

Passed by both Houses



New South Wales

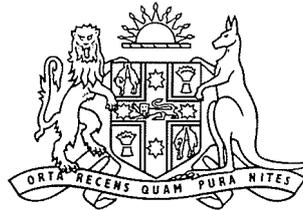
Statute Law (Miscellaneous Provisions) Bill (No 2) 2006

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

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Statute Law (Miscellaneous Provisions) Bill (No 2) 2006

Act No , 2006

An Act to repeal certain Acts and to amend certain other Acts and instruments in various respects and for the purpose of effecting statute law revision; and to make certain savings.

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

Chairman of Committees of the Legislative Assembly.

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

This Act is the *Statute Law (Miscellaneous Provisions) Act (No 2) 2006*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by this section.
- (2) The amendments made by Schedules 1–3 commence on the day or days specified in those Schedules in relation to the amendments concerned. If a commencement day is not specified, the amendments commence on the date of assent.

3 Amendments

The Acts and instruments specified in Schedules 1–3 are amended as set out in those Schedules.

4 Repeals

Each Act specified in Schedule 4 is, to the extent indicated in that Schedule, repealed.

5 General savings, transitional and other provisions

Schedule 5 has effect.

6 Explanatory notes

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

7 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Minor amendments

(Section 3)

1.1 Australian Museum Trust Act 1975 No 95

Schedule 1 Composition and procedure of the Trust

Insert after clause 8:

8A Disclosure of pecuniary interests

- (1) If:
 - (a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Trust, and
 - (b) the interest appears to raise a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,the trustee must, as soon as possible after the relevant facts have come to the trustee's knowledge, disclose the nature of the interest at a meeting of the Trust.
- (2) A disclosure by a trustee at a meeting of the Trust that the trustee:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Trust in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Trust.
- (4) After a trustee has disclosed the nature of an interest in any matter, the trustee must not, unless the Trust otherwise determines:

- (a) be present during any deliberation of the Trust with respect to the matter, or
 - (b) take part in any decision of the Trust with respect to the matter.
- (5) For the purposes of the making of a determination by the Trust under subclause (4), a trustee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Trust for the purpose of making the determination, or
 - (b) take part in the making by the Trust of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Trust.
- (7) This clause applies to a member of a committee of the Trust and the committee in the same way as it applies to a trustee of the Trust and the Trust.

Explanatory note

The proposed amendment requires a trustee of the Australian Museum Trust (*the Trust*) to disclose any pecuniary interest the trustee may have in any matter considered by the Trust that may raise a conflict with the proper performance of the trustee's duties. After a trustee has disclosed a pecuniary interest, the trustee must not, unless the Trust otherwise determines, be present during any deliberation, or take part in any decision, of the Trust with respect to the matter.

1.2 Children (Interstate Transfer of Offenders) Act 1988 No 85

Section 3 Definitions

Omit paragraph (b) from the definition of *Minister*. Insert instead:

- (b) in the case of the Australian Capital Territory—a person holding Ministerial office under the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth, or

Explanatory note

The *Children (Interstate Transfer of Offenders) Act 1988* allows the Minister for Juvenile Justice to enter into certain arrangements with a Minister of another State or Territory to facilitate the transfer of young offenders to, from and through New South Wales. The proposed amendment updates the definition of *Minister* (in relation to the Australian Capital Territory) under that Act to reflect the change of the Australian Capital Territory to self-government.

1.3 Commercial Agents and Private Inquiry Agents Act 2004 No 70

Sections 10 (1) and 17 (1)

Omit “becomes” wherever occurring. Insert instead “is”.

Explanatory note

Sections 10 (1) and 17 (1) of the *Commercial Agents and Private Inquiry Agents Act 2004* currently require the Commissioner of Police to cancel a master licence or an operator licence, respectively, if the licensee “becomes” a disqualified individual or corporation (as the case may be). This suggests that the provisions do not apply to a licensee unless the licensee becomes disqualified after being licensed. The proposed amendment amends those provisions so as to require cancellation of a licence if it is discovered that a licensee is a disqualified individual or corporation after a licence was granted as well as before it was granted.

1.4 Commission for Children and Young People Amendment Act 2005 No 108

Schedule 1 Amendment of Commission for Children and Young People Act 1998

Insert “, or otherwise attempt to obtain,” after “apply for” in proposed section 33C (1) (a) in Schedule 1 [31].

Explanatory note

The proposed amendment amends an uncommenced provision of the *Commission for Children and Young People Act 1998* inserted by the *Commission for Children and Young People Amendment Act 2005*.

Under proposed section 33C (1) (a) of the *Commission for Children and Young People Act 1998*, a prohibited person must not apply for child-related employment. The proposed amendment makes it clear that the provision extends to a prohibited person who otherwise attempts to obtain child-related employment. A **prohibited person** is a person convicted of a serious sex offence, the murder of a child or a child-related personal violence offence (as defined in proposed section 33B of the *Commission for Children and Young People Act 1998*) or who is a registrable person within the meaning of the *Child Protection (Offenders Registration) Act 2000*.

1.5 Contaminated Land Management Act 1997 No 140

[1] Section 53D Annual returns and other notifications

Omit “March” from section 53D (2). Insert instead “July”.

[2] Section 53D (6), definition of “return period”

Omit “1 March and ending on the last day of February”.

Insert instead “1 July and ending on 30 June”.

[3] Schedule 2 Savings and transitional provisions

Insert after clause 10:

11 Annual returns and other notifications

Despite the definition of *return period* in section 53D (6), the return period for the year ending 30 June 2007 is, for the purposes of section 53D, to commence on 1 March 2006 rather than 1 July 2006.

Explanatory note

Section 53D (1) of the *Contaminated Land Management Act 1997 (the Principal Act)* provides that an accredited site auditor must furnish the Environment Protection Authority with a return that shows site audits that have been commenced or completed during the return period. Currently, the return period is the year commencing on 1 March and ending on the last day of February. The return must be furnished not later than the 31 March next following the end of the return period.

Item [1] of the proposed amendments amends section 53D (2) of the Principal Act to provide that the return must now be furnished by a site auditor not later than the 31 July next following the end of the return period.

Item [2] of the proposed amendments amends the definition of *return period* in section 53D (6) of the Principal Act so that the return period is now the year commencing on 1 July and ending on 30 June.

Item [3] of the proposed amendments inserts a transitional provision which provides that the return period for the 2006–2007 year is the period commencing on 1 March 2006 and ending on 30 June 2007.

1.6 Conveyancing Act 1919 No 6

[1] Section 195D Signatures and consents

Insert after section 195D (3):

(3A) Without limiting the other provisions of this section, if a plan presented for lodgment under this Division purports to have been executed under a power of attorney, the Registrar-General may refuse:

- (a) to accept the plan for lodgment, or
- (b) to register or record the plan or take any other action in respect of it,

unless the power of attorney has been registered as provided for by the *Powers of Attorney Act 2003*.

[2] Section 203AA

Insert after section 203:

203AA Keeping of plans and other documents

- (1) The Registrar-General may keep plans and other documents lodged with the Registrar-General under this or any other Act (whether lodged for registration or recording or for another purpose) in or on any medium or combination of media capable of having information recorded in or on it or them.
- (2) Subsection (1) applies regardless of whether the plans or other documents were lodged manually or electronically.
- (3) The Registrar-General may, from time to time, vary the manner or form in which the plans and other documents are kept.
- (4) This section does not apply to any plan or other document that is required to be kept in a manner or form specified in or under any other provision of this Act or in or under any provision of any other Act.

Explanatory note

Item [1] of the proposed amendments inserts in the *Conveyancing Act 1919 (the Principal Act)* a provision that permits the Registrar-General to refuse to accept for lodgment under Division 3 (Plans) of Part 23 (Registration) of the Principal Act, or to register or record, a plan that purports to have been executed under a power of attorney, unless the power of attorney has been registered as provided for by the *Powers of Attorney Act 2003*. The proposed provision is similar to section 36 (2) of the *Real Property Act 1900*.

Item [2] of the proposed amendments inserts proposed section 203AA in the Principal Act. The proposed section provides that the Registrar-General may keep plans or other documents lodged with the Registrar-General "in or on any medium or combination of media capable of having information recorded in or on it or them" (unless another provision of the Principal Act, or a provision of another Act, specifies the way in which the plans or documents are to be kept). Section 184C (3) and (4) of the Principal Act contain provisions to similar effect in relation to the General Register of Deeds maintained for the purposes of Division 1 (General Register of Deeds) of Part 23 (Registration) of the Principal Act.

1.7 Co-operatives Act 1992 No 18

Section 178 Effect of relevant share and voting interests on voting rights

Omit "A member" from section 178 (1).

Insert instead "Subject to section 176 (5) and (6), a member".

Explanatory note

The proposed amendment clarifies that section 178 of the *Co-operatives Act 1992*, which deals with the effect of relevant shares and voting interests on voting rights, is to be read subject to section 176 (5) and (6) of that Act (which deal with joint membership and joint share holdings).

1.8 Criminal Procedure Act 1986 No 209

[1] Schedule 1 Indictable offences triable summarily

Omit “serious offence” from clause 15 (1) in Table 1.

Insert instead “serious indictable offence”.

[2] Schedule 1, Table 1

Insert after clause 23A:

23AA Royal Commissions Act 1923

An offence under section 21, 22 or 23A of the *Royal Commissions Act 1923*.

23AB Special Commissions of Inquiry Act 1983

An offence under section 27, 28 or 30 of the *Special Commissions of Inquiry Act 1983*.

Explanatory note

Item [1] of the proposed amendments updates terminology.

Item [2] of the proposed amendments requires certain offences under the *Royal Commissions Act 1923* or the *Special Commissions of Inquiry Act 1983* to be tried summarily unless the person charged or prosecutor elects otherwise. The offences relate to the giving of false or misleading testimony, subornation and delay or obstruction.

1.9 Crown Lands Act 1989 No 6

[1] Section 102A Minister’s consent not required for certain leases, licences or easements

Omit section 102A (1). Insert instead:

- (1) This section applies to a reserve trust managed by any of the following:
 - (a) a trust board or a corporation (other than a council) that has been appointed under section 93 or 95, but only if the land comprising the reserve for which the reserve trust has been appointed as trustee is being used, occupied or administered by a government agency (other than a rural lands protection board),
 - (b) a council that has been appointed under section 95.

[2] Section 102A (6)

Omit “council” where firstly occurring.

Insert instead “trust board, corporation or council concerned”.

[3] Section 102A (6) (a)

Insert “trust board, corporation or” before “council”.

[4] Section 102A (6) (b)

Insert “in the case of a reserve trust managed by a council—” before “any public”.

Explanatory note

Section 102A of the *Crown Lands Act 1989* enables a reserve trust managed by a council, if authorised to do so by the Minister for Lands, to grant a lease, licence or easement over a Crown reserve without having to obtain the Minister’s consent each time. Item [1] of the proposed amendments extends this power to reserve trusts managed by a trust board or corporation if the Crown reserve concerned is being used, occupied or administered by a government agency (other than a rural lands protection board).

Items [2]–[4] are consequential amendments.

1.10 Film and Television Office Act 1988 No 18

[1] Section 3 Definitions

Omit the definition of *Director* from section 3 (1). Insert instead:

chief executive officer means the chief executive officer of the Office holding office as such under Chapter 1A of the *Public Sector Employment and Management Act 2002*.

[2] Sections 6D, 6E and 9A

Omit “Director” wherever occurring. Insert instead “chief executive officer”.

[3] Schedule 1 Savings, transitional and other provisions

Insert after Part 3:

Part 4 Provisions consequent on enactment of Statute Law (Miscellaneous Provisions) Act (No 2) 2006

8 Construction of references to Director

Unless the regulations otherwise provide, on and from the commencement of this clause, a reference in any other Act, in any instrument made under any Act or in any other instrument of any

kind, to the Director of the New South Wales Film and Television Office is to be read as a reference to the chief executive officer of the New South Wales Film and Television Office.

Explanatory note

Items [1] and [2] of the proposed amendments rename the position of Director of the New South Wales Film and Television Office as chief executive officer of the Office. The role of the position is unchanged.

Item [3] of the proposed amendments is a savings and transitional provision that provides for references to the Director of the New South Wales Film and Television Office to be read as references to the chief executive officer of the Office.

1.11 Fisheries Management Act 1994 No 38

[1] Schedule 7 Savings, transitional and other provisions

Omit “, but only until the commencement of the management plan for the fishery” from clause 6D (2).

[2] Schedule 7, clause 6D (2A)

Insert after clause 6D (2):

- (2A) A shareholder in a fishery (within the extended meaning of that expression given by section 77A (8)) is not required to pay a rental charge under section 77A in respect of any period that is after the beginning of the first period for which a community contribution for right of access to the fishery is payable under the management plan for the fishery.

Explanatory note

Clause 6D of Schedule 7 to the *Fisheries Management Act 1994 (the Principal Act)* is a transitional provision that provides for the continuation of the payment of rental charges under section 77A of the Principal Act for access to fisheries following the transition of those fisheries from category 2 share management fisheries to category 1 share management fisheries. The payment of charges for access to a category 1 share management fishery is normally dealt with under the management plan for the fishery. However, the management plans for the new category 1 share management fisheries are yet to commence. Currently, clause 6D provides that a shareholder in a fishery is required to pay the rental charge under section 77A of the Principal Act only until the commencement of the management plan for the fishery, but this does not take into account the possibility that the provisions of the management plan dealing with rental charges may take effect at a later date.

Item [1] of the proposed amendments omits the requirement that a shareholder in a fishery is required to pay the rental charge under section 77A of the Principal Act only until the commencement of the management plan for the fishery.

Item [2] of the proposed amendments provides that a shareholder in a fishery is not required to pay a rental charge under section 77A of the Principal Act in respect of any period that is after the beginning of the first period for which a community contribution for right of access to the fishery is payable under the management plan for the fishery.

1.12 Food Act 2003 No 43

[1] Section 102 Regulations relating to establishment of food safety schemes

Omit section 102 (6) and (7).

[2] Section 139 Regulations

Insert after section 139 (2B):

(2C) The regulations may provide for an application to be made to the Administrative Decisions Tribunal by a person for a review of a decision, of a class prescribed by the regulations, that is made under this Act or the regulations.

(2D) A regulation referred to in subsection (2C) may be made only with the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

Explanatory note

Item [1] of the proposed amendments repeals section 102 (6) and (7) of the *Food Act 2003 (the Principal Act)*. Currently, section 102 (6) and (7) enable the regulations under the Principal Act to provide that a person may make an application to the Administrative Decisions Tribunal for a review of a decision under the regulations in relation to a licence or an application for the granting of a licence. Such a regulation may not be made without the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

Item [2] of the proposed amendments inserts into the general regulation-making power in section 139 of the Principal Act, provisions enabling the regulations to allow a person to make an application to the Administrative Decisions Tribunal for a review of any decision made under the Principal Act or the regulations that is a decision of a class prescribed by the regulations. The concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997* is required for the making of any such regulation.

1.13 Funeral Funds Act 1979 No 106

[1] Section 49J Cooling-off period

Omit “pre-paid funeral fund” from section 49J (1).

Insert instead “funeral service supplier, or the person’s legal representative,”.

[2] Section 49J (1)

Omit “the fund”. Insert instead “the funeral service supplier”.

[3] Section 49J (2)

Omit “If a person”.

Insert instead “If a person or the person’s legal representative”.

[4] Section 49J (2)

Omit “pre-paid funeral fund” wherever occurring.

Insert instead “funeral service supplier”.

[5] Section 49J (3)

Insert after section 49J (2):

(3) In this section:

funeral service supplier means a person who agrees to supply a funeral service under a pre-paid contract.

Explanatory note

Pre-paid contracts, within the meaning of the *Funeral Funds Act 1979 (the Principal Act)*, are contracts under which a person pays for the person’s funeral before he or she dies. Section 49J of the Principal Act provides for a cooling-off period for any such contract. However, that section incorrectly states that the pre-paid contract is between the person and a pre-paid funeral fund rather than between the person and the person who agrees to supply the funeral under the contract.

Items [1], [2], [4] and [5] of the proposed amendments make it clear that the cooling-off period provided for in section 49J applies to pre-paid contracts between a person and a funeral service supplier.

Items [1] and [3] of the proposed amendments allow a pre-paid contract to be ended during the cooling-off period by a person’s legal representative.

1.14 Growth Centres (Development Corporations) Act 1974 No 49

[1] Section 6 Provisions relating to constitution and procedure of development corporation

Insert after section 6 (1C):

(1D) The employment of a chief executive appointed by the Minister under subsection (1A) is subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*, but is not subject to Chapter 1A or 2 of that Act.

[2] Schedule 2 Provisions relating to the constitution and procedure of development corporations

Omit “the Director-General” from clauses 3 (2), 4 (2) and 7 wherever occurring.

Insert instead “a chief executive”.

[3] Schedule 2, clause 5

Omit the clause. Insert instead:

5 Application of Public Sector Employment and Management Act 2002

- (1) The *Public Sector Employment and Management Act 2002* (other than Chapter 5) does not apply to or in respect of the appointment of a member and a member is not, in the member's capacity as a member, to be subject to the provision of that Act (other than Chapter 5) during the member's term of office.
- (2) In this clause, a reference to a *member* is a reference to a member other than a chief executive.

[4] Schedule 2, clause 6 (1)

Omit "An appointed member".

Insert instead "A member (other than a chief executive)".

[5] Schedule 2, clause 6 (1) (e)

Omit "an appointed member". Insert instead "a member".

[6] Schedule 2, clause 6 (2)

Omit "appointed member".

Insert instead "member (other than a chief executive)".

Explanatory note

An amendment to the *Public Sector Employment and Management Act 2002* in this Schedule makes a person appointed as a chief executive of a development corporation under section 6 (1A) of the *Growth Centres (Development Corporations) Act 1974 (the Principal Act)* a member of the Senior Executive Service.

Item [1] of the proposed amendments sets out how the *Public Sector Employment and Management Act 2002* applies to a chief executive appointed under section 6 (1A) of the Principal Act.

Items [2]–[6] exclude provisions of the Principal Act (such as term of appointment, remuneration and vacancy of office) from applying to a chief executive as these matters are dealt with under the *Public Sector Employment and Management Act 2002*.

1.15 Historic Houses Act 1980 No 94

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

Insert after clause 8:

8A Disclosure of pecuniary interests

- (1) If:
 - (a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Trust, and
 - (b) the interest appears to raise a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,
the trustee must, as soon as possible after the relevant facts have come to the trustee's knowledge, disclose the nature of the interest at a meeting of the Trust.
- (2) A disclosure by a trustee at a meeting of the Trust that the trustee:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Trust in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Trust.
- (4) After a trustee has disclosed the nature of an interest in any matter, the trustee must not, unless the Trust otherwise determines:
 - (a) be present during any deliberation of the Trust with respect to the matter, or
 - (b) take part in any decision of the Trust with respect to the matter.
- (5) For the purposes of the making of a determination by the Trust under subclause (4), a trustee who has a direct or indirect

pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Trust for the purpose of making the determination, or
 - (b) take part in the making by the Trust of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Trust.
- (7) This clause applies to a member of a committee of the Trust and the committee in the same way as it applies to a trustee of the Trust and the Trust.

[2] Schedule 1, clause 9A

Insert after clause 9:

9A Transaction of business outside meetings or by telephone

- (1) The Trust may, if it thinks fit, transact any of its business by the circulation of papers among all the trustees for the time being, and a resolution in writing approved in writing by a majority of those trustees is taken to be a decision of the Trust.
- (2) The Trust may, if it thinks fit, transact any of its business at a meeting at which trustees (or some trustees) participate by telephone, closed-circuit television or other means, but only if any trustee who speaks on a matter before the meeting can be heard by the other trustees.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each trustee have the same voting rights as they have at an ordinary meeting of the Trust.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Trust.
- (5) Papers may be circulated among the trustees for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

Explanatory note

Item [1] of the proposed amendments requires a trustee of the Historic Houses Trust (*the Trust*) to disclose any pecuniary interest the trustee may have in any matter considered by the Trust that may raise a conflict with the proper performance of the trustee's duties. After a trustee has disclosed a pecuniary interest, the trustee must not,

unless the Trust otherwise determines, be present during any deliberation, or take part in any decision, of the Trust with respect to the matter.

Item [2] of the proposed amendments permits the Trust to conduct its business outside of meetings or by telephone, closed-circuit television or by other means.

1.16 Landlord and Tenant (Amendment) Act 1948 No 25

[1] Section 5 Crown not bound

Omit section 5 (b). Insert instead:

- (b) the New South Wales Land and Housing Corporation.

[2] Section 8 Definitions

Omit the definition of *Department* from section 8 (1). Insert instead:

Department means the Department of Commerce.

[3] Section 8 (1), definition of “Director-General”

Omit the definition. Insert instead:

Director-General means:

- (a) the Commissioner for Fair Trading, Department of Commerce, or
- (b) if there is no such position in that Department, the Director-General of that Department.

Explanatory note

Item [1] of the proposed amendments to the *Landlord and Tenant (Amendment) Act 1948* updates a reference to the Housing Commission of New South Wales as that body no longer exists.

Item [2] of the proposed amendments updates a reference to the Department of Fair Trading as that Department no longer exists.

Item [3] of the proposed amendments provides for the Commissioner for Fair Trading, Department of Commerce to exercise the functions previously exercised by the Director-General of the Department of Fair Trading. However, if there is no position of Commissioner for Fair Trading within the Department of Commerce, the Director-General of that Department will exercise those functions.

1.17 Landlord and Tenant (Rental Bonds) Act 1977 No 44

Section 4 Definitions

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

Explanatory note

The proposed amendment omits a redundant definition.

1.18 Library Act 1939 No 40

Schedule 1 Composition and procedure of the Council

Insert after clause 8:

8A Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.
- (2) A disclosure by a member at a meeting of the Council that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Council.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Council otherwise determines:
 - (a) be present during any deliberation of the Council with respect to the matter, or
 - (b) take part in any decision of the Council with respect to the matter.

- (5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Council for the purpose of making the determination, or
 - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.
- (7) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.

Explanatory note

The proposed amendment requires a member of the Library Council of New South Wales (*the Council*) to disclose any pecuniary interest the member may have in any matter considered by the Council that may raise a conflict with the proper performance of the member's duties. After a member has disclosed a pecuniary interest, the member must not, unless the Council otherwise determines, be present during any deliberation, or take part in any decision, of the Council with respect to the matter.

1.19 Mine Safety (Cost Recovery) Act 2005 No 116

[1] Section 15 Service of documents

Insert after section 15 (1) (a) (iii):

- (iv) sending it by email to the email address specified by the person for the service of documents, or

[2] Section 15 (1) (b) (iii)

Insert at the end of section 15 (1) (b) (ii):

- , or
- (iii) sending it by email to the email address of the body corporate or of any officer or employee of the body corporate specified by the body corporate for the service of documents.

Explanatory note

The proposed amendments provide for documents that are authorised or required by the *Mine Safety (Cost Recovery) Act 2005* or the regulations under that Act to be served on any person to be served by email.

1.20 Museum of Applied Arts and Sciences Act 1945 No 31

Section 8A

Insert after section 8:

8A Disclosure of pecuniary interests

- (1) If:
 - (a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the trustees, and
 - (b) the interest appears to raise a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,the trustee must, as soon as possible after the relevant facts have come to the trustee's knowledge, disclose the nature of the interest at a meeting of the trustees.
- (2) A disclosure by a trustee at a meeting of the trustees that the trustee:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).
- (3) Particulars of any disclosure made under this section must be recorded by the trustees in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the trustees.
- (4) After a trustee has disclosed the nature of an interest in any matter, the trustee must not, unless the trustees otherwise determine:
 - (a) be present during any deliberation of the trustees with respect to the matter, or
 - (b) take part in any decision of the trustees with respect to the matter.

- (5) For the purposes of the making of a determination by the trustees under subsection (4), a trustee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the trustees for the purpose of making the determination, or
 - (b) take part in the making by the trustees of the determination.
- (6) A contravention of this section does not invalidate any decision of the trustees.
- (7) This section applies to a member of a committee of the trustees and the committee in the same way as it applies to a trustee and the trustees.

Explanatory note

The proposed amendment requires a trustee who is one of the trustees of the Museum of Applied Arts and Sciences (*the trustees*) to disclose any pecuniary interest the trustee may have in any matter considered by the trustees that may raise a conflict with the proper performance of the trustee's duties. After a trustee has disclosed a pecuniary interest, the trustee must not, unless the trustees otherwise determine, be present during any deliberation, or take part in any decision, of the trustees with respect to the matter.

1.21 National Parks and Wildlife Act 1974 No 80

[1] Section 5 Definitions

Omit the definition of *Director-General* from section 5 (1). Insert instead:

Director-General means the Director-General of the Department of Environment and Conservation.

[2] Section 21 Delegation

Omit “, with the approval of the Minister,” from section 21 (1) (b).

[3] Sections 47GA (3) (a), (4) and (5) and 71AY

Omit “state recreation area” wherever occurring.

Insert instead “state conservation area”.

[4] Section 47GA (5)

Omit “state recreation areas”. Insert instead “state conservation areas”.

[5] Section 91H Appeal against order

Omit “whole of any part of an area or land” from section 91H (1).

Insert instead “whole or any part of an area of land”.

Explanatory note

The *Public Sector Employment and Management (Environment and Conservation) Order 2003* abolished the National Parks and Wildlife Service as a separate Department of the Public Service and transferred it as a branch of the Department of Environment and Conservation. That Order provided that all references to the National Parks and Wildlife Service are to be read as references to the Department of Environment and Conservation and all references to the Director-General of National Parks and Wildlife are to be read as references to the Director-General of the Department of Environment and Conservation.

Item [1] of the proposed amendments updates the definition of **Director-General** of the Service in the *National Parks and Wildlife Act 1974 (the Principal Act)*.

Item [2] of the proposed amendments enables the Director-General to delegate functions without the need to obtain the approval of the Minister.

Items [3] and [4] of the proposed amendments update references to the classification of land reserved under the Principal Act.

Item [5] of the proposed amendments corrects typographical errors.

1.22 Protection of the Environment Operations Act 1997 No 156

[1] Section 146D Littering reports

Omit “type of material that comprises litter deposited during the period concerned and the quantity of each such type of material” from section 146D (2).

Insert instead “composition and quantity of litter”.

[2] Section 161 Notices

Insert after section 161 (6) (c):

- (c1) having the vehicle tested or inspected by a person approved by the EPA for the purposes of section 207 (2) (c), or

[3] Section 161 (6) (d)

Insert “tested or” after “vehicle”.

[4] Sections 246 (3) and 248 (2)

Omit “*Local Courts (Civil Claims) Act 1970*” wherever occurring.

Insert instead “*Civil Procedure Act 2005*”.

[5] Section 250 Additional orders

Omit “environmental organisation” from section 250 (1) (e).
Insert instead “organisation”.

[6] Schedule 5 Savings, transitional and other provisions

Insert “*Environment*” before “*Operations*” in clause 16 (4).

[7] Dictionary

Omit “state recreation area” from paragraph (c) of the definition of *public place*.

Insert instead “state conservation area”.

Explanatory note

Item [1] of the proposed amendments amends section 146D of the *Protection of the Environment Operations Act 1997 (the Principal Act)* to provide that the biennial report of the Environment Protection Authority (*EPA*) on littering is to contain estimates of the composition and quantity of litter (rather than the type of material that comprises the litter and the quantity of each type of material).

Item [2] of the proposed amendments amends section 161 of the Principal Act to provide that it will not be an offence against the section to drive a motor vehicle to a place for the purposes of having the vehicle tested or inspected by a person approved by the EPA for the purposes of section 207 (2) (c) of the Principal Act. Section 207 of the Principal Act provides that an authorised officer may require the owner or person in possession of an article to have the article tested or inspected, at a place approved by the EPA. Item [3] of the proposed amendments makes a consequential amendment.

Item [4] of the proposed amendments updates references to repealed legislation.

Item [5] of the proposed amendments amends section 250 (1) (e) of the Principal Act to allow a court to order an offender to pay a specified amount to a specified organisation for certain environmental purposes. Currently, that section allows payment only to a specified “environmental” organisation.

Item [6] of the proposed amendments corrects a citation.

Item [7] of the proposed amendments updates a reference to the classification of land reserved under the *National Parks and Wildlife Act 1974*.

1.23 Public Sector Employment and Management Act 2002 No 43

[1] Section 143 Regulations

Omit “Public Service”. Insert instead “public sector service”.

[2] Schedule 2 Executive positions (other than non-statutory SES positions)

Insert at the end of Part 3:

A chief executive of a development corporation appointed under section 6 (1A) of the *Growth Centres (Development Corporations) Act 1974*

Explanatory note

Item [1] of the proposed amendments provides that the regulations under the *Public Sector Employment and Management Act 2002 (the Principal Act)* may make provision for or with respect to the acquisition or disposal of goods or services for the public sector service. Currently, such regulations may only be made with respect to the Public Service (which is now part of the Government Service). The public sector service includes, amongst other things, the Government Service, the Teaching Service, NSW Police and the NSW Health Service.

Item [2] of the proposed amendments provides that a person appointed as a chief executive of a development corporation is a member of the Senior Executive Service for the purposes of the Principal Act.

1.24 Real Property Act 1900 No 25

[1] Section 36 Lodgment and registration of documents

Omit “a dealing or caveat” from section 36 (2).

Insert instead “a plan referred to in subsection (3), or a dealing or caveat,”.

[2] Section 36 (2)

Omit “the *Conveyancing Act 1919*”.

Insert instead “the *Powers of Attorney Act 2003*”.

Explanatory note

Section 36 (2) of the *Real Property Act 1900* permits the Registrar-General to refuse to accept for lodgment, or to record or register or otherwise take action in respect of, a “dealing or caveat” presented for lodgment that purports to have been executed under a power of attorney, unless the power of attorney has been registered.

Item [1] of the proposed amendments extends section 36 (2) so as to confer the same power on the Registrar-General in relation to plans intended to be registered pursuant to the provisions of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

Currently, section 36 (2) refers to the power of attorney having been registered “as provided for by the *Conveyancing Act 1919*”. Registration of powers of attorney is now provided for by the *Powers of Attorney Act 2003*. Item [2] of the proposed amendments updates the outdated reference.

1.25 Residential Tenancies Act 1987 No 26

[1] Section 6 Agreements and premises to which Act does not apply

Omit section 6 (2) (f). Insert instead:

- (f) any premises used to provide residential care within the meaning of the *Aged Care Act 1997* of the Commonwealth.

[2] Section 6 (3)

Omit “(e), (f) or (g)”. Insert instead “(e) or (f)”.

[3] Sections 123, 124 (1), 130 (3) and (5) and 133 (1) (i)–(k)

Omit the section, subsections and paragraphs.

Explanatory note

Item [1] of the proposed amendments to the *Residential Tenancies Act 1987* updates a reference to the *Aged or Disabled Persons Care Act 1954* of the Commonwealth which has been repealed.

Item [2] of the proposed amendments omits a cross-reference to a repealed paragraph.

Item [3] of the proposed amendments omits redundant provisions that relate to the former Residential Tenancies Tribunal. These matters are now dealt with in the *Consumer, Trader and Tenancy Tribunal Act 2001*.

1.26 Royal Commissions Act 1923 No 29

Section 21

Omit the section. Insert instead:

21 False and misleading testimony

- (1) Any witness before a commission who gives testimony that is false or misleading in a material particular knowing it to be false or misleading, or not believing it to be true, is guilty of an indictable offence.

Maximum penalty: Imprisonment for 5 years.

- (2) Sections 331 and 332 of the *Crimes Act 1900* apply to proceedings for an offence against this section in the same way as they apply to proceedings for an offence under section 330 of that Act.

Explanatory note

The object of this amendment is to bring the offence of giving false testimony that is found in section 21 of the *Royal Commissions Act 1923* into line with similar offences found in section 87 of the *Independent Commission Against Corruption Act 1988* and section 107 of the *Police Integrity Commission Act 1996*. In order to do this, the offence has been expanded to cover the giving of misleading testimony (currently the offence applies only to false testimony) and to cover cases where the person giving the testimony does not believe it to be true (currently the person is guilty of the offence only if that person knowingly gives the false testimony). The amendment also applies sections 331 and 332 of the *Crimes Act 1900* to the offence. Section 331 of that Act provides that where a person has made 2 statements on oath and one is irreconcilably in conflict with the other, a jury can find a person guilty of the offence if it is satisfied that one of the statements was made by the accused knowing it to be false or misleading, or not believing it to be true. It is not necessary for the jury to know which of the statements was so made. Section 332 of that Act provides that an accused person cannot rely on a technical defect in an instrument to prevent it being used in evidence at his or her trial for the offence.

1.27 Security Industry Act 1997 No 157**[1] Section 26 Revocation of licence**

Omit section 26 (1) (c).

[2] Section 32 Advertising

Omit “licence that authorises the person to carry on that security activity” from section 32 (1).

Insert instead “master licence”.

Explanatory note

Currently, section 26 of the *Security Industry Act 1997* (**the Principal Act**) provides both a discretionary (section 26 (1) (c)) and mandatory (sections 15 (1) (a) and 26 (1A)) requirement for the Commissioner of Police to revoke a licence under the Principal Act if the licensee is no longer a fit and proper person to hold the licence. Item [1] of the proposed amendments makes it clear that such a requirement is mandatory.

Section 32 of the Principal Act currently provides that a person must not advertise that the person carries on or is willing to carry on any security activity unless the person is the holder of a licence that authorises the person to carry on that security activity. Item [2] of the proposed amendments provides instead that only the holder of a master licence may advertise in such a manner.

1.28 Security Industry Amendment Act 2005 No 63

[1] Schedule 1 Amendment of Security Industry Act 1997

Omit proposed section 14 (5) in Schedule 1 [20]. Insert instead:

- (5) In the case of an application for a class P1F licence, the applicant must also supply a letter of endorsement from the applicant's employer or proposed employer (being an approved master licensee providing uniformed cash in transit security services) that states that the applicant is or will be employed by the employer.

[2] Schedule 1 [33]

Omit "Special Crime and Internal Affairs Branch of NSW Police".

Insert instead "Professional Standards Command of NSW Police".

[3] Schedule 1 [42]

Omit ", in accordance with section 14 (5), applied for the P1F licence on the licensee's behalf" from proposed section 23C (2).

Insert instead "provided the licensee with a letter of endorsement, as referred to in section 14 (5)".

[4] Schedule 1 [48]

Omit proposed section 29A. Insert instead:

29A Offence of permitting employee who is provisional licensee to carry on unsupervised security activity

- (1) A person who is the holder of a provisional licence must not carry on a security activity authorised by that licence otherwise than under the direct supervision (as determined in accordance with the regulations) of a person who holds a class 1 licence that authorises the carrying on of the security activity to which the provisional licence relates.
- (2) If subsection (1) is contravened, the person who is (at the time of the contravention) the employer of the person holding the provisional licence is guilty of an offence.
Maximum penalty:
 - (a) in the case of a corporation—200 penalty units, or
 - (b) in the case of an individual—100 penalty units.

[5] Schedule 1 [54]

Omit the item.

[6] Schedule 1 [65]

Omit proposed section 38B (2). Insert instead:

- (2) A person (*the relevant person*) must not, for fee or reward, supervise or monitor the performance of a person who holds a class 1 or class 2 licence unless the relevant person is:
- (a) the holder of a master licence, or
 - (b) in the case of a master licence held by a corporation, government agency or public authority—the person nominated by the corporation, agency or authority for the purpose of such supervision or monitoring, or
 - (c) the holder of a licence authorising the relevant person to carry on the security activity to which the class 1 or class 2 licence relates.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

Explanatory note

The proposed amendments amend uncommenced provisions of the *Security Industry Act 1997 (the Principal Act)* that are to be inserted by the *Security Industry Amendment Act 2005*.

Under proposed section 14 (5) of the Principal Act, an application for a P1F licence is to be made on behalf of the applicant by the applicant's employer (being an approved master licensee providing uniformed cash in transit security services). Item [1] of the proposed amendments removes the requirement for the application to be made by the employer and provides instead that the applicant must supply a letter of endorsement from the applicant's employer with the application. Item [3] of the proposed amendments makes a consequential amendment.

Item [2] of the proposed amendments updates a reference to an office.

Item [4] of the proposed amendments substitutes proposed section 29A of the Principal Act to make it clear that it is an offence for the employer of the holder of a provisional licence to fail to ensure that the holder is directly supervised.

Proposed section 32 (2A) of the Principal Act makes it an offence for a person who is the holder of a provisional licence to advertise that the person carries on or is willing to carry on any security activity. Item [5] of the proposed amendments removes this offence as a consequence of the amendments proposed to be made to section 32 of the Principal Act contained elsewhere in this Schedule.

Proposed section 38B (2) of the Principal Act provides that a person must not supervise or monitor the performance of the holder of a class 1 or class 2 licence unless the person supervising or monitoring holds a master licence or a licence of the same kind as the person being supervised or monitored. Item [6] of the proposed amendments provides that in the case of a master licence held by a corporation, government agency or public authority, a person nominated by the corporation, agency or authority may also carry out such supervision or monitoring.

1.29 Special Commissions of Inquiry Act 1983 No 90

Section 27

Omit the section. Insert instead:

27 False and misleading testimony

- (1) Any witness before a Special Commission who gives testimony that is false or misleading in a material particular knowing it to be false or misleading, or not believing it to be true, is guilty of an indictable offence.
Maximum penalty: Imprisonment for 5 years.
- (2) Sections 331 and 332 of the *Crimes Act 1900* apply to proceedings for an offence against this section in the same way as they apply to proceedings for an offence under section 330 of that Act.

Explanatory note

The object of this amendment is to bring the offence of giving false testimony that is found in section 27 of the *Special Commissions of Inquiry Act 1983* into line with similar offences found in section 87 of the *Independent Commission Against Corruption Act 1988* and section 107 of the *Police Integrity Commission Act 1996*. In order to do this, the offence has been expanded to cover the giving of misleading testimony (currently the offence applies only to false testimony) and to cover cases where the person giving the testimony does not believe it to be true (currently the person is guilty of the offence only if that person knowingly gives the false testimony). The amendment also applies sections 331 and 332 of the *Crimes Act 1900* to the offence. Section 331 of that Act provides that where a person has made 2 statements on oath and one is irreconcilably in conflict with the other, a jury can find a person guilty of the offence if it is satisfied that one of the statements was made by the accused knowing it to be false or misleading, or not believing it to be true. It is not necessary for the jury to know which of the statements was so made. Section 332 of that Act provides that an accused person cannot rely on a technical defect in an instrument to prevent it being used in evidence at his or her trial for the offence.

1.30 State Records Act 1998 No 17

[1] Section 69 Establishment of Board

Insert “, to represent departments” after “*Act 2002*” in section 69 (2) (b).

[2] Section 69 (4)

Omit the subsection.

Explanatory note

Section 69 of the *State Records Act 1998* establishes a Board of the State Records Authority, two members of which are to be nominated by the Minister administering the *Public Sector Employment and Management Act 2002*. The members nominated by that Minister are currently required to represent departments and declared authorities. However, as declared authorities no longer exist, items [1] and [2] of the proposed amendments remove the requirement to appoint a member to represent declared authorities and instead require both those members to represent departments.

1.31 Sydney Opera House Trust Act 1961 No 9

[1] Section 2 Definitions

Omit the definition of *Opera House*. Insert instead:

Opera House means the whole of the land comprised in Lot 4, Deposited Plan 787933, and Lot 5, Deposited Plan 775888, and includes any building, work or fixture on that land.

[2] Section 4 Objects and functions of Trust

Omit section 4 (5) and (6).

[3] Section 5 Authority of Trust in respect of Sydney Opera House

Omit the section.

[4] Section 12A

Insert after section 12:

12A Disclosure of pecuniary interests

- (1) If:
 - (a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Trust, and
 - (b) the interest appears to raise a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,
the trustee must, as soon as possible after the relevant facts have come to the trustee's knowledge, disclose the nature of the interest at a meeting of the Trust.
- (2) A disclosure by a trustee at a meeting of the Trust that the trustee:
 - (a) is a member, or is in the employment, of a specified company or other body, or

- (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).
- (3) Particulars of any disclosure made under this section must be recorded by the Trust in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Trust.
 - (4) After a trustee has disclosed the nature of an interest in any matter, the trustee must not, unless the Trust otherwise determines:
 - (a) be present during any deliberation of the Trust with respect to the matter, or
 - (b) take part in any decision of the Trust with respect to the matter.
 - (5) For the purposes of the making of a determination by the Trust under subsection (4), a trustee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Trust for the purpose of making the determination, or
 - (b) take part in the making by the Trust of the determination.
 - (6) A contravention of this section does not invalidate any decision of the Trust.
 - (7) This section applies to a member of a committee of the Trust and the committee in the same way as it applies to a trustee of the Trust and the Trust.

[5] Section 17 Sydney Opera House Management Account

Omit the section.

Explanatory note

The *Sydney Opera House Trust Act 1961* (***the Principal Act***) provides for the establishment of the Sydney Opera House Trust (***the Trust***) and gives the Trust certain functions including the administration, care, control, management and maintenance of the Opera House. These functions were to apply to the Opera House in stages as various parts of it were completed and the Governor published a proclamation to that effect in the Gazette. Construction of the Opera House was completed in 1975.

Items [1]–[3] of the proposed amendments remove the provisions of the Principal Act that relate to the staged transfer of authority to the Trust and instead clearly set out the land over which the Trust is to have authority.

Item [4] of the proposed amendments requires a trustee to disclose any pecuniary interest the trustee may have in any matter considered by the Trust that may raise a conflict with the proper performance of the trustee's duties. After a trustee has disclosed a pecuniary interest, the trustee must not, unless the Trust otherwise determines, be present during any deliberation, or take part in any decision, of the Trust with respect to the matter.

Item [5] of the proposed amendments omits a provision that requires the Trust to operate only one bank account. This provision conflicts with requirements under fundraising legislation such as section 20 (6) of the *Charitable Fundraising Act 1991* which requires money received in the course of a fundraising appeal to be placed in a separate account and also conflicts with section 16 of the *Public Finance and Audit Act 1983* which provides that Authorities (including the Trust) may open such accounts in such banks, building societies and credit unions and on such terms as the Treasurer determines for the banking of public money. The opening of accounts by the Trust will now be provided for under the *Public Finance and Audit Act 1983*.

1.32 Sydney Water Act 1994 No 88

Section 106 Regulations

Insert after section 106 (4):

- (5) The regulations may apply, adopt or incorporate any of the following publications as in force for the time being:
 - (a) a standard published or adopted by Standards Australia,
 - (b) the *New South Wales Code of Practice—Plumbing and Drainage* produced by the Committee on Uniformity of Plumbing and Drainage Regulations in New South Wales.

Explanatory note

Section 69 (1) of the *Interpretation Act 1987* provides that a reference to a publication in an Act or instrument is a reference to that publication as in force or current on the day specified in the Act or instrument, or if no such day is specified, the day on which the provision containing the reference took effect. Section 69 (2) goes on to provide that an Act or instrument can refer to a publication as in force for the time being if that intention appears in the Act or instrument and, if the intention appears in an instrument, the Act under which the instrument is made provides that such instruments may apply, adopt or incorporate publications, as in force for the time being.

The object of this amendment is to allow regulations under the *Sydney Water Act 1994* to apply, adopt or incorporate a standard published or adopted by Standards Australia or the *New South Wales Code of Practice—Plumbing and Drainage* as in force for the time being.

1.33 Western Lands Act 1901 No 70

[1] Section 5 Disqualification from office

Insert “(other than freehold land)” after “any land”.

[2] Section 35S Minister may create easements for right of way

Omit section 35S (1) and (2). Insert instead:

- (1) The Minister may, by instrument lodged with the Registrar-General, create the following easements over land within the Western Division that, in the Minister's opinion, is being used as a road or track:
 - (a) an easement in the nature of a right of way,
 - (b) such other easements as are appropriate to the construction and maintenance of a right of way.
- (2) Such an instrument:
 - (a) may not be lodged with respect to freehold land, and
 - (b) may only be made with respect to land held under a lease on the application of the lessee or lessees of the land, and
 - (c) must specify the beneficiary of the easement or the land to which the benefit of the easement is appurtenant.

[3] Section 35S (3)

Omit "A Minister's request".

Insert instead "An instrument lodged under subsection (1)".

[4] Section 35S (4)

Omit the subsection. Insert instead:

- (4) On receiving an instrument lodged under subsection (1), the Registrar-General may record such particulars of the creation of the special easement as the Registrar-General considers necessary in any folio of the Register relating to land which, in the Registrar-General's opinion, is affected by the creation of the easement.

[5] Section 35S (5) and (6)

Omit "a Minister's request" wherever occurring.

Insert instead "an instrument lodged under subsection (1)".

[6] Section 35S (12)

Insert after section 35S (11):

- (12) In this section and in section 35T, *the Register* means the Register kept under the *Real Property Act 1900*.

[7] Section 35T Minister may extinguish special easements

Omit section 35T (1) and (2). Insert instead:

- (1) On the application of:
 - (a) each beneficiary of a special easement, and
 - (b) in the case of a special easement over land held under a lease, each lessee of the land,the Minister may, by instrument lodged with the Registrar-General, release the easement.
- (2) On receiving an instrument lodged under subsection (1), the Registrar-General may record such particulars of the release of the special easement as the Registrar-General considers necessary in any folio of the Register relating to land which, in the Registrar-General's opinion, is affected by the release of the easement.

[8] Section 35T (3)

Omit "a Minister's request".

Insert instead "an instrument lodged under subsection (1)".

Explanatory note

Item [1] of the proposed amendments makes it clear that the Western Lands Commissioner or an Assistant Commissioner are not prevented from having an interest in freehold land in the Western Division. The Commissioner and an Assistant Commissioner currently have no functions with respect to freehold land.

At present, the Minister for Natural Resources may request that the Registrar-General create special easements over certain land within the Western Division that is being used as a road or track and also to request the Registrar-General to extinguish any such easement. Items [2]–[8] of the proposed amendments will allow the Minister to create or extinguish special easements instead of having to request that the Registrar-General do so.

Schedule 2 Amendments by way of statute law revision

(Section 3)

2.1 Access to Neighbouring Land Act 2000 No 2

[1] Section 6 (a)

Omit section 6 (a) and (b). Insert instead:

- (a) land reserved as a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area,

[2] Sections 26 (5), 28 (4) and 29 (1)

Omit “*Local Courts (Civil Claims) Act 1970*” wherever occurring.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

Item [1] of the proposed amendments updates references to the classification of land reserved under the *National Parks and Wildlife Act 1974*.

Item [2] of the proposed amendments updates references to repealed legislation.

2.2 Animal Research Regulation 2005

Schedule 1, clause 7 (3)

Omit “veterinary surgeon” wherever occurring.

Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendment updates references.

2.3 Apprenticeship and Traineeship Regulation 2005

Clause 5

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.4 Architects Regulation 2004

Clause 6 (4) (b)

Omit “to practice”. Insert instead “to practise”.

Explanatory note

The proposed amendment corrects a typographical error.

2.5 Associations Incorporation Act 1984 No 143

Section 72

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.6 Bail Act 1978 No 161

Section 51 (5) (b)

Omit “regulations” wherever occurring. Insert instead “rules”.

Explanatory note

The proposed amendment corrects references.

2.7 Blacktown Local Environmental Plan 1988

Schedule 6, item 27, paragraph (c) (xviii)

Omit “screeded”. Insert instead “screened”.

Explanatory note

The proposed amendment corrects a typographical error.

2.8 Blue Mountains Local Environmental Plan 2005

Schedule 7

Omit the note to the Schedule.

Explanatory note

The proposed amendment omits a redundant note.

2.9 Botany Local Environmental Plan 1995

[1] Clause 7 (2)

Insert at the end of the clause:

- (2) Notes included in this plan do not form part of this plan.

[2] Clause 12A (2) (a)

Omit “, and”.

Explanatory note

Item [1] of the proposed amendments clarifies the status of notes.

Item [2] of the proposed amendments omits a redundant conjunction.

2.10 Camden Local Environmental Plan No 45

Clause 6 (1)

Omit “*recretaion area*”. Insert instead “*recreation area*”.

Explanatory note

The proposed amendment corrects a typographical error.

2.11 Cessnock Local Environmental Plan 1989

[1] Clause 5 (3)

Insert after clause 5 (2):

(3) Notes included in this plan do not form part of this plan.

[2] Clause 7A (1)

Omit “has”. Insert instead “had”.

Explanatory note

Item [1] of the proposed amendments clarifies the status of notes.

Item [2] of the proposed amendments corrects a grammatical error.

2.12 Civil Liability Act 2002 No 22

Section 26J (3B) (a)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.13 Cobar Local Environmental Plan 2001

Clause 5 (1), definition of “veterinary clinic”

Omit “veterinary surgeon”. Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendment updates a reference.

2.14 Community Land Management Act 1989 No 202

Sections 97D (3) and 97E (2)

Omit “*Local Courts (Civil Claims) Act 1970*” wherever occurring.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates references to repealed legislation.

2.15 Companion Animals Act 1998 No 87

Section 61 (4)

Omit “*Local Courts (Civil Claims) Act 1970*” wherever occurring.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates references to repealed legislation.

2.16 Conveyancing (General) Regulation 2003

Schedule 11, Part 1

Omit “veterinary surgeon”. Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendment updates a reference.

2.17 Crimes Amendment (Apprehended Violence) Act 2006 No 73

[1] Schedule 1, proposed sections 562M (4) (c) and 562N (2) (d)

Omit “HIV/AIDS or other” wherever occurring.

Insert instead “HIV/AIDS infection or”.

[2] Schedule 3.4, proposed section 33 (6) (c)

Omit “*Crimes Act 1990*”. Insert instead “*Crimes Act 1900*”.

Explanatory note

Item [1] of the proposed amendments clarifies conjunctions.

Item [2] of the proposed amendments corrects the citation of an Act.

2.18 Crown Lands (Continued Tenures) Act 1989 No 7

[1] Section 5 (4), definition of “tenure”

Insert “or” at the end of paragraphs (a), (b) and (c).

[2] Schedule 3, Part 1, clause 2 (2) (a)

Insert “or” at the end of the paragraph.

Explanatory note

The proposed amendments insert missing conjunctions.

2.19 Crown Lands (General Reserves) By-law 2006

Schedule 1, Part 1

Omit “Jasper” from the column headed “**Corporate name**” of the matter relating to Wee Jasper.

Insert instead “Jasper”.

Explanatory note

The proposed amendment corrects a typographical error.

2.20 Crown Lands Regulation 2006

Clause 44 (2) (c)–(e)

Omit “*Reserve*” wherever occurring. Insert instead “*Reserves*”.

Explanatory note

The proposed amendment corrects citations of an instrument.

2.21 District Court Act 1973 No 9

Schedule 3, clause 1 (1A)

Insert before clause 1 (1):

(1A) The Governor may make regulations for the purposes of this Part.

Explanatory note

The proposed amendment clarifies who is to make regulations.

2.22 District Court Rules 1973

Part 51D, heading

Omit “**Property (Relationships) Act 1984,**”.

Explanatory note

The proposed amendment omits redundant matter from a Part heading.

2.23 Drug Misuse and Trafficking Act 1985 No 226

Section 22 (2)

Omit the subsection.

Explanatory note

The proposed amendment omits a provision that is redundant because of section 179 (2) of the *Criminal Procedure Act 1986*.

2.24 Dubbo Local Environmental Plan 1998—Urban Areas

[1] Clause 5 (3)

Omit the subclause. Insert instead:

(3) Notes included in this plan do not form part of this plan.

[2] Clause 31 (5)

Omit “home based child care establishments;”.

[3] Schedule 5

Omit “Eulom2ogo” from the column headed “No” of the matter relating to Heritage Item number H78 in Pinedale Road.

Insert instead “Eulomogo”.

Explanatory note

Item [1] of the proposed amendments clarifies the status of notes.

Item [2] of the proposed amendments omits redundant words.

Item [3] of the proposed amendments corrects a typographical error.

2.25 Dungog Local Environmental Plan 2006

Dictionary, definition of “veterinary establishment”

Omit “veterinary surgeon”. Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendment updates a reference.

2.26 Environmental Planning and Assessment Regulation 2000

Clause 3, definition of “BASIX optional development”

Omit “volume” wherever occurring in paragraph (b).

Insert instead “capacity”.

Explanatory note

The proposed amendment corrects an incorrect word.

2.27 Fair Trading (General) Regulation 2002

Clause 22, definition of “Snell standard”

Omit the note to the definition. Insert instead:

Note. This standard is available on the website of the Snell Memorial Foundation at www.smf.org.

Explanatory note

The proposed amendment updates a weblink.

2.28 Farm Produce Act 1983 No 30

Section 27 (5)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.29 Financial Sector Reform (Savings and Transitional) Regulation 1999

Clause 18

Omit the clause.

Explanatory note

The proposed amendment omits a clause relating to repealed legislation.

2.30 Fire Brigades Act 1989 No 192

Section 5 (1), definition of “reserved area”

Omit “state recreation area”. Insert instead “state conservation area”.

Explanatory note

The proposed amendment updates a reference to the classification of land reserved under the *National Parks and Wildlife Act 1974*.

2.31 First State Superannuation Act 1992 No 100

Schedule 1

Omit “State Recreation Area” wherever occurring.

Insert instead “State Conservation Area”.

Explanatory note

The proposed amendment updates references to the classification of land reserved under the *National Parks and Wildlife Act 1974*.

2.32 Fisheries Management (Lobster Share Management Plan) Regulation 2000

Appendix, clauses 8 (4) and 32 (1) (b)

Omit “Director’s” wherever occurring. Insert instead “Director-General’s”.

Explanatory note

The proposed amendment corrects references to an office.

2.33 Forbes Local Environmental Plan 1986

Schedule 1

Omit “Veterinary surgeon”. Insert instead “Veterinary practitioner”.

Explanatory note

The proposed amendment updates a reference.

2.34 Gaming Machines Act 2001 No 127

Section 131 (6)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.35 Grain Marketing Act 1991 No 15

Section 94 (5) (b)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.36 Gunnedah Local Environmental Plan 1998

Clause 6 (1), definition of “veterinary clinic”

Omit “veterinary surgeon”. Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendment updates a reference.

2.37 Hawkesbury Local Environmental Plan 1989

[1] Clause 5 (3)

Insert after clause 5 (2):

- (3) Notes included in this plan do not form part of this plan.

[2] Schedule 2

Omit “Veterinary surgeon”. Insert instead “Veterinary practitioner”.

Explanatory note

Item [1] of the proposed amendments clarifies the status of notes.

Item [2] of the proposed amendments updates a reference.

2.38 Health Services Regulation 2003

Clause 3

Omit “*board* of a public health organisation,” from the note at the end of the clause.

Explanatory note

The proposed amendment omits a redundant reference.

2.39 Impounding Act 1993 No 31

[1] Section 41 (3) and definition of “area of operations” in Dictionary

Omit “state recreation area” wherever occurring.

Insert instead “state conservation area”.

[2] Section 47

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

Item [1] of the proposed amendments updates references to the classification of land reserved under the *National Parks and Wildlife Act 1974*.

Item [2] of the proposed amendments updates a reference to repealed legislation.

2.40 Independent Commission Against Corruption Act 1988 No 35

Schedule 4

Renumber Part 6 and clauses 16–19 (as inserted by the *Independent Commission Against Corruption Amendment (Operations Review Committee) Act 2006*) as Part 7 and clauses 18–21, respectively.

Explanatory note

The proposed amendment corrects duplicate numbering within a Schedule.

2.41 Infants' Custody and Settlements Act 1899 No 39

Section 10A (3B)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.42 Judicial Officers Act 1986 No 100

Part 2

Omit the Part.

Explanatory note

The proposed amendment omits a redundant Part.

2.43 Jury Act 1977 No 18

Section 69 (4)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.44 Law Enforcement and National Security (Assumed Identities) Act 1998 No 154

Section 3, definition of “authorised agency”

Omit “Organization” from paragraph (e) (iii). Insert instead “Organisation”.

Explanatory note

The proposed amendment corrects the name of an organisation.

2.45 Law Enforcement and National Security (Assumed Identities) Regulation 2004

Clauses 5 (c), 6 (c) and 7 (f)

Omit “Organization” wherever occurring. Insert instead “Organisation”.

Explanatory note

The proposed amendment corrects the name of an organisation.

2.46 Law Reform (Miscellaneous Provisions) Act 1946 No 33

Sections 2 (2) and 4 (3) (b)

Omit “*Local Courts (Civil Claims) Act 1970*” wherever occurring.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates references to repealed legislation.

2.47 Leeton Local Environmental Plan No 4

Clause 5 (1), definition of “veterinary premises”

Omit “veterinary surgeon”. Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendment updates a reference.

2.48 Legal Profession Act 2004 No 112

Section 144 (6)

Omit “The Law Council Society”. Insert instead “The Law Society Council”.

Explanatory note

The proposed amendment corrects an incorrect reference to the name of a body.

2.49 Liquor Act 1982 No 147

[1] Section 4 (9)

Insert after section 4 (8):

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

[2] Sections 16 (3), 69 (3) and 99 (4)

Omit “*Local Courts (Civil Claims) Act 1970*” wherever occurring.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

Item [1] of the proposed amendments clarifies the status of notes.

Item [2] of the proposed amendments updates references to repealed legislation.

2.50 Lismore Local Environmental Plan 2000

Schedule 1

Omit “Buit” from the matter relating to Map No 27, Westpac Bank in the column headed “**Significance**”.

Insert instead “Built”.

Explanatory note

The proposed amendment corrects a typographical error.

2.51 Long Service Leave (Metalliferous Mining Industry) Act 1963 No 48

[1] Section 1 (4)

Omit the subsection (including the note to the subsection).

[2] Section 3 (4)

Insert after section 3 (3):

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

Explanatory note

Item [1] of the proposed amendment omits a redundant subsection.

Item [2] of the proposed amendments clarifies the status of notes.

2.52 Marine Pilotage Licensing Act 1971 No 56

Section 3 (1) and (4) and Schedule

Omit section 3 (1) and (4) and the Schedule.

Explanatory note

The proposed amendment omits redundant provisions.

2.53 Meat Industry Act 1978 No 54

Section 59I (4)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.54 Mining Act 1992 No 29

Sections 223 (2) and 252 (6)

Omit “state recreation area” wherever occurring.

Insert instead “state conservation area”.

Explanatory note

The proposed amendment updates references to the classification of land reserved under the *National Parks and Wildlife Act 1974*.

2.55 Moratorium Act 1932 No 57

Section 31 (4)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.56 Moree Plains Local Environmental Plan 1995

Clause 5 (1), definition of “veterinary clinic”

Omit “veterinary surgeon”. Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendment updates a reference.

2.57 Motor Dealers Regulation 2004

Clause 65 (3)

Omit “Part 5 of the *Local Courts (Civil Claims) Act 1970*”.

Insert instead “Part 8 of the *Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.58 Motor Vehicle Repairs Regulation 1999

Clause 3 (2)

Omit the subclause.

Explanatory note

The proposed amendment omits a redundant subclause.

2.59 Motor Vehicles Taxation Act 1988 No 111

Section 19 (2) (a) and (3)

Omit “*Local Courts (Civil Claims) Act 1970*” wherever occurring.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates references to repealed legislation.

2.60 Motor Vehicles (Third Party Insurance) Act 1942 No 15

Section 43

Omit the section.

Explanatory note

The proposed amendment omits a redundant section.

2.61 Mudgee Local Environmental Plan 1998

Clause 6 (1), definition of “veterinary clinic”

Omit “veterinary surgeon”. Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendment updates a reference.

2.62 Nambucca Local Environmental Plan 1995

Clause 5 (1)

Omit:

group home means a dwelling that is a permanent group home or a transitional group home as defined in *State Environmental Planning Policy No 9—Group Homes*.

Explanatory note

The proposed amendment omits a redundant definition.

2.63 National Parks and Wildlife Regulation 2002

Clause 57H (3)

Omit “section”. Insert instead “clause”.

Explanatory note

The proposed amendment corrects a clause reference.

2.64 Native Vegetation Regulation 2005

Clause 3 (1), definition of “western coastal region”

Omit “Liverpool Plains Gloucester”.

Insert instead “Liverpool Plains, Gloucester”.

Explanatory note

The proposed amendment inserts missing punctuation.

2.65 New South Wales Retirement Benefits Act 1972 No 70

Schedule 2

Omit “state recreation area” from the First Column.

Insert instead “state conservation area”.

Explanatory note

The proposed amendment updates a reference to the classification of land reserved under the *National Parks and Wildlife Act 1974*.

2.66 Occupational Health and Safety Act 2000 No 40

Section 114 (2)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.67 Parking Space Levy Regulation 1997

Clause 6A, Table

Omit “Hollywood Av” from the matter relating to Grace Bros Department Store, Bondi Junction in the column headed “**Bounded generally by**”.

Insert instead “Hollywood Ave”.

Explanatory note

The proposed amendment corrects a typographical error.

2.68 Pawnbrokers and Second-hand Dealers Regulation 2003

Clause 25B

Omit “section 28A of the *Local Courts (Civil Claims) Act 1970*”.

Insert instead “section 93 of the *Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.69 Pesticides Act 1999 No 80

Sections 95 (3) and 97 (2)

Omit “*Local Courts (Civil Claims) Act 1970*” wherever occurring.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates references to repealed legislation.

2.70 Pharmacy Practice Act 2006 No 59

Schedule 7.13 [2], proposed section 36AA (1) and (2) (a)

Omit “veterinary surgeon” wherever occurring.

Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendment updates references.

2.71 Pipelines Regulation 2005

[1] Clauses 16 (2) (a) and (b) and 46 (3) (d)

Omit “AS 2885.1—1997” wherever occurring. Insert instead “AS 2885.1”.

[2] Clauses 18, 26, 40 (a), (b) and (d), 41 (a), (c) and (d), 42 (a) and 46 (2) (d) (ii) and (e)

Omit “AS 2885.3—2001” wherever occurring. Insert instead “AS 2885.3”.

Explanatory note

The proposed amendments update references to standards.

2.72 Poisons and Therapeutic Goods Regulation 2002

Clause 147 (3)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.73 Prevention of Cruelty to Animals Act 1979 No 200

Sections 12 (2A) and 24G (1) (b)

Omit “veterinary surgeon” wherever occurring.

Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendment updates references.

2.74 Property, Stock and Business Agents Act 2002 No 66

Section 174 (5)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.75 Protection of the Environment Operations (Waste) Regulation 2005

Schedule 1, Part 1

Omit “naphthalenes”. Insert instead “naphthalenes”.

Explanatory note

The proposed amendment corrects a typographical error.

2.76 Rail Safety (Drug and Alcohol Testing) Regulation 2003

Clause 16 (1) (e)

Omit “the authorised officer”. Insert instead “the testing officer”.

Explanatory note

The proposed amendment corrects a reference.

2.77 Residential Parks Regulation 2006

Schedule 5

Re-number item 5 where secondly occurring in the notes to Part 1 of the agreement as item 5A.

Explanatory note

The proposed amendment corrects duplicate numbering.

2.78 Residential Tenancies Regulation 2006

Clause 3 (2)

Insert “(other than notes in the Schedules)” after “Regulation” where firstly occurring.

Explanatory note

The proposed amendment clarifies the status of notes.

2.79 Road Transport (Heavy Vehicles Registration Charges) Act 1995 No 72

Section 34 (2) (a) and (3)

Omit “*Local Courts (Civil Claims) Act 1970*” wherever occurring.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates references to repealed legislation.

2.80 Road Transport (Safety and Traffic Management) Act 1999 No 20

Section 33 (7)

Omit “is be taken”. Insert instead “is taken”.

Explanatory note

The proposed amendment omits a redundant word.

2.81 Road Transport (Vehicle Registration) Regulation 1998

Dictionary, definition of “effective range”

Omit “discernable”. Insert instead “discernible”.

Explanatory note

The proposed amendment corrects a typographical error.

2.82 Roads Act 1993 No 33

Dictionary, definition of “public open space”

Omit “state recreation area” from paragraph (a).

Insert instead “state conservation area”.

Explanatory note

The proposed amendment updates a reference to the classification of land reserved under the *National Parks and Wildlife Act 1974*.

2.83 Rockdale Local Environmental Plan 2000

Part 7A, Division 1

Omit the note to the Division.

Explanatory note

The proposed amendment omits a redundant note.

2.84 State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 1, Part 1

Omit “State Recreation Area” wherever occurring.

Insert instead “State Conservation Area”.

Explanatory note

The proposed amendment updates references to the classification of land reserved under the *National Parks and Wildlife Act 1974*.

2.85 State Authorities Superannuation Act 1987 No 211

Schedule 1, Part 1

Omit “State Recreation Area” wherever occurring.

Insert instead “State Conservation Area”.

Explanatory note

The proposed amendment updates references to the classification of land reserved under the *National Parks and Wildlife Act 1974*.

2.86 State Emergency and Rescue Management Act 1989 No 165

Section 60F (2)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.87 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Clause 10

Omit “, as adopted by any environmental planning instrument,”.

Explanatory note

The proposed amendment omits redundant words.

2.88 State Environmental Planning Policy (Major Projects) 2005

[1] Schedule 1, clause 26 (1) (a)

Omit “10,000 ep equivalent”.

Insert instead “10,000 EP (equivalent population)”.

[2] Schedule 6, Part 1, clause 2, note

Omit “Part 3”. Insert instead “Part 5”.

Explanatory note

Item [1] of the proposed amendments clarifies an abbreviation.

Item [2] corrects an incorrect cross reference.

2.89 State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development

Clause 2 (7)

Insert after clause 2 (6):

(7) Notes included in this Policy do not form part of this Policy.

Explanatory note

The proposed amendment clarifies the status of notes.

2.90 State Owned Corporations Act 1989 No 134

Section 20X (3)

Omit “or the consideration”. Insert instead “of the consideration”.

Explanatory note

The proposed amendment corrects a typographical error.

2.91 State Revenue Legislation Amendment (Tax Concessions) Act 2006 No 87

Schedule 1 [4]

Omit “59 (1) (a)”. Insert instead “59 (1) where firstly occurring”.

Explanatory note

The proposed amendment corrects an incorrect incorporation direction.

2.92 Stock (Artificial Breeding) Act 1985 No 196

[1] Section 4 (1)

Omit the definition of *veterinary surgeon*. Insert instead:

veterinary practitioner has the same meaning as in the *Veterinary Practice Act 2003*.

[2] Sections 10 (2) and 11

Omit “veterinary surgeon” wherever occurring.

Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendments update references.

2.93 Stock Diseases Amendment (Artificial Breeding) Act 2004 No 35

Schedule 1 [19], proposed section 9 (2A)

Omit “veterinary surgeon”. Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendment updates a reference.

2.94 Stock Diseases Regulation 2004

Clause 23 (2)

Omit “veterinary surgeon”. Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendment updates a reference.

2.95 Stock Medicines Regulation 2005

[1] Clauses 4 (2) and 7 (1)

Omit “veterinary surgeons” wherever occurring.

Insert instead “veterinary practitioners”.

[2] Clause 7 (1) (g) and (2) and note

Omit “veterinary surgeon” wherever occurring.

Insert instead “veterinary practitioner”.

Explanatory note

The proposed amendments update references.

2.96 Strata Schemes Management Act 1996 No 138

Section 205 (2) and (4)

Omit “*Local Courts (Civil Claims) Act 1970*” wherever occurring.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates references to repealed legislation.

2.97 Superannuation Act 1916 No 28

Schedules 3 and 26

Omit “State Recreation Area” wherever occurring in Part 1 of each Schedule.

Insert instead “State Conservation Area”.

Explanatory note

The proposed amendment updates references to the classification of land reserved under the *National Parks and Wildlife Act 1974*.

2.98 Surveying Act 2002 No 83

Sections 13 (3) and 24 (3)

Omit “*Local Courts (Civil Claims) Act 1970*” wherever occurring.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates references to repealed legislation.

2.99 Sydney Local Environmental Plan 2005

Clauses 43 (8) and (9), 45 (3) and 46 (1)

Insert the words “Central Sydney” before “Site Identification Map” wherever occurring.

Explanatory note

The proposed amendment corrects references to a map.

2.100 Sydney Turf Club Act 1943 No 22

Section 31

Omit the section.

Explanatory note

The proposed amendment omits a redundant section.

2.101 Sydney Water Regulation 2006

Clause 8 (1)

Omit “unconditionally”. Insert instead “unconditionally”.

Explanatory note

The proposed amendment corrects a typographical error.

2.102 Transport Administration Act 1988 No 109

Section 45DA (3), definition of “authorised person”

Omit “section 65F (1)” from paragraph (a).

Insert instead “section 59 (1)”.

Explanatory note

The proposed amendment corrects a cross-reference.

2.103 Trustee Act 1925 No 14

Section 106

Omit the section.

Explanatory note

The proposed amendment omits a redundant section.

2.104 Trustee Companies Act 1964 No 6

[1] Second Schedule

Omit “Trust Company of Australia Limited”.

Insert instead “Trust Company Limited”.

[2] Third Schedule, First Part

Omit “Trust Company of Australia Limited”.

Insert instead “Trust Company Limited”.

Explanatory note

The proposed amendments are consequential on the change of name of a company.

2.105 Trustee Companies Regulation 2005

Clause 7 (2) (f)

Omit “Trust Company of Australia Limited”.

Insert instead “Trust Company Limited”.

Explanatory note

The proposed amendment is consequential on the change of name of a company.

2.106 Uncollected Goods Act 1995 No 68

Section 17 (2) and (3)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates references to repealed legislation.

2.107 Uniform Civil Procedure Rules 2005

Schedule 8, Part 1

Omit “*Mutual Recognition (New South Wales) 1992*”.

Insert instead “*Mutual Recognition (New South Wales) Act 1992*”.

Explanatory note

The proposed amendment corrects a citation.

2.108 Veterinary Practice Regulation 2006

Schedule 1

Omit “capacity to practice”. Insert instead “capacity to practise”.

Explanatory note

The proposed amendment corrects a typographical error.

2.109 Victims Support and Rehabilitation Act 1996 No 115

Section 54 (4)

Omit “*Local Courts (Civil Claims) Act 1970*”.

Insert instead “*Civil Procedure Act 2005*”.

Explanatory note

The proposed amendment updates a reference to repealed legislation.

2.110 Warringah Local Environmental Plan 2000

Appendix B

Insert “and” at the end of paragraph (a) under the headings “**BUILT FORM**” and “**Housing density**” in relation to the localities B3 Oxford Heights/Carnarvon Drive and B8 Red Hill.

Explanatory note

The proposed amendment inserts missing conjunctions.

2.111 Water Sharing Plan for the Upper and Lower Namoi Groundwater Sources 2003

[1] Clause 25D (2)

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

[2] Clause 25D (7)

Renumber paragraph (h) where secondly occurring as paragraph (h1).

[3] Clause 37 (2)

Omit “subclause (1)”. Insert instead “subclause (1)”.

Explanatory note

Items [1] and [2] of the proposed amendments correct duplicate numbering.

Item [3] of the proposed amendments corrects a typographical error.

Schedule 3 Amendments consequential on the enactment of the Legal Profession Act 2004 No 112

(Section 3)

Explanatory note

The *Legal Profession Act 2004* introduced new terms to distinguish between different types of lawyers. In particular, that Act introduced the concept of an **Australian lawyer** (a person who is admitted to the legal profession under that Act or a corresponding law) and an **Australian legal practitioner** (an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate). The proposed amendments in Schedule 3 replace references in various Acts to a legal practitioner, solicitor, barrister, lawyer, counsel or attorney with the appropriate term for these positions following the enactment of the *Legal Profession Act 2004*. The proposed amendments also replace references to the *Legal Profession Act 1987* (now repealed) with references to the *Legal Profession Act 2004*. Currently, the meanings of **Australian legal practitioner** and **Australian lawyer** are contained in the *Interpretation Act 1987* for ease of reference in other Acts.

3.1 Agricultural Tenancies Act 1990 No 64

[1] Section 26I Arbitrators

Omit “a legal practitioner within the meaning of the *Legal Profession Act 1987*” wherever occurring in section 26I (2) and (4) (a).

Insert instead “an Australian lawyer”.

[2] Section 28 Service of documents

Omit “a solicitor or agent” from section 28 (2).

Insert instead “an Australian legal practitioner, or an agent,”.

3.2 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 13 Admissibility of certain statements etc

Omit “a barrister or solicitor” from section 13 (1) (a) (iv).

Insert instead “an Australian legal practitioner”.

[2] Section 50A Procedures for remitting cases from one court to another

Omit “barrister or solicitor” from section 50A (2) (c).

Insert instead “Australian legal practitioner”.

3.3 Civil Procedure Act 2005 No 28

Section 8 Uniform Rules Committee

Omit “practising” wherever occurring in section 8 (1) (h) and (i).

3.4 Commercial Vessels Act 1979 No 41

Section 34 Appearances at hearing of appeal

Omit “solicitor or by counsel” from section 34 (b).

Insert instead “Australian legal practitioner”.

3.5 Consumer, Trader and Tenancy Tribunal Act 2001 No 82

[1] Section 4 Definitions

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

[2] Section 8 Qualifications of members

Omit “a legal practitioner or is qualified to be admitted as a legal practitioner” from section 8 (1).

Insert instead “an Australian lawyer”.

3.6 Crimes Act 1900 No 40

[1] Section 4 Definitions

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

[2] Section 60AA Meaning of “law enforcement officer”

Omit “a solicitor” from paragraph (m) of the definition of *law enforcement officer*.

Insert instead “an Australian legal practitioner”.

[3] Section 579 Evidence of proceedings dealt with by way of recognizance after 15 years

Omit “counsel, attorney or agent” wherever occurring in section 579 (1) and (2).

Insert instead “Australian legal practitioner, his or her agent”.

3.7 Criminal Procedure Act 1986 No 209

- [1] **Section 3 (1), definitions of “accused person” and “prosecutor”, sections 36 (1), 72 (1) and 132 (1) (b)**
Omit “a barrister or solicitor” wherever occurring.
Insert instead “an Australian legal practitioner”.
- [2] **Sections 16 (1) (i), 136 (4), 265 (1A), 276 (c) and 281A (2)**
Omit “a legal practitioner” wherever occurring.
Insert instead “an Australian legal practitioner”.
- [3] **Sections 16 (1) (i), 137 (3) and 143 (4) (b), (c) and (d)**
Omit “the legal practitioner” wherever occurring.
Insert instead “the Australian legal practitioner”.
- [4] **Section 37 Conduct of case**
Omit “barrister or solicitor” wherever occurring in section 37 (1) and (2).
Insert instead “Australian legal practitioner”.
- [5] **Section 89 Notice of rights to unrepresented accused person**
Omit “a barrister or a solicitor” from section 89 (1).
Insert instead “an Australian legal practitioner”.
- [6] **Section 124 Liaison**
Omit “lawyers”. Insert instead “Australian legal practitioners”.
- [7] **Sections 143 (2), 150 (6) and 151 (4)**
Omit “his or her legal practitioner” wherever occurring.
Insert instead “his or her Australian legal practitioner”.
- [8] **Section 149 Miscellaneous provisions**
Omit “the rules of practice of barristers or solicitors” from section 149 (5).
Insert instead “the legal profession rules made under Part 7.5 of the *Legal Profession Act 2004*”.
- [9] **Sections 159 (1) and (3), 160 (1), 285 (1) (c) and (4), 292 (2), 306B (7), 306C and 306F**
Omit “his or her counsel” wherever occurring.

Insert instead “his or her Australian legal practitioner”.

[10] Section 276 Proof of service of notice to produce

Omit “legal practitioner’s clerk” from section 276 (c).

Insert instead “Australian legal practitioner’s clerk”.

[11] Section 279 Compellability of spouses to give evidence in certain proceedings

Omit “counsel” from section 279 (6).

Insert instead “Australian legal practitioner”.

[12] Sections 285 (1) (c) and (5) and 294A (1)

Omit “by counsel” wherever occurring.

Insert instead “by an Australian legal practitioner”.

3.8 District Court Act 1973 No 9

[1] Section 4 Definitions: general

Omit the definitions of *barrister* and *solicitor* from section 4 (1).

[2] Section 13 Appointment and qualifications of Judges

Omit “a legal practitioner” from paragraph (a) of the definition of *qualified person* in section 13 (2).

Insert instead “an Australian lawyer”.

[3] Section 18B Composition of the Rule Committee

Omit section 18B (9). Insert instead:

- (9) In this section and in section 18BA:
barrister has the same meaning as in the *Legal Profession Act 2004*.
solicitor has the same meaning as in the *Legal Profession Act 2004*.

[4] Section 18FA Appointment and qualifications of Judicial Registrar

Omit “, or is eligible to be, admitted as a legal practitioner of any court of a State or Territory or of the High Court” from section 18FA (2).

Insert instead “an Australian lawyer”.

[5] Section 161 Civil procedure rules

Omit “solicitor” wherever occurring in section 161 (2) (z).

Insert instead “Australian legal practitioner”.

[6] Section 161 (6)

Omit “Part 11 of the *Legal Profession Act 1987*”.

Insert instead “Part 3.2 of the *Legal Profession Act 2004*”.

[7] Section 171 Criminal procedure rules

Omit “a solicitor” from section 171 (2) (k) (i).

Insert instead “an Australian legal practitioner”.

[8] Section 171 (2) (k)

Omit “the solicitor” wherever occurring.

Insert instead “the Australian legal practitioner”.

[9] Section 171 (2) (k) (i)

Omit “the solicitor’s client”.

Insert instead “the Australian legal practitioner’s client”.

3.9 Dust Diseases Tribunal Act 1989 No 63

[1] Section 3 Definitions

Omit the definitions of *barrister* and *solicitor* from section 3 (1).

Insert instead:

barrister has the same meaning as in the *Legal Profession Act 2004*.

solicitor has the same meaning as in the *Legal Profession Act 2004*.

[2] Section 32H Regulations to promote claims resolution

Omit “a legal practitioner” from section 32H (2) (h).

Insert instead “an Australian legal practitioner”.

[3] Section 32I Information about claims

Omit “A legal practitioner” from section 32I (1).

Insert instead “An Australian legal practitioner”.

[4] Section 32I (3) and (4)

Omit “a legal practitioner” wherever occurring.

Insert instead “an Australian legal practitioner”.

[5] Section 32I (3)

Omit “the legal practitioner”.

Insert instead “the Australian legal practitioner”.

3.10 Government and Related Employees Appeal Tribunal Act 1980 No 39

[1] Section 7 Senior Chairperson

Omit “a legal practitioner” from section 7 (2) (b).

Insert instead “an Australian lawyer”.

[2] Section 13 Constitution of the Tribunal

Omit “a legal practitioner within the meaning of the *Legal Profession Act 1987* or a person qualified to be admitted as such a legal practitioner” from section 13 (2).

Insert instead “an Australian lawyer”.

[3] Section 37 Provisions relating to informal sittings

Omit “counsel, solicitor or agent” from section 37 (3).

Insert instead “an Australian legal practitioner or an agent”.

[4] Section 38 Provisions relating to formal sittings

Omit “counsel or a solicitor” wherever occurring in section 38 (4).

Insert instead “an Australian legal practitioner”.

3.11 Home Building Act 1989 No 147

[1] Sections 7BA (4) and (5) (d) and 16DBA (4) and (5) (d)

Omit “legal practitioner” wherever occurring.

Insert instead “Australian legal practitioner”.

- [2] **Sections 7BA (5) (b), 16DBA (5) (b), 95 (4A) (b), 96 (3B) (b) and 96A (3A) (b)**
Omit “a legal practitioner” wherever occurring.
Insert instead “an Australian legal practitioner”.
- [3] **Sections 7BA (5) (b) (ii) and (iii) and 16DBA (5) (b) (ii) and (iii)**
Omit “other legal practitioner” wherever occurring.
Insert instead “other Australian legal practitioner”.
- [4] **Section 103Z Guarantee Corporation may take certain legal proceedings**
Omit “counsel or agent” from section 103Z (1).
Insert instead “an Australian legal practitioner or an agent”.
- [5] **Section 115D Membership of Advisory Council**
Omit “legal practitioner” from section 115D (1) (i).
Insert instead “Australian lawyer”.

3.12 Independent Commission Against Corruption Act 1988 No 35

- [1] **Section 3 Definitions**
Omit the definition of *legal practitioner* from section 3 (1).
- [2] **Sections 31 (10), 33 (1), 37 (5) (a) and (b), 80 (a) (iii) and (iv), 98 (d) (ii) and (iv), 106, 111 (1) (b) and 113 (1) (b) and (4)**
Omit “a legal practitioner” wherever occurring.
Insert instead “an Australian legal practitioner”.
- [3] **Sections 33 (3), 34 (1) and 109 (3)**
Omit “A legal practitioner” wherever occurring.
Insert instead “An Australian legal practitioner”.
- [4] **Section 34 Examination and cross-examination**
Omit “person’s legal practitioner” from section 34 (1).
Insert instead “person’s Australian legal practitioner”.

[5] Section 37 Privilege as regards answers, documents etc

Omit “the legal practitioner” from section 37 (5).

Insert instead “the Australian legal practitioner”.

[6] Section 109 Protection from liability

Insert “(within the meaning of the *Legal Profession Act 2004*)” after “barrister” in section 109 (3).

[7] Section 111 Secrecy

Omit “the legal practitioner’s” from section 111 (1) (b).

Insert instead “the Australian legal practitioner’s”.

3.13 Industrial Relations Act 1996 No 17

[1] Sections 90B (c), 166 (1) and (2), 167 (4), 354 (1) and (2) and 379 (5), (6) and (7)

Omit “a practising legal practitioner” wherever occurring.

Insert instead “an Australian legal practitioner”.

[2] Section 149 Judicial members

Omit “a legal practitioner” from section 149 (2) (b).

Insert instead “an Australian lawyer”.

[3] Sections 166 (3) and (4) and 354 (3)

Omit “the practising legal practitioner” wherever occurring.

Insert instead “the Australian legal practitioner”.

[4] Section 181 Costs

Omit “Division 6 of Part 11 of the *Legal Profession Act 1987*” from section 181 (1) (d).

Insert instead “Division 11 of Part 3.2 of the *Legal Profession Act 2004*”.

[5] Section 406A (1), definition of “costs agreement” and (3) and Dictionary, definition of “industrial agent”

Omit “a legal practitioner” wherever occurring.

Insert instead “an Australian legal practitioner”.

[6] Dictionary, definition of “practising legal practitioner”

Omit the definition.

3.14 Land and Environment Court Act 1979 No 204

[1] Section 8 Appointment and qualifications of Judges

Omit “a legal practitioner” from section 8 (2) (c).

Insert instead “an Australian lawyer”.

[2] Section 63 Right of appearance

Omit “a barrister or solicitor”.

Insert instead “an Australian legal practitioner”.

[3] Section 64 Appearance by the Crown

Omit “counsel, solicitor or agent” wherever occurring in section 64 (2) and (3).

Insert instead “an Australian legal practitioner or an agent”.

[4] Section 69 Costs

Omit “Division 6 of Part 11 of the *Legal Profession Act 1987*” from section 69 (2) (c).

Insert instead “Division 11 of Part 3.2 of the *Legal Profession Act 2004*”.

[5] Section 69AA Costs—liability of solicitor

Omit “*Legal Profession Act 1987*” from section 69AA (2).

Insert instead “*Legal Profession Act 2004*”.

[6] Section 74 Rules

Omit “Part 11 of the *Legal Profession Act 1987*” from section 74 (6).

Insert instead “Part 3.2 of the *Legal Profession Act 2004*”.

3.15 Local Courts Act 1982 No 164

[1] Section 12 Appointment of, and qualifications for, Magistrates

Omit section 12 (2). Insert instead:

- (2) A person is qualified to be appointed as a Magistrate if the person is an Australian lawyer.

[2] Section 29 Definitions

Omit the definitions of *barrister* and *solicitor*.

Insert instead in alphabetical order:

barrister has the same meaning as in the *Legal Profession Act 2004*.

solicitor has the same meaning as in the *Legal Profession Act 2004*.

[3] Section 76 Appointment of, and qualifications for, Assessors

Omit section 76 (3). Insert instead:

- (3) A person is qualified to be appointed as an Assessor if the person is an Australian lawyer.

3.16 Motor Accidents Compensation Act 1999 No 41

[1] Sections 104 (2) and (4) and 149 (3)

Omit “a legal practitioner” wherever occurring.

Insert instead “an Australian legal practitioner”.

[2] Section 121 Regulation of advertising and other marketing of services

Omit “a legal practitioner or agent” from section 121 (1) (a).

Insert instead “an Australian legal practitioner or an agent”.

[3] Section 121 (2)

Omit “*Legal Profession Act 1987*”.

Insert instead “*Legal Profession Act 2004*”.

[4] Section 147 Definitions

Omit “Part 11 (Legal fees and other costs) of the *Legal Profession Act 1987*” from section 147 (2).

Insert instead “Part 3.2 (Costs disclosure and assessment) of the *Legal Profession Act 2004*”.

[5] Section 147, note

Omit the note. Insert instead:

Note. Under the *Legal Profession Act 2004*, **legal costs** include Australian legal practitioners’ fees as well as other items that may be charged by Australian legal practitioners (such as expenses and disbursements) but do not include interest.

[6] Section 149 Regulations fixing maximum costs recoverable by Australian legal practitioners

Omit “A legal practitioner” from section 149 (2).

Insert instead “An Australian legal practitioner”.

[7] Section 149 (4)

Omit “*Legal Profession Act 1987* (in particular section 196 of that Act) and the regulations under that Act. An assessment under Division 6 of Part 11 of that Act”.

Insert instead “*Legal Profession Act 2004* (in particular section 329 of that Act) and the regulations under that Act. An assessment under Division 11 of Part 3.2 of that Act”.

[8] Section 153 Other matters relating to costs

Omit “*Legal Profession Act 1987*” from section 153 (3).

Insert instead “*Legal Profession Act 2004*”.

[9] Section 195 Nominal Defendant may take certain legal proceedings

Omit “counsel or agent” from section 195 (1).

Insert instead “an Australian legal practitioner or an agent”.

[10] Section 208 Membership and procedure of Council

Omit “legal practitioners” from section 208 (1) (d).

Insert instead “Australian lawyers”.

3.17 Motor Dealers Act 1974 No 52

[1] Section 29CA Cooling off period

Omit “solicitor or barrister” from section 29CA (9).

Insert instead “Australian legal practitioner”.

[2] Sections 38C (b) and 38N (9) (b) and (10) (b)

Omit “counsel or solicitor” wherever occurring.

Insert instead “an Australian legal practitioner”.

[3] Section 38E Duty of administrator to administer the affairs and property of holder of licence etc

Omit “a barrister or solicitor” from section 38E (8) (c).

Insert instead “an Australian legal practitioner”.

[4] Section 55 Proceedings

Omit “counsel or attorney” from section 55 (4).

Insert instead “Australian legal practitioner”.

3.18 Motor Vehicle Repairs Act 1980 No 71

Section 87 Proceedings

Omit “a barrister or solicitor” from section 87 (4).

Insert instead “an Australian legal practitioner”.

3.19 Oaths Act 1900 No 20

[1] Section 21 Declarations in cases not specifically provided for

Omit “legal practitioner” from section 21 (1).

Insert instead “Australian legal practitioner”.

[2] Section 27 Authority to take and receive affidavits

Omit section 27 (1). Insert instead:

- (1) An Australian legal practitioner is, except in so far as the Chief Justice of the Supreme Court by order under his or her hand otherwise directs, authorised to take and receive, subject to subsection (4), affidavits concerning any matter within the jurisdiction of any court or required for the purpose of registering an instrument in New South Wales or for any other purpose to be effected in New South Wales.

[3] Section 27 (3) and (5)

Omit the subsections.

[4] Section 27 (4)

Omit “a legal practitioner”.

Insert instead “an Australian legal practitioner”.

3.20 Optical Dispensers Act 1963 No 35

Section 25 Removal of name on account of misconduct

Omit “counsel” from section 25 (3).

Insert instead “an Australian legal practitioner”.

3.21 Parliamentary Electorates and Elections Act 1912 No 41

[1] Section 171 Australian legal practitioner

Omit “counsel or solicitor” from section 171 (1).

Insert instead “an Australian legal practitioner”.

[2] Section 171 (2)

Omit “one counsel or one solicitor”.

Insert instead “one Australian legal practitioner”.

3.22 Prices Regulation Act 1948 No 26

Section 8E Parties to inquiries

Omit “, counsel or solicitor” from section 8E (3).

Insert instead “or Australian legal practitioner”.

3.23 Registration of Interests in Goods Act 1986 No 37

[1] Section 8 Search certificates and notice

Omit “solicitor or agent” from section 8 (3).

Insert instead “Australian legal practitioner or the agent”.

[2] Section 19 Proceedings

Omit “counsel or attorney” from section 19 (3) (b).

Insert instead “an Australian legal practitioner”.

3.24 Strata Schemes Management Act 1996 No 138

[1] Section 193 Representation before the Tribunal

Omit “counsel or solicitor” from section 193 (2).

Insert instead “an Australian legal practitioner”.

[2] Section 194 Intervention by Director-General

Omit “barrister, solicitor or agent” from section 194 (3).

Insert instead “an Australian legal practitioner or an agent”.

[3] Section 230A Disclosure of matters relating to legal costs

Omit “Division 2 of Part 11 of the *Legal Profession Act 1987*”.

Insert instead “Division 3 of Part 3.2 of the *Legal Profession Act 2004*”.

3.25 Supreme Court Act 1970 No 52

[1] Section 26 Appointment and qualifications: Chief Justice and other Judges

Omit “a legal practitioner” from section 26 (2) (b).

Insert instead “an Australian lawyer”.

[2] Section 111 Appointment of associate Judges and acting associate Judges

Omit “a legal practitioner” from section 111 (3) (b).

Insert instead “an Australian lawyer”.

[3] Section 123 Rule Committee

Omit the definitions of *barrister* and *solicitor* from section 123 (2A).

Insert instead:

barrister has the same meaning as in the *Legal Profession Act 2004*.

solicitor has the same meaning as in the *Legal Profession Act 2004*.

3.26 Thoroughbred Racing Act 1996 No 37

Sections 45 (3), 46 (1) and 47 (3)

Omit “a legal practitioner” wherever occurring.

Insert instead “an Australian lawyer”.

Schedule 4 Repeals

(Section 4)

Name of Act	Extent of repeal
<i>Air Transport Amendment Act 2006</i> No 21	Whole Act ¹
<i>Appropriation (Budget Variations) Act 2005</i> No 23	Whole Act ³
<i>Appropriation (Parliament) Act 2004</i> No 61	Whole Act ³
<i>Appropriation (Parliament) Act 2005</i> No 39	Whole Act ³
<i>Appropriation (Special Offices) Act 2005</i> No 40	Whole Act ³
<i>Civil Procedure Act 2005</i> No 28	Section 6 (2) and Schedule 5 ²
<i>Commission for Children and Young People Amendment Act 2005</i> No 108	Schedule 1 [4]–[8], [11], [15]–[18], [38], [44], [50], [52], [54] and [55] ²
<i>Compulsory Drug Treatment Correctional Centre Act 2004</i> No 42	Whole Act ¹
<i>Constitution Amendment (Pledge of Loyalty) Act 2006</i> No 6	Whole Act ¹
<i>Crimes (Administration of Sentences) Amendment (Parole) Act 2004</i> No 94	Whole Act ¹
<i>Crimes and Courts Legislation Amendment Act 2005</i> No 103	Whole Act ¹
<i>Drug Misuse and Trafficking Amendment Act 2006</i> No 39	section 4, Schedule 1 [1]–[15], [17]–[19], [21], [23] and [26] and Schedule 2 ²
<i>Environmental Planning and Assessment Amendment Act 2006</i> No 8	Whole Act ¹
<i>Fines Amendment (Payment of Victims Compensation Levies) Act 2006</i> No 9	Whole Act ¹
<i>Fisheries Management Amendment Act 2006</i> No 18	Schedule 1 [1]–[5], [8], [10], [11], [14]–[16], [19], [21], [28]–[36] and [38] ²
<i>Governor General's Residence (Grant) Amendment Act 2006</i> No 3	Whole Act ¹

Name of Act	Extent of repeal
<i>Greek Orthodox Archdiocese of Australia Consolidated Trust Amendment (Duties) Act 2006</i> No 10	Whole Act ¹
<i>Home Building Amendment Act 2004</i> No 101	Whole Act ¹
<i>Industrial Relations Amendment Act 2006</i> No 1	Whole Act ¹
<i>Land Tax Management Amendment (Tax Threshold) Act 2006</i> No 11	Whole Act ¹
<i>Local Government Amendment (Stormwater) Act 2005</i> No 70	Whole Act ¹
<i>National Parks and Wildlife Amendment Act 2001</i> No 130	Schedule 1 ²
<i>National Parks and Wildlife Amendment (Jenolan Caves Reserves) Act 2005</i> No 83	Schedule 1 [1]–[19] and [21]–[27] and Schedule 2.4 and 2.4A ²
<i>Prevention of Cruelty to Animals Amendment Act 2005</i> No 50	Whole Act ¹
<i>Prisoners (Interstate Transfer) Amendment Act 2005</i> No 21	Whole Act ¹
<i>Public Sector Employment Legislation Amendment Act 2006</i> No 2	Whole Act ¹
<i>Residential Parks Amendment (Statutory Review) Act 2005</i> No 117	Schedule 1 [1]–[14] and [18]–[68] ²
<i>Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Act 2005</i> No 97	Whole Act ¹
<i>Rural Workers Accommodation Amendment Act 2005</i> No 37	Whole Act ¹
<i>State Revenue Legislation Further Amendment Act 2005</i> No 111	Whole Act ¹
<i>Sydney Opera House Act 1960</i> No 29	Whole Act ³
<i>Threatened Species Legislation Amendment Act 2004</i> No 88	Whole Act ¹
<i>Transport Administration Amendment (Public Transport Ticketing Corporation) Act 2006</i> No 5	Whole Act ¹

Name of Act	Extent of repeal
<i>Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005 No 55</i>	Whole Act ¹
<i>Veterinary Practice Act 2003 No 87</i>	Section 105 and Schedule 3 ²

Key

- 1 indicates repeal of a whole Act that contains only amendments, or amendments and repeals, that have commenced and provisions that are redundant
- 2 indicates repeal of those provisions of an Act that contain only amendments, or amendments and repeals, that have commenced or are redundant
- 3 indicates repeal of an Act that is redundant

Explanatory note

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

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

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

Schedule 5 **General savings, transitional and other provisions**

(Section 5)

1 Effect of amendment of amending provisions

- (1) An amendment made by Schedule 1 or 2 to an amending provision contained in an Act is, if the amending provision has commenced before the date of assent to this Act, taken to have effect as from the commencement of the amending provision (whether or not the amending provision has been repealed).
- (2) In this clause:
amending provision means a provision of an Act that makes a direct amendment to an Act by:
 - (a) the repeal or omission of matter contained in the amended Act without the insertion of any matter instead of the repealed or omitted matter, or
 - (b) the omission of matter contained in the amended Act and the insertion of matter instead of the omitted matter, or
 - (c) the insertion into the amended Act of matter, not being matter inserted instead of matter omitted from the Act.

Explanatory note

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

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

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

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

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

Explanatory note

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

3 Application of Interpretation Act 1987 to amendments to statutory rules

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

Explanatory note

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

4 Effect of amendment on instruments

- (1) Except where expressly provided to the contrary, any instrument made under an Act amended by this Act, that is in force immediately before the commencement of the amendment, is taken to have been made under the Act as amended.
- (2) The amendment of an instrument by this Act does not prevent its later amendment or repeal by another instrument.

Explanatory note

Subclause (1) ensures that, unless expressly provided, any instrument, that is in force and made under a provision of an Act that is amended or substituted by the proposed Act, will be taken to have been made under the Act as amended.

Subclause (2) ensures that the amendment of an instrument by the proposed Act does not prevent its later amendment or repeal by another instrument.

5 Regulations

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

Explanatory note

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

Notes

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Animal Research Regulation 2005—Schedule 2
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Architects Regulation 2004—Schedule 2
Associations Incorporation Act 1984 No 143—Schedule 2
Australian Museum Trust Act 1975 No 95—Schedule 1
Bail Act 1978 No 161—Schedule 2
Blacktown Local Environmental Plan 1988—Schedule 2
Blue Mountains Local Environmental Plan 2005—Schedule 2
Botany Local Environmental Plan 1995—Schedule 2
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Children (Criminal Proceedings) Act 1987 No 55—Schedule 3
Children (Interstate Transfer of Offenders) Act 1988 No 85—Schedule 1
Civil Liability Act 2002 No 22—Schedule 2
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Commercial Agents and Private Inquiry Agents Act 2004 No 70—Schedule 1
Commercial Vessels Act 1979 No 41—Schedule 3
Commission for Children and Young People Amendment Act 2005 No 108—Schedule 1
Community Land Management Act 1989 No 202—Schedule 2
Companion Animals Act 1998 No 87—Schedule 2
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Dubbo Local Environmental Plan 1998—Urban Areas—Schedule 2
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Growth Centres (Development Corporations) Act 1974 No 49—Schedule 1
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Landlord and Tenant (Amendment) Act 1948 No 25—Schedule 1
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Law Enforcement and National Security (Assumed Identities) Act 1998 No 154—Schedule 2
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