

Statute Law (Miscellaneous Provisions) Act (No 2) 2008 No 114

[2008-114]



New South Wales

Status Information

Currency of version

Historical version for 20 December 2008 to 1 July 2009 (accessed 5 May 2024 at 21:24)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**

Sec 7 (1) of this Act (sec 7 (1) repeals a subschedule of Sch 1, 2 or 3 on the day following the day on which all of the provisions of that subschedule have commenced)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Statute Law (Miscellaneous Provisions) Act (No 2) 2008 No 114



New South Wales

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.

1 Name of Act

This Act is the *Statute Law (Miscellaneous Provisions) Act (No 2) 2008*.

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

- (1) Each Act specified in Part 1 of Schedule 4 is repealed.
- (2) Each Act specified in Part 2 or 3 of Schedule 4 is, to the extent indicated in the Part, repealed.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 provisions of Act

- (1) A subschedule of Schedule 1, 2 or 3 is repealed on the day following the day on which all of the provisions of the subschedule have commenced.
- (2) The repeal of any such subschedule does not, because of the operation of section 30 of the [Interpretation Act 1987](#), affect any amendment made by those subschedules.

Schedule 1 Minor amendments

(Section 3)

1.1-1.7

(Repealed)

1.8 Environmental Planning and Assessment Act 1979 No 203

[1] Sections 75J (5) and 122 (b) (vi)

Omit “referred to in section 93F” wherever occurring.

Insert instead “under Division 4 of Part 5B”.

[2] Section 79C Evaluation

Omit “section 93F” wherever occurring in section 79C (1) (a) (iia).

Insert instead “Division 4 of Part 5B”.

[3] Section 80A Imposition of conditions

Omit “section 94, 94A, 94EF or 94F” from section 80A (1) (h).

Insert instead “Division 2, 3 or 5 of Part 5B”.

[4] Section 85A Process for obtaining complying development certificates

Omit “Division 6” from section 85A (9).

Insert instead “Part 5B (Division 5 excepted)”.

[5] Section 109ZI Definitions

Omit the definition of **building work**. Insert instead:

building work includes the design or inspection of building work, the issuing of a Part 4A certificate or complying development certificate in respect of building work and the issue of a design certificate under section 109IA.

[6] Section 118 Appointment of planning administrator, planning assessment panel or

regional panel

Omit “94E” from paragraph (a) of the definition of **failure to comply with obligations under the planning legislation** in section 118 (12).

Insert instead “116L”.

[7] Section 147 Disclosure of political donations and gifts

Omit “statement of” from section 147 (6) (b). Insert instead “statement to”.

[8] Schedule 5A Special contributions areas

Omit “Schedule 116A”. Insert instead “Section 116A”.

Explanatory note

Items [1]–[4] and [6] of the proposed amendments to the [Environmental Planning and Assessment Act 1979](#) (**the EP&A Act**) update cross-references.

Currently, section 109ZI of the EP&A Act and section 64 of the [Building Professionals Act 2005](#) provide that **building work** includes the design, inspection and issuing of a Part 4A certificate or complying development certificate in respect of building work.

On the commencement of Schedule 2 [14] to the [Building Professionals Amendment Act 2008](#), building work under the [Building Professionals Act 2005](#) will include the issue of a design certificate under section 109IA of the EP&A Act. Item [5] of the proposed amendments ensures that the definition of **building work** in section 109ZI of the EP&A Act remains consistent with the definition in section 64 of the [Building Professionals Act 2005](#).

Items [7] and [8] of the proposed amendments correct typographical errors.

1.9–1.11

(Repealed)

1.12 Local Government Act 1993 No 30

[1] Section 28 Forwarding of planning proposals to Minister for Planning

Omit section 28 (1). Insert instead:

- (1) A council may not forward a planning proposal to the Minister for Planning under section 56 of the [Environmental Planning and Assessment Act 1979](#) which includes a proposal to classify or reclassify public land that is not owned by the council unless the council has obtained the consent of the owner to the proposed classification or reclassification of public land.

[2] Section 29 Public hearing into reclassification

Omit section 29 (1). Insert instead:

- (1) A council must arrange a public hearing under section 57 of the *Environmental Planning and Assessment Act 1979* in respect of a planning proposal under Part 3 of that Act to reclassify community land as operational land, unless a public hearing has already been held in respect of the same matter as a result of a determination under section 56 (2) (e) of that Act.

[3] Section 32 Reclassification of land dedicated under Division 2 of Part 5B of the *Environmental Planning and Assessment Act 1979*

Omit “section 94” from section 32 (1) and (5) wherever occurring.

Insert instead “Division 2 of Part 5B”.

[4] Section 32 (2)

Omit “public amenities and public services”.

Insert instead “community infrastructure”.

[5] Section 32 (5)

Omit “that section”. Insert instead “Divisions 1 and 2 of Part 5B of that Act”.

[6] Section 377 General power of the council to delegate

Omit “section 82A” from section 377 (1) (o). Insert instead “section 96D”.

[7] Section 406 Adoption of management plan

Omit “and any other matters it considers relevant” from section 406 (1).

[8] Section 406 (2)

Insert “and any other matters it considers relevant” after “with this Part”.

[9] Schedule 6 Regulations

Omit “*Election Funding Act 1981*” from the examples to item 14.

Insert instead “*Election Funding and Disclosures Act 1981*”.

Explanatory note

The proposed amendments to the *Local Government Act 1993* update provisions of that Act as a consequence of amendments to the *Environmental Planning and Assessment Act 1979* made by the *Environmental Planning and Assessment Amendment Act 2008*.

Items [1] and [2] of the proposed amendments update terminology relating to the making of local environmental plans, so that reference is made instead to planning proposals.

Items [3]–[5] of the proposed amendments update terminology and references relating to development contributions. Reference is now made to “community infrastructure” rather than “public amenities and public services”.

Items [6] and [9] of the proposed amendments update cross-references.

Items [7] and [8] of the proposed amendments move incorrectly located words.

1.13-1.24

(Repealed)

Schedule 2 Amendments by way of statute law revision

(Section 3)

2.1-2.4

(Repealed)

2.5 City of Sydney Act 1988 No 48

Section 39 (1) and (2)

Omit “draft environmental planning instrument” wherever occurring.

Insert instead “planning proposal”.

Explanatory note

The proposed amendment updates terminology.

2.6-2.9

(Repealed)

2.10 Growth Centres (Development Corporations) Act 1974 No 49

Section 23 (2) (e)

Omit “Divisions 6 and 6A of Part 4”. Insert instead “Part 5B”.

Explanatory note

The proposed amendment updates a cross-reference.

2.11-2.22

(Repealed)

2.23 Redfern-Waterloo Authority Act 2004 No 107

[1] Section 28A

Omit “Division 6 of Part 4”. Insert instead “Part 5B (Division 5 excepted)”.

[2] Sections 30 (1A) and 32 (1A) (a)

Omit “special contributions” wherever occurring.

Insert instead “State contributions”.

[3] Sections 30 (1A), 32 (1), 32 (1A) (a) and 32 (2)

Omit “Division 6 of Part 4” wherever occurring. Insert instead “Part 5B”.

[4] Section 30 (2) and (5)

Omit “Division 6A of Part 4” wherever occurring.

Insert instead “Division 5 of Part 5B”.

[5] Section 30 (2)

Omit “75R (4)”. Insert instead “116B (2)”.

[6] Section 30 (2) (a)

Omit “94F of”. Insert instead “116Y of”.

[7] Section 30 (2) (a)

Omit “a development application for consent to carry out”.

[8] Section 30 (2) (a)

Omit “a development application described”.

Insert instead “development described”.

[9] Section 30 (2) (a)

Omit “94F (1)”. Insert instead “116Y (2)”.

[10] Section 30 (2) (b)

Omit “94F (3) (b)”. Insert instead “116Y (4) (b)”.

[11] Section 30 (6)

Omit “Division 6 of Part 4”. Insert instead “Division 2, 3 or 4 of Part 5B”.

[12] Section 31 (8)

Omit “Division 6 of Part 4”. Insert instead “Division 1, 2, 3 or 4 of Part 5B”.

[13] Section 31 (8) (a)

Omit “section 94 or any other provision of that Division (other than section 94EF)”.

Insert instead “Division 2 of that Part”.

[14] Section 31 (8) (b)

Omit “under that Division”. Insert instead “under that Part”.

[15] Section 31 (8) (b)

Omit “section 94 or any other provision of that Division”.

Insert instead “Division 2 of that Part”.

[16] Section 31 (8) (c)

Omit “section 94 or any other provision of that Division”.

Insert instead “Division 2 or 4 of that Part”.

[17] Section 32 (1A)

Omit “section 94”.

Insert instead “a direct contribution under Division 2 of Part 5B”.

[18] Section 32 (1A) (b)

Omit “Subdivision 4 of Division 6 of Part 4”.

Insert instead “Division 3 of Part 5B”.

Explanatory note

The proposed amendments update cross-references.

2.24-2.31

(Repealed)

2.32 Sydney Olympic Park Authority Act 2001 No 57

[1] Sections 18 (4) and (5), 21, 22, 23, 49 (5) (b) and 71 (6) (d)

Omit “Urban Affairs and Planning” wherever occurring.

Insert instead “Planning”.

[2] Section 23

Omit “Division 6 of Part 4”. Insert instead “Part 5B”.

Explanatory note

Item [1] of the proposed amendments updates references to a Minister and a Department.

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

2.33, 2.34

(Repealed)

2.35 Threatened Species Conservation Act 1995 No 101

[1] Section 127B (10) (a)

Omit “Subdivision 2 of Division 6 of Part 4”.

Insert instead “Division 4 of Part 5B”.

[2] Section 127B (10) (b)

Omit “or levy) required under Subdivision 3 or 4 of Division 6 of Part 4”.

Insert instead “) required under Division 2 or 3 of Part 5B”.

[3] Section 127ZO (7)

Omit “Section 82A”. Insert instead “Section 96D”.

Explanatory note

The proposed amendments update cross-references.

2.36-2.38

(Repealed)

2.39 Western Sydney Parklands Act 2006 No 92

[1] Section 39 (4)

Omit “Division 6 of Part 4”. Insert instead “Part 5B”.

[2] Section 39 (4)

Omit “section 94EJ”. Insert instead “section 116ZD”.

Explanatory note

The proposed amendments update cross-references.

2.40, 2.41

(Repealed)

Schedule 3 Amendments consequential on repeals

(Section 3)

3.1-3.8

(Repealed)

Schedule 4 Repeals

(Section 4)

Part 1 Acts that are redundant

- Appropriation Act 2007 No 18
- Appropriation (Parliament) Act 2007 No 19
- Appropriation (Special Offices) Act 2007 No 20
- Bennelong Point (Parking Station) Act 1985 No 189
- Dairy Adjustment Programme Agreement Ratification Act 1975 No 31
- Dairy Adjustment Programme Agreement Ratification Act 1977 No 98
- Dried Fruits (Repeal) Act 1997 No 124
- Grain Marketing Act 1991 No 15
- Marginal Dairy Farms Reconstruction Scheme Agreement Ratification Act 1971 No 72
- Softwood Forestry Agreement Act 1968 No 20
- Softwood Forestry Agreement Ratification Act 1980 No 90
- Softwood Forestry (Further Agreement) Act 1973 No 7
- State Brickworks Act 1946 No 16
- Swine Compensation Act 1928 No 36

Part 2 Provisions of Acts that are redundant

Name of Act	Extent of repeal
Environmental Planning and Assessment Amendment Act 2008 No 36	Schedule 2.1 [4]
Glen Davis Act 1939 No 38	Part 4 and Third Schedule
Marine Safety Act 1998 No 121	Schedule 3.3

Part 3 Acts or provisions of Acts that contain only amendments that

have commenced

Note—

Section 30 (2) (c) of the *Interpretation Act 1987* ensures that, when an Act or statutory rule is repealed, no amendment or validation made by the Act or statutory rule is affected. (Section 5 (6) of that Act applies section 30 to environmental planning instruments.)

Name of Act	Extent of repeal
<i>Australian Jockey Club Act 2008 No 52</i>	Section 39 and Schedule 2
<i>Building Professionals Amendment Act 2008 No 37</i>	Schedules 1 [1]–[3], [10], [18], [20], [22]–[32], [35], [43] and [49]–[52] and 2 [3], [10] and [11]
<i>Child Protection (Offenders Registration) Amendment Act 2007 No 87</i>	Sections 3–5 and Schedules 1–3 and 4.2–4.4
<i>Consumer, Trader and Tenancy Tribunal Amendment Act 2008 No 51</i>	Schedule 1 [1]–[17] and [20]–[25]
<i>Courts and Crimes Legislation Amendment Act 2008 No 53</i>	Schedules 2–20
<i>Courts and Other Legislation Amendment Act 2007 No 73</i>	Schedule 4
<i>Crimes (Domestic and Personal Violence) Act 2007 No 80</i>	Section 103 and Schedule 2
<i>Deer Act 2006 No 113</i>	Section 40 and Schedule 2
<i>Education Amendment Act 2008 No 12</i>	Schedule 1 [1], [2] and [4]–[11]
<i>Environmental Planning and Assessment Amendment Act 2008 No 36</i>	Schedules 2.1 [5], 2.10 [12], 4.1 [7], [8], [12]–[14], [20]–[22], [24]–[26] and [31], 4.2 [2], [5], [7] and [11]–[13], 4.3, 4.4 and 5.1 [10] and [12]
<i>Hemp Industry Act 2008 No 58</i>	Schedule 2.1 [1] and [3]
<i>Marine Safety Amendment Act 2008 No 59</i>	Schedule 1 [1]–[12], [20]–[22] and [49]–[79]
<i>Mine Health and Safety Act 2004 No 74</i>	Division 7 of Part 13 and Schedules 2–4
<i>Mining Amendment Act 2008 No 19</i>	Schedules 1 [16], [20], [28], [32], [35], [37], [42], [51], [54], [57], [62], [68], [71], [78], [81], [96]–[98], [101], [116]–[118], [121], [122], [134], [138], [141], [142], [147]–[149], [172], [174], [175], [177], [178], [182], [188], [196], [197], [199], [200], [202], [203], [222], [237], [238], [244], [246], [247], [249], [252], [255], [256], [260]–[262], [265], [266], [268], [269], [277], [278] and [280] and 2.2 [2], 2.5, 2.6 and 2.8 [1]
<i>National Gas (New South Wales) Act 2008 No 31</i>	Sections 17–19 and Schedule 1
<i>Residential Parks Act 1998 No 142</i>	Part 15

Road Transport Legislation Amendment Act 2008 No 61	Schedules 1, 3 and 4
Shop Trading Act 2008 No 49	Sections 24 and 25 and Schedule 3
Sporting Venues Authorities Act 2008 No 65	Section 42 and Schedule 6
Statute Law (Miscellaneous Provisions) Act (No 2) 2007 No 82	Whole Act
Succession Act 2006 No 80	Section 59 and Schedules 2 and 3
Surveillance Devices Act 2007 No 64	Sections 61 and 62 and Schedule 2
Thoroughbred Racing Amendment Act 2008 No 63	Schedule 1 [31] and [32]
Water Industry Competition Act 2006 No 104	Section 102 and Schedule 3
Western Sydney Parklands Act 2006 No 92	Section 52 and Schedule 5

Explanatory note

Part 1 repeals Acts that are redundant.

Part 2 repeals provisions of Acts that are redundant, because they authorise works that have been completed (Part 4 of, and the Third Schedule to, the [Glen Davis Act 1939](#)), they omit a heading that is still required (Schedule 2.1 [4] to the [Environmental Planning and Assessment Amendment Act 2008](#)) or they amend an Act that has since been repealed (Schedule 3.3 to the [Marine Safety Act 1998](#)).

Part 3 repeals Acts or provisions of Acts that contain only amendments to other Acts or instruments. All of the amendments have commenced.

In relation to the repeal of amending provisions, it should be noted that the provisions are repealed simply to rationalise the legislation in force and that the repeals have no substantive effect on the amendments made by the provisions, or any associated provisions. The Acts and instruments that were amended by the provisions being repealed are up-to-date on the NSW legislation website maintained by the Parliamentary Counsel's Office (www.legislation.nsw.gov.au).

Section 30 (2) of the [Interpretation Act 1987](#) ensures that the following matters are not affected when an Act or statutory rule is amended or repealed:

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

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 Effect of amendment on instruments

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.

Explanatory note

This clause 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.

4 Revocation of repeal

- (1) The Governor may by proclamation published in the Gazette revoke the repeal of any Act or instrument effected by the following:

 this Act

Statute Law (Miscellaneous Provisions) Act (No 2) 2007

- (2) Any Act or instrument the subject of a proclamation under subclause (1) is taken not to be, and never to have been, repealed by any such Act.
- (3) Subclause (2) does not operate in respect of any Act or instrument 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 publication in the Gazette of the proclamation under subclause (1) in respect of that Act or instrument, 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 publication of that proclamation.
- (4) A reference in this clause to an Act or instrument includes a reference to a provision of any Act or instrument.

Explanatory note

This clause enables the Governor, by proclamation, to revoke the repeal of any Act or instrument or the provision of any Act or instrument repealed by this Act or the 2007 statute law revision Act. The Act or instrument or provision of an Act or instrument the subject of the revocation of repeal is taken not to be, and never to have been, repealed.

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 proposed Act.