

# Statute Law (Miscellaneous Provisions) Act (No 2) 2009 No 106

[2009-106]



New South Wales

## Status Information

### Currency of version

Historical version for 9 January 2010 to 7 July 2011 (accessed 27 July 2024 at 10:46)

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 3 (1) of this Act (sec 3 (1) repeals a subschedule of Schedule 1, 2, 3, 4 or 5 on the day following the day on which all of the provisions of the subschedule have commenced)

[Statute Law \(Miscellaneous Provisions\) Act 2011 No 27](#) (not commenced — to commence on 8.7.2011)

### 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) 2009 No 106



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) 2009*.

## 2 Commencement

- (1) This Act commences on 8 January 2010, except as provided by this section.
- (2) The amendments made by the Schedules to this Act 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 8 January 2010.

## 3 Repeal of this Act

- (1) A subschedule of Schedule 1, 2, 3, 4 or 5 is repealed on the day following the day on which all of the provisions of the subschedule have commenced (except as provided by subsection (2)).
- (2) If a subschedule of Schedule 1, 2, 3, 4 or 5 commences before the date of assent to this Act, the subschedule is repealed on the day after the date of assent to this Act.
- (3) The repeal by this section 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.

## 4 Explanatory notes

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

## **Schedule 1 Minor amendments**

### **1.1-1.8**

(Repealed)

### **1.9 Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009 No 32**

#### **[1] Schedule 2 Amendment of other legislation**

Omit “**Sections 123 (1), 124 (1) and 141 (1)**” from Schedule 2.16 [1].

Insert instead “**Sections 123 (1) and 124 (1)**”.

#### **[2] Schedule 2.16 [5]**

Omit “**Sections 124 (2) and 141 (2)**”. Insert instead “**Section 124 (2)**”.

#### **Explanatory note**

The proposed amendments to the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009* prevent certain amendments made by that Act to section 141 of the *Rail Safety Act 2008* (which would otherwise become unincorporable on the commencement of amendments elsewhere in this Schedule that are proposed to be made to that section) from taking effect.

### **1.10-1.14**

(Repealed)

### **1.15 Rail Safety Act 2008 No 97**

#### **[1] Section 132 Proceedings for offences**

Omit section 132 (1) and (2). Insert instead:

- (1) Proceedings for an offence under this Act or the regulations may be dealt with summarily:
  - (a) before the Local Court (if the offence is under a regulation made under section 131), or
  - (b) before either the Local Court or the Industrial Court of New South Wales (if the offence is under a regulation made under Schedule 1), or
  - (c) before the Industrial Court of New South Wales (in any other case).

#### **[2] Section 132 (3)**

Omit the subsection.

### **[3] Section 141 Enforcement of undertakings**

Omit “Local Court constituted by an Industrial Magistrate” from section 141 (1).

Insert instead “Industrial Court of New South Wales”.

### **[4] Section 141 (2)**

Omit “the Local Court”. Insert instead “the Court”.

#### **Explanatory note**

The *Rail Safety Act 2008* (**the Act**) provides that proceedings for offences under the Act or its regulations may be dealt with by the Local Court or the Industrial Court of New South Wales (**the Industrial Court**). Item [1] of the proposed amendments to the Act particularises which of these proceedings may be dealt with only by the Local Court (being proceedings for offences relating to passenger conduct and the regulation and control of trains, drivers and railways), which may be dealt with by either the Local Court or the Industrial Court (being offences relating to the presence of alcohol or drugs in persons carrying out rail safety work, and refusals or failures to undergo alcohol or drug tests) and which may be dealt with only by the Industrial Court (being proceedings for all other offences under the Act and its regulations). Item [1] also omits a provision as a consequence of the amendment just described.

Item [2] omits a provision that will become redundant on the commencement of certain amendments to the *Industrial Relations Act 1996*. The provision allows proceedings for offences under the Act or its regulations that are dealt with by the Local Court (other than certain offences relating to passenger conduct and the regulation and control of trains, drivers and railways) to be appealed to the Full Bench of the Industrial Court.

Item [3] updates a reference to the Court that may enforce certain voluntary undertakings given under the Act, as a consequence of (uncommenced) amendments to the *Industrial Relations Act 1996* that abolish the office of Industrial Magistrate. Item [4] makes a consequential amendment.

## **1.16-1.20**

(Repealed)

## **Schedule 2 Amendments by way of statute law revision**

### **2.1-2.50**

(Repealed)

## **Schedule 3 On-line publication of making of statutory instruments**

#### **Explanatory note**

This Schedule contains amendments to legislation to extend the requirement for publication on the NSW legislation website to additional categories of statutory instruments (as part of a staged program for the publication on the website of statutory instruments of a legislative nature). Apart from the publication of instruments, the website also provides public access to up-to-date in force versions of Acts, regulations and other statutory instruments.

Schedule 3.5, 3.19, 3.22, 3.23, 3.31 and 3.38 also remove redundant provisions relating to the making of regulations (already provided for in Part 6 of the *Interpretation Act 1987*) and Schedule 3.21 clarifies that certain orders are required to be published in the Gazette.

### **3.1-3.45**

(Repealed)

## **Schedule 4 Amendments consequential on enactment of [Local Court Act 2007](#)**

### **Explanatory note**

The proposed amendments are consequential on the enactment of the [Local Court Act 2007](#). That Act repealed the [Local Courts Act 1982](#) and replaced the Local Courts throughout New South Wales with the Local Court (which sits at various places throughout New South Wales). Accordingly, references in other Acts and instruments to the 1982 Act are replaced with references to the 2007 Act and references to “a Local Court” are replaced with references to “the Local Court”.

### **4.1-4.31**

(Repealed)

## **Schedule 5 Amendments updating references to liquor, registered clubs and casino legislation**

### **Explanatory note**

The proposed amendments update certain references to liquor, registered clubs and casino legislation consequent on the enactment of the [Liquor Act 2007](#) and the [Casino, Liquor and Gaming Control Authority Act 2007](#), including as follows:

- (a) by updating references to the repealed [Liquor Act 1982](#),
- (b) by replacing references to registration under the [Registered Clubs Act 1976](#) with references to the holding of a club licence under the [Liquor Act 2007](#),
- (c) by updating references to the types of licences that may be held under the [Liquor Act 2007](#),
- (d) by updating references to provisions of the [Registered Clubs Act 1976](#), the [Liquor Act 1982](#), and the [Casino Control Act 1992](#) about matters now dealt with in the [Casino, Liquor and Gaming Control Authority Act 2007](#).

### **5.1-5.26**

(Repealed)

## **Schedule 6 Repeals**

### **1 Repeal of Acts that are redundant**

The following Acts are repealed:

[Appropriation Act 2008 No 45](#)

[Appropriation \(Budget Variations\) Act 2008 No 25](#)

[Appropriation \(Parliament\) Act 2008 No 46](#)

[Appropriation \(Special Offices\) Act 2008 No 47](#)

[Companies \(Receiver and Manager\) Act 1959 No 8](#)

[Matrimonial Causes Act 1899 No 14](#)

*Wollongong Sportsground and Old Roman Catholic Cemetery Legislation Amendment (Transfer of Land) Act 2001 No 103*

**2 Repeal of Act that contains only amendments that have commenced**

The *Fisheries Management Amendment Act 2006 No 18* is repealed.

**3 Repeal of Acts that contain only amendments that have commenced or cannot be incorporated because of subsequent changes**

The following Acts are repealed:

*Biofuel (Ethanol Content) Amendment Act 2009 No 11*

*Miscellaneous Acts (Local Court) Amendment Act 2007 No 94*

*Road Transport (Driver Licensing) Amendment (Demerit Points System) Act 2008 No 82*

**4 Repeal of provisions of Acts that contain only amendments that have commenced or cannot be incorporated because of subsequent changes**

The following provisions of the following Acts are repealed:

| <b>Act</b>  | <b>Provisions repealed</b>  |
|---|---|
| <i>Building Professionals Amendment Act 2008 No 37</i>                              | Schedules 1 [4], [6], [9], [12], [13], [15], [16], [19], [21], [33], [34], [36], [37], [39], [42], [47] and [48] and 2 [8], [12], [15] and [16]   |
| <i>Community Justice Centres Amendment Act 2007 No 70</i>                           | Schedule 1 [20], [30] and [32] and Schedule 2   |
| <i>Courts and Crimes Legislation Amendment Act 2008 No 53</i>                       | Schedules 1 and 22  |
| <i>Crimes and Courts Legislation Amendment Act 2006 No 107</i>                      | Schedule 1.12   |
| <i>Environmental Planning and Assessment Amendment Act 2008 No 36</i>               | Schedules 1.1 [1]-[10] and [12]-[15], 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 2.1 [1], [2], [6]-[12], [15], [21]-[25], [39]-[56], 2.2 [1]-[15], [19], [27], [33], [39] and [46]-[74], 2.3, 2.4, 2.6-2.9, 2.10 [10] and [11], 4.1 [1], [6], [9], [15], [23], [27] and [29], 4.2 [1], [3] and [8]-[10], 5.1 [1], [3]-[6], [8] and [11] and 5.7 |
| <i>Fines Further Amendment Act 2008 No 110</i>                                      | Schedule 1 [21], [22] and [29]-[33]   |
| <i>First State Superannuation Legislation Amendment (Conversion) Act 2005 No 91</i> | Schedule 3.6 and 3.11-3.13  |

|   |  |
|---|--|
| <a href="#">Marine Safety Amendment Act 2008 No 59</a>      | Schedule 1 [13], [15], [17]–[19], [23], [24], [29] and [34]–[39] |
| <a href="#">Photo Card Act 2005 No 20</a>                   | Schedule 2.3   |
| <a href="#">Security Industry Amendment Act 2008 No 113</a> | Schedule 1 [5] and [12]  |
| <a href="#">Water Management Amendment Act 2008 No 73</a>   | Schedule 4 [1]–[3], [8] and [9]                                  |

### Explanatory note

Clause 1 repeals Acts that are redundant.

Clause 2 repeals an Act that contains only amendments that have commenced.

Clause 3 repeals Acts that contain only amendments that have commenced and amendments that cannot be incorporated, because the Acts they amend have been amended or repealed.

Clause 4 repeals provisions of Acts that contain only amendments that have commenced and amendments that cannot be incorporated, because the Acts they amend have been amended or repealed.

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](http://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 7 General savings, transitional and other provisions

### 1 Effect of amendment of amending provisions

(1) An amendment made by Schedule 1, 2, 3 or 5 to an amending provision contained in an Act or instrument is, if the amending provision has commenced before the Schedule 1, 2, 3 or 5 amendment concerned, 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 or instrument that makes a direct amendment to an Act or instrument by:

- (a) the repeal or omission of matter contained in the amended Act or instrument



- without the insertion of any matter instead of the repealed or omitted matter, or
- (b) the omission of matter contained in the amended Act or instrument and the insertion of matter instead of the omitted matter, or
  - (c) the insertion into the amended Act or instrument of matter, not being matter inserted instead of matter omitted from the Act or instrument.

**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 on the NSW legislation website revoke the repeal of any Act or instrument effected by the following:

    this Act

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

*Statute Law (Miscellaneous Provisions) Act 2008*

- (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 the Act concerned.
- (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 on the NSW legislation website 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 any of the other statute law revision Acts listed. 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 on the NSW legislation website, 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.