

# Statute Law (Miscellaneous Provisions) Act (No 2) 2012 No 95

[2012-95]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Note**  
Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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New South Wales

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# Statute Law (Miscellaneous Provisions) Act (No 2) 2012 No 95



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) 2012*.

## 2 Commencement

- (1) This Act commences on 4 January 2013.
- (2) However, 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 in accordance with subsection (1).

## 3 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 Apprenticeship and Traineeship Act 2001 No 80

#### [1] Section 21, heading

Insert “**on application by a party**” after “**plans**” in the heading to the section.

#### [2] Section 21A

Insert after section 21:

#### **21A Variation of training contracts and training plans by Commissioner**

- (1) The Commissioner may, on receiving a recommendation from a registered

training organisation or any other relevant person or body or on the Commissioner's own initiative, make a variation to a training contract or training plan in accordance with this section.

- (2) A technical variation may be made at any time at the discretion of the Commissioner.
- (3) A technical variation is a variation that, in the Commissioner's opinion, is of a minor nature and will not result in any material change to the terms of the training contract or training plan.
- (4) If the variation is not a technical variation, the following provisions apply:
  - (a) the Commissioner must send a notice to each party (being the employer and the apprentice or trainee) requesting the party to notify the Commissioner whether or not the party consents to the variation,
  - (b) if the Commissioner does not receive any reply to such a request within 21 days after the date on which the notice was sent, the consent of the party to whom the notice was sent is taken to have been given,
  - (c) if the parties consent to the variation, the Commissioner may make the variation.
- (5) As soon as practicable after a variation is made under this section, the Commissioner must give notification of the variation to the following:
  - (a) the employer,
  - (b) the apprentice or trainee concerned,
  - (c) in the case of the variation of a training plan—the relevant registered training organisation.
- (6) A variation made under this section is binding on the employer and the apprentice or trainee.

#### **Explanatory note**

Currently, section 21 of the *Apprenticeship and Traineeship Act 2001* enables variations to be made to a training contract or training plan only on the application of the employer, apprentice or trainee concerned (a **relevant party**). Item [2] of the proposed amendments extends the circumstances in which a variation may be made to a training contract or training plan by enabling the Commissioner for Vocational Training to do so on receiving a recommendation from a registered training organisation or any other relevant person or body or on the Commissioner's own initiative. The proposed amendment enables the Commissioner, at any time and at his or her discretion, to make a technical variation that will not result in any material change to the terms of the training contract or training plan. However, the Commissioner may make other variations only after notifying the relevant parties and receiving their consent (or their assumed consent if the Commissioner does not receive a response from the parties within 21 days of notifying them). Any variation made by the Commissioner is binding on, and must be notified to, the relevant parties.

Item [1] of the proposed amendments makes a consequential amendment.

## 1.2 Australian Museum Trust Act 1975 No 95

### Section 18

Insert before section 19:

#### 18 Personal liability

A matter or thing done or omitted to be done by the Trust, a trustee, the Director or a person acting under the direction of the Trust or the Director does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject a trustee, the Director or a person so acting personally to any action, liability, claim or demand.

#### Explanatory note

The proposed amendment to the [Australian Museum Trust Act 1975](#) ensures that a trustee of the Australian Museum Trust, the Director of the Australian Museum or a person acting under the direction of the Trust or the Director is not personally liable for an act or omission done in good faith for the purpose of executing that Act.

## 1.3 Biofuels Act 2007 No 23

### [1] Section 5 Act applies only to sales to person in NSW or for delivery in NSW

Omit section 5 (2) and (2A). Insert instead:

- (2) This Act does not apply to a sale of petrol or diesel fuel by one volume fuel seller to another volume fuel seller.

### [2] Section 15 Exemptions from minimum biofuel requirements

Omit section 15 (4). Insert instead:

- (4) An exemption can be granted as a partial exemption specifying a percentage that is less than the minimum ethanol percentage or minimum biodiesel percentage applicable under section 6 or 7.

#### Note—

A partial exemption has the effect that the relevant section then applies to require that the volume of ethanol (in petrol ethanol blend) or volume of biodiesel (in biodiesel blend) sold by the volume fuel seller concerned is not less than the specified minimum ethanol percentage or specified minimum biodiesel percentage of the total volume of all petrol or diesel fuel sold by that seller during the relevant period.

### [3] Schedule 1 Savings, transitional and other provisions

Insert after clause 3:

## **Part 3 Provision consequent on enactment of Statute Law (Miscellaneous Provisions) Act (No 2) 2012**

### **4 Exemption from minimum biofuel requirements**

An order made by the Minister under section 15 (4) that was in force immediately before the substitution of that subsection by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2012* is taken to have been made under that subsection as so substituted.

#### **Explanatory note**

Item [1] of the proposed amendments to the *Biofuels Act 2007 (the Act)* expands a general exception from the operation of the Act (applying to certain bulk fuel sales) so as to ensure that the Act's requirements for records and returns of fuel sales will only apply to the fuel sales that are subject to the Act's main operative provisions (which impose minimum ethanol/biodiesel content requirements for fuel). As a result of the amendment, records and returns will no longer be required for sales by primary wholesalers to major retailers. Those sales are currently not subject to the Act's minimum ethanol/biodiesel content requirements (so the current requirement for records and returns for those sales serves no purpose under the Act).

Item [2] of the proposed amendments recasts a provision that allows an exemption from a minimum biofuel requirement to be granted as a "partial" exemption, to correct the explanation of how such a partial exemption operates.

Item [3] of the proposed amendments inserts a transitional provision that preserves exemptions from minimum biofuel requirements that were granted by the Minister before the amendment made by item [2].

### **1.4**

(Repealed)

## **1.5 Children and Young Persons (Care and Protection) Act 1998 No 157**

### **[1] Section 27A Alternative reporting arrangements**

Insert after section 27A (11):

(12) A staff member of a relevant agency may, in accordance with the terms of an arrangement under this section, refer any of the following matters to an assessment officer of the agency:

- (a) a matter relating to a young person that the staff member would otherwise report to the Director-General under section 24,
- (b) a matter relating to an unborn child that the staff member would otherwise report to the Director-General under section 25.

### **[2] Section 29 Protection of persons who make reports or provide certain information**

Insert at the end of the section:

**Note—**

It is an offence under section 254 for a person to disclose any information obtained in connection with the administration or execution of this Act, except in certain circumstances. The maximum penalty is 10 penalty units (currently \$1,100) or imprisonment for up to 12 months, or both.

**[3] Section 61 Applications for care orders**

Omit section 61 (2). Insert instead:

- (1A) A care application must specify the particular care order sought and the grounds on which it is sought.
- (2) A care application must be accompanied by a written report specifying such information as may be prescribed for the purposes of this section by the rules made under the *Children's Court Act 1987*.
- (2A) However, a written report is not required to accompany a care application if:
  - (a) the application is for the rescission or variation of a care order under section 90, or
  - (b) such a report has previously been provided to the Children's Court in relation to the child or young person concerned.

**[4] Chapter 9, Part 1, heading**

Omit “**in need of care and protection**”.

**[5] Section 245B Interpretation**

Insert “or a referral to an assessment officer under section 27A” after “section 25” in section 245B (3) (a).

**[6] Section 245B (3) (b) and (c)**

Insert “or referral” after “report” wherever occurring.

**[7] Section 264 Regulations**

Omit “section 114” from section 264 (1A) (c).

Insert instead “section 65A or 114”.

**Explanatory note—**

Item [1] of the proposed amendments to the *Children and Young Persons (Care and Protection) Act 1998* (**the Act**) enables mandatory reporters (such as teachers, health care workers and police officers) to refer matters relating to the safety, welfare and well-being of unborn children and young persons (aged 16 or 17 years) to assessment officers instead of making a report about the unborn child or young person directly to the Director-General of the Department of Family and Community Services (the **Director-General**). Under existing alternative reporting arrangements, assessment officers handle mandatory reports about children (aged under 16 years) that would otherwise be reported directly to the Director-General.

Items [5] and [6] make it clear that Chapter 16A of the Act (which enables the exchange of information about the safety, welfare and well-being of children and young persons between agencies) extends to information about an unborn child who is the subject of a referral to an assessment officer under the alternative reporting arrangements referred to above. Currently, Chapter 16A only extends to information about unborn children who are the subject of pre-natal reports to the Director-General.

Item [2] inserts a note referring to the offence under the Act of disclosing information obtained in connection with the administration or execution of the Act except in certain circumstances. The note is inserted into a section providing that the identity of a person who makes a report about a child or young person to the Director-General is not to be revealed, except in certain circumstances (such as the disclosure to the police of the reporter's identity for the purposes of the investigation of various offences).

Item [3] removes the requirement for certain applications for care orders to be accompanied by a written report setting out a summary of the facts, matters and circumstances of the case. A written report will still be required for most initial care applications, and all care applications must continue to specify the particular care order sought and the grounds on which it is sought.

Item [4] amends the heading to a Part in Chapter 9 of the Act to reflect that the Part applies to the medical examination and treatment of all children (and not only to children who are in need of care and protection).

Item [7] expands the power to make regulations about the use of evidence given during the course of alternative dispute resolution to include alternative dispute resolution that is ordered by the Children's Court.

## 1.6

(Repealed)

## 1.7 Criminal Procedure Act 1986 No 209

### Section 94 Meaning of "offence involving violence"

Omit "section 35 (b) of the *Crimes Act 1900*" from section 94 (1) (d).

Insert instead "section 35 (1) or (2) of the *Crimes Act 1900*".

#### Explanatory note

The proposed amendment to the *Criminal Procedure Act 1986* updates a cross-reference to the offence of recklessly causing grievous bodily harm in a definition of **offences involving violence**. Alleged victims of offences involving violence who have made a written statement cannot generally be directed to attend committal proceedings. The amendment also updates the definition to include the more serious offence of recklessly causing grievous bodily harm in company.

## 1.8 Election Funding, Expenditure and Disclosures Act 1981 No 78

### [1] Section 4 Definitions

Insert ", appointed by the member under section 46A," after "an official agent" in paragraph (f1) of the definition of **official agent** in section 4 (1).

### [2] Section 4 (1), definition of "official agent"

Omit paragraph (f2). Insert instead:

(f2) in relation to a third-party campaigner for whom an official agent, appointed by the campaigner under section 46B, is registered in the Register of Official Agents—that



official agent, or

**[3] Section 4 (1), definition of “official agent”**

Omit “or candidate” from paragraph (g).

Insert instead “, candidate or third-party campaigner concerned”.

**Explanatory note**

The proposed amendments to the *Election Funding, Expenditure and Disclosures Act 1981* ensure that the Election Funding Authority of New South Wales may designate an official agent for an elected member or third-party campaigner if an official agent is not otherwise appointed or designated for the member or campaigner.

## **1.9 Independent Commission Against Corruption Act 1988 No 35**

### **Schedule 1 Provisions relating to Commissioner and Assistant Commissioners**

Omit “7 years” wherever occurring in clause 4 (1A) and (3).

Insert instead “9 years”.

**Explanatory note**

The proposed amendment to the *Independent Commission Against Corruption Act 1988* extends the total period for which a person may hold office as an Assistant Commissioner for the Independent Commission Against Corruption from 7 to 9 years.

## **1.10 Library Act 1939 No 40**

### **Section 7BA**

Insert after section 7B:

#### **7BA Personal liability**

A matter or thing done or omitted to be done by the Council, a member of the Council, the State Librarian or a person acting under the direction of the Council or the State Librarian does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject a member of the Council, the State Librarian or a person so acting personally to any action, liability, claim or demand.

**Explanatory note**

The proposed amendment to the *Library Act 1939* ensures that a member of the Library Council of New South Wales, the State Librarian or a person acting under the direction of the Library Council or the State Librarian is not personally liable for an act or omission done in good faith for the purpose of executing that Act.

## **1.11 Local Government Act 1993 No 30**

### **Schedule 8 Savings, transitional and other provisions consequent on the enactment of**

## other Acts

Insert after clause 102:

### **102A Certain reinstated councils may retain Electoral Commissioner to administer elections, polls and referendums until end of 2016 ordinary elections**

- (1) Despite section 296, a reinstated council may resolve, before 9 September 2013, that the council is to enter into a contract or make arrangements with the Electoral Commissioner for the Electoral Commissioner to administer its elections, council polls and constitutional referendums.
- (2) The council must, as soon as possible, notify the following persons of the making of such a resolution:
  - (a) the Electoral Commissioner,
  - (b) the Director-General.
- (3) If such a contract is entered into or such arrangements made, the Electoral Commissioner is to administer all the elections, council polls and constitutional referendums of the council until the conclusion of the 2016 ordinary election for councillors.
- (4) In this clause:

**election** does not include an election of the mayor or a deputy mayor by the councillors.

**reinstated council** means any of the following councils:

- (a) Port Macquarie-Hastings Council,
- (b) Shellharbour City Council,
- (c) Wollongong City Council.

#### **Explanatory note**

The proposed amendment to the [Local Government Act 1993](#) makes it clear that certain local councils recently in administration (Port Macquarie-Hastings Council, Shellharbour City Council and Wollongong City Council) may resolve, before 9 September 2013 (just as other councils may), that the New South Wales Electoral Commissioner is to administer elections, council polls and constitutional referendums for the council for the next election cycle.

## **1.12 Museum of Applied Arts and Sciences Act 1945 No 31**

### **Section 16**

Insert after section 15:

## 16 Personal liability

- (1) A matter or thing done or omitted to be done by the Trustees, a trustee, the principal officer or a person acting under the direction of the Trustees or the principal officer does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject a trustee, the principal officer or a person so acting personally to any action, liability, claim or demand.
- (2) In this section, **principal officer** means the member of staff responsible for the day-to-day management and administration of the Museum.

### Explanatory note

The proposed amendment to the [Museum of Applied Arts and Sciences Act 1945](#) ensures that a trustee of the Museum of Applied Arts and Sciences, the principal officer of the Museum or a person acting under the direction of the Trustees or the principal officer is not personally liable for an act or omission done in good faith for the purpose of executing that Act. The Museum of Applied Arts and Sciences includes the Powerhouse Museum, Powerhouse Discovery Centre, NSW Migration Heritage Centre and Sydney Observatory.

## 1.13 Parliamentary Electorates and Elections Regulation 2008

### [1] Schedule 1 Forms

Omit “the maximum penalty for failing to vote is 0.5 penalty units” from Form 21.

Insert instead “the maximum penalty for failing to vote is 1 penalty unit (currently \$110).”

### [2] Schedule 1, Form 21

Omit “\$25”. Insert instead “[specify penalty, which must not exceed \$55]”.

### [3] Schedule 1, Form 21

Omit “the maximum penalty is 0.5 penalty units plus court costs”.

Insert instead “the maximum penalty is 1 penalty unit (currently \$110) and court costs may also be payable”.

### [4] Schedule 1, Form 21

Omit “Penalty for any person giving a false reason for failure to vote is 0.5 penalty units”.

Insert instead “The maximum penalty for any person giving a false reason for an elector’s failure to vote is 1 penalty unit (currently \$110)”.

### Explanatory note

The proposed amendments to the [Parliamentary Electorates and Elections Regulation 2008](#) make a number of corrections to the prescribed form of penalty notice for failure to vote in a State election, including amendments that are consequential on

amendments, enacted in 2009, to the *Parliamentary Electorates and Elections Act 1912*. Those amendments increased the maximum penalty notice amount, under section 120C of that Act, for failing to vote from \$25 to \$55. They also increased the maximum penalty for the offences, under section 120F of that Act, of failing to vote and giving a false reason for failing to vote from 0.5 penalty unit to 1 penalty unit (currently \$110).

## 1.14 Public Finance and Audit Act 1983 No 152

### Section 48A Review of Audit Office

Omit “3” from section 48A (1). Insert instead “4”.

#### Explanatory note

The purpose of the proposed amendment to the *Public Finance and Audit Act 1983* is to change the frequency at which the Audit Office must be reviewed by a person appointed by the Public Accounts Committee (**PAC**) from 3 to 4 yearly. The proposed amendment gives effect to a recommendation of PAC in *Conduct of the 2009 Review of the Audit Office under S48A of the Public Finance and Audit Act 1983 (Report 1/55, September 2011)* to align the required frequency of reviews with the 4-year term of the Legislative Assembly from which the membership of PAC is drawn.

## 1.15 Racing Administration Act 1998 No 114

### Section 19 Authorised betting event bookmakers

Insert after section 19 (1):

#### Note—

A licensed bookmaker does not require an authorisation under this section to take bets (on or off a racecourse) on declared betting events when the bookmaker is taking bets pursuant to an authority under section 16 to conduct telephone or electronic betting at a racecourse or approved premises off a racecourse.

#### Explanatory note

The proposed amendment to the *Racing Administration Act 1998* makes it clear that the authority a bookmaker requires to take bets at a racecourse on certain “declared” events is not required for the taking of bets on those events pursuant to an authority to conduct telephone or electronic betting at a racecourse or at approved premises off a racecourse.

## 1.16 Residential Tenancies Act 2010 No 42

### [1] Section 202 Nature of proceedings for offences

Omit section 202 (4). Insert instead:

- (4) Proceedings for an offence against this Act may be brought:
- (a) in the case of an offence in relation to a rental bond for a residential tenancy agreement or a proposed residential tenancy agreement—within the period of 3 years that next succeeds:
    - (i) the commission of the offence, or
    - (ii) the termination of the residential tenancy agreement,

whichever is the later, or

- (b) in any other case—within the period of 3 years that next succeeds the commission of the offence, or
- (c) with the consent of the Attorney General—at any time.

**[2] Schedule 2 Savings, transitional and other provisions**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provision consequent on enactment of Statute Law  
(Miscellaneous Provisions) Act (No 2) 2012**

**Nature of proceedings for offences**

The amendment made to section 202 (4) by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2012* does not apply to an offence committed before the commencement of the amendment.

**Explanatory note**

Item [1] of the proposed amendments to the *Residential Tenancies Act 2010 (the Act)* enables proceedings for an offence in relation to rental bonds for an existing or proposed residential tenancy agreement to be brought within 3 years from the commission of the offence or the termination of the residential tenancy agreement, whichever is the later. Currently, the Act requires proceedings for all offences under the Act, including offences in relation to rental bonds, to be brought within 3 years from the commission of the offence, unless the Attorney General's consent is provided.

The proposed amendment reinstates the position of offences in relation to rental bonds that existed under section 17 (2) (a) of the *Landlord and Tenant (Rental Bonds) Act 1977* which was repealed by the Act.

Item [2] of the proposed amendments makes it clear that the proposed amendment to section 202 (4) of the Act does not apply to offences in relation to rental bonds that were committed before the commencement of the proposed amendment.

**1.17 Special Commissions of Inquiry Act 1983 No 90**

**[1] Section 3 Definitions**

Omit the definition of **Judge** from section 3 (1).

**[2] Section 4 Issue of commission**

Omit section 4 (2) and (2A). Insert instead:

- (2) A person is not eligible to be issued a commission unless the person:
  - (a) is or is qualified to be appointed as a Judge of the Supreme Court of the State or of any other State or Territory, a Judge of the Federal Court of Australia or a Justice of the High Court of Australia, or

(b) is a former Judge or Justice of any court referred to in paragraph (a).

(2A) A person is not eligible to be issued a commission if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.

#### **Explanatory note**

Item [2] of the proposed amendments to the *Special Commissions of Inquiry Act 1983* inserts provisions relating to the eligibility of a person for appointment as a Commissioner for a Special Commission of Inquiry (**SCOI**) similar to provisions relating to the eligibility of a person for appointment as a Commissioner for the Crime Commission, the Independent Commission Against Corruption or the Police Integrity Commission. In particular, the amendment generally broadens the range of persons who may be appointed as a Commissioner for a SCOI (enabling a person to be appointed if the person holds, has held or is qualified to hold judicial office in Australia or if the person is an Australian lawyer of at least 7 years' standing) and prevents a person being appointed who is a member of a House of Parliament in Australia. Currently, a person may be appointed as a Commissioner for a SCOI only if the person is a New South Wales judge or the person is an Australian lawyer of at least 7 years' standing.

Item [1] makes a consequential amendment.

## **1.18 State Emergency Service Act 1989 No 164**

### **[1] Section 3 Definitions**

Omit "State Emergency Service of New South Wales" from the definition of **State Emergency Service** in section 3 (1).

Insert instead "NSW State Emergency Service".

### **[2] Section 7 State Emergency Service**

Omit "State Emergency Service of New South Wales" from section 7 (1).

Insert instead "NSW State Emergency Service".

### **[3] Section 7 (3)**

Insert after section 7 (2):

(3) In any Act or instrument, a reference to the NSW State Emergency Service need not include the term "NSW".

#### **Explanatory note**

Item [2] of the proposed amendments to the *State Emergency Service Act 1989* renames the State Emergency Service of New South Wales as the NSW State Emergency Service. Item [1] is a consequential amendment.

Item [3] of the proposed amendments provides that any reference in an Act or instrument to the NSW State Emergency Service need not include the term "NSW". This has an effect similar to section 12 (2) of the *Interpretation Act 1987*, which currently operates in relation to the State Emergency Service of New South Wales so that a reference in an Act or instrument to the State Emergency Service need not include the words "of New South Wales".

## 1.19 Sydney Opera House Trust Act 1961 No 9

### Section 27

Insert after section 26:

#### 27 Personal liability

- (1) A matter or thing done or omitted to be done by the Trust, a trustee, the principal officer or a person acting under the direction of the Trust or the principal officer does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject a trustee, the principal officer or a person so acting personally to any action, liability, claim or demand.
- (2) In this section, **principal officer** means the member of staff responsible for the day-to-day management and administration of the Opera House.

#### Explanatory note

The proposed amendment to the [Sydney Opera House Trust Act 1961](#) ensures that a trustee of The Sydney Opera House Trust, the principal officer of the Sydney Opera House or a person acting under the direction of the Trust or the principal officer is not personally liable for an act or omission done in good faith for the purpose of executing that Act.

## 1.20 Travel Agents Act 1986 No 5

### [1] Section 53 Service of documents

Omit section 53 (1) (a). Insert instead:

- (a) where the person is a natural person:
  - (i) by giving it to or serving it personally on the person, or
  - (ii) by sending it by post to the person at the person's usual or last known place of residence or business, or
  - (iii) by sending it by post to the person at the person's postal address notified to the Director-General, or

### [2] Section 53 (1) (b) (iv) and (v)

Omit section 53 (1) (b) (iv). Insert instead:

- (iv) by sending it by prepaid post addressed to the corporation at that registered office or the corporation's postal address notified to the Director-General, or
- (v) without limiting the other provisions of this paragraph, where the corporation is the

holder of a licence, by sending it by prepaid post addressed to the corporation at the address of the principal place of business of the licensee (as shown on the register of licensees).

**Explanatory note**

Item [1] of the proposed amendments to the *Travel Agents Act 1986* (**the Act**) allows a document under that Act to be served on a person by sending it by post to a postal address notified by the person to the Director-General. Currently, documents under the Act can only be sent by post to a person's residential or business address.

Item [2] allows a document under the Act to be served on a corporation by sending it by prepaid post to a postal address notified by the corporation to the Director-General. Currently, documents under the Act can only be sent by prepaid post to a corporation's registered office or business address (where the corporation is the holder of a licence).

## **1.21**

(Repealed)

## **1.22 Water Management Act 2000 No 92**

### **[1] Chapter 3, Part 2, Division 3, heading**

Omit “**and duration**”. Insert instead “, **duration and amendment**”.

### **[2] Chapter 3, Part 2, Division 3, note**

Insert after the heading to Division 3 of Part 2 of Chapter 3:

**Note—**

An access licence may be amended under section 71S, on application of the licence holder, so as to change the extraction component of the licence. The share component of an access licence may be changed, on application of the licence holder, under section 71R.

### **[3] Section 67 Imposition of conditions after access licence is granted**

Omit section 67 (2). Insert instead:

(2) Subsection (1) does not apply to conditions imposed on an access licence:

- (a) at the request of the holder of the access licence, or
- (b) as a result of action taken under section 66 (3), or
- (c) when the access licence is amended under section 68B, or
- (d) in connection with a dealing under Division 4.

### **[4] Section 68B**

Insert after section 68A:



**68B Increase of share components of Commonwealth and other access licences arising from arrangements**

- (1) The Minister may amend an access licence held by the Commonwealth (or a person nominated by the Commonwealth), at the Minister's discretion, by increasing the share component of the licence if the Minister is satisfied that:
  - (a) the amendment is required in order to give effect to an agreement or other arrangement (including, but not limited to, a funding agreement or arrangement) entered into by or on behalf of the State, and
  - (b) the licence forms part of the Commonwealth environmental water holdings within the meaning of the *Water Act 2007* of the Commonwealth.
- (2) The Minister may amend an access licence held by the State (or a public authority prescribed by the regulations), at the Minister's discretion, by increasing the share component of the licence if:
  - (a) the Minister is satisfied that the amendment is required in order to give effect to an agreement or other arrangement (including, but not limited to, a funding agreement or arrangement) entered into by or on behalf of the State, and
  - (b) the licence:
    - (i) is subject to an adaptive environmental water condition, or
    - (ii) is of an environmental subcategory, or
    - (iii) is for water taken or permitted to be taken under a licence of a class prescribed by the regulations for environmental purposes.

**[5] Section 91I Taking water when metering equipment not working**

Omit section 91I (4). Insert instead:

- (4) In this section, ***metered work*** means a water management work in connection with which metering equipment has been installed.

**[6] Section 368 Appeals to Land and Environment Court**

Insert at the end of section 368 (2) (c):

, and

- (d) no appeal lies against a decision of the Minister to impose a discretionary condition on a licence amended under section 68B.

## [7] Dictionary

Insert “or 68B” after “section 68A” in paragraph (d) of the definition of **Ministerial action**.

### Explanatory note

Item [4] of the proposed amendments to the *Water Management Act 2000 (the Act)* enables the Minister for Primary Industries (**the Minister**) to amend an access licence held by the Commonwealth or the State by increasing the licence’s share component, in order to give effect to an agreement entered into by the State and where the licence forms part of the Commonwealth environmental water holdings or is used for certain environmental purposes. Item [4] is in similar terms to sections 63A and 63B of the Act, which enable the Minister to grant an access licence to the Commonwealth or the State in order to give effect to an agreement entered into by the State.

Item [6] ensures that the holder of an access licence that is amended as provided for by item [4] (for example, the Commonwealth) cannot appeal against the Minister’s decision to impose a discretionary condition on the licence. Item [6] is consistent with section 368 (2) (c), which removes any right of appeal against the Minister’s decision to grant an access licence to the Commonwealth or the State under section 63A or 63B of the Act or to impose a discretionary condition on such a licence.

Items [1]-[3] and [7] are consequential on the amendment made by item [4].

Item [5] amends section 91I of the Act to ensure that it is generally an offence to take water from a water source to which Part 3 of Chapter 3 of the Act applies when related metering equipment is not operating (or is not operating properly), regardless of how the equipment came to be installed. The proposed amendment ensures that section 91I is consistent with section 91K of the Act, under which it is generally an offence to interfere with, damage, destroy or disconnect metering equipment, regardless of how the equipment came to be installed.

## Schedule 2 Amendments by way of statute law revision

### 2.1 Air Transport Act 1964 No 36

#### [1] Section 2 (1), definition of “Director-General”

Omit “Ministry of Transport”. Insert instead “Department of Transport”.

#### [2] Section 5 (1) (a)

Omit “the office of the Ministry of Transport”.

Insert instead “the head office of Transport for NSW”.

#### [3] Section 12A (1) (a)

Omit the paragraph. Insert instead:

- (a) a member of staff employed in the Transport Service who is appointed by the Director-General,

### Explanatory note

Item [1] of the proposed amendments updates a reference to a Director-General of a Department. Item [2] updates the reference to the office at which an application for a licence is to be lodged. Item [3] updates a reference to staff.

## **2.2 Boorowa Local Environmental Plan 2012**

### **Clause 4.2A**

Renumber clause 4.2A (5) and (6) as clause 4.2A (4) and (5), respectively.

#### **Explanatory note**

The proposed amendment corrects numbering.

## **2.3 Children and Young Persons (Care and Protection) Act 1998 No 157**

### **Section 245I (c)**

Omit “Centrelink”.

Insert instead “the Commonwealth Department of Human Services”.

#### **Explanatory note**

The proposed amendment updates a reference to a Commonwealth Government agency.

## **2.4 Community Land Development Regulation 2007**

### **Clause 36**

Omit “Country Energy”.

Insert in alphabetical order “Essential Energy”.

#### **Explanatory note**

The proposed amendment updates a reference to a corporation.

## **2.5 Compensation to Relatives Act 1897 No 31**

### **Section 7 (2)**

Omit “public trustee”. Insert instead “NSW Trustee and Guardian”.

#### **Explanatory note**

The proposed amendment updates a reference to an office holder.

## **2.6 Contaminated Land Management Act 1997 No 140**

### **Sections 7 (2) (d) and 38 (3)**

Omit “Public Trustee” wherever occurring.

Insert instead “NSW Trustee and Guardian”.

#### **Explanatory note**

The proposed amendment updates references to an office holder.

## **2.7 Co-operatives (Adoption of National Law) Act 2012 No 29**

### **Appendix, section 393**

Renumber the paragraphs in section 393 as paragraphs (a)–(g).

#### **Explanatory note**

The proposed amendment corrects numbering.

## **2.8 Criminal Procedure Act 1986 No 209**

### **Schedule 1, Table 1, clause 18A**

Omit “section 26”. Insert instead “section 26 (1A) or (1B)”.

#### **Explanatory note**

The proposed amendment clarifies a cross-reference.

## **2.9 Election Funding, Expenditure and Disclosures Act 1981 No 78**

### **[1] Section 4 (1), note to definition of “official agent”**

Omit the note.

### **[2] Section 47 (1) and (2)**

Omit “section 46” wherever occurring. Insert instead “this Division”.

### **[3] Part 6, Division 4A, heading**

Omit the heading. Insert instead:

Division 4A **Prohibition of donations from property developers or tobacco, liquor or gambling industries**

### **[4] Section 96GA, note**

Omit the note. Insert instead:

#### **Note—**

Section 96I makes it an offence for a person to do any act that is unlawful under this Division if the person is, at the time of the act, aware of the facts that result in the act being unlawful. Section 96J also provides for the recovery by the Authority of unlawful political donations.

#### **Explanatory note**

The proposed amendments are consequential on amendments enacted in 2010. In particular, item [1] removes a note that is no longer accurate, item [2] updates cross-references, item [3] updates a heading and item [4] updates a note.

## 2.10 Fair Trading Act 1987 No 68

### Section 4 (1), definition of “officer”

Omit “section 85 of the *Public Sector Employment and Management Act 2002*” from paragraph (b).

Insert instead “the *Public Sector Employment and Management Act 2002*”.

#### Explanatory note

The proposed amendment updates a cross-reference to a repealed provision of the *Public Sector Employment and Management Act 2002*.

## 2.11 First State Superannuation Act 1992 No 100

### Schedule 1

Omit “Upper Parramatta River Catchment Management Trust”.

#### Explanatory note

The proposed amendment removes a redundant reference to a trust.

## 2.12 Government Information (Public Access) Act 2009 No 52

### [1] Schedule 2, clause 4

Omit “office of Public Trustee”. Insert instead “NSW Trustee and Guardian”.

### [2] Schedule 2, clause 4

Omit “Public Trustee’s”. Insert instead “NSW Trustee and Guardian’s”.

#### Explanatory note

The proposed amendments update references to an office and office holder.

## 2.13 Gunnedah Local Environmental Plan 2012

### Part 2, Land Use Table, Zone RE2, item 4

Omit “Elecricity”. Insert instead “Electricity”.

#### Explanatory note

The proposed amendment corrects a spelling error.

## 2.14 Hawkesbury Local Environmental Plan 2012

### Schedule 5

Omit “Goal” from the matter relating to 19 Upper MacDonald Road, St Albans.

Insert instead “Gaol”.

**Explanatory note**

The proposed amendment corrects a spelling error.

## 2.15 Health Care Complaints Act 1993 No 105

### Section 25 (1)

Omit “*Mental Health Act 1990*”. Insert instead “*Mental Health Act 2007*”.

**Explanatory note**

The proposed amendment updates a reference to an Act.

## 2.16 Health Records and Information Privacy Act 2002 No 71

### Section 4 (1), definition of “public sector agency”

Omit paragraph (c).

**Explanatory note**

The proposed amendment removes a provision made redundant by amendments made to the *Public Sector Employment and Management Act 2002* by the *Public Sector Employment Legislation Amendment Act 2006*.

## 2.17 Independent Pricing and Regulatory Tribunal Act 1992 No 39

### Schedule 1

Omit “Country Energy”. Insert instead “Essential Energy”.

**Explanatory note**

The proposed amendment updates a reference to a corporation.

## 2.18 Industrial Relations Act 1996 No 17

### [1] Section 210 (1) (ib)

Omit “Chief Investigator of the Independent Transport Safety and Reliability Regulator or an officer of the Ministry of Transport”.

Insert instead “Chief Investigator (within the meaning of the *Transport Administration Act 1988*) or a member of staff employed in the Transport Service”.

### [2] Section 218 (1) (m)

Omit “paragraph (n)”. Insert instead “paragraph (o)”.

**Explanatory note**

Item [1] of the proposed amendments corrects a reference to an official and updates a reference to staff. Item [2] corrects a

cross-reference.

## 2.19 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

### [1] Schedule 2

Omit the matter relating to the *Disorderly Houses Act 1943*, the *Employment Agents Act 1996* and the *Stock (Artificial Breeding) Act 1985*.

### [2] Schedule 2

Insert in alphabetical order:

*Fire Brigades Act 1989*, section 22D  
*Mining Act 1992*, section 248F  
*Residential Tenancies Act 2010*, section 200  
*Restricted Premises Act 1943*, section 13  
*Rural Fires Act 1997*, section 33C

#### Explanatory note

The proposed amendments correct and update cross-references.

## 2.20 Library Act 1939 No 40

### Section 2 (1)

Omit the definition of **Board**.

#### Explanatory note

The proposed amendment removes redundant matter.

## 2.21 Merriwa Local Environmental Plan 1992

### Clause 14 (3) (a)

Omit “Coucil”. Insert instead “Council”.

#### Explanatory note

The proposed amendment corrects a spelling error.

## 2.22 Mining Act 1992 No 29

### [1] Section 292M (6)

Omit “section 117”. Insert instead “section 197 (3)”.

### [2] Schedule 7, Part 1

Omit “section 70 (1) (b)”. Insert instead “section 70 (1) (a1)”.

**Explanatory note**

The proposed amendments correct cross-references.

## **2.23 Non-Indigenous Animals Regulation 2012**

**[1] Clause 27 (a)**

Omit “offspring”. Insert instead “offspring”.

**[2] Clause 45 (c) (ii) (C)**

Insert “or” at the end of the subsubparagraph.

**Explanatory note**

Item [1] of the proposed amendments corrects a spelling error. Item [2] inserts a missing word.

## **2.24 Petroleum (Onshore) Act 1991 No 84**

### **Section 22**

Renumber section 22 (3A) where secondly occurring as section 22 (3B).

**Explanatory note**

The proposed amendment corrects duplicated numbering.

## **2.25 Privacy and Personal Information Protection Act 1998 No 133**

**[1] Section 3 (1), definition of “public sector agency”**

Omit paragraph (c).

**[2] Schedule 2, clause 7 (1)**

Omit “Parts 2 and 8 of the *Public Sector Management Act 1988*”.

Insert instead “Chapters 1A and 5 of the *Public Sector Employment and Management Act 2002*”.

**Explanatory note**

Item [1] of the proposed amendments removes a provision made redundant by amendments made to the *Public Sector Employment and Management Act 2002* by the *Public Sector Employment Legislation Amendment Act 2006*.

Item [2] updates a reference to provisions of a repealed Act.

## **2.26 Public Authorities (Financial Arrangements) Regulation 2005**

**[1] Schedule 2**

Omit “Country Energy”. Insert in alphabetical order “Essential Energy”.



## **[2] Schedule 2**

Omit “Public Transport Ticketing Corporation”.

### **Explanatory note**

Item [1] of the proposed amendments updates a reference to a corporation. Item [2] removes a redundant reference to a dissolved body.

## **2.27 Public Finance and Audit Act 1983 No 152**

### **Schedule 2**

Omit “Public Transport Ticketing Corporation” and “Upper Parramatta River Catchment Trust”.

### **Explanatory note**

The proposed amendment removes redundant references to a dissolved body and a trust.

## **2.28 Public Sector Employment and Management Act 2002 No 43**

### **Schedule 1, Part 2**

Omit the matter relating to the Upper Parramatta River Catchment Trust Division.

### **Explanatory note**

The proposed amendment removes a redundant reference to a trust.

## **2.29 Retirement Villages Act 1999 No 81**

### **Section 17, note**

Omit “*Trade Practices Act 1974*”.

Insert instead “*Competition and Consumer Act 2010*”.

### **Explanatory note**

The proposed amendment updates a reference to a Commonwealth Act.

## **2.30 Richmond Valley Local Environmental Plan 2012**

### **Clause 4.1C (3)**

Omit “for subdivide land”. Insert instead “for the subdivision of land”.

### **Explanatory note**

The proposed amendment corrects a grammatical error.

## **2.31 Road Transport (General) Regulation 2005**

### **Clause 78 (10)**

Omit “subclause (6) or (8)”. Insert instead “subclause (7) or (9)”.

#### **Explanatory note**

The proposed amendment corrects cross-references.

## **2.32 Road Transport (Safety and Traffic Management) Regulation 1999**

### **Schedule 3**

Omit “Aukland”. Insert instead “Auckland”.

#### **Explanatory note**

The proposed amendment corrects the spelling of a street name.

## **2.33 State Authorities Non-contributory Superannuation Act 1987 No 212**

### **Schedule 1, Part 1**

Omit “Upper Parramatta River Catchment Trust”.

#### **Explanatory note**

The proposed amendment removes a redundant reference to a trust.

## **2.34 State Authorities Superannuation Act 1987 No 211**

### **Schedule 1, Part 1**

Omit “Upper Parramatta River Catchment Trust”.

#### **Explanatory note**

The proposed amendment removes a redundant reference to a trust.

## **2.35 State Emergency and Rescue Management Act 1989 No 165**

### **Section 60D (1) and (4)**

Insert “or on the NSW legislation website” after “Gazette” wherever occurring.

#### **Explanatory note**

The proposed amendment provides that certain orders in relation to emergency operations may be published on the NSW legislation website, as an alternative to the Gazette.

## 2.36 Superannuation Act 1916 No 28

### Schedule 3, Part 1 and Schedule 26, Part 1

Omit “Upper Parramatta River Catchment Trust” wherever occurring.

#### Explanatory note

The proposed amendment removes redundant references to a trust.

## 2.37 Supreme Court Rules 1970

### Part 51B, heading and rule 1 and Schedule F, Form 1

Omit “*Crimes (Local Courts Appeal and Review) Act 2001*” wherever occurring.

Insert instead “*Crimes (Appeal and Review) Act 2001*”.

#### Explanatory note

The proposed amendment updates references to an Act.

## 2.38 Tow Truck Industry Regulation 2008

### The whole Regulation

Omit “The RTA” and “the RTA” wherever occurring. Insert instead “RMS”.

#### Explanatory note

The proposed amendment updates references to a body.

## 2.39 Transport Administration Act 1988 No 109

### [1] Section 3 (1)

Omit the definition of ***Public Transport Ticketing Corporation***.

### [2] Section 56 (d)

Omit the paragraph. Insert instead:

(d) until its dissolution, Sydney Metro.

### [3] Section 65, paragraph (j) of the definition of “transport authority”

Omit the paragraph. Insert instead:

(j) until its dissolution, Sydney Metro.

**[4] Section 81A, paragraph (g) of the definition of “Authority”**

Omit the paragraph.

**[5] Schedule 5, clause 2, paragraph (h) of the definition of “Authority”**

Omit the paragraph. Insert instead:

(h) until its dissolution, Sydney Metro.

**[6] Schedule 9**

Omit the Schedule.

**Explanatory note**

The proposed amendments remove redundant references and provisions relating to a dissolved body.

**2.40 Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010 No 8**

**[1] Sections 7 (1), (3), (4) and (7) and 16 (2) and Schedule 5, clauses 3 (3) and 5 (2)**

Omit “Treasurer” wherever occurring.

Insert instead “Minister for Finance and Services”.

**[2] Section 20 (2)**

Insert at the end of section 20:

(2) The Minister for Finance and Services (the **Minister**) may delegate to the Director-General of the Department of Finance and Services, or to any other officer of the Government Service prescribed by the regulations, any function of the Minister under this Act except this power of delegation.

**[3] Schedule 5, clauses 1 and 7**

Omit “General Manager” wherever occurring.

Insert instead “Chief Executive”.

**[4] Schedule 5, clause 5 (3)**

Insert after clause 5 (2):

(3) In respect of any such transfer, a reference in any provision of Schedule 3 to the Treasurer is to be construed as a reference to the Minister for Finance and Services.

**Explanatory note**

The proposed amendments update references to office holders in line with arrangements under the *Public Sector Employment and Management (Waste Assets Management Corporation) Order 2010* and the *Public Sector Employment and Management (Waste Assets Management Corporation) Order 2011*.

## **2.41 Water Management Act 2000 No 92**

### **Schedule 3, Part 3**

Omit “Country Energy”. Insert instead “Essential Energy”.

**Explanatory note**

The proposed amendment updates a reference to a corporation.

## **2.42 Water Management (General) Regulation 2011**

### **The whole Regulation**

Omit “Country Energy” and “Country Energy’s” wherever occurring.

Insert instead “Essential Energy” and “Essential Energy’s”, respectively.

**Explanatory note**

The proposed amendment updates references to a corporation.

## **2.43 Water Sharing Plan for the Lachlan Unregulated and Alluvial Water Sources 2012**

### **[1] Clause 22 (i)**

Omit “39 ML/day”. Insert instead “39ML/year”.

### **[2] Clause 69 (b)**

Omit “ATS 474”. Insert instead “ATS 4747”.

**Explanatory note**

The proposed amendments correct typographical errors.

## **2.44 Water Sharing Plan for the NSW Border Rivers Unregulated and Alluvial Water Sources 2012**

### **Appendix 4**

Omit “Pox”. Insert instead “Box”.

**Explanatory note**

The proposed amendment corrects a typographical error.

## 2.45 West Scholarships Act 1930 No 19

### Section 13 (2)

Omit the subsection. Insert instead:

(2) The by-laws shall be submitted for the approval of the Governor.

#### Explanatory note

The proposed amendment removes redundant provisions relating to the making of by-laws, which are provided for in Part 6 of the *Interpretation Act 1987*.

## 2.46 Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 2012

### Clause 4 (b)

Omit “of New South Wales”.

#### Explanatory note

The proposed amendment omits redundant matter.

## Schedule 3 Repeals

### 1 Repeal of redundant Acts and provisions

The following Acts and provisions of an instrument are repealed:

Act or instrument	Provisions repealed
<i>Appropriation Act 2011 No 42</i>	Whole Act
<i>Appropriation (Supply and Budget Variations) Act 2011 No 14</i>	Whole Act
<i>Legal Profession Regulation 2005</i>	Schedule 6
<i>Statute Law (Miscellaneous Provisions) Act 2011 No 27</i>	Whole Act
<i>Statute Law (Miscellaneous Provisions) Act 2012 No 42</i>	Whole Act

### 2 Repeal of amending provisions or repeals that have commenced

The following provisions of Acts and instruments are repealed:

Act or instrument	Provisions repealed
<i>Ports and Maritime Administration Act 1995 No 13</i>	Section 111 and Schedule 3

<i>State Environmental Planning Policy (State and Regional Development) 2011</i>	Schedule 6
<i>State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011</i>	Schedule 1
<i>State Environmental Planning Policy (Western Sydney Employment Area) 2009</i>	Note to clause 8 (1), and Schedule 5
<i>Sutherland Shire Local Environmental Plan 2006</i>	Clause 8 (5) and Schedule 1
<i>Water Management Act 2000 No 92</i>	Schedule 8.30 [3] and [5]

### 3 Restoration of repealed Act

The repeal of the *Law Courts Limited Act 1977* by the *Statute Law (Miscellaneous Provisions) Act 2011* is revoked and the *Law Courts Limited Act 1977* is taken not to be, and never to have been, repealed.

## Schedule 4 General savings, transitional and other provisions

### 1 Effect of amendment of amending provisions

(1) An amendment made by Schedule 1 or 2 to an amending provision contained in an Act or instrument is, if the amending provision has commenced before the Schedule 1 or 2 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**

Section 29A of the [Interpretation Act 1987](#) applies to the repeal of Acts or instruments, or provisions of Acts or instruments, by this Act.

### **Explanatory note**

The effect of this clause is to enable the Governor, by proclamation, to revoke the repeal by the proposed Act of any Act or instrument or any provision of an Act or instrument. The Act, instrument or provision 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.