

# Occupational Licensing National Law (NSW) No 100a of 2010

[2010-100a]



New South Wales

## Status Information

### Currency of version

Repealed version for 1 January 2011 to 10 May 2016 (accessed 29 November 2024 at 12:47)

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

### Provisions in force

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

### Notes—

- **Repeal**  
This Act was repealed by sec 4 of the [Occupational Licensing National Law Repeal Act 2015 No 49](#) with effect from 11.5.2016.
- **Note**  
The Occupational Licensing National Law was applied as a law of NSW by the NSW [Occupational Licensing \(Adoption of National Law\) Act 2010](#). This version was the Law as it applied in NSW.

### 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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New South Wales

## Editorial note—

The Occupational Licensing National Law is applied as a law of NSW by the NSW [Occupational Licensing \(Adoption of National Law\) Act 2010](#). This version is the Law as it currently applies in NSW.

## Part 1 Preliminary

### 1 Short title

This Law may be cited as the [Occupational Licensing National Law \(NSW\)](#).

### 2 Commencement

This Law commences in a participating jurisdiction as provided by the Act of that jurisdiction that applies this Law as a law of that jurisdiction.

### 3 Objectives

The objectives of the national licensing system are as follows—

- (a) to ensure that licences issued by the Licensing Authority allow licensees to operate in all participating jurisdictions;
- (b) to ensure that licensing arrangements are effective and proportionate to ensure consumer protection and worker and public health and safety while ensuring economic efficiency and equity of access;
- (c) to facilitate a consistent skill and knowledge base for licensed occupations;
- (d) to ensure effective coordination exists between the Licensing Authority and jurisdictional regulators;
- (e) to promote national consistency in—
  - (i) licensing structures and policy across comparable occupations; and
  - (ii) regulation affecting the requirements relating to the conduct of licensees; and

- (iii) the approach to disciplinary arrangements for licensees;
- (f) to provide flexibility to deal with issues specific to particular jurisdictions or occupations;
- (g) to provide the public with access to information about licensees.

#### 4 Definitions

In this Law—

**Advisory Committee** means an Occupational Licence Advisory Committee established under section 132.

**approved form** means a form that, under section 154, has been approved by the Licensing Authority and notified on its website.

**authorised officer** means an authorised officer appointed under section 125 by the Licensing Authority.

**Authority Fund** means the National Occupational Licensing Authority Fund established by section 142.

**chief executive officer** means the chief executive officer of the Licensing Authority appointed under section 119.

**COAG** means the Council of Australian Governments.

**COAG agreement** means the Intergovernmental Agreement for a National Licensing System for Specified Occupations signed by COAG on 30 April 2009.

**criminal history**, of a person, includes the following—

- (a) convictions of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;
- (b) pleas of guilty or findings of guilt by a court of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law and whether or not a conviction is recorded for the offence;
- (c) charges made against the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;
- (d) the person's history in relation to traffic offences, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law.

**disciplinary action** see section 47.

**disciplinary body** means—

- (a) the Licensing Authority; or
- (b) a tribunal or court of a participating jurisdiction; or
- (c) another person or body declared by or under an Act of a participating jurisdiction to be a disciplinary body for the purposes of this Law.

**entity** includes a person and an unincorporated body.

**First Minister's Department** means the department of government of a participating jurisdiction that is administered by the Premier or Chief Minister of that jurisdiction.

**former licensee** means a person who was, but is no longer, a licensee.

**immediate suspension ground** means a ground referred to in section 49 for the immediate suspension of a licence.

**jurisdictional regulator** means an entity that is prescribed by the national regulations as being a jurisdictional regulator for a licensed occupation.

**jurisdictional regulator members** see section 103(3)(b).

**licence** means a licence, registration or accreditation granted under this Law authorising a person to carry out a licensed occupation.

**licensed occupation** means any of the following occupations—

- (a) airconditioning and refrigeration;
- (b) electrical;
- (c) plumbing and gasfitting;
- (d) property-related occupations;
- (e) any other occupation prescribed by the national regulations as being a licensed occupation.

**Note—**

When an occupation is prescribed by the national regulations as being a licensed occupation it is envisaged each jurisdiction will need to return to Parliament to make consequential amendments to existing legislation regulating the occupation. This would enable this Law (as set out in the Schedule to the *Occupational Licensing National Law Act 2010* of Victoria) to be amended to include the occupation in this definition and, to the extent it is practicable, describe the scope of work that may be carried out under a licence for that occupation.

**Licensing Authority** means the National Occupational Licensing Authority established by section 97.

**Licensing Board** means the National Occupational Licensing Board established by section 103.



**Ministerial Council** means the Ministerial Council nominated by COAG and published on the COAG website as being the Ministerial Council for the purposes of this Law.

**national licensing system** means the system established under this Law for the national licensing of persons working in licensed occupations.

**national regulations** means the regulations made under section 160.

**nominee** means an individual nominated by an applicant for a licence or a licensee as being the nominee for the licence.

**participating jurisdiction** means a State or Territory—

- (a) in which this Law applies as a law of the State or Territory; or
- (b) a law that substantially corresponds to the provisions of this Law has been enacted.

**participation day**, in relation to a participating jurisdiction, means the day on which the jurisdiction becomes a participating jurisdiction.

**place** includes land or premises but does not include a vehicle.

**premises** includes a caravan being used as residential premises.

**prescribed work** means work that under the national regulations is within the scope of work that may only be carried out under the authority of a licence.

**Note—**

When an occupation is prescribed by the national regulations as being a licensed occupation (see paragraph (e) of the definition of **licensed occupation**) it is envisaged each jurisdiction will need to return to Parliament to make consequential amendments to existing legislation regulating the occupation. This would enable this Law (as set out in the Schedule to the *Occupational Licensing National Law Act 2010* of Victoria) to be amended to include the occupation in the definition of **licensed occupation** and, to the extent it is practicable, describe the prescribed work in relation to the occupation.

**primary jurisdiction** means—

- (a) for an applicant for a licence or a licensee who is an individual (other than an individual acting in the individual's capacity as a member of a partnership), the jurisdiction in which the individual's principal place of residence is located; or
- (b) for an applicant for a licence or a licensee that is a body corporate or an individual acting in the individual's capacity as a member of a partnership, the jurisdiction in which the body corporate's or partnership's principal place of business is located.

**relevant place** means a place at which prescribed work has been, is being or is about to be, carried out.

**relevant tribunal or court**, for a participating jurisdiction, means a tribunal or court that has been declared by a law of that jurisdiction to be the relevant tribunal or court for that

jurisdiction for the purposes of this Law.

**State or Territory entity** means—

- (a) an entity, or the chief executive of an entity or department of government, of a participating jurisdiction to whom the Licensing Authority has delegated any of its functions; or
- (b) an entity to which a function delegated by the Licensing Authority has been subdelegated.

**vehicle** includes—

- (a) a group of vehicles, known as a combination, that consists of a motor vehicle connected to 1 or more vehicles; and
- (b) a caravan being towed by a motor vehicle; and
- (c) a train, tram or vessel; and
- (d) a crane or earthmoving machinery; and
- (e) any other type of transport, machine or equipment prescribed by the national regulations.

## **5 Interpretation generally**

Schedule 1 applies in relation to this Law.

## **6 Single national entity**

- (1) It is the intention of the Parliament of this jurisdiction that this Law as applied by an Act of this jurisdiction, together with this Law as applied by Acts of the other participating jurisdictions, has the effect that an entity established by this Law is one single national entity, with functions conferred by this Law as so applied.
- (2) An entity established by this Law has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by Acts of each participating jurisdiction.
- (3) An entity established by this Law may exercise its functions in relation to—
  - (a) one participating jurisdiction; or
  - (b) 2 or more or all participating jurisdictions collectively.
- (4) In this section, a reference to this Law as applied by an Act of a jurisdiction includes a reference to a law that substantially corresponds to this Law enacted in a jurisdiction.

## **7 Extraterritorial operation of Law**

It is the intention of the Parliament of this jurisdiction that the operation of this Law is to, as far as possible, include operation in relation to the following—

- (a) things situated in or outside the territorial limits of this jurisdiction;
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

## **8 Law binds the State**

- (1) This Law binds the State.
- (2) In this section—

**State** means the Crown in right of this jurisdiction, and includes—

- (a) the Government of this jurisdiction; and
- (b) a Minister of the Crown in right of this jurisdiction; and
- (c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.

## **Part 6 Ministerial Council**

### **95 Functions of Ministerial Council**

The Ministerial Council is responsible for the effective implementation and operation of the national licensing system.

### **96 Directions**

- (1) The Ministerial Council may give directions to the Licensing Authority about the policies to be applied by the Licensing Authority in exercising its functions.
- (2) However, neither the Ministerial Council nor a Minister may give a direction to the Licensing Authority about—
  - (a) a particular person; or
  - (b) a particular application; or
  - (c) a particular disciplinary proceeding or disciplinary action.

## **Part 7 National Occupational Licensing Authority**

### **Division 1 Establishment, functions and powers**

#### **97 Establishment of Licensing Authority**

- (1) The National Occupational Licensing Authority is established.
- (2) The Licensing Authority—
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name.
- (3) The Licensing Authority represents the State.

#### **98 General powers of Licensing Authority**

The Licensing Authority has all the powers of an individual and, in particular, may—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, real and personal property; and
- (c) do anything necessary or convenient to be done in the performance of its functions.

#### **99 Functions of Licensing Authority**

- (1) The principal functions of the Licensing Authority are—
  - (a) to develop policy about, and administer, the national licensing system; and
  - (b) to provide advice to the Ministerial Council about matters relating to the national licensing system.
- (2) In exercising its functions, the Licensing Authority must have regard to the objectives of the national licensing system set out in section 3.
- (3) Without limiting subsection (1), the functions of the Licensing Authority include the following—
  - (a) to give effect to policy directions and other decisions made by the Ministerial Council;
  - (b) to undertake reviews of legislation, and develop and review policy matters, relating to occupational licensing and provide advice to the Ministerial Council about matters arising out of the reviews;
  - (c) to analyse, and prepare projections about, its budget and provide the analysis and

projections to the Ministerial Council;

- (d) to manage its resources in a way that ensures the national licensing system is as efficient as possible;
- (e) to review and make recommendations about any national licensing fees provided for under this Law;
- (f) to undertake research and consultation to support the development, monitoring and maintenance of policy about—
  - (i) the regulation of licensed occupations; and
  - (ii) the licensing of persons carrying out licensed occupations; and
  - (iii) requirements relating to the conduct of licensees;
- (j) to develop, for approval by the Ministerial Council, measures and processes for assessing its performance and to report on the measures and processes to the Council;
- (k) to advise the Ministerial Council on issues relevant to the national licensing system;
- (l) to liaise with participating jurisdictions in a way that is transparent and provides for the sharing of information with State or Territory entities, relevant jurisdictional regulators and statutory bodies having functions in relation to licensed occupations or licensees;
- (m) to co-operate with any entity reviewing the national licensing system;
- (n) to establish, as appropriate, committees and other mechanisms to assist the Authority in performing its functions.

## **100 Consultation**

In exercising its functions in relation to reviewing legislation or developing or reviewing policy matters about licensed occupations, the Licensing Authority must, to the extent the Authority considers reasonable in the circumstances, consult with—

- (a) stakeholders from relevant licensed occupations; and
- (b) the community.

## **101 Directions**

- (1) The Licensing Authority may give a direction to a licensee, or a class of licensees, about a matter relating to the way in which the licensee or class of licensees carries out the licensed occupation.

- (2) A direction must be given by written notice given to the licensee, or each licensee who is a member of the class of licensees, the subject of the direction.

## **102 Delegation**

- (1) The Licensing Authority may delegate any of its functions, other than developing policy about the national licensing system, to—
  - (a) an entity, or the chief executive of an entity or department of government, of a participating jurisdiction nominated by the member of the Ministerial Council that represents that jurisdiction; or
  - (b) a member of the police force or police service of a participating jurisdiction.
- (2) The Licensing Authority may delegate any of its functions to the chief executive officer or another member of the Authority's staff.
- (3) An entity or chief executive to whom a function has been delegated under subsection (1)(a) by the Licensing Authority may subdelegate the function (including this power of subdelegation).

## **Division 2 Governing Board of Licensing Authority**

### **Subdivision 1 Establishment and functions**

#### **103 National Occupational Licensing Board**

- (1) The Licensing Authority has a governing board known as the National Occupational Licensing Board.
- (2) The Licensing Board consists of not more than 10 members appointed by the Ministerial Council.
- (3) The members of the Licensing Board consist of—
  - (a) one person appointed by the Ministerial Council as Chairperson, being a person who is not a licensee or otherwise involved in any licensed occupation; and
  - (b) 2 persons (***jurisdictional regulator members***) who are jurisdictional regulators or members of the staff of jurisdictional regulators, nominated by the chief executives of First Ministers' Departments; and
  - (c) other persons the Ministerial Council considers have appropriate skills or experience in unions, employer representation, consumer advocacy or training.
- (4) In appointing members of the Licensing Board, the Ministerial Council must have regard to the need for the Board to have an appropriate balance of skills and expertise among its members.

## **104 Functions of Licensing Board**

- (1) The affairs of the Licensing Authority are to be controlled by the Licensing Board.
- (2) All acts and things done in the name of, or on behalf of, the Licensing Authority by or with the authority of the Licensing Board are taken to have been done by the Licensing Authority.
- (3) The Licensing Board must ensure the Licensing Authority performs its functions in a proper, effective and efficient way.
- (4) The Licensing Board has any other functions given to the Licensing Board by or under this Law.

## **Subdivision 2 Members**

### **105 Terms of office of members**

- (1) Subject to this Division, a member holds office—
  - (a) for a jurisdictional regulator member, for 2 years; and
  - (b) otherwise, for the period, not more than 3 years, specified in the member's instrument of appointment.
- (2) If otherwise qualified, a member is eligible for reappointment.

### **106 Remuneration**

- (1) A member, other than a jurisdictional regulator member, is entitled to be paid the remuneration and allowances decided by the remuneration tribunal from time to time.
- (2) In this section—

***remuneration tribunal*** means a tribunal prescribed by the national regulations.

### **107 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member—
  - (a) completes a term of office; or
  - (b) resigns the office by signed notice given to the Chairperson of the Ministerial Council; or
  - (c) is removed from office by the Chairperson of the Ministerial Council under this section; or
  - (d) is absent, without leave first being granted by the Licensing Board, from 3 or more consecutive meetings of the Board of which reasonable notice has been given to

the member personally or by post; or

(e) dies.

(2) The Chairperson of the Ministerial Council may remove a member from office if—

(a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or

(b) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with member's creditors or makes an assignment of member's remuneration for their benefit; or

(c) the Licensing Board recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed or is unable to properly exercise the member's functions as a member.

#### **108 Vacancies to be advertised**

(1) Before the Ministerial Council appoints a member of the Licensing Board, other than a jurisdictional regulator member, the vacancy to be filled is to be publicly advertised.

(2) It is not necessary to advertise a vacancy in the membership of the Licensing Board before appointing a person to act in the office of a member.

#### **109 Extension of term of office during vacancy in membership**

(1) If the office of a member becomes vacant because the member has completed the member's term of office, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled, whether by re-appointment of the member or appointment of a successor to the member.

(2) However, this section ceases to apply to the member if—

(a) the member resigns the member's office by signed notice given to the Chairperson of the Ministerial Council; or

(b) the Chairperson of the Ministerial Council decides the services of the member are no longer required.

(3) The maximum period for which a member is taken to continue to be a member under this section after completion of the member's term of office is 6 months.

#### **110 Members to act in public interest**

A member of the Licensing Board is to act impartially and in the public interest in the exercise of the member's functions as a member.



## **111 Disclosure of conflict of interest**

(1) If—

- (a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Licensing Board; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter;

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (2) Particulars of any disclosure made under this section must be recorded by the Licensing Board in a register of interests kept for the purpose.
- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Ministerial Council or the Licensing Board otherwise decides—
  - (a) be present during any deliberation of the Board with respect to the matter; or
  - (b) take part in any decision of the Board with respect to the matter.
- (4) For the purposes of the making of a decision by the Licensing Board under subsection (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not—
  - (a) be present during any deliberation of the Board for the purpose of making the decision; or
  - (b) take part in the making by the Board of the decision.
- (5) A contravention of this section does not invalidate any decision of the Licensing Board but if the Board becomes aware a member of the Board contravened this section the Board must reconsider any decision made by the Board in which the member took part in contravention of this section.

## **Subdivision 3 Meetings**

### **112 General procedure**

The procedure for the calling of meetings of the Licensing Board and for the conduct of business at the meetings is, subject to this Law, to be decided by the Board.

### **113 Quorum**

The quorum for a meeting of the Licensing Board is a majority of its members.

#### **114 Chief executive officer may attend meetings**

- (1) The chief executive officer may attend meetings of the Board and participate in discussions of the Board, but is not entitled to be present during the consideration by the Board of any matter in which the chief executive officer has a direct personal interest.
- (2) The chief executive officer is not entitled to vote at a meeting.

#### **115 Presiding member**

- (1) The Chairperson is to preside at a meeting of the Board.
- (2) However, in the absence of the Chairperson the following person is to preside at a meeting of the Licensing Board—
  - (a) if the Chairperson has nominated another person who is present at the meeting to preside at the meeting, that person;
  - (b) otherwise, a person elected by the members of the Licensing Board who are present at the meeting.
- (3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **116 Voting**

A decision supported by a majority of the votes cast at a meeting of the Licensing Board at which a quorum is present is the decision of the Board.

#### **117 First meeting**

The Chairperson may call the first meeting of the Licensing Board in any manner the Chairperson thinks fit.

#### **118 Defects in appointment of members**

A decision of the Licensing Board is not invalidated by any defect or irregularity in the appointment of any member of the Board.

### **Division 3 Chief executive officer**

#### **119 Chief executive officer**

- (1) There is to be a chief executive officer of the Licensing Authority.
- (2) The chief executive officer is to be appointed by the Licensing Board with the approval of the Ministerial Council.
- (3) The chief executive officer is to be appointed for a period, not more than 5 years,

specified in the officer's instrument of appointment.

- (4) The chief executive officer is eligible for re-appointment.
- (5) The chief executive officer is taken, while holding that office, to be a member of the staff of the Licensing Authority.

#### **120 Functions of chief executive officer**

The chief executive officer—

- (a) is responsible for the day to day management of the Licensing Authority; and
- (b) has any other functions conferred on the chief executive officer by the Licensing Board.

### **Division 4 Staff**

#### **121 Staff**

- (1) The Licensing Authority may, for the purpose of exercising its functions, employ staff.
- (2) The staff of the Licensing Authority are to be employed on the terms and conditions prescribed by the national regulations.

#### **122 Staff seconded to Licensing Authority**

The Licensing Authority may make arrangements for the services of a person who is a member of the staff of a government agency of a participating jurisdiction or the Commonwealth to be made available to the Licensing Authority in connection with the exercise of its functions.

### **Division 5 Authorised officers**

#### **123 Powers of authorised officers**

- (1) An authorised officer has the powers given by this Law.
- (2) In exercising the powers, the authorised officer is subject to the directions of the Licensing Authority.

#### **124 Functions of authorised officer**

An authorised officer has the following functions—

- (a) to enforce this Law;
- (b) to monitor compliance with this Law;
- (c) to determine whether work being carried out under a licence has been, or is being, carried out in accordance with this Law or a prescribed Act.

### **125 Appointment of authorised officers**

- (1) The Licensing Authority may appoint any of the following persons as an authorised officer—
  - (a) a member of the Licensing Authority's staff;
  - (b) an employee of a jurisdictional regulator;
  - (c) a member of the police force or police service of a participating jurisdiction;
  - (d) a person prescribed for the purposes of this section by the national regulations;
  - (e) a person who is a member of a class of persons prescribed for the purposes of this section by the national regulations.
- (2) The Licensing Authority may appoint a person as an authorised officer only if satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

### **126 Appointment conditions and limits on powers**

- (1) An authorised officer holds office on the conditions—
  - (a) stated in the authorised officer's instrument of appointment; or
  - (b) stated in a notice given by the Licensing Authority to the authorised officer; or
  - (c) prescribed by the national regulations.
- (2) The instrument of appointment, a notice given by the Licensing Authority or the national regulations may limit the authorised officer's powers under this Law.

### **127 Identity card**

- (1) The Licensing Authority must issue an identity card to each authorised officer.
- (2) The identity card must—
  - (a) contain a recent photograph of the authorised officer; and
  - (b) contain a copy of the authorised officer's signature; and
  - (c) identify the person as an authorised officer under this Law; and
  - (d) include an expiry date.
- (3) This section does not prevent the issue of a single identity card to a person for this Law and other Acts.

### **128 Production and display of identity card**

- (1) An authorised officer may exercise a power in relation to someone else (the **other person**) only if the authorised officer—
  - (a) first produces the authorised officer's identity card for the other person's inspection; or
  - (b) has the identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised officer must produce the identity card for the other person's inspection at the first reasonable opportunity.

### **129 When authorised officer ceases to hold office**

- (1) An authorised officer ceases to hold office if any of the following occurs—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the authorised officer ceases to hold office;
  - (c) the authorised officer's resignation takes effect.
- (2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.

### **130 Resignation**

An authorised officer may resign by signed notice given to the Licensing Authority.

### **131 Return of identity card**

A person who ceases to be an authorised officer must return the person's identity card to the Licensing Authority within 7 days after ceasing to be an authorised officer, unless the person has a reasonable excuse.

Penalty—\$5,000.

## **Division 6 Occupational Licence Advisory Committees**

### **132 Establishment of Advisory Committee**

The Licensing Authority must establish an Occupational Licence Advisory Committee for each licensed occupation.

### **133 Function of Advisory Committee**

The function of an Advisory Committee is to give advice to the Licensing Authority about—

- (a) the development, maintenance and performance of licensing policy in relation to the licensed occupation for which the Advisory Committee is established; and

- (b) any other matter referred to the Advisory Committee by the Licensing Authority.

### **134 Membership and procedures of Advisory Committee**

- (1) An Advisory Committee is to consist of the members appointed in writing by the Licensing Board.
- (2) Before appointing members of an Advisory Committee, the Licensing Authority must invite nominations for membership of the Advisory Committee from—
  - (a) national peak bodies who represent the licensed occupation; or
  - (b) if there is not a national peak body that represents the licensed occupation, another peak body that represents the licensed occupation.
- (3) Without limiting subsection (2), peak bodies include the following—
  - (a) unions and employer bodies;
  - (b) occupational professional associations;
  - (c) consumer advocacy organisations;
  - (d) bodies that regulate the licensed occupation;
  - (e) if relevant, peak insurance bodies;
  - (f) bodies involved in the national training system.
- (4) In appointing members to an Advisory Committee, the Licensing Board must have regard to the need for the Advisory Committee to have a balance of expertise relevant to the licensed occupation including in relation to the following areas—
  - (a) regulation of the licensed occupation;
  - (b) occupational operations and practices, including from a union and employer perspective;
  - (c) workplace health and safety;
  - (d) consumer advocacy;
  - (e) training;
  - (f) if relevant, insurance.
- (5) The national regulations may provide for—
  - (a) the appointment of members of Advisory Committees; and
  - (b) the procedures of Advisory Committees.

## **Part 8 Information and privacy**

### **Division 2 Disclosure of information and confidentiality**

#### **136 Definition**

In this Division—

**protected information** means information that comes to a person's knowledge in the course of, or because of, the person exercising functions under this Law or a prescribed Act.

#### **138 Duty of confidentiality**

(1) A person who is, or has been, a person exercising functions under this Law must not disclose to another person protected information.

Penalty—

(a) for an individual—\$25,000; or

(b) for a body corporate—\$125,000.

(2) However, subsection (1) does not apply if—

(a) the information is disclosed in the exercise of a function under, or for the purposes of, this Law; or

(b) the disclosure is authorised or required by any law of a participating jurisdiction; or

(c) the disclosure is otherwise required or permitted by law; or

(d) the disclosure is with the agreement of the person to whom the information relates; or

(e) the disclosure is in a form that does not identify the identity of a person; or

(f) the information relates to proceedings before a court or tribunal and the proceedings are or were open to the public; or

(g) the disclosure is the publication of information about disciplinary action taken against persons under this Law or the national regulations or the conviction of persons for offences against this Law or the national regulations and the publication is in accordance with the national regulations; or

(h) the information is, or has been, accessible to the public, including because it is or was recorded in a national register; or

(i) the disclosure is to a prescribed entity or is otherwise authorised by the national

regulations.

### **139 Disclosure to jurisdictional regulators and other Commonwealth, State and Territory entities**

A person exercising functions under this Law may disclose protected information to any of the following entities if the disclosure is in connection with functions exercised by that entity—

- (a) a jurisdictional regulator;
- (b) another Commonwealth, State or Territory entity.

## **Part 9 Miscellaneous**

### **Division 1 Finance**

#### **142 National Occupational Licensing Authority Fund**

- (1) The National Occupational Licensing Authority Fund is established.
- (2) The Authority Fund is a fund to be administered by the Licensing Authority.
- (3) The Licensing Authority may establish accounts with any financial institution for money in the Authority Fund.
- (4) The Authority Fund does not form part of the consolidated fund or consolidated account of a participating jurisdiction or the Commonwealth.

#### **143 Payments into Authority Fund**

There is payable into the Authority Fund—

- (a) all money appropriated by the Parliament of any participating jurisdiction or the Commonwealth for the purposes of the Fund; and
- (b) the proceeds of the investment of money in the Fund; and
- (c) all grants, gifts and donations made to the Licensing Authority, but subject to any trusts declared in relation to the grants, gifts or donations; and
- (d) all money directed or authorised to be paid into the Fund by or under this Law, any law of a participating jurisdiction or any law of the Commonwealth; and
- (e) any other money or property prescribed by the national regulations; and
- (f) any other money or property received by the Licensing Authority in connection with the exercise of its functions.



#### **144 Payments out of Authority Fund**

Payments may be made from the Authority Fund for the purpose of—

- (a) paying any costs or expenses, or discharging any liabilities, incurred in the administration or enforcement of this Law; and
- (b) any other payments recommended by the Licensing Authority and approved by the Ministerial Council.

#### **145 Investment by Licensing Authority**

- (1) The Licensing Authority must invest its funds in a way that is secure and provides a low risk so that the Authority's exposure to the loss of funds is minimised.
- (2) The Licensing Authority must keep records that show it has invested in a way that complies with subsection (1).

#### **146 Financial management duties of Licensing Authority**

The Licensing Authority must—

- (a) ensure its operations are carried out efficiently, effectively and economically; and
- (b) keep proper books and records in relation to the Authority Fund; and
- (c) ensure expenditure is made from the Authority Fund for lawful purposes only and, as far as possible, that reasonable value is expended from the Fund; and
- (d) ensure its procedures, including internal control procedures, afford adequate safeguards with respect to—
  - (i) the correctness, regularity and propriety of payments made from the Authority Fund; and
  - (ii) receiving and accounting for payments made to the Authority Fund; and
  - (iii) prevention of fraud or mistake; and
- (e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in its annual report; and
- (f) take any action necessary to facilitate the audit of the financial statements in accordance with this Law; and
- (g) arrange for any further audit by a qualified person of the books and records kept by the Licensing Authority, if directed to do so by the Ministerial Council.

### **Division 3 Provisions relating to persons exercising functions under**

## Law

### 149 General duties of persons exercising functions under this Law

- (1) A person exercising functions under this Law must, when exercising the functions, act honestly and with integrity.
- (2) A person exercising functions under this Law must exercise the person's functions under this Law—
  - (a) in good faith; and
  - (b) with a reasonable degree of care, diligence and skill.
- (3) A person exercising functions under this Law must not make improper use of the person's position or of information that comes to the person's knowledge in the course of, or because of, the person's exercise of the functions—
  - (a) to gain an advantage for himself or herself or another person; or
  - (b) to cause a detriment to the development, implementation or operation of the national licensing system.

Penalty—\$25,000.

### 151 Protection from personal liability for persons exercising functions

- (1) A person who is or was a protected person is not personally liable for anything done or omitted to be done in good faith—
  - (a) in the exercise of a function under this Law; or
  - (b) in the reasonable belief that the act or omission was the exercise of a function under this Law.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a protected person attaches instead to the Licensing Authority.
- (3) In this section—

**protected person** means any of the following—

  - (a) a member of the Licensing Board;
  - (b) a member of a committee of the Licensing Authority;
  - (c) a member of the staff of the Licensing Authority;
  - (d) an authorised officer;
  - (e) a person to whom the Licensing Authority has delegated any of its functions;

- (f) a person to whom an entity, or the chief executive of an entity or department of government, of a participating jurisdiction has subdelegated a function delegated to the chief executive by the Licensing Authority;
- (g) a member of the staff of an entity or department referred to in paragraph (f);
- (h) a person acting under the authority or direction of a person referred to in paragraphs (a) to (g).

## **Division 4 Legal proceedings**

### **152 Limitation on time for starting proceedings**

A proceeding for an offence against this Law or the national regulations must start within 6 years after the commission of the offence.

## **Division 6 Regulations**

### **160 National regulations**

- (1) The Ministerial Council may make regulations for the purposes of this Law.
- (2) The regulations may provide for the following—
  - (a) the occupations to which this Law is to apply;
  - (b) the licensing of persons carrying out licensed occupations;
  - (c) other matters relating to licences including—
    - (i) applications for licences; and
    - (ii) the requirements to be satisfied by persons to be eligible for a licence or to continue to hold a licence; and
    - (iii) the granting of licences; and
    - (iv) the renewal, variation or surrender of licences;
  - (d) fees under this Law including—
    - (i) the fees to be paid for applications made under this Law for licences or the renewal or variation of a licence; and
    - (ii) the refunding of fees; and
    - (iii) the waiver of fees; and
    - (iv) late fees and fees for dishonoured payments;
  - (e) arrangements for the publication of fees prescribed under Acts of participating

- jurisdictions that relate to licensees or licensed occupations;
- (f) the conduct of licensees, including the making and adoption of codes of practice applicable to licensees;
  - (g) matters relating to compliance with and enforcement of this Law and the regulations, including, for example—
    - (i) monitoring and auditing of licensees and work undertaken by licensees; and
    - (ii) complaints about licensees or former licensees; and
    - (iii) the grounds on which licences are automatically suspended or cancelled and other matters relating to those suspensions or cancellations; and
    - (iv) the establishment of a demerit point scheme for licensees; and
    - (v) the establishment of an infringement notice scheme for persons who allegedly contravene this Law or the regulations; and
    - (vi) other matters relating to disciplinary proceedings and disciplinary action;
  - (h) matters relating to nominees for licences;
  - (i) matters relating to directors and members of licensees who are bodies corporate, including—
    - (i) the duties and obligations of directors and members; and
    - (ii) matters relating to the liability of directors and members;
  - (j) matters relating to persons who are employed or otherwise engaged by licensees, including—
    - (i) the duties and obligations of licensees in relation to those persons; and
    - (ii) the duties and obligations of those persons; and
    - (iii) matters relating to vicarious liability for the actions of those persons;
  - (k) matters relating to persons who are receivers, managers or administrators appointed to carry out, wind up or otherwise administer or operate businesses conducted by licensees or persons whose licences have been suspended or cancelled, including matters relating to the appointment of those persons and the obligations and responsibilities of those persons in carrying out, winding up or otherwise administering or operating the businesses;
  - (l) matters relating to fidelity funds and indemnity funds held in relation to licensees;
  - (m) matters relating to trust funds held by licensees;

- (n) the payment of penalties and fines imposed under this Law, including who the penalties and fines are to be paid to;
  - (o) the imposition of penalties, of not more than \$5,000 for individuals or \$25,000 for bodies corporate, for a contravention of a provision of the regulations;
  - (p) criteria or procedures to be used by the Licensing Authority in developing policy about the national licensing system and the admission of new occupations to the system;
  - (q) the publication of information about disciplinary action taken against persons under this Law or the regulations or the conviction of persons for offences against this Law or the regulations;
  - (r) provisions of a savings or transitional nature—
    - (i) consequent on the enactment of this Law in a participating jurisdiction or the making of the regulations under this Law; or
    - (ii) to otherwise allow or facilitate the change from the operation of a law of a participating jurisdiction relating to the licensing of persons carrying out licensed occupations to the operation of this Law or the regulations made under this Law;
  - (s) any other matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Law.
- (3) Savings and transitional provisions consequent on the enactment of this Law in a participating jurisdiction, or to allow or facilitate the licensing of persons carrying out a licensed occupation in a participating jurisdiction, may have retrospective operation to a day not earlier than the participation day for that participating jurisdiction.

**161 Regulations about licensing, registration and accreditation of persons carrying out licensed occupations**

- (1) Without limiting section 160(2)(b), the national regulations may provide for—
- (a) the different categories of licences, registration and accreditation that may be granted for licensed occupations; and
  - (b) the scope of work that may be carried out under the authority of the different categories of licences, registration and accreditation; and
  - (c) the different types of licences, registration and accreditation that may be granted for licensed occupations; and
  - (d) the ways in which licensed occupations are to be carried out, including, for example, the way in which work is to be carried out under licences, registration

and accreditation and the records to be kept by persons who hold licences, registration and accreditation.

- (2) The national regulations may not provide for the licensing, registration or accreditation of persons carrying out, in a participating jurisdiction, prescribed work that is within the scope of a licensed occupation if—
  - (a) immediately before the occupation became a licensed occupation for the participating jurisdiction under this Law, persons carrying out that prescribed work in the participating jurisdiction were not required to hold a licence, registration or accreditation or be otherwise authorised to carry out the work; and
  - (b) the Minister who is the member of the Ministerial Council representing the participating jurisdiction has not agreed to the making of the regulation.

### **162 Inclusion of new occupations in national regulations**

- (1) A regulation may be made prescribing an occupation as being a licensed occupation only if the requirements of this section have been satisfied.
- (2) A participating jurisdiction that licences or proposes to licence an occupation may make a nomination to the Ministerial Council that the occupation should be a licensed occupation.
- (3) If the Ministerial Council unanimously agrees that the occupation is to be a licensed occupation a regulation may be made prescribing the occupation as a licensed occupation.
- (4) If a majority of the members of the Ministerial Council agrees that the occupation is to be a licensed occupation, a regulation may be made—
  - (a) prescribing the occupation as a licensed occupation; and
  - (b) providing that the occupation is a licensed occupation only in specified participating jurisdictions.
- (5) A regulation made under subsection (4) must be reviewed by the Ministerial Council at intervals of not more than 12 months.
- (6) This section does not apply to an occupation referred to in clause 3.5 of the COAG agreement.

### **163 Publication of national regulations**

- (1) The national regulations are to be published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.
- (2) A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

#### **164 Parliamentary scrutiny of national regulations**

- (1) The member of the Ministerial Council representing a participating jurisdiction is to make arrangements for the tabling of a regulation made under this Law in each House of the Parliament of the participating jurisdiction.
- (2) In addition, any other requirement of a law of a participating jurisdiction relevant to the disallowance of a regulation in that jurisdiction is to be complied with in that jurisdiction in relation to a regulation made under this Law as if the regulation had been made under an Act of that jurisdiction.
- (3) A regulation made under this Law may be disallowed in a participating jurisdiction by a House of the Parliament of that jurisdiction in the same way, and within the same period, that a regulation made under an Act of that jurisdiction may be disallowed.
- (4) A regulation disallowed under subsection (3) does not cease to have effect in the participating jurisdiction, or any other participating jurisdiction, unless the regulation is disallowed in a majority of the participating jurisdictions.
- (5) If a regulation is disallowed in a majority of the participating jurisdictions, it ceases to have effect in all participating jurisdictions on the day of its disallowance in the last of the jurisdictions forming the majority.
- (6) In this section—  
**regulation** includes a provision of a regulation.

#### **165 Effect of disallowance of national regulation**

- (1) The disallowance of a regulation in a majority of jurisdictions has the same effect as a repeal of the regulation.
- (2) If a regulation ceases to have effect under section 164 any law or provision of a law repealed or amended by the regulation is revived as if the disallowed regulation has not been made.
- (3) The restoration or revival of a law under subsection (2) takes effect at the beginning of the day on which the disallowed regulation by which it was amended or repealed ceases to have effect.
- (4) In this section—  
**regulation** includes a provision of a regulation.

## **Schedule 1 Miscellaneous provisions relating to interpretation**

(Section 5)

### **Part 1 Preliminary**

#### **1 Displacement of Schedule by contrary intention**

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

### **Part 2 General**

#### **2 Law to be construed not to exceed legislative power of Legislature**

- (1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.
- (2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this section, be construed as being in excess of the legislative power of the Legislature of this jurisdiction—
  - (a) it is a valid provision to the extent to which it is not in excess of the power; and
  - (b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.
- (3) This section applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

#### **3 Every section to be a substantive enactment**

Every section of this Law has effect as a substantive enactment without introductory words.

#### **4 Material that is, and is not, part of this Law**

- (1) The heading to a Part, Division or Subdivision into which this Law is divided is part of this Law.
- (2) A Schedule to this Law is part of this Law.
- (3) Punctuation in this Law is part of this Law.
- (4) A heading to a section or subsection of this Law does not form part of this Law.
- (5) Notes included in this Law (including footnotes and endnotes) do not form part of this Law.



## **5 References to particular Acts and to enactments**

In this Law—

- (a) an Act of this jurisdiction may be cited—
  - (i) by its short title; or
  - (ii) by reference to the year in which it was passed and its number; and
- (b) a Commonwealth Act may be cited—
  - (i) by its short title; or
  - (ii) in another way sufficient in a Commonwealth Act for the citation of such an Act; together with a reference to the Commonwealth; and
- (c) an Act of another jurisdiction may be cited—
  - (i) by its short title; or
  - (ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act; together with a reference to the jurisdiction.

## **6 References taken to be included in Act or Law citation etc**

- (1) A reference in this Law to an Act includes a reference to—
  - (a) the Act as originally enacted, and as amended from time to time since its original enactment; and
  - (b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference—the Act as re-enacted, and as amended from time to time since its re-enactment.
- (2) A reference in this Law to a provision of this Law or of an Act includes a reference to—
  - (a) the provision as originally enacted, and as amended from time to time since its original enactment; and
  - (b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference—the provision as re-enacted, and as amended from time to time since its re-enactment.
- (3) Subsections (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

## 7 Interpretation best achieving Law's purpose

- (1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.
- (2) Subsection (1) applies whether or not the purpose is expressly stated in this Law.

## 8 Use of extrinsic material in interpretation

- (1) In this section—

**extrinsic material** means relevant material not forming part of this Law, including, for example—

- (a) material that is set out in the document containing the text of this Law as printed by the Government Printer; and
- (b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Parliament of this jurisdiction before the provision concerned was enacted; and
- (c) a relevant report of a committee of the Parliament of this jurisdiction that was made to the Parliament before the provision was enacted; and
- (d) a treaty or other international agreement that is mentioned in this Law; and
- (e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Parliament of this jurisdiction by the member bringing in the Bill before the provision was enacted; and
- (f) the speech made to the Parliament of this jurisdiction by the member in moving a motion that the Bill be read a second time; and
- (g) material in the Votes and Proceedings of the Parliament of this jurisdiction or in any official record of debates in the Parliament of this jurisdiction; and
- (h) a document that is declared by this Law to be a relevant document for the purposes of this section.

**ordinary meaning** means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

- (2) Subject to subsection (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—
  - (a) if the provision is ambiguous or obscure—to provide an interpretation of it; or
  - (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd

or is unreasonable—to provide an interpretation that avoids such a result; or

(c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging proceedings without compensating advantage; and

(c) other relevant matters.

## **9 Effect of change of drafting practice**

If—

(a) a provision of this Law expresses an idea in particular words; and

(b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example—

(i) the use of a clearer or simpler style; or

(ii) the use of gender-neutral language;

the ideas must not be taken to be different merely because different words are used.

## **10 Use of examples**

If this Law includes an example of the operation of a provision—

(a) the example is not exhaustive; and

(b) the example does not limit, but may extend, the meaning of the provision; and

(c) the example and the provision are to be read in the context of each other and the other provisions of this Law, but, if the example and the provision so read are inconsistent, the provision prevails.

## **11 Compliance with forms**

(1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires—

- (a) the form to be completed in a specified way; or
- (b) specified information or documents to be included in, attached to or given with the form; or
- (c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way;

the form is not properly completed unless the requirement is complied with.

## Part 3 Terms and references

### 12 Definitions

(1) In this Law—

**Act** means an Act of the Legislature of this jurisdiction.

**adult** means an individual who is 18 or more.

**affidavit**, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

**amend** includes—

- (a) omit or omit and substitute; or
- (b) alter or vary; or
- (c) amend by implication.

**appoint** includes reappoint.

**Australia** means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

**business day** means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

**calendar month** means a period starting at the beginning of any day of one of the 12 named months and ending—

- (a) immediately before the beginning of the corresponding day of the next named month; or
- (b) if there is no such corresponding day—at the end of the next named month.

**calendar year** means a period of 12 months beginning on 1 January.

**commencement**, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation.

**Commonwealth** means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

**confer**, in relation to a function, includes impose.

**contravene** includes fail to comply with.

**country** includes—

- (a) a federation; or
- (b) a state, province or other part of a federation.

**date of assent**, in relation to an Act, means the day on which the Act receives the Royal Assent.

**definition** means a provision of this Law (however expressed) that—

- (a) gives a meaning to a word or expression; or
- (b) limits or extends the meaning of a word or expression.

**document** means any record of information and includes—

- (a) any paper or other material on which there is writing; or
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or
- (c) any computer, disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);
- (d) a map, plan, drawing or photograph.

**electronic communication** means—

- (a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or
- (b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system.

**estate** includes easement, charge, right, title, claim, demand, lien or encumbrance,

whether at law or in equity.

**expire** includes lapse or otherwise cease to have effect.

**external Territory** means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act.

**fail** includes refuse.

**financial year** means a period of 12 months beginning on 1 July.

**foreign country** means a country (whether or not an independent sovereign State) outside Australia and the external Territories.

**function** includes a power, authority or duty.

**Gazette** means the Government Gazette of this jurisdiction.

**gazetted** means published in the Gazette.

**Gazette notice** means notice published in the Gazette.

**Government Printer** means the Government Printer of this jurisdiction, and includes any other person authorised by the Government of this jurisdiction to print an Act or instrument.

**individual** means a natural person.

**information system** means a system for generating, sending, receiving, storing or otherwise processing electronic communications.

**insert**, in relation to a provision of this Law, includes substitute.

**instrument** includes a statutory instrument.

**interest**, in relation to land or other property, means—

- (a) a legal or equitable estate in the land or other property; or
- (b) a right, power or privilege over, or in relation to, the land or other property.

**internal Territory** means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

**Jervis Bay Territory** means the Territory mentioned in the [Jervis Bay Territory Acceptance Act 1915](#) (Cwlth).

**make** includes issue or grant.

**minor** means an individual who is under 18.

**modification** includes addition, omission or substitution.

**month** means a calendar month.

**named month** means 1 of the 12 months of the year.

**Northern Territory** means the Northern Territory of Australia.

**number** means—

- (a) a number expressed in figures or words; or
- (b) a letter; or
- (c) a combination of a number so expressed and a letter.

**oath**, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise.

**office** includes position.

**omit**, in relation to a provision of this Law or an Act, includes repeal.

**party** includes an individual or a body politic or corporate.

**penalty** includes forfeiture or punishment.

**person** includes an individual or a body politic or corporate.

**power** includes authority.

**prescribed** means prescribed by, or by regulations made or in force for the purposes of or under, this Law.

**printed** includes typewritten, lithographed or reproduced by any mechanical means.

**proceeding** means a legal or other action or proceeding.

**property** means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.

**provision**, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

- (a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or Schedule of or to this Law or the Act; or
- (b) a clause, section, subsection, item, column, table or form of or in a Schedule to this Law or the Act; or

(c) the long title and any preamble to the Act.

**repeal** includes—

- (a) revoke or rescind; or
- (b) repeal by implication; or
- (c) abrogate or limit the effect of this Law or instrument concerned; or
- (d) exclude from, or include in, the application of this Law or instrument concerned any person, subject matter or circumstance.

**sign** includes the affixing of a seal or the making of a mark.

**statutory declaration** means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding.

**statutory instrument** means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument.

**swear**, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise.

**word** includes any symbol, figure or drawing.

**writing** includes any mode of representing or reproducing words in a visible form.

(2) In a statutory instrument—

**the Law** means this Law.

### **13 Provisions relating to defined terms and gender and number**

- (1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.
- (2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.
- (3) In this Law, words indicating a gender include each other gender.
- (4) In this Law—
  - (a) words in the singular include the plural; and
  - (b) words in the plural include the singular.



#### **14 Meaning of “may” and “must” etc**

- (1) In this Law, the word **may**, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.
- (2) In this Law, the word **must**, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.
- (3) This section has effect despite any rule of construction to the contrary.

#### **15 Words and expressions used in statutory instruments**

- (1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.
- (2) This section has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

#### **16 Effect of express references to bodies corporate and individuals**

In this Law, a reference to a person generally (whether the expression “person”, “party”, “someone”, “anyone”, “no-one”, “one”, “another” or “whoever” or another expression is used)—

- (a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and
- (b) does not exclude a reference to an individual or a body corporate merely because elsewhere in this Law there is particular reference to an individual (however expressed).

#### **17 Production of records kept in computers etc**

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

- (a) to produce the information or a document containing the information to a court, tribunal or person; or
- (b) to make a document containing the information available for inspection by a court, tribunal or person;

then, unless the court, tribunal or person otherwise directs—

- (c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and

- (d) the production to the court, tribunal or person of the document in that form complies with the requirement.

### **18 References to this jurisdiction to be implied**

In this Law—

- (a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and
- (b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

### **19 References to officers and holders of offices**

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

### **20 Reference to certain provisions of Law**

If a provision of this Law refers—

- (a) to a Part, section or Schedule by a number and without reference to this Law—the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Law; or
- (b) to a Schedule without reference to it by a number and without reference to this Law—the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or
- (c) to a Division, Subdivision, subsection, paragraph, subparagraph, sub-subparagraph, section, subsection, item, column, table or form by a number and without reference to this Law—the reference is a reference to—
  - (i) the Division, designated by the number, of the Part in which the reference occurs; and
  - (ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and
  - (iii) the subsection, designated by the number, of the section in which the reference occurs; and
  - (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and
  - (v) the paragraph, designated by the number, of the section, subsection, item, column, table or form of or in the Schedule in which the reference occurs; and

- (vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and
  - (vii) the sub-subparagraph, designated by the number, of the subparagraph in which the reference occurs; and
  - (viii) the clause, section, subsection, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs;
- as the case requires.

## **21 Reference to provisions of this Law or an Act is inclusive**

In this Law, a reference to a portion of this Law or an Act includes—

- (a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the beginning of the portion; and
- (b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the end of the portion.

### **Example—**

A reference to “sections 5 to 9” includes both section 5 and section 9.

It is not necessary to refer to “sections 5 to 9 (both inclusive)” to ensure that the reference is given an inclusive interpretation.

## **Part 4 Functions and powers**

### **22 Performance of statutory functions**

- (1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.
- (2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.
- (3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

### **23 Power to make instrument or decision includes power to amend or repeal**

If this Law authorises or requires the making of an instrument or decision—

- (a) the power includes power to amend or repeal the instrument or decision; and
- (b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or

decision.

#### **24 Matters for which statutory instruments may make provision**

- (1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—
  - (a) an Act or statutory instrument; or
  - (b) another document (whether of the same or a different kind);as in force at a particular time or as in force from time to time.
- (2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.
- (3) A statutory instrument may—
  - (a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or
  - (b) apply generally to all persons, matters or things or be limited in its application to—
    - (i) particular persons, matters or things; or
    - (ii) particular classes of persons, matters or things; or
  - (c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.
- (4) A statutory instrument may—
  - (a) apply differently according to different specified factors; or
  - (b) otherwise make different provision in relation to—
    - (i) different persons, matters or things; or
    - (ii) different classes of persons, matters or things.
- (5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.
- (6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

- (7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.
- (8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.
- (9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

## **25 Presumption of validity and power to make**

- (1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.
- (2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

## **26 Appointments may be made by name or office**

- (1) If this Law authorises or requires a person or body—
  - (a) to appoint a person to an office; or
  - (b) to appoint a person or body to exercise a power; or
  - (c) to appoint a person or body to do another thing;the person or body may make the appointment by—
  - (d) appointing a person or body by name; or
  - (e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.
- (2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

## **27 Acting appointments**

- (1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—

- (a) a person by name; or
  - (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned;
- to act in the office.
- (2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.
  - (3) The appointer may—
    - (a) determine the terms and conditions of the appointment, including remuneration and allowances; and
    - (b) terminate the appointment at any time.
  - (4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.
  - (5) The appointee must not act for more than 1 year during a vacancy in the office.
  - (6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subsection (2), the appointee may continue to act until—
    - (a) the appointer otherwise directs; or
    - (b) the vacancy is filled; or
    - (c) the end of a year from the day of the vacancy;whichever happens first.
  - (7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.
  - (8) While the appointee is acting in the office—
    - (a) the appointee has all the powers and functions of the holder of the office; and
    - (b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.
  - (9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—
    - (a) the occasion for the appointment had not arisen; or
    - (b) the appointment had ceased to have effect; or

(c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

## **28 Powers of appointment imply certain incidental powers**

- (1) If this Law authorises or requires a person or body to appoint a person to an office—
- (a) the power may be exercised from time to time as occasion requires; and
  - (b) the power includes—
    - (i) power to remove or suspend, at any time, a person appointed to the office; and
    - (ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and
    - (iii) power to reinstate or reappoint a person removed or suspended; and
    - (iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and
    - (v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).
- (2) The power to remove or suspend a person under subsection (1) (b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.
- (3) The power to make an appointment under subsection (1) (b) may be exercised from time to time as occasion requires.
- (4) An appointment under subsection (1) (b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

## **29 Delegation of functions**

- (1) If this Law authorises a person or body to delegate a function, the person or body may, in accordance with this Law and any other applicable law, delegate the function to—
- (a) a person or body by name; or
  - (b) a specified officer, or the holder of a specified office, by reference to the title of the office concerned.
- (2) The delegation may be—

- (a) general or limited; and
  - (b) made from time to time; and
  - (c) revoked, wholly or partly, by the delegator.
- (3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.
- (4) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.
- (5) The delegate may, in the performance of a delegated function, do anything that is incidental to the delegated function.
- (6) A delegated function that purports to have been exercised by the delegate is taken to have been properly exercised by the delegate unless the contrary is proved.
- (7) A delegated function that is properly exercised by the delegate is taken to have been exercised by the delegator.
- (8) If, when exercised by the delegator, a function is dependent on the delegator's opinion, belief or state of mind, then, when exercised by the delegate, the function is dependent on the delegate's opinion, belief or state of mind.
- (9) If—
- (a) the delegator is a specified officer or the holder of a specified office; and
  - (b) the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the holder of the office;
- then—
- (c) the delegation continues in force; and
  - (d) the person for the time being occupying or acting in the office concerned is taken to be the delegator for the purposes of this section.
- (10) If—
- (a) the delegator is a body; and
  - (b) there is a change in the membership of the body;
- then—
- (c) the delegation continues in force; and



(d) the body as constituted for the time being is taken to be delegator for the purposes of this section.

(11) If a function is delegated to a specified officer or the holder of a specified office—

(a) the delegation does not cease to have effect merely because the person who was the specified officer or the holder of the specified office when the function was delegated ceases to be the officer or the holder of the office; and

(b) the function may be exercised by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, despite the delegation, be exercised by the delegator.

(13) The delegation of a function does not relieve the delegator of the delegator's obligation to ensure that the function is properly exercised.

(14) Subject to subsection (15), this section applies to a subdelegation of a function in the same way as it applies to a delegation of a function.

(15) If this Law authorises the delegation of a function, the function may be subdelegated only if the Law expressly authorises the function to be subdelegated.

### **30 Exercise of powers between enactment and commencement**

(1) If a provision of this Law (the **empowering provision**) that does not commence on its enactment would, had it commenced, confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(2) If a provision of a Victoria Act (the **empowering provision**) that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(3) If—

(a) this Law has commenced and confers a power to make a statutory instrument (the **basic instrument-making power**); and

(b) a provision of a Victoria Act that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the **additional instrument-making power**);

then—

(c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and

(d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subsection (2).

(4) If an instrument, or a provision of an instrument, is made under subsection (1) or (2) that is necessary for the purpose of—

(a) enabling the exercise of a power mentioned in the subsection; or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect;

the instrument or provision takes effect—

(c) on the making of the instrument; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If—

(a) an appointment is made under subsection (1) or (2); or

(b) an instrument, or a provision of an instrument, made under subsection (1) or (2) is not necessary for a purpose mentioned in subsection (4);

the appointment, instrument or provision takes effect—

(c) on the commencement of the relevant empowering provision; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subsection (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subsection (2) but before the provision's commencement, this section applies as if the references in subsections (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subsection (2) as amended by the empowering provision.

(8) In the application of this section to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

## **Part 5 Distance, time and age**

### **31 Matters relating to distance, time and age**

(1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event; and—

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled; and

(b) in any other case—by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

- (6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.
- (7) For the purposes of this Law, a person attains an age in years at the beginning of the person's birthday for the age.

## **Part 6 Effect of repeal, amendment or expiration**

### **32 Time of Law ceasing to have effect**

If a provision of this Law is expressed—

- (a) to expire on a specified day; or
- (b) to remain or continue in force, or otherwise have effect, until a specified day;

this provision has effect until the last moment of the specified day.

### **33 Repealed Law provisions not revived**

If a provision of this Law is repealed or amended by a Victorian Act, or a provision of a Victorian Act, the provision is not revived merely because the Victorian Act or the provision of the Victorian Act—

- (a) is later repealed or amended; or
- (b) later expires.

### **34 Saving of operation of repealed Law provisions**

- (1) The repeal, amendment or expiry of a provision of this Law does not—
  - (a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or
  - (b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or
  - (c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or
  - (d) affect a penalty incurred in relation to an offence arising under the provision; or
  - (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.
- (2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

### **35 Continuance of repealed provisions**

If a Victorian Act repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

### **36 Law and amending Acts to be read as one**

This Law and all Victorian Acts amending this Law are to be read as one.

## **Part 7 Instruments under Law**

### **37 Schedule applies to statutory instruments**

- (1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.
- (2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

## **Part 8 Application to coastal sea**

### **38 Application**

This Law has effect in and relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.