

Passed by both Houses



New South Wales

Statute Law (Miscellaneous Provisions) Bill (No 2) 2002

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

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2002*



New South Wales

Statute Law (Miscellaneous Provisions) Bill (No 2) 2002

Act No , 2002

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

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

Chairman of Committees of the Legislative Assembly.

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

This Act is the *Statute Law (Miscellaneous Provisions) Act (No 2) 2002*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsections (2) and (3).
- (2) Section 4 (2) commences on a day to be appointed by proclamation.
- (3) The amendments made by Schedules 1 and 2 commence on the day or days specified in those Schedules in relation to the amendments concerned. If a commencement day is not specified, the amendments commence on the date of assent.

3 Amendments

Each Act and instrument specified in Schedules 1 and 2 is amended as set out in those Schedules.

4 Repeals

- (1) Each Act and statutory rule specified in Schedule 3 is, to the extent indicated in that Schedule, repealed.
- (2) The *Unhealthy Building Land Act 1990* and the *Unhealthy Building Land Regulation 2001* are repealed.

5 General savings, transitional and other provisions

Schedule 4 has effect.

6 Explanatory notes

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

Schedule 1 Minor amendments

(Section 3)

1.1 Adoption Act 2000 No 75

[1] The whole Act (other than clause 3 (3) of Schedule 3)

Omit “adoption agency” wherever occurring.

Insert instead “adoption service provider”.

[2] The whole Act and notes to the Act (other than the heading to clause 3 of Schedule 3)

Omit “adoption agencies” wherever occurring.

Insert instead “adoption service providers”.

[3] Sections 15 (2) (a) and (b) and (4), 16, 17 (1) (d), 20 (1) and (2), 21 (2), (3) and (4), 43 and 193 (1) (d)

Omit “the agency” wherever occurring.

Insert instead “the adoption service provider”.

[4] Sections 15 (4) and 20 (2)

Omit “an agency” wherever occurring.

Insert instead “an adoption service provider”.

[5] Section 17 (3)

Omit “such agencies”. Insert instead “such adoption service providers”.

[6] Section 33 Aboriginal participation in decision making

Omit section 33 (a). Insert instead:

(a) a person approved in accordance with section 195, or

[7] Section 37 Torres Strait Islander participation in decision making

Omit section 37 (a). Insert instead:

(a) a person approved in accordance with section 196, or

[8] Section 64 Consent to adoption of Aboriginal child

Omit “an Aboriginal adoption consultative organisation” from section 64 (1) (a).

Insert instead “a person approved in accordance with section 195”.

[9] Section 64 (1) (b)

Omit “such an organisation”. Insert instead “such a person”.

[10] Section 64 (1) (b) (i)

Omit “the organisation”. Insert instead “the person”.

[11] Section 65 Consent to adoption of Torres Strait Islander child

Omit “a Torres Strait Islander adoption consultative organisation” from section 65 (1) (a).

Insert instead “a person approved in accordance with section 196”.

[12] Section 65 (1) (b)

Omit “such an organisation”. Insert instead “such a person”.

[13] Section 65 (1) (b) (i)

Omit “the organisation”. Insert instead “the person”.

[14] Sections 195 and 196

Omit the sections. Insert instead:

195 Consultation with Aboriginal persons

- (1) The Director-General may approve an Aboriginal person as a person who may provide advice and assistance to Aboriginal families or kinship groups in relation to care options for Aboriginal children for the purposes of this Act.
- (2) The Director-General must not approve a person under this section unless the Director-General is satisfied that the person has relevant experience in working with Aboriginal children, whether or not in connection with their families or kinship groups.

196 Consultation with Torres Strait Islanders

- (1) The Director-General may approve a Torres Strait Islander as a person who may provide advice and assistance to Torres Strait Islander families or kinship groups in relation to care options for Torres Strait Islander children for the purposes of this Act.
- (2) The Director-General must not approve a person under this section unless the Director-General is satisfied that the person has relevant experience in working with Torres Strait Islander children, whether or not in connection with their families or kinship groups.

[15] Dictionary

Omit the definitions of *Aboriginal adoption consultative organisation* and *Torres Strait Islander adoption consultative organisation*.

Explanatory note

Items [1]–[5] of the proposed amendments replace the term “adoption agency” with the term “adoption service provider” throughout the *Adoption Act 2000 (the Act)*. The term “adoption agency” has traditionally been applied only to organisations that arrange placements for children to be adopted. The new term makes it clear that the Act will apply also to organisations that provide post-adoption services such as post-adoption order information, support services and reunion services.

Items [6]–[15] of the proposed amendments remove references to approved “Aboriginal adoption consultative organisations” and “Torres Strait Islander adoption consultative organisations” throughout the Act (and make consequential amendments). These references are replaced with references to persons approved by the Director-General of the Department of Community Services under sections 195 and 196 of that Act to provide advice and assistance to Aboriginal and Torres Strait Islander families or kinship groups in relation to care options for Aboriginal and Torres Strait Islander children for the purposes of the Act.

1.2 Casino Control Act 1992 No 15

[1] Section 72A Provision of problem counselling services

Omit “classes of persons” from section 72A (2) (a).

Insert instead “persons or bodies”.

[2] Section 72A (2) (b)

Insert “or bodies” after “persons”.

[3] Section 72A (2) (d)

Omit “is”. Insert instead “in”.

Explanatory note

Section 72A of the *Casino Control Act 1992*, which was inserted by the *Gaming Machines Act 2001*, provides that it is a condition of a casino licence that the casino operator is to enter into arrangements for problem gambling counselling services to be made available to patrons of the casino. Section 46 of the *Gaming Machines Act 2001* requires hoteliers and registered clubs to enter into arrangements for such services to be made available to patrons of hotels and registered clubs.

Section 72A (2) provides that the regulations may make provision for or with respect to (among other things) the “classes of persons” who are to provide the counselling services. Section 46 of the *Gaming Machines Act 2001* was originally in the same terms, but an amendment made by the *Gaming Machines Amendment Act 2002* altered that section so as to allow the regulations to make provision for or with respect to (among other things) the “persons or bodies” who are to provide the counselling services. Item [1] of the proposed amendments makes the same amendment to section 72A of the *Casino Control Act 1992*.

Item [2] makes a consequential amendment.

Item [3] corrects a typographical error.

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

[1] Section 14 Records relating to Aboriginals and Torres Strait Islanders

Omit “report” from section 14 (3). Insert instead “record”.

[2] Section 29 Protection of persons who make reports

Insert “or a class of children or young persons” after “a child or young person” wherever occurring in section 29 (1) and (1A).

[3] Section 29 (1)

Insert “or the class of children or young persons” after “the child or young person”.

[4] Section 29 (6)

Omit the subsection. Insert instead:

(6) In this section:

court includes a court exercising federal jurisdiction.

report includes a report under sections 24, 25, 27 and 122.

Explanatory note

Items [2] and [3] of the proposed amendments amend section 29 (1) and (1A) of the *Children and Young Persons (Care and Protection) Act 1998 (the Act)* to clarify that the protections set out in that section granted to persons making reports under that Act apply to reports relating to classes of children or young persons and not solely to reports relating to an individual child or young person.

Item [4] of the proposed amendments amends section 29 (6) of the Act to make it clear that section 29 applies to reports relating to homeless children under section 122 of that Act in addition to reports relating to children at risk of harm under Part 2 of Chapter 3 of that Act.

Item [1] of the proposed amendments corrects an incorrect reference.

1.4 Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2

[1] Long title and sections 7 (4), 9 and 10 (1)

Omit “Community Visitors” wherever occurring.

Insert instead “Official Community Visitors”.

[2] Part 2, heading

Omit the heading. Insert instead:

Part 2 Official Community Visitors

[3] Section 7 and sections 47 (1) (c) and 48 (a) (as renumbered by the Community Services Legislation Amendment Act 2002)

Omit “a Community Visitor” wherever occurring.

Insert instead “an Official Community Visitor”.

[4] Sections 7 (3) and 8

Omit “A Community Visitor” wherever occurring.

Insert instead “An Official Community Visitor”.

[5] Section 7 (6) (as inserted by the Community Services Legislation Amendment Act 2002), 8 (2) and 48 (as renumbered by the Community Services Legislation Amendment Act 2002)

Omit “the Community Visitor” wherever occurring.

Insert instead “the Official Community Visitor”.

[6] Section 43A

Insert after section 43:

43A Exemption from Freedom of Information Act 1989

The Ombudsman is, in the exercise of functions under this Part, exempt from the operation of the *Freedom of Information Act 1989*.

[7] Section 47 (1) (as renumbered by the Community Services Legislation Amendment Act 2002)

Omit “Community Visitor” from section 47 (a).

Insert instead “an Official Community Visitor”.

[8] Schedule 1 Savings and transitional provisions (as amended by the Community Services Legislation Amendment Act 2002)

Omit “a Community Visitor” where firstly occurring from clause 3 (1).

Insert instead “an Official Community Visitor”.

[9] Schedule 1, clause 3 (3)

Insert after clause 3 (2):

- (3) A reference in another Act or in an instrument made under an Act or in any document to a Community Visitor appointed under this Act is to be read as a reference to an Official Community Visitor appointed under this Act.

Commencement

The amendments to the *Community Services (Complaints, Reviews and Monitoring) Act 1993* commence, or are taken to have commenced, on the commencement of the *Community Services Legislation Amendment Act 2002*.

Explanatory note

Official Community Visitors

The proposed amendments change the title of Community Visitors appointed under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to Official Community Visitors, to avoid confusion with community visitors appointed under unofficial programs, and make consequential amendments.

Item [9] is a transitional provision that converts references to Community Visitors in other Acts, instruments and other documents.

Exemption from Freedom of Information Act 1989

The *Community Services Legislation Amendment Act 2002* amends various Acts to confer powers on the Ombudsman relating to certain deaths of children and other persons in care. Among other things, it removes from the Child Death Review Team and confers on the Ombudsman the power to review and report on the deaths of children arising from abuse or neglect or that occur in suspicious circumstances while leaving power to review other child deaths.

Currently, under the *Freedom of Information Act 1989*, all functions of the Child Death Review Team are exempt from the operation of that Act. The proposed section 43A, inserted on the request of the Ombudsman, is a consequential amendment extending the previous exemption to the Ombudsman so as to reflect the changes to the Ombudsman's functions and the current exemption relating to reviews of child deaths.

1.5 Crown Lands Act 1989 No 6

[1] Section 3 Definitions

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

Department means the Department of Land and Water Conservation.

[2] Section 3 (1)

Insert in alphabetical order:

Director-General means the Director-General of the Department.

[3] Section 3 (1), definition of "Secretary"

Omit the definition.

[4] Section 34 Powers of Minister

Omit section 34 (2).

[5] Section 78 Definitions

Omit “*Commons Regulation Act 1898*” from paragraph (a) of the definition of *reserve*.

Insert instead “*Commons Management Act 1989*”.

[6] Section 92 Reserve trusts

Omit section 92 (3). Insert instead:

- (3) The Minister may, by notification in the Gazette:
 - (a) dissolve a reserve trust, or
 - (b) alter the corporate name of a reserve trust, or
 - (c) revoke the appointment of the reserve trust as trustee of any one or more specified reserves or any one or more parts of a reserve.

[7] Section 157 Compensation

Omit “Secretary” from section 157 (2).

Insert instead “Director-General”.

[8] Section 180 Delegation

Omit “Secretary” wherever occurring from section 180 (3).

Insert instead “Director-General”.

[9] Section 180 (3)

Omit “Secretary’s”. Insert instead “Director-General’s”.

Explanatory note

Item [1] of the proposed amendments updates a reference to a Department.

The Department concerned does not have a Secretary. Instead, it has a Director-General. Accordingly, item [2] of the proposed amendments inserts a definition of **Director-General**, item [3] omits the definition of **Secretary** and items [7]–[9] make consequential amendments.

Item [4] of the proposed amendments omits a requirement that the Minister, when exercising certain functions in relation to land in an irrigation area, have regard to the views of the Water Administration Ministerial Corporation (a statutory body representing the Crown). That body has been replaced, in relation to **irrigation scheme areas** (within the meaning of the repealed *Irrigation Corporations Act 1994*), by various now-privatised irrigation corporations.

Item [5] of the proposed amendments updates a reference to an Act.

Item [6] of the proposed amendments enables the Minister to revoke the appointment of a reserve trust as trustee of any one or more specified reserves or any one or more parts of a reserve. At present, this can only be done by the cumbersome method of dissolving the reserve trust and re-establishing it in respect only of those reserves (or parts of reserves) in relation to which it is desired that the reserve trust be a trustee.

1.6 Crown Lands (Continued Tenures) Act 1989 No 7

[1] Section 3 Definitions

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

Department means the Department of Land and Water Conservation.

[2] Schedule 4 Subdivision of holdings

Omit “(including the condition imposed by subclause (8))” from clause 2 (5).

Explanatory note

Item [1] of the proposed amendments updates a reference to a Department.

Item [2] of the proposed amendments omits a reference to a repealed subclause.

1.7 Education (Ancillary Staff) Act 1987 No 240

[1] The whole Act (except the matter dealt with in items [2]–[4] below)

Omit “ancillary staff” wherever occurring.

Insert instead “school administrative and support staff”.

[2] Long title

Omit “ancillary staff in the Department of Education”.

Insert instead “school administrative and support staff in the Department of Education and Training”.

[3] Section 1 Name of Act

Omit “*Education (Ancillary Staff) Act 1987*”.

Insert instead “*Education (School Administrative and Support Staff) Act 1987*”.

[4] Section 3 Definitions

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

[5] Section 3 (1)

Insert in alphabetical order:

Department means the Department of Education and Training.

school administrative and support staff means school administrative and support staff of the Department.

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

Omit “Education”. Insert instead “the Department”.

[7] Sections 4 (1), 5 (1), 8, 17 (1), 18 (1) and 21 (1)

Omit “of Education” wherever occurring.

Explanatory note

The proposed amendments change the name of the *Education (Ancillary Staff) Act 1987* to the *Education (School Administrative and Support Staff) Act 1987* and update references in that Act to the Department of Education (now the Department of Education and Training). They also make the necessary consequential amendments.

1.8 Education (Ancillary Staff) Regulation 1998

[1] Clause 1 Name of Regulation

Omit “*Education (Ancillary Staff) Regulation 1998*”.

Insert instead “*Education (School Administrative and Support Staff) Regulation 1998*”.

[2] Clause 3 Definitions

Omit “*Education (Ancillary Staff) Act 1987*” from the definition of *the Act*.

Insert instead “*Education (School Administrative and Support Staff) Act 1987*”.

Explanatory note

The proposed amendments are consequential on the change of name of the *Education (Ancillary Staff) Act 1987* proposed to be made elsewhere in this Schedule.

1.9 Fisheries Management Act 1994 No 38

[1] Section 7C Fishery management strategy for designated activities

Insert after section 7C (3):

- (4) A draft fishery management strategy becomes the existing fishery management strategy when it is approved by the Minister. However, the first fishery management strategy to be approved in respect of a designated fishing activity must be approved in accordance with section 7F.

[2] Section 7F Revision of draft strategy and publication of approved strategy following environmental assessment

Omit section 7F (1). Insert instead:

- (1) Following a determination under Division 5 of Part 5 of the EPA Act, the Minister is to revise the draft fishery management strategy for the designated fishing activity concerned and make any amendment that is necessary to reflect the result of the determination.

[3] Section 7F (2)

Omit “resource”. Insert instead “Resource”.

[4] Section 50 Method of determining eligibility and entitlement to shares

Omit “became a share management fishery” from section 50 (4).

Insert instead “ceased to be a restricted fishery”.

[5] Section 50 (4)

Insert “or, if a person is entitled to take fish for sale in the restricted fishery as the employee or nominee of some other person, that other person” after “entitled to take fish for sale in the restricted fishery”.

[6] Section 77A Rental charge for access to category 2 share management fishery

Insert “or, if a person is authorised to take fish in the fishery as the employee or nominee of some other person, that other person” after “a person authorised to take fish in the fishery” in section 77A (8) (b).

Explanatory note

Fishery management strategies

Item [1] of the proposed amendments makes it clear that a draft fishery management strategy under Part 1A of the *Fisheries Management Act 1994* (**the Act**) becomes the actual fishery management strategy when it is approved by the Minister.

Item [2] of the proposed amendments makes it clear that the revision of a draft fishery management strategy that is required after a determination is made under Division 5 of Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of the designated fishing activity to which the draft strategy relates will not necessarily give rise to any amendments to the draft strategy. The proposed amendment also allows other amendments to be made to the draft strategy before it is approved (even if those amendments do not arise out of the determination) provided that the Minister has consulted the Fisheries Resource Conservation and Assessment Council in relation to them.

Allocation of shares in share management fishery

Section 50 (4) of the Act provides for the allocation of shares in a share management fishery that is also a restricted fishery. It provides that if a restricted fishery becomes a share management fishery, the persons entitled to shares in the fishery are the persons who, immediately before the restricted fishery became a share management fishery, were entitled to take fish for sale in the restricted fishery. The provision aims to preserve the entitlements of fishers in the restricted fishery. Under section 55 of the Act, a share management fishery that is a restricted fishery ceases to be a restricted fishery when the limited access stage of the share management fishery commences.

Item [4] of the proposed amendments makes it clear that a restricted fishery “becomes” a share management fishery when it ceases to be a restricted fishery, so as to ensure that shares are allocated on the basis of the fishing entitlements held by fishers in the restricted fishery immediately before the fishery ceases to be a restricted fishery (and to recognise any transfers of restricted fishery entitlements that take place before the start of the limited access stage of the share management fishery).

Under the current regulations relating to restricted fisheries, persons who are entitled to take fish for sale in a restricted fishery may in some circumstances nominate other persons to take fish in the fishery on their behalf. Item [5] of the proposed amendments makes it clear that, in such circumstances, it is the person who is entitled to nominate the fisher, and not a nominee or employee of the person so entitled, who is to be allocated shares in the share management fishery. Similarly, item [6] makes it clear that, if a person is entitled to nominate a fisher to take fish in a category 2 share management fishery, it is the person who is entitled to nominate that other person, and not the nominee or an employee of the person, who is liable to pay a rental charge under that provision.

Statute law revision

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

1.10 Gas Supply Act 1996 No 38

[1] Sections 27 (1) (e), 33C (1) (b) and 4 (b) and 33J (paragraphs (a) and (d) of the definition of “retail market business system”) and clause 19 (1) (e) of Schedule 2

Omit “distribution system” wherever occurring.

Insert instead “distribution pipeline”.

[2] Section 33C (4) (b)

Omit “the system”. Insert instead “the pipeline”.

[3] Section 33K Market operations rules

Omit “distribution systems” wherever occurring from section 33K (1) (a) and (c).

Insert instead “distribution pipelines”.

[4] Dictionary

Omit “distribution system” from paragraph (a) of the definition of *ancillary market participant*.

Insert instead “distribution pipeline”.

[5] Dictionary, definition of “distribution pipeline”

Omit the definition. Insert instead:

distribution pipeline means the gas pipes and associated equipment that are used to convey and control the conveyance of natural gas to the premises of customers, but does not include:

- (a) any pipeline in respect of which a licence is in force under the *Pipelines Act 1967* (other than a pipeline that the regulations declare to be, or to form part of, a distribution pipeline), or
- (b) any gas installation, or
- (c) any gas pipe or associated equipment that is wholly situated on land owned by the person who owns or controls the gas pipe or equipment, or

- (d) any gas pipe or associated equipment that the regulations declare not to be, or not to form part of, a distribution pipeline.

Explanatory note

Section 5 of the *Gas Supply Act 1996 (the Act)* prohibits a person from operating a **distribution pipeline** for the purpose of conveying natural gas to any other person, and from supplying natural gas to any other person by means of such a pipeline, otherwise than under the authority of an **authorisation** (within the meaning of the Act). Section 34 of the Act imposes a similar prohibition in respect of the conveyance of certain other gases by way of a **distribution system** otherwise than under the authority of a **distributor's licence** (within the meaning of the Act).

At present, the Dictionary to the Act provides that the term **distribution pipeline** has the same meaning as it has in the *Gas Pipelines Access (New South Wales) Law*. However, certain small distribution networks do not fall within the ambit of that definition. To ensure that those distribution networks are subject to the authorisation requirement (and the other relevant provisions of the Act), item [5] of the proposed amendments repeals and re-enacts the definition of **distribution pipeline** in terms that parallel the definition of **distribution system**.

As the scheme of the Act is to use the term **distribution pipeline** in relation to the conveyance and supply of natural gas, and the term **distribution system** in relation to the conveyance of gases other than natural gas, the remaining proposed amendments correct the incorrect use of the term **distribution system** in provisions relating to natural gas (items [1]–[4]).

1.11 Gas Supply (Natural Gas Retail Competition) Regulation 2001

Clause 7 Small retail customers who are entitled to apply to be supplied under the standard form customer supply contract

Omit “distribution system” wherever occurring.

Insert instead “distribution pipeline”.

Explanatory note

The proposed amendment is consequential on the amendment proposed to be made to section 33C of the *Gas Supply Act 1996* elsewhere in this Schedule.

1.12 Hay Irrigation Act 1902 No 57

Section 5 Definitions

Omit the definitions of *Domestic use*, *Irrigated lot*, *Justice* and *Stock*.

Explanatory note

The proposed amendment omits definitions of terms that are no longer used in the *Hay Irrigation Act 1902*.

**1.13 Licensing and Registration (Uniform Procedures) Act 2002
No 28**

[1] Section 25 Periodic administration fees for continuing licences

Insert at the end of the section:

- (2) If payment is made by means of electronic communication, the licence administration fee otherwise payable:
 - (a) is to be reduced by \$5, or
 - (b) is to be reduced by 10 per cent, and rounded to the nearest whole dollar,whichever results in the greater reduction.

[2] Section 54 Periodic administration fees for continuing registration

Insert at the end of the section:

- (2) If payment is made by means of electronic communication, the registration administration fee otherwise payable:
 - (a) is to be reduced by \$5, or
 - (b) is to be reduced by 10 per cent, and rounded to the nearest whole dollar,whichever results in the greater reduction.

[3] Schedule 4 Amendment of other Acts and statutory rules

Omit item [2] of Schedule 4.11 (*Pawnbrokers and Second-hand Dealers Act 1996*).

Insert instead:

[2] Sections 10 and 10A

Omit the sections. Insert instead:

10 Duration of licence

A licence remains in force for a period of 12 months from the date of its grant.

[4] Schedule 4.30 Motor Dealers Act 1974 No 52

Insert at the end of Schedule 4.30:

[2] Section 20 Annual fee and annual statement

Omit section 20 (10) and (11).

[5] Schedule 4.32 Travel Agents Act 1986 No 5

Insert at the end of Schedule 4.32:

[2] Section 17 Annual fee and annual statement

Omit section 17 (12) and (13).

Explanatory note

Sections 13 and 42 of the *Licensing and Registration (Uniform Procedures) Act 2002* (**the Act**) currently provide for a reduction in processing fees for applications for licences and registration that are made by means of electronic communication. Items [1] and [2] of the proposed amendments amend sections 25 and 54 of that Act so as to provide similar reductions for periodic administration fees that are paid by electronic communication.

Schedule 4.11 [2] to the Act omits sections 10 and 10A of the *Pawnbrokers and Second-hand Dealers Act 1996*. Item [3] of the proposed amendments amends Schedule 4.11 [2] so as to replace the repealed sections with a new section that retains a provision that specifies the period for which a licence under the 1996 Act has effect.

Schedule 4.30 and 4.32 of the Act amend the *Motor Dealers Act 1974* and the *Travel Agents Act 1986*. Items [4] and [5] of the proposed amendments make further amendments to those Acts so as to omit provisions that create offences of giving false information. The giving of false information is to be dealt with under the *Crimes Act 1900* as a consequence of the amendments to that Act that are made by Schedule 4.27 to the *Licensing and Registration (Uniform Procedures) Act 2002*.

1.14 Local Government Act 1993 No 30

[1] Section 22 Other functions

Omit “those periods” from the matter relating to the *Rural Fires Act 1997* in the Note to the section.

Insert instead “bush fire danger periods”.

[2] Section 22, Note

Omit the matter relating to the *Unhealthy Building Land Act 1990*.

[3] Section 413 Preparation of financial reports

Omit section 413 (3) (a). Insert instead:

- (a) the publications issued by the Australian Accounting Standards Board, as in force for the time being, subject to the regulations, and

[4] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts

Insert at the end of the Schedule, with appropriate numbering:

**Provision consequent on enactment of
Statute Law (Miscellaneous Provisions)
Act (No 2) 2002**

Preparation of general purpose financial report

Until such time as a publication issued by the Australian Accounting Standards Board supersedes a particular publication that was issued by the Australian Accounting Research Foundation (on behalf of the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia) under the title *Australian Accounting Standards*, section 413 (3) (a) is to be construed as if it referred to the latter publication rather than to the publication issued by the Australian Accounting Standards Board.

Explanatory note

Financial reports

Item [3] of the proposed amendments amends section 413 (Preparation of financial reports) of the Act to reflect the fact that the Australian Accounting Standards Board, which was formerly part of the Australian Accounting Research Foundation (*the Foundation*), is now a separate body. That body is in the process of issuing accounting standards to replace those issued by the Foundation. Accordingly, the proposed amendment requires the general purpose financial report to be prepared in accordance with (among other things) the new standards. Item [4] inserts a transitional provision.

Statute law revision

Item [1] of the proposed amendments clarifies wording.

Item [2] of the proposed amendments repeals matter dealing with an Act that is to be repealed by section 4 (2).

1.15 Marine Safety Act 1998 No 121

[1] Section 71 Definitions

Insert “(and, if those services are provided by way of a subsidiary, includes the subsidiary)” after “the Port Corporation” in paragraph (a) of the definition of *pilotage service provider* in section 71 (1).

[2] Section 71 (1)

Insert in alphabetical order:

subsidiary, in relation to a Port Corporation, means a body corporate that would be a subsidiary (as determined by the *Corporations Act 2001* of the Commonwealth) of the Port Corporation if the Port Corporation were a company.

[3] Schedule 3 Amendment of other Acts

Omit Schedule 3.7 [4] and [12].

[4] Schedule 3.7 [7]

Omit “under Division 3 of Part 2 of the *Ports Corporatisation and Waterways Management Act 1995*” from proposed section 26A (2).

Insert instead “(whether directly or by way of a subsidiary)”.

Explanatory note

Amendments to the *Ports Corporatisation and Waterways Management Act 1995* (**the 1995 Act**) proposed to be made elsewhere in this Schedule include certain amendments to and in relation to Part 6 (Pilotage) of that Act. Part 6 is to be repealed and replaced by Part 6 of the *Marine Safety Act 1998* (**the 1998 Act**). Items [1], [2] and [4] of the proposed amendments to the 1998 Act ensure that the effect of the amendments relating to pilotage made to the 1995 Act are preserved. Item [4] also omits an unnecessary reference.

Item [3] of the proposed amendments repeals two uncommenced amendments. The amendment proposed to be made by Schedule 3.7 [4] is not necessary, and the amendment proposed to be made by Schedule 3.7 [12] has been superseded by item [5] of the amendments proposed to be made to the 1995 Act elsewhere in this Schedule.

1.16 National Parks and Wildlife Act 1974 No 80

[1] Section 5 Definitions

Re-number paragraph (d) of the definition of *Crown lands* in section 5 (1) as paragraph (a).

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- [2] Section 5 (1), definition of “Jenolan Caves Reserve Trust lands”**
Omit “dedicated” wherever occurring. Insert instead “reserved”.
- [3] Section 9 Audit and compliance**
Omit section 9 (4) (b).
- [4] Section 9 (5)**
Omit “subsection (2)”. Insert instead “subsection (4)”.
- [5] Section 47M Review of classification as state conservation area**
Omit “natural reserve” from section 47M (2).
Insert instead “nature reserve”.
- [6] Section 49 Reservation of nature reserves**
Omit “subsection (1) or (2)” from section 49 (6).
Insert instead “Division 1”.
- [7] Section 71BC Addition of lands not already reserved under Act**
Insert “of” after “Part 2” in section 71BC (5) (b).
- [8] Section 72 Plans of management**
Omit “state recreation areas” from section 72 (2A).
Insert instead “state conservation areas”.
- [9] Section 164 Powers of entry and seizure**
Omit “relic” from section 164 (5) (b). Insert instead “Aboriginal object”.
- [10] Schedule 9A, Transfer of assets, rights and liabilities**
Omit “state recreation area” wherever occurring in the heading to clause 2 and in clause 3 (1).
Insert instead “state conservation area”.

[11] Schedule 9A, clause 2 (1) and (2)

Omit “section 47B or 47O” wherever occurring.

Insert instead “section 30A in relation to a state conservation area or a regional park”.

[12] Schedule 9A, clause 2 (2) and 3 (1)

Omit “an SRA trust” wherever occurring.

Insert instead “a state conservation area trust”.

[13] Schedule 9A, clause 2 (2) (a) and (b) and heading to clause 3

Omit “SRA trust” wherever occurring.

Insert instead “state conservation area trust”.

Explanatory note

Membership of Audit and Compliance Committee

Item [3] of the proposed amendments omits a provision requiring the Audit and Compliance Committee established under section 9 of the *National Parks and Wildlife Act 1974 (the Act)* to include an officer of the New South Wales Audit Office. The provision was inserted by a non-Government amendment at the committee stage of the Bill for the *National Parks and Wildlife Amendment Act 2001* (which inserted the new section 9 in the Act). However, after representations from the Auditor-General, both the mover of the amendment and the Minister administering the Act now agree that the provision is inappropriate.

Statute law revision

Item [1] of the proposed amendments corrects the numbering of a paragraph.

Items [2], [8]–[10], [12] and [13] of the proposed amendments update terminology used in the Act.

Item [7] of the proposed amendments inserts a missing word.

Item [5] of the proposed amendments corrects a typographical error.

Items [4], [6] and [11] of the proposed amendments correct incorrect cross-references.

1.17 Occupational Health and Safety Act 2000 No 40

Section 108 Penalty notices for certain offences

Insert after section 108 (6) (c):

, and

- (d) prescribe different amounts of penalties for the same penalty notice offence.

Explanatory note

The proposed amendment enables regulations under the *Occupational Health and Safety Act 2000* to prescribe different amounts of penalties for the same penalty notice offence under that Act (for example, according to whether the offender is a corporation or a natural person, or according to the circumstances in which the offence is committed).

1.18 Ombudsman Act 1974 No 68

[1] Part 6

Insert after Part 5:

Part 6 Complaint handling by relevant agencies

41 Definitions

(1) In this Part:

complaint means a complaint (however described) that is made to a relevant agency.

consent includes consent that is given orally.

relevant agency means an agency specified in Schedule 1A.

relevant complaints legislation, in relation to a complaint, means the Act or statutory rule that governs the making of such a complaint.

sensitive personal information, in relation to a complainant, means information relating to the complainant's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities.

(2) For the purposes of this Part:

(a) a reference to a complaint having been made to a relevant agency includes a reference to a complaint having been referred to the agency under section 42, and

(b) a reference to a complaint being within a relevant agency's jurisdiction is a reference to a complaint that a person is authorised by law to make to the agency or that the agency is authorised by law to deal with.

(3) Schedule 1A may be amended or replaced by proclamation.

42 Referral of complaints between relevant agencies

- (1) Two or more relevant agencies may enter into an arrangement for the referral of complaints between them (a *complaint referral arrangement*).
- (2) Under a complaint referral arrangement:
 - (a) any agency that is party to the arrangement may be authorised to refer to any other such agency any complaint received by it that appears to be within, or partly within, the other agency's jurisdiction, and
 - (b) a complaint that is within, or partly within, more than one agency's jurisdiction may be referred to one of them, some of them or all of them.
- (3) A complaint may be referred under a complaint referral arrangement regardless of any action that has been taken in relation to the complaint by the agency that received it.
- (4) Despite subsection (2), a complaint may not be referred from one agency to another except with the express consent of the complainant.
- (5) Subject to the terms of the complaint referral arrangement, the referral of a complaint discharges the agency that received the complaint from any further obligations with respect to the complaint to the extent to which the complaint is not within its jurisdiction, but does not prevent that agency from continuing to deal with the complaint to the extent to which the complaint is within its jurisdiction.
- (6) A complaint that is referred to an agency under this section is taken to have been duly made to that agency under the relevant complaints legislation.
- (7) An agency has the same immunities with respect to a complaint that it refers to another agency under this section as it has with respect to any complaint that it deals with under the relevant complaints legislation.
- (8) Any report in relation to complaints dealt with by a relevant agency that is prepared by the agency for the purposes of:
 - (a) the relevant complaints legislation, or
 - (b) the *Annual Reports (Departments) Act 1985*, or
 - (c) the *Annual Reports (Statutory Bodies) Act 1984*,

must distinguish between those complaints that are made directly to the agency and those that are referred to the agency, whether under this Part or otherwise.

- (9) This section does not limit the operation of any other Act under which an agency is authorised or required to refer complaints to another agency.

43 Sharing of information by relevant agencies

- (1) Two or more relevant agencies may enter into an arrangement for the sharing of information held by them (an *information sharing arrangement*).
- (2) Under an information sharing arrangement, any agency that is party to the arrangement may be authorised to do either or both of the following (but only to the extent that the activity concerned is reasonably necessary to assist the agency to carry out its functions):
- (a) to receive information obtained by any other such agency with respect to a complaint dealt with by that other agency,
 - (b) to be present during any investigation or hearing conducted by any other such agency with respect to a complaint.
- (3) An agency that, under an information sharing arrangement, is authorised to receive information obtained by some other agency may do so, and the agency by which the information was obtained may provide the information to the agency so authorised, despite any other Act or law.
- (4) An agency that, under an information sharing arrangement, is authorised to be present during an investigation or hearing conducted by some other agency may do so, despite any other Act or law.
- (5) For the purpose of enabling an agency so authorised to be present during such an investigation, the agency may exercise any power of entry exercisable by the other agency, and has all the immunities of the other agency with respect to the exercise of any such power, despite any other Act or law.
- (6) Despite any other provision of this section, an agency must not, except with the complainant's express consent:

- (a) disclose to any other agency any information obtained by it with respect to a complaint, or
- (b) permit any other agency to be present during any investigation or hearing conducted by it with respect to a complaint,

if the agency has (or should have) reason to suspect that the information is or includes sensitive personal information about the complainant.

- (7) This section does not limit the operation of any other Act under which an agency is authorised or required to disclose information to another agency.

44 Delegation

Despite any other Act or law, a relevant agency may delegate any of its functions under this Part to an officer of the agency.

45 Inter-agency agreements to be publicly available

A relevant agency that enters into a complaint referral arrangement under section 42 or an information sharing arrangement under section 43 must ensure that copies of the arrangement are made available for public inspection at each of its offices.

[2] Schedule 1A

Insert after Schedule 1:

Schedule 1A Agencies

(Section 41)

Community Services Commission
Health Care Complaints Commission
Legal Services Commissioner
Ombudsman
President of the Anti-Discrimination Board
Privacy Commissioner

Explanatory note

The proposed amendments permit the Community Services Commission, the Health Care Complaints Commission, the Legal Services Commissioner, the Ombudsman, the President of the Anti-Discrimination Board and the Privacy Commissioner (each of which is a **relevant agency**) to enter into arrangements:

- (a) for the referral of complaints among themselves, and
- (b) for the sharing of information held by them.

1.19 Passenger Transport Act 1990 No 39

Section 59 Penalty notices for certain offences

Insert after section 59 (3):

- (3A) The regulations may:
 - (a) prescribe different amounts of penalties for different offences or classes of offences, and
 - (b) prescribe different amounts of penalties for the same penalty notice offence.

Explanatory note

The proposed amendment enables regulations under the *Passenger Transport Act 1990* to prescribe different amounts of penalties for different offences or classes of offences and to prescribe different amounts of penalties for the same penalty notice offence under that Act (for example, according to whether the offender is a corporation or a natural person, or according to the circumstances in which the offence is committed).

1.20 Ports Corporatisation and Waterways Management Act 1995 No 13

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

subsidiary, in relation to a Port Corporation, means a body corporate that would be a subsidiary (as determined by the *Corporations Act 2001* of the Commonwealth) of the Port Corporation if the Port Corporation were a company.

[2] Section 6 Establishment of Newcastle Port Corporation as statutory SOC

Omit section 6 (2).

[3] Section 7 Establishment of Port Kembla Port Corporation as statutory SOC

Omit section 7 (2).

[4] Section 50 Imposition of navigation service charge

Omit section 50 (2). Insert instead:

- (2) Unless the regulations otherwise provide, the charge:
 - (a) is payable on each entry by the vessel into any designated port, and
 - (b) is to be calculated by reference to the gross tonnage of the vessel.

[5] Section 59 Meaning of “site”

Omit “office of the Minister” from section 59 (1).

Insert instead “office of the relevant port authority”.

[6] Section 60 Site occupation charge

Insert after section 60 (3):

- (4) This section does not apply in respect of so much of a site as is leased by the relevant port authority as lessor.

[7] Section 61 Wharfage charge

Omit “The charge” from section 61 (2).

Insert instead “Unless the regulations otherwise provide, the charge”.

[8] Section 70 Interest on overdue payments

Omit section 70 (1). Insert instead:

- (1) The relevant port authority may charge interest, at a rate determined by the authority, on charges under this Part that are unpaid by the due date.

[9] Section 77 Definitions

Insert after section 77 (2):

- (3) A reference in this Part to pilotage services provided by a Port Corporation includes a reference to pilotage services provided by a subsidiary of the Port Corporation, and a reference to a pilotage service provider is to be construed as including a reference to any such subsidiary providing pilotage services.

[10] Section 108 Service of documents

Insert “a Port Corporation or” before “the Waterways Authority” wherever occurring in section 108 (1) and (2).

[11] Section 108 (1) (a) and (b)

Insert “relevant Port Corporation or the” before “Authority” wherever occurring.

Explanatory note

Repeals

Items [2] and [3] of the proposed amendments repeal provisions of the *Ports Corporatisation and Waterways Management Act 1995 (the Act)* that amended the *State Owned Corporations Act 1989*. The amendments have been incorporated in the latter Act, which is up-to-date on the Legislation Database maintained by the Parliamentary Counsel's Office and available electronically.

Port charges

At present, section 50 (2) of the Act provides that a navigation service charge is payable on each entry (by a vessel liable for the charge) into any **designated port** (within the meaning of Part 5 of the Act) and that, unless the regulations otherwise provide, the charge is to be calculated by reference to the gross tonnage of the vessel. Item [4] of the proposed amendments repeals and re-enacts section 50 (2) so as to permit the regulations to vary the requirement for payment on every entry to a designated port (as well as the method of calculation of the charge).

Item [7] of the proposed amendments amends section 61 of the Act so as to permit the regulations to vary the manner of calculation of wharfage charges payable under that section.

These proposed amendments mirror other provisions of the Act (for example, sections 56 (3), 60 (2) and 70 (3)).

Item [6] of the proposed amendments inserts a new subsection in section 60 (Site occupation charge) so as to make it clear that a site occupation charge payable under Part 5 of the Act is not payable by a lessee who leases the site from the **relevant port authority** (within the meaning of that Part). Item [5] amends the definition of **site** to reflect the fact that the map defining the area of a site is now kept at the office of the relevant port authority and not at that of the Minister.

Miscellaneous

At present, section 70 (1) of the Act provides that charges under Part 5 that are unpaid by the due date “attract interest” at a rate determined by the relevant port authority. Item [8] of the proposed amendments repeals and re-enacts section 70 (1) so as to provide for such interest to be charged at the discretion of the relevant port authority (rather than compulsorily).

Item [9] of the proposed amendments inserts a referential provision in Part 6 (Pilotage) of the Act to reflect the fact that **pilotage services** may be provided by a Port Corporation by means of a subsidiary. Item [1] inserts a definition of **subsidiary** in section 3 (Definitions) for the purposes of the Act.

At present, section 108 of the Act specifies certain ways in which documents might be served on the Waterways Authority. Items [10] and [11] of the proposed amendments extend the ambit of that section to include service of documents on Port Corporations.

1.21 Property, Stock and Business Agents Act 2002 No 66

[1] Section 86 Trust money to be paid into trust account

Omit “licencee” from section 86 (1). Insert instead “licensee”.

[2] Schedule 2 Consequential amendments

Omit so much of item [2] of Schedule 2.7 (*Property, Stock and Business Agents Act 2002*) as would insert section 17 (4), and renumber proposed section 17 (5) as section 17 (4).

[3] Schedule 2.7 [3]

Omit the item. Insert instead:

[3] Sections 18, 19 and 24

Omit the sections. Insert instead:

19 Certain applications to be refused

An application must not be granted unless the applicant is eligible to be granted the licence or certificate of registration concerned (as provided by section 14).

[4] Schedule 2.7 [5]

Omit the item. Insert instead:

[5] Section 26 Effect of applying for restoration of expired licence

Omit section 26 (1)–(5).

[5] Schedule 2.10 Strata Schemes Management Act 1996 No 138

Omit “*Property, Stock and Business Agents Act 2001*” from Schedule 2.10 [8].

Insert instead “*Property, Stock and Business Agents Act 2002*”.

Explanatory note

Amendments relating to enactment of Licensing and Registration (Uniform Procedures) Act 2002

Schedule 2.7 [2] to the *Property, Stock and Business Agents Act 2002* repeals and re-enacts section 17 of the *Property, Stock and Business Agents Act 2002* (and inserts section 17A) as a consequence of the enactment of the *Licensing and Registration (Uniform Procedures) Act 2002*. Item [2] of the proposed amendments omits an

unnecessary subsection of the new section 17 and re-numbers the following subsection in consequence of that omission.

Schedule 2.7 [3] to the *Property, Stock and Business Agents Act 2002* omits sections 18, 19 and 24 of the *Property, Stock and Business Agents Act 2002* as a consequence of the enactment of the *Licensing and Registration (Uniform Procedures) Act 2002*. Item [3] of the proposed amendments amends Schedule 2.7 [3] so as to replace the repealed sections with a new section 19 that restores a provision that currently specifies grounds on which an application for a licence or certificate of registration is to be refused.

Schedule 2.7 [5] to the *Property, Stock and Business Agents Act 2002* omits sections 26 and 27 of the *Property, Stock and Business Agents Act 2002* as a consequence of the enactment of the *Licensing and Registration (Uniform Procedures) Act 2002*. Item [4] of the proposed amendments amends Schedule 2.7 [5] so as to restore section 27 (dealing with appeals to the Administrative Decisions Tribunal) and so as to keep a provision that currently resurrects an expired licence, for limited purposes, when an application to restore the licence is made.

Statute law amendments

Item [1] of the proposed amendments corrects a typographical error.

Item [5] of the proposed amendments corrects the citation of an Act.

1.22 Protected Disclosures Act 1994 No 92

[1] Section 8 Disclosure must be made by public officials

Omit section 8 (1) (c). Insert instead:

- (c) to:
- (i) another officer of the public authority or investigating authority to which the public official belongs, or
 - (ii) an officer of the public authority or investigating authority to which the disclosure relates,

in accordance with any procedure established by the authority concerned for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by that authority or any of its officers, or

[2] Section 14 Disclosures to public officials

Insert “or by another public authority or any of its officers” after “by the authority or any of its officers” in section 14 (1).

[3] Section 14 (2)

Omit the subsection. Insert instead:

- (2) To be protected by this Act, a disclosure by a public official to:
- (a) another officer of the public authority to which the public official belongs, or
 - (b) an officer of the public authority to which the disclosure relates,

in accordance with any procedure established by the authority concerned for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by that authority or any of its officers must be a disclosure of information that shows or tends to show such corrupt conduct, maladministration or serious and substantial waste (whether by that authority or any of its officers or by another public authority or any of its officers).

[4] Section 26 Referral of disclosures by public officials

Insert after section 26 (1):

- (1A) If the public official to whom the disclosure referred to in subsection (1) was made does not belong to the public authority or investigating authority to which the disclosure relates, the public official must refer the disclosure to the principal officer of, or officer who constitutes, the authority concerned, or to an investigating authority, for investigation or other action.

Explanatory note

The *Protected Disclosures Act 1994 (the Act)* currently provides protection to a public official (as defined in the Act) who makes a disclosure of information that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by a **public authority** or **investigating authority** (both of which are defined in the Act) or any of its officers if the disclosure is made to certain persons specified in the Act. Those persons include the principal officer of (or officer who constitutes) the authority the subject of the disclosure. However, protection is afforded to a public official who discloses such information to the principal officer (or another officer, in accordance with internal procedure) of the authority to which the public official belongs only if the disclosure is in respect of that authority. Protection is not afforded if the disclosure relates to another authority.

Item [1] of the proposed amendments provides for a public official to make a disclosure to an officer of the authority to which the disclosure relates in accordance with any procedure established by the authority concerned for that purpose.

Item [2] of the proposed amendments protects a disclosure made by a public official to the principal officer of, or officer who constitutes, the public or investigating authority to which the disclosing officer belongs even if it is a disclosure relating to another public or investigating authority.

Item [3] of the proposed amendments provides the same protection in respect of such a disclosure when it is made to another officer of the authority to which the disclosure relates in accordance with any procedure established by the authority concerned for that purpose.

Item [4] of the proposed amendments inserts a new subsection in section 26 of the Act so as to require a public official to whom a disclosure under Part 2 (Protected disclosures) of the Act is made in respect of another public authority to refer the disclosure to the principal officer of (or officer who constitutes) the public authority to which the disclosure relates.

1.23 Protection of the Environment Operations Act 1997 No 156

[1] Section 187 Appointment of authorised officers

Re-number section 187 (3) (as inserted by the *Statute Law (Miscellaneous Provisions) Act 2002*) as section 187 (2A).

[2] Section 244 Orders generally

Insert after section 244 (2):

(3) Other action not required

Orders may be made under this Part regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

Explanatory note

Item [1] of the proposed amendments corrects duplicate numbering.

Section 244 in Part 8.3 of the *Protection of the Environment Operations Act 1997 (the Act)* provides for the making of orders of various kinds under that Part in relation to offences against the Act (or the regulations made under the Act) that a court finds proved. (The orders that may be made under Part 8.3 include orders to make good any environmental damage caused by the offence, orders requiring the offender to pay certain costs and expenses, and orders requiring the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit.) Section 244 (2) provides that orders may be made under Part 8.3 in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence concerned.

Item [2] of the proposed amendments inserts an additional subsection in section 244 to make it clear that the imposition of a penalty, or the taking of any other action, in relation to the offence is not a prerequisite to the making of such an order.

1.24 Public Trustee Act 1913 No 19

Section 5 Office of Public Trustee

Insert after section 5 (1):

- (1A) Subject to this Act, the person appointed to the office of Public Trustee holds office for such period (not exceeding 5 years) as is specified in his or her instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Explanatory note

At present, the person appointed to the office of Public Trustee under section 5 of the *Public Trustee Act 1913* is appointed for an indefinite term. The appointee ceases to hold that office only in the circumstances specified in the section (for example, if he or she resigns or dies, or is removed by the Governor for misbehaviour or incompetence after a resolution of each House of Parliament declaring that he or she ought to be removed).

The proposed amendment inserts a new subsection in section 5 to provide that the appointee is to be appointed for a specified term (which is not to exceed 5 years). However, there is no limit on the number of times that an appointee may be re-appointed (if otherwise qualified) to the office.

As the office is currently vacant, there is no need for a transitional provision.

1.25 Real Property Act 1900 No 25

[1] Section 74F Lodgment of caveats against dealings, possessory applications, plans and applications for cancellation of easements or extinguishment of restrictive covenants

Insert “(and, if that address is a box at a document exchange, an alternative address in New South Wales that is not such a box)” after “the caveator” in section 74F (5) (b) (viii).

[2] Section 74I Lapse of caveat where dealing etc subsequently lodged for recording

Omit “the caveator takes the action referred to in subsection (3), the caveat will lapse to the extent provided by that subsection and the dealing or plan will be recorded or registered.” from section 74I (1).

Insert instead:

the caveator has:

- (c) obtained from the Supreme Court an order extending the operation of the caveat for such further period as is specified in the order or until the further order of that Court, and

-
- (d) lodged with the Registrar-General the order or an office copy of the order,

the caveat will (subject to evidence of due service of the notice on the caveator) lapse in accordance with subsection (5) and the dealing or plan will be recorded or registered.

[3] Section 74I (2)

Omit “the caveator takes the action referred to in subsection (3), the caveat will lapse to the extent provided by that subsection and the possessory application may be granted.”.

Insert instead:

the caveator has:

- (a) obtained from the Supreme Court an order extending the operation of the caveat for such further period as is specified in the order or until the further order of that Court, and
- (b) lodged with the Registrar-General the order or an office copy of the order,

the caveat will (subject to evidence of due service of the notice on the caveator) lapse in accordance with subsection (5) and the possessory application may be granted.

[4] Section 74I (3)–(5)

Omit subsection (3). Insert instead:

- (3) The applicant must, within 4 weeks after the issue of the notice, lodge with the Registrar-General, in the form of a statutory declaration or such other form as the Registrar-General may accept, evidence of the due service of the notice on the caveator.
- (4) If the applicant does not comply with subsection (3), the Registrar-General:
- (a) may refuse to take any further action in connection with the notice prepared under subsection (1) or (2) (as relevant), or
- (b) may serve on the applicant a notice allowing a further 4 weeks from the date of service of that notice for lodgment of the evidence and, if the evidence is not

lodged within the further period, may refuse to take any further action in connection with the notice prepared under subsection (1) or (2) (as relevant).

- (5) If:
- (a) the evidence required by subsection (3) is lodged within the time permitted by this section, and
 - (b) the caveator has not lodged with the Registrar-General the order or office copy of the order referred to in subsection (1) or (2) (as the case may require) in accordance with the relevant subsection,

the Registrar-General is to make a recording in the Register to the effect that the caveat has, to the extent that it would prohibit the recording of the dealing or the registration of the delimitation plan, or the granting of the possessory application, lapsed, and the caveat so lapses on the making of that recording.

[5] Section 74J Lapse of caveat on application of proprietor of estate or interest

Omit “the caveator takes the action referred to in subsection (2) before the expiry of 21 days after the date of service of the notice, the caveat will lapse.” from section 74J (1).

Insert instead:

the caveator has, before the expiry of 21 days after the date of service of the notice:

- (a) obtained from the Supreme Court an order extending the operation of the caveat for such further period as is specified in the order or until the further order of that Court, and
- (b) lodged with the Registrar-General the order or an office copy of the order,

the caveat will (subject to evidence of due service of the notice on the caveator) lapse in accordance with subsection (4).

[6] Section 74J (2)–(4)

Omit subsection (2). Insert instead:

- (2) The applicant must, within 4 weeks after the issue of the notice, lodge with the Registrar-General, in the form of a statutory declaration or such other form as the Registrar-General may accept, evidence of the due service of the notice on the caveator.
- (3) If the applicant does not comply with subsection (2), the Registrar-General:
 - (a) may refuse to take any further action in connection with the notice prepared under subsection (1), or
 - (b) may serve on the applicant a notice allowing a further 4 weeks from the date of service of that notice for lodgment of the evidence and, if the evidence is not lodged within the further period, may refuse to take any further action in connection with the notice prepared under subsection (1).
- (4) If:
 - (a) the evidence required by subsection (2) is lodged within the time permitted by this section, and
 - (b) the caveator has not lodged with the Registrar-General the order or office copy of the order referred to in subsection (1) in accordance with that subsection,the Registrar-General is to make a recording in the Register to the effect that the caveat has lapsed, and the caveat so lapses on the making of that recording.

[7] Section 74JA Lapse of caveat regarding extinguishment of restrictive covenant

Omit “the caveator takes the action referred to in subsection (4), the caveat will lapse to the extent provided by that subsection and the restrictive covenant will be extinguished.” from section 74JA (3).

Insert instead:

the caveator has:

- (a) obtained from the Supreme Court an order extending the operation of the caveat for such further period as is

specified in the order or until the further order of that Court, and

- (b) lodged with the Registrar-General the order or an office copy of the order,

the caveat will (subject to evidence of due service of the notice on the caveator) lapse in accordance with subsection (6) and the restrictive covenant will be extinguished.

[8] Section 74JA (4)–(6)

Omit subsection (4). Insert instead:

- (4) The applicant must, within 4 weeks after the issue of the notice, lodge with the Registrar-General, in the form of a statutory declaration or such other form as the Registrar-General may accept, evidence of the due service of the notice on the caveator.
- (5) If the applicant does not comply with subsection (4), the Registrar-General:
 - (a) may refuse to take any further action in connection with the notice prepared under subsection (3), or
 - (b) may serve on the applicant a notice allowing a further 4 weeks from the date of service of that notice for lodgment of the evidence and, if the evidence is not lodged within the further period, may refuse to take any further action in connection with the notice prepared under subsection (3).
- (6) If:
 - (a) the evidence required by subsection (4) is lodged within the time permitted by this section, and
 - (b) the caveator has not lodged with the Registrar-General the order or office copy of the order referred to in subsection (3) in accordance with that subsection,

the Registrar-General is to make a recording in the Register to the effect that the caveat has, to the extent that it would prohibit the extinguishment of the restrictive covenant concerned, lapsed, and the caveat so lapses on the making of that recording.

[9] Schedule 3 Savings and transitional provisions

Insert after clause 18:

**Part 7 Statute Law (Miscellaneous Provisions)
Act (No 2) 2002**

19 Lapsing of caveats

Sections 74I, 74J and 74JA, as in force immediately before the commencement of Schedule 1.25 to the *Statute Law (Miscellaneous Provisions) Act (No 2) 2002*, continue to apply to and in respect of applications made under those sections before that commencement as if that Act had not been enacted.

Explanatory note

Section 74F (5) of the *Real Property Act 1900 (the Act)* sets out the requirements for a caveat lodged under section 74F. Section 74F (5) (b) (viii) provides that the caveat must specify an address in New South Wales at which notices may be served on the caveator. Frequently, solicitors who are members of a document exchange (**DX**) specify their DX number as the address. However, persons who are not members of the DX cannot use the DX to serve a notice. Item [1] of the proposed amendments ensures that, if a DX number is specified as the address, an alternative, non-DX, address must also be specified.

Items [2]–[8] of the proposed amendments give statutory force to the Registrar-General's current administrative arrangements relating to the lapsing of caveats. At present, sections 74I, 74J and 74JA of the Act provide that the caveats to which those sections relate lapse at the expiry of the period of 21 days after the date of service on the caveator of a notice warning the caveator that the caveat will lapse unless, within that period, the caveator obtains and lodges with the Registrar-General an order from the Supreme Court extending the operation of the caveat.

The proposed amendments amend those sections so as to require the person seeking the lapsing of the caveat to lodge with the Registrar-General evidence of service of the warning notice on the caveator within 4 weeks after the issue of the notice. They also provide for an extension of time for that service, and enable the Registrar-General to refuse to take any further action in relation to the lapsing of the caveat if the applicant fails to provide the evidence of service of the notice within the time allowed.

Item [9] of the proposed amendments inserts a transitional provision in the Act to ensure that applications made under sections 74I, 74J and 74JA before the amendment of those sections by this Act are dealt with in accordance with those sections as in force at the time the applications were made.

1.26 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Section 10AA

Insert after section 10:

10AA Tribunal assistance to other entities

- (1) The Tribunal may enter into arrangements with any Minister or government agency or other body or person in the public sector for the provision of assistance by the Tribunal to the Minister, agency or other body or person by means of the provision of services that are within the Tribunal's field of expertise and relevant to its functions.
- (2) However, the Tribunal is not to enter into an arrangement under this section:
 - (a) for the provision of services relating to the remuneration or allowances payable to the holder of an office specified in Schedule 1, 2, 3 or 4, or
 - (b) unless the Minister has approved of the arrangement (either generally or in a particular case).
- (3) In entering into an arrangement under this section, the Tribunal has a duty to ensure that giving effect to the arrangement will not interfere with the ability of the Tribunal to exercise its functions.

Explanatory note

The proposed amendment inserts a new section in the *Statutory and Other Offices Remuneration Act 1975* (**the Act**) so as to permit the Statutory and Other Offices Remuneration Tribunal (**the Tribunal**) to provide assistance to Ministers, government agencies and other bodies and persons (in the public sector only) in the form of services that are within the Tribunal's field of expertise and relevant to its functions. However, that assistance will not extend to matters relating to remuneration or allowances determined by the Tribunal under the Act.

The proposed new section is similar to a provision of the *Independent Pricing and Regulatory Tribunal Act 1992*.

1.27 Strata Schemes (Freehold Development) Act 1973 No 68

[1] Section 8 Registration of strata plans

Insert after section 8 (6) (a):

- (a1) if the certificate of title or Crown grant for the land comprising the proposed parcel does not accompany the plan (or is not produced in the office of the Registrar-General within such time as the Registrar-General considers reasonable), unless evidence is furnished to the Registrar-General's satisfaction that:
 - (i) the certificate of title or Crown grant is in his or her custody, and that he or she has authority to use the instrument in connection with the registration of the plan, or
 - (ii) the certificate of title or Crown grant has been lost, mislaid or destroyed and application has been duly made (and is being duly prosecuted) under section 111 of the *Real Property Act 1900*, or

[2] Section 11 Unit entitlements of lots in subdivisions involving common property

Omit "section 37A (5) (b)" from section 11 (b).

Insert instead "section 37A (5) (c)".

[3] Section 27 Dedication of common property

Omit "unanimous resolution" from section 27 (2).

Insert instead "special resolution".

Explanatory note

Section 15 (2) of the *Strata Schemes (Freehold Development) Act 1973 (the Act)* permits the Registrar-General to refuse to register a strata plan of subdivision or consolidation, a notice of conversion or a building alteration plan if it is not accompanied by the certificate of title for the common property (except in certain circumstances—for example, if the certificate is lost and application for a replacement has been duly made and is being prosecuted). Item [1] of the proposed amendments inserts a similar power in relation to the registration of an initial strata plan and the certificate of title (or Crown grant) for the land to which the proposed strata plan relates. Item [2] of the proposed amendments corrects a cross-reference.

The *Conveyancing Legislation Amendment (e-plan) Act 2002* repealed and re-enacted (among other things) section 27 (2) of the Act. That subsection requires the common property in a strata scheme that is to be dedicated as public road, public reserve or drainage reserve to be identified on a plan and relate to a statement of intention to so dedicate that is acknowledged by endorsement of the seal of the owners corporation "pursuant to a unanimous resolution". However, an earlier amendment (made by the *Strata Schemes Legislation Amendment Act 2001*) had altered section 27 (2), as then in force, so as to require only a special resolution (that is, a resolution passed at a duly convened general meeting of the owners corporation and against which not more than one-quarter in value (ascertained as provided by the Act) of votes is cast), rather than a unanimous resolution. Item [3] of the proposed amendments gives effect to the earlier amendment.

1.28 Strata Schemes (Leasehold Development) Act 1986 No 219

[1] Section 7 Registration of strata plans

Insert after section 7 (2E) (b):

- (b1) if the certificate of title or Crown grant for the land comprising the proposed parcel does not accompany the plan (or is not produced in the office of the Registrar-General within such time as the Registrar-General considers reasonable), unless evidence is furnished to the Registrar-General's satisfaction that:
 - (i) the certificate of title or Crown grant is in his or her custody, and that he or she has authority to use the instrument in connection with the registration of the plan, or
 - (ii) the certificate of title or Crown grant has been lost, mislaid or destroyed and application has been duly made (and is being duly prosecuted) under section 111 of the *Real Property Act 1900*, or

[2] Section 14 Unit entitlements of lots in subdivisions involving common property

Omit "section 66A (5) (b)" from section 14 (b).

Insert instead "section 66A (5) (c)".

[3] Section 31 Dedication of common property

Omit "unanimous resolution" from section 31 (2).

Insert instead "special resolution".

[4] Section 35 Powers of lessor where no current lease

Omit “prescribed authority” from section 35 (2).

Insert instead “proprietor”.

Explanatory note

Section 18 (2) of the *Strata Schemes (Leasehold Development) Act 1986 (the Act)* permits the Registrar-General to refuse to register a strata plan of subdivision or consolidation, a notice of conversion or a building alteration plan if it is not accompanied by the certificate of title for the common property (except in certain circumstances—for example, if the certificate is lost and application for a replacement has been duly made and is being prosecuted). Item [1] of the proposed amendments inserts a similar power in relation to the registration of an initial strata plan and the certificate of title (or Crown grant) for the land to which the proposed strata plan relates. Item [2] of the proposed amendments corrects a cross-reference.

The *Conveyancing Legislation Amendment (e-plan) Act 2002* repealed and re-enacted (among other things) section 31 (2) of the Act. That subsection requires the common property in a strata scheme that is to be dedicated as public road, public reserve or drainage reserve to be identified on a plan and relate to a statement of intention to so dedicate that is acknowledged by endorsement of the seal of the owners corporation “pursuant to a unanimous resolution”. However, an earlier amendment (made by the *Strata Schemes Legislation Amendment Act 2001*) had altered section 31 (2), as then in force, so as to require only a special resolution (that is, a resolution passed at a duly convened general meeting of the owners corporation and against which not more than one-quarter in value (ascertained as provided by the Act) of votes is cast), rather than a unanimous resolution. Item [3] of the proposed amendments gives effect to the earlier amendment.

Originally, the leasehold strata scheme established by the Act could be utilised only by a **prescribed authority** (the Crown or a public authority, including a local council). When the Act was later amended to allow privately owned land to be the subject of such a scheme, the expression “prescribed authority” was replaced by the expression “proprietor”. However, one such expression was missed. Item [4] of the proposed amendments makes the necessary correction.

1.29 Strata Schemes Management Act 1996 No 138

Section 112 Agreement for payment to owner of consideration on transfer or lease of common property

Omit “unanimous resolution”. Insert instead “special resolution”.

Explanatory note

On 1 June 2001, the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986* were amended to allow common property to be dealt with by special resolution rather than unanimous resolution.

The proposed amendment makes a consequential amendment to a provision that is concerned solely with common property.

1.30 Unlawful Gambling Act 1998 No 113

Section 6 Definition of “prohibited gaming device”

Insert after section 6 (3):

- (4) A device that would otherwise be a prohibited gaming device is not a prohibited gaming device if:
- (a) it is kept in a State-owned museum or similar public institution, and
 - (b) it is not used for the purposes of gambling, and
 - (c) it is used only for educational or cultural purposes.

Explanatory note

Section 15 of the *Unlawful Gambling Act 1998 (the Act)* creates the offence of possessing, or permitting the use or operation of a **prohibited gaming device**, which is defined in section 6 of the Act.

The proposed amendment amends section 6 so as to allow State-owned museums and similar public institutions to hold, display, and demonstrate the operation of, such gaming devices.

1.31 Wentworth Irrigation Act 1890 No 7

Section 4 Definitions

Omit the definitions of *Domestic use*, *Regulations* and *Stock*.

Explanatory note

The proposed amendment omits definitions of terms (**domestic use** and **stock**) that are no longer used in the *Wentworth Irrigation Act 1890*. It also omits the definition of a term (**regulations**) that is dealt with in section 20 of the *Interpretation Act 1987*.

Schedule 2 Amendments by way of statute law revision

(Section 3)

2.1 Burwood Planning Scheme Ordinance

Clause 78DA Development of land at Webb Street, Croydon

Omit “(within the meaning of the *Unhealthy Building Land Act 1990*)” from clause 78DA (6).

Commencement

The amendment to the *Burwood Planning Scheme Ordinance* commences on the commencement of section 4 (2).

Explanatory note

The proposed amendment is consequential on the proposed repeal of the *Unhealthy Building Land Act 1990* by section 4 (2).

2.2 Conveyancing (Sale of Land) Regulation 2000

Schedule 3 Prescribed warranties

Omit item 7 from Part 3.

Commencement

The amendment to the *Conveyancing (Sale of Land) Regulation 2000* commences on the commencement of section 4 (2).

Explanatory note

The proposed amendment is consequential on the proposed repeal of the *Unhealthy Building Land Act 1990* by section 4 (2).

2.3 Crimes (Administration of Sentences) Act 1999 No 93

Section 198 Matters to be considered in relation to certain advisory functions

Omit “served” where secondly occurring from section 198 (3) (e).

Insert instead “serve”.

Explanatory note

The proposed amendment corrects incorrect grammar.

2.4 Environmental Planning and Assessment Act 1979 No 203

Section 118 Appointment of environmental planning administrator

Omit “section 94A” from section 118 (1). Insert instead “section 94E”.

Explanatory note

The proposed amendment corrects a cross-reference.

2.5 Firearms (General) Amendment (Temporary Amnesty for pre-1900 Firearms) Regulation 2002

Clause 3

Omit the clause. Insert instead:

3 Amendment of Firearms (General) Regulation 1997

The *Firearms (General) Regulation 1997* is amended as set out in Schedule 1.

Commencement

The amendment to the *Firearms (General) Amendment (Temporary Amnesty for pre-1900 Firearms) Regulation 2002* is taken to have commenced on 1 July 2002.

Explanatory note

The proposed amendment corrects the incorrect citations of a statutory instrument.

2.6 Gaming Machines Act 2001 No 127

Section 47A Prohibition on accepting transfer of prize winning cheques

Omit “limited” from section 47A (2). Insert instead “limiting”.

Explanatory note

The proposed amendment corrects a typographical error.

2.7 Gas Supply (Network Safety Management) Regulation 2002

[1] Clause 3 Definitions

Insert “(1)” before “In this Regulation”.

[2] Clause 3 (1) (as gazetted)

Renumber the subclause as subclause (2).

Explanatory note

The proposed amendments number an unnumbered subclause and make a consequential amendment to the numbering of another subclause.

2.8 Health Records and Information Privacy Act 2002 No 71

Schedule 3 Amendment of Privacy and Personal Information Protection Act 1998

Omit “1998” from the Note to section 45 (2A) in Schedule 3 [18].

Insert instead “2002”.

Explanatory note

The proposed amendment corrects an incorrect citation of an Act.

2.9 Landlord and Tenant (Amendment) Act 1948 No 25

Sections 30 and 32

Omit “Controller’s” wherever occurring.

Insert instead “Director-General’s”.

Explanatory note

The proposed amendment updates terminology.

2.10 Leeton Local Environmental Plan No 35

Schedule 1 Definitions

Omit the definition of *unhealthy building land*.

Explanatory note

The proposed amendment omits the definition of a term (defined by reference to an Act that is to be repealed by section 4 (2)) that is not used in the local environmental plan.

2.11 Marine Pollution Act 1987 No 299

Section 25 Interpretation

Insert “, or” after “pipeline” in paragraph (e) (ii) of the definition of *appropriate person* in section 25 (1).

Explanatory note

The proposed amendment inserts missing punctuation and a missing conjunction.

2.12 National Parks and Wildlife Amendment Act 2001 No 130

[1] Schedule 1 Amendment of National Parks and Wildlife Act 1974 relating to classification and management of land

Omit “138 (1) (b) (ix)” from the heading to Schedule 1 [73].

Insert instead “138 (1) (b) (xi)”.

[2] Schedule 1 [80]

Omit “Sections 33 (4) (b)” from the item heading.

Insert instead “Sections 33 (4) (a)”.

Explanatory note

The proposed amendments correct incorporating directions.

2.13 Police Service Amendment (NSW Police) Act 2002 No 51

Schedule 1 Amendment of Police Service Act 1990

Insert “or where occurring in the name of an Act” after “this Schedule” in Schedule 1 [2].

Explanatory note

The proposed amendment corrects an incorporating direction.

2.14 Protection of the Environment Administration Act 1991 No 60

Section 3 Definitions

Omit “*Unhealthy Building Land Act 1990*,” from the list of Acts in the definition of *environment protection legislation*.

Commencement

The amendment to the *Protection of the Environment Administration Act 1991* commences on the commencement of section 4 (2).

Explanatory note

The proposed amendment omits a reference to an Act that is to be repealed by section 4 (2).

2.15 Public Sector Employment and Management Act 2002 No 43

Section 28 Period of employment

Omit “temporary” where secondly occurring from section 28 (2).

Explanatory note

The proposed amendment omits a superfluous word.

2.16 Public Sector Employment and Management (General) Regulation 1996

[1] Clause 3 Definitions

Insert “a” before “member of staff” in the definition of *temporary work location* in clause 3 (1).

[2] Clause 3 (1), definition of “temporary work location”

Omit “public servant”. Insert instead “member of staff”.

Explanatory note

Item [1] of the proposed amendments inserts a missing word.

Item [2] of the proposed amendments updates obsolete terminology.

2.17 Radiation Control Act 1990 No 13

Schedule 2 Savings and transitional provisions

Renumber Part 3 (where secondly occurring) as Part 4.

Explanatory note

The proposed amendment corrects duplicated numbering of Parts.

2.18 Radiation Control Regulation 1993

Clause 6 Safe dose limits to be taken into account by Authority

Omit “a a decision”. Insert instead “a decision”.

Explanatory note

The proposed amendment omits a superfluous word.

2.19 Rail Safety Regulation 1999

Schedule 1 Penalty notice offences

Omit “(Offences)” from the heading to Part 2.

Explanatory note

The proposed amendment corrects an incorrect citation of a Regulation.

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

Section 9 Variations in charges

Insert “in” after “specified” wherever occurring in section 9 (1), (3) and (4).

Explanatory note

The proposed amendment inserts missing words.

2.21 Rural Fires Act 1997 No 65

Sections 86 (Notice and certain authorities required before certain fires lit) and 89 (Issue of permits)

Omit “*Environmental Planning Assessment Act 1979*” wherever occurring from sections 86 (1A) (b) and 89 (2) (b).

Insert instead “*Environmental Planning and Assessment Act 1979*”.

Explanatory note

The proposed amendment corrects incorrect citations of an Act.

2.22 Statute Law (Miscellaneous Provisions) Act 2002 No 53

Schedule 2 Amendments by way of statute law revision

Omit “170 (1)” from Schedule 2.16 [1] wherever occurring.

Insert instead “170A (1)”.

Explanatory note

The proposed amendment corrects an incorporating direction.

2.23 Sutherland Local Environmental Plan—Menai Town Centre 1992

Clause 33 What is complying development?

Omit “1997” from clause 33 (3) (i). Insert instead “1977”.

Explanatory note

The proposed amendment corrects an incorrect citation of an Act.

2.24 Sydney Regional Environmental Plan No 17—Kurnell Peninsula (1989)

Clause 36 What is complying development?

Omit “1997” from clause 36 (3) (p). Insert instead “1977”.

Explanatory note

The proposed amendment corrects an incorrect citation of an Act.

2.25 Western Lands Act 1901 No 70

Section 20 Annual rent (as inserted by the Western Lands Amendment Act 2002)

Omit “*Annual rent = Base rent + Cultivation charge + Intensive agriculture charge Rehabilitation rebate*” from section 20 (1).

Insert instead “*Annual rent = Base rent + Cultivation charge + Intensive agriculture charge - Rehabilitation rebate*”.

Commencement

The amendment to the *Western Lands Act 1901* commences (or is taken to have commenced) on the commencement of Schedule 2 [2] to the *Western Lands Amendment Act 2002*.

Explanatory note

The proposed amendment inserts a minus sign that was in the Bill for the *Western Lands Amendment Act 2002* as introduced into Parliament and passed by both Houses but which was inadvertently omitted from the Act that was presented to the Governor for assent and assented to.

2.26 Young Offenders Act 1997 No 54

Section 4 Definitions

Omit “access” from the definition of *on-line service*.

Insert instead “accessed”.

Explanatory note

The proposed amendment corrects incorrect grammar.

Schedule 3 Repeals

(Section 4)

Name of Act or statutory rule	Extent of repeal
<i>Loan Fund Companies Act 1976</i> No 94	Sections 9, 10, 11 and 28 ⁴
<i>Meat Industry Act 1978</i> No 54	Section 46 ³
<i>Hire-Purchase (Repeal) Act 1981</i> No 127	Whole Act ³
<i>Children (Equality of Status) Amendment Act 1984</i> No 6	Whole Act ²
<i>Optical Dispensers (Amendment) Act 1987</i> No 276	Schedule 1 (1), (2), (4) and (10) ⁴ Schedule 2 ³
<i>Public Authorities Superannuation (Government Initiatives Transfer) (Savings and Transitional) Regulation 1987</i>	Whole Regulation ³
<i>Public Authorities Superannuation (Cootamundra Shire Council Gas Employees) (Savings and Transitional) Regulation 1988</i>	Whole Regulation ³
<i>Catchment Management Act 1989</i> No 235	The reference to the Upper Parramatta River Catchment Management Trust in Part 2 of Schedule 1 ⁴
<i>Superannuation (Government Insurance Office Employees) (Savings and Transitional) Regulation 1990</i>	Whole Regulation ³
<i>State Authorities Superannuation (Australian Securities Commission Employees) Savings and Transitional Regulation 1991</i>	Whole Regulation ³
<i>State Authorities Superannuation (NSW Health Department Computer and Information Systems Branch Employees Transfer) Transitional Regulation 1991</i>	Whole Regulation ³
<i>Superannuation (Australian Securities Commission Employees) Savings and Transitional Regulation 1991</i>	Whole Regulation ³
<i>Superannuation (NSW Health Department Computer and Information Systems Branch Employees Transfer) Transitional Regulation 1991</i>	Whole Regulation ³

Name of Act or statutory rule	Extent of repeal
<i>Medical Practice Act 1992 No 94</i>	Section 6 ⁴
<i>State Authorities Superannuation (First State Computing Employees) Transitional Regulation 1992</i>	Whole Regulation ³
<i>State Authorities Superannuation (Government Insurance Office Employees) Transitional Regulation 1992</i>	Whole Regulation ³
<i>State Authorities Superannuation (GrainCorp Employees) Transitional Regulation 1992</i>	Whole Regulation ³
<i>State Authorities Superannuation (Sydney Ports Pilotage Service Employees) Transitional Regulation 1992</i>	Whole Regulation ³
<i>Superannuation (First State Computing Employees) Transitional Regulation 1992</i>	Whole Regulation ³
<i>Superannuation (GrainCorp Employees) Transitional Regulation 1992</i>	Whole Regulation ³
<i>Superannuation (Sydney Ports Pilotage Service Employees) Transitional Regulation 1992</i>	Whole Regulation ³
<i>State Authorities Superannuation (ABRI Employees) Transitional Regulation 1993</i>	Whole Regulation ³
<i>State Authorities Superannuation (FINCOM Employees) Transitional Regulation 1993</i>	Whole Regulation ³
<i>State Authorities Superannuation (Joint Coal Board—Coal Industry Tribunal Employees) Transitional Regulation 1993</i>	Whole Regulation ³
<i>State Authorities Superannuation (Lismore City Council) Transitional Regulation 1993</i>	Whole Regulation ³
<i>Superannuation (FINCOM Employees) Transitional Regulation 1993</i>	Whole Regulation ³
<i>Superannuation (Joint Coal Board—Coal Industry Tribunal Employees) Transitional Regulation 1993</i>	Whole Regulation ³
<i>State Authorities Superannuation (Centre for Bone and Joint Diseases Employees' Superannuation) Regulation 1994</i>	Whole Regulation ³
<i>State Authorities Superannuation (FRC—NRC Transfer) Regulation 1994</i>	Whole Regulation ³

Statute Law (Miscellaneous Provisions) Bill (No 2) 2002

Schedule 3 Repeals

Name of Act or statutory rule	Extent of repeal
<i>State Authorities Superannuation (Government Cleaning Service Employees Transfer) Regulation 1994</i>	Whole Regulation ³
<i>State Authorities Superannuation (SRA—Goninan Transfer) Regulation 1994</i>	Whole Regulation ³
<i>Superannuation (Government Cleaning Service Employees Transfer) Regulation 1994</i>	Whole Regulation ³
<i>State Authorities Superannuation (Department of Agriculture Employees) Transitional Regulation 1995</i>	Whole Regulation ³
<i>Superannuation (Department of Agriculture Employees) Transitional Regulation 1995</i>	Whole Regulation ³
<i>State Authorities Superannuation (Eastern Creek Raceway Employees) Transitional Regulation 1996</i>	Whole Regulation ³
<i>State Authorities Superannuation (Integral Energy Australia) Transitional Regulation 1996</i>	Whole Regulation ³
<i>Superannuation (Eastern Creek Raceway Employees) Transitional Regulation 1996</i>	Whole Regulation ³
<i>Superannuation (Integral Energy Australia) Transitional Regulation 1996</i>	Whole Regulation ³
<i>Liquor and Registered Clubs Legislation Amendment Act 1997 No 155</i>	Whole Act ⁶
<i>State Authorities Superannuation (Dairy Corporation Employees) Transitional Regulation 1997</i>	Whole Regulation ³
<i>Superannuation (Dairy Corporation Employees) Transitional Regulation 1997</i>	Whole Regulation ³
<i>Parliamentary Contributory Superannuation Legislation Amendment Act 1998 No 13</i>	Whole Act ²
<i>Rural Lands Protection Act 1998 No 143</i>	Clause 11 of Schedule 7 ⁴
<i>Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999</i>	Division 4 of Part 5 (clauses 123B–123H) ³
<i>State Authorities Superannuation (APRA Employees) Transitional Regulation 1999</i>	Whole Regulation ³

Name of Act or statutory rule	Extent of repeal
<i>Superannuation (APRA Employees) Transitional Regulation 1999</i>	Whole Regulation ³
<i>Tow Truck Industry Amendment Act 1999 No 61</i>	Whole Act ²
<i>Medical Practice Amendment Act 2000 No 64</i>	Whole Act ²
<i>Unlawful Gambling Amendment (Betting) Act 2000 No 66</i>	Whole Act ²
<i>Road Transport (Heavy Vehicles Registration Charges) Amendment Act 2000 No 68</i>	Whole Act ²
<i>Plant Diseases Amendment Act 2000 No 70</i>	Whole Act ²
<i>Administrative Decisions Tribunal Legislation Amendment (Revenue) Act 2000 No 72</i>	Whole Act ²
<i>Legal Profession Amendment (Incorporated Legal Practices) Act 2000 No 73</i>	Whole Act ²
<i>Rural Assistance Amendment Act 2000 No 79</i>	Whole Act ²
<i>Protection of the Environment Operations Amendment (Balloons) Act 2000 No 82</i>	Whole Act ²
<i>Crimes at Sea Amendment Act 2000 No 83</i>	Whole Act ²
<i>General Government Debt Elimination Amendment Act 2000 No 84</i>	Whole Act ²
<i>Passenger Transport Amendment Act 2000 No 85</i>	Whole Act ²
<i>Electricity Legislation Amendment (TransGrid) Act 2000 No 88</i>	Whole Act ²
<i>Mining and Petroleum Legislation Amendment Act 2000 No 90</i>	Whole Act ²
<i>Protection of the Environment Operations Amendment (Tradeable Emission Schemes) Act 2000 No 91</i>	Whole Act ²
<i>Banana Industry Amendment Act 2000 No 94</i>	Whole Act ²
<i>Horticultural Legislation Amendment Act 2000 No 96</i>	Whole Act ²
<i>Legal Aid Commission Amendment Act 2000 No 98</i>	Whole Act ²

Statute Law (Miscellaneous Provisions) Bill (No 2) 2002

Schedule 3 Repeals

Name of Act or statutory rule	Extent of repeal
<i>Police Service Amendment (Selection and Appointment) Act 2000 No 99</i>	Whole Act ²
<i>Superannuation Legislation Amendment Act 2000 No 100</i>	Whole Act ²
<i>University of Western Sydney Amendment Act 2000 No 101</i>	Whole Act ²
<i>Rural Fires Amendment Act 2000 No 104</i>	Whole Act ²
<i>State Revenue Legislation Further Amendment Act 2000 No 105</i>	Whole Act ²
<i>Valuation of Land Amendment Act 2000 No 106</i>	Whole Act ²
<i>Crimes Legislation Further Amendment Act 2000 No 107</i>	Whole Act ²
<i>Racing and Totalizator Legislation Amendment Act 2000 No 108</i>	Whole Act ²
<i>Crimes (Administration of Sentences) Amendment Act 2000 No 110</i>	Whole Act ²
<i>Law Reform (Miscellaneous Provisions) Amendment Act 2000 No 111</i>	Whole Act ²
<i>Marine Parks Amendment Act 2000 No 113</i>	Whole Act ²
<i>State Authorities Superannuation (Rail Fleet Services Limited Employees) Transitional Regulation 2000</i>	Whole Regulation ³
<i>Superannuation Legislation Amendment (Same Sex Partners) Act 2000 No 114</i>	Whole Act ²
<i>Superannuation (Rail Fleet Services Limited Employees) Transitional Regulation 2000</i>	Whole Regulation ³
<i>Appropriation (Budget Variations) Act 2001 No 2</i>	Whole Act ³
<i>Appropriation Act 2001 No 36</i>	Whole Act ³
<i>Appropriation (Parliament) Act 2001 No 37</i>	Whole Act ³
<i>Appropriation (Special Offices) Act 2001 No 38</i>	Whole Act ³
<i>Home Building Legislation Amendment Act 2001 No 51</i>	Section 4 ⁴
<i>Criminal Legislation Amendment Act 2001 No 117</i>	Schedule 11 ⁵

Name of Act or statutory rule	Extent of repeal
<i>Fisheries Management (General) Amendment (Fees) Regulation 2002</i> (as published in Gazette No 106 on 28 June 2002 at pages 4719–4726)	Whole Regulation ³

Key

- 1 indicates repeal of an Act that was assented to in 2001 or earlier and that contains only amendments or amendments and repeals
- 2 indicates repeal of an Act that was assented to in 2001 or earlier and that contains only amendments and spent provisions (or other provisions that do not need to be preserved)
- 3 indicates repeal of an Act, statutory rule or provision that is spent or no longer of practical utility
- 4 indicates repeal of an Act or provision that is uncommenced but is not to be commenced because it is no longer of practical utility
- 5 indicates repeal of an uncommenced Act (or provision) that cannot be commenced
- 6 indicates repeal of an Act (or part of an Act) containing, among other things, uncommenced provisions that cannot be commenced or are not to be commenced because they are no longer of practical utility

Explanatory note

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

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

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

Schedule 4 General savings, transitional and other provisions

(Section 5)

1 Effect of amendment of amending provisions

- (1) An amendment made by Schedule 1 or 2 to an amending provision contained in an Act is, if the amending provision has commenced before the date of assent to this Act, taken to have effect as from the commencement of the amending provision.

- (2) In this clause:

amending provision means a provision of an Act that makes a direct amendment to an Act by:

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

whether the provision was enacted before or after the commencement of the *Reprints Act 1972*.

Explanatory note

This clause ensures that certain amendments, including amendments correcting errors in the 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 commence on the date the amendments to which they relate commenced.

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

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

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

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

Explanatory note

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

3 Application of Interpretation Act 1987 to amendments to statutory rules

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

Explanatory note

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

4 Effect of amendment on regulations

Except where expressly provided to the contrary, any regulation 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 regulation made under an Act amended by the proposed Act, and in force immediately before the commencement of the amendment, will be taken to have been made under the amended Act.

5 Effect of amendment on environmental planning instruments

The amendment of an environmental planning instrument by this Act does not prevent its later amendment or repeal by another environmental planning instrument.

Explanatory note

This clause ensures that the amendment of a local environmental plan or other environmental planning instrument does not prevent its amendment or repeal by an environmental planning instrument.

6 Regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Explanatory note

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

Notes

Index of Acts and instruments amended by Schedules 1 and 2

- Adoption Act 2000* No 75—Schedule 1
- Burwood Planning Scheme Ordinance*—Schedule 2
- Casino Control Act 1992* No 15—Schedule 1
- Children and Young Persons (Care and Protection) Act 1998* No 157—Schedule 1
- Community Services (Complaints, Reviews and Monitoring) Act 1993* No 2—Schedule 1
- Conveyancing (Sale of Land) Regulation 2000*—Schedule 2
- Crimes (Administration of Sentences) Act 1999* No 93—Schedule 2
- Crown Lands Act 1989* No 6—Schedule 1
- Crown Lands (Continued Tenures) Act 1989* No 7—Schedule 1
- Education (Ancillary Staff) Act 1987* No 240—Schedule 1
- Education (Ancillary Staff) Regulation 1998*—Schedule 1
- Environmental Planning and Assessment Act 1979* No 203—Schedule 2
- Firearms (General) Amendment (Temporary Amnesty for pre-1900 Firearms) Regulation 2002*—Schedule 2
- Fisheries Management Act 1994* No 38—Schedule 1
- Gaming Machines Act 2001* No 127—Schedule 2
- Gas Supply Act 1996* No 38—Schedule 1
- Gas Supply (Natural Gas Retail Competition) Regulation 2001*—Schedule 1
- Gas Supply (Network Safety Management) Regulation 2000*—Schedule 2
- Hay Irrigation Act 1902* No 57—Schedule 1
- Health Records and Information Privacy Act 2002* No 71—Schedule 2
- Landlord and Tenant (Amendment) Act 1948* No 25—Schedule 2
- Leeton Local Environmental Plan No 35*—Schedule 2
- Licensing and Registration (Uniform Procedures) Act 2002* No 28—Schedule 1
- Local Government Act 1993* No 30—Schedule 1

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Marine Pollution Act 1987 No 299—Schedule 2
Marine Safety Act 1998 No 121—Schedule 1
National Parks and Wildlife Act 1974 No 80—Schedule 1
National Parks and Wildlife Amendment Act 2001 No 130—Schedule 2
Occupational Health and Safety Act 2000 No 40—Schedule 1
Ombudsman Act 1974 No 68—Schedule 1
Passenger Transport Act 1990 No 39—Schedule 1
Police Service Amendment (NSW Police) Act 2002 No 51—Schedule 2
Ports Corporatisation and Waterways Management Act 1995 No 13—Schedule 1
Property, Stock and Business Agents Act 2002 No 66—Schedule 1
Protected Disclosures Act 1994 No 92—Schedule 1
Protection of the Environment Administration Act 1991 No 60—Schedule 2
Protection of the Environment Operations Act 1997 No 156—Schedule 1
Public Sector Employment and Management Act 2002 No 43—Schedule 2
Public Sector Employment and Management (General) Regulation 1996—Schedule 2
Public Trustee Act 1913 No 19—Schedule 1
Radiation Control Act 1990 No 13—Schedule 2
Radiation Control Regulation 1993—Schedule 2
Rail Safety Regulation 1999—Schedule 2
Real Property Act 1900 No 25—Schedule 1
Road Transport (Heavy Vehicles Registration Charges) Act 1995 No 72—Schedule 2
Rural Fires Act 1997 No 65—Schedule 2
Statute Law (Miscellaneous Provisions) Act 2002 No 53—Schedule 2
Statutory and Other Offices Remuneration Act 1975 (1976 No 4)—Schedule 1
Strata Schemes (Freehold Development) Act 1973 No 68—Schedule 1
Strata Schemes (Leasehold Development) Act 1986 No 219—Schedule 1
Strata Schemes Management Act 1996 No 138—Schedule 1

Sutherland Local Environmental Plan—Menai Town Centre 1992—Schedule 2
Sydney Regional Environmental Plan No 17—Kurnell Peninsula (1989)—Schedule 2

Unlawful Gambling Act 1998 No 113—Schedule 1

Wentworth Irrigation Act 1890 No 7—Schedule 1

Western Lands Act 1901 No 70—Schedule 2

Young Offenders Act 1997 No 54—Schedule 2

Index of Acts and statutory rules wholly repealed by Schedule 3

Administrative Decisions Tribunal Legislation Amendment (Revenue) Act 2000 No 72

Appropriation Act 2001 No 36

Appropriation (Budget Variations) Act 2001 No 2

Appropriation (Parliament) Act 2001 No 37

Appropriation (Special Offices) Act 2001 No 38

Banana Industry Amendment Act 2000 No 94

Children (Equality of Status) Amendment Act 1984 No 6

Crimes (Administration of Sentences) Amendment Act 2000 No 110

Crimes at Sea Amendment Act 2000 No 83

Crimes Legislation Further Amendment Act 2000 No 107

Electricity Legislation Amendment (TransGrid) Act 2000 No 88

Fisheries Management (General) Amendment (Fees) Regulation 2002 (as published in Gazette No 106 on 28 June 2002 at pages 4719–4726)

General Government Debt Elimination Amendment Act 2000 No 84

Hire-Purchase (Repeal) Act 1981 No 127

Horticultural Legislation Amendment Act 2000 No 96

Law Reform (Miscellaneous Provisions) Amendment Act 2000 No 111

Legal Aid Commission Amendment Act 2000 No 98

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Plant Diseases Amendment Act 2000 No 70

Police Service Amendment (Selection and Appointment) Act 2000 No 99

Protection of the Environment Operations Amendment (Balloons) Act 2000 No 82

Protection of the Environment Operations Amendment (Tradeable Emission Schemes) Act 2000 No 91

Public Authorities Superannuation (Cootamundra Shire Council Gas Employees) (Savings and Transitional) Regulation 1988

Public Authorities Superannuation (Government Initiatives Transfer) (Savings and Transitional) Regulation 1987

Racing and Totalizator Legislation Amendment Act 2000 No 108

Road Transport (Heavy Vehicles Registration Charges) Amendment Act 2000 No 68

Rural Assistance Amendment Act 2000 No 79

Rural Fires Amendment Act 2000 No 104

State Authorities Superannuation (ABRI Employees) Transitional Regulation 1993

State Authorities Superannuation (APRA Employees) Transitional Regulation 1999

State Authorities Superannuation (Australian Securities Commission Employees) Savings and Transitional Regulation 1991

State Authorities Superannuation (Centre for Bone and Joint Diseases Employees' Superannuation) Regulation 1994

State Authorities Superannuation (Dairy Corporation Employees) Transitional Regulation 1997

State Authorities Superannuation (Department of Agriculture Employees) Transitional Regulation 1995

State Authorities Superannuation (Eastern Creek Raceway Employees) Transitional Regulation 1996

State Authorities Superannuation (FINCOM Employees) Transitional Regulation 1993

State Authorities Superannuation (First State Computing Employees) Transitional Regulation 1992

State Authorities Superannuation (FRC—NRC Transfer) Regulation 1994

State Authorities Superannuation (Government Cleaning Service Employees Transfer) Regulation 1994

State Authorities Superannuation (Government Insurance Office Employees) Transitional Regulation 1992

State Authorities Superannuation (GrainCorp Employees) Transitional Regulation 1992

State Authorities Superannuation (Integral Energy Australia) Transitional Regulation 1996

State Authorities Superannuation (Joint Coal Board—Coal Industry Tribunal Employees) Transitional Regulation 1993

State Authorities Superannuation (Lismore City Council) Transitional Regulation 1993

State Authorities Superannuation (NSW Health Department Computer and Information Systems Branch Employees Transfer) Transitional Regulation 1991

State Authorities Superannuation (Rail Fleet Services Limited Employees) Transitional Regulation 2000

State Authorities Superannuation (SRA—Goninan Transfer) Regulation 1994

State Authorities Superannuation (Sydney Ports Pilotage Service Employees) Transitional Regulation 1992

State Revenue Legislation Further Amendment Act 2000 No 105

Superannuation (APRA Employees) Transitional Regulation 1999

Superannuation (Australian Securities Commission Employees) Savings and Transitional Regulation 1991

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Superannuation (Eastern Creek Raceway Employees) Transitional Regulation 1996

Superannuation (FINCOM Employees) Transitional Regulation 1993

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Superannuation (Government Cleaning Service Employees Transfer) Regulation 1994

Superannuation (Government Insurance Office Employees) (Savings and Transitional) Regulation 1990

Superannuation (GrainCorp Employees) Transitional Regulation 1992

Superannuation (Integral Energy Australia) Transitional Regulation 1996

Superannuation (Joint Coal Board—Coal Industry Tribunal Employees) Transitional Regulation 1993

Superannuation Legislation Amendment Act 2000 No 100

Superannuation Legislation Amendment (Same Sex Partners) Act 2000 No 114

Superannuation (NSW Health Department Computer and Information Systems Branch Employees Transfer) Transitional Regulation 1991

Superannuation (Rail Fleet Services Limited Employees) Transitional Regulation 2000

Superannuation (Sydney Ports Pilotage Service Employees) Transitional Regulation 1992

Tow Truck Industry Amendment Act 1999 No 61

University of Western Sydney Amendment Act 2000 No 101

Unlawful Gambling Amendment (Betting) Act 2000 No 66

Valuation of Land Amendment Act 2000 No 106