

Passed by both Houses



New South Wales

Statute Law (Miscellaneous Provisions) Bill 2003

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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, , 2003*



New South Wales

Statute Law (Miscellaneous Provisions) Bill 2003

Act No , 2003

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 2003*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by this section.
- (2) 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

The Acts and instruments specified in Schedules 1 and 2 are amended as set out in those Schedules.

4 Repeals

Each Act and statutory rule specified in Schedule 3 is, to the extent indicated in that Schedule, repealed.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 Anzac Memorial (Building) Act 1923 No 27

[1] Section 3 Trustees

Omit “The president of The Limbless Soldiers’ Association of NSW (Inc.),” from section 3 (1).

[2] Section 8 Use of memorial building

Omit “The Limbless Soldiers’ Association of NSW (Inc.),” from section 8 (3).

Explanatory note

The proposed amendments omit from the *Anzac Memorial (Building) Act 1923* references to an association that has been wound up.

1.2 Apprenticeship and Traineeship Act 2001 No 80

[1] Section 15 Duties of employers to notify Commissioner of certain matters

Omit “or trainee” from section 15 (1) (f).

[2] Section 18 Extension of probationary period

Insert at the end of the section:

- (2) As soon as practicable after an application is determined, the Commissioner must notify both the employer and the apprentice or trainee concerned of the determination.

[3] Section 20 Transfer of apprenticeships and traineeships

Insert after section 20 (6):

- (6A) As soon as practicable after an application is determined, the Commissioner must give notification of the determination to the following:
 - (a) the prospective employer,
 - (b) the apprentice or trainee concerned,
 - (c) the apprentice’s or trainee’s existing employer.

[4] Section 21 Variation of training contracts and training plans

Insert after section 21 (6):

- (6A) As soon as practicable after an application is determined, the Commissioner must give notification of the determination to the following:
- (a) the employer,
 - (b) the apprentice or trainee concerned,
 - (c) in the case of an application to vary a training plan—the relevant registered training organisation.

[5] Schedule 4 Savings, transitional and other provisions

Insert after clause 25:

Part 3 Provision consequent on enactment of Statute Law (Miscellaneous Provisions) Act 2003

26 Notification of determinations

Sections 18 (2), 20 (6A) and 21 (6A), as inserted by the *Statute Law (Miscellaneous Provisions) Act 2003*, extend to an application made, but not finally determined, under the section concerned before its amendment by that Act.

Explanatory note

Item [1] of the proposed amendments omits unnecessary words.

Items [2]–[4] of the proposed amendments require the Commissioner for Vocational Training to notify applicants and other interested parties of the outcome of the following applications made under the *Apprenticeship and Traineeship Act 2001* (**the Act**):

- (a) applications for the extension of an apprentice's or trainee's probationary period,
- (b) applications for approval to the transfer of an apprenticeship or traineeship,
- (c) applications for the variation of a training contract or a training plan under the Act.

Item [5] of the proposed amendments inserts a transitional provision.

1.3 Art Gallery of New South Wales Act 1980 No 65

[1] Schedule 1 Provisions relating to trustees and procedure of the Trust

Insert after clause 4 (4):

- (4A) For the purposes of subclause (3) only, an appointment under subclause (4) does not constitute (and is taken never to have constituted) an appointment for a term of office.

[2] Schedule 1, clause 4 (5)

Omit the subclause.

[3] Schedule 1, clause 7

Omit clause 7 (d). Insert instead:

- (d) becomes a mentally incapacitated person,

Explanatory note

“Term” of office of a trustee

Clause 4 (4) of Schedule 1 to the *Art Gallery of New South Wales Act 1980 (the Act)* allows a person to be appointed as a trustee of the Art Gallery of New South Wales Trust (*the Trust*) to replace a trustee whose office has become vacant otherwise than by expiration of the term of that trustee’s office. The new trustee holds office for the balance of his or her predecessor’s term.

Trustees are eligible for re-appointment on expiration of their terms of office. However, clause 4 (3) prevents a trustee from holding office for four consecutive terms.

Item [1] of the proposed amendments amends clause 4 so as to provide that an appointment for the balance of the term of a trustee’s predecessor (during which time the trustee holds office in place of that predecessor) is taken not to be an appointment for a term of office of the trustee concerned (but only for the purposes of calculating the trustee’s consecutive terms of office).

Similar amendments are proposed to be made, elsewhere in this Schedule, to other legislation within the Arts portfolio.

Commencement of term of office

Clause 4 (5) of Schedule 1 to the Act provides that the appointment of a trustee, other than a trustee appointed under clause 4 (4) as referred to above (that is, a trustee appointed to fill a casual vacancy), takes effect on 1 January of the year following the year in which the appointment is made. Clause 4 (5) was intended to assist an orderly turnover or re-appointment of trustees at the same time each year, and so trustees are usually appointed for a term that expires on 31 December in their final year of office.

However, if a nominee declines appointment or re-appointment late in the year and another nominee is not appointed until (say) 3 January, that appointment will not take effect until 1 January in the year following. Consequently, the Trust will be one trustee short for the best part of a year, which could give rise to various difficulties (such as forming a quorum for meetings, since the Act provides that a specified number of trustees, and not a majority of the trustees for the time being, constitutes a quorum).

To overcome such difficulties, item [2] of the proposed amendments repeals clause 4 (5). It will still be possible for the trustees' terms to expire concurrently, as a trustee's term of office is specified in the trustee's instrument of appointment.

Similar amendments are proposed to be made, elsewhere in this Schedule, to such of the other legislation within the Arts portfolio as contains a provision to the effect of clause 4 (5).

Statute law revision

Item [3] of the proposed amendments updates outdated terminology.

1.4 Australian Museum Trust Act 1975 No 95

[1] Schedule 1 Composition and procedure of the Trust

Insert after clause 3 (3):

- (3A) For the purposes of subclause (2) only, an appointment under subclause (3) does not constitute (and is taken never to have constituted) an appointment for a term of office.

[2] Schedule 1, clause 3 (4)

Omit the subclause.

[3] Schedule 1, clause 7

Omit clause 7 (d). Insert instead:

- (d) becomes a mentally incapacitated person,

Explanatory note

"Term" of office of a trustee

Item [1] of the proposed amendments makes an amendment equivalent to that proposed to be made by item [1] of the proposed amendments to the *Art Gallery of New South Wales Act 1980* elsewhere in this Schedule.

Commencement of term of office

Item [2] of the proposed amendments makes an amendment equivalent to that proposed to be made by item [2] of the proposed amendments to the *Art Gallery of New South Wales Act 1980* elsewhere in this Schedule.

Statute law revision

Item [3] of the proposed amendments updates outdated terminology.

1.5 Banana Industry Act 1987 No 66

Schedule 1 Provisions relating to the members of the Committee

Insert after clause 1 (2):

- (2A) For the purposes only of ensuring that there are at all times the requisite number of regional members on the Committee, the Minister may, at any time, by written notice given to a

regional member, extend or reduce the period of the member's term of office.

Explanatory note

Currently, there are 6 regional members of the Banana Industry Committee (*the Committee*) constituted by the *Banana Industry Act 1987 (the Act)*. Regional members are elected to the Committee and, under clause 1 of Schedule 1 to the Act, hold office (subject to the Act) for a period of 3 years commencing on the date of their election.

Elections for 2 of the 6 regional members are usually held on 29 September in each year. However, if an election is held late (for example, on 29 October), there will be a period during which the Committee will be short of 2 regional members.

The proposed amendment permits the Minister, for the purpose only of rectifying such a situation, to extend or reduce a regional member's term of office.

1.6 Children and Young Persons (Care and Protection) Act 1998 No 157**[1] Section 3 Definitions**

Omit the last sentence of the Note to the definition of *care plan*.

[2] Section 13 Aboriginal and Torres Strait Islander Child and Young Person Placement Principles

Omit "welfare" from section 13 (1) (d) (ii).

[3] Sections 208 (3), 209 (b) and 220 (o)

Omit "Minister" wherever occurring. Insert instead "Director-General".

[4] Section 220 Regulations

Omit "Minister's" from section 220 (n).

Insert instead "Director-General's".

Commencement

Items [3] and [4] of the amendments to the *Children and Young Persons (Care and Protection) Act 1998* commence (or are taken to have commenced) on the commencement of Chapter 12 of that Act.

Explanatory note

Item [1] of the proposed amendments omits from a Note in the text of the *Children and Young Persons (Care and Protection) Act 1998 (the Act)* a sentence that contains an inaccuracy and is, in any case, unnecessary.

Section 13 (1) (d) (ii) of the Act requires the Director-General of the Department of Community Services (*the Director-General*), before placing in out-of-home care an Aboriginal or Torres Strait Islander child or young person who needs to be so placed, to consult (in certain circumstances) with "such Aboriginal or Torres Strait Islander welfare organisations as are appropriate to the child or young person". Item [2] of the

proposed amendments omits the word “welfare” from that provision so as to widen the scope of Aboriginal and Torres Strait Islander organisations with which the Director-General may consult.

Chapter 12 (sections 199–220) of the Act deals with children’s services, which are required to be licensed. Applications for licences, the granting or refusal of licences, the revocation of licences and the substitution of licensees on the death of a licensee are dealt with by the Director-General (see sections 206, 207, 211 and 212 of the Act). However, some provisions of Chapter 12 (for example, section 209, which deals with conditions to which licences are subject) incorrectly refer to the Minister, rather than the Director-General. Items [3] and [4] of the proposed amendments correct those incorrect references.

1.7 Chiropractors Act 2001 No 15

[1] Section 111 Conduct of proceedings

Omit section 111 (5). Insert instead:

- (5) Schedule 5 has effect with respect to the conduct of any inquiry and the hearing of any appeal by the Tribunal.

[2] Schedule 1 Registration procedures

Omit “President” from clause 11. Insert instead “Registrar”.

Explanatory note

Clarification

Item [1] of the proposed amendments recasts a provision of the *Chiropractors Act 2001* (**the Act**) so as to clarify its meaning. Similar amendments to other legislation dealing with health professionals are proposed to be made elsewhere in this Schedule.

Eligibility inquiries

Schedule 1 to the Act deals with the procedures for registration of a person as a chiropractor. Part 3 of that Schedule permits the Chiropractors Registration Board (**the Board**) to hold an inquiry into the eligibility of an applicant for registration. Clause 11 (in Part 3) requires the President of the Board to fix a time and place for the holding of such an inquiry and to cause the applicant to be given at least 14 days’ notice in writing of the time and place for the inquiry.

Item [2] of the proposed amendments provides for the duty imposed by clause 11 to be carried out by the Registrar of the Board, rather than the President. Similar amendments to other legislation dealing with health professionals are proposed to be made elsewhere in this Schedule.

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

Section 24 Application of Ombudsman Act 1974 to complaints under this Act

Insert after section 24 (2):

- (2A) However, the *Ombudsman Act 1974* as applied by this section applies, in relation to a complaint made under this Act about the conduct of a service provider that is not a government agency (and in relation to any conduct of such a service provider), subject to any modifications prescribed by the regulations.

Explanatory note

Section 24 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (**the Monitoring Act**) applies the *Ombudsman Act 1974* to and in respect of complaints made under the Monitoring Act about the conduct of service providers (within the meaning of that Act) and to and in respect of any conduct of a service provider.

The proposed amendment permits regulations made under the Monitoring Act to modify that application of the *Ombudsman Act 1974* in relation to service providers that are not government agencies. A similar provision exists in respect of the application of certain provisions of the *Ombudsman Act 1974* in relation to the exercise of certain functions, and the conduct of certain reviews, under that Act.

1.9 Crimes (Local Courts Appeal and Review) Act 2001 No 120

[1] Section 5 Applications to Minister

Insert after section 5 (1):

- (1A) An application under this section may be made at any time after the relevant conviction or sentence is made or imposed.

[2] Section 43 Appeals requiring leave

Insert “being an offence for which proceedings have been prosecuted by or on behalf of a public authority (other than the Environment Protection Authority),” before “but only” in section 43 (1).

[3] Section 43 (1A)

Insert after section 43 (1):

- (1A) The Environment Protection Authority may appeal to the Land and Environment Court against:

- (a) an order that has been made by a Magistrate in relation to a person in any committal proceedings with respect to an environmental offence, or
- (b) an interlocutory order that has been made by a Local Court in relation to a person in summary proceedings with respect to an environmental offence,

being an offence for which proceedings have been prosecuted by or on behalf of the Environment Protection Authority, but only on a ground that involves a question of law alone, and only by leave of the Land and Environment Court.

[4] Section 48 Determination of appeals

Insert “or (1A) (a) or (b)” after “section 43 (1) (a) or (b)” in section 48 (2).

[5] Section 49 Miscellaneous powers

Insert “or (1A) (a) or (b)” after “section 43 (1) (a) or (b)” in section 49 (3).

Commencement

The amendments to the *Crimes (Local Courts Appeal and Review) Act 2001* commence, or are taken to have commenced, on the commencement of that Act.

Explanatory note

Item [1] of the proposed amendments amends section 5 of the *Crimes (Local Courts Appeal and Review) Act 2001* (**the Act**) so as to make it clear that an application for the annulment of a conviction or sentence made or imposed by a Local Court may be made to the Minister administering that Act at any time after the relevant conviction or sentence is made or imposed.

Item [3] of the proposed amendments inserts a new subsection (1A) into section 43 of the Act so as to enable the Environment Protection Authority to appeal to the Land and Environment Court against certain orders made by a Local Court with respect to an environmental offence for which proceedings have been prosecuted by the Environment Protection Authority. This power parallels a similar power that is exercisable by the Director of Public Prosecutions. Item [2] restricts the power of the Director of Public Prosecutions to environmental offences for which proceedings have been prosecuted by or on behalf of a public authority other than the Environment Protection Authority. Items [4] and [5] are consequential amendments.

1.10 Criminal Procedure Act 1986 No 209 (as amended by the Criminal Procedure Amendment (Justices and Local Courts) Act 2001)

[1] Section 16 Certain defects do not affect indictment

Omit “summary criminal proceedings” from section 16 (2).

Insert instead “criminal proceedings (including committal proceedings) in a Local Court or for any other offence that is to be dealt with summarily”.

[2] Section 20 Amendment of indictment

Omit “prosecuting authority” from section 20 (1).

Insert instead “prosecutor”.

[3] Section 91 Witness may be directed to attend

Insert after section 91 (6):

- (7) If a person attends to give oral evidence because of a direction under this section, the Magistrate must not allow the person to be cross-examined in respect of matters that were not the basis of the reasons for giving the direction, unless the Magistrate is satisfied that there are substantial reasons why, in the interests of justice, the person should be cross-examined in respect of those matters.

[4] Section 182 Written pleas

Insert after section 182 (3):

- (4) This section does not apply to an accused person who has been granted or refused bail or in relation to whom bail has been dispensed with.

[5] Section 194 Procedure if offence not admitted

Omit “pleads not guilty” from section 194 (1).

Insert instead “pleads not guilty or fails or refuses to make a plea”.

[6] Section 236 Form of arrest warrant

Omit “must be given under the seal of the person issuing it” from section 236 (3).

Insert instead “must be signed by the person issuing it and sealed with the seal of the court to which the person issuing it is attached”.

[7] Section 253 Court may order payment of costs

Omit section 253 (1) (b).

[8] Section 253 (1A)

Insert after section 253 (1):

- (1A) A court may, if the court makes an order dismissing the charge for an offence, in and by that order, order the prosecutor to pay to the accused person such costs as the court specifies or, if the order directs, as may be determined under subsection (2).

[9] Section 260 Offences to be dealt with summarily unless election made to proceed on indictment

Omit “prosecuting authority” wherever occurring.

Insert instead “prosecutor”.

[10] Section 261 Procedure for dealing with offences summarily if no election made

Omit “this Act” where secondly occurring.

[11] Section 262 Procedure for dealing with offences if election made

Omit “this Act” where secondly occurring in section 262 (1).

[12] Section 270 No time limit for offences dealt with summarily under this Chapter

Omit “Section 187”. Insert instead “Section 179”.

[13] Section 273 Jurisdiction of Magistrates in respect of offences arising under Division 2 of Part 4 of Crimes Act 1900

Omit “Chapter” where secondly occurring. Insert instead “Part”.

[14] Schedule 1 Indictable offences triable summarily

Omit “**prosecuting authority**” wherever occurring in the headings to Table 1 and Table 2.

Insert instead “**prosecutor**”.

Commencement

The amendments to the *Criminal Procedure Act 1986* commence, or are taken to have commenced, on the commencement of the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001* (Schedule 1 [17] to that Act excepted).

Explanatory note**General**

The *Criminal Procedure Amendment (Justices and Local Courts) Act 2001* (the **amending Act**) revised and re-enacted the provisions of the *Justices Act 1902* (the **former Act**) relating to criminal procedure in Local Courts. Generally, the effect of the provisions of the former Act was retained by the amending Act. The proposed amendments reinstate provisions of the former Act that were not intended to be omitted from the new provisions, clarify the effect of other amendments so as to retain the effect of the former Act, and make other amendments by way of pure statute law revision.

Former Act

Item [1] makes it clear that the provision preventing objections to indictments in summary criminal proceedings on grounds relating to defects of substance or form or other variances (being a re-enactment of sections under the former Act and the *Supreme Court (Summary Jurisdiction) Act 1967*) applies to all criminal proceedings in a Local Court and any other proceedings in which an offence is dealt with summarily. This preserves the effect of the re-enacted provisions.

Item [3] reinstates the effect of section 41 (10) of the former Act which prevented an accused person in committal proceedings who had been required to attend to give evidence at the proceedings from being cross-examined on matters that were not the basis of the reasons for the person being directed to give evidence unless the Magistrate was satisfied that there were substantial reasons why, in the interests of justice, the person should be so cross-examined.

Item [4] reinstates the effect of section 75 of the former Act. Under that provision, a defendant who was issued a summons or a court attendance notice was able to plead guilty or not guilty by lodging a notice in writing. This did not include defendants dealt with under the *Bail Act 1978* who were dealt with by information or complaint. The proposed amendment excludes from the category of persons who may lodge written pleas a person who has been refused or granted bail or in relation to whom bail has been dispensed with.

Item [5] reinstates the effect of section 78 of the former Act. Under that provision, a Magistrate was required to proceed to hear and determine proceedings for an offence as if a person had pleaded not guilty if the person did not admit the truth of an information or complaint. The proposed amendment requires a court to proceed to hear and determine a matter if the person pleads not guilty or refuses or fails to make a plea.

Item [6] replaces the requirement to give an arrest warrant under the seal of the person issuing it with a requirement that the warrant be signed by the person issuing it and sealed with the seal of a court. This is necessary because not all persons issuing warrants have a seal.

Item [8] reinstates the right of an accused person in summary criminal proceedings in the Supreme Court, the Land and Environment Court, and other courts currently covered by the *Supreme Court (Summary Jurisdiction) Act 1967* (see section 14 of that Act), to obtain an order for costs if the court makes an order dismissing the charge for an offence. In consequence, item [7] omits a paragraph incorrectly included in section 253 (1) of the *Criminal Procedure Act 1986*. (That paragraph would have permitted a court to make an order for costs against an accused person if the court makes an order dismissing the relevant charge against the person. In such a case, any cost order is properly for payment by the prosecutor to the accused, as now provided for by the amendment made by item [8].)

Statute law revision

The amending Act altered references to "prosecuting authority" to "prosecutor". For consistency, items [2], [9] and [14] make the same amendment to the remaining references to "prosecuting authority".

Items [10] and [11] omit duplicated words.

Item [12] corrects an incorrect cross-reference.

Item [13] reinstates a reference to a Part of the *Crimes Act 1900* that was inadvertently changed to a reference to a Chapter.

1.11 Dental Practice Act 2001 No 64

[1] Section 132 Conduct of proceedings

Omit section 132 (5). Insert instead:

- (5) Schedule 5 has effect with respect to the conduct of any inquiry and the hearing of any appeal by the Tribunal.

[2] Schedule 1 Registration procedures

Omit “President” from clause 11. Insert instead “Registrar”.

Explanatory note

Clarification

Item [1] of the proposed amendments recasts a provision of the *Dental Practice Act 2001* (**the Act**) so as to clarify its meaning. Similar amendments to other legislation dealing with health professionals are proposed to be made elsewhere in this Schedule.

Eligibility inquiries

Item [2] of the proposed amendments makes the same amendment in relation to the President and Registrar of the Dental Board in respect of the holding of an inquiry into the eligibility of an applicant for registration as a dentist or dental auxiliary as is proposed to be made by item [2] of the amendments to the *Chiropractors Act 2001* elsewhere in this Schedule in relation to the holding of an inquiry into eligibility for registration under that Act.

1.12 Discharged Servicemen’s Badges Act 1964 No 49

Schedule

Omit “Limbless Soldiers Association, New South Wales.”

Explanatory note

The proposed amendment removes from the *Discharged Servicemen’s Badges Act 1964* a reference to an association that has been wound up.

1.13 Environmental Planning and Assessment Act 1979 No 203

[1] Section 34 Environmental planning instruments—making, operation and inspection

Insert after section 34 (5):

- (5A) Subsection (5) does not prevent an environmental planning instrument from specifying different days for the commencement of different provisions of the instrument.

-
- (5B) Neither the whole nor any part of an environmental planning instrument is invalid merely because the instrument is published in the Gazette after the day on which one or more of its provisions is expressed to take effect. In that case, the provisions concerned take effect on and from the day the instrument is published in the Gazette, instead of on and from the earlier day.

[2] Section 72 Development control plans

Insert after section 72 (3):

- (3A) A State environmental planning policy, or a regional environmental plan, may provide that a development control plan under this section that applies to land to which the environmental planning instrument concerned applies is of no effect (whether the development control plan took or takes effect before or after the instrument) to the extent that the development control plan provides for any specified matters for which the instrument provides.

[3] Section 96 Modification of consents—generally

Omit “under this section” wherever occurring in section 96 (1A) (b) and (2) (a).

[4] Section 96 (4)

Omit section 96 (4). Insert instead:

- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

[5] Section 96 (5)

Insert “application for the” before “proposed modification” where secondly occurring.

[6] Section 96 (8)

Omit “council”. Insert instead “consent authority and not the Court”.

[7] Section 96AA Modification by consent authorities of consents granted by the Court

Omit “under this section” from section 96AA (1) (a).

[8] Section 96AA (1A), (1B), and (1C)

Insert after section 96AA (1):

- (1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.
- (1B) Development consent of the kind referred to in section 79B (3) is not to be modified unless the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent.
- (1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

[9] Section 105 Regulations—Part 4

Insert after section 105 (1) (p):

- (p1) procedural matters in relation to the review, under section 82A, of determinations,

[10] Section 124A Evidence of use of premises as backpackers’ hostel (as inserted by the Environmental Planning and Assessment Amendment (Illegal Backpacker Accommodation) Act 2002)

Renumber the section as section 124AA.

[11] Section 157 Regulations

Insert after section 157 (1) (e):

, or

- (f) procedural matters in relation to the making of local environmental plans.

[12] Schedule 6 Savings, transitional and other provisions

Omit “1 July 2003” wherever occurring in clauses 40 (4) and 41 (3).

Insert instead “1 July 2004”.

[13] Schedule 6

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Statute Law (Miscellaneous Provisions)
Act 2003**

Definition

In this Part, *the 2003 amending Act* means the *Statute Law (Miscellaneous Provisions) Act 2003*.

Modification of development consents—generally

Section 96 (8), as in force before the amendment made to that subsection by the 2003 amending Act, applies in respect of an application for a modification of a development consent made before the commencement of that amendment.

Modification by consent authorities of development consents granted by the Court

- (1) Section 96AA (1A) and (1B), as inserted by the 2003 amending Act, apply only in respect of an application for a modification of a development consent made on or after the commencement of those subsections.
- (2) Section 96AA (1C), as inserted by the 2003 amending Act, extends to a modification (of a development consent) granted before the commencement of that subsection.

Commencement

Items [1] and [11] of the amendments to the *Environmental Planning and Assessment Act 1979* are taken to have commenced on 1 September 1980.

Item [9] of the amendments to the *Environmental Planning and Assessment Act 1979* is taken to have commenced on 1 July 1998.

Item [12] of the amendments to the *Environmental Planning and Assessment Act 1979* commences, or is taken to have commenced, on the commencement of Schedule 2 [15] to the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001*.

Explanatory note

Commencement of environmental planning instruments

Section 34 (5) of the *Environmental Planning and Assessment Act 1979 (the Act)* provides that an environmental planning instrument is to be published in the Gazette and that it takes effect “on and from the date of publication or a later date specified in the instrument”.

Item [1] of the proposed amendments inserts two further subsections in section 34. Section 34 (5A) permits different provisions of an environmental planning instrument to commence on different days. Section 34 (5B) makes it clear that publication in the Gazette after the date on which an environmental planning instrument is expressed to commence does not invalidate the instrument.

The new subsections generally parallel provisions of the *Interpretation Act 1987* that apply to statutory rules.

Development control plans

Section 79C of the Act requires a consent authority, in determining an application for development consent, to take into consideration (among other things) the provisions of any development control plan (**DCP**) that applies to the land to which the application relates. While section 72 (3) of the Act requires a DCP prepared by a council to “generally conform to the provisions of” the local environmental plan (**LEP**) or the draft LEP which applies to the land to which the DCP applies, it is possible that a DCP could contain provisions that are inconsistent with the provisions of a State environmental planning policy (**SEPP**) or a regional environmental plan (**REP**).

Section 36 of the Act deals with inconsistencies between **environmental planning instruments**, which consist of LEPs, REPs and SEPPs (but not DCPs). To deal with any potential conflict between a council-prepared DCP and a SEPP or REP, item [2] of the proposed amendments inserts a provision in section 72 permitting those instruments to provide that a council-prepared DCP applying to land to which the SEPP or REP concerned applies is of no effect to the extent that it provides for specified matters for which the SEPP or REP concerned provides.

Modification of development consents

Section 96 of the Act provides for the modification of development consents by consent authorities generally, and section 96AA (which was inserted by the *Land and Environment Court Amendment Act 2002 (the LEC Act)*) provides for the modification by consent authorities of development consents granted by the Land and Environment Court (**the Court**). Sections 96 (1A) (b) and (2) (a) and 96AA (1) (a) all require that a consent authority, before modifying a development consent, be satisfied “that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section”. As a result of the insertion of section 96AA, there are now two sections of the Act under which consent authorities may modify development consents.

Item [3] of the proposed amendments omits the words “under this section” from section 96 (1A) (b) and (2) (a), and item [7] omits those words from section 96AA (1) (a).

The provisions of section 96AA generally parallel those of section 96, but there is currently no equivalent in section 96AA of section 96 (3), (4) or (5).

For consistency in the provisions governing consent authorities’ modifications of development consents, item [8] of the proposed amendments inserts the equivalent of section 96 (3)–(5) in section 96AA.

Items [4] and [5] of the proposed amendments make minor changes to the wording of section 96 (4) and (5) by way of statute law revision.

The LEC Act also enacted section 96 (8), which extends the provisions of section 96 (subject to the regulations) so as to enable the Court to modify development consents

granted by it. Section 96 (8) also provides that, in the extension of the other provisions of section 96, certain functions imposed on a consent authority are to be exercised, not by the Court, but by "the relevant council".

Item [6] of the proposed amendments amends section 96 (8) so as to provide that, in the extension of the other provisions of section 96, certain functions imposed on a consent authority are to be exercised, not by the Court, but by the relevant consent authority (which may or may not be the council).

Regulation-making powers

Section 157 of the Act contains the standard general power to make regulations "for or with respect to any matter.....that is necessary or convenient to be prescribed for carrying out or giving effect to this Act". Section 157 also specifies certain particular matters "for or with respect to" which regulations may be made, as do various other sections of the Act, including section 105.

Items [9] and [11] of the proposed amendments add to the particulars in sections 105 and 157, respectively, to remove any doubt that the general regulation-making power extends to the matters so particularised.

Savings and transitional provisions

The use of buildings and temporary structures as places of public entertainment and the installation of temporary structures on land are both matters that require approvals under the *Local Government Act 1993* and are subject to conditions imposed on such approvals by regulations made under that Act. The *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001* removes the requirement for those approvals and, instead, permits the matters to be regulated under the *Environmental Planning and Assessment Act 1979*. Transitional provisions preserve the conditions of existing approvals until 1 July 2003 (subject to the regulations under the latter Act).

As the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001* (or certain provisions of that Act) may not commence until after 1 July 2003, item [12] of the proposed amendments extends the operation of the transitional provisions until 1 July 2004.

Item [13] of the proposed amendments inserts savings and transitional provisions consequent on certain of the amendments referred to above.

Statute law revision

Item [10] of the proposed amendments corrects duplicated numbering.

1.14 Film and Television Office Act 1988 No 18

Schedule 2 Provisions relating to constitution and procedure of Board

Insert after clause 2 (2):

- (3) For the purposes of subclause (2) only, if:
 - (a) a person is appointed under clause 6 to fill the office of a member that has become vacant otherwise than by the expiration of the member's term of office, and
 - (b) the person is appointed for the balance of his or her predecessor's term of office,

the appointment does not constitute (and is taken never to have constituted) an appointment for a term of office.

Explanatory note

The proposed amendment makes an amendment equivalent to that proposed to be made by item [1] of the proposed amendments to the *Art Gallery of New South Wales Act 1980* elsewhere in this Schedule.

1.15 Fisheries Management Act 1994 No 38

[1] Section 217 Importation of live fish

Insert “, or class,” after “a species” in section 217 (1).

[2] Section 217 (3)

Insert “, or class,” after “any species”.

[3] Section 217 (3) (b)

Omit “fish of a species”. Insert instead “fish of a class or species”.

Commencement

The amendments to the *Fisheries Management Act 1994* commence, or are taken to have commenced, on the commencement of Schedule 6.2 [12] and [13] to the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000*.

Explanatory note

When amended by certain uncommenced provisions of the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000*, section 217 of the Act will prohibit the importation into New South Wales of live fish of a species to which the section applies (unless the importation is authorised by a permit issued by the Minister). Section 217 (3) will provide that the section applies to any species of fish other than (among others) “fish of a species, or class of species,” exempted from the operation of the section by the regulations.

The proposed amendments amend section 217, with effect from the commencement of the amendments made to it by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000*, so as to refer throughout to fish of a “class”, as well as fish of a species. This will permit the regulations to exempt from the operation of the section fish of a species whose live importation is prohibited if the fish, for example, are to be used for a particular purpose (such as to be displayed in an aquarium).

1.16 Health Administration Act 1982 No 135

Section 21 Delegation

Omit section 21 (12). Insert instead:

- (12) This section does not authorise the delegation of any of the following powers:
- (a) the power to give an approval for the purposes of section 23 (3) (b) of this Act,
 - (b) the power to conduct an inquiry referred to in section 123 of the *Health Services Act 1997*,
 - (c) the power to make determinations under section 127 (3) of the *Health Services Act 1997*.

Explanatory note

Section 21 of the *Health Administration Act 1982* provides for the delegation of the functions of the Minister for Health, the Director-General of the Department of Health, and the Health Administration Corporation. Section 21 (12) currently provides that section 21 does not authorise the delegation of two powers (those set out in paragraphs (a) and (b) of the proposed amendment). The proposed amendment repeals and re-enacts section 21 (12) so as to provide that another power is non-delegable.

The power concerned is the Minister's power to determine (after considering any recommendations on the subject from the Director-General) what amounts of money (if any) should be paid out of money appropriated from the Consolidated Fund in any financial year to area health services, statutory health corporations and affiliated health organisations.

1.17 Health Professionals (Special Events Exemption) Act 1997 No 90

[1] Section 3 Definitions

Omit the following from the definition of *Health Registration Act*:

Chiropractors and Osteopaths Act 1991

Physiotherapists Registration Act 1945

Psychologists Act 1989

[2] Section 3, definition of "Health Registration Act"

Insert in alphabetical order:

Chiropractors Act 2001

Dental Practice Act 2001

Optometrists Act 2002

Osteopaths Act 2001

Physiotherapists Act 2001

Psychologists Act 2001

[3] Section 9 Conditions on practice by visiting health professionals

Insert after section 9 (3):

- (4) In addition to any condition imposed by an order under section 5 or by the regulations, it is a condition of the provision of health care services by a visiting health professional that the visiting health professional must not, in the course of providing such services, possess or supply any substance that cannot be possessed or supplied by any local health professional under the *Drug Misuse and Trafficking Act 1985* or the *Poisons and Therapeutic Goods Act 1966*.
- (5) In subsection (4), **local health professional** means a person who is registered under a Health Registration Act and is not a visiting health professional.

Explanatory note

Items [1] and [2] of the proposed amendments update references to repealed Acts and insert references to two Acts that are to replace Acts that are not yet repealed.

Item [3] of the proposed amendments inserts in the *Health Professionals (Special Events Exemption) Act 1997 (the Act)* the condition currently imposed by the *Health Professionals (Special Events Exemption) Regulation 1998 (the Regulation)* on the provision of health care services by a visiting health professional. The Regulation, which is repealed by Schedule 3 to this Act, would otherwise be repealed on 1 September 2003 by section 10 of the *Subordinate Legislation Act 1989*. As it is desired to preserve the substance of the Regulation (which has not been amended since it was made), the insertion of that substance in the Act obviates the necessity to remake the Regulation by 1 September 2003 and at subsequent five year intervals as it again becomes subject to repeal under the *Subordinate Legislation Act 1989*.

There remains power under the *Health Professionals (Special Events Exemption) Act 1997* to make other regulations imposing further conditions on the provision of health care services by visiting health professionals.

1.18 Historic Houses Act 1980 No 94

[1] Schedule 1 Provisions relating to trustees and procedure of the Trust

Insert after clause 3 (2):

- (2A) For the purposes of subclause (3) only, an appointment under subclause (2) does not constitute (and is taken never to have constituted) an appointment for a term of office.

[2] Schedule 1, clause 3 (4)

Omit the subclause.

[3] Schedule 1, clause 7

Omit clause 7 (d). Insert instead:

(d) becomes a mentally incapacitated person,

Explanatory note

“Term” of office of a trustee

Item [1] of the proposed amendments makes an amendment equivalent to that proposed to be made by item [1] of the proposed amendments to the *Art Gallery of New South Wales Act 1980* elsewhere in this Schedule.

Commencement of term of office

Item [2] of the proposed amendments makes an amendment equivalent to that proposed to be made by item [2] of the proposed amendments to the *Art Gallery of New South Wales Act 1980* elsewhere in this Schedule.

Statute law revision

Item [3] of the proposed amendments updates outdated terminology.

1.19 Home Building Act 1989 No 147

[1] Section 120 Register

Insert “and at such other places and times as the Director-General thinks fit” after “hours of business” in section 120 (2).

[2] Section 120 (2A)

Insert after section 120 (2):

(2A) The Director-General may make a copy of the register available for inspection on the internet site maintained by the Department of Fair Trading.

Explanatory note

Currently the register containing particulars of licences, supervisor and tradesperson certificates and owner-builder permits that is maintained under section 120 of the *Home Building Act 1989* is available to be inspected at the principal office of the Department of Fair Trading. The proposed amendments permit the Director-General of the Department of Fair Trading to make the register available at other places, including on-line.

1.20 Hunter Water Act 1991 No 53

[1] Section 35 Publication of terms and conditions of customer contracts

Omit “initial” from section 35 (1).

[2] Section 35 (2) and (4)

Omit the subsections.

[3] Section 35 (3)

Omit “set out in the notice”.

[4] Section 38 Terms and conditions of customer contracts may be varied on 6 months’ notice

Insert “or summarising” after “setting out” in section 38 (1).

[5] Section 38 (3)

Insert “or summarised” after “set out”.

[6] Section 38 (4) and (5)

Insert after section 38 (3):

- (4) Subsections (1)–(3) do not apply to the variation of the terms and conditions of a customer contract to the extent that the variation relates to alteration of the level of fees or charges and the alteration is in accordance with a determination of the Independent Pricing and Regulatory Tribunal.
- (5) Following variation of a customer contract, copies of the contract and explanatory material concerning the contract are to be made available to the public in such manner as the operating licence may provide.

[7] Section 70 Regulations

Insert after section 70 (5) (b):

- (b1) in the case of drought or accident, or if the Minister is for some other reason of the opinion that it is necessary in the public interest and for the purpose of maintaining water supply—the restriction or regulation of the supply and use of water in the area of operations, and

Explanatory note

Customer contracts

Section 35 (1) of the *Hunter Water Act 1991* (**the Act**) requires the “initial” terms and conditions of a customer contract to be set out in the **operating licence** (within the meaning of the Act) of Hunter Water Corporation (**the Corporation**). Item [1] of the proposed amendments removes the word “initial”, so as to require all terms and conditions (including new terms and conditions and those that have been varied) to be set out in the operating licence.

At present, section 38 (1) of the Act provides that the terms and conditions of a customer contract may (subject to the approval of the Governor) be varied by the Corporation by publishing, in a daily newspaper circulating in the area of operations, a notice "setting out" the variation at least 6 months (or a shorter period to which the Minister agrees) before the variation becomes effective. Item [4] of the proposed amendments enables that notice to summarise the variation as an alternative to setting it out in full. Item [5] makes a consequential amendment.

Item [6] of the proposed amendments inserts two new subsections in section 38. The new subsection (4) is equivalent to section 59 (4) of the *Sydney Water Act 1994*, which provides that section 59 (which is otherwise equivalent to section 38) does not apply to a variation of a customer contract to the extent that the variation relates to alteration of the level of fees or charges and the alteration is in accordance with a determination of the Independent Pricing and Regulatory Tribunal. The new subsection (5) requires copies of a customer contract that has been varied (including one varied in accordance with a determination of the Independent Pricing and Regulatory Tribunal), together with explanatory material concerning the contract, to be made available to the public in such manner as the operating licence may provide.

Similar amendments are proposed to be made, elsewhere in this Schedule, to the *Sydney Water Act 1994* (apart from the insertion of a provision equivalent to the new section 38 (4)).

Repeal

Section 35 (2) of the Act requires the Corporation, before the commencement of section 36 (Owner of land taken to have entered into customer contract), to publish in a daily newspaper circulating in the **area of operations** (as specified in the Act) a notice setting out the terms and conditions on which the Corporation will provide water supply and sewerage services to customers pursuant to the operating licence.

Section 35 (3) of the Act requires the terms and conditions set out in the notice to include specified particulars, and section 35 (4) provides that the terms and conditions set out in the notice must be in a form specified by or authorised under the operating licence.

Section 35 (2) is spent and may be repealed. Consequently, section 35 (4) may also be repealed. Item [2] of the proposed amendments effects those repeals.

However, rather than repealing section 35 (3), item [3] of the proposed amendments merely omits the words "set out in the notice" from that subsection. The effect of this is that section 35 (3) now relates to the terms and conditions set out in the customer contract referred to in section 35 (1). This renders section 35 consistent with the equivalent section (section 54) of the *Sydney Water Act 1994*.

Regulations

Item [7] of the proposed amendments inserts a provision to permit the making of regulations for or with respect to the restriction or regulation of the supply and use of water in the area of Hunter Water's operations in the case of drought or accident or if the Minister is for some other reason of the opinion that there is a necessity for such regulations in the public interest and for the purpose of maintaining water supply. There is an identical provision in the *Sydney Water Act 1994*.

1.21 Judges' Pensions Act 1953 No 41

Section 16A

Insert after section 16:

16A **Accrued benefit multiples for family law superannuation purposes**

- (1) For the purposes of the family law superannuation legislation, the accrued benefit multiple of a judge or retired judge is the period (in years and parts of years) that the judge or retired judge served as a judge in his or her judicial office.
- (2) In this section:

family law superannuation legislation means Part VIIIIB of the *Family Law Act 1975* of the Commonwealth and the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

Explanatory note

Under Part VIIIIB of the *Family Law Act 1975* of the Commonwealth, provision is made for the splitting of superannuation entitlements as part of the division of property associated with family law proceedings. A split may occur as a result of a court order or an agreement. That Part applies to State statutory superannuation schemes, and to the trustees and administrators of those schemes, as well as to other superannuation schemes regulated under Commonwealth legislation.

The superannuation scheme established under the *Judges' Pensions Act 1953* is classified as a percentage-only scheme for the purposes of the Commonwealth legislation. The result of this is that payments of superannuation entitlements to spouses or former spouses of judges or former judges resulting from family law proceedings can only take place when a pension is payable to a judge or retired judge and also that the amount payable to a spouse or former spouse is determined with respect to a specified percentage of the relevant proportion of the superannuation interest of the judge or retired judge. The *Family Law (Superannuation) Regulations 2001* of the Commonwealth set out the methods for calculating individual payments. The method requires the governing rules of each percentage-only scheme to specify the accrued benefit multiple. The purpose of the amendment is to specify the judge or retired judge's period of service as the accrued benefit multiple so as to enable calculation of payments under those Regulations.

1.22 Justices Legislation Repeal and Amendment Act 2001 No 121

[1] **Schedule 2.72 [47]**

Omit the item.

[2] Schedule 2.72 [52]

Omit the item. Insert instead:

[52] Section 562C Making of complaint for court order

Omit “Justice” wherever occurring in section 562C (1).

Insert instead “justice of the peace”.

Commencement

Item [1] of the amendments to the *Justices Legislation Repeal and Amendment Act 2001* commences, or is taken to have commenced, immediately before the commencement of Schedule 2.72 [47] to that Act.

Item [2] of the amendments to the *Justices Legislation Repeal and Amendment Act 2001* commences, or is taken to have commenced, immediately before the commencement of Schedule 2.72 [52] to that Act.

Explanatory note

The *Justices Legislation Repeal and Amendment Act 2001* contains amendments to Acts consequential on the repeal and re-enactment of the *Justices Act 1902*. Schedule 2.72 of that Act amends the *Crimes Act 1900*. Among other things, those amendments replace references to “justices” (defined, by a provision in the *Crimes Act 1900* that is to be repealed, as meaning “a Justice of the Peace”) and “authorised justices” with references to “authorised officers” (within the meaning of the new definition of that term to be inserted in the *Criminal Procedure Act 1986*). That category of officers is more restrictive than the current category of officers exercising functions in relation to apprehended domestic violence orders.

Item [1] of the proposed amendments removes an amendment that would have replaced a reference to “a justice of the peace who is employed in the Attorney General’s Department” with a reference to “an authorised officer”.

Item [2] of the proposed amendments replaces an amendment that would have replaced a reference to a “Justice” with a reference to a “Magistrate or authorised officer” and, instead, replaces it with a reference to a “justice of the peace”.

In so doing, the proposed amendments maintain the current position in relation to persons who have functions in relation to apprehended domestic violence orders.

1.23 Law and Justice Foundation Act 2000 No 97

Section 19 Annual report

Insert after section 19 (3):

- (4) If a House of Parliament is not sitting when the Attorney General seeks to lay a report before it, the Attorney General may present copies of the report to the Clerk of the House concerned.
- (5) The report:
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and

- (b) may be printed by authority of the Clerk of the House, and
- (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
- (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

Explanatory note

Section 19 of the *Law and Justice Foundation Act 2000* requires the Attorney General to lay the annual report of the Law and Justice Foundation of New South Wales before both Houses of Parliament as soon as practicable after receiving it.

The proposed amendment amends section 19 so as to permit the Attorney General to table the annual report even if a House of Parliament is not sitting when the Attorney General seeks to do so.

1.24 Library Act 1939 No 40

[1] Schedule 1 Composition and procedure of the Council

Omit “subclauses (2) and (3)” from clause 3 (1).

Insert instead “subclause (3)”.

[2] Schedule 1, clause 3

Insert after clause 3 (5):

- (5A) For the purposes of subclause (5) only, an appointment under subclause (3) does not constitute (and is taken never to have constituted) an appointment for a term of office.

[3] Schedule 1, clause 3 (6)

Omit the subclause.

[4] Schedule 1, clause 7

Omit clause 7 (d). Insert instead:

(d) becomes a mentally incapacitated person,

Explanatory note

“Term” of office of a member of the Library Council of New South Wales

Item [2] of the proposed amendments makes an amendment equivalent to that proposed to be made by item [1] of the proposed amendments to the *Art Gallery of New South Wales Act 1980* elsewhere in this Schedule.

Commencement of term of office

Item [3] of the proposed amendments makes an amendment equivalent to that proposed to be made by item [2] of the proposed amendments to the *Art Gallery of New South Wales Act 1980* elsewhere in this Schedule.

Statute law revision

Item [1] of the proposed amendments omits a cross-reference to a repealed subclause. Item [4] of the proposed amendments updates outdated terminology.

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

Schedule 1 Licences to which Part 2 of Act applies

Insert the following at the end of the matter under the heading “Pawnbrokers and Second-hand Dealers Act 1996”:

section 9 (1) (c), combined pawnbroker’s and second-hand dealer’s licence

Explanatory note

The proposed amendment is consequential on the amendment proposed to be made to the *Pawnbrokers and Second-hand Dealers Act 1996* elsewhere in this Schedule. That amendment provides for combined pawnbrokers’ and second-hand dealers’ licences.

1.26 Local Courts Act 1982 No 164

[1] Section 10B Functions of registrars

Omit “function of making” from section 10B (2) (b).

Insert instead “functions of a Local Court to make”.

[2] Section 10B (2) (g)

Omit the paragraph.

[3] Section 10B (2) (h)

Omit the paragraph. Insert instead:

- (h) the function of remitting or postponing payment of any fees provided for under section 28 (2),

[4] Section 10D Guidelines for exercise of certain functions

Omit section 10D (1) (a). Insert instead:

- (a) the remitting or postponement of any fees provided for under section 28 (2),

[5] Section 13 Appointments for limited tenure

Omit “70 years” from section 13 (1) (a). Insert instead “72 years”.

[6] Section 21 Additional terms of office

Omit “70 years” from section 21 (1). Insert instead “72 years”.

[7] Section 64 Appeals

Insert after section 64 (1):

- (1A) An application or appeal may not be made under subsection (1) in relation to an order referred to in that subsection if the making of such an application or appeal is prohibited by the Act or law pursuant to which the order is made.

[8] Section 64 (5)

Insert after section 64 (4):

- (5) In this section, a reference to an order includes a reference to any determination that a Local Court has jurisdiction to make, and any penalty that a Local Court has jurisdiction to impose, as referred to in section 35.

Commencement

Items [1]–[4], [7] and [8] of the amendments to the *Local Courts Act 1982* commence, or are taken to have commenced, on the commencement of Schedule 2.140 to the *Justices Legislation Repeal and Amendment Act 2001*.

Explanatory note

Registrar’s authority to make consent orders

Item [2] of the proposed amendments removes an anomaly by omitting one of two paragraphs in section 10B (2) of the *Local Courts Act 1982* (**the Act**) (inserted by the *Justices Legislation Repeal and Amendment Act 2001* (**the amending Act**)) that

authorise a registrar to make consent orders. The omitted paragraph allows a registrar to make consent orders only if they are of a kind prescribed by the regulations, while the retained paragraph allows a registrar to make any consent orders except as provided by rules of court.

Item [1] makes a consequential amendment to the retained paragraph.

Fees

Schedule 1.5 [1] to the *Courts Legislation Miscellaneous Amendments Act 2002* inserted section 28 (2) in the Act to reinstate a provision relating to fees payable in respect of certain proceedings and applications in a Local Court.

Item [3] of the proposed amendments confers on the registrar the function of remitting or postponing payment of any such fees.

Item [4] repeals and re-enacts section 10D (1) (a) of the Act to ensure that guidelines that may be made under section 10D (1) extend to all fees contemplated by section 28 (2).

Retirement age of Magistrates

The *Judicial Officers Act 1986* was amended by the *Courts Legislation Further Amendment Act 2001* to increase the retirement age for Magistrates to 72 years.

For consistency, items [5] and [6] of the proposed amendments amend sections 13 and 21 of the Act so as to provide that a Magistrate appointed for a limited tenure may be appointed for a term that does not continue past the date on which the Magistrate will attain the age of 72 years, and that certain Magistrates who have retired may be reinstated for a similar term. At present, neither term may continue past the date on which the Magistrate attains the age of 70 years.

Appeals

Item [7] of the proposed amendments inserts a new subsection (1A) into section 64 of the Act so as to ensure that the rights of appeal and review conferred by that section do not override the provisions of any other Acts that restrict rights of appeal or review in relation to particular matters.

Item [8] of the proposed amendments inserts a new subsection (5) into section 64 of the Act so as to ensure that references in that section to an order include references to the determinations that a Local Court can make, and the penalties that a Local Court can impose, under Part 6 of the Act.

1.27 Local Government Act 1993 No 30

Section 429A Complaints about councils, councillors, delegates and staff

Omit section 429A (1). Insert instead:

- (1) A public official within the meaning of the *Protected Disclosures Act 1994* may complain to the Director-General about the conduct of any one or more of the following:
 - (a) a council,
 - (b) a delegate of a council,
 - (c) a councillor,
 - (d) a member of staff of a council.

Explanatory note

At present, section 429A of the *Local Government Act 1993* (**the Act**) provides for a public official (within the meaning of the *Protected Disclosures Act 1994*) to complain to the Director-General of the Department of Local Government about the conduct of a council or an officer of a council.

The proposed amendment elucidates the meaning of “officer of a council” to make it clear that complaints may be made about the conduct of councillors, delegates of councils and members of staff of councils. A similar amendment is proposed to be made to the *Protected Disclosures Act 1994* elsewhere in this Schedule.

By operation of section 400 of the Act, section 429A extends to cover county councils and their members, delegates and staff.

1.28 Meat Industry Act 1978 No 54

[1] Section 6B Branding of meat

Omit section 6B (2).

[2] Section 76

Insert after section 75A:

76 Proceedings for offences

- (1) Proceedings for an offence against this Act may be dealt with before a Local Court or before the Supreme Court in its summary jurisdiction.
- (2) Proceedings for an offence against the regulations are to be disposed of in a summary manner before a Local Court.
- (3) The maximum pecuniary penalty that may be imposed by a Local Court in proceedings for an offence against this Act is 50 penalty units or the maximum penalty provided by this Act in respect of the offence, whichever is the lesser.
- (4) If proceedings for an offence against this Act are brought before the Supreme Court in its summary jurisdiction, the Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.

Explanatory note

Branding of meat

The *Meat Industry Act 1978* (**the Act**) has been largely superseded by the *Food Production (Safety) Act 1998* (**the Safety Act**). Section 6B (1) of the Act provides that regulations under the Safety Act may include provisions requiring the branding of meat to identify whether it is lamb or hogget, regardless of whether the purpose of those provisions relates to the safety of the meat for human consumption. Section 6B (2) provides that any such provisions cease to have effect on and from 1 August 2003 (unless sooner repealed). Such a provision is currently in force (clause 60 of the *Food Production (Meat Food Safety Scheme) Regulation 2000*).

Item [1] of the proposed amendments repeals section 6B (2) so as to permit the branding requirements to be retained indefinitely.

Proceedings for offences

One of the provisions of the Act repealed by the Safety Act was section 76, which, among other things, specified the forum in which proceedings for offences against the Act or the regulations made under the Act might be taken.

As the Act still creates certain offences (and the regulations are capable of doing so), item [2] of the proposed amendments re-enacts so much of the repealed section 76 as is necessary to permit proceedings for the offences to be taken.

1.29 Medical Practice Act 1992 No 94

[1] Section 161 Conduct of proceedings

Omit section 161 (4). Insert instead:

- (4) Schedule 2 has effect with respect to the conduct of any inquiry and the hearing of any appeal by the Tribunal.

[2] Section 176 Procedure for inquiry

Omit section 176 (4). Insert instead:

- (4) Schedule 2 has effect with respect to the conduct of any inquiry by a Committee.

[3] Schedule 1 Registration procedure

Omit “President” from clause 11. Insert instead “Registrar”.

Explanatory note

Clarification

Items [1] and [2] of the proposed amendments recast certain provisions of the *Medical Practice Act 1992 (the Act)* so as to clarify their meaning. Similar amendments to other legislation dealing with health professionals are proposed to be made elsewhere in this Schedule.

Eligibility inquiries

Item [3] of the proposed amendments makes the same amendment in relation to the President and Registrar of the New South Wales Medical Board in respect of the holding of an inquiry into the eligibility of an applicant for registration as a medical practitioner as is proposed to be made by item [2] of the amendments to the *Chiropractors Act 2001* elsewhere in this Schedule in relation to the holding of an inquiry into eligibility for registration under that Act.

1.30 Mental Health Act 1990 No 9

Section 228 Appointment of official visitors

Insert at the end of section 228 (4):

, or

- (c) The Royal Alexandra Hospital for Children.

Explanatory note

Section 228 of the *Mental Health Act 1990* requires the appointment of official visitors to each **area health service**. That term is defined in section 228 (4) to mean an area health service constituted under the *Health Services Act 1997* and the Corrections Health Service (a statutory health corporation under that Act).

The proposed amendment adds The Royal Alexandra Hospital for Children (also a statutory health corporation) to the meaning of **area health service** for the purposes of section 228 as it is intended that an acute mental health ward will be opened at that hospital in the future. The proposed amendment will ensure that official visitors will be appointed to that facility.

1.31 Museum of Applied Arts and Sciences Act 1945 No 31

[1] Section 4 Appointment of trustees

Insert after section 4 (5):

- (5A) For the purposes of subsection (4) only, an appointment under subsection (5) does not constitute (and is taken never to have constituted) an appointment for a term of office.

[2] Section 4 (6)

Omit the subsection.

Explanatory note

“Term” of office of a trustee

Item [1] of the proposed amendments makes an amendment equivalent to that proposed to be made by item [1] of the proposed amendments to the *Art Gallery of New South Wales Act 1980* elsewhere in this Schedule.

Commencement of term of office

Item [2] of the proposed amendments makes an amendment equivalent to that proposed to be made by item [2] of the proposed amendments to the *Art Gallery of New South Wales Act 1980* elsewhere in this Schedule.

1.32 National Parks and Wildlife Act 1974 No 80

[1] Sections 5, 47B, 47GA, 47GB, 47GC, 47GD, 47GE, 47GF and 47GG

Omit “an state conservation area” and “An state conservation area” wherever occurring.

Insert instead “a state conservation area” and “A state conservation area”, respectively.

[2] Section 72 Preparation of plans of management

Omit section 72 (1) (c). Insert instead:

- (c) shall cause a plan of management to be prepared for each historic site, nature reserve, karst conservation reserve or national park reserved after the commencement day, as soon as practicable after the reservation,

[3] Section 118B Buying, selling or possessing threatened species or endangered population

Omit section 118B (4). Insert instead:

- (4) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the alleged offence:
 - (a) was authorised to be done, and was done in accordance with, a general licence under section 120, a licence under section 131, 132 or 132A, a scientific licence under section 132C or a licence granted under Part 6 of the *Threatened Species Conservation Act 1995*, or
 - (b) was the subject of a certificate issued under section 95 (2) of the *Threatened Species Conservation Act 1995*.

[4] Section 153B Easements, rights of way and licences for landlocked areas (as inserted by the National Parks and Wildlife Amendment Act 2001)

Renumber the section as section 153C.

Explanatory note

Item [1] of the proposed amendments corrects incorrect indefinite articles arising from the replacement of words by previous amendments.

Item [2] of the proposed amendments repeals and re-enacts section 72 (1) (c) of the *National Parks and Wildlife Act 1974* (**the Act**) so as to remove obsolete references to nature reserves and karst conservation reserves “dedicated” under the Act. All land is now “reserved” under the Act.

Item [3] of the proposed amendments repeals and re-enacts section 118B (4) of the Act so as to afford a person accused of an offence under section 118B (Buying, selling or possessing threatened species or endangered population) an additional defence to those already available. The defence concerned is currently available to persons accused of offences under sections 118A (Harming or picking threatened species, endangered populations or endangered ecological communities), 118C (Damage critical habitat) and 118D (Damage habitat of threatened species, endangered population or endangered ecological community) of the Act.

The additional defence is that the act constituting the alleged offence was the subject of a certificate issued under section 95 (2) of the *Threatened Species Conservation Act 1995*—that is, a certificate to the effect that a licence under the latter Act is not required in respect of a particular action.

Item [4] of the proposed amendments corrects duplicated numbering.

1.33 Nurses Act 1991 No 9

[1] Section 52 Proceedings before a Committee

Omit section 52 (5). Insert instead:

- (5) Schedule 2 has effect with respect to the conduct of any inquiry by a Committee.

[2] Section 61 Proceedings before the Tribunal

Omit section 61 (4). Insert instead:

- (4) Schedule 2 has effect with respect to the conduct of any inquiry and the hearing of any appeal by the Tribunal.

Explanatory note

The proposed amendments recast certain provisions of the *Nurses Act 1991* so as to clarify their meaning. Similar amendments to other legislation dealing with health professionals are proposed to be made elsewhere in this Schedule.

1.34 Ombudsman Act 1974 No 68

[1] Section 25D Disclosure to Ombudsman of information about child abuse

Omit section 25D (2).

[2] Section 31AC Ombudsman may furnish information to public authority

Insert at the end of the section:

- (2) The Ombudsman may also furnish any or all of the information referred to in subsection (1) to any other public authority, and may make such comments (if any) to that public authority as the Ombudsman considers appropriate, if:

-
- (a) the Ombudsman is satisfied that the information concerned is relevant to the functions, policies, procedures or practices of that other public authority, and
 - (b) the information does not disclose any personal information (within the meaning of the *Privacy and Personal Information Protection Act 1998*).

[3] Section 34 Disclosure by Ombudsman or officer

Re-number section 34 (1) (b1) as section 34 (1) (b3).

[4] Section 34 (1) (b1) and (b2)

Insert after section 34 (1) (b):

- (b1) to a police officer, the Department of Community Services or any other public authority that the Ombudsman considers appropriate in the circumstances if the information relates to the safety, welfare or well-being of a particular child or young person (or a class of children or young persons),
- (b2) to any person if the Ombudsman believes on reasonable grounds that disclosure to that person is necessary to prevent or lessen the likelihood of harm being done to any person (but only if the Ombudsman also believes on reasonable grounds that there is a risk of harm (including self-harm) being done to any person),

Explanatory note

Furnishing of certain information to public authorities

At present, section 31AC of the *Ombudsman Act 1974* (**the Act**) permits the Ombudsman to furnish to a public authority information obtained by the Ombudsman in discharging functions with respect to a complaint against or relating to the public authority. It also permits the Ombudsman to make comments to the public authority regarding the complaint.

Item [2] of the proposed amendments extends section 31AC so as to permit the Ombudsman to furnish to any other public authority such of that information as is relevant to the functions, policies, procedures or practices of that other public authority, provided that the information does not disclose any **personal information** (as defined in the *Privacy and Personal Information Protection Act 1998*). The proposed amendment also permits the Ombudsman to make any comments to the other public authority as the Ombudsman considers appropriate.

Disclosure of certain information

Section 34 of the Act prohibits the disclosure by the Ombudsman or an officer of the Ombudsman of any information obtained in the course of office unless the disclosure is made in the circumstances set out in that section. Item [4] of the proposed

amendments specifies two further circumstances (as section 34 (1) (b1) and (b2)) in which such a disclosure may be made. Item [3] renumbers the existing section 34 (1) (b1) as section 34 (1) (b3) to permit the insertion of the new paragraphs.

The first circumstance concerns information relating to the safety, welfare or well-being of a particular child or young person (or a class of children or young persons). In that case, the information may be disclosed to a police officer, the Department of Community Services or any other public authority that the Ombudsman considers appropriate in the circumstances. In consequence of this authorisation to disclose that information, item [1] of the proposed amendments repeals section 25D (2), which currently authorises the disclosure to police officers, other relevant investigative agencies and the Commission for Children and Young People of information about child abuse obtained under Part 3A of the Act.

The second circumstance arises when the Ombudsman believes on reasonable grounds that the disclosure to a particular person (for example, a police officer or the governor of a correctional centre) is necessary to prevent or lessen the likelihood of harm being done to any person, but only if the Ombudsman also believes on reasonable grounds that there is a risk of harm (including self-harm) being done to any person. In that case, the disclosure may be made to the particular person.

1.35 Optometrists Act 2002 No 30

[1] Section 115 Conduct of proceedings

Omit section 115 (5). Insert instead:

- (5) Schedule 5 has effect with respect to the conduct of any inquiry and the hearing of any appeal by the Tribunal.

[2] Schedule 1 Registration procedures

Omit “President” from clause 11. Insert instead “Registrar”.

Explanatory note

Clarification

Item [1] of the proposed amendments recasts a provision of the *Optometrists Act 2002* (**the Act**) so as to clarify its meaning. Similar amendments to other legislation dealing with health professionals are proposed to be made elsewhere in this Schedule.

Eligibility inquiries

Item [2] of the proposed amendments makes the same amendment in relation to the President and Registrar of the Optometrists Registration Board in respect of the holding of an inquiry into the eligibility of an applicant for registration as an optometrist as is proposed to be made by item [2] of the amendments to the *Chiropractors Act 2001* elsewhere in this Schedule in relation to the holding of an inquiry into eligibility for registration under that Act.

1.36 Osteopaths Act 2001 No 16

[1] Section 111 Conduct of proceedings

Omit section 111 (5). Insert instead:

- (5) Schedule 5 has effect with respect to the conduct of any inquiry and the hearing of any appeal by the Tribunal.

[2] Schedule 1 Registration procedures

Omit “President” from clause 11. Insert instead “Registrar”.

Explanatory note

Clarification

Item [1] of the proposed amendments recasts a provision of the *Osteopaths Act 2001 (the Act)* so as to clarify its meaning. Similar amendments to other legislation dealing with health professionals are proposed to be made elsewhere in this Schedule.

Eligibility inquiries

Item [2] of the proposed amendments makes the same amendment in relation to the President and Registrar of the Osteopaths Registration Board in respect of the holding of an inquiry into the eligibility of an applicant for registration as an osteopath as is proposed to be made by item [2] of the amendments to the *Chiropractors Act 2001* elsewhere in this Schedule in relation to the holding of an inquiry into eligibility for registration under that Act.

1.37 Pawnbrokers and Second-hand Dealers Act 1996 No 13

Section 9 Application to licences of Licensing and Registration (Uniform Procedures) Act 2002

Insert after section 9 (1) (b):

- (c) combined pawnbrokers’ and second-hand dealers’ licences.

Explanatory note

Section 10 (3) of the *Pawnbrokers and Second-hand Dealers Act 1996 (the 1996 Act)*, before the consequential repeal of section 10 (Determination of applications) by the *Licensing and Registration (Uniform Procedures) Act 2002 (the 2002 Act)*, provided that a licence under the 1996 Act “may authorise its holder to carry on the business of a second-hand dealer or pawnbroker, or both”.

The 2002 Act also repealed section 9 (Licence applications) of the 1996 Act and re-enacted it to provide (among other things) for the issue of the following:

- (a) pawnbrokers’ licences,
(b) second-hand dealers’ licences.

However, the re-enacted section omitted to make provision for a combined licence.

The proposed amendment repairs that omission.

1.38 Physiotherapists Act 2001 No 67

[1] Section 112 Conduct of proceedings

Omit section 112 (5). Insert instead:

- (5) Schedule 5 has effect with respect to the conduct of any inquiry and the hearing of any appeal by the Tribunal.

[2] Schedule 1 Registration procedures

Omit “President” from clause 11. Insert instead “Registrar”.

Explanatory note

Clarification

Item [1] of the proposed amendments recasts a provision of the *Physiotherapists Act 2001 (the Act)* so as to clarify its meaning. Similar amendments to other legislation dealing with health professionals are proposed to be made elsewhere in this Schedule.

Eligibility inquiries

Item [2] of the proposed amendments makes the same amendment in relation to the President and Registrar of the Physiotherapists Registration Board in respect of the holding of an inquiry into the eligibility of an applicant for registration as a physiotherapist as is proposed to be made by item [2] of the amendments to the *Chiropractors Act 2001* elsewhere in this Schedule in relation to the holding of an inquiry into eligibility for registration under that Act.

1.39 Property, Stock and Business Agents Act 2002 No 66

[1] Section 68 Bidders Record

Insert “or stock and station agent” after “real estate agent” in section 68 (3).

[2] Section 71 Approved consumer education guide for bidders at auctions

Insert “or stock and station agent” after “real estate agent” in section 71 (2).

Explanatory note

Section 68 of the *Property, Stock and Business Agents Act 2002 (the Act)* provides that, before residential property or rural land is offered for sale by auction, a record (***the Bidders Record***) must be made of the persons who will be entitled to bid at the auction. Section 68 (3) requires a “real estate agent” engaged to act in respect of the sale to make the Bidders Record for the auction (unless some other specified agent has done so).

Section 71 (2) of the Act requires a “real estate agent” engaged to act in respect of the sale to take all reasonable steps to ensure that a person who bids at the auction has been provided before the auction with a copy of the current consumer education guide for prospective bidders at such auctions approved by the Director-General of the Department of Fair Trading under section 71 (1).

The proposed amendments amend sections 68 (3) and 71 (2) to make it clear that the requirements of those sections extend to stock and station agents.

1.40 Protected Disclosures Act 1994 No 92

[1] Section 12B Disclosure to Director-General of Department of Local Government concerning serious and substantial waste in local government

Omit section 12B (1) (b). Insert instead:

- (b) be a disclosure of information that shows or tends to show serious and substantial waste of local government money by any one or more of the following:
 - (i) a local government authority,
 - (ii) a delegate of a local government authority,
 - (iii) a councillor (within the meaning of the *Local Government Act 1993*),
 - (iv) a member of a county council (within the meaning of the *Local Government Act 1993*),
 - (v) a member of staff of a local government authority.

[2] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Statute Law (Miscellaneous Provisions) Act 2003 (but only in so far as Schedule 1 to that Act amends this Act and the *Local Government Act 1993*)

[3] Schedule 2, clause 5

Insert at the end of the clause:

- (2) A disclosure referred to in section 12B as amended by Schedule 1.40 [1] to the *Statute Law (Miscellaneous Provisions) Act 2003* is protected by this Act even if it relates to conduct or activities engaged in, or matters arising, before the commencement of that amendment.

Explanatory note

At present, section 12B of the *Protected Disclosures Act 1994* (**the Act**) provides for a public official (within the meaning of the Act) to complain to the Director-General of the Department of Local Government about serious and substantial waste of local government money by a "local government authority" (that is, a council or a county council) or an officer of a local government authority.

Item [1] of the proposed amendments elucidates the meaning of “officer of a local government authority” to make it clear that complaints may be made about such waste by councillors, members of county councils, delegates of councils and county councils and members of staff of councils and county councils. A similar amendment is proposed to be made to the *Local Government Act 1993* elsewhere in this Schedule.

Item [2] of the proposed amendments permits the making of savings and transitional regulations in consequence of item [1] of the proposed amendments and of the proposed amendment to the *Local Government Act 1993*.

Item [3] of the proposed amendments inserts a transitional provision.

1.41 Psychologists Act 2001 No 69

[1] Section 3 Object of Act

Omit “practice”. Insert instead “practise”.

[2] Section 111 Conduct of proceedings

Omit section 111 (5). Insert instead:

- (5) Schedule 5 has effect with respect to the conduct of any inquiry and the hearing of any appeal by the Tribunal.

[3] Schedule 1 Registration procedures

Omit “President” from clause 11. Insert instead “Registrar”.

Explanatory note

Statute law revision

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

Clarification

Item [2] of the proposed amendments recasts a provision of the *Psychologists Act 2001* (**the Act**) so as to clarify its meaning. Similar amendments to other legislation dealing with health professionals are proposed to be made elsewhere in this Schedule.

Eligibility inquiries

Item [3] of the proposed amendments makes the same amendment in relation to the President and Registrar of the Psychologists Registration Board in respect of the holding of an inquiry into the eligibility of an applicant for registration as a psychologist as is proposed to be made by item [2] of the amendments to the *Chiropractors Act 2001* elsewhere in this Schedule in relation to the holding of an inquiry into eligibility for registration under that Act.

1.42 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit “Board of Surveyors of New South Wales”.

Insert instead “Board of Surveying and Spatial Information”.

Commencement

The amendment to the *Public Finance and Audit Act 1983* commences, or is taken to have commenced, on the commencement of Part 6 of the *Surveying Act 2002*.

Explanatory note

The *Surveying Act 2002* repeals the *Surveyors Act 1929*, which constituted the Board of Surveyors of New South Wales. Part 6 of the *Surveying Act 2002* constitutes the Board of Surveying and Spatial Information.

The proposed amendment makes the necessary consequential amendment to the *Public Finance and Audit Act 1983*.

1.43 Real Property Act 1900 No 25

[1] Section 36 Lodgment and registration of documents

Omit section 36 (1D) (c). Insert instead:

- (c) that is not lodged in a manner approved for the time being by the Registrar-General.

[2] Section 36 (6) (a)

Omit “in the prescribed manner”.

Insert instead “in a manner approved for the time being by the Registrar-General”.

[3] Sections 74I, 74J and 74JA

Omit “date of service of that notice” wherever occurring in sections 74I (4) (b), 74J (3) (b) and 74JA (5) (b).

Insert instead “date of issue of that notice”.

Explanatory note

Lodgment and relodgment of documents

At present, section 36 (1D) of the *Real Property Act 1900 (the Act)* provides that the Registrar-General may refuse to accept certain dealings and caveats for lodgment, including (as provided by paragraph (c) of that subsection) any dealing or caveat “that is not lodged in such a manner, or is not accompanied by such number of complete copies thereof, as may be prescribed”.

Section 36 (6) of the Act provides (in part) that, for the purposes of section 36 (Lodgment and registration of documents), a dealing that is lodged in registrable form and is subsequently uplifted is to be deemed not to be in registrable form until relodged “in the prescribed manner” (and in registrable form).

Items [1] and [2] of the proposed amendments omit the requirements that the manner of lodging and relodging dealings and caveats be prescribed by the regulations. They provide, instead, for lodging and relodging in a manner “approved for the time being by the Registrar-General”.

Lapsing of caveats

Sections 74I, 74J and 74JA of the Act provide that 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 sections require the person seeking the lapsing of the caveat (*the applicant*) 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. The sections permit the Registrar-General to refuse to take any further action in the matter if the applicant does not do so. However, the Registrar-General may (but need not) allow an extension of time for service of the warning notice. At present, the additional time (if any) runs for 4 weeks from the date of *service* on the applicant of a notice allowing the extension.

Item [3] of the proposed amendments amends sections 74I, 74J and 74JA so as to provide that the extension of time runs, instead, for 4 weeks from the date of *issue* of the notice to the applicant.

1.44 Shops and Industries Act 1962 No 43

Section 152A Performance of Director-General's functions

Omit "Part 4 or 6" from section 152A (1). Insert instead "Part 2, 4 or 6".

Explanatory note

Section 152A of the *Shops and Industries Act 1962 (the Act)* permits the delegation of the functions of the Director-General of the Department of Industrial Relations under Parts 4 and 6 of the Act to officers of that Department. (The Department of Industrial Relations was abolished by the *Public Sector Employment and Management (General) Order 2003*. However, clause 33 (3) of that Order provides that in any document, a reference to the Department of Industrial Relations is to be construed as a reference to the Department of Commerce.)

Under Part 4 of the Act, the Director-General determines applications for exemption from the provisions of Division 3 (Opening and closing hours of shops and warehouses) of that Part (and from the provisions of the regulations made for the purpose of that Division). The Director-General may withdraw any exemption if the conditions (if any) of the exemption are breached.

Under Part 6 of the Act, the Director-General determines applications for hairdressers' licences. The Director-General may cancel or suspend any licence granted, vary the terms and conditions (if any) of a licence and impose additional terms and conditions on a licence.

Schedule 1 to the *Bank Holidays Legislation Amendment Act 2002* recently inserted Part 2 (Opening of banks on weekends) in the Act. That Part provides, among other things, for the Director-General to determine banks' applications for approval to open on weekends, and it permits the Director-General, in certain circumstances, to vary the conditions of, or suspend or cancel, any such approval.

The proposed amendment ensures that the Director-General's functions under the new Part 2 of the Act may be delegated in the same way as the Director-General's functions under Parts 4 and 6.

1.45 State Records Act 1998 No 17

Schedule 2 Provisions relating to constitution and procedure of the Board

Insert at the end of clause 2:

- (2) For the purposes of the calculation of a member's consecutive terms of office only, if:

-
- (a) a person is appointed under clause 6 to fill the office of a member that has become vacant otherwise than by the expiration of the member's term of office, and
 - (b) the person is appointed for the balance of his or her predecessor's term of office,

the appointment does not constitute (and is taken never to have constituted) an appointment for a term of office.

Explanatory note

The proposed amendment makes an amendment equivalent to that proposed to be made by item [1] of the proposed amendments to the *Art Gallery of New South Wales Act 1980* elsewhere in this Schedule.

1.46 Stock (Chemical Residues) Act 1975 No 26

Section 7 Temporary notice for detention of chemically affected stock

Omit "a random" from section 7 (2). Insert instead "from a".

Explanatory note

Section 7 of the *Stock (Chemical Residues) Act 1975 (the Act)* permits an inspector under the Act to give a notice requiring the detention, at a specified place for a specified period, of stock that are chemically affected or that the inspector suspects are chemically affected. Section 7 (2) provides that, if the inspector only suspects that the stock are chemically affected, the inspector must take for analysis "specimens from those stock or [from] a random sample of those stock" or exercise any other power conferred by the Act for the purpose of ascertaining whether the stock are chemically affected.

In practice, it would be preferable to take a selected sample of the stock (for example, stock exhibiting any signs that gave rise to the inspector's suspicions), rather than a "random" sample, to increase the probability of ascertaining whether the stock are chemically affected. To permit this, the proposed amendment omits the word "random" from section 7 (2). The proposed amendment also inserts an additional "from" to clarify the meaning of the subsection.

1.47 Strata Schemes (Freehold Development) Act 1973 No 68

Section 5 Definitions

Omit the definition of *special resolution* from section 5 (1).

Insert instead:

special resolution has the same meaning as it has in the *Strata Schemes Management Act 1996*.

Commencement

The amendment to the *Strata Schemes (Freehold Development) Act 1973* is taken to have commenced on 1 July 1997.

Explanatory note

At present, *special resolution* is defined in the *Strata Schemes (Freehold Development) Act 1973* by reference to certain other provisions of that Act that have now been repealed.

The proposed amendment repeals the definition and re-enacts it in terms of the definition in the *Strata Schemes Management Act 1996*.

1.48 Strata Schemes (Leasehold Development) Act 1986 No 219

Section 4 Definitions

Omit the definition of *special resolution* from section 4 (1).

Insert instead:

special resolution has the same meaning as it has in the *Strata Schemes Management Act 1996*.

Commencement

The amendment to the *Strata Schemes (Leasehold Development) Act 1986* is taken to have commenced on 1 July 1997.

Explanatory note

At present, *special resolution* is defined in the *Strata Schemes (Leasehold Development) Act 1986* by reference to certain other provisions of that Act that have now been repealed.

The proposed amendment repeals the definition and re-enacts it in terms of the definition in the *Strata Schemes Management Act 1996*.

1.49 Strata Schemes Management Act 1996 No 138

Section 21 Executive committee's decisions to be decisions of owners corporation

Omit "this Act or the by-laws requires" from section 21 (2) (a).

Insert instead "is required by or under any Act".

Explanatory note

Section 21 of the *Strata Schemes Management Act 1996* (**the Act**) provides that a decision of an executive committee of an owners corporation is taken to be the decision of the owners corporation. The section also provides that certain decisions may not be made by the executive committee, including a decision that "this Act or the by-laws" requires to be made by the owners corporation by unanimous resolution or special resolution or in a general meeting.

However, the Act is not the only Act that requires decisions to be made by any such method (see section 19 (2) of the *Strata Schemes (Freehold Development) Act 1973*, for example). Accordingly, the proposed amendment amends section 21 so as to provide that the executive committee may not make a decision that is required by or under any Act to be made by such a method.

1.50 Sydney Opera House Trust Act 1961 No 9

[1] Section 6 Trustees

Insert after section 6 (5):

- (5A) For the purposes of subsection (4) only, an appointment under subsection (5) does not constitute (and is taken never to have constituted) an appointment for a term of office.

[2] Section 6 (6)

Omit the subsection.

Explanatory note

“Term” of office of a trustee

Item [1] of the proposed amendments makes an amendment equivalent to that proposed to be made by item [1] of the proposed amendments to the *Art Gallery of New South Wales Act 1980* elsewhere in this Schedule.

Commencement of term of office

Item [2] of the proposed amendments makes an amendment equivalent to that proposed to be made by item [2] of the proposed amendments to the *Art Gallery of New South Wales Act 1980* elsewhere in this Schedule.

1.51 Sydney Water Act 1994 No 88

[1] Section 54 Publication of terms and conditions of customer contracts

Omit “initial” from section 54 (1).

[2] Section 54 (5)

Omit the subsection.

[3] Section 59 Variation of customer contracts

Insert “or summarising” after “setting out” in section 59 (1).

[4] Section 59 (3)

Insert “or summarised” after “set out”.

[5] Section 59 (4)

Omit “This section does”. Insert instead “Subsections (1)–(3) do”.

[6] Section 59 (5)

Insert after section 59 (4):

- (5) Following variation of a customer contract, copies of the contract and explanatory material concerning the contract are to be made available to the public in such manner as the operating licence may provide.

Explanatory note

Customer contracts

Section 54 (1) of the *Sydney Water Act 1994* (***the Act***) requires the “initial” terms and conditions of a customer contract to be set out in the ***operating licence*** (within the meaning of the Act) of Sydney Water Corporation (***the Corporation***). Item [1] of the proposed amendments removes the word “initial”, so as to require all terms and conditions (including new terms and conditions and those that have been varied) to be set out in the operating licence.

At present, section 59 of the Act provides that the terms and conditions of a customer contract may (subject to the approval of the Governor) be varied by the Corporation by a notice “setting out” the variation and published in a daily newspaper circulating in the area of operations. The notice must be published at least 6 months before the variation becomes effective (or within a shorter period approved by the Minister). Item [3] of the proposed amendments enables that notice to summarise the variation as an alternative to setting it out in full. Item [4] makes a consequential amendment.

Item [6] of the proposed amendments inserts a new subsection in section 59. The new subsection requires copies of a customer contract that has been varied (together with explanatory material concerning the contract) to be made available to the public in such manner as the operating licence may provide.

Section 59 (4) currently provides that section 59 does not apply to a variation of a customer contract to the extent that the variation relates to alteration of the level of fees or charges and the alteration is in accordance with a determination of the Independent Pricing and Regulatory Tribunal. Item [5] of the proposed amendments amends section 59 (4) to ensure that the new subsection (5) will apply in relation to such variations.

Similar amendments (including the insertion of a provision equivalent to section 59 (4)) are proposed to be made, elsewhere in this Schedule, to the *Hunter Water Act 1991*.

Repeal

Section 54 (2) of the Act required the Corporation, before the commencement of section 55 (Owner of land taken to have entered into customer contract), to publish in a daily newspaper circulating in the ***area of operations*** (as specified in the Act) a notice setting out the initial terms and conditions of customer contracts or a summary of them.

Section 54 (5) of the Act provides that, if an operating licence so provides, the terms and conditions set out in “the notice or the summary” must be in a form specified by or authorised under the operating licence or licences.

Section 54 (2) is spent and has been repealed. Consequently, section 54 (5) may also be repealed. Item [2] of the proposed amendments effects that repeal.

Schedule 2 Amendments by way of statute law revision

(Section 3)

2.1 Adoption Act 2000 No 75

Section 189 Reviewable decisions

Omit “section 40” wherever occurring in paragraph (a) of the definition of *reviewable decision* and the Note to that paragraph.

Insert instead “section 28”.

Explanatory note

The proposed amendment corrects a cross-reference to a provision of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. Section 40 of that Act was renumbered as section 28 by the *Community Services Legislation Amendment Act 2002*.

2.2 Bail Regulation 1999

Schedule 1 Forms

Omit “**the**” where secondly occurring in the heading to item 6 in Form 4.

Insert instead “**that**”.

Explanatory note

The proposed amendment corrects a typographical error.

2.3 Cessnock Local Environmental Plan 1989

Schedule 6 Classification and reclassification of public land

Omit “**as operational land**” from the heading of the Schedule.

Explanatory note

The proposed amendment alters the heading of a Schedule to reflect the content of the Schedule and the heading and content of the clause of *Cessnock Local Environmental Plan 1989* to which it relates. The clause classifies or reclassifies certain public land as operational land and certain other public land as community land.

2.4 Civil Liability Act 2002 No 22

Section 5D General principles

Omit “**occurance**” from section 5D (2). Insert instead “**occurrence**”.

Explanatory note

The proposed amendment corrects a spelling error.

2.5 Coal Mine Health and Safety Act 2002 No 129

[1] Section 78 Duty to give notice of drilling operations

Omit “prospecting holder” from section 78 (1).

Insert instead “exploration holder”.

[2] Section 145 Appointment of government officials

Omit “An person” from section 145 (3). Insert instead “A person”.

[3] Section 185 Purpose of industry codes of practice

Omit “Part 5” where secondly occurring. Insert instead “Part 2”.

Explanatory note

Item [1] of the proposed amendments omits a term that is not used elsewhere in the *Coal Mine Health and Safety Act 2002* and replaces it with the correct term.

Item [2] of the proposed amendments replaces an incorrect indefinite article.

Item [3] of the proposed amendments corrects an incorrect cross-reference.

2.6 Community Land Development Act 1989 No 201

Section 26 Development contract

Omit “section 91” from section 26 (4). Insert instead “section 80”.

Explanatory note

The proposed amendment updates a reference to a section of the *Environmental Planning and Assessment Act 1979* that was repealed and then renumbered when subsequently re-enacted.

2.7 Confiscation of Proceeds of Crime Act 1989 No 90

Section 13 Applications for confiscation orders

Renumber section 13 (3A) (a) (i) where secondly occurring as section 13 (3A) (a) (ii).

Explanatory note

The proposed amendment corrects duplicated numbering.

2.8 Conveyancers Licensing Act 2003 No 3

Section 91 Associates of a licensee

Omit “*Property Relationships Act 1984*” from section 91 (2) (b).

Insert instead “*Property (Relationships) Act 1984*”.

Explanatory note

The proposed amendment corrects an incorrect citation of an Act.

2.9 Disability Services Act 1993 No 3

Section 25 Section 3 and Schedule 1 not to give rise to or affect cause of action

Omit “section 40” from section 25 (2). Insert instead “section 28”.

Explanatory note

The proposed amendment corrects a cross-reference to a provision of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. Section 40 of that Act was renumbered as section 28 by the *Community Services Legislation Amendment Act 2002*.

2.10 Electricity Supply Act 1995 No 94

[1] Section 102 Proceedings for offences

Insert “or the regulations” after “this Act” in section 102 (2).

[2] Section 102 (5)

Insert “or the regulations” after “this Act”.

[3] Section 102 (5)

Insert “of this Act, or relevant clause of the regulations,” after “relevant section”.

Explanatory note

At present, section 102 of the *Electricity Supply Act 1995 (the Act)* provides that proceedings for an offence against the Act or the regulations made under it are to be dealt with summarily before a Local Court. Alternatively, proceedings for an offence against the Act (but not the regulations) may be dealt with summarily before the Supreme Court in its summary jurisdiction.

In any such proceeding before it, a Local Court cannot impose a penalty exceeding 100 penalty units in the case of a corporation and 50 penalty units in any other case (section 102 (4)). The Supreme Court may impose the maximum penalty specified by the relevant section of the Act (section 102 (5)).

Section 106 of the Act (the general regulation-making power) was recently amended to allow the regulations to create offences punishable by penalties of up to 250 penalty units in the case of a corporation and 100 penalty units in any other case (previously

100 and 25 penalty units, respectively). However, if proceedings for offences against the regulations may be taken only in a Local Court, it is clear that the higher penalties contemplated by section 106 as amended cannot be imposed.

In consequence of the amendment to section 106, the proposed amendments amend section 102 so as to permit proceedings for offences against the regulations (as well as against the Act) to be dealt with by the Supreme Court.

2.11 Environmental Planning and Assessment Regulation 2000

Part 11 Insurance, Division 2, heading

Omit “**Automatic run-off contracts**”.

Insert instead “**Approved professional indemnity contracts**”.

Explanatory note

The proposed amendment updates terminology.

2.12 Fair Trading Act 1987 No 68

Section 8 Delegation by Director-General

Omit section 8 (1) (f).

Commencement

The amendment to the *Fair Trading Act 1987* commences, or is taken to have commenced, on the commencement of section 222 of the *Property, Stock and Business Agents Act 2002*.

Explanatory note

The proposed amendment omits a reference to an Act that is repealed by the *Property, Stock and Business Agents Act 2002*. Section 8 (1) (f) is superseded by section 222 of the latter Act.

2.13 Fines Act 1996 No 99

[1] Section 52 Provisions relating to annulment of enforcement orders

Insert “application for the” before “order” in section 52 (2).

[2] Section 85 Provisions relating to orders

Omit “the *Community Service Orders Act 1979*” from the Note to the section.

Insert instead “Part 5 of the *Crimes (Administration of Sentences) Act 1999*”.

[3] Section 89 Periodic detention

Omit the Note to the section.

[4] Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

Sydney Water Act 1994, section 50

[5] Schedule 1

Omit “*Water Board (Corporatisation) Act 1994*, section 50”.

Explanatory note

Missing words

Section 51 (4) of the *Fines Act 1996* provides (among other things) that, for certain purposes, an application for a court fine enforcement order or a penalty notice enforcement order is taken to be an information in relation to the alleged offence for which the relevant fine was imposed. Section 52 (2) refers to “the order taken under this Division to be an information”, instead of to “the application for the order taken under this Division to be an information”.

Item [1] of the proposed amendments inserts the missing words in section 52 (2).

Updates of names of Acts

Item [2] of the proposed amendments updates a reference to an Act that has been repealed and item [3] omits an outdated Note referring to another repealed Act.

The *Sydney Water Act 1994* was previously the *Water Board (Corporatisation) Act 1994*. Schedule 1 to the *Fines Act 1996* refers to that Act by its previous name.

Item [4] of the proposed amendments inserts a reference (in alphabetical order) to the current name of the Act, and item [5] removes the outdated reference.

2.14 First State Superannuation Act 1992 No 100

[1] Part 4A Death or incapacity benefits for firefighters

Re-number sections 20A, 20B and 20C where occurring in Part 4A as sections 20C, 20D and 20E, respectively.

[2] Section 20E Provision to be made with respect to death or incapacity benefits for firefighters (as renumbered by item [1])

Omit “section 20B” from section 20E (3). Insert instead “section 20D”.

Explanatory note

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

Item [2] of the proposed amendments makes a consequential amendment.

2.15 Health Records and Information Privacy Act 2002 No 71

Schedule 3 Amendment of Privacy and Personal Information Protection Act 1998

Omit Schedule 3 [24]. Insert instead:

[24] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Health Records and Information Privacy Act 2002, but only to the extent that it amends this Act

Explanatory note

The proposed amendment repeals and re-enacts in incorporable form an amendment that has become unincorporable because of an intervening amendment.

2.16 Home Building Regulation 1997

Schedule 4, Penalty notice offences

Omit “**and short descriptions**” from the heading to the Schedule.

Explanatory note

The proposed amendment updates the heading to a Schedule to reflect the fact that the Schedule no longer contains short descriptions of offences.

2.17 Industrial Relations Act 1996 No 17

[1] Section 210 Freedom from victimisation

Omit the full stop at the end of section 210 (1) (ia). Insert instead “, or”.

[2] Section 210 (1) (j)

Insert “or” at the end of the paragraph.

Explanatory note

The proposed amendments insert missing conjunctions.

2.18 Local Government (Orders) Regulation 1999

Schedule 1 Standards for places of shared accommodation

Omit “clause 83 of the *Public Health Regulation 1991*” from clause 1 (2).

Insert instead “clause 22 of the *Public Health (General) Regulation 2002*”.

Explanatory note

The proposed amendment updates a reference to a regulation that has been repealed and replaced.

2.19 Marine Parks Regulation 1999

Schedule 1 Zoning plans for marine parks

Insert “16.” after “shown on map” in the matter relating to Shark Net Beach designated anchoring area in Table D of Division 10 of Part 2.

Explanatory note

The proposed amendment inserts missing matter.

2.20 Motor Dealers Act 1974 No 52

Section 17 Change of address of holder of licence

Omit “a place of business specified in accordance with section 10 (4) (d) or, where a place of business has been varied or added under subsection (3), at the place of business as so varied or added” from section 17 (5).

Insert instead “a place of business authorised by the licence”.

Explanatory note

The proposed amendment gives effect to an amendment made by the *Licensing and Registration (Uniform Procedures) Act 2002* that was unincorporable on commencement because of an intervening amendment.

2.21 National Parks and Wildlife Regulation 2002

Clause 92 Terms of interim protection orders

Omit “relic” from clause 92 (2) (f). Insert instead “Aboriginal object”.

Explanatory note

The proposed amendment updates terminology.

2.22 Pawnbrokers and Second-hand Dealers Regulation 1997

[1] Clause 21 Penalty notice offences and demerit points

Omit “Column 3” from clause 21 (3). Insert instead “Column 2”.

[2] Clause 21 (4)

Omit “Column 4”. Insert instead “Column 3”.

[3] Schedule 2, heading

Omit the heading. Insert instead:

Schedule 2 Penalty notice offences and demerit points

[4] Schedule 2

Renumber Column 3 and Column 4 as Column 2 and Column 3 respectively.

Explanatory note

Before the repeal of section 145B of the *Justices Act 1902* (which authorised the making of regulations prescribing short descriptions of offences), Column 2 of Schedule 2 to the *Pawnbrokers and Second-hand Dealers Regulation 1997* contained (among other things) short descriptions of offences under that Act. Column 2 no longer appears in that Schedule.

Item [3] of the proposed amendments updates the heading to Schedule 2 to reflect the fact that the Schedule no longer contains short descriptions of offences.

Item [4] renumbers Columns 3 and 4 of Schedule 2 in consequence of the omission of Column 2. Items [1] and [2] make consequential amendments.

2.23 Police Integrity Commission Act 1996 No 28

Section 79 Further action by Commission

Omit “section 98” from section 79 (3). Insert instead “section 100”.

Explanatory note

The proposed amendment corrects an incorrect cross-reference.

2.24 Privacy and Personal Information Protection Act 1998 No 133

[1] Section 6 Courts, tribunals and Royal Commissions not affected

Omit “is” from section 6 (1). Insert instead “in”.

[2] Section 55 Review of conduct by Tribunal

Omit “restrain” from section 55 (2) (b). Insert instead “refrain”.

Explanatory note

The proposed amendments correct typographical errors.

2.25 Public Health Act 1991 No 10

Section 59 Sale of tobacco and non-tobacco smoking products to minors

Omit section 59 (5).

Explanatory note

Section 59 (5) of the *Public Health Act 1991* (**the Act**) is as follows:

(5) Section 61R does not apply to an offence under subsection (1A).

The subsection was inserted at a time when the *Public Health Amendment (Tobacco Control) Bill 1999* (which would have inserted section 61R, among other provisions, in the Act) was before Parliament. However, that Bill was not enacted. There is no section 61R in the Act.

The proposed amendment repeals the subsection containing the cross-reference to section 61R.

2.26 Randwick Local Environmental Plan 1998

Clause 42B Kensington Town Centre (as inserted by Randwick Local Environmental Plan 1998 (Amendment No 27))

Re-number the clause as clause 42C.

Explanatory note

The proposed amendment corrects duplicated numbering.

2.27 Road Transport (General) (Penalty Notice Offences) Amendment (Level Crossing Offences) Regulation 2002

Clause 3

Omit the clause. Insert instead:

3 Amendment of Road Transport (General) (Penalty Notice Offences) Regulation 2002

The *Road Transport (General) (Penalty Notice Offences) Regulation 2002* is amended as set out in Schedule 1.

Commencement

The amendment to the *Road Transport (General) (Penalty Notice Offences) Amendment (Level Crossing Offences) Regulation 2002* is taken to have commenced on 1 January 2003.

Explanatory note

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

2.28 Terrorism (Commonwealth Powers) Act 2002 No 114

[1] Schedule 1 Part 5.3 of Commonwealth Criminal Code

Insert “or” after “Australia;” in paragraph (a) of the definition of *organisation* in section 100.1 (1).

[2] Schedule 1, Section 100.4

Omit “terrorists acts” from subsection (1) (a).

Insert instead “terrorist acts”.

[3] Schedule 1, Section 100.6

Omit “Act” from subsection (4). Insert instead “Part”.

Explanatory note

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

Item [2] of the proposed amendments corrects an incorrect reference to a defined term.

Item [3] of the proposed amendments corrects a reference to an Act as the reference should be to a Part of the Act.

2.29 Travel Agents Regulation 2001

[1] Clause 7 Fees

Omit “Schedule 1” from clause 7 (4). Insert instead “Schedule 2”.

[2] Clause 7 (5)

Omit “an licence”. Insert instead “a licence”.

Explanatory note

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

Item [2] of the proposed amendments replaces a form of the indefinite article that is inappropriate for the context with the appropriate form.

2.30 Water Management Act 2000 No 92

[1] Section 20 Core provisions

Omit “or water source” from section 20 (1) (b).

[2] Section 178 Discontinuance or reduction of supply of water

Omit the subsection number.

[3] Section 213 Lessees of land owned by the Crown

Omit “the” where secondly occurring in section 213 (2) (d).

[4] Section 398 Exclusion of Crown liability

Insert “of” before “any functions” in section 398 (2).

Explanatory note

Item [1] of the proposed amendment omits duplicated words that were inserted by two simultaneous amendments (see Schedule 1 [4] and [5] to the *Water Management Amendment Act 2002*).

Item [2] of the proposed amendments omits a superfluous subsection number.

Item [3] of the proposed amendments omits a superfluous word.

Item [4] of the proposed amendments inserts a missing word.

2.31 Water Management Amendment Act 2002 No 138

[1] Schedule 4 Amendment of Water Management Act 2000 in relation to other matters

Omit “clause 9 (7) (e)” from Schedule 4 [35].

Insert instead “clause 9 (7) (f)”.

[2] Schedule 4 [35]

Renumber paragraph (f) as paragraph (g).

Commencement

The amendments to the *Water Management Amendment Act 2002* are taken to have commenced on the commencement of Schedule 4 [35] to that Act.

Explanatory note

Item [1] of the proposed amendments corrects an unincorporable incorporating direction.

Item [2] of the proposed amendments corrects duplicated numbering.

Schedule 3 Repeals

(Section 4)

Name of Act or statutory rule	Extent of repeal
<i>Limbless Soldiers Association, New South Wales, Incorporation Act 1943 No 27</i>	Whole Act ³
<i>New South Wales Retirement Benefits (Amendment) Act 1984 No 9</i>	Whole Act ¹
<i>Fine Enforcement Legislation (Amendment) Act 1989 No 196</i>	Whole Act ¹
<i>Criminal Procedure Amendment (Indictable Offences) Act 1995 No 22</i>	Whole Act ¹
<i>Health Professionals (Special Events Exemption) Regulation 1998</i>	Whole Regulation ³
<i>Local Government Amendment (Filming) Act 2000 No 6</i>	Whole Act ¹
<i>Children and Young Persons (Care and Protection) Miscellaneous Amendments Act 2000 No 76</i>	Whole Act ¹
<i>Federal Courts (Consequential Provisions) Act 2000 No 80</i>	Whole Act ¹
<i>Transport Administration Amendment (Rail Management) Act 2000 No 89</i>	Schedule 4.3 ⁵
<i>Business Licences Repeal and Miscellaneous Amendments Act 2001 No 3</i>	Whole Act ¹
<i>Cattle Compensation Repeal Act 2001 No 4</i>	Whole Act ¹
<i>Trade Measurement Amendment Act 2001 No 5</i>	Whole Act ¹

Name of Act or statutory rule	Extent of repeal
<i>Crown Lands Amendment (Compensation) Act 2001</i> No 8	Whole Act ¹
<i>Conveyancing Amendment (Building Management Statements) Act 2001</i> No 9	Whole Act ¹
<i>Russian Orthodox Church Property Trust Amendment Act 2001</i> No 12	Whole Act ¹
<i>Strata Schemes Legislation Amendment Act 2001</i> No 13	Whole Act ¹
<i>Agricultural Tenancies Amendment Act 2001</i> No 14	Whole Act ¹
<i>Gas Supply Amendment (Retail Competition) Act 2001</i> No 18	Whole Act ¹
<i>Local Government Amendment (Graffiti Removal) Act 2001</i> No 19	Whole Act ¹
<i>Crimes Amendment (Computer Offences) Act 2001</i> No 20	Whole Act ¹
<i>Industrial Relations Amendment (Leave for Victims of Crime) Act 2001</i> No 21	Whole Act ¹
<i>State Revenue Legislation Amendment Act 2001</i> No 22	Whole Act ¹
<i>Companion Animals Amendment Act 2001</i> No 23	Whole Act ¹
<i>Firearms Amendment (Trafficking) Act 2001</i> No 24	Whole Act ¹
<i>First Home Owner Grant Amendment Act 2001</i> No 25	Whole Act ¹
<i>Long Service Leave Legislation Amendment Act 2001</i> No 26	Whole Act ¹

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Schedule 3 Repeals

Name of Act or statutory rule	Extent of repeal
<i>Casino Control Amendment Act 2001</i> No 27	Whole Act ¹
<i>Consumer Credit (New South Wales) Amendment (Pay Day Lenders) Act 2001</i> No 28	Whole Act ¹
<i>Crimes Legislation Amendment (Existing Life Sentences) Act 2001</i> No 29	Whole Act ¹
<i>State Revenue Legislation Further Amendment Act 2001</i> No 39	Whole Act ¹
<i>Insurance (Policyholders Protection) Legislation Amendment Act 2001</i> No 41	Whole Act ¹
<i>Agricultural and Veterinary Chemicals (New South Wales) Amendment Act 2001</i> No 44	Whole Act ¹
<i>Evidence (Audio and Audio Visual Links) Amendment Act 2001</i> No 46	Whole Act ¹
<i>Industrial Relations Amendment (Casual Employees Parental Leave) Act 2001</i> No 47	Whole Act ¹
<i>Liquor Amendment (Gaming Machine Restrictions) Act 2001</i> No 48	Whole Act ¹
<i>Child Protection (Offenders Registration) Amendment Act 2001</i> No 50	Whole Act ¹
<i>Legal Profession Amendment (Disciplinary Provisions) Act 2001</i> No 53	Whole Act ¹
<i>Legal Profession Amendment (Professional Indemnity Insurance) Act 2001</i> No 54	Whole Act ¹
<i>Passenger Transport Amendment (Transitways) Act 2001</i> No 55	Whole Act ¹
<i>Workers Compensation Legislation Amendment Act 2001</i> No 61	Whole Act ¹

Name of Act or statutory rule	Extent of repeal
<i>Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001 No 62</i>	Whole Act ¹
<i>Heritage Amendment Act 2001 No 65</i>	Whole Act ¹
<i>New South Wales—Queensland Border Rivers Amendment Act 2001 No 66</i>	Whole Act ¹
<i>Police Service Amendment (Testing for Gunshot Residue) Act 2001 No 68</i>	Whole Act ¹
<i>Police Powers (Vehicles) Amendment Act 2001 No 70</i>	Whole Act ¹
<i>Summary Offences Amendment (Minors in Sex Clubs) and Theatres and Public Halls Repeal Act 2001 No 71</i>	Whole Act ¹
<i>Liquor and Registered Clubs Legislation Amendment Act 2001 No 73</i>	Whole Act ¹
<i>Sydney Water Catchment Management Amendment Act 2001 No 74</i>	Whole Act ¹
<i>Conveyancing Amendment (Rule in Pigot's Case) Act 2001 No 75</i>	Whole Act ¹
<i>Co-operatives Legislation Amendment Act 2001 No 76</i>	Whole Act ¹
<i>Land Titles Legislation Amendment Act 2001 No 77</i>	Whole Act ¹
<i>Police Service Amendment (Complaints) Act 2001 No 79</i>	Whole Act ¹
<i>Harness Racing New South Wales Amendment (Rules) Act 2001 No 81</i>	Whole Act ²
<i>Crimes (Administration of Sentences) Amendment Act 2001 No 83</i>	Whole Act ¹

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Schedule 3 Repeals

Name of Act or statutory rule	Extent of repeal
<i>Crimes Amendment (Gang and Vehicle Related Offences) Act 2001</i> No 84	Whole Act ¹
<i>Courts Legislation Amendment Act 2001</i> No 85	Whole Act ¹
<i>Insurance Protection Tax Amendment Act 2001</i> No 87	Whole Act ¹
<i>Liquor and Registered Clubs Legislation Further Amendment Act 2001</i> No 88	Whole Act ¹
<i>Crimes Amendment (Child Protection—Physical Mistreatment) Act 2001</i> No 89	Whole Act ¹
<i>Public Finance and Audit Amendment (Auditor-General) Act 2001</i> No 90	Whole Act ¹
<i>National Parks and Wildlife Amendment (Transfer of Special Areas) Act 2001</i> No 92	Whole Act ¹
<i>State Revenue Legislation Further Amendment (No 2) Act 2001</i> No 96	Whole Act ¹
<i>Statutory and Other Offices Remuneration Amendment Act 2001</i> No 97	Whole Act ¹
<i>Superannuation Legislation Amendment (Miscellaneous) Act 2001</i> No 98	Whole Act ¹
<i>Crimes Amendment (Sexual Servitude) Act 2001</i> No 99	Whole Act ¹
<i>Universities Legislation Amendment (Financial and Other Powers) Act 2001</i> No 101	Whole Act ¹
<i>Fisheries Management Amendment Act 2001</i> No 104	Whole Act ¹

Name of Act or statutory rule	Extent of repeal
<i>Parliamentary Remuneration Amendment Act 2001 No 105</i>	Whole Act ¹
<i>Road Transport Legislation Amendment (Heavy Vehicle Registration Charges and Motor Vehicle Tax) Act 2001 No 106</i>	Whole Act ¹
<i>Courts Legislation Further Amendment Act 2001 No 108</i>	Whole Act ¹
<i>Evidence Legislation Amendment Act 2001 No 109</i>	Whole Act ¹
<i>Grain Marketing Amendment Act 2001 No 110</i>	Whole Act ¹
<i>Residential Tenancies Amendment Act 2001 No 111</i>	Whole Act ¹
<i>Industrial Relations Amendment (Public Vehicles and Carriers) Act 2001 No 113</i>	Whole Act ¹
<i>Police Service Amendment (Promotions and Integrity) Act 2001 No 114</i>	Whole Act ¹
<i>Crimes Amendment (Self-defence) Act 2001 No 116</i>	Whole Act ¹
<i>Criminal Legislation Amendment Act 2001 No 117</i>	Whole Act ¹
<i>Aboriginal Land Rights Amendment Act 2001 No 118</i>	Whole Act ¹
<i>Cemeteries Legislation Amendment (Unused Burial Rights) Act 2001 No 122</i>	Whole Act ¹
<i>Courts Legislation Amendment (Civil Juries) Act 2001 No 124</i>	Whole Act ¹

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Schedule 3 Repeals

Name of Act or statutory rule	Extent of repeal
<i>Disorderly Houses Amendment (Brothels) Act 2001</i> No 125	Whole Act ¹
<i>Environmental Planning and Assessment Amendment (Ski Resort Areas) Act 2001</i> No 126	Whole Act ¹
<i>Transport Administration Amendment (Rail Access) Act 2001</i> No 131	Whole Act ¹
<i>Children (Detention Centres) Amendment Act 2002</i> No 1	Whole Act ¹
<i>Conveyancing Legislation Amendment (e-plan) Act 2002</i> No 2	Whole Act ¹
<i>Sydney Bethel Union Extension Amendment Act 2002</i> No 3	Whole Act ¹
<i>Bail Amendment (Confiscation of Passports) Act 2002</i> No 4	Whole Act ¹
<i>Crimes (Sentencing Procedure) Amendment (General Sentencing Principles) Act 2002</i> No 5	Whole Act ¹
<i>Anti-Discrimination Amendment (Drug Addiction) Act 2002</i> No 6	Whole Act ¹
<i>Courts Legislation Amendment Act 2002</i> No 7	Whole Act ¹
<i>First Home Owner Grant Amendment Act 2002</i> No 9	Whole Act ¹
<i>Motor Accidents Compensation Amendment (Terrorism) Act 2002</i> No 10	Whole Act ¹
<i>Coal Industry Amendment (Validation) Act 2002</i> No 12	Whole Act ¹

Name of Act or statutory rule	Extent of repeal
<i>Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 2002</i> No 13	Whole Act ¹
<i>Environment Protection Legislation Amendment Act 2002</i> No 14	Whole Act ¹
<i>Racing Legislation Amendment (Bookmakers) Act 2002</i> No 15	Whole Act ¹
<i>Home Building Amendment (Insurance) Act 2002</i> No 17	Whole Act ¹
<i>Gaming Machines Amendment Act 2002</i> No 18	Whole Act ¹
<i>Local Government Amendment (Anti-Corruption) Act 2002</i> No 19	Whole Act ¹
<i>Local Government Amendment (Graffiti) Act 2002</i> No 20	Whole Act ¹
<i>Drug Summit Legislative Response Amendment (Trial Period Extension) Act 2002</i> No 21	Whole Act ¹
<i>Crimes Amendment (Bushfires) Act 2002</i> No 24	Whole Act ¹
<i>Financial Services Reform (Consequential Amendments) Act 2002</i> No 26	Whole Act ¹
<i>Liquor Amendment (Special Events Hotel Trading) Act 2002</i> No 29	Whole Act ¹
<i>Local Government Amendment (Enforcement of Parking and Related Offences) Act 2002</i> No 31	Whole Act ¹
<i>Industrial Relations Amendment (Unfair Contracts) Act 2002</i> No 32	Whole Act ¹

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Schedule 3 Repeals

Name of Act or statutory rule	Extent of repeal
<i>Pastoral and Agricultural Crimes Legislation Amendment Act 2002</i> No 33	Whole Act ¹
<i>Bail Amendment (Repeat Offenders) Act 2002</i> No 34	Whole Act ¹
<i>Crimes (Forensic Procedures) Amendment Act 2002</i> No 35	Whole Act ¹
<i>Summary Offences Amendment (Places of Detention) Act 2002</i> No 37	Whole Act ¹
<i>Local Government Amendment (Miscellaneous) Act 2002</i> No 40	Whole Act ¹
<i>Parliamentary Remuneration Amendment (Recognised Office Holder) Act 2002</i> No 41	Whole Act ¹
<i>Community Services Legislation Amendment Act 2002</i> No 42	Whole Act ¹
<i>Environmental Planning and Assessment Amendment (Anti-Corruption) Act 2002</i> No 44	Whole Act ¹
<i>Crimes Amendment (Police and Other Law Enforcement Officers) Act 2002</i> No 45	Whole Act ¹
<i>Firearms Amendment (Public Safety) Act 2002</i> No 47	Whole Act ¹
<i>Summary Offences Amendment (Public Safety) Act 2002</i> No 48	Whole Act ¹
<i>Legal Aid Commission Amendment Act 2002</i> No 49	Whole Act ¹
<i>Police Service Amendment (NSW Police) Act 2002</i> No 51	Section 4, Schedule 1 (except Schedule 1 [12]) and Schedule 2 ¹

Name of Act or statutory rule	Extent of repeal
<i>Radiation Control Amendment Act 2002</i> No 52	Whole Act ¹
<i>Witness Protection Amendment Act 2002</i> No 54	Whole Act ¹
<i>Protection of the Environment Operations Amendment (Tradeable Emission Schemes Fund) Act 2002</i> No 61	Whole Act ¹
<i>Public Finance and Audit Amendment (Budgeting and Financial Reporting) Act 2002</i> No 62	Whole Act ¹
<i>State Revenue Legislation Amendment (Budget) Act 2002</i> No 63	Whole Act ¹
<i>Poultry Meat Industry Amendment (Price Determination) Act 2002</i> No 65	Whole Act ¹
<i>Property, Stock and Business Agents Act 2002</i> No 66	Schedule 2.3 [1] ⁴
<i>Rural Fires and Environmental Assessment Legislation Amendment Act 2002</i> No 67	Whole Act ¹
<i>Western Lands Amendment Act 2002</i> No 68	Schedule 4 [14] ⁴
<i>Young Offenders Amendment Act 2002</i> No 69	Whole Act ¹
<i>Courts Legislation Further Amendment Act 2002</i> No 70	Whole Act ¹
<i>Miscellaneous Acts Amendment (Relationships) Act 2002</i> No 73	Whole Act ¹
<i>Crimes Legislation Amendment (Periodic and Home Detention) Act 2002</i> No 74	Whole Act ¹
<i>Marine Legislation Amendment (Marine Pollution) Act 2002</i> No 75	Whole Act ¹

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Schedule 3 Repeals

Name of Act or statutory rule	Extent of repeal
<i>Land and Environment Court Amendment Act 2002 No 76</i>	Whole Act ¹
<i>Parliamentary Electorates and Elections Amendment (Party Registration) Act 2002 No 80</i>	Whole Act ¹
<i>Agricultural Industry Services Amendment (Interstate Arrangements) Act 2002 No 81</i>	Section 4 and Schedule 1 (except Schedule 1 [6]) ¹
<i>Farm Debt Mediation Amendment Act 2002 No 82</i>	Whole Act ¹
<i>Totalizator Agency Board Privatisation Amendment Act 2002 No 84</i>	Whole Act ¹
<i>Coastal Protection Amendment Act 2002 No 85</i>	Whole Act ¹
<i>Fair Trading Amendment (Employment Placement Services) Act 2002 No 86</i>	Whole Act ¹
<i>Murray-Darling Basin Amendment Act 2002 No 87</i>	Whole Act ¹
<i>Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002 No 90</i>	Whole Act ¹
<i>Public Health Amendment (Juvenile Smoking) Act 2002 No 91</i>	Whole Act ¹
<i>Drug Court Amendment Act 2002 No 93</i>	Whole Act ¹
<i>Environmental Planning and Assessment Amendment (Illegal Backpacker Accommodation) Act 2002 No 94</i>	Whole Act ¹
<i>Law Enforcement and National Security (Assumed Identities) Amendment Act 2002 No 95</i>	Whole Act ¹

Name of Act or statutory rule	Extent of repeal
<i>Election Funding Amendment Act 2002</i> No 101	Whole Act ¹
<i>Gaming Machines Further Amendment Act 2002</i> No 102	Whole Act ¹
<i>Police Amendment (Appointments) Act 2002</i> No 105	Whole Act ¹
<i>Retail Leases Amendment Act 2002</i> No 106	Whole Act ¹
<i>Security Industry Amendment Act 2002</i> No 107	Whole Act ¹
<i>Strata Schemes Management Amendment Act 2002</i> No 109	Whole Act ¹
<i>Superannuation Legislation Amendment Act 2002</i> No 110	Whole Act ¹
<i>Superannuation Legislation Further Amendment Act 2002</i> No 111	Whole Act ¹
<i>Motor Accidents Compensation Further Amendment (Terrorism) Act 2002</i> No 113	Whole Act ¹
<i>Privacy and Personal Information Protection Amendment (Prisoners) Act 2002</i> No 116	Whole Act ¹
<i>Public Finance and Audit Amendment (Costing of Election Promises) Act 2002</i> No 117	Whole Act ¹
<i>Guardianship and Protected Estates Legislation Amendment Act 2002</i> No 119	Whole Act ¹
<i>Industrial Relations Amendment (Industrial Agents) Act 2002</i> No 120	Whole Act ¹
<i>Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002</i> No 122	Whole Act ¹

Statute Law (Miscellaneous Provisions) Bill 2003

Schedule 3 Repeals

Name of Act or statutory rule	Extent of repeal
<i>Workers Compensation Amendment (Terrorism Insurance Arrangements) Act 2002 No 123</i>	Whole Act ¹
<i>Coal Industry Amendment (Fees for Rescue Services) Act 2002 No 125</i>	Whole Act ¹
<i>Road Transport (Vehicle Registration) Amendment Act 2002 No 126</i>	Whole Act ¹
<i>Drug Misuse and Trafficking Amendment (Dangerous Exhibits) Act 2002 No 128</i>	Whole Act ¹
<i>Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs) Act 2002 No 131</i>	Whole Act ¹
<i>Bank Holidays Legislation Amendment Act 2002 No 132</i>	Whole Act ¹
<i>Building and Construction Industry Security of Payment Amendment Act 2002 No 133</i>	Whole Act ¹
<i>Crimes Amendment (School Protection) Act 2002 No 135</i>	Whole Act ¹
<i>Crimes Legislation Amendment (Commencement) Act 2003 No 1</i>	Whole Act ³

Key

- 1 indicates repeal of an Act that was assented to in 2002 or earlier and that contains only amendments or amendments and repeals
- 2 indicates repeal of an Act that was assented to in 2002 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

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 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

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- Art Gallery of New South Wales Act 1980* No 65—Schedule 1
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- Bail Regulation 1999*—Schedule 2
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- Cessnock Local Environmental Plan 1989*—Schedule 2
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