

Interpretation Amendment Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Interpretation Act 1987* so as:

- (a) to confirm that statutory bodies that are declared by an Act to represent the Crown have the status, privileges and immunities of the Crown, and
- (b) to provide a statutory basis for the NSW legislation website maintained by the Parliamentary Counsel for the electronic publication of legislation, and
- (c) to provide for the official publication on that website of new statutory rules, proclamations that commence or amend legislation, and progressively other miscellaneous statutory instruments, to improve public access to those instruments (publication each Friday will be continued except in urgent cases and publication in the Gazette and in pamphlet form will follow to maintain public access to printed legislation).

The Bill also:

- (a) transfers the provisions relating to the paper reprinting of legislation from the *Reprints Act 1972* to the *Interpretation Act 1987* and repeals that Act as a consequence, and
- (b) makes other minor or consequential amendments to the *Interpretation Act 1987* and certain other legislation (including to the *Environmental Planning and Assessment Act 1979* to provide for the official on-line publication of new environmental planning instruments).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent, except that the amendments providing for the official publication of statutory rules and other instruments on the NSW legislation website will commence on a date to be proclaimed by the Governor.

Clause 3 is a formal provision giving effect to the amendments to the *Interpretation Act 1987* (the **Principal Act**) set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to other Acts set out in Schedule 2.

Clause 5 repeals the *Reprints Act 1972* (consequent on the transfer of its remaining operative provisions relating to paper reprints of legislation to the *Interpretation Act 1987*).

Clause 6 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Interpretation Act 1987

NSW Government agencies and statutory bodies representing the Crown

Schedule 1 [1] inserts section 13A into the Principal Act relating to NSW Government agencies and statutory bodies representing the Crown. Legislation establishing a statutory body with government functions ordinarily declares that the body is a statutory body representing the Crown. In *Wynyard Investments Pty Ltd v Commissioner for Railways (NSW)* [1955] HCA 72, the High Court confirmed that the declaration conferred on the statutory body the status, immunities and privileges of the Crown. However, in the recent case of *McNamara v CTTT & RTA* [2005] HCA 55, the High Court effectively reversed the Wynyard Investments decision. Proposed section 13A confirms the intention of declarations in previous statutes that a

particular body represented the Crown by providing that such a declaration confers on the body the status, immunities and privileges of the Crown (including that of the State). The opportunity has also been taken to give the same status to a declaration in a future Act that a statutory body is a NSW Government agency.

Schedule 1 [12] inserts clause 7 into Schedule 3 to the Principal Act to make savings and transitional provisions in relation to proposed section 13A. In particular, it declares that the section is taken always to have applied to the legislation of New South Wales. However, the section will not affect the decision of the High Court in the McNamara case in respect of the successful appellant in that case, including in respect of any future similar action by the Roads and Traffic Authority in relation to the premises and the appellant in that High Court case.

NSW legislation website

Schedule 1 [11] inserts Part 6A into the Principal Act (proposed sections 45B–45E) relating to the electronic and other government publication of legislation. **Schedule 1 [2]** defines (for the purposes of Part 6A and other Acts), the **NSW legislation website** as www.legislation.nsw.gov.au or any other website used by the Parliamentary Counsel to provide public access to the legislation of NSW.

Proposed section 45B defines **legislation** so as to include NSW Acts, regulations or other instruments made under those Acts, laws of other jurisdictions that are applied in NSW and other publications adopted by NSW legislation.

Proposed section 45C provides a statutory basis for the NSW legislation website that is used by the Parliamentary Counsel for the electronic publication of legislation and other matter relating to legislation. The website provides public access to legislation as originally made and as amended. The proposed section will require the Parliamentary Counsel to compile and maintain a database of legislation published on the NSW legislation website and will enable the Parliamentary Counsel to certify the form of that legislation that is correct (thereby providing the same official status for electronic reprints of legislation as the *Reprints Act 1972* currently provides for paper reprints certified by the Parliamentary Counsel).

Proposed section 45D re-enacts (in simplified form) provisions of the *Reprints Act 1972* (sections 5–7, 12 and 13) relating to the official paper reprint program for the publication of legislation as amended and in force at the date of the reprint. About 10,000 pages of legislation are reprinted under the program each year (which is to be maintained, although comprehensive and current updates of legislation are available on the NSW legislation website, to meet residual public demand for the paper product). Provisions that permit the Parliamentary Counsel to directly amend legislation in the course of a reprint for statute law revision purposes have not been re-enacted since they have not been used in recent years (with statute law revision amendments being included instead in the Statute Law (Miscellaneous Provisions) Bills introduced into Parliament each Session).

Proposed section 45E re-enacts provisions of the *Reprints Act 1972* (sections 9D and 9F):

- (a) that enable legislation to be published with the omission of the enacting formula and other changes in format (but not substantive text) to reflect current styles in NSW, and
- (b) that enable roman numerals to be regarded as interchangeable with the corresponding arabic numerals and that enable colons to be regarded as interchangeable with dashes.

Official publication of new statutory instruments on NSW legislation website

Currently, new regulations and other statutory instruments are required to be officially published in a paper version of the Government Gazette (which provides a historical record on a weekly basis of statutory instruments as originally made). In the Commonwealth and in some other States and Territories (such as the ACT and

Tasmania) official publication of statutory instruments is now effected by publication on an official website maintained by Parliamentary Counsel.

Schedule 1 [3], [4], [6], [7], [8], [9] and [10] amend the Principal Act to provide for the official publication on the NSW legislation website of statutory rules and proclamations and other instruments that commence or amend legislation. **Schedule 2.1** amends the *Environmental Planning and Assessment Act 1979* to make similar provision with respect to the official publication of environmental planning instruments. Publication of the statutory rules and other instruments each Friday will be continued, except in urgent cases, and publication in the Gazette and in pamphlet form will follow to maintain public access to printed legislation. The statutory rules and instruments concerned are those that are generally drafted in the Parliamentary Counsel's Office. In future, other new miscellaneous statutory instruments of a legislative nature will be able to be officially published on the website by regulations made by the Governor under proposed section 44 (**Schedule 1 [9]**). In the meantime, some significant miscellaneous instruments that have been previously made will continue to be electronically captured and made publicly accessible on the legislation website (such as water sharing plans under the *Water Management Act 2000*). Official electronic publication of new statutory instruments on the NSW legislation website:

- (a) will enable the publication of new statutory instruments to be fully integrated with the in force and historical versions of legislation on the website and with the weekly bulletin of legislative activity issued by the Parliamentary Counsel (including the facility to immediately access electronically the full text of instruments for browsing, searching and printing), and
- (b) will enable a broader range of miscellaneous statutory instruments to become more publicly accessible over time, and
- (c) will enable the inclusion and publication in statutory instruments (such as the standard environmental planning instruments) of maps and tables with colours, details and size that are currently not possible because of the limitation of publishing in an A4 black and white printed page of the Gazette, and
- (d) will enable the Parliamentary Counsel's Office to publish new instruments on behalf of government agencies in the same way as it currently arranges for their tabling in Parliament.

Other amendments

Schedule 1 [5] inserts section 23 (4A) into the Principal Act to make it clear that a power to appoint different days for the commencement of an Act includes a power to appoint different days for the repeal of different provisions of a previous Act that is to be repealed on the commencement of the Act.

Schedule 1 [12] enacts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2.1 contains amendments to the *Environmental Planning and Assessment Act 1979*. The amendments provide for the publication, on the NSW legislation website instead of the Gazette, of new environmental planning instruments and orders under that Act relating to standard instruments.

Schedule 2.2 contains amendments to the *Public Sector Employment and Management Act 2002* to provide for the publication, on the NSW legislation website instead of the Gazette, of orders amending that Act with respect to Departmental and other administrative changes.

Schedule 2.3 contains amendments to the *Subordinate Legislation Act 1989*. The amendments:

- (a) make consequential changes relating to the proposed publication of new statutory instruments on the NSW legislation website instead of the Gazette,

and

(b) provide for the publication, on the website instead of the Gazette, of orders under that Act that postpone the staged repeal of statutory rules.