



NSW Legislative Council Hansard Interpretation Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 6 June 2006.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [6.10 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

The Interpretation Act contains a number of provisions that are designed to guide the interpretation of legislation. An Act relating to the interpretation of legislation was first enacted in 1897 and was comprehensively updated in 1987. This bill contains a number of miscellaneous amendments to that important legislation. Significantly, the bill contains amendments to modernise the publication process for making statutory rules and improve public access to legislation in New South Wales. Currently, under the Interpretation Act, when statutory rules are made, the full text of the rule is required to be published in the *Government Gazette*. I seek leave to incorporate the remainder of the second reading speech in *Hansard*.

Leave granted.

While the Gazette contains an historical record of all statutory rules made, there are limitations as to the manner in which instruments can be published. Searching in the Gazette for rules in force, and any amendments made, is also a complex task.

Parliamentary Counsel has proposed amendments to the *Interpretation Act* to provide for the online gazettal of new statutory rules on the New South Wales Government legislation website maintained by the Parliamentary Counsel.

The amendments will apply to regulations, proclamations commencing or amending Acts, environmental planning instruments, court rules and by-laws approved by the Governor.

Official publication will now occur online instead of in the printed Gazette.

However, a copy of the full statutory rule will continue to appear in the Gazette to maintain public access to the information for those who do not have electronic access. This will be reviewed over time.

Official publication online of statutory rules already occurs in the Commonwealth, Tasmania and the Australian Capital Territory. New South Wales and Western Australia are the only jurisdictions in Australia that still publish the full text of statutory rules in a printed Gazette.

There are a number of benefits of the proposal. Online publication will provide for enhanced publication capabilities. For example, it will now be possible to provide for the colour publication of instruments and non-standard size publication.

Colour publication will be particularly useful for maps which are attached to environmental planning instruments which are not, in many cases, able to form part of the planning instrument itself because of current limitations.

As a result of these amendments the planning instruments and associated maps will be able to be accessed on a single site.

The New South Wales Government legislation web site also has advanced search and indexing capabilities.

Changes will be made to the New South Wales Government legislation website so the date of official publication of a statutory rule will appear on the instrument when it is accessed or downloaded.

Official publication on the New South Wales Government legislation web site will occur on Fridays which is the same day that the Gazette is currently published. It will also be possible to publish on days other than Friday if earlier publication is required, as is the case with special supplements of the Gazette.

The proposal is another step in improving online access to statutory instruments.

While the amendments in this bill are limited to statutory rules and do not include statutory instruments such as orders and guidelines, item [9] provides for regulations to be made so that other statutory instruments can be

made in the future by way of online publication.

In addition, as future legislation is drafted, the Parliamentary Counsel will be able to advise agencies as to whether a proposed power to make a particular statutory instrument should provide for official publication on the New South Wales Government legislation web site.

Over time access to these other types of statutory instruments will be improved and it will be possible to determine from a single web site which instruments are in force, those that have been repealed and those which have been amended.

The bill also includes provisions to provide a statutory basis for the New South Wales Government legislation web site.

Item [11] will enable the Parliamentary Counsel to certify that the form of legislation downloaded from the web site is correct thereby providing the same official status for electronic versions of legislation as paper reprints certified in accordance with the *Reprints Act*.

This certification will be able to be provided in respect of legislation in force at the date of download and also in respect of historical versions available online.

This will reduce in the future the need for courts, government agencies and others to rely on paper reprints as the authoritative versions of the law.

Certification of online versions will not commence immediately as software development is currently being undertaken to provide the New South Wales Government legislation web site with the required functionality to ensure that "authentic" versions are downloaded.

Such a system is already operating successfully in the Australian Capital Territory.

The bill also updates the provisions of the *Reprint Act* and transfers them to the *Interpretation Act*. Those provisions currently authorise the official paper reprint program for the publication of legislation.

The amendments make Parliamentary Counsel, rather than the Attorney General, responsible for authorising reprints. In practice, the Parliamentary Counsel currently exercises this function under delegation pursuant to the existing *Reprints Act*.

It should also be noted that the provisions of the *Reprints Act* that authorise direct statute law amendments to be made to legislation in the course of reprinting an Act are not being re-enacted.

Minor statute law amendments are now made by way of the Statute Law Revision Bill that is enacted in each Session.

Item [1] deals with references in Acts to "statutory bodies representing the Crown".

Prior to a recent decision of the High Court, the view was taken that wherever New South Wales legislation states that a statutory body is "for the purpose of any Act, a statutory body representing the Crown", such a body enjoys the status, immunities and privileges that are conferred on the Crown.

This view was based on the High Court's decision in *Wynyard Investments v Commissioner of Railways*. Parliamentary Counsel advises that the statute book has been drafted in reliance on this earlier decision.

In the case of *McNamara v CTTT*, the High Court effectively reversed its previous decision in *Wynyard Investments* and held that the Crown's immunities do not automatically extend to such bodies.

As a result of the High Court's decision, a number of adverse consequences could arise because statutory corporations will no longer have the benefit of the immunities and privileges ordinarily afforded to the Crown.

Accordingly, the amendment confirms that the interpretation adopted in the *Wynyard Investments* case continues to apply so that a statutory body which is expressed to represent the Crown has the status, immunities and privileges of the Crown.

The amendment will have retrospective effect to restore the position prior to the High Court's more recent decision. It is important to point out that item [12] will ensure the successful appellant in the High Court's case retains the benefit of her victory.

Item [5] amends the *Interpretation 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 which is to be repealed on the commencement of the Act.

Currently such a provision is generally included in major bills on a case by case basis. This provision will be of particular assistance where large, complex Acts are to be repealed in a staged manner and are replaced by new comprehensive legislative schemes.

These changes will improve the accessibility of the laws of New South Wales. Instruments published on the database will be fully indexed, and it will be easier to tell what laws are in force and which ones have been repealed.

We will also be able to do things we have not been able to do before including officially publishing maps and other documents in full colour.

I commend the bill to the House.