

# **Manual for the Preparation of Legislation**

**8th edition**

**Parliamentary Counsel's Office**

**August 2000**

**New South Wales Government**

***Parliamentary Counsel's Office***

Level 12 Goodsell Building  
8–12 Chifley Square  
Sydney 2000

***Postal address***

GPO Box 4191  
Sydney NSW 2001

***DX***

DX 1272 Sydney

***Telephone***

(02) 9228 7139

***Fax***

(02) 9232 4796

***E-mail***

parliamentary.counsel@pco.nsw.gov.au

***Business hours***

8.30 am–5.30 pm  
Monday to Friday  
[Special arrangements apply on  
days when Parliament is sitting]

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## Contents

### Chapters

1	Introduction	3
2	Bills	6
3	Statute law revision program	14
4	Amendments in committee	17
5	Statutory instruments generally	19
6	Regulations and other statutory rules	21
7	Proclamations and orders	29
8	Administrative changes orders	32

### Appendices

1	NSW legislative publications	35
2	Guidelines for the preparation of statutory rules	39
3	Lieutenant-Governor	40
4	Guidelines for the gazettal of statutory instruments	41
5	Tabling and disallowance of statutory instruments	43
6	Pro forma Law of Evidence Bill	49
7	Statute Law Revision Program	51
8	Private Bills	53
9	Forms in legislation	54



## Chapter 1 Introduction

### Purpose of Manual

- 1.1 This Manual is intended to be used as a guide for contact with the Parliamentary Counsel's Office by government departments and other agencies in connection with legislation and statutory instruments.

### Scope of Manual

- 1.2 This Manual covers the preparation of legislation, amendments in committee, and statutory instruments, on behalf of the Government of New South Wales. It is intended primarily as a guide to officers in government departments and other agencies. The expression "agency" is used in the Manual to include government departments.
- 1.3 The Manual does not generally deal with the drafting of non-Government legislation (including amendments in committee). This is subject to arrangements as agreed to by the Government and is described in the *Manual for the Drafting of Non-Government Legislation* also published by the Parliamentary Counsel's Office.

### Previous editions

- 1.4 This is the 8th edition of the Manual that was formerly called *Manual for the Preparation of Instructions for the Drafting of Bills*. The Manual has been expanded to include material on other aspects of the work of the Parliamentary Counsel's Office.

### Functions of Parliamentary Counsel's Office

- 1.5 The principal role of the Parliamentary Counsel's Office is to provide the Government with a comprehensive and integrated range of high quality services for the drafting and development of legislation and also the publication of legislation and the giving of advice and information about legislation.
- 1.6 The Parliamentary Counsel's Office is a vital link in the legislative process, working with Cabinet, Parliament and agencies to meet the Parliamentary program. The subordinate legislation program follows a similar pattern. The Office also works with other organisations to promote uniform legislation and plain language, and to further refine the content, appearance and availability of legislation.

1.7 The functions of the Parliamentary Counsel's Office include the following:

***Drafting legislation***

- Drafting new laws (Acts, regulations etc)
- Drafting amendments in committee
- Drafting explanatory notes to new laws
- Providing advice and assistance concerning new legislation and legislative policy
- Providing a legislative drafting service for non-Government Members of Parliament (under arrangements as approved by the Government)
- Drafting, settling and providing opinions on environmental planning instruments.

***Publishing legislation***

- Providing a complete legislation publishing service to Parliament (Bills for introduction and passage through Parliament and for presentation to the Governor for assent)
- Printing Bills for introduction into Parliament
- Providing camera-ready artwork for:
  - new written laws
  - updated reprints of legislation
  - annual bound volumes of legislation
- Providing Internet access to legislation and information publications about legislation

(A more detailed list of legislative publications prepared by the Office appears in Appendix 1.)

***Providing advice and information***

- Providing legal advice and administrative assistance on legislative drafting and procedure
- Providing a Legislation Information Service to the Government and the public, and producing an extensive range of legislative information publications
- Researching legislative drafting and related matters
- Compiling and developing a comprehensive Legislation Database.

**Plain language**

1.8 The Office made a formal commitment to plain language in 1986 and was one of the first Australian jurisdictions to do so. The Office has been developing and consolidating its position on plain language since then, and will continue to do so as part of a long process of ensuring that legislative language is as clear as possible, having special regard to the needs of the users of legislation. The Office is fully committed to the principle of communicating the message of legislation in plain language, without any loss of precision or of any necessary detail.

### **Gender-neutral expression**

- 1.9 New South Wales was the first Australian jurisdiction to adopt gender-neutral language in legislation. In 1983 the Attorney General approved a proposal from the Parliamentary Counsel's Office that in the preparation of future legislation preference would be given to the use of gender-neutral language. The policy was formally announced by the Governor on 16 August 1983 and has been strictly applied in the Office ever since.
- 1.10 The Office's policies relating to plain language and gender-neutral expression are available on request and also appear on its Internet site [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au).

### **Lieutenant-Governor**

- 1.11 Appendix 3 contains material on the form of statutory instruments when the Lieutenant-Governor is acting as or for the Governor.

### **Pro forma Law of Evidence Bill**

- 1.12 Appendix 6 contains material on the *Law of Evidence Bill*, introduced into the Legislative Assembly at the beginning of each session of Parliament.

### **Private Bills**

- 1.13 Appendix 8 contains material on Private Bills, ie Bills for Private Acts.

### **Forms in legislation**

- 1.14 Appendix 9 describes the technical issues associated with representing printed forms in legislation.

## Chapter 2 Bills

### Introduction

- 2.1 The Parliamentary Counsel's Office is responsible for drafting all government legislation for introduction in the Parliament of New South Wales.

### Preliminary advice

- 2.2 The Parliamentary Counsel's Office is available to give preliminary advice about legislative matters, including the following:
- advice about legislative proposals
  - advice as to whether legislation is needed
  - advice on the steps to be taken before legislation is introduced
  - advice on legislative procedures.

The Office can also direct officers to other appropriate sources of advice.

### Initial Cabinet approval

- 2.3 The Cabinet proposal should not be in the form of a draft Bill, and should not contain the legislative text of proposed amendments or provisions.
- 2.4 The drafting of a Bill by the Parliamentary Counsel will not, except in special circumstances, be commenced unless Cabinet has approved in principle of the proposals to be dealt with by the Bill.
- 2.5 Drafting work can however be commenced without Cabinet approval, subject to the Premier's approval. The Premier's approval can be sought by ministerial correspondence with the Premier, or by approaching the Director-General of The Cabinet Office.

### Initiating letter, briefing notes and contact with Parliamentary Counsel's Office

- 2.6 An initiating letter and briefing notes should be prepared by the responsible agency for forwarding to the Parliamentary Counsel's Office.
- 2.7 The initiating letter requests the preparation of the Bill, and forwards the briefing notes.

- 2.8 The briefing notes (also known as drafting instructions) contain details about the legislative proposal, as set out below. Paragraph 2.26 deals with the circumstances in which briefing notes can be dispensed with.
- 2.9 The initiating letter and briefing notes should be sent to the Parliamentary Counsel within 10 days after receipt of advice of Cabinet's approval. If Cabinet decides that the proposal is to be varied, it will still be possible to have the letter and notes ready within the 10-day period.
- 2.10 In complex matters, even with the preparation of briefing notes in anticipation of Cabinet's approval, particular difficulties may arise which delay the forwarding of briefing notes for a period greater than 10 days. In any case where delay occurs, both The Cabinet Office and the Parliamentary Counsel should be advised of the delay and the reason for it.
- 2.11 The briefing notes to the Parliamentary Counsel for a Bill must be in the form of ordinary narrative prose unless there are special circumstances and the Parliamentary Counsel has previously agreed to accept briefing notes in the form of a draft Bill.
- 2.12 The initiating letter to the Parliamentary Counsel should state the name and telephone and fax numbers of the agency officer with whom the drafter can make arrangements for any necessary conferences. The Parliamentary Counsel's Office will inform the agency of the name and contact details of the legislative drafter who has been allocated the Bill.
- 2.13 Briefing notes for Bills should not be forwarded unless they have been approved by the head of the agency or other officer responsible for recommending the Bill, when it is drafted, for the Minister's approval.
- 2.14 Briefing notes for Bills should comprise two parts, a "General statement" and "Detailed statement".
- 2.15 **General statement.** The general statement should contain a comprehensive statement in general terms setting out the following:
- (a) the principal objectives intended to be achieved by the Bill,
  - (b) how it is proposed to achieve those objectives and how it is expected that the Bill will operate in practice,
  - (c) all relevant background material relating to the proposals to be included in the Bill, including all known legal implications and difficulties, to enable the drafter to see in perspective and context the facts and problems with which the Bill is intended to deal,
  - (d) the circumstances out of which the proposals to be included in the Bill arose and the nature of the problems to be dealt with in the Bill.

- 2.16 The length of the general statement will obviously depend on the nature and extent of the legislative proposals dealt with in it but it should be comprehensive rather than unduly brief.
- 2.17 A general statement relating to an amending Bill should deal separately with each proposed area of amendment. The general statement relating to a particular amendment should immediately precede the detailed briefing notes for the amendment.
- 2.18 **Detailed statement.** This statement should contain details about the matters to be dealt with in the proposed legislation. These details should, in respect of each legislative proposal to be included in the Bill:
- (a) be expressed in simple, non-technical language, and
  - (b) deal with every aspect of the proposal and indicate every requirement which the agency considers to be necessary to give effect to the proposal.
- 2.19 The briefing notes should be accompanied by all relevant information and also should:
- (a) indicate existing legislation that will require amendment or consideration to give effect to the proposal, and
  - (b) indicate any known consequential amendments that will be necessary as a result of the legislative provision giving effect to the proposal, and
  - (c) if it appears to the agency that provisions of other New South Wales legislation or of legislation of another jurisdiction satisfactorily deal with the subject of the proposal, provide a reference to that legislation and indicate whether inquiries have found it to operate satisfactorily, and
  - (d) provide references to any known decided cases or copies of any legal opinions available to the agency that may affect the proposal, and
  - (e) provide copies of reports of committees or other bodies, or, if the reports are not readily available, references to reports that deal with the proposal, and
  - (f) be internally consistent.
- 2.20 If the proposed legislation deals with a technical subject, the briefing notes should include sufficient material on the subject to enable the drafter to gain an understanding of the technicalities and technical terms involved in drafting the Bill.
- 2.21 Where a legislative proposal impinges on the activities of another Minister or agency, that Minister or agency should be consulted before the Parliamentary Counsel is requested to include the proposal in a Bill.
- 2.22 Legally contentious provisions (such as provisions for changing the onus of proof), unusual evidentiary provisions and any departures from standard powers of entry or search should be considered by an officer of the Attorney General's Department (as the principal legal adviser to the Government) before the Parliamentary Counsel is requested to include them in a Bill.

## **Manual for the Preparation of Legislation**

- 2.23 Any departures from the accepted range of penalties should be referred to the Attorney General's Department at the time of drawing up the Cabinet submission. Failure to do this may lead to protracted delays in completing the proposed Bill.
- 2.24 The briefing notes should not be overloaded with proposals for legislative provisions that can be dealt with administratively. Nor should they contain proposals for legislative provisions, other than a suitable regulation-making power, to deal with matters of a purely administrative nature if those matters can be satisfactorily dealt with by regulations to be made under the proposed legislation.
- 2.25 Where power is to be given to make decisions affecting the person or the rights of property of persons, favourable consideration should be given to the question of whether there is to be a right of appeal against the decisions and, if so, to what body the appeal is to lie.

### **When briefing notes can be dispensed with**

- 2.26 Briefing notes need not be provided to the Parliamentary Counsel if the Cabinet Minute or other available materials contain sufficient details of the legislative proposal. Agencies are requested to contact the Parliamentary Counsel if briefing notes are not proposed to be provided, so that the matter can be discussed. A letter seeking the drafting of the proposed legislation will usually be requested.

### **Drafting process**

- 2.27 After briefing notes for the drafting of a Bill have been given to the Parliamentary Counsel, or it has been established that briefing notes will not be given, the agency's officer concerned in the preparation of the Bill should be readily available to arrange promptly any conferences required by the drafter with the agency's officer and any other officers whose expert knowledge can contribute to the drafting of the required Bill.
- 2.28 Agency officers attending conferences for the settling of Bills should have the detailed knowledge, ability and authority to make decisions on most of the questions that inevitably arise in drafting. The drafting of the Bill is greatly delayed by the drafter having to await confirmation of tentative decisions. An agency officer attending on the settlement of a proposed amending Bill should particularly have a detailed knowledge of the provisions and operation of the Principal Act to be amended.
- 2.29 Briefing notes are expected to be comprehensive and, as far as possible, deal with all matters approved by Cabinet. This enables an appropriate legislative scheme to be constructed from the early drafting stage. Ordinarily, additional provisions of any importance will not be included in a Bill without Cabinet's prior approval.

- 2.30 The Office will develop the draft Bill and will offer guidance in policy to the extent that this is appropriate. The process of drafting Bills by the Parliamentary Counsel's Office includes the drafting of explanatory notes and tables of contents that are attached to all Bills introduced into Parliament.
- 2.31 On completion of the first draft of a Bill, it will be sent to the sponsoring agency for consideration as to whether its provisions meet the wishes of the Minister and the agency. Any alterations required will be made by the drafter in consultation with the agency officer concerned or a further draft will be prepared for consideration. This process will be repeated to the extent necessary to make the draft satisfactory to the Minister and the agency.
- 2.32 It is essential that prompt consideration of these drafts should be given and that the drafter should be quickly advised of any alterations required. Where alterations are required to a draft Bill, they should be given to the drafter in the form of written or oral narrative comments, and not in the form of actual amendments. The drafter will work out the best way of altering the draft to achieve the desired result, and the agency will be given an opportunity to comment on the changes that have been made.
- 2.33 The time necessary for finalising and printing a Bill cannot always be accurately estimated. Accordingly, an agency should not, without first consulting the Parliamentary Counsel, give any promise that a Bill will be ready for introduction (even if at a particular time it is aware that the Bill is being or has been drafted).

### **Approval for introduction**

- 2.34 A Bill requires formal governmental approval before it is introduced into Parliament. This approval will be given either by Cabinet or by the Cabinet Standing Committee on Legislation.
- 2.35 Agencies should not seek to have Bills reported back to the full Cabinet without first discussing the appropriateness of this course of action with The Cabinet Office.
- 2.36 Approval for the introduction of a Bill should not be sought until the Parliamentary Counsel has indicated that the draft Bill has been finalised.

### **Cabinet Standing Committee on Legislation**

- 2.37 The Premier has established a Cabinet Standing Committee on Legislation. The Committee consists of four Ministers: the Leader of the House in the Legislative Assembly, the Leader of the Government in the Legislative Council, the Attorney General, and the Special Minister of State.

## **Manual for the Preparation of Legislation**

- 2.38 The role of the Committee is to clear Bills that have been drafted largely in conformity with Cabinet's in-principle approval.
- 2.39 By undertaking this role, the Committee will help ensure the more efficient operation of Cabinet by removing the need for Cabinet to revisit legislative proposals that it had previously approved.
- 2.40 As a rule, every Bill will be the subject of a report by the Parliamentary Counsel. This report will be addressed to the Premier and the relevant Minister on the completion of the Bill. A copy is also usually forwarded to the agency officer concerned in the preparation of the Bill.
- 2.41 The Committee will, as mentioned above, clear Bills that have been drafted largely in conformity with Cabinet's in-principle approval, or where there are variations of only a technical or relatively minor policy nature that do not have a significant impact on the overall policy direction of the proposal. A formal report-back minute from the portfolio Minister will not be necessary in these circumstances.
- 2.42 If the final version of a Bill is thought by the Committee to be significantly different in policy terms to the legislative proposal as originally approved by Cabinet, the Committee will refer the Bill to the full Cabinet for consideration.

## **Notice of motion**

- 2.43 The Parliamentary Counsel will provide the necessary Notice of Motion, which is the first step in introducing a Bill into Parliament. The Notice of Motion will be forwarded by the Parliamentary Counsel to the office of the Leader of the House in the Legislative Assembly, irrespective of whether the Bill is to be introduced in the Legislative Assembly or Legislative Council. Special arrangements are made if the Legislative Council is, and the Legislative Assembly is not, sitting.
- 2.44 The Notice of Motion is initialled by the Parliamentary Counsel, and should not be altered or retyped.
- 2.45 The responsible Minister will read out the Notice of Motion in the House concerned, and hand a copy to the Clerks of the House.

## **Tabling copies of Bills**

- 2.46 After a Bill is drafted, the Parliamentary Counsel's Office prints copies of the Bill for introduction into Parliament. Four copies of the printed Bill are forwarded to the office of the Leader of the House in the Legislative Assembly, irrespective of whether the Bill is to be introduced in the Legislative Assembly or Legislative Council. Special arrangements are made if the Legislative Council is, and the

Legislative Assembly is not, sitting. These copies are handed to the Minister to give to the Clerks at the First Reading and one of these copies is forwarded to the Parliamentary Reporting Staff.

- 2.47 Tabling copies should not, of course, be altered after they have been provided by the Parliamentary Counsel.

### **Bulk printing of Bills**

- 2.48 The Parliamentary Counsel's Office also bulk prints copies of Bills required for Members of Parliament and these are delivered to the Bills Officer in the Legislative Assembly or Legislative Council. Additional copies are printed, after the Bill has been introduced, for sale to the public by the Government Information Service.

### **Reprinted Bills**

- 2.49 If Bills are amended in committee and require reprinting, the Parliamentary Counsel's Office incorporates the amendments and produces a new print version. Reprinted Bills are copied for Parliament and the Government Information Service.

### **Exposure Bills**

- 2.50 The procedure for the drafting of Bills for exposure purposes is similar to that for Bills intended for introduction into Parliament, as outlined above.
- 2.51 Cabinet approval is generally required to initiate the drafting process in the Parliamentary Counsel's Office and to formalise the actual release of the finalised Bill.
- 2.52 The Parliamentary Counsel's Office produces camera-ready artwork for exposure Bills and can bulk print copies of the Bill (the Office recovers production costs for printing exposure Bills), subject to the size of the print run.

### **Bills in electronic form**

- 2.53 The Parliamentary Counsel's Office provides electronic versions of all Bills introduced, reprinted and finally passed to Parliament House, within hours of introduction, amendment or passage. These are available on the Parliament House Internet site [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au). Electronic versions of Bills formally exposed but not introduced into Parliament are provided on the Parliamentary Counsel's Office Internet site [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au).

## Legislation Database

- 2.54 All new Acts and most older Acts are kept in an up-to-date form on the Legislation Database maintained by the Parliamentary Counsel's Office.
- 2.55 Electronic copies of the whole of, or extracts from, the Legislation Database are available from the Government Information Service. All new legislation (Acts, regulations etc) is available in PDF format on the Parliamentary Counsel's Office Internet site [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au).

## Consolidated reprints

- 2.56 Reprints of Acts are published by the Parliamentary Counsel's Office through the Government Information Service. The Parliamentary Counsel's Office provides camera-ready artwork to the Government Information Service, which arranges the bulk printing and distribution of NSW legislation.
- 2.57 Up-to-date versions are available electronically from the Legislation Database through the Government Information Service.

## Assistance

- 2.58 The Parliamentary Counsel's Office is available to discuss any of these matters. Advice can be obtained from the Parliamentary Counsel, a Deputy or Assistant Parliamentary Counsel or other senior officers.
- 2.59 The Parliamentary Counsel's Office also provides a Legislation Information Hotline Service, which provides information on the status of legislation (ie information about enacted legislation and Bills introduced into Parliament—not confidential information about draft legislation). This service can be contacted on (02) 9228 7139, by fax on (02) 9232 4796 or by e-mail [hotline@pco.nsw.gov.au](mailto:hotline@pco.nsw.gov.au).

## Private Members' Bills

- 2.60 Private Members' Bills sponsored by a non-government Member of Parliament are dealt with in the *Manual for the Drafting of Non-Government Legislation*.
- 2.61 Private Members' Bills sponsored by a government Member of Parliament must be sponsored by a Minister and taken to Cabinet before introduction into Parliament.

## Chapter 3 Statute law revision program

### Background

- 3.1 Longstanding Cabinet approval exists for a program of regular statute law revision. The program began in 1984. Since then, many Acts have been passed under the program, which is recognised as an effective and efficient method of dealing with a multiplicity of minor amendments that do not warrant separate Bills.

### Frequency of Bills

- 3.2 Two *Statute Law (Miscellaneous Provisions) Bills* will usually be prepared each year—one in the Budget Sittings of Parliament and the other in the Spring Sittings. A third Bill can be prepared if warranted.

### Content of Bills

- 3.3 The Bills will generally contain the following 5 kinds of matters:
- (a) minor amendments proposed by government agencies (Schedule 1),
  - (b) minor amendments by way of pure statute law revision, proposed by the Parliamentary Counsel (Schedule 2),
  - (c) transfer of savings and transitional and other provisions of ongoing effect (Schedule 3),
  - (d) repeals of obsolete or unnecessary Acts, proposed by government agencies or the Parliamentary Counsel (Schedule 4),
  - (e) savings and transitional provisions (Schedule 5).
- 3.4 *Schedule 1 (minor amendments)*. This Schedule contains policy changes that the Minister responsible for the legislation to be amended considers to be too inconsequential to warrant the introduction of a separate amending Bill. The essential criterion for inclusion in this Schedule is that the amendments are **minor** and **non-controversial**. Guidelines as to matters that, generally speaking, will not be included are set out in paragraph 3.14.
- 3.5 *Schedule 2 (pure statute law revision)*. This Schedule contains amendments such as those correcting typographical errors or errors of grammar or syntax, and those omitting unnecessary material or inserting missing material. It has been suggested in the past that it is a waste of time to correct spelling errors in Acts of Parliament. However, there are several reasons why it is appropriate to make those corrections. The integrity of the statute book is one consideration. Another consideration that is of increasing importance is the growing use of electronic means to search statutes. For those searches to be effective, the spelling in the statute book must be accurate.

- 3.6 ***Schedule 3 (transfer of savings and transitional and other provisions of ongoing effect)***. This Schedule transfers provisions of ongoing effect from amending Acts into the relevant principal Act, so as to permit the repeal of the otherwise obsolete amending Act.
- 3.7 ***Schedule 4 (repeals)***. This Schedule repeals amending Acts that are no longer necessary because the amendments have been incorporated in reprints of the relevant principal Acts or transferred (by Schedule 3) to the relevant principal Act. It also repeals Acts that amended repealed Acts and Acts that are no longer of practical utility.
- 3.8 ***Schedule 5 (savings and transitional provisions)***. This Schedule contains provisions dealing with the effect of amendments on amending Acts, savings clauses for the repealed Acts and a power to make regulations for transitional matters, if necessary.

## Procedures

- 3.9 Amendments proposed by government agencies must be endorsed by the responsible Minister (unless the amendment is appropriate for inclusion in Schedule 2 to the Bill).
- 3.10 Requests for matters to be included in the Bill should be initiated by letter to the Parliamentary Counsel.
- 3.11 Requests should be sent as soon as possible after the need for the amendment is identified, but in any case by the deadline set in the current Memorandum to Ministers prepared by The Cabinet Office. The PCO's Information Officer can provide that date (the deadline for submission of proposals for the 2000 Spring Session was 30 August—see Ministerial Memorandum 2000–19).
- 3.12 Each proposed amendment will be assessed initially by the Parliamentary Counsel's Office and then by The Cabinet Office (to which it will be referred by the Parliamentary Counsel). Agencies may be requested to provide further information about proposed amendments. An amendment that is considered unsuitable for inclusion in the Bill will not be included.
- 3.13 An in-principle Cabinet Minute for the Bill will be prepared for Cabinet's consideration as soon as possible after the closing date for making requests. The completed Bill will be reported back to Cabinet or the Standing Committee on Legislation in the usual way.

### **Guidelines as to matters inappropriate for the Statute Law Revision Program**

- 3.14 The following are examples of amendments that, generally speaking, will not be included in a *Statute Law (Miscellaneous Provisions) Bill*:
- amendments creating offences punishable by imprisonment on conviction,
  - amendments creating offences punishable by very high fines,
  - amendments increasing penalties by very high amounts,
  - amendments retrospectively imposing liabilities on any person,
  - amendments to Acts dealing with a controversial subject-matter,
  - amendments intruding on or prejudicing the rights of any person,
  - amendments that may be perceived as favouring a particular person,
  - amendments imposing or varying taxes,
  - amendments conferring jurisdiction on a court or tribunal,
  - amendments that might have an impact on a government agency other than that of the Minister proposing the amendment, or amendments that have been the subject of disputes between agencies,
  - lengthy or voluminous amendments,
  - amendments proposed for inclusion in earlier Bills in the program and found to be inappropriate for them,
  - amendments to Acts being amended (or proposed to be amended) in the same sittings of Parliament,
  - amendments requested after the closing date for a particular Bill (those proposals will be carried forward to the next Bill in the program).

### **Ministerial Memoranda**

- 3.15 Ministerial Memorandum 2000–19 deals with the Statute Law Revision Program. A copy is set out in Appendix 7.

## Chapter 4 Amendments in committee

- 4.1 The Parliamentary Counsel's Office drafts amendments in committee for all Bills in Parliament.
- 4.2 Requests for the drafting of amendments in committee should preferably be made by letter (faxed or e-mailed), although the urgency of a situation will sometimes dictate that a request can only be made by telephone. In either case, a contact name, telephone and fax number should be provided. The general office telephone number for the Parliamentary Counsel's Office is (02) 9228 7139. The fax number is (02) 9232 4796 and the e-mail address is [parliamentary.counsel@pco.nsw.gov.au](mailto:parliamentary.counsel@pco.nsw.gov.au).
- 4.3 Requests for amendments in committee should be made to the Parliamentary Counsel, not to an individual officer of the Parliamentary Counsel's Office. This procedure will avoid correspondence being delayed. The Parliamentary Counsel will allocate each project to an available officer. In the case of urgent requests, contact should not be limited to a fax or e-mail but should be combined with a telephone call to ensure that the request has been received.
- 4.4 The service is provided during normal office hours (8.30 am–5.30 pm Monday to Friday).
- 4.5 An after-hours service is also provided on parliamentary sitting days. This service operates until 8 pm, or later on reasonable request. It is obviously preferable to contact the Office during ordinary business hours when the full resources of the Office are available, but the after-hours service is available to assist with urgent amendments in committee.
- 4.6 It is essential that adequate time is given for amendments to be prepared.
- 4.7 Instructions for amendments in committee should be in narrative or prose form, and preferably not in the form of a draft.
- 4.8 Government amendments to Government Bills should be cleared through the Premier's administration. The Premier also stated in a memorandum to Ministers dated 30 May 1995 that "any amendments to Government legislation should be brought to the attention of the Leaders of both Houses, by the relevant Minister, so that if necessary the matter can be dealt with by Caucus or Cabinet".
- 4.9 The Parliamentary Counsel's Office will provide an instrument containing the requested amendments in committee. The instrument can be faxed to the agency concerned or to Parliament House.

- 4.10 As a rule, amendments in committee will not be drafted for Bills that are merely released or tabled in Parliament for exposure purposes or that are known not to be proceeding further in the legislative process in their current form.
- 4.11 Further information about the drafting of non-Government amendments in committee is contained in the *Manual for the Drafting of Non-Government Legislation*.

## Chapter 5 Statutory instruments generally

### Drafting by Parliamentary Counsel's Office

- 5.1 The Parliamentary Counsel's Office is responsible for drafting the following statutory instruments:
- Regulations and other statutory rules (made, approved or confirmed by the Governor)
  - Proclamations to commence Acts or portions of Acts
  - Administrative changes orders
  - Instruments (for example a proclamation or order), other than those that are described above, that amend the text of a Schedule to an Act. These instruments are made under the express authority of Parliament, conferred by the Act itself.
  - Environmental planning instruments, comprising:
    - . Local Environmental Plans
    - . Regional Environmental Plans
    - . State Environmental Planning Policies.
- 5.2 The Parliamentary Counsel will, on request, draft or assist with other instruments.

### Rules of court

- 5.3 Rules of court are generally not made by the Governor and do not require an opinion as to their legality from the Parliamentary Counsel. However, the Office drafts most rules of court and some tribunal rules, and is available to assist with the drafting of rules of court generally.

### Opinions from Parliamentary Counsel

- 5.4 Statutory rules comprising:
- Regulations
  - By-laws
  - Rules
  - Ordinances
- made, approved or confirmed by the Governor are required by the *Subordinate Legislation Act 1989* to have a formal opinion as to their legal validity from the Parliamentary Counsel.

The following instruments are also required, by longstanding convention and practice, to have a formal opinion as to their legality from the Parliamentary Counsel:

- Proclamations amending or commencing Acts
- Orders under Part 3A of the *Public Sector Management Act 1988* (relating to administrative changes)
- Environmental planning instruments.

- 5.5 A copy of the Parliamentary Counsel's opinion should be submitted with the Executive Council minute recommending the making of the statutory rules and other instruments mentioned in paragraph 5.4.

### **Regulations and other statutory rules**

- 5.6 Regulations and other statutory rules are dealt with in more detail in Chapter 6.

### **Proclamations and orders**

- 5.7 Proclamations and orders are dealt with in more detail in Chapter 7.

### **Administrative changes orders**

- 5.8 Administrative changes orders are dealt with in more detail in Chapter 8.

## Chapter 6 Regulations and other statutory rules

### Introduction

6.1 This Chapter deals with statutory rules (regulations, by-laws, rules and ordinances) made, approved or confirmed by the Governor acting with the advice of the Executive Council. There is currently no legislation authorising the making of ordinances.

### Nature of statutory rules

6.2 Statutory rules are a form of legislation: that is, they are a law and have the force of law. They are also known as subordinate legislation or delegated legislation. They are “subordinate” or “delegated” because Parliament has delegated the law-making function to the Executive.

6.3 By contrast, Acts of Parliament are “primary legislation”.

### Use of statutory rules

6.4 The general principle is that statutory rules are used to fill in the details of Acts. A lower category of activity is purely administrative action.

6.5 Statutory rules are subject to detailed and well-established procedures, and are readily identifiable and easily located, and are subject to parliamentary review. Administrative documents (including instruments issued under legislative authority but not as statutory rules) are not subject to these procedures.

### Legislation affecting statutory rules

6.6 The following general Acts contain provisions relating to statutory rules:

- *Interpretation Act 1987*
- *Regulation Review Act 1987*
- *Subordinate Legislation Act 1989*.

6.7 Statutory rules are made under the authority of Acts of Parliament. It is always necessary to find the precise authority for a particular statutory rule.

### Overview of role of Parliamentary Counsel’s Office in regard to statutory rules

6.8 The following is an overview of the role of the Parliamentary Counsel’s Office in regard to statutory rules:

- Drafting or settling of statutory rules
- Opinion as to legal validity
- Preparation of camera-ready artwork
- Extraction from Gazette in pamphlet form
- Parliamentary Counsel’s Office Internet site
- Provision of notice of statutory rules for Parliament
- Legislation Database
- Consolidated reprints
- Staged Repeal Program (see paragraph 6.44).

### Requirements of Subordinate Legislation Act 1989

- 6.9 It is important that agencies are aware of the requirements of the *Subordinate Legislation Act 1989* regarding the steps to be taken **before** a statutory rule is made. Guidelines are set out in Schedule 1 to the *Subordinate Legislation Act 1989*. These have to be complied with “as far as is reasonably practicable”: section 4. Note that this Act does not apply to certain classes of statutory rule—see the definition of “statutory rule” in section 3 and see also Schedule 4.
- 6.10 Some of the guidelines will need to have been addressed before the statutory rule is dealt with by the Parliamentary Counsel’s Office.
- 6.11 Under the *Subordinate Legislation Act 1989*, a proposed statutory rule must not be submitted for making by the Governor (or for approval or confirmation of the Governor) unless there is submitted with it:
- A copy of a certificate of the responsible Minister stating whether or not, in his or her opinion, the provisions of the *Subordinate Legislation Act 1989* relating to the proposed statutory rule have been complied with.
  - A copy of the opinion of the Parliamentary Counsel as to whether the proposed statutory rule may legally be made.
  - In the case of a “principal statutory rule”—a copy of any certificate which may be required under section 6 of the Act because the regulatory impact statement provisions have been dispensed with or postponed.

The relevant certificate may be given by a paragraph in the Executive Council Minute (see paragraph 6.25).

### Regulatory impact statements

- 6.12 Regulatory impact statements are required under the *Subordinate Legislation Act 1989* for principal statutory rules (that is, for rules that are not amending statutory rules).

- 6.13 Section 6 (1) (a) of the Act provides a mechanism for exemption from the formal impact assessment requirements of section 5 of the Act. Section 6 (1) (b) of the Act provides a mechanism for postponement of those requirements.
- 6.14 Schedule 3 to the Act lists statutory rules that do not need to have a regulatory impact statement. The Parliamentary Counsel will be generally responsible for deciding whether a principal statutory rule falls within an exemption. If an exemption is sought on the ground that the statutory rule does not impose an appreciable burden, cost or disadvantage on any sector of the public, it will be necessary for the agency to present a cogent written case to the Parliamentary Counsel for the exemption.

### **Contacting the Parliamentary Counsel's Office**

- 6.15 There is a general requirement that ministerial approval is needed before a statutory rule is dealt with in the Parliamentary Counsel's Office.
- 6.16 The Office requires a sufficiently detailed letter explaining what is needed to be dealt with in the proposed statutory rule, although in many instances the matters to be dealt with will be obvious and therefore will not require detailed explanation. See Chapter 2 of this Manual relating to Bills—that Chapter can be adapted for statutory rules.
- 6.17 The Office will respond to urgent requests—these can be made by phone to the Parliamentary Counsel or a Deputy Parliamentary Counsel.
- 6.18 Unlike Bills, instructions in the form of a draft statutory rule will be accepted, though this is not favoured (especially in the context of the Staged Repeal of Subordinate Legislation Program).
- 6.19 The Office will develop the draft and will offer guidance in policy if this is appropriate.
- 6.20 Conferences and telephone discussions will be arranged as needed. One or more drafts will be provided to the agency for comment.

### **Final version of statutory rule**

- 6.21 The Parliamentary Counsel's Office will provide the final version of the statutory rule, together with a formal opinion as to its legal validity. This opinion is submitted to the Governor together with the statutory rule.
- 6.22 The final version will be in the form of a camera-ready document, for publication in the Government Gazette.

- 6.23 It is very important that a statutory rule is not re-keyed or changed after it leaves the Parliamentary Counsel's Office. However, blanks should be filled in as indicated in the opinion, as should the date of signing by the Governor.

### Opinion of Parliamentary Counsel

- 6.24 A proposed statutory rule must not be submitted to Executive Council unless it is accompanied by a copy of the opinion of the Parliamentary Counsel that the proposed statutory rule may legally be made. This opinion is issued after the drafting of the statutory rule has been finalised. The need for an opinion was previously a requirement imposed by longstanding convention and practice, but is now a requirement of the *Subordinate Legislation Act 1989*.
- 6.25 A proposed statutory rule submitted to Executive Council for approval by the Governor must be accompanied by a copy of a certificate of the responsible Minister stating whether or not, in his or her opinion, the provisions of the *Subordinate Legislation Act 1989* relating to the proposed statutory rule have been complied with. This might be included in the Executive Council minute in the following form:
- I certify that, in my opinion, the provisions of the *Subordinate Legislation Act 1989* relating to the proposed regulation/rule/by-law have been complied with.
- 6.26 The minimum requirement, which applies to the making of every statutory rule, is that the Minister must ensure that, as far as is reasonably practicable, the guidelines set out in Schedule 1 to the *Subordinate Legislation Act 1989* are complied with. These guidelines are reproduced in Appendix 2 to this Manual.
- 6.27 If the statutory rule is a "principal statutory rule", the Minister's certificate should also include or be accompanied by **one** of the following:
- A statement to the effect that the regulatory impact provisions of section 5 of the *Subordinate Legislation Act 1989* have been fully complied with. **OR**
  - A certificate of the responsible Minister that, on the advice of the Parliamentary Counsel, the proposed statutory rule comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*. This indicates that the regulatory impact provisions of section 5 of that Act do not need to be complied with. **OR**
  - A certificate of the Premier (or a Minister for the time being nominated by the Premier for the purpose) that, in his or her opinion in the special circumstances of the case, the public interest requires that the proposed statutory rule should be made without complying with section 5 of the *Subordinate Legislation Act 1989*. This indicates that compliance with the regulatory impact provisions of that section has been postponed. **OR**
  - A certificate of the responsible Minister that the proposed statutory rule has been or is to be made by a person or body (other than the Governor) who or which is not expressly subject to the control or direction of the responsible

Minister, and that it was not practicable, in the circumstances of the case, for the responsible Minister to comply with section 5 of the *Subordinate Legislation Act 1989*.

- 6.28 The Parliamentary Counsel's Office is available to give advice on and assist with the preparation of the necessary documents, and with instances where a variation of the above principles is appropriate.
- 6.29 The principles set out in paragraphs 6.25–6.28 do not apply to statutory rules specified or described in Schedule 4 to the *Subordinate Legislation Act 1989*. However, the convention and practice referred to in paragraph 6.24 continues to apply, so that the Parliamentary Counsel's opinion is required for these instruments.

### **Making by Governor**

- 6.30 The statutory rule is then presented to the Governor, together with an appropriate Executive Council minute and the opinion as to validity.
- 6.31 The Executive Council minute will be signed by the Minister and will recommend to the Governor and the Executive Council that the attached proposed statutory rule be made. A description of the effect of the statutory rule is also given.
- 6.32 Arrangements regarding the submission of material to the Executive Council are made through the Cabinet Secretariat of The Cabinet Office.
- 6.33 Attention is drawn to Appendix 3 regarding documentation when the Lieutenant-Governor is acting as or for the Governor.

### **Gazettal**

- 6.34 The next step is for the responsible agency to arrange publication of the statutory rule in the Government Gazette. An information sheet relating to the gazettal of statutory instruments is usually attached by the Parliamentary Counsel's Office to an opinion (see Appendix 4).
- 6.35 Arrangements for gazettal are made through the Government Printing Service.
- 6.36 Following gazettal the Parliamentary Counsel's Office extracts all statutory rules from the Gazette as separate pamphlets and publishes these through the Government Information Service and on the Parliamentary Counsel's Office Internet site [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au).

### **Tabling in Parliament**

- 6.37 The Parliamentary Counsel's Office arranges for a notice of the statutory rule to be provided to the Clerks of both Houses of Parliament.
- 6.38 There is no longer any need for each Minister to arrange tabling of statutory rules, and this practice has now ceased and been replaced by an automatic tabling scheme. The scheme, including the instruments it covers, is described in Appendix 5.

### **Regulation Review Committee**

- 6.39 The Regulation Review Committee will examine the statutory rule after it is made, and may contact the responsible Minister or agency.
- 6.40 The Committee's charter is set out in the *Regulation Review Act 1987*.

### **Parliamentary disallowance**

- 6.41 Disallowance of a statutory rule by either House of Parliament is a possibility. The procedure for disallowance is set out in Part 6 of the *Interpretation Act 1987*. A copy of the relevant provisions is reproduced in Appendix 5.
- 6.42 Disallowance can occur from the time of gazettal. Tabling of the notice merely starts the period of 15 days after the end of which the disallowance procedure cannot commence.
- 6.43 If a statutory rule is disallowed, it cannot be remade within 4 months, unless the disallowance is rescinded. See section 8 of the *Subordinate Legislation Act 1989*.

### **Staged Repeal Program**

- 6.44 This program is established under the *Subordinate Legislation Act 1989*, and is generally administered through the Parliamentary Counsel's Office. The program provides for the automatic sunseting of statutory rules after they have been in force for 5 years but contains machinery for a number of extensions. The Parliamentary Counsel's Office compiles the *Status of Statutory Rules* guide which contains details of the repeal program. This publication is issued 3 times a year.
- 6.45 The Parliamentary Counsel's Office contacts agencies at least 12 months before the year in which sunseting occurs, to establish whether the statutory rule will be allowed to lapse, whether a request will be made for a postponement, or whether it will be remade with or without major amendments. The Parliamentary Counsel's Office will provide a draft when it has been decided to proceed.

- 6.46 The Parliamentary Counsel's Office is concerned to ensure that agencies respond promptly to the Office's requests, as the volume of material is very large and bottlenecks need to be avoided at all costs.
- 6.47 Under the program, statutory rules may:
- be remade with major or minor amendments, or
  - be allowed to lapse, or
  - have their repeal postponed by the Premier.
- 6.48 Postponement of repeal is intended to be restricted to exceptional cases only. In the past, postponement has frequently been requested where a review of the principal Act or the scheme that the statutory rule implements is currently being or is about to be undertaken. Where such a review is expected to take longer than 12 months, the statutory rule should be remade rather than its repeal being postponed. Further, as a general rule, a request for postponement of repeal on the basis of a proposal for amendment or repeal of the principal Act should only be made if that proposal has been approved by Cabinet. An exception may be made, however, for statutory rules that are so lengthy and complex that it would be impractical to remake them if they were only to remain in force for a limited period.
- 6.49 Generally, postponement will not be granted where agencies have simply failed to take prompt action to enable them to remake a statutory rule and fulfil the regulatory impact statement requirements before 1 September. In order to ensure that such situations do not occur, the Parliamentary Counsel writes to agencies requesting that the Parliamentary Counsel's Office be notified by 1 November each year of Ministers' intentions with respect to those statutory rules within their administration that are due for repeal on 1 September the following year. This will leave sufficient time for initial drafts of new statutory rules to be completed by 1 April as far as possible, so that the regulatory impact statement and public consultation requirements of the *Subordinate Legislation Act 1989* can be fulfilled before 1 September.

### Legislation Database

- 6.50 All principal statutory rules are kept in an up-to-date form on the Legislation Database maintained by the Parliamentary Counsel's Office.
- 6.51 Electronic copies of the whole of, or extracts from, the Legislation Database are available from the Government Information Service. All new statutory rules are available in PDF format on the Parliamentary Counsel's Office Internet site [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au).

### Consolidated reprints

- 6.52 Reprints of statutory rules are published by the Parliamentary Counsel's Office through the Government Information Service. The Parliamentary Counsel's Office

provides camera-ready artwork to the Government Information Service which arranges the bulk printing and distribution of NSW legislation.

### **Assistance**

- 6.53 The Parliamentary Counsel's Office is available to discuss any of these matters. Advice can be obtained from the Parliamentary Counsel, a Deputy or Assistant Parliamentary Counsel or other senior officers.
  
- 6.54 The Parliamentary Counsel's Office also provides a Legislation Information Hotline Service, which provides information on the status of statutory rules and other legislation in force. This service can be contacted on (02) 9228 7139, by fax (02) 9232 4796, or by e-mail [hotline@pco.nsw.gov.au](mailto:hotline@pco.nsw.gov.au).

## Chapter 7 Proclamations and orders

### Introduction

- 7.1 The Parliamentary Counsel's Office is responsible for drafting:
- Proclamations commencing Acts or portions of Acts
  - Proclamations and orders amending Acts.
- 7.2 Orders amending or replacing Schedule 1 to the *Public Sector Management Act 1988* are dealt with in Chapter 8.

### Contacting the Parliamentary Counsel's Office

- 7.3 Except in routine matters, there is a general requirement that ministerial approval is needed before a proclamation or order is dealt with in the Parliamentary Counsel's Office.
- 7.4 Except in cases of urgency, the Office requires a letter requesting the preparation of a proclamation or order. This letter may be faxed to the Office on (02) 9232 4796.
- 7.5 The Office will respond to urgent requests—these can be made by phone to the Parliamentary Counsel or a Deputy Parliamentary Counsel.
- 7.6 Proclamations to commence Acts with blanks for the date of commencement should not be requested except on special occasions, as the Parliamentary Counsel's Office can provide proclamations at short notice.

### Final version of proclamation or order

- 7.7 The Parliamentary Counsel's Office will provide the final version of a proclamation or order, together with a formal opinion as to its legal validity. This opinion is submitted to the Governor together with the proclamation.
- 7.8 The final version will be in the form of a camera-ready document, for publication in the Government Gazette.
- 7.9 It is very important that a proclamation or order is not re-keyed or changed after it leaves the Parliamentary Counsel's Office. However blanks should be filled in as indicated in the opinion, as should the date of signing by the Governor.

### **Opinion of Parliamentary Counsel**

- 7.10 A proclamation or order must be accompanied by a copy of the opinion of the Parliamentary Counsel as to whether the proposed statutory rule may legally be made. This opinion is issued after the drafting of the proclamation or order has been finalised. The need for an opinion is a requirement imposed by longstanding convention and practice.

### **Assistance**

- 7.11 The Parliamentary Counsel's Office is available to give advice on and assist with the preparation of the necessary documents.

### **Making by Governor**

- 7.12 The proclamation or order is then presented to the Governor, together with an appropriate Executive Council minute and the opinion as to validity.
- 7.13 The Executive Council minute will be signed by the Minister who will recommend to the Governor and the Executive Council that the attached proposed proclamation or order be made. A description of the effect of the proposed proclamation or order is also given.
- 7.14 Arrangements regarding the submission of material to the Executive Council are made through the Cabinet Secretariat of The Cabinet Office.
- 7.15 Attention is drawn to Appendix 3 regarding documentation when the Lieutenant-Governor is acting for or as the Governor.

### **Gazettal**

- 7.16 The next step is for the responsible agency to arrange publication of the proclamation or order in the Government Gazette. An information sheet relating to the gazettal of statutory instruments is usually attached by the Parliamentary Counsel's Office to an opinion (see Appendix 4).
- 7.17 Arrangements for gazettal are made through the Government Printing Service.
- 7.18 Following gazettal the Parliamentary Counsel's Office extracts all proclamations and orders from the Gazette as separate pamphlets and publishes these through the Government Information Service and on the Parliamentary Counsel's Office Internet site [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au).

## Unproclaimed legislation

- 7.19 On the second sitting day of each Session and then every 15th sitting day thereafter, the Speaker shall table a list of legislation remaining unproclaimed 90 calendar days after assent.<sup>1</sup>
- 7.20 A Minister, on the second sitting day of each month, shall table a list of all legislation that has not been proclaimed 90 calendar days after assent.<sup>2</sup>
- 7.21 The Parliamentary Counsel's Office maintains the lists of unproclaimed legislation that are tabled in Parliament and forwards them to the appropriate officers at the appropriate time.
- 7.22 A list of unproclaimed legislation is also published in the quarterly *NSW Legislation in Force* guide compiled by the Parliamentary Counsel's Office (see Appendix 1).
- 7.23 The Parliamentary Counsel's Office regularly writes to Ministers, drawing attention to unproclaimed legislation within their administration (up to but not including the current or last session of Parliament). The letter seeks advice as to whether any of the legislation can be commenced or repealed.

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<sup>1</sup>*Standing Rules and Orders of the New South Wales Legislative Assembly* (as at 12 December 1994), Standing Order No 126.

<sup>2</sup>*Sessional Order*, see Minutes of the Proceedings of the Legislative Council of Wednesday 30 August 2000.

## Chapter 8 Administrative changes orders

### Introduction

- 8.1 The Parliamentary Counsel's Office is responsible for drafting the orders under the *Public Sector Management Act 1988* that give effect to administrative changes. These orders are as follows:
- Orders under section 55A creating, abolishing, altering or changing the name of, Departments or branches of Departments. These matters were formerly dealt with by way of proclamations under section 49 of the *Constitution Act 1902*.
  - Orders under section 55B amending or replacing Schedule 1 in connection with Departments.
  - Orders under section 55C specifying the Minister responsible for a Department.
  - Other administrative orders under Division 2 of Part 3. These orders were formerly made under the *Administrative Changes Act 1976*.

These orders are called “administrative changes orders” in this Chapter.

### Contacting the Parliamentary Counsel's Office

- 8.2 There is a general requirement that the Premier's approval is needed before an administrative changes order is dealt with in the Parliamentary Counsel's Office.
- 8.3 A request for an administrative changes order usually comes from the Premier's Department. In some cases, the Premier's Department agrees that a particular order be prepared at the request of another agency.
- 8.4 Except in cases of urgency, the Office requires a letter requesting the preparation of an administrative changes order. This letter may be faxed to the Office on (02) 9232 4796.
- 8.5 The Office will respond to urgent requests—these can be made by phone to the Parliamentary Counsel or a Deputy Parliamentary Counsel.

### Final version of order

- 8.6 The Parliamentary Counsel's Office will provide the final version of an administrative changes order, together with a formal opinion as to its legal validity. This opinion is submitted to the Governor together with the order.
- 8.7 The final version will be in the form of a camera-ready document, for publication in the Government Gazette.

- 8.8 It is very important that an administrative changes order is not re-keyed or changed after it leaves the Parliamentary Counsel's Office. However blanks should be filled in as indicated in the opinion, as should the date of signing by the Governor.

### **Opinion of Parliamentary Counsel**

- 8.9 An administrative changes order must be accompanied by a copy of the opinion of the Parliamentary Counsel as to whether the proposed order may legally be made. This opinion is issued after the drafting of the order has been finalised. The need for an opinion is a requirement imposed by longstanding convention and practice.

### **Assistance**

- 8.10 The Parliamentary Counsel's Office is available to give advice on and assist with the preparation of the necessary documents.

### **Making by Governor**

- 8.11 An administrative changes order is then presented to the Governor, together with an appropriate Executive Council minute and the opinion as to validity.
- 8.12 The Executive Council minute will be signed by the Minister and will recommend to His Excellency the Governor and the Executive Council that the attached proposed order be made. A description of the effect of the proposed order is also given.
- 8.13 Arrangements regarding the submission of material to the Executive Council are made through the Cabinet Secretariat of The Cabinet Office.
- 8.14 Attention is drawn to Appendix 3 regarding documentation when the Lieutenant-Governor is acting for or as the Governor.

### **Gazettal**

- 8.15 The next step is for the responsible agency to arrange publication of the administrative changes order in the Government Gazette. An information sheet relating to the gazettal of statutory instruments is often attached by the Parliamentary Counsel's Office to an opinion (see Appendix 4).
- 8.16 Arrangements for gazettal are made through the Government Printing Service.
- 8.17 Following gazettal the Parliamentary Counsel's Office extracts all administrative changes orders from the Gazette as separate pamphlets and publishes these through the Government Information Service and on the Parliamentary Counsel's Office Internet site [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au).



## Appendix 1 NSW legislative publications

### Electronic legislation

The Parliamentary Counsel's Office maintains the NSW Legislation Database, which is used to keep legislation in an up-to-date form and to generate printed copies of Bills, Acts, statutory instruments and information publications. Copies of individual Acts and statutory instruments on diskette and a subscription service to the entire Legislation Database of Acts and statutory instruments currently in force are available via the Government Information Service. The Database of Acts and statutory instruments is also provided to the Australasian Legal Information Institute (Austlii) for reproduction on its Internet site [www.austlii.edu.au](http://www.austlii.edu.au). Acts and statutory instruments are kept up-to-date and all amendments are fully consolidated and tabulated within 5 working days of their commencement.

The Office is currently undertaking a major project to develop a new legislative drafting and publishing system based on Standard Generalised Markup Language (SGML). This project is expected to deliver:

- legislation and information about legislation in a more portable and widely accessible form (the NSW Legislation Database is currently maintained in a software specific format)
- more effective and timely electronic publishing, with a specific emphasis on Internet publishing and access to the Database and related materials via the Office's Internet site
- a system that supports new products and processes such as point in time searching and the automatic incorporation of amendments into legislation.

A separate project to make the 1990s annual volumes of Explanatory notes, Acts passed and statutory instruments made from 1990 onwards available in PDF format (complete with search facilities) on the Office's Internet site is also in progress. The Annual Volumes page is currently under ongoing construction and Acts and regulations for 1999 and 2000 are already available.

From July 1999 a Weekly Bulletin has been published on the Office's Internet site. The Bulletin is generally published each Friday afternoon and contains information about legislative events of the previous week (including Bills introduced, amended, passed or enacted, statutory instruments gazetted and reprints completed). The Weekly Bulletin can also be e-mailed to users free of charge through the Office's list server.

Electronic versions of most of the printed legislative publications are readily available on the Internet and these are described below.

### Printed legislation

All printed legislation in NSW is produced initially by the Parliamentary Counsel's Office and is available for sale and subscription to the public from the Government Information Service, which organises the production, distribution, marketing and sale of legislation in printed form.

Authorised NSW printed legislation available from the Government Information Service is described below and includes reprints (authorised consolidated versions of Acts and statutory instruments), new Acts and new statutory instruments. Annual bound volumes (which include tables of supplementary information) of Acts, Explanatory notes for Bills, and Statutory Instruments are also available.

Legislation chosen for reprinting is selected under the guidelines set out in the Legislation Reprinting Policy. That document is available on the Internet and also contains further information about the Reprints Program. A list of reprinted legislation completed or proposed for a year is also published on the Internet.

All of the tables and information guides about legislation that are described below are available on the Office Internet site [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au).

## Acts

### Bills

The Office provides Parliament with printed copies of Bills for introduction into Parliament and reprints of Bills amended during the Parliamentary process, and supplies the Government Information Service with copies for sale and distribution.

The Office provides electronic copies of Bills to Parliament and from 1999 these are available from its Internet site [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)

### New Acts

Following assent, the material for printing and distribution is provided by the Office to the Government Information Service. From 1999, new Acts are available on the Office's Internet site and earlier ones are being back captured.

### Reprinted Acts

These are Principal Acts reprinted on an individual basis to incorporate amendments and to provide historical information, tables etc. The Office aims to reprint all major titles as soon as they have been significantly amended. In some cases, this involves annual reprinting.

### Table of Acts in Force

The quarterly *Legislation in Force* includes an alphabetical table of all public Acts in force that also shows:

- last reprint date
- any amendments since last print
- the Minister responsible for an Act (if it has been allocated)
- Acts available in electronic form
- details of any unproclaimed or uncommenced Acts or provisions of Acts.

*Legislation in Force* also provides the following tables:

- Private Acts (including details of last reprint date and any amendments since last print)
- Acts repealed since 1986 (with the repealing Act, last reprint date and any amendments since last print)
- Unproclaimed legislation (a chronological list with details of Acts or parts of Acts that have not yet been proclaimed in the Government Gazette to commence)
- Applied laws (details of laws of other jurisdictions that are taken to be laws of NSW).

### Monthly Acts Tables

These provide, on a monthly cumulative basis, details of all Bills introduced, Acts passed, amended or repealed, assent dates for Acts, proclamations of commencements of Acts and details of Acts reprinted.

### Bound Annual Volumes of Acts

These contain all Acts passed by Parliament during a calendar year, complete with tables and other information.

### Bound Annual Volumes of Explanatory Notes for Bills

These contain Explanatory Notes for all Bills (as introduced into Parliament) passed during a calendar year, complete with tables and information on amendments in committee.

A project to make the Volumes of Acts and Volumes of Explanatory Notes from 1990 onwards available in PDF format on the Office's Internet site is in progress and is expected to be completed later in 2000.

## Statutory instruments

Statutory instruments include regulations, rules, by-laws and orders, and certain proclamations and ordinances.

### New statutory instruments

Regulations etc extracted from the Gazette on a weekly basis and provided to the Government Information Service for printing and distribution as individual pamphlets. From 1999, new statutory instruments are available on the Office's Internet site and earlier ones are being back captured.

### Reprinted statutory instruments

Principal regulations etc reprinted on an individual basis to incorporate amendments and to provide historical information, tables etc. These instruments are subject to repeal under the *Subordinate Legislation Act 1989* and this has reduced the number of statutory instruments that are required to be reprinted.

### Table of principal statutory instruments

This is an alphabetical table of principal statutory instruments in force and includes the original date of gazettal, any proposed repeal date under the *Subordinate Legislation Act 1989*, any reprint details and dates of amendments made since the last print. It is published in the quarterly NSW *Legislation in Force* guide and indicates which statutory instruments are available in electronic form.

### Monthly Statutory Instruments Tables

These provide, on a monthly cumulative basis, details of all statutory instruments made, amended or repealed, details of reprints of statutory instruments, and also details of all environmental planning instruments made.

### Status of Statutory Rules

These tables indicate the status of statutory rules under the Staged Repeal of Subordinate Legislation Program and are published 3 times a year (1 January, 1 May and 1 September).

### Bound Annual Volumes of statutory instruments

These contain all statutory instruments gazetted during a calendar year, complete with tables. A project to make the Volumes from 1990 onwards available in PDF format on the Office's Internet site is in progress and is expected to be completed later in 2000.

## Specialised tables available on request

In connection with the task of monitoring the precise status of all legislation in NSW, the Office also maintains a range of other tables and records (see below) and provides advice and information in this regard both to Government Departments etc and to the public. The tables are available on request.

### Weekly Acts tables

- Alphabetical Tables of Acts from 1986 (short titles)
- Chronological Tables of Acts from 1986 (short titles, assent dates and commencement details from the Gazette)
- Alphabetical Table of Acts passed before 1986 where commencement published after 1 January 1987 (short titles and commencement details from the Gazette).

### Chronological tables

- Public Acts in Force
- Principal Statutory Instruments in Force (these are chronological versions of the main tables in the NSW *Legislation in Force* guide).

**Other publications**

- *Manual for the Drafting of Non-Government Legislation*. 5th edition. August 2000. ISSN 1320–7245. The Manual is also available on the Office’s Internet site.
- *Review and Redesign of NSW legislation—A discussion paper*. March 1994. ISBN 0 7310 2941 0.
- *Guarantee of Service*. September 1999. ISSN 1320–3126.

## Appendix 2 Guidelines for the preparation of statutory rules

### [Schedule 1 to the *Subordinate Legislation Act 1989*]

- 1 Wherever costs and benefits are referred to in these guidelines, economic and social costs and benefits are to be taken into account and given due consideration.
- 2 Before a statutory rule is proposed to be made:
  - (a) The objectives sought to be achieved and the reasons for them must be clearly formulated.
  - (b) Those objectives are to be checked to ensure that they:
    - are reasonable and appropriate, and
    - accord with the objectives, principles, spirit and intent of the enabling Act, and
    - are not inconsistent with the objectives of other Acts, statutory rules and stated government policies.
  - (c) Alternative options for achieving those objectives (whether wholly or substantially), and the option of not proceeding with any action, must be considered.
  - (d) An evaluation must be made of the costs and benefits expected to arise from each such option as compared with the costs and benefits (direct and indirect, and tangible and intangible) expected to arise from proceeding with the statutory rule.
  - (e) If the statutory rule would impinge on or may affect the area of responsibility of another authority, consultation must take place with a view to ensuring in advance that (as far as is reasonably practicable in the circumstances):
    - any differences are reconciled, and
    - there will be no overlapping of or duplication of or conflict with Acts, statutory rules or stated government policies administered by the other authority.
- 3 In determining whether and how the objectives should be achieved, the responsible Minister is to have regard to the following principles:
  - (a) Administrative decisions should be based on adequate information and consultation concerning the need for and consequences of the proposed action.
  - (b) Implementation by means of a statutory rule should not normally be undertaken unless the anticipated benefits to the community from the proposed statutory rule outweigh the anticipated costs to the community, bearing in mind the impact of the proposal on the economy and on consumers, members of the public, relevant interest groups, and any sector of industry and commerce, that may be affected.
  - (c) The alternative option that involves the greatest net benefit or the least net cost to the community should normally be chosen from the range of alternative options available to achieve the objectives.
- 4 A statutory rule must be expressed plainly and unambiguously, and consistently with the language of the enabling Act.

## Appendix 3 Lieutenant-Governor

- 3.1 Section 9D of the *Constitution Act 1902* provides that “the Governor may, by instrument in writing, appoint the Lieutenant-Governor ... to be the Governor’s deputy ... and in that capacity to exercise and perform on behalf of the Governor such of the powers and functions of the Governor as are specified or described in the instrument”.
- 3.2 It has been the practice in these circumstances for the Lieutenant-Governor to sign proclamations and other instruments “by deputation”. The usual practice is for the words “[space for signature], by Deputation from His Excellency the Governor” to be applied by a rubber stamp to the instrument, which itself continues to refer to the Governor. For example:

XYZ ACT 2000—PROCLAMATION  
James Jacob Spigelman, by Deputation from His Excellency the Governor.

I, the Honourable Gordon Samuels, AC, CVO, Governor of the State of New South  
Wales, with the advice of the Executive Council, ...

- 3.3 The position is different when the Lieutenant-Governor assumes the administration of the Government in terms of section 9C of the *Constitution Act 1902*. In these circumstances, the Lieutenant-Governor exercises functions in his or her own right (and not by deputation), and, therefore, proclamations and other instruments should bear his or her name and not that of the Governor. For example:

XYZ ACT 2000—PROCLAMATION  
James Jacob Spigelman, Lieutenant-Governor.

I, the Honourable James Jacob Spigelman, Lieutenant-Governor of the State of New  
South Wales, with the advice of the Executive Council, ...

## Appendix 4 Guidelines for the gazettal of statutory instruments

### Parliamentary Counsel's Office

#### Gazettal of Statutory Instruments

(Revised May 2000)

Attached are 2 copies of the proposed statutory instrument.

**Important.** The attached instrument has been prepared as a camera-ready proof for gazettal. It ***must not*** be rekeyed.

What you must now do with the statutory instrument is this:

<b>Step 1</b>	<p>(a) First determine whether the instrument is to be <b><i>made</i></b> or <b><i>approved</i></b> by the Governor (that is, the Governor acting on the advice of the Executive Council). Most instruments are made by the Governor but some, such as university by-laws, are first made by a body, such as the university council, and are then approved by the Governor.</p> <p>(b) If the instrument is to be <b><i>made</i></b> by the Governor, ignore this step and go to Step 2.</p> <p>(c) If the instrument has to be made by someone else before it is approved by the Governor, you should arrange for the instrument to be made.</p>
<b>Step 2</b>	<p>Complete any missing names or dates in the instrument that have to be inserted before the instrument is made or approved by the Governor (see over).</p>
<b>Step 3</b>	<p>Submit one copy of the completed instrument to the Executive Council with your Executive Council minute, and any other necessary papers.</p>
<b>Step 4</b>	<p>At least 2 days before the date on which the instrument is required to be published in the Gazette, send the other copy (not a photocopy or a fax) to the following address:</p> <p>Government Gazette Government Printing Service Units 5 &amp; 10, Block V 391 Park Road REGENTS PARK NSW 2143</p> <p>Telephone: (02) 9743 8777 Facsimile: (02) 9743 8203</p> <p><b>Note.</b> If an Explanatory Note has been provided as part of the instrument, the Explanatory Note <b><i>must</i></b> be gazetted with the instrument.</p>
<b>Step 5</b>	<p>After the Governor has made or approved the instrument, you should fax a letter to the Government Printing Service which:</p> <p>(a) confirms that the instrument has been made or approved by the Governor, and</p> <p>(b) provides any missing names or dates that have to be inserted before gazettal such as the name of the relevant Minister and the date on which the instrument was made or approved (see over).</p>

**Step 6**

You should confirm with the Government Printing Service by telephone that it has received your fax.

**Filling in the blanks**

**1 Names**

The name of the Minister is to appear in printed form, in the form ordinarily used by the Minister.

The abbreviation "(Sgd.)" or actual signatures should not be used.  
(See also Premier's Circular 96-5 dealing with signatures in Gazettes.)

**2 Dates**

The date on which the instrument is signed may be expressed in any appropriate form. However, the style for a date specified as the date on which an instrument commences is:

1 January 2000

**Notes.** In this case:

- (a) The day is shown by the appropriate figure or figures, rather than a word.
- (b) The figure does not have any abbreviation, such as **1<sup>st</sup>**, **2<sup>nd</sup>**, **3<sup>rd</sup>** or **4<sup>th</sup>**, after it.
- (c) There is no comma between the month and the year.
- (d) The date is not preceded by the word "the".

## Appendix 5 Tabling and disallowance of statutory instruments

### 1 Automatic Tabling of Statutory Instruments (Memorandum to all Ministers No 93–27)

#### AUTOMATIC TABLING OF STATUTORY INSTRUMENTS

A new system for notifying Parliament of regulations and certain other statutory instruments is being introduced. The system replaces the previous arrangements under which each Minister was responsible for tabling or arranging the tabling of these instruments.

Under the new system, the Parliamentary Counsel's Office will identify the instruments as they are published in the Government Gazette and will arrange for the appropriate notices and copies to be delivered to the Clerk of the Legislative Council and the Clerk of the Legislative Assembly on a weekly basis. It will then be the responsibility of the Clerks to table the material before each House of Parliament.

It is important to notice that the instruments covered by the new scheme are those that meet the following four criteria, which are that the instruments are:

- (1) required to be published in the Gazette; and
- (2) required to be notified to or tabled in each House of Parliament; and
- (3) capable of being tabled by the Clerks of the Houses of Parliament; and
- (4) capable of disallowance by either or both Houses.

A list of the classes of instruments covered is contained in the appendix attached to this memorandum. The list will be updated as required.

The tabling of documents that do not meet the four criteria (such as annual reports, land reservations) will remain the responsibility of individual Ministers.

The new system commences with the Gazette published on 1 July 1993. Although Ministers will remain responsible for ensuring that material published in the Gazette before that date has been tabled, as a supplementary, transitional step arrangements have been made for the Clerks to table material published in the Gazette before that date where the material has been identified in Parliamentary papers as requiring tabling.

Further information about the new system can be obtained from the Parliamentary Counsel's Office.

### 2 Statutory instruments covered by the Automatic Tabling Scheme

(As at 5 October 1999)

#### Statutory rules

to which Part 6 of the Interpretation Act 1987 automatically applies:

- ✧ **by-laws, ordinances, regulations or rules** *made, approved or confirmed* by the Governor
- ✧ **rules of court** (Compensation Court Rules, District Court Rules, Land and Environment Court Rules, Local Courts (Civil Claims) Rules, Medical Tribunal Rules, Supreme Court Rules, rules under Legal Profession Act 1987)

**Other instruments**

to which Part 6 of the Interpretation Act 1987 applies, by virtue of provisions of other Acts:

- ✧ **Agricultural Livestock (Disease Control Funding) Act 1998 No 139—orders under section 13** (given by the Minister) authorising the imposition of an industry levy to assist the funding of any designated disease control service
- ✧ **Business Licences Act 1990 No 72—orders under section 18** (made by the Minister) fixing fees in relation to licences
- ✧ **Coal Mines Regulation Act 1982 No 67—rules under section 23** (made by the Coal Mining Qualifications Board) relating to certificates of competency
- ✧ **Compensation Court Act 1984 No 89—practice notes under section 43** (issued by or on behalf of the Court) regulating the practice or procedure of the Court, or of any class of proceedings in the Court (including any other document, however described, but excluding a decision of the Court)
- ✧ **Dangerous Goods Act 1975 No 68—orders under clause 8 (2) of the Dangerous Goods (General) Regulation 1999** (made by the WorkCover Authority) relating to fees payable in respect of the issue or renewal of licences
- ✧ **District Court Act 1973 No 9:**
  - **practice notes under section 161** (issued by or on behalf of the Court) regulating the practice or procedure of the Court, or of any class of proceedings in the Court (including any other document, however described, but excluding a decision of the Court)
  - **proclamations under section 188** (made by the Governor) relating to references to District Court judges in existing instruments
- ✧ **Factories, Shops and Industries Act 1962 No 43—proclamations under section 5** (made by the Governor) making declarations extending the Act or creating exemptions from the Act
- ✧ **Fair Trading Act 1987 No 68:**
  - **orders under section 31** (made by the Minister) prohibiting or restricting the supply of specified goods or goods of a specified kind
  - **orders under section 34** (made by the Minister) recalling defective goods, disclosing information to the public about defective goods or notifying persons about goods
- ✧ **Food Production (Safety) Act 1998 No 128—orders under section 69** (made by the Minister) exempting certain persons, premises, vehicles, equipment, activities or primary produce or seafood, any class of such persons, premises, vehicles or equipment or any class or description of primary produce or seafood
- ✧ **Guardianship Act 1987 No 257—rules under section 75** (made by members of the Guardianship Tribunal) for or with respect to the practice and procedure of the Tribunal
- ✧ **Land and Environment Court Act 1979 No 204—practice notes under section 74** (issued by or on behalf of the Court) regulating the practice or procedure of the Court, or of any class of proceedings in the Court (including any other document, however described, but excluding a decision of the Court)
- ✧ **Legal Profession Act 1987 No 109:**
  - **rules under section 6** (made by the Legal Practitioners Admission Board) relating to registration and admission [see section 7]
  - **rules under section 208R** (made by the costs assessors' rules committee) governing the practice and procedure of the assessment of costs

- ❖ **Local Courts (Civil Claims) Act 1970 No 11—practice notes under section 84** (issued by or on behalf of Local Courts) regulating the practice or procedure of the Court, or of any class of proceedings in the Court (including any other document, however described, but excluding a decision of the Court)
- ❖ **Marine Parks Act 1997 No 64—proclamations under section 9** (made by the Governor) varying the area of a marine park
- ❖ **Marine Pollution Act 1987 No 299—orders made by the Minister in pursuance of regulations made by the Governor under sections 35, 40 and 61 (1) (d)** in relation to ships carrying or using oil, noxious substances in bulk, giving effect to the *International Convention for the Prevention of Pollution from Ships, 1973* (as corrected) and fixing fees in respect of certain matters [see section 62]
- ❖ **Medical Practice Act 1992 No 94—rules under section 158** (made by a rule committee of the Medical Tribunal) governing the practice and procedure of the Tribunal
- ❖ **Motor Accidents Compensation Act 1999 No 41:**
  - **MAA Medical Guidelines under sections 44 and 45** (issued by the Motor Accidents Authority) with respect to the following:
    - (a) the appropriate treatment of injured persons,
    - (b) the appropriate procedures with respect to the provision of rehabilitation services or attendant care services for injured persons (including the circumstances in which rehabilitation services or attendant care services are required to be provided),
    - (c) the assessment of the degree of permanent impairment of an injured person as a result of an injury caused by a motor accident,
    - (d) the procedures for the referral of disputes for assessment or review of assessments, and the procedure for assessment, under Part 3.4 of the Act
  - **MAA Claims Assessment Guidelines under section 69** (issued by the Motor Accidents Authority) with respect to the procedures to be followed by claims assessors in the assessment of claims under Part 4.4 of the Act and associated matters
- ❖ **Plant Diseases Act 1924 No 38:**
  - **orders under section 5A** (made by the Minister) in relation to treating, preventing the spread of, eradicating or lessening the risk of, diseases or pests and preventing diseases or pests from attacking or being harboured
  - **orders under section 28A** (made by the Minister) relating to the grading or packing of fruit or vegetables or the branding or labelling of coverings containing fruit, vegetables or other plants
- ❖ **Poisons and Therapeutic Goods Act 1966 No 31:**
  - **proclamations under section 8** (made by the Governor on the recommendation of the Minister) amending the Poisons List
  - **orders under section 37** (made by the Director-General of the Department of Health) prohibiting the supply of any substance specified in the order (such as a poison, restricted substance or drug of addiction) which, in the opinion of the Director-General, should not be supplied pending the evaluation of its toxic or deleterious properties or of any substance containing any such substance.  
[see section 46]
- ❖ **Professional Standards Act 1994 No 81—schemes published in the Gazette under section 13** (submitted to the Minister by the Professional Standards Council) limiting the occupational liability of members of an occupational association [see section 12]
- ❖ **Public Notaries Act 1997 No 98—rules under section 9** (made by the Legal Practitioners Admission Board) for or with respect to all or any of the following:
  - (a) to the qualifications for appointment as a public notary,
  - (b) the examination in such branches of knowledge as the Board thinks fit of candidates for appointment as public notaries,
  - (c) the approval of properly qualified persons to be appointed as public notaries,
  - (d) applications for appointment as a public notary and the approval of such applications,

- (e) the keeping of records concerning legal practitioners named on the roll of public notaries,
  - (f) the fees payable to the Board in relation to the examination of candidates for appointment as, and the appointment of, public notaries, and certificates of appointment as public notaries,
  - (g) any other matters relating to the exercise of the Board's functions under the Act.  
[see section 9A]
- ✧ **Registered Clubs Act 1976 No 31—guidelines published under section 87 (6)** (by the Minister, after consultation with the Registered Clubs Association) that determine what constitutes the application of profits derived from approved gaming devices to community development and support [see section 87 (9)]
  - ✧ **Stock Medicines Act 1989 No 182—orders under section 46** (made by the Director-General of the Department of Agriculture) prohibiting or regulating the supply and use, and requiring the recovery, of stock medicines or stock medicines of a particular class  
[see section 47]
  - ✧ **Supreme Court Act 1970 No 52:**
    - **proclamations of a transitional nature under section 24 (7)** (made by the Governor) directing that the section does not apply to any power specified in the proclamation
    - **practice notes under section 124** (issued by or on behalf of the Court) regulating the practice or procedure of the Court, any Division of the Court or of any class of proceedings in the Court (including any other document, however described, but excluding a decision of the Court)
  - ✧ **Sydney Water Catchment Management Act 1998 No 171—Orders under section 20** (made by the Governor) varying the area of operations of the Sydney Catchment Authority

### 3 Other statutory instruments subject to disallowance by either House of Parliament (where the disallowance is not by reference to the Interpretation Act 1987)

(As at 5 October 1999)

- ✧ **Civil Aviation (Carriers' Liability) Act 1967 No 64—regulations made under Commonwealth Act**  
[see section 7 of the Act]
- ✧ **Conversion of Cemeteries Act 1974 No 17—notifications of intention under section 9** (published by the Minister) to declare the whole or any part of land within a cemetery to be a public park
- ✧ **Crown Lands Act 1989 No 6—notifications under section 84** (made by the Minister) of a **proposed** revocation of dedication of land
- ✧ **Dairy Industry Act 1979 No 208—proclamations under section 5** (made by the Governor) adding or removing the description of a liquid, or any class of liquids, from Schedule 1
- ✧ **Environmental Planning and Assessment Act 1979 No 203—notices under sections 132 and 133** (made by the Director-General of Urban Affairs and Planning) constituting, altering or abolishing a development area under Division 1 of Part 7 [see section 135]
- ✧ **Fisheries Management Act 1994 No 38—proposed revocations or variations, under section 196**, of declarations under section 194 (made by the Minister) of aquatic reserves
- ✧ **Imperial Acts Application Act 1969 No 30—proclamations under section 11** (made by the Governor) reviving repealed enactments
- ✧ **National Parks and Wildlife Act 1974 No 80:**
  - **proclamations under section 33 (2) or (3)** (made by the Governor) reserving prescribed lands as, or as part of, a national park or historic site [see section 35 for tabling and disallowance provisions]

- **notices under section 47B (1)** (made by the Minister) reserving prescribed land as, or as part of, a state recreation area [see section 47D for tabling and disallowance provisions]
- **notices under section 47O (2)** (made by the Minister) reserving prescribed land as, or as part of, a regional park [see section 47R for tabling and disallowance provisions]
- **proclamations under section 49 (1) or (2)** (made by the Governor) dedicating Crown lands or lands acquired under section 145, 146 or 148 as, or as part of, a nature reserve [see section 58, applying section 35, for tabling and disallowance provisions]
- **proclamations under section 58A (1) or (2)** (made by the Governor) dedicating Crown lands or lands acquired under section 145, 147 or 148 as, or as part of, a state game reserve [see section 58J, applying section 35, for tabling and disallowance provisions]
- **proclamations under section 58K (1) or (2)** (made by the Governor) dedicating Crown lands or lands acquired under section 145, 147 or 148 as, or as part of, a karst conservation reserve [see section 58S, applying section 35, for tabling and disallowance provisions]
- **proclamations under section 71BA** (made by the Governor) declaring that the whole or part of lands listed in Schedule 14 be taken to be reserved or dedicated as part of an area reserved or dedicated under Part 4A (Aboriginal land) [see section 71BB for tabling and disallowance provisions]

**Note.** Instruments marked with an asterisk (\*) involve the tabling of notice of the relevant decision, declaration, revocation, determination etc rather than the decision itself. Parliament has the power to disallow the actual decision.

- ❖ **New South Wales—Queensland Border Rivers Act 1947 No 10—regulations under section 6** (made by The Dumaresq-Barwon Border Rivers Commission) relating to the practice and procedure of the Commission and to penalties
- ❖ **Ombudsman Act 1974 No 68—proclamations under section 14** (made by the Governor) amending Schedule 1 in relation to any class of conduct of a public authority
- ❖ **Statutory and Other Offices Remuneration Act 1975 (1976 No 4)—reports under section 18 of determinations made under sections 13, 14, 15 and 15A** (made by the Statutory and Other Offices Remuneration Tribunal) relating to the remuneration to be paid to office holders [see sections 19 and 19A for tabling and disallowance provisions]
- ❖ **Sydney Water Act 1994 No 88—orders under section 10** (made by the Governor) varying the area of operations and specifying which systems and services the Sydney Water Corporation may provide in the whole or a part or parts of the area of operations as so varied

#### 4 Disallowance of statutory rules [Interpretation Act 1987]

41. (1) Either House of Parliament may pass a resolution disallowing a statutory rule:
  - (a) at any time before the relevant written notice is laid before the House, or
  - (b) at any time after the relevant written notice is laid before the House, but only if notice of the resolution was given within 15 sitting days of the House after the relevant written notice was so laid.
- (2) On the passing of a resolution disallowing a statutory rule, the rule shall cease to have effect.
- (3) The disallowance of a statutory rule has the same effect as a repeal of the rule.
- (4) If:
  - (a) a statutory rule ceases to have effect by virtue of its disallowance, and
  - (b) the rule amended or repealed some other Act or statutory rule that was in force immediately before the rule took effect,the disallowance of the rule has the effect of restoring or reviving the other Act or statutory rule, as it was immediately before it was amended or repealed, as if the rule had not been made.
- (5) The restoration or revival of an Act or statutory rule pursuant to subsection (4) takes effect on the day on which the statutory rule by which it was amended or repealed ceases to have effect.

- (6) This section applies to a portion of a statutory rule in the same way as it applies to the whole of a statutory rule.
- (7) Any provision of an Act that relates to the disallowance of statutory rules made under the Act is of no effect.
- (8) This section does not apply to the Standing Rules and Orders of the Legislative Council and Legislative Assembly.
- (9) This section does not limit any provision of an Act (for example, section 14A (6) of the *Constitution Act 1902*) that provides that a statutory rule shall not cease to have effect upon its disallowance by either House of Parliament unless it has previously been disallowed by the other House of Parliament.

## Appendix 6 Pro forma Law of Evidence Bill

(Material on this topic has been included because of the number of inquiries received about the *Law of Evidence Bill*)

- 6.1 In England “neither House of Parliament can proceed with any public business until the session has been opened either by the Sovereign in person or by Lords Commissioners acting on her behalf. On this occasion the causes for the summons of Parliament are communicated to the two Houses in the Queen’s Speech, which states the government’s policy and intended programme of business for the forthcoming session and informs the Commons that estimates of government expenditure will be laid before them”.<sup>1</sup>
- 6.2 However, the causes of summons as so declared do not bind Parliament to consider them alone, or to proceed at once to the consideration of any of them.<sup>2</sup> The practice has been adopted of reading a bill that will never proceed any further before the Sovereign’s speech is taken into consideration to demonstrate this independence.<sup>3</sup> As Coke described it “The first day of sitting in every Parliament some one Bill and no more receiveth a first reading for forms sake”.<sup>4</sup> In the House of Commons, the *Clandestine Outlawries Bill* is read pursuant to ancient custom.<sup>5</sup> In the House of Lords, the *Select Vestries Bill* is read pursuant to Standing Order No 69 (3).<sup>6</sup>
- 6.3 The origin of the ceremony can be traced to the turbulent period of the 14th century and the assertion of parliamentary sovereignty during the reign of Richard II.<sup>7</sup>
- 6.4 The practice of reading a pro forma bill has been adopted in the Legislative Assembly of NSW pursuant to Standing Order 4 (5), which provides that on the opening of Parliament “Before the Speech is reported the House shall in assertion of its rights transact some business of a formal nature without notice”. Pursuant to this order a bill is presented and read a first time pro forma “in order to assert the right of the House of deliberating without reference to the immediate cause of summons by the Crown”.<sup>8</sup>
- 6.5 The use of the *Law of Evidence Bill* as the pro forma bill appears to date from the opening of the first session of the Nineteenth Parliament on 23 July 1901, when a *Law of Evidence Amendment Bill* was read following the Lieutenant-Governor’s Speech.<sup>9</sup> In the period from 1879 to this date, an *Ordinance Land Transfer Bill* was read following the Governor’s Speech. At the opening of the second session of the Twentieth Parliament in 1905 a *Law of Evidence Bill* was read,<sup>10</sup> and the practice of reading a *Law of Evidence Bill* after the Governor’s speech seems to have continued since that time.

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<sup>1</sup>*Halsbury’s Laws of England*, 4th ed, Vol. 34, para 1208.

<sup>2</sup>*Ibid.* See also Erskine May’s *Parliamentary Practice*, 19th ed, London, 1976, pp 271–5.

<sup>3</sup>*Ibid.* See also Sir Gilbert Campion, *An Introduction to the Procedure of the House of Commons*, London, 1950, pp 107–109.

<sup>4</sup>*Ibid.*

<sup>5</sup>*Halsbury, op cit*, para 1212; Erskine May, *op cit*, p 273.

<sup>6</sup>*Halsbury, op cit*, para 1211; Erskine May, *ibid.*

<sup>7</sup>N Wilding and P Laundy, *An Encyclopaedia of Parliament*, London, 1969, p 516. See also G Chowdharay-Best, “The Clandestine Outlawries and Select Vestries Bills” *New Law Journal*, Mar 7 1974, p 230.

<sup>8</sup>REA Ward, *A Short Guide to Rules and Practice of the NSW Legislative Assembly*, Sydney, 1977, p 14.

<sup>9</sup>109 Parliamentary Debates p 14.

<sup>10</sup>126 Parliamentary Debates p 4.

- 6.6 A similar procedure is followed in the Australian House of Representatives under the Standing Orders. The Senate, though “free to adopt this practice if it desired, has through the years been content to have the power without giving it formal expression”.<sup>1</sup>

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<sup>1</sup> Odgers, *Australian Senate Practice*, 1976, p 169.

## Appendix 7 Statute Law Revision Program

### MEMORANDUM 2000–19 (Memorandum to all Ministers)

#### STATUTE LAW REVISION PROGRAM

In line with Cabinet's long standing approval for a program of regular statute law revision, Statute Law (Miscellaneous Provisions) Bills will continue to be prepared for each sitting of Parliament (Budget and Spring).

This Memorandum sets out supporting information which should accompany statute law proposals and provides for the deadline for submission of proposals for Spring Session 2000.

To enable the timely preparation of Bills for introduction into the Parliament, the following principles and procedures should be observed:

#### Content and Nature of Proposals for inclusion in Bills

Bills will continue to contain the following matters only:

- minor amendments proposed by government agencies (but not a significant number of amendments to one Act).
- minor amendments by way of pure statute law revision proposed by the Parliamentary Counsel.
- repeals of obsolete or unnecessary Acts, proposed by agencies of the Parliamentary Counsel.

Amendments proposed by agencies must be non-controversial and must contain no more than minor policy changes. The *Manual for Preparation of Legislation*, produced by the Parliamentary Counsel's Office, sets out some guidelines as to matters that are inappropriate for inclusion in the statute law revision program (The manual is available on-line at <http://www.pco.nsw.gov.au/pdf/mpl.pdf>).

#### Procedures for Submission of Proposed Amendments

Ministers should ensure that their Departments are advised of the following procedures for submission of proposals:

- requests for matters to be included in the Bill should be drafted for the Minister's signature and addressed to the Parliamentary Counsel.
- the request should be accompanied by a **parliamentary briefing note** (no longer than one page) on the proposal. Each briefing note should relate to amendments to one Act only and should be in **plain English**, assuming no knowledge of the particular issue. It should include:
  - a **broad statement of the rationale for the proposal, its context and who has proposed it** (eg. a new scheme is about to commence or has recently been introduced and amendments are needed to ensure its effective operation).
  - a **general outline of the proposal in non-technical terms** (more detailed description will be available in the Explanatory Note to the Bill).
- Each matter will be assessed initially by the Parliamentary Counsel and then by the Cabinet Office. A matter considered to be unsuitable for the program will not be included in the Bill.

Deadline

For the Spring Session 2000, the deadline for submission of proposals, approved by the relevant Minister, to the Parliamentary Counsel is **Wednesday 30 August 2000**.

Ministers are reminded that the Premier will approve of an exemption from the deadline only under exceptional circumstances.

Your full cooperation in this regard would be appreciated. Any further enquiries may be made to Soula Papadopoulos (9228 8008) of the Parliamentary Counsel's Office or Ms Jennifer Marshall of the Justice Branch, The Cabinet Office (9228 4984).

(Sgd)

Roger B Wilkins  
Director-General

Issued by: Justice Branch  
The Cabinet Office  
Date: 18 August 2000

## Appendix 8 Private Bills

- 8.1 Private Bills are to be distinguished from Public Bills. In particular, Private Bills are to be distinguished from Public Bills introduced by private Members of Parliament.

On enactment, Private Bills become Private Acts, whereas Public Bills become Public Acts.

Private Bills essentially deal with local or special matters.

- 8.2 Special procedures apply for Private Bills. The Standing Orders of each House of Parliament contain provisions dealing with these procedures:

Legislative Council (Part XXVII) SO 265-279  
Legislative Assembly (Chapter 29) SO 398-403

- 8.3 The Clerk of the House in which a Private Bill is to be introduced will provide assistance as to the necessary procedures.
- 8.4 The Parliamentary Counsel's Office will draft the necessary legislation, subject to availability of resources. The Parliamentary Counsel is available to discuss arrangements for this purpose.
- 8.5 Under current arrangements, a fee is payable for the services of the Parliamentary Counsel's Office in this respect. The fee can be reduced or waived in certain circumstances.

## Appendix 9 Forms in legislation

The representation of forms in printed legislation poses a number of technical difficulties. The typography and page size of legislation are rarely suited for the presentation of forms that in actual use are usually printed to fully cover an A4 page. Actual forms also frequently make use of colour and specialised typographic design and printing technology. Also, with the increased use of electronic commerce, printed forms as such will in some cases be replaced by menu interfaces that are completed online.

From a drafting perspective, the main focus is to produce text for the necessary requirements in a form. This should be presented as simply as possible, as the data has to be transportable and readily accessible electronically and not in any unusual proprietary format.

Although the Parliamentary Counsel's Office is constrained by page size, printing technology and the need to publish electronically, it is acknowledged that Departments are free to design more sophisticated forms for actual use. To that end, they have considerable latitude in the presentation of prescribed forms, in terms of layout, typography and the use of colour. In cases where the use of complex forms created by a Department is unavoidable, they may be captured as graphic images. However, it should be noted that these images are likely to be difficult to read as they need reducing to fit within the standard B5 layout (a text area of only 130mm x 180mm, allowing for a heading), will not be searchable on the Legislation Database, and often create very large electronic files.

The print design developed for NSW legislation in 1995 should be applied where possible to forms. A list of features from the design that are relevant, together with a list of features to be avoided, are set out below.

### Standard design features to be applied to forms

- Full width of the page to be used (the same margins used elsewhere in legislation)
- Form to have a number and name set out as for other headings (like a Part)
- Bold Arial for headings, New Times Roman for text, same sizes as elsewhere where possible. It is often necessary to shrink type sizes where multiple column headings and densely packed tables are required. Also, non-bold Arial can be used in table headings in these circumstances.
- Arial and same style for notes as used elsewhere
- Sections and other components within forms to be numbered and given headings following usual conventions
- Footnotes should appear as notes immediately after the text to which they relate, unless they are global instructions such as “\* delete where applicable”, in which case they should appear at the beginning or end of the form. These are also in Arial 9pt.

### Do not use

- Bullet points
- Boxes around text (a table can be used to create a blank box, say for a signature block, and a character used for a small box to be ticked)
- Italics, except for citations (Arial to be used instead for instructions and under signature lines)
- Full caps, except for emphasis, where it should be used instead of underscore, bold or italic (eg “Please complete ALL sections of Part A”)
- Shading or hatching (this causes problems for electronic transmission and when copying or faxing)
- Unnecessary horizontal or vertical rules (including variable length or variable width rules (eg twin or superbold))
- Extra rows of leaders or space for addresses or entries that may require considerable space in the actual form
- Square brackets or braces where parentheses would suffice
- Landscape
- Hanging indents
- Cues for the date, such as “.../.../20...” or “20” are unnecessary. The word “Date.....” is sufficient.

## **Manual for the Preparation of Legislation**

### **Other observations on forms**

- Any reference to the parent Act set out under the form heading is to appear ranged to the left margin in parentheses and in non-bold Arial.

It is appreciated that there will be cases that are difficult to fit into the current design. These will need to be dealt with on a case by case basis and some may have to be captured as graphics as mentioned above.