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SENATE

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,  
the Hon. Lionel Bowen M.P.)



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## SCHEDULE 1

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## STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 1988

### General Outline

The amendments made by this Bill have a number of purposes such as the tidying up, correction or updating of legislation. Other amendments implement changes that are of minor policy significance or are of a routine administrative nature. None of the amendments made by this Bill has any significant financial impact.

Cl. 1 - Short title

Formal

Clause 2 - Commencement

Cl.2(1) provides that, subject to the succeeding special provisions, the Bill shall come into operation on receiving the Royal Assent.

Special provision for the commencement of amendments of specified Acts contained in Schedule 1 is made by cl.2(2) to (7); references to special commencement provisions are made in notes on the relevant provisions.

Clause 3 - Amendments of Acts

This clause provides that the Acts specified in Schedule 1 are amended as set out in that Schedule.

Clause 4 - Repeals

This clause provides that the Acts specified in Schedule 2 Parts A and B are repealed. The Acts listed in Part A are no longer operative. By virtue of cl.2(7) of this Bill the repeal of the Acts listed in Part B will take effect on a day to be fixed by Proclamation. These Acts are to be replaced by an Ordinance which will be brought into operation upon the repeal of the Acts.



Clause 5 - Transitional provisions

Cl.5(1) provides that unless there is express provision to the contrary, any act done or decision made under the provisions amended or repealed and re-enacted has effect after the amendment or repeal as if it had been done or made pursuant to the provisions as so amended or re-enacted.

Transitional provisions in cl.5(2) to (5) relating to specific Acts are referred to in the explanation of the amendments in Schedule 1.

SCHEDULE I

Amendments of Acts

Aboriginal Land Rights (Northern Territory) Amendment Act  
(No.2) 1987

Section 12

The proposed amendment of s.12(a) corrects a typographical error.

By virtue of cl.2(2) of this Bill, the proposed amendment shall be taken to have commenced immediately after the commencement of the Aboriginal Land Rights (Northern Territory) Amendment Act (No.2) 1987.

Administrative Appeals Tribunal Act 1975

Sections 49 and 56

The proposed amendments of s.49(2A) and s.56(2),(3),(5) and (6) will delete the title "Chairman" of the Administrative Review Council and substitute the title "President" of the Council, in line with the Government's policy of adoption of gender neutral terminology in legislation.

Archives Act 1983

Sections 57 and 66

S.57 currently protects the Commonwealth, authors of documents and persons concerned in the giving of access to documents against civil liability for defamation, breach of confidence

or infringement of copyright, arising from the giving of access. It also provides that a person concerned in giving access is not guilty of a criminal offence by reason of so doing.

The proposed amendment of s.57(1) will extend these protections against civil or criminal liability to instances in which persons other than the Director-General or the staff of Archives give access to Commonwealth records under the Act.

The protection against civil and criminal actions provided under s.57(1) will also be extended by the proposed addition of s.57(1A) to apply:

- . where access is given to records placed in the Archives' custody by individuals or bodies other than Commonwealth institutions;
- . where access is given to records more than 30 years old in good faith in the belief that access is required by the Act to be given; and
- . where access is given to records to which accelerated or special access applies.

The amendment of s.66(6) will enable regulations to be made allowing a charge to be levied per page, microfiche sheet or other comparable unit, rather than by entry as under the present wording of s.66(6).

#### Australian Bicentennial Authority Act 1980

##### Sections 15A, 15B and 15C

Advice has been received that the Australian Bicentennial Authority is not an "authority of the Commonwealth" within the meaning of the definition in s.3(1) of the Archives Act 1983

and is not a "prescribed authority" within the meaning of the definitions in s.4(1) of the Freedom of Information Act 1982 and s.3(1) of the Ombudsman Act 1976.

The amendment inserts 3 new sections in the Australian Bicentennial Authority Act 1980 to make the Authority subject to those Acts.

The proposed s.15A deems the Authority to be an authority of the Commonwealth for the purpose of the Archives Act 1983.

The proposed s.15B and 15C deem the Authority to be a prescribed authority for the purposes of the Freedom of Information Act 1982 and the Ombudsman Act 1976 respectively.

#### Australian Capital Territory Supreme Court Act 1933

Sections 5, 8, 8AAA, 8AC, 8AAB, 8AD, 30, 31, 32, 33, 33A, 33B, 33C, 33D, 33E, 33F, 35 and 35A

The amendments of the ACT Supreme Court Act 1933 will provide for the appointment of a Master of the ACT Supreme Court. It is intended that the Master will exercise similar kinds of powers to those exercised by Masters of State Supreme Courts. The appointment of a Master will relieve heavy workload pressures on the Judges of the ACT Supreme Court which have led to a backlog of civil cases in that Court.

Masters are an important feature of Supreme Courts in several Australian jurisdictions. They do a substantial portion of the Court's interlocutory work (including contested matters) and conduct some hearings in civil actions. They have no role in criminal matters.

S.5 of the Act is to be amended to insert a definition of Master.

S.8 is to be repealed and new s.8, 8AAA and 8AAB are to be inserted. The substance of the present s.8 is included within new s.8 and 8AAB.

New s.8 sets out the manner in which the Court's jurisdiction may be exercised and provides that Rules of Court may be made to permit the exercise of that jurisdiction by the Master or Registrar subject to such conditions as are specified in those Rules.

S.8AAA sets out the procedure for appeals from decisions of the Master. The appeal is to a single Judge of the Court in interlocutory matters and to a full bench of the Court in other matters. The section also provides for the powers of the Court on such appeals, including the power to receive further evidence, and permits the Court to make any order it considers just in the circumstances.

S.8AAB permits a person to appeal to a Judge of the Court against an order of the Registrar and permits the Court on hearing such an appeal to make such order as it considers just in the circumstances.

S.8AC of the Act is to be amended to provide that, where three or more Judges are sitting in a matter where a judgment of the Master has been called into question, the judgment of the Master is to be affirmed if the Judges are equally divided in opinion.

Proposed new s.8AD provides for matters which are before the Master to be referred by the Master, or removed by order of a Judge, to the Court constituted by one Judge. The section also provides for the Court to give procedural directions in relation to such matters and to remit the proceedings to the Master.

After s.29 a new Part III, s.30 to 33F, is to be inserted.

New s.30 provides that there shall be a Master.

New s.31 provides that the powers and duties of the Master are to be those assigned by an Act, an Ordinance, Rules of the Court or a special order of the Court.

New s.32 provides for the appointment of the Master, including the qualifications for appointment. A person cannot be appointed unless he or she has been enrolled as a legal practitioner for 5 years.

New s.33 provides that the Master shall hold office for a term not exceeding 7 years or alternatively until attaining 65 years of age. The Master ceases to hold office on attaining 65.

New s.33A sets out the form of the oath or affirmation of office to be taken by the Master.

New s.33B is a standard provision providing for remuneration and allowances.

New s.33C sets out the procedure for the Master to resign.

New s.33D empowers the Governor-General to remove the Master on the ground of proved misbehaviour or incapacity in response to an address from Parliament. S.33D also provides that the Governor-General may suspend the Master because of misbehaviour or incapacity. This is an emergency power. The suspension terminates unless a statement of the grounds of suspension is tabled in Parliament within 7 sitting days and an address from one of the Houses of Parliament praying for the removal of the Master is presented to the Governor-General within 15 sitting days after the tabling of the statement. S.33D also provides that the Governor-General shall remove the Master from office if the Master becomes bankrupt or is otherwise insolvent and that the Governor-General may, with the consent of the Master, retire the Master from office on the ground of incapacity.

New s.33E provides for any terms and conditions of appointment not provided for by the Act to be determined by the Governor-General.

New s.33F empowers the Governor-General to appoint a person to act as the Master, sets out the circumstances in which such an appointment may be made and limits the term of such an appointment to 12 months. A person who is acting as Master may only be removed under new s.33D.

The amendments also include changes to other sections in the Act required as a consequence of the above amendments.

By virtue of cl.2(3) of this Bill, the amendments made by this Bill will commence on a day or days to be fixed by Proclamation.

#### Australian Federal Police Act 1979

##### Section 69

The repeal of s.69 will give effect to measures announced in the 1987-88 Budget to reform administrative arrangements in the Territory by reducing the number of statutory and non-statutory bodies involved in administration of the ACT.

The repeal will abolish the ACT Police Liaison Advisory Committee. The Committee was established to ensure that a forum for community consultation was available following the amalgamation of the ACT Police with the Commonwealth Police. Its members were drawn from the now disbanded ACT House of Assembly. The Australian Federal Police now use Neighbourhood Watch, Police 7 (a local television program) and public relations programs to communicate with the community.

#### Australian National University Act 1946

##### Sections 6AA, 8, 15AA, 15A, 15C, and 27

The Australian National University (ANU) has for some years exploited commercially the results of research undertaken at

the University. The proposed new s.6AA will eliminate any doubts that may exist as to the power of the University to do so and to establish and operate, for example, ANUTECH Pty Ltd, a company formed by the University similar to companies and joint ventures operating in the States such as Unisearch Ltd (University of NSW), Montech Pty Ltd (Monash University) and Techsearch Ltd (SA Institute of Technology).

The proposed amendments of s.8(1) and (2) will allow for the inclusion of bodies other than research schools in the Institute of Advanced Studies. The effect of the deletion of s.8(4), which provides for establishment of departments in research schools, is to enable the Council to determine the structural organisation of research schools in more flexible ways.

The University Council is empowered to make subordinate legislation (Statutes) covering a wide range of matters under s.27 of the Act. S.15AA deals with the disclosure of interests by members of Council. The proposed amendment of s.15AA will make the section subject to Statutes made by the University Council in accordance with s.27.

The proposed amendment of s.15A(2) is consequential upon the proposed repeal of s.15C. The latter section is repealed because it is redundant as s.27(1)(k) and (l) confer on the Council, power to make, alter or repeal Statutes relating to degrees, diplomas and scholarships.

The proposed amendment of s.27(1)(d) will enable Statutes to be made by the Council with respect to discussions and voting rights on matters considered by the Council after disclosure of a pecuniary interest by a member of the Council.

The repeal of s.27(1)(f) which relates to the making of Statutes for the tenure of office, stipend, powers and duties of the Vice-Chancellor is proposed because it is redundant. S.18(2) and s.18(3) concern the appointment of the



Vice-Chancellor and when read with s.27(1)(v) give the Council express power to make Statutes relating to all relevant aspects of the Vice-Chancellorship except stipend. The stipend of the Vice-Chancellor will continue to be fixed by the Remuneration Tribunal.

The proposed amendments to delete "prizes" from the list of matters for which Statutes may be made under s.27(1)(l), and the omission of paragraph 27(1)(u) relating to "academic costume" are included because all Statutes relating to these have been repealed. They are considered to be more properly subjects for resolution by the Council rather than the subject of Statute.

### Bankruptcy Act 1966

#### Section 38

S.38 of the Bankruptcy Act confers jurisdiction on the Federal Court to hear appeals from a State court exercising jurisdiction in bankruptcy. Prior to 1986, the Federal Court also had jurisdiction to hear appeals from the Northern Territory Supreme Court exercising jurisdiction in bankruptcy by virtue of s.24 of the Federal Court of Australia Act, which then conferred jurisdiction on the Federal Court to hear appeals from all judgments of the Supreme Court of a Territory. In 1986 s.24 was amended to remove the Federal Court's jurisdiction to hear appeals from the Supreme Court of the Northern Territory. The proposed amendment of s.38 restores the Federal Court's jurisdiction to hear bankruptcy appeals from the Supreme Court of the Northern Territory, thus ensuring that the Federal Court has the same jurisdiction in bankruptcy appeals throughout Australia.

Census and Statistics Act 1905

Sections 6,7,9,12,13,14,15,17 and 19

The proposed amendments of s.6(1)(a), (b) and (c) correct typographical errors.

The proposed amendments of s.7, 9(1)(a), 14(1), 15 and 19(2) make the language non-gender specific.

Although the Statistician has charged for statistical publications and services for many years, advice received recently has recommended clarification of the power to charge for the supply of information. The addition of s.12(3) will clarify the existence of the power.

The remaining amendments will -

- . replace s.13(4) to make it consistent with the recent addition of s.46A of the Acts Interpretation Act 1901 (which applies provisions of that Act to instruments which are disallowable under the Acts which provide for them); and
- . replace s.17 to make it consistent with the recent addition of s.34AB to the Acts Interpretation Act 1901, which contains general rules relating to delegations.

Commonwealth Inscribed Stock Act 1911

Sections 3,14,21A,48,51K and 56

The purpose of the proposed amendments is to introduce more efficient administrative procedures.

The proposed amendment of s.14 will reduce the administrative burden on the Governor-General by transferring to the Treasurer the function of the establishment of Registries and the appointment of Registrars and Deputy Registrars of Stock. These matters are of a routine nature and involve appointment of middle management personnel who are officers of the Reserve Bank. The proposed amendment of s.51K(1) will extend the Treasurer's powers of delegation to include these functions.

The proposed amendments of s.3, s.48(1)(d) and s.56(2) will facilitate administration by enabling the Registrar of Stock to accept a certified copy of a power of attorney in lieu of the original document. This is consistent with practices applying under State legislation.

Proposed s.21A will enable inscription of stock in the name of the holder of a prescribed office for example, a Regional Director of a Commonwealth or State Government Department in that person's capacity as holder of that office.

### Economic Planning Advisory Council Act 1983

#### Section 9

S.9(1) constitutes the membership of the Economic Planning Advisory Council (EPAC).

The proposed amendments of s.9(1) will -

- . amend s.9(1)(h) to increase the number of members selected after consultation with the ACTU from 4 to 5;
- . make a minor drafting change to s.9(1)(k) of the Act consequential upon the addition of the new s.9(1)(n);  
and

add a new s.9(1)(n) to provide that one member of EPAC is to be selected after consultation with such organisations as are representative of the professions (for example, the Australian Council of Professions) as the Minister considers appropriate.

The amendment of s.9(8) is consequential upon the amendments of s.9(1), which have the effect of increasing the total membership of the council from 18 to 20.

The increased membership (including wider representation) is necessary because of the expansion in the matters dealt with in EPAC to include consideration of prices and incomes policy matters following the abolition of the Advisory Committee on Prices and Incomes.

#### Export Market Development Grants Act 1974

##### Sections 4 and 39

The proposed amendment of s.4(1)(c)(ii) adds eligible external governmental educational services to the range of activities for which approved bodies may receive grants under the Act. These services are educational courses offered outside Australia (either by correspondence or by a facility set up at an overseas institution) by an Australian government educational body. An approved body under the Act is a body which promotes the export of the product of an industry without itself exporting the product. This amendment will allow government education institutions to promote through approved bodies, external educational services on an equal footing with non-government institutions.

The proposed amendment to s.39(1A) increases the penalty for providing false or misleading information for the purposes of obtaining a grant from a maximum of \$1,000 or 6 months

imprisonment, or both, to \$2,000 or 12 months imprisonment or both. This brings the penalty into line with similar offence provisions of the Crimes Act.

There is no penalty for a corporation specifically included in this amendment. A recent amendment to the Crimes Act (s.4B(3)) provides that in respect of an offence, a corporation is liable to a maximum pecuniary penalty of five times the maximum pecuniary penalty that maybe imposed on a natural person for that offence.

### Federal Proceedings (Costs) Act 1981

#### Section 3

The Act authorises the Attorney-General to pay to a person to whom a costs certificate has been granted an amount for costs which that person has incurred in an appeal, new trial or aborted proceeding. The amount which may be reimbursed is limited to a maximum amount specified in the Schedule to the Act. The Act is similar to State Suitors Fund legislation in respect of appeals in State Courts.

There is a deficiency in the Act, in that it does not provide for a costs certificate to be granted in relation to an appeal concerning Federal law from a State Supreme Court to the Federal Court or for such an appeal from the Supreme Court of the Northern Territory to the Federal Court.

The proposed addition will extend the definition of "Federal appeal", in s.3(1) of the Act to include such appeals .

By virtue of cl.2(4) of this Bill, the amendments made by this Bill shall commence on a day to be fixed by Proclamation.

Cl.5(2) of this Bill provides that the amended provisions apply only in relation to appeals decided by the Federal Court of Australia on or after the day fixed by Proclamation.

### First Home Owners Act 1983

#### Sections 4,13,22,25,29,37A and 41

The purchaser or owner-builder of a first home is entitled to financial assistance in circumstances where amongst other things he or she will become entitled to ownership of a dwelling on land in Australia. The Act (s.9(2)) defines what constitutes ownership of an approved interest in land and "approved interest" is also defined to include "a lease of a term of years .... " (s.4(1) "approved interest" (d)).

It is considered that this description of a lease may be wide enough to cover residential tenancies and licences. The proposed amendment of s.4(1) "approved interest" (d) which provides that it must be a registered lease exceeding 15 years, will ensure that only long term secured tenure of land similar to an estate in fee simple or a life estate is included in the scheme.

S.13 of the Act currently defines a dependent child by reference to the family allowance provisions of the Social Security Act 1947. The amendments of s.13(2) to:

- . omit the definition of "dependent child";
- . re-define "family allowance"; and
- . add the definition of "family allowance period"

are consequential upon recent amendments of the Social Security Act. The definitions refer to particular provisions of that Act.

The original intention of providing additional assistance to home acquirers with dependent children is preserved.

The object in devising the First Home Owners income test was to ensure that all applicants are tested on the basis of a full year's income earned in Australia. The current reference to a person being domiciled in Australia throughout the year fails to ensure the testing of a full year's income in Australia for all applicants. The proposed substitution of a new s.22(5) will ensure that applicants are tested fairly and equitably on a full year's income in Australia by requiring that the person be an Australian citizen, hold a valid entry permit under the Migration Act, or be exempted from holding such a permit prior to the financial year for which income is tested. The test will be simpler to administer and will eliminate the need to make complex enquiries of applicants in order to satisfy the domicile test.

The proposed amendment of s.25 is consequential upon the addition of the new section 37A.

The proposed amendment of s.29(2)(b) will enable regulations to be made authorising disclosure of information of a prescribed kind to prescribed authorities or persons and the particular conditions to be satisfied before information is disclosed.

In October 1985 the Regulations were amended to prescribe the Secretary to the Department of Social Security and the Commissioner of Taxation as prescribed persons thus enabling information collected under the first home owners scheme to be disclosed to them. The Senate Standing Committee on Regulations and Ordinances expressed concern about the regulation because of the potential for breaching personal

rights and liberties. The then Minister for Housing and Construction undertook not to take any action under the regulation until it had been amended to specify the type of information to be disclosed and the preconditions to be satisfied.

The proposed amendment will meet the concerns of the Senate Committee and will bring the Act into line with the Governments policy on the handling of personal information by agencies and Departments of the Commonwealth.

The proposed addition of s.37A relates to "write off" and "waiver" powers in relation to debts arising out of overpayments under the Act and will avoid unnecessary duplication of action under the Audit Act to write off or waive the overpayment where a decision has been made not to recover an overpayment under the First Home Owners Act.

The addition of s.41(1A) is consequential upon the insertion of the new s.37A. The Secretary will be required to report to Parliament on the amounts waived and written off during the year.

#### Housing Loans Insurance Act 1965

##### Section 7

The proposed amendment of s.7 which deals with the membership of the Housing Loans Insurance Corporation will add a new s.7(10) to permit appointments of the Chairman, Deputy Chairman and members of the Corporation to be made on terms and conditions determined by the Governor-General. The terms and conditions supplement those provided in the Act regarding salary and allowances which are determined by the Remuneration Tribunal. The main purpose of the amendment is to allow flexibility to negotiate superannuation benefits in appropriate instances.



Human Rights and Equal Opportunity Commission Act 1986

Section 16 and 48

The proposed amendment of s.16 (Inter-governmental arrangements) inserts a new s.16(2A) which is designed to ensure that persons acting under inter-governmental arrangements are in the same position in performing functions of the Commission (for example, in investigation of complaints) as would be the case if those functions were being performed directly by the Commission, the Race Discrimination Commissioner or the Sex Discrimination Commissioner. Currently a number of relevant protections and duties apply to persons acting pursuant to such arrangements and to complainants, witnesses and others dealing with such persons. However, it has not been clear that all relevant provisions of the Racial Discrimination Act and Sex Discrimination Act apply. The amendment will overcome this difficulty.

The proposed deletion of s.48(2) will extend the protection against civil actions, which is provided by s.48(1), to all persons who perform functions, or exercise powers, of the Commission under the Sex Discrimination Act, including persons who act pursuant to co-operative arrangements. Currently s.48(2) excludes functions under the Sex Discrimination Act. The repeal will result in some overlap of protection from civil action, since the Sex Discrimination Act contains a somewhat similar provision in s.111. However, it makes the scheme of the Human Rights and Equal Opportunity Commission Act easier to follow and, in particular, means that the protection most relevant to persons acting under Commonwealth/State arrangements is located in the same Act as the provision which authorises the making of such arrangements (s.16).

## Insurance Act 1973

### Section 5

S.5 of the Insurance Act 1973 exempts from the provisions of the Act insurance business carried on by the Commonwealth, the Government of a State, certain Commonwealth and State bodies such as the Housing Loans Insurance Corporation and the Joint Coal Board and prescribed companies which insure against building society losses. The exemption does not extend to an insurer carrying on business under a State Act other than those listed in the section.

The proposed new s.5(2A) will exempt from the provisions of the Act companies licensed under the NSW Workers Compensation Act 1987 to conduct employers liability insurance business through statutory funds established and maintained under that Act. As these companies will be required to comply with the provisions of the State legislation, it is not appropriate that they also be required to comply with the Commonwealth Act.

The proposed s.5(2B) will exempt from the provisions of the Act, Coselco Insurance Pty Ltd, an insurance subsidiary of the Commonwealth Serum Laboratories Commission. The amendment will provide that the business which Coselco Insurance Pty Ltd conducts is subject to any conditions that may be prescribed by regulations.

## Insurance (Agents and Brokers) Act 1984

### Section 24

The proposed amendment of s.24(2) will provide that an insurance broker, whose application for renewal of registration under the Act has not been refused, is deemed to continue to be a broker during the period during which the application is being decided upon and to be subject to the

provisions of the Act relating to brokers. The existing provisions (s.12) deem the rights and duties of an applicant for renewal of a broker's registration whose registration has meanwhile expired to be those relating to agents. S.12 is a general provision covering insurance intermediaries not specifically dealt with by the Act. The rights and duties of agents vary considerably from those of brokers and it is not appropriate that brokers be subject to the provisions relating to agents during this interim period.

The proposed amendment of s.24(3) is consequential upon the amendment of s.24(2).

Cl.5(3) of this Bill provides that s.24(2) and (3) as amended by this Bill apply only in relation to the expiration of a registered insurance broker's period of registration occurring on or after the commencement of the amending legislation.

Cl.5(4) of this Bill provides that in spite of the amendments of s.24(2) and (3) made by this Bill, those subsections (as in force immediately before the commencement of the subsection) continue to apply in relation to the expiration of a registered insurance broker's period of registration occurring before the date of commencement of the amending legislation.

### Judiciary Act 1903

#### Sections 34, 55B, 55D and 78A

S.34 of the Judiciary Act currently enables a person to appeal as of right to the Full Court of the High Court from a judgment of a Justice or Justices exercising the Court's original jurisdiction.

The proposed amendment of s.34(2) will require a person dissatisfied with an interlocutory judgment to obtain the leave of the Court before he or she can appeal to the Full Court.

The amendment will relieve the Full Court from having to deal with misconceived appeals from rulings on interlocutory matters, such as where a writ appears on its face to be an abuse of the process of the Court or where there is an attempt to institute a frivolous or vexatious proceeding. A refusal of the application for leave will be determinative of the matter. At the same time, a right of appeal will be preserved in respect of final decisions by the Court sitting in its original jurisdiction.

The amendments of s.55B will confer on all Australian legal practitioners a right of audience before the courts of the Northern Territory and the Australian Capital Territory in relation to the exercise by those courts of jurisdiction which is equivalent to federal jurisdiction.

S.55B(4) of the Judiciary Act provides that a person who is entitled to practise as a barrister or solicitor in the Supreme Court of a State or Territory has a right of audience before any State court in relation to the exercise of federal jurisdiction by that court. Under s.55D such a person has a right of audience in relation to the exercise of any kind of jurisdiction before a court of a Territory which does not have local laws regulating legal practice.

It would be consistent with the policy evinced in s.55B(4) for practitioners from other jurisdictions to have a right of audience in Territories where there is a local profession and local rules relating to legal practice, in relation to "federal-type" matters, but not otherwise.

The proposed amendments to s.55B make such provision in relation to those Territories which do have such local laws - the Northern Territory and the Australian Capital Territory (ACT).

Because Territory courts ultimately derive all their jurisdiction from the Commonwealth Parliament the amendments can not refer simply to "federal" jurisdiction. A definition

of "federal type" jurisdiction is included to specify the jurisdiction equivalent to federal jurisdiction. The other proposed amendments of s.55B are consequential upon this main change.

The principal purpose of the amendment to s.55D is to correct an omission in s.55D(6).

S.55D(1) to (4) deal with entitlement to practise as a barrister and solicitor in the Territories. S.55D(6) provides that a local law of a Territory which contains provisions of the kind referred in s.55D(5) and complies with the conditions set out in s.55D(6)(b) will displace the rules on the right to practise laid down by s.55D(1) to (4).

However s.55D(6)(b) does not contain a condition comparable to s.55D(2) relating to disqualification from practise on the ground of suspension in some other jurisdiction.

The result is that a law of a Territory which regulates the right to practise but which does not have that disqualification (which is the very disqualification applied generally in Territories by s.55D(2)) may displace s.55D(1) to 55D(4). The amendments will remove this inconsistency by requiring the law of a Territory to embody this disqualification before s.55D(1) to (4) are displaced.

Various other drafting changes to s.55D are included in the amendments. These changes are not intended to affect the operation of the section.

Under s.78A(1) the Attorney-General of a Commonwealth or a State may intervene in proceedings in any court which relate to a matter arising under the Constitution or involving its interpretation. There is doubt whether an Attorney-General would be able to appeal from a decision of a court where the Attorney-General had intervened in proceedings before the court under s.78A(1). This can lead to an Attorney-General,

who wishes to ensure access to the High Court on the Constitutional point, seeking to remove the matter into the High Court under s.40(1) of the Judiciary Act.

The proposed addition of s.78A(3) and (4) will confer on an Attorney-General, when intervening, the same rights of appeal as have the other parties to the proceedings. Thus some cases, which would otherwise have been removed into the High Court, may be left for determination by the lower court. This will ensure a more efficient use of judicial resources.

#### Life Insurance Act 1945

##### Sections 15 and 55

S.15 of the Act provides that a company shall not carry on any class of life insurance business in Australia unless it has been registered by the Insurance and Superannuation Commissioner. There have been doubts expressed whether the section makes it an offence for unregistered overseas companies to carry on business through local agents, where the policies are issued outside Australia. The proposed amendment (a) of s.15 to insert "including a foreign company" will make it clear that it is an offence.

S.14(1) permits an agent or broker who is a natural person to carry on any class of life insurance business in Australia on behalf of a company registered under the Act. There is no equivalent provision regarding corporate agents and brokers in s.15, causing doubts whether they may carry on life insurance business on behalf of life insurance companies registered under the Act. The proposed amendment (b) to s.15 will remove any doubts and permit corporate agents and brokers to take part in this activity. The amendment will also exempt corporate agents and brokers from the registration requirements of the Act, as these provisions are intended to apply only to life insurance companies carrying on life insurance business on their own behalf.

S.55 of the Act empowers the Commissioner to make investigations in certain circumstances including where a life insurance company has not furnished information demanded by the Commissioner under the Act. S.55 does not, however, include a corresponding provision in relation to a failure to furnish documents notwithstanding that the Act also empowers the Commissioner to demand documents.

The proposed addition of paragraph (da) to s.55(1) will make failure to furnish documents demanded by the Commissioner liable to render the company subject to investigation.

#### Maritime College Act 1978

Sections 4, 8, 9, 11, 12, 13, 18, 19, 20, 24, 34, 35, 36, 37, 37A, 37B, 37C, 37D, 37E and 39

The proposed deletions from, additions to, and inclusion of, s.4, s.11(1)(c), s.12, s.19(2A), s.24(1)(da), s.11(1) and (3), s.13(4) and (5) and the amendments of s.19(2), s.20 and s.24(1)(d) will enable the non-teaching staff of the College to elect a member of the non-teaching staff to the Council in the same manner as the teaching staff elect representatives to Council.

The proposed amendment of s.8 will remove any doubt as to the power of the College to exploit research results commercially and to enter into consultancies within the maritime or maritime-related areas. The College in 1984 established AMC Search Ltd, a company limited by guarantee.

This proposed amendment will also enable the College to provide funds for the establishment and operation of affiliated bodies such as the student association.

The proposed amendment of s.9 removes a reference to the Minister for Transport and Construction in accordance with the modern practice of avoiding the naming of portfolios in legislation wherever possible.

The College Council is empowered to make subordinate legislation (Statutes) covering a wide range of matters under s.24 of the Act. S.18 deals with the disclosure of interests by members of Council. The proposed addition of s.18(3) will make the section subject to Statutes made by the College Council in accordance with s.24.

The proposed amendment of s.34, the repeal of s.35, 36 and 37 and the addition of the proposed s.35, 36, 37, 37A, 37B, 37C and 37D give the College express authority to lend, borrow (with the approval of the Treasurer) and invest monies to facilitate the management of its cash flow, and authorise the Treasurer to guarantee payments by the College.

The proposed s.37E provides that the college is a public authority and subject to the relevant provisions of the Audit Act 1900 in accordance with the Government's decision to standardise financial and reporting requirements.

The repeal of s.39 (which relates to financial reporting requirement) is consequential upon the proposed addition of s.37E.

By virtue of cl.2(5) of this Bill, the proposed s.11(1)(ca) which provides for the Council to include a member of the non-teaching staff, shall commence on a day to be fixed by Proclamation.

#### Marriage Act 1961

Sections 4, 5, 9, 9B, 9C, 9D, 9E, 13, 27, 38, 39, 42, 46, 50, 51, 57, 58, 61, 62, 63, 66, 68, 78, 80, 85, 86, 92, 93, 115, 117 and 120



The proposed amendments of s.5(1), s.9B, s.9C(1),(2),(3),(4), and (5), s.9D(2), s.9E(1), and (2), s.27(1), and (4), s.39(2), s.46(2), s.50(5), and (6), s.51(4), s.57(1), (2), and (3), s.58(1), s.61(1) and (2), s.62, s.63(1), s.68(4), and (5), s.78(2)(c), s.80(5) and (6), s.115(1)(a), s.117(2) and (2A) substitute "Minister" for "Attorney-General" in accordance with the practice in modern legislation of avoiding the naming of portfolios wherever possible.

S.4 is repealed as the section is redundant because of the operation of s.7 and 8 of the Acts Interpretation Act 1901 which make provision for the effect of any act done prior to the repeal of an Act or part of an Act.

The remaining proposed amendments will -

- . replace the definition of "medical procedure" with the definition of "artificial conception procedure" in line with s.60 of the Family Law Act 1975 (s.5(1));
- . effect a clearer drafting style in paragraph (b) of the definition of "minister of religion" (s.5(1));
- . change the reference from "Police Force of the Commonwealth" to "Australian Federal Police", the correct title as provided in the Australian Federal Police Act 1979 (s.13(2)(a) and s.42(2)(b));
- . repeal s.61(5) (which relates to persons who held office under a repealed Act) as there are no longer any persons to whom the provision applies;
- . replace gender specific language (s.66(8));
- . reflect a clearer drafting style (s.85(3));

- . make a change consequential on the changes from "Attorney-General" to "Minister" (s.38 and s.86);
- . amend s.92(4)(a) to provide for the giving of notice in an application for a declaration of legitimacy to the Attorney-General of the Northern Territory as well as the Attorney-General of the Commonwealth or a State;
- . amend s.92(6) to provide that an order under the section binds the Crown in right of the Northern Territory and of Norfolk Island as well as of the Commonwealth and a State;
- . delete the term "medical procedure" and replace it with the term "artificial conception procedure", following the change in s.5(1) (S.93(3));
- . enable the Minister to cause the publication of lists of authorised marriage celebrants and of persons who are prescribed authorities in such manner as the Minister considers appropriate, rather than require such publication to be in the Gazette (s.115(1));
- . delete the words "of the Commonwealth" in line with current drafting practice (s.120(g) and 120(h)); and
- . replace gender specific language (Item I of Part III of the Schedule).

## Migration Act 1958

### Section 5

The proposed amendment to s.5(18) will correct a drafting error caused by the Sea Installations (Miscellaneous Amendments) Act 1987 whereby the word "adjacent" was inadvertently inserted instead of the word "coastal".

By virtue of cl.2(6) of this Bill, the proposed amendment shall be taken to have commenced immediately after the commencement of Part VI of the Sea Installations (Miscellaneous Amendments) Act 1987.

### National Parks and Wildlife Conservation Act 1975

#### Sections 7,9 and 21

The Aboriginal land in Stage 1 of Kakadu National Park is leased (in three leases) by the Kakadu Aboriginal Land Trust to the Director of National Parks and Wildlife. The Aboriginal land in Stage 2 of the Park, which was granted to the Jabiluka Aboriginal Land Trust in November 1986 is not yet leased to the Director.

The traditional Aboriginal owners have insisted, through the Northern Land Council, that the current leases held by the Director of National Parks and Wildlife over Aboriginal land in Kakadu National Park be terminated and a new lease covering Aboriginal land in Stages 1 and 2 be entered into. The Minister for the Arts, Sport, the Environment, Tourism and Territories and the Minister for Aboriginal Affairs have agreed to this proposal.

Officers of the Australian National Parks and Wildlife Service, Department of Aboriginal Affairs and the Australian Government Solicitor's Office are currently negotiating the new lease for all Aboriginal land in Kakadu. Introduction of the new lease will require termination of the existing leases which began in 1978.

S.7(10B) of the Act provides that, apart from exceptions which are not relevant in this case, where a leasehold interest held by the Director in respect of land in a park or reserve ceases to exist, the land ceases to be land within that park or reserve and the proclamation applying in respect of that land is to be amended or revoked as the case requires.

The proposed amendments inserting s.9(2B) will allow the termination of a leasehold interest held by the Director in respect of any land in a park or reserve so that it can be replaced with a new lease without the land ceasing to be a park or reserve and without requiring the Governor-General to amend or revoke the proclamation of the park or reserve.

These amendments will apply generally to parks and reserves. At present only Kakadu and Uluru (Ayers Rock-Mt.Olga) National Parks involve land leased by the Director.

The proposed amendments of s.9(1) and 9(4) are consequential upon the insertion of s.9(2B).

S.21 of the Act specifies that the Director cannot enter into a contract involving the payment or receipt of an amount exceeding \$50,000 without the approval of the Minister. This amount has not changed since the Act was proclaimed in 1975 although the real value of this amount has been substantially eroded through inflation.

The current Policy Guidelines for Commonwealth Statutory Authorities and Government Business Enterprises specifies \$100,000 as an appropriate level for contract approvals by non-commercial authorities. As there is no administrative mechanism to enable the Minister to vary the amount prescribed, an amendment to the Act is necessary. In accordance with this policy the proposed amendment of s.21(1)(a) will increase the limit authorised from \$50,000 to \$100,000.

The proposed amendment of s.21(1)(a) enables the Minister to prescribe a higher amount than \$100,000 by regulation. This type of provision has been incorporated in recent legislation. It obviates the need for future amendment of the Act merely to increase the figure. Any future action by the Minister will be subject to review by the Senate Standing Committee on Regulations and Ordinances.

Parliamentary Counsel Act 1970

Sections 2,3,4,5,7,8,9,10,14,15,16 and 16A

The proposed amendments will make minor changes of an administrative nature, namely -

- . substitution of "Minister" for "Attorney-General" in accordance with the practice in modern legislation of avoiding the naming of portfolios wherever possible s.2(4), 7, 10(2)(a) and 16A(1) and 16A(2);
- . removal of the requirement that the resignation of a Parliamentary Counsel not have effect until accepted by the Governor-General. This requirement is not common in modern legislation, and recent experience demonstrated the inconvenience of the requirement by delaying action to replace an officer who had resigned. (s.8);
- . enabling acting appointments to be made by the Minister rather than by the Governor-General as at present. Appointments made by the Minister will avoid a number of administrative steps which currently present difficulties in making ad hoc appointments quickly and which have resulted in the making of a number of alternative standing or "dormant" appointments to cover all eventualities. Modern legislation frequently provides for acting appointments to be made by the relevant Minister. (s.15(1) and (2);
- . removing sub-sections which have been made redundant by the new s.33A of the Acts Interpretation Act relating to acting appointments inserted by the Statute Law (Miscellaneous Provisions) Act 1987 (s.15(3) to (7) (inclusive)); and

- removing sexist language and generally bringing the Act into line with current drafting practices (ss.2,3,4,5,9,10,14,15 and 16).

Cl.5(5) of this Bill provides that a person appointed by the Governor-General under s.15 to act in the office of First Parliamentary Counsel or an office of Second Parliamentary Counsel shall, on the commencement of cl.5(5), be deemed to have been so appointed by the Minister under s.15 of the Act as amended by this Bill.

### Petroleum Retail Marketing Franchise Act 1980

#### Section 3

The proposed amendment will prevent franchise agreements between oil companies and companies related to them falling within the definition of "franchise agreement" under the Act. A site over which there is a franchise agreement as defined in the Act, is disregarded for the purpose of calculating under the Petroleum Retail Marketing Sites Act 1980 the number of sites being operated by a prescribed oil company. The proposed amendment will ensure that sites in respect of which there are such agreements between oil companies and related companies are not exempted from the Petroleum Retail Marketing Sites Act 1980, which Act limits the number of retail outlets that a prescribed oil company may operate.

### Racial Discrimination Act 1975

#### Sections 3, 24, 25Z and 45

The proposed addition to s.3(1) defines "President" as the President of the (Human Rights and Equal Opportunity) Commission.

The proposed s.24(3A) creates an exception to the present requirement in s.24(3) for notice of a decision not to conduct, or to discontinue an inquiry into a complaint, together with a statement of reasons and appeal rights, to be given to the complainant. The reason for that requirement is to give the complainant an opportunity to ask that the complaint be referred to the Commission for fresh consideration. The proposed exception applies where the Commissioner's decision not to conduct, or to discontinue, an inquiry is made at the complainant's own request. Where a complainant lodges a complaint on behalf of other persons and any of those other persons disagree with the complainant's action in discontinuing the complaint, those persons would be able to make a fresh complaint to the Commission.

The proposed s.25Z(5) defines "complainant" for the purposes of the section to include persons on whose behalf the complaint is made. S.25Z(1) provides that, after holding an inquiry into a complaint, the Commission may either dismiss the complaint or make any one or more of the determinations listed in that sub-section. It is arguable that at present most of the determinations which the Commission can make would provide remedies only for the person or persons actually lodging the complaint. The amendment overcomes this difficulty and ensures that a separate complaint need not be made by each person seeking a remedy for a particular discriminatory act. In some cases the person lodging a complaint may be seeking a remedy only on behalf of other persons (for example, a trade union bringing a complaint on behalf of its members).

The proposed amendment to insert s.45 is related to the proposed amendment to s.16 of the Human Rights and Equal Opportunity Commission Act 1986.

The new s.45 will provide protection from civil actions for damages for persons exercising powers or performing functions under the Act, and for persons dealing with those persons, in relation to acts done or omitted to be done in good faith.

The purpose of the addition of s.45 is to remove an anomaly whereby the Race Discrimination Commissioner and persons dealing with the Commissioner are clearly protected (by s.48 of the Human Rights and Equal Opportunity Commission Act) against civil action when the Commissioner is exercising the Commission's functions and powers but may not be similarly protected (except to the extent that other defences, such as qualified privilege in defamation proceedings, may apply) when the Commissioner is exercising those powers specifically conferred on the Commissioner. S.45 is in similar terms to s.111 of the Sex Discrimination Act 1984.

#### Removal of Prisoners (Territories) Act 1923

##### Sections 8A and 10A

The proposed amendment of the definition of "Governor-General" in these sections will have the effect that when releasing prisoners on licence and criminal lunatics from custody, the Governor-General will be acting with the advice of the Minister and not the Attorney-General (s.8A(14) and s.10A(5)).

The amendments reflect the transfer of responsibility for most of the provisions of the legislation to the Minister for the Arts, Sport, the Environment, Tourism and Territories as part of the administrative re-arrangements approved by the Prime Minister in July 1987.

The use of the term "Minister" is in accordance with the practice in modern legislation of avoiding the naming of portfolios wherever possible.

#### Seat of Government (Administration) Act 1910

##### Section 12BA

The proposed addition of s.12BA(1) is necessary because of the



repeal of the Australian Capital Territory Electricity Supply Act 1962 (see Schedule 2). It is a re-enactment of s.18(3) of that Act and allows the Commonwealth to enter into an arrangement with a body (prescribed by regulation) with respect to any matter which arises out of the Snowy Mountains Hydro-electric Power Act 1949 and which also relates to the supply of electricity to the Australian Capital Territory.

The proposed s.12BA(2) will empower the Commonwealth to authorise the prescribed body to act as its agent for these express matters.

By virtue of cl.2(7) of this Bill, the amendment made by this Bill shall come into operation on a day to be fixed by Proclamation.

#### Sex Discrimination Act 1984

##### Sections 40, 52, 81 and 92

The proposed amendments of s.40 delete s.40(2)(c) and s.40(5), which exempt from the operation of the Act, acts done in direct compliance with the Repatriation Act 1920 and related legislation. These exemptions are no longer necessary following the repeal of the Repatriation Act 1920 and certain other related legislation by the Veterans' Entitlements Act 1986. Whilst the Veterans' Entitlement Act 1986 and the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986 maintain the previous differential on the ground of sex in payment of benefits contained in the repealed legislation (i.e. the payment of widows' but not widowers' pensions and entitlement to service pensions for female veterans at age 55 and for male veterans at age 60), an exemption for discriminatory provisions in those Acts is not required since, as later enacted Acts, any of their provisions that are inconsistent with the Sex Discrimination Act would override that Act.

The proposed s.52(3A) creates an exception to the requirement in s.52(3) for notice of a decision not to conduct, or to discontinue, an inquiry into a complaint, together with a statement of reasons and appeal rights, to be given to the complainant. The reason for that requirement is to give the complainant an opportunity to ask that the complaint be referred to the Commission. The exception applies where the Commissioner's decision not to conduct, or to discontinue, an inquiry is made at the complainant's own request. Where a complainant lodges a complaint on behalf of other persons and any of those other persons disagree with the complainant's action in discontinuing the complaint, those persons would be able to make a fresh complaint to the Commission.

The proposed s.81(5) defines "complainant" for the purposes of the section to include persons on whose behalf the complaint is made. Section 81(1) provides that after holding an inquiry into a complaint, the Commission may either dismiss the complaint or make any one or more of the determinations listed in that subsection. It is arguable that at present most of the determinations the Commission can make would provide remedies only for the person or persons actually lodging the complaint. The amendment overcomes this difficulty and ensures that a separate complaint need not be made by each person seeking a remedy for a particular discriminatory act. In some cases the person lodging a complaint may be seeking a remedy only on behalf of other persons (for example, a trade union bringing a complaint on behalf of its members).

The proposed amendments of s.92(1) are consequential upon the amendment of s.52 of the Act. Subject to a number of exceptions in s.92(2), s.92(1) prevents the making of a record and the communication of particulars of a complaint to any person until either an inquiry commences or a decision is made not to inquire into the complaint. The amendment of s.92(1) to insert s.92(2)(ab) is necessary to reflect the proposed s.52(3A).

The proposed amendment to s.92(2) deletes the reference to "authority" in s.92(2)(f). This reference is redundant as an amendment made by the Human Rights and Equal Opportunity Commission (Transitional Provisions and Consequential Amendments) Act 1986 deleted the former reference to "an authority of a State" in s.92(2)(b).

### Superannuation Act 1976

Sections 3, 29A, 30, 30A, 31, 32, 35, 36, 37, 39, 161, 167A and 184

The proposed addition of the definition of "Chairperson" in s.3(1), the proposed amendments of s.29A(6) and (7), 30(3), (6) and (8), 30A and 31, 32(1) and (2), 35(2)(b), 36(1), (2)(b), 36(7), 37(2),(3),(4), 39(1),(2),(3) and 161(7) and the repealing of the definition of "principal member" are consequential upon the proposed amendment of s.30(1)(a).

The proposed amendment of s.30(1)(a) provides for the replacement of the title of "principal member" of the Superannuation Fund Investment Trust with the title of "Chairperson" which is considered to be more appropriate to the financial community in which the Trust operates.

S.167A provides for the Minister to authorise superannuation schemes for certain Commonwealth employees and statutory office holders who are not members of the Commonwealth Superannuation Scheme. Under the existing s.167A, an authority or body established under a law of the Australian Capital Territory that is funded by the Commonwealth would be affected by both s.167A(1) and (2). It was intended that such bodies should only be covered by s.167A(1), which applies to persons employed or appointed under a law of the Australian Capital Territory, and not by s.167A(2) which applies to, amongst others, corporations and bodies set up under Territory

legislation and in which the Commonwealth has a substantial financial interest. The proposed amendment of paragraph (b) of the definition of "relevant body" in s.167A(8) will ensure that only s.167A(1) applies to employees of bodies set up under Commonwealth or Australian Capital Territory law.

S.167A(9) provides that the section applies in relation to a director of a company or other body corporate incorporated under a law of a State or Territory. As a company may also be incorporated under a law of the Commonwealth the proposed amendment of s.167A(9) will ensure that the section also applies to a director of a company or other body corporate incorporated under a law of the Commonwealth.

The proposed amendment of s.184(6) is consequential upon amendments made to s.16 of the Act by the Superannuation Legislation Amendment Act 1986 which altered the drafting style but not the substance of the section. The amendment of s.184(6) is to ensure a consistent drafting style.

SCHEDULE 2

Repeal of Acts

Part A

Repeal of -

- . Australian Institute of Multicultural Affairs Repeal Act 1986
- . Banks (Housing Loans) Act 1974
- . Cities Commission (Repeal) Act 1975
- . Wool Marketing (Loan) Act 1974
- . Wool Marketing (Loan) Act (No.2) 1974

These Acts are no longer operative.

Part B

Repeal of -

- . Australian Capital Territory Electricity Supply Act 1962
- . Australian Capital Territory Electricity Supply Amendment Act 1976
- . Australian Capital Territory Electricity Supply Amendment Act 1978
- . Australian Capital Territory Electricity Supply Amendment Act 1979

. Australian Capital Territory Electricity Supply Amendment  
Act 1982

These Acts are to be repealed to give effect to a proposal to amalgamate the basic services of electricity, water supply and sewerage for the Australian Capital Territory into a single authority which will operate on a commercial basis. The Acts will be replaced with an Ordinance which will come into operation upon the repeal of the Acts.



