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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO.2) 1985

EXPLANATORY MEMORANDUM

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

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STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO.2) 1985

General Outline

The amendments made by this Bill have a number of purposes such as the tidying up, correction or up-dating of legislation. Other amendments implement changes that are of minor policy significance or are of a routine administrative nature.

Clause 1 - Short Title

Formal

Clause 2 - Commencement

Sub-clause 2(1) provides that this Bill shall come into operation on receiving the Royal Assent. Special provision for the commencement of amendments to specified Acts contained in Schedule 1 is made by sub-clauses 2(2) to 2(15); references to special commencement provisions are made in notes on the relevant provision. In the absence of any special commencement provisions the amendments will come into force on the day on which Royal Assent is given.

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 - Repeal of Acts

This clause provides that the Acts specified in Schedule 2 are repealed.

Clause 5 - Operation of amendment of section 22 of the Acts Interpretation Act 1901

This clause provides that the amendment of section 22 does not affect any judgment given, or decision or order or award made in a legal or other proceeding before the amendment comes into operation.

Clause 6 - Savings provision relating to Australian Tourist Commission Act 1967

This clause provides that the person who holds the existing appointment of General Manager will continue to hold office on the same terms and conditions as Managing Director of the Australian Tourist Commission.

Clause 7 - Operation of amendment of section 41 of the Bankruptcy Act 1966

This clause will allow a judgment creditor who has obtained a judgment expressed in a foreign currency to apply for the issue of a bankruptcy notice even though the judgment was obtained before the commencement of the proposed amendment of section 41.

Clause 8 - Operation of sections 18A, 20AB and 20AC of the Crimes Act 1914

This clause is a transitional provision applicable to sections 18A and 20AB and 20AC of the Crimes Act. These sections apply to persons convicted or sentenced after the commencement of the sections and confer powers in relation to non-custodial sentences on courts in a participating State or Territory which apply only to persons who are convicted after the commencement of the sections or after the State or Territory becomes a participating State or a participating Territory, whichever is the later.

Sub-Clause 2(6) provides that this clause, and the proposed amendments to paragraph 18A(1)(a) and sub-section 20AB(1), shall come into operation immediately after the commencement of the amendment to section 2 of the Crimes Amendment Act 1982, being the date of Royal Assent to this Act.

Clause 9 - Operation of Proclamations under the Designs Act 1906

This clause provides that existing Proclamations are saved, notwithstanding the amendments of section 48, but may be revoked by regulations.

Clause 10 - Validation of purported exercise of powers under section 37A of Family Law Act 1975

This clause is designed to validate things done pursuant to section 37A since it came into force on 2 January 1985 so that they will not be called in question.

Sub-clause 10(2)(a) declares the rights, liabilities, obligations and status of persons affected by the purported exercise of powers by Registrars to be the same as if the power had been exercised by a Judge.

Sub-clause 10(2)(b) declares things done by Registrars under section 37A to have effect as if they had been done by Judges.

Sub-clause 10(3) gives effect to documents and copies of documents embodying orders and directions of Registrars as if the documents or copies contained orders or directions of Judges.

Sub-clause 10(4) is an interpretation clause defining the terms 'Judge' and 'Registrar'.

Clause 11 - Operation of Members of Parliament (Staff) Act 1984

By virtue of this clause Members of the House of Representatives and Territory Senators shall be deemed as appropriate for the purposes of Part III and Part IV of the Act to have continued in office until the holding of the election on 1 December 1984.

Clause 12 - Operation of regulations under Navigation Act 1912

This clause provides for the continuing operation of regulations made under section 217.

Clause 13 - Operation of Proclamations under the Patents Act 1952

This clause provides that existing Proclamations are saved, notwithstanding the amendments of section 123 or 140, but may be revoked by regulations.

Clause 14 - Operation of Proclamations under the Trade Marks Act 1955

This clause provides that existing Proclamations are saved, notwithstanding the amendments of section 108, but may be revoked by regulations.

Clause 15 - Savings provisions relating to Australian Institute of Anatomy

This clause provides that notwithstanding the repeal of the Zoological Museum Agreement Act 1924 and the Australian Institute of Anatomy Agreement Act 1931 the agreements approved by these Acts respectively shall continue in force.

Clause 16 - General transitional provisions

This clause 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 provision as so amended or re-enacted.

SCHEDULE 1

Amendments of Acts

Amendment of the Aboriginal Councils and Associations Act 1976

It is proposed to delete sub-section 64(5) in line with amendments made to the Act in 1984.

Amendment of the Acts Interpretation Act 1901

The amendment to section 22 adds a new sub-section 22(3). It provides that a reference to Commonwealth law does not include a reference to a law in force in a Territory by virtue of a Commonwealth Act providing for the acceptance, administration or government of that Territory e.g. a Territory Ordinance. The purpose of the new sub-section is to clarify the legal position, both past and future. It accords with the basis upon which Commonwealth legislation has been drafted and administered.

The amendment of paragraph 27(a) alters the definition of "indictment" to include "presentment". The amendment will allow Commonwealth and State offences to be joined on the one indictment in those jurisdictions where presentments are used.

Amendment of the Administrative Appeals Tribunal Act 1975

The proposed amendment of paragraph 66(1)(c) corrects a typographical error.

Amendment of the Amendments Incorporation Act 1905

The amendments to sections 2 and 3 will allow the Government Printer to publish a reprint of an Act containing all amendments made to a date that is specified in the reprint. At present all amendments to the date of actual publication of the reprint must be included. This requirement can cause delays in the reprinting of Acts which are in the process of being amended, even in a minor respect.

Amendment of the Australian Institute of Multicultural Affairs Act 1979

The proposed amendment of paragraph 22(2)(a) will enable the Minister to appoint a person to act as a member of the Council of the Australian Institute of Multicultural Affairs when the number of members is fewer than 9. This change is consistent with a previous amendment to the Act which increased from 6 to 9 the maximum number of persons who may be appointed as members of the Council.

Amendment of the Australian Tourist Commission Act 1967

The effect of the proposed amendments to sections 4 and 6, is to change the title of the General Manager of the Commission to Managing Director and to make the occupant of that position an ex-officio member of the Commission; consequential amendments are made to sections 11, 13 and 18.

The proposed amendment to section 8 provides for Ministerial appointment of the Deputy Chairman of the Commission.

The proposed amendment to section 12A(2) deals with conflicts of interest by barring members of the Commission from being present during deliberations or taking part in decisions which may lead to a conflict of interest.

Amendment of the Bankruptcy Act 1966

The proposed inclusion of a new section 17AA will allow a Registrar in Bankruptcy to stand aside in matters that may involve a conflict of interests in which case a Registrar or Deputy Registrar of the Federal Court may act as a substitute. The proposed new section will also allow a Registrar or Deputy Registrar of the Federal Court to take the place of a Registrar in Bankruptcy during a short term absence.

The proposed amendment to section 41 will rectify a lacuna in the law relating to bankruptcy notices which has resulted in bankruptcy notices based upon a judgement expressed in a foreign currency being unenforceable.

The proposed amendment of section 41 requires a consequential change to the Bankruptcy Rules and, by virtue of sub-clause 2(2), will commence on a day to be fixed by Proclamation.

A number of redundant references are proposed to be removed from sub-sections 231(4), 237(4), and 243(3).

Amendment of the Banks (Shareholdings) Amendment Act 1985

The proposed amendment to paragraph 8(6) (b) of the Schedule implements a minor grammatical change. By virtue of sub-clause 2(3) this amendment shall be deemed to have come into operation on 22 May 1985.

Amendment of the Building Industry Act 1985

The amendment to sub-section 5(4) implements a minor drafting correction. By virtue of sub-clause 2(4) this amendment shall be deemed to have come into operation on 26 August 1985.

Amendment of the Commonwealth Electoral Act 1918

The proposed amendments to section 93 provide a definition of 'British subject'. The amendments are required because provisions in the Australian Citizenship Amendment Act 1984 will, when proclaimed, cause the omission from the Australian Citizenship Act 1948 of all references to 'British subject' status. The proposed amendment to sub-paragraph 93(1)(b)(ii) defines 'British subjects' as persons (other than Australian citizens) who would, if the relevant citizenship law had continued in force, be British subjects within the meaning of that law and whose names were on a relevant electoral roll immediately before 26 January 1984. A proposed sub-section 93(8A) defines the relevant citizenship law as the Australian Citizenship Act 1948 and regulations in the form that existed prior to the proclamation of the Australian Citizenship Amendment Act 1984. By virtue of sub-clause 2(5) these amendments shall come into operation on the day fixed by Proclamation for the purposes of sub-section 2(2) of the Australian Citizenship Amendment Act 1984.

Amendment of the Companies Act 1981

The proposed amendment will, for the purposes of a reference in another Act to the law of the Commonwealth or a law of the Commonwealth, ensure that the regulations, rules and instruments applying as law in force in the Australian Capital Territory by virtue of the Act will continue to be regarded as law of the Commonwealth. It will overcome the unintended results which might otherwise arise if the Act were to be taken, for the purposes of proposed new sub-section 22(3) of the Acts Interpretation Act 1901, to be an Act for the administration or government of the Australian Capital Territory.

Amendment of the Conciliation and Arbitration Act 1904

The proposed repeal of sub-sections 12(1), (2), (3), (3A), and (4) are consequential upon the repeal of the Officers' Rights Declaration Act 1928 and the enactment of section 87TA of the Public Service Act 1922. A proposed sub-section 12(1) is to be inserted to preserve the rights of any person who, immediately before being appointed a Commissioner, was an officer of the Public Service of a State.

The proposed repeal of sub-section 12(6) is consequential upon the proposed repeal of sub-sections 12(1) and (2).

The insertion of proposed section 12A is consequential upon the proposed repeal of sub-sections 12(3A) and (4) and replaces references to the Superannuation Act 1922-1971 by references to the Superannuation Act 1976. The proposed section will enable a non-public servant contributor to the 1976 superannuation scheme who is appointed as a Deputy President to elect to be covered either by that scheme or by the scheme provided for by the Judges' Pensions Act 1968.

Amendment of the Crimes Act 1914

Section 3B is amended to include a new sub-section 3B(2) which defines a participating State to be one in respect of which an arrangement for non-custodial sentencing is in force under sub-section 3B(1) and a participating Territory is a Territory other than Norfolk Island or, if an arrangement under sub-section 3B(1) is in force in relation to Norfolk Island, Norfolk Island.

Paragraph 18A(1)(a) is amended by inserting a reference to a participating State or a participating Territory. The effect of this amendment is to confer powers on courts in those States or Territories (other than the A.C.T.) only where an arrangement under section 3B is in force. A similar amendment is made to sub-section 20AB(1).

The laws of a State or Territory in respect of the enforcement or recovery of fines which apply to fines ordered to be paid by offenders convicted in courts of summary jurisdiction shall apply to fines ordered to be paid by the Federal Court of Australia as if the Court were a court of summary jurisdiction. Proposed new paragraph 18A(1A)(b) ensures that those enforcement provisions are applicable to the Federal Court of Australia by preventing the application of sub-section 18A(1) to enforcement provisions that relate to superior courts in summary proceedings.

Sub-clause 2(6) provides that clause 8 (a transitional provision) and the proposed amendments to paragraph 18A(1)(a) and sub-section 20AB(1) shall come into operation immediately after the commencement of the amendment to section 2 of the Crimes Amendment Act 1982, being the date of Royal Assent to this Act.

Amendment of Crimes Amendment Act 1982

Section 2 of the Crimes Amendment Act 1982 is amended by inserting a new sub-section 2(1A) which provides that sections 6, 8 and 9 of the Crimes Amendment Act 1982 shall come into force on the day on which this Act receives the Royal Assent. Sub-section 6(2), which is a transitional provision relating to section 18A, is repealed. The provisions of sub-section 6(2) are incorporated in new sub-clause 8(1).

Amendment of the Crimes (Currency) Act 1981

The proposed amendments to section 3 introduce definitions of "excepted counterfeit coin", "excepted coin" and "non-excepted counterfeit money". "Excepted coin" means any pre-decimal Australian coin and any non-Australian coin which is no longer a current coin in any country. From this definition follows the definition of "excepted counterfeit coin", which draws upon the same concept as the definition of "counterfeit money", and the definition of the residual category "non-excepted counterfeit money".

The proposed amendments to section 8 are intended to make the buying or selling of excepted counterfeit coins only a criminal offence where an intention to defraud is present, but not otherwise. The proposed amendments to section 9 introduce a requirement of fraudulent intent which allows for innocent possession of excepted counterfeit coins. This will enable persons to have lawful possession of them for numismatic and other legitimate purposes.

The proposed amendments to section 28 remove the obligation upon the relevant officers to render excepted counterfeit coins incapable of use.

Proposed new section 29A is intended to nullify any forfeiture to the Commonwealth with respect to an excepted counterfeit coin made before the commencement of the section, which arises by virtue of the coin being a counterfeit coin, where, first, the coin has neither been seized nor condemned as forfeited and, secondly, has not been used in connection with an offence against section 57 of the Crimes Act 1914 of uttering counterfeit coin. This gives security of possession and removes any possible exposure to seizure and condemnation.

By virtue of sub-clause 2(7) the amendments shall come into operation immediately after the amendment of section 2 comes into operation.

Amendment of the Defence Act 1903

Existing sub-sections 124(2A) and (2B) enable regulations to provide that a witness at a Defence Force board or court of inquiry may be compelled to give evidence (although it may be self-incriminating) and that any such evidence is not admissible against the witness in proceedings against him or her before a civil court or service tribunal.

Provision does not exist for similar protection to be given to a person who voluntarily gives such evidence although other legislation provides protection to persons who voluntarily give evidence before investigating bodies (e.g. Royal Commission Act 1902 section 6DD). The proposed sub-sections 124(2A), (2B) and (2C) re-enact the existing provisions and extend the protective provisions to witnesses that give evidence voluntarily.

Amendment of the Defence Force Discipline Act 1982

The proposed sub-section 68B(2) requires rules made by a chief of staff under sub-section 68(2) or 68A(2) to be included in the Statutory Rules.

Amendment of the Designs Act 1906

The Designs Act contains a number of provisions for the declaration by Proclamation of certain matters relating to "Convention countries". The purpose of the provisions is to enable Australia to fulfil certain international obligations, particularly in relation to design applications made in other countries. The proposed amendments of sub-sections 4(1) and 48(1), (2), (3) and (4) alter those provisions to provide for declaration in regulations rather than by Proclamation. The proposed change will allow consolidated lists of Convention countries to be more readily available to practitioners and the public. Existing Proclamations are saved but may be revoked by regulations.

Amendment of the Export Control (Miscellaneous Amendments) Act 1982

The proposed amendments are to remove legislative provisions which have been repealed or are never to be proclaimed.

Amendment of the Extradition (Commonwealth Countries) Act 1966

The proposed paragraph 4(1A)(b) and sub-section 4(1B) redefine an 'extradition crime', that is, a crime for which Australia can grant extradition, to provide that such crimes must not only carry a penalty of 12 months imprisonment in the country seeking extradition but also, had the offence been committed in Australia, a penalty of 12 months imprisonment in Australia. An extradition crime must also be an offence which is described in the Schedule.

Sub-section 10(3) is deleted because its content is now covered by sub-sections 17A(4) and (5).

The proposed amendment of section 11 is consequential upon the replacement of existing section 17 with proposed sections 17 and 17A. The content of sub-sections 17(2) and 17(2B) is now contained in the proposed sub-sections 17A(1) and 17A(3).

The proposed sub-paragraph 15(5B)(a)(ii) takes account of the fact that the new section 17 provides for a fugitive to appeal against a Magistrate's decision by applying for a review rather than applying for a writ of habeas corpus.

The proposed amendment of sub-section 15(6) permits a Magistrate, who has determined that a fugitive is liable to be surrendered, to grant bail to that fugitive to permit outstanding criminal matters in relation to the fugitive to be dealt with in Australia before the fugitive is extradited.

The proposed amendment of sub-section 15(8) is consequential upon the provision in sub-section 15(6) allowing a Magistrate to grant bail.

The proposed amendment of section 16 takes account of the fact that the proposed section 17 provides for a fugitive to appeal against a Magistrate's decision by applying for a review rather than applying for a writ of habeas corpus.

The proposed sub-section 16A(5) replaces sub-sections 16A(5) and 16A(6) and provides consistency with proposed sub-section 17(3).

The proposed section 17 provides for a fugitive to appeal against a Magistrate's decision by applying for a review rather than a writ of habeas corpus. This amendment is necessary because fugitives can now be granted bail (see sub-section 15(6)). It would accordingly be inappropriate for a fugitive on bail to appeal against the Magistrate's decision by applying for a writ of habeas corpus.

The proposed section 17A re-enacts the substantive parts of the existing section 17 and also provides that fugitives who have been charged with or convicted of offences in Australia shall not be extradited until, in effect, those matters have been dealt with and any sentence of imprisonment served. Accordingly, the existing section 17 is replaced by proposed sections 17 and 17A.

The proposed amendment of paragraph 18(b) is consequential to the proposed amendments to section 17.

Section 18 provides that a court may release a fugitive who has remained in custody for two months after the final judicial decision in respect of his extradition. The proposed new sub-section 18(2) precludes a court from making such an order where the fugitive is to be dealt with for Australian charges or is to serve a term of imprisonment in Australia.

The proposed amendment of section 32 is consequential upon replacing the existing section 17 with new sections 17 and 17A.

Amendment of the Extradition (Foreign States) Act 1966

The proposed paragraph 4(1A)(b) and sub-section 4(1B) redefine an 'extradition crime', that is, a crime for which Australia can grant extradition, to provide that such crimes must not only carry a penalty of 12 months imprisonment in the country seeking extradition but also, had the offence been committed in Australia, a penalty of 12 months imprisonment in Australia.

Sub-section 10(3) is deleted because its content is now covered by the sub-sections 18A(4) and (5).

The proposed amendment of section 11 is consequential upon the replacement of existing section 18 with proposed sections 18 and 18A. The content of sub-sections 18(2) and 18(2B) is now contained in the proposed sub-sections 18A(1) and 18A(3).

The proposed sub-paragraph 17(5B)(a)(ii) takes account of the fact that the new section 18 provides for a fugitive to appeal against a Magistrate's decision by applying for a review rather than applying for a writ of habeas corpus.

The proposed amendment of sub-section 17(6) permits a Magistrate, who has determined that a fugitive is liable to be surrendered, to grant bail to that fugitive to permit outstanding criminal matters in relation to the fugitive to be dealt with in Australia before the fugitive is extradited.

The proposed amendment of sub-section 17(8) is consequential upon the provision in sub-section 17(6) allowing a Magistrate to grant bail.

The proposed amendment of section 16 takes account of the fact that proposed section 17 provides for a fugitive to appeal against a Magistrate's decision by applying for a review rather than applying for a writ of habeas corpus.

The proposed sub-section 17A(5) replaces sub-sections 17A(5) and (6) and provides consistency with proposed sub-section 18(3).

The proposed section 18 provides for a fugitive to appeal against a Magistrate's decision by applying for a review rather than a writ of habeas corpus. This amendment is necessary because fugitives can now be granted bail (see sub-section 17(6)). It would accordingly be inappropriate for a fugitive on bail to appeal against the Magistrate's decision by applying for a writ of habeas corpus.

The proposed new section 18A re-enacts the substantive parts of the existing section 18 and also provides that fugitives who have been charged with or convicted of offences in Australia shall not be extradited until, in effect, those matters have been dealt with and any sentence of imprisonment served. Accordingly, the existing section 18 is replaced by proposed sections 18 and 18A.

The proposed amendment of paragraph 19(b) is consequential to the proposed amendments to section 18.

Section 19 provides that a court may release a fugitive who has remained in custody for two months after the final judicial decision in respect of his extradition. The proposed new sub-section 19(2) precludes a court from making such an order where the fugitive is to be dealt with for Australian charges or is to serve a term of imprisonment in Australia.

The proposed amendment of section 24A is consequential upon replacing the existing section 18 with new sections 18 and 18A.

Amendment of the Family Law Act 1975

Sub-section 37A(1) empowers the Judges of the Family Court of Australia or a majority of them to make Rules of Court delegating to the Registrars all or any of the powers of the Family Court. At present the section simply states that Registrars may exercise the powers of the Court enumerated in paragraphs (a) to (m) and any additional powers which may be prescribed by Rules of Court.

The proposed re-enactment of sub-section 37A(1) revises paragraph 37A(1)(g) to resolve an ambiguity in that paragraph. The existing paragraph (g) was intended to enable Registrars to make orders with the consent of all the parties to the proceedings. The paragraph is, however, open to the unintended interpretation that Registrars may make any orders in proceedings provided the parties agree to the resolution of the proceedings by a Registrar.

Proposed new sub-section 37A(2) preserves the existing limitation on Registrars' powers presently contained in paragraph 37A(1)(g). The Family Court's powers to make a decree of dissolution or nullity of marriage, a declaration as to the validity of a marriage or of the dissolution or annulment of a marriage or an order approving a maintenance agreement under section 87 may not be delegated to Registrars.

Proposed new sub-section 37A(3) is a deeming provision under which the exercise of delegated powers by Registrars is to be treated as if the power had been exercised by the Court or a Judge.

Proposed new sub-section 37A(4) provides that the delegation of a power to Registrars does not prevent its exercise by the Court or a Judge.

Proposed sub-section 37A(5), (6), (7), (8), (9) and (10) re-enact, with consequential amendments, existing sub-sections 37A(2), (3), (4), (5), (6) and (7) respectively.

Proposed sub-sections 37A(11), (12) and (13) replace the existing provisions of sub-section 37A(8). Under proposed sub-section 37A(11) a Registrar may decide not to exercise a delegated power if he considers that the matter is not an appropriate one for a Registrar to deal with. This provision substantially re-enacts paragraph 37A(8)(a). Under proposed sub-section 37A(12) a party to proceedings delegated to a Registrar may apply to a Judge before the Registrar has commenced to exercise the delegated power, for an order that the matter be dealt with by a Judge. Under existing paragraph 37A(8)(b) an application of this kind is made to a Registrar, not a Judge, and the Registrar is required to cease dealing with the matter. This amendment is necessary because the present provision has the potential to cause considerable disruption to Family Court listing procedures. Proposed sub-section 37A(13) provides that where an application has been made for a power to be exercised by a Judge, and the matter is pending before a Registrar, then the Registrar is not to commence to exercise the power until the application to the Judge has been determined.

Sub-section 37A(14) applies the provisions of sections 48, 49 and 50 of the Acts Interpretation Act 1901 to Rules of Court which may be made under section 37A.

Sub-section 37A(15) re-enacts sub-section 37A(9).

Amendments to sub-sections 37B(1), 37B(2) and 37B(4) are consequential upon the revision of section 37A.

Paragraph 123(1)(e) is to be omitted because the enactment of new section 37A will make it unnecessary.

Amendment of the Federal Court of Australia Act 1976

At present section 32A enables the State Supreme Courts to hear and determine any application in respect of a matter pending in the General Division of the Federal Court that may be made to a Judge of the Federal Court in Chambers. The proposed amendment of sub-section 32A(1) will place the Supreme Court of the Northern Territory in this regard on a similar footing to State Supreme Courts.

Amendment of the Great Barrier Reef Marine Park Act 1975

The proposed amendment of sub-section 66(5) increases the period for the application of regulations, pending the introduction of zoning plans, from three years from the date an area becomes part of the Marine Park to five years from that date.

Amendment of the Housing Loans Insurance Act 1965

The proposed amendment to sub-section 43(2) is intended to remove any doubt as to the validity of oaths made in a Territory under section 43.

Amendment of the Insurance Contracts Act 1984

The proposed amendment of sub-section 35(2) is designed to make it clear that the information an insurer is required to provide to an insured before a contract is entered into can be conveyed by various means, including a document containing the provisions of the proposed contract. By virtue of sub-clause 2(8) this amendment shall come into operation on the day on which the Insurance Contracts Act 1984 comes into operation.

Amendment of the Law Reform Commission Act 1973

The proposed amendment of section 3 is consequential on the renaming of the Courts-Martial Appeal Tribunal with effect from 3 July 1985 by virtue of section 15 of the Defence Force (Miscellaneous Provisions) Act 1982.

Amendment of the Live-stock Slaughter (Export Inspection Charge) Collection Act 1979

The proposed repeal of section 9 and the inclusion of a new section 9 is to provide higher levels of penalties for offences relating to returns, consistent with other comparable legislation.

The new section would also provide that information in a return cannot be used in evidence against the person providing the information.

Amendment of the Members of Parliament (Staff) Act 1984

Under the Act Members and Territory Senators cease to have authority to engage staff or to continue the employment of existing staff beyond the date they cease to hold office notwithstanding the subsequent re-election of a Member or Territory Senator.

The proposed amendments of paragraph 16(2)(a) and 16(2)(b) and the insertion of sub-sections 16(2A), 16(2B) and 23(1A) provide that a Senator or Member shall be deemed not to have ceased to be a Senator or Member while he or she continues to be entitled to the Parliamentary allowance that was payable to him or her as such a Senator or Member.

Amendment of the Merit Protection (Australian Government Employees) Act 1984

The proposed amendment of sub-section 3(2) corrects a minor error.

The proposed amendment of sub-section 49(2) substitutes 'investigate further' for 'continue to investigate' to make the phraseology consistent with formulations elsewhere in section 49.

The proposed amendment of sub-paragraph 51(1)(b)(iv) substitutes 'report under sub-section (4)' for 'recommendation under sub-section (3)' to correct a reference within section 51.

Section 49 concerns the discretion of the Merit Protection and Review Agency not to investigate, or to investigate further, an action taken by a department or authority which is the subject of an application to the Agency, by an employee, for investigation. The proposed new sub-section 49(3) requires the Agency, where it has decided that it will not or cannot investigate (or investigate further) an action, to inform the employee of this in writing.

Amendment of the Museum of Australia Act 1980

The long title and short title to the Museum of Australia Act 1980 have been amended to ensure that the Museum of Australia is known legally as the National Museum of Australia. This conforms with the naming policy of other national cultural institutions such as the Australian National Gallery. Consequently, sections 3, 4, 10 and 23 have also been amended to substitute "National Museum of Australia" for "Museum of Australia".

Section 3 has also been amended by omitting the definition of "national historical collection" and substituting a new definition which enables the Council of the Museum to determine what should be included in the national historical collection. Proposed new sub-sections 3(2)(3) and (4) specify that the Act applies to external territories and the continental shelf adjacent to Australia and that any determination made by the Council will be in accordance with criteria and guidelines approved by the Minister.

Proposed new paragraph 6(1)(ba) provides the Museum with the function to present exhibitions comprising material that may or may not form the national historical collection either by itself or in collaboration with others, irrespective of location.

The Council of the Museum has been established by declaration in the Gazette. The provisions for an Interim Council are no longer required and accordingly the definition of Interim Council in section 3 has been omitted, section 11 has been repealed, and sub-section 38(4) amended.

Proposed new sub-section 8(3) clarifies any uncertainty that may arise from the accession of material by the Museum from the Institute of Anatomy.

Section 12 has been repealed and replaced by proposed section 12 which ensures that the directions by the Minister are given to the Council, not the Council and the Interim Council as previously stated. This is a consequential amendment.

The references to the "approval of the Public Service Board" in section 32 have been omitted because approval is no longer required for the appointment of consultants.

Amendment of the National Crime Authority Act 1984

The proposed amendment to paragraph 22(2)(c) corrects a typographical error.

Amendment of the Navigation Act 1912

The proposed amendment of sub-section 217(1) makes clear the obligation of owners and masters to provide and maintain life-saving and firefighting appliances on board a ship.

The proposed new section 403A facilitates proof of lodgement or non-lodgement of documents with the Department of Transport.

The proposed amendment of sub-section 425(1) ensures the validity of orders made under Division 15 of Part II of the Act.

Amendment of the Norfolk Island Act 1979

The proposed amendment of paragraph 9(2)(b) provides for the exercise by the Deputy Administrator of the powers of the Administrator when an Acting Administrator, who has commenced duty, is absent from the Territory or is otherwise unable by reason of illness or incapacity to perform the duties of the office.

Section 10 requires an oath or affirmation of office to be made by the Administrator, Acting Administrator or Deputy Administrator before entering upon the duties of that office. The proposed amendment of sub-section 10(3) enables that oath or affirmation to be made before the day on which the appointment to the office takes effect.

Amendment of the Patents Act 1952

The Patents Act contains a number of provisions for the declaration by Proclamation of certain matters relating to "Convention countries". The purpose of the provisions is to enable Australia to fulfil certain international obligations, particularly in relation to patent applications made in other countries. The proposed amendments of section 6 and sub-sections 123(2) and 140(1), (2) and (3) alter those provisions to provide for declaration in regulations rather than by Proclamation. The proposed change will allow consolidated lists of Convention countries to be available more readily to practitioners and the public. Existing Proclamations are saved but may be revoked by regulations.

The proposed amendments of sub-sections 35(1A) and 41(1B) and paragraph 177(1)(ab) will allow regulations to be made to ensure that the requirements of the Act in relation to the abstract of a patent specification are complied with. Proposed new sub-section 54A(1B) ensures that a patent applicant is not entitled to request early publication of a

patent specification until a satisfactory abstract has been prepared. By virtue of sub-clause 2(9) these amendments relating to abstracts will commence 28 days after the Royal Assent or on the date to be fixed by proclamation for the purposes of sub-section 2(11) of the Statute Law (Miscellaneous Provisions) Act (No. 2) 1983 (that is, the same date as earlier amendments to the Patents Act relating to abstracts), whichever is the later.

The proposed omission of paragraph 40(5)(d) and insertion of new section 87 will simplify procedures in relation to patent applications where the invention involves use of a micro-organism and where the micro-organism is required by sub-sections 40(3) and 40(5) to be deposited in a prescribed depositary institution. Paragraph 40(5)(d), which requires that an authority be in force for the furnishing of samples of a micro-organism from the depositary institution, is proposed to be omitted and the question of availability of samples will be dealt with in regulations. Consequential amendments are proposed to paragraphs 40(5)(c) and 40(7)(a).

Proposed section 87 will allow regulations to be made to enable amendment of a patent specification so as to include the details of a micro-organism deposit which are required under paragraph 40(5)(c).

Proposed sub-sections 45(4AA) and 45A(2A) are designed to prevent circumvention of the requirements of the Act in relation to micro-organisms where a further or "divisional" application is lodged under section 51.

Proposed sub-section 54A(1A) ensures that a patent applicant is not entitled to request early publication of a patent specification if the specification does not include any required details about the deposit of a micro-organism in a prescribed depositary institution.

The proposed amendments of sections 54B and 55 ensure that any documents which are prescribed for the purposes of sub-section 35(5) (for example, a copy of the receipt of the deposit of a micro-organism in a prescribed depository institution and evidence of any devolution of title from the depositor to a patent applicant) are subject to the same requirements for publication as the patent specification to which they relate.

The proposed amendments of sections 58C and 58E will have the effect that all the requirements of section 40 of the Act apply in relation to international applications made under the Patent Cooperation Treaty and treated as applications under the Act. This corrects an omission in the Patents Amendment Act 1984 which, inter alia, added new sub-sections 40(3) to (7).

By virtue of sub-clause 2(10) the proposed amendments of sections 40, 45 and 45A, new sub-section 54A(1A) and the amendments of sections 54B, 55, 58C and 58E, all of which relate to the requirements of the Act relating to micro-organisms, will commence 28 days after the date of Royal Assent, or on a date of commencement of the Patents Amendment Act 1984, whichever is the later.

The proposed amendment of section 165 will give effect to a recommendation of the Standing Committee of Attorneys-General that certain words used in statutes to describe the intellectually handicapped and which can be regarded as offensive be removed.

Amendment of the Postal Services Act 1975

The amendment of section 13 formalises the use by Australia Post of vending machines which issue labels according to the amount of money inserted by the customer. The new provision provides that such labels are deemed to be postage stamps for the purposes of the Act.

The amendment of section 63 inserts a new sub-section 63(2A) which provides that the suspension of an officer need not be removed where a criminal charge on which the suspension is based is replaced by an amended charge. Under the existing provisions, the officer suspended may have been entitled by virtue of sub-sections 63(2) and (4) to have the suspension based on the original charge removed and to claim a salary for the period of that suspension, irrespective of the outcome of the amended change.

The amendment of section 104 inserts a new section 104A which will provide protection to the author of a report on the work of an officer or employee of the Commission from any legal actions based on that report.

The protection will only apply where the report is made in good faith, to the appropriate person and where reasonable steps are taken to avoid the inclusion of false or misleading information.

The amendment of section 109 omits sub-section 109(7) from the provisions dealing with the attachment of wages to satisfy judgement debts. Sub-section 109(7) makes it an offence for a judgement creditor to fail to notify the Commission when payment is made in satisfaction for the judgement.

Amendment of the Public Order (Protection of Persons and Property) Act 1971

The amendment of sub-section 4(1) gives effect to Australia's international obligations to protect diplomatic and consular premises, following the severance of relations or recall of a diplomatic mission. These obligations are expressed in Article 45 of the Vienna Convention on Diplomatic Relations and Article 28 of the Vienna Convention on Consular Relations. The obligations are given effect by repealing the current definition of "protected premises", which relates only to premises occupied or used for prescribed purposes, and replacing it with a definition which relates to premises occupied or formerly occupied for those purposes.

Amendment of the Public Service Reform Act 1984

The proposed amendment of schedule 4 of the Act replaces a reference to 'Permanent Head' by a reference to 'Secretary' in the Ombudsman Act, to make it consistent with the new terminology which was introduced as part of the Public Service reforms. By virtue of sub-clause 2(9) this amendment is deemed to have come into operation on 1 July 1984, the date that all other references in legislation to 'Permanent Head' were changed to 'Secretary'.

Amendment of the Removal of Prisoners (Australian Capital Territory) Act 1968

The proposed amendment of section 3(1) will enable a Registrar, a Deputy Registrar, or District Registrar or other like officer of a federal court to be an "authorised person" for the purpose of signing a warrant of removal.

Section 6A is to be repealed and replaced by a new section which will simplify the procedure to remove a person from the Territory to a prison in New South Wales by requiring that a person will be transferred under the Act unless the Attorney-General or his delegate gives a contrary direction. Such a direction will only be given if the person should be removed under the Transfer of Prisoners Act 1983. Consent by the Attorney-General or his delegate is no longer required in respect of every removal.

Amendment of the Removal of Prisoners (Territories) Act 1923

Section 8AA is to be repealed and replaced with a new section which will simplify the procedure to remove a person from the Territory to a prison in New South Wales by requiring that a person will be transferred under the Act unless the Attorney-General or his delegate gives a contrary direction. Such a direction will only be given if the person should be removed under the Transfer of Prisoners Act 1983. Consent by the Attorney-General or his delegate is no longer required in respect of every removal.

Amendment of Remuneration and Allowances Amendment Acts

The proposed amendments of the Remuneration and Allowances Act repeal those Parts which refer to the Remuneration and Allowances Act 1973. Reference to this Act is to be removed because, following the commencement of the Judicial and Statutory Officers (Remuneration and Allowances) Act 1984, it contains citation provisions only.

Amendment of the Shipping Registration Act 1981

The proposed amendment of section 41 ensures that a failure to comply with sub-section (2) does not affect the validity of a mortgagee's action in disposing of a ship or a share in a ship. By virtue of sub-clause 2(12) this amendment shall come into operation immediately after the commencement of section 15 of the Shipping Registration Amendment Act 1984.

The proposed amendment of section 47C widens the application of that section in lapsing caveats, to remove the possible effect of frustrating the registration of legitimate interests. By virtue of sub-clause 2(13) this amendment shall come into operation immediately after the commencement of section 18 of the Shipping Registration Amendment Act 1984.

The proposed amendment of section 74 removes a drafting error. By virtue of sub-clause 2(14) the amendment shall come into operation immediately after the commencement of section 23 of the Shipping Registration Amendment Act 1984.

Amendment of the Statute Law (Miscellaneous Provisions) Act (No.1) 1985

The proposed amendment of sub-section 2(29) corrects a minor drafting error. The proposed amendments also effect minor drafting corrections to amendments made in Schedule I of this Act. By virtue of sub-clause 2(15) the amendments to Schedule 1 shall be deemed to have come into operation 28 days after the day on which the Act received the Royal Assent.

Amendment of the Telecommunications Act 1975

The proposed amendment of section 60 inserts a new sub-section 60(2A) which provides that the suspension of an officer need not be removed where a criminal charge on which the suspension is based is replaced by an amended charge. Under the existing provisions, the officer suspended may have been entitled by virtue of sub-sections 60(2) and (4) to have the suspension based on the original charge removed and to claim salary for the period of that suspension, irrespective of the outcome of the amended charge.

The proposed amendment of section 79 adds a new sub-section 79(2) which exempts certain contracts which would otherwise require Ministerial approval under section 79. The contracts to be exempted are contracts for the supply of telecommunications installations and services which involve the receipt (but not expenditure) by Telecom of an amount exceeding the threshold set by section 79.

Amendment of the Trade Marks Act 1955

The Trade Marks Act contains a number of provisions for the declaration by Proclamation of certain matters relating to "Convention Countries". The purpose of the provisions is to enable Australia to fulfil certain international obligations, particularly in relation to patent applications made in other countries. The proposed amendments of sub-sections 6(1) and 108(1),(2) and (3) alter those provisions to provide for declaration in regulations rather than by Proclamation. The proposed change will allow consolidated lists of Convention countries to be available more readily to practitioners and the public. Existing Proclamations are saved but may be revoked by regulations.

The proposed amendment of section 133 will give effect to a recommendation of the Standing Committee of Attorneys-General that certain words used in statutes to describe the intellectually handicapped and which can be regarded as offensive be removed.

SCHEDULE 2

Repeal of Acts

Repeal of Australian Institute of Anatomy Agreement Act 1931
and Australian Institute of Anatomy Agreement Act 1933

These Acts are now redundant.

Repeal of: Remuneration and Allowances Act 1973

Remuneration and Allowances Act (No. 2) 1973

Remuneration and Allowances Amendment Act 1975

Remuneration and Allowances Amendment Act 1976

Remuneration and Allowances Amendment Act (No. 2)
1976

Remuneration and Allowances Amendment Act 1978

Remuneration and Allowances Act 1979

Remuneration and Allowances Act 1980

The Remuneration and Allowances Act 1973 is to be repealed because, following the commencement of the Judicial and Statutory Officers (Remuneration and Allowances) Act 1984, it contains citation provisions only. The other Acts are to be repealed as consequence of the repeal of the Remuneration and Allowances Act 1973.

Repeal of Zoological Museum Agreement Act 1924

This Act is now redundant.

