

Queensland



STATUTORY INSTRUMENTS ACT 1992

**Reprinted as in force on 9 December 1992
(includes amendments up to Act No. 68 of 1992)**

Reprint No. 2

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 9 December 1992. As required by section 5 of the *Reprints Act 1992*, it—

- shows the law as amended by all amendments that commenced before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the *Reprints Act 1992*, the reprint includes, in a suitable place, a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- use aspects of format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by section 39 of that Act.

Also see Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

Queensland



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STATUTORY INSTRUMENTS ACT 1992

[as amended by all amendments that commenced before 9 December 1992²]

An Act relating to statutory instruments and for other purposes related to legislation

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Statutory Instruments Act 1992*³⁻⁴.

Purposes of Act

2. The purposes of this Act are to—
 - (a) facilitate the interpretation of statutory instruments; and
 - (b) facilitate improvement in the presentation of statutory instruments; and
 - (c) rationalise notification, publication, tabling and disallowance requirements for subordinate legislation; and
 - (d) generally ensure that Queensland subordinate legislation is of the highest standard.

Act applies to all statutory instruments

3. This Act applies to all statutory instruments.

Displacement of Act by contrary intention

4. The application of this Act (other than Part 5) may be displaced, wholly or partly, by a contrary intention appearing in any instrument.

Act binds Crown

5. This Act binds the Crown.

PART 2—TYPES OF STATUTORY INSTRUMENTS*Division 1—General concepts***Meaning of “instrument”**

6. An “instrument” is any document.

Meaning of “statutory instrument”

7.(1) A “statutory instrument” is an instrument made under an Act including, for example, any of the following types of instrument—

- regulation
- order in council
- rule
- by-law
- ordinance
- statute
- proclamation
- notification
- standard
- guideline.

(2) An instrument made under a statutory instrument is also a statutory instrument.

(3) An instrument is also a statutory instrument if it is made—

- (a) under power conferred by an Act or statutory instrument; and
- (b) also under power conferred otherwise by law.

Example—

An instrument made partly under an express or implied statutory power and partly under the Royal Prerogative is a statutory instrument.

Meaning of “statutory rule”

8. A “**statutory rule**” is a statutory instrument—

- (a) that is made by the Governor or the Governor in Council; or
- (b) that is made by another person or body, but—
 - (i) is required by law to be approved, confirmed or otherwise consented to by the Governor or Governor in Council; or
 - (ii) is subject to being disapproved or otherwise disallowed by the Governor or Governor in Council.

Meaning of “subordinate legislation”

9.(1) Subject to subsection (2), the following instruments are “**subordinate legislation**”—

- (a) a statutory rule that is a regulation, rule, by-law, ordinance or statute;
- (b) a statutory rule that is an order in council or proclamation of a legislative character;
- (c) any statutory instrument (including an order in council or proclamation) that is declared to be subordinate legislation by an Act or a regulation made under this Act;
- (d) any other statutory instrument that fixes or otherwise determines the commencement of—
 - (i) an Act or a provision of an Act; or

- (ii) an instrument, or a provision of an instrument, mentioned in paragraph (a), (b) or (c).
- (2) The following instruments are not subordinate legislation—
- (a) a by-law, ordinance or other statutory instrument made by a local authority;
 - (b) a rule, order, direction or practice of the Legislative Assembly;
 - (c) a statutory rule (other than a regulation) that is declared not to be subordinate legislation by—
 - (i) an Act; or
 - (ii) in the case of a statutory rule made under a provision commencing before the commencement of this Act—a regulation made under this Act.

Division 2—Orders in council, proclamations and rules of court

Meaning of “order in council”

10. An “**order in council**” is an order made by the Governor in Council and—

- (a) in the case of an order that is subordinate legislation—notified in the Gazette; or
- (b) in any other case—published in the Gazette.

Meaning of “proclamation”

11. A “**proclamation**” is a proclamation made by the Governor and—

- (a) in the case of a proclamation that is subordinate legislation—notified in the Gazette; or
- (b) in any other case—published in the Gazette.

Meaning of “rules of court”

12. “Rules of court”, in relation to a court or tribunal, are rules made by the person or body having power to make rules regulating the practice and procedure of the court or tribunal.

PART 3—PROVISION RELATING TO INSTRUMENTS**Power to do matter by instrument****13. If—**

- (a) an Act or statutory instrument (the “**authorising law**”) authorises or requires a matter to be done; and
- (b) the matter is capable of being done by instrument;

the authorising law authorises the matter to be done by instrument.

PART 4—PROVISIONS RELATING TO STATUTORY INSTRUMENTS***Division 1—Provisions of Acts Interpretation Act 1954 that apply to statutory instruments*****Applicable provisions**

14.(1) Subject to this Division, a provision of the *Acts Interpretation Act 1954* mentioned in Schedule 1 applies to a statutory instrument, and matters authorised or required to be done by a statutory instrument, in the same way as it applies to an Act, and matters authorised or required to be done by an Act, as if—

- (a) a reference to an Act included a reference to a statutory instrument; and
- (b) a reference to enactment or passage included a reference to making.

(2) A copy of the *Acts Interpretation Act 1954* showing the text of the Act as it applies to a statutory instrument because of this Act may be authorised by the Parliamentary Counsel.

(3) If a copy mentioned in subsection (2) is authorised under that subsection, the copy—

- (a) is to indicate that fact in a suitable place; and
- (b) is a reprint of a law authorised by the Parliamentary Counsel for the purposes of the *Reprints Act 1992*.

Modified application—s.14B

15. For the purposes of applying section 14B of the *Acts Interpretation Act 1954*—

“**extrinsic material**” means relevant material not forming part of the statutory instrument or the Act under which the statutory instrument was made, including, for example—

- (a) material that is extrinsic material, within the meaning of that section, in relation to the Act under which the statutory instrument was made; and
- (b) material that is set out in the document containing the text of the statutory instrument as printed by the Government Printer; and
- (c) a report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Legislative Assembly—
 - (i) if the statutory instrument is subordinate legislation—before the end of 14 sitting days after the statutory instrument was laid before the Legislative Assembly; or
 - (ii) in any other case—before the statutory instrument was made; and
- (d) a report of a committee of the Legislative Assembly that was

made to the Legislative Assembly—

- (i) if the statutory instrument is subordinate legislation—before the end of 14 sitting days after the statutory instrument was laid before the Legislative Assembly; or
 - (ii) in any other case—before the statutory instrument was made; and
- (e) a treaty or other international agreement that is mentioned in the statutory instrument; and
- (f) if the statutory instrument is subordinate legislation—an explanatory note or memorandum relating to the statutory instrument, or any other relevant document, that was laid before, or given to the members of, the Legislative Assembly—
- (i) before the end of 14 sitting days after the statutory instrument was laid before the Legislative Assembly; and
 - (ii) by the member who laid the statutory instrument before the Legislative Assembly; and
- (g) material in the Votes and Proceedings of the Legislative Assembly or in any official record of debates in the Legislative Assembly; and
- (h) a document that is declared by an Act or statutory instrument to be a relevant document for the purposes of this section; and
- (i) if the statutory instrument was made under another statutory instrument—material that is extrinsic material within the meaning of this section in relation to the other statutory instrument.

Modified application—s.27A

16. For the purposes of applying section 27A of the *Acts Interpretation Act 1954*, omit subsection (12) and insert—

‘(12) If a statutory instrument authorises the delegation of a power, the power may be subdelegated only if the statutory instrument, or the Act under which the statutory instrument is made, expressly authorises the power to be subdelegated.’.

Modified application—s.36 (definition “provision”)

17. For the purposes of applying section 36 of the *Acts Interpretation Act 1954*, insert after paragraph (c) of the definition “provision”—

‘(d) any words of notification;’.

Modified application—ss.49A–51

18. For the purposes of applying sections 49A to 51 of the *Acts Interpretation Act 1954*, a reference to an Act includes a reference to a statutory instrument that is a statutory rule.

Division 2—Provisions of Acts Interpretation Act 1954 that do not apply to statutory instruments**Non-applicable provisions**

19. A provision of the *Acts Interpretation Act 1954* mentioned in Schedule 2 does not apply to a statutory instrument.

Division 3—Other provisions applying to statutory instruments***Subdivision A—Making statutory instruments*****Presumption of validity**

20. All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

Regulation may be used instead of another type of subordinate legislation

20A.(1) If—

- (a) an Act authorises or requires the Governor, the Governor in Council, a Minister, an officer of the public service or the holder

of a prescribed office established by or under an Act to make provision with respect to a matter by subordinate legislation; and

- (b) the Act or another Act—
 - (i) does not specify the type of subordinate legislation to be used; or
 - (ii) specifies that a type of subordinate legislation other than a regulation is to be used;

the Governor in Council may make provision with respect to the matter by regulation made under the Act.

(2) Subsection (1) applies even though the Act would not, apart from this section, confer power on the Governor in Council to make a regulation for the purposes of the Act.

Example 1—

If an Act provides that provision may be made with respect to a matter by order in council, provision may now be made by regulation.

Example 2—

If provision has already been made with respect to a matter by order in council, the order in council may be repealed or amended by a regulation.

Subdivision B—Whether statutory instruments within power

Statutory instruments to be construed not to exceed powers conferred by law under which made

21.(1) A statutory instrument is to be construed as operating to the full extent of, but so as not to exceed, the power conferred by the Act, statutory instrument or law under which it is made (the “**authorising law**”).

(2) If a provision of a statutory instrument, or the application of a provision of a statutory instrument to a person, subject matter or circumstance, would, apart from this section, be construed as being in excess of the power conferred by the authorising law—

- (a) it is a valid provision to the extent to which it is not in excess of the power; and

- (b) the application of the provision to other persons, subject matters or circumstances, is not affected; and
- (c) the remainder of the provisions of the statutory instrument are not affected.

(3) This section applies to a statutory instrument in addition to, and without limiting the effect of, any provision of the statutory instrument or the authorising law.

Power to make statutory instrument for purposes of Act etc.

22.(1) If an Act or statutory instrument (the “**authorising law**”) authorises or requires the making of a statutory instrument for the purposes of the authorising law or an Act or statutory instrument (the “**other law**”), the power enables a statutory instrument to be made with respect to any matter that—

- (a) is required or permitted to be prescribed by the authorising law or other law; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to the authorising law or other law.

(2) Subsection (1) applies to the authorising law even though the authorising law also authorises the making of a statutory instrument for a particular purpose.

(3) Power conferred by the authorising law to make a statutory instrument for a particular purpose is in addition to, and does not limit the effect of, power conferred by the authorising law to make a statutory instrument for the purposes of the authorising law or other law unless the authorising law expressly provides otherwise.

Statutory instrument may make provision by applying another document

23.(1) If an Act or statutory instrument (the “**authorising law**”) authorises or requires the making of a statutory instrument with respect to a matter, a statutory instrument made under the authorising law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

- (a) an Act, statutory instrument or other law; or
- (b) another document (whether of the same or a different kind);

as in force at a particular time or from time to time.

(2) If a statutory instrument made after 1 January 1992 applies, adopts or incorporates the provisions of a document, the provisions applied, adopted or incorporated are the provisions as in force from time to time unless the statutory instrument expressly provides otherwise.

(3) In this section—

“**law**” includes a law of the Commonwealth, another State, a Territory or a foreign country.

Statutory instrument may make provision in relation to land by reference to map, plan or register

23A.(1) This section applies if an Act authorises or requires provision to be made by statutory instrument in relation to land, whether the expression ‘declare’, ‘dedicate’, ‘set apart’, ‘specify’ or another expression is used.

(2) Provision may be made by reference to—

- (a) a map or plan held by a person, department or body; or
- (b) a particular entry in a register kept by a person, department or body;

if the map, plan or register is available for inspection by members of the public.

(3) In this section—

“**land**” includes Queensland waters.

Statutory instrument may be of general or limited application

24. A statutory instrument may—

- (a) apply generally throughout the State or be limited in its application to a particular part of the State; or
- (b) apply generally to all persons and matters or be limited in its application to—

- (i) particular persons or matters; or
- (ii) particular classes of persons or matters; or
- (c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

Statutory instrument may make different provision for different categories

25. A statutory instrument may—

- (a) make different provision in relation to—
 - (i) different persons or matters; or
 - (ii) different classes of persons or matters; or
- (b) apply differently by reference to specified exceptions or factors.

Statutory instrument may authorise determination etc. by specified person etc.

26. A statutory instrument may authorise any matter to be determined, applied or regulated, from time to time, by any specified person or body.

Example—

If an Act provides that an application is to be in a prescribed form, the regulation concerned may provide that the prescribed form is to be that approved, or made available for use, by the Minister.

Statutory instrument may prohibit

27. If an Act or statutory instrument authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

Relationship between authorising law and statutory instrument concerning the same matter

28. If an Act or statutory instrument (the “**authorising law**”) authorises or requires provision to be made with respect to a matter by statutory

instrument, a statutory instrument made under the authorising law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by the authorising law in relation to another aspect of the matter or in relation to another matter.

Statutory instrument may provide review

29.(1) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under—

- (a) the statutory instrument; or
- (b) the Act or other statutory instrument under which the statutory instrument is made or in force.

(2) A statutory instrument that is a statutory rule may, for the purpose of subsection (1), confer jurisdiction on any court, tribunal, person or body.

Statutory instrument may require verification of form etc.

30. A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents (whether or not included in, attached to or given with a form), to be verified by statutory declaration.

Statutory instruments purporting to be made under a particular power

31. A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under a particular Act or another statutory instrument (the “**authorising law**”) or a particular provision of the authorising law.

Subdivision C—Commencement of statutory instruments

Prospective commencement

32.(1) Subject to section 34 (Beneficial retrospective commencement), a statutory instrument commences—

- (a) if it is required to be notified or published in the Gazette—on the day on which it is notified or published; or
- (b) if it is not required to be notified or published in the Gazette—on the day on which it is made; or
- (c) if a later day or time is fixed in the statutory instrument—on that day or at that time.

(2) If a statutory instrument that is required to be notified or published in the Gazette is notified or published on a day after the day or time fixed by the statutory instrument for its commencement, the statutory instrument is valid, but commences on the day on which it is notified or published.

Commencement of citation and commencement provisions

33.(1) The provisions of a statutory instrument providing for its citation and commencement commence, by force of this subsection—

- (a) if the statutory instrument is required to be notified or published in the Gazette—on the day on which it is notified or published; or
- (b) if it is not required to be notified or published in the Gazette—on the day on which it is made.

(2) A reference—

- (a) in an Act to the commencement of a statutory instrument (the “**law concerned**”); or
- (b) in a statutory instrument to the commencement of an Act, the statutory instrument, or another statutory instrument, (also the “**law concerned**”);

is a reference to—

- (c) if the provisions of the law concerned (other than those providing for its citation and commencement) commence, or are required to commence, on a single day or at a single time—the commencement of the remaining provisions; or
- (d) if paragraph (a) does not apply and the reference is in a provision of the law concerned—the commencement of the provision; or
- (e) in any other case—the commencement of the relevant provision of the law concerned.

(3) Subsection (1) applies to a statutory instrument despite anything in the statutory instrument unless the statutory instrument expressly provides that it does not apply.

Beneficial retrospective commencement

34.(1) A beneficial provision of a statutory instrument may be given retrospective operation if the statutory instrument expressly provides for that operation.

(2) In this section—

“**beneficial provision**” means a provision that does not operate to the disadvantage of a person (other than the State, a State authority or a local authority) by—

- (a) decreasing the person’s rights; or
- (b) imposing liabilities on the person.

Subdivision does not apply until necessary Governor or Governor in Council action taken

35. If—

- (a) an Act or statutory instrument provides for the making of a statutory instrument by a person or body other than the Governor or Governor in Council; but
- (b) the instrument is required by law to be approved, confirmed or otherwise consented to by the Governor or Governor in Council;

this Subdivision does not apply to the instrument until the approval, confirmation or consent has been given.

Subdivision D—Evidence of procedural details

Evidence of procedural details

36.(1) This section applies to a copy of a statutory instrument if—

- (a) in the case of a copy in printed form—the copy is printed by the Government Printer; or
- (b) in any other case—the copy is authorised by the Parliamentary Counsel.

(2) In a copy of a statutory instrument to which this section applies, a statement of any of the following matters is evidence of the matters—

- (a) when and by whom the statutory instrument was made, approved, confirmed or otherwise consented to; or
- (b) when and where the statutory instrument was published or notified; or
- (c) when the statutory instrument was laid before the Legislative Assembly.

(3) A document or matter purporting to be a copy of a statutory instrument to which this section applies is taken to be such a copy unless the contrary is established.

Subdivision E—Terms and references in statutory instruments

Words and expressions

37. Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in the Act or statutory instrument (the “**authorising law**”), or relevant provisions of the authorising law, under which the statutory instrument is made or in force.

Reference to “the Act”, “this by-law” etc. in statutory instrument

38. In a statutory instrument—

“**the Act**” means the Act under which the statutory instrument is made or in force;

“**these rules of court**” includes any statutory instrument made under the rules;

“**this by-law**” includes any statutory instrument made under the by-law;

“this order in council” includes any statutory instrument made under the order;

“this ordinance” includes any statutory instrument made under the ordinance;

“this regulation” includes any statutory instrument made under the regulation;

“this rule” includes any statutory instrument made under the rule.

Reference to enactment etc. of Acts

39. In a statutory instrument, a reference to the enactment of an Act or the passing of an Act is a reference to the fact of the Act’s having received the Royal Assent.

PART 5—PROCEDURAL MATTERS RELATING TO SUBORDINATE LEGISLATION

Notification

40.(1) Subordinate legislation must be notified in the Gazette.

(2) Publication in the Gazette of a notice of the making of subordinate legislation and of a place or places where copies can be obtained (by purchase or otherwise) is sufficient compliance with subsection (1).

(3) Publication in the Gazette of the subordinate legislation is also sufficient compliance with subsection (1).

Copies to be made available

41.(1) On the day of publication of a notice under section 40 (Notification) or as soon as practicable after that day, copies of the relevant subordinate legislation must be available to be obtained (by purchase or otherwise) at the place, or at each of the places, specified in the notice.

(2) Failure to comply with subsection (1) does not affect the validity of the notification under section 40.

Consequence of failing to make copies available

42.(1) If, on the day of publication of a notice under section 40 (Notification), copies of the subordinate legislation are not available at the place or any of the places specified in the notice, the relevant Minister must cause to be laid before the Legislative Assembly within 14 sitting days a statement—

- (a) that copies of the subordinate legislation were not so available; and
- (b) of the reasons why they were not available.

(2) Failure to comply with subsection (1) does not affect the validity of the notification under section 40.

(3) In this section—

“relevant Minister” means the Minister charged with the business connected with the Government Printing Service.

Tabling

43.(1) Subordinate legislation must be laid before the Legislative Assembly within 14 sitting days after notification in the Gazette.

(2) If subordinate legislation is not laid before the Legislative Assembly in accordance with subsection (1), it ceases to have effect.

Disallowance

44.(1) The Legislative Assembly may pass a resolution disallowing any subordinate legislation if notice of the resolution is given within 14 sitting days after the legislation is laid before the Legislative Assembly.

(2) On the passing of the resolution, the subordinate legislation ceases to have effect.

(3) The power of the Legislative Assembly to pass the resolution is not affected by the prorogation of the Parliament or the dissolution or end of the

term of the Legislative Assembly.

(4) If, at the end of 14 sitting days after notice is given under subsection (1), in relation to any subordinate legislation—

- (a) the notice has not been withdrawn and the resolution has not been called on, moved and seconded; or
- (b) the resolution has been called on, moved and seconded, but has not been withdrawn or otherwise disposed of;

the legislation ceases to have effect.

(5) This section applies to a provision of subordinate legislation in the same way as it applies to the whole of the subordinate legislation.

Limited saving of operation of subordinate legislation that ceases to have effect

45. If any subordinate legislation ceases to have effect because of section 43 (Tabling) or 44 (Disallowance)—

- (a) anything done or suffered under, or for the purposes of, the legislation before it ceased to have effect is not affected; but
- (b) except as provided in paragraph (a), the legislation is taken never to have been made and any law or provision of a law repealed or amended by the legislation is revived.

Other notification, gazettal, tabling or disallowance provisions of no effect

46. A provision of another Act so far as it relates to the notification, gazettal, tabling or disallowance of subordinate legislation is of no effect.

PART 6—MISCELLANEOUS**Regulations**

47. The Governor in Council may make regulations for the purposes of this Act.

SCHEDULE 1**PROVISIONS OF ACTS INTERPRETATION ACT 1954
THAT APPLY TO STATUTORY INSTRUMENTS**

section 14(1)

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sections 14F–14I

section 15B

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Part 8 (other than section 36, definitions “**enactment**” and “**passing**”)

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SCHEDULE 2

**PROVISIONS OF ACTS INTERPRETATION ACT 1954
THAT DO NOT APPLY TO STATUTORY
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2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the *Reprints Act 1992*. Accordingly, this reprint includes all amendments that commenced operation before 9 December 1992. Future amendments of the *Statutory Instruments Act 1992* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

3 List of legislation**Statutory Instruments Act 1992 No. 22**

date of assent 1 June 1992
 commenced on date of assent
 as amended by—

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 s 3 Sch 1

date of assent 7 December 1992
 commenced on date of assent

4 List of annotations

Key to abbreviations in list of annotations

RA	=	<i>Reprints Act 1992</i>
amd	=	amended
ins	=	inserted
om	=	omitted
renum	=	renumbered
sub	=	substituted
Pt hdg	=	Part heading
Div hdg	=	Division heading
Sdiv hdg	=	Subdivision heading
hdg prec	=	heading preceding
prov hdg	=	provision heading
cl	=	clause
prev	=	previous
pres	=	present
reloc	=	relocated

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Meaning of “statutory instrument”

s 7 amd 1992 No. 68 s 3 Sch 1

Regulation may be used instead of another type of subordinate legislation

s 20A ins 1992 No. 68 s 3 Sch 1

Statutory instruments to be construed not to exceed powers conferred by law under which made

s 21 amd 1992 No. 68 s 3 Sch 1

Statutory instrument may make provision in relation to land by reference to map, plan or register

s 23A ins 1992 No. 68 s 3 Sch 1

Beneficial retrospective commencement

s 34 amd 1992 No. 68 s 3 Sch 1

Subdivision E—Terms and references in statutory instruments

Sdiv hdg reloc to before s 37 1992 No. 68 s 3 Sch 1

PART 7—AMENDMENT OF ACTS INTERPRETATION ACT 1954

Pt 7 (s 48) om (see s 40 RA)

PART 8—AMENDMENT OF CRIMINAL CODE

Pt 8 (ss 49–50) om (see s 40 RA)

AMENDMENT OF ACTS INTERPRETATION ACT 1954

Sch 3 om (see s 40 RA)