

EXPLANATORY MEMORANDUM AND CLAUSE NOTES

STATUTES (MINOR AMENDMENTS) BILL 2017

STATUTES (MINOR AMENDMENTS) BILL 2017

1. Short title

Provides for the short title of the Act, which will be the *Statutes (Minor Amendments) Act 2017*.

2. Commencement

Provides for sections 1 and 2 to commence when the Act receives Royal Assent, and for the remaining provisions to come into effect on a day fixed by proclamation in the Western Australian Government Gazette.

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3. Administration Act 1903 amended

EXISTING PROVISION	AS AMENDED	EXPLANATION
<p><i>Administration Act 1903</i></p> <p>60A. Application of <i>Family Provision Act 1972</i></p> <p>Nothing in this Part shall effect or derogate from the provisions of <i>Family Provision Act 1972</i> section 6.</p>	<p>60A. Application of <i>Family Provision Act 1972</i></p> <p>Nothing in this Part shall effect or derogate from the provisions of <u>the</u> <i>Family Provision Act 1972</i> section 6.</p>	<p>S. 60A - the word “the” is missing before the name of the <i>Family Provision Act 1072</i></p>

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4. Criminal Code Amendment (Unlawful Possession) Act 2014 amended

EXISTING PROVISION	AS AMENDED	EXPLANATION
<p><i>Criminal Code Amendment (Unlawful Possession) Act 2014</i></p> <p>8. Schedule 1A amended</p> <p>(2) In Schedule 1A Part 2 item 1 delete “s. 428” and insert:</p> <p>s. 417</p>	<p><i>Criminal Code Amendment (Unlawful Possession) Act 2014</i></p> <p>8. Schedule 1A amended</p> <p>(2) In Schedule 1A Part 2 item 1 delete “s. 428” and insert:</p> <p>s. 417</p>	<p><i>Sentencing Act 1995</i> Pt 2 Div 2A deals with sentencing for certain offences in cases involving a “declared criminal organisation”.</p> <p>Sch 1A Pt 2 lists “relevant simple offences” for the purposes of Pt 2 Div 2A. (A “simple offence” is an offence that is not an indictable offence; <i>Criminal Procedure Act 2004</i> s. 3.) Included in the list is <i>Criminal Code</i> s. 428, which formerly created the offence of “possessing stolen or unlawfully obtained property”.</p> <p><i>Criminal Code Amendment (Unlawful Possession) Act 2014</i> deleted s. 428 and replaced it with a new s. 417, creating a new offence of “possessing stolen or unlawfully obtained property”.</p> <p>S. 8(2) of the 2014 Act also proposed to amend <i>Sentencing Act 1995</i> Sch 1A Pt 2 by deleting the reference to the old s. 428 and replacing it with a reference to the new s. 417. However Sch 1A Pt 2 can only include simple offences, and the new s. 417 offence is not a simple offence.</p> <p>For this reason <i>Criminal Code Amendment (Unlawful Possession) Act 2014</i> s. 8(2) is not to be proclaimed, and should be repealed.</p>

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5. Criminal Law (Mentally Impaired Accused) Act 1996 amended

EXISTING PROVISION	AS AMENDED	EXPLANATION
<p><i>Criminal Law (Mentally Impaired Accused) Act 1996</i></p> <p>Schedule 1.</p> <p>s. 388E(1)(a) Stalking committed in circumstances of aggravation</p>	<p><i>Criminal Law (Mentally Impaired Accused) Act 1996</i></p> <p>Schedule 1.</p> <p>s. 388E(1)(a) <u>338(1)(a)</u> Stalking committed in circumstances of aggravation</p>	<p>Under <i>Criminal Law (Mentally Impaired Accused) Act 1996</i> s. 21, if an accused is acquitted of a Sch 1 offence on account of unsoundness of mind the court must make a custody order.</p> <p>By <i>Criminal Law Amendment Act (No. 1) 1988</i> s. 4(3), Sch 1 was amended by including a reference to <i>Criminal Code</i> s. 388E(1)(a), said to create the offence of stalking committed in circumstances of aggravation.</p> <p>There is no <i>Criminal Code</i> s. 388E. The offence of stalking committed in circumstances of aggravation is created by s. 338E(1)(a). The current reference in Sch 1 to s. 388E is plainly a misprint.</p>

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6. Criminal Organisations Control Act 2012 amended

EXISTING PROVISION	AS AMENDED	EXPLANATION
<p>Criminal Organisations Control Act 2012</p> <p>142. Effect of registration of interstate control order</p> <p>(1) (b) Part 3 Division 3 Subdivision 5 does not apply, except as provided by sections 149, 151 and 152;</p>	<p>Criminal Organisations Control Act 2012</p> <p>142. Effect of registration of interstate control order</p> <p>(1) (b) Part 3 Division 3 Subdivision 5 does not apply, except as provided by sections 149, 151 and 152;</p>	<p>S. 142(1)(b) provides that a “registered interstate control order” operates in WA as if it were an order made under Pt 3 of the Act, but that Pt 3 Div 3 Subdiv 5 (dealing with appeals against, and variations and revocations of, control orders) does not apply “except as provided by sections 149, 151 and 152”. Pt 3 Div 3 Subdiv 5 includes sections 64 to 72.</p> <p>S. 149 and 152 apply selected provisions of Pt 3 Div 3 Subdiv 5 to registered interstate control orders. However s. 151 applies s. 44 to interstate control orders. S. 44 is not included in Pt 3 Div 3 Subdiv 3, so s. 151 does not take effect as an exception to the exclusion of that subdiv by s. 141.</p>
<p>Criminal Organisations Control Act 2012</p> <p>176. Criminal Property Confiscation Act 2000 amended</p> <p>[(5) has not come into operation.]</p>	<p>Criminal Organisations Control Act 2012</p> <p>176. Criminal Property Confiscation Act 2000 amended</p> <p>[(5) has not come into operation.]</p>	<p>S. 176(5) provides for the amendment of <i>Criminal Property Confiscation Act 2000</i> s. 159, to insert the conjunction “and” between the paragraphs of s. 159. It is an established drafting convention that where a provision is divided into paragraphs the paragraphs should be linked by conjunctions so as to make it clear whether they operate cumulatively or alternatively.</p> <p>When the time came to bring <i>Criminal Organisations Control Act 2012</i> into force, <i>Criminal Property Confiscation Act 2000</i> had been reprinted and, under powers contained in the <i>Reprints Act 1984</i>, the State Law Publisher had inserted the required conjunctions in s. 159. Consequently s. 176(5) was no longer necessary and has not been brought into force. It should be deleted.</p>

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7. Criminal Procedure Act 2004 amended

EXISTING PROVISION	AS AMENDED	EXPLANATION
<p><i>Criminal Procedure Act 2004</i> 31. Warrant for accused’s arrest, contents etc. (1) An arrest warrant for an accused must — (a) be in a prescribed form; and (b) if issued in the first instance, must form part of or be attached securely to a copy of the prosecution notice to which it relates; and (c) if issued after the accused has been served with the prosecution notice, must identify the prosecution notice or the charge or charges in it or be attached securely to a copy of it;</p> <p>32. Summons to accused, contents and service of (1) A summons must — (a) be in a prescribed form; and (b) if issued in the first instance, must form part of or be attached securely to a copy of the prosecution notice to which it relates; and (c) if issued after the accused has been served with the prosecution notice, must identify the prosecution notice or the charge or charges in it or be attached securely to a copy of it;</p> <p>33. Court hearing notice, contents and service of (1) A court hearing notice must — (a) be in a prescribed form; and (b) if issued in the first instance, must form part of or be attached securely to a copy of the prosecution notice to which it relates; and (c) if issued after the accused has been served with the prosecution notice, must identify the prosecution notice or the charge or charges in it or be attached securely to a copy of it;</p>	<p><i>Criminal Procedure Act 2004</i> 31. Warrant for accused’s arrest, contents etc. (1) An arrest warrant for an accused must — (a) be in a prescribed form; and (b) if issued in the first instance, must form part of or be attached securely to a copy of the prosecution notice to which it relates; and (c) if issued after the accused has been served with the prosecution notice, must identify the prosecution notice or the charge or charges in it or be attached securely to a copy of it;</p> <p>32. Summons to accused, contents and service of (1) A summons must — (a) be in a prescribed form; and (b) if issued in the first instance, must form part of or be attached securely to a copy of the prosecution notice to which it relates; and (c) if issued after the accused has been served with the prosecution notice, must identify the prosecution notice or the charge or charges in it or be attached securely to a copy of it;</p> <p>33. Court hearing notice, contents and service of (1) A court hearing notice must — (a) be in a prescribed form; and (b) if issued in the first instance, must form part of or be attached securely to a copy of the prosecution notice to which it relates; and (c) if issued after the accused has been served with the prosecution notice, must identify the prosecution notice or the charge or charges in it or be attached securely to a copy of it;</p>	<p>S. 31(1)(a) to (f) sets out a number of requirements as to the form and contents of arrest warrants.</p> <p>The word “must” appears in the introductory section, but is needlessly replicated in paragraphs (b) and (c).</p> <p>A similar error appears in s. 32(1) and 33(1).</p>

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8. Equal Opportunity Act 1984 amended

EXISTING PROVISION	AS AMENDED	EXPLANATION
<p>Equal Opportunity Act 1984 69. Acts done under statutory authority (1) Nothing in this Act renders unlawful anything done by a person if it was necessary for the person to do it in order to comply with a requirement of — (a) any other Act which is in force when this section comes into operation; or (b) an instrument made or approved under an Act referred to in paragraph (a) not being — (i) the rules of a co-operative registered under the <i>Co-operatives Act 2009</i>; or (ii) the rules of a credit union within the meaning of the <i>Credit Unions Act 1979</i>; or (iii) the rules of a society registered under the <i>Friendly Societies (Western Australia) Code 1999</i>; or (c) an order of the Tribunal; or (d) an order of a court; or (e) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment (including the payment by an employer of a salary, wage or other remuneration in excess of the amount fixed by such a court or tribunal and whether or not the payment of such salary, wage or other remuneration, but for this provision would constitute unlawful discrimination). (2) Subsection (1)(a), (b) and (e) shall, except to the extent that regulations made for the purposes of this subsection provide otherwise, cease to be in force at the expiration of 2 years after the coming into operation of this section. (3) Regulations made for the purposes of subsection (2) may provide generally in relation to the application of subsection (1)(a), (b) and (e) or may make provision in relation to specified Acts, instruments, orders or awards.</p>	<p>Equal Opportunity Act 1984 69. Acts done under statutory authority (1) Nothing in this Act renders unlawful anything done by a person if it was necessary for the person to do it in order to comply with a requirement of — (a) any other Act which is in force when this section comes into operation; or (b) an instrument made or approved under an Act referred to in paragraph (a) not being — (i) the rules of a co-operative registered under the <i>Co-operatives Act 2009</i>; or (ii) the rules of a credit union within the meaning of the <i>Credit Unions Act 1979</i>; or (iii) the rules of a society registered under the <i>Friendly Societies (Western Australia) Code 1999</i>; or (c) an order of the Tribunal; or (d) an order of a court; or (e) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment (including the payment by an employer of a salary, wage or other remuneration in excess of the amount fixed by such a court or tribunal and whether or not the payment of such salary, wage or other remuneration, but for this provision would constitute unlawful discrimination). (2) Subsection (1)(a), (b) and (e) shall, except to the extent that regulations made for the purposes of this subsection provide otherwise, cease to be in force at the expiration of 2 years after the coming into operation of this section. (3) Regulations made for the purposes of subsection (2) may provide generally in relation to the application of subsection (1)(a), (b) and (e) or may make provision in relation to specified Acts, instruments, orders or awards.</p>	<p>S. 69(2) contains a sunset clause which has long since taken effect. As a result repeal of much of section 69 is appropriate.</p>

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9. Evidence Act 1906 amended

EXISTING PROVISION	AS AMENDED	EXPLANATION
<p><i>Evidence Act 1906</i></p> <p>19L. Application of other laws</p> <p>(3) Subject to subsections (4) and (4a), sections 238 and 239 of the Children and Community Services Act 2004 and section 46 of the Child Care Services Act 2007 do not apply to the production or disclosure of a protected communication in criminal proceedings.</p>	<p><i>Evidence Act 1906</i></p> <p>19L. Application of other laws</p> <p>(3) Subject to subsections (4) and (4a) <u>(5A)</u>, sections 238 and 239 of the Children and Community Services Act 2004 and section 46 of the Child Care Services Act 2007 do not apply to the production or disclosure of a protected communication in criminal proceedings.</p>	<p><i>Evidence Act 1906</i> s. 19L(3) refers to “subsections (4) and (4a)”. With effect from 1 August 2012, subs. (4a) was deleted by the <i>Education and Care Services National Law (WA) Act 2012</i> s. 33, and replaced by a new subs. (5A). However through oversight the cross-reference in subs. (3) was not amended at the time. It is appropriate to amend it now.</p>

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10. Family Provision Act 1972 amended

EXISTING PROVISION	AS AMENDED	EXPLANATION
<p>Family Provision Act 197211.</p> <p>11. Distributions made for urgent purposes, administrator etc. protected in case of</p> <p>Where for the purpose of providing those things immediately necessary for the maintenance, support or education (including past maintenance, support or education provided after the death of the deceased) of any person who was totally or partially dependent on the deceased immediately before his death, an administrator distributes the whole or any part of the estate to any such person, being a person entitled thereto, an action shall not lie against him in respect of such distribution and no order made under this Act or under section 65 of the Trustees Act 1962, shall disturb such distribution, whether or not the administrator had notice immediately before the distribution of any application, or intention to make an application, that would affect the estate.</p>	<p>Family Provision Act 197211.</p> <p>11. Distributions made for urgent purposes, administrator etc. protected in case of</p> <p>Where for the purpose of providing those things immediately necessary for the maintenance, support or education (including past maintenance, support or education provided after the death of the deceased) of any person who was totally or partially dependent on the deceased immediately before his death, an administrator distributes the whole or any part of the estate to any such person, being a person entitled thereto, an action shall not lie against him in respect of such distribution and no order made under this Act or under section 65 of the Trustees Act 1962, shall disturb such distribution, whether or not the administrator had notice immediately before the distribution at the time of the distribution of any application, or intention to make an application, that would affect the estate.</p>	<p>The <i>Family Provision Act 1972</i> allows the family and dependants of a deceased person to apply for maintenance out of the person's estate.</p> <p>S. 11 provides protection to the administrator of an estate who makes a distribution out of an estate for urgent purposes to one dependant, when another dependant or family member later brings a claim under the Act.</p> <p><i>Inheritance (Family and Dependants Provision) Amendment Act 2011</i> s. 10 amended s. 11 by deleting the words "at the time" and replacing them with the words "immediately before".</p> <p>In s. 11 as enacted, the words "at the time" occurred twice, and the effect of the 2011 amending was to delete and replace both instances. The deletion and replacement of the second instance was not intended.</p> <p>The result is that, as it stands the provision protects an administrator who has made an emergency distribution whether or not he had notice of an application under the Act "immediately before the distribution". As initially enacted, section 11 provided protection whether or not the administrator had notice "at the time of the distribution".</p>

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11. Juries Act 1957 amended

EXISTING PROVISION	AS AMENDED	EXPLANATION
<p><i>Juries Act 1957</i></p> <p>56C. Protected information not to be solicited or obtained</p> <p>(2) Subsection (1) does not prohibit soliciting or obtaining protected information —</p> <p>(a) in the course of proceedings in a court; or</p> <p>(b) by a board or commission appointed by the Governor; or</p> <p>(ba) to the Corruption and Crime Commission established under the Corruption, Crime and Misconduct Act 2003;</p> <p>or</p> <p>(bb) to the Parliamentary Inspector of the Corruption and Crime Commission appointed under the Corruption, Crime and Misconduct Act 2003; or</p>	<p><i>Juries Act 1957</i></p> <p>56C. Protected information not to be solicited or obtained</p> <p>(2) Subsection (1) does not prohibit soliciting or obtaining protected information —</p> <p>(a) in the course of proceedings in a court; or</p> <p>(b) by a board or commission appointed by the Governor; or</p> <p>(ba) to by the Corruption and Crime Commission established under the Corruption, Crime and Misconduct Act 2003;</p> <p>or</p> <p>(bb) to by the Parliamentary Inspector of the Corruption and Crime Commission appointed under the Corruption, Crime and Misconduct Act 2003; or</p>	<p>Pt IXA deals with jury confidentiality. S. 56C(1) creates the offence of soliciting or obtaining “protected information” for publishing. S. 56C(2)(ba) provides that subsection (1) does not prohibit soliciting or obtaining protected information “to the Corruption and Crime Commission”; while s. 56CC(2)(bb) makes similar provision with respect to soliciting or obtaining protected information “to the Parliamentary Inspector of the Corruption and Crime Commission”.</p> <p>The word “to” in both these paragraphs is clearly an error. Other paragraphs of s. 56C(2) are introduced with the word “by”, and it is evident that paragraphs (ba) and (bb) should be too.</p> <p>Paragraphs (ba) and (bb) were introduced by <i>Corruption and Crime Commission Act 2003</i> which also introduces similar paragraphs into s. 56B (which deals with the offence of disclosing protected information). In that context the word “to” is appropriate. It’s evident that, through a drafting error, the paragraphs correctly introduced into s. 56B(2) were also introduced into s. 56C without adapting them to the context by replacing the introductory “to” with “by”</p>

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12. Sentencing Act 1995 amended

EXISTING PROVISION	AS AMENDED	EXPLANATION
<p>Sentencing Legislation Amendment Act 2016</p> <p>Part 3 — Amendments about parole and post-sentencing supervision</p> <p>Division 1 — Sentencing Act 1995 amended</p> <p>20. Section 97A inserted</p> <p>At the end of Part 13 Division 4 insert:</p> <p>97A. Declaration of serious violent offence for purposes of Sentence Administration Act 2003 Part 5A</p> <p>(1) In this section — family and domestic relationship has the meaning given in the Restraining Orders Act 1997 section 4(1); offence does not include an offence specified in the Sentence Administration Act 2003 Schedule 4; victim has the meaning given in section 13.</p>	<p>Sentencing Legislation Amendment Act 2016</p> <p>Part 3 — Amendments about parole and post-sentencing supervision</p> <p>Division 1 — Sentencing Act 1995 amended</p> <p>20. Section 97A inserted</p> <p>At the end of Part 13 Division 4 insert:</p> <p>97A. Declaration of serious violent offence for purposes of Sentence Administration Act 2003 Part 5A</p> <p>(1) In this section — family and domestic relationship family relationship has the meaning given in the Restraining Orders Act 1997 section 4(1); offence does not include an offence specified in the Sentence Administration Act 2003 Schedule 4; victim has the meaning given in section 13.</p>	<p><i>Restraining Orders Act 1997</i> s.4 defines family and domestic relationship.</p> <p><i>Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016</i> s. 6 will amend ROA s.4 by changing the term to family relationship (while making no change to the substance of the definition). A commencement order which will bring s. 6 into force on 1 July 2017 has been gazetted.</p> <p><i>Sentencing Legislation Amendment Act 2016</i> s. 20 will amend <i>Sentencing Act 1995</i> by inserting a new s. 97A, employing the term <i>family and domestic relationship</i> and defining it by reference to ROA s. 4. Again, a commencement order which will bring s. 20 into force on 1 July 2017 has been gazetted. Draft s. 97A does not anticipate the changes to be effected by ROARLA s. 6.</p> <p>Amending proposed s. 97A so that it employs the new term avoids confusion when referring between the <i>Sentencing Act 1995</i> and the <i>Restraining Orders Act 1997</i>.</p>

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12. Sentencing Act 1995 amended (cont)

EXISTING PROVISION		AS AMENDED		EXPLANATION
Sentencing Act 1995		Sentencing Act 1995		<p><i>Sentencing Act 1995</i> Pt 2 Div 2A deals with sentencing for certain offences in cases involving a “declared criminal organisation”.</p> <p>Sch 1A Pt 2 lists “relevant simple offences” for the purposes of Pt 2 Div 2A. (A “simple offence” is an offence that is not an indictable offence; <i>Criminal Procedure Act 2004</i> s. 3.) Included in the list is <i>Criminal Code</i> s. 428, which formerly created the offence of “possessing stolen or unlawfully obtained property”.</p> <p><i>Criminal Code Amendment (Unlawful Possession) Act 2014</i> deleted s. 428. and replaced it with a new s. 417, creating a new offence of “possessing stolen or unlawfully obtained property”.</p> <p>S. 8(2) of the 2014 Act also proposed to amend <i>Sentencing Act 1995</i> Sch 1A Pt 2 by deleting the reference to the old s. 428 and replacing it with a reference to the new s. 417. However Sch 1A Pt 2 can only include simple offences, and the new s. 417 offence is not a simple offence. For that reason s. 8(2) is not to be proclaimed, and is to be repealed in this Bill.</p> <p>It remains necessary to delete the reference to (repealed) s. 428 from <i>Sentencing Act 1995</i> Sch 1A Pt 2.</p>
Part 2 — Relevant simple offences		Part 2 — Relevant simple offences		
Enactment	Description of offence	Enactment	Description of offence	
1. The Criminal Code		2. The Criminal Code		
s. 206	Supplying intoxicants to people likely to abuse them	s. 206	Supplying intoxicants to people likely to abuse them	
s. 313	Common assaults	s. 313	Common assaults	
s. 338E(2)	Stalking in manner reasonably expected to intimidate	s. 338E(2)	Stalking in manner reasonably expected to intimidate	
s. 428	Possessing stolen or unlawfully obtained property	s. 428	Possessing stolen or unlawfully obtained property	
s. 445	Damaging property	s. 445	Damaging property	
s. 557H	Possessing a disguise	s. 557H	Possessing a disguise	
s. 557I(2)	Possessing bulletproof clothing	s. 557I(2)	Possessing bulletproof clothing	
s. 560	Conspiracy to commit simple offence	s. 560	Conspiracy to commit simple offence	

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13. State Administrative Tribunal Act 2004 amended

EXISTING PROVISION	AS AMENDED	EXPLANATION
<p><i>State Administrative Tribunal Act 2004</i></p> <p>Schedule 1 — Relevant Acts for section 105</p> <p>Architects Act 2004 Building Services (Registration) Act 2011 Employment Agents Act 1976 Finance Brokers Control Act 1975 Fish Resources Management Act 1994 Hairdressers Registration Act 1946 Health Practitioner Regulation National Law (Western Australia) Land Valuers Licensing Act 1978 Legal Profession Act 2008 Licensed Surveyors Act 1909 Motor Vehicle Dealers Act 1973 Pearling Act 1990 Pharmacy Act 2010 Real Estate and Business Agents Act 1978 Settlement Agents Act 1981 Taxi Act 1994 Teacher Registration Act 2012 Valuation of Land Act 1978 Veterinary Surgeons Act 1960</p>	<p><i>State Administrative Tribunal Act 2004</i></p> <p>Schedule 1 — Relevant Acts for section 105</p> <p>Architects Act 2004 Building Services (Registration) Act 2011 Employment Agents Act 1976 Finance Brokers Control Act 1975 Fish Resources Management Act 1994 Hairdressers Registration Act 1946 Health Practitioner Regulation National Law (Western Australia) Land Valuers Licensing Act 1978 Legal Profession Act 2008 Licensed Surveyors Act 1909 Motor Vehicle Dealers Act 1973 Pearling Act 1990 Pharmacy Act 2010 Real Estate and Business Agents Act 1978 Settlement Agents Act 1981 Taxi Act 1994 Teacher Registration Act 2012 Valuation of Land Act 1978 Veterinary Surgeons Act 1960</p>	<p><i>State Administrative Tribunal Act 2004</i> s. 105 allows appeals from decisions of the State Administrative Tribunal.</p> <p>In general appeals can only be brought on a point of law, but under s. 105(13) certain decisions made under “relevant Acts” may be appealed on question of law, questions of fact, or both.</p> <p>Sch 1 lists the “relevant Acts” for the purposes of s. 105. One of the Acts listed is the <i>Hairdressers Registration Act 1946</i>. That Act expired on 13 March 2012, and it is appropriate to remove the reference to it from Sch 1.</p>