



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

**REPORT OF THE
STANDING COMMITTEE ON LEGISLATION
IN RELATION TO THE
STATUTES (REPEALS AND MINOR
AMENDMENTS) BILL 2001**

Presented by Hon Jon Ford MLC (Chairman)

Report 20
June 2003

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

May 24 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“1. Legislation Committee

- 1.1 *A Legislation Committee* is established.
- 1.2 The Committee consists of 5 members.
- 1.3 The functions of the Committee are to consider and report on any bill or other matter referred by the House.
- 1.4 Unless otherwise ordered, the policy of a bill referred under subclause 1.3 at the second reading or any subsequent stage is excluded from the Committee’s consideration.”

Members as at the time of this inquiry:

Hon Jon Ford MLC (Chairman)

Hon Peter Foss MLC

Hon Giz Watson MLC (Deputy Chair)

Hon Bill Stretch MLC

Hon Kate Doust MLC

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EXECUTIVE SUMMARY AND RECOMMENDATIONS FOR THE
REPORT OF THE STANDING COMMITTEE ON LEGISLATION
IN RELATION TO THE
STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2001

EXECUTIVE SUMMARY

- 1 The Statutes (Repeals and Minor Amendments) Bill 2001 (“the Bill”) was referred to the Standing Committee on Legislation (“the Committee”) on March 13 2003.
- 2 The Committee previously considered the Bill when it was referred by the Legislative Council on August 1 2001. The Committee reported to the Legislative Council on March 12 2002 in Report Number 11.
- 3 The Committee understands that the Bill has again been referred to the Committee for consideration of the proposed amendments in Supplementary Notice Paper Number 31, Issue Number 3 (January 16 2003).¹ In Report Number 11, the Committee considered the proposed amendments to the Bill contained in Supplementary Notice Paper Number 31, Issue Number 1 (October 8 2001) and recommended that the Bill be amended accordingly.²
- 4 There are additional amendments in Supplementary Notice Paper Number 31, Issue Number 3 that were not contained in Supplementary Notice Paper Number 31, Issue Number 1 which the Committee considers in this Report. These amendments relate to:
 - clause 55 (amendments to the *Fish Resources Management Act 1994*);
 - clause 90 (amendments to the *Parliamentary Commissioner Act 1971*);
 - clause 117 (amendment to the *Tobacco Control Act 1990*); and
 - new clause 25 (amendment to the *Agriculture and Related Resources Protection Act 1976*).

¹ Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, March 13 2003, p. 5320.

² Standing Committee on Legislation, Parliament of Western Australia, Legislative Council, *Statutes (Repeals and Minor Amendments) Bill 2001*, Report Number 11, March 12 2002, pp. 10-11.

- 5 Of the proposed additional amendments, the Committee does not support the amendment pertaining to the *Tobacco Control Act 1990*.
- 6 In this Report, the Committee has also made suggestions as to the process to be followed in the future when dealing with omnibus bills to ensure efficient passage through Parliament.

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Recommendation 1: The Committee recommends that proposed amendment 13/117 on Supplementary Notice Paper Number 31, Issue Number 3 not be supported.

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Recommendation 2: Subject to recommendation 1, the Committee recommends that the proposed amendments on Supplementary Notice Paper Number 31, Issue Number 3 be supported.

REPORT OF THE STANDING COMMITTEE ON LEGISLATION

IN RELATION TO THE

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2001

1 REFERENCE AND PROCEDURE

- 1.1 The Statutes (Repeals and Minor Amendments) Bill 2001 (“the Bill”) was referred to the Standing Committee on Legislation (“the Committee”) on March 13 2003 for inquiry pursuant to a motion by Hon Norman Moore MLC. The Committee was to report to the Legislative Council by June 2 2003.
- 1.2 Pursuant to the Committee’s request, the Legislative Council granted an extension of time within which to report to June 10 2003.

2 OVERVIEW

- 2.1 The Committee previously considered the Bill when it was referred by the Legislative Council on August 1 2001. The Committee reported to the Legislative Council on March 12 2002 in Report Number 11.
- 2.2 The Committee understands that the Bill has again been referred to the Committee for consideration of the proposed amendments in Supplementary Notice Paper Number 31, Issue Number 3 (January 16 2003).³ In Report Number 11, the Committee considered the proposed amendments to the Bill contained in Supplementary Notice Paper Number 31, Issue Number 1 (October 8 2001) and recommended that the Bill be amended accordingly.⁴
- 2.3 There are additional amendments in Supplementary Notice Paper Number 31, Issue Number 3 that were not contained in Supplementary Notice Paper Number 31, Issue Number 1 and thus were not considered by the Committee in Report Number 11. These amendments relate to:
- clause 55 (amendments to the *Fish Resources Management Act 1994*);

³ Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, March 13 2003, p. 5320.

⁴ Standing Committee on Legislation, Parliament of Western Australia, Legislative Council, *Statutes (Repeals and Minor Amendments) Bill 2001*, Report Number 11, March 12 2002, pp. 10-11.

- clause 90 (amendments to the *Parliamentary Commissioner Act 1971*);
 - clause 117 (amendment to the *Tobacco Control Act 1990*); and
 - new clause 25 (amendment to the *Agriculture and Related Resources Protection Act 1976*).
- 2.4 The Committee appointed a subcommittee comprising Hon Giz Watson MLC (Convenor) and Hon Jon Ford MLC to assist in the inquiry.
- 2.5 The subcommittee sought clause notes in relation to the additional amendments from the Department of the Premier and Cabinet and these were provided in a letter from the Director General dated April 28 2003. The clause notes are attached to this Report as Appendix 1.
- 2.6 In this Report, the Committee will comment on the additional amendments contained in Supplementary Notice Paper Number 31, Issue Number 3. The Committee will also add to the comments it made in Report Number 11 in relation to clause 20 of the Bill which repeals the *Timber Industry Regulation Act 1926*.⁵
- 2.7 The Committee reiterates that the purpose of the Bill is to revise statute law by repealing spent, unnecessary or superseded Acts, and by making miscellaneous minor amendments to various Acts.⁶ The Committee understands that this purpose applies equally to any proposed amendments to the Bill contained in the Supplementary Notice Paper.

3 OMNIBUS BILLS

- 3.1 The common name for bills of this nature is “omnibus bills”. The policy behind such bills is to provide a regular opportunity for necessary legislative amendments of a non-contentious and minor nature to pass through Parliament without having to wait in line behind contentious political matters and major legislation. Omnibus bills are also cost and time effective for the Parliament.
- 3.2 As the name partly suggests, the only thing that the amendments have in common is their nature rather than their subject matter. In preparing omnibus bills, amendments that are likely to be contentious or which make a substantial change in the law are not accepted.

⁵ Standing Committee on Legislation, Parliament of Western Australia, Legislative Council, *Statutes (Repeals and Minor Amendments) Bill 2001*, Report Number 11, March 12 2002, pp. 2-4.

⁶ Ibid, p 1.

- 3.3 The Committee considers that a satisfactory process for omnibus bills would be for them to be introduced into the Parliament twice a year at the beginning of each of the Spring and Autumn sessions.
- 3.4 In this way, Government departments would know the deadline they have to meet and would also know that if they missed the deadline there would only be six months to wait for the next omnibus bill. This would be a simple and relatively inexpensive process for providing necessary legislative attention to current Acts.
- 3.5 Introducing the omnibus bill early in the session would allow it to be dealt with in a reasonably routine and efficient manner and ensure that it is unlikely to be unnecessarily derailed.
- 3.6 Once introduced, no further amendment to the omnibus bill should be foreshadowed in the House, as this would be more likely to delay rather than assist its progress. The only exception to this should be minor drafting alterations noticed after introduction. Hopefully, if there is a known, regular process followed, these minor drafting alterations would become unnecessary because Government departments would know that they need not be excessively hasty in submitting their legislation because another omnibus bill will shortly follow.
- 3.7 The Committee proposes that in the future it would recommend against proposed amendments that are any more substantial than this.

4 PROPOSED AMENDMENTS

Clause 55 - *Fish Resources Management Act 1994*

Overview

- 4.1 Clause 55 of the Bill currently contains a minor amendment to the *Fish Resources Management Act 1994*. In Report 11, the Committee did not comment on this clause of the Bill. Supplementary Notice Paper Number 31, Issue Number 3 proposes to delete this minor amendment and instead include in clause 55 a number of other amendments to the *Fish Resources Management Act 1994*.
- 4.2 The amendments result from the relationship between the *Fish Resources Management Act 1994* and the *Land (Titles and Traditional Usage) Act 1993*.⁷ The *Fish Resources Management Act 1994* contains sections that refer to and rely upon the *Land (Titles and Traditional Usage) Act 1993* which has since been repealed.

⁷ The clause notes indicate that the proposed amendments contained in the Supplementary Notice Paper Number 31, Issue Number 3 are a result of the repeal of the *Land (Titles and Traditional Usage) Act 1993* by the *Acts Amendment and Repeal (Native Title) Act 1995*.

- 4.3 The *Land (Titles and Traditional Usage) Act 1993* was assented to on December 2 1993 and was enacted as a consequence of the High Court's decisions in relation to native title in *Mabo v Queensland* (1988) 166 CLR 186 and *Mabo v Queensland (No 2)* 1 (1992) 175 CLR 1.⁸
- 4.4 In *Mabo v Queensland (No 2)* 1 (1992) 175 CLR 1, six members of the High Court (Dawson J. dissenting) held, amongst other things, that the common law of Australia recognizes a form of native title which, in the cases where it has not been extinguished, reflects the entitlement of the indigenous inhabitants, in accordance with their laws or customs, to their traditional lands.⁹
- 4.5 The *Land (Titles and Traditional Usage) Act 1993* sought to extinguish native title in Western Australia and replace it with statutory rights of traditional usage within a regime prescribed by the Act.¹⁰
- 4.6 Schedule 1 of the *Land (Titles and Traditional Usage) Act 1993* amended the *Public Works Act 1902*, the *Land Act 1933*, the *Mining Act 1978*, the *Mining Amendment Act 1994*, the *Petroleum Act 1967*, the *Petroleum (Submerged Lands) Act 1982*, the *Petroleum Pipelines Act 1969* and the *Pearling Act 1990*. In delivering the Second Reading Speech Hon George Cash MLC indicated that these Acts were to be amended:
- [S]o that the administrative processes laid down in those Acts reflect the principles of the *Land (Titles and Traditional Usage) Act* when it comes into force. The changes will ensure that Aboriginal people claiming traditional usage rights receive procedural fairness...¹¹
- 4.7 Under the Acts that were amended, various licences and permits can be granted in relation to the use of land. The Acts were amended to insert provisions to provide for objection processes based rights of traditional usage when various applications were made under those Acts. For example, under the *Pearling Act 1990*, the Executive Director was to notify the Commissioner for Aboriginal Planning of every application for a farm lease and Aboriginal groups were entitled to object to the issue of that lease on grounds relating to rights of traditional usage.¹²

⁸ Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, November 23 1993, p. 7660.

⁹ *Mabo v Queensland (No 2)* 1 (1992) 175 CLR 1, p. 15.

¹⁰ *Western Australia v Commonwealth; Wororra Peoples & Biljabu v State of Western Australia* (1995) 183 CLR 373, p. 418.

¹¹ Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, November 23 1993, p. 7665.

¹² See sections 32B to 32D which were inserted into the *Pearling Act 1990* by Schedule 1 of the *Land (Titles and Traditional Usage) Act 1993* and then were subsequently repealed.

- 4.8 The *Fish Resources Management Act 1994* was assented to on November 2 1994 and commenced operation on October 1 1995. An objection process similar to that contained in the Acts amended by Schedule 1 of the *Land (Titles and Traditional Usage) Act 1993* was incorporated in Part 14, Division 2 of the *Fish Resources Management Act 1994*.
- 4.9 When the *Fish Resources Management Act 1994* was enacted the Standing Committee on Legislation of the 34th Parliament (“previous Committee”) considered sections 6 and 7 and Parts 10 and 14 of the Act.¹³ The previous Committee considered the interaction between the *Land (Titles and Traditional Usage) Act 1993* and the provisions of the *Native Title Act 1993* (Cth) which commenced operation on January 1 1994. The previous Committee observed that the *Land (Titles and Traditional Usage) Act 1993* appeared to be in direct conflict with the *Native Title Act 1993* (Cth) and the validity of the former had been challenged in the High Court of Australia (“High Court”). The High Court had not handed down judgment when the previous Committee reported to the Legislative Council.¹⁴
- 4.10 The *Land (Titles and Traditional Usage) Act 1993* was declared invalid by the High Court in the judgment of *Western Australia v Commonwealth; Wororra Peoples & Biljabu v State of Western Australia* (1995) 183 CLR 373. The High Court held that the *Land (Titles and Traditional Usage) Act 1993* was inconsistent with the *Racial Discrimination Act 1975* (Cth) and the *Native Title Act 1993* (Cth) and therefore invalid by reason of section 109 of the *Commonwealth of Australia Constitution Act*.¹⁵
- 4.11 Consequently, the *Land (Titles and Traditional Usage) Act 1993* was repealed by the *Acts Amendment and Repeal (Native Title) Act 1995* which was assented to on November 24 1995. That Act also amended the *Public Works Act 1902*, the *Land Act 1933*, the *Mining Act 1978*, the *Mining Amendment Act 1994*, the *Petroleum Act 1967*, the *Petroleum (Submerged Lands) Act 1982*, the *Petroleum Pipelines Act 1969* and the *Pearling Act 1990* to delete the provisions relating to the objection process based on rights of traditional usage. The *Acts Amendment and Repeal (Native Title) Act 1995* did not amend the *Fish Resources Management Act 1994*.

¹³ Standing Committee on Legislation, Parliament of Western Australia, Legislative Council, *Fish Resources Management Act 1994*, Report Number 30, March 22 1994, p. 1. It was the Act and not the Bill that was referred by the Legislative Council to the Committee, see p. 1 of the Report.

¹⁴ Standing Committee on Legislation, Parliament of Western Australia, Legislative Council, *Fish Resources Management Act 1994*, Report Number 30, March 22 1994, p. 3.

¹⁵ *Western Australia v Commonwealth; Wororra Peoples & Biljabu v State of Western Australia* (1995) 183 CLR 373. In particular, see the response of Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh JJ to questions 17 and 18.

Legislative Framework

- 4.12 In order to consider the proposed amendments it is appropriate to outline the relevant parts of the *Fish Resources Management Act 1994*.
- 4.13 The *Fish Resources Management Act 1994* regulates the management of fish resources in Western Australia. Amongst other things, the Act provides for the granting of “authorizations” to undertake activities relating to fish resources. “Authorizations” are defined to mean a “licence” or a “permit”. “Licence” is defined to mean an aquaculture licence, a commercial fishing licence, a fishing boat licence and a fish processor’s licence. “Permit” is defined to mean an interim managed fishery permit and a permit granted under section 80 which relates to fish processing.¹⁶
- 4.14 Part 14, Division 1 relates to objections concerning authorizations and sets out processes by which objections may be dealt with.
- 4.15 Part 14, Division 2 sets out a process for dealing with objections to authorizations based on rights of traditional usage. Within that Division, section 164 provides for the Minister for Fisheries to notify the Commissioner for Aboriginal Planning of applications for aquaculture leases and exclusive licences. The Division then sets out the means by which Aboriginal groups may object to the granting of the lease or licence.
- 4.16 The proposed amendments include provisions for the repeal of Part 14, Division 2. The clause notes to the amendment that proposes to repeal sections 163 to 169 which are in Part 14, Division 2 state:

S164 – 169 contained the procedure by which rights of traditional usage of Aboriginal groups were to be given due weight by the Minister for Fisheries under s101 and s253, which are also to be repealed. Rights of traditional usage were a reflection of the then Government policy on native title and were embodied in the LTTUA, which was declared to be invalid by the High Court and subsequently repealed. A number of Western Australian Acts (for example, the Pearling Act 1990) had been amended to incorporate a procedure similar to s164 – 169 to deal with rights of traditional usage, following the commencement of the LTTUA. These Acts were all amended by the Repeal Act by deleting the provisions concerning rights of traditional usage. It seems likely that due to the timing of the

¹⁶ Section 4 of the *Fish Resources Management Act 1994* contains these definitions.

Repeal Act and passage of the FRMA through Parliament, the provisions of Part 14 Division 2 were overlooked.¹⁷

- 4.17 Based on these clause notes, the Committee understands that the proposed amendments to the *Fish Resources Management Act 1994* would more appropriately have occurred following the repeal of the *Land (Titles and Traditional Usage) Act 1993* by the *Acts Amendment and Repeal (Native Title) Act 1995*.
- 4.18 In this context, the Committee notes that the previous Committee when considering the *Fish Resources Management Act 1994* recommended that:

[A]fter the High Court has delivered its decisions in the cases challenging the validity of the Native Title Act 1993 and the Land (Titles and Traditional Usage) Act 1993, the Fish Resources Management Act 1994 be referred to a Select Committee for the purpose of reviewing the FRMA in the context of native title or rights of traditional usage.¹⁸

- 4.19 A Select Committee was not established.

Proposed Amendments

- 4.20 The principal amendment is that in proposed clause 55(7), which repeals Part 14, Division 2. Proposed clauses 55(2)(b), 55(4), 55(5), 55(6), 55(8) and 55(9) are consequent upon the repeal of that Division.
- 4.21 In relation to the effect of the repeal of this Division, the clause notes state:

In practice the procedure in s164 - 169 did not provide any additional rights to Aboriginal groups beyond the notification and consultation processes afforded by the Native Title Act 1993 and processes such as those in MPG 8 and was an unnecessary layer of administration in the current legislative framework for native title.

It may be argued that the notification and consultation processes under the Native Title Act 1993, MPG 8 and other administrative processes provide a greater measure of respect for the rights of Aboriginal persons and Aboriginal groups since consultation is direct

¹⁷ Clause notes relating to the proposed amendment to the *Fish Resources Management Act 1994* provided in a letter from the Director General of the Department of the Premier and Cabinet dated April 28 2003.

¹⁸ Standing Committee on Legislation, Parliament of Western Australia, Legislative Council, *Fish Resources Management Act 1994*, Report Number 30, March 22 1994, p. 6.

(ie. not through the responsible Minister) and not subject to the same strict time constraints that were imposed in s164 - 169 of the FRMA.¹⁹

- 4.22 In addition to the proposed amendments relating to the repeal of Part 14, Division 2, it is also proposed to amend the definition of “Aboriginal person”. This term is currently defined in section 4 which refers to and relies upon the definition of that term in the repealed *Land (Titles and Traditional Usage) Act 1993*. Proposed clause 55(2)(a) deletes the current definition and replaces it with the following definition:

“Aboriginal person” means a member of the Aboriginal race of Australia.

- 4.23 The clause notes assert that this definition is:

- consistent with the definition in the repealed *Land (Titles and Traditional Usage) Act 1993*;
- consistent with Commonwealth legislation such as the *Native Title Act 1993* (Cth); and
- preferred over the definitions in other Western Australia Acts such as the *Aboriginal Heritage Act 1972*.²⁰

- 4.24 The amendment in proposed clause 55(3) is consequential upon this amendment.

- 4.25 In considering the amendments, the Committee notes that in Report Number 11 in relation to the repeal of the *Timber Industry Regulation Act 1926*, the Committee indicated that it was difficult to ascertain whether the amendment completely satisfied the criteria for inclusion in the Bill.²¹

- 4.26 The Committee is of the view that the same difficulty arises with the amendments in proposed clause 55. The Committee notes that the Bill is intended to be:

[A]n avenue for making general housekeeping amendments to legislation. For this reason it is designed to make only short, non-controversial amendments to various Acts and to repeal Acts that are no longer required...The amendments contained in the Bill do not

¹⁹ Clause notes relating to the proposed amendment to the *Fish Resources Management Act 1994* provided in a letter from the Director General of the Department of the Premier and Cabinet dated April 28 2003.

²⁰ Ibid.

²¹ Standing Committee on Legislation, Parliament of Western Australia, Legislative Council, *Statutes (Repeals and Minor Amendments) Bill 2001*, Report Number 11, March 12 2002, p. 4.

*impose or increase any obligations or adversely affect any existing rights.*²²

4.27 The Committee considers that the processes contained in Part 14, Division 2 of the *Fish Resources Management Act 1994* which are derived from the *Land (Titles and Traditional Usage) Act 1993* and the sections that refer to that Act are redundant because that Act has been repealed. However, the Committee seeks to highlight the following matters that cast doubt on whether the amendments are in fact minor amendments:

- The clause notes to the amendments suggest that the *Native Title Act 1993* (Cth) and Ministerial Policy Guideline 8 in effect “cover the field” in terms of notification and consultation processes for native title claims. However, the Ministerial Policy Guideline may, pursuant to section 246(2) of the *Fish Resources Management Act 1994*, be amended or revoked at any time by the Minister.
- The definition of “Aboriginal person” which is proposed in clause 55 is not consistent with other Western Australian Acts but is consistent with Commonwealth Acts. The clause notes indicate that the Department of Indigenous Affairs has advised that the Western Australian Acts are under review and there is currently no definitive government policy on the matter. The Committee does not have before it material to ascertain whether the representations in relation to the advice from the Department of Indigenous Affairs are correct.

4.28 These matters have caused the Committee to have sufficient doubt as to the effect of the amendments such that it is of the view that the amendments may not be considered to be minor amendments.

4.29 However, because the sections referred to are redundant, the Committee considers that such amendments should be accepted.

Clause 90 - *Parliamentary Commissioner Act 1971*

4.30 Clause 90 of the Bill amends the *Parliamentary Commissioner Act 1971* (“principal Act”). In Report 11, the Committee did not comment on this clause of the Bill. Supplementary Notice Paper Number 31, Issue Number 3 contains additional amendments to be included in clause 90.

4.31 Currently, clause 90 of the Bill makes amendments of a miscellaneous nature to the principal Act. These will be considered in this Report only to the extent that they

²² Hon Kim Chance MLC, Minister for Agriculture, Second Reading Speech, Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, June 28 2001, p. 1537.

affect the additional amendments contained in the Supplementary Notice Paper Number 31, Issue Number 3.

4.32 The amendments in Supplementary Notice Paper Number 31, Issue Number 3 are directed to enabling the Parliamentary Commissioner for Administrative Investigations (“Commissioner”) to second staff from and to other public sector agencies.²³

4.33 The clause notes state that:

That power is sought for 3 main reasons:

- *to give legislative basis to a practice that has been taking place since the inception of the office 30 years ago;*
- *to allow for greater flexibility in staffing arrangements in times of fiscal restraint; and*
- *to enable the movement of staff - particularly between other “accountability agencies” for their professional development and for the benefit of the office in expanding the expertise and experience of its staff.²⁴*

4.34 Currently, the principal Act provides that the office of the Commissioner is to comprise the Commissioner, the Deputy Commissioner, and an Acting Commissioner (when necessary).²⁵ In addition, under section 9 of the principal Act, the Governor may appoint officers on the recommendation of the Commissioner.

4.35 The Committee notes that clause 90(2) of the Bill proposes that section 9 of the principal Act be amended to enable the Commissioner to directly appoint officers. The clause notes to this amendment indicate that it will reduce the administrative work required to gain the Governor’s approval for appointments.²⁶

4.36 As indicated, the amendments in Supplementary Notice Paper Number 31, Issue Number 3 are directed to enabling staff to be seconded to and from the office of the Commissioner. In addition, it is proposed that seconded staff be provided with the

²³ Clause notes relating to the proposed amendments to the *Parliamentary Commissioner Act 1971* provided in a letter from the Director General of the Department of the Premier and Cabinet dated April 28 2003. This purpose is extracted from the clause note to the proposed amendment to clause 9 that relates to “Staff of the Commissioner”. However, a consideration of the entirety of the clause notes reveals that each amendment is directed to facilitating the employment of seconded staff.

²⁴ Ibid.

²⁵ See sections 5 and 7 of the *Parliamentary Commissioner Act 1971*.

²⁶ Clause notes to the Statutes (Repeals and Minor Amendments) Bill 2001.

same powers, obligations and immunities that apply to officers of the Parliamentary Commissioner.

- 4.37 The amendments directed to achieving these aims will be briefly addressed.

Seconding staff

- 4.38 In order to enable staff to be seconded to and from the office of the Commissioner, it is proposed to amend section 4 of the principal Act to insert a definition of “staff” that includes officers of the Commissioner and persons whose services are used under section 9(2a). Further, it is proposed to amend section 9 by inserting new section 9(2a) and new sections 9(4) and 9(5) which enable the Commissioner to make use of the services of employees of other public sector agencies and for officers of the Commissioner to be seconded to other public sector agencies.

- 4.39 Pursuant to section 11 of the principal Act, “[i]n so far as he is authorised so to do by Rules of Parliament made under this Act, or a resolution of both Houses of Parliament” the Commissioner may delegate functions to the Deputy Commissioner or any “officer of the Commissioner”. It is proposed to amend section 11(1) to replace the reference to “officer of the Commissioner” with “member of the Commissioner’s staff”. Given the new definition of staff proposed to be inserted in section 4, this amendment would extend section 11 of the principal Act to seconded staff.

- 4.40 The Committee notes that the ability of the Commissioner to delegate functions is determined by Rules of Parliament made under the Act or a resolution of both Houses of Parliament. Currently, rule 3 of the *Parliamentary Commissioner Rules 1998* provides that:

For the purposes of section 11(1) of the Act, the Commissioner is authorized to delegate the performance of any of the functions of the Commissioner under the Act, other than the power to delegate under section 11 or to make any report or recommendation under the Act, to the Deputy Commissioner, the Assistant Commissioner or a special officer of the Commissioner.

- 4.41 Rule 2 defines “special officer” to mean an investigating officer, a legal officer or any other officer of the Commissioner occupying a position not lower in classification than an investigating officer or a legal officer. This definition is limited to “officers of the Commissioner” and does not appear to encompass seconded staff. Therefore, the Committee notes that if it is intended that the Commissioner will delegate functions to seconded staff, it may be that an amendment to the *Parliamentary Commissioner Rules 1998* will also be required.

Powers, obligations and immunities

- 4.42 There are a number of proposed amendments directed to providing seconded staff with the same powers, obligations and immunities of officers of the Commissioner.²⁷
- 4.43 It is proposed to extend to seconded staff the obligation of officers (as contained in section 9(3) of the principal Act) to take an oath or affirmation that (except in accordance with the Act) they will not divulge any information received under the Act. It is also proposed to extend the secrecy obligations in section 23 of the principal Act to seconded staff. This section prevents the disclosure of information obtained by the Commissioner or officers in conducting investigations except in specified circumstances.
- 4.44 In relation to the powers of officers of the Commissioner, it is proposed to extend to seconded staff the ability under section 22A to consult with the Anti-Corruption Commission, the Inspector of Custodial Services or the Director of Public Prosecutions concerning any complaint or investigation under the principal Act. It is also proposed to extend to seconded staff the ability under section 22B to disclose information obtained during an investigation to the Anti-Corruption Commission, the Inspector of Custodial Services or the Director of Public Prosecutions.
- 4.45 In relation to the immunities that apply to officers of the Commissioner, section 23A of the principal Act provides that documents sent to or by the Commissioner or his officers which are prepared for the purposes of an investigation are privileged and not admissible in any proceedings other than proceedings for perjury or any offence under the *Royal Commissions Act 1968* or under the principal Act. It is proposed that this section be amended to extend to seconded staff. In addition, section 30 provides specific immunity from civil or criminal proceedings for the Commissioner and officers of the Commissioner. It is proposed that this section be amended to extend to seconded staff.
- 4.46 The Committee has considered the proposed amendments to the principal Act set out in Supplementary Notice Paper Number 31, Issue Number 3 and the impetus for the amendments. The Committee is of the view that the proposed amendments are appropriate. The Committee's view is reinforced by the fact that the proposed amendments will require seconded staff to take an oath or affirmation not to divulge any information received and such staff will also be bound by the secrecy provisions in section 23 of the principal Act.

²⁷ In relation to each of the amendments discussed in this section it is noted that they are also to be amended to include a reference to the Deputy Commissioner. The clause notes indicate that the omission of a reference to the Deputy Commissioner is an anomaly.

Clause 117 - Tobacco Control Act 1990

- 4.47 Supplementary Notice Paper Number 31, Issue Number 3 proposes that clause 117 of the Bill be amended.
- 4.48 In Report 11, the Committee considered clause 117. The clause notes to the proposed amendment to clause 117 refer to the Committee's views on this clause and therefore it is appropriate to set out the Committee's observations from that Report:

3.27 *Clause 117 of the Bill amends the Tobacco Control Act 1990 (TCA Act). The TCA Act establishes the Western Australian Health Promotion Foundation (WAHPF), and contains provisions relating to its Constitution, membership, objectives, powers, staff and funds. The WAHPF consists of 11 members, is a body corporate and an agency of the Crown. The functions of the WAHPF include the provision of funds and provision of grants in relation to health promotion, programs and research.*

3.28 *The Schedule to the TCA Act contains further provisions relating to the WAHPF, including provisions relating to Meetings and procedure (clause 2). Currently, clause 2 of the Schedule states:*

2. Meetings and procedure:

(1) Five members constitute a quorum of the Foundation.

(2) A decision carried by the votes of a majority of the members present at a meeting of the Foundation is a decision of the Foundation.

(3) Each member present at a meeting of the Foundation is entitled to one vote on a matter arising for determination at that meeting and the presiding member has, in the event of an equality of votes, a second or casting vote.

(4) The Foundation shall cause accurate minutes to be kept of its proceedings.

(5) Subject to this Act, the business of the Foundation may be conducted in a manner determined by the Foundation.

- 3.29 *Clause 117 of the Bill amends clause 2 of the Schedule to the TCA Act, by inserting two additional subclauses:*

(6) A decision in writing signed or assented to by at least 5 members by letter, facsimile or other written means is as effectual as if it had been passed at a meeting of the Foundation.

(7) A communication between a majority of the members by telephone, audio-visual or other electronic means is a valid meeting of the Foundation if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings.

- 3.30 *The amendment provides that the WAHPF may make decisions in writing if it is signed or assented to by at least five members, and conduct valid meetings using electronic/audio means, such that a participating member's physical presence in a meeting room is not required. That is, the amendments enable decisions to be made other than in face-to-face meetings of the WAHPF.*

- 3.31 *The Committee is of the view that the amendment is not a minor amendment. The insertion of new subclauses (6) and (7), is a substantive change to the decision making process of the WAHPF. The Committee is not opposed to the idea, in principle, that decisions of the WAHPF may be validated through means other than in a face to face meeting, that is, by way of a signed and assented to written form. The Committee is of the view, however, that if a decision of the WAHPF is to be validated in this manner, then the decision should be assented to in writing by all members not just by a quorum.*

- 4.49 The amendment to clause 117 proposed in the Supplementary Notice Paper Number 31, Issue Number 3 is to delete the number "5" and insert instead the number "9" in proposed clause 2(6) of the Schedule to the *Tobacco Control Act 1990*. This would allow a written decision making process to occur when nine of the 11 members of the Western Australian Health Promotion Foundation ("WAHPF") sign or assent to a decision.

- 4.50 The clause notes to this proposed amendment, state that:

The amendment...increases from 5 to at least 9 (out of 11) the number of members required to effect a decision of the Board in writing. This means that the support of the vast majority of Board members would be required in order to make a decision by facsimile or other written means, whilst also allowing for the practical problem that it may not be possible to contact all members at any given time (eg overseas travel).

- 4.51 This proposed amendment does not adopt the recommendation of the Committee that all members must sign or assent to a decision in writing.
- 4.52 The Committee appreciates the practical advantages of the requirement for nine out of 11 members to sign or assent to decisions in writing. However, the Committee observes that the written decision making process is designed to “...enable decisions to be taken by members of the Western Australian Health Promotion Foundation (*“The Foundation”*) other than in face-to-face meetings of the Foundation.”²⁸ It follows that, where deemed necessary by the WAHPF, it will replace a formal meeting process.
- 4.53 The proposed written decision making process relies upon the assumption that, as with a formal meeting, all members will be notified of the proposed decision. The Committee is concerned to ensure that there is no potential for members of the WAHPF to be excluded from the written decision making process through a lack of notification.
- 4.54 The meeting processes of the WAHPF are regulated by clause 2 of the Schedule to the *Tobacco Control Act 1990*. This clause is entitled “Meeting and procedure”. Currently, this clause only provides for face to face meetings of the WAHPF and there is no notification process in relation these meetings. The amendments in the Bill to include new clauses 2(6) and (7) propose two new decision making processes namely, an electronic meeting (clause 2(7)) and a written decision making process (clause 2(6)). The amendments creating these meeting processes do not incorporate a notification process. However, the Committee notes that clause 2(5) provides that subject to the Act, the business of the WAHPF may be conducted in a manner determined by the WAHPF. As a result, it may be that the WAHPF regulates its meeting processes with a greater degree of particularity than that provided for in the Schedule to the *Tobacco Control Act 1990*. However, the Committee has seen no evidence to support or dispute this.
- 4.55 As neither clause 2 of the *Tobacco Control Act 1990* nor the proposed amendments to that clause provide for members to be notified of the written decision making process,

²⁸ Clause notes relating to the proposed amendment to the *Tobacco Control Act 1990* provided in a letter from the Director General of the Department of the Premier and Cabinet dated April 28 2003.

the Committee remains of the view, as expressed in Report Number 11, that the written decision making process is only appropriate if all members sign or assent to the decision. Therefore, the Committee does not support the proposed amendment to clause 117 of the Bill and in relation to clause 117 of the Bill refers to recommendations 1 and 2 of Report Number 11.

Recommendation 1: The Committee recommends that proposed amendment 13/117 on Supplementary Notice Paper Number 31, Issue Number 3 not be supported.

New clause 25 - *Agriculture and Related Resources Protection Act 1976*

- 4.56 New clause 25 in Supplementary Notice Paper Number 31, Issue Number 3 proposes that a new clause be inserted in the Bill as follows:

25. *Agriculture and Related Resources Protection Act 1976 amended*

Section 7(1) of the Agriculture and Related Resources Protection Act 1976 is amended in the definition of “Protection Board” after “Agriculture Protection Board” by inserting -

“ of Western Australia ”.

- 4.57 The clause notes to the proposed amendment state that it is intended to:

[I]nset a new clause in the Bill to insert missing words for consistency with the amendment being made by the Bill to the definition of the same term (“Protection Board”) in the Agriculture Protection Board Act 1950 (see pre-existing clause 25).²⁹

- 4.58 As the clause notes indicate, clause 25 of the Bill amends the definition of “Protection Board” in section 3 of the *Agriculture Protection Board Act 1950*. This currently reads:

“Protection Board” means *The Agriculture Protection Board constituted under the provisions of this Act;*

- 4.59 Clause 25 of the Bill inserts the words “...of Western Australia” after the words “...Agriculture Protection Board.”

²⁹ Clause notes relating to the proposed amendment to the *Agriculture and Related Resources Protection Act 1976* provided in a letter from the Director General of the Department of the Premier and Cabinet dated April 28 2003.

- 4.60 New clause 25 proposes that the same amendment be made to the definition of “Protection Board” in section 7 of the *Agriculture and Related Resources Protection Act 1976*. This reads:

“Protection Board” means the Agriculture Protection Board constituted under the provisions of the *Agriculture Protection Board Act 1950*;

- 4.61 It is clear that this definition is linked to the *Agriculture Protection Board Act 1950*. In addition, section 4(2) of the *Agriculture and Related Resources Protection Act 1976* provides that the Act shall be construed in conjunction with the *Agriculture Protection Board Act 1950* as if that Act had been incorporated with and formed part of the Act. If the provisions of the Act are in conflict or inconsistent with those of the *Agriculture Protection Board Act 1950*, the provisions of the latter shall, to the extent of the conflict or inconsistency, prevail.
- 4.62 Given the linkages between the two Acts, the Committee considers that the proposed amendment, as contained in clause 25 of Supplementary Notice Paper Number 31, Issue Number 3, is appropriate.

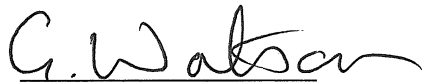
5 CLAUSE 20 OF THE BILL - *TIMBER INDUSTRY REGULATION ACT 1926*

- 5.1 In Report Number 11, the Committee considered clause 20 of the Bill which repeals the *Timber Industry Regulation Act 1926*. The Committee endorsed the repeal of the Act but noted that it was difficult to ascertain whether the amendment satisfied the criteria for inclusion in the Bill.
- 5.2 In considering the repeal of the *Timber Industry Regulation Act 1926*, the Committee observed that the clause notes indicated that following the repeal of that Act the timber industry would be regulated by the *Occupational Safety and Health Act 1984* and an Industry Code of Practice developed by the Forest Industries Federation (WA) Inc. The subcommittee for that inquiry sought confirmation from the Forest Industries Federation (WA) Inc as to whether the industry code of practice for logging was in place. In February 2002, the Forest Industries Federation (WA) Inc advised the subcommittee that an industry code of practice for logging was in place but only a draft code of practice had been produced for milling. They further indicated that it was hoped that it would be finalised within the next three months.³⁰
- 5.3 In light of the referral of the Bill back to the Committee, the subcommittee wrote to the Executive Director of the Forest Industries Federation (WA) Inc on May 26 2003 in order to ascertain whether the code of practice for the milling industry had been finalised.

³⁰ Standing Committee on Legislation, Parliament of Western Australia, Legislative Council, *Statutes (Repeals and Minor Amendments) Bill 2001*, Report Number 11, March 12 2002, p. 3.

- 5.4 In a letter dated May 30 2003, the Executive Director advised the subcommittee that the Milling Occupational Health and Safety Code has been recently finalised and is currently being prepared for publication.

Recommendation 2: Subject to recommendation 1, the Committee recommends that the proposed amendments on Supplementary Notice Paper Number 31, Issue Number 3 be supported.



**Hon Giz Watson MLC
Deputy Chairman**

Date: June 9 2003

APPENDIX 1

CLAUSE NOTES

APPENDIX 1

CLAUSE NOTES

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
|--|--|--|
| <p>4. Interpretation</p> <p>(1) In this Act, unless the contrary intention appears –</p> <p>“Aboriginal person” has the same meaning as in the <i>Land (Titles and Traditional Usage) Act 1993</i></p> | <p>4. Interpretation</p> <p>(1) In this Act, unless the contrary intention appears –</p> <p>“Aboriginal person” has the same meaning as in the <i>Land (Titles and Traditional Usage) Act 1993</i>. “Aboriginal person” means a member of the Aboriginal race of Australia.</p> | <p>Aboriginal person” was defined in s3 of the now repealed <i>Land (Titles and Traditional Usage) Act 1993</i> (LTTUA) to mean:</p> <p>“....a member of the Aboriginal race of Australia.”</p> <p>The proposed amendment is consistent with the provision in the repealed LTTUA. It is also consistent with Commonwealth legislation such as the <i>Native Title Act 1993</i>, the <i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> and the <i>Aboriginal and Torres Strait Islander Commission Act 1989</i>.</p> <p>The proposed amendment is preferred over definitions in other Western Australian Acts [<i>Aboriginal Heritage Act 1972</i>, <i>Aboriginal Communities Act 1979</i> and <i>Aboriginal Affairs Planning Authority Act 1972</i>]. The Department of Indigenous Affairs has advised that the Western Australian Acts are under review and that there is currently no definitive government policy on the matter.</p> <p>A definition of “Aboriginal person” is required as reference is made to such person in other places in the <i>Fish Resources Management Act 1994</i> (FRMA) (See for example s6 of the FRMA - Application of Act to Aboriginal persons)</p> |

NAME OF ACT BEING AMENDED: *Fish Resources Management Act 1994*

Clause No 55

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
|---|---|--|
| <p>“rights of traditional usage” has the same meaning as in the <i>Land (Titles and Traditional Usage) Act 1993</i>²:</p> | <p>“rights-of-traditional-usage” has the same meaning as in the <i>Land (Titles and Traditional Usage) Act 1993</i></p> | <p>This phrase is used a number of times in ss163 –169 of the FRMA which are to be repealed. See below for explanation why those sections are to be repealed and therefore why this phrase is redundant.</p> |
| <p>33. Recreational Fishing Advisory Committee (2) The Advisory Committee is to consist of 15 persons of whom:</p> <p>i) one is to be a person of Aboriginal descent, appointed by the Minister who in the Minister's opinion represents the interests of Aboriginal people.</p> | <p>33. Recreational Fishing Advisory Committee (2) The Advisory Committee is to consist of 15 persons of whom:</p> <p>i) one is to be a person of Aboriginal descent an Aboriginal person appointed by the Minister who in the Minister's opinion represents the interests of Aboriginal people.</p> | <p>This amendment is sought to remove any ambiguity created by the phrase “person of Aboriginal descent” by replacing it with the expression “Aboriginal person” as defined in s4 (above).</p> |

NAME OF ACT BEING AMENDED: *Fish Resources Management Act 1994*

Clause No

55

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
|---|--------------------------------|--|
| <p>101. Prerequisite to grant of lease</p> <p>(1) The Minister must not grant an aquaculture lease unless</p> <p>(a) no notice of objection has been lodged under section 166; or</p> <p>(b) the responsible Minister, as defined in section 163, has given his or her advice or recommendation under section 168 to the Minister.</p> <p>(2) In considering an application for an aquaculture lease the Minister must give due weight to, but is not bound to accept, any recommendation or advice of the responsible Minister under section 168.</p> | <p>Section 101 is repealed</p> | <p>This section is to be repealed because it became redundant when the LTTUA was declared invalid by the High Court in <i>Western Australia v Commonwealth</i> (1995) 183 CLR 373 and repealed by the <i>Acts Amendment and Repeal (Native Title Act 1995 (Repeal Act))</i>.</p> <p>The section was dependent for its effective operation on the interpretation section and procedure contained in s163 – 169 which are also to be repealed as they were based on the invalid LTTUA. Processes under s24HA of the <i>Native Title Act 1993</i> and, for example, the Minister for Fisheries' Ministerial Policy Guideline No 8 – Assessment of Applications for Authorisations for Aquaculture and Pearling in coastal waters of Western Australia (MPG 8) ensure that the Minister notifies interested Aboriginal groups about the aquaculture lease application and provide for appropriate levels of consultation before the Minister makes a decision to grant or refuse the application. A copy of MPG 8 is attached.</p> |

NAME OF ACT BEING AMENDED: *Fish Resources Management Act 1994*

Clause No 55

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
|---|--|---|
| <p>Part 14 – Objections</p> <p>Division 1 – Objections to decisions concerning authorizations</p> | <p>The Heading to Part 14 Division 1 is repealed</p> | <p>Part 14 of the FRMA is currently divided into 2 divisions. Division 1 concerns Objections to proposed decisions of the Executive Director relating to Fishing Boat Licences, Aquaculture Licences, Fish Processing Licences and permits for fish processing establishments, among other things. Division 2 concerns Objections by Aboriginal groups, based on rights of traditional usage, to applications made to the Minister for Fisheries by persons for the grant of an aquaculture lease under</p> |

NAME OF ACT BEING AMENDED: *Fish Resources Management Act 1994*

Clause No 55

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
|---|--|--|
| | | s97 or an exclusive licence under s251 of the FRMA. Division 2 is to be repealed in total for the reasons given opposite s163 169 below. Division 1 becomes Part 14 and the Heading to Part 14 Division 1 becomes redundant. |
| 146. Meaning of “affected person” In this Division ... | 146. Meaning of “affected person” In this Division <u>Part</u> ... | As the effect of the preceding amendment is that there will be no ‘Divisions’ of Part 14, the word ‘Division’ is redundant and the word ‘Part’ is substituted. |
| 147. Executive Director to notify persons of certain proposals (1) Before – a) refusing to grant an authorization; ... the Executive Director must; ... (g) give the person the opportunity to object to the proposal under this Division. | 147. Executive Director to notify persons of certain proposals (1) Before – a) refusing to grant an authorization; ... the Executive Director must; ... (g) give the person the opportunity to object to the proposal under this Division <u>Part</u> . | The word “Part” is substituted for the word “Division” for the reason given opposite s146 above. |
| 148. Executive Director to publish notice of certain proposals (1) Before granting, varying or transferring (a) a permit ... | 148. Executive Director to publish notice of certain proposals (1) Before granting, varying or transferring (a) a permit ... | The word “Part” is substituted for the word “Division” for the reason given opposite s146 above. |

NAME OF ACT BEING AMENDED: *Fish Resources Management Act 1994*

Clause No

55

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
|---|---|--|
| the Executive Director must ... (e) give affected persons the opportunity to object to the proposal under this Division. | the Executive Director must ... (e) give affected persons the opportunity to object to the proposal under this Division <u>Part</u> . | |
| 162. Regulations relating to tribunals (1) The regulations may provide for any matter necessary or convenient to give effect to this Division. (2) Without limiting subsection (1), the regulations may: ... (c) prescribe fees payable in respect of anything done under this Division. | 162. Regulations relating to tribunals (1) The regulations may provide for any matter necessary or convenient to give effect to this Division <u>Part</u> . (2) Without limiting subsection (1), the regulations may: ... (c) prescribe fees payable in respect of anything done under this Division <u>Part</u> . | The word "Part" is substituted for the word "Division" for the reason given opposite s146 above. |
| Part 14 – Objections Division 2 – Objections based on rights of traditional usage | Division 2 (sections 163-169) is repealed | S163 – 169 of the FRMA contained a discrete interpretation section (s163) and procedure to be followed to give recognition to Aboriginal groups' rights of traditional usage, as those terms were defined in the invalid and repealed LTTUA, as a prerequisite to the Minister for Fisheries granting an aquaculture lease (s101) or exclusive licence (s253). Refer further comments below. |

NAME OF ACT BEING AMENDED: *Fish Resources Management Act 1994*

Clause No

55

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
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| <p>163. Interpretation In this Division, unless the contrary intention appears –</p> <p>“Aboriginal group” has the same meaning as in the <i>Land (Titles and Traditional Usage) Act 1993</i></p> <p>“Commissioner” means the Commissioner for Aboriginal Planning referred to in section 10 of the <i>Aboriginal Affairs Planning Authority Act 1972</i>;</p> <p>“Minister for Fisheries” means the Minister to whom the administration of this Act is for the time being committed by the Governor;</p> <p>“responsible Minister” means the Minister to whom the administration of the <i>Land (Titles and Traditional Usage) Act 1993</i> is for the time being committed by the Governor.</p> | | <p>S163 was the interpretation section for Division 2. The words and phrases defined in s163 have no relevance once s101, s164 –169 and s253 are repealed, because they refer to expressions as defined in the LTTUA. Crown Solicitor’s Office has advised that whilst some of the phrases in s163 [<i>rights of traditional usage, responsible Minister and Aboriginal group</i>] are problematical to interpret, due to the invalidity and repeal of the LTTUA, as a general principle the courts have pointed out that they are not at liberty to consider any word or sentence as superfluous or insignificant. All words (and phrases) must prima facie be given some meaning and effect. A court will attempt to give the words the meaning “that produces the greatest harmony and least inconsistency”. Notwithstanding that a court will strive to give meaning to the phrases and thereby enable s163 –169 to be applied, Crown Solicitor’s Office has recommended that Part 14 Division 2 be repealed in its entirety as soon as possible.</p> |

NAME OF ACT BEING AMENDED: *Fish Resources Management Act 1994*

Clause No 55

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
|---|------------|--|
| <p>164. Notice to Commissioner of Aboriginal Planning in certain cases</p> <p>(1) The Minister must cause notice of every application for an aquaculture lease or an exclusive licence to be given to the Commissioner within 14 days of the application being made.</p> <p>(2) Notice may be given by posting a copy of the application by certified mail to the Commissioner in Perth.</p> <p>(3) The notice is to be accompanied by a map of the area in respect of which the aquaculture lease or exclusive licence is sought.</p> <p>(4) The map is to contain such information as is prescribed.</p> | | <p>S164 –169 contained the procedure by which <i>rights of traditional usage</i> of <i>Aboriginal groups</i> were to be given due weight by the Minister for Fisheries under s101 and s253, which are also to be repealed. <i>Rights of traditional usage</i> were a reflection of the then Government policy on native title and were embodied in the LTTUA, which was declared to be invalid by the High Court and subsequently repealed. A number of Western Australian Acts (for example, the <i>Pearling Act 1990</i>) had been amended to incorporate a procedure similar to s164 - 169 to deal with <i>rights of traditional usage</i>, following the commencement of the LTTUA. These Acts were all amended by the Repeal Act by deleting the provisions concerning <i>rights of traditional usage</i>. It seems likely that due to the timing of the Repeal Act and passage of the FRMA through Parliament, the provisions of Part 14 Division 2 were overlooked.</p> |
| <p>165. Commissioner to inform Aboriginal groups</p> <p>(1) If the Commissioner receives notice under section 164 the Commissioner must</p> <p>(a) consider whether any Aboriginal group may have rights of traditional usage in relation to the area and</p> <p>(b) if the Commissioner considers any Aboriginal group may have such rights, send a copy of the application in whatever way the Commissioner thinks appropriate to the group or such representatives of that group</p> | | <p>In practice the procedure in s164 –169 did not provide any additional rights to Aboriginal groups beyond the notification and consultation processes afforded by the <i>Native Title Act 1993</i> and processes such as those in MPG 8 and was an unnecessary layer of administration in the</p> |

NAME OF ACT BEING AMENDED: *Fish Resources Management Act 1994*

Clause No 55

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
|--|------------|--|
| <p>as the Commissioner thinks fit.</p> <p>(2) The duty imposed by subsection (1) must be performed within 14 days after the day on which notice under section 164(1) is received by the Commissioner.</p> <p>166. Notice of objection may be lodged</p> <p>(1) Any Aboriginal group that objects to the grant of an aquaculture lease or an exclusive licence (as the case may be), on grounds relating to rights of traditional usage, may lodge a notice of objection in the prescribed manner at the office of the responsible Minister.</p> <p>(2) Any such notice must be lodged within the prescribed period which may be different for different parts of the State, but must in no case end more than 42 days after the day on which a copy of the application was sent to the group under section 165.</p> <p>(3) A group that lodges a notice of objection must forthwith give a copy of the notice to the applicant.</p> <p>167. Contents of notice</p> | | <p>current legislative framework for native title.</p> <p>It may be argued that the notification and consultation processes under the <i>Native Title Act 1993</i>, MPG 8 and other administrative processes provide a greater measure of respect for the rights of <i>Aboriginal persons</i> and <i>Aboriginal groups</i> since consultation is direct (ie. not through the <i>responsible Minister</i>) and not subject to the same strict time constraints that were imposed in s164–169 of the FRMA.</p> |

NAME OF ACT BEING AMENDED: *Fish Resources Management Act 1994*

Clause No

55

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
|---|------------|-------------|
| <p>A notice of objection must include</p> <p>(a) a description of the Aboriginal group with sufficient particularity to enable the members to be identified;</p> <p>(b) a map of the area in respect of which rights of traditional usage are claimed;</p> <p>(c) particulars of the rights of traditional usage claimed;</p> <p>(d) a statement of the manner in which the aquaculture lease or exclusive licence(as the case may be) applied for may interfere with the claimed rights of traditional usage;</p> <p>(e) the names of members of the group or other persons who are authorized to represent and Act on behalf of the group; and</p> <p>(f) such other particulars as may be prescribed.</p> <p>168. Action to be taken by responsible Minister</p> <p>(1) If an Aboriginal group</p> <p>(a) has lodged a notice of objection and</p> <p>(b) appears to the responsible Minister to have a <i>bona fide</i> claim to rights of traditional usage,</p> <p>the responsible Minister must consult with that group in a way, and by the agency of persons, that the Minister thinks appropriate to the customs, traditions and other</p> | | |

Clause No 55

NAME OF ACT BEING AMENDED: Fish Resources Management Act 1994

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
|--|------------|-------------|
| <p>circumstances of the group; and</p> <p>(d) give such weight as the Minister thinks fit to the information so obtained.</p> <p>(2) The responsible Minister, within 3 months after the end of the prescribed period under section 166(2), must either;</p> <p>(a) advise the Minister for Fisheries that, so far as rights of traditional usage claimed in a notice of objection are concerned, there is no reason why an aquaculture lease or an exclusive licence (as the case may be) should not be granted either with or without conditions specified by the responsible Minister; or</p> <p>(b) recommend to the Minister for Fisheries that, on grounds relating to the rights of traditional usage claimed in a notice of objection, the aquaculture lease or exclusive licence should not be granted.</p> <p>(3) Any advice or recommendation of the responsible Minister is not liable to be challenged, reviewed or called in question by a court on account of anything which the responsible Minister has done or failed to do for the purposes of this section</p> <p>(4) The Minister for Fisheries may by notice in writing to the responsible</p> | | |

NAME OF ACT BEING AMENDED: *Fish Resources Management Act 1994*

Clause No

55

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
|---|------------|-------------|
| <p>Minister declare that a period shorter than 3 months applies for the purposes of subsection (2) in the case of a specified application, and any such substituted period applies accordingly.</p> <p>169. Right of applicant to make submissions</p> <p>If the Minister for Fisheries proposes –</p> <p>(a) to refuse to grant an aquaculture lease or an exclusive licence; or</p> <p>(b) to attach any condition to an aquaculture lease or an exclusive licence,</p> <p>on grounds relating to rights of traditional usage claimed in a notice of objection, the Minister must notify the applicant of, and give the applicant an opportunity to make submissions on, the proposal.</p> | | |

Clause No 55

NAME OF ACT BEING AMENDED: *Fish Resources Management Act 1994*

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
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| <p>Part 18 Financial Provisions Division 2 – Fund 5</p> <p>238. Fisheries Research and Development Fund (5) The Fund may be applied by the Minister for all or any of the following purposes: ... (m) in payment of any administrative costs under Division 1 of Part 14;</p> | <p>238. Fisheries Research and Development Fund (5) The Fund may be applied by the Minister for all or any of the following purposes: ... (m) in payment of any administrative costs under Division 1 of Part 14;</p> | <p>Part 14 has no Divisions following the repeal of Division 2.</p> |
| <p>Part 19 – Miscellaneous</p> <p>253. Prerequisite to grant of exclusive licence (1) The Minister must not grant an exclusive licence unless (a) no objection has been lodged under section 166 or (b) the responsible Minister, as defined in section 163, has given his or her advice or recommendation under section 168 to the Minister. (2) In considering an application for an exclusive licence the Minister must give due weight to, but is not bound to accept, any recommendation or advice of the responsible Minister under section 168.</p> | <p>Repealed</p> | <p>This section is to be repealed because its provisions became redundant when the High Court declared the LTTUA to be invalid and the LTTUA was repealed. The section was dependent for its effective operation on the interpretation section and procedure contained in s163 - 169 which are to be repealed. Processes under the <i>Native Title Act 1993</i> ensure that the Minister notifies interested Aboriginal groups about the application for an exclusive licence and provide for appropriate levels of consultation before the Minister makes a decision to grant or refuse the application.</p> |

NAME OF ACT BEING AMENDED: *Fish Resources Management Act 1994*

Clause No 55

Section

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
|-----------------------|---|---|
| 4. Definitions | <p>“staff”, in relation to the Commissioner, means officers of the Commissioner and persons whose services are used under section 9(2a);</p> | <p>The amendment is sought to insert a definition of “staff” to enable seconded officers to carry out their work by:</p> <ul style="list-style-type: none"> • ensuring that officers seconded to the Parliamentary Commissioner’s office from other public sector agencies have the same protections that appointed officers have under the Act; • ensuring that seconded officers are bound by the obligations imposed on appointed officers by the Act (eg confidentiality requirements); and • enabling the Parliamentary Commissioner to delegate to seconded officers the performance of any of the functions of the Parliamentary Commissioner to the extent that those powers can be delegated to appointed officers. |

NAME OF ACT BEING AMENDED: *Parliamentary Commissioner Act 1971*

CLAUSE NO. 90

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| <p>9. Staff of the Commissioner</p> <p>(1) The Governor may, on the recommendation of the Commissioner, appoint such officers as he considers necessary for the purpose of enabling the functions of the Commissioner properly to be carried out.</p> <p>(2) Subject to this Act, the terms and conditions of service of officers of the Commissioner shall be such as the Governor determines.</p> <p>(3) An officer of the Commissioner shall, before he commences his duties as such, take an oath or affirmation, to be administered by the Commissioner, that, except in accordance with this Act, he will not divulge any information received by him under this Act.</p> | <p>9. Staff of the Commissioner</p> <p>(1) The Governor may, on the recommendation of the Commissioner, appoint such officers as he considers necessary for the purpose of enabling the functions of the Commissioner properly to be carried out.</p> <p>(2) Subject to this Act, the terms and conditions of service of officers of the Commissioner shall be such as the Governor determines.</p> <p><i>[the amendments to section 9(1) & (2) are already contained in the Bill and are not altered by the amendments in committee]</i></p> <p>(2a) The Commissioner may by arrangement with the employing authority of the officer or employee, make use, either full-time or part-time, of the services of any officer or employee employed in the Public Service or in a State instrumentality or otherwise in the service of the Crown in right of the</p> | <p>The proposed s.9(2a) and (4) are sought to enable the Ombudsman to second staff from and to other public sector agencies. That power is sought for 3 main reasons:</p> <ul style="list-style-type: none"> • to give legislative basis to a practice that has been taking place since the inception of the office 30 years ago; • to allow for greater flexibility in staffing arrangements in times of fiscal restraint; and • to enable the movement of staff – particularly between other “accountability agencies” for their professional development and for the |
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NAME OF ACT BEING AMENDED: *Parliamentary Commissioner Act 1971*

CLAUSE NO. 90

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| | <p>service of the Crown in right of the State.</p> <p>(3) <u>An officer of the Commissioner A member of the Commissioner's staff shall, before he commences his duties as such, take an oath or affirmation, to be administered by the Commissioner, that, except in accordance with this Act, he will not divulge any information received by him under this Act.</u></p> <p>4) <u>The Commissioner may by arrangement with an employing authority, State instrumentality or other statutory office holder, agree to that authority, instrumentality or office holder making use, either full-time or part-time, of the services of any officer of the Commissioner.</u></p> <p>(5) <u>In this section —</u></p> <p><u>"employing authority"</u> means an employing authority within the meaning of the <i>Public Sector Management Act 1994</i>.</p> | benefit of the office in expanding the expertise and experience of its staff. |
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| <p>10. Supplementary provisions as to Commissioner and other officers</p> <p>(5) Where a Commissioner or Deputy Commissioner immediately prior to his appointment occupied an office under Part 3 of the <i>Public Sector Management Act 1994</i>, he shall, if his term of office expires by effluxion of time and he is not reappointed, be entitled to be appointed to an office under Part 3 of the <i>Public Sector Management Act 1994</i>, not lower in status than the office which he occupied immediately prior to his appointment as Commissioner or Deputy Commissioner, as the case requires.</p> | <p>10. Supplementary provisions as to Commissioner and other officers</p> <p>(5) Where a Commissioner or Deputy Commissioner immediately prior to his appointment <u>Where —</u> <u>(a) the Commissioner or Deputy Commissioner; or</u> <u>(b) an officer of the Commissioner who is appointed for a fixed term, immediately prior to his appointment under this Act,</u> occupied an office under Part 3 of the <i>Public Sector Management Act 1994</i> for an indefinite period as a permanent officer, he shall, if his term of office expires by effluxion of time and he is not reappointed, be entitled to be appointed to an office under Part 3 of the <i>Public Sector Management Act 1994</i>, not lower in status than the office which he occupied immediately prior to his appointment as Commissioner or Deputy Commissioner, <u>Deputy Commissioner, Deputy Commissioner or officer of the Commissioner, [this amendment already contained in the Bill]</u> as the case requires.</p> | <p>Section 10(3) provides for the retention of all existing rights and accruing rights of staff appointed to the Parliamentary Commissioner's Office from the public service and s.10(4) provides that service in the Parliamentary Commissioner's Office is regarded as continuing service when determining the rights of staff who return to the Public Service. However, currently only the Parliamentary Commissioner and Deputy Parliamentary Commissioner are able to transfer back to employment under Part 3 of the Public Sector Management Act 1994, if they were so employed prior to appointment with the Office of the Parliamentary Commissioner. This amendment makes the provision apply to all staff who relinquish a permanent Public Service position to take up a fixed-term appointment with the Parliamentary Commissioner. It will not apply to those officers who leave a fixed-term appointment in the Public Sector or to those officers who are given a permanent appointment in the Parliamentary Commissioner's Office. Its purpose is to encourage the mobility clearly contemplated by s.10(3) and (4) and</p> |
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| | <p>(6) Subsection (5) applies to an officer of the Commissioner irrespective of whether the officer was appointed before or after the day on which subsection (5)(b) commenced.</p> | allow greater flexibility in staffing and will give legislative basis to the practice that has been occurring, in effect, since the inception of the office 30 years ago. |
| <p>11. Delegation of functions of Commissioner</p> <p>(1) In so far as he is authorised so to do by Rules of Parliament made under this Act, or a resolution of both Houses of Parliament the Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate to the Deputy Commissioner or any officer of the Commissioner the performance of any of the functions of the Commissioner under this Act other than the power to delegate under this section or to report or recommendation under this Act.</p> | <p>11. Delegation of functions of Commissioner</p> <p>(1) In so far as he is authorised so to do by Rules of Parliament made under this Act, or a resolution of both Houses of Parliament the Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate to the Deputy Commissioner or any officer of the Commissioner <u>member of the Commissioner's staff</u> the performance of any of the functions of the Commissioner under this Act other than the power to delegate under this section or to make any report or recommendation under this Act.</p> | <p>The amendment is necessary to enable staff seconded to the office from other public sector agencies to carry out the work of the office. If the Parliamentary Commissioner cannot delegate powers to those staff, they cannot carry out investigations and other functions under the Act.</p> |

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| <p>22A. Consultation</p> <p>(2) Information obtained by the Commissioner or his officers in the course of, or for the purpose of, an investigation under this Act may be disclosed for the purposes of any consultation under subsection (1).</p> | <p>22A. Consultation</p> <p>(2) Information obtained by the Commissioner or his officers, the Deputy Commissioner or a member of the Commissioner's staff in the course of, or for the purpose of, an investigation under this Act may be disclosed for the purposes of any consultation under subsection (1).</p> | <p>This amendment is required to ensure the continued effectiveness of the provision once seconded staff may be used by the Parliamentary Commissioner and to correct an anomalous omission of a reference to the Deputy Parliamentary Commissioner.</p> <p>Section 22A recognises a public interest in the Parliamentary Commissioner, Anti-Corruption Commission, the Inspector of Custodial Services and the Director of Public Prosecutions having the capacity to consult in certain cases.</p> <p>Section 22A(1) allows the Parliamentary Commissioner to consult with the Anti-Corruption Commission, the Inspector of Custodial Services and the Director of Public Prosecutions concerning any complaint or investigation under the Act.</p> <p>If this amendment is not effected, the Parliamentary Commissioner could, for the purpose of such consultation, disclose any information obtained by an appointed officer in the course of, or for the purpose of, an investigation, but could not disclose any such information obtained by the</p> |
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| | | Deputy Parliamentary Commissioner or a seconded officer. The power to consult would be thereby limited or completely negated in some cases. |
| <p>22B. Disclosure of certain information</p> <p>A person who is the Commissioner, the Deputy Commissioner or an officer of the Commissioner authorised for the purposes of this section by the Commissioner or the Deputy Commissioner may disclose information obtained by the Commissioner or his officers in the course of, or for the purpose of, an investigation under this Act if the information</p> <p>(a) is disclosed to a person who is</p> | <p>22B. Disclosure of certain information</p> <p>A person who is the Commissioner, the Deputy Commissioner or an officer of the Commissioner member of the Commissioner's staff authorised for the purposes of this section by the Commissioner or the Deputy Commissioner may disclose information obtained by the Commissioner, the Deputy Commissioner or a member of the Commissioner's staff or his officers in the course of, or for the purpose of, an investigation under this Act if the information</p> <p>(b) is disclosed to a person who is</p> | <p>This amendment is required to ensure the continued effectiveness of the provision once seconded staff may be used by the Parliamentary Commissioner and to correct an anomalous omission of a reference to the Deputy Parliamentary Commissioner.</p> <p>Without this amendment a seconded officer could not be authorised by the Parliamentary Commissioner or the Deputy Parliamentary Commissioner to disclose to the Anti-Corruption Commission, the Inspector of Custodial Services or the Director of Public Prosecutions any information relevant to their functions.</p> <p>Nor could any information obtained by the Deputy Parliamentary Commissioner or a seconded officer in the course of, or for the purpose of, an investigation under the Act be disclosed to any of those bodies by the Parliamentary Commissioner, the Deputy Parliamentary Commissioner or</p> |

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| | | any authorised officer, even though the information related to the functions of the body concerned and it were in the public interest to do so. |
| <p>23. Secrecy</p> <p>(1) Information obtained by the Commissioner or his officers in the course of, or for the purpose of, an investigation under this Act, shall not be disclosed, except</p> <p>(a) for</p> <p>... ..</p> | <p>23. Secrecy</p> <p>(1) Information obtained by the <u>Commissioner</u> <u>Commissioner</u>, the <u>Deputy Commissioner</u> or a member of the <u>Commissioner's staff</u> or his <u>officers</u> in the course of, or for the purpose of, an investigation under this Act, shall not be disclosed, except</p> <p>(b) for</p> <p>... ..</p> | <p>This amendment is required to ensure the continued effectiveness of the provision once seconded staff may be used by the Parliamentary Commissioner.</p> <p>It will also correct an anomaly, being that the Deputy Commissioner is not expressly mentioned in the provision.</p> <p>The amendment is required to extend the obligation of confidentiality imposed on the Parliamentary Commissioner and appointed officers to also bind seconded officers.</p> |
| <p>23A. Documents sent to or by the Commissioner not admissible</p> <p>Any document that is sent to the Commissioner or his officers or by the Commissioner or his officers in the course of, or for the purposes of, an investigation under this Act and was prepared specifically for the purposes of the investigation shall be privileged and be not admissible in evidence in any</p> | <p>23A. Documents sent to or by the Commissioner not admissible</p> <p>Any document that is sent to the <u>Commissioner</u> <u>Commissioner</u>, the <u>Deputy Commissioner</u> or a member of the <u>Commissioner's staff</u> or his <u>officers</u> or by the <u>Commissioner</u> <u>Commissioner</u>, the <u>Deputy Commissioner</u> or a member of the <u>Commissioner's staff</u> or his <u>officers</u> in the course of, or for the purposes</p> | <p>This amendment is required to ensure the continued effectiveness of the provision once seconded staff may be used by the Parliamentary Commissioner and to correct an anomaly.</p> <p>The anomaly is that the Deputy Parliamentary Commissioner is not expressly referred to in the section.</p> <p>Without this amendment there would be</p> |

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| proceedings other than proceedings for perjury or any offence under the <i>Royal Commissions Act 1968</i> or under this Act alleged to have been committed in any proceedings upon such an investigation. | of, an investigation under this Act and was prepared specifically for the purposes of the investigation shall be privileged and be not admissible in evidence in any proceedings other than proceedings for perjury or any offence under the <i>Royal Commissions Act 1968</i> or under this Act alleged to have been committed in any proceedings upon such an investigation. | an argument that a document of the kind described in the section which is sent to either the Deputy Parliamentary Commissioner or a seconded officer would not be privileged and would be admissible in legal proceedings whereas, if it were sent to the Parliamentary Commissioner or an appointed officer, it would be privileged and inadmissible. |
| 30. Protection of Commissioner and officers (1) Neither the Commissioner nor any of his officers is liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any Act purporting to be done in pursuance of this Act, unless the Act was done in bad faith. (2) No civil or criminal proceedings shall be brought against the Commissioner or any of his officers | 30. Protection of Commissioner and officers (1) Neither the Commissioner, the Deputy Commissioner nor a member of the Commissioner's staff nor any of his officers is liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any Act purporting to be done in pursuance of this Act, unless the Act was done in bad faith. (2) No civil or criminal proceedings | This amendment is required to ensure the continued effectiveness of the provision once seconded staff may be used by the Parliamentary Commissioner. It will extend the protections given to the Parliamentary Commissioner and appointed officers to the Deputy Parliamentary Commissioner and seconded officers. That the protection is not presently expressly given to the Deputy Parliamentary Commissioner is anomalous. |

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| <p>in respect of any such Act as is referred to in subsection (1) without the leave of the Supreme Court, and the Supreme Court shall not give leave under this section unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith.</p> <p>(3) Notwithstanding anything in the foregoing provisions of this section, no prerogative writ shall be issued compelling the Commissioner to carry out any investigation, and no proceedings shall be brought against the Commissioner whereby the issue of such a writ is sought.</p> <p>(4) Except as required for the purpose of proceedings referred to in section 23(1)(b), neither the Commissioner nor any of his officers shall be called to give evidence or produce any document in any court, or in any judicial proceedings, in respect of any matter coming to his knowledge in the exercise of his functions under</p> | <p>shall be brought against the Commissioner, the Deputy Commissioner or a member of the Commissioner's staff or any of his officers in respect of any such Act as is referred to in subsection (1) without the leave of the Supreme Court, and the Supreme Court shall not give leave under this section unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith.</p> <p>(3) Notwithstanding anything in the foregoing provisions of this section, no prerogative writ shall be issued compelling the Commissioner to carry out any investigation, and no proceedings shall be brought against the Commissioner whereby the issue of such a writ is sought.</p> <p>(4) Except as required for the purpose of proceedings referred to in section 23(1)(b), neither the Commissioner, the Deputy Commissioner nor a member of the Commissioner's staff nor any of his</p> | |
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| <p>this Act.</p> | <p>officers shall be called to give evidence or produce any document in any court, or in any judicial proceedings, in respect of any matter coming to his knowledge in the exercise of his functions under this Act.</p> | |
| <p>Schedule 1 Entities, and extent, to which this Act does not apply⁵ Note: each item in this Schedule is listed in the alphabetical order of the Act to which the item relates.</p> <p>...</p> <p>The Western Australian Independent Gas Pipelines Access Regulator appointed under section 27 of the <i>Gas Pipelines Access (Western Australia) Act 1998</i> to the extent of the Regulator's functions under section 36(1) of that Act.</p> <p>The Commissioner for Public Sector Standards under the <i>Public Sector Management Act 1994</i> to the extent of the Commissioner's functions other than that of chief executive officer of the department</p> | <p>Schedule 1 Entities, and extent, to which this Act does not apply⁵ Note: each item in this Schedule is listed in the alphabetical order of the Act to which the item relates.</p> <p>...</p> <p>The Western Australian Independent Gas Pipelines Access Regulator appointed under section 27 of the <i>Gas Pipelines Access (Western Australia) Act 1998</i> to the extent of the Regulator's functions under section 36(1) of that Act.</p> <p>The Commissioner for Public Sector Standards under the <i>Public Sector Management Act 1994</i> to the extent of the Commissioner's functions other than that of chief executive officer of the department</p> | |

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| <p>of the Public Service principally assisting the Commissioner in the performance of the Commissioner's functions under that Act.</p> <p>The Parliamentary Commissioner for Administrative Investigations and the Deputy Commissioner for Administrative Investigations under the <i>Parliamentary Commissioner Act 1971</i>.</p> <p>The Inspector of Custodial Services under the <i>Prisons Act 1981</i>.</p> <p>The Western Australian Independent Rail Access Regulator appointed under section 13 of the <i>Railways (Access) Act 1998</i>.</p> <p>...</p> | <p>of the Public Service principally assisting the Commissioner in the performance of the Commissioner's functions under that Act.</p> <p>The Parliamentary Commissioner for Administrative Investigations and the Deputy Commissioner for Administrative Investigations under the <i>Parliamentary Commissioner Act 1971</i>.</p> <p>The Inspector of Custodial Services under the <i>Prisons Act 1981</i>.</p> <p><u>The Commissioner for Public Sector Standards under the <i>Public Sector Management Act 1994</i> to the extent of the Commissioner's functions other than that of chief executive officer of the department of the Public Service principally assisting the Commissioner in the performance of the Commissioner's functions under that Act.</u></p> <p>The Western Australian Independent Rail Access Regulator appointed under section 13 of the <i>Railways (Access) Act 1998</i>.</p> |
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| <p>... ..</p> | <p>[the amendments to the schedule are already contained in the Bill and not affected by the amendments in Committee]</p> |
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| NAME OF ACT BEING AMENDED: <i>Parliamentary Commissioner Act 1971</i> | CLAUSE NO. | 90 |
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| EXISTING PROVISION | AS AMENDED | EXPLANATION |
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| <p>The Schedule (Section 21)</p> <p>FURTHER PROVISIONS RELATING TO WESTERN AUSTRALIAN HEALTH PROMOTION FOUNDATION</p> <p>2. Meetings and procedure</p> <p>(1) Five members constitute a quorum of the Foundation.</p> <p>(2) A decision carried by the votes of a majority of the members present at a meeting of the Foundation is a decision of the Foundation.</p> <p>(3) Each member present at a meeting of the Foundation is entitled to one vote on a matter arising for determination at that meeting and the presiding member has, in the event of an equality of votes, a second or casting vote.</p> <p>(4) The Foundation shall cause accurate minutes to be kept of its proceedings.</p> <p>(5) Subject to this Act, the business of the Foundation may be conducted in a manner determined by the Foundation.</p> | <p>The Schedule (Section 21)</p> <p>FURTHER PROVISIONS RELATING TO WESTERN AUSTRALIAN HEALTH PROMOTION FOUNDATION</p> <p>2. Meetings and procedure</p> <p>(1) Five members constitute a quorum of the Foundation.</p> <p>(2) A decision carried by the votes of a majority of the members present at a meeting of the Foundation is a decision of the Foundation.</p> <p>(3) Each member present at a meeting of the Foundation is entitled to one vote on a matter arising for determination at that meeting and the presiding member has, in the event of an equality of votes, a second or casting vote.</p> <p>(4) The Foundation shall cause accurate minutes to be kept of its proceedings.</p> <p>(5) Subject to this Act, the business of the Foundation may be conducted in a manner determined by the Foundation.</p> | <p>This amendment to the Schedule to the <i>Tobacco Control Act 1990</i> will enable decisions to be taken by members of the Western Australian Health Promotion Foundation ("The Foundation") other than in face-to-face meetings of the Foundation.</p> |

NAME OF ACT BEING AMENDED: *Tobacco Control Act 1990*

Clause No: 117

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
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| | <p>(6) <u>A decision in writing signed or assented to by at least 5 9 members by letter, facsimile or other written means is as effectual as if it had been passed at a meeting of the Foundation.</u></p> <p>(7) <u>A communication between a majority of the members by telephone, audio-visual or other electronic means is a valid meeting of the Foundation if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings.</u></p> <p>3. Disclosure of interest</p> <p>...</p> | <p>As above.</p> <p>Amendment in committee to amend clause 117 of the Bill. The Standing Committee on Legislation was not opposed to the idea, in principle, that decisions of the WAPF may be validated in writing rather than face to face, but was of the view that the original amendment, by requiring only a quorum of members to effect such a decision, was a substantive change to the decision making process of the WAHPF. The Committee's view was that such a decision should be assented to in writing by all members and not just a quorum.</p> <p>The amendment in Committee increases from 5 to at least 9 (out of 11) the number of members required to effect a decision of the Board in writing. This means that the support of the vast majority of Board members would be required in order to make a decision by facsimile or other written means, whilst also allowing for the practical problem that it may not be possible to contact all members at any given time (eg overseas travel).</p> |

NAME OF ACT BEING AMENDED: Tobacco Control Act 1990

Clause No: 117 (cont).

| EXISTING PROVISION | AS AMENDED | EXPLANATION |
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| <p>7. Definition and Interpretation</p> <p>(1) In this Act unless the contrary intention appears –</p> <p>“Protection Board” means the Agriculture Protection Board constituted under the provisions of the <i>Agriculture Protection Board Act 1950</i>.</p> | <p>7. Definition and Interpretation</p> <p>(1) In this Act unless the contrary intention appears –</p> <p>“Protection Board” means the Agriculture Protection Board of Western Australia constituted under the provisions of the <i>Agriculture Protection Board Act 1950</i>.</p> | <p>Amendment in Committee to insert a new clause in the Bill to insert missing words for consistency with the amendment being made by the Bill to the definition of the same term (“Protection Board”) in the <i>Agriculture Protection Board Act 1950</i> (see pre-existing clause 25).</p> |

NAME OF ACT BEING AMENDED: *Agriculture and Related Resources Protection Act 1976* **CLAUSE NO.** new clause 25