

**STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2009**

*Second Reading*

Resumed from 6 May.

**HON SUE ELLERY (South Metropolitan — Leader of the Opposition)** [8.00 pm]: The opposition will support this bill. I want to touch briefly on a bit of its history, on the report that was prepared by the Standing Committee on Uniform Legislation and Statutes Review and on the amendments. Before I do that, though, I want to place on the record my appreciation of the Attorney General's office for providing me with a briefing from Mr Peter Richards, who, as ever, gave a very comprehensive briefing, was generous with his time and provided me with the answers to the questions that I sought. So I want to thank him in particular for that.

This bill has in fact been before the house pretty much in a previous life. The 2009 bill was referred after it was introduced into the Council on 6 May of this year. It is, as explained in the second reading speech, very similar in substance to the Statutes (Repeals and Minor Amendments) Bill 2008, although it has some differences in the range of legislation that it canvasses. As is required, the bill was referred to the Standing Committee on Uniform Legislation and Statutes Review, and the committee gave it due consideration. I thank the committee for the report that it has prepared. It makes it that much easier for the house when we are considering the bill.

There are really four elements to the matters that are before the house in respect of this bill arising from the report. One goes to the matter of white versus yellow phosphorous and matches, which people might think is a somewhat intriguing matter to be the subject of some debate when we are dealing with a piece of legislation such as this. The other is a series of what might be described as typographical errors that need to be corrected, although I note that in one matter that the committee raised, thanks, I suspect, to the research of Mr Peter Richards, who traced back literally the original version of the bill in question to check where the apostrophe correctly sat in the title, he found that in fact it was correctly recorded in the government's bill.

The other matter that the committee raised—I expect that someone from the committee will talk to this—was about the format of the explanatory memorandum. It is worth touching on that a little, because members can imagine that an explanatory memorandum whose purpose is to set out the explanation for each of the clauses, clause by clause, on a bill that is dealing with so many different pieces of legislation to be amended, is a very useful tool. I understand that the parliamentary secretary will advise us that what happened was somewhat of a technical formatting issue, and that there is no issue on the government's part with ensuring that future explanatory memorandums are set out in such a way that they are easy for committee members, and, indeed, members of the house, to follow.

This is the kind of bill that is described as an omnibus bill, in that it seeks to make administrative changes and typographical changes. It also seeks to make corrections to update references to other pieces of legislation or to delete those pieces of legislation that are no longer relevant. The approach that is taken by government and is, I guess, checked by the Standing Committee on Uniform Legislation and Statutes Review in this sense is to ensure that it does not in fact try to sneak into the legislation matters of substance and changes of policy. Certainly, the committee found that that was not the case in this instance.

I will touch briefly on the question of white phosphorus versus yellow phosphorus, but I will not go through it in great detail. The explanatory memorandum of the 2008 bill explained that the White Phosphorus Matches Prohibition Act 1912 was no longer required as it had been superseded. The explanatory memorandum set out that it had been superseded principally by the Poisons Act 1964, under which the use of yellow phosphorus as a listed poison is restricted, and more generally by the Occupational Safety and Health Act 1984, in relation to the safety of workers. When the committee looked at the issue, it could not satisfy itself that those two acts superseded the white phosphorus act. The committee found that if the house were to proceed to repeal the act dealing with white phosphorus, the manufacturing of matches using yellow phosphorus and the sale of matches made with yellow phosphorus would no longer be prohibited in Western Australia. The committee undertook some correspondence with the Department of the Attorney General, the Department of Health and the Department of Commerce to ascertain and to seek commitments on whether that was the case. As a result of that correspondence and engagement between the committee and the government agencies, the Standing Committee on Uniform Legislation and Statutes Review made recommendation 11 in report 39 that that particular clause—that is, 3(1)(k)—of the bill be deleted. I understand that the government has agreed to that recommendation.

It is the case that a piece of legislation such as this canvasses a very broad range of legislation, and in some cases legislation that goes back to the 1960s. One piece of legislation that caught my eye was the Workmen's Wages Act 1898. This act required wages for manual labourers to be paid weekly unless agreed otherwise. The information in the explanatory memorandum was that the act had been superseded by the state Industrial Relations Act and the Minimum Conditions of Employment Act and the commonwealth Workplace Relations Act. I asked Mr Richards to advise me whether those acts superseded the Workmen's Wages Act. The sense that

I had was that the payment of wages and securing the right of workers to get access to payment for outstanding wages in the event that a company collapsed, for example, was covered by another piece of legislation related to corporations. I am pleased to say that, thanks to the research done for me by Mr Richards in response to my query, he was able to satisfy me that the pre-Federation law of the Workmen's Wages Act had been overtaken by new state and commonwealth laws. The Industrial Relations Act 1979 provides for awards that cover a range of matters, including those matters that were covered by the Workmen's Wages Act.

**Hon Kate Doust:** I am just curious; is that the same piece of legislation that required workers to be paid in cash, or was that the truck act of 1890 something?

**Hon SUE ELLERY:** I can quickly tell the member the answer to that. No, I do not think it went to the cash question; I think it went to the first port of call in the event that something went awry with the company.

As I was trying to indicate, but was distracted, the bill covers a wide range of legislation that goes as far back as 1898, including such things as white phosphorous matches, workmen's wages, the Dampier to Bunbury pipeline and superannuation amendments. These bills come before the house from time to time as a cleaning-up exercise. The Standing Committee on Uniform Legislation and Statutes Review has established that there are no changes of substance and policy in the amendments that are proposed in the substantive bill that is before us, and with those words I am happy to support the bill.

**HON GIZ WATSON (North Metropolitan)** [8.10 pm]: The Greens (WA) support the Statutes (Repeals and Minor Amendments) Bill 2009, and I want to say a few words about the bill. It has taken a while for this bill to finally come to this chamber for debate, as is often the case with these omnibus bills. I have noticed over the years that they tend to languish and take time in committee to be assessed, which is the appropriate course of action. They are somewhat lengthy to examine because they involve so many different statutes. The standing committee must ensure that the bill complies with the requirement that the amendments are minor and non-controversial. I note with interest that in the time I have been a member in this place, this is probably the fourth or fifth omnibus bill of this nature that I have had the opportunity to look at. The thirty-ninth report of the Standing Committee on Uniform Legislation and Statutes Review comments on page 5 about the inadequacy of the explanatory memorandum, noting —

... the Second Reading Speech indicates that "*The various amendments* [proposed by the 2009 Bill] *are explained in detail in the explanatory memorandum.*" However, the Committee found the *Explanatory Memorandum* to be uninformative with regard to many of the clauses of the 2009 Bill. For example, the comments relating to clause 3, which proposes to repeal 12 Acts and two items of subsidiary legislation, merely list the titles of legislation which are proposed to be repealed.

I wanted to point out that the first recommendation of the standing committee's report is that the government ensures that the explanatory memorandum relating to omnibus statute review bills provides a full explanation of the reasons for the repeal or minor amendment. It is incumbent on the government, especially for these types of bills, to provide sufficient explanation. Inevitably, the work can be done, but it will be a lot quicker if the explanatory memorandum provides more information.

With those comments, the Greens are happy to support the bill, and the recommendations that the Standing Committee on Uniform Legislation and Statutes Review made on this bill.

**HON ADELE FARINA (South West)** [8.14 pm]: I am pleased to be able to speak to this bill as Chair of the Standing Committee on Uniform Legislation and Statutes Review. This is the fourth omnibus bill that has been reviewed by this committee. As members have already indicated, this 2009 bill is very similar to the 2008 bill, which slipped through due to the election being called and that bill falling off the notice paper.

The omnibus statutes are expected to not make any substantial changes. They are supposed to deal only with minor changes to the law. As members will be aware, an omnibus bill is an avenue for making general housekeeping amendments to legislation. It is designed to make only relatively minor and non-controversial amendments to various acts and to repeal acts that are no longer required. It is a way of expediting amendments to numerous bills by consolidating them into the one bill. It is for that reason that when we are dealing with a vast array of amendments to a vast array of pieces of legislation, it is very important that the explanatory memorandum is actually that—namely, it explains what the various amendments will do. Certainly, the committee had some difficulty in dealing with this omnibus bill due to the deficiencies in the explanatory memorandum, so the committee felt it was necessary to draw that to the house's attention and to ensure that in future explanatory memoranda are actually far more detailed to assist the committee and, in fact, members of this house in their consideration of such bills.

The Statutes (Repeals and Minor Amendments) Bill 2009 contains 17 clauses and proposes to repeal 12 acts, declare that seven other acts have previously been repealed, repeal two items of subsidiary legislation and make minor amendments to another 38 acts and one other item of subsidiary legislation. Therefore, this is a substantial

piece of legislation for us, and the lack of an adequate explanatory memorandum created a few problems for the committee. Fortunately, the explanatory memorandum that was associated with the 2008 bill was far more comprehensive, so we were able to use that to get a better understanding of the various amendments that are included in the bill. I would like to acknowledge the work done by the committee officers, particularly in annotating the 2008 explanatory memorandum into a workable document for committee members and now members of this house. I also draw the house's attention to recommendation 1 in the report, which states —

**The Committee recommends that the Government ensure that explanatory memoranda relating to omnibus statutes review bills provide a full explanation of the reasons why the repeal or minor amendment of the affected legislation is required.**

I trust that the government will take that recommendation on board.

In keeping with the committee's approach to reviewing omnibus bills, although the committee reviews every single aspect and component of the bill, the committee tends to simply focus its report on those matters that are worthy of comment. At pages 6 and 7 of the thirty-ninth report, the committee notes a number of typographical errors, and pages 8 and 9 of the report make a range of recommendations for each of those areas. As the Leader of the Opposition has correctly pointed out, it appears that one item that we thought was an error is in fact not an error, so apologies on behalf of the committee for that. Those recommendations are straightforward so I do not propose to go through all of them.

I will talk a little about the repeal of the White Phosphorus Matches Prohibition Act 1912. Clause 3(1)(k) of the 2009 bill proposes to repeal this act, which prohibits the manufacture of matches using white phosphorus and the sale of matches made with white phosphorus. The WPMP act was the outcome of an international agreement, the Berne Convention, made in 1906 by the League of Nations to ban the use of white phosphorus during the manufacture of matches. The ban was in response to concerns about the health risks posed by white phosphorus to consumers of matches, and particularly to workers during the manufacturing process. Although the convention was binding on only its signatories, it led other countries to enact legislation that either taxed or banned white phosphorus matches, effectively abolishing the practice of manufacturing matches that contained white phosphorus. Red phosphorus, a less toxic alternative to white phosphorus, is now used in the manufacture of matches. In looking at that proposed amendment, the committee discovered that the 2008 explanatory memorandum explained that the WPMP act was no longer required as it had been superseded by other legislation, including, principally, the Poisons Act 1964, under which the use of yellow phosphorus is a listed poison and is restricted, and, generally, in relation to the safety of workers, the Occupational Safety and Health Act 1984. The 2008 explanatory memorandum also advised that the equivalent legislation to the WPMP act in most other states has been repealed. As a result of the committee's consideration of whether those two acts actually superseded the WPMP act, we found that it was not the case, and that the explanatory memorandum is incorrect in that regard. I commend Denise Wong, the committee advisory officer, for the work she did in researching that. It required quite extensive research and double checking to ensure we were correct in our assumptions. As explained by the Leader of the Opposition, the committee corresponded with the ministers in relation to the proposed repeal of these acts and drew to the ministers' attention our concern that there was not a replacement act, that they had not actually been superseded. If we had proceeded with the repeal of this act, the restriction on the use of white phosphorus would have been lifted. We could then have found that people could use white phosphorus in the manufacturing of matches or whatever else it is used for.

**Hon Ed Dermer:** The astuteness of the committee is commendable.

**Hon ADELE FARINA:** Yes. Given the very severe health ramifications that can result from extended contact with white phosphorus, which is detailed at paragraph 5.7 of the report, it is very important that the committee managed to pick up this matter.

I commend the government ministers for responsibly acknowledging that this was an oversight and that it is a matter that requires much further examination by government agencies and the ministers. A commitment was given to the committee that the government would move an amendment to ensure that the clause is deleted from the omnibus bill so that the act is not repealed and a position does not arise in which the use of white phosphorus would be permitted and result in the sort of health implications that have been identified.

I foreshadow that in the event that the government does not proceed to move the amendment, I will move it. In recommendation 11, on page 17 of the report, the committee recommends the following —

...that clause 3(1)(k) of the Statutes (Repeals and Minor Amendments) Bill 2009 be deleted via the following amendment:

Page 3 line 17 — To delete the line.

With the exception of the recommendation to delete that line and the correction of the typographical errors identified at pages 6 to 7 of the report, the committee recommends that the bill be passed by the Parliament. However, I would like to make sure that members are aware of the importance of deleting that line and the consequences of not doing so. With that, Mr Deputy President (Hon Jon Ford), I will conclude my comments and commend the report to the house.

**HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary)** [8.23 pm] — in reply: I thank honourable members for their contributions to the debate. I also record the government's appreciation of the committee's work. I trust it will not be seen as patronising from someone who has been in this chamber for a relatively short time to say that the work the committee has done in analysing the legislation reflects the best traditions of a house of review, having picked up several problems with the proposed repeals. Those repeals fall into fairly small categories. I should say that one of the recommendations of the committee was in respect of the explanatory memorandum. The government has noted the committee's recommendation in that regard. By way of explanation for how that has come about, I feel that I should read to the house the contents of a letter that was sent, I believe, to the Clerk Assistant (Committees) in respect of recommendation 1. The Attorney General responds as follows —

The explanatory memorandum for this Bill was prepared in a narrative/portrait style while in previous years it was done in landscape with three or columns; the first reproducing the old clause, the second the clause as amended and the third detail of why the amendment was necessary.

The Bill was originally prepared by the Department of the Premier and Cabinet. When responsibility for the Bill was transferred to the Department of the Attorney General the explanatory memorandum as it then was was also transferred electronically but because of internal difficulties it could not be corrected. In an effort to get the explanatory memorandum completed a landscape style was used. The concerns of the Committee are noted and in future the explanatory memorandum will be done in a landscape style.

In short, the government appreciates the difficulty that was occasioned to those wishing to understand the bill and it will be attended to and corrected.

So far as the amendments and other recommendations that are proposed by the committee go, it will be easiest if I go through them in the order in which they appear in the bill. The first is in respect of clause 3(1)(d), whereby the Friendly Societies' Association of Kalgoorlie Investment Validation Act 1919 will be repealed. The committee pointed out that a comma should appear after the word "Act" and before the date. It also recommended that the apostrophe after "Societies" be deleted. The committee was correct about the lack of a comma but when one goes back to the original bill—the 1919 version—one can see that the word "societies" did have an apostrophe after it. We take issue with that but it is accepted by the committee that the Attorney General's research on the matter is correct and so we will agree to the insertion of a comma after the word "Act". I believe that the Attorney General has written to the Clerk Assistant (Committees) and inquired into whether that can be dealt with by way of a clerical amendment. I understand that that will be done.

The second amendment relates to clause 3(1)(j), where the Uniforms Act 1895 is cited. The committee has recommended, and the Attorney General has accepted, that the Uniforms Act should appear with a capital T in the word "the".

The third amendment is to delete the reference to the repeal of the White Phosphorus Matches Prohibition Act 1912, and the Attorney General accepts that. The remaining amendment is to clause 4(e), where there should be a full stop after the word "Act". Those amendments can also be dealt with by way of clerical correction. Otherwise, there is nothing that I can usefully add to the matter. I move that the bill be read a second time.

Question put and passed.

Bill read a second time.

*Committee*

The Deputy Chairman of Committees (Hon Jon Ford) in the chair; Hon Michael Mischin (Parliamentary Secretary) in charge of the bill.

**The DEPUTY CHAIRMAN:** We are dealing with the Statutes (Repeals and Minor Amendments) Bill 2009. I need to take members through something. The Standing Committee on Uniform Legislation and Statutes Review has made certain recommendations in statute form relating to this bill. Standing order 234A states —

- (1) Where amendments to a Bill:
  - (a) are recommended by a standing committee; and

- (b) no other amendments have been published at the time at which the order of the day for the committal of the Bill is called,
- ...
- (2) In a Committee of the whole House on a Bill reported from a standing committee with recommended amendments:
- (a) the Chairman, before putting any question on the Bill shall put the question “*That the amendments recommended by the [title] standing committee be read into and deemed part of the Bill*”;

On this basis, the first question is that the amendments recommended by the Standing Committee on Uniform Legislation and Statutes Review, report 39, be read into and deemed part of the bill.

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The Standing Committee on Uniform Legislation and Statutes Review’s recommended amendments were as follows —

**The Committee recommends that clause 3(1)(d) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:**

Page 3, line 9 — To insert after “*Act*” —

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**The Committee recommends that clause 3(1)(j) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:**

Page 3, line 16 — To delete “the” and insert —

*The*

Page 3, line 16 — To insert after “*Act*” —

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**The Committee recommends that clause 4(a) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:**

Page 3, line 28 — To insert after “*Act*” —

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**The Committee recommends that clause 4(b) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:**

Page 4, line 2 — To insert after “*Act*” —

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**The Committee recommends that clause 4(c) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:**

Page 4, line 4 — To insert after “*Act*” —

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**The Committee recommends that clause 4(d) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:**

Page 4, line 6 — To insert after “*Act*” —

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**The Committee recommends that clause 4(e) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:**

Page 4, line 8 — To insert after “*Act*” —

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**The Committee recommends that clause 4(f) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:**

Page 4, line 10 — To insert after “*Act*” —

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**The Committee recommends that clause 4(g) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:**

Page 4, line 12 — To insert after “*Act*” —

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**The Committee recommends that clause 3(1)(k) of the Statutes (Repeals and Minor Amendments) Bill 2009 be deleted via the following amendment:**

Page 3, line 17 — To delete the line.

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**The DEPUTY CHAIRMAN:** Now that I have put that question, I need to draw members' attention to the remainder of the same standing order, which states —

- (b) the question in relation to a clause agreed to by the standing committee without amendment (evidenced by its report) shall be put, clause 1 excepted, without debate unless it is proposed to amend such a clause.
- (3) If the question in paragraph (2)(a) is agreed to, the relevant clauses are amended accordingly.
- (4) Nothing in paragraph (2)(b) prevents reference to the provisions of such a clause in the course of debating other clauses where the reference is otherwise relevant.

If members accept the question that I put, the effect will be that the debate will be restricted on all other clauses except for clause 1.

*Point of Order*

**Hon SUE ELLERY:** I wonder whether I might seek clarification. If I can repeat what I understand and ask that you correct me if I am wrong, Mr Deputy Chairman, as I understand it, the effect of the standing orders is that the motion that you put is that all the amendments recommended in the report be deemed to be part of the bill and voted on accordingly. On the amendment in which there is a question about an apostrophe and the government's position is that the committee got it wrong, and the chairperson of the committee has acknowledged that the committee got it wrong, how do you pull that out?

**The DEPUTY CHAIRMAN:** As it is in effect a clerical error, the Clerk has the ability to make that amendment.

**Hon SUE ELLERY:** Okay.

*Committee Resumed*

**Hon MICHAEL MISCHIN:** In accordance with standing order 234A(1), I move that the amendments recommended by the committee be agreed to. This simply alerts the chamber to the clerical amendment required to that one paragraph in the bill.

**The DEPUTY CHAIRMAN:** The motion that you moved has the same effect as the question I put to the chamber.

**Hon MICHAEL MISCHIN:** I understood that the standing order required the minister or the member in charge of the bill to move.

**The DEPUTY CHAIRMAN:** What the parliamentary secretary referred to would be needed to be moved prior to our going into committee, but because we are in committee, I moved it. The net effect is the same. This is the first time that we have done this.

**Hon MICHAEL MISCHIN:** I am not going to argue with you.

**Question (adoption of standing committee amendments) put and passed.**

**The DEPUTY CHAIRMAN:** Members, bearing in mind what I said about available clauses, we will now deal with clause 1.

**Clause 1 put and passed.**

**The DEPUTY CHAIRMAN:** Notwithstanding that now members cannot talk to any other clause, the question is that clauses 2 to 17, as amended, be agreed to.

**Clauses 2 to 17, as amended, put and passed.**

**Title put and passed.**

*Report*

Bill reported, with amendments, and the report adopted.