



REPORT OF THE
CONSTITUTIONAL AFFAIRS COMMITTEE

IN RELATION TO THE

Statutes (Repeals and Minor Amendments) Bill (No.2) 1997

Presented by the Hon Murray Nixon (Chairman)

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

Date first appointed:

21 December 1989

Terms of Reference (as amended 12/3/98):

1. A standing committee under the name of “*Constitutional Affairs*” is established.
2. The committee consists of 3 members.
3. The functions of the committee are to inquire into and report on:
 - (a) the constitutional law, customs and usages of Western Australia;
 - (b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,
and any related matter or issue;
 - (c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
 - (d) any petition.
4. A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

Members as at the date of this report:

Hon M D Nixon MLC
Hon T R Helm MLC
Hon R J Halligan MLC

Staff as at the date of this report:

Ms Penny Griffiths, Advisory/Research Officer
Ms Kelly Campbell, Committee Clerk

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

ISBN 0 7309 8880 5

CONTENTS

1.	Reference and Procedure	1
2.	Contents and Purpose of the Bill	1
3.	Part 2 - Various Acts Repealed	1
	Clause 3 - Albany Woollen Mills Ltd Agreement Act 1976	1
	Clause 4 - Commonwealth and State Housing Agreement Act 1945	2
	Clause 5 - Commonwealth and State Housing Agreement Act 1956	2
	Clause 6 - Commonwealth and State Housing Agreement Act 1961	2
	Clause 7 - Commonwealth and State Housing Agreement Act 1966	2
	Clause 8 - Commonwealth and State Housing Supplementary Agreement Act 1955	3
	Clause 9 - Housing Agreement (Commonwealth and State) Act 1973	3
	Clause 10 - Housing Agreement (Commonwealth and State) Act 1981	3
	Clause 11 - Imperial Acts (Masters and Apprentices) Adopting Act 1873	3
	Clause 12 - Industrial Lands (Maddington) Agreement Act 1964	5
	Clause 13 - Kalgoorlie Racecourse Tramways Act 1904	5
	Clause 14 - Road Districts Rates Act 1924	5
	Clause 15 - Secret Harbour Management Trust Act 1984	6
	Clause 16 - Tourist Development (Secret Harbour) Agreement Act 1983	6
4.	Part 3 - Various Acts Amended	7
	Clause 17 - Anatomy Act 1930 amended, and transitional and savings	7
	Clause 18 - Associations Incorporation Act 1987 amendments	10
	Clause 19 - Bulk Handling Act 1967 amended	11
	Clause 20 - Bush Fires Act amended	11
	Clause 21 - Business Names Act 1962	11
	Clause 22 - Conservation and Land Management Act 1984 amended	12
	Clause 23 - County Areas Water Supply Act 1947	12
	Clause 24 - Country Towns Sewerage Act 1948	13
	Clause 25 - Cremation Act 1929	13
	Clause 26 - Criminal Law (Mentally Impaired Defendants) Act 1996	14
	Clause 27 - Dental Act 1939	14
	Clause 28 - Dental Prosthetists Act 1985	14
	Clause 29 - Dog Act 1976	14
	Clause 30 - Edith Cowan University Act 1984	15
	Clause 31 - Electricity Act 1945	15
	Clause 32 - Electricity Corporation Act 1994	15
	Clause 33 - Equal Opportunity Act 1984	16
	Clause 34 - Explosives and Dangerous Goods Act 1961	16
	Clause 35 - Fire Brigades Act 1942	16
	Clause 36 - Fisheries Adjustment Schemes Act 1987	17
	Clause 37 - Gas Corporation Act 1994	17
	Clause 38 - Government Employees Superannuation Act 1987	18
	Clause 39 - Health Act 1911	19
	Clause 40 - Interpretation Act	21
	Clause 41 - Land Drainage Act 1925	21
	Clause 42 - Legal Practitioners Act 1893	21
	Clause 43 - Limited Partnerships Act 1909	22
	Clause 44 - Litter Act 1979	22

Clause 45 - Local Government Grants Act 1978	23
Clause 46 - Local Government (Miscellaneous Provisions) Act 1960	23
Clause 47 - Medical Act 1894	23
Clause 48 - Mental Health Act 1996	24
Clause 49 - Metropolitan (Perth) Passenger Transport Trust Act 1957	24
Clause 50 - Metropolitan Water Supply, Sewerage, and Drainage Act	25
Clause 51 - Mines Safety and Inspection Act 1994	26
Clause 52 - Mining Act 1978	26
Clause 53 - Motor Vehicle Dealers Act 1973	27
Clause 54 - Murdoch University Act 1973	27
Clause 55 - National Environment Protection Council (Western Australia) Act 1996	28
Clause 56 - Occupational Safety and Health Act, 1984	28
Clause 57 - Parliamentary Commissioner Act 1971	28
Clause 58 - Pay-Roll Tax Assessment Act 1971	28
Clause 59 - Police Act 1892	29
Clause 60 - Prisoners (Release for Deportation) Act 1989	29
Clause 61 - Reprints Act 1984	29
Clause 62 - Restraining Orders Act 1997	30
Clause 63 - Rights in Water and Irrigation Act 1914	31
Clause 64 - Sentencing (Consequential Provisions) Act 1995	31
Clause 65 - Spent Convictions Act 1988	31
Clause 66 - Strata Titles Act 1985	32
Clause 67 - Totalisator Agency Board Betting Act 1960	32
Clause 68 - Town Planning Development Act 1928	32
Clause 69 - Transfer of Land Act 1893	32
Clause 70 - University of Western Australia Act 1911	33
Clause 71 - Valuation of Land Act 1978	33
Clause 72 - Water and Rivers Commission Act 1995	33
Clause 73 - Water Corporation Act	33
Clause 74 - Westpac Banking Corporation (Challenge Bank) Act 1996	34
Clause 75 - Wildlife Conservation Act 1959	34
Clause 76 - Various Acts amended	34

Report of the Legislative Council Constitutional Affairs Committee

in relation to the

Statutes (Repeals and Minor Amendments) Bill (No.2) 1997

1. Reference and Procedure

- 1.1 The *Statutes (Repeals and Minor Amendments) Bill (No. 2) 1997* (the "*Statutes Repeal Bill*") was referred to the Constitutional Affairs Committee on a motion by the Hon Norman Moore MLC.

2. Contents and Purpose of the Bill

- 2.1 The purpose of the *Statutes Repeal Bill* is to revise statute law by repealing spent, unnecessary or superseded Acts, and by making miscellaneous minor amendments to various Acts.

In his Second Reading speech in the Legislative Council, Hon Norman Moore MLC said:

Its aim is to make Parliament more efficient by reducing the number of amendment Bills dealing with relatively minor legislative amendments and repeals. Amendments and repeals included in the Bill are required to be short and non-controversial. In addition, they must not impose or increase any obligations or adversely affect any existing rights. (see recommendation 73)

- 2.2 The *Statutes Repeal Bill* contains 76 clauses in three parts:

Part 1: Preliminary

Part 2: Various Acts repealed

Part 3: Various Acts amended

- 2.3 This report makes no comment on Part 1, but will provide a brief description of each Act being repealed in Part 2 and amended in Part 3.

3. Part 2 - Various Acts Repealed

Clause 3 - Albany Woollen Mills Ltd Agreement Act 1976

- 3.1 This Act ratified an agreement between the State of Western Australia and Albany Woollen Mills Ltd for the purpose of further development of Albany Woollen Mills Ltd

in a decentralised location. Under the agreement, the obligations of Albany Woollen Mills Ltd. ceased on 30 June 1983 while the obligations of the State ceased on 30 September 1982. The purpose of the Act has been fulfilled and the Act now serves no purpose.

Recommendation 1: The Act be repealed

Clause 4 - Commonwealth and State Housing Agreement Act 1945

- 3.2 This Act approved and ratified the 1945 Housing Agreement between the Commonwealth and States. This Agreement covered the financial and administrative arrangements for the provision of public housing. The Act is being repealed because it has been superseded by later Commonwealth and State Housing Agreements.

Recommendation 2: The Act be repealed

Clause 5 - Commonwealth and State Housing Agreement Act 1956

- 3.3 This Act approved and ratified the 1956 Housing Agreement between the Commonwealth and States that followed a renegotiation of the 1945 Agreement. The Agreement covered the financial and administrative arrangements between the Commonwealth and States for the provision of public housing. The Act is being repealed because it has been superseded by later Commonwealth and State Housing Agreements.

Recommendation 3: The Act be repealed and the consequential amendment be enacted

Clause 6 - Commonwealth and State Housing Agreement Act 1961

- 3.4 This Act approved and ratified the 1961 Housing Agreement between the Commonwealth and States that amended previous Housing Agreements. The Agreements related to the financial and administrative arrangements between the Commonwealth and States for the provision of public housing and home purchase assistance. The Act is being repealed because it has been superseded by later Commonwealth and State Housing Agreements.

Recommendation 4: The Act be repealed

Clause 7 - Commonwealth and State Housing Agreement Act 1966

- 3.5 This Act approved and ratified the 1966 Housing Agreement between the Commonwealth and States that amended the 1956-1961 Agreements. These Agreements related to the financial and administrative arrangements between the Commonwealth and

States for the provision of public housing and home purchase assistance. The Act is being repealed because it has been superseded by later Commonwealth and State Housing Agreements.

Recommendation 5: The Act be repealed

Clause 8 - Commonwealth and State Housing Supplementary Agreement Act 1955

- 3.6 This Act executed an agreement between the Commonwealth and States supplementary to the 1945 Agreement. The Act made changes to the 1945 Agreement to allow for the sale of public rental dwellings to tenants. The Act is being repealed because it has been superseded by later Commonwealth and State Housing Agreements.

Recommendation 6: The Act be repealed

Clause 9 - Housing Agreement (Commonwealth and State) Act 1973

- 3.7 This Act approved and ratified the 1973 Housing Agreement between the States that followed a renegotiation of the 1966 Agreement. The Act related to the financial and administrative arrangements between the Commonwealth and States for the provision of public housing and home purchase assistance. The Act is being repealed because it has been superseded by later Commonwealth and State Housing Agreements.

Recommendation 7: The Act be repealed and consequential amendment enacted

Clause 10 - Housing Agreement (Commonwealth and State) Act 1981

- 3.8 This Act approved and ratified the 1981 Housing Agreement between the Commonwealth and States that followed a renegotiation of the previous Agreement. The Act related to the financial and administrative arrangements between the Commonwealth and States for the provision of public housing and home purchase assistance. The Act is being repealed because it has been superseded by later Commonwealth and State Housing Agreements.

Recommendation 8: The Act be repealed

Clause 11 - Imperial Acts (Masters and Apprentices) Adopting Act 1873

- 3.9 *The Imperial Acts (Masters and Apprentices) Adopting Act 1873* ("the Adopting Act") contains a total of two (2) sections which are -

1. All the laws in force in England on the first day of January, in the year of Our Lord one thousand eight hundred and seventy-three with regard to the

persons who may take or become apprentices, the number of apprentices that may be taken by any one master, the mode of binding apprentices (except in so far as relates to the stamp required on any indenture), the rights and liabilities of the parties to any indenture of apprenticeship, the assigning and turning over of apprentices and the dissolution of apprenticeships, shall be deemed to have been and shall henceforth be, except in so far as the same are inapplicable to the circumstances of this Colony, in force in this Colony; and

2. All questions arising between the parties to any indenture of apprenticeship out of or in relation to or connection with any of the subjects in the first section mentioned, and all disputes and differences between the parties to any such indenture, shall be dealt with and determined by any two Justices of the Peace in a summary manner; and such Justices shall have the same power to deal with all such questions, disputes, and differences, and make any order thereupon as is enjoyed in England by Justices of the Peace in Petty or General Quarter Sessions.

3.9.1 Essentially, the Act provides that the common law of England as at January 1873 applies in relation to the matters concerning masters and apprentices.

3.9.2 Section 28(1) of the *Industrial Training Act 1975* is as follows -

28(1) Where a provision of -

- (a) this Act;
- (b) any regulation made under this Act;
- (c) an agreement registered under this Act or any provision of the *Industrial Arbitration Act 1912*;
- (d) an award or industrial agreement in force under that Act;

is inconsistent with the law relating to masters and apprentices as declared by the *Imperial Acts (Masters and Apprentices) Adopting Act 1873* the first mentioned provision prevails.

3.9.3 Section 28(1) therefore overrides the *Adopting Act* to the extent that there is an inconsistency.

3.9.4 Section 28 of the *Industrial Training Act* and several other provisions of that Act are to be repealed when Part 7 of the *Vocational Education and Training Act 1996* comes into operation. Part 7 of the *Vocational Education and Training Act* will provide for matters concerning "trainees" which includes apprentices.

3.9.5 The repeal of section 28 leaves the *Adopting Act* in force without the mitigating effect of that provision. However, to repeal the *Adopting Act* before section 28 would mean that section 28 would be meaningless. Accordingly, any repeal of the *Adopting Act* should coincide with the repeal of section 28 and the repeal should be effected so as to come into operation on the day that the *Industrial Training Act* is repealed.

- 3.9.6 This clause is therefore intended to repeal the *Imperial Acts (Masters and Apprentices) Adopting Act 1873* with effect on the day that the Industrial Training Act 1975 is repealed.

Recommendation 9: The Act be amended

Clause 12 - Industrial Lands (Maddington) Agreement Act 1964

- 3.10 This Act was the vehicle by which the Davison Estate at Maddington was developed in the mid 1960s. The obligations under the Agreement have been satisfied and the company has since been placed in liquidation.

Recommendation 10: The Act be repealed

Clause 13 - Kalgoorlie Racecourse Tramways Act 1904

- 3.11 This 1904 Act authorised the Kalgoorlie Electric Tramways Limited to construct, maintain and manage a line of tramways on the Kalgoorlie Racecourse. As part of the review of legislation for National Competition policy and, in consultation with the Kalgoorlie-Boulder Racing Club, it has been agreed that there is no reason to maintain this Act.

Recommendation 11: The Act be repealed

Clause 14 - Road Districts Rates Act 1924

- 3.12 The Act contains only one section which deals with Extension of time for registration of transfers and provides that -

Whenever an order for the sale of land for default in payment of rates is or has been duly registered under Division (6) of Part VI of the *Road Districts Act 1919*, and the land is or has been duly sold pursuant to such order, but a transfer of the land to the purchaser is or was not registered within twelve months from the date of the order, it shall be lawful and shall be deemed to have been lawful for the Registrar of Titles to register such transfer after the expiration of such period of twelve months if there has been no change in the proprietorship of such land or encumbrance registered after the expiration of such period of twelve months.

- 3.12.1 Orders made under Part VI of the Act are no longer made following the proclamation of the *Local Government Act 1960*. Furthermore, section 592 of the Act has since been repealed by the *Local Government Act 1995*. The process for dealing with the power of sale following default in payment of rates is now contained in Schedule 6.3.

- 3.12.2 Essentially, section 2 of the Act enables transfers of land sold for default in payment of rates, under the *Road Districts Act 1991*, to be registered notwithstanding the expiration of 12 months from the registration of the order for the sale.
- 3.12.3 The repeal of the Act would mean that no transfer entered following a power of sale pursuant to an order under the *Road Districts Rates Act 1924* will be able to be registered by the Registrar of Titles where there has been no change in the proprietorship of the land.
- 3.12.4 The Department of Land Administration has advised that it is unlikely that such transfers would still exist and, in any event, alternative methods of dealing with the conveyance would be available, such as adverse possession or court order.

Recommendation 12: The Act be repealed

Clause 15 - Secret Harbour Management Trust Act 1984

- 3.13 This Act was enacted to constitute a management trust to manage and regulate the maintenance, safety and environment of the breakwaters, the sand by-pass system, the outer harbour, the inner harbour and the foreshore reserve at Secret Harbour.
- 3.13.1 Section 2 of the Act provides that it is to come into operation on a day to be fixed by proclamation. It has not been proclaimed.
- 3.13.2 The project has not proceeded. The land at Secret Harbour has subsequently been developed for private housing.

Recommendation 13: The Act be repealed

Clause 16 - Tourist Development (Secret Harbour) Agreement Act 1983

- 3.14 The *Tourist Development (Secret Harbour) Agreement Act 1984* was enacted to ratify an agreement (the "State Agreement") between the State of Western Australia and Secret Harbour Pty Ltd (the "Company") with respect to the establishment of a recreational boat harbour, a tourist resort and residential and commercial developments (the "Project").
- 3.14.1 Under clause 5 of the State Agreement, the Company was to develop the Project in stages. With respect to each stage of the Project, the Company was to submit proposals to the Minister for approval in advance. No proposals were ever received for assessment and no stage of the Project was ever commenced.
- 3.14.2 The land at Secret Harbour has subsequently been developed for private housing.

Recommendation 14: The Act be repealed

4. Part 3 - Various Acts Amended

4.1 The final part of the *Statutes Repeal Bill* contains clauses amending Acts. The majority of these clauses provide for amendments correcting minor textual errors, changes to names of organisations or government agencies, cross-reference errors or changes in terminology.

Clause 17 - Anatomy Act 1930 amended, and transitional and savings

4.2 Section 2 of the *Anatomy Act* is amended by inserting the following definitions -

- Authorised school of anatomy means a school of anatomy established and conducted under a notice published under section 4.
- Practice licence means a licence granted or renewed under section 5.

4.2.1 In relation to the establishment of schools of anatomy, the existing section 4 of the *Anatomy Act* provides that -

- (1) The Governor, by licence, may authorise the establishment of schools of anatomy at such places as he may determine and may impose such conditions relating thereto as may be necessary for the proper and efficient conduct thereof.
- (2) Any licence under this section shall be subject to revocation by the Governor at any time.

4.2.2 In relation to the granting of licences to practice anatomy, the existing section 5 of the *Anatomy Act* provides that -

The Governor may grant a license to practise anatomy on such conditions, for such period, and subject to revocation in such manner as is therein expressed, to any medical practitioner or to any graduate or licentiate in medicine or any professor or teacher of anatomy, medicine, or surgery approved by the Medical Board of Western Australia, or to any student attending any school of anatomy, on application in the prescribed form from any such person for such purpose, countersigned by a police or resident magistrate or by the principal medical officer of the State, certifying that to his knowledge or belief the applicant is about to carry on the practice of anatomy at an authorised school of anatomy.

4.2.3 As they stand, sections 4 and 5 of the *Anatomy Act* will be repealed and the following sections substituted-

4. Minister may authorise schools of anatomy -

- (1) The Minister may, by notice published in the Gazette, authorise schools of anatomy to be established and conducted at such places as are determined by the Minister and specified in the notice.
 - (2) An authorisation given under subsection (1) is subject to any conditions that are -
 - (a) necessary for the proper and efficient conduct of the authorised school of anatomy; and
 - (b) specified in the relevant notice.
 - (3) The Minister may, by notice published in the Gazette, vary or revoke an authorisation given under subsection (1).
5. *Executive Director may grant and renew licences to practise anatomy-*
- (1) On the application in the form approved by the Executive Director of the person in charge of an authorised school of anatomy, the Executive Director may grant or renew a practice licence.
 - (2) A person who holds a practice licence endorsed in relation to an authorised school of anatomy -
 - (a) may practise anatomy at the authorized school of anatomy; and
 - (b) may authorise in writing other persons to practise anatomy there.
 - (3) A practice licence has effect for such period as is, and is subject to such conditions as are, specified in the licence.
 - (4) Without limiting subsection (3), it is a condition of every practice licence that the person who holds the licence shall ensure that the practice of anatomy authorised by the licence, or by the person who holds the licence, is carried out according to the provisions of the Act.
 - (3) A school of anatomy authorised under section 4 of the Act immediately before the commencement of this section is to be taken, on and after that commencement, to be the subject of an authorisation given under section 4 of the Act as substituted by this section.
 - (4) A person in charge of a school of anatomy referred to in subsection (3) immediately before the commencement of this section is to be taken, on an after that commencement, to hold a practice licence granted under section 5 of the Act as amended by this section that is-

- (a) endorsed in relation to the school of anatomy; and
 - (b) valid for 6 months from that commencement.
 - (5) A licence granted by the Governor under section 5 of the Act and in force immediately before the commencement of this section continues to have effect, on and after that commencement as if this section had not been enacted.
- 4.2.4 It is submitted that the amendments replace the cumbersome licensing scheme with a more effective, efficient and flexible arrangement that accords with modern day practices and procedures relevant to the study of anatomy. In particular, the amendments allow the Minister for Health to authorise the conduct of schools of anatomy and enables the Executive Director Public Health to license the "Head of Department" of an authorised school of anatomy. The amendments are proposed following consultation with, and the full agreement of, the schools of anatomy.
- 4.2.5 Section 15 of the *Anatomy Act* provides that it shall not be lawful for any person to teach anatomy except at a school of anatomy. The section is amended to insert "and under the authority of a practice licence or of a person who holds a practice licence" as the penultimate sentence.
- 4.2.6 Section 18 of the *Anatomy Act* deals with the unlawful removal of body before being received into authorized school of anatomy. The existing proviso to this section is that -
- "...this section shall not apply to a licensed person approved by the Executive Director taking or removing a portion or specimen part of a body or having the same in his possession by and with the authority of an authorised school of anatomy for educational, scientific, or research purposes".
- 4.2.7 The proviso to this section is amended by deleting "licensed person approved by the Executive Director" and substituting the following -
- a person -
- (a) who holds a practice licence or is authorised by a person who holds a practice licence; and
 - (b) who is approved in writing by the Executive Director.
- 4.2.8 Section 19 of the *Anatomy Act* deals with persons authorised not to be liable to punishment for human bodies in their possession. The section is amended by deleting "No medical practitioner, nor any graduate or licentiate, nor any professor or teacher or student of anatomy, medicine, or surgery, having a licence from the Governor under this Act, shall" and substituting "A person who holds a practice licence, and any person authorised by a person who holds a practice licence, shall not".

4.2.9 The existing section 22(1) of the *Anatomy Act* provides that -

Every person who without a license from the Governor, or, having such license, practises anatomy or receives or has in his possession for anatomical examination or examines anatomically any dead human body otherwise than in accordance with the provisions of this Act shall be guilty of a misdemeanour, and, on conviction, shall be liable to imprisonment for two years.

The section is amended by deleting "without a license from the Governor, or, having such license".

4.2.10 The existing section 223(b) of the *Anatomy Act* provides that -

Every person shall be guilty of an offence against this Act -

(b) who fails in any respect to comply with the conditions mentioned in the license held by him under this Act;

Penalty for each offence: \$1 000.

The section is amended by deleting "mentioned in the" and substituting "specified in or applicable to 'a'".

Recommendation 15: Act to be amended

Clause 18 - Associations Incorporation Act 1987 amendments

4.3 The existing section 3(1) of the *Association Incorporation Act* provides that -

In this Act, unless the contrary intention appears -

"Commissioner" means the Commissioner for Corporate Affairs appointed under Section 4 of the *Companies (Administration) Act 1982*.

4.3.1 Section 3(1) of the *Association Incorporation Act* is amended by deleting the definition of "Commissioner" and substituting it with the definition as provided in the *Consumer Affairs Act 1971*.

4.3.2 The definition of "Commissioner" as provided by the *Consumer Affairs Act* means the Commissioner for Fair Trading referred to in section 15.

4.3.3 The *Associations Incorporation Act* was transferred from the Ministry of Justice to the Ministry of Fair Trading in October 1993. However, the Commissioner for Corporate Affairs - the officer in whom the Act vests administrative responsibilities - has remained an officer of the Ministry of Justice. Therefore, the amendment is necessary to streamline and reflect the above administrative arrangements by vesting responsibility in the

Commissioner for Consumer Affairs because the *Association Incorporation Act* is now administered by the Ministry of Fair Trading.

Recommendation 16: The Act be amended

Clause 19 - Bulk Handling Act 1967 amended

- 4.4 The existing section 34(1) of the *Bulk Handling Act* stipulates that charges authorised by the Company are fixed by the Governor. The section is amended to provide that the authorised charges are fixed by the Governor **by order in Council**. This is a minor textual error which was identified by Parliamentary Counsel.

Recommendation 17: The Act be amended

Clause 20 - Bush Fires Act amended

- 4.5 Traditionally, fire danger forecasts have been issued for a whole day and represent the highest level of fire danger likely to be experienced during the day. The amendments to the *Bush Fires Act* will mean that the Bureau of Meteorology will be able to issue separate a.m. and p.m. forecasts.

Recommendation 18: The Act be amended

Clause 21 - Business Names Act 1962

- 4.6 The existing section 4(1) of the *Business Names Act* provides that "Commissioner" means the Commissioner for Corporate Affairs appointed pursuant to section 4 of the *Companies (Administration) Act 1982*, and includes a Deputy or Assistant Commissioner for Corporate Affairs appointed pursuant to that Act, or a person acting in such an office.
- 4.6.1 Section 4(1) of the *Business Names Act* is amended by deleting the definition of "Commissioner" and substituting the definition as provided in the *Consumer Affairs Act 1971*.
- 4.6.2 The definition of "Commissioner" as provided by the *Consumer Affairs Act* is the Commissioner for Fair Trading referred to in section 15.
- 4.6.3 The *Business Names Act 1962* was transferred from the Ministry of Justice to the Ministry of Fair Trading in October 1993. However, the Commissioner for Corporate Affairs - the officer in whom the Act vests administrative responsibilities - has remained an officer of the Ministry of Justice. Therefore, the amendment is necessary to streamline and reflect the above administrative arrangements by vesting responsibility in the

Commissioner for Consumer Affairs because the *Business Names Act* is now administered by the Ministry of Fair Trading.

Recommendation 19: The Act be amended

Clause 22 - Conservation and Land Management Act 1984 amended

- 4.7 The existing section 13E of the *Conservation and Land Management Act* relates to preservation of licences and other instruments relating to petroleum and provision for further rights. Section 13E provides that "licence" means a licence within the meaning of a petroleum law and "pipeline licence" means a pipeline licence within the meaning of the *Petroleum (Submerged Lands) Act 1982* or the *Petroleum Pipelines Act 1969*.
- 4.7.1 Section 13(1) of the Conservation and Land Management Act is amended to provide that "licence" means a licence within the meaning of a petroleum law other than a pipeline licence and "pipeline licence" means a pipeline licence within the meaning of the *Petroleum (Submerged Lands) Act 1982* or a licence within the meaning of the *Petroleum Pipelines Act*.
- 4.7.2 The proposed amendment to the definition of licence will remove overlap with the specific definition of "pipeline licence". Amendment to the definition of "pipeline licence" is proposed because "pipeline" is a defined term used in the *Petroleum (Submerged Lands) Act 1982*, whereas "pipeline licence" is not referred to in the *Petroleum Pipelines Act* but reference is made to the term "licence".
- 4.7.3 There is a minor textual amendment to the section 26B(1)(e) of the *Conservation and Land Management Act*.

Recommendation 20: The Act be amended

Clause 23 - County Areas Water Supply Act 1947

- 4.8 The existing section 115(1) of the *County Areas Water Supply Act* deals with proceedings for an offence against provision of this Act. The section is amended by inserting the following sub-sections after the existing subsection (1) -
- (2) A complaint for an offence against this Act shall be made within 2 years after the commission of an offence.
- (3) Subject to sections 46, 71 and 113, proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.
- 4.8.1 The new subsections give effect to Part 16 of the *Sentencing (Consequential Provisions) Act 1995*. Part 16 could not be proclaimed because subsequent amendments that were

part of the water industry restructure legislation were made to section 115 late in 1995. Part 16 is to be repealed under clause 23(2).

Recommendation 21: The Act be amended

Clause 24 - Country Towns Sewerage Act 1948

4.9 The existing section 113 of the *Country Towns Sewerage Act* provides that -

All penalties and forfeitures incurred under this Act, or any by-law made for the purposes of this Act, may be recovered summarily before any two or more Justices of the Peace in the manner provided by the Justices Act 1902-1942 on the complaint of the Corporation or any officer or servant of the Corporation.

4.9.1 Section 113 of the *Country Towns Sewerage Act* is repealed and the following section is substituted -

113. (1) Proceedings for an offence against this Act may be taken by the Corporation or an officer or servant of the Corporation.
- (2) Proceedings for an offence against this Act shall be dealt with summarily in a court of summary jurisdiction.
- (3) Any penalty or forfeiture incurred under this Act may be recovered in a court of summary jurisdiction on the complaint of the Corporation or an officer or servant of the Corporation.

4.9.2 Section 113 is replaced to give effect to Part 17 of the *Sentencing (Consequential Provisions) Act 1995*. Part 17 could not be proclaimed because subsequent amendments that were part of the water industry restructure legislation were made to section 113 late in 1995. Part 17 is to be repealed under clause 24(2).

Recommendation 22: The Act be amended

Clause 25 - Cremation Act 1929

4.10 The existing section 13(1) of the *Cremation Act* deals with the right to apply for or grant any permit for the cremation of the body of a deceased person. The section provides, inter alia, that no person shall cremate or apply for or grant any permit for the cremation of the body of any deceased person if he knows that the husband, widow, or any person who is next of kin of the deceased, and is over the age of fourteen years, has objected in writing to the body being cremated.

4.10.1 Section 13(1) of the *Cremation Act* has been amended to delete the condition that the person objecting to the cremation be over the age of fourteen years. The amendment was

recommended by the Commissioner for Equal Opportunity following a review of written laws of Western Australian to identify provisions which discriminated on the basis of age. Upon amendment, should an issue as to capacity to object arise, the issue would be dealt with by common law principles.

Recommendation 23: The Act be amended

Clause 26 - Criminal Law (Mentally Impaired Defendants) Act 1996

- 4.11 Section 46(1) of the *Criminal Law (Mentally Impaired Defendants) Act* deals with "Decisions, orders and warrants". A minor textual amendment, identified by Parliamentary Counsel, is made to section 46(1)(b).

Recommendation 24: The Act be amended

Clause 27 - Dental Act 1939

- 4.12 The existing section 44(1) of the *Dental Act* provides, inter alia, that no person shall be qualified for registration as a dentist under this Act unless he is over the age of twenty-one years when he applied for registration. The section has been amended to delete the condition that registration is not conditional on the person having attained the age of twenty one years. The amendment was recommended by the Commissioner for Equal Opportunity following a review of written laws of Western Australian to identify provisions which discriminated on the basis of age.

Recommendation 25: The Act be amended

Clause 28- Dental Prosthetists Act 1985

- 4.13 The Dental Laboratory Owners' Association has merged to become the Australian Commercial Dental Laboratories Association Incorporated. This new Association now represents dental laboratory owners in Western Australia. Section 5(2)(d)(i) of the *Dental Prosthetists Act* has been amended to give effect to the merger.

Recommendation 26: The Act be amended

Clause 29 - Dog Act 1976

- 4.14 Section 29 of the *Dog Act 1976* is amended by deleting "council" in each place it occurs and substituting in each place "local government". These are minor textual errors identified by Parliamentary Counsel.

Recommendation 27: The Act be amended

Clause 30 - Edith Cowan University Act 1984

4.15 The existing Section 9 (1) of the *Edith Cowan University Act* provides that -

- in paragraph (a), "7 persons" appointed by the Governor; and
- in paragraph (f), "1 person" who is elected by and from among the persons whose names are registered on the Register of Alumni maintained by the University.

Section 9(1) of the Act is amended to provide -

- in paragraph (a), by deleting "7 persons" and substituting "6 persons"; and
- in paragraph (f) by deleting "1 person who is" and substituting "2 persons who are".

The amendment is requested by Edith Cowan University to increase the representation of the Alumni on the University Council. The change is consistent with the additional representation of the Alumni at Murdoch University and the University of Western Australia - (3 and 6 person respectively).

Recommendation 28: The Act be amended***Clause 31 - Electricity Act 1945***

4.16 The existing section 33E(a)(f)(v) of the *Electricity Act* refers to "any other corresponding law specified for the purpose of this regulation by notice published in the Gazette". The amendment replaces "regulation" with "paragraph". The original wording was drafted as part of a regulation, not as part of an Act. The reference to "this regulation" was retained in error and this is corrected by the amendment.

Recommendation 29: The Act be amended***Clause 32 - Electricity Corporation Act 1994***

4.17 Section 13(5) of the *Electricity Corporation Act* is amended to correct a grammatical error.

4.17.1 Schedule 2, Clause 12(1) of the Act is amended to increase the penalty for Directors failing to disclose personal interests from "\$1 000 or imprisonment for 3 months", to "\$1 000 or imprisonment for 6 months, or both". This amendment is consequential to the *Sentencing Act 1995* with any maximum period of imprisonment now not to be less than 6 months.

Recommendation 30: The Act be amended

Clause 33 - Equal Opportunity Act 1984

- 4.18 The existing section 67 (1)(f) of the *Equal Opportunity Act* provides that "It is unlawful for a person to subject, or threaten to subject, another person to any detriment on the ground that the person victimised has made an allegation that a person has done an Act that is unlawful by reason of a provision of Part II, III or IV."
- 4.18.1 The section 67(1)(f) is amended to add additional grounds for unlawful discrimination by providing "has made an allegation that a person has done an act that is unlawful by reason of a provision of Part II, IIA, III IV, IVA or IVB."
- 4.18.2 The additional grounds have been included as a result of omissions in drafting at the time the *Equal Opportunity Act* was amended.
- 4.18.3 Section 80 of the Act deals with the general functions of the Commissioner. The section is amended to include discrimination in the form of racial harassment. The amendment is as a result of omissions in drafting at the time the *Equal Opportunity Act* was amended.
- 4.18.4 Section 135 of the *Equal Opportunity Act* deals with the granting of exemptions by the Tribunal. The section has been amended to add additional grounds for unlawful discrimination which have been included as a result of omissions at the time the Act was amended.
- 4.18.5 Section 137 of the *Equal Opportunity Act* deals with the effect of exemption orders. The section has been amended to add additional grounds for unlawful discrimination which have been included as a result of omissions at the time the Act was amended.

Recommendation 31: The Act be amended***Clause 34 - Explosives and Dangerous Goods Act 1961***

- 4.19 The existing section 43(1) of the *Explosives and Dangerous Goods Act* deals with regulation of storage of dangerous goods. Sections (2) and (3) of the Act have been previously repealed and a minor textual amendment has been made by replacing 43(1) with 43.

Recommendation 32: The Act be amended***Clause 35 - Fire Brigades Act 1942***

- 4.20 Section 47 A of the *Fire Brigades Act* deals with Members of Senior Executive. The section has been amended to replace "Public Service Act 1978" with "Public Sector

Management Act 1994". The amendment is required as the *Public Service Act 1978* has been repealed and replaced by the *Public Management Act 1994*.

Recommendation 33: The Act be amended

Clause 36 - Fisheries Adjustment Schemes Act 1987

- 4.21 Section 10C (3) of the *Fisheries Adjustment Schemes Act* has been amended to remove the requirement to publish in a fishing magazine circulating generally in the State, an invitation to eligible persons to voluntarily surrender their authorisations and submit to the Committee an offer for compensation. The requirement has been removed because experience has shown that it has the affect of impeding the administration of the Act. The reason is that the Minister and the Department are subjected to the external publishing timetables relating to the "fishing magazine". However, the Minister will still be required to publish the invitation in a newspaper circulating generally in the State.
- 4.21.1 Clause 15B (1) is inserted into the *Fisheries Adjustment Schemes Act* to provide for a standard power of delegation that will allow the Minister for Fisheries to delegate to the Executive Director of Fisheries any of the Minister's powers under the Act other than -
- (a) this power of delegation; or
 - (b) a function of the Minister under section 10B, 11, 14B, 14C, 14H, 14J, 14K (1), 14M, 14O (2), 14P or 14Q.
- 4.21.2 Accordingly, section 15B(1)(b) of the *Fisheries Adjustment Schemes Act* means that it is not proposed to delegate powers in relation to Establishment of Voluntary Schemes (s 10B), Committees of Management (s11), Establishment of Compulsory Schemes (s14B), Procedure Before Establishing Compulsory Scheme (s14C), Affected Person may apply for Compensation (s14H), Application to Tribunal if No Agreement (s14J), Minister to Determine Compensation (s 14K(l)), Agreement May be Entered into Despite Proceedings (s14M), Establishment of Tribunal (s 14O(2), Term of Office (s14P), Acting Members (s14Q)
- 4.21.3 The provision of powers of delegation does not affect a persons existing rights under the legislation or the operation of the legislation in any material way. The delegation power provides the Minister with the power to authorise the Executive Director to undertake certain functions under the *Fisheries Adjustment Schemes Act* on the Minister's behalf.

Recommendation 34: The Act be amended

Clause 37 - Gas Corporation Act 1994

- 4.22 Schedule 2, Clause 12(1) of the *Gas Corporation Act* deals with Directors who have a material personal interest in a matter involving the Corporation and their responsibility to disclose this interest. The amendment increases the penalty for failure to disclose the

interest from "\$1 000 or imprisonment for 3 months, or both" to "\$ 1 000 or imprisonment for 6 months or both". The amendment is consequential to the *Sentencing Act 1995* with any maximum period of imprisonment now not to be less than 6 months.

Recommendation 35: The Act be amended

Clause 38 - Government Employees Superannuation Act 1987

- 4.23 The Act is amended to clarify the exclusion rules for membership of the 1987 scheme as a consequence of the introduction of salary packaging for public sector employees and the establishment of alternative superannuation arrangements for certain public sector agencies.
- 4.23.1 The Government's general policy is to limit the cost of superannuation to agencies to a maximum of 12 percent of the amount of an employee's remuneration that is payable in cash, a level consistent with the cost to agencies of the 1987 scheme. This amendment will prevent a person from receiving employer funded benefits in this scheme and also in another scheme for the same period of service, which would otherwise have the effect of increasing the cost to the employer above 12 percent of salary, except where benefits in the other scheme are funded under a salary sacrifice arrangement.
- 4.23.2 In effect, any alternative superannuation arrangement which increases the overall cost to the agency would be grounds for exclusion from the 1987 scheme.
- 4.23.3 Until recently, State Government agencies were not generally allowed to provide superannuation outside the Government Employees Superannuation Fund. Corporatised agencies may not establish alternative superannuation arrangements for their employees in accordance with published guidelines.
- 4.23.4 The current provision excludes employees of such agencies from membership of the 1987 scheme if they made additional personal contributions to a new scheme established by their employer but would not exclude them if they made similar personal contributions to any private sector superannuation fund. Such a distinction is unintended and is not considered to be sustainable on equity grounds. This amendment is aimed at removing that distinction.
- 4.23.5 Essentially, the amendments mean that a member of the 1987 scheme who makes additional personal contributions to another private sector or public sector superannuation fund, whether from pre-tax income or post-tax income, will not be excluded from membership of the 1987 scheme unless such an arrangement increases the cost of superannuation to their employer above the cost of the 1987 scheme.

Recommendation 36: The Act be amended

Clause 39 - Health Act 1911

- 4.24 Section 3(1) of the *Health Act* defines "public health official" and is amended by replacing "health surveyor" with "environmental health officer". This is a minor textual error identified by Parliamentary Counsel.
- 4.24.1 Section 246ZR(7) *Health Act* deals with penalties recovered in respect of offences. The section is amended by replacing "health surveyor" with "environmental health officer". This is a minor textual error identified by Parliamentary Counsel.
- 4.24.2 The existing section 247G of the *Health Act* deals with the purpose and function of Health Laboratory Services. The WA Centre for Pathology and Medical Research ("PathCentre") was established as an agency under the *Hospitals and Health Services Act 1927* in 1995. PathCentre assumed responsibility for the combined operations of the:
- State Health Laboratory Service;
 - UWA Laboratories; and
 - Sir Charles Gairdner Hospital Laboratories.
- 4.24.3 At the time PathCentre was established, section 247G was not repealed as some staff members had not transferred to PathCentre. As the transfer is now complete, it is appropriate to repeal section 247G of the *Health Act*.
- 4.24.4 Section 337A (2) of the *Health Act* provides that "With the approval of the Minister, the Commissioner may establish and maintain teaching schools and facilities for the training of persons as school dental therapists, and any such school shall be deemed to be a school of dental therapy that is approved by the Dental Board of Western Australia for the purposes of section 50(2)(e) of the Dental Act 1939."
- 4.24.5 Section 337 A (2) of the *Health Act* is amended by deleting that part of the section which provides "and any such school shall be deemed to be a school of dental therapy that is approved by the Dental Board of Western Australia for the purposes of section 50(2)(e) of the Dental Act 1939".
- 4.24.6 Section 50(1) of the *Health Act* provides that no person, other than a dentist, and no company shall —
- (a) practise dentistry or perform any Act of dentistry; or
 - (b) hold himself, or hold itself, out, either directly or by implication, as practising, or being prepared to practise, dentistry in any of its branches.
- 4.24.7 Section 50 (2) of the *Health Act* provides, inter alia, that the section does not apply to —

- (e) a student who, while undertaking a prescribed course of training, performs an Act of dentistry under the direction of a dentist.

The amendment to this section is identified as a minor contextual error by Parliamentary Counsel.

4.24.8 Section 340B of the *Health Act* deals with the "Maternal Mortality Committee" and provides for the functions of the Committee. Section 340B(4) of the Act provides that, of the 6 persons appointed as provisional members of the Committee —

- (a) 2 shall be general medical practitioners practising in the metropolitan area, nominated by the Western Australian Branch of the British Medical Association;
- (b) 2 shall be general medical practitioners having not less than 5 years practice outside the metropolitan area, nominated by the Western Australian Branch of the British Medical Association; and
- (c) 2 shall be midwives nominated by the Western Australian Branch of the Royal Australian Nursing Federation.

4.24.9 Sections 340B(4)(a) and (b) of the *Health Act* are amended by replacing reference to the "Western Australian Branch of the British Medical Association" with the "Western Australian Branch of the Australian Medical Association Inc". The amendments reflect the new name of the relevant body.

4.24.10 The existing section 340AB(3) of the *Health Act* deals with the appointment of Committee Members and provides that one of the Members shall be a medical practitioner of the Department nominated by the Commissioner.

4.24.11 The requirement that the medical practitioner be an employee of the Department does not appear in other similar Committees established under the *Health Act*. Accordingly, the section is amended to delete the requirement that the medical practitioner should be an employee of the Department.

4.24.12 Section 340 BB of the *Health Act* provides that a body to be called the "Anaesthetic Mortality Committee" and having the functions prescribed by this Part shall be constituted as provided in this section.

4.24.13 The existing section 340BB(3)(a) of the *Health Act* provides that of the 5 persons appointed as permanent members of the Committee one shall be nominated by the Faculty of Anaesthetists of the State Branch of the Royal Australian College of Surgeons and he shall be Chairman of the Committee.

4.24.14 Section 340BB(3)(a) of the *Health Act* is amended to provide that of the 5 persons appointed as permanent members of the Committee one shall be nominated by the Western Australian Regional Committee of the Australian and New Zealand College of Anaesthetists and he shall be Chairman of the Committee.

- 4.24.15 The Western Australian Regional Committee of the Australian and New Zealand College of Anaesthetists is a new body which was established separately to the Royal Australian College of Surgeons.
- 4.24.16 The existing section 340 BB4(c) of the *Health Act* provides that of the 7 persons appointed as provisional members of the Committee one shall be a medical practitioner nominated by the State Branch of the Royal Australian College of Surgeons.
- 4.24.17 The section is amended to provide that of the 7 persons appointed as provisional members of the Committee one shall be a medical practitioner specialising in surgery nominated by the State Branch of the Royal Australasian College of Surgeons. The amendment reflects the change of name of the College.

Recommendation 37: The Act be amended

Clause 40 - Interpretation Act

- 4.25 Section 5 of the *Interpretation Act* is amended to re-order the definitions into alphabetical order.
- 4.25.1 Section 72 of the *Interpretation Act* deals with Statutory penalties. The existing subsection (3) provides that subsections (1) and (2) apply to regulations, rule and by-laws subject to necessary modification. Subsection (3) is amended to include application to "local laws". The amendment to subsection (3) reflects that penalty provisions may exist in local laws issued as a result of the new *Local Government Act*.

Recommendation 38: The Act be amended

Clause 41 - Land Drainage Act 1925

- 4.26 There is a minor textual amendment to section 85 (4) of the *Land Drainage Act* which involves deleting the word "a". This is an error identified by Parliamentary Counsel.
- 4.26.1 Section 173 of the *Land Drainage Act* deals with Proof of ownership or occupancy. The section is amended to replace out of date references to various Government Departments.

Recommendation 39: The Act be amended

Clause 42 - Legal Practitioners Act 1893

- 4.27 Section 58Q of the *Legal Practitioners Act* deals with remuneration and allowances of members. The section is amended to replace reference to the "Public Service Commissioner" with "Minister for Public Sector Management".

- 4.27.1 Section 58S of the *Legal Practitioners Act* deals with the "Use of staff and facilities of departments, etc". The section is amended by deleting the "Public Service Commissioner" and substituting the "Minister for Public Sector Management". The amendment is as a result of the repeal of the *Public Service Act 1978* by the *Public Sector Management Act 1994* which meant that the office of the Public Service Commissioner was discontinued. The appropriate reference is now to the Minister for Public Sector Management.
- 4.27.2 Schedule 2, Part A, of the *Legal Practitioners Act* deals with Provisions as to the constitution of the Legal Costs Committee. The existing section 2(2) of Part A provides that "The deputy chairman shall act as chairman during the illness or absence of the chairman and while so acting shall have, and may perform the functions of the chairman". The section is amended by inserting in the section "or during a vacancy in the office of chairman". This amendment makes it clear that the deputy chairman shall Act during a vacancy in the office of chairman.
- 4.27.3 Schedule 2, Part C, of the *Legal Practitioners Act* is amended by deleting the "Public Service Commissioner" and substituting the "Ministry for Public Sector Management". The amendment is as a result of the repeal of the *Public Service Act 1978* by the *Public Sector Management Act 1994* which means that the Public Service Commissioner was discontinued. The appropriate reference is now to the Minister for Public Sector Management.

Recommendation 40: The Act be amended

Clause 43 - Limited Partnerships Act 1909

- 4.28 The existing section 15 of the *Limited Partnerships Act* provides that "the Commissioner for Corporate Affairs shall be the Registrar of limited partnerships, and the office for the registration of companies in Perth shall be the office for the registration of limited partnerships." Section 15 of the Act is amended by deleting "for Corporate Affairs" and substituting "within the meaning of the Consumer Affairs Act 1971".
- 4.28.1 The *Limited Partnerships Act* was transferred from the Ministry of Justice to the Ministry of Fair Trading in October 1993. However, the Commissioner for Corporate Affairs - the officer in whom the Act vests administrative responsibilities - has remained an officer of the Ministry of Justice. The amendment is necessary to streamline and reflect this arrangement by vesting responsibility in the Commissioner for Consumer Affairs because the Act is now administered by the Ministry of Fair Trading.

Recommendation 41: The Act be amended

Clause 44 - Litter Act 1979

- 4.29 The existing section 27AA of the *Litter Act* deals with Honorary inspectors and provides that "A local government may appoint a person to be an honorary inspector to assist in

the enforcement of regulations relating to the securing of loads carried by vehicles." The section is amended by deleting "enforcement of regulations relating to the securing of loads carried by vehicles" and substituting "the serving of infringement notices relating to offences prescribed for the purposes of section 30".

- 4.29.1 The amendment corrects an unintended amendment made by the *Local Government (Consequential Amendments) Act 1996* whereby the enforcement by honorary inspectors of litter infringement notices and the regulations was limited to only offences relating to unsecured loads on vehicles. This amendment will re-instate the previous provisions whereby councils may appoint honorary inspectors to police all regulations litter offences matters.

Recommendation 42: The Act be amended

Clause 45 - Local Government Grants Act 1978

- 4.30 Section 8 of the *Local Government Grants Act* deals with "Meetings". The existing section 8(2) of the Act provides that "At a meeting of the Commission a quorum is constituted by 4 members". The section is amended by deleting "4 members" and substituting "the Chairman or Deputy Chairman and 2 other members".
- 4.30.1 This amendment reduces the quorum for meetings of the Local Government Grants Commission from 4 persons to 3 persons including either the Chairman or Deputy Chairman. The Grants Commission (total of 5 members) recommended that this amendment be made to facilitate the holding of meetings. There have been various occasions where two members have been absent, or unable to attend a full meeting and the Commission has been without a quorum.

Recommendation 43: The Act be amended

Clause 46 - Local Government (Miscellaneous Provisions) Act 1960

- 4.31 Minor textual and grammatical amendments are made to the *Local Government (Miscellaneous Provisions) Act*. These amendments have been identified by Parliamentary Counsel.

Recommendation 44: The Act be amended

Clause 47 - Medical Act 1894

- 4.32 The existing section 1 of the *Medical Act* provides that "This Act may be cited as the Medical Act 1894, and shall come into operation on 1 January 1895, and is divided into Parts, as follows - ". The section is amended by deleting "and is divided into Parts".

- 4.32.1 The section is amended because it includes a description of how the Act is divided into Parts. It is more appropriate to provide this information by means of an arrangement, which is not part of the Act and can therefore be updated when the Act is reprinted. A provision such as this will also cause inconvenience in producing the electronic form on legislation when the new word processing and database systems come into operation in Parliamentary Counsel's Office.
- 4.32.2 A minor contextual amendment is made to section 16A(1)(aa) of the *Medical Act*.

Recommendation 45: The Act be amended

Clause 48 - Mental Health Act 1996

- 4.33 The existing section 175(c) of the *Mental Health Act* provides that "any other person who is detained against that person's will in an authorised hospital or in an institution prescribed for the purposes of this section by the regulations". This section was included to cover minors who may have been detained with their parents' permission. As the Act is now generic to all persons, the particular wording relevant to minors is anomalous and therefore removed.

Recommendation 46: The Act be amended

Clause 49 - Metropolitan (Perth) Passenger Transport Trust Act 1957

- 4.34 The *Metropolitan (Perth) Passenger Transport Trust Act 1957* is amended by inserting provisions relating to Ministerial directions and Ministerial access to information, developed in response to the Burt Commission recommendations.
- 4.34.1 The provisions inserted deal with Ministerial directions and Minister's access to information and are as follows -

- 79.(1) The Minister may give directions to the Trust with respect to the performance by the Trust of its functions, either generally or in respect to a particular matter, and the Trust shall give effect to those directions.
- (2) The Text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of the Trust under section 66 of the Financial Administration and Audit Act 1985.
- (3) Subsection (1) has effect subject to the Statutory Corporations (Liability of Directors) Act 1996.

79A(1) The Minister is entitled -

- (a) to have information in possession of the Trust; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) for the purposes of subsection (1), the Minister may -
 - (a) request the Trust to provide information to the Minister;
 - (b) request the Trust to give the Minister access to information;
 - (c) for the purposes of paragraph (b), make use of the staff and facilities of the Trust to obtain the information and provide it to the Minister.
- (3) The Trust shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section -

"document" includes any tape, disc or other device or medium on which information is recorded or stored.

"information" means information specified, or of a description specified, by the Minister that relates to the functions of the Trust.

Recommendation 47: The Act be amended

Clause 50 - Metropolitan Water Supply, Sewerage, and Drainage Act

4.35 The existing section 57B (1) of the *Metropolitan Water Supply, Sewerage, and Drainage Act* deals with By-Laws and provides -

- 57B. (1) The Commission may make by-laws for all or any of the following purposes —
- (a) protecting the purity of underground water within any pollution area for the supply of water under this Act;
 - (b) controlling, regulating, limiting or prohibiting, on lands, anywhere within a pollution area or within any specified part or parts thereof, the placing or discharging on, onto, or into the ground therein of anything that is liable to effect detrimentally the purity of underground water in the pollution area either directly or indirectly.

- (2) The by-laws may be so made as to apply within the whole of a pollution area or within such part or parts thereof as may be specified in the by-law.
- (3) The by-laws may provide that any Act or thing shall be done with the approval or to the satisfaction of a specified person or class of persons and may confer upon a specified person or class of persons a discretionary authority.
- (4) The by-laws may impose a penalty not exceeding \$200 for any breach thereof and in the case of a continuing breach a penalty not exceeding \$10 for each day the breach continues after the Commission serves notice of the breach on the offender.

4.35.1 Section 57B(1) of the *Metropolitan Water Supply, Sewerage, and Drainage Act* is amended by deleting "Commission" and substituting "Minister". At the time of the water agency restructure in 1995/1996 the power to make by-laws was transferred from the Water Authority to the Minister and the Water and Rivers Commission. The by-laws that were made by the Commission cannot be changed as they are contained within by-laws made by the Minister. The proposed arrangement transfers all responsibility to the Minister and enables the by-laws to be modified by the Minister as required.

4.35.2 Section 124A(3) of the *Metropolitan Water Supply, Sewerage, and Drainage Act* deals with Prohibition on dealings in land. The section is amended by deleting "Managing Director" and substituting "Chief Executive Officer". The amendment is made because the term Managing Director is no longer a defined term under water legislation.

4.35.3 Section 159 of the *Metropolitan Water Supply, Sewerage, and Drainage Act* deals with Summary proceedings for offences and recovery of penalties. Section 159 is replaced to give effect to section 73 of the *Sentencing (Consequential Provisions) Act 1995*.

Recommendation 48: The Act be amended

Clause 51 - Mines Safety and Inspection Act 1994

4.36 Section 81 of the *Mines Safety and Inspection Act* deals with "Place of accident not to be disturbed". The section is amended to correct a minor textual amendment identified by Parliamentary Counsel.

Recommendation 49: The Act be amended

Clause 52 - Mining Act 1978

4.37 Section 24A (1) of the *Mining Act* deals with Mining in marine reserves. The section is amended to correct a minor textual amendment identified by Parliamentary Counsel.

Recommendation 50: The Act be amended

Clause 53 - Motor Vehicle Dealers Act 1973

- 4.38 With the introduction of triennial licensing in 1996 there have been several instances where licence holders have indicated that they will be surrendering their licence before the end of the three year licence period. The existing provisions of the *Motor Vehicle Dealers Act* do not include provisions to provide for a refund of the unused portion of the licensing fee.
- 4.38.1 The proposed amendment to the *Motor Vehicles Dealers Act* will provide the Motor Vehicle Dealers Licensing Board with the discretion to refund unused portions of triennial licence fees. This amendment will bring the Act into line with other legislation administered under the Fair Trading portfolio such as the *Travel Agents Act 1985*, the *Settlement Agents Act 1981* and the *Real Estate and Business Agents Act 1978* which imposes licensing requirements and makes provisions for refunds where a licence is suspended before its term expires.

Recommendation 51: The Act be amended**Clause 54 - Murdoch University Act 1973**

- 4.39 Section 3(1) of the *Murdoch University Act* provides the definition of a "student". The section is amended to simplify the definition and bring the Act into line with definitions appearing in the *Curtin University of Technology and Edith Cowan University Act 1973*.
- 4.39.1 Section 10(5) of the *Murdoch University Act* provides that "It shall be the duty of the Chancellor to confer the degrees awarded by the University". The section is repealed for administrative purposes. It is not necessary to retain the distinction between the powers of the Senate to 'award' and 'grant' degrees.
- 4.39.2 Section 11(2) of the *Murdoch University Act* is amended to allow the term of office of the Pro-Chancellor to be increased from one year to two years.
- 4.39.3 Section 11(3) of the *Murdoch University Act* is amended to remove the prohibition on degrees being 'conferred' by the Pro-Chancellor.
- 4.39.4 The existing section 18(1) of the *Murdoch University Act* deals with Delegation by Senate and provides -
- 18(1). The Senate may, in relation to any matter or class of matters, or in relation to any activity or function of the University, by resolution, delegate all or any of its powers and functions under this Act (except this power of delegation and its powers in relation to the making of by-laws, Statutes, and regulations) to any committee of its members, or to any officer or officers of the University.

- 4.39.5 The section 18(1) of the Act is amended by deleting "of its members" and substituting "appointed under this Act or as a Statute". Subsection (1) limits the capacity of the Senate to delegate authority to committees of its members and officers of the University. The Senate agreed that it was desirable to provide greater flexibility in determining the extent to which it could delegate authority than was permitted by the existing provisions.

Recommendation 52: The Act be amended

Clause 55 - National Environment Protection Council (Western Australia) Act 1996

- 4.40 Section 64(1) of the *National Environment Protection Council (Western Australia) Act 1996 Act* deals with Review of operation of the Act. The amendment corrects a minor textual error of formatting identified by Parliamentary Counsel.

Recommendation 53: The Act be amended

Clause 56 - Occupational Safety and Health Act, 1984

- 4.41 Section 53 of the *Occupational Safety and Health Act* deals with Proceedings for an offence against the Act. Section 53(c) of the Act is deleted and replaced with a new subsection which corrects a minor textual error identified by Parliamentary Counsel.

Recommendation 54: The Act be amended

Clause 57 - Parliamentary Commissioner Act 1971

- 4.42 Section 5(10) of the *Parliamentary Commissioner Act* is amended to replace a reference to a Repealed Act.
- 4.42.1 A minor textual amendment is made to section 21(1) of the *Parliamentary Commissioner Act*.

Recommendation 55: The Act be amended

Clause 58 - Pay-Roll Tax Assessment Act 1971

- 4.43 Section 3(1) of the *Pay-Roll Tax Assessment Act* defines "Commissioner" and is amended by deleting "Public Service Act 1978" and substituting "Public Sector Management Act 1994".
- 4.43.1 Section 11D of the *Pay-Roll Tax Assessment Act* deals with "Special annual adjustment." The amendment corrects a minor textual amendment.

Recommendation 56: The Act be amended

Clause 59 - Police Act 1892

- 4.44 The existing section 3 of the *Police Act* provides that "This Act may be cited as the Police Act 1892 and shall be divided into parts, as follows -". The section is amended to delete "and shall be divided into parts" because it is more appropriate to provide this information by means of an arrangement which is not part of the Act and can therefore be updated when the Act is reprinted.

Recommendation 57: The Act be amended**Clause 60 - Prisoners (Release for Deportation) Act 1989**

- 4.45 A minor textual amendment it made to section 3(1) of the *Prisoners (Release for Deportation) Act*.

Recommendation 58: The Act be amended**Clause 61 - Reprints Act 1984**

- 4.46 Section 7A of the *Reprints Act* is inserted into the Act and provides -

The Attorney General may, by instrument in writing, delegate to the Parliamentary Counsel the functions and powers conferred on the Attorney General under sections 5(1) and (3), 6(3) and 7(6).

- 4.46.1 The proposed new section 7A of the *Reprints Act* allows certain functions and powers of an administrative rather than executive nature relating to the reprinting of Acts to be performed by the Parliamentary Counsel.
- 4.46.2 Section 4 of the *Reprints Act* is amended by inserting subsection (2) which provides that "For the purposes of this Act, 'written law' includes rules made under the Royal Prerogative in relation to Queen's Counsel."
- 4.46.3 The amendment to section 4 of the *Reprints Act* is necessary to allow the rules to be reprinted from time to time.
- 4.46.4 Section 7 of the *Reprints Act* deals with Amendments of a formal nature. The section is amended by inserting subsection (ba) which provides that an authorised officer may "correct any inconsistency within a written law in respect of any matter mentioned in paragraph (b)". Paragraph (b) includes the matters of spelling, grammar, punctuation, the use of upper or lower case or the typing or printing. This amendment provides a slightly wider scope to the Parliamentary Counsel's Office in respect of correcting any inconsistencies.

Recommendation 59: The Act be amended

Clause 62 - Restraining Orders Act 1997

- 4.47 The existing section 40 of the *Restraining Orders Act* provides that -
- (1) if an applicant does not attend a mention hearing, the court -
 - (a) if it is satisfied the applicant was notified of the hearing, is to dismiss the application; or
 - (b) otherwise, is to adjourn the hearing.
 - (2) If a respondent does not attend a mention hearing and the applicant does attend, the court -
 - (a) if it is satisfied the respondent was served with the summons requiring the respondent to attend the hearing, is to hear the matter in the absence of the respondent; or
 - (b) otherwise, is to adjourn the hearing.
- 4.47.1 Section 40(3) of the *Restraining Orders Act* is inserted to provide the Court with options at its disposal when conducting a hearing in the absence of the respondent and provides -
- When hearing a matter in the absence of the respondent, the court is to -
- (a) make a restraining order;
 - (b) dismiss the application;
 - (c) direct the clerk to fix a hearing and summons the respondent to attend the hearing; or
 - (d) adjourn the mention hearing.

- 4.47.2 Section 40(4) of the *Restraining Orders Act* is inserted to provide that -

The Clerk is to prepare and serve an order made under subsection 3(a).

Recommendation 60: The Act be amended**Clause 63 - Rights in Water and Irrigation Act 1914**

- 4.48 Division 4, section 27(1) of the *Rights in Water and Irrigation Act* deals with Regulations. The existing section 27(1)(ga) provides -
- (ga) charges that are to be paid by the holder of an operating licence (water supply services) or an operating licence (irrigation services) under the *Water Services Coordination Act 1995* in respect of water taken under the licence.

- 4.48.1 The section is amended to insert "a licence issued under this Act" at the end of the subsection. This amendment removes confusion as to which licence is subject to changes.

Recommendation 61: The Act be amended

Clause 64 - Sentencing (Consequential Provisions) Act 1995

- 4.49 Section 62 of the *Sentencing (Consequential Provisions) Act* deals with Transitional provisions. The existing section 62 provides that -

62(1) In this section "commencement" means the commencement of the Sentencing Act 1995.

62(2) If immediately before commencement a person is bound by a recognizance to which section 154A of the principal Act applies but to which that section as re-enacted by section 53 would not apply on and after commencement, then on and after commencement section 154A of the principal Act as it was immediately before commencement continues to apply to that person in respect of the recognizance.

- 4.49.1 The section is amended by deleting reference to "section 53" in subsection (2) and substituting "section 59". This amendment corrects a cross-referencing error in the *Sentencing (Consequential Provisions) Act 1995* in relation to transitional provisions concerning recognizances issued under the *Justices Act 1902*.

Recommendation 62: The Act be amended

Clause 65 - Spent Convictions Act 1988

- 4.50 Section 12 of the *Spent Convictions Act* deals with Application of the Act. The amendment deletes the reference to section 24 of the *Children's Court of Western Australian Act 1988*. Section 24 of this Act was repealed upon the enactment of the *Young Offenders Act 1994*.

- 4.50.1 Schedule 3 section 2 of the *Spent Convictions Act* is amended to correct the reference to the Chapter of The Criminal Code dealing with sexual offences.

Recommendation 63: The Act be amended

Clause 66 - Strata Titles Act 1985

- 4.51 Section 123A of the *Strata Titles Act* deals with Caravan and Camping areas not to be subdivided. The *Caravan and Camping Grounds Act 1995* and the *Strata Titles*

Amendment Act 1996 each introduced a section 123A dealing with different subject matter. The amendment renumbers the section introduced by the *Caravan Parks and Camping Grounds Act 1995* so as to avoid confusion.

Recommendation 64: The Act be amended

Clause 67 - Totalisator Agency Board Betting Act 1960

- 4.52 Section 3 of the *Totalisator Agency Board Betting Act* is amended by deleting "Chairman" and substituting "Chairperson".

Recommendation 65: The Act be amended

Clause 68 - Town Planning Development Act 1928

- 4.53 Sections 7B(8)(a)(ii) and 9(2b) of the *Town Planning Development Act* are amended to correct minor textual errors identified by Parliamentary Counsel.

Recommendation 66: The Act be amended

Clause 69 - Transfer of Land Act 1893

- 4.54 Section 106(2)(b) of the *Transfer of Land Act* is amended by deleting "certified mail" and substituting "registered post". The amendment removes the requirement to send notices to borrowers by certified mail. The reason for the amendment is that certified mail service previously provided by Australia Post has been replaced by a modified registered postal service.
- 4.54.1 This amendment is necessary because otherwise lenders serving notices on borrowers under section 106 of the *Transfer of Land Act 1893* could not comply with the requirement to send notices by certified mail. This could lead to legal arguments that the notice had not been properly served, as Courts usually require strict compliance with service of notice provisions contained in legislation.
- 4.54.2 Section 121(2)(b) of the *Transfer of Land Act* is amended by deleting "certified mail" and substituting "registered post". This amendment removes the requirement to send foreclosure notices to borrowers by certified mail.

Recommendation 67: The Act be amended

Clause 70 - University of Western Australia Act 1911

- 4.55 Section 11 of the *University of Western Australia Act* is amended to remove the age references in relation to Senate membership. This amendment relates to the outcome

of the review of age discrimination in legislation following amendments to the *Equal Opportunity Act 1984*.

Recommendation 68: The Act be amended

Clause 71 - Valuation of Land Act 1978

- 4.56 The *Valuation of Land Act* refers to a "rent" payable under the *Petroleum Act 1967* for a petroleum production licence or exploration permit whereas it should refer to a "fee". This amendment corrects this inconsistency.

Recommendation 69: The Act be amended

Clause 72 - Water and Rivers Commission Act 1995

- 4.57 Section 17(1) of the *Water and Rivers Commission Act* deals with the disclosure of interests by a Board member. The section has been amended by increasing the penalty from three (3) months to six (6) months. This makes the sentencing provisions consistent with the government policy that there be no maximum term of less than six months.

Recommendation 70: The Act be amended

Clause 73 - Water Corporation Act

- 4.58 Section 12(1) of the *Water Corporation Act* deals with the disclosure of interests in contracts by Directors of the Board. The section has been amended by increasing the penalty from three (3) months to six (6) months. This makes the sentencing provisions consistent with the government policy that there be no maximum term of less than six months.

Recommendation 71: The Act be amended

Clause 74 - Westpac Banking Corporation (Challenge Bank) Act 1996

- 4.59 The amendment to the *Westpac Banking Corporation (Challenge Bank) Act* corrects minor errors in references to the *Consumer Credit (Western Australia) Act 1996* as identified by Parliamentary Counsel.

Recommendation 72: The Act be amended

Clause 75 - Wildlife Conservation Act 1959

- 4.60 Section 27A(1) of the *Wildlife Conservation Act* deals with "Illegal devices, etc, found may be forfeited". The section is amended by deleting "or proclamation made" and substituting "made or a notice published".
- 4.60.1 There are presently no provisions in the *Wildlife Conservation Act* for proclamations to be made. Proclamations of the Governor used to be made, for example, in respect of removing or varying the protection afforded to all fauna under the Act. This is now achieved by notices made by the Minister which are published in the Government Gazette.

Recommendation 73: The Act be amended**Clause 76 - Various Acts amended**

- 4.61 The Various Acts mentioned in column 1 of the Table to clause 76 of the Bill are amended by repealing the corresponding provision of the Act mentioned in column 2 of the Table.
- 4.61.1 The sections are being repealed because they describe how a particular Act is divided into Parts. It is more appropriate to provide this information by means of an arrangement which is not part of the Act and can therefore be updated when the Act is reprinted.

Recommendation 74: Acts be amended

Recommendation 75: The Committee is concerned about the length and complexity of a number of the clauses in Part 3 of the *Statutes Repeal Bill*. For example, the Committee considers that Clause 39 of the *Statutes Repeal Bill* deals with amendments to the *Health Act* which were lengthy and addressed a number of separate issues. Likewise, Clause 17 of the *Statutes Repeal Bill* deals with amendments to the *Anatomy Act* which are extremely lengthy and administratively detailed.

The Committee does not intend to take issue with this particular *Statutes Repeal Bill*. However, the Committee considers that Government Departments should be mindful of the Hon Norman Moore's comment that the *Statutes Repeal Bill* should deal with "relatively minor legislative amendments and repeals. Amendments and repeals included in the Bill are required to be short and non-controversial".