



THIRTY-NINTH PARLIAMENT

REPORT 81

**STANDING COMMITTEE ON UNIFORM
LEGISLATION AND STATUTES REVIEW**

**STATUTES (REPEALS AND MINOR
AMENDMENTS) BILL 2013**

Presented by Hon Kate Doust MLC (Chair)

August 2013

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Date first appointed:

17 August 2005

Terms of Reference:

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

“5. Uniform Legislation and Statutes Review Committee

5.1 *A Uniform Legislation and Statutes Review Committee* is established.

5.2 The Committee consists of 4 Members.

5.3 The functions of the Committee are –

- (a) to consider and report on Bills referred under Standing Order 126;
- (b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;
- (c) to examine the provisions of any treaty that the Commonwealth has entered into or presented to the Commonwealth Parliament, and determine whether the treaty may impact upon the sovereignty and law-making powers of the Parliament of Western Australia;
- (d) to review the form and content of the statute book; and
- (e) to consider and report on any matter referred by the Council.

5.4 In relation to function 5.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill or proposal may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.”

Members as at the time of this inquiry:

Hon Kate Doust MLC (Chair)

Hon Brian Ellis MLC (Deputy Chair)

Hon Mark Lewis MLC

Hon Amber-Jade Sanderson MLC

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ISBN 978-1-922047-44-1

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EXECUTIVE SUMMARY AND RECOMMENDATIONS OF THE
REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW
IN RELATION TO THE
STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2013

EXECUTIVE SUMMARY

The Committee examined the Statutes (Repeals and Minor Amendments) Bill 2013 (**Omnibus Bill**) to determine to what extent its provisions comply with the accepted function of omnibus statutes review bills in the Parliament of Western Australia. The Bill's 44 clauses propose the repeal of one Act and amendments to 41 Acts.

All clauses described in the Explanatory Memorandum and Clause Notes on the Statute (Repeals and Minor Amendments) Bill 2013 (**Explanatory Memorandum**) were examined against the criteria listed in the Premier's Circular 2010/01. The Committee considered whether the proposed amendments affects any existing right, obligation, power or duty; or changes any process provided for in the legislation; or involves the insertion of multiple new sections into an Act.

The Committee noted the legislative timetable for amendment bills in the Legislative Assembly. Amendment bills provide for the insertion of multiple new sections in some Acts. The Committee considered whether some clauses in the Omnibus Bill could have been included in the Petroleum and Geothermal Energy Legislation Amendment Bill 2013 and the Criminal Investigation (Identifying People) Amendment Bill 2013 currently tabled in the Legislative Assembly. Furthermore, the Green Paper on the *Mental Health Act 1996* was released for public consultation in November 2012 and it is likely further reforms and legislative amendments will be proposed. The Committee has adopted a diligent approach to the scrutiny process and encourages improved coordination and examination of the program of legislative review and reform.

RECOMMENDATIONS

1 Recommendations are grouped as they appear in the text at the page number indicated:

Page 4

Recommendation 1: The Committee recommends that clause 3 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed and the 2000 Information Disclosure Act 1999 be repealed.

Page 4

Recommendation 2: The Committee recommends that clause 4 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 5

Recommendation 3: The Committee recommends that clause 5 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 7

Recommendation 4: The Committee recommends that clause 6 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 8

Recommendation 5: The Committee recommends that clause 7 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 9

Recommendation 6: The Committee recommends that clause 8 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 11

Recommendation 7: The Committee recommends that clause 9 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 11

Recommendation 8: The Committee recommends that clause 10 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 12

Recommendation 8: The Committee recommends that clause 11 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 13

Recommendation 9: The Committee recommends that clause 12 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 13

Recommendation 10: The Committee recommends that all provisions under clause 13 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 13

Recommendation 11: The Committee recommends that clause 14 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 14

Recommendation 12: The Committee recommends that clause 15 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 14

Recommendation 13: The Committee recommends that clause 16 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 15

Recommendation 14: The Committee recommends that all provisions of clause 17 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 15

Recommendation 15: The Committee recommends that clause 18 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 15

Recommendation 16: The Committee recommends that clause 19 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 18

Recommendation 17: The Committee recommends that clause 20 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 19

Recommendation 18: The Committee recommends that clause 21 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 19

Recommendation 19: The Committee recommends that all provisions of clause 22 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 20

Recommendation 20: The Committee recommends that clause 23 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 20

Recommendation 21: The Committee recommends that clause 24 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 21

Recommendation 22: The Committee recommends that clause 25 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 21

Recommendation 23: The Committee recommends that clause 26 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

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Recommendation 24: The Committee recommends that clause 27 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

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Recommendation 25: The Committee recommends that clause 28 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 23

Recommendation 26: The Committee recommends that clause 29 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

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Recommendation 27: The Committee recommends that clause 30 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 23

Recommendation 28: The Committee recommends that clause 31 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 24

Recommendation 29: The Committee recommends that clause 32 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

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Recommendation 30: The Committee recommends clause 33 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 24

Recommendation 31: The Committee recommends that clause 34 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

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Recommendation 32: The Committee recommends that clause 35 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 26

Recommendation 33: The Committee recommends that clause 36 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 27

Recommendation 34: The Committee recommends that all provisions under clause 37 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 29

Recommendation 35: The Committee recommends that clause 38 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 32

Recommendation 36: The Committee recommends that all provisions of clause 39 in the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 32

Recommendation 37: The Committee recommends that clause 40 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 32

Recommendation 38: The Committee recommends that clause 41 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 33

Recommendation 39: The Committee recommends that clause 42 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 35

Recommendation 40: The Committee recommends that clause 43 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 35

Recommendation 41: The Committee recommends that clause 44 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Page 37

Recommendation 42: The Committee recommends that all clauses of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW**

IN RELATION TO THE

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2013

1 REFERENCE AND PROCEDURE

- 1.1 On 21 May 2013, the Hon Michael Mischin MLC, Attorney General referred the Statutes (Repeals and Minor Amendments) Bill 2013 (**Omnibus Bill**) to the Standing Committee on Uniform Legislation and Statutes Review (**Committee**) under Standing Order 126.¹
- 1.2 The Omnibus Bill is described as “*omnibus*” legislation that provides an “*avenue for making general housekeeping amendments to legislation*”².
- 1.3 The Legislative Council has previously referred Omnibus Bills to the Committee following the Second Reading Speech. No reporting date was imposed.
- 1.4 The document entitled, Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013 (the **Explanatory Memorandum**) was tabled in the House for members information. The Explanatory Memorandum, however, contained an omission, minor typographical, referencing and spelling errors. When considering future Omnibus Bills, the Committee would be assisted by an up to date and detailed Explanatory Memorandum, preferably one that is proof read before being tabled in the House.
- 1.5 For completeness, the Committee examined each and every clause of the Omnibus Bill whether or not it is contentious.³

¹ Bill introduced on motion by Hon Michael Mischin MLC, Attorney General, Western Australia Legislative Council, Parliamentary Debates (Hansard) 21 May 2013, p4b-4b.

² Statutes (Repeals and Minor Amendments) Bill 2013; Second reading speech by the Hon Michael Mischin MLC, Attorney General p.1

³ The Committee adopts the approach taken by the Hon Murray Nixon (Chairman) in the 21st *Report of the Constitutional Affairs Committee in relation to the Statutes (Repeals and Minor Amendments) Bill (No.2) 1997* published in April 1998 of examining each and every clause.

2 OVERVIEW OF THE OMNIBUS BILL

- 2.1 The object of the Omnibus Bill is to deal with two main categories of amendments – acts repealed and acts amended.
- 2.2 The Explanatory Memorandum (**Appendix 1**) is in table form. It lists the repeal of one Act and proposes amendments to another 41 Acts that are typographical, grammatical, formatting and cross referencing errors, or that make changes to better implement the object or intent of the relevant legislation. Furthermore, the amendments make changes consequent upon the enactment or repeal of other legislation and update terminology used in legislation.
- 2.3 The Premier’s Circular 2010/01 (**Appendix 2**) provides guidance on those proposed amendments that do not fall within the scope of an Omnibus Bill. A matter will not be included in an Omnibus Bill if it;
- *affects any existing right, obligation, power or duty; or*
 - *changes any process provided for in the legislation; or*
 - *involves the insertion of multiple new sections into an Act.*
- 2.4 Section 9 of the Bill (line 16-20 inclusive) refers to the *Petroleum Pipelines Act 1969* however, as the Explanatory Memorandum did not have a reference number or explanation of the clause, the Committee sought additional information from the Hon Michael Mischin MLC, Attorney General. The Attorney General provided an explanation of this clause and clarified others in his letters to the Committee dated 28 June 2013 (**Appendix 3**) and 2 August 2013 (**Appendix 4**).
- 2.5 The Committee queried why some clauses were included in the Omnibus Bill and not in amendment bills. The Attorney General clarified;
- ...the action taken was partly due to timing and partly due to efficiency. The amendments made by the Omnibus Bill were in place before the amending Bills reached the Legislative Assembly. Additionally, the relevant Ministers are aware that the amendments are being made in the Omnibus Bill rather than the legislation that they are responsible for. I also note that it would be inefficient to now make a series of amendments in Committee in the Assembly. In the*

*event I would not support any action to vary the legislation at this stage.*⁴

3 THE STRUCTURE OF THE STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2013

3.1 The Bill has three Parts:

Part 1 – Preliminary

Part 2 – Repeal

Part 3 – Amendments

3.2 Part 3 has 4 divisions:

Division 1 Amendments reflecting the abolition of Local Courts

Division 2 Amendments adopting the terminology of the *Criminal Procedure Act 2004*

Division 3 Amendments reflecting changes in nomenclature

Division 3 has three subdivisions:

- Subdivision 1 Registrar of the Mentally Impaired Accused Review Board
- Subdivision 2 Professional Accountancy bodies; and the,
- Subdivision 3 Other changes in nomenclature.

Division 4 is headed Miscellaneous amendments.

4 CLAUSES

Clause 1 *Statutes (Repeals and Minor Amendments) Act 2013 (WA)*

4.1 Clause 1 provides when enacted, the Act is the *Statutes (Repeals and Minor Amendments) Act 2013 (WA)*.

Clause 2 **Royal Assent**

4.2 Clause 2 provides that Part 1 comes into effect on Royal Assent, but the balance of the proposed Act comes into effect on proclamation.

⁴ Letter from the Hon Michael Mischin MLC, Attorney General, 2 August 2013.

Clause 3 ***2000 Information Disclosure Act 1999***

- 4.3 Clause 3 provides for the repeal of *2000 Information Disclosure Act 1999*. This Act was enacted “*to encourage the voluntary disclosure and exchange of information about year 2000 computer problems and remediation efforts and for other purposes*”. The Year 2000 has passed and the Committee agrees with the repeal of the Act as it is “*exhausted and is no longer required*”.⁵

Recommendation 1: The Committee recommends that clause 3 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed and the *2000 Information Disclosure Act 1999* be repealed.

Division 1 Amendments reflecting the abolition of Local Courts

Clause 4 ***Genetically Modified Crop Free Areas Act 2003***

- 4.4 Clause 4 and Clause 5 reflect changes in terminology arising from the repeal of the *Local Courts Act 1904* by s4 of the *Courts Legislation Amendment and Repeal Act 2004*.
- 4.5 Clause 4 provides for the abolition of the word “*Local Court*” and the words “*Magistrates Court*” inserted in its place. This clause amends s9(4) of the *Genetically Modified Crop Free Areas Act 2003* and reflects current terminology.

Recommendation 2: The Committee recommends that clause 4 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 5 ***Residential Tenancies Act 1987***

- 4.6 Clause 5 amends s15(2)(d) of the *Residential Tenancies Act 1987* by replacing the words “*a Local Court*” with the words “*Magistrates Court*”. The

⁵ Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013 tabled by the Hon Michael Mischin MLC, Attorney General Western Australian Legislative Council, 21 May 2013.

Committee agrees that the amendment is minor and reflects an update of name.

Recommendation 3: The Committee recommends that clause 5 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Division 2- Amendments adopting the terminology of the *Criminal Procedure Act 2004*

Clause 6 *Criminal Investigation (Identifying People) Act 2002*

4.7 Clause 6 deletes the word “*complaint*” as it is no longer in usage in the *Criminal Procedure Act 2004*. The *Criminal Procedure Act 2004* refers to the commencement or discontinuance of a prosecution. Changes to the *Criminal Procedure Act 2004* amend particular sections of the *Criminal Investigation (Identifying People) Act 2002*, the *Petroleum (Submerged Lands) Act 1982*, the *Petroleum and Geothermal Energy Resources Act 1967* and the *Water Efficiency Labelling and Standards Act 2006* with regard to references to the word “*complaint*”.

4.8 Clause 6 amends s3(2)(a) of the *Criminal Investigation (Identifying People) Act 2002*. References to making or swearing a complaint are deleted for the words – “*commenced a prosecution*”.

4.9 The current provision of s3(2)(a) the *Criminal Investigation (Identifying People) Act 2002*, reads as follows:

For the purposes of this Act a person is charged with an offence when

—

(a) the officer investigating the offence informs the person that he or she will be charged with the offence, whether or not at that time the officer has made or sworn a complaint in respect of the offence; or

(b) a prosecution of the offence is commenced against the person, or whichever happens first.

4.10 Clause 6 amends s3(2)(a) of the *Criminal Investigation (Identifying People) Act 2002* to be read as:

For the purposes of this Act a person is charged with an offence when —

(a) the officer investigating the offence informs the person that he or she will be charged with the offence, whether or not at that time the officer has commenced a prosecution in respect of the offence; or

(b) a prosecution of the offence is commenced against the person, whichever happens first.

- 4.11 There are two matters the Committee would like to raise. Firstly, the proposed changes to s3(2)(a) appear to make the current provision of s3(2)(b) redundant. The Committee requested further information about the clause from Parliamentary Counsel representing the Attorney General, who explained;

...the terminology was changed by the Criminal Procedure Act 2004, and the associated Criminal Procedure and Appeals (Transitional Provisions) Act 2004 made a number of changes to other legislation to replace the old terminology with the new. Section 3 (2) (b) was amended by that Act to put in the new terminology. But due, presumably, to oversight section 3 (2) (a) was not amended, and the purpose of the present measure is to remedy that oversight.⁶

- 4.12 Secondly, the Committee notes that the Attorney General's Second Reading Speech⁷ refers to Omnibus Bills and the efficiency of such instruments;

Omnibus bills are an efficient means by which Parliament may make numerous minor amendments to diverse pieces of legislation without the need for separate amendment bills addressing many specific acts.

There is a separate amendment bill entitled the Criminal Investigation (Identifying People) Amendment Bill 2013 that provides for a number of amendments to the *Criminal Investigation (Identifying People) Act 2002*.

The purpose of this Bill is to amend the Criminal Investigation (Identifying People) Act 2002 implementing various recommendations emanating from the Statutory Review of the Act. The main purpose of the Bill is to enable regulations to be made to broaden the definition of what is considered an 'identifying particular' under the Act. The Bill also makes amendments to the Act to allow identifying particulars to be taken from both charged and uncharged suspects, to make changes to the manner in which consent is requested from charged

⁶ Email to the Committee from the Department of the Attorney General, 9 July 2013 and 11 July 2013.

⁷ Hon Michael Mischin MLC, Attorney General, Western Australia Legislative Council, Parliamentary Debates (Hansard) 21 May 2013, p4b-4b.

*suspects, and to enable police to request a person to remove headwear or do other things to facilitate the officer being able to confirm a person's identity.*⁸

- 4.13 The amendment bill was tabled before the Legislative Assembly on 20 June 2013. The Committee queried why clause 6 was not included in the amendment bill.

The Hon Michael Mischin MLC, Attorney General advised:

*The Criminal Investigation (Identifying People) Amendment Bill 2012 was approved for printing in January 2012. That Bill lapsed on the dissolution, but Cabinet did not give fresh instructions about it until May 2013, by which time the Omnibus Bill had already been sent to Cabinet, so the question of transferring amendments to that Bill did not arise.*⁹

Recommendation 4: The Committee recommends that clause 6 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 7 *Petroleum (Submerged Lands) Act 1982*

- 4.14 Clause 7 amends s137A(1) of the *Petroleum (Submerged Lands) Act 1982*. The word “complaint” is not used in the *Criminal Procedure Act 2004* and the clause updates the Act to include “*more appropriate words*” namely, the “*charge of the offence*”.
- 4.15 There is an amendment bill (the *Petroleum Geothermal Energy Legislation Amendment Bill 2013*) currently tabled before the Legislative Assembly that provides for a number of amendments to the *Petroleum (Submerged Lands) Act 1982*. The Committee sought clarification as to why all amendments relating to this Act (including clause 7) were not incorporated in the amendment bill.
- 4.16 The Hon Michael Mischin MLC, Attorney General advised the Committee:

⁸ Synopsis of the Criminal Investigation (Identifying People) Amendment Bill 2013 is available at <http://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=15B09698E2BF8D3F48257B900013BB4E> accessed 5 August 2013.

⁹ Letter from the Hon Michael Mischin MLC, Attorney General to the Committee dated 2 August 2013.

*The Petroleum and Geothermal Energy Legislation Amendment Bill 2012 was sent to Cabinet in September 2012, so its preparation period did overlap with the omnibus preparation period. It would have been possible to deal with the amendments to the Petroleum (Submerged Land) Act 1982, the Petroleum and Geothermal Energy Resources Act 1967 and the Petroleum Pipelines Act 1969 in that Bill. However, those amendments formed part of a larger group of amendments, all of which were consequential on the Criminal Procedure Act 2004. In each case the amendment brings terminology regarding criminal proceedings in some other Act in line with the terminology used in the 2004 Act.*¹⁰

Recommendation 5: The Committee recommends that clause 7 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 8 *Petroleum and Geothermal Energy Resources Act 1967*

4.17 Clause 8 amends s126A(1) of the *Petroleum and Geothermal Energy Resources Act 1967*, by removing the word “*complaint*” and replacing the text with “*charge of the offence*”. The Committee clarified why this clause was not included in the Petroleum and Geothermal Energy Legislation Amendment Bill 2013 tabled in the Legislative Assembly on 12 June 2013.

4.18 The Petroleum and Geothermal Energy Legislation Amendment Bill 2013¹¹ is a Bill:

for an Act to amend the Petroleum and Geothermal Energy Resources Act 1967 and the Petroleum Pipelines Act 1969 to facilitate the geological storage of greenhouse gas substances, to make consequential amendments to other Acts, and for other purposes.

4.19 It is apparent that the number and nature of the amendments affecting the *Petroleum and Geothermal Energy Resources Act 1967* has required a separate amendment bill in the form of the Petroleum and Geothermal Energy Legislation Amendment Bill 2013.

¹⁰ Letter from the Hon Michael Mischin MLC, Attorney General to the Committee on 2 August 2013.

¹¹ This Bill was introduced into the Legislative Assembly on 12 June 2013 by the Minister for Mines and Petroleum, the Hon W.R Marmion, Western Australian Parliamentary Debates, Hansard p1351c-1352a.

- 4.20 Furthermore, the amendment bill in the Legislative Assembly proposes to change the title of the *Petroleum and Geothermal Energy Resources Act 1967* to the *Petroleum and Geothermal Energy and Greenhouse Gas Storage Act 1967* (refer to Division 12 of the Petroleum and Geothermal Energy Legislation Amendment Bill 2013).¹²
- 4.21 The amendment bill also amends wording in s126A(1) of the *Petroleum and Geothermal Energy Resources Act 1967*, that provides for “*Evidentiary matters*”.
- 4.22 The Committee notes that Clause 103 of the Petroleum and Geothermal Energy Legislation Amendment Bill 2013 in the Legislative Assembly proposes the following changes to s126A(1):
- delete “operation or geothermal energy” and insert (each occurrence) and insert:*
- operation, geothermal energy operation or GHG*¹³
- 4.23 Clause 8 of the Omnibus Bill and clause 103 of the Petroleum and Geothermal Energy Legislation Amendment Bill 2013 both propose changes to s126A(1) of *Petroleum and Geothermal Energy Resources Act 1967*.
- 4.24 The Committee is unclear as to why the specific change to clause 8 of the Omnibus Bill was not incorporated in the Petroleum and Geothermal Energy Legislation Amendment Bill 2013 and why the other amendments to s126A(1) were not incorporated in clause 8 in full. The Committee holds the view it could have been appropriate to incorporate the changes sought in clause 8 in the amendment bill so that all amendments to the provision could be considered in full.

Recommendation 6: The Committee recommends that clause 8 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

¹² Petroleum Geothermal and Energy Legislation Amendment Bill 2013 at [http://www.parliament.wa.gov.au/parliament/Bills.nsf/8B5378BC4E4367FA48257B8800214A76/\\$File/Bill013-1.pdf](http://www.parliament.wa.gov.au/parliament/Bills.nsf/8B5378BC4E4367FA48257B8800214A76/$File/Bill013-1.pdf) accessed at 23 July 2013.

¹³ Petroleum and Geothermal Energy Legislation Amendment Bill 2013 located at [http://www.parliament.wa.gov.au/parliament/Bills.nsf/8B5378BC4E4367FA48257B8800214A76/\\$File/Bill013-1.pdf](http://www.parliament.wa.gov.au/parliament/Bills.nsf/8B5378BC4E4367FA48257B8800214A76/$File/Bill013-1.pdf) accessed at 23 July 2013.

Clause 9 ***Petroleum Pipelines Act 1969***

4.25 Clause 10 is not listed in the Explanatory Memorandum provided to the House. The Bill lists section 9 (lines 16 to 20 inclusive) as amending the *Petroleum Pipelines Act 1969*. The Committee notes that the numbering of clauses in the Explanatory Memorandum is inconsistent with the Omnibus Bill.

4.26 The Committee notes, the amendments in the Bill appear consistent with the change of words arising from the *Criminal Procedure Act 2004*. The word “*complaint*” has been deleted and replaced with the words “*the charge of the offence*”.

4.27 The letter (dated 28 June 2013) from the Hon Michael Mischin MLC, Attorney General apologised for the lack of information in the Explanatory Memorandum and provided the following detail on the proposed clause;

Currently, section 66BB(1) of the Petroleum Pipelines Act 1969 reads:

(1) In a proceeding for an offence against this Act an averment in the complaint that at a particular time-

(a) a particular operation was a pipeline operation;

(b) a particular person was the licensee for a pipeline operation;

(c) a particular person was in control of a particular part of a pipeline operation;

(d) a particular person was an employer who carried on a particular pipeline operation;

(e) a particular person was an employer of a particular person or particular persons engaged in a pipeline operation;

(f) a particular person was an employee or inspector,

is to be taken to have been proved in the absence of evidence to the contrary.

As amended by clause 9(2), section 66BB(1) of the Petroleum Pipelines Act 1969 would read:

(1) In a proceeding for an offence against this Act an averment in the charge of the offence that at a particular time –

(a) a particular operation was a pipeline operation;

(b) a particular person was the licensee for a pipeline operation;

(c) a particular person was in control of a particular part of a pipeline operation;

(d) a particular person was an employer who carried on a pipeline operation;

(e) a particular person was an employer of a particular person or particular persons engaged in a pipeline operation

(f) a particular person was an employee or inspector,

is to be taken to have been proved in the absence of evidence to the contrary.

- 4.28 The Committee is satisfied with the explanation provided by the Attorney General (**Appendix 3**) that the clause updates the Act using the current terminology of the *Criminal Procedure Act 2004*. However, the Committee holds the view that this provision could have been included in the Petroleum and Geothermal Energy Legislation Amendment Bill 2013, an amendment bill that amends key provisions of the *Petroleum Pipelines Act 1969*. Clearly the preparation period for the Omnibus Bill overlapped with the preparation for the amendment bill.

Recommendation 7: The Committee recommends that clause 9 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 10 *Water Efficiency Labelling and Standards Act 2006*

- 4.1 Clause 10 amends s40A(1)(b) the *Water Efficiency Labelling and Standards Act 2006*. The clause, consistent with changes to the *Criminal Procedure Act 2004*, updates the terminology used in legislation by removing the word “*complaint*” and replacing with the words “*charge of the offence*”.

Recommendation 8: The Committee recommends that clause 10 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Division 3 Reflecting changes in nomenclature

- 4.2 Division 3 reflects changes in nomenclature in Subdivision 1 of the Mentally Impaired Accused Review Board.

Comment: The Government released the Green Paper calling for submissions into the *Mental Health Act 1996* in November 2012. The Committee holds the view that further changes will be made to the Act as a result of the public consultations.

Clause 11 *Electoral Act 1907*

Clause 11 amends s59(1) of the *Electoral Act 1907* by replacing the term “*secretary, Mentally Impaired Accused Review Board*” with the word “*registrar, MIARB*”. The Explanatory Memorandum states that term is also “*inserted in proper alphabetical order in s59(1).*”¹⁴

- 4.3 Section 59(1) also makes reference to ‘*required information*’ and it states “*required information, in relation to a person, means that person’s name, address, date of birth, occupation and sex;*”

A full stop will conclude the sentence and the semi colon will be deleted.

- 4.4 Clause 11 also amends s59 (2)(b) and s59 (3) (b) of the *Electoral Act 1907*, by replacing the term “*secretary, Mentally Impaired Review Board*” with the words “*registrar MIARB*”. These changes reflect current terminology and are minor.

The Committee has considered the approach taken by the Hon Michael Mischin MLC, Attorney General in his letter dated 2 August 2013.

Recommendation 8: The Committee recommends that clause 11 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 12 *Guardianship and Administration Act 1990*

- 4.5 Clause 12 provides for the use of the word “*registrar*” in place of the word “*secretary*” in s98(1) of the *Guardianship and Administration Act 1990*. The Committee noted that this amendment updates the terminology used.

¹⁴ Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013, p5.

Recommendation 9: The Committee recommends that clause 12 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 13 *Mental Health Act 1996*

- 4.6 The Committee notes that the *Mental Health Act 1996* is currently under review. The Green Paper was released in November 2012 for public comment.
- 4.7 Clause 13 amends s44 and s94(1) of the *Mental Health Act 1996*.
- 4.8 Clause 13 amends s44 of the *Mental Health Act 1996* by replacing the word “*secretary*” with the word “*registrar*”.
- 4.9 Clause 13 amends s94(1) of the *Mental Health Act 1996*, replacing the word “*secretary*” with the word “*registrar*”.
- 4.10 The Committee notes the above changes are minor and reflects current terminology however; the Committee encourages improved coordination and cross referencing of proposed amendments with the current program of legislative review and reform.

Recommendation 10: The Committee recommends that all provisions under clause 13 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 14 *Commercial Tenancy (Retail Shops) Agreements Act 1985*

- 4.11 Clause 14 amends the definition of “*accountant*” under section 3 of the *Commercial Tenancy (Retail Shops) Agreements Act 1985* with the new names of “*CPA Australia Ltd*” or “*the Institute of Public Accountants*”. The Committee notes that the amendment reflects and updates the current terminology.

Recommendation 11: The Committee recommends that clause 14 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 15 *Legal Profession Act 2008*

- 4.12 Clause 15 amends the definition of “*accountant*” in section 3 of the *Legal Profession Act 2008*. The words “*National Institute of Accountants*” is deleted and replaced with “*the Institute of Public Accountants*”. The Committee notes that the amendment updates terminology.

Recommendation 12: The Committee recommends that clause 15 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 16 *Geraldton Sailors and Soldiers’ Memorial Institute Act 1929*

- 4.13 Clause 16 amends s6 (2) of the *Geraldton Sailors and Soldiers’ Memorial Institute Act 1929* with the new name of the “*Returned and Services League of Australia WA Branch Incorporated*”. The words “*Returned Sailors’ Soldiers’ and Airmen’s Imperial League of Australia*” have been replaced with the words “*Returned and Services League of Australia WA Branch Incorporated*”. The Committee notes that the amendment will reflect the correct name.

Recommendation 13: The Committee recommends that clause 16 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Division 4 Miscellaneous Amendments

- 4.14 Division 4 of the Statutes (Repeals and Amendments) Bill 2013 refers to Miscellaneous Amendments of a range of acts.

Clause 17 *Bush Fires Act 1954*

- 4.15 Clause 17 amends s38(14) of the *Bush Fires Act 1954* by deleting the word “*this*”. The deletion of the word will not impact the meaning of the section.
- 4.16 Clause 17 amends s38(18) *Bush Fires Act 1954* by replacing the small numerals and word (i) *(a) during* with “*(a) during*”. The small numerals “*(ii) during*” have been replaced with “*(b) during*”.

- 4.17 Clause 17 amends s44(3)(a) of the *Bush Fires Act 1954* by deleting “(3)(a) *Subject*” and replacing with “(3) *Subject*”.
- 4.18 The Committee notes that the amendments are minor and reflect formatting corrections.

Recommendation 14: The Committee recommends that all provisions of clause 17 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 18 *Children and Community Services Act 2004*

- 4.19 Clause 18 amends s125A(3B) of the *Children and Community Services Act 2004* by deleting the words “*Minister for Public Sector Management*” with “*Public Service Commission*”. This section is under “*Division 10 General*” regarding the appointment of assessors. The amendment corrects the terminology used when referring to the Public Service Commission.

Recommendation 15: The Committee recommends that clause 18 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 19 *Co-operatives Act 2009*

- 4.20 Clause 19 of the Bill makes minor changes to s188(5) of the *Co-operatives Act 2009* by deleting the word “*subregulation (4)*” and replacing with “*subsection (4)*”. Reference to subregulation is deemed incorrect and the amendment reflects the correction of a grammatical error. Section 188 refers to the “*Holding of postal ballot on requisition*”. The current use of the word *subregulation* incorrectly assumes the status of subsidiary legislation rather than a reference to another part of the section as was intended at drafting.

Recommendation 16: The Committee recommends that clause 19 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 20 ***Credit Act 1984***

4.21 Clause 20 of the Bill proposes an amendment to section 19B(2)(a) and (b) of the *Credit Act 1984* for the purpose of correcting a “*typographical error*”.

4.22 The Explanatory Memorandum states that the Act should have inserted the date of 1 July 2010. Currently the Act is read as “*a [reference date]*” in respect of actions before the *Consumer Credit (Western Australia) Code*.

4.23 The current provisions of 19B of the *Credit Act 1984* are:

Section 19B The Act to continue to apply to some acts etc. done before 1 Nov 1996

(1) Except as otherwise provided by this section, this Act continues to apply —

(a) to a continuing credit contract entered into before the commencement day, but only in respect of anything done or omitted to be done before the commencement day; and

(b) to a credit contract of any other kind entered into before the commencement day in respect of anything done or omitted to be done, whether before or after the commencement day; and

(c) to a mortgage or guarantee relating to a continuing contract referred to in paragraph (a), but only in respect of anything done or omitted to be done before the commencement day; and

(d) to a mortgage or guarantee relating to a credit contract referred to in paragraph (b) in respect of anything done or omitted to be done, whether before or after the commencement day.

(2) If the credit provider under a contract to which this Act continues to apply acts in accordance with

(a) in respect of any action before [reference date], the Consumer Credit (Western Australia) Code 3 section 34, 35, 66 to 69, 78 to 99, 163, 171, 172 or 173; or

(b) in respect of any action on or after [reference date], the National Credit Code section 36, 37, 72 to 75, 85 to 107, 185, 194, 195 or 196,

the credit provider is taken to have acted in accordance with the corresponding provision of this Act.

(3) Despite anything to the contrary in subsection (2), section 112(1)(b) continues to apply in respect of goods subject to a regulated mortgage.

- 4.24 Clause 20 of the Bill proposes the amendment to section 19B (2) (a) and (b) to be read as following:

(2) if the credit provider under a contract to which this Act continues to apply acts in accordance with-

*(a) in respect of any action **before 1 July 2010**, the Consumer Credit (Western Australia) Code 3 section 34, 35,66 to 69, 78-99, 163, 171, 172 or 173; or*

*(b) in respect of any action **on or after 1 July 2010**, the National Code section 36, 37, 72 to 75, 85 to 107, 185, 194, 195 or 196.*

the credit provider is taken to have acted in accordance with the corresponding provision.

- 4.25 A question arose for the Committee as to whether the proposed date of 1 July 2010 to section 19B (2) (a) and (b) creates a retrospective provision that may propose a substantial amendment.

- 4.26 In a letter dated 28 June 2013, the Hon Michael Mischin MLC, Attorney General stated that;

*Section 19 B, as it was inserted in its original form in 1996, was a transitional provision. In 1996 Western Australia enacted uniform legislation to govern credit contracts. Existing credit contracts continued to be governed by the former legislation, but credit providers were given the option of complying with the new, uniform legislation instead. This option was intended to save credit providers from having to operate separate systems for pre-1996 and post-1996 business as well as providing that, so far as possible, all consumers would be protected by the same regulatory regime. With effect from 1 July 2010, by the Credit (Commonwealth Powers) Act 2010, Parliament referred certain matters (**the referred credit matters**) to the Parliament of the Commonwealth, giving it power to deal with those matters under Commonwealth legislation. The result was the introduction of yet any other regulatory regime, the National Credit Code (Cth), to govern credit contracts formed in Western Australia.*

In the interests of consistency and continuity, it was decided that in respect of surviving pre-1996 credit contracts, providers could once again opt to comply with the new regulatory regimes. This course of

action required an amendment to section 19B of the Credit Act 1984, which was effected by section 9(3) of the Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010.

4.27 The Attorney General further stated that;

The obvious conclusion is that the word ‘reference’ in the term alludes to the referral of power to the Commonwealth, and that the term as a whole means the date on which that reference took effect, which was 1 July 2010. For these it is considered appropriate to correct this drafting error in an Omnibus Bill. I note and appreciate that an Omnibus Bill is not intended as a vehicle for changes to the substance or effect of the law, but properly construed, the term ‘[reference date]’ already refers to the effective date of the referral of credit power to the Commonwealth, and this can be discerned from an examination of the legislative history.¹⁵

4.28 The Committee notes that the amendment does not change the meaning of section 19B(2) of the *Credit Act 1984*.

Recommendation 17: The Committee recommends that clause 20 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 21 *Fair Trading Act 1987*

4.29 Clause 21 amends s3C(3) of the *Fair Trading Act 1987* to reflect the appropriate cross reference to “*subsection 2*”. The change is a minor grammatical correction however; the Committee queried why this clause was not included in the Fair Trading Amendment Bill 2013. The Committee notes the letter of 2 August 2013, from the Hon Michael Mischin, MLC, states;

So far as the Fair Trading Amendment Bill is concerned, the first instructions on this were received in January 2013, three months after the Omnibus Bill had been closed and sent to Cabinet the first time.¹⁶

¹⁵ Letter dated 28 June 2013 from the Hon. Michael Mischin MLC, Attorney General.

¹⁶ Letter dated 2 August 2013 from the Hon Michael Mischin MLC, Attorney General.

Recommendation 18: The Committee recommends that clause 21 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 22 *Guardianship and Administration Act 1990*

- 4.30 Clause 22 amends s45(2)(d) of the *Guardianship and Administration Act 1990* by correctly renumbering the first section. This change will have a flow-on effect to other subsections such as section 110G (1). The amendment reflects a correction of minor errors of presentation. In effect s45(2)(d) will delete the words “*subsection 4*” and replace with the words “*subsection (4A)*”.
- 4.31 Clause 22 amends s45(4) of the *Guardianship and Administration Act 1990* by renumbering the section as “*subsection(4A)*”. The clause deletes the words in s 45 “*(4) A plenary guardian cannot*” and replaces it with “*(4A) A plenary guardian cannot*”.
- 4.32 Clause 22 amends s76(3) of the *Guardianship and Administration Act 1990* by reflecting changes to the *Public Trustee Act 1941*. This Act was deleted by the *Public Trustee and Trustee Companies Legislation Amendment Act 2008*. This means section 50 and s53 are deleted and replaced with “*section 50*”.
- 4.33 Clause 22 amends s110G(1) of the *Guardianship and Administration Act 1990*. The Explanatory Memorandum states that “*there are two subsections 45(4). This amendment renumbers the first such section as subsection 4A in s110G of the amended Act.*”¹⁷ This amendment is required as there are currently two subsections 45(4). The Omnibus Bill cites the change as “*In section 110G(1), delete “section 45(3) and (4) and insert section 45(3), 4(A) and (4).*”

Recommendation 19: The Committee recommends that all provisions of clause 22 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 23 *Health Act 1911*

- 4.34 Clause 23 amends the definition of “*public place*” under s3(1) of the *Health Act 1911*. The Explanatory Memorandum states that currently it is defined as

¹⁷ Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013, p15.

- “**public place**, except in Part IXB, includes every place to which the public ordinarily have access, whether by payment of fee or not”. The amendment proposes the definition be read as “**public place**, includes every place to which the public ordinarily have access, whether by payment or not.” Part IXB was removed by the *Tobacco Products Control Act 2006* and the reference is redundant.

Recommendation 20: The Committee recommends that clause 23 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 24 *Health Services (Quality Improvement) Act 1994*

- 4.35 Clause 24 refers to amendments to s12(2) of the *Health Services (Quality Improvement) Act 1994*. Section 12(2) of the *Health Services (Quality Improvement) Act 1994* specifically refers to s354 of the *Criminal Code* in relation to criminal defamation. Section 354 of the *Criminal Code* was amended by s47 of the *Defamation Act 2005*. Section 12(2) of the *Health Services (Quality Improvement) Act 1994* refers to redundant provision (s354) of the *Criminal Code*. Clause 24 updates the statute by removing s12(2) of the *Health Services (Quality Improvement) Act 1994*.

Recommendation 21: The Committee recommends that clause 24 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 25 *Hire-Purchase Act 1959*

- 4.36 Clause 25 amends a specific provisions contained in s3(2)(e)(viii) of the *Hire-Purchase Act 1959* relating to the form and content of hire purchase agreements.
- 4.37 Section 3(2)(e)(viii) states the total of the amounts referred to in *subparagraphs (i)(iii), (iv),(v),(vi) (vii) and (viiia) less the deposit (in this Act called and in the agreement as amount financed*. Subparagraph (vii) of section 3 of the *Hire-Purchase Act 1959* was deleted by s52 of the *Personal Property Securities (Consequential Repeals and Amendments) Act 2011* and subparagraph (viiia) of section 3 of the *Hire Purchase Act 1959* was deleted by s39 of the *Revenue Laws Amendment and Repeal Act 2004*.

As these subsections have been repealed, the clause provides for the Act to be updated.

Recommendation 22: The Committee recommends that clause 25 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 26 *Housing Act 1980*

- 4.38 Clause 26 deletes the words “*corporate name*” from s6(1) of the *Housing Act 1980*. For the purposes of the legislation, these words appear redundant. The section retains the meaning of the Act, “*that The State Housing Authority is preserved and continues in existence for the purposes of this Act as a body corporate retaining the same corporate identity*”.¹⁸

Recommendation 23: The Committee recommends that clause 26 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 27 *Interpretation Act 1984*

- 4.39 Clause 27 amends s13CA(2) that refers to a “*named local government district*” under the *Interpretation Act 1984*. This section amended shall be read as:

Section 13CA(2)

(2) A reference in a written law to a named local government district is a reference to the local government district that has that name under the Local Government Act 1995

[Examples: “Perth local government district” refers to the local government district named Perth

¹⁸ Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013, p16.

“Narrogin (Shire) local government district refers to the local government district names Narrogin (Shire).”¹⁹

The Explanatory Memorandum states that the section provides an example of a Shire. The current example refers to Albany Shire, however this reference is not appropriate as Albany is a City and not a Shire. The amendment in clause 27 corrects the example provided to reflect a Shire and refers to the word “Narrogin” for this purpose. These amendments incorporate the appropriate reference.

Recommendation 24: The Committee recommends that clause 27 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 28 *Marketing of Potatoes Act 1946*

- 4.40 Clause 28 deleted s22(4)(d) and (e) of the *Marketing of Potatoes Act 1946*. The Explanatory Memorandum suggests that the clause clarifies the wording of the evidentiary requirements, but the effect is the same. The old reference to the words “*prima facie*” has been removed.

Recommendation 25: The Committee recommends that clause 28 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 29 *Mining Act 1978*

- 4.41 Clause 29 amends s160AA of the *Mining Act 1978* and the Table references. The reference to s94J in the Table is redundant in the text as it was repealed by the *Acts Amendment and Repeal (Native Title) Act 1995*. The amendment corrects the statute and is minor.

¹⁹ Explanatory Memorandum and Table of Clauses Statutes (Repeals and Minor Amendments) Bill 2013, p17.

Recommendation 26: The Committee recommends that clause 29 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 30 *Owner Drivers (Contracts and Disputes) Act 2007*

- 4.42 Clause 30 amends the definition of the word “*Council*” in s3 of the *Owner Drivers (Contracts and Disputes) Act 2007* to incorporate the correct name of the relevant Council. The section will be read as

Section 3 definition of Council

...Council means the Road Freight Transport Industry Council established by section 17;²⁰

The amendment is minor.

Recommendation 27: The Committee recommends that clause 30 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 31 *Petroleum Legislation Amendment and Repeal Act 2005*

- 4.43 Clause 31 amends s29(2) of the *Petroleum Legislation Amendment and Repeal Act 2005*. Section 29(2) is a transitional provision referring to s51 of the repealed *Justices Act 1902*. No replacement provision is required.

Recommendation 28: The Committee recommends that clause 31 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 32 *Professional Standards Act 1997*

- 4.44 Clause 32 amends a typographical error in s34A(2) of the *Professional Standards Act 1997*. The provision will commence with the word “A” before

²⁰ Explanatory Memorandum and Table of Clauses Statutes (Repeals and Minor Amendments) Bill 2013, p21.

the word “*limitation*”. Currently the section begins with the word “*Limitation*”. The amendment is minor.

Recommendation 29: The Committee recommends that clause 32 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 33 *Radiation Safety Act 1975*

- 4.45 Clause 33 amends s4 of the *Radiation Safety Act 1975*. The word in the definition; “*seller*” and the words “*repealed acts*” will be deleted. Where the definition of *sell* appears in s4, the semi colon will be deleted after the word “*accordingly*” and replaced by a full stop. The Explanatory Memorandum states these terms no longer appear in the Act and the words are redundant.

Recommendation 30: The Committee recommends clause 33 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 34 *Rail Safety Act 2010*

- 4.46 Clause 34 amends s40 of the *Rail Safety Act 2010* to include the words “*for a first offence*”. The amendment clarifies the provision by stipulating what is a first offence penalty.

Recommendation 31: The Committee recommends that clause 34 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 35 *Road Traffic Act 1974*

- 4.47 Clause 35 amends s22(5)(a) of the *Road Traffic Act 1974* by changing the wording of “*Fund*” replacing it with the word “*Account*”. The current provision is read as following:

22. Fees and charges, application of

- (1) *The Director General shall, on or before the 15th day of the month next following that in which it receives them, credit to the Consolidated Account, all vehicle licence charges.*
- (2) *All recording fees paid to the Director General may be retained by the Director General.*
- [(3) deleted]*
- (4) *All fees taken pursuant to the regulations on the grant of a permit for the carrying on a vehicle of a load exceeding a prescribed load, shall be credited to the Consolidated Account.*
- (5) *An amount equal to the amounts credited to the Consolidated Account under subsections (1) and (4) shall be —*
- (a) credited to the Main Roads Trust Fund maintained under the Main Roads Act 1930; and*
- (b) charged to the Consolidated Account, and this subsection appropriates the Consolidated Account accordingly.*

- 4.48 The Omnibus Bill includes the words “*Note: the heading to amended section 22 is to read:*

Certain fees and charges to be credited to Main Roads Trust Account

- 4.49 The Committee notes that the amendment to change the wording from “*Fund*” and “*Account*” is consistent with the terminology used in the s3(1) of the *Main Roads Act 1930* and does not change policy.

Recommendation 32: The Committee recommends that clause 35 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 36 *Road Traffic Legislation Amendment (Disqualification by Notice) Act 2010*

Clause 36 deletes s12(2)(c), s(5)(d) and s(7)(b) of the *Road Traffic Legislation Amendment (Disqualification by Notice Act) 2010* proposed to amend s76 of the *Road Traffic Act 1974*. The effect of the amendments inserts the words “*or*” or “*and*” at the end of each subparagraph. The Explanatory Memorandum states that the “*amendments were effected by another Act and the subsections are now redundant and are deleted.*”²¹

²¹ Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013, p25.

Recommendation 33: The Committee recommends that clause 36 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 37 *Sentencing Act 1995*

- 4.50 Clause 37 amends s46(b), s108(3), s108(6) and subsections of Schedule 1 of the *Sentencing Act 1995*. The clause proposes the replacement of the words “*that it*” from S46(b) with “*it*”. This section lists the considerations that a court may take when imposing no sentence such as “*the circumstances of the offence, regard for the offender’s character, antecedents, age, health and mental condition and any other matter that the court thinks is proper to consider*”. The last line of the s46(b) will be read as “*it is not just to impose any other sentencing option*”. The removal of the word “*that*” will not impact the meaning or intent of the section.

Section 108(3) currently reads:

(3) The court must immediately send details of the offence and the order to the Secretary to the department administering the Passports Act 1938 of the Commonwealth.

Clause 37 amends s108(3) of the *Sentencing Act 1995* by deleting the words “*the Passports Act 1938 of the Commonwealth.*” to be read as “*the Australian Passports Act 2005 (Commonwealth).*”

Passports are now regulated under the *Passports Act 2005 (Cth)* and the clause will amend the section to reflect this.

- 4.51 Clause 37 amends Section 108(6) of the *Sentencing Act 1995*. This subsection describes the elements of a “*passport offence*” and “*makes it clear that it only relates to s108 of the Sentencing Act 1995.*”²² The amendment clarifies the application of the provision.
- 4.52 Clause 37 also amends Schedule 1 of the *Sentencing Act 1995*. There are two proposed amendments to Schedule 1. Firstly, the word “*fund*” is changed to “*account*”. Schedule 1 will read as “*Person or account*”.
- 4.53 This amendment is minor and updates the statute.
- 4.54 Secondly, Schedule 1 is read as;

²² Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013, p26.

Schedule 1 Colleges Act 1978 The college that made the by-law under which the fine was imposed.

The clause proposes the reference to the *Colleges Act 1978* be deleted as it was repealed by *Vocational Education and Training Act 1996*.

This amendment updates the statute.

Recommendation 34: The Committee recommends that all provisions under clause 37 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 38 *Sentencing Legislation Amendment and Repeal Act 2003*

4.55 Clause 38 amends s78 of the *Sentencing Legislation Amendment and Repeal Act 2003*.

4.56 Currently, Section 78 is read as follows;

The amendments in this section are to the Maritime Archaeology Act 1973.

Section 9 (6) is amended by deleting the penalty clause and inserting the following penalty clause instead- "Penalty: \$1000.

4.57 The Explanatory Memorandum states that "*s78 of the Sentencing Legislation Amendment and Repeal Act 2003 has not been proclaimed. It is deleted as the current penalty in s78 of the Maritime Archaeology Act 1973 is to continue.*"²³

4.58 The Committee notes that s78 of the *Maritime Archaeology Act 1973* is not being amended. It is s78 of the *Sentencing Legislation Amendment and Repeal Act 2003* that is proposed to be amended. Section 78 was intended to amend penalty provisions of s9(6) of the *Maritime Archaeology Act 1973*.

4.59 Section 9 (6) of the *Maritime Archaeology Act 1973* provides:

A person who contravenes any provision of a regulation made pursuant to subsection (5) commits an offence against this Act, and where a vessel enters or remains within a protected zone in contravention of any such regulation the person in command or in

²³ Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013, p27.

charge of the vessel and, where he can be shown to have caused or permitted the contravention, the owner or charterer of the vessel are each guilty of an offence against this Act. Penalty: \$1 000 or imprisonment for 6 months or both the fine and imprisonment.

4.60 The Attorney General clarified the background to the current penalty provisions under s9(6) of the *Maritime Archaeology Act 1973* that imposes a fine, imprisonment or both.

4.61 In a letter dated 28 June 2013, the Attorney General stated;

Section 9(6) of the Maritime Archaeology Act 1973 as originally enacted and as currently in force provides a penalty of \$1,000, or six months' imprisonment, or both. Section 78 of the Sentencing Legislation and Repeal Act 2003 would have amended this to provide a sentence of \$1,000 only. However in 2004, when the rest of the 2003 Act was being proclaimed, the Minister then administering the Maritime Archaeology Act 1973 (the Minister for Culture and the Arts) requested that it not be proclaimed, because a wider review of the Maritime Archaeology Act 1973, and of the penalties under it, had been commenced. Section 78 was therefore never proclaimed, so the penalty remains as it always was...

...as the repeal of an unproclaimed provision will not in any way affect the law in force, I can confirm that the deletion of s78 will not change the penalty and that it is retained in full.²⁴

4.62 The policy considerations that resulted in s78 of the *Sentencing Legislation Amendment and Repeal Act 2003* reflect a government commitment to change the penalty provisions. It is the Committee's view that clear policy considerations resulted in a narrowing of penalty provisions (to a fine of \$1000). At the time, changing the penalty provisions of s9(6) of the *Maritime Archaeology Act 1973* (that provided for a fine, gaol or both) to consideration of a fine - reflects a policy position as to appropriate penalty provisions. Whilst the (former) Minister for Culture and the Arts decided not to introduce the fine (under s78 of the *Sentencing Legislation Amendment and Repeal Act 2003*) and preferred to retain the existing provisions under s9(6) of the *Maritime Archaeology Act 1973*, the Committee holds the view that there were policy changes that led to s78 *Sentencing Legislation Amendment and Repeal Act 2003* being proposed. It is the view of the Committee that these changes were not minor. The Attorney General's correspondence explains the reasoning behind the retention of the penalty provisions. Whilst s78 was not

²⁴ Letter dated 28 June 2013 from the Hon. Michael Mischin MLC, Attorney General to the Committee.

ultimately proclaimed, the Committee maintains that there was a level of discussion, legislative review and agreement about the policy settings for penalty provisions.

- 4.63 The Committee agrees that the penalty provisions in s9(6) of the *Maritime Archaeology Act 1973* remain the same. This is a result of the amendment provision (s78 of the *Sentencing Legislation Amendment and Repeal Act 2003*) not being proclaimed.

Recommendation 35: The Committee recommends that clause 38 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 39 *Standardisation of Formatting Act 2010*

- 4.64 Clause 39 amends a number of provisions under s4 Table of the *Standardisation of Formatting Act 2010*. This Act amends a wide range of statutes to ensure consistency in drafting and format.

- 4.65 The Explanatory Memorandum of the *Standardisation of Formatting Act 2010* states:

*there are some structural and formatting matters that can be changed only by legislative amendment. The Act provides for uniformity of layout, style and formatting across the legislation database (that) will improve the readability of legislation; increase the ability to search and manipulate the data on the database; enable additional functionality to be incorporated into the database (such as the hyper-linking of references both within a document and between documents); reduce the complexity of the database thus simplifying its maintenance and reducing the likelihood of technical problems.*²⁵

- 4.66 Prior to the Act's operation however, amendments were made to Western Australian legislation "*in a common format. In many cases the amendment proposed to be made by the Act were made prior to this by other legislation.*"²⁶ Amendments made by prior acts are incorporated in clause 39.

²⁵ This Act received assent on 28 June 2010. The Explanatory Memorandum of the Standardisation of Formatting Bill 2009.

²⁶ Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013, p28.

- 4.67 Clause 39 proposes a number of changes to the *Standardisation of Formatting Act 2010* that improves consistency of formatting, layout and style.
- 4.68 Clause 39 amends a number of items under section 4 of the Table of the *Standardisation of Formatting Act 2010*.

The amendments are;

- Deletion of schedule 1 of the *Fish Resources Management Act 1994*.
 - Schedule (s60(5)) relating to the *Occupational Safety and Health Act 1984* is deleted (as this schedule was amended by the *Occupational Safety and Health Legislation and Amendment Act 2009*). The reference to the schedule in the *Standardisation of Formatting Act 2010* will therefore need to be removed.
 - Schedule 1 of the *Security and Related Activities (Control) Act 1996* (as this schedule was deleted by the *Security and Related Activities (Control) Amendment Act 2008*). The reference to the schedule in s4 Table of the *Standardisation of Formatting Act 2010* will therefore need to be deleted.
 - Schedule of the *Shipping and Pilotage Act 1967*. This schedule was deleted by the *Shipping and Pilotage Amendment Act 2006*. The reference to the schedule in s4 Table of the *Standardisation of Formatting Act 2010* will therefore need to be deleted.
- 4.69 Section 51 in the Table deletes Item 14 of the *Construction Industry Portable Paid Long Service Leave Act 1985*. The Explanatory Memorandum states that “*this amendment (to the Act) was preciously (sic) amended by the Labour Relations Legislation Amendment Act 2006. It is deleted as redundant.*”²⁷ The Explanatory Memorandum refers to this section as “*redundant*”.²⁸ The provisions related to leave contributions.
- 4.70 Section 51 Table item 31 refers to s55(5) of the *Housing Act 1980* that have been amended previously. This provision is now redundant and should therefore be deleted.
- 4.71 There are references to a number of items under s 52(4) of the Table that relate to sections 21(1), (2) and (3) and 39(2) of the *Bushfire Act 1954* that are now redundant. The clause will amend the Table and delete the following

²⁷ Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013, p29.

²⁸ Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013, p29.

provisions as they are redundant following amendments to the *Bushfire Act 1954*:

Section 52(4) Table

s21(1)(1)(a), Where amended to read *(1A), Where*

(b) The Minister amended to read *(1B), The Minister*

s21(2)(2)(a), Subject amended to read *(2A) Subject*

(b) Permission under this subsection amended to read *(2B) Permission under subsection (2A)*

S21 (3)(3)(a) During amended to read *(3A) During*

3 (A) subsection (1) amended to read *subsection (1A)*

(3B) Where, (b) where amended to read *(3B) Where*

S39 (2) (2) (a) Where amended to read *(2) Where*

In section 52 (4) the Table, the rows will be read as:

S44 (3) (3) (a) Where amended to read *(3) Where*. (This amendment to the *Bush Fires Act 1954* is deleted as it is redundant).

S45(a) where amended to read *(1) Where, (b) Where* amended to read *(2) Where*. (This amendment to the *Bush Fires Act 1954* is deleted as it is redundant).

S47 section 39 (2)(a) amended to read *section 39(2)*. (This amendment to the *Bush Fires Act 1954* is deleted as it is redundant).

S64 section 21(2) amended to read *section 21(2A) and (2B), section 38(5)* amended to read *section 38(5A) or (5B)*. (This amendment to the *Bush Fires Act 1954* is deleted as it is redundant).

As amended the Section 4 of the Table will contain only “*Fish Resources Management Act 1994 (Schedule 3)*”.

- 4.72 All the proposed changes reflect formatting improvements consistent with the intention of the amending acts and the *Standardisation of Formatting Act 2010*.

Recommendation 36: The Committee recommends that all provisions of clause 39 in the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 40 *State Superannuation Act 2000*

- 4.73 Clause 40 amends s30(2) of the *State Superannuation Act 2000* that refers to the powers of the Treasurer. The changes recognise that the Treasurer may approve alternative schemes. The Explanatory Memorandum states “*this subsection is amended by deleting the words ‘and only if’ near the end. The words are not appropriate having regard to the fact that the treasurer may approve alternative schemes.*”²⁹ The Committee notes that the changes are minor.

Recommendation 37: The Committee recommends that clause 40 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 41 *State Trading Concerns Act 1916*

- 4.74 Clause 41 deletes s8(2) and s26 of the *State Trading Concerns Act 1916*. The Explanatory Memorandum states that the sections are now subject to the *Financial Management Act 2006*. The amendment is minor.

Recommendation 38: The Committee recommends that clause 41 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 42 *Transport Co-ordination Act 1966*

- 4.75 Clause 42 amends the definition of³⁰ owner in s4(1) *Transport Co-ordination Act 1966* as the definition is redundant as a result of the *Financial*

²⁹ Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013, p31.

³⁰ Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013, at page 34 has a typographical error – replace “od” with “of”.

Management Act 2006. The Explanatory Memorandum³¹ states that the words “a person who” are deleted from the paragraph (ab) “as these words are already used at the beginning of the provision and these latter words are therefore redundant”. The amendments are minor.

Recommendation 39: The Committee recommends that clause 42 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 43 *Warehousemen’s Liens Act 1952*

4.76 Clause 43 of the Explanatory Memorandum amends s13 of the “*Warehousemen’s Liens Act 1953*”. This clause proposes to “correct cross references” contained in s13, by replacing the words “section 9” to “section 10(2A)”. The Omnibus Bill however, refers to the *Warehousemen’s Liens Act 1952*. The Committee notes that the Act received assent on 28 November 1952 and commenced on 20 February 1953. The Explanatory Memorandum³² states s13 of the “*Warehousemen’s Liens Act 1953*” is read as “the Governor’s power to make rules and prescribe forms to regulate applications to the Magistrates Court under section 7 and payments into court under section 9 and otherwise regulate proceedings and prescribe fees under those sections and to carry those sections into effect”.

4.77 Section 13 of the *Warehousemen’s Liens Act 1952* is read as:

Rules of Court

The Governor may make rules and prescribe forms to regulate applications to the Magistrates Court under section 7 and payments into court under section 9 and otherwise to regulate proceedings and prescribe fees under those sections and to carry those sections into effect.

³¹ Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013,p32-33.

³² The Explanatory Memorandum and Clause Notes Statutes (Repeals and Minor Amendments) Bill 2013 refers to the *Warehousemen’s Liens Act 1953*. The Committee notes that the Omnibus Bill refers to the *Warehousemen’s Liens Act 1952* which is the correct reference. There was an amendment to the Act, the *Warehousemen’s Liens Act Amendment Act 1954*. Refer to http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/wa/consol_act/wla1952228/notes.html?stem=0&synonyms=0&query=warehousemen's%20liens%20act

4.78 Clause 43 proposes s13 is amended by deleting s9 and placing a reference to s10(2A).

4.79 Section 9 of the *Warehousemen's Liens Act 1952* is read as:

Notices, giving of etc.

(1) Where a notice of lien under the provisions of section 6, or a notice of intention to sell under the provisions of section 7 has been given, but those provisions have not been strictly complied with, then if a court before which a question respecting the notice is tried or inquired into considers that those provisions have been substantially complied with, or that it would be inequitable that the lien or sale should be deemed to be void by reason of the non-compliance, no objection to the sufficiency of the notice shall in any such case be allowed to prevail so as to release or discharge the goods from the lien or vitiate the sale.

(2) A notice given under this Act by registered post shall be deemed to be sufficiently addressed to the person to whom it is sent if it is addressed to him at the last address of such person known to the warehouseman.

(3A) Regulations made under this Act may provide for the giving of notice by advertisement in cases where a person to whom notice may be given pursuant to the provisions of section 6 or section 7 is unknown to the warehouseman, or where no address of the person is known to the warehouseman, and for the ascertainment of the day upon which the notice shall be deemed to have been given, and for any other matter relating to the advertisement.

(3B) A notice given by advertisement in accordance with the regulations shall for the purposes of this Act be deemed to have been given personally on the date ascertained pursuant to the regulations.

4.80 Section 10(2A) of the *Warehousemen's Liens Act 1952* is read as:

Disposition of proceeds of sale

Where there are conflicting claims to a surplus or the rights of a claimant to it are uncertain, the warehouseman shall within 14 days after the sale pay the surplus, whatever the amount of it may be, into the Magistrates Court at the place nearest to the premises of the warehouseman.

- 4.81 The Committee notes that s9 will remain in the Act. Section 13 will delete the section's reference to s9 and replace with s10(2A). The amendment provides for a cross reference.

Recommendation 40: The Committee recommends that clause 43 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

Clause 44 *Wildlife Conservation Act 1950*

- 4.82 Clause 44 amends s16 of the *Wildlife Conservation Act 1950* to reflect the correct cross references to s14(1). Section 16 is currently read as:

Taking of protected fauna an offence

*(1) Subject to subsection (3), a person who infringes the protection conferred by **subsection (1)** or declared pursuant to section 14(2) to (5), by taking fauna while protected, otherwise than by —*

(a) the authority of a licence issued pursuant to the provisions of section 15; or

(b) the authority of the provisions of section 17(2)(c), or of section 23, commits an offence against this Act.

- 4.83 The clause amends s16(1) by deleting subsection 1 and inserting the correct cross reference to section 14(1).
- 4.84 The amendment is minor and the Committee is satisfied that it will not impact policy.

Recommendation 41: The Committee recommends that clause 44 of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

5 CONCLUSION

- 5.1 The Committee considered all clauses in the Explanatory Memorandum and found omissions, minor spelling, referencing, and formatting errors in the document. In future, Committee Members would be assisted by a comprehensive, detailed and accurate Explanatory Memorandum that corresponds with the proposed clauses of Omnibus Bills referred to the Committee.
- 5.2 All clauses were examined in light of the Premier's Circular 2010/01 and whether the proposed amendments affects any existing right, obligation, power or duty; or changes any process provided for in the legislation; or involves the insertion of multiple new sections into an Act.
- 5.3 A number of matters require particular comment. The Committee identified a number of clauses that could have been included in current amendment bills tabled in the Legislative Assembly. For example, the Petroleum and Geothermal Energy Legislation Amendment Bill 2013 tabled in the Legislative Assembly, considers 170 proposed clauses to the *Petroleum (Submerged Lands) Act 1982*, the *Petroleum and Geothermal Energy Resources Act 1967* and the *Petroleum Pipelines Act 1969*. A number of clauses in the Omnibus Bill also dealt with amendments to the *Petroleum (Submerged Lands) Act 1982*, the *Petroleum and Geothermal Energy Resources Act 1967* and the *Petroleum Pipelines Act 1969*. Clause 8 of the Omnibus Bill proposed an amendment to some words of a section (s126A(1) of *Petroleum and Geothermal Energy Resources Act 1967*), with changes to the rest of the section (s126A(1)) referred for consideration in the amendment bill before the Legislative Assembly.
- 5.4 Furthermore, the Omnibus Bill proposes clause 13 that amends s44 and s94 (1) of the *Mental Health Act 1996*. The Green Paper called for public submissions from November 2012. Again, the Committee queried why these changes are not considered with the substantial review undertaken by the Green Paper into the Act.
- 5.5 The Omnibus Bill also considered unproclaimed Acts that had an impact on penalty provisions. For example, Clause 38 of the Omnibus Bill refers to s78 of the *Sentencing Legislation Amendment and Repeal Act 2003*. Section 78 of the *Sentencing Legislation Amendment and Repeal Act 2003* was not proclaimed. The provision was originally intended to limit current penalty provisions of s9(6) of the *Maritime Archaeology Act 1973*. The Committee holds the view that changes to the penalty provisions (in s78) did represent a major policy change, despite this section not being proclaimed.

- 5.6 The Committee acknowledges the timely response of the Hon Michael Mischin MLC, Attorney General to questions posed by Committee.
- 5.7 The Hon Michael Mischin MLC, Attorney General in his letter to the Committee (dated 2 August 2013), provided a detailed account of the timing of the amendments and the efficiencies that were considered in the preparation of the Omnibus Bill. The Committee notes however, that the amendments sought in the Petroleum and Geothermal Energy Legislation Amendment Bill (2012) overlapped with the omnibus preparation period.
- 5.8 The Committee holds the view that the legislative reform agenda of both Houses of the current Parliament would be better served if proposed amendments were identified at an earlier stage, coordinated, cross referenced and integrated within the appropriate amendment bills. This would ensure that all amendments relating to key legislation could be considered in full and not, as currently adopted, by way of an ad hoc or piecemeal approach using omnibus legislation. The Committee takes the view that there was ample opportunity to have a number of clauses (of the Omnibus Bill) considered in relevant amendment bills.
- 5.9 The Committee agrees with the Second Reading address of the Attorney General and the Premier's Circular, that "*an omnibus bill is an avenue for making general housekeeping amendments*".³³ "*An omnibus bill is not a vehicle for implementing a change in government policy or dealing with an issue that may be controversial or legally or otherwise contentious*".³⁴
- 5.10 As the Committee worked through a wide range of legislative instruments under amendment, Members noted that there were a large number of legislative instruments that required updating because they were obsolete or redundant.
- 5.11 The Committee recommends a more diligent approach in the preparation of Explanatory Memorandums and future Omnibus Bills tabled before the House.

Recommendation 42: The Committee recommends that all clauses of the Statutes (Repeals and Minor Amendments) Bill 2013 be passed.

³³ Statutes (Repeals and Minor Amendments) Bill 2013, Second reading speech, the Hon Michael Mischin MLC, Attorney General.

³⁴ Statutes (Repeals and Minor Amendments) Bill, Premier's Circular 2010/01



Hon Kate Doust MLC
Chair

8 August 2013

APPENDIX 1

EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM AND CLAUSE NOTES

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2013

Part 1 – Preliminary matters

Clause 1. Short title

Clause 1 provides that when enacted the Act is the *Statutes (Repeals and Minor Amendments) Act 2013 (WA)*.

Clause 2. Commencement

Clause 2 provides that Part 1 comes into effect on Royal Assent but the balance of the proposed Act comes into effect on proclamation.

Part 2 – Repeal

CLAUSE IN BILL	EXISTING PROVISION	AS AMENDED	EXPLANATION
Clause 3.	<i>Year 2000 Information Disclosure Act 1999</i> repealed.	The Act is repealed.	The <i>Year 2000 Information Disclosure Act 1999</i> is exhausted and is no longer required.

Part 3 – Amendments

Division 1 – Amendments reflecting the abolition of Local Courts

CLAUSE IN BILL	EXISTING PROVISION	AS AMENDED	EXPLANATION
Clause 4. <i>Genetically Modified Crop Free Areas Act 2003</i> amended	Section 9(4). The amount of compensation payable is to be determined by agreement between the person applying for compensation and the chief executive officer or, in the	Section 9(4). The amount of compensation payable is to be determined by agreement between the person applying for compensation and the chief executive officer or, in the	The words “a Local Court” are deleted and the words “the Magistrates Court” are inserted. The <i>Local Courts Act 1904</i> was

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	absence of agreement, by a <u>Local Court</u> on the application of the person applying for compensation or of the chief executive officer.	absence of agreement, by <u>the Magistrates Court</u> on the application of the person applying for compensation or of the chief executive officer.	repealed by the <u>Courts Legislation Amendment and Repeal Act 2004</u> , section 4. Local Courts have been replaced by the Magistrates Court.
Clause 5. Residential Tenancies Act 1987 amended	<p>Section 15(2)(d).</p> <p>(2) Upon such an application the court may —</p> <p>.....</p> <p>(d) authorise payment of the rent under the agreement into <u>a local court</u> until the agreement has been performed or any application for compensation has been determined, and order that such rent be paid out towards the cost of remedying the breach or towards the amount of any compensation or otherwise as it considers appropriate; and</p>	<p>Section 15(2)(d).</p> <p>(2) Upon such an application the court may —</p> <p>.....</p> <p>(d) authorise payment of the rent under the agreement into <u>the Magistrates Court</u> until the agreement has been performed or any application for compensation has been determined, and order that such rent be paid out towards the cost of remedying the breach or towards the amount of any compensation or otherwise as it considers appropriate; and</p>	<p>The words "a Local Court" are deleted and the words "the Magistrates Court" are inserted. The <u>Local Courts Act 1904</u> was repealed by the <u>Courts Legislation Amendment and Repeal Act 2004</u>, section 4. Local Courts have been replaced by the Magistrates Court.</p>

Division 2 – Amendments adopting the terminology of the *Criminal Procedure Act 2004*

CLAUSE IN BILL	EXISTING PROVISION	AS AMENDED	EXPLANATION
Clause 6. Criminal Investigation (Identifying People) Act 2002 amended	<p>Section 3(2)(a).</p> <p>(3) For the purposes of this Act a person is charged with an offence when —</p> <p>(a) the officer investigating the offence informs the person that he or she will be charged with the offence, whether or not at that time the officer has <u>made or sworn a complaint in respect</u> of the offence; or</p>	<p>Section 3(2)(a).</p> <p>(3) For the purposes of this Act a person is charged with an offence when —</p> <p>(a) the officer investigating the offence informs the person that he or she will be charged with the offence, whether or not at that time the officer has <u>commenced a prosecution</u> of the offence; or</p>	<p>The word "complaint" is not used in the <i>Criminal Procedure Act 2004</i>. Instead that Act refers to the commencement or discontinuance of a prosecution in a number of places. Accordingly the reference to making or swearing a complaint is deleted for the more appropriate words "commenced a prosecution".</p>
Clause 7. Petroleum (Submerged Lands) Act 1982 amended	<p>Section 137A(1).</p> <p>(1) In a proceeding for an offence against this Act an averment in <u>the complaint</u> that at a particular time —</p> <p>(a) a particular operation was an offshore petroleum operation;</p> <p>(b) a particular vessel or structure was a facility;</p> <p>(c).....</p>	<p>Section 137A(1).</p> <p>(1) In a proceeding for an offence against this Act an averment in <u>the charge of the offence</u> that at a particular time —</p> <p>(a) a particular operation was an offshore petroleum operation;</p> <p>(b) a particular vessel or structure was a facility;</p> <p>(c).....</p>	<p>The word "complaint" is not used in the <i>Criminal Procedure Act 2004</i>. Instead that Act refers to the charge of the offence. Accordingly the reference to a complaint is deleted for the more appropriate words "charge of the offence".</p>

<p>Clause 8. <i>Petroleum and Geothermal Energy Resources Act 1967</i> amended</p>	<p>Section 126A(1).</p> <p>(1) In a proceeding for an offence against this Act an averment in the <u>complaint</u> that at a particular time —</p> <p>(a) a particular operation was a petroleum operation or geothermal energy operation; or</p> <p>(b) a particular person was the operator of a petroleum operation or geothermal energy operation; or</p> <p>(c).....</p>	<p>Section 126A(1).</p> <p>(1) In a proceeding for an offence against this Act an averment in the <u>charge of the offence</u> that at a particular time —</p> <p>(a) a particular operation was a petroleum operation or geothermal energy operation; or</p> <p>(b) a particular person was the operator of a petroleum operation or geothermal energy operation; or</p> <p>(c).....</p>	<p>The word “complaint” is not used in the <i>Criminal Procedure Act 2004</i>. Instead that Act refers to the charge of the offence. Accordingly the reference to a complaint is deleted for the more appropriate words “charge of the offence”.</p>
<p>Clause 9. <i>Water Efficiency Labelling and Standards Act 2006</i> amended</p>	<p>Section 40A(1)(b).</p> <p>(1) An infringement notice is to be in the prescribed form and is to —</p> <p>(a) contain a description of the alleged offence;</p> <p>(b) advise that if the alleged offender does not wish to have a <u>complaint</u> of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to the Regulator within a period of 28 days after the giving of the notice; and</p> <p>(c)....</p>	<p>Section 40A(1)(b).</p> <p>(1) An infringement notice is to be in the prescribed form and is to —</p> <p>(a) contain a description of the alleged offence;</p> <p>(b) advise that if the alleged offender does not wish to have a <u>charge</u> of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to the Regulator within a period of 28 days after the giving of the notice; and</p> <p>(c)....</p>	<p>The word “complaint” is not used in the <i>Criminal Procedure Act 2004</i>. Instead that Act refers to the charge of the offence. Accordingly the reference to a complaint is deleted for the more appropriate word “charge”.</p>

Division 3 – Reflecting changes in nomenclature

Subdivision 1 – Registrar of the Mentally Impaired Accused Review Board

ACT AMENDED	EXISTING PROVISION	AS AMENDED	EXPLANATION
<p>11. <i>Electoral Act 1907</i> amended</p>	<p>Section 59(1).</p> <p>(1) In this section —</p> <p>.....</p> <p><u>secretary, Mentally Impaired Accused Review Board</u> means the secretary of the Mentally Impaired Accused Review Board established under the <i>Criminal Law</i></p>	<p>Section 59(1).</p> <p>(1) In this section —</p> <p>.....</p> <p><u>registrar, MIARB</u> means the registrar of the Mentally Impaired Accused Review Board established under the <i>Criminal Law (Mentally</i></p>	<p>The meaning of the term “registrar” of the MIARB is updated from the former term “secretary”. The term is also inserted in the proper alphabetical order in section 59(1).</p>

	<p><u>(Mentally Impaired Accused) Act 1996.</u></p> <p>Section 59(1).</p> <p>(1) In this section —</p> <p>....</p> <p>required information, in relation to a person, means that person's name, address, date of birth, occupation and <u>sex</u>;</p> <p>.....</p> <p>Section 59(2)(b) and (3)(b).</p> <p>(2) As soon as practicable after the beginning of each month —</p> <p>.....</p> <p>(b) the <u>secretary, Mentally Impaired Accused Review Board</u> must forward to the Electoral Commissioner —</p> <p>(i) a list containing the required information for each person who became a mentally impaired accused during the preceding month; and</p> <p>(ii) a list containing the required information for each person who ceased to be a mentally impaired accused during the preceding month.</p> <p>(3) Within 4 days after the date of the writ for an election —</p> <p>.....</p> <p>(b) the <u>secretary, Mentally Impaired Accused Review Board</u> must forward to the Electoral Commissioner —</p> <p>(i) a list containing the required information for each person who became a mentally impaired accused during the period since a list was last forwarded under subsection (2)(b)(i); and</p> <p>(ii) a list containing the required information for each person who ceased to be a mentally impaired accused during the period since a list</p>	<p><u>Impaired Accused) Act 1996.</u></p> <p>Section 59(1).</p> <p>(1) In this section —</p> <p>....</p> <p>required information, in relation to a person, means that person's name, address, date of birth, occupation and <u>sex</u>.</p> <p>.....</p> <p>Section 59(2)(b) and (3)(b).</p> <p>(2) As soon as practicable after the beginning of each month —</p> <p>.....</p> <p>(b) the <u>registrar, MIARB</u> must forward to the Electoral Commissioner —</p> <p>(i) a list containing the required information for each person who became a mentally impaired accused during the preceding month; and</p> <p>(ii) a list containing the required information for each person who ceased to be a mentally impaired accused during the preceding month.</p> <p>(3) Within 4 days after the date of the writ for an election —</p> <p>.....</p> <p>(b) the <u>registrar, MIARB</u> must forward to the Electoral Commissioner —</p> <p>(i) a list containing the required information for each person who became a mentally impaired accused during the period since a list was last forwarded under subsection (2)(b)(i); and</p> <p>(ii) a list containing the</p>	<p>The term required information in section 59(1) is amended to delete the semi-colon after the word "sex" and insert a full stop. The amendment is necessary because the definition of required information is now the last matter referred to in section 59(1).</p> <p>The meaning of the term "registrar" of the MIARB is updated from the former term "secretary" where the words occur in sections 59(2)(b) and (3)(b) in the <i>Electoral Act 1907</i>.</p>

<p>Clause 12. <i>Guardianship and Administration Act 1990</i> amended</p>	<p>was last forwarded under subsection (2)(b)(ii).</p> <p>Section 98(1).</p> <p>(1) If a person becomes a mentally impaired accused (as defined in Part 5 of the <i>Criminal Law (Mentally Impaired Accused) Act 1996</i>) the <u>secretary</u> to the Mentally Impaired Accused Review Board shall notify the Public Advocate accordingly.</p> <p>Section 44.</p> <p>If an order is made under section 43 in respect of a mentally impaired accused who has been released by the Governor on conditions under the <i>Criminal Law (Mentally Impaired Accused) Act 1996</i>, the person making the order must as soon as is practicable give a copy of the order to the <u>secretary</u> of the Mentally Impaired Accused Review Board.</p> <p>Section 94(1).</p> <p>(1) If under Division 4, 5, 7, 8 or 9 a mentally impaired accused is given treatment, the treating psychiatrist is to give a report of the treatment to the <u>secretary</u> of the Mentally Impaired Accused Review Board.</p>	<p>required information for each person who ceased to be a mentally impaired accused during the period since a list was last forwarded under subsection (2)(b)(ii).</p> <p>Section 98(1).</p> <p>(1) If a person becomes a mentally impaired accused (as defined in Part 5 of the <i>Criminal Law (Mentally Impaired Accused) Act 1996</i>) the <u>registrar</u> to the Mentally Impaired Accused Review Board shall notify the Public Advocate accordingly.</p> <p>Section 44.</p> <p>If an order is made under section 43 in respect of a mentally impaired accused who has been released by the Governor on conditions under the <i>Criminal Law (Mentally Impaired Accused) Act 1996</i>, the person making the order must as soon as is practicable give a copy of the order to the <u>registrar</u> of the Mentally Impaired Accused Review Board.</p> <p>Section 94(1).</p> <p>(1) If under Division 4, 5, 7, 8 or 9 a mentally impaired accused is given treatment, the treating psychiatrist is to give a report of the treatment to the <u>registrar</u> of the Mentally Impaired Accused Review Board.</p>	<p>The term "registrar" is inserted into section 98(1) of the <i>Guardianship and Administration Act 1990</i> in place of the word "secretary".</p>
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<p>Clause 13. <i>Mental Health Act 1996</i> amended</p>			<p>The term "registrar" is inserted into section 44 of the <i>Mental Health Act 1996</i> in place of the word "secretary".</p> <p>The term "registrar" is inserted into section 94(1) of the <i>Mental Health Act 1996</i> in place of the word "secretary".</p>
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Subdivision 2 – Professional accountancy bodies

<p>Clause 14. <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i> amended</p>	<p>Section 3. Definition of accountant</p> <p>(1) In this Act, unless the contrary intention appears —</p> <p>accountant means a member of —</p> <p>(a) The Institute of Chartered Accountants in Australia;</p> <p>(b) <u>The Australian Society of Certified Practising Accountants; or</u></p> <p>(c) <u>The National Institute of Accountants.</u></p>	<p>Section 3. Definition of accountant</p> <p>(1) In this Act, unless the contrary intention appears —</p> <p>accountant means a member of —</p> <p>(a) The Institute of Chartered Accountants in Australia;</p> <p>(b) <u>CPA Australia Ltd; and</u></p> <p>(c) <u>the Institute of Public Accountants.</u></p>	<p>The definition of accountant in section 3 of the <i>Commercial Tenancy (Retail Shops) Agreement Act 1985</i> is amended to reflect the correct names of two accounting bodies. The names of The Australian Society of Certified Practising Accountants and The National Institute of Accountants are deleted and the new names CPA Australia Ltd and Institute of Public Accountants are inserted.</p>
<p>Clause 15. <i>Legal Profession Act 2008</i> amended</p>	<p>Section 3. Definition of accountant.</p> <p>In this Act —</p> <p>accountant means a member of —</p> <p>(a) The Institute of Chartered Accountants in Australia (AR643BN 084 642 571); or</p> <p>(b) CPA Australia (ACN 008 392 452); or</p> <p>(c) the <u>National Institute of Accountants</u> (ACN 004 130 643);</p>	<p>Section 3. Definition of accountant.</p> <p>In this Act —</p> <p>accountant means a member of —</p> <p>(a) The Institute of Chartered Accountants in Australia (AR643BN 084 642 571); or</p> <p>(b) CPA Australia (ACN 008 392 452); or</p> <p>(c) the <u>Institute of Public Accountants</u> (ACN 004 130 643);</p>	<p>The definition of accountant in section 3 of the <i>Legal Profession Act 2008</i> is amended to reflect the correct names of the Institute of public Accountants. The name of the National Institute of Accountants is deleted and the new name Institute of Public Accountants is inserted.</p>

Subdivision 3 – Other changes in nomenclature

<p>Clause 16. Geraldton Sailors and Soldiers' Memorial Institute Act 1929 amended</p>	<p>Section 6(2).</p> <p>(2) The trustees may, without the approval of the Governor, lease for a term of not longer than 3 years the said land and buildings, and the said chattels to the said Geraldton sub-branch of <u>the Returned Sailors' Soldiers' and Airmen's Imperial League of Australia</u> and, if it does so, the sub-branch shall use such land, buildings, and chattels as a club for returned soldiers..</p>	<p>Section 6(2).</p> <p>(2) The trustees may, without the approval of the Governor, lease for a term of not longer than 3 years the said land and buildings, and the said chattels to the said Geraldton sub-branch of <u>the Returned & Services League of Australia WA Branch Incorporated</u> and, if it does so, the sub-branch shall use such land, buildings, and chattels as a club for returned soldiers.</p>	<p>The <i>Geraldton Sailors and Soldiers' Memorial Institute Act 1929</i> is amended to reflect the correct name of the Returned & Services League of Australia WA Branch Incorporated in the Act.</p>
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Division 4 – Miscellaneous amendments

<p>Clause 17. <i>Bush Fires Act 1954</i> amended</p>	<p>Section 38(14).</p> <p>(14) An approved local government may appoint a committee for the purpose of advising and assisting a fire weather officer or any deputy of a fire weather officer acting in the place of that officer under <u>this</u> subsections (6) to (18).</p>	<p>Section 38(14).</p> <p>(14) An approved local government may appoint a committee for the purpose of advising and assisting a fire weather officer or any deputy of a fire weather officer acting in the place of that officer under subsections (6) to (18).</p>	<p>Section 38(14) of the <i>Bush Fires Act 1954</i> is amended to delete the word "this" as it is superfluous and not needed.</p>
	<p>Section 38(18).</p> <p>(18) Subsections (6) to (18) do not authorise the burning of bush —</p> <p>(i) <u>during</u> the prohibited burning times; or</p> <p>(ii) <u>during</u> the period in which, and in the area of the State in respect of which, a total fire ban is declared under section 22A to have effect.</p>	<p>Section 38(18).</p> <p>(18) Subsections (6) to (18) do not authorise the burning of bush —</p> <p>(a) <u>during</u> the prohibited burning times; or</p> <p>(b) <u>during</u> the period in which, and in the area of the State in respect of which, a total fire ban is declared under section 22A to have effect.</p>	<p>Section 38(18) of the <i>Bush Fires Act 1954</i> is amended in two places to delete small numerals and replace them with alphabeticals in accordance with modern drafting practice.</p>
	<p>Section 44(3)(a).</p> <p><u>(3)(a)</u> <u>Subject</u> to the provisions of sections 13(6) and 45, where the bush fire brigade of a local government is present at a fire which is burning within the district of the local government, if a bush fire control officer of the local government is not present, the captain or in his absence the next senior officer of the bush fire brigade of the local government, or in the absence of the captain and all other officers of that bush fire brigade, any other member of that bush fire brigade has and shall take supreme control and charge of all operations and the officers and members of another bush fire brigade if present are subject to and shall act under his orders and directions.</p>	<p>Section 44(3)(a).</p> <p><u>(3)</u> <u>Subject</u> to the provisions of sections 13(6) and 45, where the bush fire brigade of a local government is present at a fire which is burning within the district of the local government, if a bush fire control officer of the local government is not present, the captain or in his absence the next senior officer of the bush fire brigade of the local government, or in the absence of the captain and all other officers of that bush fire brigade, any other member of that bush fire brigade has and shall take supreme control and charge of all operations and the officers and members of another bush fire brigade if present are subject to and shall act under his orders and directions.</p>	<p>Section 44(3)(a) of the <i>Bush Fires Act 1954</i> as it presently exists is amended to delete "(a)" from the section numbering as it is not required there being no other paragraphs in the subsection.</p>
<p>Clause 18. <i>Children and Community Services Act 2004</i> amended</p>	<p>Section 125A(3B).</p> <p>(3B) An assessor is to be paid such remuneration and allowances (if any) as the CEO, on the recommendation of the <u>Minister for Public Sector Management</u>, determines.</p>	<p>Section 125A(3B).</p> <p>(3B) An assessor is to be paid such remuneration and allowances (if any) as the CEO, on the recommendation of the <u>Public Service Commissioner</u>, determines.</p>	<p>Section 125A(3B) of the <i>Children and Community Services Act 2004</i> is amended to delete "Minister for Public Sector Management" and insert "Public Service Commission" as this is now the body that determines remuneration and allowances for CEO's.</p>
<p>Clause 19. <i>Co-operatives Act 2009</i></p>	<p>Section 188(5).</p>	<p>Section 188(5).</p>	

amended	(5) The members' liability under <u>subregulation (4)</u> is joint and several.	(5) The members' liability under <u>subsection (4)</u> is joint and several.	The word "subregulation" is deleted from section 188(5) of the <i>Co-operatives Act 2009</i> and the word "subsection" is inserted. The provision refers to the previous subsection and the reference to subregulation is incorrect.
Clause 20. <i>Credit Act 1984</i> amended	<p>Section 19B(2)(a) and (b).</p> <p>(2) If the credit provider under a contract to which this Act continues to apply acts in accordance with —</p> <p>(a) in respect of any action before [reference date], the <i>Consumer Credit (Western Australia) Code</i> 3 section 34, 35, 66 to 69, 78 to 99, 163, 171, 172 or 173; or</p> <p>(b) in respect of any action on or after [reference date], the <i>National Credit Code</i> section 36, 37, 72 to 75, 85 to 107, 185, 194, 195 or 196,</p> <p>the credit provider is taken to have acted in accordance with the corresponding provision of this Act.</p>	<p>Section 19B(2)(a) and (b).</p> <p>(2) If the credit provider under a contract to which this Act continues to apply acts in accordance with —</p> <p>(a) in respect of any action before 1 July 2010, the <i>Consumer Credit (Western Australia) Code</i> 3 section 34, 35, 66 to 69, 78 to 99, 163, 171, 172 or 173; or</p> <p>(b) in respect of any action on or after 1 July 2010, the <i>National Credit Code</i> section 36, 37, 72 to 75, 85 to 107, 185, 194, 195 or 196,</p> <p>the credit provider is taken to have acted in accordance with the corresponding provision of this Act.</p>	Section 19B(2)(a) of the <i>Credit Act 1984</i> is amended in two places to correct a typographical error. The subsections presently refer to "[reference date]" which clearly means that an appropriate date was to be included. The relevant date is 1 July 2010.
Clause 21. <i>Fair Trading Act 1987</i> amended	<p>Section 3C(3).</p> <p>(3) To avoid doubt, the <i>Fair Trading (Infringement Notices) Regulations 2006</i> continue in force on and after the commencement day for the purposes of <u>subsection (3)</u> and section 3D and for no other purpose.</p>	<p>Section 3C(3).</p> <p>(3) To avoid doubt, the <i>Fair Trading (Infringement Notices) Regulations 2006</i> continue in force on and after the commencement day for the purposes of <u>subsection (2)</u> and section 3D and for no other purpose.</p>	Section 3C(3) of the <i>Fair Trading Act 1987</i> is amended to correct a cross-reference. At present the subsection erroneously refers to itself rather than the correct subsection.
Clause 22. <i>Guardianship and Administration Act 1990</i> amended	<p>Section 45(2)(d).</p> <p>(2) Without limiting subsection (1), a plenary guardian may do any of the following —</p> <p>.....</p> <p>(d) subject to <u>subsection (4)</u>, make treatment decisions for the represented person;</p> <p>.....</p>	<p>Section 45(2)(d).</p> <p>(2) Without limiting subsection (1), a plenary guardian may do any of the following —</p> <p>.....</p> <p>(d) subject to <u>subsection (4A)</u>, make treatment decisions for the represented person;</p> <p>.....</p>	At present there are two subsections 45(4) in the <i>Guardianship and Administration Act 1990</i> . The following subsection of the Bill corrects the typographical error and this amendment makes the appropriate amendment to subsection 45(2).
	<p>Section 45(4).</p> <p>(4) <u>A plenary guardian cannot</u> consent to the sterilisation of the represented person, except in accordance with Division 3 2.</p> <p>(4) A plenary guardian may not make a will or other testamentary disposition on behalf of a represented person but this subsection does not affect the operation of section 111A.</p>	<p>Section 45(4).</p> <p>(4A) <u>A plenary guardian cannot</u> consent to the sterilisation of the represented person, except in accordance with Division 3 2.</p> <p>(4) A plenary guardian may not make a will or other testamentary disposition on behalf of a represented person but this subsection does not affect the operation of section 111A.....</p>	At present there are two subsections 45(4) in the <i>Guardianship and Administration Act 1990</i> . This amendment renumbers the first such section as subsection (4A).
	<p>Section 76(3).</p> <p>(3) Nothing in this section affects <u>sections 50 and 53</u> of the <i>Public</i></p>	<p>Section 76(3).</p> <p>(3) Nothing in this section affects <u>section 50</u> of</p>	Section 53 of the <i>Public Trustee Act 1941</i> was

	<i>Trustee Act 1941.</i>	<i>the Public Trustee Act 1941.</i>	deleted by the <i>Public Trustee and Trustee Companies Legislation Amendment Act 2008</i> . As a result it is necessary to delete the reference to section 53 from section 76(3) of the <i>Guardianship and Administration Act 1990</i> .
	Section 110G(1). (1) Subject to this section, an enduring guardian has the same functions under section 45(1) and (2), and is subject to the same limitations under <u>section 45(3) and (4)</u> , in relation to the appointor as a plenary guardian has and is subject to in relation to a represented person.	Section 110G(1). (1) Subject to this section, an enduring guardian has the same functions under section 45(1) and (2), and is subject to the same limitations under <u>section 45(3), (4A) and (4)</u> , in relation to the appointor as a plenary guardian has and is subject to in relation to a represented person.	At present there are two subsections 45(4) in the <i>Guardianship and Administration Act 1990</i> . This amendment renumbers the first such section as subsection (4A) in section 110G of the <i>Guardianship and Administration Act 1990</i> .
Clause 23. Health Act 1911 amended	Section 3(1) definition of <i>public place</i>. <u><i>public place</i>, except in Part IXB, includes every place to which the public ordinarily have access, whether by payment of fee or not;</u>	Section 3(1) definition of <i>public place</i>. <u><i>public place</i>, includes every place to which the public ordinarily have access, whether by payment of fee or not;.....</u>	This amendment to the definition of <i>public place</i> in section 3 of the <i>Health Act 1911</i> effectively deletes the words "except in Part IXB" from the definition. Part IXB was deleted from the Act by the <i>Tobacco Products Control Act 2006</i> .
Clause 24. Health Services (Quality Improvement) Act 1994 amended	Section 12(2). (2) <u>Without limiting subsection (1), for the purposes of section 354 of <i>The Criminal Code</i> —</u> (a) <u>any statement made orally or in writing by a member of a Committee in good faith and in the performance of the functions of a member; and</u> (b) <u>any report or other information published in good faith by the Committee,</u> <u>is to be taken to be published for the information of the public and for the discharge of public functions.</u>		Section 12 of the <i>Health Services (Quality Improvement) Act 1994</i> is deleted because section 354 of <i>The Criminal Code</i> was deleted by the section 47 of the <i>Defamation Act 2005</i> . The subsection is therefore redundant in its entirety.
Clause 25. Hire-Purchase Act 1959 amended	Section 3(2)(e)(viii). (2) Every hire-purchase agreement — (e) shall set out in tabular form — (viii) the total of the amounts referred to in <u>subparagraphs (i), (iii), (iv), (v), (vi), (v), (vi), (v), (vi),</u>	Section 3(2)(e)(viii). (2) Every hire-purchase agreement — (e) shall set out in tabular form — (viii) the total of the amounts referred to in <u>subparagraphs (i), (iii), (iv), (v), (vi) less the deposit (in this Act called and in the agreement to be described</u>	Subparagraph (vii) of section 3 of the <i>Hire-Purchase Act 1959</i> was deleted by section 52 of the <i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011</i> . Subparagraph (viii) of section 3 of the <i>Hire-Purchase Act 1959</i> was deleted by section 39 of

	(vii) and (viii) less the deposit (in this Act called and in the agreement to be described as amount financed);.....	as amount financed);.....	the <i>Revenue Laws Amendment and Repeal Act 2004</i> . Accordingly, these subparagraphs are now deleted from subparagraph 3(2)(e)(viii) the Act.
Clause 26. <i>Housing Act 1980</i> amended	Section 6(1). (1) The body corporate constituted under the repealed Act by the name "The State Housing Authority" is preserved and continues in existence for the purposes of this Act as a body corporate retaining the same corporate name and corporate identity.	Section 6(1). (1) <u>The body corporate constituted under the repealed Act by the name "The State Housing Authority" is preserved and continues in existence for the purposes of this Act as a body corporate retaining the same corporate identity.</u>	Section 6(1) of the Housing Act 1980 is effectively amended by the deletion of the words "corporate name and" from the section. The words deleted are redundant.
Clause 27. <i>Interpretation Act 1984</i> amended	Section 13CA(2). (2) A reference in a written law to a named local government district is a reference to the local government district that has that name under the <i>Local Government Act 1995</i> . [Examples: "Perth local government district" refers to the local government district named Perth. "Albany (Shire) local government district" refers to the local government district named <u>Albany</u> (Shire).]	Section 13CA(2). (2) A reference in a written law to a named local government district is a reference to the local government district that has that name under the <i>Local Government Act 1995</i> . [Examples: "Perth local government district" refers to the local government district named Perth. "Narrogin (Shire) local government district" refers to the local government district named <u>Narrogin</u> (Shire).]	The Example presently refers to "Albany Shire". However, this is not an appropriate example as Albany is a City. The reference to "Albany Shire" is amended to refer to "Narrogin Shire".
Clause 28. <i>Marketing of Potatoes Act 1946</i> amended	Section 22(4)(d) and (e). (4) At the hearing of a charge of any offence against this section, evidence — (d) that the person charged did not produce to the inspector any sales docket, or as the case may be, any delivery note or relevant consignment advice from the grower; or (e) that the person charged did in fact produce to the inspector a sales docket, or delivery note or relevant consignment advice, but did not contain the prescribed information or that — (i) the sales docket, or delivery note or relevant consignment advice, did not purport to have been issued by or on behalf of the Corporation or the holder of a relevant permit under section 25; or (ii) it was not in fact issued by or on behalf of the	Section 22(4)(d) and (e). (4) At the hearing of a charge of any offence against this section, evidence — (d) <u>either —</u> (i) <u>that the person charged did not produce to the inspector any sales docket, delivery note or relevant consignment advice from the grower; or</u> (ii) <u>that the person charged produced to the inspector a sales docket, delivery note or relevant consignment advice but —</u> (I) <u>it did not contain the prescribed information; or</u> (II) <u>it did not purport to have been issued by or on behalf of the Corporation or the holder of a relevant permit under section 25; or</u> (III) <u>it was not in fact issued by or on behalf of the Corporation or he holder of a relevant permit under section</u>	Subsections 22(4)(d) and (e) of the <i>Marketing of Potatoes Act 1946</i> are deleted and a new section 22(4)(d) is inserted containing the same evidentiary requirements but worded differently.

	<p>Corporation or the holder of a relevant permit under section 25; or</p> <p>(iii) if it did so purport or was so issued, the potatoes were not contained in any bags or other containers, or were not contained in bags or other containers branded or marked in accordance with particulars shown in the sales docket or delivery note or relevant consignment advice, or did not correspond with the description given in the sales docket or delivery note or relevant consignment advice.</p> <p>shall be deemed to be <i>prima facie</i> evidence that the person charged purchased, or as the case may be, took delivery of, the potatoes in a manner contravening the provisions of this Act.</p>	<p>25; or</p> <p>(IV) the potatoes were not contained in any bags or other containers, or were not contained in bags or other containers branded or marked in accordance with particulars shown in the sales docket or delivery note or relevant consignment advice, or did not correspond with the description given in the sales docket or delivery note or relevant consignment advice.</p>	
<p>Clause 29. <i>Mining Act 1978</i> amended</p>	<p>Section 160AA.</p> <p>(1) A function that the LAA Minister has under a provision of this Act listed in the Table may be performed by a public service officer of the Department, as defined in the <i>Land Administration Act 1997</i> section 3(1), who is authorised in writing by the LAA Minister to do so.</p> <p>(2) Nothing in this section limits the ability of the LAA Minister to otherwise perform a function through an officer or agent.</p> <p style="text-align: center;">Table</p> <p>s. 24(3)(b), (5)(b), as the responsible Minister under s. 24(8)</p> <p>s. 25(2)(b), (3)(b)</p> <p>s. 26(2)(a)</p> <p>s. 55(1), (3), (4)</p> <p>s. 69C(1), (3), (4)</p> <p><u>s. 94J</u></p>	<p>Section 160AA.</p> <p>(1) A function that the LAA Minister has under a provision of this Act listed in the Table may be performed by a public service officer of the Department, as defined in the <i>Land Administration Act 1997</i> section 3(1), who is authorised in writing by the LAA Minister to do so.</p> <p>(2) Nothing in this section limits the ability of the LAA Minister to otherwise perform a function through an officer or agent.</p> <p style="text-align: center;">Table</p> <p>s. 24(3)(b), (5)(b), as the responsible Minister under s. 24(8)</p> <p>s. 25(2)(b), (3)(b)</p> <p>s. 26(2)(a)</p> <p>s. 55(1), (3), (4)</p> <p>s. 69C(1), (3), (4)</p>	<p>Section 94J of the <i>Mining Act 1978</i> was deleted by section 33 of the <i>Acts Amendment and Repeal (Native Title) Act 1995</i>. The reference to section 94J in the Table to section 160AA is therefore redundant and is deleted from the Table.</p>
<p>Clause 30. <i>Owner Drivers (Contracts and Disputes) Act 2007</i> amended</p>	<p>Section 3 definition of Council.</p> <p>In this Act, unless the contrary intention appears —</p> <p>....</p> <p>Council means the <u>Road Transport Freight Industry Council</u> established by section 17;</p>	<p>Section 3 definition of Council.</p> <p>In this Act, unless the contrary intention appears —</p> <p>....</p> <p>Council means the <u>Road Freight Transport Industry Council</u> established by section 17;</p>	<p>The definition of Council in section 3 of the <i>Owner Drivers (Contracts and Disputes) Act 2007</i> is amended to reflect the correct name of the relevant Council.</p>

<p>Clause 31. <i>Petroleum Legislation Amendment and Repeal Act 2005</i> amended</p>	<p>Section 29(2).</p> <p>(2) Section 51 of the <i>Justices Act 1902</i> as in force immediately before the commencement of subsection (1) applies to an offence against the <i>Petroleum Pipelines Act 1969</i> committed before that commencement as if subsection (1) had not been enacted.</p>		<p>Section 29(2) of the <i>Petroleum Legislation Amendment and Repeal Act 2005</i> is a transitional provision referring to section 51 of the repealed <i>Justices Act 1902</i>. The subsection is no longer required and is repealed.</p>
<p>Clause 32. <i>Professional Standards Act 1997</i> amended</p>	<p>Section 34A(2).</p> <p>(2) <u>limitation</u> that applies under this Act to the occupational liability of a person as a member of an occupational association in respect of a cause of action (the principal cause of action) also applies, in respect of the principal cause of action and any related cause of action, to the liability of any other person to whom the scheme concerned applies as a partner, officer, employee or associate of the member (whether or not the other person's liability is an occupational liability).</p>	<p>Section 34A(2).</p> <p>(2) <u>A limitation</u> that applies under this Act to the occupational liability of a person as a member of an occupational association in respect of a cause of action (the principal cause of action) also applies, in respect of the principal cause of action and any related cause of action, to the liability of any other person to whom the scheme concerned applies as a partner, officer, employee or associate of the member (whether or not the other person's liability is an occupational liability).</p>	<p>Section 34A(2) of the <i>Professional Standards Act 1997</i> is amended to insert "A" at the commencement of the subsection. The amendment corrects a typographical error.</p>
<p>Clause 33. <i>Radiation Safety Act 1975</i> amended</p>	<p>Section 4 definitions of seller, the repealed Acts and sell.</p> <p>In this Act unless the context otherwise requires —</p> <p>.....</p> <p><u>sell</u>, without limiting the scope of the primary meaning, includes —</p> <p>(a) <u>placing on the market for sale;</u></p> <p>(b) <u>bargaining, barter, exchange, loaning or giving;</u></p> <p>(c) <u>supply and use under a contract for work and materials;</u></p> <p>(d) <u>dealing in, or agreeing, causing, permitting or attempting to sell or allowing to be sold;</u></p> <p>(e) <u>offering, exposing, receiving, supplying or possessing for the purposes of sale;</u></p> <p>(f) <u>sending or delivering for sale or on sale with or without consideration;</u></p> <p>(g) <u>supply or disposal under hire purchase, credit sale or otherwise upon terms; and</u></p> <p>(h) <u>wholesale, bulk, and retail trading,</u></p> <p><u>and the concepts of sale and purchase shall be construed accordingly;</u></p> <p><u>seller</u> includes any person acting or representing himself to be acting for a seller; and</p> <p><u>the repealed Acts</u> means the Acts</p>	<p>Section 4 definitions of seller, the repealed Acts and sell.</p> <p>In this Act unless the context otherwise requires —</p> <p>.....</p> <p><u>sell</u>, without limiting the scope of the primary meaning, includes —</p> <p>(a) <u>placing on the market for sale;</u></p> <p>(b) <u>bargaining, barter, exchange, loaning or giving;</u></p> <p>(c) <u>supply and use under a contract for work and materials;</u></p> <p>(d) <u>dealing in, or agreeing, causing, permitting or attempting to sell or allowing to be sold;</u></p> <p>(e) <u>offering, exposing, receiving, supplying or possessing for the purposes of sale;</u></p> <p>(f) <u>sending or delivering for sale or on sale with or without consideration;</u></p> <p>(g) <u>supply or disposal under hire purchase, credit sale or otherwise upon terms; and</u></p> <p>(h) <u>wholesale, bulk, and retail trading,</u></p> <p><u>and the concepts of sale and purchase shall be construed accordingly.</u></p>	<p>The definitions of seller and the repealed Acts are deleted from section 4 of the <i>Radiation Safety Act 1975</i>. Additionally, because these definitions are deleted a full stop is inserted at the end of the definition of sell.</p> <p>The definitions of seller and the repealed Acts are deleted because the terms no longer appear in the Act.</p>

	<u>repealed by this Act pursuant to section 5.</u>		
Clause 34. Rail Safety Act 2010 amended	<p>Section 40 Penalty paragraph.</p> <p>An accredited person must not fail to comply with a condition or restriction of accreditation applying under this Part.</p> <p>Penalty:</p> <p>(a) a fine of \$55 000;</p> <p>(b) for a second or subsequent offence, a fine of \$82 000.</p>	<p>Section 40 Penalty paragraph.</p> <p>An accredited person must not fail to comply with a condition or restriction of accreditation applying under this Part.</p> <p>Penalty:</p> <p>(a) <u>for a first offence</u>, a fine of \$55 000;</p> <p>(b) for a second or subsequent offence, a fine of \$82 000.</p>	<p>The additional words "for a first offence" are inserted into the penalty provision of section 40 to make it clear that the relevant fine relates only to a first offence under the Act.</p>
Clause 35. Road Traffic Act 1974 amended	<p>Section 22(5)(a)</p> <p>(5) An amount equal to the amounts credited to the Consolidated Account under subsections (1) and (4) shall be —</p> <p>(a) credited to the Main Roads Trust <u>Fund</u> maintained under the <i>Main Roads Act 1930</i>; and</p> <p>(b) charged to the Consolidated Account,</p> <p>and this subsection appropriates the Consolidated Account accordingly.</p>	<p>Section 22(5)(a)</p> <p>(5) An amount equal to the amounts credited to the Consolidated Account under subsections (1) and (4) shall be —</p> <p>(a) credited to the Main Roads Trust <u>Account</u> maintained under the <i>Main Roads Act 1930</i>; and</p> <p>(b) charged to the Consolidated Account,</p> <p>and this subsection appropriates the Consolidated Account accordingly.</p>	<p>Section 22(5)(a) of the <i>Road Traffic Act 1974</i> is amended to delete the word "Fund" and insert the word "Account". The heading of the section is also amended to refer to "Account" rather than "Fund" The word "Account" is the correct term to use in this case.</p>
Clause 36. Road Traffic Legislation Amendment (Disqualification by Notice) Act 2010 amended	<p>Sections 12(2)(c), (5)(d) and (7)(b).</p> <p>.....</p> <p>(2) In section 76(1a):</p> <p>(a) delete "No" and insert:</p> <p style="padding-left: 40px;">Subject to subsection (1B), no</p> <p>(b) in paragraph (f) delete "64(2)(a)" and insert:</p> <p style="padding-left: 40px;">64(2)(b)</p> <p><u>(c) after each of paragraphs (a) to (f) insert:</u></p> <p style="padding-left: 40px;"><u>or</u></p> <p>.....</p> <p>(5) In section 76(3):</p> <p>(a) delete "Subject to subsection (3a), the" and insert:</p> <p style="padding-left: 40px;">The</p> <p>(b) in paragraph (e) delete "disqualification; and" and insert:</p> <p style="padding-left: 40px;">disqualification,</p> <p>(c) delete paragraph (f);</p> <p><u>(d) after each of paragraphs (a)</u></p>	<p>Sections 12(2)(c), (5)(d) and (7)(b).</p> <p>.....</p> <p>(2) In section 76(1a):</p> <p>(a) delete "No" and insert:</p> <p style="padding-left: 40px;">Subject to subsection (1B), no</p> <p>(b) in paragraph (f) delete "64(2)(a)" and insert:</p> <p style="padding-left: 40px;">64(2)(b)</p> <p>.....</p> <p>(5) In section 76(3):</p> <p>(a) delete "Subject to subsection (3a), the" and insert:</p> <p style="padding-left: 40px;">The</p> <p>(b) in paragraph (e) delete "disqualification; and" and insert:</p> <p style="padding-left: 40px;">disqualification,</p> <p>(c) delete paragraph (f);</p> <p>.....</p> <p>(7) In section 76(3b):</p> <p>(a) delete the passage that begins with "For" and ends with "hardship if" and insert:</p> <p style="padding-left: 40px;">Despite subsection (3), the court</p>	<p>Subsections 12(2)(c), (5)(d) and (7)(b) of the <i>Road Traffic Legislation Amendment (Disqualification by Notice) Act 2010</i> proposed to amend section 76 of the <i>Road Traffic Act 1974</i> to insert "or" or "and" at the end of each subparagraph. However, the amendments were effected by another Act and the subsections are now redundant and are deleted.</p>

	<p style="text-align: center;"><u>to (d) insert:</u></p> <p style="text-align: center;"><u>and</u></p> <p>.....</p> <p>(7) In section 76(3b):</p> <p>(a) delete the passage that begins with "For" and ends with "hardship if " and insert:</p> <p style="padding-left: 40px;">Despite subsection (3), the court shall not make an order directing the grant of an extraordinary licence unless it is satisfied that</p> <p style="text-align: center;"><u>(b) after paragraph (a) insert:</u></p> <p style="text-align: center;"><u>or</u></p> <p>.....</p>	<p>shall not make an order directing the grant of an extraordinary licence unless it is satisfied that</p> <p>.....</p>	
<p>Clause 37. Sentencing Act 1995 amended</p>	<p>Section 46(b).</p> <p>A court sentencing an offender may impose no sentence if it considers that —</p> <p>(a) the circumstances of the offence are trivial or technical; and</p> <p>(b) having regard to —</p> <p>(i) the offender's character, antecedents, age, health and mental condition; and</p> <p>(ii) any other matter that the court thinks is proper to consider,</p> <p><u>that it</u> is not just to impose any other sentencing option.</p> <p>Section 108(3).</p> <p>(3) The court must immediately send details of the offence and the order to the Secretary to the department administering <u>the Passports Act 1938 of the Commonwealth.</u></p> <p>Section 108(6).</p> <p>(6) <u>Passport offence</u> means an offence where —</p>	<p>Section 46(b).</p> <p>A court sentencing an offender may impose no sentence if it considers that —</p> <p>(a) the circumstances of the offence are trivial or technical; and</p> <p>(b) having regard to —</p> <p>(i) the offender's character, antecedents, age, health and mental condition; and</p> <p>(ii) any other matter that the court thinks is proper to consider,</p> <p><u>it</u> is not just to impose any other sentencing option.</p> <p>Section 108(3).</p> <p>(3) The court must immediately send details of the offence and the order to the Secretary to the department administering <u>the Australian Passports Act 2005 (Commonwealth).</u></p> <p>Section 108(6).</p> <p>(6) <u>In this subsection passport offence</u> means an offence where —</p> <p>(a) a passport is used in the commission of the offence;</p>	<p>Section 46(b) of the <i>Sentencing Act 1995</i> is amended by deleting the word "that" where it appears near the end of the section. The word is deleted because it previously appears at the commencement of the section and is redundant.</p> <p>The <i>Passports Act 1938</i> (Cth) was amended by the <i>Australian Passports (Transitional and Consequential) Act 2005</i> (Cth) and is now the <i>Foreign Passports (Law Enforcement and Security Act 2005</i> (Cth). Australian passports are now regulated under the <i>Australian Passports Act 2005</i> (Cth). Accordingly, the references in section 108(3) of the <i>Sentencing Act 1995</i></p>

	<p>(a) a passport is used in the commission of the offence;</p> <p>(b) the commission of the offence is aided or facilitated by the use of a passport;</p> <p>(c) a passport is used after the commission of the offence to provide, or to attempt to provide, a means for the offender to leave the place of the commission of the offence;</p> <p>(d) a passport is used by the offender after the commission of the offence to avoid, or to attempt to avoid, apprehension.</p> <p>Schedule 1</p> <p>Heading.</p> <p><u>Person or fund</u> to which a fine under the Act is to be paid or credited</p> <p>item</p> <p><u>Colleges Act 1978</u> The college that made the by-law under which the fine was imposed</p>	<p>(b) the commission of the offence is aided or facilitated by the use of a passport;</p> <p>(c) a passport is used after the commission of the offence to provide, or to attempt to provide, a means for the offender to leave the place of the commission of the offence;</p> <p>(d) a passport is used by the offender after the commission of the offence to avoid, or to attempt to avoid, apprehension.</p> <p>Schedule 1</p> <p>Heading.</p> <p><u>Person or account</u> to which a fine under the Act is to be paid or credited</p>	<p>are amended.</p> <p>The amendment to section 108(6) makes it clear that the term passport offence relates only to section 108 of the Sentencing Act 1995.</p> <p>The heading to column 2 of the Schedule is amended to refer to "account" rather than "fund" and the item relating to the <i>Colleges Act 1978</i> is deleted as that Act was repealed by the <i>Vocational Education and Training Act 1996</i></p>
<p>Clause 38. Sentencing Legislation Amendment and Repeal Act 2003 amended</p>	<p>Section 78.</p> <p>(1) <u>The amendments in this section are to the Maritime Archaeology Act 1973*.</u></p> <p>(2) Section 9(6) is amended by</p>		<p>Section 78 of the <i>Sentencing Legislation Amendment and Repeal Act 2003</i> has not yet been proclaimed. It is</p>

	<p><u>deleting the penalty clause and inserting the following penalty clause instead —</u></p> <p><u>"Penalty: \$1 000."</u></p>		<p>deleted as the current penalty in section 78 of the <i>Maritime Archaeology Act 1973</i> is to continue.</p>
<p>Clause 39. Standardisation of Formatting Act 2010 amended</p>	<p>Section 4 Table.</p> <p><i>Fish Resources Management Act 1994</i></p> <p><u>Schedule 1</u></p> <p>Schedule 3</p> <p><u>Occupational Safety and Health Act 1984</u></p> <p><u>Schedule</u></p> <p>[s. 60(5)]</p> <p><u>Security and Related Activities (Control) Act 1996</u></p> <p><u>Schedule 1</u></p> <p><u>Shipping and Pilotage Act 1967</u></p> <p><u>Schedule</u></p> <p>Section 51 Table.</p> <p>Item 14. Construction Industry Portable Paid Long Service Leave Act 1985</p>	<p>Section 4 Table.</p> <p><i>Fish Resources Management Act 1994</i></p> <p>Schedule 3</p>	<p>The <i>Standardisation of Formatting Act 2010</i> made amendments to Western Australian legislation so that all statutes were in a common format. However, in many cases the amendments proposed to be made by the Act were made prior to this by other legislation. For example, the reference to Schedule 1 of the <i>Occupational Safety and Health Act 1984</i> was amended by the <i>Occupational Safety and Health Legislation and Amendment Act 2009</i> before the <i>Standardisation of Formatting Act 2010</i> came into operation. Accordingly, the reference to this Act in the <i>Standardisation of Formatting Act 2010</i> is redundant and must be repealed. Similar circumstances apply to the other items of the Table of section 4.</p> <p>Schedule 1 of the <i>Security and Related Activities (Control) Act 1996</i> was deleted by the <i>Security and Related Activities (Control) Amendment Act 2008</i>.</p> <p>The Schedule of the <i>Shipping and Pilotage Act 1967</i> was deleted by the <i>Shipping and Pilotage Amendment Act 2006</i>.</p> <p>This amendment to the <i>Construction Industry Portable Paid Long Service Leave Act 1985</i> was preciously effected by the <i>Labour Relations Legislation Amendment Act 2006</i>. It is deleted as redundant.</p>

	<p><u>Sch. cl. 1</u></p> <p><u>1. Notwithstanding</u></p> <p><i>amended to read</i></p> <p><u>1. Service prior to application</u></p> <p><u>Notwithstanding</u></p> <p><u>Sch. cl. 2</u></p> <p><u>2. (1) Notwithstanding</u></p> <p><i>amended to read</i></p> <p><u>2. Contributions for service prior to appointed day</u></p> <p><u>(1) Notwithstanding</u></p> <p> </p> <p>Section 51 Table.</p> <p>Item 31. Housing Act 1980.</p> <p>.....</p> <p><u>s. 55(5)</u></p> <p>.....</p> <p><u>or on termination</u></p> <p><i>amended to read</i></p> <p><u>or (ii) on termination</u></p> <p> </p> <p>Section 52(4) Table.</p> <p>.....</p> <p><u>s. 21(1)(1)(a) Where</u></p> <p><i>amended to read</i></p> <p><u>(1A) Where</u></p> <p><u>(b) The Minister</u></p> <p><i>amended to read</i></p> <p><u>(1B) The Minister</u></p> <p><u>s. 21(2)(2)(a) Subject</u></p> <p><i>amended to read</i></p> <p><u>(2A) Subject</u></p> <p><u>(b) Permission under this subsection</u></p> <p><i>amended to read</i></p> <p><u>(2B) Permission under subsection (2A)</u></p>		<p>The reference to the amendment of section 55(5) of the <i>Housing Act 1980</i> in item 31 is deleted as it is redundant.</p> <p> </p> <p>These amendments to the <i>Bush Fires 1954</i> are deleted as they are redundant.</p>
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	<p><u>s. 21(3)(3)(a) During</u></p> <p><u>amended to read</u></p> <p><u>(3A) During</u></p> <p><u>subsection (1)</u></p> <p><u>amended to read</u></p> <p><u>subsection (1A)</u></p> <p><u>(3B) Where</u></p> <p><u>(b) Where</u></p> <p><u>amended to read</u></p> <p><u>(3B) Where</u></p> <p>.....</p> <p><u>s. 39(2) (2)(a) Where</u></p> <p><u>amended to read</u></p> <p><u>(2) Where</u></p> <p>Section 52(4) Table</p> <p>.....</p> <p><u>s. 44(3) (3)(a) Where</u></p> <p><u>amended to read</u></p> <p><u>(3) Where</u></p> <p>Section 52(4) Table</p> <p>...</p> <p><u>s. 45 (a) Where</u></p> <p><u>amended to read</u></p> <p><u>(1) Where</u></p> <p><u>(b) Where</u></p> <p><u>amended to read</u></p> <p><u>(2) Where</u></p> <p>.....</p> <p><u>s. 47 section 39(2)(a)</u></p> <p><u>amended to read</u></p> <p><u>section 39(2)</u></p> <p>Section 52(4) Table</p> <p>.....</p>		<p>This amendment to the <i>Bush Fires 1954</i> is deleted as it is redundant.</p> <p>These amendments to the <i>Bush Fires 1954</i> are deleted as they are redundant.</p> <p>This amendment to the <i>Bush Fires 1954</i> is deleted as it is redundant.</p> <p>These amendments to the <i>Bush Fires 1954</i> are deleted as they are redundant.</p>
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	<p>s. 64 section 21(2),</p> <p><i>amended to read</i></p> <p>section 21(2A) and (2B),</p> <p>section 38(5).</p> <p><i>amended to read</i></p> <p>section 38(5A) or (5B).</p>		
<p>Clause 40. State Superannuation Act 2000 amended</p>	<p>Section 30(2).</p> <p>(2) An Employer may make superannuation contributions for persons who work for the Employer to a superannuation fund or scheme other than —</p> <p>(a) a scheme under this Act; or</p> <p>(b) a superannuation scheme or fund established in accordance with subsection (1); or</p> <p>(c) a superannuation scheme or fund established before 28 December 1989,</p> <p>if <u>and only if</u> the Treasurer has approved the making of those contributions.</p>	<p>Section 30(2).</p> <p>(2) An Employer may make superannuation contributions for persons who work for the Employer to a superannuation fund or scheme other than —</p> <p>(a) a scheme under this Act; or</p> <p>(b) a superannuation scheme or fund established in accordance with subsection (1); or</p> <p>(c) a superannuation scheme or fund established before 28 December 1989,</p> <p>if the Treasurer has approved the making of those contributions.</p>	<p>The subsection is amended by deleting the words “and only if” near the end. The words are not appropriate having regard to the fact that the Treasurer may approve alternative schemes.</p>
<p>Clause 41. State Trading Concerns Act 1916 amended</p>	<p>Section 8(2).</p> <p><u>(2) Such contributions shall be paid to the trustees appointed by the Governor for the administration of the State Sinking Fund as the Treasurer shall direct.</u></p> <p>Section 26.</p> <p><u>The proceeds of the sale of any assets of a trading concern shall be applied in reduction of the capital of such concern, and in the books of the Treasury the proceeds shall be credited to the Government Property Sales Fund.</u></p>		<p>Sections 8(2) and 26 are deleted as these matters are now subject to the <i>Financial Management Act 2006</i>.</p>
<p>Clause 42. Transport Co-ordination Act 1966 amended</p>	<p>Section 4(1) definition of owner.</p> <p>owner, in relation to a vehicle, includes</p>	<p>Section 4(1) definition of owner.</p> <p>owner, in relation to a vehicle, includes every</p>	

	<p>every person who —</p> <p>(a) is the owner or a co-owner of the vehicle;</p> <p>(aa) is the purchaser or hirer of the vehicle under a contract that for the purposes of the <i>Credit Act 1984</i> is a credit sale contract to which that Act applies or who is the debtor under an agreement that pursuant to that Act is deemed to be a credit sale contract to which that Act applies;</p> <p>(ab) <u>a person who</u> is the purchaser or hirer of a vehicle under a contract that for the purposes of the <i>National Credit Code</i> (Commonwealth) is a credit contract, or is to be regarded as a credit contract, to which that Code applies;</p> <p>(b) has the use of the vehicle under a hiring, lease or hire-purchase agreement,</p> <p>but does not include an unpaid vendor of the vehicle under a hire-purchase agreement;</p>	<p>person who —</p> <p>(a) is the owner or a co-owner of the vehicle;</p> <p>(aa) is the purchaser or hirer of the vehicle under a contract that for the purposes of the <i>Credit Act 1984</i> is a credit sale contract to which that Act applies or who is the debtor under an agreement that pursuant to that Act is deemed to be a credit sale contract to which that Act applies;</p> <p>(ab) is the purchaser or hirer of a vehicle under a contract that for the purposes of the <i>National Credit Code</i> (Commonwealth) is a credit contract, or is to be regarded as a credit contract, to which that Code applies;</p> <p>(b) has the use of the vehicle under a hiring, lease or hire-purchase agreement,</p> <p>but does not include an unpaid vendor of the vehicle under a hire-purchase agreement;</p>	<p>The words "a person who" are deleted from paragraph (ab) as these words are already used at the beginning of the provision and these latter words are therefore redundant.</p>
<p>Clause 43. <i>Warehousemen's Liens Act 1953</i> amended</p>	<p>Section 13.</p> <p>The Governor may make rules and prescribe forms to regulate applications to the Magistrates Court under section 7 and payments into court under <u>section 9</u> and otherwise to regulate proceedings and prescribe fees under those sections and to carry those sections into effect.</p>	<p>Section 13.</p> <p>The Governor may make rules and prescribe forms to regulate applications to the Magistrates Court under section 7 and payments into court under <u>section 10(2A)</u> and otherwise to regulate proceedings and prescribe fees under those sections and to carry those sections into effect.</p>	<p>Section 13 of the Warehousemen's Liens act 1952 is amended to replace the words "section 9" with the words "section 10(2A)" as this is the correct cross-reference.</p>
<p>Clause 44. <i>Wildlife Conservation Act 1950</i> amended</p>	<p>Section 16.</p> <p>(1) Subject to subsection (3), a person who infringes the protection conferred by <u>subsection (1)</u> or declared pursuant to section 14(2) to (5), by taking fauna while protected, otherwise than by —</p> <p>(a) the authority of a licence issued pursuant to the provisions of section 15; or</p> <p>(b) the authority of the provisions of section 17(2)(c), or of section 23,</p> <p>commits an offence against this Act.</p>	<p>Section 16.</p> <p>(1) Subject to subsection (3), a person who infringes the protection conferred by <u>section 14(1)</u> or declared pursuant to section 14(2) to (5), by taking fauna while protected, otherwise than by —</p> <p>(a) the authority of a licence issued pursuant to the provisions of section 15; or</p> <p>(b) the authority of the provisions of section 17(2)(c), or of section 23,</p> <p>commits an offence against this Act.</p>	<p>Section 16(1) of the Wildlife Conservation Act is amended to insert the correct cross-reference of section 14(1).</p>

APPENDIX 2

PREMIER'S CIRCULAR

Premier's Circular

Number:	2010/01
Issue Date:	11/02/2010
Review Date:	04/02/2015

TITLE

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL

POLICY

The *Statutes (Repeals and Minor Amendments) Bills* ("the Omnibus Bills") provide an avenue for introducing a range of minor legislative amendments and repeals that do not affect the substance of the law. Omnibus Bills make the Government's legislative program and parliamentary business more efficient by reducing the number of Bills that would otherwise be required to deal with these minor amendments and repeals.

Examples of matters that may be suitable for inclusion include:

- the repeal of obsolete legislation;
- the correction of typographical, grammatical and other minor errors of presentation;
- amendments to update names, titles, entities, designations etc.

A provision will be included in an Omnibus Bill only if its effect is clear on the face of the provision.

An Omnibus Bill is not a vehicle for implementing a change in Government policy or dealing with an issue that may be controversial or legally or otherwise contentious.

A matter will not be included in an Omnibus Bill if it:

- affects any existing right, obligation, power, or duty; or
- changes any process provided for in legislation; or
- involves the insertion of multiple new sections into an Act.

BACKGROUND

The Department of the Attorney General is responsible for preparation and introduction of Omnibus Bills. A Minister wanting to have a matter dealt with in an Omnibus Bill should make a request in writing to the Director General, Department of the Attorney General, and provide details of a departmental instructing officer for further consultation.

The Department of the Attorney General will scrutinise the proposed matter to ensure that it is suitable to be dealt with in an Omnibus Bill. If the matter is suitable, the Department of the Attorney General will forward the request to the Parliamentary Counsel for drafting. The Department of the Attorney General will liaise with the departmental instructing officer to prepare explanatory notes to accompany the Omnibus Bill.

The final decision about whether a matter is suitable to be dealt with in an Omnibus Bill lies with the Attorney General acting in consultation with the Leader of the Government in the Legislative Council.

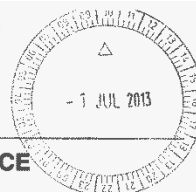
The intention is that an Omnibus Bill will be introduced annually or, if needed, in each of the Autumn and Spring sittings during a year.

The Bill is introduced into Parliament in the Legislative Council and is scrutinised by the Legislative Council's Standing Committee on Uniform Legislation and Statutes Review to ensure that it includes only matters that are suitable for inclusion in an Omnibus Bill.

**COLIN BARNETT MLA
PREMIER**

For enquiries contact:	Peter Richards 9264 1076 Department of the Attorney General
Other relevant Circulars:	N/A
Circular/s replaced by this Circular:	2003/15

APPENDIX 3
LETTER DATED 28 JUNE 2013 FROM HON MICHAEL MISCHIN
MLC, ATTORNEY GENERAL



ATTORNEY GENERAL; MINISTER FOR COMMERCE

Our Ref: 44-05023

The Hon Catherine Doust MLC
Chair
Standing Committee on Uniform Legislation and Statutes Review
Parliament House
PERTH WA 6000

Attn: Linda Murdoch

Dear Chair

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2013

Thank you for your letter dated 13 June 2013 regarding the Statutes (Repeals and Minor Amendments) Bill 2013 (the Bill). Responses to your questions about the Bill are set out below in the same order as asked.

1. Clause 20 – amendment to section 19B(2)(a) and (b) of the *Credit Act 1984*

You have sought clarification as to the basis on which this amendment has been characterised as one of form rather than substance. For the reasons set out below, this amendment is properly characterised as one of form.

Section 19B(2) of the *Credit Act 1984* was introduced with effect from 1 July 2010 by section 9(3) of the *Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010*. The introduced language in the provision provides for:

- 'any action before [reference date]' to be governed by certain provisions of the *Consumer Credit (Western Australia) Code*, and
- 'any action on or after [reference date]' to be governed by the corresponding provisions of the *National Credit Code* (Cth).

The term '[reference date]' is not defined or explained, and the explanation for this is as follows:

- Section 19B of the *Credit Act 1984*, as it was inserted in its original form in 1996, was a transitional provision. In 1996 Western Australia enacted uniform legislation to govern credit contracts. Existing credit contracts continued to be governed by the former legislation, but credit providers were given the option of complying with the new, uniform legislation instead. This option was intended to save credit providers from having to operate separate systems for pre-1996 and post-1996 business as well as providing that, so far as possible, all consumers would be protected by the same regulatory regime.
- With effect from 1 July 2010, by the *Credit (Commonwealth Powers) Act 2010*, Parliament referred certain matters (the *referred credit matters*) to the

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Parliament of the Commonwealth, giving it power to deal with those matters under Commonwealth legislation. The result was the introduction of yet another regulatory regime, the *National Credit Code* (Cth), to govern credit contracts formed in Western Australia

- In the interests of consistency and continuity it was decided that in respect of surviving pre-1996 credit contracts, providers could once again opt to comply with the new regulatory regime. This course of action required an amendment to section 19B of the *Credit Act 1984*, which was effected by section 9(3) of the *Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010*.
- When the amending provision was drafted, the date upon which the relevant power would be referred to the Commonwealth Parliament was not known. The term '[reference date]' was employed in the drafting as a placeholder. It was intended that, before the Bill was enacted, the term would be replaced with the actual date on which power was to be referred. Due to oversight, this was not done. The result is that the placeholder language appears in the legislation as enacted.

In assessing the *effect* of the amendment to section 19B (and whether it is one of form or of substance), it is important to consider the current meaning of the section.

A court interpreting and applying section 19B in its current form would seek to discern, and give effect to, the intention of Parliament. Although the term '[reference date]' is not defined, an examination of the legislative history shows that it was introduced in consequence of the referral of power effected by the *Credit (Commonwealth Powers) Act 2010*. Further, the effect of section 19B as amended in 2010 is to allow credit providers to comply with the *National Credit Code* (Cth), whose validity in Western Australia rests on that referral.

The obvious conclusion is that the word 'reference' in the term alludes to the referral of power to the Commonwealth, and that the term as a whole means the date on which that reference took effect, which was 1 July 2010.

For these reasons, it is considered appropriate to correct this drafting error in an Omnibus Bill. I note and appreciate that an Omnibus Bill is not intended as a vehicle for changes to the substance or effect of the law but, properly construed, the term '[reference date]' already refers to the effective date of the referral of credit power to the Commonwealth, and this can be discerned from an examination of the legislative history.

The amendment now proposed, therefore, does not change the meaning of section 19B(2) of the *Credit Act 1984* but merely clarifies it.

2. Clause 38 – amendments to section 78 of the *Sentencing Legislation Amendment and Repeal Act 2003*

You have sought clarification on the nature of the amendments proposed and in particular as to whether they relate to the retention of the current penalty provisions under section 9(6) of the *Maritime Archaeology Act 1973* that imposes a fine, imprisonment or both.

Section 9(6) of the *Maritime Archaeology Act 1973* as originally enacted and as currently in force provides a penalty of \$1,000, or six months' imprisonment, or both. Section 78 of the *Sentencing Legislation Amendment and Repeal Act 2003* would have amended this to provide a sentence of \$1,000 only.

However in 2004, when the rest of the 2003 Act was being proclaimed, the Minister then administering the *Maritime Archaeology Act 1973* (the Minister for Culture and the Arts) requested that it not be proclaimed, because a wider review of the *Maritime Archaeology Act 1973*, and of the penalties under it, had been commenced.

Section 78 was therefore never proclaimed, so the penalty remains as it always was: \$1,000, or six months' imprisonment, or both.

As the repeal of an unproclaimed provision will not in any way affect the law in force, I can confirm that the deletion of section 78 will not change the penalty and that it is retained in full.

3. Division 2 – amendments adopting the terminology of the Criminal Procedure Act 2004

You note that the Explanatory Memorandum and Table of Clause Notes for the Bill do not provide information on the *Petroleum Pipelines Act 1969* as listed under Division 2 of the Bill. In addition, you seek further information on the clause relating to the *Petroleum Pipelines Act 1969*.

I apologise for the absence of information on this clause in the Explanatory Memorandum, which was the result of an oversight. I confirm that clause 9(2) of the Bill effects only one amendment to the *Petroleum Pipelines Act 1969*.

Currently, section 66BB(1) of the *Petroleum Pipelines Act 1969* reads:

- (1) In a proceeding for an offence against this Act an averment in **the complaint** that at a particular time —
- (a) a particular operation was a pipeline operation;
 - (b) a particular person was the licensee for a pipeline operation;
 - (c) a particular person was in control of a particular part of a pipeline operation;
 - (d) a particular person was an employer who carried on a pipeline operation;
 - (e) a particular person was an employer of a particular person or particular persons engaged in a pipeline operation;
 - (f) a particular person was an employee or inspector,

is to be taken to have been proved in the absence of evidence to the contrary.

As amended by clause 9(2), section 66BB(1) of the *Petroleum Pipelines Act 1969* would read:

- (1) In a proceeding for an offence against this Act an averment in **the charge of the offence** that at a particular time —

- (a) a particular operation was a pipeline operation;
- (b) a particular person was the licensee for a pipeline operation;
- (c) a particular person was in control of a particular part of a pipeline operation;
- (d) a particular person was an employer who carried on a pipeline operation;
- (e) a particular person was an employer of a particular person or particular persons engaged in a pipeline operation;
- (f) a particular person was an employee or inspector,

is to be taken to have been proved in the absence of evidence to the contrary.

The word 'complaint' is not used in the *Criminal Procedure Act 2004*. Instead, the *Criminal Procedure Act* refers to the charge of the offence. Accordingly the reference to a complaint is deleted and replaced with the more appropriate words 'charge of the offence'. The amendment made by cl. 9 is similar to the amendments made by clauses 7 and 8.

I trust that this information answers your questions sufficiently and thank you for your attention to the Bill.

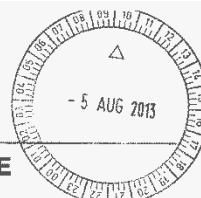
Yours sincerely



Hon. Michael Mischin MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE

28 JUN 2013

APPENDIX 4
LETTER DATED 2 AUGUST 2013 FROM HON MICHAEL
MISCHIN MLC, ATTORNEY GENERAL



ATTORNEY GENERAL; MINISTER FOR COMMERCE

Our Ref: 44-05791
Your Ref: SR2

Hon C Doust MLC
Chair
Standing Committee on Uniform Legislation and Statutes Review
Parliament House
PERTH WA 6000

Dear Chair

STATUTE (REPEALS AND MINOR AMENDMENTS) BILL 2013 (WA)

Thank you for your letter dated 23 July 2013 regarding the Statute (Repeals and Minor Amendments) Bill 2013.

You have asked why certain clauses in the Bill were not considered in a number of amendment Bills currently before the legislative Assembly.

What was then the Statute (Repeals and Minor Amendments) Bill 2012 was drafted between May and October 2012 (the "omnibus preparation period"). When the Bill was closed and sent to Cabinet in October 2012 it was clear that it would not be enacted before the dissolution. It was intended that when the new Parliament convened, the lapsed Bill would be revised and updated to take account of developments since October 2012.

In the event, I wanted to move quickly with the Omnibus Bill, and early in April 2013 I instructed that the Bill be prepared for introduction with no more changes than were necessary. Therefore, the present 2013 Bill is effectively the same as the lapsed 2012 Bill. Given that, the position with respect to the amendments the Committee is asking about now is as follows:

1. The Criminal Investigation (Identifying People) Amendment Bill 2012 was approved for printing in January 2012. That Bill lapsed on the dissolution, but Cabinet did not give fresh instructions about it until May 2013, by which time the Omnibus Bill had already been sent to Cabinet, so the question of transferring amendments to that Bill did not arise.
2. The Petroleum and Geothermal Energy Legislation Amendment Bill 2012 was sent to Cabinet in September 2012, so its preparation period did overlap with the omnibus preparation period. It would have been possible to deal with the amendments to the *Petroleum (Submerged Land) Act 1982*, the *Petroleum and Geothermal Energy Resources Act 1967* and the *Petroleum Pipelines Act 1969* in that Bill.

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However, those amendments formed part of a larger group of amendments, all of which were consequential on the *Criminal Procedure Act 2004*. In each case, the amendment brings terminology regarding criminal proceedings in some other Act into line with the terminology used in the 2004 Act. While it would have been possible to separate out the amendments to Acts dealing with energy issues and deal with them in the Petroleum and Geothermal Energy Legislation Amendment Bill, leaving the Omnibus Bill only to deal with other Acts, there was no obvious advantage in doing so. The considerations regarding the use of up-to-date terminology with respect to criminal proceedings in energy legislation are exactly the same as the considerations which apply with respect to any other legislation, and there is no reason why Parliament should be called upon to consider the question twice, once as respects energy legislation and once as respects legislation on other topics. It seemed to the Department that the Omnibus Bill was the appropriate forum in which to address this issue with respect to all legislation. In these circumstances the fact that it was possible to deal with amendments to the energy legislation in an energy legislation amendment Bill was not, in itself, a good enough reason to handle matters that way.

3. So far as the Fair Trading Amendment Bill is concerned, the first instructions on this were received in January 2013, three months after the Omnibus Bill had been closed and sent to Cabinet for the first time.
4. So far as the *Mental Health Act 1996* is concerned, a Mental Health Amendment Bill is being drafted but it is not yet ready for introduction. While the amendment to the 1996 Act included in the Omnibus Bill could have been excluded from this Bill and left to be dealt with in the Mental Health Amendment Bill when ultimately introduced, there was no obvious advantage in doing so. The Omnibus Bill also updates terminology with respect to the Secretary of the Mentally Impaired Accused Review Board in the *Electoral Act 1907* and the *Guardianship and Administration Act 1990*. It is considered convenient and efficient to address the issue in the Omnibus Bill.

In summary, the action taken was partly due to timing and partly due to efficiency. The amendments made by the Omnibus Bill were in place before the amending Bills reached the Legislative Assembly. Additionally, the relevant Ministers are aware that the amendments are being made in the Omnibus Bill rather than the legislation that they are responsible for. I also note that it would be inefficient to now make a series of amendments in Committee in the Assembly. In the event I would not support any action to vary the legislation at this stage.

Yours sincerely



Hon. Michael Mischin MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE

- 2 AUG 2013

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