



REPORT OF THE  
LEGISLATION COMMITTEE

IN RELATION TO THE

*Statutes (Repeals and Minor Amendments) Bill 1998*

Presented by the Hon Bruce Donaldson (Chairman)

## STANDING COMMITTEE ON LEGISLATION

### Terms of Reference:

- 1 There is hereby appointed a standing committee to be known as the *Legislation Committee*.
- 2 The Committee consists of 5 members.
- 3 A Bill originating in either House, other than a Bill which the Council may not amend, may be referred to the Committee after its second reading or during any subsequent stage by motion without notice.
- 4 A referral under clause 3 includes a recommittal.
- 5 The functions of the Committee are to consider and report on
  - (a) Bills referred under this order;
  - (b) what written laws of the State and spent or obsolete Acts of Parliament might be repealed from time to time;
  - (c) what amendments of a technical or drafting nature might be made to the statute book;
  - (d) the form and availability of written laws and their publication.

### Members at the time of this inquiry:

Hon Bruce Donaldson MLC (Chairman)  
Hon Bill Stretch MLC (Deputy Chairman)  
Hon Tom Stephens MLC  
Hon Derrick Tomlinson MLC  
Hon Giz Watson MLC

### Staff at the time of this inquiry:

Ms Mia Betjeman, Advisory/Research Officer  
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### APPENDIX 1

### APPENDIX 2

### APPENDIX 3

**Report of the Legislative Council  
Legislation Committee**

**in relation to the**

***Statutes (Repeals and Minor Amendments) Bill 1998***

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**1 Summary of Recommendations**

Recommendations are grouped as they appear in the text at the page numbers indicated.

Page 6:

<b>Recommendation 1:</b>	<b>The <i>Dried Fruits Act 1947</i> be repealed and the transitional and consequential amendments be enacted, in accordance with clause 3 of the <i>Statutes Repeal Bill</i>.</b>
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<b>Recommendation 2:</b>	<b>The <i>Snowy Mountains Engineering Corporation Enabling Act 1971</i> be repealed in accordance with clause 4 of the <i>Statutes Repeal Bill</i>.</b>
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Page 7:

<b>Recommendation 3:</b>	<b>The <i>Wundowie Works Management and Foundry Agreement Act 1966</i> be repealed in accordance with clause 5 of the <i>Statutes Repeal Bill</i>.</b>
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Page 15:

<b>Recommendation 4:</b>	<b>The <i>Beekeepers Act 1963</i> be amended in accordance with Clause 6 of the <i>Statutes Repeal Bill</i>.</b>
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Page 16:

**Recommendation 5:** Where regulations are intended or required to supplement amendments proposed to an Act, those regulations (or the fact that regulations are required to be drafted) should be referred to in the Explanatory Notes to the relevant clause of the relevant Statutes Repeal Bill.

Page 17:

In view of the matters discussed at paragraphs 5.20.3 and 5.24 the Committee agrees that a review of the *Beekeepers Act 1963* be undertaken as matter of priority.

Page 22:

**Recommendation 6:** Clause 26B(1)(a) of the *Conservation and Land Management Act 1984* be amended by deleting - “marine nature reserves, marine parks and marine management areas” and inserting instead - “marine reserves”.

Page 22:

**Recommendation 7:** The *Conservation and Land Management Act 1984* be amended in accordance with clause 11 of the *Statutes Repeal Bill*.

Page 29:

**Recommendation 8:** The *Education Services Providers (Full Fee Overseas Students) Registration Act 1991* be amended and the transitional amendments be enacted in accordance with clause 13 of the *Statutes Repeal Bill*.

Page 31:

**Recommendation 9:** That section 281 of the *Health Act 1911* be repealed.

Page 31:

**Recommendation 10:** The *Health Act 1911* be amended in accordance with clause 16 of the *Statutes Repeal Bill*.

Page 32:

**Recommendation 11:** The *Interpretation Act 1984* be amended in accordance with clause 19 of the *Statutes Repeal Bill*.

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**Recommendation 12:** Clause 20(1) of the *Statutes Repeal Bill* not be enacted.

Page 34:

**Recommendation 13:** Section 159 of the *Land Administration Act 1997* is deleted and the following paragraph is inserted instead -

“ (g) the Minister responsible for administering the *Financial Administration and Audit Act 1985*, ”.

Page 35:

**Recommendation 14:** The *Land Administration Act 1997* be amended in accordance with clause 20(2) of the *Statutes Repeal Bill*.

Page 35:

**Recommendation 15:** The *Racing Penalties (Appeals) Act 1990* be amended in accordance with clause 37 of the *Statutes Repeal Bill*.

Page 37:

**Recommendation 16:** The *Transfer of Land Act 1893* be amended in accordance with clause 42 of the *Statutes Repeal Bill*.

Page 37:

**Recommendation 17:** That the remaining amendments contained in Part 3 of the *Statutes Repeal Bill* be enacted.

Page 37:

**Recommendation 18:** That the amendments contained in Part 4 of the *Statutes Repeal Bill* be enacted.

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**Recommendation 19:**

The Committee is concerned about the length and complexity of a number of the clauses in Part 3 of the *Statutes Repeal Bill*. For example, the Committee considers that clause 6 of the *Statutes Repeal Bill* deals with amendments to the *Beekeepers Act 1963* which, although not lengthy, raise a number of separate issues and require the drafting and promulgation of regulations to supplement the proposed amendments.

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

## 2 Reference and Procedure

- 2.1 The *Statutes (Repeals and Minor Amendments) Bill 1998* ("*Statutes Repeal Bill*") was referred to the Legislation Committee on a motion by the Hon Norman Moore MLC.

## 3 Contents and Purpose of the Bill

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

In the Second Reading speech introducing the *Statutes Repeal Bill* into the Legislative Council, the Leader of the House, Hon Norman Moore MLC, said:

*"Its aim is to make Parliament more efficient by reducing the number of amendment Bills dealing with relatively minor legislative amendments and repeals. Amendments and repeals included in the Bill are required to be short and non-controversial. In addition, they must not impose or increase any obligations or adversely affect any existing rights."*<sup>1</sup>

- 3.2 The *Statutes Repeal Bill* contains 55 clauses in four parts:

**Part 1: Preliminary**

**Part 2: Various acts repealed**

**Part 3: Various acts amended**

**Part 4: Amendments relating to cheques**

- 3.3 This report makes no comment on Part 1, but will provide a brief description of each Act being repealed in Part 2, selected extracts for certain Acts being amended in Part 3 and a brief comment on Part 4.

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<sup>1</sup> *Hansard*, Volume 11, Second Session, 3 December 1998, page 4800.



**Clause 3 - Dried Fruits Act 1947**

4.1 The Committee notes the comments of the Leader of the House, Hon Norman Moore MLC, in the Second Reading speech introducing the *Statutes Repeal Bill* into the Legislative Council:

*“ This Act contains a large number of redundant restrictions and has been inoperative for some years. Its repeal is consistent with policy related to regulatory reform. Legislative review of the Act for compliance with National Competition Policy principles included consultation with the Dried Fruits Board of WA, the Australian Dried Fruits Association, a number of Western Australian growers and the Swan Settlers’ Packing House. The Dried Fruits Board agreed to cease operations from February 1998 and appointed a caretaker sub-committee until the Act is repealed. All parties agreed to return any surplus accumulated funds to the Australian Dried Fruits Association (WA Branch) when the Act is repealed. ”*<sup>2</sup>

4.2 The Committee made inquiries of the secretary of the caretaker subcommittee of the Dried Fruits Board, Mr Ronald Barrett, and various stakeholders and is satisfied that there is industry consensus to the repeal of the Act and the return of surplus funds to the Australian Dried Fruits Association (WA Branch).

<b>Recommendation 1:</b>	<b>The Dried Fruits Act 1947 be repealed and the transitional and consequential amendments be enacted, in accordance with clause 3 of the <i>Statutes Repeal Bill</i>.</b>
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**Clause 4 - Snowy Mountains Engineering Corporation Enabling Act 1971**

4.3 The Committee notes the comments of the Leader of the House, Hon Norman Moore MLC, in the Second Reading speech introducing the *Statutes Repeal Bill* into the Legislative Council:

*“ The Bill also repeals the Snowy Mountains Engineering Corporation Enabling Act 1971 which was enacted to enable the Snowy Mountains Engineering Corporation to carry out work for the state government and for private organisation in Western Australia. In the previous year the Commonwealth had passed an act to establish the*

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<sup>2</sup> Hansard, ibid, page 4801.



names of organisations or government agencies, cross-reference errors or changes in terminology.

- 5.2 The Committee considered that it would be an unnecessary duplication of the materials provided in the *Explanatory Notes to the Statutes Repeal Bill* (“Explanatory Notes”) to individually review each proposed amendment. The Committee has provided a short summary of and comment on a selected range of the various Acts to be amended. The Report provides final recommendations for Part 3 of the *Statutes Repeal Bill* at the end of all the summaries.

### **Clause 6 - Beekeepers Act 1963**

- 5.3 The Committee notes the comments of the Leader of the House, Hon Norman Moore MLC, in the Second Reading speech introducing the *Statutes Repeal Bill* into the Legislative Council:

*“ The Bill amends this Act in order to permit a person to use a disposable “bee tube” for pollination of crops for a limited period of 8 weeks without the need to become a registered beekeeper. Research has shown very large increases in production of fruit and improvement in quality after using pollination techniques and demand for the bee tube device is expected to expand dramatically.”*<sup>5</sup>

- 5.4 The Explanatory Notes state:

*“ A new market opportunity has been developed for beekeepers to sell bees for pollination of crops. There has been developed a disposable “Bee Tube” which registered beekeepers may sell to horticulturalists for placing in crops during pollination. This amendment enables a person to use these alternative devices for a limited time of 8 weeks during pollination. The devices and bees must be destroyed after 8 weeks which overcomes any potential disease problems. A Code of Conduct has been developed by the industry for the use of these devices which with this legislation (sic) amendments will ensure that exemption from registration as a beekeeper is for only this limited purpose. Research has shown very large increases in production of fruit and improvement in quality from using pollination techniques and demand for these devices is expected to expand dramatically. ”*

- 5.5 The Committee was concerned about the amendments proposed by clause 6 of the *Statutes Repeal Bill*.

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<sup>5</sup> Hansard, *ibid.*

- 5.6 The Committee considers that Government Departments should be mindful of the comments of the Leader of the House, Hon Norman Moore MLC, that the *Statutes Repeal Bill* should deal with "*relatively minor legislative amendments and repeals. Amendments and repeals included in the Bill are required to be short and non-controversial*".<sup>6</sup> The Committee notes that although the proposed amendments to the *Beekeepers Act 1963* are short and non controversial, the ramifications of the proposed amendments are far from simple.
- 5.7 The Committee specifically inquired into a number of issues which presented themselves for review as part of its general mandate in respect of the *Statutes Repeal Bill*. Central to these inquiries was the issue of disease prevention and/or control.
- 5.8 Section 8 of the *Beekeepers Act 1963* presently requires that:
- Within 14 days after becoming a beekeeper a person must apply to be registered (section 8(1));
  - every beekeeper must apply for a renewal of his registration (section 8(2)); and
  - a beekeeper who fails to register or to renew his registration as a beekeeper commits an offence (section 8(2)). Pursuant to section 28(2) of the Act the penalty is \$2,000.
- 5.9 As required by the *Beekeepers Act 1963*, the usual hive has removable frames which enables beekeepers to inspect the hive, bees and brood for signs of disease and to report its presence.<sup>7</sup>
- 5.10 Historically hives of the traditional variety were placed in orchards however current planting densities in orchards, with their elaborate structures for trellising and hail or bird netting, make it very difficult to carry out traditional honey bee pollination services.

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<sup>6</sup> *Hansard*, *ibid*, page 4800.

<sup>7</sup> Clauses 13 and 14 of the *Beekeepers Act 1963* and the *Beekeepers Regulations* require a beekeeper to report disease and eradicate pests in his "apiary" which by further definition means "hive". As a result of the proposed amendments an "approved device" is exempted from being a "hive" and the reporting and eradication requirements of the Act would not apply.

In response to changing orchard practices, research was undertaken to develop alternative pollination devices.

- 5.11 As noted above, the proposed amendments permit a person to use “an approved device”<sup>8</sup> for pollination of crops for a limited period of 8 weeks<sup>9</sup> (“Exemption Period”) without the need to become a registered beekeeper. Presently the “approved device” is a Bee Tube.<sup>10</sup> The use of this type of pollination unit without frames makes the detection of

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<sup>8</sup> Pursuant to section 4 of the Beekeepers Act 1963 “approved” means “approved by the Senior Apiculturist”. “...if an alternative container became more economical or research proved that certain changes to the bee tube were warranted, we could do that without changing the Act. As long as I approve and it meets our disease requirements, the industry is happy for us to change it ... for example, Canada uses foam eskies for the same purpose in cranberry crops. A parachute is put on the esky containing the bees and it is then dropped out of a plane. It floats down into the cranberry crop which has no access to it, but it requires the bees. When the esky hits the ground, a whole is punched in it which lets out the bees.”: Evidence, Mr Allan, Senior Apiculturist, Agriculture WA, 5 May 1999, page 23.

<sup>9</sup> The period of 8 weeks meets the pollination needs of the growers with the disease management requests of the beekeepers. The Committee was informed by its witnesses that:

- the period of 8 weeks enables the use of approved devices during the usual 6 week pollination period, with some leeway for growers who wish to utilise the approved device in one or more crops; and
- experience over the years and research conducted on American Foul Brood disease show that development of the visual signs of the disease takes at least 6 weeks from the time the hive becomes infected with the disease. However there is very little risk of the disease spreading until the hive dies out, which exposes the infection to other bees that could steal the infected honey, thus spreading the disease. If the approved device is destroyed before the 8 week period, there is virtually no disease risk even if the infected bees were used in the Bee Tubes.

Refer to Written Submission from Mr Allan, undated. See also Evidence, Mr Silcock, President, Pollination Association of Western Australia, 5 May 1999, page 4.

<sup>10</sup> A “Bee Tube” is a specific sized lightweight cardboard tube approximately 6 inches (15 centimetres) in diameter and 30 inches (76 centimetres) in length containing about 1 kilogram of bees (approximately 9000 bees) and a queen. It is punctured by ventilation holes, has plastic stoppers at either end with a door plug and a wire hook to hang it amongst the trees. If further research improves the design of the Bee Tube or results in another type of pollination unit the new device can be approved by the Senior Apiculturist pursuant to section 4 of the *Beekeepers Act 1963* (see footnote 8

disease more difficult and could pose a disease risk to beekeepers' hives unless additional measures are put in place to prevent the spread of disease.

5.12 The Committee was concerned of the potential to spread disease with the use of approved devices, such as Bee Tubes, and inquired into what additional measures were proposed by the industry.

5.13 The Committee took evidence from Mr Lee Allan, Senior Apiculturist, Agriculture WA; Mr John Silcock, President, Pollination Association of Western Australia; and Mr Ian Baile, President, Beekeepers Section of the Western Australian Farmers' Federation. The Committee takes this opportunity to thank those witnesses for their assistance and their interesting and informative evidence.

5.14 Mr Allan informed the Committee that disease concerns amongst the industry were addressed by both an Industry Code of Practice and proposed regulations, drafted by Agriculture WA to supplement the *Beekeepers Act 1963* once the amendments have been assented to. A copy of the Code of Practice is attached as Appendix 2. A copy of the proposed regulations prepared by Agriculture WA are attached as Appendix 3.

5.15 For relevant purposes of discussion the Code of Practice:

5.15.1 separates pollination units into two types:

- Rentable pollination units, where ownership (and therefore responsibility) remains with the beekeeper (South of the 26th parallel); and
- Disposable pollination units where ownership (and therefore responsibility) transfers from the beekeeper to the grower under a voluntary Code of Practice (North of the 26th parallel).<sup>11</sup>

5.15.2 requires that each pollination unit be marked with the beekeeper's brand name, address and phone number for identification (clause 2.4 of the Code of the

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above).

<sup>11</sup> The Committee was informed that the geographical differentiation is based on the economic and practical difficulties that would be faced by beekeepers in having to service and police the disposal of pollination units supplied north of the 26th parallel: *Evidence*, Mr Lee Allan, page 22; *Evidence*, Mr Silcock, pages 3 & 6.

Practice); and marked with the date showing when they were first placed in the crop (amendment to the Code of Practice); and

5.15.3 prescribes the method of destruction, mirroring Regulation 18 of the *Beekeepers Regulations* which applies in respect of “hives”.<sup>12</sup>

5.16 The Code of Practice covers the destruction of Pollination Units both prior to and after the expiry of the Exemption Period. The Committee notes that the Code of Practice is voluntary and has no legislative force ensuring compliance. In this respect the Committee notes that:

5.16.1 regardless of the existence of, or compliance with, the Code of Practice, *upon expiry of the Exemption Period*, the approved devices (referred to in the Code of Practice as Pollination Units) “become” hives under the *Beekeepers Act 1963* and the legislative requirements relating to registration and destruction apply.<sup>13</sup> Furthermore, in the event of non-compliance with the provisions of the *Beekeepers Act 1963*, legislative sanctions and penalties will apply to the non-complying beekeeper whose Pollination Unit has “become” a hive; and

5.16.2 *prior to the expiry of the Exemption Period* the Pollination Unit is not a “hive” and the legislative requirements for correct disposal and the sanctions for non compliance do not apply. Although an indication of goodwill amongst

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<sup>12</sup> The Code of Conduct essentially picks up the disposal requirements in Section 18 of the *Beekeepers Act 1963* and the *Beekeepers Regulations*. This involves dousing the hive with petrol at night time, burying it in a hole half a metre deep, burning it and then covering the ashes with soil. Such measures are necessary in light of diseases, such as American Foul Brood, which can be carried by spores that can remain dormant for up to 35 years before spawning.

<sup>13</sup> After the expiry of the Exemption Period:

- A person who owns or has the charge, care or possession of bees is a beekeeper under the Act and must register within 14 days;
- If a person does not register a penalty applies (s 8(2)) of \$2,000 (section 28(2)).
- A person owning a Bee Tube cannot register the “hive” as it does not meet prescribed regulations requiring removable frames. (Reg 26)
- The person must dispose of the hive in the prescribed manner. (Reg 18)
- Failure to comply with any provision of the Act, the regulations or any direction or order given or made under provisions of the Act relating to any apiary, bees, hives etc. is an offence (Clause 28(1)).

those voluntarily “bound”, the Code of Practice has no legislative force and no penalty attaches to those who do not comply with its requirements. The Committee was concerned that the amendments proposed in Clause 6 of the *Statutes Repeal Bill* do not legislate for the use and disposal of approved devices *prior to expiry* of the Exemption Period.

5.17 In this respect the Committee notes that the draft regulations to be proposed by Agriculture WA require that:

5.17.1 a date be placed on the approved device to mark the date it is first used for keeping bees; and

5.17.2 sets out the prescribed method of disposal of the approved device and bees kept in it. The method of disposal mirrors that contained in regulation 18 of the *Beekeepers Regulations* regarding the eradication of brood diseases.

5.18 The Committee notes that once regulations are formally drafted and promulgated non-compliance will attract sanctions in the *Beekeepers Act 1963* in respect of the use and disposal of approved devices *prior to expiry of the Exemption Period*. In respect of disposal, the Committee notes that it is not a matter of total disease prevention - rather it is a management of disease risk by timely destruction.

5.19 In addition to the proposed draft amendments to the *Beekeepers Regulations* (Appendix 3), the Committee notes the comments of Mr Allan that the use of approved devices such as Bee Tubes for pollination puts the bees under a great deal of stress:

*“Under most circumstances, at the end of the six or eight-week period, the approved device will be of little value to the grower. He may work the odd crop, which has a pollen and nectar flow, which the bees are pollinating, but that does not happen very often. The value of the bee tubes will be virtually useless at the end. If the grower wanted to use them for another crop, he will not get the value out of using them. He would be better off buying new ones that are set up for the next crop. There are incentives for the grower, because he is getting value for money, and there are benefits for the beekeeper, because he has more to sell. That is a happy marriage and helps ensure that they are destroyed. There is also a penalty because if he does not dispose of them, he is keeping them illegally under the Act.”<sup>14</sup>*

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<sup>14</sup> Evidence, Mr Allan, page 22.



- 5.20 The Committee was also informed by its witnesses that:
- 5.20.1 Experiments using Bee Tubes show that there is a spectacular 167 - 176 per cent increase in cherry production with the use of Bee Tubes.<sup>15</sup>
  - 5.20.2 The development of the Bee Tube is an exciting opportunity for the bee industry, providing a huge benefit to agriculture and horticulture in Western Australia.<sup>16</sup>
  - 5.20.3 *“Annually, pollination in Western Australia is valued at \$89 million. In Australia it is valued at between \$602 million and \$1.2 billion annually. That is the estimation of the value of bees through accidental and managed pollination of agriculture and horticultural crops.”*<sup>17</sup>
  - 5.20.4 All sectors of the industry are behind the concept of approved devices for pollination and the principles espoused in the Code of Practice.<sup>18</sup>
  - 5.20.5 Bee Tubes restrict the spread of disease. Hives which are placed in orchards can be exposed to diseased hives which may have been placed in close proximity for pollination purposes. When the hives are collected by the beekeeper and returned to his property the infected hive may infect other hives. Bee Tubes are destroyed after use and along with them any disease that may have been transferred from another hive or Bee Tube in proximity.<sup>19</sup>

In the words of Mr John Silcock: *“I have discussed this issue with entomologists, researchers and beekeepers in the eastern States. They all*

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<sup>15</sup> Evidence, Mr Allan, page 30 and also see *“Bee Tubes - a new pollination system for high density orchards”* by Rob Manning, Research Officer, Animal Research and Development Services, Agriculture WA, 9 April 1998.

<sup>16</sup> Evidence, Mr Allan, page 30.

<sup>17</sup> Evidence, Mr Allan, page 30.

<sup>18</sup> Evidence, Mr Baile, President, Beekeepers Section of the Western Australian Farmers' Federation, 5 May 1999, pages 13 & 14; Evidence, Mr Silcock, page 9.

<sup>19</sup> Evidence, Mr Allan, page 21; Evidence, Mr Baile, page 14; Evidence, Mr Silcock, page 10.

*believe that these [Bee Tubes] are the greatest things ever invented to slow the spread of the disease”<sup>20</sup>*

- 5.20.6 Bee Tubes restrict hive, and therefore honey, contamination from residue which may collect from the spraying of crops. Bee Tubes are destroyed after use and as such beekeepers can maintain honey production without the risk of pesticide residues. This has an advantage for export sales.<sup>21</sup>

The Committee notes the comments of Mr Baile: “ *WA is probably the last place in the world where we do not use antibiotics or chemicals in producing honey*”.<sup>22</sup>

**Recommendation 4:            The *Beekeepers Act 1963* be amended in accordance with Clause 6 of the *Statutes Repeal Bill*.**

- 5.21        The Committee recognises that the proposed regulations are yet to be formally drafted and are not before the House. Accordingly it is not appropriate for the Committee to comment in detail on the form of the draft attached as Appendix 3 until such time as the proposed amendments have been formally drafted by Agriculture WA, in conjunction with Parliamentary Counsel, and tabled.
- 5.22        However should Clause 6 of the *Statutes Repeal Bill* be approved by the House, the Committee expresses the view that such regulations should be drafted and tabled forthwith in order that the opportunities afforded to the Western Australian beekeeping and pollination industries by the use of approved devices such as the Bee Tube can be harvested, with the appropriate legislative requirements and sanctions to maintain the integrity of the beekeeping industry.
- 5.23        At this point the Committee makes the observation that at the time of referral of the *Statutes Repeal Bill* and its initial inquiries with Agriculture WA, the existence of the proposed regulations were not drawn to the Committee’s attention. Most, if not all, of the Committee’s queries may have been dispensed with had the proposed regulations been referred to.

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<sup>20</sup>            *Evidence*, Mr Silcock, page 5.

<sup>21</sup>            *Evidence*, Mr Allan, page 21.

<sup>22</sup>            *Evidence*, Mr Baile, page 15.

**Recommendation 5: Where regulations are intended or required to supplement amendments proposed to an Act, those regulations (or the fact that regulations are required to be drafted) should be referred to in the Explanatory Notes to the relevant clause of the relevant Statutes Repeal Bill.**

5.24 The Committee notes the many comments made by the witnesses that a review of the *Beekeepers Act 1963* is long overdue and that any review was to be done in conjunction with the proposed Agriculture Protection Board Act.<sup>23</sup> The *Beekeepers Act 1963* is now 36 years old and requires updating to reflect, amongst other matters:

5.24.1 ***Problems with neglected apiaries.*** Reluctance on the part of the beekeeping industry to “dob someone in”; jurisdictional difficulties in taking action if the neglected hive is not diseased; and interpretation difficulties with what “neglect” means, present monitoring and control difficulties for the industry.<sup>24</sup>

5.24.2 ***New procedures for disease control:*** Changes in disease control have occurred since the *Beekeepers Act* was introduced in 1963. Such changes include the use of honey culture tests and a barrier management system for managing hives. These new procedures must be incorporated into a sensible Act.<sup>25</sup>

5.24.3 ***Effective control, detection and the prosecution of the use of antibiotics:*** The Committee was informed by Mr Allan that: “*At the moment it is difficult to deal with antibiotics because to get evidence for a successful prosecution we must establish that the beekeeper bought them; that the antibiotic was not in the hive before he bought the product; that we saw him put it in; that we tested the honey after seeing him put it in, analysed it and showed that it was present; and then take it to court. That is totally inappropriate. I endeavoured to deal with that issue some time ago but the issue of antibiotics, particularly residues in honey, was not a high priority for the industry; but it is now. People have spoken to me about changing that*

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<sup>23</sup> Evidence, Mr Allan, page 25.

<sup>24</sup> Evidence, Mr Allan, page 24; Evidence, Mr Baile, page 17.

<sup>25</sup> Evidence, Mr Allan, pages 25 & 26.

*section. I have suggested that we need to make it an offence for the antibiotic to be there. If we detect it in the honey, it is an offence and that person will be prosecuted.... I am sure the industry will fully support the introduction of legislation of that kind.*<sup>26</sup>

5.25 The Committee is aware that new legislation is being drafted for the Agriculture Protection Board which may provide umbrella legislation for all agriculture industries. The Committee has been informed by Mr Allan that: *“We will be looking at the new Act and the regulations when it comes under the Agriculture Protection Board Act and at including a definition after consultation with the industry about what it considers to be neglect. We are well down that path already. We have one of the first Acts up and running to get all that in place and when the new Act is proclaimed, we will slot straight in.”*<sup>27</sup>

5.26 **In view of the matters discussed at paragraphs 5.20.3 and 5.24 the Committee agrees that a review of the *Beekeepers Act 1963* be undertaken as matter of priority.**

#### ***Clause 8 - Conservation and Land Management Act 1984***

5.27 Clause 8 contains amendments to the *Conservation and Land Management Act 1984* (“CALM Act”) which have a complicated legislative origin.

5.28 Essentially amendments made to the CALM Act by Part 13 of the *Acts Amendment (Land Administration) Act 1997* (which became operative on 30 March 1998), overlooked and are therefore inconsistent with the amendments which were already made to the CALM Act by the *Acts Amendment (Marine Reserves) 1997* (which became operative on 29 August 1997).

5.29 The inconsistencies between the *Acts Amendment (Land Administration) Act 1997* and the *Acts Amendment (Marine Reserves) 1997* have the result that there is, putting it simply, an unintended and inconsistent overlap of reservation powers and consultation regimes between:

- a marine reserve comprising land reserved under Part 4 of the *Land Administration Act 1997*; and

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<sup>26</sup> Evidence, Mr Allan, page 27.

<sup>27</sup> Evidence, Mr Allan, page 24.

- a marine reserve comprising waters reserved under the CALM Act (which is reserved by order of the Governor).

5.30 The Committee notes the comments made by Mr Syd Shea, Executive Director, Department of Conservation and Land Management to the Hon Minister for the Environment in a letter dated 18 November 1998 in which Mr Shea states:

*“...it was never intended that these reserves [reserves placed with a CALM Act controlling body] would include coastal waters. It would be contrary to Government policy to do so and it has never been contemplated that the LAA [Land Administration Act] reservation process would be used instead of the CALM Act marine reserve process. However ignoring Government policy and as raised by the fisheries portfolio, it would be possible for this to happen because the LAA [Land Administration Act] definition of “land” includes marine and coastal waters.”*

A copy of that letter is attached to this report as Appendix 1.

5.31 The amendments proposed by Clause 8 of the *Statutes Repeal Bill* reinforce the intended structure and address the inconsistencies between the amendments made by the *Act Amendment (Marine Reserves) Act 1997* and the *Acts Amendment (Land Administration) Act 1997*.

#### **Clause 8(1)**

5.32 The existing section 5 of the CALM Act specifies the land to which the CALM Act applies. More particularly, section 5(h) includes any other land reserved under Part 4 of the *Land Administration Act 1997* the care, control and management of which are placed by order under that Part with the Lands and Forest Commission or the National Parks and Nature Conservation Authority.

5.33 Clause 8(1) of the *Statutes Repeal Bill* primarily amends section 5 by replacing existing section 5(h) with new section 5(1)(h). The amendment:

- excludes marine and coastal waters from being land to which the CALM Act would normally apply by virtue of the land falling within the provisions of existing section 5(h). The Explanatory Notes state that this provides consistency with the consultative marine reservation provisions established by the *Acts Amendment (Marine Reserves) Act 1997*. Those provisions are intended to be the only means available for marine and coastal waters to be reserved and placed with the Marine Park and Reserves Authority; and

- corrects an omission from existing section 5(h) when that section was inserted<sup>28</sup>, to enable land reserved and placed by order under Part 4 of the *Land Administration Act 1997*<sup>29</sup> with the Marine Parks and Reserves Authority<sup>30</sup> to be land to which the CALM Act *does* apply.

5.34 Clause 8(1)(d) of the *Statutes Repeal Bill* inserts a definition of the marine and coastal waters which are excluded from the operation of proposed section 5(1)(h) and therefore is not land to which the CALM Act applies:

“ (2) In subsection (1)(h) -  
**“excluded waters”** means -  
 (a) the marine waters referred to in the definition of “land” in section 3(1) of the *Land Administration Act 1997*; and  
 (b) the coastal waters of the States referred to in section 13(8)(b).”

**Clause 8(2)**

5.35 Section 17 of the CALM Act applies to the cancellation, amendment or alteration of CALM Act reserves which are not State forest, timber reserves, conservation parks, national parks or Class A reserves. It sets out a procedure for consultation and approval and more specifically, in the case of a “marine park or marine nature reserve” (existing section 17(5)) or a “marine reserve” (existing section 17(6)), it provides for the approval or consent of the relevant Minister or Ministers.

5.36 Clause 8(2)(a) of the *Statutes Repeal Bill* amends section 17(5) by deleting “park or marine nature” so that the reference is only to a “marine reserve”, specifically in the following manner:

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<sup>28</sup> Section 15(1)(c) of the *Acts Amendment (Land Administration) Act 1997* (operative 30 March 1998).

<sup>29</sup> Part 4 of the *Land Administration Act 1997* enables the Minister to reserve Crown land to the Crown for one or more purposes in the public interest, classify it as an “A Class” reserve, provide for management plans and by order vest the care, control and management of a reserve with another person.

<sup>30</sup> The Marine Parks and Reserves Authority was established by section 17 of the *Acts Amendment (Marine Reserves) Act 1997* (operative 29 August 1997) which inserted Division 3A into Part III of the CALM Act.

“(5) Except in the case of the waters of a marine ~~park or marine nature~~ reserve to which subsection (6) applies, the Minister may, subject to this section recommend to the Minister administering the *Land Administration Act 1997* that an order be made to give effect to the proposal, and, if that Minister agrees, the proposed cancellation, amendment or alteration shall be carried into effect under Part 4 of that Act.”

*(Amendments have been marked up)*

5.37 The Explanatory Notes state that the amendment is consistent with amendments made to the CALM Act by:

- the establishment of a “marine management area” as a category of a marine reserve in addition to a “marine park and marine nature reserve”; and
- the definition of “marine reserve” which means a “marine nature reserve, a marine park or a marine management area”.

5.38 Both the establishment of marine management areas as a new category of CALM Act marine reserve and the definition of “marine reserve” were inserted by section 4 of the *Acts Amendment (Marine Reserves) Act 1997* (operative 29 August 1997).

5.39 Clause 8(2)(b) of the *Statutes Repeal Bill* amends section 17(6) in the following manner:

“(6) In the case of the waters of a marine reserve, other than a marine reserve comprising land reserved under Part 4 of the *Land Administration Act 1997*, the Minister, with the concurrence of the Minister for Fisheries and the Minister for Mines, may, subject to this section, recommend to the Governor that an order be made to give effect to the proposal, and thereupon the Governor shall by order published in the *Gazette* give effect to the proposed cancellation, amendment or alteration.”

*(Amendments have been marked up)*

5.40 The amendments sought to be made by clause 8(2)(b) of the *Statutes Repeal Bill* essentially repeats the amendments sought to be made by the *Acts Amendment (Land Administration) Act 1997*. The Explanatory Notes state that this amendment was of no effect because of amendments already made to section 17(6) by the *Acts Amendment (Marine Reserves) Act 1997*.

**Clause 8(3)**

5.41 Clause 8(3) of the *Statutes Repeal Bill* amends section 26B of the CALM Act, which sets out the functions of the Marine Parks and Reserves Authority, by inserting omissions from the *Acts Amendment (Land Administration) Act 1997*. Those omissions relate to section 5(1)(h) reserves placed with the Marine Parks and Reserves Authority which was earlier established by amendments made by the *Acts Amendment (Marine Reserves) Act 1997*.

5.42 The *Acts Amendment (Land Administration) Act 1997* did pick up equivalent amendments in respect of the functions of the Lands and Forest Commission (see sections 19(1)(aa) and 19(4) of the CALM Act) and the National Parks and Nature Conservation Authority (see sections 22(1)(aa) and 22(3a) of the CALM Act). The amendments proposed by Clause 8(3) of the *Statute Repeals Bill* are consistent with those earlier amendments and insert:

- New section 26B(1)(aa), to state that a function of the Marine Authority is:
  - “(aa) to have the care, control and management of relevant land referred to in section 5(1)(h) placed with it;”

and

- New section 26B(3a):
  - “(3a) Despite the *Land Administration Act 1997*, the placing of the care, control and management of land to which section 5 (1)(h) applies with the Marine Authority is only for the purposes referred to in subsection (2).”<sup>31</sup>

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<sup>31</sup> Subsection (2) declares that the vesting of marine reserves in the Marine Authority is only for the purposes of subsections (1)(b) - (1)(h) for example: subsection (1)(b) (the development of policies for specific purposes); (1)(c) (the consideration of cancellation, change of purpose or boundary alteration); (1)(e) (to submit proposed management plans to the Minister); (1)(f) (the development of guidelines for monitoring, setting performance criteria for evaluation and conducting periodic assessment); and (1)(h) (to cause study or research to be undertaken).



- 5.43 In reviewing the proposed amendments to existing section 26B of the CALM Act the Committee notes that section 26B(1)(a) refers to “marine nature reserves, marine parks and marine management areas”. In view of the reasoning advanced by the Explanatory Notes in respect of the amendments proposed by clause 8(2)(a) of the *Statutes Repeal Bill*<sup>32</sup>, reflecting the all encompassing definition of “marine reserve”, the Committee recommends that section 26B(1)(a) should also be amended.

<p><b>Recommendation 6:</b>            <b>Clause 26B(1)(a) of the <i>Conservation and Land Management Act 1984</i> be amended by deleting - “marine nature reserves, marine parks and marine management areas” and inserting instead - “marine reserves”.</b></p>
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*Clause 8(4)*

- 5.44 Clause 8(4) of the *Statutes Repeal Bill* amends existing section 62 of the CALM Act, which states how land may be classified, by correcting an omission from the *Acts Amendment (Land Administration) Act 1997*. The Explanatory Notes state that the amendment is:

- consistent with making land mentioned in section 5 (1)(h) “land to which this Act applies”; and
- will enable section 5 (1)(h) reserves to be classified in the same manner as provided for section 5(1)(g) reserves. In effect a section 62 classified area is a management zone.

*Clauses 8(5) - (7)*

- 5.45 Clauses 8(5) - (7) inclusive of the *Statutes Repeal Bill* provide for consequential amendments as a result of a new subsection being inserted into section 5 of the CALM Act and the existing provisions being designated subsection “(1)”.

<p><b>Recommendation 7:</b>            <b>The <i>Conservation and Land Management Act 1984</i> be amended in accordance with clause 11 of the <i>Statutes Repeal Bill</i>.</b></p>
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Amending section 17(5) CALM Act.

**Clause 13 - Education Services Providers (Full Fee Overseas Students) Registration Act 1991**

5.46 The Explanatory Notes state:

*“ Section 50 of the Education Services Providers (Full Fee Overseas Students) Registration Act 1991 provides for a Review of the Act after three years of operation. Section 50(1) states that the Review must be undertaken by an independent party. The Department of Education Services called for tenders in October 1996. Accordingly, Stanton Partners, Chartered Accountants and Consultants, were the successful tenderers.*

*The review was the result of broad consultation with the International Education industry in Western Australia. A questionnaire was sent to all registered providers resulting in an 80% response rate. The Reviewers also sought further advice from individual providers on matters raised in the questionnaire. In addition, written submissions were received from relevant agencies, student groups and major stakeholders.”*

5.47 The ESPRA Review was tabled in Parliament on 18 June 1997.<sup>33</sup> All members were advised through a Ministerial Statement that the Government would proceed with the implementation of the recommendations.<sup>34</sup> Briefly the recommendations contained in the report relate to the following matters<sup>35</sup>:

- the extension of the maximum period of registration;
- the powers of the Chief Executive Office responsible for the Act;
- the collection of statistical information from providers; and
- the definitions contained in the Act.

5.48 The Committee notes that some of the recommendations require further consultation with the industry before a practical policy position is able to be finalised. Some of the recommendations relating to legislative amendment are covered in the *Statutes Repeal Bill*.

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<sup>33</sup> “A Review of the Education Service Providers (Full Fee Overseas Students) Registration Act 1991”, Stanton Partners, 3 February 1997 (“ESPRA Review”).

<sup>34</sup> Letter dated 4 August 1997 from Minister for Education to Chief Executive, Office of State Administration.

<sup>35</sup> Ibid.

**Clause 13(1)**

5.49 Existing section 3(1) of the *Education Services Providers (Full Fee Overseas Students) Registration Act 1991* (“ESPRA”) provides:

“ **“full fee overseas student”** means a student who is not -

- (a) an Australian citizen;
- (b) a New Zealand citizen;
- (c) a permanent resident in Australia; or
- (d) a dependant of a person referred to in paragraphs (a), (b) or (c),

and in relation to whom a full fee is paid for an education service; ”

5.50 The Committee has reviewed advice received by The Chief Executive Officer of Non-Government Education from the Crown Solicitor's Office dated 21 January 1991 which states:

*“ The definition of “full fee overseas student” in the State Act [ESPRA Act] can be interpreted to include students who are not overseas students for the purposes of the Commonwealth Act. The State Act could (theoretically at least) be applied to non-citizens who are in Australia illegally or on other visa classes and receiving training or education. It is possible for individuals who are contravening the terms of their Australian visa to fall under the definition in the State Act of full fee overseas student. Migration law establishes the legal principles which govern the lawful entry into and stay in Australia for non-citizens. It would seem desirable for Western Australia to further these legal principles through ensuring compliance with migration laws, where possible. ... Although to date the definition found in the State Act has been applied in the sense described in the Commonwealth Act it would seem desirable to amend the State Act to clearly reflect the desired application.”*

5.51 Clause 13 (1) of the *Statutes Repeal Bill* therefore deletes the existing definition and inserts instead:

“ **“full fee overseas student”** means a student who holds a student visa in force under the *Migration Act 1958* of the Commonwealth and in relation to whom a full fee is paid for an education service; ”

- 5.52 The Explanatory Notes state that this provides consistency with the definition of "full fee overseas student" contained in ESPRA and section 3 of the Commonwealth Government's *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* ("ESOS Act").
- 5.53 The Committee notes that the ESPRA Review raised further issues regarding the definition of "full fee overseas student, including:
- ESPRA is limited to students to whom a "full fee" is paid. "Full fee" is defined in ESPRA as meaning the full average costs of providing a full fee overseas student with an education service including both recurrent and capital costs. ESPRA does not provide some latitude for education service providers who claim that a "full fee" is not paid by the overseas student to avoid the application of the Act; and
  - "education service" is broad enough to encompass any instruction or training whether it be formal, informal, training and recreational courses provided that a full fee is paid
- 5.54 The Committee notes that, due to their possibly controversial nature, such issues are appropriately not addressed by the *Statute Repeal Bill*.

**Clause 13(2)**

- 5.55 Section 6(1) of ESPRA provides for the registration of an education service provider.
- 5.56 Clause 13(2) of the *Statutes Repeal Bill* amends section 6(1) ESPRA to provide consistency with section 4 of the ESOS Act. The Explanatory Notes incorrectly set out the text of the amended section. The amended section will provide:

- " (1) On and after the appointed day an education service provider shall not-
- (a) enrol any full fee overseas student, or, offer to, or enter into any agreement to, enrol any full fee overseas ~~student~~; student, in relation to an education service;
  - (b) advertise an education service for full fee overseas students; or
  - (c) provide an education service for full fee overseas students,

~~unless the education service provider is registered under this Act.~~

unless

(d) the education service provider is registered under this Act; and

(e) the particulars of the education service are contained on the register with respect to the education service provider.

”

*(Amendments have been marked up)*

5.57 The proposed amendment is a procedural matter and not as a result of any recommendations contained within the review of ESPRA.

***Clauses 13(3) and (4)***

5.58 Existing section 14(1) of ESPRA provides:

" (1) Subject to this section, registration of an education service provider shall not exceed a period of 3 years. "

5.59 Clause 13(3) of the *Statutes Repeal Bill* proposes amending section 14 (1) of ESPRA by deleting "3 years" and inserting instead "5 years"

5.60 Clause 13(4) of the *Statutes Repeal Bill* provides that:

" (4) The chief executive officer (as defined in section 3(1) of the Act) may extend the period of registration of an education service provider registered under the Act, as in force before the commencement of this section, but any extension of the period of registration is not to exceed 2 years. "

5.61 The Explanatory Notes explain that:

- the amendments effected by clause 13 (3) assists registered providers with the opportunity of reducing administrative and financial costs associated with the reporting and compliance requirements of the Act; and
- the provisions of clause 13 (4) maintains fairness and equity for registered providers that may be due for registration or re-registration prior to the new period of registration.

**Clause 13(5)**

5.62 Section 18(3) of ESPRA refers to an amendment of registration and change of particulars of an education service provider. It requires not less than 14 days before any change in the particulars furnished to the chief executive officer under section 10 or 11 or in the particulars specified in the certificate of registration under section 17(2)(d), notice thereof shall be sent to the chief executive officer.

5.63 The ESPRA Review notes that the 14 days requirement has not been of sufficient duration in order to undertake an assessment of a change of a material nature of an education service provider. This is particularly so if external consultants are required to advise on issues relating to financial matters as a result of the change of particulars of an education service provider.

5.64 Clause 13(5) of the *Statutes Repeal Bill* proposes amending section 18 (3) of ESPRA in the following manner:

" (3) Not less than ~~14 days~~ 30 days before any change occurs in the particulars furnished to the chief executive officer under section 10 or 11 or in the particulars specified in a certificate of registration under section 17 (2) (d) notice thereof together with the prescribed fee shall be sent to the chief executive officer. "

*(Amendments have been marked up)*

5.65 The Explanatory Notes state that the amendment will provide the Chief Executive Officer of the Department of Education Services with sufficient time to undertake a comprehensive assessment of any changes of particulars for registered providers.

**Clause 13(6)**

5.66 Existing section 23(1) of ESPRA provides:

" 23(1) An education service provider shall cause such of the affairs of the education service provider that relate to full fee overseas students to be audited not later than 4 months after the end of each financial year of the education service provider by an auditor duly qualified for the purposes of this Act. "

5.67 Clause 13(6) of the *Statutes Repeal Bill* proposes amending section 23 of ESPRA by repealing the whole subsection and inserting instead:

" (1) The chief executive officer may require an education service provider to cause such of the affairs of the education service provider that relate to full fee overseas students to be audited

(a) not later than 4 months after the end of the financial year of the education service provider; and

(b) by an auditor duly qualified for the purposes of this Act.

(2) An education service provider shall comply with a requirement under subsection (1). "

5.68 The Explanatory Notes state that the amendment enables the mandatory audit requirements of the Act to be amended so that the requirement to prepare audited financial statements be a discretionary power of the Chief Executive Officer of the Department of Education Services.

5.69 The Committee notes that the ESOS Act requires the education service provider to operate and have audited a notified trust account and to be a member of a Tuition Assistance Scheme. The ESPRA Review noted that the reduction in reporting requirements for education service providers does not compromise, to any material extent, the continuation of a regulatory framework which mitigates the likelihood of loss of student funds due to the financial failure of an education service provider.<sup>36</sup>

### **Clause 13(7)**

5.70 Existing section 43(1) of ESPRA provides for the appointment and composition of an Advisory Committee.

5.71 Clause 17(5) of the *Statutes Repeal Bill* proposes amending section 43 (3) of ESPRA so that it shall provide:

" (1) The Minister shall appoint a committee consisting of ~~seven members - three~~ nine members - four nominated by organisations represented by education service providers; ~~three of~~ 4 of whom shall be appointed by the chief

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<sup>36</sup> ESPRA Review, page ii.

executive officer; and an independent chairman appointed by the Minister who shall not be an employee of the Ministry or an education service provider.

- (2) The Minister may refer any matter relating to the administration of this Act to the Committee appointed under subsection (1). "

*(Amendments have been marked up)*

- 5.72 The Explanatory Notes state that the amendment enables broader industry representation on the Ministerial Advisory Committee.

**Recommendation 8:**      **The *Education Services Providers (Full Fee Overseas Students) Registration Act 1991* be amended and the transitional amendments be enacted in accordance with clause 13 of the *Statutes Repeal Bill*.**

***Clause 16 - Health Act 1911***

***Clause 16(1)***

- 5.73 The definition of “infectious disease” in section 3(1) of the *Health Act 1911* lists a number of diseases as well as providing that other diseases may be designated as infectious diseases by the Governor by notification in the Government Gazette. A number of the listed diseases have now been overtaken by new terminology or are no longer applicable.
- 5.74 The effect of most of the amendments proposed by clause 16(1) of the *Statutes Repeal Bill* is to update references to, and in some cases remove, certain diseases in the definition of “infectious disease” in the *Health Act 1911*.
- 5.75 However the Committee notes that clause 16(1)(e) deletes reference to “puerperal fever” with the Explanatory Notes stating that “*case definitions are difficult and the disease is therefore rarely notified.*” Puerperal fever refers to septicaemia occurring in the puerperal period (42 days) following childbirth. The Committee inquired into a number of issues which presented themselves for review.



5.76 ***Why difficulty of diagnosis or rarity of notification should preclude the classification of puerperal fever as an “infectious disease”?***

5.76.1 The Committee has been informed by Dr Gary Dowse, Medical Epidemiologist, Health Department of Western Australia that:<sup>37</sup>

- There are diagnostic difficulties in distinguishing whether febrile illnesses in the period following childbirth are related to infections in the female genital tract.
- Modern obstetric practice in this country is such that the condition is now very rare, and if it does occur antibiotic treatment is generally very effective in bringing about a cure.
- Although the disease remains part of the *Health Act*, it has effectively not been notified in the State for some years as it is not listed on the notification form in current use.
- At the time the *Health Act* was written in 1911 puerperal fever was a disease that was of public health significance and outbreak could potentially occur in hospitals or be associated with particular doctors or midwives who did not practice proper aseptic technique.
- In modern times puerperal fever is not a public health problem and does not require monitoring through the infectious disease notification system.

5.77 ***In view of the proposed deletion of “puerperal fever” from section 3, why does section 281 still remain in Division 2 (Notification of disease), Part IX (Infectious Disease) of the Health Act? The removal of puerperal fever as a defined “infectious disease” appears inconsistent with the continued reference to the disease in Part IX.***

5.77.1 Section 281 provides:

**“281. Puerperal fever**

If death occurs in any case where there is a septic condition of the parturient canal within 14 days after the expulsion of the contents, it shall be immediately reported by the occupier of the house in which the death occurs, and by the medical practitioner attending the case, or if there be no medical practitioner, by the midwife, to the local government and to the nearest coroner.”

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<sup>37</sup> Letter dated 31 March 1999 from Dr Gary Douse, Medical Epidemiologist, Health Department of Western Australia to Mia Betjeman, ARO, Legislation Committee.

- 5.77.2 The Committee notes that, although the heading to section 281 refers to puerperal fever, the section itself is not confined to that condition, referring more generally to “*a septic condition of the parturient canal*”. The Committee understands that such septic conditions may be caused by a condition other than puerperal fever. To that extent the head note is misleading as the section may also cover other conditions.
- 5.77.3 The Committee has been informed by Dr Dowse that a different system is now in place whereby maternal deaths, whether associated with puerperal fever or other causes, are notified to a register maintained quite separately from the infectious disease notification system and that removal of section 281 from the *Health Act* will not affect that system.
- 5.77.4 Relevant sections include section 336 which requires the notification of death as a result of pregnancy or childbirth or arising from or following upon pregnancy or childbirth, to be reported to the Executive Director, Public Health by the medical practitioner and any nurse who were at the time of the death attending such woman. Upon receipt of such report the Executive Director, Public Health shall direct an investigator to inquire into the circumstances of the death and require him to present a full report to the Chairman of the Maternal Mortality Committee appointed under that Part XIII A of the *Health Act*.

**Recommendation 9: That section 281 of the *Health Act 1911* be repealed.**

***Clause 16(2)***

- 5.78 Clause 16(2) of the *Statutes Repeal Bill* makes a number of amendments to reflect the removal of “Royal” from the official title of the Australian Nursing Federation.

**Recommendation 10: The *Health Act 1911* be amended in accordance with clause 16 of the *Statutes Repeal Bill*.**

***Clause 19 - Interpretation Act 1984***

- 5.79 Section 72 of the *Interpretation Act* deals with statutory penalties and currently provides

“72. (1) Where in an Act a penalty -

(a) is specified without qualification at the foot of a section of the Act;

(b) is specified at the foot of a subsection of a section of the Act, but not at the foot of the section; or

(c) is specified at the foot of a section of the Act and expressed to apply to a specified subsection or specified subsections of the section,

then, unless the contrary is expressly provided, a contravention of the section or subsection, or, as the case may be, of any of the subsections, is an offence the penalty on conviction for which is the penalty specified.

(2) Where in an Act a penalty is specified as described in subsection (1) in respect of a section or subsection that expressly creates an offence, the penalty for that offence on conviction is the penalty specified.

(3) Subsections (1) and (2) apply to regulations, rules, local laws and by-laws subject to necessary modification. ”

5.80 Clause 19 of the *Statutes Repeal Bill* proposes to repeal section 72(3) and insert instead-

“ (3) In this section a reference to a section or subsection of an Act includes a reference to a clause or subclause of a Schedule to an Act.

(4) This section applies, with any modifications that are necessary, to subsidiary legislation by which offences may be created or penalties may be imposed.”

5.81 The Explanatory Notes state that the amendments are “*To ensure consistency of interpretation across schedules to an Act, in the same way that consistency applies to an Act itself in relation to location of penalty provisions.*”

5.82 “Subsidiary legislation” is a more concise and modern term of referral to “regulations, rules, local laws and by-laws”. It is the Committee’s view that the proposed amendments clarify the application of sections 72(1) and (2) to Schedules of an Act and subsidiary legislation.

<b>Recommendation 11:</b> <b>The <i>Interpretation Act 1984</i> be amended in accordance with clause 19 of the <i>Statutes Repeal Bill</i>.</b>
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**Clause 20 - Land Administration Act 1997**

5.83 Section 159(1) of the *Land Administration Act 1997* currently provides:

“(1) The Minister may, by notice published in the Gazette, either generally or as otherwise provided by the notice, delegate to -

...

(g) the Minister responsible for administering the Government Property Office continued under the Public Sector Management Act 1994,

any of his or her powers or duties under this Part or Part 10.”

5.84 Clause 20(1) of the *Statutes Repeal Bill* proposes to delete section 159(1)(g) and insert instead: “(g) the Treasurer”.

5.85 The proposed amendment will result in the Minister being able, by notice published in the Gazette, either generally or as otherwise provided by the notice, delegate to the Treasurer any of his or her powers or duties under Part 9 (Compulsory Acquisition of Interests in Land) or Part 10 (Compensation) of the *Land Administration Act 1997*.

5.86 The Explanatory Notes comments that this change is necessary by the transfer of responsibility for the Government Property Office to the Treasury.

5.87 Section 160 of the *Land Administration Act 1997* allows a subdelegation of the power or duty delegated under section 159. Section 160 is specific about the subdelegation of each delegation under section 159, for example, providing that:

- the Minister referred to in section 159(a) to whom a delegation has been made can delegate all or part of the power or duty to “*the chief executive officer of the Department principally assisting that Minister in the administration of the Public Works Act 1902 or to any other officer of that Department*” (section 160(1)(a); and
- the Minister referred to in section 159(e) to whom a delegation has been made can delegate all or part of the power or duty to “*the Authority within the meaning of the Water Agencies (Powers) Act 1984 or to any other officer of that Authority within the meaning of that Act*” (section 160(1)(e).

5.88 The Committee notes that section 160 does not currently allow a subdelegation of any delegation effected under section 159(g)<sup>38</sup>.

5.89 There are no Explanatory Notes for clause 20(2) which proposes to insert a new section 160(g) as follows:

“(g) in the case of the Minister referred to in section 159(g), to the chief executive officer of the Department principally assisting that Minister in the administration of the *Financial Administration and Audit Act 1985* or to any other officer of that Department,”

5.90 The Committee notes that, as a result of the amendments proposed by Clause 20(1) of the *Statutes Repeal Bill*, there will no longer be any reference to “a Minister” in section 159(1)(g) of the *Land Administration Act 1997*. Although the Treasurer is a Minister the Committee believes that the amendments proposed by clause 20(2), in light of the amendments proposed by clause 20(1), may be confusing.

5.91 In the interest of:

- maintaining the correct references between section 159 and 160 of the Land Administration Act 1997; and
- to minimise any potential for confusion due to the proposed reference of the Minister as “Treasurer” in section 159(g) but “Minister” in section 160(g),

the Committee considers that instead of the reference to “Treasurer” proposed by clause 20(1) of the *Statutes Repeal Bill* that the reference be to “the Minister responsible for administering the *Financial Administration and Audit Act 1985*”.

<b>Recommendation 12:</b> Clause 20(1) of the <i>Statutes Repeal Bill</i> not be enacted.
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<b>Recommendation 13:</b> Section 159 of the <i>Land Administration Act 1997</i> is deleted and the following paragraph is inserted instead -
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“(g) the Minister responsible for administering the <i>Financial Administration and Audit Act 1985</i> , ”.
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<sup>38</sup>

Although the delegation notice itself may provide for a subdelegation.

**Recommendation 14:**      **The *Land Administration Act 1997* be amended in accordance with clause 20(2) of the *Statutes Repeal Bill*.**

***Clause 37 - Racing Penalties (Appeals) Act 1990***

5.92 Existing section 6(2) of the *Racing Penalties (Appeals) Act 1990* provides:

“ 6(2) The members who are to constitute the Tribunal in relation to any appeal shall be selected by the Chairperson having regard to their respective knowledge or experience relating to the code of racing in respect of which the appeal arose.”

5.93 In June 1998, the Minister for Racing and Gaming tabled a report in Parliament on the Review of the Racing Penalties (Appeals) Act. In that review the Minister noted that:

- there is no requirement for members of the Tribunal to be experienced in the racing industry as a prerequisite of their appointment to the Tribunal;
- it could be argued that this was inconsistent with the existing provision requiring that the Chairperson take such skill into account when selecting a panel for a particular appeal; and
- there is scope for Tribunal members to develop this experience or knowledge over time through participation in appeal hearings.

5.94 The Minister recommended that the section be amended to provide the chairperson with a discretion, rather than a requirement, to consider a panel member’s relevant knowledge and experience when selecting a panel to hear a particular appeal.

5.95 Clause 37 of the *Statutes Repeal Bill* achieves this recommendation by deleting - “having regard to” and substituting - “who may have regard to”.

**Recommendation 15:**      **The *Racing Penalties (Appeals) Act 1990* be amended in accordance with clause 37 of the *Statutes Repeal Bill*.**

***Clause 42 - Transfer of Land Act 1893***

5.96 Section 141A of the *Transfer of Land Act 1893* (“TLA”) provides for the removal of a caveat where the interest protected by that caveat has ceased to exist. The existing provisions require a caveator to either withdraw the caveat or, if they seek to extend the

operation of his or her caveat, to apply to the Supreme Court within 14 days of receiving notice from the Registrar of Titles. If the caveator does not comply with the requirements of the notice the Commissioner of Titles may direct the Registrar to remove the caveat from the Register and to forward notice of such removal to the caveator.

5.97 As noted by the Explanatory Notes there is no mechanism which ensures that the Registrar of Titles is advised of any application to the Court. This creates an unsatisfactory position for a registered proprietor and the Registrar of Titles in that there is no certainty as to when a caveat lapses.

5.98 The Committee notes that although section 141A(2) TLA requires a caveator to join the Registrar of Titles and the registered proprietor as parties to the action, which would require that the caveator serve them with notice, they may not be joined contemporaneously with the filing of the application. Subsection 141A(2) TLA does not grant sufficient certainty.

5.99 Clause 42 of the *Statutes Repeal Bill* proposes amendments to provide that:

“ 141A(1) Where it appears to the Commissioner that the estate or interest claimed by any caveator has ceased to exist, he may, either of his own motion or on the application of any person claiming any interest in the land, serve the caveator with notice requiring him within 14 days from the date of such notice to withdraw such caveat or within such time to commence proceedings in Court to substantiate his claim, and in the event of the caveator failing to comply with the requirements of such notice within the time therein limited, or to comply with subsection (1a), the Commissioner may direct the Registrar to remove such caveat from the Register and forward notice of such removal to the caveator.

(1a) If a caveator commences proceedings in Court to substantiate his claim under this section, he shall -

(a) within the 14 days referred to in subsection (1); or

(b) within 2 days after commencing proceedings.

whichever time expires later, serve the Registrar with notice that the proceedings have been commenced. ”

<b>Recommendation 16:</b> <b>The <i>Transfer of Land Act 1893</i> be amended in accordance with clause 42 of the <i>Statutes Repeal Bill</i>.</b>
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**Recommendation 17:** That the remaining amendments contained in Part 3 of the *Statutes Repeal Bill* be enacted.

**6 Part 4 - Amendments Relating to Cheques**

6.1 Clauses 48 to 55 of the *Statutes Repeal Bill* proposes amending a number of Acts by replacing all words or phrases specified in those clauses with “financial institution”.

6.2 The Committee notes the *Explanatory Notes to the Statutes Repeal Bill* which state:

“ *The Commonwealth Parliament recently passed the Cheques and Payment Orders Amendment Act 1998 which allow various non bank financial institutions (such as building societies and credit unions) to issue cheques.*

*The Commonwealth Act will take effect from 1 December 1998. These amendments are necessary to reflect that change.”*

6.3 The *Cheques and Payment Orders Amendment Act 1998* (Cwlth) was assented to on 2 July 1998 with various sections becoming operative at different times from 1 December 1998. Some sections are still to be proclaimed.

**Recommendation 18:** That the amendments contained in Part 4 of the *Statutes Repeal Bill* be enacted.



**Recommendation 19:**

The Committee is concerned about the length and complexity of a number of the clauses in Part 3 of the *Statutes Repeal Bill*. For example, the Committee considers that clause 6 of the *Statutes Repeal Bill* deals with amendments to the *Beekeepers Act 1963* which, although not lengthy, raise a number of separate issues and require the drafting and promulgation of regulations to supplement the proposed amendments.

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

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Hon Bruce Donaldson MLC  
Chairman

Date:

APPENDIX 1

Letter dated 18 November 1998 from Mr Syd Shea, Executive Director, Department of Conservation and Land Management to the Hon Minister for the Environment.

DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT

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HON MINISTER FOR THE ENVIRONMENT

Attention: Ms Gail McGowan

**AMENDMENTS TO CALM ACT IN STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 1998 : CONCERNS RAISED BY FISHERIES PORTFOLIO**

Confirming the advice provided to your office by the Director of Nature Conservation Mr Keiran McNamara, it was brought to CALM's attention late yesterday (17 November 1998) by Fisheries WA that the fisheries portfolio had substantive concerns with regard to amendments intended to be made to the *Conservation and Land Management Act 1984* by the *Statutes (Repeals and Minor Amendments) Bill 1998* (Omnibus Bill).

Yesterday evening CALM received a copy of draft notes prepared by Fisheries WA which apparently form the basis for a briefing to the Hon Premier with regard to concerns of the Hon Minister for Fisheries about the Omnibus amendments (copy attached). These notes present a scenario whereby the consultative marine reservation process put in place by the *Acts Amendment (Marine Reserves) Act 1997* (Marine Reserves Act) would be by-passed, a scenario contrary to Government policy as enunciated in the Marine Reserves Act, that Act's second reading speech and *'New Horizons - the way ahead in marine conservation and management'*.

The Omnibus amendments are a result of omissions from the *Acts Amendment (Land Administration) Act 1997* (AALAA) with regard to the establishment of the Marine Parks and Reserves Authority and the new marine reserve category, marine management area, under the Marine Reserves Act.

The crux of the fisheries portfolio problem relates to the CALM Act section 5 (h) reserve category, which are miscellaneous reserves to which the CALM Act may apply.

Section 5 (h) was inserted because the *Land Administration Act 1997* (LAA) does not use "vesting" orders to place responsibility for reserved land with a CALM Act controlling body. As inserted by the AALAA, section 5 (h) can only apply to land reserved and placed with the Lands and Forest Commission or the National Parks and Nature Conservation Authority, i.e. the Marine Parks and Reserves Authority was omitted and an Omnibus amendment is intended to correct this omission.

Section 5 (g), which previously applied to miscellaneous land reserves, could not be applied to coastal waters because of the limitations of the *Land Act 1933*.

An example of a section 5 (g) reserve vested in the MPRA is the 40 metre strip of land which is inland from and contiguous with the southern portion of Ningaloo Marine Park. This coastal land was reserved for the purpose of "marine park" under the Land Act and originally vested in the NPNCA. Its vesting was transferred to the MPRA when the Marine Reserves Act became operative. To not proceed with the Omnibus amendment to section 5 (h) would exclude the ability to place such land-based reserves above the high water mark in the MPRA (e.g. as is intended in the case of the Shark Bay Marine Park). This would not be a desirable outcome and an inability to manage certain coastal land as a contiguous area with reserved waters would be a backward step.

In providing for section 5 (h) reserves to be placed with the LFC and NPNCA, and, as intended through the Omnibus Bill, with the MPRA, it was never intended that these reserves would include coastal waters. It would be contrary to Government policy to do so and it has never been contemplated that the LAA reservation process would be used instead of the CALM Act marine reserve process. However, ignoring Government policy and as raised by the fisheries portfolio, it would be possible for ~~this~~ this to happen because the LAA definition of "land" includes marine and coastal waters.

Despite firm Government policy establishing that CALM Act marine reserves of coastal waters will only be established by the provisions put in place or amended by the Marine Reserves Act, a legislative measure that could be used to prevent section 5 (h) of the CALM Act from being used to apply to coastal waters would be to provide an amendment to exclude coastal waters from that section's operation, e.g.:

5. Where in this Act reference is made to "land to which this Act applies", the reference is to land, or land and waters, comprising —

(h) any other land, **other than marine or coastal waters**, reserved under Part 4 of the *Land Administration Act 1997* the care, control and management of which are placed by order under that Part with the Commission, the Authority or the Marine Authority.

[bold = possible additional amendment to prevent marine and coastal waters reserved under the LAA being placed with the CALM Act controlling bodies as a 'miscellaneous' section 5 (h) reserve; underline = Omnibus Bill amendment]

Ketra Mulla

for Syd Shea  
EXECUTIVE DIRECTOR

18 November 1998

ATT.

**APPENDIX 2 - Code of Conduct**

**POLLINATION ASSOCIATION OF WESTERN AUSTRALIA (INC.)  
CODE OF PRACTICE FOR THE USE OF RENT-ABLE  
AND DISPOSABLE POLLINATION UNITS**

**Fourth and Final Draft Approved by All sections  
of the W.A. Apiculture Industry August, 1997**

**1. Definition**

A Rent-able or Disposable Pollination Unit is a container (cardboard tube) containing about 1kg of bees and a queen, and which does not contain removable frames, as required under the Beekeepers Act. Foundation wax and/or food may be inserted by the beekeeper to assist the bees to build comb and establish the colony. These units are distinct from Langstroth hives or nuclei, which contain removable frames, which are used by beekeepers for pollination.

**2. Use of Pollination Units**

The purpose of the code is to facilitate the use of Pollination Units without spreading bee diseases, particularly American Foul Brood (AFB). There is a potential to spread disease with the use of pollination units, unless additional measures are implemented to reduce the risk, particularly where there is a history of AFB in the apiary from which the bees are sourced.

Under the code, it is recommended the Pollination Units be made available to growers in two ways:

- a) Rent-able Pollination Unit (RPU), or
- b) Disposable Pollination Unit (DPU).

**2.1 (a) Rent-able Pollination Unit (RPU)**

Beekeepers retain ownership by renting the Rent-able Pollination Unit to growers below an area SOUTH of the Shark Bay turnoff (The Overlander Roadhouse). Beekeeper's to retain ownership and be responsible for their management as currently required under the Beekeepers Act, and for their disposal after the pollination period.

**(b) Disposable Pollination Unit (DPU)**

Beekeepers be permitted to sell Disposable Pollination Units NORTH of this area to grower ONLY under an agreed voluntary Code of Practice to prevent the spread of disease. Key factors under this Code of Practice are detailed in the following points including those in 3.2.

**2.2 Apiaries to be Free of Disease**

Honey bees be shaken from hives in apiaries that are free of disease. The apiary to have had at least two Honey Culture Test (HCT) reports three months apart which test negative for AFB or are inspected by the beekeeper and found to have no visible signs of disease, prior to shaking the bees. Beekeepers to notify Agriculture W.A., Midland Office, prior to sending bees north of the 26th parallel.

**2.3 Disposable and Rent-able Hive Structure**

Hives be made from new materials without drawn comb or hive products (e.g. honeycomb or brood) being used in their construction or production. The use of wax foundation, to assist the honey bees to build honeycomb is optional.

**2.4 Disposable and Rent-able Pollination units to be Identified**

It is recommended that all hives be marked with the beekeepers brand name, address and phone number for identification. This practice could also be used as a valuable marketing tool.

**POLLINATION ASSOCIATION OF WESTERN AUSTRALIA (INC.)  
CODE OF PRACTICE FOR THE USE OF RENT-ABLE  
AND DISPOSABLE POLLINATION UNITS (Cont.)**

**2.5 Feeding Pollination Units**

Only artificial foods such as sugar syrup and pollen substitute should be used. Pollen or honey can be fed only if it has been irradiated to a minimum of 15 Kilo Grey.

*Note: Imported pollen or pollen supplements containing pollen are not permitted entry into Western Australia.*

**2.6 Re-Hiring of Rent-able Pollination Units**

Rent-able Pollination Units may be re-hired within the 8-week period of use. Only those units which are above average weight, gathering pollen and flying vigorously may be re-hired.

**2.7 Re-use of Pollination Units**

Cleaning out for re-use is not recommended due to the increased disease risk.

**3. Destruction of Pollination Units**

All Pollination Units be destroyed after 8 weeks of being placed in a crop or orchard. The bees are to be closed up and killed at night and the DPU's including the bees are burnt in a pit and covered with 50cm of soil to prevent the spread of disease, in accordance with Section 18 of the Beekeepers Act and Regulation.

CONSULT WITH LOCAL FIRE CONTROL OFFICERS BEFORE BURNING.

**3.1 Rent-able Pollination Units (RPU)**

Any units that die out before the 8-week period must be removed from the orchard or crop immediately upon observation and destroyed as above.

**3.2 Disposable Pollination Units (DPU)**

- (a) The beekeeper (the seller) makes a condition that the grower (buyer) will destroy the 'Disposable Pollination units' within the 8-week period of use.
- (b) The Beekeeper will provide specific directions to the grower (buyer) as to their correct disposal to ensure the 'Disposable Pollination Units' do not pose a disease risk.
- (c) Should the grower require Disposable Pollination Units for a longer time than 8 weeks, the beekeeper will inform the grower that he will be required to rent the normal standard removable-frame hives, or purchase the hives and become a registered beekeeper, in order to comply with the provisions of the Beekeepers Act.
- (d) Any 'Disposable Pollination Units' that are sold and die out before the 8-week period in a crop or orchard be destroyed by the grower by burning as in (b) above.

**4. Voluntary Code of Practice**

This voluntary Code of Practice is approved by The Pollination Association of W.A. and other sections of the W.A. Apiculture Industry. All beekeepers are requested to abide by the Code which is aimed at protecting the growers interests and the industry's hives from disease.

J.N. SMITH  
HON SECRETARY  
P.A.W.A. Inc.

AMENDMENT: SECTION 3. DESTRUCTION OF POLLINATION UNITS  
Before the commencement, 'All Pollination Units  
insert the following :-

"All Bee Tubes must be marked with the date showing  
when they were first placed in the crop." Amended  
PAWA AGM 20/8/98.

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**APPENDIX 3 - Draft amendments to the Beekeepers Regulations**

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Suggested amendments to the Beekeepers Regulations 1963 in relation to bee tubes (Devices of an approved kind under section 8 (1a) of the Beekeepers Act).

**Regulation 26**

Insert before the full stop the following -

“or the use of a device of an approved kind for the purpose of pollination”.

**New regulation 31**

Insert the following regulation after regulation 31 (or in some other appropriate place in the regulations).

**31. Devices approved for pollination purposes**

(1) A person who puts bees in a device referred to in section 8 (1a) of the Act is to clearly and permanently mark the device with the date it is first used for keeping bees.

(2) A device referred to in section 8 (1a) of the Act and the bees kept in it are to be disposed of within the time required by that section by -

(a) destroying the bees immediately after flying has ceased at night by pouring petrol into the device and immediately closing it;

(b) burning the device and the dead bees in a pit in the ground; and

(c) burying the burnt remains under at least 0.3 metres of earth.