



THIRTY-SEVENTH PARLIAMENT

REPORT 21

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

**STATUTES (REPEALS AND MINOR AMENDMENTS
BILL) 2006**

Presented by Hon Simon O'Brien MLC (Chairman)

October 2007

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:

“8. Uniform Legislation and Statutes Review Committee

- 8.1 A *Uniform Legislation and Statutes Review Committee* is established.
- 8.2 The Committee consists of 4 members.
- 8.3 The functions of the Committee are -
- (a) to consider and report on Bills referred under SO 230A;
 - (b) of its own motion or on a reference from a Minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;
 - (c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;
 - (d) to review the form and content of the statute book;
 - (e) to inquire into and report on any proposal to reform existing law that may be referred by the House or a Minister; and
 - (f) to consider and report on any matter referred by the House or under SO 125A.
- 8.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the Parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting.”

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Government Response

This Report is subject to Standing Order 337:

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.

The four-month period commences on the date of tabling.

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

EXECUTIVE SUMMARY

- 1 The Committee has examined the Statutes (Repeals and Minor Amendments) Bill 2006 to determine to what extent its provisions comply with the accepted function of omnibus statutes review bills in the Parliament of Western Australia.
- 2 The Bill's 159 clauses propose the repeal of 18 State Acts or Ordinances (including five State legislative Codes), amendments to 152 State Acts, and the repeal of eight Imperial Acts, either in part or in full.
- 3 The overwhelming majority of proposed amendments are suitable for inclusion in an omnibus statutes review Bill and are identified at Appendix 2 to this report.
- 4 The Committee draws the attention of the Legislative Council to five of the proposed amendments in the Bill for its consideration without making any recommendation. These are highlighted at paragraphs 2.18-2.44 of the report.
- 5 The Committee advises the Legislative Council that amendments to six Acts proposed in the Bill are not suitable for inclusion in an omnibus statutes review Bill. These are highlighted at paragraphs 2.45-2.112 of the report.
- 6 Some additional matters of concern are raised for the consideration of the Legislative Council at paragraphs 2.113-2.120 of the report.

RECOMMENDATIONS

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

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Recommendation 1: The Committee recommends that, during debate on clause 33 of the Statutes (Repeals and Minor Amendments) Bill 2006, the responsible Minister advise the Legislative Council why the *Companies (Administration) Act 1982* was not repealed in its entirety, and in the event that this was not an oversight, why reference to the *Companies Act 1961* remains undisturbed in the Long Title of the *Companies (Administration) Act 1982*.

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Recommendation 2: The Committee recommends that, should the Government table an amendment to clause 18 of the Bill in the same terms as those contained within Appendix 3, the House do accept the amendment.

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Recommendation 3: The Committee recommends that, should the Government table an amendment to clause 41(4) of the Bill in the same terms as those contained within Appendix 3, the House do accept the amendment.

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Recommendation 4: The Committee recommends that sub-clause 41(6) of the Statutes (Repeals and Minor Amendments) Bill 2006 be deleted from the Bill. This could be effected by the following amendment -

Page 19, lines 15 to 17 - To delete the lines.

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Recommendation 5: The Committee recommends that clause 45 of the Statutes (Repeals and Minor Amendments) Bill 2006 be deleted from the Bill. This could be effected by the following amendment -

Page 21, line 20 to page 24, line 13 - To delete the lines.

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Recommendation 6: The Committee recommends that during debate on sub-clause 52(2) of the Statutes (Repeals and Minor Amendments) Bill 2006, the responsible Minister advise the Legislative Council on what basis the proposed amendment complies with the Premier's Circular 2003/15, *Statutes (Repeals and Minor Amendments) Bill*.

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Recommendation 7: The Committee recommends that sub-clauses 95(2)-(3) of the Statutes (Repeals and Minor Amendments) Bill 2006 be deleted from the Bill. This could be effected by the following amendment -

Page 49, lines 1 to 14 - To delete the lines.

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Recommendation 8: The Committee recommends that sub-clause 114(2) of the Statutes (Repeals and Minor Amendments) Bill 2006 be deleted from the Bill. This could be effected by the following amendment -

Page 57, lines 8 to 10- To delete the lines.

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Recommendation 9: The Committee recommends that sub-clause 114(4) of the Statutes (Repeals and Minor Amendments) Bill 2006 be deleted from the Bill. This could be effected by the following amendment -

Page 57, lines 16 to 18- To delete the lines.

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Recommendation 10: The Committee recommends that Premier's Circular 2003/15, *Statutes (Repeals and Minor Amendments) Bill*, issued by the Department of Premier and Cabinet, Western Australia, 24 November 2003 be amended and re-issued to make clear to departments that omnibus statutes review Bills are not appropriate vehicles for amendments whose sole or principal function is: "to better implement the object or intent of legislation" or are otherwise justified primarily on the grounds of legislative policy.

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Recommendation 11: The Committee recommends that the Premier ensure that the purpose and limitations of omnibus statutes review Bills are more clearly understood by Departmental legislative instructing officers.

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Recommendation 12: The Committee recommends that Ministers ensure that Explanatory Memorandum commentary relating to inclusions in omnibus statutes review Bills adequately and accurately explain the purpose and effect of proposed amendments prior to the tabling of an omnibus statutes review Bill in the Legislative Council.

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Recommendation 13: The Committee recommends that, where possible, proposed amendments of a related nature should be co-located in a separate Part or Division within any future omnibus statutes review Bill to streamline the scrutiny process.

CHAPTER 1

REFERENCE AND PROCEDURE

REFERENCE

- 1.1 The Statutes (Repeals and Minor Amendments) Bill 2006 (the “Bill”) is the second omnibus statutes review Bill to be referred to the Uniform Legislation and Statutes Review Committee (the “Committee”) under its current terms of reference.
- 1.2 In a general sense, the Bill is a matter for the Committee’s attention due to it having been required to “consider and report on any matter referred” by the Legislative Council as provided by the Committee’s terms of reference at paragraph “(f)”.
- 1.3 More specifically, the Bill is incidental to the Committee’s terms of reference at paragraph “(d)”, namely: “to review the form and content of the statute book”.
- 1.4 The Bill was introduced to the Legislative Council on 18 October 2006 by Hon Kim Chance, MLC, Leader of the House, Minister Representing the Premier and Minister for Public Sector Management (the “Minister”).
- 1.5 The Bill was referred to the Uniform Legislation and Statutes Review Committee (the “Committee”) for inquiry and report immediately following the Second Reading Speech. This innovation was suggested in the Committee’s report on the Statutes Law Revision Bill 2005.¹
- 1.6 The Legislative Council did not impose a reporting date on the Committee in its reference.

‘OMNIBUS’ STATUTES REVIEW LEGISLATION

- 1.7 The nature of omnibus statutes review legislation generally and the current approach to them in Western Australia in particular was examined by the Committee in its report on the Statutes Law Revision Bill 2005.² The Second Reading Speech to the Bill by the Minister provides a succinct summary as follows:

An omnibus bill is an avenue for making general housekeeping amendments to legislation. It is designed to make only relatively

¹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 8, *Statutes Law Revision Bill 2005*, April 2006, p4 para 4.5.

² *Ibid* pp1-3.

*minor, non-controversial amendments to various acts and to repeal acts that are no longer required. Omnibus bills assist in expediting the government's legislative program and parliamentary business by reducing the number of separate amendment bills that deal with relatively minor amendments and repeals. They also help to weed out spent or redundant legislation from the statute book. The Department of the Premier and Cabinet has overseen the preparation of the bill to try to ensure that amendments about which there is some contention or complexity, or that make some substantive change to the law, are not included.*³

- 1.8 These views have been echoed over time in debates concerning previous omnibus statutes review legislation. For example, in 1998 an earlier omnibus bill was described in the following terms by Hon Norman Moore MLC, then Leader of the House:

*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 noncontroversial. In addition, they must not impose or increase any obligations or adversely affect any existing rights.*⁴

- 1.9 Numerous predecessors in time to this Committee have scrutinised and reported on omnibus statutes review legislation brought before the Legislative Council. In one such earlier report, the then Standing Committee on Legislation observed as follows:

The Committee reiterates that the purpose of the Bill is to revise statute law by repealing spent, unnecessary or superseded Acts, and by making miscellaneous minor amendments to various Acts. ...

OMNIBUS BILLS

The common name for bills of this nature is "omnibus bills". The policy behind such bills is to provide a regular opportunity for necessary legislative amendments of a noncontentious and minor nature to pass through Parliament without having to wait in line behind contentious political matters and major legislation. Omnibus bills are also cost and time effective for the Parliament.

³ Hon Kim Chance MLC, Leader of the House, Minister Representing the Premier, Minister for Public Sector Management, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 18 October 2006, p7142.

⁴ Hon Norman Moore MLC, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 3 December 1998, p4800.

As the name partly suggests, the only thing that the amendments have in common is their nature rather than their subject matter. In preparing omnibus bills, amendments that are likely to be contentious or which make a substantial change in the law are not accepted.

1.10 In response to this particular observation in the report of that Committee, a Premier's Circular (No 15 of 2003) was issued instructing relevant government departments and agencies as to the purpose and limitations of omnibus statutes review legislation, namely:⁵

- *the repeal of obsolete legislation;*
- *the correction of typographical and other minor drafting errors; and*
- *amendments that make legislation more accurate by reflecting changes in names, titles, entities, designations etc.*

1.11 The Committee notes the extent to which the amplified comments of Premier's Circular 15/ 2003 reiterate the views referred to above:⁶

Amendments will not be considered to be minor where they make substantial changes to the powers, rights, obligations or processes provided for in the legislation concerned, or otherwise impose or increase any obligation or adversely affect any existing rights. Amendments may also cease to be of a minor nature where they insert multiple new sections into the substantive Act, or they are not reasonably clear on their face as to the effect.

⁵ Premier's Circular 2003/15, *Statutes (Repeals and Minor Amendments) Bill*, issued by the Department of Premier and Cabinet, Western Australia, 24 November 2003. (See Appendix 1)

⁶ Id.

CHAPTER 2

CONTENTS AND PURPOSE OF THE BILL

LEGISLATIVE PURPOSE

2.1 The Long Title of the Bill describes it to be:

An Act to amend the statute law by -

- repealing various Acts and adopted imperial Acts; and*
- making minor amendments to various other written laws and adopted imperial Acts,*

and for related purposes.

2.2 The Bill has no objects clause, and neither is there a general statement of objects in the Explanatory Memorandum to the Bill.

2.3 The clearest and most comprehensive statement of the Bill's purpose is provided in the Second Reading Speech by the Minister as follows:⁷

The bill deals with three main categories of amendments: acts repealed, acts amended and imperial acts. Part 2 of the bill deals with the repeal of unproclaimed or obsolete, redundant, spent and inoperative acts. Part 3 of the bill contains a range of miscellaneous, non-controversial and administrative amendments to a number of acts across various portfolio areas. These are minor or technical changes to legislation that parliamentary counsel considers are appropriate for inclusion in the bill. Examples of such amendments are: corrections to typographical, grammatical, formatting and cross-referencing errors; those that are believed to better implement the object or intent of legislation; those arising out of the enactment or repeal of other legislation; and those updating terminology. Part 4 repeals a number of imperial acts, or provisions of imperial acts, that either have been superseded by other legislation or are now obsolete. Part 4 also repeals three imperial acts that have for a long time been treated as having been impliedly repealed by Western Australian acts but have in fact never been expressly repealed.

⁷ Hon Kim Chance MLC, Leader of the House, Minister Representing the Premier, Minister for Public Sector Management, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 18 October 2006, p7143.

CONTENTS

- 2.4 The Bill proposes the repeal of 18 State Acts or Ordinances (including five State legislative Codes),⁸ amendments to 152 State Acts,⁹ and the repeal of eight Imperial Acts, either in part or in full.¹⁰

PART 2 DIVISION 1 - REPEALS WITHOUT CONSEQUENTIAL AMENDMENT

- 2.5 The Committee advises the House that, after careful consideration, those amendments proposed by the Bill at “*Part 2 Division 1 - Repeals Without Consequential Amendment*” are suitable for inclusion in an omnibus statutes review Bill. The Acts to be repealed are:

- (a) *Imperial Act Adopting Ordinance 1847;*
- (b) *Land Act Amendment Act 1928;*
- (c) *Life Assurance Companies Act 1889;*
- (d) *Sailors and Soldiers’ Scholarship Fund Act 1938;*
- (e) *Stock Jobbing (Application) Act 1969;*
- (f) *The Bankruptcy Act 1892.*

- 2.6 All of the above Acts are obsolete and the proposal to repeal them should be adopted.

PART 2 DIVISION 2 - COMPANIES LEGISLATION REPEALED AND CONSEQUENTIAL AMENDMENTS

- 2.7 The Committee advises the House that those amendments proposed by the Bill at “*Part 2 Division 2 - Repeal and Consequential Amendment of Companies Legislation*” are all suitable for inclusion in an omnibus statutes review Bill and should be adopted.

- 2.8 The Committee draws the attention of the House to two further potential amendments to the *Companies (Administration) Act 1982* that could equally have been proposed by the Bill in Part 2, Division 2 but appear to have been inadvertently overlooked.

⁸ At clauses 3, 4 & 12.

⁹ At Part 2 Divisions 2 & 3, and Part 3.

¹⁰ At clauses 158 & 159.

Companies (Administration) Act 1982

- 2.9 Repealing the State companies' *Code* legislation renders reference to the "Companies Auditors and Liquidators Disciplinary Board" in any Act otiose. Clause 6 of the Bill deletes reference to the Board from the Long Title and ss 13 and 14 of the *Companies (Administration) Act 1982*. The Long Title of that Act would then read as follows:

An Act to continue the office of Commissioner for Corporate Affairs, to ~~establish the Companies Auditors and Liquidators Disciplinary Board~~, to amend the Companies Act 1961, and for related purposes.

- 2.10 However, there appear to be two potential anomalies within clause 6 of the Bill:

2.10.1 As will be immediately appreciated, the Long Title to the *Companies (Administration) Act 1982* also contains reference to the *Companies Act 1961*. In addition, section 16 of the *Companies (Administration) Act 1982* amends the *Companies Act 1961*. Given that clause 4 of the Bill repeals the *Companies Act 1961*, it is anomalous that sub-clause 6(2) of the Bill should leave these references in the 1982 Act to the *Companies Act 1961* undisturbed.

2.10.2 The *Companies (Administration) Act 1982* relates to the administration of the companies *Code* legislative framework in the State. Given that clause 4 of the Bill repeals the companies *Code* legislative framework, the Committee is uncertain why the *Companies (Administration) Act 1982* was not included in clause 4 as an Act to be repealed.

Recommendation 1: The Committee recommends that, during debate on clause 33 of the Statutes (Repeals and Minor Amendments) Bill 2006, the responsible Minister advise the Legislative Council why the *Companies (Administration) Act 1982* was not repealed in its entirety, and in the event that this was not an oversight, why reference to the *Companies Act 1961* remains undisturbed in the Long Title of the *Companies (Administration) Act 1982*.

PART 2 DIVISION 3 - PUBLIC INSTITUTIONS AND FRIENDLY SOCIETIES LANDS IMPROVEMENT ACT 1892 REPEALED AND CONSEQUENTIAL AMENDMENTS

- 2.11 The Second Reading Speech to the Bill makes no specific mention of either the *Public Institutions and Friendly Societies Lands Improvement Act 1892*; or, the *Public Institutions and Friendly Societies Lands Improvement Act 1892, Amendment Act 1893*.
- 2.12 The Explanatory Memorandum, in its commentary on clause 12 of the Bill, provides the following summary relating to the proposed repeal of the *Public Institutions and*

Friendly Societies Lands Improvement Act 1892; and, the Public Institutions and Friendly Societies Lands Improvement Act 1892, Amendment Act 1893:

These Acts allow trustees of “public institutions” to mortgage the land to raise money to improve the land. “Public Institutions” include Public Libraries, Public Museums, Working Men’s Institutes, Mechanics’ Institutes, Lodges of Freemasons, Lodges of Oddfellows, Agricultural Societies, Lodges of Good Templars, Temperance Societies, Trade Unions, Trades and Labour Councils Friendly Societies, and Associations holding land granted for a public purpose. Bodies such as these either no longer exist or are covered by other legislation (such as the Associations Incorporation Act 1987) under which they have power to mortgage land. These Acts are therefore no longer required.

- 2.13 The Committee is concerned that the commentary in the Explanatory Memorandum dealing with this clause of the Bill appears limited to incorporated entities. The term “public institutions” is considerably wider in its reach than incorporated groups alone. Specifically with respect to unincorporated groups that qualify as “public institutions”, where the group’s assets are held on trust by office-holders for the group as a whole, the proposed amendment taken in isolation has the potential to “*impose or increase ... obligations or adversely affect ... existing rights.*”¹¹ The view expressed in the Explanatory Memorandum that: “*Bodies such as these either no longer exist or are covered by other legislation*” appears to be restricted to incorporated bodies. Closer questioning of the relevant agency of Government by the Committee did not elicit a response that encompassed unincorporated “public institutions”.
- 2.14 Nevertheless, the Committee’s own research and inquiries indicate that unincorporated “public institutions” in which group assets are held on trust for group purposes appear to retain the relevant protection under the aegis of the *Trustees Act 1962 (WA)* at “*Part IV - General powers of trustees*”.
- 2.15 In light of the foregoing, the Committee advises the House that those amendments proposed by the Bill at “*Part 2, Division 3 - Public Institutions and Friendly Societies Lands Improvement Act 1892 Repealed and Consequential Amendments*”, are suitable for inclusion in an omnibus statutes review Bill and should be adopted.

¹¹ Hon Norman Moore MLC, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 3 December 1998, p4800.

PART 3 - AMENDMENTS**Proposed Amendments Suitable for Inclusion in an Omnibus Bill**

2.16 The Committee advises the House that those amendments proposed by the Bill and contained within Appendix 2 to this Report all appear to be suitable for inclusion in an omnibus statutes review Bill, and should be adopted.

2.17 The proposed amendments which are within the accepted nature of omnibus statutes review Bills are, broadly speaking of the following types:

- removal of redundant provisions from Acts (for example: clause 15 of the Bill);
- nomenclature adjustments to the titles of locations, agencies and officials referred to in Acts (for example: clauses 42 and 121 of the Bill);
- corrections to grammar (for example: clauses 18 and 55 of the Bill);
- typographic and numerical errors (for example: clauses 41 and 135 of the Bill);
- superficial changes flowing from new drafting policy (for example: clause 29 of the Bill);
- corrections to references in Acts to redundant legislation (e.g.: clause 38 of the Bill);

Proposed Amendments about which the Committee makes No Recommendation

2.18 The Committee commends the following proposed amendments within the Bill to the Legislative Council without making a recommendation:

Children and Community Services Act 2004

2.19 Clause 32 of the Bill at sub-paragraphs (2) and (3) seeks to introduce the term “judge” (of the Children’s Court) into the *Children and Community Services Act 2004*. Thereafter all references to the powers of a “magistrate” (of the Children’s Court) are to be amended to read “judge or magistrate” within the 2004 Act.

2.20 According to the Explanatory Memorandum to the Bill:

The Act confers on magistrates of the Children’s Court power to issue warrants and preside at pre-hearing conferences. As the presiding judge of the Court may also be called on to exercise such functions,

these amendments are to enable a judge of that Court to exercise those powers as well as a magistrate.

- 2.21 While there may be no *contention* about making the proposed amendments, questions relating to the jurisdiction of judicial officers necessarily give rise to issues of legislative *complexity, or substantive changes to the law* that would not ordinarily be within the accepted purpose of omnibus statutes review Bills.
- 2.22 The Committee accepts that an argument might be raised suggesting that the proposed amendment falls within the accepted legislative policy of the *Children and Community Services Act 2004*. However, such policy considerations are beyond the accepted functions of this Committee.
- 2.23 The Committee draws the attention of the House to this proposed amendment, without making any recommendation.

Civil Liability Act 2002

- 2.24 Clause 33 of the Bill proposes renaming the former “Wage Cost Index” the “Labour Price Index” within s 4(2) of the *Civil Liability Act 2002* to reflect a change in reporting made by the Australian Bureau of Statistics from the September quarter of 2004.¹² The Explanatory Memorandum states that the proposed amendment is simply a “*change of name*”.
- 2.25 The Committee draws the attention of the House to the fact that the explanation provided in the Explanatory Memorandum does not appear to convey the full facts. While it is true to say that the “Labour Price Index” (excluding bonuses) is the relevant successor in time to the “Wage Cost Index” (excluding bonuses) currently referred to in the *Civil Liability Act 2002*, the new index is not merely a “*new name*”.
- 2.26 Reference to the Australian Bureau of Statistics publication “6351.0.55.001 - Labour Price Index: Concepts, Sources and Methods, 2004” at paragraph 1.13 reveals that “The LPI was developed by the ABS in response to the changing labour market conditions”. More detailed investigation of this publication indicates that the weightings used in the new Labour Price Index are not the same as those used in the previous Wage Cost Index.

¹² <http://www.abs.gov.au/Ausstats/abs@.nsf/0e5fa1cc95cd093c4a2568110007852b/f0e0dc26ba708ba4ca256f37007c834e!OpenDocument> (viewed on 2 January 2007). The Labour Price Index is explained in detail by the Australian Bureau of Statistics in its publication “6351.0.55.001 - Labour Price Index: Concepts, Sources and Methods, 2004”. This publication can be accessed at: <http://www.abs.gov.au/Ausstats/abs@.nsf/66f306f503e529a5ca25697e0017661f/47ED0DCC30ECA1BCCA256F4E00799C9A?opendocument> (viewed on 2 January 2007).

- 2.27 The Committee's inquiries regarding this proposed amendment elicited the following response from the relevant agency of Government:¹³

The name change provides clearer links between the survey and the data produced, and is appropriate given the inclusion of non-wage indexes each year. While this publication now includes non-wage indexes each year, the index continues to provide the same data on ordinary time hourly rates of pay excluding bonuses, which is the relevant measure for the purposes of the principal Act. Thus it can be confirmed that the changed index will not impose or increase any obligations or adversely affect existing rights.

- 2.28 The Committee respectfully noted the lack of continuity in logic, and therefore meaning, exhibited in this response. It may be correct to assert (as indeed does the first sentence of the above quote) that a changed method of calculating a data series warrants a change in name. It may be further correct to assert (as does the second sentence of the above quote) that some *portion* of the data sets used in both methods of calculation are the same. However, it does not necessarily follow that two differently constructed indices will have the same impact on existing obligations or rights.
- 2.29 The Committee draws the attention of the House to this proposed amendment, without making any recommendation.

Corruption and Crime Commission Act 2003

- 2.30 Sub-clause 41(11) of the Bill relates to the *Corruption and Crime Commission Act 2003* ss 46, 5 and Schedule 1. The Bill at this sub-clause proposes excluding certain offences described in the *Criminal Code* from the range of offences that can be the subject of an application by the Commissioner of Police to the Corruption and Crime Commission for "exceptional powers" of investigation and inquiry into matters of organised crime.
- 2.31 Currently, s 393 of the *Criminal Code* contains matters about which the Commissioner of Police can apply to the Corruption and Crime Commission for exceptional powers. That section provides as follows:

393. *Assault with intent to rob*

A person who, with intent to steal a thing, uses or threatens to use violence to any person or property in order -

¹³ At p10.

-
- (a) *to obtain the thing intended to be stolen; or*
- (b) *to prevent or overcome resistance to its being stolen,*
- is guilty of a crime and is liable -*
- (c) *if -*
- (i) *immediately before or at or immediately after the commission of the offence the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; and*
- (ii) *the offence is committed in circumstances of aggravation,*
- to imprisonment for life;*
- (d) *if -*
- (i) *immediately before or at or immediately after the commission of the offence the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; or*
- (ii) *the offence is committed in circumstances of aggravation,*
- to imprisonment for 14 years; or* [Committee Emphasis]
- (e) *in any other case, to imprisonment for 10 years.”*

2.32 Schedule 1 to the *Corruption and Crime Commission Act 2003*, as it is currently enacted, specifically excludes the offences contemplated in the *Criminal Code* s 393(d) from those offences about which the Commissioner of Police can apply for exceptional powers of investigation and inquiry. This means that only the very *worst* and the very *least* offences contemplated by this *Criminal Code* provision can be the subject of exceptional powers applications.

- 2.33 The Committee accepts the view put by the instructing officer for the Bill, Mr John Lightowlers, General Counsel, Public Sector Management, Department of Premier and Cabinet that; “*The current situation is, in fact, a nonsense.*”¹⁴
- 2.34 However, the Committee makes particular note of the fact, adverted to in the Explanatory Memorandum to the Bill that the present wording of *Criminal Code s 393* has been in place since December 2001. That is to say, this anomaly existed at the time at which the *Corruption and Crime Commission Act 2003* was drafted, debated and enacted.
- 2.35 The Committee accepts that the amendment proposed at sub-clause 41(11) of the Bill is meritorious and apposite. However, these considerations relate to the policy of the amendments rather than the more concrete question of whether they are of a type that warrants inclusion in an omnibus statutes review Bill. As to this much more limited question, the Committee is mindful of the view that the proposed amendment may be of a technical and legislative significance to make it unsuited to inclusion in an omnibus statutes review Bill.
- 2.36 The Committee draws the attention of the House to this proposed amendment, without making any recommendation.

Legal Aid Commission Act 1976

- 2.37 Sub-clause 91(2) of the Bill proposes amending the *Legal Aid Commission Act 1976* by deleting two contradictory definitions in sub-section 4(1) of that Act and inserting a single alternative definition. In the words of the Explanatory Memorandum to the Bill:

Due to an overlap in the commencement of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 and the Statutes (Repeals and Minor Amendments) Act 2003, there is some question as to whether the Acts Amendment and Repeal (Courts and Legal Practice) Act amendment could have proper effect.

The Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 and the Statutes (Repeals and Minor Amendments) Act 2003 inserted different definitions of Legal Practice Board. This repeals both of them and inserts the intended Acts Amendment and Repeal (Courts and Legal Practice) Act definition so there can be no doubt.

- 2.38 In its response to the Committee’s inquiries, the relevant agency of Government stressed that: “*The current provisions can have no sensible operation but for these*

¹⁴ Mr J Lightowlers, General Counsel, Public Sector Management Division, Department of the Premier and Cabinet, *Transcript of Evidence*, 4 April 2007, p5.

amendments and it is doubtful that they could have proper effect in their present form.”¹⁵

- 2.39 While this proposed amendment is undoubtedly meritorious, the Committee notes that it is not strictly of a type that is envisaged by the accepted ambit of an omnibus statutes review Bill. The Committee therefore draws this proposed amendment to the attention of the House without making any recommendation.

Metric Conversion Act 1972

- 2.40 Clause 100 of the Bill proposes amending the *Metric Conversion Act 1972* by inserting a regulation making power into the Act. In the words of the Explanatory Memorandum to the Bill:

To allow a single set of regulations to be made under the Metric Conversion Act 1972 to change all non-metric measurements still in existence in subsidiary legislation made under any Act. The amendment permits a single set of “Omnibus” Regulations, rather than waiting for each Minister to make separate sets of regulations relating to their portfolios.

- 2.41 This Committee cannot consider matters of policy when exercising its scrutiny function with respect to individual components of an omnibus statutes review Bill.¹⁶ Nevertheless, the Committee accepts that there is benefit in a more standardised and simplified regulatory procedure.
- 2.42 The Committee’s inquiries on this matter elicited the following response from the relevant agency of Government:

The use of such amending regulations is now quite a common practice in Acts which necessitate the amendment of large numbers of regulations. (eg. Sentencing Legislation Amendment and Repeal Act 2003, Acts Amendment and Repeal (Courts and Legal Practice) Act 2003, Racing and Gambling Legislation Amendment and Repeal Act 2003, Electricity Corporations Act 2005, Planning and Development (Consequential and Transitional Provisions) Act 2005, Financial

¹⁵ Compendium of written Departmental responses to questions on notice tabled on 4 April 2007 by Mr J Lightowers, General Counsel, Public Sector Management Division, Department of the Premier and Cabinet, entitled “*Standing Committee on Uniform Legislation Statutes Review Inquiry into Statutes (Repeals and Minor Amendments) Bill 2006*”. 2 April 2007 p 18.

¹⁶ Standing Order 230B.

Legislation Amendment and Repeal Act 2006, Swan and Canning
Rivers (Consequential and Transitional Provisions) Act 2006).¹⁷

- 2.43 The Committee notes that the above response tends not to support the inclusion of this category of provision in an omnibus statutes review Bill. None of the examples provided above were contained in an omnibus statutes review Bill. Indeed, most were inserted via a special purpose amending measure.
- 2.44 The proposed amendment to the *Metric Conversion Act 1972* appears to be contrary to precedent. However, given the uniqueness of the matter in question, and the restrictions which would apply to any agency that might seek to rely on it as a precedent, the Committee draws the proposed amendment to the attention of the House without making any recommendation.

Proposed Amendments Not Suitable for Inclusion in an Omnibus Bill

- 2.45 The Committee advises the House that, after careful consideration, the following amendments proposed by the Bill are *not* suitable for inclusion in an omnibus statutes review Bill and should not be passed.

Adoption Act 1994

- 2.46 Sub-clause 18(3) of the Bill seeks to amend s 52 of the *Adoption Act 1994*. Given the technical nature of the proposed amendment, it is as well to re-produce the entire section as it currently appears on the statute book:

52. Restrictions on placement

(1) *The CEO is not to place a child with a view to the child's adoption unless -*

(a) *the prospective adoptive parent -*

(i) *is named in a register under section 44(1)(b);*

(ii) *meets, as far as is practicable, the wishes expressed under section 45(a)(i);*

¹⁷ Compendium of written Departmental responses to questions on notice tabled on 4 April 2007 by Mr J Lightowlers, General Counsel, Public Sector Management Division, Department of the Premier and Cabinet, entitled "*Standing Committee on Uniform Legislation Statutes Review Inquiry into Statutes (Repeals and Minor Amendments) Bill 2006*". 2 April 2007, p 24.

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- (iii) *is not more than 45 years older than the child in the case where the prospective adoptive parent is the younger of prospective joint adoptive parents who, as a couple, have not adopted a child before;*
 - (iiia) *is not more than 50 years older than the child in the case where the prospective adoptive parent is the older of prospective joint adoptive parents who, as a couple, have not adopted a child before;*
 - (iiib) *is not more than 50 years older than the child in the case where the prospective adoptive parent is the younger of prospective joint adoptive parents who, as a couple, have adopted a child before;*
 - (iiic) *is not more than 55 years older than the child in the case where the prospective adoptive parent is the older of prospective joint adoptive parents who, as a couple, have adopted a child before;*
 - (iiid) *is not more than 45 years older than the child in the case where the prospective adoptive parent is a prospective sole adoptive parent and has not adopted a child before (whether as a joint or sole adoptive parent); **or***
 - (iiie) *is not more than 50 years older than the child in the case where the prospective adoptive parent is a prospective sole adoptive parent and has adopted a child before (whether as a joint or sole adoptive parent);*
 - (iv) *if married or in a de facto relationship, can show that the marriage or de facto relationship is stable;*
 - (v) *meets, if relevant, the child's wishes;*
 - (va) *recognises the value of, and need for, cultural and ethnic continuity for the child;*

- (vb) *shows a desire and ability to continue the child's established cultural, ethnic, religious or educational arrangements;*
 - (vi) *if female, is not pregnant at the time of the proposed placement, evidenced by means prescribed by regulation;*
- (aa) *where the adoption applications committee has approved the prospective adoptive parent in accordance with section 13(2), the child belongs to a category of children in respect of whom the prospective adoptive parent has been approved for prospective adoptive parenthood;*
- (ab) *where the child is an Aboriginal person or a Torres Strait Islander, the placement is in accordance with the Aboriginal or Torres Strait Islander children placement for adoption principle as set out in Schedule 2A;*
- (b) *where the child is 2 or more years of age, the child has had the nature and implications of his or her adoption explained in a manner appropriate to the child's age and level of understanding;*
- (c) *where there are other children in the prospective adoptive family -*
 - (i) *the prospective adoptee is to be the youngest child in the prospective adoptive family;*
 - (ii) *the second youngest child in the family is 12 or more months older than the prospective adoptee; and*
 - (iii) *each of the other children has been in the family for at least 2 years;*
- (d) *where siblings are relinquished for adoption at the same time, all reasonable steps have been taken to place them with the same prospective adoptive parent; and*
- (e) *where the child has a sibling who is already adopted or placed for adoption, all reasonable steps have been taken to place the child with the sibling's adoptive or prospective adoptive parent.*

- (2) *The requirements of subsection (1) are not affected by any provision of, and cannot be changed, by any provision of an adoption plan.*

2.47 The Committee notes the instance above where the disjunctive “or” is proposed to be deleted from subsection 1 of s 52 of the *Adoption Act 1994* by cl 18(3)(a) of the Bill. The Committee accepts that, depending on its construction, such a grammatical amendment in isolation may not “*impose or increase ... obligations or adversely affect ... existing rights.*”¹⁸

2.48 Sub-clause 18(3)(b) of the Bill thereafter proposes that; “*after each of paragraphs (a) to (c), paragraph (a)(i) to (vb) and paragraph (c)(i)*” the conjunctive “and” should be inserted. This would mean that s 52 would thereafter read as follows:

52. Restrictions on placement

- (1) *The CEO is not to place a child with a view to the child's adoption unless -*

(a) *the prospective adoptive parent -*

(i) *is named in a register under section 44(1)(b);*
and

(ii) *meets, as far as is practicable, the wishes expressed under section 45(a)(i);* **and**

(iii) *is not more than 45 years older than the child in the case where the prospective adoptive parent is the younger of prospective joint adoptive parents who, as a couple, have not adopted a child before;* **and**

(iiia) *is not more than 50 years older than the child in the case where the prospective adoptive parent is the older of prospective joint adoptive parents who, as a couple, have not adopted a child before;* **and**

(iiib) *is not more than 50 years older than the child in the case where the prospective adoptive parent is the younger of prospective joint adoptive parents who, as a couple, have adopted a child before;* **and**

¹⁸ Hon Norman Moore MLC, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 3 December 1998, p4800.

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- (iic) *is not more than 55 years older than the child in the case where the prospective adoptive parent is the older of prospective joint adoptive parents who, as a couple, have adopted a child before; **and***
 - (iiid) *is not more than 45 years older than the child in the case where the prospective adoptive parent is a prospective sole adoptive parent and has not adopted a child before (whether as a joint or sole adoptive parent); **and***
 - (iiie) *is not more than 50 years older than the child in the case where the prospective adoptive parent is a prospective sole adoptive parent and has adopted a child before (whether as a joint or sole adoptive parent); **and***
 - (iv) *if married or in a de facto relationship, can show that the marriage or de facto relationship is stable; **and***
 - (v) *meets, if relevant, the child's wishes; **and***
 - (va) *recognises the value of, and need for, cultural and ethnic continuity for the child; **and***
 - (vb) *shows a desire and ability to continue the child's established cultural, ethnic, religious or educational arrangements; **and***
 - (vi) *if female, is not pregnant at the time of the proposed placement, evidenced by means prescribed by regulation;*
- (aa) *where the adoption applications committee has approved the prospective adoptive parent in accordance with section 13(2), the child belongs to a category of children in respect of whom the prospective adoptive parent has been approved for prospective adoptive parenthood; **and***

- (ab) *where the child is an Aboriginal person or a Torres Strait Islander, the placement is in accordance with the Aboriginal or Torres Strait Islander children placement for adoption principle as set out in Schedule 2A; **and***
- (b) *where the child is 2 or more years of age, the child has had the nature and implications of his or her adoption explained in a manner appropriate to the child's age and level of understanding; **and***
- (c) *where there are other children in the prospective adoptive family -*
- (i) *the prospective adoptee is to be the youngest child in the prospective adoptive family; **and***
- (ii) *the second youngest child in the family is 12 or more months older than the prospective adoptee; and*
- (iii) *each of the other children has been in the family for at least 2 years;*
- (d) *where siblings are relinquished for adoption at the same time, all reasonable steps have been taken to place them with the same prospective adoptive parent; and*
- (e) *where the child has a sibling who is already adopted or placed for adoption, all reasonable steps have been taken to place the child with the sibling's adoptive or prospective adoptive parent.*
- (2) *The requirements of subsection (1) are not affected by any provision of, and cannot be changed, by any provision of an adoption plan.*

2.49 The Committee notes above at the instances where the conjunctive “and” is proposed to be inserted into ss 52(1) of the *Adoption Act 1994* by cl 18(3)(a) of the Bill. The Committee accepts that, depending on its construction, such grammatical amendments may not “impose or increase ... obligations or adversely affect ... existing rights.”¹⁹

2.50 However, the Committee cannot be certain that the proposed combination of deleting a single instance of the disjunctive “or” along with the multiple introduction of the conjunctive “and”, will result in a neutral impact on the judicial interpretation of the relevant sections of the *Adoption Act 1994*.

¹⁹ Hon Norman Moore MLC, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 3 December 1998, p4800.

- 2.51 When the Committee raised the potential significance of the seemingly minor ‘grammatical’ amendments proposed by the Bill in this sub-clause with the relevant agency of Government, the response was as follows:²⁰

It is, of course, common for seemingly small points of construction to generate sharp and evenly held differences of opinion. Possible alternative constructions have been considered. However the conclusion is that the ordinary meaning is given effect by the drafting policy being implemented. The ordinary meaning of “and” is conjunctive. There is no occasion created to depart from the ordinary meaning here. On the contrary, given the nature of omnibus bills and the fact that courts will, according to ordinary principles of interpretation, which allow regard to be had to the background to an Act (see for example judgment of Heydon J in Victim Compensation Corporation v Brown [2003] HCA 54 at para 17), be able to consider the nature of the amending act, it is submitted that the effect of the change of drafting policy will not be to change the policy or operation of the existing provision. The new drafting policy is merely expressing the same ideas in a different manner using a clearer or simpler style. The ideas are not to be taken to be different just because added conjunctives are used.

- 2.52 The difficulties posed by such seemingly minor amendments were at the heart of recent full court appeals to the New South Wales Court of Appeal,²¹ and the High Court of Australia.²² Given the potential for such a major dispute to arise from seemingly minor conjunctive phrases, the Committee formed the view that the amendments proposed at cl 18(3) of the Bill cannot, with certainty, be characterised as being “*designed to make only relatively minor, non-controversial amendments*” as is the accepted object of omnibus statute revision legislation.
- 2.53 In addition, in its communications with the relevant agency of Government, the Committee stressed the fact that the relevant sub-clause of the Bill might introduce this potential for controversy concerning the significant issue of the exercise of discretion by the CEO about the placement of adopted children.
- 2.54 However, regardless of the particular context, the present example highlights the difficulties that can arise with bulk retro-application of conjunctives in lengthy, technical legislation. The Committee notes in particular that the instance in question

²⁰ Compendium of written Departmental responses to questions on notice tabled on 4 April 2007 by Mr J Lightowlers, General Counsel, Public Sector Management Division, Department of the Premier and Cabinet, entitled “*Standing Committee on Uniform Legislation Statutes Review Inquiry into Statutes (Repeals and Minor Amendments) Bill 2006*”. 2 April 2007, p 6.

²¹ *Victims Compensation Fund v Brown* (2002) 54 NSWLR 668.

²² *Victims Compensation Fund Corporation v Brown* [2003] HCA 54, 30 September 2003.

here had already passed through the various levels of scrutiny and quality assurance applied by the Office of the Parliamentary Counsel for Western Australia.

- 2.55 In the course of the Committee's inquiries, the Parliamentary Counsel's Office received instructions to re-draft the proposed amendment in cl 18(3) of the Bill. The Committee was then advised that the Government was considering the introduction of an amendment to cl 18 in the same terms as are contained in Appendix 3.

Recommendation 2: The Committee recommends that, should the Government table an amendment to clause 18 of the Bill in the same terms as those contained within Appendix 3, the House do accept the amendment.

Corruption and Crime Commission Act 2003

- 2.56 Sub-clause 41(4) of the Bill proposes amending s 27B(1) of the *Corruption and Crime Commission Act 2003* to include a reference back to ss "27(1)(a) and (b)".

- 2.57 The Committee formed the view that there is a drafting error in the Bill at cl 41(4). The Committee bases its view on two observations, namely; there is no paragraph (a) or (b) in s 27(1) of the 2003 Act; and, secondly, s 27B(1) is expressly dependant on referrals "*made under section 27A(1)*".

- 2.58 In the course of the Committee's inquiries, the Parliamentary Counsel's Office reconsidered the proposed amendment in cl 41(4) of the Bill. As a result of this reconsideration the Committee received advice from the Parliamentary Counsel's Office that the Government was considering the introduction of an amendment to cl 41(4) in the same terms as are contained in Appendix 3.

Recommendation 3: The Committee recommends that, should the Government table an amendment to clause 41(4) of the Bill in the same terms as those contained within Appendix 3, the House do accept the amendment.

- 2.59 Sub-clause 41(6) of the Bill proposes amending ss 77(2)(b) and 78(3)(b) of the *Corruption and Crime Commission Act 2003* by expanding their effect from the limited scope of s 75(3) of the 2003 Act to the wider range of activities provided for in s 75. The Explanatory Memorandum explains this proposed amendment as a "*cross reference error*".

- 2.60 The Committee observes that s 75(3) of the 2003 Act provides the following power in connection with failure to adequately comply with a "*Fortification Removal Notice*":

- (3) *Subsection (1) authorises police officers and agents of the Commissioner of Police, without warrant or further notice, to enter the premises and secure them in order to do anything for the purposes of that subsection, and to use any force and employ any equipment necessary.*

2.61 The Committee observes that section 75 of the 2003 Act provides wider powers than those specified in subsection 75(3), as follows:

- (1) *If the fortifications at the premises are not, within the time specified in the fortification removal notice or any further time allowed by the Commissioner of Police, removed or modified to the extent necessary to satisfy the Commissioner of Police that the premises are no longer heavily fortified, the Commissioner of Police may cause the fortifications to be removed or modified to the extent required by the fortification removal notice.*
- (2) *The Commissioner of Police may extend the time allowed by the notice if, before the time allowed elapses, application is made to the Commissioner of Police for it to be extended.*
- (3) *Subsection (1) authorises police officers and agents of the Commissioner of Police, without warrant or further notice, to enter the premises and secure them in order to do anything for the purposes of that subsection, and to use any force and employ any equipment necessary.*
- (4) *The Commissioner of Police may seize anything that can be salvaged in the course of removing or modifying fortifications under this section, and may sell or dispose of it as the Commissioner of Police considers appropriate.*
- (5) *The proceeds of any sale under subsection (4) are forfeited to the State and, to the extent that they are insufficient to meet the costs incurred by the Commissioner of Police under this section, the Commissioner of Police may recover those costs as a debt due from the owner of the premises.*

2.62 The Committee notes that section 77 of the *Corruption and Crime Commission Act 2003* carries with it a significant criminal sanction for any person who “*does anything intending to prevent, obstruct, or delay*” the implementation of a fortification removal order:

77. *Hindering removal or modification of fortifications*

- (1) *A person who does anything intending to prevent, obstruct, or delay, the removal or modification of fortifications in accordance with a fortification removal notice commits a crime.*

Penalty: Imprisonment for 5 years and a fine of \$100 000.

- (2) *Subsection (1) applies to the removal or modification of fortifications by a person who:*
 - (a) *is, or is acting for or on the instructions of, the owner or an interested person; or*
 - (b) *is acting under section 75(3).*

2.63 The Committee further notes that *Corruption and Crime Commission Act 2003* s 78 provides significant administrative relief in connection with the enforcement of a fortification removal order:

78. *Planning and other approval issues*

- (1) *The powers given by this Division may be exercised without regard to whether any statutory or other approval had been given for the fortifications.*
- (2) *No statutory or other approval is required for the removal or modification of fortifications in accordance with a fortification removal notice.*
- (3) *Subsection (2) applies to the removal or modification of fortifications by a person who:*
 - (a) *is, or is acting for or on the instructions of, the owner or an interested person; or*
 - (b) *is acting under section 75(3).*

2.64 As currently provided in the *Corruption and Crime Commission Act 2003*, the criminal sanctions and administrative relief do not extend to actions taken under subsections 75(4)-(5) of that Act relating to seizure, forfeiture and sale of fortification materials.

2.65 Given that the amendment proposed at sub-clause 41(6) of the Bill will provide a significant extension of criminal sanction and administrative relief, the Committee has formed the view that this proposed amendment does not properly belong in an omnibus Bill.

Recommendation 4: The Committee recommends that sub-clause 41(6) of the Statutes (Repeals and Minor Amendments) Bill 2006 be deleted from the Bill. This could be effected by the following amendment -

Page 19, lines 15 to 17 - To delete the lines.

Criminal Property Confiscation Act 2000

- 2.66 The nature and extent of the proposed amendments to the *Criminal Property Confiscation Act 2000* at cl 45 of the Bill taken as a whole are significant.
- 2.67 The Committee notes that the need for such wide-ranging amendments to that Act appears to be genuine. Particular reference is made to a response to the Committee's inquiries on cl 45 of the Bill from the relevant agency of Government that there was a: "*lack of sufficient precision in the initial drafting*".²³
- 2.68 The materiality of the amendments to the *Criminal Property Confiscation Act 2000* proposed at cl 45 of the Bill will be appreciated from the following paragraphs.
- 2.69 Sub-clause 45(6) of the Bill proposes amending the *Criminal Property Confiscation Act 2000* s 82(7) in a manner illustrated by the use of strikethrough and bold text as follows:

*On the application of the DPP or an owner of the property, the court may set aside the freezing notice or freezing order for the property if it also orders the objector to pay to the State ~~an amount equal to the value of the property~~ **the amount equal to the value of the property at the time the application to set aside was made.***

- 2.70 The Committee is concerned that the reasons provided in the Explanatory Memorandum for this proposed amendment are significantly at odds with the accepted rationale of omnibus statutes review legislation in the first instance, and devoid of meaning in the second. The Explanatory Memorandum states that this proposed amendment is necessary; "*to be consistent for crime-used property and crimederived [sic] property. Also to avoid any uncertainty as to which application is being referred to.*"
- 2.71 Whether or not an agency of government considers that the treatment of two similar issues should be identical is essentially a policy matter, and not of the type that should

²³ Compendium of written Departmental responses to questions on notice tabled on 4 April 2007 by Mr J Lightowlers, General Counsel, Public Sector Management Division, Department of the Premier and Cabinet, entitled "*Standing Committee on Uniform Legislation Statutes Review Inquiry into Statutes (Repeals and Minor Amendments) Bill 2006*". 2 April 2007, p15.

be considered for inclusion in an omnibus statutes review Bill.²⁴ Secondly, the suggestion that there is; “*any uncertainty as to which application is being referred to*” appears to the Committee to be unsupportable given that the *Criminal Property Confiscation Act 2000* s 82(1) makes it clear that the section relates to “crime-used property”; and s 83(1) makes it clear that the section relates to “crime-derived property”.

2.72 Notwithstanding the apparently erroneous commentary in the Explanatory Memorandum to the Bill regarding sub-clause 46(6), the Committee has considered the proposed amendment on its face.

2.73 The *Criminal Property Confiscation Act 2000* s 82(7), concerning the valuation of “crime-used property”, as it is currently drafted provides as follows:

On the application of the DPP or an owner of the property, the court may set aside the freezing notice or freezing order for the property if it also orders the objector to pay to the State an amount equal to the value of the property.

2.74 The *Criminal Property Confiscation Act 2000* s 83(5), concerning the valuation of “crime-derived property”, as it is currently drafted provides as follows:

On the application of the DPP or an owner of the property, the court may set aside the freezing notice or freezing order for the property if it also orders the objector to pay to the State the amount assessed by the court as the amount equal to the value of the property at the time of the application.

2.75 The Committee wishes to draw the attention of the House to the fact that as it is presently worded, section 82(7) of *Criminal Property Confiscation Act 2000* is ambiguously drafted with respect to the time for valuation of “crime-used property”. This ambiguity is significantly exacerbated by the presence in the 2000 Act of a different form of words for the valuation of “crime-derived property” in s 83(5) in virtually identical circumstances. Any amendment to ambiguously drafted legislation beyond mere typography or punctuation necessitates changing the meaning of legislation.

²⁴ Premier’s Circular 2003/15, *Statutes (Repeals and Minor Amendments) Bill*, issued by the Department of Premier and Cabinet, Western Australia, 24 November 2003 (see Appendix 1); and Standing Order 230B.

- 2.76 The Committee notes that the *Criminal Property Confiscation Act 2000* in varying degrees and instances, and for legitimate purposes, departs from ordinarily accepted fundamental legislative principles including the onus of proof and the forfeiture of property to the State.²⁵ In light of the unique nature of this legislation, the Committee believes that any proposed changes to the present meaning or effect of the legislation ought rightly be subject to the full scrutiny of the Parliament.
- 2.77 Sub-clause 45(7) of the Bill proposes amending the *Criminal Property Confiscation Act 2000* s 82(7) in a manner illustrated by the use of strikethrough and bold text as follows:

*On the application of the DPP or an owner of the property, the court may set aside the freezing notice or freezing order for the property if it also orders the objector to pay to the State the amount assessed by the court as the amount equal to the value of the property at the time ~~of the application~~ **the application to set aside was made.***

- 2.78 The Committee is cognisant of the view put in the Explanatory Memorandum to the Bill that this proposed amendment is merely a change in grammar.
- 2.79 However, given that it is not aimed at correcting any obvious error of drafting, the amendments in the proposal may not be “*reasonably clear on their face as to the effect.*”²⁶ As indicated above with respect to sub-clause 45(6) of the Bill, the Committee is not of the view that the comments in the Explanatory Memorandum to the Bill, essentially repeating the reasons provided for that sub-clause, assist in ascertaining why this proposed amendment should be included in the Bill.
- 2.80 Sub-clause 45(9) of the Bill proposes amending *Criminal Property Confiscation Act 2000* s 94(3)(b). That sub-paragraph refers to situations where perishable property has come under the control or management of the Public Trustee through either a property freezing notice or a property freezing order. Section 94(3) is reproduced below showing the effect of the proposed amendment by means of bold text:

If the Public Trustee has the control or management of frozen property under this Act, the Public Trustee may sell the property in the circumstances referred to in subsection (2), without obtaining an order under that subsection, if

- (a) *the Public Trustee gives adequate notice of the proposed sale to the owner of the property; and*

²⁵ See Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report No 15, *Industrial Training Amendment Bill 2006*, November 2006 at Appendix 3.

²⁶ Premier’s Circular 2003/15, *Statutes (Repeals and Minor Amendments) Bill*, issued by the Department of Premier and Cabinet, Western Australia, 24 November 2003 (see Appendix 1).

(b) *the owner does not file an objection to the sale in the court in which the freezing notice was filed or that made the freezing order;*

- 2.81 The Committee is again cognisant of the view expressed in the Explanatory Memorandum to the Bill that the intention of the proposed amendment is to overcome a perceived anomaly in sub-paragraph (b) above to grant the right of objection to the recipients of both freezing orders and freezing notices.
- 2.82 The Committee accepts the proposition that the right to object to the court against such unilateral action on the part of the Public Trustee is intended to apply to the owners of all “frozen property” whether by order or notice given the opening passage of sub-section 94(3). This, together with the fact that the apparent intent of the proposed amendment is beneficial against the backdrop of a penal statute, recommends it to the Committee as an appropriate amendment.
- 2.83 However, such questions invite the Committee to consider or otherwise frame its deliberations by reference to the policy of a Bill. The Committee again stresses that this is not within the Committee’s terms of reference.²⁷
- 2.84 The Bill at sub-clause 45(11) proposes amending the *Criminal Property Confiscation Act 2000* s 117(2)(b) as indicated by the bold text below:

117. Interstate registration of freezing notices and orders

- (1) *For the purpose of enabling a freezing notice or freezing order to be registered under a corresponding law of another State or a Territory, the notice or order may be expressed to apply to property in the State or Territory.*
- (2) *The notice or order does not apply to property in another State or a Territory except to the extent that*
- (a) *a corresponding law of the State or Territory provides that the notice or order has effect in the State or Territory when it is registered under that law; or*
- (b) *if the property is moveable - when the **notice or** order took effect, the property was not located in a State or Territory in which a corresponding law is in force.*

²⁷ Standing Order 230B.

- 2.85 The intention of this proposed amendment as expressed in the Explanatory Memorandum is that it; “*Corrects reference to orders instead of notices and orders.*” The Committee does note that every other reference in the *Criminal Property Confiscation Act 2000* s 117 is to the combination of “notices or orders”.
- 2.86 However, the Committee allows for the possibility of another view of the proposed amendment, namely that it could be argued to; “*impose or increase any obligation or adversely affect any existing rights.*”²⁸
- 2.87 The Bill at sub-clauses 45(12)-(17) proposes amending the *Criminal Property Confiscation Act 2000* in ss 118, 120, 121 and 122 to correct sections in which there is an apparent lack of precision, consistency or uniformity in the interrelated use of the terms “order” and “declaration”.
- 2.88 The Committee is cognisant of the views expressed in the Explanatory Memorandum and the relevant agency of Government that these proposed amendments are “minor and simple”.
- 2.89 However, the Committee has formed the view that the inconsistencies highlighted by ss 45(12)-(17) of the Bill indicate a significant structural problem in the present drafting of the *Criminal Property Confiscation Act 2000*. The Committee notes in particular the observation of the relevant agency of Government that: “*It is respectfully suggested that the minor errors exist because of lack of sufficient precision in the initial drafting.*”²⁹
- 2.90 In light of the foregoing, the Committee has formed the view that the combined effect of the amendments proposed by the Bill at ss 45(12)-(17) cannot be characterised as “minor drafting errors”³⁰ of the type that belong in an omnibus statutes review Bill.
- 2.91 The Bill at s 45(18) proposes amending the *Criminal Property Confiscation Act 2000* s 148(8)(b). The wording of that provision showing the effect of the proposed amendment in bold text is as follows:

(8) *Crime-derived property stops being crime-derived property -*

(a) *when it is acquired by an innocent party;*

²⁸ Premier’s Circular 2003/15, *Statutes (Repeals and Minor Amendments) Bill*, issued by the Department of Premier and Cabinet, Western Australia, 24 November 2003.

²⁹ Compendium of written Departmental responses to questions on notice tabled on 4 April 2007 by Mr J Lightowlers, General Counsel, Public Sector Management Division, Department of the Premier and Cabinet, entitled “*Standing Committee on Uniform Legislation Statutes Review Inquiry into Statutes (Repeals and Minor Amendments) Bill 2006.*” 2 April 2007, p15.

³⁰ Id.

(b) *if it is frozen property - when the **freezing notice or freezing order** is set aside under section 83;*

2.92 The Committee notes the rationale for this amendment provided in the Explanatory Memorandum to the Bill, namely that the current wording; “*Refers to frozen property, which may be frozen under a notice or order but refers only to orders. This amendment inserts a reference to freezing notices.*” This, together with the fact that the apparent intent of the proposed amendment is beneficial against the backdrop of a penal statute recommends it to the Committee as an appropriate amendment to the *Criminal Property Confiscation Act 2000*.

2.93 However, this is not the situation of an obvious typographical error, and the effect of the proposed amendment on the status quo is not “reasonably clear” on its face.³¹

2.94 In light of the Committee’s inquiries, the Committee has formed the view that the proposed amendments at clause 45 of the Bill should be removed and be reintroduced as a special-purpose amendment Bill.

Recommendation 5: The Committee recommends that clause 45 of the Statutes (Repeals and Minor Amendments) Bill 2006 be deleted from the Bill. This could be effected by the following amendment -

Page 21, line 20 to page 24, line 13 - To delete the lines.

Electricity Corporations Act 2005

2.95 Sub-clause 52(2) of the Bill proposes amending section 37 of the *Electricity Corporations Act 2005* by inserting a wholly new sub-section (4) which reads as follows:

4) *If -*

(a) *the sources of energy used to generate electricity are a combination of renewable sources and diesel or renewable sources and gas; and*

(b) *the renewable sources comprise a substantial proportion of those sources of energy, then for the purposes of subsection (2) the electricity is taken to be generated from renewable sources.*

³¹ Premier’s Circular 2003/15, *Statutes (Repeals and Minor Amendments) Bill*, issued by the Department of Premier and Cabinet, Western Australia, 24 November 2003.

- 2.96 The Explanatory Memorandum to the Bill explains the purpose of inserting this new sub-section into the *Electricity Corporations Act 2005* in the following terms:

This amendment clarifies that Verve Energy may own and operate the non-renewable portions of wind-diesel and wind-gas generation plants outside the South West Interconnected System. This is in keeping with the policy in place at the time the Act was drafted, which was to allow Verve to run the former Western Power's Sustainable Energy unit, which included owning and operating such plants. The current wording of s. 37 may be interpreted as not allowing Verve to own the non-renewable portion of wind-diesel and wind-gas plants, even though it was intended that Verve would be allowed to own the non-renewable portion of such plants upon the disaggregation of Western Power.

- 2.97 In response to the Committee's inquiries on this proposed amendment, the relevant agency of Government confirmed that a legal opinion had been obtained: "*to the effect that, given the precise wording of section 37 of the [Electricity Corporations Act 2005], Verve Energy is not allowed to own the non-renewable portions of hybrid plants (such as wind-diesel and wind-gas plants) outside of the SWIS.*"³² The same response further highlights that the proposed amendment: "*is consistent with and better achieves the existing policy of the Act being amended*".
- 2.98 The Committee is concerned that the above responses may suggest a lack of regard for the Premier's Circular 2003/15 "Statutes (Repeals and Minor Amendments) Bill" which states that; "*Amendments will not be considered to be minor where they make substantial changes to the powers, rights, obligations or processes provided for in the legislation concerned*". In addition, the Committee again stresses that it is not permitted to consider matters of policy when exercising its scrutiny function with respect to individual components of an omnibus statutes review Bill.³³
- 2.99 The Committee also received representations from Horizon Power expressing concerns that the amendments proposed by clause 52 of the Bill may have unintended consequences.³⁴ This correspondence highlights the potential of the proposed amendment to prove controversial which further suggests that it is not suitable for inclusion in an omnibus statutes review Bill.

³² Compendium of written Departmental responses to questions on notice tabled on 4 April 2007 by Mr J Lightowers, General Counsel, Public Sector Management Division, Department of the Premier and Cabinet, entitled "*Standing Committee on Uniform Legislation Statutes Review Inquiry into Statutes (Repeals and Minor Amendments) Bill 2006*". 2 April 2007, p16.

³³ Standing Order 230B.

³⁴ Email to committee staff from Mr David Martin, General Manager Public Affairs, Horizon Power, 7 August 2007 "Fw: Statutes (Repeals and Minor Amendments) Bill 2006".

- 2.100 The Committee is concerned that the proposed amendment at sub-clause 52(2) of the Bill inserting a wholly new *Electricity Corporations Act 2005* sub-section 37(4) may represent a “*substantial [change] to the powers, rights, obligations or processes provided for in the legislation concerned*”.

Recommendation 6: The Committee recommends that during debate on sub-clause 52(2) of the Statutes (Repeals and Minor Amendments) Bill 2006, the responsible Minister advise the Legislative Council on what basis the proposed amendment complies with the Premier’s Circular 2003/15, *Statutes (Repeals and Minor Amendments) Bill*.

Local Government Act 1995

- 2.101 Sub-clauses 95(2)-(3) of the Bill propose amending the *Local Government Act 1995* in connection with the status of persons appointed to fill a vacancy in the office of a “commissioner” under Schedule 2.4 of that Act and in connection with the status of that Schedule. In the words of the Explanatory Memorandum to the Bill:

Schedule 2.4 clause 4 allows the Governor to appoint someone to fill a vacancy in the office of a commissioner of a local government. These amendments are to clarify the relationship between that clause and s. 2.39 and make it clear that such a person is a “commissioner” by including cl 4 in the definition.

- 2.102 The *Local Government Act 1995* as it is currently cast, expressly provides at s 2.39 for the appointment of a commissioner by the Governor:

2.39. Appointment of commissioner

A commissioner of a local government can be appointed by the Governor under the power given by section 2.6(4),³⁵ 2.36A(3),³⁶ 2.37(4),³⁷ 2.37A(1),³⁸ 8.30³⁹ or 8.33⁴⁰ and not otherwise.

³⁵ “The Governor may, by order, appoint a person to be the commissioner of a local government until the offices of members of the council are filled for the first time and the council holds its first meeting.”

³⁶ “When a declaration has been made under this section the Governor may, by order, appoint a person as commissioner of the local government until the district is abolished.”

³⁷ “(1) If more than ½ of the offices of members of a council are vacant for any reason, the Governor may, by order, declare all the remaining offices of members to be vacant. ...

(4) When a declaration has been made under this section the Governor may, by order, appoint a person to be the commissioner of the local government until the offices of members of the council are filled again and the new council holds its first meeting.”

- 2.103 The power of the Governor, acting on advice, to appoint local government commissioners is clearly circumscribed by s 2.39 of the *Local Government Act 1995* to extend only to certain specific instances. That there is an apparently contradictory grant of power to the Governor to fill vacancies in commissionerships at s 2.41 and Schedule 2.4 of the *Local Government Act 1995* is clearly more than a mere typographical error. It is an issue relating to the grant of executive power with respect to the appointment of delegates.
- 2.104 The proposed amendment to the *Local Government Act 1995* cll 95(2)-(3) of the Bill arguably changes the current law and relates to a matter of potential legal controversy. The Committee is therefore of the view that it should not be included in an omnibus statutes review Bill.

Recommendation 7: The Committee recommends that sub-clauses 95(2)-(3) of the Statutes (Repeals and Minor Amendments) Bill 2006 be deleted from the Bill. This could be effected by the following amendment -

Page 49, lines 1 to 14 - To delete the lines.

Professional Combat Sports Act 1987

- 2.105 Sub-clauses 114(2) and (4) of the Bill propose amending the *Professional Combat Sports Act 1987* at ss 24 and 38 by increasing the maximum period of imprisonment from 6 months to 9 months. In the words of the Explanatory Memorandum to the Bill:

... when the Boxing Control Amendment Act 2003 came into operation on 12 January 2005 and replaced s. 24 it inadvertently had the effect of changing the penalty back to ‘\$1000 or 6 months or both’. ...

This amendment has the effect of reinstating in s. 24 the maximum period of imprisonment of 9 months that was set by the Sentencing Legislation Amendment and Repeal Act 2003 (SLA&R Act).

³⁸ “If all the offices of members of a council have become vacant, or are going to become vacant, for any reason other than an order under section 2.36A(1), 2.37(1) or (2) or 8.25, the Governor may, by order, appoint a person to be the commissioner of the local government until the offices of members of the council are filled again and the new council holds its first meeting.”

³⁹ “An order suspending a council is to include an order appointing a person as commissioner of the local government while the council is suspended and, if it is reinstated, until it holds its first meeting after being reinstated.”

⁴⁰ “An order dismissing a council is to include an order appointing a person as commissioner of the local government until a new council is elected and holds its first meeting.”

2.106 In response to the Committee's inquiries on this matter the relevant agency of Government stated that:⁴¹

The effect of these amendments, in the order in which they were passed by Parliament would have been that s. 24 would be replaced, retaining the 6 month penalty, and would then be amended by the Sentencing Legislation Amendment and Repeal Act 2003 to increase the penalty to 9 months.

Due to the delay in the commencement of the Boxing Control Amendment Act 2003, the 2 Acts came into operation in reverse order with the result that the penalty in the original s. 24 was increased to 9 months and, when s. 24 was replaced, was reduced back to 6 months.

This is contrary to the clear intention of Parliament at the time it passed the 2003 Acts. It also has the effect of removing the penalty of imprisonment altogether because the Sentencing Act 1995 now prohibits the imposition of a term of imprisonment of 6 months or less.

2.107 The Committee notes the proposition put in the above response from the relevant agency that the commencement dates of the two named amending measures appear to have been in the opposite order to the dates in which they were passed by the Parliament of Western Australia.

2.108 However, the Committee further notes that both the *Boxing Control Amendment Act 2003* and the *Sentencing Legislation Amendment and Repeal Act 2003* were passed by the Parliament on the basis that they would commence on a date set by proclamation. The commencement of Acts by proclamation is clearly a matter of policy and, as stated elsewhere in this report, the Committee is not permitted to consider matters of policy when exercising its scrutiny function with respect to individual components of an omnibus statutes review Bill.⁴²

2.109 As noted in the response to the Committee's inquiries on this matter by the relevant agency of Government, the *Sentencing Act 1995* s 86 prohibits the imposition of prison sentences of 6 months or less in most cases. This means that, in its present form, the *Professional Combat Sports Act 1987* s 24 cannot ordinarily give rise to any term of imprisonment at all. If adopted, the amendment proposed at clause 114 of the

⁴¹ Compendium of written Departmental responses to questions on notice tabled on 4 April 2007 by Mr J Lightowlers, General Counsel, Public Sector Management Division, Department of the Premier and Cabinet, entitled "*Standing Committee on Uniform Legislation Statutes Review Inquiry into Statutes (Repeals and Minor Amendments) Bill 2006*". 2 April 2007, p24.

⁴² Standing Order 230B.

Bill will alter the current non-custodial situation to one carrying a maximum term of imprisonment of 9 months.⁴³

- 2.110 It is further remarkable to the Committee that the relevant agency of Government, in its response to the Committee's inquiries, should have failed to address itself to the proposed identical 0-9 month incarceration amendment to the *Professional Combat Sports Act 1987 s 38*. That provision deals with the offence of wilfully damaging certain medical records. No mention of section 38 was made in either of the *Boxing Control Amendment Act 2003* and the *Sentencing Legislation Amendment and Repeal Act 2003*.
- 2.111 The Committee wishes to make it clear that it in no way expresses any view on the relative merits of the amendments proposed at sub-clauses 114(2) and (4) of the Bill. The sole purpose of the Committee's deliberations on these matters is to ascertain if they are suitable for inclusion in an omnibus statutes review Bill.
- 2.112 The Committee draws the attention of the House to the fact that the amendments proposed at sub-clauses 114(2) and (4) of the Bill significantly change the current law and significantly affect existing rights such that they do not properly belong in an omnibus statutes review Bill.

Recommendation 8: The Committee recommends that sub-clause 114(2) of the Statutes (Repeals and Minor Amendments) Bill 2006 be deleted from the Bill. This could be effected by the following amendment -

Page 57, lines 8 to 10- To delete the lines.

Recommendation 9: The Committee recommends that sub-clause 114(4) of the Statutes (Repeals and Minor Amendments) Bill 2006 be deleted from the Bill. This could be effected by the following amendment -

Page 57, lines 16 to 18- To delete the lines.

Additional Matters of Concern Raised by Part 3 of the Bill

Amendments "To Better Implement The Object Or Intent Of Legislation"

- 2.113 The Committee notes that the above criterion of suitability for including an amendment in an omnibus statutes review Bill appears for the first time in the Second

⁴³ The Committee notes that the recent decision in *Ryder v Abbott* [2007] WASC 41 (6 February 2007) has raised some uncertainty concerning the status of all maximum terms of imprisonment of 12 months or less.

Reading of the Bill by the Minister.⁴⁴ None of the previous accepted elucidations of the purpose of omnibus statutes review Bill's referred to this criterion.

- 2.114 The Committee has formed the view that adopting the above criterion for assessing the suitability for including a given proposed amendment in an omnibus statutes review Bill would require full consideration of the policy of the Act proposed to be amended.
- 2.115 Requiring the Committee to consider the underlying policy of all of the Acts under review would subvert the underlying principle of omnibus statutes review Bills. It should be noted that in the case of this Bill, the Committee has scrutinised the proposed amendment or repeal of some 178 Acts. Further, as already discussed in several places in this report, the Committee is not permitted to consider the policy of a Bill without being specifically requested to do so by the Legislative Council.

Recommendation 10: The Committee recommends that Premier's Circular 2003/15, *Statutes (Repeals and Minor Amendments) Bill*, issued by the Department of Premier and Cabinet, Western Australia, 24 November 2003 be amended and re-issued to make clear to departments that omnibus statutes review Bills are not appropriate vehicles for amendments whose sole or principal function is: "to better implement the object or intent of legislation" or are otherwise justified primarily on the grounds of legislative policy.

Inappropriate Inclusions in Omnibus Statutes

- 2.116 The Committee observes that no less than 10 separate amendments to the *Corruption and Crime Commission Act 2003*, and no less than 19 separate amendments to the *Criminal Property Confiscation Act 2000* demonstrating varying degrees of technical complexity, were included in the Bill. The Committee expresses the view that the cumulative effect of a large number of "minor" amendments to any one Act should ordinarily suggest to the relevant agency of government that the particular statute requires separate legislative review. Otherwise, the legislative purpose of omnibus statutes review legislation as a means of "*expediting the government's legislative program and parliamentary business by reducing the number of separate amendment bills*"⁴⁵ will be defeated.

⁴⁴ Hon Kim Chance, MLC, Leader of the House; Minister Representing the Premier, Minister for Public Sector Management, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 18 October 2006, p7142.

⁴⁵ Hon Kim Chance, MLC, Leader of the House; Minister Representing the Premier, Minister for Public Sector Management, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 18 October 2006, p7142.

Recommendation 11: The Committee recommends that the Premier ensure that the purpose and limitations of omnibus statutes review Bills are more clearly understood by Departmental legislative instructing officers.

Unhelpful or Misleading Commentary in the Explanatory Memorandum

2.117 As noted throughout this report, there were several instances where the commentary provided in the Explanatory Memorandum to the Bill by instructing agencies were either unhelpful or misleading.

2.118 For example:

- The Explanatory Memorandum commentary to sub-clause 3(a) of the Bill which proposes the repeal of the *Imperial Act Adopting Ordinance 1847* states that it is obsolete because “*The residual application in WA of [the Imperial] Act was terminated by the Defamation Act 2005.*” In fact, the relevant subject matter of the Imperial Act now appears to be covered by a combination of the *Defamation Act 2005*, the *Supreme Court Rules 1971* and the *Criminal Code Part V Division XXXV (Criminal Defamation)*.
- The Explanatory Memorandum commentary to clause 12 of the Bill which proposes repealing the *Public Institutions and Friendly Societies Lands Improvement Act 1892*; and, the *Public Institutions and Friendly Societies Lands Improvement Act 1892, Amendment Act 1893* states that “*Bodies such as [a few selected examples] either no longer exist or are covered by other legislation*”. The examples referred to in the Explanatory Memorandum are all incorporated entities and no indication is given as to how unincorporated purpose trusts might be affected by the proposed repeal. The fact that such groups are probably protected by Part IV of the *Trustees Act 1962* is not mentioned in the Explanatory Memorandum.
- Sub-clause 52(2) of the Bill proposes altering *Electricity Corporations Act 2005* s 37 to include a new definition of “renewable energy sources”. The Explanatory Memorandum commentary to this proposed amendment suggests that this is a mere clarification. Further inquiry of the instructing department revealed that, such was the need for clarification, that the matter had been the subject of a legal opinion. Nevertheless the instructing department continued to advise that the amendment was suitable for inclusion in an omnibus statutes review Bill.

2.119 The Committee observes that rather than being a mere irritation in the process of scrutinising a technical measure such as an omnibus statutes review Bill, such

ambiguity leads to significant delay as the Committee liaises with Ministerial and/or Departmental officers to ascertain the full facts.

Recommendation 12: The Committee recommends that Ministers ensure that Explanatory Memorandum commentary relating to inclusions in omnibus statutes review Bills adequately and accurately explain the purpose and effect of proposed amendments prior to the tabling of an omnibus statutes review Bill in the Legislative Council.

Grouping Together Amendments of a Similar Nature?

2.120 The Committee notes that numerous amendments proposed by the Bill relate to the removal of procedures in respect of interest on judgement sums out of the *Supreme Court Act 1935* and into the *Civil Judgments Enforcement Act 2004*. The affected Acts were the *Construction Contracts Act 2004*; *Country Areas Water Supply Act 1947*; *Dampier to Bunbury Pipeline Act 1997*; and the *Land Administration Act 1997*. The Committee's scrutiny of the proposed amendments would have been streamlined if they had been co-located in a separate part of the Bill, rather than having them dispersed throughout Part 3. The Committee recommends that any future omnibus statutes review Bill should group related proposed amendments together for ease of scrutiny.

Recommendation 13: The Committee recommends that, where possible, proposed amendments of a related nature should be co-located in a separate Part or Division within any future omnibus statutes review Bill to streamline the scrutiny process.

PART 4 - IMPERIAL ACTS

2.121 Part 4 of the Bill expunges several Imperial Acts or provisions of Imperial Acts from the Statute Book of Western Australia. The affected Acts are detailed in Appendix 3 to this Report. All appear to be suitable for inclusion in an omnibus statutes review Bill and the proposed amendments should therefore be adopted.



Hon Simon O'Brien MLC
Chairman

16 October 2007

APPENDIX 1
PREMIER'S CIRCULAR 2003/15

APPENDIX 1

PREMIER'S CIRCULAR 2003/15

Premier's Circular

Number:	2003/15
Issue Date:	24/11/2003
Review Date:	24/11/2007

TITLE

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL

POLICY

The Statutes (Repeals and Minor Amendments) Bill ("the Omnibus Bill") is a vehicle for introducing a range of minor, non-controversial legislative amendments and repeals across government.

Matters that will be considered of a minor nature and suitable for inclusion in an Omnibus Bill will include, for instance:

- the repeal of obsolete legislation;
- the correction of typographical and other minor drafting errors; and
- amendments that make legislation more accurate by reflecting changes in names, titles, entities, designations etc.

Amendments will not be considered to be minor where they make substantial changes to the powers, rights, obligations or processes provided for in the legislation concerned, or otherwise impose or increase any obligation or adversely affect any existing rights. Amendments may also cease to be of a minor nature where they insert multiple new sections into the substantive Act, or they are not reasonably clear on their face as to the effect.

The Department of the Premier and Cabinet will also scrutinise proposed amendments closely, to ensure that they do not involve policy changes or matters about which there is some legal or other contention.

A Minister wanting an amendment or repeal included in the Omnibus Bill should seek inclusion in writing to the Director General, Department of the Premier and Cabinet, and provide details of the departmental instructing officer for further consultation.

The Department will liaise with the Minister's office concerning the request and if the above criteria are met, forward the request to Parliamentary Counsel to draft the amendment or repeal. If agreement cannot be met, the final decision will rest with

.../2

- 2 -

the Premier, in consultation with the Leader of the Government in the Legislative Council.

The Department of the Premier and Cabinet will liaise with the departmental instructing officers to prepare explanatory notes to accompany each Omnibus Bill.

BACKGROUND

Cabinet has approved the annual or bi-annual preparation of an Omnibus Bill to make more efficient the Government's legislative program and parliamentary business by reducing the number of amendment Bills that are introduced into Parliament to deal with minor legislative amendments and repeals.

Once introduced into Parliament, Omnibus Bills are scrutinised by the Legislative Council's Standing Committee on Uniform Legislation and Statutes Review, to ensure that they are suitable for inclusion in the Omnibus Bill and recommend whether or not they ought be supported.

DR GEOFF GALLOP MLA
PREMIER

For enquiries contact:	<u>John Lightowers</u> 9222 8740 General Counsel Department of the Premier and Cabinet
Other relevant Circulars:	N/A
Circular/s replaced by this Circular:	N/A

APPENDIX 2
PROPOSED AMENDMENTS CLEARLY SUITABLE FOR INCLUSION IN AN
OMNIBUS BIL

APPENDIX 2

PROPOSED AMENDMENTS SUITABLE FOR INCLUSION IN AN OMNIBUS BILL

Part 3 - Amendments

Clause of Bill	Act Amended
15	<i>Acts Amendment (Equality of Status) Act 2003</i>
16	<i>Acts Amendment (Federal Courts and Tribunals) Act 2001</i>
17	<i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002</i>
18(2) only	<i>Adoption Act 1994</i>
19	<i>Aerial Spraying Control Act 1966</i>
20	<i>Agricultural and Veterinary Chemicals (Western Australia) Act 1995</i>
21	<i>Agricultural Practices (Disputes) Act 1995</i>
22	<i>Architects Act 2004</i>
23	<i>Art Gallery Act 1959</i>
24	<i>Bank Mergers Act 1997</i>
25	<i>Bank of Western Australia Act 1995</i>
26	<i>Betting Control Act 1954</i>
27	<i>Caravan Parks and Camping Grounds Act 1995</i>
28	<i>Cemeteries Act 1986</i>
29	<i>Charitable Collections Act 1946</i>
30	<i>Chattel Securities Act 1987</i>
31	<i>Child Welfare Amendment Act 1990</i>
32(4) only	<i>Children and Community Services Act 2004</i>
35	<i>Conservation and Land Management Amendment Act 1991</i>
36	<i>Conspiracy and Protection of Property Act of 1900</i>
37	<i>Constitution Acts Amendment Act 1899</i>

38	<i>Construction Contracts Act 2004</i>
39	<i>Construction Industry Portable Paid Long Service Leave Act 1985</i>
40	<i>Control of Vehicles (Off-road Areas) Act 1978</i>
41(2)-(5) and (7)-(10) only.	<i>Corruption and Crime Commission Act 2003</i>
42	<i>Country Areas Water Supply Act 1947</i>
43	<i>Court Security and Custodial Services Act 1999</i>
44	<i>Credit Act 1984</i>
45(2)-(4), (8), (10), (19) and (20)	<i>Criminal Property Confiscation Act 2000</i>
46	<i>Curriculum Council Act 1997</i>
47	<i>Dampier to Bunbury Pipeline Act 1997</i>
48	<i>Disposal of Uncollected Goods Act 1970</i>
49	<i>Dog Act 1976</i>
51	<i>Electricity Act 1945</i>
53	<i>Electricity Transmission and Distribution Systems (Access) Act 1994</i>
54	<i>Employers' Indemnity Supplementation Fund Act 1980</i>
55	<i>Employment Agents Act 1976</i>
56	<i>Energy Coordination Act 1994</i>
57	<i>Environmental Protection Act 1986</i>
58	<i>Environmental Protection Amendment Act 2003</i>
59	<i>Exotic Diseases of Animals Act 1993</i>
60	<i>Fair Trading Act 1987</i>
61	<i>Fire and Emergency Services Authority of Western Australia Act 1998</i>
62	<i>Firearms Act 1973</i>
63	<i>Firearms Amendment Act 2004</i>
64	<i>Fish Resources Management Act 1994</i>

65	<i>Fisheries Adjustment Schemes Act 1987</i>
66(4) only.	<i>Forest Products Act 2000</i>
68	<i>Gas Pipelines Access (Western Australia) Act 1998</i>
69	<i>Gold Corporation Act 1987</i>
70	<i>Governor's Establishment Act 1992</i>
72	<i>Guardianship and Administration Act 1990</i>
73	<i>Hairdressers Registration Act 1946</i>
74	<i>Health Act 1911</i>
75	<i>Health Amendment Act 1987</i>
77	<i>Hire-Purchase Act 1959</i>
78	<i>Home Building Contracts Act 1991</i>
79	<i>Human Reproductive Technology Act 1991</i>
80	<i>Industrial Relations Act 1979</i>
81	<i>Inspector of Custodial Services Act 2003</i>
82	<i>Insurance Commission of Western Australia Act 1986</i>
83	<i>Interpretation Act 1984</i>
84	<i>Iron Ore (Marillana Creek) Agreement Act 1991</i>
85	<i>Jetties Act 1926</i>
86.	<i>Jurisdiction of Courts (Cross-Vesting) Act 1987</i>
87	<i>Kalgoorlie and Boulder Racing Clubs Act 1904</i>
88	<i>Land Administration Act 1997</i>
89	<i>Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947</i>
90	<i>Law Reform (Miscellaneous Provisions) Act 1941</i>
91(3) and (4) only.	<i>Legal Aid Commission Act 1976</i>
92(2), (3) and (4) only.	<i>Legal Practice Act 2003</i>
93	<i>Legal Practitioners Act Amendment Act 1944</i>
94	<i>Litter Act 1979</i>

95(4) only.	<i>Local Government Act 1995</i>
96	<i>Local Government Amendment Act 2004</i>
97	<i>Lotteries Commission Act 1990</i>
98	<i>Magistrates Court Act 2004</i>
99	<i>Maritime Archaeology Act 1973</i>
101	<i>Mine Workers' Relief Act 1932</i>
102	<i>Mining Amendment Act 1996</i>
103	<i>Motor Vehicle Dealers Act 1973</i>
104	<i>National Environment Protection Council (Western Australia) Act 1996</i>
105	<i>National Trust of Australia (W.A.) Act 1964</i>
106	<i>Painters' Registration Act 1961</i>
107	<i>Parks and Reserves Act 1895</i>
108	<i>Perth Theatre Trust Act 1979</i>
110	<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i>
109	<i>Planning and Development Act 2005</i>
111	<i>Poisons Act 1964</i>
112	<i>Police Act 1892</i>
113(2) only.	<i>Port Authorities Act 1999</i>
114(3) only.	<i>Professional Combat Sports Act 1987</i>
115	<i>Public and Bank Holidays Act 1972</i>
116	<i>Public Interest Disclosure Act 2003</i>
117	<i>Queen Elizabeth II Medical Centre Act 1966</i>
119	<i>Radiation Safety Act 1975</i>
120	<i>Real Property (Foreign Governments) Act 1951</i>
121	<i>Referendums Act 1983</i>
122	<i>Reprints Act 1984</i>
123	<i>Retirement Villages Act 1992</i>

124	<i>Road Traffic Amendment (Vehicle Licensing) (Taxing) Act 2001</i>
125	<i>Road Traffic Amendment Act (No 2) 1987</i>
126	<i>Road Traffic Amendment Act 1996</i>
128	<i>Salaries and Allowances Act 1975</i>
129	<i>Sentencing Act 1995</i>
131	<i>Sentencing Legislation Amendment Act 2004</i>
130	<i>Sentencing Legislation Amendment and Repeal Act 2003</i>
132	<i>Settlement Agents Act 1981</i>
133	<i>Sports Drug Testing Act 2001</i>
134	<i>Stamp Act 1921</i>
135	<i>State Administrative Tribunal Act 2004</i>
136	<i>Statutory Corporations (Liability of Directors) Act 1996</i>
137	<i>Suitors' Fund Act 1964</i>
138	<i>Surveillance Devices Act 1998</i>
139	<i>Swan Valley Planning Legislation Amendment Act 2006</i>
140	<i>Taxation (Staff Arrangements) Act 1969</i>
141	<i>Travel Agents Act 1985</i>
142	<i>Trustees Act 1962</i>
143	<i>University Colleges Act 1926</i>
144	<i>Valuation of Land Act 1978</i>
145	<i>Veterinary Surgeons Act 1960</i>
146	<i>Video Tapes Classification and Control Amendment Act 1991</i>
147	<i>Water Boards Act 1904</i>
148(2) and (6) only.	<i>Water Corporation Act 1995</i>
149 (2) and (3) only.	<i>Water Services Licensing Act 1995</i>
150	<i>Western Australian Coastal Shipping Commission Act 1965</i>
151	<i>Western Australian College of Teaching Act 2004</i>

153	<i>Western Australian Marine Act 1982</i>
155	<i>Workers' Compensation and Injury Management Act 1981</i>
156	<i>Working with Children (Criminal Record Checking) Act 2004</i>

Part 4 - Imperial Acts

Clauses 158 and 159

- *Bills of Exchange (non-payment) Act 1832* (2 & 3 Will. IV c. 98)
- *Bills of Exchange (day for payment) Act 1836* (6 & 7 Will. IV c. 58)
- *Executors Act 1830* (11 Geo. IV & 1 Will. IV c. 40)
- *Judgements Act 1839* s 11, 12 and 14 (2 & 3 Vict. c. 11)
- *Judgements Act 1855* s 9 (18 & 19 Vict. c. 15)
- *An Act for the Amendment of the Law relating to Dower* (1833) (3 & 4 Will. IV c. 105)
- *An Act for the Amendment of the Law of Inheritance* (1833) (3 & 4 Will. IV c. 106)
- *An Act for the Removal of Defects in the Administration of Criminal Justice* (1848) (11 & 12 Vict. c. 46)

APPENDIX 3
DRAFT AMENDMENTS ADVISED BY MR J. LIGHTOWLERS

APPENDIX 3

DRAFT AMENDMENTS ADVISED BY MR J. LIGHTOWLERS

Statutes (Repeals and Minor Amendments) Bill 2006 — Draft amendments

Legislative Council

Statutes (Repeals and Minor Amendments) Bill 2006
(No. 170—1)

When in Committee on the *Statutes (Repeals and Minor Amendments) Bill 2006*:

Clause 18

The Minister representing the Premier: To move —

Page 10, lines 1 to 5 — To delete the lines and insert instead —

“

(3) Section 52(1) is amended as follows:

(a) in paragraph (a) by deleting subparagraphs (iii) to (iiie) and the “or” after subparagraph (iiid) and inserting instead —

“

(iii) satisfies the age differential requirement set out in subsection (3);

”;

(b) after each of paragraphs (a) to (c), paragraph (a)(i) to (va) and paragraph (c)(i) by inserting —

“ and ”.

”.

The Minister representing the Premier: To move —

Page 10, after line 7 — To insert —

“

(5) After section 52(2) the following subsection is inserted —

“

(3) For the purposes of subsection (1)(a)(iii) the age differential requirement is that the prospective adoptive parent —

(a) is not more than 45 years older than the child in the case where the prospective adoptive parent is the younger of prospective joint adoptive parents who, as a couple, have not adopted a child before; or

(b) is not more than 50 years older than the child in the case where the prospective adoptive parent is the older of prospective joint adoptive parents who, as a couple, have not adopted a child before; or

(c) is not more than 50 years older than the child in the case where the prospective adoptive parent is the younger of

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- prospective joint adoptive parents who, as a couple, have adopted a child before; or
- (d) is not more than 55 years older than the child in the case where the prospective adoptive parent is the older of prospective joint adoptive parents who, as a couple, have adopted a child before; or
 - (e) is not more than 45 years older than the child in the case where the prospective adoptive parent is a prospective sole adoptive parent and has not adopted a child before (whether as a joint or sole adoptive parent); or
 - (f) is not more than 50 years older than the child in the case where the prospective adoptive parent is a prospective sole adoptive parent and has adopted a child before (whether as a joint or sole adoptive parent).

Clause 41

The Minister representing the Premier: To move —

Page 19, line 8 — To delete “27(1)(a)” and insert instead —

“ 27A(1)(a) ”.

The Minister representing the Premier: To move —

Page 19, line 11 — To delete “27(1)(b)” and insert instead —

“ 27A(1)(b) ”.

APPENDIX 4
COMPANIES CODE RELATED REGULATIONS TO BE REPEALED

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COMPANIES CODE RELATED REGULATIONS TO BE REPEALED

- *Companies Regulations 1976*
- *Companies (Fees) Regulations 1977*
- *Companies (Busselton Beach Resort) Regulations 1982*
- *Companies (Acquisition of Shares) (Western Australia) Regulations*
- *Companies (Acquisition of Shares Fees) (Western Australia) Regulations*
- *Companies (Acquisition of Shares) (Application of Laws) Regulations 1981*
- *Companies (Acquisition of Shares) (Application of Laws-Regulations) Regulations 1982*
- *Companies (Acquisition of Shares) (Application of Laws) Regulations 1983*
- *Companies (Acquisition of Shares) (Application of Laws) Regulations 1986*
- *Companies (Acquisition of Shares) (Application of Laws) (No. 2) Regulations 1986*
- *Companies (Acquisition of Shares) (Application of Laws) (No. 3) Regulations 1986*
- *Companies (Acquisition of Shares) (Application of Laws) (Penalty Notices) Regulations 1989*
- *Companies (Application of Laws- Regulations) Regulations 1982*
- *Companies (Application of Laws) Regulations 1982*
- *Companies (Application of Laws- Transitional Provisions) Regulations 1982*
- *Companies (Application of Laws-Fees) Regulations 1982*
- *Companies (Fees) (Western Australia) Regulations*
- *Companies (Western Australia) Regulations*
- *Companies (Application of Laws) (No.2) Regulations 1982*

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- *Companies (Application of Laws) Regulations 1983*
 - *Companies (Application of Laws) – Regulations 1986*
 - *Companies (Application of Laws- Regulations) Regulations 1986*
 - *Companies (Application of Laws- Regulations) (No. 2) Regulations 1986*
 - *Companies (Application of Laws) (No.2) Regulations 1986*
 - *Companies (Application of Laws) (No.3) Regulations 1986*
 - *Companies (Application of Laws) (Exemption) Regulations 1986*
 - *Companies (Application of Laws) (No.2) Regulations 1987*
 - *Companies (Application of Laws) (Penalty Notices) Regulations 1989*
 - *Companies (Application of Laws) (Amendment) Regulations 1989*
 - *Futures Industry (Western Australia) Regulations*
 - *Futures Industry (Fees) (Western Australia) Regulations*
 - *Futures Industry (Application of Laws) Regulations 1987*
 - *Futures Industry (Application of Laws) (Penalty Notices) Regulations 1989*
 - *Futures Industry (Application of Laws) (Amendment) Regulations 1989*
 - *Marketable Securities Transfer Regulations 1971*
 - *Security Industry Regulations 1976*
 - *Securities Industry (Western Australia) Regulations*
 - *Securities Industry (Fees) (Western Australia) Regulations*
 - *Securities Industry (Application of Laws) Regulations 1981*
 - *Securities Industry (Application of Laws) Regulations 1982*
 - *Securities Industry (Application of Laws-Regulations) Regulations 1982*
 - *Securities Industry (Application of Laws) Regulations 1983*
 - *Securities Industry (Application of Laws) Regulations 1986*

- *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Regulations 1986*
- *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Regulations 1987*
- *Securities Industry (Application of Laws) Regulations 1987*
- *Securities Industry (Application of Laws) (No. 2) Regulations 1987*
- *Securities Industry (Application of Laws) (Penalty Notices) Regulations 1989*
- *Securities Industry (Application of Laws) (Amendment) Regulations 1989*
- *Companies and Securities Industry (Retirement Villages) Regulations 1990*

APPENDIX 5
FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

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FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

Does the legislation have sufficient regard to the rights and liberties of individuals?
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1. Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?
2. Is the Bill consistent with principles of natural justice?
3. Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons? Sections 44(8)(c) and (d) of the *Interpretation Act 1984*. The matters to be dealt with by regulation should not contain matters that should be in the Act not subsidiary legislation.
4. Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?
5. Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?
6. Does the Bill provide appropriate protection against self-incrimination?
7. Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?
8. Does the Bill confer immunity from proceeding or prosecution without adequate justification?
9. Does the Bill provide for the compulsory acquisition of property only with fair compensation?
10. Does the Bill have sufficient regard to Aboriginal tradition and Island custom?
11. Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

Does the Bill have sufficient regard to the institution of Parliament?

12. Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?
13. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?
14. Does the Bill allow or authorise the amendment of an Act only by another Act?
15. Does the Bill affect parliamentary privilege in any manner?
16. In relation to uniform legislation where the interaction between state and federal powers is concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament?