THIRTY-EIGHTH PARLIAMENT

REPORT 57

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2010

Presented by Hon Adele Farina MLC (Chairman)

February 2011

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."

Members as at the time of this inquiry:

Hon Adele Farina MLC (Chairman)	Hon Liz Behjat MLC
Hon Nigel Hallett MLC (Deputy Chairman)	Hon Linda Savage MLC

Staff as at the time of this inquiry:

Susan O'Brien, Advisory Officer (Legal)	Mark Warner, Committee Clerk
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EXECUTIVE SUMMARY

1 The Committee has examined the Statutes (Repeals and Minor Amendments) Bill 2010 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 28 clauses propose the repeal of four Acts and two items of subsidiary legislation as well as the amendment of 78 Acts and one item of subsidiary legislation. The Committee finds that all of the proposed repeals and amendments are suitable for inclusion in an omnibus statutes review bill.

3 The Committee has made 17 narrative form recommendations and two statutory form recommendations regarding the Bill.

RECOMMENDATIONS

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

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Recommendation 1: The Committee recommends that clause 10 of the Bill be passed, subject to clause 28(2), row 20 also being passed.

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Recommendation 2: The Committee recommends that the Parliamentary Secretary representing the Attorney General explain why, in clause 12(2) of the Bill, the phrase "*to the Account*" has been proposed instead of "*to the Consumer Credit Account*".

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Recommendation 3: The Committee recommends that the Parliamentary Secretary representing the Attorney General explain the rationale for replacing the term "*defendant*" with "*accused*" in criminal proceedings in clause 15(2) of the Bill.

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Recommendation 4: The Committee recommends that clause 15(2), rows 3, 4 and 9 be deleted from the Bill.

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Recommendation 5: The Committee recommends that the Parliamentary Secretary representing the Attorney General advise the Legislative Council if the expiry of the *Fair Trading Act 1987* has been proclaimed. If so, the Committee further recommends that clause 15(2), row 5 be deleted from the Bill.

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Recommendation 6: The Committee recommends that the Parliamentary Secretary representing the Attorney General advise the Legislative Council the reason for not replacing the word "*defendant*" with "*accused*" in:

sections 97(7) and 102(3) of the *Petroleum (Submerged Lands) Act 1982* at clause 15(2), row 6;

sections 91(4) and 96(3) of the *Petroleum and Geothermal Energy Resources Act 1967* at clause 15(2), row 7; and

section 42(4) of the *Petroleum Pipelines Act 1969* at clause 15(2), row 8.

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Recommendation 7: The Committee recommends that the Parliamentary Secretary representing the Attorney General clarify the correct name of the entity provided for by the *Registration of Deeds Act 1856.*

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Recommendation 8: The Committee recommends that the Parliamentary Secretary representing the Attorney General advise the Legislative Council if section 49 of the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* (which repeals the *Argentine Ant Act 1968* and therefore its reference to the 'Registrar of Deeds') has commenced. If not, the Committee recommends that section 15(1)(b) of the *Argentine Ant Act 1968* be amended to refer to the 'Registrar of Deeds and Transfers'.

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Recommendation 9: The Committee recommends that the Parliamentary Secretary representing the Attorney General explain why sections 170(3) and (4) of the *Land Administration Act 1997* are not amended by clause 16(2), row 8 of the Bill.

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Recommendation 10: The Committee recommends that clause 16(2), row 16 of the Bill be amended as follows:

Page 11, row 16, To delete s.79(2)(a)

Page 11, row 16, To insert s.79(b)(i)

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Recommendation 11: The Committee recommends that clause 16(2), row 22 of the Bill be amended as follows:

Page 12, row 22, To delete s.160(2)(a)

Page 12, row 22, To insert s.160(b)(i)

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Recommendation 12: The Committee recommends that the Parliamentary Secretary representing the Attorney General clarify whether the intention of clause 18(2) of the Bill is to limit the persons who may administer oaths of office.

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Recommendation 13: The Committee recommends that clause 23(2) of the Bill be passed.

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Recommendation 14: The Committee recommends that clause 24(2) of the Bill be passed.

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Recommendation 15: The Committee recommends that the Parliamentary Secretary representing the Attorney General explain why the proposed new definition "*Interest Account*" in clause 26(3) of the Bill should not be "*Board Interest Account*"; or alternatively, why the term: "*Interest Account*" is not substituted for "*Board Interest Account*" in section 125(1) of the *Real Estate and Business Agents Act 1978* which establishes the relevant account.

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Recommendation 16: The Committee recommends that the Parliamentary Secretary representing the Attorney General explain why upper case has been proposed for the terms "*Council*" and "*Union*" in clause 28(2), row 3 of the Bill.

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Recommendation 17: The Committee recommends that the Parliamentary Secretary representing the Attorney General confirm that the term "*stamp duty*" in section 45 of the *Evidence Act 1906* is to be retained in that Act.

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Recommendation 18: The Committee recommends that the Parliamentary Secretary representing the Attorney General explain the reason for expanding the definition of "*written law*" in clause 28(2), row 17 of the Bill.

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Recommendation 19: The Committee recommends that, subject to its other recommendations, the Statutes (Repeals and Minor Amendments) Bill 2010 be passed.

REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

IN RELATION TO THE STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2010

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1 REFERENCE AND PROCEDURE

1.1 The Statutes (Repeals and Minor Amendments) Bill 2010 (**Bill**) is the fifth omnibus statutes review bill to be referred to the Uniform Legislation and Statutes Review Committee (**Committee**) under its current terms of reference.

1.2 In a general sense, the Bill is a matter for the Committee's scrutiny due to the requirement to consider and report on any matter referred by the Legislative Council under paragraph (f) of the Committee's Terms of Reference. More specifically, the Bill is incidental to paragraph (d) of the Committee's Terms of Reference, namely, to review the form and content of the statute book.

1.3 The 2010 Bill was introduced into the Legislative Council on 8 September 2010 by Hon Michael Mischin MLC, Parliamentary Secretary to the Attorney General. Pursuant to past practice of the Legislative Council, the Bill was referred to the Committee for consideration and report immediately following the Second Reading Speech. This innovation had been suggested in the Committee's report on the Statutes Law Revision Bill 2005.[1] No reporting date was imposed.

2 OMNIBUS BILLS

2.1 The Second Reading Speech for the Bill explains the characteristics of an omnibus statutes review bill:

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

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[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.

> *and repeals. They also help to weed out spent or redundant legislation from the statute book.*[2]

2.2 These characteristics are reiterated in a new *Premier's Circular 2010/01* issued in February 2010 which, amongst other things, states:

> *Examples of matters that may be suitable for inclusion include: the repeal of obsolete legislation; the correction of typographical, grammatical and other minor errors of presentation; amendments to update names, titles, entities, designations etc.*
>
> *A provision will be included in an Omnibus Bill only if its effect is clear on the face of the provision.*
>
> *An Omnibus Bill is not a vehicle for implementing a change in Government policy or dealing with an issue that may be controversial or legally or otherwise contentious.*
>
> *A matter will not be included in an Omnibus Bill if it: affects any existing right, obligation, power, or duty; or changes any process provided for in legislation; or involves the insertion of multiple new sections into an Act.*[3]

3 STRUCTURE AND CONTENTS OF THE BILL

3.1 The Bill contains 28 clauses in three Parts and proposes to:

- repeal four Acts;
- repeal two items of subsidiary legislation;
- amend 78 Acts; and
- amend one item of subsidiary legislation.

3.2 The Long Title of the Bill states that it is "*An Act to amend the statute law by repealing various written laws and making minor amendments to various other written laws*".

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[2] Hon Michael Mischin MLC, Parliamentary Secretary to the Attorney General, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 8 September 2010, p6115a.

[3] *Premier's Circular 2010/01*, Statutes (Repeals and Minor Amendments) Bill, 11 February 2010, p1. It replaced *Premier's Circular 2003-15*. DC Pearce and RS Geddes *Statutory Interpretation in Australia*, Sixth Edition, Butterworths, Sydney, 2001 at p262 state that the courts assume statute law revision Acts are not intended to change the substance of the law. They are used more to tidy up the statute book, often before consolidation or reprinting occurs.

3.3 The Bill has no objects clause and lacks a general statement of objects in the *Explanatory Memorandum and Clause Notes* (**EM**) to the Bill. The clearest and most comprehensive statement of the Bill's purpose is provided in the Second Reading Speech by the Parliamentary Secretary as follows:

> *The bill deals with two main categories of amendments: acts repealed and acts amended.*
>
> *Part 2 of the bill provides for the repeal of unproclaimed, obsolete, redundant, spent and consequential amendments necessary as a result of those repeals.*
>
> *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 are considered 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 the legislation; those arising out of the enactment or repeal of other legislation; and those updating terminology.*[4]

4 SELECTED CLAUSES IN THE BILL

4.1 The Committee draws the following clauses to the attention of the House.

Clause 3

4.2 Clause 3(c) proposes to repeal regulations made under the *Miner's Phthisis Act 1922* which were published in the *Government Gazette W.A.* on 4 September 1925 (known as the Miner's Phthisis Regulations). The Committee noted that it is unusual for regulations to be repealed via another unrelated Act when the principal Act can effect that repeal or if the principal Act is repealed, any regulations made under it wither away.

4.3 The Committee noted that section 11 of the *Miner's Phthisis Act 1922* provides the Governor with a general, 'necessary or convenient' regulation making power. Section 43(4) of the *Interpretation Act 1984* then provides that a power to make regulations includes a power to repeal them.

4.4 Although the EM to the Bill states that the *Miner's Phthisis Act 1922* is obsolete,[5] nevertheless it forms part of the statute law of Western Australia and section 11 could

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4 Hon Michael Mischin MLC, Parliamentary Secretary to the Attorney General, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 8 September 2010, p6115a.

5 The Explanatory Memorandum and Clause Notes, p4.

have been utilised to repeal the Miner's Phthisis Regulations. The inclusion of clause 3(c) tidies the statute book.

Clause 10

4.5 Clause 10 of the Bill repeals the *Swan and Canning Rivers (Transitional) Regulations (No. 2) 2007.* According to the EM, those regulations were made to address a drafting error in the principal legislation:

> *The repeal of these regulations is to be effected in consequence of the amendment proposed in Clause 28 Row 20 to section 29 of the Swan and Canning Rivers Management Act 2006. Section 13 of the Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006 provides for certain leases made under the Marine and Harbours Act 1981 to continue as leases under the Swan and Canning Rivers Management Act 2006. Section 29(8) of the Swan and Canning Rivers Management Act 2006 refers to leases referred to in section 14, rather than section 13, of the Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006. Under section 9 of the Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006 if no sufficient provision is made in the Act for dealing with a transitional provision, regulations may be made to deal with that matter.*
>
> *When the error in section 29(8) of the Swan and Canning Rivers Management Act 2006 was discovered, the Swan and Canning Rivers (Transitional) Regulations (No. 2) 2007 were made to cover the situation until section 29(8) could be amended. The regulations simply repeat section 29(8) in so far as it applies to the continued leases but with the correct cross reference. Clause 28 Row 20 of this Bill will amend section 29(8) to correct the cross-reference. As this will render the Swan and Canning Rivers (Transitional) Regulations (No. 2) 2007 redundant, Clause 10 will repeal those regulations.*[6]

4.6 Clause 28(2), row 20 of the Bill proposes amending section 29(8) of the *Swan and Canning Rivers Management Act 2006* to correct that drafting error. If clause 28(2), row 20 is passed, the regulations become obsolete. Procedurally, clause 10 of the Bill should only be passed in the event clause 28(2), row 20 of the Bill is passed.

Recommendation 1: The Committee recommends that clause 10 of the Bill be passed, subject to clause 28(2), row 20 also being passed.

[6] The Explanatory Memorandum and Clause Notes, p9.

Clauses 11 to 14

References to the Financial Administration and Audit Act 1985 in other legislation

4.7 Clauses 11 to 14 amend several principal Acts to acknowledge enactment of the *Financial Management Act 2006* and consequent repeal of the *Financial Administration and Audit Act 1985*.[7]

4.8 The Committee observed that the *Financial Administration and Audit Act 1985* remains referenced in the Compilation Tables and Notes to the Compilation Tables of 42 other Acts. As these do not form part of an enactment such references would not be amended by a statues revision bill.[8] Other references are located in savings provisions which have long since come into effect or transitional provisions which have exhausted their effect. They may be omitted through reprints.

Clause 12(2)

4.9 Clause 12(2) proposes amendment of section 44B(2)(a) of the *Credit (Administration) Act 1984* to reflect a change in terminology effected by enactment of the *Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010*.[9] However, the term "*Account*" in the proposed phrase "*to the Account*", is neither defined nor used elsewhere in the *Credit (Administration) Act 1984.* Instead, that Act consistently uses the term "*Consumer Credit Account.*"

4.10 The full text of section 44B(2) is as follows:

> *(2) The Consumer Credit Account is to be credited with —*
>
> > *(a) any amount paid <u>to the fund</u> by a credit provider;* (the underlined words are proposed to be changed to the phrase: "to the Account")
> >
> > *(b) income derived from the investment, under section 44A, of moneys standing to the credit of the Consumer Credit Account;*
> >
> > *(c) any moneys received by, made available to or payable to the Consumer Credit Account;*

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7 The *Financial Administration and Audit Act 1985* was repealed by section 3 of the *Financial Management (Transitional Provisions) Act 2006.*

8 The Committee utilised the search function on the State Law Publisher website which allows a search of all Acts for a particular search item.

9 The Explanatory Memorandum and Clause Notes, p11. Enactment of the *Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010* occurred on 25 June 2010.

> *(d) costs awarded to the Commissioner in a proceeding under this Act; and*
>
> *(e) costs awarded to the Commissioner in a proceeding under the Credit Act 1984.*

4.11 For consistency in drafting and because the capital "*A*" in "*Account*" indicates a defined term, which is not in fact the case in the *Credit (Administration) Act 1984*, clause 12(2) requires amendment to include the words "*Consumer Credit*" before "*Account*".

4.12 The Committee draws this matter to the attention of the Attorney General and queries whether there is any reason why the phrase "*to the Account*" has been used instead of "*to the Consumer Credit Account*".

Recommendation 2: The Committee recommends that the Parliamentary Secretary representing the Attorney General explain why, in clause 12(2) of the Bill, the phrase "*to the Account*" has been proposed instead of "*to the Consumer Credit Account*".

Clause 15(2) of the Table

4.13 Clause 15(2) replaces the term "*defendant*" with "*accused*" in criminal proceedings in 10 Acts that were inadvertently omitted during the passage of clause 82 of the *Criminal Procedure and Appeals (Consequential and Other Provisions) Bill 2004*.[10]

4.14 The Committee was advised that in 2004, the Parliamentary Counsel's Office had undertaken a project which involved identifying those sections in all enactments where the replacement of the term "*defendant*" with "*accused*" was appropriate. However, the Committee has been unable to ascertain the impetus for the 2004 project, corporate memory of the exercise having now been lost. One possible explanation is that the term "*accused*" carries criminal connotations whereas the term "*defendant*" remains in the various Acts amended where it is used in connection with civil actions, rather than offences. This is evidenced in the EM which states (for example, with respect to amendments made to the *Petroleum Pipelines Act 1969*):

> *Schedule 1 was inserted by the Petroleum Legislation Amendment and Repeal Act 2005 which was in Parliament at the same time as the Courts legislation. As a result Schedule 1 refers to "defendant" rather than "accused". The other references in Schedule 1 to*

[10] The relevant Bill was originally titled the Criminal Procedure and Appeals (Consequential Provisions) Bill 2004. Its title was changed on 26 November 2004 to Criminal Procedure and Appeals (Consequential and Other Provisions) Bill 2004. Clause 82 of that bill made amendments to 94 enactments.

"defendant" are not amended as they relate to civil, not criminal, proceedings.

4.15 The Committee noted that during passage of the Criminal Procedure and Appeals (Consequential and Other Provisions) Bill 2004, the rationale behind the project was not explained in either the explanatory memorandum or second reading speech. Clause 82 itself was not debated. The Committee is of the view that the rationale for the project and therefore the residual omitted provisions, the subject of clause 15(2), should be explained in the Legislative Council for the public record.

Recommendation 3: The Committee recommends that the Parliamentary Secretary representing the Attorney General explain the rationale for replacing the term "*defendant*" with "*accused*" in criminal proceedings in clause 15(2) of the Bill.

Clause 15(2) of the Table at rows 3, 4 and 9

4.16 The Committee noted that recently proclaimed sections 14(b), (c) and (j) of the *Health Practitioner Regulation National Law (WA) Act 2010* repealed respectively the:

- *Dental Act 1939;*
- *Dental Prosthetists Act 1985*; and
- *Pharmacy Act 1964*.

4.17 Clause 15, rows 3, 4 and 9 propose to amend enactments that now no longer exist. These three rows will therefore be ineffective and require deletion. The Parliamentary Counsel's Office confirmed that as a result of the three enactments being effectively repealed on 18 October 2010, they are now redundant and can be deleted from the Bill.[11]

Recommendation 4: The Committee recommends that clause 15(2), rows 3, 4 and 9 be deleted from the Bill.

Clause 15(2) of the Table at row 5

4.18 Clause 15(2), row 5 proposes amendment of section 30(4) of the *Fair Trading Act 1987* to delete the word "*defendant*" at each occurrence and insert the word "*accused*".

[11] Letter from the Parliamentary Counsel's Office, 21 January 2011, p1.

However, clause 128 of the Fair Trading Bill 2010, introduced to the Legislative Council on 20 October 2010, proposed the expiry of the *Fair Trading Act 1987*.[12]

4.19 The Fair Trading Bill 2010 passed through the Parliament and came into operation on 1 January 2011 making, at first glance, clause 15(2), row 5 redundant. The Parliamentary Counsel's Office explained that section 127 of *the Fair Trading Act 2010* inserted a new section 3A into the *Fair Trading Act 1987* which states that the *Fair Trading Act 1987* does not apply on or after the date on which Part 10 of the *Fair Trading Act 2010* comes into force.[13] However, this must be qualified by new section 3C(2) of the *Fair Trading Act 1987* which states that it:

> *continues to apply for certain purposes (which are transitional, relating to offences committed, or proceedings instituted, before 1 January 2011).*

4.20 Further:

> *New section 3B provides for the 1987 Act to expire when it is has been certified that the 1987 Act is not longer necessary, that is, when all transitional matters have been completed.*
>
> *The amendment effected by cl.15 row 5 is relevant to the purposes for which the 1987 Act continues to apply, and should be made.*
>
> *However, if the expiry of the 1987 Act is proclaimed while the Bill is still before Parliament, it will be appropriate to delete cl. 15 row 5 from the Bill.*[14]

4.21 Given this explanation, the Committee makes the following recommendation.

Recommendation 5: The Committee recommends that the Parliamentary Secretary representing the Attorney General advise the Legislative Council if the expiry of the *Fair Trading Act 1987* has been proclaimed. If so, the Committee further recommends that clause 15(2), row 5 be deleted from the Bill.

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12 The Long Title of that bill states that it is a "*bill for an Act to promote and encourage fair trading practices and a competitive and fair market, and protect the interests of consumers, by applying* the Australian Consumer Law *(with modifications) as a law of Western Australia, and providing for codes of practice; and provide for the powers and functions of a Commissioner, including powers to carry out investigations into alleged breaches of this Act; and provide for the repeal of the* Consumer Affairs Act 1971, Fair Trading Act 1987 and Door to Door Trading Act 1987."

13 Part 10 titled "*Amendments*" concerns the *Consumer Affairs Act 1971*; the *Door to Door Trading Act 1987*; and the *Fair Trading Act 1987*.

14 Letter from the Parliamentary Counsel's Office, 21 January 2011, p2.

Clause 15(2) of the Table at rows 6, 7 and 8

Row 6 - Petroleum (Submerged Lands) Act 1982

4.22 In addition to the proposed amendments to replace the term "*defendant*" with "*accused*" in Schedule 5, clauses 77(2) and 81, the Committee noted that the term "*defendant*" is also used in:

- section 97(7), which provides:

  It is a defence if a person charged with failing to comply with a provision of this section, or a defendant in an action arising out of a failure by the defendant to comply with a provision of this section, proves that he took all reasonable steps to comply with that provision.

  Penalty: For contravention of subsections (1) to (5), $10 000.

  and

- section 102(3), which provides:

  It is a defence if a person charged with failing to comply with a direction given or applicable to the person under this Part or under the regulations, or a defendant in an action under subsection (2), proves that he took all reasonable steps to comply with the direction.

Row 7 - Petroleum and Geothermal Energy Resources Act 1967

4.23 In addition to the proposed amendments to replace the term "*defendant*" with "*accused*" in Schedule 1, clauses 76(2) and 80, the Committee noted that the term "*defendant*" is also used in:

- section 91(4), which provides:

  It is a defence if a person charged with failing to comply with a provision of this section, or a defendant in an action arising out of a failure by the defendant to comply with a provision of this section, proves that he took all reasonable steps to comply with that provision.

  Penalty: For contravention of subsection (1), (2), (2a) or (3),

  $10 000;

  and

- section 96(3), which provides:

> *It is a defence if a person charged with failing to comply with a direction given or applicable to the person under this Part or under the regulations or a defendant in an action under subsection (2) proves that he took all reasonable steps to comply with the direction.*

Row 8 - Petroleum Pipelines Act 1969

4.24 In addition to the proposed amendments to replace the term "*defendant*" with "*accused*" in Schedule 1, clauses 76(2) and 80, the Committee noted that the term "*defendant*" is also used in section 42(4), which provides:

> *It is a defence if a person charged with failing to comply with a direction given or applicable to the person under this Act or under the regulations, or a defendant in an action under subsection (2), proves that that person took all reasonable steps to comply with the direction.*

Possible explanation

4.25 A possible reason for not changing the term "*defendant*" to "*accused*" in the identified sections of the three enactments (above) may be that the relevant proceedings are for civil offences but this requires confirmation. There is nothing in the sections of the three enactments that suggests those sections relate to civil, rather than criminal offences and for this reason, the Committee makes the following recommendation.

Recommendation 6: The Committee recommends that the Parliamentary Secretary representing the Attorney General advise the Legislative Council the reason for not replacing the word "*defendant*" with "*accused*" in:

sections 97(7) and 102(3) of the *Petroleum (Submerged Lands) Act 1982* at clause 15(2), row 6;

sections 91(4) and 96(3) of the *Petroleum and Geothermal Energy Resources Act 1967* at clause 15(2), row 7; and

section 42(4) of the *Petroleum Pipelines Act 1969* at clause 15(2), row 8.

Clause 16(2) of the Table

4.26 Clause 16(2) amends a number of written laws to reflect what is said to be the "*correct*" title of the entity administering the *Registration of Deeds Act 1856*. The

EM states that the *Registration of Deeds Act 1856* established the "*Registrar of Deeds and **Titles***" but section 2 of that Act refers to a "*Registrar of Deeds and **Transfers***".[15]

4.27 The correct title of the entity is the "*Registrar of Deeds and Transfers*", not "*Registrar of Deeds and Titles*" as the EM mistakenly asserts. The Committee is of the view that the name of the entity should be clarified for the public record and therefore makes the following recommendation.

Recommendation 7: The Committee recommends that the Parliamentary Secretary representing the Attorney General clarify the correct name of the entity provided for by the *Registration of Deeds Act 1856.*

Obsolete provisions in Acts not deleted

4.28 The EM states:

> *There are also references to the Registrar of Deeds in a number of provisions that have no ongoing legal effect. As they are now historic references it would not be appropriate to change them so they are also not included.*[16]

4.29 This advice in the EM raises the question of whether there are redundant provisions in Acts that should be deleted given the statement in the *Premier's Circular 2010/01* that a subject matter suitable for inclusion in an omnibus bill is the "*the repeal of obsolete legislation*". Clarity of the statute book requires deletion of obsolete and other unnecessary provisions.

4.30 The Committee sought a list of the historic provisions referred to in the EM which is replicated at **Appendix 1**. The Parliamentary Counsel's Office explained that 16 enactments retain the reference to the 'Registrar of Deeds'. Of these:

- 12 are transitional and having been carried into effect, amendment would have not have any legal effect;[17]

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15 The Explanatory Memorandum and Clause Notes, p23.

16 The Explanatory Memorandum and Clause Notes, p24.

17 *Country Housing Act 1988* at Schedule 2, paragraph 8. Section 178(1)(b) of the *Electricity Corporations Act 2005*. Part 7 of the *Public Transport Authority Act 2003*. Section 41 of the *Regional Development Act 1993*. Section 47 of the *Taxi Act 1994*. *Australia and New Zealand Banking Group Act 1970*. *The Bank of Adelaide (Merger) Act 1980*. *The Commercial Bank of Australia (Merger) Act 1982*. *The Commercial Bank of Sydney Limited (Merger) Act 1982*. *Anglican Church of Australia (Diocese of North West Australia) Act 1961*. *Kojonup Cemetery Act 1928*. *Pharmacy Act 2010*.

- one, although a transitional provision has exhausted its practical effect and that amending it to correct the title of the Registrar would have no practical effect;[18]

- to amend the terminology in the *Albany Lot 184 (Validation of Title) Act 1956* would have no legal effect and have the practical disadvantage that the recitals in the Act would no longer conform to the recitals in the instruments which the Act validates;

- one is a State Agreement Act and since the Act sets out the agreements as made, it would be inappropriate to amend the Act;[19] and

- the *Argentine Ant Act 1968*, which will be entirely repealed when section 49 of the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* commences is "*expected sooner rather than later, so it is thought unnecessary to correct the term in section 15.*"[20]

4.31 Of these historic provisions, the Committee makes the following recommendation.

Recommendation 8: The Committee recommends that the Parliamentary Secretary representing the Attorney General advise the Legislative Council if section 49 of the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* (which repeals the *Argentine Ant Act 1968* and therefore its reference to the 'Registrar of Deeds') has commenced. If not, the Committee recommends that section 15(1)(b) of the *Argentine Ant Act 1968* be amended to refer to the 'Registrar of Deeds and Transfers'.

Clause 16(2) of the Table at row 8

4.32 Clause 16, row 8 proposes amendment of the definition of "*Registrar of Deeds*" in section 151(1) of the *Land Administration Act 1997* but does not amend the term where it appears elsewhere in that Act, being:

- section 170(3);

- section 170(4); and

- the list of defined terms.[21]

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18 Schedule 4 of the *Western Australian Land Authority Act 1992*.

19 *Alumina Refinery (Pinjarra) Agreement Act 1969.*

20 Letter from the Parliamentary Counsel's Office, 21 January 2011, p5.

21 This list does not form part of the Act but appears in the published instrument as an aid.

4.33 From its context, the reference to "*Registrar of Deeds*" in section 170 is intended to be to the position under the *Registration of Deeds Acts 1856*, proposed to be known as the Registrar of Deeds and Transfers.

4.34 The Committee noted that definitions are not substantive provisions.[22] They perform two functions:

- they avoid ambiguities; and
- by means of abbreviation, avoid tedious repetition.

4.35 The Committee further noted that sections 151(1), 170(3) and 170(4) are compartmentalised in the *Land Administration Act 1997,* at Part 9.

4.36 Definitions may be located in different areas of primary or subsidiary legislation and if in other Parts, there is a risk that the words may be given different or unexpected meanings in different sections of the same legislation. However, section 6 of the *Interpretation Act 1984* states that "*definitions… contained in a written law apply to the construction of the provisions of the written law that contain those definitions… as well as to other provisions of that written law*." That is, section 6 promotes consistency in the use of a particular term throughout the various areas of an enactment.

4.37 At first glance, amendment of the 'name' of a defined term in a definition provision of an Act does not amend that name where it appears elsewhere in an Act. However, case law suggests that:

> *When an Act is divided and cut into parts or heads, prima facie, it is to be presumed that those heads were intended to indicate a certain group of clauses as relating to a particular object.*[23]

4.38 Arguably, clause 16, row 8 proposes that the new definition of "*Registrar of Deeds*" in Part 9 of the *Land Administration Act 1997* applies to the whole of that Part, that is to include sections 170(3) and (4). However, if the proposed amendment to section 151(1) of the *Land Administration Act 1997* is passed, there would be two terms in use: "*Registrar of Deed and Transfer*s", which is defined in section 151(1); and "*Registrar of Deeds*", which is a not a defined term but is used in section 170.

4.39 Although the use of two distinct terms suggests different entities are intended, a court taking a purposive approach would be likely to find that the two entities are the same. However, if indeed the two entities are the same, the legislation is untidy and gives rise to debate and is confusing. For this reason, the Committee is of the view that

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22 *Gibb v FCT* (1966) 118 CLR 628 at 635.

23 Holroyd J in *re Commercial Bank of Australia Ltd* (1893) 19 VLR 333.

sections 170(3) and (4) of the *Land Administration Act 1997* should have been included in the Bill and the list of defined terms updated. The Committee therefore makes the following recommendation.

Recommendation 9: The Committee recommends that the Parliamentary Secretary representing the Attorney General explain why sections 170(3) and (4) of the *Land Administration Act 1997* are not amended by clause 16(2), row 8 of the Bill.

Clause 16(2) of the Table at row 16

4.40 Clause 16(2), row 16 purports to amend section 79(2)(a) of the *Rights in Water and Irrigation Act 1914.* However, the current version of the Act published on the State Law Publisher's website, with a currency start date of 5 November 2010,[24] does not have a section 79(2)(a). Earlier versions of the *Rights in Water and Irrigation Act 1914* up to the version dated 28 June 2010 contain a section 79(2)(a) but their currency ended with the version of 11 September 2010.

4.41 The Committee noted that the subparagraphs of section 79 were renumbered by section 51 of the *Standardisation of Formatting Act 2010*, which came into effect on 11 September 2010, three days after the Bill was introduced in the Legislative Council. The term "*Registrar of Deeds*" is now in section 79(b)(i) of the *Rights in Water and Irrigation Act 1914.*

4.42 The Committee makes the following statutory form recommendation.

Recommendation 10: The Committee recommends that clause 16(2), row 16 of the Bill be amended as follows:

Page 11, row 16, To delete s.79(2)(a)

Page 11, row 16, To insert s.79(b)(i)

Clause 16(2) of the Table at row 22

4.43 Amongst other things, clause 16(2), row 22 purports to amend section 160(2)(a) of the *Water Boards Act 1904*. Similar to clause 16(2), row 16 at paragraph 4.40 (above), the current version of the *Water Boards Act 1904* published on the State Law Publisher's website does not have a section 160(2)(a). However, the term "*Registrar of Deeds*" is used in section 160(b)(i).

[24] The currency start date is the date that the document first came into effect in that form.

4.44 The Committee noted that the subparagraphs of section 160 were renumbered by section 51 of the *Standardisation of Formatting Act 2010*, which came into effect on 11 September 2010, three days after the Bill was introduced in the Legislative Council. The term "*Registrar of Deeds*" is now in section 160(b)(i) of the *Water Boards Act 1904*.

4.45 The Committee makes the following statutory form recommendation.

Recommendation 11: The Committee recommends that clause 16(2), row 22 of the Bill be amended as follows:

Page 12, row 22, To delete s.160(2)(a)

Page 12, row 22, To insert s.160(b)(i)

Clause 18(2) of the Table

4.46 Clause 18(2) amends three Acts to replace the term "*Judge*" with "*judge of the Supreme Court*" for the administration of oaths[25] in the:

- *Corruption and Crime Commission Act 2003*;
- *Energy Arbitration and Review Act 1998*; and
- *Health Services (Conciliation and Review) Act 1995*.

4.47 The EM states that the rationale for these amendments is "*clarity and consistency*", as the full term is used in other legislation, rather than relying on the definition of "*Judge*" in the *Interpretation Act 1984*.[26]

4.48 The Committee noted that the replacement term "*judge of the Supreme Court*" differs from the definition of "*Judge*" in section 5 of the *Interpretation Act 1984*, which is more expansive. Section 5 states:

> ***Judge*** *means a judge, acting judge or auxiliary judge of the Supreme Court.*

4.49 Clause 18(2), therefore, has the effect of limiting the persons who may currently administer an oath under those three Acts.

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[25] And also affirmations. Under section 5 of the *Interpretation Act 1984*, oath means an oath or affirmation taken or made in accordance with the *Oaths, Affidavits and Statutory Declarations Act 2005.*

[26] The Explanatory Memorandum and Clause Notes, p58.

4.50 The Committee noted that the *Interpretation Act 1984* cannot be used to expand the word "*Judge*" in the three Acts, as those Acts state what the term means with the *Interpretation Act 1984* setting the default provision in the absence of a definition. Further, such an argument would be contrary to the intention of the proposed amendment, which is to render recourse to the *Interpretation Act 1984* unnecessary.

4.51 If the intention of clause 18(2) is to limit the persons who may currently administer an oath under the relevant legislation, then arguably, this may constitute an issue that is, according to *Premier's Circular 2010/01*, "*controversial or legally or otherwise contentious*" and therefore not a matter suitable for inclusion in this Bill. Therefore, the Committee makes the following recommendation.

Recommendation 12: The Committee recommends that the Parliamentary Secretary representing the Attorney General clarify whether the intention of clause 18(2) of the Bill is to limit the persons who may administer oaths of office.

Clause 21

4.52 Clause 21(2) proposes to amend the *Constitution Act 1889* by inserting, before Part 1, a new Short Title which states:

> *This is the Constitution Act 1889.*

4.53 Clause 21(3) then proposes to delete section 78 of the *Constitution Act 1889*, the current Short Title (amended in 1970) which is located at the end of the enactment rather than at the beginning. Its relocation reflects modern drafting practice. Section 78 states:

> ***78. Short title***
>
> *This Act may be cited for all purposes as the Constitution Act 1889.*

4.54 A 'short title' is the name by which an Act is commonly known and cited. In modern legislation, it constitutes section 1 of an enactment. The short title is no more than a label; its purpose is mere identification, not description.[27] Section 26(1) of the *Interpretation Act 1984* states that it is sufficient for all purposes to cite an Act by its short title.

[27] *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107. Also Francis Bennion, *Statutory Interpretation* (Fourth Edition) Butterworths, London, 2002, p627 and at p629 where it is stated that "*judges not infrequently mention the short title as being at least confirmatory of one of opposing constructions*."

4.55 The Committee noted that:

- There is currently no section 1 to the *Constitution Act 1889*. There was originally a section 1 (concerning the division of the Act into various Parts) which was deleted in 1998.

- The numbering of the proposed new Part as "*IA*" is consistent with current Parliamentary Counsel Office practice of inserting Parts and sections with dual numeric and alphabetic designations prior to the Part or section designated with the relevant number only.

- The text of section 78 of the *Constitution Act 1889* which is proposed to be deleted is consistent with the section 1 that is proposed to be introduced. No additional information is contained in the proposed amendment.

- Compatibility between the Long and the proposed new Short Title remains undisturbed.

- The amendment is authorised by section 73 of the *Constitution Act 1889* which states in part:

  73. Legislature as constituted by this Act empowered to alter any of its provisions

  (1) Subject to the succeeding provisions of this section, the Legislature of the Colony shall have full power and authority, from time to time, by any Act, to repeal or alter any of the provisions of this Act.

- No special procedure or majority of the House is required to pass the amendments.

Clause 23

4.56 The EM states that the amendment proposed by clause 23(2) corrects a formatting error in section 25A of the *Home Building Contracts Act 1991*,[28] suggesting that it has no substantive effect.

4.57 The Committee considered whether the proposed amendment may have an effect on rights and obligations existing at law. The relevant part of section 25A of the *Home Building Contracts Act 1991* states:

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[28] The Explanatory Memorandum and Clause Notes, p65. Section 25A was inserted into the *Home Building Contracts Act 1991* by the *Home Building Contracts Amendment Act 1996*. That Amendment Act introduced Part 3A, making provision for compulsory home indemnity insurance. Section 25A provided the definitions of terms used in Part 3A.

25A. Interpretation

In this Part —

***residential building work** means home building work that is —*

(a) home building work described in paragraph (a), (b) or (c) of the definition of that term in section 3; or

(b) home building work described in paragraph (d) of the definition of that term in section 3, when —

(i) it is to be performed under a contract which also includes the performance of home building work described in paragraph (a), (b) or (c) of that definition; or

(ii) it is associated work of a prescribed kind;

but does not include home building work where the cost of the building work is the minimum amount or less;

4.58 The question is whether the latter part of the section bolded above and defined here as (**Concluding Words**), applies to both subsection 25A(a) and (b) of the *Home Building Contracts Act 1991* or only to subsection 25A(b). The Concluding Words as they appear in their current layout are aligned directly under the word "*home*" in subsection (b) thus giving rise to the question as to what is meant by the definition of 'residential building work' in section 25A. The EM states that, as formatted, it does not reflect the intention to exempt works of less than the prescribed amount from the compulsory insurance scheme.

4.59 The Committee considered whether:

- there is uncertainty as to the meaning of section 25A as currently drafted;
- if so, whether clause 23 is an appropriate clause for an omnibus bill; and
- if not, whether the proposed amendment effects a substantive change to the law and is, therefore, inappropriate for an omnibus bill.

4.60 In being formatted to align with subsection 25A(b), not as a continuation of the opening words to both subsections, the grammatical positioning of the Concluding Words is that it is confined in its effect to subsection 25A(b). This is acknowledged in

the EM that the Concluding Words "*appear as an outset to paragraph (b) of the definition rather than a continuation of the opening words of the definition*."[29]

4.61 From a grammatical perspective, there is a question raised by the semi-colon at the end of section 25A(b). A semi colon is a mark of punctuation used to indicate a more distinct separation between parts of a sentence than that indicated by a comma.[30] The semi-colon is incorrect regardless of whether the Concluding Words terminates section 25A as a whole or subsection 25A(b) alone and the amendment proposes to insert a comma before the Concluding Words. A comma is used to indicate the smallest interruptions in continuity of thought or grammatical construction.[31]

4.62 If the Concluding Words apply only to section 25A(b), the definition of "*residential building work*" in section 25A(a) of the *Home Building Contracts Act 1991* captures all home building work defined in sections 3(a), (b) or (c) of that Act, regardless of cost.[32] If this is the case, the amendment proposed by clause 23 would effect a change to rights and obligations imposed by the *Home Building Contracts Act 1991* - because its effect is to exclude works costing $20,000 or less from the compulsory insurance obligations and guarantee of moneys to settle claims imposed by the *Home Building Contracts Act 1991*.

4.63 In the Committee's view, if this is the correct interpretation, it would represent a substantive change to the legislation, contrary to *Premier's Circular 2010/01* which states: "*A matter will not be included in an Omnibus Bill if it: affects any existing right, obligation, power, or duty; or changes any process provided for in legislation.*"[33]

4.64 From a legal perspective, a literal or grammatical reading of section 25A suggests that the Concluding Words relate only to subsection 25A(b), in which case, clause 23 proposes a substantial amendment. However, the purpose of the law needs to be considered and section 18 of the *Interpretation Act 1984* states:

> *In the interpretation of a provision of a written law, a construction that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to a construction that would not promote that purpose or object.*

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29 The Explanatory Memorandum and Clause Notes, p65.

30 The Macquarie Dictionary, Second Edition, 1995, p1594.

31 Ibid, p361.

32 The Explanatory Memorandum and Clause Notes, pp65-66.

33 *Premier's Circular 2010/01*, Statutes (Repeals and Minor Amendments) Bill, 11 February 2010, p1. It replaced *Premier's Circular 2003-15*.

4.65 That section applies where two constructions are open from a plain reading of the provision. It is not clear that section 25A meets that criteria. On its face, the purpose or object of section 25A is to provide for compulsory indemnity insurance for the home building works included in the definition of residential building works. Whether that is only to occur in respect of works of a certain cost is not addressed other than in section 25A itself.

4.66 Second Reading Speeches are a statement of government intent. The Second Reading Speech seems to indicate an intent to impose a general threshold for the requirement for insurance. Parliamentary intent is determined from the words of the legislation itself. The Committee stage of consideration of the Bill introducing section 25A is ambiguous and unhelpful as to the intent of the Concluding Words. If anything, it suggests that it was intended to be confined to section 25A(b). Unanimous advice from industry is that section 25A has always been applied and interpreted in accordance with the proposed amendment.[34]

4.67 Despite the identified difficulties with clause 23(2), the Committee concluded that it is suitable for inclusion in an omnibus bill and that the clause be passed. Therefore, the Committee makes the following recommendation.

Recommendation 13: The Committee recommends that clause 23(2) of the Bill be passed.

Clause 24

4.68 Clause 24(2) proposes the deletion of the whole of Part 3, Division 1 of the *Machinery of Government (Miscellaneous Amendments) Act 2006* which made amendments to the *Bail Act 1982*. However, a Note 14 to the *Bail Act 1982* states:

> *The amendments to the Bail Act 1982 in the Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 3 Div. 1 cl. 31(1)(b) and (c), cl. 32 and 33 would conflict with amendments by the Prisons and Sentencing Legislation Amendment Act 2006 Pt. 5.*

4.69 Clause 31(1)(a) of the *Machinery of Government (Miscellaneous Amendments) Act 2006* was not implemented by the *Prisons and Sentencing Legislation Amendment Act 2006* when it came into operation on 4 April 2007.

4.70 The Committee sought an explanation from the Parliamentary Counsel's Office as to why the clause has not been implemented by the *Prisons and Sentencing Legislation*

[34] For example: Letter from the Builders' Registration Board of Western Australia, 19 October 2010, p1. However, where a court considers a provision clear, long-standing stakeholder practice will not persuade a court to imply a meaning consistent with that practice.

Amendment Act 2006. The Parliamentary Counsel's Office said that before the *Machinery of Government (Miscellaneous Amendments) Act 2006* was passed, the *Prisons and Sentencing Legislation Amendment Act 2006* was introduced and it made amendments to the *Bail Act 1982* which were inconsistent with the *Machinery of Government (Miscellaneous Amendments) Act 2006.* The *Prisons and Sentencing Legislation Amendment Act 2006* came into force, making the *Machinery of Government (Miscellaneous Amendments) Act 2006* inoperative, that is, the amendments cannot now be brought into force.

4.71 The *Machinery of Government (Miscellaneous Amendments) Act 2006* purports:

- to delete the definition of "*CEO Justice*" from the *Bail Act 1982* when in fact that Act now contains no such definition; and

- substitute all references to "*CEO Justice*" in a scenario where the *Bail Act 1982* contains no such references.

4.72 The Parliamentary Counsel's Office said:

> *It seems likely that there was a change in policy between 23 June 2005, when the Machinery of Government legislation was introduced, and 13 April 2006 when the Prisons and Sentencing legislation was introduced. It is not for PCO to comment on policy but it seems reasonable to speculate that the change in policy, and the introduction of different amendments, arose out of developments in the government's thinking regarding the restructuring and division of the then Department of Justice.*
>
> *By April 2006 when the Prisons and Sentencing legislation was introduced, the Machinery of Government legislation had passed all stages in the Assembly and was already well advanced in the Council. (It completed all stages less than a month later). It may be that there simply was not time to amend the Machinery of Government legislation to delete the now redundant provisions for the amendment of the Bail Act, and that instead a decision was taken that they would simply not be proclaimed, and would be repealed when a suitable occasion arose.*
>
> *Be that as it may, the amendments contained in the Machinery of Government (Miscellaneous Amendments) Act 2006 cannot now be proclaimed. They purport to amend and replace text which no longer exists in primary legislation.*[35]

[35] Letter from the Parliamentary Counsel's Office, 21 January 2011, pp7-8.

4.73 The Committee makes the following recommendation.

Recommendation 14: The Committee recommends that clause 24(2) of the Bill be passed.

Clause 26

4.74 Clause 26(2) deletes the definition of "*Account*" in section 4(1) of *the Real Estate and Business Agents Act 1978* which states: "*Account means the Board Interest Account established under section 125(1).*"[36] Clause 26(3) then inserts a new definition: "*Interest Account*" as meaning the "*Board Interest Account established under section 125(1).*"

4.75 The EM states that the term "*Account*" is being replaced with "*Interest Account*" to remove confusion in referring to four accounts in the *Real Estate and Business Agents Act 1978*.[37] "*Interest Account*" will be defined to be the "*Board Interest Account*" established under section 125(1) of the principal Act.

4.76 The Committee is of the view that the proposed amendment does not achieve its stated purpose. If enacted, confusion will remain with both of the terms "*Interest Account*" and "*Board Interest Account*" being used to describe the same account. Therefore, the Committee makes the following recommendation.

Recommendation 15: The Committee recommends that the Parliamentary Secretary representing the Attorney General explain why the proposed new definition "*Interest Account*" in clause 26(3) of the Bill should not be "*Board Interest Account*"; or alternatively, why the term: "*Interest Account*" is not substituted for "*Board Interest Account*" in section 125(1) of the *Real Estate and Business Agents Act 1978* which establishes the relevant account.

Clause 28(2) of the Table at row 3

4.77 Clause 28(2), row 3 proposes various amendments to the *Coal Miner's Welfare Act 1947*. The proposed insertion of upper case "*Council*" and "*Union*" in sections 10(1), 10(2) and 12(1) raises a query about the drafting practice of using upper case in the middle of a sentence to suggest a defined term. However, neither "*Council*" nor "*Union*" are defined in the principal Act.

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36 Section 125(1) states: "*An account called the Board Interest Account is to be established — (a) as an agency special purpose account under section 16 of the Financial Management Act 2006; or (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.*"

37 The Explanatory Memorandum and Clause Notes, p73.

4.78 The Committee is of the view that the proposed amendments should be drafted in lower case. Therefore, the Committee makes the following recommendation.

Recommendation 16: The Committee recommends that the Parliamentary Secretary representing the Attorney General explain why upper case has been proposed for the terms "*Council*" and "*Union*" in clause 28(2), row 3 of the Bill.

Clause 28(2) of the Table at row 6

4.79 Clause 28(2), row 6 proposes an amendment to the *Evidence Act 1906* to remove the word "*stamp*" in the phrase "*stamp duty*" in section 73U(2). According to the EM, section 73U(2) was amended by the *Duties Legislation Amendment Act 2008* to include duty under the *Duties Act 2008* but the reference in section 73U(2) was inadvertently overlooked.[38]

4.80 The Committee noted that there is also a reference to "*stamp duty*" in section 45 of the *Evidence Act 1906* which states:

> ***45. Seals and stamps for the revenue or post office, proof of***
>
> *On the trial of a person charged with any offence relating to any seal or stamp used for the purposes of the public revenue, or of the post office in any part of Her Majesty's dominions, or in any foreign State, a despatch from one of Her Majesty's principal Secretaries of State, transmitting to the Governor any stamp, mark, or impression and stating it to be a genuine stamp, mark, or impression, of a die, plate, or other instrument, provided, made or used by or under the direction of the proper authority of the country in question, for the purpose of expressing or denoting any* ***stamp duty*** *or postal charge, shall be admissible as evidence of the facts stated in the despatch; and the stamp, mark, or impression, so transmitted may be used by the court and jury and by witnesses for the purposes of comparison.*
>
> (Emphasis added)

4.81 The Committee is of the view that this may be a correct reference but recommends this be clarified. Therefore, the Committee makes the following recommendation.

Recommendation 17: The Committee recommends that the Parliamentary Secretary representing the Attorney General confirm that the term "*stamp duty*" in section 45 of the *Evidence Act 1906* is to be retained in that Act.

[38] The Explanatory Memorandum and Clause Notes, p87.

Clause 28(2) of the Table at row 17

4.82 Clause 28(2), row 17 proposes an amendment to section 4(2) of the *Reprints Act 1984.* Section 4 states:

> ***4. Interpretation***
>
> *(1) In this Act, unless the contrary intention appears —*
>
> *"**written law**" or law includes any portion of a written law or law.*
>
> *(2) For the purposes of this Act, "written law" includes rules made under the Royal Prerogative in relation to Queen's Counsel.*

4.83 The amendment proposes to delete the words "*Prerogative in relation to Queen's Counsel*" underlined above and insert instead the word "*Prerogative*". This is explained on the basis that Queen's Counsel are no longer appointed in Western Australia.[39] However, the Committee noted that the proposed amendment results in the broader "*rules made under Royal Prerogative*" being included in the definition of "*written law*". Previously, it was only rules in respect of Queen's Counsel that were included.

4.84 'Prerogatives' are exclusive rights or privileges. There are Royal Prerogatives in relation to:

- Executive Powers - the power to declare war, appoint ambassadors, charter corporations, coin money, pardon offenders, request extraditions;
- Immunities and Privileges - the right to be paid a debt before other creditors, immunity from legal suit (Acts do not bind the Crown unless clearly expressed to do so); and
- Proprietary rights - such as treasure trove, royal minerals, royal fish and the seabed.[40]

4.85 Such powers are exercised without statutory authority.[41] Presumably, to the extent these powers have not been extinguished by legislation, rules can be made about all of these things. It is not known whether there are any such rules in Western Australia.

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39 The Explanatory Memorandum and Clause Notes, pp96-97.

40 Evatt, H. V., *The Royal Prerogative,* The Law Book Company Limited, Sydney, 1987, p10.

41 Sarah Joseph and Melissa Castan, *Federal Constitutional Law, A Contemporary View, 3rd Edition,* Thomson Reuters, Sydney, 2010, p153.

4.86 The proposed amendment appears to apply the *Reprints Act 1984* to all rules made under Royal Prerogative whereas currently, only the rules dealing with Queen's Counsel would be captured. This suggests an amendment in substance, not form. It is, therefore, questionable whether this amendment is suitable for an omnibus bill. Therefore, the Committee makes the following recommendation.

Recommendation 18: The Committee recommends that the Parliamentary Secretary representing the Attorney General explain the reason for expanding the definition of "*written law*" in clause 28(2), row 17 of the Bill.

5 CONCLUSION

5.1 The Committee finds that the Bill and the information provided in the Explanatory Memorandum are consistent with the scope and purpose of an omnibus statutes review bill. Therefore, the Committee makes the following recommendation.

Recommendation 19: The Committee recommends that, subject to its other recommendations, the Statutes (Repeals and Minor Amendments) Bill 2010 be passed.

Hon Adele Farina MLC
Chairman

Date: 15 February 2011

APPENDIX 1

EXTRACT OF A LETTER FROM THE PARLIAMENTARY COUNSEL'S OFFICE REGARDING CLAUSE 16

APPENDIX 1

EXTRACT OF A LETTER FROM THE PARLIAMENTARY COUNSEL'S OFFICE REGARDING CLAUSE 16

Table 1

Act	Explanation
Acts which abolish or establish statutory bodies, and effect associated property transfers	
Country Housing Act 1998	The term is used once, in Sch 2 para 8. Sch 2 makes transitional provisions, including the vesting of assets in the Country Housing Authority established by the Act, and para 8 empowers the Registrar to register documents necessary to give effect to the Schedule.
Electricity Corporations Act 2005	The term occurs only in s.178 (1) (b), a transitional provision for the transfer of Western Power's assets to successor corporations and/or to the State. The transfer having been effected, amending s. 178(1)(b) to correct the Registrar's title would have no effect.
Public Transport Authority Act 1993	The Act establishes the Public Transport Authority of Western Australia and provides for the transfer to it of the undertakings and assets of predecessor bodies. Pt 7 ("Transitional") provides for the Registrar to take notice of the transfer, and register transfer documents. As the provisions are purely transitional; and have exhausted their effect, amending at this point to correct the title of the Registrar would have no effect.
Regional Development Commissions Act 1993	S.39 of the Act vests certain lands in bodies established by the Act. S.41 provides for the registration of the relevant transfers, and it is here that the term is used. Again, this transitional provision has already been carried into effect. Amending it to correct the Registrar's title would have no legal effect.

Act	Explanation
Taxi Act 1994	S. 47 of the Act vests the assets of the former Taxi Control Board in the Minster, and provides for any necessary transfers to be registered. It is a transitional provision which has long since been carried into effect, and amending it would have no legal effect.
Western Australian Land Authority Act 1992	The Act was establishes the West Australian Land Authority and abolished the Industrial Lands Development Authority and the Joondalup Development Corporation. Transitional provisions in Sch. 4 vest their property in the new Authority and provide for the registration of documents necessary to give effect to this. It is in these transitional provisions that the term occurs. The view has been taken that the transitional registration provision has exhausted its practical effect, and that amending it to correct the title of the Registrar would have no practical effect.
Australia and New Zealand Banking Group Act 1970 *The Bank of Adelaide (Merger) Act 1982* *The Commercial Bank of Australia (Merger) Act 1982* *The Commercial Banking Company of Sydney Limited (Merger) Act 1982*	Each of these Acts facilitates the merger of one bank into another. In each case the Act provides for the transfer of the undertaking and assets of the bank to be merged to a successor bank, and for the registration of any documents necessary to give effect to the merger and/or the transfer. The registration provision is either explicitly or as a matter of practicality a transitional one. Any documents necessary to give effect to the merger will have been executed and registered, at the latest, within a short time after the effective date of the merger. Since the transitional registration provisions will long since have exhausted their practical effect, the view has been taken that no purpose would be served by amending them to reflect the full title of the Registrar.

Act	Explanation
Other Acts	
Albany Lot 184 (Validation of Title) Act 1956	The term is used in the Long Title, The Preamble and s. 2. The purpose of the Act was to validate a land transaction which took place in 1874 - a sale of Albany Lot 184 by the Municipality of Albany to one Robert Muir. The Act identifies the 1874 sale by reciting its details, including the details of registration. In this context that the term "Registrar of Deeds" is used (although the reference is not to the Registrar as such, but rather to his department - the "Office of the Registrar of Deeds"). The 1956 Act has one operative section which took effect immediately on assent. Changing the terminology at this point would have no legal effect, and would have the practical disadvantage that the recitals in the instrument which the Act validates.
Alumina Refinery (Pinjarra) Agreement Act 1969	This is a state agreement Act which ratifies a number of agreements between state government and Alcoa of Australia (W.A.) Ltd. The Act schedules the agreement in full, and the term is found in one of the agreements. Since the Act sets out the agreements as made, it would not be appropriate to amend the Act.
Anglican Church of Australia (Diocese of North West Australia) Act 1961	The Act vests certain land, set out in the schedule, in the Trustees of the Northern Diocese. S.4 of the Act, where the phrase occurs, directs the Registrar to register the Trustees as owners of the land. The necessary registration having long since been effected, an amendment to s.4 to correct the Registrar's title would have no purpose and no legal effect.

Act	Explanation
Argentine Ant Act 1968	The term is used in section s. 15, an evidentiary provision dealing with how ownership or occupation of tenancy of premises may be proven. The entire Act will be repealed when *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* s. 49 commences. Repeal by this provision is expected sooner rather then later, so it is thought unnecessary to correct the term in s.15.
Kojonup Cemetery Act 1928	The Act vests certain land, identified in the Schedule, in the Shire of Kojonup, and directs (in s. 2) that the change of ownership is to be registered. Ownership having long since been registered, correcting the title of the Registrar would have no effect.
Pharmacy Act 2010	The *Pharmacy Act* had not been passed when the present Bill was drafted, so there was no consideration given to the question of whether the Bill ought to amend it. The term "Registrar of Deeds" is used once, in s. 92, which is included in Pt 9 ("Transitional and savings provisions") Pt 9 provides (*inter alia)* for the incorporation of the Pharmaceutical Society, and vests the assets of the former Pharmaceutical Council of Western Australia in the newly-incorporated body. Under s.92 the Registrar is to take note of these provisions, and is empowered to register any necessary documents. Although the vesting took effect only recently, and it is possible (though I think unlikely) that any necessary registrations have not yet been effected, the provision remains a purely transitional one. It would be consistent with the treatment of other purely transitional provisions not to amend it.