

STANDING COMMITTEE ON LEGISLATION

STANDARDISATION OF FORMATTING BILL 2009

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 16 SEPTEMBER 2009**

Members

**Hon Michael Mischin (Chairman)
Hon Sally Talbot (Deputy Chair)
Hon Mia Davies
Hon Helen Morton
Hon Alison Xamon**

Hearing commenced at 9.55 am**ARMSTRONG, MISS NICOLA****Assistant Parliamentary Counsel, Parliamentary Counsel's Office,
sworn and examined:**

The CHAIRMAN: On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you to take either the oath or the affirmation. Which do you prefer?

[Witness took the affirmation.]

The CHAIRMAN: Could you please state your full name, contact address and the capacity in which you are appearing before us?

Miss Armstrong: I am Nicola Armstrong. I am Assistant Parliamentary Counsel from the Parliamentary Counsel's Office. The address is 141 St Georges Terrace. It is part of the Department of the Attorney General.

The CHAIRMAN: You have signed a document, I believe, entitled "Information for Witnesses". Have you read and understood that document?

Miss Armstrong: Yes, I have.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document that you refer to during the course of this hearing so that it is recorded and it is plain from the record as to which document it is. Please be aware also of the microphones and try to talk into them. Ensure that you do not cover the microphones or obscure them with papers or make any noises near them. I remind you that your transcript will be a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. At present, there is no member of the public or media present. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Would you like to make an opening statement to us?

Miss Armstrong: Yes, Mr Chairman. I was asked to come up to brief the committee about the Standardisation of Formatting Bill. I am in the unusual position in relation to this bill that I was the chief policy officer in developing it. I am also the drafter. It is rather unusual but the bill emanates from the Parliamentary Counsel's Office, so I scored both roles. The bill is one small step in a process of improving public access to the legislation of this state. The legislation is provided through the State Law Publisher's website. The Parliamentary Counsel's Office is responsible for the content of that site. In 2007 the database was overhauled and completely upgraded. It is now very much better than it was, but, as with all technological things, it is continuing to be improved, the content is being improved and the features and functions of the website continue to be improved. The aim of this bill is to help us to standardise the formatting of legislative documents. It does not and it is not intended to change the legal content or effect of any legislation at all. The purpose of trying to standardise the formatting is that if all the documents are standardised, it is then possible to run automated processes over those documents, rather than having to undertake the same processes manually, which is obviously time consuming and introduces the risk of human error. There are approximately 1 800 documents on the website of current laws. There are also very large

numbers of other passed laws. In fact, now every act passed by the Western Australian Parliament is on the website.

One example of the sorts of processes we are talking about is the running headers on the tops of all the pages of all Western Australian legislation. They are actually quite complex. They include part headings, division headings, section numbers and so on. They change for schedules, where there is a slightly different format. There are different headers on the left and right-hand pages, so that the clause number is on the outside of the page, making it easier to find. Those are generated automatically and the process to do that depends on every single heading, section number, clause number, part number and so on being in the right format and having the right codes attached to it. If they do not have, those processes do not work properly and the headers all have to be manually manipulated. The same applies for the table of contents. The same applies for the document map that can appear with a Word document and the bookmarking that appears on the PDF documents. They can only be generated if the documents are all in the right format and styles. Those are the sorts of processes for the purpose of internal documents that we are talking about automating. So far as the website as a whole is concerned, the source documents are in Word format and we then generate other formats. At the moment, we have PDF and HTML documents. Those secondary documents are also generated by an automatic process, which has difficulties if the Word documents are not in the correct format and style. Although this bill may appear to actually do very little in substance, it is actually quite important in that it will help us improve the database and the access of all Western Australians to their laws.

The CHAIRMAN: Does anyone want to ask anything about that aspect?

Hon SALLY TALBOT: Perhaps, if I may, Mr Chair. How long has the bill been around? Is this its first presentation?

Miss Armstrong: Yes. The bill was just recently introduced. The work towards it has been going on for some years. I started work at the very preliminary stages of this in 2003.

Hon SALLY TALBOT: So, presumably, it was planned for at the time when the whole website updating and all that sort of thing was planned?

Miss Armstrong: We knew that we were going to have to have a bill of some sort; we did not know the details of it, but yes.

The CHAIRMAN: Has anyone else worked on it apart from yourself, or has it been entirely your responsibility?

Miss Armstrong: I have been the principal drafter. I have consulted other people, principally the Parliamentary Counsel himself, on a number of matters.

The CHAIRMAN: But you are the one who has had to sift through all the legislation and pick the eyes out of it?

Miss Armstrong: Yes. We have had a lot of assistance from our IT staff who have been able to develop programs that will —

The CHAIRMAN: Assist?

Miss Armstrong: — assist, yes.

The CHAIRMAN: Can you summarise for us the categories of reformatting that are embraced by the bill? We have obviously got schedules that are being dealt with. Can you outline for us the way in which you have dealt with it—you have already touched on that in your opening—but also any other changes to formatting and the blocks or categories of formatting?

Miss Armstrong: The bill is basically in two blocks. One, as you have mentioned, is the schedules, and in those we were largely directed at the schedule headings. If you are familiar with the current format of legislation, a heading appears—I do not know how well you can see this—like this: the

word “Schedule”, a number, an em rule and then the title, with the relevant section number underneath it. In the past, schedule headings have been done in a variety of other formats—sometimes just the word “Schedule”; sometimes they had the word “Schedule” and the title on a separate line.

The first part of the bill is directed at changing all of the schedule headings which are not in our current format into that format. For schedules which have a title, obviously we continue with that current title. There are quite a lot which do not have a title at all, and in those cases an appropriate title is being inserted. The vast majority of those amendments are being made by clause 4 and this enormous multipage table. Those were all able to be grouped on the basis that the existing schedule headings were in two or three reasonably similar formats. In the acts that are amended by the other clauses in that part, the existing headings were different in various ways so we were not able to fit the amendments into that table so we had to do them in separate clauses. But the effect is the same; we are rearranging the components of the schedule heading into the current format. The only changes that are to be made are to insert titles where that is necessary.

The CHAIRMAN: I have noticed in that regard that you mentioned that part of the purpose was to insert numerals or that there is a particular format now involving the identification of a schedule as schedule whatever and using a numeral. But I notice that some of these amendments do not actually do that, but you leave the number of the schedule in words and simply insert an explanatory heading. Why is that?

Miss Armstrong: From an automation point of view, it is not necessary for the schedule number to be in numerals or words; it simply has to be a series of characters. When the correct style is applied to it and the correct codes, it recognises that as the heading to the schedule. It does not matter for structural purposes whether it is in words or numbers or letters or even, indeed, if it is the word “Schedule”. There are some where they are described as an appendix. From the structural point of view, it works the same.

The CHAIRMAN: Would it not matter from a searching point of view, though? Why not? If I was searching for references to “Schedule 16” and the fact that it is called the sixteenth schedule —

Miss Armstrong: Yes, it would make a difference in that context. But if we were to go through and change all of the schedules which are numbered using words, or some where they are simply called “Schedule” and they do not have a number at all, every single cross-reference to those schedules throughout the act would also have to be changed. When we were deciding how far to go with these amendments, that was one of the things we considered. And given the number of acts and the number of references to each of those schedules, it would have been such a huge task to do it that it was decided that it was better to leave it the way it was. There would also be references outside the legislative documents. We can change acts and regulations, but there would be other documents used by departments and references elsewhere to things by the schedules by their names. Just as one example, the Transfer of Land Act has a vast number of schedules which are in words, and most of them have forms which are used by the department. If we were to change them, the department would have to change all their forms as well, so it would create a huge amount of administrative work.

Hon ALISON XAMON: And expense.

Miss Armstrong: And expense, yes. Generally speaking, if you are using an act that has a number of schedules and you are looking for the sixteenth schedule, you will be aware that it is schedule 16 or the sixteenth schedule.

The CHAIRMAN: Just on that point, and while I remember it, though, would that not be picked up by the Reprints Act anyway as something that could be changed in future in a reprint of the act?

Miss Armstrong: That is not changed on the reprints. I am not sure whether the power in the reprints would extend that far, but you would have the same problem in that if you changed the act, you have all the regulations, related documents and so on that would not be changed.

The CHAIRMAN: The forms would be valid, nevertheless, in terms of style because they are matters of style rather than substance. So under the Interpretation Act, they would still be protected even if they were out of kilter with the act. In any event, you have chosen not to take that path at this time.

Miss Armstrong: Yes. I must say, nowadays, we do number everything numerically and the number of acts with the schedules referred to in ordinal fashion is reducing.

The CHAIRMAN: You mentioned that was one category, or two I think you said.

Miss Armstrong: Yes; there is a second small category of other headings, which is part 3 of the bill. The first of those relates to what is usually part 1. Modern practice is that if an act is divided into parts then every section must be in a part. There was a time when the first few sections of an act—its citation, commencement provisions and sometimes a contents provision—actually appeared before part 1. Clause 43 of the bill will amend those acts where that is still the case to put in a part heading or move the heading to part 1 so that all sections then do fall in a part. There are a number of acts around which have what we describe as ad hoc headings, where there are headings which are not part, division, subdivision or section headings. Most of them are, in fact, the equivalent of part or division headings and serve the same purpose and are simply changed by this bill into part, division and subdivision headings. There are a small number where that is not the case and where these ad hoc headings actually serve very little useful purpose, if any at all. Some of them are headings which effectively just repeat the subsequent section headings, so they are being deleted because there is no appropriate reformatting to deal with them.

The CHAIRMAN: Apropos the deletion of headings, is there any legal consequence to that as to the interpretation of the section following the deletion?

Miss Armstrong: I do not believe so. If, looking at those headings, there had been any suggestion that they added any meaning or served any interpretive purpose, we would not be deleting them.

The CHAIRMAN: To your knowledge, is there any case law that has relied on the heading as a way of interpreting the effect of any of these sections or parts of these acts?

Miss Armstrong: Certainly, headings to parts and divisions and so on under the Interpretation Act are a formal part of the law and they certainly would be capable of affecting the interpretation of the provisions, yes.

The CHAIRMAN: But you are confident that there is no legal consequence flowing from what has been undertaken?

Miss Armstrong: Yes. There are five acts in which we are deleting those headings, and, in those cases, yes, I would be confident that they are not going to have any impact on interpretation. One example, if I can find it, I think is the library board act. There is a heading that simply says “General provisions”, which really does not serve any purpose. The headings in the Conservation and Land Management Act do not add anything to the section headings of the provisions that follow them.

The CHAIRMAN: Those are the two areas of amendment?

Miss Armstrong: Those are the ones that deal with headings. Part 4 of the bill is perhaps a little more difficult to explain in that it is amending the structure of subsections and paragraphs where they do not meet the current structure. Most of them deal with situations where the current structure for a subsection would involve some opening words and, if it was necessary, then a series of paragraphs and perhaps closing words, but it would always start with opening words before the paragraphs. There are some older acts where the provisions are numbered as if they were

paragraphs but are in fact a complete sentence on their own and they do not have the opening words, so it is not entirely clear whether they are subsections or paragraphs. There are others where the opening words and the paragraphs do not necessarily follow from each other. That has commonly been caused by subsequent amendments being inserted where the grammar is incorrect or, for example, an exception has been inserted in relation to one of the paragraphs that does not apply to the rest of the provision. The structure of those sorts of provisions is not in accordance with our current format.

The CHAIRMAN: Can you give us some examples of those sorts of problems that you are addressing?

Miss Armstrong: I am sorry. I am just looking for the provision that I have in mind.

The CHAIRMAN: That is okay; take your time.

Miss Armstrong: The Bush Fires Act. It is clause 52 of the bill. It is on page 391 of the explanatory memorandum. If you have that handy, that may be easier to show the problem.

The CHAIRMAN: Page 391?

Miss Armstrong: Yes.

Hon SALLY TALBOT: So you are looking at clause 18?

Miss Armstrong: Clause 18, yes. Subsection (5) there begins with (5)(a) and starts with a provision which is, in effect, a whole subsection on its own, even though it is numbered as if it were a paragraph. All we are doing in this case is renumbering it in a subsection format so that it then fits into the current standard practice of structuring subsections.

Hon SALLY TALBOT: If I can just be absolutely clear then, were one to be in court referring to a precedent, and in court your precedent might be referred to as the name of the act, the clause—18 refers to this bill, does it not, so we are looking at what is called 18 on page 391—you might refer to (5)(a)(B), which would, I think, take you to the word “imposing” that has been crossed out.

Miss Armstrong: It would.

Hon SALLY TALBOT: Hansard is going to have fun with this! That then becomes (5)(ii) —

Miss Armstrong: It would be (5)(a)(ii), yes.

Hon SALLY TALBOT: So (5)(a)(ii); okay. How does the court check that you are referring to the same clause of the bill?

Miss Armstrong: If you had a reference to section 5(a)(B), it would be a reference to that provision at a particular point in time.

Hon SALLY TALBOT: So it is dated.

Miss Armstrong: At the time that the court referred to it the first time. So you would have to look at the act on that date to see what it was so you could then look at the act as it is now after these amendments and you would discover it was the same provision.

Hon SALLY TALBOT: So somewhere in the system there will be a copy of the Bush Fires Act 1954 as it was on 16 September.

Miss Armstrong: Yes. It is on the State Law Publisher’s website, yes.

The CHAIRMAN: The part that I am curious about, just using that as an example, is why there is a need to do it anyway. Looking at section 18(5)(a), you are changing it to section 18(5).

Miss Armstrong: It is really a matter of the numbering. The current structure of numbering is that a subsection is numbered using numerals in brackets and to have the (5) and then the (a) as a single number for that provision —

The CHAIRMAN: I see.

Miss Armstrong: It may seem like pedantry, and perhaps it is, but it is all part of making the system consistent.

The CHAIRMAN: I am with you now. A subsection must then proceed into text and not into a reference to a further —

Miss Armstrong: A further number, yes; quite right.

The CHAIRMAN: — paragraph.

Miss Armstrong: Yes. If you were to give this provision to an automated process, it would look at the (5) and it would look at the (a) and it would not be able to tell whether this was a subsection or a paragraph.

[10.25 am]

The CHAIRMAN: Is much of this being driven from the imperatives of the database, as it were, rather than necessarily something is that stylistic?

Miss Armstrong: There is an element of that to it as well. If all legislation used the same numbering sequences, a person familiar with using one act would be able to pick up another act and be able to follow the numbering scheme. It does help with the understanding of legislation generally.

Hon SALLY TALBOT: It looks to me like this might be one of those happy occasions when the technical provisions actually coincide with better English.

Miss Armstrong: That is very likely in a number of cases.

Hon SALLY TALBOT: If you read you way through section 5 that we are looking at, to have the word “vary” followed by a subsection when it is not followed by a series of points but only one point, looks to me as if it reads better in your reformatting of it.

Miss Armstrong: There are certainly some cases like that, yes.

The CHAIRMAN: We are probably descending into too much detail, but I notice that subsection (5) is followed by subsection (5B). Why not have subsection (5A) rather than skip a letter of the alphabet?

Miss Armstrong: I was endeavouring to make sure that the numbers changed as little as possible. What was previously section 18(5)(b) now becomes (5B).

The CHAIRMAN: It might look odd when it finally gets printed because it seems to skip sequences.

Miss Armstrong: Yes, but in almost all acts when multiple amendments have been made, you end up with missing numbers. Short of renumbering an act each time, the numbering will inevitably end up with gaps.

The CHAIRMAN: The other question that flows from that, of course, is—I presume it has been addressed, but, again, we are, to a very large extent, dependent upon your assurance—were no consequential amendments overlooked by references to other parts of the act or indeed in the regulations or in other statutes that depend on the original numbering?

Miss Armstrong: There are none that I could find that are not included. There are a very small number but for each of these amendments, searches were done over the entire database to find any other reference to those provisions. In most of the cases the acts we are amending are older acts that tend to have a lot fewer internal cross-references than modern acts. There are a lot fewer of those types of cross-references that need to be corrected. They have been searched for. I point out also that there is a provision in the Interpretation Act that a reference to a provision in a written law is a reference to that provision, as amended. This renumbering is a form of amendment. If a reference to

the provision was missed prior to this amendment, the Interpretation Act provision would enable that reference to be read correctly.

The CHAIRMAN: Would that reference be updated at some point by way of automatic reprint?

Miss Armstrong: If we found any such provisions, they would be amended. It would have to be done through the next Statutes (Repeals and Minor Amendments) Bill but they would be amended. It may be possible to do them through the powers under the Reprints Act as an incorrect reference to a provision.

Hon ALISON XAMON: On that note, if we discover that inadvertently the intention of the legislation had changed, would that automatically be picked up? Do you understand what I am asking? I suspect that one of the primary concerns that people will be looking at is to make sure that we are not effectively changing the intent of the various acts. That is obviously what we are asking people to comment on. If it turns out that that has happened by accident, would it be expected that that would be reversed as part of that process, or would we need to revisit that on its own terms?

Miss Armstrong: There would not be a process whereby we could do it automatically. We cannot undo an amendment made by Parliament. It would have to be a legislative amendment but we would certainly do it as soon as we could, quite possibly through the omnibus bills.

Hon ALISON XAMON: I was trying to get an understanding of whether the responsibility for making sure that that was effectively repealed would go through that process.

Miss Armstrong: Yes.

The CHAIRMAN: Is there anything else you would like to say about that aspect?

Miss Armstrong: No, I do not think so, if no-one has any more questions.

The CHAIRMAN: Moving on to the next category of amendments, part 4 deals with that sort of thing.

Miss Armstrong: Yes, it is that sort of thing. In part 4 there are a number of subsections in a section and those subsections are not numbered. We have simply given them numbers. The very first provision in section 51 of the Aboriginal Affairs Planning Authority Act is an example of that. Section 30 has two subsections that are not numbered. We have simply numbered them subsections (1) and (2).

The CHAIRMAN: Do you have a page number?

Miss Armstrong: It is page 78 of the bill.

The CHAIRMAN: Can you give me a page reference in the explanatory memorandum? That would be easier to follow.

Miss Armstrong: It is on page 175.

The CHAIRMAN: Have any other categories of formatting been undertaken?

Miss Armstrong: No. In general terms, the whole of part 4 covers those sorts of matters. The exact amendments vary. The amendments in clauses 52 onwards, in some places, are more voluminous because the provisions being corrected are so far removed from the current format that the only way to bring them into line with that format is to delete them and re-enact the provisions in the current format. As far as possible we have not changed the words. The wording has only been changed to the extent that it is necessary for reformatting purposes.

The CHAIRMAN: Why was it not possible to do this by operation of the Reprints Act?

Miss Armstrong: Mainly because of the necessity to change words and numbers. If it were a matter, for example, of changing only margins or purely appearances—a lot of that type of “cleaning”, for want of a better word, was done that way. However, the provisions being dealt with

in this Act are actually changing substantive provisions of the law in very minor ways, but they could not be done through the Reprints Act.

The CHAIRMAN: None at all, or is it simply a convenient way of doing many of the same sorts of things, some of which could be covered by the Reprints Act?

Miss Armstrong: It is possible that some of them could have been done through the Reprints Act but not many, I do not think. It also would have taken a very long time to achieve that result if we were depending on reprinting the acts for that purpose. A lot of the acts are not the sorts of things that could be fixed through the reprints. It was considered whether it might be practical to amend the Reprints Act to give us the power to do these sorts of things, particularly like the schedule headings, but it was decided that that was not a good option, partly because the exercise would only have to be undertaken once. If a bill has to be passed through Parliament, it is best for Parliament to make the amendments rather than to change the Reprints Act to allow them to be changed when they are reprinted. Also, when things like titles must be inserted, that is not a clerical matter; that is a legislative matter. There are some things it would not be appropriate to do in reprint, even if we were to amend the Reprints Act.

The CHAIRMAN: There are a number of substantive changes that seem to us to go beyond formatting, as such. I would like you to comment on those. For example, clause 6(2), which is the deletion of a schedule. I am not sure what page it is.

Miss Armstrong: It is page 23 of the bill and page 100 of the explanatory memorandum. This is one example of it. There are a small number of provisions where the provision was found not to comply with the current formatting standards but on looking at it, it was apparent that the provision was spent and had no ongoing legal effect. It is therefore very difficult to amend it. It would be pointless to amend something that has no ongoing legal effect. It would be a waste of Parliament's time to bother dealing with it. It would also potentially have an adverse affect because if Parliament were to amend it, it would suggest that Parliament thought that the provision was still alive and still had some ongoing effect. In those cases, the only way to deal with the non-standard formatting issue is to delete the provision. If the provision has no ongoing effect and simply does nothing anymore, deleting it will not change the substantive effect of the law. The third schedule to the Administration Act is an example of that. It contained rules for dealing with matters under the Administration Act that were revoked by rules made under that section of the act in 1967. The content of the third schedule to that act has been redundant since 1967.

The CHAIRMAN: There are a couple of other things and I suspect that your response will be of a similar nature.

Miss Armstrong: There is one that may alarm people, which is to do with the Constitution Act Amendment Act.

The CHAIRMAN: I was going to get to that in a minute but another one that I picked up was clause 10 on page 104 of the explanatory memorandum.

Miss Armstrong: Clause 10, to delete the second schedule, is in the same category. Its relevance to the act is in section 3, and section 3 of the act was repealed in 1960. Why the second schedule also was not repealed is a bit of a mystery. In the past, it was sometimes considered that if you repealed the section that connected the schedule, the schedule would fall with the section. It may be that it was thought that it simply was not necessary to repeal it. That schedule has no effect at the moment because the provision that related to it has long since been repealed.

The CHAIRMAN: Is it the case that a schedule falls away —

Miss Armstrong: That is not the currently held view, no. That was considered to be the case in the past. There are discussions about that kind of thing in relation to the commencement of provisions. If you have a split commencement date for the provisions of a bill and one provision is commenced,

the generally held view is that you should separately commence the schedule. It is another provision of the act that should be dealt with on its own.

The CHAIRMAN: Clause 13 of the Constitution Act is another one.

Miss Armstrong: That is also in the category of a provision that simply no longer has any effect. It is not capable of having any effect.

The CHAIRMAN: Would you otherwise have had to break that section into several subsections, perhaps?

Miss Armstrong: It is because of the schedule. Section 71 operates in relation to the schedule. The schedule heading is what would have caused the problem. The schedule is no longer required because that provision—the two are linked. If you delete the schedule, the section is deleted as well. That provision relates to four individuals who are no longer around.

The CHAIRMAN: And have not been since at least the 1800s.

Miss Armstrong: They retired in 1889.

The CHAIRMAN: Clause 22(2).

Hon SALLY TALBOT: Page 123.

The CHAIRMAN: That deletes two subsections for the seventh and eighth schedules.

Miss Armstrong: Those seventh and eighth schedules have long since been repealed. The provisions have no effect. They do not achieve anything because the schedules to which they relate have been repealed.

The CHAIRMAN: What does section 114(1) say? That provides for the taking of the possession of land. Is that what is referred to in subsection (4)?

Miss Armstrong: I do not have a copy of it in front of me.

The CHAIRMAN: Subsection (4) stands in reference to some earlier effective provision regarding taking possession of land.

Miss Armstrong: It may be section 114(1). I suspect that there is a lengthy series of provisions about the taking possession of land.

Hon SALLY TALBOT: Will section 114(1) now read “114(1) and 114(4)”?

Miss Armstrong: Yes. That is not uncommon. As a matter of practice, we do not renumber provisions. If the subsections are deleted, the numbering of the subsequent subsections is not changed.

Hon HELEN MORTON: Do you have a word deleted behind subsection 114(2)? Does “(2)” stay there and it just has “deleted”?

Miss Armstrong: A note will be inserted instead of the provision to note that that has been deleted.

The CHAIRMAN: Clause 63.

Miss Armstrong: That is page 220 of the bill and page 464 of the memorandum.

The CHAIRMAN: It deletes a few subsections.

Miss Armstrong: It deletes a number of subsections from section 32. I assume that is the one you are referring to.

The CHAIRMAN: What are the reasons for that?

Miss Armstrong: Those provisions no longer have any effect because they are related to road funding for the period 1 July 1980 to 1985.

The CHAIRMAN: Right. Are there any other similar deletions? Have we effectively picked up all of them?

Miss Armstrong: There are none that I can think of offhand. There may be one or two, but you certainly have picked up all the ones that come to mind. The notes in the explanatory memorandum should explain the reasons why those provisions are being deleted, if there are any others.

The CHAIRMAN: I can understand the rationale for disposing of them, but the repeal of provisions, no matter how uncontroversial they may be, do they strictly fall within the idea of it being a standardisation of formatting, given the long title of the act, and indeed the short title, to standardise the formatting of certain aspects of those laws?

Miss Armstrong: I would consider that they do because they are being deleted for the purpose of correcting the formatting. Deleting them is the only way to address the problem. They are not being deleted simply because we found them and they are spent or have no effect. Deleting them is the only appropriate form of amendment.

Hon SALLY TALBOT: They are not being repealed. I think in your question, Mr Chairman, you used the word “repeal”. They have already been repealed.

The CHAIRMAN: No, I do not think they have, have they?

Miss Armstrong: They certainly have been not been repealed yet. The effect of the bill is to delete them. We refer to deleting provisions of an act. You repeal the whole of an act but you delete provisions of it.

The CHAIRMAN: I am sorry—delete them.

Miss Armstrong: That is the terminology that is used now, if that makes sense.

The CHAIRMAN: It does.

Miss Armstrong: It is pedantry, I am afraid.

The CHAIRMAN: To be more technically correct, those provisions are being deleted, but they are being deleted as a consequence of the need to reformat. On that argument, is it falling within the concept of a standardisation of the formatting because the only way of reformatting is to delete them?

Miss Armstrong: Exactly, yes.

The CHAIRMAN: There is some replacement of slabs of text within some acts. Clause 52 is an example of that. Tell us about that and how that is a standardisation of formatting.

Miss Armstrong: Again, the only reason for doing anything to that provision is that it does not comply with the current formatting standards. Unfortunately, it is so far removed from the current standards that it simply is not possible to reformat it sufficiently just by making a single word amendment. The only way of dealing with those provisions is by replacing them. The actual words used, as far as is absolutely possible, are the same as the current provisions.

The CHAIRMAN: I am trying to find a reference to the page number in the explanatory memorandum.

Miss Armstrong: It is 89. Section 58 is on page 405.

The CHAIRMAN: Another example is clause 54, existing section 99, for example.

Miss Armstrong: Yes.

The CHAIRMAN: As an example, you appear to have taken out of section 99(1)(c) a lengthy proviso and inserted that proviso as new subsection (2). Subsection (3) is the proviso of existing 99(1)(d). Is that right?

Miss Armstrong: Yes, those provisos are simply being moved to form separate subsections.

The CHAIRMAN: Similar things have been done in clauses 55 through to 73 inclusive.

Miss Armstrong: Yes, that is right.

The CHAIRMAN: Are you able to identify for us any other amendments of a similar character that we have not picked up on?

Miss Armstrong: Clauses 52 to 63 make those larger amendments.

The CHAIRMAN: Right. What is the rationale for that?

Miss Armstrong: That was the only way that we could reformat the provisions. The provisos in section 99 that you referred to, for example, form completely separate sentences that are stuck in a series of paragraphs. That simply is not correct English grammar, apart from anything else. The only way to deal with them is to move them into separate subsections.

The CHAIRMAN: There are a number of cross-references and the like that are also corrected by the operation of the bill. For example, clause 7 of clause 11 appears to correct references, albeit minor.

Miss Armstrong: The shoulder note.

The CHAIRMAN: How are they strictly a standardised formatting, and could they be corrected by way of the Reprints Act?

Miss Armstrong: I do not think that we would correct them by way of the Reprints Act. Generally speaking, cross-references of that nature would be corrected using the omnibus bills rather than the Reprints Act. The reason for including them in these provisions is that it would be inappropriate to ask Parliament to enact a section heading that was wrong. We are inserting a section heading with a shoulder clause. It does need to be correct.

The CHAIRMAN: Are there any other corrections that we have not been able to pick up? The ones that we have noticed were clauses 7 and 11. Are there any others?

Miss Armstrong: If there are, it is a very small number of them. I cannot identify them offhand.

The CHAIRMAN: That is comforting!

Miss Armstrong: If the committee wants me to, I can review the bill and get back to the committee on that.

The CHAIRMAN: Do we need to know this stuff?

Hon SALLY TALBOT: That might be useful. Is that a terribly time-consuming thing to do? Presumably you can search on—what could you do a search on?

Miss Armstrong: I am not sure, to be honest.

The CHAIRMAN: Would you have kept a record as you were going through of those sorts of corrections that you can easily gain access to?

Miss Armstrong: I do not believe that there is a list, as such, of that sort of thing but I may be able to identify them through the notes in the explanatory memorandum.

The CHAIRMAN: Let me put it another way then, which might answer the question: if there are any such corrections would you have identified them in the explanatory memorandum or the preamble to the illustrations of the changes in the explanatory memorandum?

Miss Armstrong: Yes.

The CHAIRMAN: Thank you.

Hon HELEN MORTON: What page in the memorandum are clauses 7 and 11?

The CHAIRMAN: Page 101 for clause 7 and page 104 for clause 11. That might help for the transcript. Was consideration given to dealing with the corrections, deletions and like of spent

provisions by way of some means other than including them in this bill, such as by way of a minor corrections and repeals act or some other omnibus legislation?

Miss Armstrong: Those sorts of amendments probably could be included in one of the omnibus bills. It was considered more appropriate to include them in this bill because dealing with them is part of this one exercise.

The CHAIRMAN: In the course of your preparation of the bill, to what extent did you consult with the various departments and agencies or other organisations that either administer or are affected by the bill?

Miss Armstrong: Every department or agency that administers any of the acts that are to be amended was consulted. They were provided with a copy of the bill and explanatory memorandum. They were asked if they had any comments and to confirm whether they thought that the amendments were satisfactory.

The CHAIRMAN: And what was their response?

Miss Armstrong: There was a certain amount of discussion but they all agreed to the amendments that are now in the bill.

The CHAIRMAN: What was the character of those discussions? What sorts of issues were raised at them?

Miss Armstrong: Much the same as the issues that have been raised by the committee. They asked why we were doing it and that kind of thing. No-one had objections to the amendments.

The CHAIRMAN: Either the principle or the detail?

Miss Armstrong: That is right.

The CHAIRMAN: Some of these acts deal with references to church lands and the like. Were the relevant churches approached?

Miss Armstrong: The departments that administer the acts were consulted. Whether they consulted other entities, I cannot say.

The CHAIRMAN: So the level of consultation was with the departments administering the acts?

Miss Armstrong: The departments and agencies.

The CHAIRMAN: When you say “agencies”, you went to, for example, statutory authorities?

Miss Armstrong: Yes. Whichever agency was formally assigned to administer the act.

The CHAIRMAN: Was there no adverse comment or suggestion of disagreement with what was being proposed?

Miss Armstrong: Absolutely none. I was surprised at how enthusiastic people were.

The CHAIRMAN: Which agency did you consult regarding the Constitution Acts Amendment Act?

Miss Armstrong: The Department of the Premier and Cabinet is responsible for that.

The CHAIRMAN: Clause 2 of the bill provides for substantive provisions of the bill to commence on a date to be fixed by proclamation. The explanatory memorandum notes that the commencement clause was drafted that way in case another bill amends the legislation before this bill commences so as to make proposals contained in this bill redundant. Are you aware of any bills currently before Parliament that may have an affect on this bill?

Miss Armstrong: I am aware of one that I believe is on the notice paper to be introduced today to amend the Bush Fires Act.

The CHAIRMAN: You do not sound happy about that one! What is the problem? Is it because it amends the —

Miss Armstrong: It is purely a coincidence that it is on the notice paper today. It would make significant amendments to the Bush Fires Act and they may well overlap with some of the amendments proposed in this bill. The only other way of dealing with those sorts of provisions is to make amendments to this bill in committee or to that bill while both of them are in Parliament. That can get very difficult, particularly if the bills are in different houses and cross over and that kind of thing. The most practical solution, if the provisions do conflict, is to not proclaim the provisions in this bill.

[11.05 am]

The CHAIRMAN: That raises certain logistical issues should there be reformatting of provisions, where there are amendments that may change references in the provisions to be reformatted where you do want the provision reformatted, but you also have to make some kind of substantial change to a reference or a schedule or something like that.

Miss Armstrong: Depending on what the amendments are, if the amendments in this bill are not proclaimed, we may have to make equivalent amendments by way of the next omnibus bill or something of that nature to end up with the right result.

The CHAIRMAN: Cross one bridge at a time, I think.

Hon HELEN MORTON: If this bill were proclaimed before the bush fires act, or whatever it is, completed its passage through the Parliament, why could you not then make the amendments to that act while it was still in the Parliament?

Miss Armstrong: It is possible; it could be done that way. It depends on the relative speed of the two bills and which one is in which house. It is quite possible that they will pass each other between houses. It may end up that if you were proposing to make further amendments to the Bush Fires Amendment Bill in the second house, you would then cause it to be referred back to the first house, which may not be a desirable result.

Hon SALLY TALBOT: That is if you tried to do both at the same time.

Miss Armstrong: Yes, and, unfortunately, if both bills are in Parliament at the same time, it is quite possible.

Hon HELEN MORTON: But you could not do anything with the other bill anyway until this is proclaimed. That is the starting point to consider doing something else other than that.

Miss Armstrong: That bill has to deal with the act as it currently is. This is not something peculiar to this bill. The possibility of overlapping amendments happens with every bill.

The CHAIRMAN: Are there any further bills standardising the existing legislation anticipated by you?

Miss Armstrong: There is none on the cards right at the moment. I would think that it is quite possible there may be to address perhaps other issues of formatting when they come to light. This bill on its own is not going to achieve perfection in terms of standardisation, so there may be. There is none on the cards at the moment.

The CHAIRMAN: Are you aware whether the government proposes any amendments to the bill as it currently stands?

Miss Armstrong: Not that I am aware of.

The CHAIRMAN: Just getting back to the question of the nature of the amendments and the title of the bill, although the effect of the bill is to standardise formatting, as you explained, it does not itself proclaim any standards for formatting, except by way of example.

Miss Armstrong: That is quite right, yes.

The CHAIRMAN: Is there any reason why it ought not to have been an omnibus bill or something along the line of an acts standardisation of formatting and minor repeals bill or something like that, as opposed to something that suggests that if you turn to the bill, you will find a menu, as it were, of how bills are to appear in future?

Miss Armstrong: It certainly does not fit in the category of the omnibus bills and the statutes (repeals and minor amendments) bills because the nature of those that makes them special is the fact that the amendments that they effect are unrelated. That is the very problem with those bills and why they have to be dealt with specially, so it does not fall into the category of an omnibus bill. The current practice of the Parliamentary Counsel's Office is not to name bills as "Acts Amendment (Some Description)", because it is generally felt that it is not a helpful title in terms of, for example, indexing or documents appearing on the website listed alphabetically; you get hundreds of acts appearing under "A", which is not really very helpful. Often those names are not terribly helpful and they can be avoided. I discussed this with the Parliamentary Counsel and we considered that this was an appropriate title, given that it reflects the effect of the act.

The CHAIRMAN: Has there been any thought given to setting out in the act or some other legislation like, say, the Reprints Act the current practice for the appearance of acts by setting out, for example, the principles that are being adopted in this bill but as a template or a set of principles for the structure of acts in future that may then allow the reprinting of legislation to comply with that formatting or may govern future legislation?

Miss Armstrong: I am not aware of any proposals of that sort. As you have described it, these are procedures, practices and standards. I doubt whether there would be enthusiasm for the idea of setting them out in statute. They do change from time to time. It would be very restrictive if they could not be changed, particularly with the move to electronic legislation.

The CHAIRMAN: I suppose what exercises my mind is if Parliamentary Counsel does decide, because of a change in the technology that is being used or because it decides that stylistically things should be presented in a different fashion, we may have to go through this whole exercise yet again to change the formatting of every piece of legislation that has been passed up until that point to make it conform.

Miss Armstrong: I do not believe so if the changes are purely matters of appearance, because that would not require legislative change. The reason these provisions require legislation is because of the changing of words and renumbering of provisions, inserting of titles and so on. If standards were changed, for example, so that we used a different typeface, it would not be necessary for legislation to achieve that.

The CHAIRMAN: No, if the current practice is to use numerals rather than words for references to schedules and the like, at some stage there may have to be an ability to do that. Would we have to amend the statute again, or can there be recourse to, say, the Reprints Act in order to do that or some like provision? Is it desirable to do that?

Miss Armstrong: I am sorry; I have not understood the question.

The CHAIRMAN: For example, some of the schedules are described as the "Twenty-fourth schedule". The current practice is to use numerals, like schedule 24. You have mentioned the reasons why you have not undertaken that exercise in this bill, but at some stage in the future, how does one go about changing the "Twenty-fourth schedule" to "Schedule 24"? Can it be done automatically through the Reprints Act, or is it something that is going to require some piece of legislation to change that?

Miss Armstrong: If it was decided that we were in fact going to change all those references to numerals, my understanding is that you could not do it through the Reprints Act as it currently is, no.

Hon SALLY TALBOT: I just detect that you are hedging your answer slightly. Is it possible for you to clarify that for us to be absolutely certain, or have I misunderstood you; are you absolutely certain?

The CHAIRMAN: It may be the way I framed the question. Is that what is causing you trouble?

Hon SALLY TALBOT: It might be; that is what I am trying to tease out.

Miss Armstrong: My understanding is that we would not be able to make those sorts of changes using the Reprints Act as it is at the moment. It is always possible to amend the Reprints Act. But as is the case at the moment, if a decision were made for some reason that it was necessary to change all the schedules so that they did use numerals, it would be a one-off exercise which would require legislative action of some sort, be it to change each individual reference or to change the Reprints Act.

Hon SALLY TALBOT: You could do it in an omnibus bill, though?

Miss Armstrong: Yes, I would think so.

The CHAIRMAN: Would there not be an underlying unity of that one that would make it inappropriate to be an omnibus bill because you are changing —

Miss Armstrong: It could be included in an omnibus bill, along with any number of other miscellaneous amendments. Given the number of amendments that would need to be made and the number of acts affected, it is likely it would be more appropriate to do it in a separate bill of the sort that we have got now.

Hon ALISON XAMON: Through the Chair, I am satisfied with the response that having a Standardisation of Formatting Bill in the way that we would understand it—that is, the way you have explained it as, perhaps, a pro forma of how we would want our bills to be presented—may not be desirable because, effectively, it would lock us into a format that we may not want to do and it may be more difficult to revisit that in the future. I am personally satisfied that this is attempting to deal with the right here, right now in terms of an accepted formatting and that that leaves us open to be able to see what technologies bring. I am reluctant to try to predict what the future might hold in terms of technologies and how our acts are going to need to be formatted to reflect that in the future. I suppose that the use of this at least sets a standard, even if not prescribed within law, an understanding, of how we expect our bills to be drafted in future and also amended so that there is some sort of consistency. I am personally quite satisfied with that as your response.

The CHAIRMAN: Thank you very much for that.

Miss Armstrong: My pleasure.

Hon HELEN MORTON: Except perhaps to say what an amazing amount of work over a number of years.

The CHAIRMAN: I am surprised you are still sane!

Miss Armstrong: I must say I am a little surprised I am still awake! It is not the most stimulating work.

The CHAIRMAN: I hope that they give you something short and interesting to do next time! Thank you very much for your assistance today. It may be necessary to call you back on some matter at a future sitting. We will need to discuss that. Also, as Hon Helen Morton has mentioned, well done on the amount of attention that you have paid to it and your diligence to it. By many standards, I suppose, one might think of it as a relatively inconsequential piece of legislation that does not actually do anything substantial in terms of the laws of the state, but it is one of those that require an enormous amount of attention to detail and perseverance by its very nature, because you are dealing with so many statutes and potential consequences of making an error. Thank you. I terminate the hearing. You are excused.

Hearing concluded at 11.22 am