



REPORT OF THE
CONSTITUTIONAL AFFAIRS AND STATUTES REVISION
COMMITTEE

IN RELATION TO THE

Statutes (Repeals and Minor Amendments) Bill 1997

Presented by the Hon Murray Nixon (Chairman)

**STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS
AND STATUTES REVISION**

Date first appointed:

21 December 1989

Terms of Reference:

The functions of the Committee are to consider and report on -

- (a) what written laws of the State and spent or obsolete Acts of Parliament might be repealed from time to time;
- (b) what amendments of a technical or drafting nature might be made to the Statute book;
- (c) the form and availability of written laws and their publication;
- (d) any petition;
- (e) any matter of a constitutional or legal nature referred to it by the House.

A petition stands referred to the Committee after presentation.

Members as at the date of this report:

Hon M D Nixon MLC (Chairman)
Hon R Halligan MLC
Hon T Helm MLC

Staff as at the date of this report:

Mr Peter Williams, Advisory/Research Officer
Ms Kelly Campbell, Committee Clerk

Previous reports:

See Appendix 1

Address:

Parliament House, Perth WA 6000, Telephone (09) 222 7222

ISBN 0 7309 8869 4

CONTENTS

1	Reference and Procedure	1
2	Contents and Purpose of the Bill	1
3	Part 2 - Various Acts Repealed	2
	<i>Assistance by Local Authorities in Wiring Dwellings for Electricity Act 1953</i>	2
	<i>Death Duty Act 1973</i>	2
	<i>Death Duty Assessment Act 1973</i>	2
	<i>The Fremantle Gas and Coke Company's Act 1886</i>	3
	<i>The Fremantle Harbour Works and Tramways Act 1893</i>	3
	<i>The Geraldton Municipal Gas Supply Act 1910</i>	3
	<i>Iron Ore (Dampier Mining Company Limited) Agreement Act 1969</i>	4
	<i>Nelson Agricultural Society Land Act 1906</i>	4
	<i>State (Western Australian) Alunite Industry Act 1946</i>	4
	<i>Tax Collection Act 1920</i>	4
	<i>Wood Distillation and Charcoal Iron and Steel Industry Act 1943</i>	5
4	Part 3 - Various Acts Amended	5
	Clause 28 - <i>Casino Control Act 1984</i> amendments	5
	Clause 34(7) - <i>Community Services Act 1972</i> amendment	5
	Clause 54(3) and (7) - <i>Environmental Protection Act 1986</i> amendments	6
	Clause 66(2) - <i>Government Employees Superannuation Act 1987</i> amendment	6
	Clause 71 - <i>Heritage of Western Australia Act 1990</i> amendment	6
	Clause 83(2) - <i>Local Government (Miscellaneous Provisions) Act 1960</i> amendment	6
	Clause 90(1) - <i>Motor Vehicle Dealers Act 1973</i> amendment	7
	Clause 93 - <i>Nurses Act 1992</i> amendment	7
	Clause 121 - <i>Tobacco Control Act 1990</i> amendments	8
	Clause 130(2),(3),(4) and(5) - <i>Welfare and Assistance Act 1961</i> amendments	9
	APPENDIX I	10

**Report of the Legislative Council
Constitutional Affairs and Statutes Revision**

in relation to the

Statutes (Repeals and Minor Amendments) Bill 1997

1 Reference and Procedure

- 1.1 The *Statutes (Repeals and Minor Amendments) Bill 1997* (the *Statutes Repeal Bill*) was referred to the Constitutional Affairs and Statutes Revision Committee on 26 June 1997 on a motion by the Hon Norman Moore MLC.
- 1.2 The Committee received 3 submissions concerning various clauses within the *Bill* and conducted hearings upon Clause 93 concerning amendments to the *Nurses Act 1992* on 30 September 1997. The Committee heard representatives of the Western Australian Nurses Board and the Australian Nurses Federation (WA) in regard to their views on the proposed clause.

2 Contents and Purpose of the Bill

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

In his Second Reading speech in the Legislative Council, Hon Norman Moore MLC said:

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

- 2.2 The *Statutes Repeal Bill* is substantively the same as the *Statutes (Repeals and Minor Amendments) Bill 1996* which lapsed on the dissolution of Parliament prior to the 1996 election. Parliamentary Counsel reviewed the Bill and made a number of amendments consequential to other legislative amendments and repeals that took place during 1996.

2.3 The *Statutes Repeal Bill* contains 134 clauses in 3 parts:

Part 1: Preliminary

Part 2: Various Acts repealed

Part 3: Various Acts amended

2.4 The report makes no comment on Part 1, but will provide a brief description of each Act being repealed in Part 2 and provide selected extracts for certain Various Acts amended in Part 3. The report will also provide a particular focus on clause 93 concerning an amendment to the *Nurses Act 1992*.

3 **Part 2 - Various Acts Repealed**

Assistance by Local Authorities in Wiring Dwellings for Electricity Act 1953

3.1 The process authorised by this act is now obsolete and any activities contemplated by this Act are now covered by other Western Australian energy legislation.

Recommendation 1: The Act be repealed

Death Duty Act 1973

Death Duty Assessment Act 1973

3.2 The *Death Duty Act 1973* and the *Death Duty Assessment Act 1973* ("probate legislation") impose probate duty on the estates of persons who died prior to 1 January 1980. The limited application of the legislation of such estates is the result of amendments to both Acts in 1978 to abolish probate duty.

3.3 The probate legislation requires that before the asset of an estate of a person who died prior to 1 January 1980 can be released to the executor or administrator of the estate for distribution, a clearance certificate must first be obtained from the Commissioner of State Revenue and the relevant duty (if any) paid.

3.4 As a result of this requirement the Commissioner receives in the order of 40 applications per annum requesting probate clearance certificates for assets of affected estates. The majority of these applications relate to incidental assets, the values of which are below the thresholds to which probate duty applies, and result in little or no revenue.

- 3.5 Over time the estates of affected persons have been finalised and the application of the probate legislation is now limited and the revenue raised by it is considered to be outweighed by the administration and compliance costs associated with its continued operation. The Commissioner of State revenue has also advised that there are currently no outstanding probate duty assessments, nor is he aware of any existing liability which has yet to be assessed that involves revenue of any significance.

Recommendation 2: Both Acts be repealed, and certain obligations and prohibitions extinguished.

The Fremantle Gas and Coke Company's Act 1886

- 3.6 The Company is no longer in existence and AlintaGas now has the responsibility for gas reticulation in the area contemplated by the Act, with other Western Australian energy legislation providing legislative authority.

Recommendation 3: The Act be repealed and the consequential amendment be enacted.

The Fremantle Harbour Works and Tramways Act 1893

- 3.7 The original purpose and activities contemplated by the Act are now covered by other Western Australian legislation including the *Fremantle Port Authority Act 1902*.

Recommendation 4: The Act be repealed.

The Geraldton Municipal Gas Supply Act 1910

- 3.8 The Act is now defunct and the purpose and activities contemplated by the Act are now covered by other Western Australian energy legislation.

Recommendation 5: The Act be repealed.

Iron Ore (Dampier Mining Company Limited) Agreement Act 1969

- 3.9 The Act is obsolete, since the agreement to which it refers has now been cancelled, pursuant to the *Iron Ore (Robe River) Agreement Act 1964*. The Dampier Mineral Lease was surrendered on 17 March 1988 and the Dampier Agreement was cancelled on that date.

Recommendation 6: The Act be repealed.

Nelson Agricultural Society Land Act 1906

- 3.10 The Act enabled the trustees of the Nelson Agriculture Society to sell land in Bridgetown and apply the proceeds to improve certain other land. The Act is now redundant having served its purpose.

Recommendation 7: The Act be repealed.

State (Western Australian) Alunite Industry Act 1946

- 3.11 The Act enabled the State of Western Australia to continue, for a few years, a then ailing strategic wartime potash and mineral alunite industry established under a repealed Act of 1942. The Act is now redundant, as it concerns an industry which has not operated for at least 45 years.

Recommendation 8: The Act be repealed.

Tax Collection Act 1920

- 3.12 The Act was designed to enable certain State taxes and duties to be collected by officers of the Commonwealth of Australia. No taxes or duties are currently being collected by the Commonwealth under the authority of this Act.

Recommendation 9: The Act be repealed.

Wood Distillation and Charcoal Iron and Steel Industry Act 1943

- 3.13 The Act has been of no force or effect since the State run Charcoal Iron and Steel project at Wundowie was disposed of under the terms of the *Wundowie Charcoal Iron Industry Sale Agreement Act 1974*. The industry covered by the obsolete Act ceased operation in 1980.

Recommendation 10: The Act be repealed.

4 Part 3 - Various Acts Amended

- 4.1 The final part of the *Statutes Repeal Bill* contains clauses amending 121 Acts. The majority of these clauses provide for amendments correcting minor textual errors, changes to the names of organisations or government agencies, cross-reference errors or changes in terminology.
- 4.2 The Committee considered that it would be unnecessary duplication of the materials provided in the *Explanatory Notes to the Statutes Repeal Bill* to individually review each proposed amendment. The Committee has provided a short extracted summary of a selected range of the various Acts to be amended. The Report provides final recommendations for Part 3 of the *Statutes Repeal Bill* at the end of all the summaries.

Clause 28 - *Casino Control Act 1984* amendments

- 4.3 Section 13 of the Act only authorises the Chief Casino Officer to release certain information that would otherwise be protected under section 20 of the *Gaming Commission Act 1987*. The amendment would also empower the WA Gaming Commission to authorise release of information to another regulatory body or law enforcement agency. Since the WA Gaming Commission is the "senior body" overseeing gaming in WA, it would be inconsistent for it to not have the powers of a subordinate officer.

Clause 34(7) - *Community Services Act 1972* amendment

- 4.4 The amendment will allow the Minister to provide general or specific delegation of powers under the Act. It is designed to allow for greater administrative convenience and is a provision that brings the Act into line with other Western Australian legislation.

Clause 54(3) and (7) - *Environmental Protection Act 1986* amendments

- 4.5 The proposed amendments clarify that the Minister can require the Environmental Protection Authority to assess a proposal they have elected not to assess, consistent with the Environmental Protection Authority functions under section 16(e) of the *Environmental Protection Act 1986*.

Clause 66(2) - *Government Employees Superannuation Act 1987* amendment

- 4.6 Government policy is to provide choice in superannuation to public sector agencies that are required to operate on a commercial basis. Subject to certain guidelines being met, agencies may now establish alternative arrangements to those available through the Government Employees Superannuation Fund.
- 4.7 The effect of the proposed amendment will be to allow members of the 1987 scheme who are employees of agencies which establish alternative superannuation arrangements, to transfer their accrued entitlements from the Government Employees Superannuation fund to the new fund. Without this amendment, such employees will not be able to consolidate their superannuation within one fund until after age 55.

Clause 71 - *Heritage of Western Australia Act 1990* amendment

- 4.8 The amendment repeals a subsection of the Act that provides that a member of the Heritage Council whose term of office has expired continues in office until a successor is appointed. The amendment will bring the Heritage Council period of office procedure in line with similar provisions contained in other acts.

Clause 83(2) - *Local Government (Miscellaneous Provisions) Act 1960* amendment

- 4.9 The amendment increases the penalties provided in Section 377(6) of the Act. This amendment should have been included with similar amendments made to Part XV of the Act in Schedule 9.2 of the *Local Government Act 1995*. This amendment will bring certain fines in line with other penalties in the Act.

Clause 90(1) - *Motor Vehicle Dealers Act 1973* amendment

- 4.10 The amendment will provide statutory immunity for individual members of the Motor Vehicle Dealers Licensing Board and administrative support staff consistent with immunities provided in other occupational licensing acts administered by the Ministry of Fair Trading.
- 4.11 The amendment corrects an anomaly which currently exists in that individual members and staff of the Motor Vehicle Dealers Licensing Board are denied the protection currently afforded to individual members and staff of the Real Estate and Business Agents Supervisory Board, the Settlement Agents Board, the Land Valuers Licensing Board and the Finance Brokers Supervisory Board.

Clause 93 - *Nurses Act 1992* amendment

- 4.12 The amendment has been proposed to address an anomaly within the act, by which the professional standards committee of the Nurses Board of Western Australia is bound by the "rules of evidence" in the conduct of a formal inquiry under the *Nurses Act 1992*.
- 4.13 It has been submitted that the proposed amendment is justified principally on the following grounds:
- 4.13.1 no other health registration board in Western Australia is bound by the "rules of evidence";
 - 4.13.2 no other Nurses Board in Australia is bound by the "rules of evidence" in disciplinary matters;
 - 4.13.3 the Crown Solicitor's Office has been consulted and agrees that the amendment is appropriate;
 - 4.13.4 the expense and delay in being bound by the "rules of evidence" has proved substantial for both the Nurses Board of Western Australia and persons required to attend formal disciplinary inquiries; and
 - 4.13.5 the Nurses Board of Western Australia profile is adequately weighted in favour of nurses, as is the professional standards committee.

- 4.14 In opposition to the proposed amendment it has been submitted that:
- 4.14.1 even if no other health registration body or Nurses Board is bound by the "rules of evidence" that is not proof in itself that the current Western Australian model is inappropriate;
 - 4.14.2 any expense and delay that may have occurred as a result of the requirement that the committee be bound by the "rules of evidence" is outweighed by the protection accorded by the "rules of evidence" to the accused; and
 - 4.14.3 it would be preferable to rely upon the protection of the "rules of evidence" until assurances can be provided by the Nurses Board of Western Australia with regard to consistency of approach and appropriate standard of inquiry by the professional standards committee. This would require adequate preparation, training and experience in respect of committee members.
- 4.15 In light of the requirement that an amendment in the *Statutes Revision Bill* be "short and non-controversial" and "in addition, they must not impose or increase any obligations or adversely affect any existing rights" the Committee considered that the evidence is that this amendment is controversial. The Nurses Board of Western Australia and the Australian Nurses Federation (WA Branch) have discussed this amendment for some time and have not resolved their fundamental disagreements.
- 4.16 Furthermore the Committee understands that at this stage the matter has not been considered by all relevant parties, including enrolled nurses, so it may well add to further controversy concerning the issues already raised in this debate.
- 4.17 The *Nurses Act 1992* is subject to review in 1998, and the Committee believes that this amendment is best dealt with in the overall review of the functions and operations of the Act at that time.

Clause 121 - Tobacco Control Act 1990 amendments

- 4.18 The amendments remove the onus on the Western Australian Health Promotion Fund to seek to disburse certain funds within the year in which those funds are received. The current need to disburse funds within the time constraint has resulted in a number of problems, including rushing of negotiations and entering into large and complex sponsorships. This has caused a continual need to seek an extension to the submission date for the Annual Report in each year of its operation.

Clause 130(2),(3),(4) and(5) - *Welfare and Assistance Act 1961* amendments

- 4.19 These amendments are designed to reflect changes to modern monetary amounts, and it also adjusted the level of penalty in line with similar offences in other legislation.

Recommendation 11: The Committee considers that it is inappropriate for Clause 93 - *Nurses Act 1992* amendment to be considered as part of this Bill and should instead be considered as part of the overall review of the functions and operations of the *Nurses Act 1992* in 1998.

Clause 93 - *Nurses Act 1992* amendment should not be enacted at this time.

Recommendation 12: That the remaining amendments contained in Part 3 be enacted.

APPENDIX I

LIST OF REPORTS

1. Report regarding a petition seeking legislation on various aspects of substantive law and procedural law relating to sex offences against children.
2. Interim report into links between Government agencies and the failed Western Women Group.
3. Second interim report into links between Government agencies and the failed Western Women Group.
4. Report regarding a petition requesting the Legislative Council to investigate whether the proposed dissolution of the City of Perth contravenes the Constitution Act 1889 or any other Act or Statute.
5. Report in relation to a petition requesting the ban on the use of fishing nets (other than prawn drag nets and throw nets) for recreational fishing in the Pilbara region and the phasing out of certain professional licence endorsements.
6. Report in relation to a petition concerning the export of iron ore through Esperance.
7. Report in relation to a petition concerning the town of Wittenoom.
8. Overview of Petitions: April 1993 - March 1994.
9. Overview of Petitions: May 1994 - December 1994.
10. Report in relation to a petition regarding the Port Kennedy Development.
11. Report in relation to the Electronic Availability of Statutes.
12. Report in relation to a petition regarding the Swan Valley and Whiteman Park.
13. Report in relation to a petition regarding the Sewerage System.
14. Report in relation to a petition objecting to the Government's decision to restrict the use by pensioners of their free Westrail entitlement during holiday periods.
15. Overview of Petitions: March 1995- March 1996.
16. Report in relation to a petition regarding the effect of soil conservation policy on clearing controls and remnant vegetation management.
17. Report in relation to a petition regarding hardship due to the formerly rare and endangered plant *Acacia Guinetii*
18. Overview of Petitions March 1996 - November 1996