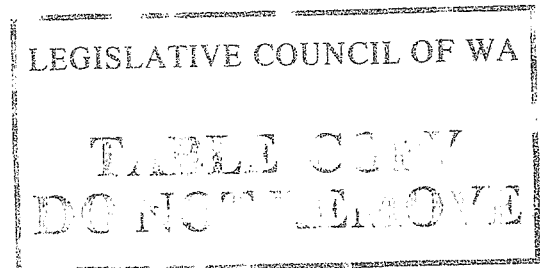




Attorney General; Minister for Corrective Services

Our Ref: 35-05856

Mr Paul Grant
Clerk Assistant (Committees)
Legislative Council
Parliament House
PERTH WA 6000



Dear Mr Grant

**COMMITTEE REPORTS: GOVERNMENT RESPONSE
LEGISLATIVE COUNCIL STANDING ORDER 337
STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2009**

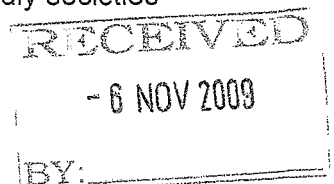
Thank you for your letter dated 17 September 2009 seeking my response regarding the Statutes (Repeals and Minor Amendments) Bill 2009.

My response is particularly required in relation to recommendation 1 that requires a "full explanation of the reasons why the repeal or minor amendment of the affected legislation is required." The explanatory memorandum for this Bill was prepared in a narrative/portrait style while in previous years it was done in landscape with three or columns; the first reproducing the old clause, the second the clause as amended and the third detail of why the amendment was necessary.

The Bill was originally prepared by the Department of the Premier and Cabinet. When responsibility for the Bill was transferred to the Department of the Attorney General the explanatory memorandum as it then was also transferred electronically but because of internal difficulties it could not be corrected.

The concerns of the Committee are noted and in future the explanatory memorandum will be done in a landscape style.

The Committee has recommended that the apostrophe in "Societies" should be deleted in relation to the title of the *Friendly Societies' Association of Kalgoorlie Investment Validation Act 1919 (WA)* (recommendation 2). Parliamentary Counsel is of the view that this is not correct. A copy of the original Act is attached for information. The Act refers to a body the name of which appears to be the Friendly Societies' Association of Kalgoorlie. It is mentioned in the long title and preamble with an apostrophe so presumably it is meant to be possessive not plural (i.e., the association belonging to the friendly societies, rather than the being a collective of friendly societies - which is what we might likely call it today).



The Committee has recommended that the word "The" in the title of *The Uniforms Act 1895* (WA) should be capitalised and italicised (recommendation 3). It is agreed that the change should be made. The Act appears on the legislation database and all internal records without the word "*The*" but it is in the original Act.

All Acts passed before about 1980 had a comma in the title after the word Act. As a matter of practice the comma is no longer included and the commas are removed when Acts are reprinted. None of the Acts in question (recommendations 2 to 10, inclusive) have, in fact, been reprinted and accordingly there is no official authority for not including the commas. Having regard to the nature of the amendments regarding the commas and the agreed amendment to *The Uniforms Act 1895* (WA) I have asked the Clerk of the Council to consider them as "clerk's amendments".

It has previously been agreed that the proposal to repeal the *White Phosphorus Matches Prohibition Act 1912* (WA) be deleted (recommendation 11) and an amendment has been prepared by Parliamentary Counsel.

Yours sincerely



C. Christian Porter MLA
ATTORNEY GENERAL; MINISTER FOR CORRECTIVE SERVICES

Attach: *Friendly Societies' Association of Kalgoorlie Investment Validation Act, 1919* (WA)

28 OCT 2009

No. 34.] *Friendly Societies Association of Kalgoorlie* [1919.
Investment Validation.

FRIENDLY SOCIETIES'
ASSOCIATION OF KALGOORLIE
INVESTMENT VALIDATION.

10° GEO. V., No. XXII.

No. 34 of 1919.

AN ACT to validate certain investments made by the
Friendly Societies' Association of Kalgoorlie.

[Assented to 12th December, 1919.]

Preamble.

WHEREAS the Friendly Societies' Association of Kalgoorlie, a society registered under the Friendly Societies Act, 1894, pursuant to section eight thereof, has invested certain of its funds in the purchase of shares in M. Kelly, Limited, a company formed for (amongst other purposes) carrying on business as a chemist and druggist; And whereas the said society was not justified in law in investing the said funds in manner aforesaid, and it is expedient to validate all investments made by the said society in the shares of the said company: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Friendly Societies' Association of Kalgoorlie Investment Validation Act, 1919.*

Validation of
investments of
society.

2. All investments made by the said society in the shares of the said company to the extent of three hundred contributing shares and five hundred fully paid shares are hereby validated, and the said society shall be deemed to have been authorised to acquire the said shares, and may hold and dispose of such shares as lawful owners thereof accordingly.

Contents

- 3.4 The 2009 Bill contains 17 clauses and proposes to:
- repeal 12 Acts (refer to clause 3(1));
 - declare that seven other Acts have previously been repealed (refer to clause 4);
 - repeal two items of subsidiary legislation (refer to clause 3(2)); and
 - make minor amendments to another 38 Acts and one other item of subsidiary legislation (refer to Part 3).

4 INADEQUATE EXPLANATORY MEMORANDUM

- 4.1 The Committee noted that the Second Reading Speech indicates that “*The various amendments [proposed by the 2009 Bill] are explained in detail in the explanatory memorandum.*”¹³ However, the Committee found the *Explanatory Memorandum* to be uninformative with regard to many of the clauses of the 2009 Bill. For example, the comments relating to clause 3, which proposes to repeal 12 Acts and two items of subsidiary legislation, merely list the titles of the legislation which are proposed to be repealed.¹⁴ There is no explanation of why these items of legislation require repealing, apart from a general statement that they are “*unproclaimed or obsolete, redundant, spent and inoperative*”.¹⁵ Without any further explanation, it is difficult for the Committee to be assured of the need for the repeals.
- 4.2 Conversely, the *Explanatory Memorandum* for the 2008 Bill (**2008 EM**) was much more instructive. That document is attached to this Report as **Appendix 2** because it provides information which is useful when considering the 2009 Bill. Given that the 2008 Bill and 2009 Bill vary in some respects, the 2008 EM has been annotated by the Committee to identify which parts of it relate to the 2009 Bill. The Table in **Appendix 3** also provides a quick reference to the corresponding clauses in the bills and the relevant parts of the 2008 EM.

Recommendation 1: The Committee recommends that the Government ensure that explanatory memoranda relating to omnibus statutes review bills provide a full explanation of the reasons why the repeal or minor amendment of the affected legislation is required.

¹³ Hon Simon O’Brien MLC, Minister for Transport, Parliament of Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 6 May 2009, p3396.

¹⁴ *Explanatory Memorandum* for the Statutes (Repeals and Minor Amendments) Bill 2009, p2.

¹⁵ *Ibid.*, p1.

Recommendation 2: The Committee recommends that clause 3(1)(d) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:

Page 3, line 8 – To delete “’”.

Page 3, line 9 – To insert after “*Act*” –

Recommendation 3: The Committee recommends that clause 3(1)(j) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:

Page 3, line 16 – To delete “the” and insert –

The

Page 3, line 16 – To insert after “*Act*” –

Recommendation 4: The Committee recommends that clause 4(a) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:

Page 3, line 28 – To insert after “*Act*” –

Recommendation 5: The Committee recommends that clause 4(b) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:

Page 4, line 2 – To insert after “*Act*” –

Recommendation 6: The Committee recommends that clause 4(c) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:

Page 4, line 4 – To insert after “*Act*” –

Recommendation 7: The Committee recommends that clause 4(d) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:

Page 4, line 6 – To insert after “*Act*” –

Recommendation 8: The Committee recommends that clause 4(e) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:

Page 4, line 8 – To insert after “*Act*” –

Recommendation 9: The Committee recommends that clause 4(f) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:

Page 4, line 10 – To insert after “*Act*” –

Recommendation 10: The Committee recommends that clause 4(g) of the Statutes (Repeals and Minor Amendments) Bill 2009 be amended as follows:

Page 4, line 12 – To insert after “*Act*” –

Committee Comment

5.27 For the above reasons, the Committee was not satisfied that the WPMP Act has been superseded by other legislation and was concerned that, if the WPMP Act is repealed:

- the manufacturing of matches using yellow phosphorus; and
- the sale of matches made with yellow phosphorus,

will no longer be prohibited in Western Australia.

5.28 The Committee advised the Department of the Attorney General, the Department of Health and the Department of Commerce of its concerns about clause 3(1)(k) of the 2009 Bill and arranged for representatives from each of those departments to attend a hearing to discuss the Committee's concerns. However, before the hearings were held, the Department of Health advised the Committee that, after discussing the issues with the Department of the Attorney General and the Parliamentary Counsel's Office, and seeking comment from the Chief Pharmacist, it was of the view that:

there appears to be unresolved issues regarding the operation of the poisons legislation and the repeal of the [WPMP] Act and [given that] the Poisons Act 1964 is currently under review, we have agreed to remove the [WPMP] Act from the [2009] Bill.⁶⁰

5.29 In order to confirm the advice from the Department of Health, the Committee requested and received letters from the Minister for Health⁶¹ and the Attorney General⁶² undertaking to withdraw the repeal of the WPMP Act from the 2009 Bill (attached to this Report as **Appendix 4** and **Appendix 5**, respectively). The Committee draws the attention of the House to the letter from the Attorney General, which encloses a draft amendment to delete clause 3(1)(k) from the 2009 Bill. The Committee supports the draft amendment.

Recommendation 11: The Committee recommends that clause 3(1)(k) of the Statutes (Repeals and Minor Amendments) Bill 2009 be deleted via the following amendment:

Page 3, line 17 — To delete the line.

⁶⁰ Letter from Ms Suzanne Hillier, Acting Director, Legal & Legislative Services, Director General's Division, Department of Health, 14 August 2009.

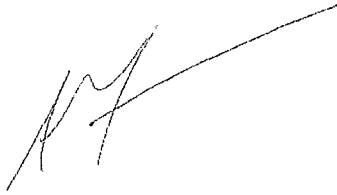
⁶¹ Letter from Hon Dr Kim Hames MLA, Deputy Premier and Minister for Health, 24 August 2009.

⁶² Letter from Hon C Christian Porter MLA, Attorney General, 4 September 2009.

6 CONCLUSION

6.1 The Committee considered the 2009 Bill and the information provided by the *Explanatory Memorandum* for the 2009 Bill and the 2008 EM. The Committee was of the view that the clauses of the 2009 Bill, with the exception of clause 3(1)(k), are consistent with the scope and purpose of an omnibus statutes review bill. Therefore, the Committee makes the following recommendation:

Recommendation 12: The Committee recommends that, subject to the adoption of Recommendations 1 to 11, the Statutes (Repeals and Minor Amendments) Bill 2009 be passed.



Hon Adele Farina MLC
Chairman

16 September 2009