

STATUTES (REPEALS) BILL 2013

EXPLANATORY MEMORANDUM

The Statutes (Repeals) Bill 2013 repeals various obsolete Acts, including some Imperial Acts in so far as they are part of the law of Western Australia, and consequentially amends various other Acts.

PART 1 — PRELIMINARY

Clause 1: Short title

Upon enactment, this Act may be referred to as the *Statutes (Repeals) Act 2013*.

Clause 2: Commencement

This clause provides for sections 1 and 2 of the Act to come into operation on the day the Act receives the Royal Assent. The rest of the Act comes into operation on the day after the Royal Assent.

PART 2 — REPEALS

DIVISION 1 Repeal of WA Acts with no consequential amendments

Clause 3: WA Acts repealed

This clause provides that Acts listed in **Schedule 1** are repealed.

DIVISION 2 Repeal of WA Acts with consequential amendments or other provisions

SUBDIVISION 1 Advance Bank (Merger with St.George Bank) (Taxing) Act 1998 repealed and consequential amendments

Clause 4: *Advance Bank (Merger with St.George Bank) (Taxing) Act 1998* repealed

This clause provides for the repeal of the *Advance Bank (Merger with St.George Bank) (Taxing) Act 1998*. This Act served the specific purpose of enabling the transfer of assets and liabilities to St George Bank as if it were transferred pursuant to a normal transaction, rather than by way of a New South Wales regulation.

The transfer is presumed to have been made and a certificate issued (GG 216, 30 October 1998). All objection or appeal

rights have been exhausted and the Act is no longer necessary.

Clause 5: *Advance Bank (Merger with St. George Bank) Act 1998* amended

This clause amends the *Advance Bank (Merger with St. George Bank) Act 1998* by removing references to the *Advance Bank (Merger with St. George Bank) (Taxing) Act 1998*.

SUBDIVISION 2 *Midland Junction-Welshpool Railway Act 1957 repealed and savings provision*

Clause 6: *Midland Junction-Welshpool Railway Act 1957* repealed

This clause repeals the *Midland Junction-Welshpool Railway Act 1957*, which authorised construction of two branches of railway:

- from Midland Junction to Welshpool Station Yard, which was constructed but a portion of which was discontinued by the *Railway Discontinuance Act 2006*; and
- from Cannington Station Yard (which was never constructed).

Subclauses (1) and (3) provide for a saving provision that confirms:

- any railway made under the authority of this repealed Act (including marshalling yards) continues to be a railway authorised by a special Act; and
- any limits of deviation authorised by the repealed enactment continue to be authorised limits of deviation of that railway

The saving provision maintains the status of:

- a portion of the Midland Junction to Welshpool railway ("Railway Corridor Line No. 6", which was authorised by the *Railways (Standard Gauge) Construction Act 1961-3*); and
- a marshalling yard permitted to be constructed by section 2 of the repealed Act (the Kewdale Freight Terminal).

SUBDIVISION 3 *Racing and Gambling Legislation Amendment and Repeal Act 2003 repealed and consequential amendments*

Clause 7: *Racing and Gambling Legislation Amendment and Repeal Act 2003* repealed

This clause provides for the repeal of the *Racing and Gambling Legislation Amendment and Repeal Act 2003*, which contained transitional provisions and consequential amendments to facilitate the establishment of Racing and Wagering Western Australia. All provisions were spent upon enactment, so the Act is obsolete and can be repealed.

Clause 8: *Betting Control Act 1954* amended

This clause amends the *Betting Control Act 1954* by removing a reference to the *Racing and Gambling Legislation Amendment and Repeal Act 2003*.

Clause 9: *Racing and Wagering Western Australia Act 2003* amended

This clause amends the *Racing and Wagering Western Australia Act 2003* by removing a reference to the *Racing and Gambling Legislation Amendment and Repeal Act 2003*.

SUBDIVISION 4

University Building Acts repealed and consequential amendment

Clause 10: *University Building Act 1938* repealed

This Act authorised the Senate of the University of Western Australia to access from trust moneys belonging to the University an amount for the erection a building used for agricultural and pastoral research and training. The Act provided for the University to be reimbursed by the Government. Liaison with the University indicated the Act was no longer relevant and there would be no negative impact upon repeal.

Clause 11: *University Buildings Act 1930* repealed

This Act authorised the Senate of the University of Western Australia to access certain trust moneys to complete certain buildings at its Crawley campus. Specifically the moneys were to be used for buildings to cater for the Physics, Chemistry, and Agricultural Science Departments of the University. The Act provided for the University to be reimbursed by the Government. Liaison with the University indicated the Act was no longer relevant and there would be no negative impact upon repeal.

Clause 12: *University Buildings Act 1952* repealed

This Act authorised the Senate of the University of Western Australia to use its trust funds to borrow on the security of its trust investments in order to provide money for the erection of various buildings, unspecified at the time, for the University.

Liaison with the University indicated the Act was no longer relevant and there would be no negative impact upon repeal.

Clause 13: *University of Western Australia Act 1911* amended

This clause amends the *University of Western Australia Act 1911* by removing references to the *University Buildings Act 1930*, the *University Building Act 1938* and the *University Buildings Act 1952*.

Division 3 — Repeal of Imperial Acts

Clause 14: *Imperial Acts repealed*

These Acts were originally passed by the United Kingdom parliament and extended to Western Australia through various Adopting Acts passed by the Western Australian Parliament.

Clause 14(1) lists the Imperial Acts to be repealed -

(a) *An Act for the Amendment of the Law relating to Dower (Imp)*

The Act relates to the law of dower. In Roman law dower referred to property a bride brings to her groom in marriage. It is also a widow's life interest in a portion of her deceased husband's property: that proportion of his lands or tenements which the wife, for the term of her life, holds after his death for the sustenance of her and her children.

The Act provides that no widow is entitled to dower out of any land which had been absolutely disposed of by her husband in his lifetime or his will.

The Act is adopted in Western Australia by the *Imperial Acts Adopting Act 1836 (WA)*. It has been effectively, but not explicitly, repealed by later Western Australian Acts. In any case the Act's provisions are no longer effective and the Act can be repealed.

(b) *An Act for the Amendment of the Law of Inheritance (Imp)*

The Act is adopted in Western Australia by the *Imperial Acts Adopting Act 1836 (WA)* and amends the laws of inheritance.

The Act was effectively, but not explicitly, repealed by later Western Australian Acts that provided for the passing of real estate by executors and administrators. Even if it is not repealed the provisions are no longer effective as other laws of inheritance have been enacted.

(c) *Marriage Act 1835*

The Act provides that marriages within certain degrees of affinity before enactment are not void, but they will be after enactment. The Act was adopted in Western Australia by the *Imperial Acts Adopting Act 1844 (WA)*.

Marriage is now a specific power of the Commonwealth Government under the *Commonwealth Constitution 1901 (Cth)*. As a result the statute is redundant and there are no adverse effects on repeal.

(d) *Perpetuation of Testimony Act 1842*

This Act “perpetuates” testimony in certain cases. Perpetuation of testimony is a proceeding originally in Chancery to place on record evidence material for establishing a future claim to property or title.

The Act is adopted in Western Australia by the *Imperial Acts Adopting Act 1844 (WA)*.

Section 1 provides for the perpetuation of testimony in relation to a claim for an honour or a title. Section 2 provides that the Attorney General is a party in a case dealing with the perpetuation of testimony of the Sovereign. There are no adverse effects on repeal.

(e) *An Act to abolish Deodands (Imp)*

Deodands were abolished in England in 1846 by this Imperial Act, which was adopted in Western Australia by the *Imperial Acts Adopting Act 1849 (WA)*. Formerly, if a personal chattel was the immediate and accidental cause of death of any “reasonable creature” it was forfeited to the Crown under the name of a “deodand”.

The Act notes deodands are “unreasonable and inconvenient” and provides for their abolition with effect from 1 September 1846. Due to the passage of time, repeal of this law is unlikely to lead to reapplication of the law of deodand. The Act is no longer required.

Clause 14(2) enables Part V of the *Interpretation Act 1984* to apply to these Imperial Acts in the same way as for Western Australian Acts. For example, the general savings provisions in section 37 of the *Interpretation Act 1984* would apply to the repealed Imperial enactment to the extent it was part of Western Australian law.

Schedule 1 — WA Acts repealed

This Schedule contains the list of Acts referred to Clause 3 that will be repealed. The Acts are –

1. *Albany Cemeteries Act 1943*

This Act re-vested burial grounds in the Crown and made them public cemeteries. The Act is no longer required.

2. *Albany Lot 184 (Validation of Title) Act 1956*

This Act validated a sale of Albany Lot 184 by the Municipality of Albany. The Act has no continuing effect and can be repealed.

3. *Albany Public Cemeteries Subsidies Act 1952*

This Act allows the Town of Albany and the Shire of Albany to levy rates for the Albany Cemetery. The Act enabled the Albany Municipality and the Albany Road District to contribute to the costs of cemeteries in each other's district. The Shire and Town have since been amalgamated into the City of Albany.

Section 45 of the *Cemeteries Act 1986* provides for the funding of cemeteries to enable them to perform their functions. The Albany Public Cemeteries *Subsidies Act 1952* is no longer required.

4. *Busselton Cemetery Act 1944*

This Act re-vested in the Crown a disused cemetery and gave the Shire of Busselton responsibility for its management. The Act has no continuing effect and can be repealed.

5. *Carnarvon Electric Lighting Act 1924*

This Act allows the Shire of Carnarvon to exempt certain town lots from rates for electric lighting. The *Carnarvon Electric Light and Power Act 1919* enabled the Carnarvon Municipal Council to purchase the Carnarvon Electric Light and Power Company Limited business to supply electric light and power to the district, and to take out a loan to do so.

The Council was able to strike a special rate to repay the principal and interest on this loan for as long as it was unpaid. The *Carnarvon Electric Lighting Act 1924* enabled the Council to exempt certain properties (ones not connected to the power network) from this special rate.

The *Carnarvon Electric Light and Power Act 1919* was repealed in 1994. The Shire of Carnarvon confirms the loan has been repaid, so the 1924 Act has no continuing effect and can be repealed.

6. *Caves House Disposal Act 1965*

The Act related to the disposal of portions of land at Yallingup, including Caves House. This Act resulted from the Government's decision to dispose of State hotels. The Act has no ongoing effect and can be repealed.

7. *City of Fremantle (Free Literary Institute) Act 1948*

This Act provided legislative backing for an agreement between the Fremantle Literary Institute and the City of Fremantle to transfer the land (and its associated mortgage) and all assets to the City and for the City to run a public library with by-laws specified in the Act.

The building, now heritage-listed, is owned by the City of Fremantle, although it is no longer used as a library. The Act is no longer required.

8. *City of Perth Improvement Act 1913*

This Act provides the City with the power to purchase or compulsorily acquire land for the purpose of extending streets. The land acquisition has been completed and the Act has no ongoing effect and can be repealed.

9. *Fitzgerald Street Bus Bridge Act 1991*

This Act was motivated by the perceived need for a transit bridge Act, but the need has been met by the James Street bus bridge, which opened in 2010. Additionally, Perth City Link project (sinking of Fremantle railway) will allow future light rail system to operate at surface past City Square with no requirement for a bridge. This Act is no longer required.

10. *Fremantle Endowment Lands Act 1918*

This Act vests land in the Fremantle municipal district with provision for part of this land to be transferred to the Melville Road Board. The Act serves no continuing purpose.

11. *Fremantle Improvement Act 1913*

This Act allowed the Municipality of Fremantle to acquire certain land as specified in the Act's Schedule for the widening of Market and High Streets. Compensation was payable to landowners and the Municipality of Fremantle was given the power to borrow for this purpose. Land not used for the road could not be sold without the Governor's approval, nor could it be mortgaged or charged. The title check reveals that land transfers never took place and the lots have continued in private ownership. The Act serves no continuing purpose.

12. *Guildford Cemeteries Act 1936*

This Act re-vested in the Crown land used as burial grounds and allowed it to be used for public cemeteries. The Act has no continuing purpose.

13. *Guildford Old Cemetery (Lands Revestment) Act 1949*

This Act re-vested land in the Crown, part of which was to be used for a public highway. The remainder of the land was to be transferred to Perth Diocesan Trustees who had the power to relocate headstones (but not disturb any remains).

The need for the Act arose because an apparent donation of the land to the Church in the early years of the colony was not reflected on the title. Certain conditions were included in the Act to ensure they were captured in perpetuity, such as public access to the land between sunrise and sunset and a requirement to maintain the grass..

A title check confirms the land transfer is registered and the conditions are included on the title, so the Act has no continuing purpose.

14. Kojonup Cemetery Act 1928

This Act vested land in the Shire of Kojonup for use as a public cemetery. The Act has no continuing effect.

15. Mandurah Church Burial Ground Act 1947

This Act makes it unlawful to use a portion of land near Cockburn Sound as a burial ground. The Second Reading Speech indicates the burial ground was in the middle of Mandurah and there were concerns over its impact on drinking water from nearby wells. Section 11 of the *Cemeteries Act 1986* makes it an offence to bury a person in a place other than a cemetery without the Minister's authorisation (under s12), so the *Mandurah Church Burial Ground Act 1947* is no longer required.

16. Miscellaneous Repeals Act 1991

This Act repealed a number of spent, unnecessary or superseded enactments and Imperial enactments no longer required. The Act remains on the statute book because of transitional arrangements in section 6 relating to licences issued under the repealed *Street Photographers Act 1947 (WA)*. Section 9 is a savings provision providing that Part V of the *Interpretation Act 1984 (WA)* applies to the Imperial enactments that are repealed as if a reference in Part V to the repeal was a reference to the repeal of the Imperial enactment, rather than just Western Australian Acts. Part V deals with repeals of written laws: essentially that repeal also repeals amendments and that a repeal of a repeal does not revive the repealed enactment. Both sections 6 and 9 are now exhausted and the Act serves no continuing purpose.

17. Native Mission Stations Act 1923

This Act enabled fee simple grants of land to be made to the Perth Diocesan Trustees (Forrest River Mission Station), and the Benedictine Community (Drysdale River Mission). The Act has no continuing purpose.

18. Northam Cemeteries Act 1944

This Act re-vested cemeteries and other land in the Crown and made them public cemeteries in the control of the Shire of Northam. The Act serves no ongoing purpose.

19. Ocean Gardens (Inc.) Act 2004

This Act provided the rules that formed the constitution of Ocean Gardens Inc and prohibited certain actions until Ocean Gardens Inc was established. Ocean Gardens Inc updated its constitution in 2011 so the "rules" contained in the Act have been superseded. The Act has no continuing purpose.

20. *Resumption Variation (Boulder-Kambalda Road) Act 1973*

This Act varied specified resumptions of land for roads to assist the State in reaching settlement of the compensation payable to owners of the land.

In 1966, the Main Roads Department published a Notice was issued to resume part of the land required for construction of the Boulder-Kambalda Road. A further Notice was published in 1970.

A landowner affected by the 1966 Notice, Hampton Gold Mining Areas Limited, objected to the proposed resumption on the grounds the resumption would remove its right to mine minerals under the proposed road reserve. This Act limited the resumption of land to 100 feet below the natural surface. There are no ongoing rights associated with the Act and it serves no continuing purpose.

21. *Service and Execution of Process (Harbours) Ordinance 1855*

This Act aimed to remove doubts as to the service or execution of common law process on the sea within the harbours of Western Australia. Section 1 provides that all parts of the sea in a port or harbour are taken to lie within the body of the colony. Section 2 provides that it is lawful to serve process in such a port or harbour.

Under the Commonwealth Constitution, the Commonwealth Government has power to enact laws relating to the service and execution of process throughout Australia (s51(xxiv)). The *Service and Execution of Process Act 1992 (Cth)* appears to “cover the field” on this subject, although harbours are not specifically mentioned. There are no adverse effects on repeal of this Act.

22. *Special Investigation (Coal Contract) Act 1994*

This Act provides for the appointment of a special investigator to report into coal contracts under which SECWA ordered additional coal from Western Collieries. The Act gave the special investigator the power of a royal commission. The Investigator has reported and the Act serves no ongoing purpose.

23. *Special Lease (Gypsum) Act 1918*

This Act enabled a Special Lease to be granted under the Land Act 1898. The lease was to be granted to the Western Australian Plaster of Paris and Preamble, which sought to obtain gypsum deposits from the land to use for manufacturing plaster of Paris and manure. The Act’s purpose is no longer current and the Act may be repealed.

24. *Special Lease (Lake Clifton) Act 1916*

This Act enabled a Special Lease to be granted under the *Land Act 1898*, of Lake Clifton and Reserve A998 in the South-West Division of the State, and to authorise the construction of a railway from Waroona to Reserve A998. There are no ongoing rights associated with the Act and it can be repealed.

25. Special Lease (Stirling Estate) Act 1916

This Act enabled a Special Lease to be granted under the *Land Act 1898*, of a portion of the Stirling Estate to authorise the working of lime deposits in the area and to enable a License to be issued to the Lessee to dredge the Swan River for oyster shell for the purpose of making cement. The lease further provided for permission to be given to the lessee to construct a railway from the land so leased to the Capel station. There are no ongoing rights associated with the Act and it serves no continuing purpose.

26. Special Lease Enabling Act 1914

This Act ratified an agreement for a Special Lease of Crown Land in the Kimberley region to be used for agricultural and horticultural purposes. There are no ongoing rights associated with the Act and it serves no continuing purpose.

27. Stock Jobbing (Application) Act 1969

This Act terminated two Imperial Acts from operating in Western Australia: the *Stock Jobbing Act 1733* and the *Stock Jobbing Act 1736*. The 1733 and 1736 Acts would not be revived by the repeal of this Act as Part V of the *Interpretation Act 1984 (WA)* applies. There are no adverse effects on repeal.

28. Tamala Park Land Transfer Act 2001

This Act transferred ownership share in land (as tenants in common) at Tamala Park from the City of Perth to the Towns of Cambridge, Victoria Park and Vincent. With the transfer completed, the Act serves no further purpose.

29. Toodyay Cemeteries Act 1939

This Act provided the closure of a road and re-vesting of that and other land in the Crown to make it a public cemetery controlled by the Shire of Toodyay. The Act serves no continuing purpose.

30. Transfer and Use of Funds (Shires of Harvey and Waroona) Act 1991

This Act provides for funds to be transferred from the Shire of Harvey Meat Inspection Trust Fund and the Shire of Waroona Reserve Fund – General to the respective local governments' Municipal Accounts for use for community purposes. Both Shires confirm the money was transferred and has subsequently been used for community purposes. The Act serves no continuing purpose.

31. *Western Australian Meat Marketing Co-operative Limited (Shares) Act 2003*

This Act completed the transfer to the ownership of lamb producers of the business of the former Western Australian Meat Marketing Corporation. It allowed the issue to the Minister of shares in Western Australian Meat Marketing Co-operative, the successor to the former statutory Corporation, and the transfer of those shares to trustees for distribution to lamb producers.

The issue and transfer of shares were completed in accordance with the Act, and it has no further application.

32. *York Cemeteries Act 1933*

The York Cemeteries Act 1933 re-vested land in the Crown and made it a public cemetery in the control of the Shire of York. The Act serves no continuing purpose.