

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2009 (WA)

EXPLANATORY MEMORANDUM

Overview of Bill

The Bill makes general housekeeping amendments to various pieces of State legislation. It makes only relatively minor, non-controversial amendments to various acts and repeals the acts that are no longer required. Omnibus bills assist in expediting the government's legislative program and parliamentary business by reducing the number of separate amendment bills that deal with relatively minor amendments and repeals. They also help to weed out spent or redundant legislation from the statute book. During preparation of the Bill action has been taken to ensure that amendments about which there is some contention or complexity, or that make some substantive changes to the law, are not included.

The Bill deals with two main categories of amendments—acts repealed and acts amended. Part 2 of the Bill repeals unproclaimed or obsolete, redundant, spent and inoperative Acts. Part 3 of the Bill contains a range of miscellaneous, non-controversial and administrative amendments to a number of acts across various portfolio areas. These are minor or technical changes to legislation that the Office of the Parliamentary Counsel considers are appropriate for inclusion in the Bill. Examples of such amendments are corrections to typographical, grammatical, formatting and cross-referencing errors; those that are believed to better implement the object or intent of the legislation; those arising out of the enactment or repeal of other legislation; and those updating terminology.

CLAUSE NOTES

Part 1 - Preliminary

Clause 1 – Short title

Clause 1 provides that the title of the proposed Act is the *Statutes (Repeals and Minor Amendments) Act 2009 (WA)*.

Clause 2 – Commencement

Clause 2 provides that sections 1 and 2 will come into operation on the day that the Act receives Assent. The balance of the Act (sections 3 to 17, inclusive) will commence on the following day.

Part 2 - Repeals

Clause 3 – Various written laws repealed

Clause 3 provides a list of 12 Acts that are repealed and two regulations that are also repealed. The repealed Acts are as follows:

- (a) *Census Act 1891*;
- (b) *Co-opted Medical and Dental Services for the Northern Portion of the State Act 1951*;
- (c) *Fairbridge Farm School Act 1948*;
- (d) *Friendly Societies' Association of Kalgoorlie Investment Validation Act 1919*;
- (e) *Liquefied Petroleum Gas Subsidy Act 1980*;
- (f) *Members of Parliament, (Legislative Council) Retirement Act 1964*;
- (g) *Miscellaneous Regulations (Validation) Act 1985*;
- (h) *Petroleum Products Subsidy Act 1965*;
- (i) *The City Club Act 1965*;
- (j) *Uniforms Act 1895*;
- (k) *White Phosphorus Matches Prohibition Act 1912*;
- (l) *Workmen's Wages Act 1898*.

The repealed regulations are:

- (a) *Dampier to Bunbury Pipeline Regulations 1998*;
- (b) *Gas Pipelines Access (Privatized DBNGP System) (Transitional) Regulations 1999*.

Clause 4 – Acts presumed to have been repealed

Clause 4 makes it clear that the Acts listed under have been repealed by the *Local Government (Superannuation) Legislation Amendment Act 1994*:

- (a) *City of Perth Scheme for Superannuation (Amendments Authorisation) Act 1941*;
- (b) *City of Perth Scheme for Superannuation (Amendments Authorisation) Act 1946*;
- (c) *City of Perth Scheme for Superannuation (Amendments Authorisation) Act 1947*;
- (d) *City of Perth Scheme for Superannuation (Amendments Authorisation) Act 1949*;

- (e) *City of Perth Scheme for Superannuation (Amendments Authorisation) Act 1954*;
- (f) *City of Perth Scheme for Superannuation 10 (Amendments Authorisation) Act 1956*;
- (g) *City of Perth Scheme for Superannuation (Amendments Authorisation) Act 1958*.

The *City of Perth Superannuation Fund Act 1934* (WA) authorised the City of Perth to establish a superannuation fund for its employees. The 7 above Acts authorised amendments to the scheme but did not amend the 1934 Act.

The 1934 Act was repealed by the *Local Government (Superannuation) Legislation Amendment Act 1994* (WA). Section 33 of the *Interpretation Act 1984* (WA) provides that the repeal of an Act also repeals any amendments to that Act.

The 7 Acts have been treated as having been repealed by the 1994 Act, however, as they did not actually amend the 1934 Act there is doubt whether section 33 of the *Interpretation Act 1984* (WA) applied to them. Clause 4 removes any doubt by declaring that the 7 Acts are repealed.

Part 3 - Amendments

Clause 5 – Commissioner for Children and Young People Act 2006 amended

Clause 5(1) notes that the proposed section amends the *Commissioner for Children and Young People Act 2006* (WA).

Clause 5(2) proposes to insert a new definition of **advisory committee** in section 5 of the Act. Under the new definition an advisory committee means an advisory committee or reference group established under section 52(1) or (2) of the *Commissioner for Children and Young People Act 2006* (WA).

Clause 5(3) amends section 19 of the *Commissioner for Children and Young People Act 2006* (WA) which deals with the functions of the Commissioner. Section 19(m) is a “catch-all” provision providing that the Commissioner may perform the functions conferred by the Act or any other written law and should therefore be at the end of section 19. Clause 5(3) therefore deletes the existing paragraph 19(m) and without altering the wording re-inserts it after paragraph 19(o) as new paragraph 19(p).

Clause 5(4) deletes section 53 of the *Commissioner for Children and Young People Act 2006* (WA). Section 53(1) is redundant as it repeats section 52(5). Section 52(2) makes provision for “expert advisory committees”. The provisions regarding these committees were removed during debate but this provision was overlooked.

Clause 5(5) makes a number of minor amendments to the sections in the Act that are listed to remove gender bias mainly in relation to section 8 of the Act. For example, “his

office” is deleted in the places where it occurs and is replaced with “office”. In other places “himself” or “his” is amended to “himself or herself” or “his or her” as the case requires.

Clause 6 – *Energy Legislation Amendment Act 2003* amended

Clause 6(1) provides that the proposed section amends the *Energy Legislation Amendment Act 2003* (WA). The Amendment Act amends a number of pieces of legislation particularly the *Electricity Corporation Act 1994* (WA) which has been superseded by the *Electricity Corporation Act 2005* (WA).

Clauses 6(2), (3) and (4) delete sections 109(4) and (5), 110(4) and 111, respectively of the Amendment Act. The provisions of the Amendment Act which were to amend the *Electricity Corporation Act 1994* (WA) were not proclaimed and because the 1994 Act has now been superseded by the 2005 Act they will not be proclaimed. It is necessary to delete the sections to remove them from the statute book.

Clause 7 – *Family Court Act 1997* (WA) amended

Clause 7(1) provides that the proposed section amends the *Family Court Act 1997* (WA).

Clause 7(2) amends section 33(3) of the Act by deleting some words regarding orders that can be made by the Family Court of Western Australia and substituting other words about orders available to the Court under proposed new section 33(4A). The words in the proposed new section 33(4A) are similar to the words omitted from section 33(3) and therefore do not change the meaning of the section.

The change is necessary because of the substantial changes made to the *Family Court Act 1997* (WA) by the *Family Legislation Amendment Act 2006* (WA). The changes made included replacing the various types of order previously available to the Court in relation to children (including residence, contact and specific issues orders) with “parenting orders” dealing with all the matters previously covered by the old orders. An appropriate amendment to section 33(3) was inadvertently overlooked and is now amended so it is in line with other amendments made to the *Family Court Act 1997* (WA) by the *Family Legislation Amendment Act 2006* (WA). As presently drafted section 33(3) can have no effect. The amendment will align the section with the other powers of the Court.

Clause 8 – *Financial Management (Transitional Provisions) Act 2006* amended

Clause 8(1) provides that the proposed section amends the *Financial Management (Transitional Provisions) Act 2006* (WA).

Clause 8(2) deletes Schedule 1 clause 122 of the *Financial Management (Transitional Provisions) Act 2006* (WA). Clause 122 proposed to make amendments to sections 22 and 29 of the *Perth International Centre for Application of Solar Energy Act 1994* (WA).

However, that Act has since been repealed and therefore clause 122 will not be proclaimed. The clause is therefore deleted.

Clause 9 – *Fire Brigades Act 1942* amended

Clause 9(1) provides that the proposed section amends the *Fire Brigades Act 1942* (WA).

Clauses 9(2) and (3) when read together correct a structural problem identified during preparation of a recent reprint of the *Fire Brigades Act 1942* (WA). The existing section 33(e) comprises two subparagraphs and a proviso. The first subparagraph provides the Director of Operations of the Fire Brigades Board with access to premises where he is of the opinion that there is a potential fire risk. The second subparagraph sets out the penalty for any person who does not comply with an order for access and the proviso allows a person to appeal against a requisition for access to the State Administrative Tribunal. Apart from a necessary cross-referencing the wording has not been changed.

Clause 9(2) creates the existing section as “section 1” and then deletes the existing subparagraph (e) and inserts similar words as before providing the Director with access to premises.

Clause 9(3) inserts a new subsection (2) providing for a penalty comparable to the previous second subparagraph. Clause 9(4) allows a person to appeal to the State Administrative Tribunal using words comparable to the previous proviso.

Clause 10 – Consequent amendments to State Administrative Tribunal Regulations 2004

Clause 10(1) provides that the proposed section amends the State Administrative Tribunal Regulations 2004 (WA) consequential on the amendment made to the *Fire Brigades Act 1942* (WA) by clause 9 above.

Clause 10(2) deletes the reference in Schedule 5 of the State Administrative Tribunal Regulations 2004 (WA) to section 33(e)(ii) of the *Fire Brigades Act 1942* (WA) and inserts the new reference of section 33(3).

Clause 11 – *Liquor Licensing (Moratorium) Amendment Act 1985* amended

Clause 11(1) provides that the proposed section amends the *Liquor Licensing (Moratorium) Amendment Act 1985* (WA).

Clause 11(2) provides that section 3 of the *Liquor Licensing (Moratorium) Amendment Act 1985* (WA) is deleted. The *Liquor Licensing (Moratorium) Amendment Act 1985* (WA) amended the *Liquor Licensing (Moratorium) Amendment Act 1983* (WA). The 1985 Act, except for section 3, commenced on 1 January 1986. The 1983 Act expired on 30 June 1988 and therefore section 3 now cannot have any effect and will not be proclaimed. It is therefore repealed.

Clause 12 – *Parole and Sentencing Legislation Amendment Act 2006* amended

Clause 12(1) provides that the proposed section amends the *Parole and Sentencing Legislation Amendment Act 2006* (WA).

Clause 12(2) provides that section 95(3) of the *Parole and Sentencing Legislation Amendment Act 2006* (WA) is deleted. Section 95(3) of the *Parole and Sentencing Legislation Amendment Act 2006* (WA) repealed section 15 of the *Sentencing Legislation Amendment Act 2004* (WA). Section 15 was an amendment to the *Criminal Investigation (Identifying People) Act 2002* (WA), Schedule 1.

The *Sentencing Legislation Amendment Act 2004* (WA) was passed in 2004 but its proclamation was delayed. In the interim relevant part of the *Criminal Investigation (Identifying People) Act 2002* (WA) ceased to have effect from 29 June 2005. Accordingly, the proposed amendment to the *Sentencing Legislation Amendment Act 2004* (WA) is redundant. Consequently section 95(3) of the *Parole and Sentencing Legislation Amendment Act 2006* (WA), which has not been proclaimed, is also redundant and is repealed.

Clause 13 – *Port Kennedy Development Agreement Act 1992* amended

Clause 13(1) provides that the proposed section amends the *Port Kennedy Development Agreement Act 1992* (WA).

Clause 13(2) deletes the definition of ***Department of Land Administration*** in section 3(1) of the *Port Kennedy Development Agreement Act 1992* (WA).

Clause 13(3) deletes words referring to the Department of Land Administration from section 3(2) of the *Port Kennedy Development Agreement Act 1992* (WA).

Clause 13(4) deletes the words “Department of Land Administration” from the definition of ***chief executive officer*** in section 7(1) of the *Port Kennedy Development Agreement Act 1992* (WA) and inserts a reference to the *Land Administration Act 1997* (WA).

The amendments are necessary because the WA Land Information Authority was created by the *Land Information Authority Act 2006* (WA). That Act made consequential amendments to numerous Acts to change references to the Department and related matters. The *Port Kennedy Development Agreement Act 1992* (WA) was inadvertently overlooked in this process. These amendments to that Act are consistent with amendments made by the *Land Information Authority Act 2006* (WA) to similar Acts.

Clause 14 – *Rights in Water and Irrigation Act 1914* amended

Clause 14(1) provides that the proposed section amends the *Rights in Water and Irrigation Act 1914* (WA).

Clause 14(2) deletes a reference to “subsection (1)” in section 26C(3a)(a) of the *Rights in Water and Irrigation Act 1914* (WA) and inserts the correct reference to “subsection (2)”. Subsection (1) is an interpretation provision. The erroneous cross-reference was identified during preparation of a recent reprint of the Act.

Clause 14(3) corrects a grammatical/structural error in Schedule 1 clause 39(1)(c) of the *Rights in Water and Irrigation Act 1914* (WA) identified during preparation of a recent reprint of the Act. The amendment deletes the word “under” at the start of the clause and inserts it into paragraphs (c)(i) and (ii). The clause also inserts “or” after subparagraph (i). The changes mean that the subsection now reads correctly.

Clause 14(4) also corrects a grammatical/structural error in Schedule 1 clause 42(1)(b) of the *Rights in Water and Irrigation Act 1914* (WA) identified during preparation of a recent reprint of the Act. As a result of the amendment that is made subparagraph (ii) of clause 42(1)(b) will now follow correctly from the opening words of paragraph (1)(b).

Clause 15 – *Settlement Agents Act 1981* amended

Clause 15(1) provides that the proposed section amends the *Settlement Agents Act 1981* (WA).

Clause 15(2) deletes the definition of **Account** (first occurring) in section 3 of the *Settlement Agents Act 1981* (WA) and inserts a definition of **Interest Account** in the appropriate place using the same words. The definition is amended as a result of the enactment of the *Financial Legislation Amendment and Repeal Act 2006* (WA). That Act introduced into the *Settlement Agents Act 1981* (WA) a reference to **Fidelity Guarantee Account** or **Account** with the result that there are now two definitions of **Account** in section 3. The change clarifies the **Accounts** referred to in the *Settlement Agents Act 1981* (WA).

Clause 15(3) amends the provisions listed in the Table to delete the word “Account” where it appears in the *Settlement Agents Act 1981* (WA) and inserts reference to “Interest Account” or similar words as the case requires. The section amended are section 49B(1) and (3), 103(2), 104, 105 and 106 of the *Settlement Agents Act 1981* (WA). Where appropriate the heading to the sections are also amended by a separate Table.

Clause 16 – *University of Notre Dame Australia Act 1989* amended

Clause 16(1) provides that the proposed section amends the *University of Notre Dame Australia Act 1989* (WA).

Clause 16(2) deletes the definition of **Provost** from section 3 of the *University of Notre Dame Australia Act 1989* (WA) and clause 16(3) deletes section 18 providing that there is to be a Provost. The University proposes to provide for the appointment of Provosts in

the statutes made by the University under section 4 of the Act. The position of provost is academic and the Act does not confer any functions or duties on the provost. No other State university Act contains a similar provision. It is therefore considered appropriate to allow the University to provide for the appointment without a legislative requirement. The repeal of the provisions relating to a provost will enable the appointment of a second provost for the University's new Sydney Campus.

Clause 17 – Other Acts amended

Clause 17(1) provides that the proposed section amends the Acts listed in Table of the clause.

Clause 17(2) provides for the amendments listed in the Table as set out in the Table. A total of 31 Acts are listed in the Table as follows:

Adoption Act 1994
Armadale Redevelopment Act 2001
Corruption and Crime Commission Act 2003
Country Areas Water Supply Act 1947
Credit (Administration) Act 1984
Criminal and Found Property Disposal Act 2006
East Perth Redevelopment Act 1991
Electricity Industry Act 2004
Employers' Indemnity Supplementation Fund Act 1980
Finance Brokers Control Act 1975
Housing Act 1980
Juries Act 1957
Land Administration Act 1997
Land Drainage Act 1925
Midland Redevelopment Act 1999
Port Authorities Act 1999
Public Works Act 1902
Sale of Goods Act 1895
Sentencing Act 1995
Soil and Land Conservation Act 1945
Subiaco Redevelopment Act 1994
Swan and Canning Rivers Management Act 2006
Taxi Act 1994
Terrorism (Extraordinary Powers) Act 2005
Tobacco Products Control Act 2006
Water Efficiency Labelling and Standards Act 2006
Workers' Compensation and Injury Management Act 1981

The amendments make minor changes to the Acts listed. For example, in relation to the *Adoption Act 1994* (WA) section 119 is amended to delete an incorrect cross-reference to section 211(1) of the *Family Court Act 1997* (WA) and insert the correct cross-reference

of section 209A of that Act.. The words “that section” in section 17(8)(a) of the *Armadale Redevelopment Act 2001* (WA), section 19(8)(a) of the *East Perth Redevelopment Act 1991* (WA), section 20(7)(a) of the *Midland Redevelopment Act 1999* (WA) and section 21(7)(a) of the *Subiaco Redevelopment Act 1994* (WA) are amended to read “those sections”. In a number of places references to “Consolidated Fund” are amended to refer to “Consolidated Account”.

The amendments made by clause 17 correct cross-references, grammatical errors and punctuation errors in the Acts listed in the Table.