

ACTS AMENDMENT AND REPEAL (COMPETITION POLICY) BILL 2002

EXPLANATORY MEMORANDUM

The Bill repeals or amends a number of laws in accordance with recommendations of National Competition Policy reviews of those laws, undertaken to comply with the State's obligations under the 1995 Competition Policy Agreements. The reviews identified restrictions on competition and considered whether the restrictions are in the public interest. The amendments (and repeals) implement reforms in respect of restrictions found not to be in the public interest. Some minor miscellaneous amendments have also been made.

PART 1 - PRELIMINARY

This part contains the title of the Act and the commencement provisions.

1 Short title

Citation of the Act.

2 Commencement

Different days may be fixed by proclamation for the commencement of different provisions, to allow for preparation of regulations as needed.

PART 2 - REPEALS

3. *Bread Act 1982 repealed, and consequential amendment to Consumer Affairs Act 1971*

This clause repeals of the *Bread Act 1982* and makes consequential amendment to the *Consumer Affairs Act 1971*.

4. *Wheat Marketing Act 1989 repealed, and consequential amendment to Bulk Handling Repeal Act 2000*

Clause 4 will result in the repeal of *Wheat Marketing Act 1989* and consequential amendment to the *Bulk Handling Repeal Act 2000*.

PART 3 - AMENDMENTS TO THE BUSH FIRES ACT 1954

5. The Act amended

Clause 5 defines that the *Bush Fires Act 1954* is to be amended.

6. Section 7 amended

Clause 6 clarifies that in the Act generally an "owner or occupier of land" does not include a State agency, instrumentality or department, subject to the exceptions in respect of section 33.

7. Section 33 amended

Section 33 deals with powers of local governments to require owners and occupiers of land to take measures to prevent outbreak of bushfires.

Clause 7 provides that for the purposes of section 33, "owners and occupiers of land" includes prescribed departments of the Public Service and prescribed State agencies or instrumentalities.

The clause will allow the Minister flexibility to determine on practical grounds which entities should be subject to section 33.

PART 4 - AMENDMENTS TO THE *CHICKEN MEAT INDUSTRY ACT 1977*

8. The Act amended

Clause 8 defines that amendments to this part are to the *Chicken Meat Industry Act 1977*.

9. Section 4 amended

Clause 9 amends section 4(1) by deleting the definitions that determine the establishment of a processing plant. Since other specific laws (eg health and planning laws) also govern the operation of processing plants, section 4(1) is unnecessary.

10. Section 15 amended

Clause 10 amends section 15 by deleting paragraph (g), which in the existing Act, made it a function of the Chicken Meat Industry Committee to advise the Minister on future production requirements of the industry when requested. Clause 10 also inserts a new section 15(2) that sets out matters that the Chicken Meat Industry Committee may take into account in laying down criteria for determining whether a grower is an efficient grower under section 15(c). The matters are the productivity of growers, the average price for chickens determined under section 16 and the market for chicken meat.

Currently these matters are relevant to approval of growing premises under section 19A(13), which the Bill repeals. Under the Bill these matters will no longer affect the approval of growing premises, as it is not appropriate for the Committee to intervene in decisions about growing premises on the basis of

these market considerations. However, the matters remain relevant to the Committee's function of laying down criteria for determining whether a grower is an "efficient grower" for the purposes of determining growers' entitlements under an agreement with a processor.

11. Section 16 amended

Clause 11 replaces the term "standard price" with the term "average price" as the latter term better reflects the potential for variation in prices paid under the prescribed form of agreement. The use of the term "average" is not intended to place any constraints on the Committee's exercise of its powers under section 16.

Clause 11(2) removes the reference to cost of production figures being supplied by the Department, for the purposes of the Committee's determination under section 16 of the average price for broiler chickens. In practice a number of sources can supply cost of production figures, and it is not necessary to limit the source. Section 16(4) continues to provide for a prescribed method of determining the price, allowing the Government if necessary to regulate what production figures should be used, or any other relevant matters.

Clause 11(5) inserts a new section 16(7) that limits the application of section 16 (which deals with the average price to be paid for chickens under the prescribed form and notification of processors and growers) to those agreements that are in the prescribed form.

12. Section 17 repealed

Clause 12 repeals section 17, which currently prohibits sale and purchase of broiler chickens except in accordance with a written agreement that is in or to the effect of the prescribed form of agreement. The repeal means it will no longer be mandatory for growers and processors to use the prescribed form. However the prescribed form remains relevant in relation to new sections 18(1a) and (1b).

13. Section 18 amended

Clause 13 inserts new sections 18(1a) and (1b) that limit the dispute resolution function of the Committee under section 18 to disputes arising under:

- agreements that are in or to the effect of the prescribed form of agreement; and
- any other written agreements that provide for a dispute to be placed before the Committee;

provided that any conditions specified in the agreement are found by the Committee to have been satisfied.

14. Section 19 repealed

Clause 14 repeals section 19, which currently sets out a requirement for ministerial approval to establish a processing plant. The purpose of section 19 in the current Act is ambiguous in that there is no guidance as to what matters the Minister will consider in making his decision. Since other specific laws (eg health and planning laws) also govern the operation of processing plants, section 19 is an unnecessary additional hurdle and is appropriately repealed.

15. Section 19A amended

Clause 15 inserts a new section 19A(5a), which provides that the Committee shall apply any requirements prescribed in the regulations in deciding whether to approve an application for approval of growing premises. The same standards will apply to a Committee decision of whether an existing approval should be revoked under new section 19A(9a), inserted by clause 15(3).

16. Section 24 amended

Clause 16 inserts new sections 24(2)(aa) and (fa), which allow for regulations to be made:

- providing for environmental, animal welfare and health matters relating to the growing of chickens; and
- prescribing requirements with which growing premises have to comply.

It is intended that the requirements with which growing premises have to comply will be essentially the standards provided for environmental, animal welfare and health matters, although other relevant matters may be prescribed. Once suitable regulations are made, they will provide the criteria by which the Committee makes decisions discussed in section 19A.

These provisions replace the broad discretion currently applied by the Committee under section 19A(13), which is repealed by clause 15(5). However, as noted above, some of the elements of that section remain relevant in the context of determining whether a grower is an efficient grower.

Clause 16(e) amends section 15(e) by allowing the enabling inspector to inspect land or premises for the purpose of collecting information relating to compliance with the regulations.

17. Section 27 repealed

Clause 17 repeals section 27, which is no longer relevant to the operation of the Act.

18. Section 28 repealed

Clause 18 repeals section 28, which is no longer relevant to the operation of the Act.

PART 5 - AMENDMENTS TO THE CONSERVATION AND LAND MANAGEMENT ACT 1984

19. The Act amended

Clause 19 defines that the *Conservation and Land Management Act 1984* is to be amended.

20. Section 140 repealed

Clause 20 repeals section 140 of the Act, and in doing so removes the rating exemption applied to plantation forests that have been planted with the approval of the Executive Director of Conservation and Land Management. The continuance of this provision would be against the principles of competitive neutrality.

21. Section 143 repealed

Clause 21 repeals section 143 of the Act so that it removes the requirement that the Minister responsible for this Act concur with the Minister responsible for the *Mining Act 1978* when administering the Greenbushes State Forest. This section was initially enacted to promote investment associated with the mining of tin in the area. The section is outdated, as there are other mechanisms which allow for consideration of mining interests.

PART 6 - AMENDMENTS TO THE EASTERN GOLDFIELDS TRANSPORT BOARD ACT 1984

Part 6 makes two changes to the Act, both of which reflect the principle that unless there is clear justification, government businesses (such as the Eastern Goldfields Transport Board) should not have advantages over other businesses simply due to their public status.

22. The Act amended

Clause 22 defines that the *Eastern Goldfields Transport Board Act 1984* is to be amended.

23. Section 5 amended

Clause 23 inserts a new section 5(2) which removes the advantages which the Board previously had over other business by stating that it is not an agent of the Crown and does not have the status, immunities and privileges of the Crown.

24. Section 35 repealed

Clause 24 removes the Board's exemption from rates under the *Local Government Act 1995* which is in accord with the principles of competitive neutrality.

PART 7- AMENDMENTS TO THE *EDITH COWAN UNIVERSITY ACT 1984*

Part 7 amends the *Edith Cowan University Act 1984* so that its Council has similar powers of investment as that of a trust. These powers are consistent with other universities in Western Australia. Variations between the enabling statutes mean that this Act once amended will not have identical form to the relevant provisions of any of the other University statutes.

25. The Act amended

Clause 25 defines that the *Edith Cowan University Act 1984* is to be amended.

26. Section 38 replaced by sections 38, 38A and 38B

Clause 26 repeals section 38 of the Act, which gives the Council of Edith Cowan University limited power to invest moneys but does not give any powers to act as trustee of moneys or property. The clause replaces section 38 with three new sections, based in part on the investment and trustee provisions under the *Murdoch University Act 1973*. Clause 26 also provides the Council with powers to invest moneys in securities and to sell securities. A new section 38A empowers the Council to act as trustee or manager of property or moneys held on trust by the University, and to apply the property or moneys where not immediately required for the purposes of the trust.

The clause does not detail the constraints that will apply to the Council, as these are determined by general trust law including the *Trustees Act 1962*. The power to "apply" moneys is a broad power that includes power to invest, for example in land or in improvements to University land.

A new section 38B deals with repayment of trust moneys applied. Moneys applied under new section 38A(b) are taken to be a loan to the University from the trust. The loan is repayable by the Council with interest at the rate approved by the Minister, subject to a 25 year limit on repayment.

PART 8 - AMENDMENTS TO THE GOLD CORPORATION ACT 1987

Part 8 is intended to impose on Gold Corporation (and its subsidiaries Goldcorp and the Mint) obligations to pay charges and taxes in a similar manner to other State government trading enterprises. The principle behind the amendments is that government businesses should be subject to similar trading conditions as their private sector counterparts unless there is good reason otherwise.

27. The Act amended

Clause 27 defines that the *Gold Corporation Act 1987* is to be amended.

28. Section 4 amended

Clause 28 removes the obligation of Gold Corporation to pay local government rates and charges in respect of land used exclusively for Gold Corporation's purposes.

The section is replaced by standard provisions concerning a government trading enterprise's liability for local government rates and charges, based on those applying to the Water Corporation. Those provisions, forming new sections 4(6), (7) and (8), require Gold Corporation to pay to the Consolidated Fund a sum equal to the amount of local government rates and charges that would be payable but for the exemption. This amount is sometimes referred to as a "local government rate equivalent". The Treasurer may direct principles for determining the amount and times for payment.

29. Section 20 repealed

Clause 29 repeals section 20, which sets out an obligation for the Gold Corporation to pay amounts equivalent to income tax that would be payable if Gold Corporation were subject to Commonwealth taxes.

It is intended that section 20 will be replaced by a similar obligation under the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*. This will require inclusion of Gold Corporation as a prescribed State entity in regulations under that Act. No amendment to either Act is required. Following these changes, Gold Corporation will be subject to the same taxation regime as other government trading enterprises.

30. Section 21 amended

Clause 30 is a consequential amendment to section 9(3).

31. Section 23 inserted

Clause 31 inserts a new section 23 empowering the Treasurer to fix a charge payable by Gold Corporation and its subsidiaries to the Consolidated Fund in respect of a Treasurer's guarantee given under section 22. The Treasurer may direct times and instalments for payment of the charge, sometimes referred to as a "guarantee charge". The charge compensates for the competitive advantage that the Treasurer's guarantee confers on the Gold Corporation, Goldcorp and the Mint, as against their private sector counterparts who would have to enter into a commercial arrangement to obtain a similar guarantee from, say, a bank.

32. Section 35 amended

Clause 32 removes the Mint's liability for local government rates and charges, while clause 32(2)(7b) replaces this liability with the standard local government rate equivalent regime (in the same way as clause 28 does for Gold Corporation and clause 34 does for GoldCorp).

Clause 32 also repeals current section 35(7), thereby removing the exemption from any rate, tax or imposition that currently applies to land vested in The Director of The Perth Mint or Western Australian Mint under the Act. This exemption is an historical relic of the previous status of the Mint as the Perth Branch of the UK Royal Mint and is no longer appropriate.

33. Section 44 amended

Clause 33 is a consequential amendment to section 9(3). As a subsidiary of Gold Corporation, the Mint will not be prescribed as a separate entity for the purposes of the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*. Currently, the income tax equivalent payment to Gold Corporation by the Mint is calculated under section 44 as a proportion of Gold Corporation's tax payment under section 20. Section 44 will continue to have the same effect, except that Gold Corporation's payments will be made under the abovementioned Act, rather than section 20.

34. Section 48 amended

Clause 34(1) removes Goldcorp's liability for local government rates and charges, while clause 34(2) replaces this liability with the standard local government rate equivalent regime.

35. Section 53 amended

Clause 35 is a consequential amendment to clause 29, with the same effect for Goldcorp as clause 33 has for the Mint.

PART 9 –AMENDMENTS TO THE *HIRE PURCHASE ACT 1959*

36. The Act amended

Clause 36 defines that the *Hire Purchase Act 1959* is to be amended.

37. Section 1 amended

Clause 37 repeals section 1(4) of the Act, which currently provides that the Act applies to hire-purchase agreements entered into from the commencement of the Act. Other amendments below re-define the Act's application.

38. Section 1A inserted

Clause 38 inserts a new section 1A determining the application of the Act from the time these amendments commence.

New section 1A(1) has the effect that the Act will remain in force, unchanged by this Bill, in respect of hire-purchase agreements that are in place prior to the commencement of this section of the Bill.

New section 1A(2) provides that the Act does not apply to hire-purchase agreements entered into after commencement (defined by new section 1A(8) as "exempt" hire-purchase agreements), subject to some sections being continued as set out in the remainder of the section.

The scope of the ongoing application of the Act to relevant hire-purchase agreements is determined by new sections 1A(3), (4), (5), (6) and (7). The sections of the Act that have ongoing application to hire-purchase agreements are sections 2, 13(1) and (2) (partially amended), 15 (other than subsections (1)(a), (4) and (5)), 17, 24 (other than subsection 24(6)(a)) and 25.

Section 2 is the definitions section.

Section 13(1) and (2) relate to a requirement for a notice in the form of the Third Schedule to be given to a hirer who is a farmer before certain farm goods can be repossessed.

Section 15, which sets out the hirer's rights and immunities when goods are re-possessed, has ongoing operation apart from subsections 15(1)(a), (4) and (5). Those subsections are contingent on notice requirements elsewhere in the Act that will not have ongoing operation, making it inappropriate to continue those subsections in operation. Section 17 also has ongoing effect, to allow courts to give effect to section 15.

Section 24, which empowers a court to re-open certain hire-purchase transactions on equitable grounds, has ongoing operation apart from subsection 6(a). That subsection is contingent on notice requirements elsewhere in the Act that will not have ongoing operation, making it inappropriate to continue the subsection in operation.

Section 25, which provides additional protection for certain goods hired by a farmer, continues in operation unchanged in itself. However, its operation is affected by new section 1A(3)(a). That section continues section 13(1) and (2) for the purposes of section 25 as if the words “section 12A or” were deleted from section 13(2).

PART 10 - AMENDMENTS TO THE *LICENSED SURVEYORS ACT 1909*

39. The Act amended

Clause 39 defines that the *Licensed Surveyors Act 1909* is to be amended.

40. Section 4 amended, and transitional

Clause 40 replaces the appointment to the Board of two members nominated by the Surveyor General, at least one of whom must be a licensed surveyor, with the appointment of two more broadly representative members. The member nominated by the chief executive officer of the Board is to represent interests in relation to land registration matters, while the member nominated by the Minister is to represent the interests of users of licensed surveyors' services.

Clause 40(2) removes the ex officio appointment of the Surveyor General as the chairman of the Land Surveyors Licensing Board. Instead, clause 40(2)(1a) provides for the Governor to appoint one of the members of the Board as chairman.

Clause 40(1)(c) clarifies that the licensing surveyors appointed to the Board under section 4(1)(c) are to hold practising certificates. Additionally, clause 40(2)(1b) requires one other person appointed under section 4(1) to be a licensed surveyor who holds a practising certificate.

Clause 40(2) repeals section 4(1a), which imposes transitional arrangements dating from 1976 that are no longer needed.

Clause 40(4) makes amendments consequential upon the altered arrangements for appointments to the Board, while clause 40(5) corrects a minor apparent anomaly in the operation of section 4(5a).

Clause 40(6) repeals the licensing requirement that an applicant be of good fame and character, which is regarded as overly discretionary. Instead, the

section provides a more detailed rule that prohibits the grant of a licence in various circumstances where an applicant has committed or been charged with an offence involving fraud or dishonesty.

Clause 40(7), (8) and (9) are transitional sections providing for continuity of appointments to the Board until the 31 December following the commencement of the Act.

41. Section 26A amended

Clause 41 deletes section 26A(3)(c), which provides that regulations may be made relating to the approval of insurers and the issue of certificates of insurance to persons covered by professional indemnity insurance and may prescribe the form of those certificates. This degree of regulation is overly prescriptive.

The Bill amends the *Licensed Surveyors Act 1909* to broaden the make-up of the Land Surveyors Licensing Board to include consumer representation. The Bill also replaces the undefined requirement for licensed surveyors to be of good fame and character with specific provisions determining eligibility to practise.

PART 11 - AMENDMENTS TO THE *PERTH MARKET ACT 1926*

42. The Act amended

Clause 42 defines that the *Perth Market Act 1926* is to be amended.

43. Section 11A repealed

Clause 43 repeals section 11A which removes the power of the Perth Market Authority to set the trading times in the public market. The Authority doesn't require statutory authority to set its opening and closing times so the provision is redundant. The repeal of section 11A also removes the power of the Authority to discriminate between vendors within its market complex with respect to the hours of operation. Consequentially, it also removes the power of the Authority to penalise vendors for contravening these rules.

44. Section 11B repealed

Clause 44 repeals section 11B which is a consequential amendment to clause 43, removing the ability of the Authority to delegate its powers of making an exception to operating outside of the hours set by the Authority.

45. Section 13 amended

Clause 45 amends section 13 (1) by deleting paragraphs (3a), (3b), (3c) and (3d). Section 13(2a) is also repealed. These amendments remove the power of the Authority to make by-laws prohibiting the sale of produce at other markets thereby removing the monopoly position of the Authority in the control of the sale of agricultural produce at market.

PART 12 - AMENDMENTS TO THE SANDALWOOD ACT 1929

46. The Act amended

Clause 46 defines that the *Sandalwood Act 1929* is to be amended.

47. Section 3 amended

Clause 47 deletes section 3(2) of the Act. That section prevents the quantity of sandalwood authorised for removal under licences relating to alienated land (excluding plantations) comprising more than 10% of the State's total authorised annual sandalwood removal. The deletion will have the effect of allowing licences to be granted in accordance with generally applicable State environmental laws and policy rather than according to whether the sandalwood is located on Crown or alienated land.

PART 13 - AMENDMENTS TO THE STATE SUPPLY COMMISSION ACT 1991

48. The Act amended

Clause 48 defines that the *State Supply Commission Act 1991* is to be amended.

49. Section 26J repealed

Clause 49 repeals section 26J of the Act which removes the State Supply Commission's exemption from stamp duty on the transfer of property or any other relevant liability. This change is in accord with the principles of competitive neutrality.

PART 14 - AMENDMENTS TO THE VALUATION OF LAND ACT 1978

50. The Act amended

Clause 50 defines that the *Valuation of Land Act 1978* is to be amended.

51. Section 6 amended, and transitional

Clause 51(1) replaces section 6(3) of the Act with a more general provision governing who may be appointed Valuer-General. Clause 51(2) is a transitional provision continuing the appointment of the present office-holder.

52. Section 14 amended

Clause 52 clarifies that information released under section 14 can be released to the public at large, as well as to a particular class of persons.

53. Section 16A inserted

Clause 53 inserts a new section 16A giving the Minister an entitlement to have and retain copies of information in the possession of the Valuer-General. This power is expected to improve the Minister's ability to make decisions about release of information under section 14.

54. Section 25 amended

Clause 54 repeals section 25(2) which set out that the rating or tax authority could only engage those licensed under the Act or qualified for membership of the Australian Institute of Valuers (Incorporated) as a Fellow or Associate of that Institute to make general or interim land valuations.

PART 15 - AMENDMENTS TO THE WESTERN AUSTRALIAN MEAT INDUSTRY AUTHORITY ACT 1976

55. The Act amended

Clause 55 defines that the *Western Australian Meat Industry Authority Act 1976* is to be amended.

56. Section 16 amended

Clause 56(1) amends section 16 to confirm the primary status of the Authority as a regulator by preventing it from operating saleyards (although there is provision in subsequent sections for the Minister to make a direction allowing this in certain circumstances).

Clause 56(2) amends section 16(1)(d) by replacing a section stating that the Authority had to arrange or assume responsibility for the management of Midland Saleyard and expanding the section to include any other undertaking, establishment or facility in the meat industry that the Minister declares to be a replacement for Midland Saleyard.

Clause 56(3) inserts a new section 16(2), (3) and (4). Section 16(2) provides that the Minister should consider whether the meat industry would suffer substantial loss or disruption in deciding whether the Authority may assume responsibility for undertakings other than Midland Saleyard. Under new section 16(3), the Minister must specify the relevant period for the Authority assuming responsibility and this period may not exceed 2 years. There is provision for the Minister to extend this period by a period not exceeding 12 months, under new section 16(4).

57. Section 19 amended

Clause 57 is to delete section 19(b)(iv), which removes the power of the Authority to reject an application to establish an abattoir on the grounds that the area is already serviced by another such facility. The Authority would not be able to limit expansion of abattoir facilities on grounds that it will affect the throughput of the facility and thereby impact on other abattoirs in the area.

58. Section 21 amended

Clause 58 repeals section 21 of the Act. This removes the restrictions on alterations and additions to abattoirs.

59. Section 23 amended

Clause 59 amends section 23 of the Act to account for the deletion of section 21 in accordance with the amendment in Clause 58 above.