

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

TERRITORIES LEGISLATION AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Arts,
Sport, the Environment and Territories,
The Hon Ros Kelly MP)



TERRITORIES LEGISLATION AMENDMENT BILL 1992

OUTLINE

This Bill makes minor technical amendments to the *Christmas Island Act 1958* and *Cocos (Keeling) Islands Act 1955*. It follows on from the *Territories Law Reform Act 1992*, relevant provisions of which commenced on 1 July 1992.

That Act reforms the legal regimes of the Indian Ocean Territories (IOTs), Christmas Island and the Cocos (Keeling) Islands, by repealing the former IOT laws, applying Western Australian (WA) laws as in force from time to time (subject to modification by Ordinances, made under the Christmas Act or Cocos Act) and extending Commonwealth laws (unless expressed not to extend). The amendments made by the Reform Act also enable the Minister administering the Christmas Act and Cocos Act to enter arrangements with the Government of WA for assistance in the administration of applied WA laws, including the performance of functions and provision of services by WA agencies on behalf of the Commonwealth.

The WA Government introduced its *Indian Ocean Territories (Administration of Laws) Bill* into the WA Parliament in November 1992, to make corresponding provision for intergovernmental arrangements, particularly in relation to the Commonwealth's proposal for the exercise of jurisdiction in respect of the IOTs by the courts and court officers of WA.

The technical amendments to be made by this Bill have been requested by Western Australia, so as to better provide for such arrangements. They relate mainly to the manner of application of the provisions of the law of Western Australia, and to the exercise of judicial and related powers under applied laws by Territory or State courts and court officers.

FINANCIAL IMPACT STATEMENT

The Bill will have no impact on Commonwealth expenditure or revenue.

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NOTES ON CLAUSES

Clause 1: Short Title

1. Provides for the Act to be cited as the *Territories Legislation Amendment Act 1992*.

Clause 2: Commencement

2. Provides that the Act, excepting clause 4 and Schedule 2, shall come into operation on the day it receives Royal Assent.

3. Clause 4 and Schedule 2, which relate to exercise of jurisdiction in respect of the Indian Ocean Territories (IOTs) by the courts of Western Australia (WA), are to commence immediately after the commencement of sections 10 and 19 of the *Territories Law Reform Act 1992*. By section 2 of the Reform Act, sections 10 and 19 of that Act are to commence on a day to be proclaimed, which must be on or before 30 June 1993 (12 months from the date of Royal Assent to the Reform Act) or they will be repealed. Those sections, when proclaimed, will amend the *Christmas Island Act 1958* and *Cocos (Keeling) Islands Act 1955* so as to provide for the exercise of jurisdiction in respect of the IOTs by the courts of WA; accordingly, they will only be proclaimed if and when there is a formal agreement between the Commonwealth and the State in relation to this conferral of jurisdiction. The amendments to the Christmas Act and Cocos Act which are to be made by clause 4 and Schedule 2 of this Bill will only be required if and when there is such an agreement, and the amendments by sections 10 and 19 of the Reform Act are being brought into effect. Accordingly, they are to commence immediately after commencement of those sections.

Clause 3: Amendments of Acts

4. This clause will amend the *Christmas Island Act 1958* and *Cocos (Keeling) Islands Act 1955* as set out in Schedule 1. These are amendments which take effect immediately, and are required to facilitate development of service delivery agreements between the Commonwealth and Western Australia. Details of these amendments are set out below, at paragraphs 6-13.

Clause 4: Further amendments of Acts

5. This clause will amend the *Christmas Island Act 1958* and *Cocos (Keeling) Islands Act 1955* as set out in Schedule 2. These amendments are only required at the time when the courts of Western Australia are to acquire jurisdiction in respect of the Indian Ocean Territories. At that time, the Parts of the Christmas Act and Cocos Act which currently provide for

exercise of judicial powers under applied WA laws by the existing separate Territory courts will be repealed, and replaced by new Parts providing for conferral of Territory jurisdiction on the courts of WA. Schedule 2 sets out the amendments which are to be made to those new Parts, and corresponding changes required to other elements of the Acts. Details of these amendments are set out below, at paragraphs 15-22.

Schedule 1: Amendments of Acts

6. This Schedule will amend the *Christmas Island Act 1958* and *Cocos (Keeling) Islands Act 1955*. As the amendments are almost entirely to provisions introduced by the *Territories Law Reform Act 1992*, which were consistent for each Territory, the amendments are virtually identical for the Christmas Act and the Cocos Act, save the different numbering of the provisions introduced by the Reform Act. The explanatory remarks below relate to the amendments to the Christmas Act; corresponding provisions of the Cocos Act are identified at paragraph 14 below.

7. Section 4 ("Definitions") will be amended so as to expand the definition of "jurisdiction".

8. Section 8A ("Application of Western Australian laws") will be amended so as to clarify conceptually the basis on which provisions of Western Australian laws are to be applied to the Territory, and avoid possible undesirable restrictions on the applicability of such laws. The removal of the limitation in subsection 8A(1), which restricted the application of the provisions of Western Australian law according to their inherent applicability, will not substantially affect the laws currently in force in the Territory. Provisions logically incapable of application will henceforth be taken to form part of the law in force in the Territory, notwithstanding their inapplicability, but this is not invalid; provisions incapable of application for constitutional reasons will still be displaced by the express provision in subsection 8A(4) of the Christmas Act.

9. Section 8G ("Powers and functions under the applied Western Australian laws") will be amended to deal more consistently with the vesting of judicial or administrative powers, by expanding the categories of court officers. Powers vested in courts and court officers are dealt with under Part IVA of the Christmas Act. They are not dealt with through this section, which provides for vesting of non-court-related powers initially in the Minister administering the Christmas Act, who may then delegate or direct that they be vested in other persons. Part IVA of the Christmas Act ("Judicial powers etc. under the applied Western Australian laws") provides for judicial and related powers to be directly vested in an appropriate Territory court or court officer, as this is preferable to any initial vesting of judicial powers in the Minister.

10. Section 14A ("Definitions") of Part IVA will be amended to provide more comprehensively for the various court officers of the existing courts of the Territories, in addition to those exercising principal judicial powers. This corresponds with the new framework to be introduced at a future date, upon the conferral of jurisdiction generally on the courts (and court officers) of WA.

11. Section 14B ("References to courts in applied laws") will be amended to deal with any references to coroner's courts in applied laws, supplementing the existing provision in section 14C in relation to references to coroners.

12. Section 14C ("References to judicial officers in applied laws") will be amended to provide for references in applied laws to other officers who may exercise judicial as well as executive powers.

13. Section 14D ("Jurisdiction conferred by applied laws") will be amended corresponding with the replacement of the definition of "judicial officer" with a definition of "court officer".

14. The provisions of the Cocos Act amended or affected by Schedule 1 correspond to the above-mentioned provisions of the Christmas Act as follows: sections 4, 8A and 8G are identical; sections 14A, 14B, 14C and 14D of the Christmas Act correspond to sections 15AAA, 15AAB, 15AAC and 15AAD of the Cocos Act, respectively; Part IVA of the Christmas Act corresponds to Part IVAA of the Cocos Act.

Schedule 2: Further amendments of Acts

15. This Schedule will further amend the *Christmas Island Act 1958* and *Cocos (Keeling) Islands Act 1955*, particularly the new Parts to be introduced on commencement of sections 10 and 19 of the *Territories Law Reform Act 1992*, which provide for conferral of Territory jurisdiction on WA courts and its exercise. Again, the amendments are virtually identical for the Christmas Act and the Cocos Act, save the different numbering. The explanatory remarks below relate to the amendments to the Christmas Act; corresponding provisions of the Cocos Act are identified at paragraph 22 below.

16. Section 4 ("Definitions") will be amended to insert definitions of "court officer of Western Australia" and "court of Western Australia". Again, this definition is broader than that of judicial officer, because it also includes executive officers of courts, and particularly those court officers who may exercise both judicial and executive powers. These definitions will be able to be expanded by regulations, in respect of courts or tribunals of WA other than those named. This is to provide a framework for dealing with minor tribunals, as and when appropriate service delivery arrangements are developed.

17. Section 8G ("Powers and functions under the applied Western Australian laws") will be amended, utilising the new definitions.

18. Section 14 ("Appeals to the High Court") will be repealed, as it is already of no effect. This provision was overridden by the *Federal Court of Australia Act 1976*, which provides for appeals from the Supreme Courts of the various Territories to the Federal Court in the first instance. It is appropriate to remove this provision in conjunction with the repeal of section 13 ("Establishment of other courts") by section 9 of the Reform Act. That section, as well as section 10 of the Reform Act, which will bring this amendment into effect, will be proclaimed to commence on the day when the courts of WA, with their own appellate structure and appeals to the High Court, receive jurisdiction in respect of the Territory.

19. New section 14A ("Definitions"), to be inserted by section 10 of the Reform Act when proclaimed, will be amended by omitting the definition of "judicial officer of Western Australia", superseded by the general definition of "court officer of Western Australia" inserted into section 4 (see paragraph 16 above).

20. New section 14B ("Conferral of jurisdiction on Western Australian courts and judicial officers"), to be inserted by section 10 of the Reform Act when proclaimed, will be amended by including specific reference to the appellate jurisdiction of the courts of Western Australia, and referring to "court officers" instead of "judicial officers".

21. New section 14J ("References to courts of Territory - transitional"), to be inserted by section 10 of the Reform Act when proclaimed, will be amended so as to exclude references to the Federal Court from the ambit of the section. New section 14J provides a means of dealing with references in other Commonwealth Acts to the current courts of the Territories, by providing generally that such references are to be taken to include references to the courts of WA. However, this is not appropriate in the case of the *Federal Court of Australia Act 1976*, which provides for appeals from the Supreme Courts of the Territories to the Federal Court in the first instance. While that provision will continue to have that effect in respect of the Supreme Court of Christmas Island, for so long as that Court continues in existence (see new sections 14G and 14H), it is not appropriate for it to apply to WA courts in any way. Appeals from WA courts in their Territory jurisdiction will be through the normal appellate mechanisms of the State and then to the High Court.

22. The provisions of the Cocos Act amended by Schedule 2 correspond to the above-mentioned provisions of the Christmas Act as follows: sections 4 and 8G are identical; new sections 14A, 14B, 14G, 14H and 14J of the Christmas Act (to be inserted by section 10 of the Reform Act) correspond to sections 15AAA, 15AAB, 15AAG, 15AAH and 15AAI of the Cocos Act (to be inserted by section 19 of the Reform Act), respectively. (There is no equivalent in the Cocos Act to the current section 14 of the Christmas Act, dealing with appeals to the High Court, as the formerly corresponding section 16 of the Cocos Act had already been repealed and replaced.)

