

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TERRITORIES LAW REFORM BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
for the Arts and Territories,
The Hon Wendy Fatin MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY
THE SENATE TO THE BILL AS INTRODUCED



TERRITORIES LAW REFORM BILL 1992

OUTLINE

The principal object of the Bill is reform of the legal regimes of the Indian Ocean Territories (IOTs), Christmas Island and the Cocos (Keeling) Islands, with effect from 1 July 1992. This will implement in large measure the Government's response, tabled in the House of Representatives on 10 September 1991, to the "Islands in the Sun" report of the House of Representatives Standing Committee on Legal and Constitutional Affairs.

The Bill will amend the *Christmas Island Act 1958* and *Cocos (Keeling) Islands Act 1955* so as to repeal current IOT laws (unless specified in new Schedules), apply 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 extend Commonwealth laws (unless expressed not to extend).

The application of WA laws will not of itself confer powers or impose responsibilities on WA authorities or officers. Non-judicial powers and duties will be vested in the Commonwealth Minister administering the Christmas Act and Cocos Act, who will have a capacity to delegate the powers, or direct that they be vested in some other person or authority. The Bill will enable the Minister to enter arrangements with the Government of WA for assistance in the administration of applied laws, including the performance of functions and provision of services by WA agencies on behalf of the Commonwealth.

Judicial powers and duties will initially be vested in the existing courts of the IOTs. (The Family Court of Western Australia will have jurisdiction in respect of the IOTs under the *Family Law Act 1975*, as a result of the extension of that Act to the IOTs.) Provisions to commence on a date to be proclaimed will confer jurisdiction on the courts of WA generally, allowing the abolition by Ordinance of courts of the IOTs other than the Supreme Courts. Each of the IOT Supreme Courts will retain jurisdiction in respect of matters already before them (pending, commenced or completed), and will only be able to be abolished (by further Proclamation) when it has no serving Judge.

In conjunction with the amendments resulting in the extension of Commonwealth laws generally, the *Acts Interpretation Act 1901* will be amended to provide that 'Australia' and 'the Commonwealth', when used in a geographic sense, include the IOTs, unless the context otherwise requires. The Bill will also amend a number of Commonwealth laws, so that they either extend effectively, or will not extend at this time, to the IOTs.

The Bill will make a number of additional minor amendments to the Christmas and Cocos Acts.

The Bill will also validate payments of additional salary received by certain executive members of the Norfolk Island Legislative Assembly during 1989, and remove the requirement that remuneration and allowances of members of the Legislative Assembly be determined by the Commonwealth Remuneration Tribunal.

FINANCIAL IMPACT STATEMENT

The direct cost of changing the legal regimes of Christmas Island and the Cocos (Keeling) Islands is negligible. However, indirect costs, especially over the first five years, are substantial. These indirect costs are associated with the Government's commitment to bring the conditions on the Islands up to a standard comparable with mainland Australia.

The costings have two components; recurrent costs and capital works. Under the new legal regime, while total net recurrent costs will increase over the next two years, they will then reduce to below the 1991-92 level. In fact, net recurrent costs (1991-92 values) will reduce from \$18.707m in 1991-92 to \$14.825m per annum by 1996-97, and should remain at about that level in subsequent years.

A substantial capital works program is required on the Islands to bring infrastructure up to mainland standards. Approval has been given for the allocation of \$37m for a rebuilding program for Christmas Island from 1992-93 to 1996-97. Other capital works proposals for Christmas Island have been referred to the Joint Parliamentary Committee on Public Works. Proposals for capital works for the Cocos Islands are currently being prepared.

The Bill's provisions relating to remuneration of Norfolk Island Legislative Assembly members will have no effect on Commonwealth expenditure or revenue.

TERRITORIES LAW REFORM BILL 1992

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1: Short Title

1. Provides for the Act to be cited as the *Territories Law Reform Act 1992*.

Clause 2: Commencement

2. Provides for the Act, excepting sections 1, 2, 9, 10, 19, 21, 22, 25 and 26, to commence on 1 July 1992. Sections 1 and 2, which are formal, and sections 25 and 26, concerning remuneration of members of the Norfolk Island Legislative Assembly, will commence on Royal Assent.

3. Sections 9, 10, 19, 21 and 22, which relate to conferral of jurisdiction in respect of the Indian Ocean Territories (IOTs) on the courts of Western Australia (WA), will commence on a day to be proclaimed. This is because jurisdiction is not to be conferred until there is a formal agreement between the Commonwealth and WA on the terms for provision of judicial services to the IOTs. If these sections do not commence within 12 months of Royal Assent, they will be repealed.

PART 2 - AMENDMENTS OF THE CHRISTMAS ISLAND ACT 1958

Clause 3: Principal Act

4. Identifies the *Christmas Island Act 1958* as the Principal Act in this Part.

Clause 4: Interpretation

5. Clause 4 will introduce new definitions, of "laws of the Territory", "laws in force in the Territory", "police force of the Territory" and "Western Australia", to assist in application of the Act in the context of the reforms to be made by the Bill. New subsection 4(2) simplifies drafting of this Bill, by enabling references to Acts to encompass references to parts of Acts and subsidiary laws.

Clause 5: Part heading

6. Clause 5 will repeal the current heading, "PART III - LEGISLATION", and substitute "PART III - LAWS AND LEGISLATIVE POWERS", in accordance with current drafting practice.

Clause 6: Repeal of Division 1 of Part III of the Principal Act and substitution of new Division

7. Clause 6 will repeal Division 1 of Part III (which currently deals with continuance of pre-1958 laws and application of Commonwealth Acts) and substitute a new Division 1 ("Laws of the Territory"). The eight sections of this new Division 1, discussed below, will provide the basic framework of the new legal regime.
8. These provisions have been prepared in the light of the provisions of the *Ashmore and Cartier Islands Acceptance Act 1933*, by which the laws of the Northern Territory, as in force from time to time, are applied to the Territory of Ashmore and Cartier Islands. However, they do not follow that precedent exactly, because of changes in drafting style and differences in the policy context.
9. New section 7 ("The laws of the Territory") will identify exhaustively the sources of the laws of the Territory, that is, Commonwealth Acts (see new section 8E), Territory Ordinances (section 9), Ordinances continued in force by section 8, and Western Australian laws (subject to new section 8A).
10. New section 8 ("Operation of existing laws etc.") will provide that laws in force before 1 July 1992 are repealed unless listed in the Schedule to the Act (Schedule 1 to this Bill). In particular, this will mean that the common law of the Territory, which is currently difficult to identify, will be repealed (to be replaced by the common law of Western Australia).
11. New section 8A ("Application of Western Australian laws") will provide that the law of WA, as in force in WA from time to time, is in force in the Territory. This application of WA law will be by force of this section, that is, as Commonwealth law rather than as an exercise of WA legislative power. The application of WA laws is expressed to be subject to the new provisions dealing with vesting of non-judicial powers and duties (new section 8G - see paragraph 16 below) and vesting of judicial powers and duties (the two versions of Part IVA - see paragraphs 30 and 38 below).
12. New subsections 8A(2), 8A(3) and 8A(4) will express that an applied law of WA can be amended, repealed, incorporated or suspended by an Ordinance, and in any case of inconsistency between the Constitution or an Act or Ordinance on the one hand and an applied law of WA on the other hand, the Constitution, Act or Ordinance prevails. These provisions reflect the Commonwealth's overriding power over, and responsibility for, the laws of the Territory. (The concept of incorporation of a law relates to the possibility of codifying some part of the common law of WA in an Ordinance.)
13. New subsection 8A(6) will define 'law' so as to include the common law of WA (the law not set out in statutes). It will also provide that 'law' "does not include an Act": this

is a reference to Commonwealth Acts, rather than WA Acts. WA Acts, and the subordinate legislation of WA, are included within the meaning of 'law'. Commonwealth Acts as in force in WA will not be applied by this section, but are dealt with in the next section: they will extend or not extend of their own force, and not necessarily in the same way as they are in force in WA.

14. New sections 8B to 8D, discussed in more detail below, confer on each House of the Parliament the power, by resolution, to terminate the application by the Bill of specified Western Australian (WA) statutes to either of the Indian Ocean Territories. The termination system is substantially similar to that already applying to the disallowance by either House of Ordinances made for each Territory, under sections 9 to 10C of the Christmas Island Act and sections 12 to 13C of the Cocos (Keeling) Islands Act.

15. New section 8B ("Minister must table lists of applied Western Australian Acts") provides that the Minister administering the Christmas Island Act must cause lists of the Acts of the Western Australian Parliament ('WA Acts') that have come into force in the Territory under new section 8A of the Act to be tabled regularly in each House of Parliament.

16. The first list must be tabled within the period of 3 months commencing on 1 July 1992, when section 8A commences, and each later list within each period of 6 months following the first period. If a House does not sit within the last month of a period, the list may be tabled within the first 15 sitting days after it resumes sitting.

17. New section 8C ("House may terminate application of Western Australian Acts in the Territory") provides for either House to terminate the operation in the Territory of a WA Act included in a list tabled under section 8B. Either House may terminate a WA Act (or part of a WA Act) by resolution, provided that notice of motion to terminate has been moved within 15 sitting days of the tabling in that House of the WA Act list including the WA Act in question. (Where section 8D applies, the period is 3 months, see below).

18. Termination of application of a WA Act has the same result as repeal of the Act, as part of the law of the Territory, by an Ordinance. Repeal is not retrospective, so the application of the WA Act to actions taken before the termination is not affected. But if the WA Act itself repealed another statute, termination of the WA Act revives the repealed statute. (Generally, repeal of a statute that itself repealed a statute does not revive the previous statute).

19. New subsection 8C(3) deals with the case where notice is given in time but the motion is not dealt with within 15 sitting days of the notice: that is, the notice is neither withdrawn nor called on, or is called on, but neither agreed to nor defeated. In this case, on the expiration of the 15th sitting day after the notice is given, the WA Act is terminated, as if the motion had been agreed to.

20. New subsection 8C(4) deals with the case where there is an interruption to the sittings of the Parliament during the 15 sitting days that follow the giving of a notice of motion to terminate a WA Act: that is, dissolution or expiration of the House of Representatives, or prorogation of the Parliament. If the notice has not been dealt with when the interruption occurs, the WA Act list in question is taken to have been tabled on the first sitting day of the House after the interruption (and notice of a motion to terminate a WA Act on that list can thus be given within 15 sitting days of the resumption of sittings).

21. New section 8D ("Extension of period for giving notice of motion to terminate WA Act") applies only to the first list to be tabled under section 8B. This list will contain a large number of WA Acts applying in the Territory from 1 July, and a longer time than usual may be needed in each House to consider whether to terminate any of them. Section 8D empowers either House to extend (by resolution), from 15 sitting days to 3 months after the tabling of this first WA Act list, the time in which it may consider whether to terminate an Act or Acts specified in their resolution.

22. New subsections 8D(3) and (4) deal with certain situations in respect of a notice of motion for an extension of period, analogous to those situations in respect of a notice of motion for termination of the operation of an Act, addressed by new subsections 8C(3) and (4): see paragraphs 28 and 29 above.

23. New section 8E ("Application of Commonwealth Acts") reverses the current position, under what is now subsection 8(1) of the Act. Currently, an Act is not in force in the Territory unless expressed to extend to the Territory. This provision will mean that an Act (including one already in force) extends to the Territory unless it specifically provides otherwise. (It is intended that an Act which provides a specific mechanism for extension to the Territory should be considered to "provide otherwise" within the meaning of subsection 8E(1), without necessarily expressing that it does not extend unless that mechanism is exercised.)

24. New section 8F ("Application of *Industrial Relations Act 1988*") will modify the definition of "industrial dispute" in that Act in relation to the Territory, by removing the "interstateness" requirement for a Christmas Island dispute to constitute an industrial dispute within the meaning of the *Industrial Relations Act 1988*. This follows the precedents of section 53 of the *Northern Territory (Self-Government) Act 1978* and section 5 of the *Seat of Government (Administration) Act 1910* (for the Australian Capital Territory). New section 8F does not affect subsection 7(2) of the *Industrial Relations Act*, which enables application of the Act in relation to Christmas Island to be modified by Regulations.

25. New section 8G ("Powers and functions under the applied Western Australian laws") will deal with non-judicial powers and functions. The scheme is similar though not identical to current provisions in relation to powers under laws of the Colony of Singapore which still apply in the Territory. All non-judicial powers will initially be vested in the Minister. The Minister will be able to delegate a power to, or direct that it be vested in, a person or authority within the classes set out in subsection (7), which generally cover the Commonwealth, WA and Territory public sectors. Subdelegation will be restricted to the same classes, and will only be possible where a power to delegate under WA law is itself delegated, or the Minister expressly provides for subdelegation in a direction.

26. New subsection 8G(9) will make plain that the vesting of non-judicial powers by this section does not affect the application in the Territory (by section 8A) of a subordinate law of WA. WA regulations, for example, would be made by the Governor-in-Council, by virtue of a non-judicial power under a WA law as that law is in force in WA - such an exercise of a power is not "in relation to the Territory", so is not affected by section 8G.

27. New section 8H ("Arrangements with the Government of Western Australia") will provide for arrangements relating to application and administration of the laws of the Territory. These arrangements are intended to deal with terms and conditions for performance of functions and provision of services by WA officers and authorities, and also with provision of advice and assistance by WA agencies to the Commonwealth generally.

28. New section 8I ("Savings") will preserve generally the validity of Acts done under the existing law, and all associated rights, duties etc. It will also enable conduct of legal proceedings in respect of matters occurring before the commencement of the Bill, under the previous law.

Clause 7: Regulations, rules and by-laws

29. This clause will clarify that section 10D, which deals with tabling and disallowance of regulations made under Ordinances and other laws of the Territory, will not apply to WA regulations applied by new section 8A (which will come into force automatically, subject to possible modification by Ordinance), but will apply to any regulations made specifically for the Territory.

Clause 8: Insertion of new Part

30. This clause inserts a new Part IVA, "Judicial powers etc. under the applied Western Australian laws". This Part, which deals with exercise of jurisdiction in relation to the applied laws of WA by the existing courts of the Territory, will operate for the period from 1 July 1992 until jurisdiction is to be conferred on the courts of WA (if the Commonwealth and the State so agree). At that time, remaining provisions of

the Bill will be proclaimed to commence, including clause 10, which will repeal the Part IVA introduced by this clause (except in relation to matters where the Supreme Court of the Territory continues to have jurisdiction), and introduce a new Part IVA - see paragraphs 38-47 below.

31. The only court of WA which will exercise any jurisdiction in respect of the Territory from 1 July 1992 is the Family Court of Western Australia, which will have jurisdiction under the *Family Law Act 1975*, as a result of the extension of that Act to the IOTs by this Bill, rather than as a result of the application of WA law or the operation of this Part. (The Family Court of Western Australia currently has federal jurisdiction under the *Family Law Act* throughout Australia, though it can only sit within WA.) The Family Court of Western Australia will not exercise its "non-federal" jurisdiction in respect of the IOTs until all WA courts receive jurisdiction generally: that jurisdiction will be exercised in the interim by the Supreme Court of the Territory (see paragraph 34 below).

32. New section 14A ("Definitions") will define the courts and judicial officers referred to in this Part.

33. New section 14B ("References to courts in applied laws") will provide interpretation provisions for references in the applied laws to the various Courts of WA. (The application in the Territory of provisions of WA laws which establish courts or provide for appointment of judicial officers will be repealed, by Ordinance, as it is not intended to create new courts or appoint new judicial officers specifically for the Territory; this repeal also simplifies the task of interpretation of references.)

34. New paragraph 14B(1)(b) will distinguish between references in the applied law which relate to the Family Court of Western Australia in its federal jurisdiction (as defined by new subsection 14B(2)) and references which relate to that Court in its non-federal jurisdiction (also defined). (The distinction between these jurisdictions is also made in WA legislation - see s.27 of the *Family Court Act 1975* (WA).) This distinction is necessary because the Family Court of Western Australia is capable of exercising jurisdiction under the *Family Law Act 1975* in respect of the Territory as soon as that Act extends to the Territory, and is the appropriate court to exercise that jurisdiction. The non-federal jurisdiction which the Family Court of Western Australia exercises in WA (principally concerning adoption of children, property matters not subject to the *Family Law Act*, children not "of a marriage" within the meaning of the Constitution, and custody and welfare of children generally) is to be exercised in relation to the Territory, during the operation of this Part, by the Supreme Court of the Territory.

35. New section 14C ("References to judicial officers in applied laws") will provide similarly in relation to judicial offices.

36. New section 14D ("Jurisdiction conferred by applied laws") will restrict the Territory courts in the exercise of their additional jurisdiction, in accordance with the limits of their territorial jurisdiction and procedures (if any) required by Ordinances.

Clause 9: Repeal of section 13

37. This clause will commence on the date to be proclaimed, when jurisdiction will be conferred on the courts of WA. It will repeal the section currently providing for the establishment of Territory courts by Ordinance.

Clause 10: Repeal of Part IVA and substitution of new Part

38. This clause, which will commence on a date to be proclaimed, will insert a second new Part IVA, which will replace the Part IVA inserted by clause 8 - see paragraph 30 above. The second new Part IVA, "Conferral of Territory jurisdiction on Western Australian courts etc.", will deal with exercise of jurisdiction by WA courts in relation to the Territory.

39. New section 14A ("Definitions") will define "judicial officers" for the purposes of this Part, and provide a short expression for the day on which the Part will be proclaimed to commence.

40. New section 14B ("Conferral of jurisdiction on Western Australian courts and judicial officers") will confer the same power and jurisdiction, in relation to the Territory, as each court and officer has in WA (except in relation to matters remaining with the Supreme Court of the Territory - see following paragraph). This power and jurisdiction will be exercised in accordance with WA practice and procedure, in either WA or the Territory (subject to the Act as amended - see paragraph 43 below).

41. New section 14C ("Transfer of Supreme Court jurisdiction") will provide for transfer of most of the powers of the Supreme Court of the Territory to courts of WA, particularly the Supreme Court of WA. The Supreme Court of the Territory will be the only Territory court to continue in existence after conferral of jurisdiction on the courts of WA - lesser courts will be abolished by Ordinance. The Supreme Court of the Territory will not have any jurisdiction in relation to new matters - it is this jurisdiction which will be transferred to WA courts (in addition to the conferral of jurisdiction by new section 14B). This transfer of jurisdiction takes account of the additional jurisdiction conferred on the Supreme Court of the Territory by the previous Part IVA, particularly the provisions dealing with references in the applied law to the Family Court of WA and the District Court of WA. The Supreme Court of the Territory will retain jurisdiction in relation to matters pending, already commenced or completed on the transfer day.

42. New section 14D ("Transfer of proceedings") will enable the Supreme Court of the Territory to transfer proceedings where it has retained jurisdiction, to the Supreme Court, Family Court or District Court of WA, as appropriate, where requested by the parties to the proceedings and not contrary to the interests of justice.

43. New section 14E ("Application of provisions of this Act to Supreme Court of Western Australia") will restrict the Supreme Court of WA in its exercise of jurisdiction under this Act in relation to indictable matters, by applying various current provisions of the Act to the Court and its officers. The broad effect of these provisions is that indictable offences may only be tried before a jury, and the jury trial must be commenced in the Territory, but it can then be removed to the mainland (for example, if the empanelment of a jury is impossible, which has occurred in the past, in part because of the small population of the Territory).

44. New section 14F ("Savings - jurisdiction of Supreme Court of the Territory on and after transfer day") will preserve the provisions inserted by clause 8, for any continuing matters in the Supreme Court of the Territory.

45. New section 14G ("Abolition of Supreme Court of the Territory") will enable the abolition of the Supreme Court of the Territory, by Proclamation, but only when there is no longer any serving Judge.

46. New section 14H ("Transitional provisions after abolition of Supreme Court") will provide for the transfer to the Supreme Court, Family Court or District Court of WA, as appropriate, of all proceedings in the Supreme Court of the Territory (not already transferred under new section 14D), as soon as practicable once there is no longer a serving Judge. The provisions are similar to those of new section 14D.

47. New section 14J ("References to courts of Territory - transitional") will provide means of applying references in Commonwealth Acts to the courts of the Territory, following the conferral of jurisdiction on the courts of WA, so that such references are taken to include references to the courts of Western Australia exercising jurisdiction under the Christmas Act.

Clause 11: Schedule

48. This clause will add a new Schedule to the Act, which will list those existing laws which are to continue in force after 1 July 1992. Some comments on the Schedule are at paragraph 67 below.

PART 3 - AMENDMENTS OF THE COCOS (KEELING) ISLANDS ACT 1955

49. Amendments to the *Cocos (Keeling) Islands Act 1955* will be the same in essence as the amendments to the *Christmas Island Act 1958*, but will take into account the slightly different provisions of the two Acts.

Clause 12: Principal Act

50. Identifies the Cocos (Keeling) Islands Act 1955 as the Principal Act in this Part.

Clause 13: Interpretation

51. Similar to clause 4 (paragraph 5 above).

Clause 14: Part heading

52. Similar to clause 5 (paragraph 6 above).

Clause 15: Repeal of section 7 and substitution of new section

53. Clause 15 will repeal section 7 of the Act, which currently provides for exercise by the Governor-General of rights and powers vested in the Queen under an Indenture of 1886, and substitute a new section 7 ("Extinguishment of certain rights and restrictions under the 1886 Indenture"). This clause, and the Bill as a whole, do not affect the trusts under which the Cocos (Keeling) Islands Council holds land in the territory for the benefit of the Cocos Islander community.

54. The background and current situation in relation to the repeal and substitution by clause 15 and the trusts are as follows. The Indenture gave rights in land in the Territory to George Clunies Ross, subject to certain Crown rights, particularly a requirement for Crown sanction of any land transfer (other than to Mr Clunies Ross' descendants, by will). Nearly all of the land in the Territory has been transferred from Mr Clunies Ross' descendants to the Commonwealth, and in large measure then transferred to the Cocos (Keeling) Islands Council, which holds the land under trusts for the benefit of the Cocos community. As part of the Memorandum of Understanding between the Commonwealth, Cocos Council and Cocos Co-operative, land tenure and transfer is to be brought in line with mainland norms. This requires, in addition to the general law reform process, the lifting of all restrictions derived from the Indenture, by new section 7 of this Bill. It had been intended that a further Ordinance would be introduced for Cocos to abolish the Trust under which land is currently held by the Cocos Council, and to allow mainland style dealings to take place. Further discussions will be held with the Cocos Islander community on this issues.

Clause 16: Repeal of Division 1 of Part III and substitution of new Division

55. Similar to clause 6 (paragraphs 7-28 above). New sections 7, 8, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H and 8I of the Christmas Act correspond to new sections 7A, 8, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H and 8I of the Cocos Act, respectively.

Clause 17: Regulations, rules and by-laws

56. Similar to clause 7 (paragraph 29 above).

Clause 18: Insertion of new Part

57. Similar to clause 8 (paragraphs 30-36 above). New sections 14A, 14B, 14C and 14D of the Christmas Act correspond to new sections 15AAA, 15AAB, 15AAC and 15AAD of the Cocos Act, respectively.

58. An exception to the general operation of new Part IVAA is that the Juvenile Court of the Territory will not continue to exist after 1 July 1992. Though the Children and Young Persons Ordinance of the Territory has always provided for establishment of such a Court, it was only established on 30 April 1992, for the purposes of a single hearing. References in the applied law to the Children's Court of Western Australia will be taken to be references to the Supreme Court of the Territory.

Clause 19: Repeal of Part IVAA and substitution of new Part

59. Similar to clause 10 (paragraphs 38-47 above). New sections 14A, 14B, 14C, 14D, 14E, 14F, 14G, 14H and 14J of the Christmas Act correspond to new sections 15AAA, 15AAB, 15AAC, 15AAD, 15AAE, 15AAF, 15AAG, 15AAH and 15AAI of the Cocos Act, respectively. New sections 15AAC, 15AAD and 15AAH reflect the additional jurisdiction conferred on the Supreme Court of the Territory by the previous Part IVAA in respect of references in the applied law to the Children's Court of WA (see previous paragraph).

Clause 20: Schedule

60. The new Schedule to the Cocos Act will be different from the new Schedule to the Christmas Act, because of the different legislative histories since acquisition of the Territories by Australia, and differences in the social and economic environments of the Territories. Some comments on the two Schedules are at paragraph 67 below.

PART 4 - MISCELLANEOUS

Clause 21: Amendment of the *Federal Proceedings (Costs) Act 1981*

61. This clause will commence on a date to be proclaimed, when jurisdiction is conferred on the courts of WA. It will create an exception to the general rule that references to courts of the Indian Ocean Territories (IOTs) include references to courts of WA exercising jurisdiction in relation to the Territory, such that costs will only be payable as provided by the applied law of WA.

Clause 22: Amendment of the *Judiciary Act 1903*

62. This clause will also commence on the date to be proclaimed, when jurisdiction is conferred on the courts of WA. Section 55D of the Judiciary Act deals with rights to practise as a barrister or solicitor in Territory courts:

clause 22 will amend the section so that it no longer applies to IOT courts, with the effect that admission to practice in WA will be the sole requirement.

Clause 23: Other amendments of the Christmas Island Act 1958 and the Cocos (Keeling) Islands Act 1955

63. This clause will make a number of amendments, generally minor, to the Christmas Act and Cocos Act, as set out in Schedule 3. Some comments on the Schedule are at paragraphs 68 and 69 below.

Clause 24: Consequential amendments of Acts

64. This clause will amend a number of Commonwealth Acts, with effect from 1 July 1992, as set out in Schedule 4. Some comments on the Schedule are at paragraphs 70 to 72 below.

Clause 25: Amendments of other Acts

65. This clause, which will commence on Royal Assent, will amend the *Norfolk Island Act 1979* and the *Remuneration Tribunal Act 1973*, in relation to remuneration and allowances for members of the Norfolk Island Legislative Assembly. Some comments on the Schedule are at paragraphs 73 and 74 below.

Clause 26: Validation of certain payments

66. This clause, which will commence on Royal Assent, validates payments made to certain members of the Norfolk Island Legislative Assembly in respect of a period in 1989.

SCHEDULES

Schedule 1: New Schedule added to Christmas Island Act 1958

Schedule 2: New Schedule added to Cocos (Keeling) Islands Act 1955

67. These Schedules ("Laws continuing in force in the Territory on and after 1 July 1992") will list those laws of each of the IOTs which will continue in force after 1 July 1992. Some of these are expected to be repealed when suitable arrangements can be made with WA agencies for the administration of corresponding WA laws in relation to the Territory. Others relate to the courts of the Territory, and are required only until the conferral of jurisdiction on WA courts, and the eventual abolition of the Supreme Court of the Territory. Others, such as the Juries Ordinances, will be required for the foreseeable future.

Schedule 3: Other amendments of the Christmas Island Act 1958 and the Cocos (Keeling) Islands Act 1955

68. This Schedule will make a number of minor amendments to the Christmas Act and Cocos Act, such as removal of sexist language etc. One significant amendment is the insertion of a new section 18B in the Cocos Act, equivalent to existing

section 21A of the Christmas Act, which enables the making of Ordinances in relation to disposal of land, notwithstanding the application of the *Lands Acquisition Act 1989*. This is required in the context of reforms to land tenure in the Territory - see paragraphs 53 and 54 above.

69. The regulation making powers under each Act are also expanded to encompass savings and transitional provisions in respect of the abolition of Territory courts: while the abolition of the courts will be done by Ordinance, regulations (which would apply throughout Australia) will be required for the transfer of any continuing proceedings to the appropriate courts of WA (along the lines of the provisions in the Bill in respect of the abolition of the Supreme Courts of the Territories).

Schedule 4: Consequential amendments of Acts

70. This Schedule will amend a number of Commonwealth Acts, in the context of the amendments to the Christmas Act and Cocos Act which will have the effect that Commonwealth laws extend to the IOTs unless they specifically provide otherwise. Some of these amendments provide for the effective application of the relevant Act in the IOTs, others prevent application of the Act for the time being.

71. The Schedule will amend the *Acts Interpretation Act 1901* so that references in Commonwealth laws to "Australia" or "the Commonwealth", when used in a geographic sense, will include the IOTs, unless the context otherwise requires. This amendment will affect a large number of Acts, with the result of extending benefits or obligations which would not otherwise apply.

72. The Schedule will also amend the *Customs Act 1901*, *Excise Act 1901* and *Sales Tax Assessment Act (No. 1) 1930* so that they will not apply to the IOTs. It is intended to extend these laws to the IOTs, while maintaining their current duty free status, in separate legislation, to be introduced in the near future.

Schedule 5: Amendments of other Acts

73. This Schedule will amend the *Norfolk Island Act 1979*, to allow Norfolk Island legislation to provide for determination of remuneration and allowances of Legislative Assembly members, which has hitherto been determined by the Commonwealth Remuneration Tribunal.

74. The Schedule will also make corresponding amendments to the *Remuneration Tribunal Act 1973*, to remove references to the offices of the Norfolk Island Legislative Assembly, consistent with the policy that the Commonwealth should have no further role in determination of Norfolk Island remuneration.
