

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

TERRITORIES LAW REFORM BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

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

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

TERRITORIES LAW REFORM BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the
Government

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

NOTES ON AMENDMENTS

The general purpose of the new sections inserted by the amendments is to 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. WA statutes will be applied by new section 8A of each of the Christmas Island Act 1958 and the Cocos (Keeling) Islands Act 1955.

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 10D of the Christmas Island Act and sections 12 to 13D of the Cocos (Keeling) Islands Act.

Amendment 1 - new sections to be inserted in the
Christmas Island Act

New section 8AA ('Minister must table lists of applied Western
Australian Acts')

New Section 8AA 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.

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.

New section 8AB ('House may terminate application of Western Australian Acts in the Territory')

New Section 8AB provides for either House to terminate the application in the Territory of a WA Act included in a list tabled under section 8AA.

Either House may terminate 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 8AC applies, the period is 3 months, see below).

Notice may be given in time but the motion may not be dealt with within 15 sitting days of the notice: that is, the notice may be neither withdrawn nor called on, or may be called on, but the motion neither agreed to nor defeated. (Where section 8AC applies, the period in which the notice can be given is 3 months after tabling of the list, see below). 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.

There may be an interruption to the sittings of the Parliament during the 15 sitting days that follow the giving of a notice of motion to terminate: 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 the WA Act in question can thus be terminated within 15 sitting days of the resumption of sittings.

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).

Section 8AB can be applied to parts of WA Acts in the same way as to whole WA Acts; thus particular sections of a WA Act can be terminated while saving the remainder.

New section 8AC ('Extension of period for giving notice of motion to terminate Western Australian Act')

New Section 8AC applies only to the first list to be tabled under section 8AA. 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 8AC empowers either House to extend, from 15 sitting days to 3 months after the tabling of the relevant WA Act list, the time in which it may consider whether to terminate an Act on the list.

If notice of motion is given in either House, within 15 sitting days of the tabling of the list, to extend the termination period as regards a WA Act on the list, that House may resolve to extend the period in which the motion may be agreed to from 15 sitting days after tabling to 3 months after tabling.

Notice of motion to extend time may be given, but the motion may not be dealt with within 15 sitting days of the notice (see under section 8AB, above). In this case, on the expiration of the 15th sitting day after the notice to extend time is given, time is extended to 3 months after tabling of the list, as if the motion had been agreed to.

If 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 extend time (see under section 8AB, above), and the notice has not been dealt with when the interruption occurs, notice of motion to terminate can be given within 15 sitting days of the House after the interruption.

Amendment 2 - New sections to be inserted in Cocos (Keeling) Islands Act

The new sections 8AA - 8AC are identical in form and effect to new sections 8AA - 8AC of the Christmas Island Act, described above.

