



Territories Law Reform Act 1992

No. 104 of 1992

**An Act to reform the law of the Territory of Christmas
Island and of the Territory of Cocos (Keeling) Islands,
and for other purposes**

[Assented to 30 June 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Territories Law Reform Act 1992*.

Commencement

2.(1) Sections 1, 2, 25 and 26 commence on the day on which this Act receives the Royal Assent.

(2) Sections 9, 10, 19, 21 and 22 commence on a day to be fixed by Proclamation. 5

(3) The remaining provisions of this Act commence on 1 July 1992.

(4) If the provisions mentioned in subsection (2) do not commence under that subsection within the period of 12 months beginning on the day on which this Act receives the Royal Assent, the provisions are repealed on the first day after the end of that period. 10

PART 2—AMENDMENTS OF THE CHRISTMAS ISLAND ACT 1958

Principal Act

3. In this Part, “Principal Act” means the *Christmas Island Act 1958*¹. 15

Interpretation

4. Section 4 of the Principal Act is amended:

(a) by inserting the following definitions:

“‘jurisdiction’ includes powers;

‘laws of the Territory’ or ‘laws in force in the Territory’ means the laws in force in the Territory as mentioned in section 7; 20

‘the police force of the Territory’ includes any police force empowered to provide police services under a law in force in the Territory;”;

(b) by adding at the end the following subsection: 25

“(2) In this Act, a reference to an Act is a reference to the whole or a part of that Act, or to the whole or a part of a law made under that Act.”.

Part heading

5. The heading to Part III of the Principal Act is omitted and the following heading is substituted: 30

“PART III—LAWS AND LEGISLATIVE POWERS”.

6. Division 1 of Part III of the Principal Act is repealed and the following Division is substituted:

“Division 1—Laws of the Territory” 35

The laws of the Territory

“7. On and after 1 July 1992, the laws in force in the Territory from time to time are:

(a) Acts as in force from time to time in or in relation to the Territory on and after that day; and 40

- (b) Ordinances made on or after that day as in force from time to time; and
- (c) laws as in force in the Territory in accordance with section 8; and
- 5 (d) Western Australian laws as in force in the Territory in accordance with section 8A.

Operation of existing laws etc.

“8.(1) A law in force in the Territory immediately before 1 July 1992 is repealed unless it is specified in the Schedule.

- 10 “(2) Subject to subsection (3), a law that is specified in the Schedule (including any instruments made under that law) as in force in the Territory immediately before 1 July 1992 continues to be in force in the Territory on and after that day.

- 15 “(3) A law specified in the Schedule may be amended or repealed by an Ordinance.

“ (4) In this section:

‘instruments’ includes regulations, rules and by-laws;

‘law’:

- (a) includes a principle or rule of common law or equity; and
- 20 (b) does not include an Act.

Application of Western Australian laws

- 25 “8A.(1) Subject to this section, section 8G and Part IVA, the provisions of the law of Western Australia (whether made before or after this section’s commencement) as in force in Western Australia from time to time are in force in the Territory so far as they are capable of applying in the Territory.

“(2) To the extent that a law is in force in the Territory under subsection (1), it may be incorporated, amended or repealed by an Ordinance or a law made under an Ordinance.

- 30 “(3) An Ordinance may suspend the operation in the Territory of a law in force in the Territory under subsection (1) for such period as is specified in the Ordinance.

- 35 “(4) To the extent that a law is in force in the Territory under subsection (1), it has no effect so far as it is inconsistent with the Constitution or an Act or Ordinance.

“(5) For the purpose of subsection (4), a law is consistent with the Constitution or an Act or Ordinance if the law is capable of operating concurrently with it.

“(6) In this section:

- 40 ‘law’:

- (a) includes a principle or rule of common law or equity; and
- (b) does not include an Act.

Minister must table lists of applied Western Australian Acts

“8B.(1) The Minister must cause a list of Acts of the Western Australian Parliament (**‘WA Acts’**) to be prepared and tabled in each House of the Parliament for the following periods: 5

- (a) the period of 3 months beginning on 1 July 1992; and
- (b) each subsequent period of 6 months.

“(2) The list must specify the names of all WA Acts that are wholly or partly in force in the Territory under section 8A on the day specified in the list, and have not been specified in a previous list under this section. The specified day must be not more than 14 days before the day on which the list is to be tabled. 10

“(3) The list must include WA Acts whose operation has been suspended in accordance with subsection 8A(3). 15

“(4) The list must be tabled in each House of the Parliament before the end of the period to which the list relates. However, if the House concerned does not sit during any day in the last month of the period, the list may be tabled in that House within the next 15 sitting days of that House. 20

House may terminate application of Western Australian Acts in the Territory

“8C.(1) In this section:

‘terminate’ means terminate the operation of a WA Act in the Territory;
‘WA Act’ means an Act of the Western Australian Parliament that is specified in a list tabled under section 8B, or part of such an Act; 25
‘WA Acts list’ means a list prepared and tabled in a House of the Parliament under section 8B.

“(2) If:

- (a) a notice of a motion to terminate a WA Act has been given in a House of the Parliament: 30

- (i) within 15 sitting days after the tabling in that House of the WA Acts list specifying that WA Act; or
 - (ii) if section 8D applies to that WA Act—within 3 months after that list was tabled; and 35

(b) that House passes a resolution to terminate the WA Act; then the WA Act is terminated from the time when the resolution was passed.

“(3) If:

- (a) a notice of a motion to terminate a WA Act has been given in a House of the Parliament: 40

- (i) within 15 sitting days after the tabling in that House of the WA Acts list specifying that WA Act; or
 - (ii) if section 8D applies to that WA Act—within 3 months after that list was tabled; and
- 5 (b) at the expiration of 15 sitting days after the notice was given:
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;
- 10 then the WA Act is terminated from the expiration of that period of 15 sitting days.
- “(4) If, before the expiration of 15 sitting days after notice of a motion to terminate a WA Act specified in a WA Acts list has been given in a House of the Parliament (**“the notice House”**):
- 15 (a) the House of Representatives is dissolved or expires, or the Parliament is prorogued; and
- (b) at the time of the dissolution, expiry or prorogation:
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - 20 (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;
- subsections (2) and (3) apply as if the WA Acts list had been tabled in the notice House on the first sitting day of that House after the dissolution, expiry or prorogation.
- 25 “(5) The termination of a WA Act under subsection (2) or (3) has the same effect as the repeal of that WA Act, as a law of the Territory, by an Ordinance.
- “(6) If:
- 30 (a) a WA Act (**“the terminated Act”**) is terminated under subsection (2) or (3); and
- (b) the terminated Act repealed, in whole or in part, another WA Act or any other law that was in force in the Territory immediately before the terminated Act came into force in the Territory under section 8A;
- 35 the termination of the terminated Act has the effect of reviving that other WA Act or law from and including the date of the termination, as if the terminated Act had not come into force in the Territory.
- “(7) A notice of a motion, or a resolution, for the purposes of this section may relate to the termination of more than one WA Act.

Extension of period for giving notice of motion to terminate WA Act

“8D.(1) This section provides for an extension of time for giving a notice of a motion (**‘the termination notice’**) in a House of the Parliament to terminate one or more WA Acts that are specified in the first WA Acts list that is required by section 8A to be tabled in that House. 5

“(2) If:

(a) within 15 sitting days after tabling of the WA Acts list in a House of the Parliament, a notice of a motion is given in that House to extend the period for giving the termination notice in relation to one or more WA Acts specified in the extension notice; and 10

(b) that House passes a resolution to extend the period;
the termination notice may be given in that House within 3 months after the tabling of the WA Acts list in that House.

“(3) If: 15

(a) within 15 sitting days after tabling of the WA Acts list in a House of the Parliament, a notice of a motion (**‘the extension notice’**) is given in that House to extend the period for giving the termination notice in relation to one or more WA Acts specified in the extension notice; and 20

(b) at the expiration of 15 sitting days after the extension notice has been given in that House:

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of; 25

the termination notice may be given in that House within 3 months after the tabling of the WA Acts list in that House.

“(4) If a notice of a motion (**‘the extension notice’**) is given in a House of the Parliament (**‘the notice House’**) for the purpose of obtaining an extension under subsection (2) or (3) but, before the expiration of 15 sitting days after the extension notice is given: 30

(a) the House of Representatives is dissolved or expires, or the Parliament is prorogued; and

(b) at the time of the dissolution, expiry or prorogation: 35

(i) the extension notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

the following provisions apply: 40

(c) the extension notice is taken to have been given in the notice House on the first sitting day of that House after the dissolution, expiry or prorogation;

- (d) the termination notice may be given in that House within the first 15 sitting days of that House after the dissolution, expiry or prorogation.

5 “(5) In this section, ‘terminate’, ‘WA Act’ and ‘WA Acts list’ have the same meanings as in section 8C.

Application of Commonwealth Acts

“8E.(1) An Act (whether passed before or after this section’s commencement) extends to the Territory of its own force except so far as the Act or another Act expressly provides otherwise.

10 “(2) Except as provided by this Act, an Ordinance has no effect so far as it purports to affect the application of an Act in or in relation to the Territory.

Application of the *Industrial Relations Act 1988*

15 “8F.(1) The *Industrial Relations Act 1988* applies in relation to industrial disputes in the Territory as if paragraph (a) of the definition of ‘industrial dispute’ in subsection 4(1) of that Act were omitted and the following paragraph were substituted:

20 “(a) an industrial dispute (including a threatened, impending or probable industrial dispute) that is about matters pertaining to the relationship between employers and employees; or’.

““(2) For the purpose of subsection (1), an industrial dispute about the employment of persons employed for the performance of work wholly or mainly in the Territory is taken to be an industrial dispute in the Territory.

25 ““(3) Nothing in this section affects the operation of subsection 7(2) of the *Industrial Relations Act 1988*.

Powers and functions under the applied Western Australian laws

30 “8G.(1) If a power is vested in a person (other than a Judge, magistrate, Justice of the Peace or Coroner appointed under a Western Australian law) or an authority (other than a court established by a Western Australian law) by a Western Australian law in force in the Territory under section 8A, that power is, in relation to the Territory:

- (a) subject to subsection (3), vested exclusively in the Minister; and
- (b) only exercisable in accordance with this section.

35 ““(2) In subsection (1), a power vested in a person or authority by a Western Australian law includes a power vested in the Governor or Governor-in-Council of Western Australia by such a law.

““(3) The Minister may, in writing:

40 (a) direct that a power vested in the Minister under subsection (1) is also to be vested in a specified person or authority, being a person or authority to whom subsection (7) applies; or

- (b) delegate the power to a specified person, being a person to whom subsection (7) applies.

“(4) A person or an authority in whom a power is vested under paragraph (3)(a) may, if the person is so empowered by the Minister in the direction, delegate the power, in writing, to a person to whom subsection (7) applies. 5

“(5) If a power under a Western Australian law as in force in the Territory is a power to delegate a power (**“prescribed power”**), the Minister or a person or an authority exercising that power under this section may delegate that prescribed power only to a person to whom subsection (7) applies. 10

“(6) The Minister may appoint, on such terms and conditions as are determined by the Minister, such persons as the Minister considers necessary to exercise a power under this section.

“(7) This subsection applies to the following persons and authorities: 15

- (a) a person holding or exercising the powers of the office of Administrator or Deputy Administrator of the Territory under the *Administration Ordinance 1968* of the Territory;
- (b) a person holding or exercising the powers of an office established by an Act; 20
- (c) a person holding or exercising the powers of an office established by a Western Australian law, or a Western Australian law as in force in the Territory under section 8A;
- (d) a person holding or exercising the powers of an office established by an Ordinance or a law made under an Ordinance; 25
- (e) an authority (whether incorporated or not) established by an Act;
- (f) an authority (whether incorporated or not) established by a Western Australian law, or a Western Australian law as in force in the Territory under section 8A; 30
- (g) an authority (whether incorporated or not) established by an Ordinance or a law made under an Ordinance;
- (h) an officer or employee within the meaning of the *Public Service Act 1922*;
- (i) a person employed under a Western Australian law, or a Western Australian law as in force in the Territory under section 8A; 35
- (j) a person employed under the *Administration Ordinance 1968* of the Territory;
- (k) a person employed by an authority mentioned in paragraph (e), (f) or (g); 40
- (l) a member of the Defence Force;
- (m) a member or special member of the Australian Federal Police;
- (n) a person appointed by the Minister under subsection (6).

“(8) The validity of the exercise of a power under a law by a person or authority under this section is unaffected by the failure of the person or authority to hold a qualification required of a person exercising that power under the law as in force in Western Australia.

- 5 “(9) This section does not affect the operation of section 8A in relation to the application in or in relation to the Territory of a law (**‘subordinate law’**) made under a Western Australian law, whether the subordinate law is made after this section’s commencement or not.

 “(10) In this section:

- 10 **‘power’** includes function or duty, and in that context, **‘exercise’** means perform.

Arrangements with the Government of Western Australia

- “8H.(1) The Commonwealth may enter into arrangements with Western Australia for the effective application and administration of
15 the laws in force in the Territory.

 “(2) Without limiting the generality of subsection (1), such an arrangement may provide for the exercise of powers or the performance of functions or duties by an officer or authority of Western Australia in or in relation to the Territory.

20 **Savings**

 “8I.(1) The repeal of a law of the Territory by subsection 8(1) does not:

- (a) revive anything not in force or existing at the time of the repeal; or
25 (b) affect the previous operation of the law, or anything duly done under or permitted by the law; or
 (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law; or
30 (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or
 (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

35 “(2) In spite of the repeal, the law continues in force for the purposes of:

- (a) the institution or continuation of any investigation or legal proceeding mentioned in paragraph (1)(e); or
 (b) the enforcement of any remedy mentioned in paragraph (1)(e); or
40 (c) the imposition of any penalty, forfeiture or punishment mentioned in paragraph (1)(e).”.

Regulations, rules and by-laws

7. Section 10D of the Principal Act is amended by inserting after subsection (1) the following subsection:

- “(1A) In subsection (1), a regulation made under a law in force in the Territory: 5
- (a) does not include a regulation of Western Australia as in force in the Territory under section 8A; and
 - (b) includes a regulation made by a person or an authority empowered, under section 8G, to make the regulation under a Western Australian law as in force in the Territory under section 8A.”. 10

Insertion of new Part

8. The Principal Act is amended by inserting after Part IV the following Part:

“PART IVA—JUDICIAL POWERS ETC. UNDER THE APPLIED WESTERN AUSTRALIAN LAWS 15

Definitions

- “14A. In this Part:
- ‘**applied law**’ means a Western Australian law as in force in the Territory under section 8A; 20
- ‘**Children’s Court of the Territory**’ means the Children’s Court established by the *Children’s Court Ordinance 1972* of the Territory;
- ‘**Coroner of the Territory**’ means a Coroner under the *Coroners Ordinance 1958* of the Territory;
- ‘**Family Court of Western Australia**’ means the Court established by the *Family Court Act 1975* of Western Australia; 25
- ‘**Judge of the Territory**’ means a Judge of the Supreme Court of the Territory;
- ‘**judicial officer of the Territory**’ means a person holding or performing the functions or duties of any of the following offices: 30
- (a) Judge of the Territory;
 - (b) Magistrate of the Territory;
 - (c) Justice of the Peace of the Territory;
 - (d) Coroner of the Territory;
- ‘**Justice of the Peace of the Territory**’ means a Justice of the Peace under the *Magistrate’s Court Ordinance 1958* of the Territory; 35
- ‘**Magistrate of the Territory**’ means a Special Magistrate under the *Magistrate’s Court Ordinance 1958* of the Territory;
- ‘**Magistrate’s Court of the Territory**’ means the Magistrate’s Court established by the *Magistrate’s Court Ordinance 1958* of the Territory; 40
- ‘**Territory court**’ means any of the following courts:

- (a) the Supreme Court of the Territory;
- (b) the Magistrate's Court of the Territory;
- (c) the Children's Court of the Territory.

References to courts in applied laws

- 5 "14B.(1) Unless the contrary intention appears, an applied law has effect in relation to the Territory as if, in the applied law:
- (a) a reference to the Supreme Court of Western Australia or a reference to the District Court of Western Australia were a reference to the Supreme Court of the Territory; and
 - 10 (b) a reference to the Family Court of Western Australia were a reference to:
 - (i) if the reference relates only to federal jurisdiction—the Family Court of Western Australia; or
 - 15 (ii) if the reference relates only to non-federal jurisdiction—the Supreme Court of the Territory; or
 - (iii) in any other case—the Family Court of Western Australia or the Supreme Court of the Territory, or both those Courts, as the case requires; and
 - 20 (c) a reference to a Local Court of Western Australia or a reference to a Court of Petty Sessions of Western Australia were a reference to the Magistrate's Court of the Territory; and
 - (d) a reference to the Children's Court of Western Australia were a reference to the Children's Court of the Territory.

"(2) In this section:

- 25 '**federal jurisdiction**' means jurisdiction vested or conferred by or under an Act (other than this Act);
- 'non-federal jurisdiction'** means any jurisdiction other than federal jurisdiction.

References to judicial officers in applied laws

- 30 "14C.(1) Unless the contrary intention appears, an applied law has effect in relation to the Territory as if, in the applied law:
- (a) a reference to a Judge appointed under a Western Australian law (other than the *Family Court Act 1975* of Western Australia) were a reference to a Judge of the Territory; and
 - 35 (b) a reference to a Judge appointed under the *Family Court Act 1975* of Western Australia were a reference to:
 - (i) if the reference relates only to federal jurisdiction—a Judge of the Family Court of Western Australia; or
 - 40 (ii) if the reference relates only to non-federal jurisdiction—a Judge of the Supreme Court of the Territory; or
 - (iii) in any other case—a Judge of the Family Court of Western Australia or a Judge of the Supreme Court of

the Territory, or Judges of both those Courts, as the case requires; and

- (c) a reference to a magistrate (however described) appointed under a Western Australian law were a reference to a Magistrate of the Territory; and 5
- (d) a reference to a Justice of the Peace appointed under a Western Australian law were a reference to a Justice of the Peace of the Territory; and
- (e) a reference to a Coroner appointed under a Western Australian law were a reference to a Coroner of the Territory. 10

“(2) In this section:

‘federal jurisdiction’ and ‘non-federal jurisdiction’ have the same meanings as in section 14B.

Jurisdiction conferred by applied laws

“14D. If section 14B or 14C has the effect of enabling an applied law to confer jurisdiction on a Territory court or on a judicial officer of the Territory, the jurisdiction: 15

- (a) must be exercised only in relation to matters that are, or arise from, within the territorial jurisdiction of the Territory court or of the judicial officer of the Territory under the Ordinance that establishes the court or the judicial officer’s office; and 20
- (b) must be exercised in accordance with practices and procedures (if any) provided under any Ordinance that relates to the Territory court or the judicial officer’s office; and
- (c) subject to paragraph (b), may be exercised in accordance with the applied law.”. 25

Repeal of section 13

9. Section 13 of the Principal Act is repealed.

10. Part IVA of the Principal Act is repealed and the following Part is substituted: 30

“PART IVA—CONFERRAL OF TERRITORY JURISDICTION ON WESTERN AUSTRALIAN COURTS ETC.

Definitions

“14A. In this Part:

‘Family Court of Western Australia’ means the Court established by the *Family Court Act 1975* of Western Australia; 35

‘judicial officer of Western Australia’ means a Judge, magistrate (however described), Justice of the Peace or Coroner appointed under a law of Western Australia;

‘transfer day’ means the day on which this Part commences. 40

Conferral of jurisdiction on Western Australian courts and judicial officers

5 “14B.(1) Subject to this Part and any law in force in the Territory, the courts and judicial officers of Western Australia have jurisdiction in and in relation to the Territory as if the Territory were part of Western Australia.

“(2) Subject to section 14E, a court or judicial officer of Western Australia may, in exercising jurisdiction under this section, sit in the Territory or Western Australia.

10 “(3) Subject to any law in force in the Territory, the practice and procedure applicable to a court or judicial officer exercising jurisdiction under this section are to be the practice and procedure as in force from time to time in relation to that court or judicial officer in Western Australia.

15 **Transfer of Supreme Court jurisdiction**

“14C.(1) This section applies to the jurisdiction vested in the Supreme Court of the Territory or a Judge of that Court immediately before the transfer day, except in relation to matters for which:

- 20 (a) proceedings were pending in that Court immediately before that day; or
(b) proceedings had been completed in that Court before that day.

“(2) On and after the transfer day, the jurisdiction:

- 25 (a) ceases to be vested in the Supreme Court of the Territory or a Judge of that Court; and
(b) is vested in:
 (i) if the Family Court of Western Australia or a Judge of that Court would, apart from this section, have the jurisdiction under subsection 14B(1)—the Family Court of Western Australia or a Judge of that Court (as the case requires); or
30 (ii) if the District Court of Western Australia or a Judge of that Court would, apart from this section, have the jurisdiction under subsection 14B(1)—the District Court of Western Australia or a Judge of that Court (as the case requires); or
35 (iii) in any other case—the Supreme Court of Western Australia or a Judge of that Court (as the case requires).

Transfer of pending proceedings

40 “14D.(1) On and after the transfer day, the parties to proceedings in a matter pending in the Supreme Court of the Territory (“**Territory Court**”) may apply to that Court to transfer the proceedings to:

- (a) if the proceedings relate only to a matter of a kind that is

within the jurisdiction of the Family Court of Western Australia—the Family Court of Western Australia; or

- (b) if the proceedings relate only to a matter of a kind that is within the jurisdiction of the District Court of Western Australia—the District Court of Western Australia; or 5
- (c) in any other case—the Supreme Court of Western Australia.

“(2) If the Territory Court decides that it is not contrary to the interests of justice to grant the application, the Court is to transfer the proceedings to the relevant Court (**‘State Court’**) and:

- (a) the State Court may hear and determine the proceedings; and 10
- (b) all documents filed of record in the Territory Court in the proceedings are to be transmitted to the State Court; and
- (c) any money lodged with the Territory Court in relation to the proceedings is to be transferred to the State Court and is taken to be money lodged with the State Court in relation to the proceedings; and 15
- (d) everything done in or in relation to the proceedings in the Territory Court is taken to have been done in the State Court.

Application of provisions of this Act to Supreme Court of Western Australia 20

“14E. In relation to the exercise of jurisdiction by the Supreme Court of Western Australia or a Judge or an officer mentioned in this Part, sections 11AA, 12A, 12B, 14, 18A, 18B, 18C, 18D, 18E and 18F have effect as if, in those provisions:

- (a) a reference to the Supreme Court of the Territory included a reference to the Supreme Court of Western Australia; and 25
- (b) a reference to a Judge of the Supreme Court of the Territory included a reference to a Judge of the Supreme Court of Western Australia; and
- (c) a reference to a magistrate of the Territory included a reference to a magistrate (however described) of Western Australia who has jurisdiction or power in or in relation to the Territory under a law of the Territory; and 30
- (d) a reference to the Registrar of the Supreme Court of the Territory included a reference to a person who has the powers and functions of the Registrar of the Supreme Court of Western Australia in the application of the *Supreme Court Act 1935* of Western Australia in the Territory; and 35
- (e) a reference to the Sheriff of the Supreme Court of the Territory included a reference to a person who has the powers and functions of the sheriff of the Supreme Court of Western Australia in the application of the *Supreme Court Act 1935* of Western Australia in the Territory. 40

Savings—jurisdiction of Supreme Court of the Territory on and after transfer day

- 5 “14F. Part IVA of this Act as in force immediately before the transfer day continues in force in relation to any matter in respect of which the Supreme Court of the Territory or a Judge of that Court continues to have jurisdiction on or after that day.

Abolition of Supreme Court of the Territory

- 10 “14G. The Supreme Court of the Territory is abolished on a day to be fixed by Proclamation, being a day on which no person holds office as a Judge of that Court.

Transitional provisions after abolition of Supreme Court

“14H.(1) In this section:

- 15 ‘proclaimed day’ means the day fixed by Proclamation under section 14G;
‘State Court’ means the Court to which proceedings are transferred under subsection (2);
‘Territory Court’ means the Supreme Court of the Territory.

- 20 “(2) As soon as practicable after no person holds office as a Judge of the Territory Court, the Registrar of the Court must transfer all proceedings in the Court (including completed proceedings) to:

- 25 (a) if the proceedings relate only to a matter of a kind that is within the jurisdiction of the Family Court of Western Australia—the Family Court of Western Australia; or
(b) if the proceedings relate only to a matter of a kind that is within the jurisdiction of the District Court of Western Australia—the District Court of Western Australia; or
(c) in any other case—the Supreme Court of Western Australia.

“(3) If proceedings are transferred under subsection (2):

- 30 (a) all documents filed of record in the Territory Court in the proceedings are to be transmitted to the State Court; and
(b) any money lodged with the Territory Court in relation to the proceedings is to be transferred to the State Court and is taken to be money lodged with the State Court in relation to the proceedings; and
35 (c) everything done in or in relation to the proceedings in the Territory Court is taken to have been done in the State Court.

“(4) If proceedings transferred under subsection (2) were not completed before the proclaimed day, the State Court may:

- 40 (a) hear, or further hear, the proceedings; and
(b) determine the proceedings; and
(c) have regard to any evidence or argument in the proceedings in the Territory Court.

“(5) On and after the proclaimed day, this Act has effect as if sections 11, 11AAA and 11A were repealed and subsection 12(1) were omitted.

References to courts of Territory—transitional

- “14J. Unless the contrary intention appears: 5
- (a) a reference in any Act (including a reference in a provision of this Act other than this Part) to the Supreme Court of the Territory is taken to include a reference to the Supreme Court of Western Australia exercising jurisdiction in or in relation to the Territory under this Act; and 10
 - (b) a reference in any Act to courts of the Territory is taken to include a reference to courts of Western Australia exercising jurisdiction in or in relation to the Territory under this Act.”.

Schedule

11. The Principal Act is amended by adding at the end the Schedule set out in Schedule 1. 15

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

Principal Act

12. In this Part, “Principal Act” means the *Cocos (Keeling) Islands Act 1955*². 20

Interpretation

13. Section 4 of the Principal Act is amended:
- (a) by omitting “Police Force” from paragraph (b) of the definition of “constable” and substituting “police force”; 25
 - (b) by inserting the following definitions:
 - “‘jurisdiction’ includes powers;
 - ‘laws of the Territory’ or ‘laws in force in the Territory’ means the laws in force in the Territory as mentioned in section 7A;
 - ‘Supreme Court of the Territory’ means the Supreme Court established by the *Supreme Court Ordinance 1955* of the Territory; 30
 - ‘the police force of the Territory’ includes any police force empowered to provide police services under a law in force in the Territory;”;35
 - (c) by adding at the end the following subsection:

“(2) In this Act, a reference to an Act is a reference to the whole or a part of that Act, or to the whole or a part of a law made under that Act.”.

Part heading

14. The heading to Part III of the Principal Act is omitted and the following heading is substituted:

“PART III—LAWS AND LEGISLATIVE POWERS”.

5 15. Section 7 of the Principal Act is repealed and the following section is substituted:

Extinguishment of certain rights and restrictions under the 1886 Indenture

10 “7.(1) The restrictions under the 1886 Indenture relating to dealings in land in the Islands are extinguished.

 “(2) All rights and powers reserved to and exercisable by or on behalf of the Queen under the 1886 Indenture are extinguished.

 “(3) In this section:

15 ‘the 1886 Indenture’ means the Indenture dated 7 July 1886 that was made between Her late Majesty Queen Victoria, the Governor of the Straits Settlements and George Clunies Ross in relation to the Islands.”.

16. Division 1 of Part III of the Principal Act is repealed and the following Division is substituted:

“Division 1—Laws of the Territory

20 **The laws of the Territory**

 “7A. On and after 1 July 1992, the laws in force in the Territory from time to time are:

- 25 (a) Acts as in force from time to time in or in relation to the Territory on and after that day; and
- (b) Ordinances made on or after that day as in force from time to time; and
- (c) laws as in force in the Territory in accordance with section 8; and
- 30 (d) Western Australian laws as in force in the Territory in accordance with section 8A.

Operation of existing laws etc.

 “8.(1) A law in force in the Territory immediately before 1 July 1992 is repealed unless it is specified in the Schedule.

35 “(2) Subject to subsection (3), a law that is specified in the Schedule (including any instruments made under that law) as in force in the Territory immediately before 1 July 1992 continues to be in force in the Territory on and after that day.

“(3) A law specified in the Schedule may be amended or repealed by an Ordinance.

“(4) In this section:

‘instruments’ includes regulations, rules and by-laws;

‘law’:

- (a) includes a principle or rule of common law or equity; and
- (b) does not include an Act.

5

Application of Western Australian laws

“8A.(1) Subject to this section, section 8G and Part IVAA, the provisions of the law of Western Australia (whether made before or after this section’s commencement) as in force in Western Australia from time to time are in force in the Territory so far as they are capable of applying in the Territory.

10

“(2) To the extent that a law is in force in the Territory under subsection (1), it may be incorporated, amended or repealed by an Ordinance or a law made under an Ordinance.

15

“(3) An Ordinance may suspend the operation in the Territory of a law in force in the Territory under subsection (1) for such period as is specified in the Ordinance.

“(4) To the extent that a law is in force in the Territory under subsection (1), it has no effect so far as it is inconsistent with the Constitution or an Act or Ordinance.

20

“(5) For the purpose of subsection (4), a law is consistent with the Constitution or an Act or Ordinance if the law is capable of operating concurrently with it.

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“(6) In this section:

‘law’:

- (a) includes a principle or rule of common law or equity; and
- (b) does not include an Act.

Minister must table lists of applied Western Australian Acts

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“8B.(1) The Minister must cause a list of Acts of the Western Australian Parliament (‘WA Acts’) to be prepared and tabled in each House of the Parliament for the following periods:

- (a) the period of 3 months beginning on 1 July 1992; and
- (b) each subsequent period of 6 months.

35

“(2) The list must specify the names of all WA Acts that are wholly or partly in force in the Territory under section 8A on the day specified in the list, and have not been specified in a previous list under this section. The specified day must be not more than 14 days before the day on which the list is to be tabled.

40

“(3) The list must include WA Acts whose operation has been suspended in accordance with subsection 8A(3).

5 “(4) The list must be tabled in each House of the Parliament before the end of the period to which the list relates. However, if the House concerned does not sit during any day in the last month of the period, the list may be tabled in that House within the next 15 sitting days of that House.

House may terminate application of Western Australian Acts in the Territory

10 “8C.(1) In this section:

‘**terminate**’ means terminate the operation of a WA Act in the Territory;
‘**WA Act**’ means an Act of the Western Australian Parliament that is specified in a list tabled under section 8B, or part of such an Act;

15 ‘**WA Acts list**’ means a list prepared and tabled in a House of the Parliament under section 8B.

 “(2) If:

 (a) a notice of a motion to terminate a WA Act has been given in a House of the Parliament:

- 20 (i) within 15 sitting days after the tabling in that House of the WA Acts list specifying that WA Act; or
 (ii) if section 8D applies to that WA Act—within 3 months after that list was tabled; and

 (b) that House passes a resolution to terminate the WA Act;
25 then the WA Act is terminated from the time when the resolution was passed.

 “(3) If:

 (a) a notice of a motion to terminate a WA Act has been given in a House of the Parliament:

- 30 (i) within 15 sitting days after the tabling in that House of the WA Acts list specifying that WA Act; or
 (ii) if section 8D applies to that WA Act—within 3 months after that list was tabled; and

 (b) at the expiration of 15 sitting days after the notice was given:
35 (i) the notice has not been withdrawn and the motion has not been called on; or
 (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

 then the WA Act is terminated from the expiration of that period of 15 sitting days.

40 “(4) If, before the expiration of 15 sitting days after notice of a motion to terminate a WA Act specified in a WA Acts list has been given in a House of the Parliament (**‘the notice House’**):

- (a) the House of Representatives is dissolved or expires, or the Parliament is prorogued; and
 - (b) at the time of the dissolution, expiry or prorogation:
 - (i) the notice has not been withdrawn and the motion has not been called on; or 5
 - (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;
- subsections (2) and (3) apply as if the WA Acts list had been tabled in the notice House on the first sitting day of that House after the dissolution, expiry or prorogation. 10
- “(5) The termination of a WA Act under subsection (2) or (3) has the same effect as the repeal of that WA Act, as a law of the Territory, by an Ordinance.
- “(6) If:
- (a) a WA Act (**‘the terminated Act’**) is terminated under subsection (2) or (3); and 15
 - (b) the terminated Act repealed, in whole or in part, another WA Act or any other law that was in force in the Territory immediately before the terminated Act came into force in the Territory under section 8A; 20
- the termination of the terminated Act has the effect of reviving that other WA Act or law from and including the date of the termination, as if the terminated Act had not come into force in the Territory.
- “(7) A notice of a motion, or a resolution, for the purposes of this section may relate to the termination of more than one WA Act. 25
- Extension of period for giving notice of motion to terminate WA Act**
- “8D.(1) This section provides for an extension of time for giving a notice of a motion (**‘the termination notice’**) in a House of the Parliament to terminate one or more WA Acts that are specified in the first WA Acts list that is required by section 8A to be tabled in that House. 30
- “(2) If:
- (a) within 15 sitting days after tabling of the WA Acts list in a House of the Parliament, a notice of a motion is given in that House to extend the period for giving the termination notice in relation to one or more WA Acts specified in the extension notice; and 35
 - (b) that House passes a resolution to extend the period;
- the termination notice may be given in that House within 3 months after the tabling of the WA Acts list in that House.
- “(3) If: 40
- (a) within 15 sitting days after tabling of the WA Acts list in a House of the Parliament, a notice of a motion (**‘the extension**

notice') is given in that House to extend the period for giving the termination notice in relation to one or more WA Acts specified in the extension notice; and

5 (b) at the expiration of 15 sitting days after the extension notice has been given in that House:

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

10 the termination notice may be given in that House within 3 months after the tabling of the WA Acts list in that House.

“(4) If a notice of a motion (**‘the extension notice’**) is given in a House of the Parliament (**‘the notice House’**) for the purpose of obtaining an extension under subsection (2) or (3) but, before the expiration of
15 15 sitting days after the extension notice is given:

(a) the House of Representatives is dissolved or expires, or the Parliament is prorogued; and

(b) at the time of the dissolution, expiry or prorogation:

20 (i) the extension notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

the following provisions apply:

25 (c) the extension notice is taken to have been given in the notice House on the first sitting day of that House after the dissolution, expiry or prorogation;

(d) the termination notice may be given in that House within the first 15 sitting days of that House after the dissolution, expiry or prorogation.

30 “(5) In this section, **‘terminate’**, **‘WA Act’** and **‘WA Acts list’** have the same meanings as in section 8C.

Application of Commonwealth Acts

35 “8E.(1) An Act (whether passed before or after this section’s commencement) extends to the Territory of its own force except so far as the Act or another Act expressly provides otherwise.

“(2) Except as provided by this Act, an Ordinance has no effect so far as it purports to affect the application of an Act in or in relation to the Territory.

Application of the *Industrial Relations Act 1988*

40 “8F.(1) The *Industrial Relations Act 1988* applies in relation to industrial disputes in the Territory as if paragraph (a) of the definition of ‘industrial dispute’ in subsection 4(1) of that Act were omitted and the following paragraph were substituted:

‘(a) an industrial dispute (including a threatened, impending or probable industrial dispute) that is about matters pertaining to the relationship between employers and employees; or’.

“(2) For the purpose of subsection (1), an industrial dispute about the employment of persons employed for the performance of work wholly or mainly in the Territory is taken to be an industrial dispute in the Territory. 5

Powers and functions under the applied Western Australian laws

“8G.(1) If a power is vested in a person (other than a Judge, magistrate, Justice of the Peace or Coroner appointed under a Western Australian law) or an authority (other than a court established by a Western Australian law) by a Western Australian law in force in the Territory under section 8A, that power is, in relation to the Territory: 10

- (a) subject to subsection (3), vested exclusively in the Minister; and
- (b) only exercisable in accordance with this section. 15

“(2) In subsection (1), a power vested in a person or authority by a Western Australian law includes a power vested in the Governor or Governor-in-Council of Western Australia by such a law.

“(3) The Minister may, in writing:

- (a) direct that a power vested in the Minister under subsection (1) is also to be vested in a specified person or authority, being a person or authority to whom subsection (7) applies; or 20
- (b) delegate the power to a specified person, being a person to whom subsection (7) applies.

“(4) A person or an authority in whom a power is vested under paragraph (3)(a) may, if the person is so empowered by the Minister in the direction, delegate the power, in writing, to a person to whom subsection (7) applies. 25

“(5) If a power under a Western Australian law as in force in the Territory is a power to delegate a power (**‘prescribed power’**), the Minister or a person or an authority exercising that power under this section may delegate that prescribed power only to a person to whom subsection (7) applies. 30

“(6) The Minister may appoint, on such terms and conditions as are determined by the Minister, such persons as the Minister considers necessary to exercise a power under this section. 35

“(7) This subsection applies to the following persons and authorities:

- (a) a person holding or exercising the powers of the office of Administrator or Deputy Administrator of the Territory under the *Administration Ordinance 1975* of the Territory; 40
- (b) a person holding or exercising the powers of an office established by an Act;

- (c) a person holding or exercising the powers of an office established by a Western Australian law, or a Western Australian law as in force in the Territory under section 8A;
- 5 (d) a person holding or exercising the powers of an office established by an Ordinance or a law made under an Ordinance;
- (e) an authority (whether incorporated or not) established by an Act;
- 10 (f) an authority (whether incorporated or not) established by a Western Australian law, or a Western Australian law as in force in the Territory under section 8A;
- (g) an authority (whether incorporated or not) established by an Ordinance or a law made under an Ordinance;
- (h) an officer or employee within the meaning of the *Public Service Act 1922*;
- 15 (i) a person employed under a Western Australian law, or a Western Australia law as in force in the Territory under section 8A;
- (j) a person employed under the *Administration Ordinance 1975* of the Territory;
- 20 (k) a person employed by an authority mentioned in paragraph (e), (f) or (g);
- (l) a member of the Defence Force;
- (m) a member or special member of the Australian Federal Police;
- (n) a person appointed by the Minister under subsection (6).
- 25 “(8) The validity of the exercise of a power under a law by a person or authority under this section is unaffected by the failure of the person or authority to hold a qualification required of a person exercising that power under the law as in force in Western Australia.
- 30 “(9) This section does not affect the operation of section 8A in relation to the application in or in relation to the Territory of a law (**‘subordinate law’**) made under a Western Australian law, whether the subordinate law is made after this section’s commencement or not.
- “(10) In this section:
- ‘power’** includes function or duty, and in that context, **‘exercise’** means perform.
- 35 **Arrangements with the Government of Western Australia**
- “8H.(1) The Commonwealth may enter into arrangements with Western Australia for the effective application and administration of the laws in force in the Territory.
- 40 “(2) Without limiting the generality of subsection (1), such an arrangement may provide for the exercise of powers or performance of functions or duties by an officer or authority of Western Australia in or in relation to the Territory.

Savings

“8I.(1) The repeal of a law of the Territory by subsection 8(1) does not:

- (a) revive anything not in force or existing at the time of the repeal; or 5
- (b) affect the previous operation of the law, or anything duly done under or permitted by the law; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or 10
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

“(2) In spite of the repeal, the law continues in force for the purposes of: 15

- (a) the institution or continuation of any investigation or legal proceeding mentioned in paragraph (1)(e); or
- (b) the enforcement of any remedy mentioned in paragraph (1)(e); or 20
- (c) the imposition of any penalty, forfeiture or punishment mentioned in paragraph (1)(e).”.

Regulations, rules and by-laws

17. Section 13D of the Principal Act is amended by inserting after subsection (1) the following subsection: 25

“(1A) In subsection (1), a regulation made under a law in force in the Territory:

- (a) does not include a regulation of Western Australia as in force in the Territory under section 8A; and
- (b) includes a regulation made by a person or an authority empowered, under section 8G, to make the regulation under a Western Australian law as in force in the Territory under section 8A.”. 30

Insertion of new Part

18. The Principal Act is amended by inserting after Part IVA the following Part: 35

“PART IVAA—JUDICIAL POWERS ETC. UNDER THE APPLIED WESTERN AUSTRALIAN LAWS

Definitions

“15AAA. In this Part: 40
‘**applied law**’ means a Western Australian law as in force in the Territory under section 8A;

- 'Coroner of the Territory'** means a Coroner under the Courts Ordinance of the Territory;
- 'Courts Ordinance of the Territory'** means the Courts Ordinance of the Colony of Singapore in its application to the Territory on and after
5 1 July 1992;
- 'Family Court of Western Australia'** means the Court established by the *Family Court Act 1975* of Western Australia;
- 'Judge of the Territory'** means a Judge of the Supreme Court of the Territory;
- 10 **'judicial officer of the Territory'** means a person holding, or performing the functions or duties of any of the following offices:
- (a) Judge of the Territory;
 - (b) Magistrate of the Territory;
 - (c) Justice of the Peace of the Territory;
 - 15 (d) Coroner of the Territory;
- 'Justice of the Peace of the Territory'** means a Justice of the Peace under the Courts Ordinance of the Territory;
- 'Magistrate of the Territory'** means a Special Magistrate or Magistrate under the Courts Ordinance of the Territory;
- 20 **'Magistrate's Court of the Territory'** means the Magistrate's Court established by the Courts Ordinance of the Territory;
- 'Ordinance'** includes the Courts Ordinance of the Territory;
- 'Territory court'** means either of the following courts:
- (a) the Supreme Court of the Territory;
 - 25 (b) the Magistrate's Court of the Territory.

References to courts in applied laws

- "15AAB.(1) Unless the contrary intention appears, an applied law has effect in relation to the Territory as if, in the applied law:
- 30 (a) a reference to the Supreme Court of Western Australia, a reference to the District Court of Western Australia or a reference to the Children's Court of Western Australia were a reference to the Supreme Court of the Territory; and
 - (b) a reference to the Family Court of Western Australia were a reference to:
 - 35 (i) if the reference relates only to federal jurisdiction—the Family Court of Western Australia; or
 - (ii) if the reference relates only to non-federal jurisdiction—the Supreme Court of the Territory; or
 - 40 (iii) in any other case—the Family Court of Western Australia or the Supreme Court of the Territory, or both those Courts, as the case requires; and

- (c) a reference to a Local Court of Western Australia or a reference to a Court of Petty Sessions of Western Australia were a reference to the Magistrate's Court of the Territory.

“(2) In this section:

‘federal jurisdiction’ means jurisdiction vested or conferred by or under an Act (other than this Act); 5

‘non-federal jurisdiction’ means any jurisdiction other than federal jurisdiction.

References to judicial officers in applied laws

“15AAC.(1) Unless the contrary intention appears, an applied law has effect in relation to the Territory as if, in the applied law: 10

- (a) a reference to a Judge appointed under a Western Australian law (other than the *Family Court Act 1975* of Western Australia) were a reference to a Judge of the Territory; and
- (b) a reference to a Judge appointed under the *Family Court Act 1975* of Western Australia were a reference to: 15
 - (i) if the reference relates only to federal jurisdiction—a Judge of the Family Court of Western Australia; or
 - (ii) if the reference relates only to non-federal jurisdiction—a Judge of the Supreme Court of the Territory; or 20
 - (iii) in any other case—a Judge of the Family Court of Western Australia or a Judge of the Supreme Court of the Territory, or Judges of both those Courts, as the case requires; and
- (c) a reference to a magistrate (however described) appointed under a Western Australian law were a reference to a Magistrate of the Territory; and 25
- (d) a reference to a Justice of the Peace appointed under a Western Australian law were a reference to a Justice of the Peace of the Territory; and 30
- (e) a reference to a Coroner appointed under a Western Australian law were a reference to a Coroner of the Territory.

“(2) In this section:

‘federal jurisdiction’ and **‘non-federal jurisdiction’** have the same meanings as in section 14B. 35

Jurisdiction conferred by applied laws

“15AAD. If section 15AAB or 15AAC has the effect of enabling an applied law to confer jurisdiction on a Territory court or on a judicial officer of the Territory, the jurisdiction:

- (a) must be exercised only in relation to matters that are, or arise from, within the territorial jurisdiction of the Territory court or of the judicial officer of the Territory under the Ordinance that establishes the court or the judicial officer's office; and 40

- (b) must be exercised in accordance with practices and procedures (if any) provided under any Ordinance that relates to the Territory court or the judicial officer's office; and
- (c) subject to paragraph (b), may be exercised in accordance with the applied law."

19. Part IVAA of the Principal Act is repealed and the following Part is substituted:

**"PART IVAA—CONFERRAL OF TERRITORY JURISDICTION
ON WESTERN AUSTRALIAN COURTS ETC.**

10 Definitions

"15AAA. In this Part:

'Family Court of Western Australia' means the Court established by the *Family Court Act 1975* of Western Australia;

15 'judicial officer of Western Australia' means a Judge, magistrate (however described), Justice of the Peace or Coroner appointed under a law of Western Australia;

'transfer day' means the day on which this Part commences.

**Conferral of jurisdiction on Western Australian courts
and judicial officers**

20 "15AAB.(1) Subject to this Part and any law in force in the Territory, the courts and judicial officers of Western Australia have jurisdiction in and in relation to the Territory as if the Territory were part of Western Australia.

25 "(2) Subject to any law in force in the Territory, a court or judicial officer of Western Australia may, in exercising jurisdiction under this section, sit in the Territory or Western Australia.

30 "(3) Subject to any law in force in the Territory, the practice and procedure applicable to a court or judicial officer exercising jurisdiction under this section are to be the practice and procedure as in force from time to time in relation to that court or judicial officer in Western Australia.

Transfer of Supreme Court jurisdiction

35 "15AAC.(1) This section applies to the jurisdiction vested in or exercisable by the Supreme Court of the Territory or a judge of that Court immediately before the transfer day, except in relation to matters for which:

- (a) proceedings were pending in that Court immediately before that day; or
- (b) proceedings had been completed in that Court before that day.

40 "(2) On and after the transfer day, the jurisdiction:

- (a) ceases to be vested in the Supreme Court of the Territory or a Judge of that Court; and
- (b) is vested in:
 - (i) if the Family Court of Western Australia or a Judge of that Court would, apart from this section, have the jurisdiction under subsection 15AAB(1)—the Family Court of Western Australia or a Judge of that Court (as the case requires); or 5
 - (ii) if the District Court of Western Australia or a Judge of that Court would, apart from this section, have the jurisdiction under subsection 15AAB(1)—the District Court of Western Australia or a Judge of that Court (as the case requires); or 10
 - (iii) if the Children's Court of Western Australia or a Judge of that Court would, apart from this section, have the jurisdiction under subsection 15AAB(1)—the Children's Court of Western Australia or a Judge of that Court (as the case requires); or 15
 - (iv) in any other case—the Supreme Court of Western Australia or a Judge of that Court (as the case requires). 20

Transfer of pending proceedings

“15AAD.(1) On and after the transfer day, the parties to proceedings in a matter pending in the Supreme Court of the Territory (**‘Territory Court’**) may apply to that Court to transfer the proceedings to:

- (a) if the proceedings relate only to a matter of a kind that is within the jurisdiction of the Family Court of Western Australia—the Family Court of Western Australia; or 25
- (b) if the proceedings relate only to a matter of a kind that is within the jurisdiction of the District Court of Western Australia—the District Court of Western Australia; or 30
- (c) if the proceedings relate only to a matter of a kind that is within the jurisdiction of the Children's Court of Western Australia—the Children's Court of Western Australia; or
- (d) in any other case—the Supreme Court of Western Australia.

“(2) If the Territory Court decides that it is not contrary to the interests of justice to grant the application, the Court is to transfer the proceedings to the relevant Court (**‘State Court’**) and: 35

- (a) the State Court may hear and determine the proceedings; and
- (b) all documents filed of record in the Territory Court in the proceedings are to be transmitted to the State Court; and 40
- (c) any money lodged with the Territory Court in relation to the proceedings is to be transferred to the State Court and is taken to be money lodged with the State Court in relation to the proceedings; and

- (d) everything done in or in relation to the proceedings in the Territory Court is taken to have been done in the State Court.

Application of provisions of this Act to courts of Western Australia

5 “15AAE. In relation to the exercise of jurisdiction by a court of Western Australia or a Judge or an officer mentioned in this Part, this Act has effect as if:

- (a) a reference in this Act to an indictment court included a reference to the Supreme Court of Western Australia; and
- 10 (b) a reference in this Act to a Judge of an indictment court included a reference to a Judge of the Supreme Court of Western Australia; and
- (c) a reference in this Act to the Registrar of an indictment court included a reference to a person who has the powers and functions of the Registrar of the Supreme Court of Western Australia in the application of the *Supreme Court Act 1935* of Western Australia in the Territory; and
- 15 (d) a reference in this Act to the Sheriff of an indictment court included a reference to a person who has the powers and functions of the sheriff of the Supreme Court of Western Australia in the application of the *Supreme Court Act 1935* of Western Australia in the Territory; and
- 20 (e) a reference in section 16 to a Territory court included a reference to a Western Australian court exercising jurisdiction in or in relation to the Territory under a law of the Territory; and
- 25 (f) a reference in paragraph 16(c) to a person who holds an office in relation to a Territory court included a reference to a person who has the powers or duties mentioned in that paragraph in relation to the Territory under a law of the Territory.

30 **Savings—jurisdiction of Supreme Court of the Territory on and after transfer day**

“15AAF. Part IVAA of this Act as in force immediately before the transfer day continues in force in relation to any matter in respect of which the Supreme Court of the Territory or a Judge of that Court continues to have jurisdiction on or after that day.

35 **Abolition of Supreme Court of the Territory**

“15AAG. The Supreme Court of the Territory is abolished on a day to be fixed by Proclamation, being a day on which no person holds office as a judge of that Court.

Transitional provisions after abolition of Supreme Court

40 “15AAH.(1) In this section:
‘proclaimed day’ means the day to be fixed by Proclamation under section 15AAG;

'State Court' means the Court to which proceedings are transferred under subsection (2);

'Territory Court' means the Supreme Court of the Territory.

"(2) As soon as practicable after no person holds office as a Judge of the Territory Court, the Registrar of the Court must transfer all proceedings in the Court (including completed proceedings) to: 5

- (a) if the proceedings relate only to a matter of a kind that is within the jurisdiction of the Family Court of Western Australia—the Family Court of Western Australia; or
- (b) if the proceedings relate only to a matter of a kind that is within the jurisdiction of the District Court of Western Australia—the District Court of Western Australia; or 10
- (c) if the proceedings relate only to a matter of a kind that is within the jurisdiction of the Children's Court of Western Australia—the Children's Court of Western Australia; or 15
- (d) in any other case—the Supreme Court of Western Australia.

"(3) If proceedings are transferred under subsection (2):

- (a) all documents filed of record in the Territory Court in the proceedings are to be transmitted to the State Court; and
- (b) any money lodged with the Territory Court in relation to the proceedings is to be transferred to the State Court and is taken to be money lodged with the State Court in relation to the proceedings; and 20
- (c) everything done in or in relation to the proceedings in the Territory Court is taken to have been done in the State Court. 25

"(4) If proceedings transferred under subsection (2) were not completed before the proclaimed day, the State Court may:

- (a) hear, or further hear, the proceedings; and
- (b) determine the proceedings; and
- (c) have regard to any evidence or argument in the proceedings in the Territory Court. 30

References to courts of Territory—transitional

"15AAI. Unless the contrary intention appears:

- (a) a reference in any Act to the Supreme Court of the Territory is taken to include a reference to the Supreme Court of Western Australia exercising jurisdiction in or in relation to the Territory under this Act; and 35
- (b) a reference in any Act to courts of the Territory is taken to include a reference to courts of Western Australia exercising jurisdiction in or in relation to the Territory under this Act." 40

Schedule

20. The Principal Act is amended by adding at the end the Schedule set out in Schedule 2.

PART 4—MISCELLANEOUS

5 **Amendment of the *Federal Proceedings (Costs) Act 1981***

21. Section 3 of the *Federal Proceedings (Costs) Act 1981* is amended by adding at the end the following subsection:

10 “(3) In this Act, a reference to a court of a Territory (including a reference to the Supreme Court of a Territory) does not include a reference to a court of Western Australia exercising jurisdiction:

(a) in or in relation to the Territory of Christmas Island under the *Christmas Island Act 1958*; or

(b) in or in relation to the Territory of Cocos (Keeling) Islands under the *Cocos (Keeling) Islands Act 1955*.”.

15 **Amendment of the *Judiciary Act 1903***

22. Section 55D of the *Judiciary Act 1903* is amended by adding at the end of subsection (7) “, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands.”.

20 **Other amendments of the *Christmas Island Act 1958* and the *Cocos (Keeling) Islands Act 1955***

23. The *Christmas Island Act 1958* and the *Cocos (Keeling) Islands Act 1955* are further amended as set out in Schedule 3.

Consequential amendments of Acts

25 **24.** The Acts specified in Schedule 4 are amended as set out in that Schedule.

Amendments of other Acts

25. The Acts specified in Schedule 5 are amended as set out in that Schedule.

Validation of certain payments

30 **26.(1)** In this section:

“prescribed office” means an executive office within the meaning of the *Norfolk Island Act 1979* that has any of the following designations:

(a) Minister for Immigration and Commerce;

(b) Minister for Community Services;

35 (c) Minister for Tourism;

“prescribed period” means the period beginning on 18 May 1989 and ending immediately before 16 November 1989.

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(2) In spite of anything contained in any Act, a payment made to a person is, for all purposes, taken to have been validly made if:

- (a) the person was holding a prescribed office during the prescribed period; and
- (b) the payment was purportedly a payment of additional salary or fee in respect of the person's services in the prescribed office during the prescribed period.

5

SCHEDULE 1

Section 11

NEW SCHEDULE ADDED TO CHRISTMAS ISLAND ACT 1958

“SCHEDULE

Section 8

**LAWS CONTINUING IN FORCE IN THE TERRITORY
ON AND AFTER 1 JULY 1992**

Administration Ordinance 1968
Casino Control Ordinance 1988
Children's Court Ordinance 1972
Christmas Island Services Corporation Provident Fund Ordinance 1985
Coroners Ordinance 1958
Customs Ordinance (of the Colony of Singapore in its application to the Territory)
Gambling (Clubs) Ordinance 1978
Importation of Dogs and Cats Ordinance 1973
Interpretation Ordinance 1958
Juries Ordinance 1987
Lands Ordinance 1987
Magistrate's Court Ordinance 1958
Migratory Birds Ordinance 1980
Phosphate Mining Company of Christmas Island Limited Provident Fund Ordinance 1982
Phosphate Mining Corporation of Christmas Island Provident Fund Ordinance 1985
Phosphate Mining Corporation of Christmas Island Ordinance 1985
Phosphate Mining Corporation of Christmas Island (Winding up) Ordinance 1987
Postal and Telegraph Ordinance 1968
Quarantine and Prevention of Disease Ordinance (of the Colony of Singapore in its application to the Territory)
Standard Time and Daylight Saving Time Ordinance 1980
Supreme Court Ordinance 1958
Unclaimed Moneys Ordinance 1974”.

Territories Law Reform No. 104, 1992

SCHEDULE 2

Section 20

**NEW SCHEDULE ADDED TO COCOS (KEELING)
ISLANDS ACT 1955**

“SCHEDULE

Section 8

**LAWS CONTINUING IN FORCE IN THE TERRITORY
ON AND AFTER 1 JULY 1992**

Administration Ordinance 1975

Companies Ordinance (of the Colony of Singapore in its application to the Territory)

Co-operative Societies Ordinance (of the Colony of Singapore in its application to the Territory)

Courts Ordinance (of the Colony of Singapore in its application to the Territory)

Interpretation Ordinance 1955

Juries Ordinance 1989

Migratory Birds Ordinance 1980

Postal Services Ordinance 1979

Quarantine and Prevention of Disease Ordinance (of the Colony of Singapore in its application to the Territory)

Supreme Court Ordinance 1955”.

SCHEDULE 3

Section 23

**OTHER AMENDMENTS OF THE CHRISTMAS ISLAND ACT 1958
AND THE COCOS (KEELING) ISLANDS ACT 1955**

Christmas Island Act 1958

Subsections 2(4) and (5):

Omit the subsections.

Section 4 (definition of “Sheriff”):

Omit “the Deputy Sheriff”, substitute “a Deputy Sheriff”.

Subsection 9(3):

Omit the subsection.

Subsection 10D(2):

Omit the subsection, substitute:

“(2) Subsections 10(2) to (4B), inclusive, and sections 10A, 10B and 10C apply in relation to regulations laid before a House of the Parliament as if, in those provisions:

- (a) references to subsection 10(1) were references to subsection (1) of this section; and
- (b) references to an Ordinance were references to regulations; and
- (c) references to a provision of an Ordinance were references to a regulation.”.

Section 15A:

Omit “he”, substitute “he or she”.

Section 16:

- (a) Omit “he” (twice occurring), substitute “the person”.
- (b) Omit “his” (3 times occurring), substitute “his or her”.

Subsection 17(1):

Omit the subsection, substitute:

“(1) In spite of the *Public Service Act 1922*, a law of the Territory may make provision for and in relation to the appointment and employment of persons for the purposes of the government of the Territory.”.

Subparagraph 18(1)(a)(ii):

Omit “persons suffering from leprosy, or”.

SCHEDULE 3—continued

Section 19:

Repeal the section.

Subsection 20(1):

- (a) Omit “under his hand”, substitute “signed by the Governor-General”.
- (b) Omit “court of the Territory exercising criminal jurisdiction”, substitute “court exercising criminal jurisdiction under a law in force in the Territory”.
- (c) Omit “he”, substitute “the Governor-General”.

Subsection 20(2):

- (a) Omit all the words before “Governor-General”, substitute “The”.
- (b) Omit “under his hand”, substitute “signed by the Governor-General”.

Subsection 21A(2):

Omit “ordinances”, substitute “Ordinances”.

Paragraph 23(b):

Omit “\$100”, substitute “\$1,500”.

Section 23:

Add at the end:

“; and (c) making saving or transitional provisions in relation to the abolition of any court established by an Ordinance.”.

Cocos (Keeling) Islands Act 1955

Subsection 13D(2):

Omit the subsection, substitute:

“(2) Subsections 13(2) to (4B), inclusive, and sections 13A, 13B and 13C apply in relation to regulations laid before a House of the Parliament as if, in those provisions:

- (a) references to subsection 13(1) were references to subsection (1) of this section; and
- (b) references to an Ordinance were references to regulations; and
- (c) references to a provision of an Ordinance were references to a regulation.”.

Section 14A:

Omit “he”, substitute “he or she”.

SCHEDULE 3—continued

Section 15:

- (a) Omit “he” (twice occurring), substitute “he or she”.
- (b) Omit “his” (3 times occurring), substitute “his or her”.

Subsection 15A(1):

Omit the subsection, substitute:

“(1) In spite of the *Public Service Act 1922*, a law of the Territory may make provision for and in relation to the appointment and employment of persons for the purposes of the government of the Territory.”.

After section 18A:

Insert:

Disposal of land

“18B.(1) The application of the *Lands Acquisition Act 1989* in relation to land in the Territory does not prevent or affect the making or operation of a provision of a law of the Territory (including a law made before this section’s commencement) under which:

- (a) lands in the Territory acquired by or vested in the Commonwealth may be disposed of or otherwise dealt with; or
- (b) instruments, receipts and other documents in relation to any such lands may be executed; or
- (c) rights, duties and liabilities in relation to any such lands are or may be acquired, conferred or imposed.

“(2) A law of the Territory mentioned in subsection (1) which provides for the acquisition of land must provide that land is not to be acquired otherwise than on just terms.”.

Section 20:

Omit all the words after “giving effect to this Act, and,”, substitute: “in particular:

- (a) prescribing penalties, not exceeding a fine of \$1,500 or imprisonment for 3 months, for offences against the regulations; and
 - (b) making saving or transitional provisions in relation to the abolition of any court established by a law of the Territory.”.
-

SCHEDULE 4

Section 24

CONSEQUENTIAL AMENDMENTS OF ACTS

Acts Interpretation Act 1901

Paragraph 17(a):

Omit “does not include an external Territory”, substitute “includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory”.

Australian Capital Territory (Self-Government) Act 1988

Subsection 69(1):

Omit “or the Jervis Bay Territory”, substitute “, the Jervis Bay Territory, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands”.

Commonwealth Grants Commission Act 1973

Title:

Omit “and to the Northern Territory”, substitute “, the Australian Capital Territory, the Northern Territory, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands”.

Section 6:

Repeal the section, substitute:

Extension of Act to Territory of Christmas Island and Territory of Cocos (Keeling) Islands

“6. This Act extends to the following Territories:

- (a) the Territory of Christmas Island;
- (b) the Territory of Cocos (Keeling) Islands.”.

Section 16C:

After “Commonwealth to” (twice occurring) insert “the Territory of Christmas Island or”.

Subsection 25(2):

After “16A” insert “, 16C”.

SCHEDULE 4—continued

Customs Act 1901

Subsection 4(1):

Insert:

“‘Australia’ does not include:

- (a) the Territory of Christmas Island; or
- (b) the Territory of Cocos (Keeling) Islands;”.

Departure Tax Collection Act 1978

Section 3:

Insert:

“‘external Territory’ does not include:

- (a) the Territory of Christmas Island; or
- (b) the Territory of Cocos (Keeling) Islands;”.

Excise Act 1901

Subsection 4(1):

Insert:

“‘Australia’ does not include:

- (a) the Territory of Christmas Island; or
- (b) the Territory of Cocos (Keeling) Islands;”.

Export Control Act 1982

After section 4:

Insert:

Regulations may provide for the extension of Act to certain Territories

“4A.(1) Subject to subsection (2), this Act does not extend to the following Territories:

- (a) the Territory of Christmas Island;
- (b) the Territory of Cocos (Keeling) Islands.

“(2) Regulations may be made to extend the whole or a part of this Act to either or both of the Territories.”.

Family Law Act 1975

Subsection 4(1) (definition of “Territory”):

Omit the definition, substitute:

“‘Territory’ includes:

- (a) Norfolk Island;

SCHEDULE 4—continued

- (b) the Territory of Christmas Island;
 - (c) the Territory of Cocos (Keeling) Islands;
- but does not include any other external Territory;”.

Section 7:

Repeal the section, substitute:

Extension of Act to certain Territories

“7. This Act extends to the following Territories:

- (a) Norfolk Island;
- (b) the Territory of Christmas Island;
- (c) the Territory of Cocos (Keeling) Islands.”.

Marriage Act 1961

Subsection 5(1) (definition of “Territory”):

Omit the definition, substitute:

“ ‘Territory’ means:

- (a) the Australian Capital Territory; or
- (b) the Northern Territory; or
- (c) Norfolk Island; or
- (d) the Territory of Christmas Island; or
- (e) the Territory of Cocos (Keeling) Islands;”.

Subsection 8(1):

Omit the subsection, substitute:

“(1) The whole of this Act extends to the following Territories:

- (a) Norfolk Island;
- (b) the Territory of Christmas Island;
- (c) the Territory of Cocos (Keeling) Islands.”.

Motor Vehicle Standards Act 1989

Subsection 5(1):

Insert:

“ ‘Australia’ does not include:

- (a) the Territory of Christmas Island; or
- (b) the Territory of Cocos (Keeling) Islands;”.

Petroleum (Submerged Lands) Act 1967

Subsection 5A(6):

- (a) After “Heard” insert “Island”.

SCHEDULE 4—continued

(b) Omit “superadjacent”, substitute “superjacent”.

After subsection 5A(6):

Insert:

“(6A) For the purposes of this Act, the adjacent area in respect of the Territory of Christmas Island is the area whose boundaries are:

- (a) the coastline at mean low water of Christmas Island; and
- (b) the outer limit of the superjacent waters of the continental shelf adjacent to the coast of Christmas Island.

“(6B) For the purposes of this Act, the adjacent area in respect of the Territory of Cocos (Keeling) Islands comprises the following areas:

- (a) the area whose boundaries are:
 - (i) the coastline at mean low water of the north atoll of the Territory (otherwise called North Keeling Island); and
 - (ii) the outer limit of the superjacent waters of the continental shelf adjacent to the coast of that Island;
- (b) the area whose boundaries are:
 - (i) the coastlines at mean low water of the remaining islands of the Territory; and
 - (ii) the outer limit of the superjacent waters of the continental shelf adjacent to the coasts of those islands.”.

Section 7:

Repeal the section, substitute:

Extension to certain Territories

“7. This Act extends to the following Territories:

- (a) Norfolk Island;
- (b) the Territory of Christmas Island;
- (c) the Territory of Cocos (Keeling) Islands;
- (d) the Territory of Ashmore and Cartier Islands;
- (e) the Territory of Heard Island and McDonald Islands.”.

Prices Surveillance Act 1983

Paragraph 4(1)(f):

After “Northern Territory)” insert “, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands”.

Subparagraph 4(1)(g)(ii):

Omit “or”.

SCHEDULE 4—continued

After subparagraph 4(1)(g)(ii):

Insert:

- “(iia) between a State and the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands;
- (iib) between an internal Territory and the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands;
- (iic) between the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands; or”.

Public Accounts Committee Act 1951

Subsection 8(2):

After the subsection, insert:

“(2A) For the purposes of subsection (2), an External Territory does not include the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands.”.

Public Order (Protection of Persons and Property) Act 1971

Subsection 4(1) (definition of “Territory”):

Omit the definition, substitute:

“ ‘Territory’, except in subsection 25(2), means:

- (a) the Australian Capital Territory; or
- (b) the Jervis Bay Territory; or
- (c) the Territory of Christmas Island; or
- (d) the Territory of Cocos (Keeling) Islands;”.

Quarantine Act 1908

After section 6:

Insert:

Regulations may provide for the extension of Act to Christmas Island

“6AA. (1) Subject to subsection (2), this Act does not extend to the Territory of Christmas Island.

“(2) Regulations may be made to extend the whole or a part of this Act to the Territory of Christmas Island.”.

Sales Tax Assessment Act (No. 1) 1930

Subsection 3(1):

Insert:

“ ‘Australia’ does not include:

- (a) the Territory of Christmas Island; or
- (b) the Territory of Cocos (Keeling) Islands;”.

SCHEDULE 4—continued

Trade Practices Act 1974

Subsection 4(1) (definition of “Territory”):

Omit the definition, substitute:

“ ‘Territory’ means:

- (a) an internal Territory; or
- (b) the Territory of Christmas Island; or
- (c) the Territory of Cocos (Keeling) Islands;”.

Wheat Marketing Act 1989

Subsection 3(1) (definition of “Territory”):

Omit the definition, substitute:

“ ‘Territory’ means:

- (a) an internal Territory; or
- (b) the Territory of Christmas Island; or
- (c) the Territory of Cocos (Keeling) Islands;”.

Paragraph 7(2)(p):

Omit “or Territory”, substitute “the Australian Capital Territory or the Northern Territory”.

SCHEDULE 5

Section 25

AMENDMENTS OF OTHER ACTS

Norfolk Island Act 1979

Subsections 65(1), (2) and (3):

Omit the subsections, substitute:

“(1) A person is to be paid, in respect of the person’s services in an office to which this section applies, such remuneration and allowances (if any) as are provided for under an enactment.

“(2) If the remuneration or an allowance in respect of the office is not so provided for, the person is to be paid such remuneration or allowance (if any) as is specified:

- (a) in any determination of that remuneration or allowance by the Remuneration Tribunal that was in force immediately before the commencement of this subsection; or
- (b) if no such determination was then in force—in the regulations; until the remuneration or allowance (if any) is so provided for.”.

SCHEDULE 5—continued

Remuneration Tribunal Act 1973

Subsection 3(3A):

Omit the subsection.

After paragraph 3(4)(ja):

Insert:

“(jaa) an office of member of the Legislative Assembly, of member of the Executive Council, or of executive member, within the meaning of the *Norfolk Island Act 1979*,”.

Subsection 7(7):

Omit “(other than a determination referred to in section 7A)”.

Paragraph 7(9)(ab):

Omit the paragraph.

Section 7A:

Repeal the section.

NOTES

1. No. 41, 1958, as amended. For previous amendments, see No. 9, 1959; No. 21, 1963; No. 131, 1965; No. 93, 1966; No. 216, 1973; No. 174, 1980; Nos. 26 and 80, 1982; No. 39, 1983; Nos. 72 and 120, 1984; No. 65, 1985; No. 168, 1986; No. 120, 1987; No. 99, 1988; and No. 21, 1989.
2. No. 34, 1955, as amended. For previous amendments, see No. 89, 1956; No. 67, 1958; No. 22, 1963; No. 93, 1966; No. 216, 1973; No. 56, 1975; No. 6, 1979; Nos. 26 and 80, 1982; No. 39, 1983; No. 65, 1985; No. 168, 1986; No. 99, 1988; and No. 60, 1989.

NOTE ABOUT SECTION HEADING

1. On the commencement of section 24 of this Act, the heading to section 16C of the *Commonwealth Grants Commission Act 1973* is altered by inserting “Christmas Island and the Territory of” after “Territory of”.

[Minister's second reading speech made in—

Senate on 27 May 1992

House of Representatives on 25 June 1992]