

*Standing Committee on Uniform Legislation and Statutes Review — Ninety-ninth Report —
“Inquiry into the Statute Book” — Motion*

Resumed from 29 June on the following motion moved by Hon Kate Doust —

That the report be noted.

Hon KATE DOUST: As I think I said the last time I had the occasion to speak on this issue, this is a very short report. Due to other work pressures, the committee has been dealing with over the last couple of years, although we would have liked to provide much more detail and recommendations about how the government could put in place more appropriate mechanisms to deal with repealing legislation out of that legislation, we were not afforded that opportunity, so we decided to close our inquiry as it stood but provide some information to the house in the hope that whoever happens to be on this committee in the next Parliament, might decide to reinstate the inquiry and come up with some proposals.

In the past there were a couple of goes at looking at how the statute book could be better managed. An earlier committee of inquiry travelled extensively and looked at arrangements in other places, but due to the prorogation of Parliament at that time we have never seen a report so we have not had access to that information. The committee has dealt with a number of bills on obsolete legislation. We noticed that it has been quite piecemeal. An extensive list of obsolete legislation was put out in an earlier report—I think it was the seventy-ninth report. In 2013, the committee dealt with the last piece of obsolete legislation that went through this house. It did not pick up all the bills that were listed, only a number of them. We thought that if the government genuinely wants to have a clearing day or a tidying up of legislation that is no longer relevant or used it should look at other ways to do it.

If members have had the opportunity to look at some of the comments we have made on this, they will have seen that we have looked at a range of other jurisdictions. Appendix 1 lists in dot point form a number of options that other states and the commonwealth use to deal with obsolete legislation. We have also made reference to places such as Hong Kong, New Zealand, England, Wales, Scotland and the Republic of Ireland, as well as the European Commission, because they all use a range of mechanisms to more efficiently remove obsolete legislation. Although our research has been desktop driven, if you like, and not tarmac driven, this is what we have provided. With the information that the committee has, if a future committee is able to tap into what earlier committees have looked at, that would be a good starting point to come up with some clear options for government.

This government has made a big deal about having a Repeal Day and trying to bring through a number of bills that deal with obsolete legislation. Although some bills might repeal a couple of bills, others are more about tidying up some of the language and bringing them more up to date. The committee commented on those in each of the relevant reports on those specific bills. We found that sometimes obsolete legislation bills dealt with legislation that should not have been included and could have been dealt with separately. The government has pulled some of these together, but there also needs to be a more coordinated approach across the whole of government. On a couple of occasions that the committee dealt with obsolete legislation bills, it found that although there is reference to a particular act, on at least two occasions that I can think of—there might have been more—this house was dealing with an entirely separate piece of legislation that dealt with the act that was listed in the obsolete bill that we were also dealing with. It might have been the case on some occasions that the right hand was not talking to the left hand. There needs to be better coordination across government, regardless of who the government is, about how that could be better managed. I do not know whether there needs to be a clearing house sort of setup or some sort of unit to deal with it, which was something the committee looked at.

The committee listed the number of bills that the government removed. Under “Committee Comment” on page 3, it is stated —

- 4.6 If the current processes continue, the Committee notes that it may very well take decades for the obsolete legislation identified by the Committee in Report 79 to be repealed.

That is the report I referred to earlier that was done in another incarnation of this committee in another Parliament. It provided a fairly extensive list of obsolete legislation. Whenever we get these obsolete legislation bills, they usually comprise a relatively short list. The committee’s view is that if we continue down that path—for whatever reason it has been decided to do it in that way—it will indeed take a long time to get rid of obsolete legislation.

The committee is very keen that this is not the end of it. With some reluctance, we had to shut down the inquiry because the committee became quite busy dealing with other bills. This was sort of being put to the side so that we could focus on those other priorities. The committee has made two recommendations, and the first one states —

The Committee recommends that the Government give greater priority to identifying and repealing obsolete legislation and considers more robust systems to repeal obsolete legislation.

As I said, we have provided some of that detail to assist a future committee and also the government to look at options in other places. The second recommendation states —

The Committee recommends that the Standing Committee on Uniform Legislation and Statutes Review of the 40th Parliament consider inquiring into the statute book in the next Parliament.

We are just trying to be a bit proactive and flag some future work for a new committee post-May 2017. That is not the end of it because some real and interesting work needs to be done. Looking at some of those other models might be helpful. I imagine it is quite frustrating for government and certainly for people in departments who might have out-of-date, unused legislation dogging around, and it seems to take an extended period to get those bills into this place. There must be a better way of doing it. I am sure that a future committee at the start of the next Parliament might be able to get itself focused, using this report and the seventy-ninth report—I think there was another one after that as well—to perhaps give it some guidance about where it should go on these issues. Any work done in this space to provide recommendations and advice to government about how to improve those mechanisms can only benefit everyone in this state.

Hon LIZ BEHJAT: I too rise to commend the Standing Committee on Uniform Legislation and Statutes Review for the tabling of its ninety-ninth report. As a former member of that committee in the Parliament prior to this one, I am certainly a great admirer of the work done by that very hardworking committee and all of the committees in this place. Statutes review is a very important part of what needs to be done, and I agree with Hon Kate Doust when she said that not enough has been done in this area. The government has started with a Repeal Day, but although a number of pieces of legislation were dealt with, the announcement at the time about what was being repealed was certainly not earth-shattering. Nevertheless, it is a start. Quite rightly, it is something that future Parliaments will need to turn their minds to. Maybe there is a job for retired members of Parliament to come back to be part of a committee that reviews statutes.

Hon Simon O'Brien: Unpaid, of course!

Hon LIZ BEHJAT: I would not be suggesting it to be an unpaid job at all, Hon Simon O'Brien, for whoever might want to do something like that. People who are well versed in the work of committees and legislation might provide some valuable input into that were they to become the commissioner for statutes review or something; I do not know. I understand there are a lot of law graduates. A unit comprising law graduates could gain experience trolling through the statute book. It would be a tedious and thankless task but one from which a person could gain good experience. Even more controversial would be the introduction of a regulation that provided that new legislation could not be introduced without getting rid of an old piece of legislation or, at least, without reviewing one. I do not know how that would be done by whoever is in government in the future, but we certainly need to look at different ways of doing that. They are the couple of ideas that I throw out into the ether today.

Statute review is important work and the language in statutes should be modernised to make sure that statutes are relevant to their time. Often language becomes irrelevant over time, especially in large pieces of legislation. When we talk about fines and things like that we are talking about not only quantum, but also how to make something. I think a provision in the Dog Act 1903 referred to “sluts on heat”, which is quite an unusual term. Opposition members can shake their heads, but that was a reference to dogs in the Dog Act. I am not sure what would come out if we were talking about that in today's society.

Hon Ken Travers: The government is always fearful of bringing amendments to the Dog Act into this chamber you know. They have a reputation.

Hon LIZ BEHJAT: I do not know about that, but when language as archaic as that is still in the statutes, it certainly needs to be looked at, and that is something we could do under statutory review.

It is very important that the committee system of this house remains in place and that there is a committee charged with statute review. When I was a member of the Standing Committee on Uniform Legislation and Statutes Review—and again in this current committee—a lot of uniform legislation needed to be looked at. During the time that you, Madam Chair, were the chairman of the uniform legislation committee we split into subcommittees because we needed to examine much uniform legislation and there was a massive push for uniform schemes. At that time the terms of reference were quite different and that committee probably had more teeth in those days than it has now.

Hon Kate Doust: I think we've achieved a few significant changes, thank you very much!

Hon LIZ BEHJAT: I am sorry, Hon Kate Doust. I am not casting any disparaging remarks about the current committee. The work that that committee is doing is fantastic, but I believe that with the change to the terms of

reference of that committee, brought about by a previous leader of this house, that committee is hampered from doing things it was once able to do.

Hon Kate Doust: Sorry; so you wanted to criticise Norman for changing the terms of reference?

Hon LIZ BEHJAT: I was talking about a former Leader of the House and the changes to the terms of reference. That is what I was referring to. In no way do I want anyone on that current committee to think that I am criticising them. I was saying that when I was on the committee and the terms of reference were different, there was broader scope to look at a number of things and to do own-motion inquiries, and that unfortunately has been taken away. There we are; things change and we move on. Statutes do not change that much but the terms of reference of committees are very easily changed.

With those words, I commend the committee report to the chamber. It is important that we ensure that all future Parliaments look at what can be done to ensure that the statute book remains relevant and user friendly so that people are able to understand what is contained in the statutes. Well done to the Standing Committee on Uniform Legislation and Statutes Review committee on its report. Everyone should read it.

Hon SIMON O'BRIEN: I am greatly relieved to hear that the honourable member who spoke before me would not make any disparaging remarks about members opposite. I certainly would never do that. My attention was drawn to the ninety-ninth report of the Standing Committee on Uniform Legislation and Statutes Review because of its subject matter. I chaired that committee a few Parliaments ago.

Hon Ken Travers: Last century, was it?

Hon SIMON O'BRIEN: No, it was this century; in fact, it was this millennium.

I want to offer a couple of observations that members might find useful. Firstly, I do not find the subject matter of the statute book and how it has been constructed and how it has evolved over centuries dry or uninteresting. On occasion other things might capture my imagination more, but as a legislator I find this subject matter fascinating, and I think that other members also would if they examined it. That is the first thing I wanted to say. It is important that we as legislators, particularly in this chamber, pay attention to this subject. I recommend members do that because it may help satisfactorily fulfil their roles as parliamentarians. I am glad that the committee recommends that future committees continue examination of this subject. That is one observation I make.

The other observation I make is that when we talk about removing obsolete legislation and about obsolete legislation repeal days, it is a bit like talking about red tape reviews. Everyone knows that they are a good idea; they advocate for them and put out announcements to suggest that they are a great initiative—we are going to have a red tape review or a repeal day every year or whatever it might be—and we do that because everyone thinks it is a good idea. I have considered that and I am not so sure. I think the challenge is to ask the questions: Is it really such an imperative? Is it such a good idea? On the one hand I am not scared of looking at those questions. I want to know whether we have correctly identified a problem or the nature of the problem in either of those examples. If there is a real problem and something needs to be done about it, rather than continuing to announce it, we stand condemned if we do nothing about it. I am yet to hear anything articulated about the problem of obsolete legislation cluttering up the statute book. That may offend some people's sensitivities. They may have been brought up to assume that it is a heresy for me to suggest that we have to get rid of obsolete legislation. If that is the case, let us do something about it; if not, let us wind it back a bit.

The other question about red tape reviews is different. I simply mention that question because it is a perennial question that keeps coming up: everyone knows it is bad and that we should do something about it, and indeed we should, but I have observed other dynamics and I believe that most people who embark on that have got it wrong. Maybe I can share something about that matter on another occasion.

While we are dealing with obsolete legislation, I want to mention that the statutes review committee of several Parliaments ago did examine the statute book. Yes, we travelled and sought people's advice. We went to places such as the Westminster Parliament. We visited the repository in which the original acts of Parliament are stored. We held them in our hands. It was remarkable. We heard that the originals are printed on vellum and what have you and are kept somewhere in a Hogwarts-type repository that goes on forever. There is row after row of musty, old, rolled up original acts of Parliament. Some of the older ones are printed on animal hide and stored flat. It is interesting to hold those documents in your hands and to see written with the authority of an absolute monarch and with a flourish the signature "Henry Rex" on a bill, with a massive great wax seal stamped on it. The seal alone must have weighed several kilograms. It is interesting for a parliamentarian to research that part of our statute book because back in 1831, under Governor Stirling, the imperial acts, as they are known—that body of law that existed in England at that time, including, presumably, the act that I have just referred to—were adopted holus-bolus in Western Australia. We were looking at the question of which of those acts—I think we identified a staggering five-figure number—actually applied in Western Australia, when perhaps they ought not to, because

they are quite irrelevant or, in some cases, had been superseded by legislation about the same matters, which is highly relevant. Do we know whether the previous acts—thousands of them—that cover this matter are in conflict, or have they been repealed? That is the problem with obsolete acts on the statute book. A genuine impediment might suddenly arise, brought up by some smart lawyer—we have lots of smart lawyers in this chamber—in defence of someone to whom such a defence should not be available. That is what we were inquiring into in relation to obsolete legislation.

Other obsolete legislation simply clutters up the statute book. Let us take a hypothetical example of the Newcastle coal board act of 1822, or something like that. If that were adopted as an imperial act, along with all the others, it would apply here, but it has no relevance to Western Australia, so one would think that we would not find it to be an encumbrance on whatever happens at Collie or anything like that. What is the problem with all those thousands of acts that are in force and have not been repealed but do not really cause us any problems? That is the question for this committee, and it is a fascinating question for those members who, like me, are interested in questions such as this because we want to make sure that we do not come unstuck. This, I believe, is what motivates current members of the committee, such as the Chair, Hon Kate Doust, to encourage a future Parliament to have a look.

Hon Kate Doust: I think you have just put your pitch to be a member of that committee next time around.

Hon SIMON O'BRIEN: There is a little bit of unfinished business with that committee, because when we came back, we had a colossal amount of information, and then someone went and called a snap election, dissolving the Parliament, so we never got the chance to report. Perhaps, as the sole surviving member of that committee, I should go back and do it all again at some stage in the future.

Hon Kate Doust: I don't think you'd get to travel.

Hon SIMON O'BRIEN: I would like to acquaint members with the benefits of going to other jurisdictions in pursuit of the sorts of inquiries we are talking about. We did find out, when we sat down with people in Dublin and other places, that we in Western Australia at that time, and presumably still today, had a better handle on all this than people anywhere else did. They all wanted to pick our brains. We have a website that we all have recourse to—the State Law Publisher. In this game, we go there all the time to look up acts and regulations. As practitioners, we can find out a lot of useful information about when legislation was amended, what it stated before, and all that sort of thing. Ours is state of the art, and everyone else wants to pick our brains. I am surprised they are not coming over here more often to visit and learn from us. That is certainly what the Irish wanted to do when we went to visit them.

Finally, I want to touch on the question of omnibus bills. Every now and then omnibus bills come forward, intended to clear out redundant provisions, and make minor, almost clerical, changes to acts.

Hon Kate Doust: Allegedly—sometimes they try it on.

Hon SIMON O'BRIEN: Yes, sometimes the committee, when it examines these omnibus bills, is on the watch for some of these little things that have been slipped in that are not necessarily inconsequential or minor amendments. There may be a policy impact to them.

Hon Kate Doust: Sometimes they are quite blatantly not part of that category.

Hon SIMON O'BRIEN: Indeed, and full marks to the bureaucrats that engineer to put these things through, but the committee is pretty good at picking them up. Inevitably, such bills take a long time in their development, and they are not the highest priority of government, but neither do they need to be, I would suggest, because if, for example, the Minister for Commerce finds something wrong in one or two of the acts over which he has control, it should become a priority of some sort for him to bring forward some substantial amending bill to correct that legislation. Indeed, that is what he does from time to time. That is how we deal with legislation on the books that needs to be deleted, amended in some way or augmented, whereas the stuff that is just sitting there gathering some sort of ethereal dust out there is probably not doing anyone much harm, but it would take a lot of looking to find it.

I will conclude by referring to another example that occurred in this house and gives substance to what Hon Kate Doust and her committee are reporting on. In the first Parliament of which I was a member with Hon Ken Travers—this was in the last century; indeed the last millennium—we considered a bill to repeal the Sunday Observance Act 1676. It is not every day that a 300-year-old act of Parliament is repealed by a 108-year-old—or however old we were then—Parliament, but that is what happened on that occasion. This sort of thing is fascinating. We repealed the Sunday Observance Act 1676, which provided for it to be an offence to do certain things on Sunday by way of employment. It was a great act, with some tremendously old archaic terms, occupations, exclusions and penalties. I think the penalty was a fine of two shillings, or something like that, for someone found to be working in a foundry, but there were exemptions for someone getting a horse out of a mud trap. I am sure that most of those provisions have all been superseded by our own laws here about when

shops can open and what people can and cannot do. It was seen as necessary to repeal this adopted imperial act, which was probably long ago repealed in the UK but still applied here in Western Australia. The purpose of repealing that act was to make it explicit that it was not a defence for any offence here if a summons had been served on the offender on a Sunday. Some clever lawyer had tried that defence to get some local scoundrel of a charge in Western Australia, or there was a fear that that might happen unless this act was officially repealed.

I found that a fascinating exchange. Members can look it up in *Hansard* if they are interested. Hon Nick Griffiths dealt with it for the opposition and Hon Peter Foss for the government of the day. That is the sort of thing that I think is living history, which adds to the satisfaction of being a member of Parliament if you are so inclined to pursue those matters. I offer those observations intending to be helpful and in support of the report and its recommendations and I hope members do —

Hon Ken Travers: Was the repeal of that bill the beginning or the end of Sundays as we know it? That is the question we should ask ourselves.

Hon SIMON O'BRIEN: The member's latent conservative streak is starting to appear through, but my observation of the last —

Hon Ken Travers interjected.

Hon SIMON O'BRIEN: Madam Chair, I am trying to wind up my remarks so that somebody else can have a go and the member's interjections —

The CHAIR: Order, member!

Hon SIMON O'BRIEN: We know from previous debate today that the Labor Party can be very selective and very inventive in the arguments it advances in this place, but I am sure that it was not the Labor movement that gave rise to the Sunday Observance Act of the late seventeenth century but some other matter of history back then. However, the member makes a good point and we have to be careful when people want to change things. We are starting to digress but thanks for the report, thanks for the work of the committee and I hope my comments are of some interest.

Hon NICK GOIRAN: When I woke this morning, I had not contemplated coming into the chamber to speak on this report, but following the contributions by my colleagues Hon Liz Behjat and Hon Simon O'Brien, I want to raise one particular point. I thank those members for awakening me to this ninety-ninth report of the Standing Committee on Uniform Legislation and Statutes Review, particularly because this short report makes reference to the seventy-ninth report tabled on 15 November 2012. The reason that particular report is of any interest to me whatsoever is that I was a newly minted member appointed to that committee at the time. I was staggered to learn during that inquiry and the tabling of that report about the sheer number of acts that remain unproclaimed in this state. I very much regret that I am not better prepared this afternoon to speak more substantially on this matter and I do not have the seventy-ninth report at my disposal. However, I recall that it was a very large number. To the best of my recall it was something in the realm of 70 acts. Whatever the number was, it was substantial. I was staggered to think of the time that not only this chamber but also the other place spent on debating those bills, which were assented to, and then sit there and gather dust for an inordinate period. In the analysis of what seemed to be redundant legislation, I was also staggered to see the length of time that had passed for a lot of these acts. Since that time and during this Parliament it struck me—and again in reading this report just tabled by Hon Kate Doust—that there must be a better and more efficient way of doing things. I thank the committee for this report that it tabled on 21 June this year and for providing us with a useful summary of responses in other jurisdictions. If members care to take a look at that matter, they will see that the phrase “sunset clauses” is often used. I have not had the opportunity to look into this matter in any detail, but I suspect that the phrase “sunset clause” probably means that a bill passes with the support of Parliament, it receives royal assent, it is proclaimed and it is then enforced until such time as the sunset clause kicks in. That is all well and good, but that is not the problem we have in Western Australia. I was very interested to hear the remarks by Hon Simon O'Brien that other jurisdictions look to us as some kind of gold standard when it comes to these things.

Hon Simon O'Brien: In assessing the statute book.

Hon NICK GOIRAN: Yes, and, like Hon Simon O'Brien, I agree that we have a lot of room for improvement in this area. One way in which that could be achieved is with the introduction of some kind of generic sunset clause that indicates that if a piece of legislation has not been proclaimed after “X” period of time—I will just pluck a figure out of thin air of, say, five years—it is automatically repealed. That would at very least incentivise government departments to get on with the job and overcome whatever it is that is holding them back from having legislation proclaimed. It may well be that from time to time that legislation is passed that is then subsequently found not to be needed for a particular reason. It might be that the purpose or the cause of the problem has been resolved by some other mechanism. There may have been some change in the law. In our

jurisdiction with the Federation, it may be that something done at a state level has been superseded at a national level on a uniform basis. I do not know. However, I can imagine a small number of occasions when that might happen, and that is certainly of no concern to us. As I said, in 2012, it was staggering for me to see the sheer volume of legislation that had obviously had the benefit of time invested into it by members of this and the other place and yet continued to not be proclaimed. I just raise that point.

I thank Hon Kate Doust for tabling this report and my two colleagues on this side of the house for sparking my attention on this matter. I encourage members on this committee now and into the future and the relevant government departments to give some consideration to a generic sunset clause that might incentivise government departments to get cracking with the proclamation of legislation. If it is the case that such legislation is no longer needed, it would automatically assist in the efficient repeal of those acts. With that short contribution, I certainly lend my support to the noting of the report.

Question put and passed.