



The Hon Kate Doust MLC
Chair
Western Australian Legislative Council Standing
Committee on Uniform Legislation & Statute Review
Parliament House
PERTH WA 6000

File 14/002803

Dear Chair

Thank you for your recent letter about the Standing Committee's review of mechanisms by which laws are reviewed for the purposes of repeal.

You have asked for information on relevant NSW mechanisms. NSW has the following mechanisms in place, which may be relevant to the Standing Committee's review:

Statute Law Revision Program

The Program has run for almost 30 years and is used to make minor amendments and to repeal redundant legislation. Generally, two *Statute Law (Miscellaneous Provisions) Bills* are introduced into Parliament each year by the NSW Government. As well as minor statute law revisions, these Bills may contain repeals of obsolete or unnecessary Acts.

Requests for amendments or repeals are proposed by either agencies (with the approval of the relevant Minister) or the NSW Parliamentary Counsel, for approval by the Government. The Program is coordinated centrally by the NSW Department of Premier and Cabinet (DPC) and the Parliamentary Counsel's Office (PCO).

Further information about the Program is available in:

- DPC Circular C2014-02 *Statute Law Revision Program 2014* (http://www.dpc.nsw.gov.au/announcements/circulars/2014/c2014-02_statute_law_revision_program_2014)
- Chapter 3 of the Parliamentary Counsel's *Manual for the Preparation of Legislation* (<http://www.pco.nsw.gov.au/corporate/mpl.pdf>).

It is also noted that section 30C of the *Interpretation Act 1987* (NSW) provides for the automatic repeal of amending Acts that have commenced.

Staged Repeal Program

The Program is an annual process that provides for the review, remake and repeal of statutory rules (principally Regulations). The Program is coordinated centrally by DPC and PCO.

Under section 10(2) of the *Subordinate Legislation Act 1989* (NSW), a statutory rule published on or after 1 September 1990 is repealed on the fifth anniversary of the date on which it was published (in the case of a statutory rule published on 1 September in any year), or on 1 September following the fifth anniversary of the date on which it was published (in any other case). From September each year, PCO sends a letter to the head of the agencies that administer each statutory rule due for automatic repeal on 1 September in the following year advising that the statutory rule is due to be repealed on that date. Agencies must advise Parliamentary Counsel of the intention to either (a) let the statutory rule lapse; (b) remake the statutory rule (with or without changes), or (c) postpone the staged repeal of the rule.

Postponement of the repeal of a statutory rule can be made by order of the Governor under section 11 of the *Subordinate Legislation Act*. This occurs by the Minister responsible for the relevant rule writing to the Premier requesting the making of an order to postpone the repeal of that particular rule for one year, including the reasons for such a request. The postponement of the repeal of a statutory rule through this mechanism cannot be done more than five times. The responsible Minister must also provide notice to the NSW Parliament's Legislation Review Committee if a statutory rule is proposed to be postponed for a third, fourth or fifth time. Subject to these requirements, the order can be made to postpone the statutory repeal of a statutory rule for one year.

There are a limited number of statutory rules exempted from the staged repeal process (see Schedule 4 of the *Subordinate Legislation Act*).

PCO reports on the numbers of statutory rules dealt with under this Program in DPC's annual report. In the 2012-13 annual report, it is noted that as at 1 July 1990 there were 976 instruments and as at 1 September 2012 there were 345.

Further information about the Program is set out in Premier's Memorandum M2008-01 *Staged repeal of statutory rules* (http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/2008/m2008-01_staged_repeal_of_statutory_rules).

Statutory reviews of legislation

In NSW, new principal Acts (and occasionally new Divisions or Parts inserted into existing Acts) generally contain a provision requiring the Act be reviewed after a specified period (for example, three or five years after the date of assent) to determine whether:

- (a) the policy objectives of the Act remain valid; and
- (b) the terms of the Act remain appropriate for securing those objectives.

These statutory review provisions also require reports on the outcome of reviews to be tabled in each House of Parliament.

Statutory reviews enable an assessment of whether an Act is still needed and if so, an assessment of whether the Act's provisions are operating as intended to achieve the Act's objectives.

NSW Government's One on Two off Policy

This Policy implements a NSW Government election commitment to impose a "one on, two off" requirement for new legislation, and to introduce a target to reduce regulatory costs for business and the community by 20 per cent by June 2015.

The Policy essentially requires that for each new principal Act or Regulation added to the statute book, two must be repealed.

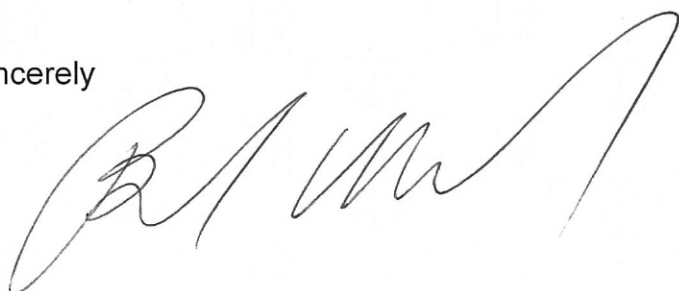
The Policy also requires that the regulatory burden imposed by new principal legislative instruments within each portfolio is less than the regulatory burden removed by the repeal of principal legislative instruments from the same portfolio.

Further information about the Policy is set out in Premier's Memorandum M2012-02 *Red tape reduction – new requirements*

(http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/2012/m2012-02_red_tape_reduction_-_new_requirements)

If the Standing Committee requires further information, please ask your officers to contact Kathrina Lo, Director Justice Policy, NSW Department of Justice on telephone 02 8061 9226 or email kathrina_lo@agd.nsw.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'BRAD HAZZARD', with a large, sweeping flourish extending from the end of the signature.

BRAD HAZZARD MP
Attorney General

15 SEP 2014