

**STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW**

OBSOLETE LEGISLATION REPEAL BILL 2015

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 14 MARCH 2016**

Members

**Hon Kate Doust (Chair)
Hon Brian Ellis (Deputy Chair)
Hon Mark Lewis
Hon Amber-Jade Sanderson**

Hearing commenced at 1.29 pm**Mr DAVID HILLYARD****Acting Commissioner for Consumer Protection, Department of Commerce, sworn and examined:****Ms PATRICIA BLAKE****Senior Policy Officer, Consumer Protection, Department of Commerce, sworn and examined:****Dr JAMES THOMSON****Senior Assistant State Solicitor, State Solicitor's Office, Department of the Attorney General, sworn and examined:**

The CHAIR: Thanks very much for coming in to speak with the committee today. Now, we are in a bit of an interesting arrangement. Hon Brian Ellis and myself are both here today and Hon Amber-Jade Sanderson is on the phone. She is listening in and she may very well ask a question. We are just trying some different arrangements to accommodate some work–family balance issues. So, Parliament is trying to be a bit more modern, if you like. So if you bear with us —

Dr Thomson: We cannot have that; we cannot have that!

The CHAIR: We are giving it a go, Jim; giving it a go. So if you just bear with us, this is our first go, so you are the guinea pigs today, if that is all right. We have got a couple of formalities that you are probably familiar with to go through before we actually start. So, on behalf of the committee, firstly, I would like to welcome you to the meeting, and before I begin, I must ask that you take either the oath or the affirmation, and, hopefully, you have got that in front of you.

[Witnesses took the affirmation.]

The CHAIR: Thank you very much. Now, each of you will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

The Witnesses: Yes.

The CHAIR: Yes from everyone—great. As you know, these proceedings are recorded by Hansard and a transcript of your evidence will be provided to you. To assist both the committee and Hansard, if you could please quote the full title of any document that you refer to during the course of this hearing for the record, and if you would also be aware of the microphones and try and talk into them. Ensure that you do not cover them with papers and make noise near them. I also remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. That is the formalities out of the way. Thank you very much.

As I said, Hon Brian Ellis and myself and Hon Amber-Jade Sanderson, we have only just started to have a look at this Obsolete Legislation Repeal Bill 2015. The bill was read into our chamber late last year, and then after some discussion the minister decided to refer it to us, and so we are just starting to look at it. On the surface of it, it looks a relatively straightforward piece of legislation,

but we thought it would be useful to go through some of the clauses, and there are a number of questions that we had that we thought you would be able to provide the answers to, to assist us to pull our report together for the Parliament.

I understand that there are both the AG and Commerce represented here. I do not know whether you want to start off with a statement or whether you are happy to go straight into questions today.

Mr Hillyard: Well, we can do a statement in relation to the way in which the legislation operated and where we think we are at today as to why it is being repealed, but we are just as happy to answer questions as we go.

The CHAIR: Yes. We will probably get the same information out of the questions, really.

Dr Thomson: Can I just make a somewhat unusual statement only because of what is in the bill and why I think I am here; I am not sure. Can I just say I am conscious that some of my comments will involve legal advice—legal advice regarding, for example, whether, and, if so, the extent to which, subsequent or later Western Australian legislation repeals expressly or impliedly earlier legislation which the WA Parliament adopted, and both the adopted WA legislation and the adopted UK legislation is the earlier legislation. Therefore, to the extent that legal advice is privileged and to the extent that the State Solicitor's Office normally generally provides advice to the executive government, as part of the executive government, can I just indicate that it would be appreciated to the extent that the Attorney General or State Solicitor may want to preserve that legal professional privilege, that to that extent the committee might treat comments I make that involve perhaps legal advice more in a private manner than they might otherwise treat other comments that are made before parliamentary committee. I am putting that reasonably gently. I am more than happy to try and assist. I am not an expert necessarily in the areas that part 3 deals with. I am going to endeavour, to the greatest extent possible, to assist the committee, but I just thought, against that background, I ought to just make that comment.

The CHAIR: I think you are very politely asking if you can give your evidence in private, are you not?

Dr Thomson: In private in the sense I do not mind if there is no forum—we have got other public servants here. We have got, I understand, maybe no-one from the public here in that sense. I am more than happy to make the comments. It is just a matter after the transcript is taken if the committee considers that some of the matters that I may comment on might be legal advice and be treated appropriately. I am sure the Attorney General and people would want me to assist the committee and I would like to do that, but I just, against that background—I have appeared before other committees and there has not been a problem, so I just thought I would make that—I do not suggest that the session be closed or anything like that.

The CHAIR: Okay. We will take that on board. I think most of the questions we have are reasonably general, and I think in part 3, when we get to those questions —

Dr Thomson: My answers might be reasonably general too, so it will not be in the sense of a detailed —

The CHAIR: I think where we want to go on the couple of the areas in part 3 probably really only require general information, not complicated legal opinion.

Dr Thomson: Yes, sure. I appreciate that. We will try and work through it so the committee gets what it wants.

The CHAIR: Yes. At this point I do not think we had any issue around the repeal or the timing of the repeal of those acts at all.

The Committee Clerk: Excuse me. I am just going to ring.

Hon BRIAN ELLIS: It has dropped out.

The CHAIR: Sorry.

Hon BRIAN ELLIS: Can that question be taken on notice?

The CHAIR: Yes. That might be the way around it.

Hon AMBER-JADE SANDERSON: Hello.

The CHAIR: Are you back again?

Hon AMBER-JADE SANDERSON: Yes, I am back. I do not know what happened there. Thank you.

The CHAIR: We have got a couple of questions about at least one of the acts under part 3, but I think it is more of a general nature in terms of the information you provide to us.

Dr Thomson: Yes.

The CHAIR: I do not think we have had any difficulty with the actual repeal of those acts; just some of the language that we wanted to clarify.

Dr Thomson: I will try my best.

The CHAIR: I am sure you will; I am sure you will. We have not had to do one of these bills for quite some time, so we are still sort of working out how we work through them. Can we just —

Dr Thomson: Sorry to interrupt you. Can I make one or other point?

The CHAIR: Sure.

Dr Thomson: I am going to, when I answer your questions, depending on the questions, refer to some scribbled notes I make, rather than any document, just to keep my old memory alive.

The CHAIR: Is that scribbled document something you want to table later on?

Dr Thomson: No, just my scribbled notes.

The CHAIR: That is fine; that is perfectly fine.

Dr Thomson: Thank you.

[1.40 pm]

The CHAIR: That is perfectly fine.

We will start out with the questions, and I think the first few are very general. Why is this statutes review bill called the Obsolete Legislation Repeal Bill 2015, rather than using the established naming conventions for this type of bill; that is, statutes review or repeals and amendments bill? Is this a deliberate shift in terminology; and, if so, to what end?

Dr Thomson: It might be. I cannot speak for the drafting or instructing officer, but it might be because some of the bills referred to in part 3 might be considered to be obsolete. In that sense there has been some debate in previous reports of parliamentary committees of the Western Australian Parliament about whether the bill was obsolete, and therefore ought to be repealed. To the extent that it might be considered that the earlier legislation is not already repealed, it might be thought that the earlier legislation ought to be amended or repealed because it is obsolete. That is one of the issues around which one might make some comments about whether or not the earlier UK legislation, which has been adopted by the Western Australian Parliament, has in fact been either expressly or impliedly repealed already by subsequent Western Australian legislation, or whether that earlier UK legislation is merely obsolete. To whatever extent, either of those alternatives might be the correct alternative. Without speaking for the government, I think the intention is to remove from the statute books the legislation in part 3.

The CHAIR: What was the process for identifying and selecting the specific pieces of legislation in this bill for repeal? I suppose the question is: of those ones that were selected, why now? We had

a look back to 2012, when we had an earlier piece of legislation and we dealt with in our seventy-ninth report to the Parliament, and there was quite a long list of acts that could have been repealed. They came in different categories, if I recall, at the time. But I know the committee at the time sort of questioned why they all were not going to be repealed, and in some cases I think there were some amendments as well. I am just wondering what determines which acts will actually be up for repeal: how do you identify that?

Mr Hillyard: I think from the Department of Commerce's perspective it was really a matter of reviewing what was associated with some of this legislation and whether it was still being used. In the case of the Sunday Entertainments Act 1979, it was about whether or not we thought there was any value-adding in terms of the operation of that legislation, and we would then put forward a position about whether it was in the best interests to keep that legislation rolling along.

Ms Blake: Certainly with that initiative it came up through, I guess, what is better termed a "red tape reduction process". All the departments were asked to identify legislation that would be considered to be useful in a red tape process, so the Sunday Entertainments Act from the Department of Commerce was identified for that. The Business Licensing Amendment Act came up then during the process of drafting those bills, because under another bill that is in the other house, under the —

The CHAIR: Licensing provisions.

Ms Blake: — licensing provisions we were dealing with the Debt Collectors Licensing Act and Auction Sales Act. Parliamentary counsel identified this business licensing act as sitting there on the statute books, it has done its job as far as it can do, and so it was a recommendation from parliamentary counsel at that time.

The CHAIR: In that situation you will actually need to have this bill passed before the licensing provisions bill is passed?

Ms Blake: No.

The CHAIR: It will not have any impact at all?

Ms Blake: No. This Business Licensing Amendment Act is long gone; it was a 1995 act. All bar parts 2 and 3 of it have been implemented and have moved on; parts 2 and 3 actually cannot be implemented anymore because the Auction Sales Act and the Debt Collectors Licensing Act have moved beyond that point anyway of that act and are now being further amended again. It is impossible to implement parts 2 and 3, so that is why it has been put forward by parliamentary counsel.

The CHAIR: Mr Thomson, do you have anything you want to add to that?

Dr Thomson: I think the reason why the bills in part 3 have been chosen is because there were a number of statutes that were identified by the seventy-ninth report of the standing committee as being, for example, probably obsolete—I am looking at the 1832 Bills of exchange (non-payment) comment, and, again, the Bills of Exchange (day for payment) (1836) act. The act is probably obsolete, and there are other similar equivocal statements—purposely equivocal and properly equivocal—as to whether or not the earlier imperial legislation was either repealed, expressly or impliedly, or was obsolete, and there was some doubt about that. I think the State Solicitor's Office has been going carefully through those statutes, and the ones in this 2015 bill are the ones the State Solicitor's Office, and obviously the Department of the Attorney General and the Attorney General, thinks now falls within the category that you can say they have either been repealed or they are obsolete. I presume the lawyers are, some people might say unfortunately, very cautious, but the State Solicitor's Office is going carefully through these pieces of legislation. I am sure that when your research officer reads some of this old English legislation, it is not as crisp in language and you have to really work out what it is doing to find out its correspondence with

subsequent legislation. I think that is the reason why only some at this stage have been chosen to get into a bill before the house.

The CHAIR: Thanks for that. The next question is around the Housing Societies Act 1976. We would like to know whether you could explain the process the minister went through back in 2009 or 2010 to be satisfied that the registration of the housing societies referred to in section 24 of the now repealed Housing Societies Act 1976 had been cancelled. If you do not have that answer, I am happy to take it on notice.

Mr Hillyard: It is not a Commerce issue at all.

Dr Thomson: And not an Attorney General's issue so far as I am aware. I do not know which minister that legislation falls under.

Ms Blake: It would be the Minister for Housing.

Dr Thomson: The Minister for Housing.

The CHAIR: Housing? It is a banking society—housing societies.

Ms Blake: But it is administered by the Housing Authority, so it is the Minister for Housing.

The CHAIR: Okay. We will sort that out and track that information down ourselves.

The next question comes back to the Sunday entertainments matter that you referred to earlier. Will the Sunday Entertainments Regulations 2006 also be repealed now that the substantive act will be repealed? That is the first part of the question.

Mr Hillyard: Yes, they will.

Ms Blake: The regulations fall away because the substantive act has been repealed, but we will have to make consequential amendments to a number of other regulations that refer to those regulations. I think parliamentary counsel has given us a list of those consequential regulation amendments that will need to —

The CHAIR: There is a second part to that. In relation to section 5 under part 2 of the Criminal Procedure Act 2004, which refers to the Sunday Entertainments Act 1979, why has that not also been amended to remove the reference?

[1.50 pm]

Ms Blake: It will ultimately need to. Once the act has been repealed, that will be tidied up in a subsequent process. Because this is to do with the repeal of the whole act, Parliamentary Counsel have given us the instruction to do this and then we will —

The CHAIR: For the sake of red tape.

Ms Blake: Sure, yes.

The CHAIR: Is there any reason why it could not have been dealt with at the same time?

Ms Blake: I am not sure. It would have to be —

The CHAIR: I am just thinking—we talk about reducing these tasks and the paperwork involved.

Ms Blake: Sure. I can raise that with Parliamentary Counsel.

The CHAIR: I am wondering if that is something that we perhaps need to note in our report, or recommend that it be dealt with.

Mr Hillyard: We think it would be related to the issuing of infringement notices so that they are then taken out because the penalties under this legislation can either be a prosecution in courts or we can issue an infringement notice. We presume those regulations would be the ones that would be re-amended.

The CHAIR: Okay.

Mr Hillyard: I cannot see why it would not be done at once.

Hon BRIAN ELLIS: It would make more sense for an efficient process, would it not? That is the whole point of the bill.

Mr Hillyard: It would, and I am only guessing at this, but I think that because there is a possibility that there are offences that have occurred during the period up until the point that it is repealed, and you may have an investigation or a prosecution which is ongoing past that date of repeal, that that penalty notice might still be in force. There are periods of time which are mandatory for the defendants to respond to those infringement notices and Parliamentary Counsel might be thinking that that needs to remain open because if you take away both parts, then that prosecution angle of that infringement notice would fall away straightaway.

Hon BRIAN ELLIS: Okay.

The CHAIR: We have a copy of a Premier's circular. Sorry, we tried to be paper-free today and then the system went down so we now have paper all over the place; it gets a bit confusing. This is the Premier's Circular 2010/01 that is specifically about statutes, repeals, and minor amendment bills. Quite often when we get these bills through our chamber, we are told in the second reading speeches that they are about making minor changes to the bills: crossing the t's and dotting the i's, maybe tidying up the language, and removing some of the archaic and obsolete parts of the legislation. From time to time when we have had these types of bills, we have found that sometimes other matters are slipped into these bills that appear to be more onerous than those simple changes. When we looked at this issue around the Sunday Entertainments Act, it appeared to be more than just changes that would normally be seen in an omnibus bill. We are wondering why it was included in this type of bill. Was it just about being expeditious and getting it off the books with everything else, or was there some other thinking behind it?

Ms Blake: Again, as I said, it was part of the red tape reduction. When we put all the matters through to cabinet and then to approval for drafting, they were all supposed to be part of one whole-of-government approach. Then within Parliamentary Counsel the decision was made to separate them out into like-for-like bills, I guess, so that all repeals would be dealt with in one bill and the licensing provisions would be dealt with in another bill, then you have the residential tenancies, hence that is why it has come through in this bill. Its purpose is red tape reduction. It is removing unnecessary regulations.

The CHAIR: Are you able to explain to the committee exactly what that piece of legislation provided for?

Mr Hillyard: The Sunday Entertainments Act?

The CHAIR: Yes.

Mr Hillyard: Effectively, it was about preventing paid entertainment from being held on Sundays, Christmas Day and Good Friday. The legislation has been around for quite a considerable period of time and over that long distance, various ministers have granted exemptions from the legislation, either for practical or day-to-day purposes. We have been processing applications just today from people who want to open this coming Good Friday.

The CHAIR: What sort of applications would they be for?

Mr Hillyard: They are applications from, say, an ice-skating rink, all the cinemas that are going to show movies over that time, and family entertainment centres like Pot Black and those sorts of places. They all apply for an exemption so that they can open usually from something like lunchtime on Good Friday. They have to make that application each year, and each year it is granted.

The CHAIR: If this act is repealed, will they no longer have to apply for any sort of exemption and anyone can simply operate on Christmas Day or Good Friday, or any Sunday?

Mr Hillyard: In the main, that is what has been happening for at least the last 10 years. Anyone who knew about it and applied for it was granted those times.

The CHAIR: Prior to the decision being made to repeal this act, was there any consultation with any stakeholders?

Ms Blake: Yes, there was.

The CHAIR: Who were they?

Ms Blake: It was advertised statewide. It was put on the department's website and we received I think in the vicinity of six or seven submissions, all in favour bar one. I cannot remember the gentleman's name, but he was an Anglican minister or was within the Anglican parish. He raised the concern about events happening on Sundays, Good Friday or Christmas Day that would interfere with parishioners going to church. I think it was more in terms of access, like if there were street markets and things like that, which would cause difficulties. As we responded to him, those sorts of issues are still dealt with. For the Easter markets that happen in Rockingham, every year they apply for a permit for Good Friday. They still have to comply with liquor licensing laws and they still have to comply with local government laws around access, parking and issues like that. The only thing they will not need to apply for if this act is repealed is permission to charge a fee for people to go in.

The CHAIR: Into the event?

Ms Blake: Into the event. If it was a free event, there is no need to ask for a permit; because they charge an entry fee, they need to ask for a permit.

The CHAIR: With the repeal of this act, would there be any impact upon any of those days being treated as an ordinary day of work?

Mr Hillyard: No, I do not think so. It would not make any difference to the employees because they would have been working on those days, in any event, with a permit.

Hon BRIAN ELLIS: Does this possibly also apply to an AFL game on Good Friday?

Mr Hillyard: In days gone by, it would have prevented those things. I think we have one example when we had a rugby team here in Western Australia and an application had to be made because they held a rugby game on Easter Friday. They were granted a permit to have that game on that day. Yes, if there were not the general exemptions that have been published about things like football games, then you would not have had a football game on a Sunday and likewise a race meeting.

The CHAIR: Thanks for that information. We were not too sure why that particular act had been included here.

The other thing that we thought was interesting, given that that Premier's circular had been in place for some time, was: the circular provides that a matter must not be included in an omnibus bill if it affects any existing right, obligation of power or duty; or changes any process provided for in legislation; or it implements a change in government policy; or is an issue that may be controversial or legally or otherwise contentious. The committee has formed the preliminary view that the repeal of the Sunday Entertainments Act 1979 offends these four principles. We were just wondering if you could please clarify for us the following issues. You have already said that, yes, you have had this advertising and some sort of consultation. Did you receive any legal advice about the change?

[2.00 pm]

Ms Blake: Sorry, in terms of whether it would fit within this type of bill?

The CHAIR: Yes.

Ms Blake: I guess the short answer is no, other than parliamentary counsel grouping it in this bill. I guess the issue in terms of the oversight, both in referring it to the committee in the first instance

and in it being considered an omnibus bill is its origin, because—I know I keep coming back to this—these matters were all brought in as red tape reduction, not as an omnibus bill, and so it has then morphed into something that is now an omnibus bill. It clearly fits within that definition. So at that point, no, we have not had any advice as to whether it fits within that format.

The CHAIR: The committee would be interested in having a look at those submissions that you received from those people. If you are able to provide us with copies of that, we would appreciate it. It just helps to better educate us about people's views on the issue.

The second part of that question is we would be interested in the rationale for the decision to include the repeal of this act in the bill and how this addressed the principles of the Premier's circular.

Ms Blake: Okay. We can take that on notice, thank you.

The CHAIR: That is fine.

Dr Thomson: Could I just ask a question there, just for my own edification?

The CHAIR: Sure.

Dr Thomson: I am not familiar with that circular, but can you just tell me what the circular is directed at? Is it directed at what you referred to earlier on as a type of statute law revision?

The CHAIR: Yes, it is.

Dr Thomson: I wonder, in light of that—it is a question that perhaps my colleagues could think about—in relation to my earlier remarks to you, which were off-the-cuff, about the difference in the title of the bill, I wonder whether this bill falls within the title of the Premier's circular. That is, I am not saying one ought not to have regard to anything the Premier or ministers or the opposition or other people say, but that might be one clue to parliamentary counsel's thinking—that this circular was not strictly relevant to this bill. I may be totally wrong.

The CHAIR: If you go down just past the first paragraph, it says that examples of matters that may be suitable for inclusion include the repeal of obsolete legislation, so I think it is picked up under the Premier's circular.

Dr Thomson: I am not doubting that it is; I just raised that for an issue my colleagues might look at, and I have not looked at the long title of the bill, which is not very big at all. But that was just a question they might raise with parliamentary counsel to get their thinking on it. I do not necessarily disagree with you at all.

The CHAIR: Thank you for that.

It is not a long afternoon; we only have a few more questions! It is a relatively straightforward bill. During the second reading speech for the bill, the Attorney General referred to a sufficient level of government oversight already existing for the regulation of public entertainment on Sundays through local government and other regulations. We were just wondering if you could please provide to the committee a list of all primary and subsidiary legislation and any relevant local laws in support of the Attorney General's statement. I am happy to take that on notice.

Mr Hillyard: That would be good!

The CHAIR: We did not expect you to come up with that today, but we could not find any information about that so we just thought it would be useful for us when we are drafting this report to be able to have a look at what else was in place.

Mr Hillyard: In very broad terms, we are talking about liquor licensing and the local government controls over what is happening at a particular event at any particular time, so it is where the event is being held and what it is involving.

The CHAIR: Okay. We look forward to seeing the specifics, then. Thanks.

The next question is around the Bills of Exchange (Day for Payment) Act 1836, which I think you have already referred to. We just wondered why it has taken so long for the Bills of Exchange (day for payment) Act 1836 and the Bills of exchange (non-payment) Act 1832 to be repealed, given that the act that superseded them, the commonwealth Bills of Exchange Act 1909, has been in place since 1909.

Dr Thomson: I think the reason for that is that there may be some legal debate as to whether or not the 1909 act covers the field.

The CHAIR: Right.

Dr Thomson: That is, whether the 1909 act is inconsistent with the 1836 and 1832 acts. When you look at the specifics of the two 1832 and 1836 acts, they are very detailed. One of my colleagues indicated to me before the hearing—I will use her terminology—that these two acts are merely snippets of a bigger framework of bills of exchange. There is that question, the general question: does the commonwealth act cover the field? We do not want to have a constitutional class here. One of the issues is whether there are any type of direct provisions in the commonwealth act that you might say are inconsistent with the 1832 and 1836 acts. It may be that there are some provisions that get you reasonably close, and by “reasonably”, I mean pretty close: section 70(5) of the 1909 act in relation to the 1836 act; and, in relation to the 1832 act, there are two provisions, section 48(2) of the 1909 act, and section 50(6)(b) of the 1909 act. If I can give you another example, it is reasonably complicated but I will try to set it out. I was informed this morning—I think this is something that some people were looking at a little while ago—that there is an 1884 WA bill of exchange act, and that act repeals all other bills of exchange acts, obviously, that apply in Western Australia, which are contrary to or inconsistent with the 1884 Western Australian act. So the question then became: are the 1832 and/or the 1836 UK acts, which were adopted by the WA Parliament, inconsistent with or contrary to the 1884 act? We would get differing legal opinions on that. But assume you said yes, they were contrary to or inconsistent, then they would no longer be there. They would be repealed. If you said they were not inconsistent, then you go to section 7, part 1 of the 1909 act, which specifically repeals or says that the 1884 WA act ceases to apply to bills of exchanges after the commencement of the 1909 act, which I understand commenced in 1910. Therefore, you might have the 1884 act that has gone for inconsistency, but not the 1832 and 1836 acts. But if you say that the Bills of Exchange Act 1909 covers the field, then of course they are gone, but you might want to argue—I am not arguing this at all—that the mere fact that the 1909 legislation identifies particular pieces of state legislation, including all the other states—I do not think this is correct—means it does not cover the field. Lawyers like these questions; I think that is the reason why it has taken so long and people have discovered—I am not a computer buff, but it has taken people a long time to actually try to work through the British legislation, which never expressly repealed earlier provisions; it just layers amendments on top of amendments. I think that is the reason. It has just had to be very careful. As far as I know, no-one has used the 1832 or 1836 acts; it has never been challenged and everyone has just assumed, perhaps correctly, that it is the case that the 1909 act is covering the field.

The CHAIR: It has certainly been a long time in its gestation to come to the decision, has it not? Obviously someone has decided either one option or the other option to get us to the point now, have they not?

Dr Thomson: I think they have. The states, as I understand it, particular states, have been looking at that and have been going back and confirming and coming back to that view. As I said, this morning I was pointed to a very obscure piece of legislation that I think was touched upon by a good parliamentary counsel who has now retired, the 1884 act, and that had to be thought about, so again, it is a matter of caution. I presume that that is the delay, if I can call it the delay. You will be aware as well as I that there is a WA Law Reform Commission report on repeals of acts. That is

still being looked at, and I suppose people are busy doing real-world cases in the SSO and other places, so it is a matter of juggling priorities.

[2.10 pm]

The CHAIR: I suppose the other question, given these two particular acts were highlighted in that earlier report 79: we have had this additional four-year period before we have had them on the table again for consideration.

Dr Thomson: Yes, as I said, I am not the instructing officer and all that, but I know the State Solicitor's Office, like all other places, is busy and this requires careful looking at, as all legal questions do. As I say, the legislation, when your research officer reads it—really, if I can confess to the committee I read it on the weekend and went over it very closely this morning, and a colleague of mine was helping me—that provision I referred you to, section 48(2), picks up an obscure point, because I think the 1832 act talks about when you can protest a non-payment. But in the paragraph that does that in the 1832 act, it also indicates that if you get to that point, you do not need to present the bill of exchange for payment; it allows you to skip that. It is that skipping bit that section 48(2) actually picks up. So, there, it is obviously covered, but I am not sure that people picked that up in the very long paragraphs that some of these imperial acts have.

The CHAIR: We might get a similar response to our next question, which is about the Executors Act 1830. Things move very slowly in Western Australia, don't they, in terms of change? Again, the question is: why has it taken so long for the Executors Act 1830 to be repealed, given the length of time that the Administration Act 1903 has been in operation?

Dr Thomson: I will not go over all that again, but I understand that section 13(2) and (3) of the Administration Act are relevant here. Other than that, against a general background, I cannot answer the committee further as to why, since your report; it may be that this advice was being looked at carefully and it was going to be included in an earlier bill, I do not know, and then pulled for some reason. Again, sorry, I am an old fellow and I do not know that you rush into change, being a lawyer, so sometimes slowness is a good thing and other times it is terrible.

The CHAIR: Thank you for that. Have you any comments you want to add about the Executors Bill?

Dr Thomson: No.

The CHAIR: That is fine. The final question we have is in relation to the Infants' Property Act 1830. We wonder if you could please explain why this statute is now considered obsolete and what other legislation exists, if any, that deals with property law relating to those classes of people. Just to remind you, the long title of the statute states —

An Act for consolidating and amending the Laws relating to Property belonging to Infants, Females Covert, Idiots, Lunatics, and Persons of Unsound Mind.

We know that is very old language with the idea of infants, married women and idiots and lunatics being bound up in the same care provision. We were wondering what has changed now and is there any other legislation that picks up on those areas.

Dr Thomson: I understand there are a couple of reasons: the first reason is, of course, as you have pointed out and indicated, and everyone would agree with you in 2016, if not earlier, that mere language is archaic and obsolete, and it is made archaic and obsolete not only by moral values and sense of things but, I am told, for example, the Age of Majority Act, which now talks about majority being at 18, the Married Women's Property Act 1892 and 1895, which were repealed by the Acts Amendment (Equality of Status) Act 2002 and the Domicile Act 1985 deal with "married women" and not the more archaic term. Again, I am told that the Transfer of Land Act and the Property Law Act provide a system of freehold tenure not copyright, which is another ancient and archaic term. The second reason has more to do with the substance of it, and I am told that a number

of pieces of state legislation now substantively deal with the protections and the points of law that one would think are quite normal and natural and ought to be there. Again, I am told these are the Transfer of Land Act 1893, Supreme Court Act 1935, Administration Act 1903, Public Trustee Act 1941, Land Administration Act 1997, Legal Representation of Infants Act 1977, Trustees Act 1962, and the Guardianship and Administration Act 1990. The third reason I am told, and I have not myself gone into detail, but I am sure this is the case, the 1830 act would most likely contradict provisions in the Equal Opportunity Act 1984, and I am told that it is thought that the United Kingdom Parliament has repealed the 1830 statute. The SSO has gone through each of the numerous provisions in that act and, for example, refers to particular provisions of those acts that I have mentioned, for example, section 20 of the Transfer of Land Act and section 12 of the Public Trustee Act, so a fair amount of detail has gone into considering each of those and coming to the conclusion either the earlier provisions have been repealed, expressly or impliedly or they are just obsolete and there is no need any more for that particular type of protection or rights.

The CHAIR: The question again is: Why has it taken so long, given that the first of those changes that would have impacted upon that legislation seemed to commence towards the end of the nineteenth century—I think the 1890s—all the way through to the 1980s with the equal opportunity legislation. You are still looking at a significant window of time when this could have been repealed, so the question is: why so long?

Dr Thomson: I think, again, this is myself speaking and not the government or, I suspect, the State Solicitor's Office. Western Australia, I think, compared with other states, maybe New South Wales and Victoria, came rather late to the question of looking at Imperial statutes that have either been inherited, adopted or naturally formed part of Western Australian law. It is a long time ago now, but the Western Australian Law Reform Commission, I think, was the first real attempt to try to survey some of that legislation and make some recommendations. Then, report 79 was the other one. In addition to my earlier ramblings about why it has taken so long, I suspect the other reason may be that in governments priorities of legislation and what the community thinks ought to be done and election promises, this is not an immensely — I do not want to use the term “sexy” —

The CHAIR: A sexy piece of legislation!

Dr Thomson: Yes; therefore, I suspect when governments change, the SSO puts the file away and waits for the next government to come in or it might send a memo to the minister and the minister says, “I've got other priorities.” I think that may be also, apart from the need to closely look and consider and read the legislation, I suspect. I have never known one of these bills to have a high priority in the legislation committee of cabinet and other places.

The CHAIR: I imagine that is the case. That is all we really wanted to ask you about today. We know there are a couple of things you will provide to the committee, and we appreciate that. I think we are okay in terms of the information you will provide to us and we do not need to go back over that. We certainly appreciate the fact that you have come to meet with us today and provide all that information, and it certainly will be very useful for us when we pull together our report. Thank you very much.

Hearing concluded at 2.20 pm
