



THIRTY-NINTH PARLIAMENT

REPORT 99

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

INQUIRY INTO THE STATUTE BOOK

Presented by Hon Kate Doust MLC (Chair)

June 2016

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

‘6. Uniform Legislation and Statutes Review Committee

- 6.1 *A Uniform Legislation and Statutes Review Committee* is established.
- 6.2 The Committee consists of 4 Members.
- 6.3 The functions of the Committee are —
- (a) to consider and report on Bills referred under Standing Order 126;
 - (b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;
 - (c) to examine the provisions of any treaty that the Commonwealth has entered into or presented to the Commonwealth Parliament, and determine whether the treaty may impact upon the sovereignty and law-making powers of the Parliament of Western Australia;
 - (d) to review the form and content of the statute book; and
 - (e) to consider and report on any matter referred by the Council.
- 6.4 In relation to function 6.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill or proposal may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.’

Members as at the time of this inquiry:

Hon Kate Doust MLC (Chair)	Hon Brian Ellis MLC (until 6 April 2016)
Hon Mark Lewis MLC (Deputy Chair)	Hon Samantha Rowe MLC (until 23 February 2016)
Hon Amber-Jade Sanderson MLC	
Hon Phil Edman MLC (from 6 April 2016)	

Staff as at the time of this inquiry:

Michael Ryan (Advisory Officer)	Tracey Sharpe (Committee Clerk)
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Government Response

This Report is subject to Standing Order 191(1):

Where a report recommends action by, or seeks a response from, the Government, the responsible Minister or Leader of the House shall provide its response to the Council within not more than 2 months or at the earliest opportunity after that time if the Council is adjourned or in recess.

The two-month period commences on the date of tabling.

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**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW**

INQUIRY INTO THE STATUTE BOOK

1 INTRODUCTION

- 1.1 The Standing Committee on Uniform Legislation and Statutes Review (Committee) terms of reference 6.3(d) enables the Committee to review the form and content of the statute book.
- 1.2 On 16 June 2014, the Committee resolved to commence an inquiry into the statute book with the following terms of reference:
- to identify the current process for reviewing the statute book utilised in Western Australia
 - to identify the current process for reviewing the statute book utilised in other jurisdictions
 - any other matter relevant to the inquiry.¹

2 PREVIOUS COMMITTEE INQUIRIES INTO THE STATUTE BOOK

- 2.1 In November 2011, the Committee of the 38th Parliament commenced an inquiry to review the form and content of the statute book. On 15 November 2012, that Committee tabled Interim Report 79, *Inquiry into the form and content of the statute book* (Report 79). The Committee made four recommendations, including that the Government should introduce an omnibus bill repealing obsolete acts noted in Report 79.
- 2.2 The Attorney General advised the Committee of the Government's support of the recommendations and commitment to repealing obsolete legislation.²
- 2.3 Hon Colin Barnett MLA, Premier also confirmed his commitment to repealing obsolete legislation and advised the Committee that a bill to repeal obsolete legislation (which would later become the Statutes (Repeals and Minor Amendments) Bill 2013), largely informed by Report 79, was being developed to repeal obsolete legislation.³

¹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 87, *Inquiry into the Statute Book—Terms of Reference*, 17 June 2014.

² Hon Michael Mischin MLC, Attorney General, Letter, 22 July 2013. All correspondence noted in this report is available on the Committee's inquiry webpage.

³ Hon Colin Barnett MLA, Premier, Letter, 12 November 2013.

The Premier highlighted that the Committee's findings complemented his own commitment to a 'Repeal Day' (see paragraph 3.1) which would '*provide an opportunity for Parliament to focus on removing obsolete Acts.*'⁴

2.4 On 21 May 2013, the Legislative Council referred the Statutes (Repeals and Minor Amendments) Bill 2013 (2013 Bill) to the Committee.⁵ The 2013 Bill repealed only one Act and amended another 41 Acts.

3 REVIEW OF THE STATUTE BOOK

3.1 In Western Australia, the Government manages the statute book through the following processes.⁶

- The Government undertakes to annually 'clean out' obsolete legislation. The Premier announced the inaugural 'Repeal Day' in 2012, to demonstrate the Government's commitment to '*reducing unnecessary red tape.*' The Premier advised that the findings of the Committee would be taken into account in the operation of Repeal Day.⁷
- Review clauses in particular acts which mandate fixed legislative reviews. For example, sections requiring that an Act be reviewed after five years.⁸
- Recommendations by law reform bodies, such as the Law Reform Commission of Western Australia, are considered by the Attorney General.⁹
- When amendments to legislation are being drafted, Parliamentary Counsel's Office seeks to identify and initiate required changes to existing legislation. The Minister responsible for administering the legislation ultimately decides whether to initiate action to review, amend or repeal legislation.¹⁰

3.2 The Committee sought information from State and Territory Attorneys General and international jurisdictions on the processes used by their governments to review the statute book and any other information on recent reforms to streamline the processes. A summary of the responses received is attached at **Appendix 1**.

⁴ *ibid.*

⁵ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 81, *Statutes (Repeals and Minor Amendments) Bill 2013*, 8 August 2013.

⁶ See for example, Hon Colin Barnett MLA, Premier, Letter, 12 November 2013.

⁷ Hon Colin Barnett MLA, Premier, *Inaugural Repeal Day to cut red tape, Media Statement*, Perth, 8 November 2012.

⁸ For example, *Auditor General Act 2006*, s 48.

⁹ Hon Colin Barnett MLA, Premier, Letter, 12 November 2013, p1.

¹⁰ *ibid.*

4 COMMITTEE COMMENT

- 4.1 The Committee notes that other jurisdictions have innovative approaches to how they consider the statute book and repeal obsolete legislation.
- 4.2 The Committee's recent inquiry into the Obsolete Legislation Repeal Bill 2015 has strengthened the Committee's belief that the repeal of obsolete legislation should be given a greater priority by the Government. The Committee notes the time taken since Report 79 to introduce this bill into the Parliament.¹¹
- 4.3 The Committee queries whether more robust systems would result in greater efficiency in the repeal of obsolete legislation. Options could include teams dedicated to working on the repeal of obsolete legislation and a greater use of review clauses and sunset clauses (a clause in an Act that provides that the law shall cease to have effect after a specific date, unless further legislative action is taken to extend the law).
- 4.4 The Committee notes the efforts of the Government in including nine obsolete Acts previously recommended for repeal in Report 79 in the Obsolete Legislation Repeal Bill 2015. While this represents some progress, the Committee remains concerned about the pace at which obsolete legislation is identified and repealed.
- 4.5 The Committee notes that despite the Government's Repeal Day initiative, which commenced in 2012 and support for the recommendations in Report 79, many Acts identified in Report 79 have yet to be repealed.
- 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.

5 CONCLUSION

- 5.1 The Committee has not been able to conclude its inquiry into the statute book. This has been largely due to the volume of work scrutinising uniform bills and other legislation referred by the Legislative Council, such as the Planning and Development (Development Assessment Panels) Regulations 2011.¹²
- 5.2 The Committee has identified some potential areas of improvement in the pace and processes of the review of the statute book in Western Australia.
- 5.3 The Committee has resolved to close its inquiry at this stage, but is of the view that the Standing Committee on Uniform Legislation and Statutes Review of the 40th

¹¹ The Obsolete Legislation Repeal Bill 2015 was first introduced to the Legislative Council on 18 November 2015 and is yet to be introduced into the Legislative Assembly.

¹² Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 93, *Review of the Planning and Development (Development Assessment Panels) Regulations 2011*, 8 September 2015.

Parliament should undertake a further inquiry into the statute book, including consideration of alternative approaches to repealing obsolete legislation in Western Australia.

5.4 The Committee recommends as follows.

Recommendation 1: The Committee recommends that the Government give greater priority to identifying and repealing obsolete legislation and considers more robust systems to repeal obsolete legislation.

Recommendation 2: 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.

5.5 The Committee commends its report to the House.



Hon Kate Doust MLC
Chair

21 June 2016

APPENDIX 1

SUMMARY OF RESPONSES FROM OTHER JURISDICTIONS

<p>Commonwealth</p> <ul style="list-style-type: none">• Two Parliamentary sitting days every year are dedicated to debating and repealing obsolete legislation.• Repeal Day commenced in 2014 and is similar to the Western Australian initiative.• All Commonwealth government departments have a dedicated reregulation unit.• Sunset clauses are widely used in legislative instruments.
<p>New South Wales</p> <ul style="list-style-type: none">• Statute Law Revision Program, similar to Western Australian statutes review bills, generally introduced into Parliament twice per year.• Automatic repeal of subordinate legislation after five years is built into the <i>Subordinate Legislation Act 1989</i> (NSW): the repeal program is coordinated by Parliamentary Counsel's Office, with the involvement of the Legislation Review Committee of NSW Parliament.• New statutes generally contain a three or five year review clause, which requires the review report to be tabled in Parliament.• 'One on, two off' policy requires Ministers to repeal two statutes within their portfolio for every new piece of principal legislation which is submitted to Cabinet. The policy commenced in 2011.
<p>Queensland</p> <ul style="list-style-type: none">• Automatic repeal of subordinate legislation after ten years is built into the <i>Statutory Instruments Act 1992</i> (Qld). The Office of the Queensland Parliamentary Counsel gives affected agencies one year's notice of impending expiry of subordinate legislation.• Government has set a policy target of 20 per cent reduction in regulation by 2018, coordinated through the Office of Best Practice Regulation.• Mandatory legislative reviews and sunset clauses are also used in primary legislation.
<p>Tasmania</p> <ul style="list-style-type: none">• Sunset clauses are widely used in primary legislation and the <i>Subordinate Legislation Act 1992</i> (Tas) provides that all subsidiary legislation has an automatic ten year sunset clause.• Statutes review bills are introduced into Parliament on a periodic basis.
<p>Victoria</p> <ul style="list-style-type: none">• No coordinated program to review obsolete legislation on a regular basis.• Office of Chief Parliamentary Counsel tracks laws with sunset clauses.• The Scrutiny of Acts and Regulations Committee is a joint committee of the Victorian Parliament that considers and reports on statute law bills, similar to the Uniform Legislation and Statutes Review Committee's role in this State.
<p>Australian Capital Territory</p> <ul style="list-style-type: none">• No fixed program for review of the statute book.• Review clauses are used in primary legislation and subject-specific reviews are sometimes carried out by the ACT Law Reform Advisory Council.• Some provision for the automatic repeal of certain legislation (such as amending legislation) according to the <i>Legislation Act 2001</i> (ACT).

<ul style="list-style-type: none">• Statute Law Amendment Bills are used to repeal obsolete legislation, but only with the Chief Minister's approval.
<p>Hong Kong</p> <ul style="list-style-type: none">• No regular review of legislation is carried out; sunset clauses and automatic repeals are not normally used in legislation.
<p>New Zealand</p> <ul style="list-style-type: none">• Review process is built into the <i>Legislation Act 2012</i> (NZ), which requires the Attorney General, with assistance from the New Zealand Parliamentary Counsel Office, to table three-yearly review programs for each Parliament.• Revision bills are used to make minor amendments to legislation, remove redundant or spent provisions and update archaic drafting styles and formats.• Attorney General reports annually to Parliament about legislation that has not yet been brought into force.
<p>European Commission</p> <ul style="list-style-type: none">• Review process called '<i>codification</i>' is used to simplify statutes and amendments, which repeals the original legislation.• Sunset clauses and legislative review clauses are used in legislation, especially in areas of rapid technological development.• Informal procedures, such as declarations of obsolescence and removing legislation from the director of legislation are also used.
<p>England and Wales</p> <ul style="list-style-type: none">• Law Reform Commission for England and Wales has a dedicated team responsible for the repeal of obsolete legislation that works closely with its Scottish counterpart.• Statute review is carried out on a topic-by-topic basis, focusing only on primary legislation. The reviews result in a statutes review bill, tabled and fast-tracked through Parliament by the Minister for Justice.• Joint Committee on Consolidation Bills considers and reports on all statutes review bills, similar to the Uniform Legislation and Statutes Review Committee in this State.
<p>Scotland</p> <ul style="list-style-type: none">• Scottish Law Commission has a small team which considers the repeal of obsolete legislation, together with the Law Reform Commission for England and Wales, using a very similar process.• The Scottish team provides advice to UK Parliament on any obsolete Scottish legislation that is included in a statutes review bill.
<p>Republic of Ireland</p> <ul style="list-style-type: none">• No systematic review of the statute book; sunset clauses are not favoured by the Office of Parliamentary Counsel; repeal days are not used.• Statute Law Revision Acts have been used in recent years to repeal obsolete statutes.