

40TH PARLIAMENT



Report 105

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Statutes (Minor Amendments) Bill 2017

Presented by
Hon Michael Mischin MLC (Chairman)

June 2017

Standing Committee on Uniform Legislation and Statutes Review

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REPORT 105

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

STATUTES (MINOR AMENDMENTS) BILL 2017

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**EXECUTIVE SUMMARY AND RECOMMENDATION FOR THE
REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW**

STATUTES (MINOR AMENDMENTS) BILL 2017

EXECUTIVE SUMMARY

- 1 The Statutes (Minor Amendments) Bill 2017 (Bill) was introduced into the Legislative Council by the Leader of the House, Hon Sue Ellery MLC, on 11 May 2017. It was referred to the Standing Committee on Uniform Legislation and Statutes Review (Committee) on 16 May 2017 for consideration and report.
- 2 The Legislative Council did not direct a reporting date for the Committee's inquiry.
- 3 The Bill proposes amendments to 11 Acts.
- 4 The Committee examined the Bill according to its terms of reference and has considered the policy principles set out in Premier's Circular 2010/01 *Statutes (Repeals and Minor Amendments) Bill*.
- 5 The Committee notes the Government's intention to move an amendment to the Bill during Committee of the Whole to have all clauses come into operation from its receiving Royal Assent.
- 6 The Committee takes no issue with the amendments effected by the Bill.

RECOMMENDATION

- 7 The recommendation appears in the text at the page number indicated:

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Recommendation 1: The Committee recommends that the Statutes (Minor Amendments) Bill 2017 be passed by the Legislative Council.

STATUTES (MINOR AMENDMENTS) BILL 2017

1 INTRODUCTION

- 1.1 The Statutes (Minor Amendments) Bill 2017 (Bill) was introduced into the Legislative Council by the Leader of the House, Hon Sue Ellery MLC, on 11 May 2017. It was referred to the Standing Committee on Uniform Legislation and Statutes Review (Committee) on 16 May 2017 for consideration and report.¹
- 1.2 The Legislative Council did not direct a reporting date for the Committee's inquiry.
- 1.3 The Committee posted the inquiry on its website at [Uniform Legislation Committee homepage](#). The general public was immediately notified of the referral via social media.² Given the limited scope and corrective nature of the Bill and the Committee's terms of reference, the Committee considered that any broader advertising or invitation for submissions from the public was neither necessary nor warranted.

2 OVERVIEW OF THE BILL

- 2.1 The Bill proposes amendments to the following 11 Acts:
- *Administration Act 1903*
 - *Criminal Code Amendment (Unlawful Possession) Act 2014*
 - *Criminal Law (Mentally Impaired Accused) Act 1996*
 - *Criminal Organisations Control Act 2012*
 - *Criminal Procedure Act 2004*
 - *Equal Opportunity Act 1984*
 - *Evidence Act 1906*
 - *Family Provision Act 1972*
 - *Juries Act 1957*

¹ The Bill was referred pursuant to the Committee's Term of Reference, which state that the functions of the Committee are 'to consider and report on any matter referred by the Council' and that the Committee is authorised to 'review the form and content of the statute book': Standing Orders of the Legislative Council, Schedule 1, cl 6.3(d) and (e).

² Legislative Council, 16 May 2017, retrieved from <<https://twitter.com/WALegCouncil/status/864473945344401410>>.

- *Sentencing Act 1995*
- *State Administrative Tribunal Act 2004.*

2.2 In her second reading speech, Hon Sue Ellery MLC, Leader of the House representing the Attorney General stated:

This is an Omnibus Bill.³ The amendments range from inserting missing words to correcting typographical, cross-referencing and formatting errors to account for updates to and repeals of other legislation. Redundant or lapsed provisions, such as sunset clauses which have long since taken effect, and references to now-repealed provisions of other legislation, will also be removed or corrected by the passage of this bill.⁴

3 PREMIER'S CIRCULAR REGARDING OMNIBUS BILLS

3.1 The Department of the Attorney General provides guidance to Government departments on what may be included in omnibus bills in Premier's Circular 2010/01 '*Statutes (Repeals and Minor Amendments) Bill*' (Premier's Circular). The Premier's Circular states that a matter will not be included in an omnibus bill if it:

- *affects any existing right, obligation, power or duty; or*
- *changes any process provided for in legislation; or*
- *involves the insertion of multiple new sections into an Act.⁵*

3.2 The Committee is not limited by these considerations when scrutinising omnibus bills, but they are useful when considering the amendments included in such a bill. The Committee also considered whether the subject matter is appropriate for inclusion in an omnibus bill.

4 CLAUSES IN THE BILL

4.1 The Committee considered all clauses in the Bill.

³ An omnibus bill is technically a bill that covers a number of diverse or unrelated topics. While this definition could technically cover more than Statutes (Repeal and Minor Amendment) Bills, in this State Statutes (Repeal and Minor Amendment) Bills are known as omnibus bills because omnibus bills in this State only make minor amendments.

⁴ Hon Sue Ellery MLC, Leader of the House representing the Attorney General, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 16 May 2017, p 81.

⁵ Department of the Premier and Cabinet, Premier's Circular 2010/01, *Statutes (Repeals and Minor Amendments) Bill*, 11 February 2010.

Part 1—Preliminary

- 4.2 Clause 2 of the Bill provides that Part 1 will come into operation on the date of Royal Assent and that Part 2, which contains the substantive provisions of the Bill, will come into operation on a day or days fixed by proclamation.⁶ This is an Executive action.
- 4.3 This affects the Parliament’s sovereignty as the commencement dates will be controlled by the Executive. It is conceivable that the proclamation may never be made and the will of the Parliament, in passing a bill, would be frustrated.
- 4.4 While the Committee concedes that that is unlikely in relation to this Bill, it has occurred in the past with respect to other enacted bills.⁷ While there are circumstances where it is prudent, if not necessary, that all or some of the substantive provisions of an Act should be brought into operation by proclamation when considered appropriate by the Executive, general provisions such as clause 2(b) should not be utilised as a matter of course and without good reason.
- 4.5 The Committee raised the issue with the Attorney General by letter dated 9 June 2017.
- 4.6 His response in a letter dated 22 June 2017 was to point out that the Bill contains in clause 12 some amendments to the *Sentencing Act 1995* relating to provisions in Part 3 of that Act about post-sentencing supervision. Part 3 of the *Sentencing Legislation Amendment Act 2016* comes into operation on 1 July 2017.⁸
- 4.7 The Attorney General advised that at the time of drafting this Bill, it was possible that it may have been enacted prior to 1 July 2017. That is, if this Bill had received Royal Assent before that date, clause 12 would have come into operation before the 2016 amendments came into effect which clause 12 is to amend.⁹ Consequently it was considered that this Bill’s commencement provisions should enable a day on which, for example, clause 12 was to come into operation to be fixed by proclamation.¹⁰
- 4.8 The Committee notes, however, that the Executive discretion in this Bill regarding a commencement date extends beyond clause 12, something for which no reason has been given.

⁶ ‘proclamation’ means *a proclamation made by the Governor [‘with the advice and consent of the Executive Council’] and published in the Gazette*: *Interpretation Act 1984* ss 5 and 60.

⁷ For example, see Parliament of Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 79, *Interim Report: Inquiry into the Form and Content of the Statute Book*, 15 November 2012, pp 7, 8 (Recommendation 4) and 29 (Appendix 7).

⁸ Hon John Quigley MLA, Attorney General, Letter, dated 22 June 2017.

⁹ *ibid.*

¹⁰ *ibid.*

- 4.9 Notwithstanding this, the Committee is pleased to note the Attorney General's advice that:

Given that the Bill will now not be enacted before 1 July 2017, I can inform the Committee that an amendment is being drafted to provide that the [sic] all of the Bill, including Part 2, will take effect on Royal Assent. This amendment will be moved during the Committee stage.¹¹

Committee comment

- 4.10 The Committee is of the view that the lack of express commencement date or dates for the majority of clauses in this Bill is an erosion of the Western Australian Parliament's sovereignty and law-making powers.
- 4.11 The Committee notes the Government's intention to move an amendment to the Bill during Committee of the Whole to have all clauses come into operation from its receiving Royal Assent.

Finding 1: The Committee finds that clause 2(b) of the Statutes (Minor Amendments) Bill 2017, in providing that the Executive determines commencement dates, erodes the Western Australian Parliament's sovereignty and law-making powers.

Finding 2: The Committee finds that the Government intends to move an amendment to the Bill during Committee of the Whole to have all clauses come into operation from its receiving Royal Assent.

Part 2

- 4.12 Part 2 contains 11 sections, each making minor amendments to various statutes. These are discussed below.

Clause 3 - Administration Act 1903

- 4.13 This amendment corrects a grammatical error by inserting the word '*the*' into section 60A of the *Administration Act 1903* so the section reads:

Nothing in this Part shall effect or derogate from the provisions of the Family Provision Act 1972 section 6. [underlining added]

- 4.14 The amendment is uncontroversial and appropriate for inclusion in an omnibus bill.

¹¹ *ibid.*

Clause 4 - Criminal Code Amendment (Unlawful Possession) Act 2014

- 4.15 Schedule 1A Part 2 of the *Sentencing Act 1995* lists ‘*relevant simple offences*’ for the purposes of Part 2 Division 2A of that Act.¹² Included in the list is section 428 of *The Criminal Code* which formerly created the offence of ‘*possessing stolen or unlawfully obtained property*’.
- 4.16 The *Criminal Code Amendment (Unlawful Possession) Act 2014* deleted section 428 of *The Criminal Code* and replaced it with a new section 417, creating a new offence of ‘*possessing stolen or unlawfully obtained property*’.
- 4.17 Section 8(2) of the *Criminal Code Amendment (Unlawful Possession) Act 2014* proposed to amend Schedule 1A Part 2 of the *Sentencing Act 1995* by deleting the reference to the old section 428 and replacing it with a reference to the new section 417. However Schedule 1A Part 2 of the *Sentencing Act 1995* can only include simple offences and, unlike the old section 428, the new section 417 is not a simple offence.¹³
- 4.18 For this reason, section 8(2) of the *Criminal Code Amendment (Unlawful Possession) Act 2014* will not be proclaimed and by the amendment effected by clause 4 of this Bill is to be repealed.
- 4.19 The amendment is uncontroversial and appropriate for inclusion in an omnibus bill.

Clause 5 - Criminal Law (Mentally Impaired Accused) Act 1996

- 4.20 This amendment corrects a typographical error in Schedule 1 of the *Criminal Law (Mentally Impaired Accused) Act 1996* so that a reference to section 388E(1)(a) of *The Criminal Code*, which does not exist, is deleted and replaced with section 338E(1)(a).
- 4.21 The amendment is uncontroversial and appropriate for inclusion in an omnibus bill.

Clause 6 - Criminal Organisations Control Act 2012

- 4.22 This clause addresses two issues with the *Criminal Organisations Control Act 2012*.
- 4.23 The first issue is addressed by clause 6(2) of this Bill.
- 4.24 Section 142(1)(b) of the *Criminal Organisations Control Act 2012* provides that a ‘*registered interstate control order*’ operates in Western Australia as if it were an

¹² A ‘*simple offence*’ is ‘*an offence that is not an indictable offence*’: section 3 of the *Criminal Procedure Act 2004*.

¹³ Section 67(1a) of the *Interpretation Act 1984* states: ‘*An offence designated as a crime or as a misdemeanour is an indictable offence.*’ Section 417 of *The Criminal Code* states in part: ‘*A person...is guilty of a crime...*’.

- order made under Part 3 of that Act,¹⁴ but that Part 3 Division 3 Subdivision 5¹⁵ (sections 64 to 72) does not apply ‘*except as provided by sections 149, 151 and 152*’.
- 4.25 Sections 149 and 152 apply selected provisions of Part 3 Division 3 Subdivision 5 to registered interstate control orders.
- 4.26 Section 151,¹⁶ however, applies section 44¹⁷ to interstate control orders. Section 44 is not included in Part 3 Division 3 Subdivision 5 so section 151 does not take effect as an exception to the exclusion.
- 4.27 This amendment deletes the incorrect reference to section 151 in section 142(1)(b) of the *Criminal Organisations Control Act 2012*.
- 4.28 The second issue is addressed by clause 6(3) of this Bill which proposes to delete section 176(5) from the *Criminal Organisations Control Act 2012*.
- 4.29 Section 176(5) has not come into operation. That section was intended to correct a simple drafting error in the *Criminal Property Confiscation Act 2000* by inserting ‘*and*’ between paragraphs.
- 4.30 The error was subsequently corrected by the State Law Publisher pursuant to section 7(4B) of the *Reprints Act 1984* when the *Criminal Property Confiscation Act 2000* was reprinted. Consequently section 176(5) is unnecessary as the error it was meant to correct has already been rectified.
- 4.31 These amendments are uncontroversial and appropriate for inclusion in an omnibus bill.

Clause 7 - Criminal Procedure Act 2004

- 4.32 Section 31(1)(a) to (f) of the *Criminal Procedure Act 2004* sets out a number of requirements as to the form and contents of arrest warrants.
- 4.33 The word ‘*must*’ appears at the end of the first phrase of section 31(1) preceding the list of requirements set out in paragraphs (a) to (f) but the word ‘*must*’ appears again in paragraphs (b) and (c). The same grammatical error appears in sections 32(1)(b) and (c) and 33(1)(b) and (c).
- 4.34 Clause 7 of this Bill addresses these errors by deleting from the relevant paragraphs the unnecessary word ‘*must*’ in the six instances it appears.

¹⁴ *Criminal Organisations Control Act 2012*, Part 3 – ‘*Control orders*’.

¹⁵ *Ibid.*, Part 3, Division 3, Subdivision 5 – ‘*Appeals, variations and revocations*’.

¹⁶ *Ibid.*, section 151 – ‘*Cancellation of registration of interstate control order at request of Commissioner of Police*’.

¹⁷ *Ibid.*, section 44 – ‘*Alternative means of service*’.

4.35 The amendment is uncontroversial and appropriate for inclusion in an omnibus bill.

Clause 8 - *Equal Opportunity Act 1984*

4.36 Section 69(1)(a), (b) and (e) of the *Equal Opportunity Act 1984* provided for exceptions from the operation of that Act. By virtue of section 69(2), the exceptions were effective for two years, or longer if provided for by regulation.

4.37 The exceptions have long since expired and no longer operate. Clause 8 of this Bill removes the three exceptions by deleting section 69(1)(a), (b) and (e) and making a consequential amendment to paragraph (d). It also deletes section 69(2) and (3), the ‘sunset’ provision and regulation making powers specific to those paragraphs.

4.38 The amendment is uncontroversial and appropriate for inclusion in an omnibus bill.

Clause 9 - *Evidence Act 1906*

4.39 Section 19L(3) of the *Evidence Act 1906* refers to ‘*subsections (4) and (4a)*’. With effect from 1 August 2012, subsection (4a) was deleted by section 33 of the *Education and Care Services National Law (WA) Act 2012* and replaced by a new subsection (5A).

4.40 Through oversight the cross-reference to subsection (4a) was not changed to (5A) at the time of the amendment.¹⁸ Clause 9 of this Bill makes that amendment.

4.41 The amendment is uncontroversial and appropriate for inclusion in an omnibus bill.

Clause 10 - *Family Provision Act 1972*

4.42 Section 10 of the *Inheritance (Family and Dependents Provision) Amendment Act 2011* amended section 11 of the *Family Provision Act 1972* by simply stating that the words ‘*at the time*’ were to be deleted and replaced by the words ‘*immediately before*’. However, ‘*at the time*’ appeared twice in section 11, firstly in determining who was a dependent of the deceased and secondly in the context of protecting an administrator of an estate making a distribution out of an estate for urgent purposes to a dependent.

4.43 The changes were effected in both instances where the words ‘*at the time*’ appeared.

4.44 As initially enacted and intended, section 11 provided protection to an administrator whether or not the administrator had notice of an application that would affect the estate ‘*at the time of the distribution*’. The unintended result of the section 10 amendment was that an administrator who made an emergency distribution is

¹⁸ Statutes (Minor Amendments) Bill 2017, *Explanatory Memorandum and Clause Notes*, Legislative Council, p 9.

protected whether or not he had notice of an application ‘*immediately before*’ the distribution.¹⁹

4.45 Clause 10 of this Bill gives effect to the original intent of the legislation by deleting the words ‘*immediately before the distribution*’ and replacing them with ‘*at the time of the distribution*’, in order to protect an administrator who has made an emergency distribution whether or not the administrator had notice of an application affecting the estate.

4.46 The amendment is uncontroversial and appropriate for inclusion in an omnibus bill.

Clause 11 - *Juries Act 1957*

4.47 The amendment to sections 56C(2)(ba) and (bb) of the *Juries Act 1957* corrects a minor drafting error by simply replacing the words ‘*to the*’ with ‘*by the*’.

4.48 The amendment is uncontroversial and appropriate for inclusion in an omnibus bill.

Clause 12 - *Sentencing Act 1995*

4.49 Clause 12 of this Bill addresses two issues with the *Sentencing Act 1995*.

4.50 The first issue, addressed by clause 12(2), (3) and (4), makes amendments consequential to amendments to the *Restraining Orders Act 1997*, which contains a definition of the term ‘*family and domestic relationship*’.

4.51 On 1 July 2017, by virtue of section 6 of the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016*, that term will change to ‘*family relationship*’. No change will be made to the substance of the definition.

4.52 Clause 12(2), (3) and (4) of this Bill amends the *Sentencing Act 1995* by changing the term ‘*family and domestic relationship*’ where it appears in section 97A(1) and (4) to ‘*family relationship*’.

4.53 The amendment brings the language in the *Sentencing Act 1995* into line with that used in the *Restraining Orders Act 1997* and avoids confusion when referring between the two Acts.

4.54 The second issue that this Bill addresses, by clause 12(5), is to amend Schedule 1A Part 2 item 1 of the *Sentencing Act 1995*.

4.55 Schedule 1A Part 2 of the *Sentencing Act 1995* lists ‘*relevant simple offences*’ for the purposes of Part 2 Division 2A of that Act. Included in the list is section 428 of *The*

¹⁹ *ibid.*, p 10.

Criminal Code which formerly created the offence of ‘*possessing stolen or unlawfully obtained property*’.

- 4.56 The *Criminal Code Amendment (Unlawful Possession) Act 2014* deleted section 428 of *The Criminal Code* and replaced it with a new section 417, creating a new offence of ‘*possessing stolen or unlawfully obtained property*’.
- 4.57 Section 8(2) of the *Criminal Code Amendment (Unlawful Possession) Act 2014* proposed to amend Schedule 1A Part 2 of the *Sentencing Act 1995* by deleting the reference to the old section 428 and replacing it with a reference to the new section 417. However Schedule 1A Part 2 of the *Sentencing Act 1995* can only include simple offences and, unlike the old section 428, the new section 417 is not a simple offence.²⁰
- 4.58 For this reason, section 8(2) of the *Criminal Code Amendment (Unlawful Possession) Act 2014* will not be proclaimed and by the amendment effected by clause 12(5) of this Bill is to be repealed. Refer to paragraphs 4.17 and 4.18.
- 4.59 These amendments are uncontroversial and appropriate for inclusion in an omnibus bill.

Clause 13 - State Administrative Tribunal Act 2004

- 4.60 Section 105 of the *State Administrative Tribunal Act 2004* allows appeals from decisions of the State Administrative Tribunal.
- 4.61 In general, appeals can only be brought on a point of law, but under section 105(13) a decision made under ‘*a relevant Act*’ may be appealed on any ground whether it involves a question of law, a question of fact or a question of mixed law and fact.
- 4.62 Schedule 1 of the *State Administrative Tribunal Act 2004* lists the ‘*relevant Acts*’ for the purposes of section 105. One of the Acts listed is the *Hairdressers Registration Act 1946* which was repealed by the *Hairdressers Registration (Amendment and Expiry) Act 2010* and expired on 13 March 2012. It is appropriate to remove the reference to it from Schedule 1.
- 4.63 The amendment is uncontroversial and appropriate for inclusion in an omnibus bill.

5 CONCLUSION

- 5.1 The Committee has concluded that the Bill contains statutes which are appropriate for inclusion in an omnibus bill: there are no amendments which affect any existing

²⁰ Section 67(1a) of the *Interpretation Act 1984* states: ‘*An offence designated as a crime or as a misdemeanour is an indictable offence.*’ Section 417 of *The Criminal Code* states in part: ‘*A person...is guilty of a crime...*’.

rights, obligations, powers or duties, which change any legislative process or which involve the insertion of multiple new sections into an Act.

5.2 The Committee takes no issue with the amendments effected by the Bill.

Recommendation 1: The Committee recommends that the Statutes (Minor Amendments) Bill 2017 be passed by the Legislative Council.



**Hon Michael Mischin MLC
Chairman**

29 June 2017

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.'



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