

40TH PARLIAMENT



Report 131

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Statutes (Repeals and Minor Amendments) Bill 2020

Presented by
Hon Michael Mischin MLC (Chairman)
November 2020

Standing Committee on Uniform Legislation and Statutes Review

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ISBN 978-1-925580-25-9



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EXECUTIVE SUMMARY

- 1 On 9 September 2020, the Statutes (Repeals and Minor Amendments) Bill 2020 (Bill) was introduced into the Legislative Council by the Leader of the House, Hon Sue Ellery MLC. The Bill was referred to the Standing Committee on Uniform Legislation and Statutes Review (Committee) on 9 September 2020 for consideration and report.¹
- 2 The Legislative Council did not direct a reporting date for the Committee's inquiry.
- 3 The Bill proposes the:
 - repeal of seven Western Australian Acts
 - repeal of six Imperial Acts
 - repeal of one provision in each of two Imperial Acts
 - amendment of numerous Western Australian Acts.
- 4 The Committee examined the Bill according to its terms of reference.
- 5 The Committee takes no issue with the amendments effected by the Bill.
- 6 The Committee makes some observations regarding what has and has not been included in the Bill in light of Government advice in respect of provisions previously considered by the Committee in respect of the form and content of the statute book.

Recommendations

Recommendations are grouped as they appear in the text at the page number indicated:

RECOMMENDATION 1

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The Legislative Council note the Standing Committee on Uniform Legislation and Statutes Review's observations during consideration of the Statutes (Repeals and Minor Amendments) Bill 2020.

RECOMMENDATION 2

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The Statutes (Repeals and Minor Amendments) Bill 2020 be passed by the Legislative Council.

¹ The Bill was referred pursuant to the Committee's terms of reference, which state that the functions of the Committee are to, among other things, '*review the form and content of the statute book*' and that the Committee is authorised '*to consider and report on any matter referred by the Council*': Standing Orders of the Legislative Council, schedule 1, item 6.3(c) and (d).



1 Introduction

- 1.1 On 9 September 2020, the Statutes (Repeals and Minor Amendments) Bill 2020 (Bill) was introduced into the Legislative Council by the Leader of the House, Hon Sue Ellery MLC. The Bill was referred to the Standing Committee on Uniform Legislation and Statutes Review (Committee) on 9 September 2020 for consideration and report.²
- 1.2 The Legislative Council did not direct a reporting date for the Committee's inquiry.

2 Inquiry procedure

- 2.1 The Committee posted the inquiry on its webpage at [Uniform Legislation Committee homepage](#). The general public was immediately notified of the referral via social media.³
- 2.2 Given 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.

3 Premier's Circular 2010/01 regarding omnibus bills

- 3.1 One of the Committee's functions is to 'review the form and content of the statute book'.⁴
- 3.2 As part of this function, it considers and reports on Statutes (Repeals and Minor Amendments) Bills (commonly referred to as omnibus bills) referred to it by the Legislative Council.
- 3.3 Such omnibus bills cover a number of diverse or unrelated topics. They repeal Acts that are obsolete or make only minor, non-controversial, amendments to various Acts. Omnibus bills are used to make general 'housekeeping' amendments to maintain the currency of the statute book.
- 3.4 The development of omnibus bills is overseen by the Department of Justice. The Attorney General has the final decision about whether a matter is suitable for inclusion, in consultation with the Leader of the Government in the Legislative Council.⁵
- 3.5 Premier's Circular 2010/01 'Statutes (Repeals and Minor Amendments) Bill' (Premier's Circular), issued on 11 February 2010, set out what may and may not be included in omnibus bills and helped to ensure that the content of such bills complied with Legislative Council Standing Orders. It is at Appendix 1.
- 3.6 The Premier's Circular was rescinded in March 2019 and not replaced. The Committee was not informed this had occurred.
- 3.7 As noted, the Committee is required to consider and report on omnibus bills as part of its terms of reference and the Premier's Circular had governed the drafting and content of such omnibus legislation for close to a decade. While the Committee appreciates that there was

² The Bill was referred pursuant to the Committee's terms of reference, which state that the functions of the Committee are to, among other things, 'review the form and content of the statute book' and that the Committee is authorised 'to consider and report on any matter referred by the Council': Standing Orders of the Legislative Council, schedule 1, item 6.3(c) and (d).

³ Legislative Council, 9 September 2020, retrieved from <https://twitter.com/WALegCouncil/status/1303623425928261633>.

⁴ The Standing Orders of the Legislative Council, schedule 1, item 6.3(c).

⁵ Government Response to Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Tabled Paper No 3528, Legislative Council, 11 February 2020, p 1.

no obligation to inform it, it would have been desirable for the Committee to be notified of the change.

3.8 The Committee wrote to the Premier and asked:

- why the Premier's Circular was rescinded
- why the Committee was not informed of the rescission
- what steps have been taken to ensure the Committee is informed of any future amendments or rescissions to Premier's Circulars affecting its terms of reference
- how the practice relating to omnibus bills, previously established and supported by the authority of a Premier's Circular, will be maintained without that support and in light of its rescission.⁶

3.9 The Premier advised by letter dated 10 November 2020, which is attached as Appendix 2, that the Premier's Circular:

had been in place for ten years and is now a well-established practice across the public sector. The rescission of this Circular does not diminish the importance of this matter or the work of the Committee, rather it seeks to avoid the continuation or duplication of administrative instruments where well-established and accepted practices already exist.⁷

3.10 The Premier also advised that in response to the Committee's letter:

the Department of the Premier and Cabinet has amended its procedures to ensure that, at the time a Circular is reviewed, the administering agency is reminded to consult all relevant stakeholders, including any Parliamentary Committees. This will also occur following decisions to rescind circulars.⁸

3.11 He further advised that:

all Premier's Circulars will only be valid for the term of the government and will be automatically rescinded on 30 June of an election year, unless evidence supports their continuation.⁹

3.12 The Committee appreciates the Premier's confirmation that previous practice regarding omnibus bills will be continued. It also appreciates his assurance, among other things, that relevant Parliamentary committees will be consulted in the review of Premier's Circulars and regarding decisions to rescind them.

3.13 The Committee notes the Premier's advice that all Premier's Circulars will only be valid for the term of government and automatically be rescinded on 30 June of any election year unless evidence supports their continuation. This is analogous to the Committee's view that any unproclaimed legislation and provisions should be repealed if the Executive has not brought them into operation after 10 years of receiving Royal Assent.

⁶ Standing Committee on Uniform Legislation and Statutes Review, letter, 21 October 2020, p 2.

⁷ Hon Mark McGowan MLA, Premier, letter, 10 November 2020, p 1.

⁸ *ibid.*

⁹ *ibid.*

4 Previous Committee reports on the form and content of the statute book

- 4.1 The Committee has inquired into, and reported on, the form and content of the statute book during this and previous Parliaments.¹⁰ In its most recent report under this term of reference, *Inquiry into the Form and Content of the Statute Book* (Report 124), the Committee found that a significant number of potentially obsolete enactments remain on the statute book.¹¹
- 4.2 Report 124 noted that:
- omnibus bills for the repeal of obsolete legislation are an effective mechanism in maintaining a current statute book
 - no omnibus bills had been tabled during the 40th Parliament
 - drafting instructions for an omnibus bill had been provided to Parliamentary Counsel's Office.¹²
- 4.3 The Committee recommended that the Government introduce its proposed omnibus bill in relation to the repeal of obsolete legislation at the earliest opportunity, preferably to enable enactment in the 40th Parliament.¹³
- 4.4 The Government Response to Report 124 stated:
- The Department of Justice is preparing an omnibus bill repealing obsolete legislation. The Bill will contain all of the Acts and provisions of Acts identified in the Committee's report as being obsolete or requiring further investigation that are suitable for inclusion in the Bill.¹⁴
- 4.5 The Bill substantially reflects the Government Response to Report 124. However, the Bill does not contain all of the Acts and provisions of Acts identified in that report. An overview of the Bill is provided in section 5 of this report and the Bill is considered in section 6. Section 7 of this report reviews legislation referred to in Report 124 and the Government Response but not included in the Bill.

5 Overview of the Statutes (Repeals and Minor Amendments) Bill 2020

- 5.1 The Bill proposes to repeal, or make minor amendments to, a number of Acts, and includes many of those listed in the appendices to Report 124.
- 5.2 The Bill proposes the:
- repeal of seven Western Australian Acts

¹⁰ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, interim report 79, *Inquiry into the Form and Content of the Statute Book*, November 2012 and Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 99, *Inquiry into the Statute Book*, June 2016.

¹¹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Finding 1, p 10.

¹² *ibid.*, p i.

¹³ *ibid.*, Recommendation 2, p 14.

¹⁴ Government Response to Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Tabled Paper No 3528, Legislative Council, 11 February 2020, p 1.

- repeal of six Imperial Acts
- repeal of one provision in each of two Imperial Acts
- amendment of numerous Western Australian Acts.

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

As members may be aware, bills of this nature are a routine part of legislative review and ensure that the state's statute book is regularly updated and streamlined.¹⁵

Progress since Report 124

5.4 As noted, the Bill proposes to repeal many enactments identified by the Government in Report 124. However, of the:

- 14 Acts identified as obsolete¹⁶ and still in force, one (the *Marketing of Potatoes Act 1946*) is not included in the Bill for repeal.
- 36 Acts containing sections identified as obsolete,¹⁷ 23 contain sections that are not included for repeal in the Bill. They are listed in Appendix 3.
- 20 Acts identified as requiring further investigation,¹⁸ 19 are not included for repeal in the Bill. They are listed in Appendix 4.
- 12 unproclaimed Acts or sections in Acts identified,¹⁹ nine are not included for repeal in the Bill. They are listed in Appendix 5.

5.5 The Committee asked the Attorney General why enactments or sections identified as obsolete, requiring further investigation or unproclaimed in Report 124 were not included in the Bill, specifically:

- Why the Bill does not contain 'all of the Acts and provisions of Acts identified in the Committee's report as being obsolete or requiring further investigation that are suitable for inclusion in the Bill' as stated in the Government Response to Report 124?
- Why was the *Marketing of Potatoes Act 1946*, which was identified by the Government as obsolete (see Appendix 2 of Report 124), not included in the Bill?
- Why were the sections in Acts listed in Appendix 3, which were identified by the Government as obsolete (see Appendix 3 of Report 124), not included in the Bill?
- Why were the Acts listed in Appendix 4, which were identified by the Government as requiring further investigation (see Appendix 6 of Report 124), not included in the Bill?
- Why were the Acts and sections in Acts listed in Appendix 5, which were identified by the Government as unproclaimed (see Appendix 7 of Report 124), either not included in the Bill or not proclaimed?

¹⁵ Hon Sue Ellery MLC, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 9 September 2020, p 5553.

¹⁶ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 2, p 33.

¹⁷ *ibid.*, Appendix 3, pp 34-6.

¹⁸ *ibid.*, Appendix 6, pp 39-41. The Committee has only referred to the Acts identified as requiring further investigation, not the subsidiary legislation.

¹⁹ *ibid.*, Appendix 7, p 42.

- Is it the Government’s intention to deal with the obsolete subsidiary legislation listed in Report 124 via the Governor’s usual ‘necessary or convenient’ regulation making power?²⁰

5.6 The Attorney General responded by letter dated 27 October 2020.

5.7 In relation to obsolete *subsidiary* legislation, the Attorney General advised:

The Government has progressed the Bill as its priority reform for dealing with obsolete legislation. The Government supports the repeal of obsolete subsidiary legislation when the opportunity arises and if appropriate to do so, in the manner specified by the authorising primary legislation.²¹

5.8 In relation to obsolete *primary* legislation, the Attorney General advised:

Following the Government response, and upon further review by the Department of Justice in consultation with the relevant agencies, certain matters identified by the Government as being obsolete in Report 124 (that are listed in appendices 2, 3 and 6 [of Report 124]) were not included as they:

- will be repealed through another Act; or
- are already repealed or spent; or
- are under review in another project; or
- have been identified by the agency as not being suitable for repeal; or
- require further review and/or legal advice.²²

5.9 The Committee’s review of this information, arranged under these five categories, is set out in section 7 of this report. It includes advice the Committee received during its *Inquiry into the Form and Content of the Statute Book*, which informed the Committee’s findings and recommendations in Report 124.

6 Clauses in the Bill

6.1 The Committee has considered all clauses in the Bill. It has only reported on clauses that it considers require comment to assist the Legislative Council during debate on the Bill.

Clause 2 – Commencement

Background

6.2 The Committee has previously expressed its concern about clauses which allow commencement by proclamation, which is an Executive action.²³ The Committee has said that these clauses impinge on Parliament’s sovereignty, and there should be sound reasons for Parliament to permit the Executive to control commencement dates.²⁴

²⁰ Standing Committee on Uniform Legislation and Statutes Review, letter, 20 October 2020, pp 1-2.

²¹ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, p 2.

²² *ibid.*, p 1.

²³ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, p 19 and Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 129, *Legal Profession Uniform Law Application Bill 2020 and Legal Profession Uniform Law Application (Levy) Bill 2020*, September 2020, p 12.

²⁴ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, p 19.

- 6.3 In its Report 124, the Committee recommended that the *Interpretation Act 1984* be amended to:
- provide for the automatic repeal of Acts or the provisions of Acts that are to come into operation by proclamation and that are not proclaimed within 10 years of the Act or provision receiving Royal Assent.²⁵
- 6.4 It further recommended that the Government implement a mechanism that is the same as, or similar to, a Canadian Act²⁶ which sets out a process for repealing legislation that has not come into force within 10 years of receiving Royal Assent.²⁷
- 6.5 The Government expressed its in-principle support for a legislative mechanism to manage unproclaimed enactments.²⁸ Although it did not support an amendment to the *Interpretation Act 1984*, it stated it would 'consider implementing a more flexible mechanism, such as the Canadian model set out in the [Canadian Act]'.²⁹
- 6.6 In recent reports on bills referred to it, the Committee has recommended that commencement clauses be amended to require Acts or provisions of Acts to be automatically repealed, if not operational, at the expiration of 10 years of receiving Royal Assent.³⁰

Clause 2 – Commencement

- 6.7 Clause 2 provides for sections 1 and 2 of the Bill to commence when the Act receives Royal Assent, and for the remaining provisions to come into effect the day after the day on which Royal Assent is given.
- 6.8 This preserves Parliamentary sovereignty, as commencement of the operational clauses of the Bill is not reliant on an Executive-made proclamation.
- 6.9 Commencement clauses drafted in these terms are uncommon. The Committee has previously expressed its concerns at the statute book containing Acts and provisions that remain unproclaimed, and hence inoperative, for what seem to be 'excessive and unreasonable periods of time'.³¹ Accordingly, it reiterates its view that commencement clauses for all bills (unless they expressly provide for when an Act and all its provisions come into operation) should contain a requirement for Acts and provisions of Acts to be automatically repealed, if not operational, at the expiration of 10 years of the Act receiving Royal Assent ('10 year sunset').
- 6.10 Notwithstanding initial reservations on the part of the Government, legislation with commencement clauses that include a 10 year sunset provision are becoming more common. Such provisions ensure that unproclaimed provisions do not accumulate on the

²⁵ *ibid.*, Recommendation 6.

²⁶ *Statutes Repeal Act S.C. (Statutes of Canada) 2008, c.20.*

²⁷ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Recommendation 7.

²⁸ Government Response to Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Tabled Paper 3528, Legislative Council, 11 February 2020, p 2.

²⁹ *ibid.*

³⁰ Most recently, Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 129, *Legal Profession Uniform Law Application Bill 2020 and Legal Profession Uniform Law Application (Levy) Bill 2020*, September 2020, Recommendation 2.

³¹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, paras 3.95-3.98 and Recommendation 6.

statute book in future. However, there remains the problem of expunging inoperative enactments and provisions of 10 years' vintage currently in the statute book. That exercise can be readily accomplished by amending the *Interpretation Act 1984*.

- 6.11 Accordingly, the Committee invites the Government to reconsider the Committee's recommendation 6 in Report 124 to amend the *Interpretation Act 1984* to provide a 10 year sunset repeal of unproclaimed Acts or provisions, albeit subject to any specific exceptions that the Government might think necessary.
- 6.12 Alternatively, the Government may wish to consider a blanket repeal in a future omnibus bill of any inoperative Act or provision of 10 years' vintage, exempting any specific Acts or provisions that it considers necessary to retain by reason of imminent proclamation.

Clause 53 – *Pollution of Waters by Oil and Noxious Substances Act 1987* amended

- 6.13 Section 38(2) of the *Pollution of Waters by Oil and Noxious Substances Act 1987* (1987 Act) provides that the *Prevention of Pollution of Waters by Oil Act 1960* (1960 Act) continues to apply in relation to discharges of oil or mixtures containing oil that occurred or commenced before the commencement of section 38 of the 1987 Act.
- 6.14 Section 38(2) therefore partially saves the operation of the 1960 Act notwithstanding the repeal of that Act effected by section 38(1) of the 1987 Act.
- 6.15 Clause 53 of the Bill proposes to repeal section 38(2) of the 1987 Act. The explanatory memorandum to clause 53 relevantly states as follows:

[Section 38(2)] was required at the time in the event of a discharge of oil between the time the *Pollution of Waters by Oil and Noxious Substances Act 1987* received Royal Assent (29 June 1987) and came into operation (1 July 1993).

Section 38(2) is a spent transitional provision.³²

- 6.16 The explanatory memorandum assumes that section 38(2) of the 1987 Act is only relevant to a discharge of oil that occurred between 29 June 1987 and 1 July 1993. This appears to be incorrect as, by its terms, section 38(2) saves the 1960 Act in relation to any discharge of oil prior to 1 July 1993. As the heading to section 38 suggests, section 38(2) is more properly described as a saving rather than a transitional provision.
- 6.17 On this basis, the Committee is concerned that section 38(2) of the 1987 Act may not be a spent provision as it continues to have effect in relation to conduct that occurred or commenced before 1 July 1993.
- 6.18 The Committee asked the Attorney General to provide an explanation as to why, as stated in the explanatory memorandum, section 38(2) of the 1987 Act is considered to be a spent transitional provision.
- 6.19 The Attorney General responded that:
- The Department of Transport have advised that section 38(2) of the *Pollution of Waters by Oil and Noxious Substances Act 1987* still has effect in relation to conduct that occurred or commenced before 1 July 1993. However, the provision is considered a spent transitional provision, given there are no known outstanding matters prior to 1 July 1993 (i.e. discharges of oil), and that it is highly unlikely for

³² Statutes (Repeals and Minor Amendments) Bill 2020, *Explanatory Memorandum*, Legislative Council, p 66.

any matters to be discovered that may have occurred at the time for the provision to have any practical effect today.³³

- 6.20 The Attorney General's response confirms that clause 53 seeks to repeal a legislative provision that continues to have legal effect. Ordinarily, an omnibus bill is not an appropriate vehicle to repeal a provision that continues to affect any existing right, obligation, power or duty.
- 6.21 Further, the Attorney General continues to characterise section 38(2) as a 'spent transitional provision'. In the Committee's view a provision such as section 38(2), which continues to have effect and is not expressed to cease at a defined point, cannot be accurately described as either spent or transitional.
- 6.22 However, the Committee notes the Attorney General's advice that there are no known outstanding matters in relation to which section 38(2) can practically affect. The Committee also accepts the improbability of there having been a discharge of oil before 1 July 1993 in relation to which section 38(2) may operate.
- 6.23 The Committee is therefore satisfied that there is no foreseeable prospect of section 38(2) having any practical application in the future, and considers that clause 53 may be safely included in the Bill.

7 Committee's review of legislation not included in the Statutes (Repeals and Minor Amendments) Bill 2020

- 7.1 As foreshadowed in paragraph 5.9, the Attorney General in his letter of 27 October 2020 advised that on further review certain legislation identified by the Government as being obsolete and listed in Appendices 2, 3 and 6 of Report 124 were not included in the Bill as they:
- will be repealed through another Act
 - are already repealed or spent
 - are under review in another project
 - have been identified by the agency as not being suitable for repeal
 - require further review and/or legal advice.³⁴

Sections to be repealed through another Act

Marketing of Potatoes Act 1946

- 7.2 This was identified by the Government in Report 124 as obsolete.³⁵ The Minister for Agriculture and Food advised in February 2018 that the Act is 'obsolete and exhausted and will be repealed by proclamation of section 13 of the *Marketing of Potatoes Amendment and Repeal Act 2016*'.³⁶ The Committee observed in Report 124 that 'section 13 of the *Marketing of Potatoes Amendment and Repeal Act 2016* is yet to be proclaimed'.³⁷

³³ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, p 2.

³⁴ *ibid.*, p 1.

³⁵ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 2, item 3, p 33.

³⁶ Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, letter, 2 February 2018, Attachment 2, p 3.

³⁷ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, footnote 121, p 33.

- 7.3 The Attorney General repeats the previous advice that the *Marketing of Potatoes Act 1946* 'will be repealed through the proclamation of section 13 of the *Marketing of Potatoes Amendment and Repeal Act 2016*'.³⁸ No timeframe was provided as to when that might occur.
- 7.4 If the *Marketing of Potatoes Act 1946* is obsolete, there seems to be no reason why its repeal needs to await the prospective proclamation of a provision of other legislation rather than being included in the Bill.

Sections 56 to 60 of the *Working With Children (Criminal Record Checking) Act 2004*

- 7.5 The Government identified these sections as obsolete on the basis that they are exhausted transitional provisions. The Minister for Child Protection advised in January 2018 that 'repeal of these provisions is intended to be addressed in proposed amendments to the [*Working With Children (Criminal Record Checking) Act 2004*] and related regulation amendments this year.'³⁹
- 7.6 The Attorney General repeats the previous advice that sections 56 to 60 of the *Working With Children (Criminal Record Checking) Act 2004* are exhausted and can be repealed, and that repeal of these provisions is intended to be addressed in proposed amendments to that Act and related regulations.⁴⁰ No timeframe was provided as to when that might occur.
- 7.7 If sections 56 to 60 of the *Working With Children (Criminal Record Checking) Act 2004* are obsolete, there seems to be no reason why their repeal needs to await other prospective legislation rather than being included in the Bill.

***Western Australian Marine Amendment Act 1987* other than sections 1 and 2**

- 7.8 The Government identified all of the *Western Australian Marine Amendment Act 1987* other than sections 1 and 2 as obsolete. The Attorney General advised in January 2018 that '[the Department of] Transport confirm these sections are suitable for repeal'.⁴¹
- 7.9 The Attorney General now advises that all of the *Western Australian Marine Amendment Act 1987* other than sections 1 and 2 'will be repealed through another Act'.⁴² The Act was not identified and no timeframe was provided as to when that might occur.
- 7.10 If all of the *Western Australian Marine Amendment Act 1987* other than sections 1 and 2 is obsolete, there seems to be no reason why its repeal needs to await other prospective legislation rather than being included in the Bill.

Sections 15 to 20 and Division 4 of Part II of the *Western Australian Marine Act 1982*

- 7.11 The Government identified these provisions as obsolete. Regarding sections 15 and 20, the Attorney General advised in January 2018 that '[the Department of] Transport confirm these sections are suitable for repeal'.⁴³
- 7.12 Regarding Division 4 of Part II, the Minister for Transport advised in May 2018 that:

Division 4 allows regulations to be made in respect of mercantile marine matters and to provide for a now obsolete WA Mercantile Marine Disciplinary Appeal Tribunal. It is understood that these provisions have never been used. These

³⁸ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 2.

³⁹ Hon Simone McGurk MLA, Minister for Child Protection, letter, 17 January 2018, p 1.

⁴⁰ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 17.

⁴¹ Hon John Quigley MLA, Attorney General, letter, 30 January 2018, Attachment p 1.

⁴² Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 17.

⁴³ Hon John Quigley MLA, Attorney General, letter, 30 January 2018, Attachment p 1.

sections are intended to be repealed as part of consequential amendments to the National Law Application Bill.⁴⁴

- 7.13 The Attorney General now advises that sections 15 to 20 and Division 4 of Part II of the *Western Australian Marine Act 1982* 'will be repealed through another Act'.⁴⁵ The Act was not identified and no timeframe was provided as to when that might occur.
- 7.14 If sections 15 to 20 and Division 4 of Part II of the *Western Australian Marine Act 1982* are obsolete, there seems to be no reason why their repeal needs to await other prospective legislation rather than being included in the Bill.

Section 19(3) of the *Western Australian Sports Centre Trust Act 1986*

- 7.15 The Government identified this subsection as obsolete in February 2018 on the basis that it was 'identified by Treasury as suitable for "repeal" as [it is] now redundant'.⁴⁶
- 7.16 The Attorney General now advises that subsection 19(3) of the *Western Australian Sports Centre Trust Act 1986* 'will be repealed through another Act'.⁴⁷ The Act was not identified and no timeframe was provided as to when that might occur.
- 7.17 If subsection 19(3) of the *Western Australian Sports Centre Trust Act 1986* is obsolete, there seems to be no reason why its repeal needs to await other prospective legislation rather than being included in the Bill.

Sections already repealed or spent

Section 64 of the *Road Traffic Legislation Amendment Act 2016*

- 7.18 The Government identified this section as obsolete. The Minister for Police advised in March 2018 that section 64 is a transitional provision intended to provide for a scenario that did not eventuate, and 'is now superfluous'.⁴⁸
- 7.19 The Attorney General now refers to the Minister for Police's advice, and advises that section 64 of the *Road Traffic Legislation Amendment Act 2016* is a spent provision.⁴⁹ The Attorney General did not explain why section 64 is not included in the Bill.
- 7.20 If section 64 of the *Road Traffic Legislation Amendment Act 2016* is obsolete, there seems to be no reason why it could not be included in the Bill.

Part 2 to Part 13 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995*

- 7.21 The Government identified these provisions as obsolete in February 2018 on the basis that they 'are spent and may be repealed'.⁵⁰

⁴⁴ Hon Rita Saffioti MLA, Minister for Transport; Planning; Lands, letter, 1 May 2018, p 1.

⁴⁵ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 17.

⁴⁶ Brett McLarty, A/Senior Policy Officer, Policy and Aboriginal Service Directorate, Department of Justice, email, 12 February 2018.

⁴⁷ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 18.

⁴⁸ Hon Michelle Roberts MLA, Minister for Police, letter, 13 March 2018, p 2.

⁴⁹ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 13.

⁵⁰ Hon Dave Kelly MLA, Minister for Water, letter, 9 February 2018, p 1.

- 7.22 The Attorney General now advises that Part 2 to Part 13 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* are spent provisions.⁵¹ He did not explain why these provisions are not included in the Bill.
- 7.23 If Part 2 to Part 13 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* are spent provisions, there seems to be no reason why they could not be included in the Bill.

Sections are under review in another project

Legislation under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project

- 7.24 In January 2018 the Government identified the following legislation as requiring further investigation:
- *Petroleum Act 1936*
 - *Petroleum and Geothermal Energy Resources Act 1967*
 - *Petroleum and Geothermal Energy Resources (Registration Fees) Act 1982*
 - *Petroleum Pipelines Act 1969*
 - *Petroleum (Submerged Lands) Act 1982*
 - *Petroleum (Submerged Lands) Registration Fees Act 1982*.⁵²
- 7.25 The Minister for Commerce and Industrial Relations advised in January 2018 that these Acts were under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project. The Minister advised that the primary focus of the Petroleum 2020 Project will be to amalgamate the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969* and the *Petroleum (Submerged Lands) Act 1982* into a single Petroleum Act to cover all petroleum and geothermal operations conducted in Western Australia up to the Commonwealth/State boundary.⁵³
- 7.26 The Attorney General confirmed that these Acts and 10 sets of related regulations are under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.⁵⁴ No timeframe was provided for the completion of that review.
- 7.27 The Government advised the Committee that these Acts were under review over two and a half years ago.

Railways (Access) Act 1998

- 7.28 The *Railways (Access) Act 1998* was identified by the Government as requiring further investigation. The Treasurer advised in March 2018 that the Act (along with the *Railways (Access) Code 2000*) was under review with a view to improving and, where necessary, repealing provisions.⁵⁵

⁵¹ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 14.

⁵² Hon Bill Johnston MLA, Minister for Commerce and Industrial Relations, letter, 23 January 2018, Attachment pp 25-30.

⁵³ *ibid.*, and Appendix 1.

⁵⁴ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 23.

⁵⁵ Hon Ben Wyatt MLA, Treasurer, letter, 6 March 2018, Attachment A p 1.

- 7.29 The Attorney General now advises that 'the entire Act is under review through in [sic] another project'.⁵⁶ He did not identify the project or provide a timeframe for the completion of the review.
- 7.30 The Government advised the Committee that this Act was under review over two and a half years ago.

University Medical School, Teaching Hospitals, Act 1955

- 7.31 The *University Medical School, Teaching Hospitals, Act 1955* was identified by the Government as requiring further investigation. The Minister for Health advised that he had recently approved a review of the Act to be undertaken with a view to its possible repeal.⁵⁷
- 7.32 The Attorney General advises that the entire *University Medical School, Teaching Hospitals, Act 1955* is being reviewed through another project. He did not identify the project or provide a timeframe for the completion of the review.
- 7.33 The Government advised the Committee that this Act was under review over two and a half years ago.

Sections identified as not being suitable for repeal

Sections 47A to 47F of the *Transport Co-ordination Act 1966*

- 7.34 These sections were identified by the Government in May 2018 as obsolete.⁵⁸
- 7.35 The Attorney General now advises that the 'Department of Transport have advised these provisions are not suitable for repeal'.⁵⁹ No information was provided as to why these provisions are now no longer suitable for repeal.
- 7.36 The Committee draws this change of advice to the attention of the Legislative Council.

Section 14 of the *Insurance Commission of Western Australia Act 1986*

- 7.37 This section was identified by the Government in January 2018 as obsolete.⁶⁰
- 7.38 The Attorney General now advises that section 14 is 'not suitable for repeal due to containing policy considerations'.⁶¹ No information was provided as to what those policy considerations might be.
- 7.39 The Committee draws this change of advice to the attention of the Legislative Council.

Section 144 of the *Port Authorities Act 1999*

- 7.40 Section 144 of the *Port Authorities Act 1999* was identified by the Government in May 2018 as obsolete.⁶² It is a review provision and states:

⁵⁶ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 23.

⁵⁷ Hon Roger Cook MLA, Minister for Health, letter, 29 January 2018, p 1.

⁵⁸ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 3, item 34, p 36.

⁵⁹ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 5.

⁶⁰ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 3, item 18, p 35.

⁶¹ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 6.

⁶² Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 3, item 33, p 36.

144. Minister to review and report on Act

(1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from the commencement of section 4.

(2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

7.41 Section 4 of the *Port Authorities Act 1999* commenced operation on 14 August 1999,⁶³ more than 21 years ago.

7.42 The Attorney General now advises that section 144 'is a review provision and is not suitable for repeal'.⁶⁴ No explanation was provided as to why a provision for a review that ought to have taken place 'as soon as is practicable after [15 August 2004]' is still required.

7.43 The Committee draws this change of advice to the attention of the Legislative Council.

Sections 27 and 37 of the *Museum Act 1969*

7.44 These sections were identified by the Government in January 2018 as obsolete.⁶⁵

7.45 The Attorney General now advises that 'the Department of Local Government, Sport and Cultural Industries has advised that these provisions are not suitable for repeal'.⁶⁶ No information was provided as to why these provisions are no longer suitable for repeal.

7.46 The Committee draws this change of advice to the attention of the Legislative Council.

Sections 12A, 12B and 28 of the *Main Roads Act 1930*

7.47 These sections were identified by the Government in May 2018 as obsolete.⁶⁷

7.48 The Attorney General now advises that 'these provisions relate to matters of policy and are not suitable for repeal'.⁶⁸ No information was provided as to what those matters of policy might be.

7.49 The Committee draws this change of advice to the attention of the Legislative Council.

Sections 83A and 106A of the *Agriculture and Related Resources Protection Act 1976*

7.50 These sections were identified by the Government in February 2018 as obsolete.⁶⁹

7.51 The Attorney General now advises that 'the Department of Primary Industries and Regional Development have advised that these provisions are not suitable for repeal'.⁷⁰ No information was provided as to why these provisions are no longer suitable for repeal.

7.52 The Committee draws this change of advice to the attention of the Legislative Council.

⁶³ *Western Australian Government Gazette*, 13 August 1999, No 155, p 3823.

⁶⁴ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 12.

⁶⁵ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 3, item 3, p 34.

⁶⁶ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 13.

⁶⁷ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 3, item 35, p 36.

⁶⁸ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 13.

⁶⁹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 3, item 36, p 36.

⁷⁰ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 16.

Section 47(1)(c) of the *Security and Related Activities (Control) Act 1996*

- 7.53 This section was identified by the Government in March 2018 as obsolete.⁷¹
- 7.54 The Attorney General now advises that ‘WA Police have advised this provision is not suitable for repeal’.⁷² No information was provided as to why this provision is no longer suitable for repeal.
- 7.55 The Committee draws this change of advice to the attention of the Legislative Council.

Section 29 of the *Western Australian Tourism Commission Act 1983*

- 7.56 Section 29 of the *Western Australian Tourism Commission Act 1983* was identified by the Government in January 2018 as obsolete.⁷³ It is a review provision and states:

29. Review of Act

(1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from the commencement of the *Western Australian Tourism Commission Amendment Act 1994*...

- 7.57 The *Western Australian Tourism Commission Amendment Act 1994* commenced operation on 31 December 1994,⁷⁴ nearly 25 years ago.
- 7.58 The Attorney General now advises that section 29 ‘is a review provision and is not suitable for repeal’.⁷⁵ No explanation was provided as to why a provision for a review that ought to have taken place ‘as soon as is practicable after [1 January 2000]’ is still required.
- 7.59 The Committee draws this change of advice to the attention of the Legislative Council.

Perth Market (Disposal) Act 2015

- 7.60 The Government advised the Committee in March 2018 that, in relation to the *Perth Market (Disposal) Act 2015*, ‘advice on the repeal of provisions relating to the disposal of the asset was required from the State Solicitor’s Office’.⁷⁶
- 7.61 The Attorney General now advises that the ‘Department of Treasury have advised that this Act is not suitable for repeal’.⁷⁷ No information was provided as to why this Act is no longer suitable for repeal.
- 7.62 The Committee draws this change of advice to the attention of the Legislative Council.

Shipping and Pilotage Amendment Act 2006

- 7.63 The Government advised the Committee in May 2018 that sections 8 and 13(1)(b) of the *Shipping and Pilotage Amendment Act 2006*:

⁷¹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 3, item 31, p 36.

⁷² Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 16.

⁷³ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 3, item 5, p 34.

⁷⁴ *Western Australian Government Gazette*, 30 December 1994, No 186, p 7215.

⁷⁵ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 16.

⁷⁶ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 6, item 23, p 40.

⁷⁷ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 22.

have not yet been proclaimed however they concern marine safety plans which may be needed in future to ensure safety in ports. These sections should remain while the ports that are covered under the *Shipping and Pilotage Amendment Act 1967* are transferred over to the *Port Authority Act 1999*.⁷⁸

- 7.64 The Attorney General has confirmed to the Committee that the 'Department of Transport have advised this Act is not suitable for repeal'.⁷⁹

South Fremantle Oil Installations Pipe Line Act 1948

- 7.65 The Government advised the Committee in January 2018 that whether the *South Fremantle Oil Installations Pipe Line Act 1948* was necessary for the continued operation of its stated purpose was obsolete and, if so, whether any harm would result if it was repealed, were all under review.⁸⁰
- 7.66 The Attorney General now advises that the 'Department of Local Government, Sport and Cultural Industries have advised that the Act is not suitable for repeal at this time'.⁸¹ No information was provided as to why this Act is not suitable for repeal.

Sections 43AA, 47A to 47F of the Transport Co-ordination Act 1966

- 7.67 The Government advised the Committee in May 2018 that sections 43AA and 47A to 47F of the *Transport Co-ordination Act 1966* were 'obsolete and may be repealed'.⁸²
- 7.68 The Attorney General now advises that the 'Department of Transport have advised that these provisions are not suitable for repeal'.⁸³ No information was provided as to why these sections are no longer suitable for repeal.
- 7.69 The Committee draws this change of advice to the attention of the Legislative Council.

Sections require further review and/or legal advice

Numerous sections of the Electricity Act 1945

- 7.70 Numerous sections of the *Electricity Act 1945*⁸⁴ were identified by the Government in January 2018 as obsolete.⁸⁵
- 7.71 The Attorney General now advises that 'the Department of Mines, Industry Regulation and Safety advised that these provisions require further review before repeal'.⁸⁶ No timeframe was provided as to when that might occur.
- 7.72 The Committee draws this change of advice to the attention of the Legislative Council.

⁷⁸ Hon Rita Saffioti MLA, Minister for Transport; Planning; Lands, letter, 1 May 2018, p 4.

⁷⁹ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 24.

⁸⁰ Hon David Templeman MLA, Minister for Local Government, letter, 16 January 2018, p 12.

⁸¹ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 24.

⁸² Hon Rita Saffioti MLA, Minister for Transport; Planning; Lands, letter, 1 May 2018, pp 1, 3 and 4.

⁸³ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 24.

⁸⁴ Sections 11, 12, 14, 18, 19, 20, 21, 22, 23, 24, 32(1)(a), (b), (d), (h), (l), 32(3)(a)(ii), 33B(1B), 33B(5A), 33E, 33F, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51.

⁸⁵ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, Inquiry into the Form and Content of the Statute Book, November 2019, Appendix 3, item 9, p 34.

⁸⁶ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 15.

Sections 8, 9(2)(a) and 11 of the *Gas Standards Act 1972*

- 7.73 These sections were identified by the Government in January 2018 as obsolete.⁸⁷
- 7.74 The Attorney General now advises that ‘the Department of Mines, Industry Regulation and Safety advised that these provisions require further review before repeal’.⁸⁸ No timeframe was provided as to when that might occur.
- 7.75 The Committee draws this change of advice to the attention of the Legislative Council.

Part 5 of the *Gas Supply (Gas Quality Specifications) Act 2009*

- 7.76 This Part was identified by the Government in January 2018 as obsolete.⁸⁹
- 7.77 The Attorney General now advises that ‘the Department of Mines, Industry Regulation and Safety advised that these provisions require further review before repeal’.⁹⁰ No timeframe was provided as to when that might occur.
- 7.78 The Committee draws this change of advice to the attention of the Legislative Council.

Decimal Currency Act 1965

- 7.79 The Government identified the *Decimal Currency Act 1965* as requiring further investigation. In January 2018 the Minister for Commerce and Industrial Relations advised that the Act ‘provides for the amendment of WA legislation as a consequence of the adoption of decimal currency’, and that ‘legal advice is required to determine whether the Act or provisions within the Act may now be repealed’.⁹¹
- 7.80 The Attorney General repeats the Minister’s advice, and states that ‘Department of Mines, Industry Regulation and Safety have advised that legal advice is still required to determine the suitability of this Act for repeal’.⁹² No timeframe was provided as to when that legal advice might be received.
- 7.81 The Government identified a need for legal advice on the suitability of the *Decimal Currency Act 1965* for repeal over two and a half years ago. The Attorney General’s most recent advice does not explain why legal advice is still outstanding.

Survey legislation

- 7.82 In May 2018 the Minister for Lands advised that ‘opportunity for further review and consolidation of the State’s survey legislation has been identified, with the existing regulatory framework fragmented between six Acts and five pieces of subsidiary legislation’.⁹³ The Minister noted that such a review ‘would be a significant undertaking, with resources and capacity for this work not currently available within Landgate’.⁹⁴
- 7.83 The Minister identified the following legislation as requiring further investigation:
- *Land Boundaries Act 1841*

⁸⁷ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 3, item 10, p 35.

⁸⁸ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 15.

⁸⁹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 3, item 11, p 35.

⁹⁰ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 16.

⁹¹ Hon Bill Johnston MLA, Minister for Commerce and Industrial Relations, letter, 23 January 2018, Attachment p 8.

⁹² Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 19.

⁹³ Hon Rita Saffioti MLA, Minister for Transport, Planning, Lands, letter, 1 May 2018, p 6.

⁹⁴ *ibid.*

- *Licensed Surveyors Act 1909*
- *Standard Survey Marks Act 1924*
- *Street Alignment Act 1844*
- *Town Boundary Mark Ordinance 1853*.

7.84 The Attorney General now repeats the Minister's advice and advises that while a provision of the *Licensed Surveyors Act 1909* is included in the Bill, the remaining provisions of the identified legislation 'require further review by the relevant agency'.⁹⁵ No timeframe was provided as to when that might occur.

Metric Conversion Act 1972

7.85 The Government identified the *Metric Conversion Act 1972* as requiring further investigation. In January 2018 the Minister for Commerce and Industrial Relations advised that the Act 'provides for the amendment of WA legislation to facilitate the use of the metric system of measurement', and that 'legal advice is required to determine whether this Act or provisions within the Act may now be repealed'.⁹⁶

7.86 The Attorney General repeats the Minister's advice and states that 'Department of Mines, Industry Regulation and Safety have advised that legal advice is still required to determine the suitability of this Act for repeal'.⁹⁷ No timeframe was provided as to when that legal advice might be received.

7.87 The Government identified a need for legal advice on the suitability of the *Metric Conversion Act 1972* for repeal over two and a half years ago. The Attorney General's most recent advice does not explain why legal advice is still outstanding.

New Tax System Price Exploitation Code (Western Australia) Act 1999

7.88 In January 2018 the Minister for Commerce advised that further investigation is required to determine whether the *New Tax System Price Exploitation Code (Western Australia) Act 1999* can be repealed.⁹⁸

7.89 The Attorney General repeats the Minister's advice and states that the 'Department of Mines, Industry Regulation and Safety have advised they will undertake further investigation to determine if this Act can be repealed'.⁹⁹ No timeframe was provided as to when that might occur.

7.90 The Government advised the Committee that this Act required investigation over two and a half years ago.

Other

Part 2 of the Business Licensing Amendment Act 1995

7.91 Parts 2 and 3 of the *Business Licensing Amendment Act 1995* were identified by the Government in January 2018 as obsolete.¹⁰⁰

⁹⁵ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 19.

⁹⁶ Hon Bill Johnston MLA, Minister for Commerce and Industrial Relations, letter, 23 January 2018, Attachment p 17.

⁹⁷ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 20.

⁹⁸ Hon Bill Johnston MLA, Minister for Commerce and Industrial Relations, letter, 23 January 2018, Attachment p 21.

⁹⁹ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 21.

¹⁰⁰ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 3, item 6, p 34.

- 7.92 Part 3 of the *Business Licensing Amendment Act 1995* is deleted by clause 26 of the Bill, however 'Part 2 was inadvertently omitted and is due for inclusion in the next omnibus bill'.¹⁰¹
- 7.93 If Part 2 of the *Business Licensing Amendment Act 1995* is obsolete, there seems to be no reason why its repeal cannot be effected by way of including it through an amendment to the Bill, rather than awaiting other prospective legislation.

Sections 20 and 21 of the *Motor Vehicle Dealers Act 1973*

- 7.94 Report 124 records that sections 20, 21 and 65 of the *Motor Vehicle Dealers Act 1973* were identified by the Government as obsolete.¹⁰²
- 7.95 Section 65 is deleted by clause 15 of the Bill.
- 7.96 The Attorney General now advises:
- The Department of Mines, Industry Regulation and Safety, Consumer Protection division advised that the instructions with respect to sections 20 and 21 relate to the *Motor Vehicle Dealers Act Amendment Act 2003 (WA)* [sic], not the *Motor Vehicle Dealers Act 1973 (WA)*.
- Sections 20 and 21 of the *Motor Vehicle Dealers Amendment Act 2003 (WA)* are included in the Omnibus Bill 2020.¹⁰³
- 7.97 The Committee notes the explanation provided by the Attorney General that sections 20 and 21 of the *Motor Vehicle Dealers Act 1973* were inadvertently identified as obsolete, and that the relevant obsolete provisions are sections 20 and 21 of the *Motor Vehicle Dealers Amendment Act 2003*.
- 7.98 Sections 20 and 21 of the *Motor Vehicle Dealers Amendment Act 2003* are deleted by clause 47 of the Bill.

Sections 30, 33(1), 60(1) and 65 of the *State Superannuation (Transitional and Consequential Provisions) Act 2000*

- 7.99 In January 2018 the Government identified sections 27-31, 33-34, 60, 63-67 and 75 of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* as obsolete and to be repealed or amended.¹⁰⁴
- 7.100 While most of these sections are repealed by clause 62 of the Bill, sections 30, 33(1), 60(1) and 65 are not included in the Bill.
- 7.101 Regarding sections 30 and 65, the Attorney General now advises that these sections 'were not recommended for repeal by the Department of Treasury, and appears [sic] to be an administrative oversight that occurred before the publication of the Committee's Report 79'.¹⁰⁵
- 7.102 The Committee notes the Attorney General's explanation that sections 30 and 65 were not recommended for repeal by the Department of Treasury, and were incorrectly identified to the Committee as obsolete.

¹⁰¹ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 10.

¹⁰² Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Appendix 3, item 13, p 35.

¹⁰³ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 11.

¹⁰⁴ Hon John Quigley MLA, Attorney General, letter, 30 January 2018, Attachment, p 1.

¹⁰⁵ Hon John Quigley MLA, Attorney General, letter, 27 October 2020, Attachment A, p 12.

- 7.103 Regarding sections 33(1) and 60(1) of the *State Superannuation (Transitional and Consequential Provisions) Act 2000*, the Attorney General simply states that these sections were proclaimed on 17 February 2001.¹⁰⁶
- 7.104 The Attorney General's response does not explain why sections 33(1) and 60(1) are not included in the Bill.
- 7.105 If sections 33(1) and 60(1) of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* are obsolete, there seems to be no reason why their repeal could not be included in the Bill.

Committee comment

- 7.106 Significant progress has been made with respect to updating the form and content of the statute book. The Committee commends the Government for repealing a number of statutes and provisions identified as obsolete in Report 124.
- 7.107 At the same time, it notes that a number of statutes and provisions which have previously been identified by the Government as obsolete, requiring further investigation or unproclaimed, have not been included in the Bill.
- 7.108 Further work also needs to be undertaken, particularly in relation to obsolete subsidiary legislation listed in Report 124 and statutes and provisions that have received Royal Assent but have not been proclaimed.

8 Conclusion

- 8.1 The Committee has concluded that the Bill contains statutes and provisions which are appropriate for inclusion, or can safely be included, in an omnibus bill.

RECOMMENDATION 1

The Legislative Council note the Standing Committee on Uniform Legislation and Statutes Review's observations during consideration of the Statutes (Repeals and Minor Amendments) Bill 2020.

RECOMMENDATION 2

The Statutes (Repeals and Minor Amendments) Bill 2020 be passed by the Legislative Council.



Hon Michael Mischin MLC
Chairman

¹⁰⁶ *ibid.*

APPENDIX 1

PREMIER'S CIRCULAR 2010/01

Premier's Circular

| | |
|--------------|------------|
| Number: | 2010/01 |
| Issue Date: | 11/02/2010 |
| Review Date: | 04/02/2015 |

TITLE

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL

POLICY

The *Statutes (Repeals and Minor Amendments) Bills* ("the Omnibus Bills") provide an avenue for introducing a range of minor legislative amendments and repeals that do not affect the substance of the law. Omnibus Bills make the Government's legislative program and parliamentary business more efficient by reducing the number of Bills that would otherwise be required to deal with these minor amendments and repeals.

Examples of matters that may be suitable for inclusion include:

- the repeal of obsolete legislation;
- the correction of typographical, grammatical and other minor errors of presentation;
- amendments to update names, titles, entities, designations etc.

A provision will be included in an Omnibus Bill only if its effect is clear on the face of the provision.

An Omnibus Bill is not a vehicle for implementing a change in Government policy or dealing with an issue that may be controversial or legally or otherwise contentious.

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.

BACKGROUND

The Department of the Attorney General is responsible for preparation and introduction of Omnibus Bills. A Minister wanting to have a matter dealt with in an Omnibus Bill should make a request in writing to the Director General, Department of the Attorney General, and provide details of a departmental instructing officer for further consultation.

The Department of the Attorney General will scrutinise the proposed matter to ensure that it is suitable to be dealt with in an Omnibus Bill. If the matter is suitable, the Department of the Attorney General will forward the request to the Parliamentary Counsel for drafting. The Department of the Attorney General will liaise with the departmental instructing officer to prepare explanatory notes to accompany the Omnibus Bill.

The final decision about whether a matter is suitable to be dealt with in an Omnibus Bill lies with the Attorney General acting in consultation with the Leader of the Government in the Legislative Council.

The intention is that an Omnibus Bill will be introduced annually or, if needed, in each of the Autumn and Spring sittings during a year.

The Bill is introduced into Parliament in the Legislative Council and is scrutinised by the Legislative Council's Standing Committee on Uniform Legislation and Statutes Review to ensure that it includes only matters that are suitable for inclusion in an Omnibus Bill.

COLIN BARNETT MLA
PREMIER

| | |
|---------------------------------------|--|
| For enquiries contact: | Peter Richards 9264 1076 Department of the Attorney General |
| Other relevant Circulars: | N/A |
| Circular/s replaced by this Circular: | 2003/15 |

APPENDIX 2

PREMIER'S LETTER DATED 10 NOVEMBER 2020



Premier of Western Australia

Our Reference: 59-225816

Hon Michael Mischin MLC
Chairman, Standing Committee on Uniform Legislation and Statutes Review
Legislative Council Committee Office
unileg@parliament.wa.gov.au

Dear Chairman

I refer to your letter of 21 October 2020 concerning matters related to the rescission of Premier's Circular 2010/01 – Statutes (Repeals and Minor Amendments) Bill and the work of the Standing Committee on Uniform Legislation and Statutes Review (Standing Committee).

Premier's Circular 2010/01 had been in place for ten years and is now a well-established practice across the public sector. The rescission of this Circular does not diminish the importance of this matter or the work of the Committee, rather it seeks to avoid the continuation or duplication of administrative instruments where well-established and accepted practices already exist.

In response to your correspondence the Department of the Premier and Cabinet has amended its procedures to ensure that, at the time a Circular is reviewed, the administering agency is reminded to consult all relevant stakeholders, including any Parliamentary Committees. This will also occur following decisions to rescind circulars.

To ensure all Premier's Circulars are reviewed regularly for currency, instructions on the Administration of Premier's Circulars are in place establishing that all Premier's Circulars will only be valid for the term of the government and will be automatically rescinded on 30 June of an election year, unless evidence supports their continuation.

Thank you for taking the time to raise this matter with me.

Yours sincerely

Mark McGowan MLA
PREMIER

10 NOV 2020

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APPENDIX 3

ACTS CONTAINING SECTIONS IDENTIFIED BY THE GOVERNMENT AS OBSOLETE

1. Section 105 of the *Racing and Wagering Western Australia Act 2003*.
2. Sections 56 to 60 of the *Working with Children (Criminal Record Checking) Act 2004*.
3. Sections 27 and 37 of the *Museum Act 1969*.
4. Section 29 of the *Western Australian Tourism Commission Act 1983*.
5. Part 2 of the *Business Licensing Amendment Act 1995*.
6. Sections 11, 12, 14, 18, 19, 20, 21, 22, 23, 24, 32(1)(a), (b), (d), (h), (l), 32(3)(a)(ii), 33B(1B), 33B(5A), 33E, 33F, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51 of the *Electricity Act 1945*.
7. Sections 8, 9(2)(a) and 11 of the *Gas Standards Act 1972*.
8. Part 5 of the *Gas Supply (Gas Quality Specifications) Act 2009*.
9. Sections 20 and 21 of the *Motor Vehicle Dealers Act 1973*.
10. Section 14 of the *Insurance Commission of Western Australia Act 1986*.
11. *Western Australian Marine Amendment Act 1987* other than sections 1 and 2.
12. Sections 15 to 20 and Part II, Division 4 of the *Western Australian Marine Act 1982*.
13. Sections 30, 33(1), 60(1) and 65 of the *State Superannuation (Transitional and Consequential Provisions) Act 2000*.
14. Schedule 4, clause 7A of the *Vocational Education and Training Act 1996*.
15. Section 43 of the *Western Australian Planning Commission Act 1985*.
16. Section 19(3) of the *Western Australian Sports Centre Trust Act 1986*.
17. Part 2 to Part 13 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995*.
18. Section 47(1)(c) of the *Security and Related Activities (Control) Act 1996*.
19. Section 64 of the *Road Traffic Legislation Amendment Act 2016*.
20. Section 144 of the *Port Authorities Act 1999*.
21. Sections 47A to 47F inclusive of the *Transport Co-ordination Act 1966*.
22. Sections 12A, 12B and 28 of the *Main Roads Act 1930*.
23. Sections 83A and 106A of the *Agriculture and Related Resources Protection Act 1976*.

APPENDIX 4

ACTS IDENTIFIED BY THE GOVERNMENT AS REQUIRING FURTHER INVESTIGATION

1. *South Fremantle Oil Installations Pipe Line Act 1948.*
2. *Decimal Currency Act 1965.*
3. *Metric Conversion Act 1972.*
4. *New Tax System Price Exploitation Code (Western Australia) Act 1999.*
5. *Petroleum Act 1936.*
6. *Petroleum and Geothermal Energy Resources Act 1967.*
7. *Petroleum and Geothermal Energy Resources (Registration Fees) Act 1967.*
8. *Petroleum Pipelines Act 1969.*
9. *Petroleum (Submerged Lands) Act 1982.*
10. *Petroleum (Submerged Lands) Registration Fees Act 1982.*
11. *University Medical School, Teaching Hospitals, Act 1955.*
12. *Perth Market (Disposal) Act 2015.*
13. *Railways (Access) Act 1998.*
14. *Shipping and Pilotage Amendment Act 2006.*
15. *Section 43AA of the Transport Co-ordination Act 1966.*
16. *Land Boundaries Act 1841.*
17. *Licensed Surveyors Act 1909.*
18. *Standard Survey Marks Act 1924.*
19. *Street Alignment Act 1844.*

APPENDIX 5

UNPROCLAIMED ACTS OR SECTIONS IN ACTS IDENTIFIED BY THE GOVERNMENT

1. Sections 301(2), (3), (6) and (7) and section 307(j) of the *Health Services Act 2016*.
2. Section 14(2) of the *Medicines and Poisons Act 2014*.
3. Sections 7 and 8, Parts 5 to 8, Part 10, Part 14, Part 18 Division 3, Part 19 Division 1 and Part 20 (sections 313 to 320) of the *Public Health Act 2016*.
4. Part 4 sections 208 to 211, 214 to 222, Division 4 to 9, sections 239 and 241, Division 11 and 15, sections 249 to 271, 273, 275 and 276, Part 5 section 278(2) and 279(2), Division 3, section 285(2), Division 5, 7, 8, 11, 12, 14, 15 to 17, 19, 21 to 24, section 334, Division 27, section 343(2) and Part 6 of the *Public Health (Consequential Provisions) Act 2016*.
5. Sections 8(2) and (3) of the *Personal Property Securities (Commonwealth Laws) Act 2011*.
6. Section 4(d), sections 6-9 and section 12 of the *Western Australian Marine Amendment Act 1990*.
7. *Taxi Drivers Licensing Act 2014*.
8. Sections 43, 46, 56 and 57 of the *Transfer of Land Amendment Act 2003*.
9. Sections 40 to 44 of the *Acts Amendment (Land Administration) Act 1987*.

GLOSSARY

| Term | Definition |
|---------------------------|---|
| Bill | Statutes (Repeals and Minor Amendments) Bill 2020 |
| Committee | Standing Committee on Uniform Legislation and Statutes Review |
| Premier's Circular | Premier's Circular 2010/01 'Statutes (Repeals and Minor Amendments) Bill' |
| Report 124 | Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, <i>Inquiry into the Form and Content of the Statute Book</i> , November 2019 |
| 1960 Act | <i>Prevention of Pollution of Waters by Oil Act 1960</i> |
| 1987 Act | <i>Pollution of Waters by Oil and Noxious Substances Act 1987</i> |





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 review the form and content of the statute book; and
 - (d) 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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