



**THIRTY-EIGHTH PARLIAMENT**

**INTERIM REPORT 79**

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

**INQUIRY INTO THE FORM AND CONTENT OF THE  
STATUTE BOOK**

Presented by Hon Adele Farina MLC (Chairman)

November 2012

## **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:

#### **“5. Uniform Legislation and Statutes Review Committee**

- 5.1 *A Uniform Legislation and Statutes Review Committee* is established.
- 5.2 The Committee consists of 4 Members.
- 5.3 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.
- 5.4 In relation to function 5.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill, proposal or agreement may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.”

### **Members as at the time of this inquiry:**

Hon Adele Farina MLC (Chairman)

Hon Donna Faragher MLC (Deputy Chairman) did not participate for the duration of the inquiry due to a leave of absence being granted by the House.

Hon Nick Goiran MLC

Hon Robin Chapple MLC

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Irina Lobeto-Ortega (Advisory Officer (Legal))

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## **Government Response**

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

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

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



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

**IN RELATION TO THE**

**INQUIRY INTO THE FORM AND CONTENT OF THE STATUTE BOOK**

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**1 INTRODUCTION**

- 1.1 As at October 2012, the State Law Publisher website, built from the Parliamentary Counsel's Office legislation database, lists 1,603 enactments on the statute book that are currently in force.<sup>1</sup> Of these, 855 are Acts and 748 are items of subsidiary legislation.
- 1.2 In 2001, there were 1,700 titles of legislation on the statute book, comprising 900 Acts and 800 items of subsidiary legislation.<sup>2</sup> Thus in an 11 year period, 97 enactments have been removed from the statute book.<sup>3</sup>

**2 REFERENCE AND PROCEDURE**

**Reference**

- 2.1 On 9 November 2011, the Committee activated *Term of Reference* 5.3(d) to independently "*review the form and content of the statute book*".

**Procedure**

- 2.2 In late November 2011, the Committee contacted all Ministers advising them of *Term of Reference* 5.3(d) with a view to identifying obsolete statutes or provisions within statutes and removing these from the statute book.
- 2.3 The Ministers were provided with a list of the statutes for which each had responsibility. The list was obtained from the State Law Publisher's website publication titled: *Administration of Departments, Authorities, Statutes and Votes*. That publication linked to another site titled *Information about Acts with administering portfolios and public sector agencies (Portfolio order)*. The list there

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<sup>1</sup> Email from Ms Sandy Williams, Acting Manager, Legislation and Publications, Parliamentary Counsel's Office to the Parliamentary Library staff, 23 October 2012.

<sup>2</sup> Mr Patrick Tremlett, Assistant Parliamentary Counsel, Getting Legislation Drafted, Institute of Public Administration Australia, Legislative Process Seminar, 28 February 2001.

<sup>3</sup> According to the Parliamentary Counsel's Office website viewed on 26 October 2012, the database contains more than 8,500 Acts and 100,000 pages of legislation captured back to 1832.

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identifies all the Acts falling within a particular portfolio. The Committee provided a copy of those Acts to each Minister.

2.4 The Committee requested that in relation to each Act, Ministers advise by 31 January 2012:

- (1) the purpose of the Act;
- (2) whether the Act is necessary for the continued operation of the stated purpose;
- (3) whether there are provisions in the Act that are obsolete and what harm would result if the provisions were rescinded;
- (4) whether the Act is obsolete and what harm would result if it were rescinded.

2.5 The Committee further requested that the Ministers identify the associated delegated legislation made under each Act and:

- (5) whether there are provisions in the regulations that are obsolete. If so, whether any harm would result if the regulations were removed; and
- (6) whether the delegated legislation itself is obsolete. If so, whether any harm would result if the legislation was repealed.

2.6 By the due date, the Committee had received responses from 14 of the 17 Ministers with varying degrees of information about their portfolio enactments. By 9 July 2012, the three outstanding responses had been received, again with varying degrees of information.

2.7 After considering the first round of responses, the Committee re-contacted the Ministers to follow up those enactments that had been described as requiring further investigation. As at the date of this Report, the investigations into many of the enactments have still not been completed and it was this factor that ultimately slowed the Committee's inquiry.

## **Outcomes**

2.8 Twelve months on, the Committee reports the following results of its investigations.

- 48 Acts have been identified as obsolete and are listed in **Appendix 1**.
- 16 specific sections in Acts have been identified as obsolete and are listed in **Appendix 2**.



- 25 items of subsidiary legislation have been identified as obsolete and are listed in **Appendix 3**.
- 53 Acts have been identified as requiring further investigation and are listed in **Appendix 4**.
- Eight specific sections in Acts have been identified as potentially obsolete but require further investigation. These are listed in **Appendix 5**.
- One item of subsidiary legislation has been identified as requiring further investigation and is listed in **Appendix 6**.

### **3 IDENTIFYING THOSE MINISTERS THAT FAILED TO RESPOND TO THE INQUIRY**

- 3.1 The Premier is the only Minister who has not provided a substantive response to the Committee's Inquiry.
- 3.2 The Committee wrote to the Premier twice during the Inquiry process regarding his two portfolios. The Committee noted 39 Acts in his *Premier* portfolio and 75 in his *State Development* portfolio.
- 3.3 The Premier indicated in the only response the Committee received on 23 April 2012 that "*a full and considered response will be provided to the Committee as soon as practicable.*" However, no information has been received as at the date of this Report.

### **4 REPEAL DAY**

- 4.1 The Premier first announced an initiative to hold an annual 'Repeal Day' in a *Premier's Statement* on 21 February 2012. Repeal Day was described as an "*opportunity for the Parliament to specifically focus on repealing or removing obsolete Acts, or irrelevant or superfluous boards and committees created by statute.*"<sup>4</sup>
- 4.2 Given his initiative, the Committee is disappointed with the Premier's lack of a substantive response to review his own portfolio enactments and inform the Committee of the outcomes. However, the Committee values the Premier's comment that "*the Committee's findings and recommendations will be of great interest.*"<sup>5</sup>
- 4.3 On 8 November 2012, the Premier announced the first annual Repeal Day bill that would, in the State Agreements Legislation Repeal Bill 2012, be dedicated to the

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<sup>4</sup> In a *Premier's Statement*, 21 February 2012.

<sup>5</sup> Letter from Hon Colin Barnett, MLA, Premier, 23 April 2012.

removal of five superseded Acts.<sup>6</sup> According to the Long Title, these are Acts that give effect to agreements between the State and other parties dating back to 1952.

4.4 Of this first Repeal Day, the Premier described the concept as being similar to the ‘Corrections Calendar’ procedure of the United States House of Representatives. The Premier also stated that the findings of the Committee are to be taken into account in the operation of Repeal Day.<sup>7</sup>

## 5 IMPERIAL STATUTES

5.1 In October 1994, the Western Australian Law Reform Commission (**Commission**) published *Report Project No 75 on United Kingdom Statutes in Force in Western Australia* (**WALRC Report**). That project sought to evaluate those United Kingdom statutes that were still in force in Western Australia and recommended which of these statutes should be:

- repealed;
- repealed and re-enacted in whole or in part;
- preserved because of their historical interest; or
- preserved pending further review.

5.2 The Commission recommended that:

*most United Kingdom statutes which have been inherited should cease to be in force in Western Australia. Exceptions are statutes of historical interest or statutes where a reform of the law in the area has been undertaken or is needed; and statutes which contain provisions which are still relevant in Western Australia. Statutes which contain principles still relevant in this State should be repealed and re-enacted by the Parliament of Western Australia.*<sup>8</sup>

5.3 Mr Walter Munyard, Parliamentary Counsel, said the WALRC Report was submitted to the then Attorney General in 1994.

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<sup>6</sup> The five Acts are the (1) *Broken Hill Proprietary Company Limited Agreements (Variation) Act 1980*; (2) *Broken Hill Proprietary Company's Integrated Steel Works Agreement Act 1960*; (3) *Broken Hill Proprietary Steel Industry Agreement Act 1952*; (4) *Iron and Steel (Mid West) Agreement Act 1997*; and (5) *Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968*.

<sup>7</sup> Premier's Ministerial Statement, 8 November 2012.

<sup>8</sup> Western Australian Law Reform Commission, *Report Project No 75 on United Kingdom Statutes in Force in Western Australia*, October 1994, p4.

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*The Commission's recommendations dealt with over 200 imperial Acts. Work commenced the following year on implementing the recommendations of that report.*<sup>9</sup>

- 5.4 In 1995 Cabinet approved the drafting of legislation to implement the WALRC Report. Parliamentary Counsel prepared a first draft, the Imperial Acts (Law Reform) Bill, and requested comments from the Commission. In August 1996, representatives of the Commission, the Solicitor-General and Parliamentary Counsel met with the then Attorney General to discuss the proposed legislation. However, no further action was taken.<sup>10</sup>

### **The Statutes (Repeals and Minor Amendments) Bill 2006**

- 5.5 The first statutory glimpse of the WALRC Report recommendations being implemented came when the Statutes (Repeals and Minor Amendments) Bill 2006 was introduced. According to the Leader of the House, that bill was earlier introduced into the Parliament in 2004 but lapsed in 2005 due to the State Election.<sup>11</sup> In 2006 the bill was introduced again, then adjourned and referred to the former Committee for scrutiny.<sup>12</sup>

- 5.6 The former Committee scrutinised that bill in 2007. Part 4 included provisions to either repeal or repeal provisions of eight imperial Acts. The former Committee tabled its Report on 16 October 2007 noting that:

*Part 4 repeals a number of imperial acts, or provisions of imperial acts, that either have been superseded by other legislation or are now obsolete.*

*Part 4 also repeals three imperial acts that have for a long time been treated as having been impliedly repealed by Western Australian acts but have in fact never been expressly repealed.*<sup>13</sup>

- 5.7 The bill did not progress.

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<sup>9</sup> Letter from Mr Walter Munyard, Parliamentary Counsel, Parliamentary Counsel's Office, 11 December 2008.

<sup>10</sup> The Western Australian Law Reform Commission, *Outcomes of the WALRC Report*, viewed on 13 November 2012, <http://www.lrc.justice.wa.gov.au/075o.html>.

<sup>11</sup> Hon Norman Moore, MLC, Leader of the House, on behalf of the Minister for Transport, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 12 November 2008, p157a-157a.

<sup>12</sup> That committee was also called the Standing Committee on Uniform Legislation and Statutes Review. At the time it was under the Chairmanship of Hon Simon O'Brien MLC.

<sup>13</sup> Hon Kim Chance MLC then Leader of the House, Minister Representing the Premier, Minister for Public Sector Management, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 18 October 2006, p7143.

## **The Statutes (Repeals and Miscellaneous Amendments) Bill 2008**

5.8 The Statutes (Repeals and Minor Amendments) Bill 2006 (above) was renamed as the Statutes (Repeals and Miscellaneous Amendments) Bill 2008 and introduced into the Legislative Council on 12 November 2008. It was not referred to the Committee for scrutiny and report. The Leader of the House said:

*It is usual practice for omnibus bills to be referred to the Standing Committee on Uniform Legislation and Statutes Review; however, given that this bill has already been scrutinised by this committee in great detail, it would be duplicative for this to again occur, when the majority of amendments are in accordance with the committee's recommendations.<sup>14</sup>*

5.9 Relevantly, the bill omitted the clauses concerning the eight imperial Acts.

5.10 In December 2008, Mr Walter Munyard, Parliamentary Counsel, told the Committee that:

*When the 2008 bill was prepared it was considered that the provisions affecting the 8 imperial Acts would be better incorporated into the law reform exercise, which we understood had progressed during the previous 2 years. That is why the provisions were not included in the 2008 bill.<sup>15</sup>*

5.11 In July 2009, the Committee wrote to the Attorney General requesting an update on implementing the recommendations of the WALRC Report. The Attorney General said he was proceeding with the reform project and would introduce the necessary legislation in the 2010 Autumn Session of Parliament.<sup>16</sup> However, that did not occur.

5.12 During the course of this Inquiry, the Committee twice requested an update on the implementation of the recommendations in the WALRC Report. To date, there has been no response. However, three imperial enactments listed in the WARLC Report

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<sup>14</sup> Hon Norman Moore MLC Leader of the House, on behalf of the Minister for Transport, Western Australia, Legislative Council, Parliamentary Debates (Hansard), 12 November 2008, p157a-157a.

<sup>15</sup> Letter from Mr Walter Munyard, Parliamentary Counsel, Parliamentary Counsel's Office, 11 December 2008.

<sup>16</sup> Letter from the then Attorney General, Hon Christian Porter MLA, 13 July 2009.

were identified and confirmed as obsolete by the Attorney General in his response to 21 imperial enactments within his own portfolio.<sup>17</sup>

5.13 It is now 18 years since the WALRC Report was published.

## 6 STATUTES NOT YET PROCLAIMED

6.1 The Committee noted that between 1970 and 2012, 70 statutes with Royal Assent have still not been proclaimed.<sup>18</sup> A list of these statutes was obtained from the Parliamentary Counsel Office Access Database.<sup>19</sup> The statutes are listed in **Appendix 7**. That list provides details of legislation that:

- has not yet commenced;
- is either awaiting proclamation, coming into operation on the commencement of another Act; or
- commences on a specified date.

6.2 Of the 70 statutes, 21 have not been substantively proclaimed other than sections 1 and 2. These two sections are the short title and commencement. The Committee is of the view that if there is no intention to proclaim these statutes, they should be repealed.

## 7 CONCLUSIONS

7.1 From its investigations the Committee is of the view that a significant number of enactments could be removed from the statute book in an omnibus bill. The Committee therefore makes the following recommendations.

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<sup>17</sup> These are the Factors (1823) (Imp), Factors (1825) (Imp) and Factors (1842) (Imp) identified by Hon Michael Mischin MLC, Attorney General, 5 September 2012. Of these, the WARLC Report at p81 states: “*The statutes 4 George IV chapter 83 (1823) and 6 George IV chapter 94 (1825) together with the Factors Act 1842 (UK) (5 & 6 Victoria chapter 39) (adopted by 7 Victoria No 13 (1844)) and 29 Vict No 5 (1865) and 42 Vict No 3 (1878) govern the law relating to factors in Western Australia. In the United Kingdom the Factors Acts of 1823 and 1825, together with further Factors Acts of 1842 and 1877, were repealed by the Factors Act 1889. This statute, which is still in force, consolidated and to some extent extended the earlier Acts. The law is in need of review: it is unsatisfactory that the law in this State is based on inherited and adopted United Kingdom statutes which have been subsequently repealed in the United Kingdom. Pending a review, the 1823 and 1825 statutes should be preserved.*” According to the Parliamentary Counsel Office Access Database, there are only 21 Imperial Acts currently in force. Email from Ms Sandy Williams, Acting Manager, Legislation and Publications, Parliamentary Counsel’s Office, 8 November 2012.

<sup>18</sup> Email from Ms Sandy Williams, Acting Manager, Legislation and Publications, Parliamentary Counsel’s Office, 5 November 2012.

<sup>19</sup> Email from Ms Sandy Williams, Acting Manager, Legislation and Publications, Parliamentary Counsel’s Office, 6 November 2012.

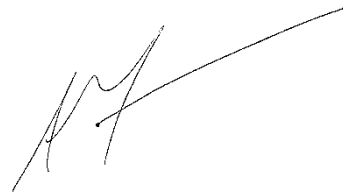
**Recommendation 1: The Committee recommends that the Government introduce an omnibus bill that includes the obsolete enactments identified in Appendices 1, 2 and 3.**

**Recommendation 2: The Committee recommends that the Government conduct a review of those enactments identified in Appendices 4, 5 and 6 as requiring further investigation in order to determine if they are in fact, obsolete.**

**Recommendation 3: The Committee recommends that the Government's next omnibus bill include those obsolete imperial enactments identified by the Western Australian Law Reform Commission's *Report Project No 75 on United Kingdom Statutes in Force in Western Australia* in 1994.**

**Recommendation 4: The Committee recommends that the Government's next omnibus bill repeal those substantively unproclaimed Acts that they do not intend to proclaim.**

- 7.2 The Committee advises the Legislative Council that until recommendation two is undertaken and the outcomes reported the Committee will be unable to conclude its Inquiry. In the meantime, the Committee commends this Interim Report to the House.



**Hon Adele Farina MLC  
Chairman**

**Date: 15 November 2012**

# APPENDIX 1

## ACTS IDENTIFIED AS OBSOLETE

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1. *Midland Junction-Welshpool Railway Act 1957.*<sup>20</sup>
2. *Morawa-Koolanooka Hills Railway Act 1964.*<sup>21</sup>
3. *Western Australian Marine (Sea Dumping) Act 1981.*<sup>22</sup>
4. *Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998.*<sup>23</sup>
5. *Advance Bank (Merger with St George Bank) (Taxing) Act 1998.*<sup>24</sup>
6. *Albany Cemeteries Act 1943.*<sup>25</sup>
7. *Busselton Cemetery Act 1944.*<sup>26</sup>
8. *Guildford Cemeteries Act 1936.*<sup>27</sup>
9. *Guildford Old Cemetery (Lands Revestment) Act 1949.*<sup>28</sup>

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<sup>20</sup> Letter from Hon Troy Buswell MLA, Minister for Transport, *Legislation under the Transport Portfolio*, 30 January 2012. The Minister said the Act “*may be declared obsolete, no part of the original remains or will be required for construction.*”

<sup>21</sup> Letter from Hon Troy Buswell MLA, Minister for Transport, *Legislation under the Transport Portfolio*, 30 January 2012. The Minister said of the Act, “*discontinuance recommended.*”

<sup>22</sup> Letter from Hon Troy Buswell MLA, Minister for Transport, *Legislation under the Transport Portfolio*, 30 January 2012. The Minister said “*our understanding is this Act has no force.*” Pursuant to section 6, the Commonwealth’s Sea Dumping Act applies throughout Australia. Section 9 of the Commonwealth Act provides that the Commonwealth Minister may, if she/he is satisfied that the law of a State makes provision for giving effect to the *Protocol on the Sea Dumping Convention* in relation to coastal waters of that State, make declaration that limits the operation of the Commonwealth Act in relation to the relevant State and its coastal waters. The declaration is required to be in the form of a Notice published in the *Commonwealth Gazette*. The Commonwealth Minister has never made a declaration pursuant to section 9 in relation to our Act. As such it appears that our Act has no legal effect and the Commonwealth Act instead applies in WA’s coastal waters. Repeal would not have any foreseeable adverse impact as the Commonwealth Act would continue to apply. However, this should not be done without consideration as to whether the State Government wishes to pursue a declaration under the Commonwealth Act.

<sup>23</sup> Letter from Hon Troy Buswell MLA, Minister for Transport, Attachment 3, *Emergency Services Acts*, 3 October 2012. The Committee noted that this Act is not on the SLP “*Live Acts*” list and would not be as consequential provisions enactments fall away when made.

<sup>24</sup> Letter from Hon Troy Buswell MLA, Treasurer, *Attachment 2*, 3 October 2012.

<sup>25</sup> Letter from Hon John Castrilli MLA, Minister for Local Government, 17 January 2012.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

10. *Kojonup Cemetery Act 1928*.<sup>29</sup>
11. *Northam Cemeteries Act 1944*.<sup>30</sup>
12. *Toodyay Cemeteries Act 1939*.<sup>31</sup>
13. *York Cemeteries Act 1933*.<sup>32</sup>
14. *Albany Public Cemeteries Subsidies Act 1952*.<sup>33</sup>
15. *City of Fremantle and Town of East Fremantle Trust Funds Act 1961*.<sup>34</sup>
16. *Mandurah Church Burial Ground Act 1947*.<sup>35</sup>
17. *Spear-gun Control Act 1955*.<sup>36</sup>
18. *Year 2000 Information Disclosure Act 1999*.<sup>37</sup>
19. *Corporations (Taxing) Act 1990*.<sup>38</sup>
20. *Corporations (Western Australia) Act 1990*.<sup>39</sup>
21. *Deodands abolition (1846) (Imp)*.<sup>40</sup>
22. *Dower amendment (1833) (Imp)*.<sup>41</sup>
23. *Escheat and forfeiture of real and personal property (1834) (Imp)*.<sup>42</sup>

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<sup>29</sup> Letter from Hon John Castrilli MLA, Minister for Local Government, 17 January 2012.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Letter from Hon John Castrilli MLA, Minister for Local Government, 17 January 2012. The Minister said a draft amendment and expiry bill is being prepared to transfer the trusts' assets directly to the two respective local governments.

<sup>35</sup> Letter from Hon John Castrilli MLA, Minister for Local Government, 17 January 2012.

<sup>36</sup> Letter from Hon Norman Moore MLC, 5 October 2012. The Minister said this Act is “*not considered to be necessary from a fisheries perspective.*”

<sup>37</sup> Letter from Hon Simon O'Brien MLC, Minister for Commerce, 13 January 2012. The Minister said this Act would be included in a 2012 omnibus bill but this did not occur.

<sup>38</sup> Letter from Hon Michael Mischin MLC, Attorney General, 5 September 2012.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.



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24. *Executors Act 1830 (Imp)*.<sup>43</sup>
  25. *Factors (1823) (Imp)*.<sup>44</sup>
  26. *Factors (1825) (Imp)*.<sup>45</sup>
  27. *Factors (1842) (Imp)*.<sup>46</sup>
  28. *Imperial Acts Adopting Act 1836*.<sup>47</sup>
  29. *Imperial Acts Adopting Act 1844*.<sup>48</sup>
  30. *Infants' Property Act 1830 (IMP)*.<sup>49</sup>
  31. *Inheritance Amendment Act (1833) IMP*.<sup>50</sup>
  32. *Judgments Act 1839(IMP)*.<sup>51</sup>
  33. *Judgments Act 1855(IMP)*.<sup>52</sup>
  34. *Marriage Act 1835 (IMP)*.<sup>53</sup>
  35. *Mercantile Law Amendment Act 1856 (IMP)*.<sup>54</sup>
  36. *Miscellaneous Repeals Act 1991*.<sup>55</sup>

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<sup>43</sup> Letter from Hon Michael Mischin MLC, Attorney General, 5 September 2012.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Letter from Hon Michael Mischin MLC, Attorney General, 5 September 2012, p23. The Attorney General said: "*Whether the Act can be repealed will depend on how many of the English Acts adopted are obsolete.*"

<sup>48</sup> Ibid, p24.

<sup>49</sup> Ibid, p27. The Attorney General said: "*Any provisions that remain current should be taken up in other legislation and this Act repealed.*"

<sup>50</sup> Letter from Hon Michael Mischin MLC, Attorney General, 5 September 2012, p28.

<sup>51</sup> Letter from Hon Michael Mischin MLC, Attorney General, 5 September 2012, p29. The Attorney General said: "*The provisions of this Act are obsolete as the Civil Judgments Enforcement Act 2004 now applies to all matters relating to civil judgments.*"

<sup>52</sup> Letter from Hon Michael Mischin MLC, Attorney General, 5 September 2012, p30. The Attorney General said: "*The provisions of this Act are obsolete as the Civil Judgments Enforcement Act 2004 now applies to all matters relating to civil judgments.*"

<sup>53</sup> Letter from Hon Michael Mischin MLC, Attorney General, 5 September 2012, p31.

<sup>54</sup> Ibid, p32.

<sup>55</sup> Letter from Hon Michael Mischin MLC, Attorney General, 5 September 2012, p33. The Attorney General said: "*Sections 6 and 9 are now exhausted.*"

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37. *Perpetuation of Testimony Act 1842 (IMP)*.<sup>56</sup>
38. *Prescription Act 1832 (IMP)*.<sup>57</sup>
39. *Special Investigation (Coal Contract) Act 1994*.<sup>58</sup>
40. *Stock Jobbing (Application) Act 1969*.<sup>59</sup>
41. *West Australian Trustees Limited (Merger) Act 1989*.<sup>60</sup>
42. *White Phosphorus Matches Prohibition Act 1912*.<sup>61</sup>
43. *Hospital Fund Act 1930*.<sup>62</sup>
44. *Housing Societies Repeal Act 2005*.<sup>63</sup>
45. *Western Australian Meat Marketing Co-operative Limited (Shares) Act 2003*.<sup>64</sup>
46. *Fitzgerald Street Bus Bridge Act 1991*.<sup>65</sup>
47. *Machinery of Government (Planning and Infrastructure) Amendment Act 2002*.<sup>66</sup>
48. *Racing and Gaming Legislation and Repeal Act 2003*.<sup>67</sup>

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<sup>56</sup> Ibid, p34. The Attorney General said: “*The provisions appear to be irrelevant for modern purposes.*”

<sup>57</sup> Ibid, p35.

<sup>58</sup> Ibid, p37. The Attorney General said: “*The powers and abilities under the Act are exhausted.*”

<sup>59</sup> Ibid, p37.

<sup>60</sup> Ibid, p43. The Attorney General said: “*Subject to checking what has happened to the assets referred to in the definition of ‘excluded assets’ in section 3, the Act is probably exhausted and obsolete.*”

<sup>61</sup> Letter from Hon Dr Kim Hames MLA, Minister for Health, 7 September 2012, p1. The Minister said this Act “*will be repealed as soon as appropriate arrangements are in effect for the regulation of white phosphorous matches under either the Public Health Bill or the Medicines, Poisons and Therapeutic Goods Bill.*”

<sup>62</sup> Letter from Hon Dr Kim Hames MLA, Minister for Health, 7 September 2012, p1. The Minister said this Act will be repealed by Part 8 of the National Health Funding Pool Bill 2012 currently at *Amendments agreed to by Legislative Assembly - 08/11/2012* stage.

<sup>63</sup> Letter from Hon Troy Buswell MLA, former Minister for Housing, 19 January 2012.

<sup>64</sup> Letter from Hon Terry Redman MLA, Minister for Agriculture and Food, 27 September 2012, p6.

<sup>65</sup> Letter from the Hon John Day MLA, Minister for Planning, 12 September 2012.

<sup>66</sup> Ibid.

<sup>67</sup> Letter from Hon Terry Waldron MLA, Minister for Racing and Gaming, *Statutes under the Racing and Gaming Portfolio*, 19 January 2012.

## APPENDIX 2

### SPECIFIC SECTIONS IN ACTS IDENTIFIED AS OBSOLETE

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1. Section 38(2) of the *Pollution of Waters by Oil and Noxious Substances Act 1987*.<sup>68</sup>
2. Section 43AA of the *Transport Co-ordination Act 1966*.<sup>69</sup>
3. Sections 12A, 12B and 28 of the *Main Roads Act 1930*.<sup>70</sup>
4. Sections 15 to 20 of the *Western Australian Marine Act 1982*.<sup>71</sup>
5. Sections 17(2)(k); 16(2) and 18 of the *Western Australian Land Authority Act 1992*.<sup>72</sup>
6. Section 50(3), 125(3) and 211(2) of the *Acts Amendment (Equality of Status) Act 2003*.<sup>73</sup>
7. Sections 2 and 4 of the *Factors Acts Amendment Act 1878*.<sup>74</sup>

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<sup>68</sup> Letter from Hon Troy Buswell MLA, Minister for Transport, *Legislation under the Transport Portfolio*, 30 January 2012. The Minister described section 38(2) as a “*spent provision*.”

<sup>69</sup> Ibid. The Minister said the Commonwealth Act referred to ceased to have effect on 31 August 1995. It was repealed by the *Qantas Sale Act 1992 (Cth)*.

<sup>70</sup> Ibid. The Minister said sections 12A and 12B comprise all of Part 3 of the *Main Roads Act 1930* headed “*Main Roads Advisory Board*” and are both obsolete. The Board has never been convened and the purposes it was intended to serve are addressed by alternative means. There are no foreseeable problems that may arise if these provisions were repealed. Section 28 is obsolete; there are no records of it having been used since it was inserted into the Act in 1976. There are no foreseeable problems that may arise if the provision was repealed.

<sup>71</sup> Ibid. The Minister said the ‘Manning Committee’ referred to there can no longer be constituted. Some of offices listed no longer exist but these sections will be repealed as part of the National Reforms for Commercial Vessel Safety agreed by COAG in 2011 and expected to come into operation in 2013.

<sup>72</sup> Letter from Hon Brendon Grylls MLA, Minister for Lands, 9 July 2012, p6.

<sup>73</sup> Letter from the Attorney General, Hon Michael Mischin MLC, 5 September 2012. The Attorney General said: “*There may be a case for replacing each of the transitional provisions and inserting them as stand-alone transitional in the relevant places or at the end of the main Acts (that is, the Family Court Act 1997; the Property Law Act 1969 and the Wills Act 1970. This has two advantages: the Acts Amendment (Equality of Status) Act 2003 could be removed from the State Law Publisher website and the transitional is in the statute to which it applies and not the Acts Amendment (Equality of Status) Act 2003.*”

<sup>74</sup> Ibid. The Attorney General said: “*Sections 2 and 4 are inconsistent with the Personal Property Securities Act 2009 (Cth) and potentially inoperative and therefore could be treated as obsolete.*”

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8. Savings and transitional provisions in the *Family Legislation Amendment Act 2006*.<sup>75</sup>
9. Sections 27(1), (2) (3) (4), 28(A), 37(1), (2), (3), (4) and 51(c) of the *Museum Act 1969*.<sup>76</sup>
10. Section 81(3) of the *Gaming and Wagering Commission Act 1987*.<sup>77</sup>
11. Section 178 of the *Liquor Control Act 1988*.<sup>78</sup>
12. Parts 2 and 3 of the *Energy Coordination Act 1994*.<sup>79</sup>
13. Part 7 of the *Land Drainage Act 1925* and the *Land Drainage (Validation) Act 1996*.<sup>80</sup>
14. Sections 57E-1 of the *Metropolitan Water Authority Act 1982* and the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*.<sup>81</sup>
15. Part VI of the *Rights in Water and Irrigation Act 1914*.<sup>82</sup>
16. Section 3A of the *Perth Theatre Trust Act 1979*.<sup>83</sup>

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<sup>75</sup> Letter from the Attorney General, Hon Michael Mischin MLC, 5 September 2012, p20. The Attorney General said: “*The statute, excluding transitionals and savings provisions is exhausted. Arguably, those provisions could be incorporated into the principal legislation.*”

<sup>76</sup> Letter from Hon John Day MLA, Minister for Planning, 22 March 2012.

<sup>77</sup> Letter from Hon Terry Waldron MLA, Minister for Racing and Gaming, *Statutes under the Racing and Gaming Portfolio*, 19 January 2012. The Minister said this is “*no longer necessary.*” The section states: “*The playing of the game of two-up and the gaming associated with that game conducted in all respects in accordance with the Police (Kalgoorlie Two-up Gaming) Regulations 1983 as in force immediately prior to the coming into operation of this section shall be taken to constitute permitted two-up and is not unlawful.*” The Minister said: “*Bush Two-Up ceased a number of years ago.*”

<sup>78</sup> Ibid. The Minister said this is “*no longer necessary.*” The section provides for a one off, five year review of the Act.

<sup>79</sup> Letter from Hon Peter Collier MLA, Minister for Energy, 31 January 2012, p6.

<sup>80</sup> Letter from Hon Bill Marmion MLA, Minister for Water, 31 January 2012. The Minister said Part 7 deals with rating for drainage services.

<sup>81</sup> Ibid. The Minister said they relate to Public Drinking Water Source Areas and have no water resource management purpose on the passage of the Water Services Bill 2011.

<sup>82</sup> Ibid. The Minister said the compensation regime here remains though it is understood they have never been utilised. This Part is considered obsolete in the sense of having fallen into disuse.

<sup>83</sup> Letter from Hon John Day MLA, Minister for Culture and Arts, 22 March 2012. The Minister said the section “*provides for transitional provisions relating to the general manager.*”

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## APPENDIX 3

### SUBSIDIARY LEGISLATION IDENTIFIED AS OBSOLETE

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1. Regulations 47AA, 47AB and 47CA and references to those provisions in regulation 47F) of the Navigable Waters Regulations 1958.<sup>84</sup>
2. Western Australian Marine (Sea Dumping) Regulations 1982.<sup>85</sup>
3. Regulation 6(2) of the W.A. Marine (Adjustment of Compasses) Regulations 1983.<sup>86</sup>
4. Regulation 27A of the W.A. Marine (Certificates of Competency and Safety Manning) Regulations 1983.<sup>87</sup>
5. “Numerous” provisions in Part 2 of the W.A. Marine (Radiotelephony) Regulations 1981.<sup>88</sup>
6. ANZAC Day Act Regulations 1961.<sup>89</sup>

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<sup>84</sup> Letter from Hon Troy Buswell MLA, Minister for Transport, *Legislation under the Transport Portfolio*, 30 January 2012. The Minister said regulations 47AA, 47AB and 47CA and references to those provisions in regulation 47F) are spent provisions.

<sup>85</sup> Ibid. The Minister said that as the Act under which these are made has no force, these must be obsolete. But to note, that pursuant to section 6, the Commonwealth’s Sea Dumping Act applies throughout Australia. Section 9 of the Commonwealth Act provides that the Commonwealth Minister may, if she/he is satisfied that the law of a State makes provision for giving effect to the *Protocol on the Sea Dumping Convention* in relation to coastal waters of that State, make declaration that limits the operation of the Commonwealth Act in relation to the relevant State and its coastal waters. The declaration is required to be in the form of a Notice published in the Commonwealth Gazette. The Commonwealth Minister has never made a declaration pursuant to section 9 in relation to our Act. As such it appears that our Act has no legal effect and the Commonwealth Act instead applies in WA’s coastal waters. Repeal would not have any foreseeable adverse impact as the Commonwealth Act would continue to apply. However, this should not be done without consideration as to whether the State Government wishes to pursue a declaration under the Commonwealth Act.

<sup>86</sup> Ibid. The Minister said the Australian Maritime College referred to there no longer exists. The Minister said this should be updated, not repealed at this time and will be repealed as part of the National Reforms for Commercial Vessel Safety agreed by COAG in 2011 and expected to come into operation in 2013.

<sup>87</sup> Ibid. The Minister said the certificates are no longer issued by the Department but will be repealed as part of the National Reforms for Commercial Vessel Safety agreed by COAG in 2011 and expected to come into operation in 2013.

<sup>88</sup> Ibid. The Minister said there are references to organisations that no longer exist. The Minister said this should be updated, not repealed at this time and will be repealed as part of the National Reforms for Commercial Vessel Safety agreed by COAG in 2011 and expected to come into operation in 2013.

<sup>89</sup> Letter from Hon Troy Buswell MLA, Minister for Transport, 3 October 2012. The Minister said “*after further review, the entire regulations are obsolete and may be repealed.*”

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7. Regulations 220, 231 and the Third Appendix of the Fire Brigades Regulations 1943.<sup>90</sup>
8. Regulations 40A, 41 and 44M of the Pearling (General) Regulations 1991.<sup>91</sup>
9. Economic Regulation Authority (Transitional) Regulations 2003.<sup>92</sup>
10. Imperial Act Adopting Ordinance 1847.<sup>93</sup>
11. Imperial Acts Adopting Ordinance 1849.<sup>94</sup>
12. Imperial Acts Adopting Ordinance 1867.<sup>95</sup>
13. Service and Execution of Process (Harbours) Ordinance 1855.<sup>96</sup>
14. By-law under the Second Schedule of the Town Planning and Development Act 1928, clauses 4 & 11.<sup>97</sup>
15. By-laws for the Control of Hoardings.<sup>98</sup>
16. Town Planning (Buildings) Uniform General By-laws 1989.<sup>99</sup>
17. Town Planning (Height of Obstructions at Corners) General By-laws 1975.<sup>100</sup>
18. Town Planning and Development By-laws - By-law 3.<sup>101</sup>

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<sup>90</sup> Letter from Hon Troy Buswell MLA, Minister for Transport, Attachment 3, *Emergency Services Subsidiary Legislation*, 3 October 2012. The Minister said “each of these provisions relate to a section within the *Fire Brigades Act 1942* which has been deleted.”

<sup>91</sup> Letter from Hon Norman Moore MLC, Minister for Fisheries, 3 February 2012. The Minister said the “regulations had been identified by the Department as obsolete and is initiating action to repeal these”. However, as at the date of this Report the repeals have not been made.

<sup>92</sup> Letter from Hon Christian Porter MLA, former Treasurer, 27 January 2012, *Attachment A*, p4.

<sup>93</sup> Letter from Hon Michael Mischin MLC, Attorney General, 5 September 2012, p22.

<sup>94</sup> Ibid, p25.

<sup>95</sup> Ibid, p26.

<sup>96</sup> Ibid, p36. The Attorney General said: “The sections have been overtaken by the *Service and Execution of Process Act 1992 (Cth)*.”

<sup>97</sup> Letter from Hon John Day MLA, Minister for Planning, 18 September 2012. The Minister identified this as obsolete and said “Subject to my approval as Minister for Planning and that of his Excellency the Governor, the DoP is preparing documentation to repeal.”

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

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19. Town Planning and Development By-laws - By-laws in respect of Excavations in Subdivided Areas.<sup>102</sup>
  20. Uniform General By-laws - (Section 30 Subsection 1) New Subdivisions and Re-subdivisions.<sup>103</sup>
  21. Form 1 of the Schedule to the Product Symbol Regulations 1980.<sup>104</sup>
  22. Regulations 3,5-10, 12-13, 15-31 of the Regulations for the Conduct of the State Library.<sup>105</sup>
  23. Police (Gaming) Regulations 1982.<sup>106</sup>
  24. Police (Kalgoorlie Two-Up Gaming) Regulations 1983.<sup>107</sup>
  25. Regulations 41(d) and 42(b) of the Conservation and Land Management Regulations 2002.<sup>108</sup>

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<sup>102</sup> Letter from Hon John Day MLA, Minister for Planning, 18 September 2012. The Minister identified this as obsolete and said “*Subject to my approval as Minister for Planning and that of his Excellency the Governor, the DoP is preparing documentation to repeal.*”

<sup>103</sup> Ibid.

<sup>104</sup> Ibid. The Minister said the Schedule prescribes inspectors’ identification papers but is outdated.

<sup>105</sup> Letter from Hon John Day MLA, Minister for Planning, 22 March 2012. The Minister said these regulations are “*now covered by policies and procedures*” and could be repealed.

<sup>106</sup> Letter from Hon Rob Johnson MLA, former Minister for Police, 23 January 2012. The former Minister said “*these are no longer relevant as the sections of the Police Act 1982 upon which they are based have since been deleted. The content of these regulations has been effectively transferred to the Gaming and Wagering Commission Act 1987 and all sections of the Police Act 1892 upon which the regulations are based have been deleted.*”

<sup>107</sup> Ibid.

<sup>108</sup> Letter from Hon Bill Marmion MLA, Minister for Environment, 31 January 2012. The Minister said these refer to a section of the *Wildlife Conservation Act* which no longer exists.





## APPENDIX 4

### ACTS IDENTIFIED BY MINISTERS AS REQUIRING FURTHER INVESTIGATION

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1. *Carnarvon Electric Lighting Act 1924.*<sup>109</sup>
2. *Ocean Gardens (Inc) Act 2004.*<sup>110</sup>
3. *Tamala Park Land Transfer Act 2001.*<sup>111</sup>
4. *Transfer and Use of Funds (Shires of Harvey and Waroona) Act 1991.*<sup>112</sup>
5. *City of Fremantle (Free Literary Institute) Act 1948.*<sup>113</sup>
6. *Fremantle Endowment Lands Act 1918.*<sup>114</sup>
7. *Fremantle Improvement Act 1913.*<sup>115</sup>
8. *South Fremantle Oil Installations Pipeline Act 1948.*<sup>116</sup>
9. *City of Perth Improvement Act 1913.*<sup>117</sup>
10. *City of Perth Restructuring Act 1993.*<sup>118</sup>
11. *Energy Corporations (Transitional and Consequential Provisions) Act 1994.*<sup>119</sup>

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<sup>109</sup> Letter from Hon John Castrilli MLA, Minister for Local Government, 17 January 2012.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Letter from Hon Peter Collier MLA, Minister for Energy, 31 January 2012. The Minister said the Act is “potentially obsolete” but further legal analysis and stakeholder consultation is required to be certain.

12. *Gas Corporation (Business Disposal) Act 1999.*<sup>120</sup>
13. *State Energy Commission (Validation) Act 1978.*<sup>121</sup>
14. *Albany Lot 184 (Validation of Title) Act 1956.*<sup>122</sup>
15. *Anglican Church of Australia Diocesan Trustees and Lands Act 1918.*<sup>123</sup>
16. *Anglican Church of Australia Lands Vesting Act 1892.*<sup>124</sup>
17. *Anglican Church of Australia School Lands Act 1896.*<sup>125</sup>
18. *Canning Lands Revestment Act 1954.*<sup>126</sup>
19. *Caves House Disposal Act 1965.*<sup>127</sup>
20. *City of Perth (Lathlain Park Reserves) Act 1950.*<sup>128</sup>
21. *City of Perth (Leederville Park Lands) Act 1950.*<sup>129</sup>
22. *East Carey Park Land Vesting Act 1957.*<sup>130</sup>
23. *Fremantle City Council Lands Act 1929.*<sup>131</sup>
24. *Fremantle Reserves Surrender Act 1912.*<sup>132</sup>
25. *Geraldton Agricultural and Horticultural Society's Land Act 1914.*<sup>133</sup>

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<sup>120</sup> Letter from Hon Peter Collier MLA, Minister for Energy, 31 January 2012. The Minister said the Act is “potentially no longer necessary” but further legal analysis and stakeholder consultation is required to be certain.

<sup>121</sup> Ibid.

<sup>122</sup> Letter from Hon Brendon Grylls, Minister for Regional Development; and Lands, 9 July 2012.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

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26. *Geraldton Sailors and Soldiers' Memorial Institute Lands Vesting Act 1933.*<sup>134</sup>
  27. *Jennacubbine Sports Council (Incorporated) Act 1965.*<sup>135</sup>
  28. *Native Mission Stations Act 1923.*<sup>136</sup>
  29. *Perth Town Hall Act 1950.*<sup>137</sup>
  30. *Perth Town Hall Agreement Act 1953.*<sup>138</sup>
  31. *Resumption Variation (Boulder-Kambalda Road) Act 1973.*<sup>139</sup>
  32. *Roman Catholic New Norcia Church Property Act 1929.*<sup>140</sup>
  33. *Special Lease (Gypsum) Act 1918.*<sup>141</sup>
  34. *Special Lease (Lake Clifton) Act 1916.*<sup>142</sup>
  35. *Special Lease (Stirling Estate) Act 1916.*<sup>143</sup>
  36. *Special Lease Enabling Act 1914.*<sup>144</sup>
  37. *Town of Claremont (Exchange of Land) Act 1964.*<sup>145</sup>
  38. Various Reserves Acts.<sup>146</sup>
  39. *Coal Industry Tribunal of Western Australia Act 1992.*<sup>147</sup>

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<sup>134</sup> Letter from Hon Brendon Grylls, Minister for Regional Development; and Lands, 9 July 2012.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> The Minister for Mines and Petroleum said “*It is understood that Commerce considers the Act obsolete and has made or will shortly be making a submission to the Committee to this effect.*” Letter dated 3 February 2012. However, on 24 September 2012, Hon Simon O’Brien MLC, Minister for Commerce said the Act is “*still under internal review.*” It “*requires assessment*” in light of the Commonwealth’s *Fair Work Act 2009*.

40. *Conspiracy and Protection of Property Act 1900.*<sup>148</sup>
41. *Industrial Relations Act 1979.*<sup>149</sup>
42. *Labour Relations Reform Act 2002.*<sup>150</sup>
43. *Law Reform (Common Employment) Act 1951.*<sup>151</sup>
44. *Bills of Exchange (Day for Payment) (1836) (IMP).*<sup>152</sup>
45. *Bills of Exchange (Day for Payment) (1832) (IMP).*<sup>153</sup>
46. *Debts Recovery Act 1830 (Imp).*<sup>154</sup>
47. *Debts Recovery Act 1839 (Imp).*<sup>155</sup>
48. *Imperial Acts Adopting Act 1836.*<sup>156</sup>
49. *Imperial Acts Adopting Act 1846.*<sup>157</sup>
50. *University Buildings Act 1930.*<sup>158</sup>
51. *University Building Act 1938.*<sup>159</sup>
52. *University Buildings Act 1952.*<sup>160</sup>

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<sup>148</sup> Letter from Hon Simon O'Brien MLC, Minister for Commerce, 24 September 2012.

<sup>149</sup> Letter from Hon Simon O'Brien MLC, Minister for Commerce, 24 September 2012.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Letter from the Attorney General, Hon Michael Mischin MLC, 5 September 2012. The Attorney General said: "*The Act is probably obsolete, however, State Solicitor's Office should be asked to confirm.*"

<sup>153</sup> Ibid.

<sup>154</sup> Ibid. The Attorney General said: "*A detailed review would be required to ascertain whether any of the 12 operative provisions remain valid. If any do, and this is doubtful, it is arguable that those provisions should be re-enacted in modern legislation. The Act may be obsolete.*"

<sup>155</sup> Ibid.

<sup>156</sup> Ibid, p23. The Attorney General said: "*Whether the Act can be repealed will depend on how many of the English Acts adopted are obsolete.*"

<sup>157</sup> Ibid, p24. The Attorney General said: "*Whether the Act can be repealed will depend on how many of the English Acts adopted are obsolete.*"

<sup>158</sup> Letter from Hon Elizabeth Constable, MLA, then Minister for Education, *Addendum 2*, 1 February 2012, The former Minister said "*No process of formal statutory review has been undertaken in identifying this legislation as potentially obsolete and consultation with relevant stakeholders is essential before progressing repeal.*"

<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

53. *Murdoch University Planning Boards Act 1970.*<sup>161</sup>

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<sup>161</sup> Letter from Hon Elizabeth Constable, MLA, then Minister for Education, *Addendum 2*, 1 February 2012. The former Minister said “*No process of formal statutory review has been undertaken in identifying this legislation as potentially obsolete and consultation with relevant stakeholders is essential before progressing repeal.*”

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## APPENDIX 5

### SPECIFIC SECTIONS IN ACTS IDENTIFIED AS POTENTIALLY OBSOLETE BUT REQUIRE FURTHER INVESTIGATION

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1. Division 4, Part II of the *Western Australian Marine Act 1982*.<sup>162</sup> Also some of the sections in Part V- Carriage of Dangerous Goods.<sup>163</sup> Also references to International Conventions in Part IV.<sup>164</sup>
2. Part 9 of the *Electricity Corporations Act 2005*.<sup>165</sup>
3. Schedule 3 to the *Electricity Industry Act 2004*.<sup>166</sup>
4. Part 3 of the *Electricity Transmission and Distribution Systems (Access) Act 1994*.<sup>167</sup>
5. The Long Title of the *Fuel, Energy and Power Resources Act 1972*.<sup>168</sup>
6. Several transitional and savings provisions in the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003*.<sup>169</sup>

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<sup>162</sup> Letter from Hon Troy Buswell MLA, Minister for Transport, *Legislation under the Transport Portfolio*, 30 January 2012. The Minister said this Division deals with seaman’s wages which are now dealt with in industrial relations.

<sup>163</sup> Ibid. The Minister said these “may” be obsolete, for example the *Dangerous Goods Act 1961* referred to in section 91(1)(a) has been repealed.

<sup>164</sup> Ibid. The Minister said these “may” be obsolete.

<sup>165</sup> Letter from Hon Peter Collier MLC, Minister for Energy, 31 January 2012. The Minister said it deals with transitional provisions for succession for Western Power Corporation to the new corporations and “may” be obsolete. Further legal analysis and stakeholder consultation is required to be certain.

<sup>166</sup> Ibid. The Minister said the Schedule is a transitional matter. However, further legal analysis and stakeholder consultation is required to be certain.

<sup>167</sup> Ibid. The Minister said Part 3 may be considered to be obsolete as it provides transitional provisions for succession from the SEC to Western Power Corporation. However, further legal analysis and stakeholder consultation is required to be certain.

<sup>168</sup> Ibid. The Minister said because it does not account for the deletion in 1975 of Part II (sections 5-40) which provides for the establishment and functions of the Fuel and Power Commission of WA and the Fuel and Power Advisory Council.

<sup>169</sup> Letter from the Attorney General, Hon Michael Mischin MLC, 5 September 2012. The Attorney General said: “Depending on whether or not the transitional provisions have any continuing effect there would appear to be two possible courses of action. If they no longer have any effect the provisions will have to be repealed as they will otherwise remain on the statute book indefinitely. If they do continue to have effect they could be inserted into the main legislation. The latter would have the advantage that the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* could be removed from the State Law Publisher website and the transitional is in the statute to which it applies and not the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003*. It might be appropriate to obtain State Solicitor Office advice.”

7. Sections 6 and 7 of the *Civil Procedure Act 1833 (IMP)*.<sup>170</sup>
8. Several transitional and savings provisions in the *Criminal Property Confiscation (Consequential Provisions) Act 2000*.<sup>171</sup>

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<sup>170</sup> Letter from the Attorney General, Hon Michael Mischin MLC, 5 September 2012. The Attorney General said: “Sections 6 and 7 seem obsolete. Subject to confirmation by the State Solicitor Office the provisions could be repealed.”

<sup>171</sup> Ibid. The Attorney General said: “All the provisions appear to remain relevant, however, the question needs to be asked whether any of the savings provisions have been exhausted by the time that has elapsed. If there are any provisions that remain in operation it might be possible to transfer them to the Criminal Property Confiscation Act 2000 so that they are all in that main Act. This would mean that the Criminal Property Confiscation (Consequential Provisions) Act 2000 could be taken off the database.”



**APPENDIX 6**  
**ONE PROVISION IN SUBSIDIARY LEGISLATION IDENTIFIED AS**  
**REQUIRING FURTHER INVESTIGATION**

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1. Regulation 3(2)(a) of the Marine Navigational Aids Regulations 1985.<sup>172</sup>

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<sup>172</sup> Letter from Hon Troy Buswell MLA, Minister for Transport, *Legislation under the Transport Portfolio*, 30 January 2012, p1. The Minister said “*An examination of the regulation is required to determine whether it is a spent provision.*”

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## APPENDIX 7

### 70 STATUTES WITH ROYAL ASSENT BUT NOT PROCLAIMED

<b>Acts awaiting commencement</b>		
YearNumber	ActName	Provisions awaiting commencement
1970/091	Presbyterian Church of Australia Act 1970	s. 7 not in operation (Notice to be published, see s. 7(2) & 2(2))
1978/117	Control of Vehicles (Off-road Areas) Act 1978	s. 11: to be proclaimed (see s. 2)
1987/015	Western Australian Marine Amendment Act 1987	Act other than s. 1 & 2: to be proclaimed (see s. 2)
1987/126	Acts Amendment (Land Administration) Act 1987	Pt. IX: to be proclaimed
1990/035	Western Australian Marine Amendment Act 1990	s. 4(d), 6-9 & 12: to be proclaimed
1995/056	Business Licensing Amendment Act 1995	Pt. 2 & 3: to be proclaimed
1996/045	Acts Amendment (ICWA) Act 1996	s. 25 & 28 & Sch. 1 item 3(c), 4, 8 (other than para 7): to be proclaimed
1998/061	Acts Amendment (Land Administration, Mining and Petroleum) Act 1998	s. 4 operative on commencement of Pt. 5 of the Native Title (State Provisions) Act 1998 (see s. 2(2)); s. 7 operative on commencement of any of Pt. 3-5 of the Native Title (State Provisions) Act 1998 (see s. 2(3))
1999/036	School Education Act 1999	s. 182(3) & 208: to be proclaimed
1999/060	Native Title (State Provisions) Act 1999	Pt.2 (except s.2.2) (see s.1.2(3)); Pt.3 (except s.3.1), Pt.5 Div.4 (see s.1.2(4) & (5)); Pt.4 to be proc.; Pt.5 Div.1,2 & 3 & Pt. 6; s. 7.3 op. on commencement of Pt. 2 (except s.2.2), Pt.3 (except s.3.1) and Pt.4 (see s.1.2)
2000/043	State Superannuation (Transitional and Consequential Provisions) Act 2000	s. 27-32, 33(2), 34, 36(2), 37(2), 38, 39(2), 40, 43(2), 44, 46(2), 48(2), 50, 51, 53, 54, 56, 57, 59(a), 60(2), 63, 64, 66-68 & 71-75: to be proclaimed
2003/006	Transfer of Land Amendment Act 2003	s. 43, 46, 56 & 57: to be proclaimed (see s. 2)
2003/050	Sentencing Legislation Amendment and Repeal Act 2003	s. 78: to be proclaimed
2003/073	Motor Vehicle Dealers Amendment Act 2003	s. 20-21: to be proclaimed
2004/066	Reserves (National Parks, Conservation Parks, Nature Reserves and Other Reserves) Act 2004	s. 15, 21, 22, 24, 29, 31 & 32: to be proclaimed
2004/072	Community Protection (Offender Reporting) Act 2004	s. 12 & Sch. 3: to be proclaimed
2005/013	Petroleum Legislation Amendment and Repeal Act 2005	s. 29(2): to be proclaimed
2005/037	Planning and Development Act 2005	s. 149: to be proclaimed (see s. 2)
2006/026	Commonwealth Powers (De Facto Relationships) Act 2006	Act other than s. 1 & 2: to be proclaimed (see s. 2)
2006/035	Family Legislation Amendment Act 2006	Pt. 4: to be proclaimed (see s. 2)

Acts awaiting commencement		
YearNumber	ActName	Provisions awaiting commencement
2006/048	Commissioner for Children and Young People Act 2006	Sch. 1 cl. 3: to be proclaimed (see s. 2)
2006/061	Daylight Saving Act 2006	s. 6 operative on the day after publication of a statement in the Gazette (see s. 2(2))
2006/071	Shipping and Pilotage Amendment Act 2006	s. 8 & 13(1)(b): to be proclaimed (see s. 2)
2006/077	Financial Management (Transitional Provisions) Act 2006	Sch. 1 cl. 122: to be proclaimed (see s. 2(1))
2007/007	Owner-Drivers (Contracts and Disputes) Act 2007	s. 35 & 36: to be proclaimed (see s. 2)
2007/023	Biosecurity and Agriculture Management Act 2007	Pt. 2 Div. 1 & 2, Div. 3 (other than s. 22, 27-32 & 36-39), Div. 4 (other than s. 43), Pt. 3, Pt. 7 Div. 4, s. 183-186, 193 & Pt. 9: to be proclaimed
2007/024	Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007	Pt. 2 Div. 3-5, Div. 6 Subdiv. 1 (s. 28 & 29), 8, 10, 12-13 & 15-18 & Pt. 3 other than s. 85(4); Proc to be made under s. 27 of this Act to repeal Agriculture and Related Resources Protection Act 1976: to be proclaimed (see s. 2)
2007/036	Waste Avoidance and Resource Recovery Act 2007	Sch. 4 cl. 2(3) & 3: to be proclaimed (see s. 2(b))
2008/012	Duties Legislation Amendment Act 2008	Pt. 2 Div. 2 Subdiv. 3: 1 Jul 2013 (see s. 2(c) and Act No. 2010/009 s. 8)
2008/013	Prostitution Amendment Act 2008	Act other than s. 1 & 2: to be proclaimed (see s. 2(b))
2008/025	Acts Amendment (Consent to Medical Treatment) Act 2008	s. 11 (to the extent that it inserts s. 110RA, 110ZAA, 110ZAB & 110ZAC) & s. 12: to be proclaimed (see s. 2)
2008/029	Criminal Law Amendment (Homicide) Act 2008	s. 36(2): to be proclaimed (see s. 2(d))
2008/039	Road Traffic (Administration) Act 2008	Act other than s. 1 & 2: to be proclaimed (see s. 2(b))
2008/040	Road Traffic (Authorisation to Drive) Act 2008	Act other than s. 1 & 2: operative on commencement of the Road Traffic (Administration) Act 2008 s. 2(b) (see s. 2(b))
2008/041	Road Traffic (Vehicles) (Taxing) Act 2008	Act other than s. 1 & 2: operative on commencement of the Road Traffic (Administration) Act 2008 (see s. 2(b))
2010/014	Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010	Pt. 5: to be proclaimed (see s. 2(b))
2010/018	Rail Safety Act 2010	s. 64-66: 1 Feb 2014 (see s. 2(d))
2010/019	Standardisation of Formatting Act 2010	Balance
2010/042	Petroleum and Energy Legislation Amendment Act 2010	s. 51, 57, 58(b) (to the extent that it inserts s. 153(2)(lc)), 61 (to the extent that it inserts Sch. 2 cl. 3), 149, 163, 165(1)(b) (to the extent that it inserts s. 152(2)(lc)) & 169 (to the extent that it inserts Sch. 3 cl. 4): to be proclaimed

Acts awaiting commencement		
YearNumber	ActName	Provisions awaiting commencement
2010/043	Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act 2010	Pt. 3: to be proclaimed (see s. 2(c))
2010/051	Road Traffic Legislation Amendment (Disqualification by Notice) Act 2010	s. 12(2)(c), (5)(d) and (7)(b): to be proclaimed (see s. 2(c))
2011/001	Health, Safety and Civil Liability (Children in Schools and Child Care Services) Act 2011	Act other than s. 1 & 2: to be proclaimed (see s. 2(b))
2011/010	Criminal Code Amendment (Infringement Notices) Act 2011	Act other than s. 1 & 2: to be proclaimed (see s. 2(b))
2011/012	Police Amendment Act 2011	Act other than s. 1 & 2: to be proclaimed (see s. 2(b))
2011/014	Road Traffic Amendment (Alcohol and Drug Related Offences) Act 2011	Pt. 3: operative on commencement of the Road Traffic (Administration) Act 2008 (see s. 2(b) and Gazette 30 Aug 2011 p. 3503)
2011/018	Road Traffic Legislation Amendment (Information) Act 2011	Pt. 3 & 4 (other than s. 25): operative on commencement of the Road Traffic (Administration) Act 2008 (see s. 2(b) and Gazette 29 Jun 2011 p. 2611); s. 9 & 25: to be proclaimed (see s. 2(b))
2011/031	Workers' Compensation and Injury Management Amendment Act 2011	s. 123(2)-(7): to be proclaimed (see s. 2(b))
2011/036	Conservation Legislation Amendment Act 2011	s. 40 & Pt. 3: to be proclaimed (see s. 2(b))
2011/041	Personal Property Securities (Commonwealth Laws) Act 2011	s. 8(2) & (3): to be proclaimed (see s. 2)
2011/044	Professional Combat Sports Amendment Act 2011	Act other than s. 1 & 2: to be proclaimed (see s. 2(b))
2011/048	Inheritance (Family and Dependants Provision) Amendment Act 2011	Act other than s. 1 & 2: to be proclaimed (see s. 2(b))
2011/055	Cat Act 2011	s. 5, 6, 14(1), 18(1), 22-24, 26-35, 41, 49, 55-60 & 86: 1 Nov 2013 (see s. 2(c))
2011/056	Misuse of Drugs Amendment Act 2011	s. 5-8 & 12-15: to be proclaimed (see s. 2(b))
2011/059	Commercial Tenancy (Retail Shops) Agreements Amendment Act 2011	Act other than s. 1 & 2: to be proclaimed (see s. 2(b))
2011/060	Residential Tenancies Amendment Act 2011	s. 4, 5 (except to the extent that it inserts the definition of lessor), 6-41, 42(3), 43-44, 45(2), 46-56, 59, 61-68, 70-87, 89 (except to the extent that it amends s. 71), Pt. 4 (s. 96) & Pt. 5 (s. 97-108): to be proclaimed (see s. 2(b))
2012/002	Local Government Amendment Act 2012	s. 14-18, 39, 40(b) & 41 to the extent that it inserts s. 10(4)(c)(ii)
2012/007	Road Traffic (Vehicles) Act 2012	Act other than s. 1 & 2: operative on commencement of the Road Traffic (Administration) Act 2008 (see s. 2(b))
2012/008	Road Traffic Legislation Amendment Act 2012	Act other than s. 1 & 2
2012/010	Legal Deposit Act 2012	Act other than s. 1 & 2: to be proclaimed (see s. 2(b))

<b>Acts awaiting commencement</b>		
<b>YearNumber</b>	<b>ActName</b>	<b>Provisions awaiting commencement</b>
2012/011	Education and Care Services National Law (WA) Act 2012	s. 70(1)(d), 152, 153(2)-(4), 154-159, Pt. 5 Div. 6 (s. 160), 172(d), 266-268 & 270(1)(d) & (2)-(4): to be proclaimed (see s. 2(c))
2012/015	Adoption Amendment Act 2012	Act other than s. 1 & 2
2012/016	Teacher Registration Act 2012	Act other than s. 1 & 2
2012/023	Commercial Arbitration Act 2012	Act other than s. 1A & 1B: to be proclaimed (see s. 1B(b))
2012/024	Water Services Act 2012	Act other than s. 1 & 2: to be proclaimed (see s. 2(b))
2012/025	Water Services Legislation Amendment and Repeal Act 2012	Act other than Pt. 1: to be proclaimed (see s. 2(b))
2012/028	Fines, Penalties and Infringement Notices Enforcement Amendment (Taxation) Act 2012	Act other than s. 1 & 2: operative on commencement of the Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012 s. 39
2012/030	Litter Amendment Act 2012	Act other than s. 1 & 2: to be proclaimed (see s. 2(b))
2012/031	Evidence and Public Interest Disclosure Legislation Amendment Act 2012	Act other than Pt. 1