



**THIRTY-NINTH PARLIAMENT**

**REPORT 104**

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

**STATUTES (REPEALS) BILL 2016**

Presented by Hon Kate Doust MLC (Chair)

November 2016

# STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

## Date first appointed:

17 August 2005

## Terms of Reference:

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

### ‘6. Uniform Legislation and Statutes Review Committee

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

## Members as at the time of this inquiry:

Hon Kate Doust MLC (Chair)	Hon Phil Edman MLC
Hon Mark Lewis MLC (until 22 September 2016)	Hon Amber-Jade Sanderson MLC (until 11 October 2016)
Hon Brian Ellis MLC (Deputy Chair) (from 22 September 2016)	Hon Laine McDonald MLC (from 11 October 2016)

## Staff as at the time of this inquiry:

Irina Lobeto-Ortega (Advisory Officer (Legal))      Samantha Parsons (Committee Clerk)

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# CONTENTS

<b>EXECUTIVE SUMMARY AND RECOMMENDATIONS</b> .....	<b>i</b>
EXECUTIVE SUMMARY .....	i
RECOMMENDATIONS .....	i
<b>REPORT</b> .....	<b>1</b>
1 INTRODUCTION .....	1
2 OVERVIEW OF THE BILL .....	1
3 LACK OF PROGRESS IN THE REPEAL OF OBSOLETE LEGISLATION .....	2
Repeal of obsolete legislation in Canada .....	4
Report 99— <i>Inquiry into the Statute Book</i> .....	6
Government agencies’ review of obsolete legislation.....	7
4 CLAUSES IN THE BILL .....	9
Premier’s Circular regarding statutes review bills .....	9
Part 2— <i>Coal Industry Tribunal of Western Australia Act 1992</i> repealed and consequential amendments .....	9
Part 3— <i>Labour Relations Reform Act 2002</i> repealed and consequential amendments .....	10
Part 4— <i>Spear-guns Control Act 1955</i> repealed and one consequential amendment .....	12
Consequential amendment to the Fair Trading Act 2010.....	13
Part 5— <i>Western Australian Marine (Sea Dumping) Act 1981</i> repealed.....	14
Part 6— <i>Escheat and forfeiture of real and personal property (1834) (Imp)</i> repealed .....	15
5 CONCLUSION .....	16
<b>APPENDIX 1 SUMMARY OVERVIEW TABLE AS AT 9 MAY 2016, TABLED ON 10 OCTOBER 2016</b> .....	<b>19</b>



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

**STATUTES (REPEALS) BILL 2016**

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**EXECUTIVE SUMMARY**

- 1 The Statutes (Repeals) Bill 2016 (Bill) proposes to repeal five obsolete Acts (including one Imperial statute) and make consequential amendments to five other Western Australian Acts.
- 2 The Committee has examined the Bill according to its terms of reference and has considered the policy principles set out in the Premier's Circular 2010/01 *Statutes (Repeals and Minor Amendments) Bill*. The Committee has also received advice from the Department of Finance and the Department of the Attorney General on the background to the Bill and its intended effects.
- 3 The Committee has investigated the process for reviewing obsolete legislation generally and makes general comments on this process in this report. More can be done to prioritise the review of the statute book and simplify the process.
- 4 The Committee recently raised concerns with the slow rate of progress in repealing obsolete legislation in Report 99, *Inquiry into the Statute Book*, and reiterates these observations in relation to this Bill.
- 5 The Committee notes that the Government has recently undertaken a '*reinvigorated regulatory reform plan*' to reduce red tape across all agencies. Whole-of-government priorities are focused on a number of elements of regulatory reform (including red tape reduction), and do not specifically target or prioritise the task of repealing obsolete legislation. The Committee is concerned that the review of the statute book is not being given the same priority as other objectives.
- 6 The Committee takes no issue with the Bill but again raises its concerns about the lack of progress in the repeal of obsolete legislation.

**RECOMMENDATION**

- 7 The recommendation is grouped as it appears in the text at the page number indicated:

Page 17

**Recommendation 1: The Committee recommends that the Statutes (Repeals) Bill 2016 be passed by the Legislative Council.**

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

**STATUTES (REPEALS) BILL 2016**

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**1 INTRODUCTION**

- 1.1 The Statutes (Repeals) Bill 2016 (Bill) was introduced into the Legislative Council by the Attorney General Hon Michael Mischin MLC on 15 September 2016 and referred to the Committee on the same day for consideration and report.<sup>1</sup>
- 1.2 The Legislative Council did not impose a reporting date for the Committee's inquiry.
- 1.3 The Committee contacted eight key stakeholders directly and advertised the inquiry on the Committee's website. The Committee received two submissions: Hon Nick Goiran MLC, Member for the South Metropolitan Region, and David Hillyard, Acting Commissioner for Consumer Protection, Department of Commerce.
- 1.4 On 10 October 2016, the Committee held a public hearing with the Department of Finance and the Department of the Attorney General. The Department of Finance tabled an internal document at the hearing; see **Appendix 1**. The transcript of the hearing is available on the Committee's website at [www.parliament.wa.gov.au/uni](http://www.parliament.wa.gov.au/uni).
- 1.5 The Committee thanks all those who provided a submission or appeared before the Committee for their time during this inquiry.

**2 OVERVIEW OF THE BILL**

- 2.1 The Bill proposes to repeal five obsolete Acts (including one Imperial statute) and make consequential amendments to other legislation as a result of the repeals. The Acts which are proposed for repeal are the following:
- *Coal Industry Tribunal of Western Australia Act 1992*
  - *Labour Relations Reform Act 2002*
  - *Spear-Guns Control Act 1955*
  - *Western Australian Marine (Sea Dumping) Act 1981*

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

- *Escheat and forfeiture of real and personal property (1834) (Imp).*
- 2.2 The Bill also proposes consequential amendments to the following Acts as a result of the above repeals:
- *Constitution Acts Amendment Act 1899*
  - *Industrial Relations Act 1979*
  - *Workers' Compensation and Injury Management Act 1981*
  - *Minimum Conditions of Employment Act 1993*
  - *Fair Trading Act 2010.*
- 2.3 The Explanatory Memorandum (EM) to the Bill states that the aim of the Bill is to 'remove redundant and obsolete legislation from the Statute Book, and ensure any legislation in operation remains current and relevant.'<sup>2</sup> The Attorney General also referred to the Bill being part of the government's goal of 'modernising the statute book and reducing red tape.'<sup>3</sup>
- 2.4 The Committee notes that the Department of Finance (Department) is the lead agency in charge of the Bill, despite the portfolio areas affected by the repeals in the Bill including Commerce, Police, Transport and the Attorney General. The Committee has heard that the Government has only recently begun to give greater priority to repealing obsolete legislation through its 'reinvigorated regulatory reform plan' with a 'reinvigorated effort generally in red tape and regulatory reforms' led by the Department.<sup>4</sup>

### **3 LACK OF PROGRESS IN THE REPEAL OF OBSOLETE LEGISLATION**

- 3.1 During the Second Reading Speech for the Bill, the Attorney General referred to the Committee's report from 2012 *Inquiry into the Form and Content of the Statute Book* (Report 79) and added that the current Bill 'continues to implement the committee's recommendations.'<sup>5</sup>

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<sup>2</sup> Statutes (Repeals) Bill 2016, *Explanatory Memorandum*, Legislative Council, p 1.

<sup>3</sup> Hon Michael Mischin MLC, Attorney General, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 15 September 2016, p 15.

<sup>4</sup> Andrew Dolling, Director, Economic Reform, Department of Finance, *Transcript of Evidence*, 10 October 2016, p 2.

<sup>5</sup> Hon Michael Mischin MLC, Attorney General, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 15 September 2016, p 15.



- 3.2 Report 79 contained seven appendices that identified legislation for potential repeal, with categories including ‘Acts identified as obsolete’, ‘Acts identified by Ministers as requiring further investigation’, and ‘Statutes with Royal Assent but not proclaimed.’<sup>6</sup>
- 3.3 The Committee observes that four years have passed since Report 79 was tabled and, of the 151 pieces of obsolete legislation identified in the report, only 56 have been included in statutes review bills.<sup>7</sup>
- 3.4 The Committee recently made comment on this very slow rate of repeal in Report 99, ‘Inquiry into the Statute Book’:

*The Committee notes the efforts of the Government in including nine obsolete Acts previously recommended for repeal in Report 79 in the Obsolete Legislation Repeal Bill 2015. While this represents some progress, the Committee remains concerned about the pace at which obsolete legislation is identified and repealed.*

*The Committee notes that despite the Government’s Repeal Day initiative, which commenced in 2012 and support for the recommendations in Report 79, many Acts identified in Report 79 have yet to be repealed.*

*If the current processes continue, the Committee notes that it may very well take decades for the obsolete legislation identified by the Committee in Report 79 to be repealed.*<sup>8</sup>

- 3.5 Hon Nick Goiran MLC also raised concerns with this ‘systemic problem’ in his submission to the Committee:

*The committee’s most recent report tabled on 23 August 2016, noted once again that there was still room for more appropriate mechanisms to be put in place in order to deal with repealing obsolete legislation ...*

*Given the Statutes (Repeals) Bill 2016 continues the unfortunately slow and inefficient process of repeal, it is plain the problem is systemic.*<sup>9</sup>

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<sup>6</sup> Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 79, *Inquiry into the Form and Content of the Statute Book*, 15 November 2012.

<sup>7</sup> The Statutes (Repeals and Minor Amendments) Bill 2013 repealed one act and amended 41 other acts as a result of Report 79, the Obsolete Legislation Repeal Bill 2015 contained nine statutes identified in Report 79 (including six Imperial Acts) and the current Bill before the Committee contains five statutes mentioned in Report 79 (including one Imperial Act).

<sup>8</sup> Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 99, *Inquiry into the Statute Book*, 21 June 2016, p 3. See paragraph 3.13 onwards.

- 3.6 Hon Nick Goiran MLC also suggests the creation of a generic sunset repeal law, based on the system used in some Canadian provinces, such as Ontario and Nova Scotia.<sup>10</sup>

### **Repeal of obsolete legislation in Canada**

- 3.7 The Canadian province of Ontario's *Legislation Act, 2006* (Ontario) obliges the Attorney General to table an annual list of all acts eligible for repeal in the Ontario Legislative Assembly,<sup>11</sup> which are then automatically repealed on 31 December that calendar year. Section 10.1 provides that:

(1) *On one of the first five days on which the Legislative Assembly sits in each calendar year, the Attorney General shall table in the Assembly a report listing every Act or provision of an Act that,*

*(a) is to come into force on a day to be named by proclamation of the Lieutenant Governor;*

*(b) was enacted nine years or more before December 31 of the preceding calendar year; and*

*(c) was not in force on December 31 of the preceding calendar year.*

(2) *Every Act or provision listed in the annual report is repealed on December 31 of the calendar year in which the report is tabled unless,*

*(a) it comes into force on or before December 31 of that calendar year; or*

*(b) during that calendar year, the Assembly adopts a resolution that the Act or provision listed in the report not be repealed.<sup>12</sup>*

[Committee emphasis added]

- 3.8 The effect of the *Legislation Act, 2006* (Ontario) is that any legislation more than nine years old must be proposed for repeal and will automatically be removed from the statute book unless the Legislative Assembly of Ontario actively takes steps to preserve it.

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<sup>9</sup> Submission 1 from Hon Nick Goiran MLC, 19 September 2016, pp 3-4.

<sup>10</sup> *ibid*, p 4.

<sup>11</sup> The legislature in the province of Ontario is unicameral.

<sup>12</sup> *Legislation Act, 2006* (Ontario) s 10.1.

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3.9 The Committee notes that this positive repeal process results in a more dynamic and evolving statute book and ensures that obsolete legislation is reviewed in a timely (and time-limited) manner.

3.10 By contrast, the province of Nova Scotia, in section 22A of the *Justice Administration Amendment (2001) Act* (Nova Scotia) proposed to repeal statutes (or parts thereof) in the following circumstances:

*(1) Where a statute or part of a statute, whether enacted before or after the coming into force of this Section,*

*(a) does not come into force until proclaimed in force; and*

*(b) has not come into force within five years after the statute received Royal Assent or, where the statute has been amended, after the latest amendment received Royal Assent, that statute or part of the statute, as the case may be, is repealed five years after the statute or latest amendment, as the case may be, received Royal Assent.*

*(2) Notwithstanding subsection (1), where a statute or a part of a statute*

*(a) would, but for this subsection, be repealed by subsection (1) within one year after this Section comes into force; and*

*(b) has not come into force within one year after this Section comes into force,*

*that statute or part of a statute, as the case may be, is repealed one year after this Section comes into force.*

3.11 The Committee notes the irony, however, that section 22A of the *Justice Administration Amendment (2001) Act* (Nova Scotia), above, has never been proclaimed and is therefore not currently in force.

3.12 The Committee supports such positive legislative action which would ensure that unproclaimed legislation is efficiently and automatically removed from the statute book. Similar legislation could be inserted into the *Interpretation Act 1984* in Western Australia.

**Report 99—*Inquiry into the Statute Book***

3.13 The Committee takes this opportunity to reiterate the recommendations made in its recent report, *Inquiry into the Statute Book*<sup>13</sup> (Report 99), into the review of the statute book and comment on the Government's response to that report.

3.14 Report 99 contained two recommendations, as follows:

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

***Recommendation 2:** The Committee recommends that the Standing Committee on Uniform Legislation and Statutes Review of the 40<sup>th</sup> Parliament consider inquiring into the statute book in the next Parliament.*

3.15 The Government Response to Report 99 advised that:

*The Government will consider mechanisms that aim to ensure that at least one repeal and minor amendment bill is introduced and passed each calendar year ...*

*The Government is of the view that the system and policy currently in place in Western Australia is suitable, acknowledging the necessity for improvements in the speed of passage of bills that repeal obsolete legislation.<sup>14</sup>*

3.16 In the Committee's view, this response does not adequately address the concerns raised in Report 99, nor the opportunity that exists for innovation and improvement in this area of legislative reform.

3.17 The Committee remains concerned at the slow rate of repeal of obsolete legislation (including Imperial Acts), given that the current Bill is now the third opportunity for progress to be made and yet it only contains five substantive repeals.

3.18 The Committee's inquiry into this Bill has also revealed further bureaucratic processes in the repeal of obsolete legislation, which are slowing down the modernisation of the Western Australian statute book.

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<sup>13</sup> Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 99, *Inquiry into the Statute Book*, 21 June 2016.

<sup>14</sup> Tabled Paper 4404, Legislative Council, 22 August 2016, p 2.

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**Government agencies' review of obsolete legislation**

- 3.19 The Committee has learned that there are two government agencies involved in the repeal of obsolete legislation, with overlapping yet separate responsibilities. The Department of the Attorney General stated in evidence that:

*Mr Fernandes: ... I think that there needs to be a clear distinction between the Repeal Week repeal bill, which, I think focuses on that particular report that you mentioned [Report 79] and investigating whether those can be repealed or not, as opposed to general omnibus legislation and minor amendments, which are dealt with by my agency. ...*

*On our side, it is dealing, at this stage, with minor amendments ... Once I have a number of required amendments, then that gets put together as an instruction to draft a bill in that regard. It is very different to the repeal process.*

*THE CHAIR: How does it work with the Department of Finance? Do they come to you and say, "We have got this piece of legislation that needs to be repealed", or do you set —*

*Ms Varma: It is a two-pronged approach. There is our regular liaison with agencies, where we go and talk to them about red tape and regulatory reform, and through that process we become aware of items that are on their reform agenda, which may include repeals or may as well include red tape reduction items.<sup>15</sup>*

- 3.20 The Committee is concerned that the 'two-pronged approach' to the review of the statute book referred to above leads to confusion and, in the Committee's own experience, a lack of communication between relevant government departments.
- 3.21 When the Obsolete Legislation Repeal Bill 2015 was introduced into the Legislative Council in November 2015, it was not referred to the Committee for consideration and report as an omnibus bill. The Attorney General, Hon Michael Mischin MLC, advised the Committee that:

*the [Obsolete Legislation Repeal] Bill was part of a greater suite of red tape reduction initiatives, prepared and coordinated by the Department of Finance with input from a number of other*

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<sup>15</sup> Hon Kate Doust MLC, Chair, Standing Committee on Uniform Legislation and Statutes Review, Dominico Fernandes, Legal Policy Officer, Department of the Attorney General, and Aditi Varma, Assistant Director, Economic Reform, Department of Finance, *Transcript of Evidence*, 10 October 2016, pp 2 and 5.

*departments. There was a failure to appreciate that it was also an Omnibus Bill.*<sup>16</sup>

- 3.22 The Obsolete Legislation Repeal Bill 2015 was referred to the Committee when it was re-introduced to the Legislative Council on 16 February 2016, but the Committee is concerned that this oversight was only rectified when the Committee pro-actively raised the issue with the Attorney General. This is an example of the confusion caused by two agencies being involved in the repeal of obsolete legislation.
- 3.23 The Committee is therefore concerned that there may be instances in the future where a similar oversight occurs. The Committee also notes that the duplication inherent in two agencies being involved in the repeal of obsolete legislation adds unnecessary complexity and, potentially, time to an already-drawn out repeal process. There is merit in one department coordinating the repeal process.
- 3.24 Whether the repeal of obsolete legislation should be coordinated by one department, perhaps the Department of the Attorney General, is a matter that the Standing Committee on Uniform Legislation and Statutes Review of the 40<sup>th</sup> Parliament may wish to consider if it initiates an inquiry into the statute book in the next Parliament.
- 3.25 The Committee also notes that the Department's priorities in regulatory reform do not necessarily prioritise the review of obsolete legislation on the statute book. The Department describes its '*reinvigorated regulatory reform plan*' as having four key elements:

*One is the Repeal Week communication and engagement element. Another element is red tape reduction. The third element is regulatory reform of a substantial nature, which could be, for example, on-demand transport reform et cetera. The other element is good practice, new regulatory development, which captures the regulatory gatekeeping unit's functions et cetera. Within that space, we have been increasingly building up our ability to support agencies in their thinking of regulatory reform and red tape reduction.*<sup>17</sup>

- 3.26 These '*whole-of-government*' priorities are focused on a wider purpose of reform and improvements. The Committee is concerned therefore that the task of reviewing the statute book and repealing obsolete legislation may not be given the same strategic priority or imperative if it only forms part of a larger strategic objective.

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<sup>16</sup> Hon Michael Mischin MLC, Attorney General, Letter, 24 December 2015, p 1.

<sup>17</sup> Andrew Dolling, Director, Economic Reform, Department of Finance, *Transcript of Evidence*, 10 October 2016, p 4.

- 3.27 Given the Committee's key role in reviewing the form and content of the statute book and in the scrutiny of obsolete legislation, the Committee would prefer to see this task being undertaken as a separate project by government with greater focus on prioritising the repeal of a significant amount of obsolete legislation.

#### **4 CLAUSES IN THE BILL**

##### **Premier's Circular regarding statutes review bills**

- 4.1 The Department of the Attorney General provides guidance to government departments on what may be included in statutes review bills in the Premier's Circular 2010/01 *Statutes (Repeals and Minor Amendments) Bill* (Premier's Circular). The Premier's Circular states that a statutes review bill must not:

- affect any existing right, obligation, power or duty
- change any process provided for in legislation
- involve the insertion of multiple new sections into an act.<sup>18</sup>

- 4.2 In the Committee's scrutiny of statutes review bills, the Committee reviews any matter that it considers relevant, including whether the subject matter of a repeal is appropriate for inclusion in a statutes review bill and whether the bill may infringe the parameters set out in the Premier's Circular.

- 4.3 The Committee has examined all clauses in the Bill and has focused on the five substantive clauses that contain legislation proposed for repeal (Parts 2 to 6 of the Bill).

##### **Part 2—*Coal Industry Tribunal of Western Australia Act 1992* repealed and consequential amendments**

- 4.4 Part 2 of the Bill contains four Divisions: one to repeal the *Coal Industry Tribunal of Western Australia Act 1992* (CIT Act) and three others which make consequential amendments to other statutes that refer to that act. The three statutes consequentially affected by the repeal are the:

- *Constitution Acts Amendment Act 1899*
- *Industrial Relations Act 1979*
- *Workers' Compensation and Injury Management Act 1981*.

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<sup>18</sup> Department of the Premier and Cabinet, Premier's Circular 2010/01, *Statutes (Repeals and Minor Amendments) Bill*, 11 February 2010.

- 4.5 The EM states that the CIT Act is no longer relevant as a result of ‘*Commonwealth industrial laws exclusively regulating industrial relations matters for employers that are constitutional corporations*’: that is, the *Fair Work Act 2009* (Cth).<sup>19</sup>
- 4.6 The EM also refers to ‘*two coal mining employers*’ operating in Western Australia that are covered by the Commonwealth legislation, but no further detail is provided about these entities. The Committee confirmed at a hearing that these two employers are Premier Coal, owned by Yancoal Australia Limited, and Griffin Coal, owned by Lanco Infratech Limited.<sup>20</sup>
- 4.7 The CIT Act was included in Appendix 4 of Report 79: ‘*Acts identified by Ministers as requiring further investigation.*’ In 2012, the Minister for Commerce advised the Committee that the CIT Act was ‘*still under review*’ and that it ‘*require[d] assessment*’ in light of the Commonwealth’s *Fair Work Act 2009*.<sup>21</sup>
- 4.8 The Committee finds that the repeal of the CIT Act and consequential amendments are not controversial and takes no issue with the repeals contained in Part 2 of the Bill.

### **Part 3—Labour Relations Reform Act 2002 repealed and consequential amendments**

- 4.9 Part 3 of the Bill contains three Divisions: the *Labour Relations Reform Act 2002* (LRR Act) is repealed in Division 1 and consequential amendments are made to the following statutes in Divisions 2 and 3, respectively, the:
- *Industrial Relations Act 1979*
  - *Minimum Conditions of Employment Act 1993*.
- 4.10 The Committee notes that the EM advises that the LRR Act is an amending act and has ‘*completed its stated purpose.*’ At a hearing, the Committee confirmed that no individuals will be adversely affected by the repeal of the LRR Act and that the act is no longer relevant in Western Australia:

**The CHAIR:** ... Can you confirm that there are [no] employees in WA still regulated by state workplace agreements, and what inquiries were made to investigate this?

**Ms Varma:** Again, there are no remaining employee contracts that are regulated under that act. I think all the provisions of that act were amending provisions and they had fulfilled their purpose ...

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<sup>19</sup> Statutes (Repeals) Bill 2016, *Explanatory Memorandum*, Legislative Council, p 2.

<sup>20</sup> Aditi Varma, Assistant Director, Department of Finance, *Transcript of Evidence*, 10 October 2016, p 7.

<sup>21</sup> Hon Simon O’Brien MLC, Minister for Commerce, Letter, 24 September 2012.



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*workplace agreements have been repealed for over 13 years; therefore, it is understood that statutory contracts of employment in fact have no existed for 13 years and all of the employees would now be covered by more modern awards and agreements.*<sup>22</sup>

4.11 The LRR Act contains 11 Parts which amended other statutes dealing with issues such as workplace agreements, industrial relations and awards. The main acts amended by the LRR Act were:

- *Industrial Relations Act 1979*
- *Workplace Agreements Act 1993*
- *Minimum Conditions of Employment Act 1993.*

4.12 The Committee observes that when the Labour Relations Reform Bill 2002 was introduced, the intention of the bill was to:

*amend the Workplace Agreements Act 1993 (Western Australia) to provide for the phasing out and expiry of that Act; to introduce Employer Employee Agreements (EEAs); to repeal the Court Government's "third wave" (eg existing provisions on pre-strike ballots, restrictions on union political expenditure, federal award coverage, compulsory resume work orders, restrictions on right of entry, and inspection of time and wages records; to enhance the Minimum Conditions of Employment Act 1993; to promote a collective approach to industrial relations through new objects of the Industrial Relations Act 1979 and new powers for the Western Australian Industrial Relations Commission, facilitating the award making and collective agreement making process and introducing good faith bargaining; to clarify and increase the powers of the Industrial Relations Commission; and to reform the unfair dismissal provisions.*<sup>23</sup>

4.13 The LRR Act was also identified in Report 79 as an act that required further investigation prior to being categorised as obsolete and suitable for repeal.

4.14 Divisions 2 and 3 of Part 3 of the Bill delete any references to the LRR Act in the statutes listed above (paragraph 4.9). The Committee observes that there are only three

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<sup>22</sup> Hon Kate Doust MLC, Chair, Standing Committee on Uniform Legislation and Statutes Review & Aditi Varma, Assistant Director, Department of Finance, *Transcript of Evidence*, 10 October 2016, pp 7-8.

<sup>23</sup> Labour Relations Reform Bill 2002, *Explanatory Memorandum*, Legislative Council, pp 1-2.

minor amendments across both divisions, which remove references to the title of the LRR Act.

- 4.15 The Committee therefore takes no issue with the repeal of the LRR Act and its consequential amendments.

**Part 4—*Spear-guns Control Act 1955* repealed and one consequential amendment**

- 4.16 Part 4 of the Bill contains two Divisions: one to repeal the *Spear-guns Control Act 1955* (Spear-guns Act) and the other to make a consequential amendment to Schedule 1 of the *Fair Trading Act 2010* ('*Acts that override the Australian Consumer Law (WA) Part 3-3*').

- 4.17 The Spear-guns Act contains eight sections, including a table in section 4 setting out spear-gun related offences. Many of the offences contained in section 4 of the Spear-guns Act can be linked to the dangerous or negligent handling of a spear-gun.<sup>24</sup> The Committee notes that the penalties in the Spear-guns Act range from \$20 to \$50 and that the section has not been amended since 1972.

- 4.18 The EM to the Bill advises that spear-guns are more appropriately regulated under the more modern *Weapons Act 1999*, which covers the field. The *Weapons Act 1999* defines three types of weapons:

- prohibited weapons (section 6, with definition in section 3)
- controlled weapons (section 7, with definition in section 3)
- other articles carried or possessed as weapons (section 8).

- 4.19 Spear-guns are listed in item 16 of Schedule 2 of the *Weapons Regulations 1999* as controlled weapons. The penalty for carrying or possessing a controlled weapon without a lawful excuse is a fine of \$24 000 and imprisonment of up to 2 years.

- 4.20 Section 5 of the Spear-guns Act gives the Governor of Western Australia the power to declare by proclamation particular areas as prohibited (for the purposes of spear-gun offences), with the effect of reversing the onus of proof for offences committed in those areas. The Committee has heard that extensive consultation occurred with Western Australia Police and the Department of Fisheries and that:

*Those areas [declared as prohibited under section 5] fell under the cities of Busselton, Belmont, Stirling, Mosman Park, Peppermint*

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<sup>24</sup> For example, using a spear-gun within 45 metres of any other person swimming, loading a spear-gun prior to entering the water, pointing a spear-gun at any other person, using a spear-gun for any other purpose than fishing: Table, section 4, Spear-guns Act.

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*Grove and Melville. All of these local councils were consulted and none of them had any objections to the repeal of this act.*<sup>25</sup>

- 4.21 The Committee finds therefore that the use (or misuse) of spear-guns can therefore be adequately regulated under the *Weapons Act 1999* and takes no issue with the repeal of the *Spear-guns Act*.

*Consequential amendment to the Fair Trading Act 2010*

- 4.22 As noted above, Part 4 of the Bill also makes a consequential amendment to Schedule 1 of the *Fair Trading Act 2010* ('*Acts that override the Australian Consumer Law (WA) Part 3-3*').
- 4.23 Schedule 1 of the *Fair Trading Act 2010* contains a list of statutes which override the operation of Part 3-3 of the Australian Consumer Law (WA): '*Safety of consumer goods and product related services*.' Part 3-3 of the Australian Consumer Law (WA) deals with safety standards for goods and the procedures for putting in place interim or permanent bans on specific goods.
- 4.24 The Department of Commerce submitted to the Committee that:

*By reason of its current listing in [the Fair Trading Act 2010] Schedule 1, the Spear-guns Control Act 1955 is an Act that prevails over Part 3-3 of the Australian Consumer Law (WA) ... to the extent of any inconsistency. However, the Spear-guns Control Act 1955 does not currently (and cannot) prevail over the Australian Consumer Law (Cwlth) ... The proposed amendments ... reverse the hierarchy between the ACL (WA) and spear-gun legislation, but this is a re-ordering of the relationship between State legislation only.*

*Over the past six years, the Department of Commerce – Consumer Protection Division has not identified any need for spear-gun regulation that is inconsistent with the ACL (WA).*<sup>26</sup>

- 4.25 The amendment to Schedule 1 of the *Fair Trading Act 2010* is therefore required as a result of the repeal of the *Spear-guns Act* but does not affect the operation of the *Weapons Act 1999* in any way.
- 4.26 The Committee takes no issue with the repeals and consequential amendment in Part 4 of the Bill.

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<sup>25</sup> Aditi Varma, Assistant Director, Department of Finance, *Transcript of Evidence*, 10 October 2016, p 8.

<sup>26</sup> Submission 2 from Department of Commerce, 30 September 2016, p 2.

**Part 5—Western Australian Marine (Sea Dumping) Act 1981 repealed**

- 4.27 Part 5 of the Bill repeals the *Western Australian Marine (Sea Dumping) Act 1981* (Sea Dumping Act) in its entirety: 35 sections and three Schedules. There are no consequential amendments required.
- 4.28 The Sea Dumping Act deals with the dumping and burning of waste in Western Australian waters, as a result of Australia ratifying the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. The Sea Dumping Act sets out the offences and penalties for people/organisations who illegally dump or incinerate waste at sea and who pollute Western Australian waters.
- 4.29 The Committee notes that the Sea Dumping Act was identified in Report 79 as obsolete and Hon Troy Buswell MLA, the former Minister for Transport previously advised that:

*Our understanding is that this Act has no force.*

*By virtue of its section 6, the Commonwealth Sea Dumping Act applies throughout Australia. Section 9 of the Commonwealth Act provides that the Commonwealth Minister may, if he/she is satisfied that the law of a State makes provision for giving effect to the Protocol on the Sea Dumping Convention in relation to the coastal waters of that State, make a 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 the WA Sea Dumping Act. As such, it appears that the WA Sea Dumping Act has no legal effect and the Commonwealth's Sea Dumping Act instead applies in WA's coastal waters.*

*Repeal of this statute would not have any foreseeable adverse impact, as the Commonwealth legislation 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>27</sup> [Committee emphasis added]

- 4.30 The *Environment Protection (Sea Dumping) Act 1981* (Cth) is the Commonwealth equivalent statute. The Committee notes that the EM to the Bill also appears to indicate that there is still no intention to pursue such a declaration as it states that:

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<sup>27</sup> Hon Troy Buswell MLA, Minister for Transport, Letter, 30 January 2012, p 7.

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*This Act has been inoperative since it commenced because no declaration has ever been made to give effect to the legislation, and instead Commonwealth legislation applies. Accordingly, this Act is no longer required and can be repealed.*<sup>28</sup>

- 4.31 At a hearing, the Department advised that it had received legal advice from the State Solicitor's Office that:

*the commonwealth minister would only make a declaration [under the Commonwealth statute] if the minister was satisfied that the state law gives effect to the protocol. The key operating word here is "protocol", because the protocol is the 1996 protocol to the dumping convention, but not the convention itself. The sea dumping act gives effect to only to the dumping convention and not to the protocol. That is the reason why a declaration has never been made and cannot be made under the WA sea dumping act. For all effects and purposes it is really only the commonwealth act that will apply in this space.*<sup>29</sup>

- 4.32 The Committee notes that section 109 of the *Commonwealth Constitution* nevertheless ensures that the *Environment Protection (Sea Dumping) Act 1981* (Cth) overrides the State's Sea Dumping Act in the case of any inconsistency.<sup>30</sup>
- 4.33 The Committee therefore takes no issue with the repeal of the Sea Dumping Act in Part 5 of the Bill.

**Part 6—*Escheat and forfeiture of real and personal property (1834) (Imp) repealed***

- 4.34 The *Escheat and forfeiture of real and personal property (1834) (Imp)* (Escheat Act) deals with the transfer and forfeiture of property by the Crown or the State. The former definition of 'escheat' is '*the reversion of land to the feudal lord or the Crown in the absence of heirs of the owner.*'<sup>31</sup>
- 4.35 According to the EM to the Bill, this issue is now '*addressed by more modern legislation.*'<sup>32</sup> The Department has confirmed that several modern statutes now cover the field:

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<sup>28</sup> Statutes (Repeals) Bill 2016, *Explanatory Memorandum*, Legislative Council, p 5.

<sup>29</sup> Aditi Varma, Assistant Director, Department of Finance, *Transcript of Evidence*, 10 October 2016, pp 8-9.

<sup>30</sup> *Commonwealth Constitution* s 109: '*When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.*'

<sup>31</sup> *Macquarie Dictionary Online*. Available at: <<https://www.macquariedictionary.com.au/>>. Viewed 27 October 2016.

<sup>32</sup> Statutes (Repeals) Bill 2016, *Explanatory Memorandum*, Legislative Council, p 5.

- *Trustees Act 1962*
  - *Criminal Code Act Compilation Act 1913* (the Criminal Code)
  - *Administration Act 1903*.<sup>33</sup>
- 4.36 Clause 24(2) of the Bill refers to the application of Part V of the *Interpretation Act 1984* to the Escheat Act in identical terms as were used for the repeal of two Imperial acts in the recent Obsolete Legislation Repeal Bill 2015.<sup>34</sup>
- 4.37 Part V of the Interpretation Act 1984 (*'Repeal of written law'*) provides that:
- where a written law is repealed, the amendments are also repealed
  - where a repeal act is being repealed, then the repeal does not revive the previous statute unless explicitly stated.<sup>35</sup>
- 4.38 This reference in the Bill to Part V of the *Interpretation Act 1984* therefore clarifies that the statute also applies to the Escheat Act as if it were a Western Australian act, to avoid any doubt as to the validity of repealing an Imperial act.
- 4.39 The Committee takes no issue with the repeal of the Escheat Act in Part 6 of the Bill.

## 5 CONCLUSION

- 5.1 The Committee has concluded that the Bill contains only statutes which are appropriate for inclusion in a statutes review bill. There are no repeals or amendments which affect any existing rights, obligations, powers or duties, which change any legislative process or which involve the insertion of multiple new sections into an act.
- 5.2 The Committee does, however, query the relatively small number of obsolete statutes that have been included in the Bill in light of the Committee's Report 79 and the four year delay in finalising the repeal of statutes raised as obsolete in that 2012 report.

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<sup>33</sup> Aditi Varma, Assistant Director, Department of Finance, *Transcript of Evidence*, 10 October 2016, p 9.

<sup>34</sup> Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 98, *Obsolete Legislation Repeal Bill 2015*, 21 June 2016.

<sup>35</sup> *Interpretation Act 1984* ss 33, 34, 38. See also Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 98, *Obsolete Legislation Repeal Bill 2015*, 21 June 2016, p 16.

5.3 Given the length of time that the repeal of obsolete legislation in this State takes, the Committee repeats the following statement from its Report 99 into the statutes review process:

*If the current processes continue, the Committee notes that it may very well take decades for the obsolete legislation identified by the Committee in Report 79 to be repealed.*

5.4 Whilst acknowledging the work of the Department since 2015 to reinvigorate its regulatory reform plan and red tape reduction strategies, the Committee notes that the repeal of obsolete legislation is not a key element of the plan. The Committee would prefer that the repeal of obsolete legislation be given greater priority as a stand-alone statutes review project, coordinated by the Department of the Attorney General.

5.5 The Committee takes no issue with the Bill.

**Recommendation 1: The Committee recommends that the Statutes (Repeals) Bill 2016 be passed by the Legislative Council.**



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**Hon Kate Doust MLC**  
**Chair**

**10 November 2016**





## APPENDIX 1

### SUMMARY OVERVIEW TABLE AS AT 9 MAY 2016, TABLED ON 10 OCTOBER 2016

SUMMARY OVERVIEW TABLE – status as at 9 May 2016



APPENDIX NUMBER AND TITLE OF APPENDIX		CATEGORIES OF ACTS/REGULATIONS/SECTIONS IDENTIFIED IN THE APPENDICES					
		NOT SUITABLE FOR REPEAL	UNDER INVESTIGATION*	TO BE REPEALED	SUITABLE FOR INCLUSION IN 2016 REPEAL WEEK	REPEALED (for Appendix 7 – the Acts have either commenced or remain unproclaimed)	TOTAL NUMBER OF – ACTS; SECTIONS; or REGULATIONS
1	Acts identified as obsolete	13	1	5	3	26	48 Acts
2	Specific sections in Acts identified as obsolete	4	4	7	-	3	18 sections
3	Subsidiary legislation identified as obsolete	-	14	6	-	5	25 Regulations
4	Acts identified by Ministers as requiring further investigation	9	17	5	2	20	53 Acts
5	Specific section in Acts identified as potentially obsolete but require further investigation	1	4	2	-	1	8 sections
6	One provision in subsidiary legislation identified as requiring further investigation	-	1	-	-	-	1 section
7	Statutes with Royal Assent but not yet proclaimed	10	17	6	1	33 items have already commenced 1 item has been repealed	68 Acts

\*Acts and provisions “under investigation” are to be considered in the longer term