



Submission on Statutes (Repeals) Bill 2016

To: Standing Committee on Uniform Legislation and Statutes Review

From: Hon Nick Goiran MLC

Date: 16 September 2016

1. Introduction

Since its formation in 2005 the Standing Committee on Uniform Legislation and Statutes Review (“SCULSR”) has done a commendable job at scrutinising and reviewing the statute book. The Committee continued in this longstanding practice with the tabling of its latest Report 99 *Inquiry into the Statute Book*. SCULSR has a demonstrated history of providing recommendations made possible through extensive research and investigation.

2. Policy

The Bill as drafted is intended to repeal both obsolete and redundant legislation from the Statute Book, including one Imperial Act. Specifically, it will:

- repeal five obsolete Acts across the four portfolios of Commerce, Police, Transport and the Attorney General; and
- amend several other Acts as a consequence of those repeals.

3. Background information – SCULSR Reports

a. **Report 34, Interim Report – The Statutes Review Inquiry¹**

This report was presented to the Legislative Council on December 9 2008². The purpose of the inquiry was threefold to inquire and report on:

- the purpose and nature of Statutes Repeals and Minor Amendments Bills;
- the process for the drafting and enactment of Statutes Repeals and Minor Amendments Bills and, if relevant, the comparative process in other Australian jurisdictions; and
- any related issues the Committee considers appropriate.³

¹ Standing Committee on Uniform Legislation and Statutes Review. (2008). *Report 34: Interim Report – The Statutes Review Inquiry*. Retrieved from:

[http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/353CE2A6ABB1C4FF48257831003E979F/\\$file/us.sta.081202.rpf.034.xx.a.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/353CE2A6ABB1C4FF48257831003E979F/$file/us.sta.081202.rpf.034.xx.a.pdf)

² Parliament of Western Australia. Legislative Council. (2008) Parliamentary Debate (Hansard). Retrieved from: [http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/d9bea69cc2f4aaf1c8257686002bbcc2/\\$FILE/C38+S1+20081209+p1043d-1043d.pdf](http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/d9bea69cc2f4aaf1c8257686002bbcc2/$FILE/C38+S1+20081209+p1043d-1043d.pdf)

³ SCULSR. (2008). Report 34. Pg. 1

At the time of its findings the Committee made note of various jurisdictions (Canada, the UK, and Ireland) which had implemented Acts in order to repeal redundant, irrelevant and unnecessary legislation.

Canada introduced “An Act to repeal legislation that has not come into force within ten years of receiving royal assent” which came into force on June 18, 2010.⁴

The United Kingdom created the Law Commission of England and Wales, with the purpose of repealing obsolete and unnecessary enactments.

The report also noted changes in Ireland, in particular the succession of Statute Law Revision measures since 2002, including *Statute Law Revision (Pre-1922) Bill 2004 (1e)* which repealed over 200 statutes pre-dating the modern Republic of Ireland.⁵

b. Interim Report 79, Inquiry into the form and content of the Statute Book⁶

This report tabled on 15 November 2012⁷, focused heavily on identifying obsolete statutes and provisions within statutes with the view of removing them from the statute book.

At the time in 2012, the SCULSR identified:

- 48 wholly obsolete Acts (as flagged by the relevant Ministers)
- 16 specific obsolete sections in Acts
- 25 obsolete instruments of subsidiary legislation (whole or only specific clauses)
- at least 53 other Acts that required further investigation
- eight specific sections in Acts identified as potentially obsolete but that required further investigation
- one provision in subsidiary legislation identified as requiring further investigation
- 70 statutes with Royal Assent that were never proclaimed.⁸

⁴ *Statutes Repeal Act 2008* (Canada). Retrieved from: <http://laws.justice.gc.ca/eng/acts/S-21.5/page-1.html>

⁵ SCULSR. (2008). Report 34. Pg. 16

⁶ Standing Committee on Uniform Legislation and Statutes Review. (2012). Interim Report 79, *Inquiry into the form and content of the Statute Book*. Retrieved from:

[http://www.parliament.wa.gov.au/parliament%5Ccommit.nsf/\(Report+Lookup+by+Com+ID\)/932180655F3D120048257AB8001EDE20/\\$file/us.sta.121115.rpf.079.xx.pdf](http://www.parliament.wa.gov.au/parliament%5Ccommit.nsf/(Report+Lookup+by+Com+ID)/932180655F3D120048257AB8001EDE20/$file/us.sta.121115.rpf.079.xx.pdf)

⁷ Parliament of Western Australia. Legislative Council. (2012). Parliamentary Debate (Hansard). Retrieved from: [http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/9a61fc9f1139968748257afc0028d9cd/\\$FILE/C38+S1+20121115+p8704b-8704b.pdf](http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/9a61fc9f1139968748257afc0028d9cd/$FILE/C38+S1+20121115+p8704b-8704b.pdf)

⁸ Western Australia, Legislative Council Standing Committee on Uniform Legislation and Statutes Review, Interim Report 79, *Inquiry into the form and content of the Statute Book*, 15 November 2012.

c. **Report 99, Inquiry into the Statute Book**⁹

The committee's most recent report tabled on 23 August 2016¹⁰, 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.

Since the 79th Report by the SCULSR in 2012:

- only one Act was repealed and another 41 Acts amended in the *Statutes (Repeals and Minor Amendments) Bill 2013*; and
- only four Acts were repealed along with a further 6 Imperial Acts in the *Obsolete Legislation Repeal Bill 2015*.

If the current process continues (repealing only one to ten Acts per Bill), it may take decades for the obsolete legislation that was identified in the 2012 Report 79 to be repealed.¹¹

4. Background Information – Other Jurisdictions

a. **Ontario**

Section 10.1 (1) and 10.1 (2) of Ontario's *Legislation Act, 2006* has similar provisions to Canada's aforementioned *Statutes Repeal Act*. It has been in force since July 2007.

The text of the legislation reads:

10.1 (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.¹²

⁹ Standing Committee on Uniform Legislation and Statutes Review. (2016). Report 99, *Inquiry into the Statute Book*. Retrieved from:

[https://powanet.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/14D07F93335C27FD48257FD9002D7A0F/\\$file/us.sta.160613.rpf.099.xx.pdf](https://powanet.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/14D07F93335C27FD48257FD9002D7A0F/$file/us.sta.160613.rpf.099.xx.pdf)

¹⁰ Parliament of Western Australia. Legislative Council. (2016), Parliamentary Debate (Hansard). Retrieved from

¹¹ Western Australia, Legislative Council Standing Committee on Uniform Legislation and Statutes Review, Report 99, *Inquiry into the Statute Book*, 21 June 2016.

¹² *Legislation Act, 2006* (Ontario). Retrieved from: <https://www.ontario.ca/laws/statute/06I21#BK12>

b. **Nova Scotia**

In 2001 the Nova Scotia legislature added the following provision to their *Interpretation Act*:

22A (1) Where a statute or a 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.¹³

Ironically this provision has not been proclaimed despite the provision being in a government bill and no comment – adverse or otherwise - made on the provision during the parliamentary debate.

In the event of such a provision being included in a Western Australian Bill it should have a fixed commencement date not be subject to commencement by proclamation.

5. Assessment – A Systemic Problem

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

6. Recommendations

A systemic issue requires a systemic solution. I recommend that the SCULSR consider recommending the creation of a generic sunset repeal law. I presently can see no authentic obstacle to our State adopting such a law based upon the Canadian-model referred to above.

In the event the Committee considers that such a recommendation would fall outside its terms of reference for this particular Bill, I would recommend it consider establishing an inquiry into the feasibility of creating such a law.

END OF SUBMISSION

¹³ *Justice Administration Amendment (2001) Act*, (Nova Scotia). Retrieved from: http://nslegislature.ca/legc/bills/58th_2nd/3rd_read/b025.htm