

41ST PARLIAMENT



Report 135

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Statutes (Repeals and Minor Amendments) Bill 2021

Presented by
Hon Donna Faragher MLC (Chair)
August 2021

Standing Committee on Uniform Legislation and Statutes Review

Members as at the time of this inquiry:

Hon Donna Faragher MLC (Chair)

Hon Martin Pritchard MLC (Deputy Chair)

Hon Matthew Swinbourn MLC

Hon Rosie Sahanna MLC

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EXECUTIVE SUMMARY

- 1 On 6 May 2021, the Statutes (Repeals and Minor Amendments) Bill 2021 (Bill) was introduced into the Legislative Council. The Bill was referred to the Standing Committee on Uniform Legislation and Statutes Review (Committee) on 6 May 2021 for consideration and report.¹
- 2 The Legislative Council did not direct a reporting date for the Committee's inquiry.
- 3 The Bill was introduced in a very similar format in the Fortieth Parliament. The Statutes (Repeals and Minor Amendments) Bill 2020 (2020 Bill) was referred to the Committee for consideration and report.² The Committee's report (Report 131) on the 2020 Bill was tabled in the Legislative Council on 24 November 2020.³
- 4 The 2020 Bill lapsed when the Parliament was prorogued prior to the 2021 state election.
- 5 The Bill proposes the:
 - repeal of seven Western Australian Acts
 - repeal of six Imperial Acts
 - repeal of one provision in each of two Imperial Acts
 - amendment of numerous Western Australian Acts.
- 6 Although the Bill is very similar to the 2020 Bill, it includes some additional items for repeal. These are discussed in this report.
- 7 The Committee examined the Bill according to its terms of reference.
- 8 The Committee is satisfied that the Bill contains statutes and provisions which are appropriate for inclusion in an omnibus bill.

Recommendation

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

RECOMMENDATION 1

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The Legislative Council note the Standing Committee on Uniform Legislation and Statutes Review's report during consideration of the Statutes (Repeals and Minor Amendments) Bill 2021.

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

² The Statutes (Repeals and Minor Amendments) Bill 2020 was referred to the Committee on 9 September 2020.

³ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 131, *Statutes (Repeals and Minor Amendments) Bill 2020*, November 2020.

1 Introduction

- 1.2 On 6 May 2021, the Statutes (Repeals and Minor Amendments) Bill 2021 (Bill) was introduced into the Legislative Council by the Parliamentary Secretary to the Attorney General, Hon Matthew Swinbourn MLC. The Bill was referred to the Standing Committee on Uniform Legislation and Statutes Review (Committee) on 6 May 2021 for consideration and report.⁴
- 1.3 The Legislative Council did not direct a reporting date for the Committee's inquiry.
- 1.4 The Bill was introduced in a very similar format in the Fortieth Parliament. The Statutes (Repeals and Minor Amendments) Bill 2020 (2020 Bill) was referred to the Committee for consideration and report.⁵ The Committee's report (Report 131) on the 2020 Bill was tabled in the Legislative Council on 24 November 2020.⁶
- 1.5 The 2020 Bill lapsed when the Parliament was prorogued prior to the 2021 state election.

2 Inquiry procedure

- 2.1 The Committee posted the inquiry on its webpage at [Uniform Legislation Committee homepage](#).
- 2.2 Given the Committee's terms of reference, the Committee did not seek further submissions.
- 2.3 Hon Matthew Swinbourn MLC was not involved in the Committee's deliberations for this inquiry.

3 Previous Committee reports

- 3.1 The Committee has inquired into, and reported on, the form and content of the statute book during previous Parliaments.⁷

Report 124

- 3.2 In its most recent report under this term of reference, tabled on 19 November 2019 (Report 124), the Committee found that a significant number of potentially obsolete enactments remain on the statute book.⁸
- 3.3 Report 124 noted that:
 - omnibus bills for the repeal of obsolete legislation are an effective mechanism in maintaining a current statute book
 - no omnibus bills had been tabled during the Fortieth Parliament

⁴ The Bill was referred pursuant to the Committee's terms of reference, which state that the functions of the Committee are to, among other things, 'review the form and content of the statute book' and that the Committee is authorised 'to consider and report on any matter referred by the Council': Standing Orders of the Legislative Council, schedule 1, item 6.3(c) and (d).

⁵ The Statutes (Repeals and Minor Amendments) Bill 2020 was referred to the Committee on 9 September 2020.

⁶ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 131, *Statutes (Repeals and Minor Amendments) Bill 2020*, November 2020.

⁷ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, interim report 79, *Inquiry into the Form and Content of the Statute Book*, November 2012 and Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 99, *Inquiry into the Statute Book*, June 2016.

⁸ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, *Inquiry into the Form and Content of the Statute Book*, November 2019, Finding 1, p 10.

- drafting instructions for an omnibus bill had been provided to Parliamentary Counsel's Office.⁹
- 3.4 The Committee recommended that the Government introduce its proposed omnibus bill in relation to the repeal of obsolete legislation at the earliest opportunity, preferably to enable enactment in the Fortieth Parliament.¹⁰
- 3.5 The Government Response to Report 124 stated:
- The Department of Justice is preparing an omnibus bill repealing obsolete legislation. The Bill will contain all of the Acts and provisions of Acts identified in the Committee's report as being obsolete or requiring further investigation that are suitable for inclusion in the Bill.¹¹

Report 131

- 3.6 The 2020 Bill was the omnibus bill referred to in the Government Response to Report 124. The Committee reported on the 2020 Bill in Report 131.
- 3.7 Although the 2020 Bill repealed a number of obsolete Acts and provisions identified in Report 124, it did not repeal them all. The Attorney General advised the Committee that on further review, certain legislation identified by the Government as being obsolete were not included in the 2020 Bill as they:
- will be repealed through another Act
 - are already repealed or spent
 - are under review in another project
 - have been identified by the agency as not being suitable for repeal
 - require further review and/or legal advice.¹²
- 3.8 The Committee reviewed every piece of legislation referred to in Report 124 but not included in the 2020 Bill¹³. It provided a comprehensive analysis of whether those provisions could be included in the 2020 Bill.

4 Overview of the Statutes (Repeals and Minor Amendments) Bill 2021

- 4.1 The Bill is an 'omnibus' bill, which is a bill that covers a number of diverse or unrelated topics. Omnibus bills should not implement a change in Government policy or deal with issues that may be controversial or contentious. Instead, they repeal obsolete legislation, correct typographical and grammatical errors and update names, titles and entities.
- 4.2 The Bill proposes to repeal, or make minor amendments to, a number of Acts, and includes many of those listed in the appendices to Report 124.

⁹ *ibid.*, p i.

¹⁰ *ibid.*, Recommendation 2, p 14.

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

¹² Hon John Quigley MLA, Attorney General, letter, 27 October 2020, p 2.

¹³ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 131, *Statutes (Repeals and Minor Amendments) Bill 2020*, November 2020, section 7.

- 4.3 The Bill proposes the:
- repeal of seven Western Australian Acts
 - repeal of six Imperial Acts
 - repeal of one provision in each of two Imperial Acts
 - amendment of numerous Western Australian Acts.

Committee enquiry

- 4.4 The previous membership of the Committee met following referral of the Bill. It wrote to the Attorney General seeking a comparison between the Bill and the 2020 Bill. In particular it sought an explanation of the:
- differences between the two bills
 - extent to which matters outlined in Report 131 have been addressed in the Bill
 - extent to which matters outlined in Report 131 have not been addressed in the Bill and the reasons for that.
- 4.5 The Attorney General's response is attached as Appendix 1.

5 Clauses in the Bill

- 5.1 Although the Bill is very similar to the 2020 Bill, it includes some additional items for repeal. They are discussed below.

Clause 21: *Acts Amendment (ICWA) Act 1996* amended

Clause 21(4)

- 5.2 Clause 21(4) deletes Schedule 1 item 3 of the *Acts Amendment (ICWA) Act 1996* (AAICWA Act). That item sought to amend the *Financial Administration and Audit Act 1985*, however it cannot come into operation because the *Financial Administration and Audit Act 1985* has been repealed.¹⁴

Clause 21(5)

- 5.3 Clause 21(5) deletes Schedule 1 item 8 of the AAICWA Act. That item sought to amend the *Mine Workers' Relief Act 1932*, however it cannot come into operation because the *Mine Workers' Relief Act 1932* has been repealed.¹⁵

Reason for inclusion

- 5.4 Parliamentary Counsel's Office identified Schedule 1 items 3 and 8 of the AAICWA Act as suitable for inclusion in the Bill.¹⁶

Committee comment

- 5.5 Schedule 1 items 3 and 8 of the AAICWA Act are suitable for repeal and inclusion in the Bill.

¹⁴ The *Financial Administration and Audit Act 1985* was repealed by section 3 of the *Financial Legislation Amendment and Repeal Act 2006*.

¹⁵ The *Mine Workers' Relief Act 1932* was repealed by section 3 of the *Statutes (Repeals and Minor Amendments) Act 2011*.

¹⁶ Hon Matthew Swinbourn MLC, Parliamentary Secretary, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 6 May 2021, p 264.

Clause 26: *Business Licensing Amendment Act 1995* amended

Clause 26(2)

- 5.6 Clause 26(2) deletes parts 2 and 3 of the *Business Licensing Amendment Act 1995* (BLA Act). The 2020 Bill deleted only part 3 of the BLA Act, despite Part 2 also being identified by the Government in January 2018 as obsolete.¹⁷

Reason for inclusion

- 5.7 The Committee identified Part 2 of the BLA Act as suitable for repeal and inclusion in the 2020 Bill in Report 131.¹⁸

Committee comment

- 5.8 Part 2 of the BLA Act is suitable for repeal and inclusion in the Bill.

Clause 62: *State Superannuation (Transitional and Consequential Provisions) Act 2000* amended

Clause 62(8)

- 5.9 Clause 62(8) deletes section 50 of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* (SSTCP Act). That section sought to amend clause 16(2) of Schedule 4 to the *Insurance Commission of Western Australia Act 1986* (ICWA Act). Section 50 cannot come into operation because clause 20(4) of the Bill deletes Schedule 4 of the ICWA Act.

Reason for inclusion

- 5.10 The Bill deletes the schedule which section 50 seeks to amend.

Committee comment

- 5.11 Section 50 of the SSTCP Act is suitable for repeal and inclusion in the Bill.

6 Conclusion

- 6.1 The Committee reiterates the comments it made in Report 131; namely:
- a number of statutes and provisions which have previously been identified by the Government as obsolete, requiring further investigation or unproclaimed have not been included in the Bill
 - further work needs to be undertaken with respect to updating the form and content of the statute book, particularly in relation to obsolete subsidiary legislation listed in Report 124 and statutes and provisions that have received Royal Assent but have not been proclaimed.
- 6.2 The Committee concludes that the Bill contains statutes and provisions which are appropriate for inclusion in an omnibus bill.

¹⁷ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 131, *Statutes (Repeals and Minor Amendments) Bill 2020*, November 2020, pp 17-18.

¹⁸ *ibid.*

RECOMMENDATION 1

The Legislative Council note the Standing Committee on Uniform Legislation and Statutes Review's report during consideration of the Statutes (Repeals and Minor Amendments) Bill 2021.



Hon Donna Faragher MLC
Chair

APPENDIX 1

LETTER FROM THE ATTORNEY GENERAL DATED 31 MAY 2021



Attorney General; Minister for Electoral Affairs

Our Ref: 67-24682

Chair, Standing Committee on Uniform Legislation and Statutes Review
Legislative Council Committee Office
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Chair

STATUTES (REPEALS AND MINOR AMENDMENTS) BILL 2021

I refer to the letter, dated 11 May 2021, from the previous Chair, Mr Mischin, regarding the differences between the Statutes (Repeals and Minor Amendments) Bill 2020 (2020 Bill) and the Statutes (Repeals and Minor Amendments) Bill 2021 (2021 Bill). Please see responses below.

1. Differences between the two bills?

The 2021 Bill is almost identical to the 2020 Bill apart from:

- minor editorial drafting changes;
- two provisions of the *Acts Amendment (ICWA) Act 1996* (WA), which Parliamentary Counsel's Office (PCO) identified as suitable for inclusion; and
- Part 2 of the *Business Licensing Amendment Act 1995* (WA), which the Standing Committee on Uniform Legislation Statutes Review (Committee) identified in Report 131; and
- Section 50 of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* (WA), which PCO identified for inclusion.

To assist the Committee, attached is the 2021 Bill compared with the lapsed 2020 Bill in marked up changes.

2. Extent to which the matters outlined in Report 131 have been addressed in the Bill?

The 2021 Bill includes all the matters referred to under the heading of 'other' in the Committee's 131 Report apart from sections 33(1) and 60(1) of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* (WA), explained at 3.6 below.

3. Extent to which the matters outlined in Report 131 have not been addressed in the Bill and the reasons for that?

3.1. Sections to be repealed through another Act

When an agency has advised that a repeal provision will be considered and/or repealed through another Act, the matter has not been included in the Bill.

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3.2. *Sections already repealed or spent*

Section 64 of the *Road Traffic Legislation Amendment Act 2016* (WA) is not included in the 2021 Bill because it was deleted by section 9 of the *Road Traffic Amendment (Blood Alcohol Content) Act 2019* (WA).

Part 2 to 13 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* (WA) principally contain spent amendment provisions with no ongoing effect. To amend these type of provisions unnecessarily broadens the scope of matters that are considered under the Omnibus Bill repeal process and impacts Departmental and Parliamentary resources. In any event, a provision of an Act that has become spent may be omitted from the Act, under section 7(4)(e) of the *Reprints Act 1984* (WA). A similar power is preserved in clause 35 of the *Legislation Bill 2021* (WA) currently before Parliament.

3.3. *Sections are under review in another project*

The Committee's observations are noted.

3.4. *Sections not identified as not being suitable for repeal*

The Committee's observations are noted.

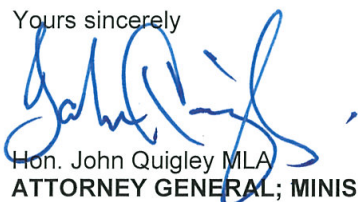
3.5. *Sections requiring further review and/or legal advice*

The Committee's observations are noted.

3.6. *Other*

Sections 33(1) and 60(1) of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* (WA) are not included in the 2021 Bill for the same reason that Parts 2 to 13 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* (WA) are not included in the 2021 Bill as discussed at 3.2 above.

Yours sincerely



Hon. John Quigley MLA
ATTORNEY GENERAL; MINISTER FOR ELECTORAL AFFAIRS

31 MAY 2021

GLOSSARY

Term	Definition
AAICWA Act	<i>Acts Amendment (ICWA) Act 1996</i>
Bill	Statutes (Repeals and Minor Amendments) Bill 2021
BLA Act	<i>Business Licensing Amendment Act 1995</i>
Committee	Standing Committee on Uniform Legislation and Statutes Review
ICWA Act	<i>Insurance Commission of Western Australia Act 1986</i>
Report 124	Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 124, <i>Inquiry into the Form and Content of the Statute Book</i> , November 2019
Report 131	Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, report 131, <i>Statutes (Repeals and Minor Amendments) Bill 2020</i> , November 2020
SSTCP Act	<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i>
2020 Bill	Statutes (Repeals and Minor Amendments) Bill 2020

Standing Committee on Uniform Legislation and Statutes Review

Date first appointed:

17 August 2005

Terms of Reference:

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

'6. Uniform Legislation and Statutes Review Committee

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



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