



THIRTY-NINTH PARLIAMENT

REPORT 98

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

OBSOLETE LEGISLATION REPEAL BILL 2015

Presented by Hon Kate Doust MLC (Chair)

June 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 Brian Ellis MLC (until 6 April 2016)

Hon Mark Lewis MLC (Deputy Chair)

Hon Samantha Rowe MLC
(until 23 February 2016)

Hon Amber-Jade Sanderson MLC
(from 24 February 2016)

Hon Phil Edman MLC (from 6 April 2016)

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ISBN 978-1-925149-62-3

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

OBSOLETE LEGISLATION REPEAL BILL 2015

EXECUTIVE SUMMARY

- 1 The Obsolete Legislation Repeal Bill 2015 (Bill) was introduced into the Legislative Council on 16 February 2016 and referred to the Uniform Legislation and Statutes Review Committee (Committee) for consideration and report.
- 2 The Bill is an example of a statutes review bill, intended to correct minor errors, repeal obsolete provisions and tidy up the statute book. The Department of the Attorney General provides policy advice for departments when preparing statutes review bills, including that they must not: affect any existing right, obligation, power or duty, change any legislative process or involve the insertion of multiple new sections into an act.
- 3 The Committee has examined the Bill according to its terms of reference and has also taken guidance from these policy principles as it sees fit.
- 4 The Bill proposes the repeal of four Western Australian obsolete statutes and six Imperial acts. The Committee takes no issue with the repeal of three of the four statutes and supports the repeal of all six Imperial acts.
- 5 The Committee does not support clause 6 of the Bill, which proposes the repeal of the *Sunday Entertainments Act 1979*. This statute currently regulates paid public entertainment that occurs on Sundays, Good Friday and on Christmas Day. These activities are prohibited, punishable by a fine of \$500, unless the Minister for Commerce provides an exemption under the act.
- 6 The Committee is of the view that clause 6 of the Bill is not a minor amendment as it implements a change in Government policy and therefore should be considered by the Parliament in a separate bill.

RECOMMENDATIONS

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

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Recommendation 1: The Committee recommends that the Obsolete Legislation Repeal Bill 2015 be amended to delete clause 6.

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Recommendation 2: The Committee recommends that the Obsolete Legislation Repeal Bill 2015 be passed by the Legislative Council, subject to the amendment in Recommendation 1.

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

OBSELETE LEGISLATION REPEAL BILL 2015

1 INTRODUCTION

- 1.1 On 16 February 2016, the Obsolete Legislation Repeal Bill 2015 (Bill) was introduced into the Legislative Council and referred to the Standing Committee on Uniform Legislation and Statutes Review (Committee) pursuant to the Committee's term of reference which states that:

*The functions of the Committee are ... to consider and report on any matter referred by the Council.*¹

- 1.2 The Bill, a type of bill more commonly known as a 'statutes review bill' or 'omnibus bill', proposes the repeal of four Western Australian acts and six Imperial acts insofar as they apply in Western Australia.
- 1.3 The Committee's scrutiny of this Bill is also incidental to Committee term of reference (d), which authorises the Committee 'to review the form and content of the statute book.' The Bill is only the second statutes review bill to be referred to the Committee during the 39th Parliament.
- 1.4 The Legislative Council did not impose a reporting date for the Bill.

2 STATUTES REVIEW BILLS

- 2.1 Bills which are intended to '*cure anomalies, correct minor errors, repeal obsolete provisions and generally tidy up the statute book*'² are often referred to as 'statutes review bills.'
- 2.2 The Department of the Attorney General is responsible for the preparation and drafting of statutes review bills, as noted in 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

¹ Standing Orders of the Legislative Council, Schedule 1: Committees, cl 6.3(e).

² D Pearce & R Geddes, *Statutory Interpretation in Australia 8th edition*, LexisNexis Butterworths, Chatswood, 2014, p 27.

- involve the insertion of multiple new sections into an act.³
- 2.3 In the Committee's scrutiny of these bills, the Committee reviews any matter that it considers relevant, including whether the subject matter of the repeal is appropriate for a statutes review bill and whether the bill infringes the parameters set out in the Premier's Circular.
- 2.4 The Second Reading Speech for the Bill refers to the general benefits of statutes review bills:

*Removing unnecessary legislation from the statutes book assists the government's legislative program and parliamentary business generally, by reducing the number of consequential amendments that must be considered when undertaking legislative change.*⁴

- 2.5 In 2012, the Committee investigated obsolete legislation in Western Australia during its self-initiated inquiry into the form and content of the statute book.⁵ During this inquiry, the Committee 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.⁶

³ Department of the Premier and Cabinet, Premier's Circular 2010/01, *Statutes (Repeals and Minor Amendments) Bill*, 11 February 2010.

⁴ Hon Michael Mischin, Minister for Commerce, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 18 November 2015, p 8450.

⁵ 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.

⁶ *ibid*, Appendices 1–7.

2.6 The following statutes which are proposed for repeal in the current Bill were identified during the Committee’s investigations in Report 79:

- *Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998*
- *Executors Act 1830 (Imp)*
- *Infants’ Property Act 1830 (Imp)*
- *Housing Societies Repeal Act 2005*
- *Bills of Exchange (day for payment) (1836) (Imp)*
- *Bills of exchange (non-payment) (1832) (Imp)*
- *Debts Recovery Act 1830 (Imp)*
- *Debts Recovery Act 1839 (Imp)*
- *Business Licensing Amendment Act 1995, Parts 2 and 3.*

2.7 The *Sunday Entertainments Act 1979*, repealed by clause 6 of the Bill, is the only statute that was not highlighted in Report 79 as being actually or potentially obsolete. The Department of Commerce (Department) advised at a hearing that:

with that initiative it came up through ... what is better termed a “red tape reduction process.” All the departments were asked to identify legislation that would be considered to be useful in a red tape process, so the Sunday Entertainments Act from the Department of Commerce was identified for that.⁷

3 THE BILL

3.1 The Committee has examined all clauses in the Bill and has focused on the five substantive clauses containing legislation to be repealed (clauses 3 to 7 of the Bill).

Clause 3 — repeal of the *Business Licensing Amendment Act 1995*

3.2 The purpose of the *Business Licensing Amendment Act 1995* (BLAA) was to amend various industry statutes in relation to the granting of licences and how licence fees would be set by regulation. The BLAA contained nine substantive parts; each part amending a different industry statute as noted below:

⁷ Patricia Blake, Senior Policy Officer, Department of Commerce, *Transcript of Evidence*, 14 March 2016, p 4.

PART	Amended statute	PART	Amended statute
Part 2	<i>Auction Sales Act 1973</i>	Part 3	<i>Debt Collectors Licensing Act 1964</i>
Part 4	<i>Employment Agents Act 1976</i>	Part 5	<i>Finance Brokers Control Act 1975</i>
Part 6	<i>Land Valuers Licensing Act 1978</i>	Part 7	<i>Motor Vehicle Dealers Act 1973</i>
Part 8	<i>Real Estate and Business Agents Act 1978</i>	Part 9	<i>Settlement Agents Act 1981</i>
Part 10	<i>Travel Agents Act 1985</i>		

3.3 Parts 2 and 3 were never proclaimed and therefore did not come into effect. These are therefore the relevant parts of the BLAA which are proposed for repeal by the Bill. Parts 4 through 10 have long since been proclaimed and implemented and are therefore unaffected by this repeal. The Department advised that:

*Parts 2 and 3 actually cannot be implemented anymore because the Auction Sales Act and the Debt Collectors Licensing Act have moved beyond that point anyway of that act and are now being further amended again. It is impossible to implement Parts 2 and 3, so that is why it has been put forward by Parliamentary Counsel.*⁸

Parts 2 and 3 of the BLAA – auctioneers and debt collectors

3.4 Part 2 of the BLAA sought to amend the *Auction Sales Act 1973* and Part 3 sought to amend the *Debt Collectors Licensing Act 1984*.

- Part 2 sought to amend section 19 of the *Auction Sales Act 1973* to give the magistrate granting an auctioneer’s licence the power to fix the period that the licence would be in effect, with a set minimum of 12 months and a maximum period to be prescribed by regulation. This differed from the original (current) section 19 by providing for licences to be initially granted for longer periods (as prescribed by the regulations), rather than only a 12 month period each time.
- Part 3 proposed similar amendments to the *Debt Collectors Licensing Act 1964*: the licensing sections were to be amended to provide for a longer initial licence grant (as prescribed by regulation) and then similarly renewed.

3.5 Both Parts 2 and 3 of the BLAA also contained a proposed amendment to the respective statutes to include a head of power to prescribe fees by reference to section 45 of the *Interpretation Act 1984*.

⁸ Patricia Blake, Senior Policy Officer, Department of Commerce, *Transcript of Evidence*, 14 March 2016, p 4.

Licensing Provisions Amendment Bill 2015

- 3.6 Parts 2 and 3 of the BLAA are now essentially replicated by (coincidentally) Parts 2 and 3 of the *Licensing Provisions Amendment Bill 2015* (LPA Bill), which has been at the second reading stage in the Legislative Assembly since 17 November 2015. The LPA Bill proposes wholesale amendments to various industry statutes to ‘align licensing periods with other occupational licences’, including for auctioneers and debt collectors.⁹
- 3.7 Part 2 of the LPA Bill replicates the 1995 amendments to section 19 of the *Auction Sales Act 1973*, with additional amendments and formatting updates. Part 3 of the LPA Bill amends the *Debt Collectors Licensing Act 1964* in almost identical terms to Part 3 of the BLAA.
- 3.8 In 2013, the Committee tabled its report into the Statutes (Repeals and Minor Amendments) Bill 2013: a statutes review bill.¹⁰ In its consideration of the one act being repealed and amendments to 41 other acts, the Committee noted that there were a number of amendments included in the bill that were simultaneously under consideration in the Legislative Assembly. The Committee reiterates its view, as expressed in Report 81, that:

*the legislative reform agenda of both Houses of the current Parliament would be better served if proposed amendments were identified at an earlier stage, coordinated, cross referenced and integrated within the appropriate amendment bills. This would ensure that all amendments relating to key legislation could be considered in full and not, as currently adopted, by way of an ad hoc or piecemeal approach using omnibus legislation.*¹¹

- 3.9 The Committee investigated whether the recent introduction of the LPA Bill into the Legislative Assembly would have any effect on the parts of the BLAA being repealed by the Bill:

The CHAIR: *In that situation you will actually need to have this bill passed before the licensing provisions bill is passed?*

Ms Blake: *No.*

The CHAIR: *It will not have any impact at all?*

⁹ Licensing Provisions Amendment Bill 2015, *Explanatory Memorandum*, Legislative Assembly, p 1.

¹⁰ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 81, *Statutes (Repeals and Minor Amendments) Bill 2013*, 8 August 2013.

¹¹ *ibid*, p 37.

*Ms Blake: No. This Business Licensing Amendment Act is long gone; it was a 1995 act.*¹²

3.10 In this case, the Committee takes no issue with clause 3 of the Bill.

Clause 4 — repeal of the *Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998*

3.11 The *Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998* (Consequential Provisions Act) was enacted when several emergency services agencies were consolidated by the Fire and Emergency Services Authority of Western Australia Bill 1998.¹³

3.12 The changes to the *Bush Fires Act 1954*, the *Fire Brigades Act 1942* and to other related statutes inserted references to the ‘Authority’ and updated references to the Bush Fires Board or the Fire Brigades Board. All of the changes made in the Consequential Provisions Act were relatively minor in nature and were necessary as a result of the main statute being implemented.

3.13 The changes implemented by the Consequential Provisions Act have all been carried out, therefore the utility of the statute has been exhausted.

3.14 The Committee takes no issue with clause 4 of the Bill.

Clause 5 — repeal of the *Housing Societies Repeal Act 2005*

3.15 The *Housing Societies Repeal Act 2005* (HS Repeal Act) repealed the *Housing Societies Act 1976* and the *Housing Loan Guarantee Act 1957* and provided for the winding up of the final two housing societies that existed in Western Australia at the time. The HS Repeal Act outlined the winding up process for the housing societies and included details of how the reserves would be distributed.

3.16 Part 2 of the HS Repeal Act set out the winding up procedure and Part 3 contained the substantive repeals of the two statutes above and consequential amendments to 12 other acts.

¹² Hon Kate Doust MLC, Chair and Patricia Blake, Senior Policy Officer, Department of Commerce, *Transcript of Evidence*, 14 March 2016, p 4.

¹³ ‘*This Bill seeks to effect changes to a number of other Acts of Parliament which include references to the Bush Fires Board or the Fire Brigade Board. Such references will be substituted by references to the Fire and Emergency Services Authority of Western Australia. Amendments to the Bush Fires Act and the Fire Brigades Act will provide for the abolition of the Bush Fires Board and the Western Australian Fire Brigades Board and the transfer of their powers and functions to the Fire and Emergency Services Authority of Western Australia*’: Hon Peter Foss MLC, Attorney General, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 16 September 1998, p 1428.

- 3.17 Part 2 of the HS Repeal Act commenced in 2005, but the repeals and amendments in Part 3 did not come into operation until 10 July 2010¹⁴, as provided for in section 2(4), which stated that:

A proclamation [to commence Part 3 of the act] cannot be made under subsection (3) unless the Minister is satisfied that the registration of each society in existence immediately before commencement day has been cancelled.

- 3.18 There is no public information relating to the Minister for Housing being satisfied that the registrations were cancelled. The Minister for Housing has confirmed that ‘*the necessary documentation was provided to [the] satisfaction of the then Minister for Housing in April 2010.*’¹⁵ The Minister for Housing also provided copies of the relevant Certificates of Cancellation of Registration for the two housing societies (Westland Housing Society and Western Homebuyers Housing Society), dated 19 January 2010.¹⁶
- 3.19 The Committee notes that, as the registrations of the housing societies have been cancelled, the HS Repeal Act can be safely removed from the statute book with no ongoing consequences. The Committee therefore takes no issue with clause 5 of the Bill.

Clause 6 — repeal of the *Sunday Entertainments Act 1979*

- 3.20 The *Sunday Entertainments Act 1979* (Sunday Entertainments Act) prohibits ‘*public entertainment or amusement*’ (defined in section 2¹⁷) that occurs on Sundays, on Good Friday or on Christmas Day, which requires payment of money to attend.
- 3.21 Section 3(1) of the Sunday Entertainments Act creates an offence where an owner, lessor or landlord engages in or permits paid entertainment with a penalty of \$500 (or \$100 modified penalty). Section 3(2) provides for the Minister for Commerce to grant exemptions to the offence by publishing a notice in the *Government Gazette* that sets out the details of the activity or place being exempted from the ban.
- 3.22 The Minister for Commerce referred to this statute being appropriate for repeal in the Second Reading Speech to the Bill:

¹⁴ Gazetted on 9 July 2010, with the repeal to take effect the next day.

¹⁵ Hon Colin Holt MLC, Minister for Housing, Letter, 4 April 2016, p 1.

¹⁶ *ibid*, Attachment 2.

¹⁷ Public entertainment is more clearly defined by what it does not include: ‘*address, discussion or lecture on, or exhibition concerned with, art, ethics, literature, science, social duties or any matter of public interest*’: *Sunday Entertainments Act 1979*, s 2.

Since 1979, ministers of successive governments have granted permanent and short-term exemptions from the operation of this act and published exclusion notes in the Government Gazette to allow cinemas, sporting events, live music performances, carnivals, festivals and the like to operate ... Nowadays, most applications are to allow cinemas, ice rinks and some other amusement centres to operate on Good Friday.

Repealing the Sunday Entertainments Act is timely as the act no longer reflects community attitudes; the process of having to apply for an exemption from the act is unnecessarily burdensome on businesses and an inefficient use of their and government resources; and a sufficient level of government oversight of such activities already exists through local government and other regulation.

Removing this unnecessary regulation will provide greater flexibility to industry as business owners, landlords and lessors no longer need to seek approval to use a place for paid public entertainment on Sundays, Christmas Day or Good Friday, and will expand consumer choice and convenience.¹⁸

Entertainment on Sundays, Good Friday or Christmas Day regulated by other legislation

- 3.23 The repeal of the Sunday Entertainments Act is referred to as ‘timely’ because ‘a sufficient level of government oversight ... already exists through local government and other regulation.’ The Department discussed the following example at a hearing:

For the Easter markets that happen in Rockingham, every year they apply for a permit for Good Friday. They still have to comply with liquor licensing laws and they still have to comply with local government laws around access, parking and issues like that. The only thing they will not need to apply for if this act is repealed is permission to charge a fee for people to go in [to the markets].¹⁹

- 3.24 No detail was provided in the Explanatory Memorandum to the Bill as to other legislation or local laws in existence that regulate public entertainment on Sundays, Good Friday or on Christmas Day. The Committee has confirmed with the Department that the following legislation will continue to apply to traders seeking to provide paid entertainment on Sundays, Good Friday and Christmas Day:

¹⁸ Hon Michael Mischin MLC, Minister for Commerce, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 18 November 2015, p 8450.

¹⁹ Patricia Blake, Senior Policy Officer, Department of Commerce, *Transcript of Evidence*, 14 March 2016, p 7.

- *Racing and Wagering Western Australia Act 2003*
- *Racing and Wagering Western Australia Regulations 2003*
- *Racing Restriction Act 2003*
- *Liquor Control Act 1988*
- *Liquor Commission Rules 2007*
- *Occupational Health and Safety Act 1984*
- *Occupational Health and Safety Regulations 1996*
- *Road Traffic Act 1974*
- *Road Traffic (Events on Road) Regulations 1991*
- *The by-laws of each local government – event organisers will require council approval for size of event, location, date and time, as well as alcohol consumption. Local governments require event organisers to notify the police if alcohol is to be consumed at an event. Organisers are also liable under local government laws with regard to noise abatement, risk management and public liability.*²⁰

Subject matter of the repeal not appropriate for a statutes review bill

- 3.25 The Committee has formed the view that the proposed repeal of the Sunday Entertainments Act in clause 6 is not a minor amendment and therefore not appropriate for inclusion in the Bill.
- 3.26 Clause 6 of the Bill purports to change the process by which public entertainment may be permitted on Sundays, Good Friday or Christmas Day and the Minister's power to enforce the entertainment ban on those days. Clause 6 of the Bill also appears to implement a change in Government policy and therefore should not be included in a statutes review bill.
- 3.27 The Committee has confirmed with the Department that no legal advice was sought with regard to the repeal of the Sunday Entertainments Act being appropriate to

²⁰ David Hillyard, Acting Commissioner for Consumer Protection, Letter, 24 March 2016, pp 2-3.

include in a statutes review bill: 'I guess the short answer is no, other than parliamentary counsel grouping it in this bill.'²¹

3.28 The Department has submitted that:

Although the Bill was referred to the Committee in accordance with the Premier's Circular, Consumer Protection respectfully submits that the Bill is not an omnibus Bill in the sense contemplated by the Premier's Circular and therefore does not offend the principles as laid out in that document ... This repeal Bill differs from an omnibus Bill in key respects.

The Bill was deliberately called Obsolete Legislation Repeal Bill 2015 by Parliamentary Counsel so as to signal its purpose ... The Department of Finance was the lead instructor of the Bill rather than the Department of the Attorney General. The purpose of the Bill is not to make minor administrative amendments, but rather to repeal obsolete and spent legislation on the statute books ... this Bill is designed to allow for clause by clause debate if a member takes issue with the repeal of a certain Act. The SE Act [Sunday Entertainments Act 1979] has been included in this Bill rather than an omnibus Bill because it contains a moral dimension which must be considered by Parliament ...²²

3.29 The Committee notes that the Department's views above are not supported by the Minister for Commerce, who provided the following advice prior to the Bill being referred:

the non-referral was an oversight arising from the unusual genesis of the Bill. Under normal circumstances, an Omnibus Repeal Bill is prepared by the Department of the Attorney General as a standalone initiative and would be referred to the Committee in conformance with Premier's Circular 2010/01.

However, on this occasion, the Bill was part of a greater suite of red tape reduction initiatives, prepared and coordinated by the Department of Finance ... In this process, having been characterised as a red tape reduction Bill, there was a failure to appreciate that it was also an Omnibus Bill. Consequently, the requirement to refer the Bill to the Committee was not recognised ...

²¹ Patricia Blake, Senior Policy Officer, Department of Commerce, *Transcript of Evidence*, 14 March 2016, p 7.

²² David Hillyard, Acting Commissioner for Consumer Protection, Letter, 24 March 2016, p 2.

*I have requested that arrangements be made to ensure departments involved in future red tape reduction Bills are aware of the requirements outlined in the Premier's Circular 2010/01.*²³

- 3.30 Important matters which are politically contestable or which are matters of substance should be subject to the Parliament's separate consideration in individual bills. The general principle is that a bill must relate to one subject matter only and the contents must be within that bill's scope.²⁴ Content which would be controversial or propose a change in policy would not be appropriate subject matter for a statutes review bill.
- 3.31 The Committee therefore takes issue with clause 6 of the Bill, as the subject matter of clause 6 is not appropriate for inclusion in a statutes review bill.

Consequential amendments arising from this repeal that have not been included

- 3.32 The Committee notes that there are instruments of subsidiary legislation which are related to the Sunday Entertainments Act which are not referred to in the Bill:
- the Criminal Procedure Regulations 2005 include the Sunday Entertainments Act as a prescribed act in Schedule 1A, pursuant to sections 4 and 5(1) of the *Criminal Procedure Act 2004* (related to the issuing of infringement notices)
 - the Sunday Entertainments Regulations 2006 are made under the power in section 5(1) of the *Criminal Procedure Act 2004* and contain the list of prescribed offences, authorised officers and forms for the offences of operating or hiring venues for public entertainment on a Sunday, Good Friday or Christmas Day.
- 3.33 The Department advised that '*the regulations fall away because the substantive act has been repealed.*'²⁵ The Committee notes, however, that the empowering statute for the Sunday Entertainments Regulations 2006 is not the Sunday Entertainments Act but rather the *Criminal Procedure Act 2004*. The repeal of the Sunday Entertainments Act will therefore have no effect on the operation of the Sunday Entertainment Regulations 2006.
- 3.34 The Department explained at a hearing that:

because there is a possibility that there are offences that have occurred during the period up until the point that [the Sunday Entertainments Act] is repealed, and you may have an investigation

²³ Hon Michael Mischin MLC, Minister for Commerce, Letter, 24 December 2015, p 1.

²⁴ David McGee, *Parliamentary Practice in New Zealand: 3rd edition*, Dunmore Publishing Limited, Wellington, 2005, p 318.

²⁵ Patricia Blake, Senior Policy Officer, Department of Commerce, *Transcript of Evidence*, 14 March 2016, p 5.

*or a prosecution which is ongoing past that date of repeal, that that penalty notice might still be in force. There are periods of time which are mandatory for the defendants to respond to those infringement notices and Parliamentary Counsel might be thinking that that needs to remain open because if you take away both parts, then that prosecution angle of that infringement notice would fall away straightaway.*²⁶

3.35 The Department has further advised that:

*amendments to various regulations are needed if the SE Act is repealed. It would not be appropriate for Consumer Protection to progress the amendments to subsidiary legislation in advance of Parliament dealing with the Obsolete Legislation Repeal Bill 2015.*²⁷

3.36 The Committee has formed the view, however, that the repeal of the Sunday Entertainments Act is not appropriate for inclusion in the Bill. The issue of making consequential amendments to subsidiary legislation therefore becomes redundant.

Recommendation 1: The Committee recommends that the Obsolete Legislation Repeal Bill 2015 be amended to delete clause 6.

Clause 7 — repeal of Imperial acts

Clauses 7(1)(a) and (b) — Bills of Exchange (day for payment) Act (1836) and Bills of exchange (non-payment) Act (1832)

3.37 The Explanatory Memorandum to the Bill advises that these two Imperial statutes can be repealed because they have been ‘*superseded by the Bills of Exchange Act 1909 (Cth)*.’²⁸

3.38 The *Bills of Exchange Act 1909 (Cth)* commenced in February 1910 and defines a bill of exchange as an order in writing that requires a person to pay a sum of money to another at a particular time.²⁹

²⁶ David Hillyard, Acting Commissioner for Consumer Protection, Department of Commerce, *Transcript of Evidence*, 14 March 2016, p 6.

²⁷ David Hillyard, Acting Commissioner for Consumer Protection, Letter, 24 March 2016, p 1.

²⁸ Obsolete Legislation Repeal Bill 2015, *Explanatory Memorandum*, Legislative Council, p 2.

²⁹ *Bills of Exchange Act 1909 (Cth)* s 8(1): ‘A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.’

- 3.39 Schedule 1 of the *Bills of Exchange Act 1909* (Cth) contains a list of State acts which ceased to apply to bills of exchange, cheques or promissory notes that were drawn or made after the commencement of the statute in 1910.³⁰ Neither of the two Imperial acts included in the Bill are included in the list in Schedule 1.
- 3.40 The Department of the Attorney General has advised of a possible constitutional law issue with regard to the interaction between the two Imperial acts in the Bill and the *Bills of Exchange Act 1909* (Cth), in that:

there may be some legal debate as to whether or not the 1909 [Commonwealth] act covers the field ... That is, whether the 1909 act is inconsistent with the 1836 and 1832 [Imperial] acts ... does the Commonwealth act cover the field? ...

there is an 1884 WA bill of exchange act, and that act repeals all other bills of exchange acts, obviously, that apply in Western Australia, which are contrary to or inconsistent with, the 1884 Western Australian act. So the question then became: are the 1832 and/or the 1836 UK acts, which were adopted by the WA Parliament, inconsistent with or contrary to the 1884 act? We would get differing legal opinions on that. But assume you said yes, they were contrary to or inconsistent, then they would no longer be there. They would be repealed.

If you said they were not inconsistent, then you go to section 7, Part 1 of the 1909 act, which specifically repeals or says that the 1884 act ceases to apply to bills of exchanges after the commencement of the 1909 act ... Therefore you might have the 1884 act that has gone for inconsistency, but not the 1832 and 1836 acts ...

As far as I know, no-one has used the 1832 or 1836 acts; it has never been challenged and everyone has just assumed, perhaps correctly, that it is the case that the 1909 act is covering the field.³¹

- 3.41 The Committee agrees with the proposition that the repeal now is likely unnecessary from a legal perspective, but still suitable to ensure consistency with the law and as an administrative tidy up of Western Australian legislation.

³⁰ According to section 7 of the Commonwealth Act, which provides that the statutes listed in Schedule 1 will cease to apply to bills of exchange after the commencement of the Commonwealth Act. There are three Western Australian (Imperial) acts listed which ceased to operate when the Commonwealth Act commenced in 1910, including the *Bank Holidays Act 1884* (repealed by the *Bank Holidays Act 1970*), the *Bills of Exchange Act of 1884* and the *Bills of Exchange Act 1904* (both repealed by the *Statute Law Revision Act 1967*).

³¹ Dr James Thomson, Senior Assistant State Solicitor, Department of the Attorney General, *Transcript of Evidence*, 14 March 2016, p 9.

3.42 The Committee takes no issue with the repeal of the two Imperial acts in clauses 7(1)(a) and (b).

Clauses 7(1)(c) and (d) — Debts Recovery Act 1830 and Debts Recovery Act 1839

3.43 The Explanatory Memorandum to the Bill states that these two statutes no longer have relevance in Western Australia for the following reasons:

- ‘the introduction of the Torrens system of indefeasible title’³²
- ‘the existence of other current legislation dealing with property law, probate, wills and administration.’³³

3.44 The *Debts Recovery Act 1830 (Imp)* and the *Debts Recovery Act 1839 (Imp)* deal with remedies that are available to recover a debt incurred in various situations but it is likely that current, modern legislation has rendered these Imperial statutes largely irrelevant. The Committee notes that Western Australia first adopted the Torrens system with the *Transfer of Land Act 1874* (repealed) and now relies on the *Transfer of Land Act 1893*.

3.45 The Committee takes no issue with clauses 7(1)(c) and (d) of the Bill.

Clause 7(1)(e) — Executors Act 1830

3.46 This Imperial statute deals with the undisposed residue of a will where it is not clear what a testator intended to be done with the property. The Explanatory Memorandum for the Bill advises that the statute has been included in the Bill because this area of probate law is covered by the *Administration Act 1903*.

3.47 The Committee has examined the *Executors Act 1830* and the *Administration Act 1903* and has found that sections 13(2) and (3) of the *Administration Act 1903* are essentially identical in intent as the two substantive provisions in the *Executors Act 1830* but with modern wording.

3.48 The Committee therefore takes no issue with the repeal in clause 7(1)(e) of the Bill.

Clause 7(1)(f) — Infants’ Property Act 1830

3.49 The long title for the *Infants’ Property Act 1830 (Imp)* (Infants’ Property Act) states that it is for:

³² The Torrens system is a system of conveyancing that was devised by Sir Robert Torrens and first introduced into Australia by South Australian legislation on 1 July 1858. The purpose of the legislation was to simplify the land titles system by making them depend wholly on registration and the dealing of the title by the relevant land titles office: *Halsbury’s Laws of Australia*, Real Property, [355-8010].

³³ Obsolete Legislation Repeal Bill 2015, *Explanatory Memorandum*, Legislative Council, p 2.

consolidating and amending the Laws relating to Property belonging to Infants, Femes Coverts, Idiots, Lunatics, and Persons of Unsound Mind.

- 3.50 Section 3 of the Infants' Property Act refers to an infant being anyone under the age of 21 years. The Committee observes that the statute does not define 'idiot', 'lunatic' or 'person of unsound mind' and that these terms are no longer used in a legal context.³⁴
- 3.51 'Feme Covert' is not defined in the statute, but was historically used to indicate that a married woman's rights and property were subsumed by her husband's through the principle of 'couverture'.³⁵
- 3.52 The Infants' Property Act contains provisions such as:
- infants, femes covert and lunatics could be admitted as tenants on copyhold land if their guardian, husband or attorney appeared before the lord or steward on their behalf³⁶
 - if the guardian or husband in question paid a fine related to the tenancy owned by an infant, feme covert or lunatic (section 3, above), then the fine could be reimbursed from the rent or profits of the land and the guardian or husband could enter onto and 'hold and enjoy the said land' until the amount was disbursed.³⁷
- 3.53 The Explanatory Memorandum states that '*the Act is now considered obsolete, and is therefore suitable for repeal.*' The Department of the Attorney General has clarified that other legislation exists which has rendered the statute obsolete, such that:

everyone would agree with you in 2016, if not earlier, that mere language is archaic and obsolete, and it is made archaic and obsolete not only by moral values and sense of things but, I am told, for example, the Age of Majority Act, which now talks about majority being at 18, the Married Women's Property Act 1892 and 1895, which were repealed by the Acts Amendment (Equality of Status) Act 2002 and the Domicile Act 1985 deal with "married women" and not

³⁴ Idiot, for example, was used to describe a person 'in whom there exists mental defectiveness of such a degree that the person is unable to guard against common physical dangers': *R v Colgan* (1958) 59 SR (NSW) 96. A 'person of unsound mind' meant someone who was incapable of managing his own affairs due to infirmity of the mind: for example, *Trustee Act 1936* (SA), s 4(1).

³⁵ Encyclopaedic Australian Legal Dictionary, LexisNexis: At common law, the goods and leasehold land of a woman became her husband's property on marriage, as did the income from her freehold land. Married women were also unable to sue in their own names. These rules were not always followed in early colonial Australia, partly because the free wives of convict men were not incapacitated.

³⁶ *Infants' Property Act 1830 (Imp)* s 3.

³⁷ *ibid*, s 8.

the more archaic term ... the Transfer of Land Act and the Property Law Act provide a system of freehold tenure not copyright, which is another ancient and archaic term ...

a number of pieces of State legislation now substantively deal with the protections and the points of law that one would think are quite normal and natural and ought to be there ... the Transfer of Land Act 1893, Supreme Court Act 1935, Administration Act 1903, Public Trustee Act 1941, Land Administration Act 1997, Legal Representation of Infants Act 1977, Trustees Act 1962 and the Guardianship and Administration Act 1990 ...

the 1830 act would most likely contradict provisions in the Equal Opportunity Act 1984 ...

The SSO [State Solicitor's Office] has gone through each of the numerous provisions in that act ... for example, section 20 of the Transfer of Land Act and section 12 of the Public Trustee Act, so a fair amount of detail has gone into considering each of those and coming to the conclusion either the earlier provisions have been repealed, expressly or impliedly, or they are just obsolete and there is no need any more for that particular type of protection or rights.³⁸

3.54 The Committee has examined the statutes referred to above and is satisfied that they represent the legal rights and responsibilities of women, minors and people with a mental illness as currently provided for in State legislation.

3.55 The Committee therefore takes no issue with clause 7(1)(f) of the Bill.

Clause 7(2) — application of the *Interpretation Act 1984*

3.56 This clause provides that Part V of the *Interpretation Act 1984* applies to the repeal of the Imperial acts in the Bill as if Western Australian statutes were being repealed.

3.57 Part V ('*Repeal of written law*') provides that:

- where a written law is repealed, the amendments are also repealed³⁹
- where a repeal act is being repealed (such as the HS Repeal Act in clause 5 of this Bill), then the repeal does not revive the previous statute unless explicitly stated⁴⁰

³⁸ Dr James Thomson, Senior Assistant State Solicitor, Department of the Attorney General, *Transcript of Evidence*, 14 March 2016, pp 10-11.

³⁹ *Interpretation Act 1984* s 33.

- where an act is repealed and substitutes other provisions, or repeals and re-enacts an act, any subsidiary legislation made under the repealed act will continue in operation and have effect *'for all purposes as if it had been made under the repealing Act.'*⁴¹

3.58 A similar clause was included in the Statutes (Repeals) Bill 2013, which was introduced as a result of the Committee's Interim Report 79.⁴² The *Statutes (Repeals) Act 2014* came into operation on 3 December 2014.

3.59 The reference in the Bill to Part V of the *Interpretation Act 1984* clarifies that the *Interpretation Act 1984* also applies to the Imperial acts in the Bill as if they were Western Australian acts.

Conclusion

3.60 The Committee has examined the Bill in detail and has received advice regarding the background and effect of specific clauses.

3.61 The Committee has found that the Bill is a statutes review bill with the intent to remove out-dated and archaic references from Western Australian legislation.

3.62 The Committee has concerns with regard to clause 6, the repeal of the Sunday Entertainments Act, specifically that its inclusion in the Bill is not appropriate and that it should not be included in a statutes review bill. The Committee is also concerned that the Department disputes the significance of the repeal and its inclusion in the Bill.

3.63 The Committee therefore makes the following recommendation:

Recommendation 2: The Committee recommends that the Obsolete Legislation Repeal Bill 2015 be passed by the Legislative Council, subject to the amendment in Recommendation 1.



Hon Kate Doust MLC
Chair

21 June 2016

⁴⁰ *ibid*, s 34.

⁴¹ *ibid*, s 38.

⁴² See paragraph 2.5.