

40TH PARLIAMENT



Report 124

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Inquiry into the Form and Content of the Statute Book

Presented by
Hon Michael Mischin MLC (Chairman)
November 2019

Standing Committee on Uniform Legislation and Statutes Review

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Government response

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

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

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

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EXECUTIVE SUMMARY

- 1 The Standing Committee on Uniform Legislation and Statutes Review (Committee) has inquired into, and reported on, the form and content of the statute book in previous Parliaments. This inquiry arises from an interim report tabled by the Committee in the Thirty Ninth Parliament which reported its concern at the slow pace at which obsolete legislation is identified and repealed in Western Australia. This report expands on that work.
- 2 On 4 December 2017, the Committee resolved to commence an inquiry to '*review the form and content of the statute book*'. The terms of reference are to identify enactments that are obsolete, exhausted, expired or as yet unproclaimed with a view to having them removed from the statute book.
- 3 The Committee has found that a significant number of potentially obsolete enactments remain on the statute book. While some mechanisms currently used in Western Australia help to reduce obsolete legislation, they are being underutilised. Other mechanisms are not being used at all.
- 4 Other jurisdictions in Australia, New Zealand and Canada have some innovative approaches to managing and maintaining their statute books. These might be used in Western Australia to manage our statute book more effectively and maintain a more relevant statute book into the future.
- 5 Omnibus bills for the repeal of obsolete legislation are an effective mechanism in maintaining a current statute book. No such bill has been tabled during the Fortieth Parliament, however drafting instructions have been provided to Parliamentary Counsel's Office. The Committee, with one exception, has 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.
- 6 The Committee considered the problem of unproclaimed Acts and provisions remaining on the statute book for what seem to be excessive and unreasonable periods of time. The Committee considers that Acts or provisions that have not become law within 10 years ought to automatically be removed from the statute book. It has prepared a bill to amend the *Interpretation Act 1984* to provide for this.

Findings and recommendations

Findings and recommendations are grouped as they appear in the text at the page number indicated:

FINDING 1

Page 10

Despite the Committee's reports over several Parliaments and its repeated concerns about the lack of progress in the repeal of obsolete legislation, a significant number of potentially obsolete enactments remain on the statute book.

FINDING 2

Page 13

Premier's Circular 2010/01 provides an opportunity for the Government to introduce a variety of minor legislative amendments and repeals to reduce the number of enactments on the statute book.

FINDING 3

Page 13

There is no legislative requirement for the Government to introduce any omnibus bills under Premier's Circular 2010/01.

FINDING 4

Page 13

Premier's Circular 2010/01 is not being used as frequently as contemplated which has resulted in a substantial number of obsolete enactments remaining on the Western Australian statute book.

RECOMMENDATION 1

Page 13

The Government advise the Legislative Council of its time frame for introducing its proposed omnibus bill repealing obsolete legislation.

The Committee, being a majority comprised of Hon Michael Mischin MLC, Hon Laurie Graham MLC and Hon Robin Scott MLC makes the following recommendation:

RECOMMENDATION 2

Page 14

The Government introduce its proposed omnibus bill repealing obsolete legislation at the earliest opportunity, preferably to enable enactment in the Fortieth Parliament.

Hon Pierre Yang MLC preferred that Recommendation 2 be in different terms, which are set out in paragraph 3.23.

RECOMMENDATION 3

Page 15

The Government give greater priority to 'Repeal Day' bills as part of a strategy to ensure the currency of the statute book.

FINDING 5

Page 18

There is scope for sunset provisions to be used more frequently in subsidiary legislation in Western Australia, to encourage consideration of the necessity for regulations and other subordinate instruments made under an Act and to facilitate their repeal if no longer of utility.

RECOMMENDATION 4

Page 19

The Government make greater use of sunset provisions in subsidiary legislation to facilitate the identification and repeal of obsolete legislation.

FINDING 6

Page 19

Clauses that provide for commencement by proclamation, with no requirement for proclamation within a specified time or by a specified date, impinge on the Parliament's sovereignty, and should be supported by sound reasons.

RECOMMENDATION 5

Page 19

Whenever practicable, commencement provisions should specify the date or dates when provisions of an Act are to come into operation.

RECOMMENDATION 6

Page 26

The Government introduce a bill to amend the *Interpretation Act 1984* to provide for the automatic repeal of Acts or the provisions of Acts that are to come into operation by proclamation and that are not proclaimed within 10 years of the Act or provision receiving Royal Assent, in the terms set out in Appendix 9.

RECOMMENDATION 7

Page 26

The Government implement a mechanism that is the same as, or similar to, the *Statutes Repeal Act* S.C. (Statutes of Canada) 2008, c.20.

RECOMMENDATION 8

Page 29

The Government examine the merits of adopting a regulatory stewardship approach, as a statutory obligation, for Government departments in Western Australia.

FINDING 7

Page 30

Periodic reviews of legislation help to ensure redundant provisions are removed and the statute book remains current.

RECOMMENDATION 9

Page 30

The Government consider introducing a law or mandate a system requiring the periodic review of all Western Australian legislation to identify that suitable for repeal.

RECOMMENDATION 10

Page 30

Legislation for repeal identified by periodic reviews be included in a list to be tabled in both Houses of the Western Australian Parliament at least once in every calendar year.

RECOMMENDATION 11

Page 30

Pursuant to Premier's Circular 2010/01, a Statutes (Repeals and Minor Amendments) Bill repealing legislation identified in periodic reviews be introduced at least once in every calendar year.

CHAPTER 1

Introduction

Establishment of the inquiry

- 1.1 Previous iterations of the Standing Committee on Uniform Legislation and Statutes Review (Committee) have inquired into, and reported on, the form and content of the statute book.¹ The most recent Committee to do so was that of the Thirty-Ninth Parliament. It reported its concern at the slow pace at which obsolete legislation is identified and repealed. It was unable to conclude its inquiry prior to the Parliament being prorogued for the State election in March 2017. The Committee recommended that the Committee of the Fortieth Parliament consider inquiring into the statute book in the next Parliament.²
- 1.2 The Committee considered this recommendation and on 4 December 2017 it resolved to commence an inquiry to ‘review the form and content of the statute book’. The terms of reference are to identify enactments that are obsolete, exhausted, expired or as yet unproclaimed with a view to having them removed from the statute book (Inquiry).³
- 1.3 On 6 December 2017, the Committee notified the Legislative Council of the Inquiry pursuant to Standing Order 179(2). This was done by way of Report 110, which is available on the Committee’s website.⁴
- 1.4 The Committee posted the Inquiry on its website at [Uniform Legislation Committee homepage](#). The general public was immediately notified of the Inquiry via social media.⁵

Inquiry procedure

- 1.5 On 7 December 2017, the Committee wrote to all Ministers advising them of the Inquiry and requesting that, with respect to each of the Acts and subsidiary legislation within their portfolios, they advise:
 - What (if any) provisions in each statute are obsolete, exhausted, expired or remain unproclaimed and if any foreseeable problems may arise were they to be repealed.
 - Whether the statute itself is obsolete, exhausted, expired or remains unproclaimed and if so, if any foreseeable problems would arise were they to be repealed.
- 1.6 The Committee referred to its Interim Report 79⁶ and requested advice as to whether there was any intention to proclaim any outstanding statutes identified in that report as having received Royal Assent but that were not proclaimed, and if so why they could not now be repealed.

¹ One of the Committee’s terms of reference is to ‘review the form and content of the statute book’: The Standing Orders of the Legislative Council, Western Australia, Schedule 1, Item 6.3(c).

² Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 99, *Inquiry into the Statute Book*, June 2016, Recommendation 2.

³ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 110, *Inquiry into the Form and Content of the Statute Book – Terms of Reference*, December 2017.

⁴ [Uniform Legislation Committee homepage](#).

⁵ Legislative Council, 6 December 2017, retrieved from <https://twitter.com/WALegCouncil/status/938336775772127232>.

⁶ 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.

- 1.7 The Committee also received a private briefing from the Parliamentary Counsel, Geoff Lawn, about the statute book in Western Australia and ways other jurisdictions maintain their statute books.
- 1.8 Finally, the Committee wrote to all Australian jurisdictions, New Zealand and Canada to inquire how their statute books are maintained.

Structure of the report

- 1.9 The Committee's previous reports relevant to the Inquiry demonstrate that despite repeated recommendations for changes to the way the statute book in Western Australia is managed, the mechanisms used have not been improved. Those reports are discussed in Chapter 2.
- 1.10 The outcomes of the Committee's inquiries with Ministers as to existing enactments that are obsolete or unproclaimed is also discussed in Chapter 2.
- 1.11 Further, the Committee considered and analysed mechanisms used to manage and maintain the statute book in Western Australia, other Australian jurisdictions, New Zealand and Canada. On the basis of the information obtained, the Committee has made recommendations for the improved management and maintenance of the statute book in Western Australia. This is contained in Chapter 3.
- 1.12 Terms used in this report are explained in the glossary.

CHAPTER 2

Committee's reports on the form and content of the statute book

- 2.1 The Committee has long been concerned about the slow pace at which obsolete legislation is identified and repealed in Western Australia.
- 2.2 The Committee's previous reports are relevant to the Inquiry. They demonstrate that despite repeated recommendations for changes to the way the statute book in Western Australia is managed, the mechanisms used have not been improved. For example, of the 48 Acts identified as obsolete in November 2012, only 30 have been repealed.
- 2.3 The Committee's statute book reports tabled during the Thirty-Eighth and Thirty-Ninth Parliaments, and the Government responses to them, are discussed below.

Committee report tabled during the Thirty-Eighth Parliament (6 November 2008-14 December 2012)

Interim Report 79: November 2012

- 2.4 On 9 November 2011, the Committee commenced an inquiry into the form and content of the statute book.
- 2.5 The Committee contacted all Ministers with a view to identifying obsolete statutes or provisions within statutes and removing them from the statute book.
- 2.6 At the time of the Committee's inquiry during the Thirty-Eighth Parliament, there were a total of 1603 enactments on the statute book that were in force.⁷ Of those, 855 were Acts and 748 were items of subsidiary legislation.⁸
- 2.7 The Committee reported the following results of its investigations in Interim Report 79:
- 48 Acts were identified as obsolete
 - 18 specific sections in Acts were identified as obsolete
 - 25 items of subsidiary legislation were identified as obsolete
 - 53 Acts were identified as requiring further investigation
 - 8 specific sections in Acts were identified as potentially obsolete but requiring further investigation
 - 1 item of subsidiary legislation was identified as requiring further investigation
 - 68 statutes were identified which had Royal Assent but were not proclaimed.⁹

⁷ 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, p 1.

⁸ *ibid.*

⁹ *ibid.*, pp 2–3 and p 7. Note that Appendix 2 of Interim Report 79 lists 16 enactments however items 13 and 14 contain two enactments each, making a total of 18 enactments. Appendix 7 of Interim Report 79 states there were 70 statutes with Royal Assent but not proclaimed, however only 68 statutes are listed. Of those 68, in many cases only certain provisions had not been proclaimed and operative.

- 2.8 Of the 68 statutes which were identified as having Royal Assent but remained unproclaimed at the date Interim Report 79 was tabled (November 2012):
- 13 had received Royal Assent in 2012
 - 27 had received Royal Assent since September 2008 (election of the Barnett Government) and before 2012
 - 10 had received Royal Assent between January 2006 and September 2008 (the Carpenter Government)
 - 7 had received Royal Assent between February 2001 and January 2006 (the Gallop Government)
 - 6 had received Royal Assent between February 1993 and February 2001 (the Court Government)
 - 5 had received Royal Assent before February 1993, the earliest dating back to November 1970.
- 2.9 The Committee concluded that a significant number of enactments could be removed from the statute book in an omnibus bill.¹⁰ It also identified a number of enactments as requiring further investigation in order to determine if they were, in fact, obsolete.¹¹ The Committee advised the Legislative Council that until the Government conducted such an investigation and reported the outcomes, it would be unable to conclude its inquiry.¹²
- 2.10 The Committee tabled Interim Report 79 in November 2012. It recommended the repeal in an omnibus bill of a number of obsolete Acts, specific sections in Acts and subsidiary legislation, and the further review of a number of other potentially obsolete enactments.¹³

Government response to Interim Report 79

- 2.11 The Government advised that '[t]he report has been referred to Parliamentary Counsel's Office for attention'.¹⁴ The Government anticipated that a bill would be drafted in the second half of 2013 dealing with the obsolete Acts and specific sections in Acts identified by the Committee and, subject to further investigation, the obsolete subsidiary legislation.¹⁵
- 2.12 The Government also advised that the legislation identified as requiring further review was being investigated. It was anticipated that any amendments arising would be incorporated into an omnibus bill in 2014.¹⁶

Former Premier's letter

- 2.13 The former Premier, Hon Colin Barnett MLA, also confirmed his commitment to repealing obsolete legislation. He advised the Committee in November 2013 that 'a Bill is currently being developed to repeal obsolete legislation'.¹⁷ The former Premier advised that the content of the Bill had been largely informed by Interim Report 79.¹⁸

¹⁰ 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, p 7.

¹¹ *ibid.*, Appendices 4, 5 and 6.

¹² *ibid.*, p 8.

¹³ *ibid.*, Recommendations 1–4.

¹⁴ Hon Michael Mischin MLC, Attorney General, Letter, 22 July 2013, p 1.

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ Hon Colin Barnett MLA, Premier, Letter, 12 November 2013.

¹⁸ *ibid.*

2.14 The former Premier noted that the bill would:

represent a first step in removing unnecessary Acts from the statute book and will include only those Acts that are clearly redundant. The proposed repeal of other Acts, many of which were identified in [Interim Report 79], will require further investigation, and it is expected that many of these Acts will form the basis of a second repeal Bill to be developed during 2014. The issue of unproclaimed Acts will also be considered as part of this process.¹⁹

2.15 No repeal bills were introduced into the Legislative Council for the remainder of the Thirty– Eighth Parliament.²⁰

Committee reports tabled during the Thirty–Ninth Parliament (11 April 2013–30 January 2017)

2.16 Four reports relevant to this inquiry were tabled during the Thirty–Ninth Parliament.

Report 81: August 2013

2.17 On 21 May 2013, the Legislative Council referred the Statutes (Repeals and Minor Amendments) Bill 2013 (2013 Bill) to the Committee for consideration and report.²¹ The 2013 Bill proposed the repeal of one of the 48 Acts identified in Interim Report 79 as obsolete, and amendments to 41 Acts.²²

2.18 The Committee reported on the 2013 Bill in its Report 81, tabled on 8 August 2013.²³

2.19 The 2013 Bill received Royal Assent on 2 July 2014. The Act proposed to be repealed by the 2013 Bill has now been repealed.

Report 98: June 2016

2.20 On 16 February 2016, the Obsolete Legislation Repeal Bill 2015 (2015 Bill) was referred to the Committee for consideration and report.²⁴ The 2015 Bill proposed the repeal of four obsolete Western Australian Acts and six obsolete Imperial Acts.

2.21 Nine of the 10 statutes proposed to be repealed by the 2015 Bill were identified in Interim Report 79 as being actually or potentially obsolete.²⁵

¹⁹ *ibid.*

²⁰ It was not until 16 February 2016, during the Thirty–Ninth Parliament, that another statutes review bill was referred to the Committee. This was the Obsolete Legislation Repeal Bill 2015 and was reported on in the Committee's Report 98, *Obsolete Legislation Repeal Bill 2015*, tabled on 21 June 2016. That Bill proposed the repeal of only four Western Australian obsolete statutes and six Imperial Acts.

²¹ The Statutes (Repeals and Minor Amendments) Bill 2013 was referred under the Committee's Terms of Reference 5.3(d) which stated that a function of the Committee is 'to review the form and content of the statute book' and 5.3(e) which stated that a function of the Committee is 'to consider and report on any matter referred by the Council'. Those Terms of Reference are now 6.3(d) and 6.3(e) respectively.

²² The obsolete Act proposed to be repealed by the Statutes (Repeals and Minor Amendments) Bill 2013 was the *Year 2000 Information Disclosure Act 1999*.

²³ Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 81, *Statutes (Repeals and Minor Amendments) Bill 2013*, August 2013.

²⁴ The Obsolete Legislation Repeal Bill 2015 was referred under the Committee's Terms of Reference 6.3(d) which states that a function of the Committee is 'to review the form and content of the statute book' and 6.3(e) which states that a function of the Committee is 'to consider and report on any matter referred by the Council'.

²⁵ Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 98, *Obsolete Legislation Repeal Bill 2015*, June 2016, p 3. The nine statutes were the *Business Licensing Amendment Act 1995*, *Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998*, *Housing Societies Repeal Act 2005*, *Bills of Exchange (day for payment) (1836) (Imp)*, *Bills of exchange (non-payment) (1832) (Imp)*,

- 2.22 The Committee reported on the 2015 Bill in its Report 98, tabled on 21 June 2016.²⁶
- 2.23 The 2015 Bill was third read in the Legislative Council on 16 November 2016 but, despite having been received, did not progress through the Legislative Assembly prior to the Thirty– Ninth Parliament being prorogued on 30 January 2017 for the March 2017 election.
- 2.24 Of the 10 statutes proposed to be repealed by the 2015 Bill, the following eight are still in force as at the date of this report:
- *Housing Societies Repeal Act 2005*
 - *Sunday Entertainments Act 1979*
 - *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)*
 - *Executors Act 1830 (Imp)*
 - *Infants' Property Act 1830 (Imp)*.²⁷

Report 99: June 2016

- 2.25 On 16 June 2014, the Committee resolved to commence an inquiry into the statute book with the following terms of reference:
- to identify the current process for reviewing the statute book utilised in Western Australia
 - to identify the current process for reviewing the statute book utilised in other jurisdictions
 - any other matters relevant to the inquiry.²⁸
- 2.26 The Committee researched the processes by which the State Government manages the statute book, as well as information from State and Territory Attorneys General and international jurisdictions on the processes used by their governments to review their statute books.²⁹ It summarised the information it had obtained in a table which it attached as an appendix to Report 99.³⁰ Except to the extent dealt with in this report, the Committee has not reviewed or updated that information. However we include a copy of that summary for the information of the Legislative Council as Appendix 1 as an example of the range of mechanisms then employed by other jurisdictions.

Debts Recovery Act 1830 (Imp), *Debts Recovery Act 1839 (Imp)*, *Executors Act 1830 (Imp)* and the *Infants' Property Act 1830 (Imp)*. The tenth statute was the *Sunday Entertainments Act 1979*, the repeal of which the Committee did not support as it considered it implemented a change in Government policy and therefore should be considered by the Parliament in a separate bill: p 9.

²⁶ Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 98, *Obsolete Legislation Repeal Bill 2015*, June 2016.

²⁷ State Law Publisher website, <https://www.slp.wa.gov.au/legislation/statutes.nsf/actsif.html>, viewed 14 August 2019.

²⁸ Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 87, *Inquiry into the Statute Book – Terms of Reference*, June 2014, p 1.

²⁹ Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 99, *Inquiry into the Statute Book*, June 2016, p 2.

³⁰ Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 99, *Inquiry into the Statute Book*, June 2016.

- 2.27 The Committee tabled its Report 99 in June 2016. Despite being unable to conclude its inquiry, largely due to the volume of work scrutinising uniform bills and other legislation referred by the Legislative Council, the Committee found that the repeal of obsolete legislation should be given a greater priority by the Government.³¹ It remained concerned about the pace at which obsolete legislation is identified and repealed, and noted that 'many Acts identified in [Interim] Report 79 have yet to be repealed'.³²
- 2.28 The Committee commented:
- If the current processes continue, the Committee notes that it may very well take decades for the obsolete legislation identified by the Committee in [Interim] Report 79 to be repealed.³³

Government response to Report 99

- 2.29 In August 2016 the Government advised that it would consider mechanisms that aim to ensure that at least one repeal and minor amendment bill is introduced and passed each calendar year.³⁴

Report 104: November 2016

- 2.30 On 15 September 2016, the Legislative Council referred the Statutes (Repeals) Bill 2016 (2016 Bill) to the Committee for consideration and report.³⁵ The 2016 Bill proposed the repeal of four obsolete Western Australian Acts and one obsolete Imperial Act, all of which were referred to in Interim Report 79.³⁶ It also proposed consequential amendments to five other Western Australian Acts as a result of the repeals.
- 2.31 As part of its inquiry, the Committee investigated and commented on the process for reviewing obsolete legislation. The Committee remained concerned at the slow rate of repeal of obsolete legislation, including Imperial Acts.³⁷
- 2.32 The Committee noted that the Department of the Attorney General and the Department of Finance were both involved in the repeal of obsolete legislation, with overlapping yet separate responsibilities.³⁸ The Committee expressed its concern that this approach 'leads to confusion and, in the Committee's own experience, a lack of communication between relevant government departments'.³⁹ The Committee concluded that it 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'.⁴⁰

³¹ *ibid.*, p 3.

³² *ibid.*

³³ *ibid.*

³⁴ Hon Michael Mischin MLC, Attorney General, Letter, 22 August 2016, p 2.

³⁵ The Statutes (Repeals) Bill 2016 was referred under the Committee's Terms of Reference 6.3(d) which states that a function of the Committee is 'to review the form and content of the statute book' and 6.3(e) which states that a function of the Committee is 'to consider and report on any matter referred by the Council'.

³⁶ The five obsolete Acts proposed to be repealed by the Statutes (Repeals) Bill 2016 were the *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* and the *Escheat and forfeiture of real and personal property (1834) (Imp)*.

³⁷ Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 104, *Statutes (Repeals) Bill 2016*, November 2016, p 6.

³⁸ *ibid.*, p 7.

³⁹ *ibid.*

⁴⁰ *ibid.*, p 17.

- 2.33 The Committee reported on the 2016 Bill in its Report 104, tabled on 10 November 2016.⁴¹
- 2.34 The 2016 Bill received Royal Assent on 28 November 2016. The five Acts proposed to be repealed by the 2016 Bill are no longer in force.⁴²

Committee comment

- 2.35 The Committee observes that since Report 104 was tabled on 10 November 2016, no statutes repeal bills have been tabled in the Western Australian Parliament. The 2015 Bill has not been re-introduced, notwithstanding it had passed through the Legislative Council and did not proceed only because of the prorogation of Parliament in January 2017.

Outcomes of Committee's investigations

- 2.36 The Committee sought information from the Parliamentary Counsel's Office and the Department of the Premier and Cabinet to bring up to date its understanding of the status of the statute book.
- 2.37 The Committee was informed that, as at August 2019, there were a total of 1640 enactments on the statute book that were in force.⁴³ Of these, 798 were Acts and 842 were items of subsidiary legislation.⁴⁴
- 2.38 Based on that advice, since the Committee tabled Interim Report 79, the total number of enactments has grown by 37, with 57 fewer Acts but 94 more items of subsidiary legislation.
- 2.39 As mentioned in paragraph 1.5, the Committee wrote to all Ministers asking, with respect to each of the Acts and subsidiary legislation within their portfolios, what (if any) provisions are obsolete, exhausted, expired or remain unproclaimed and if any foreseeable problems may arise were they to be repealed.
- 2.40 Ministers have informed the Committee that as at early 2018:
- 14 Acts had been identified as obsolete (see Appendix 2)
 - 36 Acts had been identified with obsolete sections (see Appendix 3)
 - 11 items of subsidiary legislation had been identified as obsolete (see Appendix 4)
 - 8 pieces of subsidiary legislation had been identified with obsolete provisions (see Appendix 5)
 - 33 Acts or subsidiary legislation, as well as various statutes within the Lands portfolio, had been identified as requiring further investigation (see Appendix 6)
 - no specific sections in Acts had been identified as potentially obsolete but requiring further investigation
 - 12 Acts had been identified as unproclaimed or containing sections that were unproclaimed (see Appendix 7).
- 2.41 The Committee did not audit or seek to verify the information provided.

⁴¹ Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 104, *Statutes (Repeals) Bill 2016*, November 2016.

⁴² State Law Publisher website, <https://www.slp.wa.gov.au/legislation/statutes.nsf/actsif.html>, viewed 14 August 2019.

⁴³ Debbie Mackey, Senior Legislation Officer, Parliamentary Counsel's Office WA, Email, 13 August 2019.

⁴⁴ *ibid.*

- 2.42 However, it questions the advice that only 12 Acts were unproclaimed or contained sections that were unproclaimed. Although it has not exhaustively examined the *Assent, commencement and ceasing information for Acts* document maintained by the Department of Justice via the Parliamentary Counsel's Office, the Committee notes there are several statutes not listed in Appendix 7 that contain provisions that have not yet been proclaimed to be operative. For example, sections 8 and 13(1)(b) of the *Shipping and Pilotage Amendment Act 2006*, Part 4 of the *Family Legislation Amendment Act 2006* and clause 3 of Schedule 1 of the *Commissioner for Children and Young People Act 2006*.
- 2.43 Nevertheless, of the 12 statutes or parts thereof which Ministers identified as having received Royal Assent but remaining unproclaimed:
- none had received Royal Assent in 2017-18
 - seven had received Royal Assent between September 2008 and March 2017 (the Barnett Government)
 - none had received Royal Assent between January 2006 and September 2008 (the Carpenter Government)
 - two had received Royal Assent between February 2001 and January 2006 (the Gallop Government)
 - one had received Royal Assent between February 1993 and February 2001 (the Court Government)
 - two had received Royal Assent before February 1993, the earliest dating back to 1987.
- 2.44 The Attorney General advised in January 2018 that the Department of Justice (formerly the Department of the Attorney General) had recently resumed carriage of the repeal of obsolete legislation, which had previously been overseen by the Department of Finance.⁴⁵

Committee comment

- 2.45 The Committee is pleased to note that its preference, as stated in Report 104, that the repeal of obsolete legislation be coordinated by the Department of the Attorney General (now the Department of Justice) has been implemented.

Progress since Interim Report 79

- 2.46 The Committee sought advice from Ministers as to any progress made in repealing outstanding enactments, or provisions in enactments, identified in Interim Report 79 as obsolete or unproclaimed.
- 2.47 The table below shows the findings of Interim Report 79 and the progress made to date in repealing enactments, or provisions in enactments, identified in that report as obsolete or unproclaimed.⁴⁶
- 2.48 It is not possible to compare the information at paragraph 2.39 against that in the table below. The table summarises progress against the statutes identified in Interim Report 79, rather than advice received from each Minister regarding statutes for which they were responsible at the time they responded to the Committee's request for information.

⁴⁵ Hon John Quigley MLA, Attorney General, Letter, 30 January 2018, p 1.

⁴⁶ *ibid.*, pp 3–29.

Table 1. Progress made in repealing obsolete enactments since Interim Report 79.

Acts or parts of Acts identified in Interim Report 79	Since Repealed	Not suitable for repeal	Proposed to be repealed	Currently under investigation	Have since been commenced (by proclamation)
48 Acts identified as obsolete	30	13	5	0	N/A
18 specific sections in Acts identified as obsolete	4	6	2	6	N/A
25 items of subsidiary legislation identified as obsolete	7	4	9	5	N/A
53 Acts requiring further investigation	22	10	4	17	N/A
8 specific sections in Acts identified as potentially obsolete but requiring further investigation	1	1	2	4	N/A
1 item of subsidiary legislation identified as requiring further investigation	1	0	0	0	N/A
68 statutes or part thereof with Royal Assent but not proclaimed	1	12	9	13	33
Total	66	46	31	45	33

Source: Information obtained from Hon John Quigley MLA, Attorney General, Letter, 30 January 2018, Attachment pp 3-29.

FINDING 1

Despite the Committee's reports over several Parliaments and its repeated concerns about the lack of progress in the repeal of obsolete legislation, a significant number of potentially obsolete enactments remain on the statute book.

CHAPTER 3

Mechanisms used to manage and maintain the statute book

Introduction

- 3.1 Given the Committee's concern expressed in Finding 1, it resolved to research the mechanisms currently being used to manage and maintain the statute book in Western Australia with a view to identifying processes that could be improved.
- 3.2 The Committee has considered mechanisms used in other Australian jurisdictions, New Zealand and Canada to manage and maintain statute books. Some of those mechanisms have been successful in helping to remove obsolete and unproclaimed enactments and keeping statute books up to date.
- 3.3 The Committee found that some mechanisms currently used in Western Australia help to reduce obsolete legislation but are being underutilised. Others are not being utilised at all.
- 3.4 The Committee also found that other jurisdictions have innovative approaches which could be used in Western Australia to manage the statute book more effectively and to maintain a more relevant statute book into the future.
- 3.5 The mechanisms used in Western Australian and other jurisdictions are analysed below. The Committee has made findings and recommendations where it considers Western Australia could benefit from a change in current processes or by adopting mechanisms used in other jurisdictions.

Mechanisms used in Western Australia

- 3.6 Mechanisms that are, or have been, used in Western Australia to manage our statute book include:
- Premier's Circular 2010/01 – Statutes (Repeals and Minor Amendments) Bills.
 - Repeal Day bills.
 - review provisions.
 - sunset provisions.
 - automatic commencement provision in the *Interpretation Act 1984*.

Premier's Circular 2010/01 – Statutes (Repeals and Minor Amendments) Bills

- 3.7 Premier's Circular 2010/01 deals with omnibus bills. An omnibus bill is a bill that covers a number of diverse or unrelated topics.
- 3.8 The policy set out in Premier's Circular 2010/01 is:

The *Statutes (Repeals and Minor Amendments) Bills* (the Omnibus Bills) provide an avenue for introducing a range of minor legislative amendments and repeals that do not affect the substance of the law. Omnibus Bills make the Government's legislative program and parliamentary business more efficient by reducing the number of Bills that would otherwise be required to deal with these minor amendments and repeals.⁴⁷

⁴⁷ Premier's Circular 2010/01: *Statutes (Repeals and Minor Amendments) Bill*, issued 11 February 2010.

- 3.9 Examples of matters that may be suitable for inclusion in omnibus bills include:
- the repeal of obsolete legislation
 - the correction of typographical, grammatical and other minor errors of presentation
 - amendments to update names, titles, entities and designations.⁴⁸
- 3.10 An omnibus bill is not a vehicle for implementing a change in Government policy or dealing with an issue that may be controversial or legally or otherwise contentious.⁴⁹
- 3.11 The Department of Justice is responsible for the preparation and introduction of omnibus bills.
- 3.12 Omnibus bills introduced into Parliament are referred to the Committee under its Terms of Reference.⁵⁰
- 3.13 As noted above, three omnibus bills were referred to the Committee during the Thirty-Ninth Parliament (see discussion on Report 81 at paragraphs 2.17 to 2.19, Report 98 at paragraphs 2.20 to 2.24 and Report 104 at paragraphs 2.30 to 2.35). The Committee repeats its observation that since Report 104 was tabled on 10 November 2016, no statutes repeal bills have been tabled in the Western Australian Parliament.
- 3.14 The Attorney General advised in January 2018 that the Department of Justice was working on a substantial omnibus bill for minor amendments and the repeal of obsolete legislation identified by the Committee in Interim Report 79.⁵¹ The Attorney General provided a list of Acts, parts of Acts and subsidiary legislation identified by the Department of Justice for inclusion in the omnibus bill.
- 3.15 The Premier advised in April 2018 that 'the Department of Justice continues to work on the legislation and it is anticipated to be introduced into parliament by the end of 2018'.⁵²
- 3.16 No omnibus bill was introduced during 2018. The Committee sought an update and was advised in September 2019 that:
- drafting instructions have been provided to Parliamentary Counsel's Office. However, a time-frame for the introduction of the Bill as part of the Government's legislative program has not yet been agreed to.⁵³
- 3.17 As at October 2019, no omnibus bill for minor amendments and the repeal of obsolete legislation has been introduced into Parliament.

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ The Standing Orders of the Legislative Council, Schedule 1, Item 6, Uniform Legislation and Statutes Review Committee, Terms of Reference 6.3(c) and (d).

⁵¹ Hon John Quigley MLA, Attorney General, Letter, 30 January 2018, p 1.

⁵² Hon Mark McGowan MLA, Premier, Letter, 6 April 2018, p 1.

⁵³ Mark Hainsworth, Director Advisory Services, Office of the Director General, Department of Justice, Email, 2 September 2019, p 1.

Advantages

- 3.18 Omnibus bills are a mechanism to repeal superfluous and redundant legislation.
- 3.19 Premier's Circular 2010/01 states that the 'intention is that an Omnibus Bill will be introduced annually or, if needed, in each of the Autumn and Spring sittings during a year'.⁵⁴
- 3.20 This sets the Government's expectations that repealing obsolete legislation should be a part of each Department's annual governance program.

Disadvantages

- 3.21 There is no legislative requirement for the Government to introduce any omnibus bills under Premier's Circular 2010/01.

Committee comment

- 3.22 The Committee suggests that reliance on the Premier's Circular 2010/01 alone is not an efficient and effective means of removing obsolete and unproclaimed provisions from the statute book. There is no requirement to give effect to the Premier's Circular 2010/01. Furthermore, governments can be expected to give priority to enacting laws for the peace, order and good government of the State rather than devoting limited legal and drafting resources, and Parliamentary time, to repealing laws that are of no effect.

FINDING 2

Premier's Circular 2010/01 provides an opportunity for the Government to introduce a variety of minor legislative amendments and repeals to reduce the number of enactments on the statute book.

FINDING 3

There is no legislative requirement for the Government to introduce any omnibus bills under Premier's Circular 2010/01.

FINDING 4

Premier's Circular 2010/01 is not being used as frequently as contemplated which has resulted in a substantial number of obsolete enactments remaining on the Western Australian statute book.

RECOMMENDATION 1

The Government advise the Legislative Council of its time frame for introducing its proposed omnibus bill repealing obsolete legislation.

⁵⁴ Premier's Circular 2010/01: *Statutes (Repeals and Minor Amendments) Bill*, issued 11 February 2010.

The Committee, being a majority comprised of Hon Michael Mischin MLC, Hon Laurie Graham MLC and Hon Robin Scott MLC makes the following recommendation:

RECOMMENDATION 2

The Government introduce its proposed omnibus bill repealing obsolete legislation at the earliest opportunity, preferably to enable enactment in the Fortieth Parliament.

3.23 Hon Pierre Yang MLC preferred that Recommendation 2 be in the following terms:

The Government consider introducing its proposed omnibus bill repealing obsolete legislation at the earliest opportunity, preferably to enable enactment in the Fortieth Parliament.

Repeal Day bills

3.24 The former Premier, Hon Colin Barnett MLA, first announced an initiative to hold an annual 'Repeal Day' in a Premier's Statement on 21 February 2012. He described Repeal Day as an:

annual opportunity for the Parliament to specifically focus on repealing or removing obsolete acts, or irrelevant or superfluous boards and committees created by statute.⁵⁵

3.25 On 8 November 2012, the former Premier announced the first annual Repeal Day bill that would, with the State Agreements Legislation Repeal Bill 2012, be dedicated to the removal of five superseded Acts. The Acts to be repealed, dating back to 1952, had given effect to agreements between the State and other parties.⁵⁶

3.26 In a media statement issued on 8 November 2012, the former Premier said '[t]he State Government is committed to reducing unnecessary red tape in Western Australia, and an annual day of Parliament dedicated to removing obsolete legislation will go a long [way] towards this'.⁵⁷ Mr Barnett said the operation of Repeal Day would be a matter for each House of Parliament to determine, however it was expected to be held towards the end of each year.

3.27 The Committee noted in 2016, in Report 99, 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.⁵⁸

3.28 It became apparent during the Thirty-Ninth Parliament that despite the Government's intention, and notwithstanding that several repeal bills were introduced into the Parliament, the idea of an annual day of Parliament dedicated to removing legislation was not adhered to.

⁵⁵ Hon Colin Barnett MLA, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 21 February 2012, p 19.

⁵⁶ The State Agreements Legislation Repeal Bill 2012 was introduced and second read in the Legislative Assembly on 8 November 2012 but did not progress past that stage prior to the Thirty-Eighth Parliament being prorogued on 14 December 2012. The five superseded Acts were repealed by the *State Agreements Legislation Repeal Act 2013* which came into operation on 28 August 2013.

⁵⁷ Hon Colin Barnett MLA, Premier, *Inaugural Repeal Day to cut red tape, Media statement*, Western Australia, 8 November 2012.

⁵⁸ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Repeal, Report 99, *Inquiry into the statute book*, June 2016, p 3.

- 3.29 The Committee asked the Premier in March 2018:
- What is the Government's policy with respect to 'Repeal Day' bills?
 - Does the Government intend to introduce one 'Repeal Day' omnibus bill each calendar year?
- 3.30 The Premier advised that a 'Repeal Day' bill is not a priority for the Government, although it will 'consider repealing certain legislation should the opportunity arise and should it be deemed appropriate to do so'.⁵⁹

Committee comment

- 3.31 Contentious content could be included in 'Repeal Day' bills as there are no restrictions on subject matter as there are for omnibus bills introduced under Premier's Circular 2010/01. The two mechanisms could be used together to repeal enactments that are no longer required.
- 3.32 Obsolete legislation is unlikely to be repealed via Repeal Day bills during this term of Government.

RECOMMENDATION 3

The Government give greater priority to 'Repeal Day' bills as part of a strategy to ensure the currency of the statute book.

Review provisions

- 3.33 The purpose of a review provision:
- is to oblige the responsible Minister or some other identified authority or person to review the operation of legislation after a specified period and to report to Parliament with appropriate recommendations.⁶⁰
- 3.34 The review report might identify provisions that are obsolete or no longer necessary.
- 3.35 Review provisions are an important mechanism for Parliamentary accountability and oversight of legislation. Parliament often includes a provision in Acts requiring a review of the legislation after five years or at regular intervals.
- 3.36 The Committee sought the Attorney General's response to a series of questions regarding review provisions in the Western Australian statute book.
- 3.37 The Attorney General advised:
- as at October 2019 there were 136 Acts in force with review provisions
 - where there is a review provision in a piece of legislation within a Minister's portfolio responsibilities, that Minister is generally required to initiate the review and table the resulting report in Parliament
 - the review provisions in each of the 136 Acts do not contain consequences for non-compliance.⁶¹

⁵⁹ Hon Mark McGowan MLA, Premier, Letter, 6 April 2018, p 1.

⁶⁰ GC Thornton, *Legislative Drafting*, (4th edition, 1996) Butterworths, London, p 216.

⁶¹ Hon John Quigley MLA, Attorney General, Letter, undated, received 15 October 2019, p 1.

Advantages of review provisions

- 3.38 Reviews are a statutory requirement which makes Government accountable to the Parliament to consider and report on whether an enactment is still required or can be repealed.

Disadvantages of review provisions

- 3.39 There is no statistical evidence regarding compliance with the statutory obligation to review.
- 3.40 There are no repercussions if statutory reviews are not undertaken when they are due, or at all.

Committee comment

- 3.41 The Committee notes that review provisions in Western Australian legislation vary in form and substance; for example, the period after which reviews are to take place varies and provision is not always made for continuing periodic reviews.
- 3.42 The Committee has not considered this issue in its current Inquiry but is of the view that there may be merit in a level of standardisation of review provisions as part of management of the Western Australian statute book. The Committee notes, for example, that section 86(2) of the *Cat Act 2011* requires the responsible Minister to consider and have regard to, among other things, 'the need for the continuation of [the] Act'.

Sunset provisions

- 3.43 A sunset provision is a measure within an Act or regulation that provides that the law shall be automatically repealed after a fixed period of time or after a specific date, unless further legislative action is taken to extend the law. The purpose of sunset provisions is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.
- 3.44 It is rare for a Western Australian Act of Parliament to contain a sunset provision. In this jurisdiction they are mostly used in subordinate legislation.
- 3.45 An example of a sunset provision in subsidiary legislation appears in regulation 4 of the *Fair Trading (Retirement Villages Interim Code) Regulations (No.2) 2018*:
4. Expiry
- These regulations expire at the end of 31 March 2019.
- 3.46 There are, however, instances where sunset provisions are used in primary legislation. The *Terrorism (Extraordinary Powers) Act 2005* is an example. Section 35 provides that the provisions of the Act, and any warrants issued or authorisations or appointments made under the Act, would expire on the tenth anniversary of the day on which it receives the Royal Assent:

35. Expiry of Act

(1) This Act expires on the tenth anniversary of the day on which it receives the Royal Assent.

(2) Any warrant issued, or any authorisation or appointment made under the Act and which is in force on the tenth anniversary of the day on which the Act receives the Royal Assent, will cease to be in force.

- 3.47 In 2015, the expiry date of the Act was extended by 10 years. The new expiry date is 19 December 2025.⁶²
- 3.48 Examples of uniform legislation that contains sunset provisions are:
- *Corporations (Commonwealth Powers) Act 2001* – section 10. The references of matters to the Commonwealth under the Act terminate on the fifth anniversary of the day on which section 4(1) of the Act comes into operation or a later day fixed by proclamation. The latest proclamation fixed 15 July 2021 as the relevant day.
 - *Mutual Recognition (Western Australia) Act 2010* – section 6(3). The adoption of the *Mutual Recognition Act 1992* (Cth) ends on 28 February 2021 or earlier if fixed by proclamation.
 - *Trans-Tasman Mutual Recognition (Western Australia) Act 2007* – section 7. The adoption of the *Trans-Tasman Mutual Recognition Act 1997* (Cth) ends on 31 January 2021 or earlier if fixed by proclamation.

Commonwealth jurisdiction

- 3.49 Although not used in Western Australia as a matter of course, most jurisdictions in Australia use sunset provisions, albeit typically in subordinate legislation.
- 3.50 The Commonwealth frequently uses sunset provisions and their operation has recently been reviewed.
- 3.51 Part 4 of Chapter 3 of the *Legislation Act 2003* (Cth) deals with sunset provisions of legislative instruments (these are delegated legislation such as regulations, not primary legislation⁶³). It provides:
- Generally, legislative instruments sunset on the first 1 April or 1 October on or after the tenth anniversary of their registration. The Attorney-General may (by legislative instrument) defer sunset in some circumstances.
 - The Attorney-General must, twice each year, lay lists of instruments due to sunset before each House of Parliament. The sunset list is required to be tabled on the first sitting day within 18 months before the relevant sunset date. The Office of Parliamentary Counsel must then arrange for each rule-maker [the agency responsible for that legislation] to be given a copy of the list.
 - Either House of Parliament may resolve to continue in force a legislative instrument that would otherwise sunset.
 - A legislative instrument does not sunset if the *Legislation Act 2003* (Cth) or a regulation under the Act, or another Act, provides or has the effect that Part 4 does not apply to the instrument.
- 3.52 The instruments listed may be repealed, preserved or re-made prior to their scheduled sunset day.
- 3.53 Section 60 of the *Legislation Act 2003* (Cth) required a review of the operation of sunset provisions in that Act. Pursuant to section 60, the Attorney-General appointed a Sunset Review Committee to review the operation of Part 4 (Sunsetting of legislative instruments) of Chapter 3 of that Act.

⁶² *Terrorism (Extraordinary Powers) Amendment Act 2015*, s 20.

⁶³ *Legislation Act 2003*, (Cth) s 8.

- 3.54 The final report by the Sunsetting Review Committee was tabled in the Australian Parliament in 2017⁶⁴ (Sunset Report). Key points from that report are summarised below.
- 3.55 Since the sunsetting mechanism has taken effect, it has already led to a large number of instruments being removed from the statute book. Since it commenced in 2003, 2024 legislative instruments have appeared on sunsetting lists tabled by the Attorney-General. Approximately 1215 (60%) of those listed instruments were either allowed to sunset (413 instruments), were actively repealed (340 instruments), or have been replaced (462 instruments).⁶⁵
- 3.56 The Sunset Report stated '[t]he sunsetting framework has played a key role in keeping the statute book up to date'.⁶⁶
- 3.57 The Sunset Report noted that some agencies remain ill-prepared for sunsetting. Concerns were raised that instruments were being re-made in identical form, or with substantively the same effect, to maintain the status quo pending the completion of a broader review. The Sunsetting Review Committee expressed the view that 'this appears to indicate a lack of planning for sunsetting and may well undermine the sunsetting framework'.⁶⁷ To address this, it recommended that:
- agencies implement robust internal processes for managing the sunsetting of legislative instruments, including taking early action to review and, where necessary, begin the process of remaking the legislative instruments.⁶⁸
- 3.58 The Sunset Report recommended that the sunsetting framework should not be extended to primary legislation. Its view was:
- it would be inappropriate to impose any form of a sunsetting regime on primary legislation; any regulatory benefits arising from regular review would be significantly outweighed by the considerable burden this would impose on parliamentary processes and legislative drafting workloads. The Committee also notes that there would be considerable compliance costs associated with the transitional requirements of re-enacted legislation.
- The Committee considers that it should be a matter for the responsible ministers and agencies to determine whether it would be appropriate to implement statutory review provisions in primary legislation, rather than subjecting them to automatic sunsetting.⁶⁹

FINDING 5

There is scope for sunset provisions to be used more frequently in subsidiary legislation in Western Australia, to encourage consideration of the necessity for regulations and other subordinate instruments made under an Act and to facilitate their repeal if no longer of utility.

⁶⁴ Commonwealth, Sunsetting Review Committee, *Report on the Operation of the Sunsetting Provisions in the Legislation Act 2003*, September 2017, tabled in the House of Representatives on 23 October 2017 and in the Senate on 13 November 2017.

⁶⁵ *ibid.*, p 5.

⁶⁶ *ibid.*

⁶⁷ *ibid.*, p 10.

⁶⁸ *ibid.*, p 1.

⁶⁹ *ibid.*, p 32.

RECOMMENDATION 4

The Government make greater use of sunset provisions in subsidiary legislation to facilitate the identification and repeal of obsolete legislation.

Automatic commencement provision in the *Interpretation Act 1984*

- 3.59 Section 20(2) of the *Interpretation Act 1984* is an automatic commencement provision for legislation that has not been brought into operation by a certain period of time. It states:

Every Act to which the Royal Assent is given on or after 1 July 1984 shall, unless the contrary intention appears in that Act, come into operation on the 28th day after the day on which that Act receives the Royal Assent.

- 3.60 This is a default provision. Where commencement dates are prescribed, the automatic commencement provision would not apply.
- 3.61 It is the usual drafting practice in Western Australia not to rely on these automatic commencement sections but to specify in bills when the Act or particular provisions are to come into operation. This would usually be the day on which an Act receives the Royal Assent (for the short title and commencement provisions) and then either a specified date (or dates), or commencement by proclamation.⁷⁰
- 3.62 The Committee's view on clauses that provide for commencement by proclamation is that they impinge on the Parliament's sovereignty. Commencement by proclamation is controlled by the Executive, rather than Parliament, and there should be sound reasons for Parliament to permit this. The Committee has said that it is conceivable that a proclamation might never be made and the will of the Parliament, in passing a Bill, would be frustrated. The Committee considers that Parliament should, *prima facie*, be responsible for setting the date when its laws are to come into effect.⁷¹

FINDING 6

Clauses that provide for commencement by proclamation, with no requirement for proclamation within a specified time or by a specified date, impinge on the Parliament's sovereignty, and should be supported by sound reasons.

RECOMMENDATION 5

Whenever practicable, commencement provisions should specify the date or dates when provisions of an Act are to come into operation.

⁷⁰ Geoff Lawn, Parliamentary Counsel, Parliamentary Counsel's Office, *Transcript of evidence*, 9 April 2018, p 5 and Geoff Lawn, Parliamentary Counsel, Parliamentary Counsel's Office, Email, 4 October 2019.

⁷¹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 107, *Domestic Violence Orders (National Recognition) Bill 2017*, October 2017, p 9.

Mechanisms used in other jurisdictions

- 3.63 Mechanisms used in other Australian jurisdictions, New Zealand and Canada to manage their statute books have been successful to varying degrees in helping remove obsolete and unproclaimed enactments. They include:
- reporting requirements via Parliamentary Standing Orders
 - statutes repeal Acts in Canada: Canadian (Federal) mechanism and Alberta (Provincial) mechanism
 - regulatory stewardship
 - periodic reviews of legislation for redundancy
 - sunset provisions (see paragraphs 3.43 to 3.58).

Reporting requirements via Parliamentary Standing Orders

- 3.64 The Australian Parliament's Senate Standing Order 139 requires the tabling, on or before 31 August each year, of:
- details of all provisions of Acts which come into effect on proclamation and which have not been proclaimed
 - a statement of reasons for their non-proclamation and a timetable for their operation.
- 3.65 New South Wales Legislative Assembly Standing Order 117 requires that on the second sitting day of each session and then every 15th sitting day thereafter, the Speaker shall table a list of legislation remaining unproclaimed 90 days after assent.
- 3.66 New South Wales Legislative Council Standing Order 160(2) requires that on the second sitting day of each month, a Minister is to table a list of all legislation that has not been proclaimed 90 days after assent.

Advantage

- 3.67 These Standing Orders provide transparency as to which legislation remains unproclaimed 90 days after assent.

Disadvantage

- 3.68 They are reporting and accountability mechanisms only; they carry no consequences and permit no action on the part of Parliament if legislation continues to remain unproclaimed.

Committee comment

- 3.69 Tabling a list of legislation that has not been proclaimed akin to the requirement in Senate Standing Order 139 has merit in improving accountability to Parliament. However, on its own, it is unlikely to have any significant impact on keeping the statute book current.

Statute repeal Acts: Canadian (Federal) mechanism

- 3.70 The *Statutes Repeal Act* S.C. (Statutes of Canada) 2008, c.20 (Canadian Statutes Repeal Act) provides a mechanism for repealing legislation that has not come into force within 10 years of receiving Royal Assent. It is attached as Appendix 8.⁷²

⁷² Provisions of the *Legislation Act, 2006*, S.O. 2006, c. 21, *Schedule F* (Ontario) closely mirror the federal Canadian mechanism for repealing unproclaimed legislation. It also provides for the repeal of Acts that were enacted more than nine years earlier and have not been brought into force: see s 10.1.

- 3.71 Under the Canadian Statutes Repeal Act, the Minister of Justice must table a report at the beginning of each calendar year, before both Houses of Parliament, listing every Act or provision of an Act that has been enacted more than nine years earlier but has not come into force.⁷³ Each of those Acts or provisions is repealed on 31 December of the year in which the report is tabled, unless:
- it comes into force on or before that date
 - either House of Parliament adopts a resolution that the Act or provision not be repealed.⁷⁴
- 3.72 The Canadian Statutes Repeal Act ensures that parliamentarians and government officials are given almost one year's notice of an impending repeal to focus attention on whether the provision should indeed be brought into force. In addition, the power to defer repeal is put into the hands of parliamentarians and is exercisable again for as many times as the Parliament sees fit.
- 3.73 Each year the Minister of Justice must publish in the *Canada Gazette* a list of every Act or provision repealed under the Canadian Statutes Repeal Act.⁷⁵
- 3.74 The first report required under the Canadian Statutes Repeal Act was tabled in January 2011.⁷⁶ The report listed 45 Acts, or Acts with provisions, assented to nine years or more before 31 December 2010 and not in force on that day. Of the 45, only two were entire Acts.⁷⁷
- 3.75 Of the 45 Acts or Acts with provisions listed as unproclaimed, 32 were repealed at the end of 2011 through the operation of the Act.⁷⁸ Of those 32 Acts, only one was an entire Act.⁷⁹
- 3.76 The latest report under the Canadian Statutes Repeal Act tabled in January 2019 lists 18 unproclaimed Acts or Acts with unproclaimed provisions.⁸⁰ Of the 18, only one was an entire Act.⁸¹
- 3.77 It appears that the number of unproclaimed Acts, or unproclaimed provisions in Acts, that are more than nine years old is decreasing.
- 3.78 The following table shows the number of unproclaimed Acts, or Acts with unproclaimed provisions, which were included in reports between 2011 and 2018:

⁷³ *Statutes Repeal Act* S.C. (Statutes of Canada) 2008, c. 20 s 2.

⁷⁴ *ibid.*, s 3.

⁷⁵ *ibid.*, s 4.

⁷⁶ Department of Justice, Canada, 31 January 2011, viewed 14 August 2019, https://laws-lois.justice.gc.ca/PDF/2011-Report_Rapport.pdf.

⁷⁷ These were the *Canadian Heritage Languages Institute Act*, S.C. 1991, c. 7 and the *Comprehensive Nuclear Test-Ban Treaty Implementation Act*, S.C. 1998, c. 32.

⁷⁸ Government of Canada, 18 February 2012, viewed 14 August 2019, <https://laws-lois.justice.gc.ca/eng/Reports/> and click on '2011' under the heading 'Repeals'.

⁷⁹ This was the *Canadian Heritage Languages Institute Act*, S.C. 1991, c. 7.

⁸⁰ Government of Canada, 22 February 2019, viewed 14 August 2019, <https://laws-lois.justice.gc.ca/eng/Reports/2019.html>.

⁸¹ This was the *Comprehensive Nuclear Test-Ban Treaty Implementation Act*, S.C. 1998, c. 32 which was also listed in the 2011 report.

Table 2. The number of unproclaimed Acts, or Acts with unproclaimed provisions, which were included in reports under the Canadian Statutes Repeal Act between 2011 and 2018.

Year	Acts or unproclaimed provisions listed	Acts or unproclaimed provisions repealed
2011	45	32
2012	20	4
2013	16	3
2014	19	3
2015	19	3
2016	19	5
2017	17	2
2018	15	3

Source: <https://laws-lois.justice.gc.ca/eng/Reports/>

- 3.79 However, it also appears that the repeal of the vast majority of the Acts and provisions included in each Annual Report required under the Canadian Statutes Repeal Act is deferred by resolution of either the House of Commons or the Senate.⁸² Further, a large number of Acts appear year after year.⁸³
- 3.80 A variety of reasons are given for why legislation has not been commenced and why repeal should be deferred. These include:
- the provisions cannot be brought into force before the accompanying regulations are made
 - the relevant government department needs time to implement the provisions, as it does not yet have the capacity to exercise the authority conferred upon it under the Act that has not commenced
 - more time is required to allow the amendments to a different (related) Act to proceed and the Government needs time to complete a review of federal, provincial and territory laws that will be affected by the Act.⁸⁴
- 3.81 The Committee sought advice from the Minister of Justice and Attorney General of Canada, Hon Jody Wilson-Raybould, and Parliamentary Counsel of Western Australia, Geoff Lawn, about the operation of the Canadian Statutes Repeal Act, including its advantages and disadvantages.

⁸² Government of Canada, 7 June 2018, viewed 14 August 2019, <https://laws-lois.justice.gc.ca/eng/Reports/>.

⁸³ For example, the *Act to amend the Canadian Forces Superannuation Act*, S.C. 2003, c. 26 has been included in the Annual Report every year since 2013 and is yet to be either commenced or repealed.

⁸⁴ Government of Canada, 11 December 2017, viewed 14 August 2019, <https://sencanada.ca/en/in-the-chamber/debates> and click on 11 December 2017, and Government of Canada, 12 December 2018, viewed 14 August 2019, <https://sencanada.ca/en/in-the-chamber/debates> and click on 12 December 2018.

Advantages of the Canadian Statutes Repeal Act

3.82 The Committee considers that the advantages of the Canadian Statutes Repeal Act include:

- The Executive remains accountable to the Parliament for the exercise of the power to commence legislation by proclamation.
- The Government is required to justify deferral of repeal to the Parliament.
- Deferral is not indefinite, but is required to be justified every year.
- Legislation is required to be reviewed annually.

3.83 Geoff Lawn advised:

The need to seek Parliamentary approval to defer repeal means that the Executive remains accountable to the Parliament for the exercise of the power to commence the legislation by proclamation.

The mechanism has advantages over the processes in place in the Commonwealth and New South Wales where a report listing unproclaimed provisions is tabled under Parliamentary standing orders. The same is true in relation to the list of unproclaimed provisions that is produced regularly by the New Zealand Parliamentary Counsel Office (which is presented to Parliament annually). In none of those cases does any consequence necessarily flow from the tabling of the report.⁸⁵

3.84 Geoff Lawn further advised:

Under the Canadian mechanism, the government of the day must respond to the report and justify deferral of repeal of individual items listed in the report. Failure to justify deferral to the satisfaction of the relevant House of Parliament will lead to automatic repeal at the end of the year.⁸⁶

3.85 Jody Wilson-Raybould informed the Committee that resolutions to defer repeal may not be used to protect legislation indefinitely:

In order to request a deferral of the repeal, there must be an operational need; a need to await the occurrence of some event out of the Government's control; federal-provincial implications; or international implications. The following year, the Minister of Justice will once again include the deferred provisions on the list for that year and the process is repeated.⁸⁷

3.86 Geoff Lawn advised that if the Canadian mechanism were adopted in Western Australia:

the annual report on unproclaimed legislation could be referred to a Parliamentary committee for consideration and report. That committee could consider proposals from the Executive to defer repeal of particular Acts or provisions and report to the relevant House. A member of the committee could then, if necessary, move a resolution deferring relevant repeals.⁸⁸

⁸⁵ Geoff Lawn, Parliamentary Counsel, Parliamentary Counsel's Office, Letter, 6 June 2018, p 4. Geoff Lawn noted that 'it is understood, however, that the tabling of the reports in New Zealand has encouraged Ministers to take steps to bring unproclaimed legislation into operation or repeal it.'

⁸⁶ Geoff Lawn, Parliamentary Counsel, Parliamentary Counsel's Office, Letter, 6 June 2018, p 4.

⁸⁷ Hon Jody Wilson-Raybould PC, QC, MP, Minister of Justice and Attorney General of Canada, Letter, 25 October 2018, p 2.

⁸⁸ Geoff Lawn, Parliamentary Counsel, Parliamentary Counsel's Office, Letter, 6 June 2018, p 5.

- 3.87 Geoff Lawn told the Committee that the Canadian mechanism may, in some cases, have an advantage over specific provisions that repeal individual Acts or provisions that are not proclaimed within a specified period:

Under those provisions, a finite period is allowed for proclamation to occur. There may be cases where it is difficult to identify an appropriate period. The [Canadian] mechanism provides greater flexibility in those cases, because repeal is not automatic. Instead, the need to defer proclamation must be justified each year once the relevant period of non-proclamation has expired.⁸⁹

- 3.88 Furthermore:

This flexibility of the [Canadian] mechanism means that the Executive is given time to work through any implementation issues arising from the unproclaimed legislation. If necessary, the Executive can come back to Parliament with amendments either within the relevant non-proclamation period or during any period of deferred repeal.⁹⁰

- 3.89 According to Jody Wilson-Raybould, the process of repeal or deferral is made transparent and flexible under the Canadian Statutes Repeal Act:

It is transparent because the deferrals and repeals are debated and approved by Parliament. The requirement for a public notice in the *Canada Gazette* also ensures transparency of the repeal process. The process is flexible because it requires the approval of only one house of Parliament, rather than both, and because a resolution could be adopted at any time during the year, as long as it is done before December 31.⁹¹

- 3.90 She observed that the Canadian Statutes Repeal Act:

presents a straightforward and cost-effective mechanism to improve the legislative process and government accountability by bringing Acts and provisions of an Act that have not been brought into force to the attention of Parliament. To that end, the departments responsible for the Acts or provisions of an Act included in the annual report are consulted in the development of the options and the rationales for deferral or repeal.⁹²

...

Despite the fact that the justifications invoked for a deferral have to be supported by a strong rationale and that the granting of a deferral is an exceptional measure, some provisions can be deferred from repeal for several years. However, this process has to be flexible to avoid repealing legislation that has not been brought into force for reasons out of the control of the Government.⁹³

⁸⁹ *ibid.*

⁹⁰ *ibid.*

⁹¹ Hon Jody Wilson-Raybould PC, QC, MP, Minister of Justice and Attorney General of Canada, Letter, 25 October 2018, p 2.

⁹² *ibid.*

⁹³ *ibid.*, p 3.

3.91 Jody Wilson-Raybould concludes that:

The [Canadian Statutes Repeal Act] is achieving its purpose by steadily reducing the number of statutes in the Canadian federal statute book while increasing government accountability for the exercise of the powers delegated by Parliament to bring legislation into force.⁹⁴

Shortcomings of the Canadian Statutes Repeal Act

3.92 However, the Committee considers that the Canadian Statutes Repeal Act has certain shortcomings. These include:

- Unproclaimed Acts or provisions of Acts are not listed for repeal until nine years after their enactment. This is a long time for an Act or provisions to remain on the statute book unproclaimed.⁹⁵
- It requires annual consideration of unproclaimed Acts or provisions. This may mean that some Acts or provisions are unnecessarily considered each year. There may be a valid reason to defer proclamation for a longer period than a year, but the Act or provision has to be listed, and a reason for its retention presented, each year. It may be that the same reason is repeated annually.
- A Government with a majority in a House of Parliament can carry a resolution to defer repeal, regardless of the merits of the reason for deferral. This disadvantage is not present when a specific provision repeals unproclaimed legislation after a finite period; for example, by way of a sunset provision.⁹⁶
- It applies only to Acts and provisions of Acts that can be brought into operation by proclamation. If the commencement of an Act or a provision of an Act is simply tied to the commencement of another unproclaimed Act or provision, the mechanism does not apply. Acts or provisions of Acts of that nature would remain on the statute book, but could never come into operation. They would need to be repealed specifically.⁹⁷

Statute repeal Acts: Alberta (Provincial) mechanism

3.93 The Canadian province of Alberta enacted similar provisions in 2013 by way of its *Statutes Repeal Act 2013* Chapter S-19.3 (Alberta Act).

3.94 The main difference between the Alberta Act and the Canadian Statutes Repeal Act is that the former provides for the repeal of Acts and provisions of Acts that were enacted more than five years earlier and have not been brought into force.

Committee comment

3.95 The Committee has considered the problem of unproclaimed Acts and provisions remaining on the statute book for what seem to be excessive and unreasonable periods of time. While mechanisms such as that in the Canadian Statutes Repeal Act go some way towards addressing that situation, the Committee considers that a more effective, more easily managed and efficient option is available which would avoid the complexities and draw of Parliamentary time required by that Act.

⁹⁴ *ibid.*

⁹⁵ Compare the Canadian federal mechanism with that of Alberta (see paragraphs 3.93-3.94) where the mechanism applies once an Act or provision has remained unproclaimed for five years.

⁹⁶ Geoff Lawn, Parliamentary Counsel, Parliamentary Counsel's Office, Letter, 6 June 2018, p 5.

⁹⁷ *ibid.*

- 3.96 The Committee considers that an Act, or a provision in an Act, that has not been brought into operation within 10 years of its receiving the Royal Assent is unlikely to be brought into law. Reasons for this include:
- Since the introduction of four year fixed term Parliaments, 10 years would span two and a half Parliamentary terms of government. Successive governments would have their own policy imperatives.⁹⁸
 - Western Australian society changes rapidly and ideas as to what may be for the peace, order and good government of the State change accordingly. An Act or provision that has not been brought into operation within 10 years is unlikely to reflect contemporary needs.
 - Considerable legislative activity would routinely occur both within Western Australia and outside this jurisdiction while the substantive provisions of an Act remain unproclaimed. An Act or provision that has not been proclaimed within 10 years is likely to require review or fresh Parliamentary scrutiny and amendment before it can be brought into effect.⁹⁹
 - Given that commencement by proclamation impinges on Parliamentary sovereignty by authorising the Executive to decide when one of Parliament's laws is to come into effect, an automatic expiry after 10 years places a limit on that discretion.
- 3.97 Having regard to the above and with a view to maintaining a current and relevant statute book, the Committee considers that Acts or provisions that have not become law within 10 years ought to automatically be removed from the statute book.
- 3.98 Accordingly, the Committee has prepared a bill to amend the *Interpretation Act 1984* to provide for the automatic repeal of Acts or the provisions of Acts that are to come into operation by proclamation and that are not proclaimed within 10 years of the Act or provision receiving Royal Assent. This is attached at Appendix 9.

RECOMMENDATION 6

The Government introduce a bill to amend the *Interpretation Act 1984* to provide for the automatic repeal of Acts or the provisions of Acts that are to come into operation by proclamation and that are not proclaimed within 10 years of the Act or provision receiving Royal Assent, in the terms set out in Appendix 9.

- 3.99 In the event the Government does not accept Recommendation 6, the Committee makes the following recommendation.

RECOMMENDATION 7

The Government implement a mechanism that is the same as, or similar to, the *Statutes Repeal Act* S.C. (Statutes of Canada) 2008, c.20.

⁹⁸ For example, the *Prostitution Amendment Act 2008*, which was introduced to 'give effect to Labor's policy commitment to reform prostitution laws': Hon Jim McGinty MLA, Attorney General, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 29 August 2007, p 4468. Sections 1 and 2 of that Act have been proclaimed, section 34 has since been repealed and the rest of the Act is yet to be proclaimed.

⁹⁹ For example, Part 4 of the *Family Legislation Amendment Act 2006* which deals with the interaction between family law and bankruptcy law is yet to be proclaimed and clause 3 of Schedule 1 of the *Commissioner for Children and Young People Act 2006* which makes amendments to the *Working with Children (Criminal Record Checking) Act 2004*.

Regulatory stewardship

- 3.100 Regulatory stewardship is a responsibility of Government regulatory agencies. It requires them to adopt a 'whole-of-system, lifecycle view of regulation, and taking a proactive, collaborative approach, to the monitoring and care of the regulatory system(s) within which they have policy or operational responsibilities'.¹⁰⁰
- 3.101 'Regulation' in this context means rules set by government that affect the everyday activity of businesses, consumers and communities through Acts of Parliament, regulations made under those Acts or by statutory instruments.¹⁰¹
- 3.102 Regulatory stewardship in New Zealand and New South Wales is discussed below.

New Zealand

- 3.103 In New Zealand, regulatory stewardship is a statutory obligation of Government departments. The *State Sector Act 1988* (NZ) provides that one of the principal responsibilities of a departmental chief executive is 'stewardship of...the legislation administered by the department'.¹⁰² 'Stewardship' is defined in section 2 as 'active planning and management of medium and long-term interests, along with associated advice'.
- 3.104 This statutory obligation of regulatory stewardship by Government agencies was introduced in New Zealand in 2013.¹⁰³ In March 2013, the New Zealand Government agreed to a set of 'Initial Expectations for Regulatory Stewardship', in order to give departments more direction as to how they should discharge their regulatory stewardship obligations.¹⁰⁴
- 3.105 In April 2017, the New Zealand Government released a set of updated expectations for regulatory stewardship by Government agencies. These include responsibilities for:
- monitoring, review and reporting on regulatory systems
 - robust analysis and implementation support for changes to regulatory systems
 - good regulator practice.¹⁰⁵
- 3.106 The main Government agencies in New Zealand provide annual regulatory reports (overseen by the Treasury) that include:
- regulatory management strategy
 - regulatory priorities
 - expected new regulation
 - a review of existing regulatory 'stock'.¹⁰⁶
- 3.107 It is said that this review 'is helpful in identifying redundant legislation that could be repealed'.¹⁰⁷

¹⁰⁰ The Treasury, New Zealand, 21 April 2017, <https://treasury.govt.nz/information-and-services/regulation/regulatory-stewardship>, viewed 14 August 2019.

¹⁰¹ *NSW Regulatory Policy Framework*, Independent Review, Regulatory Policy Framework Review Panel, Final Report, Sydney, August 2017, p 4.

¹⁰² *State Sector Act 1988* (NZ) s 32(1)(d)(ii).

¹⁰³ See section 27 of the *State Sector Amendment Act 2013* (NZ) (2013 No. 49).

¹⁰⁴ The Treasury, New Zealand, 21 April 2017, <https://treasury.govt.nz/information-and-services/regulation/regulatory-stewardship>, viewed 14 August 2019.

¹⁰⁵ *ibid.*

¹⁰⁶ Julia Agar, Senior Legal and Policy Analyst, Parliamentary Counsel Office, New Zealand, Email, 28 May 2018, p 4.

¹⁰⁷ *ibid.*

3.108 Regulatory stewardship is said to help maintain and manage the statute book in New Zealand:

The stewardship responsibility of chief executives for their agency's legislation under section 32 of the *State Sector Act 1988* has focussed particular attention on the statute book and provided the impetus for agencies to maintain their legislation through vehicles such as the omnibus repeal Bills, and the government's revision Bill programmes.¹⁰⁸

3.109 In relation to this approach to maintaining the statute book, Geoff Lawn advised:

I think it is early days to say that it has been an overwhelming success or otherwise, but it is certainly an alternative to what could be quite a blunt instrument of sunseting or "one on, two off" approaches.¹⁰⁹

New South Wales

3.110 The New South Wales Government established the Regulatory Policy Framework Review Panel in October 2016. It undertook 'a broad ranging review of the current NSW regulatory policy framework that underpins regulatory quality across the whole of the NSW Government'.¹¹⁰

3.111 The Panel published its report in August 2017.¹¹¹ The Chair of the Panel stated:

Regulation cannot be a 'set and forget' exercise. It needs regular and frequent engagement and iterative improvement ... A lifecycle – or stewardship – approach offers a way to address this by making the custodians of regulations more accountable for the ongoing 'health' of those regulations.¹¹²

3.112 A key finding was that:

A new statutory framework – which consolidates and streamlines existing requirements – should be established to embed the principle of regulatory stewardship.¹¹³

3.113 The report noted that under a stewardship approach, regulations and the regulatory framework in which they operate are subject to proactive monitoring by the responsible departments and agencies, to ensure that they remain fit for purpose.¹¹⁴

¹⁰⁸ *ibid.*

¹⁰⁹ Geoff Lawn, Parliamentary Counsel, Parliamentary Counsel's Office, *Transcript of evidence*, 9 April 2018, p 12.

¹¹⁰ *NSW Regulatory Policy Framework*, Independent Review, Regulatory Policy Framework Review Panel, Final Report, Sydney, August 2017, p 16.

¹¹¹ *NSW Regulatory Policy Framework*, Independent Review, Regulatory Policy Framework Review Panel, Final Report, Sydney, August 2017.

¹¹² *ibid.*, p 2.

¹¹³ *ibid.*, p 7.

¹¹⁴ *ibid.*, p 26.

- 3.114 The New South Wales Government responded to the report by assigning responsibility for regulatory policy to the Treasurer and appointing a New South Wales Commissioner for Productivity.¹¹⁵ In February 2018, the Government announced its intention to establish a Productivity Commission to ‘drive microeconomic reform and tackle burdensome regulation in NSW.’¹¹⁶
- 3.115 New South Wales’ inaugural Productivity Commissioner was appointed on 14 May 2018.

Committee comment

- 3.116 Regulatory stewardship by a Government agency sets clear processes, accountability and responsibility to help manage and maintain statutory frameworks within which it operates and for which it is responsible.
- 3.117 However, the Committee has insufficient information as to the performance and effectiveness of regulatory stewardship regimes to make any findings or recommendations as to whether they should be adopted by Western Australia.

RECOMMENDATION 8

The Government examine the merits of adopting a regulatory stewardship approach, as a statutory obligation, for Government departments in Western Australia.

Periodic reviews of legislation for redundancy

- 3.118 The New Zealand Government undertakes periodic reviews of legislation to identify redundant legislation that can be repealed. The most recent exercises resulted in the repeal of legislation via the *Regulatory Reform (Repeals) Act 2012* (NZ) (which repealed 31 Acts) and the *Statutes Repeal Act 2017* (NZ) (which repealed 128 Acts in full and 9 Acts in part).
- 3.119 The Treasury and Ministry of Business, Innovation and Employment led the 2012 review and the Treasury and Parliamentary Counsel Office led the 2017 work. The work required all departments and agencies that administer legislation to undertake reviews of their legislation.
- 3.120 Some of the enactments that were repealed in 2017 were waiting to be brought into force by Order in Council (similar to Proclamations in Western Australia). The Attorney General tables a report of these as at 1 July each year. As at 1 January 2019 there were 26 Acts waiting to be brought into force by Order in Council.¹¹⁷ Each year Parliamentary Counsel’s Office (on behalf of the Attorney General) contacts departments and agencies with legislation on the list and reminds them to review their legislation for enactments that could be brought into force or repealed.¹¹⁸
- 3.121 This is the sort of exercise that is meant to take place to inform the drafting of omnibus bills in this jurisdiction.

¹¹⁵ New South Wales Government, *Independent Review of the NSW Regulatory Policy Framework, Government Response*.

¹¹⁶ Hon Dominic Perrottet MP, New South Wales Treasurer, *Productivity Commission to be Established in NSW, Media statement*, New South Wales Government, 19 February 2018.

¹¹⁷ Parliamentary Counsel Office New Zealand, 1 January 2019, <http://www.pco.govt.nz/legislation-waiting-to-be-brought-into-force/>, viewed 14 August 2019.

¹¹⁸ Julia Agar, Senior Legal and Policy Analyst, Parliamentary Counsel Office, New Zealand, Email, 28 May 2018, p 1.

FINDING 7

Periodic reviews of legislation help to ensure redundant provisions are removed and the statute book remains current.

RECOMMENDATION 9

The Government consider introducing a law or mandate a system requiring the periodic review of all Western Australian legislation to identify that suitable for repeal.

RECOMMENDATION 10

Legislation for repeal identified by periodic reviews be included in a list to be tabled in both Houses of the Western Australian Parliament at least once in every calendar year.

RECOMMENDATION 11

Pursuant to Premier's Circular 2010/01, a Statutes (Repeals and Minor Amendments) Bill repealing legislation identified in periodic reviews be introduced at least once in every calendar year.

A handwritten signature in blue ink, appearing to read 'Mischin', with a large circular flourish at the beginning.

Hon Michael Mischin MLC
Chairman

APPENDIX 1

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW REPORT 99 – APPENDIX 1

APPENDIX 1

SUMMARY OF RESPONSES FROM OTHER JURISDICTIONS

Commonwealth <ul style="list-style-type: none">• Two Parliamentary sitting days every year are dedicated to debating and repealing obsolete legislation.• Repeal Day commenced in 2014 and is similar to the Western Australian initiative.• All Commonwealth government departments have a dedicated reregulation unit.• Sunset clauses are widely used in legislative instruments.
New South Wales <ul style="list-style-type: none">• Statute Law Revision Program, similar to Western Australian statutes review bills, generally introduced into Parliament twice per year.• Automatic repeal of subordinate legislation after five years is built into the <i>Subordinate Legislation Act 1989</i> (NSW): the repeal program is coordinated by Parliamentary Counsel's Office, with the involvement of the Legislation Review Committee of NSW Parliament.• New statutes generally contain a three or five year review clause, which requires the review report to be tabled in Parliament.• 'One on, two off' policy requires Ministers to repeal two statutes within their portfolio for every new piece of principal legislation which is submitted to Cabinet. The policy commenced in 2011.
Queensland <ul style="list-style-type: none">• Automatic repeal of subordinate legislation after ten years is built into the <i>Statutory Instruments Act 1992</i> (Qld). The Office of the Queensland Parliamentary Counsel gives affected agencies one year's notice of impending expiry of subordinate legislation.• Government has set a policy target of 20 per cent reduction in regulation by 2018, coordinated through the Office of Best Practice Regulation.• Mandatory legislative reviews and sunset clauses are also used in primary legislation.
Tasmania <ul style="list-style-type: none">• Sunset clauses are widely used in primary legislation and the <i>Subordinate Legislation Act 1992</i> (Tas) provides that all subsidiary legislation has an automatic ten year sunset clause.• Statutes review bills are introduced into Parliament on a periodic basis.
Victoria <ul style="list-style-type: none">• No coordinated program to review obsolete legislation on a regular basis.• Office of Chief Parliamentary Counsel tracks laws with sunset clauses.• The Scrutiny of Acts and Regulations Committee is a joint committee of the Victorian Parliament that considers and reports on statute law bills, similar to the Uniform Legislation and Statutes Review Committee's role in this State.
Australian Capital Territory <ul style="list-style-type: none">• No fixed program for review of the statute book.• Review clauses are used in primary legislation and subject-specific reviews are sometimes carried out by the ACT Law Reform Advisory Council.• Some provision for the automatic repeal of certain legislation (such as amending legislation) according to the <i>Legislation Act 2001</i> (ACT).

<ul style="list-style-type: none"> Statute Law Amendment Bills are used to repeal obsolete legislation, but only with the Chief Minister's approval.
Hong Kong <ul style="list-style-type: none"> No regular review of legislation is carried out; sunset clauses and automatic repeals are not normally used in legislation.
New Zealand <ul style="list-style-type: none"> Review process is built into the <i>Legislation Act 2012</i> (NZ), which requires the Attorney General, with assistance from the New Zealand Parliamentary Counsel Office, to table three-yearly review programs for each Parliament. Revision bills are used to make minor amendments to legislation, remove redundant or spent provisions and update archaic drafting styles and formats. Attorney General reports annually to Parliament about legislation that has not yet been brought into force.
European Commission <ul style="list-style-type: none"> Review process called '<i>codification</i>' is used to simplify statutes and amendments, which repeals the original legislation. Sunset clauses and legislative review clauses are used in legislation, especially in areas of rapid technological development. Informal procedures, such as declarations of obsolescence and removing legislation from the director of legislation are also used.
England and Wales <ul style="list-style-type: none"> Law Reform Commission for England and Wales has a dedicated team responsible for the repeal of obsolete legislation that works closely with its Scottish counterpart. Statute review is carried out on a topic-by-topic basis, focusing only on primary legislation. The reviews result in a statutes review bill, tabled and fast-tracked through Parliament by the Minister for Justice. Joint Committee on Consolidation Bills considers and reports on all statutes review bills, similar to the Uniform Legislation and Statutes Review Committee in this State.
Scotland <ul style="list-style-type: none"> Scottish Law Commission has a small team which considers the repeal of obsolete legislation, together with the Law Reform Commission for England and Wales, using a very similar process. The Scottish team provides advice to UK Parliament on any obsolete Scottish legislation that is included in a statutes review bill.
Republic of Ireland <ul style="list-style-type: none"> No systematic review of the statute book; sunset clauses are not favoured by the Office of Parliamentary Counsel; repeal days are not used. Statute Law Revision Acts have been used in recent years to repeal obsolete statutes.

APPENDIX 2

ACTS IDENTIFIED BY THE GOVERNMENT AS OBSOLETE

1. *Housing Societies Repeal Act 2005*.¹¹⁹
2. *Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998*.¹²⁰
3. *Marketing of Potatoes Act 1946*.¹²¹
4. *Bills of Exchange (Day for Payment) (1836) (Imp)*.¹²²
5. *Bills of Exchange (Day for Payment) (1832) (Imp)*.¹²³
6. *Debts Recovery Act 1830 (Imp)*.¹²⁴
7. *Debts Recovery Act 1839 (Imp)*.¹²⁵
8. *Executors Act (1830) (Imp)*.¹²⁶
9. *Infants' Property Act 1830 (Imp)*.¹²⁷
10. *Morawa-Koolanooka Hills Railway Act 1964*.¹²⁸
11. *Water Services Legislation Amendment and Repeal Act 2012*.¹²⁹
12. *Curriculum Council (Fees and Charges) Act 2006*.¹³⁰
13. *Unclaimed Money (Superannuation and RSA Providers) Act 2003*.¹³¹
14. *Railway Standardisation Agreement Act 1961*.¹³²

¹¹⁹ Hon Peter Tinley AM MLA, Minister for Housing, Letter, 11 January 2018, p 1. The Minister advised that 'all operative provisions have taken effect and the Act is considered spent'. and Hon John Quigley MLA, Attorney General, Letter, 30 January 2018, Attachment p 1. This was included at item 44 of Appendix 1 of Interim Report 79: Acts identified as obsolete.

¹²⁰ Hon Francis Logan MLA, Minister for Emergency Services, Letter, 30 January 2018, p 1. The Minister advised that 'a review of the Act has been undertaken and it has been determined the Act may be repealed without any adverse effects...' and Hon John Quigley MLA, Attorney General, Letter, 30 January 2018, Attachment p 1. This was included at item 4 of Appendix 1 of Interim Report 79: Acts identified as obsolete.

¹²¹ Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, Letter, 2 February 2018, Attachment 2, p 3. The Minister advised that the Act is 'obsolete and exhausted and will be repealed by proclamation of section 13 of the *Marketing of Potatoes Amendment and Repeal Act 2016*'. Section 13 of the *Marketing of Potatoes Amendment and Repeal Act 2016* is yet to be proclaimed.

¹²² Hon John Quigley MLA, Attorney General, Letter, 30 January 2018, Attachment p 1. This was included at item 44 of Appendix 4 of Interim Report 79: Acts identified by Ministers as requiring further investigation.

¹²³ *ibid*. This was included at item 45 of Appendix 4 of Interim Report 79: Acts identified by Ministers as requiring further investigation.

¹²⁴ *ibid*. This was included at item 46 of Appendix 4 of Interim Report 79: Acts identified by Ministers as requiring further investigation.

¹²⁵ *ibid*. This was included at item 47 of Appendix 4 of Interim Report 79: Acts identified by Ministers as requiring further investigation.

¹²⁶ *ibid*. This was included at item 24 of Appendix 1 of Interim Report 79: Acts identified as obsolete.

¹²⁷ *ibid*. This was included at item 30 of Appendix 1 of Interim Report 79: Acts identified as obsolete.

¹²⁸ *ibid*. This was included at item 2 of Appendix 1 of Interim Report 79: Acts identified as obsolete.

¹²⁹ Hon Dave Kelly MLA, Minister for Water, Letter, 9 February 2018, p 1. This was included in Appendix 7 of Interim Report 79: 70 statutes with Royal Assent but not proclaimed.

¹³⁰ Hon Sue Ellery MLA, Minister for Education and Training, Letter, 19 February 2018, p 2.

¹³¹ Hon Ben Wyatt MLA, Treasurer, Letter, 6 March 2018, Attachment A, p 2.

¹³² Hon Rita Saffioti MLA, Minister for Transport; Planning; Lands, Letter, 1 May 2018, p 3.

APPENDIX 3

ACTS CONTAINING SECTIONS IDENTIFIED BY THE GOVERNMENT AS OBSOLETE

1. Section 105 of the *Racing and Wagering Western Australia Act 2003*.¹³³
2. Sections 56 to 60 of the *Working With Children (Criminal Record Checking) Act 2004*.¹³⁴
3. Sections 27 and 37 of the *Museum Act 1969*.¹³⁵
4. Section 3A of the *Perth Theatre Trust Act 1979*.¹³⁶
5. Section 29 of the *Western Australian Tourism Commission Act 1983*.¹³⁷
6. Part 2 and Part 3 of the *Business Licensing Amendment Act 1995*.¹³⁸
7. Section 12 of the *Business Names (Commonwealth Powers) Act 2012*.¹³⁹
8. Section 3 of the *Distress for Rent Abolition Act 1936*.¹⁴⁰
9. Sections 11, 12, 14, 18, 19, 20, 21, 22, 23, 24, 32(1)(a), (b), (d), (h), (l), 32(3)(a)(ii), 33B(1B), 33B(5A), 33E, 33F, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51 of the *Electricity Act 1945*.¹⁴¹

¹³³ Hon Paul Papalia CSC MLA, Minister for Racing and Gaming, Letter, 18 January 2018, p 1. The Minister advised that 'Section 105 relating to the allocation of funds by Racing and Wagering Western Australia to the racing industry prior to 1 August 2006 is now a spent provision.' Table 1 p 2.

¹³⁴ Hon Simone McGurk MLA, Minister for Child Protection, Letter, 17 January 2018, p 1. The Minister advised that these sections 'are transitional provisions being the mechanism for the staged implementation of the WWC [Working With Children] Check.' The Minister advised that the provisions 'are now exhausted and can be repealed. The repeal of these provisions is intended to be addressed in proposed amendments to the [Working With Children (Criminal Record Checking) Act 2004] and related regulation amendments this year'.

¹³⁵ Hon David Templeman MLA, Minister for Local Government, Letter, 16 January 2018, p 20. Consequential amendments are required to section 28A of the *Museum Act 1969* (to delete the reference to section 27) and section 51(2)(c) of the *Museum Act 1969* (to delete the reference to 'museums recognised').

¹³⁶ *ibid.*, p 22. Section 3A provides for transitional provisions relating to the general manager of the Perth Theatre Trust. The Minister advised 'there are no foreseeable problems that may arise if these provisions were repealed'.

¹³⁷ Hon Paul Papalia CSC MLA, Minister for Tourism, Letter, 29 January 2018, p 1. The Minister advised that 'this section provided for one review of the Act to occur, which has taken place and amendments were subsequently made (see *Western Australian Tourism Commission Amendment Act 2003*)'.

¹³⁸ Hon Bill Johnston MLA, Minister for Commerce and Industrial Relations, Letter, 23 January 2018, Attachment p 1. The Minister advised that Part 2 of the *Business Licensing Amendment Act 1995* has not come into operation, that amendments of a similar nature were made by the *Licensing Provisions Amendment Act 2016* (see sections 8 and 9) and the amendments in Part 2 of the *Business Licensing Amendment Act 1995* have been superseded. The Minister also advised that Part 3 of the *Business Licensing Amendment Act 1995* has not come into operation. This Part inserts sections 9A and 12A and amends section 26 of the *Debt Collectors Licensing Act 1964*. The Minister advised that the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* amended the *Debt Collectors Licensing Act 1964* in a manner inconsistent with proposed section 12A. Amendments of a similar nature to proposed sections 9A and amended section 26 were made by the *Licensing Provisions Amendment Act 2016*. He advised that 'the 1995 amendments have therefore been superseded and can be considered for repeal'.

¹³⁹ *ibid.*, Attachment p 3. Section 12 provides for the making of transitional regulations. A time limit of 12 months from the commencement day (11 April 2012) applies. The Minister advised 'this provision could be considered for repeal'.

¹⁴⁰ *ibid.*, Attachment p 9. Section 3 of the *Distress for Rent Abolition Act 1936* provides that any distress for rent which is pending prior to the commencement of the Act may not proceed. The Minister advised 'given that the Act came into effect on 11 December 1936 this provision may no longer be required and can be considered for repeal'.

¹⁴¹ *ibid.*, Attachment p 9.

10. Sections 8, 9(2)(a) and 11 of the *Gas Standards Act 1972*.¹⁴²
11. Part 5 of the *Gas Supply (Gas Quality Specifications) Act 2009*.¹⁴³
12. Section 46 of the *Land Valuers Licensing Act 1978*.¹⁴⁴
13. Sections 20, 21 and 65 of the *Motor Vehicle Dealers Act 1973*.¹⁴⁵
14. Section 122 of the *Motor Vehicle Repairers Act 2003*.¹⁴⁶
15. Section 19 of the *Personal Property Securities (Commonwealth Laws) Act 2011*.¹⁴⁷
16. Section 159 of the *Real Estate and Business Agents Act 1978*.¹⁴⁸
17. Section 135 of the *Settlement Agents Act 1981*.¹⁴⁹
18. Sections 14, 47, 48 and Schedule 4 of the *Insurance Commission of Western Australia Act 1986*.¹⁵⁰
19. Section 9 of the *Judgments Act 1855 (Imp)*.¹⁵¹
20. *Western Australian Marine Amendment Act 1987* other than sections 1 and 2.¹⁵²

¹⁴² *ibid.*, Attachment p 13.

¹⁴³ *ibid.*, Attachment p 14. The Minister administers only Part 5 Division 2 of the *Gas Supply (Gas Quality Specifications) Act 2009*. The remainder of the Act is administered by the Minister for Energy principally assisted by the Department of Treasury.

¹⁴⁴ *ibid.*, Attachment p 16.

¹⁴⁵ *ibid.*, Attachment p 20. Sections 20 and 21 of the *Motor Vehicle Dealers Act 1973* have not been proclaimed. The proposed provisions allow for conciliation of disputes by the former Motor Vehicle Dealers Licensing Board. The Board was abolished by the *Acts Amendment (Fair Trading) Act 2010*. The Minister advised 'these provisions should therefore be considered for repeal'. Section 65 provides for the making of transitional regulations. A time limit of 12 months from the commencement day (1 July 2011) applies. The Minister advised 'this provision could be considered for repeal'.

¹⁴⁶ *ibid.*, Attachment p 21. Section 122 of the *Motor Vehicle Repairers Act 2003* provides for the making of transitional regulations. A time limit of 12 months from the commencement day (1 July 2011) applies. The Minister advised 'this provision could be considered for repeal'.

¹⁴⁷ *ibid.*, Attachment p 24. Section 19 provides for the making of transitional regulations. A time limit of 12 months from the commencement day (4 October 2011) applies. The Minister advised 'this provision could be considered for repeal'.

¹⁴⁸ *ibid.*, Attachment p 31. Section 159 provides for the making of transitional regulations. A time limit of 12 months from the commencement day (1 July 2011) applies. The Minister advised 'this provision could be considered for repeal'.

¹⁴⁹ *ibid.*, Attachment p 33. Section 135 of the *Settlement Agents Act 1981* provides for the making of transitional regulations. A time limit of 12 months from the commencement day (1 July 2011) applied. The Minister advised the provision could be considered for repeal.

¹⁵⁰ Hon Ben Wyatt MLA, Treasurer, Letter, 23 January 2018, p 1. Section 14 of the *Insurance Commission of Western Australia Act 1986* allows the Insurance Commission to set up its own superannuation fund for employees. The Treasurer advised that 'this provision has not been used since it was proclaimed and is obsolete'. Sections 47, 48 and Schedule 4 set out transitional arrangements for the formation of the Insurance Commission of Western Australia. The Treasurer advised they are obsolete and that the proclamation of sections 25 and 28 of the *Acts Amendment (ICWA) Act 1996* will repeal those provisions. The Committee notes that sections 25 and 28 of the *Acts Amendment (ICWA) Act 1996* are unproclaimed and therefore sections 47, 48 and Schedule 4 of the *Insurance Commission of Western Australia Act 1986* appear to remain on the statute book.

¹⁵¹ Hon John Quigley MLA, Attorney General, Letter, 30 January 2018, Attachment p 1. This was included at item 33 of Appendix 1 of Interim Report 79: Acts identified as obsolete. The Attorney General advised the Committee, however, that 'Current legislation does not completely address all the matters provided for by the *Judgments Act 1855*. As section 11 to 14 continue to apply in general law and cannot be repealed without altering the law, this Act is not suitable for repeal. However, section 9 does not apply in Western Australia and can be repealed.'

¹⁵² *ibid.*, Attachment p 1.

21. Section 38(2) of the *Pollution of Waters by Oil and Noxious Substances Act 1987*.¹⁵³
22. Sections 15 to 20 and Part II, Division 4 of the *Western Australian Marine Act 1982*.¹⁵⁴
23. Schedule 3 of the *Electricity Industry Act 2004*.¹⁵⁵
24. The Long Title of the *Fuel, Energy and Power Resources Act 1972*.¹⁵⁶
25. Sections 27-31, 33-34, 60 and 63-67 (of the *State Superannuation (Transitional and Consequential Provisions) Act 2000*).¹⁵⁷
26. Schedule 4, clause 7A of the *Vocational Education and Training Act 1996*.¹⁵⁸
27. Section 43 of the *Western Australian Planning Commission Act 1985*.¹⁵⁹
28. Section 19(3) of the *Western Australian Sports Centre Trust Act 1986*.¹⁶⁰
29. Sections 60A(1a) and 60C of the *Plumbers Licensing Act 1995*.¹⁶¹
30. Part 2-Part 13 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995*.¹⁶²
31. Section 47(1)(c) of the *Security and Related Activities (Control) Act 1996*.¹⁶³
32. Section 64 of the *Road Traffic Legislation Amendment Act 2016*.¹⁶⁴
33. Sections 91(3)(a)(i), 91(3)(b)(i) and 144 of the *Port Authorities Act 1999*.¹⁶⁵
34. Sections 47A to 47F inclusive of the *Transport Co-ordination Act 1966*.¹⁶⁶
35. Sections 12A, 12B and 28 of the *Main Roads Act 1930*.¹⁶⁷
36. Sections 83A and 106A of the *Agriculture and Related Resources Protection Act 1976*.¹⁶⁸

¹⁵³ *ibid.*, This was included at item 1 of Appendix 2 of Interim Report 79: Specific sections in Acts identified as obsolete. Also Hon Rita Saffioti MLA, Minister for Transport; Planning; Lands, Letter, 1 May 2018, p 2.

¹⁵⁴ *ibid.* This was included at item 4 of Appendix 2 of Interim Report 79: Specific sections in Acts identified as obsolete. Also Hon Rita Saffioti MLA, Minister for Transport; Planning; Lands, Letter, 1 May 2018, p 1.

¹⁵⁵ *ibid.*, This was included at item 3 of Appendix 5 of Interim Report 79: Specific sections in Acts identified as potentially obsolete but require further investigation. The Attorney General advised the Committee that 'Treasury advise that this Schedule is suitable for repeal, and if repealed s.79(4), 81(6) and 92(6) of the *Electricity Industry Act 2004* should also be repealed'.

¹⁵⁶ *ibid.*, This was included at item 5 of Appendix 5 of Interim Report 79: Specific sections in Acts identified as potentially obsolete but require further investigation. The Attorney General advised the Committee that 'Treasury advise that the Act itself is not suitable for repeal, however the long title refers to entities which no longer exist and should be reflected'.

¹⁵⁷ *ibid.*, Attachment p 1.

¹⁵⁸ Brett McLarty, A/Senior Policy Officer, Policy and Aboriginal Service Directorate, Department of Justice, Email, 12 February 2018.

¹⁵⁹ *ibid.*

¹⁶⁰ *ibid.*

¹⁶¹ Hon Dave Kelly MLA, Minister for Water, Letter, 9 February 2018, p 1.

¹⁶² *ibid.*

¹⁶³ Hon Michelle Roberts MLA, Minister for Police, Letter, 13 March 2018, pp1-2.

¹⁶⁴ *ibid.*, p 2.

¹⁶⁵ Hon Rita Saffioti MLA, Minister for Transport; Planning; Lands, Letter, 1 May 2018, p 2.

¹⁶⁶ *ibid.*, p 3.

¹⁶⁷ *ibid.*

¹⁶⁸ Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, Letter, 2 February 2018, Attachment 2, p 1.

APPENDIX 4

SUBSIDIARY LEGISLATION IDENTIFIED BY THE GOVERNMENT AS OBSOLETE

1. *Marketing of Potatoes Regulations 1987*.¹⁶⁹
2. *By-laws for the Control of Hoardings*.¹⁷⁰
3. *Town Planning (Buildings) Uniform General By-laws 1989*.¹⁷¹
4. *Town Planning (Height of Obstructions at Corners) General By-laws 1975*.¹⁷²
5. *Town Planning and Development By-laws – By-law 3*.¹⁷³
6. *Town Planning and Development By-laws – By-laws in respect of Excavations in Subdivided Areas*.¹⁷⁴
7. *Uniform General By-laws – (Section 30 subsection 1) New Subdivisions and Re-subdivisions*.¹⁷⁵
8. *Power of Entry and Inspection Regulations*.¹⁷⁶
9. *By-law providing for enforcement of any by-law made under section 30*.¹⁷⁷
10. *By-law under the Second Schedule of the Town Planning and Development Act 1928, clauses 4 and 11*.¹⁷⁸
11. *Agriculture and Related Resources Protection (Spraying Restrictions) 1979*.¹⁷⁹

¹⁶⁹ Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, Letter, 2 February 2018, Attachment 2, p 3. The Minister advised that the Regulations are 'obsolete and exhausted and will be repealed by proclamation of section 13 of the *Marketing of Potatoes Amendment and Repeal Act 2016*'. Section 13 of the *Marketing of Potatoes Amendment and Repeal Act 2016* is yet to be proclaimed.

¹⁷⁰ Hon John Quigley MLA, Attorney General, Letter, 30 January 2018, Attachment p 2. This was included at item 15 of Appendix 3 of Interim Report 79: Subsidiary Legislation identified as obsolete.

¹⁷¹ *ibid.*, This was included at item 16 of Appendix 3 of Interim Report 79: Subsidiary Legislation identified as obsolete.

¹⁷² *ibid.*, This was included at item 17 of Appendix 3 of Interim Report 79: Subsidiary Legislation identified as obsolete.

¹⁷³ *ibid.*, This was included at item 18 of Appendix 3 of Interim Report 79: Subsidiary Legislation identified as obsolete.

¹⁷⁴ *ibid.*, This was included at item 19 of Appendix 3 of Interim Report 79: Subsidiary Legislation identified as obsolete.

¹⁷⁵ *ibid.*, This was included at item 20 of Appendix 3 of Interim Report 79: Subsidiary Legislation identified as obsolete.

¹⁷⁶ Hon Rita Saffioti MLA, Minister for Transport; Planning; Lands, Letter, 1 May 2018, p 5.

¹⁷⁷ *ibid.*

¹⁷⁸ *ibid.*

¹⁷⁹ Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, Letter, 2 February 2018, Attachment 2, p 1.

APPENDIX 5

SUBSIDIARY LEGISLATION CONTAINING PROVISIONS IDENTIFIED BY THE GOVERNMENT AS OBSOLETE

1. Part 3 of the *Working With Children (Criminal Record Checking) Regulations 2005*.¹⁸⁰
2. Regulation 12 of the *Museum Regulations 1973*.¹⁸¹
3. Regulation 220 of the *Fire Brigades Regulations 1943*.¹⁸²
4. Regulations 40A, 41 and 44M of the *Pearling (General) Regulations 1991*.¹⁸³
5. By-law under the Second Schedule of the *Town Planning and Development Act 1928*, clauses 4 and 11.¹⁸⁴
6. Regulation 6(2) of the *W.A. Marine (Adjustment of Compasses) Regulations 1983*.¹⁸⁵
7. Regulation 3(2)(a) of the *Marine Navigational Aids Regulations 1985*.¹⁸⁶
8. Regulation 8C; Schedule 2 Forms 10, 11, 12, 15 and 16 of the *Transport Co-ordination Regulations 1985*.¹⁸⁷

¹⁸⁰ Hon Simone McGurk MLA, Minister for Child Protection, Letter, 17 January 2018, p 1. The Minister advised that 'the arrangements for the phasing-in of the [Working With Children] Check were made under Part 3 of the [Working With Children (Criminal Record Checking) Regulations 2005] and progressively introduced the requirement to hold an assessment notice (WWC Card) for different groups over a 5 year period (1 January 2006 to 31 December 2010)'. She advised that 'Part 3 of the [Working With Children (Criminal Record Checking) Regulations 2005] are now exhausted and can be repealed. The repeal of these provisions is intended to be addressed in proposed amendments to the [Working With Children (Criminal Record Checking) Act 2004] and related regulation amendments this year'.

¹⁸¹ Hon David Templeman MLA, Minister for Local Government, Letter, 16 January 2018, p 21. Regulation 12 sets out 'minor offences' on museum premises. The Minister advised that 'these offences are now obsolete and several acts of prohibited behaviour are now covered under other legislation (for example, smoking and gambling). The Museum regulates the behaviour of patrons through terms and conditions of entry (onto the relevant Museum site), rather than by subsidiary legislation'.

¹⁸² Hon Francis Logan MLA, Minister for Emergency Services, Letter, 30 January 2018, p 2.

¹⁸³ Hon John Quigley MLA, Attorney General, Letter, 30 January 2018, Attachment p 1. This was included at item 8 of Appendix 3 of Interim Report 79: Subsidiary Legislation identified as obsolete. The Attorney General advised that 'Fisheries previously advised that repeal of the three regulations is progressing and they are likely to be repealed around the middle of this year'.

¹⁸⁴ *ibid.*, Attachment p 2. This was included at item 14 of Appendix 3 of Interim Report 79: Subsidiary Legislation identified as obsolete.

¹⁸⁵ *ibid.*, This was included at item 3 of Appendix 3 of Interim Report 79: Subsidiary Legislation identified as obsolete.

¹⁸⁶ *ibid.*, This was included at item 1 of Appendix 6 of Interim Report 79: One provision in subsidiary legislation identified as requiring further investigation.

¹⁸⁷ Hon Rita Saffioti MLA, Minister for Transport; Planning; Lands, Letter, 1 May 2018, p 3.

APPENDIX 6

ACTS OR SUBSIDIARY LEGISLATION IDENTIFIED BY THE GOVERNMENT AS REQUIRING FURTHER INVESTIGATION

1. *South Fremantle Oil Installations Pipe Line Act 1948*.¹⁸⁸
2. *Decimal Currency Act 1965*.¹⁸⁹
3. *Metric Conversion Act 1972*.¹⁹⁰
4. *New Tax System Price Exploitation Code (Western Australia) Act 1999*.¹⁹¹
5. *Petroleum Act 1936*.¹⁹²
6. *Petroleum and Geothermal Energy Resources Act 1967*.¹⁹³
7. *Petroleum and Geothermal Energy Resources Regulations 1987*.¹⁹⁴
8. *Petroleum and Geothermal Energy Resources (Environment) Regulations 2012*.¹⁹⁵
9. *Petroleum and Geothermal Energy Resources (Resource Management and Administration) Regulations 2015*.¹⁹⁶

¹⁸⁸ Hon David Templeman MLA, Minister for Local Government, Letter, 16 January 2018, p 12.

¹⁸⁹ Hon Bill Johnston MLA, Minister for Commerce and Industrial Relations, Letter, 23 January 2018, Attachment p 8. The Minister advised that legal advice is required to determine whether the *Decimal Currency Act 1965* or provisions within the Act may now be repealed.

¹⁹⁰ *ibid.*, Attachment p 17. The *Metric Conversion Act 1972* provides for the amendment of Western Australian legislation to facilitate the use of the metric system of measurement. The Minister advised that 'legal advice is required to determine whether this Act or provisions within the Act may now be repealed'.

¹⁹¹ *ibid.*, Attachment p 21. The *New Tax System Price Exploitation Code (Western Australia) Act 1999* applies the New Tax System Price Exploitation Code of the Commonwealth as a law of Western Australia. The Minister advised that 'the Commonwealth price exploitation code appears to have been repealed'. He advised that equivalent legislation in New South Wales, Queensland and the Northern Territory has also been repealed. However legislation remains in effect in South Australia, Tasmania and Victoria. The Minister advised that further investigation is required to determine whether the *New Tax System Price Exploitation Code (Western Australia) Act 1999* can be repealed.

¹⁹² *ibid.*, Attachment p 25. The Minister advised that the *Petroleum Act 1936* remains in force for the Barrow Island lease, L1H despite being repealed on commencement of the *Petroleum and Geothermal Energy Resources Act 1967*. He advised that 'this Act is currently under review as part of the review of the *Petroleum and Geothermal Energy Resources Act 1967* by the Petroleum Legislation Amendment (Petroleum 2020) Project'. The Minister advised that the primary focus of the Petroleum 2020 Project will be to amalgamate the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969* and the *Petroleum (Submerged Lands) Act 1982* into a single common Petroleum Act to cover all petroleum and geothermal operations conducted in Western Australia to the Commonwealth/State boundary. The Minister also advised that the amalgamation of the Acts will allow for further legislative streamlining with the amalgamation of the associated subsidiary legislation. He advised this will reduce the number of regulations from 10 to four and this is expected to occur at the same time as the commencement of the single Petroleum Act: Attachment, Appendix 1.

¹⁹³ *ibid.*, The Minister advised that all provisions of this Act are currently in force. The Act is under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

¹⁹⁴ *ibid.*, The Minister advised that all provisions in these Regulations are currently in force. The Regulations are under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

¹⁹⁵ *ibid.*, Attachment p 26. The Minister advised that all provisions in these Regulations are currently in force. The Regulations are under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

¹⁹⁶ *ibid.*, The Minister advised that all provisions in these Regulations are currently in force. The Regulations are under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

10. *Petroleum and Geothermal Energy Resources (Registration Fees) Act 1967*.¹⁹⁷
11. *Petroleum and Geothermal Energy Resources (Registration Fees) Regulations 1990*.¹⁹⁸
12. *Petroleum Pipelines Act 1969*.¹⁹⁹
13. *Petroleum Pipelines Regulations 1970*.²⁰⁰
14. *Petroleum Pipelines (Environment) Regulations 2012*.²⁰¹
15. *Petroleum (Submerged Lands) Act 1982*.²⁰²
16. *Petroleum (Submerged Lands) Regulations 1990*.²⁰³
17. *Petroleum (Submerged Lands) (Environment) Regulations 2012*.²⁰⁴
18. *Petroleum (Submerged Lands) (Resource Management and Administration) Regulations 2015*.²⁰⁵
19. *Petroleum (Submerged Lands) Registration Fees Act 1982*.²⁰⁶
20. *Petroleum (Submerged Lands) Registration Fees Regulations 1990*.²⁰⁷
21. *University Medical School, Teaching Hospitals, Act 1955*.²⁰⁸
22. *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015*.²⁰⁹
23. *Perth Market (Disposal) Act 2015*.²¹⁰

¹⁹⁷ *ibid.*, Attachment p 27. The Minister advised that all provisions in this Act are currently in force. The Act is under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

¹⁹⁸ *ibid.*, The Minister advised that all provisions in these Regulations are currently in force. The Regulations are under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

¹⁹⁹ *ibid.*, The Minister advised that all provisions in this Act are currently in force. The Act is under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

²⁰⁰ *ibid.*, Attachment p 28. The Minister advised that all provisions in these Regulations are currently in force. The Regulations are under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

²⁰¹ *ibid.*, The Minister advised that all provisions in these Regulations are currently in force. The Regulations are under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

²⁰² *ibid.*, Attachment p 29. The Minister advised that all provisions in this Act are currently in force. The Act is under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

²⁰³ *ibid.*, The Minister advised that all provisions in these Regulations are currently in force. The Regulations are under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

²⁰⁴ *ibid.*, Attachment p 30. The Minister advised that all provisions in these Regulations are currently in force. The Regulations are under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

²⁰⁵ *ibid.*, The Minister advised that all provisions in these Regulations are currently in force. The Regulations are under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

²⁰⁶ *ibid.*, The Minister advised that all provisions in this Act are currently in force. The Act is under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

²⁰⁷ *Ibid.*, The Minister advised that all provisions in these Regulations are currently in force. The Regulations are under review as part of the Petroleum Legislation Amendment (Petroleum 2020) Project.

²⁰⁸ Hon Roger Cook MLA, Minister for Health, Letter, 29 January 2018, p 1. The Minister advised that he had recently approved a review of the Act to be undertaken with a view to its possible repeal.

²⁰⁹ Hon Ben Wyatt MLA, Treasurer, Letter, 6 March 2018, Attachment A, p 1. The Treasurer's response was that advice on the repeal of provisions was required from the State Solicitor's Office.

²¹⁰ *ibid.*, The Treasurer's response was that advice on the repeal of provisions relating to the disposal of the asset was required from the State Solicitor's Office.

24. *Railways (Access) Act 1998*.²¹¹
25. *Railways (Access) Code 2000*.²¹²
26. *Shipping and Pilotage Amendment Act 2006*.²¹³
27. Section 43AA of the *Transport Co-ordination Act 1966*.²¹⁴
28. *Land Boundaries Act 1841*.²¹⁵
29. *Licensed Surveyors Act 1909*.²¹⁶
30. *Standard Survey Marks Act 1924*.²¹⁷
31. *Street Alignment Act 1844*.²¹⁸
32. *Town Boundary Mark Ordinance 1853*.²¹⁹
33. Various statutes within the Lands Portfolio.²²⁰

²¹¹ *ibid.*, The Treasurer's response was that the *Railways (Access) Act 1998* is currently under review with a view to improving provisions, including repeal of provisions where necessary.

²¹² *ibid.*, The Treasurer's response was that the *Railways (Access) Code 2000* is currently under review with a view to improving provisions, including repeal of provisions where necessary.

²¹³ Hon Rita Saffioti MLA, Minister for Transport; Planning; Lands, Letter, 1 May 2018, p 4.

²¹⁴ *ibid.*

²¹⁵ *ibid.*, p 6. The Minister advised that 'opportunity for further review and consolidation of the State's survey legislation has been identified, with the existing regulatory framework fragmented between six Acts and five pieces of subsidiary legislation. Such a review would be a significant undertaking, with resources and capacity for this work not currently available within Landgate'. This is one of the pieces of legislation identified.

²¹⁶ *ibid.* The Minister advised that 'opportunity for further review and consolidation of the State's survey legislation has been identified, with the existing regulatory framework fragmented between six Acts and five pieces of subsidiary legislation. Such a review would be a significant undertaking, with resources and capacity for this work not currently available within Landgate'. This is one of the pieces of legislation identified.

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²²⁰ *ibid.* The Minister advised that 'within the Lands portfolio there were 25 different statutes identified by the then Minister for Lands as requiring further investigation as to whether they could potentially be repealed (Appendix 4 of Interim Report 79). Those Acts relate to the vesting of specific parcels of land with various entities, and for the most part the land is required to be used for a particular purpose. Accordingly, detailed research and analysis needs to be undertaken...Work was done in 2013-14 to identify the relatively straightforward Acts, and those have been repealed. The remaining Acts require significantly greater levels of work to be done before a decision can be made as to whether each one can be repealed; and resources are not currently available to undertake this work'. pp 5-6.

APPENDIX 7

UNPROCLAIMED ACTS OR SECTIONS IN ACTS IDENTIFIED BY THE GOVERNMENT

1. Sections 301(2), (3), (6) and (7) and section 307(j) of the *Health Services Act 2016*.²²¹
2. Section 14(2) of the *Medicines and Poisons Act 2014*.²²²
3. Sections 7 and 8, Parts 5 to 8, Part 10, Part 14, Part 18 Division 3, Part 19 Division 1 and Part 20 (sections 313 to 320) of the *Public Health Act 2016*.²²³
4. Part 4 sections 208 to 211, 214 to 222, Division 4 to 9, sections 239 and 241, Division 11 and 15, sections 249 to 271, 273, 275 and 276, Part 5 section 278(2) and 279(2), Division 3, section 285(2), Division 5, 7, 8, 11, 12, 14, 15 to 17, 19, 21 to 24, section 334, Division 27, section 343(2) and Part 6 of the *Public Health (Consequential Provisions) Act 2016*.²²⁴
5. Sections 8(2) and (3) of the *Personal Property Securities (Commonwealth Laws) Act 2011*.²²⁵
6. Section 60(2) of the *State Superannuation (Transitional and Consequential Provisions) Act 2000*.²²⁶
7. Section 4(4) of the *Retirement Villages Amendment Act 2012*.²²⁷
8. Section 149 of the *Planning and Development Act 2005*.²²⁸
9. Section 4(d), sections 6-9 and section 12 of the *Western Australian Marine Amendment Act 1990*.²²⁹
10. *Taxi Drivers Licensing Act 2014*.²³⁰
11. Sections 43, 46, 56 and 57 of the *Transfer of Land Amendment Act 2003*.²³¹
12. Sections 40-44 of the *Acts Amendment (Land Administration) Act 1987*.²³²

²²¹ Hon Roger Cook MLA, Minister for Health, Letter, 29 January 2018, p 3.

²²² *ibid.*

²²³ *ibid.*

²²⁴ *ibid.*

²²⁵ Hon Bill Johnston MLA, Minister for Commerce and Industrial Relations, Letter, 23 January 2018, Attachment p 24. These provisions were identified as unproclaimed in Appendix 7 of Interim Report 79.

²²⁶ *ibid.*, Attachment p32. This provision was identified as unproclaimed in Appendix 7 of Interim Report 79. The Minister advised that section 60(2) of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* has not come into operation as the section it seeks to amend has been deleted. He advised that the section could be considered for repeal.

²²⁷ *ibid.*, The Minister advised that section 4(4) of the *Retirement Villages Amendment Act 2012* has not come into operation and 'appears redundant'. He advised that the section could be considered for repeal.

²²⁸ Hon John Quigley MLA, Attorney General, Letter, 30 January 2018, Attachment p 1. The Attorney General advised 'planning confirmed suitable for repeal'.

²²⁹ *ibid.*, The Attorney General advised 'transport confirm these sections are suitable for repeal'.

²³⁰ Hon Rita Saffioti MLA, Minister for Transport; Planning; Lands, Letter, 1 May 2018, p 3. Part 1 of this Act (the Short title and Commencement clauses) commenced on 2 July 2014. The rest of the Act is yet to be proclaimed).

²³¹ *ibid.*, The Minister advised that 'there remains an intention to proclaim these provisions, pending the preparation of regulations in support of these amendments'. These provisions were identified as unproclaimed in Appendix 7 of Interim Report 79.

²³² *ibid.*, p 6. The Minister advised that 'any intention to proclaim these provisions be considered as part of a broader review of survey legislation'.

APPENDIX 8

CANADIAN STATUTES REPEAL ACT



CANADA

CONSOLIDATION

CODIFICATION

Statutes Repeal Act

Loi sur l'abrogation des lois

S.C. 2008, c. 20

L.C. 2008, ch. 20

Current to June 20, 2019

À jour au 20 juin 2019

Last amended on June 18, 2010

Dernière modification le 18 juin 2010

Published by the Minister of Justice at the following address:
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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

NOTE

This consolidation is current to June 20, 2019. The last amendments came into force on June 18, 2010. Any amendments that were not in force as of June 20, 2019 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

Cette codification est à jour au 20 juin 2019. Les dernières modifications sont entrées en vigueur le 18 juin 2010. Toutes modifications qui n'étaient pas en vigueur au 20 juin 2019 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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- 5** Transitional
- *6** Coming into force

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- 3** Abrogation le 31 décembre suivant
- 4** Publication dans la Gazette du Canada
- 5** Disposition transitoire
- *6** Entrée en vigueur



S.C. 2008, c. 20

L.C. 2008, ch. 20

An Act to repeal legislation that has not come into force within ten years of receiving royal assent

Loi prévoyant l'abrogation des lois non mises en vigueur dans les dix ans suivant leur sanction

[Assented to 18th June 2008]

[Sanctionnée le 18 juin 2008]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

Short title

Titre abrégé

1 This Act may be cited as the *Statutes Repeal Act*.

1 Titre abrégé : *Loi sur l'abrogation des lois*.

Annual report of legislation not in force

Rapport annuel des lois non en vigueur

2 In every calendar year, the Minister of Justice shall cause to be laid before the Senate and the House of Commons, on any of the first five days on which that House sits, a report listing every Act of Parliament or provision of an Act of Parliament that is to come into force on a day or days to be fixed by proclamation or order of the Governor in Council and that

2 Le ministre de la Justice fait déposer devant chaque chambre du Parlement, dans les cinq premiers jours de séance de celle-ci au cours de chaque année civile, un rapport énumérant les lois fédérales — ou les dispositions de ces lois — devant entrer en vigueur à une date fixée par proclamation ou décret et qui :

(a) was assented to nine years or more before the December 31 immediately preceding the laying of the report; and

a) d'une part, ont été sanctionnées au moins neuf ans avant le 31 décembre précédant le dépôt du rapport;

(b) had not come into force on or before that December 31.

b) d'autre part, n'étaient pas entrées en vigueur au 31 décembre précédant ce dépôt.

Repeal on December 31 following

Abrogation le 31 décembre suivant

3 Every Act or provision listed in the annual report is repealed on December 31 of the year in which the report is laid unless it comes into force on or before that December 31 or during that year either House of Parliament adopts a resolution that the Act or provision not be repealed.

3 Toute loi ou disposition figurant dans le rapport est abrogée le 31 décembre de l'année du dépôt de celui-ci, à moins qu'elle ne soit en vigueur à cette date ou que l'une ou l'autre des chambres n'adopte, durant cette même année, une résolution faisant opposition à son abrogation.

Publication in *Canada Gazette*

Publication dans la *Gazette du Canada*

4 The Minister of Justice shall publish each year in the *Canada Gazette* a list of every Act or provision repealed on the preceding December 31 under this Act.

4 Le ministre fait publier chaque année, dans la *Gazette du Canada*, la liste des lois et dispositions abrogées le 31

Transitional

5 Section 2 does not apply to any provision amended by an Act that was assented to during the nine calendar years preceding the year this Act comes into force, or to any provision that is necessary for the amended provision to have effect, until the calendar year following the ninth anniversary of that assent.

Coming into force

***6** This Act comes into force two years after the day on which it receives royal assent.

* [Note: Act in force on June 18, 2010.]

décembre de l'année précédente par l'effet de la présente loi.

Disposition transitoire

5 Sont soustraites à l'application de l'article 2 les dispositions faisant l'objet d'une modification apportée par une loi sanctionnée au cours des neuf années civiles précédant celle de l'entrée en vigueur de la présente loi ainsi que les dispositions nécessaires à leur prise d'effet, et ce jusqu'à la fin de la neuvième année civile qui suit celle de la sanction de la modification.

Entrée en vigueur

***6** La présente loi entre en vigueur deux ans après la date de sa sanction.

* [Note : Loi en vigueur le 18 juin 2010.]

APPENDIX 9

THE COMMITTEE'S PROPOSED BILL TO AMEND THE *INTERPRETATION ACT* *1984*

Western Australia

Interpretation Amendment Bill 2019

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Western Australia

LEGISLATIVE ASSEMBLY/COUNCIL

Interpretation Amendment Bill 2019

A Bill for

An Act to amend the *Interpretation Act 1984* to provide for the automatic repeal of Acts or the provisions of Acts that are to come into operation by proclamation and that are not proclaimed within 10 years of the Act or provision receiving Royal Assent.

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Interpretation Amendment Act 2019*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Act amended

This Act amends the *Interpretation Act 1984*.

4. Sections 27A and 27B inserted

At the end of Part III insert:

27A. Automatic repeal of unproclaimed laws

(1) In this section —

assent day, in relation to a postponed law, means the day on which Royal Assent is given to —

- (a) if the postponed law is an Act — the Act; or
- (b) if the postponed law is a provision of an Act — the Act that enacts the provision;

commencement proclamation, in relation to a postponed law, means a proclamation fixing a date on which the postponed law is to come into operation;

postponed law means an Act or a provision of an Act that is to come into operation on a day to be fixed by proclamation.

(2) This section applies to a postponed law that is enacted before, on or after the commencement of the *Interpretation Amendment Act 2019* section 4.

- 1 (3) Where a commencement proclamation has not been
2 made in relation to a postponed law within the period
3 of 10 years beginning on assent day, the postponed law
4 is repealed on the next day.
 - 5 (4) Where an Act or a provision of an Act is to commence
6 on the commencement of a postponed law, the Act or
7 provision is repealed on the repeal of the postponed
8 law under this section.
 - 9 (5) Where the assent day for a postponed law is 10 or more
10 years before the commencement of the *Interpretation*
11 *Amendment Act 2019* section 4, the postponed law is
12 repealed on the commencement of that section if no
13 commencement proclamation has been made in
14 relation to the postponed law before that section
15 commences.
- 16 **27B. Report by Minister on repeal of unproclaimed laws**
- 17 (1) The Minister must prepare a report for each calendar
18 year that —
 - 19 (a) specifies whether or not any postponed laws
20 were repealed under section 27A in the
21 calendar year; and
 - 22 (b) if a postponed law was repealed under
23 section 27A in the calendar year, lists the
24 postponed law.
 - 25 (2) The Minister must, within 14 sitting days after the
26 beginning of each calendar year, cause a report
27 prepared under subsection (1) for the previous calendar
28 year to be laid before each House of Parliament.
29

GLOSSARY

Term	Definition
Alberta Act	<i>Statutes Repeal Act 2013 Chapter S-19.3</i>
Canadian Statutes Repeal Act	<i>Statutes Repeal Act S.C. (Statutes of Canada) 2008, c.20</i>
Committee	Standing Committee on Uniform Legislation and Statutes Review
Expired provisions	Expired provisions are no longer part of the statute book and therefore not part of the law of Western Australia.
Form and content of the statute book	The form of the statute book is the manner in which statutes are presented and arranged for access. Examples include paper copies or in an electronic format on a website. The term also refers to how legislation is arranged; for example in alphabetical or chronological order, or by subject matter. The content of the statute book is the text of the legislation.
Inquiry	Self-initiated inquiry to ' <i>review the form and content of the statute book</i> '. The terms of reference are to identify enactments that are obsolete, exhausted, expired or as yet unproclaimed with a view to having them removed from the statute book. ²³³
Obsolete provisions	Obsolete provisions are no longer capable of application or effective operation, however they remain on the statute book and part of the law of Western Australia.
Proclamation	<p>A proclamation is a public announcement with statutory authority published in the <i>Government Gazette</i> and made by the Governor in Executive Council.</p> <p>Proclamation is an Executive action. This affects the Parliament's sovereignty as the commencement dates for legislation are controlled by the Executive. As the Committee has said, it is conceivable that a proclamation may never be made and the will of the Parliament, in passing the bill, would be frustrated. The Committee's published view is that Parliament should be responsible for determining when laws are to come into effect.²³⁴</p>

²³³ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 110, *Inquiry into the Form and Content of the Statute Book – Terms of Reference*, December 2017.

²³⁴ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 107, *Domestic Violence Orders (National Recognition) Bill 2017*, October 2017, p 9.

Term	Definition
Royal Assent	<p>Once a Bill has passed both Houses of Parliament, it is presented to the Governor who, as the representative of the third part of the Parliament, is authorised to grant the Royal Assent on behalf of her Majesty the Queen. The Bill thereupon is enacted and becomes an Act of Parliament.</p> <p>At this time the Act is in force, unless there is a specified date in the Act when the Act becomes operational or a specific provision in the Act that it comes into operation upon proclamation.</p>
Sunset Report	Sunsetting Review Committee, <i>Report on the Operation of the Sunsetting Provisions in the Legislation Act 2003</i> , September 2017, tabled in the House of Representatives on 23 October 2017 and in the Senate on 13 November 2017
Unproclaimed provisions	Unproclaimed provisions are those provisions not yet brought into operation by proclamation. This may be because of a need to coordinate legislation in various jurisdictions in Australia with a common commencement date, there may be a need to make subsidiary legislation before an Act can be brought into operation or administrative arrangements may need to be made before the legislation can commence.
2013 Bill	Statutes (Repeals and Minor Amendments) Bill 2013
2015 Bill	Obsolete Legislation Repeal Bill 2015
2016 Bill	Statutes (Repeals) Bill 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 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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