

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

REPORT 124

INQUIRY INTO THE FORM AND CONTENT OF THE STATUTE BOOK

GOVERNMENT RESPONSE

On 19 November 2019, the Standing Committee on Uniform Legislation and Statutes Review (the Committee) presented its Report 124 – *Inquiry into the Form and Content of the Statute Book* to the Legislative Council.

The Committee made 11 recommendations, of which 8 require a response from the Government in accordance with Legislative Council Standing Order 191(1). The Government has responded to all 11 recommendations.

Maintaining the Statute Book

The main avenue for making general housekeeping amendments to maintain the currency of the statute book is an omnibus bill. An omnibus bill, most often titled the Statutes (Repeals and Minor Amendments) Bill, makes only minor, non-controversial amendments to various Acts and repeals Acts that are no longer required. Omnibus bills are an efficient means by which the Parliament may make numerous minor amendments to diverse pieces of legislation without the need for separate amendment bills addressing many specific Acts.

The development of omnibus bills is overseen by the Department of Justice, and the Attorney General has the final decision about whether a matter is suitable for inclusion, in consultation with the Leader of the Government in the Legislative Council. Omnibus bills are referred to the Committee. All items within omnibus bills must either repeal obsolete legislation and/or contain minor amendments. They must not contain matters that may be the implementation of Government policy or deal with issues that are controversial, or legally or otherwise contentious.

Government response to the Committee's recommendations

Recommendation 1: The Government advise the Legislative Council of its time frame for introducing its proposed omnibus bill repealing obsolete legislation.

and

Recommendation 2: The Government introduce its proposed omnibus bill repealing obsolete legislation at the earliest opportunity, preferably to enable enactment in the Fortieth Parliament.

The Department of Justice is preparing an omnibus bill repealing obsolete legislation. The Bill will contain all of the Acts and provisions of Acts identified in the Committee's report as being obsolete or requiring further investigation that are suitable for inclusion in the Bill.

Recommendation 3: The Government give greater priority to 'Repeal Day' bills as part of a strategy to ensure the currency of the statute book.

The Government has a significant legislative reform agenda. The Government repeals obsolete legislation when the opportunity arises and if it is deemed appropriate to do so.

As noted above, the Department of Justice is preparing an omnibus bill repealing obsolete legislation. The Bill will address any obsolete legislation that would be part of a Repeal Day bill.

Recommendation 4: The Government make greater use of sunset provisions in subsidiary legislation to facilitate the identification and repeal of obsolete legislation.

The Government supports the use of sunset provisions in subsidiary legislation, when appropriate. The Government notes that sunset clauses can impose a substantial administrative and drafting burden, as each instrument must be reviewed in advance of its sunset date to give sufficient time to redraft an instrument or take action to preserve it. They are therefore not appropriate in all circumstances.

The Government notes the Economic Regulation Authority of Western Australia's recent Inquiry into reform of business licensing in Western Australia, which discusses the additional workload that sunset clauses create and the administrative burden of broader sunset regimes, such the Commonwealth and New South Wales models. The Government notes that a 2017 Independent Review into the NSW Regulatory Policy Framework recommended repealing the existing automatic sunset mechanism, noting that the process is resource-intensive and ineffective in ensuring regulation remains fit for purpose.

Recommendation 5: Whenever practicable, commencement provisions should specify the date or dates when provisions of an Act are to come into operation.

The Government continues to support commencement provisions specifying when an Act or particular provisions of an Act are to come into operation, when practicable and appropriate. Commencement by proclamation is used only where it is necessary, such as where subsidiary legislation is required to be drafted before commencement.

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.

and

In the event the Government does not accept Recommendation 6, 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*.

The Government supports in principle a legislative mechanism to manage unproclaimed enactments.

The Government does not support the Committee's recommendation to amend the Interpretation Act 1984 to provide for the automatic repeal of unproclaimed Acts or provisions, as set out in Appendix 9.

In some circumstances, it is necessary for the commencement of an Act or provision to be delayed. A good example of this is the Commonwealth Powers (De Facto Relationships) Act 2006. The model presented by the Committee does not provide for any flexibility in these circumstances.

The Government will consider implementing a more flexible mechanism, such as the Canadian model set out in the Statutes Repeal Act S.C. (Statutes of Canada) 2008, c.20.

Recommendation 8: The Government examine the merits of adopting a regulatory stewardship approach, as a statutory obligation, for Government departments in Western Australia

The Government does not support regulatory stewardship as a statutory obligation. However, the Government is committed to whole of government regulatory reform through its Streamline WA initiative.

Part of the Government's public sector reform agenda, Streamline WA is a whole of government initiative to make it easier to do business in Western Australia by improving regulation and regulatory practice. Streamline WA is not limited to legislation and is

also focused on ensuring better outcomes for Western Australians by improving their interactions with the State Government.

Streamline WA has established a working group of representatives from State Government agencies to improve regulatory practice and culture in the Western Australian public sector. The objective of this ongoing project is to create a more consistent approach to the application of regulation, to make it easier for businesses to understand and navigate regulatory requirements in this State.

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

and

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

and

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

The Government does not support the introduction of a law or the mandating of a system requiring the periodic review of all legislation, or requiring a list of legislation for repeal identified by periodic reviews to be tabled in both Houses of the Western Australian Parliament at least once in every calendar year.

The best system is one that is flexible and allows for priority to be given to enacting laws for the peace, order and good governance of the State when required. The Government repeals obsolete legislation when the opportunity arises and if it is deemed appropriate to do so.

It is anticipated that an omnibus bill repealing obsolete legislation will be introduced in the first half of 2020. The Bill will include all of the Acts and provisions of Acts identified in the Committee's report as being obsolete or requiring further investigation that are suitable for inclusion in the Bill.

The Government notes that Premier's Circular 2010/01 has been repealed. Nonetheless, the Government continues to follow the policy set out in Circular 2010/01.