

## United Kingdom Statutes in Force in Western Australia

### Terms of Reference

In 1978 the Commission was asked to review the Imperial Acts in force in Western Australia at the time of its founding and to recommend which of those still in force should be repealed and which should be re-enacted (whether in the same or different form) by the Parliament of Western Australia.

### Background of Reference

Under a well-established common law rule, at the time of the settlement of Western Australia in 1829, all statutes in force in the United Kingdom ("UK statutes"), which were reasonably applicable to conditions in the new colony, automatically became part of the law of Western Australia.<sup>1</sup> This included approximately 7000 statutes dating from 1235. Although many of these statutes had been replaced, of the statutes that remained in force<sup>2</sup> many were regarded as obsolete or unsuitable to modern conditions, at least in their existing form. There was also concern that these statutes were inaccessible due to archaic expression and the limited availability at public libraries.

Over a period of 12 years, the Commission built up a substantial database of information on the subject which included action taken by other domestic legislatures and recommendations of law reform agencies both in Australia and overseas.<sup>3</sup>

### Nature and Extent of Consultation

Due to the technical nature of the report, the Commission decided against the publication of a discussion paper. Instead, the Commission forwarded a copy of its 1993 draft report to interested members of the judiciary, academia and legal profession for comment. The Commission received 12 submissions in response to the draft report including submissions from the Chief Justice and other senior judicial officers, the Director of Public Prosecutions and the Assistant Parliamentary Counsel. The Commission released its final report in October 1994.<sup>4</sup>

### Recommendations

Emphasising the need to create and maintain certainty, clarity and accessibility of laws,<sup>5</sup> the Commission recommended that:

- One hundred and forty-two UK statutes that applied by reception should cease to be in force in Western Australia.<sup>6</sup>
- Twenty-three UK statutes should be repealed and re-enacted in whole or in part as they contain provisions that are still an important part of the law of Western Australia. This includes 13th century statutes that form the basis of the private landowning system and a provision of a statute that ensures that Parliament, and not the Crown, may levy a tax.

<sup>1</sup> This rule is often known as the 'Blackstone applicability test'.

<sup>2</sup> Because of the difficulty of retrospective application of the Blackstone applicability test, it is difficult to ascertain exactly how many UK statutes might have been received into law and might therefore still be in force in Western Australia.

<sup>3</sup> Specifically, New Zealand and Papua New Guinea.

<sup>4</sup> Law Reform Commission of Western Australia, *United Kingdom Statutes in Force in Western Australia*, Project No 75 (1994).

<sup>5</sup> This was reinforced in Law Reform Commission of Western Australia, *Review of the Criminal and Civil Justice System in Western Australia*, Project No 92 (1999), which emphasised the importance of plain language drafting in working towards an accessible legal system. Recommendation 2 of Project No 92 recommended that "...plain English should be implemented when revising or drafting new legislative and procedural provisions in response to recommendations in this Report and generally."

<sup>6</sup> The Commission considered that because the statutes are those of the United Kingdom Parliament and its predecessors, it would be more appropriate to provide that they cease to be in force (as has occurred in the Australian Capital Territory and Queensland) than to repeal them (as has occurred in New South Wales and Victoria).

- Eleven UK statutes, including the *Magna Carta* and the *Bill of Rights 1688*, should be preserved because of their historical value.
- Forty UK statutes should be preserved pending a review.

A number of consequential recommendations were also made including recommendations regarding the implementation of statutes that should be re-enacted, the avoidance of a clawback clause and the inclusion of a general saving clause along the lines of s 37 of the *Interpretation Act 1984* (WA). A comprehensive outline of recommendations may be found at pages 112–122 of the Commission's final report.

#### Legislative or Other Action Undertaken

In 1995, Cabinet approved the drafting of legislation to implement this report.<sup>7</sup> Parliamentary Counsel prepared a first draft, the Imperial Acts (Law Reform) Bill, and requested comments from the Commission. In August 1996, representatives of the Commission, the Solicitor General and Parliamentary Counsel met with the Attorney-General to discuss the proposed legislation. No further action has been taken.

Cabinet separately approved the drafting of legislation to repeal the *Sunday Observance Act 1677* ("the Act"), a statute the Commission recommended should be preserved pending a review. There was a concern that the service of telephone restraining orders under the *Restraining Orders Act 1997* (WA) on Sundays would be prevented by the operation of s 6 the Act which prevented the service of writs on a Sunday.<sup>8</sup> The *Sunday Observance Laws Amendment and Repeal Act 1997* (WA) repealed this Act.

#### Currency of Recommendations

The recommendations remain current and crucial to achieving certainty and clarity in the Western Australian legal system.

#### Action Required

Parliamentary Counsel have finalised a draft of the Imperial Acts (Law Reform) Bill for tabling in Parliament as soon as is practicable. Enactment of the Bill would substantially implement the Commission's recommendations.

#### Priority – Medium–High

This assessment is based on the ease with which the recommendations of the Commission may be implemented combined with the importance of removing archaic language, ensuring certainty in the legal system and achieving uniformity with other jurisdictions.

<sup>7</sup> Law Reform Commission of Western Australia, *Annual Report 1995–1996*, 28.

<sup>8</sup> See Western Australia, *Parliamentary Debates*, Legislative Council, 15 October 1997, 6799/1; Western Australia, *Parliamentary Debates*, Legislative Assembly, 20 November 1997, 8386/2; Western Australia, *Parliamentary Debates*, Legislative Assembly, 26 November 1997, 8726/1.