



25 September 2020

The Hon. Michael Mischin MLC
Shadow Attorney General
Deputy Leader of the Opposition in the Legislative Council

By email: michael.mischin@mp.wa.gov.au

Dear Mr Mischin

Imperial Acts (Law Reform) Bill

You are probably aware that the Law Reform Commission of Western Australia (**LRCWA**) was asked in 1978 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Acts in force in Western Australia at the time of its founding and to recommend which of those still in force should be repealed and which should be re-enacted (whether in the same or different form) by the Parliament of Western Australia.

That LRCWA review became known as Project No. 75.

As you are also no doubt aware, 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, which were reasonably applicable to conditions in the new colony, automatically became part of the law of Western Australia.

That included approximately 7000 statutes dating back to 1235.

When the LRCWA conducted its review, although many of those statutes had been replaced, of the statutes that remained in force, many were regarded as obsolete or unsuitable to modern conditions, at least in their existing form. There was also concern that those statutes were inaccessible due to archaic expression and the limited availability at public libraries.

Over a period of 12 years, the LRCWA 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.

The LRCWA issued a final report for Project No. 75 in October 1994, and their recommendations included:

- One hundred and forty-two UK statutes that applied by reception should cease to be in force in Western Australia.
- Twenty-three UK statutes should be repealed and re-enacted in whole or in part as they contain provisions that are still an important part of the law of Western Australia.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.
- 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.
- Consequential recommendations – including 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)*.

In 1995, Cabinet approved the drafting of legislation to implement the LRCWA's report recommendations.

Parliamentary Counsel prepared a first draft, the *Imperial Acts (Law Reform) Bill*, and requested comments from the LRCWA.

In August 1996, representatives of the LRCWA, the Solicitor General and Parliamentary Counsel met with the Attorney General to discuss the proposed legislation.

No further action has been taken, save that it is understood that work was proceeding on the draft Bill. It is unknown why this project stalled in 1996.

STEP WA has identified this project as one that has merit and which would be worthy to see through to its completion.

A member of STEP WA, who currently serves on its Policy Sub-committee, barrister Dr John Hockley, wrote to the Attorney General, The Hon Mr John Quigley MLA, on 15 March 2018 (almost 2 years before the STEP WA Policy Sub-committee formed), asking whether the WA government would consider enacting the *Imperial Acts (Law Reform) Bill*.

We **attach** a copy of Dr Hockley's letter for your reference. According to Dr Hockley, the reply he received from the Attorney General indicated that there were constitutional issues which would take time to work through.

We have asked Dr Hockley for a copy of the Attorney General's reply so that we can consider the merits of those issues. We will forward a copy of that reply to you, once to hand, in case you are interested.

What we would like to know from you is whether:

1. you are able to source and provide us with a copy of the *Imperial Acts (Law Reform) Bill* and, if not, can you provide us with any guidance as to how we might obtain a copy; and
2. the Opposition would support the progress of that Bill if it were introduced into Parliament.

Contact

Your primary point of contact for this enquiry is Jim O'Donnell, whose details are below.

STEP WA is willing to work with the WA Government and Opposition on any issues, points of law and possible reform touching or concerning trust and estate matters in this State. We are very willing to respond to questions.

Yours sincerely



Jim O'Donnell

Chair of STEP Western Australia

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FRANCIS BURT
— CHAMBERS —

15 March 2018

Mr John Quigley,
Attorney General,
10TH Floor,
London House,
216 St. Georges Terrace,
Perth, WA 6005.

Dear John,

**Re: *Imperial Acts (Law Reform) Bill:*
An Act to re-enact the United Kingdom Statutes in Force in
Western Australia to Western Australian Legislation.**

I am writing to ask if you and the Premier and your government will consider enacting the above Act to bring Imperial Legislation back to Western Australia. The passing of this Act would be a historic day for Western Australia.

It is quite probable that the three "One Nation" members of the Legislative Council would support this Bill. In fact, you may find that there is no opposition to the Bill.

The Bill is already drafted. I quote from the Summary of Law Reform Commission of Western Australia Project No 75, October 1994.

In 1995 Cabinet approved the drafting of legislation to implement this report. 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.

The enacting of the Draft Bill would remove archaic language, ensuring certainty and achieve clarity in the legal system as well as achieving uniformity with other legal systems.

I recently spoke with Emeritus Professor Peter Handford of the UWA Law School who was a former Executive Officer and Director of Research for The Law Reform Commission of Western Australia, who indicated that he, had the time to be of assistance to you or the Commission in the implementation of the draft *Imperial Acts (Law Reform) Bill*, if needed.

Thanking you,

Yours faithfully,

John Hockley.