

LEGAL DEPOSIT BILL 2011

Introduction and First Reading

Bill introduced, on motion by **Mr J.H.D. Day (Minister for Culture and the Arts)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR J.H.D. DAY (Kalamunda — Minister for Culture and the Arts) [12.33 pm]: I move —

That the bill be now read a second time.

Legal deposit laws have been in force for nearly 500 years, initially in France, to enable countries or states to collect, record and make available the published cultural and intellectual heritage of that jurisdiction. It is a statutory provision that obliges publishers to deposit copies of their publications with a recognised central institution. In Australia this is primarily the National Library of Australia or state libraries. Those libraries that receive material under legal deposit legislation have a reciprocal obligation to collect, store, preserve and provide access to those materials for future generations.

Western Australia is currently the only state within Australia that does not have legal deposit legislation. Legal deposit provisions were included in the Copyright Act 1895 and the Newspaper Libel and Registration Act 1884. However, those laws were repealed in 1994 and 2005 respectively. Fortunately, many Western Australian publishers of print material have maintained the spirit of legal deposit following the repeal of these acts, and have continued to provide copies of their publications to the State Library.

The benefit to Western Australia from this legislation is that it will capture and provide access to the published record of the state's economic, social, creative, scientific and educational activities. It will provide almost comprehensive coverage of these materials, and these collections will form the basis for much of the historical research in this state for decades, if not centuries, to come. Thorough and total records are required to build a complete and accurate picture of the past. Notwithstanding the gap in legal deposit legislation, the State Library has extensive print collections from the state and local governments, commercial and non-government organisations, and publishers of all descriptions. However, the traditional legal deposit model did not extend to non-print publications such as music, film and multimedia material. This limitation leaves gaps in the recording of Western Australia's social, political and economic history. This legislation recognises that the documentary history of this state comes in more than just the printed form.

The world is now embracing powerful new information technologies, which are dramatically changing what it means to "publish" a work. This is particularly evident, for instance, with government information. For most government agencies the internet is now the primary means of communicating information to the public. Most agency or department information, from reports and media releases to guidelines and standards, is posted on government websites, often in place of publication in the printed form. Government invests significantly in creating and publishing these works. Legal deposit ensures this investment is captured and carried forward, securing it for future historians and researchers. Beyond the government sphere, even less is being produced in printed form. We are entering the age of the e-book. Estimates of the rate of change to digital publishing vary, but conservative estimates indicate that by 2020, only 25 per cent of all titles worldwide will be published in print form alone, with 75 per cent being available only digitally, or in both digital and print form. It is critically important to capture digital information in order to record the state's history and culture.

The definition of materials to be deposited under this bill is deliberately very broad to ensure that any document related to the heritage of Western Australia will be collected, regardless of length, format and medium. It will continue to cover the print materials included in previous legislation such as books, newspapers, magazines, directories, newsletters, maps, brochures and sheet music. As I have already mentioned, this bill broadens the definition of a publication to include information recorded on other media such as music and video cassettes, compact discs, CD-ROMs and DVDs. These definitions have been framed broadly to account for future technological developments. Most states in Australia and the commonwealth have legal deposit legislation covering these formats.

The final part of the definition is "information on a website". This is a very broad definition and may cover a separate document such as a report, an e-book, music or video online, or a part of or a complete website that relates to Western Australia. With the globalisation of information, Western Australian information may be held on a server anywhere in the world, but the definition of a WA internet document ties the document to a person resident in the state or a company whose primary place of business is in this state and who controls the content on the website.

There may be concerns that the definition of “documents” in the bill is too broad and may attract surplus material of little value or relevance. However, to prescribe exemptions to the bill will decrease the possibility of gaining a full and relevant collection. Items deposited under legal deposit will be subject to the State Library’s collection development policy and there will be provisions in regulations for the state librarian to exempt particular persons or a class of persons from this definition so that for some types of materials only a sample is collected, as is already the case with some print materials.

Within Australia, this legislation provides a benchmark, with only the Northern Territory having legal deposit legislation for internet documents. In other jurisdictions, however, such as New Zealand and the United Kingdom, as well as many countries in Europe, this is now the norm for legal deposit, as countries seek to ensure that their future cultural heritage is collected and preserved.

Collecting documents from the internet within Australia does present challenges, not least because of the requirements of the commonwealth Copyright Act 1968. Due to restrictions on copying documents imposed by the federal copyright legislation, under this bill, WA internet documents are treated in the same manner as other public documents, with the onus on the publisher for supplying the document or information about the document. Once the State Library of Western Australia has been notified of a Western Australian internet document, it will be assessed against the library’s collection development policy to determine whether the online information is required. If the item meets the selection criteria, the publisher will then supply a copy to the library or give permission for the item to be copied from the internet. The State Library has considerable experience in this area, having worked for many years to preserve Western Australia’s websites and internet documents as part of the National Library of Australia’s PANDORA initiative. This bill will increase those powers and extend the range of documents collected.

The intention of this bill is to ensure a comprehensive state collection of heritage items. It is not intended to be punitive, and deposit will be encouraged rather than a penalty imposed. This legislation for legal deposit is designed to encourage compliance rather than to pursue offenders. Penalties or civil action would be undertaken only if extensive negotiations failed for significant items.

Although the bill has been developed to give overarching powers, much of the detail will be included in the accompanying regulations. These will be developed in a cooperative and consensual approach with the industries impacted. Publishers already deposit material with the National Library of Australia, and processes for the deposit of public documents are well developed Australia-wide. Processes for the deposit of internet documents have been developed in New Zealand and the United Kingdom and this state can learn from their experience. These include issues of access, storage, deposit of documents at regular intervals, protecting commercial interests and others. Legal deposit legislation is in place in Canada, France, the United Kingdom, New Zealand, Spain, Sweden and the United States of America. Most countries rely on a legal instrument of some sort to ensure the comprehensiveness of their heritage collections. The United Nations Educational, Scientific and Cultural Organization has noted that a well-organised legal deposit scheme is an essential element of any national public policy of freedom of expression and access to information. The reintroduction and expansion of legal deposit legislation in this state will be welcomed by historians, researchers, librarians and all those who use and value our documentary cultural heritage. I commend this bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.