



FIRST SESSION OF THE THIRTY-SIXTH PARLIAMENT

**SPECIAL REPORT OF THE
STANDING COMMITTEE ON LEGISLATION
IN RELATION TO
INTERGOVERNMENTAL AGREEMENTS,
UNIFORM SCHEMES AND UNIFORM LAWS:
AMENDMENTS TO STANDING ORDERS
230(c) AND (d)**

Presented by Hon Jon Ford MLC (Chairman)

Special Report
October 2001

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

May 24 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“1. Legislation Committee

- 1.1 *A Legislation Committee* is established.
- 1.2 The Committee consists of 7 members.
- 1.3 The functions of the Committee are -
 - (a) to consider and report on any bill referred by the House;
 - (b) to review the form and content of the statute book;
 - (c) to inquire into and report on any proposal to reform an existing law;
 - (d) to consider and report on a bill referred under SO 230 (c).
- 1.4 Unless otherwise ordered, the policy of a bill referred under subclause 1.3(a) at the second reading or any subsequent stage is excluded from the Committee’s consideration.
- 1.5 The Committee of its own motion, or on a reference from a Minister, may inquire into and report to the House on any or all aspects, including policy, of a proposal for an agreement or arrangement that, to have effect, would necessitate the enactment of legislation of a type described in SO 230 (c).”

Members as at the time of this inquiry:

Hon Jon Ford MLC (Chairman)	Hon Adele Farina MLC
Hon Giz Watson MLC (Deputy Chair)	Hon Peter Foss MLC
Hon Kate Doust MLC	Hon Bill Stretch MLC
Hon Paddy Embry MLC	

Staff as at the time of this inquiry:

Mia Betjeman, Principal Advisory Officer	Louis Gargan, Committee Clerk
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Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

Website: <http://www.parliament.wa.gov.au>

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Government Response

This Report is subject to Standing Order 337:

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.

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

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EXECUTIVE SUMMARY AND RECOMMENDATIONS FOR THE
SPECIAL REPORT OF THE STANDING COMMITTEE ON LEGISLATION
IN RELATION TO

INTERGOVERNMENTAL AGREEMENTS, UNIFORM SCHEMES AND UNIFORM LAWS:
AMENDMENT TO STANDING ORDERS 230(c) AND (d)

EXECUTIVE SUMMARY

1. Pursuant to standing order (SO) 230(c), the resumption of debate for the second reading of a bill that gives effect to an intergovernmental agreement or adopts or introduces a uniform scheme (**uniform bill**) is to be a date not less than 30 days from the day that the bill is read a first time. By operation of SO 230(d) and the Legislation Committee's (**Committee**) terms of reference, a uniform bill stands referred to the Committee, which must report within the 30-day period.
2. By this report the Committee recommends amendments to the Standing Orders of the Legislative Council to insert a standing order that specifically deals with uniform bills and which:
 - provides the House with the flexibility to order that a uniform bill be referred to a committee other than the Legislation Committee, or not referred to a committee at all;
 - provides the House with the flexibility to order that the period within which a committee must report to the House on a uniform bill be altered; and
 - suspends the second reading debate on a uniform bill until the expiry of 30 days of the date of the first reading or until it has been reported from a committee, whichever is the later.
3. The Committee's proposed amendments are set out in Appendix 2 to this report.

RECOMMENDATIONS

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Recommendation 1: The Committee recommends that the Legislative Council Standing Orders be amended in accordance with Appendix 2 to this report.

SPECIAL REPORT OF THE STANDING COMMITTEE ON LEGISLATION

IN RELATION TO

INTERGOVERNMENTAL AGREEMENTS, UNIFORM SCHEMES AND UNIFORM LAWS: AMENDMENTS TO STANDING ORDERS 230(c) AND (d)

1 THE COMMITTEE'S TERMS OF REFERENCE

1.1 The Legislation Committee's (**Committee**) terms of reference include —

1.3 *The functions of the Committee are –*

...

(d) *to consider and report on a bill referred under SO 230(c).*

1.4. *Unless otherwise ordered, the policy of a bill referred under subclause 1.3(d) is excluded from the Committee's consideration.*

1.2 Pursuant to SO 230(c), the resumption of debate for the second reading of a bill that gives effect to an intergovernmental agreement or adopts or introduces a uniform scheme (**uniform bill**) is to be a date not less than 30 days from the day that the bill is read a first time. By operation of SO 230(d) and the Legislation Committee's (**Committee**) terms of reference, a uniform bill stands referred to the Legislation Committee, which must report within the 30-day period.

1.3 These terms of reference reflect, in part, those of the former Constitutional Affairs Committee of the Thirty-Fifth Parliament, whose mandate encompassed examining uniform bills which stood referred under SO 230(d).

2 INTERGOVERNMENTAL AGREEMENTS AND UNIFORM SCHEMES

2.1 The federal structure of government in Australia, with a constitutional division of power between the central Commonwealth government and regional state and territory governments, requires cooperation between these bodies to achieve national uniform laws in areas where the central Commonwealth government has limited or no constitutional power.

2.2 Intergovernmental agreements are utilised to effect uniform laws where the Commonwealth does not have the power to legislate in the particular area. Uniform schemes are implemented in a variety of ways, depending on the degree of flexibility and permanence required.

- 2.3 There are significant benefits in uniform laws, particularly in industry and commerce. It is appropriate that there be uniform laws to regulate a national market, rather than having eight separate markets with different conditions, as is possible if each state and territory were to legislate in the field. Uniform laws make it easier for consumers and businesses to operate, because there is greater certainty as to their rights and obligations. Practical benefits such as the removal of duplication of administration and compliance costs, increased efficiency and economies of scale also result from uniform laws.
- 2.4 Proper scrutiny of national legislative schemes implementing uniform laws is a matter with implications for all state parliamentary legislative scrutiny committees.¹ The common concern is that the role of State Parliament as the legislature is threatened by the rise of uniform schemes that employ a method of law making which in some cases effectively excludes State Parliament from the scrutiny process.
- 2.5 The disadvantages associated with uniform laws relate to the possible erosion of the States' powers. It is important to take into account the role of the Western Australian Parliament in determining the appropriate balance between the advantages to the State in enacting uniform laws, and the degree to which Parliament, as legislature, loses its autonomy through the mechanisms used to achieve uniform laws.

3 HISTORY OF THE DEVELOPMENT OF STANDING ORDERS 230(c) AND (d)

- 3.1 It is evident from prior debate in the House on SOs 230(c) and (d) and national schemes of uniform legislation, that the imposition of a delay between the second reading speech and the second reading debate in relation to bills implementing uniform legislation was directed at proper scrutiny of such bills by Parliament and proper accountability of executive actions to Parliament.
- 3.2 An overview of the genesis of SO 230(c) and (d) is instructive. Standing order 230(c) was inserted into the SO by resolution of the House passed on October 21 1992. In its original form, 120 days were to elapse between first reading and commencement or resumption of the second reading. The 120 days was to enable Members to scrutinise the bill and raise any concerns. At this time, SO 230(d) (referral to a Committee) did not exist.

¹ The matter has been the subject of continuing study by the Working Group of Chairs and Deputy Chairs of Australian Scrutiny of Primary and Delegated Legislation Committees (**Working Group of Chairs**) since 1994. Past meetings have involved discussion and consideration on proposed structures by which scrutiny of both primary and subordinate national scheme legislation can be achieved.

The Working Group of Chairs has published two papers dealing with scrutiny of national scheme legislation. A Discussion Paper was released in 1995 and the Position Paper followed in 1996. Both the Discussion Paper and Position Paper have been tabled in the Western Australian Parliament.

- 3.3 In 1995, the 120 day period was reduced to the current 30 days “... *on the basis that 30 days should provide sufficient time within which members can identify perceived defects in, or unresolved issues arising from, the bill.*”²
- 3.4 It was not until March 1998 that paragraph (d) was added to SO 230 on the recommendation of a select committee that had been appointed to review the operations of the committee system. The committee, when discussing the intended ambit of operations for the Constitutional Affairs Committee, noted —

*It is regrettable that the House has not used the “30 day” rule for its original purpose viz, to give adequate time for the House to consider the full implications for the State of legislation giving effect to intergovernmental agreements. A standing referral of this type of legislation to the Constitutional Affairs Committee after the Minister’s second reading speech would give the committee a 30 day period within which to consider the bill’s implications.*³

- 3.5 The terms of reference for the former Constitutional Affairs Committee were amended to include the scrutiny of uniform legislation. When the House reconstituted the committees this year, the standing referral passed to the Legislation Committee as part of the redistribution of the former Constitutional Affairs Committee’s terms of reference.
- 3.6 The original intent was to allow for a ‘cooling off’ period, initially 120 and, later, 30 days during which time it was up to individual members to read the legislation and raise matters of interest or concern when debate was resumed on second reading. Standing referral to a committee came at a later stage and in the expectation that formal consideration by a committee within the 30 days would produce a more informed appreciation of the mechanics, but not the policy, of the legislation.

4 THE COMMITTEE’S ROLE AND EXPERIENCE IN REVIEWING UNIFORM BILLS

- 4.1 One of the primary functions of the Legislative Council is the review and scrutiny of legislation. As discussed in section 2, under many methods of implementing uniform laws the role of the House in scrutinising legislation is removed to other Parliaments and bodies outside Western Australia.
- 4.2 Where the uniform bills are not accompanied by sufficient information to alert the Western Australian Parliament to serious constitutional implications, the scrutiny role of the Committee may be the only mechanism to do so. However uniform bills, in

² Standing Orders Committee, *Report No. 1 August 1995*, p 5.

³ *Report of the Select Committee to Review the Committee System*, 1998, pp 17, 18.

general, represent a restriction on the operation of the Committee due to the pressure to report bills without amendment or within a particularly short time frame, such as the 30 days permitted by SOs 230(c) and (d).

4.3 The quantity of bills that come to the Committee under SO 230(c) is considerable and there is a growing practice of introducing two or more companion bills in order to give intergovernmental agreements legislative effect. An example of the 'multi bill' approach used in relation to bills introduced this session is the Corporations Bills package: Corporations (Commonwealth Powers) Bill 2001; Corporations (Ancillary Provisions) Bill 2001; Corporations (Administrative Actions) Bill 2001; and Corporation (Consequential Amendments) Bill 2001.

4.4 To date in this session the Committee has considered and reported on ten uniform bills:

- Acts Amendment (Federal Courts and Tribunals) Bill 2001;
- Agricultural and Veterinary Chemicals (Western Australia) Amendment Bill 2001;
- Consumer Credit (Western Australia) Amendment Bill 2001;
- Co-operative Schemes (Administrative Actions) Bill 2001;
- Corporations (Commonwealth Powers) Bill 2001;
- Corporations (Ancillary Provisions) Bill 2001;
- Corporations (Administrative Actions) Bill 2001;
- Corporation (Consequential Amendments) Bill 2001;
- Road Traffic Amendment Bill 2001; and
- Road Traffic Amendment (Vehicle Licensing) Bill 2001.

4.5 The Committee is currently considering four bills that implement a uniform scheme:

- Electronic Transactions Bill 2001;
- Offshore Minerals Bill 2001;
- Offshore Minerals (Consequential Provisions) Bill 2001; and
- Offshore Minerals (Registration Fees) 2001.

- 4.6 Furthermore, the Committee is aware that, as at the date of this report, there are another four bills that have been tabled in the Legislative Assembly which would fall within the Committee's remit under SO 230(d) if and when they are tabled in the House.⁴
- 4.7 Much uniform legislation is complex in character and, leaving aside the legislative purpose, the Committee must concern itself with matters such as the jurisdictional interlocking mechanisms and the extent (if any) to which the State is subordinating its instrumentalities or governmental capacities to an external authority.
- 4.8 It is apparent to the Committee that the 30 days referred to in SO 230(d) is too short a time for many uniform bills to be given more than a cursory examination. Indeed, due to the Committee's legislative workload, earlier this session the House suspended standing orders to extend the time within which the Committee is to report on the package of offshore minerals legislation.

5 THE COMMITTEE'S PROPOSAL TO AMEND THE STANDING ORDERS

Overview

- 5.1 The Committee considers that amendments to the SO in the form of Appendix 2 are desirable.
- 5.2 The proposed amendments will provide for a separate SO addressing uniform bills and will enable the House to order (by majority resolution) that a uniform bill:
- i) be referred to a committee other than the Legislation Committee;
 - ii) not be referred to any committee; and/or
 - iii) be reported to the House within a period other than the 30-day period expressed in SO 230(d).
- 5.3 In addition the amendments provide for the suspension of the second reading debate on a uniform bill until expiry of 30 days of the date of the first reading or before it has been reported from a committee, whichever is the later.
- 5.4 The Committee's proposed amendments will provide for more flexibility than otherwise exists. Currently, in order to vary matters referred to in SOs 230(c) and (d) (for example, the period of time within which the Committee must report on a bill),

⁴ Child Support (Adoption of Laws) Amendment Bill 2001, Child Welfare Amendment Bill 2001, Gene Technology Bill 2001 and Gene Technology Amendment Bill 2001.

the House must suspend the relevant standing orders. Two factors can impede this procedure:

- i) Suspension of standing orders requires an order by absolute majority of the House.
- ii) A precedent of suspending standing orders on a regular basis is undesirable.

Paragraph 1 – amendment to existing standing order 230

5.5 This amendment deletes those subparagraphs in current SO 230 that address uniform legislation. Such matters are now to be addressed by new SO 230A.

Paragraph 2 – new standing order 230A

Paragraph (1)

5.6 Paragraph (1) of the amendment specifies the bills to which new SO 230A applies. Subparagraphs (a) and (b) reflect the description currently found in current SO 230(c).

5.7 New SO 230A is to apply to a bill that –

(a) ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or

(b) by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth.

Paragraph (2)

5.8 Paragraph (2) of the amendment specifies that the second reading stage of a bill is not to be resumed where SO 230(a) applies, or commence where SO 230(b) applies, within 30 days of the date of the bill's first reading. This reflects the current operation of SO 230(c).

5.9 Paragraph (2) goes further and provides that the second reading of the bill is not to resume "... *before it has been reported from a committee, whichever is the later.*"

5.10 Therefore if the House, by order, requires a committee to report on a uniform bill within, for example, 60 days, then the second reading stage of the bill cannot resume until the committee reports, even if 30 days have passed. However if the committee reports within the 30 day period (for example, after 20 days) the second reading stage of the bill cannot resume until after the 30 day period has expired.

5.11 Paragraph (2) of the amendment therefore ensures that:

- i) if a bill has been referred to a committee, the House has the benefit of the committee's report before the second reading stage is resumed; and
- ii) if a bill is not referred to a committee, or a committee reports earlier than expiry of the 30-day period, the second reading stage does not resume until 30 days has passed. This preserves the 30-day delay to ensure that members can identify perceived defects in, or unresolved issues arising from, the bill.

5.12 If the second reading stage of a uniform bill is to resume on a day earlier than the 30 days referred to then the House must suspend standing orders to do so. This reflects the current operation of SO 230(c).

Paragraph (3)

5.13 At present all uniform bills stand referred to the Legislation Committee. Paragraph (3) of the amendment provides the House with the flexibility to order that a uniform bill be referred to a committee other than the Legislation Committee, or not to refer it to a committee at all.

5.14 There are obvious advantages in the House referring a uniform bill to a committee (other than the Legislation Committee), where a committee's terms of reference are closely aligned with the subject matter of the bill.

5.15 In making this recommendation the Committee is not endorsing the current structure of committees. The Committee believes that uniform bills are better handled by a small committee dedicated to that task.

5.16 The Committee notes that, where appropriate, it is always open to another committee to which a uniform bill has been referred, to consult with the Committee on matters involved in a consideration of uniform bills, for example, by way of subcommittee: SO 339.

Paragraph (4)

5.17 At present, under SO 230(d) the Legislation Committee must report within the 30 day period referred to in SO 230(c), that is, 30 days from the day that the bill is read a first time.

5.18 Paragraph (4) of the amendment provides the House with the flexibility to order that the period within which a committee must report to the House on a uniform bill may be longer, or shorter, than the 30 days referred to.

5.19 It is apparent to the Committee that the 30 days referred to in SO 230(d) is too short a time for many uniform bills to be given more than a cursory examination, particularly when:

- i) the quantity of bills that come to the Committee under SO 230(d) is considerable (refer to paragraphs 4.3 to 4.6);
- ii) there is a growing practice of introducing two or more companion bills in order to give intergovernmental agreements legislative effect (refer to paragraph 4.3);
- iii) much uniform legislation is complex in character and will require a more detailed analysis than a 30 day period might have provided (refer to paragraph 4.7); and
- iv) the scrutiny of uniform bills is only one aspect of the Committee's terms of reference and, at any particular time, the Committee may also be considering other bills and issues of law reform.

Paragraph (5)

5.20 Paragraph (5) of the amendment reflects the restriction currently found in SO 230(d).

Legislative Council Notice Paper: Order of the Day No 5 (notice given May 1 2001)

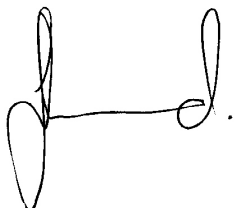
5.21 The Committee notes that there is currently a motion on the notice paper to be debated, which addresses amendments to SO 230. The motion includes an amendment to paragraph (d) by deleting the words "*Constitutional Affairs Committee*" and substituting the words "*Legislation Committee*". If the recommendation of this report is adopted before that motion is debated, then that portion of the motion will be superseded.

Recommendation 1:
The Committee recommends that the Legislative Council Standing Orders be amended in accordance with Appendix 2 to this report.

6 REQUESTS FOR RESPONSIBLE MINISTERS TO PROVIDE SPECIFIED INFORMATION

6.1 The Committee needs to receive certain information as soon as possible after a uniform bill stands referred. The Committee has a limited time within which to review a uniform bill and it needs sufficient time to consider matters pertaining to the uniform bill in order to adequately scrutinise the bill and report to the House.

- 6.2 The Committee has taken administrative steps to facilitate its consideration of uniform bills by writing to all Ministers in the form of Appendix 3. It is hoped that once a uniform bill stands referred to a committee pursuant to SO 230(d), the responsible Minister will ensure that the requested information is immediately provided to the relevant committee.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small 'd' shape, ending with a period.

Hon Jon Ford MLC
Chairman

Date: October 25 2001

APPENDIX 1

EXTRACT FROM THE LEGISLATIVE COUNCIL STANDING ORDERS

The following is an extract of SO 230 of the Legislative Council Standing Orders:

“ **Question for second reading**

230 After the first reading motion may be made:

- (a) *"That the Bill be now read a second time"* and the speech of the Minister or Member in charge given, at the conclusion of which the debate shall be adjourned; or
- (b) That the second reading be made an order of the day for the next sitting.
- (c) Resumption of debate under paragraph (a), or the day fixed under paragraph (b), for a Bill that -
 - (i) ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or
 - (ii) by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth,

shall be a date that is not less than 30 days from the day on which the Bill was read a first time, but in calculating that period, no account shall be had of any prorogation that intervenes where the Bill is restored in the succeeding session.

- (d) A bill to which paragraph (c) applies stands referred to the [*Legislation Committee*]⁵ which shall report on the bill within the 30 day period prescribed in that paragraph. The policy of a bill so referred, evidenced by an explanatory memorandum or the second reading speech of the Minister having charge of the bill, is not a matter for inquiry by the committee. ”

⁵ As proposed to be amended by a motion listed on the Legislative Council Notice paper (notice given May 1 2001) which motion proposes to amend SO 230 including, in paragraph (d) deletion of the words “Constitutional Affairs Committee” and substituting the words “Legislation Committee”.

APPENDIX 2

PROPOSED AMENDMENTS TO THE LEGISLATIVE COUNCIL STANDING ORDERS WITH REGARD TO UNIFORM LEGISLATION

1. Standing order 230 is amended by deleting paragraphs (c) and (d).
2. The following standing order is inserted after SO 230 —

“ **230A. Uniform legislation**
 - (1) This order applies to a bill that —
 - (a) ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or
 - (b) by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth.
 - (2) The second reading stage of a bill is not to be resumed where SO 230(a) applies, or commence where SO 230(b) applies, within 30 days of the date of the bill’s first reading or before it has been reported from a committee, whichever is the later.
 - (3) Unless otherwise ordered, a bill when read a first time stands referred to the *Legislation Committee*.
 - (4) The *Legislation Committee*, or other committee, receiving a bill under subclause (3) is to present its final report not later than 30 days of the day of the reference or such other period as may be ordered by the House.
 - (5) The policy of a bill is not a matter for inquiry by a committee receiving it. ”

APPENDIX 3

**EXAMPLE OF THE LETTER SENT BY THE COMMITTEE TO ALL
MINISTERS ON AUGUST 16 2001**



Hon Dr G I Gallop MLA

Premier; Minister for Public Sector Management; Federal Affairs; Science; Citizenship and Multicultural Interests

24th Floor

197 St George's Terrace

PERTH WA 6000



Dear Minister

**Uniform Legislation: Information required by the Legislation Committee on the tabling of
Uniform Legislation in the Legislative Council**

On May 24 2001 the Legislative Council appointed the Legislation Committee (Committee) with the attached terms of reference. One of the functions of the Committee is to consider and report on Bills referred under Standing Order 230(c). Accordingly Bills that:

- ratify or give effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or
- by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the Commonwealth,

stand referred to the Committee for inquiry and report to the Legislative Council within 30 days from the day on which the Bill was read a first time.

In order to assist with the conduct of its inquiries, the Committee requests that, at the time a Bill to which Standing Order 230(c) applies is tabled in Parliament, if you are the responsible Minister, you ensure that the following information is immediately provided to the Committee:

- a) a copy of the relevant intergovernmental agreement;
- b) if (a) is not available, a copy of the most recent draft with a statement as to the status of that draft;
- c) a statement as to any timetable for the implementation of the legislation; and
- d) a copy of the Explanatory Memorandum or clause notes to the Bill.

The Committee also requests that you ensure that relevant Chief Executive Officers and Heads of Department are notified of the Committee's request. Departmental staff can then prepare the

PARLIAMENT HOUSE PERTH WA 6000 TELEPHONE +61 8 9222 7222
FACSIMILE: HOUSE +61 8 9222 7809 COMMITTEES +61 8 9222 7805
E-MAIL (GENERAL OFFICE): council@parliament.wa.gov.au

requested documentation for contemporaneous presentation to the Committee when the Bill is tabled in the Legislative Council.

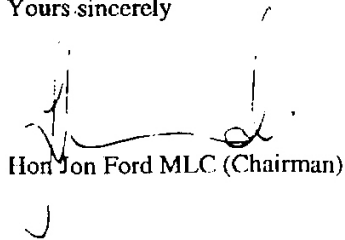
Material should be lodged with:

Mr Louis Gargan
Committee Clerk to the Legislation Committee
Legislative Council Committee Office
Parliament House
Perth WA 6000

A similar letter is being sent to other Ministers. For further information please contact Mr Gargan on 9222 7410. If you wish to discuss substantive issues please contact Mia Betjeman, Principal Advisory Officer (9222 7472) or Lisa Hanna, Research Officer (9222 7408).

Thank you in anticipation of your cooperation.

Yours sincerely



Hon Jon Ford MLC (Chairman)

August 16 2001

