

LEGISLATION BILL 2021

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

Second Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [6.35 pm]: I move —

That the bill be now read a second time.

A bill with substantially the same content as this bill was introduced into the Legislative Assembly in June 2018 and was passed without amendment by the Legislative Assembly in October 2018. It was introduced into the Legislative Council in October 2018, and was awaiting a second reading when it lapsed.

An important responsibility of government is to provide public access to accurate, up-to-date and reliable versions of legislation in a timely and efficient manner. This responsibility stems from the principles that everybody is presumed to know the law, and that ignorance of the law is no excuse. Neither of these principles can operate fairly and effectively if the law is not made publicly accessible. In Western Australia, this responsibility is carried out by the Parliamentary Counsel's Office and the government printer. Individual acts as passed and bound volumes of acts passed each year are published in hard copy. Subsidiary legislation as made is generally published in full in the *Government Gazette*, which is published in both hard copy and electronic forms. Reprints of acts and subsidiary legislation—that is, with their amendments incorporated—are prepared by the PCO under the authority of the Reprints Act 1984 and printed and published under the authority of the government printer.

The WA legislation website provides public access to WA legislation in electronic form. Previously hosted by the State Law Publisher, the website is now hosted by the PCO. The work of maintaining and updating the collections of material on this website has always been undertaken by the PCO staff. Under current WA law, generally only hard copy versions of acts and hard copy versions of the *Government Gazette* in which subsidiary legislation is published have official status. Electronic versions on the WA legislation website and the electronic version of the *Government Gazette* have no official status.

Demand for printed copies of WA legislation has steadily declined over recent years. People have come to rely on the availability of the WA legislation website as a means of accessing legislation. Usage of the WA legislation website continues to increase, in line with the trend in other Australasian jurisdictions. Hard copy reprints are produced only periodically, while the electronic consolidations on the WA legislation website are updated each time an enactment is amended. This means that hard copy reprints can quickly become out of date and potentially misleading, while the electronic consolidations provide up-to-date access to current law. The number of subscribers to the *Government Gazette* also continues to decrease. It is a reasonable assumption that most people who want to access WA subsidiary legislation do so by looking at the electronic version of the *Government Gazette* in which it appears or the versions on the WA legislation website. Many other jurisdictions no longer require that subsidiary legislation be published in full in their gazette. Instead, the making of an item of subsidiary legislation—along with details of where it may be accessed—is merely notified in the gazette or on a legislation website, and the full text of the item is included in the collection of legislation made available on a legislation website.

A general decline in the demand for printed copies of legislation and an increased demand for electronic legislative material has had a further consequence. Most other Australasian jurisdictions have reduced or discontinued entirely the production of printed versions of legislation, and have given electronic versions official status. Electronic versions of legislation now have official status in the commonwealth, New South Wales, Queensland, the ACT, Victoria and New Zealand. In those jurisdictions, people wanting their own official versions can simply print these from the electronic versions available on the relevant websites. For those people who want access to commercially printed and bound legislation, some jurisdictions have moved, or are moving, to a print-on-demand service.

The current processes for publishing WA legislation have a number of disadvantages. First, electronic versions of legislation lack official status. Under WA legislation, only printed copies of WA acts and subsidiary legislation are given evidential status in judicial and other proceedings. Electronic versions of WA legislation and the *Government Gazette*, which is the format in which most people access this material, have no official status. This means that the current processes for the publication of WA legislation, particularly the publication of subsidiary legislation in the *Government Gazette*, are unnecessarily expensive, inefficient, and inconvenient for users.

Second, the current editorial powers available under the Reprints Act 1984 are unnecessarily limited in nature and scope. That act confers power on the PCO to make formal amendments in reprints—such as updating drafting styles, correcting certain inconsistencies, errors and anomalies and changing outdated references. These changes would otherwise have to be made by way of amendments enacted by Parliament which, given their minor nature, would not be an efficient use of parliamentary time. It is also very difficult for Parliament to find time to consider and enact

Statutes (Repeals and Minor Amendments) Bills, which would otherwise be the usual vehicle for making these kinds of amendments.

I note that there is an important restriction on the exercise of these editorial powers. They must not alter or otherwise affect the substance or operation of any written law. Currently, the editorial powers can be exercised only in the preparation of hard copy reprints. They cannot be exercised in the preparation of the electronic versions of legislation made available on the WA legislation website. This deprives users of legislation of the benefits of the timely exercise of editorial powers to maintain the quality and accuracy of material on the WA legislation website. It also adds unnecessary complexity and inefficiency to the PCO's electronic legislation updating processes. The current editorial powers are also much more limited than those available to the PCO's equivalents in other Australasian jurisdictions. Some of the current editorial powers have also been found to be uncertain in scope. This means that changes that can be made under editorial powers in other jurisdictions can be made in WA only by way of parliamentary amendment.

The bill proposes to modernise the processes for publishing WA legislation. It will enact a new Legislation Act that sets out the responsibilities for publishing WA legislation, provide for the official status of both hard copy and electronic versions of WA legislation and give the PCO a more useful set of editorial powers so that WA legislation can be kept up to date, modernised and simplified, and errors corrected without the need for the changes to be enacted by Parliament. Important restrictions on the exercise of those editorial powers will remain. The Reprints Act 1984 will be repealed. In line with conferring official status on electronic versions of WA legislation, the electronic version of the *Government Gazette* also will be given official status.

A number of benefits will flow from these proposals. It will improve public access to subsidiary legislation. Unlike WA acts, currently published versions and consolidated versions of WA subsidiary legislation must be accessed through two different channels—the *Government Gazette* and the WA legislation website. It would be more convenient for users if it were available in one place on the WA legislation website.

It will bring the legal status of electronic versions of legislation into line with hard copy versions. Given that electronic versions are increasingly being more widely used than hard copy versions, the current difference in legal status is difficult to justify. It will also help allay any concern about the accuracy and reliability of the electronic version compared with the hard copy version, and promote confidence in its use. It will bring the legal status of electronic versions of WA legislation into line with that in the majority of other Australasian jurisdictions and many other overseas jurisdictions.

It will enable the editorial improvements currently authorised by the Reprints Act 1984 to be delivered to users of legislation sooner. Necessary or desirable changes to the most up-to-date versions of legislation on the WA legislation website that require the exercise of reprint powers will not need to wait for the next available hard copy reprint. This will also make the PCO's electronic legislation updating processes simpler and more efficient. It will significantly improve the quality of reprints and their usefulness to users, and save parliamentary time, because a greater range of editorial changes could be made.

The current restriction on the exercise of editorial powers will remain. They must not be used to alter or otherwise affect the substance or operation of any written law. Some of the proposed additional powers are as follows: to update references to the laws of other Australasian jurisdictions where the citations of the laws have been changed; to change expressions indicating gender to conform with current drafting practice, which is to draft in gender-free terms; to number or renumber provisions; to update references to things that have been replaced, such as statutory bodies; to change grammar, spelling or punctuation to conform with current drafting practice; to omit obsolete or redundant provisions of WA legislation; to incorporate validation, saving, transitional or similar provisions, where contained in amending legislation, in the legislation to which the provisions relate; and to make format or layout changes to ensure conformity with current drafting practice. In this respect, I note that a minor change has been made to the 2018 bill since it was introduced in the previous Parliament.

Clause 33(2) relates to definitions that begin with a definite or indefinite article, and permits the article to be deleted or the appearance of the text changed so that the article is not formatted as a definition. It is no longer PCO drafting practice to include or format definite or indefinite articles as part of definitions. The Reprints Act 1984, section 7(5)(d), confers a similar power. The power in clause 33(2) was not expressly included in the 2018 bill, but has now been included for clarity and certainty.

The bill will introduce greater efficiencies in the availability of printed copies of WA legislation with official status. The production of hard copy reprints will cease, and users of WA legislation will be able to print their own copies from electronic versions of legislation on the WA legislation website or order commercially printed and bound versions. It will enhance the status of the version of the *Government Gazette* that most people access, and also enable the *Government Gazette* to move to online-only publication in the future as the continuing decrease in demand for the hard copy version eventually makes publication in that format uneconomic.

It will make the processes for the publication of subsidiary legislation more efficient and cost effective. Publishing subsidiary legislation on the WA legislation website will provide significant cost savings to government and other agencies. I note that the PCO proposes to take a staged approach to the implementation of the proposal to change the way in which WA subsidiary legislation is published. The material that the PCO drafts will be moved from the *Government Gazette* to the WA legislation website as a first step. The PCO will also undertake consultation with other agencies responsible for the subsidiary legislation that PCO does not draft, such as local laws. This consultation will be designed to determine whether this material should continue to be published in the *Government Gazette*, moved to the WA legislation website or published in some other way.

I note that the bill will not alter the processes for the development and passage of legislation through Parliament, nor will it change the way in which acts are handled under the existing publication regime. The bill will introduce a significant change to the way in which subsidiary legislation is published. The Parliament of Western Australia performs a close supervisory function with respect to subsidiary legislation, particularly through the Joint Standing Committee on Delegated Legislation and the disallowance power vested in each house by section 42 of the Interpretation Act 1984. No change is proposed with respect to that function.

The PCO has consulted extensively on the changes that are proposed to be implemented in the bill. In 2015, the PCO wrote to key legal stakeholders affected by the proposals to modernise the processes for publishing WA legislation and sought their feedback. All those who responded supported the proposals.

In relation to the proposed enhancements to editorial powers, the PCO issued a public discussion paper in December 2016 seeking submissions on those proposals. The discussion paper was made available online, and responses could be made by way of an online survey, email or letter. Emails inviting submissions on the discussion paper were also sent to a large number of legal stakeholders and others considered to have an interest in the proposals. Twenty-one submissions were received on the discussion paper. An overwhelming majority supported the proposed enhancements. There was some feedback on the proposals to enhance the current editorial powers. The PCO currently takes a very careful and conservative approach to the exercise of the editorial powers available under the Reprints Act 1984, and this approach will be adopted in relation to the enhanced editorial powers. If there is any doubt about whether the exercise of an editorial power would change the law, the PCO would not exercise the power. Any change would then have to be made by Parliament in the normal way, principally through a Statutes (Repeals and Minor Amendments) Bill.

On the introduction of the 2018 bill, the Attorney General noted that the changes proposed in the bill would not have a direct impact on the way in which crown copyright in WA legislation was administered. He indicated that the approach in WA was quite conservative and restrictive compared with other jurisdictions, and that he intended to give consideration to relaxing the approach to copyright in WA legislation. Since then, creative commons licences for the WA legislation website and hard copies of WA legislation have been granted. The Attorney General made a statement to the Legislative Assembly about this on 13 November 2019. As a result of the granting of these licences, WA joined other jurisdictions, such as the commonwealth, Queensland, South Australia, New Zealand and the UK, in taking a more open approach to the re-use of legislative data. The adoption of this approach in WA is also consistent with the WA government whole-of-government open data policy, which seeks to ensure that the state's data and information resources are shared widely across government and the community, and these resources are able to be used to improve government, encourage innovation and develop new business and employment opportunities. The bill supports the government's objectives to make its processes more efficient and cost effective through more effective use of technology, and to improve the provision of its services to the public. The bill will create administrative efficiencies across government and also reduce costs to all government agencies. In one sense, the proposals in the bill are also about managing, maintaining and enhancing a vital state asset—that is, its collection of its legislative data. The bill will enhance public accessibility of WA legislation. In enhancing access to legislation, the bill will improve access to justice, which is a key priority of this government.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to a bilateral or multilateral intergovernmental agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper [254](#).]

Debate adjourned, pursuant to standing orders.

House adjourned at 6.54 pm
