



**THIRTY-SEVENTH PARLIAMENT**

**REPORT 15**

**STANDING COMMITTEE ON UNIFORM  
LEGISLATION AND STATUTES REVIEW**

**INDUSTRIAL TRAINING AMENDMENT BILL 2006**

Presented by Hon Simon O'Brien MLC (Chairman)

November 2006

# STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

## **Date first appointed:**

17 August 2005

## **Terms of Reference:**

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

### **“8. Uniform Legislation and Statutes Review Committee**

8.1 A *Uniform Legislation and Statutes Review Committee* is established.

8.2 The Committee consists of 4 Members.

8.3 The functions of the Committee are -

- (a) to consider and report on Bills referred under SO 230A;
- (b) of its own motion or on a reference from a Minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;
- (c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;
- (d) to review the form and content of the statute book;
- (e) to inquire into and report on any proposal to reform existing law that may be referred by the House or a Minister; and
- (f) to consider and report on any matter referred by the House or under SO 125A.

8.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the Parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting.”

## **Members as at the time of this inquiry:**

Hon Simon O’Brien MLC (Chairman)  
Hon Matt Benson-Lidholm MLC

Hon Donna Faragher MLC  
Hon Sheila Mills MLC

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**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES  
REVIEW**

**IN RELATION TO THE**

**INDUSTRIAL TRAINING AMENDMENT BILL 2006**

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**1 REFERENCE AND PROCEDURE**

- 1.1 On 26 October 2006, the Industrial Training Amendment Bill 2006 (**Bill**) stood referred to the Uniform Legislation and Statutes Review Committee (**Committee**) pursuant to Standing Order 230A.<sup>1</sup>
- 1.2 Pursuant to Standing Order 230A(4) the Committee is required to report to the Legislative Council within 30 calendar days (exclusive of the day of referral) of the Minister for Education and Training's Second Reading Speech on the Bill.
- 1.3 Legislative Council Standing Order 230B prevents the Committee from inquiring into the policy of the Bill.

**2 INQUIRY PROCEDURE**

- 2.1 On 1 November 2006 the Committee received a briefing on the Bill from:
- Ms Anne Stannard, Senior Project Officer - Legislation, Department of Education and Training (**Department**); and
  - Ms Wendy Dunne, Policy Officer, Office of the Minister for Education and Training.
- 2.2 A transcript of the hearing is attached at **Appendix 1**.
- 2.3 Noting both the extensive consultation process conducted by the Government preceding the introduction of the Bill into the Parliament,<sup>2</sup> and the apparent lack of any stakeholder opposition to the proposals contained in the Bill,<sup>3</sup> the Committee did not seek any further public submissions or stakeholder comment in relation to the Bill.

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<sup>1</sup> Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 26 October 2006, p7739.

<sup>2</sup> Which is detailed on the Skills Formation Taskforce website at:  
<http://www.stb.wa.gov.au/taskforce/skillstaskforcecontact.html> (viewed on 6 November 2006).

<sup>3</sup> Ms Anne Stannard, Senior Project Officer (Legislation), Department of Education and Training, *Transcript of Evidence*, 1 November 2006, pp2-3.

- 2.4 Details of the Committee's inquiry were available on the parliamentary website, [www.parliament.wa.gov.au](http://www.parliament.wa.gov.au).

### **3 UNIFORM LEGISLATION**

- 3.1 The Bill has been referred to the Committee because it contains uniform legislation within the meaning of Standing Order 230A(1).
- 3.2 National legislative schemes implementing uniform legislation take a variety of forms. Nine different structures, each with a varying degree of emphasis on national consistency or uniformity of laws and adaptability, have been identified. The structures are summarised in **Appendix 2**.
- 3.3 When examining uniform legislation, the Committee considers what are known as 'fundamental legislative scrutiny principles'. Although not formally adopted by the Legislative Council as part of the Committee's terms of reference, the Committee applies the principles as a convenient framework for the scrutiny of uniform legislation. These principles are set out in **Appendix 3**.

### **4 BACKGROUND**

- 4.1 The Bill proposes to amend the *Industrial Training Act 1975 (Act)* so as to empower the Minister to give approval for the undertaking of apprenticeships or industrial traineeships on a part-time basis. It is envisaged that the amendments will enable Year 11 and 12 high school students to commence an apprenticeship whilst still at school.
- 4.2 In her Second Reading Speech on the Bill, the Minister for Education and Training stated:

*"The Industrial Training Amendment Bill 2006 will amend the Industrial Training Act 1975 to provide for part-time apprenticeships so that school students and others can undertake apprenticeships through a part-time arrangement in trades in which there is industry and union support.*

*The Skills Formation Taskforce conducted a series of statewide consultation forums early in the year to seek input into reforming the apprenticeship and traineeship system. Nearly 1 000 people attended two metropolitan and eight regional forums. The pressing need to introduce school-based and part-time apprenticeships was one of the key themes that came out of the forums.*

*In addition to the Skills Formation Taskforce identifying the need to introduce part-time apprenticeships in this state, all governments, through the Council of Australian Governments, have agreed to*

*remove legislative, regulatory and educational barriers to school students' participation in apprenticeships by 31 December 2006. This bill will ensure that that COAG commitment is met by Western Australia.*

*Part-time apprenticeships are keenly sought by parents who are looking to return to the work force, but for whom school hours are a consideration, and by employers who are unable to offer a full-time apprenticeship. The hospitality, meat and horticulture industries are three sectors that are keen to introduce part-time apprenticeships. They view the non-existence of part-time apprenticeships as an impediment to apprenticeship growth, because it prevents some employers from employing an apprentice if they are unable to sustain a full-time apprentice. The availability of part-time apprenticeships in a particular industry area will require the support of the industry and unions to ensure that part-time apprenticeship arrangements are appropriate for the sector. Industries that are supportive of part-time apprenticeships will be required to seek ministerial approval in accordance with clause 28A of the bill.”<sup>4</sup>*

## **5 COUNCIL OF AUSTRALIAN GOVERNMENTS' MEETING ON 10 FEBRUARY 2006**

- 5.1 The Council of Australian Governments (COAG) agreed on a broad range of issues “of national importance” at its meeting on 10 February 2006. The subsequent COAG Communiqué states:

*“COAG has reached agreement on a package of measures designed to underpin a new genuinely national approach to apprenticeships, training and skills recognition and alleviate skill shortages currently evident in some parts of the economy. While governments have today agreed to tackle some of the obstacles within the system of government, industry also has a critical role to play in creating solutions. In preparing these measures, COAG officials consulted with industry bodies and unions.*

...

*By December 2006 also, legislative, regulatory and educational barriers will be removed so that school-based apprenticeships are nationally available as a pathway for school students where there is industry demand. Industrial barriers will also be removed to enable*

<sup>4</sup> Hon Ljiljana Ravlich MLC, Minister for Education and Training, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 26 October 2006, pp7738-7739.

*school-based apprenticeship participation in skills shortage industries where there is industry demand.”<sup>5</sup>*

- 5.2 An Action Plan appended to the COAG Communiqué also lists the following associated “*agreed outcome*” of the COAG meeting of 10 February 2006, which is also to be achieved by 31 December 2006:

*“Industrial barriers are removed, in collaboration with Industry, for school based apprenticeships in:*

- metals and engineering;*
- automotive;*
- building and construction;*
- electrotechnology; and*
- commercial cookery.”<sup>6</sup>*

- 5.3 The Committee was advised that the following industries had so far indicated support for school-based apprenticeships in Western Australia:

*“An example is the furnishing industry, which is cabinet making and so forth. Hairdressing is interested, as are metals, building and construction, horticulture and printing. That is probably most of the industries at this point. There are a couple whose position we are not sure about at this point.*

...

*Most trades are interested in school-based apprenticeships. We are still getting their position on part-time apprenticeships for non-school students.”<sup>7</sup>*

- 5.4 There is no template national uniform legislation that accompanies the COAG agreement. Each State and Territory has been left to develop their own legislation (where required) to allow participation in school-based apprenticeships.<sup>8</sup>

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<sup>5</sup> Council of Australian Governments’ Meeting, 10 February 2006, *Communiqué*, pp15-17. Available at website: [http://www.alga.asn.au/newsroom/communiques/01.coag/COAG\\_Communique\\_20060210.pdf](http://www.alga.asn.au/newsroom/communiques/01.coag/COAG_Communique_20060210.pdf) (viewed on 6 November 2006).

<sup>6</sup> Ibid, pp74-75 (Attachment F).

<sup>7</sup> Ms Anne Stannard, Senior Project Officer (Legislation), Department of Education and Training, *Transcript of Evidence*, 1 November 2006, p2.



5.5 The Department provided the Committee with the following further information regarding the practical aspects of implementing school-based apprenticeships:<sup>9</sup>

- Years 11 or 12 students undertaking a school-based apprenticeship would, in a typical school week, be attending school for 3 days, TAFE for one day and training in a workplace for one day.
- Students will receive significant credit toward their full apprenticeship:
  - a) if they commence their school-based apprenticeship in Year 12, they would reduce their post-school training by 6 months; and
  - b) if they commence their school-based apprenticeship in Year 11, they could reduce their post-school training by up to 12 months.
- The terminology of ‘school-based apprenticeships’ has proved misleading for some people. It is not the schools that will deliver the apprenticeship training - like any other apprenticeship, the trade training will be delivered by a Registered Training Organisation and an employer in the workplace.
- A school-based apprenticeship will contribute to a student’s achievement of the Western Australian Certificate of Education.
- School-based apprenticeships will form part of a suite of options available to support the higher school leaving age reforms.
- There are no financial implications of the proposed amendments because school-based apprenticeships will be either funded by the Commonwealth Government through Australian Technical Colleges or through current State Government allocations to the School Apprenticeship Link program.
- The Department of Consumer and Employer Protection (**DOCEP**) has been consulted regarding industrial award provisions for school-based apprenticeships. The Department notes that “*DOCEP is analysing the best options for compliance with the COAG agreements*”.

## 6 **INDUSTRIAL TRAINING ACT 1975**

6.1 The Act regulates apprentices and the industrial and commercial training of other persons.

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<sup>8</sup> *Industrial Training Amendment Bill 2006: Information for the Standing Committee on Uniform Legislation and Statutes Review*, Department of Education and Training, 1 November 2006, p4.

<sup>9</sup> *Ibid*, pp2-3 and pp15-16.

6.2 Part V of the Act (titled “*Employment and training of apprentices and industrial trainees*”) sets out the requirements on employers for employing an apprentice or an industrial trainee, including amongst other things such matters as:

- a) a probationary period of between three and six months: s 29;
- b) obtaining the approval of the Director of Industrial Training to employ a probationer: s 29A;
- c) the prescribing of the term of apprenticeship or period of industrial training: s 30; and
- d) the registration of apprenticeship agreements and industrial training agreements: s 31.

6.3 Part V of the Act, however, does not expressly refer to any ability to undertake apprenticeships or industrial traineeships on a part-time basis. The *Explanatory Memorandum* for the Bill notes that “*the need to amend the Act has been confirmed by the State Solicitor’s Office*”.<sup>10</sup>

## 7 SPECIFIC CLAUSES OF THE BILL

### Clause 4 - Section 28A inserted

7.1 Clause 4 proposes to insert proposed new s 28A into Part V of the Act. Proposed new s 28A states:

***“28A. Ministerial approval of part-time employment***

*The Minister may, by notice published in the Gazette, approve of an apprentice, or industrial trainee, of a class specified in the notice being employed on a part-time basis.”*

7.2 The Department advised the Committee that the term “*a class*” in proposed new s 28A may apply to a particular trade that is approved for part-time apprenticeships, or could also apply to a class of apprentices, such as ‘school students’ or ‘non-school students’:

*“For example, the Minister may approve that the Cooking ‘class of trade’ is approved for the employment of school-based apprentices as a ‘class of apprentice’. This example would enable school students to enter into an apprenticeship agreement in the trade of Cooking.”*<sup>11</sup>

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<sup>10</sup> Industrial Training Amendment Bill 2006, *Explanatory Memorandum*, p1.

<sup>11</sup> *Industrial Training Amendment Bill 2006: Information for the Standing Committee on Uniform Legislation and Statutes Review*, Department of Education and Training, 1 November 2006, p11.

*Ministerial approval*

- 7.3 A matter of concern arising from the Bill that the Committee wishes to bring to the attention of the Legislative Council is the Ministerial approval mechanism used in proposed new s 28A.
- 7.4 Although the Ministerial approval of a class of apprentice or industrial trainee that may be employed on a part-time basis must be published in the *Western Australian Government Gazette*, the approval is not an instrument of subsidiary legislation for the purposes of s 5 and Part VI of the *Interpretation Act 1984* (which includes those provisions dealing with the tabling and disallowance of subsidiary legislation: s 42).
- 7.5 The following fundamental legislative scrutiny principles (see Appendix 2) are relevant to this Ministerial approval:
- Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?
  - Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?
- 7.6 The Committee sought advice from the Department as to whether there was a practical reason as to why proposed new s 28A contained the ministerial approval mechanism rather than the more common mechanism of prescribing classes of persons within the regulations (which would then be subjected to appropriate parliamentary scrutiny).
- 7.7 The Department advised that:

*“Section 28A provides for the Minister to make the decision to approve part-time and school-based apprenticeships. Allocating the responsibility to the Minister allows for high-level decision-making to occur for approvals under the section.*

*Ministerial approval of these arrangements is consistent with:*

- *Ministerial approval of new regulations when a new trade is established under the Industrial Training Act 1975 (Section 21); and*
- *Ministerial approval of new traineeship schemes under the Industrial Training Act 1975 (Section 37D).*

*... The Minister’s decision will be based on advice from the Department, which the Department will develop on the basis of consultation undertaken through:*

- *Skills Formation Taskforce Industry Working Groups;*
- *Industry Training Advisory Boards; and*
- *Other relevant stakeholders (eg employer associations and unions).*

#### ***Gazetting an approval for Section 28A***

*Section 28A provides for part-time approvals to be Gazetted, rather than prescribed in regulations, to allow for streamlined and rapid implementation of the arrangements. Gazetting will allow for a speedy response to the introduction of part-time arrangements, particularly in areas of critical need such as skill shortage trades.*

*The Gazetting notice will not be a disallowable instrument. The Department considers the comprehensive consultation and application processes leading to the Minister's consideration, will provide adequate opportunity to thoroughly [examine] any issues surrounding part-time and/or school-based apprenticeship arrangements in a particular class.”<sup>12</sup>*

- 7.8 The Committee does not agree with the argument that the use of amendment regulations to prescribe relevant classes of apprentices and industrial trainees would prevent the streamlined and rapid implementation of the arrangements.
- 7.9 The Committee brings proposed new section 28A to the Legislative Council's attention.

#### **Clause 5 - Section 29A (titled “*Employment of probationers*”) amended**

- 7.10 Clause 5 proposes to amend s 29A of the Act so as to prevent the Director of Industrial Training approving of the employment of a probationer (that is, the first step to becoming an apprentice or industrial trainee) unless the requirements of proposed new s 29B have been met (see cl 6 of the Bill).

#### **Clause 6 - Section 29B (titled “*Part-time employment of apprentices and industrial trainees*”) inserted**

- 7.11 Clause 6 proposes to insert proposed new s 29B into the Act. This proposed new section sets out the requirements that must be satisfied before a part-time

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<sup>12</sup> Letter from Ms Anne Stannard, Senior Project Officer (Legislation), Department of Education and Training, 8 November 2006, pp3-4.

apprenticeship or industrial training agreement can be registered under the Act. The requirements are:

- the Minister has given approval under proposed new s 28A; and
- the Director of Industrial Training has notified the Registrar that the Director is satisfied that:
  - the training of the apprentice or industrial trainee can be completed within the term of the agreement; and
  - the employer will provide the apprentice or industrial trainee with adequate training during the term of the agreement; and
  - the apprentice or industrial trainee will be employed for at least the prescribed minimum hours.

7.12 Proposed new s 29B also defines a ‘part-time’ apprenticeship or industrial traineeship as where the hours of employment are less than:

- a) the ordinary hours of work specified in the State or Commonwealth industrial instrument that applies to the employment of the apprentice or industrial trainee; or
- b) where the ordinary hours of work are not so specified, the hours that have been prescribed.

**Clause 7 - Section 30 (titled “*General provisions as to agreements*”) amended**

7.13 Clause 7 proposes to insert a new subsection 30(2) into the Act, which states:

*“(2) An apprenticeship agreement or industrial training agreement for an apprentice or industrial trainee who is to be employed part-time may provide for the term of the apprenticeship or industrial training to be up to 50% longer than the term prescribed.”*

7.14 The Department advised the Committee that this provision will be applied when the term currently prescribed in regulations for an apprenticeship or industrial traineeship agreement does not provide adequate time for a part-time apprentice or industrial trainee to successfully complete all of their training requirements.<sup>13</sup>

<sup>13</sup> *Industrial Training Amendment Bill 2006: Information for the Standing Committee on Uniform Legislation and Statutes Review*, Department of Education and Training, 1 November 2006, p12.

**Clause 8 - Section 42 (titled “Regulations”) of Part VI of the Act amended**

- 7.15 Clause 8 amends that section of the Act dealing with the Governor’s general regulation-making power under the Act so as to permit regulations to be made which “provide” for a minimum number of hours of employment of a probationer, apprentice or industrial trainee.
- 7.16 The Committee has a concern regarding the use of the word “provide” in this amendment. Regulations are generally expressed to “prescribe” a matter. The Committee notes that it is a basic principle of statutory interpretation that the Parliament’s use of different words in the same Act implies that a different meaning is intended for each word.<sup>14</sup>
- 7.17 Interestingly, in the regulation-making heads of power currently listed in the 14 paragraphs of s 42(2) of the Act the word “provide” is used in seven paragraphs, whilst the word “prescribe” is also used in seven paragraphs.
- 7.18 The Committee queries whether the use of the word “provide” is an attempt to avoid parliamentary scrutiny. The word “prescribe” is well understood to require the relevant matter that is to be so prescribed to be clearly designated in the text of the regulations.<sup>15</sup> However, the Committee notes that there may be an argument that where a matter may be “provided for” in regulations, that the subsequent regulations may simply provide that the relevant matter is to be dealt with elsewhere, in a separate, non-disallowable, document - such as an internal departmental policy or decision of the Minister.
- 7.19 The Committee therefore believes that it is important that the Government clarify the intended purpose of the use of the word “provide” in the amendment to s 42 of the Act. In the Committee’s view it would be an inappropriate purpose if the intent was to avoid the scrutiny of the Joint Standing Committee on Delegated Legislation and the disallowance provisions of s 42 of the *Interpretation Act 1984*.
- 7.20 The Committee brings this matter to the attention of the Legislative Council.
- 7.21 The Department advised the Committee that the minimum paid number of hours of employment provided for in the regulations may differ for school students undertaking an apprenticeship to those undertaking part-time apprenticeships who are not a full-time school student.<sup>16</sup>

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<sup>14</sup> *Scott v Commercial Hotel Merbein Pty Ltd* [1930] VLR 75.

<sup>15</sup> *Muong Gi Kim v Minister for Immigration and Multicultural & Indigenous Affairs* [2004] FCA 956; BC200404551, per Branson J at para 31.

<sup>16</sup> *Industrial Training Amendment Bill 2006: Information for the Standing Committee on Uniform Legislation and Statutes Review*, Department of Education and Training, 1 November 2006, p12.

**8 NO FURTHER AMENDMENTS PROPOSED**

8.1 The Department has advised the Committee that no further amendments are proposed for the Bill.<sup>17</sup>



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**Hon Simon O'Brien MLC**  
**Chairman**

**22 November 2006**

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<sup>17</sup> Ms Anne Stannard, Senior Project Officer (Legislation), Department of Education and Training, *Transcript of Evidence*, 1 November 2006, p3.





**APPENDIX 1**  
**TRANSCRIPT OF HEARING ON 1 NOVEMBER 2006**



**APPENDIX 1**  
**TRANSCRIPT OF HEARING ON 1 NOVEMBER 2006**

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**STANDING COMMITTEE ON UNIFORM LEGISLATION  
AND STATUTES REVIEW**

**INDUSTRIAL TRAINING AMENDMENT BILL 2006**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
WEDNESDAY, 1 NOVEMBER 2006**

**Members**

**Hon Simon O'Brien (Chairman)**  
**Hon Matthew Benson-Lidholm**  
**Hon Sheila Mills**  
**Hon Donna Faragher**

**Hearing commenced at 9.53 am**

**STANNARD, MS ANNE**

**Senior Project Officer (Legislation), Department of Education and Training, examined:**

**DUNNE, MS WENDY**

**Policy Adviser, Training, Office of the Minister for Education and Training, examined:**

**The CHAIRMAN:** On behalf of the committee, welcome to this meeting. To begin with, I ask each of you to state the capacity in which you appear before the committee.

**Ms Stannard:** I was the instructing officer for the legislation, and I am the policy officer responsible for the carriage of the bill.

**Ms Dunne:** My role within the office is policy adviser for training.

**The CHAIRMAN:** You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

**The Witnesses:** Yes.

**The CHAIRMAN:** Thank you. These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, for the record, please quote the full title of any document you refer to during the course of this hearing. Please be aware of the microphones and try to talk into them and avoid covering them with sheets of paper and other things. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public or media in attendance will be excluded from the hearing. I note that we do not have anybody like that here at present. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

We are examining the Industrial Training Amendment Bill 2006, which has been referred to us as uniform legislation. Ms Stannard, could you please provide the committee with a brief overview of the purpose and need for this bill?

**Ms Stannard:** The Industrial Training Amendment Bill will amend the Industrial Training Act to allow for part-time apprenticeships. Part-time apprenticeships include school students in years 11 and 12 who want to undertake an apprenticeship, as well as people outside the school system. Initially, the government's skills formation taskforce did some statewide consultations earlier in the year. It was clear from those consultations that there was a need for part-time apprenticeships and school-based apprenticeships in the school system. Also, there is a requirement to implement school-based apprenticeships by the end of the year.

**The CHAIRMAN:** The minister's second reading speech states that the proposed amendments will permit school students to undertake part-time apprenticeships in trades when there is industry and union support. Are you able to give an indication as to the types of trades that are likely to fall within this category?

**Ms Stannard:** I can give you an indication of the industries. An example is the furnishing industry, which is cabinet making and so forth. Hairdressing is interested, as are metals, building

and construction, horticulture and printing. That is probably most of the industries at this point. There are a couple whose position we are not sure about at this point.

**The CHAIRMAN:** It is quite a wide spread.

**Ms Stannard:** It is very widespread. Most trades are interested in school-based apprenticeships. We are still getting their position on part-time apprenticeships for non-school students.

**The CHAIRMAN:** Let us turn to the proposed new section 28A which will enable the minister to approve by notice published in the *Gazette* those classes of apprentices or industrial trainees who may be employed on a part-time basis. Is there a practical reason as to why we have the ministerial approval mechanism rather than the more familiar mechanism of prescribing classes of persons within the regulations?

**Ms Stannard:** To establish a trade we have to go through a parliamentary process. I guess this is to mirror that process. We are establishing a trade as a school-based or part-time arrangement and we wanted to have it consistent with those current provisions.

**Hon DONNA FARAGHER:** Can that not be done through regulation?

**Ms Stannard:** Through regulation, yes, but it has to be approved by the minister to go through regulations. This is allowing for that to occur.

**The CHAIRMAN:** I am not sure if we really have got down to the nitty-gritty there. You are familiar with proposed section 28A, are you not?

**Ms Stannard:** The Council of Australian Governments asked us to remove legislative barriers and establish school-based apprenticeships where there is industry demand. This is the process by which the department thought we could ensure industry support; that it was being introduced in practical areas, it went through a proper process of consultation and the minister approved the arrangement.

**The CHAIRMAN:** It raises the question of whether such a notice would be a disallowable instrument as a regulation would be. Was the intent of the wording of the provision to avoid that situation?

[10.00 am]

**Ms Stannard:** No. It was basically just to allow for a proper process of consultation and for high-level approval.

**The CHAIRMAN:** All of that occurs before it gets to the minister, whereas the gazettal of a regulation would occur from that point onwards. That seems to be the bit that does not exist. We are trying to work out if there is a practical reason why that has to be so. If you would like to consider the question, you can take it on notice, consider a response and forward it to us later. Would you like to do that?

**Ms Stannard:** Yes, sure.

**The CHAIRMAN:** There appears to have been extensive consultation by the skills formation task force prior to the introduction of the bill, and you have already confirmed that. In the course of the consultation, was there any opposition to the proposal to introduce the part-time apprenticeships and industrial traineeships?

**Ms Stannard:** No, there was not.

**The CHAIRMAN:** Are there any proposals to introduce further amendments to the bill currently before the house?

**Ms Stannard:** No.

**The CHAIRMAN:** What about any further proposals to amend the act later on to comply with the COAG agreement, or is it all covered in the bill that we now have.



**Ms Stannard:** There is no need to do anything further to comply with COAG.

**The CHAIRMAN:** Are you aware of any constitutional law issues affecting this jurisdiction that will arise under the bill?

**Ms Stannard:** No.

**The CHAIRMAN:** No?

**Ms Stannard:** No.

**The CHAIRMAN:** I have one more question for now and then I will ask my colleagues if they have any that they want to raise. Again, this is a standard thing that we do in our examination of a bill.

Are you able to provide a copy of the relevant intergovernmental agreement or memorandum of understanding, or if one is not available, then a copy of the most recent draft, together with a statement as to the status of that draft?

**Ms Stannard:** There is no agreement as such but there is a communiqué, which is the formal public agreement for the government. I have a copy of that here.

**The CHAIRMAN:** Excellent. That arises from the COAG meeting in February this year, does it?

**Ms Stannard:** That is right, yes.

**The CHAIRMAN:** If you could table that document, that would be good.

**Hon DONNA FARAGHER:** I refer to the need for industry and union support. What is the process for the consultation - I am assuming by the department - with respect to the particular trades to determine their views? If there is disagreement between the industry and the union, what happens then?

**Ms Stannard:** The skills formation task force and industry working groups, which we have been working through on the training reforms, have mostly stated their position on school-based apprenticeships. We will be confirming that once the legislation goes through. Those who did not make a recommendation about school-based apprenticeships, we will be calling them together again and seeking their support for school-based apprenticeships and part-time apprenticeships.

**Hon DONNA FARAGHER:** What happens if there is disagreement?

**Ms Stannard:** If there is disagreement? The minister makes a decision based on the level of support. There have not been any disagreements so far; it has been a unanimous decision, so it has not been an issue.

**Hon DONNA FARAGHER:** I have been to a number of schools within my electorate and there seems to be a little confusion between school-based apprenticeships and school-based traineeships. One school indicated to me that providing that the Curriculum Council agrees, they can already undertake school-based apprenticeships. Is that correct? They are telling me that this is happening now, providing that they get the agreement of the Curriculum Council.

**Ms Stannard:** They can undertake school-based direct traineeships and school apprenticeship link, which is units of competence out of an apprenticeship trade. They cannot do school-based apprenticeships yet, but they can certainly do units of competence that may lead to an apprenticeship. It will not actually involve a contract of training and indenture.

**Hon DONNA FARAGHER:** They can commence their trade training but they have not signed any formal employment contract, which is the formal apprenticeship arrangement?

**Ms Dunne:** We are piloting, as a state, school-based apprenticeship arrangements in a couple of areas.

**Hon DONNA FARAGHER:** What areas are they?

**Ms Dunne:** Metals and automotive and - correct me if I am wrong, Anne - also for cooks through the hospitality industry. That has had combined industry-union agreement.

**Hon SHEILA MILLS:** Do you have any process to look at key performance indicators to see if there is any success, failure or weaknesses in this scheme? Is anything in place, or proposed to be put in place?

**Ms Stannard:** There is a process in place to measure school-based traineeships and we are using the same processes. I guess we will be establishing targets. The apprenticeship traineeship support network regularly monitors traineeships to make sure training outcomes are being met and measured against the school apprenticeship link. There are certainly already provisions in place to measure school-based arrangements.

**Ms Dunne:** We would also be looking for feedback from those pilots. Part of starting the pilot process is to have feedback from the stakeholders involved to help inform work for the 2007 commencements.

**Hon MATT BENSON-LIDHOLM:** I am involved with the Rural and Remote Education Advisory Council. There are a number of issues that that particular council is dealing with and they will no doubt go backwards and forwards to the minister through that particular council. For instance, I have many communication opportunities with the minister. I am concerned about equality of opportunity issues that are beyond the discussion that we would have here. Right here and now, no, I do not have anything beyond that style of thing.

**The CHAIRMAN:** We have our tabled document, "Industrial Training Amendment Bill 2006: Information for the Standing Committee on Uniform Legislation and Statutes Review, 1 November 2006". That is a useful collection of information relating to the bill and I thank you for preparing that. That will be of some assistance to the committee. Are there any comments either of you want make further to what we have covered?

**Ms Stannard:** No really. Even though we had to do this for COAG, the COAG commitment is for a flexible and responsive training system and that is certainly what WA wants to implement. Therefore, we are supportive of this bill regardless. That is it, basically.

**The CHAIRMAN:** Even in the absence of the COAG agreement we might well be seeing this bill?

**Ms Stannard:** We have certainly been working towards school-based traineeships, and apprenticeships would have been coming anyway, definitely.

**The CHAIRMAN:** That probably concludes what we need to discuss today.

On behalf of the committee I would like to thank Ms Stannard and Ms Dunne for attending and for providing us with their assistance. We look forward to any further comments you may have on further reflection. There is one question we have placed on notice, so we will look forward to receiving your advice on that. Thank you very much.

**Hearing concluded at 10.10 am**

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**APPENDIX 2**  
**IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION**



## APPENDIX 2

### IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION

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The former Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements identified and classified nine legislative structures relevant to the issue of uniformity in legislation which were endorsed by the 1996 Position Paper. A brief description of each is provided below.

- Structure 1:** Complementary Commonwealth-State or Co-operative Legislation. The Commonwealth passes legislation, and each State or Territory passes legislation which interlocks with it and which is restricted in its operation to matters not falling within the Commonwealth's constitutional powers.
- Structure 2:** *Complementary or Mirror Legislation.* For matters which involve dual, overlapping, or uncertain division of constitutional powers, essentially identical legislation is passed in each jurisdiction.
- Structure 3:** *Template, Co-operative, Applied or Adopted Complementary Legislation.* Here a jurisdiction enacts the main piece of legislation, with the other jurisdictions passing Acts which do not replicate, but merely adopt that Act and subsequent amendments as their own.
- Structure 4:** *Referral of Power.* The Commonwealth enacts national legislation following a referral of relevant State power to it under section 51 (xxxvii) of the Australian Constitution.
- Structure 5:** *Alternative Consistent Legislation.* Host legislation in one jurisdiction is utilised by other jurisdictions which pass legislation stating that certain matters will be lawful in their own jurisdictions if they would be lawful in the host jurisdiction. The non-host jurisdictions cleanse their own statute books of provisions inconsistent with the pertinent host legislation.
- Structure 6:** *Mutual Recognition.* Recognises the rules and regulation of other jurisdictions. Mutual recognition of regulations enables goods or services to be traded across jurisdictions. For example, if goods or services to be traded comply with the legislation in their jurisdiction of origin they need not comply with inconsistent requirements otherwise operable in a second jurisdiction, into which they are imported or sold.

- Structure 7:**            *Unilateralism.* Each jurisdiction goes its own way. In effect, this is the antithesis of uniformity.
- Structure 8:**            *Non-Binding National Standards Model.* Each jurisdiction passes its own legislation but a national authority is appointed to make decisions under that legislation. Such decisions are, however, variable by the respective State or Territory Ministers.
- Structure 9:**            *Adoptive Recognition.* A jurisdiction may choose to recognise the decision making process of another jurisdiction as meeting the requirements of its own legislation regardless of whether this recognition is mutual.

**APPENDIX 3**  
**FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES**



## APPENDIX 3

### FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

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<b>Does the legislation have sufficient regard to the rights and liberties of individuals?</b>
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1. Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?
2. Is the Bill consistent with principles of natural justice?
3. Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons? Sections 44(8)(c) and (d) of the *Interpretation Act 1984*. The matters to be dealt with by regulation should not contain matters that should be in the Act not subsidiary legislation.
4. Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?
5. Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?
6. Does the Bill provide appropriate protection against self-incrimination?
7. Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?
8. Does the Bill confer immunity from proceeding or prosecution without adequate justification?
9. Does the Bill provide for the compulsory acquisition of property only with fair compensation?
10. Does the Bill have sufficient regard to Aboriginal tradition and Island custom?
11. Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

<b>Does the Bill have sufficient regard to the institution of Parliament?</b>
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12. Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?
13. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?

14. Does the Bill allow or authorise the amendment of an Act only by another Act?
15. Does the Bill affect parliamentary privilege in any manner?
16. In relation to uniform legislation where the interaction between state and federal powers is concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament?