



THIRTY-EIGHTH PARLIAMENT

REPORT 32

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

ANNUAL REPORT 2007

Presented by Hon Adele Farina MLC

December 2008

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) resigned 23 September 2008	Hon Matt Benson-Lidholm MLC, resigned 11 November 2008
Hon Adele Farina MLC, (Chairman) appointed 11 November 2008	Hon Brian Ellis MLC, appointed 11 November 2008
Hon Donna Faragher MLC, resigned 8 September 2008	Hon Sheila Mills MLC
Hon Nigel Hallett MLC, appointed 11 November 2008	

Staff as at the time of this inquiry:

Ms Jan Paniperis, Committee Clerk

Dr Colin Huntly, Advisory Officer (Legal)
Ms Anne Turner, Advisory Officer (Legal)

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**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW****IN RELATION TO THE ANNUAL REPORT 2007**

1 INTRODUCTION - ANNUAL REPORT

- 1.1 Prior to the Thirty-Sixth Parliament, it was the usual practice for the Governor, on advice from the Executive, to prorogue and reopen the Parliament in August each year.¹ Reflecting this practice, parliamentary committees prepared sessional reports to report to the Legislative Council on their work during that period.
- 1.2 In June 2003, the former Government indicated that it did not intend to continue to ask the Governor to prorogue on an annual basis² and prorogation did not occur in August 2003 or August 2004 during the Thirty-Sixth Parliament. Reflecting this shift in practice, in the Thirty-Seventh Parliament, parliamentary committees of the Legislative Council tabled annual reports relating to their work during the preceding calendar year.
- 1.3 On 7 August 2008, the State Election was called and the Parliament prorogued. This had the effect of suspending the Standing Committee on Uniform Legislation and Statutes Review's (Committee) activities until the new Parliament commenced on 6 November 2008. Membership of the Legislative Council and its various committees remained unchanged during this period because the four year term had not expired.

2 TERMS OF REFERENCE

- 2.1 The Committee's terms of reference are published on the inside cover of the report. The terms of reference refer to Standing Order 230A, a copy of which is attached at **Appendix 1** to this Report.
- 2.2 Standing Order 230A was amended on 20 September 2006. The amendments:
- provide that uniform legislation stands referred to the Committee at the conclusion of the Second Reading Speech;

¹ Hon Kim Chance, MLC, then the Minister for Agriculture and Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, June 25 2003, p9149. The Parliament meets and transacts business for a period known as a "session". A session is terminated by a "prorogation" of the Parliament, which is effected by proclamation of the Governor on the advice of the Executive Council. Prorogation suspends meetings of each House of Parliament and its Committees.

² Hon Kim Chance, MLC, then the Minister for Agriculture and Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, June 25 2003, p9150.

- specifically exclude the date of referral from the calculation of the 30 day reporting period; and
 - remove the previous express restriction on the consideration of the policy of a bill by a Committee.
- 2.3 Standing Order 230B provides a general prohibition against Standing Committees inquiring into the policy of a bill unless otherwise ordered.

3 REPORTS

3.1 The following six reports have been tabled over the reporting period:

- **10 May 2007** - Report 18 Consumer Credit (Queensland) and Another Act Amendment Bill 2007 (Qld).
- **20 June 2007** - Report 19 Administrative Practices and Procedures and Parliamentary Processes involving Treaties entered into, or proposed to be entered into, by the Commonwealth.
- **18 September 2007** - Report 20 Road Traffic Amendment Bill (No 2) 2007.
- **16 October 2007** - Report 21 Statutes (Repeal and Minor Amendments Bill) 2006.
- **16 October 2007** - Report 22 National Environment Protection Council (Western Australia) Amendment Bill 2007.
- **18 October 2007** - Report 23 Human Reproductive Technology Amendment Bill 2007.

4 COMMITTEE TRAVEL

4.1 The Committee travelled to the United Kingdom and the Republic of Ireland between 26 October and 9 November 2007. This travel related to the Committee's term of reference at paragraph 8.3(d) "*to review the form and content of the statute book*" and the ongoing *Statutes Review Inquiry* which commenced on 28 November 2005. Members and staff who participated in the travel were:

- Hon Simon O'Brien MLC (the then Chairman).
- Hon Matt Benson-Lidholm MLC.
- Hon Sheila Mills MLC.
- Ms Jan Paniperis, (Committee Clerk).

-
- Dr Colin Huntly, Advisory Officer (Legal).

4.2 Hon Donna Faragher MLC was unavailable to travel.

4.3 The outcomes from the travel and other matters pertaining to the ongoing inquiry will be subject to another report.

5 REPORTS TABLED - UNIFORM BILLS

General

5.1 The Committee scrutinises bills containing uniform legislation under term of reference 8.3(a) which provides that the Committee is:

to consider and report on Bills referred under SO 230A.

5.2 The Committee scrutinises 230A bills against relevant, fundamental legislative principles listed in **Appendix 2**.

5.3 Standing Order 230A sets out a specific procedure to ensure that all bills involving uniform legislation are referred to the Committee and are not progressed in the Legislative Council until the Committee tables its report.

5.4 Pursuant to Standing Order 230A, 'uniform legislation' is the term applied to 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 their subject matter, introduce a uniform scheme or uniform laws throughout the States and Territories.

5.5 During 2007, the Committee advised the Department of Premier and Cabinet that the relevant Ministerial Office Memorandum concerning uniform legislation had become out-dated and recommended that it be updated accordingly. On 14 November 2007, the Ministerial Office Memorandum was re-issued.

5.6 The Committee is pleased to note that the Ministerial Office Memorandum concerning uniform legislation ensures that information required by the Committee is now routinely provided by the relevant departments.

5.7 The Committee has also adopted the practice of holding a hearing on every Standing Order 230A referral. This provides the Committee with an opportunity to question the relevant departmental instructing officer, together with the relevant Parliamentary Counsel draftsman. In some cases it has also been helpful to include relevant

technical or operational personnel on the witness lists at such hearings to provide important background information.

- 5.8 The following is a summary of the reports the Committee has presented in 2007 in relation to uniform legislation.

Road Traffic Amendment Bill (No 2) 2007

- 5.9 The suitability of this bill for referral under Standing Order 230A was somewhat questionable.³ It was the case that on 13 April 2007 the Council of Australian Governments (COAG) accepted a recommendation from the Ministerial Council on Consumer Affairs (MCCA) that the Commonwealth assume responsibility for trade measurement. However, the National Measurement Institute sets measurement standards pursuant to the *National Measurement Act 1960* (Cth) s17 which was enacted pursuant to the Commonwealth “weights and measures” power at s51(XV) of the *Commonwealth Constitution*.

- 5.10 The Minister’s Second Reading speech on the bill revealed that:

In 2003, the National Measurement Institute developed a new national standard for evidential breath analysers used in drink driving enforcement (NMI R 126:2000), which is consistent with the international standard developed by the International Organization of Legal Metrology. At that time, the National Measurement Institute agreed to a sunset clause of five years for total implementation of the new standard, as it was estimated that it would take three and a half years for the national facility to initially verify all the evidential breath analysers in the country. The sunset clause is due to expire in November 2008.

- 5.11 The Committee held a public hearing on the bill on 29 August 2007. The Departmental Instructing Officer, relevant Parliamentary Counsel Draftsperson and the specialist operational police officer were the witnesses before the Committee at this hearing.⁴

- 5.12 It became apparent to the Committee that the bill was necessary in order to ensure that Western Australian legislation and breath analysis protocols were not open to

³ Western Australia, Legislative Council, Uniform Legislation and Statutes Review Committee, Report 20, Road Traffic Amendment Bill (No 2) 2007, 18 September 2007, p3.

⁴ Transcript of Evidence at Appendix 1, Western Australia, Legislative Council, Uniform Legislation and Statutes Review Committee, Report 20, Road Traffic Amendment Bill (No 2) 2007, 18 September 2007.

constitutional challenge as a result of the “*new national standard for evidential breath analysers used in drink driving enforcement (NMI R 126:2000)*”.⁵

- 5.13 Once the constitutional background to the bill had been ascertained by the Committee, the inquiry proceeded to determine whether or not the bill reflected the 13 April 2007 COAG agreement. The lack of detail in the available information from the COAG meeting and subsequent meeting of the MCCA precluded such a determination. The Committee did, however, note that the relevant clauses of the bill were identical to *Road Safety (Amendment) Act 2003 (Vic) s8*.⁶
- 5.14 The Committee made a particular point of drawing the attention of the House to the resource implications of the change in measurement standard which necessitated the bill’s passage into the House.⁷

5.2 *Of particular interest to the Committee was the evidence of one witness that the cost of the introduction of the new national standard in question was estimated to be \$23 million nationally, with the amendments proposed at cl 10 and 12 of the Bill likely to cost in the region of \$2 million.*

National Environment Protection Council (Western Australia) Amendment Bill 2007

- 5.15 The Committee held a public hearing on this bill on 26 September 2007. The Departmental Director and the Instructing Officer were witnesses before the Committee at this hearing.⁸
- 5.16 The Committee made the following three findings with respect to this bill:⁹

Finding 1

The National Environment Protection Council (Western Australia) Amendment Bill 2007 gives statutory effect to an intergovernmental agreement to which the Government of the State is a party namely, the “Intergovernmental Agreement on the Environment”.

⁵ Western Australia, Legislative Council, Uniform Legislation and Statutes Review Committee, Report 20, Road Traffic Amendment Bill (No 2) 2007, 18 September 2007, p3.

⁶ Ibid, p4.

⁷ Ibid, p5.

⁸ Transcript of Evidence at Appendix 2, Western Australia, Legislative Council, Uniform Legislation and Statutes Review Committee, Report 22, National Environment Protection Council (Western Australia) Amendment Bill 2007, 16 October 2007.

⁹ Western Australia, Legislative Council, Uniform Legislation and Statutes Review Committee, Report 22, National Environment Protection Council (Western Australia) Amendment Bill 2007, 16 October 2007, p5.

Finding 2

The Intergovernmental Agreement on the Environment was amended on 2 June 2001 by virtue of recommendations made in a report of the National Environment Protection Council entitled “Report of the Review of National Environment Protection Council Acts (Commonwealth, State and Territory)”.

Finding 3

The National Environment Protection Council (Western Australia) Amendment Bill 2007 does, in fact, implement the amendments to the Intergovernmental Agreement on the Environment recommended by the National Environment Protection Council in 2001 and as enacted by the National Environment Protection Council Amendment Act 2002 (Cth).

- 5.17 The Committee noted that the bill, which was Western Australia’s response to the *National Environment Protection Council Amendment Act 2002 (Cth)*, took almost five years to reach the Legislative Council.¹⁰

Human Reproductive Technology Amendment Bill 2007

- 5.18 The background to the uniform scheme for legislation regulating human embryo research was summarised in Report 13 of the Legislative Council’s Uniform Legislation and General Purposes Committee (2002 - 2005).¹¹
- 5.19 The Committee held a public hearing on the bill on 26 September 2007. The Departmental Instructing Officer and relevant Parliamentary Counsel Draftsperson were witnesses before the Committee at this hearing.¹²
- 5.20 The Committee made the following four findings with respect to this bill:

¹⁰ Western Australia, Legislative Council, Uniform Legislation and Statutes Review Committee, Report 22, National Environment Protection Council (Western Australia) Amendment Bill 2007, 16 October 2007, p5.

¹¹ Western Australia, Legislative Council, Uniform Legislation and General Purposes Committee, Report 13, Human Reproductive Technology Amendment Bill 2003 and Human Reproductive Technology Amendment (Prohibition Of Human Cloning) Bill 2003, December 2003, p 6.

¹² Transcript of Evidence at Appendix 4, Western Australia, Legislative Council, Uniform Legislation and Statutes Review Committee, Report 23, Human Reproductive Technology Amendment Bill 2007, 18 October 2007.

Finding 1

*The intergovernmental agreement that is of relevance to the Human Reproductive Technology Amendment Bill 2007 is the “Intergovernmental Agreement: Research Involving Human Embryos and Prohibition of Human Cloning” as detailed in the Council of Australian Governments Communique dated 2 April 2002 and as subsequently varied in the Council of Australian Governments “Notice of Variation - Research Involving Human Embryos and Prohibition of Human Cloning Inter-Governmental Agreement” dated 13 April 2007.*¹³

Finding 2

*The Western Australian Human Reproductive Technology Act 1991 is no longer a “corresponding State law” for the purposes of the Research Involving Human Embryos Act 2002 (Cth) and in consequence, embryonic research in Western Australia no longer qualifies for a National Health and Medical Research Council licence.*¹⁴

Finding 3

*The Human Reproductive Technology Amendment Bill 2007 has been introduced to Parliament within the time agreed in the Council of Australian Governments’ “Notice of Variation - Research Involving Human Embryos and Prohibition of Human Cloning Inter-Governmental Agreement” dated 13 April 2007.*¹⁵

¹³ Western Australia, Legislative Council, Uniform Legislation and Statutes Review Committee, Report 23, Human Reproductive Technology Amendment Bill 2007, 18 October 2007, p5.

¹⁴ Ibid, p6.

¹⁵ Ibid, p7.

Finding 4

The Human Reproductive Technology Amendment Bill 2007 corresponds to and is consistent with the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Act 2006 (Cth).

As a consequence, the Human Reproductive Technology Amendment Bill 2007 “ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party” namely, the “Intergovernmental Agreement: Research Involving Human Embryos and Prohibition of Human Cloning” as detailed in the Council of Australian Governments’ Communique dated 2 April 2002 and as subsequently varied in the Council of Australian Governments’ “Notice of Variation - Research Involving Human Embryos and Prohibition of Human Cloning Inter-Governmental Agreement” dated 13 April 2007.¹⁶

6 INQUIRIES COMMENCED IN THE REPORTING PERIOD BUT NOT CONCLUDED AS AT 31 DECEMBER 2007

- 6.1 The following uniform legislation inquires were commenced in the reporting period but had not concluded at the end of the reporting period:

Cross-border Justice Bill 2007

- 6.2 This bill was introduced into the Legislative Council on 21 November 2007 and was immediately referred to the Committee “*pursuant to standing orders*”.
- 6.3 On 26 November 2007, an agreement was signed by the Attorneys General of Western Australia and the Northern Territory relating to the establishment of a cross border justice scheme. On 28 November 2007, that agreement was also signed by the Attorney General of South Australia.
- 6.4 The unique circumstances of the introduction of the bill to the Legislative Council prior to the signing of an intergovernmental agreement were carefully considered by the Committee. While considering this matter the Committee resolved to proceed on the same basis that it proceeds with regular Standing Order 230A referrals from the Legislative Council.
- 6.5 The Committee held a public hearing on the bill on 5 December 2007. Those in attendance included Departmental Instructing Officers, the relevant Parliamentary

¹⁶ Western Australia, Legislative Council, Uniform Legislation and Statutes Review Committee, Report 23, Human Reproductive Technology Amendment Bill 2007, 18 October 2007, p8.

Counsel drafts person together with a specialist technical staff member and operational sworn officer of Western Australia police.

Medical Practitioners Bill 2006

6.6 This bill was introduced into the Legislative Council on 21 November 2007 and was immediately referred to the Committee.

6.7 The Committee held a public hearing on the bill on 5 December 2007. Those in attendance were the Departmental Instructing Officer and the relevant Parliamentary Counsel drafts person.

Legal Profession Bill 2007

6.8 This bill was introduced into the Legislative Council on 21 November 2007 and was immediately referred to the Committee.

6.9 The Committee held a public hearing on the bill on 5 December 2007. Those in attendance were the Departmental Instructing Officer and the relevant Parliamentary Counsel drafts person.

7 REPORTS TABLED - CONSUMER CREDIT (WESTERN AUSTRALIA) ACT 1996

7.1 Consumer credit is regulated by a national legislative scheme called the *Consumer Credit Code*. Under this scheme, the States and Territories adopt template legislation passed in Queensland which ensures that the same legislation operates in each jurisdiction. In all jurisdictions, except Western Australia and Tasmania, amendments to the Queensland legislation are automatically adopted.

7.2 In Western Australia, as a result of a statutory referral process under section 6 and 6B of the *Consumer Credit (Western Australia) Act 1996*, amendments to the Queensland legislation must be:

- provided by the relevant Minister to the Clerk of each House of Parliament and the Committee; and
- approved as a draft order by both Houses of Parliament.

7.3 If approved, the amendments are then published by the Governor as an order in the *Government Gazette* and then commence operation.

7.4 The following inquiry was commenced pursuant to a referral under 6B of the *Consumer Credit (Western Australia) Act 1996*.

Consumer Credit (Queensland) and Another Act Amendment Bill 2007 (Qld)

7.5 The Minister indicated that the purpose of the Queensland Amendment Bill (as contained in the Draft Order) is to extend the sunset clause in the *Consumer Credit Code* relating to the 'Mandatory Comparison Rates regime' enshrined by Part 9A of the *Code*. This regime was established to require:

- all credit advertisements that contain an annual percentage rate of interest to quote a comparison rate; and,
- credit providers, 'linked providers' and finance brokers to supply consumers with schedules of comparison rates.¹⁷

7.6 Part 9A of the *Consumer Credit Code*, which commenced on 1 July 2003, includes a sunset clause at s 146D which reads:

This Part expires on the fourth anniversary of its commencement, or on an earlier day fixed by a regulation.

7.7 The Ministerial Council on Consumer Affairs had intended that a review of the Mandatory Comparison Rates regime would be conducted prior to the expiration of the sunset period.

7.8 The Minister indicated to the Committee that the Standing Committee of Officials of Consumer Affairs advised the Ministerial Council on Consumer Affairs that the review would not be completed by the current sunset date and requested that the sunset date be extended by a further two years to 30 June 2009. The Ministerial Council on Consumer Affairs provided formal approval for the requested sunset extension on 29 January 2007.¹⁸

7.9 The Committee noted that this is, in fact the second such urgent extension of the sunset clause in the *Consumer Credit Code*.¹⁹

7.10 The Committee was satisfied that Clause 3 of the Draft Order proposed to amend the *Consumer Credit (Western Australia) Code* s146D in a manner that gave effect to the resolution of the Ministerial Council on Consumer Affairs granting the requested sunset extension on 29 January 2007.

¹⁷ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 18, *Consumer Credit (Queensland) and Another Act Amendment Bill 2007 (Qld)*, 10 May 2007, p4.

¹⁸ Ibid, p5.

¹⁹ Ibid, p6.

8 REPORTS TABLED - OTHER REPORTS**Administrative Practices and Procedures and Parliamentary Processes involving Treaties entered into, or proposed to be entered into, by the Commonwealth**

- 8.1 Report 19 of the Committee following its inquiry into “Administrative Practices and Procedures and Parliamentary Processes involving Treaties entered into, or proposed to be entered into, by the Commonwealth” was tabled on 20 June 2007.
- 8.2 On the basis of this inquiry, the executive summary to Report 19 of the Committee reported nine findings, namely:

Finding 1

The negotiation and execution of treaties is a function of the Executive Government at either State or Commonwealth level.

Finding 2

Municipal legislation giving effect to treaties that have been duly executed by the Commonwealth Government is subject to the scrutiny of the Commonwealth Parliament.

Finding 3

Any statute of the Commonwealth Parliament that purports to be pursuant to a treaty executed by the Commonwealth Government is reviewable by originating summons in the High Court of Australia. The power to bring a High Court action on behalf of the Crown in right of the State of Western Australia is an executive power that resides with the Attorney General for Western Australia.

Finding 4

Any valid exercise of the treaty-making power of the Commonwealth Government, and a subsequent valid amendment to the municipal law of Australia by the Commonwealth Parliament, are binding on the Crown in right of the State of Western Australia, and are not justiciable.

As a result of its inquiries, the Committee has made the following findings in relation to the current administrative processes and practices relating to treaties affecting Western Australia:

Finding 5

There is a wide range of publicly available information relating to treaties to which the Commonwealth Government has acceded, or proposes to accede.

Finding 6

The Western Australian Government is consulted extensively by the Commonwealth Government in the treaty-making process and the process of implementing treaty obligations.

Finding 7

Noting that the majority of treaties to which the Commonwealth Government proposes to accede are only tabled in the Commonwealth Parliament 15-20 sitting days prior to execution, any period of notice subsequently given to the Legislative Council by the Commonwealth Parliament Joint Standing Committee on Treaties of that Committee's inquiries into treaties so tabled is not sufficient for any Committee of the Legislative Council to participate meaningfully in such inquiries.

Finding 8

Western Australia is currently the only State in which a parliamentary Committee is charged with the scrutiny of treaties to which the Commonwealth Government has acceded or proposes to accede.

Finding 9

In relation to other States and Territory parliaments, notice of treaties and any subsequent reports published by the Commonwealth Parliamentary Joint Standing Committee on Treaties are tabled only in the parliaments of Queensland and Victoria. Such tabling of notice and reports does not occur in any other State or Territory parliament.

- 8.3 On the basis of the findings above, the Committee made the following recommendations:²⁰

Recommendation 1: *The Committee recommends that the Responsible Minister table in the Legislative Council notice of all treaties tabled in the Commonwealth Parliament, and any subsequent*

²⁰ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 19, Administrative Practices and Procedures and Parliamentary Processes involving Treaties entered into, or proposed to be entered into, by the Commonwealth, 20 June 2007, p17.

reports on treaties received by the State Government from the Chair of the Commonwealth Parliament Joint Standing Committee on Treaties together with any other relevant information (which may include the treaties themselves). The Committee observes that presently the Responsible Minister is the Leader of the House, representing the Minister for Federal-State Relations.

Recommendation 2: *The Committee recommends that, when introducing a Bill to the Legislative Council which gives legislative effect to any treaty obligation acceded to by the Government of the Commonwealth of Australia, the Government of the State do provide details of any National Interest Analysis and any Regulation Impact Statement relating to the treaty together with any report on the treaty published by the Commonwealth Parliament Joint Standing Committee on Treaties as part of the Explanatory Memorandum to the Bill.*

Recommendation 3: *The Committee recommends that the House do amend the Committee's terms of reference at clause 8.3 to delete sub-clause (c) which reads:*

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;

and re-number the remaining sub-clauses accordingly.

- 8.4 The Committee notes that the government has responded to Report 19.²¹
- 8.5 The Committee has been advised that the President will table in the Legislative Council any notice received of treaties tabled in the Commonwealth Parliament, and any subsequent reports on treaties received by the President from the Chair of the Commonwealth Parliament Joint Standing Committee on Treaties together with any other relevant information (which may include the treaties themselves).
- 8.6 The Committee has resolved to pursue Recommendation 3 (above).

Statutes (Repeals and Minor Amendments) Bill 2006

- 8.7 Report 21 of the Committee was tabled on 16 October 2007 following its inquiry into the Statutes (Repeals and Minor Amendments) Bill 2006.

²¹ Tabled Paper No 3540, 27 November 2007.

- 8.8 As discussed in Report 21, the bill proposed the repeal of 18 State Acts or Ordinances (including five State legislative Codes), amendments to 152 State Acts, and the repeal of eight Imperial Acts, either in part or in full.²²
- 8.9 The bill was introduced to the Legislative Council on 18 October 2006 and was referred to the Committee for inquiry and report immediately following the Second Reading Speech. This innovation was suggested in the Committee's report on the Statutes Law Revision Bill 2005.²³
- 8.10 The Committee held two public hearings on the bill. The first of these was on 4 April 2007 at which the witnesses in attendance were the Departmental Instructing Officer and Policy Officer on the bill. The second of these hearings was held on 30 May 2007 at which the witness was the Parliamentary Counsel for Western Australia.
- 8.11 The Committee took great care in Chapter 1 of Report 21 to outline the accepted nature and function of "omnibus statutes review" legislation. The subsequent analysis of the bill was conducted through the prism of that outline.
- 8.12 The Committee's inquiries revealed that the overwhelming majority of proposed amendments were suitable for inclusion in an omnibus statutes review Bill and were identified at Appendix 2 to the report.
- 8.13 In response to the Committee's preliminary inquiries on the bill, the Committee was advised by the Departmental Instructing Officer that Parliamentary Counsel's Office had prepared draft amendments to two proposed clauses of the bill.²⁴
- 8.14 The Committee resolved to highlight a number of clauses within the bill to the Legislative Council without making any recommendation. In turn these relate to:
- extending certain powers of Children's Court Magistrates to the Children's Court Judge;²⁵
 - changing a statutory reference to a labour cost index for the purposes of indexing certain compensation payments;²⁶

²² Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 21, Statutes (Repeals and Minor Amendments) Bill 2006, 16 October 2007, p10.

²³ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 8, *Statutes Law Revision Bill 2005*, April 2006, p4 para 4.5.

²⁴ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 21, Statutes (Repeals and Minor Amendments) Bill 2006, 16 October 2007, p26 and Appendix 3.

²⁵ Ibid, p13.

²⁶ Ibid, p14.

- correcting a perceived drafting anomaly in the *Corruption and Crime Commission Act 2003* relating to “exceptional powers”;²⁷
- addressing a perceived drafting anomaly in the *Legal Aid Commission Act 1976* argued to be the result of a clash of commencement dates of amending legislation;²⁸ and,
- granting a regulation making power under the *Metric Conversion Act 1972* to allow for the conversion of statutory references to imperial units of measurement into their metric equivalents.²⁹

8.15 None of the above highlighted clauses could be seen to come within the accepted nature and function of omnibus statutes review legislation.

8.16 The Committee formed the view that a number of the bill’s clauses were clearly not suitable for inclusion in an omnibus statutes review bill, namely:

- A proposed amendment to the *Adoption Act 1994* in the bill served as a salutary lesson on the difficulties that can arise with bulk retro-application of conjunctives in lengthy, technical legislation.³⁰ There were other clauses in the bill which sought to retro-actively modify conjunctives and or disjunctives within technical provisions in a blanket manner, however the dangers attending such treatment were best illustrated in the case of the *Adoption Act 1994*. Despite having passed through the various levels of scrutiny and quality assurance applied by the Office of the Parliamentary Counsel, careful review by the Committee resulted in fresh instructions to prepare draft amendments to the relevant clause of the bill. As a result of this experience the Committee has determined to further consider the issue of quality assurance, resource sufficiency and compliance testing with respect to the Parliamentary Counsel’s Office.
- A minor drafting error in the bill in connection with the *Corruption and Crime Commission Act 2003* was identified and, following preliminary inquiries by the Committee, a draft amendment to the bill was advised by the Instructing Officer to the bill.³¹

²⁷ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 21, Statutes (Repeals and Minor Amendments) Bill 2006, 16 October 2007, p15.

²⁸ Ibid, p17.

²⁹ Ibid, p18.

³⁰ Ibid, p26.

³¹ Id.

- Further amendments proposed by the bill to the *Corruption and Crime Commission Act 2003* were not supported by the Committee on the basis that they more properly formed the subject matter of a special purpose amending bill.³²
- Extensive proposals in the bill to amend the *Criminal Property Confiscation Act 2000* were likewise opposed by the Committee on the basis that they warranted a special purpose amending bill.³³
- A substantive proposed amendment to the statutory powers of Verve Energy under the *Electricity Corporations Act 2005* was plainly outside the accepted nature and function of omnibus statutes review bills.³⁴
- A proposed amendment to the *Local Government Act 1995* extending the powers of the Governor to appoint local government commissioners was also clearly beyond the accepted nature and function of omnibus statutes review bills.³⁵
- Two proposed amendments to insert custodial terms of imprisonment into the *Professional Combat Sports Act 1987* as statutory penalties were identified by the Committee as being unsuitable for inclusion in an omnibus statutes review bill.³⁶

8.17 A number of the proposed amendments in the bill to which the Committee took exception were founded on the premise that it was appropriate to include within omnibus statutes review bills amendments intended “to better implement the object or intent of legislation”.³⁷ The Committee noted in Report 21 that this was a novel formulation, and one which is yet to be debated and/or accepted by the Legislative Council.³⁸ Such was the Committee’s concern about this innovation that it has resolved to pursue the question within the framework of the on-going inquiry into statutes repeals and minor amendments bills when Report 21 is considered by the House.

³² Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 21, Statutes (Repeals and Minor Amendments) Bill 2006, 16 October 2007, p26.

³³ Ibid, p29.

³⁴ Ibid, p34.

³⁵ Ibid, p36.

³⁶ Ibid, p37.

³⁷ Hon Kim Chance, MLC, then the Leader of the House; Minister Representing the Premier, Minister for Public Sector Management, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 18 October 2006, p7142.

³⁸ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 21, Statutes (Repeals and Minor Amendments) Bill 2006, 16 October 2007, p40.

- 8.18 The Committee commented specifically in Report 21 on the concerning incidence of unhelpful or misleading commentary contained within the explanatory memorandum to the bill.³⁹ The Committee highlighted a number of such instances.
- 8.19 The Committee made some comments in Report 21 concerning the grouping together of similar-type amendments in omnibus statutes review bills. The Committee was there attempting to provide feedback to Parliamentary Counsel's Draftspersons about the preferences of legislators so that it might facilitate the expeditious scrutiny of legislation. The Committee remains hopeful that these comments will be taken on board by future Draftspersons.
- 8.20 The Committee noted that, more than 175 years after the establishment of the Legislative Council, imperial legislation still encumbers the Western Australian statute book. The Committee further noted that the Law Reform Commission of Western Australia (**LRCWA**) published a report on imperial statutes in 1994.⁴⁰ The outcome of this report is summarised on the LRCWA's website in the following terms:⁴¹

In 1995, Cabinet approved the drafting of legislation to implement this report. Parliamentary Counsel prepared a first draft, the Imperial Acts (Law Reform) Bill, and requested comments from the Commission. In August 1996, representatives of the Commission, the Solicitor General and Parliamentary Counsel met with the Attorney General to discuss the proposed legislation. No further action has been taken.

- 8.21 The Committee is concerned that the costly work product of both the LRCWA and Parliamentary Counsel should result in "no further action". This matter relates to the Committee's term of reference to review the form and content of the statute book and is addressed further in this report below.

9 OTHER INQUIRIES

Intergovernmental Agreement on the Reform of Commonwealth - State Financial Relations

- 9.1 This inquiry was referred by the Legislative Council pursuant to paragraph 8.3(f) of the Committee's terms of reference on 19 October 2005. The terms of reference for the inquiry are:

³⁹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 21, Statutes (Repeals and Minor Amendments) Bill 2006, 16 October 2007, p41.

⁴⁰ Law Reform Commission of Western Australia, Project 75 Report., *United Kingdom Statutes in Force in Western Australia*, 25 October 1994.

⁴¹ <http://www.lrc.justice.wa.gov.au/075o.html>, (viewed on 18 March 2008).

That the Standing Committee on Uniform Legislation and Statutes Review do inquire into and report on the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations including -

- (a) the implementation of that Agreement;*
- (b) any reviews required by that Agreement;*
- (c) the possible impact of any matters proposed or arising under any review;*
- (d) any related issues the Committee considers appropriate;*
- (e) the fiscal benefits flowing to the Commonwealth from the economic development of Western Australia;*
- (f) the extent of, reasons for and ways to ameliorate Western Australia's fiscal subsidy to the rest of the Australian Federation; and*
- (g) the relative extent of and potential for Commonwealth direct investment in Western Australian infrastructure.*

9.2 In the Annual Report 2006, it was noted that the Committee had produced an interim report relating to terms of reference (a)-(d), with particular focus on the review of stamp duties required by clause 5(vii) of the revised Intergovernmental Agreement.⁴² The Committee is continuing its inquiry into the remaining terms of reference.

10 ONGOING INQUIRY

The Statutes Review Inquiry

10.1 Term of reference 8.3(d) empowers the Committee “to review the form and content of the statute book”. Statutes Repeals and Minor Amendment Bills which are also known as “omnibus bills” are a mechanism by which the statute book is reviewed.

10.2 On 28 November 2005, the Committee resolved to inquire into and report on:

- a) the purpose and nature of Statutes Repeals and Minor Amendments Bills;
- b) the process for the drafting and enactment of Statutes Repeals and Minor Amendments Bills and, if relevant, the comparative process in other Australian jurisdictions; and

⁴² That Report was tabled on 22 November 2006.

-
- c) any related issues the Committee considers appropriate.
- 10.3 Given the perennial nature of omnibus bills, together with the close connection they bear to the overall *Statutes Review Inquiry*, the Committee has formed the view that this inquiry must be in the nature of an open, watching brief. In the absence of a direction from the Legislative Council to the contrary, it is the Committee's intention to pursue this term of reference in an ongoing manner.
- 10.4 The Committee anticipates that there may be occasion for interim reports on matters of particular significance relating to omnibus bills, but in the normal course, the Committee proposes to use the vehicle of the Annual Report to advise the Legislative Council of its inquiries on this matter.

Conclusion

- 10.5 The Committee had a productive year tabling six reports, three of which related to uniform legislation. There are a number of other matters subject to ongoing inquiry as at the end of this reporting period. The major task accomplished this year was the scrutiny and Report on the Statutes (Repeals and Minor Amendments) Bill 2006. Members of the Committee would like to record their appreciation for the excellent support of Committee staff.



Hon Adele Farina MLC
Chairman

2 December 2008

APPENDIX 1
STANDING ORDER 230A - AMENDMENTS

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Uniform legislation

230A. (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, within 30 days of the date of the adjournment (exclusive of that day) or before it has been reported from a Committee, whichever is the later.
- (3) Unless otherwise ordered, a Bill stands referred to the Uniform Legislation and Statutes Review Committee at the conclusion of the second reading speech of the Minister or Member in charge.
- (4) The Uniform Legislation and Statutes Review 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 (exclusive of the referral day) or such other period as may be ordered by the House.

APPENDIX 2
FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

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FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

Does the legislation have sufficient regard to the rights and liberties of individuals?

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?

Does the Bill have sufficient regard to the institution of Parliament?

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?**