



THIRTY-EIGHTH PARLIAMENT

REPORT 54

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

ANNUAL REPORT 2009

Presented by Hon Adele Farina MLC (Chairman)

September 2010

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 Adele Farina MLC (Chairman) Hon Helen Bullock MLC (from 4 June 2009)

Hon Nigel Hallett MLC (Deputy Chairman) Hon Brian Ellis MLC (to 4 June 2009)

Hon Liz Behjat MLC (from 4 June 2009) Hon Sheila Mills MLC (to 22 May 2010)

Staff as at the time of this inquiry:

Susan O’Brien, Advisory Officer (Legal) Mark Warner, Committee Clerk

Anne Turner, Advisory Officer (Legal) Cassandra Stephenson, Committee Clerk

Suzanne Veletta, Advisory Officer (General) Denise Wong, Advisory Officer (Legal)

Address:

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

lcco@parliament.wa.gov.au

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

ISBN 978-1-921634-48-2

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

IN RELATION TO THE

ANNUAL REPORT 2009

1 INTRODUCTION - ANNUAL REPORT

1.1 In the 37th Parliament, parliamentary committees of the Legislative Council tabled annual reports relating to their work during the preceding calendar year. This practice continues in the current 38th Parliament.

Reporting period

1.2 This report summarises the Committee's activities for the period 1 January to 31 December 2009.

2 TERMS OF REFERENCE

2.1 The Committee's current terms of reference are published on the inside cover of this report. The terms of reference refer to Standing Order 230A, a copy of which is attached as **Appendix 1**.

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;
- 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 On the last point, however, Standing Order 230B now provides a general prohibition against Legislative Council standing committees inquiring into the policy of a bill, unless otherwise ordered.

Bills to which Standing Order 230A applies

2.4 As the Committee reported in its Reports 44 and 48 (reports tabled in 2010 in respect of bills referred in 2009), through 2009 and 2010, it received correspondence suggesting Standing Order 230A was not well understood by various ministerial

offices, government departments and agencies, leading to initial failure to characterise a bill as one to which Standing Order 230A applied.

2.5 In summary:

- ‘Uniform legislation’ does not equate to legislation that is required by a written intergovernmental agreement to be identical in its terms with the legislation of another jurisdiction;
- Standing Order 230A(1)(a) and (b) are disjunctive, as are the legs of sub-order 230A(1)(b); and
- As with other Legislative Council Standing Orders, Standing Order 230A(1) is interpreted in accordance with the custom and practice of the Legislative Council and its intent.

2.6 The Committee is required by its term of reference 8.3(a):

to consider and report on Bills referred under SO230A.

2.7 The Committee draws the attention of the Legislative Council to Reports 19 and 23 of the former Standing Committee on Uniform Legislation and General Purposes, which contain a useful summary of the various materials that may constitute, or evidence, an intergovernmental agreement and the range of structures that ‘uniform legislation’ may take.

3 REPORTS TABLED

Reports

3.1 The Committee tabled nine reports in 2009, being:

- Report 35 - National Gas Access (WA) Bill 2008, tabled 10 March 2009;
- Report 36 - Child Exploitation Material and Classification Legislation Amendment Bill 2009, tabled 21 May 2009;
- Report 37 - National Environment Protection Council (Western Australia) Amendment Bill 2009, tabled 21 May 2009;
- Report 38 - First Home Owner Grant Amendment Bill 2009, tabled 3 July 2009;
- Report 39 - Statutes (Repeals and Minor Amendments) Bill 2009, tabled 16 September 2009;

- Report 40 - Cross-border Justice Amendment Bill 2009, tabled 13 October 2009;
- Report 41 - Child Exploitation Material and Classification Legislation Amendment Bill 2009, tabled 22 October 2009;
- Report 42 - Professional Standards Amendment Bill 2009, tabled 19 November 2009; and
- Report 43 - Arson Legislation Amendment Bill 2009, tabled 19 November 2009.

Inquiries commenced in the reporting period but not concluded

3.2 Inquiries into the following bills were commenced in 2009 but not completed at 31 December 2009:

- Criminal Code Amendment (Identity Crime) Bill 2009;
- Working with Children (Criminal Record Checking) Amendment Bill 2009;
- Approvals and Related Reforms (No 1) Environment Bill 2009;
- Rail Safety Bill 2009; and
- Petroleum and Energy Legislation Amendment Bill 2009.

General inquiry procedure

3.3 The Committee scrutinises 'uniform' bills under its term of reference 8.3(a), which provides that the Committee is "*to consider and report on Bills referred under SO 230A*".

3.4 In general, with bills referred under Standing Order 230A, the Committee:

- identifies and outlines the intergovernmental agreement/national scheme to which the bill gives effect;
- describes the practical effect of the bill;
- reports on consistency between the bill and the relevant intergovernmental agreement/national scheme;
- reports on the impact of the bill/intergovernmental agreement/national scheme on sovereignty of the State and Parliamentary rights and privileges; and

- scrutinises the bill against relevant fundamental legislative scrutiny principles. These are summarised in **Appendix 2**.
- 3.5 From time to time, the Committee also scrutinises under its terms of reference 3.8(d), (e) and (f), which provide:
- (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.*
- 3.6 Report 39 - Statutes (Repeals and Minor Amendments) Bill 2009, is an example of an inquiry conducted under the Committee's terms of reference 3.8(d) and (f).
- 3.7 The Committee advertises each of its inquiries on its website and, unless there are reasons for not doing so, in the *West Australian* newspaper. The Committee generally invites submissions from identified stakeholders and the public.
- 3.8 In 2009, the Committee endeavoured to continue its practice of holding a hearing on every bill referred to it under Standing Order 230A. This provides the Committee with an opportunity to question the relevant departmental instructing officer. On occasions, the Committee may also hold hearings with stakeholders.
- 3.9 The Committee was not, however, able to follow its usual practice in respect of:
- Report 36 - Child Exploitation Material and Classification Legislation Amendment Bill 2009; and
 - Report 43 - Arson Legislation Amendment Bill 2009,
- due to the Legislative Council curtailing the time allowed by Standing Order 230A to report on the relevant bills. In respect of those reports, no hearing occurred. (The Child Exploitation Material and Classification Legislation Amendment Bill 2009, however, was re-referred to the Committee and the subject of a later report, Report 41.)

Reporting deadlines

- 3.10 The Committee has on previous occasions drawn the attention of the House to the difficulties it experiences in scrutinising bills and reporting within the 30 day deadline imposed by Standing Order 230A(4). This arises from a number of issues, including: the complexity of much legislation under review; failure of the government to identify

and provide supporting documents in a timely manner; lack of explanatory information in Explanatory Memoranda; and Committee workload.

3.11 The Committee was granted extensions of time to report on the following two occasions:

- Report 38 - First Home Owner Grant Amendment Bill 2009, tabled 3 July 2009; and
- Report 42 - Professional Standards Amendment Bill 2009, tabled 19 November 2009.

4 BILLS NOT AUTOMATICALLY REFERRED TO THE COMMITTEE

4.1 Under Standing Order 230A, unless otherwise ordered by the House, bills falling within the ambit of that standing order are automatically referred to the Committee at the conclusion of the Second Reading Speech of the Minister or Member in charge. Five such bills were not referred in the reporting period. These are discussed below.

Sentence Administration (Interstate Transfer of Community Based Sentences) Bill 2009

4.2 The Sentence Administration (Interstate Transfer of Community Based Sentences) Bill 2009 was introduced to the House on 11 March 2009. It had previously been introduced to the House on 10 April 2008 as the Sentence Administration (Interstate Transfer of Community Based Sentences) Bill 2007 and referred to the Committee. The Committee tabled its report on the 2007 bill, Report 29, on 27 May 2008. The Sentence Administration (Interstate Transfer of Community Based Sentences) Bill 2007 lapsed on the prorogation of the Parliament for the State election on 7 August 2008, requiring the introduction of the Sentence Administration (Interstate Transfer of Community Based Sentences) Bill 2009.

Prisoners (Interstate Transfer) Amendment Bill 2009

4.3 The Prisoners (Interstate Transfer) Amendment Bill 2009 was introduced to the House on 8 April 2009. It had previously been introduced to the House on 10 April 2008 as the Prisoners (Interstate Transfer) Amendment Bill 2007 and referred to the Committee. The Committee tabled its report on the 2007 bill, Report 28, on 27 May 2008. The Prisoners (Interstate Transfer) Amendment Bill 2007 lapsed on the prorogation of the Parliament for the State election on 7 August 2008, the introduction of the Prisoners (Interstate Transfer) Amendment Bill 2009.

Co-operatives Bill 2009

4.4 The Co-operatives Bill 2009 was introduced to the House on 13 May 2008. It was in essentially the same terms as the Co-operatives Bill 2007, which had been introduced to the House on 9 April 2007 and referred to the Committee. The Committee tabled

its report on the Co-operatives Bill 2007, Report 30, on 27 May 2008. The Co-operatives Bill 2007 lapsed on the prorogation of the Parliament for the State election on 7 August 2008, requiring the introduction of the Co-operatives Bill 2009.

Fish Resources Management Bill 2009

- 4.5 The Fish Resources Management Bill 2009 was introduced to the House on 14 October 2009. The bill was not identified as one to which Standing Order 230A applied in the Second Reading Speech. The Explanatory Memorandum to the bill, however, stated that certain amendments proposed by the bill reflected the provisions of the *Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Act 2006* (Cwlth) and were made in accordance with the decision of the Natural Resources Management Ministerial Council.
- 4.6 Referral of the bill to the Committee pursuant to Standing Order 230A was questioned by the responsible Minister and the bill stood adjourned for the Minister and President to seek further advice. On 10 November 2009, the President ruled that Standing Order 230A applied to the Fish Resources Management Bill 2009.
- 4.7 The House supported the government's motion on 10 November 2009 that, due to the limited nature of uniform provisions and the need to urgently consider the bill, the Fish Resources Management Bill 2009 not be referred to the Committee.
- 4.8 The Committee notes that had the Fish Resources Management Bill 2009 been correctly identified in the Second Reading Speech, the Committee would have been required by Standing Order 230A to report on 17 November 2009.

Higher Education Amendment Bill 2009

- 4.9 The Higher Education Amendment Bill 2009 was introduced to the House on 18 November 2009, when it was identified as a bill to which Standing Order 230A applied. The House supported the government motion that the bill not be referred to the Committee.

5 COMMITTEE TRAVEL

- 5.1 Hon Adele Farina MLC (Chairman), Hon Liz Behjat MLC and Hon Helen Bullock MLC attended the biennial Australia-New Zealand Scrutiny of Legislation Conference, held in Canberra on 6 to 8 July 2009, which examined *Scrutiny and Accountability in the 21st Century*. Hon Adele Farina MLC chaired a session of that conference.

6 CONCLUSION

- 6.1 The Committee had a productive year tabling nine reports and commencing four further inquiries. Members of the Committee would like to record their appreciation for the excellent support of Committee staff.



Hon Adele Farina MLC
Chairman

9 September 2010

APPENDIX 1
TERMS OF REFERENCE

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- 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;
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 - (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;
 - (f) to consider and report on any matter referred by the House or 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.

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.