



THIRTY-SEVENTH PARLIAMENT

REPORT 2

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

STANDARD TIME BILL 2005

Presented by Hon Simon O'Brien MLC (Chairman)

September 2005

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Date first appointed:

August 17 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 Sheila Mills MLC

Hon Matt Benson-Lidholm MLC

Hon Donna Taylor MLC

Staff as at the time of this inquiry:

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

IN RELATION TO THE

STANDARD TIME BILL 2005

1 REFERENCE

- 1.1 On August 23 2005, the Standard Time Bill 2005 (**Bill**) stood referred to the Uniform Legislation and Statutes Review Committee (**Committee**) pursuant to Standing Order 230A.
- 1.2 Standing Order 230A(4) requires the Committee to report to the Legislative Council within 30 days of the first reading of the Bill and thus the Committee is due to report by September 21 2005.
- 1.3 Standing Order 230A(5) prevents the Committee inquiring into the policy of the Bill.

2 INQUIRY PROCEDURE

- 2.1 The Committee did not seek submissions with respect to the Bill, however, details of the inquiry were available on the Parliament website: www.parliament.wa.gov.au.
- 2.2 On June 29 2005, prior to the referral of the Bill, the Premier, Hon Dr Gallop MLA, provided the Committee with the standard information that it seeks in relation to uniform bills.¹

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 1**. This Bill is an example of a form of uniform legislation known as 'Complementary Commonwealth-State or Co-operative Legislation' (refer to Structure 1 in Appendix 1).
- 3.3 When examining uniform legislation, the Committee considers what are known as 'fundamental legislative scrutiny principles'. Although not formally adopted by the

¹ Letter from Hon Dr G Gallop MLA, Premier, June 29 2005.

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.² These principles are set out in **Appendix 2**.

4 PURPOSE OF THE BILL

4.1 The Bill is intended to provide that standard time will be measured in Western Australia by reference to **Co-ordinated Universal Time** rather than **Greenwich Mean Time**, which is the current measure under the *Standard Time Act 1895*.

4.2 **Greenwich Mean Time** is a solar time scale based on the average time that the earth takes to rotate on its axis from noon to noon and is measured at the Royal Observatory in Greenwich, England.³

4.3 **Co-ordinated Universal Time** is determined by the International Bureau of Weights and Measures in Paris, which co-ordinates data from more than 200 atomic clocks in timing laboratories around the world, including the Australian National Measurement Institute in Canberra.⁴

4.4 The second reading speech indicates that Greenwich Mean Time is a less accurate time scale because it measures time based on the motion of the earth, which is erratic, fluctuating a few thousandths of a second a day. By contrast, Co-ordinated Universal Time is accurate to approximately one billionth of a second per day.⁵

4.5 The second reading speech asserts that the shift to the use of Co-ordinated Universal Time as the measure of standard time is necessary because:⁶

- it is used by many modern technologies including the satellite-based global positioning system;
- it is the standard measure in the United States, New Zealand, Singapore and the United Kingdom;
- at the Commonwealth level, since 1997, the Chief Metrologist has been required by the *National Measurement Act 1960 (Cth)* (**Commonwealth Act**) to maintain Co-ordinated Universal Time;

² Further background on fundamental legislative scrutiny principles can be found in a report by the predecessor Committee, the Standing Committee on Uniform Legislation and General Purposes: refer to Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, Report 23, *The Work of the Committee During the Second Session of the Thirty-Sixth Parliament - August 13 2002 to November 16 2004*, November 2004, pp4-9.

³ Hon Kim Chance MLC, Minister for Agriculture; Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, August 23 2005, p4299.

⁴ Ibid.

⁵ Ibid.

- the Australian Bureau of Metrology has advised that for most practical purposes, Co-ordinated Universal Time has superseded Greenwich Mean Time;
- in Western Australia, organisations that disseminate time such as the Australian National Measurement Institute which has an outpost in the physics school at the University of Western Australia and Telstra Australia, already use Co-ordinated Universal Time; and
- it will result in Western Australia's standard time being based on the internationally accepted time standard.

5 BACKGROUND TO THE BILL

- 5.1 Since 1997, at the Commonwealth level, pursuant to the Commonwealth Act, Co-ordinated Universal Time has been the legal measurement of time, but standard time Acts and similar legislation in the States and Territories have continued to use Greenwich Mean Time.
- 5.2 The Committee notes that the second reading speech relating to the counterpart bill in the Northern Territory indicated that the use of Co-ordinated Universal Time was raised at the meeting of the Standing Committee of Attorneys General (**SCAG**) on November 5 2004 as a result of Dr Richard Brittain, Secretary of the National Time Commission, approaching relevant State and Territory Ministers.⁷
- 5.3 At the SCAG meeting on November 5 2004, it was agreed that State and Territory legislation would replace references to Greenwich Mean Time with Co-ordinated Universal Time. It was further agreed that to avoid confusion, the relevant amendments would commence on September 1 2005.⁸
- 5.4 The Premier provided the Committee with an extract of the minutes of the SCAG meeting and these are attached as **Appendix 3**.⁹

⁶ Ibid

⁷ Dr Toyne, Minister for Justice and Attorney General, Northern Territory, Legislative Assembly, *Parliamentary Debates (Hansard)*, February 17 2005.

⁸ Hon Kim Chance MLC, Minister for Agriculture; Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, August 23 2005, p4299.

⁹ Letter from Hon Dr G Gallop MLA, Premier, June 29 2005.

6 COMMENT ON THE BILL

Implementation of agreement

- 6.1 When considering uniform legislation, the Committee undertakes an examination of the documentation recording the agreement reached in the relevant Ministerial Council to determine whether the proposed legislation implements that agreement.
- 6.2 The Committee has considered the extract of the minutes from the SCAG meeting on November 5 2004 and is of the view that the Bill accords with the intent of the agreement captured in the short extract.

Clauses of the Bill

- 6.3 The Bill contains seven clauses and the Committee comments on the selected clauses below.

Clause 2 - Commencement

- 6.4 Commensurate with the SCAG agreement, clause 2 provides that the Bill commences on September 1 2005.
- 6.5 The Committee notes that September 1 2005 has passed and that Supplementary Notice Paper No. 54, Issue No. 1 proposes to amend clause 2 to enable the Bill to commence on the day after the day on which it receives Royal Assent.
- 6.6 The Committee asked the Premier about the effect of the delay in the commencement of the Bill given that the second reading speech indicated that a uniform commencement date of September 1 2005 was required to “*avoid confusion*”.¹⁰
- 6.7 The Premier advised the Committee that Parliamentary Counsel, Mr Greg Calcutt indicated that there would be no significant implications if the legislation commences after September 1 2005. Additionally, advice was sought from Dr Richard Brittain, Secretary of the National Time Committee about whether a retrospective commencement date of September 1 2005 was necessary. Dr Brittain indicated that there is “*no fundamental technical reason why retrospective legislation should be enacted*” and that the universal commencement date was suggested to ensure that the changes were enacted rather than for technical reasons.¹¹
- 6.8 The Committee notes that the relevant legislation has been passed in Queensland, New South Wales, Victoria, the Northern Territory and the Australian Capital Territory

¹⁰ Letter to Hon Dr Gallop MLA, Premier, August 31 2005. In relation to the second reading speech, see Hon Kim Chance MLC, Minister for Agriculture; Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, August 23 2005, p4299.

¹¹ Letter from Hon Dr Gallop MLA, Premier, August 31 2005, p1.

with Co-ordinated Universal Time commencing on September 1 2005 in those States and Territories. The Committee notes that Tasmania and South Australia are yet to pass the legislation with the relevant Tasmanian bill proposing a retrospective commencement date of September 1 2005.¹²

6.9 Based on the advice from Parliamentary Counsel and Dr Richard Brittain, the Committee is of the view that:

- a retrospective commencement date is not required; and
- Supplementary Notice Paper No. 54, Issue No. 1 appropriately resolves the issue of the commencement date of the Bill.

Clause 3 - Definitions

6.10 Clause 3 contains the relevant definitions including that of “*Co-ordinated Universal Time*”. The Committee notes that it is defined as the time determined by the International Bureau of Weights and Measures and maintained under section 8AA of the Commonwealth Act. To assist debate in the Legislative Council, the Committee notes that section 8AA of the Commonwealth Act provides that:

The Chief Metrologist is to maintain, or cause to be maintained, Co-ordinated Universal Time (UTC) as determined by the International Bureau of Weights and Measures.

Clause 5 - Construction of references to time in legal instruments

6.11 Clause 3 contains a wide definition of “*legal instrument*” to include primary legislation, subsidiary legislation, contracts and agreements and any deed or instrument having legal effect.

6.12 Clause 5 operates to apply the standard time as measured by Co-ordinated Universal Time (rather than Greenwich Mean Time) to any time or period of time stated in a legal instrument, unless it is expressly required to be construed another way.

6.13 The Committee notes that clause 5(3) provides that the application of standard time as measured by Co-ordinated Universal Time is to apply to legal instruments made before the commencement of the Act.

6.14 When applying fundamental legislative scrutiny principles to bills, the Committee examines whether the bill adversely affects rights and liberties or imposes obligations retrospectively.

¹² Ibid, p2.

6.15 The Committee notes that if Co-ordinated Universal Time did not apply retrospectively then some periods of time in legal instruments would be measured by Greenwich Mean Time up to the commencement of the proposed Act and then Co-ordinated Universal Time after the commencement of the proposed Act.

6.16 As the difference between Greenwich Mean Time and Co-ordinated Universal Time relates to parts of seconds, it is difficult for the Committee to envisage how clause 5(3) might adversely affect rights and liberties or impose obligations retrospectively.

7 CONCLUSION

7.1 The Committee has considered the operation of the clauses of the Bill and considers that the Bill should be passed subject to the amendment proposed in Supplementary Notice Paper No. 54, Issue No. 1.

Recommendation

Recommendation 1: The Committee recommends that the Standard Time Bill 2005 be passed subject to the amendment proposed in Supplementary Notice Paper No. 54, Issue No. 1.



Hon Simon O'Brien MLC
Chairman

September 20 2005

APPENDIX 1

IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION

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 regulations 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 2

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?**

APPENDIX 3

EXTRACT FROM MINUTES OF NOVEMBER 5 2004 MEETING OF STANDING COMMITTEE OF ATTORNEYS-GENERAL

Attachment 1

EXTRACT FROM MINUTES OF 5 NOV. 2004
MEETING OF STANDING COMMITTEE OF
ATTORNEYS - GENERAL

6. COORDINATED UNIVERSAL TIME

Ministers:

1. Agreed to replace references in legislation to GMT with UTC; and
2. Agreed to introduce legislation into Parliament that will commence on 1 September 2005.