



STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Your Ref: PIP

Hon Ken Travers MLC
Chair
Standing Committee on Estimates and Financial Operations
Parliament House
PERTH WA 6000

4 December 2015

Dear Chair

Inquiry into the Provision of Information to Parliament

I refer to your letter of 18 September 2015 requesting advice as to whether the Standing Committee on Uniform Legislation and Statutes Review has experienced any difficulties obtaining information from the Government. The Committee recalls the following occasions during this Parliament when this was an issue.

Information pursuant to Ministerial Office Memorandum 2007/01 (MOM2007/01)

MOM2007/01 contains a description of the information required by the Committee from the Government to assist it in the conduct of its inquiries into uniform legislation. A copy is attached.

Standing Order 126(5) requires that the Member in charge of a Bill referred to the Committee ensure all documentation required by the Committee is provided to it within 3 working days after referral.

On occasion, the Committee has experienced a delay in obtaining the documentation required by MOM2007/01 within this timeframe. For example, the Directors' Liability Reform Bill 2015 was referred to the Committee on 25 February 2015, but it did not receive information pursuant to MOM2007/01, which was due by 3 March 2015, until 13 March 2015.

Assertion of public interest immunity – Directors' Liability Reform Bill 2015

During the Committee's inquiry into the Directors' Liability Reform Bill 2015 the Department of the Attorney General was requested to provide information to assist the Committee in understanding the process by which Western Australian legislation was audited by various agencies. The audit process

was used to determine the amendments required by the Council of Australian Government Principles and Guidelines governing personal liability for corporate fault.

The Department asserted public interest immunity by stating 'the context of audit forms part of the deliberative process of Cabinet.'¹ This assertion was the subject of Recommendation 1 of the Committee's report.²

If you have any questions, please contact Alex Hickman, the Committee's Advisory Officer (Legal), on 9420 7633 or at unileg@parliament.wa.gov.au.

Yours sincerely



Hon Kate Doust MLC
Chair

Att: Ministerial Office Memorandum 2007/01 (MOM2007/01)

¹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 92, *Directors' Liability Reform Bill 2015*, 21 April 2015, p 12.

² Ibid, p14.

MINISTERIAL OFFICE MEMORANDUM

MM 2007/01

UNIFORM LEGISLATION AND STATUTES REVIEW COMMITTEE

The Uniform Legislation and Statutes Review Committee ("the Committee") scrutinises all uniform legislation on behalf of the Legislative Council of Western Australia.

Uniform legislation

Uniform legislation is legislation that ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or which by reason of subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth of Australia ("uniform legislation").

The Legislative Council standing order

The Legislative Council standing orders provide for Bills implementing uniform legislation to automatically stand referred to the Committee for inquiry and report. The relevant standing order provides:

- 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.

There is an additional standing order of relevance to this matter, namely:

230B. Unless otherwise ordered, a standing committee is not to inquire into the policy of a Bill.

The standing orders require that the Committee report back on the Bill within 30 days. The Legislative Council can resolve to extend or reduce this period although it is more usual that the time for the Committee's inquiry and report is extended.

Ministers can assist the passage of uniform legislation through the Legislative Council by:

- (1) identifying the Bill/s early as one that may be subject to standing order 230A;
- (2) being aware that in programming the introduction and parliamentary passage of the Bill/s, account must be taken of the 30-day (minimum) period that the Bill/s will stand referred to the Committee for inquiry; and
- (3) responding to a request from the Committee for information in a timely manner.

Identification of Bills as uniform legislation

When introducing into the Parliament of Western Australia a Bill that implements uniform legislation, Ministers should ensure that the second reading speech for the Bill:

- (a) makes reference to the fact that the Bill is pursuant (whether in whole or in part) to uniform legislation; and
- (b) outlines the relevant intergovernmental agreement/memorandum of understanding pursuant to which the Bill has been introduced.

Provision of Information

To assist the conduct of the Committee's inquiries, a Minister should consider providing the following information to the Committee, at the time a Bill to which standing order 230A applies is first tabled in Parliament (even if this is in the Legislative Assembly):

- (a) a copy of the relevant intergovernmental agreement/memorandum of understanding, if one is available;
- (b) if (a) is not available, a copy of the communiqué from the Ministerial Council meeting at which it was agreed to introduce the legislation;
- (c) a statement as to any timetable for the implementation of the legislation;

- (d) a copy of the Explanatory Memoranda;
- (e) a public statement of the Government's policy on the Bill;
- (f) the advantages and disadvantages to the State as a participant in the relevant scheme or agreement;
- (g) relevant constitutional issues;
- (h) an explanation as to whether and by what mechanism the State can opt out of the scheme;
- (i) the mechanisms by which the Bill, once enacted, can be amended. That is, whether the intergovernmental agreement/memorandum of understanding places parameters on the type of and manner in which it is envisaged that amendments are to be made to the legislation, for example whether the agreement of the State, or a majority of States and Territories, is required;
- (j) if the legislation has been developed by reference to a model Bill, a copy of that model Bill; and
- (k) the name and contact numbers for the:
 - Policy Officer who has carriage of the Bill;
 - Instructing Officer in the relevant department; and
 - where relevant, any government expert(s) who can answer technical questions posed by the legislation.

This information should be sent via the Minister's Office to:

Advisory Officer
Uniform Legislation and Statutes Review Committee
Legislative Council
Parliament House
PERTH WA 6000.

In order to assist the timely passage of uniform legislation through the Legislative Council, Ministers should ensure that Ministerial staff and agencies within their portfolios are familiar with the above requirements of the Committee.

It is important that any request for the Committee to prohibit publication of all or part of the information provided is made when the information is provided and the reason why it is to be confidential is clearly stated. It should be noted that ongoing negotiations between levels of government are considered to be confidential and wherever possible, should not be divulged until the State's position is finalised. It should be further noted that the Committee will consider requests for confidentiality, but retains the power to publish any material. The Legislative Council may also authorise publication.

Further information regarding the functions or procedures of the Committee may be sought from the Committee Clerk, Uniform Legislation and Statutes Review Committee, telephone 9222 7300.



Alan Carpenter MLA
PREMIER

Enquiries:	Committee Clerk, ph: 9222 7300 Uniform Legislation and Statutes Review Committee
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