



THIRTY-SEVENTH PARLIAMENT

REPORT 17

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

ANNUAL REPORT 2006

Presented by Hon Simon O'Brien MLC (Chairman)

May 2007

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

Staff during this reporting period:

Paul Grant, Advisory Officer (Legal)
Christine Kain, Advisory Officer (Legal)
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**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW**

ANNUAL REPORT 2006

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 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 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 table annual reports relating to their work during the calendar year.

2 TERMS OF REFERENCE

- 2.1 The Standing Committee on Legislation and Statutes Review (**Committee**) current terms of reference are published on the inside cover of the report.
- 2.2 The terms of reference refer to Standing Order 230A, a copy of which is attached at **Appendix 1** to this Report.
- 2.3 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

¹ Hon Kim Chance MLC, Minister for Agriculture and Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 25 June 2003, p9149. Parliament meets and transacts business for a period known as a "session". A session is terminated by a 'prorogation' of 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, Minister for Agriculture and Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 25 June 2003, p9150.

- remove the previous express restriction on the consideration of the policy of a bill by a committee.

2.4 A new Standing Order 230B has been introduced which provides a general prohibition against Standing Committees inquiring into the policy of a bill unless otherwise ordered.

3 REPORTS

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

- **4 April 2006** - Report 8, Statutes Law Revision Bill 2005
- **4 April 2006** - Report 9, *Consumer Credit (Western Australia) Act 1996: Consumer Credit (Charge Card) Amendment Regulation (No. 1) 2005 (Qld)*
- **25 May 2006** - Report 10, Consumer Credit and Trade Measurement Amendment Bill 2006 (Qld)
- **13 June 2006** - Report 11, Terrorism (Preventative Detention) Bill 2005
- **27 June 2006** - Report 12, Consumer Protection Legislation Amendment and Repeal Bill 2005
- **20 September 2006** - Report 13, Water Efficiency Labelling and Standards Bill 2006
- **27 September 2006** - Report 14, Food Bill 2005
- **22 November 2006** - Report 15, Industrial Training Amendment Bill 2006
- **22 November 2006** - Report 16, Interim Report on the Intergovernmental Agreement on the Reform of Commonwealth - State Financial Relations

4 REPORTS TABLED - UNIFORM BILLS

General

4.1 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;

4.2 Essentially, 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.

4.3 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.

4.4 The Committee is pleased to note that following the Ministerial Office Memorandum concerning uniform legislation, information required by the Committee has been provided promptly by the relevant departments.³

4.5 The following is a summary of the reports the Committee has presented in 2006 in relation to uniform legislation.

Terrorism (Preventative Detention) Bill 2005

4.6 At a special Council Of Australian Governments meeting held on 27 September 2005 to consider national counter terrorism issues, State and Territory leaders agreed that following the July 2005 terrorist attacks in London a strengthening of Australia's counter-terrorism laws was warranted. An agreement was reached to amend the Commonwealth *Criminal Code* to include provision for measures such as control orders and preventative detention to improve Australia's capability to prevent terrorist acts and to prosecute perpetrators of such acts when they occur. Due to constitutional constraints on the Commonwealth, it was also agreed that the States and Territories would enact legislation to allow for certain counter-terrorism measures including preventative detention for up to 14 days.

4.7 The main features of the Terrorism (Preventative Detention) Bill 2005 were:

- Western Australian police may issue preventative detention orders for up to 14 days in order to:
 - a) prevent an imminent terrorist act expected to occur within 14 days; and
 - b) preserve evidence relating to a terrorist act that has occurred within the previous 28 days.
- A prohibited contact order may be made in relation to someone subject to a preventative detention order.
- Preventative detention orders cannot be made for people under 16 years of age.

³ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, Report 19, *Uniform Legislation and Supporting Documentation*, 27 August 2004, p31.

- Police should not use force which causes death or grievous bodily harm when taking a person into custody unless it is used lawfully in self defence or defence of another.
- A preventative detention order must be reviewed by the Supreme Court as soon as practicable.
- The detained person is only allowed limited and monitored contact with other people.
- Contact by the detainee with his or her lawyer will not be monitored if the lawyer has a security clearance to “*secret*” by the Commonwealth Attorney General’s Department, however contact with a lawyer may be monitored if a monitoring order is in place.
- Quarterly reports to the Parliament.
- Ministerial reviews on the first anniversary of the Act and then every three years thereafter.
- A ten year expiry date for those provisions dealing with preventative detention orders and prohibited contact orders.

Water Efficiency Labelling and Standards Bill 2006

- 4.8 The Water Efficiency Labelling and Standards Bill 2006 (**Water Bill**) complemented a mandatory regime - the Water Efficiency Labelling Standards (**WELS**) scheme - established by the Commonwealth Government for the testing and labelling of certain plumbing products and household appliances to ensure that minimum water efficiency standards are introduced and that consumers are encouraged to purchase water efficient products.
- 4.9 The Committee noted the extremely wide powers the Water Bill provided to WELS inspectors, and queried the use of penalties of imprisonment for a number of offences under the Water Bill.

Food Bill 2005

- 4.10 The Food Regulation Agreement was signed by the Council of Australian Governments on 6 December 2002. As part of that agreement the States and Territories were required to pass legislation giving effect to model food provisions which would allow administration and enforcement of the *Food Standards Code*. In Western Australia the proposed legislation is the Food Bill 2005 (**Food Bill**).

4.11 The Committee noted and discussed provisions in the Bill which impact on the rights and liberties of individuals with regard to:

- the privilege against self-incrimination; and
- the creation of strict liability offences.

Privilege against self- incrimination

4.12 The Food Bill contained provisions which removed the privilege against self-incrimination. Provisions of this nature do not exist in the part of the *Health Act 1911* which relate to food regulation. The right to the privilege against self-incrimination is expressly protected in the *Health Act 1911*.⁴

4.13 The common law privilege against self-incrimination entitles a person to refuse to answer any question, or produce any document, if the answer or the production of the document would tend to incriminate that person.⁵

4.14 The privilege against self-incrimination protects not only from direct incrimination, but also from making a disclosure that may lead indirectly to incrimination or to the discovery of other evidence of an incriminating nature.⁶

4.15 There was no discussion in the Explanatory Memorandum to the Food Bill regarding the justification for removal of the privilege.

4.16 The Committee considered the abrogation of the privilege in light of the public health issues inherent in legislation regulating the food industry. The Committee concluded that there is a significant public interest in the capacity of an enforcement agency to compel vital information from an individual on an urgent basis.

Strict liability

4.17 Strict liability offences involve penalising someone for an action whether or not they have guilty intent.

4.18 The Committee noted that the Food Bill contained a number of strict liability offences including a clause that imposes liability on an employer for an employee's offences.

4.19 Whilst similar strict liability clauses exist in the *Health Act 1911* penalties under the Food Bill are significantly higher and the possibility of imprisonment accompanies some offences.

⁴ Section 246ZB (4), *Health Act 1911*.

⁵ *Pyneboard Pty Ltd v Trade Practices Commission* (1983)152 CLR 328,335.

⁶ Queensland Law Reform Commission, Report No 59, *The Abrogation of the Privilege Against Self-Incrimination*, December 2004, paragraphs 1.3-1.4.

4.20 In Western Australia the defence of ‘mistake of fact’ applies to strict liability offences unless excluded. The Food Bill also makes stipulated defences available for some offences.

4.21 The Committee had concerns that the defence of mistake of fact may not be available to an employer where they were liable for an employee’s offence. The Committee raised this matter for the attention of the Legislative Council.

Industrial Training Amendment Bill 2006

4.22 The Industrial Training Amendment Bill 2006 (**Amendment Bill**) proposed 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.

4.23 The Committee queried the following issues relating to subsidiary legislation:

- although the Ministerial approval under the Amendment Bill 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); and
- whether the use of the word “*provide*” in a regulation-making provision 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.⁷ However, the Committee noted 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.

4.24 The Committee brought these two matters to the attention of the Legislative Council.

Issue Arising-Right to Silence

4.25 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

⁷ *Muong Gi Kim v Minister for Immigration and Multicultural & Indigenous Affairs* [2004] FCA 956; BC200404551, per Branson J at para 31.

applies the principles as a convenient framework for the scrutiny of uniform legislation. These principles are set out in **Appendix 2**.

- 4.26 One of the of fundamental legislative scrutiny principles that is considered by the Committee is whether the legislation has sufficient regard to the rights and liberties of individuals.
- 4.27 In considering individual rights and liberties the Committee notes with concern a pattern of infringement of the ‘right to silence’.

*The right to silence, in its broadest terms, provides that a person is not under a duty to answer questions from or provide information to public officials engaged in an investigation or prosecution.*⁸

- 4.28 The New South Wales Legislation Review Committee noted the more extensive definition of the right to silence expressed by the House of Lords in *R v Director of Serious Fraud Office; ex parte Smith* [1933] AC 1 at 30-31 per Lord Mustill:

The expression “the right to silence” describes a group of rights

which ... includes:

(1) a general immunity, possessed by all persons and bodies, from being compelled on pain of punishment to answer questions posed by other persons or bodies;

(2) a general immunity, possessed by all persons and bodies, from being compelled on pain of punishment to answer questions the answers to which may incriminate them;

(3) a specific immunity, possessed by all persons under suspicion of criminal responsibility whilst being interviewed by police officers or others in similar positions of authority, from being compelled on pain of punishment to answer questions of any kind;

(4) a specific immunity, possessed by accused persons undergoing trial, from being compelled to give evidence, and from being compelled to answer questions put to them in the dock;

(5) a specific immunity, possessed by persons who have been charged with a criminal offence, from having questions material to the offence addressed to them by police officers or persons in a similar position of authority;

⁸ New South Wales, Legislation Review Committee, *The Right to Silence: Discussion Paper*, Discussion Paper No. 1, 21 September 2005, p4.

(6) a specific immunity (at least in certain circumstances...) possessed by accused persons undergoing trial, from having adverse comment made on any failure.

4.29 The Committee noted that the right to silence was infringed in the following bills that it considered in 2006:

- Water Efficiency Labelling and Standards Bill 2006; and the
- Food Bill 2005.

4.30 The Committee is aware that the issue of the statutory abrogation of the right to silence has been, and is being, considered in other States.⁹

4.31 In the Committee's view, there needs to be a considered weighing of the interests of all parties in circumstances where there is a statutory infringement on the right to silence. The Committee is concerned that the rights of the individual should receive adequate consideration and should not be compromised as a matter of course.

4.32 The Queensland Law Reform Commission, when examining the issue of abrogation of the privilege of self incrimination by statute, noted that, the fact that the abrogation provision is part of a uniform legislative scheme does not justify abrogation of the privilege.¹⁰

4.33 The Committee will continue to scrutinise uniform legislation using the fundamental legislative scrutiny principles and will continue to observe closely the trend of infringement of the right to silence and other individual rights and liberties.

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

5.1 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.

5.2 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:

⁹ Queensland Law Reform Commission, Report No 59, *The Abrogation of the Privilege Against Self-Incrimination*, December 2004, New South Wales, Legislation Review Committee, *The Right to Silence: Discussion Paper*, Discussion Paper No 1, 21 September 2005.

¹⁰ Queensland Law Reform Commission, Report No 59, *The Abrogation of the Privilege Against Self-Incrimination*, December 2004, at paragraphs 6.86 and 6.90.

- 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.
- 5.3 If approved, the amendments are then published by the Governor as an order in the *Government Gazette* and then commence operation.
- 5.4 The following inquiries were commenced pursuant to referrals under 6B of the *Consumer Credit (Western Australia) Act 1996*.

Consumer Credit (Western Australia) Act 1996: Consumer Credit (Charge Card) Amendment Regulation (No. 1) 2005 (Qld)

- 5.5 The Minister indicated that the purpose of the Queensland Amendment was to exempt from the operation of the *Consumer Credit Code* ‘charge card’ contracts offered by ‘specified credit providers’.
- 5.6 The Committee was advised that the amendment was necessary to correct an unintended consequence of a previous amendment to the *Consumer Credit Code* in 2001. The offending amendment was intended to bring “payday lending” schemes within the scope of the *Consumer Credit Code*. The unintended consequence was that the ‘specified credit providers’ whose charge cards had previously been exempt were also caught by the amendment.
- 5.7 The Committee recommended that in the event of the Legislative Council being asked to approve a draft order which adopts the *Consumer Credit (Charge Card) Amendment Regulation (No. 1) 2005 (Qld)*, the order be approved.

Consumer Credit and Trade Measurement Amendment Bill 2006 (Qld) (25/05/2006)

- 5.8 Part 2 of the Consumer Credit and Trade Measurement Amendment Bill 2006 (Qld) (25/05/2006) related to the *Consumer Credit (Western Australia) Code*. The purpose of that Part was to:
- extend the expiry date in relation to the mandatory comparison rate scheme in the *Consumer Credit Code* by up to one year to enable a review of that scheme to be completed; and
 - facilitate the application of electronic transactions legislation to the *Consumer Credit Code*.

Mandatory Comparison Rate

- 5.9 The mandatory comparison rate is a method of reducing the total cost of a loan, including interest and all fees and charges, to a single percentage rate. This allows for easier comparison of the overall cost of loan products by consumers.

Electronic Transactions

- 5.10 Historically, there had been uncertainty about the application of electronic transactions legislation to the *Consumer Credit Code* in a number of Australian jurisdictions. Western Australian legislation expressly exempted the *Consumer Credit Code* from the application of uniform electronic transaction legislation.
- 5.11 The amendments contained in the Consumer Credit and Trade Measurement Amendment Bill 2006 (Qld) (25/05/2006) seek to facilitate the application of Western Australia's electronic transaction legislation to the *Consumer Credit (Western Australia) Code*.
- 5.12 The Committee recommended that if the Legislative Council were asked to approve a draft order which adopted Part 2 of the Consumer Credit and Trade Measurement Amendment Bill 2006 (Qld), then it should be approved.

6 REPORTS TABLED - OTHER REPORTS

Statutes Law Revision Bill 2005

- 6.1 The Statutes Law Revision Bill 2005 repealed more than 80 pieces of legislation identified as being obsolete, no longer in practice or unproclaimed.
- 6.2 The Committee recommended that the Bill be passed without amendment.

Consumer Protection Legislation Amendment and Repeal Bill 2005

- 6.3 The Consumer Protection Legislation Amendment and Repeal Bill 2005 (Amendment and Repeal Bill) proposed the amendment of the following 11 principal Acts:
- *Builders' Registration Act 1939*;
 - *Consumer Affairs Act 1971*;
 - *Credit (Administration) Act 1984*;
 - *Fair Trading Act 1987*;
 - *Land Valuers Licensing Act 1978*;
 - *Motor Vehicle Dealers Act 1973*;

- *Real Estate and Business Agents Act 1978;*
- *Residential Tenancies Act 1987;*
- *Retirement Villages Act 1992;*
- *Settlement Agents Act 1981;* and
- *Travel Agents Act 1985.*

6.4 The Amendment and Repeal Bill also proposed the repeal of the *Trading Stamp Act 1981*.

6.5 The Committee queried clauses 31 and 32 of the Amendment and Repeal Bill, which proposed to amend the *Residential Tenancies Act 1987*. In effectively removing various forms from regulations made by the Governor and having them henceforth “*approved*” by the Minister, Parliament’s oversight of the contents of those forms was to be removed.

6.6 Clauses 31 and 32 therefore appeared to breach the thirteenth fundamental legislative scrutiny principle as applied by the Committee:

Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?

6.7 The Committee brought these clauses to the attention of the Legislative Council.

7 REPORTS TABLED - INTERIM REPORTS

Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations

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

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.*

7.2 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, was tabled on 22 November 2006.

8 ONGOING INQUIRIES

8.1 The inquiries detailed below will be pursued in 2007.

Statutes Review

8.2 Term of reference 8.3(d) enables the Committee “*to review the form and content of the statute book*”. Statutes Repeals and Minor Amendment Bills, also known as Omnibus Bills are a mechanism by which the statute book is reviewed.

8.3 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
- c) any related issues the committee considers appropriate.

Statutes Repeals and Minor Amendments Bill 2006

8.4 This Bill was referred to the Committee by the Legislative Council on 18 October 2006 for consideration and report.

Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations

8.5 For details of this inquiry see section 7 'Reports Tabled - Interim Reports'.

Treaties

8.6 The Committee has previously noted the ongoing difficulties in the scrutiny of treaties, in particular the limited time provided for consultation and comment.¹¹

8.7 The Committee notes that a Government Response to recommendations made by the Standing Committee on Uniform Legislation and General Purposes regarding scrutiny of treaties remains outstanding.¹²

8.8 On 18 October 2006, the Standing Committee on Uniform Legislation and Statutes Review resolved as follows:

To conduct an inquiry and to report to the Legislative Council on the practical implications of clause 8.3(c) of the Committee's terms of reference, having regard to -

(a) clarifying the current administrative practices and procedures and parliamentary processes in Western Australia relating to treaties entered into, or proposed to be entered into, by the Commonwealth;

(b) identifying the current administrative practices and procedures and parliamentary processes in other Australian jurisdictions relating to treaties entered into, or proposed to be entered into, by the Commonwealth;

(c) the means by which Members of Parliament may be made aware of, and be provided with an opportunity to contribute to, the treaty-making process; and

(d) any other relevant matters in relation to the Committee's effective scrutiny of treaties entered into, or proposed to be entered into, by the Commonwealth.

¹¹ Western Australia, Legislative Council, Uniform Legislation and Statutes Review Committee, *Annual Report 2005*, pp18,19.

¹² 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 - November 16 2004*, November 2004 (Recommendations 3 and 4).

9 CONCLUSION

- 9.1 The Committee has had a productive year tabling nine reports, four of which related to uniform legislation. Members of the Committee would like to record their appreciation for the excellent support of Committee staff.
- 9.2 The Committee will continue to scrutinise uniform legislation using the fundamental legislative scrutiny principles and to observe closely the trend of infringement of the 'right to silence' and other individual rights and liberties.



**Hon Simon O'Brien MLC
Chairman**

1 May 2007

APPENDIX 1
STANDING ORDER 230A

APPENDIX 1

STANDING ORDER 230A

Uniform legislation¹³

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.

¹³ Legislative Council Standing Orders

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?**