



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

SESSIONAL REPORT OF THE

**STANDING COMMITTEE ON UNIFORM
LEGISLATION AND GENERAL PURPOSES:**

**THE WORK OF THE COMMITTEE DURING THE
FIRST SESSION OF THE THIRTY-SIXTH PARLIAMENT –
MAY 1 2001 TO AUGUST 9 2002**

Presented by Hon Adele Farina MLC (Chairman)

Report 2
August 2002

STANDING COMMITTEE ON UNIFORM LEGISLATION AND GENERAL PURPOSES

Date first appointed: April 11 2002

Terms of reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“7. Uniform Legislation and General Purposes Committee

- 7.1 A Uniform Legislation and General Purposes Committee is established.
- 7.2 The Committee consists of 3 members with power in the Committee to co-opt 2 additional members for a specific purpose or inquiry.
- 7.3 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 consider and report on any matter referred by the House.
- 7.4 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 (Chair)

Hon Paddy Embry MLC

Hon Simon O’Brien MLC

Staff as at the time of this inquiry:

Mia Betjeman, Principal Advisory Officer Jan Paniperis, Committee Clerk

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**SESSIONAL REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND
GENERAL PURPOSES**

**THE WORK OF THE COMMITTEE DURING THE FIRST SESSION OF THE THIRTY-SIXTH
PARLIAMENT –MAY 1 2001 TO AUGUST 9 2002**

1 INTRODUCTION

Establishment of the Committee

- 1.1 The Legislative Council established the Standing Committee on Uniform Legislation and General Purposes (**Committee**) on April 11 2002.
- 1.2 The Committee continues the work of the Standing Committee on Legislation (**Legislation Committee**) of the Thirty-Sixth Parliament in relation to uniform legislation. Uniform legislation refers to a bill that ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party or a bill that, by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth.
- 1.3 National schemes of legislation emerge from such bodies as the Council of Australian Governments (COAG) and the various ministerial councils such as the Standing Committee of Attorneys General (SCAG). At its simplest level, such Councils agree to uniform legislation, usually in closed session, and then proceed through the participating Ministers to sponsor bills through individual Parliaments. The message from the Executive (Cabinet) is that such bills cannot be amended for fear of destroying their uniform nature and breaching the intergovernmental agreement upon which the uniform bill was based.
- 1.4 The Committee is essentially an amalgamation of two previous committees from the Thirty-Fifth Parliament, the Legislative Council Standing Committee on Constitutional Affairs and the Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements. Neither committee was reappointed in the Thirty-Sixth Parliament, however their terms of reference have, in part, been incorporated into the Committee's terms of reference.

Terms of reference

- 1.5 The Legislative Council established the Committee's terms of reference on its appointment on April 11 2002. They are published at the front of this report.
- 1.6 Under the terms of reference the functions of the Committee are:
 - a) to consider and report on uniform legislation;

- 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 uniform legislation;
- 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; and
- d) to consider and report on any matter referred by the House.

1.7 The Committee's terms of reference also provide that, 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 territory, and New Zealand and similarly, may participate in any conference or other meeting.

Membership and Chair

Appointment

- 1.8 The Committee consists of three members of the Legislative Council with power in the Committee to co-opt two additional members for a specific purpose or inquiry.
- 1.9 On April 11 2002 the Legislative Council appointed Hon Paddy Embry MLC, Hon Adele Farina MLC, and Hon Simon O'Brien MLC as members of the Committee.
- 1.10 By resolution of the Committee on May 5 2002, Hon Adele Farina MLC was appointed Chair.

Profile of Hon Adele Farina MLC, Chair

- 1.11 Member for South West Region, Australian Labor Party.¹
- 1.12 *Parliamentary Service:* Elected to the Thirty-Sixth Parliament for South West Region on February 10 2001 (for term commencing May 22 2001).
- 1.13 *Parliamentary Appointments:* Deputy Chairman of Committees: May 23 2001 – present.
- 1.14 *Standing Committees:*
 - a) Member, Standing Committee on Procedure and Privileges: May 31 2001 - present.

¹ Information in this section sourced from the Western Australian Parliament website: <http://www.parliament.wa.gov.au/parliament> (accessed August 1 2002).

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- b) Member, Standing Committee on Legislation: May 31 2001 – April 10 2002.
 - c) Chair, Standing Committee on Uniform Legislation and General Purposes: April 11 2002 - present.

1.15 *Personal:*

- a) Birth: Born March 31 1964, Perth, Western Australia.
- b) Marital Status: Not married.
- c) Occupation before entering Parliament and qualifications: Solicitor,
Bachelor of Arts, UWA; Bachelor of Laws, UWA.

1.16 *Electorate:* South West Region includes the Legislative Assembly electorates of Albany, Bunbury, Collie, Dawesville, Mandurah, Mitchell, Murray-Wellington, Stirling, Vasse and Warren-Blackwood. Enrolment (December 14 1996) 134,939; area 44,518 sq km.

Profile of Hon Patrick (Paddy) Embry MLC

1.17 Member for South West Region, One Nation Party.²

1.18 *Parliamentary Service:* Elected to the Thirty-Sixth Parliament for South West Region on February 10 2001 (for term commencing May 22 2001).

1.19 *Standing Committees:*

- a) Member, Standing Committee on Legislation: May 31 2001 - April 10 2002.
- b) Member, Standing Committee on Uniform Legislation and General Purposes: April 11 2002 - present.

1.20 *Personal:*

- a) Birth: Born October 19 1942, Oundle, United Kingdom. Arrived in Australia December 1956.
- b) Marital Status: Married.
- c) Occupation before entering Parliament and qualifications: Farmer.

² Information in this section sourced from the Western Australian Parliament website: <http://www.parliament.wa.gov.au/parliament> (accessed August 1 2002).

- 1.21 *Electorate:* South West Region includes the Legislative Assembly electorates of Albany, Bunbury, Collie, Dawesville, Mandurah, Mitchell, Murray-Wellington, Stirling, Vasse and Warren-Blackwood. Enrolment (December 14 1996) 134,939; area 44,518 sq km.

Profile of Hon Simon McDonnell O'Brien MLC

- 1.22 Member for South Metropolitan Region, Liberal.³
- 1.23 *Parliamentary Service:* Elected to the Thirty-Fifth Parliament for South Metropolitan Region on December 14 1996 for term commencing May 22 1997. Re-elected 2001 (for term commencing May 22 2001).
- 1.24 *Parliamentary Party/Shadow Ministerial Appointments:* Shadow Minister for Disability Services; Drug Abuse Strategy: March 9 2001 – present.
- 1.25 *Parliamentary Appointments:* Deputy Chairman of Committees: May 23 2001 - present.
- 1.26 *Standing Committees:*
- a) Member, Standing Committee on Estimates and Financial Operations: May 27 1997 - January 10 2001.
 - b) Member, Joint Standing Committee on Delegated Legislation: June 26 1997 - January 10 2001 (membership ceased on prorogation). Reappointed June 28 2001 - March 26 2002.
 - c) Member, Standing Committee on Procedure and Privileges: May 31 2001 - present.
 - d) Member, Standing Committee on Uniform Legislation and General Purposes: April 11 2002 - present.
- 1.27 *Personal:*
- a) Birth: Born May 16 1960, Subiaco, Western Australia.
 - b) Marital Status: Married.
 - c) Qualifications and Occupation before entering Parliament: Customs Officer.

³ Information in this section sourced from the Western Australian Parliament website: <http://www.parliament.wa.gov.au/parliament> (accessed August 1 2002).

- 1.28 *Electorate:* South Metropolitan Region includes the Legislative Assembly electorates of Alfred Cove, Cockburn, Fremantle, Murdoch, Peel, Riverton, Rockingham, South Perth, Victoria Park, Willagee. Enrolment (December 14 1996) 238,150; area 590 sq km.

Staff and support services

- 1.29 The work of the Committee is supported by the Legislative Council Committee Office. The Committee is currently staffed by:
- Mia Betjeman, Principal Advisory Officer, B Juris, LLB, GCM;
 - Felicity Beattie, Advisory Officer (Legal), LLB; and
 - Jan Paniperis, Committee Clerk, BA.
- 1.30 On an inquiry by inquiry basis, other staff of the Legislative Council Committee Office also assist the Committee.

2 DEVELOPMENT OF THE SCRUTINY OF NATIONAL SCHEMES OF LEGISLATION BY THE PARLIAMENT OF WESTERN AUSTRALIA

- 2.1 In considering its appointment and terms of reference, the Committee has reflected on the genesis and development of the scrutiny of national schemes of legislation by the Parliament of Western Australia. The Committee considers that this report is a convenient forum to collate its inquiries into this matter. Attached to this report as Appendix 1 is a *Chronology of Events for the Scrutiny of Uniform Legislation: Parliamentary Committees and Legislative Council Standing Orders*.

History

- 2.2 Since 1992 both the Legislative Council and Legislative Assembly have established procedures to assist Parliament in the scrutiny of uniform legislation.
- 2.3 In September 1992 the Legislative Council standing orders were amended to provide for a 120-day delay before the second reading debate on a bill implementing a uniform legislative scheme could resume in the Council. At this time the standing orders did not expressly provide for referral of the bill to a committee.
- 2.4 In October 1995 the Legislative Council amended the standing orders to provide for a 30-day delay before the second reading debate on a bill may resume in the House. Again, at this time the standing orders still did not expressly provide for referral of the bill to a committee.
- 2.5 In 1997 the standing orders were further amended to provide for automatic referral to the (former) Legislative Council Standing Committee on Constitutional Affairs

(**Constitutional Affairs Committee**) for inquiry and report (under former standing orders 230(c) and (d)).

- 2.6 In 1993 the Legislative Assembly had established a new committee specifically concerned with the scrutiny of uniform legislation – the Joint Standing Committee on Uniform Legislation and Intergovernmental Agreements (**SCULIA**).
- 2.7 The Constitutional Affairs Committee and SCULIA were reappointed in successive Parliaments until the Thirty-Sixth Parliament. The committees were not reappointed following reviews of the Legislative Assembly and Legislative Council committee systems.

Thirty-Sixth Parliament

- 2.8 On May 24 2001 the Legislative Council of the Thirty-Sixth Parliament appointed the Legislation Committee, with new terms of reference including the scrutiny of uniform legislation. The terms of reference for the former Constitutional Affairs Committee and SCULIA were, in part, incorporated into the Legislation Committee’s terms of reference.
- 2.9 Between June 2001 and April 2002 the Legislation Committee considered in detail, and tabled reports on, 15 bills implementing uniform legislative schemes. The Legislation Committee recommended amendments to many of these bills, mainly to facilitate effective parliamentary scrutiny.
- 2.10 The volume of uniform legislation standing referred to the Legislation Committee during 2001 led to the tabling, in November 2001, of a *Special Report of the Standing Committee on Legislation in relation to Intergovernmental Agreements, Uniform Schemes and Uniform Laws: Amendment to Standing Orders 230(c) and (d)* (**Special Report**).⁴
- 2.11 After consideration of the Special Report, on November 13 2001 the Legislative Council repealed standing orders 230(c) and (d) and inserted standing order 230A.
- 2.12 Standing order 230A provides that:
- a) Bills falling within the definition in the standing order stand referred to the Committee without the question being put.
 - b) The Legislative Council has flexibility to order that a uniform bill be referred to a committee other than the Committee, or not referred to a committee at all.

⁴ Parliament of Western Australia, Legislative Council. Legislation Committee, *Special Report of the Standing Committee on Legislation in relation to Intergovernmental Agreements, Uniform Schemes and Uniform Laws: Amendment to Standing Orders 230(c) and (d)*, (tabled November 6 2001).

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- c) A committee referred a uniform bill must report to the House within 30 days, although an extension of time can be sought.
 - d) The Legislative Council has flexibility to order that the period within which a committee must report to the House on a uniform bill be altered.
 - e) The standing order suspends the second reading debate on a uniform bill until the expiry of 30 days of the date of the first reading or until it has been reported from a committee, whichever is the later.
 - f) The policy of a bill is not a matter for inquiry by the committee receiving it.

2.13 The Legislative Council Standing Committee on Procedure and Privileges also considered the Special Report and on March 21 2002 tabled a report recommending that a new committee be appointed.⁵ This new committee – the Uniform Legislation and General Purposes Committee – was appointed on April 11 2002.

3 REPORTS TABLED BY THE COMMITTEE

Introduction

3.1 During the reporting period one report was tabled in the Legislative Council. This report was in relation to offshore mining legislation.

Offshore Minerals Bill, Offshore Minerals (Registration Fees) Bill 2001 & Offshore Minerals (Consequential Amendments) Bill 2001

3.2 The purpose of these Bills is to provide for the administration of mineral exploration and development in coastal waters adjacent to the State.

3.3 The Bills are intended to form part of a national scheme which gives effect to an intergovernmental ‘agreement’ (known as the Offshore Constitutional Settlement), negotiated between the Commonwealth Government and the States in 1979 at a Premiers’ Conference some 22 years ago. The scheme to which the Bills give effect involves the passage by the other States of legislation that is, or will be, virtually identical in terms and principles to the Bills. However, the Committee notes that the Bills have been tailored to take into account issues specific to the State.

3.4 The Bills effectively mirror, in State coastal waters, the Commonwealth *Offshore Minerals Act 1994*. The Bills will assume jurisdiction over the three nautical mile zone of State coastal waters and establishes a uniform legal and administrative

⁵ Parliament of Western Australia, Legislative Council, Procedure and Privileges Committee, *Third Report: Alteration of the membership and functions of the Legislation Committee and to establish a new standing committee as a consequence and to repeal standing order 72 and substitute a new standing order 72*, (tabled March 21 2002).

framework for the offshore mining industry. Offshore mining in State coastal waters is currently controlled by the *Mining Act 1978* (WA). After passage of the Bills, that Act will only apply to onshore mining. Offshore mining will continue to be governed beyond the three nautical mile limit by the *Offshore Minerals Act 1994* (Cth), which came into operation in February 1994.

- 3.5 The Bills originally stood referred to the Legislation Committee in August 2001 under standing order 230(d) (now standing order 230A).
- 3.6 On establishment of the Committee on April 11 2002, the Legislative Council ordered that the Bills stand referred to the Committee. The Committee continued the extensive work commenced by the Legislation Committee including consideration of ministerial responses to a Discussion Paper issued by the Legislation Committee in December 2001.⁶
- 3.7 The Committee's First Report was tabled in the House on Wednesday June 26 2002.⁷ The report includes some generic discussion about the role of the Committee, national schemes of uniform legislation and legislative scrutiny principles.⁸
- 3.8 The Committee recommended that the Bills be passed subject to seven amendments. The majority of the amendments address:
- a) issues relating to the treatment of other legislatively based rights granted in coastal waters;⁹ and
 - b) the appropriate balance to be achieved between the need for the Executive to act with flexibility and the rightful place of Parliament as legislature, in the context of 'Henry VIII clauses' and retrospective operation of legislation.¹⁰
- 3.9 The report was not debated as prorogation of Parliament occurred on August 9 2002 and the Bills lapsed from the Legislative Council Notice Paper.

⁶ On December 20 2001 the Legislation Committee wrote to the Ministers responsible for portfolios affected by the Bills, suggesting that they liaise with each other to discuss and clarify matters summarised in a Discussion Paper prepared by the Legislation Committee. These matters were the subject of the Legislation Committee's Interim Report on the Bills to the Legislative Council: Parliament of Western Australia, Legislative Council, Legislation Committee, *Report 14: Interim report on the Offshore Minerals Bill 2001, Offshore Minerals (Registration Fees) Bill 2001 and Offshore Minerals (Consequential Amendments) Bill 2001* (March 21 2002).

⁷ Parliament of Western Australia, Legislative Council, Uniform Legislation and General Purposes Committee, *Report 1: Report on the Offshore Minerals Bill 2001, Offshore Minerals (Registration Fees) Bill 2001 and Offshore Minerals (Consequential Amendments) Bill 2001* (June 26 2002).

⁸ *Ibid*, paras 1.8 – 1.9.

⁹ *Ibid*, paras 3.8 – 3.33.

¹⁰ *Ibid*, paras 4.77 – 4.102. A 'Henry VIII clause' is a provision in an Act that authorises the amendment of the enabling legislation or another Act by means of subsidiary legislation or executive act.

4 INQUIRIES IN PROGRESS PRIOR TO PROROGATION

- 4.1 Prior to prorogation of Parliament on August 9 2002 the Committee was undertaking a number of preliminary investigations into bills which stood referred pursuant to standing order 230A(3). If the bills are reinstated to the Notice Paper then they would again stand referred to the Committee at that time.

National Crime Authority (State Provisions) Amendment Bill 2002

- 4.2 On June 20 2002 the Bill was first read and second read in the Legislative Council and stood referred to the Committee pursuant to standing order 230A(3).
- 4.3 The purpose of this Bill is to amend the *National Crime Authority (State Provisions) Act 1985* so that it more closely reflects the *National Crime Authority Act 1984* of the Commonwealth. The primary aim of the Bill is to enhance the effectiveness of the National Crime Authority in combating organised crime. This will be achieved principally through the provision of greater penalties for failing to answer a question at a National Crime Authority hearing; the removal of the defence “without reasonable excuse”; and the removal of derived-use immunity.¹¹
- 4.4 On June 29 2002 the Committee advertised in the *West Australian* newspaper, advising the public that the Committee was inquiring into the Bill and was seeking public submissions.
- 4.5 Prior to continuing its inquiries and reporting to the Legislative Council, the Bill (and the referral to the Committee) lapsed on prorogation of Parliament on August 9 2002. If the Bill is reinstated to the Notice Paper then it would again stand referred to the Committee at that time.

Censorship Amendment Bill 2002

- 4.6 On June 25 2002 the Bill was first read and second read in the Legislative Council and stood referred to the Committee pursuant to standing order 230A(3).
- 4.7 The purpose of this Bill is to amend the *Censorship Act 1996* to make Western Australia a full participant in the National Co-operative Censorship Scheme and to ensure that Western Australia's censorship legislation is consistent with that in other States and Territories.

¹¹ Derived-use immunity refers to the evidence the National Crime Authority can derive from self-incriminatory evidence given by a person at a hearing and for a prosecuting authority to use that derived evidence against the person at a later trial. By way of qualification, derived evidence is the evidence obtained as a direct result of the self-incriminating evidence given by a person at a hearing; that is, self-incriminating evidence can be used to find other evidence that verifies any admission or is otherwise relevant to the proceedings: Parliament of Western Australia, *Parliamentary Debates (Hansard)*, Thirty-Sixth Parliament First Session, June 20 2002, p 11,777.

- 4.8 Censorship in Australia involves a cooperative Commonwealth, State and Territories scheme (the National Co-operative Censorship Scheme) that, in its present form, has been in force since January 1 1996. The *Classification (Publications, Films and Computer Games) Act 1995 (Cth) (Commonwealth Act)* is the legislative centrepiece of the national classification scheme for publications, films and computer games. Western Australia joined the National Co-operative Censorship Scheme in 1996.
- 4.9 All States adopted the Commonwealth Act as their own, except Western Australia. Western Australia set up an arrangement whereby it enacted its own legislation, the *Censorship Act 1996*, and enabled Commonwealth officers to classify films and computer games under Western Australian legislation. In relation to publications, Western Australia has operated its own classification regime since 1973.
- 4.10 The amendments to the *Censorship Act 1996* provided by the Bill will provide for the full integration of Western Australia into the National Co-operative Censorship Scheme. The *Censorship Act 1996* will no longer provide for the classification of publications, films and computer games. These will be carried out under the Commonwealth Act.
- 4.11 On June 29 2002 the Committee advertised in the *West Australian* newspaper, advising the public that the Committee was inquiring into the Bill and was seeking public submissions.
- 4.12 Prior to continuing its inquiries and reporting to the Legislative Council, the Bill (and the referral to the Committee) lapsed on prorogation of Parliament on August 9 2002. If the Bill is reinstated to the Notice Paper then it would again stand referred to the Committee at that time.

5 OTHER ACTIVITIES

Conferences and seminars

- 5.1 Committee staff attended and participated in one conference during this reporting period.

Meeting of Working Group of Chairs and Deputy Chairs of Australian Scrutiny of Primary and Delegated Legislation Committees

Background

- 5.2 Scrutiny committees from Australia and New Zealand have been meeting on a bi-annual basis since 1986. The issue of scrutiny of national scheme legislation was first raised in a workshop presented by the delegation of New South Wales Regulation Review Committee at the Third Australasian and Pacific Conference on Delegated Legislation held at Perth in 1991.

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- 5.3 The matter has been the subject of continuing study by the Working Group of Chairs and Deputy Chairs of Australian Scrutiny of Primary and Delegated Legislation Committees (**Working Group**) since 1994. Past meetings have involved discussion and consideration on proposed structures by which scrutiny of both primary and subordinate national scheme legislation can be achieved.

Canberra Meeting, May 2 2002

- 5.4 The most recent meeting of the Working Group was held in Canberra on May 2 2002. At the time of the invitation to attend, the Committee had not been appointed. Accordingly Felicity Beattie, Advisory Officer (Legal) and Mia Betjeman, Principal Advisory Officer, attended on behalf of the Legislative Council Committee Office.
- 5.5 The meeting was convened to progress various proposals to establish a coordinated national approach to the scrutiny of national schemes of legislation, with particular reference to a proposal being promoted by the delegation from the Victorian Scrutiny of Acts and Regulations Committee, originally in July 1999 (**Victorian proposal**). The Victorian proposal was modified during 1999, 2000 and, most recently, at the meeting in Canberra on May 2 2002.
- 5.6 At the meeting in Canberra:
- a) Ms Mary Gillett, MLA, Chair of the Victorian Scrutiny of Acts and Regulations Committee was elected Chair of the Working Group;
 - b) amendments were proposed to the model bill (that forms part of the Victorian proposal) to include scrutiny of subordinate national scheme legislation;
 - c) attendees raised a number of further issues for discussion. Some of these will require the input of the Delegated Legislation Committee, particularly the interaction of the proposed amendments to include scrutiny of subordinate national scheme legislation with various disallowance procedures in each State; and
 - d) the Principal Advisory Officer presented a paper on recent developments in the Western Australian Parliament in relation to the scrutiny of uniform legislation.
- 5.7 The next meeting is proposed for Monday, February 3 2003, in Hobart, Tasmania, immediately prior to the Biennial Conference of the Australian Scrutiny of Primary and Delegated Legislation Committees in Hobart between February 4 and February 6 2003.

5.8 The Committee is to review the Victorian proposal with a view to providing substantive comment prior to and at the next meeting of the Working Group on February 3 2003 in Hobart.

6 ISSUES FACING THE COMMITTEE

Introduction

6.1 In this and previous Parliaments, difficulties have been experienced with the identification of bills to which standing order 230A applies and the timetable for the passage of some legislation.

6.2 The Committee is in the process of considering a range of matters that may facilitate identification of bills to which standing order 230A applies.

Supply of background information on a bill's referral

6.3 Parliaments are not typically involved in proposed uniform legislation.¹² The Committee is therefore particularly interested to ensure the adequate flow of relevant and timely information to the legislation under consideration by the Committee.

6.4 Each time a bill is referred to the Committee it writes to the relevant Minister requesting the responsible Minister ensures that the following information is immediately provided to the Committee:

- a) a copy of the relevant intergovernmental agreement or, if not available, a copy of the most recent draft with a statement as to the status of that draft;
- b) a statement as to any timetable for the implementation of the legislation; and
- c) a copy of the explanatory memorandum or clause notes to the bill.

6.5 Early receipt of this information enables the Committee to commence its inquiries as soon as possible particularly in view of the 30-day reporting period imposed by standing order 230A(4).

'Six-monthly audit'

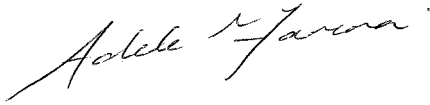
6.6 The Committee continued the initiative of the Legislation Committee in an endeavour to identify bills that may become subject to standing order 230A if tabled in the Legislative Council.

¹² Refer to paragraph 1.3.

- 6.7 The Committee has identified certain areas in which the issue of proposed uniform legislation has been raised and which might be tabled in Parliament over each forthcoming six-month period. This is through a process that the Committee colloquially calls a 'six-monthly audit'.
- 6.8 On May 20 2002 the Committee wrote to Ministers requesting information on what bills implementing national legislative schemes might be tabled in the forthcoming six-month period. The Committee is currently collating its replies. Of the 14 Ministers approached, nine have responded. The Committee will write again to Ministers in November 2002. This process assists the Committee to plan its workload and, if desired, conduct pre-emptive research on the bill or activate term of reference 7.3(b).¹³ A spreadsheet is compiled from the responses and copied to the Legislative Council Table Officers to facilitate easier identification of bills to which standing order 230A applies.
- 6.9 To date the Committee has been advised by Ministers that the following legislation may be introduced and may fall to be considered under standing order 230A:
- a) amendments to the *Gas Pipelines Access (WA) Act 1998*;
 - b) legislation in relation to worker's compensation entitlements, to enable cross border workers' compensation transfer of entitlements;
 - c) legislation relating to consumer protection issues, possibly including, trade measurement, cooperatives and associations;
 - d) an Environmental Protection Amendment Bill;
 - e) amendments to the *Education Services Providers (Full Fee Overseas Students) Registration Act 1991*;
 - f) National Protocols for Higher Education Approval Processes;
 - g) a Food Bill; and
 - h) a Human Reproductive Technology Amendment Bill.

¹³ Term of reference 7.3(b) provides for one of the functions of the Committee is, "of its 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 standing order 230A".

- 6.10 The Committee is considering other arrangements that might assist with the scrutiny of uniform bills and may report to the Legislative Council separately on this matter.



Hon Adele Farina MLC
Chair

Date: August 20 2002

APPENDIX 1
CHRONOLOGY OF EVENTS
THE SCRUTINY OF UNIFORM LEGISLATION: PARLIAMENTARY
COMMITTEES AND LEGISLATIVE COUNCIL
STANDING ORDERS

Date	Event
1989	Legislative Council committee system established. Legislative Council Legislation Committee appointed to scrutinise bills referred by the Legislative Council.
1992	Legislative Assembly Select Committee on Parliamentary Procedures for Uniform Legislation Agreements reports on uniform legislation.
September 24 1992	<p>Standing order 230(c) inserted into the standing orders by resolution of the House with a time period of <i>120 days</i> as a delay before the second reading debate on the bill may resume in the House. At this stage standing order 230(d) (referral to a committee) did not exist. The 120 days (say 17 weeks) was to enable Members to scrutinise the bill and raise any concerns. Parliamentary debate highlights -</p> <ul style="list-style-type: none"> - Members' concerns about the '120 day rule'. Comments made that not all uniform legislation would require this period of delay and to circumvent the '120 day rule' would require a suspension of standing orders. Comments made that suspension of standing orders would be the norm and not the exception. - Members' desire that draft uniform legislation should be tabled in WA Parliament 6 months before executive governments agree the legislation.
August 1993	<p>WA Legislative Assembly establishes Standing Committee on Standing Committee on Uniform Legislation and Intergovernmental Agreements (SCULIA).</p> <p>Assembly Committee recommends that an Assembly standing orders be inserted requiring that the second reading debate on a bill giving effect to uniform legislation be adjourned until 120 days have passed, the responsible Minister has tabled information on certain matters (including the background to the negotiations and the text of any draft intergovernmental agreements) and a report has been tabled by the</p>

Date	Event
	Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements. Standing order never inserted.
June 15 1995	Council refers standing order 230 to the Standing Orders Committee for report on the motion of Hon Peter Foss MLC. Foss proposes that the '120 day rule' be maintained but that legislation be referred to the Legislation Committee for review during that period. Comments raised during debate reflect those of members in September 24 1992.
September 1995	<p>Standing Orders Committee tables report in Council recommending that standing order 230(c) be amended by deleting "120" and substituting "30" on the basis that 30 days should provide sufficient time within which Members can identify perceived defects in or unresolved issues arising from, the Bill. The committee did not comment on Foss' proposal to refer matters to a committee.</p> <p>Note: Standing order 230(d) (referral to a committee) not yet inserted.</p>
October 18 1995	Council debates Standing Orders Committee report and resolves to amend standing order 230(c) to read "30 days".
December 1995	Commission on Government Report. COG recommends that SCULIA be abolished and its functions incorporated into a new Legislative Council committee. That committee should be called the Standing Committee on Constitutional and Federal/State Affairs.
October 1996	SCULIA responds to the Final Report of the Legislative Assembly Select Committee on Procedure. SCULIA recommends that the role of SCULIA be expanded to look at Federal/State affairs and legal and constitutional issues.
August 1997	Legislative Council Select Committee to Review Council Standing Committee System tables report. Recommendations include " <i>That a bill to which the "30 day" rule applies stands referred to the Constitutional Affairs Committee after the Minister's second reading speech and the committee is to report within 30 days of that referral.</i> " (that is, standing order 230(d)).
August 28, September 11 and October 23 1997	Council debates Select Committee report and inserts standing order 230(d) requiring referral of such bills to the Constitutional Affairs Committee.

Date	Event
October 23 1997	Terms of reference of Legislative Council Constitutional Affairs Committee amended to include uniform legislation in accordance with 1997 Select Committee report.
June 1998	Legislative Assembly Standing Orders and Procedure Committee tables report. Committee rejects 1995 Commission on Government recommendations and finds instead that SCULIA and Delegated Legislation Committees should be amalgamated. Neither of the two committees are in favour of the merger.
May 24 2001	Legislative Council appoints Legislation Committee with terms of reference encompassing uniform legislation, a role previously performed by SCULIA and Legislative Council Constitutional Affairs Committee.
November 6 2001	Legislation Committee tables <i>Special Report of the Standing Committee on Legislation in relation to Intergovernmental Agreements, Uniform schemes and Uniform Laws: Amendment to Standing Orders 230(c) and (d)</i> .
November 13 2001	Legislative Council repeals standing orders 230(c) and (d) and inserts standing order 230A.
March 21 2002	Legislative Council Procedure and Privileges Committee tables report recommending establishment of a new committee of three members that will address uniform legislation (standing order 230A); proposals for uniform legislation; treaties; and any bill/matter referred by the House or on request from a State or Commonwealth authority.
April 11 2002	Legislative Council appoints Uniform Legislation and General Purposes Committee.