



THIRTY-EIGHTH PARLIAMENT

REPORT 60

**STANDING COMMITTEE ON UNIFORM
LEGISLATION AND STATUTES REVIEW
ELECTRONIC TRANSACTIONS BILL 2011**

Presented by Hon Adele Farina MLC (Chairman)

March 2011

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Date first appointed:

17 August 2005

Terms of Reference:

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

“8. Uniform Legislation and Statutes Review Committee

- 8.1 *A Uniform Legislation and Statutes Review Committee* is established.
- 8.2 The Committee consists of 4 Members.
- 8.3 The functions of the Committee are -
- (a) to consider and report on Bills referred under SO 230A;
 - (b) of its own motion or on a reference from a Minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;
 - (c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;
 - (d) to review the form and content of the statute book;
 - (e) to inquire into and report on any proposal to reform existing law that may be referred by the House or a Minister; and
 - (f) to consider and report on any matter referred by the House or under SO 125A.
- 8.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the Parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting.”

Members as at the time of this inquiry:

Hon Adele Farina MLC (Chairman)	Hon Liz Behjat MLC
Hon Nigel Hallett MLC (Deputy Chairman)	Hon Linda Savage MLC

Staff as at the time of this inquiry:

Donald Allison, Clerk Assistant Mark Warner, Committee Clerk
(Committees)

Address:

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

lcco@parliament.wa.gov.au

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

ISBN 978-1-921634-61-1

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

IN RELATION TO THE

ELECTRONIC TRANSACTIONS BILL 2011

1 REFERENCE AND PROCEDURE

- 1.1 The Electronic Transactions Bill 2011 (**Bill**) was introduced into the Legislative Council on 23 February 2011 by Hon Michael Mischin MLC. Following the Second Reading Speech, the Bill stood automatically referred to the Uniform Legislation and Statutes Review Committee (**Committee**) to report by 5 April 2011.

2 REPORT

- 2.1 The Committee advises that due to circumstances beyond its control it is unable to report on the Bill within the 30 calendar days required by Standing Order 230A of the Legislative Council.
- 2.2 The Committee's ability to scrutinise and report on bills within 30 days relies upon the timely provision of supporting documentation. This did not occur. Two weeks elapsed before the supporting documentation (in particular, the document recording the inter-governmental agreement giving rise to the Bill) was supplied.
- 2.3 It is difficult for the Committee to prepare for hearings and conduct its inquiries without the essential supporting documentation. The 30 day inquiry time does not allow for delays in the provision of documentation. Where the Committee has several bills before it (as in this case), the timely provision of documentation is essential to ensure the Committee is able to fulfill its obligation to the Legislative Council.
- 2.4 The Committee relies upon Ministers and their agencies observing the Ministerial Office Memorandum 2007/01 (**MM 2007/01**), which asks Ministers to provide supporting information to the Committee when the bill is tabled. The Committee does not only rely on agency compliance with MM 2007/01 but also directly pursues agencies for this information.
- 2.5 The Committee wrote to the Premier on 17 March 2011 noting the current Ministerial Memorandum is ineffective, with an average delay of 17 days for documentation to be

received. The implication for a 30 day reporting period is self-evident and compromises the ability of the Committee to satisfy its obligation to the Legislative Council. Refer to **Appendix 1**.

2.6 The Committee is dedicated to providing swift and accurate analysis on uniform legislation to the House. However, it cannot meet its remit unless the Government provides the documentation it requires in a timely manner.

2.7 If the House wishes the Committee to inquire into the Bill, the Committee invites the House to again refer the Bill for inquiry with a reasonable reporting period.

Recommendation 1: The Committee recommends that the Premier issue a Premier's Circular regarding uniform legislation emphasising the need to provide the Committee with supporting documents on the date of tabling a uniform bill in the Parliament.



Hon Adele Farina MLC
Chairman

Date: 22 March 2011

APPENDIX 1
LETTER DATED 17 MARCH 2011 TO THE PREMIER

APPENDIX 1

LETTER DATED 17 MARCH 2011 TO THE PREMIER



STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Hon Colin Barnett MLA
Premier
24th Floor
197 St Georges Terrace
Perth WA 6000
By facsimile: 9322 1213

17 March 2011

Dear Premier

Ministerial Office Memorandum 2007/01 - provision of information to the Standing Committee on Uniform Legislation and Statutes Review

I write to draw your attention to a recurrent problem in provision of information by Ministers to the Standing Committee on Uniform Legislation and Statutes Review (Committee).

As you are aware, the Committee is tasked with scrutinising bills referred to it pursuant to the Legislative Council's Standing Order 230A (SO230A), commonly referred to as 'uniform legislation'.¹ Pursuant to Standing Order 230A, the Committee is required to report within 30 days of referral of a bill.

In order to assist the Committee in meeting its tight deadline, a Ministerial Office Memorandum was issued in 2005, and again in 2007 (MOM 2007/01), stating that Ministers:

- "*should ensure*" that the Second Reading Speech in respect of bills to which SO230A will apply makes reference to the bill being uniform legislation;
- should respond to requests for information from the Committee in a timely manner;
- "*should consider*" providing certain stipulated information to the Committee when a bill is first tabled, even if this occurs in the Legislative Assembly; and
- "*should ensure*" that Ministerial staff and agencies within their portfolio are familiar with the requirements of the Committee as set out in the memorandum.

¹ Being bills ratifying or giving effect to intergovernmental agreements or, by reason of their subject matter, introducing uniform legislation or schemes.

Letter Premier re MOM 2007/01 (A248112)

PARLIAMENT HOUSE PERTH WESTERN AUSTRALIA 6000
TELEPHONE: +61 8 9222 7222 FACSIMILE: HOUSE +61 8 9222 7809 COMMITTEES +61 8 9222 7805
EMAIL (GENERAL OFFICE): council@parliament.wa.gov.au

Unfortunately, as many of the Committee's recent reports attest, the Committee is experiencing delay in provision of documents in an increasing number of inquiries. On only three occasions in the past year has the Committee been provided with documents prior to referral. One of these occasions was in respect of the National Health Practitioner Regulation (WA) Bill 2010, when the Minister for Health responded to the Committee's suggestion that referral of the bill under one of the Committee's Terms of reference, rather than SO230A would assist in meeting the government's implementation deadline. Another was the Fair Trading Bill 2010, when the Committee wrote to the Minister requesting the supporting documents after tabling in the Legislative Assembly but before referral. It follows that information was voluntarily provided on only one occasion.

There has also been only one occasion in the past 12 months on which the Committee has been provided, prior to the Committee making a written request for information, with the supporting documents and information set out in MOM 2007/01 after referral. The average time taken for provision of the relevant documents is 17 days. As you will appreciate, this results in considerable difficulty for the Committee in meeting its reporting deadline.

Delay is frequently 'explained' as being due to Ministerial staff or agency officers (or both) not appreciating that SO230A applies to a bill or not being aware of the requirements of MOM 2007/01.

I seek your assistance through issue of a Premier's Circular to replace MOM 2007/01.

The predecessor to MOM 2007/01, MOM 2005/01, was issued in response to recommendations made by the Standing Committee on Uniform Legislation and General Purposes (SCULGP) in its Report 19, *Uniform Legislation and Supporting Documentation*. SCULGP recommended that the terms of MOM 2007/01 be issued by way of Premier's Circular. The response of the then government was that, as the Committee's recommendations were directed at Ministers, a Ministerial Office Memorandum was more appropriate than a Premier's Circular, which was directed at the Public Sector.

The Committee is of the view that a Premier's Circular, in terms similar to MOM 2007/01, is required to address the current problems with provision of information. The Committee has attached a suggested text.

Yours sincerely



Hon Adele Farina MLC
Chairman

Enc: 1

Letter Premier re MOM 2007/01 (A248112)

PREMIER'S CIRCULAR

TITLE:

UNIFORM LEGISLATION AND STATUTES REVIEW COMMITTEE - PROVISION OF INFORMATION

POLICY

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 stand automatically referred to the Committee for inquiry and report (see Standing Order 230A).

Standing orders require that the Committee report back on the Bill within 30 days (Standing Order 230A(4)).

Identification of Bills as uniform legislation

When introducing into the Parliament of Western Australia a Bill that implements uniform legislation, Ministers are required to 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 is to provide 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.

Ministerial staff and departmental officers should be aware that when examining bills, the Committee may consider the Fundamental Legislative Scrutiny Principles contained in Appendix 2 to Report 23, *the work of the Committee during the Second Session of the Thirty-Sixth Parliament August 13 2002 to November 16 2004*, a report of the Standing Committee on Uniform Legislation and General Purposes. Ministerial staff and departmental officers should consider the comments on the application of these principles at pages 6 to 7 of that report. (Report 23 can be accessed from the “Past Committees” webpage under the Parliament of Western Australia’s website.)

The required 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.

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

us.all.110316.blk.001.xx (A289566)

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.

Hon Colin Barnett MLA

PREMIER