



**ELEVENTH REPORT**

**OF THE**

**STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS  
AND STATUTES REVISION**

**IN RELATION TO THE ELECTRONIC AVAILABILITY OF  
STATUTES**

**Presented by the Hon M D Nixon (Chairman)**

**11**  
**January 1996**

**STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS  
AND STATUTES REVISION**

**Date first appointed:**

21 December 1989

**Terms of Reference:**

The functions of the Committee are to consider and report on -

- (a) what written laws of the State and spent or obsolete Acts of Parliament might be repealed from time to time;
- (b) what amendments of a technical or drafting nature might be made to the Statute book;
- (c) the form and availability of written laws and their publication;
- (d) any petition;
- (e) any matter of a constitutional or legal nature referred to it by the House.

A petition stands referred to the Committee after presentation.

**Members as at the date of this report:**

Hon M D Nixon MLC (Chairman)  
Hon A J G MacTiernan MLC  
Hon B M Scott MLC

**Staff as at the date of this report:**

Mr Chris Richards, Committee Clerk

**Previous reports:**

See Appendix V

**Address:**

Parliament House, Perth WA 6000, Telephone (09) 222 7222

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## EXECUTIVE SUMMARY

Under its Terms of Reference, the Committee is required, *inter alia*, to consider and report on the form and availability of written laws and their publication.

Accordingly, the Committee has given consideration to the electronic availability of statutory materials and the manner of their publication.

## BACKGROUND TO THE REPORT

The Committee recognises the need to make statutory materials, particularly primary legislation, available to the entire community as widely and as cheaply as possible.

Currently, legislation is disseminated to the public in paper copy, magnetic diskettes<sup>1</sup> and the use of the Swans electronic bulletin board known as LawNet.<sup>2</sup>

On the weight of the evidence placed before it, the Committee considers that two issues of concern arise in relation to the current methods of disseminating legislation in Western Australia:

- The delay in consolidating and reprinting statutes which have been amended; and
- The desirability of making legislation more accessible to the public through electronic means.

The Committee considers that the consolidation of legislative amendments is as important an issue as basic availability. The lack of up-to-date reprints or consolidations can make the often complex task of reading legislation even more difficult.

The Committee believes that effective and equitable access to legislation should be encouraged by taking advantage of technological advances in the fields of electronics and computing to develop wide-ranging means of electronic access. There are a number of general advantages to providing electronic access to legislation:

- It represents an easy and effective method of distributing legislation throughout the community, particularly to professionals, students, residents of remote areas and, in some cases, the economically disadvantaged.
- It would provide a much more efficient medium for the rapid consolidation of amending legislation.
- It would make the task of ensuring that the text of legislation reflects the current state of that legislation much quicker and simpler than the current paper-based system.
- The use of electronic means of dissemination would reduce the costs of printing legislation and the need for storage of unwanted hard copies.

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<sup>1</sup> Magnetic diskettes are produced only for a limited number of individual Acts

<sup>2</sup> At this time, only 109 public and private organisations subscribe to LawNet.

The four forms of electronic access investigated by the Committee are magnetic diskettes, CD-ROM, bulletin board databases and the Internet. The Committee strongly advocates the use of the Internet as representing the cheapest, most accessible and progressive alternative for the dissemination of legislation.

## **CONCLUSIONS**

The Committee recognises that the electronic transfer of information is an imperative of the modern world, particularly in relation to the provision of legal information. Electronic information systems, such as the Internet, are fast, effective and able, at least to some extent, to transcend geographical and socio-economic boundaries. As a result, the Committee gives its unqualified support to the development of electronic means of disseminating legislation.

While the Committee believes that the Internet must be considered as the most effective method of electronically disseminating legislation, users or providers of legislative information should not be forced away from existing or alternative forms of electronic dissemination. The Committee considers a diversity of dissemination methods is desirable to ensure that the full range of user needs are satisfied.

Lastly, the Committee acknowledges that the electronic availability of statutes via the Internet is a very new concept. However, the Committee believes that Western Australia has the opportunity and resources to be an early participant in these exciting developments.

## **RECOMMENDATIONS**

As a result of its investigations, the Committee has identified four recommendations that would enhance the accessibility of State legislation to the public:

1. The continued upgrading of the public information infrastructure to ensure the accessible and effective delivery of State legislation to all members of the community and other consumers of legislative material. This upgrading would include:
  - a) the appropriate evolution of electronic dissemination activities by the State Government, particularly through use of the Internet; and
  - b) an increase in the number of "public access points" to electronically disseminated legislation within the State library system.
2. The improvement of the consolidation and reprinting of legislation by providing Parliamentary Counsel and the State Law Publisher with access to the most current technology and sufficient resources to ensure the availability of all State legislation in a current and consolidated form.
3. The enhancement of public access to government information such as legislation through appropriate pricing policies by the State Law Publisher. The Committee considers that the distribution of legislation should not be regarded as a "profit centre" and that any cost recovery should be based on the costs of dissemination rather than the costs of creation or collection.
4. The Committee strongly recommends that all Western Australian legislation, including legislative bills, be posted on the Internet at the earliest possible convenience. The preferred method of the Committee is for the State Government to enter into a licensing agreement with

the Australasian Legal Information Institute ("AUSTLII") to provide free public access to all Western Australian legislation on the AUSTLII World-Wide-Web site (see section 3.4 below).

## THE ELECTRONIC AVAILABILITY OF STATUTES

### 1. INTRODUCTION

The Standing Committee on Constitutional Affairs and Statutes Revision was first appointed on 21 December 1989. Under its Terms of Reference, the Committee is required, *inter alia*, to consider and report on the form and availability of written laws and their publication.

Accordingly, the Committee has given consideration to the electronic availability and consolidation of statutes.

A list of the persons the Committee met with and the written materials considered in reviewing this issue is attached at Appendix 1.

### 2. OVERVIEW

The Committee endorses the view that a citizen of a democratic society has an inherent right of access to the written laws which regulate one's conduct. This right of access to legislation allows a citizen to more effectively participate in the governance of society by disseminating knowledge of the rights, obligations and accountability which attaches to individual citizens and to the State alike.

Accordingly, the Committee recognises the need to make statutory materials, particularly primary legislation, available to the entire community as cheaply and as widely as possible and that a diversity of methods of dissemination of this information is beneficial.

However, the Committee concurs with the view that such legislative information must only be provided through means that meet the following four criteria:

- a) It should be in a **readily usable form**, including a consolidation of amending legislation where possible and with such additional information as is necessary for the proper understanding of the legislation.
- b) It should be in an **authoritative** form, capable of reliance for legal purposes and with an emphasis on the need for a "user-neutral system" whereby the legislative information being transferred remains incapable of alteration by the dissemination process.
- c) It should be provided in a **form which facilitates effective dissemination**. The current use of word processors and computer type-setting by Parliamentary Counsel and the State Law Publisher in the original production of legislation creates the potential for greater availability of legislation in electronic form to the general public. Furthermore, given that legislation is electronically produced by Parliamentary Counsel in the course of their normal work, there should be no substantial cost or effort to make legislation available to the general public in electronic form as well as the traditional hard copy print.
- d) It should be provided at no more than on a **cost-recovery basis** equally to anyone who wishes to obtain it. Public policy should support maximising free public access to the law. Its dissemination should not be regarded as a "profit centre". Generally, the Committee recommends that fees be set on a cost-recovery basis (*Perritt Report, 1994*).

Furthermore, the Committee feels that ease of access is as important an issue as basic availability and that this ease of access should be encouraged by taking advantage of technological advances in the fields of electronics and computing. These technological advances, however, must be

accompanied by equivalent developments in the provision of publicly-available technical resources for the dissemination of legislation, without prejudice to economic, geographical or social conditions.

### *Current Dissemination of Legislation*

The State Law Publisher (which is a branch of the Office of State Administration) is responsible for the dissemination of statutory material to the community. This dissemination is currently achieved by three methods:

1. The distribution of paper copy through selected public and academic library services and by retail sale at a shopfront facility at the State Law Publisher;
2. The retail sale of magnetic diskettes containing some individual Acts available from the State Law Publisher shopfront facility; and
3. The use of the SWANS electronic bulletin board database known as LawNet.

The cost of legislation in paper copy varies depending upon the size of the Act required whereas the magnetic diskettes are purchased at a set price of \$38 per Act. LawNet is available only on a subscription basis and costs \$150.00 per annum and \$1.95 per minute of use. At this time, there are 109 public and private organisations which subscribe to the LawNet (Strijk, 1995).

On the weight of the evidence placed before it, the Committee considers that two issues of concern arise in relation to the current methods of dissemination of legislation in this State:

1. The delay in consolidating and reprinting statutes which have been amended; and
2. The necessity to have legislation made more accessible to the public through electronic means.

The Committee acknowledges that it is very important that all users of legislation be able to access legislation in a consolidated form. The lack of up-to-date reprints makes legislation difficult to read and understand because it is often necessary to refer to more than one document at a time.

The Committee is also concerned with the perceived difficulties in obtaining public access to legislation, especially subordinate legislation and ancillary materials, other than through the shop facility at the premises of the State Law Publisher and a very small number of public libraries.

Wide-ranging electronic access to legislation is considered by the Committee as an answer to both of the above concerns. Firstly, it would provide a progressive and inexpensive method of distributing legislation within the community. It would be of particular benefit to professionals, students, residents of remote areas of the State and, in some cases, the economically disadvantaged. Secondly, it would provide a much more efficient medium for on-going legislative consolidation by Parliamentary Counsel, as well as making the task of ensuring that the text reflects the current state of that legislation much quicker and simpler than the current paper-based system.

It has been noted by the Committee that other Australian jurisdictions have already been involved in developing public access to legislation in electronic form, particularly the Commonwealth, New South Wales and Victoria.

### **3. THE ELECTRONIC AVAILABILITY OF STATUTES: THREE ACCESS ALTERNATIVES**

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The global information infrastructure - today represented by the universally accessible telephone system, television, libraries, computers, electronic bulletin boards and the Internet - has been described as "a seamless web of communications networks, computers, databases, and consumer electronics that will put vast amounts of information at user's fingertips"(Perritt, 1994).

The Committee supports the use of the global information infrastructure to expand the information available to the public, ensuring that government information is available to the public easily and equitably. In particular, the Committee recommends the establishment of a public system of access to legislation to make legal research and understanding more available to scholars, professionals, public interest groups, members of the community and all other users of electronic information. The Committee recognises, however, that such change must also accommodate the technologically unsophisticated and economically disadvantaged, who must be provided with the ability to access and use modern technology to exercise their basic right to legislative information.

The four forms of electronic access that have been considered by the Committee are magnetic diskettes, CD-ROM, bulletin board databases and the Internet. The Committee considers the last of these approaches to be the most appropriate. The Committee's findings are detailed below.

### **3.1 MAGNETIC DISKETTES**

Magnetic diskettes, commonly known as "floppy disks", are a standard tool for the electronic transfer of information between computers, particularly where fewer than a few megabytes of information is being transferred. The information contained on such a diskette is magnetically encoded in conventional binary arithmetic.

The State Law Publisher provides selected individual Acts on magnetic disk from its shopfront facility in Perth.

#### *Access Advantages*

The major advantage of magnetic diskettes in the dissemination of legislation, particularly retail dissemination, is the fact that almost every desktop computer has at least one diskette drive and there is near universal adherence to MS-DOS formats. Also, access to information contained on magnetic diskettes is instantaneous and easy to use, with no delays establishing contact and no waiting for access to a busy public electronic site.

#### *Disadvantages with Magnetic Diskette*

Dissemination of legislation by way of magnetic diskettes shares many disadvantages with traditional print publishing. In particular, magnetic diskettes require a physical distribution of the medium, with a necessary amount of physical stockpiling and delays associated with physical transportation. In addition, the Committee considers the relatively high cost at \$38 per Act a disincentive to purchase by the general public, who may only wish to view such information on an irregular basis.

### **3.2 CD-ROM**

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Compact Disk Read Only Memory ("CD-ROM") is a technology for storing digital information on a plastic disk called a "platter" by altering the surface of the disk with a laser beam. It is the same basic technology used to make popular audio compact disks. From a user's standpoint, a CD-ROM works in much the same way as a magnetic diskette. The user places the CD-ROM platter in the disk drive and then accesses information stored on the platter with the user's regular operating system and application software.

Current CD-ROM technology permits up to 500 megabytes of information to be stored on a single platter, the equivalent of about 300 magnetic diskettes. While this technology is relatively new, the growing availability of CD-ROM drives as a standard accessory for desktop computers has steadily increased the market for information products distributed on CD-ROM.

A great deal of legal information is currently available on CD-ROM, ranging from caselaw citations to articles extracted from legal journals. In Australia, there are two CD-ROM services - Diskrom and Info-One International Pty Ltd - providing a CD-ROM service for Commonwealth legislation. However, the legislation contained on these CD-ROM services is not fully consolidated, although it does contain hypertext links<sup>3</sup> which allow easy movement between a provision of the principal legislation and later provisions that amended the principal legislation.

At the present time, the Committee is not aware of any Western Australian legislation being available on CD-ROM.

#### *Access Advantages*

Accessing legislation on CD-ROM has the major advantage of being relatively cheap to produce for the distributor. While a master disk must be created with CD-ROM mastering systems that are significantly more complex than the typical desktop computer system, once a master disk is created, the platters intended for distribution are pressed from the master disk much as acrylic phonograph records are pressed from a master recording. This production technology means that CD-ROM enjoys significant economies of scale compared to other mediums of electronic information and in many regards resembles traditional print publishing.

Furthermore, like magnetic diskettes, the user of a CD-ROM product has no need to access a network or dial-up bulletin board. Therefore, access to information contained on CD-ROM is instantaneous, with no delays establishing contact and no waiting for access to a busy public electronic site.

#### *Disadvantages with CD-ROM*

There are a number of perceived disadvantages with providing information that is intended for public dissemination on CD-ROM:

1. A major problem with current CD-ROM services is the extent to which they mirror some of the deficiencies of the paper-based system, in particular the lack of up-to-date consolidations. When using CD-ROM technology to access legislation, although it is easy to

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<sup>3</sup> Hypertext links are a form of encoded syntax which allows a user to automatically access other linked documents, usually of a similar or related subject matter. The quality of hypertext links ranges from a "basic" level of hypertext functionality, consisting primarily of hierachial links (such as table of contents or footnotes), "sequencing" links (such as "Next" and "Previous") to what is known as "rich" hypertext which provides the addition of lateral or internal hypertext links (such as links to definitions and cross-references).

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move between different provisions, it may often be necessary to read more than one provision to obtain an up-to-date text of a provision that has been amended since the last reprint.

2. Even where legislation contained on a CD-ROM was consolidated, it would only represent a valid consolidation from the date that the master platter was made and current CD-ROM technology does not allow for amendment to an existing platter. Accordingly, obtaining an up-to-date consolidation of legislation on CD-ROM requires a CD-ROM user to wait for the next CD-ROM instalment every time there is a legislative amendment.
3. CD-ROM publishing, like print publishing, requires physical distribution of the medium, with a certain amount of physical stockpiling and the delays associated with physical transportation.
4. The costs of a CD-ROM (and the required disk drive) are relatively high for an individual, particularly where the information contained on the CD-ROM is not static and requires continual up-dating, such as legislation.
5. Most importantly, the Committee recognises that while the use of CD-ROMS is appropriate to a professional environment, such as a law firm, they are not the most effective mechanism for distributing legislation to the general public who may only wish to view such information on an irregular basis.

### **3.3 ELECTRONIC BULLETIN BOARD**

An electronic bulletin board (sometimes referred to as a dial-up proprietary single-use system) is a computer that answers the telephone through a modem and allows a caller to access an information database through ordinary software running on the caller's computer. There are many private and public electronic bulletin boards running on inexpensive desktop computers covering a multitude of subjects, including legal and legislative materials. LawNet is an example of such an electronic bulletin board.

To access one of these bulletin boards, a user needs an ordinary desktop computer and a modem and the user must know the telephone number of the bulletin board or possibly a password. Upon entering the correct telephone number, the user's computer automatically dials the number and connects to the electronic bulletin board computer at the other end. The regular telephone system establishes the necessary circuit. File transfer and error correction is conducted by ordinary communications software within the bulletin board computer, the user's computer and the respective modems. User identification, security, and billing (if any) are provided for by the bulletin board software.

After downloading (if allowed by bulletin board software), a user may print the file, edit it and incorporate it into word processing documents, or simply read it on the screen of the user's computer.

#### *Access Advantages*

The bulletin board database is a very effective and relatively straightforward method to disseminate information electronically. Its particular advantages are:

1. The ease with which information on bulletin boards can be accessed once a user is attached to the bulletin board service, particularly users who are remote geographically or are

disadvantaged in some other manner with respect to traditional information sources.

2. The information on bulletin board databases can easily be updated or consolidated to take account of subsequent amendments.
3. Given that the information contained on a bulletin board database is usually subject to greater control by the software on the bulletin board computer than on other electronic mediums, it follows that the uses to which the information contained on the bulletin board is put can be more easily regulated and maintained in its original and authoritative form than on an interactive system such as the Internet<sup>4</sup>. While the Committee notes that bulletin boards are not **inherently** subject to greater controls than other mediums (and that systems such as the Internet are not **inherently** interactive), existing legal bulletin boards generally impose a greater degree of restriction on user activities.

#### *Disadvantages with Bulletin Board Databases*

In spite of the obvious value of bulletin board databases, such as LawNet, the Committee has some concerns over the suitability of this system for disseminating information such as legislation to the general public. In particular, the Committee considers the relative disadvantages with this alternative to be:

1. Operational disadvantages such as a lack of public knowledge of bulletin board numbers, frequent busy signals, and the need for public education concerning the use of such systems.
2. The major shortcomings of bulletin boards is the requirement that the user system be compatible with the bulletin board system. Naturally, this will limit the number of public users with the capability to access a bulletin board database.
3. Another important disadvantage would be the extreme difficulty in providing useful hypertext links within and between the information posted on a bulletin board. Hypertext links provide the most effective and user-friendly means of presenting legislation in computerised form because of the need to cross-reference diverse legislative provisions and definitions.
4. Electronic bulletin board costs are expensive to operate and the costs that are passed on to the consumer would be prohibitive for many private users. These costs would include the subscription costs for connection to the service and the on-line time charges.<sup>5</sup> Any move to provide public information on bulletin board databases would need to be matched by the provision of a sufficient number of free or heavily subsidised public access points, such as library computers connected to the bulletin board database.
5. The inability to download on most bulletin board databases reduces the effectiveness and flexibility of providing the information electronically.

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<sup>4</sup>For example, the information contained on a bulletin board could easily be classified as "Read Only".

<sup>5</sup>A related disadvantage of bulletin boards is, of course, the higher STD costs for people outside the metropolitan area.

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### 3.4 THE INTERNET

The Internet is a complex global network consisting of thousands of independent computer networks run by businesses, government agencies, educational or research institutions and private individuals. The Internet is not, however, a specific kind of network. It is actually better thought of as a set of standards or protocols that lets various types of networks intercommunicate. This protocol, called TCP/IP, enables communications between public and private networks running over any medium: phone lines, traditional network lines, fibre cables and cable television wires. It is also computer-independent, running across all types of computer systems, workstations and mainframes. Across the Internet, users can share and access information, discuss topics of interest and research various topics, including legislation and other public information (*Perritt, 1994*).

To gain access, an individual, company or organisation can link his or her computer to the Internet by paying an Internet service provider for a link from that network to the Internet via a modem.

The best way to provide legal information such as legislation is probably over the World-Wide-Web, an Internet-based distributed hypertext system whose primary features are its "open architecture" and its relative inexpensiveness for both information consumer and information provider.

#### *Access Advantages*

The Internet is a unique part of the existing global information infrastructure. It provides many distinct advantages for the dissemination of public information such as legislation because of the following characteristics:

1. The Internet has what is known as an "open architecture"<sup>6</sup>, meaning that one computer system can connect to others simply by adhering to the TCP/IP standards. It is not necessary for users of one computer system to use the same hardware or software as another computing system with which they wish to communicate, or even to know the nature of the hardware and software in the other system.
2. Unlike similar bulletin board databases, the Internet is a collective endeavour in the sense that different aspects of its information content and related services may be supplied by different Internet nodes, operated by different persons or entities, which results in a user being able to obtain a vastly greater variety of information and perform various required services with the one technology.
3. The search facilities available on the Internet, such as hypertext links, which enable cross-referencing are far superior to those found in the other electronic information mediums.
4. Although institutions or individuals connecting to the Internet must pay for their own hardware, software, and communications lines, there is no charge (other than for the cost of a telephone call) for access to other nodes on the Internet nor, with rare exceptions, to information resources made available through those nodes.
5. Many Internet users are members of institutions or workplaces that already possess Internet connections and such users are not charged directly for Internet usage.

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<sup>6</sup>The file transfer protocol ("ftp") of the Internet is indifferent to file formats. Thus, for example, one Internet site could "publish" an Apple Mackintosh file on a non-Mackintosh Internet node, and other Internet nodes could retrieve that file without having to have Mackintosh connections or without the transferor and transferee computing systems to be similar.

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6. There is a rapidly growing market for the provision of information and services on the Internet for a more diverse population of users, including international users<sup>7</sup>.

#### *Problems with On-Line*

In spite of the operational advantages of disseminating legislation by way of the Internet, there are a number of problems which would need to be met:

1. The difficulty in preserving the style and formatting of legislation when it is downloaded by users.
2. The matter of cost, particularly the question of who will bear responsibility for the initial cost of placing legislation on the Internet and the maintenance of the system in the long term.<sup>8</sup>
3. The need to advertise the precise Internet site at which the legislation may be accessed and the risk of frequent busy signals during peak user periods.

However, the Committee has been advised that not all Internet service providers encounter the above problems to any significant degree, although it is acknowledged that these problems do attach to the Internet generally (see below). The Committee also notes the recent development of computer protocols allowing much greater preservation of the style and format of documents placed on the Internet (see *Technical Agenda* section below.)

#### *Responsibility for Public Access to Law via Internet*

Perhaps one of the most important questions to be considered is whether a government agency, such as the State Law Publisher, will be responsible for the placement and maintenance of all State legislation on the Internet or whether it would be more practical to take advantage of the pre-existing public information servers on the Internet.

At the present time, there is already in existence a specific service providing legal materials, such as legislation, known as the Australasian Legal Information Institute ("AustLII"), which is a legal research facility on the Internet (<http://austlii.edu.au>) that aims to provide access to Australian legal materials via the Internet.

The Committee also notes the recent launch of the State Government's own World-Wide-Web site on the Internet (<http://www.wa.gov.au>) which it is anticipated will provide the general public with

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<sup>7</sup>Recent statistics show Australians are at the forefront of the Internet explosion, with a million people expected to be linked to the system by the end of 1995. According to statistics released by Telstra Australia, 700,000 Australians already have access to the Internet, making it the highest per capita participation rate in the world. Further, 46% of all Australian households have personal computers.

It is also estimated that the global Internet reaches approximately 20 million users.

<sup>8</sup>Initial cost - \$60 000 to \$80 000 to set up and \$20 000 for communication. Those costs are for hardware and communication with personnel and constitute an estimate of costs provided to the Committee by representatives of the State Law Publisher. However, the Committee notes the view expressed by other persons that these figures may underestimate the cost.

a link to a wealth of government information and commercial services. The State Government plans to link the site to other government sites throughout Australia and the Australasian region. Businesses will be encouraged to develop presences on the Internet and to link their content to the WA Government site.

The Committee has been advised that the site will act as a coherent co-ordinating entry point for "home pages" of government departments which wish to place public information on the Internet. Under the proposed system, each participating government department will be responsible for placing its own relevant information to meet their own service requirements on home pages which will be linked to the State Government site. The Committee is not aware of any plans by the Department of Justice to use the State Government site to post legislation on the Internet.

The Committee does note, however, that the State Government site is divided into a number of icons, each of which has been reserved for a particular arm of the State Government. The Committee notes with interest that one icon has been reserved solely for use by the Parliament.

However, given that the State Government site acts only as an "on-ramp", the Committee acknowledges that any attempt to post legislation by use of this site would require a large amount of effort and expense on behalf of the Department of Justice or the Parliament (see footnote 8).

#### *Public Policy Agenda*

Publicly-funded servers like AustLII are part of an expanding international network of Internet servers which are concentrating on providing publicly available legal materials throughout the Internet (*Greenleaf et al*, 1995). Examples of such servers are outlined at Appendix 3.

The development of "public legal information servers" has been described as "part of the more general movement to create publicly available (or "free to air") resources on the Internet, similar in some respects to the creation of public libraries in the nineteenth century. The Internet is fast becoming home to the commercial providers of information, and effective means of charging for even occasional uses of resources are being developed. The countervailing movement, of which AustLII is a part and which the Committee supports, aims to ensure that some part of cyberspace remains public space, where no one is denied use of resources because of financial considerations" (*Greenleaf et al*, 1995).

#### *Technical Agenda*

The Committee also acknowledges the need to develop a technical agenda for the computerisation of legislation on the Internet, in particular:

- i) the choice of text for delivering legal information on the Internet.<sup>9</sup>
- ii) the identification of specific standards for maintaining the form of Internet-accessible legal information because legal documents, such as legislation, have peculiar typographical and structural disciplines which are not common to other disciplines and must be utilised in a standard way to maximise the Internet's legal

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<sup>9</sup> Hypertext form via the World-Wide-Web is the primary means of delivering legal information at present. This is an uncontroversial choice as most material on the Internet is now available in HTML (hypertext mark-up language) so as to allow for World-Wide-Web access.

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value.<sup>10</sup> The Committee is aware of the continuing development of format control systems on the Internet, such as the use of Hypertext Mark-up Language ("HTML") or Portable Document Format ("PDF"). These are software systems for embedding commands about type size, layout, bolding or paragraphing in the text of material placed on the Internet. As the style and format is embedded in the text, use of these systems allows electronic text to be downloaded from the Internet and printed on any type of personal computer or any kind of system while maintaining its original form.

- iii) a decision must be made as to whether a user is only allowed "read-only" access, or whether there can be any "downloading" or re-use of the legal information accessed.

#### *Provision of Legislative Material by AustLII*

As mentioned above, AustLII is part of an expanding international network of public legal information servers - facilities providing public domain and freely licensable legal materials via the Internet. AustLII's principal purpose is to provide to legal researchers, via the Internet, effective access to Australasian legal materials that are in the public domain or for which licences can be obtained at minimal charge. As a publicly-funded information utility, AustLII will not charge for access to the materials it provides and may be accessed via the world-wide-web (*Greenleaf et al*, 1995).

AustLII was established by the University of NSW and the University of Technology, Sydney in January 1995 with the original funding mostly coming from the Commonwealth Department of Employment, Education and Training's Research Infrastructure Equipment and Facilities Program and the two host Universities. In September 1995, the Law Foundation of New South Wales agreed to fund AustLII's ongoing provision of primary legal materials, such as legislation, for **all** Australian jurisdictions, with an initial grant of \$150,000. Furthermore, AustLII is working with the Law Foundation's "Foundation Law" service which provides an Internet Service Provider ("ISP") focussed on the needs of Australian lawyers and a convenient home page through which to access the primary materials on AustLII and other legal resources.

The AustLII site has been functioning since January 1995 and includes the hypertext and searchable versions of the full text of over 1500 Commonwealth statutes and regulations, the consolidated New South Wales statutes and a variety of other legal materials. The site contents are listed at Appendix 2. After less than one year's operation, AustLII is already the world's largest source of legal materials on the Internet's world-wide-web.

According to its promotional material, AustLII's usage has been doubling each month since its inception and, at the end of October 1995, was averaging almost 7,000 "hits" or pages accessed per working day from at least 600 different users each day. Peak usage so far is over 9,000 hits in a day. Approximately, 80% of users come from within Australia, 20% from overseas.

In the course of its deliberations, the Committee has had informal discussions with AustLII concerning the possibility of the State Government inviting AustLII to place all Western Australian legislation on their Internet site. This proposition has been received very enthusiastically by the directors of AustLII.

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<sup>10</sup> An alternative considered by the Committee was the imposition of a rider warning that legislation posted on the Internet might not be an accurate copy



It is the opinion of the Committee that there are a number of advantages to the West Australian State Government entering into a licensing agreement to allow AustLII to post all State legislation on their Internet site:

1. The funding received from the Law Foundation of New South Wales allows AustLII (at least initially) to post all Western Australian legislation at no cost to the Western Australian Government;
2. The formatting system used by AustLII, in particular the searching function, is superior to the pre-existing database systems such as LawNet. Currently, AustLII uses a "rich" hypertext system, with over five (5) million automatically inserted hypertext links contained in its existing databases, including links to definitions of words in statutes, links to other sections (even in other Acts) and links to caselaw and secondary materials;
3. Due to AustLII's recent close working relationship with Foundation Law<sup>11</sup>, they are able to provide low dial-in cost (local call) preferential access from anywhere in Australia, with direct links to AustLII and very few traffic delays; and
4. In relation to congested public Internet access, the Committee has been assured by the directors of AustLII that their Internet service is equipped to handle as many simultaneous accesses as it is likely to receive from both commercial and private users. During its operation to date, the AustLII site has experienced a peak of sixty (60) simultaneous users and could accommodate up to three hundred (300) simultaneous users without even the need for hardware upgrades. Further, through its relationship with Foundation Law and with the University of Technology, Sydney, AustLII is also developing a number of independent access paths to its server, through microwave, laser and ISDN links, which will reduce any vulnerability to system congestion at particular points of the Internet.

However, one disadvantage is that AustLII does not perform consolidations of the legislative materials they post on their site. Accordingly, it would still be the responsibility of Parliamentary Counsel to perform that function, as they currently do for all hard copy legislation. Alternatively, to alleviate this problem, AustLII have agreed to initially setting up two databases, one with the consolidated acts at the time of first posting the legislation on the Internet, and one with sessional acts recording all amendments made after that date. It is anticipated that this system would adequately provide access to all Western Australian legislation until such time as Parliamentary Counsel is able to complete all outstanding consolidation of statutes.

The Committee also fully supports the idea of presenting legislative Bills and Hansard on the Internet for perusal by academics, students and the public. This practice would be of special note because no Australian jurisdiction currently provides electronic access to bills presented to their respective parliaments.

In view of the above, the Committee recommends that the State Government should enter into a licensing agreement with AustLII to provide the mechanism for placing Western Australian

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<sup>11</sup> Foundation Law is an initiative of the Law Foundation of New South Wales designed to give the whole community easy, low-cost access to legal information on the Internet. It brings together a nation-wide range of essential legal information on one easily-accessed menu, and also allows cheap and easy electronic communication.

Foundation Law has been developed with the co-operation of the Australian Legal Information Institute, the Law Society of New South Wales, the New South Wales Bar Association and the New South Wales Attorney General's Department.

Furthermore, Foundation Law recommends Open Net Pty Ltd as the preferred Internet Service Provider. Open Net Pty Ltd is a government sponsored Internet Service Provider which provides access to Foundation Law at very low rates.

legislation on the Internet, possibly with a link established between AustLII's site and the Western Australian Government "on-ramp" site.

### **3.5 COPYRIGHT**

The Committee has also given some consideration to the question of the copyright over State legislation. In particular the Committee had considered whether there can be any copyright claim made by the State over such public materials as legislation which are placed on the Internet. The Committee also considered whether, as a matter of public policy, there should be any such claim.

It is the Committee's understanding that placing information on the Internet does not surrender copyright but can, upon the election of the information provider, allow the public a blanket licence to use it, as the New South Wales Parliament has done. Alternatively, a government body can give licences for the computerised use of legislation to a specific service provider, as the Commonwealth Parliament had done with AustLII.

There are advantages in adopting the second alternative as it allows a greater degree of control over the uses to which the legislation placed on the Internet will be put (e.g. re-sale) and it will not burden a government department with the onus of maintaining an Internet site or home page.

### **3.6 COST**

The Committee feels that the issue of cost is a pivotal consideration in two respects:

1. The choice among technologies should take into account the cost to the public and to the disseminating agency; and
2. The measure of cost recovery to be adopted by the disseminating agency should be set at the lowest possible level.

In accordance with the inherent right of citizens to freely access the laws that regulate their conduct, costs incurred by creating, collecting and processing information, such as legislation, should not be passed on to those who wish to utilise that public information.

Accordingly, the Committee favours information such as legislation being provided to the public either free or on a cost of recovery basis regardless of the technology employed.

In the recommendation of the Committee to accept the offer by AustLII to post all Western Australian legislation on their Internet site, the cost effectiveness, both for the State Government and for the public, is a major consideration.

### **3.7 LIBRARIES**

The dissemination of public information has always been a primary responsibility of the State library system in Western Australia. The Committee takes the view that public libraries must be equipped with current innovations in dissemination technology to continue to effectively carry out this function.

Accordingly, the Committee is of the opinion that, should the State's legislation be provided on the Internet, it is incumbent upon the State government to initiate and fund several pilot programs

under which libraries establish connections to the Internet and develop appropriate interfaces for public access. If alternative technologies are employed, appropriate resources should also be granted to public libraries for the provision of expertise and training of the public to facilitate the proper dissemination of the information.

At present, only three metropolitan public libraries<sup>12</sup> have established connections to the Internet in Western Australia. However, the use of these connections is restricted to Library staff and there are no current plans to make them available to the general public. Furthermore, funding for Internet access in Western Australia does not presently come under the aegis of the State Library Service but remains an individual Library initiative to be paid for from the participating Library's own funds. Accordingly, very few public Libraries in Western Australia are currently considering expanding their services to include Internet access. A particular concern to the Committee is the fact that not even the Alexander Library currently provides Internet access to the general public.

The Committee notes with some concern the apparent distance at which Western Australia trails some other States in relation to the provision of electronic access to information in our public library system. States, such as Victoria<sup>13</sup>, New South Wales and Queensland have already developed and instituted wide-ranging programs for free public access to the Internet through terminals available at a number of local branches for short-term bookings. The Committee strongly urges that a similar program for public access points at local branches of the public library be instituted in Western Australia.

In this regard, the Committee notes the recent release of the Prime Minister's *"Innovate Australia"* statement. Section 4.1 of the Information Technology part of the statement announces the establishment of the *Accessing Australia* program, by which \$11.4 million is to be provided in 1996/97 to help ensure that all Australians, particularly the economically and technologically disadvantaged, have access to the "information superhighway" by providing public Internet facilities at public libraries. The Committee strongly urges the State Government to participate in this scheme to the advantage of our State library system and to enhance the access of all West Australians to public information.

### 3.8 ReDISSEMINATION

A final element that needs to be carefully considered is whether there would be a restriction on the re-use of the legislative information disseminated on the Internet by commercial, value-added re-sellers. These re-sellers make the same information available to consumers but with a variety of

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<sup>12</sup>Nedlands, Fremantle and Mundaring Public Libraries.

<sup>13</sup>The Victorian system, known as VicNet, is worth particular mention. VicNet is an Internet-based libraries network which was designed and implemented by the State Library of Victoria and the Royal Melbourne Institute of Technology Library. The aim of the project is to give Internet users at home - and eventually in all public and regional libraries throughout Victoria - access to public information and services including:

- Dial-up access to library facilities such as CD-ROM and library catalogues
- Community bulletin boards and e-mail facilities
- State and local government information.

Public access points are currently found in fourteen (14) public libraries throughout Victoria. Access is free and can be booked in half hour blocks. The Victorian Government plans to connect 1000 public libraries by the end of 1996, with a focus on equality between country and metropolitan centres.

The VicNet Internet address can be found at <http://www.vicnet.au>

enhancements to improve its utility and ease of use to specific audiences, including more sophisticated search techniques and user-friendly menuing and information management features.

The Committee feels that public policy should support the maximum dissemination of the law and the forms to make it most understandable. This policy agenda does not require any restriction against commercial users of public information but instead promotes effective access to the sources of law by all who wish to create value-added legal products, whether on a commercial basis or a publicly-funded basis. Indeed, commercial servers such as Diskrom and Info-One International Pty Ltd demonstrate how large quantities of legal information can be commercially provided with a high degree of value added functions.

#### **4. RECOMMENDATIONS AND CONCLUSIONS**

The digital distribution of law is not a futuristic fiction, but a present fact. The rapid shift in the dissemination of information from print to computer-based systems is now well underway in both the public and the private sectors, particularly in relation to the provision of legal information. These electronic delivery systems are fast, flexible, and more current than their printed counterparts, reaching effortlessly across great distances and different sections of society.

Within sight, if not present reality, is the creation of computer-based legal information systems offering access to a complete set of statutes, judicial opinions and regulations, as well as useful expert opinion in many fields of law. Since many law-making bodies now produce their original material in digital form (preparing final versions of their statutes, regulations, or judgments on computers), one can imagine widespread access to authoritative versions of their output directly from the primary source.

The Committee recognises that proper electronic access to legislation is vital, particularly in areas where it is not easy to obtain printed legislation. The continuing demand for the type of services provided by electronic publishers such as Info-One and the Computer Law Service attests to the importance of electronic access to legislation. In addition, some of the costs of printing and storing hard copies of legislation not ultimately wanted by the public would be eliminated.

In the course of its investigations, the Committee addressed the question of whether the market for the electronic dissemination of legislation is best realised through connections to the Internet, dial-up access to bulletin board databases or through CD-ROM or magnetic diskette services. The Committee believes the Internet ultimately represents the cheapest, most accessible and technologically innovative alternative. In particular, the Committee strongly recommends that the State Government accept AustLII's offer to post all Western Australian legislation and bills on the Internet for the free use of the public.

Of course, this is not to say that users or providers of legislative information should be forced away from existing or alternative forms of electronic dissemination. The Committee recognises the different needs of the general public and the commercial sector, where information such as legislation is considered a standard resource to be utilised on a daily basis. For these commercial users, while the Internet would be an effective mechanism for the dissemination of legislation<sup>12</sup>, there will always be a continuing demand for the more specific and "office-friendly" services provided by bulletin board and CD-ROM providers.

In this regard, the Committee recognises that posting legislation on the Internet free of charge will

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<sup>12</sup> Especially given the large number of commercial enterprises which now maintain on-line access.

have some effect on the activities of commercial providers of legal information, such as bulletin board providers and the manufacturers of CD-ROMS. However, the Committee feels that the need to disseminate public information widely and effectively, without prejudice to economic, geographic or social conditions, must take precedence over the business interests of commercial information providers. It is the opinion of the Committee that such commercial providers may replace any lost market-share by expanding the field of providing supplementary legal information and value-added products, such as annotated editions of legislation and specialised information services.

Furthermore, the Committee believes that electronic access to legislation is not intended to be a complete substitute for the system of publishing (and reprinting) legislation in hard copy. The cost of electronic equipment and the need for training will deny access for some people to electronically transferred information.

In relation to the matter of consolidation of statutes, the Committee also heard evidence from Parliamentary Counsel that there was a considerable backlog in the consolidation and reprinting of statutes. This backlog was attributed to the lack of sufficient resources specifically reserved for this important task and that at least two additional staff would be required full-time for a period of at least two (2) years to redress the situation. In keeping with the Committee's stated view of the need to provide legislation to the public in a clear and current form, the Committee strongly recommends that the additional staff required by the Parliamentary Counsel should be provided to ensure that the necessary consolidation and reprinting of all Western Australian legislation is completed at the earliest possible time.

The Committee notes, however, that the need to clear this backlog does not represent an impediment to the dissemination of legislation on the Internet by AustLII. As discussed above, AustLII have agreed to initially setting up two databases, one with the consolidated acts at the time of first posting the legislation on the Internet, and one with sessional acts recording all amendments made after that date. It is anticipated that this system would adequately provide access to all Western Australian legislation until such time as Parliamentary Counsel is able to complete all outstanding consolidation of statutes.

Lastly, while the Committee acknowledges that the electronic availability of statutes via the Internet is a very new concept, only developing in any meaningful way since the rise in popularity of the World-Wide-Web, there is also the conviction that Western Australia has the opportunity and the available resources to be a relatively early participant in these exciting developments.

## APPENDIX I

The Committee met or spoke with the following persons to discuss the electronic availability and consolidation of statutes:

Mr Ken Green, Member of the Computerisation Sub-Committee of the Law Society of WA and Treasurer of the WA Society of Computers and the Law.

Mr Greg Calcutt, Parliamentary Counsel, Ministry of Justice

Mr John Strijk, Acting Assistant Director, State Law Publisher, Department of Social Services

Mr Garry Duffield, Government Printer, Department of State Services

Mr David Harrold, Manager, Office Systems, Ministry of Justice.

Associate Professor Graham Greenleaf, Co-Director of the Australasian Legal Information Institute.

Mr Max Joynes, Principal Policy Analyst, Strategic Information and Information Technology Unit of the Public Sector Management Office.

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PERRITT H, 1994. *Public Information in the National Information Infrastructure* (Report to the Regulatory Information Service Centre, General Services Administration and to the Administration of the Office of Information and Regulatory Affairs, Office of Management and Budget).

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## APPENDIX II

A prototype AustLII site has been functioning since January 1995 for demonstration purposes. As of 30 May 1995, the prototype contained the following contents:

- all Commonwealth statutes, marked up in "rich hypertext" and searchable by both user-controlled and pre-stored free text searches. The statutes are consolidated with all amendments as at 17 May 1995.
- all Commonwealth statutory rules in full text, consolidated as at 22 May 1995.
- the decisions of the High Court of Australia (since 1950), the NSW Land and Environment Court, the Family Court of Australia, the Commonwealth Administrative Appeals Tribunal, the Tasmanian Supreme Court and the Australian Industrial Court.
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- two (2) substantial new Discussion Papers from the NSW Law Reform Commission
- an Australian Institute of Judicial Administration Report
- the Justice Statement of May 1995, the Commonwealth Government's response to the 1994 Report of the Access to Justice Advisory Committee, as an example of AustLII providing government policy statements via Internet as soon as they are announced.
- the www version of Murdoch University School of Law's electronic law journal, E-Law.l

**APPENDIX III**

AustLII will be part of an expanding international network of Internet servers which are concentrating on providing publicly available legal materials throughout the Internet. Examples of such servers provided by universities are:

- Cornell University's *Legal Information Institute* (<http://www.law.cornell.edu>) which provides decisions of the US Supreme Court, New York Court of Appeals, US Code, other legislation, model codes.
- Universities in Florida, Utah, Indiana and Texas (State constitutions and codes) \* see Cornell site for comprehensive list
- University of Montreal's *Centre de recherche en droit public* (<http://www.droit.umontreal.ca/english.html>)
- Department of Anthropology, University of Western Australia (<http://www.arts.uwa.edu.au/AnthropWWW/ntcases.htm>) providing Australian native title caselaw.
- Info-One International Pty Ltd provides subscribers with on-line access to legislation of many Australian jurisdictions



**APPENDIX IV**

There are also an increasing number of such publicly funded servers who are providing public information (including public bodies themselves), such as:

- the Australian Parliament (<http://www.aph.gov.au/>)
- the Law Reform Committee of the Victorian Parliament (<http://www.vicnet.net.au/vicnet/vicgov/parl/lawref/lawrefhome.html>)
- US Library of Congress; *Legislative Information on the Internet* (<http://thomas.loc.gov/>)
- The Law Reform Commission of British Columbia in Canada (<http://bbs.qp.gov.bc.ca/lrc/lrhome.htm>)
- legislatures in California, New York, Washington and Minnesota.
- the ACT has made all of its legislation available on public access databases.

**APPENDIX V****LIST OF REPORTS**

1. Report regarding a petition seeking legislation on various aspects of substantive law and procedural law relating to sex offences against children.
2. Interim report into links between Government agencies and the failed Western Women Group.
3. Second interim report into links between Government agencies and the failed Western Women Group.
4. Report regarding a petition requesting the Legislative Council to investigate whether the proposed dissolution of the City of Perth contravenes the Constitution Act 1889 or any other Act or Statute.
5. Report in relation to a petition requesting the ban on the use of fishing nets (other than prawn drag nets and throw nets) for recreational fishing in the Pilbara region and the phasing out of certain professional licence endorsements.
6. Report in relation to a petition concerning the export of iron ore through Esperance.
7. Report in relation to a petition concerning the town of Wittenoom.
8. Overview of Petitions: April 1993 - March 1994.
9. Overview of Petitions: May 1994 - December 1994.
10. Report in relation to a petition regarding the Port Kennedy Development.