



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

STANDING COMMITTEE ON LEGISLATION

SESSIONAL REPORT:

AN OVERVIEW OF THE COMMITTEE'S

OPERATIONS: FIRST SESSION OF THE

THIRTY-SIXTH PARLIAMENT

MAY 1 2001 TO AUGUST 9 2002

Presented by Hon Jon Ford MLC (Chairman)

Report 17
October 2002

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

May 24 2001

Terms of Reference:

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

“1. Legislation Committee

- 1.1 *A Legislation Committee* is established.
- 1.2 The Committee consists of 5 members.
- 1.3 The functions of the Committee are to consider and report on any bill or other matter referred by the Legislative Council.
- 1.4 Unless otherwise ordered, the policy of a bill referred under subclause 1.3(a) at the second reading or any subsequent stage is excluded from the Committee’s consideration.”

Members as at the time of this report:

Hon Jon Ford MLC (Chairman)

Hon Peter Foss MLC

Hon Giz Watson MLC (Deputy Chair)

Hon Bill Stretch MLC

Hon Kate Doust MLC

Staff as at the time of this report:

David Driscoll, Senior Committee Clerk

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EXECUTIVE SUMMARY FOR THE
REPORT OF THE STANDING COMMITTEE ON LEGISLATION
SESSIONAL REPORT

- 1 Executive Summary
 - 1.1 The primary function of the Legislation Committee is to consider and report on any bill or other matter referred by the Legislative Council.
 - 1.2 The Legislative Council amended the Committee's terms of reference and constitution on April 11 2002. Prior to April 11 2002, the Committee was also required to review the form and content of the statute book, inquire into and report on any proposal to reform an existing law and to consider and report on uniform legislation.
 - 1.3 During this report period the Committee tabled 16 reports in the Legislative Council.

REPORT OF THE STANDING COMMITTEE ON LEGISLATION

SESSIONAL REPORT

1 HISTORY AND PURPOSE

- 1.1 The Legislation Committee (Committee) was established on May 24 2001, in the First Session of the Thirty-Sixth Parliament, as part of a series of changes to the Legislative Council committee system. The Committee replaced the former Legislative Council Standing Committee on Legislation (1989-2001).
- 1.2 The primary function of the Committee is to consider and report on any bill referred by the Legislative Council. The Legislative Council can refer most bills to the Committee, the exceptions being appropriation, taxation and loan bills. The Committee is able to consider bills in more detail than would be possible in the limited time available in the Legislative Council itself. This process allows for effective mediation of differing political views on an issue and allows for input to that mediation from the public. The Committee reports its findings to the Legislative Council.
- 1.3 Unlike scrutiny of legislation committees of other Australian Parliaments, in Western Australia:
- the scrutiny of legislation is divided between the Joint Standing Committee on Delegated Legislation (scrutiny of all subsidiary legislation), the Standing Committee on Uniform Legislation (scrutiny of uniform legislation) and the Committee (scrutiny of primary legislation); and
 - the Committee does not scrutinise all bills tabled in the Legislative Council as a matter of course - its main activity is the scrutiny of bills as and when referred by the Legislative Council.

2 THE COMMITTEE'S TERMS OF REFERENCE AND CONSTITUTION

- 2.1 The Committee's current terms of reference and constitution differ from those that existed when the Committee was first established. These were amended on April 11 2002. (Refer to paragraphs 2.14 to 2.17).

Terms of reference - May 2001 to April 2002

- 2.2 The functions of the Committee as stated in its initial terms of reference (prior to April 11 2002, attached at Appendix 2) were to:
- i) consider and report on any bill referred by the Legislative Council;

- ii) review the form and content of the statute book;
- iii) inquire into and report on any proposal to reform an existing law; and
- iv) consider and report on uniform legislation.

Committee Activities under terms of reference - May 2001 to April 2002

Consider and report on any bill referred by the Legislative Council

- 2.3 The Committee's terms of reference required it to consider and report on any bill referred by the Legislative Council. Unless otherwise ordered, the policy of a bill referred at the second reading or any subsequent stage was excluded from the Committee's consideration.
- 2.4 In its consideration of a bill, the Committee often recommended amendments or further review of particular matters in its reports to the Legislative Council. Under parliamentary convention, inquiries of the Committee focused on the feasibility, clarity and technical competence of a bill. The Committee itself cannot amend a bill, but may make recommendations to the Legislative Council to do so.
- 2.5 The Legislative Council referred seven bills to the Committee for inquiry during this period. (Refer to Committee Reports 8, 11, and 15. A brief overview of these reports is provided at section 5 below. Also refer to section 6).

Form and content of the statute book

- 2.6 The Committee's terms of reference required it to review the State's laws and to report on what laws required technical or drafting amendments or could be repealed altogether, and to look at the form, availability and publication of the State's laws.
- 2.7 Unfortunately, the workload of the Committee prevented it from undertaking work on this aspect of its terms of reference.

Uniform legislation

- 2.8 The Committee's terms of reference required it to consider and report on all uniform legislation before the Legislative Council. This is pursuant to Standing Order (SO) 230(c).¹ Any bill that ratified or gave effect to an intergovernmental agreement or adopted or introduced a national scheme of legislation was subject to the Committee's inquiry.
- 2.9 The scrutiny of uniform legislation was previously conducted by the Legislative Council Standing Committee on Constitutional Affairs (LCSCCA) and the Legislative

¹ Standing Order 230(c) was repealed on November 13 2001 as part of a revision and redraft of standing orders relating to uniform legislation.

Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements (SCULIA). Neither committee was reappointed in the Thirty-Sixth Parliament. The terms of reference for LCSCCA and SCULIA were, in part, incorporated into the Committee's terms of reference.

- 2.10 In its consideration of uniform legislation, the Committee was bound by SO230(d),² which required the Committee to report back to the Legislative Council within 30 days, and which prevented the Committee from inquiring into the policy of a uniform bill.
- 2.11 The Legislative Council referred 18 'uniform legislation' bills to the Committee for inquiry during this period. (Refer to Committee Reports 1-5, 7, 9, 10, 12, 13 and 14. A brief overview of these reports is provided at section 5 below).

Term of reference 1.5

- 2.12 The Committee's terms of reference enabled the Committee to inquire into and report on any proposal affecting the State of Western Australia and its constitutional or legal relationship with the Commonwealth, the States and Territories, which, in order to have effect, would require the implementation or enactment of intergovernmental agreements or national schemes of legislation. The Committee could conduct such an inquiry by its own motion or on a reference from a Minister.
- 2.13 In order to assist with its consideration of current and proposed uniform legislation, the Committee wrote to all Ministers requesting that they advise the Committee what uniform legislation they, and the department/s for which they are responsible, may introduce into Parliament in the next six months. The Committee resolved that such letters be sent out to all Ministers every six months to ascertain any change in circumstance.

Amendment to the terms of reference

- 2.14 Amendment to the Committee's terms of reference came about from the Committee's desire to ensure an effective scrutiny of legislation before the Legislative Council.
- 2.15 The volume of legislation being referred to the Committee and the tight time-frame under which the Committee was required to report was hindering the Committee from comprehensively and effectively scrutinising the bills which were being referred to it. The Committee found itself having to limit the scope of its inquiries in order to meet its reporting deadlines.
- 2.16 Consideration of these factors led to the Committee tabling a special report, *Special Report of the Standing Committee on Legislation in relation to Intergovernmental Agreements, Uniform Schemes and Uniform Laws: Amendment to Standing Orders*

² Standing Order 230(d) was replaced with SO230A on November 13 2001.

230(c) and (d). In that report the Committee recommended that SO230(c) and (d) be amended and that a new committee be appointed. (Refer to paragraphs 5.43 to 5.47 below for further details on this report).

- 2.17 The Legislative Council Procedure and Privileges Committee considered the Special Report of the Committee.³ In November 2001 the Legislative Council repealed SO230(c) and (d) and inserted SO230A. Standing Order 230A strengthened the parliamentary scrutiny of bills that ratify or give effect to an intergovernmental agreement or adopt or introduce a national scheme of legislation, that is, the scrutiny of 'uniform legislation'. On April 11 2002 the Committee's terms of reference were amended.

Terms of reference - April 2002 to present

- 2.18 The Committee's current terms of reference are published at the front of this report.
- 2.19 The sole function of the Committee is to consider and report on any bill or other matter referred by the Legislative Council. Unless otherwise ordered, the policy of a bill referred at the second reading or any subsequent stage is excluded from the Committee's consideration.
- 2.20 As stated above at paragraph 2.4, the Committee cannot itself amend a bill, but may recommend amendments or further review of particular matters in its report to the Legislative Council. The majority of the Committee's inquiries focus on the feasibility, clarity and technical competence of a bill.
- 2.21 The amendment to the Committee's terms of reference has removed the ability of the Committee to inquire into uniform legislation, to review the form and content of the statute book and to inquire into and report on any proposal to reform and existing law.
- 2.22 The responsibility to consider and report on uniform legislation now lies with the Uniform Legislation and General Purposes Committee, which was established on April 11 2002.

3 MEMBERSHIP OF THE COMMITTEE

- 3.1 With the amendment to its terms of reference, the Committee's membership was reduced from seven members to five.

- 3.2 The Committee consists of the following five members:

3.2.1 **Hon Jon Ford MLC (Chairman).** Jon is a Member for the Mining and Pastoral Region and a member of the Australian Labor Party. Jon was elected

³ A copy of that report can be viewed on the Western Australian parliamentary website at:
<http://www.parliament.wa.gov.au/parliament/Commit.nsf/WCurrentNameNew/9EFDDC262D2E5BBA48256A6A0012BCC3?OpenDocument>

to the Thirty-Sixth Parliament for the Mining and Pastoral Region on February 10 2001 (for the term commencing May 22 2001).

3.2.2 **Hon Giz Watson MLC (Deputy Chair)** - Giz is a member for the North Metropolitan Region and a member of the Greens (WA). Giz was elected to the Thirty-Fifth Parliament for the North Metropolitan Region on December 14 1996 for the term commencing May 22 1997 and was re-elected in 2001 (for the term commencing May 22 2001).

3.2.3 **Hon Peter Foss MLC** - Peter is a Member for East Metropolitan Region, and a member of the Liberal Party. Peter was elected to the Thirty-Third Parliament for East Metropolitan Region from May 22 1989 and was re-elected in 1993, 1996 and 2001 (for the term commencing May 22 2001).

3.2.4 **Hon William (Bill) Stretch MLC** - Bill is a Member for the South-West Region and a member of the Liberal Party. Bill was elected to the Thirty-First Parliament for the Lower Central Province from May 2 1983. Bill was elected to the Thirty-Third Parliament for the South West Region on May 22 1989 and was re-elected in 1993, 1996, and 2001 (for the term commencing May 22 2001).

3.2.5 **Hon Kate Doust MLC** - Kate is a Member for the South Metropolitan Region, and a member of the Australian Labor Party. Kate was elected to the Thirty-Sixth Parliament for the South Metropolitan Region on February 10 2001 (for the term commencing 22 May 2001).

3.3 Prior to April 11 2002, the following members also served on the Committee:

3.3.1 **Hon Adele Farina MLC** - Adele is a Member for the South West Region, and is a member of the Australian Labor Party. Adele was elected to the Thirty-Sixth Parliament for the South West Region on February 10 2001 (for the term commencing May 22 2001).

3.3.2 **Hon Patrick (Paddy) Embry MLC** - Paddy is a Member for the South West Region, One Nation Party. Paddy was elected to the Thirty-Sixth Parliament for the South West Region on February 10 2001 (for the term commencing May 22 2001).

4 STAFF AND SUPPORT SERVICES

4.1 The Committee is supported by the Legislative Council Committee Office. During this report period, the Committee was staffed by:

- Louis Gargan, Committee Clerk, from June 2001 to February 2002
- David Driscoll, Committee Clerk, from March 2002 to August 2002

- Lisa Hanna, Advisory Officer (General), from June 2001 to August 2002
 - Amber Kwaymullina, Advisory Officer (Legal), from April 2002 to August 2002
 - Mia Betjeman, Principal Advisory Officer, from June 2001 to August 2002
- 4.2 On an inquiry by inquiry basis, other staff of the Legislative Council Committee Office also assisted the Committee.
- 4.3 The Committee extends its thanks to all staff of the Legislative Council Committee Office for their valuable assistance.

5 REPORTS TABLED BY THE COMMITTEE

- 5.1 During the reporting period 15 reports and one special report were tabled by the Committee in the Legislative Council. An overview of each report is provided below.

Corporations (Administrative Actions) Bill 2001, Corporations (Commonwealth Powers) Bill 2001, Corporations (Consequential Amendments) Bill 2001, Corporations (Ancillary Provisions) Bill 2001 (Corporations Bills) - Report 1

- 5.2 The Legislative Council referred the Corporations (Administrative Actions) Bill 2001, Corporations (Commonwealth Powers) Bill 2001, Corporations (Consequential Amendments) Bill 2001 and the Corporations (Ancillary Provisions) Bill 2001 (Corporations Bills) to the Committee on May 29 2001, under SO230(d).
- 5.3 The four Corporation Bills formed a package, the purpose of which was to refer State corporations powers to the Commonwealth Parliament. The Corporations Bills gave effect to a new arrangement for the regulation of corporate activity and enforcement of corporations laws throughout Australia as part of a national uniform co-operative scheme. That is, to change the Corporations Law from a state-based national law to a Commonwealth law. The Corporations Bills referred the power of the State to the Commonwealth to enact the text of the Corporations Law together with the power to amend that law after consulting the States. The Corporations Bills also validated past actions of Commonwealth authorities and officers, which might be found to be invalid as a result of the High Court ruling in the *The Queen v Hughes*⁴ (*Hughes*) case.
- 5.4 Staff allocated to the inquiry were: Christina Eftos, Advisory Officer; Lisa Hanna, Research Officer; and Louis Gargan, Committee Clerk.
- 5.5 The Committee tabled its first report on June 19 2001.

⁴ (2000) 171 ALR 155. For information on the *Hughes* case, see the Legislation Committee's First and Second Reports, 2001, of the First Session of the Thirty-Sixth Parliament.

- 5.6 The Committee's report gave a background to the Corporations Law and the National Co-operative Scheme, including an overview of the constitutional issues which had been raised by the *Hughes* and *Re Wakim: Ex parte McNally*,⁵ (*Wakim*) cases. Comment was provided on the Intergovernmental Agreement, which gave effect to the co-operative scheme. Also included was an overview of the amendments proposed by each of the four Bills and comment on significant selected clauses of the Bills.
- 5.7 The Committee made a number of observations raising concerns about the effect of the new scheme, specifically, the erosion of the power of the State to the Commonwealth. This had the effect of reducing the State's ability to have meaningful input into any amendments to the scheme and affected the State's ability to enforce compliance by the Commonwealth with the Intergovernmental Agreement. The Committee made two recommendations to the Government in this regard.
- 5.8 The Committee recommended that the Bills be passed without amendment.

Co-operative Schemes (Administrative Actions) Bill 2001 and the Agricultural and Veterinary Chemicals (Western Australia) Amendment Bill 2001 (Co-op Schemes and AgVet Bills) - Report 2

- 5.9 The Legislative Council referred the Co-operative Schemes (Administrative Actions) Bill 2001 and the Agricultural and Veterinary Chemicals (Western Australia) Amendment Bill 2001 (Co-op Schemes and AgVet Bills) to the Committee on May 29 2001, under SO230(d).
- 5.10 The purpose of the Co-op Schemes and AgVet Bills was to ensure the constitutional validity and continuing effective operation of the National Registration Co-operative Scheme for Agriculture and Veterinary Chemicals. The constitutional validity of this and other schemes was cast into doubt by the High Court decisions in the *Hughes* and *Wakim* cases. The Co-op Schemes and AgVet Bills were also designed to ensure the continuing effective operation of all co-operative schemes to which Western Australia is a party with the Commonwealth. As other co-operative schemes become identified, they would be brought under the protective umbrella of the Co-operative Schemes (Administrative Actions) Bill 2001, when that Bill became law.
- 5.11 Staff allocated to the inquiry were: Anne Turner, Advisory Officer; Lisa Hanna, Research Officer; and Louis Gargan, Committee Clerk.
- 5.12 A subcommittee comprising Hon Bill Stretch MLC (Convenor), Hon Giz Watson MLC and Hon Paddy Embry MLC was established by Committee resolution, to conduct inquiries into the Co-op and AgVet Bills.
- 5.13 The Committee tabled its second report on June 28 2001.

⁵ (1999) 198 CLR 511. For information on the *Wakim* case, see the Legislation Committee's First and Second Reports, 2001, of the First Session of the Thirty-Sixth Parliament.

- 5.14 The Committee's report provided a brief background to the Bills, which included an overview of the High Court cases of *Hughes* and *Wakim*, and a brief explanation of the meaning of national co-operative schemes. An overview of the amendments proposed by the Bills was provided, together with comment on significant selected clauses of the Bills.
- 5.15 In its report, the Committee noted its reservations about the use of proclamations to identify a specified State Act as a "relevant State Act" to which the provisions of the Co-operative Schemes (Administrative Actions) Bill 2001 would then apply. The Committee considered that a regulation was the preferred method of identification, but that such a regulation should only become operative after parliamentary scrutiny. The Committee was also concerned that the Co-operative Schemes (Administrative Actions) Bill 2001 appeared to be able to be applied not only to existing co-operative schemes but also to future co-operative schemes. The Committee made recommendations for amendment of the Co-operative Schemes (Administrative Actions) Bill 2001 addressing this concern.
- 5.16 The Committee recommended that the Agricultural and Veterinary Chemicals (Western Australia) Amendment Bill 2001 be passed without amendment.

Road Traffic Amendment Bill 2001 and the Road Traffic (Vehicle Licensing) Bill 2001 (Road Traffic Bills) - Report 3

- 5.17 The Legislative Council referred the Road Traffic Amendment Bill 2001 and the Road Traffic (Vehicle Licensing) Bill 2001 (Road Traffic Bills) to the Committee on August 2 2001, under SO230(d).
- 5.18 The purpose of the Road Traffic Bills was to make amendments to the *Road Traffic Act 1974* and other consequential amendments. These Bills formed part of Western Australia's obligation to assist in creating nationally consistent transport policies and laws.
- 5.19 Staff allocated to the inquiry were: Christina Eftos, Advisory Officer; and Louis Gargan, Committee Clerk.
- 5.20 The Committee tabled its third report on September 13 2001.
- 5.21 The Committee's report gave a brief background to the Bills, which included an overview of the uniform scheme and the intergovernmental agreements, which underlie the scheme. An overview of the amendments proposed by the Bills, and comment on significant selected clauses of the Bills was provided.
- 5.22 In its examination of the Road Traffic Bills, the Committee identified two major areas of concern: (i) the provision of a regulation-making power to adopt Commonwealth regulations, which may remove Western Australia's Parliamentary scrutiny; and (ii) the proposal to give meaning to terms used in primary legislation. The

Committee made recommendations for amendment of the Road Traffic Bills addressing these areas of concern.

Acts Amendment (Federal Courts and Tribunals) Bill 2001 - Report 4

- 5.23 The Legislative Council referred the Acts Amendment (Federal Courts and Tribunals) Bill 2001 to the Committee on September 18 2001, under SO230(d).
- 5.24 The purpose of the Acts Amendment (Federal Courts and Tribunals) Bill 2001 was to make further amendments consequential on matters dealt with by the *Federal Courts (States Jurisdiction) Act 1999* or by Commonwealth legislation relating to federal courts and tribunals. The Bill formed part of legislation that the Commonwealth and States were enacting to address the effect of the High Court decision in the *Wakim* case in which it was determined that State jurisdiction could not be conferred on federal courts because only the Commonwealth Parliament could confer jurisdiction on a federal court as a matter of interpretation of Chapter III of the Commonwealth Constitution.
- 5.25 Staff allocated to the inquiry were: Lisa Hanna, Research Officer; and Louis Gargan, Committee Clerk.
- 5.26 A subcommittee comprising Hon Peter Foss MLC (Convenor) and Hon Adele Farina MLC was established by Committee resolution, to conduct inquiries into the Bill.
- 5.27 The Committee tabled its fourth report on October 23 2001.
- 5.28 The Committee's report gave a brief background to the Bill, an overview of the amendments proposed by the Bill, and provided comment on significant selected clauses of the Bill.
- 5.29 The Committee recommended that the Bill be passed, subject to the deletion of certain, now obsolete, commencement clauses.

Consumer Credit (Western Australia) Amendment Bill 2001 - Report 5

- 5.30 The Legislative Council referred the Consumer Credit (Western Australia) Amendment Bill 2001 to the Committee on September 20 2001, under SO230(d).
- 5.31 The purpose of the Consumer Credit (Western Australia) Amendment Bill 2001 was to close a loophole in the Consumer Credit Code that allowed payday lenders to avoid regulation under the Code and also to ensure that the same consumer credit laws continue to apply in Western Australia as applied in all other Australian states and territories. Consumer credit laws operate uniformly throughout Australia, under the *Australian Uniform Credit Laws Agreement 1993*.

- 5.32 Staff allocated to the inquiry were: Felicity Beattie, Advisory Officer; and Louis Gargan, Committee Clerk.
- 5.33 A subcommittee comprising Hon Giz Watson MLC (Convenor) and Hon Kate Doust MLC was established by Committee resolution, to conduct inquiries into the Bill.
- 5.34 The Committee tabled its fifth report on October 23 2001.
- 5.35 The Committee's report gave a brief background to the Bill and the uniform legislation, which underlies the national scheme relating to consumer credit laws. An overview of the amendments proposed by the Bill, and comment on significant selected clauses of the Bill was also provided together with an overview of submissions received in relation to the Committee's inquiry.
- 5.36 The Committee recommended that the Bill be passed without amendment.

Proposal to Travel - Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 (Electoral Reform Bills) - Report 6

- 5.37 The Legislative Council referred the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 (Electoral Reform Bills) to the Committee on September 27 2001 to report back by November 26 2001.
- 5.38 Staff allocated to the inquiry were: Paul Grant, Advisory Officer; Lisa Hanna, Research Officer; and Louis Gargan, Committee Clerk.
- 5.39 The Committee tabled its sixth report on October 23 2001.
- 5.40 As part of its inquiry into the Electoral Reform Bills, the Committee resolved to hold public hearings in various towns in the Kimberley Region, the Pilbara Region, the Gascoyne Region, the Eastern Goldfields, the Northern Wheatbelt Region, the Central Wheatbelt Region, the Southern Wheatbelt Region, the Great Southern Region, the South West Region and the Murchison Region.
- 5.41 The Committee sought endorsement from the Legislative Council for this purpose. In its report, the Committee advised the Legislative Council of its approach to the inquiry and of why the Committee was proposing to travel.
- 5.42 The Committee recommended that the Legislative Council note the Committee's approach to the inquiry and that it give approval to the Committee to seek funds from the Clerk.⁶

⁶ On October 24 2001 the Legislative Council resolved that the necessary funds be made available to the Committee.

*Special Report: Intergovernmental Agreements, Uniform Schemes and Uniform Laws:
Amendments to Standing Orders 230(c) and (d).*

- 5.43 The purpose of the Special Report was to recommend amendments to the Standing Orders of the Legislative Council, to insert a standing order that specifically deals with uniform bills and which provided the Legislative Council with flexibility to:
- refer a uniform bill to a committee, other than the Legislation Committee, for inquiry;
 - order that the date in which a committee is to report on a uniform bill be altered; and
 - suspend 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.
- 5.44 The Committee's resolution to report to the Legislative Council in this regard arose out of a review of its role, and its experience in reviewing uniform bills. The enormous quantity of uniform bills that stood referred to the Committee under SO230(d) and the particularly short time-frame in which the Committee was required to report, placed enormous pressure on the Committee. Further, the 30 day time-frame provided by the Standing Orders provided little opportunity to give the uniform bills more than a cursory examination. The Committee was of the view that the Standing Orders were not providing for the effective scrutiny of uniform legislation.
- 5.45 Staff allocated to the inquiry were: Mia Betjeman, Principal Advisory Officer; and Louis Gargan, Committee Clerk.
- 5.46 The Committee tabled the Special Report on November 6 2001.
- 5.47 The Committee's report included an overview of intergovernmental agreements, uniform schemes and the history of the development of SO230(c) and (d). Comment on the Committee's role and experience in reviewing uniform bills, and the Committee's proposal to amend the Standing Orders, was also provided.

Electronic Transactions Bill 2001 - Report 7

- 5.48 The Legislative Council referred the Electronic Transactions Bill 2001 to the Committee on October 23 2001, under SO230(d). The Legislative Council granted an extension of time to report to December 19 2001.
- 5.49 The purpose of the Electronic Transactions Bill 2001 was to provide a regulatory framework for the use of electronic transactions. Under the Bill, an electronic communication had the same validity as a written communication. The Bill also

provided rules for determining the time and place of dispatch of electronic documents and the authority of the originator of the electronic communication.

- 5.50 Staff allocated to the inquiry were: Mia Betjeman, Principal Advisory Officer; and Louis Gargan, Committee Clerk.
- 5.51 The Committee tabled its seventh report on November 8 2001.
- 5.52 The Committee's report referred the Legislative Council to Report No. 58 of the former Standing Committee on Constitutional Affairs, which during the Thirty-Fifth Parliament, had considered an almost identical Bill, save and except for the year.

Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 (Electoral Reform Bills) - Report 8

- 5.53 The Legislative Council referred the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 (Electoral Reform Bills) to the Committee on September 27 2001, to report back by November 26 2001.
- 5.54 The purpose of the Electoral Reform Bills was to provide greater electoral equality through the redefining of the Legislative Assembly electoral districts, and to consolidate all aspects of State elections and parliamentary representation into a single piece of legislation, namely the *Electoral Act 1907*. The practical effect of the Electoral Reform Bills was to reduce the number of country-based Legislative Assembly seats by eight and to increase the number of city-based Legislative Assembly seats by the same margin.
- 5.55 Staff allocated to the inquiry were: Paul Grant, Advisory Officer; Lisa Hanna, Research Officer; and Louis Gargan, Committee Clerk.
- 5.56 Hon Bill Stretch MLC was substituted by Hon George Cash MLC for the purpose of the inquiry, pursuant to SO326A.
- 5.57 For the purposes of the inquiry, the Committee held public hearings in various towns throughout Western Australia.
- 5.58 As the Legislative Council was not sitting on the assigned reporting date, the Committee presented its eighth report to the President of the Legislative Council on November 26 2001.
- 5.59 The short time-frame for and the particularly politically contentious nature of this inquiry, resulted in the report not being researched nor written in the manner that the Committee would have preferred, and it should not be seen as a complete or adequate investigation of the issues raised by the Bills. Similarly, time constraints and the failure of the Committee to reach common ground on many issues resulted in

particular chapters of the report being written by either a majority or a minority of the Committee.

5.60 The Committee's report includes comment on:

- the current representation in the Legislative Assembly, reform of the Western Australian Electoral System, and definitions of 'one vote one value' and 'vote weighting';
- the amendments proposed by the Electoral Reform Bills and comment on significant selected clauses of the Bills;
- the history and role of the Legislative Assembly;
- arguments against rural vote weighting in the Legislative Assembly;
- arguments for vote weighting in rural and remote areas of Western Australia in the Legislative Assembly;
- the Legislative Council as a House of regional representation;
- the manner and form requirements for the repeal of the *Electoral Distribution Act 1947*;
- the arguments for and against holding a referendum in relation to the Electoral Reform Bills;
- resources for Members of Parliament;
- other issues raised during the course of the inquiry; and
- observations of Hon Paddy Embry MLC of submissions received and hearings held.

5.61 The Committee made a number of recommendations relating to the Electoral Reform Bills and issues that were raised by the Bills. The recommendations were of three types - unanimous recommendations of the Committee; recommendations of a majority of the Committee; and recommendations of a minority of the Committee.

Child Support (Adoption of Laws) Amendment Bill 2001 - Report 9

5.62 The Legislative Council referred the Child Support (Adoption of Laws) Amendment Bill 2001 to the Committee on November 13 2001, under SO230A. The Legislative Council granted an extension of time to report to March 21 2002.

5.63 The purpose of the Bill was to amend the *Child Support (Adoption of Laws) Act 1990* in order to adopt recent changes to the relevant Commonwealth child support

legislation and enable ex-nuptial children to be treated in the same way as nuptial children in respect of child support.

- 5.64 Staff allocated to the inquiry were: Mia Betjeman, Principle Advisory Officer; and Jan Paniperis, Committee Clerk.
- 5.65 A subcommittee comprising Hon Kate Doust MLC (Convenor) and Hon Giz Watson MLC was established by Committee resolution, to conduct inquiries into the Bill.
- 5.66 The Committee tabled its ninth report on February 26 2002.
- 5.67 The Committee's report gave a brief background to the Bill, an overview of the amendments proposed by the Bill, and provided comment on significant selected clauses of the Bill.
- 5.68 The Committee recommended an amendment to the Bill to up-date the commencement dates.

Child Welfare Amendment Bill 2001 - Report 10

- 5.69 The Legislative Council referred the Child Welfare Amendment Bill 2001 to the Committee on November 6 2001, under SO230A. The Legislative Council granted an extension of time to report to March 21 2002.
- 5.70 The purpose of the Bill was to amend the *Child Welfare Act 1947* in addressing five main issues: inserting the 'best interest of the child' principle; redefining the term 'parent'; facilitating the exchange of information between agencies; inserting warrant provisions; and inserting interstate transfer provisions, which aspect involved the implementation of reciprocal legislation to facilitate a uniform national scheme.
- 5.71 Staff allocated to the inquiry were: Mia Betjeman, Principal Advisory Officer; and Jan Paniperis, Committee Clerk.
- 5.72 A subcommittee comprising Hon Giz Watson MLC (Convenor) and Hon Kate Doust MLC was established by Committee resolution, to conduct inquiries into the Bill.
- 5.73 The Committee tabled its tenth report on March 12 2002.
- 5.74 The Committee's report gave a background to the Bill, an overview of submissions received, an overview of the amendments proposed by the Bill, and provided comment on significant selected clauses of the Bill.
- 5.75 The Committee made some general recommendations for the Government to give consideration to issues relating to: the regulation of the execution of warrants in relation to children and young persons; factors to be considered when determining the 'best interest of the child'; and in respect of the privacy and security of information obtained by the Department of Community Development and public authorities.

5.76 The Committee recommended that the Bill be passed without amendment.

Statutes (Repeals and Minor Amendments) Bill 2001 - Report 11

5.77 The Legislative Council referred the Statutes (Repeals and Minor Amendments) Bill 2001 to the Committee on August 1 2001, to report back by September 26 2001. The Legislative Council granted an extension of time to November 15 2001 and again to March 14 2002.

5.78 The purpose of the Statutes (Repeals and Minor Amendments) Bill 2001 was to revise statute law by repealing spent, unnecessary or superseded Acts, and by making miscellaneous minor amendments to various Acts.

5.79 Staff allocated to the inquiry were: Lisa Hanna, Research Officer; and Jan Paniperis, Committee Clerk.

5.80 A subcommittee comprising Hon Jon Ford MLC (Convenor), Hon Giz Watson MLC and Hon Kate Doust MLC was established by Committee resolution, to conduct inquiries into the Bill.

5.81 The Committee tabled its eleventh report on March 12 2002.

5.82 The Committee's report gave a brief background to the Bill, an overview of the amendments proposed by the Bill, and provided comment on significant selected clauses of the Bill.

5.83 The Committee made one recommendation for amendment to the Bill, in relation to the amendments proposed to the *Tobacco Control Act 1990*. It was the Committee's view that the amendment proposed was not a minor amendment, but one that would provide for a substantive change to the decision-making process of the Western Australian Health Promotion Foundation.

Corporations (Consequential Amendments) Bill (No 2) 2001 - Report 12

5.84 The Legislative Council referred the Corporations (Consequential Amendments) Bill (No 2) 2001 to the Committee on November 13 2001, under SO230A. The Legislative Council granted an extension of time to report to March 21 2002.

5.85 The purpose of the Bill was to make consequential amendments to 23 Western Australian Acts, which were additional to those made by the *Corporations (Consequential Amendments) Act 2001* (WA). This Act is one of the statutes associated with the referral of State corporations power to the Commonwealth Parliament. The statutes associated with the referral were the subject of the Committee's first report. These amendments were required so that the new arrangements for a national Corporations Law are more readily understood when read in conjunction with State legislation.

- 5.86 Staff allocated to the inquiry were: Mia Betjeman, Principal Advisory Officer; Lisa Hanna, Research Officer; and Louis Gargan, Committee Clerk.
- 5.87 A subcommittee of Hon Jon Ford MLC (Convenor) and Hon Peter Foss MLC was established by Committee resolution, to conduct inquiries into the Bill.
- 5.88 The Committee tabled its twelfth report on March 14 2002.
- 5.89 The Committee's report gave a brief background to the Bill, an overview of the amendments proposed by the Bill, and provided comment on significant selected clauses of the Bill.
- 5.90 The Committee was advised of a number of amendments to the Bill that the Government proposed to move in the Legislative Council. The Committee considered these amendments in its inquiry and report. The amendments proposed to insert a provision for regulations, which had a 'Henry VIII' operation, to be made with retrospective effect. However, the regulations were to be subject to a sunset clause and would expire on the first anniversary of the day that they were made. In view of the nature of the regulations, the Committee recommended a further amendment to this provision, considering it appropriate that the legislation should ensure that a regulation made cannot be made again, after expiry, in respect of the same enactment.
- 5.91 The Committee recommended that the Bill be passed subject to the amendments prepared by the Committee.

Corporations (Consequential Amendments) Bill (No 3) 2001 - Report 13

- 5.92 The Legislative Council referred the Corporations (Consequential Amendments) Bill (No 3) 2001 to the Committee on December 13 2001, under SO230A. The Legislative Council granted an extension of time to report to March 21 2002.
- 5.93 The purpose of the Bill was to make amendments that were consequential to the amendments made by the Commonwealth Parliament to the Corporations Law. Specifically the Bill amended State laws which made reference to former Chapters 7 and 8 of the *Corporations Act 2001 (Cwlth)* or to concepts which were dealt with in those Chapters. The amendments were intended to ensure that those State laws maintained their meaning in the context of the Commonwealth amendment.
- 5.94 Staff allocated to the inquiry were: Mia Betjeman, Principal Advisory Officer; Lisa Hanna, Research Officer; and Sarah Galbraith, Committee Clerk.
- 5.95 A subcommittee of Hon Jon Ford MLC (Convenor) Hon Peter Foss MLC and was established by Committee resolution, to conduct inquiries into the Bill.
- 5.96 The Committee tabled its thirteenth report on March 19 2002.

- 5.97 The Committee's report gave a brief background to the Bill, an overview of the amendments proposed by the Bill, and provided comment on significant selected clauses of the Bill.
- 5.98 In its report, the Committee noted a number of aspects of the Bill which it considered to be unusual: it was retrospective in nature; it provided for the validation of events in certain circumstances; it provided for regulations and statutory rules to be made with retrospective operation and the power to do so was unlimited by any time constraints; and it raised issues relating to 'Henry VIII clauses'.
- 5.99 In view of the Committee's concern with these unusual aspects, the Committee made recommendations for amendments to the Bill to limit the ability to make regulations and statutory rules that had retrospective operation.
- 5.100 The Committee recommended that the Bill be passed subject to amendments prepared by the Committee.

Offshore Minerals Bill, Offshore Minerals (Registration Fees) Bill 2001 & Offshore Minerals (Consequential Amendments) Bill 2001 (Offshore Bills) - Report 14

- 5.101 The Legislative Council referred the Offshore Minerals Bill, Offshore Minerals (Registration Fees) Bill 2001 and the Offshore Minerals (Consequential Amendments) Bill 2001 (Offshore Bills) to the Committee on August 8 2001, under SO230(d). The Legislative Council granted an extension of time to report to November 6 2002 and again to April 11 2002.
- 5.102 The purpose of the Offshore Bills was to provide for the administration of mineral exploration and development in coastal waters adjacent to the State. The Offshore Bills assumed jurisdiction over the three nautical mile zone of State coastal waters and established a uniform legal and administrative framework for the offshore mining industry. Offshore mining would continue to be governed beyond the three nautical mile limit by the *Offshore Minerals Act 1994* (Cth), which came into operation in February 1994. The Offshore Bills were intended to form part of a national scheme which gave 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.
- 5.103 Staff allocated to the inquiry were: Mia Betjeman, Principal Advisory Office; Louis Gargan, Committee Clerk; and Jan Paniperis, Committee Clerk.
- 5.104 The Committee tabled an Interim Report on the Bills, its fourteenth report, on March 21 2002.
- 5.105 The Committee's report gave a brief background to the Bills, an overview of the amendments proposed by the Bills, and a brief of the Committee's progress on the inquiry.

5.106 As from April 11 2002 the Uniform Legislation and General Purposes Committee took over responsibility for scrutiny of these Bills.

Criminal Investigation (Exceptional Powers) and Fortification Removal Bill 2001 - Report 15

5.107 The Legislative Council referred the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill 2001 to the Committee on December 19 2001, to report by March 31 2002. The Legislative Council granted an extension of time to report to April 18 2002 and again to May 9 2002.

5.108 The purpose of the Bill was to provide the Western Australia Police Service with new and exceptional powers to be used to fight organised criminal activity. The Bill established the office of a special commissioner. The role of the special commissioner is to decide if the police may exercise the powers and functions provided by the Bill.

5.109 Staff allocated to the inquiry were: Mia Betjeman, Principal Advisory Officer; Lisa Hanna, Research Officer; and David Driscoll, Committee Clerk.

5.110 Hon Adele Farina MLC was substituted by Hon Ed Dermer MLC and Hon Kate Doust MLC was substituted by Hon Ken Travers MLC for the purpose of the inquiry, pursuant to SO326A.

5.111 The Committee tabled its fifteenth report on May 9 2002.

5.112 The Committee's report provided a brief background to the Bill, an overview of the amendments proposed by the Bill, an overview of the issues raised by the Bill and comment on significant selected clauses of the Bill.

5.113 The Committee regretted that the time constraints imposed on the inquiry by the Legislative Council limited consideration of the entire Bill in detail.

5.114 Key issues of concern raised by the Bill and identified by the Committee were: accountability for the use of the exceptional powers provided for in the Bill; adequate safeguards to ensure that the exceptional powers provided for in the Bill were used appropriately and with propriety; and balancing individual 'due process' rights against the public interest in crime control.

5.115 The Committee recommended a number of significant amendments to the Bill, which address the key issues.

6 INQUIRIES IN PROGRESS

Taxation Administration Bill 2001, Taxation Administration (Consequential Provisions) (Taxing) Bill 2001, Taxation Administration (Consequential Provisions) Bill 2001 (Taxation Bills)

- 6.1 On April 17 2002 the Legislative Council referred the Taxation Administration Bill 2001, Taxation Administration (Consequential Provisions) (Taxing) Bill 2001 and the Taxation Administration (Consequential Provisions) Bill 2001 (Taxation Bills) to the Committee, to report by June 27 2002. The Legislative Council granted an extension of time to report to August 22 2002.
- 6.2 The purpose of the Taxation Administration Bill 2001 (Main Bill) was to provide for the administration and enforcement of State taxation legislation. The Taxation Administration (Consequential Provisions) Bill 2001 and the Taxation Administration (Consequential Provisions) (Taxing) Bill 2001 complemented the Main Bill by providing for amendments to legislation made necessary by the enactment of the Main Bill. The three Taxation Bills formed part of a package of ten Bills to amend the administrative provisions of State taxation legislation. The Main Bill did not levy any tax, but it did provide for improved tax collection powers.
- 6.3 Staff allocated to the inquiry were: Amber Kwaymullina, Advisory Officer (Legal); and David Driscoll, Committee Clerk.
- 1.1 Hon Bill Stretch MLC was substituted by Hon George Cash MLC for the purpose of the inquiry, pursuant to SO326A.
- 1.2 Prior to continuing its inquiries and reporting to the Legislative Council, the Taxation Bills (and the referral to the Committee) lapsed on prorogation of Parliament on August 9 2002.

7 COMMITTEE TRAVEL

- 7.1 The Committee travelled to Kalgoorlie, Esperance, Bruce Rock and Lake Grace on October 21 and 22 2001 in relation to the inquiry into the Electoral Reform Bills. Two Committee staff and two Hansard staff accompanied the Committee.
- 7.2 The Committee travelled to Kununurra, Fitzroy Crossing, Broome, Port Hedland, Karratha and Tom Price on October 29, 30 and 31 2001 in relation to the inquiry into the Electoral Reform Bills. Two Committee staff and two Hansard staff accompanied the Committee.
- 7.3 The Committee travelled to Carnarvon, Geraldton and Meekatharra on November 1 and 2 2001 in relation to the inquiry into the Electoral Reform Bills. Two Committee staff and two Hansard staff accompanied the Committee.

7.4 The Committee travelled to Wagin, Jerramungup, Mt Barker and Manjimup on November 4 and 5 2001 in relation to the inquiry into the Electoral Reform Bills. One Committee staff and two Hansard staff accompanied the Committee.

8 COMMITTEE FINANCES AND RESOURCES

8.1 The Committee sought and received funds to advertise in relation to the following inquiries: Electoral Reform Bills; Consumer Credit (Western Australia) Bill 2001; Child Welfare Amendment Bill 2001; and the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill 2001.

8.2 The Committee sought and received funds to travel extensively throughout Western Australia to hold public hearings in relation to the Electoral Reform Bills inquiry.



Hon Jon Ford MLC
Chairman

Date: October 17 2002

APPENDIX 1

LIST OF REPORTS TABLED

Report No	Report Title	Date tabled
1	Corporations (Commonwealth) Bill 2001, Corporations (Ancillary Provisions) Bill 2001, Corporations (Administrative Actions) Bill 2001, Corporations (Consequential Amendments) Bill 2001	19/06/01
2	Co-operative Schemes (Administrative Actions) Bill and the Agricultural and Veterinary Chemicals (Western Australia) Amendment Bill 2001	28/06/01
3	Road Traffic Amendment Bill 2001 and the Road Traffic Amendment (Vehicle Licensing) Bill 2001	13/09/01
4	Acts Amendment (Federal Courts and Tribunals) Bill 2001	23/10/01
5	Consumer Credit (Western Australia) Bill 2001	23/10/01
6	Electoral Bills – Proposal to Travel	23/10/01
Special Report	Intergovernmental Agreements, Uniform Schemes and Uniform Laws: Amendments to Standing Orders 230 (c) and (d)	06/11/01
7	Electronic Transactions Bill 2001	08/11/01
8	Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001	26/11/01 (presented to President)
9	Child Support (Adoption of Laws) Amendment Bill 2001	26/02/02
10	Child Welfare Amendment Bill 2001	12/03/02
11	Statutes (Repeal and Miscellaneous Amendments) Bill 2001	12/03/02
12	Corporations (Consequential Amendments) Bill (No. 2) 2001	14/03/02
13	Corporations (Consequential Amendments) Bill (No. 3) 2001	19/03/02

Report No	Report Title	Date tabled
14	Interim Report: Offshore Minerals Bill 2001, Offshore Minerals (Registration Fees) Bill 2001 and Offshore Minerals (Consequential Amendments) Bill 2001	21/03/02
15	Criminal Investigation (Exceptional Powers) and Fortification Removal Bill 2001	09/05/02

APPENDIX 2

TERMS OF REFERENCE - MAY 2001 TO APRIL 2002

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

“1. Legislation Committee

- 1.1 *A Legislation Committee* is established.
- 1.2 The Committee consists of 7 members.
- 1.3 The functions of the Committee are -
 - (a) to consider and report on any bill referred by the Legislative Council;
 - (b) to review the form and content of the statute book;
 - (c) to inquire into and report on any proposal to reform an existing law;
 - (d) to consider and report on a bill referred under SO 230 (c).
- 1.4 Unless otherwise ordered, the policy of a bill referred under subclause 1.3(a) at the second reading or any subsequent stage is excluded from the Committee’s consideration.
- 1.5 The Committee of its own motion, or on a reference from a Minister, may inquire into and report to the Legislative Council on any or all aspects, including policy, of a proposal for an agreement or arrangement that, to have effect, would necessitate the enactment of legislation of a type described in SO 230 (c).”

Extract from the Standing Orders of the Legislative Council of Western Australia

“Question for second reading

- 230 After the first reading motion may be made:
- (a) *“That the Bill be now read a second time”* and the speech of the Minister or Member in charge given, at the conclusion of which the debate shall be adjourned; or
 - (b) That the second reading be made an order of the day for the next sitting.
 - (c) Resumption of debate under paragraph (a), or the day fixed under paragraph (b), for a Bill that -
 - (i) ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or
 - (ii) by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth,
shall be a date that is not less than 30 days from the day on which the Bill was read a first time, but in calculating that period, no account shall be had of any prorogation that intervenes where the Bill is restored in the succeeding session.
 - (d) A bill to which paragraph (c) applies stands referred to the *Legislation Committee* which shall report on the bill within the 30 day period prescribed in that paragraph. The policy of a bill so referred, evidenced by an explanatory memorandum or the second reading speech of the Minister having charge of the bill, is not a matter for inquiry by the committee.”