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National Scheme Legislation

This Research Brief considers the nature of, and reasons for, national scheme legislation, its advantages and problems (particularly the 'State sovereignty' argument), and the various identified structures of uniform legislation.

It also analyses the process for dealing with uniform legislation that exists in Western Australia, which is considered unique amongst Australian parliaments in the sense that it has a committee specifically dedicated to scrutinising proposed legislation that is uniform in nature or has some element of uniformity.

Finally, the position regarding national scheme legislation in Queensland is considered.

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Key Points

- Uniform legislation is legislation which is the same, or substantially the same, in all or a number of jurisdictions.
- There are various identified structures of uniform legislation.
- The principal source of uniform legislation is the work of Ministerial Councils.
- If an intergovernmental agreement or national scheme requires legislation to give it effect, the various Ministers are responsible for sponsoring Bills through their particular Parliaments.
- Since the 1990s, there has been an increased incidence of uniform legislation, particularly due to globalisation of the economy.
- There are numerous reasons for uniform legislation, some of which include achieving consistency in a common functional area in which the Commonwealth Government may have limited or no constitutional power, and avoiding duplication of services or functions.
- There can be advantages to having uniform legislation, such as easier conditions for consumers and businesses to operate under, significant benefits for commerce and industry when uniform laws regulate a single Australian market, the removal of duplication of administration and compliance costs, and increased efficiency and economies of scale.
- The ‘overarching issue’ with uniform legislation concerns the way uniform legislative schemes are made into law, and whether sufficient regard is given to the institution of Parliament (i.e. the ‘State sovereignty’ argument). That is, in most cases, national schemes of legislation, themselves, are not the issue, but rather the *processes* by which they are made into law. Concerns in this regard relate to Parliament not being informed of negotiations prior to an intergovernmental agreement for uniform legislation being entered into, and the perception that Parliament may be pressured by the Executive to pass uniform laws.
- There can also be the potential for a loss of consistency in uniform laws between the jurisdictions to emerge.
- The Uniform Legislation and Statutes Review Committee of the Western Australian Legislative Council is considered unique amongst Australian parliaments in the sense that it is specifically dedicated to scrutinising proposed legislation that is uniform in nature or has some element of uniformity. That committee, and its predecessor committees, have published a number of helpful reports discussing the process for dealing with uniform legislation. The committee is currently inquiring into uniform legislation in other jurisdictions.
- In Queensland, there are no formal requirements governing, nor practices that have developed regarding, the provision of information on national schemes of legislation to the Parliament. However, with the establishment in 2011 of portfolio-based committees to which Bills are now, by default, sent, various committees of the Queensland Parliament have recently reported on certain issues concerning the passage of national scheme legislation in this jurisdiction.

For further clarification and analysis of the relevant issues, the reader should consult the Research Brief and refer to the Explanatory Notes to the Bill as well as to the Bill itself.

1 Uniform legislation

1.1 What is uniform legislation?

Uniform legislation is legislation which is the same, or substantially the same, in all or a number of jurisdictions.¹

In Australia, uniform legislation arises from the federal structure of our government, which provides for a constitutional division of power between the Commonwealth Government and State and Territory Governments. This structure requires co-operation between these bodies when a nationally-consistent legislative approach to an issue is considered appropriate and the Commonwealth Government has limited or no constitutional power.²

1.2 Role of Ministerial Councils

The **principal** source of uniform legislation is the work of Ministerial Councils.³

Ministerial Councils generally consist of the Ministers of all Australian States and Territories, and the Commonwealth, from specific portfolio areas.⁴

Until recently, there were over 40 Ministerial Councils that facilitated consultation and cooperation between the Commonwealth and State and Territory governments in specific policy areas,⁵ the most well-known being the Council of Australian Governments ('**COAG**') and the Standing Committee of Attorneys-General ('**SCAG**').⁶

By way of example, some of the areas in which SCAG developed uniform and model laws to reduce jurisdictional difference and create national systems included:

- uniform defamation laws;
- model evidence laws;
- national model laws for the legal profession;
- model provisions for the enforcement of foreign judgments;
- uniform commercial arbitration laws;
- legislation to allow for the interstate recognition of apprehended violence orders;
- model Crown Proceedings legislation; and
- referral of corporations power to the Commonwealth (in conjunction with the Ministerial Council on Corporations).⁷

Once a Ministerial Council has approved a proposal for a national scheme, the matter is generally referred to COAG for approval, and then returned to the Ministerial Council for referral to a working party for detailed development of the scheme and proposals for legislation. For proposals initiated by COAG, the matter may be referred for development and implementation to another Ministerial Council or a COAG working group.⁸

If an intergovernmental agreement or national scheme requires legislation to give it effect, the various Ministers are responsible for sponsoring Bills through their particular Parliaments.⁹

1.3 Intergovernmental agreements

Intergovernmental agreements are political compacts which represent agreements reached by Executive branches of Government at the Council of Australian Governments (COAG) and/or Ministerial Councils, to a scheme involving the passage of uniform legislation in different jurisdictions. The agreement usually describes the substantive principles upon which the legislation will be based.¹⁰

Intergovernmental agreements can be utilised to effect uniform laws where the Commonwealth does not have the power to legislate in a particular area.¹¹

More than a decade ago, the view was expressed that:

Australia ... [has] had a long history of intergovernmental agreements on a wide variety of matters.¹²

COAG has stated that where it has directed Ministerial Councils to carry forward issues on its behalf, there is an expectation that any substantive decisions requiring legislation will be “enshrined in intergovernmental agreements”.¹³ COAG states that:

This provides members of COAG with an opportunity to review and scrutinise these ministerial decisions before signing and entering into an agreement at head of government level.

There have been occasions when because of the nature of the issues and the urgency to have legislation in place ... the political compact forged at the relevant COAG meeting has not been consolidated through an intergovernmental agreement. However, it must be emphasised that this is the exception rather than the rule. COAG level agreements make clear that the outcomes have head of government support and have greater currency and force than ministerial reports and communiqué text which may not always contain detailed policy and/or operational matters.¹⁴

Despite this position, it has been commented that “intergovernmental agreements/memoranda of understanding are the exceptions not the rule”.¹⁵

Indeed, it has been analysed that intergovernmental agreements may take a range of forms including, but not limited to:

- contracts signed by legal entities such as statutory corporations, including commercial contracts;
- formal written agreements for joint action which may be signed by, for example, the Prime Minister and/or Premier, or the relevant national and/or state Minister;
- memoranda of understanding signed by any of the above combination of signatories;
- simple exchanges of correspondence; and
- informal discussions with no documented evidence of arrangements, for example a telephone call.¹⁶

It was recently stated that:

Whether legislation implements, ratifies or gives effect to an intergovernmental agreement or introduces a uniform scheme or laws is not necessarily expressed in any particular written agreement. The need for, or desirability of, uniform legislation:

- is often implied in the agreement or decision to introduce the uniform scheme or laws;
- may arise from the manner in which the State decides to implement an intergovernmental agreement or uniform scheme; or
- may become apparent as a result of more detailed consideration of reform proposals involving several forums and documents.¹⁷

1.4 Reasons for uniform legislation

The reasons for uniform legislation include:

- achieving consistency in a common functional area (e.g. criminal law);
- avoiding duplication of services between the Commonwealth and the States/Territories;
- pooling resources;
- applying uniform laws to mobile resources (e.g. rivers which cross state borders);
- achieving nationally consistent legislation in areas in which the Commonwealth Government has limited or no constitutional power; or
- achieving some other 'harmonising purpose'.¹⁸

It was recently noted that:

Since the 1990s there has been an increased incidence of uniform legislation, primarily arising from globalisation of the economy.¹⁹

The following context has been provided for this growth:

Industry has demanded a more unified approach to laws affecting commerce and trade. Globalisation and the need for nations to become economically efficient has led to the harmonisation of laws not only nationally but also internationally.

The expansion of markets from local to domestic and then to the global level have necessitated the harmonisation of laws and regulations connected with a wide variety of issues. This has meant the standardisation at the local, Australian and world level of laws and standards, sometimes on a voluntary basis but sometimes through agreements and legislative measures.

Although Australian States have always moved to standardise laws, a new imperative has emerged with the globalisation of the economy and rapid technological change.²⁰

1.5 Advantages of uniform legislation

The advantages of uniform legislation can include:

- easier conditions for consumers and businesses to operate under, due to greater certainty about their rights and obligations;
- significant benefits, particularly for industry and commerce, when it is appropriate to have uniform laws regulate a single Australian market, rather than have eight separate markets with different conditions, as might be the case if each State and Territory legislates independently;
- the removal of duplication of administration and compliance costs; and
- increased efficiency and economies of scale.²¹

1.6 Problems with uniform legislation

1.6.1 Impacts on State sovereignty

By far, the 'overarching issue' with uniform legislation concerns the manner in which uniform legislative schemes are made into law, and whether sufficient regard is given to the institution of Parliament (i.e. the 'State sovereignty' argument).²²

In legal terms, a State Parliament is not bound by an intergovernmental agreement to enact legislation to implement a uniform national scheme, as the Executive of a State does not have power in law to commit or compel a State Parliament to follow a particular course of action.

However, in practical terms, it may be perceived that considerable pressure has been exerted on a State Parliament to enact the desired legislation.²³

It is observed that the Executive is, in effect, exercising supremacy over a State Parliament when it enters agreements that, in practical terms, bind a State Parliament to enact legislation to give effect to national uniform schemes or an intergovernmental agreement.²⁴

The following passage encapsulates the concerns with the manner of passage of uniform laws:

Where a State Parliament is *not informed* of the negotiations prior to entering the [intergovernmental] agreement and is *pressured to pass* uniform bills by the actions of the Executive, its superiority to the Executive can be undermined.²⁵

These concerns are discussed in greater detail below.²⁶

Despite these concerns, it should be noted that, in most cases, national schemes of legislation, themselves, are not the issue, but rather the **mechanisms** by which they are made into law. For example, in 1996, the Senate's Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia, said, in a position paper on scrutiny of national schemes of legislation:

At this point ... the working party again emphasises that it does not oppose the concept of legislation with uniform (or substantially uniform) application in all jurisdictions across Australia. It does, however, question the mechanisms by which those uniform legislative schemes are made into law and advocates the recognition of the importance of the institution of Parliament. The working party does not suggest that national schemes of legislation be discouraged, nor that there should be any interference in the role of government, but that the role of the Executive be:

*... balanced against the need of the Parliament not to be excluded from the (lawmaking) processes ... which it is currently excluded from.*²⁷

Parliament not being informed of negotiations prior to an intergovernmental agreement for uniform legislation being entered into

Sometimes, the first notice a State Parliament has of a uniform scheme is the media coverage of the signing of the agreement by the Ministerial Council or the introduction of the relevant Bill into the Parliament.

Ministerial Councils do not regularly report to Parliaments after meetings on intergovernmental matters and proposed national scheme legislation. Members of Parliament may not have sufficient notice of, or information about, the operations of a Ministerial Council to adequately scrutinise a Minister's activity at that Council or debate whether a uniform scheme is, in fact, necessary or desirable.

Some relevant commentary on this issue follows:

Historically the concerns of the Parliament have been that 'uniform legislation' is made by a process that frequently results in inadequate notice of, or detailed information about, the proposal for the legislation and negotiations leading to the intergovernmental agreement or uniform scheme. This denigrates from Parliament's role as *the* forum for public debate of issues and scrutiny of the Government and its legislative programme.²⁸

Accountability by the Executive to the Parliament is central to the system of responsible Government. Procedures which allow access to information are essential if Parliament is to perform its role. It is important to remember that Parliament is supreme and the Government of the day serves at the pleasure of Parliament.²⁹

The need for proper accountability cannot be overstated. Parliament needs to be able to exercise constant and effective scrutiny over Government, and this can only be done by improving its access to information about executive activities. At the same time, the reality of a federal system requires Governments to liaise and develop common policies and laws. Intergovernmental relations depend on consultation, negotiation, bargaining and conflict resolution in such forums as Ministerial Councils. Often this will be done behind closed doors, where the participants can speak freely and openly. The challenge lies in balancing the requirements of accountability with the efficient functioning of intergovernmental relations.³⁰

... [T]he procedures for drafting intergovernmental agreements are conducted in a manner that avoids recourse to the Parliament. This failure to bring such matters before the Parliament means that the public exposure and discussion initiated by it does not occur. Accordingly, there are very limited opportunities to improve the legislation.

The increasing number of intergovernmental agreements is a gradual yet significant element in transforming the Westminster system of Government in the Australian Federation. Intergovernmental agreements have been introduced for a variety of reasons. There is however no procedure or opportunity to make governments more accountable with respect to the creation and implementation of these agreements.³¹

A curious feature of the current state of affairs is that whilst many parties interested in proposed intergovernmental agreements or proposed uniform legislation are consulted about the proposals, Parliaments are not. Scrutiny of Legislation Committees have expressed their concern that individual Parliaments and their Committees do not have an adequate opportunity to constructively review uniform legislation.³²

It is central to the idea of responsible government that the executive is accountable to the Parliament. For Parliament to perform its role it is essential that it has access to information on proposed legislation for it to fulfil its constitutional role.

It is accepted that there may be a need for national schemes of legislation ..., but this trend in law making should not exclude Parliaments from executing their constitutional responsibility.

National schemes of legislation affecting the people of a State should be made available to the Parliament. Parliament has a broad responsibility to the electors and the people whom it represents. The current system of dealing with national schemes of legislation removes the Parliament's ability to carry out its responsibility to scrutinise and hold the Executive responsible.³³

There was widespread support in the submissions for the idea that Parliaments should be informed about national schemes of legislation before they are introduced as a *fait accompli*.

The Australian Law Reform Commission came to the following conclusion:

In the Commission's view the best way in which to promote greater involvement of the legislatures in the development of uniform legislation is initially through improved information flow between Ministerial Councils and legislatures.

The Australian Council for Civil Liberties made its suggestions after describing the difficulties caused by the current situation:

We have had a concern for some time at the growing trend for important policy decisions, especially in the criminal justice area, to be made at the national level rather than, as has traditionally been the case, at State level.

...

Several Parliamentarians expressed the firm view that information flow on national schemes of legislation to Parliaments should be improved:

It is critical that each Parliament has tabled, prior to any uniform legislation being introduced, a detailed report including a copy of any Heads of Government or Ministerial Council Agreement and an exposure draft of both the bill and regulations. Forewarning by, or accompanying the report to parliament, by a Ministerial Statement to each House of Parliament.

In his address to the conference of scrutiny committees in Hobart, the then Tasmanian Premier, the Honourable Ray Groom, MHA also supported the view that:

As you say, it is not simply policy-type matters, it is the detail of the scheme and the legislation which people need time to consider. The problem that arises is partly out of the nature of the beast – everyone sometimes wonders where this thing is coming from and suddenly you are landed with it and ministers often have to suddenly consider detail in which they have not been directly involved themselves. But it is a question of Parliament having proper notice, ... actually having the bill well in advance so that you can consider the precise mechanisms and the detail. I think the tabling of agreements which have a degree of information in them that is not perhaps as detailed as the bill itself would be a valuable step forward, so that parliaments are informed of what is developing; not just policy but also some of the mechanisms that are actually contained in proposed agreements.

...

It is clear, therefore that there is a need for Parliaments to be informed about intergovernmental agreements.³⁴

Perceptions of Parliament being pressured by the Executive to pass uniform laws

There may be perceptions that Parliaments are pressured by the Executive to pass uniform laws due to:

- tight timeframes for the passage of such legislation, which curtail Parliamentary scrutiny;
- fiscal imperatives requiring laws to be passed by a certain date and in a certain form (i.e. Commonwealth funding which is contingent on compliance with the underlying intergovernmental agreement); and
- assertions that a Bill cannot be amended because consistency with other jurisdictions is required.

The Chairman of the Uniform Legislation and Statutes Review Committee of the Western Australian Legislative Council, the Hon Adele Farina MLC, recently stated:

The Committee has sometimes felt that a bill has been presented to it to be rubber stamped on the basis that all decisions regarding the implementation of the relevant national scheme have already been made by the national body (such as a Ministerial

Council) and that any changes would put the participation by Western Australia in the scheme (or, indeed, the whole of the national scheme) in jeopardy and may result in it having to withdraw.³⁵

Other State sovereignty concerns

Other State sovereignty concerns with uniform legislative schemes may include:

- the ability to amend legislation after it is enacted;
- preservation of review of the exercise of delegated legislation; and
- questions about the transfer of functions to an authority of another jurisdiction.³⁶

1.6.2 Loss of consistency in uniform laws between the jurisdictions

A further problem with uniform legislation is that consistency between the jurisdictions is often required for a uniform legislative scheme to be most effective. However, differences can emerge due to, for example:

- political divergence;
- matters of style in the legislative drafting adopted in each jurisdiction; and
- amendments made by individual jurisdictions over time.³⁷

2 Identified structures of uniform legislation

The most recent analysis of uniform scheme structures appears in a report of the Uniform Legislation and Statutes Review Committee of the Western Australian Legislative Council ('**WA Committee**'), tabled in August 2011.³⁸

The report identifies five uniform scheme structures, known more colloquially as 'cooperative schemes',³⁹ to which the WA Committee matches proposed national scheme legislation it is reporting on, for the benefit of the Parliament.⁴⁰

The five structures were adapted from the 2008 [Protocol on Drafting National Uniform Legislation](#) by the national Parliamentary Counsel's Committee ('**PCC**').⁴¹

The WA Committee's report also provides an overview of developments over the past 16 years in identifying and describing various structures or mechanisms of uniform legislation.

Section 2.1 below summarises this overview.

Section 2.2 sets out the five structures currently identified by the WA Committee.

2.1 Developments in identifying and describing structures or mechanisms of uniform legislation

Date	Development	Description
August 1995	Uniform Legislation and Intergovernmental Agreements Committee, WA Legislative Assembly, tabled a report, Scrutiny of National Scheme Legislation and the Desirability of	The report identified six methods for achieving national uniformity in legislation: <ol style="list-style-type: none"> 1. State Parliaments could refer power to the Commonwealth under s 51(xxxvii) of the Australian Constitution which enables the Commonwealth to legislate on the particular matter. 2. The introduction of 'mirror' legislation enacted by all jurisdictions in identical terms. 3. 'Co-operative' legislation which may be enacted in

	<p><u>Uniform Scrutiny Principles</u></p>	<p>circumstances where the Commonwealth enacts legislation to the extent of its powers and the States and Territories legislate to cover the remaining matters.</p> <ol style="list-style-type: none"> 4. 'Template' legislation which involves a jurisdiction, known as the host jurisdiction, enacting the model legislation and other jurisdictions adopting that legislation. 5. Under 'alternative consistent' legislation, where a jurisdiction may be permitted to participate in a national legislative scheme by enacting legislation which is consistent with the legislation of the host jurisdiction. 6. 'Mutual recognition', under which jurisdictions agree to recognise each other's laws.
<p>October 1996</p>	<p>Senate's Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia, <u>Position Paper – Scrutiny of National Schemes of Legislation</u></p>	<p>Eight structures were identified and finalised:</p> <ol style="list-style-type: none"> 1. 'Complementary Commonwealth-State' or 'co-operative' legislation; The Commonwealth passes legislation, and each State or Territory passes legislation which interlocks with it and which is restricted in its operation to matters not falling within the Commonwealth's constitutional powers. 2. 'Complementary' or 'mirror' legislation; For matters involving dual, overlapping, or uncertain division of powers, essentially identical legislation is passed in each jurisdiction. 3. 'Template', 'co-operative', 'applied' or 'adopted complementary' legislation; A jurisdiction enacts the main piece of legislation, with the other jurisdictions passing Acts which do not replicate, but merely adopt that Act and subsequent amendments as their own. 4. Referral of powers; The Commonwealth enacts national legislation following a referral of relevant State power to it under section 51(xxxvii) of the Australian Constitution. 5. 'Alternative consistent' legislation; Host legislation in one jurisdiction is utilised by other jurisdictions which pass legislation stating that certain matters will be lawful in their own jurisdictions if they would be lawful in the host jurisdiction. The non-host jurisdictions cleanse their own statute books of provisions inconsistent with the pertinent host legislation. 6. 'Mutual recognition' legislation; Recognises the rules and regulation of other jurisdictions. Mutual recognition of regulations enables goods or services to be traded across jurisdictions. For example, if goods or services to be traded comply with the legislation in their jurisdiction of origin they need not comply with inconsistent requirements otherwise operable in a second jurisdiction, into which they are imported or sold.

		<p>7. Unilateralism;</p> <p>Each jurisdiction goes its own way. In effect, this is the antithesis of uniformity.</p> <p>8. 'Non-binding national standards model' legislation.</p> <p>Each jurisdiction passes its own legislation but a national authority is appointed to make decisions under that legislation. Such decisions are, however, variable by the respective State or Territory Ministers.⁴²</p>
March 2002	<p>Successive committees of the WA Parliament identified nine structures of uniform legislation – see, for example, Uniform Legislation and General Purposes Committee, WA Legislative Council, Offshore Minerals Bill 2001; Offshore Minerals (Registration Fees) Bill 2001; and Offshore Minerals (Consequential Amendments) Bill 2001, tabled in June 2002</p>	<p>Each of the eight structures identified by the Senate's Working Party (listed above) were adopted, together with an additional ninth structure, listed below.</p> <p>These nine structures were set out in a standard appendix that was included in every report on uniform legislation between 2002 and August 2011.</p> <p>9. Adoptive recognition.</p> <p>A jurisdiction may choose to recognise the decision making process of another jurisdiction as meeting the requirements of its own legislation regardless of whether this recognition is mutual.</p>
May 2009	<p>Report commissioned by the Council for the Australian Federation, Common Cause: Strengthening Australia's Cooperative Federalism</p>	<p>Identified four structures, as follows:</p> <ol style="list-style-type: none"> 1. Referral of powers; 2. Complementary applied laws; 3. Mirror legislation; and 4. Framework laws.⁴³
2008 - 2010	<p>A range of other developments in identifying uniform schemes</p>	<p>Some of the developments included:</p> <ul style="list-style-type: none"> • the national PCC's 2008 Protocol on Drafting National Uniform Legislation, which identified five structures; • the COAG Reform Council, which identified five structures; • the Australian Law Reform Commission, which identified four main types of structures;

		<ul style="list-style-type: none"> the Law Council of Australia, which identified four structures (National Classification Scheme Review, Issues Paper 40, 'Reform of the cooperative scheme', May 2011); and the President of the WA Legislative Council, Hon Barry House MLC, who identified four structures.
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The WA Committee's report of August 2011 stated:

The Committee observed that many structures identified by the above sources have similar characteristics to those identified in the 1996 Senate's *Position Paper* or are the same but have been renamed.

Of this scholarship, the Committee is of the view that the five structures identified by the national *Parliamentary Counsel's Committee* are useful for the Committee's continuing purpose of both identifying and describing the features of a particular structure in every report on a uniform bill.⁴⁴

The report further stated:

The Committee chose to adapt the national PCC's five structures on the basis that it is both a representative forum of all jurisdictions' drafters and the predominant forum for:

- the preparation of uniform or complementary legislation;
- the promotion of consistent styles of legislation; and
- the exchange of ideas.⁴⁵

2.2 WA Committee's current list of structures of uniform legislation⁴⁶

Structure 1 – Applied laws (also known as template legislation, cooperative legislation, complementary applied law and complementary non-applied law)

Legislation is enacted in one jurisdiction and applied (as in force from time to time) by other participating jurisdictions as a law of those jurisdictions.

There are two broad categories:

- legislation on matters generally within the States' legislative power – national template legislation is enacted in one State or Territory and applied in other States or Territories;
- legislation on matters generally within the Commonwealth's remit – national template legislation is enacted in the Commonwealth, for Commonwealth legislative matters such as corporations, and applied in the States for residual matters, for example individuals.

Examples:

- the national corporations laws scheme adopted in the 1990s by the Commonwealth, States and Territories;
- the counter-terrorism legislation.

An advantage of this structure is that it provides the highest prospect of achieving lasting uniformity across the jurisdictions, provided the scheme is underpinned by an intergovernmental agreement and allows for the central administration and application of that law.

A disadvantage of this approach is that it requires a concession of parliamentary scrutiny by non-host jurisdictions.

Structure 2 – Model legislation (also known as mirror legislation)

This legislation is enacted in participating jurisdictions with any local variations that are necessary to achieve the agreed uniform national policy when the legislation forms part of the local law. It is drafted in either non-jurisdictional specific terms or as the law of a particular jurisdiction.

Example: Uniform Evidence Acts.

This is the least potentially disadvantageous structure for a State from a legislative sovereignty perspective, however the effectiveness of a scheme may be undermined if parliaments amend the legislation too much.

Structure 3 – Legislation of the States referring legislative power to the Commonwealth

The legislation can either confer general authority to legislate with respect to a general matter described in the referral legislation, or confer specific authority to legislate in the terms set out in the referral legislation.

Particular features include:

- provision for the referral to be terminated by, or terminate on a specific day unless extended by, an instrument issued by the Governor of the State, or by subsequent State legislation;
- where authority is conferred to legislate in the terms set out in the referral legislation, provision on how that legislation may be amended by the Commonwealth in the future; and
- where authority is conferred to legislate in particular terms, it is usual for those terms to be set out in each State referring legislation. However, if it is extensive, the reference can be made by adopting the text tabled in one of the State jurisdictions.

Advantages of this approach are that it avoids the need for a referendum, and States can set or influence the terms of the referral and impose criteria that limits or terminates the referral at a given time.

A disadvantage of this structure is that it has contributed to the continuing growth and centralisation of Commonwealth power. There have been numerous referrals in recent years in areas such as crime, family law, corporations law and personal property securities, and there have been calls for the States to refer powers in other areas such as education. There is also some uncertainty about the legal consequences of a State rescinding a referral.

Structure 4 – Legislation of the States adopting a Commonwealth law

Section 51(xxxvii) of the Australian Constitution enables a State, as an alternative to referral, to “adopt” a Commonwealth law enacted in reliance on a referral by other States.

This approach is not usually favoured because the Commonwealth has taken the view that the States can only adopt a law as it exists at a particular time, not from time to time. In comparison, a referral of power (structure 3) gives the Commonwealth greater flexibility to make future changes and to ensure that those changes commence at the same time in all jurisdictions.

Example: *Child Support (Adoption of Laws) Act 1990* (WA).

Structure 5 – A combination of structures

Some provisions of a legislative project may be dealt with by way of an applied law scheme and other provisions by way of a national model scheme. Those jurisdictions that are currently prepared to use an applied law model to achieve future consistency by delegation of legislative changes to the Parliament of another jurisdiction (the template jurisdiction) may also be prepared to enact national model legislation and delegate legislative changes that are agreed by governments nationally to the executive of their own jurisdiction, subject to a power of the local Parliament to disallow the changes in the same way as they disallow subordinate legislation made by the executive.

3 WA Legislative Council, Uniform Legislation and Statutes Review Committee

The Uniform Legislation and Statutes Review Committee of the Western Australian Legislative Council (**‘WA Committee’**) is considered unique amongst Australian parliaments in that it is specifically dedicated to scrutinising proposed legislation that is uniform in nature or has some element of uniformity.⁴⁷

3.1 Establishment⁴⁸

In 1992, the WA Legislative Assembly’s Select Committee on Parliamentary Procedures for Uniform Legislation Agreements (**‘Select Committee’**) recommended (amongst other things) the establishment of a Standing Committee to inquire into and report on matters relating to proposed or current intergovernmental agreements and uniform legislative schemes.⁴⁹

The Select Committee had been set up earlier that year to examine the process behind the introduction into the WA Parliament of the *Financial Institutions (Queensland) Act 1992*, which had proposed changes to the supervision of non-bank financial institutions in WA, in order to create uniformity in laws across Australia.

Concerns had been raised about the **process** for dealing with this legislation, principally that the Queensland legislation referred to in the WA Bill was not available to members of the WA Parliament for examination and comment, and that there had been insufficient time to properly consider the Bill.

Other concerns with the approach used to achieve uniformity included:

- the delegation of many of the powers of the WA Parliament to Ministerial Councils;
- the ability of the Queensland Parliament, as the ‘host state’ under the uniform scheme, to enact amendments without reference to the WA Parliament;
- any regulations under the scheme were to be made by the Governor in Council in Queensland; and
- jurisdiction was conferred on the Supreme Court of Queensland for appeals on questions of law, even where proceedings arose from a matter in WA.

It was recently commented that:

There is no clearer example than this of the enactment of skeletal legislation having an adverse impact on the sovereignty of the Western Australian Parliament.⁵⁰

In 1993, the WA Legislative Assembly implemented the Select Committee’s recommendation and established the Standing Committee on Uniform Legislation and Intergovernmental Agreements (a precursor to the current WA Committee).

In addition to recommending the establishment of the WA Committee, some of the other recommendations of the Select Committee included the following:

- the primary consideration in decisions on participation in intergovernmental agreements and uniform legislative schemes should be whether WA would be better served by the enactment of uniform law than by WA legislation specifically drafted to address WA's needs and requirements; and
- exposure drafts of material explaining proposed uniform schemes should be tabled in each participating parliament.⁵¹

In providing some further context and historical background to the establishment of the WA Committee, the current Chairman recently said:

It is significant that the Solicitor-General of Western Australia, in his advice to the Select Committee, stated that, while there can be valid reasons why national uniformity of law can be desirable or necessary, the need for or the advantages of national uniformity are usually exaggerated, describing such a need as having developed into a 'catch-cry' for Federal committees and bodies.⁵²

3.2 Functions

The Terms of Reference for the WA Committee set out a number of functions, including:

To consider and report on Bills referred under SO 230A.⁵³

Standing Order 230A of the Legislative Council provides:⁵⁴

- (1) This order applies to a Bill that-
 - (a) ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or
 - (b) by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth.
- (2) The second reading stage of a Bill is not to be resumed where SO 230(a) applies, within 30 days of the date of the adjournment (exclusive of that day) or before it has been reported from a committee, whichever is the later.
- (3) Unless otherwise ordered, a Bill stands referred to the *Uniform Legislation and Statutes Review Committee* at the conclusion of the second reading speech of the Minister or Member in charge.
- (4) The *Uniform Legislation and Statutes Review Committee*, or other committee, receiving a Bill under subclause (3) is to present its final report not later than 30 days of the day of the reference (exclusive of the referral day) or such other period as may be ordered by the House.

3.3 General inquiry procedure⁵⁵

It is the Parliament's duty and privilege to determine the appropriate balance between the advantages to the State in enacting uniform laws, and the degree to which Parliament, as legislature, loses its autonomy through the mechanisms used to achieve uniform laws. State Ministers and departments need to justify a national scheme: explain why it is necessary and why it is in the best interests of the Western Australian public to enact the legislation.⁵⁶

In its *Annual Report 2009*,⁵⁷ the WA Committee outlined its procedure when scrutinising uniform Bills. In general, in scrutinising a uniform Bill, the WA Committee will:

- identify and outline the intergovernmental agreement/national scheme to which the Bill gives effect;
- describe the practical effect of the Bill;
- report on consistency between the Bill and the relevant intergovernmental agreement/national scheme;
- report on the impact of the Bill/intergovernmental agreement/national scheme on sovereignty of the State and Parliamentary rights and privileges; and
- scrutinise the Bill against relevant fundamental legislative scrutiny principles.⁵⁸

The WA Committee recently said:

The Committee's inquiry involves consideration of how the legislation impacts on the institution of Parliament and ensuring the Parliament has sufficient information to decide whether the uniform legislation is necessary or desirable. The Committee's inquiry, therefore, involves seeking, collating and presenting to the House information in respect of an intergovernmental agreement or uniform scheme and its practical effect.⁵⁹

The WA Committee has also said that, under its Terms of Reference, in considering and reporting on Bills referred to it under Standing Order 230A, it is not limited as to the matters into which it may inquire. However, its inquiry is made in the context of:

- the intergovernmental agreement or the Bill's subject matter giving rise to a uniform scheme or uniform laws;
- the prohibition imposed by the Standing Orders on a standing committee reviewing the policy of a Bill (unless specifically directed by the House to do so); and
- the issues which led the House to establish the committee and a standing order providing for automatic referral of such Bills.⁶⁰

In addition, the WA Committee recently made the following points regarding the function it performs and its inquiry process:

- Standing Order 230A is not limited in its application to Bills that are identical to a model Bill or to legislation proposed by other participating jurisdictions;
- Standing Order 230A applies to a Bill that is partly uniform such that where a Bill is referred to the committee under Standing Order 230A, the committee is tasked with reviewing the entire Bill and not just the parts that are uniform;
- the committee's inquiry into the 'consistency' of a Bill with its supporting documents and uniform scheme is contextual; and
- in scrutinising uniform legislation, it is important to take into account the role of the WA Parliament in determining the appropriate balance between the advantages to the State in enacting uniform laws, and the degree to which Parliament loses its autonomy through the mechanisms used to achieve uniform laws.⁶¹

3.4 Provision of supporting documents

In 1998, a predecessor to the WA Committee (the Uniform Legislation and Intergovernmental Agreements Committee, WA Legislative Assembly) tabled a report⁶² which set out a number of recommendations to promote greater involvement of the legislatures in the development of uniform legislation, namely through improved information flow between the responsible Minister and the legislature. The recommendations⁶³ included the following:

- all proposals for uniform legislation should be in the form of consultation documents and should be tabled in both Houses of the WA Parliament;
- proposals for legislation by Ministerial Councils should be made available within six weeks by the relevant Minister of the WA Parliament to ensure that both Houses have

the opportunity to consider the proposal;

- an agreed period of time should elapse between a legislative proposal being tabled in both Houses of the WA Parliament and the reconsideration of the proposal by Ministerial Council;
- the practice of providing exposure drafts for uniform legislation to various interest groups should also be made available to the WA Parliament;
- consideration be given by Ministers to tabling intergovernmental agreements so that Parliament is informed of any proposed legislative developments;
- Ministers refer documents on intergovernmental agreements and proposed uniform legislation to the Standing Committee on Uniform Legislation and Intergovernmental Agreements; and
- the Standing Committee on Uniform Legislation and Intergovernmental Agreements examine and report on any legislative proposals or initiatives which have resulted from Ministerial Council meetings.

In July 2005, the WA Premier issued a Ministerial Office Memorandum highlighting ways by which Ministers should assist the passage of uniform legislation through the Legislative Council.⁶⁴ The most recent version ([MM 2007/01](#)) was issued in November 2007 (with a review date of November 2011) and sets out suggestions relating to:

- early identification by Ministers of a Bill as one to which Standing Order 230A applies;
- awareness of the timeframe during which a Bill will stand referred to the Committee for inquiry when programming the introduction and parliamentary passage of the Bill; and
- timely response to requests from the committee for information.

These suggestions are expanded on below.

Identification of Bills as uniform legislation

The Ministerial Office Memorandum states that when introducing a Bill that implements uniform legislation, Ministers should ensure their second reading speech:

- makes reference to the fact that the Bill is pursuant (whether in whole or in part) to uniform legislation; and
- outlines the relevant intergovernmental agreement/memorandum of understanding pursuant to which the Bill has been introduced.

Provision of information

To assist the conduct of the WA Committee's inquiries, the Ministerial Office Memorandum states that a Minister "should consider" providing the following information to the committee at the time a Bill to which Standing Order 230A applies is first tabled in the Parliament (even if this is in the Legislative Assembly):

- a copy of the relevant intergovernmental agreement/memorandum of understanding, if available;
- if not available, a copy of the communiqué from the Ministerial Council meeting at which it was agreed to introduce the legislation;

- a statement as to any timetable for the implementation of the legislation;
- a copy of the Explanatory Memoranda;
- a public statement of the Government's policy on the Bill;
- the advantages and disadvantages to the State as a participant in the relevant scheme or agreement;
- relevant constitutional issues;
- an explanation as to whether and by what mechanism the State can opt out of the scheme;
- the mechanisms by which the Bill, once enacted, can be amended (i.e. whether the intergovernmental agreement/memorandum of understanding places parameters on the type of and manner in which it is envisaged that amendments are to be made to the legislation, for example whether the agreement of the State, or a majority of States and Territories, is required);
- if the legislation has been developed by reference to a model Bill, a copy of that model Bill; and
- the name and contact numbers for the policy officer with carriage of the Bill, the instructing officer in the relevant department and, where relevant, any government expert(s) who can answer technical questions posed by the legislation.

The WA Committee also:

- has a practice of reviewing the Legislative Assembly Notice Paper to identify Bills to which Standing Order 230A would apply when tabled in the House; and
- has instituted a practice of biannual letters to Ministers requesting advice of the uniform legislation within their portfolios that might be introduced in to the Parliament in the next six months.⁶⁵

One difficulty for the WA Committee has been accessing information concerning the decisions of Ministerial Councils. It has recently said:

Where information that a decision has been made is available, there may not be any publicly available written record of the content of the agreement beyond a statement of intention to jointly address an agreed problem. Where there is a written intergovernmental agreement, it is often primarily concerned with principle and provides no detail on implementation.⁶⁶

Despite the Ministerial Office Memorandum and implementation of the other practices outlined above, the WA Committee, in March 2011, wrote to the WA Premier noting the ineffectiveness of the current Memorandum and an average delay of 17 days for documentation to be received. In that instance, the Committee was unable to report on the referred Bill within the required timeframe and invited the House to again refer the Bill for inquiry within a reasonable reporting time period.⁶⁷

The WA Committee recently commented on the ongoing failure to be provided with the required supporting documentation for proposed uniform legislation in a timely manner, and issued the following warning:

In practice, the Committee is rarely provided with supporting documents prior to its standard request, which is made after referral of a bill. ...

...

As [an earlier incarnation of the WA Committee] said in 2004:

The Committee considers that such accountability should occur without the need for the Committee to consider exercising powers under the Parliamentary Privileges Act 1891 to summons persons, papers and records.

However, given the problems the Committee and predecessor committees have encountered, agencies can expect summonses to be issued in the future.

Delay in provision of supporting documents and incomplete provision of those documents hinders the Committee's ability to inquire into a bill, in that its resources are diverted to establishing the terms or parameters of the intergovernmental agreement or uniform scheme, rather than the practical effect of the proposed bill – such as its impact on State sovereignty and the rights and privileges of the Parliament – and 'technical' issues such as retrospectivity or incorrect references to other legislation.⁶⁸

3.5 Useful reports and recent developments

3.5.1 General reports into issues associated with uniform legislation

Various reports of the WA Committee (and its predecessor committees) are useful in highlighting issues associated with national scheme legislation, including:

- **Uniform Legislation and Statutes Review Committee, Legislative Council (2005-present)**
 - [Information Report: Scrutiny of Uniform Legislation](#), Report 63, June 2011;
 - [Information Report on Uniform Scheme Structures](#), Report 64, August 2011;
 - [Standing Order 230A – Referral of Uniform Legislation and Reporting Time Frames](#), Special Report, August 2005;
- **Uniform Legislation and General Purposes Committee, Legislative Council (2002-2005)**
 - [Uniform Legislation and Supporting Documentation](#), Report 19, August 2004;
- **Uniform Legislation and Intergovernmental Agreements Committee, Legislative Assembly (1993-2001)**
 - *Parliament and the Executive: Parliamentary Scrutiny and Review of Uniform Legislation and Intergovernmental Agreements*, Report 4, June 1994,⁶⁹
 - [Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles](#), Report 10, August 1995;
 - [Report on Position Paper: Scrutiny of National Schemes of Legislation](#), Report 13, October 1996;
 - [Ministerial Councils](#), Report 19, June 1997;
 - [Uniform Legislation](#), Report 21, April 1998.

3.5.2 Examples of recent analysis of uniform legislation

For some examples of recent analysis of uniform legislation by the WA Committee, see the following reports, each of which raises various problems and considerations regarding the mechanisms by which national schemes of legislation are made into law:

- [Occupational Licensing National Law \(WA\) Bill 2010](#), Report 61, April 2011;
- [Personal Property Securities \(Commonwealth Laws\) Bill 2011 and Personal Property Securities \(Consequential Repeals and Amendments\) Bill 2011](#), Report 59, March 2011;

- [Trade Measurement Legislation \(Amendment and Expiry\) Bill 2010](#), Report 55, November 2010; and
- [Health Practitioner Regulation National Law \(WA\) Bill 2010](#), Report 52, June 2010.

3.5.3 Recent comments by Chairman of WA Committee

The Hon Adele Farina MLC, Chairman of WA Committee, recently commented:

Increased use of skeletal legislation [including national scheme legislation] may, arguably, move us closer to what could be termed an ‘elected dictatorship’, whereby the substance of laws are left to be decided by a purely administrative process by the Executive, there being little oversight by Parliament between elections. The path we appear to be going down may well leave no real role for state parliaments, making them irrelevant.

While its use may be well intentioned, there is simply no substitute for proper parliamentary scrutiny and the deliberate avoidance of this by successive governments could lead to an increasing loss of confidence in the machinery of responsible government and the parliamentary process, which is one of the foundations of parliamentary democracy.

Accordingly, further investigation is warranted into methods by which the integrity of the parliamentary process can be effectively maintained and respected to ensure that this confidence is regained and the sovereignty of the Parliament is assured. The role skeletal legislation [including national scheme legislation] has and is playing in subverting the parliamentary process would be an important part of this investigation.⁷⁰

3.5.4 Current inquiry into uniform legislation in other jurisdictions

In August 2011, the WA Committee commenced an inquiry into uniform legislation in other jurisdictions.

The [terms of reference](#) require the WA Committee to:

- review the findings and recommendations of the earlier report of the Uniform Legislation and Intergovernmental Agreements Committee, [Uniform Legislation](#), which was tabled in 1998, and consult with officers in other Australian and overseas jurisdictions regarding developments in the thirteen years since that report was tabled; and
- inquire into and report on how the federations in these jurisdictions deal with issues of State sovereignty and uniform legislation i.e. how their Parliaments determine the appropriate balance between the advantages to the State in enacting uniform laws, and the degree to which Parliament loses its autonomy through the mechanisms used to achieve uniform laws, and any improvements that can be made to current practices.

The WA Committee intends to report to the Legislative Council by August 2012.

4 Recent comments by Tasmanian Parliamentary Committee

In August 2011, the Government Administration Committee “B” of the Tasmanian Legislative Council (**‘Tasmanian Committee’**) completed a [report](#) on the Business Names (Commonwealth Powers) Bill 2011 (Tas) (**‘Bill’**).

In summary, the purpose of the Bill was to refer Tasmania’s responsibility for the registration of business names to the Commonwealth under section 51(xxxvii) of the Australian Constitution. The referral would permit the Commonwealth to legislate to establish a national business names register to be administered by the Australian Securities and Investments Commission (ASIC). Two Commonwealth Bills that would cover the operational

framework of the register and transitional arrangements were referred to in the Bill as “tabled text”. The Bill was said to be “text-based”, meaning that the only power referred to the Commonwealth was the text of the two Commonwealth Bills (i.e. the tabled text). This scenario was distinct from a situation in which an entire subject or policy area might be referred to the Commonwealth.⁷¹

The Tasmanian Committee raised a number of concerns about the Bill, including regarding its introduction into the Tasmanian Parliament and mechanisms for the future amendment of the Commonwealth legislation:

... [T]he Committee has reservations about the lack of involvement by the Tasmanian Parliament in this process.

...

For example, in his evidence to the Committee, [one witness at a public hearing of the Committee in relation to the Bill] made the following observation:

‘I must say that I am quite glad that Parliament is having a look at some of these because I really think there is pressure from COAG to get Parliament to rubber-stamp agreed legislation’.

The question of the sovereignty of the Tasmanian Parliament in dealing with legislation formally agreed to by COAG is becoming more of a concern as growing numbers of such “nationally uniform” legislative packages are presented for approval.

...

In addition, the introduction of such legislation is often accompanied by Government warnings about its urgency and about the consequences of delay or, even worse, its rejection.

...

It may appear that, once again, the approval of State Parliaments around Australia is regarded as a formality as a result of an agreement entered into by State and Federal Governments without reference to the elected representatives of the people in those States.

The Committee has more serious concerns in relation to the mechanism that allows for future amendments to the Commonwealth legislation that are more than minor or technical.

Under the provisions of the Intergovernmental Agreement it signed with the States, the Commonwealth is permitted to make minor or technical amendments to its business names legislation without reference to the States. For more substantive amendments, the Commonwealth is required under the terms of the Agreement to seek the approval of the Ministerial Council for Corporations.

However, there is no provision in the Agreement, the Commonwealth legislation or the Tasmanian Bill for the Commonwealth to seek the agreement of State Parliaments which are the bodies responsible for initial referral of the business name powers to the Commonwealth. There is not even any mechanism that would require State Parliaments to be informed of substantive amendments to the Commonwealth legislation that require the approval of the Ministerial Council.

It should be noted that the Ministerial Council is not an elected or parliamentary body, but an organisation comprised solely of representatives of Commonwealth,

State and Territory Governments.

In this regard, it is a matter of concern that the *Intergovernmental Agreement for Business Names Agreement* has never been tabled in, or endorsed by, either House of the Tasmanian Parliament even though it is fundamental to the main objective of the Tasmanian Bill.

Further, the Australian Securities and Investment Commission, which will have powers and functions to administer the national law, will also be subject to the Intergovernmental Agreement in carrying out that role.

The questionable status of this quasi-legislative power of the Intergovernmental Agreement, without endorsement or approval by State Parliaments, is a matter of concern to the Committee.⁷²

The conclusions reached by the Tasmanian Committee included the following:⁷³

Referral of State powers to the Commonwealth is a significant and important function of State Parliaments that should not be treated as a mere formality by Commonwealth, State and Territory Governments.

At present, there is no requirement for amendments to the tabled text of nationally consistent legislation to be tabled in all State Parliaments.

The Tasmanian Committee's recommendations in relation to the Bill included the following:⁷⁴

Substantive amendments to the [business names register] legislation be tabled in all Australian Parliaments before becoming law.

Intergovernmental Agreements signed through the Council of Australian Governments (COAG) be tabled in the relevant State and Territory Parliaments before they are binding on those jurisdictions.

5 Position in Queensland

In Queensland, fundamental legislative principles include requiring that legislation have sufficient regard to the institution of Parliament (s 4(2)(b) of the [Legislative Standards Act 1992 \(Qld\)](#)).

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill:

- allows the delegation of legislative power only in appropriate cases and to appropriate persons;
- sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
- authorises the amendment of an Act only by another Act (s 4(4) of the *Legislative Standards Act 1992 (Qld)*).

The [Queensland Cabinet Handbook](#) provides that the following are some [matters that should be brought by Ministers for the consideration of Cabinet](#):

- matters likely to have a considerable impact on relations with Commonwealth, local and other State and Territory Governments ... ;
- matters of an intergovernmental nature that may constrain the government's ability to develop or amend policy, e.g. national policy strategies, interstate agreements ...; and

- major issues to be discussed, or a report of significant outcomes agreed at Ministerial Council forums.

It also provides that, in the [development of a Bill](#):

Cabinet submissions must clearly identify where it is intended that proposed legislation ... will depart from a fundamental legislative principle and Cabinet approval for the proposed departure must be sought.

Appropriate arguments must be included in the Cabinet submission in support of any departure from a fundamental legislative principle.

The information an explanatory note for a Bill that is substantially uniform or complementary with legislation of the Commonwealth or another State must include, in clear and precise language, is:

- a statement to that effect; and
- a brief explanation of the legislative scheme (s 23(1)(i) of the *Legislative Standards Act 1992* (Qld)).

The Queensland Government [Guidelines for the Preparation of Explanatory Notes](#) (p 6) state that, when meeting this requirement:

- if applicable, include background information relevant to the development of the national scheme, for example an intergovernmental agreement; and
- consider whether a comparison table of the different legislation would assist.

In Queensland, there are no formal requirements governing, nor practices that have developed regarding, the provision of information on national schemes of legislation to the Parliament.

In October 2011, the [Legal Affairs, Police, Corrective Services and Emergency Services Committee](#) of the Queensland Parliament made the remarks below in its [Report No. 4: Examination of Business Names \(Commonwealth Powers\) Bill 2011](#). In doing so, the Committee noted that the power that was proposed to be referred to the Commonwealth under the Bill was effectively defined by the content of Commonwealth legislation, which had already been introduced into the Commonwealth Parliament but had not been tabled in the Queensland Parliament.

The committee considers that, in the case of national scheme legislation that relies on or is defined by proposed Commonwealth legislation or legislation in another jurisdiction (the accompanying legislation), the text of the accompanying legislation should be tabled at the time of introduction of the national scheme legislation into the Queensland Parliament. The availability of the text of the accompanying legislation is essential to effective scrutiny of the Bill before the State Parliament.

The committee therefore strongly encourages the Government to ensure that the text of accompanying legislation is tabled at the time of introduction of future proposed national scheme legislation.⁷⁵

There is currently no system in place for COAG decisions or for Intergovernmental Agreements of a binding nature to be tabled in the Queensland Legislative Assembly before the State becomes bound by that decision or agreement.

Other jurisdictions have processes in place to ensure that the Parliament is aware of intergovernmental agreements relating to Bills.

For example, the Australian Capital Territory tables a list of intergovernmental agreement negotiations in the Assembly every six months; tables all signed

intergovernmental agreements in the Assembly as soon as practicable; and publishes the signed intergovernmental agreements on a register on the Chief Minister's Department website.⁷⁶

Ministers in Western Australia must identify, in the second reading speech of a Bill, whether the Bill ratifies a multilateral or bilateral intergovernmental agreement or if it introduces a scheme of uniform legislation throughout the Commonwealth. The Minister must also identify any relevant intergovernmental agreements.

The Tasmanian Parliament does not table Intergovernmental Agreements. The Legislative Council Government Administration Committee B (the Tasmanian Committee) recommended that the Tasmanian Government table all Intergovernmental Agreements before they become binding on the State.

Intergovernmental agreements are not tabled in the Northern Territory Parliament, and the committee is not aware of any relevant requirements in either the New South Wales or South Australian Parliaments.

With an increasing focus on nationally uniform policy reforms, the committee strongly encourages the Government to table intergovernmental agreements, at the latest, when a Bill to implement the agreed policy reform is introduced into the Legislative Assembly.⁷⁷

In its [response](#) to the Committee's report, the Queensland Government stated:

The Government understands the Committee's rationale for this suggestion. It acknowledges the tabling of [intergovernmental agreements] would provide Committees with valuable context when considering Bills of this nature, will give this matter further consideration and will consult with the Commonwealth as appropriate.

Also in October 2011, the [Industry, Education, Training and Industrial Relations Committee](#) of the Queensland Parliament made a number of comments in its [Report No. 4: Education and Care Services National Law \(Queensland\) Bill 2011](#) which are relevant to the introduction of national scheme legislation.

By way of brief background,⁷⁸ the Education and Care Services National Law (Queensland) Bill 2011 sought, amongst other things, to apply the Education and Care Services National Law (the '**National Law**') set out in the schedule to the *Education and Care Services National Law Act 2010* (Vic) as a law of Queensland.

In December 2009, COAG endorsed the *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care*, which included a commitment to establish a jointly governed, uniform National Quality Framework and facilitate the introduction of a new National Quality Standard for early childhood education and care services.

Victoria was the host jurisdiction and, in October 2010, the Victorian Parliament passed the *Education and Care Services National Law Act 2010* (Vic). Under the National Partnership Agreement, the other jurisdictions agreed to enact legislation to apply the National Law by reference, with the exception of WA which would pass its own corresponding legislation.

The Committee's observations and comments were as follows:⁷⁹

4.1 Tabling of the National Law

The law to be adopted as the law of Queensland was not tabled with the Bill by the Minister. The Committee believes that this should occur as a matter of course,

particularly given that the explanatory notes to the Bill indicate that the National Law contains provisions that may not be consistent with fundamental legislative principles.

Committee comment

The Minister is invited to table a copy of the Schedule to the *Education and Care Services National Law Act 2010 (Victoria)* (the National Law) at the second reading of the Bill.

4.2 Tabling of the National Partnership Agreement

The *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* was not tabled by the Minister at the time that the Bill was tabled. The Committee believes this should be tabled, given the Bill intends to give effect to Queensland's commitment under that Agreement.

Committee comment

The Minister is invited to table a copy of the *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* at the second reading of the Bill.

4.3 Amendments to the National Law

The Committee notes with concern the absence from the legislation of a requirement that amendments to the National Law be tabled in the Queensland Legislative Assembly. Section 303 of the National Law provides that Members of the Ministerial Council are required to make arrangements to table National Regulations in their respective jurisdictions. No such provision exists in respect of amendments to the National Law.

Advice from DET

DET advised that any future amendments would be negotiated amongst all participating jurisdictions, with any changes to be endorsed by the Ministerial Council prior to amendments taking effect. The standard meeting protocol is that the decision on an amendment would be informed by majority agreement.

Committee comment

The Committee is not satisfied of the practical ability of the Legislative Assembly to subject amendments to the National Law, which would also be a law of Queensland, to its scrutiny and to inform the people of Queensland, under the Bill as it stands.

Recommendation 2

The Committee recommends that a clause be inserted in the Bill to provide that the member of the Ministerial Council representing Queensland is to make arrangements for the tabling of any amendment to the National Law in this House of Parliament.

The relevant Queensland legislation was passed with amendment in November 2011.

In its [response](#) to the Committee's report, the Queensland Government said it would table a copy of the National Law and National Partnership Agreement. The Government also said the following in relation to recommendation 2 of the Committee:

The Government supports this recommendation.

The Government acknowledges the Committee's comments about the apparent inconsistency in the National Law, which requires members of the Ministerial Council to table the [Regulations] in their respective parliaments, but does not require tabling of any amendments to the National Law.

The National Law requires the tabling of any regulations ... in order for the Houses of Parliament in each participating jurisdiction to scrutinise the regulations and to move a motion for their disallowance if considered necessary. However, if a House of Parliament disallows a regulation made by the Ministerial Council, section 303 of the National Law provides that the regulation does not cease to have any effect in that jurisdiction, unless the regulation is disallowed in a majority of the participating jurisdictions.

The process for making amendments to the National Law itself is different from this. Any future amendments will be negotiated by the Ministerial Council. The amendments will then be progressed by amending the Victorian *Education and Care Services National Law Act 2010* and will apply automatically in each participating jurisdiction. Therefore, the Queensland Parliament will not be required to scrutinise amendments to the National Law before they are made.

Despite this, the Government supports the Committee's recommendation to include a clause in the Bill which would require the tabling in Parliament of any future amendments to the National Law. The Government considers this would provide an appropriate mechanism for ensuring Parliament is informed about any future amendments.

An amendment will be moved during consideration in detail of the Bill, to insert the recommended clause. The clause will clarify that any failure to table future amendments to the National Law will not affect the application of the amendments in Queensland.

In the [Second Reading Debate](#) on the Bill (at p 3655), the Hon C Dick MP, Minister for Education and Industrial Relations, said:

The committee's report advised that a copy of the national law to be adopted in Queensland by this bill should have been tabled with the bill. The national law is found in the schedule to the Victorian Education and Care Services National Law Act 2010 and is readily available on the Victorian parliamentary counsel's website. Despite this, I concur with the committee's view and agree that, as far as nationally applied laws processes go, it would be desirable to establish a practice of tabling a copy of the legislation to be applied in Queensland. Preferably, a copy of the legislation should be tabled at the time the bill is introduced.

...

The committee also expressed the view that the National Partnership Agreement ... should have been tabled at the time the bill was tabled, given that the bill intends to give effect to Queensland's commitment under that agreement. A copy of the national partnership agreement ... can, of course, be viewed at the [COAG] website. However, I agree with the committee that, in order to provide parliament with comprehensive information about the national law that the bill proposes to apply in Queensland, tabling a copy of the national partnership agreement would be beneficial.

Other recent examples of national scheme legislation considered by the Queensland Parliament, and relevant publications, include:

- [Business Names \(Commonwealth Powers\) Bill 2011 \(Qld\)](#)
 - Legal Affairs, Police, Corrective Services and Emergency Services Committee, [Report No. 4: Examination of Business Names \(Commonwealth Powers\) Bill 2011](#), October 2011;
 - [Explanatory Notes](#);
 - [Explanatory Speech](#), 24 August 2011 (pp 2612-2613);
- [Work Health and Safety Bill 2011 \(Qld\)](#)
 - [Scrutiny of Legislation Committee, Legislation Alert 6/2011](#);
 - [Explanatory Notes](#);
 - [Second Reading Speech](#), 10 May 2011 (pp 1282-1283);
 - [Queensland Parliamentary Library publication](#);
- [Occupational Licensing National Law \(Queensland\) Bill 2010 \(Qld\)](#)
 - [Scrutiny of Legislation Committee, Legislation Alert 13/2010](#);
 - [Explanatory Notes](#);
 - [Second Reading Speech](#), 6 October 2010 (pp 3648-3649);
- [Health Legislation \(Health Practitioner National Regulation\) Amendment Bill 2010 \(Qld\)](#)
 - [Scrutiny of Legislation Committee, Legislation Alert 5/2010](#);
 - [Explanatory Notes](#);
 - [Second Reading Speech](#), 25 March 2010 (pp 1175-1176);
 - [Queensland Parliamentary Library publication](#);
- [Trade Measurement Legislation Repeal Bill 2009 \(Qld\)](#)
 - [Scrutiny of Legislation Committee, Legislation Alert 9/2009](#);
 - [Explanatory Notes](#);
 - [Second Reading Speech](#), 15 September 2009 (pp 2223-2224);
 - [Queensland Parliamentary Library publication](#).

From the annual reports of the [former Scrutiny of Legislation Committee](#), the following information is available regarding the quantity of national scheme legislation introduced into the Queensland Parliament over the period 2008/09 to 2010/11:⁸⁰

Year	No. of Bills	Year	No. of Bills	Year	No. of Bills
2010/11	10	2009/10	7	2008/09	16

6 Summary of some key initiatives/suggestions

The below table briefly summarises some of the key initiatives/suggestions identified in this *Research Brief* regarding national scheme legislation:

- Improve the flow of information between Ministerial Councils and legislatures, including in relation to national schemes of legislation.
- Prior to the introduction of uniform legislation, table in each participating Parliament a copy of any intergovernmental agreement and an exposure draft of the legislation. Currently, it is practice for exposure drafts of proposed uniform legislation to be provided to various interest groups.
- Determine the appropriate balance between the advantages to a State in enacting uniform laws and the degree to which a Parliament, as legislature, loses its autonomy through the mechanisms used to achieve a national law.

- Determine whether a Parliament has been provided with sufficient information to decide whether a national scheme is necessary or desirable. Consider the type of information required, and when it should be provided.
- Consider implementing a practice of early identification of proposed national scheme legislation, e.g. by developing an avenue of communication with a Minister, perhaps biannually, when advice is requested of the uniform legislation within their portfolio that might be introduced into the Parliament within the next six months.

Key Documents and Links

Key documents from which information and views in this *Research Brief* were compiled include:

Uniform Legislation and Statutes Review Committee, WA Legislative Council (and its predecessor committees)

- [Information Report on Uniform Scheme Structures](#), Report 64, August 2011;
- [Information Report: Scrutiny of Uniform Legislation](#), Report 63, June 2011;
- [Uniform Legislation and Supporting Documentation](#), Report 19, August 2004;
- [Uniform Legislation](#), Report 21, April 1998.

Senate's Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia

- [Position Paper – Scrutiny of National Schemes of Legislation](#), October 1996.

National Parliamentary Counsel's Committee

- [Protocol on Drafting National Uniform Legislation](#), 2008

Endnotes

- ¹ Note however a statement by the Uniform Legislation and General Purposes Committee of the Western Australian Legislative Council that “some collaborative arrangements may not necessarily involve identical or even common legislative elements at all. Indeed it has been suggested that the phrase “harmonisation in law” is also an appropriate description for uniform legislation” (Western Australian Legislative Council, Uniform Legislation and General Purposes Committee, [The Work of the Committee during the Second Session of the Thirty-Sixth Parliament – August 13 2002 to November 16 2004](#), Report 23, November 2004, pp 9-10).
- ² Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, [Information Report: Scrutiny of Uniform Legislation](#), Report 63, June 2011, p 4; and Western Australian Legislative Council, Uniform Legislation and General Purposes Committee, [Uniform Legislation and Supporting Documentation](#), Report 19, August 2004, p 9.
- ³ Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, [Information Report: Scrutiny of Uniform Legislation](#), p 5.
- ⁴ And sometimes the responsible Minister from New Zealand.
- ⁵ Australian Government. Attorney-General’s Department, ‘[Ministerial councils](#)’.
- ⁶ In February 2011, COAG agreed to a comprehensive reform plan for a new system of Ministerial Councils, which more than halved the number of Ministerial Councils to 23. The new system focuses on strategic national priorities and new ways for COAG and its councils to identify and address issues of national significance. A feature of the new system is the establishment of 12 ‘Standing Councils’ in the areas of health; community, housing and disability services; school education and early childhood; tertiary education, skills and employment; transport and infrastructure; police and emergency management; law and justice; federal financial relations; energy and resources; environment and water; regional Australia; and primary industries. Standing Councils will address enduring issues of national significance and support the move to a reform-based system for COAG by identifying a small number of priority issues of national significance (five to seven) that they will deal with and in what timeframes, for endorsement by COAG. Standing Councils will also undertake legislative and governance functions relevant to their scope. ‘Select Councils’ will be time-limited bodies that address critical and complex issues. A small number of ‘Ministerial Legislative and Governance Fora’ were also established in specific areas to manage ongoing legislative and governance functions where they are outside the scope of Standing Councils. The Ministerial Legislative and Governance Fora also oversee significant collective responsibilities for ministers where they are set out in relevant legislation, intergovernmental agreements and treaties that are outside the scope of Standing Councils. See COAG, [Communiqué](#), 13 February 2011, pp 4-5 and [attachment C](#). By way of example, in September 2011, SCAG transitioned to the Standing Council on Law and Justice.
- ⁷ [SCAG](#) website.
- ⁸ Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, [Information Report: Scrutiny of Uniform Legislation](#), p 5.
- ⁹ Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, [Information Report: Scrutiny of Uniform Legislation](#), p 5.
- ¹⁰ Western Australian Legislative Assembly, Uniform Legislation and Intergovernmental Agreements Committee, [Uniform Legislation](#), Report 21, 1998, p 4.

- 11 Western Australian Legislative Council, Uniform Legislation and General Purposes Committee, *Uniform Legislation and Supporting Documentation*, p 9.
- 12 Western Australian Legislative Assembly, Uniform Legislation and Intergovernmental Agreements Committee, *Uniform Legislation*, p xvi.
- 13 COAG website, '[Guide to Intergovernmental Agreements](#)'.
- 14 COAG website, 'Guide to Intergovernmental Agreements'. Emphasis added.
- 15 Western Australian Legislative Council, Uniform Legislation and General Purposes Committee, *Uniform Legislation and Supporting Documentation*, p 15.
- 16 Western Australian Legislative Council, Uniform Legislation and General Purposes Committee, *Uniform Legislation and Supporting Documentation*, pp 15-16.
- 17 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, p 12.
- 18 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, p 4. Later in the report (at p 12), the Committee states that the "key to identifying 'uniform legislation' is whether it has a harmonisation purpose".
- 19 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, p 5.
- 20 Western Australian Legislative Assembly, Uniform Legislation and Intergovernmental Agreements Committee, [Committee Report of Activities November 1996 – October 1999](#), p 10.
- 21 Western Australian Legislative Council, Uniform Legislation and General Purposes Committee, *Uniform Legislation and Supporting Documentation*, pp 9-10.
- 22 Western Australian Legislative Council, Uniform Legislation and General Purposes Committee, *The Work of the Committee during the Second Session of the Thirty-Sixth Parliament – August 13 2002 to November 16 2004*, p 8.
- 23 Western Australian Legislative Council, Uniform Legislation and General Purposes Committee, *Uniform Legislation and Supporting Documentation*, p 11.
- 24 Western Australian Legislative Council, Uniform Legislation and General Purposes Committee, *Uniform Legislation and Supporting Documentation*, p 11.
- 25 Western Australian Legislative Council, Uniform Legislation and General Purposes Committee, *Uniform Legislation and Supporting Documentation*, p 11. Emphasis added.
- 26 This discussion is largely taken from Western Australian Legislative Assembly, Uniform Legislation and Intergovernmental Agreements Committee, *Committee Report of Activities November 1996 – October 1999*, p 10; Western Australian Legislative Council, Uniform Legislation and General Purposes Committee, *Uniform Legislation and Supporting Documentation*, pp 10-11; Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, pp 20-24; Western Australian Legislative Assembly, Uniform Legislation and Intergovernmental Agreements Committee, *Uniform Legislation*, p 5.

- 27 Senate's Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia, [Position Paper – Scrutiny of National Schemes of Legislation](#), October 1996, p 12.
- 28 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, p 22.
- 29 Western Australian Legislative Assembly, Uniform Legislation and Intergovernmental Agreements Committee, [Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles](#), Report 10, August 1995, p 14.
- 30 Western Australian Legislative Assembly, Uniform Legislation and Intergovernmental Agreements Committee, *Uniform Legislation*, p ix.
- 31 Western Australian Legislative Assembly, Uniform Legislation and Intergovernmental Agreements Committee, *Uniform Legislation*, p 4.
- 32 Western Australian Legislative Assembly, Uniform Legislation and Intergovernmental Agreements Committee, *Uniform Legislation*, p 5.
- 33 Senate's Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia, *Position Paper – Scrutiny of National Schemes of Legislation*, pp 7-8.
- 34 Senate's Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia, *Position Paper – Scrutiny of National Schemes of Legislation*, pp 38-39.
- 35 Hon Adele Farina MLC, Chairman of the Uniform Legislation and Statutes Review Committee, Western Australian Legislative Council, '[Bones without flesh – the issues with skeletal legislation](#)', pp 4-5. This paper was presented at the Australia – New Zealand Scrutiny of Legislation Conference, 26-28 July 2011, Brisbane.
- 36 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, p 24.
- 37 For a discussion of the causes of differences between model legislation see, for example, the 2008 [Protocol on Drafting National Uniform Legislation](#) by the national Parliamentary Counsel's Committee, pp 18-25 (appendix 3).
- 38 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, [Information Report on Uniform Scheme Structures](#), Report 64, August 2011.
- 39 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report on Uniform Scheme Structures*, p 1.
- 40 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report on Uniform Scheme Structures*, p i.
- 41 The [Parliamentary Counsel's Committee](#) is a committee representing the drafting offices in Australia and New Zealand. Amongst other things, the committee provides a forum for the preparation of national uniform legislation.
- 42 The description of these structures is taken from reports of the Uniform Legislation and Statutes Committee of the WA Legislative Council, and its previous incarnations, from 2002, which adopted all of these structures (and a further additional structure).
- 43 For a description, rationale, examples, strengths and weaknesses of these structures, refer to the report, p 20.

- 44 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report on Uniform Scheme Structures*, p 8.
- 45 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report on Uniform Scheme Structures*, p 14.
- 46 For a more detailed description of each of these structures, and some of their advantages and disadvantages, see Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report on Uniform Scheme Structures*, pp 8-14. Also see the table at p 7 of the report.
- 47 Hon Adele Farina MLC, Chairman of the Uniform Legislation and Statutes Review Committee, Western Australian Legislative Council, 'Bones without flesh – the issues with skeletal legislation', p 2.
- 48 This information is largely taken from Western Australian Legislative Assembly, Uniform Legislation and Intergovernmental Agreements Committee, *Committee Report of Activities November 1996 – October 1999*, p 9, and 'Bones without flesh – the issues with skeletal legislation', pp 5 and 7-8.
- 49 Western Australian Legislative Assembly, Select Committee on Parliamentary Procedures for Uniform Legislation Agreements, Report, 27 August 1992.
- 50 'Bones without flesh – the issues with skeletal legislation', p 8.
- 51 The current chairman of the WA Committee recently noted that this particular recommendation of the Select Committee has still not been implemented ('Bones without flesh – the issues with skeletal legislation', p 5). For additional discussion on the tabling of exposure drafts see, for example, Senate's Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia, *Position Paper – Scrutiny of National Schemes of Legislation*, pp 13-18.
- 52 'Bones without flesh – the issues with skeletal legislation', p 5.
- 53 Western Australian Parliament, [Legislative Council Standing Orders](#), schedule 1, Terms of Reference, pp 145-146. See 8.3(a).
- 54 Note that the Procedure and Privileges Committee of the Western Australian Legislative Council completed a review of the Standing Orders in October 2011. A [report](#) on the review, the [Draft Standing Orders](#) and a [comparative table](#) of the current and draft Standing Orders are available. Draft Standing Order 125 would be the replacement provision for the current Standing Order 230A. There are also temporary standing orders of the Legislative Council of 24 March 2011 which increased the 30 day timeframe within which the committee had to table a report to 45 days (referred to in Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, p 3).
- 55 For a historical perspective of scrutiny of uniform legislation in Western Australia, see Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, appendix 1.
- 56 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, [Occupational Licensing National Law \(WA\) Bill 2010](#), Report 61, April 2011, p 2.
- 57 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, [Annual Report 2009](#), Report 54, September 2010, pp 3-4.

- 58 The relevant fundamental legislative scrutiny principles are included as Appendix 2 to the WA Committee's *Annual Report 2009*, mentioned in the preceding footnote.
- 59 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, p 24.
- 60 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, p 20.
- 61 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, pp 2, 12-14, 20-23.
- 62 Western Australian Legislative Assembly, Uniform Legislation and Intergovernmental Agreements Committee, *Uniform Legislation*.
- 63 The recommendations are listed at pages xvii-xviii of the report.
- 64 The Ministerial Office Memorandum was issued following a recommendation in a 2004 report of the former Uniform Legislation and General Purposes Committee (see Western Australian Legislative Council, Uniform Legislation and General Purposes Committee, *Uniform Legislation and Supporting Documentation*, recommendation 1, p 29).
- 65 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, pp 7-8.
- 66 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, p 6.
- 67 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, [Electronic Transactions Bill 2011](#), Report 60, March 2011. In that report, the WA Committee recommended that the Premier issue a Premier's Circular regarding uniform legislation emphasising the need to provide the Committee with supporting documents on the date of tabling a uniform Bill in the Parliament. Appendix 1 contains a copy of the letter from the WA Committee to the Premier, including suggested wording for such a circular.
- 68 Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, *Information Report: Scrutiny of Uniform Legislation*, pp 17-19. The WA Committee recently served a summons for supporting documents on the Western Australian Director General, Department of the Attorney General, for documents which had not been received within the requisite timeframe (see Western Australian Legislative Council, Uniform Legislation and Statutes Review Committee, [Criminal Appeals Amendment \(Double Jeopardy\) Bill 2011](#), Report 66, November 2011, p 2. Details of the summons are included in appendix 4 to that report. This was the first occasion a committee resolution on the subject of issuing a summons had been used.
- 69 Not available online. For a copy of this report, please contact the Queensland Parliamentary Library.
- 70 Hon Adele Farina MLC, Chairman of the Uniform Legislation and Statutes Review Committee, Western Australian Legislative Council, 'Bones without flesh – the issues with skeletal legislation', p 14.
- 71 Tasmanian Legislative Council, Government Administration Committee "B", [Report on Business Names \(Commonwealth Powers\) Bill 2011](#), August 2011, p 4.
- 72 Tasmanian Legislative Council, Government Administration Committee "B", *Report on Business Names (Commonwealth Powers) Bill 2011*, pp 7-9.

- ⁷³ Tasmanian Legislative Council, Government Administration Committee “B”, *Report on Business Names (Commonwealth Powers) Bill 2011*, p 19.
- ⁷⁴ Tasmanian Legislative Council, Government Administration Committee “B”, *Report on Business Names (Commonwealth Powers) Bill 2011*, p 20.
- ⁷⁵ Legal Affairs, Police, Corrective Services and Emergency Services Committee of the Queensland Parliament, [Report No. 4: Examination of Business Names \(Commonwealth Powers\) Bill 2011](#), October 2011, p 9.
- ⁷⁶ See <http://www.cmd.act.gov.au/policystrategic/igr>.
- ⁷⁷ Legal Affairs, Police, Corrective Services and Emergency Services Committee of the Queensland Parliament, *Report No. 4: Examination of Business Names (Commonwealth Powers) Bill 2011*, pp 21-22.
- ⁷⁸ Industry, Education, Training and Industrial Relations Committee of the Queensland Parliament, [Report No. 4: Education and Care Services National Law \(Queensland\) Bill 2011](#), October 2011, p 9.
- ⁷⁹ Industry, Education, Training and Industrial Relations Committee of the Queensland Parliament, *Report No. 4: Education and Care Services National Law (Queensland) Bill 2011*, pp 11-12. See also pp 21-22.
- ⁸⁰ The former Scrutiny of Legislation Committee reported, in its annual reports, on the number of Bills that had, as required by section 23 of the *Legislative Standards Act 1992*, included a statement that the bill was substantially uniform or complementary with legislation of the Commonwealth or another State and a brief explanation of the legislative scheme. Note that the information was not recorded in this way by the former committee prior to 2008/09.