

Parliamentary Counsel's Committee

Protocol on Drafting National Uniform Legislation

Fourth Edition: 21 February 2018

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1. Preliminary

- 1.1 The Parliamentary Counsel's Committee ("PCC") is a national committee representing the drafting offices in Australia and New Zealand. It comprises the heads of each of those drafting offices, with other drafters from those offices co-opted by their respective heads as required.
- 1.2 Appendix 1 contains the procedural arrangements under which PCC operates. Appendix 2 contains an article on the history of PCC. Appendix 3 contains a copy of the 2006 SCAG decision on uniform legislation that gave rise to this protocol, together with a paper prepared by the First Parliamentary Counsel of the Commonwealth which canvasses the reasons for inconsistency in national uniform legislation projects and which is referred to in the SCAG decision.
- 1.3 The national uniform legislation dealt with by PCC includes:
 - (a) national applied laws legislation (or "template" legislation) i.e. legislation enacted in one jurisdiction and applied (as in force from time to time) by other participating jurisdictions as a law of those other jurisdictions;
 - (b) national model legislation i.e. legislation that is drafted as model legislation and that 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);
 - (c) legislation of the States referring legislative power to the Commonwealth;
 - (d) legislation of a particular jurisdiction that is identified as legislation that will be followed in other jurisdictions (in this case, the matter can be added to the PCC agenda for settling as model legislation or for informal comments from other PCC members to promote uniform legislation in appropriate cases).
- 1.4 This Protocol concerns the legislation of Australian jurisdictions (i.e. the legislation of the Australian Parliament and the Parliaments of the States, Northern Territory and the ACT).
- 1.5 This Protocol is designed to promote consistency in national uniform legislation. It should be recognised however that, while the Protocol will be a useful tool, the most efficient mechanism for promoting consistency in legislation in a complex and changing world is the settling of the legislation through meetings of, and circulation of drafts among, PCC members representing all relevant jurisdictions. It should also be recognised that there is a significant level of consistency in the large number of national uniform legislation projects that have been implemented by the various Australian

jurisdictions. Some of the more significant areas of uniform legislation are listed on the PCC website [http://www.pcc.gov.au/uniform_legislation_official_versions.html]. The version of that list as at July 2014 is set out after Appendix 5.

- 1.6 PCC, through its members, also has a role in maintaining consistency of implemented national uniform legislation. Accordingly, when members draft local legislation that will impact on the complementary legislation of other jurisdictions, advice will be provided to other members of the proposed legislation (at least at the time of introduction or earlier if possible) so that any necessary consequential changes to that complementary legislation can be made.

2. Applied laws legislation

- 2.1 Applied laws legislation falls into 2 broad categories:

- (a) Legislation on matters that are generally within the States' legislative powers (eg health practitioners registration). In that case, the national "template legislation" is enacted in one State or Territory and applied in other States or Territories (it is no longer the practice for the Commonwealth to legislate for the Territories and the law applied in other States).
- (b) Legislation on matters that are generally within the Commonwealth's legislative powers. In that case, the national "template" legislation is enacted in the Commonwealth (for Commonwealth legislative matters) and applied in the States (for residual matters). In the case of a Territory, there is the option for the Territory to vacate the field and for the Commonwealth template law to apply expressly to the Territory.

- 2.2 Western Australia has taken a policy decision that it will not generally adopt the legislation of other jurisdictions as in force from time to time (other jurisdictions make similar decisions on particular legislative projects). When applied laws legislation is used for national uniform legislation, Western Australia (and those other jurisdictions) will enact consistent legislation and keep it up to date by subsequent amending legislation when the template legislation is amended.

- 2.3 In the case of Commonwealth template legislation, a policy decision is required as to whether the law is to be administered only by the Commonwealth or by both the Commonwealth and the States.

If the law is to be administered only by the Commonwealth, the States' application legislation will "federalise" the local law so that the Commonwealth and local laws can be administered as a single body of law by Commonwealth officials (or State officials appointed under Commonwealth legislation) using Commonwealth adjectival law (i.e. laws relating to the investigation and prosecution of criminal offences, laws relating to administrative appeals, laws relating to Ombudsman complaints/investigations etc). A typical example of a "federalised" uniform law is the Water Efficiency Labelling and Standards (New South Wales) Act 2005 (and the corresponding Acts of the other jurisdictions).

If the law is to be administered by both the Commonwealth and the States, the

practicalities of administration by State officials may require the enactment or application in each jurisdiction of local standard adjectival laws (particularly if the State officials use those local laws in the exercise of their other regulatory functions).

- 2.4 The proposed uniform national “template” law will be contained at the end of the Act of the host enacting jurisdiction and expressed to apply as a law of that jurisdiction, with legislation in other jurisdictions applying the legislation at the end of that Act as a law of that jurisdiction.
- 2.5 The national “template” law is drafted in non-jurisdiction specific terms (e.g. “this jurisdiction”, “the court”, “the appropriate regulatory authority” etc). The application provisions for the national “template” law in the host jurisdiction and in the applying jurisdictions provide local definitions for those terms when the national “template” law applies as a law of that jurisdiction.
- 2.6 The drafting of the national “template” law at the end of the Act (in non-jurisdiction specific terms) is relevant for those legislative projects that are identified and drafted as applied law national uniform legislation. It is not relevant in cases where the application of Commonwealth legislation is subsequently extended by State application legislation to cover some areas in which the Commonwealth legislation does not apply.
- 2.7 PCC has settled a precedent for applied national legislation. The precedent is set out in Appendix 5.

3. National model legislation

- 3.1 The objective of this model legislation is that it will be enacted in jurisdictions with any local variations that are necessary to achieve the agreed uniform national policy when the legislation forms part of the local law.
- 3.2 The model legislation can be drafted either:
 - (a) in non-jurisdictional specific terms, or
 - (b) as the law of a particular jurisdiction (usually that of the drafting office that undertakes the drafting on behalf of PCC), in which case the model legislation will note that local variations will be necessary when other jurisdictions enact the legislation.
- 3.3 Model legislation can be drafted with a view to a high degree of uniformity when implemented where the relevant Ministerial Council (or policy officers) have indicated that a high degree of uniformity is desired when the legislation is implemented in each jurisdiction (see SCAG decision in Appendix 3). Whether jurisdictions follow the model legislation when implementing the legislation is a matter for those jurisdictions (and not PCC). However, PCC members will ensure that in implementing the legislation the model is followed where issues of drafting only are involved.
- 3.4 Where model legislation comprises a mixture of core and non-core provisions (or requires the insertion of model provisions into an existing local Act), the Queensland Parliamentary Counsel has indicated that changes may be required due to drafting practices applied across the whole Queensland statute book, but that any changes would

be kept to a minimum.

4. Referral of powers legislation

4.1 Legislation of the States referring legislative power to the Commonwealth follows a relatively standard pattern that has been settled over the years. The legislation can either confer general authority to legislate with respect to a general matter described in the referral legislation (eg meat inspection legislation) or confer specific authority to legislate in the terms set out in the referral legislation (eg mutual recognition legislation).

4.2 Particular features include:

- (a) provision for the referral to be terminated by (or to terminate on a specified day unless extended by) an instrument issued by the Governor of the State (or by subsequent State legislation);
- (b) where authority is conferred to legislate in the terms set out in the referral legislation, provision on how that legislation may be amended etc by the Commonwealth in the future (eg by requiring a request from each of the referring States (the Australia Act). Alternatively, future amendments although not legally constrained can be subject of agreements between the Commonwealth and the States for Ministerial Council approval of changes;
- (c) 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 (eg the new Corporations legislation).

4.3 In recent times, the Commonwealth has been prepared to introduce its legislation once at least one of the States has introduced its referral legislation (with passage being delayed until at least one State's referral legislation is passed).

4.4 The Australian Constitution (para 51 (xxxvii)) enables a State, as an alternative to referral, to "adopt" a Commonwealth law enacted in reliance on a referral by other States (see for example the Victorian Mutual Recognition Act). A referral of power by participating States gives the Commonwealth greater flexibility in relation to the application of future changes and assists in ensuring that those changes commence at the same time in all jurisdictions.

5. Development of other forms of uniform legislation

PCC will consider whether it is feasible to develop other legislative schemes to assist in drafting and implementing national uniform legislation, in particular to overcome perceived deficiencies of applied law or national model schemes. It may be possible for a legislative project to deal with some provisions 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.

6. Drafting conventions for national uniform legislation

6.1 Uniform numbering of sections, parts and other components

- 6.1.1 Where Ministers have identified a legislative project as requiring a high degree of national uniformity, numbering for a stand-alone Act should be uniform. PCC and officers will consult on whether it is practicable for the particular legislation to adopt uniform numbering. If uniform numbering is adopted, the policy and drafting officers of each jurisdiction concerned will need to consider all relevant issues in their jurisdiction before the legislation is settled (so that appropriate gaps in numbering for necessary local variations are provided and the jurisdiction is able to adopt that numbering when the legislation is implemented). In some cases it may not be possible to determine whether uniform numbering is feasible until the draft is almost settled.
- 6.1.2 In order to facilitate the adoption of uniform numbering:
- (a) Gaps in numbering of sections, Parts and other components will generally be provided where a unique Commonwealth provision is required (e.g. to state the heads of legislative power to which the Commonwealth legislation applies) or where a significant number of the States/Territories require a provision not required by the Commonwealth or by the other States/Territories.
 - (b) If there is a gap in numbering, local jurisdictions will ordinarily include a note relating to the reason for the gap (e.g. Evidence Acts of the Commonwealth and of NSW).
 - (c) As an alternative to leaving gaps in numbering, jurisdictions that decide to legislate for additional provisions at the outset (whether as a matter of local policy or in order to ensure that the legislation will operate uniformly in the local jurisdiction) can use the drafting protocol adopted in the local jurisdiction for additional provisions included by future amending legislation (usually the preceding section number followed by “A”, “B” etc).
 - (d) Since Victoria does not have a short title section in its legislation, a purpose clause would be included as the first section of the national uniform legislation (this would form part of the local Victorian legislation, but in other jurisdictions a short title would be inserted as section 1 and the purpose clause transferred to the explanatory note or to the long title. Alternatively, if the other jurisdictions wish to enact the purpose clause as part of their legislation, the national model would leave a gap for the purpose clause (usually after or before the definition section) or the local jurisdiction would use an “A” number for the purpose clause.

6.2 Decimal numbering

- 6.2.1 In national consistent legislation, decimal numbering at the section level (to reflect the Part in which the section appears) will not be adopted. This is because such numbering is not used in most jurisdictions.
- 6.2.2 However, in large legislative projects in which Chapters are used to group significant legislative subject-matters, decimal numbering will be used for Parts (to reflect the Chapter in which the Part appears). Cross references to a Part will not mention the Chapter because of the unique Part number (eg “A reference in Part 2.3 to ...” instead of “A reference in Part 3 of Chapter 2 to ...”).

6.3 Numbering/terminology for different components of legislation

- 6.3.1 For Acts: Chapters, Parts, Divisions, Subdivisions, sections and Schedules - sequential arabic numerals.
 - 6.3.2 For Acts: within a section in order as follows:
 - Subsections - sequential arabic numerals in brackets
 - Paragraphs - sequential lower case letters in brackets
 - Subparagraphs - sequential lower case roman numerals in brackets
 - Sub-subparagraphs - sequential upper case letters in brackets [Note: this level to be avoided if possible]
- In the case of a schedule that forms part of an Act, the above applies except that provisions may (but need not) be referred to as clauses and subclauses (instead of sections and subsections). In addition, items may be used for a list of matters (each matter not consisting of a sentence).
- 6.3.3 For statutory instruments: similar numbering and terminology as for Acts ordinarily apply (although there are additional options at the section/subsection-equivalent level because of the different kinds of statutory instruments and other factors).
 - 6.3.4 A hyphen will not be used in the expression “subsection”, “subparagraph” etc

6.4 System for numbering additional sections etc when national uniform legislation is amended

- 6.4.1 In uniformly numbered national consistent legislation (and in other appropriate cases), the protocol for numbering the additional provisions will be as follows:
 - (a) For section and subsection numbers - the previous section or subsection numeral followed by sequential upper case letters i.e. A to Z, and then ZA to ZZ, and then ZZA to ZZZ etc. For sections added before section 1A, section 1AA may be used. For sections added after section 1A, sections 1AB, 1AC, 1AD etc may be used. Other numbering systems may be necessary where very extensive provisions are to be inserted into an Act.

- (b) For paragraphs: the previous paragraph letter followed by sequential lower case letters (all within the brackets) i.e. (a), (aa), (ab), (ac)....., (az), (aza)... (b), (c) etc
 - (c) For subparagraphs: the previous subparagraph roman numeral followed by sequential lower case letters i.e. (i), (ia), (ib), (ic)....., (iz), (iza)... (ii), (iii) etc
- 6.4.2 In order to avoid difficulties in numbering, existing sections etc can be re-numbered in appropriate cases (eg the insertion of a new section between an existing section and an “A” numbered section, particularly where the re-numbered section has not been the subject of significant case law and is not significantly cross-referred to in that or other legislation). Automatic re-numbering arrangements in local jurisdictions will not apply to uniformly numbered national consistent legislation.
- 6.4.3 Ordinarily, the Commonwealth uses “A” etc numbers or leaves gaps in numbering when amendments are made in the House during the progress of a Bill and the resulting Bill is not re-numbered to provide sequential numbering when it is passed. In most other jurisdictions, clauses are re-numbered when the final form of the Bill is known. In order to promote consistency of numbering in national uniform legislation, the Commonwealth will adopt the system of re-numbering in the case of any such legislation that is amended during passage to adopt nationally agreed changes to legislation that has been introduced.

6.5 Forward form of reference to components of sections

For national consistent principal (“stand-alone”) legislation that includes the Commonwealth and that is identified as requiring a high degree of uniformity, the Commonwealth will use the forward form of reference used as a matter of course in all State and Territory legislation (i.e “in section 4 (1) (a) (i)” rather than “in subparagraph 4 (1) (a) (i)”).

6.6 Sections and subsections to comprise one sentence

The use of two or more sentences in a section or subsection is to be avoided, but may be justified in some circumstances.

6.7 Interpretation Acts

When implementing national uniform legislation, the Interpretation Act of the local jurisdiction will not be dis-applied (even if it is a case requiring a high degree of uniformity) in favour of the Interpretation Act of a selected jurisdiction or by enacting special Interpretation Act provisions for the particular legislation. This is because Interpretation Acts in many jurisdictions contain “adjectival” legislation that in other jurisdictions is contained in separate legislation or the general law (eg conferring the incidents of corporate status on incorporated State bodies; declaring the application of the law of the jurisdiction to the coastal waters of the jurisdiction; providing for the electronic or other publication and parliamentary disallowance of statutory instruments

etc). However, in applied law (or template) legislation it is usual to enact a separate schedule for the interpretation of words or phrases in the applied law (or in some cases to apply the Interpretation Act of the enacting template jurisdiction for that purpose).

Since the application of Interpretation Acts is subject to any contrary intention in the legislation, national uniform legislation should as far as practicable avoid relying on special definitions in an Interpretation Act (apart from standard provisions relating to the singular including the plural etc.). PCC will seek to identify any special case in which a provision of a local Interpretation Act is being relied on if the differences in the Interpretation Act of other jurisdictions will necessitate local variations in the model national legislation to maintain uniformity in policy outcomes.

Following an earlier request from the Standing Committee of Attorneys General, PCC is developing a set of uniform Interpretation Act provisions to be applied to the interpretation of national uniform laws.

6.8 Criminal offences

The Commonwealth, ACT and NT have a criminal code based on the MCCOC model. Criminal offences in those jurisdictions will (because of the general principles of criminal responsibility in Chapter 2 of the Code) have different consequences to criminal offences drafted in the same terms in the other jurisdictions. In particular, if there is no mental element expressed for an element of an offence (and it is not declared to be a strict or absolute liability offence) a default mental element of intention or recklessness applies under the Code. National uniform legislation should as far as practicable be drafted so that relevant mental elements are specified (rather than relying on the default fault element) and cases of strict or absolute liability identified. When implementing national consistent legislation in a local jurisdiction, PCC members will seek to draft provisions in a way that achieves the same policy result.

6.9 Penalty units

Because of differences in current levels of the value of penalty units among jurisdictions and the potential for further variations to occur, national uniform legislation will use dollar amounts to express the amount of monetary fines for offences. PCC considers it would be confusing to adopt a unique penalty unit figure for national uniform legislation and it does not seem likely that the jurisdictions will adopt a standard amount of penalty unit as a matter of policy. In legislation that does not require a high level of uniformity, the local jurisdiction could substitute a level of penalty unit under its local legislation that reflects the agreed dollar amount in the model legislation (even though future changes in the value of a penalty unit in the local jurisdiction may result in a different applicable monetary fine).

In any case, the local jurisdiction could refer to penalty units, but define a penalty unit for the purposes of that legislation at a level that will correspond to the agreed dollar amount in the model legislation.

National uniform legislation should make it clear that levels of penalties are the maximum penalty that may be imposed (eg by prefacing the penalty with the words “Maximum penalty: \$x”).

6.10 Location of definitions

The use of dictionaries at the end of the legislation (instead of definitions being included in a section at the beginning of the legislation) is to be avoided. However, some jurisdictions (eg Queensland) have a standard practice of using dictionaries in all its legislation. In the implementation of the legislation in a jurisdiction in that case, the definitions in the uniform legislation may be transferred to a dictionary (with the definition clause at the beginning used to refer to the dictionary). The referral form of definition (eg “dog” - see section 6) is permissible, particularly where separate sections are used to explain key concepts of the legislation (rather than their inclusion in a long list of defined terms).

6.11 Provisions authorising the amendment of legislation by regulation or other disallowable subordinate instrument

Provisions of Acts that permit the Act to be directly amended by regulation or other disallowable subordinate instrument are to be avoided in national uniform legislation. The avoidance of those provisions does not extend to powers conferred by Acts for the use of statutory instruments to exempt or exclude persons or things from the application of all or any of the provisions of the Act or allow other modifications of the operation of the Act (the conferral of powers of that kind is a policy matter).

6.12 Uniform explanatory notes

PCC is available to settle a common explanatory note that is prepared for national uniform legislation (particularly where Ministers have identified a legislative project as requiring a high degree of national uniformity).

In some cases, the drafter may be in a position to assist officers in the preparation of the explanatory note during the drafting process.

6.13 Special drafting formats and devices

Special drafting formats and features have been developed in some jurisdictions in order to improve legislation (eg the use of examples set out in different type and format within legislation). Some of these special formats and devices cause difficulties when published using local drafting tools or when displayed on the official websites maintained by parliamentary counsel offices to provide public access to legislation. The inclusion of these special formats and devices will be subject to any such publishing limitation and to agreement that they will improve the intelligibility of the uniform legislation.

6.14 Notes in the text of legislation

In some jurisdictions, notes that do not form part of the official text of the legislation are included in legislation to point to relevant provisions in that or other legislation or to provide other useful editorial information to assist in the understanding of the legislation. Although this practice is not uniform among jurisdictions, the use of such editorial notes will be permitted (but not used excessively) in national uniform legislation. Provision will be included in the legislation to explain the status of the notes (so that they have a common effect in all jurisdictions).

In addition, editorial or drafting notes are also utilised in the agreed text of uniform legislation to indicate a matter to be taken into account by a local jurisdiction when implementing the legislation or to provide necessary information about the operation of the uniform legislation that can be transferred in due course to the explanatory note for the implemented legislation or other explanatory document.

6.15 Human rights

Most jurisdictions have formal and informal arrangements to ensure that appropriate consideration is given to human rights in the development, drafting and Parliamentary consideration of proposed legislation and the interpretation of enacted legislation. These arrangements extend to national uniform legislation (eg the Commonwealth, Victoria and ACT are required to table statements of compatibility with all new Bills introduced into Parliament; most jurisdictions have scrutiny of Bills committees that formally report on human rights issues arising under proposed legislation; drafting offices generally have informal and sometimes legislatively mandated requirements and processes to ensure consideration of human rights issues during the drafting of legislation). In Victoria and ACT, their human rights legislation will require an interpretation of legislation that favours the Charter of Human Rights set out in their human rights legislation. That interpretation of legislation is not excluded in the case of national uniform legislation. Accordingly, if the policy of uniform legislation might be inconsistent with human rights, the uniform legislation will need to be explicit to ensure a uniform interpretation across jurisdictions.

6.16 Headings to sections

In some jurisdictions headings to sections form part of the text of the Act, and in others they do not. The drafting of national uniform legislation will need to take account of that difference.

The use of headings in the form of questions will be avoided.

6.17 Official Dictionary

PCC will use the Macquarie Dictionary for reference in drafting Australian legislation.

6.18 Plain english

Plain english drafting (which has been the approach adopted in all Australian jurisdictions for some time) will apply to national uniform legislation. The principles of plain english drafting have been developed over time and are formally set out in the policy documents and drafting directions issued by drafting offices.

6.19 Miscellaneous matters of style

PCC will generally adopt the following:

- (a) Subsection headings will be avoided.
- (b) Bullet points will be avoided in primary legislative text.
- (c) Paragraphs will end with a semi-colon.
- (d) References to a Part or Division will be capitalised (subject to any particular local variation).
- (e) References to a Part or Division will be in the form “Division x of Part x” (subject to any particular local variation).
- (f) “He or she” should be avoided if possible, but “their” is not to be used as a singular pronoun.
- (g) “For the purposes of section x” will be used and not “For section x”.
- (h) The designated PCC drafter will use the formatting style used for legislation in the local drafting office. Jurisdictions can use their own formatting style when enacting the legislation (but not change the text of the agreed legislation).
- (i) For national uniform legislation that is applied by other jurisdictions, the host jurisdiction will include savings and transitional provisions in the principal legislation and not in amending legislation.
- (j) Where legislation of another jurisdiction is applied as a law of a jurisdiction, it will be expressed to apply “as if it were an Act”.
- (k) Definitions in national uniform legislation of a “corresponding law” will be defined as a law of another jurisdiction that corresponds to the relevant enacted law, and includes a law of another jurisdiction that is prescribed by the regulations as a corresponding law. This formulation is intended to keep national laws up-to-date with changes in legislation in other jurisdictions – the prescription of a corresponding law is not intended to be used as a matter of course but only to remove doubt.
- (l) The application of the Commonwealth Criminal Code will be considered on a case by case basis. It is appropriate for a Commonwealth law that is applied by the States and administered by the Commonwealth, but not for a law that is separately administered in each jurisdiction and does not involve the Commonwealth.

7. Source site for national uniform legislation

- 7.1. SCAG has decided (at its meeting on 9-10 November 2006) that where possible for each model legislation project a particular text is to be used as the central model for the preparation of implementing legislation in each jurisdiction. Accordingly, there is a need (for Ministerial Council projects) to identify the agreed version of national uniform legislation.
- 7.2. The PCC Secretariat (currently NSW PCO) maintains as part of the records of PCC copies of reports containing the settled draft of national uniform legislation submitted to and approved by Ministerial Councils.
- 7.3. PCC Secretariat has established and maintains the PCC website [<http://www.pcc.gov.au>] on which the agreed official version of national uniform legislation can be posted for public access (once it is established that the relevant Ministerial Council has approved the public release of the legislation).
- 7.4. The PCC website also lists Acts of jurisdictions implementing agreed uniform legislation.
- 7.5. Appendix 4 shows screenshots from the website.

Appendix 1 Procedure of the Parliamentary Counsel's Committee

The PCC provides a forum for the preparation of uniform and model legislation. It consists of the heads of the offices of Parliamentary Counsel for the Commonwealth, the States, the ACT, the Northern Territory and New Zealand and the head of the Office of Legislative Drafting for the Commonwealth. The Secretariat is presently located in NSW and the Secretary to the Committee is Mr Don Colagiuri (ph: 02 9321 3300, fax: 02 9232 4796, email: don.colagiuri@pco.nsw.gov.au).

Initiation of project. The PCC receives its work in 3 principal ways:

1. Projects specifically referred to the PCC from time to time by the Council of Australian Governments (COAG). These projects are initiated by a letter from the COAG Secretariat to the PCC Secretary that describes the outcome desired and indicates the name and contact details for the lead instructing officer for the project. The PCC Secretary places the matter on the PCC agenda and circulates any relevant material to other members of the PCC.
2. Projects received from Ministerial Councils or from national governmental bodies, seeking the drafting of uniform or model legislation. These projects are initiated by a letter from the person or body concerned to the PCC Secretary that describes the outcome desired and indicates the name and contact details for the lead instructing officer for the project. The PCC Secretary places the matter on the PCC agenda and circulates any relevant material to other members of the PCC. In some cases, it may be necessary for PCC to first discuss whether it is appropriate for PCC to accept the reference.
3. Projects placed on the PCC agenda by one or more of its members. This happens when Parliamentary Counsel, individually or collectively, are assigned a project which they consider warrants or would benefit from collective consideration and discussion. These projects are initiated by contacting a member of the Committee who may request the PCC Secretary to place the matter on the PCC agenda and circulate any relevant material to other members of the PCC.

Allocation of work. Some drafting projects involve all or most jurisdictions, while others involve fewer jurisdictions. There is a lead drafter for each project. The PCC Secretary seeks volunteers for the project and the PCC decides which jurisdiction will provide the lead drafter.

Drafting process. The lead drafter may need to discuss the approach (both general and detailed) of a draft with the lead instructor and in these circumstances may give a preliminary draft to the lead instructor for comment to check that the draft is on the right track. Drafts are circulated by the lead drafter to other Parliamentary Counsel for comment. Parliamentary Counsel will not, as a general rule, provide these drafts to local instructors as these drafts are at the developmental stage and the intention is that the lead drafter will, as a result of comments received from other Parliamentary Counsel, be able to refine the draft before it is released as the PCC draft. It is the responsibility of the lead instructor to circulate the draft to instructors generally.

PCC Report. When a draft is settled by the PCC, a formal report, with the draft attached, is provided to the Ministerial Council or other body that requested the legislation. The report may draw attention to any matter of concern to the PCC.

Timing. It is desirable that the lead instructor keep the lead drafter informed of the priority of the particular exercise. While all reasonable efforts will be made to settle drafts within the desired timetable, the contingencies of parliamentary programs and differential timing of peak work periods may not make this possible.

Confidentiality. PCC treats its work with the same high level of confidentiality that applies to the ordinary work of Parliamentary Counsel. Instructions to Parliamentary Counsel, and drafts or other advice provided by Parliamentary Counsel, are subject to legal professional privilege and that privilege is not waived by the circulation of instructions, drafts or other advice among PCC members.

Appendix 2 History of the Parliamentary Counsel's Committee (Article by Dennis Murphy, former Parliamentary Counsel NSW, for inaugural edition of PC News and Views newsletter)

Introduction

The Parliamentary Counsel's Committee provides an important forum for legislative drafters in Australia and New Zealand. It is appropriate in this inaugural edition of the newsletter to record some information about its origins, membership and role.

Origins

The heads of legislative drafting offices in Australasia were of course in contact with each other before the establishment of the Committee. There were a number of exercises involving uniform or complementary legislation (including for example companies and hire purchase legislation), and it was inevitable that there would be many occasions when legislative counsel would communicate or confer.

The earliest record of the work of the Committee is a report by a conference of drafters held on 20-25 February 1970 in accordance with a direction given by Attorneys-General at a meeting in December 1969. The conference was attended by drafters from the Commonwealth and most States, and resulted in the establishment of the Committee.

Drafters again met on 8 July 1970, and it was reported to Ministers at their meeting in that month that drafters discussed in particular systems for the programming of legislation.

When Ministers met in Sydney in March 1972, they adopted recommendations that where uniform legislation is to be prepared, the matter be referred to the Committee and that the source of further instructions for the draftsman be identified.

During the 1970s, legislation was prepared by the Committee on a variety of subjects, including the interchange of powers between the Commonwealth and the States; domicile; family law (invalidity of orders by *Russell v Russell*); recognition of foreign adoptions; reciprocal enforcement of probation and parole orders; consumer credit; and carriers' liability.

It is interesting that the question of a uniform Food Act was on the agenda by May 1979. How history repeats itself!

Membership of the Committee

The Committee originally consisted of the heads of the Offices of Parliamentary Counsel for the Commonwealth, the States, the Australian Capital Territory, and the Northern Territory. The head of the New Zealand Parliamentary Counsel Office and the head of the Office of Legislative Drafting for the Commonwealth later became members. Secretariat functions are provided by New South Wales.

Role of the Committee

The Committee provides a forum for the preparation of uniform or complementary legislation, the promotion of consistent styles of legislation in Australia and New Zealand and the exchange of ideas.

The Committee receives its work in two principal ways, and it is convenient to classify its work according to these.

The first class of the work of the Committee consists of projects specifically referred to it from time to time by the Standing Committee of Attorneys-General. The relationship with the Attorney-Generals no doubt arises from the historical and on-going relationship between individual Parliamentary Counsel's Offices and the Attorney-General in each jurisdiction. In earlier times Parliamentary Counsel often formed part of or was a branch within the Attorney-General's Department or its equivalent and in modern times have generally been answerable to the Attorney-General. However, in recent years ministerial responsibility in a number of jurisdictions has shifted to other portfolios. For example, in New South Wales it presently lies with the Premier.

The second class of work consists of matters brought to the Committee by one or more of its members. This happens when Parliamentary Counsel, individually or collectively, are assigned a project which warrants or would benefit from collective consideration and discussion. This is the way the Committee sometimes receives work from Heads of Government and other ministerial councils or from other governmental authorities seeking the enactment of uniform or model legislation. There has been a tendency in recent years for much of the work of the Committee to be referred to us by persons or bodies other than the Standing Committee of Attorneys-General, though such work is sometimes formally referred through the Standing Committee or its officers.

Any member of the Committee is at liberty to put an item on the Committee's agenda. Such an item may be for information only or to exchange ideas, or it may result in a co-operative drafting project involving most if not all members of the Committee.

There has been a suggestion that the second class of work is not part of the work of the Committee as such, but is rather a class of work being considered and dealt with by Parliamentary Counsel collectively outside the formal operations of the Committee. This distinction has not led to any practical consequences, but would be relevant in instances where responsibility for the policy of a particular project of the Committee will lie with Heads of Government or other authorities and their officers, and not the Standing Committee and its officers.

Some drafting projects involve all or most jurisdictions, while others involve fewer jurisdictions. The role of lead drafters is normally assigned by the Committee. Volunteers are called for. Co-location of the lead instructing officer is sometimes a relevant consideration in assigning responsibility for drafting.

Some at least of our work also involves model legislation that may not necessarily be adopted either in whole or in part by all jurisdictions. This means that for some members some projects may be of little or no concern.

To maintain its reputation, the Committee needs to produce work of a high quality and as quickly as possible. The contingencies of parliamentary programs inevitably mean that at some

times of year individual members are forced by pressure of work to “delegate to other members”.

The differential timing of peak work periods makes it very difficult to schedule meetings at all, let alone on a regular basis. Perhaps this does not really matter as quite a large percentage of Committee work is now fairly efficiently carried out on paper. Nevertheless, the Committee does aim to meet 3 or 4 times a year.

The Committee has established and supported drafters’ conferences and the Information Technology Forum, which has developed into a valuable resource for all members of drafting offices.

Value of the Committee

The Committee has prepared a very considerable amount of draft uniform or complementary legislation. Recent projects include cross vesting; crimes at sea; forensic procedures; cross-border workers compensation; and (again) food law.

Experience has shown that the collective discussion of draft legislation in this forum has been most useful. Members of the Committee are well-known to each other, and legislative matters are discussed in a friendly and frank way, with the application of the highest drafting principles. There can be no doubt that the work of the Committee has made a major contribution to Australian legislation.

The success of conferences such as the Information Technology Forum, and the Drafting Forum in New Zealand in February 2000, suggests that members of the Committee would continue to support future similar conferences and other means by which members of Australasian drafting offices can stay in contact and develop and share their professional skills.

Acknowledgment

The author thanks Rowena Armstrong (Victoria) and Marion Pascoe (NSW) for their invaluable assistance in the preparation of this paper.

Appendix 3 SCAG decision on uniform legislation and paper by Commonwealth PC

At its meeting on 9-10 November 2006, Ministers:

- (a) noted the paper at Attachment “A” prepared by the Commonwealth’s First Parliamentary Counsel “*Consistency in model legislation*”.
- (b) noted that the Parliamentary Counsels Committee (PCC) had agreed to prepare a document that sets out relevant drafting practices to consider when drafting model or uniform legislation.
- (c) agreed to adopt the following high level principles to encourage consistency for future SCAG model legislation:
 - 1. SCAG decide at the outset for each model legislation project the level of drafting consistency that is required, including consistent numbering where practicable, and include the decision in the drafting instructions;
 - 2. SCAG decide where possible for each model legislation project a particular text to be used as the “central model” for the preparation of implementing legislation in each jurisdiction;
 - 3. Jurisdictions report to SCAG on how they implement model legislation for future projects including an explanation of any departures from the “central model” when it has been agreed that a high degree of consistency or uniformity is required.
- (d) agreed in principle to minimise policy difference in implementing SCAG model legislation wherever that can be achieved.

Differences between model legislation - paper prepared for SCAG by Commonwealth First Parliamentary Counsel

Background

- 1 There are a wide range of areas where States and Territories, sometimes in conjunction with the Commonwealth, enact model legislation to deal with particular issues or to cover particular fields. Various people have commented on the fact that, even though there is an intention that each State and Territory should enact the same legislation, the legislation often varies between jurisdictions.
- 2 Recently, the Commonwealth Attorney-General (Mr Ruddock) raised this matter with me after he had been spoken to at a legal function. I understand that the particular legislation that was raised with him was the Legal Practitioners legislation but that it was put forward as a general problem. I understand that he was advised that the cause of the differences was the different drafting approaches of the different Offices of Parliamentary Counsel.
- 3 This paper looks at some reasons why this occurs and ways that the differences can be minimised.

The causes of differences

Overview

- 4 It is clear that there are often differences between the versions of model laws that are introduced by different jurisdictions. In some cases, these differences are quite minor. In others the differences are quite substantial.
- 5 The causes of these differences include:
 - (a) political decisions to implement different policies;
 - (b) different legislative environments (eg different interpretation Acts, other existing legislation);
 - (c) legislation being implemented in different forms (eg as part of existing legislation or as stand-alone legislation);
 - (d) legislation being introduced at different stages during a policy's development;
 - (e) later changes in policy;
 - (f) differences in numbering;
 - (g) differences in legislative drafting styles between drafting offices.
- 6 Each of these causes is examined in detail below.

Political decisions to implement different policies

- 7 Australia's federal system of Government makes it almost inevitable that there will be different political positions adopted on certain issues. As legislation must be agreed to by the Government of each State and Territory and the Commonwealth and then passed through each Parliament, it is common for changes to be made to the model Bills to accommodate different policies.
- 8 At its most extreme, this results in a State or Territory or the Commonwealth not passing the model legislation at all.
- 9 At the other end of the spectrum, the legislation passed will vary in a small number of ways.
- 10 Political decisions about consultation are also relevant. If governments will not allow draft legislation to be circulated (either at all, or within a realistic timeframe) then it is more difficult to achieve uniformity.

Different legislative environments (eg different interpretation Acts, other existing legislation)

- 11 Each jurisdiction has its own existing legislative environment. This will often impact on the detail of uniform legislation.
- 12 For example, each jurisdiction has its own Acts Interpretation Act (or similar). While these are largely consistent, there are differences. This will mean that a clause in an Act in one jurisdiction that is worded identically to a clause in an Act of another jurisdiction may have a different operation.
- 13 In such cases it is necessary that:
 - (a) the text of the model legislation be altered in one of the jurisdictions to ensure that the operation is the same in each; or
 - (b) the interpretation legislation of one jurisdiction be overridden for the purposes of the model legislation; or
 - (c) it be accepted that the provisions, while worded identically, will have a different operation.
- 14 Clearly, none of these is an optimal result and the one that is preferable will vary from case to case.
- 15 At the Commonwealth level, there may be constitutional issues that require some divergences from model laws. For example, the need to link provisions to a constitutional head of power may require additional or slightly different provisions. Provision may need to be made for compensation if property is acquired other than on just terms. Legislation involving taxation may need to comply with Commonwealth constitutional requirements, which can lead to presentational differences.
- 16 Another area of difference that can have major impacts on model legislation is the structure of the criminal law. This can require differences in the way that offences are drafted and impact on the effect of provisions dealing with such things as infringement notice schemes. However, compromises can be made in some cases—for example, in clarifying the legislation relating to research involving embryos and human cloning, the Commonwealth expressly included mental elements (which is not the approach preferred by the criminal

law area of the Commonwealth Attorney-General's Department) in recognition that this would occur at State level.

- 17 When the range of legislation that may impact on model legislation is considered (particularly general criminal law) it seems unrealistic to expect that jurisdictions will agree to ensure that all such legislation is consistent.
- 18 Another issue is that jurisdictions may take different views of the legal position in relation to certain matters. For example, the view of the effect of the Wakim case has resulted in different review mechanisms under certain South Australian complementary legislation. Applications for review under certain SA Acts are made to the District Court of SA, while other States confer jurisdiction on the AAT.

Legislation being implemented in different forms (eg as part of existing legislation or as stand-alone legislation)

- 19 Some model legislation (such as the evidence legislation) is enacted as a stand-alone Act. Other model legislation is included as a part of existing legislation on a related topic. For example, legislation relating to controlled operations that was enacted in Victoria as a stand-alone Act is currently being drafted for inclusion in the Commonwealth Crimes Act.
- 20 Where model legislation is included as a part of existing legislation on a related topic there may be ways in which the model legislation needs to fit with the existing concepts in that legislation. It is very likely that these concepts will vary from jurisdiction to jurisdiction. Consequently, this may lead to the uniform model legislation being implemented in slightly different ways. For example, the Commonwealth is currently drafting legislation based on model laws relating to assumed identities. The model laws relate only to law enforcement agencies. The existing Commonwealth provisions that are being replaced relate also to intelligence agencies. OPC has been instructed that the provisions are to be based on the model laws, but are still to cover intelligence agencies. This means that the Commonwealth provisions will differ in some respects from the model laws.

Legislation being introduced at different stages during a policy's development

- 21 It is extremely difficult, due to the timing of sittings and elections in different jurisdictions, for legislation to be introduced at the same time in every sittings.
- 22 This need not be a problem where the model legislation is settled before it is introduced into the first jurisdiction and then not changed until it has been introduced in all jurisdictions.
- 23 However, in many cases the time lag between introduction in the first and last jurisdiction is such that the policy has changed and, consequently, the model legislation has changed.
- 24 This has been a particular problem with the Legal Practitioners model legislation. The model has never been finally settled and, as a consequence, the legislation in different jurisdictions reflects the policy that was current at the time that the legislation was introduced into the various jurisdictions.

Later changes in policy

- 25 Policy in nearly all areas is constantly developing. This causes a particular problem for model legislation as any changes need to be incorporated into the legislation of numerous jurisdictions.
- 26 As mentioned, this can take a substantial amount of elapsed time.
- 27 The two options that are available are to:
- (a) accept that there will be differences in the legislation during the period of change; or
 - (b) delay the start of any change until the last jurisdiction has its legislation in place.
- 28 The second option, while ensuring that consistency is maintained, is often considered unacceptable.

Differences in numbering

- 29 In many model legislation projects where stand-alone legislation is being adopted there will be particular clauses that are not required by some jurisdictions or that are only required by a small number of jurisdictions.
- 30 If the legislation in each jurisdiction were simply numbered sequentially, the inclusion (or exclusion) of such clauses from particular versions of the legislation would mean that the numbering of corresponding clauses would not match.
- 31 Historically, there has been resistance to introducing Bills into Parliaments (or to enact Acts) that have missing numbers or that have numbers with A, B etc. This was overcome in the uniform evidence legislation. The NSW, Commonwealth and Tasmanian legislation use numbering that ensures that corresponding provisions have the same section number. The Victorian Gene Technology Act, which was enacted after the Commonwealth Act, achieved consistent numbering by leaving gaps or, where necessary, using alphanumeric numbers.
- 32 Obviously, achieving consistent numbering is not possible if the model legislation is implemented through amendments of existing legislation rather than through stand-alone legislation.

Correcting technical deficiencies

- 33 A technical deficiency may be identified in model laws. The drafter must then decide whether to draft the (deficient) model law or correct the deficiency.

Differences in legislative drafting styles between drafting offices

- 34 The legislative drafting styles of all Australian offices is substantially consistent. There are, however, differences between offices and differences between drafters within offices.
- 35 I believe that it is recognised by PCC that it is important when drafting model legislation to ensure that such differences cause the minimum number of changes possible from the model legislation. However, there have been cases in the past where the drafting styles of

particular offices, or particular drafters, have led to changes to model legislation.

Addressing the causes

Political decisions to implement different policies

- 36 Where there is known to be a difference with one or more jurisdictions on a basic part of the policy of a model scheme, there is little that can be done other than proceed with the scheme in those jurisdictions that do agree. In some cases, other jurisdictions may join the scheme at a later time.
- 37 Where there is general agreement on the model scheme but there are differences on certain aspects, it is desirable to identify those aspects early in the policy development and drafting process. If this is done, it may be possible to construct the policy and the legislation so that those areas that are agreed can be consistent while allowing areas of difference to be identified as such. This assists users of the legislation, as they do not have to guess whether the differences are intentional or not.
- 38 A process for achieving this may be to ensure that there is a version that is agreed on as “the central model” even if not all jurisdictions agree to implement the complete model. When implementing their particular version of the model, jurisdictions could highlight the differences that have been made to the central model and the reasons for those differences.
- 39 SCAG officers could then report on how each piece of model legislation had been implemented in each jurisdiction.

Different legislative environments (eg different interpretation Acts, other existing legislation)

- 40 As each jurisdiction has its own legislative framework, it will often be necessary for jurisdictions to make minor changes to model legislation to ensure that it operates correctly in each jurisdiction.
- 41 A difficulty for users of legislation, and those who are involved in the policy and legislation development process, is knowing why changes have been necessary.
- 42 Having a version that is agreed on as “the central model” would assist users to be aware of where changes have been made. When implementing their particular version of the model, jurisdictions could highlight the differences that have been made to the central model and the reasons for those differences.
- 43 There will be a number of areas (for example, the description of offences) where changes will regularly have to be made for particular jurisdictions. It would assist those developing the policy (and those preparing the legislation) if these areas were documented.
- 44 In some projects, such as the model legal profession legislation, a conscious decision will be made about what needs to be uniform. Where this is done, the decision needs to be clearly documented so that it can guide the development of the legislation in the various jurisdictions.

Legislation being implemented in different forms (eg as part of existing legislation or as stand-alone legislation)

- 45 As part of the process of developing model legislation, a conscious decision should be made about the importance of the legislation being in the same form in different jurisdictions.
- 46 In some cases this will be very important, in others it will not be.
- 47 It should be noted when doing this that implementation as part of existing legislation is likely to result in greater differences between jurisdictions than implementation as stand-alone legislation.

Legislation being introduced at different stages during a policy's development

- 48 Where the policy is continuing to change, it is important that decisions be made early in the process about how some level of consistency will be maintained.
- 49 This may require jurisdictions to agree to delay introduction of any version of the model legislation until there is an agreed version.
- 50 Decisions will then need to be made about how changes to that model will be subsequently incorporated into the legislation of each jurisdiction.

Later changes in policy

- 51 At the time that the original model legislation is developed, consideration should be given to how later changes in policy will be implemented in the various jurisdictions that have adopted the model legislation.
- 52 It is suggested that a protocol be developed on how future changes will be dealt with for each piece of model legislation. Those protocols would need to take into account the realities of the elapsed time that it takes for legislation to be implemented in a number of jurisdictions. It would therefore need to determine whether changes should take effect as each jurisdiction makes them or only when all relevant jurisdictions have made them.

Differences in numbering

- 53 I believe that there should be an acknowledgement of the desirability of having uniform section numbering where model legislation is implemented as stand-alone legislation and that all parties should work to achieving this in future model legislation.
- 54 There will, of course, be some cases in which uniform numbering is not important or not desirable. In these cases, a positive decision that this is the case should be made and recorded.
- 55 Where model legislation is incorporated into another Act, it is unlikely that uniform section numbering will be achievable.

Correcting technical deficiencies

- 56 Where technical deficiencies are detected in model legislation, the jurisdiction that is implementing the model will need to determine whether to correct that deficiency at the time that the legislation is initially implemented.
- 57 Whether or not the technical deficiency is corrected at that time, the jurisdiction should raise the deficiency with the officers group responsible for the model legislation and seek a change to the model legislation.
- 58 This may, in turn, necessitate changes to versions of the model legislation as enacted in other jurisdictions.
- 59 It needs to be noted that delaying the implementation in a jurisdiction until agreement can be reached on a technical deficiency may result in an unacceptable delay in the introduction of the model legislation in that jurisdiction. This would need to be weighed against the desirability of maintaining consistency across jurisdictions.

Differences in legislative drafting styles between drafting offices

- 60 I believe that the members of PCC, as heads of each of the Australian drafting offices, should work to ensure that in future such changes do not occur. This may require providing flexibility in relation to normal office standards and also providing guidance to those drafters involved in model legislation projects.

Use of legislation picked up by reference

- 61 An approach that lends itself to much greater consistency is for one jurisdiction to implement the model legislation and then for each other jurisdiction to pick this up by reference (with or without jurisdiction specific modifications).
- 62 I am aware that the Parliaments in some jurisdictions do not like this approach. However, if consistency of model legislation is a key objective, this is probably the best way to achieve it as any changes from the model must be specifically legislated by a particular jurisdiction.
- 63 This approach also enables changes to the model to be able to be implemented much more quickly than is possible if each jurisdiction has implemented its own legislation.
- 64 A disadvantage to this approach is that it can reduce access to legislation as the model legislation may not be included in statutory databases for the other jurisdictions. If this approach was to be used more commonly, those responsible for the databases would need to consider how access could be assisted.

Conclusion and summary

- 65 There is obvious benefit in keeping model laws as consistent as possible between jurisdictions. There are, however, a range of factors that work against this. The goal should be to ensure that unnecessary factors do not impede consistency.
- 66 I believe that instructors, PCC and individual drafters in Australian drafting offices should work to reduce as many of the differences as possible. This may involve being flexible on

drafting approaches and trying to encourage instructors to be satisfied with the policy approach that has been adopted under the model law.

67 It is recommended:

- (a) that PCC recognise that obtaining consistency in model legislation is a goal that we should be striving for;
- (b) that for each model legislation project a particular text (which may or may not be the text of the legislation for a jurisdiction) is specified as the central model;
- (c) that SCAG officers report on how model legislation has been implemented in each participating jurisdiction including an explanation of all variations from the text of the central model;
- (d) that, unless it is inappropriate in the particular case, uniform numbering be used where model legislation is implemented as stand-alone legislation;
- (e) that instructing officers, in consultation with PCC, develop a protocol for each piece of model legislation setting out the level of consistency that is expected in the project, the way in which the model legislation will be implemented in each jurisdiction and the approach that will be taken to implementing later changes in policy;
- (f) that drafting offices develop material setting out the areas in which legislation implemented in their jurisdiction is likely to vary from model legislation;
- (g) that consideration be given to implementing as many model legislation schemes as possible through legislation that is enacted by one jurisdiction and picked up by others.

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First Parliamentary Counsel
Office of Parliamentary Counsel

Appendix 4 Website - Agreed text of uniform legislation

URL <http://www.pcc.gov.au/>

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Australasian Parliamentary Counsel's Committee

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Appendix 5 Applied national law – PCC precedent

[Topic] National Law Bill 2008

NOTE: This precedent has been settled by the Parliamentary Counsel’s Committee for use in national consistent legislation using an applied law model (including for use in enacting an agreed uniform law set out separately in the local Act). The precedent deals mainly with the “local application provisions” or “front end” of the legislation, namely the provisions giving effect in the local jurisdiction to the uniform national law (either as set out at the end of the local legislation or as set out at the end of the legislation of the host jurisdiction). Jurisdictions may need to make local variations to the local application provisions to reflect their general drafting style (eg Victoria would not have a short title but a purpose clause instead; the style of short title and commencement clauses differ between jurisdictions). Uniform clause numbering of the local application provisions is not required (uniform numbering of the national law is achieved by each jurisdiction applying the national law that starts with clause 1). The model also caters for those cases in which some jurisdictions prefer to apply a particular national law as in force from time to time in the host jurisdiction but the other jurisdictions prefer to enact that national law in their own legislation.

A Bill for

An Act relating to [topic].

[Topic] National Law Bill 2008

The Legislature of [Name of enacting jurisdiction] enacts:

1 Short title

This Act is the [Topic] National Law Act 2008.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed under subsection (1) for the commencement of different provisions of the [Topic] National Law set out in this Act.

OR [when applying the law of the host jurisdiction]

- (2) Different days may be appointed under subsection (1) for the commencement of different provisions of the [Topic] National Law set out in the [Topic] National Law Act 2008 of (Insert name of host jurisdiction).

Note: Despite local practice, provision should not be made for default commencement if the Act has not been commenced after a stated period, and any local legislation that provides for automatic commencement of Acts after a stated period should be excluded.

3 Definitions

- (1) For the purposes of this Act, the local application provisions of this Act are the provisions of this Act other than the [Topic] National Law set out in this Act.
- (2) In the local application provisions of this Act:
[Topic] **National Law** (Insert name of enacting jurisdiction) means the provisions applying in this jurisdiction because of section 4.
- (3) Terms used in the local application provisions of this Act and also in the [Topic] National Law set out in this Act have the same meanings in those provisions as they have in that Law.

[Topic] National Law Bill 2008

OR [when applying the law of the host jurisdiction]

3 Definitions

(1) In this Act:

[Topic] **National Law** (Insert name of enacting jurisdiction) means the provisions applying in this jurisdiction because of section 4.

- (2) Terms used in this Act and also in the [Topic] National Law set out in the [Topic] National Law Act 2008 of [Insert name of host jurisdiction] have the same meanings in this Act as they have in that Law.

4 Application of [Topic] National Law

(1) The [Topic] National Law set out in this Act:

- (a) applies as a law of this jurisdiction, and
- (b) as so applying may be referred to as the [Topic] National Law (Insert name of enacting jurisdiction), and
- (c) applies as if it were an Act.

[Topic] National Law Bill 2008

OR [when applying the law of the host jurisdiction]

4 Application of [Topic] National Law

- (1) The [Topic] National Law, as in force from time to time, set out in the [Topic] National Law Act 2008 of [Insert name of host jurisdiction]:
 - (a) applies as a law of this jurisdiction, and
 - (b) as so applying may be referred to as the [Topic] National Law (Insert name of enacting jurisdiction), and
 - (c) applies as if it were an Act.

Note: Some jurisdictions that apply the law of the host jurisdiction may wish to include provision for the disallowance by their Parliament of future amendments to the National Law enacted by the host jurisdiction. In that case, the amendment would cease to have effect in that applying jurisdiction from the date of disallowance (in the meantime, as with regulations, the amendments would have effect).

4A Uniform application of nationally approved amendments to the [Topic] National Law [Optional—For use by jurisdictions that enact the national law instead of applying the law of a host jurisdiction as amended in the future, but wish to ensure the co-ordinated and timely amendment throughout Australia of the national law without the necessity and delay of local Parliamentary amendment of the law]

- (1) In this section, nationally approved amendment means an amendment of the [Topic] National Law that is of a kind that has been approved by the relevant Ministers of the participating jurisdictions [OR by the Ministerial Council (as defined in the National Law)].
- (2) The Governor may, by regulation [or other form of local disallowable instrument], amend the [Topic] National Law set out in this Act to give effect in this jurisdiction to any nationally approved amendment.

Note: Under the law of the local jurisdiction, the disallowance of a regulation etc by either House of Parliament has the same effect as a repeal and will restore the National Law in the local jurisdiction as if the amending regulation etc had not been made.

[Topic] National Law Bill 2008

5 Meaning of generic terms in [Topic] National Law for purposes of this jurisdiction

In the [Topic] National Law (Insert name of enacting jurisdiction):

Court means the [eg Supreme Court of enacting jurisdiction].

the regulatory authority means ...[eg the Department of Fair Trading].

this jurisdiction means [Insert name of enacting jurisdiction].

6 Exclusion of legislation of this jurisdiction

The following Acts (or parts of Acts) of this jurisdiction do not apply to the [Topic] National Law (Insert name of enacting jurisdiction) or to the instruments made under that Law:

- (a) [here insert reference to local Interpretation Act, having regard to enactment of uniform interpretation provisions in the National Law]
- (b) [depending on the terms of local legislation, provisions for staged repeal of statutory instruments may need to be excluded, and any other legislation that is inconsistent with the operation of the applied law as a national uniform law]
- (c) [if a local legislature so determines, provision for dis-application of other local provisions by regulation under this Act could be included here]

7 Local provisions

[here insert any necessary local provisions, such as repeal or amendment of existing legislation, transitional provisions, any special modification or addition to the Law in its application to the local jurisdiction as is contemplated by the relevant Intergovernmental agreement etc.]

[Topic] National Law Bill 2008

[Topic] National Law

1 Short title

This Law may be cited as the [Topic] National Law.

2 Commencement

This Law commences in a jurisdiction as provided by the Act of that jurisdiction that applies this Law as a law of that jurisdiction.

National regulations

Note: The national regulations are to be a separate form of law made under the national law and are not to be local regulations of the host jurisdiction that are applied as the law of other jurisdictions (in the same way as orders, directions etc made under the national law).

- (1) For the purposes of this section, the designated authority is
[Options include: the relevant Ministers of the participating jurisdictions; the relevant Ministerial Council (if referred to in the National Law); the Governor of the host jurisdiction acting with advice of the Executive Council of that jurisdiction and on the recommendation of the Ministerial Council]
- (2) The designated authority may make regulations for the purposes of this Law.
- (3) In particular, the regulations may make provision for or with respect to the following:
 - (a)
 - (b)

[here list any specific matters for which uniform regulations may be made]

 - (#) any other matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Law.
- (4) The regulations are to be published.....[Options include: in accordance with the arrangements approved by the designated authority; in accordance with the arrangements for the publication of the making of regulations in the host jurisdiction; in accordance with the

[Topic] National Law Bill 2008

arrangements for the publication of regulations made under a Commonwealth Act].

(5) A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

Parliamentary scrutiny of national regulations

- (1) A regulation made under this Law may be disallowed in a jurisdiction by a House of the Parliament of that jurisdiction in the same way that a regulation made under an Act of that jurisdiction may be disallowed.
- (2) If a regulation is so disallowed, it ceases on the date of its disallowance to have any effect in that jurisdiction, but the disallowance does not affect the application of the regulation in any other jurisdiction.

Interpretation Act provisions

Schedule # contains provisions relating to the interpretation of this Law.

Note: The following would be covered in the uniform Interpretation Schedule that applies to the Law:

- (a) The application of the Law to the coastal waters of a jurisdiction.
- (b) The reading down of the Law so as not to exceed the constitutional reach of the local legislature (no special "Hughes" clauses would be required in the local application legislation).
- (c) The extra-territorial application of the Law.