



**Parliamentary Counsel's Office
Department of the Attorney General**

Discussion Paper

Enhanced Reprint Powers for Western Australian Legislation

December 2016

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Introduction

An important responsibility of government is to provide public access to accurate, up-to-date and reliable versions of legislation in a timely and efficient manner. This responsibility stems from the principles that everybody is presumed to know the law, and that ignorance of the law is no excuse. Neither of these principles can operate fairly and effectively if the law is not made publicly accessible.

In Western Australia, this responsibility is carried out by the Parliamentary Counsel's Office (PCO) and the State Law Publisher (SLP). Individual Acts as passed and reprints of Acts with their amendments incorporated are published in hard copy and made available through SLP. Bound volumes of Acts passed each year are also made available. Subsidiary legislation as made is generally published in full in the *Gazette*, which is published in both hard copy and electronic forms.

Reprints of Acts and subsidiary legislation are prepared by PCO under the authority of the *Reprints Act 1984* and printed and published by SLP. PCO maintains the electronic versions of WA legislation made available on the WA Legislation Databases (the **WA legislation website** at www.legislation.wa.gov.au), although this website is hosted by SLP. However, at present only legislation (including reprints) published in hard copy form has official status. Electronic versions of the *Gazette* and the electronic versions of legislation published on the WA legislation website have no official status.

There is a need to make the processes for publishing WA legislation more efficient and cost-effective, improve public access to WA legislation and reduce the cost to government of publishing WA legislation. PCO therefore proposes that the processes for publishing WA legislation be modernised by:

- replacing the current requirement to publish subsidiary legislation in full in the *Gazette* with publication on the WA legislation website;
- giving WA legislation compilations prepared by PCO in electronic form the same status that statutory reprints in printed form now have;
- extending the powers available under the *Reprints Act 1984* to the preparation by PCO of all electronic versions of WA legislation.

The Government has not yet considered this proposal, and no final decision has been made to proceed with it. However, PCO is currently developing the proposal for consideration by the Government.

As part of that process, PCO has been considering the adequacy of the powers in the *Reprints Act 1984* and whether enhancements to those powers are needed to ensure that versions of WA legislation made available to users (including electronic versions on the WA legislation website if they are given official status) are accurate and up-to-date and reflect current WA legislative drafting practice.

An initial analysis of the powers in the *Reprints Act 1984* suggests that those powers are not as comprehensive or useful as powers available in some other Australasian jurisdictions.

The purpose of this discussion paper is to set out proposals for the expansion of the powers available to PCO when compiling reprints of WA legislation and to invite submissions on those proposals.

The proposals outlined in this discussion paper have been developed by PCO for the purposes of consultation and do not represent the settled position of the Government.

Submissions

PCO invites submissions on the proposals outlined in this discussion paper. PCO also welcomes any additional comments regarding the enhancement of WA reprint powers.

Please include in your submission the following details about you:

- name
- organisation
- contact details.

All submissions are received on the assumption that the maker of the submission and the content of the submission can be made public. If you do not want your name as the maker of a submission made public, please state this in your submission.

Submissions can be made in any of the following ways:

Online survey

Complete the survey online [[click here](#)]

Email

Send your submission to reprintsurvey@pco.wa.gov.au.

Post

Send your submission to:

Parliamentary Counsel's Office
Level 29, David Malcolm Justice Centre
28 Barrack Street
Perth WA 6000

Attention: Reprints submission

The closing date for submissions is **Friday 27 January 2017**.

Proposals for enhancement of reprint powers

Background

The *Reprints Act 1984* sets out various powers that can be exercised by PCO when compiling a reprint of WA legislation. The exercise of these powers reduces the need for Parliament to spend its valuable time considering amendments to legislation that are essentially minor and technical in nature and do not change the substance of the law, but nonetheless help to improve the accessibility of the law. Indeed, an important limitation on the exercise of these powers is that any changes cannot alter the operation or effect of the legislation.

Current powers in *Reprints Act 1984*

The current WA reprint powers as set out in section 7 of the *Reprints Act 1984* are limited in a number of key respects:

- while they allow the updating of citations to WA legislation where those citations have changed, there is no corresponding power in relation to laws of other jurisdictions that might be referred to in WA legislation;
- they make no provision for the updating of language indicative of gender;
- they do not permit the correction of cross-referencing errors or the renumbering of legislative provisions;
- there is little in the way of powers that would allow the making of format changes to bring WA legislation into line with current legislative drafting practice.

Other jurisdictions

Legislative drafting offices in a number of other Australasian jurisdictions have extensive statutory powers to make editorial and other changes when preparing reprints (also called consolidations) of legislation. Those powers tend to be broader and to provide greater flexibility than the powers available to PCO. A common theme in other jurisdictions is to allow changes to be made for the purpose of achieving consistency with current legislative drafting practice in the particular jurisdiction. The *Reprints Act 1984* does not contemplate changes of this kind.

An overview of the relevant legislation in other jurisdictions is set out in [Attachment 1](#).

Striking a balance

Any expansion of reprint powers needs to be carefully considered in order to strike the right balance between 3 matters:

- the maintenance of the integrity of the legislative process by which only Parliament, and those to whom legislative powers are delegated by Parliament, can enact and change the law;
- the need for the law to be written in a way that makes it readily understandable by those to whom it applies and those who must administer it;

- the responsibility of government to provide public access to accurate, up-to-date and reliable versions of legislation in a timely and efficient manner.

Proposed enhancements of reprint powers

The proposals for the enhancement of the WA reprint powers deal with powers that fall into 2 broad categories:

- powers to make editorial changes to legislation;
- powers to make changes to the format or layout of legislation to conform with current drafting practice.

It needs to be emphasised that, as is the case with the current WA reprint powers, any additional reprint powers would need to be exercised with caution and only in appropriate circumstances. The overriding principle has to be that any change made as the result of the exercise of reprint powers cannot alter the operation or effect of the legislation. This principle is currently reflected in the *Reprints Act 1984*, and no change is proposed.

A. Powers to make editorial changes

Editorial changes are changes made to the text of a law to update its content, to bring it into line with current drafting practice or to correct errors.

1. Updating references to law of other jurisdictions where citation has changed

The *Reprints Act 1984* permits a change to the citation of a WA Act or of WA subsidiary legislation if the citation has been changed. There is currently no power to update the citation of a law of another jurisdiction. This is to be contrasted with the approach in other jurisdictions where the relevant powers are framed more broadly so as to cover laws of the Commonwealth, other States, Territories and, in some instances, New Zealand.

Proposal 1

The WA reprint powers be expanded to allow the updating of a reference to the law of another Australasian jurisdiction in cases where the citation of the law has changed.

2. Updating references to law where law has been replaced

Several jurisdictions confer power to change a reference to a law or a provision of a law in circumstances where the law or provision has been replaced by another law or provision. The concept of a law is defined to include a law of another jurisdiction. There is no corresponding power in the *Reprints Act 1984*.

Proposal 2

The WA reprint powers be expanded to allow the updating of a reference to a law (including a law of another Australasian jurisdiction) or a provision of a law in cases where the law or provision has been replaced.

3. Expressions indicating gender

PCO has recently moved to a gender-free drafting style, which requires that WA legislation, to the extent appropriate, be expressed in terms that are inclusive of all persons so as to avoid provisions that assume each individual has a specific gender. Other jurisdictions allow expressions indicating gender to be changed for consistency with current drafting practice.

Example

Change:

A person must not obstruct a police officer in the exercise of his or her powers under this Act.

to:

A person must not obstruct a police officer in the exercise of the officer's powers under this Act.

Proposal 3

The WA reprint powers be expanded to allow expressions indicating gender to be changed to conform with current drafting practice.

4. Numbering and renumbering

Several jurisdictions have powers that allow the numbering and renumbering of legislative provisions. Powers of this kind could prove useful in the reprinting of WA legislation, especially where the relevant enactment has been extensively amended so that it contains complex and confusing numbering.

Proposal 4

The WA reprint powers be expanded to allow the numbering and renumbering of provisions.

5. References to things that have been replaced

The *Reprints Act 1984* currently authorises WA legislation to be updated if there has been a change to the name, style or title of a person, office, place or other thing. However it does not cover circumstances where something referred to in legislation has been replaced by something else. Some other jurisdictions (for example, Queensland and Tasmania) expressly deal with this issue and permit the updating of references to things in circumstances where those things have been replaced.

Example

If a body called the Water and Rivers Board is replaced by a body called the Water Resources Commission, references to the first body can be changed to references to the second body.

Proposal 5

The WA reprint powers be expanded to allow the updating of references to things that have been replaced.

6. Grammar, spelling and punctuation

The *Reprints Act 1984* authorises the correction of errors or inconsistencies in spelling, grammar or punctuation. In the case of inconsistency, a limiting factor is that the inconsistency has to arise in the legislation that is being reprinted. Broader powers are available in other jurisdictions to make changes to grammar, spelling or punctuation for consistency with current drafting practice.

Proposal 6

The WA reprint powers be expanded to allow changes to be made to grammar, spelling or punctuation to conform with current drafting practice.

7. References to provision of law

A number of other jurisdictions have power to change the way a provision of a law is referred to in order to achieve consistency with current drafting practice. The power in the *Reprints Act 1984* is restricted to situations where an error or anomaly in the way in which a provision is referred to can be identified. A widening of the power so that it permitted changes for consistency with current drafting practice would result in a more flexible approach.

Example

A reference to Division 2 of Part 5 can be changed to Part 5 Division 2.

Proposal 7

The WA reprint powers be expanded to allow changes to the way in which a provision of a law is referred to for conformity with current drafting practice.

8. Minor or technical errors

The powers available in other jurisdictions to correct errors in legislation tend to be much broader than the powers available under the *Reprints Act 1984*. Examples of the errors dealt with in other jurisdictions are:

- typographical or clerical errors;
- grammatical and spelling errors;
- punctuation errors;
- cross-referencing or numbering errors;
- errors in alphabetical ordering;
- errors in references to legislation or legislative provisions;
- errors in or arising out of a legislative amendment.

Proposal 8

The WA reprint powers be expanded to allow the correction of errors of a minor or technical nature.

9. Obsolete or redundant provisions

Several jurisdictions permit the omission of obsolete or redundant provisions in legislation. These powers go further than the *Reprints Act 1984* which deals specifically with the omission of expired, spent, repealing, saving or transitional provisions.

Proposal 9

The WA reprint powers be expanded to allow the omission of obsolete or redundant provisions in WA legislation.

10. Incorporation of certain provisions contained in amending legislation

The current practice in PCO is to include validation, saving and transitional provisions and provisions of a similar nature in principal legislation. However, historically, provisions of this kind have been set out in amending legislation instead of the legislation being amended. The provisions are “homeless” in that they do not form part of the legislation to which they relate and are therefore difficult to find. Other jurisdictions confer power to incorporate these provisions in the relevant principal legislation and it would be useful if a similar power were available in WA.

Proposal 10

The WA reprint powers be expanded to allow validation, saving, transitional and similar provisions contained in amending legislation to be incorporated in the legislation to which the provisions relate.

11. Consequential changes

As other jurisdictions have recognised, a power to make changes that are consequential on other changes made in the exercise of editorial powers is an important adjunct to the conferral of those powers.

Proposal 11

The WA reprint powers be expanded to allow the making of changes that are consequential on other changes made in the exercise of editorial powers.

B. Powers to make format or layout changes

12. Format or layout changes

A number of jurisdictions confer specific powers to make changes in respect of the format or layout of legislation for the purposes of reprinting. As with editorial changes, there is usually the constraint that changes of this kind can only be made for the purpose of bringing the legislation into line with current drafting practice. The powers under the *Reprints Act 1984* are comparatively limited in this respect.

It would be useful to mirror the approach in other jurisdictions and allow format or layout changes to WA legislation for consistency with current drafting practice.

Proposal 12

The WA reprint powers be expanded to allow format or layout changes to be made to WA legislation to ensure conformity with current drafting practice.

ATTACHMENT 1

Statutory powers for consolidation or reprinting of legislation in other Australasian jurisdictions

Commonwealth

The *Legislation Act 2003* Part 2 authorises the First Parliamentary Counsel (FPC) to make editorial and other changes to an Act or legislative instrument when preparing a compilation of the Act or instrument, as long as those changes do not alter the effect of the Act or instrument.

The concept of an editorial change is broadly defined in the Commonwealth Act and includes a number of matters that do not fall within the ambit of the current WA reprint powers. Importantly, the FPC can only make an editorial change if the FPC considers that the change is desirable to bring the legislation into line, or more closely into line, with legislative drafting practice being used by the Office of Parliamentary Counsel, to correct an error or to ensure that a misdescribed amendment is given effect to in the way intended.

The Commonwealth Act authorises the making of other changes described as presentational changes. These are changes relating to the format, layout or printing of an Act or instrument. As with editorial changes, the FPC can only make a presentational change if the FPC considers that the change is desirable to bring the legislation into line, or more closely into line, with legislative drafting practice being used by the Office of Parliamentary Counsel.

New South Wales

The *Interpretation Act 1987* section 45E contains limited powers with respect to changes that can be made to legislation published on the NSW legislation website. Most notably, it authorises changes to the format (but not the text) of legislation in order to conform with "current styles in the State".

Victoria

The *Interpretation of Legislation Act 1984* section 54A gives the Chief Parliamentary Counsel power to authorise alterations to Acts or statutory rules to give effect to listed formatting changes. The powers available are not as extensive as the current WA reprint powers.

Queensland

The *Reprints Act 1992* Part 4 sets out comprehensive powers to make changes to legislation on a reprint. They are possibly the broadest powers of any Australasian jurisdiction and allow both textual and formatting changes to be made, often in order to achieve consistency with current legislative drafting practice.

The Queensland Act defines current legislative drafting practice as current Queensland legislative drafting practice.

South Australia

The *Legislation Revision and Publication Act 2002* section 7 lists alterations that can be made when legislation is revised. It also allows further kinds of alteration to be prescribed by regulation.

The section authorises a number of changes (including to spelling, numbering and formatting) to achieve “consistency with current practice or uniformity in style”.

Tasmania

The *Legislation Publication Act 1996* Part 3 contains extensive powers to alter a law for the purposes of compiling a reprint of the law. It also authorises regulations to prescribe further changes that can be made to a law on a reprint.

The Tasmanian Act defines current legislative drafting practice as the legislative drafting practice for the time being in use in Tasmania.

Australian Capital Territory

The *Legislation Act 2001* Chapter 11 authorises both editorial amendments and format or layout changes to be made when preparing a law for republication. The concept of an editorial amendment is broadly defined. Amendments and other changes to a law are only permissible if they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice. This is similar to the formulation used in the Commonwealth Act.

The ACT Act defines current legislative drafting practice as the legislative drafting practices from time to time used in the Parliamentary Counsel's Office.

Northern Territory

The Northern Territory does not have any comprehensive reprint legislation. The *Amendments Incorporation Act* allows for some limited changes to be made on the reprint of an Act or regulations.

New Zealand

The *Legislation Act 2012* Part 2 makes provision for both editorial changes and format changes to be made on a reprint of legislation. In many cases, changes are authorised so as to be consistent with current drafting practice.

The New Zealand Act defines current drafting practice as the legislative drafting practice for the time being used by the Parliamentary Counsel Office.