

*Joint Standing Committee on Delegated Legislation — Second Report — Annual Report 2021*

Resumed from 16 June.

*Motion*

**Hon MARTIN PRITCHARD:** I move —

That the report be noted.

As a member of the committee, I think it is beholden on me to make some comments about the annual report, even though in most cases the annual reports are fairly dry. I would like to make a couple of comments. I will not go through the whole committee, but I would like to make a special mention of the chair, Geoff Baker, MLA, and member for South Perth, and the deputy chair, Hon Lorna Harper of this chamber. I think they have done a magnificent job this year and during this reporting period. It has obviously been a challenging year because of COVID-19 and because many of the meetings were over Zoom. I want to pay my respects to the chair for being able to handle that in a particularly incorporative way, allowing all members to make a contribution.

I also want to mention and welcome Hon Steve Martin, who will be joining this committee, according to the report from the Leader of the House this morning. I look forward to working with him.

I also want to pay my absolute respects to the advisory officer and the committee clerk, who have a lot of other responsibilities and are able to do this job as well. I think they have done a remarkable job this year.

I want to make a couple of points. I will not go through the whole report; I do not think that is necessary. I want to go to chapter 2.3 on page 4 of the annual report, which notes the breakdown of issues and concerns we had with the devices that came before the committee. Of the concerns about the instruments that came before us, about 66 per cent were drafting errors. I can understand that. Many of the instruments that come before us are local laws that are put together by municipalities that often do not have the expertise required. Often one area will do a draft regulation and other municipalities will tend to follow suit because it is easy. That creates a domino effect, with the same issue arising over a number of different instruments that come before the committee.

I also want to point out that, unfortunately, a lot of the instruments that come before us are about cats. I hope that the Cat Act might be updated at some point so that it is a little bit clearer to local municipalities what they actually can do in their regulations and local laws. I hope that at some point next year this government might address that legislation.

I want to make a point about access to Australian–New Zealand standards. Most local laws reference standards at some point. It is obviously an easy way to make sure things are done to a certain standard in Western Australia. There are standards for all manner of things and a lot of local laws refer to standards. A previous committee raised the issue of access to Australian Standards and did a lot of work to try to make sure people could easily access them free of charge. Members may have read about this in a previous report, but basically the rights to Australian Standards were sold to SAI Global and the money was used to make more standards and such. SAI Global charges our communities to access those standards. It became particularly difficult to access the standards, it was expensive and people could not share that information. For instance, an electrician could access the standards after paying a fee, but the next person wanting to access them would also have to pay a fee. It became very, very expensive, so there was a view to try to free up access to Australian Standards. This committee took a lead in that. A number of the local laws come before the committee, and the committee often raises this issue with local councils, asking whether they make local standards available free of charge when they reference them. We spent a lot of time trying to make sure that local councils do that because people should know what the law is and they should have free access to the law. That should not be made more difficult by having to pay a fee for access.

Those are the two main things I want to raise about this report. It is a fairly standard report that reports on all the work the committee has done. I must say, most of that work was done by the advisory officer and the committee clerk. I think a lot of committee members find out that a lot of the work is done for them and that the committee makes determinations and decisions based on the work of the advisory officer and the committee clerk. I want to thank them again for the amount of work they have done. I think the committee is working particularly well. Again, I want to thank the member for South Perth for the way in which he has conducted the meetings, making us all feel very included. I commend the report.

**Hon NICK GOIRAN:** It is not ordinarily the case that I would rise to speak on the work of the hardworking Joint Standing Committee on Delegated Legislation; however, I would like to bring to members' attention something that has occurred recently. The context is the tabling statement that accompanied this particular annual report. The member tabling the report in this house, which I presume must have been the deputy chair said, amongst other things, the following —

The committee scrutinises instruments made under statutory delegation and determines whether the instruments are beyond the scope of the delegated power, or are otherwise in breach of the committee's terms of reference.

One of the matters that was brought to the attention of the Joint Standing Committee on Delegated Legislation was an instrument by the name of the "Public Trustee's Scale of Fees" for 2022–23. This matter went before the committee. I was interested to hear the remarks by Hon Martin Pritchard, who is of course a member of this committee. He identified that from time to time the committee's analysis picks up typographical errors and things of that sort. When it came to the "Public Trustee's Scale of Fees" for 2022–23, I understand the committee identified what is described as a typographical error. As I understand the sequence of events, keeping in mind that I have never served on this committee, the committee identified the error and then the Attorney General or at the very least the Department of Justice responded to the committee in some fashion. I understand that they acknowledged what the committee had found—that there was indeed a typographical error—and gave some form of undertaking. I understand it is the ordinary custom and practice that when these types of things are identified, departments will give an undertaking to the committee. In this instance, an undertaking was given on 13 September that the typographical error contained in clause 23 would be corrected within six months.

I raise this issue because in this particular instance the committee appears to be doing exactly what the tabling statement indicated. The committee scrutinised instruments made under statutory delegation—in this instance the scale of fees for the Public Trustee—and determined whether the instruments were beyond the scope of the delegated power or otherwise in breach of the committee's terms of reference. Might I suggest, deputy chair, that this warrants some form of inquiry. It is all well and good for the Joint Standing Committee on Delegated Legislation to pick up a typographical error in the "Public Trustee's Scale of Fees" for the current financial year; however, would it not be good if the eight members of this committee, on behalf of the people of Western Australia, were able to do more on the "Public Trustee's Scale of Fees" for 2022–23 than merely identify a typographical error? I do not say that to criticise the committee because it appears that it is simply operating within its terms of reference. However, there is a great controversy occurring at the moment about the fees the Public Trustee is charging Western Australians. So much so, that it has led the Western Australian Auditor General to make a number of findings, including the shocking finding that trust fees did not always reflect actual work effort.

Consider that for a moment. The Public Trustee of Western Australia is the person of last resort who is utilised to assist people with financial matters. Financial decisions are made by the Public Trustee on behalf of persons who may not have the capacity to make those financial decisions themselves—for example, a minor under the age of 18 years who has a sum under trust. The Public Trustee charges a fee for that service. Remember that the Standing Committee on Delegated Legislation has been considering the scale of fees. In other words, what fees are able to be charged by the Public Trustee for the coming financial year? It has identified a typographical error. Fair enough. There was one and the Attorney General says that he will fix it sometime in the next six months. But what about the quantum of the fees themselves? The Auditor General said that the trust fees did not always reflect actual work done. The Auditor General also said —

Trust clients are not provided with a clear and easy to understand explanation of the fees that are more likely to be charged to their account.

Hon Peter Rundle in the other place has taken up this matter and pleaded with the Attorney General to do something about it. I understand, as it has been relayed to me, that at first instance the Attorney General indicated that there was some appetite for it to be referred to a standing committee of the other place. In more recent times when Hon Peter Rundle has raised this matter again with the Attorney General, he has been quickly rebuffed and told that will not be happening. The problem I have here is that we have an eight-person Joint Standing Committee on Delegated Legislation that, apparently, because of the narrow terms of reference is not permitted to look into these things. I assume that that is the case and a member of the committee will correct me if that is not the case. I assume that when it looks at the scale of fees for the Public Trustee, apart from looking for typographical errors, which it is allowed to do, I assume unless a committee member tells me otherwise, under the terms of reference it is not able to look at the quantum of those fees and whether the fees that are proposed by the Public Trustee are fair and reasonable. I assume that it is not able to do that because if it were able to do that, one would think the committee would have made some comment about that and possibly even rejected the instruments. I assume it is because of the committee's narrow terms of reference that it is not able to do that.

The question I am putting this afternoon is: is that in the best interests of Western Australia? Might it be time for us to inquire into or reconsider the terms of reference of the Standing Committee on Delegated Legislation so that it can do more than what has happened in this instance? It seems to make a mockery of the system if this hardworking committee of eight members of Parliament is able only to identify a typographical error. Meanwhile the Auditor General of Western Australia is saying, "Hang on a second; the fees that are being charged are not necessarily reflecting actual work done." Those who are following this matter closely know that following some questions that the opposition has asked, the Premier has now instructed Treasury to do something about this. As

was identified earlier by the Leader of the Opposition in this place, we had an annual report hearing with the Department of Treasury just last week. It was identified that it is indeed working on this, but it is going to take some time. I forget exactly when it said that that was coming to an end, but I think it was March or May next year that we might see something occur.

I simply ask whether perhaps the Standing Committee on Procedure and Privileges or some other appropriate body might like to give this matter some consideration, because it seems to me this is a classic case in point. If we have eight members of Parliament who are doing their job but are allowed to look only at the typographical error, and the Auditor General has found something very significant with regard to the quantum of fees, surely we need to look at widening the committee's terms of reference so that it can look into these substantive matters.

**Hon MARTIN PRITCHARD:** I take a little exception to the language of the previous speaker with regard to looking only at typographical errors. That is obviously one of the things that the committee looks at. It looks at a number of other things. If we turn to the back of the report, we see that paragraph 10.6 states —

In its consideration of an instrument, the Committee is to inquire whether the instrument —

- (a) is within power;
- (b) has no unintended effect on any person's existing rights or interests;
- (c) provides an effective mechanism for the review of administrative decisions; and
- (d) contains only matter that is appropriate for subsidiary legislation.

The committee does a little more than just look at typographical errors. I was not going to do so, but I will go into more detail on the breakdown of the issues raised during this reporting period. Of those issues, 66 per cent were “drafting errors”, which does not necessarily mean a typo. There can be significant drafting errors, such as a reference to wrong legislation. The advisory clerk does a very good job of looking through and checking all the reference points within the instruments that come before us, so it is a bit more than just drafting errors.

If we look at the issues that were raised during the reporting period, we see that 369 disallowable matters came before the committee and, of the ones that had issues, 12 per cent of them were identified as “beyond power”. This refers to when a local government wants to extend its powers beyond what this chamber allows it to do. Keeping in mind that the delegated legislation committee is really just an extension of this chamber, we asked it to keep an eye on what powers we have delegated to local governments and ensure that those local governments do not go beyond what we, as a chamber, would want them to do. Twelve per cent of the issues identified were “beyond power”. For two per cent, the issue was “uncertainty”, and for another 12 per cent, it was “access to standards”. If we are talking about costs, a previous iteration of this committee and the current committee have been trying to achieve a situation in which access to standards is free.

**Consideration of report adjourned, pursuant to standing orders.**

**Progress reported and leave granted to sit again, pursuant to standing orders.**