



**STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS**  
**SUBCOMMITTEE INQUIRY INTO PUBLIC SECTOR EXPENDITURE**

Hon Colin Barnett MLA  
Premier  
24<sup>th</sup> Floor, Governor Stirling Tower  
197 St Georges Terrace  
PERTH WA 6000

24 March 2009

Dear Premier

**Inquiry into Public Sector Expenditure**

Thank you for your letter dated 11 March 2009.

In the letter you note that the Standing Committee on Estimates and Financial Operations subcommittee inquiry into Public Sector Expenditure (**the Committee**) has not invited Hon Troy Buswell, Treasurer, to appear before the Committee.

The Committee is established under, and is proceeding in accordance with, the rules of the Legislative Council.

I **enclose** a copy of the ruling of Hon Nick Griffiths MLC, President of the Legislative Council, dated 21 August 2007 on Legislative Assembly members appearing before Legislative Council committees.

The President ruled on when a Legislative Council committee should request a Legislative Assembly member to appear before the committee, and when a Message shall be sent to the Legislative Assembly to request that the Assembly give leave for the member to attend. The President ruled:

*This procedure by request should not be used in cases where the conduct of individuals may be examined, adverse findings may be made against individuals or disputed matters of fact may be under inquiry. For such cases I am of the view that that [sic] the formal process of Message and authorisation should be employed.*

I note that the Houses of Parliament were not sitting at the time the Committee was scheduling its hearings, making it therefore impossible to send a Message to the Legislative Assembly seeking leave for the Treasurer to appear. However, the Committee has corresponded with the Treasurer in relation to this inquiry. In December 2008 the Committee invited the Treasurer to provide a submission to the inquiry. The Treasurer responded to this request in February 2009.

The Committee has conducted a hearing with Mr Tim Marney, Under Treasurer, on Tuesday, 24 March 2009 and invited Hon Barry House MLC, Parliamentary Secretary to the Treasurer (the Treasurer's representative in the Legislative Council) to appear at this hearing. Hon Barry House MLC advised that he was unable to attend the hearing. As you will be aware, it is the usual practice of the Standing Committee on Estimates and Financial Operations to invite the representative minister (if the minister is a member of the Legislative Council) or a minister's parliamentary secretary in the Legislative Council to hearings.

Now that the hearing has occurred, the Committee will consider whether to conduct a hearing with the Treasurer. If a decision is made to call the Treasurer, the Committee will then determine the appropriate course to adopt to secure the Treasurer's appearance before the Committee.

Your letter also raises several issues as to whether the Committee is conducting itself efficiently and effectively and requests that the Committee reviews whether or not it should proceed.

Scrutiny of the estimates of expenditure and the financial operations of government is a major function of the Legislative Council. Review of the committee system in 1997 and 2005 led to changes in the area of the Legislative Council's consideration of the annual estimates of expenditure and the financial operations of Government, the most recent changes resulting in the establishment of the Standing Committee on Estimates and Financial Operations.

The functions of the Standing Committee on Estimates and Financial Operations are to consider and report on matters relating to the estimates of expenditure laid before the Legislative Council each year and the financial administration of the State. As a standing committee this committee conducts hearings in relation to the State Budget throughout the year. Under its broad terms of reference, the Committee is also authorised to initiate investigations and other own motion inquiries into any aspect of the financial administration of the State. The Committee, as a subcommittee of the Standing Committee on Estimates and Financial Operations, has all the powers of that committee.

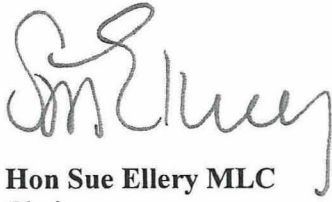
The Committee has received advice from the Treasurer that Government agencies have been asked to apply a three per cent efficiency dividend from 1 January 2009. This clearly falls within the scope of matters the Standing Committee on Estimates and Financial Operations, and its subcommittees, may inquire into.

Given the advice from the Treasurer, the suggestion in your letter that the Committee is inquiring into matters yet to be determined in the Budget is not accurate.

The Committee is operating well within its role and is entitled to inquire into the implementation of a decision already made by the Government.

Please contact Ms Suzanne Veletta, Advisory Officer, on 9222 7250, if you have any questions.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Sue Ellery', written in a cursive style.

**Hon Sue Ellery MLC**  
Chair

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**Legislative Council Standing Order 327: President's Procedural Ruling**

**Legislative Assembly Members appearing before Legislative Council Committees**

**Overview**

On 15 August 2007 Hon Giz Watson MLQ, Chair of the Standing Committee on Estimates and Financial Operations, requested a ruling pursuant to Legislative Council SO 327, in relation to the appearance of Legislative Assembly Members before Legislative Council committees, specifically

*Is the procedure set out in SO 423 required to be followed where a Member of the Legislative Assembly requests to be a witness at a hearing of a Council committee?*

I understand that there has been varying approaches adopted by Council committees in relation to this matter, and various advice received on this subject in previous Parliaments.

**Comity between the Houses**

Each House of Parliament imposes limitations on the attendance of Members to the call of bodies other than itself. This limitation is based on the House of Commons' ancient claim of the paramount right of the House to the attendance and service of its Members and the independence of the House. It is also based on a parliamentary rule that a House of Parliament does not seek to compel the attendance of Members of the other House, as a matter of comity between the Houses and of respect for the equality of their powers. These rules are reflected in both Council and Assembly Standing Orders which set out procedures to be followed where the appearance of a Member of one House is required by a committee of the other House or indeed its own House.<sup>1</sup>

For present purposes the relevant Council Standing Order provides:

*"When attendance of Members or Officer of Assembly required.*

*423 When the attendance of a Member of the Assembly or any officer of that House is desired, to be examined by the Council or any committee thereof (not being a committee on a Private Bill), a Message shall be sent to the Assembly to request that the Assembly give leave to such Member or officer to attend, in order to his being examined accordingly."* [emphasis added]

Assembly SQ 306 provides -

*"Council request for Assembly Member or officer to attend*

*306 If the Council or one of its committees wishes to examine a member or officer of the Assembly, the Assembly may -*

- (a) give leave for the member to attend if the member thinks fit; and*
- (b) order an officer to attend."* [emphasis added]

<sup>1</sup> Legislative Council SOs 420, 421, 423 and 424. Legislative Assembly SOs 266, 305 and 306.

### Interpretation of Standing Orders

Standing Orders must be read so as to facilitate the business of a House not to impede it. If Standing Orders were to be interpreted to require leave of the House where a Member voluntarily wished to appear before a committee of the other House then that Member would be at a greater disadvantage than a usual citizen to do so.

SO 423 must therefore be read so as not to prevent the voluntary appearance of an Assembly Member before a committee of the Council, whether pursuant to that Member's request or the committee's invitation, unless leave is sought.

Should an Assembly Member wish to appear before a Council committee, the committee can accommodate the request without any need for the Council committee to instigate the process under SO 423. This is a practical approach in the context of a voluntary appearance by an Assembly Member by request as opposed to a requirement by a Council committee. It is consistent with the practice in other jurisdictions.<sup>2</sup>

The situation would be quite different should a Council committee require an Assembly Member to appear. In such instances the procedure required by Council SO 423 must be followed. If a Council committee wishes to invite an Assembly Member to voluntarily appear before the committee but must not, in any manner, be seen to require their attendance.

If a Member of one House does appear before a committee of the other House Members would have to ensure that they respect the comity between Houses and right of their House to their attendance.

### Other observations

It is timely that I make a number of observations in relation to this practice:

1. I note the polite and permissive language used in the Standing Orders - "is desired" and "wishes to" as opposed to "requires" or "orders".

In my view nothing turns on the language used insofar as it might be argued to evidence an intention to require leave in all circumstances. The language properly reflects the fact that a committee of one House cannot "require" or "order" a Member of its own House, or the other House, to appear before it. The language employed makes it clear that those matters are reserved for the judgment of the House itself - compare, for example, Council SOs 420 ("order") and 421 ("desires").

2. In hearing from witnesses committees should consider the most appropriate person to provide that evidence. In this respect if evidence was to be sought on a matter of departmental or ministerial responsibility then the responsible minister in the Council should provide that oral evidence. It is the responsible minister in the Council who must answer to the Council and its committees for the accuracy and provision of any advice. It is only a Council Minister over whom the Council can make an order for production or attendance.

<sup>2</sup> *Commonwealth*: Senators cannot be compelled by the House to appear before it or before one of its committees or to produce evidence. This immunity is entrenched practice and there have been several instances where Members of the House of Representatives have appeared before Senate committees. The *House of Commons*, under its standing orders, has given a general leave to attend to any Commons Member requested to attend before a Lords committee, if the Member thinks fit. Standing Order 120 of the House of Commons provides "Any Member requested by a committee appointed by the Lords to attend as a witness before it or before any sub-committee appointed by it shall have the leave of this House so to attend, if the Member think fit."

3. This procedure of appearance by request should not be used in cases where the conduct of individuals may be examined, adverse findings may be made against individuals or disputed matters of fact may be under inquiry. For such cases I am of the view that that the formal process of Message and authorisation to appear should be employed.

**Conclusion**

I answer the question as follows

*Is the procedure set out in SO 423 required to be followed where a Member of the Legislative Assembly requests to be a witness at a hearing of a Council committee?*

No. Should an Assembly Member wish to appear before a Council committee, the committee can accommodate the request without any need for the Council committee to instigate the process under SO 423.



Hon Nick Griffiths MLC  
President of the Legislative Council

21 August 2007