

*Joint Standing Committee on Delegated Legislation — Thirty-fifth Report —  
“Fish Resources Management Amendment Regulations (No. 3) 2009”*

Resumed from 19 November 2009.

*Motion*

**Hon HELEN BULLOCK:** I move —

That the report be noted.

I am thankful for the opportunity to speak on this report. I have to make it clear that I was not a member of the Joint Standing Committee on Delegated Legislation when this report was produced. However, after four months on the committee, I must say that it is a very peaceful committee. In the past three or four months while I have been on this committee, we have not disallowed a single regulation and have not produced a report. The committee’s job is basically to examine local government regulations to determine whether regulations made by local governments are empowered by acts. I think in that sense the committee carried out its functions and job very appropriately and very thoroughly. As I said, we normally carry out our job very peacefully. Occasionally we produce a report like this because there is something that concerns the committee. This report is one of those cases. The Fish Resources Management Regulations have been amended pursuant to sections 256 and 258(zc) of the Fish Resources Management Act 1994 to increase the fees payable for access licences in relation to the managed fisheries for 2008–09. The managed fisheries include the abalone managed fishery, the Exmouth Gulf prawn managed fishery and the Shark Bay prawn managed fishery. They are all listed on page 1 of the committee’s report if members want to know more.

To cut a long story short, fee increases will always raise the question of whether the fee increase is cost recoverable or something else, such as a tax or an extra duty. If the answer was yes in this case, there would be no report. The committee would have carried on its work as usual. Members have probably guessed that there were some concerns from the committee that in this case the increases in fees and charges in the regulation are not cost recoverable. Page 8 of the report contains a formula to derive the new fees and charges. It contains a component called a DBIF, a Development and Better Interest Fund. In the committee’s opinion the DBIF component of managed fishery access licence fees is a tax or a duty. Because of that, it leads to the conclusion that the increase in the access licence fees prescribed in the Fish Resources Management Regulations 1995 are taxes and duties of access licence fees. If members want to see a detailed analysis of that, members can read the report in detail. Based on that, the committee made three findings. I have already talked about findings 1 and 2. The third finding states —

**The Committee finds that regulation 137 and Schedule 1, Part 3, item 3 of the *Fish Resources Management Regulations 1995*, to the extent that they impose access licence fees for managed fisheries:**

**(a) are not authorised ... by the *Fish Resources Management Act 1994* ...**

Therefore it has breached the Constitution of the commonwealth. Based on these findings, the committee made three recommendations. It recommended that the government cease imposing the DBIF, which is the component in the formula causing the problem, so that the increase in access licence fees becomes cost recoverable. That is very logical. However, an alternative is that if the government does not agree to cease imposing the access licence fees, the government probably should think about delaying the schedule, which causes a bit of trouble.

The Joint Standing Committee on Delegated Legislation has eight members. I think it is one of the largest committees. It carries out its duties very diligently and thoroughly, as I already said. The report raises concerns.

**Committee interrupted, pursuant to temporary orders.**

[Continued on page 6093.]

*Sitting suspended from 4.15 to 4.30 pm*