

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Thirty-fifth Report — “Fish Resources Management Amendment Regulations (No. 3) 2009” — Tabling

MR J.M. FRANCIS (Jandakot) [11.20 am]: I present for tabling the thirty-fifth report of the Joint Standing Committee on Delegated Legislation, entitled “Fish Resources Management Amendment Regulations (No. 3) 2009”.

[See paper 1649.]

Mr J.M. FRANCIS: I know every member of every committee thinks that their committee has it harder and tougher than other committees. The Joint Standing Committee on Delegated Legislation is probably one of those committees that takes up an enormous amount of the time of committee members in dealing with difficult legal issues. We do a bit of wrestling over some of them and our meetings can be long. I make this point because, on behalf of the members of the committee—Hon Robin Chapple, Hon Jim Chown, Hon Jock Ferguson and Hon Alyssa Hayden, and my Assembly colleagues Janine Freeman, Andrew Waddell and Paul Miles—I acknowledge the outstanding work of the committee’s former chairman, the late Paul Andrews. I and my fellow committee members are probably more aware than most members of this place of how much work that man put into the committee. The committee would like to acknowledge how much work he did as Chairman of the Joint Standing Committee on Delegated Legislation.

The Fish Resources Management Amendment Regulations (No. 3) 2009 amends the Fish Resources Management Regulations 1995. The instrument effected changes to the fees payable for access licences for seven managed fisheries in 2008-09. The instrument was purportedly made pursuant to sections 256 and 258 of the Fish Resources Management Act 1994. The combined effect of these sections is to authorise the making of regulations that prescribe fees for, among other things, the issue of access licence fees for managed fisheries.

The committee found that managed fishery access licence fees, which are prescribed by the principal regulations, are taxes and duties of excise, because a component of the fees contributes to the development and better interest fund, or DBIF. The findings in this report were made after the committee considered the relevant legislation and case law, and after consulting with the Department of Fisheries, which obtained advice from the State Solicitor’s Office. All this information is summarised in the committee’s report.

The committee made the decision to table this information report rather than recommend the disallowance of the instrument because, firstly, the committee’s findings have ramifications for all managed fishery access licence fees prescribed in the principal regulations, not just those amended by the instrument; secondly, the disallowance of the instrument would have little effect on the newly introduced fees, the vast majority of which have already been paid; and, thirdly, the managed fishery access licence fees prescribed in the principal regulations have been calculated according to a longstanding fee-setting model introduced in 1995, which was under review at the time of the committee’s inquiry.

The committee’s three recommendations are as follows —

Recommendation 1: The Committee recommends that the Government cease imposing the Development and Better Interest Fund component of the managed fishery access licence fees prescribed in the *Fish Resources Management Regulations 1995* as soon as is practicable.

Recommendation 2: The Committee recommends that, if the Government does not agree with Recommendation 1, Schedule 1, Part 3, item 3 of the *Fish Resources Management Regulations 1995* be deleted by both Houses of Parliament pursuant to section 42(4)(a) of the *Interpretation Act 1984*.

Recommendation 3: The Committee recommends that the Government consider and accept the findings and recommendations in this Report as part of its review of the fee-setting model under *Future Directions for Fisheries Management in Western Australia*, released jointly by the Minister for Fisheries and the Chairman of the Western Australian Fishing Industry Council in September 1995.

The committee’s report makes no comment about the validity of any managed fishery access licence fees prescribed in the management plans or other subsidiary legislation. However, the committee is concerned that the findings in its report may apply to such managed fishery access licence fees if they also contain a DBIF component.

Thirty-sixth Report — “Tabling of Subsidiary Legislation in the Legislative Council” — Tabling

MR J.M. FRANCIS (Jandakot) [11.24 am]: I present for tabling the thirty-sixth report of the Joint Standing Committee on Delegated Legislation, entitled “Tabling of Subsidiary Legislation in the Legislative Council”.

[See paper 1650.]

Mr J.M. FRANCIS: This is predominantly a report to draw the Legislative Council's attention to a number of issues that the committee faces when it comes to the timing of consideration of instruments. The Joint Standing Committee on Delegated Legislation holds a standing referral from the Legislative Council to consider every single instrument of subsidiary legislation that is gazetted in Western Australia. The committee deals with hundreds of instruments each year and has a limited amount of time in which to scrutinise and report on these instruments. Time frames and procedures are, therefore, crucial to the committee's workload. The time frames in which the committee works are dependent upon the date on which the instruments are gazetted and tabled in the house. One day can often make an enormous difference to the committee's workload.

The purpose of the report is to inform the Legislative Council and this house of the difficulties that the committee faces in performing its scrutiny functions when it must deal with an increasing number of instruments at certain times in the parliamentary sitting calendar. The committee often experiences a sudden increase in the volume of instruments at the end of the financial year, when agencies and local governments gazette large numbers of instruments in a flurry of activity. These external factors can be tempered by modifying the time given to the committee to perform its functions of scrutiny, analysis, consultation and recommendation.

The committee believes that the tabling of this report comes at a convenient time for the house and Council to consider the matter. The committee also believes that the four recommendations contained in its report present simple, yet practical, solutions to ensure that the committee's work continues to be of the highest standard. The committee has considered its current procedures and the possible avenues for amendment and is pleased to offer its recommendations to this house and the Council for their consideration.

Briefly, as an example, I will refer to some of the difficulties that the committee faces. In 2006 the committee considered 457 instruments; in 2007, 509; in 2008, 477; and from January to September this year, 312 instruments have been considered. Although the volume of the work is large, the number of instruments scrutinised by the committee still does not accurately reflect the varying level of complexity and the issues arising out of each instrument. Obviously some instruments are given far more consideration than others. I try to allow the committee members time to make use of every opportunity equally to raise any issue they want on any of the instruments that are considered. At times, that can be a timely process.

The committee notes that members may wish to give notice of disallowance motions in the Legislative Council at the first available opportunity when an instrument is being considered. They should not be disadvantaged by any deliberate delay in an instrument coming before the Legislative Council.