

Joint Standing Committee on Delegated Legislation — Thirty-ninth Report — “Annual Report 2009”

Resumed from 6 May 2010.

Motion

Hon HELEN BULLOCK: I move —

That the report be noted.

This is the Joint Standing Committee on Delegated Legislation’s 2009 annual report and it is a summary of the committee’s activity during the reporting year, including some detailed deliberation processes for a few regulations. This report gives members some insight into the work of the committee, including how deliberations are carried out and decisions reached for some of these complex issues. In reading this report, I could not help but notice that a third of the report’s seven or eight pages is devoted to the issue of the fees and charges imposed by various government departments. The government’s policy on this issue is very simple: cost recovery. However, when it comes to implementing this simple policy, most of the time the departments just cannot get it right. Some of the fees and charges are beyond cost recovery, which is over cost recovery; some are under-costed. In some cases there is cross-subsidisation. To impose fees and charges, the departments have to be able to justify their undertaking based on not only interpretation of the legislation, but also the cost model for setting up the fees and charges from the beginning. They cannot just use the Treasurer’s advance or the consumer price index as justification for increased fees and charges. As the Auditor General pointed out in one of the hearings held on this issue, the CPI is not necessarily a good basis for establishing increases, because the fee for providing a service is related to the costing within the agencies. From my experience as an accountant, I know that it is not an easy matter to determine costs; there are various components that need to be taken into account when determining costs. Some of these components can be quite complex. Until such time as a methodology is developed, I can see that fees and charges will be an ongoing issue for the government. However, ministers have, over time, realised that it is an issue for them, because every time they have come to a hearing of the committee, they have not been able to justify themselves, so they agreed to address this issue. For that I commend them, and I will finish my remarks on that positive note.

Hon NORMAN MOORE: I read this report with great interest because a significant part of it relates to my portfolio and an ongoing dispute between me, the State Solicitor and this committee about what is an allowable fee and what is not. By way of explanation, the Fish Resources Management Act provides for the collection of fees from the various managed fisheries in Western Australia, and those fees contained what was called a development of better interest fund. A small percentage of the fee was paid into a fund that was then used to do a number of things in respect of research and development for fisheries. This particular funding model has been in place since 1995. The Department of Fisheries has raised these fees through the development and better interest fund that has been in place since 1995, yet the Joint Standing Committee on Delegated Legislation has found that the fees were in fact unauthorised. I do not want to get into an argument with the committee about this other than to say that I am surprised that after 15 years of collecting the fees the committee has decided it has a problem with the fees when for the past 15 years there was no problem. Obviously I took advice from the State Solicitor’s Office on this matter and his advice to me was that the fees are valid, that the development and better interest fund is valid, and that neither of them is an excise or a tax.

I am highlighting the difficulty ministers have from time to time. When seeking to work and be cooperative with parliamentary committees when they raise legitimate issues, sometimes ministers can encounter the type of problem such as the one I have just described. The government’s legal advice is very strongly of the view that what the department is doing is legitimate, appropriate and proper. Sometimes a committee, not always by unanimous decision, reaches a different conclusion. In this case I have indicated to the committee that we will not raise any development and better interest fund fees from the time of the report in the future. That decision will be accompanied by the legislation that is currently in the Legislative Assembly to validate the current situation to remove any confusion about whether there is a legislative basis for raising these fees. The Department of Fisheries has since moved to a different funding arrangement; it is now calculated as a percentage of the gross value of the production of the different fisheries. The department collects that money to manage those fisheries and the State Solicitor is very strongly of the view that they are legitimate fees and does not believe that we need to legislate to validate our processes. However, I will go down the path of having a belts-and-braces approach. We will accept the advice of the State Solicitor and hope that eventually the committee comes to the conclusion that he is right and the committee is not, but I cannot guarantee that. In order to dispel any doubt about this matter, two bills before the Assembly, which will possibly be dealt with this week, will put to rest once and for all the notion that these fees are not permissible under the current legislation.

Question put and passed.