

**JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION**

*Forty-fourth Report — “Annual Report 2010” — Tabling*

**MR J.M. FRANCIS (Jandakot)** [10.11 am]: I present for tabling the forty-fourth report of the Joint Standing Committee on Delegated Legislation entitled “Annual Report 2010”.

[See paper 3149.]

**Mr J.M. FRANCIS:** I will make some brief remarks on the annual report of the Joint Standing Committee on Delegated Legislation. Every year, hundreds of instruments of subsidiary legislation are made, affecting the lives of many Western Australians. They have the same force in law as primary legislation, and create legal rights, obligations and duties. Some instruments can impose significant penalties for breaches. The executive government makes most regulations via the Governor in Executive Council. However, a significant proportion of subsidiary legislation is made by the councils of the 139 local governments of Western Australia, and many other instruments are generated by statutory bodies and boards.

The parliamentary function of scrutiny of delegated legislation has been delegated by the Parliament to the Joint Standing Committee on Delegated Legislation. The membership of the committee changed at the commencement of the thirty-eighth Parliament in 2009. The committee holds a standing referral from the Legislative Council to consider all instruments of subsidiary legislation that are published, whether under section 41(1)(a) of the Interpretation Act 1984 or another written law. As a result, the committee is able to scrutinise and report to Parliament on a huge volume of instruments. However, due to statutorily imposed deadlines and limited resources, the committee resolved shortly after its establishment to consider only those instruments that are subject to disallowance pursuant to section 42 of the Interpretation Act 1984 or another written law, together with any other instruments that were noted by individual members. The committee’s work comprises scrutiny of local laws made by governments, and instruments made by government agencies, departments, boards and other entities to make subsidiary legislation. Upon publication, the instruments stand referred to the committee for scrutiny.

At the commencement of each sitting year the committee tables an annual report in both houses outlining its activities during the previous year. In previous years the committee has also tabled a report identifying and discussing issues of concern in respect to local law. The committee has resolved to now table one composite annual report. The forty-fourth report covers activity between 2 December 2009 and 2 December 2010, which was the last sitting day for 2010. It is worth briefly noting some of the statistics regarding the instruments that the committee considered. In 2009–10 the committee considered the following: total number of disallowable instruments referred, 468; total number of regulations referred, 300; total number of local laws referred, 93; total number of rules referred, 29; and the total number of instruments referred including orders, notices, plans and metropolitan region schemes, 46. They are similar numbers to the previous year, but the work of the delegated legislation committee seems to be forever mounting. It is a huge task to get through it all. I acknowledge the contribution made by members of the committee to help us bulldoze through a sometimes impassable mountain. I acknowledge fellow members of my committee: Hon Robin Chapple, the deputy chairman; Hon Helen Bullock, who came onto the committee on 22 April last year; Hon Jim Chown; and the late great Hon Jock Ferguson. I hope he is looking down and having a giggle at us once again! We miss his sense of humour. I also thank Ms Janine Freeman, the member for Nollamara; Hon Alyssa Hayden; Mr Paul Miles, the member for Wanneroo; and of course my good friend Andrew Waddell, the member for Forrestfield.

I also acknowledge the hard work of the committee staff. As I said, it is a never-ending effort. They put in hours that go far, far beyond the call of duty. I thank Ms Christine Kain, the advisory officer; Ms Irina Lobeto-Ortega, another advisory officer; and Mrs Felicity Mackie and Ms Denise Wong who are also legal advisory officers. I make special mention of Mr David Driscoll, the committee clerk, who is leaving us to move onto another job within Parliament. He has been the clerk since our time on the committee after the last election. He has been very professional in the way he carries out his duties. I would like to acknowledge his contribution.

In closing, I acknowledge all the people who help the committee get through its mountain of work. I am sure other members of the committee might want to comment on the 2010 annual report.

**MS J.M. FREEMAN (Nollamara)** [10.16 am]: I, too, wish to rise to speak to the 2010 annual report of the Joint Standing Committee on Delegated Legislation. However, I note the state of the house. Although I understand that the delegated legislation committee is one of the least exciting and sexy areas, I would like a few more government members present other than the member for Jandakot, who already understands this issue, and the members for Geraldton, Ocean Reef and Mt Lawley. I suppose I call a quorum; thank you.

[Quorum formed.]

**The ACTING SPEAKER (Mr A.P. O’Gorman):** Member for Nollamara, you have your audience!

**Ms J.M. FREEMAN:** I thank you very much. I note that Mr Paul Miles is also in the chamber. As a member of the Joint Standing Committee on Delegated Legislation, he would be familiar with this report. This report relates to some of the important issues that we considered this year but did not report on, for various reasons. We understand that the processes of government need to be ongoing. I would like to draw some issues to the house’s attention; however paltry the presence of the government is on this particular issue. I am glad to see the spokesperson for small business in the chamber as she would recognise the importance of the delegated legislation committee in trying to ensure red tape is not constantly affecting the way we look at these issues, and that small business is not used in a surreptitious way to pay additional costs to government through progressively increasing fees and charges. I suppose it is a way of paying for services that government uses rather than delivering those services.

One of the areas I want to speak about is the Energy Coordination (Gas Tariffs) Amendment Regulations 2010. In the following paragraphs the committee refers to its concern about the fees —

- 4.43 The Committee had concerns with these amendments and made further inquiries with the Office of Energy. ... The Committee was of the view that there was the potential for over-recovery in future years if, following recovery of the Varanus Island costs, annual CPI adjustments were simply applied on top of the new base tariffs.
- 4.44 The response from the Office of Energy did not entirely satisfy the Committee, however it resolved to not recommend disallowance of the amendments.

The committee did, however, resolve to maintain a watching brief and to alert the house that at this point in time there is a belief that gas charges may include that additional cost.

Most importantly, I wish to raise the changes to the Road Traffic Code Amendment Regulations (No. 2) 2010 and the requirements for “booster seat”, “child safety harness” and “suitable child safety harness”. I raise this because sometimes we have to be very cautious in this house when we make laws to make sure they are not laws that people are forced to break because they cannot comply with them. These road traffic code regulations are very, very difficult for many families to comply with due to the costs involved, the size of their vehicles and the size of families. Frankly, these regulations mean that if a child under the age of six is placed in a car seat with a lap belt—parents might think they are doing it in the interests of safety—the person responsible can be charged as though the child is wearing no seatbelt. The penalties attached to this regulation do not take into account the best intentions of families. They mean that in emergency situations when a parent cannot pick up a child from school and asks another parent to do so, that parent will have to say, “No, I don’t have the proper child restraints to pick up your child and take him home.” It will have a massive impact on decisions parents in the rural community have to make about car seats. It will particularly affect Indigenous communities in remote and regional areas because yet another cost and potential fine will be imposed upon them by us middle-class white people in the city, who may not understand all their circumstances. That is not to say that I do not fully believe in the safety of children on our roads. I do; I think it is very important. However, if we make rules that cannot be complied with, those very rules will undermine the objective for introducing them in the first instance. That concerns me.

As much as I understand that most people perceive delegated legislation to be a very dry subject, in this annual report we have brought to the attention of the house some very important points. We have not reported on each individual area, but we wanted to make people aware of our concerns. I thank the house.

**MR A.J. WADDELL (Forrestfield)** [10.23 am]: I must disagree with my colleagues. Delegated legislation is not dry; it is not boring. It is the last bastion of this place. It is how we hold the barbarians at the gate because delegated legislation is our last great hope; it is the last chance we have to review the regulations written under the legislation we bring into this place. This is very, very serious business. I am often asked by people: how is it that we can elect all these smart people to Parliament and we end up with nonsensical, ridiculous laws? The answer is: it is because of delegated legislation—not that we create them. We delegate the nuts and bolts; the nitty-gritty to other people. The horses are designed by committees and we end up with legislation that looks like camels; it has humps where humps are not needed. For all the best reasoned, well thought out rationale they put into this, they approach their little patch of the world with blinkers. What might make perfect sense if that is the only thing we possibly care for, makes no sense when seen in the bigger picture. As I said, the Joint Standing Committee on Delegated Legislation holds the barbarians from the gates. We do that by ensuring that nobody encroaches outside the bounds we set in our legislation. This, I suppose, is the critical warning that needs to be heard here. The critical warning is not to draft our legislation to be so broad that we allow the details to be picked up later in regulations. That is where the evil creeps in; it is where the intent of this place is not being made clear and of which people will take advantage. Many times I have heard ministers speak in here about the good people in the public sector, the good people in the police force and good people everywhere else and how

we can trust them to do the right thing. Perhaps today we can; perhaps tomorrow we will be able to. In five years' time who knows what the circumstances will be for those people, but that legislation will continue to be in force. Bit by bit, like a frog slowly boiling in water, regulations are changed and our rights are overtaken and crept up on. Before we know it, someone is trying to regulate what colour toothbrush we have to use in the bathroom.

**Mr J.M. Francis** interjected.

**Mr A.J. WADDELL:** I thank the member for Jandakot for reminding me that we dealt with one of those matters when a local council was trying to regulate to prohibit glass on the beach. Members might say that that was very sensible; we do not want people cutting their feet on glass. The trouble is that it would stop us taking to the beach a bowl to put our chips in, a salad bowl or bottles. It would be illegal to take a baby's bottle to the beach.

**Mr J.M. Francis:** Glasses.

**Mr A.J. WADDELL:** The member for Jandakot is getting very carried away. Clearly, that was not the intent of this Parliament when we gave local government the right to make laws for the good governance of that local area. We did not expect local governments to impede people carrying out ordinary, everyday activities on the beach. Yet that is the extent to which that had been pushed. Throughout the year, as my friend the member for Nollamara said, we dealt with some very dry issues. Many a Sunday night I spent poring over some very boring regulations, including those for demersal fishing. We learn all sorts of intricacies about how things work that we might not otherwise have expected to know.

Every so often the committee dealt with a few real gems. One issue was controversial to the extent we almost constructed the Berlin Wall through the middle of the committee. One such event resulted from the issue of the retail trading precincts. The committee found itself extraordinarily divided on this topic. Members may recall that the minister attempted to expand the tourist precincts around Perth and Fremantle by regulation as a way of overcoming his inability at the time to pass legislation through this house to expand retail trading hours. He took advantage of an exemption that applied to the City of Perth and the City of Fremantle whereby they were declared tourist precincts and allowed to trade for seven days a week with extended hours. The minister wanted to extend those precincts to other areas and, as a result, committee members entered into a great deal of debate over whether it was the intent of the Parliament to allow this. We were poring over previous debates, tourist maps and all sorts of information to try to determine the intent of the Parliament in 1996, 2001 and 2005, the three occasions on which the issue had been discussed. Perhaps one of the ironies of the situation was that roles were somewhat reversed when members of the Labor Party had been looking at it from an opposition point of view, but when in government, of course, the debate was vice versa. I found myself feeling great sympathy for what the then Liberal opposition said at the time, and I am sure that my friends on the Liberal side of the house felt sympathy for what some Labor members said in the previous debate. That goes to show how flexible members in this place can be in that we can all flip our positions on a dime or merely on an election.

This was a highly controversial debate. What it really got down to was the issue of how regulations can be abused to essentially bypass this place. There is no doubt that retail trading was a controversial issue. There is no doubt that it was subject to a great deal of debate in the community, and it was an issue that the community wanted us to make a decision on one way or the other. The appropriate forum for that was this place. The appropriate forum was Parliament—the people's house. It was not in some backroom office where somebody could quickly nip out a little memo and change a regulation to bring about an alteration at that level. Unfortunately, that is what was done. It was an attempt by the executive to bypass the will of Parliament. That is the inherent danger in regulation. Sometimes we will find ourselves thinking that that is a wonderful thing because it suits our purposes, and sometimes we will find that that is abhorrent because it does not suit our purposes. But, on balance, we need to look at it and say that it is always an abhorrent thing. Whenever the executive impinges upon Parliament, that is an error. These rights were fought for over hundreds of years. It is always an error to allow that power to be concentrated into fewer and fewer hands, and in particular to be hidden behind the secrecy of cabinet decisions and commercial-in-confidence decisions. We need to ensure that our democracy remains vibrant, that debate occurs in the people's house and that at all times we have the opportunity to be vigilant with any legislation or regulation that comes before us. As I have said, delegated legislation is far from boring. It is what is keeping us on the straight and narrow. It is keeping the barbarians from the gate. I highly recommend that members of this house read this report and enjoy it.