



**THIRTY-EIGHTH PARLIAMENT**

**REPORT 16**

**STANDING COMMITTEE ON ESTIMATES AND  
FINANCIAL OPERATIONS**

**INTERIM REPORT ON THE PUBLIC SECTOR  
EXPENDITURE INQUIRY: REQUEST FOR A  
MEMBER OF THE LEGISLATIVE ASSEMBLY TO  
APPEAR BEFORE THE COMMITTEE**

Presented by Hon Giz Watson MLC (Chair)

April 2009

## **STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS**

### **Date first appointed:**

30 June 2005

### **Terms of Reference:**

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

#### **'2. Standing Committee on Estimates and Financial Operations**

2.1 *An Estimates and Financial Operations Committee* is established.

2.2 The Committee consists of 5 Members, 3 of whom shall be non-government Members.

2.3 The functions of the Committee are to consider and report on -

- (a) the estimates of expenditure laid before the Council each year;
- (b) any matter relating to the financial administration of the State;
- (c) any bill or other matter relating to the foregoing functions referred by the House;
- (d) to consult regularly with the Auditor General and any person holding an office of a like character.'

### **Members of the Standing Committee on Estimates and Financial Operations for the purpose of the inquiry into Public Sector Expenditure:**

Hon Giz Watson MLC (Chair)

Hon Sue Ellery MLC (substitute for Sheila Mills MLC)

Hon Brian Ellis MLC

Hon Jon Ford MLC (substitute for Hon Ken Travers MLC)

Hon Helen Morton MLC

### **Staff as at the time of this inquiry:**

Suzanne Veletta, Advisory Officer (General)      Renae Jewell, Committee Clerk

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**ISBN 978-1-921243-90-5**

## CONTENTS

<b>REPORT.....</b>	<b>1</b>
1 REFERRAL.....	1
2 REQUEST BY A MEMBER OF THE LEGISLATIVE ASSEMBLY TO APPEAR BEFORE THE COMMITTEE .....	2
<b>APPENDIX 1 OFFER TO APPEAR .....</b>	<b>5</b>
<b>APPENDIX 2 PROCEDURAL RULING .....</b>	<b>11</b>



**REPORT OF THE STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS**

**IN RELATION TO THE**

**INTERIM REPORT ON THE PUBLIC SECTOR EXPENDITURE INQUIRY: REQUEST FOR A  
MEMBER OF THE LEGISLATIVE ASSEMBLY TO APPEAR BEFORE THE COMMITTEE**

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**1 REFERRAL**

- 1.1 On 3 December 2008 the Standing Committee on Estimates and Financial Operations Committee (**Committee**), by own motion, established an inquiry into Public Sector Expenditure. The inquiry's terms of reference are:

*The Committee is to inquire into and report on Government measures to audit the operational and financial performance of the Western Australian public sector, and any other means by which efficiencies in public sector expenditure can be gained and all the circumstances surrounding the implementations of the three percent efficiency dividend including -*

- a) *the impacts of a three percent efficiency dividend on the general level of service delivery across all agencies; in particular any impacts on service delivery to regional areas;*
- b) *consider alternative methods for achieving a three percent reduction in government expenditure, including:*
  - i) *the approach of the former Government;*
  - ii) *whether certain agencies or functions of agencies should be exempt from the efficiency dividend; and*
  - iii) *whether the rate of the dividend should vary according to agency size or function, and if so specific advice on which agencies or functions should contribute a disproportionate share of savings over the forward estimates.*
- c) *whether a three percent efficiency dividend has a disproportionate impact on smaller agencies, including whether or not smaller agencies are disadvantaged by poorer economies of scale or a relative inability to obtain funding for new policy proposals;*
- d) *what measures agencies are taking to implement the three percent efficiency dividend, and the effect on their functions, performance and staffing arrangements;*

- e) *the impact of the current financial crisis on the state's economy and finances;*
  - f) *the sustainability of the rate of growth in general government expenditure detailed in the 2008-09 budget;*
  - g) *the sustainability of the forecast decrease in operating surplus detailed in the 2008-09 budget;*
  - h) *the sustainability of the forecast increase in net debt detailed in the 2008-09 budget; and*
  - i) *the impact of failing to fully implement the three percent efficiency dividend on the operating surplus and net debt.*
- 1.2 On 9 December 2008 the Committee granted leave to substitute Hon Sue Ellery MLC for Hon Sheila Mills MLC, and Hon Jon Ford MLC for Hon Ken Travers MLC for the purposes of the inquiry into Public Sector Expenditure.
- 1.3 The Committee established a subcommittee comprising Hons Helen Morton, Brian Ellis, Sue Ellery and Jon Ford MLCs, with Hon Ken Travers MLC as a participating Member, to gather evidence and report back to the Committee. The subcommittee's first meeting was on 15 December 2008.
- 1.4 On 10 February 2009 the Committee resolved that membership of the subcommittee be reduced from four to three Members. Hon Helen Morton MLC resigned from the subcommittee effective immediately.
- 1.5 The Committee further resolved that the subcommittee be comprised of Hons Sue Ellery (Chair), Jon Ford and Brian Ellis MLCs, with Hon Ken Travers MLC as a participating Member with leave to deliberate.
- 1.6 The subcommittee has conducted a number of meetings and public hearings in 2009.
- 2 REQUEST BY A MEMBER OF THE LEGISLATIVE ASSEMBLY TO APPEAR BEFORE THE COMMITTEE**
- 2.1 Hon Colin Barnett MLA, Premier, in his letter to the subcommittee dated 11 March 2009 offered to have Hon Troy Buswell MLA, Treasurer, 'brief' the Committee. This repeated an earlier offer by Hon Kim Hames MLA, (then) Acting Premier, by way of letter dated 19 January 2009 (see letters at **Appendix 1**).
- 2.2 On 1 April 2009 the subcommittee resolved to invite Hon Troy Buswell MLA, Treasurer, to give evidence to the subcommittee at a hearing.
- 2.3 The Committee notes Standing Order 423 which states:

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***When attendance of Member 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.*

- 2.4 The Committee also notes the President of the Legislative Council, Hon Nick Griffiths MLC's procedural ruling dated 21 August 2007, made under Standing Order 327 (the President's ruling is attached at **Appendix 2**).
- 2.5 The Committee has considered the President's procedural ruling, and in particular item 3 of page 3 which states:

*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 [sic] the formal process of Message and authorisation to appear should be employed.*

- 2.6 In light of this provision and the nature of the evidence the subcommittee is likely to receive from Hon Troy Buswell MLA, Treasurer, the Committee has resolved to initiate the process provided for in Standing Order 423.

**Recommendation 1: The Committee recommends that the House send a Message to the Legislative Assembly in the following terms:**

**'Mr Speaker,**

**The Legislative Council requests that the Legislative Assembly grant leave to Hon Troy Buswell MLA, Treasurer, to give evidence before the Standing Committee on Estimates and Financial Operations' inquiry into Public Sector Expenditure, if he thinks fit.'**



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**Hon Giz Watson MLC**

**Chair**

**Date: 7 April 2009**





**APPENDIX 1**  
**OFFER TO APPEAR**



# APPENDIX 1

## OFFER TO APPEAR

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**PUBLIC**

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### Premier of Western Australia

Our Ref: 200901245

Hon Sue Ellery MLC  
Acting Convenor  
Subcommittee Inquiry into Public Sector  
Expenditure  
Standing Committee on Estimates and  
Financial Operations  
Parliament House  
PERTH WA 6000

Dear Ms Ellery

I refer to your letter of 16 February in response to correspondence from the Acting Premier Hon Dr Kim Hames MLA relating to your inquiry into Public Sector Expenditure.

Assuming that your Committee still intends to continue with its inquiry, I have indicated that Directors General will be available to meet with your Committee to discuss efficiency savings where those savings have been given operational effect. I also reaffirm the position outlined by Dr Hames that given that the 3% efficiency dividend that will apply as from the next financial year is subject to Budget (and policy) approval, it is premature for those issues to be discussed. Consistent with Dr Hames' earlier response I do not consider it appropriate that Directors General or agency heads discuss matters of policy.

I have agreed to the above course out of respect for the Parliamentary process and the operation of its committees. You are clearly aware the issues about which you seek to inquire will be the subject of extensive budget discussion. Further the estimates process will provide significant and presumably a more effective process, for reviewing public sector expenditure. Noting the prevailing difficult economic conditions and noting the current Opposition proposed the same 3% efficiency dividend it is appropriate that your committees reflect upon whether your process is the most efficient and effective way of proceeding.

I am also concerned that your Committee does not seem to have sought to take advantage of the offer to have the Treasurer brief your Committee as to the process underway. This heightens my concerns that your Committee may not be approaching the issues in an efficient and effective manner.

Page 1 of 2

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I make these comments because I consider that while the Parliament and its Committees must remain a bastion of robust debate and inquiry it should also be playing its part in meeting the challenges the economic downturn has presented.

I request you and all members of your Committee again review the need for your Committee to proceed as proposed.

Yours sincerely



Colin Barnett MLA  
**PREMIER**

11 MAR 2009



**PUBLIC**

**Premier of Western Australia**



Hon Sue Ellery MLC  
Acting Convenor  
Subcommittee Inquiry into Public Sector  
Expenditure  
Standing Committee on Estimates and  
Financial Operations  
Parliament House  
PERTH WA 6000

Dear Ms Ellery

**INQUIRY INTO PUBLIC SECTOR EXPENDITURE**

I refer to your recent letters to Government agencies inviting them to provide written submissions on the matters referred to in the terms of reference of the above Inquiry.

As you will be aware the genesis of the 3% efficiency dividend was the decision of the former Government to propose such a dividend prior to the last election. This decision was made following four years where growth averaged 8.7% per year. The current Government also committed to that dividend prior to the election.

Application of efficiency dividends always present significant challenges given the differing impacts such dividends have on agencies and the capacity of agencies to deal with the dividends in terms of policy and operations. The changed and more difficult economic environment, globally and locally, will also add to the challenges.

While the Government has committed to the 3% efficiency dividend, it will ensure that adverse or unintended impacts of efficiency dividend proposals on policy and operations are considered and dealt with appropriately as part of any deliberations. Nevertheless there remains a need for efficiency savings to be made, hence the request for agencies to put forward proposals for consideration by respective Ministers and subsequently the Economic and Expenditure Review Committee.

The fact that we are involved in a deliberative process means initial proposals put forward by Departments may not be accepted, in part, or at all.

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- 2 -

While Departments have been required to put forward proposals for consideration, individual Ministers may seek to adjust or reject those proposals and/or suggest alternatives. That is entirely appropriate. Similarly the Economic and Expenditure Review Committee may amend or reject proposals or suggest alternatives.

The information requested by the Committee relates to the implementation of the 3% efficiency dividend, which is a matter of Government policy. In accordance with Legislative Council Standing Order 331, it is not appropriate that Government agencies make submissions in relation to matters of policy.

It is intended that details of the savings identified will be summarised in the 2009/10 budget. Public sector agencies will be in a position to respond during the estimates review process conducted by the Standing Committee on Estimates and Financial Operations, following the tabling of the 2009/10 budget. As yet however, those policy decisions have not been made. Once the policy decisions of Government have been made, Ministers may be in a position to respond.

Finally, I can advise that the Premier has requested that the Treasurer meet with you to further discuss the process being undertaken and to explore with you options for keeping your Committee briefed.

Yours sincerely



Dr Kim Hames MLA  
ACTING PREMIER

19 JAN 2009

**APPENDIX 2**  
**PROCEDURAL RULING**





## APPENDIX 2

### PROCEDURAL RULING

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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 MLC, 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 SO 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]*

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<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.

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<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