



**SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT**

**REPORT OF THE  
STANDING COMMITTEE ON  
PUBLIC ADMINISTRATION AND FINANCE  
IN RELATION TO  
A SESSIONAL OVERVIEW OF THE COMMITTEE'S  
OPERATIONS:  
SECOND SESSION OF THE THIRTY-SIXTH  
PARLIAMENT (AUGUST 2002 TO NOVEMBER 2004)**

Presented by Hon Barry House MLC (Chairman)

Report 11  
November 2004

## STANDING COMMITTEE ON PUBLIC ADMINISTRATION AND FINANCE

### **Date first appointed:**

May 24 2001

### **Terms of Reference:**

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

#### **“2. Public Administration and Finance Committee**

- 2.1 A *Public Administration and Finance Committee* is established.
- 2.2 The Committee consists of 7 members.
- 2.3 The functions of the Committee are -
- (a) to inquire into and report on the structure, efficiency, effectiveness, and economic management of the system of public administration;
  - (b) to consider and report on any bill or other matter referred by the House;
  - (c) to inquire into and report on practice or procedure applicable or relating to administrative acts or decisions (either generally or in a particular case without inquiring into or reporting on the merits of the case);
  - (d) to inquire into and report on the existence, adequacy, or availability, of merit and judicial review of administrative acts or decisions;
  - (e) to consult regularly with the Parliamentary Commissioner for Administrative Investigations, the Auditor General, the Public Sector Standards Commissioner, the Information Commissioner, and any person holding an office of a like character.
- 2.4 Subject to subclause 2.3 (b), the following are excluded from inquiry by the Committee -
- (a) the Governor’s establishment;
  - (b) the constitution and administration of Parliament;
  - (c) the operations of the Executive Council;
  - (d) a decision made by a person acting judicially;
  - (e) a decision made by a person to exercise, or not exercise, a power of arrest or detention.”

#### **Members during the Second Session of the Thirty-Sixth Parliament:**

Hon Barry House MLC (Chairman)	Hon John Fischer MLC
Hon Ed Dermer MLC (Deputy Chairman)	Hon Dee Margetts MLC
Hon Murray Criddle MLC	Hon Ken Travers MLC
Hon Sue Ellery MLC	

#### **Staff during the Second Session of the Thirty-Sixth Parliament:**

Paul Grant, Advisory Officer (Legal)	Jan Paniperis, Senior Committee Clerk
Stefanie Dobro, Advisory Officer (General)	Lisa Hanna, Advisory Officer (General)
Denise Wong, Advisory Officer (Legal)	Kelly Campbell, Advisory Officer (General)
Sarah Kearney, Committee Clerk	

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**ELEVENTH REPORT OF THE STANDING COMMITTEE ON PUBLIC ADMINISTRATION AND  
FINANCE**

**IN RELATION TO**

**A SESSIONAL OVERVIEW OF THE COMMITTEE'S OPERATIONS: SECOND SESSION OF THE  
THIRTY-SIXTH PARLIAMENT (AUGUST 2002 TO NOVEMBER 2004)**

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**1 HISTORY AND PURPOSE OF THE PUBLIC ADMINISTRATION AND FINANCE  
COMMITTEE**

- 1.1 The Public Administration and Finance Committee (**Committee**) was established on May 24 2001, in the First Session of the Thirty-Sixth Parliament, as part of a series of significant changes to the Legislative Council committee system.
- 1.2 The Committee is, in many respects, simply a combination of the functions of the former Legislative Council Standing Committee on Public Administration (1996-2001) and the former Legislative Council Standing Committee on Estimates and Financial Operations (1989-2001), minus the latter committee's function of conducting annual hearings into the Western Australian Government's estimates of expenditure.
- 1.3 The Committee's area of interest and its potential subjects for inquiry cover an extremely broad range of matters relating to the activities of the State Government. Subject to the few notable exceptions specified in paragraph 2.4 of its terms of reference, the Committee may initiate an inquiry into any aspect of the administration of the State public sector or the expenditure of public funds.

**2 REPORTS PRESENTED TO THE LEGISLATIVE COUNCIL**

- 2.1 The Committee has presented the following reports to the Legislative Council over the course of the session:
- Report No 2: *A Sessional Overview of the Committee's Operations: First Session of the Thirty-Sixth Parliament (May 2001 to August 2002)*, tabled on September 26 2002;
  - Report No 3: *Economic Regulation Authority Bill 2002*, tabled on May 30 2003;
  - Report No 4: *Transfer of Management of Fremantle Cemetery to the Metropolitan Cemeteries Board*, tabled on December 10 2003;
  - Report No 5: *Petition on Western Power's Underground Power Policy*, tabled on December 11 2003;

- Report No 6: *Local Government Act 1995*, tabled on December 12 2003;
- Report No 7: *The Impact of State Government Actions and Processes on the Use and Enjoyment of Freehold and Leasehold Land in Western Australia*, tabled on May 14 2004;
- Report No 8: *Water Services in Western Australia* (Interim Report), tabled on November 11 2004;
- Report No 9: *A Petition on Increases in Motor Vehicle Stamp Duty*, tabled on November 12 2004; and
- Report No 10: *Local Government Rating System and Distribution of Funds*, tabled on November 19 2004.

### **3 MATTERS CONSIDERED BY THE COMMITTEE THAT DID NOT RESULT IN AN INQUIRY OR REPORT**

#### **Issues Arising from the Inquiry by Mr Greg McIntyre, Barrister, into the South Perth City Council under Part 8 of the *Local Government Act 1995***

- 3.1 The Committee considered several requests for the Committee to undertake an inquiry into various aspects of the official inquiry into the South Perth City Council under Part 8 of the *Local Government Act 1995* that was conducted by Mr Greg McIntyre, Barrister.
- 3.2 The Committee declined to pursue such an inquiry for the following reasons:
- the Committee noted the possible limitations imposed on any such inquiry by subclause 2.4(d) of the Committee's terms of reference; that is, the restriction preventing the Committee from inquiring into "*a decision made by a person acting judicially*";
  - like the Legislative Council itself, the committees of the Legislative Council have no power to intervene in the conduct of commissions of inquiry or other tribunals, or assume an appellate or review function that enable them to reverse findings or recommendations of such bodies. The correction of alleged procedural or jurisdictional error committed by administrative tribunals is a matter for the Supreme Court; and
  - it would be difficult to conduct an inquiry into alleged administrative problems with Part 8 of the *Local Government Act 1995* in isolation from its context within the rest of that Act, and the day-to-day workings of local governments in Western Australia. Given the Committee's then involvement in a major inquiry into the system of land administration in Western Australia,

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the Committee was of the view that it would not be practical for the Committee to undertake another broad-ranging inquiry at that time.

### **Issues Associated with the *Public Interest Disclosure Act 2003***

- 3.3 The Committee has received a number of requests for the Committee to undertake inquiries into various aspects of the *Public Interest Disclosure Act 2003* and the operations of the various ‘watchdog’ agencies in Western Australia with respect to handling the complaints of public sector ‘whistleblowers’.
- 3.4 After consideration of extensive correspondence on the issues, the Committee decided not to undertake a broad-ranging inquiry into the operations of the ‘watchdog’ agencies with respect to public sector ‘whistleblowers’.
- 3.5 The Committee also expressed the view that a parliamentary inquiry was not an appropriate means of redress for the specific individual cases that had been presented to the Committee.
- 3.6 The persons raising these matters were directed to the Ombudsman, the Public Sector Standards Commissioner or other appropriate agencies for further action.

### **Petition Regarding the Proposed Alignment of a 132Kv Transmission Line between Waterloo and Busselton**

- 3.7 On April 3 2003 the above petition was referred to the Committee from the Standing Committee on Environment and Public Affairs. The Committee noted that the subject matter of the inquiry was one of the issues to be addressed in the Committee’s then current ‘land inquiry’ (see Report No 7), and that the petitioner had given evidence to the Committee as part of that inquiry. Accordingly, the Committee resolved to inquire into the matters raised by the petition as part of the ‘land inquiry’. The petitioner was advised of the Committee’s decision.

### **Shire of Augusta-Margaret River’s Local Planning Policy PE 37**

- 3.8 In June 2003 the Joint Standing Committee on Delegated Legislation referred certain correspondence to the Committee in relation to the Shire of Augusta-Margaret River’s local planning policy PE 37, titled: *Holiday Houses- Short Stay Use of Residential Dwellings*. This planning policy had been criticised by some Augusta-Margaret River ratepayers on the grounds of an alleged discrimination in the application of rates against non-resident landholders.
- 3.9 The Committee wrote to both the Minister for Local Government and Regional Development and the Minister for Planning and Infrastructure, requesting their views as to the validity and appropriateness of the Shire of Augusta-Margaret River’s local planning policy PE 37.

- 3.10 The Committee noted that although both Ministers expressed some concern regarding the effect of Shire of Augusta-Margaret River's local planning policy PE 37 on non-resident ratepayers, there was apparently no issue as to the validity of the planning policy.
- 3.11 The subsequent responses of the two Ministers were provided to the Joint Standing Committee on Delegated Legislation for distribution to the author of the original correspondence.

### **Western Power's Maintenance and Replacement Policy for Electricity Transmission Lines in Regional Areas**

- 3.12 In November 2003, issues were raised at a public meeting in Jerramungup which was attended by Hon Dee Margetts and Hon Murray Criddle. At the request of those two Members, the Committee sought and obtained details of Western Power's current funding arrangements for the maintenance and replacement of existing electricity infrastructure in regional areas of Western Australia.

### **Issues Arising from the Department of Local Government and Regional Development's Inquiry into the City of Belmont**

- 3.13 During December 2003 the Committee received a number of requests for the Committee to undertake an inquiry into various aspects of the inquiry into the City of Belmont which was conducted in 2002-03 by investigators appointed by the Department of Local Government and Regional Development.
- 3.14 The Committee sought a response from the Minister for Local Government and Regional Development to the various issues and allegations raised in the requests to the Committee.
- 3.15 After considering the Minister's response to the issues and allegations raised, and all of the documentation submitted in support of the requests for an inquiry, the majority of the Committee resolved not to conduct an inquiry. The Committee's decision was based, in part, on similar considerations to those set out in paragraph 3.2 with respect to the South Perth City Council. The Committee noted that some of the allegations raised had been referred by the Minister to an appropriate investigative body.
- 3.16 Due to the Committee's workload, the Committee was unable to inquire into the issues. The Committee noted, however, that the broader issue of the Department of Local Government and Regional Development's investigative powers under the *Local Government Act 1995* was touched on in the Committee's Report No 6, and that it may be a suitable matter for inquiry by a parliamentary committee with the same or similar terms of reference to the Committee in the next Parliament.



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## **The Cost of Government Advertising**

3.17 The Committee was approached in August 2004 with a request that the Committee undertake an inquiry into the cost of the State Government's advertisements.

3.18 Given the Committee's heavy workload at that time and the imminent end of the Thirty-Sixth Parliament, the Committee expressed the view that it was not practical to commence such an inquiry.

## **4 CONSULTATION WITH INDEPENDENT STATUTORY OFFICE-HOLDERS**

4.1 Subclause 2.3(e) of the Committee's terms of reference states that one of the functions of the Committee is to consult regularly with the Parliamentary Commissioner for Administrative Investigations (also known as the "Ombudsman"), the Auditor General, the Public Sector Standards Commissioner, the Information Commissioner, and any person holding an office of a like character.

4.2 As noted in the Committee's Report No 2, the Committee met with the various independent statutory office-holders during the First Session of the Thirty-Sixth Parliament. The Committee again undertook a series of such consultations throughout 2004. Between June 21 and September 20 2004, the Committee held private briefings with the following independent statutory office-holders:

- Public Sector Standards Commissioner;
- Parliamentary Commissioner for Administrative Investigations (Ombudsman);
- Auditor General;
- Acting Information Commissioner; and
- Inspector of Custodial Services.

4.3 The Committee continues to find these private briefings to be beneficial in obtaining a greater understanding of the role and the current activities of these independent statutory office-holders, and in identifying possible future lines of inquiry for the Committee. The feedback received by the Committee from many of these independent statutory office-holders also indicates that they too find the exercise to be valuable in establishing a dialogue between their offices and the Committee/Parliament.

### *Freedom of Information Issues Associated with Members' Electorate Office Correspondence*

4.4 The Committee wishes to draw to the attention of the Legislative Council one of the issues that the Committee discussed with the Acting Information Commissioner;

namely access to information contained in correspondence from members' electorate offices to government agencies or bodies.

- 4.5 This is an issue that has attracted some attention recently both within this Parliament and in the parliaments of other Australian jurisdictions.
- 4.6 Although it is clear that documents created and held within the Legislative Council proper are exempt from the operation of the *Freedom of Information Act 1992 (FOI Act)*, the position is less clear with respect to certain documents and communications created within individual Member's electorate offices which are directed to, and subsequently held on the files of, agencies which are subject to the FOI Act.
- 4.7 Of particular concern is the status of correspondence from a Member's electorate office to a government agency that encloses documents or paraphrases information provided by a member of the public/constituent. A 1997 Issues Paper by the Queensland Members' Ethics and Parliamentary Privileges Committee noted that:

*"Members of Parliament constantly act on behalf of their constituents and write to ministers, departments and other public bodies on their behalf. These activities are integral to the contemporary role of a member of Parliament.*

*However, there is a great deal of uncertainty as to whether such correspondence is in any way protected by privilege or the confidential status of such correspondence. This has resulted in constituents' letters being made public or shown to those about whom they complain and occasionally has even resulted in threats of legal action against the constituent. There is a strong argument that this type of correspondence should have some qualified privilege.*

*Further, there may be a need for protocols for the handling of this type of correspondence to be developed and implemented by parliament.*

*There are also doubts as to what extent parliamentary privilege protects transactions between members and their informants."*<sup>1</sup>

- 4.8 Although the Committee understands that agencies that are subject to the FOI Act are required to consult with relevant third parties prior to releasing documents created by, or relating to, the third party, it would seem that ultimately the decision to release a document rests with the agency (or the Information Commissioner/Supreme Court on appeal). The Committee also notes that correspondence on departmental files may be

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<sup>1</sup> Queensland, Legislative Assembly, Members' Ethics and Parliamentary Privileges Committee, *Issues Paper No 3: Parliamentary Privilege in Queensland*, July 1997, pp9-10, at Internet site: <http://www.parliament.qld.gov.au/comdocs/ethics/EthicsIss3.PDF> (current at November 2 2004).

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accessed by third parties by mechanisms other than the FOI Act, such as in the course of tribunal or legal proceedings.

- 4.9 The Committee suggests that this issue may need to be pursued as a subject of inquiry by an appropriate parliamentary committee in the next Parliament.

## **5 CONFERENCES ATTENDED**

- 5.1 Between February 2 and 5 2003 four members (Hons Barry House, Murray Criddle, Sue Ellery and John Fischer MLCs) and two staff of the Committee attended the 7<sup>th</sup> Biennial Conference of the Australasian Council of Public Accounts Committees in Melbourne. The theme of the conference was *Emerging issues for Public Accounts Committees and similar type Committees*. Some of the topics covered at the conference included:

- *How to get Better Governance in Non-Budget Agencies;*
- *Public Private Partnerships - Are There Gaps in Public Sector Accountability?;*
- *Developing an Ethics Culture in the Public Sector - Is there a Role for Public Accounts Committees?;*
- *The Changing Relationship Between Public Accounts Committees and Officers of Parliament, Including Auditors-General;*
- *Protecting the Public Interest in the 21<sup>st</sup> Century;*
- *Budget Sector Transparency in Accrual Output Based Budgeting - Has it Matched the Expectations of Public Accounts Committees?;* and
- *Major Risk Management Challenges in the Public Sector.*

- 5.2 The members who attended the conference agreed that a number of the presentations at the conference were of great benefit to those Committee members and staff who attended the conference.



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**Hon Barry House MLC**  
**Chairman**  
**November 19 2004**