



THIRTY-EIGHTH PARLIAMENT

REPORT 17
STANDING COMMITTEE ON LEGISLATION
ANNUAL REPORT 2009 AND 2010

Presented by Hon Michael Mischin MLC (Chair)

November 2010

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

17 August 2005

Terms of Reference:

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

“4. Legislation Committee

- 4.1 *A Legislation Committee* is established.
- 4.2 The Committee consists of 5 members.
- 4.3 The functions of the Committee are to consider and report on any Bill referred by the House or under SO 125A.
- 4.4 Unless otherwise ordered any amendment recommended by the Committee must be consistent with the policy of a Bill.”

Members during this reporting period:

Previous Members

Hon Ken Baston MLC (Chairman)
until 4 June 2009

Hon Giz Watson MLC (Deputy Chair)
until 4 June 2009

Hon Matt Benson-Lidholm MLC
until 4 June 2009

Hon George Cash MLC
substituted Hon Helen Morton MLC for the
inquiry into the jurisdiction and operation of
the State Administrative Tribunal until 20
May 2009

Current Members

Hon Michael Mischin MLC (Chair)
from 4 June 2009

Hon Dr Sally Talbot MLC (Deputy Chair)
continued as a Member of the Committee and
was appointed Deputy Chair on 4 June 2009

Hon Mia Davies MLC
from 4 June 2009

Hon Helen Morton MLC
continued as a Member of the Committee

Hon Alison Xamon MLC
from 4 June 2009

Staff during this reporting period:

Ms Denise Wong, Advisory Officer (Legal)
Mr Paul Grant, Clerk Assistant (House)
Mr Donald Allison, Clerk Assistant
(Committees)
Mr Mark Warner, Committee Clerk

Ms Renae Jewell, Committee Clerk
Mr David Driscoll, Committee Clerk
Ms Jan Paniperis, Administration Officer
(Committees)
Mr Peter Axford, Research Officer

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ISBN 978-1-921634-54-3

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REPORT OF THE STANDING COMMITTEE ON LEGISLATION

ANNUAL REPORT 2009 AND 2010

1 INTRODUCTION

- 1.1 Prior to the 36th Parliament, it was the usual practice for the Governor, on advice from the Executive, to prorogue and reopen the Parliament in August each year.¹ Reflecting this practice, parliamentary committees prepared ‘sessional’ reports on their work during that period for tabling in the Legislative Council (**Council or House**)
- 1.2 In June 2003, the Government indicated that it did not intend to continue to ask the Governor to prorogue on an annual basis² and prorogation did not occur in August 2003 or August 2004 during the 36th Parliament. Reflecting this shift in practice, in the 37th Parliament, and now in the 38th Parliament, parliamentary committees of the Council table annual reports relating to their work during the calendar year.

2 REPORTING PERIOD

- 2.1 This Report covers a 24-month period of activity by the Standing Committee on Legislation (**Committee**) between 5 December 2008 and 24 November 2010, spanning the first two years of the 38th Parliament.

3 ESTABLISHMENT OF THE COMMITTEE

- 3.1 The Committee was established on 17 August 2005 as part of a series of changes to the Council committee system.

4 TERMS OF REFERENCE

- 4.1 The Committee’s terms of reference are set out on the inside cover of this Report.
- 4.2 The functions of the Committee are to consider and report on any bill referred by the Council or under Standing Order 125A (that is, referred by the Council at the recommendation of the Business Management Committee)^{3,4} Most bills can be

¹ Hon Kim Chance MLC, Minister for Agriculture and Leader of the House, Parliament of Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 25 June 2003, p9149. Parliament meets and transacts business for a period known as a ‘session’. A session is terminated by a ‘prorogation’ of Parliament, which is effected by proclamation of the Governor on the advice of the Executive Council. Prorogation suspends meetings of each House and its committees.

² Hon Kim Chance MLC, Minister for Agriculture and Leader of the House, Parliament of Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 25 June 2003, p9150.

³ Standing Order 125A is quoted in **Appendix 1**. The Committee understands that the Business Management Committee has operated in a limited and informal manner.

referred by the Council to its committees, the general exceptions being appropriation, taxation and loan bills.

4.3 In Western Australia, unlike other Australian jurisdictions, the scrutiny of legislation is divided between three standing committees: the Joint Standing Committee on Delegated Legislation (scrutiny of subsidiary legislation); the Standing Committee on Uniform Legislation and Statutes Review (scrutiny of uniform legislation); and the Committee (scrutiny of primary legislation).

4.4 The Committee does not scrutinise all bills introduced into the Council as a matter of course; it only scrutinises bills if they are specifically referred by the Council. The Committee cannot amend a bill, but may make narrative-form and/or statutory-form recommendations to amend a bill in its report to the Council. Unless otherwise ordered by the Council, any amendment recommended by the Committee must be consistent with the policy of a bill.⁵

4.5 The Committee is able to consider bills in more detail than would be possible in the limited time available in the Council itself, and reports its findings to the Council. This process allows for the effective mediation of differing views on issues. It can also allow and encourage interested members of the public to participate in parliamentary proceedings.

4.6 Under its terms of reference, the Committee's inquiries focus on the feasibility, clarity and technical competence of a bill. The Committee also considers any abrogation or curtailment of various fundamental legislative scrutiny principles.

5 COMMITTEE MEMBERSHIP

5.1 The Committee consists of five Members. During the reporting period,⁶ the following Members served on the Committee:

- Hon Ken Baston MLC was a Member and the Chairman of the Committee until 4 June 2009.
- Hon Michael Mischin MLC was appointed as a Member and the Chair of the Committee on 4 June 2009.
- Hon Giz Watson MLC was a Member and the Deputy Chair of the Committee until 4 June 2009.

⁴ Term of Reference 4.3.

⁵ Term of Reference 4.4.

⁶ The Legislative Council Members' term for the 38th Parliament started on 22 May 2009.

- Hon Dr Sally Talbot MLC continued as a Member of the Committee and was appointed the Deputy Chair of the Committee on 4 June 2009.
- Hon Matt Benson-Lidholm MLC was a Member of the Committee until 4 June 2009.
- Hon Mia Davies MLC was appointed as a Member of the Committee on 4 June 2009.
- Hon Helen Morton MLC continued as a Member of the Committee.
- Hon Alison Xamon MLC was appointed as a Member of the Committee on 4 June 2009.

6 STAFF AND SUPPORT SERVICES

6.1 The Council Committee Office supports the Committee. During the reporting period, the Committee was staffed at various times by:

- Ms Denise Wong, Advisory Officer (Legal);
- Mr Paul Grant, Clerk Assistant (House);⁷
- Mr Donald Allison, Clerk Assistant (Committees);
- Mr Mark Warner, Committee Clerk;
- Ms Renae Jewell, Committee Clerk;
- Mr David Driscoll, Committee Clerk;
- Ms Jan Paniperis, Administration Officer (Committees); and
- Mr Peter Axford, Research Officer.

7 INQUIRIES

Inquiry into the Jurisdiction and Operation of the State Administrative Tribunal

7.1 This inquiry was referred by the House to the Committee on 7 June 2007 pursuant to section 173 of the *State Administrative Tribunal Act 2004*, which provides that:

As soon as practicable after the end of the period of 2 years after the day on which section 7 comes into operation [that period ended on 1

⁷ At the relevant time, Mr Paul Grant was the Clerk Assistant (Committees).

January 2007] *an inquiry into the jurisdiction and operation of the [State Administrative] Tribunal is to be conducted by –*

- (a) *a committee of the Legislative Council established to conduct that inquiry; or*
- (b) *an existing committee of the Legislative Council upon which the function of conducting that inquiry is conferred by that House.*

- 7.2 On 7 August 2008, the Committee was still in the process of gathering further information and drafting its report when the 2008 State Election was called, the 37th Parliament was prorogued and the Legislative Assembly was dissolved.⁸ The prorogation of the 37th Parliament terminated this inquiry. However, this inquiry was re-referred to the Committee on 11 November 2008 in the 38th Parliament.⁹
- 7.3 The Committee's report, tabled on 20 May 2009, contained 25 findings and 60 narrative-form recommendations.¹⁰ All of the findings and recommendations were unanimous. The Committee found the State Administrative Tribunal to be operating efficiently and effectively. The Government's response to the report was tabled on 17 September 2009 and a copy of that response is available on the Committee's website.
- 7.4 During the reporting period, for the purposes of this inquiry, Hon George Cash MLC substituted Hon Helen Morton until 20 May 2009 pursuant to Standing Order 326A. The Committee extends its appreciation to Hon George Cash for his contribution to the inquiry.

Standardisation of Formatting Bill 2009

- 7.5 Pursuant to a referral from the House, the Committee commenced an inquiry into the Standardisation of Formatting Bill 2009 on 19 August 2009. The reporting deadline for this inquiry was 22 October 2009.
- 7.6 The purpose of the bill was to standardise the formatting, layout and style of all written laws, both primary and subsidiary legislation, in the State, thereby improving the State's legislation database. The Committee's report was tabled on 22 October 2009 and recommended, in statutory form, two amendments to the bill.¹¹ The

⁸ *Western Australian Government Gazette*, Number 135 Special, 7 August 2008, p3497.

⁹ Parliament of Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 11 November 2008, p53.

¹⁰ Parliament of Western Australia, Legislative Council, Standing Committee on Legislation, Report 14, *Inquiry into the Jurisdiction and Operation of the State Administrative Tribunal*, May 2009.

¹¹ Parliament of Western Australia, Legislative Council, Standing Committee on Legislation, Report 15, *Standardisation of Formatting Bill 2009*, October 2009.

Government's response to the report was provided during the debate of the bill in the Council.

Criminal Investigation Amendment Bill 2009

- 7.7 The inquiry into the Criminal Investigation Amendment Bill 2009 was referred to the Committee on 26 November 2009 with a reporting deadline of 25 March 2010. Given the controversial nature of the bill, the complexity of the issues raised and the large volume of evidence which had been, and was still being, received by the Committee, it was necessary for the Committee to seek two extensions of the reporting deadline, resulting in an ultimate reporting deadline of 21 October 2010.
- 7.8 The bill proposes to introduce powers for the police to stop and search people and vehicles in public places within designated areas without the need for a search warrant, an arrest, consent or a reasonable suspicion of something.
- 7.9 The Committee's report was tabled on 21 October 2010.¹² The Committee was unanimous in its view that the bill ought not to proceed in its current form. However, a majority of the Committee opposed the bill in any form. The Committee made 12 findings and 54 recommendations. Thirty-six recommendations were made unanimously, ten recommendations were made by a majority of the Committee and eight recommendations were made by a minority of the Committee.
- 7.10 The Government's response to the report is due on 22 February 2011.

8 CONCLUSION

- 8.1 The Committee has an important role in the legislative process, assisting the Council to consider and review proposed legislation and to inquire into any other matter which is referred. The Committee considers that it has operated efficiently and effectively during the reporting period.



Hon Michael Mischin MLC

Chair

25 November 2010

¹² Parliament of Western Australia, Legislative Council, Standing Committee on Legislation, Report 16, *Criminal Investigation Amendment Bill 2009*, October 2010.

APPENDIX 1

STANDING ORDER 125A

Arrangement of business

- 125A. (1) In this order “**Committee**” means a meeting of the Leader of the House with the Leader of the Opposition and such other Members as the Leader of the House may invite.
- (2) The Committee shall meet at a time and place fixed by the Leader of the House.
- (3) The Committee is to discuss with the Leader of the House:
- (a) the content, order, and routine of business for each sitting day in the following week;
 - (b) a day or days by which each or any of the remaining stages of a Bill might be completed;
 - (c) the referral of a Bill or other matter to a specified committee and, if desired, a date on which that committee report on the Bill or other matter;
 - (d) such things, consistent with the rules and orders of the House, as will facilitate the orderly conduct of business.
- (4) Nothing in this order affects the operation of SO’s 127 and 129.