



**REPORT OF THE**  
**STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS**  
**IN RELATION TO**  
**A PETITION REGARDING DEBT IMPOSITION ON**  
**LOCAL GOVERNMENT AUTHORITIES FOR**  
**MEAT INSPECTION FEES**

Presented by the Hon Murray Nixon (Chairman)

Report 31

**STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS  
AND STATUTES REVISION**

**Date first appointed:**

21 December 1989

**Terms of Reference:**

1. The functions of the committee are to inquire into and report on:
  - (a) the constitutional law, customs and usages of Western Australia;
  - (b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,  
  
and any related matter or issue;
  - (c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
  - (d) any petition.
  
2. A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

**Members as at the date of this report:**

Hon M D Nixon MLC (Chairman)  
Hon Ray Halligan MLC  
Hon Tom Helm MLC

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## 1. Introduction

### 1.1 The Petition

- 1.1.1 On 11 June 1997, Hon Bruce Donaldson MLC presented a petition from 118 citizens and ratepayers of Western Australia in the following terms -

*"We the undersigned citizens of Western Australia call upon the Government of Western Australia to recognise the will of the people of the State who oppose -*

- a. The decision of the Government to not recognise the financial plight of local governments in respect to meat inspection services supplied to failed abattoir operations under the Health Act 1911 prior to its amendment on 22 July 1996.*
- b. The failure of the Government to recognise that such financial losses sustained by local governments prior to 22 July 1996 are directly attributable to the flawed legislation contained within the Health Act 1911.*
- c. The decision of Government to not compensate local governments which have been adversely affected by the flawed legislation particularly where all legal process for recovery of expenses has been exhausted."*

- 1.1.2 On 9 September 1998, Hon Bruce Donaldson MLC retabled a petition again requesting that the Legislative Council call upon the Government of Western Australia to reverse the decision to not compensate financially disadvantaged local governments.

### 1.2 Background to the Petition

- 1.2.1 In 1973, the Kojonup Abattoir Pty Ltd (the "Company") was established for the purpose of trading as an abattoir within the Kojonup Shire boundaries. As authorised by the *Health Act 1911* (the "*Health Act*"), the Shire of Kojonup (the "Shire") provided meat inspection services to the Company in return for a fee.

- 1.2.2 In May 1996, the Company was placed into liquidation and the Shire was advised that the Company's liabilities far outweighed its remaining assets and that there would be no funds remaining for payment of unsecured creditors. Accordingly, the Shire, as an unsecured creditor, was advised that they would not receive any funds in satisfaction of the debt for meat inspection fees.

- 1.2.3 Prior to the amendments of July 1996, the *Health Act* did not provide for the taking of any form of security for the debts incurred in relation to the provision of meat inspection services. However, the Shire maintained that, as the local authority, they still had an obligation to provide inspection services for the Company while it continued to operate as an abattoir in their jurisdiction. In these circumstances, the Shire claims that they are entitled to compensation from the State Government for the financial loss suffered due to their obligations under the *Health Act*.

### **1.3 The Issues Raised in the Petition**

1.3.1 The petition raises the following issues -

- a. the operation of the *Health Act* before and after the amendment of section 246F in July 1996;
- b. the effect of the *Health Act* on local authorities with regard to the provision of meat inspection services;
- c. whether the Shire acted reasonably in the management of the debt; and
- d. whether the *Health Act*, prior to amendment, directly caused the Shire to suffer a financial loss.

## **2. The Shire's Account**

2.1 During the course of the inquiry, the Shire provided the Committee with a copy of the debtor's ledger relating to the outstanding meat inspection service fees owed by the Company. Between 1990 and 1994, the outstanding fees for meat inspections appeared to vary from approximately \$11 377 to \$35 689 as at 30 June each year. The approximate amounts outstanding were -

- 30 June 1990 - \$12 586
- 30 June 1991 - \$11 377
- 30 June 1992 - \$29 163
- 30 June 1993 - \$27 593
- 30 June 1994 - \$35 689

2.2 In the light of the above, the Committee requested the Shire to outline what action was taken to manage the outstanding fees for the period between 1990 and 1994. The Shire's response was that, prior to 1994, the debt owed by the Company was considered manageable with payments being received on a regular basis. Accordingly, the Shire did not actively pursue the debt until early 1994.

2.3 The debtor's ledger indicates a degree of variation in the standard monthly meat inspection fees invoiced by the Shire to the Company. In relation to the financial years between 1989/1990 and 1993/1994, the average monthly meat inspection fees were -

- 1989/1990 - \$ 4068
- 1990/1991 - \$ 5363
- 1991/1992 - \$ 5384
- 1992/1993 - \$ 6311
- 1993/1994 - \$ 6101

2.4 The debtor's ledger also indicates that for the period July 1989 to February 1994, the Shire was receiving regular payments from the Company in relation to the outstanding

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meat inspection service fees. In particular, the ledger indicates that it was not until about March 1994 that it appeared that regular payments were not being made by the Company to the Shire for the outstanding fees.

- 2.5 In March 1994, a Shire Finance Committee (the "Finance Committee") meeting was held at which it was resolved that the Company be called upon to pay off their outstanding account over a three (3) month period and that the matter be reviewed by the Assistant Shire Clerk.
- 2.6 On 16 March 1994, the Shire sent a letter to the Company advising that their account for meat inspection services was \$20 161.27 in arrears in relation to the period from September 1993 to February 1994 inclusive.
- 2.7 On 19 April 1994, the Shire Finance Committee again met and noted that the Company's installments for meat inspection services for April had not been paid. A Shire meeting was later held on 26 April 1994 and it was resolved that the Clerk should seek legal advice on the options available to recover the debt owing by the Company.
- 2.8 On 5 May 1994, the Shire sent a letter to Wilson and Rogers Barristers and Solicitors ("Wilson and Rogers Solicitors") explaining that the Company had been late in meeting its payments over the last six to twelve months to the point where the outstanding balance was currently at \$20 000. The Shire sought legal advice as to the options to recover the debt.
- 2.9 On 6 May 1994, Wilson and Roger Solicitors sent a letter to the Shire advising of the avenues which could be taken to recover the debt such as -
- legal mortgage;
  - equitable mortgage; or
  - debenture over the undertakings of the Company.

In the event that the Company failed to provide security, Wilson and Rogers Solicitors advised the Shire that they should then institute legal proceedings by summons or writ.

- 2.10 At a Finance Committee meeting on 17 May 1994, it was noted that legal opinion had been received by the Shire concerning the options available to recover the debt. In the light of the opinion, the Shire resolved that a special meeting of the Finance Committee be held at 11.00 am on 23 May 1994 and suggested an invitation be extended to the management of the Company to discuss the matter of the outstanding meat inspection fees.
- 2.11 At the meeting, the Finance Committee was also advised that the Company owed the Shire \$31 428.62 minus the operating surplus of \$6 473.86 which equated to \$24 954.75 as at 31 May 1994. The Committee noted that the State Cabinet had approved drafting of amendments to the *Health Act* to enable Councils to require the provision of a bond or bank guarantee from abattoir operators and to allow a Shire to withdraw meat

- inspection services where abattoir operators failed to comply with the issued work schedules or to pay for meat inspection services.
- 2.12 On 23 May 1994, a special meeting of the Finance Committee was held at which it was decided that the Shire President and Shire Clerk should have discussions with the Company to ascertain if they would agree to the Shire holding a security for the outstanding monies owed.
- 2.13 On 27 May 1994, the Shire President and Shire Clerk met with the management of the Company who assured them that the account would be paid in full. The Company also agreed to supply a letter from the directors confirming their assurances and commitment to keep the Shire informed of the situation in regard to the possible sale of the Company.
- 2.14 On 1 July 1994, the Shire sent a letter to the Company requesting that they provide a formal director's guarantee in relation to payment of the outstanding debt. The letter stated that the guarantee must be received by the Shire no later than 4.00pm on 14 July 1994. It was also stated that the Shire was extremely disappointed that repeated requests for such a guarantee had not been honoured and that the negotiated agreement for monthly installments of \$8 000 had not been satisfied.
- 2.15 On 1 August 1994, the Shire organised for a credit check to be conducted on the directors of the Company. On 5 August 1994, the Shire sent a letter to the Company advising of an agreement on the following conditions -
- i) a nominal interest rate of 5% be applied to the frozen overdue accounts reducing balance commencing as from 1 July 1994. If monthly commitments are maintained, and the total amount is paid off by 30 June 1995, a \$5 000 contribution towards the costs incurred in the retrenchment of one (1) meat inspector would be made; or
  - ii) the Company grant the Shire a mortgage over the abattoir property to secure \$25 000; or
  - iii) the Company be offered a choice of accepting clause (ii), however, if it defaults in its monthly payments, then it agree to immediately grant a mortgage over the abattoir property.
- 2.16 On 23 August 1994, the Shire sent a letter to the Company requesting written confirmation of their intentions in regard to the counter offer and mortgage. On 5 September, the Shire then sent a letter to Minter Ellison Northmore Hale Barristers and Solicitors ("Minter Ellison Solicitors") concerning the outstanding debt owed by the Company. In particular, the Shire advised that the Company had rejected a number of offers in relation to guarantees and mortgages to secure the debt. The Shire also specifically sought a legal opinion as to whether the Shire and/or staff could be held liable for the debt.
- 2.17 On 23 September 1994, Minter Ellison Solicitors sent an opinion to the Shire advising that they were unable to exclude the possibility that the Shire would be held liable for

negligence in relation to recovery of the outstanding debt owed by the Company. The opinion stated, inter alia, that the Shire was **not at liberty to simply terminate its inspection service** and it is, therefore, **likely that there will always be an outstanding debt** to the Shire given the continuing nature of the service. It was advised that, in order to avoid any suggestion or allegation of financial mismanagement, the Shire ought to adopt a firm strategy for the management of the debt. To date, the opinion considered that the Shire's actions had been "most reasonable".

- 2.18 The opinion advised that the management of the debt should involve, at some point, the issuing of legal proceedings. However, it was pointed out that the issuing of a writ may have some commercial consequences for the Company but in itself may not necessarily cause the Company to cease operations. The obtaining of a final judgement may take some years and, during that period of time, the proprietors of the Company may have resolved their financial problems.
- 2.19 It was also advised that the Shire should attempt to ascertain the reason for the lack of regular payments by the Company. If the reason is bona fide, then it would be quite proper for the Shire not to commence legal proceedings. In other words, if such steps would result in the closure of the business, and the flow on effect to the local economy would have greater ramifications, then it is appropriate for the Shire to take that into account in making its final decision. On the other hand, if the reasons for the non-payment of the fees fall into the other general category, namely the mismanagement of the business, then commercially, it would be unwise to allow that situation to compound itself.
- 2.20 On 3 March 1995, the Shire sent a letter to the Company requesting a meeting to discuss three (3) possible alternatives to satisfy the necessary "duty of responsibility" the Shire had to its ratepayers. The alternatives were -
- to obtain security from the management in the form of a mortgage;
  - to obtain personal cheques from the directors to bring the debt back on track to the agreed debt reduction; or
  - if no agreement between the parties is reached, to proceed with the legal options as outlined by Wilson and Rogers Solicitors in May/June 1994 and Minter Ellison Solicitors in September 1994.
- 2.21 On 10 March 1995, the Shire held a Special Meeting at which the President sought an explanation from the Company concerning the delay in making the agreed monthly payments to reduce the outstanding debt. Mr Harrison, on behalf of the Company, advised that he disagreed with what had been paid according to the Shire's accounting records. However, it was agreed that the Company should examine their own financial records to ensure that they reconciled with the Shire's records in terms of the cash receipts.
- 2.22 Mr Harrison advised that he had a cheque to pay for the December 1994 account and would endeavour to pay the October and November 1994 invoices as cash flow



permitted, but not into one or two payments. It was agreed that if the estimated debt (at 31 January 1995) of \$14 815 was paid off by 30 June 1995, the Shire would be satisfied. The Shire outlined a proposal for the Company to repay the October and November 1994 invoices (\$11 337) by five equal instalments on top of the remaining five monthly accounts to 30 June 1995, to which the Company agreed. The matter of seeking a form of guarantee was also discussed by way of bank guarantees or director's guarantees. The Company advised that they would not be prepared to sign any such guarantee.

- 2.23 On 24 March 1995, the Shire sent a letter to the Company enclosing the invoice for February's meat inspection fees and acknowledged the December account remittance. On that same date, an agreement between the Shire and the Company was executed in which it was agreed that the Company would pay the Shire five (5) equal payments of \$2,267.54 in addition to the normal January through to May 1995 accounts. The additional payments would be in recognition of the outstanding October and November 1994 accounts amounting to \$11, 337.70.
- 2.24 On 3 April 1995, the Shire sent a letter to the Company stating that a monthly meeting would be held between the Shire and the Company to monitor the outstanding debt. On 7 April and 5 May 1995, the monthly meetings were held with discussion about the status of the debt.
- 2.25 On 2 June 1995, a monthly meeting was held between the Shire and the Company. On 30 August 1995, the Shire sent a letter to the Company stating that they were disappointed that the agreement to pay the debt had not been maintained and that the last cash payment was received on 30 May 1995. Accordingly, the Shire said they would be executing a Local Court summons for the amount of \$18,387.08 unless payment was received within 7 days.
- 2.26 On 8 September 1995, the Shire sent a letter to Wilson and Rogers Solicitors requesting preparation of a summons for service by the local bailiff on the Company for the sum of \$18, 387.08 being unpaid invoices from May 1994 to April 1995 inclusive and the 1994/95 Offensive Trade license fee. On 22 September 1995, the Shire received a letter from Wilson and Rogers advising that other summonses had been issued against the Company (one in excess of \$50, 000) for debt recovery which had reached the stage of entry of judgement and most creditors had also issued warrants of execution.
- 2.27 Wilson and Rogers further advised that none of the warrants of execution or writs fi fa had directly resulted in any payment to creditors. The reason for the non payment was that all of the assets of the Company were encumbered and none of the creditors had been prepared to apply for liquidation. The Company also advised Wilson and Rogers Solicitors that they were prepared to start repaying the outstanding fees by regular monthly payments and should have the debt repaid within 12 months. As a result of the conflict of interest and unlikelihood that a summons would result in any payment, Wilson and Rogers Solicitors advised against issuing a summons.
- 2.28 On 13 November 1995, the Shire sent a letter to the Minister for Health explaining that the Company was experiencing some difficulty in payment of fees for the meat inspection services provided by the Shire. In this regard, the Shire sought information

as to what safeguards existed for local authorities in the event that an abattoir owner decided to cease trading or was forced into liquidation because of such a financial situation. If there were no such safeguards, the Shire enquired as to the intentions of the Government to rectify the legislation to protect local authorities who are legally obliged to provide the service.

2.29 On 13 November 1995, the Shire also sent a letter to Wilson and Rogers Solicitors advising that they had resolved to monitor the Company's monthly repayments. On 18 December 1995, the Shire received further **legal advice from Minter Ellison Solicitors advising that it was unlikely that the Shire could obtain an injunction to prevent the Company from trading so as to prevent it from incurring further debts** to the Shire for non-payment of meat inspection service fees. Accordingly, the advice recommended -

- recovery of the debt under the Corporations Law or personal recovery of the debt from the directors of the Company; or
- recovery of the debt by commencement of District Court proceedings.

2.30 In response to the letter of 13 November 1995, the Shire received a letter from the Minister for Health, Hon Graham Kierath MLA, on 5 December 1995 concerning the provision of meat inspection services. The Minister advised that the Shire's concerns regarding the recovery of bad debts had been addressed in the current *Health Act Amendment Bill*. The Minister explained that the amendments would enable local government to hold a bond or bank guarantee from abattoir operators against bad debts and withdraw meat inspection services for non-payment of inspection fees.

2.31 On 16 January 1996, the Shire received a letter from Minter Ellison Solicitors enclosing a copy of the Creditor's Statutory Demand for Payment of Debt and a supporting affidavit. On 27 February 1996, the Company was served with a letter of demand for payment in accordance with the Creditor's Statutory Demand. The letter stated that Council required the guarantee to be a director's guarantee which was to be drafted by the Shire's solicitors. The letter also advised that the Shire had resolved to grant a sum of \$5,000 as its contribution towards the R Wheat retrenchment, the redundant meat inspector.

2.32 On 17 January 1996, the Shire sent a letter to the Minister for Health, Hon Kevin Prince MLA, stating that the problems with outstanding meat inspection service fees had been discussed with his predecessor, Hon Graham Kierath MLA. The Shire again explained the invidious position in which they had been placed as a result of the *Health Act* and sought advice regarding the proposed amendments. The Shire also requested the Minister to attend its next Council Meeting to discuss, inter alia, government assistance to local governments who had been financially disadvantaged by the *Health Act*.

2.33 On 16 February 1996, the Shire received a response from the Minister for Health stating that he regretted that he was unable to attend the Council meeting on 22 January 1996. The Minister indicated that he appreciated the Shire's position and reaffirmed that a Bill would be introduced into Parliament at the earliest opportunity during the 1996

- Parliamentary Session to address the issues in question. In regard to compensation, the Minister said that the State was unable to offer any assistance and suggested that the Shire pursue recovery of the outstanding monies through the Court system.
- 2.34 On 29 April 1996, the Minister for Health, Hon Kevin Prince MLA, sent a letter to Hon Bill Stretch MLA advising that he intended to introduce a Bill into Parliament at the earliest available opportunity during the 1997 Parliamentary Session to deal with the issue of meat inspection services by local government. However, the Minister repeated that the State was not in a position to offer financial assistance to the Shire.
- 2.35 On 8 May 1996, the Shire received a letter from Judge Constable Chartered Accountants advising that Kevin Judge was appointed the Official Liquidator of the Company on 1 May 1996.
- 2.36 On 25 June 1996, the Shire sent a letter to the Office of the Premier stating that the Company had gone into receivership with debts far outweighing assets and an amount of \$52 527.00 owing to the Shire. The Shire complained that it had made repeated protestations to the Government concerning the flawed *Health Act* which had been met from the State with "bland statements that the legislation would be amended".
- 2.37 The Shire believed that there was a lack of "haste by the Health Department to react to a situation that was well known to them and to local government which have been operating abattoirs" which was bordering on negligence. Accordingly, the Shire requested that the Government give consideration to compensating local governments which had suffered financial loss through no fault of their own and due directly to the flawed *Health Act*.
- 2.38 On 28 October 1996, the Shire received a response from the Office of the Premier stating that the amendments to the *Health Act* had been passed by Parliament on 22 July 1996. The Premier commented that the amendments "**should prevent losses incurring in the future but not those which had been incurred in the past**". In these circumstances, the Premier said that the Government was not in a position to compensate the Shire for the losses incurred for unpaid meat inspection services and recommended that the appropriate legal action be pursued.
- 2.39 On 25 November 1996, the Shire sent a letter to the Health Inspector, Mr R Couch, advising that the Company had ceased operations and that the Shire no longer required his services.

### 3. The Government's account

3.1 As outlined above, the Shire was advised by both the Minister for Health and the Office of the Premier that the Government was not prepared to compensate them for the losses allegedly caused by the flawed legislation. The Government's position was that local governments should not be compensated for their losses for the following reasons -

- i) local authorities are often required to provide services for the benefit of the local community without a fee being charged. This is particularly the case where public health is concerned;
- ii) the activities of the local government necessarily extend beyond user pays functions for which reason they have an authority to tax;
- iii) the Shire's apparent reluctance to pursue legal avenues to recover the outstanding fees. Such discretionary actions do not place an obligation on the State for compensation; and
- iv) if the Government were to compensate the Shire, it could act as a precedent for local governments to attempt to transfer the cost of many legitimate responsibilities onto the State Government.

3.2 In these circumstances, the State Government recommended to the Shire that they have recourse to the Courts to recover the outstanding debt owed by the Company.

**NOTE:** *The Shire has informed the Committee that approximately 90% of the meat processed by the Company was consumed by persons outside the Shire's jurisdiction. In this regard, the Shire disagrees with the Government's comment at 3.1 (i) that the meat inspection service provided to the Company was solely for the benefit of the local community.*

### 4. The legislation

4.1 The scheme of the health-related legislation regarding meat inspection incorporates the *Health Act 1911*, the *Health (Meat Inspection, Branding and Processing) Regulations 1950* and the *Health Legislation Administration Act 1984*.

4.2 Under this system, every animal slaughtered for food, and every carcass or portion thereof imported for food, shall be subject to inspection by an inspector (Article 1A of the *Meat Inspection Regulations 1950*).

4.3 The inspector may either be an officer of the Health Department or, pursuant to section 27 of the *Health Act*, a local government authority may be required to undertake this function at the direction of the Executive Director, Public Health. In this case, the Shire was directed to undertake the function.

4.4 Under section 246F of the *Health Act*, fees must be paid in respect of all inspections carried out for the purposes of the meat inspection regulations. These fees must be paid

either to the Executive Director, Public Health, or to the local authority, whichever was responsible for the inspection.

## **5. Amendments to the Health Act in July 1996**

5.1 On 22 July 1996, section 246F of the *Health Act* was amended by insertion of the following sub-sections -

- **246FA(1) and (2)** which provides the local authority with the power to require financial security of any form to cover the payment of fees for meat inspections;
- **246FA(3)** provides that where the local authority requires security in the form of a contract of insurance, the local authority may require that it be a joint insured or a beneficiary;
- **246FA(4)** provides that a person who has provided financial security may apply to the local authority at any time to have the security discharged;.
- **246FA(5)** provides that if fees are not paid within thirty (30) days notice requiring payment, then the local authority may exercise any financial security provided to recover the outstanding amount;
- **246FA(6)** provides that the provision of security does not affect any other means of recovering fees that are owed under the meat inspection regulations;
- **246FB(1)** provides that the local authority may refuse to inspect meat for a person until -
  - a) any fees owed under meat inspection regulations are paid;
  - b) a lawful direction given to that person under the Act is complied with;  
or
  - c) financial security requested of the person under s 246FA has been provided; and
- **246FB(2)** provides that seven days notice should be given before the local authority refuses to inspect meat.

## **6. The effect of amendments to section 246F of the Health Act on local government**

6.1 As mentioned above, prior to July 1996, the *Health Act* did not provide for the taking of any form of security for the debts incurred with regard to meat inspections. However, section 246F has since been amended and now allows local authorities to protect

themselves against such debts by taking security, such as guarantees, contracts of insurance or priority charges.

6.2 The effects of the amendments to sections 246FA and 246FB of the *Health Act* are as follows -

- local authorities are now entitled to require financial security in relation to the payment of fees. It should be noted that this amendment does not necessarily ensure payment but will provide the local authority with the status of a secured creditor in the event of liquidation or receivership; and
- local authorities are also entitled to withdraw those services if the fees are not paid or financial security is not provided. The importance of this amendment is that, under Article 1 of the *Health Regulations*, every animal slaughtered for food, and every carcass or portion thereof imported for food, must be inspected by an inspector. This means that, theoretically, a local authority could close down the business operations of an abattoir that does not pay its fees or refuses to enter into financial security arrangements.

6.3 It is therefore clear that these amendments to the *Health Act* **do not** change the obligations of local governments to perform meat inspections. The amendments simply ensure that these services will not be provided without the corresponding payment of fees. However, it is still open to local authorities to continue providing inspection services without fees being paid. In other words, the amendments provide a mechanism by which security may be obtained but do not ensure that local authorities receive payment for inspection services.

## 7. Conclusion

7.1 As outlined, the outstanding fees owed to the Shire by the Company for the period 1990 to 1994 varied between approximately \$11 377 to \$35 689 as at 30 June each year. The specific amounts owed to the Shire by the Company as at 30 June were -

- 30 June 1990 - \$12 586
- 30 June 1991 - \$11 377
- 30 June 1992 - \$29 163
- 30 June 1993 - \$27 593
- 30 June 1994 - \$35 689

7.2 The debtors ledger indicated that there was a degree of variation in the amount of the monthly meat inspection fees owed by the Company to the Shire. However, the average monthly fees for the financial years 1989/90 to 1993/94 were -

- 1989/1990 - \$ 4068
- 1990/1991 - \$ 5363
- 1991/1992 - \$ 5384
- 1992/1993 - \$ 6311

- 1993/1994 - \$ 6101

7.3 The Committee understands that 30 to 90 days is considered as a normal trading period. In this regard, the Committee notes that the debt (as averaged) owed by the Company to the Shire was in arrears to the approximate number of trading days of -

- 1989/1990 - 90 days
- 1990/1991 - 60 days
- 1991/1992 - 160 days
- 1992/1993 - 130 days
- 1993/1994 - 170 days

7.4 The Committee is satisfied that for the 1989/1990 and 1990/1991 financial years, the outstanding fees owed by the Company to the Shire did not exceed the accepted practice in business of a 30 to 90 day trading period. In this regard, the Committee considers that it was not incumbent on the Shire to pursue any action for recovery of the outstanding fees during that period.

7.5 In relation to the 1991/1992, 1992/1993 and 1993/1994 financial years, the Committee notes that the trading period for the debt varied between approximately 130 and 170 days. In this regard, the Committee notes that such trading exceeds the preferred 30 to 90 day period. However, the Committee accepts the Shire's comments that they did not take any action to recover the outstanding debt until March 1994 as regular payments were being made by the Company to the Shire up until that time.

7.6 In these circumstances, the Committee considers that it was neither unreasonable nor improper for the Shire to decline commencing legal action against the Company until March 1994. It was at that time that the Shire expressed concern about the debt and threatened to commence legal action to protect and recover the amount owing. The debt was continually raised at the Shire and Finance Committee meetings along with the possibility of taking legal action and obtaining security or guarantees from the Company.

7.7 The Shire sought legal opinion on the matter in May 1994, September 1994 and September 1995 and was specifically advised, inter alia, that it was not at liberty simply to terminate its inspection services. According to legal opinion, this meant that it was likely that there would always be an outstanding debt to the Shire given the continuing nature of the service.

7.8 On the information provided, the Committee is satisfied that the Shire managed the outstanding debt owed by the Company in both a reasonable and proper manner. However, prior to the 1996 amendments to the *Health Act*, the Committee considers that the Shire was placed in an untenable position whereby they were required to provide meat inspection services without the corresponding payment of fees. The *Health Act* also did not provide for the taking of any form of security for the debts incurred with regard to meat inspections. The absence of this latter provision meant that the Shire was not afforded the position of a secured creditor and, accordingly, the status of a preferential creditor.

- 7.9 The Committee also notes that approximately 90% of the meat processed by the Company was consumed by persons outside the Shire's jurisdiction. This meant that the meat inspection services provided by the Shire were, in the greater part, for the benefit of persons outside the Shire's jurisdiction. In these circumstances, the Committee is unable to accept the Government's comment (see 3.1 (i) above) that the Shire is not entitled to compensation for the reason, inter alia, that local authorities are often required to provide services for the benefit of the local community without a fee being charged.
- 7.10 In the light of the above, the Committee believes that, prior to the 1996 amendments, the *Health Act* prevented the Shire from protecting its ratepayers by withdrawing the meat inspection services and/or ensuring that the Shire was afforded the benefit of being a secured creditor. In this regard, the Committee considers that the *Health Act* directly resulted in the Shire suffering a financial loss to the detriment of the ratepayers.

**Recommendation:** The Committee recommends that the Shire be granted an *ex gratia* payment in relation to the loss suffered as a result of the failure of the *Health Act* to protect the Shire and its ratepayers.

**Hon Murray Nixon MLC**  
**Chairman**

**Date:**