



# ***PROCEDURE AND PRIVILEGES COMMITTEE***

## **REVIEW OF THE LEGISLATIVE ASSEMBLY COMMITTEE SYSTEM (PART A)**

**Report No.4  
2008**

Presented by:  
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**Deputy Speaker of the Legislative Assembly**  
**on 15 May 2008**

**Published by the Legislative Assembly, Parliament of Western Australia, Perth, May 2008.**

Printed by the Government Printer, State Law Publisher, Western Australia.



Review of the Legislative Assembly Committee System

ISBN: 978-1-921355-38-7

(Series: Western Australia. Parliament. Legislative Assembly. Committees. Review of the Legislative Assembly Committee System. Report No. 4 of 2008)

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PERTH WA 6000

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## COMMITTEE'S FUNCTIONS AND POWERS

Legislative Assembly Standing Order No. 284 provides the following functions, powers and terms of reference to the Procedure and Privileges Committee -

- (1) A Procedure and Privileges Committee will be appointed at the beginning of each Parliament to -
  - (a) examine and report on the procedures of the Legislative Assembly; and
  - (b) examine and report on issues of privilege; and
  - (c) wherever necessary, confer with a similar committee of the Council.
- (3) Membership of the committee will consist of the Speaker and four other members as the Legislative Assembly appoints.
- (4) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.
- (5) When consideration of a report from the committee is set down as an order of the day it will be considered using the consideration in detail procedure.





## **ABBREVIATIONS AND ACRONYMS**

CDJSC	Community Development and Justice Standing Committee
EHSC	Education and Health Standing Committee
EISC	Economics and Industry Standing Committee
JSCCCC	Joint Standing Committee on the Corruption and Crime Commission
PAC	Public Accounts Committee
PPC	Procedure and Privileges Committee
SAT	Salaries and Allowances Tribunal

## CHAPTER 1 INTRODUCTION

### 1.1 Background to inquiry

The establishment of the Legislative Assembly Committee System (committee system) at the commencement of the 36<sup>th</sup> Parliament in May 2001 was broadly in line with recommendations of the 1996 Select Committee on Procedure and the 1999 *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*. That report was informed by the *Final Report* of the Select Committee on Procedure, which reported to the House on 27 June 1996.

Prior to the establishment of the committee system, the Legislative Assembly was supported by the Public Accounts Committee (PAC), the Joint Standing Committee on the Anti Corruption Commission, the Standing Committee on Uniform Legislation and Intergovernmental Agreements and the Standing Orders and Procedure Committee, each of which were established on a sessional basis. In addition, single issue Select Committees were appointed by the House as required.

The current arrangements have been in place for approximately seven years, and in line with its power to examine and report on the procedures of the Legislative Assembly, the PPC resolved to conduct a review of the committee system, including consideration of committees' membership, workloads, terms of reference and related matters.

#### (a) Terms of Reference

On 22 November 2005 the PPC resolved to adopt the following Terms of Reference for its investigation -

- “(1) That a review of Legislative Assembly’s committee system be conducted, specifically taking into consideration -
- (a) Committees’ membership and chairmanships;
  - (b) Standing Committees’ portfolio workloads;
  - (c) Sources of terms of reference and the level of priority that should be allocated by a committee particularly if it is a direction from the Legislative Assembly;
  - (d) Early disclosure of committee evidence and reports and possible sanctions that should apply;
  - (e) Sessional committees including what the Procedure and Privileges Committee’s role should be in reviewing breaches of privilege; and
  - (f) Other related matters.”

While the Committee initially intended to report to the Legislative Assembly by 28 September 2006, a number of other matters took precedence in that year. The Committee then resolved to report to the House in March 2007; however, the Committee was required to turn its attention to successive inquiries in which members’ actions, some in their role as members of the Legislative

Assembly committee system, were called into question.<sup>1</sup> Consequently, the following report, Part A, focuses on Terms of Reference (a), (b), (c) and (f), and your Committee is of the opinion that in the light of the latter mentioned events, Terms of Reference (d) and (e) and related issues should be the matter of a separate report, Part B.

## **1.2 Conduct of Inquiry**

In conducting this review the Committee has drawn on submissions from current committees in the Legislative Assembly, discussions with individual members and observations of practice and procedure elsewhere. It has looked at the operation of the Committee system as a whole, and specifically on the Standing Orders and Speaker's Procedural Rules that guide the portfolio-based committees.

The Committee also met with Members and officers of the Victorian, New South Wales and Queensland Parliaments and as a result of those discussions, combined with an examination of submissions, has deliberated and formed the views that are developed in this Report.

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<sup>1</sup> Specifically, the *Inquiry into a Matter Referred to the Committee by the Legislative Assembly on 1 December 2005* (Report 3, 2005), *Inquiry into the Unauthorised Release of Committee Documents by the Member for Murchison Eyre* (Report 2, June 2007) and the *Inquiry into Allegations of Misconduct by Members of the Legislative Assembly*, which was referred to the Corruption and Crime Commission under S27A of the Corruption and Crime Commission Act 2003 on 16 October 2007 (ongoing).

## **CHAPTER 2 THE LEGISLATIVE ASSEMBLY COMMITTEE SYSTEM**

### **2.1 Standing Orders**

Three Chapters of the Standing Orders of the Legislative Assembly (Standing Orders) provide guidance by the House on the operations of the committee system.

Chapter 24 contains the general provisions for standing and select committees and covers what could be termed the micro-aspects of the system, including procedures for establishment, sub-committees, ballots, eligibility and so on.

Chapter 26 establishes the functions and powers of the individual committees that make up the Committee System, and guides the broader manner in which such committees operate.

Chapter 27 of the Standing Orders and the Speaker's Procedural Rules provide guidance to members on the procedures for taking evidence from witnesses.

### **2.2 Current structure**

The structure of the Committee System has remained relatively stable throughout the 36<sup>th</sup> and 37<sup>th</sup> Parliaments, with the exception of the replacement of the Standing Orders relating to the Joint Standing Committee on the Anti Corruption Commission with the new Standing Orders for the JSCCCC<sup>2</sup>, and a relatively minor reallocation of portfolios amongst existing committees.

The current Committee System is made up of the:

- Public Accounts Committee (PAC);
- Education and Health Standing Committee (EHSC);
- Economics and Industry Standing Committee (EISC);
- Community Development and Justice Standing Committee (CDJSC);
- Joint Standing Committee on the Corruption and Crime Commission (JSCCCC); and
- Procedure and Privileges Committee (PPC).

The Joint Standing Committee on Delegated Legislation consists of eight members, four from each House. However, as it operates under the Standing Orders of the Legislative Council, it will not be considered in this review.

### **2.3 Portfolio-based committees**

At the commencement of each Parliament, the Speaker determines the portfolio responsibilities for each committee which he tables in the House. Table 3.1 represents the current (37<sup>th</sup> Parliament) allocation of portfolio responsibilities.

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<sup>2</sup> Following the establishment of the Corruption and Crime Commission (CCC) in 2003.

**Table 3.1 Portfolio Allocation for the Standing Committees of the 37<sup>th</sup> Parliament**

<b>Public Accounts Committee</b>	<b>Community Development and Justice Standing Committee</b>	<b>Economics and Industry Standing Committee</b>	<b>Education and Health Standing Committee</b>
Premier Public Sector Management Federal Affairs Treasurer Government Enterprises	Citizenship and Multicultural Interests Attorney General Justice Electoral Affairs Indigenous Affairs Police and Emergency Services Community Safety Community Development Women's Interests Seniors Youth Disability Services Culture and the Arts Sport and Recreation Local Government Environment	Energy Consumer and Employment Protection Science Agriculture and Forestry Fisheries Water Resources Housing and Works Heritage Planning and Infrastructure State Development Land Information Tourism Small Business Racing and Gaming Regional Development The regional portfolios of – The Midwest and Wheatbelt The Kimberley, Pilbara and Gascoyne Peel and the South West Goldfields -Esperance and Great Southern	Education and Training Health

The Select Committee on Procedure identified a number of objectives it sought to achieve by establishing the committee system, including:

- the provision of a co-ordinated approach to oversight of Government departments;
- an established avenue of referral of inquiries;
- enhanced accountability; and
- to increase Parliament's role, and particularly that of backbenchers, in the legislative process.

That committee identified a number of constraints in achieving these objectives across the broad range of portfolio areas, given the limited numbers of members available to serve on committees.

Consequently it was recommended that three committees be established covering the range of portfolios.<sup>3</sup>

It is apparent that it is not possible for any of the portfolio-related committees to continually cover all of the portfolios allocated to them. Your Committee notes that although Standing Orders do permit subcommittees to be appointed from time to time, the limitations highlighted by the Select Committee on Procedure in 1996 remain, and that simply providing additional staff to support the current committee structure would not address the shortfall in number of Members available to conduct simultaneous inquiries.

Notwithstanding resource constraints, the diversity of portfolios is reflected in the range and type of inquiries that have been carried out by the various portfolio-based standing committees since their establishment in May 2001 as set out below. Issues relating to portfolio allocations are dealt with in Chapter 3.

### **(a) Public Accounts Committee**

Public Accounts Committees have a long history in Westminster-style parliaments, dating back to 1857 in the British House of Commons. In Western Australia a PAC has been appointed at the commencement of each Parliament since 1971, with its key role being the scrutiny of public expenditure.

Under the new system, in addition to its general role, the PAC received an allocation of portfolios considered relevant to its general remit, these being the Premier, Public Sector Management, Federal Affairs, Treasurer and Government Enterprises.

To assist in the process of assessing the efficiency and effectiveness of Government financial management, the PAC has long maintained an independent but close relationship with the Office of the Auditor General, often through the process of evaluating Auditor General Reports and holding hearings to clarify matters raised in those reports.

In the 36<sup>th</sup> Parliament, the PAC built on previous practice and established a follow-up process whereby public sector agencies are requested to respond to all recommendations contained in reports of the Auditor General. Discussions with PAC members indicate that this process provides insight into the broader issues around public sector financial management, but is a process that the committee intends to refine to suit the requirements of the Committee. In the 37<sup>th</sup> Parliament, the PAC tabled its inaugural *Review of the Reports of the Auditor General 2005-2006* in 2006, and in 2007 the PAC continued this practice. The Chairman of the PAC made the following comments in relation to the review process:

*The relationship between the Public Accounts Committee of the thirty-seventh Parliament and the Auditor General is evolving. I believe that it is indicative of best practice. The committee and the Auditor General maintain their independence. Indeed, the Auditor General's independence is formally constituted under the Auditor General Act 2006. In this atmosphere of independence, the committee and the Auditor General work together for the benefit of Western Australian taxpayers to ensure that agencies comply with the Auditor General's recommendations to increase their efficiency and services to the public,*

<sup>3</sup> Select Committee on Procedure Final report, 27 June 1996, p.34.

*and that the public gets value for money from their agencies. This process is extremely important in ensuring that the recommendations of the Auditor General are given close consideration by the public sector.<sup>4</sup>*

As well as this work, in the 36<sup>th</sup> and 37<sup>th</sup> Parliaments the PAC has tabled reports including:

- The Use of Visiting Medical Practitioners in the Western Australian Public Hospital System;
- The Port Coogee Development;
- Developer Contributions for Costs Associated with Land Development;
- The Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations; and
- Local Government Accountability in Western Australia.

At the time of writing, the PAC was intending to table its *Inquiry into Funding Arrangements for Western Australian Infrastructure Projects* on 15 May 2008.

### **(b) Education and Health Standing Committee**

The key role of the EHSC is to review and report to the Legislative Assembly on the outcomes and administration of the departments within the committee's portfolio responsibilities. Education and Health are arguably the two most significant portfolio areas in terms of their budget allocation and their public profile. The challenge for this committee is to strike a balance between its focus on these competing portfolios areas.

In the 36<sup>th</sup> and 37<sup>th</sup> Parliaments, the EHSC has tabled reports including:

- Inquiry into Post-Compulsory Curriculum in Western Australia;
- Adequacy and Availability of Dental Services in Regional, Rural and Remote Western Australia;
- Rural, Remote and Indigenous Health;
- Attention Deficit Hyperactivity Disorder in Western Australia;
- The Role and Interaction of Health Professionals in the Western Australian Public Health System;
- Inquiry into Swimming Pool Program in Remote Communities; and
- Inquiry into Cause and Extent of Lead Pollution in the Esperance Area.

### **(c) Economics and Industry Standing Committee**

The EISC has a broad range of sixteen portfolio responsibilities, including but not limited to Energy, Consumer and Employment Protection, Water Resources, Housing and Works and Planning and Infrastructure.

<sup>4</sup> *Parliamentary Debates*, Legislative Assembly, Thursday 22 November 2007, pp.7639-7640.

In the 36<sup>th</sup> and 37<sup>th</sup> Parliament, the EISC has tabled reports including:

- Bellevue Hazardous Waste Fire;
- The Sustainability of the Dairy Industry in Western Australia;
- Inquiry into the Western Australian Strata Management Industry
- Inquiry into the Production and Marketing of Foodstuffs; and
- Inquiry into the State Government's Role in Developing and Promoting Information Communication Technology (ICT) in Western Australia; and
- Water Licensing and Services.

#### **(d) Community Development and Justice Standing Committee**

The CDJSC also has a diverse range of portfolios, including responsibility for Justice, Indigenous Affairs, Police and Emergency Services and Community Development.

In the 36<sup>th</sup> and 37<sup>th</sup> Parliaments, the CDJSC has tabled reports including:

- Impact of the Arts in Regional Western Australia;
- Inquiry into Fire and Emergency Services Legislation; and
- Inquiry into Western Australia's Natural Disaster Relief Arrangements.

More recently the CDJSC has turned its attention to issues of justice, and on 10 April 2008 tabled a report on:

- The Prosecution of Assaults and Sexual Offences.

## **2.4 Non-portfolio based Standing Committees**

### **(a) Joint Standing Committee on the Corruption and Crime Commission**

The JSCCC is established under Section 216A of the *Corruption and Crime Commission Act 2003* although its terms of reference are prescribed by Standing Orders of the Legislative Assembly. The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council, reports to both Houses and carries out its core functions in part by conducting quarterly hearings.

The functions of the JSCCCC are to -

- monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.



One quarterly hearing per annum (generally public) is dedicated to reviewing the Annual Reports of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission.

In addition the JSCCCC meets twice yearly with the Integrity Coordinating Group (ICG), which was established in 2005 and includes the Parliamentary Commissioner for Administrative Investigations (Ombudsman), the Office of the Commissioner for Public Sector Standards (OPSSC), the Corruption and Crime Commission (CCC), and the Office of the Auditor General (OAG).

### **(b) Procedure and Privileges Committee**

The PPC examines the procedures of the Legislative Assembly and issues relating to privilege matters as necessary. It also reviews any requests for responses to adverse comments made in the Legislative Assembly and referred to the committee by the Speaker, and matters referred by the House for the committee's investigation.

In the 37<sup>th</sup> Parliament the committee was redesignated from a Sessional to a Standing Committee to reflect its integral role in the scrutiny and review of parliamentary processes.

Although the PPC formerly reported only occasionally on procedural matters, such as amendments to Standing Orders and other House related business, in the 37<sup>th</sup> Parliament it has examined matters of privilege and contempt with regard to individual members' actions. Reference will be made to PPC reports where the issues raised relate to the terms of reference specific to this inquiry.

## **2.5 Sessional and Select Committees**

The House has not appointed a Select Committee since the establishment of the current Committee System. Motions for the establishment of select committees continue to be moved in the House, and on occasion have been amended to refer the matter in question to the relevant standing committee. Nevertheless, your Committee believes the House should retain the capacity to establish select committees in future.

The Parliamentary Services Committee is appointed at the beginning of each session. It has the specific and limited purpose of deliberating on matters dealing with Hansard, Library, Catering and Building Management in the Parliament. The committee consists of members from both Houses and includes the Speaker and five other members as the Legislative Assembly appoints. Generally it does not have the powers provided to other committees under the Standing Orders.

## CHAPTER 3 MATTERS RAISED IN SUBMISSIONS

Your Committee received submissions from a number of the current standing committees which raised a range of matters for consideration. These include issues with:

- portfolio workloads;
- references from the House;
- budget allocations;
- allowances; and
- sources of terms of reference.

The committee also received submissions from the Attorney General of Western Australia and the WA Law Society on matters including powers to compel witnesses and procedures for the examination of witnesses. These matters will be examined in Part B of this report, as discussed in Chapter 4.

### 3.1 Standing committees' portfolio workloads

The introduction of the portfolio-based committees has enabled the Legislative Assembly to examine a wide range of issues. The difference in the weight of some portfolio areas in relation to others has meant that several committees have a greater number of portfolios allocated to them.

Standing Order 287 provides for the establishment and functions of each of the portfolio-based committees. Standing Order 287(2) requires those committees to review and report to the Legislative Assembly on:

- (a) the outcomes and administration of the departments within the committee's portfolio responsibilities;
- (b) annual reports of government departments laid on the Table of the House;
- (c) the adequacy of legislation and regulations within its jurisdiction; and
- (d) any matters referred to it by the Legislative Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

The EISC submits that current staffing levels preclude standing committees from carrying out all of the functions required by SO 287 and is concerned that standing committees are currently required to duplicate work undertaken by the Office of the Auditor General, which routinely reviews Annual Reports.<sup>5</sup>

Your Committee agrees that it is not practical for committees to comprehensively cover each of their areas of governance. Rather, committees should be as free as possible to choose the area of most demand from the Parliament's perspective. Your Committee believes such concerns highlight the need for individual committees to choose their topics of inquiry carefully, and considers the Standing Order should be interpreted as a guideline for tasks to be undertaken.

It is noted that Standing Order 287(3) reflects this in that it provides that:

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<sup>5</sup> Ms J.A. Radisich MLA, Chairman, Economics and Industry Standing Committee, Submission dated 28 March 2006, p.2.

*Annual reports of government departments and authorities tabled in the Legislative Assembly will stand referred to the relevant committee for any inquiry the committee **may** make. (emphasis added)*

Your Committee does not believe it was intended that the committee system would be tied up with examining documents and annual reports without discretion. It is noted, however, that the PAC and the JSCCCC have established the practice of holding regular meetings with key agencies relevant to their portfolio areas in an effort to obtain information, including information regarding potential topics of inquiry.

Committees are free to develop ways in which to undertake prescribed functions, including the evaluation of annual reports and relevant legislation. Notwithstanding the primacy of references from the House, your Committee believes it is for each portfolio-related committee to determine those areas which may require closer scrutiny and a subsequent report to the Legislative Assembly.

### **Recommendation**

Your Committee recommends:

“That the House and members of the committee system note the limitations on them, but that committees should feel free to develop methods of assessing annual reports and relevant legislation and any other factors, to determine those areas which may require closer scrutiny and a consequent report to the Legislative Assembly.”

## **3.2 Primacy of references from the House**

All committees are required to undertake inquiries that have been referred to them by the House. The EISC noted that the Standing Orders as they relate to the PAC (specifically 286) do not appear to require that committee to carry out the prescribed functions. Rather, Standing Order 286 appears to provide the PAC with a level of autonomy that not afforded the portfolio-based committees, in that it provides that the PAC *may* do a range of things. For example, SO 286(1) expressly provides that:

“The Committee [PAC] may —

- (1) Examine the financial affairs and accounts of government agencies of the State which includes any statutory board, commission, authority, committee, or trust established or appointed pursuant to any rule,
- (2) Inquire into and report to the Legislative Assembly on any question which —
  - (a) it deems necessary to investigate;

- (b) is referred to it by resolution of the Legislative Assembly;
  - (c) is referred to it by a Minister; or
  - (d) is referred to it by the Auditor General.
- (3) Consider any papers on public expenditure presented to the Legislative Assembly and such of the expenditure as it sees fit to examine.
- (4) Consider whether the objectives of public expenditure are being achieved, or may be achieved more economically.”

The EISC suggested that the terms of reference for standing committees could be changed in line the terms of reference set for the PAC, thereby providing standing committees with similar autonomy in determining their work priorities.<sup>6</sup>

However, your Committee notes that the financial role of the PAC requires a difference in its ability to investigate the matters listed above. However, your Committee proposes that the Standing Order relating to the PAC be amended to reflect the requirement that any matter referred by resolution of the Legislative Assembly to the PAC will have priority over other investigations being undertaken by the committee.

Committees should not feel obliged to report on matters simply because a Minister has written asking them to inquire. The Government has vast resources available to it which enable it to inquire into matters deemed necessary by members of the Executive.

It must remain the case, however, that all referrals to committees from the House must be undertaken within the time frame provided by the House, including extensions agreed to by the House, and, to the extent necessary to meet that timeframe, must take precedence over other committee work.

Your Committee therefore believes Standing Order 286(2)(b) should be deleted and a new subclause (5) inserted to require the PAC to investigate matters referred to it by the House.

### **Recommendation**

Your Committee recommends:

“That Standing Order 286(2)(b) be deleted and a new suborder (5) be inserted:

- (5) The Committee will investigate any matter which is referred to it by resolution of the Legislative Assembly.”

### **(a) Sources of Terms of Reference**

The EISC submits that while terms of reference referred by the House should continue to take precedence over other committee work, the relevant committee should be consulted about

<sup>6</sup> Ms J.A Radisich MLA, Chairman, Economics and Industry Standing Committee, Submission dated 28 March 2006, p.2.

appropriate reporting dates before referral of fresh Terms of Reference, to allow it to determine its own priorities in relation to all other suggested inquiries.

Your Committee does not agree with this proposal. Motions in the Legislative Assembly to establish inquiries may emanate either from Private Members' or Government Business in response to an urgent public issue, and include specific terms of reference. The House may amend such motions as the stages of a debate are advanced, including adjusting the reporting dates. If a reference from the House directs a short turnaround for an inquiry, the committee is obliged to comply with that request.

However, providing additional research resources at short notice, almost irrespective of the topic, is often difficult or impossible, and the Legislative Assembly needs to be aware of this.

Your Committee believes there should be no unnecessary impediment to the manner of debate within the House on motions to establish committee inquiries. Rather, a common sense approach is preferred.

### **3.3 Budget allocation**

Committees' funding is provided through a global allocation and funds outside ordinary operating expenditure are allocated on application to the Speaker (in consultation with the Clerk) on a needs basis. Individual committees are required to submit proposals for large expenditure items such as committee travel, advertising and seeking independent assistance and advice.

The EISC proposed that this situation be reviewed, with a view to providing a discrete budget to each committee, with appropriately set parameters to allow committees to have greater autonomy to go about its work more efficiently.<sup>7</sup>

Funding requirements vary across the committee system, largely due to differences in the range and scope of inquiries, but also because activity levels sometimes vary due to unforeseen circumstances, such as references from the House. Your Committee is aware that in some jurisdictions discrete funds are allocated to individual committees<sup>8</sup>, but notes that in Western Australia, such allocations may unnecessarily restrict the capacity to fund those committees which may have a greater need for resources at a given time.

When committees seek extra funding, it is appropriate that there is a focus on explicating why the expenditure is necessary or desirable. The Speaker and the Clerk<sup>9</sup> are accountable for these funds through the budget processes, and it follows that this requires formal justification for Legislative Assembly expenditure.

It is your Committee's view that such responsibility should remain with the Speaker, and the allocation of funds should continue to be based on individual committee justification.

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<sup>7</sup> Ms J.A Radisich MLA, Chairman, Economics and Industry Standing Committee, Submission dated 28 March 2006, p.3.

<sup>8</sup> For example the Queensland Parliament allocates discrete funding per committee.

<sup>9</sup> The Clerk is also the Accountable Officer for the Legislative Assembly funds under the *Financial Management Act 2006*.

### 3.4 Travel allowances

The CDJSC raised an issue in relation to the adequacy of travel allowances for committee members. It was submitted that in the CDJSC's experience, costs for accommodation south of the 26<sup>th</sup> parallel are barely covered by the indicative rate, before taking into account meals and other incidental costs. The CDJSC did note, however, that they were unsure whether this review was the appropriate avenue for appeal, given that the rate is set by the Salaries and Allowance Tribunal.

Your Committee confirms that travel allowances are determined under section 7 of the *Salaries and Allowances Tribunal Determination: Members of Parliament*. The Tribunal is a statutory body established under the *Salaries and Allowances Act 1975*, and has the responsibility for both determining and recommending rates of remuneration for a range of public officials including the Governor, Members of Parliament, Judges and Magistrates.

The indicative Accommodation Allowance for a member in securing overnight accommodation when travelling within Australia as an official representative of a parliamentary committee is based on the rate set for a Minister of the Crown.

Current practice at the Legislative Assembly provides that where any costs *reasonably and properly incurred* by a committee exceed the rates outlined by the SAT, the actual costs are met by the Legislative Assembly.

## **CHAPTER 4 COMMITTEES' MEMBERSHIP AND CHAIRMANSHIPS**

### **4.1 Background**

This chapter covers Committees' membership and Chairmanships and addresses issues raised in submissions together with those considered by the committee, including:

- Membership;
- Deputy Chairmen;
- Remuneration;
- Proposed changes to Committees' functions and powers;
- Joint committee membership; and a
- Handbook for Parliamentary Committees.

### **4.2 Membership**

With the exception of Ministers, committee membership is open to all Members of the Legislative Assembly. Standing Order 252 provides that each member appointed to a standing committee, while otherwise qualified, continues as a committee member until the Legislative Assembly expires by effluxion of time or is dissolved, or until the member is discharged or resigns from the committee.

Standing Orders provide that the JSCCCC will consist of four members, two drawn from each House. The remaining committees consist of five members, three of which are usually drawn from the members supporting the government. From time to time membership numbers have been increased for specific inquiries, on resolution of the Legislative Assembly, for the term of those inquiries, under Standing Order 249(4). For example, in 2004 the House moved to allow the EHSC to co-opt a member for the duration of its inquiry into Attention Deficit and Hyperactivity Disorder in Western Australia, and in 2006 the EISC similarly co-opted two additional members for its Inquiry into the Production and Marketing of Foodstuffs. In 2007, the House moved to allow the CDJSC to co-opt an additional three members, including one Independent member, to the Inquiry into the Prosecution of Assaults and Sexual Offences. In May 2008, an Independent member was co-opted onto the CDJSC for the purposes of reviewing the Children and Community Services Amendment (Body Piercing) Bill 2007.

#### **(a) Position of Chairman**

The election of a Chairman is the first item of business at the initial meeting of a committee. Although the Chairman has been a Government member as a matter of convention, the Standing Orders do not preclude the position being filled by a non-Government member.

#### **(b) Position of Deputy Chairman**

There is currently no provision in the Standing Orders for the position of Deputy Chairman.

Your Committee considered the question of whether the position of Deputy Chairman should be formalised.

In a submission to the Inquiry, the EISC noted that the election of a Deputy Chairman is by convention only, and while most committees have appointed a Deputy Chairman to 'stand-in' on occasions when the Chairman is unavailable, this has not always been the case. It was further noted that in some, but not all cases, the Deputy is a member from the other side of the House.

The EISC proposed that a formalised position of Deputy Chairman would allow the committee to function in the absence of the elected Chairman and would provide consistency across the Committee System.

Initially your Committee did not agree that the position should be formalised, as it considered that there are already sufficient measures in place for committees to appoint Deputy Chairmen as they see fit. Following a recent determination by the SAT, those acting in the capacity of Deputy Chairmen are remunerated as Deputies rather than ordinary committee members, and perform the duties of Chairmen when required. As a result, it follows that the position should be formally ratified in Standing Orders.

Your Committee, however, considers that decisions regarding Deputy Chairmanship should be left to each committee, and does not wish for committees to be compelled to appoint a Deputy Chairman if it is not considered necessary. Your Committee considers that the Chairman and Deputy Chairman should be from opposite sides of the House. It is considered that this promotes harmony amongst committee members and provides a sense of balance.

Your Committee believes Standing Order 257 should be amended to provide for the election of the Deputy Chairman at the first meeting if the committee sees fit.

**Recommendation**

That Standing Order 257 be amended by adding -  
“, after which the committee may elect a Deputy Chairman.”

**(c) Joint Committee membership**

Although the Standing Orders provide that the JSCCCC will consist of two members drawn from each House, they do not prescribe that members in each House must be drawn from opposing political backgrounds.

Your Committee considered the question in what proportion the Government and Opposition in each House should be represented on joint committees. In the first two years of the 37th Parliament, for example, both of the Legislative Assembly's members of the JSCCCC came from the Government while the Council members were non-Government. There were concerns that this imbalance in membership effectively stifled the non-Government members from having their view represented in the Legislative Assembly, and prevented Government members from having their voice represented in the Legislative Council.



The Committee notes that although this situation has now been addressed, with one Government and non-Government member from each House making up the membership of the JSCCCC, such arrangements should continue to be left in the hands of both Houses.

The JSCCCC also raised the difficulties it experiences co-ordinating meetings when both Houses are sitting and submitted that from time to time the Houses do not sit concurrently, which can make arranging meetings difficult, particularly where members do not reside in the metropolitan area. It proposed that rather than requiring a motion in each House to be passed to allow the committee to meet when one or both Houses are sitting, Standing Orders could be changed to allow this to occur when required.

Your Committee reaffirms that each Member's first responsibility is to their respective House. Members are expected to contribute to debates and are obliged to be present in the House when the division bells ring, and are expected to represent their respective electorates. Accordingly the Committee does not believe there should be any change in these arrangements.

### 4.3 Remuneration

As the salaries of Western Australian parliamentarians are determined by SAT under the *Salaries and Allowances Act 1975*, remuneration is not an area in which your Committee should properly venture. However, your Committee notes that the EISC raised the need to review the arrangements for financial remuneration for the Chairman of each committee to reflect the commitment and responsibility attached to the position. The EISC argued that the role of the Chairman involves a greater degree of responsibility and participation in the operations of a committee, including but not limited to media liaison, drafting reports and responding to questions in the Legislative Assembly regarding the administration of the committee.

Subsequent to that submission and following a submission to the SAT by the Speaker, on 28 March 2007 the Tribunal made a variation determination on its 2006 August determination in relation to Members of Parliament. The variation determination was a result of the introduction of the *Parliamentary Legislation Amendment Bill 2006* to enable SAT to determine an allowance in respect of the office of the Parliamentary Secretary, Chairman, Deputy Chairman or a member of committees of a House or joint committees of both Houses. The Bill received Royal Assent on 16 November 2006.

### 4.4 Naming conventions

A submission raised the question of whether Standing Orders should continue to retain references to Chairman or Chairmen, or whether Standing Orders and other associated material should be changed to reflect the wider use of the term 'Chair' or 'Chairperson'.<sup>10</sup>

The term 'Chair' with the meaning 'seat of a person presiding at a meeting' dates back to 1647. 'Chairman' is the next oldest and most widely used of these words (1654) and has been and still is used to refer to women.<sup>11</sup>

<sup>10</sup> Ms J.A Radisich MLA, Chairman, Economics and Industry Standing Committee, Submission dated 28 March 2006, p.1.

<sup>11</sup> Mirriam-Webster's Dictionary of English Usage, Mirriam-Webster 1994, p235

‘Chairperson’ is a relatively recent invention (1971) as a ‘gender-neutral’ term to be used in place of chairman and chairwoman, one of several such gender-neutral terms containing ‘-person’. The term is widely used in Australia, but currently there is no recognised standard. Section 18B of the Commonwealth’s *Acts Interpretation Act 1901*, for example, recognises the use of ‘Chairperson’, ‘Chairman’, ‘Chairwoman’ or simply ‘Chair’.

A survey conducted of the Standing Orders of the Houses of Parliaments within Australia demonstrates that the term ‘Chair’ is more widely used than ‘Chairman’ or ‘Chairperson’. Current practice in the Legislative Assembly is to allow the member presiding to use the term of their choice. Your Committee considers this to be entirely appropriate and does not propose to recommend the Standing Orders in this regard.

#### **4.5 Video conferencing committee deliberations**

A query was raised regarding the use of video conferencing for committee deliberations. The use of video conference facilities in committee deliberations was the subject of a previous report of this committee. As a result of that report, Standing Orders were amended to include the provision that committee members using a video-conferencing facility will be counted as present for the purpose of a quorum for the taking of evidence and deliberative meetings. The report stated:

*A committee member, when using video-conferencing from a remote location as a method to attend a deliberative meeting or hearing, will be counted as part of that committee’s quorum. If members can participate fully, there is no reason not to count them for quorum purposes or to enable them to move motions and to vote. A chairman of a committee will need to be careful to ensure that a member attending by video-conference has an equal opportunity with other members to participate<sup>12</sup>.*

For the reasons outlined on that occasion, your Committee believes no further change is required in this area.

#### **4.6 Handbook for Parliamentary Committees**

At the commencement of each Parliament, members are provided with a series of introductory seminars and briefings on a range of aspects of parliamentary practice and procedure for newly appointed committee members. Recently this has included an overview of the committee system. Feedback indicates that while members find this practice useful, the provision of a procedural manual may improve members’ ability to effectively engage in committee activities, and provide guidance in areas not specifically covered in the Standing Orders. Such a manual already exists for committee staff, and this could form the basis for a similar manual for members.

In a submission to the Inquiry the Attorney General suggested:

*It would be helpful to enshrine some of the principles related to committees (particularly their powers and procedures) in a handbook for members. The handbook could combine the relevant standing orders, statutory provisions and caselaw relating to committees in a user-friendly fashion for easy reference for members. This would save each committee*

<sup>12</sup> Procedure and Privileges Committee, ‘Use of Video Conferencing by Legislative Assembly Committees’, Report No. 2, 2003, p. 4.

*“reinventing the wheel” with respect to various aspects of committee functions, powers and procedures.*<sup>13</sup>

It is also imperative, given the incidents outlined in the reports listed in Chapter One, and in the *Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations Report* of November 2007, that members are given the opportunity to fully understand their rights and responsibilities in relation to parliamentary privilege, and to understand its background, the reasons for its existence, and possible consequences for breaching it. (See also Chapter 4.) Your Committee therefore believes a procedural manual for committee members should be developed before the commencement of the next Parliament.

**Recommendation**

That a procedural manual for committee members be developed to provide guidance on the procedures and operations of the Legislative Assembly’s committees.

**4.7 Matters to be considered in a future report**

Given the seriousness of the matters surrounding unauthorised disclosure of committee reports, your Committee is of the view that a separate consideration of the Legislative Assembly’s possible responses to such matters is warranted.

Your Committee also recommends that a report incorporating Terms of Reference (d) and (e), namely the consideration of -

- “(d) early disclosure of committee evidence and reports and possible sanctions that should apply;
- (e) sessional committees including what the Procedure and Privileges Committee’s role should be in reviewing breaches of privilege”,

be tabled at a later date.

This report should also consider matters in relation to:

- procedures and penalties in relation to contempt;
- procedures for the examination of witnesses;
- statutory secrecy provisions; and
- related matters.

The proposed report should be viewed as complementing this report.

HON. FRED RIEBELING, MLA  
 CHAIRMAN OF THE COMMITTEE  
 15 May 2008

<sup>13</sup> Hon Jim McGinty, MLA, Attorney General, Submission dated 31 March 2006, p.7.