



35TH PARLIAMENT OF WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

FIRST REPORT

OF THE

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

**REVIEW OF OPERATIONS FOR THE FOURTH SESSION OF THE 34TH
PARLIAMENT FOR THE STANDING COMMITTEE ON GOVERNMENT
AGENCIES**

14 MARCH 1996 TO 12 NOVEMBER 1996

PRESENTED BY THE HON KIM CHANCE, MLC (CHAIRMAN)

1
JUNE 1997

Members of the Standing Committee on Public Administration

Hon Kim Chance, MLC (Chairman)
Hon Barbara Scott, MLC (Deputy Chair)
Hon Murray Criddle, MLC
Hon Barry House, MLC
Hon Cheryl Davenport, MLC

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Sessional Report

Parliament of Western Australia

Legislative Council

**First Report
of the Standing Committee
on Public Administration**

**Review of Operations for the Fourth Session of the 34th Parliament for the Standing
Committee on Government Agencies**

14 March 1996 to 12 November 1996

Presented by the Hon Kim Chance, MLC (Chairman)

June 1997

Mr President

It is with pleasure that I submit the Standing Committee on Public Administration's Review of Operations Report for the Fourth Session of the 34th Parliament for the former Standing Committee on Government Agencies.

One new member, the Hon Tom Helm, joined the Government Agencies Committee on 23 May 1996, replacing the Hon Doug Wenn.

The inquiry into Golden Egg Farms continued during this session, with a report on this inquiry being tabled on 7 November 1996. The Committee also commenced an extensive inquiry into the University of Western Australia, an Interim Report on this inquiry being tabled on 7 November 1996.

In all, three reports were tabled during the session and are as follows:

No. 38A - Restructuring of the Government Agencies Committee - May 1996

No. 38B - Inquiry into Golden Egg Farms - November 1996

ISBN 0 7309 8375 7

No. 39 - Interim Report on the University of Western Australia - November 1996

ISBN 0 7309 8376 5

Parliament was prorogued on 12 November 1996, hence the Committee's work ceased until the election of the members of the new Standing Committee on Public Administration. Under Standing Orders, all material and documentation previously belonging to the former Standing Committee on Government Agencies has become the property of the new Standing Committee on Public Administration. This has given the new Committee the jurisdiction to inquire into, and report on the matters previously the subject of scrutiny of the Standing Committee on Government Agencies.

The primary objective of the new Committee in the first session of the 35th Parliament is to complete its inquiry into the University of Western Australia, and to inquire into and report to the House on the means of establishing agencies, the roles, functions, efficiency, effectiveness, and accountability of agencies and, generally, the conduct of public administration by or through agencies, including the relevance and effectiveness of applicable law and administrative practises.

In addition, the new Standing Committee has a particular interest in out-sourcing, and the contracting out of government services. The Committee is mindful of the issues raised by the contracting out process, such as the apportionment of liability, the allocation of risk, and precisely which party is responsible when disputes arise as to non-performance, or unsatisfactory performance of a particular service or contractual obligation. The Standing Committee on Public Administration maintains a close interest in the implications of these processes on the delivery and quality of public services.

Hon Kim Chance, MLC (Chairman)

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The Terms of Reference for the Standing Committee on Public Administration are as follows:

Schedule 1 of the Standing Orders establishes the Standing Committee on Public Administration.

The Terms of Reference for the Standing Committee are:

- "1. A Standing Committee on Public Administration is established.
2. The Committee consists of 5 members.
3. The functions of the Committee are:
 - (1) to inquire into and report to the House on the means of establishing agencies, the roles, functions, efficiency, effectiveness, and accountability of agencies and, generally, the conduct of public administration by or through agencies, including the relevance and effectiveness of applicable law and administrative practises;
 - (2) to consider and report on any bill referred to it by the House providing for the creation, alteration or abolition of an agency, including abolition or alteration by reason of privatization; and
 - (3) except as provided in Standing Order 367(c), the Committee shall not proceed to an inquiry whose sole or principal object would involve consideration of matters that fall within the purview, or are a function, of another Committee.
4. In this order:

"Agency" means-

 - (a) an agent or instrumentality of the State Government, established for the purpose of developing, implementing or administering any program or policy with a public purpose or any such program or policy that relies substantially for its development, implementation or administration on public monies or revenue;
 - (b) any person empowered by a written law to make a decision enforceable at law whether by that person or otherwise,

and, where appropriate, includes any agency officer or employee acting, or having ostensible authority to act, as the agent or delegate of the agency, but does not include:

- (c) a House of the Parliament, or any Committee or member of either House, or any officer or employee of a department of the Parliament;
- (d) a court of law or a court of record, or a judge or other member of either court;
- (e) any person whose functions are solely of an advisory nature and the failure to obtain or act in accordance with advice given by that person does not invalidate or make voidable a decision made by another person;
- (f) a police officer or other person in the course of exercising a power conferred by a written law to arrest or charge a person with the commission of an offence, or to enter premises and seize or detain any object or thing;
- (g) a local government within the meaning of the Local Government Act 1995;".

HON KIM CHANCE, MLC
CHAIRMAN

Standing Committee on Government Agencies

Review of Operations for the Fourth Session of the 34th Parliament 14 March 1996 to 12 November 1996

Preamble

On 7 November 1996, Standing Orders were amended whereby the Standing Committee on Government Agencies was dissolved, and the Standing Committee on Public Administration was created (please see Appendix 1 to this report). This report is the last sessional report for the former Committee known as the Standing Committee on Government Agencies. This report covers the period from 14 March 1996 until 12 November 1996, and reviews the operation of the Government Agencies Committee during that period.

PART 1: INTRODUCTION

1. The Standing Committee on Government Agencies was established by the Legislative Council on 7 April 1982, and its first members were appointed to the Committee on 21 April 1982. The establishment of the Committee was a direct result of the report of the Select Committee on Government Agencies which was appointed by the Legislative Council on 1 October 1980.
2. Support for the Committee's establishment was derived from all political parties in the Legislative Council. The impetus for the Committee's establishment may be found in general expressions of concern about the limited information available with regard to the extent and operation of government agencies, and the degree to which those agencies are accountable to Parliament for their actions.
3. The Committee held its first meeting on 21 April 1982. In the period from April 1982 to November 1996, the Committee published 40 reports.
4. This session of Parliament was prorogued on 12 November 1996. The Standing Committee on Government Agencies was dissolved on 7 November 1996. Under Standing Orders, all material and documentation previously belonging to the former Standing Committee on Government Agencies has become the property of the new Standing Committee on Public Administration. This has given the new Committee the jurisdiction to inquire into, and to report on the matters previously the subject of scrutiny by the Standing Committee on Government Agencies.
5. This is the first report of the Standing Committee on Public Administration.

PART 2: FUNCTION AND OBJECTIVES OF THE STANDING COMMITTEE ON GOVERNMENT AGENCIES

Functions:

2.1 The Standing Committee was appointed, pursuant to the then Legislative Council Standing Order 38 on 7 April 1982 with the following Terms of Reference:

- (i) To make such examination as it deems necessary and to inquire into the purpose, finance, accountability, extent, nature, administrative control and methods of State Government agencies, including statutory corporations, primary produce boards, regulatory and quasi-judicial bodies, trustees of government agencies, advisory committees and local and regional bodies (excluding municipal authorities) that are the subject of legislation of the Western Australian Parliament, with the exception of those agencies listed in the Schedule to these Orders.
- (ii) To report to the House upon any matter concerning the government authorities referred to in paragraph (i) or any recommendations for abolition or amalgamation of them, or any findings particularly in regard to the productivity, efficiency, economy, effectiveness, organisation and circumstances connected with them to which the Committee thinks the attention of the House should be directed.
- (iii) To inquire into and report to the House upon any question in connection with government agencies which is referred to the Committee by resolution of the House.
- (iv) To inquire into and where necessary, report to the House when, in the view of the Committee, any agency duplicates all or part of the work of another.
- (v) To recommend as it deems necessary the application of the “Sunset” principle to any government agency.

The “Sunset” principle is defined as a process whereby a government agency’s existence is automatically terminated after a certain period unless specific reauthorising legislation is enacted.

2.2 The functions of the Committee were laid down in the former Legislative Council Standing Order 310 (now repealed).

2.3 In summary, the Standing Orders required the Committee to:

- (a) inquire into the purpose, finance, accountability, extent, nature, administrative control and methods of government agencies;

- (b) report to the Legislative Council on its inquiries and, as appropriate, make recommendations for the abolition or amalgamation of government agencies;
- (c) inquire into, and report on, any question in connection with government agencies which is referred to the Committee by the Legislative Council;
- (d) inquire into, and report on, any duplication of effort by government agencies; and
- (e) recommend as necessary the application of the sunset principle to any government agency.

2.4 The term "government agency" was not exclusively defined by Standing Orders. Standing Order 310(a)(i), however, provides that "government agency includes any "statutory corporations, primary produce boards, regulatory and quasi-judicial bodies, trustees of government agencies, advisory committees and local and regional bodies" which are the subject of Western Australian legislation. Municipal authorities are specifically exempted from the Committee's jurisdiction as are a number of specific bodies.

2.5 **Objectives:**

In carrying out its functions, the Committee aimed to achieve the following objectives:

- (a) increased public knowledge of the size, activities and performance of the government agency sector in Western Australia;
- (b) improved accountability of all government agencies in Western Australia; and
- (c) improved efficiency and effectiveness in the government agency sector in Western Australia.

PART 3: MEMBERSHIP, STAFF AND PROCEDURE

- 3.1 The committee consisted of six members appointed by the Legislative Council.
- 3.2 During this session, the Hon Barry House was re-elected Committee Chairman, and the Hon Tom Stephens was re-elected Deputy Chairman.
- 3.3 The members of the Committee remained constant during this session of Parliament other than the Hon Tom Helm replaced the Hon Doug Wenn on the Committee on 23 May 1996.
- 3.4 The members of the Committee were-
- The Hon Barry House, MLC (Chairman) (LIB)
 - The Hon Tom Stephens, MLC (Deputy Chairman) (ALP)
 - The Hon Murray Criddle, MLC (NPA)
 - Hon Kim Chance, MLC (ALP)
 - Hon Barbara Scott, MLC (LIB)
 - Hon Tom Helm, MLC (ALP)

Staff

- 3.5 Since March 1996, the Committee has had 3 Advisory/Research Officers. These were Mr Chris Richards, Ms Jenny Cutri and Ms Elizabeth Lawton, the current Advisory/Research Officer. Mr Jason Agar was the Clerk to the Committee during this session.

Independent Legal Advice

- 3.6 The Committee is able to call upon the services of Queen's Counsel when necessary. Mr Len Roberts-Smith QC has advised the Committee in this capacity since 1989. The Committee continues to appreciate Mr Roberts-Smith QC's independent and impartial legal advice. In 1996 Mr Roberts-Smith QC advised the Committee in respect of its inquiry into Golden Egg Farms.
- 3.7 This matter involved issues of political sensitivity and Mr Roberts-Smith QC maintained the highest standards of independence and impartiality in framing his legal advice to the Committee.

Procedure

- 3.8 All of the Committee's hearings were open to members of the public and representatives of the media, unless the Committee was in deliberation or private session. The Committee met on 24 occasions during this session.
- 3.9 Information concerning the Committee's schedule for meetings during this session is available from the Committee Clerk.
- 3.10 Any member of the Legislative Council was permitted to participate in a public meeting of the Committee and question witnesses, unless the Committee decided otherwise. Only Committee members, however, were permitted to vote and participate in the Committee's deliberations.
- 3.11 The Committee was also empowered to take evidence on oath or affirmation. The Committee never exercised this power. Witnesses were advised of sections 57 and 59 of the *Criminal Code 1913* which (respectively) provide that it is a crime to knowingly give false answers to questions asked before a parliamentary committee and that it is a misdemeanour to refuse to answer any lawful and relevant question asked before a parliamentary committee.
- 3.12 The Committee also advised all witnesses of their entitlements under Standing Order 358(g) before any evidence was given before the Committee.

PART 4: MAJOR PROJECTS OF THIS SESSION

4.1 Inquiries

4.1.1 The Committee inquired and reported into the following matters during this session:

No. 38A- Restructuring of the Government Agencies Committee (May 1996)

No. 38B - Inquiry into Golden Egg Farms (November 1996)

No. 39 - Interim Report on the University of Western Australia (November 1996)

4.1.2 In addition, the Committee inquired into the Dairy Industry Authority. The new Standing Committee on Public Administration is hopeful of reporting on this inquiry shortly.

4.2 Nature of Particular Inquiries

4.2.1 Restructuring of the Government Agencies Committee

The report on the restructuring of the Standing Committee on Government Agencies provided the framework for the amendment of Standing Orders to discontinue the Standing Committee on Government Agencies and to create the Standing Committee on Public Administration.

This change to the Committee structure and jurisdiction will give the new Committee the power to maintain a comprehensive overview of public administration, and the ability to review all State instrumentalities, and not simply those that may be described as "government agencies" (as that expression was previously defined).

The report recommended amendments to Standing Orders for the reformation of the Committee. This was endorsed by the House on 7 November 1996.

4.2.2 Inquiry into Golden Egg Farms

The Committee spent some time inquiring into the arrangements made by the WA Egg Marketing Board trading as Golden Egg Farms ("the Board"), a statutory trading corporation established to control the marketing of eggs, with a succession of persons ("the drivers") who contracted with the Board to distribute eggs and egg products to retailers. Each driver was assigned an exclusive 'round'. The drivers were obliged to modify their self-owned trucks to meet the Board's requirements for the carriage of eggs.

The Committee's inquiry was sparked by allegations that the Board breached its contractual obligations to the existing drivers when it notified them that it would not renew existing arrangements but, instead, put up distribution for tender. The drivers argued that although the Board was free to go to tender, it should have paid out the

'goodwill' component of their contracts. The Board denied that any element of goodwill existed in its contracts with the drivers.

The Committee heard oral evidence from the 8 drivers, and from a representative of the Board. The Committee based its recommendations on this evidence. No documentary evidence was tabled in this matter in order to preserve the rights of each party should litigation eventuate.

Although the Committee did not want to prejudice the rights of either the drivers or the Board in this matter (given that there was a high possibility of litigation arising from the dispute), the Committee was of the view that this matter reflected adversely on the administrative processes of various government agencies and statutory authorities in a climate of changing arrangements. The Committee also asserted that there was a clear obligation on government agencies and statutory authorities to perform their functions in a moral and ethical way, as well as in a legal way. The Committee maintained that every effort should be made to avoid further disputes of this nature, and that this will continue to be the subject of further inquiry by the Standing Committee on Public Administration.

The Committee tabled a report on this inquiry to the House on 7 November 1996. The report was also referred to the responsible Minister for review and consideration.

It should be noted that the new Standing Committee is continuing to monitor this matter.

4.2.3 Inquiry into the University of Western Australia

This inquiry occupied the majority of the Committee's time in this session.

The Committee received in excess of 60 written submissions, and over 27 volumes of documentation and material. In addition, the Committee heard oral evidence from 17 witnesses (with certain witnesses appearing several times before the Committee).

Although the Committee was hopeful of finalising the report on Term of Reference 1 (a) before the end of this session, this was not possible given the enormous volume of documentation and evidence that had been presented before it. The nature of the inquiry also required considerable research into the issues of tenure, tenure review, research output and university procedure, some major elements of which remained outstanding in this session. An interim report was tabled on 7 November 1996 outlining these issues.

Subsequently, the new Standing Committee resolved on 30 April 1997 to recommence the inquiry into this matter, and to report as soon as practicable on Term of Reference 1(a).

Reference and Procedure for the Inquiry into the University of Western Australia

The Hon Mark Nevill appeared before the Standing Committee on Government Agencies on 30 November, 1995. Mr Nevill informed the Committee that he had received complaints from various people concerning the now disbanded Department of Archaeology at the University of Western Australia ("the University"). In particular, he drew the Committee's attention to a perceived lack of effectiveness of the University's complaints procedure for staff and students.

On 14 December 1995 the Hon Mark Nevill informed the Western Australian Legislative Council of allegations of improper conduct by certain individuals who had been associated with the former Department of Archaeology at the University. Mr Nevill expressed the view that the denial of tenure to Dr David Rindos, who had been a staff member within the Department of Archaeology, may have been unfair in light of information provided to him. Mr Nevill tabled a number of documents as part of this process.

On 21 March 1996, the Government Agencies Committee formally launched an inquiry into the University with the following Terms of Reference:

To inquire into and report on:

1. The events surrounding the denial of tenure to Dr David Rindos by the University, and more particularly to:
 - (a) investigate whether the procedures adopted by the University to review and determine the tenure of Dr Rindos and his subsequent appeals were deficient and amounted to a breach of the common law rules of fairness;
 - (b) determine what, if any, remedies might be available to Dr Rindos or to make any appropriate recommendations for the swift and equitable resolution of the dispute between Dr Rindos and the University; and
 - (c) make recommendations arising out of the events surrounding the denial of tenure to Dr Rindos concerning the need to maintain integrity, professionalism and international standing of State Universities generally, thereby reinforcing the public confidence in the State tertiary education system.
2. The internal management procedures of the University and the associated administrative decision - making process, including functions of:
 - (i) the Senate as the "governing authority" of the University;
 - (ii) the office of Vice-Chancellor in the internal administration of the University;

- (iii) the Divisional and Departmental Heads in the decision - making processes of the University relative to other academic members of the Division and Departmental respectively; and
- (iv) filing and record - keeping systems, to the extent to which the University has installed proper mechanisms to prevent unauthorised interference.

The Committee also resolved that, subject to the operation of Standing Order 324, all meetings held in relation to this inquiry would be held in public. Standing Order 324 (now repealed) stated that:

“The Standing Committee shall consider application by witnesses to be heard in private session and no evidence or testimony taken in private session may be released without the consent of the committee”.

4.2.4 Dairy Industry Authority ("DIA")

During this session, the DIA Sub-Committee substantially advanced its inquiry into the implications of the Dairy Industry Amendment Bill 1994 ("the Bill"). Clause 91 of the Bill sets up a scheme for the DIA to make payments to vendors and distributors who are exiting the industry as a result of deregulation. The scheme is known as the Dairy Adjustment Assistance Scheme ("DAAS"). Investigations by the Sub-Committee have focused upon the adequacy or otherwise of the adjustment assistance measures consequent to the scheme, rather than on the wording or structure of the scheme per se. The new Committee is hopeful of completing its inquiry into DIA during the 35th Parliament.

PART 5: TRAVEL

5.1 The Committee did not engage in any travel during this session.

APPENDIX 1

Standing Orders 310 to 337 inclusive determined the procedure, composition and rights and obligations for the Members of the former Standing Committee on Government Agencies. These Standing Orders were repealed on 7 November 1996 in order to ensure consistency for all Standing Committees of the Legislative Council. The new Standing Committee on Public Administration now has the same procedure under Standing Orders as the other Standing Committees of the Council.

APPENDIX 2

Previous Reports of the Standing Committee on Government Agencies

Committee Report Number	Date Tabled	Report Name
1	16/11/82	Report of Government Agencies
2	27/6/83	Government Agencies in Western Australia
3	1/12/83	Annual Reporting Requirements for Government Agencies
	22/3/83	Interim Report for the Urban Lands Council and Metropolitan Region Planning Authority - Extension of Time
	29/5/84	Report by Chairman on release of Committee Reports during a Parliamentary Recess of Adjournment
	6/11/84	Report on the Commercial Tribunal Bill 1984
4	26/2/85	Review of Operations for 1984
5	28/3/85	Review of Annual Report for 1984
(Second Edition)	4/7/85	Second Report (Second Edition) of Government Agencies in Western Australia
6	4/7/85	A Framework of Accountability for Government Agencies
	30/8/85	Lotteries Commission: Review of Accountability (not tabled)
7	4/9/85	The Urban Lands Council of Western Australia
	15/10/85	Report on the Contraceptives Amendment Bill 1984
8	8/7/86	Review of Operation for 1985

9	8/86	Resumption of Land Proposals (not tabled)
	8/86	Interim Tenth Report - A Review of the Lotteries Commission of Western Australia (not tabled)
10	19/11/86	Review of the Lotteries Commission of Western Australia
11	2/12/86	1985/86 Annual Reports of Government Agencies Not Tabled as at November 30 1986
12	29/5/87	Review of Operations for 1986
13	24/6/87	Resumption of Land by Government Agencies: Final Report
14	24/6/87	A Review of Coal Industry Agencies (2 Volumes)
15	16/9/87	Review of the Builders' and Painters' Registration Boards (2 Volumes)
(Third Edition)	1/12/87	Second Report (Third Edition) of Government Agencies in Western Australia
16	1/12/87	Delayed Payment of Accounts by Government Agencies
17	8/12/87	Review of Agencies : A Statement of Principle
18	15/12/87	Review of Operations for 1987
19	24/5/88	Use of Plain English in Government Writing : Some Preliminary Findings
20	21/9/88	A Review of the Country High School Hostels Authority
21	15/12/88	The Financial Management and Accountability of the State Government Insurance Commission and Corporation
22	13/4/89	Review of Operations for 1988

23	19/10/89	Review of Previous Committee Reports Implementation of Recommendations
	7/12/89	Report on the Statutory Corporations (Directors' Liability) Bill
	7/12/89	Government Agencies in Western Australia (Fourth Edition)
	31/5/90	Report on inability to elect a Chairman
24	28/5/90	Implementation of Committee Recommendations
25	5/7/90	Review of Operations for 1989
26	5/7/90	The Financial Management and Accountability of the State Government Insurance Commission and Corporation: Final Report
27	13/6/91	Review of Operation for 1990
28	5/12/91	The Establishment, Role and Scrutiny of Government Agencies, Interim Report (Survey of Government Agencies)
29	29/4/92	South West Development Authority (SWDA)
30	4/6/92	The Establishment, Role and Scrutiny of Government Agencies, Interim Report Number 2, (Survey of Government Agencies)
31	25/8/92	Review of Operation for 1991
32	22/10/92	The Establishment, Role and Scrutiny of Government Agencies, Interim Report Number 3, The Identification and Parliamentary Oversight of Government Agencies
33	2/12/92	Perth Marketing Authority - Preliminary Report
	5/8/93	Election of Chairman
34	6/9/93	Review of Operations for 1992
35	14/9/93	Review of the Perth Market Authority

(3 Volumes)

36	11/5/94	State Agencies - Their Nature and Function
	9/6/94	Inability to Elect a Chairman
37	28/11/95	Hairdressers Registration Repeal Bill 1994
38A	2/5/96	Restructuring of the Government Agencies Committee May 1996
38B	7/11/96	Golden Egg Farms
39	7/11/96	The University of Western Australia - Interim Report

APPENDIX 3

Statistics for the former Standing Committee on Government Agencies for the Fourth Session of the 34th Parliament - 14 March 1996 to 12 November 1996.

Item	Session
No of meetings (incl public and private hearings)	24
No of hours of meetings (incl public and private hearings)	57.25
No of public hearings	6
No of hours of public hearings	25
No of private hearings	4
No of hours of private hearings	11
No of witnesses	26
No of submissions received	71
No of pages of submissions received	796
No of reports tabled	3
No of pages of reports tabled	27
No of copies of tabled reports printed	300
No of copies of tabled reports distributed	280
No of government responses to reports	0 ¹
No of government responses outstanding	1 ²
No of reports in progress	2

¹ Response received from the Minister for Primary Industry and Fisheries on 9 April 1997

² Ibid.