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**SELECT COMMITTEE TO REVIEW THE LEGISLATIVE COUNCIL
STANDING COMMITTEE SYSTEM**

REPORT

**Presented by Hon George Cash MLC (President of the Legislative
Council and Chairman)**

August 1997

SELECT COMMITTEE TO REVIEW THE LEGISLATIVE COUNCIL STANDING COMMITTEE SYSTEM

Members of the Committee

Hon George Cash MLC (Chairman)
Hon Murray Criddle MLC
Hon Helen Hodgson MLC
Hon Barry House MLC
Hon Jim Scott MLC
Hon Tom Stephens MLC
Hon Derrick Tomlinson MLC

Advisory Officers

Laurie Marquet, Clerk of the Legislative Council
Ian Allnutt, Deputy Clerk
Stuart Kay, Deputy Clerk

Committee Clerk

Jan Paniperis

Terms of Reference:

1. A select committee of seven members, any four of whom excluding the Chairman constitute a quorum, is appointed.
2. The committee is to review the constitution, effectiveness, efficiency and economy of the standing committee system and report its findings and recommendations to the House not later than Wednesday, 27 August 1997.
3. In carrying out the review provided for in paragraph (2), the committee shall have regard to the functions of the existing standing committees and whether, and to what extent, those functions might be extended or modified, or vested in another standing committee now established or recommended by the committee to be established.
4. The President is the Chairman of the committee. The Chairman shall not vote on any question arising in the course of the committee's proceedings, but any member elected as a temporary Chairman may vote while occupying the Chair. Procedural rulings of the President as Chairman are final and not open to dissent.
5. Three members of the committee shall be appointed from among those members supporting the Government. Their Chairman is not to be counted as a member for the purposes of this paragraph.

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COMMITTEE FOR THE REVIEW OF THE COMMITTEE SYSTEM IN THE LEGISLATIVE COUNCIL

Summary of Recommendations

<i>Subject</i>	<i>Recommendation</i>
Duplication of function among committees	No additional, formal strictures required.
Business Management Committee	<p>That the House recognize, but not formally appoint, a <i>Business Management Committee</i> comprising the Leader of the Government, the Leader of the Opposition, and 1 representative each of the Greens (WA), the National Party and the Democrats;</p> <p>desirably, the committee meet immediately before a resumption of sittings following an adjournment, or immediately after the rising of the House on a Thursday in a sitting week, and in either case, determine for the ensuing sitting week the specific business to be transacted on each day;</p> <p>any negotiated change to the proposed routine be concluded by or on the following Monday;</p> <p>in lieu of the Notice Paper on Wednesday and Thursday, an Agenda be published that is confined to those motions and orders of the day scheduled for consideration on that day;</p> <p>failing agreement on the placement or timing of an item of business, the Government, through the Leader of the House, maintains its existing right to arrange that business as it thinks fit in recognition of the pre-eminent right of the Crown to have its business considered.</p>
Bills Classification Committee	Amend the sessional order so as to vest the classification of bills in the proposed Business Management Committee.

Non-members' participation in committee deliberations

That SO 326 be amended to enable an MLC who is not a member of a particular committee to participate in that committee's

deliberations in relation to a specified matter at the invitation of the committee;

That the prohibition against voting in SO 326 be retained.

Substitute Members

That the House adopt rules enabling the substitution of a member of a standing committee by another member who is not a member of that committee;

That the substitution be limited to a particular inquiry and that on the presentation of a report from the standing committee which finally disposes of that inquiry, or where the inquiry is discontinued for any reason, the substitution lapses;

That substitution does not prevent the original (substituted) member from participating in any other inquiry being carried on contemporaneously with that for which substitution is made;

That any substitution be made by the House by motion after notice given by the chair of the standing committee;

That it be a condition precedent to giving notice of motion for substitution that the committee member and the member intended to be substituted for that member each give written consent to the substitution.

Prorogation - effects on parliamentary business

That the Government give priority to the introduction of legislation that modifies the effects of prorogation by enabling either House, by resolution, to carry forward business from session to session within the life of a Parliament and also enables committees to meet and transact business during a recess.

Explanatory memoranda for bills

That the House request the Government to adopt the practice of providing for each bill an explanatory memorandum, printed with the bill, at the time of introduction.

Technology and committees

That the department further investigate the adoption of a range of communication technologies, allowing for any legal impediments, and report to the President.

Personal interest in matters before a committee

That the House adopt a standing order as follows:

A member shall not vote on a question in which the member has a direct pecuniary or personal interest not held in common with the rest of the subjects of the Crown.

Aboriginal Affairs

That any issue involving or relating to Aboriginal affairs be considered by each committee in the normal course of an inquiry.

Constitutional Affairs

That the existing Constitutional Affairs and Statutes Revision Committee be reconstituted as a Constitutional Affairs Committee having power to originate its own inquiries on any matter affecting the State of Western Australia and its constitutional or legal relationship with the Commonwealth, the States and Territories;

That a bill to which the "30 day" rule applies stands referred to the Constitutional Affairs Committee after the Minister's second reading speech and the committee is to report within 30 days of that referral;

That a petition relating to the subject matter of an inquiry in progress or to be commenced stand referred to the committee undertaking that inquiry;

That a petition not so related be referred to an appropriate committee by the Business Management Committee following presentation;

That the Legislation Committee have responsibility for statute revision currently vested in the Constitutional Affairs and Statutes Revision Committee.

Standing Orders

That the House repeal SOs 305-308

Consideration of bills - acceleration of time available

That the House adopt a procedure for the timely consideration of legislation by standing committees in the following terms:

- (a) the Business Management Committee recommends to the relevant minister that he/she table, as a paper, a bill introduced in, but yet to be passed by, the Assembly;
- (b) on tabling, the minister moves without notice that the paper be referred to a named standing committee for consideration, excluding any policy contained in the tabled paper;
- (c) after introduction of the bill, usually after the second reading has been agreed to, the minister moves to refer the bill to the standing committee that received the tabled paper;
- (d) where, for any reason, the Assembly fails to pass the bill already subject to standing committee consideration as a tabled paper, the original reference is revoked and all proceedings of the committee terminated upon notification of that failure to the Council by the appropriate minister.

Ecologically Sustainable Development Committee

That existing terms of reference of the ESD Committee be amended by repealing para (b) and substituting:

- “(b) any issue of significant community concern other than a matter that falls*

Report - Review of the Legislative Council's Committee System

within the terms of reference of another Legislative Council committee or a bill;";

That all committees have regard to minority and regional interests in the course of each inquiry they undertake.

SO 334 - requirement to give notice of Report

Amend SO 334 by deleting the requirement for notice of intention to table a report.

Staffing and resources

That the House support the appointment of additional advisory/research officers and support staff in the Committee Office.

COMMITTEE FOR THE REVIEW OF THE COMMITTEE SYSTEM IN THE LEGISLATIVE COUNCIL

Report

1. Appointment and Terms of Reference

This committee was appointed by the House on Thursday June 26 1997 and ordered to report by or on August 27 1997. The committee, chaired by the President (non-voting), comprising 2 Liberal Party members and 1 each from the ALP, the Democrats, the National Party and the Greens (WA) was required to review "the constitution, effectiveness, efficiency and economy" of the system of standing committees that has operated in the Legislative Council since 1990.

2. The Committee System

The system comprises 5 Legislative Council standing committees and 1 joint standing committee, Delegated Legislation, administered by the Legislative Council. The committees are constituted on a broad, subject matter basis; they are not "portfolio-related". With the exception of the Legislation Committee, each committee may institute its own inquiries without prior reference from the House.

Members of a committee are appointed by the House for the duration of a parliament (4 years maximum)¹ but may sooner resign or be discharged (replaced).

Until the abolition of the Government Agencies Committee in December 1996, the system was administered under 3 separate groups of standing orders. That committee had its own rules adopted in 1982, Delegated Legislation is governed by the Council's standing orders applicable to select committees, and the remaining committees operate under standing orders adopted in 1989/90. When the Public Administration Committee was established in substitution for the Government Agencies Committee the House took the opportunity to repeal the 1982 rules and apply the "uniform" 1989 rules to the new committee. Desirably, the Delegated Legislation Committee should also be brought under the 1989 version as part of a rationalization of the system.

¹ Appointment was for a session. SO 303 amended Jun 26 '97 by deleting "session" and substituting "parliament".

3. Agreed Principles/Propositions

The committee agreed to the following principles/propositions:

1. Standing committees should be general purpose without regard to ministerial portfolios which are, themselves, subject to alteration at the behest of the Government;
2. The committee system ought to be an integral part of the legislative and review process;
3. There is nothing intrinsically wrong with the procedures now in place;
4. The current system for discharging/appointing members requires further consideration;
5. There is in principle support for the provision of proxy/substitute members;
6. Committee Chairs should be invited to express their views on the system and how it might be improved;
7. Select committees should be retained as part of the committee system for narrow purpose inquiries;
8. The Legislative Council should retain its own system of standing committees; joint committees of both Houses are acceptable only where there is a common interest and a compelling need.

The committee has considered various aspects of the existing system and these, together with recommendations (where appropriate), form the basis of this report.

The committee notes the Government has provided members with a list of proposed legislation for the current session. The committee believes that by giving MLCs an overview of the Government's intended legislative program the work of the chamber should be facilitated. If forward notice of legislation is to be useful, it will need to be updated regularly and be available to MLCs and the public.

4. Duplication of function among committees

The House is aware of the potential for duplication, eg, Public Administration Committee's §3 (3) (Sch 1) and the provision for the appointment of joint subcommittees (SO 339)².

The likelihood of serious duplication is very slight if only because the references for each committee require it to inquire into matters from a particular perspective. For example, both the Public Administration and Delegated Legislation committees have had reason to consider facets of subordinate legislation, including the processes undertaken in making subordinate legislation. Public Administration approached the issue as one of "rulemaking on the record", Delegated Legislation was concerned to ensure that any instrument that could be characterized as having legislative effect was subject to transparency in its making and open to disallowance without regard to labels such as "regulation" or "order". Each committee was well aware of what the other was doing. Neither committee saw its inquiry as a duplication of the other's but rather as complementary. The difference between the 2 inquiries was that Public Administration was concerned with decision making processes across the public sector whereas Delegated Legislation set out to improve the processes governing the making of subordinate legislation.

Similarly, the Constitutional Affairs Committee has declined to consider a petition that related to the subject matter of legislation before the Legislation Committee.

As well, potential serious duplication can be avoided through the Chairmen's Panel³ and the committee officers alerting their committees to the work of other committees.

Recommendation

No additional, formal strictures required.

5. Business Management Committee

Subject to the express will of the House (SO 125), the management and control of the House's business lies with the Ministers, particularly the Leader of the House (eg SOs 127, 129) - recognition of the Crown's pre-eminent right to have its business dealt with. "Behind the

² All references to SOs in this report are as they are numbered in the July 1997 reprint.

³ A meeting of the Chairs of the standing committees convened periodically to discuss the operations of the various committees and the coordination of their resources.

Chair" discussions between the Leaders of the House and the Opposition have been used to ensure the efficient and mutually convenient transaction of business.

Because of the change in the political composition of the House since May 22, the Leader of the Opposition cannot always speak for the minor parties and, so far as arranging the House's business is concerned, there was an indication that the National Party might also wish to participate in its own right.

To determine the business for the coming sitting week, a meeting of the 2 Leaders and a representative of each of the other parties (National, Green (WA) , Democrat) should be held before the House sits. This meeting should occur in advance of the resumption of each sitting following an adjournment. When the House is sitting this meeting should occur when the House rises on a Thursday. The draft agenda should be finalized by or on the following Monday of the sitting week. Failure to agree on a weekly agenda would not affect the existing right of the Government to arrange the business as it sees fit.

Under this regime, it would be feasible to provide members with a daily agenda showing only the business for that day. The Notice Paper would be available in electronic form but, except on Tuesday, would not be reprinted each day as is now the case. Supplementary Notice Papers would still be published as and when required.

Before the commencement of each parliament, or following a vacancy occurring on any committee, the Business Management Committee should meet to negotiate on the list of appointees, the prospective Chairs, or a replacement to fill the vacancy, (as the case requires) for the consideration of the House.

Recommendation

That:

- the House recognize, but not formally appoint, a *Business Management Committee* comprising the Leader of the Government, the Leader of the Opposition, and 1 representative each of the Greens (WA), the National Party and the Democrats;
- desirably, the committee meet immediately before a resumption of sittings following an adjournment, or immediately after the rising of the House on a

Thursday in a sitting week, and in either case, determine for the ensuing sitting week the specific business to be transacted on each day⁴;

- any negotiated change to the proposed routine be concluded by or on the following Monday;
- in lieu of the Notice Paper⁵ on Wednesday and Thursday, an Agenda be published that is confined to those motions and orders of the day scheduled for consideration on that day;
- failing agreement on the placement or timing of an item of business, the Government, through the Leader of the House, maintains its existing right to arrange that business as it thinks fit in recognition of the pre-eminent right of the Crown to have its business considered.

6. Bills' Classification Committee

If the Management Committee discussed above is embraced by the House, it would be sensible to vest the classification of bills in that committee. This arrangement would probably negate any subsequent move for a reclassification under sessional orders, given the all-party membership of the Management Committee.

Recommendation

Amend the sessional order so as to vest the classification of bills in the proposed Business Management Committee.

⁴ NB Relevantly, Sess O 5(2)(c) requires the Bills Classification Committee:

specify a day or days by which each or any of the remaining stages of [the] bill might be completed.

⁵ The Notice Paper would continue to exist in electronic format and would be available to any member wishing to see it. A printed version could also be obtained from the Procedure Office.

7. Non-members' participation in a committee's deliberations

SO 326 provides:

Any member of the Council may participate in a committee's proceedings but may not vote. Such a member shall not be present during a committee's deliberations.

Contextually, "deliberation" means any proceeding, excluding the hearing of evidence whether publicly or in private, that arises from, or relates to, the resolution of a question put to the committee. Accordingly, participation by a non-committee member is circumscribed.

Given the extensive nature of the areas and issues that the committee system has the potential to cover, it can be expected that a non-committee member's knowledge or expertise on a matter arising in the course of a particular inquiry would be useful to a committee during the deliberation phase. This assumes a situation where it is neither intended nor desired to arrange a substitution but a degree of consultation is seen as beneficial.

Although it could be argued that the committee could obtain the relevant information/opinion from the member by inviting him/her to appear as a witness, the reality of committee proceedings supports an ability to include the member in deliberations.

Recommendation

That:

- SO 326 be amended to enable an MLC who is not a member of a particular committee to participate in that committee's deliberations in relation to a specified matter at the invitation of the committee;
- the prohibition against voting in SO 326 be retained.

8. Substitute Members

The committee supports the proposition that it is desirable to be able to substitute members of a committee for specific, temporary purposes, eg, individual interest or expertise of members.

This proposal deals with one-for-one substitution in committee membership; it is not to be confused with the appointment of joint subcommittees under SO 339.

The procedure for arranging substitution is not difficult to devise. The committee has had to consider such matters as a requirement for notice of the substitution, whether to the House, the relevant committee, or both, and approval by the competent authority if such approval were to be required, eg, by the committee affected. Moreover, would a substitution be for the duration of a particular inquiry? Must it be linked to an inquiry or can it be a global substitution for a defined period during which the substitute may act as a full member in relation to any matter coming before the committee?

Recommendation

- That the House adopt rules enabling the substitution of a member of a standing committee by another member who is not a member of that committee;
- That the substitution be limited to a particular inquiry and that on the presentation of a report from the standing committee which finally disposes of that inquiry, or where the inquiry is discontinued for any reason, the substitution lapses;
- That substitution does not prevent the original (substituted) member from participating in any other inquiry being carried on contemporaneously with that for which substitution is made;
- That any substitution be made by the House by motion after notice given by the chair of the standing committee;
- That it be a condition precedent to giving notice of motion for substitution that the committee member and the member intended to be substituted for that member each give written consent to the substitution.

9. Prorogation - effects on parliamentary business

The Governor (in Council) may prorogue Parliament at any time without the prior advice or consent of the 2 Houses. Prorogation terminates a session and prevents either the House or its committees from meeting until Parliament is next summoned to meet at a date, time, and place specified by the Governor. Prorogation kills off any business before the House and any bill that has not received royal assent at the time of prorogation thereupon lapses.

It is the effects of prorogation on parliamentary business and the continued ability of committees to meet during a recess that causes inconvenience. The inconvenience has been lessened by governments delaying prorogation until a week or so before the next session is

scheduled to commence. Nonetheless, it is still necessary to restore bills in both Houses to the stage they had reached in the previous session, orders (eg, sessional orders) and motions must be reintroduced and petitions re-presented if they are to be further considered. It was also necessary before the recent change to SO 303 to reappoint all committees at the start of a new session.

Neither House, by its own resolution, may override the effects of prorogation - that can be done only by Act. Some Houses, eg, the Senate, simply ignore the effects of prorogation⁶. The danger for any House or committee ignoring prorogation is that post-prorogation proceedings are not "proceedings in Parliament" under §9 of the *Bill of Rights 1689 (GB)* and are therefore not protected by privilege. Committee proceedings under those circumstances would be open to challenge in a court and members and witnesses could be sued for defamatory statements made in the course of those proceedings.

There have been 3 unsuccessful attempts between 1989 and 1991 in the Council to enact legislation based on the *Legislature Amendment Act 1977 (NZ)*. The *Prorogation of Parliament Bill* would have empowered each House to carry forward business specified in 1 or more resolutions and enabled committees to meet during recesses. On the last occasion the bill was before the House, the then President ruled that the bill was caught by s 73 (2) of the *Constitution Act* and therefore had to be submitted to referendum before assent. In giving his ruling the President acknowledged that he was adopting a cautious approach; there was disagreement among those providing him with advice as to whether s 73 (2) did apply.

If the effects of prorogation are to be mitigated, legislation is a necessity and the previous ruling as to the applicability of s 73(2) of the *Constitution Act* will need to be revisited.

Recommendation

That the Government give priority to the introduction of legislation that modifies the effects of prorogation by enabling either House, by resolution, to carry forward business from session to session within the life of a Parliament and also enables committees to meet and transact business during a recess.

⁶ LC SO 305 has a similar intent.

10. Explanatory memoranda for bills

In other parliaments it is customary for bills to be accompanied by notes that explain the object and intent of each clause and the bill as a whole. The notes provide an analysis of the bill, clause by clause, and in some jurisdictions the Government's policy objectives are included⁷. Members of the Legislative Council provided with the minister's committee notes have found them extremely useful in understanding the intent of a particular provision and obviated the need for what might otherwise have been a protracted committee debate.

The Delegated Legislation Committee has insisted for some time on the provision of explanatory memoranda with regulations and has extended the requirement to local laws. There seems no reason why the same requirement could not be applied to bills. Explanatory notes may assist at subsequent briefings by departmental officials or, in some cases, cancel the need for a briefing.

Under s 19 (2) (e) of the *Interpretation Act 1984*, " any explanatory memorandum relating to the Bill containing the provision ", provided to members by the relevant minister as an assist at the time the legislation was in passage, where the interpretation of that provision in the resulting Act is being considered by a court, may be used by the court in determining the meaning of the provision.

Recommendation

That the House request the Government to adopt the practice of providing for each bill an explanatory memorandum, printed with the bill, at the time of introduction.

11. Technology and Committees

The committee agreed that the use of modern communications technology was a desirable development but that privilege and other, possible, legal impediments under the existing law needed further consideration before adopting such facilities as videoconferencing and the like.

Recommendation

That the department further investigate the adoption of a range of communication technologies, allowing for any legal impediments, and report to the President.

⁷ See NZ bills appended to this report.

12. Personal interest in matters before a committee

There is no rule applicable to standing committees that is the equivalent of SO 343⁸. It should be noted that SO 343 is not confined to "pecuniary" interests, ie, the member need not stand to gain solely a financial or other tangible benefit or advantage from the outcome of the inquiry before the member is caught by the prohibition.

It is customary for a member who does have a direct pecuniary or personal interest in a matter under consideration to declare that interest in the course of debate but the Council does not have a standing order that specifically forbids an interested member from voting in a division.

The rule can be stated as:

A member shall not vote on a question in which the member has a direct pecuniary or personal interest not held in common with the rest of the subjects of the Crown.

However, the major exception to this rule - it does not apply to a member whose interest is held as one of a limited class and a question of public policy is involved - virtually confines it to private bills and petitions. It does not, for example, preclude members from voting themselves a salary increase, or disenfranchise farmer-members from voting on a marketing scheme that would benefit them as farmers (limited class/public policy).

This matter, given the existence of SO 343, was considered at the time the committee system was being discussed. It was decided not to include an equivalent rule for standing committees for 2 reasons. First, the extremely narrow application of the rule, contrasted with the broad ranging types of inquiry proposed for standing committees, suggested that the occasions on which it would come into play would be few if at all. Second, ss 60, 61 of the *Criminal Code* deal comprehensively with the issue of MPs soliciting or accepting bribes or other inducements intended to influence their vote in the House. Additionally, by operation of ss 1, 8 of the *Parliamentary Privileges Act 1891*, the House could proceed against a member or other person for breach of privilege in the circumstances contemplated by the *Code* and the Anti-Corruption Commission also has jurisdiction in this area.

⁸ *No member who is personally interested in the inquiry before a select committee shall sit on such committee.*

Nevertheless, the committee sees merit in adopting the above stated formulation of the rule.

Recommendation

That the House adopt a standing order in the following terms:

A member shall not vote on a question in which the member has a direct pecuniary or personal interest not held in common with the rest of the subjects of the Crown.

13. Aboriginal Affairs

It was urged on the committee that separate provision be made for Aboriginal issues preferably through the creation of a dedicated standing committee. The majority is not persuaded that there is a need to deal with these matters discretely and in isolation from the mainstream of committee activity. The majority would prefer to see each committee consider issues affecting Aborigines as they arise in the course of any inquiry. If necessary, Schedule I could be amended by inserting a requirement that each committee have proper regard to Aboriginal interests as part of any inquiry.

In declining to recommend the creation of an Aboriginal Affairs Committee, the majority had regard to the question of the exclusive and concurrent jurisdictions of the Commonwealth regarding Aboriginal affairs, and the extent to which it is relevant or appropriate for a State parliamentary committee to inquire into those matters. Although the Full Court in the *Aboriginal Legal Service* case (1992) found on the facts that the Council had not gone beyond the constitutional competence of the State, the Court was clearly of the view that Commonwealth involvement or jurisdiction would negate any attempt by this House to force compliance with its orders. The question must be asked whether the residual State jurisdiction over Aboriginal affairs warrants a separate committee.

The committee also considers that the recent establishment of the Ecologically Sustainable Development Committee has exhausted the number of members able and willing to serve on committees. If the House decides that specific provision be made in relation to Aboriginal affairs, the majority, adopting the recommendations of the 1985 *Ferry Report*⁹, believes that minority and regional interests should also be taken into account.

⁹ Report of a *Select Committee on a Committee System in the Legislative Council*, September 1985.

Recommendation

- That any issue involving or relating to Aboriginal affairs be considered by each committee in the normal course of an inquiry;

14. Constitutional Affairs

The committee discussed the current role of the Constitutional Affairs Committee, particularly its petitions workload and whether it was desirable that there be a shift in emphasis towards "constitutional affairs and inter-governmental relations".

That the committee has not reported on "any matter of a constitutional or legal nature" since it was first appointed is not the fault of the committee; such a matter must be referred by the House. One reference was made which lapsed on prorogation and was not renewed in the next session.

If the Constitutional Affairs Committee is to deal with constitutional matters including inter-governmental relations, it needs to have an ability to generate its own inquiries without a prior reference. That does not preclude the House from making a specific reference from time to time.

It was further suggested that the "statutes revision" aspect of the committee's functions could be transferred to the Legislation Committee with the result that it would deal with bills and the currency of the Statute Book. Petitions would be referred to the appropriate standing committee rather than, as is now the case, sending all to Constitutional Affairs.

What ought to concern members of this Parliament is the non-existence of adequate parliamentary mechanisms intended to inform them about the formal and informal arrangements made among the States and between the Commonwealth and the States. Many of these arrangements do not require mutual legislation for their implementation and in those cases where sanctioning legislation is required, the Parliament's acquiescence is assumed if not demanded.

This committee believes that a redirection of Constitutional Affairs is in the interests of the House and would be an enhancement of the existing committee system. Accordingly, a reconstituted committee should be given a wide ranging brief. It is impossible to treat the State's constitution in isolation from the Commonwealth Constitution and the State's relationship with the other States and Commonwealth Territories. The State's basic laws have been the subject of scrutiny and recommendation in recent years, eg, the Premier's

Constitutional Committee (McCusker QC) and this Parliament's joint select committee on the Constitution (Kobelke), with no legislative result. A redefined Constitutional Affairs Committee, capable of initiating its own inquiries, could perform an educational function at the parliamentary and community levels. Anecdotal and statistical evidence points to a high degree of ignorance among the general population about the fundamentals of Australian government and the bases of a democratic state.

The timely publication of reports, written in terms that can be understood by the wider community, that explain, *inter alia*, the role of State and Commonwealth instrumentalities and the rights and obligations of citizens would be a desirable outcome.

It is regrettable that the House has not used the "30 day" rule for its original purpose viz, to give adequate time for the House to consider the full implications for the State of legislation giving effect to intergovernmental agreements. A standing referral of this type of legislation to the Constitutional Affairs Committee after the Minister's second reading speech would give the committee a 30 day period within which to consider the bill's implications.

Recommendation

- That the existing Constitutional Affairs and Statutes Revision Committee be reconstituted as a Constitutional Affairs Committee having power to originate its own inquiries on any matter affecting the State of Western Australia and its constitutional or legal relationship with the Commonwealth, the States and Territories;
- That a bill to which the "30 day" rule applies stands referred to the Constitutional Affairs Committee after the Minister's second reading speech and the committee is to report within 30 days of that referral;
- That a petition relating to the subject matter of an inquiry in progress or to be commenced stand referred to the committee undertaking that inquiry;
- That a petition not so related be referred to an appropriate committee by the Business Management Committee following presentation;
- That the Legislation Committee have responsibility for statute revision currently vested in the Constitutional Affairs and Statutes Revision Committee.

15. Standing Orders

SO's 305-308 should be repealed; their provisions are duplicated in SO's 311-315. Other alterations may be required as a result of this committee's recommendations.

A comprehensive review of Standing orders is to be undertaken by the Standing Orders Committee. This committee believes that any major amendments or repeals, eg, merger of the rules applicable to select and standing committees, should be included as part of the review and that the opportunity should be taken to simplify the language of the rules to avoid ambiguities.

Recommendation

That the House repeal SOs 305-308.

16. Consideration of Bills - Acceleration of available time

One of the recurrent difficulties encountered in referring bills to the Legislation Committee is the time needed for consideration, including the invitation to comment and then consider submissions, and the conflict that can cause with the Government's own timetable for passage of the legislation.

This issue was recognized by the *Ferry Committee* which included in its discussions, but not recommendations, the device of "simultaneous introduction", ie, the same bill is introduced in each House at the same time. The difficulty for Westminster-model parliaments lies not in simultaneous introduction so much as how amended versions emanating from the Houses at the conclusion of the legislative process are to be reconciled. There was a marked resistance to the notion of creating a "standing" conference of managers from each House to carry out the reconciliation process.

One means of providing more time for consideration of bills would be to adapt an existing procedure used in relation to the Estimates of Expenditure. SO 49 (c) and §3(a) of the Order establishing the Estimates Committee contemplate Council consideration of the annual Budget before the Appropriation Bills are passed by the Assembly, albeit that the Estimates are part of those bills.

By similar reasoning, a copy of a bill recently introduced in the Assembly could be tabled in the Council and motion made referring the "tabled paper" (the bill) to the appropriate standing committee for consideration. When the bill so referred is introduced in the Council,

a further motion would need to be made sending the bill to the same committee. In such a case, the committee's actual report would be on the bill, not the tabled paper.

The advantage of this procedure would be to afford the committee greater time to consider the legislation than would be the case were the referral to be delayed until the bill finally reached the Council.

The motion referring a bill as a tabled paper would need to specify that the reference was on the terms and conditions applicable to the bill itself, ie, excluding policy issues from the committee's consideration.

This proposal will not, of itself, reduce the time taken by a committee to consider a bill but rather is an effective means of extending the time that might otherwise be available for standing committee consideration consistent with the Government's legislative program.

It would be sensible to coordinate use of this referral mechanism through the Business Management Committee.

Recommendation

That the House adopt a procedure for the timely consideration of legislation by standing committees in the following terms:

- (a) the Business Management Committee recommends to the relevant minister that he/she table, as a paper, a bill introduced in, but yet to be passed by, the Assembly;
- (b) on tabling, the minister moves without notice that the paper be referred to a named standing committee for consideration, excluding any policy contained in the tabled paper;
- (c) after introduction of the bill, usually after the second reading has been agreed to, the minister moves to refer the bill to the standing committee that received the tabled paper;
- (d) where, for any reason, the Assembly fails to pass the bill already subject to standing committee consideration as a tabled paper, the original reference is revoked and all proceedings of the committee terminated upon notification of that failure to the Council by the appropriate minister.

17. Ecologically Sustainable Development Committee

This committee was established on June 26 1997 with the following terms of reference:

“ . . . to inquire into and report to the House on:

- (a) any matter in Western Australia concerning or relating to the planning for or management, use or development of natural resources and the environment having particular regard to demographic, economic, ecological, technological and lifestyle and settlement factors and concerns; and*
- (b) any Bill or matter referred to it by the House.”*

These terms of reference were derived from terminology used in the *State Planning Strategy* (November 1996) and designed to achieve a broad basis for inquiry by the Committee on matters relating to ecologically sustainable development.

The terms of reference cited are considered to be restrictive in that:

- they apply to natural resources and the environment;
- those matters are qualified by requiring the committee to have regard to specific issues.

It has been suggested that these terms of reference should be widened further.

In order to achieve a broadening of the ESD Committee's role, it was suggested that:

- 1 the Committee be re-named the *“Standing Committee on Ecologically Sustainable Development and Community Issues”*; and
- 2 a new term of reference (b) be added:
 - “(b) any issue of significant community concern other than a matter that falls within the terms of reference of another Legislative Council committee, or a bill;”*.

Broadening the terms of reference of the ESD Committee in this way would enable the Committee to inquire into matters of community concern that are not strictly related to ecologically sustainable development but nevertheless warrant an inquiry by a suitable

parliamentary committee. This is consistent with the view of the Chair of the Committee, Hon Christine Sharp MLC, in her submission to this committee, in which she says the ESD Committee is a committee:

“which is broad in scope yet whose purpose is integrative, trying to articulate and conciliate various community stakeholder interests...”.

The range of matters to be inquired into is restricted by prohibiting inquiry into a matter which falls within the purview of another Legislative Council committee. This would avoid duplication of work and conflict between committees. Additionally, it should be noted that the committee's terms of reference are restricted by preventing inquiry into a Bill unless the Bill is specifically referred by the House.

Although an extension in the ESD Committee's scope has its attractions, this committee does not believe that minority and regional interests will be better served by extending the existing reference solely to a particular committee. The preferable course would be for all committees to incorporate in each of their inquiries a “checklist” intended to ensure that those particular interests are considered appropriately and relevantly as and when they arise.

Recommendation

That existing terms of reference of the ESD Committee be amended by repealing para (b) and substituting:

“(b) any issue of significant community concern other than a matter that falls within the terms of reference of another Legislative Council committee or a bill;” .;

That all committees have regard to minority and regional interests in the course of each inquiry they undertake.

18. SO 334 - requirement to give notice of Report

The requirement in this rule to give notice of an intention to table a report had a laudable intent but has been honored more in the breach than the observance. With the recent changes introduced by the sessional order relating to consideration by the House of committee reports, supported by SO 336, it seems to the committee that the process of committee reports would be assisted were SO 334 to be amended by deleting the requirement for notice. The rule would then simply state:

334. A report is presented by the Chairman.

Recommendation

Amend SO 334 by deleting the requirement for notice of intention to table a report.

19. Staffing and resources

The Committee Office, located at 1110 Hay Street, is a division of the Department of the Legislative Council¹⁰. Control of, and responsibility for, its operations vest in the Deputy Clerk (Committees) who reports to the Clerk and the President jointly and severally.

Committee Staff¹¹ - All staff of the Office are employees of the department (*cf Parliamentary and Electorate Staff (Employment) Act 1992*). Each committee is assigned a committee clerk, responsible for the administrative aspects of the committee and its inquiries, and an advisory/research officer. Changes to a committee's officers are infrequent and are made in consultation with the Chairs of the committee(s) affected. The department rotates or reassigns committee staff consistent with the requirements of enterprise bargain agreements and other industrial instruments or for other departmental purposes.

Employment status - Committee clerks are permanent employees engaged in accordance with the *Parliamentary Employees Award 1989* and the *Parliamentary Enterprise Agreement 1996*. Advisory/research officers are employed initially on a 12 month contract. Subject to satisfactory performance, the contract is renewed for a fixed period. This policy is under review following IRC (WA) and Industrial Court (Cth) decisions that negate the intention of the fixed-term contract by holding that once such a contract has been rolled over more than once, the employee, effectively, obtains the benefits of permanency. A request to contract with a person's company, rather than the individual, to provide advisory services has been refused.

It is departmental policy to appoint suitably-qualified persons as advisory/research officers. Provision exists for the contracting of persons with expertise in a specific area or discipline relevant to a particular inquiry.

¹⁰ *cf* organizational chart attached to this report.

¹¹ Committee Office establishment is 4 AROs, 3 clerks (incl principal committee clerk) and 1 typist/receptionist.

Committee Expenditure - The following table shows the Vote for the previous 2 years and the current year to date. The amounts exclude salaries and capital expenditure:

1995/96	
Total LC Vote	\$800,244.00
Total LC Expenditure	\$675,769.92
Total Committee Office Expenditure	\$308,278.98
1996/97	
Total LC Vote	\$796,000.00
Total LC Expenditure	\$618,057.74
Total Committee Office Expenditure	\$307,047.25
1997/98	
Total LC Vote	\$844,845.00
Total LC Expenditure to date	\$129,058.06
Total Committee Office Expenditure to date	\$73,667.69

The control of Council expenditure vests in the Clerk as the accountable officer and is subject to the *Financial Administration and Audit Act 1985* and Treasurer's Instructions. Departmental rules governing financial approvals, expenditure and acquittal of expenditure are contained in the Accounting Manual and Committee Office Manual. The Deputy Clerk has delegated authority to incur expenditure for specified purposes.

Funds for the committees and the Committee Office are provided from the Vote: Legislative Council. There is no separate budget for committees; funds are expended from the Vote for committee purposes as part of the operations of the department. The Deputy Clerk coordinates the inclusion of projected committee expenditures in the draft annual estimates prepared by the department

Travelling Allowances - The rate of travelling allowances, within Australia, for select committees are determined by the Salaries and Allowances Tribunal. Rates for standing committees (and select committees outside Australia), are benchmarked against the Tribunal's select committee rates. However, because of the introduction

of credit cards for members and staff some years ago, the department operates on "actual and reasonable" expenditure rather than a predetermined amount. For overseas travel, each committee member is given a cash advance of \$60 per diem for incidentals. Except in cases where the department's credit cards are not accepted at the committee's destination, cash advances are not provided. Apart from the incidentals allowance, all expenditure by members or staff must be acquitted in accordance with statutory requirements and is subject to audit.

Planning - The lease for the premises occupied by the Committee Office in the Wang Building expires in 1998 and will be renegotiated for a 5 year period on the assumption that projected additions to Parliament House would not be completed before that time. Consideration will be given to taking additional space, under the renegotiated lease, to provide better accommodation for the committee clerks who are all located in the same room at present. More space will be required if the request for funds to employ 2 additional advisory/research officers is successful. It is not intended to provide more meeting rooms; the Presiding Officers are considering the feasibility of reconfiguring existing space to provide 2 meeting rooms in Parliament House subject to budgetary constraints.

In June 1995, the salary aggregate for 3 advisory/research officers was \$125 355. In June 1997, that figure was \$207 474 for 4 AROs. The \$82 119 increase has been funded from existing levels within the Vote, ie, no additional funds have been provided to cover the increase.

The increase has a number of components:

- 1 additional advisory officer;
- 7% + 2% EBA salary increase;
- reclassification of advisory officer positions from level 5 to levels 6,7.

The reclassification was made after an independent review was conducted by the Public Sector Management Office. PSMO recommended, after consultation with the Crown Law Office, that levels 6, 7 properly reflected the qualifications (law) of the AROs and the responsibilities of their position description.

The existing establishment does not allow for the assignment of a full ARO FTE to each standing committee and the recent establishment of the ESD Committee will place additional strain on resources. Accordingly, funding for 2 ARO FTEs in fiscal 1998-99 and subsequent years is being sought. It is also the case that select committees must be supported from the same pool.

Existing staffing levels make difficult the flexible deployment of resources. For various reasons, it is the case that many committee inquiries take longer to complete than is desirable. In appropriate cases the formation of a small "task force" of AROs and support staff would go a long way in ensuring that inquiries are completed in timely fashion and a committee's findings on a particular issue are relevant and contemporary.

It has to be acknowledged that there has been justifiable criticism by committees about lack of resources. It is far from ideal for a committee to share its ARO with another committee. However, the standing committees' meeting patterns, and the frequency of meetings over a session have been difficult to predict and would engender a comparatively high degree of redundancy were they to be resourced on a 1:1 basis. The department has to balance the cost of resourcing committees against the obligations imposed by the *FAAA* to provide services that are efficient, effective, and economic.

The all-party commitment to the retention of a proper committee system, the alteration to SO 303 enabling committees to be appointed for the duration of a parliament, and changes to be recommended by this committee will assist the department in planning for, and providing, high-caliber professional and administrative support.

Recommendation

That the House support the appointment of additional advisory/research officers and support staff in the Committee Office.

20. Public Awareness of Committees' Roles and Functions

The committee notes that the Committee Office recently has been taking initiatives to raise the profile and public awareness of committees of the Council. It is also seeking to streamline and clarify its operations. For these purposes it has recently produced a new *Information for Witnesses* document which is given to all witnesses who appear before committees. Similarly, it has produced a document *Making a Submission to a Committee of the Legislative Council*. It is currently preparing a booklet of *Guidelines for Members of Committees of the Legislative Council*.

Substantial improvements in the quality of presentation of some committee reports have been made. Administrative guidelines have been produced to facilitate professional printing of

committee reports that are over a certain length or that may attract significant public interest. However, professional printing of reports can only be undertaken if a committee allows for sufficient time for printing between conclusion of its deliberations and tabling in the House.

The Committee Office has established a home page on the World Wide Web. The site has already attracted some international interest. More material will continue to be added to this site to make it more useful and informative. It is hoped that all substantive committee reports will eventually be available at the site. The Committee Office does not have sufficient resources to maintain current information on committee activities on the Web page. Maintenance of an up-to-date Web page for the whole of Parliament is a desirable goal and should be pursued.

Consideration currently is being given to holding a series of "moots" on topics of constitutional law and also to the question of committee officers holding seminars to brief staff of government departments and interest groups on committee operations.

The committee encourages committees of the Council to promote awareness of their activities to the public, interest groups and the media. There may be opportunities to further raise the profile of committees by considering ways of improving advertising of committee inquiries and calling for submissions. Committee staff have been asked to give consideration to new ways and means of raising the public profile of committees. Identified opportunities will be taken whenever resources permit.

The committee also considers that the Council committee system and the work of Council committees should form an integral part of a broader parliamentary education program. Examples of ways in which this could be achieved include the daily up-dating of a Parliamentary Web page and the inclusion, whenever possible, of Council committees' public hearings in tours of Parliament.

George Cash MLC
Chairman

COMMITTEE FOR THE REVIEW OF THE COMMITTEE SYSTEM IN THE LEGISLATIVE COUNCIL

HON TOM STEPHENS MLC

REPORT

INTRODUCTION

I agree with a majority of the findings and recommendations of the main report. However, I would like to place on record my views on a number of the issues that are not adequately dealt with in the main report and to offer the House some alternative approaches which will enhance the review and scrutiny role of the Legislative Council and its committees.

Committee system and the Legislative Process

The Council's Committee system ought be viewed as an integral part of the Council's major role which, as the Commission on Government recommended, is "that of a house of review" for the people of Western Australia. While a Government has a right to have its business considered, this right should not be a right that pre-empts or prevents the House from performing its major review role. In fulfilling that role, non-government Members of the House and of the committees are entitled to a fair share of the House's time for consideration of business they wish to propose.

Public Involvement and participation

I believe that for too long the Legislative Council has allowed its processes and procedures to guarantee that a cloak of unnecessary incomprehensibility and secretiveness has been the way the House operates. It operates in a way that is largely inexplicable and impenetrable for most Western Australians.

I believe there is an urgent need to improve the processes of the House and its committees to make the Legislative Council accessible and its workings understandable to the wider community of Western Australia, who - after all - elect us and pick up the tab for our costly operation.

There is wide scope for greater participation and awareness by the public in the processes of the Committee system of the House. Currently, apart from the occasional controversial inquiry or the appearance of a "high profile" witness, the public, the media, the public service and community and industry interest groups have little awareness of the existence or operations of Parliamentary committees in this state.

Indeed, the rules governing this committee's work illustrated to me the need for reform. As is normal, draft copies of the report were circulated to members of the committee for their consideration. However Standing Orders prohibit Members even showing a copy of the draft to their own research staff, let alone seeking input from the wider community or other interested

parties. It was not even possible to obtain a copy of the draft report on computer-file disk to facilitate Members making amendments they may wish to have had considered before the report was finalised. This is not an efficient use of Members' time and is a matter the committee has suggested be reviewed; I would hope that the standing orders committee of the House would take up this matter for further consideration.

THE LEGISLATIVE COUNCIL AS HOUSE OF REVIEW

As previously stated, the major role of the Legislative Council is that of a house of review. The Senate has a similar role, which Odgers describes as including:

- To act as a House of review with responsibility for expressing second opinions in relation to legislative and other proposals initiated in the House of Representatives. In every walk of life, be it medicine, science or day-to-day family problems, the second opinion is sought and valued. So is it in government, where a second House acts so as to ensure proper consideration of all legislation, imposes a period for reflection and provides an opportunity for anyone to voice an opinion, support or protest regarding proposed legislation, after which the second House may make or suggest amendments to proposed laws. Development of the Senate's committee system has established a formal channel of communication between the Senate and interested organisations and individuals, especially through developing procedures for reference of bills committees.
- To ensure that legislative measures express the considered view of the community and to provide opportunity for contentious legislation to be subject to electoral scrutiny.
- To provide protection against a government, with a disciplined majority in the House of Representatives, introducing extreme measures for which it does not have broad community support.
- To provide adequate scrutiny of financial measures, especially by committees considering estimates.
- To initiate non-financial legislation, as the Senate sees fit. The Senate's capacity to initiate proposed legislation effectively means that the Parliament is not confined in its opportunities for considering public issues in a legislative context to those matters covered by bills brought forward by the executive government.
- To probe and check the administration of the laws, to keep itself and the public informed, and to insist on ministerial accountability for the government's administration

The main report makes repeated reference to right of the Government to have its legislative program given pre-eminence in the Legislative Council. This is an oft repeated pitch on the part of governments which too regularly try to control parliament and to thereby avoid full public scrutiny.

In my view the main report has shown no commensurate concern or pre-occupation with the rights and indeed obligations of Members wanting to insist on full review and scrutiny of Government activity. Nor is there any matching pre-occupation of the main report with the rights and obligations of Members to put in place proper and appropriate methods of ensuring Government accountability. Nor is there any commensurate pre-occupation with the rights and obligations of non-Government Members to have their issues considered by the House and its committees, and for these issues to be brought to resolution.

Already on the notice paper there are countless items of non-Government business languishing at the bottom of the notice paper with no easy mechanism for bringing these items up for guaranteed consideration and resolution by the House.

The people of Western Australia have legitimate and high expectations of the Legislative Council. After all, they elect it and pay for it. They have a right to ensuring that it is not a mere tool of the Executive. The House will only meet its destiny when the Standing Orders balance the rights of Government and non-Government members to have issues brought forward for consideration and brought to resolution.

The main report does not in my view strike the right balance. I do not accept that the Government has an unfettered right to the handling of the issues before the House. There has to be a balance that ensures the orderly consideration and resolution of non-Government business.

These issues effect not only the operation of the House, in its legislative and review functions, but also the committees of the House. To a very great extent, the committees of the House now have a structure which has dramatically increased the prospects of achieving this balance.

Now the task is to ensure that the Standing Orders of the House are urgently amended to better cater for the rights of ordinary Western Australians to have their Upper House function as their House of review, holding the Government accountable. This can only be done by achieving some better balance in reference to government and non-Government business and also in the processes that relate to Question Time, the answering of questions both without notice and on notice.

I find it inconceivable that I would step back from the task of convincing the House to move in the direction expected of us by the Royal Commission, the Commission on Government, and by the people of Western Australia: we must function as an effective House of Review.

Recommendation: that the House direct the Standing Orders Committee to present proposals to amend Standing Orders that would ensure an appropriate balance to the processes of the House, that will enable the orderly processing and resolution of Government and non-Government business and increased opportunities for guaranteeing Government accountability through obligations on Ministers in reference to responding to questions without notice and on notice; and that additional procedures be put in place, such as opportunities to move to “note answers to questions” that increase the prospects of government accountability.

Representation of regional and minority interests

The Legislative Council's proportional representation system of electing its members also ensures a wide range of political interests, including minority interests, are represented in the House. Committees should wherever possible and practical reflect these interests in their composition.

BUSINESS MANAGEMENT COMMITTEE

It is pleasing to note the Government has provided Members with a list of proposed legislation for the current session, a practice the I urged upon the Government Leader earlier this year. This should facilitate the work of the proposed Business Management Committee by giving Members some overview of and context to the Government's legislative program. This list should be regularly updated to reflect any changes proposed by the Government for House consideration. The list, with any changes, should be readily available to Members and the public.

It is noted that the Commonwealth Senate has adopted a practice whereby Bills must be introduced within a specified period before they will be considered. Current practice is now to introduce legislation in one period of sitting for passage in the next.

It is to be hoped that the proposed Business Management Committee will go along way to ensuring better management of the Legislative Council. This Committee should would aim at avoiding unnecessary House "grid-lock", in the event that a non-government majority on the floor does not agree to the government's proposed order for the transaction of business.

Any proposed change to the publication or format of the Notice Paper offers the opportunity to provide more information to Members, staff and the public. In my view these documents ought be available to members of the public and other interested persons and in the public gallery of the Legislative Council for those who attend sittings of the House. It is my view that a section of the notice paper/agenda ought include an explanation of the various types of business to be conducted by the House and a list of key office holders and Ministers, their portfolios and the Assembly ministers they are representing, together with a seating plan of the chamber. The Senate notice paper includes much of this information as a matter of course which assists those unfamiliar with Parliament and its procedures. In addition, the Notice Paper could also list the title and membership of standing and select committees and the current inquiries each committee is conducting. Copies of the Notice paper should be available in the public gallery and at the main and public gallery entrances of the Parliament.

The effectiveness of the proposed new Business Management Committee should be monitored to ensure it facilitates the House's role.

RECOMMENDATIONS:

A. That the Business Management Committee determine for the ensuing sitting week the

specific business to be transacted on each day and this committee meet prior to the commencement of each weekly sitting of the House; desirably, the committee should meet immediately after the rising of the House on Thursdays;

B. That the notice paper of the Council include:

- * a brief explanation of the types of business the House deals with;
- * key office holders' and Ministers' names and titles;
- * a seating plan;
- * details of committees
- * sitting dates, times and the time for questions without notice

COMMITTEE CONSTITUTION AND APPOINTMENT OF MEMBERS

Prior to the commencement of each Parliament, or following a vacancy occurring on any Committee, the Business Management Committee should meet, to prepare a recommendation to the House by way of motion for the appointment of Members and Chairs of the Standing Committees. In preparing its recommendation, the Business Management Committee would have regard to written advice from the parties in reference to Members available to serve on the committees.

The Committee should be required to report to the House on the first day of sitting of each Parliament, or within three sitting days of a committee vacancy occurring, and the report should be brought forward by way of motion for consideration and resolution within three sitting days.

The recommendations of the Committee should come into effect when the House concurs with the report.

The Standing Orders should be altered to reflect this change.

STANDING ORDERS

The standing orders should incorporate modern "user friendly" document standards. Those parts of Standing Orders relevant to Committee proceedings should be clearly annotated.

ADDITIONAL RECOMMENDATIONS

Committee Information Gathering

It is necessary and desirable for committees to obtain information from sources outside Western Australia from time to time. Committees ought consider using and expanding the use of modern communication and information methods, such as video conference facilities and teleconferencing, to achieve this task.

Currently it is feasible for judicial proceedings to be conducted in this manner. Documents can be exchanged and presentations conducted via video/Internet links relatively inexpensively. A wide range of public sector, industry and academic expertise is accessible through this process.

Similarly, committees ought to be encouraged to bring relevant experts and witnesses to Western Australia where the committee, government, industry and the community can take advantage of their expertise during their visit by the holding of public meetings or seminars.

RECOMMENDATION: that with a view to maximising the effective use of resources, urgent efforts be made to ensure that committees:

- a) can use modern communication technology to obtain evidence;**
- b) can bring interstate or overseas expert witnesses to give their evidence in Western Australia; and**
- c) conduct information seminars and other meetings in the course of their inquiry.**

Public Awareness of Committees' Roles And Functions

Despite the valuable work committees perform and the opportunity they offer for public participation in the legislative and administrative process, few outside Parliament know they exist or what they do.

Committee chairs should be encouraged to promote public awareness of their committee's activities among the media and the public and relevant interest groups. At the moment, accessing information on the composition, terms of reference, current inquiries, public hearing dates and venues for hearings is no easy task for a member of the public. At the least, committees should publish this information in a current and accessible form.

The effectiveness of the advertising of committee inquiries should also be examined. Advertisements in community papers, press releases by Chairs of the committee and postings on Internet news groups may be more effective in drawing submissions in certain inquiries. Committees dealing with issues affecting Aboriginal or non-English speaking communities should ensure their calls for submissions and general publicity are adapted for the special needs of these groups.

Key individuals such as public servants who are likely to be called to give evidence or assemble evidence to be provided to committees should have access to a guide or other material setting out their obligations to the committee and its processes. Similarly, members of the public should be provided with some basic information on how to make a submission to a committee.

Some progress is being made along these lines. However, the roles of committees, their processes and their work remain a mystery for most Western Australians. While this remains so, Governments will be under little pressure to respond to findings or adopt recommendations of committees, thus negating or diminishing both the role of committees and the House itself.

RECOMMENDATION:

That Committees develop and implement communication and information strategies to enhance public awareness of their role and activities including information guides for the public, government agencies and departments and witnesses.

PRIVILEGE

Issues of privilege

The work of the Committees and the members on Committees would be enhanced by standardising the opportunity for Members to draw on the support of their electorate staff and colleagues in preparing for committee work. It is my view that efforts should be made where possible to ensure that committee work, draft reports and submissions should be available for such public and open consideration unless specifically identified by the committee for consideration "in camera".

Computer technology

In line with current best practice, draft reports should be available to members in computer disk-file format.

Indigenous Issues Committee

The majority report has brought down a recommendation which urges issues "involving or relating to Aboriginal affairs be considered by each committee in the normal course of an inquiry". I have no objection to this recommendation in itself. However, the recommendation is presented to the House as if it were a response to a question that I have raised from time to time as whether there should be established a Standing Committee of the Legislative Council on Indigenous Issues.

It is my view that neither the House nor this current Committee reviewing the Committee System of the Legislative Council has yet had presented all of the arguments from all of the groups that would want to mount such argument in support of such a Standing Committee.

It is my belief that of the most pressing issues that the Western Australian Parliament must prepare itself to tackle this year is the issue of a state legislative response to the Native Title legislation that will go through the Federal Parliament later this year. It is from this belief that I have moved that the House establish a Select Committee of Inquiry on Native Title to prepare our Parliament for this task. I believe that this select committee of inquiry is one of the most pressing issues with which the House now needs to deal.

It is my view that Committee of Inquiry could well find that itself faced with the question of whether, in their final report on the Native Title issues, a recommendation should be made to the House to establish a Standing Committee on Indigenous Issues.

For my part, I am increasingly of the view that it is important for the Western Australian Parliament to develop a specialist dedicated committee to consider issues affecting the Indigenous people of this state. Western Australia's size and its dispersed and diverse Indigenous population require a degree of specialisation which may otherwise not be available to the House and its committees when considering issues affecting Indigenous people.

Such a committee could also act as a point of contact between the Parliament and Indigenous people who often lack the resources to make their views known to Parliament. In addition, a dedicated committee can develop the specialist knowledge of Indigenous people and culture which will facilitate Indigenous participation in committee inquiries which may have to be conducted in a less "formal" manner in remote locations to enable members to gain a better understanding of the needs and views of indigenous people.

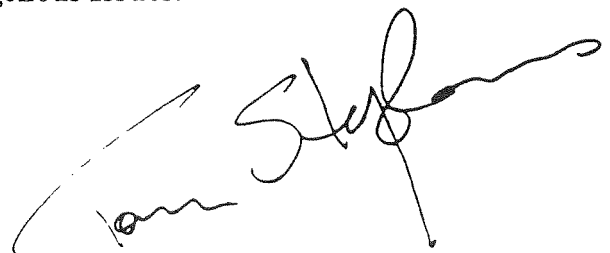
While the Commonwealth has a major role in the provision of funds for Indigenous communities and programs, delivery of those services still remains very much under the control of the state government and its agencies particularly in the areas of health, education and housing. Each of these areas is the subject of intense concern and interest to Indigenous people (and to the wider community) and each overlaps considerably demanding co-ordinated responses from each responsible agency.

I note that many Parliaments of the Commonwealth have committees of this sort available to the House and to indigenous people to assist with the consideration of issues effecting their indigenous populations: the Maori Affairs House Committee of the NZ Parliament and the Aboriginal Affairs Committees of the various Parliaments of provincial Canada are examples. I note that the US Congress and Senate have had such committees available to assist them in their legislative and executive review functions. I understand that these Committees have built up a small parliamentary staff of indigenous people who have made available to their parliaments great expertise that has been of enormous value to the deliberations of the legislature. There may well be just such a future opportunity for the Western Australian parliament.

For all these reasons, I believe that the option of a dedicated Standing Committee of the Legislative Council on Indigenous Issues should not be shut off at this time.

RECOMMENDATION:

That the Legislative Council explore further the option of moving to establish a dedicated Standing Committee on Indigenous Issues.



Appendix

Explanatory Notes-New Zealand Bills

POSTAL SERVICES BILL

EXPLANATORY NOTE

General Explanation

This Bill consolidates and amends the Postal Services Act 1987. The principal purpose of the Bill is to allow increased competition in postal services in New Zealand. In this respect, the Bill—

- (a) Abolishes the sole right of NZ Post to carry letters weighing 200 grams or less and for which the postal charge is less than 80 cents;
- (b) Provides for the designation of 1 or more postal operators as a postal administration for New Zealand for the purpose of fulfilling New Zealand's obligations as a member of the Universal Postal Union and the Asia Pacific Postal Union. Such designated postal operators are given the sole right to issue postage stamps bearing the words "New Zealand" or any abbreviation of those words;
- (c) Extends to new postal operators certain rights and obligations relating to the handling and security of mail, in order to ensure the continued integrity of the mail system;
- (d) Includes a power to make regulations imposing some information disclosure obligations on NZ Post, to enable service quality to be monitored and maintained, and to enable efficient interconnection to take place.

Removal of Monopoly

New Zealand Post currently has a statutory monopoly on the delivery of letters weighing less than 200 grams, and for which a charge of 80 cents or less is made. Following passage of the Bill, the postal market will be fully open to competition. Postal operators will not face any restriction on the type of article they carry, or on the prices, terms, and conditions under which services are provided.

The Government expects increased competition to result in a number of benefits, including—

- (a) Improvements in service and reductions in prices for postal services, particularly for bulk business mail. For business customers, this will mean lower costs and accordingly, increased competitiveness. Exporters are expected to be amongst the prime beneficiaries;
- (b) Increased commercial incentives on New Zealand Post to maintain and extend its current excellent performance. Without the direct

commercial pressures of competition, there is a risk that, over time, the company's efficiency may be eroded:

- (c) Increased choice for consumers. New entrants to the market can be expected to offer a range of service and price differentiation. New operators can explore service niches and opportunities that large operators have not contemplated:
- (d) Simple regulation. There is less concern about the potential for New Zealand Post to cross-subsidise its competitive business from monopoly profits, if the statutory monopoly is removed.

When proposals to remove the postal monopoly were first made, some reservations were expressed over the possible impact on New Zealand Post's profitability and on the Government's ownership interests. New Zealand Post has, however, confirmed that it is ready and able to meet competition.

New Zealand Post has been positioning itself to face competition for some time now. This is reflected in its increased efficiency and a programme of progressive price reductions to customers. These reductions have in fact seen the postal market grow further, with increased volumes of mail and continuing high profitability for the company. The Government considers that the time is now right to move to a more competitive postal environment.

The decision to remove the letter monopoly also reflects a growing trend overseas. A number of countries have already opened their markets to full competition, without detriment to the incumbent operator.

Concerns have also been expressed that removing the monopoly may be a precursor to privatising NZ Post. The Government has stated publicly that privatisation is not on the agenda. The objective of this Bill is to increase competition, and accordingly to allow greater economic benefit to be captured for users of the postal system. These benefits can be achieved without privatising NZ Post.

Security of the Postal System

Clauses 5 to 26 of the Bill specify the rights and obligations of postal operators and members of the public in relation to the handling of mail. Under the Postal Services Act 1987, these rights and obligations apply only to NZ Post. They are intended to protect the interests of both postal operators and consumers, and safeguards and penalties are in place to ensure proper accountability on postal operators in exercising these rights.

Postal operators will have the right to detain and examine postal articles where there is reason to suspect that an article has been posted in contravention of certain statutes, such as the Misuse of Drugs Act 1975, the Customs and Excise Act 1996, and the Trade in Endangered Species Act 1989.

To ensure that the rights of the sender and intended recipient are protected, the postal operator will be required to give the sender or addressee notice of the postal operator's intention to open the article.

Procedures are also defined in relation to the forfeiture and disposal of goods found to be posted in contravention of the law. These procedures provide a clearer accountability on postal operators than exists under the present Postal Services Act 1987, by limiting the discretionary powers of postal operators in relation to forfeiture and disposal.

It will be an offence for any officer, employee, or agent of a postal operator to divulge information derived from a postal article. These provisions accordingly strike a balance between the need to permit detention and inspection of postal articles for safety and security reasons, and the need to protect the privacy rights of consumers.

The Postal Services Act 1987 includes provision for NZ Post to be exempted from liability in relation to loss or damage suffered by any person by reason of loss or delay in relation to letters. This provision is extended in the Bill to all postal operators. It recognises that there are circumstances in which a postal operator cannot reasonably be held liable to guarantee delivery, given that letters are typically low value, high volume items, delivered anonymously into the postal system (for example, through a street collection box) by the sender.

This exemption from liability does not mean that users of the postal system do not have protections or assurances on service quality. A number of safeguards exist. First, the exemption applies only to letters, not to postal articles in general. The definition of a letter is specifically limited in the Bill to an article for which a charge of 80 cents or less is made for carriage or sending. The expectation therefore is that a letter will be an item of low value.

Second, the sender has the option of entering into a specific contractual arrangement with a postal operator, where delivery or value of the item is of critical importance. In effect, this reflects the current arrangements that apply in the case of couriers.

Obligations on the Public

Clauses 13 to 19 impose obligations on the public to ensure the integrity and safety of the postal system.

Persons receiving mail that is not addressed to them are required to return the items to the postal system. It remains an offence for a person to wilfully open an article not addressed to that person. It also remains an offence to—

- (a) Post noxious substances, or indecent or dangerous enclosures; or
- (b) Falsely mark any postal article so as to lead another person to believe that it was posted at any time or place other than the correct time and place.

Additional Rights of Postal Operators

In order to be able to collect mail from customers, new entrants to the postal market will require the right to erect public letterboxes. Currently this right is limited to NZ Post. *Clauses 20 to 24* empower postal operators generally to erect and maintain public letterboxes in public places.

This right must obviously be balanced by considerations relating to town planning, environmental and visual impacts, and traffic safety. Accordingly the Bill provides a clearly defined notification process which must take into account any reasonable conditions prescribed by a local authority or other person having jurisdiction over the place where the letterbox is to be erected.

Postal operators are required to give prior notice of an intention to erect collection facilities and the Bill creates an offence, subject to a fine of \$10,000, for failure to comply with these requirements. The court may also make an order relating to the payment of compensation in such cases.

The requirement for prior notice, and the offence provisions, do not appear in the Postal Services Act 1987. The Bill therefore places some constraints on the previously open right of NZ Post (and, in the future, on new operators) to erect collection facilities, while continuing to ensure that the public will have ready access to collection facilities for casual mail.

The Bill also provides that every postal operator must, where practicable, make available publicly the address of every rural delivery boxholder to whom that postal operator provides service. This provision is carried over from the Postal Services Act 1987, as amended in 1990 (where it applied only to NZ Post). The requirement was inserted by the Postal Services Amendment Act 1990 in response to concerns that information should be more readily accessible concerning the location of people residing in remote areas. A rural delivery

boxholder may however direct the postal operator to withhold this information, ensuring that personal privacy can be protected.

International Mail Services

Clauses 27 to 33 provide for the responsible Minister to designate a postal operator or operators to act as New Zealand's postal administration for the purposes of fulfilling New Zealand's obligations as a member of the Universal Postal Union (UPU) and the Asia Pacific Postal Union (APPU).

The UPU is an international organisation, established under the auspices of the United Nations to ensure that the global postal system is maintained. Currently NZ Post is New Zealand's designated postal administration.

The UPU has functioned historically on the basis of relationships between monopoly carriers. This restriction is however beginning to be reconsidered, and over time, the UPU can be expected to recognise the place of competitive services in the international postal system. Designation as an operator for UPU purposes will over time provide other entrants to the market with the possibility of entering into relations with UPU members for the carriage of international mail.

As a transitional measure, NZ Post will continue to have exclusive designation for a period of 5 years after the Bill's commencement. After that, the Government will have the option of designating multiple operators for this purpose.

Designation carries with it the sole right to issue postage stamps bearing the words "New Zealand" or any abbreviation of those words, as set out in *clause 4* of the Bill. Effectively this gives a designated operator the exclusive right to issue "official" New Zealand postage stamps for philatelic purposes. For the first 5 years after passage of the Bill, NZ Post will retain an exclusive right to issue such stamps.

Safeguards on Services

The Bill provides for information disclosure requirements in *clause 34* and regulation-making powers in *clauses 38 and 39* to ensure that—

- (a) Consumers are assured of high quality and reliable service under competition; and
- (b) New entrants are not unduly constrained from competing effectively in the market.

Concerns have been expressed in the past that rural residents might face reduced service, or loss of service, if the letter post monopoly were removed. Critics of the policy suggested that, faced with competition, NZ Post might choose to downgrade service on uneconomic routes in order to protect its profit margins on higher value services where competition was most likely to develop.

It is proposed that safeguards be put in place to ensure that all New Zealanders continued to receive a reliable, nationwide service at affordable prices. The Government will be putting in place a renewed agreement, in the form of a Deed of Understanding with NZ Post, which will specify the company's undertakings to continue to provide—

- (a) Defined frequency of delivery at current levels (5 or 6 days a week to most delivery points);
- (b) A nationwide network of delivery points and postal outlets at current levels. This includes a specific number of rural delivery points;
- (c) Constraints on NZ Post's ability to alter service, subject to the agreement of customers or demographic changes;
- (d) An interim price cap on the basic letter of 45 cents, subject to movements in the consumers price index. NZ Post in fact reduced the price of the basic letter to 40 cents from October 1995. It attributed this move to pending competition in its annual report.

The Deed will be put in place for an indefinite period, with provision for a review after 3 years.

To enable compliance with the Deed of Understanding to be monitored, the Bill provides regulation-making powers for the establishment of information disclosure regulations. Under these regulations, NZ Post will be required, as now, to publish in its annual report information relating to frequency of service, quality, and price. The Secretary of Commerce will also be empowered to seek additional information if required, in order to monitor compliance with the Deed of Understanding.

This will provide substantial assurance to consumers that postal services will be maintained at current levels once the monopoly is removed. The company's present level of profitability and efficiency, its competitive advantage derived from a nationwide network, and the growth in mail volumes overall, should all ensure that the company is well placed to meet the requirements of the Deed of Understanding.

The information disclosures required of the company will further provide consumers with a transparent means of monitoring the company's compliance with these undertakings.

It is also proposed that regulations made pursuant to the Bill will provide for NZ Post to disclose information concerning its interconnection arrangements with other postal operators. The issue of interconnection is an important one for the effective development of future competition. It is unlikely that the majority of new entrants will wish or need to duplicate a nationwide network on the scale of that operated by NZ Post. New entrants wishing to provide nationwide service can therefore be expected to want to interconnect with NZ Post's network.

The parties will be free to negotiate interconnection terms on a commercial basis. However, NZ Post will be required under the proposed regulations to publish details of interconnection terms and conditions established with other operators. This will assist new market entrants in negotiating interconnection agreements from an informed basis. NZ Post has also agreed with the Government that it will provide undertakings in the Deed of Understanding that it will offer interconnection to competitors on fair and reasonable terms.

Regulation-making powers are also provided under the Bill to cover matters that may arise in relation to the efficient operation of the postal system. Operators, for example, will need to exchange information on customers' addresses, agree arrangements for the return of mail that has been wrongly delivered, and establish arrangements relating to the numbering of private boxes. In the first instance, it is envisaged that postal operators would reach agreement on these technical issues through negotiation. All operators have a vested interest in ensuring that such arrangements work, if they are to operate an efficient and reliable system. The regulation-making powers do however provide a formal backup, in the event that more specific or formal guidelines should prove necessary.

Clause by Clause Analysis

Clause 1 relates to the Short Title and commencement. The Bill is to come into force on a date appointed by the Governor-General by Order in Council.

PART 1

PRELIMINARY PROVISIONS

Clause 2 relates to interpretation. Of particular importance are the following definitions:

- (a) The definition of the term “letter”, which means any form of written communication or other document or article (including a packet, package, or wrapper containing any such communication)—
- (i) That is directed to a specific person or a specific address and is to be conveyed other than by electronic means; and
 - (ii) In respect of the carriage, taking charge, or sending of which a charge of not more than 80 cents is made:
- (b) The definition of the term “postal article”, which generally means a letter, parcel, or other article that has been posted and has not been delivered:
- (c) The definition of the term “postal operator”, which means any person whose business or a principal part of whose business consists of the carriage of letters.
- Subclause (2)* sets out when an article is taken to have been posted, and *subclause (3)* sets out when a postal article is taken to have been delivered.

Clause 3 provides that the Bill binds the Crown.

PART 2
GENERAL PROVISIONS
Stamps

Clause 4 provides that only a designated postal operator (that is, a postal operator that has been designated pursuant to *clause 27*) may issue postage stamps that bear the words “New Zealand” or any abbreviation of those words. An exception is provided where those words or any abbreviation of them appear on a postage stamp as part of the name of the postal operator by which the stamp is issued, those words or that abbreviation form part of the registered company name of that postal operator, and that company name appears in full on the stamp. A breach of *clause 4* is an offence punishable by a maximum fine of \$10,000.

Detention and Examination of Postal Articles

Clauses 5 to 12 relate to the detention and examination of postal articles, and their disposal in any case where they are found to be in contravention, or to have been posted in contravention, of the provisions of the Bill, or certain other enactments.

Clause 5 confers on any postal operator the power to detain, open, and examine any postal article that the postal operator has reason to suspect—

- (a) Has been posted in contravention of the provisions of the Bill; or
- (b) Is in contravention, or has been posted in contravention, of the Misuse of Drugs Act 1975, the Antiquities Act 1975, the Trade in Endangered Species Act 1989, the Biosecurity Act 1993, or the Customs and Excise Act 1996.

Unless to do so would be likely to prejudice any investigation into the commission or possible commission of an offence, or the detection or prosecution of an offence, the postal operator is required to give notice of its intention to open a postal article, or that a postal article has been opened, to the addressee (if known), or if not known, to the sender (if known).

Clause 6 sets out the procedure to be followed by a postal operator if, having opened a postal article pursuant to *clause 5*, it finds that the postal article has been posted in contravention of the provisions of the Bill. In these circumstances, the postal operator may seize the postal article. It is then required to be held pending the outcome of any proceedings for the offence in respect of which the postal article was seized, unless the postal article is perishable or is or is about to become dangerous, in which case the postal article may be destroyed or disposed of.

Where any such proceedings are completed or abandoned, the postal article is to be returned to the person appearing to the postal operator to be entitled to it, unless the court orders the postal article to be forfeited to the Crown under *clause 8*. If no such proceedings are taken within 6 months after seizure, the postal article is to be returned to the person appearing to be entitled to it. The postal operator may destroy or dispose of the postal article if the person appearing to be entitled to it cannot be found, or there is no such person.

Clause 7 provides that in any case where, pursuant to *subclause (4) or subclause (5) of clause 6*, a postal operator is otherwise required to deliver a postal article to a person appearing to the postal operator to be entitled to it, the postal operator may instead apply to a District Court Judge for an order as to the disposal of the postal article. On any such application, the District Court Judge may make an order that the postal article be delivered to such person as the Judge considers is entitled to it, or that it be destroyed or otherwise disposed of in such manner as the Judge thinks fit.

Clause 8 provides that on the conviction of any person for an offence against the Bill involving any postal article seized pursuant to *clause 6*, the convicting court may order that the postal article be forfeited to the Crown. The court is also empowered to order that the postal article be restored to a person other than the person convicted.

Clause 9 provides that no action lies against any person for any act done in good faith in pursuance or intended pursuance of *clause 7 or clause 8* or of any order made in pursuance or intended pursuance of either of those clauses.

Clause 10 sets out how postal operators are to deal with postal articles detained pursuant to *clause 5*, where, on opening or examination, the postal operator believes, on reasonable grounds, that the postal article is in contravention, or has been posted in contravention, of certain enactments. The procedures are as follows:

- (a) In the case of a contravention of the Misuse of Drugs Act 1975, the postal article is to be delivered to the Commissioner of Police or his or her designate, and is to be dealt with in accordance with that Act:
- (b) In the case of a contravention of the Antiquities Act 1975, the postal article is to be delivered to the Secretary for Internal Affairs or his or her designate, and is to be dealt with in accordance with that Act:
- (c) In the case of a contravention of the Trade in Endangered Species Act 1989, the postal article is to be delivered to the Director-General of Conservation or his or her designate, and is to be dealt with in accordance with that Act:
- (d) In the case of a contravention of the Biosecurity Act 1993, the postal article is to be delivered to the chief executive of the Ministry of Agriculture or his or her designate, and is to be dealt with in accordance with that Act:
- (e) In the case of a contravention of the Customs and Excise Act 1996 or any Order in Council or regulation made under that Act, the postal article is to be delivered to the chief executive of the New Zealand Customs Service or his or her designate, and is to be dealt with in accordance with that Act, order, or regulation.

Clause 11 provides that where any postal article is detained under *clause 5*, and is found to contain any valuable or saleable enclosure, the postal operator must keep the postal article and its contents safe pending their disposal under the Bill. The postal operator is also obliged to keep a record of such postal articles and their contents.

Clause 12 provides that the detention, destruction, or disposal under the Bill of any postal article does not relieve any person from liability for any offence.

General Obligations Relating to Postal Articles

Clause 13 provides that where a postal article that has not been delivered comes into the possession of a person other than the addressee, that person must deliver the postal article to the addressee or any postal operator. Failure, without reasonable excuse, to comply with this obligation is punishable by a maximum fine of \$5,000.

Clause 14 makes it an offence punishable by imprisonment for a maximum of 6 months—

- (a) For an officer, employee, or agent of a postal operator to divulge to any person, without reasonable excuse, any information from or as to the contents of a postal article that has come to the person's knowledge in the course of his or her duty;
- (b) For any other person who has examined the contents of a postal article not intended for him or her to divulge to any person, without reasonable excuse, any information from or as to the contents of the postal article.

Clause 15 makes an offence punishable by a maximum fine of \$5,000 to post or cause to be posted, without reasonable excuse, any postal article containing any noxious substance or thing, or any dead animal.

Clause 16 makes it an offence punishable by a maximum fine of \$5,000 for a person to post or cause to be posted any postal article containing any indecent article or representation, where the person intends to offend the recipient.

Clause 17 makes it an offence punishable by imprisonment for a maximum of 6 months for a person to wilfully, and without reasonable excuse, open or cause to be opened any postal article not addressed to that person.

Clause 18: subclause (1) makes it an offence punishable by imprisonment for a maximum of 1 year for a person to post or cause to be posted—

- (a) Any postal article containing any explosive, dangerous, or destructive substance or fluid; or
- (b) Any postal article containing any matter or thing capable, as packed, of causing any injury to any person.

Subclause (2) makes it an offence punishable by a maximum fine of \$5,000 for a person to post or cause to be posted any postal article containing any matter or thing capable, as packed, of causing damage to any postal article.

Clause 19 makes it an offence punishable by a maximum fine of \$5,000 for a person to falsely mark any postal article so as to lead another person to believe that it was posted at a time or place other than the correct time or place.

PART 3

POSTAL OPERATORS

Erection of Public Letterboxes

Clause 20 empowers postal operators to erect and maintain public letterboxes in any road, street, reserve, or public place. The power must be exercised in accordance with any reasonable conditions prescribed by the local authority or other body or person having jurisdiction over the place where the letterbox is to be erected. A public letterbox must not be so placed as to interfere with ordinary traffic.

Clause 21 provides that where a postal operator proposes to erect a public letterbox pursuant to *clause 20*, the postal operator must give written notice of its proposal to the local authority or other body or person having jurisdiction over the road, street, reserve, or public place where the letterbox is to be erected. The person so notified then has 15 working days to notify the postal operator of any conditions that are to apply to the carrying out of the work.

Clause 22 makes it an offence punishable by a maximum fine of \$10,000 for a postal operator to fail to comply with any of the requirements of *clause 20* or *clause 21*. In addition to any fine, the court may make an order relating to the payment of compensation.

Clauses 23 and 24 provide for appeals against conditions imposed, pursuant to *clause 20*, by local authorities and other bodies and persons on the erection of public letterboxes by postal operators.

Addresses of Rural Delivery Boxholders

Clause 25 provides that every postal operator must, where practicable, make available publicly the address of every rural delivery boxholder to whom that postal operator provides postal collection and delivery services. Any such boxholder may direct the postal operator not to make that boxholder's address available publicly.

Loss or Delay of Letters

Clause 26 provides that neither the Crown nor any postal operator is liable for any loss or damage suffered by any person by reason of any loss, default, delay, or omission in the receipt, transmission, or delivery of any letter.

Designated Postal Operators

Clauses 27 to 33 provide for the responsible Minister to designate particular postal operators to be a postal administration for New Zealand for the purposes of fulfilling New Zealand's obligations as a member of the Universal Postal Union and the Asia Pacific Postal Union. Designation as such a postal operator also confers on the postal operator the right to issue postage stamps bearing the words "New Zealand" or any abbreviation of those words (see further *clause 4*). It should be noted that, under *clause 40*, NZ Post is to be New Zealand's sole postal administration for the period of 5 years from the commencement of the Bill.

Clause 27 provides for the responsible Minister to designate 1 or more postal operators to be a postal administration for New Zealand. Such a designation may be for a specific period, or indefinite, and may be subject to conditions.

Clause 28 sets out certain obligations of postal operators that are designated as a postal administration for New Zealand. These are as follows:

- (a) To act as a representative of New Zealand at the Universal Postal Union and the Asia Pacific Postal Union;
- (b) To comply with New Zealand's obligations as a member of those organisations, including any obligation to pay any fees or charges levied by those organisations;
- (c) To comply with the requirements of any regulations made under *clause 38 (b)* (which empowers the making of regulations imposing certain information disclosure obligations on designated postal operators);
- (d) To comply with any condition imposed in respect of the postal operator's designation.

Clause 29 provides that the responsible Minister may from time to time, by written notice, communicate to any designated postal operator—

(a) The general policy of the New Zealand Government in relation to the Universal Postal Union, the Asia Pacific Postal Union, and international postal matters:

(b) The Government's general policy in respect of international relations.

A designated postal operator must have regard to any such policy, and must also comply with any directions given by the responsible Minister pursuant to any such policy.

Where the responsible Minister gives any notice to a designated postal operator relating to the Government's policy in relation to international postal matters or international relations generally, or issues a direction pursuant to any such policy, the Minister is required to publish a copy of the notice in the *Gazette* and present a copy of it to the House of Representatives.

Clause 30 relates to the duration of designations as a postal administration for New Zealand.

Clause 31 provides that the Crown is not responsible for any debts, liabilities, or obligations incurred by a designated postal operator merely by virtue of conferring that designation, nor does the Crown become liable for any such debts, liabilities, or obligations merely because such a designation ceases to be in force.

Clause 32 provides for the revocation of the designation of a postal operator under *clause 27*.

Clause 33 empowers the responsible Minister to revoke, amend, or add to any condition imposed on the designation of a postal operator.

Disclosure of Information by the Corporation

Clause 34 imposes on NZ Post an obligation to provide, to the chief executive of the responsible department, such information as the chief executive requires for the following purposes:

- (a) Monitoring the efficiency and quality of service provided by that company:
- (b) Monitoring that company's compliance with any agreement with the Crown in relation to prices, frequency, quantity, and quality of services:
- (c) Monitoring the extent to which, and the terms and conditions on which, the company provides, to other postal operators, access to the facilities owned or used by the company for the purposes of providing postal delivery services.

PART 4

MISCELLANEOUS PROVISIONS

Offences and Penalties

Clause 35 creates certain offences.

Clause 36 sets out the penalty for offences against the Bill, where no other penalty is provided.

Clause 37 extends the time within which criminal proceedings may be instituted for offences against the Bill.

Regulations

Clause 38 empowers the making of regulations. The purposes for which regulations may be made include the following:

- (a) Requiring NZ Post to include, in the annual report furnished by it pursuant to the State-Owned Enterprises Act 1986,—

- (i) Certain information relating to the company's services, including information relating to prices, frequency, quantity, and quality of services:
- (ii) Financial statements:
- (b) Requiring designated postal operators to disclose certain information relating to their activities as a postal administration for New Zealand:
- (c) Requiring NZ Post to disclose information relating to interconnection arrangements with other postal operators:
- (d) Prescribing rules to be followed by postal operators to ensure the orderly and efficient operation of the New Zealand postal system, including rules relating to—
 - (i) The exchange of information relating to customers' addresses:
 - (ii) Postal articles that are improperly addressed or misdelivered:
 - (iii) The numbering of private boxes at postal outlets.

Consequential Amendments and Repeals

Clause 39 provides for consequential amendments and repeals. Of particular significance are the following.

At present, sections 12 and 13 of the Misuse of Drugs Amendment Act 1978 confer special powers on Police officers and Customs officers with respect, among other things, to postal articles that are believed to contain controlled drugs that have been illegally imported into New Zealand. Section 12 of that Act empowers Customs officers to return the postal article to NZ Post for delivery to the addressee. Section 13 (2) of that Act empowers Police officers and Customs officers to place a tracking device on any postal article that is intended to be so returned to NZ Post for delivery to the addressee. Those provisions are amended by the Bill as follows:

- (a) Section 12 is amended so that Customs officers may return any goods or mail believed to contain illegally imported controlled drugs to the appropriate carrier for delivery to the addressee:
- (b) Section 13 (2) is amended so that Police officers and Customs officers may place a tracking device on any mail intended to be returned to a carrier pursuant to section 12.

Section 4 (2) (b) of the Carriage of Goods Act 1979 provides that nothing in that Act applies to the carriage of goods by New Zealand Post Limited, whether by its agents or otherwise. The Bill amends that Act so that the Act is not to apply to the carriage of letters by any postal operator (as those terms are defined in the Bill).

Transitional Provision

Clause 40 provides that, for the period of 5 years from the commencement of the Bill, NZ Post is to be the sole postal administration for New Zealand. This means that for that period, NZ Post will have the sole right to issue postage stamps bearing the words "New Zealand" or any abbreviation of those words (subject to the exceptions in *clause 4 (2)*), and will be New Zealand's sole representative at the Universal Postal Union and the Asia Pacific Postal Union.

TAXATION (SUPERANNUITANT SURCHARGE ABOLITION) BILL

EXPLANATORY NOTE

GENERAL POLICY STATEMENT

Introduction

THIS Bill gives effect to a key initiative of the Coalition Government's senior citizens policy, the abolition of the New Zealand superannuitant surcharge.

Details of Policy

The Bill repeals the sections of the Income Tax Act 1994 and the Tax Administration Act 1994 that provide for the imposition and collection of the surcharge.

The Bill also introduces a transitional provision removing the effect of the superannuitant surcharge on calculations of provisional tax for the 1998-99 and/or 1999-2000 income years. A taxpayer is able to calculate provisional tax for an income year based on the taxpayer's residual income tax (RIT) in an earlier year. For years before the abolition of the surcharge, a taxpayer's RIT is the amount remaining after making certain deductions from the total amount of income tax and New Zealand superannuitant surcharge payable. Under the transitional provision, the RIT used to calculate provisional tax for the 1998-99 and/or the 1999-2000 income years is reduced by its superannuitant surcharge component so that effectively superannuitants provisional tax payments will not include the surcharge component.

These amendments apply for the 1998-99 and subsequent income years.

Clause by clause analysis

PART I

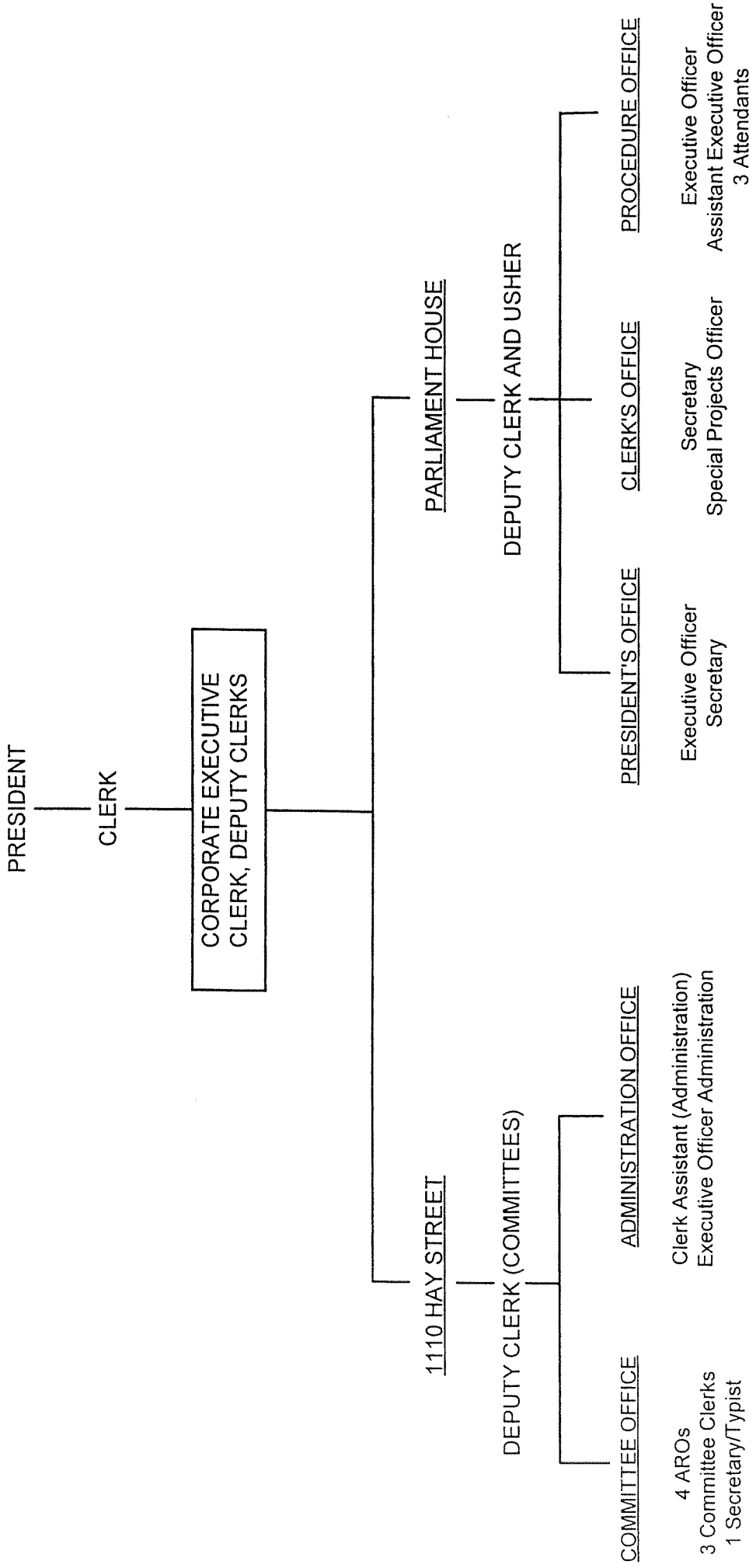
AMENDMENTS TO INCOME TAX ACT 1994

This Part amends the Income Tax Act 1994.

Clause 3 repeals paragraph (b) of *section DB 1 (2)*. That provision includes the New Zealand superannuitant surcharge in a list of items for which no deduction is allowed.

Clause 4 repeals *Subpart JB*. That Subpart imposes the New Zealand superannuitant surcharge.

DEPARTMENT OF THE LEGISLATIVE COUNCIL - ORGANISATIONAL STRUCTURE



DEPARTMENT OF THE LEGISLATIVE COUNCIL - ORGANISATIONAL STRUCTURE

