



35TH PARLIAMENT OF WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

SECOND REPORT

OF THE

**STANDING COMMITTEE ON PUBLIC
ADMINISTRATION**

**SCRUTINY OF OUT-SOURCING AND
CONTRACTING-OUT IN THE UNITED KINGDOM**

PRESENTED BY THE HON KIM CHANCE, MLC (CHAIRMAN)

**2
JUNE 1997**

Members of the Standing Committee on Public Administration

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Hon Barbara Scott, MLC (Deputy Chair)
Hon Murray Criddle, MLC
Hon Barry House, MLC
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**THE TERMS OF REFERENCE FOR THE STANDING COMMITTEE ON PUBLIC
ADMINISTRATION:**

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

"Agency" means-

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

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

 - (c) a House of the Parliament, or any Committee or member of either House, or any officer or employee of a department of the Parliament;

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

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1. BACKGROUND

1.1 The Establishment of the Standing Committee on Public Administration

On 7 November 1996, the Standing Committee on Government Agencies was replaced by the Standing Committee on Public Administration. The impetus to restructure the Standing Committee on Government Agencies was based on the perceived restraints on the Committee's jurisdiction to provide a comprehensive overview of public administration, and the role played by agencies in this context. It had become apparent to the Committee that some agencies are part of departments, and the dividing line sometimes can become blurred. For this reason, the main grounds for the creation of the Public Administration Committee was the proposal that all state instrumentalities should fall within its purview, and not those simply described as "government agencies".

The widened definition of "agency" in the new Committee's Terms of Reference to include essentially any agent or instrumentality "of the State Government established for the purpose of developing, implementing or administering any program or policy with a public purpose or any such program or policy that relies substantially for its development, implementation or administration of public monies or revenue," has expanded the jurisdiction of the Committee substantially (see Term of Reference 4(a)).

One of the major principles of operation for the Committee is that there is a duty on the executive to conduct its administration openly, fairly and in accordance with the rule of law. Equally, there is a duty on each agency to act always in conformity with its mandate, and to ensure that its functions are performed carefully, reliably and with due regard to costs, and to report as and when required to the Parliament of Western Australia.

The actions of agencies remain one point of focus for the Committee, but it is the Committee's experience that agencies do not function in isolation from policy, public law and administrative developments (or a combination thereof). In essence, the role of the new Committee is to work towards ensuring agencies are efficient, effective and accountable. This should be viewed in the context of public administration, public interest, policy, and administrative law. The Committee members play a vital role in keeping the other members of the House informed about the application of executive authority.

2. THE ROLE OF THE COMMITTEE

As part of this process of agency and administrative review, the Committee has developed a particular interest in out-sourcing, and the contracting-out of government services. The Committee is mindful of the issues raised by the contracting-out process, such as the apportionment of liability, the allocation of risk, and precisely which party

is responsible when disputes arise as to non-performance, or unsatisfactory performance of a particular service or contractual obligation. The Standing Committee on Public Administration maintains a close interest in the implications of these processes on the delivery and quality of public services. To this effect, the Committee tabled 2 discussion papers on out-sourcing and contracting-out on 18 June 1997.¹

For the Committee members to give their best consideration to these particular issues, it is imperative that they gain more knowledge of the systems utilised in other jurisdictions, and increase their level of expertise so they can deal effectively and efficiently with the volume of matters that come before them relating to inadequate contract management, and poor service delivery.

Accordingly, the Committee is of the opinion that it would be most advantageous for members to meet with various representatives and policy officials in another jurisdiction for the purpose of acquiring a better understanding of the way in which they prepare, implement, monitor and review contracting-out processes. If the Committee members are exposed to new and innovative ideas, the Committee believes it will gain a greater knowledge and a better understanding of alternative systems of reviewing these policies, and their possible applicability in Western Australia. This is essential if the Committee is to remain accountable and discharge its parliamentary duty to scrutinise the actions of government, and government departments and agencies.

3. PROPOSED DESTINATION: The United Kingdom

After some deliberation, the Committee resolved that the UK would be the most suitable and worthwhile jurisdiction to visit to research the impact of contracting-out. A primary reason for examining these processes in the UK is the country's history of privatisation and contracting-out over the past decade at both a national and county level. A particular focus for the Committee are the various outcomes of contracting-out of essential public services such as health, education and transport, and how both the positive and negative effects of contracting-out can be assessed, reviewed, and monitored.

In addition, the Committee is most concerned to look at the safeguards and balances that have been put in place to address some of the perceived inadequacies in the contracting-out process. The Committee needs to examine what the problems are in another jurisdiction, and how these problems are measured. This is not confined to measurement in a quantitative sense, but equally as importantly, 'measurement' from a qualitative and social perspective.

¹ "Out-Sourcing - What are the Issues Involved - Summary of the Administrative Review Issues Paper, February 1997", and "Out-Sourcing to the Private Sector - The United States Office of Federal Contract Compliance Programs (OFCCP)", both discussion papers tabled by the Chairman of the Standing Committee on Public Administration on 18 June 1997.

3.1 The main grounds for the Committee's proposed travel to the UK:

- Review of out-sourcing and contracting-out policies, and their application in practice, with a view to utilising the knowledge and experience gained on the Committee's return to Western Australia;
- The period of time in which these policies have been in operation in the UK;
- Lack of experience in the other states of Australia and New Zealand in terms of the practical application of out-sourcing and contracting-out;
- The UK provides an opportunity to examine the outcomes of contracting-out in counties, as well as in the industrial and business sectors. This could provide the Committee with indicators with which Western Australia's rural and remote areas could be compared.
- The Committee is mindful of addressing both the financial and social outcomes of the contracting-out process, and how these outcomes are measured, both quantitatively and qualitatively.

The Committee is proposing to meet with representatives from the following organisations during its time in the UK:

- **University of Derby.**
Sir Christopher Ball - Chancellor of the University, and President of National Campaign for Learning. Chairman of several local forums of lifelong learning.
- **North Western Water Authority.**
Mr Bill Crackle - Solicitor and former Secretary of the Authority.
- **Centre for Public Services, Sheffield.**
Mr Dexter Whitfield - Director of the Centre for Public Services. The Centre has a wide range of experience in areas such as the impact of tendering, developing best practice public management, strategic approaches and training programs for Councillors, managers, trade union representatives and tenants organisations.
- **Public Sector Privatisation Research Unit, London.**
Ms Margie Jaffe / Mr David Hall - Directors. This Unit researches the impact of the contracting-out of essential public services, such as water, electricity, transport and health.
- **Public Transport Information Unit, London.**
- **Local Government Information Unit, London.**
- The Committee is also waiting for information from the former and current Agent-General with respect to various bodies of interest to the Committee in London.

4. MEMBERSHIP

The following Committee members will be travelling to the UK, for a period of 2 to 3 weeks, from 28 or 29 July 1997:

The Hon Barbara Scott MLC (Deputy Chair of the Committee)

The Hon Cheryl Davenport MLC

The Hon Barry House MLC

The Committee will be assisted by one Advisory/Research Officer.

The proposed travel is endorsed by all members of the Standing Committee on Public Administration. The Hon Kim Chance MLC and the Hon Murray Criddle MLC are unavailable to travel with the Committee at this time due to prior commitments.

The cost of airfares for the 4 persons travelling is estimated at \$24,580.00. The accommodation expenses plus \$60.00 per day for incidental expenses is estimated at \$30,240.00 (based on a 21 day itinerary), although some allowance may need to be made for the high accommodation expenses in London at this time.