



**REPORT OF THE STANDING
ORDERS AND PROCEDURE
COMMITTEE**

on

**COMMISSION ON GOVERNMENT
RECOMMENDATIONS**

Presented by:
Mr R C Bloffwitch, MLA



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on 18 June 1998

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REPORT OF THE STANDING ORDERS AND PROCEDURE COMMITTEE

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TERMS OF REFERENCE

On 26 November 1997 the House forwarded to the Standing Orders and Procedure Committee the following Commission on Government recommendations for consideration and report by 11 June 1998 -

Recommendation 2 - Evidence to Parliament;

Recommendation 31.2 - 31.5 - Improving Accountability to Parliament;

Recommendation 60 - Proceedings Subject to Privilege;

Recommendation 61 - Waiving Parliamentary Privilege;

Recommendation 62 - Privileges of the House of Commons;

Recommendation 63 - Abuse of Privilege;

Recommendation 110 - Parliamentary Committees;

Recommendation 113 - Managing Parliament's Time;

Recommendation 114 - Prorogation;

Recommendation 116 - Question Time;

Recommendation 117 - Reporting to the Houses;

Recommendation 118 - Provision of Information to Committees;

Recommendation 119 - Legislation Committees;

Recommendation 120 - Referral of Bills;

Recommendation 121 - Delegated Legislation;

Recommendation 159 - Code of Conduct for Members of Parliament;

Recommendation 173 - Accountability;

Recommendation 221 - Disclosure by Members of Parliament;

Recommendation 225 - Enforcement and Penalties;

Recommendation 112.1 - Information Needs of Members; and

Recommendation 122.4 - Advertising Tabling of Subordinate Legislation.

In considering these recommendations, the Standing Orders and Procedure Committee was to have regard to the views and recommendations of relevant Parliamentary Committees.

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INTRODUCTION

The Committee has reviewed all of the Commission on Government recommendations referred to it. Advice has been sought and given to the committee from the Public Accounts and Expenditure Review Committee, the Joint Standing Committee on Delegated Legislation and the Standing Committee on Uniform Legislation and Intergovernmental Agreements. In addition, the committee has had the report from the Select Committee on Procedure to provide some guidance as well. Those recommendations which deal with Parliamentary privilege are generally not supported as they have potential to diminish the powers, privileges and immunities of the House or of Parliament.

Much the same can be said in relation to those recommendations which deal with codes of conduct and pecuniary interest disclosure provisions. All these areas are inter-related and not only is it inappropriate for the committee to come up with proposals based on limited evidence, but initial examinations indicate that major aspects of the COG recommendations are unlikely to be supported at any stage.

While the recommendations being made to the House on the COG recommendations are final, some of the issues raised warrant further attention and the Standing Orders and Procedure Committee intends to report to the House in future on those matters.

Another major aspect of the committee's work at present is the redrafting of the whole of the Standing Orders, which is a very significant undertaking in its own right and provides a major opportunity for review of many matters. Much work will be undertaken by the committee over the next 12 to 18 months and it is envisaged that its enquiries will be wide-ranging.

The committee does not intend to present any further report on any of these COG recommendations.

**Commission on Government Recommendations 2, 60, 61, 62
Evidence to Parliament, Proceedings Subject to Privilege, Waiving Parliamentary Privilege,
Privileges of the House of Commons**

The Commission on Government recommended as follows -

Recommendation 2 - Evidence to Parliament, Report No. 1, August 1995

The common law and custom of Parliament should be codified by way of an amendment to the Parliamentary Privileges Act 1891 to provide that general statutory secrecy provisions do not limit the powers, privileges and immunities of the Houses of Parliament.

Recommendation 60 - Proceedings Subject to Privilege, Report No. 1, August 1995

The Parliamentary Privileges Act 1891 should be amended to define the proceedings in Parliament that are subject to privilege by adopting s.16(2) of the Parliamentary Privileges Act 1987 (Commonwealth).

Recommendation 61 - Waiving Parliamentary Privilege - Report No. 1, August 1995

The Parliamentary Privileges Act 1891 should not be amended to permit any waiver of the immunities conferred by Article 9 of the Bill of Rights 1689.

Recommendation 62 - Privileges of the House of Commons - Report No. 1, August 1995

1. *The Constitution Act 1889 should be amended to repeal the proviso contained in s.36 linking the privileges of the Western Australian Parliament to those of the House of Commons.*
2. *The Parliamentary Privileges Act 1891 should be amended to specify the privileges, powers and immunities of the Western Australian Parliament so that they can be identified separately from and operate independently of those which may apply from time to time to the House of Commons.*

Recommendations 2, 60 and 62 all have the potential to damage the Parliament by diminution of its current position. Recommendation 61 relating to waiving of privilege is supported by the committee but there is little point in reporting any specifics on that without dealing in a substantive fashion with the other recommendations mentioned.

The committee intends to undertake further investigations of its own accord on this issue.

Your committee draws attention to the following -

- The UK House of Commons has recently made a change to its privileges which is potentially damaging for a number of Parliaments in Australia and the continuing linking with the House

of Commons which is now established must be closely examined.

- Codification of privileges is most likely to be an unwise course of action and the committee has received advice from senior legal advisors which suggests that great caution is warranted and that an enormous amount of time and effort could be invested for what might be an unsatisfactory result.
- Privilege in Western Australia may have secondary ramifications for other jurisdictions and be considered by courts and others to be of some persuasive authority when considering the law in other jurisdictions relating to Parliamentary privilege.
- There are investigations into privilege in other parts of Australia and in the UK which need full consideration.
- Judicial views of privilege have varied dramatically in recent times to the extent that there needs to be an assessment of the likely path of judicial interpretation in the future.
- There is no matter of privilege at present which is providing this Parliament with any special difficulties and therefore no urgent reason to change the current position immediately.
- Parliamentary privilege is not something which can be farmed out to a casual consultant to consider. It warrants close scrutiny by members of Parliament, and the most senior and experienced Parliamentary officials together with senior legal advisors well versed in State and national constitutional matters.

RECOMMENDATIONS

Your Committee recommends -

- (1) That COG recommendations 2, 60 and 62 not be accepted and recommendation 61 be accepted but that no action be taken on it.**
- (2) That the House note that the Standing Orders and Procedure Committee is continuing to examine the whole issue of parliamentary privilege for the future.**

Commission on Government Recommendation 31.2 to 31.5 - Improving Accountability to Parliament

The Commission on Government, in Report No. 1, August 1995, recommended as follows -

1. *The Auditor General should be designated an independent accountability agent of the Parliament in the proposed Auditor General Act proposed in Section 6.1.*
2. *The existing Legislative Assembly Public Accounts and Expenditure Review Committee and Legislative Council Standing Committee on Estimates and Financial Operations should be abolished and replaced by a Legislative Council Standing Committee on Finance and Audit and a Legislative Assembly Standing Committee on Estimates and Financial Operations.*
3. (a) *The proposed Legislative Council Standing Committee on Finance and Audit should:*
 - (i) *systematically consider annual reports and ensure follow up;*
 - (ii) *systematically consider reports of the Auditor General and ensure follow up; and*
 - (iii) *call for additional audit reports when required.*
- (b) *The Committee should consist of four government party members and four non-government party members and it should be chaired by a member of a non-government party.*
- (c) *The Committee should meet regularly and in public (except when it decides otherwise) and have a formal agenda and systematic approach to its activities.*
- (d) *The Auditor General, or nominee, and a Treasury representative should be present at all public meetings of the Committee.*
- (e) *The Committee should have the power to call ministers, chief executive officers and other relevant witnesses.*
- (f) *The position of Chairperson should have a high status given its role in the accountability process with a remuneration recognising the status of the position to be determined by the Salaries and Allowances Tribunal.*
- (g) *The Committee must be properly resourced and supported by senior full time staff qualified in accounting, policy analysis or law.*
4. (a) *The proposed Legislative Assembly Standing Committee on Estimates and Financial Operations should systematically consider the annual estimates*

and program statements.

- (b) The Committee should consist of three government party members and two non-government party members and should be chaired by a member of the government party.*
 - (c) The Committee should meet to consider the estimates and program statements when they are tabled and have a formal agenda and systematic approach to its activities.*
 - (d) The Committee should have the power to call ministers, chief executive officers and other relevant witnesses.*
 - (e) The Committee should have the power to call on the Auditor General, or nominee, for assistance as required.*
 - (f) The position of Chairperson should have a high status given its role in the accountability process with a remuneration recognising the status of the position to be determined by the Salaries and Allowances Tribunal.*
 - (g) The Committee must be properly resourced and supported by senior full time staff qualified in accounting, policy analysis or law.*
5. *These two proposed committees should come together as a Joint Audit Committee to:*
- (a) participate in the appointment of the Auditor General in accordance with our recommendations in Section 6.1;*
 - (b) determine the budget of the Office of the Auditor General in accordance with our recommendations in Section 6.1;*
 - (c) approve the strategic plan of the Office of the Auditor General;*
 - (d) appoint the external auditors for purposes of conducting the audit of the Office of the Auditor General;*
 - (e) review the Audit Report on the Office of the Auditor General; and*
 - (f) review annually a report by the Auditor General on the recruitment and staffing policy of the Office of the Auditor General.*
6. *The Office of the Auditor General should be constituted in an Auditor General Act.*

Your committee has considered this recommendation in conjunction with COG recommendation 110

dealing with parliamentary committees.

Finance-related Committees

Your committee does not support the proposals for re-arrangement of the Legislative Assembly Public Accounts and Expenditure Review Committee (PAERC) and the Legislative Council Standing Committee on Finance and Audit. No further comment is made in relation to Legislative Council committee structures as that is a matter for that House to determine. It is highly likely however, that there will continue to be a finance-related committee in the Legislative Council.

Estimates

The Commission on Government proposed that a Legislative Assembly Standing Committee on Estimates and Financial Operations should systematically consider the annual estimates programs and statements. The PAERC disagreed with the Legislative Assembly establishing the proposed Standing Committee on Estimates and Financial Operations and consequently considered that the COG recommendations in relation to systematic examination of the annual reports did not warrant further comment. The PAERC expressed the view that the main thrust of estimates examination should be in the Legislative Council, away from the government of the day, but that consideration of the annual budget should be performed in the House with which the Appropriation Bills were introduced, namely the Legislative Assembly. The PAERC supports continuation of consideration of the estimates in the existing Legislative Assembly Estimates Committee system, but noted that the Public Accounts and Expenditure Review Committee could conduct specific investigations into the accounts and expenditure of public monies at any time and not just once a year.

Independence of the Auditor General

COG recommendation 31.5 deals with Parliamentary involvement in the appointment of the Auditor General in order to maintain a greater level of independence of the Auditor General from the Executive Government.

The PAERC considers that Parliament should have a role in the

- selection and appointment of the Auditor General;
- oversight of the budget of the Auditor General;
- appointment of an independent external auditor for the purposes of conducting an audit of the Office of the Auditor General;
- review of that audit report; and
- oversight of resources of the Office of the Auditor General.

That committee also advised that legislation should provide for the PAERC to be involved in the conduct of periodic external reviews of the performance of the Office of the Auditor General.

There have been several reports, both from the Auditor General and from Parliamentary committees,

including 1992 and 1996 PAERC report relating to the office of the Auditor General. There is little to be gained by the Standing Orders and Procedure Committee re-considering the substance of those issues, but it considers that as the Auditor General reports to both Houses of Parliament, parliamentary involvement in the Office ought to include both Houses of Parliament through appropriate committees. Consequently, the committee agrees that the PAERC and the appropriate finance-orientated committee in the Legislative Council, should meet together to consider issues relating to the Office of the Auditor General and that those committees should be relied upon to make recommendations relating to the extent to which Parliament should be involved in those processes, and subsequently to be involved in processes accordingly.

Auditor General legislation

The PAERC supported Recommendation 31.6, that the Office of the Auditor General should be constituted under a separate Act and advised as follows -

The PAERC considers that any new audit legislation should incorporate the Office of the Auditor General. The Financial Administration and Audit Act 1985 (FAAA) is silent on the Office as it is a Department of the Public Service under the Public Sector Management Act 1994 and thus is governed by public service procedures.

The PAERC further considers that in the interests of promoting independence the Office of the Auditor General should not form part of the Public Service; rather it should be restructured under a separate Act of Parliament, perhaps as a statutory authority. Any new audit legislation should also reflect this intent.

Your Committee sees no reason to vary from the view of the PAERC or the Commission on Government and therefore supports the recommendation.

RECOMMENDATIONS

Your Committee recommends that -

- 1. COG recommendations 31.2, 31.3 and 31.4 not be supported.**
- 2. The PAERC and the Assembly Estimates Committee system be retained.**
- 3. COG recommendation 31.5 be supported to the extent that it coincides with the view of the PAERC as recorded in this report.**
- 4. COG recommendation 31.6 be supported on the basis that both the COG and the PAERC are in agreement.**

Commission on Government Recommendation 63 - Abuse of Privilege

The Commission on Government, in Report No. 1, August 1995, recommended as follows -

1. *A Standing Committee on Privilege should be established in each house of Parliament. The first task should be the preparation of a uniform code of conduct for the guidance and governance of members in relation to possible breaches of parliamentary privilege.*
2. *Following the adoption of a uniform code of conduct, each Standing Committee should review conduct alleged to be in breach of the Code.*
3. *In the event of a breach of the code of conduct being established, a relevant Standing Committee should recommend an appropriate penalty to the house concerned. Depending upon the seriousness of the conduct, the penalty could be:*
 - (a) *a retraction and/or apology;*
 - (b) *suspension from the house for a period of up to 14 days; or*
 - (c) *forfeiture of the member's seat.*

Establishment of A Standing Committee on Privilege

It is important that members who serve on a committee dealing with privilege have a good knowledge of the standing orders, parliamentary privilege and the proposed code of conduct. This is unlikely to occur with a Committee which will meet only on an *ad hoc* basis, ie only on those occasions when an alleged breach is referred to it. In addition, many members are serving on several committees already and the creation of yet another committee could further exacerbate the problem.

For these reasons the Standing Orders and Procedure Committee, which already has members with a strong knowledge of, and interest in the standing orders, parliamentary privilege and the proposed code of conduct, should consider matters of alleged breaches of parliamentary privilege and the proposed code of conduct.

Accordingly, the name of the committee should be changed to the Procedure and Privileges Committee.

Code of Conduct

Code of conduct issues are dealt with under COG recommendation 159.

RECOMMENDATIONS

Your Committee recommends that -

- 1. COG recommendation 63 not be supported.**
- 2. The Standing Orders and Procedure Committee be the body to consider any matters of privilege referred by the House and that the Committee be redesignated the Procedure and Privileges Committee.**
- 3. Code of conduct issues be dealt with as proposed in the recommendations on COG recommendation 159.**

Commission on Government Recommendation 110 - Parliamentary Committees

The Commission on Government, in Report 2, Part 2, December 1995 recommended as follows -

1. *The committee system in the Legislative Council should be developed to bring the entire public sector and all proposed primary legislation and subordinate legislation, under review. The system should comprise the following special purpose committees:*
 - (a) *the Finance and Audit Committee (Recommendation 31 in the Commission's Report No.1);*
 - (b) *the Public Administration Committee (see 9.3.2);*
 - (c) *the Constitutional and Federal/State Affairs Committee (see 9.3.2); and*
 - (d) *the Legislation Committee (see 10.3.2).*
2. *The Legislative Assembly should establish the following system of committees:*
 - (a) *The Estimates and Financial Operations Committee (Recommendation 31 in the Commission's Report No. 1); and*
 - (b) *up to four portfolio-related committees (see 9.3.2 and 10.3.2).*
3. *The portfolio-related committees proposed for the Legislative Assembly should*
 - (a) *each consist of three government party members and two non-government party members; and*
 - (b) *be able to delegate their functions and powers to sub-committees.*
4. *The Standing Committee on Uniform Legislation and Intergovernmental Agreements should be abolished and its functions transferred (see 10.3.2.5.).*
5. *There should be two permanent joint committees with scrutiny-related functions:*
 - (a) *The Joint Audit Committee (Recommendation 31 in the Commission's Report No.1);*
 - (b) *the Joint Standing Committee on Delegated Legislation (see 10.3.4).*
6. *Ministers should not be eligible to become members of a committee with scrutiny and/or review functions.*

7. *The high status of the position of chairperson of a standing scrutiny and review committee should be recognised by remuneration to be determined by the Salaries and Allowances Tribunal.*

Council Committees

Recommendation 110.1 deals with the Legislative Council and your committee makes no comment on it except to say that insofar as that involves a re-arrangement of Legislative Assembly committees, it not supported.

Standing Committees

Recommendation 110.2 is supported insofar as it is consistent with the recommendations of the Select Committee on Procedure which is preferable of the approach of the Commission on Government. The Select Committee on Procedure made the following recommendations in relation to Parliamentary Committees -

That Chapter 30 of the Standing Orders be deleted, and the following Chapter be substituted -

“

CHAPTER 30

STANDING COMMITTEES

PAERC

410. (1) At the commencement of every Parliament the House shall appoint a PAERC to inquire into, consider and report to the Parliament on any proposal, matter or thing connected with the receipt and expenditure of public moneys, including moneys allocated under the Annual Appropriation Bills and the Loan Fund.

(2) The Committee may -

- (a) examine the financial affairs and accounts of Government agencies of the State;*
- (b) examine all reports of the Auditor-General, copies of which have been laid before the Assembly;*
- (c) inquire into, and report to the Assembly on any question which*
 - (i) it deems necessary to investigate;*
 - (ii) is referred to it by a resolution of the Assembly;*
 - (iii) is referred to it by a Minister of the Crown, or*
 - (iv) is referred to it by the Auditor-General;*
- (d) consider any papers on public expenditure presented to the Assembly and such*

of the expenditure as it sees fit to examine; and

- (e) consider whether the objectives of public expenditure are being achieved, or may be achieved more economically.*

(3) "Government agencies" for the purpose of this Standing Order includes any statutory board, commission, authority, committee, or trust established or appointed pursuant to any rule, regulation, By-Law, order, Order in Council, proclamation, ministerial direction or any other like means.

Portfolio-related Standing Committees

411. (1) At the commencement of every Parliament the House shall appoint three portfolio-related Standing Committees, namely -

- (a) Education, Social Development and Community Affairs;*
- (b) Health and Justice;*
- (c) Primary Industries, Resources, Transport and Trade.*

(2) The functions of each committee are to review and report to the Assembly on -

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

(3) Annual reports of government departments and authorities tabled in the House shall stand referred to the relevant committee for any inquiry the committee may wish to make. Reports shall stand referred to Committees in accordance with a schedule tabled by the Speaker to record the areas of responsibility of each Committee and any question concerning responsibility for a report or a part of a report shall be determined by the Speaker.

Establishment and Meetings

412. (1) Each Committee shall consist of five members and no Minister of the Crown shall be eligible to be a member of the Committee.

(2) Each member, while otherwise qualified, shall continue as a committee member until the Assembly expires by effluxion of time or is dissolved, or until the member is discharged

from the Committee by motion in the Assembly.

(3) When the House is not in Session and a vacancy occurs on the Committee, the Speaker or, in his absence, the Deputy Speaker, may, in consultation with the Leader of the Government or Leader of the Opposition as the case may require, appoint a member to fill the vacancy until an appointment can be made or confirmed by the House.

(4) Each Committee shall elect a Chairman and a Deputy Chairman of the Committee.

(5) The Clerk of the Assembly shall call the first meeting of each Committee as soon as practicable, following its appointment.

(6) At a meeting of a Committee three members constitute a quorum, of whom one shall be either the Chairman or Deputy Chairman.

(7) The member chairing a meeting of a Committee shall have a deliberative vote only.

(8) Where the members present do not vote unanimously, the manner in which each member votes, shall, if any member requires, be recorded in the minutes.

(9) If after the lapse of a quarter of an hour for the time appointed for the meeting of a Committee a quorum has not been formed, the members present may retire and the Clerk shall enter their names on the minutes.

(10) The Committee may appoint a subcommittee of two or more of its members to inquire into and report to the Committee upon any matter which the Committee is empowered to examine.

(11) At a meeting of a subcommittee, two members constitute a quorum.

(12) The provisions of these Standing Orders apply to a subcommittee in like manner as they apply to the Committee.

(13) A subcommittee shall report to the Committee as soon as practicable on each matter referred to that subcommittee.

Powers of Standing Committees

413. (1) Each Standing Committee shall have power to act until the Assembly is next dissolved or expires by effluxion of time, notwithstanding any prorogation which may occur prior to dissolution or expiry of the Assembly.

(2) Each Committee may sit when the Assembly is adjourned but may not sit during the Sittings or suspension of the Assembly unless leave is given by the House.

- (3) *Each Committee shall have power to send for persons, papers and records and to move from place to place.*
- (4) *Each Committee may invite any person to give evidence and may resolve that the Chairman direct the Clerk of the House to summon a witness to be examined before the Committee.*
- (5) *Standing Orders 370 to 377 and 379 to 382 inclusive shall apply mutatis mutandis to each Standing Committee.*
- (6) *Each Committee and subcommittee shall have power to consider and make use of the evidence and records of the relevant Standing Committees appointed during previous Parliaments.*
- (7) *Each Committee shall have power to confer with a similar Committee of the Legislative Council.*

Reports

414. (1) *Each Committee shall, in addition to any other reports, present an annual report to the House, which shall include a statement showing the actual (or estimated) costs of operating the committee.*
- (2) *The reports of the Committee shall be signed by the Chairman and presented to the Assembly by the Chairman or the Deputy Chairman but if for any reason the Assembly is not sitting for a period in excess of two weeks, a report of a Committee may be forwarded to the Clerk and on receipt by the Clerk it is deemed to be laid upon the Table of the House. If the Committee so requests, the Clerk shall take such action as is necessary and appropriate to publish the report. The Clerk shall advise the House of the receipt of any such report at the next sitting of the House.*
- (3) *A report may include a direction that the appropriate responsible Minister shall, as soon as practicable, but within three months, or at the earliest opportunity after that time if Parliament is in adjournment or recess, report to the House as to the action (if any) proposed to be taken by the Government with respect to a recommendation or recommendations of the Committee. ”*

The arguments in favour of this proposal are detailed in the Final Report of the Select Committee on Procedure which is before the House, and the Standing Orders and Procedure Committee supports it without reiteration of those arguments.

Committee Membership

COG recommendation 110.3(a). Nomination of government and non-government members for committees is unnecessary in the view of the Standing Orders and Procedure Committee. The House

will establish committees with such membership as it sees fit and it is unnecessary to detail the member of government or non-government members. Consequently Recommendation 110.3(a) is not supported.

Sub-committees

Recommendation 110.3(b). There is no real need to formally establish sub-committees. The Standing Orders of the Assembly, in relation to the operation of committees and the other statutory provisions relating to evidence taking only make a real difference while a committee is within Western Australia. At the moment, a quorum for taking evidence is 2, and 3 members are required to take evidence. On many occasions approval is given for one or two committee members to travel to undertake various examinations and report back to committees, and the establishment of sub-committees does nothing to enhance that, or increase the capacity to do that work. On most occasions it is appropriate that a quorum for the taking of evidence or the passing of resolutions be three. Although your committee does not generally support two members undertaking an enquiry on behalf of any committee there may occasionally be a need for it. Consequently, Recommendation 110.3(b) is supported to the extent that it is consistent with the Standing Order 412 recommended by the Select Committee on Procedure.

Delegated Legislation Committee

Uniform Legislation and Intergovernmental Agreements Committee

In relation to Recommendations 110.4 and 110.5, the Standing Orders and Procedure Committee believes that the functions of the Uniform Legislation and Intergovernmental Agreements Committee and the Joint Standing Committee on Delegated Legislation ought to be merged. Neither of these two committees is in favour of the merge and part of the reason for that relates to workload. If that merge occurs, there will have to be the retention of existing levels of research and advice to the two committees to enable the newly formed committee to undertake the work.

The Joint Standing Committee on Delegated Legislation has argued that the work related to subsidiary legislation and work related to uniform legislation are of different natures. That is true but it is not an argument for not merging the committees. The proposals of the Select Committee on Procedure in relation to a new committee system are designed to bring streamlining, order, and logical processes to the work before Parliamentary committees and to avoid repetition. It is interesting that the conferences now held in Australia, to which the Delegated Legislation committees are invited, are also attended by such committees as the Scrutiny of Bills Committee in Victoria and the Uniform Legislation and Intergovernmental Agreements Committee in Western Australia. The fact that the two areas of work are distinct does not mean that there are not many common threads of interest. COG recommendation 119.4 recommends abolition of the *Standing Committee on Uniform Legislation and Intergovernmental Agreements*. That committee put forward three options: to retain the committee; to retain and expand the role; or to make a joint committee and to expend the role.

In support of option 1, SCULIA argued that it should be retained because -

- it provided a leadership role in Australia in the area of intergovernmental relations. Federal/State affairs, uniform legislation and intergovernmental agreements which has led for example to the establishment in May 1996 of the Victorian Federal-State relations committee
- liaison with Ministries and agencies
- the Council is a House of review and this function is not appropriate for them
- the majority of legislation is introduced in the Assembly and the committee is often involved prior to introduction into the House

In option 2, SCULIA argued that the role should be expended to look at Federal/State Affairs and legal and constitutional issues.

In option 3, it was proposed that the role it performed ought to be continued, that it had built up expertise in the area and that it could expand to provide advice in relation to Federal/State Issues and issues such as the Republic debate.

SCULIA's has also advised as follows -

The committee (SCULIA) becomes involved in considering proposals for uniform legislation at a very early stage and is more akin to a portfolio committee, although it covers a number of portfolio areas from Attorney General's to the Environment.

In relation to the arguments put forward in Option 1 -

- it is accepted that SCULIA has provided a lead in the area of uniform legislation but that does not mean that it has to continue as a separate committee.
- Liaison could be continued whether the committee is a joint committee or not
- the methods by which legislation is brought to the Parliament is a legitimate concern for both Houses; and
- it is noted that notes that the Victorian Federal-State Relations committee is a joint committee. Consequently, your committee agrees with the Commission on Government insofar as that is consistent with the approach adopted by the Select Committee on Procedure in its Final Report and in Recommendation 18 from that committee which is as follows -

That the concurrence of the Legislative Council be sought to alter the name of the Standing Committee on Delegated Legislation to Standing Committee on Uniform Legislation and Delegated Legislation and amend its functions by substituting for rule 5 of the rules for the Committee, the following -

"5. It is the function of the Committee -

- (1) *to inquire into, consider and report on matters relating to proposed or current intergovernmental agreements and uniform legislative schemes involving the Commonwealth, States and Territories, or any combination of States and Territories without the participation of the Commonwealth.*
- (2) *to consider and report on any regulation that —*
 - (a) *appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
 - (b) *unduly trespasses on established rights, freedoms or liberties;*
 - (c) *contains matter which ought properly to be dealt with by an Act of Parliament;*
 - (d) *unduly makes rights dependent upon administrative, and not judicial, decisions.*

Ministers on Committees

COG Recommendation 110.6 is supported except for those instances where legislation committees or other select committees are appointed to examine legislation before the House. It is entirely appropriate for the responsible Minister to be a member of that committee where that is thought desirable by the House.

Remuneration of Members Presiding over Committees

COG Recommendation 110.7 is supported by the PAERC and also by the Select Committee on Procedure, and now also by the Standing Orders and Procedure Committee.

RECOMMENDATIONS

Your Committee recommends that -

- 1. COG recommendation 110.1 not be supported insofar as it affects Assembly committees.**
- 2. COG recommendation 110.2 be supported to the extent that it is consistent with the recommendations of the Select Committee on Procedure relating to Standing Committees which is the preferred approach.**
- 3. COG recommendation 110.3(a) not be supported.**
- 4. COG recommendation 110.3(b) be supported to the extent that it is consistent with the proposed Standing Order 412 recommended by the Select Committee on Procedure.**
- 5. COG recommendation 110.4 be supported, subject to the functions of the Select Committee on Uniform Legislation and Intergovernmental Agreements being amalgamated with the Joint Standing Committee on Delegated Legislation and staffing levels being maintained.**
- 6. COG recommendation 110.5(a) be supported as detailed in this report under COG recommendation 31.**
- 7. COG recommendation 110.5(b) not be supported. Refer to recommendation 5 above.**
- 8. COG recommendation 110.6 be supported except in cases where legislation before the House is being examined.**
- 9. COG recommendation 110.7 be supported.**

Commission on Government Recommendation 112.1 - Information Needs of Members

The Commission on Government, in Report No. 2, Part 2, December 1995, recommended as follows

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Recommendation 112 1. The Parliamentary Library should be restructured to include an appropriately staffed Research Branch to provide a specialist research service to members and committees.

Since the Commission on Government reported, the Premier has approved the provision of 0.4 of a full time equivalent Research Officer to each member of Parliament. That provision makes a greater research facility available to members but has in fact increased the demand for information from the Parliamentary Library. As a result of the demand for more information on a broader range of issues, the unmet need for the library to provide value added information via a research service has been emphasised. The service should be able to produce specialist research documentation in subject fields such as economic, legal, environmental and social policies, in order to provide more in-depth analysis of information to members of Parliament and Committees of Parliament in a timely, focused and clearly-presented way. Availability of a wider range of information through the Internet and other sources makes a sifting and evaluating service more valuable. Other Parliamentary libraries have well established research services that provide state focused information. This information has a parochial value which often has limited relevance to Western Australian issues. In addition, the Committee notes that the administrative reorganisation being undertaken in the Parliament aims at placing of much more emphasis on research and believes that work is already underway to achieve this end. Your Committee notes that improvement of computer access by members and staff to information held in the Library and in other areas of the Parliament is well underway.

RECOMMENDATIONS

Your Committee agrees with the thrust of COG recommendation 112 (1) and recommends -

- (1) That research facilities in the Parliamentary Library be increased, with the level and scope of that increase to be determined by the Presiding Officers, and**
- (2) That the Treasurer provide funds accordingly.**

Commission on Government Recommendation 113 - Managing Parliament's Time

The Commission on Government, in Report No. 2, Part 2, December 1995, recommended as follows

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1. *An additional two sitting weeks should be added to each parliamentary session.*
2. *Hours of sitting should be extended to approximate those of the House of Representatives and the Senate.*
3. *Standing Orders should be amended to allow committees to meet while the house is sitting.*

The Select Committee on Procedure dealt comprehensively with the management of Parliament's time. The Standing Orders and Procedure Committee does not support the COG recommendation for this area, to add a specific two sitting weeks to the Parliamentary session, or that the hours of sitting should be extended to approximate those of the House of Representatives or the Senate.

In relation to committees being able to meet while the House is sitting, the Standing Orders and Procedure Committee does not support that at this time. If as a result of the introduction of portfolio related committees there followed changes to sitting arrangements, that matter may have to be revisited. It is apparent that there is not sufficient appropriate time available to allow the committees to meet and the Standing Orders and Procedure Committee strongly recommends that the House not meet until 2.00 pm on Wednesdays.

RECOMMENDATIONS

Your Committee recommends that -

1. **COG recommendation not be supported.**
2. **The House not meet until 2.00 pm on Wednesdays to enable committees to sit.**

Commission on Government Recommendation 114 - Prorogation

The Commission on Government, in Report No. 2, Part 2, December 1995, recommended as follows

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Prorogation should not hinder the work of parliamentary committees.

The Standing Orders and Procedure Committee agrees that prorogation should not hinder the work of Parliamentary committees, but does not, at this time, propose a method by which that could be avoided entirely. At present, prorogation is undertaken in such a way as to minimise the effect on Parliamentary committees, but the potential remains for prorogation to be a tool used to shut down committees. It is the intention of your committee to consider the alternative in its review of Parliamentary Privilege as that review will also involve the consideration of the way in which the Constitution Act should be amended.

Appropriate advice will be taken from senior legal officers and senior Parliamentary officers on the best approach.

RECOMMENDATIONS

Your Committee recommends that -

- 1. COG recommendation 114 be supported.**
- 2. The House note that the Standing Orders and Procedure Committee will consider alternatives to the present prorogation arrangements.**

Commission on Government Recommendation 116 - Question Time in the Legislative Assembly

The Commission on Government, in Report No. 2, Part 2, December 1995, made the following recommendations -

The Standing Orders of the Legislative Assembly should be amended to provide that:

- (a) the asking of each question not exceed one minute;*
- (b) non government members be afforded the right to ask at least ten questions in each question time;*
- (c) the asking of each supplementary question not exceed one minute; and*
- (d) that immediate supplementary questions be regarded as part of one question, rather than a second question, for the purpose of recommendation (b) above. (9.4.5)*

Your Committee has noted the proposals which were put forward by the Select Committee on Procedure in its Second Interim Report, Recommendation Nos. 4, 5 and 6, which are as follows:

RECOMMENDATION 4

Your committee recommends,

That a standing order be adopted in the following terms -

“Questions without Notice

111A.

Questions without notice may be asked at the discretion of the Speaker, and are subject to the same rules as questions on notice. Unless the Speaker otherwise determines, at least 11 questions, not counting supplementary questions, may be asked during the time for questions without notice each sitting day.”

RECOMMENDATION 5

Your committee recommends,

That supplementary questions become a permanent feature of Questions without Notice whereby one supplementary question developing the theme of the original question may be asked immediately by the member asking the original question.

RECOMMENDATION 6

Your committee recommends,

That the Speaker be encouraged to exercise his authority to curtail lengthy questions and answers during Questions without Notice.

The proposed Standing Order 111A, which provides for a minimum number of questions, was not adopted by the House. Supplementary questions are now a permanent feature of questions without notice and to a great extent the Speaker has exercised his authority to curtail the length of questions and answers during questions without notice. The effect of the Speaker exercising his authority and encouraging Ministers to keep their answers short, and encouraging members to reduce the amount of preliminary matter they put in their questions, has led to a defacto implementation of the full proposals of the Select Committee on Procedure. It could also be argued that the Speaker's actions have implemented in large measure, the proposals put forward by the Commission on Government.

Your committee notes that from 1990 to 1995, the average number of questions without notice asked each day was 10.5. In 1996, that figure rose to 12.5 and in 1997 it rose to 15.2, including supplementary questions. During 1997, 63.8% of questions without notice, including supplementaries, were asked by non-government members. The trend continues into 1998.

Conclusion

The Committee is satisfied that Question Time is working well and that it unnecessary to put time limits on the asking of questions. Your Committee does not consider that there should be a minimum provision for questions at Question Time, but believes that the Speaker should be encouraged in continuing the current policy of ensuring that questions and answers are not over long.

RECOMMENDATION

Your committee recommends,

That COG Recommendation 116 not be supported.

Commission on Government Recommendation 117 - Reporting to the Houses

The Commission on Government, in Report No. 2, Part 2, December 1995, recommended as follows

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The Estimates and Financial Operations Committee recommended for the Legislative Assembly in the Commission's Report No. 1 (Recommendation 31) should continue the practice developed by the current Estimates and Financial Operations Committee of making recommendations to the house on how documentation could be improved in terms of content, presentation and timeliness, in particular through the use of information technology.

This recommendation deals with the Legislative Council's existing committee but insofar as it was proposed to be undertaken by the Finance and Audit Committee of the Legislative Assembly, the Standing Orders and Procedure Committee considers that the PAERC has sufficient powers to investigate such matters if it thought it to be appropriate.

RECOMMENDATION

Your committee recommends that -

No specific action be taken in relation to Recommendation 117.

Commission on Government Recommendation 118 - Provision of Information to Committees

The Commission on Government, in Report No. 2, Part 2, December 1995, recommended as follows

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Parliamentary committees should have the power to call ministers from either house, chief executive officers and other relevant witnesses.

The Commission on Government argued in the following terms -

If open and accountable government is to be a reality, from time to time parliamentary committees will need to obtain information directly from a minister. While we recognise that the convention is that ministers may only be requested to appear before a committee, we nevertheless believe that committees should be empowered to call ministers from either House. If ministers are to be removed from the Legislative Council, the active review committees we envisage developing there will certainly require access to Assembly ministers. These issues will also be addressed in Report No. 5.

Nothing precludes a minister from voluntarily appearing before a parliamentary committee of either House. It is apparent to those involved in the parliamentary process, that it is not just a political process, it is also a party-political process and while committees are a valuable part of the work of the House, they are also open to potential manipulation by party majorities of those committees. Each House has sufficient powers and capacities to deal with such abuses if they think fit, but enabling a committee to require members of the other House or ministers of the other House to appear before it can circumvent that balance.

The Standing Orders and Procedure Committee considers that the power to call ministers should only be required under a Constitution where the minister is not directly accountable to one House or the other, in other words, where the Executive was fully independent of the Parliament. That is not the situation in Western Australia.

RECOMMENDATION

Your committee recommends,

That COG Recommendation 116 not be implemented.

Commission on Government Recommendation 119 - Legislation Committees

The Commission on Government, in Report No. 2, Part 2, December 1995, recommended as follows -

1. *The portfolio-related standing committees, recommended for the Legislative Assembly, should examine legislation relevant to their portfolios.*
2. *The Legislative Council's Standing Committee on Legislation should be retained.*
3. *Any Member of Parliament, including ministers, should be allowed to make representation to a committee examining a particular Bill.*
4. *The current Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements should be abolished. In its place, the proposed Standing Committee on Constitutional and Federal/State Affairs in Legislative Council should be responsible for scrutinising uniform legislation and intergovernmental agreements. Its brief should also include considering legislation with constitutional implications.*

Committee consideration of existing legislation

In dealing with COG recommendation 110.2, this report details the recommendations of the Select Committee on Procedure relating to Standing Committees, and part of those recommendations is proposed Standing Order 411 (2) (c), which provides “a function of each Committee is to review and report on the adequacy of legislation and regulations within its jurisdiction”. This committee agrees with the Procedure Committee’s recommendation and consequently also agrees with COG recommendation 119.1.

COG Recommendation 119.2 refers to the Legislative Council and this committee makes no recommendation in relation to it.

Participation in legislation committees

Suborder (3) of the Sessional Order relating to Legislation Committees, provides as follows -

- (3) Members of the House who are not members of the Committee may participate in the proceedings of the committee, but shall not vote, move any motion, or be counted for the purpose of a quorum.

In addition, suborder (4) provides that any member can have amendments considered by the Committee if they give notice.

Consequently COG recommendation 119.3 is supported as it already exists in the House.

Standing Committee on Uniform Legislation and Intergovernmental Agreements

Abolition of the SCULIA has been considered earlier in this report in relation to COG recommendation 110.4 and 110.5. Without reproducing those considerations in this part of the report, this Committee supports the recommendation to the extent that the functions of SCULIA and the Delegated Legislation Committee are amalgamated into one joint committee, appropriately resourced.

RECOMMENDATIONS

Your Committee recommends that-

- 1. COG recommendation 119.1 be supported**
- 2. No recommendation is made on COG recommendation 119.2.**
- 3. COG recommendation 119.3 be supported as it is already in place.**
- 4. COG recommendation 119.4 be supported to the extent that it is consistent with the functions of the Standing Committee on Uniform Legislation and Intergovernmental Agreements being amalgamated with the Joint Standing Committee on Delegated Legislation.**

Commission on Government Recommendation 120 - Referral of Bills to Committees

The Commission on Government, in Report No. 2, Part 2, December 1985, recommended as follows

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1. *All Bills introduced into the Legislative Assembly should be referred automatically to the relevant portfolio-related standing committees in that House, while all Bills introduced into the Legislative Council should be directed to the Standing Committee on Legislation. This should not preclude either House from referring a Bill to its appropriate legislation committee, even if the Bill has not originated in that House.*
2. *All Bills should be referred to a legislation committee after the first reading stage and should be accompanied by a statement of intent from the Minister or Member of Parliament introducing the Bill.*
3. *Ministers should provide adequate information to committees to facilitate consideration of legislation. Such information should include:*
 - (a) *understanding the particular problem the Bill was originally intended to overcome;*
 - (b) *whether there was legislation dealing with the same or a similar topic in other Australian states or overseas;*
 - (c) *whether other Western Australian or Commonwealth legislation will be affected by the legislative proposal;*
 - (d) *when the public or relevant interest groups were first advised of the legislation and in what form;*
 - (e) *who made submissions or representations to government over the legislation and whether there were any particular requests for amendments; and*
 - (f) *what level of consultation was made from the time the legislation was first advised to the public.*

The Standing Orders and Procedure Committee has also noted that the Select Committee on Procedure in its Final Report, 27 June 1996, dealt in considerable detail with the procedures for examining legislation as well as the value of developing a new committee system. In particular the Select Committee on Procedure had the opportunity to consider the COG Recommendation No. 120 (at page 9 of the Select Committee's Final Report) and the Select Committee on Procedure quoted with approval the report of the Standing Orders Committee of the Parliament of New Zealand which effectively rejected paragraph 2 of COG Recommendation 120. Your present committee agrees with

the Select Committee on Procedure and paragraphs 25, 26 and 27 of the Select Committee on Procedure's Report are reproduced as follows -

25. The Procedure Committee has considered the recommendation put forward by the COG (*Recommendation 120*) that all Bills be automatically referred to a standing committee for consideration after the first reading of the Bill. Referring a Bill to a standing committee prior to the second reading of the Bill, means that the principles of the Bill have not been agreed to by the House.
26. While most Houses in Australia can only refer a Bill to a committee after the second reading, automatic referral after the first reading was the practice used in the House of Representatives of New Zealand until very recently. The *Report of the Standing Orders Committee on the Review of the Standing Orders* of the Parliament of New Zealand has recently recommended abandoning this practice. The Report states -

The committee, however, considers there should be a debate on the principles of the Bill before it goes to a committee to give members of the committee an understanding of the mind of the House on the bill. And, if the House decides that it is not in agreement without those principles and the bill should not proceed, then it should be discharged before the select committee (*sic*) calls for submissions on it and engages in lengthy consideration of that bill. Members of the public and interest groups should not have to incur the expense of making submissions on bills that will not proceed.

27. The Procedure Committee concurs with the view stated by the Standing Orders Committee of the New Zealand Parliament against the recommendation put forward by the Commission on Government, and considers that the principles of a Bill should be agreed to by the House prior to the Bill being referred to a committee. Furthermore, your Committee considers that only those Bills that the House determines should be referred to a committee and therefore does not support the Commission on Government's recommendation that all Bills be referred to a standing committee for review.

No comprehensive response has yet been provided by the Government to the Select Committee on Procedure's recommendations and in the absence of good and reasoned argument to the contrary, the Standing Orders and Procedure Committee endorses the proposal of the Select Committee on Procedure for establishment of portfolio-related standing committees. In relation to paragraph 1 of the Commission on Government recommendations, the Standing Orders and Procedure Committee does not agree that all bills should be referred automatically to the standing committees and concurs with paragraph 24 of the Select Committee on Procedure's Final Report which is as follows -

24. If the recommendations contained elsewhere in this report in relation to a system of standing committees are adopted, then once a Bill has been read a second time, four options will be available to the House:

- That the Bill go to the Committee of the Whole House for consideration;
- That the Bill be referred to a legislation committee;
- That the Bill be referred to a standing committee for report;
- If leave is granted, the House may proceed forthwith to the third reading of the Bill.

The Select Committee on Procedure considers that the wide range of bills which are presented to the House will require different approaches depending upon the subject, complexity, social sensitivity and many other matters. Automatic referral to a standing committee would be unproductive in a number of cases and inappropriate in others, perhaps because the measure is simple, or it would preclude members from being directly involved at the appropriate stage.

In relation to paragraph 3 of Recommendation 120, which lists the information a Minister should provide to committees when a bill is being considered by them, the Standing Orders and Procedure Committee agrees that the appropriate information ought to be provided, but that the level and detail of information will vary considerably depending on the subject. The committees themselves should determine what specific information they require of the Minister and do so in a clear, unequivocal form. The Minister should be prepared to provide that information.

In addition, your present committee notes the sessional order currently in place in relation to legislation committees, and specifically the absence of a provision which enables those legislation committees to take evidence. The Standing Orders and Procedure Committee endorses the views of the Select Committee on Procedure in its Final Report, paragraphs 170-172, which are as follows -

170. *Central to achieving more effective use of the time of the House was the Committee's recommendation that: a Sessional Order be adopted to trial a legislation committee. The proposed legislation committee would sit apart from the chamber to examine a Bill as well as conduct the "committee of the whole" stage, ie. consider the Bill clause-by-clause. The recommendation included the provision that legislation committees have the power to call for submissions and take evidence in relation to a Bill referred to the committee for scrutiny. The benefits of such a practice were stated in the Second Interim Report as the following:*

legislation committees can increase the efficiency of the House, allow for more thorough examination of legislation and provide an avenue for public input into the legislative process. (p.2)

171. *The Sessional Order adopted by the House to trial legislation committees eliminated that part of clause (4) providing legislation committees with the capacity "...to send for persons and papers..." and "...to move from place to place...", and consequently the avenue for real public input into the legislative process was blocked. The Committee's view on the issue of the need for powers to consult the public is reinforced by the Leader of the House's statement during debate on the motion where he said*

It is envisaged that the type of Bill referred to the committee will be typically a Bill of particular importance, perhaps dealing with a social or moral issue. It would not typically be a Bill where there is a clear division of policy between one side of the House and the other. Bills such as those relating to adoption or censorship and the like would be suitable. (Hansard, p.1747 of 1996).

172. *Given that it is envisaged that it is often those Bills which are highly emotive that will be considered by legislation committees, the Procedure Committee remains firmly of the view that legislation committees should have these powers that provide for public consultation and input on legislation.*

Conclusion

The Standing Orders and Procedure Committee prefers the approach suggested by the Select Committee on Procedure to that recommended by the Commission on Government.

In doing so, it rejects the views

- (a) that all bills be referred to committees; and
- (b) that bills should be referred to committees after the first reading stage.

RECOMMENDATIONS

Your Committee recommends that COG recommendation 120 not be supported and that the House -

- 1. Establish portfolio-related standing committees.**
- 2. Provide legislation committees with evidence gathering powers.**
- 3. Agrees that ministers should provide adequate information to committees to facilitate consideration of legislation, and that the minister should do everything reasonable to meet any committee request for such information.**

Commission on Government Recommendation 121 - Delegated Legislation

The Commission on Government, in Report No. 2, Part 2, December 1985 recommended as follows -

1. *The Joint Standing Committee on Delegated Legislation should continue.*
2. *The Joint Standing Committee on Delegated Legislation's Terms of Reference should be amended to allow the Committee to examine all subsidiary legislation and, if appropriate, recommend disallowance.*
3. *The Interpretation Act 1984 should be amended to permit either house to give effect to the Joint Standing Committee on Delegated Legislation's recommendations.*

Earlier in this report, reporting on COG recommendation 110, this committee dealt with the substantive issue of the continuation of the Joint Standing Committee on Delegated Legislation and recommended that it be continued and amalgamated with the Standing Committee on Uniform Legislation and Intergovernmental Agreements.

In relation to the committee's Terms of Reference, the Standing Committee on Delegated Legislation made the following comments -

The Committee agrees with the broadening of the Committee's Terms of Reference to allow an examination of all subsidiary legislation. In the Sixteenth Report to Parliament entitled "The Subordinate Legislation Framework in Western Australia", the Committee noted that one of the impediments to the Committee's scrutiny function is the limitation that it may only scrutinise "regulations", which by reason of s 42(8) of the Interpretation Act 1984 includes "rules" and "by-laws". While s 41 of the Interpretation Act 1984 provides that all subsidiary legislation must be published in the Gazette only "regulations" must be tabled in Parliament. Thus, Parliamentary scrutiny of subordinate legislation can be avoided if it is called something other than "regulations", "rules", or "by-laws".

The Committee does not consider this a satisfactory state of affairs and in its Twenty-Second Report to Parliament entitled "Disallowance Procedures", recommended that, if the Subordinate Legislation Bill, annexed to the Committee's Sixteenth Report to Parliament (which is discussed under heading 4 below) is not proceeded with, then s 42 of the Interpretation Act 1984 should be amended to allow for disallowance of "subordinate legislation" with the definition of "subsidiary legislation" in s 5 of the Interpretation Act 1984 being deleted and replaced with the following definition:

"Subordinate legislation" means any rule having legislative effect (howsoever it may be described) authorised or required to be made by or under an Act.

Section 42 of the Interpretation Act 1984 provides the mechanism for the disallowance of

“regulations” as that term is defined in the Act. The Committee recommended in its Twenty-Second Report to Parliament that the application of the disallowance procedures contained in s 42 of the Interpretation Act 1984 be expanded to include all “subordinate legislation” as that term is defined above.

In relation to the amendment to the *Interpretation Act 1984*, your committee notes the views of the Joint Standing Committee on Delegated Legislation as follows -

The Committee made submissions to the COG prior to the completion and tabling of the Committee’s Sixteenth Report entitled “The Subordinate Legislation Framework in Western Australia”. The relevant section of COG’s report dealing with the scrutiny of legislation and delegated legislation (at 10.3.4) makes no reference to any recommendation by the Committee to amend the Interpretation Act 1984. The seven principles of reform proposed by the Committee to the system of scrutinising delegated legislation (and shown at page 261 of COG’s Report No 2 - Part 2) are general in nature and do not contemplate specific amendments. The above recommendation is, in the Committee’s opinion, misleading as it implies that the Committee recommended to COG specific changes to the Interpretation Act 1984.

In its Sixteenth Report to Parliament tabled in November 1995 and entitled “The Subordinate Legislation Framework in Western Australia” the Committee does recommend the deletion of certain sections of the Interpretation Act 1984 (refer to pages 24 and 25 of the Report). However, the omission of certain sections was predicated on, and conditional upon, the adoption of the proposed Subordinate Legislation Bill which is annexed as Appendix 5 to the Report. The Subordinate Legislation Bill contemplates significant changes to the existing system of scrutiny of subordinate legislation and incorporates the seven principles of reform outlined by the Committee to COG.

In its Twenty-Second Report to Parliament tabled in August 1997 and entitled “Disallowance Procedures” the Committee stated that, if the Subordinate Legislation Bill is not enacted, then the Committee recommends that section 42 of the Interpretation Act 1984 be amended to allow for disallowance of “subordinate legislation”, and that the definition of “subsidiary legislation” in section 5 of the Interpretation Act 1984 be deleted and replaced with the following definition:

“Subordinate legislation” means any rule having legislative effect (however it may be described) authorised or required to be made by or under an Act.

This amendment will ensure that all subordinate legislation (and not just “regulations”, “rules” and “by-laws” as those terms are defined in the Act) will be subject to Parliamentary scrutiny.

The Standing Orders and Procedure Committee considers that the approach taken by the Joint Standing Committee on Delegated Legislation is to be preferred.

RECOMMENDATIONS

Your Committee recommends that -

- 1. COG recommendation 121.1 be supported.**
- 2. COG recommendation 121.2 be supported to the extent that it coincides with the proposals from the Joint Standing Committee on Delegated Legislation.**
- 3. COG recommendation 121.3 not be supported and the recommendations of the Joint Standing Committee on Delegated Legislation be implemented.**

Commission on Government Recommendation 122.4 - Public Representation

The Commission on Government, in Report 2, Part 2, December 1995, recommended as follows -

4. *The Joint Standing Committee on Delegated Legislation should advertise, additionally to the Government Gazette, the tabling of all subordinate legislation by way of notice in The West Australian and, where appropriate, a relevant trade, business or professional journal.*

Advertising and Subordinate legislation

The Joint Standing Committee on Delegated Legislation advises as follows -

The Committee, whilst agreeing in principle to the broader publication of subordinate legislation, can see impediments to the proposal to advertise all subordinate legislation. The Committee considers that the obligation to advertise regulations rests with the agency promulgating the regulations and should not be the responsibility of the Committee.

The Committee in its Sixteenth Report to Parliament, "The Subordinate Legislation Framework in Western Australia", recommended the introduction of a number of measures to improve the general quality of subordinate legislation by proposing a Subordinate Legislation Bill ("Bill"). Measures contained in the Bill include:

Consultation

Recommending the formalisation of consultation procedures by requiring, in certain circumstances where the proposed regulations or amendments are considered substantial, the publication of a notice in a daily newspaper to alert the public generally to the proposal to make or amend regulations, and to direct the public to sources of further information (which, in the first instance will be the Gazette or the relevant agency). Following publication, it is proposed that there be a 14 day period in which the public can make submissions to the relevant agency. An obligation is placed on agencies to make reasonable endeavours to identify persons who will be significantly affected by the relevant subordinate legislation and for additional notice to be given to the persons so identified.

Regulatory Impact Statements

Recommending that agencies prepare Regulatory Impact Statements ("RIS"). Agencies are already required under Circular to Ministers No. 9/96 dated 16 May 1996, to prepare an explanatory memorandum for use by the Committee however, some agencies are slow to provide the Committee with such memoranda and in many cases, the memoranda provided by agencies are inadequate for scrutiny purposes. For this reason, the Committee considers it desirable to make the requirement a statutory one.

The Committee believes that its recommendations contained in the above report, if implemented, would alleviate the need to advertise the tabling of all subordinate legislation in The West Australian. The Committee considers that the imposition of a requirement for all regulations to be advertised in addition to the Gazette would unnecessarily impose costs on agencies where the regulations are minor in nature and broad consultation is not justified. However, the Committee supports agencies funding additional advertising where the regulations introduced or the proposed changes to the regulations are substantial. Please refer to the Committee's Sixteenth Report to Parliament for further information regarding the Committee's recommendations.

The Standing Orders and Procedure Committee concurs with these views.

RECOMMENDATION

Your Committee recommends that -

COG recommendation 122.4 not be supported and the approach of the Joint Standing Committee on Delegated Legislation be preferred.

Commission on Government Recommendation 159 - Code of Conduct for Members of Parliament

The Commission on Government, in Report 3, April 1996, recommended as follows -

1. *There should be a Standing Committee in each house of Parliament with the following responsibilities;*
 - (a) *to prepare a code of conduct for members of the respective houses of Parliament within 12 months;*
 - (b) *to prepare and conduct induction programs on ethical issues for new members and continuing education on ethical issues for all members;*
 - (c) *to give assistance and advice to members on ethical issues; and*
 - (d) *to consider alleged breaches of a code of conduct and make recommendations to the respective house(s) on appropriate sanctions.*
2. *A breach of a code of conduct applicable to ministers or other Members of Parliament shall not, of itself, constitute improper conduct as defined in our Recommendation 66.*
3. *There should be regular reviews of the effectiveness of approved codes of conduct and the performance of the respective Standing Committee(s) in carrying out their functions.*

At these reviews the public should be invited to make written submissions and appear at public hearings.

If, from the weight of public opinion, it can be concluded that the Standing Committee(s) have not carried out their functions adequately, then the Parliament is to appoint an independent commissioner to be responsible for overseeing the ethical standards of Members of Parliament.
4. *A code of conduct (including a ministerial code of conduct), once approved, should be tabled in Parliament.*

Your committee considers that there is scope for the introduction for a code of conduct and notes that a very significant amount of time has been spent on this matter in other jurisdictions. Codes of conduct relating to ministers of the Crown, parliamentary staff, the public service, journalists, doctors and auditors, as well as proposed parliamentary codes which have been developed but not yet been adopted in other jurisdictions, have been put before the committee. It is plain that a code of conduct is meant to assist members in the performance of their duties and make it clear for members and others to see that there are certain rules which should apply. However, any such code has the

potential to provide hidden trip wires for those who are serving the community well and it is in no one's interest to establish a code which has that potential.

Your committee is aware of the recent experience in the UK Parliament and attempts there to provide an overseer of Members' behaviour, and has very considerable reservations about the way that has worked. No code should be put before members of Parliament for their consideration without considerably more work being done. The Standing Orders and Procedure Committee is prepared to undertake the task of developing a code, but that code will not be produced without considerable further research and close consideration, and could not be produced much before 1999.

Similarly, the question of penalties which might apply needs serious consideration, but the preliminary view of your committee is that the range of options open to be used at the moment in relation to contempt are likely to be the same range of options which would appropriate in relation to a breach of the code.

Codes of conduct from ministers are a matter for Executive Government so far as they exceed the general code for members.

No set procedure should be established for reviewing codes as that will be determined by the House at that time.

RECOMMENDATIONS

Your Committee recommends that -

- 1. COG recommendation 159.1 be supported insofar as the House notes that the Standing Orders and Procedure Committee will proceed to consider a code for members but not ministers.**
- 2. COG recommendation 159.2 be supported.**
- 3. COG recommendation 159.3 not be supported.**
- 4. COG recommendation 159.4 be supported to the extent that the House itself must approve any code.**

Commission on Government Recommendation 173 - Accountability

The Commission on Government, in Report 3, April 1996, recommended as follows -

1. *The departments of the parliamentary administration should comply with the Financial Administration and Audit Act 1985.*
2. *All Standing Committees should produce annual reports that include financial statements.*
3. *Select Committees should produce financial information in their final reports. (9.6.5)*

Compliance with the Financial Administration and Audit Act 1985

Compliance by departments of the Parliament with the *Financial Administration and Audit Act 1985* is plainly desirable however, for some considerable period of time the Presiding Officers have taken the unusual step of requesting the Heads of Departments of the Parliament not to produce Annual Reports, including performance indicators, to highlight the difficulties they see with the *Financial Administration and Audit Act 1985* providing a potential avenue for undue interference by Executive Government in parliamentary administration. Discussion has continued between the Parliament and Executive Government for some time and this committee encourages each of the parties to work towards a solution which meets all the needs of accountability, but does not give the Treasury an undue capacity to interfere with the operations of the Parliament.

Committee Financial Information

All standing committees of the Legislative Assembly do produce Annual Reports which include financial statements and in so doing they are following the spirit of Standing Order 378 which requires of every standing committee that the final report include a statement showing the actual or estimated costs of the operation of the standing committee.

RECOMMENDATIONS

Your Committee recommends that -

1. **The parliamentary administration and Executive Government work to ensure that the parliamentary departments are accountable in accordance with the *Financial Administration and Audit Act 1985* in such a way as does not allow undue influence from Executive Government and parliamentary administration, and COG recommendation 173.1 be supported to that extent.**
2. **COG recommendations 173.2 and 173.3 be supported as this financial information has already been provided.**

Commission on Government Recommendation 221 - Disclosure by Members of Parliament

The Commission on Government, in Report 4, July 1996, recommended as follows -

1. *The Register of Members' Financial Interests established by the Members of Parliament (Financial Interests) Act 1992 should be retained.*
2. *The Parliament should amend the standing orders of the Legislative Assembly and Legislative Council to ensure disclosure of pecuniary and other interests as and when the circumstances require during the business of a house.*

Pecuniary Interests

Consideration of a code of conduct necessarily involves consideration of the way in which members pecuniary interests are disclosed. This Committee has already indicated in earlier recommendations that it proposes to further consider a code of conduct. In the interim, there is no reason not to continue the register of members interests established under the *Members of Parliament (Financial Interests) Act 1992*.

In general this Committee supports appropriate voluntary disclosures by the Members of Parliament or “*ad hoc*” disclosures as they are described by the Commission on Government, and will be considering the way in which that might be addressed as part of its review of all of the standing orders of the House. That review is now well under way, although delayed to a very considerable extent by this review of the COG recommendations which was referred to it by the House.

RECOMMENDATIONS

Your Committee recommends that -

1. **COG recommendation 221.1 be supported.**
2. **COG recommendation 221.2 be supported to the extent that the Standing Orders and Procedure Committee will make recommendations on the way in which voluntary *ad hoc* disclosures can or should be made.**

Commission on Government Recommendation 225 - Enforcement and Penalties

The Commission on Government, in Report 4, July 1996, recommended as follows -

1. *A Standing Committee on Privilege in each house of Parliament, as recommended in Report No. 1 (Recommendation 63), should monitor and enforce the provisions of the Members of Parliament (Financial Interests) Act 1992.*
2. *The Members of Parliament (Financial Interests) Act 1992 should be amended to allow:*
 - (a) *written allegations by a Member of Parliament that another member has breached provisions of the Act to be referred to Standing Committees on Privilege in each house which, after investigation, will report to the relevant house with a recommendation on the action to be taken; and*
 - (b) *Standing Committees on Privilege to receive complaints from members of the public concerning allegations that a Member of Parliament has breached provisions of the Act.*
3. *The Members of Parliament (Financial Interests) Act 1992 should provide for penalties, including forfeiture of a member's seat, for breaches of the Act by Members of Parliament. (9.2.5.5)*

Privileges Committee

When reporting on COG recommendation 63, this Committee indicated it did not support the establishment of a separate Standing Committee on Privilege, but proposed that any issues of privilege could be forwarded to the Standing Orders and Procedure Committee which would be renamed as the Procedure and Privileges Committee.

Recommendations 225.2 and 225.3 are not supported as they propose specific actions to be taken which affect the issues of privilege, code of conduct and disclosure of pecuniary interests which will be the subject of further consideration by this Committee.

In passing, the Committee notes proposals for a Conflict of Interest Commissioner and given the experience in the UK with such a position, there are very grave doubts about the wisdom of that course of action.

RECOMMENDATION

Your Committee recommends that -

COG recommendation 225 not be supported.