



THIRTY-EIGHTH PARLIAMENT

REPORT 30
JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION
ANNUAL REPORT 2008

Presented by Mr Joe Francis MLA (Chairman)

and

Hon Kim Chance MLC (Deputy Chairman)

May 2009

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Date first appointed:

28 June 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing orders:

- “3. Joint Standing Committee on Delegated Legislation**
- 3.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 3.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chairman must be a Member of the Committee who supports the Government.
- 3.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 3.4 A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.
- 3.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 3.6 In its consideration of an instrument, the Committee is to inquire whether the instrument -
- (a) is authorized or contemplated by the empowering enactment;
- (b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;
- (c) ousts or modifies the rules of fairness;
- (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review;
- (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable; or
- (f) contains provisions that, for any reason, would be more appropriately contained in an Act.
- 3.7 In this clause -
- “adverse effect”** includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;
- “instrument”** means -
- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
- (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
- “subsidiary legislation”** has the meaning given to it by section 5 of the *Interpretation Act 1984*.”

Members as at the time of this inquiry:

Mr Joe Francis MLA (Chairman)
Hon Kim Chance MLC (Deputy Chairman)
Hon Shelley Eaton MLC
Ms Janine Freeman MLA

Hon Ray Halligan MLC
Mr Paul Miles MLA
Hon Barbara Scott MLC
Mr Andrew Waddell MLA

Staff as at the time of this inquiry:

Christine Kain, Advisory Officer (Legal)
Andrea McCallum, Advisory Officer (Legal)

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JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

ANNUAL REPORT 2008

1 INTRODUCTION

Scrutiny of subsidiary legislation

- 1.1 The role of the Joint Standing Committee on Delegated Legislation (**the Committee**) and its approach to the scrutiny of subsidiary legislation was discussed in the Committee's Sixth Report.¹
- 1.2 The Committee holds a standing referral from the Legislative Council to consider all instruments of subsidiary legislation that are published,² whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law. As a result, the Committee is able to scrutinise and report to the Parliament on a huge volume of instruments. However, due to statutorily imposed deadlines and limited resources, the Committee resolved shortly after its establishment to consider only those instruments that are subject to disallowance pursuant to section 42 of the *Interpretation Act 1984* or another written law, together with any other instruments that were noted by individual members.

2 REPORTING PERIOD

- 2.1 This report covers a 12-month period of activity by the Committee between 7 December 2007 and 4 December 2008 (the last scheduled day of sitting for 2008), spanning the fourth year of the 37th Parliament and the beginning of the 38th Parliament, which opened on 6 November 2008.

Members

- 2.2 The Committee was served by the following members until 7 August 2008³:
- Mr Paul Andrews MLA (Chairman);
 - Hon Ray Halligan MLC (Deputy Chairman);
 - Hon Barbara Scott MLC;

¹ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, *Sessional Report June 28 2001 to August 9 2002*, Report No 6, March 2003, Chapters 1-2.

² As defined in section 5, *Interpretation Act 1984*.

³ Technically speaking the Legislative Council Members continued membership of the Committee after 7 August 2008, practically, however, the Committee did not operate again until the Legislative Assembly members were appointed after the commencement of the 38th Parliament.

- Dr Graham Jacobs MLA (to 13 February 2008);
- Mr Tony Simpson MLA (to 10 April 2008);
- Hon Vincent Catania MLC (to 12 August 2008);
- Hon Ken Travers MLC (to 25 November 2008)
- Mr Tony McRae MLA;
- Mr Christian Porter MLA (from 13 February 2008); and
- Mr Murray Cowper MLA (from 10 April 2008).

2.3 On 7 August 2008, the State Election was called and the Parliament prorogued. This had the effect of suspending the activities of the Joint Standing Committee on Delegated Legislation until the new Parliament commenced on 6 November 2008. Hon Shelley Eaton MLC was appointed to the Legislative Council during prorogation, under the provisions of the *Electoral Act 1907*, upon the resignation of Hon Vince Catania MLC and was then appointed to the Committee by the President of the Legislative Council. Hon Kim Chance MLC was appointed by the Legislative Council to replace Hon Ken Travers MLC. Four new Legislative Assembly Members were also appointed resulting in the following constitution of the Committee:

- Mr Joe Francis MLA (Chairman);
- Hon Kim Chance MLC (Deputy Chairman);
- Hon Ray Halligan MLC;
- Hon Barbara Scott MLC;
- Hon Shelly Eaton MLC;
- Ms Janine Freeman MLA;
- Mr Paul Miles MLA; and
- Mr Andrew Waddell MLA.

2.4 The Committee is assisted by up to three advisers who examine and report to the Committee on every disallowable instrument, attend meetings and draft correspondence. In the event that the Committee decides to report to the Parliament, the advisers prepare a draft report for the Committee's consideration. The Committee's advisers during 2008 were:

- Ms Susan O'Brien, Advisory Officer (Legal);
- Ms Christine Kain, Advisory Officer (Legal);
- Ms Felicity Mackie, Advisory Officer (Legal) (until 13 February 2008);
- Ms Anne Turner Advisory Officer (Legal) (from 20 February-18 June 2008);
and
- Ms Andrea McCallum, Advisory Officer (Legal) (from 5 May 2008).

2.5 Mr David Driscoll, Committee Clerk, provided administrative and clerical support. Mr Lindsay Dodd and Ms Lavina Mandy (Articled Clerks) assisted the Committee to March 2008. Mr Steven Elliott (Articled Clerk) commenced with the Committee in June 2008 and Mrs Kay Sampson, Clerical Assistant, provided technical, internet and reception services.

3 COMMITTEE ACTIVITIES

Reports presented to the Parliament

- 3.1 In 2008 the Committee presented the following reports to both the Legislative Council and the Legislative Assembly, in accordance with its terms of reference:
- Report number 24 - *Town of Claremont - Standing Orders Local Law 2007*-tabled on 19 February 2008;
 - Report number 25 - *University Statutes: Curtin University of Technology - Statute No. 7 - The Council; and Murdoch University - Amending Statutes - No. 5 and No. 17* - tabled on 20 March 2008;
 - Report number 26 - *Issues arising under Health Local Laws* - tabled on 20 March 2008; and
 - Report number 27 - *Annual Report* - tabled on 8 May 2008.

Government Responses

- 3.2 The Committee sought and received Government responses to:
- Report number 25 - *University Statutes: Curtin University of Technology - Statute No. 7 - The Council; and Murdoch University - Amending Statutes - No. 5 and No. 17*- tabled on 20 March 2008, a copy of this response is attached as Appendix 1; and

- Report number 26 - *Issues arising under Health Local Laws* - tabled on 20 March 2008, a copy of this response is attached as Appendix 2.
- 3.3 The Committee noted that, in relation to the Government responses provided, as at 29 April 2009:
- the *Curtin University of Technology Act 1991* and the *Murdoch University Act 1973* had not been amended; and
 - health local laws had not been amended as recommended in Report number 25.
- 3.4 Given the change of Government in 2008 the Committee resolved to write to the current Ministers for Health and Education to clarify the progress of the relevant Government responses and to confirm that the Committee's recommendations will be implemented by the current Government.

Statistics

- 3.5 The table below provides a purely numerical indication of the Committee's workload in 2008.
- 3.6 When the Committee reconvened on 3 December 2009, 250 instruments were awaiting its consideration.
- 3.7 The figures in the table below do not demonstrate that many of the instruments considered by the Committee are often lengthy documents. Irrespective of their size, the instruments often involve complex issues that span a diverse range of subject matters.

Calender Year	2008
Total number of disallowable instruments referred	477
Total number of local laws referred	142
Percentage of instruments referred that were local laws	30%
Total number of notices of motion for disallowance given	20
Total number of notices of motion for disallowance withdrawn	19
Total number of hearings held by the Committee	0
Total number of undertakings provided to the Committee to amend/repeal an instrument	12
Total number of reports tabled (information and disallowance)	4
Total number of instruments disallowed on recommendation of the Committee	1

Undertakings

- 3.8 The figure in the last row of the above table indicates that one instrument was disallowed on the recommendation of the Committee in 2008. Prior to recommending disallowance the Committee will seek to obtain a written undertaking from the responsible Minister, department or local government to amend or repeal the instrument in question. When such undertakings are given, the Committee does not usually proceed with any motion to disallow the instrument. As indicated above 12 undertakings were provided to the Committee.

Disallowance

- 3.9 As a last resort the Committee may resolve to report to the Parliament, recommending the disallowance of an instrument in the Legislative Council.⁴
- 3.10 The Committee recommended disallowance of the *Town of Claremont - Standing Orders Local Law 2007* and that instrument was subsequently disallowed by the Legislative Council.⁵
- 3.11 Standing Orders local laws are to provide for the orderly and efficient conduct of council meetings of local governments. Matters giving rise to the Committee's concerns regarding the *Town of Claremont - Standing Orders Local Law 2007* included provisions relating to giving notice of meetings, exclusion of matters from the notice paper and disclosure of interests.

4 AN EXAMPLE OF AN ISSUE OF CONCERN WHICH AROSE IN RELATION TO INSTRUMENTS THE COMMITTEE SCRUTINISED.

Use of a 'necessary and convenient' regulation making power in relation to fundamental common law rights

- 4.1 A number of Acts authorise the making of regulations that are "necessary or convenient" for giving effect to the purposes of the Act. On occasions a "necessary and convenient power" is used to prescribe a regulation that abrogates or infringes a fundamental common law right.
- 4.2 The Committee has adopted a position consistent with settled law⁶ that, when interpreting statutes, common law doctrines will not be altered by statute unless there

⁴ Either House of Parliament may pass a motion disallowing a regulation, provided that notice of that motion has been given within 14 sitting days after tabling of the regulation. (Section 42 of the *Interpretation Act 1984*).

⁵ [http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/978c4e353d01bc7cc8257570000f97de/\\$FILE/C37%20S1%2020080221%20p202b-205a.pdf](http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/978c4e353d01bc7cc8257570000f97de/$FILE/C37%20S1%2020080221%20p202b-205a.pdf)

⁶ The Committee's position on this situation was first publicly recorded in 2003 when the former Joint Standing Committee on Delegated Legislation reported to the Parliament on the *Powers of Entry and Powers to make Local Laws that affect Private Land under the Local Government Act 1995*

are clear and express words (or necessary implication) to show that the Parliament intended to do so.⁷

- 4.3 The regulation and local law set out below purported to use a “necessary and convenient power” to authorise potential abrogation of common law rights.

Prison Amendment Regulations 2008

- 4.4 The Committee scrutinised the following provision in new subregulation 53B(4) inserted into the Prisons Regulations 1982 by the Prison Amendment Regulations 2008⁸ (**the Regulations**):

A visitor who refuses or otherwise fails to undergo identity confirmation prior to exiting a prison may be detained until that person’s identity is established to the satisfaction of the superintendent.

- 4.5 The Regulations provide, among other things, for the way in which visitors to the prison may be required to confirm their identity.
- 4.6 Whilst the *Prisons Act 1981* permits regulations to be prescribed requiring a visitor to prove their identity on entrance to a prison, the Committee found no express authorisation for detaining a visitor in the circumstances outlined in subregulation 53B(4) of the Regulations.
- 4.7 The Committee was of the view that detaining a visitor in a prison infringed their personal liberty. Personal liberty is a freedom described by the High Court of Australia in *Re Bolton; Ex Parte Beane* as a fundamental common law freedom.⁹
- 4.8 The Committee’s conclusion was that the regulation 53(B)(4) was not authorised or contemplated by the empowering Act.¹⁰ The Committee was also of the view that the detaining of visitors to a prison is subject matter more appropriately dealt with in an Act.¹¹

⁷ The Committee’s position on this situation was first publicly recorded in 2003 when the former Joint Standing Committee on Delegated Legislation reported to the Parliament on the *Powers of Entry and Powers to make Local Laws that affect Private Land under the Local Government Act 1995*. See also *Daniels Corporation International Pty Ltd and Another v Australian Competition and Consumer Commission* (2002) 77 ALJR 40 at 43 per Gleeson CJ, Gaudron, Gummow and Hayne JJ, at 49 per McHugh J, and at 65-66 per Callinan J.

⁸ West Australian Government Gazette, No 51. 28 March 2008, p907.

⁹ [1987] HCA 12; 162 CLR 514 (9 April 1987), per Deane J.

¹⁰ Committee Term of Reference 3.6(a).

¹¹ Committee Term of Reference 3.6(f).

- 4.9 Whilst acknowledging that regulation 53B(4) was not expressly provided for by the Act, the Department of Corrective Services considered that the regulation was authorised by the ‘necessary and convenient’ formulation of the regulation making power found in s110(1)(d) and set out below:¹²

110. The Governor may make regulations prescribing all matters that ... are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

- 4.10 In keeping with its previously expressed views, the Committee did not accept that the ‘necessary or convenient’ regulation making power was sufficient to authorise the abrogation of the fundamental common law freedom of personal liberty.
- 4.11 The Committee subsequently received an undertaking from the Department of Corrective Services that the regulation would be repealed.

City of Fremantle - Local Law Relating to Outdoor Eating Areas Amendment Local Law 2007

- 4.12 The Committee scrutinised the following new clauses 4(c)(iii), 4(d) and 12 (**the Clauses**) inserted into the City of Fremantle Local Laws relating to Outdoor Eating Areas¹³ by the *City of Fremantle - Local Law Relating to Outdoor Eating Areas Amendment Local Law 2007*¹⁴ the (**the Local Law**):

Clause 4(c)

...(iii) Where a licensee or employee of an eating house is aware or could reasonably be expected to be aware that a person is smoking in a part of a licenced area set aside as a no smoking area, then the licensee or employee shall—

A. inform the person smoking that the person is committing an offence; and

B. request the person to leave the no smoking area until the person has finished smoking.

(d) After the expiration of six months from the date of commencement of this local law—

(i) No person shall smoke in a licenced area.

¹² Letter from A/Commissioner, Department of Corrective Services, 26 May 2008, p4.

¹³ Western Australian Government Gazette, No 94, 6 May 1998, p264 and as amended in the Western Australian Government Gazette on 24 December 2004.

¹⁴ Western Australian Government Gazette, No 18, 1 February 2008.

(ii) Where a licensee or employee of an eating house is aware or could reasonably be expected to be aware that a person is smoking in a licenced area, then the licensee or employee shall—

A. inform the person smoking that the person is committing an offence; and

B. request the person to leave the licenced area until the person has finished smoking.

(e) No person shall set up or conduct an outdoor eating area that prohibits public access to that area unless that area is located on private land.”

Clause 12

“12. A person who commits a breach of these local laws commits an offence and is liable on conviction to a maximum penalty of—

(a) \$2,000 in the case of a breach of local law 4(c) or 4(d);... .

4.13 The combined effect of the clauses was that an employee who failed to inform a smoker that the smoker was committing an offence would likewise be committing an offence and liable to the same penalty - \$2,000. The employee was effectively required to enforce the Local Law.

4.14 The Committee noted that the Local Law was made under the general law making power in the *Local Government Act 1995* which provides that:¹⁵

A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act

4.15 The *Local Government Act 1995* permits local governments to create offences and impose penalties but these are required to be for the good government of the district and purposes of the Act.¹⁶

4.16 The Committee did not consider that the Clauses were authorised by the *Local Government Act 1995* and noted that the Clauses offended the common law principle reflected in section 7 of the *Criminal Code* that the defendant is responsible for an

¹⁵ Subdivision 1, Division 2 of Part 3 *Local Government Act 1995*.

¹⁶ Clause 3.1 Division 1 Part 3, Clause 3.10 Subdivision 1 Division 2 Part 3, *Local Government Act 1995*.

offence only if he or she participated in the conduct proscribed with the requisite mental element.¹⁷

- 4.17 The Committee subsequently received an undertaking from the City of Fremantle that Clause 4 would be amended to remove references to employees.

5 SMOKING LAWS

- 5.1 The Committee noted the use of local government local laws to prohibit smoking in stipulated areas. The Committee scrutinised two local laws which were the first of their kind in Western Australia.
- 5.2 The *City of Fremantle - Local Law Relating to Outdoor Eating Areas Amendment Local Law 2007* (see also paragraph 4.12) prohibited smoking in outdoor eating areas licensed by the Council.¹⁸
- 5.3 The *City of Joondalup - Local Government and Public Property Amendment Local Law (No2) 2007* prohibited smoking on the City's beaches.¹⁹
- 5.4 The Committee also scrutinised six hospital by-laws which related to the banning of smoking. The hospital by-laws imposed total bans on smoking at hospital sites and imposed a penalty of \$50.00 for breach of the by-law.²⁰

6 SIGNS

- 6.1 The Committee continued to scrutinise a series of signs local laws which raised questions regarding the powers of local governments to make local laws relating to signage and advertising devices.²¹ In particular the Committee examined the relationships between:

- sections 3.1(1), 3.5(1) and 3.7 of the *Local Government Act 1995*
- the *Planning and Development Act 2005*; and

¹⁷ *Laws of Australia* viewed at <http://legalonline.thomson.com.au/tla/resultDetailed.jsp?showDropDown=true¶Number=9.2.1910&hitlist=%2Ftla%2FresultSummary.jsp&id=9.2.1910&start=1> noting *R v Huggins* (1730) 2 Ld Ray 1574; 92 ER 518; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153; [1971] 2 WLR 1166; [1971] 2 All ER 127. Viewed on 8 May 2009.

¹⁸ Scrutinised by the Committee on 2 April 2008.

¹⁹ *Ibid.*

²⁰ *Armadale Kelmscott District Memorial Hospital Amendment By-Laws 2008*; *Bentley Hospital Amendment By-Laws 2008*; *Fremantle Hospital Amendment By-Laws 2008*; *Metropolitan Health Service By-Laws 2008*; *Peel Health Services By-Laws 2008*; and *Swan Districts Hospital (Eveline Road Site) Amendment By-Laws 2008*. Scrutinised by the Committee on 2 April 2008

²¹ *City of Armadale - Signs Local Laws 2007*, *Shire of Harvey - Local Law Relating to Signs and Other Advertising Devices 2007*, *City of Nedlands - Signs Local Law 2007* and *Town of Victoria Park - Signs Local Law 2007*

- the *Local Government (Miscellaneous Provisions) Act 1960*

6.2 The Committee tabled two reports in relation to signs on 2 April 2009:

- Report No 28 - *Local Laws Regulating Signs and Advertising Devices*
- Report No 29 - *City of Armadale Signs Amendment Local Law 2008*

7 FEES AND CHARGES

7.1 The consideration of fees and charges imposed, in the main, by regulations continues to occupy a significant amount of the Committee's time. The Committee's scrutiny of fees generally involves identifying whether the impost in question is a fee or whether it is actually a tax. The Committee will scrutinise the fee to determine whether it is expressly or impliedly authorised by the primary Act. If so, the Committee attempts to identify whether the quantum of the fee:

- bears a reasonable relationship to the costs of providing that service (where the fee is to be paid for a service); or
- bears a reasonable relationship to the costs incurred in establishing or administering the scheme or system under which the licence is issued, or is incurred in respect of matters to which the licence relates (where the fee is to be paid for a licence).

7.2 In a number of instances initial information provided in the Explanatory Memorandum is insufficient for the Committee to determine the questions set out above. As a result, the Committee must engage in a time consuming exchange of correspondence with the relevant department to obtain further information.

7.3 Another problem facing the Committee is lack of certainty that the cost recovery models used by the different department and agencies adequately identify the costs relating to fees with the degree of particularity required for the Committee's scrutiny. At the Committee's request, the Auditor General inquired into this in 2004, tabling reports in 2004 and 2006. A further hearing with the Auditor General has been scheduled for June 2009.

7.4 The report on the topic of fees and charges, foreshadowed by the Committee in its previous Annual Report,²² continues to progress following the interruption to the Committee's activities arising from the general election in 2008.

²² Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 27, *Annual Report*, May 2008, p8.

8 BRIEFING SESSION INTERPRETATION ACT 1984

- 8.1 The Committee held a briefing session for Members providing information on the sections of the *Interpretation Act 1984* relating to disallowance. The session also examined ramifications of the use of the terms “prescribe”, “provide for” and “specify” on the Committee’s capacity to scrutinise an instrument. Members of both houses attended the briefing which prompted a series of questions and ensuing discussion.
- 8.2 Further briefings will be made available to new Committee members as required. The Committee envisages that other Parliamentary Members would also be invited to future briefings.

9 ISSUES FOR THE COMMITTEE IN 2009*Section 344 C of the Health Act 1911*

- 9.1 On 18 October 2006, the Committee resolved not to scrutinise fees and charges imposed under s 344C of the *Health Act 1911* for local laws made under that Act. This was an isolated decision based on the particular circumstances outlined in the Committee’s 2006 Annual Report.²³
- 9.2 One of the circumstances outlined by the Committee in its 2006 Annual Report were provisions in the Food Bill 2005 providing for a number of fees that were, at the time, imposed under s 344C of the *Health Act 1911* to be set under Part 6 of the *Local Government Act 1995*. Fees set under the *Local Government Act 1995* are not disallowable.
- 9.3 Sections 1 and 2 of the *Food Act 2008 (Food Act)* commenced on 8 July 2007. The Committee notes that as at 29 April 2009 the remainder of the Food Act which contains the relevant provisions concerning fees had not yet commenced. The resolution remains in place pending the commencement of the remainder of the Food Act.
- 9.4 The Committee resolved to write to the current Minister for Health to inquire into the anticipated date of commencement of the remaining provisions of the Food Act.

Issues arising in local laws

- 9.5 It is the Committee’s intention to present a local laws report on issues arising from its scrutiny of local laws from 1 May 2007 to 30 April 2009.

²³ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation Committee, Report 22, *Annual Report 2006*, March 2007, p1.

9.6 The Local Law working group did not meet in 2008. The Committee anticipates that the group will meet in 2009 and looks forward to that opportunity.

Publication of undertakings

9.7 Subsidiary legislation has an effect on the lives of many Western Australians. In order to increase public access to the Committee's decisions, undertakings provided to the Committee by local governments and government departments will be published on the Parliamentary website in 2009.²⁴

9.8 Undertakings provided from 1 January 2009 will be published and the Committee anticipates that publication will be ongoing.



Mr Joe Francis MLA

Chairman

Date: 14 May 2009

²⁴ Go to <http://www.parliament.wa.gov.au/web/newwebparl.nsf/iframewebpages/Legislative+Council++Current+Committees> and select Delegated Legislation Committee.

APPENDIX 1
GOVERNMENT RESPONSE TO REPORT 25

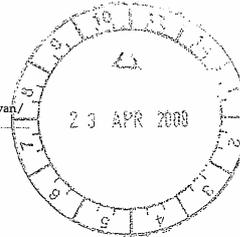
APPENDIX 1

GOVERNMENT RESPONSE TO REPORT 25



Hon Mark McGowan MLA
Minister for Education and Training; South West

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Our Ref: 17-022503

Mr Paul Grant
Clerk Assistant (Committees)
Legislative Council
Parliament House
PERTH WA 6000

Dear Mr Grant

COMMITTEE REPORTS: GOVERNMENT RESPONSE

Thank you for your letter of 20 March 2008 forwarding the *Joint Standing Committee on Delegated Legislation Report No. 25: University Statutes: Curtin University of Technology- Statute No. 7- The Council; and Murdoch University- Amending Statutes- No. 5 and No. 17* (Tabled paper 3812).

I refer to the two recommendations contained in the Report, namely:

- Recommendation 1: The Committee recommends that the Government amend the *Curtin University of Technology Act 1996* to clarify that the matters set out in subsections 34(1)(e), (ea) and (eb) of that Act are intended to be addressed by statutes, not rules, made under the Act; and
- Recommendation 2: The Committee recommends that the Government amends the *Murdoch University Act 1973* to provide for the tabling in Parliament of, and the application of disallowance procedures to, statutes made pursuant to that Act.

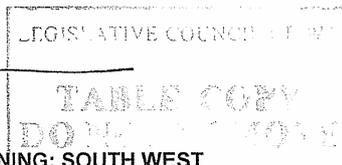
I recognise that avoidance of Parliamentary scrutiny of delegated legislation is a key concern for the Joint Standing Committee on Delegated Legislation.

In this context, please be advised that I support the recommendations contained in the report and commit to ensuring that they are addressed at the next opportunity the relevant Acts are open for substantive amendment.

Yours sincerely

HON MARK MCGOWAN MLA
MINISTER FOR EDUCATION AND TRAINING; SOUTH WEST

21 APR 2008



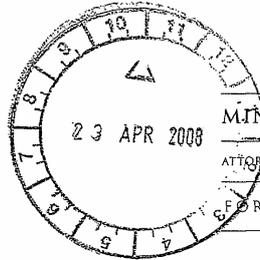
APPENDIX 2
GOVERNMENT RESPONSE TO REPORT 26

APPENDIX 2

GOVERNMENT RESPONSE TO REPORT 26

Our Ref: 4-47242

Mr Paul Grant
Clerk Assistant (Committees)
Legislative Council
Parliament House
PERTH WA 6000



MINISTER FOR HEALTH
ATTORNEY GENERAL: ELECTORAL AFFAIRS
FOR WESTERN AUSTRALIA

Dear Mr Grant

I refer to your letter dated 20 March 2008 requiring response, under Legislative Council Standing Order 337, to the recommendations contained in the report of the Joint Standing Committee on Delegated Legislation (the Committee) *Report No.26: Issues Arising Under Health Local Laws* (the Report), as tabled in the Legislative Council on 20 March 2008.

The Report has been considered and the conclusions and recommendations set out in Part 5 are accepted and, in that respect, section 343B of the *Health Act 1911* is to be invoked to effect the necessary amendments to those local government Health Local Laws identified as containing provisions having similar effect to those specified in recommendations 1 and 2 of the Report.

With regard to Recommendation 2 of the Report, the word "obnoxious" is to be deleted rather than defined.

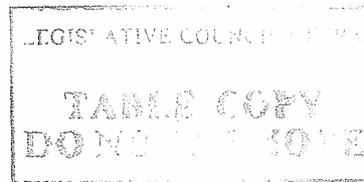
As part of the section 343B process, all local governments will now need to be contacted in order to identify whether their health local laws contain the offending provisions, so that the text or repeal of the actual provision can be appropriately dealt with.

It is anticipated that the required changes, as recommended in the Report, will be implemented within three months from the date of this advice.

Yours sincerely

A handwritten signature in black ink, appearing to read "Jim McGinty".

JIM MCGINTY MLA
MINISTER FOR HEALTH



21 APR 2008

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