



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

STANDING COMMITTEE ON LEGISLATION

SESSIONAL REPORT:

**AN OVERVIEW OF THE
COMMITTEE'S OPERATIONS:
SECOND SESSION OF THE
THIRTY-SIXTH PARLIAMENT**

(AUGUST 2002 TO NOVEMBER 2004)

Presented by Hon Jon Ford MLC (Chairman)

Report 26
November 2004

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

May 24 2001

Terms of Reference:

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

“1. Legislation Committee

- 1.1 A Legislation Committee is established.
- 1.2 The Committee consists of 5 members.
- 1.3 The functions of the Committee are to consider and report on any bill or other matter referred by the House.
- 1.4 Unless otherwise ordered, the policy of a bill referred under subclause 1.3 at the second reading or any subsequent stage is excluded from the Committee’s consideration.”

Members as at the time of this inquiry:

Hon Jon Ford MLC (Chairman)

Hon Peter Foss MLC

Hon Giz Watson MLC (Deputy Chair)

Hon Bill Stretch MLC

Hon Kate Doust MLC

Staff as at the time of this inquiry:

Johanna Edwards, Advisory Officer (Legal)

David Driscoll, Senior Committee Clerk

Lillian Makinda, Articled Clerk

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REPORT OF THE STANDING COMMITTEE ON LEGISLATION

SESSIONAL REPORT - SECOND SESSION, THIRTY-SIXTH PARLIAMENT

1 HISTORY AND TERMS OF REFERENCE

- 1.1 The Standing Committee on Legislation (**Committee**) was established on May 24 2001, in the First Session of the Thirty-Sixth Parliament (May 2001 to August 2002), as part of a series of changes to the Legislative Council committee system. The Committee replaced the former Legislative Council Standing Committee on Legislation (1989 to 2001).
- 1.2 The Committee's current Terms of Reference are published at the front of this report.
- 1.3 The primary function of the Committee is to consider and report on any bill or other matter referred by the Legislative Council. The Legislative Council can refer most bills to the Committee except appropriation, taxation and loan bills.
- 1.4 Unless otherwise ordered, the policy of a bill referred at the second reading or any subsequent stage is excluded from the Committee's consideration.
- 1.5 The Committee cannot amend a bill, but may recommend amendments or a further review of particular matters in its report to the Legislative Council.
- 1.6 The Committee is able to consider bills in more detail than would be possible in the limited time available in the Legislative Council. This process allows for effective mediation of differing political views on issues and allows for input from the public. The Committee reports its findings to the Legislative Council.
- 1.7 Unlike scrutiny of legislation committees of other Australian Parliaments, in Western Australia:
- the scrutiny of legislation is divided between the Joint Standing Committee on Delegated Legislation (scrutiny of all subsidiary legislation), the Standing Committee on Uniform Legislation (scrutiny of uniform legislation) and the Committee (scrutiny of primary legislation); and
 - the Committee does not scrutinise all bills tabled in the Legislative Council - its main activity is the scrutiny of bills referred by the Legislative Council.

2 MEMBERSHIP

- 2.1 The Committee consists of the following five members:

- Hon Jon Ford MLC (Chairman);
- Hon Giz Watson MLC (Deputy Chair);
- Hon Kate Doust MLC;
- Hon Peter Foss QC MLC; and
- Hon Bill Stretch MLC.

2.2 During the Second Session of the Thirty-Sixth Parliament, the Committee was assisted by the following substitute members in the following inquiries:

- Hon George Cash MLC (Taxation Administration Bill 2001, Taxation Administration (Consequential Provisions) (Taxing) Bill 2001 and Taxation Administration (Consequential Provisions) Bill 2001; and Road Traffic Amendment (Dangerous Driving) Bill 2004);
- Hon Derrick Tomlinson MLC (*Corruption and Crime Commission Act 2003* and Corruption and Crime Commission Amendment Bill 2003); and
- Hon Ken Travers MLC (Road Traffic Amendment (Dangerous Driving) Bill 2004).

2.3 The work of the Committee was facilitated by the use of a number of subcommittees.

3 STAFF AND SUPPORT SERVICES

3.1 The Legislative Council Committee Office supports the Committee. During the Second Session, the Committee was staffed by:

- David Driscoll, Senior Committee Clerk, from August 2002 to November 2004;
- Amberlin Kwaymullina, Advisory Officer (Legal), from August 2002 to October 2002;
- Johanna Edwards, Advisory Officer (Legal), from November 2002 to November 2004; and
- Paul Grant, Advisory Officer (Legal), from April 2003 to May 2003 and from September 2003 to October 2004.

3.2 The Advisory Officers were allocated to specific inquiries.

4 REPORTS TABLED

- 4.1 Throughout both the First and Second Sessions of the Thirty-Sixth Parliament, the Committee tabled 25 reports and a list of these reports is attached at **Appendix 1**.
- 4.2 During the Second Session, the Committee tabled **nine reports** in the Legislative Council.¹ To progress these inquiries and prepare these reports the Committee and various subcommittees met on 105 occasions.
- 4.3 An overview of each of the nine reports tabled in the Second Session (in the order of presentation) follows.

Taxation Administration Bill 2001, Taxation Administration (Consequential Provisions) (Taxing) Bill 2001 and Taxation Administration (Consequential Provisions) Bill 2001

Referral Date: April 17 2002

Date of Presentation: October 16 2002

- 4.4 The Taxation Administration Bill 2001 proposed to amalgamate the administrative provisions of Western Australia's four major taxing Acts, namely the *Pay-roll Tax Assessment Act 1971*, the *Stamp Act 1921*, the *Land Tax Assessment Act 1976* and the *Debts Tax Assessment Act 1990*. The purpose of the Taxation Administration Bill 2001 was to provide for the administration and enforcement of State taxation legislation.
- 4.5 The Taxation Administration (Consequential Provisions) (Taxing) Bill 2001 and the Taxation Administration (Consequential Provisions) Bill 2001 contained amendments to legislation made necessary by the enactment of the Taxation Administration Bill 2001.
- 4.6 The Committee focussed its inquiry on the following areas:
- the imposition of civil and criminal liability on directors of a body corporate; and
 - legal professional privilege.
- 4.7 The Committee also addressed numerous other issues raised during the inquiry.
- 4.8 The Committee made 36 recommendations, a large proportion of which were proposed amendments to clauses of the Taxation Administration Bill 2001 in statutory form. The Committee was of the view that the recommended amendments would

¹ This does not include the Sessional Report for the First Session of the Thirty-Sixth Parliament, Western Australia, Legislative Council, Standing Committee on Legislation, *An Overview of the Committee's Operations: First Session of the Thirty-Sixth Parliament - May 1 2001 to August 9 2002*, October 2002.

operate to ensure that the Taxation Administration Bill 2001 achieved a fair balance between the interests of the Commissioner of State Revenue and the rights of the taxpayer.

- 4.9 Following the tabling of the Committee's report, a number of amendments were made to the Taxation Administration Bill 2001 in accordance with the Committee's recommendations.²

Sentencing Legislation Amendment and Repeal Bill 2002 and the Sentence Administration Bill 2002

Referral Date: December 19 2002

Date of Presentation: May 23 2003

- 4.10 The Sentencing Legislation Amendment and Repeal Bill 2002 and the Sentence Administration Bill 2002 proposed important changes to sentencing in Western Australia including:

- the introduction of Pre-sentence Orders and the ability for the court to adjourn sentencing for up to 12 months;
- an amendment to Parole Eligibility Orders such that there is no presumption in favour of parole;
- the amendment of parole to 50% of the sentence;
- the abolition of remission;
- the abolition of sentences of six months or less;
- the abolition of Home Detention Orders and the introduction of Chief Executive Officer Parole in relation to sentences of imprisonment of less than 12 months; and
- the abolition of Work Release Orders and the introduction of Re-entry Release Orders.

- 4.11 A significant issue for the Committee was the impact of the proposed amendments in remote and regional areas of Western Australia.

- 4.12 The Committee made 23 recommendations, including a recommendation that the Sentencing Legislation Amendment and Repeal Bill 2002 and the Sentence

² See for example, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, February 26 2003, pp4727-4742.

Administration Bill 2002 be passed subject to proposed amendments to a number of clauses of the Bills.

- 4.13 The Committee also recommended that the Government consider broader issues such as:
- placing a high priority on the development and implementation of any proposed Drug Court legislation; and
 - undertaking an inquiry into sentencing, law enforcement and penalties in remote and regional areas of Western Australian with the intention of reducing the rate of imprisonment.
- 4.14 The report contained a Minority Report by Hon Peter Foss QC MLC and Hon Bill Stretch MLC.
- 4.15 Consequent upon the tabling of the Committee's report, a number of amendments were made to the Bills in accordance with the Committee's recommendations.³

Environmental Protection Amendment Bill 2002

Referral Date: April 9 2003

Date of Presentation: May 23 2003

- 4.16 The purpose of the referral of the Environmental Protection Amendment Bill 2002 was for the Committee to examine the Bill, including the impact on the Bill of any proposed amendments to the Bill.
- 4.17 The Bill contained proposals to amend various provisions of the *Environmental Protection Act 1986* and a number of minor, mostly consequential, amendments to other Acts. However, there were 135 proposed amendments to the Bill listed on Supplementary Notice Paper No. 131, Issue No. 5, as at Friday April 11 2003. Additionally, there were a further three proposed amendments that were provided to the Committee over the course of the inquiry by Hon Murray Criddle MLC.
- 4.18 The Committee approached the inquiry as a purely technical exercise of attempting to provide the Legislative Council, and in particular the committee of the Whole, with a practical working document to assist members to understand the aim and effect of the numerous proposed amendments to the Bill. Thus the Committee considered only the proposed amendments to the Bill and did not consider the substantive provisions or merits of the Bill other than in the narrow context of the impact of the proposed amendments.

³ See for example, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, June 26 2003, pp9458-9464.

- 4.19 The report adopted a narrative approach with no recommendations being made to the Legislative Council.

Statutes (Repeals and Minor Amendments) Bill 2001

Referral Date: March 13 2003

Date of Presentation: June 10 2003

- 4.20 The Statutes (Repeals and Minor Amendments) Bill 2001 was first referred to the Committee on August 1 2002. In response to that referral, the Committee reported to the Legislative Council on March 12 2002.⁴ The purpose of the second referral on March 13 2003 was for the Committee to consider proposed amendments to the Bill contained in a Supplementary Notice Paper.
- 4.21 The Bill was an ‘omnibus bill’. The purpose of such bills is to revise statute law by repealing spent, unnecessary or superseded Acts and making miscellaneous minor amendments to various Acts. The policy behind such bills is to provide a regular opportunity for necessary legislative amendments of a non-contentious and minor nature to pass through Parliament without having to wait behind contentious political matters and major legislation.
- 4.22 The Committee’s report addressed the amendments in the Supplementary Notice Paper. The Committee recommended that the proposed amendments on the Supplementary Notice Paper be supported, with the exception of one proposed amendment. Following the Committee’s report, the Government did not proceed with the proposed amendment.⁵
- 4.23 The Committee made comments in relation to the use of omnibus bills. The Committee noted that in preparing omnibus bills, amendments that are likely to be contentious or make a substantial change in the law are not accepted. The Committee considered that a satisfactory process for omnibus bills would involve their introduction into the Parliament twice a year at the beginning of each of the Spring and Autumn Sessions. In this way, Government departments would know the deadline they have to meet and would also know that if they missed the deadline there would only be six months to wait for the next omnibus bill.
- 4.24 In addition, the Committee was of the view that, once introduced, no further amendments to the omnibus bill should be foreshadowed in the Legislative Council, as this is more likely to delay, rather than assist, its progress. The only exception to this, would be minor drafting alterations (such as corrections to minor drafting errors)

⁴ Western Australia, Legislative Council, Standing Committee on Legislation, *Statutes (Repeals and Minor Amendments) Bill 2001*, March 2002.

⁵ Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, October 22 2003, pp12395-12405.

noticed after the bill is introduced in the Legislative Council. The Committee anticipated that if there were a known, regular process, these minor drafting alterations would become unnecessary because Government departments would know that another omnibus bill would shortly follow. The Committee indicated that in the future it would recommend against proposed amendments that are any more substantial.

- 4.25 As a result of the Committee's comments, the Premier issued a Circular to all Public Sector agencies (No. 2003/15) which outlines the proposed process for future omnibus bills and provides greater clarity as to matters that will and will not be considered suitable for inclusion in such a bill.⁶

Corruption and Crime Commission Act 2003 and the Corruption and Crime Commission Amendment Bill 2003

Referral Date: June 26 2003

Date of Presentation: December 9 2003

- 4.26 The Corruption and Crime Commission Bill 2003 and the Corruption and Crime Commission Amendment Bill 2003 originally formed a single Bill (**original Bill**). The original Bill was split in the Legislative Council to enable the provisions dealing with the establishment of the Corruption and Crime Commission to be promptly enacted. These provisions formed the Corruption and Crime Commission Bill 2003 which was passed and received Royal Assent on July 3 2003 and thus was referred to as the *Corruption and Crime Commission Act 2003*. The remaining provisions of the original Bill became the Corruption and Crime Commission Amendment Bill 2003. The *Corruption and Crime Commission Act 2003* and the Corruption and Crime Commission Amendment Bill 2003 were referred to the Committee.
- 4.27 The original Bill was formed on the basis of recommendations contained in the Interim Report of Hon Geoffrey Kennedy AO QC of the Royal Commission into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers (**Police Royal Commission**). The principal recommendation of the Police Royal Commission was that a new agency, the Corruption and Crime Commission, be created to replace the Anti-Corruption Commission.
- 4.28 Out of 105 Committee and subcommittee meetings during the Second Session, 30 of these occurred as part of this inquiry, which included meetings with a number of key agencies in Brisbane, Sydney and Canberra.
- 4.29 The Committee's report was wide ranging but its main focus was the proper balance between power and accountability and thus the Committee addressed matters such as

⁶ Letter from Mr Wauchope, Director General, Department of Premier and Cabinet, December 3 2003.

the structure, composition and model of the Corruption and Crime Commission, and its functions and powers.

- 4.30 The Committee made 68 recommendations a significant number of which were proposed statutory amendments to the Corruption and Crime Commission Amendment Bill 2003. Following the tabling of the Committee's report, a number of amendments were made to the Corruption and Crime Commission Amendment Bill 2003 in accordance with the Committee's recommendations.⁷

Magistrates Court Bill 2003, Magistrates Court (Civil Proceedings) Bill 2003 and Courts Legislation Amendment and Repeal Bill 2003

Referral Date: June 29 2004

Date of Presentation: September 28 2004

- 4.31 The purpose of the Magistrates Court Bill 2003, the Magistrates Court (Civil Proceedings) Bill 2003 and the Courts Legislation Amendment and Repeal Bill 2003 was to reform Western Australia's lower court structure by, amongst other things, establishing a new Magistrates Court - amalgamating the existing Courts of Petty Sessions, the Local Court and the Small Claims Tribunal.
- 4.32 The Bills formed part of a larger legislative package which included the Justices of the Peace Bill 2003; the Civil Judgments Enforcement Bill 2003; the Oaths, Affidavits and Statutory Declarations Bill 2003 and the Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Bill 2003.
- 4.33 The Committee understood that the purpose of the referral was for it to consider a discrete number of issues raised during the second reading debate in the Legislative Council and in submissions. The Committee conducted its inquiry accordingly.
- 4.34 A significant issue raised in the submissions was the proposed process for the suspension of magistrates from office due to substandard performance, which, the submissions asserted, compromised judicial independence. The Committee made a recommendation to address this issue.
- 4.35 The Committee recommended that the Magistrates Court Bill 2003, the Magistrates Court (Civil Proceedings) Bill 2003 and the Courts Legislation Amendment and Repeal Bill 2003 be passed subject to certain proposed amendments.

⁷ See for example Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, December 11 2003, pp14734-14753.

4.36 Following the tabling of the Committee's report, a number of amendments were made to the Bills in accordance with the Committee's recommendations and some alternative amendments were proposed by the Government.⁸

Road Traffic Amendment (Dangerous Driving) Bill 2004

Referral Date: September 21 2004

Date of Presentation: October 27 2004

4.37 The stated purpose of the Road Traffic Amendment (Dangerous Driving) Bill 2004 was to simplify the requirements for proof of causation for the offences of:

- dangerous driving causing death or grievous bodily harm (section 59 of the *Road Traffic Act 1974*); and
- dangerous driving causing bodily harm (section 59A of the *Road Traffic Act 1974*).

4.38 The Committee was advised that the Road Traffic Amendment (Dangerous Driving) Bill 2004 was required because the offences under sections 59 and 59A were deficient due to the difficulty in establishing causation between the dangerous manner of a person's driving and the resulting harm.

4.39 The Committee's inquiry focussed particularly on the proposed amendments to causation, and on a provision that appeared to reverse the persuasive burden of proof.

4.40 A majority of the Committee, comprising Hon Giz Watson MLC, Hon Peter Foss QC MLC and Hon George Cash MLC, did not support a recommendation that the Road Traffic Amendment (Dangerous Driving) Bill 2004 pass without amendment as it was of the view that the intent of the report was to better inform the Legislative Council. That majority instead recommended that the Legislative Council be cognisant of certain aspects of the operation of the Road Traffic Amendment (Dangerous Driving) Bill 2004.

4.41 A minority of the Committee, comprising Hon Kate Doust MLC and Hon Ken Travers MLC, recommended that the Road Traffic Amendment (Dangerous Driving) Bill 2004 be passed.

State Administrative Tribunal Bill 2003 and the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003

Referral Date: September 16 2003

⁸ Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, October 19 2004, pp6766-6773.

Date of Presentation: October 27 2004

- 4.42 The purpose of the State Administrative Tribunal Bill 2003 was to establish a State Administrative Tribunal. This Tribunal was to assume the original or review jurisdictions of numerous civil and administrative review tribunals, and also of various administrative, court and ministerial appeal processes in Western Australia. The State Administrative Tribunal Bill 2003 dealt with matters that related to the State Administrative Tribunal's powers, procedures and administration.
- 4.43 The State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003, which at 644 pages was believed to be the largest bill ever introduced into the Western Australian Parliament, amended a large amount of existing legislation (144 Acts) and created enabling legislation so that various matters could go to the State Administrative Tribunal. The State Administrative Tribunal was not intended to have inherent jurisdiction - it was instead to derive its jurisdiction from numerous enabling Acts. For each application or right of appeal to the State Administrative Tribunal, there was to be an enabling Act, granting a right of application or appeal. An enabling Act was to prevail over the State Administrative Tribunal Act in the event of any inconsistency.
- 4.44 Out of 105 Committee and subcommittee meetings during the Second Session, 38 occurred during this inquiry, which included meetings with relevant parties in Melbourne and Sydney. The Committee received 48 written submissions, held public hearings involving 24 witnesses and conducted site visits.
- 4.45 The Committee made 49 recommendations arising from its examination of the Bills (mostly in the form of statutory amendments), and recommended that the Bills be passed subject to the Committee's recommended amendments. The Bills were amended in accordance with the Committee's recommendations.⁹
- 4.46 The report also contained three minority recommendations of Hon Giz Watson MLC.

Young Offenders Amendment Bill 2003

Referral Date: April 1 2004

Date of Presentation: November 16 2004

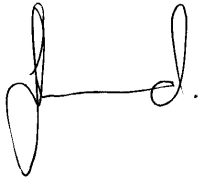
- 4.47 The Young Offenders Amendment Bill 2003 was a private member's bill, which is a bill introduced by a member other than a Minister. Hon Peter Foss QC MLC introduced the Bill in the Legislative Council.

⁹ Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, November 10 2004, pp7775-7776.

- 4.48 The Bill proposed to amend the *Young Offenders Act 1994* to affect the application of certain *Criminal Code* provisions, which are commonly known as the ‘three strikes’ legislation, to young offenders.
- 4.49 The report outlined the purpose of the Bill, the nature of the proposed amendments and some of the issues raised by the submissions.
- 4.50 A majority of the Committee, comprising Hon Jon Ford MLC, Hon Giz Watson MLC and Hon Kate Doust MLC, recommended that the Bill not be passed.
- 4.51 A minority of the Committee, comprising Hon Peter Foss QC MLC and Hon Bill Stretch MLC dissented from this recommendation and presented a Minority Report.

5 CONCLUSION

- 5.1 The Committee considers that during both the First and Second Sessions of the Thirty-Sixth Parliament it has operated efficiently and effectively in undertaking the important role of assisting the Legislative Council to consider and review proposed legislation.



Hon Jon Ford MLC
Chairman

Date: November 19 2004

APPENDIX 1
LIST OF REPORTS - THIRTY-SIXTH PARLIAMENT

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LIST OF REPORTS - THIRTY-SIXTH PARLIAMENT

Report Title	Report No
Corporations (Commonwealth Powers) Bill 2001, Corporations (Ancillary Provisions) Bill 2001, Corporations (Administrative Actions) Bill 2001 and Corporations (Consequential Amendments) Bill 2001	1
Co-operative Schemes (Administrative Actions) Bill 2001 and the Agricultural and Veterinary Chemicals (Western Australia) Amendment Bill 2001	2
Road Traffic Amendment Bill 2001 and the Road Traffic Amendment (Vehicle Licensing) Bill 2001	3
Acts Amendment (Federal Courts and Tribunals) Bill 2001	4
Consumer Credit (Western Australia) Amendment Bill 2001	5
Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 - Proposal to Travel	6
Intergovernmental Agreements, Uniform Schemes and Uniform Laws: Amendments to Standing Orders 230(c) and (d)	Special Report
Electronic Transactions Bill 2001	7
Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001	8
Child Support (Adoption of Laws) Amendment Bill 2001	9
Child Welfare Amendment Bill 2001	10
Statutes (Repeals and Minor Amendments) Bill 2001	11
Corporations (Consequential Amendments) Bill (No 2) 2001	12
Corporations (Consequential Amendments) Bill (No 3) 2001	13

Report Title	Report No
Offshore Minerals Bill 2001, Offshore Minerals (Registration Fees) Bill 2001 and Offshore Minerals (Consequential Amendments) Bill 2001	14
Criminal Investigation (Exceptional Powers) and Fortification Removal Bill 2001	15
Taxation Administration Bill 2001, Taxation Administration (Consequential Provisions) (Taxing) Bill 2001 and Taxation Administration (Consequential Provisions) Bill 2001	16
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Magistrates Court Bill 2003, Magistrates Court (Civil Proceedings) Bill 2003 and Courts Legislation Amendment and Repeal Bill 2003	22
Road Traffic Amendment (Dangerous Driving) Bill 2004	23
State Administrative Tribunal Bill 2003 and the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003	24
Young Offenders Amendment Bill 2003	25