



THIRTY-SEVENTH PARLIAMENT

REPORT 2
STANDING COMMITTEE ON LEGISLATION
ANNUAL REPORT 2005

Presented by Hon Graham Giffard MLC (Chair)

March 2006

STANDING COMMITTEE ON LEGISLATION

Date first appointed: 17 August 2005

Terms of Reference:

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

“4. Legislation Committee

- 4.1 A *Legislation Committee* is established.
- 4.2 The Committee consists of 5 Members.
- 4.3 The functions of the Committee are to consider and report on any Bill referred by the House or under SO 125A.
- 4.4 Unless otherwise ordered -
- (a) the policy of a Bill referred under subclause 4.3 may be considered by the Committee but only to the extent that the Committee is satisfied the provisions of the Bill, as referred, are consistent with that policy and that the legislative intent can be given practical effect;
 - (b) any amendment recommended by the Committee must be consistent with the policy of a Bill.
- 4.5 In this order “**policy of a Bill**” is its scope and purpose ascertained from the Bill’s provisions, but reference may be had to any document or statement or other information that may assist in clarifying the intended legislative effect or construing the application or interpretation of any provision.”

Members during this reporting period:

Hon Graham Giffard MLC (Chair)

Hon Peter Collier MLC

Hon Giz Watson MLC (Deputy Chair)

Hon Sally Talbot MLC

Hon Ken Baston MLC

Hon Simon O’Brien MLC (substitute member for Hon Ken Baston MLC on the inquiry into the Taxi Amendment Bill 2005)

Staff during this reporting period:

David Driscoll, Senior Committee Clerk

Denise Wong, Advisory Officer (Legal)

Anne Turner, Advisory Officer (Legal)

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REPORT OF THE STANDING COMMITTEE ON LEGISLATION

ANNUAL REPORT 2005

1 INTRODUCTION

- 1.1 Prior to the Thirty-Sixth Parliament, it was the usual practice for the Governor, on advice from the Executive, to prorogue and reopen the Parliament in August each year.¹ Reflecting this practice, parliamentary committees prepared 'sessional' reports for tabling in the Legislative Council on their work during that period.
- 1.2 In June 2003, the Government indicated that it did not intend to continue to ask the Governor to prorogue on an annual basis² and prorogation did not occur in August 2003 or August 2004 during the Thirty-Sixth Parliament. Reflecting this shift in practice, in the Thirty-Seventh Parliament, parliamentary committees of the Legislative Council may table annual reports relating to their work during the calendar year.

2 REPORTING PERIOD

- 2.1 This report covers a four-month period of activity by the Standing Committee on Legislation (**Committee**) between 17 August 2005 and 31 December 2005 in the first year of the Thirty-Seventh Parliament.
- 2.2 The Committee's immediate predecessor, the Standing Committee on Legislation (24 May 2001 to 16 August 2005) (**Former Committee**), also operated in the Thirty-Seventh Parliament between 26 May 2005 and 16 August 2005, but no bills were referred to it during that period.

3 ESTABLISHMENT OF THE COMMITTEE

- 3.1 The Committee was established on 17 August 2005 as part of a series of changes to the Legislative Council committee system.

4 TERMS OF REFERENCE

- 4.1 The Committee's current Terms of Reference are published on the inside cover of this Report.

¹ Hon Kim Chance MLC, Minister for Agriculture and Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 25 June 2003, p9149. Parliament meets and transacts business for a period known as a 'session'. A session is terminated by a 'prorogation' of Parliament, which is effected by proclamation of the Governor on the advice of the Executive Council. Prorogation suspends meetings of each House and its committees.

² Hon Kim Chance MLC, Minister for Agriculture and Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 25 June 2003, p9150.

- 4.2 The functions of the Committee are to consider and report on any bill referred by the Legislative Council or under Standing Order 125A (that is, referred by the Legislative Council at the recommendation of the Business Management Committee). Most bills can be referred by the Legislative Council to its committees, the general exceptions being appropriation, taxation and loan bills.
- 4.3 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 subsidiary legislation), the Standing Committee on Uniform Legislation and Statutes Review (scrutiny of uniform legislation), and the Committee (scrutiny of primary legislation). The Committee does not scrutinise all bills introduced into the Legislative Council as a matter of course; it only scrutinises bills if they are specifically referred by the Legislative Council.
- 4.4 The Committee is able to consider bills in more detail than would be possible in the limited time available in the Legislative Council itself, and to report its findings to the Legislative Council. This process allows for effective mediation of differing political views on issues and allows for input from the public. The Committee cannot amend a bill but will often recommend amendments or further review of particular matters in its report to the Legislative Council.
- 4.5 Under its terms of reference, the Committee's inquiries focus on the feasibility, clarity and technical competence of a bill rather than a bill's policy. Unless otherwise ordered by the Legislative Council:
- the Committee can only consider a bill's policy for the purpose of ensuring that the provisions of the bill are consistent with, and effectively implement, that policy; and
 - any amendment recommended by the Committee must be consistent with the policy of a bill.
- 4.6 The Committee's terms of reference provide that the Legislative Council may, at the time of referral, order the Committee to conduct a wider examination of the bill's policy.
- 4.7 The terms of reference provide that 'policy of a bill' is its scope and purpose ascertained from the bill's provisions, but reference may be had to any document or statement or other information that may assist in clarifying the intended legislative effect or construing the application or interpretation of any provision.
- 4.8 The Former Committee also scrutinised bills that sought to revise statute law by repealing spent, unnecessary or superseded Acts and by making miscellaneous minor amendments to various Acts. That function now lies with the Standing Committee on

Uniform Legislation and Statutes Review, which was also established on 17 August 2005.

5 COMMITTEE MEMBERSHIP

5.1 The Committee consists of five Members:

- Hon Graham Giffard MLC (Chair);
- Hon Giz Watson MLC (Deputy Chair);
- Hon Peter Collier MLC;
- Hon Dr Sally Talbot MLC; and
- Hon Ken Baston MLC.

5.2 Hon Simon O'Brien MLC substituted Hon Ken Baston on the inquiry into the Taxi Amendment Bill 2005.

6 STAFF AND SUPPORT SERVICES

6.1 The Legislative Council Committee Office supports the Committee. During the reporting period, the Committee was staffed at various times by:

- Denise Wong, Advisory Officer (Legal);
- David Driscoll, Senior Committee Clerk; and
- Anne Turner, Advisory Officer (Legal).

7 INQUIRIES

Limitation Bill 2005 and Limitation Legislation Amendment and Repeal Bill 2005

7.1 During the reporting period, the Committee conducted an inquiry into the Limitation Bill 2005 and the Limitation Legislation Amendment and Repeal Bill 2005 (**2005 Limitation Bills**). Earlier versions of the 2005 Limitation Bills had been referred to the Former Committee on 24 November 2004 but both lapsed when prorogation of the Thirty-Sixth Parliament occurred on 23 January 2005.

7.2 The 2005 Limitation Bills were referred to the Committee on 23 August 2005 and the report³ was tabled on 15 September 2005, as ordered by the Legislative Council. The

³ Western Australia, Legislative Council, Standing Committee on Legislation, Report 1, *Limitation Bill 2005 and Limitation Legislation Amendment and Repeal Bill 2005*, September 2005.

Committee was required to meet seven times in the period of three weeks in order to meet the short reporting timeframe.

7.3 The purposes of the 2005 Limitation Bills were to:

- update and modernise the State's laws in relation to the time limits imposed for the commencement of civil legal proceedings and arbitrations; and
- achieve a modern limitations regime that would deliver a large measure of certainty and would be fairer and more flexible than the previous regime.

7.4 Due to the time constraints placed on the Committee, it resolved to limit its inquiry into the 2005 Limitation Bills to the consideration of only those issues raised in the referral debate and the evidence provided to the Committee. Again due to time constraints, the Committee did not form a concluded view on all issues raised and it referred to relevant evidence to assist with the debate of the 2005 Limitation Bills in the Legislative Council. Consequently, the Committee adopted a narrative approach to the report, although it did make one recommendation to the Legislative Council to delete a reference in the Limitation Bill 2005 to two archaic and obsolete causes of action.

7.5 Following the tabling of the Committee's report, the Limitation Bill 2005 was amended in accordance with the Committee's recommendation.⁴

Parental Support and Responsibility Bill 2005

7.6 The Parental Support and Responsibility Bill 2005 was referred to the Committee on 30 November 2005 with no reporting date. The policy of the bill was also referred for inquiry.

7.7 The purposes of the Parental Support and Responsibility Bill 2005 are to provide for:

- the making of responsible parenting agreements and responsible parenting orders with respect to parents of children aged up to 15 years who are offending, engaging in antisocial behaviour or failing to attend school;
- information sharing between government agencies; and
- the making of consequential amendments to the *Children's Court of Western Australia Act 1988* and the *Young Offenders Act 1994*.

7.8 On 10 December 2005, the Committee lodged an advertisement in *The West Australian* newspaper advising the public that the Committee is inquiring into the bill and was seeking public submissions in respect of the bill. The Committee also invited

⁴ Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 20 October 2005, p6654.

various stakeholders to provide a submission by writing to them directly. The due date for submissions was 27 January 2006.

Taxi Amendment Bill 2005

- 7.9 The Taxi Amendment Bill 2005 was referred to the Committee on 1 December 2005. The bill aims to introduce changes to the *Taxi Act 1994* that will provide the owners of transferable multipurpose taxi plates with an opportunity to reduce their costs by selling their plates back to the Government.
- 7.10 On 17 December 2005, the Committee lodged an advertisement in *The West Australian* newspaper advising the public that the Committee is inquiring into the bill and was seeking public submissions in respect of the bill. The Committee also invited various stakeholders to provide a submission by writing to them directly. The due date for submissions was 27 January 2006.
- 7.11 Hon Simon O'Brien substituted Hon Ken Baston on this inquiry. Hon Ken Baston is participating in this inquiry with leave of the Committee to take part in deliberations.

8 REPORTING TIMEFRAMES

- 8.1 In order for the Committee to effectively and efficiently assist the Legislative Council with its role of scrutinising proposed legislation, the Committee wishes to highlight to the Legislative Council the time required to conduct inquiries into proposed legislation. The short reporting timeframe imposed by the Legislative Council in relation to the 2005 Limitation Bills meant that the Committee was unable to produce as comprehensive a report as might otherwise have been possible.
- 8.2 The following factors served to compound the effect of the three-week reporting timeframe:
- There was limited continuity of membership and staff between the Former Committee inquiring into the Limitation Bill 2004 and the Limitation Legislation Amendment and Repeal Bill 2004 (**2004 Limitation Bills**) and the Committee.
 - There were differences between the 2005 Limitation Bills and the 2004 Limitation Bills. This required the Committee to provide an opportunity for people to reconsider their submissions on the 2004 Limitation Bills or to provide additional information.
- 8.3 The Committee draws the attention of the Legislative Council to the need to give due consideration to the adequacy of the reporting timeframes it imposes on the Committee in order to ensure adequate opportunity for public input and so that the Committee's work is of maximum assistance to the House.

9 CONCLUSION

9.1 The Committee considers that:

- it has an important role in assisting the Legislative Council to consider and review proposed legislation; and
- in the time made available to the Committee for this function during the reporting period, it has operated efficiently and effectively.



Hon Graham Giffard MLC
Chair
14 March 2006