



**THIRTY-SEVENTH PARLIAMENT**

**REPORT 19**

**JOINT STANDING COMMITTEE ON DELEGATED  
LEGISLATION**

***OATHS, AFFIDAVITS AND STATUTORY  
DECLARATIONS (ACT AMENDMENT) REGULATIONS  
2006***

Presented by Mr Paul Andrews MLA (Chairman)

and

Hon Ray Halligan MLC (Deputy Chairman)

September 2006

# 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 Delegated Legislation Committee* 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 1 is a Member of the Council and 1 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 Paul Andrews MLA (Chairman)	Dr Graham Jacobs MLA
Hon Ray Halligan MLC (Deputy Chairman)	Ms Jaye Radisich MLA
Hon Shelley Archer MLC	Hon Barbara Scott MLC
Hon Vincent Catania MLC	Mr Tony Simpson MLA

## Staff as at the time of this inquiry:

Kerry-Jayne Braat, Committee Clerk	Felicity Mackie, Advisory Officer (Legal)
Susan O’Brien, Advisory Officer (Legal)	

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# REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

## IN RELATION TO THE

### *OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS (ACT AMENDMENT) REGULATIONS 2006*

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#### **1 INFORMATION ONLY REPORT**

- 1.1 The *Oaths, Affidavits and Statutory Declarations (Act Amendment) Regulations 2006 (the Amendment)* adds ‘Electorate officers’ of a Member of State Parliament to Schedule 2 of the *Oaths, Affidavits and Statutory Declarations Act 2005 (the Act)* as an occupational group who may witness a statutory declaration made in Western Australia.
- 1.2 The Committee was uncertain as to whether the Amendment permitted persons designated ‘Research Officers’ in electorate offices to witness statutory declarations made in Western Australia. It sought, and received, clarification from the Attorney General.
- 1.3 The Committee considered that the answer to this question would be of interest to Members and at its meeting on Wednesday, 13 September 2006, resolved to provide this report as a means of informing Members.

#### **2 WHETHER ‘RESEARCH OFFICERS’ MAY WITNESS STATUTORY DECLARATIONS**

- 2.1 The Amendment inserts item 15A into Schedule 2 of the Act, which sets out authorised witnesses for statutory declaration for the purposes of s 12(6)(a)(i) of the Act. Item 15A reads:

*A person appointed under the Parliamentary and Electorate Staff (Employment) Act 1992 section 4(1)(b)(i) or (2)(b)(i).*

- 2.2 In his letter of 1 September 2006, which is attached as **Appendix 1**, the Attorney General pointed out that while the terms ‘Research Officer’ and ‘Electorate Officer’ were used as a matter of practice to distinguish between certain roles of staff in a Member’s electorate office, the *Parliamentary and Electorate Staff (Employment) Act 1992* used the term “*electorate officer*” to describe persons employed under the relevant sections of that Act, regardless of the position title used in practice.
- 2.3 The Committee notes that it follows that:
  - Persons appointed under section 4(1)(b)(i) or (2)(b)(i) of the *Parliamentary and Electorate Staff (Employment) Act 1992* are authorised witnesses for

statutory declarations in Western Australia, regardless of whether they are titled 'Research Officers' or 'Electoral Officers'.

- Staff employed under some other legislation, or by contractual arrangement, are not authorised witnesses for statutory declarations in Western Australia by reason of their designated title being 'Research Officer' or 'Electoral Officer'.

2.4 The Committee brings this matter to the attention of the Parliament.



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**Mr Paul Andrews MLA**  
**Chairman**

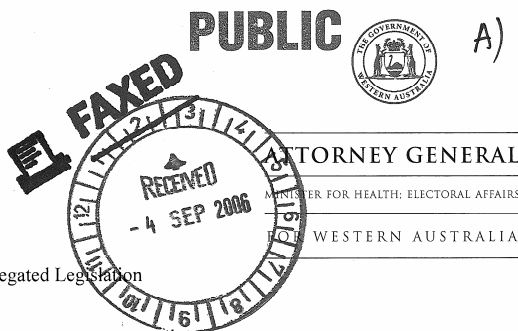
**21 September 2006**

**APPENDIX 1**  
**LETTER FROM ATTORNEY GENERAL DATED**  
**1 SEPTEMBER 2006**

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Your Ref: 3714/33  
Our Ref: 22-6594

Mr Paul Andrews MLA  
Chairman  
Joint Standing Committee on Delegated Legislation  
Parliament House  
PERTH WA 6000



Dear Mr Andrews

Thank you for your letter dated 24 August 2006 concerning the *Oaths, Affidavits and Statutory Declarations (Act Amendment) Regulations 2006* (WA) which adds, as an occupational group who may witness a statutory declaration made in this State, electorate officers to Schedule 2 of the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA).

In this context, your letter asks for advice as to whether "persons designated Research Officers in [Members of the WA Parliament's] electorate offices" are authorised to witness such statutory declarations.

For your information, the position of research officers was specifically considered during the drafting of the above Regulation. Consequently, the Department of Premier and Cabinet provided the following advice. First, that "research officers" came into existence in June 1997. Second, that research officers and electorate officers are employed under the *Parliamentary and Electorate Staff (Employment) Act 1992* (WA). There is no proposal to amend this 1992 Act to include a reference to "research officers".

I understand that as a matter of practice, the title "research officer" is the informal designation applied or title given to some "electorate officers". However, because of the above 1992 Act and the above Regulation, it would be more appropriate if those "research officers", who are "electorate officers" (because they are employed under the 1992 Act), receive and use the designation "electorate officers". That will avoid any confusion about which officers can witness such statutory declarations by clearly indicating that if an officer, in an electorate office, is not an electorate officer (but is, for example, a research officer employed under legislation or some other contractual arrangements) they cannot witness such statutory declarations.

As you may be aware, the list of authorised witnesses in every case refers to relevant statute under which persons are qualified (eg veterinarians, architects and doctors) or members of recognised occupational groups (eg Members of Parliament or members of accountancy bodies, such as CPA Australia and ICA). "Research officers", unless they are "electorate officers" employed under the above 1992 Act, cannot be connected to a statute or to an occupational association.

Thank you for your inquiry and I trust that the above is of assistance.

Yours sincerely

JIM MCGINTY MLA  
ATTORNEY GENERAL

01 SEP 2006

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