



THIRTY-NINTH PARLIAMENT

REPORT 69

**JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**

**REPORT SEEKING CLARIFICATION OF THE
APPLICATION OF STANDING ORDERS TO THE
JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**

Presented by Mr Peter Abetz MLA (Chair)

And

Hon Robin Chapple MLC (Deputy Chair)

October 2013

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:

“6. Joint Standing Committee on Delegated Legislation

- 6.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 6.2 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.
- 6.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 6.4 (a) 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.
- (b) Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House’s consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.
- 6.5 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.
- 6.6 In its consideration of an instrument, the Committee is to inquire whether the instrument –
- (a) is within power;
- (b) has no unintended effect on any person’s existing rights or interests;
- (c) provides an effective mechanism for the review of administrative decisions; and
- (d) contains only matter that is appropriate for subsidiary legislation.
- 6.7 It is also a function of the Committee to inquire into and report on –
- (a) any proposed or existing template, *pro forma* or model local law;
- (b) any systemic issue identified in 2 or more instruments of subsidiary legislation; and
- (c) the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary legislation that has yet to be published.
- 6.8 In this order –
- “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 Peter Abetz MLA (Chair)	Hon Ljiljana Ravlich MLC (Deputy Chair) until 16 October 2013
Hon John Castrilli MLA	Hon Robin Chapple MLC (Deputy Chair) from 16 October 2013
Hon Peter Katsambanis MLC	Hon Mark Lewis MLC
Ms Simone McGurk MLA	Mr Peter Watson MLA

Staff as at the time of this inquiry:

Felicity Mackie (Advisory Officer (Legal))	Alex Hickman (Advisory Officer (Legal))
Anne Turner (Advisory Officer (Legal))	Steve Hales (Advisory Officer)
Stacey Martin (Committee Clerk)	

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

lcco@parliament.wa.gov.au

Website: <http://www.parliament.wa.gov.au>

ISBN 978-1-922047-61-8

CONTENTS

REPORT.....	1
Introduction.....	1
The Order of Reference.....	1
Legislative Council	3
Legislative Assembly.....	3
Interpretation of Standing Order 249	3
Participation on Joint Committees	4
Conclusion	4
Outcomes	4
Recommendation	4

REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION
REPORT SEEKING CLARIFICATION OF THE APPLICATION OF STANDING ORDERS TO THE
JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Introduction

- 1.1 Chapter XV of the Legislative Council Standing Orders deals with Committees. In that chapter, Legislative Council Standing Order 156(2) provides that:

“If ordered by the Houses, this chapter applies to Joint Committees of the Parliament.”

The Order of Reference

- 1.2 The Order of Reference agreed to by the Legislative Assembly and transmitted to the Legislative Council on 23 May 2013 for the establishment of the Joint Standing Committee on Delegated Legislation (Joint Committee) is silent as to which Standing Orders apply to the Joint Committee.
- 1.3 The Order of Reference is copied below¹:

Message from the Council requesting concurrence in the following resolution now considered —

That the Legislative Assembly be invited to agree to the rules and orders of the Legislative Council contained in the schedule for the constitution, powers and procedure of a Joint Standing Committee on Delegated Legislation.

EXTRACT FROM LEGISLATIVE COUNCIL STANDING ORDERS

SCHEDULE

6. Joint Delegated Legislation Committee

6.1 A Joint Delegated Legislation Committee is established.

6.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chair must be a Member of the Committee who supports the Government.

6.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.

¹ Mr Michael Sutherland MLA, Speaker, Legislative Assembly, Western Australia *Parliamentary Debates (Hansard)*, 23 May 2013, p1087.

6.4 (a) *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.*

(b) *Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House's consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.*

6.5 *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.*

6.6 *In its consideration of an instrument, the Committee is to inquire whether the instrument —*

(a) *is within power;*

(b) *has no unintended effect on any person's existing rights or interests;*

(c) *provides an effective mechanism for the review of administrative decisions; and*

(d) *contains only matter that is appropriate for subsidiary legislation.*

6.7 *It is also a function of the Committee to inquire into and report on —*

(a) *any proposed or existing template, pro forma or model local law;*

(b) *any systemic issue identified in 2 or more instruments of subsidiary legislation; and*

(c) *the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary legislation that has yet to be published.*

6.8 *In this order —*

"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.

- 1.4 Accordingly, it is entirely unclear whether, and if so, to what extent the Standing Orders of the Legislative Council apply to the Joint Committee.
- 1.5 Further, the Standing Orders of the Legislative Council and the Legislative Assembly differ as set out below.

Legislative Council

- 1.6 Legislative Council Standing Order 164(1) provides that:

*“Any Member of the Council may participate in the taking of oral evidence by a Committee, and **by leave of a Committee** its deliberations and proceedings but may not vote.”*

Legislative Assembly

- 1.7 By contrast, Legislative Assembly Standing Order 249(4) provides that:

*“**The Assembly may on motion co-opt any member of the Assembly, not being a Minister, to participate for a specified inquiry, in meetings of a portfolio-related committee or the Public Accounts Committee in relation to portfolio-related matters allocated to it. That member is not a member of the committee and may not vote, move any motion or be counted for the purpose of a quorum, but in relation to that inquiry may ask questions of witnesses and participate in a deliberative meeting.**”*

Interpretation of Standing Order 249

- 1.8 By virtue of Legislative Assembly Standing Order 297², Standing Order 249 applies to the Assembly members of the Joint Committee.
- 1.9 The Joint Committee interprets the words “co-opt” in Legislative Assembly Standing Order 249(4) to mean ‘co-opt to participate’ (as opposed to ‘co-opt to substitute’) in that Members may be present at a meeting but not vote.

² Legislative Assembly Standing Order 297 states: “*Except to the extent that they impinge upon the functioning of the Committee, Standing Orders applicable to Committees of the Legislative Council will apply to the Committee’s proceedings. Assembly Standing Orders 249, 252, 254, 262, 263 and 264 will also apply to the Assembly members of the Joint Standing Committee.*”

Participation on Joint Committees

1.10 The Joint Committee notes there are different standards for appointment as a Participating Member on the Joint Committee in both Chambers. An Assembly Member must be appointed by the Assembly, whereas a Council Member may be appointed by leave of the Joint Committee.

Conclusion

1.11 The Joint Committee is of the view that there is a lack of equity between Council and Assembly Members in the rules for appointment as a Participating Member on the Joint Committee.

Outcomes

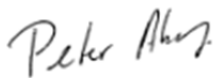
1.12 Two issues arise from the foregoing.

- Firstly, it is completely unclear which Standing Orders apply to the Joint Committee.
- Secondly, regardless of which Standing Orders apply, they have different application between members of both Houses.

1.13 This lack of equity between members of the Legislative Council and the Legislative Assembly suggests a contradiction of the principle of equality between members of joint committees.

Recommendation

Recommendation 1: The Committee recommends that the Legislative Council and the Legislative Assembly clarify which Standing Orders are to apply to the Joint Committee. Further the Houses should clarify how such Standing Orders are to be applied, to ensure equitable treatment of Members from both Houses.



Mr Peter Abetz MLA

Chair

31 October 2013