



THIRTY-EIGHTH PARLIAMENT

REPORT 13
STANDING COMMITTEE ON LEGISLATION
ANNUAL REPORT 2008

Presented by Hon Ken Baston MLC (Chairman)

December 2008

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 any amendment recommended by the Committee must be consistent with the policy of a Bill.”

Members during this reporting period:

Hon Graham Giffard MLC (Chair)
until 10 August 2008

Hon Giz Watson MLC (Deputy Chair)

Hon Peter Collier MLC
until 8 October 2008

Hon Helen Morton MLC
from 6 November 2008

Hon George Cash MLC
(substitute Member on the inquiry into the jurisdiction and operation of the State Administrative Tribunal for Hon Peter Collier MLC until 7 August 2008 and for Hon Helen Morton MLC from 14 November 2008)

Hon Ken Baston MLC
(Chairman from 12 November 2008)

Hon Dr Sally Talbot MLC

Hon Adele Farina MLC
from 6 November 2008 to 11 November 2008

Hon Matt Benson-Lidholm MLC
from 11 November 2008

Hon Kate Doust MLC
(participating Member with leave to deliberate on the inquiry into the Surrogacy Bill 2007)

Staff during this reporting period:

Ms Denise Wong, Advisory Officer (Legal)

Ms Amanda Gillingham, Research Officer

Mr Lindsay Dodd, Articled Clerk

Mr Mark Warner, Committee Clerk

Ms Lavina Mandy, Articled Clerk

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REPORT OF THE STANDING COMMITTEE ON LEGISLATION

ANNUAL REPORT 2008

1 INTRODUCTION

- 1.1 Prior to the 36th 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 on their work during that period for tabling in the Legislative Council (**Council or House**).
- 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 36th Parliament. Reflecting this shift in practice, in the 37th Parliament, and now in the 38th Parliament, parliamentary committees of the Council table annual reports relating to their work during the calendar year.

2 REPORTING PERIOD

- 2.1 This report covers a 12-month period of activity by the Standing Committee on Legislation (**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.

3 ESTABLISHMENT OF THE COMMITTEE

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

4 TERMS OF REFERENCE

- 4.1 The Committee's terms of reference are set out on the inside cover of this Report.
- 4.2 The functions of the Committee are to consider and report on any bill referred by the Council or under Standing Order 125A (that is, referred by the Council at the

¹ Hon Kim Chance MLC, Minister for Agriculture and Leader of the House, Parliament of 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, Parliament of Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 25 June 2003, p9150.

recommendation of the Business Management Committee³). Most bills can be referred by the 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).
- 4.4 The Committee does not scrutinise all bills introduced into the Council as a matter of course; it only scrutinises bills if they are specifically referred by the Council. The Committee cannot amend a bill, but may make narrative-form recommendations and/or statutory-form recommendations to amend a bill in its report to the Council. Unless otherwise ordered by the Council, any amendment recommended by the Committee must be consistent with the policy of a bill.
- 4.5 The Committee is able to consider bills in more detail than would be possible in the limited time available in the Council itself, and to report its findings to the Council. This process allows for the effective mediation of differing views on issues. It can also allow and encourage interested members of the public to participate in parliamentary proceedings.
- 4.6 Under its terms of reference, the Committee's inquiries focus on the feasibility, clarity and technical competence of a bill. The Committee also considers any abrogation or curtailment of various, fundamental legislative scrutiny principles.⁴

5 COMMITTEE MEMBERSHIP

- 5.1 The Committee consists of five Members. During 2008, the following Members served on the Committee:
- Hon Graham Giffard MLC was a Member and the Chair of the Committee until 10 August 2008. On 6 November 2008, Hon Adele Farina MLC replaced Hon Graham Giffard on the Committee when she was appointed by the President pursuant to Standing Order 312. On 11 November 2008, the House appointed Hon Matt Benson-Lidholm MLC to replace Hon Adele Farina.
 - Hon Giz Watson MLC, Deputy Chair.

³ Standing Order 125A is quoted in **Appendix 1**. The Committee understands that the Business Management Committee has operated in a limited and informal manner.

⁴ These principles are attached in **Appendix 2**.

- Hon Dr Sally Talbot MLC.
- Hon Ken Baston MLC. He was elected the Chairman of the Committee on 12 November 2008.
- Hon Peter Collier MLC was a Member of the Committee until 8 October 2008. On 6 November 2008, Hon Helen Morton MLC replaced Hon Peter Collier on the Committee when she was appointed by the President pursuant to Standing Order 312.

6 STAFF AND SUPPORT SERVICES

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

- Ms Denise Wong, Advisory Officer (Legal);
- Ms Amanda Gillingham, Research Officer;
- Mr Mark Warner, Committee Clerk;
- Ms Lavina Mandy, Articled Clerk; and
- Mr Lindsay Dodd, Articled Clerk.

7 INQUIRIES

Surrogacy Bill 2007

- 7.1 The Surrogacy Bill 2007 was referred to the Committee on 14 November 2007 with a reporting deadline of 10 April 2008. On 3 April 2008, a request for an extension of the reporting deadline to 8 May 2008 was sought by the Committee and granted by the Council.
- 7.2 Hon Kate Doust MLC participated, with leave to deliberate, on this inquiry pursuant to Standing Order 326. The Committee extends its appreciation to Hon Kate Doust for her contribution to the inquiry.
- 7.3 The bill aimed to provide for the regulation of surrogacy arrangements and for the parentage of children who are born as a result of these arrangements. The Committee's report⁵, tabled 8 May 2008, focused on specific issues and clauses of the bill and contained 12 narrative-form recommendations to amend the bill. Eleven of these recommendations were unanimous.

⁵ Parliament of Western Australia, Legislative Council, Standing Committee on Legislation, Report 12, *Surrogacy Bill 2007*, 8 May 2008.

7.4 The Committee formed a subcommittee, consisting of Hon Graham Giffard, Hon Giz Watson and Hon Kate Doust, to liaise with the Parliamentary Counsel's Office on the drafting of statutory-form amendments which would bring the Committee's recommendations for narrative-form amendments into effect.

Inquiry into the Jurisdiction and Operation of the State Administrative Tribunal

7.5 This inquiry was referred to the Committee on 7 June 2007 pursuant to section 173 of the *State Administrative Tribunal Act 2004*, which provides that:

As soon as practicable after the end of the period of 2 years after the day on which section 7 comes into operation [that period ended on 1 January 2007] an inquiry into the jurisdiction and operation of the [State Administrative] Tribunal is to be conducted by –

- (a) *a committee of the Legislative Council established to conduct that inquiry; or*
- (b) *an existing committee of the Legislative Council upon which the function of conducting that inquiry is conferred by that House.*

7.6 The Committee held 12 hearings in relation to this inquiry in 2008, the details of which are contained in the following table:

Table 1: Hearings for the Inquiry into the Jurisdiction and Operation of the State Administrative Tribunal for 2008

Date	Witness	Public/Private Status
15 February 2008	State Administrative Tribunal	Public
25 March 2008	Department of the Attorney General	Public
30 April 2008	Department of Environment and Conservation	Public
30 April 2008	Office of the Appeals Convenor	Public
30 April 2008	Environmental Defender's Office of Western Australia	Public
7 May 2008	Australian Veterinary Association (Western Australian Division)	Public
7 May 2008	Veterinary Surgeons' Board of Western Australia	Public

Date	Witness	Public/Private Status
7 May 2008	Office of the Public Advocate	Public
7 May 2008	Environmental Protection Authority	Public
14 May 2008	Disability Services Commission	Public
14 May 2008	Western Australian Planning Commission	Public
14 May 2008	LEADR Association of Dispute Resolvers	Public

7.7 On 7 August 2008, the Committee was still in the process of gathering further information and drafting its report when the 2008 State Election was called, the 37th Parliament was prorogued and the Legislative Assembly was dissolved.⁶ The prorogation of the 37th Parliament terminated this inquiry. However, this inquiry was re-referred to the Committee on 11 November 2008 in the 38th Parliament.⁷

7.8 During 2008, for the purposes of this inquiry, Hon George Cash MLC substituted:

- Hon Peter Collier until 7 August 2008; and
- Hon Helen Morton from 14 November 2008,

pursuant to Standing Order 326A. The Committee extends its appreciation to Hon George Cash for his contribution to the inquiry to date.

7.9 The Committee also acknowledges and thanks:

- the State Administrative Tribunal for its assistance in this inquiry; and
- the individuals who, and organisations which, provided evidence and information as part of the inquiry.

8 CONCLUSION

8.1 The Committee considers that:

- it has an important role in assisting the Council to consider and review proposed legislation and to inquire into any other matter which is referred; and

⁶ *Western Australian Government Gazette*, Number 135 Special, 7 August 2008, p3497.

⁷ Parliament of Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 11 November 2008, p53.

- in the time made available to the Committee for this function during the reporting period, it has operated efficiently and effectively, and plays a major role in the legislative process.



Hon Ken Baston MLC
Chairman
4 December 2008

APPENDIX 1

STANDING ORDER 125A

Arrangement of business

- 125A. (1) In this order “**Committee**” means a meeting of the Leader of the House with the Leader of the Opposition and such other Members as the Leader of the House may invite.
- (2) The Committee shall meet at a time and place fixed by the Leader of the House.
- (3) The Committee is to discuss with the Leader of the House:
- (a) the content, order, and routine of business for each sitting day in the following week;
 - (b) a day or days by which each or any of the remaining stages of a Bill might be completed;
 - (c) the referral of a Bill or other matter to a specified committee and, if desired, a date on which that committee report on the Bill or other matter;
 - (d) such things, consistent with the rules and orders of the House, as will facilitate the orderly conduct of business.
- (4) Nothing in this order affects the operation of SO’s 127 and 129.

APPENDIX 2

FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

Does the Bill have sufficient regard to the rights and liberties of individuals?

1. Are rights, freedoms or obligations dependent on administrative power only if sufficiently defined and subject to appropriate review?
2. Is the Bill consistent with principles of natural justice?
3. Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?
4. Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?
5. Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?
6. Does the Bill provide appropriate protection against self-incrimination?
7. Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?
8. Does the Bill confer immunity from proceeding or prosecution without adequate justification?
9. Does the Bill provide for the compulsory acquisition of property only with fair compensation?
10. Does the Bill have sufficient regard to Aboriginal and Torres Strait Islander tradition?
11. Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

Does the Bill have sufficient regard to the institution of Parliament?

12. Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?
13. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?
14. Does the Bill allow or authorise the amendment of an Act only by another Act?
15. Does the Bill affect parliamentary privilege in any manner?

16. In relation to uniform legislation where the interaction between state and federal powers is concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament?