

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

*Eighty-first Report — “Explanatory Report in relation to the School Education Amendment Regulations 2014”
— Tabling*

MR P. ABETZ (Southern River) [9.54 am]: I am directed to present for tabling, the eighty-first report of the Joint Standing Committee on Delegated Legislation. This explanatory report concerns the School Education Amendment Regulations 2014.

[See paper 2733.]

Mr P. ABETZ: These amendment regulations provide for the charging and waiving of a fee for the education of dependents of 457 visa holders attending public schools, while retaining an entitlement to enrol at local intake schools. The committee noted that the manner in which the amendment regulations effected these changes was unwieldy, difficult to follow and unnecessarily complex. The committee did not give notice of motion to disallow the amendment regulations but observed that notice of motion to disallow had been given on 19 November 2014 by Hon Sue Ellery, MLC, on behalf of Hon Stephen Dawson, MLC. The committee resolved to prepare this explanatory report to assist the house during debate on the disallowance motion.

The committee held a hearing into the amendment regulations on 25 February 2015 with the Minister for Education and four witnesses from the Department of Education. The committee noted that prior to the amendment regulations, the principal regulations already contained a sub-delegation to the director general of Education to determine fees payable by overseas students but that it was much more limited in scope. The amendment regulations extend the sub-delegation to include reference to such matters as the director general thinks fit, specifically, to setting fee amounts to cover whole visa categories and other groups of students.

The committee concluded that the effect of the amendment regulations is to sub-delegate to the director general the power to prescribe fees payable by overseas students under the School Education Act 1999 in a manner, and to an extent not authorised by that act, and beyond the constraints that have historically applied to these types of arrangements. This is the committee’s view notwithstanding the provisions of the Interpretation Act 1984 and other matters raised by the minister.

The committee also noted that under the regulations, the director general is able to set fees for overseas students up to a maximum of \$25 000, which is significantly higher than the average cost of instruction for both primary and secondary students. The committee concluded that the prescribed maximum of \$25 000 bears no reasonable relationship to the cost of the provision of instruction to overseas students and, in many cases, will be significantly higher than the actual cost. The provision therefore enables the imposition of an unauthorised tax and is not within power. For these reasons, the committee concluded that parts of the amendment regulations are not within power. The committee commends the report to the house.

[Quorum formed.]