

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Eighty-ninth Report — “Annual Report 2016” — Tabling

MR P. ABETZ (Southern River) [11.39 am]: I present for tabling the eighty-ninth report of the Joint Standing Committee on Delegated Legislation, titled “Annual Report 2016”.

[See paper 4895.]

Mr P. ABETZ: The report I have just tabled advises the house of the activities of the Joint Standing Committee on Delegated Legislation during 2016 and comments on significant issues that have arisen during that time. The committee continues to scrutinise a large number of instruments of delegated legislation. Up to 31 October 2016, the committee was referred 340 instruments, including 168 sets of regulations and 104 local laws. In that same period, only two instruments were disallowed by this house on the recommendation of the committee, with all other problematic instruments dealt with behind the scenes. It is this method of handling problem cases, without recourse to the disallowance powers of the house, that is one of the major strengths of the committee.

Other matters dealt with in the report include the effect of the passing by this Parliament of the Local Government Legislation Amendment Bill 2014; the inclusion of administrative appeal rights in hospital and TAFE by-laws; the release of the committee’s reports this year into access to Australian standards incorporated in delegated legislation; and the use of determination devices by local governments to sub-delegate administrative decisions.

The committee takes this opportunity to thank the ministers, departments and local governments that provided assistance during the year. The committee appreciates the work performed by local governments that often, with limited resources, undertake the difficult challenge of drafting local laws. The committee also appreciates the contributions made by the Department of Local Government and Communities and the Western Australian Local Government Association in assisting local governments with drafting their local laws. Personally, as chair of the committee for the last four years, I would like to thank the staff for their excellent work. I commend the report to the house.

*Ninetieth Report — “Energy Operators (Electricity Generation and Retail Corporation)
(Charges) Amendment By-laws 2016” — Tabling*

MR P. ABETZ (Southern River) [11.41 am]: I present for tabling the ninetieth report of the Joint Standing Committee on Delegated Legislation, titled “Energy Operators (Electricity Generation and Retail Corporation) (Charges) Amendment By-laws 2016”.

[See paper 4896.]

Mr P. ABETZ: The report that I have just tabled is the committee’s disallowance report in support of Legislative Council order of the day 1, Energy Operators (Electricity Generation and Retail Corporation) (Charges) Amendment By-laws 2016—disallowance, currently scheduled for debate on 24 November 2016. According to the explanatory memorandum supplied to the committee with this instrument, one of the fees amended by it resulted in a cost recovery by Synergy of some 157 per cent. In correspondence appended to the report, the Minister for Energy revised the costings, but even that revised figure resulted in a cost recovery of some 143 per cent of the actual costs incurred by Synergy in pursuing customers who are late in paying their electricity bills.

The committee takes the view, as it has long done, that any cost recovery in excess of 100 per cent results in the imposition of a tax. As members will be well aware, only Parliament may impose a tax; it cannot be imposed by the executive under delegated powers in the absence of a specific taxing provision in the empowering act. It is not in dispute that the empowering statute in this case, the Energy Operators (Powers) Act 1979, lacks such a taxing provision. It is therefore the conclusion of the committee that the amendment made to item 10 of schedule 4 to the Energy Operators (Electricity Generation and Retail Corporation) (Charges) By-laws 2006, by row 4 of the table in by-law 5 of the Energy Operators (Electricity Generation and Retail Corporation) (Charges) Amendment By-laws 2016, is beyond the powers delegated to Synergy, with the approval of the Governor, under section 124 of the Energy Operators (Powers) Act 1979, and should be disallowed. I commend the report to the house.