



THIRTY-NINTH PARLIAMENT

REPORT 71
JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION
INQUIRY INTO A SYSTEMIC ISSUE ARISING OUT
OF NINE COURT AND TRIBUNAL INSTRUMENTS –
TERMS OF REFERENCE

Presented by Mr Peter Abetz MLA (Chairman)

and

Hon Robin Chapple MLC (Deputy Chair)

April 2014

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:

“10. Joint Standing Committee on Delegated Legislation

- 10.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 10.2 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.
- 10.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 10.4 (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.
- 10.5 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.
- 10.6 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.
- 10.7 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.
- 10.8 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 (Chairman)	Hon Robin Chapple MLC (Deputy Chair)
Hon John Castrilli MLA	Hon Peter Katsambanis MLC
Hon Mark Lewis MLC	Ms Simone McGurk MLA
Mr Paul Papalia MLA	Hon Ljiljana Ravlich MLC

Staff as at the time of this inquiry:

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

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REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

REPORT 71: –INQUIRY INTO A SYSTEMIC ISSUE ARISING OUT OF NINE COURT AND TRIBUNAL INSTRUMENTS –TERMS OF REFERENCE

1 REFERENCE AND PROCEDURE

1.1 On 2 April 2014 the Joint Standing Committee on Delegated Legislation (**Committee**) resolved to conduct an own motion inquiry arising out of its scrutiny into fee increases by the Department of the Attorney General across nine court and tribunal instruments. The Instruments are the:

- Children’s Court (Fees) Amendment Regulations 2013;
- Civil Judgments Enforcement Amendment Regulations 2013;
- Coroners Amendment Regulations 2013;
- District Court (Fees) Amendment Regulations (No.2) 2013;
- Evidence (Video and Audio Links Fees and Expenses) Amendment Regulations 2013;
- Magistrates Court (Fees) Amendment Regulations (No.2) 2013;
- State Administrative Tribunal Amendment Regulations (No.4) 2013;
- Supreme Court (Fees) Amendment Regulations (No.2) 2013; and
- State Administrative Tribunal Amendment Regulations (No. 2) 2013.

1.2 Committee *Term of Reference* 10.7(b) states:

*It is also a function of the Committee to inquire into and report on-
any systemic issue identified in 2 or more instruments of subsidiary
legislation*

1.3 The Committee has identified a systemic issue relating to the above fee increase instruments, which has been resolved with respect to instruments that increase fees gazetted by other agencies and departments. Specifically, the relevant department, the Department of the Attorney General:

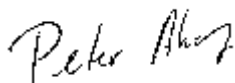
- is unable to accurately cost its fees to the satisfaction of the Committee;
- in the absence of further information, lacks an appropriate costing model; and
- cannot cost fees individually.

1.4 Thus, pursuant to *Term of Reference* 10.7(b), the Committee has resolved to inquire into and report on:

- (1) *The actual methodology for calculating fee increases applied within the Department of the Attorney General;*
- (2) *The extent to which the Department of the Attorney General fee increases are calculated in accordance with relevant law, together with appropriate standards including Department of Treasury guidelines and Office of the Auditor General recommendations;*
- (3) *The extent to which individual Department of the Attorney General fees can be said to be reasonable cost recovery in all the circumstances; and*
- (4) *Other matters of relevance to the foregoing.*

1.5 The Committee will report its findings and recommendations during 2014.

1.6 Pursuant to Legislative Council Standing Order 179, the Committee acquaints the Houses accordingly.



Mr Peter Abetz MLA

Chairman

10 April 2014