



THIRTY-SEVENTH PARLIAMENT

REPORT BY

**HON GEORGE CASH MLC, CHAIRMAN OF COMMITTEES,
LEGISLATIVE COUNCIL OF WESTERN AUSTRALIA**

**REFLECTIONS ON THE LEGISLATIVE COUNCIL COMMITTEE
SYSTEM AND ITS OPERATIONS DURING
THE THIRTY-SIXTH PARLIAMENT:
*DISCUSSIONS WITH THE CHAIRS AND DEPUTY CHAIRS OF
PARLIAMENTARY COMMITTEES***

May 2005

Officer:

Mia Betjeman, Clerk Assistant (Committees)

Address:

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

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

CONTENTS

EXECUTIVE SUMMARY AND RECOMMENDATIONS.....	I
EXECUTIVE SUMMARY.....	I
RECOMMENDATIONS.....	II
1 OVERVIEW OF DISCUSSIONS.....	1
2 MATTERS RAISED IN DISCUSSIONS	2
3 TERMS OF REFERENCE FOR COMMITTEES	3
Discussion.....	3
Recommendations.....	7
4 SIZE AND MEMBERSHIP OF COMMITTEES, AND SUBCOMMITTEES	7
Discussion.....	7
Recommendations.....	10
5 APPOINTMENT OF MEMBERS TO COMMITTEES	10
Discussion.....	10
Recommendation	11
6 DAYS AND TIMES FOR COMMITTEE MEETINGS.....	11
Discussion.....	11
Recommendations.....	13
7 COMMITTEE TRAVEL.....	14
Discussion.....	14
Recommendation	14
8 COMMITTEE RESOURCES	15
Staffing of committees.....	15
Discussion	15
Recommendations	18
Committee meeting rooms and offices	18
Discussion	18
Recommendation.....	19
Committee seating arrangements	19
Discussion	19
Recommendation.....	19
Parliamentary draftsman	20
Discussion	20
Recommendations	20
Committee funding	20
Discussion	20
Recommendation.....	21
9 OPERATIONAL MATTERS PERTAINING TO COMMITTEES: FLEXIBLE PROCEDURES ..	21
Overview.....	21
Conducting inquiries - clear terms of reference.....	22
Discussion	22
Recommendation.....	23

	Formality of committee proceedings - conduct of proceedings.....	23
	Discussion	23
	Recommendation	24
	Written tools for Chair.....	24
	Discussion	24
	Recommendations	25
	Delegation to Committee Chair, standing resolutions and circular resolutions.....	25
	Discussion	25
	Recommendation	27
	Disclosure of committee deliberations	27
	Discussion	27
	Recommendation	27
	Members amending draft reports.....	28
	Discussion	28
	Recommendation	29
	Liaison between Committee Chair and staff	29
	Discussion	29
	Recommendation	30
	Note taking during committee hearings.....	30
	Recommendation	30
10	OPERATIONAL MATTERS PERTAINING TO COMMITTEES: INSTANTANEOUS	
	COMMUNICATION DEVICES	30
	Discussion.....	30
	Recommendations	34
11	COMMITTEE REPORTS	35
	Length of committee reports.....	35
	Discussion	35
	Recommendation	36
	Consideration of committee reports in the Legislative Council	36
	Discussion	36
	Recommendation	37
	Government responses.....	37
	Discussion	37
	Recommendation	37
12	REFERRAL OF LEGISLATION TO COMMITTEES	37
	Discussion.....	37
	Recommendation	38
13	INDUCTION AND PROFESSIONAL DEVELOPMENT FOR MEMBERS	38
	Discussion.....	38
	Recommendations	41
14	INDUCTION AND PROFESSIONAL DEVELOPMENT FOR COMMITTEE CHAIRS.....	42
	Title of committee convenor.....	42
	Discussion	42
	Recommendation	42

Induction and professional development	42
Discussion	42
Recommendations	44
15 PARLIAMENTARY COMMITTEE EDUCATION FOR THE PUBLIC SECTOR.....	45
16 THE OPERATIONS OF THE ESTIMATES COMMITTEE	46
Background.....	46
Discussion.....	47
Recommendations.....	50
17 OTHER MATTERS.....	51
Select committees	51
Discussion	51
Recommendations	52
APPENDIX 1 USE OF INSTANTANEOUS COMMUNICATION DEVICES BY THE NEW ZEALAND AND AUSTRALIAN PARLIAMENTS (AS AT DECEMBER 2004)	53
APPENDIX 2 LEGISLATIVE COUNCIL BRIEFINGS: SOME TOPICS	57
APPENDIX 3 COMMITTEE MEMBERS GUIDELINES: TOPICS	59

EXECUTIVE SUMMARY AND RECOMMENDATIONS

REPORT BY HON GEORGE CASH MLC, CHAIRMAN OF COMMITTEES, LEGISLATIVE COUNCIL OF WESTERN AUSTRALIA

REFLECTIONS ON THE LEGISLATIVE COUNCIL COMMITTEE SYSTEM AND ITS OPERATIONS DURING THE THIRTY-SIXTH PARLIAMENT: *DISCUSSIONS WITH THE CHAIRS AND DEPUTY CHAIRS OF PARLIAMENTARY COMMITTEES*

EXECUTIVE SUMMARY

- 1 During the Thirty-Sixth Parliament committees were extremely active. The experiences of Members serving as a Chair or Deputy Chair of a committee administered by the Legislative Council during that Parliament was recognised as being of great assistance in considering initiatives relating to the Legislative Council committee system and the operation of its committees.
- 2 During the later half of 2004, Members who had served as either Chair or Deputy Chair of a standing or select committee administered by the Legislative Council, raised a number of issues with Mia Betjeman, Clerk Assistant (Committees) and myself. Of particular interest were the Members' views on changes that they considered would improve the current committee system.
- 3 The focus of the discussions was on assessing the value of matters developed so far and sharing strategies and ideas.
- 4 This report summarises the matters discussed with Members, makes some observations on initiatives currently under development, and offers some suggestions for the future.
- 5 A number of recommendations are made. Some of the recommendations are already being addressed. Where this is the case, observations have been made in the relevant text of the report.
- 6 Some issues are able to be addressed within the power of committees themselves, others are for the consideration of the Legislative Council and the *Procedure and Privileges Committee*, or for consideration by the Clerk of the Legislative Council as it is his department that is responsible for matters such as training programs and resources.
- 7 The consideration of some matters will also be influenced by the composition of the Chamber in the next Parliament and may require further consideration and consultation with Members.

RECOMMENDATIONS

Page 7

Recommendation 1: It is recommended that consideration be given to establishing a discrete petitions committee with a membership of three.

Page 7

Recommendation 2: It is recommended that consideration be given to providing a committee with a term of reference to address the form and content of the statute book and matters of law reform.

Page 7

Recommendation 3: It is recommended that the *Procedure and Privileges Committee* consider whether the Standing Orders should be amended to require committees commencing an ‘own-motion inquiry’ to report such inquiry to the Legislative Council within a certain number of days. In the interim it is recommended that committees consider adopting a practice of reporting committee resolutions to commence ‘own-motion inquiries’ to the Legislative Council by way of report.

Page 10

Recommendation 4: It is recommended that greater awareness be fostered amongst committees as to the use of subcommittees for committee inquiries or specific items of business.

Page 10

Recommendation 5: It is recommended that the Standing Orders be amended to provide that membership of standing committees comprise no more than five Members save and except for:

- membership of the *Delegated Legislation Committee* to consist of eight (four from each House); and
- membership of any discrete petitions committee and the *Uniform Legislation and General Purposes Committee* to consist of three.

Page 10

Recommendation 6: It is recommended that greater awareness be fostered as to the mechanisms, other than full committee membership, by which Members can participate in committee inquiries.

Page 11

Recommendation 7: It is recommended that, following an election and as soon as the Legislative Council Seats are declared, a letter is sent to all Members-Elect advising of the committee system and types of committees.

Page 13

Recommendation 8: It is recommended that greater awareness be fostered amongst committees as to the ability of committees to seek leave to sit whilst the House is sitting.

Page 13

Recommendation 9: It is recommended that, should the Standing Orders be revised to commence sittings of the House on Wednesdays prior to 3.30pm, consideration be given to commencing sittings no earlier than 2.00pm to enable time for committee meetings to principally occur on Wednesday mornings.

Page 13

Recommendation 10: It is recommended that, if the Standing Orders are revised to rearrange sitting days and times for the House, the matters raised in paragraph 6.11 are considered.

Page 14

Recommendation 11: It is recommended that when arrangements are made for committee hearings to be held offsite, the matters referred to in paragraph 7.4 be considered.

Page 18

Recommendation 12: It is recommended that greater awareness be fostered within committees in relation to the use of limited committee resources and that such matters be taken into account in planning any committee work program.

Page 18

Recommendation 13: It is recommended that the current staffing support available to standing committees be reviewed to:

- ensure that current standing committees are adequately resourced with advisory and support personnel; and
- any revision of the Standing Orders resulting in an increase in the number of committees is reflected in a corresponding increase in staffing resources.

Page 18

Recommendation 14: It is recommended that consideration be given to increasing the use of specialist and consultant contract advisers for committee inquiries.

Page 18

Recommendation 15: It is recommended that consideration be given to using departmental advisers to advise a committee during an inquiry and, in particular, during inquiries into legislative proposals.

Page 19

Recommendation 16: It is recommended that consideration be given to the development of committee facilities in Parliament House. In the interim consideration should be given to:

- the procurement of larger premises for the Legislative Council Committee Office; and
- the use, by Legislative Council committees, of Legislative Assembly Committee Office committee hearing room facilities.

Page 19

Recommendation 17: It is recommended that consideration be given to reviewing the seating arrangements during committee hearings to afford easier consultation between committee staff and the Committee Chair.

Page 20

Recommendation 18: It is recommended that inquiries be made of Parliamentary Counsel's Office as to when, and under what circumstances, drafting assistance may be provided to parliamentary committees.

Page 20

Recommendation 19: It is recommended that consideration be given to securing the services of a qualified draftsman to be engaged by Parliament as a dedicated Parliamentary Draftsman to provide drafting services to the Houses and their committees.

Page 21

Recommendation 20: It is recommended that the current funding provided to the Legislative Council be reviewed, particularly in light of the continuing growth of the Legislative Council committee system.

Page 23

Recommendation 21: It is recommended that greater awareness be fostered amongst Committee Members as to:

- the most effective use of parliamentary committees and the type and scope of inquiries for which parliamentary committees may be best suited;
- the need to ensure clear terms of reference for inquiries; and
- making use of panels of experts who may assist in identifying the principal issues that the committee should examine, the identification of relevant witnesses and the issuing of discussion papers on a topic to foster areas of agreement.

Page 24

Recommendation 22: It is recommended that committees consider using operational flexibility in the conduct of their proceedings whilst having due regard to parliamentary privilege and the parliamentary environment. Attention is drawn to the matters raised in paragraphs 9.9 to 9.12.

Page 25

Recommendation 23: It is recommended that the materials used by committees in the conduct of hearings be reviewed to make them simpler and clearer and to facilitate delivery in a more flexible manner.

Page 25

Recommendation 24: It is recommended that Committee Chairs adjust the style of delivery of introductory statements at hearings to suit the particular circumstances and audience.

Page 27

Recommendation 25: It is recommended that committees consider using flexibility in the manner in which inquiries are progressed, for example, in appropriate circumstances delegating certain decisions to a Member and the ability to adopt standing resolutions.

Page 27

Recommendation 26: It is recommended that committees note their ability to authorise the Committee Chair or a Member/s to consult with the Minister, particularly where it is desirable to facilitate the progress of a committee's inquiry.

Page 29

Recommendation 27: It is recommended that:

- inquiries be made whether, and if so in what form, a facility should be made available to Committee Members that will enable them to individually mark up draft reports in a manner that differentiates each author; and
- inquiries be made whether, and if so in what form, an encryption facility should be made available to Committee Members and committee staff and whether there should be e-mail transfer of deliberative committee documents.

Page 30

Recommendation 28: It is recommended that greater awareness be fostered amongst Committee Chairs in relation to liaison between Chairs and committee staff.

Page 30

Recommendation 29: It is recommended that the *Procedure and Privileges Committee* consider whether practice and procedure should be amended to enable note taking by the public in Legislative Council committee hearings. It is noted that this may require consideration of the practice in the Chamber.

Page 34

Recommendation 30: It is recommended that guidelines for the use of instantaneous communication devices by committees be issued and that committees refer to those guidelines when considering whether to use the technology in their inquiries.

Page 34

Recommendation 31: It is recommended that committees consider making greater use of instantaneous communication devices in taking evidence from witnesses and experts in appropriate circumstances, and have due regard to the present advantages and limitations of using that medium.

Page 35

Recommendation 32: It is recommended that the *Procedure and Privileges Committee*:

- consider what amendments are required to the existing law to enable the use of instantaneous communication devices by parliamentary committees;
- consider amendments required to the Standing Orders to expressly authorise the use of instantaneous communication devices; and
- consider what steps may be taken with other Australian jurisdictions to provide comity and to ensure uniform privileges are granted by each Parliament to Members of other Parliaments when taking evidence using instantaneous communication devices between States.

Page 36

Recommendation 33: It is recommended that greater awareness be fostered amongst committees in relation to different methods of communicating information both within the committee, and by committees to the House, with a view to reducing the length of committee reports and the time required by a committee to consider a report.

Page 37

Recommendation 34: It is recommended that the matters raised in paragraphs 11.5 to 11.8 in relation to the consideration of committee reports in the House be considered by the *Procedure and Privileges Committee* and during any revision of the Sessional Orders that operated during the Thirty-Sixth Parliament.

Page 37

Recommendation 35: It is recommended that consideration be given to amending the Notice Paper to include a section noting when a government response was requested for a committee report and when that response is due or outstanding.

Page 38

Recommendation 36: It is recommended that the *Business Management Committee* take a more proactive role negotiating a more efficient and effective flow of legislation through both the committee system and the House.

Page 41

Recommendation 37: It is recommended that a specific induction be provided to Members in relation to committees and committee processes. Reference is made to the matters discussed in paragraphs 13.4 and 13.5.

Page 41

Recommendation 38: It is recommended that throughout the parliamentary term occasional seminars or discussion forums could be offered on matters of interest to the Members. Reference is made to the matters discussed in paragraph 13.7

Page 41

Recommendation 39: It is recommended that a written guide to the practice and procedure of committees be prepared and made available to Committee Members on their appointment.

Page 42

Recommendation 40: It is recommended that the reference in the Standing Orders to the convenor of a committee as 'Chairman' be considered by the *Procedure and Privileges Committee* with regard to the view expressed by some Members that the reference should be to 'Chair'.

Page 44

Recommendation 41: It is recommended that a specific induction be provided to Committee Chairs to foster effective committee chairmanship. Reference is made to the matters discussed in paragraph 14.6.

Page 44

Recommendation 42: It is recommended that a panel of Members comprising the Chairman of Committees and the Chairs of standing committees - a *Chairs' Forum* - be formed with a view to securing the more efficient functioning of committees. The forum might discuss such matters as challenges met within the exercise of their functions, make best practices observed in committees more widely known and develop *esprit de corps* amongst Committee Chairs.

Page 44

Recommendation 43: It is recommended that the *Chairs' Forum* meet and hold discussions on a regular basis during sitting weeks. Although this may be dependent on the parliamentary sitting pattern, it is recommended that such meetings occur four times a year.

Page 45

Recommendation 44: It is recommended that a timetable for meetings of the *Chairs' Forum* for the parliamentary year be issued to Committee Chairs at the beginning of the parliamentary cycle to provide adequate notice so that the meetings may be noted in their diaries.

Page 45

Recommendation 45: It is recommended that a written guide to the practice and procedure of committee chairmanship be prepared and made available to Committee Chairs on their appointment.

Page 46

Recommendation 46: It is recommended that consideration be given to the Department of the Legislative Council offering a seminar program to the public sector with a view to enhancing the working relationship between public sector employees and parliamentary committees.

Page 50

Recommendation 47: It is recommended that consideration be given to ensuring that a committee of the Legislative Council is provided with the mandate to examine the expenditure of public monies.

Page 51

Recommendation 48: It is recommended that any proposal to establish an *Estimates Committee*, as provided by previous Sessional Orders of the Thirty-Sixth Parliament, be fully considered by the *Procedure and Privileges Committee* and the matters raised in this report and the reports of previous *Estimates Committees* be taken into account.

Page 52

Recommendation 49: It is recommended that the *Procedure and Privileges Committee* review the Standing Orders that apply to standing committees and select committees to consider whether to apply Chapter XXII of the Standing Orders to all committees.

Page 52

Recommendation 50: It is recommended that prior to moving a motion to establish a select committee the mover should be required to discuss the funding and staffing requirements with the Clerk.

**REPORT BY HON GEORGE CASH MLC, CHAIRMAN OF COMMITTEES,
LEGISLATIVE COUNCIL OF WESTERN AUSTRALIA**

**REFLECTIONS ON THE LEGISLATIVE COUNCIL COMMITTEE SYSTEM
AND ITS OPERATIONS DURING THE THIRTY-SIXTH PARLIAMENT:
*DISCUSSIONS WITH THE CHAIRS AND DEPUTY CHAIRS OF PARLIAMENTARY COMMITTEES***

1 OVERVIEW OF DISCUSSIONS

- 1.1 The modern Legislative Council committee system has been in operation since 1989. The last formal comprehensive review was conducted in 1997,¹ although the committee system is continually being reviewed and refined to address particular issues. It is usual for changes to the committee system to be implemented at the beginning of a new Parliament.
- 1.2 In preparation for and during the Thirty-Seventh Parliament, a number of initiatives are being considered to address the practice and procedure of committees and the Legislative Council committee system. The initiatives endeavour to assist and enhance Members' roles and contributions as Committee Members. They can also assist in increasing community awareness of, and involvement in, committees.
- 1.3 On August 30 2004, during the Thirty-Sixth Parliament, I invited those Members serving as Chair or Deputy Chair to share their thoughts on the committee system with Mia Betjeman, Clerk Assistant (Committees) and myself. Of particular interest were the Members' views on changes that they considered would improve the current committee system.
- 1.4 Over the ensuing few months, finalising on December 23 2004, the Clerk Assistant (Committees) and I met with 11 Members who had served as either Chair or Deputy Chair of a standing or select committee administered by the Legislative Council.²
- 1.5 The focus of the discussions was on assessing the value of matters developed so far and sharing strategies and ideas. This report summarises the matters discussed with Members, makes some observations on initiatives currently under development, and offers some suggestions for the future.

¹ Western Australia, Legislative Council, Select Committee to Review the Legislative Council Standing Committee System, *Report*, August 1997.

² Discussions were held with Hons Ed Dermer, Kate Doust, Adele Farina, Jon Ford, Peter Foss, Ray Halligan, Barry House, Simon O'Brien, Barbara Scott, Christine Sharp, and Giz Watson MLCs.

1.6 I propose to discuss these matters with the Clerk of the Legislative Council with a view to changes being implemented during the Thirty-Seventh Parliament. I also intend to table this report in the Legislative Council and circulate a copy to all Members.

1.7 I take this opportunity to thank the Chairs and Deputy Chairs of committees who participated in the discussions; sharing their thoughts on the committee system and its operations and providing suggestions for improvement. I also express my appreciation to the Clerk Assistant (Committees), Ms Mia Betjeman, for her assistance during the discussions and the preparation of this report.

2 MATTERS RAISED IN DISCUSSIONS

2.1 Issues raised during discussions included:

- a) Terms of reference for committees.
- b) Size and membership of committees, and subcommittees.
- c) Appointment of Members to committees.
- d) Days and times for committee meetings.
- e) Committee travel.
- f) Committee resources.
- g) Operational matters pertaining to committees, including flexible procedures and the use of instantaneous communication devices.
- h) Committee reports.
- i) Referral of legislation to committees.
- j) Induction and professional development for Committee Members.
- k) Induction and professional development for Committee Chairs, including regular meetings of Committee Chairs.
- l) Benefits inherent for pursuing opportunities for greater parliamentary education for the public sector.
- m) The operation of the *Estimates Committee*.

- 2.2 Whilst the focus of the discussions was the Legislative Council committee system, during the course of conversation Members also commented on matters pertaining to the Legislative Council as a whole. These matters have been separately advised to the Table Officers.³

3 TERMS OF REFERENCE FOR COMMITTEES

Discussion

- 3.1 Since 1989, when the modern Legislative Council committee system was introduced, the areas of responsibility allocated to standing committees have been revised and realigned a number of times. The most recent changes occurred on May 24 2001 with the revision of Schedule 1 to the Standing Orders and on April 11 2002 with the creation of the *Uniform Legislation and General Purposes Committee* and the revision of the terms of reference for the *Legislation Committee*.
- 3.2 Legislative Council standing committees are essentially generic, ‘whole of Government’ committees with a broad, but distinct, focus in their potential subjects for inquiry. They are not restricted in their inquiries to specific Government portfolios, although each committee’s terms of reference defines a basic broad area of responsibility to avoid an overlap with another committee’s jurisdiction.
- 3.3 Discussions with Members on the current terms of reference of the standing committees revealed areas where it was considered responsibility could be created or enhanced. These are considered below.
- 3.4 During the discussions it was noted that:
- The number and type of standing committees is necessarily influenced by the committee membership that might be available in the Legislative Council, after taking into account ministerial roles, and this can result in some Members being members on more than one committee.
 - Committees need to be adequately resourced both with staff and meeting facilities. This matter is canvassed in section 8.

Delegated Legislation Committee

- 3.5 The operation of the *Delegated Legislation Committee* during the Thirty-Sixth Parliament was noted as being very effective and efficient. The amount of time required to consider local laws was significant and for this reason the services of two

³ Matters include: providing training for a Deputy Chairman in Committee of the Whole, providing a reference guide on a chair’s duties in committee which might include: responsibilities, practical hints, common matters of procedure and order, and a copy of relevant *President’s Rulings*. Also suggested was the provision of a list of common motions.

Advisory Officers was considered highly desirable. The ability to utilise the services of Articled Clerks was noted as being most useful.

Environment and Public Affairs Committee

- 3.6 The benefits of establishing a committee to consider the effect or possible effect of policies, practices and schemes on the environment was noted, however, views were expressed that the function of petitions scrutiny should be separated (refer to paragraphs 3.12 to 3.14).
- 3.7 The operation of the *Environment and Public Affairs Committee* with seven Members was noted as being challenging at times, probably due to the type of inquiries being considered by that committee, with many being own-motion inquiries.
- 3.8 The complexity of inquiries conducted by the committee along with the standing referral of petitions tabled in the Legislative Council resulted in an unrealistic workload.

Estimates Committee

- 3.9 Members noted the process for the consideration of the Annual Estimates of Expenditure and related documents (**Budget Papers**) during the Thirty-Sixth Parliament through an *Estimates Committee* established by Sessional Orders. Alternative methods of scrutiny were discussed. These matters are addressed in section 16.

Legislation Committee

- 3.10 The operation of the *Legislation Committee* during the Thirty-Sixth Parliament was noted as being very effective and efficient, particularly in view of the volume and type of legislation referred by the Legislative Council for consideration.
- 3.11 The multi-party membership and manner in which the committee operated was seen to be of great assistance to the subsequent passage of bills through the Legislative Council.

Petitions Committee

- 3.12 It was observed that the current *Environment and Public Affairs Committee*, to which petitions stand referred, established a permanent subcommittee of four Members to consider and process petitions.
- 3.13 Whilst a petition may be referred to any committee, in practice most petitions are referred to the *Environment and Public Affairs Committee*. That committee may refer a petition to another committee where the subject matter of the petition is within the competence of that other committee.

- 3.14 Members suggested that consideration be given to establishing a discrete petitions committee with a membership of three.⁴

Public Administration and Finance Committee

- 3.15 The operation of the *Public Administration and Finance Committee* during the Thirty-Sixth Parliament was noted as being effective and efficient. However, the combination of matters of public administration and financial review in the one committee was the subject of discussion and this is addressed in section 16.

Uniform Legislation and General Purposes Committee

- 3.16 The operation of the *Uniform Legislation and General Purposes Committee* during the Thirty-Sixth Parliament was noted as being effective and efficient, although the facility to co-opt membership was not utilised and there was a lack of recourse by Ministers to term of reference 7.3(b).⁵
- 3.17 It was suggested that an appropriate mechanism be introduced to require the Government to formally inform the Legislative Council when an intergovernmental agreement is being negotiated or has been concluded.⁶

Law reform and the quality of legislation

- 3.18 It was observed that a committee in a previous Parliament had a term of reference specifically addressing matters of law reform.⁷ It was proposed that during any realignment of the current committee system a committee be given a specific term of reference relating to matters of law reform.
- 3.19 Members also expressed concern about the quality and detail of legislation being introduced into Parliament. It was considered that there was a need for a Legislative Council committee to have an ability to review the form, structure, currency and content of enacted legislation and to ‘streamline bureaucracy’. Such matters should be in addition to a committee’s ability to review bills as and when they are referred.

⁴ I note that the *Environment and Public Affairs Committee* recommended the establishment of a discrete petitions committee in its 14th Report. Refer to: Legislative Council, Environment and Public Affairs Committee, *Sessional Report: An Overview of Petitions and Inquiries - Second Session of the Thirty Sixth Parliament (August 2004 to November 2004)*, November 2004, p95.

⁵ Term of reference 7.3(b) provides that the functions of the Committee are “... of its own motion or on a reference from a minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A”.

⁶ These matters are discussed in Chapters 2 and 5 of a report of the *Uniform Legislation and General Purposes Committee*, refer to Legislative Council, Uniform Legislation and General Purposes Committee, *Report No 19: Uniform Legislation and Supporting Documentation*, August 2004.

⁷ The terms of reference for the *Legislation Committee* of the Thirty-Fifth Parliament provided for that committee to consider and report on “... (b) what written laws of the State and spent or obsolete Acts of Parliament might be repealed from time to time; (c) what amendments of a technical or drafting nature might be made to the statute book; (d) the form and availability of written laws and their publication.”

- 3.20 In respect of the ‘streamlining of bureaucracy’, reference was made to the Ontario Red Tape Commission, which evaluates regulations with a view to determining whether they are still appropriate. It makes recommendations to streamline existing regulations by identifying those that should be rewritten or deleted entirely.⁸
- 3.21 It was proposed that during any realignment of the current committee system, a committee be given a specific term of reference relating to the statute book. This mandate should include removing obsolete or contradictory provisions, amending unclear language, correcting drafting, technical and typographical errors and omissions, updating and revising legislative references, and making other minor changes.
- 3.22 It was noted that any committee with this mandate should maintain consultative links with the State Law Publisher, Parliamentary Counsel’s Office and the Law Reform Commission of Western Australia.

Own-motion capacity

- 3.23 All committees should have the ability to commence their own inquiries. The ability for a committee to commence an ‘own-motion’ inquiry was seen as a positive attribute however it was recognised that the potential for committees to enthusiastically embrace an ‘own-motion’ power could result in a workload that was unrealistic and not focused.
- 3.24 It was suggested that where committees commence an inquiry of their own motion they should report the commencement of that inquiry to the Legislative Council. Notification would inform the Legislative Council of the committee’s workload. It was also mooted that the ‘own-motion’ resolution of the committee to conduct an inquiry could be subject to disallowance by the Legislative Council or require ratification by the Legislative Council within a certain period of time.

⁸ “What is red tape? Red tape refers to government measures that impede job creation and investment opportunities and diminish competitiveness by adding unnecessary, uncoordinated or unjustifiable requirements, restrictions, compliance, implementation or administrative costs to everyday business activities. It includes government imposed legislation, regulations, registration, licenses, permits, approvals, restrictions, standards, guidelines, procedures, reporting, filing and certification requirements, paperwork, investigation, inspection and enforcement practices or other measures that truly are not needed to protect public health, safety and the environment.” The Ontario Red Tape Commission is established by Government and comprises nine Members of Provincial Parliament and an additional non-elected member. All members are appointed by the Premier of Ontario: www.redtape.gov.on.ca.

Recommendations

Recommendation 1: It is recommended that consideration be given to establishing a discrete petitions committee with a membership of three.

Recommendation 1 is addressed to the Legislative Council, the *Procedure and Privileges Committee* and the Clerk of the Legislative Council.

Recommendation 2: It is recommended that consideration be given to providing a committee with a term of reference to address the form and content of the statute book and matters of law reform.

Recommendation 2 is addressed to the Legislative Council, the *Procedure and Privileges Committee* and the Clerk of the Legislative Council.

Recommendation 3: It is recommended that the *Procedure and Privileges Committee* consider whether the Standing Orders should be amended to require committees commencing an ‘own-motion inquiry’ to report such inquiry to the Legislative Council within a certain number of days. In the interim it is recommended that committees consider adopting a practice of reporting committee resolutions to commence ‘own-motion inquiries’ to the Legislative Council by way of report.

Recommendation 3 is addressed to the Legislative Council, the *Procedure and Privileges Committee* and the Clerk of the Legislative Council. It is also drawn to the attention of committees.

4 SIZE AND MEMBERSHIP OF COMMITTEES, AND SUBCOMMITTEES

Discussion

4.1 Legislative Council committees currently have between three and seven Members, with the *Delegated Legislation Committee* having eight Members, four Members being appointed from each House.⁹ The Legislative Council Standing Orders currently provide for Members to be:

- substitute Members;
- participating Members;
- participating Members with leave to participate in committee deliberations; and

⁹ Other committees have the following membership: *Environment and Public Affairs Committee* (seven members); *Legislation Committee* (seven members then five members), *Public Administration and Finance Committee* (seven members); *Uniform Legislation and General Purposes Committee* (three members).

- in the case of the *Uniform Legislation and General Purposes Committee*, co-opted Members.

4.2 Members commented that committee work creates a heavy demand on their time, which was often spread too thinly amongst the committees to which they were appointed. The formation of quorum was noted as being a problem when membership included country Members or when Members served on more than one committee or subcommittee.

Seven or more Members?

4.3 It was observed that in the case of the *Delegated Legislation Committee* a membership of eight was productive given the need for joint membership with the Legislative Assembly and the well-established procedures of that committee.

4.4 It was also observed that, whilst seven Members provided the opportunity for cross-party representation on committees, there were practical difficulties in arranging convenient meeting times for all Members. Discussion indicated that a membership of seven facilitated the committee to work as two subcommittees when desirable although it was also observed that subcommittees added to a Member's workload. It was generally observed that, given the size of Legislative Council chamber, seven Members was an excessive number.

Five Members?

4.5 The majority of Members agreed that committees should have a core appointment of *no more than* five Members, which would enable cross-party membership, and make greater use of subcommittees. It was noted that a membership of five might be more realistic for those committees that conducted inquiries touching on policy. Reference was made to the *Legislation Committee* of the Thirty-Sixth Parliament that was initially constituted as a committee of seven Members. It was observed that the committee worked more effectively with a membership of five than seven. It was considered that the *Legislation Committee* should maintain a maximum membership of five.

4.6 The greater use of subcommittees was generally supported whether for a discrete inquiry or a particular item of business. It was observed that a membership of five would enable the formation of subcommittees and that greater use of subcommittees should be encouraged.

Three Members?

4.7 It was observed that the current *Environment and Public Affairs Committee*, to which petitions stand referred, established a permanent subcommittee of three Members to consider and process petitions. Members considered that a membership of three

would be a suitable size for a discrete petitions committee and that a membership of three worked effectively for the *Uniform Legislation and General Purposes Committee*.

4.8 A few matters were noted in relation to any reduction in the size of committee membership:

- a) A committee has traditionally been viewed as a vehicle that represents the party proportions in the Legislative Council. As membership tends to reflect the composition of the House so should the number of available positions on a committee.
- b) Aside from full membership there are other opportunities for committee membership that enable Members to contribute to committee inquiries including:
 1. participating membership, although no voting rights attach;
 2. substitute membership, recognizing that such changes were usually only made intra-party; and
 3. co-opted membership, although this was currently only available to the *Uniform Legislation and General Purposes Committee*.

Committee chairmanship

4.9 Discussions indicated that Committee Chairs should, where practical, be drawn from all parties, not just the Government.

Membership other than full membership

4.10 The requirement for Members to serve on more than one committee or subcommittee can result in a heavy demand on their scarce time and might contribute to irregular attendance. Other opportunities for committee membership were discussed (refer to paragraph 4.8b).

4.11 It was noted that there could be greater use of such forms of committee membership. For example, different interests associated with an inquiry could be accommodated within the framework of an existing committee by Members participating, or substituting for another Member, rather than establishing a select committee.

Recommendations

Recommendation 4: It is recommended that greater awareness be fostered amongst committees as to the use of subcommittees for committee inquiries or specific items of business.

Recommendation 4 is addressed to committees and the Clerk of the Legislative Council. The use of the induction sessions, professional development opportunities and *Chairs' Forum* referred to in sections 13 and 14 would be useful forums to canvass this matter.

Recommendation 5: It is recommended that the Standing Orders be amended to provide that membership of standing committees comprise no more than five Members save and except for:

- membership of the *Delegated Legislation Committee* to consist of eight (four from each House); and
- membership of any discrete petitions committee and the *Uniform Legislation and General Purposes Committee* to consist of three.

Recommendation 5 is addressed to the Legislative Council, the *Procedure and Privileges Committee* and the Clerk of the Legislative Council.

Recommendation 6: It is recommended that greater awareness be fostered as to the mechanisms, other than full committee membership, by which Members can participate in committee inquiries.

Recommendation 6 is addressed to committees and the Clerk of the Legislative Council. The use of the induction sessions, professional development opportunities and *Chairs' Forum* referred to in sections 13 and 14 would be useful forums to canvass these matters.

5 APPOINTMENT OF MEMBERS TO COMMITTEES

Discussion

Information for Members-Elect

- 5.1 Members considered that there was a need to inform Members-Elect about the important work performed by Members of the Legislative Council in serving on various parliamentary committees. It was noted that at the first party meeting following an election it was not unusual for Members-Elect to be asked to consider committee membership. Often the decision was made in a vacuum of information about the number and types of committees as it occurred prior to any formal parliamentary induction.

- 5.2 Members suggested that, following an election and as soon as Legislative Council seats were known, a letter be sent to all Members-Elect outlining the Legislative Council committee system and types of committees. It was noted that the committee system may undergo realignment in the next Parliament; however information relating to current committees was considered to be of use.

Recommendation

Recommendation 7: It is recommended that, following an election and as soon as the Legislative Council Seats are declared, a letter is sent to all Members-Elect advising of the committee system and types of committees.

Recommendation 7 is addressed to the Clerk of the Legislative Council. I note that this has been actioned for the Members-Elect to the Thirty-Seventh Parliament.

6 DAYS AND TIMES FOR COMMITTEE MEETINGS

Discussion

- 6.1 Sessional Orders of the Thirty-Sixth Parliament provided for committees to meet on each Monday in a sitting week and at any other time that the House was not sitting or a sitting was suspended. The Standing Orders provide for committees to meet on Wednesdays prior to the House sitting at 3.30pm.
- 6.2 During the Thirty-Sixth Parliament committees often held additional meetings during the course of a sitting week. Some committees met on Mondays, other committees met Wednesday mornings prior to the House sitting at 10.00am (such meetings commencing at 8.00am) and many committee meetings were held in the evenings during the dinner break or after the House had risen. Other short meetings were held during lunch and afternoon tea breaks.
- 6.3 Although committees may seek the leave of the House to sit whilst the House is sitting, leave was not sought during the Thirty-Sixth Parliament. In view of Members' first priority to the Chamber when the House is sitting, leave would usually only be sought where there was committee urgency.

Committee meetings during sittings of the Legislative Council

- 6.4 Members commented that to meet reporting deadlines there was a need to squeeze short meetings into suspensions of sittings.
- 6.5 It was suggested that there could be merit in the Standing Orders enabling committees to meet during sittings of the House as a matter of course rather than being required to seek leave in each case. The majority of Members were generally not in favour of this suggestion, particularly in view of Members' first priority to the Chamber and also the need for proximity to the House to attend any division.

- 6.6 During discussion it became apparent that the ability of committees to seek leave of the House to sit whilst the House was sitting was not common knowledge amongst Members. Members observed that on some occasions the granting of such leave would have assisted committees with meeting reporting deadlines.
- 6.7 Observations were made that this ability should be used sparingly and only used for deliberative meetings so as to avoid an inconvenience to witnesses if bells were rung requiring Members' attendance in the chamber.

Principal day for committee meetings

- 6.8 Members observed that it was often difficult to be available for committee meetings on Mondays (as occurred under Sessional Orders of the Thirty-Sixth Parliament) due to other demands on their time. Some Members, particularly country Members, preferred to remain in their electorate until the days that they were required to attend the House. Other Members preferred meeting on Wednesday mornings as provided by the Standing Orders.
- 6.9 Members also observed that there were advantages in committees being able to meet on a distinct day separate to sittings of the House as it enabled more time to address committee matters. Having a distinct committee day also enabled Members with overlapping committee responsibilities to move from committee to committee during the course of a day.
- 6.10 There was support for committee meetings to occur on Wednesday mornings by commencing sittings of the House on a Wednesday at, for example, 1.00pm, 2.30pm or 3.00pm. It was noted that Standing Orders currently provide for the House to sit at 4.00pm on a Wednesday. This could reduce the need for committees to meet either very early in the morning or after the House had risen for the evening. It was also observed that enabling committees to meet on a Wednesday until the House sat at 2.30pm or 3.00pm might accommodate:
- those committees with Members from both Houses of Parliament;
 - those committees with a membership drawn from Members in country electorates, some of whom found it difficult to attend Perth for Monday committee meetings; and
 - address any proposals to commence sittings of the House on Wednesday before 4.00pm.

Sittings of the Legislative Council - Sessional Order

- 6.11 As available meeting times for committees are inextricably linked to sittings of the House, observations were made on the pattern of sittings created by Sessional Orders

of the Thirty-Sixth Parliament. Whilst the certainty of the sitting times and weeks were supported it was considered that:

- the order of business allocated to Fridays was not productive. It was observed that the absence of Members from the Chamber on other business was particularly prevalent on Fridays;
- sitting on Wednesday evenings instead of Fridays would provide more time for Members to attend to constituent work;
- country Members were unable to productively utilise Wednesday evenings after the House rose to attend to electorate business;
- starting later on Wednesdays (say 1.00pm) would provide more time for committee meetings on Wednesday mornings (refer to paragraph 6.10); and
- the reduction to one night of sitting may have increased the ability for some Members to use evenings for private or electorate purposes but it had correspondingly reduced the time during which members of the public, who work during the day, could observe proceedings in the House.

Recommendations

Recommendation 8: It is recommended that greater awareness be fostered amongst committees as to the ability of committees to seek leave to sit whilst the House is sitting.

Recommendation 8 is addressed to committees and the Clerk of the Legislative Council. The use of the induction sessions, professional development opportunities and *Chairs' Forum* referred to in sections 13 and 14 would be useful forums to canvass this matter.

Recommendation 9: It is recommended that, should the Standing Orders be revised to commence sittings of the House on Wednesdays prior to 3.30pm, consideration be given to commencing sittings no earlier than 2.00pm to enable time for committee meetings to principally occur on Wednesday mornings.

Recommendation 9 is addressed to the Legislative Council, the *Procedure and Privileges Committee* and the Clerk of the Legislative Council.

Recommendation 10: It is recommended that, if the Standing Orders are revised to rearrange sitting days and times for the House, the matters raised in paragraph 6.11 are considered.

Recommendation 10 is addressed to the Legislative Council, the *Procedure and Privileges Committee* and the Clerk of the Legislative Council.

7 COMMITTEE TRAVEL

Discussion

A need for travel?

- 7.1 Committee travel was seen as an essential part of the inquiry process and an avenue for committees to connect with the wider community. It was noted, however, that some inquiries lend themselves more readily and effectively to travel than others. Generally, the ability for committees to travel was seen as a necessary facility to enable interaction with the community in order to gauge and represent their views.
- 7.2 Travel was also seen as valuable by enabling committees to attend conferences and workshops intrastate, interstate and overseas, where the events were relevant to a committee's terms of reference or to liaise with similar committees in other Parliaments.
- 7.3 Funding was noted as a major factor in the ability of committees to travel. Some disappointment was expressed about the restrictions that a lack of available funding placed on the capacity of some committees to travel or host certain forums. Funding is discussed at paragraph 8.25.

Sound projection during committee hearings

- 7.4 It was observed that when committee hearings are held offsite, witnesses and members of the public may be unable to hear the proceedings due to the lack of a public announcement system and the arrangement of the hearing room. It was suggested that when hearing evidence offsite:
- a) a public announcement system should be made available to project the speech of witnesses and Members; and
 - b) the hearing room layout should require the witness to be seated on one side to enable the public to better hear the evidence. In this respect, the recent changes to the layout of the hearing rooms at the Legislative Council Committee Office were noted with approval.

Recommendation

Recommendation 11: It is recommended that when arrangements are made for committee hearings to be held offsite, the matters referred to in paragraph 7.4 be considered.

Recommendation 11 is addressed to committees and to the Clerk of the Legislative Council.

8 COMMITTEE RESOURCES

Staffing of committees

Discussion

- 8.1 The recruitment, provision and allocation of staff to committees play an important role in the effective operation of committees. Members were complimentary of the services provided by committee staff during the Thirty-Sixth Parliament. Many Members also commented that the Articled Clerks provided a valuable resource for committees. Concern was expressed about the workload placed on existing staff by standing committees and the additional workload created by select committees. In the case of one committee there was no dedicated Advisory Officer for the last twelve months of the Thirty-Sixth Parliament. Although that committee's staffing requirements in relation to referrals from the Legislative Council were competently serviced by Advisory Officers assigned to a discrete referral, it was considered that the committee was unable to progress 'bigger picture matters' relating to its terms of reference as far as would have been desirable. Members recommended the recruitment of more staff to service standing committees in the Thirty-Seventh Parliament.
- 8.2 Members further emphasised that, if committees are realigned in the next Parliament with a resulting increase in the number of committees, existing staff numbers will need to reviewed and supplemented.
- 8.3 It is recognised that staffing matters are the province of the Office of the Clerk but some observations are made in relation to areas of advice that could be pursued or revisited.
- 8.4 Members noted the need for realistic funding to meet increased demand for advisory support through extra staff, advisers or consultants. Funding is also required to provide offices to accommodate extra staff. The matter of committee accommodation is discussed at paragraph 8.17. Members also noted that the workload of committees is such that in a short space of time there can be real demand for additional staff which needs to be met.
- 8.5 The need to balance resourcing requirements of committees without causing a permanent staff explosion was recognised.
- 8.6 In addition to the possible recruitment of more full-time dedicated staff, it was noted that the need for committees to obtain independent specialist advice may increase. It was observed that committees operating in a particular subject area would benefit greatly from being able to access advice from a relevant expert in the particular area of an inquiry, for example, by the engagement of a suitably qualified consultant.

- 8.7 There was a call for consideration to be given to the greater use of contract consultants and advisers for particular matters, including the use of departmental employees.
- 8.8 It was also noted that institutional knowledge is highly valued amongst parliamentary staff providing procedural advice to Members and that committees being assisted by an adviser, consultant or public sector employee would still require this procedural knowledge.
- 8.9 It was further noted that there is a need to impart awareness of relevant Standing Orders, parliamentary processes and the need for political neutrality to any public sector employees or consultants.

Advisers and consultants

- 8.10 In some inquiries, the complexity or technical nature of the subject is such that the committee may require some specialist assistance. The role of a consultant varies and could include: preparing a paper on a particular aspect of the inquiry; briefing Members on specific issues; and preparing guidelines and material for consideration by the committee.
- 8.11 It was noted that:
- a) In Queensland, one committee has a permanent panel of consultants that are accessed as and when required and another committee uses consultants on an ad hoc basis.
 - b) In South Australia, the *Parliamentary Committees Act 1991* (SA) expressly refers to the commission, by committees, of any person to investigate and report to a committee on any aspect of any matters referred to the Committee.¹⁰
 - c) The Scottish Parliament invites expressions of interest to act as a consultant to its parliamentary committees and application can be made through its Website. The application requests the applicant to indicate three main areas of expertise and their availability over the next 6 to 12 months from the date of the application.¹¹
 - d) New Zealand parliamentary committees adopt a regular practice of using consultants.

¹⁰ *Parliamentary Committees Act 1991* (SA), s33(2). It is, however, noted that in South Australia committees are appointed by statute.

¹¹ Refer to: www.scottish.parliament.uk/corporate/recruitment/committeeAdviser/index.htm (viewed at March 2005)

8.12 It was noted that the Legislative Council rarely engages consultants and this practice should be reviewed.

Public sector employees

8.13 Employees of government departments could be of assistance to committees both on longer-term secondments and as short-term advisers for a particular matter or bill under inquiry.

8.14 In respect of the use of departmental employees, it was noted that:

- a) although there are no formal ongoing arrangements in place, the Legislative Assembly Committee Office has entered into arrangements for an exchange of officers between the *Public Accounts Committee* and the Office of the Auditor General for certain inquiries;
- b) during a parliamentary recess, Legislative Council committee staff have been seconded to the Ombudsman's Office;
- c) in South Australia, the *Parliamentary Committees Act 1991* (SA) expressly refers to the use by committees of employees or facilities of the public service. The Presiding Officer must authorise such use and the responsible Minister must approve it.¹² Research officers for select committees are usually provided from within the public service and are paid by their particular government department; and
- d) in the unicameral New Zealand Parliament, parliamentary committees reviewing legislation are provided with the services of both a departmental adviser and parliamentary counsel to advise during committee deliberations on legislation.

8.15 It was further noted that, depending on how an exchange or secondment is agreed, the *Parliamentary and Electorate Staff (Employment) Act 1992* may need to be reviewed to enable secondments from and to the public sector, and to enable the transfer of entitlements when an employee moves permanently between the two sectors. In this respect it is noted that clause 21 of the Parliamentary Employees General Agreement 2004 refers to the implementation of reciprocal arrangements enabling the transfer of employees and associated leave entitlements between the Parliament and government agencies.

8.16 Suggestions were also made in relation to legislative drafting services - this is canvassed in paragraph 8.21.

¹² *Parliamentary Committees Act 1991* (SA), s33(1).

Recommendations

Recommendation 12: It is recommended that greater awareness be fostered within committees in relation to the use of limited committee resources and that such matters be taken into account in planning any committee work program.

Recommendation 12 is addressed to committees. The use of the induction sessions, professional development opportunities and *Chairs' Forum* referred to in sections 13 and 14 would be useful forums to canvass this matter.

Recommendation 13: It is recommended that the current staffing support available to standing committees be reviewed to:

- ensure that current standing committees are adequately resourced with advisory and support personnel; and
- any revision of the Standing Orders resulting in an increase in the number of committees is reflected in a corresponding increase in staffing resources.

Recommendation 13 is addressed to committees and the Clerk of the Legislative Council.

Recommendation 14: It is recommended that consideration be given to increasing the use of specialist and consultant contract advisers for committee inquiries.

Recommendation 14 is addressed to committees and the Clerk of the Legislative Council.

Recommendation 15: It is recommended that consideration be given to using departmental advisers to advise a committee during an inquiry and, in particular, during inquiries into legislative proposals.

Recommendation 15 is addressed to committees and the Clerk of the Legislative Council.

Committee meeting rooms and offices

Discussion

8.17 The needs of committees, their staff, witnesses, media and members of the public have put considerable pressure on accommodation available for meetings and offices at the Legislative Council Committee Office. The office space available at 1110 Hay Street, West Perth is already at maximum capacity. The recruitment of staff will create immediate pressure on the accommodation currently available.

8.18 The limited meeting room facilities at Parliament House have been used by several committees although it was noted that if meetings are convened in different buildings

it creates difficulties for Members with cross-committee membership to move between meetings.

8.19 It was requested that other options be considered including:

- a) the development of dedicated committee facilities in Parliament House;
- b) the procurement of larger premises for the Legislative Council Committee Office; and
- c) the joint use of Legislative Assembly Committee Office committee room facilities.

Recommendation

Recommendation 16: It is recommended that consideration be given to the development of committee facilities in Parliament House. In the interim consideration should be given to:

- the procurement of larger premises for the Legislative Council Committee Office; and
- the use, by Legislative Council committees, of Legislative Assembly Committee Office committee hearing room facilities.

Recommendation 16 is addressed to the Clerk of the Legislative Council.

Committee seating arrangements

Discussion

8.20 The recent changes to layout of the hearing rooms at the Legislative Council Committee Office were noted with approval. However, it was suggested that to ensure adequate and prompt advice during committee hearings it was preferable for the Advisory Officer to be located in closer proximity to the Committee Chair. The nature of hearings is such that matters may need to be promptly and discretely drawn to the Chair's attention without undue interruption by staff having to approach the Chair, or otherwise gain the Chair's attention.

Recommendation

Recommendation 17: It is recommended that consideration be given to reviewing the seating arrangements during committee hearings to afford easier consultation between committee staff and the Committee Chair.

Recommendation 17 is addressed to the Clerk of the Legislative Council.

Parliamentary draftsman

Discussion

- 8.21 It was observed that committees increasingly return reports on bills with amendments drafted in statutory form however there was a lack of resources within Parliament to provide a drafting service.
- 8.22 It was noted that the Clerk of the Legislative Council and other officers, due to their significant workloads, were able to only provide limited drafting assistance. On one occasion Parliamentary Counsel's Office assisted with amendments to a bill when requested by the relevant Minister. Members recognised the demands on Parliamentary Counsel's Office and their principal responsibility to the drafting of government legislation.
- 8.23 The extensive drafting assistance granted by the New Zealand Parliamentary Counsel's Office to New Zealand parliamentary committees was noted, as was the drafting service for Members' bills provided by the New Zealand Office of the Clerk.
- 8.24 It was suggested that Parliament should have its own Parliamentary Draftsman to assist committees and Members with amendments. The funding implications of this suggestion and recruiting challenges were noted.

Recommendations

Recommendation 18: It is recommended that inquiries be made of Parliamentary Counsel's Office as to when, and under what circumstances, drafting assistance may be provided to parliamentary committees.

Recommendation 18 is addressed to the Clerk of the Legislative Council.

Recommendation 19: It is recommended that consideration be given to securing the services of a qualified draftsman to be engaged by Parliament as a dedicated Parliamentary Draftsman to provide drafting services to the Houses and their committees.

Recommendation 19 is addressed to the Clerk of the Legislative Council.

Committee funding

Discussion

- 8.25 Members observed that the Legislative Council is required to provide increasing support to parliamentary committees due, in part, to increases in the number and complexity of inquiries. This places pressure on the Vote received each year by the Legislative Council.

- 8.26 Concerns were expressed about the constraints on the funding available for the conduct of inquiries, both interstate and internationally, which were considered by committees as essential to an inquiry. It was also noted that when select committees are established there is no additional allocation of funding to service the needs of that select committee - already limited resources were stretched even further to provide support.
- 8.27 Many of the matters raised by Members during the discussions require the application of resources, for example, the recruitment of committee staff, advisers and consultants. To source, engage and retain such advice will place further pressure on the funds of the Legislative Council. In addition the necessary increase in office and meeting room accommodation will also require funding. The lack of a realistic increase in funding to the Legislative Council has been an unsatisfactory aspect of Parliament for some time.
- 8.28 In order for the Legislative Council and, in particular, its committees, to properly and effectively perform its role as part of parliamentary democracy it is essential that adequate and appropriate funding be made available by the Government. The fact that Government has not enjoyed a clear majority in the Legislative Council for some years must not be a factor in any decision to adequately resource the Legislative Council and its parliamentary committees.
- 8.29 It is essential that the funding provided by Government be addressed as a matter of priority. The Legislative Council has an obligation to ensure that its committees discharge their constitutional responsibilities in an efficient and effective manner. It is imperative that appropriate funding is made available in order to discharge these duties.

Recommendation

Recommendation 20: It is recommended that the current funding provided to the Legislative Council be reviewed, particularly in light of the continuing growth of the Legislative Council committee system.

Recommendation 20 is addressed to the Legislative Council.

9 OPERATIONAL MATTERS PERTAINING TO COMMITTEES: FLEXIBLE PROCEDURES

Overview

- 9.1 Members were particularly interested in considering operational matters pertaining to committees and what I have termed 'more flexible procedures' for conducting committee inquiries. Committees usually conduct hearings in a formal manner and environment requiring witnesses to appear before a committee in the hearing rooms at the Legislative Council Committee Office in Hay Street.

9.2 However, increasingly, committees are adopting less formal processes and more flexible approaches to the gathering of information and when providing opportunities for public input to committee activities.

9.3 Members were particularly interested in offering suggestions on the working practices of committees to increase their productivity and reduce time demands on Members. For convenience of discussion this report has noted these as:

- Conducting inquiries - clear terms of reference.
- Formality of committee proceedings.
- Written tools for the Committee Chair.
- Delegation to the Committee Chair, standing resolutions and circular resolutions.
- Disclosure of committee deliberations to a Minister and to party caucus.
- Members amending draft reports.
- Liaison between the Committee Chair and staff.
- Note taking during committee hearings.

Conducting inquiries - clear terms of reference

Discussion

9.4 This was an area where committees appeared to have an inconsistent record. Observations were made that some committees were spread very thinly and could be easily overloaded if, having decided on an ambitious work program, further matters were then referred for inquiry. This could result in extreme demands on Members' time with a loss of clear focus on some or all of the committee's work.

9.5 It was observed that there is an important and distinctive place for parliamentary committees compared to other committees - they bring particular unique attributes to inquiries.¹³

9.6 It was noted that committees are inappropriate vehicles for matters already under investigation; matters outside state jurisdiction; or matters of significant technical complexity unless a cross-party majority has some special knowledge or background in the issue.

¹³ For example: party political membership, electoral representation, political influence, parliamentary power and privilege, and witness immunity.

- 9.7 Committees embarking on a major inquiry should focus the time available and carefully consider the scope of the inquiry and possible terms of reference prior to adoption of those terms of reference. Strategies could include making use of panels of experts who may assist in identifying the principal issues that the committee could examine, the identification of relevant witnesses and the issuing of discussion papers on a topic to foster areas of agreement.

Recommendation

Recommendation 21: It is recommended that greater awareness be fostered amongst Committee Members as to:

- **the most effective use of parliamentary committees and the type and scope of inquiries for which parliamentary committees may be best suited;**
- **the need to ensure clear terms of reference for inquiries; and**
- **making use of panels of experts who may assist in identifying the principal issues that the committee should examine, the identification of relevant witnesses and the issuing of discussion papers on a topic to foster areas of agreement.**

Recommendation 21 is addressed to committees and to the Clerk of the Legislative Council. The use of the induction sessions, professional development opportunities and *Chairs' Forum* referred to in sections 13 and 14 would be useful forums to canvass this matter.

Formality of committee proceedings - conduct of proceedings

Discussion

- 9.8 It was noted that the ability of committees to adopt less formal procedures was not widely practised during the Thirty-Sixth Parliament. It was noted that the use of more informal inquiry procedures could be more widely utilised by committees to achieve greater effectiveness and efficient use of resources.
- 9.9 Informal approaches have been utilised in the Legislative Council and in other Parliaments with a view to facilitating an easier interchange of views than may be possible in a formal hearing process. Approaches utilised might include: public meetings, seminars or workshops; the conduct of preliminary discussions prior to adopting inquiry terms of reference; general background discussions at the start of inquiry to obtain general community views at public meetings; and to obtain expert advice.

- 9.10 It was noted that it is necessary to clarify the operation of parliamentary privilege in these contexts and informal procedures should not be seen as a substitute for normal hearing processes - depending on the circumstances informal measures may not be covered by parliamentary privilege. In addition, it was observed that information obtained in an informal manner may not have the forensic value or technical status of formal evidence and such information should be used with caution.
- 9.11 It was observed that, given the form that most hearings take and the need to schedule additional hearings to accommodate a number of witnesses, the demands on Members' time and pressure to meet reporting deadlines is significant. Consequently, hearings may stretch out over months or even years. Coupled with other demands on busy Members' time, their recall of evidence can become remote and confused. This can delay deliberations on draft reports prepared by committee staff.
- 9.12 It was noted that use could be made of panels of witnesses - combining several witnesses with contrary points of view to assist in identifying the issues in dispute and areas of agreement. Such methods are more likely to get to the nub of the issues and policies than a question and answer format. It was noted that such forums would require the Committee Chair to exercise deft control of the direction of the proceedings.

Recommendation

Recommendation 22: It is recommended that committees consider using operational flexibility in the conduct of their proceedings whilst having due regard to parliamentary privilege and the parliamentary environment. Attention is drawn to the matters raised in paragraphs 9.9 to 9.12.

Recommendation 22 is addressed to committees and to the Clerk of the Legislative Council. The use of the induction sessions, professional development opportunities and *Chairs' Forum* referred to in sections 13 and 14 would be useful forums to canvass these matters.

Written tools for Chair

Discussion

- 9.13 To assist the committee, the Legislative Council Committee Office provides written prompt sheets, such as Committee Chair's *Introductions to Witnesses* and Committee Chair's *Statements*, on matters likely to arise in hearings.
- 9.14 Members observed that, on occasion, the wording of such documents was not conducive to productive interaction between the committee and witnesses. On some occasions it was considered that the formal style of the introduction may have had the effect of intimidating witnesses and potential witnesses.

- 9.15 Members noted that the Legislative Council Committee Office briefing material contains information that needs to be imparted to the public and witness and observed that the availability of such material was of assistance. However, Members suggested that they be drafted in simple plain English and that Committee Chairs need to ensure that they are aware of the needs of the particular audience and adjust the style of delivery to the circumstances.

Recommendations

Recommendation 23: It is recommended that the materials used by committees in the conduct of hearings be reviewed to make them simpler and clearer and to facilitate delivery in a more flexible manner.

Recommendation 23 is addressed to the Clerk of the Legislative Council. I note that initiatives have been commenced for the Thirty-Seventh Parliament.

Recommendation 24: It is recommended that Committee Chairs adjust the style of delivery of introductory statements at hearings to suit the particular circumstances and audience.

Recommendation 24 is addressed to committees. The use of the induction sessions, professional development opportunities and *Chairs' Forum* referred to in sections 13 and 14 would be useful forums to canvass this matter.

Delegation to Committee Chair, standing resolutions and circular resolutions

Discussion

- 9.16 When a reference is received from the Legislative Council there may be a number of preliminary matters to attend to that would ordinarily require a committee meeting. These may include: advertising for submissions, approaching specific stakeholders for submissions, granting extensions of time for submissions and issuing a media release about a committee's inquiry.
- 9.17 During the Thirty-Sixth Parliament committees adopted a number of different mechanisms to facilitate the initial progression of a committee's inquiry without the need for Members to meet. These included:
- a) Delegation to the Committee Chair or to another Member.
 - b) Standing resolutions.
 - c) Circular resolutions.

Delegation to the Chair or another Member

- 9.18 Some committees delegated the decision-making power in respect of a particular matter to a Member/s. The *Delegated Legislation Committee* often delegated to the Committee Chair and the Deputy Chair, the final decision on whether or not to pursue a disallowance motion, based on an expected departmental response. This was of assistance where time was of the essence between receiving a departmental response and the last day on which a notice of motion of disallowance may be withdrawn or discharged from the Notice Paper.
- 9.19 In other cases, the decision in relation to a matter, for example, extensions of time to provide submissions, was delegated to the Committee Chair. It was observed that delegations are most suitable in those committees where there is a proven working relationship and rapport between the Members with delegated authority and other Members.

Standing resolutions

- 9.20 Some committees adopted a standard procedure to the commencement of inquiries in relation to advertising, seeking of funds and submission deadlines. This was particularly so where those committees had a standard type of referral for which a generic approach was best suited. The *Uniform Legislation and General Purposes Committee* utilised a standing resolution which enabled committee staff to draft and place advertisements seeking submissions on uniform legislation to start the inquiry process to ensure a report within the 30 day report back period. Similar resolutions were adopted by that committee in relation to the pursuit of background information relating to uniform legislation that was expected to stand referred to the committee for inquiry and report.

It was noted that standing resolutions should only be adopted for routine matters and should not be used to substitute for other committee deliberative and decision-making processes.

Circular resolutions

- 9.21 Some committees attempted to address matters by way of a 'circular resolution'. In such cases a proposal was circulated to Members, usually by facsimile, and, if agreed, their signature was usually required by way of return fax. If all Members agreed the matter was actioned with the action being formally noted and endorsed at a subsequent committee meeting. It was noted that 'circular resolutions' are not binding resolutions and act as an indication of acceptance to a course of action. The Legislative Council cannot conduct business in this manner. This procedure would only be suitable where the matter was administrative and non-contentious as the procedure does not facilitate debate or alternatives being proposed. It was noted that circular resolutions only have binding effect when ratified at a subsequent committee meeting.

Recommendation

Recommendation 25: It is recommended that committees consider using flexibility in the manner in which inquiries are progressed, for example, in appropriate circumstances delegating certain decisions to a Member and the ability to adopt standing resolutions.

Recommendation 25 is addressed to committees and to the Clerk of the Legislative Council. The use of the induction sessions, professional development opportunities and *Chairs' Forum* referred to in sections 13 and 14 would be useful forums to canvass these matters.

Disclosure of committee deliberations*Discussion*

- 9.22 It was noted that on many occasions during the Thirty-Sixth Parliament committees, through the Committee Chair, liaised with the relevant Minister on a matter during the deliberative process. Members observed that this strategy assisted greatly with the passage of some bills being considered by committees.
- 9.23 It was suggested that Standing Orders be amended to enable Committee Chairs to liaise with Ministers to discuss committee deliberations directly rather than having to rely on case specific permission or an exchange of committee correspondence. There was a view that it is accepted practice for Committee Chairs to liaise with Ministers during the course of a committee's inquiry.
- 9.24 It was observed that committee deliberations are private and confidential to the committee unless disclosure has been authorised. It was observed that all committees are able to authorise their Chair (or any other Member), in what they consider to be appropriate circumstances for the particular inquiry, to liaise with the Minister about a particular matter. It was also observed that it is within the power of a committee to issue its Chair with a standing authority to liaise, although the ramifications of such authority in a political environment would need to be carefully considered as it may result in the government purloining recommendations in advance of a report or seeking to delay a report.

Recommendation

Recommendation 26: It is recommended that committees note their ability to authorise the Committee Chair or a Member/s to consult with the Minister, particularly where it is desirable to facilitate the progress of a committee's inquiry.

Recommendation 26 is addressed to committees. The use of the induction sessions, professional development opportunities and *Chairs' Forum* referred to in sections 13 and 14 would be useful forums to canvass this matter.

Members amending draft reports

Discussion

- 9.25 Committee Members currently have access to soft copies of draft reports for relevant inquiries through a facility called *Legislative Council Committee Office - Docs Online*. Members noted the useful assistance that this facility provides. Members who access this facility by their computer may print out a copy of the draft report or other committee document, which is usually loaded in a 'Word version'. Members may save the document into their own drive, make amendments to record their views, save it as their own version and utilise their version during deliberations on the committee's draft report at a meeting.
- 9.26 It is the practice that amendments are made to a committee's draft report only after the committee has deliberated on, and then accepted, amendments at a meeting. This observes the committee process and avoids the logistical challenge of incorporating into the committee's draft report up to seven different Members' versions.
- 9.27 It was noted that the ability to access a version of a draft committee report that may be electronically manipulated by individual Committee Members was of great benefit when considering matters to be discussed and voted upon. It was noted that for some inquiries groups of Committee Members with similar views would draft their own comments into a version of the draft committee report, e-mail that version to other Committee Members and informally meet to reach common ground for a formal proposal and consideration at a committee meeting. The use of e-mail was noted as enabling rapid, virtually cost free exchanges between Members and, where time was of the essence, assisted in meeting committee deadlines.
- 9.28 One Member considered that software should be purchased to enable Committee Members to all amend the same document (report) with each Member's amendment appearing as a different colour on the document and screen. It was observed that this process would enable preliminary discussions to occur by e-mail with formal consideration deferred to a later committee meeting.
- 9.29 I note that the convenience of the above process needs to consider many matters including: draft reports reflecting committee deliberations remaining on Members' drives; the security aspects of using e-mail; funding implications in relation to the investigation and any purchase of document drafting systems; and (where colour coding is used) the purchase, maintenance and operating costs of colour printers to print hard copies of such documents. In addition Members will require training and support in the use of the technology.
- 9.30 Committee Members should be mindful of the need to delete and securely dispose of all copies of deliberative committee documents from their personal hard copy and soft copy systems on the completion of an inquiry.

9.31 Furthermore it should be emphasised that any electronic process:

- should not be used to displace the formal committee deliberative process; and
- should accommodate technological disparities or preferences between all Committee Members.

Recommendation

Recommendation 27: It is recommended that:

- **inquiries be made whether, and if so in what form, a facility should be made available to Committee Members that will enable them to individually mark up draft reports in a manner that differentiates each author; and**
- **inquiries be made whether, and if so in what form, an encryption facility should be made available to Committee Members and committee staff and whether there should be e-mail transfer of deliberative committee documents.**

Recommendation 27 is addressed to the Clerk of the Legislative Council.

Liaison between Committee Chair and staff

Discussion

9.32 It was noted that a Committee Chair should ensure that they foster a good working relationship with staff and consider regularly liaising with them prior to meetings. It was observed that in some meetings the consideration of correspondence took undue time and administrative actions to streamline meetings, including prior consultation between the Committee Chair and committee staff, could result in the preparation of a recommended course of action for the committee at its meeting. It was noted that committee staff regularly initiate and facilitate such liaison.

9.33 To improve efficiency and effectiveness of committees it is desirable that Committee Chairs discuss the handling of meetings with committee staff and that regular liaison between a Committee Chair and the committee's staff could be scheduled to review agendas, hearing procedures and the committee work program.

Recommendation

Recommendation 28: It is recommended that greater awareness be fostered amongst Committee Chairs in relation to liaison between Chairs and committee staff.

Recommendation 28 is addressed to committees and to the Clerk of the Legislative Council. The use of the induction sessions, professional development opportunities and *Chairs' Forum* referred to in sections 13 and 14 would be useful forums to canvass this matter.

Note taking during committee hearings

9.34 It was observed that only accredited news media may take notes during committee hearings and it was suggested that this limitation be lifted to enable notes to be taken by the public in the hearing.

Recommendation

Recommendation 29: It is recommended that the *Procedure and Privileges Committee* consider whether practice and procedure should be amended to enable note taking by the public in Legislative Council committee hearings. It is noted that this may require consideration of the practice in the Chamber.

Recommendation 29 is addressed to the Clerk of the Legislative Council and the *Procedure and Privileges Committee*.

10 OPERATIONAL MATTERS PERTAINING TO COMMITTEES: INSTANTANEOUS COMMUNICATION DEVICES

Discussion

10.1 Increasing amounts of business is being transacted by audioconferencing/teleconferencing and videoconferencing (referred to as instantaneous communication devices (ICD)) in today's society. Parliaments in Australia and New Zealand have embraced, to varying degrees, the use of ICD for committee proceedings. Whilst the infrastructure exists for committees to meet using ICD, in practice Legislative Council committees of the Thirty-Sixth Parliament have not generally taken advantage of this technology.

10.2 ICD could be used in two main circumstances:

- a) To enable committees to communicate with witnesses or experts to take evidence and to gather information.
- b) To enable committees to conduct formal meetings enabling remote participation by a Member.

- 10.3 Both uses have procedural and legal implications. The use of ICD by parliamentary committees could be worthy of an inquiry to better inform Members. ICD was touched upon by a report of the Legislative Assembly *Procedure and Privileges Committee* in June 2003.¹⁴ The legal and procedural implications of using ICD have also been canvassed in various publications and consequently are not canvassed in this report.¹⁵
- 10.4 Two main issues arising where ICD might be used are:
- a) The determination of quorum when a Member participates in the proceedings by ICD.¹⁶
 - b) The application of parliamentary privilege to participation by a Member or a witness using ICD.
- 10.5 The use of ICD was discussed during meetings of Committee Chairs in November 2001 and April 2003. In addition I have liaised with Members in my capacity as Chairman of Committees. Limitations on the use of ICD were canvassed including:
- a) whether to investigate the means of amending the relevant law to enable the use of ICD; and
 - b) if committees took evidence by phone, that parliamentary privilege might not apply to the conversation.
- 10.6 It was noted that:
- a) a committee should consider holding the hearing in private;
 - b) a committee should ensure that all participants are made aware that only qualified privilege may apply; and
 - c) if a Member is not physically in attendance at a meeting, the Member may participate, but could not be involved in deliberations or vote using ICD. It was noted that Members cannot form part of a quorum for the House, unless

¹⁴ Western Australia, Legislative Assembly, Procedure and Privileges Committee, *Use of Video-Conferencing by Legislative Assembly Committees*, June 2003.

¹⁵ For example, refer to: Charles Roberts and Deborah Palumbo, 'Videoconferencing in the Parliamentary Setting', *Canadian Parliamentary Review*, Spring 1999, pp18–26; Hon Fred Riebeling, Speaker of the WA Legislative Assembly, 'Parliament and Meetings by Electronic Communication', *34th Presiding Officers and Clerks Conference*, Tonga, July 2003.

¹⁶ Traditional procedure places considerable emphasis on the Members' physical presence. Members who wish to exercise their parliamentary rights must be physically present during the proceedings. Therefore, members must be in the Chamber or in the committee to be counted in the quorum or to be allowed to vote.

they are physically present in the Chamber, and the powers of committees cannot exceed the powers of the House.

10.7 A preliminary survey of the use of ICD in other Australian and New Zealand Parliaments indicates that the Parliaments of the Commonwealth, Queensland and the Australian Capital Territory are now expressly permitted by Standing Orders to use ICD for committee hearings and meetings.

10.8 The New Zealand Parliament does not allow the use of ICD for deliberative meetings but has a practice enabling the use of ICD for hearing witnesses or experts. Some Parliaments distinguish between the use of audioconferencing and videoconferencing, permitting use of one but not the other. Appendix 1 is a comparative table of the *Use of Instantaneous Communication Devices by Australian Parliaments and the New Zealand Parliament* (as at December 2004), prepared by staff of the Legislative Council Committee Office. It was noted that some State Parliaments have legislated to redefine 'parliamentary proceeding' or made express procedural rules to enable certain types of proceedings to occur using ICD.

10.9 The advantages of using ICD that have been noted are:

- Committees are able to hear oral submissions from a larger number of people in the community who may not otherwise have been able to participate.
- ICD can enable committees to hear evidence and advice from witnesses or experts in the State, Australia and overseas.
- Evidence may be obtained from witnesses outside Perth where the committee usually meets, thus reducing travel expenses for Committee Members or witnesses.
- The time taken by committees to gather evidence in the course of an inquiry could be reduced.
- It could be useful where a committee may have already met with a witness to establish a rapport and needs to follow up on relevant matters.
- Whilst a physical meeting is ideal, it was noted that the ability for Members to meet by ICD would avoid the necessity for country Members to travel for half a day to attend a committee meeting that may only last half an hour.

10.10 Disadvantages noted include:

- Alternative methods of transacting business should not be used to displace face to face meetings, particularly in relation to ensuring that people outside

major metropolitan areas do not feel excluded from committee processes or that video or audio conferencing facilities are 'second best'.

- It should not be used to replace personal interaction between committees and the public, as such interaction can be very useful for establishing rapport with the community.
- Members of the public who may not have access to the technology may feel marginalised.
- As there is the possibility that evidence given through ICD is not secure, the use of ICD may not be suited to private hearings or contentious issues.
- There are procedural implications to the use of ICD for committee deliberations.
- Parliamentary privilege does not extend to protect evidence given out of the State.
- It should not be used so that Members are encouraged to regularly physically absent themselves from committee meetings.
- It is not suitable for deliberative committee meetings where personal interaction between Committee Members is considered to be more conducive to the resolution of issues.
- Human focus on a phone or video facility in a room may be appropriate for a witness providing evidence by such means but it was considered that it was not appropriate for such focus to fall on a Member contributing by phone or video.
- Whilst it may be convenient to use ICD when attending to preliminary matters associated with a committee's inquiry this may be the 'thin end of the wedge'. For example, how do you determine what is a preliminary, or non-contentious matter in any given case?

10.11 Members are generally of the same view with regard to use of ICD, namely:

- a) ICD should be used to communicate with a remote witness but not in cases where the evidence is of a private or confidential nature unless security of the transmission can be confirmed.
- b) ICD should not be used to form a committee quorum.

- c) ICD might be used to enable liaison during a committee meeting with a ‘physically absent’ Member to obtain their view on a matter before the committee, particularly if it is of a preliminary nature, although the Member would not be counted as present and could not vote.
- 10.12 Recognising the push for the ability to use ICD, it was suggested that a preliminary approach would be to promote greater use of ICD by committees but within an environment where there is an appreciation of the limitations on the facility and there is a need to address substantive issues of law. Practices adopted by committees can minimise the risks inherent in the use of ICD. For example, initially committees might use ICD to gather public evidence only, ensuring that all participants are aware of the status of the proceeding.
- 10.13 In the interim, it was noted that the longer-term ramifications should be considered by the *Procedure and Privileges Committee* particularly in view of the passage of the *Constitution (Parliamentary Privileges) Amendment Act 2004*, which removed the State Parliament’s continuing link with the powers and privileges of the United Kingdom House of Commons.
- 10.14 Members observed that it would be desirable for an Instruction or Guideline to be issued on the use of ICD by committees. It was noted that the Speaker of the Legislative Assembly has issued a guideline for use by Legislative Assembly committees. Committees could then refer to those guidelines when considering whether to use ICD in their inquiries.

Recommendations

Recommendation 30: It is recommended that guidelines for the use of instantaneous communication devices by committees be issued and that committees refer to those guidelines when considering whether to use the technology in their inquiries.

Recommendation 30 is addressed to committees and to the Clerk of the Legislative Council.

Recommendation 31: It is recommended that committees consider making greater use of instantaneous communication devices in taking evidence from witnesses and experts in appropriate circumstances, and have due regard to the present advantages and limitations of using that medium.

Recommendation 31 is addressed to committees and the Clerk of the Legislative Council.

Recommendation 32: It is recommended that the *Procedure and Privileges Committee*:

- **consider what amendments are required to the existing law to enable the use of instantaneous communication devices by parliamentary committees;**
- **consider amendments required to the Standing Orders to expressly authorise the use of instantaneous communication devices; and**
- **consider what steps may be taken with other Australian jurisdictions to provide comity and to ensure uniform privileges are granted by each Parliament to Members of other Parliaments when taking evidence using instantaneous communication devices between States.**

Recommendation 32 is addressed to the Clerk of the Legislative Council and the *Procedure and Privileges Committee*.

11 COMMITTEE REPORTS

Length of committee reports

Discussion

- 11.1 It was observed that the interest of Members to the progress of an inquiry is crucial and prolonged committee inquiries should be avoided. If a prolonged committee inquiry eventuates then it was suggested that the inquiry and evidence might be kept alive by regularly tabling issues papers, discussion papers and interim reports. It was observed that committees may need to take a more practical approach and discontinue inquiries instead of wasting resources and raising public expectations by an inefficient and ineffective long drawn-out process.
- 11.2 It was suggested that, where possible, committees also consider:
- a) tabling short reports on a matter under inquiry;
 - b) tabling a report with a resolution reflecting the principal concerns of a committee; or
 - c) tabling a report drawing a matter to the attention of the House for further consideration.
- 11.3 Such practices were considered to be more desirable than tabling a report at a time when the report had become remote from when the issue under inquiry was of concern. It was considered that the tabling of shorter reports may allow a committee to take a position rapidly on a matter of immediate concern.

- 11.4 Members considered that voluminous reports were not conducive to subsequent consideration of an inquiry by Parliament. It was suggested that committees consider making greater use of background papers, issues papers, interim reports and “*letting the transcript speak for itself*”.

Recommendation

Recommendation 33: It is recommended that greater awareness be fostered amongst committees in relation to different methods of communicating information both within the committee, and by committees to the House, with a view to reducing the length of committee reports and the time required by a committee to consider a report.

Recommendation 33 is addressed to committees and the Clerk of the Legislative Council. The use of the induction sessions, professional development opportunities and *Chairs’ Forum* referred to in sections 13 and 14 would be useful forums to canvass these matters.

Consideration of committee reports in the Legislative Council

Discussion

- 11.5 It was observed that, under Sessional Orders of the Thirty-Sixth Parliament, the absence of Members from the Chamber on other parliamentary business was particularly prevalent on Fridays and that this was not conducive to adequate debate of committee reports as provided for by Sessional Orders.
- 11.6 Members noted that the practice under Sessional Orders of alternating consideration of committee reports with Ministerial Statements should be revisited with a view to:
- a) Consideration of committee reports having precedence over Ministerial Statements.
 - b) Ministerial Statements that are not considered within three months of being made an Order of the Day would be discharged from the Notice Paper unless a Member indicated to the Clerk’s Office that they wished to speak to the Statement.
- 11.7 Members also noted, with dissatisfaction, the practice of forfeiting, by agreement, the time allocated to the consideration of committee reports in order to consider government business.
- 11.8 Members also suggested that there be an ability for Members to bring committee reports on for debate outside of any period that may be allocated by the Standing or Sessional Orders to ensure currency and immediacy of debate.

Recommendation

Recommendation 34: It is recommended that the matters raised in paragraphs 11.5 to 11.8 in relation to the consideration of committee reports in the House be considered by the *Procedure and Privileges Committee* and during any revision of the Sessional Orders that operated during the Thirty-Sixth Parliament.

Recommendation 34 is addressed to the Legislative Council, the *Procedure and Privileges Committee* and the Clerk of the Legislative Council.

Government responses*Discussion*

11.9 It was observed that once government responses to committee reports were received they were tabled in the Legislative Council and posted on the Internet. However, it was noted that there was no formal public mechanism for tracking when government responses were due or when they were outstanding. It was suggested that the Notice Paper include a section noting when a government response was requested for a committee report and when that response is due or becomes outstanding.

Recommendation

Recommendation 35: It is recommended that consideration be given to amending the Notice Paper to include a section noting when a government response was requested for a committee report and when that response is due or outstanding.

Recommendation 35 is addressed to the Clerk of the Legislative Council.

12 REFERRAL OF LEGISLATION TO COMMITTEES**Discussion***Legislation generally*

- 12.1 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 *Legislation Committee* (scrutiny of primary legislation) and the *Uniform Legislation and General Purposes Committee* (scrutiny of uniform legislation); and
 - the *Legislation Committee* does not scrutinise all tabled bills as a matter of course - it only scrutinises bills if the Legislative Council specifically refers them.

- 12.2 It was observed that the scrutiny of primary legislation by Legislative Council committees during the Thirty-Sixth Parliament lead to more informed debate in the House and better legislation. It was suggested that the scrutiny of primary legislation would be enhanced by using the *Business Management Committee*, established under SO 125A, to actively and regularly consider those bills that should be referred to particular committees. The *Business Management Committee* should also consider the purpose of a referral, so that the terms of a referral adequately instruct the committee in its inquiry focus. It was also observed that the allocation of bills to committees could take into account the expertise of Members and assist in the committee's inquiry.
- 12.3 Another proposal was for the *Legislation Committee* to have the formal capacity to advise the Legislative Council of those bills it considered should be referred to the committee. It was noted that additional committee resources would be required to enable the *Legislation Committee* to conduct this preliminary analysis.

Uniform Legislation and SO 230A

- 12.4 It was observed that SO 230A should be amended to provide that uniform legislation standing referred to a committee be reported back within a period greater than the 30 calendar days currently provided for in the Standing Order. It was noted that this matter is addressed in the Twenty-Third report of the *Uniform Legislation and General Purposes Committee*.¹⁷

Recommendation

Recommendation 36: It is recommended that the *Business Management Committee* take a more proactive role negotiating a more efficient and effective flow of legislation through both the committee system and the House.

Recommendation 36 is addressed to the Legislative Council and the *Business Management Committee*.

13 INDUCTION AND PROFESSIONAL DEVELOPMENT FOR MEMBERS

Discussion

- 13.1 If Members are to be encouraged to make a useful contribution to the House and its committees they need to be provided with adequate training and refreshers to serve them during their parliamentary term. Induction and training of Members was observed as being of particular relevance but it must not make unreasonable demands

¹⁷ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, *Report No 23: The Work of the Committee During the Second Session of the Thirty-Sixth Parliament - August 13 2002 to November 16 2004*, November 2004, p1.

on Members, noting that it takes time for Members to become familiar with both the operation of the committee system and the subject matter of their new committee.

13.2 Induction and training has been provided to Committee Members in the past however there is merit in a more formal approach and program being considered. Whilst mindful of demands on their time, all Members expressed interest in and support for committee induction programs and for professional development opportunities throughout the parliamentary term.

13.3 Various initiatives were discussed to assist Members to be more informed about their roles and responsibilities and better equipped to discharge their obligations including:

- comprehensive induction seminars to newly elected Members;
- regular information sessions in the form of *Legislative Council Briefings*; and
- quick reference handbook for Members.

13.4 Some common themes emerged from Members' observations on the form of induction and professional development including:

- Holding Legislative Council Members' induction before the House first meets with the commitment of follow up sessions after the end of the first round of sittings.
- The need to provide induction programs before Members' diaries fill with constituency and party obligations.
- Provision of a general induction on committees for ½ day canvassing procedures and protocols of committees.
- Provision of an induction for Committee Chairs canvassing matters such as the powers and responsibilities of Committee Chairs, committee management, inquiry management, and parliamentary privilege.
- At the first meeting of each committee, the committee should have a briefing on issues relevant to that committee's terms of reference and operations.
- Throughout the parliamentary term offering occasional seminars or discussion forums on matters of interest to Members.

Induction

13.5 Items to be considered for Committee Members' induction include:

- A specific induction for Members regarding the committee system and its processes (one ½ day recommended).
- The program should be designed for new Members but offered to all to refresh knowledge and understanding.
- Involve a panel of serving and former Members to expand on personal dimensions of being a Member. This would provide an opportunity for new Members to liaise with current or former Committee Members.
- Matters could include the procedures and protocols of committees including inquiry processes, parliamentary privilege and committee practice, Members interests, and the power of Committee Chairs.
- At the first meeting of each committee, the committee should have a briefing on issues relevant to that committee's terms of reference and operations. Depending on a committee's terms of reference the induction could include hearings with relevant offices such as the Auditor General's Office, the Ombudsman's Office and the Environmental Defender's Office.
- Other benefits of an induction program include the ability to establish rapport between Members and committee staff.

Legislative Council briefings

13.6 It was suggested that throughout the parliamentary term occasional seminars or discussion forums should be arranged to give Members the opportunity to hear, first hand, expert opinion on a range of relevant topics. One purpose would be to introduce Members to their duties and responsibilities as Members and to the general principles that underpin the role of Parliament, Executive Government and the Courts.

13.7 It was noted that:

- a) The sessions could be held during sitting weeks, one topic per week.
- b) The briefings could consist of sessions covering a broad range of topics relevant to the work of Members in electorates and in the chamber. Some topics could be presented by experts including special guest presenters from the public sector and the courts, for example, Auditor General, Ombudsman, Chief Judge of the District Court and Chief Justice of Western Australia.

- c) Presentations could be compiled and published on the Intranet for the benefit of all Members and staff.

A list of proposed topics is attached at Appendix 2.

Committee Members' Guidelines

- 13.8 It was noted that at the commencement of the last Parliament some helpful written material was provided to Members in relation to committee processes. Members considered that it was desirable for a written guide on the practice and procedure of committees be made available to them on their appointment. It was noted that the handbook could be a user-friendly size, preferably smaller than A4. The A5 size of the guidelines produced by the New Zealand Parliament is noted.¹⁸
- 13.9 It was noted that *Committee Members Guidelines* are currently being prepared. A list of topics that may be canvassed is attached at Appendix 3.

Recommendations

Recommendation 37: It is recommended that a specific induction be provided to Members in relation to committees and committee processes. Reference is made to the matters discussed in paragraphs 13.4 and 13.5.

Recommendation 37 is addressed to the Clerk of the Legislative Council. I note that initiatives have been commenced for the Thirty-Seventh Parliament.

Recommendation 38: It is recommended that throughout the parliamentary term occasional seminars or discussion forums could be offered on matters of interest to the Members. Reference is made to the matters discussed in paragraph 13.7

Recommendation 38 is addressed to the Clerk of the Legislative Council.

Recommendation 39: It is recommended that a written guide to the practice and procedure of committees be prepared and made available to Committee Members on their appointment.

Recommendation 39 is addressed to the Clerk of the Legislative Council. I note that initiatives have been commenced for the Thirty-Seventh Parliament.

¹⁸ <http://www.clerk.parliament.govt.nz/NR/rdonlyres/A4F2FA15-FCB9-46E3-A2A4-9C15DACACD86/11204/EffectiveSelectCommitteeMembership2004.pdf> (viewed in February 2005)

14 INDUCTION AND PROFESSIONAL DEVELOPMENT FOR COMMITTEE CHAIRS

Title of committee convenor

Discussion

- 14.1 Members observed that the Standing Orders refer to the appointed convenor of a committee as a 'chairman' and practice was to retain that nomenclature for formal committee documentation, although informally some Members had elected to be referred to as 'Chair'. Whilst the Latin origins of the term 'chairman' were noted, Members considered that the common perception of the word relates to gender. Members suggested that practice and procedure be formally altered to refer to convenors of committees as 'Chair', with the Standing Orders being amended accordingly.
- 14.2 It was also noted that consideration of the title of the convenor of a committee may also have an effect on other references in the Standing Orders to, for example, 'Chairman of Committees'.

Recommendation

Recommendation 40: It is recommended that the reference in the Standing Orders to the convenor of a committee as 'Chairman' be considered by the *Procedure and Privileges Committee* with regard to the view expressed by some Members that the reference should be to 'Chair'.

Recommendation 40 is addressed to the Legislative Council, the *Procedure and Privileges Committee* and the Clerk of the Legislative Council.

Induction and professional development

Discussion

- 14.3 It was observed that it takes time to become effective as a Committee Chair. Apart from developing the skills required to chair a multi-party meeting, time is required to gain the confidence of Members, especially from opposing parties. Many Members noted that some committees had smooth working relationships due to the rapport and trust between Members that had been fostered by the Committee Chair.
- 14.4 It was observed that Committee Chairs with appropriate skills at their disposal might be in a position to better guide their committees in their choice and planning of inquiries. This could lead to the expeditious handling of committee inquiries and reports.
- 14.5 With these observations in mind it was considered that it would greatly assist the operation of committees and their management by the Committee Chair if:

-
- an induction was offered to Committee Chairs immediately following their appointment;
 - there were regular meetings of Committee Chairs; and
 - the written material provided by the Legislative Council Committee Office to Committee Chairs was formalised and published.

Induction

14.6 Items to be considered for Committee Chairs' induction include:

- A specific induction for Committee Chairs (maximum two hours recommended). It may be possible to conduct the session with the first *Chairs' Forum* called by the Chairman of Committees (refer to section 14.7 to 14.8).
- If there are staggered appointments then it may be necessary to convene additional sessions.
- The program be designed for new Committee Chairs but offered to all Chairs to refresh knowledge and understanding;
- It would promote a collegial atmosphere by involving a panel of serving and former Committee Chairs to expand on the personal dimensions of being a Chair. This would provide an opportunity for new Committee Chairs to liaise with current or former Committee Chairs. It is anticipated that Committee Chairs would find it helpful to discuss their new responsibilities, particularly with their more experienced peers and former Committee Chairs.
- Matters could include the authority and responsibilities of a Committee Chair, effective meeting management, managing an inquiry, terms of reference, timetabling, hearings, deliberations, committee staff, and parliamentary privilege.

Regular meetings of Committee Chairs

14.7 The advantages of an informal forum where Committee Chairs could meet to discuss matters of mutual interest, to facilitate liaison between the committees and to exchange experiences and ideas was supported. It was considered that such meetings would facilitate knowledge of committee Standing Orders by providing a forum for discussion of matters pertaining to practical committee management and the functioning of committees. Many of the matters raised in this report could have been discussed and addressed in such forums had they regularly been held during the Thirty-Sixth Parliament.

14.8 Members noted that although initial attempts had occurred to convene such meetings during the Thirty-Sixth Parliament pressure on Members' time had led to difficulties with convening such meetings. Suggestions were made that a timetable for meetings of the *Chairs' Forum* for the parliamentary year be issued at the beginning of the cycle to provide adequate notice to Members so that the meetings may be noted in their diaries and the relevant time 'quarantined' from other engagements.

Committee Chairs' Guidelines

14.9 It was noted that at the commencement of the last Parliament written material was provided to Committee Chairs in relation to committee processes and that this was found to be most helpful. Members considered that it was desirable for a written guide for Committee Chairs be made available to them on their appointment.

14.10 It was noted that *Committee Members Guidelines* are currently being prepared and the publication includes material for the guidance of Committee Chairs. A list of the topics that may be canvassed is attached at Appendix 3.

Recommendations

Recommendation 41: It is recommended that a specific induction be provided to Committee Chairs to foster effective committee chairmanship. Reference is made to the matters discussed in paragraph 14.6.

Recommendation 41 is addressed to the Clerk of the Legislative Council.

Recommendation 42: It is recommended that a panel of Members comprising the Chairman of Committees and the Chairs of standing committees - a *Chairs' Forum* - be formed with a view to securing the more efficient functioning of committees. The forum might discuss such matters as challenges met within the exercise of their functions, make best practices observed in committees more widely known and develop *esprit de corps* amongst Committee Chairs.

Recommendation 42 is addressed to the Clerk of the Legislative Council and the Chairman of Committees.

Recommendation 43: It is recommended that the *Chairs' Forum* meet and hold discussions on a regular basis during sitting weeks. Although this may be dependent on the parliamentary sitting pattern, it is recommended that such meetings occur four times a year.

Recommendation 43 is addressed to the Clerk of the Legislative Council and the Chairman of Committees.

Recommendation 44: It is recommended that a timetable for meetings of the *Chairs' Forum* for the parliamentary year be issued to Committee Chairs at the beginning of the parliamentary cycle to provide adequate notice so that the meetings may be noted in their diaries.

Recommendation 44 is addressed to the Clerk of the Legislative Council and the Chairman of Committees.

Recommendation 45: It is recommended that a written guide to the practice and procedure of committee chairmanship be prepared and made available to Committee Chairs on their appointment.

Recommendation 45 is addressed to the Clerk of the Legislative Council. I note that initiatives have been commenced for the Thirty-Seventh Parliament.

15 PARLIAMENTARY COMMITTEE EDUCATION FOR THE PUBLIC SECTOR

- 15.1 It was noted that the relationship between the Executive and the Parliament could be enhanced through the working relationship between public sector employees and parliamentary committees. Subject to the application of certain necessary principles it is desirable that there be the freest flow of information between the public sector, and the Parliament and its committees.
- 15.2 Public sector employees appear each year as witnesses before committees as part of the parliamentary consideration of the Estimates and in reviews of departmental performance. Committees also require public sector employees to provide information. This process allows open review of the Executive and provides departmental officers with an opportunity to explain programs and activities. The interaction between public sector employees and committees is generally positive, of mutual benefit and encourages the free flow of information between the public service, the Parliament and the public.
- 15.3 It was noted that annual information seminars are jointly offered by the Houses of Parliament to public sector employees, that is, departmental and ministerial staff, to enhance understanding of the parliamentary environment and the mechanisms adopted for Parliament's effective scrutiny of the decisions and operations of Executive Government. During the information seminars, one 20 minute session is provided on parliamentary committees.
- 15.4 It was noted that Government guidelines for public sector employees interacting with and appearing before parliamentary committees have not been formally updated since 1987.¹⁹

¹⁹ *Ministerial Guidelines re Evidence to Parliamentary Committees 1987.*

- 15.5 It was noted that there would be merit in a seminar, or series of seminars, being made available to public sector employees in which they could explore their responsibilities in relation to the processes and practices of committees and their working relationship with committees. Whilst on a case by case basis there will be differences between the parliamentary perspective and the executive perspective, there is much to be said for providing an informal forum for discussion on practical matters.
- 15.6 I note that, on an ad hoc basis during the Thirty-Sixth Parliament, committee staff held discussions with small groups of departmental employees. It was noted that there was value in small group discussion between parliamentary committee staff and employees from the same government department, in relation to, for example, delegated legislation, local laws and uniform legislation.
- 15.7 Seminars would provide an opportunity for public sector employees to meet with staff who have responsibility for supporting the work of committees and who are able to provide a practical explanation of committee procedures and practice. The forum would also promote committee work to the Executive with a view to enhancing working relationships between the Parliament and the Executive.
- 15.8 Topics to be canvassed could include: Legislative Council committees; the *Delegated Legislation Committee* and the *Uniform Legislation and General Purposes Committee*; submissions to parliamentary committees and committee hearings; petitions to the Legislative Council and their consideration by parliamentary committees.

Recommendation 46: It is recommended that consideration be given to the Department of the Legislative Council offering a seminar program to the public sector with a view to enhancing the working relationship between public sector employees and parliamentary committees.

Recommendation 46 is addressed to the Clerk of the Legislative Council.

16 THE OPERATIONS OF THE ESTIMATES COMMITTEE

Background

- 16.1 Departments and other government agencies charged with the expenditure of public monies are accountable to Parliament for that expenditure. Their appearance before a parliamentary committee for financial review is noted as the procedural reality of that accountability.
- 16.2 One of the most significant changes brought about by the new committee system appointed in 2001 during the Thirty-Sixth Parliament is in the area of the Legislative Council's consideration of the Annual Estimates of Expenditure and related

documents (**Budget Papers**).²⁰ Previously, the Budget Papers were examined in hearings conducted by the former Legislative Council *Standing Committee on Estimates and Financial Operations*. Sessional Orders adopted during the Thirty-Sixth Parliament for each round of estimates hearings provided that the Council *Estimates Committee* was a committee of the whole House subject to those Standing Orders that apply to standing committees.

- 16.3 The most recent *Estimates Committee* was that established by resolution of the Legislative Council on December 12 2003 under Sessional Order 313. The Sessional Order changes slightly each time it is moved in an attempt to improve the process and to meet or reflect political agreement as to the process.
- 16.4 The function of examining expenditure of public funds, as opposed to the Budget Papers, is reflected in the terms of reference for the *Public Administration and Finance Committee*. That committee was established on May 24 2001, in the first session of the Thirty-Sixth Parliament, as part of a series of significant changes to the Legislative Council committee system. The committee is, in many respects, simply a combination of the functions of the former Legislative Council *Standing Committee on Public Administration* (1996-2001) and the former Legislative Council *Standing Committee on Estimates and Financial Operations* (1989-2001), *minus* the latter committee's function of conducting annual hearings into the Government's estimates of expenditure.

Discussion

- 16.5 Members unanimously expressed dissatisfaction with the process afforded by the *Estimates Committee* of the Thirty-Sixth Parliament.²¹ It was seen as a cumbersome and time-consuming procedure in which numerous questions were raised during a few days of hearings, Members could not address departmental officials directly and detailed questions and lines of inquiry were unable to be satisfactorily pursued. It was noted that it was sometimes difficult to determine from financial papers whether public money is being spent effectively and appropriately. Concerns were raised in relation to the adequacy of answers provided to the *Estimates Committee* in response

²⁰ It is observed that the role of the Estimates Committee is to consider the Budget Papers, not the Budget Appropriation Bills. The Budget Appropriation Bills themselves are not considered by the Legislative Council until they have been passed by the Legislative Assembly, which can be weeks after the *Estimates Committee* has held its hearings. In fact, pursuant to former Sessional Order 313(6), the *Estimates Committee* was required to present its report, if any, on the estimates hearings not later than one day after the Budget Appropriation Bills reach the second reading stage in the Legislative Council.

²¹ It is noted that the process for scrutiny that was afforded by the *Estimates Committee* of the Thirty Sixth Parliament was not dissimilar to the process afforded for Legislative Council scrutiny in previous Parliaments.

to questions either placed on notice prior to, or asked during the course of, the estimates hearing sessions.²²

- 16.6 Members noted that the usual inquiry processes of standing committees conducted over a period of time would enable Parliament to more effectively scrutinise government agencies charged with the expenditure of public monies than through the operation of the hearings afforded by the *Estimates Committee* and estimates hearings in previous Parliaments. The consideration of estimates by the Senate's legislation committees was favourably referred to.²³
- 16.7 Whilst the role of the current *Public Administration and Finance Committee* includes inquiring into the expenditure of public monies, it was noted that the committee's area of interest and its potential subjects for inquiry covered an extremely broad range of matters relating to the activities of the State Government. Some Members considered that financial accountability of departments to Parliament had been reduced by the combination in the one committee of both the scrutiny of public administration and finance.
- 16.8 Many Members noted that the scrutiny of the expenditure of public monies should be bestowed on a discrete standing committee of the Legislative Council that would be able to review the financial accountability of departments over the course of a year.
- 16.9 Observations about the appointment of a discrete expenditure standing committee of the Council included:
- A greater corporate memory would reside in a distinct standing committee. For example, Committee Members would have the ability to obtain a deeper understanding of issues in departments and acquire expertise.
 - The committee, being able to meet year round, would have the ability to maintain continuity of an inquiry, that is, issues revealed during an overview hearing could be pursued in a separate investigation or in-depth inquiry.
 - Conducting hearings over the course of a year might enable examination of more 'off-Budget' agencies, for example, semi-privatised Government trading enterprises such as Western Power, Water Corporation and Alinta Gas.

²² For example: Legislative Council of Western Australia, *Report of the Estimates Committee in relation to the 2002/2003 Budget Estimates Hearings*, June 2003.

²³ Twice each year estimates of proposed annual expenditure of government departments and authorities are referred by the Senate to its eight legislation committees for examination and report. These estimates are contained in the main appropriation bills introduced into Parliament as part of the budget (usually in May) and in the additional appropriation bills introduced later in the year (usually in November). For further information refer to: Australian Parliament, *Senate Brief No 5: Consideration of Estimates*, November 2004, www.aph.gov.au/senate/pubs/briefs/brief5.htm (viewed in December 2004)).

- Departmental officers involved must be present for proper and thorough investigation before the committee and Members could question officers more directly about, for example, the objectives, operational procedures and efficiency of programs for which they are responsible.²⁴ In this respect, the requirements of SO 331 are noted and it may be necessary for Ministers to attend to answer questions of policy.²⁵
- If witnesses are unable to provide a satisfactory answer during a hearing then they may do so by means of a question on notice procedure or supplementary hearings, similar to what occurs in current estimates hearings.
- Matters of procedure to compel the giving of answers would be able to be pursued outside the committee's scrutiny hearings and should not impede any carefully constructed timetable of monthly hearings.²⁶
- Matters of financial accountability could be immediately inquired into by the committee, for example, the committee might hold a hearing into a current matter of concern and report to the House. The report need not be a narrative report of an inquiry; it could be a report of the hearing with some observations for the attention of the House.

16.10 Items considered in relation to and by a committee charged with overseeing the financial accountability of departments could be as follows:

- Select agencies to be examined by the committee during the forthcoming year.
- Establish a program of hearings over the course of a parliamentary year in which they would hear evidence from, and concentrate on, a particular agency at each hearing.
- Publish the program of hearings well in advance to enable Members to participate in hearings of interest and to prepare questions in advance. To enable participation by other Members the hearings should not be held on a day when other committees usually meet.

²⁴ It is observed that during hearings of the *Estimates Committee* witnesses were accompanied by the responsible or representing Minister or Parliamentary Secretary. Although the Minister's consent is technically required before Members can ask questions directly of the witnesses, Ministers generally stated at the outset of a hearing that they had no problem with questions being asked directly of the witnesses, who are generally agency Chief Executive Officers and senior advisers.

²⁵ SO 331 provides that "*Where a committee examines a public servant, questions of policy shall not be asked of that person but shall be directed to the responsible Minister. A public servant is entitled to decline to answer any question on a matter of policy.*"

²⁶ The difficulties faced by the *Estimates Committee* in pursuing such matters to the detriment of the carefully constructed timetable of the week's hearings were noted in: Legislative Council of Western Australia, *Report of the Estimates Committee in relation to the 2002/2003 Budget Estimates Hearings*, June 2003, p4.

- Give prior notice of questions that will be asked in the committee to allow for a considered, informative response.
- There be an appointed membership of three with an ability to co-opt additional Members as the case requires. Aside from co-option, which would afford deliberative and voting rights additional to the full membership, the usual means for contribution by Members through participating and substitute membership would be available.²⁷

16.11 It was noted as desirable that any committee charged with the responsibility of overseeing the financial accountability of departments should be provided with the necessary resources and expert assistance. It was observed that this would require:

- adequate staffing with its own Committee Clerk and Advisory Officer; and
- assistance from a representative of the Office of the Auditor General who could advise the committee on matters to consider and issues that could be pursued; and advise during hearings on any matters of a technical financial or accounting nature that may arise.

Recommendations

Recommendation 47: It is recommended that consideration be given to ensuring that a committee of the Legislative Council is provided with the mandate to examine the expenditure of public monies.

Recommendation 47 is addressed to the Legislative Council, the *Procedure and Privileges Committee* and the Clerk of the Legislative Council. In making this recommendation I note the total number of committees and the size of their membership will need to be cognisant of the number of Members available in the Legislative Council and to avoid appointment of Members to multiple committees. In this respect I note that the facility provided by the *Uniform Legislation and General Purposes Committee* to co-opt Members may be utilised by other committees. Any increase in the number of committees will also require an assessment of the staffing resources of the Legislative Council Committee Office.

²⁷ It is observed that the rights of ‘participating Members’ in estimates hearings by Senate Committees (to which some Members referred) differs to those ‘participating Members’ of Legislative Council standing committees. Participating Members in Senate committee estimates hearings have the right to attend hearings (as do Legislative Council participating Members). They also have the right to receive all documentation provided to the committee and participate in deliberations but may not vote (similar to Legislative Council participating Members who have the leave of the committee to do so). In contrast to Western Australia, participating Members in Senate committee estimates hearings may add their conclusion or recommendation to a committee’s report.

Recommendation 48: It is recommended that any proposal to establish an *Estimates Committee*, as provided by previous Sessional Orders of the Thirty-Sixth Parliament, be fully considered by the *Procedure and Privileges Committee* and the matters raised in this report and the reports of previous *Estimates Committees* be taken into account.

Recommendation 48 is addressed to the Legislative Council, the *Procedure and Privileges Committee* and the Clerk of the Legislative Council.

17 OTHER MATTERS

Select committees

Discussion

17.1 With regard to select committees it was observed that:

- a) the Standing Orders governing select and standing committees were different and it was suggested that there should be common rules that apply to both select and standing committees;
- b) terms of appointment for select committees have applied Chapter XXII of the Standing Orders to the select committee's proceedings;²⁸
- c) select committees should not be appointed unless a funding appropriation is provided separately to the Legislative Council Vote. Unless such funding is available then Members should be encouraged to utilise the 'general purpose' function of the *Uniform Legislation and General Purposes Committee* or refer the subject matter of inquiry to a standing committee; and
- d) if a select committee was appointed then the Government should be required to provide additional discreet funding.

17.2 It was further observed that in the Legislative Council of South Australia, Research Officers for select committees are usually provided from within the public service and are paid by their particular government department. Negotiations are held with particular government departments or the (SA) Office of the Commissioner for Public Employment to obtain these officers but they are not 'seconded' like the Research Officers for the standing committees.

²⁸ Chapter XXII of the Standing Orders governs standing committee proceedings.

Recommendations

Recommendation 49: It is recommended that the *Procedure and Privileges Committee* review the Standing Orders that apply to standing committees and select committees to consider whether to apply Chapter XXII of the Standing Orders to all committees.

Recommendation 49 is addressed to the Legislative Council, the *Procedure and Privileges Committee* and the Clerk of the Legislative Council. In making this recommendation I note awareness of the procedural parameters within which select committees ordinarily operate and whether Chapter XXII of the Standing Orders should be applied.

Recommendation 50: It is recommended that prior to moving a motion to establish a select committee the mover should be required to discuss the funding and staffing requirements with the Clerk.

Recommendation 50 is addressed to Members of the Legislative Council.



Hon George Cash MLC
Chairman of Committees

Date: May 19 2005

APPENDIX 1

USE OF INSTANTANEOUS COMMUNICATION DEVICES BY THE NEW ZEALAND AND AUSTRALIAN PARLIAMENTS (AS AT DECEMBER 2004)

Use of ICD	To form quorum	Not for quorum or voting but members can participate	Sworn evidence - public	Sworn evidence - private
CTH House of Reps	√ Standing Orders ¹	NA	√ Standing Orders ²	√ Standing Orders - limited circumstances ³
CTH Senate	√ Standing Orders ⁴	NA ⁵	√ Standing Orders ⁶	√ No distinction ⁷
NZ House of Reps	X ⁸	X ⁹	√ Speaker's Guidelines	√ Speaker's Guidelines - limited circumstances ¹⁰
NSW Legislative Assembly	√ Practice only Rare occasions ¹¹	√ Practice only Rare occasions ¹²	√ Practice only Rare occasions ¹³	No distinction
NSW Legislative Council	X	X ¹⁴	√ ¹⁵	No distinction
VIC Legislative Council	X	X ¹⁶	X ¹⁷	X ¹⁸
QLD Legislative Assembly	√ Standing Orders ¹⁹	NA	√ Standing Orders ²⁰	No distinction ²¹
ACT Legislative Assembly	√ Standing Orders ²²	NA	X (being revised))	X (being revised)
SA House of Assembly	√ Rarely - practice only ²³	X	√ Rarely - practice only ²⁴	No distinction ²⁵

Use of ICD	To form quorum	Not for quorum or voting but members can participate	Sworn evidence - public	Sworn evidence - private
SA Legislative Council	X ²⁶	X	√ Practice only Rare occasions ²⁷	No distinction ²⁸
TAS Legislative Assembly	Proposed changes ²⁹	NA	Proposed changes ³⁰	Proposed changes ³¹
TAS Legislative Council	√ Standing Orders ³²	NA	X Proposed changes ³³	X Proposed changes ³⁴
NT Legislative Assembly	Developing ³⁵	Developing ³⁶	√ Practice only ³⁷	√ Practice only ³⁸
WA Legislative Assembly	√ Speaker's Guidelines ³⁹	NA	√ Speaker's Guidelines ⁴⁰	√ Speaker's Guidelines ⁴¹ (but not for in camera evidence/secret evidence)
WA Legislative Council	X	X	√ Practice only Rare occasions	X

¹ Commonwealth Parliament, House of Representatives, Standing Order 235. See also the Procedural Guidelines in Harris, *House of Representatives Practice* (10th ed), Department of the House of Representatives, Canberra, 2001, pp679-680.

² Ibid.

³ Commonwealth Parliament, House of Representatives, Standing Order 235 does not limit the use of electronic means of communication to public hearings. However, the Procedure Committee has issued guidelines to assist committees in deciding whether to conduct meetings using audio-visual or audio links. Those guidelines provide that they should only be used to hear evidence *in camera* if the committee is satisfied that the evidence will not be overheard or recorded by any unauthorised person and that the transmission is secure.

⁴ Commonwealth Parliament, Senate, Standing Order 30(3).

⁵ Until 1997 when the current Senate Standing Orders were adopted, the principle was followed that a duly constituted meeting of a committee required a quorum of members present in one place, but other members and witnesses could participate in such a meeting by telephone or television. Evans H (ed) *Odgers' Australian Senate Practice* (10th ed), Department of the Senate, Canberra, 2001, p417.

⁶ Commonwealth Parliament, Senate, Standing Order 30(3).

⁷ 'No distinction' has been used to indicate that inquiries undertaken have not indicated that there is a distinction between public and private evidence when using video and/or audio conferencing. The Standing Orders contain no reference to the hearing being public or private. Commonwealth Parliament, Senate, Standing Order 30(3).

⁸ This position was recently re-affirmed in a report of the Standing Orders Committee, New Zealand, House of Representatives, *Review of Standing Orders*, December 2003, p35.

-
- 9 Ibid.
- 10 Guidelines provide that where a committee is to hear private or secret evidence by videoconference, the chairperson must be satisfied that security is guaranteed and that no unauthorised person can overhear or intercept proceedings.
- 11 The New South Wales Legislative Assembly has a general policy not to conduct video or audioconferencing for hearings or deliberative meetings. However, it appears that on a couple of unusual occasions this has occurred.
- 12 Ibid.
- 13 Ibid.
- 14 Ibid.
- 15 Ibid.
- 16 Ibid.
- 17 Ibid.
- 18 Ibid.
- 19 Queensland Parliament, Legislative Assembly, Standing Order 200(4).
- 20 Queensland Parliament, Legislative Assembly, Standing Order 204.
- 21 Queensland Parliament, Legislative Assembly, Standing Order 204.
- 22 Australian Capital Territory Parliament, Legislative Assembly, Standing Order 230A. Although the Standing Orders indicate that this Order was in force for the remainder of the Fifth Session and that Session has concluded, inquiries indicate that the arrangements will continue.
- 23 Inquiries indicate that audio conferencing only has been used on rare occasions. Whilst the House of Assembly does not actively promote this it is noted that change will occur as technology changes.
- 24 Ibid.
- 25 Inquiries indicate that on the few occasions ICD has been used, a distinction between its use for public or private use was not raised.
- 26 The Standing Orders do not make provision for meetings to occur by electronic means and the advice from the Clerk of the Legislative Council does not refer to it occurring.
- 27 Whilst the Standing Orders for the Legislative Council do not make provision for the taking of evidence by electronic means, on occasions it has been used.
- 28 Audio/video conferencing was used during an inquiry which also took 'in camera' evidence.
- 29 In a recent report, the Tasmanian Joint Select Committee on the Working Arrangements of Parliament recommended that the *Parliamentary Privileges Act 1858* be amended to provide the authority for all parliamentary committees, whether established by resolution or statute, to be able to meet by electronic means for the purpose of deliberation **or to take evidence**. Tasmania, Joint Select Committee - Working Arrangements of the Parliament, *Report No. 13 - Electronic Committee Meetings*, October 20 2004.
- 30 Ibid.
- 31 Ibid.
- 32 Tasmanian Parliament, Legislative Council, Standing Order 186(3).
- 33 Ibid.
- 34 Ibid.
- 35 See email from Mr David Horton, Deputy Clerk, Northern Territory, Legislative Assembly, December 14 2004.
- 36 Ibid.
- 37 Although this is generally accepted, it is not reflected in the Standing Orders. Changes are expected in 2005.
- 38 Ibid.
- 39 Western Australia, Legislative Assembly, Procedure and Privileges Committee, *Use of Video-Conferencing by Legislative Assembly Committees*, June 2003. Sessional orders and Speaker's Rulings operated in the Thirty-Sixth Parliament with this report recommending that Standing Orders be changes. Audioconferencing links are not permitted for meetings and hearings - must be videoconferencing link.
- 40 Ibid.
- 41 Ibid.

APPENDIX 2

LEGISLATIVE COUNCIL BRIEFINGS: SOME TOPICS

- What is Parliament - separate functions Parliament, Executive, Judiciary; why separation of power is important; functions of House; government accountability
- The Legislative Process
- Government accountability to the House
- Role of the Member and Member's conduct
- Parliamentary papers and publications: How to read and where to find: the Notice Paper, Minutes, Business Program, Tabled Paper list, Questions and Questions on Notice, Messages, Bills.
- Roles in the House: President, Chairman of Committees, Whips, Leaders, Ministers, Parliamentary Secretaries; and the Business Management Committee

- Privilege and contempt
- When can courts investigate the proceedings of Parliament?
- Freedom of Political Communication

- Hansard: history; explanation; and demonstration
- Parliamentary Library
- Role of the Auditor General and Ombudsman
- Role of the Crime and Corruption Commission
- Elements of the judicial and legal process

- The Genesis of a Legislative Instrument
- Elements in a Bill and Tools to Assist Scrutiny
- Fundamental Legislative Scrutiny Principles

- Uniform Legislation and Intergovernmental Agreements
- State Agreement Acts
- National Competition Policy
- Treaties and Conventions

- Do Governments need to obey Statutes? Immunity of the Crown
- Introduction to Natural Justice principles

- The Western Australian Constitution
- Manner and form provisions in the Western Australian Constitution and the Marquet case
- The separation of powers in the Commonwealth and the States
- Section 46 of the *Constitution Act Amendment Act 1899* regarding the ability of the House to make amendments to bills that may increase any proposed burden or charge on the people

APPENDIX 3

COMMITTEE MEMBERS GUIDELINES: TOPICS

HOW TO BE AN EFFECTIVE COMMITTEE MEMBER

THE IMPORTANCE OF COMMITTEE MEMBERSHIP
PLANNING

INTRODUCTION TO COMMITTEES

BACKGROUND
TYPES OF COMMITTEES
APPOINTMENT OF COMMITTEES
MEMBERSHIP OF COMMITTEES
POWERS OF COMMITTEES
COMMITTEE BUSINESS
PROGRAMMING
RESOURCES
COMMITTEE DOCUMENTS

SUPPORT SERVICES

COMMITTEE STAFF
ADVISERS
LEGISLATIVE DRAFTING

COMMITTEE MEETINGS

MEETING TIMES AND PLACES
CHAIR AND DEPUTY CHAIR
MEETING PAPERS
SUBCOMMITTEES
QUORUM
VOTING

INQUIRIES

BACKGROUND
ESTABLISHING TERMS OF REFERENCE
TAKING EVIDENCE
CONSIDERATION OF SUBMISSIONS, DELIBERATIONS AND DRAFT REPORT

BILLS

BEING A LEGISLATOR
TYPES OF BILLS
REFERRAL OF BILLS
EXPLANATORY MEMORANDA
SETTLE SCOPE OF INQUIRY
TAKING EVIDENCE
DELIBERATIONS AND DRAFT REPORT

PETITIONS

WHAT IS A PETITION?
INQUIRING INTO A PETITION

REPORTS

WITNESSES AND EVIDENCE

SUBMISSIONS
HEARINGS
POWERS
WITNESS ENTITLEMENTS
EVIDENCE OF PUBLIC SERVANTS
WITNESSES' EXPENSES
RECORDING OF EVIDENCE
EVIDENCE ON OATH

STATUS OF PROCEEDINGS AND EVIDENCE

GENERALLY
WRITTEN EVIDENCE
ORAL EVIDENCE
PUBLICATION OF PRIVATE EVIDENCE
CONSIDERATION AND DELIBERATION
PRESS STATEMENTS

PROCEDURE FOR CHAIR

ROLES AND FUNCTIONS
POWERS
BUSINESS AND MEETING MANAGEMENT
CONDUCT OF HEARINGS
COMMITTEE DELIBERATIONS
SUSPENSION AND CLOSURE OF MEETINGS
ABSENCE OF CHAIR

PARLIAMENTARY PRIVILEGE