



MINISTER FOR MINES  
AND PETROLEUM;  
FISHERIES;  
ELECTORAL AFFAIRS;  
LEADER OF THE  
GOVERNMENT IN THE  
LEGISLATIVE COUNCIL

Our ref: 26-05234

Mr Paul Grant  
Clerk Assistant (Committees)  
Legislative Council  
Parliament House  
PERTH WA 6000

Dear Mr Grant

**GOVERNMENT RESPONSE: REPORT 36, TABLING OF SUBSIDIARY LEGISLATION  
IN THE LEGISLATIVE COUNCIL**

Thank you for your letter dated 19 November 2009 regarding the report of the Joint Standing Committee on Delegated Legislation – Report 36, Tabling of Subsidiary Legislation in the Legislative Council. The Attorney General and I have met to consider the Report's recommendations and provide the following joint response.

The Report\* notes that the Joint Standing Committee on Delegated Legislation (the Committee) considers between 400 and 500 instruments per annum and that the Committee performs a lot of the work in order to decide whether or not subsidiary legislation should be disallowed. The Report also provides examples of how it would have more time to consider instruments if the timeframes within the process were slightly altered.

In the first example, when an instrument is tabled on the fifth sitting day instead of the first (including the Summer Recess), the last day to move a Notice of Disallowance is extended from 19 November 2009 to 2 March 2010. In the second example (without the inclusion of the Summer Recess) the last day to move a Notice of Disallowance is extended from 21 October 2009 to 12 November 2009.

The requirements in other Australian jurisdictions are generally similar to the present requirements in Western Australia. In New South Wales, the *Interpretation Act 1987* (NSW), section 41(1) provides that a resolution to disallow a regulation must be made within 15 sitting days of tabling. The South Australian time limit for disallowance is 14 sitting days *Subordinate Legislation Act 1978* (SA), section 10(5b), which is identical to the *Interpretation Act 1984* (WA), section 42(2).

Similarly with regard to the tabling of instruments, in Tasmania the *Acts Interpretation Act 1931* (Tas), section 47(3), provides that instruments must be tabled within 10 days of publication. In Queensland and South Australia, the *Statutory Instruments Act 1992* (Qld), section 49, and the *Subordinate Legislation Act 1978* (SA), section 10(3), both provide that instruments must be tabled within 14 days and 6 days, respectively, of being notified in the relevant gazettes. The 14 days allowed in Queensland is considerably longer than the 6 days presently provided in South Australia and the *Interpretation Act 1984* (WA), section 42(1).

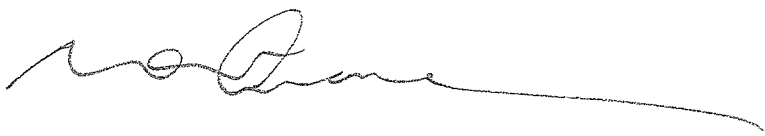
Any of the recommendations would provide the Committee with more time to consider subsidiary legislation. However, there could be quite long periods before there would be any certainty that the regulations would not be disallowed. Sometimes the commencement of regulations is deliberately postponed until it is certain that they will not be disallowed and any of the proposals would result in much longer postponement.

A regulation remains in effect unless and until it is disallowed by either House of Parliament. Under one of the examples provided by the Committee a regulation could remain in effect for nearly six months before disallowance. This creates uncertainty for the public and the Government particularly where fees are involved, as occurred in the recent problems with court fees. Consequently, if recommendation 3 or 4 to amend the *Interpretation Act 1984* (WA) was implemented, the result could be that the public may be disadvantaged and the public perception of "the law", because an instrument which has been legally effective and then six months later disallowed, will be undermined.

The above issues have been considered along with the time challenges the Committee is experiencing. As a result the Government is willing to support Recommendation 1 which states 'The Committee recommends that Standing Order 153 (c)(i) be amended by deleting the number '10' and substituting it with the number '16''.

As this recommendation requires changes to Standing Order 153 (c)(i), I will arrange for Recommendation 1 of the Report to be forwarded to the Legislative Council Procedure and Privileges Committee. As you would be aware, this Committee is currently reviewing the Legislative Council Standing Orders and will be requested to consider this recommendation as part of their deliberations. I will request the Procedure and Privileges Committee report directly to the Joint Standing Committee on Delegated Legislation on the outcome.

Yours sincerely



HON NORMAN MOORE, MLC  
MINISTER FOR MINES AND PETROLEUM; FISHERIES; ELECTORAL AFFAIRS;  
LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL

30 MAR 2010