



THIRTY-SEVENTH PARLIAMENT

REPORT 6
STANDING COMMITTEE ON LEGISLATION
ANNUAL REPORT 2006

Presented by Hon Graham Giffard MLC (Chair)

December 2006

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“4. Legislation Committee

- 4.1 *A Legislation Committee* is established.
- 4.2 The Committee consists of 5 Members.
- 4.3 The functions of the Committee are to consider and report on any Bill referred by the House or under SO 125A.
- 4.4 Unless otherwise ordered any amendment recommended by the Committee must be consistent with the policy of a Bill.”

Members during this reporting period:

Hon Graham Giffard MLC (Chair)

Hon Peter Collier MLC

Hon Giz Watson MLC (Deputy Chair)

Hon, Dr Sally Talbot MLC

Hon Ken Baston MLC

Hon George Cash MLC (substitute member for Hon Ken Baston MLC on the inquiry into the Criminal Investigation Bill 2005, Criminal Investigation (Consequential Provisions) Bill 2005 and Criminal and Found Property Disposal Bill 2005)

Hon Simon O’Brien MLC (substitute member for Hon Ken Baston MLC on the inquiry into the Taxi Amendment Bill 2005)

Staff during this reporting period:

David Driscoll, Senior Committee Clerk

Anne Turner, Advisory Officer (Legal)

Lisa Peterson, Advisory Officer (General)

Christine Kain, Advisory Officer (Legal)

Denise Wong, Advisory Officer (Legal)

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ISBN 1 9208 8698 2

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REPORT OF THE STANDING COMMITTEE ON LEGISLATION

ANNUAL REPORT 2006

1 INTRODUCTION

- 1.1 Prior to the Thirty-Sixth Parliament, it was the usual practice for the Governor, on advice from the Executive, to prorogue and reopen the Parliament in August each year.¹ Reflecting this practice, parliamentary committees prepared 'sessional' reports for tabling in the Legislative Council on their work during that period.
- 1.2 In June 2003, the Government indicated that it did not intend to continue to ask the Governor to prorogue on an annual basis² and prorogation did not occur in August 2003 or August 2004 during the Thirty-Sixth Parliament. Reflecting this shift in practice, in the Thirty-Seventh Parliament, parliamentary committees of the Legislative Council table annual reports relating to their work during the calendar year.

2 REPORTING PERIOD

- 2.1 This report covers a 12-month period of activity by the Standing Committee on Legislation (**Committee**) between 1 January 2006 and 7 December 2006 (the last scheduled day of sitting for 2006) in the second year of the Thirty-Seventh Parliament.

3 ESTABLISHMENT OF THE COMMITTEE

- 3.1 The Committee was established on 17 August 2005 as part of a series of changes to the Legislative Council committee system.

4 TERMS OF REFERENCE

- 4.1 The Committee's terms of reference are published on the inside cover of this Report. On 20 September 2006, the Committee's terms of reference were amended by the Legislative Council. Previously, the Committee had discretion to consider the policy of a bill to a limited extent. Essentially, the new terms of reference have omitted former clause 4.4(a) in Schedule 1 of the Standing Orders which stated:

¹ Hon Kim Chance MLC, Minister for Agriculture and Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 25 June 2003, p9149. Parliament meets and transacts business for a period known as a 'session'. A session is terminated by a 'prorogation' of Parliament, which is effected by proclamation of the Governor on the advice of the Executive Council. Prorogation suspends meetings of each House and its committees.

² Hon Kim Chance MLC, Minister for Agriculture and Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 25 June 2003, p9150.

Unless otherwise ordered, the policy of a Bill ... may be considered by the Committee but only to the extent that the Committee is satisfied the provisions of the Bill ... are consistent with that policy and that the legislative intent can be given practical effect.

- 4.2 Effectively, the alteration means that the Committee is now absolutely prohibited from scrutinising the policy of a bill unless otherwise ordered by the House.
- 4.3 The functions of the Committee are to consider and report on any bill referred by the Legislative Council or under Standing Order 125A (that is, referred by the Legislative Council at the recommendation of the Business Management Committee). Most bills can be referred by the Legislative Council to its committees, the general exceptions being appropriation, taxation and loan bills.
- 4.4 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 Standing Committee on Uniform Legislation and Statutes Review (scrutiny of uniform legislation), and the Committee (scrutiny of primary legislation).
- 4.5 The Committee does not scrutinise all bills introduced into the Legislative Council as a matter of course; it only scrutinises bills if they are specifically referred by the Legislative Council. The Committee cannot amend a bill but may make narrative form recommendations and/or statutory form recommendations to amend a bill in its report to the Legislative Council. Unless otherwise ordered by the Legislative Council, any amendment recommended by the Committee must be consistent with the policy of a bill.
- 4.6 The Committee is able to consider bills in more detail than would be possible in the limited time available in the Legislative Council itself and to report its findings to the Legislative Council. This process allows for effective mediation of differing political views on issues. It also encourages the general public and stakeholders to participate in an inquiry.
- 4.7 Under its terms of reference, the Committee's inquiries focus on the feasibility, clarity and technical competence of a bill. The Committee also considers any abrogation or curtailment of various, fundamental legislative principles.³

5 COMMITTEE MEMBERSHIP

5.1 The Committee consists of five Members:

- Hon Graham Giffard MLC (Chair);

³ These principles are attached in Appendix 1.

-
- Hon Giz Watson MLC (Deputy Chair);
 - Hon Peter Collier MLC;
 - Hon Dr Sally Talbot MLC; and
 - Hon Ken Baston MLC.

6 STAFF AND SUPPORT SERVICES

6.1 The Legislative Council Committee Office supports the Committee. During the reporting period, the Committee was staffed at various times by:

- Ms Denise Wong, Advisory Officer (Legal);
- Mr David Driscoll, Senior Committee Clerk;
- Ms Anne Turner, Advisory Officer (Legal);
- Ms Lisa Peterson, Advisory Officer (General); and
- Ms Christine Kain, Advisory Officer (Legal).

7 INQUIRIES

Parental Support and Responsibility Bill 2005

7.1 The Parental Support and Responsibility Bill 2005 was referred to the Committee on 30 November 2005 with no reporting date. The policy of the bill was expressly referred for inquiry.

7.2 The purposes of the Parental Support and Responsibility Bill 2005 were to provide for:

- the making of responsible parenting agreements and responsible parenting orders with respect to parents of children aged up to 15 years who are offending, engaging in antisocial behaviour or failing to attend school;
- information sharing between government agencies; and
- the making of consequential amendments to various Acts.

7.3 The Committee spent 11 months completing this inquiry, tabling on 2 November 2006.⁴ The Committee was divided with respect to three statutory form

⁴ Western Australia, Legislative Council, Report No 5, *Parental Support and Responsibility Bill 2005*, 2 November 2006.

recommendations made in the Report, which included the deletion of Part 5 of the bill relating to responsible parenting orders.

Taxi Amendment Bill 2005

- 7.4 The Taxi Amendment Bill 2005 was referred to the Committee on 1 December 2005. Its purpose was to introduce changes to the *Taxi Act 1994* to provide the owners of transferable multipurpose taxi plates with an opportunity to reduce their costs by selling their plates back to the Government.
- 7.5 The Committee tabled its Report on 23 March 2006 and recommended that the bill be passed without amendment.
- 7.6 Hon Simon O'Brien MLC substituted for Hon Ken Baston MLC on this inquiry pursuant to Standing Order 326A. Hon Ken Baston MLC subsequently participated in this inquiry with leave of the Committee to take part in deliberations pursuant to Standing Order 326. The Committee extends its appreciation to Hon Simon O'Brien MLC for his contribution to the inquiry.

Criminal Investigation Bill 2005, Criminal Investigation (Consequential Provisions) Bill 2005 and Criminal and Found Property Disposal Bill 2005

- 7.7 The Criminal Investigation Bill 2005, Criminal Investigation (Consequential Provisions) Bill 2005 and Criminal and Found Property Disposal Bill 2005 were referred to the Committee on 13 June 2006 with a reporting date of 30 August 2006. An extension of the reporting date was granted to 20 September 2006.
- 7.8 The purposes of the bills (and in particular, the Criminal Investigation Bill 2005) were to:
- amalgamate statutory police powers currently available to police by virtue of the *Police Act 1892* and *The Criminal Code*;
 - codify the majority of police common law powers; and
 - introduce new powers that reflect the needs of a contemporary police force.
- 7.9 In its Report⁵, the Committee focussed primarily on the Criminal Investigation Bill 2005 and made six statutory form recommendations and one narrative recommendation in relation to that bill. The Committee also made one statutory form recommendation to each of the Criminal Investigation (Consequential Provisions) Bill 2005 and the Criminal and Found Property Disposal Bill 2005.

⁵ Western Australia, Legislative Council, Report No 4, *Criminal Investigation Bill 2005, Criminal Investigation (Consequential Provisions) Bill 2005 and Criminal and Found Property Disposal Bill 2005*, 20 September 2006.

7.10 Hon George Cash MLC substituted for Hon Ken Baston MLC on the inquiry into these bills pursuant to Standing Order 326A. The Committee extends its appreciation to Hon George Cash MLC for his contribution to the inquiry.

8 REPORTING TIMEFRAMES

8.1 The short reporting timeframe imposed by the Legislative Council in relation to the Criminal Investigation Bill 2005, Criminal Investigation (Consequential Provisions) Bill 2005 and Criminal and Found Property Disposal Bill 2005 meant that the Committee was unable to produce as comprehensive a report as might otherwise have been possible. The fact that the referral was made during the six week winter recess meant that Members encountered difficulties with the scheduling of meetings.

8.2 The Committee draws to the attention of the Legislative Council, the need to give due consideration to the adequacy of the reporting timeframes it imposes in order to ensure adequate opportunity for public and stakeholder participation. This will ensure that the Committee's work is of maximum assistance to the House.

9 CONCLUSION

9.1 The Committee considers that:

- it has an important role in assisting the Legislative Council to consider and review proposed legislation; and
- in the time made available to the Committee for this function during the reporting period, it has operated efficiently and effectively.



Hon Graham Giffard MLC

Chair

7 December 2006

APPENDIX 1

FUNDAMENTAL LEGISLATIVE PRINCIPLES

Does the Bill have sufficient regard to the rights and liberties of individuals?

1. **Are rights, freedoms or obligations dependent on administrative power only if sufficiently defined and subject to appropriate review?**
2. **Is the Bill consistent with principles of natural justice?**
3. **Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?**
4. **Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?**
5. **Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?**
6. **Does the Bill provide appropriate protection against self-incrimination?**
7. **Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?**
8. **Does the Bill confer immunity from proceeding or prosecution without adequate justification?**
9. **Does the Bill provide for the compulsory acquisition of property only with fair compensation?**
10. **Does the Bill have sufficient regard to Aboriginal and Torres Strait Islander tradition?**
11. **Is the Bill unambiguous and drafted in a sufficiently clear and precise way?**

Does the Bill have sufficient regard to the institution of Parliament?

12. **Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?**
13. **Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?**

14. Does the Bill allow or authorise the amendment of an Act only by another Act?

15. Does the Bill affect parliamentary privilege in any manner?