



PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE  
ON  
DELEGATED LEGISLATION**

**TWENTY-THIRD REPORT:**

*Sessional Report: 4th Session, 34th Parliament*

Presented by the Hon Robert Laurence Wiese MLA (Chairman)

**23**  
**August 1997**

## **Joint Standing Committee on Delegated Legislation**

### **Members**

Hon Bob Wiese MLA (Chairman)  
Hon Nick Griffiths MLC (Deputy Chairman)  
Hon Barbara Scott MLC  
Hon Jim Scott MLC  
Hon Simon O'Brien MLC  
Mr Ted Cunningham MLA  
Mr Mark McGowan MLA  
Mr Iain MacLean MLA

### **Advisory/Research Officers**

Andrew Mason

### **Committee Clerk**

Jan Paniperis

### **Terms of Reference**

*It is the function of the Committee to consider and report on any regulation that:*

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament;*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

*If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.*

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## **Report of the Joint Standing Committee on Delegated Legislation**

**in relation to**

### **Sessional Report: 4th Session, 34th Parliament**

#### **1 Introduction**

- 1.1 The 4th Session of the 34th Parliament was a busy and fruitful year for the Committee. The Committee resumed meeting on 21 March 1996 and meetings continued throughout the year until 12 November 1996 after which Parliament was dissolved and prorogued for a general election. Within this period the Committee was able to review and consider a large volume of subordinate legislation, tabled several reports, lodged several notices of motion of disallowance as protective measures, had its staffing arrangements improved and began investigations into a number of matters which may have wider ramifications in regard to the governing of this State.
- 1.2 It is the intent of this report to review the Committee's work for the 4th Session of the 34th Parliament and to this end the report contains a summary of the many issues that came before the Committee in 1996. Some of these are a continuation of matters and inquiries that the Committee had been conducting prior to and including 1995, however some represent new issues that the Committee felt worthy of attention. In all cases these matters are or will be dealt with in more detail by the Committee either in other reports or on a private basis with the parties concerned. As such this report is only to be treated as a historical record of the Committee's work in 1996 and not as a statement of the Committee's position in relation to any of the matters discussed.

#### **2 Committee Membership**

- 2.1 In accordance with its rules, the Committee has 8 members, 4 from each of the Houses of Parliament. In 1996 the members were:

Hon Bruce Donaldson MLC (Chairman)  
Hon Tom Helm MLC (Deputy Chairman)  
Hon Jim Scott MLC  
Hon Cheryl Davenport MLC  
Mr Bob Bloffwitch MLA  
Mr Kevin Leahy MLA  
Mr Ted Cunningham MLA  
Mrs June van de Klashorst MLA

Hon Cheryl Davenport MLC replaced Hon Doug Wenn MLC who resigned on 21 May 1996 having served on the Committee since 3 August 1993.

## 3

**Committee Staff**

- 3.1 In its exacting work, the Committee is currently supported by 2 staff (1 legally trained advisory/research officer and 1 committee clerk). This represents an increase in the staffing of the Committee from the previous arrangement where the staff also worked for other Committees. The increase in staffing has enabled the Committee to recover some of the ground that it lost during the previous period. The Committee had for a period not scrutinised all “by-laws”. The Committee resumed this task late in 1995 largely due to the efforts of the previous advisory/research officer, Stuart Kay. The employment of a full-time advisory/research officer has enabled this task to continue. Despite this there remains potential for the Committee to face staffing and resource problems in the future due to the requirement of staff to service other committees. In this regard the comments below adopted from the Committee’s 18th Report, *1995 Review of Operations*, remain pertinent today.
- 3.2 With the escalating volume and complexity of subordinate legislation being published in Western Australia, the Committee's role is becoming increasingly important and difficult. Competent staff are required to assist the members in their role.
- 3.3 The Committee commented on the importance of its staff in its 16th Report, *The Subordinate Legislation Framework in Western Australia*<sup>1</sup>. The importance of committee staff should not be underestimated. Professor Pearce has said:

“It is not really practicable to expect a member of a committee, even though he be a lawyer, to undertake the time-consuming task of carefully perusing the [numerous] pieces of delegated legislation that are produced each year, reading them into the existing legislation if they are amending instruments, checking them against their empowering Acts, etc. This is something that should be done for the committee by a legal adviser who should be paid for his assistance. It does not seem appropriate that the adviser should be a governmental officer because conflicts of interest can too readily arise... Alternatively, as is the position in the United Kingdom, a legally trained member of the parliamentary staff could provide the requisite assistance to the committee<sup>2</sup>.”

- 3.4 When the establishment of the Committee was being debated in the Legislative Council in 1987, Hon VJ Ferry said:

“The best example in Australia is that of the Australian Senate in Canberra, which has been blessed over the years with having the benefit of very competent legal advice for what I consider to be a very low sum of money. The Senate committee system has been very fortunate in obtaining the services of very competent legal advisers from time to time for a very low reward in monetary terms. I admire the legal counsel who have made themselves available in a very dedicated way to assist the committee to work for the Senate. Similarly, in this State I believe that

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<sup>1</sup> pp17-18.

<sup>2</sup> Pearce 1977, pp 83-4.

in order for this committee as proposed to be effective we need to have an independent legal adviser...”

3.5 The Royal Commission Into Commercial Activities of Government and Other Matters found that<sup>3</sup>:

“[If] parliamentary committees are to be able to realise their purpose, several conditions require to be satisfied.

- (a) Their mandate must not be cast in ways which curtail, in any arbitrary or protective way, the matters into which they can inquire.
- (b) Their powers must be ample.
- (c) They must be provided with the support staff, resources and facilities necessary to enable research, investigation and reporting to be fully and effectively undertaken.

We particularly emphasise the last of these. An unsupported committee is a wounded committee.”

3.6 The Committee has been fortunate since its establishment in 1987 to secure the services of some competent and dedicated committee clerks and legal advisers who are members of the Parliamentary staff. It is important to note that staff are employed by Parliament and not the Government and are therefore to a large extent insulated from partisan executive pressure - this is another important aspect of the Committee's impartiality and independence from executive control.

3.7 While the Committee does not consider itself to be under-staffed at present it is mindful that its review and scrutiny function presents a job for 2 staff dedicated full-time to that task alone irrespective of the other tasks that the Committee is called upon to perform, such as reporting. Should the volume and complexity of subordinate legislation escalate to any degree the Committee will quickly find itself in the same position that it was before its staffing was improved. It therefore remains relevant to compare the staffing of equivalent committees in other Australian jurisdictions. A table of comparative staffing levels of Australian subordinate legislation committees as at July 1997 is attached as Appendix 1.

3.8 Furthermore, in the last 2 years there has been a high turnover of legal advisers. For a short period of time in 1994 the Clerk of the Legislative Council himself filled the role of the Committee's advisory/research officer. It seems that the high turnover in legal advisers is largely due to the unrelenting flow of subordinate legislation, the great burdens placed on legal advisers from time to time as a result of their having to serve more than 1 committee, the short contract terms for which they are appointed and the relatively low pay of the Committee's legal advisers, even when compared with equivalently qualified legal officers in other branches of the Western Australian public service.

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<sup>3</sup> Western Australia, Royal Commission into Commercial Activities of Government and Other Matters, *Report*, Perth, 1992, Part II, para 3.9.5.

- 3.9 There are a number of problems caused by the high turnover of legal advisers. The first is that it can take some time to become accustomed to the work of the Committee, which means the Committee is working under a disadvantage during that time. Another problem is that frequent changes in legal advisers mean a significant loss of "institutional memory" of the Committee. A dedicated legal adviser can keep track of recurring themes in subordinate legislation that repeatedly require scrutiny by the Committee. A change in legal adviser often means that ongoing and planned projects of the Committee fall by the wayside as the new legal adviser learns how the Committee operates and develops the specific expertise required. Continuity in the Committee staff, particularly its legal advisers, needs to be encouraged.
- 3.10 The same problems have not been experienced with Committee Clerks. The Committee has been fortunate to have had the services of the same Committee Clerk since 1989. The Committee takes the opportunity to acknowledge the excellent support it has had from Jan Paniperis throughout.
- 3.11 The Committee is continuing to monitor the position of its staff and the volume and complexity of work that it receives. For the present staffing levels are adequate but the potential exists for problems to arise.

#### 4 **Independent Legal Advice**

- 4.1 The Committee is able to call upon the services of Queen's Counsel when necessary. Mr Len Roberts-Smith QC has advised the Committee in this capacity since 1989. In addition the Committee has called upon the services of Associate Professor Peter Johnson from time to time. In 1996 Mr Roberts-Smith QC and Mr Johnson advised the Committee jointly in respect of:

##### *Bunbury Port Authority Amendment Regulations 1996*

Mr Roberts-Smith QC and Mr Johnson maintained the highest standards of independence and impartiality in framing their legal advice to the Committee and the Committee continues to appreciate their assistance and advice.

#### 5 **1996: Overview**

- 5.1 The Committee during the 1996 year began to see an understanding and acceptance, by government agencies, of the role it plays in the legislative process. From this perspective, the long drive to educate government agencies on the role of the Committee, is beginning to bear fruit. However, the Committee has not become complacent and continues to target agencies who do not respond appropriately to the needs and demands of the Committee. At the same time the Committee in the 1996/97 financial year, undertook to formerly recognise and acknowledge the assistance of a government agency where it had been informative, co-operative and responsive. By this dual approach the Committee hopes to educate government agencies as to the requirements of the Committee. The Committee has already perceived an improvement in the quality of the explanatory material that it receives from a number of agencies. Of course there remain some agencies that do not fully appreciate the role of the Committee, and the Committee continues in its efforts to change the direction of these agencies in their approach to the Committee.

- 5.2 The Committee's role as educator has led to the tabling, publication, and distribution to all local governments within the State, of an information package on the creation of local laws by local governments under the new *Local Government Act 1995*. This document is entitled "A Guide to "Local Laws" under the Local Government Act 1995 as "Subsidiary Legislation" under the Interpretation Act 1984", and has been well received by local governments. It has spurred a number of queries and requests for extra copies of the document which has resulted in the possible need for a second issue. The initial explanatory material received from various local governments has been of good quality. These local governments have been contacted and due recognition of their efforts has been given.
- 5.3 A new Advisory/Research Officer, Andrew Mason, was appointed in July 1996, following the elevation of Stuart Kay to the position of Deputy Clerk Committees.
- 5.4 The Hon Doug Wenn MLC resigned from the Committee on 21 May 1996 having served on the Committee for approximately 3 years. He was replaced by the Hon Cheryl Davenport MLC on the same day.
- 5.5 Apart from the "A Guide to "Local Laws" under the Local Government Act 1995 as "Subsidiary Legislation" under the Interpretation Act 1984", the Committee has tabled in Parliament a position paper entitled "Scrutiny of National Schemes of Legislation"(discussed below at paragraphs 12.1 to 12.7) which arose from a working party of representatives of scrutiny of legislation committees throughout Australia. The following reports were also tabled:
- 1995 Review of Operations, 18th Report, May 1996*
- The Committee's Response to the Final Report of the Legislative Assembly Select Committee on Procedure, 19th Report, September 1996*
- Bunbury Port Authority Amendment Regulations 1996, 20th Report, November 1996*
- 5.6 During the course of 1996 it was also brought to the Committees attention that it was not properly constituted as no member of the National Party was a member of the Committee. Membership of the National Party is required by virtue of the terms of Rule 2(1) of the *Rules of the Joint Standing Committee on Delegated Legislation*<sup>4</sup>. It was decided that this procedural irregularity should be dealt with on a correspondence basis at first. At the same time the Committee also determined to address problems it had been experiencing in establishing a quorum due to the particular requirements of its Rules. These matters are discussed in more detail below (see paragraphs 10.1 to 10.8).
- 5.7 In 1995 the Committee sought the Attorney General's support for the Committee's recommendations contained in its 16th Report, *The Subordinate Legislation Framework in Western Australia*. The Committee had made several recommendations for significant reform to the subordinate legislation system in the State including the adoption of a

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See, 1987 WAPD 30 & 3731

proposed *Subordinate Legislation Bill*. A response to this correspondence was sought throughout 1996. It was not until December 1996 that a response was received. Further comment on the position taken by the Attorney General appears below (see paragraphs 13.1 to 13.8).

- 5.8 Throughout 1996 the Committee has had cause to deal with a range of matters that have arisen as a result of the subordinate legislation it has reviewed. These matters often represent recurring themes and have provided the Committee with an opportunity to adopt and establish a position for future reference. They have also initiated more substantial inquiries due to the importance of the issues under consideration. In most instances these inquiries are ongoing and it is the intention of the new Committee to continue and complete these inquiries in 1997.

## 6 Statistics

- 6.1 The collection of statistics continued throughout 1996 as well as the monitoring of the general quality of explanatory memoranda.
- 6.2 Table 1 sets out statistical details of the Committee's work during the year. A list of subordinate legislation scrutinised by the Committee appears at Appendix 2 and a list of the witnesses who appeared before the Committee appears at Appendix 3. A comparative table of statistics from 1988 to 1996 appears at Appendix 4.

<b>ITEM</b>	<b>1996</b>
Total regulations examined	234
Total rules examined	33
Total by-laws examined	167
Total other instruments examined	26
Total instruments examined	440
Matters requiring further action	48
Notices of motion of disallowance given	4
Notices of motion of disallowance withdrawn	4
Instruments disallowed	0
Number of tabled reports	4
Number of reports in progress	3
Number of meetings	20
Number of hours of meetings	25hrs 5mins
Number of witnesses	9
Number of members resigned	1
Number of new members	1
Number of conferences organised	1



Number of trips planned	1
Number of unsatisfactory Explanatory Memoranda	226

Table 1<sup>5</sup>

6.3 The Committee did not recommend disallowance of any subordinate legislation. Protective notices of motion of disallowance<sup>6</sup> were given in respect of the following subordinate legislation:

Subordinate legislation	Reason for protective notice
<i>Bunbury Port Authority Amendment Regulations 1996</i>	one regulation possibly <i>ultra vires</i> , Ministerial undertaking to consult, see Committee's 20th Report
<i>Misuse of Drugs Amendment Regulations 1996</i>	one regulation possibly contravening international conventions on human rights, Ministerial and Departmental undertaking to amend
<i>Evidence (Witnesses' Interpreters' Fees and Expenses) Amendment Regulations 1995</i>	EM not received on time
<i>Juries (Allowances to Jurors) Amendment Regulations 1995</i>	EM not received on time

Table 2

7

**Drafting Errors**

7.1 In 1996 the Committee identified a number of pieces of subordinate legislation which contained drafting errors. All of these errors were brought to the attention of the relevant body by the Committee, for the body to attend to correction of the error. Following is a list of subordinate legislation which the Committee identified as containing a drafting error:

*Coal Industry Superannuation Amendment Regulations 1996 - reg. 15(1)*  
*Road Traffic (Licensing) Amendment Regulations 1996 - reg. 21FA(3)*  
*Environmental Protection (Liquid Waste) Regulations 1996 - reg. 39(1)*

<sup>5</sup> The number of "matters requiring further action" is the total number of matters in respect of which the Committee took formal action, such as writing to the relevant agency or Minister, or requiring the attendance of witnesses before the Committee.

<sup>6</sup> A protective notice of motion of disallowance is the terminology used by the Committee to describe a notice of motion of disallowance that is tabled where there has been insufficient time for the Committee's concerns to be addressed prior to the 14 sitting day period for giving the notice expiring. For instance a protective notice of motion of disallowance will be tabled where the Department or Agency has failed to provide the required explanatory material in sufficient time for the Committee to consider the subordinate legislation.

*Shire of Augusta-Margaret River - Model By-law Series "A"*  
*Lotteries Commission (Instant Lottery) Rules 1996*  
*Betting Control Amendment Regulations 1996*  
*Shire of Chittering - By-laws Relating to Dogs*

## 8 Government Agency Fees and Charges

- 8.1 Fees and charges levied by government agencies usually are contained in subordinate legislation. They form part of the minutiae in respect of which the greatest administrative flexibility is needed.
- 8.2 Sections 53 and 55 of the *Financial Administration and Audit Act 1985* require accountable authorities and officers to conduct (at least) annual reviews of the fees and charges for government services. As a consequence, the Committee each year has before it many pieces of subordinate legislation relating to fees and charges and their method of calculation and collection. In 1996 the Committee examined 120 pieces of subordinate legislation relating to government fees and charges. Whilst a few fees and charges were in fact reduced, most were increased. Most of these increases were in accordance with changes in the CPI since their last increase, or on the basis of achieving full cost recovery. There were many examples of increases that were disproportionate to the cost of the service provided or to increases in the CPI over the period. In these instances further information was always sought by the Committee as to the true basis for the fee increase.
- 8.3 The adjustment of fees and charges to reflect the principles of "user pays" and "full cost recovery", has in particular been a significant trend<sup>7</sup>. The assessment of what constitutes full cost is increasingly on the basis of accrual accounting, taking into consideration all of the current administrative and capital costs associated with the provision of the good or service. The use of accrual accounting for budgetary reporting to Treasury has been a requirement for Statutory Authorities under sections 66 and 67 of the *Financial Administration and Audit Act 1985* since the inception of that Act. However it only became a requirement for Government Departments in 1996 following the amendment of section 62 of that Act in 1996<sup>8</sup>.
- 8.4 In seeking further information from some agencies it became apparent that, whilst agencies were claiming that fee increases were required to cover the costs of services provided, the agencies' accounting methods did not necessarily accurately calculate the costs of provision of the relevant services. This experience is consistent with the findings of the McCarrey Report<sup>9</sup>:

*"The most common observation of the Commission's consultants was that the accounting systems of budget sector agencies do not reveal the cost of most*

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<sup>7</sup> See, Western Australia, Joint Standing Committee on Delegated Legislation, *1995 Review of Operations*, 18th Report, May 1996, pp21-22

<sup>8</sup> See, *Financial Legislation Amendment Act 1996*, s 36, No. 49 of 1996

<sup>9</sup> Western Australia, Independent Commission to Review Public Sector Finances, *Report: Agenda for Reform*, Vol 2, August 1993, pp2-3.

*functions. Management information systems are, for the most part, wholly inadequate to enable comparative costs to be determined.*

*Consequently, the government should give high priority to the introduction of full accrual accounting and costing systems to budget sector agencies...*

- 8.5 If agencies are unable accurately to calculate their costs, this casts some doubt over agency claims that their fees are set to recover costs. It also raises the question whether the fee or charge is within the power given the agency to render fees or charges. When the Committee comes to consider a piece of subordinate legislation that determines a fee or charge, it does so within the bounds of its terms of reference. Amongst other matters it is the function of the Committee to consider and report on any regulation that appears not to be within power, or not to be in accord with the objects of the Act pursuant to which it purports to be made<sup>10</sup>.
- 8.6 When giving consideration to the power for a regulation which renders fees and charges, the Committee must address itself to the proposition that the government cannot demand or coerce payment of money to the public purse unless the demand is authorised by legislation<sup>11</sup>. Such a demand is labelled a tax and unless there is clear legislative authority, such an impost should not readily be regarded as within power. An exception to this is that governments may charge a “fee for service” provided, and may do so by means of subordinate legislation. It is equally well established that to be regarded as a “fee for service” the fee must be reasonable. If a regulatory “fee for service” bears no relationship to the service provided, the fee may nevertheless be regarded as a revenue raising device or tax and may therefore be invalid<sup>12</sup>. The Committee has previously recommended disallowance of subordinate legislation on this basis<sup>13</sup>.
- 8.7 During the course of 1996 the Committee had occasion to consider a number of fees and charges which possibly constituted a tax imposed without legislative authority. In most instances the fee or charge was justified on the basis of “full cost recovery”, and the

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<sup>10</sup> Rule 5(a), *Rules of the Joint Standing Committee on Delegated Legislation*, 1987 WAPD 30 & 3731

<sup>11</sup> This proposition is well supported by judicial authority: see *Attorney-General v Wilts United Dairies* (1922) 91 LJKB 897, per Lord Buckmaster at 900; *Marsh v Shire of Serpentine-Jarrahdale* (1966) 120 CLR 572 at 580. The proposition is derived from the system of responsible government, which asserts the idea of the accountability of the government to the parliament through the control parliament exerts over the government’s access to finance. The system evolved during the late seventeenth and eighteenth centuries in England to link the executive government with the parliament and allowed the dominant political forces in the parliament to control the agenda and personnel of the government. Historically the system reflects the struggle of the parliament to assert its authority over the policies and initiatives of the Crown. The result of this struggle in blood was the Bill of Rights 1689, which has its modern day counterpart in Western Australia through sections 64 and 72 of the Constitution Act 1889 (WA). See generally, Hanks, PJ, *Constitutional Law in Australia*, Butterworths, 1991, Chapter 5.

<sup>12</sup> *Levingston v City of Hobart* (1931) 26 Tas LR 164; see also Pearce, D, *Delegated Legislation in Australian and New Zealand*, Butterworths, Sydney 1977, pp166-9.

<sup>13</sup> See, for example: Western Australia, Joint Standing Committee on Delegated Legislation, *Report on the Department of Land Administration Regulations 1992*, 10th Report, November 1992.

question for the Committee was whether the fee or charge can be seen as a “fee for service” in light of what the agency has assessed as the “costs”. These “costs” frequently involve more than the direct costs attributable to provision of the service. Amongst other matters they often relate to the costs of maintaining and improving the service for future users. Such costs don’t relate to the service being provided to the customer. When this occurs the impost is more likely to be characterised as a tax.

- 8.8 Until there is universal application of the economic principal of “full cost recovery” in combination with “accrual accounting” agencies will continue to set fees and charges that may be invalid and which attempt to recover more than the cost of the service being provided. In many instances the setting of the fee beyond recovery of the cost of the service has an historic basis. In other cases the agency is dependant on the fee or charge for its continued effective operation and to disallow would have serious consequences. This has led the Committee to give consideration to the wider implications of the legal and constitutional principles to the setting of fees and charges by government agencies.
- 8.9 The wider implications extend beyond whether certain fees and charges are taxes and run to the basis on which fees and charges are set by government agencies, the legal authority necessary to charge fees which attempt to recover more than the cost of the service and the practical consideration of the impact disallowance of such fees will have on the operations of the relevant agency. The Committee determined in 1996 to look into these wider issues in order that a position could be adopted when assessing fees and charges in the future. As a result the advisory/research officer was instructed to examine further these matters with reference to some of the fees and charges that the Committee considered in 1996. Amongst the fees and charges under examination are the Department of Land Administration Fees and the *Road Traffic (Licensing) Amendment Regulations 1996*, both of which have previously been under examination by the Committee. However, the principal reference for examination of the wider issues involved in 1996 were the *Bunbury Port Authority Amendment Regulations 1996*, over which a notice of motion of disallowance was placed and which were also the subject of a report to Parliament<sup>14</sup>.

#### *Bunbury Port Authority Amendment Regulations 1996*

- 8.10 The *Bunbury Port Authority Amendment Regulations 1996* (“the Amendment Regulations”) were gazetted and came into effect on 26 July 1996. Among other things, the Amendment Regulations increase the Outer Harbour Port Infrastructure Charge by 25%. The Bunbury Port Authority (“the Authority”) informed the Committee that the purpose of the increase in the charge was to fund the purchase, or depreciation costs, of a new ship loading facility. Installation of that ship loading facility had not been completed.
- 8.11 The Committee met on 19 September 1996 where a number of concerns were discussed in relation to the Amendment Regulations and the Port Infrastructure charge in particular. On the basis of these concerns the Committee wrote to the Authority on 19 September 1996, seeking the Authority’s views on the matter. Given that the last day on which notice of motion to disallow the Amendment Regulations could be given was 26 September 1996

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<sup>14</sup>

See, Western Australia, Joint Standing Committee on Delegated Legislation, *Bunbury Port Authority Amendment Regulations 1996*, 20th Report, November 1996

(pursuant to section 42(2) of the Interpretation Act 1984, the Amendment Regulations having been tabled on 20 August 1996), the Committee resolved for the Chairman to give such notice in order to allow for the Amendment Regulations to be disallowed if the Committee's concerns were proven correct. A response to the Committee's correspondence was received from the Authority on 24 September 1996.

- 8.12 Upon further consideration, and after taking legal advice, the Committee considered that the increase in the charge was in the nature of a tax and was not authorised by statute. Furthermore, it was not within the power of the Authority to waive collection of the fee pending completion of the installation of the ship loading facility.
- 8.13 The Committee was of the opinion that there are many complicated issues involved in this matter and they raise many broad questions about taxation and the charging of fees for services by Government agencies. These matters cannot be resolved in the immediate short term.
- 8.14 Based on this opinion, the Committee withdrew the motion for disallowance and tabled its report on 6 November 1996 on the Minister for Transport's undertaking to:
- 8.14.1 consider the issues raised by the Committee in the Committee's 20th Report; and
  - 8.14.2 after further consultation with the Committee, in the next Parliament to introduce any necessary remedial legislation to resolve the problem.
- 8.15 The Committee now has the opportunity to examine the issues involved with this and other similar matters, and is hopeful that as a result of these inquiries, it will be in a position to deal with future fees and charges that it must consider.

### Rounding Out

- 8.16 During 1996 the Committee also noted a trend by government agencies to justify fee increases on the basis of CPI, and then add a further component for rounding out to a convenient whole number. In most cases this rounding out has been to the nearest whole dollar, but in some cases, there has been rounding out of a greater magnitude. A further element of this trend is that rounding out is invariably upwards.
- 8.17 The use of CPI to increase fees and charges is acceptable where agencies are using the principles of "user pays" and "full cost recovery" as the basis for the increases. However the tagging on of a further increase to round out to a whole number adds a further dimension to the increase. When any rounding out is included within the increase then the question must be asked whether the fee increase bears proportionality to the cost of the service provided. If it does not bear that proportionality then it can no longer be seen as a fee for service, and may be more properly characterised as a tax. As discussed above, in general government agencies are not authorised to raise revenue and impose taxes.
- 8.18 The continual use of rounding out is beginning to raise the concerns of the Committee that agencies are using rounding out to raise revenue, and hence are imposing taxes. This is even more so where the rounding out is beyond the nearest dollar unit. Specific examples of this in 1996 were the *Health (Pesticides) Amendment Regulations 1996*, the *Dangerous*

*Goods Amendment Regulations 1996* and the *Explosives Amendment Regulations 1996*. In these cases the fee increases were rounded out to the nearest \$5 amount. The Committee took these concerns up with the Health Department and the Department of Minerals and Energy in correspondence. Both Departments have been able to address these concerns by explanation of the full cost of the service to which the fee relates. It is the intent of the Committee to look more closely at rounding out in 1997.

### Unreviewable Fees and Charges

- 8.19 The Committee continues to note that some fees and charges imposed by various agencies (particularly local governments) which would ordinarily be imposed by a regulation, rule or by-law subject to tabling in Parliament and scrutiny by the Committee, are in fact being imposed by "memoranda" or "resolution", which may not necessarily be tabled in Parliament and may not necessarily be reviewable by the Committee. Consequently, Parliament is not being kept informed of all subordinate legislation.
- 8.20 In its 16th Report the Committee noted that one of the impediments to the Committee's scrutiny function is the limitation that it may only scrutinise "regulations" having legislative effect which, by reason of s 42(8) of the *Interpretation Act 1984* include "rules" and "by-laws" having legislative effect<sup>15</sup>. Similarly, while all "subsidiary legislation" <sup>16</sup>must be gazetted, only "regulations" must be tabled in Parliament. Thus Parliamentary scrutiny of subordinate legislation can be avoided if it is called something other than "regulations", "rules" or "by-laws". The Committee noted in its 16th Report that this situation is not satisfactory. Subordinate legislation should be defined by reference to its purpose and effect, not by how it is nominally described in a particular case.
- 8.21 Of particular concern to the Committee is section 6.16 of the *Local Government Act 1995*, which empowers a local government to impose and recover a fee or charge for any goods or services it provides or proposes to provide. Such an imposition can be effected by way of Council resolution with an absolute majority required. The only other formal requirement being that such fees and charges are to be imposed when adopting the annual budget otherwise it is necessary for local public notice to be given pursuant to section 6.19 of the *Local Government Act 1995*. If the fee or charge is set by way of "resolution" then under section 41 of the *Interpretation Act 1984* all that is necessary is for the resolution to be gazetted. There is no necessity to table the resolution as section 42 of that Act only requires "regulations" to be tabled. The inability to review and scrutinise local government fees and charges is of concern to the Committee.

## 9

### Henry VIII Clauses

- 9.1 A "Henry VIII clause" is a provision in an Act that authorises the amendment of the enabling legislation or another Act by means of subordinate legislation. The *Macquarie*

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<sup>15</sup> See, Western Australia, Joint Standing Committee on Delegated Legislation, *The Subordinate Legislation Framework in Western Australia*, 16th Report, November 1995, p17

<sup>16</sup> *Interpretation Act 1984*, s 5.

*Dictionary of Modern Law* notes that it is "so named because of its autocratic flavour". The Committee has repeatedly expressed its concern at the use of Henry VIII clauses<sup>17</sup>, as have other subordinate legislation committees throughout Australia<sup>18</sup> as well as in the United Kingdom<sup>19</sup> and New Zealand<sup>20</sup>.

- 9.2 Following further consideration of the matter and after hearing evidence from Mr Greg Calcutt, Parliamentary Counsel, in May 1995, the Committee has accepted the view that the use of Henry VIII clauses is necessary in some limited circumstances. However, the Committee considered that the use of Henry VIII clauses requires some specific form of Parliamentary scrutiny, such as that which would be provided by a scrutiny of Bills committee. Additionally, the Committee considered that Henry VIII clauses should be precisely delimited and perhaps be subject to a definite time limitation such as that suggested by the Donoughmore Committee (1 year)<sup>21</sup>.
- 9.3 A practical problem with Henry VIII clauses is the difficulty of the public in identifying, at any given time, precisely what are the contents of an Act which contains such a clause. The Henry VIII clause may appear in a different part of the Act to the provision (eg, a schedule) that the clause provides can be amended by regulations, and therefore may not immediately come to the attention of someone relying on the relevant provision of the Act. Furthermore, if the Act is amended by regulations, these may only appear in the *Gazette*, which is only cumulatively indexed at the end of each year. Consequently, if a person is aware of the problem in the first place, it may be necessary for the person to individually peruse each issue of the *Gazette* to ascertain if the Act has been amended by regulation. This would be an extremely time consuming and onerous task. Computer access to consolidated legislation (including subordinate legislation) would to some extent alleviate this problem by enabling the use of computerised search facilities. In this context the Committee notes and supports the recommendation of the Standing Committee on Constitutional Affairs and Statutes Revision that Western Australian legislation (including subordinate legislation) should be posted on the Internet at the earliest possible convenience<sup>22</sup>.

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<sup>17</sup> See, for example: Western Australia, Joint Standing Committee on Delegated Legislation, *Review of Operations: 1991-1992*, 11th Report, December 1992; & also *1995 Review of Operations*, May 1996, pp19-21.

<sup>18</sup> See, for example: Australia, Senate Standing Committee for the Scrutiny of Bills, *Ten Years of Scrutiny*, 25 November 1991.

<sup>19</sup> See, for example: United Kingdom, Westminster, *Third Commonwealth Conference on Delegated Legislation: Record of Proceedings*, 1989.

<sup>20</sup> See, for example: New Zealand, Regulations Review Committee, *Report on an Inquiry into the Resource Management (Transitional) Regulations 1994 and the principles that should apply to the use of empowering provisions allowing regulations to override primary legislation during a transitional period*, 1995.

<sup>21</sup> United Kingdom, Committee on Ministers' Powers, *Report*, 1932 (Cmd 4060), p61.

<sup>22</sup> Western Australia, Standing Committee on Constitutional Affairs and Statutes Revision, *Electronic Availability of Statutes*, 11th Report, January 1996.

*Government Employees Superannuation Act (Amendment of Schedule 1) Order 1996*

- 9.4 Although this “order” did not come within the Committee’s terms of reference, as the EM was sent to the Committee in error, the Committee took the opportunity to consider that it was made under a Henry VIII clause - s 48 of the *Government Employees Superannuation Act 1987*. The order amends Schedule 1 to the *Act* which relates to which government agencies may be part of the Government Employees’ Superannuation Scheme.
- 9.5 The Committee wrote to the Minister Assisting the Treasurer on 5 June 1996 seeking his comments on the amendment of provisions contained within the Act by this Order pursuant to a Henry VIII clause. The Committee made particular note of the fact that amendment of the Act could be effected by way of Order which did not even require tabling in Parliament. The Minister responded by letter dated 26 June 1996, that s48 was designed to facilitate changes to the Schedule to the Act without the formality of using a regulation. The Committee’s comments with respect to tabling were noted and a commitment was given by the Minister to amend s48 to require an Order to be tabled. This amendment is to be included when the Act is next amended. The Committee resolved to acknowledge this commitment given by the Minister.
- 9.6 In addition the Committee also considered the *Road Traffic (Licensing) Amendment Regulations (No. 4) 1995*, which were made under a Henry VIII clause. At various points in 1996 the Committee also brought to the attention of the relevant Minister Henry VIII clauses which it became aware of in the course of its inquiries.

## 10

**Procedural Irregularities**

## Irregular Constitution of the Committee

- 10.1 During 1996 it was brought to the Committee’s attention that due to the lack of representation on the Committee from the National Party the Committee was not constituted according to its Rules. Rule 2(1) of the Joint Standing Rules of the Committee relevantly provides:

“... where there is a party in the Assembly of not less than five members, other than a party whose leader is either the Premier or the Leader of the Opposition, one of the Assembly members of the Committee shall be a member of that party”.

- 10.2 During 1996 the National Party had six members in the Assembly, and has had six members in the Assembly since the last National Party member of the Committee was discharged from the Committee on 6 April 1994. At the time of discharge the Houses did not expressly vary the rules. Thus the Committee may have been operating in breach of its Rules from 6 April 1994 until the Committee was re-constituted with a National Party member on 13 May 1997. At the time this did not present an immediate problem for, as Erskine May says at page 90 of his text, *Parliamentary Practice (1989, 21st ed.)*:

“... the right of both Houses to be sole judge of the lawfulness of their own proceedings, or to settle - and depart from - their own code of procedure is fully established.”



- 10.3 Accordingly, it could be argued that there was an implicit variation of the rules at the time of discharge. Nevertheless the Committee was firmly of the view that this was a matter which should be rectified at the earliest opportunity.
- 10.4 The Committee does note that from a practical point of view the wording is aimed at the National Party to ensure its representation on the Committee. However, again from a practical perspective, representation from the National Party has proved difficult to ensure where limited numbers mean that its representatives are tied up with other duties as part of a coalition government. Effective representation from the National Party has proved to be a difficult task and this resulted in the situation where there were no representatives from the National Party on the Committee.
- 10.5 In order to rectify this anomaly, the Committee put a proposal involving the amendment of the Committee Rules to the Premier and the Leaders of the Opposition and the National Party, as well as to the Leaders of the Government and Opposition in each House. Responses to the proposal were received from the Premier, the Leader of the National Party, the Leader of the Government in the Legislative Assembly and the Leader of the Opposition in the Legislative Council.
- 10.6 Following the appointment of a National Party member, the Hon Robert Laurence Wiese, MLA to the Committee on 13 May 1997 the Committee is no longer operating in breach of its rules. Accordingly no further action has been taken by the Committee in 1997 though the Committee does recognise that the problem may arise again.

#### Committee Quorum

- 10.7 During 1996 the Committee also attempted to address a problem it perceived with its Rules in relation to its quorum. Rule 10 of the Joint Standing Rules of the Committee states:

“A quorum for the conduct of business is 4 members of whom not less than 2 shall be members of the Assembly and not less than 2 members of the Council”

The Committee has experienced difficulty in establishing a quorum from time to time where there have been 4 members present but only 1 of whom is a member of the Assembly or of the Council. The differing time pressures and workloads of the Assembly and the Council mean that it proves difficult for a joint committee to have available sufficient of its members from both Houses at the same time.

- 10.8 As a joint committee the Committee is essentially a sub-committee of the whole of the Parliament, and it is correct that there be a requirement for some representation from each of the Houses before a quorum is established and the Committee can proceed with its business. However the requirement for 2 representatives from each House has simply hampered the effective running of the Committee. The Committee is of the view that only 1 representative from each House need be present for a quorum to be established. If a member is not happy with the manner in which the business of the Committee is being conducted then he or she can report to the relevant House. It is not necessary for 2 members of a House to be present for any problems to be identified and referred to the relevant House. With the removal of the requirement for 2 members from each House to be present, the Committee will no longer be delayed in the performance of its functions and the

scrutiny of an ever increasing volume of subordinate legislation. From a comparative standpoint, the Committee notes that the Joint Standing Committee on the Commission on Government only requires that each House be represented at a meeting of that Committee for a quorum to be established.

- 10.9 The Committee again put a proposal for a solution to the problem to the Premier and the Leaders of the Opposition and the National Party, as well as to the Leaders of the Government and Opposition in each House. Under this proposal it would be necessary to move for the amendment of Rule 10 by deleting the words:

“of whom not less than 2 shall be members of the Assembly and not less than 2 members of the Council”

and substituting the words:

“,provided that each House is represented at all times”.

This would be done by motion without notice by a member of the Committee in the Legislative Assembly. A message that the Assembly has agreed to the resolution would then be passed to the Legislative Council and a similar motion moved there. Favourable responses to this proposal have now been received from all parties.

## 11 **Committee’s Response to the Final Report of the Legislative Assembly Select Committee on Procedure**

- 11.1 The Legislative Assembly Select Committee on Procedure tabled its *Final Report* on 27 June 1996<sup>23</sup>. The *Report* contains a number of recommendations relevant to the work of the Joint Standing Committee on Delegated Legislation (JSCDL).

- 11.2 In summary the recommendations of that Committee were:

- 11.2.1 Amend the Legislative Assembly Standing Orders and the *Interpretation Act 1984* to accord priority to motions of disallowance and generally require them to be dealt with within 15 sitting days. In conjunction with this the *Interpretation Act 1984* be amended to provide that, if the Assembly is dissolved or expires or Parliament is prorogued within the 15 sitting days following the giving of a notice of motion of disallowance, then the subordinate legislation is deemed to be laid on the table on the first sitting day after the dissolution, expiry or prorogation.
- 11.2.2 That the Premier seek to amend the *Constitution Act 1889* to permit standing committees to operate during periods when Parliament is prorogued.
- 11.2.3 That the Standing Committee on Uniform Legislation and Intergovernmental Agreements (SCULIA) should be amalgamated with the JSCDL.

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<sup>23</sup> Western Australia, Legislative Assembly, Select Committee on Procedure, *Final Report*, 27 June 1996.

11.3 Following consideration of these recommendations the JSCDL prepared and tabled its 19th Report, *The Committee's Response to the Final Report of the Legislative Assembly Select Committee on Procedure*. In this report the JSCDL noted that it had not been consulted by the Select Committee about the reforms that were proposed. The JSCDL's response was to recommend as follows:

11.3.1 that the proposals for reform of the disallowance provisions not be proceeded with and the question of procedures regarding motions for disallowance be re-considered after consultation with the JSCDL;

11.3.2 that the JSCDL supports the Select Committee's recommendation to permit standing committees to operate during periods when Parliament is prorogued so far as it relates to the JSCDL<sup>24</sup>;

11.3.3 that the Select Committee's Recommendation 18 not be proceeded with until further consideration is given to the consequences of the amalgamation of the functions of the SCULIA and the JSCDL, after taking into account:

the recommendations of the JSCDL in its 16th Report regarding establishment of a scrutiny of bills committee or function;

the anticipated Position Paper on the Scrutiny of National Schemes of Legislation to be published by parliamentary scrutiny committees in all Australian jurisdictions in the near future; and

whether or not it would be more appropriate to amalgamate SCULIA with the Legislative Council Legislation Committee.

To date there has been no further developments in relation to these matters. The JSCDL is simply awaiting a governmental response to the report of the Select Committee and its own 19th Report.

## 12 **Position Paper on Scrutiny of National Schemes of Legislation**

12.1 Over a period of 30 months Members and advisers of all scrutiny of legislation and subordinate legislation committees from all Commonwealth, State and Territory Parliaments in Australia had been meeting to discuss the introduction of mechanisms by which national schemes of legislation sponsored by executive government can properly be scrutinised by the Parliaments.

12.2 Effective parliamentary scrutiny has been threatened because of the rise of national schemes of legislation which emerge from such bodies as the Council of Australian Governments (COAG) and various Ministerial Councils. Expressed at its simplest level, such councils agree to uniform legislation, usually in closed session, and then proceed through the participating Ministers to sponsor Bills through individual Parliaments, often

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<sup>24</sup> The JSCDL is not in a position to comment on whether or not Recommendation 12 is appropriate for other standing committees of the Parliament.

with the message that the Bills cannot be amended for fear of destroying their uniform nature.

- 12.3 As a result of the discussions that had taken place a Discussion Paper for comment had been released by all scrutiny committees in 1995. Submissions had been received in response to the Discussion Paper and this provided the committees with assistance in arriving at a final Position Paper. During 1996 several meetings took place of Chairmen and Secretaries which resulted in the publication of the Position Paper. It was noted that the Deputy Chairman of the Committee played an instrumental role in achieving consensus on the Paper. The Paper was tabled in all Parliaments on 17 October 1996.
- 12.4 The Paper deals with two important and interrelated issues concerning national schemes of legislation. Firstly, the technical scrutiny of primary and subordinate legislation and the role of Parliamentary scrutiny committees and secondly, the position of legislators in the various Parliaments throughout Australia. The Paper concludes with broad support for adopting uniform scrutiny principles and proposes several options for the implementation of uniform scrutiny principles, including the setting up of a National Committee for the Scrutiny of National Schemes of Legislation with members from all the ten legislative scrutiny committees.
- 12.5 Following the tabling of the Position Paper, a national telephone hook-up on 22 October 1996 of all chairs of the scrutiny committees resolved that it was appropriate that the implementation of the proposals in the Position Paper is a matter that should be considered by the Council of Australian Government Leaders ("COAG"). As COAG will only consider matters which are referred to it by a federal, state or territory government, the presiding member of the South Australian Legislative Review Committee requested the Hon Dean Brown, then Premier of South Australia, to take the necessary steps to have the issue put on the agenda for consideration by COAG. As the Hon Dean Brown is no longer Premier of South Australia it will be necessary for another Premier to refer the matter to COAG. An attempt was also made for the matter to be listed as an agenda item at the Select Committee of Attorneys General but this was rejected. At the recent Australasian and Pacific Sixth Conference on Delegated Legislation and Third Conference on the Scrutiny of Bills it was resolved:

*"That, following consideration by the Federal Attorney-General, all chairs of scrutiny committees meet to consider further options in relation to the proposals in the Position Paper on Scrutiny of National Scheme Legislation"*

- 12.6 In addition the chairs also resolved to jointly write to all heads of government on the issue to seek their support to ensure that the matter is considered by COAG. A draft joint letter, which formally seeks support of each of the heads of government, was being circulated at the end of 1996 for comment by all chairs and secretaries of scrutiny of legislation committees in all Australian Parliaments, state, federal and territorial.
- 12.7 In the interim, pending the finalization of this joint approach, each chair also undertook to approach the head of government in their own jurisdiction on an individual basis. Accordingly, the Chairman of the Joint Standing Committee on Delegated Legislation wrote to the Premier seeking his support on this issue to ensure that the matter is

considered by COAG on 7 November 1996. There has been no response from the Premier to this correspondence to date.

### 13 Proposed Subordinate Legislation Bill - Attorney General's Response

13.1 Following its investigations in 1995 in Washington DC, London and Paris, the Committee tabled 2 reports. Its 15th Report, *The Committee's Investigations in Washington, London and Paris*, reported its findings on subordinate legislation in each of the United States, the United Kingdom and France.

13.2 In its 16th Report, *The Subordinate Legislation Framework in Western Australia*, the Committee made recommendations for significant reform to the subordinate legislation system in this State. The substance of the reforms were taken up in a proposed *Subordinate Legislation Bill*. Late in 1995 the Committee wrote to the Attorney General, Hon Peter Foss MLC, seeking his support for the Committee's recommendations. Throughout 1995 the Committee through its Chairman and ultimately in further correspondence sought the Attorney General's response. This was not forthcoming until late in 1996 and the recently constituted Committee is currently evaluating that response.

13.3 The Attorney General does not endorse the Committee's recommendations or support the introduction into Parliament of the proposed *Subordinate Legislation Bill*. The Attorney General sees the thrust of the Committee's recommendations as the development of a formal rule-making procedure and system of judicial review similar to that which prevails in the United States. He believes that such a system is inappropriate for the Western Australian system of government which is based on the direct accountability of the executive to the Parliament which accountability enables the Parliament to disallow subordinate legislation made by the executive. In contrast the US system is based on a clear separation of legislative, executive and judicial powers with no accountability of the executive to the legislature. In the absence of such legislative accountability, a formalised rule-making system has evolved in response to requirements of, and criteria for, standards of judicial review of regulations and executive orders developed by American courts.

13.4 Not only does the Attorney General see the formal rule-making procedures and system of judicial review as inappropriate, he also bases his objections on the perceived consequences of such a system in WA. These consequences are stated to be:

13.4.1 more formal, expensive and lengthy procedures (without necessarily assisting on the merits) with an inevitable increase in litigation;

13.4.2 a shift in the balance of power from the Parliament to the courts; and

13.4.3 diminution of our current system of responsible government

In addition to the above general grounds for not supporting the Committee's recommendations the Attorney General also supplied the Committee with the more detailed comments of the Ministry of Justice. These comments principally address the Committee's recommendations for the establishment of an Office of Regulatory Review and for the introduction of a *Subordinate Legislation Bill* in terms of the Bill attached to the Committee's 16th Report.

- 13.5 The Ministry of Justice deals with the Committee's recommendations by commenting on each of the "key concepts" that the recommended reforms are attempting to achieve. Those "key concepts" are stated to be:
- 13.5.1 availability of information about subordinate legislation;
  - 13.5.2 consultation in the making of subordinate legislation;
  - 13.5.3 assessment of the impact of subordinate legislation;
  - 13.5.4 adequacy of Parliamentary scrutiny of subordinate legislation;
  - 13.5.5 maintenance of a rulemaking record by agencies;
  - 13.5.6 judicial review of subordinate legislation and rulemaking procedures; and
  - 13.5.7 staged repeal of existing subordinate legislation and "sunsetting" of new subordinate legislation.

Each of these concepts, except the last, is reflected by different measures in the draft Bill. The last is encompassed by the Committee's recommendation to establish an Office of Regulatory Review one function of which will be to review existing subordinate legislation and recommend a timetable for its staged repeal and an appropriate period for "sunsetting" of all new subordinate legislation.

- 13.6 In commenting on each of these "key concepts" the Ministry of Justice raises a number of concerns that it has and which the Attorney General appears to endorse, in respect of the operation of the measures designed to implement the "key concepts". The principal objection is the delay and expense involved with the measures that are proposed. The Committee notes that the Ministry has not itself made any investigations into the delay and expenses that will be involved with the proposed measures preferring to rely on generalised statements. The Committee accepts that it is not the role of the Ministry to perform such costings and does take note that the Ministry has simply highlighted a matter that does require further investigation and scrutiny.
- 13.7 Although it is the intent of the Committee to comment in more detail on the response of the Attorney General and the Ministry of Justice, the Committee does at this point note that the suggested measures in relation to the availability of information and consultation, are very similar to the measures which have already been adopted under the *Local Government Act 1995* in respect of the making of local laws. The question to be asked is on what basis should government agencies be treated any differently from local governments when it comes to the creation of subordinate legislation?
- 13.8 The Committee also notes that although the Ministry of Justice opposes the adoption of the proposed *Subordinate Legislation Bill*, it does, with the exception of the proposal relating to judicial review, believe the thrust of the Committee's recommendations to be worthwhile. Thus it would seem that the possibility for movement on the "key concepts", excepting that of judicial review, is possible.

14

**Specific Inquiries***Misuse of Drugs Amendment Regulations 1996*

- 14.1 These regulations introduced a \$50 application fee to have seized prohibited drugs independently analysed. The Committee had concerns that this fee infringed an accused persons right to prove his innocence in that, if he or she cannot afford the \$50 fee then he or she will be denied access to the substance in order to raise a defence (eg. that the substance is not a prohibited drug) or argument for mitigation.
- 14.2 The Committee wrote to the Police Department expressing its concerns and seeking the comments of the Department. Due to insufficient time the Department's response could not be provided before the final date for notice of motion of disallowance could be given. Accordingly the Committee took the step of tabling a protective notice of motion of disallowance pending the response of the Department.
- 14.3 Discussions with the Department were unable to resolve the Committee's concerns. Following the provision of an undertaking from the Department that the \$50 application fee would not be enforced and that the fee would be repealed when the regulations were next amended, the motion of disallowance was removed from the notice paper. Throughout the course of this inquiry the Committee received prompt assistance and responses from the Department and noted a co-operative approach to the problem at hand. This enabled the matter to be resolved to the satisfaction of the Committee and the Department's assistance was duly acknowledged.

*Rules of Trotting - Notice of Amendment - Rule 507*

- 14.4 This Rule amendment altered the time period from two hours to thirty minutes for a driver, trainer, stablehand or official to comply with a requirement of the Stewards. Under the Rules a Steward has the power to require a driver, trainer, stablehand or official to provide a sample of breath, urine or blood for testing. The Committee was of the opinion that while thirty minutes may be sufficient time to provide a sample of breath or blood, that was not the case in respect of a sample of urine. In this respect it was felt the amendment was draconian.
- 14.5 The Committee corresponded with the WA Trotting Association and as a result an undertaking was provided to amend the Rule so that only breath and blood samples need be provided within 30 minutes and a two hour time limit remain for compliance with all other requirements of the Stewards. The Committee was satisfied with this undertaking and the inquiry was closed.

*Windy Harbour - Augusta Rock Lobster Management Plan Amendment 1996*

- 14.6 The above Management Plan Amendment was gazetted on 30 August 1996. Pursuant to the provisions of Section 42 of the Interpretation Act 1984 it is a requirement that the Management Plan Amendment be laid before each House of Parliament within six sitting days following publication of the Management Plan Amendment in the *Government*

*Gazette*. Parliament sat between 3 September and 5 September 1996 and 17 September and 19 September 1996. Accordingly it was necessary for the Management Plan Amendment to be laid before each House of Parliament by 19 September 1996. This did not occur.

- 14.7 By virtue of Section 42(2) of the Interpretation Act 1984, where the Management Plan Amendment has not been laid before both Houses of Parliament within six sitting days following publication in the *Gazette* the Management Plan Amendment thereupon ceases to have effect. As a result of this provision and the failure to lay the Management Plan Amendment before both Houses of Parliament within six sitting days of gazettal, the Management Plan Amendment ceased to have effect as of 20 September 1996.
- 14.8 The Committee having become aware of the above circumstances took the step of notifying the Fisheries Department in order that they could take any necessary steps to notify those concerned with the Management Plan. The Committee also sought an explanation for the failure to table the Management Plan Amendment as it was an unusual event. The Legislative Council Procedure Office advised that they did not receive the Management Plan Amendment in time to arrange for it to be laid before both Houses of Parliament as is usual. Following correspondence it became evident that the problem arose through an administrative oversight and the Committee has determined not to take the matter any further.

#### *Fremantle Port Authority Amendment Regulations 1996*

- 14.9 These amendment regulations provide criteria for the eligibility and approval, and periodical assessment of persons approved to operate as pilots in the Port of Fremantle. There is also a power to revoke an approval. The Committee was concerned that the regulations do not provide a hearing or review process when exercising this power, and this raises an interesting question as to whether natural justice is provided. This is a particularly important question in the context of an approval which affects an individual's livelihood.
- 14.10 It was confirmed with the Fremantle Port Authority that neither the Act or the Regulations provides a procedure for a hearing or review process. Revocation of a licence or approval normally attracts the common law protection of natural justice, especially when revocation results in loss of livelihood or the right to carry on a financially rewarding activity - see *Kioa v. West (1985) 159 C.L.R. 550*. However it is important to distinguish between the decision to revoke a licence and the failure to provide a review or hearing process in the regulations. It is the individual decision which attracts the common law protection of natural justice. Each decision must be procedurally fair. There is no requirement that such a procedure be provided in the regulations. Under the regulations as they stand it is within the discretion of the Fremantle Port Authority to provide a hearing or review process whenever it exercises the power to revoke an approval. If a sufficient review or hearing process is not provided then that decision is objectionable and the individual can seek the protection of the common law through the prerogative writs in the Supreme Court to compel an adequate hearing or review process. Whether natural justice is provided by these regulations then becomes a question which is entirely dependent on each decision.
- 14.11 In this regard the Committee considered whether a failure to lay down a procedure in the subsidiary legislation for a hearing or review process is a matter which comes within the Committee's Terms of Reference. The Committee's 4th Term of Reference relates to



regulations that unduly make rights dependent upon administrative and not judicial decisions. Every decision concerning the approval or revocation of a licence involves an administrative function in the sense that a subjective judgment is required by someone in relation to the decision. The question is whether the decision is unduly dependent on that subjective judgment. This of course will depend on each individual decision and cannot be determined by the lack of a formal procedure for review or hearing within the regulations. The Committee is unable to determine whether these regulations make rights unduly dependent on administrative decisions without assessing each decision after it is made. On this basis the Committee determined that the failure to provide a formal procedure for hearing or review of a decision to revoke an approval for a pilot did not bring these regulations within the Committee's Terms of Reference.

- 14.12 However, the Committee does have power to report any opinion on a matter relating to any regulation to the House<sup>25</sup>. The failure to provide procedures for review and hearing on such matters concerning an individual's livelihood is a matter that frequently arises in subsidiary legislation. In most instances where the regulations provide a system of licensing there is inadequate review and hearing procedures. While it is true that whether procedural fairness is afforded will depend on each decision, the practical operation is that decisions on licensing are generally made arbitrarily without recourse to a hearing or review process. At present in WA, an aggrieved individual has the protection of the prerogative writs to compel a body to provide procedural fairness. However, this involves application to the Supreme Court, which the average person does not have the resources to access. There is no other administrative review system available in the State. Therefore the practical operation is that most individuals do not have the ability to question an adverse decision which affects their livelihood. These regulations highlight the need to look more seriously at review and hearing procedures within the State and within subordinate legislation. The Committee determined to look into the issues raised by these regulations more deeply.

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<sup>25</sup>See - Rule 6, *Rules of the Joint Standing Committee on Delegated Legislation*, 1987 WAPD 30 & 3731

## Appendix 1

Table of Comparative Staffing Levels<sup>26</sup>  
July 1997

Committee	Approx no. of instruments annually	Consultant	No. Full-time Staff	No. Part-time Staff	Total Staff
Australian Capital Territory: Standing Committee on Scrutiny of Bills and Subordinate Legislation	320 (as well as 100 Bills)	R	0	2A	1 + C
Commonwealth: Senate Standing Committee for the Scrutiny of Bills	200-250	R	1L 1A	1A	2.5 + C
Commonwealth: Senate Standing Committee on Regulations and Ordinances	2000-2400	R	1L 3A	0	4 + C
New South Wales: Regulation Review Committee	250-350	AH <sup>27</sup>	1L	1L 1A 1 (casual)	2.5
Northern Territory: Subordinate Legislation and Tabled Papers Committee	150-200	0	0	2A	1
Queensland: Scrutiny of Legislation Committee	500	AH	2L 1A	1L(casual)	3.5
South Australia: Legislative Review Committee	500	0	1L 1A	1A	2.5
Tasmania: Standing Committee on Subordinate Legislation	450	AH	0	2A	1
Victoria: Scrutiny of Acts and Regulations Committee	300-350	AH	2L 1A	1L 1A	4
Western Australia: Joint Standing Committee on Delegated Legislation	500	AH		1L 1A	1

<sup>26</sup>

Consultant: R = retained or referred to on a regular basis; AH = ad hoc references.  
Full-time Staff: L = legally trained staff; A = administrative/clerk staff, E = trained in economics.  
Part-time Staff: L = legally trained staff; A = administrative/clerk staff. Part-time staff include staff employed on a part-time basis and staff who work for more than one committee or have other duties. For the purposes of determining the total staff complement of a committee, part-time staff have been assumed to be equivalent to 0.5 of a full-time staff member. Consequently there is some inaccuracy in these figures as a part-time staff member may in fact work 4 full days for a committee. Consultants have not been included in these figures.

<sup>27</sup>

Provision is made for reference to a legal consultant, but to date this has not been required.

## Appendix 2

### List of subordinate legislation scrutinised by the Committee in 1996

Abalone Management Plan Amendment 1996  
Abalone Management Plan Amendment (No 2) 1996  
Abalone Management Plan Amendment (No 3) 1996  
Abalone Management Plan Amendment (No 4) 1996  
Abattoirs Repeal Regulation 1996  
Abrolhos Islands & Midwest Trawl Management Plan Amendment 1996  
Aerial Spraying Control Amendment Regulations 1996  
Agricultural Practices (Disputes) Regulations 1996  
Agricultural Produce (Chemical Residues) Amendment Regulations 1996  
Albany - Health By-laws  
Albany - Repeal of Prevention of Damage to Streets By-law  
Albany (By-laws Relating to Dogs)  
Amendment to By-laws Relating to Standing Orders  
Armadale By-laws  
Armadale - By-laws Relating to Dogs  
Armadale - By-laws Relating to Dogs  
Armadale Heath By-laws 1996  
Armadale - Bush Fires By-laws  
Armadale (By-law for the Repeal of By-laws)  
Armadale - By-laws Relating to Dogs  
Artificial Breeding of Stock Amendment Regulations 1996  
Ashburton (Parking Facilities By-laws)  
Ashburton - By-laws Relating to Dogs  
Ashburton (By-laws Relating to Aerodromes)  
Augusta-Margaret River - Model By-laws Series "A"  
Bassendean - By-law Relating to the Conduct of Proceedings & the Business of the Council  
Bassendean - Model By-laws Series "A" Amendment By-laws 1994  
Bassendean - Model By-laws Series "A"  
Beekeepers Amendment Regulations 1996  
Betting Control Amendment Regulations 1996  
Betting Control Amendment Regulations (No 2) 1996  
Broome Prawn Interim Managed Fishery Management Plan 1996  
Broome - By-laws Relating to Signs, Hoardings & Bill Posting  
Broome - Health By-laws 1995  
Builders' Registration (Scheduled Areas) Regulations 1996  
Building Amendment Regulations 1996  
Bulk Handling Amendment Regulations (No 2) 1996  
Bulk Handling Act Amendment Regulations 1996  
Bunbury Health By-laws 1996  
Bunbury Port Authority Amendment Regulations 1996  
Bunbury Port Authority Amendment Regulations (No 3) 1996  
Burswood Park Amendment By-laws 1996  
Business Names Amendment Regulations 1996  
Busselton Water Board By-law - Penalties  
Busselton - By-law Relating to Firebreaks  
By-law 82 (Electricity Supply Employees, Rules & Regulations) (Repeal) By-laws 1996  
By-laws Relating to Firebreaks  
By-laws Relating to Management of the Quairading District Memorial Swimming Pool  
Canning - By-law Relating to Fencing  
Capel Health By-laws 1996  
Capel By-laws  
Carnamah - By-laws Relating to Swimming Pools  
Carnarvon - By-laws Relating to Advertising Devices  
Censorship Regulations 1996

Change of Frequency Repeal Regulations 1996  
Chattel Securities Amendment Regulations 1996  
Chittering - By-law Relating to Reserves & Foreshores  
Chittering - By-law Relating to Extractive Industries  
Chittering - Model By-laws Series "A"  
Chittering - By-laws Relating to Dogs  
City of Perth Restructuring (Postal Elections) Amendment Regulations 1996  
Claremont - Amendment to By-law Relating to Signs  
Coal Industry Superannuation Amendment Regulations 1996  
Cockburn - By-law Relating to the Conduct of Proceedings & the Business of Council  
Cockburn - Local Laws  
Cockburn - By-law Relating to Dogs  
Cockburn Health By-laws  
Cockburn: Health By-laws - Eating Houses  
Cockburn - City of Cockburn (Local Government Act) By-laws  
Cockburn Sound (Crab) Management Plan Amendment (No 2) 1996  
Community Services (Child Care) Amendment Regulations 1996  
Competition Policy Reform (WA) Savings & Transitional Regulations 1996  
Consumer Credit Regulation 1996  
Consumer Credit Amendment Regulation 1996  
Consumer Credit Amendment Regulation (No 2) 1996  
Controlled Areas (Cancellation of Certain Areas) Order 1996  
Coolgardie - By-laws Relating to Fencing & Obstruction At Intersections  
Coolgardie - Model By-laws Series "A" Amendment By-laws 1994  
Coolgardie By-laws  
Coorow - Local Law Relating to Dogs  
Coorow - Model By-laws Series "A"  
Cottesloe - By-law Relating to Street Entertainers By-law No 45  
Cottesloe (By-law No 44 Relating to Trading in Streets & Public Places)  
Cottesloe (Local Law No 1 - Standing Orders)  
Country Taxi-cars (Fares & Charges) Amendment Regulations 1996  
Country Taxi-cars (Fares & Charges) Amendment Regulations (No 2) 1996  
Country Taxi-cars (Fares & Charges) Amendment Regulations (No 3) 1996  
Cremation Amendment Regulations 1996  
Dairy Industry Amendment Regulations 1996  
Dalwallinu Health By-laws 1996  
Dampier Port Authority Amendment Regulations 1996  
Dandaragan - By-laws Relating to Dogs  
Dandaragan - By-laws Relating to Dogs  
Dangerous Goods Amendment Regulations 1996  
Dardanup - Extractive Industries Local Law  
Dental Board Amendment Rules (No 2) 1995  
District Court Amendment Rules 1996  
District Court Amendment Rules 1996  
District Court Rules 1996  
Dog Amendment Regulations 1996  
Drugs of Addiction Notification Amendment Regulations 1996  
East Pilbara - By-laws Relating to Fencing Obstructions At Intersections  
East Pilbara - By-laws Relating to Newman Airport  
Education Amendment Regulations 1996  
Education Amendment Regulations (No 2) 1996  
Education Service Providers (Full Fee Overseas Students) Registration Amendment Regulations 1996  
Electoral (Political Finance) Regulations 1996  
Electoral Amendment Regulations 1996  
Electoral Regulations 1996  
Electoral Amendment Regulations (No 2) 1996  
Electric Works Repeal By-laws 1996  
Electricity Amendment Regulations 1996  
Electricity Corporation (Charges) By-laws 1996

Electricity (Licensing) Amendment Regulations 1996  
Electricity Transmission Regulations 1996  
Employment Agents Amendment Regulations 1996  
Energy Charges (Repeal) By-laws 1996  
Environmental Protection (Liquid Waste) Regulations 1996  
Environmental Protection Amendment Regulations (No 3) 1996  
Environmental Protection Amendment Regulations (No 4) 1996  
Environmental Protection Amendment Regulations (No 5) 1996  
Environmental Protection Amendment Regulations (No 6) 1996  
Enzootic Diseases Amendment Regulations 1996  
Enzootic Diseases Amendment Regulations (No 2) 1996  
Esperance Port Authority Amendment Regulations 1995  
Esperance - Eating House Local Laws  
Esperance - Model By-laws Series "A"  
Esperance Port Authority Amendment Regulations 1996  
Exmouth Gulf Prawn Management Plan Amendment 1996  
Exotic Diseases (General) Amendment Regulations 1996  
Explosives Amendment Regulations 1996  
Extension of Water Corporation (Temporary Status As An SES Organisation) Amendment Order 1996  
Fertilizers Amendment Regulations 1996  
Finance Brokers Control (General) Amendment Regulations 1996  
Financial Administration & Audit Act (Designation of Statutory Authorities) Regulations (No 3) 1995  
Financial Institutions Duty Amendment Regulations 1996  
Financial Administration Amendment Regulations 1996  
Fines, Penalties & Infringement Notices Enforcement Amendment Regulations 1996  
Fines, Penalties & Infringement Notices Enforcement Amendment Regulations (No 2) 1996  
Fines, Penalties & Infringement Notices Enforcement Amendment Regulations (No 3) 1996  
Fines, Penalties & Infringement Notices Enforcement Amendment Regulations (No 4) 1996  
Firearms Amendment Regulations 1996  
Fish Resources Management Amendment Regulations  
Fish Resources Management Amendment Regulations (No 2) 1996  
Fish Resources Management Amendment Regulations (No 3) 1996  
Forest Management Amendment Regulations 1996  
Forest Management Amendment Regulations (No 2) 1995  
Forest Management Amendment Regulations (No 3) 1996  
Freedom of Information Amendment Regulations 1996  
Fremantle By-laws  
Fremantle - By-law Relating to Parking Facilities  
Fremantle Port Authority Amendment Regulations 1996  
Fremantle - By-law Relating to Parking Facilities  
Fremantle - By-law Relating to Parking Facilities  
Friendly Societies Amendment Regulations 1996  
Gaming Commission Amendment Regulations 1996  
Gaming Commission Amendment Regulations (No 2) 1996  
Gas Referee Amendment Regulations 1996  
Gas Transmission (Distribution Integration) Amendment Regulations 1996  
Gas Distribution Regulations 1996  
Gas Transmission Amendment Regulations 1996  
Gas Corporation (Charges) By-laws 1996  
Geraldton - Caravan Parks & Camping Grounds By-laws  
Geraldton - Alfresco Dining By-law  
Goldfields & Agricultural Controlled Area (Water Supply Services) Order (No 2) 1996  
Gosnells - Health By-laws  
Gosnells By-laws  
Government Employees Superannuation Act (Amendment of Schedule 1) Order 1996  
Government Railways Amendment By-laws 1995  
Grain Marketing Amendment Regulations 1996  
Greenough - Amendment of Health Local Laws  
Greenough - Model By-laws Series "A"

Hardy Inlet Estuarine Fishery  
Harvey By-laws  
Harvey - By-laws Relating to Extractive Industries  
Harvey Controlled Area (Sewerage Services) Order 1996  
Harvey, Waroona & Collie River Irrigation Districts Amendment By-law 1996  
Health (Meat Inspection & Branding) Amendment Regulations (No 2) 1996  
Health (Notification of Cancer) Amendment Regulations 1996  
Health (Food Hygiene) Amendment Regulations 1996  
Health (Meat Inspection & Branding) Amendment Regulations 1996  
Health (Meat Inspection & Branding) Amendment Regulations (No 4) 1996  
Health (Pesticides) Amendment Regulations (No 2) 1996  
Health - Claremont By-laws  
Health (Meat Inspection & Branding) Amendment Regulations (No 3) 1996  
Health Act - Shire of Irwin - By-laws  
Health (Liquid Waste) Repeal Regulations 1996  
Health (Meat Inspection & Branding) Amendment Regulations (No 6) 1996  
Health (Meat Inspection & Branding) Amendment Regulations (No 5) 1996  
Health (Pesticides) Amendment Regulations 1996  
Health Act - Shire of Wyndham East Kimberley By-law  
Home Building Contracts Amendment Regulations 1996  
Hospitals (Services Charges) Amendment Regulations 1996  
Hospitals (Services Charges for Compensable Patients) Determination 1996  
Hospitals (Services Charges) Amendment Regulations (No 4) 1996  
Hospitals (Services Charges) Amendment Regulations (No 2) 1996  
Hospitals (Services Charges for Magnetic Resonance Imaging) Determination 1996  
Hospitals (Services Charges) Amendment Regulations (No 3) 1996  
Housing Amendment Regulations 1996  
Industrial Relations Commission Amendment Regulations 1996  
Industrial Training (Apprenticeship Training) Amendment Regulations 1996  
Industrial Training (Apprenticeship Training) Amendment Regulations (No 2) 1996  
Irwin - Model By-laws Series "A" Amendment By-laws 1994  
Jetties Amendment Regulations 1996  
Justices Act (Extraordinary Licences) Amendment Regulations 1996  
Justices Act (Courts of Petty Sessions Fees) Amendment Regulations 1996  
Justices (Forms) Amendment Regulations (No 2) 1996  
Justices (Forms) Amendment Regulations 1996  
Justices (Service of Summonses by Post) Amendment Regulations 1996  
Kalgoorlie-Boulder - By-laws Relating to Signs, Hoardings & Billposting  
Katanning - Local Laws Relating to Standing Orders  
Kimberley Demersal Line Interim Managed Fishery Management Plan Amendment 1996  
Kimberley Prawn Managed Fishery Management Plan Amendment 1996  
Kondinin - Firebreak By-laws  
Kondinin - Amendment to Health Local Laws  
Kwinana Health Local Laws  
Land Amendment Regulations 1996  
Land Valuers Licensing Amendment Regulations 1996  
Land Tax Assessment Amendment Regulations 1996  
Licence Exemption (Wittenoom) Amendment Order 1996  
Liquor Licensing Amendment Regulations 1996  
Liquor Licensing Amendment Regulations (No 2) 1996  
Litter Amendment Regulations 1996  
Litter Amendment Regulations (No 2) 1996  
Local Court Amendment Rules 1996  
Local Court Amendment Rules (No 2) 1995  
Local Government (Administration) Regulations 1996  
Local Government (Audit) Regulations 1996  
Local Government (Appeals to Building Referees) Amendment Regulations 1996  
Local Government (Administration) Amendment Regulations 1996  
Local Government (Constitution) Amendment Regulations 1996

Local Government (Financial Management) Amendment Regulations 1996  
Local Government (Uniform Local Provisions) Regulations 1996  
Local Government (Financial Management) Amendment Regulations (No 2) 1996  
Local Government (Amendment & Repeal) Regulations 1996  
Local Government (Parking for Disabled Persons) Amendment Regulations 1996  
Local Government Act (Schedule 3.1) Amendment Regulations 1996  
Local Government Act (Schedule 3.1) Amendment Regulations (No 2) 1996  
Local Government (Constitution) Regulations 1996  
Local Government (Financial Management) Regulations 1996  
Local Government (Functions & General) Regulations 1996  
Local Government (Elections - Owners & Occupiers Roll) Regulations 1996  
Local Government (Constitution) Amendment Regulations (No 2) 1996  
Lotteries Commission (Soccer Pools) Rules 1996  
Lotteries Commission (Powerball Lotto) Rules 1996  
Lotteries Commission (Instant Lottery) Rules 1996  
Lotteries Commission (Saturday Lotto) Rules 1996  
Lotteries Commission Amendment Regulations 1996  
Lotteries Commission (Super 66) Rules 1996  
Machinery Safety (Repeal) Regulations 1996  
Main Roads (Control of Advertisements) Regulations 1996  
Mandurah - Caravan Parks & Camping Grounds By-laws 1996  
Mandurah Health By-laws 1996  
Marine Aquarium Fish Management Plan Amendment 1996  
Marine Navigational Aids Amendment Regulations 1996  
Medical Amendment Rules 1996  
Medical Amendment Rules (No 2) 1996  
Melville - By-laws Relating to Fences  
Melville - By-law Relating to Parking Facilities  
Melville - By-laws Relating to Signs, Hoardings & Billposting  
Melville By-laws  
Melville - By-laws Relating to Hawkers, Stallholders & Trading in Public Places  
Melville By-laws  
Mental Health (Treatment Fees) Amendment Regulations 1996  
Mental Health (Treatment Fees) Amendment Regulations (No 2) 1996  
Merredin - Amendment of Health Local Laws  
Metropolitan Recreational Abalone Fishery Amendment Order 1996  
Metropolitan Cemeteries Board (Amendment) By-law 1995  
Mines Safety & Inspection Amendment Regulations (No 3) 1996  
Mines Safety & Inspection Amendment Regulations (No 4) 1996  
Mines Safety & Inspection Amendment Regulations 1996  
Mines Safety & Inspection Amendment Regulations (No 2) 1996  
Mingenew - By-laws Relating to the Manner and Mode of Keeping Dogs  
Mining Amendment Regulations 1996  
Mining Amendment Regulations (No 2) 1996  
Misuse of Drugs Amendment Regulations 1996  
Mosman Park By-laws  
Mosman Park - By-laws Relating to Beekeeping  
Mosman Park By-laws  
Mosman Park By-laws Relating to Dogs  
Mosman Park Health By-laws 1995  
Motor Vehicle Dealers (Licensing) Amendment Regulations 1996  
Motor Vehicles Instructors Amendment Regulations  
Mt Magnet - By-laws Relating to Aerodromes  
Mullewa Health By-laws  
Mullewa - Model Health By-law Series "A" Amendment By-laws 1994  
Murray - By-laws - Fencing  
Narrogin - By-law Relating to the Conduct of the Proceedings & the Business of the Council  
Narrogin - By-law Relating to the Keeping of Bees  
Narrogin - Model By-laws Series "A"

Navigable Waters Amendment Regulations 1996  
Nedlands - Standing Orders By-law No 18  
Nedlands By-laws  
Nedlands - Standing Orders By-law No 18  
Nedlands - Dog By-laws  
Nickol Bay Prawn Management Plan Amendment 1996  
Northam Health Local Laws  
Northam - Parking Facilities By-law  
Northam Health By-laws  
Northampton - Model By-laws Series "A"  
Northampton - Dog By-laws  
Northampton - Stables By-laws  
Northampton Health By-laws  
Northampton - By-laws Relating to Signs, Hoardings & Bill Posting  
Nurses Amendment Rules 1996  
Nurses Amendment Rules (No 2) 1996  
Occupational Safety & Health Regulations 1996  
Onslow Prawn Management Plan Amendment 1996  
Pawnbrokers & Second-hand Dealers Regulations 1996  
Pay-roll Tax Amendment Regulations (No 4) 1996  
Pay-roll Tax Amendment Regulations (No 3) 1996  
Pay-roll Tax Amendment Regulations (No 2) 1996  
Pay-roll Tax Amendment Regulations 1996  
Perth Parking Facilities By-law  
Perth Parking Facilities By-law  
Perth Parking Facilities By-law Amendment  
Physiotherapists Amendment Regulations 1996  
Piggeries Amendment Regulations 1996  
Piggeries Amendment Regulations (No 2) 1996  
Plant Diseases Amendment Regulations (No 2) 1996  
Plant Diseases Amendment Regulations 1996  
Plant Diseases Amendment Regulations (No 5) 1996  
Plant Diseases Amendment Regulations (No 3) 1996  
Poisons Amendment Regulations (No 2) 1996  
Poisons Amendment Regulations (No 4) 1996  
Poisons Amendment Regulations (No 5) 1996  
Poisons Amendment Regulations 1996  
Police (Fees) Amendment Regulations 1996  
Police Force Amendment Regulations (No 2) 1996  
Port Hedland Port Authority Amendment Regulations (No 2) 1996  
Port Hedland Health By-law 1995 - Amendments  
Ports & Harbours Amendment Regulations 1996  
Prisons Amendment Regulations 1996  
Prisons Amendment Regulations (No 2) 1996  
Prohibition on Fishing (Lake Clifton) Order 1996  
Pt Hedland - By-law Relating to Trading in Streets & Public Places  
Public Sector Management (Redeployment & Redundancy) Amendment Regulations 1996  
Public Sector Management (General) Amendment Regulations 1996  
Public Sector Management (Repeal of Administrative Instruction) Regulations 1996  
Public Sector Management (General) Amendment Regulations (No 3) 1996  
Public Sector Management (General) Amendment Regulations (No 4) 1996  
Public Sector Management (Review Procedures) Amendment Regulations 1996  
Public Sector Management (Redeployment & Redundancy) Amendment Regulations (No 2) 1996  
Public Sector Management (General) Amendment Regulations (No 4) 1996  
Public Sector Management (Transitional) Regulations 1996  
Public Sector Management (SES Organisations) Regulations 1996  
Public Sector Management (Schedule 6) Regulations 1996  
Queen Elizabeth II Medical Centre (Delegated Site) Amendment By-laws 1996  
Radiation Safety (General) Amendment Regulations (No 5) 1996



Radiation Safety (Qualifications) Amendment Regulations (No 2) 1996  
Radiation Safety (General) Amendment Regulations (No 2) 1996  
Rates & Charges (Rebates & Deferments) Amendment Regulations 1996  
Ravensthorpe - By-laws Relating to Parks, Reserves and Foreshores  
Real Estate & Business Agents Supervisory Board (Elections) Amendment Regulations 1996  
Real Estate & Business Agents (General) Amendment Regulations 1996  
Real Estate & Business Agents (General) Amendment Regulations (No 2) 1996  
Real Estate & Business Agents (General) Amendment Regulations (No 3) 1996  
Registration of Deeds Amendment Regulations 1996  
Regulations Restricting Use of Electricity in An Emergency Repeal Regulations 1996  
Residential Tenancies Amendment Regulations 1996  
Retail Trading Hours Amendment Regulations (No 2) 1996  
Road Traffic (Vehicle Standards) Amendment Regulations 1996  
Road Traffic Regulations Amendment (Greenmount Hill Speed Restriction) Regulations 1996  
Road Traffic (Fees for Vehicle Licences) Amendment Regulations 1996  
Road Traffic (Drivers' Licences) Amendment Regulations (No 3) 1995  
Road Traffic Code Amendment Regulations (No 3) 1996  
Road Traffic (Infringements) Amendment Regulations 1995  
Road Traffic Code Amendment Regulations (No 5) 1995  
Road Traffic (Licensing) Amendment Regulations (No 3) 1996  
Road Traffic (Fees for Vehicle Licences) Regulations (No 2) 1996  
Road Traffic (Licensing) Amendment Regulations 1996  
Road Traffic (Drivers' Licences) Amendment Regulations 1996  
Rockingham Health By-laws 1996  
Rockingham - By-laws Relating to Signs, Hoardings and Bill Posting  
Rules of Trotting - Notice of Amendment  
Rules of Trotting  
Rules of Trotting  
Rules of Trotting  
Rules of Trotting  
Rules of Trotting - Notice of Amendment  
Rules of Trotting - Notice of Amendment  
Salaries and Allowances Amendment Regulations (No 2) 1996  
Salaries and Allowances Amendment Regulations 1996  
Salmon (Restrictions on Commercial Use) Revocation Order 1996 - Order No 3 of 1996  
Sandalwood Amendment Regulations 1996  
School Premises Amendment Regulations 1996  
Security Agents Amendment Regulations 1996  
Seeds Amendment Regulations 1996  
Sentence Administration Regulations 1996  
Sentencing Rules 1996  
Sentencing Regulations 1996  
Serpentine-Jarrahdale - Amendments to Health Local Laws  
Serpentine-Jarrahdale - By-laws Relating to Pest Plants  
Settlement Agents Amendment Regulations 1996  
Settlement Agents Amendment Regulations 1996  
Settlement Agents Amendment Regulations (No 2) 1996  
Settlement Agents Amendment Regulations (No 3) 1996  
Shark Bay Prawn Management Plan Amendment 1996  
Shark Bay Prawn Management Plan Amendment (No 2) 1996  
Shark Bay Scallop Management Plan Amendment 1996  
Skeleton Weed & Resistant Grain Insects (Eradication Funds) Amendment Regulations 1996  
South Coast Purse Seine Management Plan Amendment 1996  
South Coast Purse Seine Management Plan Amendment (No 2) 1996  
South Perth - By-law Relating to Street Lawns & Gardens No 10  
South Perth (Local Law Relating to Dogs)  
South Perth - Local Law Relating to Standing Orders - No 1 of 1996  
South Perth - By-law Relating to Standing Orders  
South Perth - By-law Relating to Parking Facilities

Stamp Amendment Regulations 1996  
Stamp Amendment Regulations (No 2) 1996  
State Supply Commission Amendment Regulations 1995  
Stirling - Local Laws Relating to Disused Vehicles & Machinery  
Stirling - Local Laws Relating to Standing Orders  
Stirling - Local Laws Relating to Dogs  
Stirling - Local Laws Relating to Standing Orders  
Stirling - By-laws Relating to Standing Orders  
Stirling - By-laws Relating to Parking  
Stirling - By-laws Relating to Signs, Hoardings & Billposting  
Stock (Identification & Movement) Amendment Regulations 1996  
Strata Titles General Amendment Regulations 1996  
Strata Titles General Regulations 1996  
Strawberry Growers' Committee Directions 1996  
Subiaco - Parking Facilities By-law No 29  
Supreme Court Act - Non-contentious Probate Amendment Rules (No 2) 1996  
Supreme Court Amendment Rules (No 4) 1996  
Supreme Court Amendment Rules 1996  
Supreme Court Amendment Rules (No 3) 1996  
Supreme Court Act 1935 & Administration Act 1903 - Non-contentious Probate Amendment Rules 1996  
TAB (Betting) Amendment Regulations 1996  
TAB Amendment Rules 1996  
TAB (Betting) Amendment Regulations (No 2) 1996  
Taxi Amendment Regulations 1996  
Taxi Amendment Regulations (No 3) 1996  
Taxi Amendment Regulations (No 2) 1996  
Telecommunications (Interception) WA Regulations 1996  
Three Springs - By-laws Relating to Repeal of By-laws  
Town Planning Amendment Regulations (No 2) 1996  
Town Planning Amendment Regulations 1996  
Town of Vincent Eating Areas By-law No 13  
Town Planning & Development Act (Appeal) Amendment Regulations 1996  
Town Planning Appeal Tribunal Amendment Rules 1996  
Transfer of Land Amendment Regulations 1996  
Travel Agents Amendment Regulations 1996  
Travel Agents (Exemption) Variation Order  
Trayning By-laws  
Trayning Health By-laws  
Treatment of Sewage & Disposal of Effluent & Liquid Waste Amendment Regulations 1996  
Unclaimed Money Amendment Regulations 1996  
Valuation of Land Amendment Regulations (No 2) 1996  
Valuation of Land Amendment Regulations 1996  
Veterinary Preparations & Animal Feeding Stuffs Amendment Regulations 1996  
Veterinary Surgeons Amendment Regulations 1996  
Victoria Park - By-law Relating to Signs  
Victoria Park Health By-laws 1995  
Vincent - By-law Relating to Parking Facilities  
Vincent - Parking Facilities By-law Amendment  
Vocational Education & Training Regulations 1996  
WA Meat Industry Authority Amendment Regulations 1996  
WA Turf Club Amendment of By-laws  
WA Trotting Assoc - By-laws of Trotting - Notice of Amendment  
WA Trotting Association Rules of Trotting  
WA Trotting Association - Notice of Amendment  
WA Marine (Infringements) Amendment Regulations 1996  
WA Marine Amendment Regulations 1996  
Wandering - Wandering Public Cemetery By-laws  
Wandering - Health By-laws  
Wandering - Repeal of By-laws

Wanneroo - Amendment to By-laws Relating to Dogs  
Wanneroo - Amendments to By-laws Relating to Signs, Hoardings & Bill Postings  
Wanneroo - Amendments to By-laws Relating to Dogs  
Wanneroo - Amendments to By-laws Relating to Swimming Pools  
Wanneroo - Amendments to By-laws Relating to Signs, Hoardings & Bill Postings  
Wanneroo - Amendments to By-laws Relating to Parking Facilities  
Wanneroo - Amendments to By-laws Relating to Dog Kennels  
Wanneroo - Amendments to By-laws Relating to Reserves & Foreshores  
Waroona - Model By-laws Series "A"  
Waroona Controlled Area (Sewerage Services) Order 1996  
Waroona/Yarloop Region Controlled Area (Sewerage Services) Order 1996  
Water Agencies (Charges) Amendment By-laws 1996  
Water Agencies (Charges) Amendment By-laws (No 2) 1996  
Water Agencies (Charges) Amendment By-laws (No 3) 1996  
Water Agencies (Charges) Amendment By-laws (No 4) 1996  
Water Agencies (Charges) Amendment By-laws (No 5) 1996  
Water Agencies (Charges) Amendment By-laws (No 6) 1996  
Water Services Coordination Act 1995 - Controlled Area Orders  
Water Services Coordination Regulations 1996  
Waterways Conservation Amendment Regulations 1996  
Weights & Measures Amendment Regulations 1996  
West Arthur Health Local Laws  
West Coast Lobster Management Plan Amendment 1996  
Windy Harbour/Augusta Rock Lobster Management Plan Amendment 1996  
Windy Harbour-Augusta Rock Lobster Management Plan Amendment 1996  
Witness Protection (WA) Regulations 1996  
Wongan-Ballidu By-laws  
Wongan-Ballidu - Model By-laws Series "A"  
Wyalkatchem Health By-laws  
Wyndham East Kimberley (By-laws Relating to the Control & Storage of Old & Disused Vehicles & Machinery Motors)  
Yalgoo - By-law Relating to Standing Orders  
Yarloop Controlled Area (Sewerage Services) Order 1996  
York - By-laws Relating to York General Cemetery  
Young Offenders Amendment Regulations 1995  
Zoological Gardens Amendment By-laws 1996

## Appendix 3

### List of witnesses appearing before the Committee in 1996

#### 29.4.96

Mr Paul Schapper  
Chief Executive  
Public Sector Management Office

Mr Peter King  
Director  
Public Sector Management Office

Mr John Lightowlers  
Solicitor  
Public Sector Management Office

Mr Digby Blight  
Director General  
Public Sector Standards Commission

Mr Kerry O'Neil  
Executive Director  
Public Sector Standards Commission

Mr Richard Gornik  
Manager - Investigations  
Public Sector Standards Commission

#### 20.6.96

Dr Brian Martin  
Coordinator of Water Services  
Office of Water Regulation  
Hyatt Centre  
East Perth

#### 19.9.96

Mr David Mulcahy  
Commissioner of Titles  
Department of Land Administration  
Midland

Mr Geoffrey Sach  
Registrar of Titles  
Department of Land Administration  
Midland

**Appendix 4**

**Table of Comparative Statistics: 1988 - 1996**

Item	1988	1989	1990	1991	1992	1993	1994	1995	1996
Total regulations examined	NA	NA	NA	NA	NA	NA	NA	220	234
Total rules examined	NA	NA	NA	NA	NA	NA	NA	32	33
Total by-laws examined	NA	NA	NA	NA	NA	NA	NA	35	167
Total other instruments examined	NA	NA	NA	NA	NA	NA	NA	2	26
Total instruments examined	7	301	273	314	386	239	250	289	440
Matters requiring further action	7	45	75	85	71	75	35	45	48
Notices of motion of disallowance given	0	0	4	6	9	4	3	14	4
Notices of motion of disallowance withdrawn	0	0	4	NA	3	4	3	14	4
Instruments disallowed	0	0	0	5	NA	0	0	0	0
Number of tabled reports	1	1	5	3	4	0	4	3	4

Item	1988	1989	1990	1991	1992	1993	1994	1995	1996
Number of meetings	8	12	16	20	21	8	22	28	20
Number of witnesses	0	5	23	22	32	4	23	27	9
Number of unsatisfactory EMs	NA	NA	NA	NA	NA	NA	NA	74	226

**Table of Comparative Statistics: 1988 - 1996<sup>28</sup>**

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**Notes:**

NA = not available

- a The statistics for 1988 to 1994 may not be entirely accurate as there was no formal mechanism in place for their collection, and the Committee’s records are inconsistent.
- b Total regulations, rules and by-laws examined: statistics for the breakdown of subordinate legislation examined only commenced to be kept in 1995. The Committee only began examining all by-laws towards the end of 1995.
- c Total other instruments examined: includes such things as codes of practice, orders and guidelines required by an Act to be published and tabled in the same manner as “regulations”.
- d Total instruments examined is not a good indicator of the Committee’s workload because it does not take into account the degree of complexity of the instruments examined, which can vary significantly. Additionally, there were variations in the way these statistics were recorded from 1988 to 1994.
- e Matter requiring further action: formal action including writing to the relevant agency or minister, or requiring the attendance of witnesses.
- f Statistics for “number of unsatisfactory EMs” only began to be kept in March 1995.