

PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE
ON
DELEGATED LEGISLATION**

EIGHTEENTH REPORT:

1995 Review of Operations

Presented by the Hon Bruce Donaldson MLC (Chairman)

18
May 1996

Joint Standing Committee on Delegated Legislation

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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

1995 Review of Operations

1

Introduction

The place of subordinate legislation in our system of government¹

- 1.1 The system of government in Western Australia is that of a parliamentary democracy based on the rule of law². Modern governmental functions are frequently divided into 3 classes:
 - 1.1.1 legislative - the power to make general rules of conduct (ie the power to make laws);
 - 1.1.2 executive - the power to put into effect in individual cases the general rules made under the legislative power; and
 - 1.1.3 judicial - the power to judge, or to resolve disputes.
- 1.2 The 3 arms of the system of State government in Western Australia are represented by:
 - 1.2.1 Parliament - the legislature;
 - 1.2.2 the Executive Council, also known as the "Cabinet" - the executive; and
 - 1.2.3 the judiciary (in relation to which the Supreme Court is the highest court³ and the Chief Justice of Western Australia the chief judicial officer⁴).
- 1.3 The principal function of Parliament is to make law. Parliament makes laws by enacting statutes or Acts of Parliament (which are also referred to as primary legislation).

¹ A more detailed account of the place of subordinate legislation in our system of government, including consideration of the advantages and disadvantages of its use and the potential for abuse, is set out in the Committee's 16th Report, *The Subordinate Legislation Framework in Western Australia*, November 1995.

² In simple terms, the "rule of law" is the idea that law is supreme and replaces arbitrary force. For a more detailed explanation of the rule of law, see Allars, M, *Introduction to Australian Administrative Law*, Butterworths, 1990, pp14 *et seq.*

³ It is, however, possible to appeal from the Supreme Court of Western Australia to the High Court of Australia.

⁴ *Supreme Court Act 1935*, s 7.

- 1.4 It has long been established that parliaments may delegate their legislative powers. The earliest example of such a delegation in England occurred in 1385⁵. Legislation that is made under a delegation of power from the legislature is known as subordinate legislation.
- 1.5 The term "subordinate legislation"⁶ postulates 2 concepts. The first relates to the fact that the legislation is *subordinate* or *delegated*. That is, it is legislation that is made by a body (such as a government department) other than the parliament, under the authority of the parliament. The second concept is that of *legislation*. What is legislation? The English Donoughmore Committee⁷ distinguished legislative activity from executive activity on the basis that legislative action constitutes the process of formulating general rules of conduct without reference to particular cases while executive action constitutes the process of performing particular acts which apply general rules to particular cases. Thus subordinate legislation can be said to be general rules of conduct affecting the community at large which have been made by a body expressly authorized so to do by an Act of Parliament⁸.
- 1.6 It should be kept in mind that subordinate legislation is law, no less so than is primary legislation made by Parliament itself. Members of Parliament are accountable to the people at election time and Parliamentary debates about Bills are a matter of public record. Subordinate legislation is formally made by the executive government. Practically speaking it is often made by bureaucrats. Whilst most subordinate legislation, like an Act of Parliament, is a matter of public record, the process of making it is, generally speaking, formally invisible to the public. In other words, members of Parliament and the laws made by them are accountable in that members are directly accountable to the people in elections and the record of making legislation, at least in so far as Parliamentary debates are concerned, is available to the public. The reasons for making subordinate legislation and information about the process by which it is made are not readily available to the public. At present the principal effective means of accountability in respect of subordinate legislation is its scrutiny by parliamentary committee.
- 1.7 Some mention should be made here of the general legislative hierarchy from a more practical perspective. The legislative hierarchy is ordinarily such that the most important matters are dealt with in the statute, those matters of detail of lesser importance are dealt with by subordinate legislation and the minutiae (in respect of which the greatest administrative flexibility is needed) are dealt with by administrative rules or policies. In some cases the lines between each of these categories (ie legislation, subordinate legislation and administrative rules) is not clear. However, there are legal principles which can be applied.

⁵ Pearce, DC, *Delegated Legislation in Australia and New Zealand*, Butterworths, 1977, p 3.

⁶ Subordinate legislation is also known as delegated or subsidiary legislation. The term subordinate legislation has been chosen as it is the most accurate description of the material it refers to. It is noted that the *Interpretation Act 1984* currently uses the term subsidiary legislation.

⁷ United Kingdom, Committee on Ministers' Powers, *Report*, 1932 Cmd 4060.

⁸ Pearce 1977, p 1-2.

- 1.8 It is generally accepted that, in the modern democratic state, it would be impossible for Parliament to legislate on all matters requiring legislation. However, it is also generally accepted that it is necessary to recognise the criticisms made of subordinate legislation and take steps to minimise the dangers that it poses. In particular cases of delegation, while it is the case that Parliament has approved subject matter on which subordinate legislation can be made, this does not and should not be assumed to grant to the executive or the administration an unfettered discretion to make whatever subordinate legislation it thinks fit. In the first place, the delegation of the legislative power should be (and sometimes is) specifically confined by enabling legislation, that is, given express jurisdictional limits. The discretion granted for the purposes of making subordinate legislation should be structured or subject to specific procedural requirements. And there must be some means whereby innocent and inadvertent misuse (as well as abuse) of delegated powers can be reviewed and remedied. Consequently, although Parliament does not itself wish to legislate on a relevant subject, it nevertheless is essential that Parliament remain informed about the subordinate legislation that is made and have an opportunity to review it.

How subordinate legislation is made

- 1.9 A self-explanatory flowchart of a typical process of making subordinate legislation is attached as Appendix 1⁹.

Interpretation Act 1984

- 1.10 Section 41 of the *Interpretation Act 1984* provides that all “subsidiary legislation”¹⁰ must be published in the *Gazette* and comes into operation on the date of publication (or the day specified in the subsidiary legislation). This reflects a fundamental principle of representative democracy based on the rule of law. The rule of law requires that law must be publicised with sufficient precision. John Locke said:

For all the power the government has, being only for the good of society, as it ought not to be arbitrary and at pleasure, so it ought to be exercised by established and promulgated laws, that both the people may know their duty, and be safe and secure within the limits of the law, and the rulers, too, kept within their due bounds...¹¹

⁹ It should be noted that the flowchart represents a typical process of making regulations required to be made by the Governor and may not represent the process of making, for instance, Ministerial regulations or by-laws.

¹⁰ The *Interpretation Act* refers to subsidiary legislation rather than subordinate legislation. As the Committee noted in its 16th Report, it prefers the term subordinate legislation as this more accurately describes the subordinate nature of subordinate legislation. It is also consistent with the practice adopted in most other parts of Australia.

¹¹ Locke, J, *Two Treatises of Government*, Book II, para 137, cited in Allan, TRS, “Legislative Supremacy and the Rule of Law: Democracy and Constitutionalism” (1985) 44 *Cambridge Law Journal* 111

And TRS Allan of Cambridge University has said:

The acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it.¹²

- 1.11 The same principle was referred to in the Committee's 16th Report¹³, in the context of discussing accountability and means of preventing abuse of delegated legislative powers, and in its 17th Report¹⁴, in the context of certain subordinate legislation that was not published in the *Gazette* as required.
- 1.12 In the context of publication of legislation (including subordinate legislation), the Committee notes and supports the recommendations of the Standing Committee on Constitutional Affairs and Statutes revision in relation to continual consolidation of legislation and posting of legislation on the Internet¹⁵. This would enhance the availability of legislation to the public in an accessible form.
- 1.13 Following publication in the *Gazette*, all "regulations" must be tabled in both Houses of Parliament within 6 sitting days of their publication. If the regulations are not tabled within the 6 sitting days, they thereupon cease to have effect.
- 1.14 After tabling, either House may then disallow the regulations, provided notice of motion of disallowance is given within 14 sitting days of their tabling in the relevant House. Both Houses (in agreement) may amend the regulations.
- 1.15 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. Similarly, while all "subsidiary legislation"¹⁶ 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.
- 1.16 Furthermore, for "regulations", "rules" or "by-laws" to fall within the definition of "regulations" under the *Interpretation Act*, they must have legislative effect. Thus they must involve the formulation of **general rules of conduct, usually operating**

¹² *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613

¹³ pp10-11.

¹⁴ Western Australia, Joint Standing Committee on Delegated Legislation, *Young Offenders Regulations 1995 and Director General's Rules*, 17th Report, December 1995.

¹⁵ Western Australia, Standing Committee on Constitutional Affairs and Statutes Revision, *Electronic Availability of Statutes*, 11th Report, January 1996.

¹⁶ *Interpretation Act 1984*, s 5.

prospectively, and will usually determine the content of the law rather than merely apply it¹⁷. In this context the Committee notes that there appears to be much ignorance in some government agencies about the line between rules which have legislative effect and rules which are merely administrative policy. The Committee acknowledges that sometimes the distinction is not clear and that in some cases even senior lawyers may disagree on the character of a particular rule or rules. Consequently it is important that both government agencies and Parliamentary Counsel give consideration to whether or not particular rules have, or are intended to have, legislative effect. "Legislative effect" is the principle criterion to be used in a determination of what must be contained in subordinate legislation and what may be contained in administrative rules. In the Committee's view it is preferable to err on the side of including administrative rules in regulations rather than to include rules having legislative effect in administrative instruments which are not subject to Parliamentary scrutiny.

Scrutiny of subordinate legislation

- 1.17 The Western Australian Royal Commission into Commercial Activities of Government and Other Matters ("the Royal Commission") found that¹⁸:

The least visible law making activity undertaken in this State is that by which statutory rules are made. These have a pervasive effect upon the lives and livelihood of the community. The Joint Standing Committee on Delegated Legislation and the *Interpretation Act 1984* constitute significant checks in the processes through which rules are given legal effect.

- 1.18 The scrutiny of subordinate legislation by parliamentary committees is the principal means by which Australian parliaments keep themselves informed of matters regarding subordinate legislation. In conjunction with the requirements to table subordinate legislation and the parliamentary power to disallow subordinate legislation, such committees enable parliaments to exercise an essential and useful form of control over the making of subordinate legislation. The High Court has said:

When a man becomes a member of Parliament, he undertakes high public duties. Those duties are inseparable from the position: he cannot retain the honour and divest himself from the duties. One of the duties is that of watching on behalf of the general community the conduct of the Executive, of criticizing it, and, if necessary, of calling it into account in the constitutional way by censure from his place in Parliament... That is the whole essence of responsible government, which

¹⁷ See, for example: Australia, Administrative Review Council, *Report to the Attorney-General: Rule Making by Commonwealth Agencies*, Report No 35, March 1992, p20; *Commonwealth v Grunseit* (1943) 67 CLR 58, 82; *Queensland Medical Laboratory v Blewett* (1988) 84 ALR 615, 633.

¹⁸ Western Australia, Royal Commission into Commercial Activities of Government and Other Matters, *Report*, Perth, 1992, Part II, para 5.7.9.

is the keystone of our political system, and is the main constitutional safeguard the community possesses¹⁹.

- 1.19 Thus the members of the Committee are, on behalf of the members of Parliament generally (who individually do not have the time necessary so to do), performing an important role in "watching... the conduct of the Executive" in the context of subordinate legislation. The Committee was created to perform the scrutiny function of Parliament because individual members of Parliament do not have the time to review the thousands of pages of subordinate legislation that are tabled each year.
- 1.20 As part of their scrutiny of subordinate legislation on behalf of parliaments, scrutiny committees also play a valuable role in identifying, at an early stage, possible grounds on which subordinate legislation can be challenged in the courts. This can result in: substantial savings in terms of avoidance of expensive litigation (which would otherwise also consume valuable court time); avoiding or reducing potential liability of governments for invalid action; and avoiding or reducing embarrassment of governments for invalid action.
- 1.21 Parliamentary committees for the scrutiny of subordinate legislation have existed in Australia since the first one was established by the Commonwealth Government in 1931. This was followed by South Australia in 1938, Victoria in 1956, New South Wales in 1960, Tasmania and the Northern Territory in 1969 and Queensland in 1975. In 1976, the Western Australian Parliament enacted legislation to create the Legislative Review and Advisory Committee, a statutory committee charged with the scrutiny of subordinate legislation²⁰. It was not until 1987 that Western Australia abandoned the statutory committee and appointed a Parliamentary committee when it established the Joint Standing Committee on Delegated Legislation²¹.

Committee an effective mechanism

- 1.22 In its 16th Report, *The Subordinate Legislation Framework in Western Australia*, the Committee concluded that, despite some of the impediments²² to its scrutiny function which require reform in the manner considered in that report, the Committee is nevertheless an effective mechanism for scrutiny of subordinate legislation in Western Australia. Drawing equal representation from both Houses of Parliament, the Committee is proud of and carefully guards its ability to function with apolitical impartiality in its scrutiny of subordinate legislation. At the time of writing, the Government continues to have minority representation on the Committee, there being 4 members from the Australian Labor Party, 3 from the Liberal Party and 1 member of the Committee who is a member of the Greens WA. Essentially a sub-committee of the whole of the Parliament, the Committee believes that it fairly represents Parliament. The Committee considers that it is important that this

¹⁹ *Horne v Barber* (1920) 27 CLR 494, 500.

²⁰ *Legislative Review and Advisory Committee Act 1976*.

²¹ 1987 WAPD 30, 636, 1636, 1754, 2457, 2944, 3728.

²² These are set out in the Committee's 16th Report.

fully representational and impartial structure be maintained and supported by Parliament. If it is not, the Committee could become a political entity which merely rubber-stamps bureaucratic or government policy simply because "it is policy" or has executive support. This would undermine the role of Parliament and its members as representatives of the community and severely limit the effectiveness of the Committee.

2 Committee Procedures

The Committee's Terms of Reference

2.1 The Committee's rules²³ provide:

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.

Explanatory memoranda (EM)

2.2 The Royal Commission found that²⁴:

...accountability can only be exacted where those whose responsibility it is to call government to account are themselves possessed of, or are able to obtain, the information necessary to make considered judgements. Information is the key to accountability. Given Parliament's role as the primary accountability agent of the public, accurate information is its lifeblood. Without it, Parliament can be neutralised, the public left vulnerable.

²³ A copy of the Committee's rules is attached as Appendix 2.

²⁴ Western Australia, Royal Commission into Commercial Activities of Government and Other Matters, *Report*, Perth, 1992, Part II, para 2.4.2.

This statement has been repeated in the McCarrey Report²⁵ and by the Commission on Government²⁶. It was also referred to by the Committee in its 16th Report²⁷.

- 2.3 The Committee requires that, preferably upon publication in the *Gazette*, and no later than upon tabling, a government agency having responsibility for any relevant subordinate legislation must send to it 10 copies of the subordinate legislation together with 10 copies of an explanatory memorandum in respect of the subordinate legislation. Unfortunately this is not, as yet, a statutory requirement. Although the Premier has issued a Circular to Ministers (No. 37/93) requiring agencies to comply with the Committee's requirements, many agencies ignore or fail to comply with the directive. This causes great difficulties for the Committee in its scrutiny function. Additionally, many agencies, whilst strictly complying with the form of the directive nevertheless fail to provide the Committee with relevant information about the substance of the subordinate legislation. Other agencies provide EMs of inconsistent quality. Consequently, in its 16th Report, the Committee recommended that the requirements be made statutory. The Commission on Government commented²⁸:

Another constraint on the efficacy of the JSCDL is the lack of compliance by government departments and agencies in providing the Committee with sufficient information with which to examine proposed regulations. These bodies are often tardy in providing the information, resulting in the Committee having to put on a protective notice of motion of disallowance, simply because they have not been afforded the opportunity of properly scrutinising the proposed rules. This device preserves the Committee's capacity to recommend disallowance of delegated legislation after the disallowance period has expired. When the information is provided, it is often insufficient for the purpose; this reflects poorly on the agencies that indulge in such practices.

- 2.4 Notable exceptions to the generally poor standard of EMs received by the Committee are those EMs prepared by the Health Department. The Health Department follows a simple format in the preparation of its EMs which most often meets the Committee's major requirements for the scrutiny of subordinate legislation. It is the only agency which consistently provides the Committee with EMs of a high standard. Some other agencies, such as the Fisheries Department, the Department of Land Administration and the State Taxation Department, sometimes prepare EMs of a high standard.
- 2.5 The Committee has sought by various means throughout the year to encourage an attitudinal change in agencies to their provision of information to it. The Committee considers that this has had some impact and anticipates a significant improvement in both

²⁵ Western Australia, Independent Commission to Review Public Sector Finances, *Report: Agenda for Reform*, June 1993, Vol 1, p49.

²⁶ Western Australia, Commission on Government, *Report No 1*, August 1995, p169.

²⁷ Western Australia, Joint Standing Committee on Delegated Legislation, *The Subordinate Legislation Framework in Western Australia*, 16th Report, November 1995, p20.

²⁸ Western Australia, Commission on Government, *Report No. 2*, Part 2, December 1995, p262.

the standard of EMs and the response of agencies to the Committee's requests for information in 1996.

Protective notice of motion of disallowance

- 2.6 Where an agency has not complied with the Premier's directive, the Committee has no choice but to give a "protective" notice of motion of disallowance (usually in the Legislative Council). If it does not do so, the relevant period in which a notice of motion of disallowance passes, and Parliament is then unable to disallow the subordinate legislation (other than by enacting primary legislation which overrides it). This process sends a signal to agencies that the Committee requires the subordinate legislation and explanatory memorandum immediately, and gives the Committee time to consider the subordinate legislation and explanatory memorandum when they are received.
- 2.7 The giving of a protective notice of motion of disallowance does not mean that the Committee will recommend disallowance of the relevant subordinate legislation, though that is an ultimate sanction where an agency continues to refuse to provide the Committee with materials which Parliament and the Premier require the agency to provide. The Committee did not find it necessary to recommend disallowance of any subordinate legislation in 1995.
- 2.8 Whilst the Committee endeavours to advise relevant Ministers of its intention to give notice of motion of disallowance before it is given, this has not always proved possible because of the time constraints on the Committee. As a result of recent amendments to standing orders in the Legislative Council (discussed below), these processes have been put under an ever stricter timetable.
- 2.9 Protective notices of motion of disallowance are also used by the Committee where it identifies a matter of concern in subordinate legislation and time is required for the relevant agency or Minister to respond to the Committee's concerns.

Scrutiny by the Committee

- 2.10 Having received subordinate legislation and an explanatory memorandum after *Gazettal* or tabling, the materials are given preliminary consideration by the Committee's Advisory/Research Officer. They are then scrutinised by the Committee.
- 2.11 Where the Committee identifies that subordinate legislation transgresses any of the Committee's terms of reference, it will, in the first instance, seek comment from the agency responsible for the subordinate legislation. In most instances, matters are able to be resolved at this level.
- 2.12 If an agency is unable to satisfy the Committee's concerns, the Committee will approach the Minister responsible for the relevant subordinate legislation. The majority of matters which cannot be resolved at agency level are resolved at Ministerial level.
- 2.13 If a matter is not resolved at Ministerial level, the Committee will report the matter to Parliament, with or without a recommendation for disallowance of the relevant subordinate legislation. The ultimate fate of subordinate legislation therefore remains with the Houses

of Parliament. The Committee recommends disallowance of subordinate legislation in only the most exceptional circumstances. To date, the Western Australian Parliament has not overruled a recommendation for disallowance made by the Committee²⁹.

- 2.14 As has been observed by both the Chairman and Deputy Chairman of the Committee, it is not the role or purpose of the Committee to hinder effective government. The Committee very carefully guards its apolitical impartiality. However, it is the duty of the Committee to ensure that, within its terms of reference, government is accountable and government efficiency is maintained within the bounds of what is required by a representative democracy based on the rule of law.

3 **Committee Membership**

- 3.1 In accordance with its rules, the Committee has 8 members, 4 from each of the Houses of Parliament. Currently the members are:

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

Hon Jim Scott MLC replaced Hon Reg Davies MLC who resigned on 25 May 1995 having served on the Committee since 31 May 1990.

4 **Committee Staff**

- 4.1 In its exacting work, the Committee is currently supported by only 2 staff (1 legally trained advisory/research officer and 1 committee clerk), both of whom also work for other Parliamentary committees. This is actually fewer staff than the Committee has had in the past (on occasions in the past it has had 2 staff dedicated full-time to the work of the Committee), despite the fact that the work-load of the Committee is increasing.
- 4.2 With the escalating volume and complexity of subordinate legislation being published in Western Australia, the Committee's role is becoming increasingly important and difficult. Whilst Committee members can often identify problems when scrutinising subordinate legislation and are sometimes made aware of problems with particular pieces of subordinate legislation by members of the public, the Committee members neither have the time nor the expertise to identify all problems. Competent staff are required to assist the members in their role.

²⁹ Such recommendations have, however, lapsed as a result of prorogation of Parliament.

- 4.3 The Committee commented on the importance of its staff in its 16th Report, *The Subordinate Legislation Framework in Western Australia*³⁰. 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 committee³¹.

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

- 4.5 The Royal Commission found that³²:

[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.

³⁰ pp17-18.

³¹ Pearce 1977, pp 83-4.

³² Western Australia, Royal Commission into Commercial Activities of Government and Other Matters, *Report*, Perth, 1992, Part II, para 3.9.5.

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

4.6 The Commission on Government reported³³:

The Committee receives a large volume of subordinate legislation, and yet it is only staffed by one part-time research officer. This is another example of the lack of resources for parliamentary committees, a factor that diminishes their effectiveness.

4.7 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 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.

4.8 However, the Committee considers, in concordance with the finding of the Commission on Government, that it is under-staffed and that this detracts from the Committee's effectiveness. The fact of under-staffing is also reflected by comparing the staffing of equivalent committees in the United States, the United Kingdom and France, as well as in other Australian jurisdictions. A table of comparative staffing levels of Australian subordinate legislation committees as at July 1995 is attached as Appendix 3.

4.9 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.

4.10 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. Legal advisers can keep track of subordinate legislation that repeatedly requires scrutiny by the Committee. Members do not have time to do this and, in any event, membership of the Committee also changes from time to time. Finally, 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. The turnover in legal advisers is also one of the reasons the

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Western Australia, Commission on Government, *Report No. 2*, Part 2, December 1995, pp261-262.

Committee is unable to prepare an annual report each year³⁴. Whilst the Committee accepts that its staff will change from time to time, it considers that some continuity in its staff, particularly its legal advisers, needs to be encouraged.

- 4.11 The Committee is continuing its efforts to improve the position of its staff.

5 Independent Legal Advice

- 5.1 The Committee is able to call upon the services of Queen's Counsel when necessary. Len Roberts-Smith has advised the Committee in this capacity since 1989. The Committee continues to appreciate Mr Roberts-Smith's independent and impartial legal advice. In 1995 Mr Roberts-Smith advised the Committee in respect of:

Retail Trading Hours Amendment Regulations 1994; and
Young Offenders Regulations 1995.

Both of these matters involved issues of political sensitivity and Mr Roberts-Smith maintained the highest standards of independence and impartiality in framing his legal advice to the Committee.

6 1995: Overview

- 6.1 1995 was an exceptionally busy year for the Committee. It commenced before the opening of Parliament when, in late February and early March, the Committee visited Washington DC, London and Paris to observe how subordinate legislation is dealt with in those jurisdictions. The Committee's investigations in these places resulted in the tabling of 2 substantial reports (discussed below) during the year.
- 6.2 A new Advisory/Research Officer, Stuart Kay, had been appointed in December 1994. He very quickly had to learn about the role and functions of the Committee in order to assist the members in their investigations overseas.
- 6.3 In May, Hon Reg Davies MLC resigned from the Committee having served on it for just under 5 years. He was replaced by Hon Jim Scott MLC.
- 6.4 The Committee received front page coverage in *The West Australian* on 2 occasions. The first was in respect of the Committee's inquiries in respect of the *Retail Trading Hours Amendment Regulations 1994*³⁵ and the second was in respect of the *Young Offenders Regulations 1995*³⁶. The media report on the *Retail Trading Hours Amendment Regulations 1994* resulted from a leak of information from an unknown place within the

³⁴ In compiling this report, another of the disadvantages of insufficient staff and high staff turnover became apparent. It proved to be difficult to compile statistics for the years 1988 to 1994 because statistics have not uniformly been kept, and there are inconsistencies in those statistics that have been kept.

³⁵ *The West Australian*, 29 June 1995

³⁶ *The West Australian*, 30 June 1995

Parliament. New procedures were put in place in an attempt to prevent any further such leak in the future.

6.5 The Committee tabled 3 reports in Parliament:

The Committee's Investigations in Washington, London and Paris, 15th Report, July 1995

The Subordinate Legislation Framework in Western Australia, 16th Report, November 1995

Young Offenders Regulations 1995 and Director General's Rules, 17th Report, December 1995

6.6 Mechanisms for collecting statistics have been put in place to assist the Committee in reviewing and reporting on its work to Parliament. Additionally, a mechanism has been put in place to attempt to monitor the general quality of explanatory memoranda and help the Committee to identify those agencies which are particularly recalcitrant. Continuation of these systems will depend upon the resources available to the Committee. The Committee considers that it would be desirable to put in place a mechanism to identify changes to subordinate legislation which has previously been of concern to the Committee, but the Committee does not have the resources to do this.

6.7 In the context of statistics, it is noted that the Committee does not produce an annual report to Parliament because it does not have the staff resources necessary to do so. However, a periodic review of operations is produced to Parliament. The Committee considered that such a review of operations was essential in respect of the 1995 calendar year because of significant developments during the year, including the recommendations for reform of the subordinate legislation system in the Committee's 16th Report and amendments to the Legislative Council's Standing Orders.

6.8 As a result of the increasing workload of the Committee in respect of "regulations" and "rules" and a lack of resources, the Committee had not for some time scrutinised all by-laws, though by-laws which raised particular interest continued to be scrutinised. Late in the year, the Committee again commenced to scrutinise all by-laws. The ability of the Committee to continue to scrutinise all by-laws depends on the resources available to it.

6.9 Members of the Committee and the Advisory/Research Officer gave evidence to the Commission on Government. A response to the Commission on Government's report in respect of the Committee is made below.

7

Statistics

General

7.1 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 4 and a list of the witnesses who appeared before the Committee appears at Appendix 5. A comparative table of statistics from 1988 to 1995 appears at Appendix 6.

Item	1995
Total regulations examined	220
Total rules examined	32
Total by-laws examined	35
Total other instruments examined	2
Total instruments examined	289
Matters requiring further action	45
Notices of motion of disallowance given	14
Notices of motion of disallowance withdrawn	14
Instruments disallowed	0
Number of tabled reports	3
Number of meetings	28
Number of witnesses	27
Number of unsatisfactory EMs	74

Table 1³⁷

Disallowance

- 7.2 The Committee did not recommend disallowance of any subordinate legislation. Protective notices of motion of disallowance were given in respect of the following subordinate legislation:

Subordinate legislation	Reason for protective notice
<i>Aboriginal Heritage Amendment Regulations 1995</i>	EM not received on time
<i>Bunbury Port Authority Amendment Regulations 1995</i>	EM not received on time
<i>Credit Amendment Regulations 1995</i>	EM not received on time

³⁷

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. In respect of by-laws examined, it has already been noted that the Committee only began to scrutinise all by-laws towards the end of the year. Statistics for the “number of unsatisfactory EMs”, were only collected from March 1995.

Subordinate legislation	Reason for protective notice
<i>Dampier Port Authority Amendment Regulations 1995</i>	EM not received on time
<i>Electricity (Amendment) Regulations 1995</i>	one regulation <i>ultra vires</i> , subsequently amended
<i>Forest Management Amendment Regulations 1995</i>	one regulation possibly <i>ultra vires</i> , Ministerial undertaking for amendment
<i>Hospitals (Services Charges) Regulations 1995</i>	further information required
<i>Industrial Relations Commission Amendment Regulations No. 2 1994</i>	EM not received on time
<i>Industrial Training (Apprenticeship Training) Amendment Regulations 1995</i>	EM not received on time
<i>Industrial Training (Apprenticeship Training) Amendment Regulations (No 2) 1995</i>	EM not received on time
<i>Radiation Safety (General) Amendment Regulations (No 3) 1995</i>	EM not received on time
<i>Supreme Court Amendment Rules (No 4) 1995</i>	EM not received on time; further information required
<i>Veterinary Preparations & Animal Feeding Stuffs Amendment Regulations 1995</i>	EM not received on time
<i>Young Offenders Regulations 1995</i>	See the Committee's 17th Report

Table 2

8

Recommendations for Reform

- 8.1 Following its investigations 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, the European Union and France.
- 8.2 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 Committee proposed that reforms be made taking into account the following concepts:
- 8.2.1 availability of information about subordinate legislation;
 - 8.2.2 consultation in the making of subordinate legislation;

- 8.2.3 assessment of the impact of subordinate legislation;
- 8.2.4 adequacy of Parliamentary scrutiny of subordinate legislation;
- 8.2.5 maintenance of a rulemaking record by agencies;
- 8.2.6 judicial review of subordinate legislation and rulemaking procedures; and
- 8.2.7 staged repeal of existing subordinate legislation and "sunsetting" of new subordinate legislation.

8.3 The Committee has since written to the Attorney General, Hon Peter Foss MLC, seeking his support for the Committee's recommendations.

9 Legislative Council Standing Orders

9.1 Late in 1995, the Legislative Council amended its Standing Orders in respect of disallowance motions over "regulations". The combined effect of the amendments is to:

- 9.1.1 require the Chair, during the routine of business, to inquire separately if there are any notices of motion of disallowance;
- 9.1.2 where a motion is not moved within 2 sitting days after the notice is given, the motion is deemed to have been moved so that SO 153 applies.

9.2 SO 153 provides that where such a motion remains unresolved at the expiration of 10 sitting days, the motion shall be put and determined on the next sitting day; or if Parliament is prorogued before that time, the motion is deemed to have been resolved in the affirmative.

9.3 The principle aim of the amendments is to improve the efficiency of the procedures of the House. The House is justifiably concerned about notices of motion of disallowance that sit on the notice paper for long periods of time and may in fact fall off when the House is prorogued.

9.4 As a result of the fact that the Legislative Council is traditionally the house of review³⁸, and because of administrative procedures which are available within the Legislative Council but are not available within the Legislative Assembly, most of the formal mechanisms for review of subordinate legislation (such as protective notices of motion of disallowance) are,

³⁸ The Royal Commission recommended that:

The Legislative Council be acknowledged as having the review and scrutiny of the management and operations of the public sector of the State as one of its primary responsibilities.

(Western Australia, Royal Commission into Commercial Activities of Government and Other Matters, *Report*, Perth, 1992, Part II, para 5.3.7.)

as a practical matter, implemented in the Legislative Council. The amendments therefore have a significant impact on the Committee's operations.

- 9.5 As a result of the amendments it has become imperative that the Committee receive the explanatory memorandum (required by the Premier's Circular to Ministers No. 37/93) at the latest by the time that subordinate legislation is tabled, and preferably when it is *Gazetted*. Where this information is not received on time, the Committee, in accordance with its long-standing practice, will continue to give a notice of motion of disallowance of the subordinate legislation. As a result of the amendments, once such a notice is given, the motion will automatically be put within 2 sitting days and determined within a further 10 sitting days (or resolved in the affirmative if Parliament is prorogued and the matter is not resolved). Consequently, the Committee will now be compelled to act in respect of such a notice within a limited time. If relevant information is not received on time, the Committee will have no choice but to support disallowance of the relevant subordinate legislation.
- 9.6 The Committee wrote to all Ministers on 23 November 1995 and again on 22 March 1996 to advise them of these changes to the Legislative Council's Standing Orders and the impact that they will have on the making of subordinate legislation.

10 **Commission on Government**

- 10.1 In its review of the Committee's role and function, the Commission on Government commented on, among other things:
- 10.1.1 the Committee's lack of resources;
 - 10.1.2 the lack of compliance by agencies with the Committee's requirements for explanatory memoranda; and
 - 10.1.3 the need to expand the Committee's terms of reference to include all subordinate legislation, however it may be nominally described.
- 10.2 The Commission noted³⁹:

In undertaking a comprehensive review of its activities, the JSCDL has acknowledged that there are shortcomings in its scrutiny of subordinate legislation. It is apparent to the Commission on Government, that these shortcomings relate primarily to external constraints on the operations of the Committee, rather than deficiencies in the Committee itself.

³⁹

Western Australia, Commission on Government, *Report No. 2, Part 2, December 1995*, p261.

10.3 The Commission recommended⁴⁰:

- 1 The Joint Standing Committee on Delegated Legislation should continue.
- 2 The Joint Standing Committee on Delegated Legislation's Terms of Reference should be amended to allow the Committee to examine all subsidiary legislation and, if appropriate, recommend disallowance.
- 3 The *Interpretation Act 1984* should be amended to permit either house to give effect to the Joint Standing Committee on Delegated Legislation's recommendations.

10.4 The Committee supports the Commission's first recommendation, which reflects the Committee's own finding in its 16th Report.

10.5 The Committee's recommendations for reform contained in its 16th Report supersede the Commission's second recommendation.

10.6 The Commission's third recommendation is misconceived. Currently, either House may give effect to the Committee's recommendations: there is no need to make statutory provision for this. There is no reason to suggest that the Houses should or must give effect to the Committee's recommendations. The Committee is, practically speaking, a sub-committee of the Houses; there is no reason that either House should formally be bound by the findings and recommendations of the Committee.

11 Henry VIII Clauses

11.1 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 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 clauses⁴¹, as have other subordinate legislation committees throughout Australia⁴² as well as in the United Kingdom⁴³ and New Zealand⁴⁴.

⁴⁰ Western Australia, Commission on Government, *Report No. 2*, Part 2, December 1995, p263.

⁴¹ See, for example: Western Australia, Joint Standing Committee on Delegated Legislation, *Review of Operations: 1991-1992*, 11th Report, December 1992.

⁴² See, for example: Australia, Senate Standing Committee for the Scrutiny of Bills, *Ten Years of Scrutiny*, 25 November 1991.

⁴³ See, for example: United Kingdom, Westminster, *Third Commonwealth Conference on Delegated Legislation: Record of Proceedings*, 1989.

⁴⁴ 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.

- 11.2 Following further consideration of the matter and after hearing evidence from Greg Calcutt, Parliamentary Counsel, in May 1995, the Committee has accepted the view that the use of Henry VIII clauses is necessary or desirable in some limited circumstances. However, the Committee considers 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 considers 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)⁴⁵.
- 11.3 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 indeed 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 convenience⁴⁶.
- 11.4 In 1995 the Committee examined 13 pieces of subordinate legislation made under Henry VIII clauses. It wrote to agencies or Ministers in respect of several of them. Additionally, the Chairman of the Committee commented in the Legislative Council⁴⁷ on a particularly significant and objectionable Henry VIII clause which appeared in the *Hire Purchase Amendment Bill 1995*.
- 11.5 Following is a list of subordinate legislation identified by the Committee as being made under Henry VIII clauses:

City of Perth Restructuring (Postal Elections) Regulations 1995
Disability Services Regulations 1995
Financial Administration & Audit Act (Designation of Statutory Authorities) Regulations 1995
Land Tax Assessment Amendment Regulations 1995
Public Sector Management (SES Organisations) Regulations 1995
Public Sector Management (SES Organisations) Regulations (No 2) 1994

⁴⁵ United Kingdom, Committee on Ministers' Powers, *Report*, 1932 (Cmd 4060), p61.

⁴⁶ Western Australia, Standing Committee on Constitutional Affairs and Statutes Revision, *Electronic Availability of Statutes*, 11th Report, January 1996.

⁴⁷ 1995 WAPD 7892

Public Sector Management (SES Organisations) Regulations 1994
Public Sector Management (Transitional) Regulations 1995
Public Sector Management (SES Organisations) Regulations (No 2) 1995
Public Sector Management (Transitional) Regulations (No 2) 1994
Public Sector Management (Entities which are not Organisations) Regulations
Public Sector Management (Entities which are not Organisations) Regulations
(No 2) 1995
Residential Tenancies Amendment Regulations (No 2) 1994

12 Fees and Charges⁴⁸

General

- 12.1 It is well established that governments may charge fees for services provided, and may do so by means of subordinate legislation. It is equally well established that fees for services must be reasonable. If a regulatory fee for service bears no relationship to the service provided, the fee may be regarded as a revenue raising device or tax and may therefore be invalid⁴⁹. The Committee has previously recommended disallowance of subordinate legislation on this basis⁵⁰.
- 12.2 Sections 53 and 55 of the *Financial Administration and Audit Act 1985* require accountable authorities and officers to conduct (at least) annual reviews of fees and charges for government services. Many fees and charges are made by way of subordinate legislation.
- 12.3 In 1995 the Committee examined 93 pieces of subordinate legislation relating to government fees and charges and their method of calculation and collection. Whilst a few fees and charges were in fact reduced, most were increased. The most dramatic increase was approximately 1000%⁵¹ and several fees and charges were increased by between 100% and 300%. Most fees were increased either in accordance with changes in the CPI since their last increase, or on the basis of achieving full cost recovery. Some fees were calculated by reference to “market rates” or based on consultations or agreements with groups of users⁵² of the relevant services.

⁴⁸ The Committee notes that it has made some recommendations regarding fees and charges in its 16th Report.

⁴⁹ *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.

⁵⁰ See, for example: Western Australia, Joint Standing Committee on Delegated Legislation, *Report on the Department of Land Administration Regulations 1992*, 10th Report, November 1992.

⁵¹ *Fire Brigades Amendment Regulations 1994*: the increase in fees was actually made in the *Fire Brigades Act 1942*, and the *Regulations* were amended to reflect this.

⁵² In this case the Committee is cognisant of the fact that individual users of services who are not consulted may be disadvantaged as a result of agreements between agencies and large corporate consumers of their services. However, the Committee generally is not in a position to make an assessment of such circumstances except in extreme cases.

- 12.4 The Committee makes no comment on increases in fees and charges which are in accordance with changes in the CPI. In respect of increases which are greater than corresponding changes in the CPI, the Committee generally examines the reasons for the increases more closely and frequently seeks more information from the relevant agency.
- 12.5 Many of the 1995 fee increases which were greater than CPI increases for the corresponding period were justified by agencies on the basis that they were required for “full cost recovery” and/or on “user pays”⁵³ principles. 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 Report⁵⁴:

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 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...

- 12.6 If agencies are unable accurately to calculate their costs, this casts some doubt over agency claims that their fees are set to recover costs. The Committee will continue to monitor the situation within its terms of reference and to the extent possible given its resource constraints.
- 12.7 It has recently been drawn to the Committee’s attention that some fees and charges imposed by some agencies (particularly local government agencies) which in other cases would be imposed by a regulation, rule or by-law subject to tabling in Parliament and

⁵³ The Committee is aware of both disadvantages and advantages of “user pays” systems of charging fees. In the context of government “community service obligations” and basic government information services (such as publication of legislation to meet the fundamental requirements of the rule of law), “user pays” principles may have deleterious effects on both accountability and efficiency. One commentator has noted:

The drive for public sector efficiency has had no greater companion piece than “user pays”. It has done more to erode accountability and equity than specific privatisation and deregulatory strategies suggest. It has also underscored the inevitable tensions that are placed on all public sector functions to become economically productive. User pays is not merely the extension of a rational accounting framework for efficient managerial practice, it is the ideological sub-text of all policy decisions.

(McInnes, M, “Public Sector Reform and the Public Interest”, (1993) 31 *Journal of Australian Political Economy* 19, 25.)

⁵⁴ Western Australia, Independent Commission to Review Public Sector Finances, *Report: Agenda for Reform*, Vol 2, August 1993, pp2-3.

scrutiny by the Committee⁵⁵, are in fact being imposed by “memoranda”⁵⁶, which may not be being tabled in Parliament and may not be reviewable by the Committee. The Committee does not have the resources to inquire into such matters. Consequently, Parliament may not be being kept informed of them.

Department of Land Administration Fees

- 12.8 In 1992 various regulations were made for the purpose of levying a Register 2000 surcharge on land transactions. The purpose of the surcharge was to pay for new technology for the Department of Land Administration (DOLA).
- 12.9 The Committee tabled a report on the relevant regulations in November 1992⁵⁷. The Committee considered that the Register 2000 surcharge on fees was a tax and therefore *ultra vires*. It recommended that the relevant regulations be disallowed and the relevant statutes be amended to permit the Register 2000 surcharge to be levied.
- 12.10 The disallowance motion was neither debated nor passed by Parliament. It therefore lapsed upon prorogation before the 1993 election. Whilst DOLA claims to have drafted the legislative amendments suggested by the Committee, these were never presented to Parliament. In other words, no formal action was ever taken to remedy the Committee’s concerns. Consequently, the Register 2000 surcharge continued to be levied. Now it is no longer necessary.
- 12.11 Early in 1995 DOLA notified the Committee that it was proposing to amend its fees regulations. David Mulcahy, Commissioner of Titles, gave evidence to the Committee about the proposed changes on 11 May.
- 12.12 In December 1995, the Minister for Lands, Hon George Cash MLC offered the Committee an opportunity to review the proposed amendments to the fees regulations, an opportunity for which the Committee was grateful. One observation made by the Committee in its review was in the context of the accounting system used to calculate the cost of provision of services by DOLA. The current system is inadequate and does not produce a certain calculation of DOLA’s costs of providing relevant services. However, the Committee was informed that DOLA is moving towards full accrual accounting and will implement a new financial management system in 1996/97. The Committee welcomes this change and will continue to monitor DOLA fees and charges in this context.

⁵⁵ For example, compare the *Municipality of the City of Geraldton - By-laws Relating to Caravan Parks & Camping Grounds*, WAGG 12.12.95 with the *City of Mandurah - Memorandum of Imposing Peninsula Caravan Park Fees and Charges 1995/96*, WAGG 12.3.96.

⁵⁶ As to nominal descriptions of rules, see paragraph 4.

⁵⁷ Western Australia, Joint Standing Committee on Delegated Legislation, *Report on the Department of Land Administration Regulations 1992*, November 1992.

Fisheries Department Fees

- 12.13 The Committee has previously corresponded with the Fisheries Department regarding the method of calculation of its fees. The Committee has on a number of occasions expressed to the Fisheries Department its concern that some of the fees charged by the Department may be characterisable as taxes and would therefore be invalid. As a result of enactment of the *Fish Resources Management Act 1994* and of the Committee's concerns, the Department's fee structure was significantly altered by the *Fish Resources Management Regulations 1995*. The Department has expressed the view that its new fees are not taxes. The Committee is continuing to monitor these regulations.

Road Traffic (Licensing) Amendment Regulations (No 2) 1995

- 12.14 The Committee first examined the *Road Traffic (Licensing) Amendment Regulations (No 2) 1995* in August 1995. The *Amendment Regulations* relate to the outsourcing of motor vehicle licence renewals to Australia Post. Fees for renewals were increased from \$10.90 to \$12.00 to cover the cost of commissions payable to Australia Post with the objective of reducing Police licensing staff by seven. The Committee had concerns with the collection of a proportion of the fees, a possible duplication of fees collected and also with the quality of the information that was provided to the Committee.
- 12.15 On 29 August 1995, the Committee sought further information from the Police Department. In the interim, licensing functions had been transferred to the Department of Transport. Phil Cunningham, Executive Director, Department of Transport, responded to the Committee's inquiry on 20 September 1995. His response did not answer the Committee's questions. Consequently, Angus Clydesdale of the Department gave evidence to the Committee on 26 October 1995. This still did not satisfy the Committee's concerns. Consequently, on 31 October 1995 the Committee wrote to both Mr Cunningham and Kevin Gaitskell of the Police Department seeking detailed answers to specific questions regarding the matter.
- 12.16 Mr Cunningham responded by letter dated 5 February 1996 and Mr Gaitskell by letter dated 6 February 1996. Mr Gaitskell's reply added nothing substantial to the information the Committee already had and indicated that all relevant staff and files had been transferred to the Department of Transport. Mr Cunningham's letter did not adequately address the concerns raised by the Committee, nor did it answer the Committee's specific questions.
- 12.17 The Committee is now in the process of pursuing its concerns with the Minister for Transport.

13

Specific Inquiries*Forest Management Amendment Regulations 1995*

- 13.1 These *Amendment Regulations*, among other things, amended r 101 of the *Forest Management Regulations 1993*. Regulation 101 formerly provided that only 1 tonne of firewood could be removed from a public firewood area every 60 days. The *Amendment Regulations* removed the 60 day "turnaround" period so that any person was permitted to

remove 1 tonne of firewood as often as was desired. The Committee was concerned that this amendment may be *ultra vires* the *Conservation and Land Management Act 1984*. The reason for this concern was that s 80 of the *Act* provides that the overriding duty of the Department of Conservation and Land Management (CALM) is to control and eradicate forest diseases (s 79). The removal of the 60 day turnaround period would permit more access to public forests during winter months when dieback is easier to spread, contrary to the duty of CALM to control and eradicate dieback.

- 13.2 In evidence to the Committee, Syd Shea, Executive Director of CALM, and Don Keene, Director of Forests, indicated that the purpose of the removal of the restrictive 60 day turnaround period was to encourage people to collect wood in summer months when dieback is "dormant" or less easy to spread. Mr Keene said that the removal of the 60 day period would permit people to obtain more firewood during the summer months, and presumably this would to some extent limit the spread of dieback during the wet winter months.
- 13.3 However, the Committee considered that people generally were unlikely to collect firewood until after the first rains or cold snap in winter. Mr Keene supported this view of the Committee when he said:

[C]ommercial firewood operators tell us through their association that they are hard pressed to sell firewood when it is 104 degrees in the waterbag and the only time that people want to buy firewood is after the first rains and frost.

Consequently it seemed to be the only rational conclusion that the removal of the 60 day turnaround period was likely to increase collection of firewood in the winter months. The wet winter months are the time that dieback is most easily spread.

- 13.4 The Committee acknowledged that it could not itself make an appropriate assessment of dieback spread to support its view. This is because, despite the duty of CALM to control and eradicate forest diseases such as dieback, Mr Keene indicated that, at least in the context of public firewood areas:

There is no formal assessment of the dieback spread...

- 13.5 The Committee therefore considered that collection of firewood between 1 June and 30 September (the wet months) in each year should be restricted to 1 tonne to be collected every 60 days. The 60 day turnaround period need not apply between 1 October and 31 May (the dry months).
- 13.6 Dr Shea and Mr Keene expressed concern that removal of rights to collect firewood would result in a public backlash. However, the Committee noted that the 60 day restriction has existed in the *Regulations* at least since 1993, the *Amendment Regulations* in fact remove the restriction, and the position advocated by the Committee merely retains the restriction during wet months whilst de-restricting firewood collection during the dry months. Consequently adoption of the Committee's suggestion would not remove any rights that existed immediately before *Gazettal* of the *Amendment Regulations*. Additionally the Committee considered that adoption of its suggested amendment would in fact advance the stated policy of CALM which is to encourage collection of firewood during the dry months

when dieback is difficult to spread and discourage collection during the wet months when dieback is easy to spread.

- 13.7 The Committee wrote to the Minister expressing these views on 24 August 1995. The Minister responded to the Committee on 16 November 1995 indicating that both the Department and the Minister supported the suggestion made by the Committee and that instructions had been given to draft a suitable amendment to the *Regulations*.
- 13.8 On 23 January 1996, the *Forest Management Amendment Regulations (No 2) 1995* were published in the *Gazette*. The *Amendment Regulations (No 2)* purportedly were made in response to the Committee's concerns. However, they in fact aggravated the situation by further de-restricting collection of firewood during the dry months and maintaining the provisions for collection of firewood during the wet months that the Committee had expressed concern with in the first place. The Committee has been informed that there was a misunderstanding about the drafting instructions regarding the *Amendment Regulations (No 2)* and that a further set of amendments has been prepared. The Committee will continue to monitor this situation.

Retail Trading Hours Amendment Regulations 1994

- 13.9 The *Retail Trading Hours Amendment Regulations 1994* were considered by the Committee on 11 May 1995. At that time the Committee identified a concern that the *Amendment Regulations* may have been made in excess of the power conferred by the *Retail Trading Hours Act 1987*. The Committee's view on the *Amendment Regulations* was only tentative. Additionally, it is not within the Committee's terms of reference to comment on Government policy (nor would this be consistent with the Committee's belief in its role as an independent reviewer of executive regulation making). Furthermore, the Committee still had power to report to the House should this prove necessary in the future. Consequently, the Committee came to the view that it would not at that time obstruct the clear policy of the Government without obtaining further advice. If it subsequently became clear that the Committee's concerns were well-founded, the Committee could take appropriate action at that time.
- 13.10 The Committee sought further advice on a confidential basis from Len Roberts-Smith QC. Mr Roberts-Smith's opinion was received on 23 June 1995. He was of the view that the amendment to r 5 of the *Retail Trading Hours Amendment Regulations 1988* effected by the *Amendment Regulations*, was invalid for inconsistency with or repugnance to the *Retail Trading Hours Act 1987* or was *ultra vires* the regulation making power in s 40 of the *Act*. It appears that the amendment to r 5 defeated the legislative intent of the *Act* to **regulate** retail trading hours of small retail shops by providing that all goods could be sold by a small retail shop. The Committee accepted Mr Roberts-Smith's advice.
- 13.11 Counsel's opinion was leaked to the press. Subsequently a question was raised as to whether the *Retail Trading Hours Amendment Regulations 1995*, which deleted a category of goods from those which may be sold by a small retail shop, cured the defect identified by the Committee. In a second opinion dated 6 July 1995, Mr Roberts-Smith clearly rejected that possibility. Again, the Committee accepted Mr Roberts-Smith's advice.

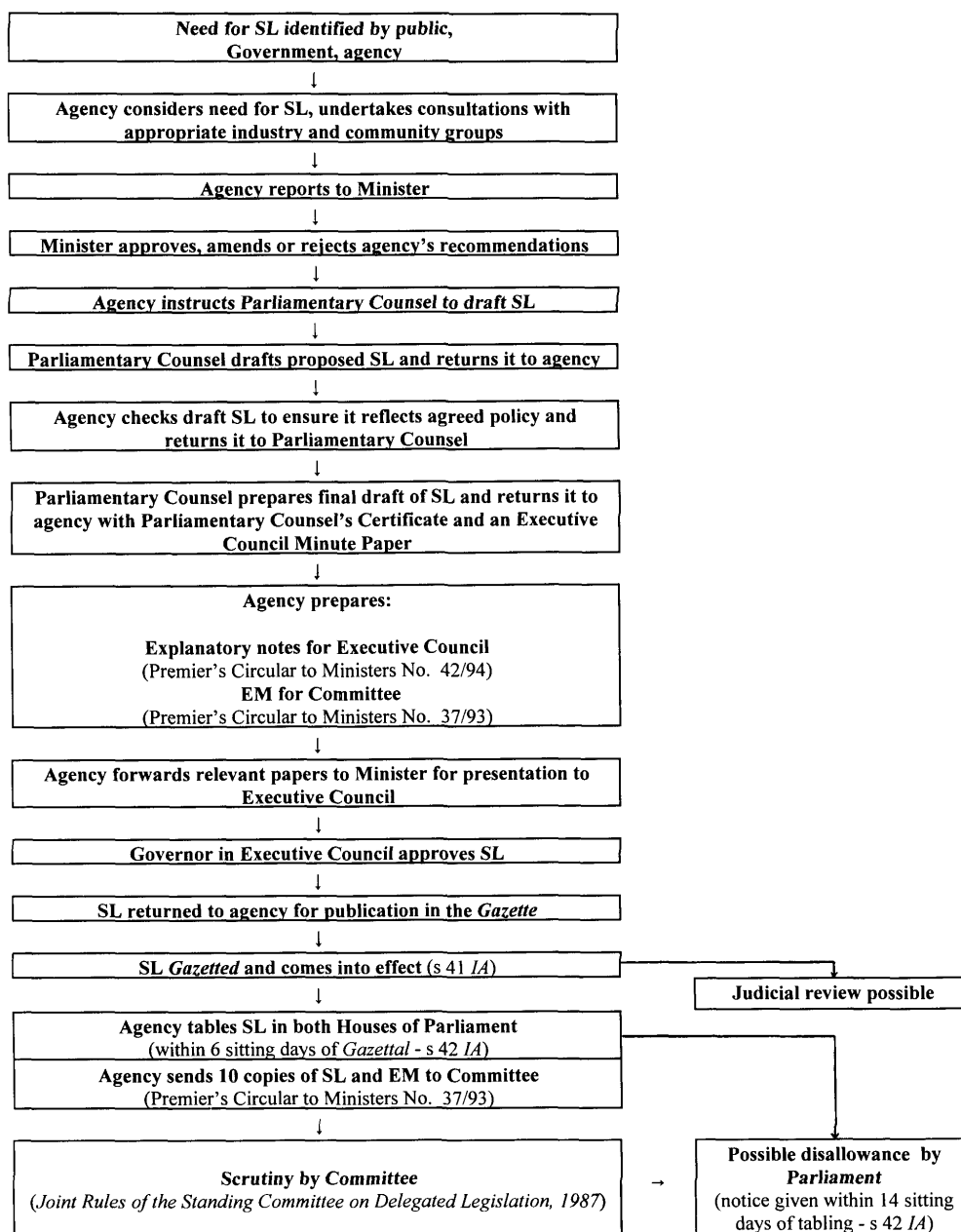
- 13.12 By an undated letter received by the Committee on 10 November 1995, the Minister for Fair Trading advised the Committee that amendments would be made to the *Retail Trading Hours Act 1987* which would address the Committee's concerns and retrospectively validate the *Amendment Regulations*.

Young Offenders Regulations 1995

- 13.13 The details of the Committee's inquiries and concerns in respect of the *Young Offenders Regulations 1995* are set out in its 17th Report. The Committee has subsequently written to the Attorney General seeking a response to its report. The Committee will continue to monitor developments in this area.

Appendix 1

Flowchart of a typical process of making subsidiary legislation



- Committee = Joint Standing Committee on Delegated Legislation
- EM = Explanatory Memorandum
- IA = Interpretation Act 1984
- SL = subsidiary legislation which is a regulation, rule or by-law as defined in ss 5 & 42 IA

Appendix 2

RULES OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION⁵⁸

1. The Standing Committee on Delegated Legislation (the "Committee") shall consist of 4 members of the Legislative Assembly and 4 members of the Legislative Council.
2.
 - (1) The Assembly members of the Committee shall be chosen as the House may determine but, where there is a party in the Assembly of not less than 5 members, other than a party whose leader is either the Premier or the Leader of the Opposition, 1 of the Assembly members of the Committee shall be a member of that party.
 - (2) The term of office of each Committee member extends from the time of election to the Committee until the expiration of that Parliament during which he was elected.
 - (3) When a vacancy occurs on the Committee during a recess or a period of adjournment in excess of 2 weeks the President or the Speaker, as the case may be, may appoint a member to fill the vacancy until an appointment can be made by the Council or Assembly as the case may be.
 - (4) A member may resign from membership of the Committee at any time by writing addressed to the President or Speaker, as the case may require, and the appropriate Presiding Officer shall thereupon notify the House of the vacancy, and any member elected to fill that vacancy holds office for the balance of the vacating member's term and is eligible for re-election.
3. A person shall not be elected to, or continue as, a member of the Committee if that member is or becomes:
 - (a) a Minister of the Crown;
 - (b) the President of the Legislative Council;
 - (c) the Speaker of the Legislative Assembly; or
 - (d) the Chairman of Committees of the Legislative Council or of the Legislative Assembly.
4. At its first meeting and thereafter as occasion requires the Committee shall elect from its members a Chairman who belongs to a party or parties supporting the Government, and a Deputy Chairman.
5. 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 is purports to be made;

⁵⁸ See 1987 WAPD 30 & 3731

- (b) unduly trespasses on established rights, freedoms or liberties;
 - (c) contains matter which ought properly to be dealt with by an Act of Parliament;
or
 - (d) unduly makes rights dependent upon administrative, and not judicial, decisions.
6. (1) If the Committee is of the opinion that any of the Regulations ought to be disallowed, in whole or in part, it shall report that opinion and the grounds thereof to each House before the end of the period during which any motion for disallowance of those Regulations may be moved in either House, but if both Houses are not sitting, it may report its opinion and the grounds thereof to the authority by which the Regulations were made.
- (2) Where a report is made to the regulation-making authority pursuant to rule 6(1), a copy of the report shall be delivered to the Clerk of each House who shall make it available to any member for perusal, and any such report shall be tabled in each House not later than 6 sitting days from the start of the next ensuing sitting of each House.
7. 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.
8. A report of the Committee shall be presented in writing to each House by a member of the Committee nominated for that purpose by the Committee.
9. The Committee has power to send for persons, papers and records, and to sit during a recess or an adjournment of either House or of both Houses.
10. 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.
11. Except to the extent that they impinge upon the functioning of the Committee, its proceedings shall be regulated by the standing orders applicable to Select Committees of the Legislative Council.

Appendix 3

Table of Comparative Staffing Levels⁵⁹
July 1995

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	200-250	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	1000-2000	R	1L 3A	0	4 + C
New South Wales: Regulation Review Committee	250	AH ⁶⁰	2L 3A	1 (casual)	5.5
Northern Territory: Subordinate Legislation and Tabled Papers Committee		0	0	1A	0.5
Queensland: Scrutiny of Legislation Committee ⁶¹	500	AH	2L 1A	0	3
South Australia: Legislative Review Committee	400	0	1L 1A	1A	2.5
Tasmania: Standing Committee on Subordinate Legislation	450	AH	0	1A	0.5
Victoria: Scrutiny of Acts and Regulations Committee	300-350	0	2L 1A	1L 1A	4
Western Australia: Joint Standing Committee on Delegated Legislation	250-350	AH	0	1L 1A	1

⁵⁹ Consultant: R = retained or referred to on a regular basis; AH = ad hoc references.
Full-time Staff: L = legally trained staff; A = administrative/clerical staff.
Part-time Staff: L = legally trained staff; A = administrative/clerical 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.

⁶⁰ Provision is made for reference to a legal consultant, but to date this has not been required.

⁶¹ The replacement of the Queensland Subordinate Legislation Committee with the Scrutiny of Legislation Committee is proposed by the *Parliamentary Committee's Bill 1995*. The staff of the proposed Committee was approved by Cabinet before the election held on 15 July 1995.

Appendix 4

List of subordinate legislation scrutinised by the Committee in 1995

Aboriginal Heritage Amendment Regulations 1995 (37-12a)
Adoption Regulations 1995 (33-37)
Adoption Rules 1995 (34-7)
Aerial Spraying Control Amendment Regulations 1995 (37-18)
Agricultural and Veterinary Chemicals (WA) Regulations 1995 (36-18)
Artificial Breeding of Stock Amendment Regulations 1995 (37-19)
Associations Incorporation Amendment Regulations 1995 (36-24)
Beekeepers Amendment Regulations 1995 (34-30)
Beekeepers Amendment Regulations (No 2) 1995 (37-20)
Betting Control Amendment Regulations 1994 (33-3)
Builders' Registration Act - Builders' Registration (Scheduled Areas) Regulations (No 3) 1994 (33-8)
Building & Construction Industry Training Fund & Levy Collection Amendment Regulations 1994 (34-21)
Building Amendment Regulations 1995 (36-20)
Bulk Handling Amendment Regulations 1995 (37-21)
Bunbury Port Authority Amendment Regulations (No 2) 1995 (38-38)
Bunbury Port Authority Amendment Regulations 1995 (36-17)
Bush Fires Act - Shire of Pingelly - By-law Relating to Fire Control Matters (39-17)
Bush Fires Act - City of Armadale - By-laws Relating to Firebreaks (39-16)
Bush Fires Act - Town of Kwinana - By-laws Relating to Firebreaks (39-19)
Bush Fires Act - Shire of York - By-laws Relating to Firebreaks (39-18)
Business Names Amendment Regulations 1995 (36-25)
City of Belmont - Health By-law 1995 (38-27)
City of Fremantle By-laws (39-6)
City of Fremantle - By-laws Relating to Parking Facilities (38-10)
City of Geraldton - By-law Relating to Parking Facilities (38-11)
City of Gosnells By-laws (39-7)
City of Melville - By-law Relating to the Keeping of Bees (38-34)
City of Melville - Repeal of Various By-laws (38-34b)
City of Melville - Repeal of Air Conditioning By-laws (38-34a)
City of Perth Parking Facilities By-law - Amendment (38-3)
City of Perth Restructuring (Postal Elections) Regulations 1995 (34-22)
City of Stirling - By-laws Relating to Standing Orders (38-12)
Commercial Tribunal Amendment Regulations 1995 (34-28)
Companies (Co-operative) (Fees) Regulations 1995 (36-26)
Country Slaughter-house Amendment Regulations 1995 (35-3)
Country Taxi-cars (Fares & Charges) Amendment Regulations 1995 (37-1)
Credit Amendment Regulations 1995 (35-1)
Dampier Port Authority Amendment Regulations 1995 (37-34)
Dangerous Goods Amendment Regulations 1995 (35-33)
Dental Board Amendment Rules 1995 (39-22)
Disability Services Regulations 1995 (34-31)
Dog Amendment Regulations 1995 (38-36)
Education Amendment Regulations 1995 (36-2)
Education Amendment Regulations (No 2) 1995 (38-32)
Education Service Providers (Full Fee Overseas Students) Registration Amendment Regulations 1995 (38-39)
Electricity (Amendment) (No 2) Regulations 1995 (36-15)
Electricity (Amendment) Regulations 1995 (33-24)
Electricity (Licensing) (Amendment) Regulations 1995 (33-25)
Energy Coordination (Designation of Inspectors) Regulations 1995 (33-26)
Environmental Protection (Recovery of Vapours From the Transfer of Organic Liquids) Regulations 1995 (36-3)
Environmental Protection Amendment Regulations 1995 (35-26)
Enzootic Diseases Amendment Regulations 1995 (37-27)
Exotic Diseases (General) Amendment Regulations 1995 (37-22)

Family Court of Western Australia Amendment Rules 1995 (35-10)
Fertilizers Amendment Regulations 1995 (37-23)
Financial Administration & Audit Act (Designation of Statutory Authorities) Regulations (No 2) 1995 (38-26)
Financial Administration & Audit Act (Designation of Statutory Authorities) Regulations 1995 (37-39)
Financial Institutions Duty Amendment Regulations (No 2) 1995 (39-14)
Financial Institutions Duty Amendment Regulations 1995 (35-18)
Fines, Penalties & Infringement Notices Enforcement Amendment Regulations 1995 (37-2)
Fines, Penalties & Infringement Notices Enforcement Amendment Regulations (No 2) 1995 (37-3)
Fines, Penalties and Infringement Notices Enforcement Regulations 1994 (33-38)
Fire Brigades (Superannuation Fund) Amendment Regulations 1995 (39-30)
Fire Brigades Amendment Regulations 1994 (33-6)
Firearms Amendment Regulations 1995 (37-40)
Fish Resources Management Regulations 1995 (38-33)
Fisheries (Abrolhos Islands) By-laws 1995 (34-45)
Fisheries Adjustment Schemes Amendment Regulations 1995 (38-8)
Fisheries Amendment Regulations (No 10) 1994 (33-1)
Fisheries Amendment Regulations 1995 (34-25)
Fisheries Amendment Regulations (No 3) 1995 (35-11)
Fisheries Amendment Regulations (No 4) 1995 (36-27)
Fisheries Amendment Regulations (No 2) 1995 (36-4)
Forest Management Amendment Regulations 1995 (35-17)
Fremantle Hospital Amendment By-laws 1995 (38-6)
Fremantle Port Authority Amendment Regulations (No 2) 1995 (38-31)
Fremantle Port Authority Amendment Regulations 1995 (36-28)
Fruit Growing Industry (Trust Fund) Amendment Regulations 1994 (33-39)
Gaming Commission Act 1987 - Amendment Regulations (No 3) 1994 (34-1)
Gas Referee Regulations 1995 (36-9)
Gas Standards (Amendment) (No 2) Regulations 1995 (34-35)
Gas Standards (Amendment) Regulations 1995 (33-28)
Gas Transmission Regulations 1994 (33-23)
Gas Undertakings (Amendment) Regulations 1995 (34-36)
Geraldton Port Authority Amendment Regulations (No 2) 1995 (37-36)
Geraldton Port Authority Amendment Regulations 1995 (37-13)
Guardianship & Administration Regulations 1995 (34-26)
Guardianship & Administration Amendment Rules 1994 (33-7)
Guardianship & Administration Amendment Rules 1995 (37-24)
Health (Adoption of Food Standards Code) Amendment Regulations 1995 (37-31)
Health (Game Meat) Amendment Regulations 1995 (35-30)
Health (Liquid Waste) Amendment Regulations 1995 (35-29)
Health (Meat Inspection & Branding) Amendment Regulations (No 2) 1995 (36-10)
Health (Meat Inspection & Branding) Amendment Regulations 1995 (35-31)
Health (Meat Inspection & Branding) Amendment Regulations (No 4) 1995 (38-1)
Health (Notification of Adverse Event After Immunisation) Regulations 1995 (39-21)
Health (Pesticides) Amendment Regulations (No 2) 1995 (36-29)
Health (Pesticides) Amendment Regulations (No 3) 1995 (37-11)
Health (Pesticides) Amendment Regulations 1995 (35-15)
Health (Pesticides) Amendment Regulations (No 5) 1995 (38-2)
Health Act 1911 - City of Fremantle By-laws (39-24)
Health Act 1911 - City of Fremantle By-laws (39-23)
Health Services (Quality Improvement) Regulations 1995 (38-15)
Heritage of WA Amendment Regulations 1994 (34-13)
Horticultural Produce Commission General Amendment Regulations 1995 (35-5)
Hospitals (Service Charges) Amendment Regulations 1995 (35-6)
Hospitals (Services Charges) Amendment Regulations (No 3) 1995 (38-44)
Hospitals (Services Charges) Amendment Regulations (No 2) 1995 (36-31)
Hospitals & Health Services Act - Pathcentre (Common Seal) Regulations 1995 (34-32)
Housing Amendment Regulations 1995 (35-13)
Human Reproductive Technology (Licences & Registers) Amendment Regulations 1995 (35-28)
Industrial Relations (Workplace Agreements) Regulations 1995 (36-14)

Industrial Relations Commission Amendment Regulations (No 2 of 1994) (34-27)
Industrial Relations Commission Amendment Regulations No 2 of 1994 (34-37)
Industrial Training (Apprenticeship Training) Amendment Regulations (No 2) 1995 (38-41)
Industrial Training (Apprenticeship Training) Amendment Regulations 1995 (38-40)
Industrial Training (Apprenticeship Training) Amendment Regulations 1994 (33-4)
Jetties Amendment Regulations 1995 (37-4)
Justices (Forms) Amendment Regulations (No 2) 1995 (37-5)
Justices (Interstate Restraint Orders) Regulations 1995 (35-7)
Justices Act (Courts of Petty Sessions Fees) Amendment Regulations 1995 (38-9)
Land Amendment Regulations (No 2) 1995 (39-10)
Land Amendment Regulations 1995 (37-33)
Land Tax Assessment Amendment Regulations 1995 (36-19)
Land Tax Assessment Act 1976 - Amendment Regulations 1994 (33-21)
Land Valuers Licensing Amendment Regulations 1995 (34-12)
Legal Practice Board Amendment Rules 1995 (36-16)
Legal Practitioners (Professional Indemnity Insurance) Regulations 1995 (35-32)
Limited Partnerships Amendment Rules 1995 (36-32)
Liquid Petroleum Gas (Amendment) Regulations 1995 (33-29)
Liquid Petroleum Gas (Amendment) Regulations 1995 (33-27)
Liquor Licensing Amendment Regulations 1995 (36-5)
Liquor Licensing Amendment Regulations (No 2) 1994 (33-40)
Liquor Licensing Court Rules 1995 (34-38)
Liquor Licensing Court Amendment Rules 1995 (35-27)
Local Court Amendment Rules 1995 (34-29)
Local Government (Appeals to Building Referees) Amendment Regulations 1995 (36-21)
Local Government (Electoral) Amendment Regulations 1995 (34-14)
Local Government Auditors Amendment Regulations 1995 (36-22)
Lotteries Commission (Midweek Lotto) Rules 1995 (39-4)
Lotteries Commission (Oz Lotto) Rules 1995 (39-3)
Lotteries Commission (Saturday Lotto) Rules 1995 (39-5)
Lotteries Commission Act 1990 - Instant Lottery (Telespin) Amendment Rules (No 3) 1994 (33-22)
Lotteries Commission Act - Instant Lottery (Telespin) Amendment Rules (No 2) 1994 (33-5)
Lotto Amendment Rules 1995 (35-12)
Marine Navigational Aids Amendment Regulations 1995 (37-6)
Marine Stores Amendment Regulations 1995 (37-41)
Marketing of Potatoes Amendment Regulations 1995 (38-14)
Medical Amendment Rules 1995 (34-8)
Medical Amendment Rules (No 2) 1995 (38-37)
Mental Health (Treatment Fees) Amendment Regulations (No 2) 1995 (38-45)
Mental Health (Treatment Fees) Amendment Regulations 1995 (35-8)
Mining Amendment Regulations (No 3) 1995 (37-7)
Mining Amendment Regulations (No 2) 1995 (36-6)
Mining Amendment Regulations 1995 (38-42)
Mining Amendment Regulations (No 4) 1994 (33-30)
National Crime Authority (State Provisions) Amendment Regulations 1995 (39-25)
Nurses Code of Practice 1995 (35-22)
Navigable Waters Amendment Regulations 1995 (37-8)
Occupational Health, Safety & Welfare Regulations 1988 - Exemption Certificate Pursuant to Regulation 213 (No 1 of 1995) (34-18)
Occupational Health, Safety & Welfare Regulations 1988 - Exemption Certificate Pursuant to Regulation 213 (No 2 of 1995) (34-19)
Occupational Health, Safety & Welfare Regulations 1988 - Exemption Certificate Pursuant to Regulation 213 (No 3 of 1995) (34-20)
Occupational Health, Safety & Welfare Regulations 1988 - Exemption Certificate Pursuant to Regulation 213 (No 4 of 1995) (34-23)
Occupational Health, Safety & Welfare Regulations 1988 - Exemption Certificate Pursuant to Regulation 213 (No 5 of 1995) (34-24)
Occupational Health, Safety & Welfare Amendment Regulations 1995 (37-15a)
Occupational Safety & Health Amendment Regulations (No 2) 1995 (38-24)

Painters' Registration (Scheduled Areas) Regulations (No 3) 1994 (33-9)
Painters' Registration Board Amendment Rules 1995 (34-6)
Parliamentary Commissioner Act - Parliamentary Commissioner Rules 1994 (33-17)
Pay-roll Tax Amendment Regulations 1995 (35-25)
Pay-roll Tax Amendment Regulations (No 2) 1995 (39-26)
Piggeries Amendment Regulations 1995 (35-4)
Piggeries Amendment Regulations (No 2) 1995 (37-32)
Plant Diseases Amendment Regulations 1995 (34-39)
Plant Diseases Amendment Regulations (No 4) 1995 (37-25)
Plant Diseases Amendment Regulations (No 10) 1994 (33-41)
Plant Diseases Amendment Regulations (No 3) 1995 (36-1)
Poisons Amendment Regulations 1995 (34-40)
Poisons Amendment Regulations (No 2) 1995 (35-20)
Poisons Amendment Regulations (No 3) 1995 (35-21)
Poisons Amendment Regulations (No 4) 1995 (36-33)
Poisons Amendment Regulations (No 5) 1995 (38-38)
Poisons Amendment Regulations (No 6) 1995 (38-16)
Poisons Amendment Regulations (No 7) 1994 (33-31)
Poisons Amendment Regulations (No 9) 1994 (34-15)
Police (Fees) Amendment Regulations 1995 (37-42)
Police Force Amendment Regulations (No 2) 1995 (34-41)
Police Force Amendment Regulations (No 2) 1994 (34-16)
Port Hedland Port Authority Amendment Regulations (No 2) 1995 (37-37)
Port Hedland Port Authority Amendment Regulations 1995 (37-14)
Port Hedland Port Authority (Pilotage) Regulations 1995 (37-9)
Ports & Harbours Amendment Regulations (No 2) 1995 (37-10)
Ports & Harbours Amendment Regulations 1995 (35-9)
Public Sector Management (Entities Which Are Not Organisations) Regulations (No 2) 1995 (39-15)
Public Sector Management (Transitional) Regulations (No 2) 1994 (33-11)
Public Sector Management (General) Amendment Regulations 1994 (33-10)
Public Sector Management (Transitional) Regulations 1995 (35-24)
Public Sector Management (SES Organisations) Regulations 1994 (33-12)
Public Sector Management (SES Organisations) Regulations (No 2) 1994 (33-32)
Public Sector Management (SES Organisations) Regulations 1995 (34-17)
Public Sector Management (SES Organisations) Regulations (No 2) 1995 (36-8)
Public Sector Management (General) Amendment Regulations 1995 (37-38)
Public Sector Management (Entities Which Are Not Organisations) Regulations 1995 (36-23)
Public Trustee Amendment Regulations 1995 (35-15(a))
Radiation Safety (General) Amendment Regulations 1995 (34-42)
Radiation Safety (General) Amendment Regulations (No 3) 1995 (38-4)
Radiation Safety (General) Amendment Regulations (No 2) 1995 (36-34)
Radiation Safety (Qualifications) Amendment Regulations 1995 (36-35)
Rates & Charges (Rebates & Deferments) Amendment Regulations 1995 (36-36)
Real Estate & Business Agents (General) Amendment Regulations (No 2) 1994 (33-13)
Registration of Births, Deaths & Marriages Amendment Regulations (No 2) 1994 (33-42)
Residential Tenancies Amendment Regulations 1995 (36-11)
Residential Tenancies Amendment Regulations (No 2) 1994 (33-43)
Retail Trading Hours Amendment Regulations 1995 (35-14)
Retail Trading Hours Amendment Regulations 1994 (33-33)
Retail Trading Hours Amendment Regulations (No 2) 1995 (38-43)
Rights in Water & Irrigation Amendment Regulations 1995 (37-12)
Road Traffic (Drivers' Licences) Amendment Regulations 1994(33-19)
Road Traffic (Drivers' Licences) Amendment Regulations 1995 (34-3)
Road Traffic (Infringements) Amendment Regulations 1994 (33-20)
Road Traffic (Licensing) Amendment Regulations (No 2) 1995 (36-7)
Road Traffic (Licensing) Amendment Regulations (No 3) 1995 (36-37)
Road Traffic (Licensing) Amendment Regulations 1995 (34-4)
Road Traffic (Towed Agricultural Implements) Regulations 1995 (35-34)
Road Traffic Act - Road Traffic Code Amendment Regulations (No 4) 1994 (33-18)

Road Traffic Code Amendment Regulations (No 3) 1995 (39-11)
Road Traffic Code Amendment Regulations 1995 (34-2)
Rottneest Island Amendment Regulations 1995 (37-30)
Rottneest Island Amendment Regulations 1994 (33-44)
Rules of Trotting - Notice of Amendment (39-31)
Rules of Trotting - Notice of Amendment (39-12)
Rules of Trotting - Notice of Amendment (38-7)
Salaries & Allowances Amendment Regulations 1994 (33-2)
Security Agents Amendment Regulations 1995 (37-43)
Seeds Amendment Regulations (No 2) 1995 (37-26)
Seeds Amendment Regulations 1995 (34-33)
Shipping & Pilotage (Mooring Control) Regulations 1983 - Determination of Fees (37-10a)
Shire of Donnybrook/Balingup - Extraction Industries By-law (38-18)
Shire of Esperance - Model By-laws Series "A" Amendment By-laws 1994 (38-30)
Shire of Esperance By-laws (39-8)
Shire of Harvey - By-laws Relating to Extractive Industries (39-2)
Shire of Katanning - By-laws Relating to Dogs (38-17)
Shire of Lake Grace - By-law Relating to Eating Areas (38-13)
Shire of Merredin By-laws (39-9)
Shire of Northampton - Model By-laws Series "A" Amendment By-laws 1994 (38-29)
State Energy Commission (Appointment of Inspectors) (Repeal) Regulations 1995 (33-34)
Stock (Brands & Movement) Amendment Regulations 1995 (35-23)
Stock (Identification & Movement) Amendment Regulations 1994 (37-28)
Supreme Court Amendment Rules (No 2) 1995 (34-10)
Supreme Court Amendment Rules (No 4) 1995 (37-15)
Supreme Court Amendment Rules 1995 (34-9)
Supreme Court Amendment Rules (No 6) 1995 (39-20)
Supreme Court Amendment Rules (No 5) 1995 (39-1)
Taxi Regulations 1995 (34-5)
The Municipality of the City of Wanneroo - Amendments to By-laws Relating to Parking Facilities (38-35)
The Municipality of the Town of East Fremantle - Repeal of By-laws Relating to the Removal & Disposal of Obstructing Animals & Vehicles (38-23)
The Municipality of the Shire of Mt Magnet - By-laws Relating to the Removal of Refuse, Rubbish, Litter, Vehicle Bodies, Discarded Material & Unightly Items Or Objects From Land (38-22)
The Municipality of the Shire of Meekatharra - By-laws Relating to the Removal of Refuse, Rubbish, Litter, Vehicle Bodies, Discarded Material & Unightly Items Or Objects From Land (38-21)
The Municipality of the Shire of Cue - By-laws Relating to the Removal of Refuse, Rubbish, Litter, Vehicle Bodies, Discarded Material & Unightly Items Or Objects From Land (38-20)
The Municipality of the City of Stirling - By-laws Relating to Officers & Employees (38-19)
Tobacco Control (General) Amendment Regulations 1994 (33-14)
Tobacco Control (Package Labels) Regulations 1994 (33-15)
Tobacco Control (Package Labels) Amendment Regulations 1995 (34-43)
Tobacco Control (Statement on Vending Machines) Amendment Regulations 1994 (33-16)
Totalisator Agency Board Amendment Rules 1995 (33-45)
Totalisator Agency Board (Betting) Amendment Regulations (No 3) 1994 (33-35)
Totalisator Agency Board (Betting) Amendment Regulations 1995 (35-16)
Town Planning & Development Act (Appeal) Amendment Regulations 1995 (36-12)
Town Planning Appeal Tribunal Amendment Rules 1995 (36-13)
Transfer of Land (Surveys) Regulations 1995 (37-17)
Transfer of Land Amendment Regulations 1995 (39-13)
Transport (Country Taxi-car) Amendment Regulations 1995 (35-2)
Transport Coordination (Petroleum Products Licensing) Amendment Regulations 1995 (34-11)
Treatment of Sewage & Disposal of Effluent & Liquid Waste Amendment Regulations 1995 (36-30)
Trotting Rules (34-15(a))
Trotting Rules (34-20(b))
Trotting Rules (35-40(a))
Trotting Rules - Notice of Amendment (35-26(a))
Valuation of Land Amendment Regulations 1995 (36-38)
Veterinary Preparations & Animal Feeding Stuffs Amendment Regulations 1995 (34-44)

Veterinary Preparations & Animal Feeding Stuffs Amendment Regulations (No 2) 1995 (37-29)
WA Marine Amendment Regulations 1995 (37-16)
Water Authority (Charges) Amendment By-laws (No 11) 1994 (33-46)
Water Authority (Charges) Amendment By-laws (No 5) 1995 (39-29)
Water Authority (Charges) Amendment By-laws (No 3) 1995 (39-27)
Water Authority (Charges) Amendment By-laws (No 4) 1995 (39-28)
Weights and Measures Amendment Regulations 1995 (37-35)
Workers' Compensation & Rehabilitation Amendment Regulations 1995 (38-5)
Workers' Compensation & Rehabilitation Amendment Regulations (No 2) 1995 (38-25)
Workplace Agreements Amendment Regulations (No 2) 1994 (33-36)
Young Offenders Regulations 1995 (34-34)

Appendix 5

List of witnesses appearing before the Committee in 1995

THURSDAY, 11 MAY 1995

Department of Land Administration:
David Mulcahy, Acting Chief Executive

THURSDAY, 18 MAY 1995

Parliamentary Counsel:
Greg Calcutt

THURSDAY, 25 MAY 1995

Health Department
Nigel McBride, Director, Legal Administration

MONDAY, 12 JUNE 1995

Ministry of Justice:
David Northcott, Executive Director, Juvenile Justice Division

Health Department (informal discussions only):
Dr Paul Psaila-Savona
Dr Peter di Marco
Chris Sharp

Public Trustee:
Ken Bradley

THURSDAY, 15 JUNE 1995

Fisheries Department:
Peter Rogers, Executive Director
Tony O'Connor, Legal Officer

THURSDAY, 10 AUGUST 1995

Len Roberts-Smith, QC

Department of Conservation and Land Management:
Dr Syd Shea, Executive Director
Don Keene, Director, Forests

Ministry of Fair Trading:

Dr Chris Whittaker, Acting Executive Director
Mark Bodycoat, Principal Legal Officer
Alan Tenger, Director, Retail Goods Branch
Mick Drover, Manager, Retail Goods Branch

Ministry of Justice:

David Grant, Director General
David Northcott, Executive Director, Juvenile Justice

THURSDAY, 21 SEPTEMBER 1995

Department of Transport:

Reece Waldock, Executive Director, Maritime Division
Trevor Maughan, Legislative Services Officer
Kim Davies, Acting Manager, Regional Facilities

THURSDAY, 26 OCTOBER 1995

Department of Transport:

Angus Clydesdale, Assistant Director, Administrative Services, Licensing Division

Hansard, Parliament of Western Australia:

Neil Burrell, Chief Hansard Reporter

THURSDAY, 30 NOVEMBER 1995

Ministry of Fair Trading:

Alan Tenger, Director, Retail Goods Branch
Mike Drover, Manager, Retail Goods Branch
Mark Bodycoat, Principal Legal Officer

Appendix 6

Table of Comparative Statistics: 1988 - 1995

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

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

Table of Comparative Statistics: 1988 - 1995⁶²

⁶²

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.