



PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE
ON
DELEGATED LEGISLATION**

TWENTIETH REPORT:

Bunbury Port Authority Amendment Regulations 1996

Presented by the Hon Bruce Donaldson MLC (Chairman)

**20
November 1996**

Joint Standing Committee on Delegated Legislation

Members

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

Advisory/Research Officer

Stuart Kay
Andrew Mason

Committee Clerk

Jan Paniperis

Terms of Reference

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

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

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

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Report of the Joint Standing Committee on Delegated Legislation

in relation to

Bunbury Port Authority Amendment Regulations 1996

- 1 Members of this House are aware that it is the function of the Joint Standing Committee on Delegated Legislation to review all regulations made in this State. One of the reasons the Committee has been given this important scrutiny role is to ensure that regulations drafted under instructions from Government agencies comply with the constitutional laws of this State and with statutes made by this Parliament.
- 2 The Committee recently reviewed the *Bunbury Port Authority Amendment Regulations 1996*. Those *Regulations* are subject to a disallowance motion in this House. Due to the impending expiry of the period in which the Committee could give notice of motion of disallowance, the Chairman gave notice of motion of disallowance of the *Regulations* on 26 September 1996 date because the Committee was concerned about certain aspects of the *Regulations* and required more information from the Authority.
- 3 Among other things, the *Regulations* increase the Outer Harbour Port Infrastructure Charge by 25%. The Authority informed the Committee that the purpose of the increase in the charge was to fund the purchase, or depreciation costs, of a new ship loading facility. Installation of that ship loading facility has not been completed.
- 4 Upon further consideration, and after taking legal advice, the Committee considers that the increase in the charge is in the nature of a tax and is not authorised by statute. Furthermore, it is not within the power of the Authority to waive collection of the fee pending completion of the installation of the ship loading facility.
- 5 The Committee considers that there are many complicated issues involved in this matter and they raise many broad questions about taxation and the charging of fees for services by Government agencies. These matters cannot be resolved in the immediate short term.
- 6 In the result, the Committee has resolved to seek leave to withdraw the motion for disallowance if the Minister for Transport will undertake:
 - 6.1 to consider the issues raised by the Committee in this report; and
 - 6.2 after further consultation with the Committee, in the next Parliament to introduce any necessary remedial legislation to resolve the problem.