

## Chapter 11: Standing Committee Expansion (from December 1989)

Although the important matter of the expansion of the Legislative Council standing committee system had been on the Notice Paper since October 1989, it was not until just four days before Christmas 1989 that the Legislative Council passed motions on the same day to amend the Standing Orders, thereby creating three new standing committees. Later (in 2001) it was claimed in the Legislative Council regarding these motions that:

*A fair amount of discussion occurred outside the House among members of the then Opposition, but very little debate occurred inside the House. Hansard indicates clearly that a number of committees were opposed. The then Leader of the House, Hon Joe Berinson, was unsure whether they were necessary. He seemed to believe at the time that they may impede the business of the Government. However, he was sufficiently convinced to support the new committee system as it was in 1989. I note that the committee system was agreed to on 21 December 1989, so the whole of that year was wasted.*<sup>1483</sup>

As alluded to by the Hon. George Cash in the statement above, in December 1989 the Council established a Standing Committee on Estimates and Financial Operations, another on Legislation, and one titled Constitutional Affairs and Statutes Revision.

In the same year the Legislative Council had its membership increased from 34 to 36 members. Moreover, the Legislative Council members were to represent regions and to be elected by a proportional representation voting system. This was likely to alter representation in the House and would seemingly make it more difficult for governments to command a majority and more likely that minor parties could secure representation.

The motions to establish each of the three standing committees was at the behest of Bob Pike, the North Metropolitan Region Liberal MLC who had been very active in promoting a Legislative Council standing committee system. As discussed in Chapter 9, it was Bob Pike who moved the motion to create the Government Agencies Standing Committee in September 1980.

In May 1989 John Williams, arguably the father of the Legislative Council committee system, had retired from Parliament. In 1988, near the end of his 18-year parliamentary career, John Williams voiced a last stand, in extensive detail, to strongly advocate for a Standing Legislative and General Purposes Committee. In moving to establish that committee as a standing committee, Williams stated that:

*one of the objectives of introducing this motion was to ease the strain on Government frontbenchers. I believe their work in the Legislative Council is horrendous. The work of backbench and frontbench members of the Opposition as*

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<sup>1483</sup> WAPD, Legislative Council, 23 May 2001, p.357 (statement made by the Hon. George Cash, Liberal MLC).

*we are presently constituted is equally horrendous because the resources at our disposal are extremely limited.*<sup>1484</sup>

It should also be noted that John Williams' Liberal colleague Vic Ferry, Chairman of the 1985 Legislative Council select committee that had advocated a comprehensive standing committee system, had resigned from Parliament in 1987. While Vic Ferry's select committee did not have an immediate impact, it can be argued that its work had been sufficiently persuasive to have the thrust of its recommendations implemented some five years later.

There were also some significant developments in the Legislative Assembly. In 1992 during the fourth session of the 33rd Parliament, Premier Carmen Lawrence successfully moved for the appointment of a select committee to consider the merits of a Legislative Assembly Standing Committee on Parliamentary Procedures for Uniform Legislation. This had arisen particularly out of concerns relating to uniform financial legislation.<sup>1485</sup> The select committee's report led to the appointment in August 1993 of a Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements. Its continuance was ratified after the 1996 State election, and it worked as an extremely active standing committee, with some of its members not wishing it to be phased out or have its responsibilities transferred to the Legislative Council. The latter fate, initially at the hands of the Legislative Assembly's own Select Committee on Procedure, is explained further below.

In 1996 the Legislative Councils' standing committee flagship, the Government Agencies Standing Committee, was refitted as the Standing Committee on Public Administration. Another significant development was the creation of a Standing Committee on Ecologically Sustainable Development. Although very active, being chaired by Greens WA Christine Sharp, it only survived one Parliament, to be replaced in 2001 by the newly named Environment and Public Affairs Committee. Moreover, there was much conjecture about the success or otherwise of the standing committees, their limitations due to financial constraints, whether there should be specified mornings or afternoons for committee activities and the optimum number of members needed for their operation.

### 11.1 The Case for Permanent Standing Committees

As mentioned above, since 1989 the Legislative Council was (and still is) elected on a regional basis via a proportional representation voting system. This is similar to the Australian Senate which, as an Upper House, it resembled in some respects. Positive accounts of the Senate standing committee system had been incorporated into the political texts on Australian Government and reference was made to the Senate during the brief debate to finally approve the establishment of the three above-mentioned standing committees.<sup>1486</sup> The case for the committees was voiced by Bob Pike who, reminiscent of

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<sup>1484</sup> WAPD, Legislative Council, 26 October 1988, pp.4226–4227.

<sup>1485</sup> WAPD, Legislative Assembly, 4 June 1992, pp.3580–3582; and *Report on Parliamentary Procedures for Uniform Legislation Agreements*, Legislative Assembly, August 1992, p.1.

<sup>1486</sup> WAPD, Legislative Council, 21 December 1989, p.6875.

his argument for the Government Agencies Standing Committee in 1980, was once again ideological in approach. His 1989 version of his argument reads:

*I propose the formation of permanent Standing Committees of this House to provide for continuing surveillance and supervision of Government. My aim is to free individuals and organisations from red tape and a relationship of dependency on Government. What we need is a great deal less Government and not a great deal more of it ... I am concerned, and I hope the House is concerned, about the growing imbalance in the relationship between Parliament and the rapidly increasing power and influence of the Executive and what is becoming its encrusted authority.*<sup>1487</sup>

In Pike's opinion the House needed to 'consider adapting its methods of operation to cope with modern day challenges and changes.'<sup>1488</sup> Furthermore, the standing committees would have 'the protection of the House' and 'help keep the Parliament effectively bicameral.'<sup>1489</sup> In response, Labor's Joe Berinson reminded members that the background to the motions was originally as set down in a series of proposals by Bob Pike.<sup>1490</sup> Berinson added that he did 'not accept that consultation has been thorough enough.'<sup>1491</sup> Berinson also said that he found it 'impossible to contemplate a single committee dealing with the whole range of issues' the House had dealt with during that debate on standing committees, and suggested that three Estimates Committees be established.<sup>1492</sup> Nevertheless, after insisting on an amendment to ensure that any additional committee appointments be made by the House rather than by each respective committee, he indicated he did not wish to thwart the initiative.<sup>1493</sup>

National member John Caldwell advised the House that his party had some reservations about a Standing Committee on Estimates and Financial Relations and, like Joe Berinson, queried whether the financial operations of Government should be subject to further committee scrutiny, as there was already a parliamentary committee undertaking that function. Caldwell argued that this function sat better with the Legislative Council as the House of review and that perhaps the other committee should be abolished. Nevertheless, the Nationals supported the establishment of the committee which, as well as considering the Estimates, would investigate other financial matters. Caldwell suggested that the committee have 'a trial run' to allow any adjustments to be made as necessary.<sup>1494</sup> Ultimately, Caldwell was in concert with Liberal Margaret McAleer who agreed with her colleague Hon. George Cash 'that it is better to begin than not to begin.'<sup>1495</sup>

<sup>1487</sup> WAPD, Legislative Council, 25 October 1989, p.3740.

<sup>1488</sup> WAPD, Legislative Council, 25 October 1989, p.3740.

<sup>1489</sup> WAPD, Legislative Council, 25 October 1989, p.3741.

<sup>1490</sup> WAPD, Legislative Council, 21 December 1989, p.6873.

<sup>1491</sup> WAPD, Legislative Council, 21 December 1989, p.6874.

<sup>1492</sup> WAPD, Legislative Council, 21 December 1989, p.6875.

<sup>1493</sup> WAPD, Legislative Council, 21 December 1989, pp.6882–6883.

<sup>1494</sup> WAPD, Legislative Council, 21 December 1989, p.6876.

<sup>1495</sup> WAPD, Legislative Council, 21 December 1989, p.6877.

To facilitate this, a host of amendments to the Standing Orders were passed, with the Legislative Council resolving:

*That the Standing Committees now established commence operations on such day or days as shall be specified in an order of the House to be made not later than six sitting days from the day on which the Legislative Council first meets in 1990.*<sup>1496</sup>

## 11.2 Standing Committee on Estimates and Financial Operations (1989)

Established on 21 December 1989 to enhance the process of review and scrutiny of Government, the Standing Committee on Estimates and Financial Operations' functions were to report on:

- (a) *the estimates of expenditure laid before the Council each year; and*
- (b) *any matter relating to the financial administration of the State.*<sup>1497</sup>

The Standing Committee on Estimates and Financial Operations was also able to initiate its own investigations, and was authorised to commence operations from 1 July 1990.<sup>1498</sup> Its original membership comprised of Eric Charlton (National Party) as Chairman, Reg Davies (Liberal, but Independent after July 1991), Max Evans (Liberal), Sam Piantadosi (Labor) and Bob Thomas (Labor).<sup>1499</sup>

Some months later a further six members were appointed to the committee to consider Government estimates of revenue and expenditure for 1990–1991. The additional members were John Halden, Tom Stephens, Barry House, Margaret McAleer, Norman Moore, and Mark Nevill. On 18 October 1990, Tom Stephens resigned and was replaced by Tom Helm.<sup>1500</sup>

Under Standing Order 38A, the Standing Committee on Estimates and Financial Operations divided itself into three subcommittees and, also on 18 October 1990, successfully obtained leave from the House 'for members of the committee to appoint proxy members to replace them on the committee for the duration of its consideration of the Estimates.'<sup>1501</sup> This would allow the 11 appointed committee members allocated to one of the three Estimates subcommittees to 'move from one subcommittee to another.'<sup>1502</sup>

Significantly each subcommittee was to deliberate on the areas of responsibility of one of the three Government Ministers in the Legislative Council. Subcommittee A, with four members and chaired by Max Evans, was assigned to consider Joe Berinson's (the Attorney General's) portfolio areas. Subcommittee B's three members, including Chair Eric Charlton,

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<sup>1496</sup> WAPD, Legislative Council, 21 December 1989, p.6887.

<sup>1497</sup> *Report of Standing Committee on Estimates and Financial Operations in Relation to the 1990–91 Budget Estimates*, Legislative Council, November 1990, p.1. Here, Estimates means the annual Budget Papers which are provided as supporting documents to the annual Appropriation Bills presented to parliament.

<sup>1498</sup> WAPD, Legislative Council, 16 May 1990, p.909; and *Report of Standing Committee on Estimates and Financial Operations in Relation to the 1990–91 Budget Estimates*, Legislative Council, November 1990, p.1.

<sup>1499</sup> WAPD, Legislative Council, 16 May 1990, p.910.

<sup>1500</sup> WAPD, Legislative Council, 18 October 1990, pp.6288–6289.

<sup>1501</sup> WAPD, Legislative Council, 18 October 1990, p.6288.

<sup>1502</sup> WAPD, Legislative Council, 18 October 1990, p.6288.

examined Kay Hallahan's portfolio areas as Minister for Planning, and Subcommittee C, consisting of four members and chaired by Sam Piantadosi, was assigned to examine Graham Edwards' areas of responsibility as Minister for Police.<sup>1503</sup>

The whole committee of eleven members, 'adopted in principle a program of hearings prepared by the Leader of the House and determined to meet over three days with specified time for each area of review.'<sup>1504</sup> Each subcommittee met with the applicable chief executive officers and other departmental or authority representatives, with each Minister attending the all the subcommittee hearings.<sup>1505</sup>

As well as making recommendations in relation to specific agencies, the Standing Committee on Estimates and Financial Operations in its first report noted 'the serious shortfall in the Legislative Council budget' and recommended 'that the Appropriation (Consolidated Revenue Fund) Bill 1990 be allowed to proceed' subject to the Government providing the Council with 'supplementary funding of \$227,200' for its 1990–1991 budget.<sup>1506</sup>

Evidence from President Clive Griffiths and Clerk Laurie Marquet had indicated that 'the deteriorating financial position is of such extreme proportions that if the shortfall is not immediately addressed and rectified the Legislative Council may exhaust its funds by March 1991 and could be forced to cease operations.'<sup>1507</sup> The report explained that the further funding was largely, but not entirely, required to 'adequately staff, house and resource the additional three Standing Committees,' and noted that 'the maintenance and expansion of the Standing Committee system had to face the limitation of resources.'<sup>1508</sup>

Despite its dire predictions that without further funding the Legislative Council would be forced to cease operations, the committee's first report was not mentioned in the Political Chronicle for the period. Nor did the matter receive detailed public attention. It was clearly expected that supplementary funding would be provided and the threat to the standing committee system was apparently not deemed to be matter of public interest.

One matter that might have been of particular interest was the consideration of the committee's processes and procedures, particularly those related to responses to committee questions during hearings. As noted, the Ministers attended all hearings with their agencies and some of the subcommittees found a tendency for the Minister to answer

<sup>1503</sup> *Report of Standing Committee on Estimates and Financial Operations in Relation to the 1990–91 Budget Estimates*, Legislative Council, November 1990, pp.1–2. The practice of dividing into three subcommittees continued until the 1992–1992 Budget Estimates proceedings. This is discussed further below.

<sup>1504</sup> *Report of Standing Committee on Estimates and Financial Operations in Relation to the 1990–91 Budget Estimates*, Legislative Council, November 1990, p.2.

<sup>1505</sup> *Report of Standing Committee on Estimates and Financial Operations in Relation to the 1990–91 Budget Estimates*, Legislative Council, November 1990, p.2.

<sup>1506</sup> *Report of Standing Committee on Estimates and Financial Operations in Relation to the 1990–91 Budget Estimates*, Legislative Council, November 1990, pp.2–3.

<sup>1507</sup> *Report of Standing Committee on Estimates and Financial Operations in Relation to the 1990–91 Budget Estimates*, Legislative Council, November 1990, p.2.

<sup>1508</sup> *Report of Standing Committee on Estimates and Financial Operations in Relation to the 1990–91 Budget Estimates*, Legislative Council, November 1990, p.2.

questions rather than permitting the departmental officers to answer. In response to this, the committee affirmed its view that it had the right to question any witness appearing before it, including public servants, while acknowledging that where a question related to Government policy public servants could refuse to answer and that then Minister was to provide a response.<sup>1509</sup>

The first report also recognised that for some agencies too little time had been allocated for the review and advised that for future Estimates considerations the committee itself would determine the hearing timetable with time 'allowed for the consideration of the General Loan and Capital Works Budget.'<sup>1510</sup>

This 1994 report also demonstrates a refinement of the hearing process as the committee members gained experience on the Standing Committee on Estimates and Financial Relations. The committee reported that in 1993 its procedure had been 'frustrated by a large number of generic questions addressed to each department and taken on notice,' and resolved to develop a formal hearings policy for 1994 hearings.<sup>1511</sup> The report contained a draft procedure policy, including information on the order of questions, the procedure for asking questions, the types of questions permitted, questions taken on notice, and the circulation of invitations and guidelines to agency representatives and members of the Council prior to hearings.<sup>1512</sup> Overall, the Standing Committee on Estimates and Financial Operations expressed confidence 'that its approach to the 1994/95 review of the consolidated fund estimates will contribute to informed debate' in the House.<sup>1513</sup>

Moreover, in 1994 the Standing Committee on Estimates and Financial Operations also turned its attention to performance reporting in the Western Australian public sector, something Government agencies and statutory authorities had been required to do since 1985 under the *Financial Administration and Audit Act 1985*. The Act also required the Auditor General to provide his opinion on whether the agencies' performance indicators were 'relevant and appropriate having regard to their purpose and fairly represent indicated performance.'<sup>1514</sup> In his 1994 report, almost a decade after the Act had been passed, the Auditor General 'noted that only 18% of public sector agencies reported satisfactory performance indicators' for all of their programs in the 1993–1994 financial year.<sup>1515</sup>

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<sup>1509</sup> *Report of Standing Committee on Estimates and Financial Operations in Relation to the 1990–91 Budget Estimates*, Legislative Council, November 1990, p.5.

<sup>1510</sup> *Report of Standing Committee on Estimates and Financial Operations in Relation to the 1990–91 Budget Estimates*, Legislative Council, November 1990, p.5.

<sup>1511</sup> *Eighth Report of the Standing Committee on Estimates and Financial Operations in Relation to the Review of the Consolidated Fund Estimates 1994/95*, Legislative Council, p.2.

<sup>1512</sup> *Eighth Report of the Standing Committee on Estimates and Financial Operations in Relation to the Review of the Consolidated Fund Estimates 1994/95*, Legislative Council, pp.4–5.

<sup>1513</sup> *Eighth Report of the Standing Committee on Estimates and Financial Operations in Relation to the Review of the Consolidated Fund Estimates 1994/95*, Legislative Council, p.2.

<sup>1514</sup> *Tenth Report of the Standing Committee on Estimates and Financial Operations in relation to Performance Indicators*, Legislative Council, December 1994, p.6.

<sup>1515</sup> *Tenth Report of the Standing Committee on Estimates and Financial Operations in relation to Performance Indicators*, Legislative Council, December 1994, p.4.



In reporting on its inquiry into performance reporting, the Standing Committee on Estimates and Financial Operations recognised that Western Australia ‘compared favourably with other jurisdictions.’<sup>1516</sup> However, the committee also ‘noted comments from agencies that the performance indicators are still in a development stage’ and found ‘that systematic problems have led to a marked lack of progress by some agencies.’<sup>1517</sup> The committee called on the State Government ‘to ensure that the responsibility for leadership in public sector program evaluation and performance reporting [... was] clearly defined and appropriately resourced.’<sup>1518</sup> Performance auditing in the public sector was to continue as a challenging and important domain, as indicated by the Auditor General’s 2012 report, *Beyond compliance: Reporting and managing KPIs in the public sector*.<sup>1519</sup>

Earlier, in July 1991, the Standing Committee on Estimates and Financial Operations had found it necessary to address a report of the Office of the Auditor General titled *The rental of information technology equipment for the administration of the Legislative Council*. During the latter part of 1990 Laurie Marquet, then Clerk of the Legislative Council, entered into an arrangement with a Sydney merchant bank to rent computer equipment for the new Council committees and to convert some of Parliament’s existing computer system to a new operating system. The Auditor General found that the Clerk’s agreement with the merchant bank, while described as a rental agreement, was a finance lease and, consequently, constituted ‘a borrowing of a nature to be met from within the State’s Global Borrowing Limit.’<sup>1520</sup> After examining the authorisation process the Auditor General considered it:

*imprudent of the Clerk to have signed acknowledgements of receipt before the goods had been physically received from, or the services supplied by, the computer consultant and satisfactorily tested as fully operational in their intended environment within the Administration of the Legislative Council.*<sup>1521</sup>

The Auditor General also indicated that:

*Notwithstanding the considerable time devoted by the Clerk of the Legislative Council and the computer consultant to planning meetings, the planning of the subsequent system was poorly documented for a development of this nature. This element of the*

<sup>1516</sup> *Tenth Report of the Standing Committee on Estimates and Financial Operations in relation to Performance Indicators*, Legislative Council, December 1994, p.4.

<sup>1517</sup> *Tenth Report of the Standing Committee on Estimates and Financial Operations in relation to Performance Indicators*, Legislative Council, December 1994, p.4.

<sup>1518</sup> *Tenth Report of the Standing Committee on Estimates and Financial Operations in relation to Performance Indicators*, Legislative Council, December 1994, p.14.

<sup>1519</sup> Auditor General Western Australia (2012), *Beyond compliance: Reporting and managing KPIs in the public sector*, Office of the Auditor General, Perth.

<sup>1520</sup> *Third Report of the Standing Committee on Estimates and Financial Operations in Relation to the Leasing of Computer Equipment for the Legislative Council*, Legislative Council, February 1992, p.1. Rental payments of \$100,000 had been made in 1990–1991, with future commitments of some \$600,000 over the following four years, a significant proportion of the Legislative Council’s 1990–1991 budget of \$1.4 million.

<sup>1521</sup> *Third Report of the Standing Committee on Estimates and Financial Operations in Relation to the Leasing of Computer Equipment for the Legislative Council*, Legislative Council, February 1992, p.1.

*planning process appears to have been largely informal to have become progressively less structured as the implementation progressed.*<sup>1522</sup>

Furthermore, the Auditor General noted that the Clerk had not called for tenders before authorising the contracted consultant ‘to proceed with the acquisition and installation of the equipment, cabling, software, programming and training etc.’ and deemed ‘that the Clerk of the Legislative Council should have obtained explicit written clearance before entering into the financing agreement.’<sup>1523</sup>

As a result of the Auditor General’s report, the Standing Committee on Estimates and Financial Operations decided to investigate the agreement and the manner in which it had been arranged. Following its consideration of submission and hearing evidence, the committee agreed that the arrangement was a finance lease, which had ‘definite ramifications for the State’s Global Borrowing Limits.’<sup>1524</sup> It understood there were ‘significant benefits in the form of increased efficiencies and improvement of computer operations within the Legislative Council’ and that staff had ‘acknowledged its enhanced performance over the previous CTOS [Convergent Technologies Operating System] system.’<sup>1525</sup> At the same time the committee commented on ‘the need to recognise and observe the guidelines of the FAAA [*Financial Administration and Audit Act 1985*] and/or the Treasurer’s Instructions in regard to the acquisition of similar goods and services.’<sup>1526</sup>

Ultimately the committee concluded that there was no further action warranted; however, there was a perceived need for better accountability. A rider was added ‘that as a consequence of any new evidence and/or the outcome of pending legal proceedings, the Committee may re-examine or initiate further investigations.’<sup>1527</sup> This situation did not arise, but the report contents made it clear that the expansion of the committee system has imposed strains on the Council’s resources with an accompanying need to tighten its own procedures.

Over the coming years the Standing Committee on Estimates and Financial Operations refined its proceedings, making changes to make its work more effective. For example, for the 1991–1993 budget statements hearings, rather than operate as three subcommittees, members met as a whole committee to allow them examine each department and agency. Ministers appearing before the committee were also encouraged to allow department staff to directly answer questions on operational and financial matters, while the Minister would

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<sup>1522</sup> *Third Report of the Standing Committee on Estimates and Financial Operations in Relation to the Leasing of Computer Equipment for the Legislative Council*, Legislative Council, February 1992, p.2.

<sup>1523</sup> *Third Report of the Standing Committee on Estimates and Financial Operations in Relation to the Leasing of Computer Equipment for the Legislative Council*, Legislative Council, February 1992, p.2.

<sup>1524</sup> *Third Report of the Standing Committee on Estimates and Financial Operations in Relation to the Leasing of Computer Equipment for the Legislative Council*, Legislative Council, February 1992, p.3.

<sup>1525</sup> *Third Report of the Standing Committee on Estimates and Financial Operations in Relation to the Leasing of Computer Equipment for the Legislative Council*, Legislative Council, February 1992, p.4.

<sup>1526</sup> *Third Report of the Standing Committee on Estimates and Financial Operations in Relation to the Leasing of Computer Equipment for the Legislative Council*, Legislative Council, February 1992, p.4.

<sup>1527</sup> *Third Report of the Standing Committee on Estimates and Financial Operations in Relation to the Leasing of Computer Equipment for the Legislative Council*, Legislative Council, February 1992, p.4.



answer specific policy questions.<sup>1528</sup> These practices have largely remained unchanged to the present day.

### 11.3 Standing Committee on Legislation (1989)

The December 1989 establishment of the Standing Committee on Legislation, to be known as the Legislation Committee, was an important initiative of the Legislative Council in seeking to improve Parliament's scrutiny of Government.

The original motion to establish the Legislation Committee, consisting of five members, was moved by Hon. Robert (Bob) Pike on 25 October 1989. According to the motion:

*A Bill originating in either House, other than a Bill which the Council may not amend, stands referred to the committee after the second reading has been moved and the speech of the Minister or member in charge of the Bill has been given, but before that stage is completed.*

*[The above paragraph...] does not prevent a Bill being referred or recommitted at any stage of its passage.*

*The functions of the committee are to consider and report on Bills referred by Standing Order or resolution.*<sup>1529</sup>

The debate at that time was adjourned with Labor senior MLC Joe Berinson suggesting that the parties meet informally to discuss 'the sorts of amendments that might be considered.'<sup>1530</sup>

On 21 December 1989 Joe Berinson advised the House that following the recommended negotiation process, a number of his proposed amendments had been incorporated into revised terms of reference. Nevertheless, Berinson still had some reservations, and listed proposed amendments on the Notice Paper. Ultimately, though, he decided not to pursue them.<sup>1531</sup>

Under the revised terms of reference for a Legislation Committee, it would still consist of five members, and the committee was still to consider and report on referred Bills.<sup>1532</sup>

However, there were significant changes to the committee's terms of reference. According to the motion passed in December 1989:

*A Bill originating in either House, other than a Bill which the Council may not amend, may be referred to the committee after its second reading at or during any subsequent stage by motion without notice.*

<sup>1528</sup> *Fourth Report of the Standing Committee on Estimates and Financial Operations in Relation to the 1992–93 Budget Estimates*, Legislative Council, November 1992, p.1.

<sup>1529</sup> WAPD, Legislative Council, 25 October 1989, p.3742.

<sup>1530</sup> WAPD, Legislative Council, 21 December 1989, p.6873.

<sup>1531</sup> WAPD, Legislative Council, 21 December 1989, p.6873 and p.6878.

<sup>1532</sup> WAPD, Legislative Council, 21 December 1989, p.6873. The wording of this function was amended slightly. The committee was to consider and report on Bills referred under the order establishing the committee, rather than Bills 'referred by Standing Order or resolution'.

*A referral under [... the above clause] includes a recomittal.*<sup>1533</sup>

Instead of *all* allowable Bills having to be referred, the change in wording to *may be referred* gave the Council discretion as to which Bills would and would not be referred.<sup>1534</sup>

Perhaps an even more significant aspect of the amendment was the timing of the referral. The original proposal was for referral after the second reading is moved, but before the completion of the second reading stage. The amended terms of reference allowed for a Bill to be referred by motion after its second reading or at any subsequent stage. During the sometimes heated second reading debate on the Criminal Code Amendment (Incitement to Racial Hatred) Bill 1989, committee activist Bob Pike described this amendment to the Legislation Committee's terms of reference as a 'dramatic alteration because it meant that the policy of a Bill will have been established before it came before the committee.'<sup>1535</sup> Consequently, the Legislation Committee could not examine and report on the policy of a Bill unless ordered to do so by the House.<sup>1536</sup>

While the Legislation Committee was created on 21 December 1989, its operations did not commence until members were appointed on 16 May 1990. Its first five members were Garry Kelly as Chairman and Cheryl Davenport (Labor), John Caldwell (National), Peter Foss and Derrick Tomlinson (Liberal).<sup>1537</sup>

The Legislation Committee's first report dealt with the Criminal Law Amendment Bill 1990. Evidence was taken from the Attorney General, Hon. Joe Berinson QC MLC and Mr Charles Luckman, Secretary of the Criminal Law Association, and assistance was received from Senior Parliamentary Counsel and the Counsel's office.<sup>1538</sup>

Some of the committee's proposed amendments to the Bill reflected proposals made in the Murray Review of the Criminal Code, which was a detailed analysis originally presented to the Sir Charles Court Government's Attorney General, Ian Medcalf, in March 1982. It contained over 80 principal recommendations.<sup>1539</sup> The committee's consideration of the Murray Review suggests that the committee members were expanding their horizons in the pursuit of better legislation.

Interestingly, with respect to Clause 1 of the Bill, the committee expressed concern about the frequent provision made 'for the proclamation of acts for reasons of administrative procedure without any justification being provided to Parliament as to why separate proclamation was necessary.'<sup>1540</sup> Given that the two Houses, together with the Queen, are

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<sup>1533</sup> WAPD, Legislative Council, 21 December 1989, pp.6877–6878.

<sup>1534</sup> Allowable here means Bills the Council could amend.

<sup>1535</sup> WAPD, Legislative Council, 19 June 1990, p.2149.

<sup>1536</sup> WAPD, Legislative Council, 19 June 1990, p.2149.

<sup>1537</sup> WAPD, Legislative Council, 16 May 1990, p.909.

<sup>1538</sup> *Report of the Standing Committee on Legislation in Relation to the Criminal Law Amendment Bill*, Legislative Council, July 1990, p.5.

<sup>1539</sup> Michael J. Murray, Crown Counsel (1982), *The Criminal Code: A General Review*, Report presented to the Attorney General, Western Australia, Vol. 1 and Vol. 2, Perth: Crown Law Department.

<sup>1540</sup> *Report of the Standing Committee on Legislation in Relation to the Criminal Law Amendment Bill*, Legislative Council, July 1990, p.1.

the constitutional parties to enacting legislation for Western Australia, the committee held that, in effect, the regular call for separate proclamations added another participant, this being executive Government. According to the Legislation Committee, this practice needed scrutinising. Ultimately, the committee 'agreed to recommend the Bill to the House' and its report provided a brief outline of the reasons for amendments made.<sup>1541</sup>

Between the committee beginning operations on 16 May 1990, and September 1991 when it reviewed some aspects of its operations, the House had referred 10 Bills for consideration, two of them being referred twice.<sup>1542</sup> These Bills covered a broad range of subjects including heritage, tobacco, education, legal aid funding, education and criminal law matters. Some of these are discussed in detail below.

One of the first matters to be considered was the Director of Public Prosecutions Bill 1990 which related to 'the appointment of an independent Director of Public Prosecutions [DPP] whose functions would be to bring and conduct 'proceedings for offences and related matters.'<sup>1543</sup> The House directed the committee to 'consider the matter of appointment or reappointment of the DPP,' which largely related to the independence of the office holder.<sup>1544</sup> The committee began by taking evidence from Peter Fitzpatrick AM, Executive Officer of the Law Society, but was unable to proceed further because of a question raised by John Caldwell, a member of the Legislation Committee.

Given the Attorney General had said the Bill would not be accepted if the DPP was appointed by a panel, Caldwell's concern was whether committee consideration of the method of appointment would be contrary to the Bill's policy as established in second reading. Caldwell here is echoing Bob Pike's above-mentioned concern about the revised terms of reference for the Legislation Committee. Based on the Clerk's advice that Caldwell's concern was valid, the committee decided to report the arguments aired during committee deliberations, particularly those involving opposing views that might be reconciled, and recommend the House refer the Bill back to the committee 'with a direction to consider the method of appointment.'<sup>1545</sup>

The Director of Public Prosecutions Bill 1990 was again referred to the Legislation Committee, with Eric Charlton moving that the committee have power 'to inquire into and report on the method by which the director shall be appointed.'<sup>1546</sup> However, the House's resolution was that the Bill be referred to the Legislation Committee 'for further consideration and report.'<sup>1547</sup> The committee tabled its second report on the Bill on

<sup>1541</sup> *Report of the Standing Committee on Legislation in Relation to the Criminal Law Amendment Bill*, Legislative Council, July 1990, p.1.

<sup>1542</sup> *Report of the Standing Committee on Legislation in Relation to a Review of Some Aspects of the Committee to Date*, Legislative Council, September 1991.

<sup>1543</sup> Long Title, *Director of Public Prosecutions Act 1991* (WA).

<sup>1544</sup> *Report of the Standing Committee on Legislation in Relation to the Director of Public Prosecutions Bill*, Legislative Council, July 1990, p.1.

<sup>1545</sup> *Report of the Standing Committee on Legislation in Relation to the Director of Public Prosecutions Bill*, Legislative Council, July 1990, p.1.

<sup>1546</sup> WAPD, Legislative Council, 18 September 1990, p.5151.

<sup>1547</sup> WAPD, Legislative Council, 19 September 1990, p.5308.

5 December 1990, noting that it had once again been unable to resolve the differences between the Government and Opposition in relation to the appointment of the DPP.<sup>1548</sup> In May 1992, during the second reading debate on the Bill, a clearly frustrated John Caldwell advised the House that the Legislation Committee ‘had enormous problems and [...their] hands were tied’ due to the Attorney General’s comments regarding a panel appointment, and that the committee ‘had carried on down a long, dark tunnel without reaching a verdict.’<sup>1549</sup>

On 29 August, Liberal member Hon. Max Evans moved to refer the Tobacco Bill 1990 to the Legislation Committee for consideration. The proposed terms of reference were extensive, encompassing thirteen complex areas for particular attention.<sup>1550</sup> This motion was the subject of extensive debate in the House, raising issues regarding the purpose of the committee, whether the committee was being used to obstruct the passage of legislation and whether it was appropriate for the committee to consider such matters. For example, while the Minister, Hon. Kay Hallahan, preferred the Bill to remain in the House, Opposition members such as George Cash argued that referring it to the committee would allow members of the public to put their case, which, he reminded the House, was one of the reasons the committee was established.<sup>1551</sup>

The controversy highlighted in the debate caused the President to indicate that he too held concerns about the motion. He was not convinced that, in particular, parts of the first term of reference were questions that should be directed to the committee. He indicted to members that thought certain aspects of the motion could be beyond the committee's remit. The matters of concern were on restrictions to advertising and sponsorship by tobacco companies, and the need for a Health Promotion Foundation. The President advised the House that he would consider the matter and make a ruling the following day.<sup>1552</sup>

On 30 August 1990 the President advised the House that any committee, whether a committee of the whole House, standing or select committee, should consider any matter as directed by the House. He further held that it was ‘proper for a committee to ascertain whether a Bill does, in fact, carry out the stated policy and to inquire whether there are any other effective means of achieving that stated principle.’<sup>1553</sup>

Subsequent to the President’s ruling, Labor Opposition member Fred McKenzie moved an amendment to the motion, removing the detailed terms of reference and replacing them with the following motion: ‘That the Tobacco Bill 1990 be referred to the Legislation Committee for consideration and report.’<sup>1554</sup> Following considerable debate, the vote on the

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<sup>1548</sup> *Report of the Standing Committee on Legislation in Relation to the Director of Public Prosecutions Bill*, December 1990, p.1.

<sup>1549</sup> WAPD, Legislative Council, 14 May 1992, p.1744.

<sup>1550</sup> WAPD, Legislative Council, 29 August 1990, pp.4368–4369.

<sup>1551</sup> WAPD, Legislative Council, 29 August 1990, pp.4325–4339 and pp.4350–4351.

<sup>1552</sup> WAPD, Legislative Council, 29 August 1990, p.4371.

<sup>1553</sup> WAPD, Legislative Council, 30 August 1990, p.4475.

<sup>1554</sup> WAPD, Legislative Council, 4 September 1990, p.4655.

amended terms of reference resulted in an equal vote. That being the case, the President voted for the amendment, which was thus passed,<sup>1555</sup> and set the inquiry in motion.

The committee reported that it met 15 times, took oral evidence from 21 individuals or organisations including health professionals and industry representatives, and received some 50 public submissions representing the views of both groups strongly in favour of a total ban of tobacco products and those concerned about the effect the legislation would have on commercial and sporting activities.<sup>1556</sup> The report included an account of the many contentious issues and made recommendations particularly with respect to the proposed Health Promotion Foundation that ultimately facilitated its administration.<sup>1557</sup> The Legislation Committee's review of this Bill represents its facilitation of public engagement by interested parties on a scale larger than in the past.

Another contentious policy matter referred to the Legislation Committee concerned the Road Traffic Amendment Bill (No. 2) 1990, which had been introduced to the Legislative Council on 12 July 1990.<sup>1558</sup> This Bill included reducing the permissible blood alcohol concentration when driving vehicles from 0.08 to 0.05 per cent. The committee's report shows that it received 26 submissions representing a broad range of views 'from those in the medical profession supporting the Bill to those in the liquor industry opposing any change in the existing law.'<sup>1559</sup> The report also made it clear that diverging opinions in the evidence meant that reconciling the differences to make a determination would not be easy. Another point of difference concerned 'the proposed extended period of probation for inexperienced drivers,' the aim of which was to separate 'the two learning experiences of learning to drive and learning to drink.'<sup>1560</sup>

Committee Chairman, Hon. Garry Kelly, proposed a compromise position on the blood-alcohol concentration of probationary drivers of different ages, but the committee could not come to an agreement on this and returned the Bill back to the Legislative Council.<sup>1561</sup>

The Bill was re-referred to the Legislation Committee on 14 May 1991 to provide members with 'an opportunity to reconsider its findings,' with the suggestion that it may have been rushed in its previous work as it was also considering other Bills.<sup>1562</sup> Consequently the committee's report did not adequately explain its processes. The committee was asked to

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<sup>1555</sup> WAPD, Legislative Council, 4 September 1990, pp.4658–4659 and pp.4662–4663.

<sup>1556</sup> *Report of Standing Committee on Legislation in Relation to the Tobacco Bill 1990*, Legislative Council, November 1990, pp.2–5.

<sup>1557</sup> *Report of Standing Committee on Legislation in Relation to the Tobacco Bill 1990*, Legislative Council, November 1990.

<sup>1558</sup> WAPD, Legislative Council, 12 July 1990, p.3665.

<sup>1559</sup> *Report of Standing Committee on Legislation in Relation to the Road Traffic Amendment Bill (No. 2) 1990*, Legislative Council, December 1990, p.1.

<sup>1560</sup> *Report of Standing Committee on Legislation in Relation to the Road Traffic Amendment Bill (No. 2) 1990*, Legislative Council, December 1990, p.1.

<sup>1561</sup> *Report of Standing Committee on Legislation in Relation to the Road Traffic Amendment Bill (No. 2) 1990*, Legislative Council, December 1990, pp.1–2.

<sup>1562</sup> WAPD, Legislative Council, 14 May 1991, p.1728.

‘provide a more detailed report to enable members to understand the committee’s deliberations.’<sup>1563</sup>

The Legislation Committee tabled its second report on the Road Traffic Amendment Bill (No. 2) 1990 in August 1991. While this much more detailed report made a number of recommendations, overall the committee was not able ‘to settle on an agreed set of amendments’ and therefore provided two versions of the Bill with its report to the House.<sup>1564</sup>

The Legislation Standing Committee was also involved in an unusual arrangement with another standing committee. During the second reading debate of the Education Service Providers (Full Fee Overseas Students) Registration Bill 1990, Hon. Norman Moore, MLC, successfully moved that the Bill be referred to the Legislation Committee and that the committee appoint a subcommittee to work with a subcommittee of the Standing Committee on Government Agencies to consider the Bill. The joint subcommittees were also to consider the whether a Board should be established to substitute for the functions of the chief executive officer as provided in the Bill.<sup>1565</sup>

The subcommittee comprised two members, Derrick Tomlinson as Chair (Liberal) and Garry Kelly (Labor) from the Legislation Committee, and three members from the Government Agencies Standing Committee, namely Norman Moore (Liberal), Doug Wenn (Labor) and Murray Montgomery (National).<sup>1566</sup>

This subcommittee provides yet another example of the work of a committee being interrupted by the prorogation of Parliament. The subcommittee was not able to meet as Parliament was prorogued on 2 January 1991. Parliament was reconvened on 14 March 1991 and the Bill referred once again to the Legislation Committee with the same instructions to form a subcommittee. The new subcommittee was formed on 21 March 1991 with the same members.<sup>1567</sup>

The aim of the Education Service Providers (Full Fee Overseas Students) Registration Bill 1990 was to ‘establish a state register of approved institutions’ and to protect students’ funds if institutions were forced to close, and in doing so, restore the State’s reputation in the overseas study market. The subcommittee recognised the need to provide ‘legal

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<sup>1563</sup> WAPD, Legislative Council, 14 May 1991, p.1729.

<sup>1564</sup> *Report of Standing Committee on Legislation in Relation to the Road Traffic Amendment Bill (No. 2) 1990 (Re-referred)*, Legislative Council, August 1991.

<sup>1565</sup> WAPD, Legislative Council, 6 December 2016, p.8741.

<sup>1566</sup> *Report of Standing Committee on Legislation prepared by a Subcommittee of the Legislation and Government Agencies Standing Committees in Relation to the Education Service Providers (Full Fee Overseas Students) Registration Bill 1990*, Legislative Council, August 1991.

<sup>1567</sup> *Report of Standing Committee on Legislation prepared by a Subcommittee of the Legislation and Government Agencies Standing Committees in Relation to the Education Service Providers (Full Fee Overseas Students) Registration Bill 1990*, Legislative Council, August 1991, p.1.



safeguards upon the financial administration of education service providers to minimise the effect upon students of institutions being forced to close.’<sup>1568</sup>

The subcommittee’s report indicates it had difficulty in obtaining submissions, having to advertise four times and make direct approaches to those who had submitted to a federal inquiry into the export of education. This combined effort resulted in 14 written submissions.<sup>1569</sup> The subcommittee also took evidence at hearings and met with the Minister for Education, Hon. Kay Hallahan and officers of her department.

While cognisant of the urgency of this legislation, the subcommittee was also ‘critical of “legislating on the run” and the inability of some officers of the Ministry of Education to appreciate the procedures involved in the presentation of a Committee report to the House.’<sup>1570</sup> The subcommittee was critical of the ‘intercession of those Ministry officials between the Committee and witnesses who volunteered to present evidence,’ describing it as ‘unacceptable’.<sup>1571</sup> According to the subcommittee, Ministry officials were negotiating with witnesses just minutes before they were due to give evidence, meaning that the subcommittee ‘found itself deliberating on submissions which were not current.’<sup>1572</sup>

Consequently, the subcommittee was not able to meet its reporting deadline and strongly recommended that:

*before legislation is presented to the Parliament that Ministers seek response from interested parties and make appropriate amendments. Only if that is done will the Parliament be able to deliberate upon current Bills rather than upon drafts which are continuously updated by government amendments according to the state of negotiations with interested parties.*<sup>1573</sup>

Furthermore, the subcommittee’s report included an Addendum authored by the Chair, Norman Moore (Liberal Party), where he expressed a view that the Bill gave too many powers to the chief executive officer of the education ministry. He also indicated that while he was a signatory to the report, he wished to record his view ‘that the Overseas Education

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<sup>1568</sup> Report of Standing Committee on Legislation prepared by a Subcommittee of the Legislation and Government Agencies Standing Committees in Relation to the Education Service Providers (Full Fee Overseas Students) Registration Bill 1990, Legislative Council, August 1991, p.2.

<sup>1569</sup> Report of Standing Committee on Legislation prepared by a Subcommittee of the Legislation and Government Agencies Standing Committees in Relation to the Education Service Providers (Full Fee Overseas Students) Registration Bill 1990, Legislative Council, August 1991, p.2.

<sup>1570</sup> Report of Standing Committee on Legislation prepared by a Subcommittee of the Legislation and Government Agencies Standing Committees in Relation to the Education Service Providers (Full Fee Overseas Students) Registration Bill 1990, Legislative Council, August 1991, p.8.

<sup>1571</sup> Report of Standing Committee on Legislation prepared by a Subcommittee of the Legislation and Government Agencies Standing Committees in Relation to the Education Service Providers (Full Fee Overseas Students) Registration Bill 1990, Legislative Council, August 1991, pp.8–9.

<sup>1572</sup> Report of Standing Committee on Legislation prepared by a Subcommittee of the Legislation and Government Agencies Standing Committees in Relation to the Education Service Providers (Full Fee Overseas Students) Registration Bill 1990, Legislative Council, August 1991, p.9.

<sup>1573</sup> Report of Standing Committee on Legislation prepared by a Subcommittee of the Legislation and Government Agencies Standing Committees in Relation to the Education Service Providers (Full Fee Overseas Students) Registration Bill 1990, Legislative Council, August 1991, p.9.

Service Providers Industry should be regulated by a Board comprising representatives from the industry and the Ministry of Education.’<sup>1574</sup>

On 7 February 1992 the Legislative Council referred the Crime (Serious and Repeat Offenders) Sentencing Bill 1992 and the Criminal Law Amendment Bill 1992 to the Legislation Committee for consideration as, in the words of the Hon. Reg Davies, the two Bills ‘were progressed through the parliament with such haste.’<sup>1575</sup> The committee was also asked to report to the House by 31 March 1992, a deadline it was not able to meet. In reporting to the House in May 1992, the committee stated that it had been ‘very mindful of the magnitude of the task in reviewing this legislation,’ and had decided to make two separate reports to the House.<sup>1576</sup> The first, which was tabled in May 1992, dealt ‘with the broad legal and human rights implications of the legislation,’ while the second ‘set out the social implications and consideration of the detail of the Act, including administrative and legal aspects and suggest alternatives for dealing with the underlying issues that lead to juvenile crime.’<sup>1577</sup>

The committee’s second report on these Bills was released on 8 July 1992.<sup>1578</sup> This report was surrounded by controversy due to the premature release of some of the draft report’s contents by Channel 9 News on 7 July 1992. The Deputy Chair of the committee, Garry Kelly, happened to see the news report and contacted Channel 9 and advised that ‘the telecast of material from an unreleased committee report constituted a contempt of the House,’ and ‘strongly advised’ that the news item not be repeated.<sup>1579</sup> Through its *Special Report*, the committee informed the House that an informal inquiry into how the television station obtained the report had not reached any conclusion, and that the committee did ‘not want to indulge in a witch-hunt and have a long drawn out Privileges Committee process to find out why Channel Nine ran a story on it.’<sup>1580</sup> While the committee did not wish to pursue the matter, it asked the Legislative Council to resolve that ‘a contempt of the House’ be noted in its report and that ‘no further action be taken.’<sup>1581</sup> The *Special Report* also advised media outlets that any premature publication of its reports in the future would result in recommendation of a referral to a privilege committee, which would consider appropriate sanctions.<sup>1582</sup>

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<sup>1574</sup> *Report of Standing Committee on Legislation prepared by a Subcommittee of the Legislation and Government Agencies Standing Committees in Relation to the Education Service Providers (Full Fee Overseas Students) Registration Bill 1990*, Legislative Council, August 1991, p.9.

<sup>1575</sup> WAPD, Legislative Council, 7 February 1992, pp.8286–8287.

<sup>1576</sup> *First report on the Crime (Serious & Repeat Offenders) Sentencing Act 1992 and the Criminal Law Amendment Act 1992*, Legislative Council, May 1991, p.1.

<sup>1577</sup> *First report on the Crime (Serious & Repeat Offenders) Sentencing Act 1992 and the Criminal Law Amendment Act 1992*, Legislative Council, May 1991, p.1.

<sup>1578</sup> WAPD, Legislative Council, 27 August 1992, p.4035; and *Second Report on the Crime (Serious & Repeat Offenders) Sentencing Act 1992 and the Criminal Law Amendment Act 1992*, Legislative Council, July 1992.

<sup>1579</sup> WAPD, Legislative Council, 27 August 1992, p.4035.

<sup>1580</sup> WAPD, Legislative Council, 27 August 1992, p.4035; and *Special Report on the Premature Release of Contents on Report*, Legislative Council, August 1992.

<sup>1581</sup> WAPD, Legislative Council, 27 August 1992, p.4035.

<sup>1582</sup> WAPD, Legislative Council, 27 August 1992, p.4036.

The Legislation Committee's involvement in reviewing issues to do with criminal law continued with the referral of the Criminal Law Amendment Bill (No. 2) 1992 and the Legal Practitioners Amendment (Disciplinary Provisions) 1992.<sup>1583</sup> The weight of referral of legal Bills to the Legislation Committee suggests that the members of the Legislative Council understood the value of the participation of various sections of the legal profession (through submissions and oral evidence) in the creation of legal legislation. Despite the high ratio of lawyers holding seats in many legislatures throughout the democratic world, particularly the United States Congress, there has often been a dearth of lawyers in the Western Australian Parliament. Recommendations which were being reported to the Council were not necessarily framed to address the finer legal points necessary. For example, in the case of the Legal Practitioners Bill it was recommended that a new set of clauses be added to the Code of Ethics, that provision be made for open hearings before the Complaints Committee or Disciplinary Tribunal, and that adverse findings against a legal practitioner be published, all of which are quite broad.<sup>1584</sup>

The work of the Legislation Committee also reveals that it grappled with some aspects of its operations. A committee report in September 1991 describes the objectives of the committee as providing public access to process, providing a forum for different views, undertaking detailed work on the wording of Bills, accessing department information more readily, providing alternative views to the House, providing a historical record of evidence and making recommendations to the House.<sup>1585</sup> The report makes an assessment of the committee's work against these objectives, noting where it had made good progress, where progress was patchy and where considerable challenges had been encountered.

The time demands on both committee members and staff was noted as a particular difficulty. The committee advised that 'for a number of reasons a fairly substantial alteration should be made in which the Committee operates,' with its recommendations including that the Council's Standing Orders be amended to allow the committee to operate in subcommittees with other members co-opted 'for a particular reference.'<sup>1586</sup>

This recommendation echoes previous concerns in relation to the limits placed on committees when undertaking their functions. For example, in discussing its work on the Heritage Bill 1990, the Legislation Committee reported that:

*Time did not allow the Committee to recommend far ranging changes to the Bill. It was considered better to have imperfect legislation rather than no legislation. The Committee recommends however, that after this Bill is enacted, there be a reference*

<sup>1583</sup> *Report on Criminal Law Amendment Bill (No 2) 1992*, Standing Committee on Legislation, Legislative Council, September 1992; and *Report on the Legal Practitioners Amendment (Disciplinary Provisions) Bill 1992*, Legislative Council, August 1992.

<sup>1584</sup> *Report on Criminal Law Amendment Bill (No 2) 1992*, Standing Committee on Legislation, Legislative Council, September 1992, pp.3–5.

<sup>1585</sup> *Report of Standing Committee on Legislation in Relation to a Review of Some Aspects of the Operations of the Committee to Date*, Legislative Council, September 1991, pp.2–3.

<sup>1586</sup> *Report of Standing Committee on Legislation in Relation to a Review of Some Aspects of the Operations of the Committee to Date*, Legislative Council, September 1991, p.6.

*to it to prepare, as a discussion document, a draft replacement Bill, being a Bill of the type the Committee would have recommended had time been available.*<sup>1587</sup>

Similarly, a few months earlier National Party MLC Eric Charlton (Leader of the Nationals) asked Joe Berinson as the Leader of the House whether he would assure first, that during the next parliamentary session a sitting day would be allocated to standing committee operations and second, that legislation with Government priority would be introduced early in the session rather than toward the end. The Leader of the House could not give such an assurance, but agreed that he and Mr Charlton would consider the proposal during the recess. Mr Berinson also agreed that to the best of his ability priority legislation would be introduced early in the next session.<sup>1588</sup>

It is clear from the work of the Standing Committee on Legislation that the standing committee system was beginning to be appreciated by members. In its July 1990 report on the Director of Public Prosecutions Bill, for example, the Legislation Committee was of the view that committees were 'an ideal way to arrive at a working solution to the differences aired in the second reading debate.'<sup>1589</sup> Just over a year later, the committee's report on its consideration of the Criminal Code Amendment (Incitement to Racial Hatred) Bill 1990 clearly presents the members' views on the benefits of the system:

- 91. We consider that this reference has amply illustrated the use of the Standing Committee System*
- 92. It has meant that the work of Parliament has been able to continue even during Parliamentary recess*
- 93. The public have had the opportunity to make their submissions directly to the Parliament*
- 94. The members have had the opportunity to understand the problems better by talking directly to those concerned*
- 95. The members had had the opportunity to clarify drafting matters with Parliamentary Counsel*
- 96. The Committee has proved an ideal venue for members to argue out the essence of the legislation and to take time in consideration in a matter that would be impracticable with a Committee of the Whole*
- 97. It has been able to do this in a manner directed to obtaining good and workable legislation in an atmosphere little affected by politics*

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<sup>1587</sup> *Report of Standing Committee on Legislation in Relation to the Heritage Bill 1990*, Legislative Council, December 1990, p.1.

<sup>1588</sup> WAPD, Legislative Council, 11 July 1990, pp.3659–3660.

<sup>1589</sup> *Report of the Standing Committee on Legislation in Relation to the Director of Public Prosecutions Bill*, Legislative Council, July 1990, p.1.

98. *The intent of the Parliament, unanimously expressed by the House in setting up this committee, that the people of Western Australia be better served and have better legislation has, we trust, been carried out in this reference.*<sup>1590</sup>

With this sense of confidence and agreed benefits from the operation of the Legislation Standing Committee it was not surprising that the Legislative Council had also moved beyond the legal sphere to achieving extensive specialist and general public input during its consideration of the Heritage Bill 1990, the Road Traffic Amendment Bill (No. 2) 1990 and the Tobacco Bill 1990, all of which were contentious Bills.

While the Legislation Committee made an auspicious start with both its parliamentary role in reviewing Bills and in considering methods to achieve greater efficiency and effectiveness, it was not successful in gaining a new Standing Order to facilitate the establishment of subcommittees. Nevertheless, standing committees were changing the practices of parliamentary business. Ultimately, it meant these activities needed to be fitted into the administrative arrangements for the Parliament.

On 12 March 1998 further changes were made to the Legislation Committee's terms of reference to redistribute responsibilities between the Legislation Committee and the related Constitutional Affairs and Statutes Revision Standing Committee.<sup>1591</sup> There were even more changes at the beginning of the new millennium, with a new Labor Government in 2001. It was then considered 'appropriate that the Legislation Committee should have some role in initiating statute revision.'<sup>1592</sup> On 24 May 2001, the committee's terms of reference were again amended and provision was made for it to consider on its own motion 'any or all aspects, including policy, of a proposal for an agreement or arrangement' that would lead to legislation of a particular kind outlined in the Standing Orders.<sup>1593</sup>

#### 11.4 Standing Committee on Constitutional Affairs and Statutes Revision (1989)

On 21 December 1989 the Legislative Council established the Standing Committee on Constitutional Affairs and Statutes Revision.<sup>1594</sup> Consisting of three members, the terms of reference for the committee were to consider and report to the House on:

- (a) *what written laws of the State and spent or obsolete Acts of Parliament might be repealed from time to time;*
- (b) *what amendments of a technical or drafting nature might be made to the Statute book;*
- (c) *the form and availability of written laws and their publication;*
- (d) *any petition;*

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<sup>1590</sup> *Report of Standing Committee on Legislation in Relation to the Criminal Code Amendment (Incitement to Racial Hatred) Bill*, Legislative Council, August 1990, p.16.

<sup>1591</sup> WAPD, Legislative Council, 12 March 1998, p.480.

<sup>1592</sup> WAPD, Legislative Council, 12 March 1998, p.490.

<sup>1593</sup> WAPD, Legislative Council, 24 May 2001, p.442.

<sup>1594</sup> WAPD, Legislative Council, 21 December 1989, p.6878. The original motion had been moved by Hon. Bob Pike on 25 October 1989, but debate was adjourned. See: WAPD, Legislative Council, 25 October 1989, pp.3743–3743.

*(e) any matter of a constitutional or legal nature referred to it by the House.*<sup>1595</sup>

A further term of reference of the Standing Committee on Constitutional Affairs and Statutes Revision specified that ‘a petition stands referred to the Committee after presentation.’<sup>1596</sup>

The Hon. Joe Berinson proposed amendments to these terms of reference as he deemed them to be too broad, including not just ‘spent or obsolete Acts,’ but also ‘parts of Acts which are part of the written laws of the State and which the committee might want repealed.’<sup>1597</sup> He also did not agree with sending all petitions to the committee.<sup>1598</sup> However, Berinson’s amendments were not accepted and the proposed terms of reference, as above, were agreed to in the House.<sup>1599</sup> The Standing Orders under which the Standing Committee on Constitutional Affairs and Statutes Revision would operate were then debated and established.<sup>1600</sup> The committee was to commence operations on a day determined by the House within six sitting days of its first meeting in 1990.<sup>1601</sup> On 16 May 1990 the Legislative Council resolved that the Standing Committee on Constitutional Affairs and Statutes Revision would commence operations on 1 July 1990.<sup>1602</sup>

The inaugural Chairman of Standing Committee on Constitutional Affairs and Statutes Revision was Hon. Bob Pike, who was clearly one of the driving forces in the creation of the standing committee system. Given the terms of reference of the committee it is perhaps surprising that Pike, as a Liberal Party MLC, only had two other parliamentarians as committee members, namely the Hon. John Caldwell (National Party) and the Hon. Mark Nevill (Labor).<sup>1603</sup> This invariably meant that the role of advisory research officer was very significant. Notably, the research officer for Standing Committee on Constitutional Affairs and Statutes Revision, like many others in such positions, also fulfilled the same role for another committee, in this case, the Standing Committee on Legislation.

On 18 March 1992, in speaking to the proposition that half a sitting day be set aside for committee business, Bob Pike noted that because it had one city member and two country members it had been challenging for Standing Committee on Constitutional Affairs and Statutes Revision to find meeting dates suiting all three members. In effect, the Standing Committee on Constitutional Affairs and Statutes Revision found it difficult to achieve quorum.<sup>1604</sup> Subsequently, in August 1992, Mark Nevill resigned from the committee and was replaced by the Hon. Jon Halden.<sup>1605</sup>

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<sup>1595</sup> WAPD, Legislative Council, 21 December 1989, p.6878.

<sup>1596</sup> WAPD, Legislative Council, 21 December 1989, p.6878.

<sup>1597</sup> WAPD, Legislative Council, 21 December 1989, p.6878.

<sup>1598</sup> WAPD, Legislative Council, 21 December 1989, p.6879.

<sup>1599</sup> WAPD, Legislative Council, 21 December 1989, p.6879.

<sup>1600</sup> WAPD, Legislative Council, 21 December 1989, pp.6879–6887. These Standing Orders also applied to the Standing Committee on Estimates and Financial Operations.

<sup>1601</sup> WAPD, Legislative Council, 21 December 1989, p.6887.

<sup>1602</sup> WAPD, Legislative Council, 16 May 1990, p.909.

<sup>1603</sup> WAPD, Legislative Council, 16 May 1990, pp.909–910.

<sup>1604</sup> WAPD, Legislative Council, 18 March 1992, p.169.

<sup>1605</sup> WAPD, Legislative Council, 25 August 1992, p.3683.



The early work of Standing Committee on Constitutional Affairs and Statutes Revision was focussed on petitions presented to the Legislative Council which pertained to highly controversial and important matters. Many of these petitions were tabled by Reg Davies, the North Metropolitan MLC, who in August 1991 had formally resigned from the Liberal Party to become an Independent.<sup>1606</sup> Earlier, on 23 August 1990 Reg Davies, had presented a petition containing a substantial number of 79,567 signatures requesting Parliament introduce legislation ‘to deal with all cases of sexual and other crimes against children.’<sup>1607</sup>

As all petitions stand referred to Standing Committee on Constitutional Affairs and Statutes Revision, the committee began its consideration of this petition. The committee was aware that the sexual abuse of children was a complex matter already extensively researched by organisations such as the Western Australian Law Reform Commission and the Child Sexual Abuse Task Force, and that no one piece of legislation could effectively deal with all the issues involved.<sup>1608</sup> Given the importance of the issue, rather than initially call for submissions, the committee began by holding public hearings with those who had expressed a wish to give evidence. Overall, the Standing Committee on Constitutional Affairs and Statutes Revision was ‘faced with a proliferation of evidence,’ which led to it giving consideration to the length of non-parole sentences, the use of videotaped evidence, the need to allow children to give evidence via closed circuit television, whether to amend the statute of limitations legislation for child sexual abuse actions, mandatory therapy for offenders, removing ‘false reporting’ as an offence for children, the difficulty children have with being specific about the details of the offence, the age requirement for the corroboration of a child’s evidence, mandatory reporting and family court proceedings involving allegations of child sexual abuse.<sup>1609</sup> The committee’s report made 11 recommendations covering legislative change, the development of treatment programs, and the training of police and relevant Government agency staff.<sup>1610</sup>

Another particularly controversial matter which the Standing Committee on Constitutional Affairs and Statutes Revision considered was the failed Western Women Investment Group. In early 1991 the Western Women Group of companies (‘Western Women Group’) had collapsed and a provisional liquidator appointed. The collapse and the associated actions of the group’s principal, Ms Robin Greenburg, attracted considerable media attention. Concerns were expressed that there might have been inappropriate links between Western

<sup>1606</sup> WAPD Legislative Council, 20 August 1991, pp.3409–3410. The host of petitions presented by Reg Davies were about juvenile offenders and banning duck shooting. See, for example: WAPD, Legislative Council, 17 October 1991. Reg Davies presented another petition signed by 10,107 citizens, requesting the Parliament, to review the policy of cautioning juvenile offenders and to amend the *Child Welfare Act*.

<sup>1607</sup> WAPD, Legislative Council, 23 August 1990, p.4059.

<sup>1608</sup> *Report of Standing Committee on Constitutional Affairs and Statutes Revision in Relation to a Petition Seeking Legislation on Various Aspects of Substantive Law and Procedural Law Relating to Sex Offences Against Children*, Legislative Council, October 1991, pp.1–2.

<sup>1609</sup> *Report of Standing Committee on Constitutional Affairs and Statutes Revision in Relation to a Petition Seeking Legislation on Various Aspects of Substantive Law and Procedural Law Relating to Sex Offences Against Children*, Legislative Council, October 1991, pp.4–14.

<sup>1610</sup> *Report of Standing Committee on Constitutional Affairs and Statutes Revision in Relation to a Petition Seeking Legislation on Various Aspects of Substantive Law and Procedural Law Relating to Sex Offences Against Children*, Legislative Council, October 1991, pp.15–17.

Women and the Women's Information and Referral Exchange (WIRE), then a part of the Office of Women's Interests. It was alleged that WIRE staff had preferentially referred people to Western Women. On 8 September 1992 Robin Greenburg, who had been the head of the Investment Group, was sentenced to 17 years of imprisonment by the Perth District Court for offences relating to the collapse of her corporate empire.

Following the presentation of two petitions by Liberal MLC Peter Foss—one in August 1991 with 1,761 signatures and another in September 1991 with 209 signatures—the committee sought to consider the matter.<sup>1611</sup> While the severity of Robin Greenburg's sentence created a public debate, the committee was to determine whether the State should bear 'any legal responsibility for persons relying on the investment advice of that Group' for the losses.<sup>1612</sup> The committee was also asked to consider what legislation might be required to either prevent such events from occurring again or to at least enable them to be detected earlier.<sup>1613</sup>

In November 1991, Bob Pike advised the House that Hon. Reg Davies, Chair of the Standing Committee on Estimates and Financial Operations, expressed an interest in pursuing the matters relating to the Western Women Group, and that Standing Committee on Constitutional Affairs and Statutes Revision had resolved to refer the petition inquiry to that committee. However, 'after some delay,' the Standing Committee on Estimates and Financial Operations had decided not to investigate the matter and it once again stood referred to Standing Committee on Constitutional Affairs and Statutes Revision.<sup>1614</sup>

In June 1992, the Hon. Mark Nevill, no longer a member of Standing Committee on Constitutional Affairs and Statutes Revision, moved a motion in the House that the committee report on or before 18 June 1992 on its progress on the Western Women Group matter and that it provide its final report on the group's links with Government by 22 October 1992.<sup>1615</sup> A lengthy and intense debate, including criticism of the way the committee was operating, took place over two sitting days during which Mark Nevill amended the required reporting dates—10 September for the progress report and 26 November for the final report.<sup>1616</sup> With the President using his casting vote, the motion for the Standing Committee on Constitutional Affairs and Statutes Revision to provide two reports to the House was passed.

The committee met the first reporting date, tabling an interim report on 10 September 1992.<sup>1617</sup> However, it making its second interim report on 3 November 1992, the Standing

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<sup>1611</sup> See WAPD, Legislative Council, 21 August 1991, p.3603; and 10 September 1991, p.4225.

<sup>1612</sup> Standing Committee on Constitutional Affairs and Statutes Revision, *Interim Report on its Inquiry into Links between Government Agencies and the Failed Western Women Group*, Legislative Council, September 1992, p.2.

<sup>1613</sup> Standing Committee on Constitutional Affairs and Statutes Revision *Report—Government Agencies and the Western Women Group*, Legislative Council, September 1992, p.2.

<sup>1614</sup> WAPD, Legislative Council, 12 November 1991, p.6359.

<sup>1615</sup> WAPD, Legislative Council, 4 June 1992, p.3342.

<sup>1616</sup> WAPD, Legislative Council, 4 June 1992, pp.3342–3352; and 26 August 1992, pp.3856–3864.

<sup>1617</sup> Standing Committee on Constitutional Affairs and Statutes Revision, *Interim Report on its Inquiry into Links between Government Agencies and the Failed Western Women Group*, Legislative Council, September 1992.

Committee on Constitutional Affairs and Statutes Revision advised it was unable to meet the House-set date and requested an extension until 19 February 1993.<sup>1618</sup> Despite this extension of time, no comprehensive report was ever made by the committee, due to an election intervening in February 1993. Perhaps one other mitigating factor was that an inquiry was undertaken by the Public Service Commission 'into the relationship between the Women's Information and Referral Exchange and Western Women.'<sup>1619</sup> Later, too, the Legislative Assembly, passed a motion on 9 April 1992, requesting the Parliamentary Commissioner for Administrative Investigations (the Ombudsman) to examine and report, 'as a matter of priority,' as to whether there were any deficiencies in the Public Service Commission Inquiry, and 'whether any officer involved in the inquiry was improperly influenced by any Minister.'<sup>1620</sup>

#### 11.4.1 Review of the Standing Committees

Significantly, on 12 November 1991 the Attorney General, Joe Berinson, moved a motion requesting a Standing Orders Committee review the work of the Standing Committee on Constitutional Affairs and Statutes Revision's 'with a view to recommending whether the committee should be retained or terminated, and if retained, whether with any modifications to its structure, terms of reference or operations' were required, with a report to be presented no later than 3 December 1991.<sup>1621</sup> While the motion was ultimately defeated, it was subject to quite acrimonious debate.

According to Joe Berinson, the standing committee system was established on the understanding that it would proceed on an experimental basis, and that its operations would be reviewed as the need arose. Berinson provided a frank assessment of the performance of each of the three standing committees that had existed for the previous 18 months. On Berinson's judgement, the Standing Committee on Estimates had 'functioned reasonably well' and the Legislation Committee had 'performed a valuable service.'<sup>1622</sup>

However, he adopted a very different perspective in relation to Standing Committee on Constitutional Affairs and Statutes Revision, suggesting that it needed to be reviewed immediately. He complained about the lack of output by the committee, which he thought suggested that there had been scant need for it to deal with matters of substance. Moreover, he argued that where it had been called upon to deal with matters, its work had 'been largely superfluous,' particularly its examination of petitions.<sup>1623</sup> Here, Berinson repeated his objection to the Standing Committee on Constitutional Affairs and Statutes Revision having petitions in its terms of reference, and was particularly critical of its decision

<sup>1618</sup> Standing Committee on Constitutional Affairs and Statutes Revision, *Second Interim Report on its Inquiry into Links Between Government Agencies and the Failed Western Women Group*, Legislative Council, November 1992.

<sup>1619</sup> See WAPD, Legislative Assembly, 9 May 1991, pp.1695–1696.

<sup>1620</sup> WAPD, Legislative Assembly, 9 April 1992; and Parliamentary Commissioner for Administrative Investigations, *Report to the Speaker of the Legislative Assembly of the Parliament of Western Australia on the Public Service Commission Review of the Women's Information and Referral Exchange*, Perth, 2 October 1992.

<sup>1621</sup> WAPD, Legislative Council, 12 November 1991, p.6355.

<sup>1622</sup> WAPD, Legislative Council, 12 November 1991, p.6355.

<sup>1623</sup> WAPD, Legislative Council, 12 November 1991, p.6356.

to take action on the petition concerning sexual offences against children. Instead, Berinson thought the committee should be giving consideration to its other terms of reference such as statutes revision, the repealing of obsolete acts, and constitutional matters.<sup>1624</sup>

He also argued that the Standing Orders Committee review should determine whether the time and effort expended on the Standing Committee on Constitutional Affairs and Statutes Revision 'might be better applied elsewhere,' and that its 'terms of reference might readily be accommodated' in another committee.<sup>1625</sup>

The stance taken by Attorney General Berinson was supported by his Labor colleague Mark Nevill, who until two months earlier had been a member of Standing Committee on Constitutional Affairs and Statutes Revision. Nevill, too, had been a member of the 1985 Legislative Council select committee chaired by Vic Ferry and Jim Brown which, amongst other recommendations, called for the House to establish one committee encompassing the functions of the existing Legislation Committee and the Standing Committee on Constitutional Affairs and Statutes Revision. Nevill's general view was that too many standing committees had been established in the Legislative Council.<sup>1626</sup> He also suggested that the Legislation Committee 'is worked about 20 times as hard as other committees of this House,' with its members shouldering 'an unfair burden of work.'<sup>1627</sup>

As expected, Chairman Bob Pike was critical of the motion to review the work of the Standing Committee on Constitutional Affairs and Statutes Revision, and vigorously defended the role of his committee generally, and its handling of petitions in particular, which, he suggested, in the Legislative Assembly 'go nowhere.'<sup>1628</sup> His committee had already dealt with 19 petitions and in each instance had communicated with the relevant Minister, the petitioners and the member who tabled the petition. He also noted some 'incredible delays' in received Ministerial responses to committee correspondence.<sup>1629</sup>

Pike made a number of comments in relation to the time it had taken the Standing Committee on Constitutional Affairs and Statutes Revision to undertake its work and report to the House. He reminded members of the difficulties the committee had faced in relation to attaining a quorum for meetings and with staffing issues. He was scathing of the Government depriving the Council of funding and, consequently, 'staff and research facilities by a contemptible prorogation of Parliament,' something he described as an act of executive Government designed 'to shut up the committees' of the Parliament.<sup>1630</sup>

Bob Pike, in strongly opposing Berinson's motion to review the committee's work, also addressed its other terms of reference. He defended the inactivity of his committee with respect to consideration of obsolete Acts of Parliament, arguing that because there was a 'surfeit of laws and regulations' in Western Australia, repealing obsolete legislation would

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<sup>1624</sup> WAPD, Legislative Council, 12 November 1991, pp.6356–6357.

<sup>1625</sup> WAPD, Legislative Council, 13 November 1991, p.6547.

<sup>1626</sup> WAPD, Legislative Council, 12 November 1991, p.6362.

<sup>1627</sup> WAPD, Legislative Council, 12 November 1991, p.6363.

<sup>1628</sup> WAPD, Legislative Council, 12 November 1991, p.6358.

<sup>1629</sup> WAPD, Legislative Council, 12 November 1991, p.6360.

<sup>1630</sup> WAPD, Legislative Council, 12 November 1991, p.6362.

be ‘one of the biggest projects’ that the Standing Committee on Constitutional Affairs and Statutes Revision would undertake, and not something it could do ‘quickly or willy-nilly.’<sup>1631</sup> According to Pike, ‘the sooner we have less Government and less regulation and not more, the better.’<sup>1632</sup>

Pike also conceded that as the ‘architect’<sup>1633</sup> of all the Legislative Council’s standing committees he did not believe that the set of Standing Orders and terms of reference for these committees ‘should be cast in concrete—far from it.’<sup>1634</sup> This outlook had encouraged him to conduct informal discussions with each of the five chairs of the standing committees to meet regularly about matters of general concern. None of them, according to Pike, had been consulted by Berinson about the work of their committees.<sup>1635</sup>

Perhaps of even greater moment was Pike’s reference to what he saw as ‘one of the most fundamental activities’ of the Standing Committee on Constitutional Affairs and Statutes Revision, namely ‘to review the process by which Statutes are revised and by which uniform legislation is imposed on the States by a Commonwealth which controls the purse strings.’<sup>1636</sup> He believed that the Parliament should be guaranteed enough time to review uniform legislation, a phenomenon emerging out of Australian federalism. Pike contended that Attorney General Berinson had been ‘the architect of the ambush which forced the Parliament of Western Australia to adopt securities legislation which it had no more than three or four days to consider.’<sup>1637</sup>

In fact, action on the constitutional matter of uniform legislation, as well debate on Berinson’s motion of review, or even an examination of the original theories which justified the standing committee system, was never put to a vote. Indeed, it was the Legislative Assembly that finally took the initiative to create a Standing Committee on Uniform Legislation. The all-encompassing review of the parliamentary committee system was a task for the WA Inc. Royal Commission in 1991 which was also to assign the envisaged Commission of Government the task of review.

### 11.5 Standing Committee on Constitutional Affairs (1998)

In August 1997 the Select Committee to Review the Legislative Council Standing Committee System report made a number of recommendations on ways to improve the effectiveness and efficiency of the Legislative Council’s committee system. In relation to the Standing Committee on Constitutional Affairs and Statutes Revision it argued that while it had not inquired into any constitutional or legal matters since it had been established, that was because such matters must be referred from the House.<sup>1638</sup> The review led to a number of

<sup>1631</sup> WAPD, Legislative Council, 12 November 1991, p.6359.

<sup>1632</sup> WAPD, Legislative Council, 12 November 1991, p.6359.

<sup>1633</sup> WAPD, Legislative Council, 12 November 1991, p.6361.

<sup>1634</sup> WAPD, Legislative Council, 12 November 1991, p.6362.

<sup>1635</sup> WAPD, Legislative Council, 12 November 1991, p.6357.

<sup>1636</sup> WAPD, Legislative Council, 12 November 1991, p.6361.

<sup>1637</sup> WAPD, Legislative Council, 12 November 1991, p.6361.

<sup>1638</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.17. Only one matter was referred, but it had lapsed due to the prorogation of parliament.

recommendations for significant changes to the terms of reference of the Standing Committee on Constitutional Affairs and Statutes Revision, recommending that it be 'reconstituted as a Constitutional Affairs Committee,' and that it have the power to initiate its own inquiries on matters affecting the State's constitutional or legal relationship with other Australian jurisdictions.<sup>1639</sup> It was suggested that the power to initiate its own inquiries would help the committee 'perform an educational function at the parliamentary and community levels.'<sup>1640</sup> It also made recommendations in relation to which Bills and petitions would be referred to the reconstituted committee.

Following a brief debate on the recommendations, on 12 March 1998 new terms of reference were adopted for the newly named Standing Committee on Constitutional Affairs, which would still consist of three members. The functions of the Standing Committee on Constitutional Affairs were to inquire into and report on:

- (a) *the constitutional law, customs and usages of Western Australia;*
- (b) *the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories, and any related matter or issue;*
- (c) *a bill to which SO 230(c) applies but subject to SO 230(d);*<sup>1641</sup>
- (d) *any petition.*<sup>1642</sup>

Furthermore, while a petition once presented to the House stood referred to the Standing Committee on Constitutional Affairs, the committee could refer it to another standing committee with terms of reference more appropriate to the petition.<sup>1643</sup>

The new Standing Committee on Constitutional Affairs, this time with Murray Nixon, Thomas Helm and Ray Halligan as members, presented its first report to the House in the same month it was established.<sup>1644</sup> The report deals with a petition tabled on 6 March 1996 whereby Mr James Allison sought relief for the Painters' Registration Board's refusal to register him under the *Painters' Registration Act 1961*, and Mr Allison's subsequent re-application of 1997, which was also rejected.

Between its establishment in March 1998 and its expiry at the end of the 35th Parliament on 10 January 2001, Standing Committee on Constitutional Affairs tabled some 43 reports in the Legislative Council.

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<sup>1639</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.3.

<sup>1640</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.18.

<sup>1641</sup> Standing Order 230(c) refers to the requirement for a Bill relating to intergovernmental agreements or to uniform schemes or legislation to be dealt with within 30 days from its first reading. Under SO 230(d) such Bills must be referred to the Standing Committee on Constitutional Affairs, which, in turn, must report to the House within 30 days. See the 1998 *Standing Orders of the Legislative Council*.

<sup>1642</sup> WAPD, Legislative Council, 12 March 1998, pp.489–490.

<sup>1643</sup> WAPD, Legislative Council, 12 March 1998, p.490.

<sup>1644</sup> *Report of the Constitutional Affairs Committee in Relation to a Petition regarding the Application for Registration as a Painter under the Painters' Registration Act 1961 of James Allison*, Legislative Council, March 1998.



## 11.6 Standing Committee on Uniform Legislation and Intergovernmental Agreements (1993)

### 11.6.1 Select Committee on Parliamentary Procedures for Uniform Legislation Agreements

While general concern about the centralising trends in Australian federalism was an existing element of Western Australian political culture, the specific event which gave momentum to the eventual formation of the Standing Committee on Uniform Legislation and Intergovernmental Agreements was the passage of two Queensland Acts of Parliament pertaining to uniform financial institutions legislation. These Acts, the *Financial Institutions (Queensland) Act 1992* and the *Australian Financial Institutions Commission Act 1992* (Cth) were themselves the result of discussions at a Special Premiers Conference held in Brisbane in late October 1990. On 22 November 1991, the State and Territory Heads of Government *Financial Institutions Agreement* (the Agreement) was developed and agreed to by the Ministerial Council on Financial Institutions.<sup>1645</sup>

The Agreement details the system by which States would provide ‘prudential supervision of permanent building societies and credit unions’ through ‘uniform legislation, with national co-ordination of uniform high standards and practices and provision for suitable industry-funded national liquidity support mechanisms.’<sup>1646</sup> This was considered necessary to improve investor confidence in non-bank financial institutions, particularly after the collapse of the Pyramid Building Society in Victoria and the Teachers Credit Society in Western Australia. Under the Agreement Queensland was the host State, passing the primary legislation, with other States needing to incorporate it into their laws. The Agreement provided that the Queensland primary legislation would be passed by 31 March 1992, and other States would adopt it by 30 June 1992, so that the scheme could be implemented on 1 July 1992.<sup>1647</sup>

The three Bills needed for this legislation were introduced into the Western Australian Legislative Assembly on 14 May 1992.<sup>1648</sup> Given the agreement that uniform legislation would be passed by 30 June, time was of the essence. On 26 May 1992 permission was granted by the House for the second reading of these Bills debated cognately.<sup>1649</sup> During this debate concern was raised about the way in which the Bills had been dealt and the approach taken to attain the uniform legislation. In particular, and given the importance and complexity of the legislation, a major concern was that the Queensland Acts had not been incorporated into the Bills—nor had copies been provided to members for scrutiny.<sup>1650</sup>

<sup>1645</sup> *Report of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements*, Legislative Assembly, August 1992, p.5; and WAPD, Legislative Assembly, 26 May 1992, p.2546.

<sup>1646</sup> *Report of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements*, Legislative Assembly, August 1992, p.5.

<sup>1647</sup> *Report of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements*, Legislative Assembly, August 1992, p.5.

<sup>1648</sup> WAPD, Legislative Assembly, 14 May 1992, p.2393. The Bills were the Financial Institutions (Western Australia) Bill, the Western Australian Financial Institutions Authority Bill and the Financial Institutions (Taxing) Bill.

<sup>1649</sup> WAPD, Legislative Assembly, 26 May 1992, p.2546.

<sup>1650</sup> WAPD, Legislative Assembly, 3 June 1992, pp.3297–3298.

Furthermore, given that the legislation had to be passed by both Houses by 4 June, which was the end of the autumn session, the time available to consider the Bills was held to be inadequate.<sup>1651</sup>

Not surprisingly there was consternation about the Western Australian Parliament, in effect, 'delegating some of its powers to the Queensland Parliament and the ministerial Council for Financial Institutions.'<sup>1652</sup> There were three main concerns over this arrangement:

- amendments and regulations to the Queensland Acts would not come to the Western Australian Parliament for consideration;
- appeals on questions of law must be started in the Queensland Supreme Court regardless of where the action arises and despite the Appeals Tribunal sitting in each State;
- the Ministerial Council could amend the Queensland Acts by a majority rather than a unanimous vote, meaning that the Western Australia's interests would not be a primary consideration yet Western Australia would be 'bound by the agreement.'<sup>1653</sup>

While members were mindful of the need for Western Australia to be part of the uniform legislation scheme, there was considerable disquiet about the arrangement that enhanced the power of the executive and effectively made State and Territory parliaments a mere rubber stamp to legislation formulated through Ministerial Agreements.<sup>1654</sup>

So apparent was the unease about the course of events that it led to Premier Carmen Lawrence successfully moving as early as 4 June 1992 for the immediate appointment of a select committee to inquire into the delegation of Parliament's legislative functions, which would report upon the processes involved in establishing and maintaining uniform legislation, and the mechanism by which Parliaments authorise a host Parliament to enact legislation applicable to all participating jurisdictions.<sup>1655</sup> The Leader of the National Party, Hendy Cowan, agreed with this course of action, as did the Opposition, with Cheryl Edwardes MLA stating such a select committee was important and that Parliament should not delegate its functions 'without being fully aware of the effects and implications.'<sup>1656</sup>

Following its inquiry, which included whirlwind visits to the New South Wales, Queensland and Commonwealth Parliaments for meetings over two and a half days, and deliberating on the evidence from 25 submissions and 19 hearing witnesses, the select committee met its

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<sup>1651</sup> WAPD, Legislative Assembly, 3 June 1992, p.3306.

<sup>1652</sup> WAPD, Legislative Assembly, 3 June 1992, p.3306; and *Report of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements*, Legislative Assembly, August 1992, p.3. It was suggested that Queensland was chosen as the host state for the financial institutions legislation and as a model for future Acts as it did not have an Upper House, thus guaranteeing the passage of the government's legislation. See: WAPD, Legislative Assembly, 27 August 1992, p.4067.

<sup>1653</sup> WAPD, Legislative Assembly, 27 August 1992, p.4066; and *Report of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements*, Legislative Assembly, August 1992, p.3.

<sup>1654</sup> *Report of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements*, Legislative Assembly, August 1992, p.3,

<sup>1655</sup> WAPD, Legislative Assembly, 4 June 1992, p.3580.

<sup>1656</sup> WAPD, Legislative Assembly, 4 June 1992, p.3581.

reporting date of 27 August 1992 with the *Report of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements*.<sup>1657</sup>

The select committee's comprehensive report provided a set of recommendations addressing Parliament's concerns about national uniform legislation. Foremost amongst these was that, to avoid similar problems in the future:

*the primary consideration in decisions on participation in intergovernmental agreements and uniform legislative schemes should be whether Western Australia will be better served by the enactment of uniform law than by Western Australian legislation specifically drafted to address Western Australian needs and requirements.*<sup>1658</sup>

With this proviso it also stipulated that there should be a mechanism by which the Western Australian Parliament could scrutinise proposed uniform legislation and intergovernmental agreements as early as possible in their development. In view of this, the committee recommended the establishment of a standing committee of the Parliament 'to scrutinise, monitor and review intergovernmental agreements and uniform schemes' and related Ministerial Council decisions, regardless of which jurisdictions were involved or which model was 'adopted to achieve uniformity.'<sup>1659</sup>

This meant that the select committee was advocating a joint standing committee of both Houses, with terms of reference and membership to be determined. The thrust of the recommendations was to ensure that 'Ministers responsible for formal or informal agreements involving uniform or co-operative legislation' reported in detail to both Houses as early as possible.<sup>1660</sup> The recommendations also addressed issues such as providing enough time for scrutiny of the draft legislation, the desirability of 'a central register of current and proposed, formal and informal intergovernmental agreements,' and, significantly, the need for all uniform legislation to include a clause allowing parties to withdraw on specified terms, and to permit question-of-law appeals to the Supreme Court of Western Australia, rather than being heard in Queensland.<sup>1661</sup>

The select committee presented a well-researched position on uniform legislation from the Western Australian perspective. In fact, committee member Dr Elizabeth Constable (Independent) said the Parliament should 'take pride' in being the first jurisdiction to examine the matter.<sup>1662</sup>

<sup>1657</sup> *Report of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements*, Legislative Assembly, August 1992.

<sup>1658</sup> *Report of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements*, Legislative Assembly, August 1992, p.45.

<sup>1659</sup> *Report of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements*, Legislative Assembly, August 1992, p.45.

<sup>1660</sup> *Report of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements*, Legislative Assembly, August 1992, p.46.

<sup>1661</sup> *Report of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements*, Legislative Assembly, August 1992, pp.45–51.

<sup>1662</sup> WAPD, Legislative Assembly, 27 August 1992, p.4087.

### 11.6.2 Legislative Assembly Action on Uniform Legislation

The Select Committee on Parliamentary Procedures for Uniform Legislation Agreements recommended the formation of a joint standing committee, as discussed above. However when the Legislative Assembly of the 34th Parliament was establishing its committees, Cheryl Edwardes, then Attorney General in the Richard Court Liberal Government, moved to establish an Assembly-only Standing Committee on Intergovernmental Agreements and Uniform Legislation Schemes.<sup>1663</sup>

In speaking to the motion, Cheryl Edwardes explained that because the Legislative Council's existing Standing Committee on Constitutional Affairs and Statutes Revision 'would be considering similar matters,' the terms of reference for the proposed Assembly committee included provision for it to 'confer with any committee of the Legislative Council' dealing with similar issues.<sup>1664</sup> Dr Constable supported the motion, reminding the House that the Royal Commission into Commercial Activities of Government and Other Matters had commented on the role of committees. She suggested that the proposed standing committee, like other committees, would have a 'special accountability role,' and argued that 'instead of being passive recipients of legislation,' it was time for active participation.'<sup>1665</sup>

While the Opposition did not oppose the formation of this committee, concern was expressed about the pressing need for uniform legislation in Australia. The Opposition also stressed a critical need for the committee to be seen as independent, with an accountability function equivalent to the Public Accounts and Expenditure Review Committee and the Joint Standing Committee of Delegated Legislation. The Opposition also called for an equal number of Government and non-Government members together with Dr Constable, the member for Floreat, who was an Independent.<sup>1666</sup>

The motion to appoint members to the Standing Committee on Uniform Legislation and Intergovernmental Agreements named three Government members, one Independent and one Labor member.<sup>1667</sup> Considering this an 'outrage,' the Opposition called for a ballot to determine membership as provided for in the Standing Orders.<sup>1668</sup> Not surprisingly, the

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<sup>1663</sup> WAPD, Legislative Assembly, 4 August 1993, p.1835. While the motion adopted by the House was for a Standing Committee on Intergovernmental Agreements and Uniform Legislation Schemes, the committee was thereafter referred to, and referred to itself as, the Standing Committee on Uniform Legislation and Intergovernmental Agreements. The latter is the term used in this publication.

<sup>1664</sup> WAPD, Legislative Assembly, 4 August 1993, pp.1836–1837.

<sup>1665</sup> WAPD, Legislative Assembly, 4 August 1993, p.1839.

<sup>1666</sup> WAPD, Legislative Assembly, 4 August 1993, p.1837.

<sup>1667</sup> WAPD, Legislative Assembly, 4 August 1993, p.1840. The nominated members were Anthony Prince (Albany), Robert Johnson (Whitford) and Robert Bloffwitch (Geraldton) as Liberal members; Elizabeth Constable, Independent (Floreat); and Fred Riebeling, Labor (Asburton).

<sup>1668</sup> WAPD, Legislative Assembly, 4 August 1993, p.1840. The ballot provision at that time was provided for under Legislative Assembly Standing Order 355.

result of the ballot confirmed the five nominated members (three Liberal, one Independent and one Labor).<sup>1669</sup>

### 11.6.3 Standing Committee Activity

Once the Standing Committee on Uniform Legislation and Intergovernmental Agreements commenced its activities it recorded a substantial first year of experience. Initially, Liberal Kevin Prince was appointed as the Chairperson, but within a few months (in January 1994) he was appointed to the Richard Court Government Ministry. This led to the appointment of Phil Pandal (Liberal) to the committee, and he was immediately elected as the Chairman. As a committed federalist he drove the committee to action with the strong support of Deputy Chairperson, Dr Elizabeth Constable.<sup>1670</sup>

In March 1994 the Standing Committee on Uniform Legislation and Intergovernmental Agreements tabled its first report, which Phil Pandal described as ‘but the first of many in a field crying out for robust debate and creative solutions.’<sup>1671</sup> This report provided an analysis of the select committee’s recommendations and described how the Standing Committee on Uniform Legislation and Intergovernmental Agreements planned to address them. The report also made recommendations for amendments to the Legislative Assembly Standing Orders to facilitate the committee’s work.<sup>1672</sup>

The standing committee’s first annual report, tabled in May 1995, indicated it had completed a staggering seven major inquiries involving some 44 meetings, held hearings and briefings with approximately 140 persons with relevant expertise, and undertaken an overseas and interstate study tour.<sup>1673</sup> This study tour assisted the committee in its review of uniform legislation agreements in Australia, the United States, Canada and the United Kingdom, which was the focus of its June 1994, its fourth report.<sup>1674</sup>

Given the committee was unique in Australia, it was not surprising that it received numerous invitations to speak at conferences around Australia. In 1994 the committee received invitations to three conferences, attending the National Conference on Micro-economic Reform and Federalism and the Conference on Delegated Legislation and Scrutiny

<sup>1669</sup> WAPD, Legislative Assembly, 4 August 1993, p.1841. The ballot returned 49 votes for the member for Floreat and for Ashburton, 48 for the member for Whitford, 47 for the member for Geraldton and 28 for the member for Albany.

<sup>1670</sup> WAPD, Legislative Assembly, 4 August 1993, p.1839.

<sup>1671</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Establishment and Analysis. Establishment of the Standing Committee and Analysis of the Recommendations of the Select Committee. First Report in the Thirty-Fourth Parliament*, Legislative Assembly, March 1994, p.vi.

<sup>1672</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Establishment and Analysis. Establishment of the Standing Committee and Analysis of the Recommendations of the Select Committee. First Report in the Thirty-Fourth Parliament*, Legislative Assembly, March 1994, pp.11–13.

<sup>1673</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements, *First Annual Report. A Year’s Experience*, Legislative Assembly, May 1995, p.5.

<sup>1674</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements, *First Annual Report. A Year’s Experience*, Legislative Assembly, May 1995, p.15; and *Parliament and the Executive. Parliamentary Scrutiny and Review of Uniform Legislation and Intergovernmental Agreements*, Legislative Assembly, June 1994.

of Bills Committees. By May 1995 it had already received a further three invitations, including two to present conference papers.<sup>1675</sup>

The importance of the work of the committee was exemplified by its inquiry into the desirability of the State participating in a mutual recognition scheme. Mutual recognition for goods and occupations means that goods meeting all the conditions for sale in one jurisdiction can be sold in another, and a person whose qualifications are recognised in one jurisdiction can practice in another. By 1994, Western Australia was the only State not to participate in the Australia-wide scheme outlined in the *Mutual Recognition Act 1992* (Cth).<sup>1676</sup>

In 1993 the Cabinet had agreed that Western Australia should participate in the scheme through adoptive legislation. In 1994 the committee examined the implications for the State joining the current scheme. In its fifth report, tabled in June 1994, the committee recommended that Western Australia 'join the scheme' by adopting the Commonwealth's *Mutual Recognition Act 1992* 'as an interim measure,' and that from 1997 the current scheme should be renegotiated to be replaced with a 'states-territories mutual recognition scheme without the Commonwealth.'<sup>1677</sup> The Government decision was to adopt the federal legislation as it was, but that any amendments must be scrutinised by the Western Australian Parliament prior to being incorporated into State law. The Bill also provided that the State's participation would cease on 28 February 1998 when a review of its effectiveness for Western Australia would be conducted.<sup>1678</sup> Following the adoption of the *Mutual Recognition (Western Australia) Act 1995*, successive Acts have continued the State's participation in the scheme, the most recent being the *Mutual Recognition (Western Australia) Act 2010*, which is due to expire on 28 February 2021.<sup>1679</sup>

In the committee's first annual report Chairman Phil Pandal also noted that in a number of reports it had recommended changes to the Legislative Assembly's Standing Orders to allow for debate on draft intergovernmental agreements before a Minister formally committed the State to a particular scheme. While recognising that any commitment by the executive is not binding until Western Australian legislation is passed, the committee wanted to ensure that Parliament have 'the opportunity to consider intergovernmental schemes before an agreement is made with any other jurisdiction.'<sup>1680</sup> In fact, the committee's first report, tabled in March 1994, included 'a guide to ensure the involvement of Parliament in the

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<sup>1675</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements *First Annual Report. A Year's Experience*, Legislative Assembly, May 1995, p.v.

<sup>1676</sup> WAPD, Legislative Assembly, 23 November 1994, p.7484; and Standing Committee on Uniform Legislation and Intergovernmental Agreements *First Annual Report. A Year's Experience*, Legislative Assembly, May 1995, p.16.

<sup>1677</sup> WAPD, Legislative Assembly, 23 November 1994, p.7484.

<sup>1678</sup> WAPD, Legislative Assembly, 23 November 1994, pp.7484–7485.

<sup>1679</sup> Mutual Recognition (Western Australia) Bill 2010, *Explanatory Memorandum*, p.1.

<sup>1680</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements *First Annual Report. A Year's Experience*, Legislative Assembly, May 1995, p.v.



scrutiny of intergovernmental agreements for proposed future uniform legislation agreed to at Ministerial Council.’<sup>1681</sup>

Furthermore, the committee’s third report argued that there was an ‘urgent need for a comprehensive Parliamentary register to monitor the existence and development of proposed uniform legislation and intergovernmental agreements in Australia.’<sup>1682</sup> However, between the tabling of that report in April 1994 and its 1995 annual report, the committee discovered that Melbourne University’s Centre for Comparative Constitutional Studies had started a similar project. In light of this, the committee decided not to develop a register and anticipated the university’s register to be of benefit to its own work.<sup>1683</sup>

A major issue that the Standing Committee on Uniform Legislation and Intergovernmental Agreements saw fit to investigate was the impact of the Independent Committee Inquiry into National Competition (the Hilmer Report 1993) on Western Australia. In particular the committee aimed to determine how the legislation would be enacted in Western Australia and other Australian jurisdictions, and the costs and benefits of the scheme for Western Australia.<sup>1684</sup> With this challenge in mind as part of an ever increasing number of intergovernmental arrangements that committee sought to monitor, it was not surprising that it saw committee resourcing as a major issue. The committee’s first annual report called for ‘immediate and realistic resources to be made available by way of increased research capacity,’ stating that failure to provide these resources would severely restrict its ability to meet its responsibilities.<sup>1685</sup>

Following the 14 December 1996 Western Australian State election, a new Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements was re-established on 18 March 1997.<sup>1686</sup> In speaking to the motion to establish the committee, Dr Elizabeth Constable argued that this would constitute recognition by the House of ‘the increasing complexity of Commonwealth–State relations and the importance of this Parliament in monitoring the relationship between the Commonwealth and the State and, particularly, in monitoring the work of ministerial councils.’<sup>1687</sup>

The five-member committee was chaired by Kevin Minson, a former Liberal Party Minister, with Labor member Fred Riebeling (a future Speaker) the Deputy Chair. Other members were Ted Cunningham (Labor), and Dan Barron-Sullivan and Rodney Sweetman (both

<sup>1681</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements *First Annual Report. A Year’s Experience*, Legislative Assembly, May 1995, p.14.

<sup>1682</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements *First Annual Report. A Year’s Experience*, Legislative Assembly, May 1995, p.14.

<sup>1683</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements *First Annual Report. A Year’s Experience*, Legislative Assembly, May 1995, p.15.

<sup>1684</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements *First Annual Report. A Year’s Experience*, Legislative Assembly, May 1995, p.18.

<sup>1685</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements *First Annual Report. A Year’s Experience*, Legislative Assembly, May 1995, p.21.

<sup>1686</sup> WAPD, Legislative Assembly, 18 March 1997, p.431.

<sup>1687</sup> WAPD, Legislative Assembly, 18 March 1997, p.432.

Liberal).<sup>1688</sup> The scale of the committee's work was considerable in terms of reports and advice, particularly given the context of its operation being the changing domain of federalism and the impact of globalisation.<sup>1689</sup>

Whilst the committee's primary role was to inform the House 'about proposed or current uniformed legislative schemes and intergovernmental agreements,' it was also developing a means through which the executive would inform Parliament of 'continuing developments in the unification and harmonisation of Statute Law,' thus allowing Parliament to have input at the policy development stage.<sup>1690</sup> A review of report subject matter gives some indication of the scale of the committee's role. This includes reports on evidence law, Ministerial Councils, the Bank Mergers Bill 1997, uniform legislation, cooperatives law, financial systems reform, and competition policy and reforms in the public utility sector.<sup>1691</sup>

A major piece of work undertaken by the committee was to identify and classify nine legislative structures relating to uniformity in legislation. The structures identified were:

- complementary Commonwealth-State or cooperative legislation;
- complementary or mirror legislation;
- template, cooperative, applied or adopted complementary legislation;
- referral of power under s 51 (xxxvii) of the Australian Constitution;
- alternative consistent legislation;
- mutual recognition;
- unilateralism;
- a non-binding national standards model; and
- adoptive recognition.<sup>1692</sup>

The relevance of this exercise was illustrated in the Legislative Assembly Select Committee on the *Human Reproductive Technology Act 1991* which tabled its extensive report on 22 April 1999. Chaired by National Party member, Dr Hilda Turnbull, the select committee called for the adoption of 'consistent uniform, national legislation' on the technology 'as a matter of priority' and recommended that the Standing Committee on Uniform Legislation and Intergovernmental Agreements be asked to inquire into the matter.<sup>1693</sup>

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<sup>1688</sup> WAPD, Legislative Assembly, 18 March 1997, p.434. The membership of the committee underwent some changes, with Monica Holmes (Liberal) replacing Rodney Sweetman in May 1997 and John McNee (Liberal) replacing Daniel (Dan) Barron-Sullivan in May 1998. See: Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Committee Report of Activities. November 1996—October 1999*, Legislative Assembly, October 1999, p.1.

<sup>1689</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Committee Report of Activities. November 1996—October 1999*, Legislative Assembly, October 1999, p.10.

<sup>1690</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Committee Report of Activities. November 1996—October 1999*, Legislative Assembly, October 1999, p.9.

<sup>1691</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Committee Report of Activities. November 1996—October 1999*, Legislative Assembly, October 1999, pp.11–14.

<sup>1692</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Committee Report of Activities. November 1996—October 1999*, Legislative Assembly, October 1999, p.57.

<sup>1693</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Committee Report of Activities. November 1996—October 1999*, Legislative Assembly, October 1999, p.21.

Importantly, too, the committee was very active, with members attending relevant conferences and participating in investigative tours including trips to Brussels, Bonn, Toronto, Washington and Wellington. Representatives from the upper House of the Federal Republic of Germany, the *Bundesrat*, met with the committee on 8 December 1998 with a view to ‘establishing contacts and exchanging information and views.’<sup>1694</sup> The committee was also aware the existence of relevant committees in all Australian jurisdictions, and undertook an investigative tour of Brisbane, Canberra and Melbourne. In late June 1999 committee members also attended a Commonwealth Parliament Joint Standing Committee on Treaties seminar in Canberra on the role of Parliaments in treaty making. It was considered that further meetings would improve ‘public awareness of treaty actions’ and provide a State perspective into the deliberations of the Joint Standing Committee on Treaties.<sup>1695</sup>

While the 1995 Commission on Government reported that the Standing Committee on Uniform Legislation and Intergovernmental Agreements ‘had gained considerable status and recognition for its work,’ it concluded that the committee ‘should be abolished’ and its functions performed by the Legislative Council’s Standing Committee on Constitutional and Federal State Affairs.<sup>1696</sup> Similarly, the Legislative Assembly’s Select Committee on Procedure recommended that the committee’s functions be amalgamated with those of the Joint Standing Committee on Delegated Legislation, with an appropriate amendment to the joint committee’s terms of reference.<sup>1697</sup>

While the Standing Committee on Uniform Legislation and Intergovernmental Agreements itself did not agree with these recommendations and argued against them, ultimately, in 2001 the committee’s function was transferred the Legislative Council Constitutional Affairs Standing Committee. These changes are discussed further in Volume 2.

### 11.7 Standing Committee on Public Administration (1996)

The creation of the Standing Committee on Government Agencies in 1982 had represented the beginnings a major new direction by the Legislative Council towards the creation of a standing committee system in the upper House broadly replicating the direction of the Australian Senate. However, as the committee system had evolved there had been signs that modifications were being sought to the inaugural Standing Committee on Government Agencies. The response was the establishment of the Standing Committee on Public Administration in 1996. Liberal MLC Barry House, who was also the Chairman of Committees as well as Chairman of the Standing Committee on Government Agencies, moved a motion to establish the Standing Committee on Public Administration to investigate and report on

<sup>1694</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Committee Report of Activities. November 1996—October 1999*, Legislative Assembly, October 1999, p.16.

<sup>1695</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Committee Report of Activities. November 1996—October 1999*, Legislative Assembly, October 1999, p.18.

<sup>1696</sup> Commission on Government, *Report No.2, Part 2*, December 1995, p.252.

<sup>1697</sup> Standing Committee on Uniform Legislation and Intergovernmental Agreements, *The Committee’s Response to the Final Report of the Select Committee on Procedure*, Legislative Assembly, October 1996, p.4.

‘the means of establishing State agencies’ and on any Bill ‘providing for the creation, alteration or abolition of an agency.’<sup>1698</sup>

In commenting on the change of terminology from ‘Government agencies’ to ‘State agencies,’ Barry House noted that this terminology varies across other jurisdictions and reminded the House that when the Standing Committee on Government Agencies had been established there had been considerable confusion on the part of members and the public about QANGOS<sup>1699</sup>—what they were and how many of them existed.<sup>1700</sup> Thus, the proposed terms of reference provided a detailed seven-part definition of what constituted an ‘agency’ as an instrumentality of the Western Australian Government.<sup>1701</sup>

Labor MLC Kim Chance viewed the motion as the culmination of a ‘process of self-analysis’ that the Standing Committee on Government Agencies had been engaged in for several years.<sup>1702</sup> In supporting the motion, Chance portrayed the change of definition of agency as a ‘fundamental reform,’ paraphrasing agency to mean ‘a body established for a function which has a public purpose and relies on public funds to some extent to achieve that purpose.’<sup>1703</sup>

Chance further explained that large departments such as agriculture can be comprised of different agencies, each of which has a different function; some ‘might be regulatory, advisory or operational, and sometimes all three. The lines are blurred.’<sup>1704</sup> He added:

*Parliament should not be deterred from its power to inquire into the creation of those agencies and their performance simply because we cannot define on which side of the line they fall because the line is blurred and multicoloured. This reform had to happen.*<sup>1705</sup>

Barry House also emphasised the jurisdiction argument, stating that:

*we needed to close the gaps in our jurisdictions. They have been identified at times by the reports by the Ombudsman and Auditor General; and by the Commission on Government.*<sup>1706</sup>

With reference to the Commission on Government, Kim Chance, after paying tribute to the Standing Committee on Government Agencies members, was keen to emphasise that the move to a standing committee with modified terms of reference and definitions was:

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<sup>1698</sup> WAPD, Legislative Council, 22 August 1996, p.4435.

<sup>1699</sup> As discussed in Chapter 9, the 1980s saw a proliferation of government and quasi-government agencies. These were often referred to colloquially as QANGOS. The term QANGO (sometimes spelt QUANGO) was used at the time to mean ‘quasi-autonomous non-Government organisation’ (or sometimes ‘quasi-autonomous national Government organisation’). These were semi-public administrative bodies outside the public service but which received financial support from the government and which made senior appointments to it.

<sup>1700</sup> WAPD, Legislative Council, 22 August 1996, p.4436 and p.4437.

<sup>1701</sup> WAPD, Legislative Council, 22 August 1996, p.4435–4436.

<sup>1702</sup> WAPD, Legislative Council, 22 August 1996, p.4436.

<sup>1703</sup> WAPD, Legislative Council, 22 August 1996, p.4438 and p.4439.

<sup>1704</sup> WAPD, Legislative Council, 22 August 1996, p.4438.

<sup>1705</sup> WAPD, Legislative Council, 22 August 1996, p.4439.

<sup>1706</sup> WAPD, Legislative Council, 22 August 1996, p.4437.

*not a response to the royal commission or the Commission on Government recommendations, although it was in line with and sympathetic to the Commission on Government recommendations. However, it is not a response to that. It has come from the Parliament. It has been driven by the Parliament and members who have recognised something out there in the public which has called for improved accountability.*<sup>1707</sup>

On Chance's judgement it was 'an era in which accountability, integrity and openness in public administration has been prominent in the public consciousness.'<sup>1708</sup> Interestingly, he also judged that:

*much of the existing public administration system is not open to inquiry by the Parliament, apart from the somewhat limited avenue, by ability, not charter, of the Legislative Council Standing Committee on Estimates and Financial Operations. The same could be said of the Public Accounts and Expenditure Review Committee in the other place.*<sup>1709</sup>

House's motion to establish a six-member Standing Committee on Public Administration stated that its functions were to:

- (1) *to inquire into and report to the House on the means of establishing State agencies, the roles, functions, efficiency, effectiveness, and accountability of State agencies and, generally, the conduct of public administration by or through State agencies, including the relevance and effectiveness of applicable law and administrative practises (sic);*
- (2) *notwithstanding any rule or order to the contrary, to consider and report to the House on any bill providing for the creation, alteration or abolition of an agency, including abolition or alteration by reason of privatization (sic).*<sup>1710</sup>

However, this was not the motion that was ultimately agreed to. During the debate to establish the committee, the Leader of the House in the Legislative Council, Norman Moore, indicated that the Government, led by Richard Court, supported the changes with some amendments. He noted that the 34th report of the Standing Committee on Government Agencies had been important in influencing the decision for change. In his view, the 'essence of the change' was to shift the focus of 'the committee away from looking at Government agencies as opposed to departments and to concern itself with the question of public administration.'<sup>1711</sup>

One amendment was to reduce the committee membership from six to five. This would help to ensure the committee could form a quorum to meet, while also avoiding the problem which had arisen in 2004 when there was a deadlock in the appointment of a Chairman.<sup>1712</sup> At that time, as the Standing Committee on Government Agencies had been unable to elect

<sup>1707</sup> WAPD, Legislative Council, 22 August 1996, p.4439.

<sup>1708</sup> WAPD, Legislative Council, 22 August 1996, p.4439.

<sup>1709</sup> WAPD, Legislative Council, 22 August 1996, p.4439.

<sup>1710</sup> WAPD, Legislative Council, 22 August 1996, p.4435.

<sup>1711</sup> WAPD, Legislative Council, 7 November 1996, p.7965.

<sup>1712</sup> WAPD, Legislative Council, 7 November 1996, p.7965.

a Chairman, under Standing Order 316, the Leader of the House moved that George Cash be appointed to that position.<sup>1713</sup> After lengthy and, at times heated, debate, Cash was given the Chairmanship 16 Ayes to 15 Noes.<sup>1714</sup> The move to reduce the number of members on Standing Committee on Public Administration was not supported by the Opposition who held the change to be neither 'proper' nor 'necessary' as a six-member committee with a '3:3 membership' was seen to be 'entirely balanced and bilateral.'<sup>1715</sup> Nevertheless, despite the argument that the success of the Standing Committee on Government Agencies being bipartisan had been 'largely due to the fact that it had six members,' the amendment was put and passed.<sup>1716</sup>

This, though, was not the final position adopted in relation to the number of members for the Standing Committee on Public Administration. Following the reappointment of the committee following the November 1996 prorogation of Parliament, six members were appointed to Standing Committee on Public Administration with the Opposition not opposing the motion for committee membership.<sup>1717</sup>

In relation to the Standing Committee on Public Administration's consideration of Bills, changes were made to ensure that the committee only reviewed those Bills referred by the House.<sup>1718</sup> Moreover, to overcome a potential overload of work for the committee and duplication of the work of other committees, it was resolved to ensure that Standing Committee on Public Administration did 'not proceed to an inquiry whose sole or principal object would involve consideration of matters that fall within the purview, or are a function of another committee.'<sup>1719</sup>

Importantly, the House resolved that 'all records, documents and other material' gathered by the Standing Committee on Government Agencies be provided to Standing Committee on Public Administration which was accorded the power to deal with that evidence as if it had been originally obtained by that committee.<sup>1720</sup>

The original members of the newly formed committee were Kim Chance and Cheryl Davenport (Labor), Barbara Scott and Barry House (Liberal) and Murray Criddle (National), with Helen Hodgson joining the committee in 1997.<sup>1721</sup> The committee's first report reviewed the work of the former committee and advised that as well as fulfilling its functions, the main objective of the new committee was to complete the inquiry into the

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<sup>1713</sup> WAPD, Legislative Council, 9 June 1994, p.1323.

<sup>1714</sup> WAPD, Legislative Council, 9 June 1994, p.1323–1344.

<sup>1715</sup> WAPD, Legislative Council, 7 November 1996, p.7966.

<sup>1716</sup> WAPD, Legislative Council, 7 November 1996, pp.7969–7970.

<sup>1717</sup> WAPD, Legislative Council, 26 June 1997, p.4620.

<sup>1718</sup> WAPD, Legislative Council, 7 November 1996, p.7969.

<sup>1719</sup> WAPD, Legislative Council, 7 November 1996, p.7970. The committee's first report also removes the three mentions of the word 'State' from its functions, perhaps because the definition of 'agency' made it redundant.

<sup>1720</sup> WAPD, Legislative Council, 7 November 1996, p.7975.

<sup>1721</sup> *First Report of the Standing Committee on Public Administration. Review of Operations for the Fourth Session of the 34th Parliament for the Standing Committee on Government Agencies. 14 March 1996 to 12 November 1996*, Legislative Council, June 1997, np; and WAPD, Legislative Council, 26 June 1997, p.4620.



University of Western Australia. It also noted 'its particular interest in out-sourcing, and the contracting out of government services.'<sup>1722</sup>

Between 1996 and 2001 (the end of the 35th Parliament) the Standing Committee on Public Administration produced 18 reports covering a wide range of topics, including the scrutiny of outsourcing and contracting-out in the United Kingdom, the Distribution Adjustment Assistance Scheme, the administration of environmental complaints relating to public health, Government proposals for the sale or lease of Westrail's freight operations and a number of Bills referred by the House.<sup>1723</sup>

What awaited, though, were further modifications to the terms of reference to the Standing Committee on Public Administration and Finance, to eventually be a new Standing Committee on Public Administration in the new millennium.

### 11.8 Standing Committee on Ecologically Sustainable Development (1997)

While the establishment of Standing Committee on Public Administration to replace the Standing Committee on Government Agencies was unanimously supported, this was not the case one year later when the Standing Committee on Ecologically Sustainable Development was established by a one vote majority in the Legislative Council.<sup>1724</sup> The Richard Court Government had lost its majority in the Council from 24 May 1997 after three Greens WA members and two Australian Democrats members gained the 'balance of power.' With the support of the Labor Party and the Australian Democrats, the Greens member Jim Scott and his new colleague, Dr Christine Sharp, moved for a new committee of five members to have the major function of inquiring into and reporting on:

*any matter in Western Australia concerning or relating to the planning for or management, use or development of natural resources and the environment having particular regard to demographic, economic, ecological, technological and lifestyle and settlement factors and concerns.*<sup>1725</sup>

The Standing Committee on Ecologically Sustainable Development was also to report on any Bill referred to it by the Legislative Council.<sup>1726</sup>

This was an important step in the development of the Legislative Council committee system as it was the first to deal with 'a single issue or area of Government policy, such as the environment.'<sup>1727</sup> A range of other committees existed in nearly every other Australian jurisdiction to examine 'the nexus between planning, natural resource management and environment.'<sup>1728</sup> In arguing that the Standing Committee on Ecologically Sustainable Development was not 'an antidevelopment committee,' Christine Sharp suggested that

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<sup>1722</sup> *First Report of the Standing Committee on Public Administration*, Legislative Council, June 1997, np.

<sup>1723</sup> *Report of the Standing Committee on Public Administration. Overview Report 2000*, Legislative Council, November 2000.

<sup>1724</sup> WAPD, Legislative Council, 7 November 1996, p.7975; and WAPD, Legislative Council, 26 June 1997, p.4614.

<sup>1725</sup> WAPD, Legislative Council, 24 June 1997, p.4478.

<sup>1726</sup> WAPD, Legislative Council, 24 June 1997, p.4478.

<sup>1727</sup> WAPD, Legislative Council, 24 June 1997, p.4478.

<sup>1728</sup> WAPD, Legislative Council, 24 June 1997, p.4480. Queensland was the exception as it has no upper House.

‘those economies that lead in green economics will lead the economies of the twenty-first century and those that do not rise to the challenge will be left behind with regard to not only environmental degradation but also economic well-being.’<sup>1729</sup> Sharp was confident the committee would be ‘not only reactive to policy by analysing and reviewing development programs, but also proactive in looking at areas for development.’<sup>1730</sup>

The Government’s opposition to the Standing Committee on Ecologically Sustainable Development proposition was led by Norman Moore, the Leader of the House. After observing that all members of the non-Government parties were trying to be ‘greener’ than the others,<sup>1731</sup> Moore expressed concern that establishing the Standing Committee on Ecologically Sustainable Development may send a message ‘to people who want to invest in industries at which some members of the Greens, in particular, may want to look closely; that is, the timber, agricultural, pastoral, mining and other industries which involve some interaction with the environment.’<sup>1732</sup> There was also concern that this would set a precedent for other ‘issue-based’ committees to be established; for example, a standing committee on Aboriginal affairs or a standing committee on fisheries.<sup>1733</sup>

Moore was also worried that some members, presumably those from the newly elected Greens and Australian Democrats, did not understand the difference between Government and Parliament, and were trying to use committees to participate in Government processes rather than to participate in the parliamentary process of scrutinising Government.<sup>1734</sup>

Significantly for the future of the parliamentary committee system, Norman Moore thought the committee would be another burden on the Legislative Council’s budget. He saw it ‘a fact of life’ that the House should not have ‘too many committees’ as that would ‘ensure that none of them works effectively.’<sup>1735</sup> Based on his long experience in Parliament and on the Standing Committee on Government Agencies, together with the requirement for the House ‘to review the committee system before any significant changes are made to it’ Moore’s preference was to wait for the House itself to review its standing committee system.<sup>1736</sup>

Moore also expressed surprise at what he saw as the new-found support of the Labor members for the standing committee system, arguing that when Labor had been in office (from 1983 to 1993) they had vigorously opposed the system.<sup>1737</sup> Not surprisingly, Labor members took exception to this suggestion, particularly as there had been an expansion of the system during the decade of Labor in Government. It was true that Liberals John Williams and Bob Pike were driving forces in the creation of the committee system, but this

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<sup>1729</sup> WAPD, Legislative Council, 24 June 1997, p.4480.

<sup>1730</sup> WAPD, Legislative Council, 24 June 1997, p.4481.

<sup>1731</sup> WAPD, Legislative Council, 24 June 1997, p.4481.

<sup>1732</sup> WAPD, Legislative Council, 26 June 1997, p.4610.

<sup>1733</sup> WAPD, Legislative Council, 26 June 1997, pp.4610–4611.

<sup>1734</sup> WAPD, Legislative Council, 26 June 1997, p.4610.

<sup>1735</sup> WAPD, Legislative Council, 26 June 1997, p.4611.

<sup>1736</sup> WAPD, Legislative Council, 26 June 1997, p.4609.

<sup>1737</sup> WAPD, Legislative Council, 26 June 1997, p.4609 and p.4610.

also overlooks the pioneering work of Arthur Bickerton and Arthur Tonkin in the Legislative Assembly in the late 1960 and early 1970s.

After considerable debate, the Standing Committee on Ecologically Sustainable Development was established on 26 June 1997 by 17 Ayes to 16 Noes.<sup>1738</sup> The Chair was Dr Christine Sharp, the newly elected Greens (WA) member. Other Standing Committee on Ecologically Sustainable Development members were Greg Smith (Liberal), Murray Criddle (National), Norm Kelly (Australian Democrats) and Ljiljanna Ravlich (Labor).<sup>1739</sup>

In one term of Government the committee tabled three forest-related reports—the first in 1998 on the management of and planning of Western Australia’s State forests under the Regional Forrest Agreement, the second in 1998 on the sustainability of current logging practice in State forests and the third in 2000 in relation to the Conservation and Land Management Amendment Bill 1999 and the Forests Products Bill 1999. Each of these reports had an important impact upon the course of environmental legislation in Western Australia and are deserving of separate examination in an era of political conflict, especially over forest matters.

Three reports of the committee tabulated the range of public works committees and environmental-issues committees across Australia.<sup>1740</sup> The committee also reported on the Environmental Protection Amendment Bill 1997 (1998), the management and sustainability of western rock lobster (2000), and the quality of Perth’s water supply (2000).

In November 1997 future Labor President John Cowdell tried to have the committee ‘examine the salinity problems facing Western Australia and ... report every three months on the Government’s progress on implementing the State’s salinity action plan.’<sup>1741</sup> Debate on Cowdell’s motion was adjourned on 27 November 1997 and did not resume until 11 March 1998 when Bruce Donaldson moved an amendment to Cowdell’s motion.<sup>1742</sup> These amendments provided that the Standing Committee on Ecologically Sustainable Development report annually rather than quarterly, and removed the word ‘Government’ from the motion, meaning that the committee would report annually on progress made in implementing the action plan.<sup>1743</sup>

On 9 April 1998 Greg Smith moved further amendments, providing that the Standing Committee on Ecologically Sustainable Development ‘monitor and report at least once a year on the implementation of the State’s salinity action plan and other matters the committee considers relevant to the State’s salinity problems.’<sup>1744</sup> This was seen as ‘a

<sup>1738</sup> WAPD, Legislative Council, 26 June 1997, p.4614.

<sup>1739</sup> WAPD, Legislative Council, 26 June 1997, p.4620.

<sup>1740</sup> *Report of the Standing Committee on Ecologically Sustainable Development in relation to the National Conferences of Public Works and Environment Committees*, Legislative Council, November 1998. See also the reports from the 1999 and 2000 national conferences.

<sup>1741</sup> WAPD, Legislative Council, 26 November 1997, pp.8600–8602; and 27 November 1997, pp.8772–8779.

<sup>1742</sup> WAPD, Legislative Council, 11 March 1998, p.342.

<sup>1743</sup> WAPD, Legislative Council, 11 March 1998, p.347.

<sup>1744</sup> WAPD, Legislative Council, 9 April 1998, p.1791.

valuable amendment,' with Christine Sharp stating that the committee could achieve some good on a concerning matter.<sup>1745</sup>

The motion as further amended was passed and the task of monitoring the implementation of the salinity action plan was referred to the committee. However, as Christine Sharp stated in March 1999, as Parliament was prorogued at the end of the first session of the 35th Parliament, 'that motion was lost.'<sup>1746</sup> No report on any work the committee might have done on monitoring the implementation of the salinity plan was ever tabled.

In fact, the Standing Committee on Ecologically Sustainable Development only survived the 35th Parliament and for the next Parliament commencing on 24 May 2001 a newly named Environment and Public Affairs Committee was established. However, as this Standing Committee was also to be chaired by Dr Christine Sharp it enabled her to ensure an environmental focus was maintained in the committee system. Remarkably, when Dr Sharp became Chair of Standing Committee on Ecologically Sustainable Development, she became the first woman in the Western Australian Parliament to be a Chairperson of a standing committee. Earlier, in 1989, she had also been the first woman appointed to the Environmental Protection Authority (EPA), where she was the Deputy Chair for a brief period. This experience, together with her PhD in the same field, made her well qualified for her inaugural role as committee Chair in the Legislative Council. She later reflected 'that was a pretty wonderful way to start my parliamentary career with a first.'<sup>1747</sup> When asked whether having a Greens WA Party member as the committee Chair brought about a fresh approach Dr Sharp thought that 'the dynamic' did change as she did not 'set out to dump on Government and score political points, nor was it to whitewash the problems. The committee was there to raise issues and to come up with a constructive way forward [...] for dealing with some very contentious issues, and I think that if it hadn't been a Green in the Chair, it wouldn't have worked out so easily like that.'<sup>1748</sup>

Having a woman parliamentarian as Chair of standing committee was a further signal of change in concert with the general expansion of the committee system of the Western Australian Parliament. In fact, as mentioned, there was even some concern that too many changes were being made to the parliamentary committee system, particularly in the Legislative Council. What is necessary, though, is a review of parliamentary committees provided by the Commission on Government (COG) which was established after the Royal Commission into Commercial Activities of Government and Other Matters. The so-called WA Inc. Royal Commission in 1992 had broadly enunciated principles by which parliamentary committees should function. Even before the Royal Commission and COG had addressed the parliamentary committees they had also been given attention by the Joint Select Committee on the Constitution of Western Australia (1990) and a Parliamentary Standards Committee

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<sup>1745</sup> WAPD, Legislative Council, 9 April 1998, pp.1794–1795.

<sup>1746</sup> WAPD, Legislative Council, 16 March 1999, p.6458.

<sup>1747</sup> Christine Sharp, 'Transcript of an Interview,' with Ron Chapman, Oral History Collection, August–September 2006, p.50.

<sup>1748</sup> 'Christine Sharp, 'Transcript of an Interview,' with Ron Chapman, Oral History Collection, August–September 2006, p.58.

{1989). These reviews will be considered in the next chapter as they help provide an understanding of the genesis of committee changes for the new millennium.