

## Chapter 12: The 1990s WA Inc. Royal Commission and the Commission on Government Years and the Impact on Parliamentary Committees

The 1990s in Western Australia was an era when the State's political fabric was significantly challenged. In the wake of the 1989 Parliamentary Standards Report, the Western Australian Parliament in 1990 established a Joint Select Committee on the Constitution. Shortly thereafter, the 1992 Royal Commission into Commercial Activities of Government and Other Matters, referred to as the WA Inc. Royal Commission, documented a measure of dysfunction in Government. It also recommended a set of guidelines for a more effective Parliament, including guidelines for a parliamentary committee system. The WA Inc. Royal Commission was followed by the Commission of Government (COG) which suggested an extensive reform of Government and Parliament, including a comprehensive network of parliamentary committees.

These reports gave significant attention to parliamentary committees, and as well as outlining the main points in the reports the following describes Parliament's response to their recommendations.

### 12.1 The Parliamentary Standards Committee Report (1989)

In 1998 Premier Peter Dowding established the Parliamentary Standards Committee as a response to the 'very grave concerns' of Government and National Party members in relation to 'the public perception of parliamentary behaviour.'<sup>1748</sup> The Parliamentary Standards Committee was unusual in that it was comprised of senior members and staff from both Houses, as well as non-members with considerable expertise in relation to Parliament. Thus, the membership of the Parliamentary Standards Committee was Kim Beazley Senior, Chair and former member of the House of Representatives and Commonwealth Minister; Clive Griffiths, MLC, President of the Legislative Council; Mike Barnett, MLA, Speaker of the Legislative Assembly; Mr Matthew Stephens, former Deputy Leader of the National Party; Bruce Okely, Clerk of the Legislative Assembly; Peter McHugh (Deputy Clerk and successor to Mr Okely) and Professor David Black from Curtin University.<sup>1749</sup>

Although established late in the 1980s with terms of reference that did not specifically include parliamentary committees, the Parliamentary Standards Committee certainly gave consideration to them in their recommendations. Volume 2 of that committee's 1989 report noted the importance of standing and select committees in assisting Parliament to fulfil its scrutiny, education and supply functions, and further noted the 'considerable powers'

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<sup>1748</sup> Western Australia Parliamentary Debates (WAPD), Legislative Assembly, 5 May 1992, p.1694.

<sup>1749</sup> WAPD, Legislative Assembly, 5 May 1992, p.1694; and Parliamentary Standards Committee, *Interim Report No. 1. Report Addressing Term of Reference No. 4. The Constitutional or Legal Basis of Privilege for State Parliament*, August 1989, np.

granted to committees through the *Parliamentary Privileges Act* and Standing Orders to allow them to undertake their work.<sup>1750</sup>

The Parliamentary Standards Committee drew attention to what it saw as a major shortcoming of the committee system, namely that most committees were structured to reflect partisan interests, making debate as unsatisfying as it was in the House. It was (perhaps surprisingly) observed, however, that the problem should not be overstated as there were instances where members cooperated. Nevertheless, and especially for select committees inquiring into Government policy or actions, there were seen to be many committees where disagreement were likely and where views in reports were likely to split along partisan lines. The committee held that one way of overcoming this challenge was to change the number of members on committee from the more traditional odd numbers to having committees comprised of even numbers of members—half from the Government side and half from the opposition—with the Chair, who would have a casting vote, chosen on rotation or by lot.<sup>1751</sup>

To improve Parliament's 'investigative and educative functions' and 'to improve the conduct of members,' the committee encouraged Parliament to:

- (a) *institute a system of committee appointment that draws equal numbers of members from Government and Opposition;*
- (b) *review the nature and nature of standing committees with a view to fulfilling Parliament's educative and investigative functions; and*
- (c) *defend the system of committees as a whole, and insist upon the rights of Committees when dealing with witnesses.*<sup>1752</sup>

The Parliamentary Standards Committee also reviewed suggestions to introduce a Select Committee of Privilege or a Standing Committee of Privilege. Based on the experience of the Legislative Assembly, the committee saw little benefit in appointing a select committee to inquire into whether a member's comments in the House had constituted a breach of privilege, particularly as determining a breach of privilege would be difficult. Therefore, the 'strongest terms' to describe a member's potential offence would be '*abuse or misuse*.'<sup>1753</sup> Furthermore, the results of previous select committee inquiries into members' statements had demonstrated that a committee's report is often accompanied by a minority report. This had certainly been the case in 1976, 1986 and 1988 when select committees had inquired into statements made by Mal Bryce, Ian Laurance and George Cash respectively. In each case the committee had found either a contempt or a serious breach, while the

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<sup>1750</sup> *Report of the Parliamentary Standards Committee, Volume 2. Submissions, Advice and Transcripts of Evidence*, Parliament of Western Australia, 1989, p.23.

<sup>1751</sup> *Report of the Parliamentary Standards Committee, Volume 2. Submissions, Advice and Transcripts of Evidence*, Parliament of Western Australia, 1989, p.23. In the case of joint committees the membership would come from both Houses.

<sup>1752</sup> *Report of the Parliamentary Standards Committee, Volume 2. Submissions, Advice and Transcripts of Evidence*, Parliament of Western Australia, 1989, p.24.

<sup>1753</sup> *Report of the Parliamentary Standards Committee, Volume 1. Report, Findings and Recommendations*, 1989, Parliament of Western Australia, p.36.

minority report held there was no breach of privilege.<sup>1754</sup> Based on this, the assumption was that party loyalties provided ‘little hope of a unanimous report in such cases.’<sup>1755</sup> Another problem with a Select Committee of Privilege inquiry into such matters was the possibility of criminal charges against a member ‘for refusing to answer a lawful and relevant question.’<sup>1756</sup> Overall, the Parliamentary Standards Committee held that the stress of such inquiries for Parliament as an institution was far greater than any benefit achieved and that ‘better ways exist for handling such problems.’<sup>1757</sup>

A Standing Committee on Privilege was viewed more favourably, particularly as in jurisdictions such as the United Kingdom, the Commonwealth of Australia, Victoria and the New South Wales Upper House had appointed standing committees to inquire into matters referred by their respective Houses and to make recommendations for action the House might take. The Western Australian Legislative Assembly had established a committee for this purpose in 1985, but as no matters were referred it was not re-established.<sup>1758</sup>

Although acknowledging the strong arguments in favour of appointing a Standing Committee on Privilege for each House, the Parliamentary Standards Committee expressed concern that it could lead to a significant and unnecessary increase in complaints. The committee noted that since a privileges committee had been established in the Commonwealth House of Representatives some 38 years previous, the number of matters of privilege raised had almost doubled those raised in the 43 years before the committee was established.<sup>1759</sup>

The Parliamentary Standards Committee saw a major advantage in a standing committee as opposed to a select committee as the timing of the establishment of the committee and the appointment of its members. Rather than this occurring in the often intense atmosphere when an incident occurred, the matter would be referred to an existing committee, often including senior members who might have experience in privilege issues.<sup>1760</sup>

After detailing a step-by-step procedure for establishing a Standing Committee on Privilege, the committee recommended:

*that each House of the Western Australian Parliament give serious consideration to the establishment of a Standing Committee on Privilege, its membership to be as*

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<sup>1754</sup> *Report of the Parliamentary Standards Committee, Volume 1. Report, Findings and Recommendations*, 1989, Parliament of Western Australia, p.27.

<sup>1755</sup> *Report of the Parliamentary Standards Committee, Volume 1. Report, Findings and Recommendations*, 1989, Parliament of Western Australia, p.36.

<sup>1756</sup> *Report of the Parliamentary Standards Committee, Volume 1. Report, Findings and Recommendations*, 1989, Parliament of Western Australia, p.37.

<sup>1757</sup> *Report of the Parliamentary Standards Committee, Volume 1. Report, Findings and Recommendations*, 1989, Parliament of Western Australia, p.37.

<sup>1758</sup> *Report of the Parliamentary Standards Committee, Volume 1. Report, Findings and Recommendations*, 1989, Parliament of Western Australia, p.37.

<sup>1759</sup> *Report of the Parliamentary Standards Committee, Volume 1. Report, Findings and Recommendations*, 1989, Parliament of Western Australia, p.37.

<sup>1760</sup> *Report of the Parliamentary Standards Committee, Volume 1. Report, Findings and Recommendations*, 1989, Parliament of Western Australia, p.37.

*small as possible and chosen with a view to the inclusion of Members with some experience of and a strong commitment to the parliamentary process.*<sup>1761</sup>

It also recommended that each House establish a procedure for referring matters of privilege to its standing committee.<sup>1762</sup> Although the Parliamentary Standards Committee reported in 1989, its recommendations were not considered until 5 May 1992. At that time Premier Carmen Lawrence moved a motion in the Legislative Assembly to allow members to 'deal seriously' with the committee's recommendations, admitting that Parliament was 'somewhat belated' in such deliberations.<sup>1763</sup>

Perhaps the degree of prescription militated against the immediate adoption of a Standing Committee of Privilege. What, however, should be observed was that since the introduction of responsible Government each House had appointed sessional committees which considered standing orders and sometimes matters of privilege. From 1991 the Legislative Council produced formal reports of its Standing Orders Committee, which from May 2001 became the Procedures and Privileges Committee.<sup>1764</sup> The Legislative Assembly from July 1990 began publishing formal reports from its Standing Orders and Procedure Committee which, after 1999, became the Procedure and Privileges Committee.<sup>1765</sup> These are considered further below.

## 12.2 Joint Select Committee on the Constitution (1990)

Ironically, the 1990s began with a celebratory tone. On Sunday 21 October 1990 the Legislative Council and the Legislative Assembly conducted a joint sitting to commemorate the 100<sup>th</sup> anniversary of Queen Victoria's proclamation of the *Constitution Act 1889* (WA), which gave Western Australia self-Government and marked the beginning of a bicameral, responsible Government constitutional framework. In recognition of the anniversary, the following day a student Parliament, based on statewide representation of students, was also conducted. Thus it seems that there was a 'small but widening interest in matters constitutional.'<sup>1766</sup>

In 1989, Parliament had established a Joint Select Committee on the Constitution. In moving the motion to establish the committee, Dr Geoff Gallop suggested that it was not widely known that the Western Australian Constitution is broken up into two pieces of legislation. The first of these, the *Constitution Act 1889* (WA), came into effect on 21 October 1890, and Dr Gallop's motion included the provision that the committee report by October 1990, 100 years later. Over those intervening 100 years, the Act had been amended 18 times. The second Act, the *Constitutions Acts Amendment Act 1899* (WA), received Royal Assent on 18 May 1900, and had been amended 50 times since then. Dr Gallop argued that this situation

<sup>1761</sup> *Report of the Parliamentary Standards Committee, Volume 1. Report, Findings and Recommendations*, 1989, Parliament of Western Australia, p.38.

<sup>1762</sup> *Report of the Parliamentary Standards Committee, Volume 1. Report, Findings and Recommendations*, 1989, Parliament of Western Australia, pp.38–39.

<sup>1763</sup> WAPD, Legislative Assembly, 5 May 1992, pp.1693–1694.

<sup>1764</sup> *Parliament of Western Australia: Digest 2001–2002*, No. 29, Perth: Government Printer, p.39.

<sup>1765</sup> *Parliament of Western Australia: Digest 2001–2002*, No. 29, Perth: Government Printer, p.25.

<sup>1766</sup> *Final Report*, Vol. 1, Joint Select Committee of the legislative Assembly and the Legislative Council on the Constitution, October 1991, Foreword.

led to three problems. First, was that genuine citizenship education is difficult; second, there were many instances of redundancy in the phraseology and content of the Constitution; and third, reform was possible in some areas.<sup>1767</sup> The aim of the proposed six-member joint select committee was:

- (a) to create opportunities for community discussion concerning possible areas of constitutional reform and to provide the Parliament with a reasoned summary of proposals for reform;*
- (b) to give consideration to consolidating the law, practice and Statutes comprising the Constitution of Western Australia; and*
- (c) to make recommendations concerning making this body of law and practice more readily accessible by the citizens of this State.*<sup>1768</sup>

The Opposition acknowledged the need for a review of the Constitution, with Ian Thompson (Liberal member for Darling Range) describing it as a ‘dog’s breakfast.’<sup>1769</sup> However, the Opposition did not support the idea of a joint select committee, with Andrew Mensaros (Floreat) saying that only a Legislative Assembly committee would be acceptable and, thus, they would oppose the current motion.<sup>1770</sup> Nevertheless, the motion was successful and a Message was sent to the Legislative Council seeking its concurrence and requesting three Council members be appointed to the committee.<sup>1771</sup> The Legislative Council agreed to this request on 21 December 1989, and the Joint Select Committee on the Constitution was established.<sup>1772</sup>

However, as a result of the prorogation of Parliament on 6 April 1990, the joint select committee lapsed.<sup>1773</sup> On 8 May 1990 another motion was introduced into the Legislative Assembly to re-establish the Joint Select Committee on the Constitution, with the terms of reference being the same. The motion was successful and another message was sent to the Legislative Council seeking concurrence.<sup>1774</sup> On 16 May 1990 the Council agreed to re-establish the committee.<sup>1775</sup> The reporting date of the re-established committee remained as 21 October 1990. The six members of the committee were John Kobelke (Chair), Hendy Cowan and Andrew Mensaros from the Assembly, and Garry Kelly, Phil Pandal and Bob Thomas from the Council.<sup>1776</sup>

<sup>1767</sup> WAPD, Legislative Assembly, 7 December 1989, p.6326.

<sup>1768</sup> WAPD, Legislative Assembly, 7 December 1989, pp.6325–6326.

<sup>1769</sup> WAPD, Legislative Assembly, 7 December 1989, p.6329.

<sup>1770</sup> WAPD, Legislative Assembly, 7 December 1989, p.6328.

<sup>1771</sup> WAPD, Legislative Council, 7 December 1989, p.6309.

<sup>1772</sup> WAPD, Legislative Council, 7 December 1989, pp.6934–6940.

<sup>1773</sup> WAPD, Legislative Assembly, 8 May 1990, p.323.

<sup>1774</sup> WAPD, Legislative Assembly, 8 May 1990, pp.323–324.

<sup>1775</sup> WAPD, Legislative Council, 7 December 1989, pp.943–945.

<sup>1776</sup> WAPD, Legislative Assembly, 5 June 1990, p.1746; and WAPD, Legislative Council, p.1875. Membership changed over time, with Mensaros and Pandal retiring from the committee, and Derrick Tomlinson and Leon Watt being appointed. See: *Final Report*, Vol. 1, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, 1991, p.1.

The select committee received 94 submissions, took verbal evidence ‘on a number of occasions,’ and sought advice from relevant experts.<sup>1777</sup> In response to the requirement for the committee to facilitate community discussion, a public seminar was held in the Legislative Assembly on 15 August 1990, with both the floor and the public galleries filled to capacity. The keynote address was given by the Chief Justice, Hon. David Malcolm, with personal perspectives on the Constitution provided by respected present and past university lecturers Campbell Sharman and Martyn Webb, and June Williams (Equal Opportunity Commissioner) and Clive Brown (Secretary of the Trades and Labor Council).<sup>1778</sup> An *Interim Report* was published to help give a greater profile to the Western Australian Constitution, and the final report was tabled on 24 October 1991 with a rarely presented financial report.<sup>1779</sup>

The submissions sought a range of major constitutional changes, and the committee reported that the issues ‘were generally complex and some were politically divisive.’<sup>1780</sup> The committee was not sympathetic to radical change such as that advocated by Professor Martyn Webb, which ranged beyond the ‘Westminster model’ to incorporate many features of the Constitution of the United States of America.<sup>1781</sup> Even within the Westminster framework there were submissions to modify the role of the Governor. Other proposals canvassed a Bill of Rights; the opportunity for acknowledgement of the Aboriginal peoples of Western Australia; a reference to constitutional money supply and a mechanism to resolve deadlocks between the two Houses; consideration of ensuring that the Presiding Officer has a deliberative rather than a casting vote; and yearly sessions of Parliament without being prorogued in each year of a four-year term of Government.<sup>1782</sup> Also raised were citizen-initiated referendums; protection of local Government by referendum requirements; and numerous changes to the electoral system including the pros and cons of compulsory voting.<sup>1783</sup> The committee was ‘unable to reach a unanimous position on the principle of equal value voting power for all electors.’<sup>1784</sup>

The select committee also emphasised the dissatisfaction with the political system evident in the submissions. Many of the views, though, indicated a degree of misunderstanding regarding the way in which Parliament, executive Government and the public service

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<sup>1777</sup> *Final Report*, Vol. 1, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, pp.2–3.

<sup>1778</sup> *Final Report*, Vol. 1, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, p.2.

<sup>1779</sup> Joint Select Committee on the Constitution, *Interim Report*, October 1991; and *Final Report*, Vol. 1, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, 1991, p.2

<sup>1780</sup> *Final Report*, Vol. 1, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, p.4.

<sup>1781</sup> *Final Report*, Vol. 1, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, pp.4–5; and Joint Select Committee on the Constitution, *Public Seminar on the Constitution*, Parliament House, Perth, August 1990.

<sup>1782</sup> *Final Report*, Vol. 1, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, pp.4–13.

<sup>1783</sup> *Final Report*, Vol. 1, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, pp.13–18.

<sup>1784</sup> *Final Report*, Vol. 1, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, p.9.

operates. The select committee reported that such issues should be dealt with via political education and ‘more directly by the ongoing reform of the system of government,’ both of which were addressed in the committee’s recommendations.<sup>1785</sup>

In relation to parliamentary committees, the select committee held that they play:

*an important role in its [Parliament’s] functioning. Committees are formed by each House of the Parliament under the Standing Orders of that particular House and enjoy the rights and privileges of that House.*<sup>1786</sup>

The select committee’s final report provided a list of the then current parliamentary committees, including joint committees, and provided an indication of the breadth of their activities.<sup>1787</sup>

The report also drew attention to the relationship between the two Houses, noting that improving ‘the standing and powers of parliamentary committees involves among other things the relationships between the Houses,’ and that:

*real advances in the effectiveness of committees in reviewing the actions of government and assisting in the working of Parliament itself are unlikely until the relationship between the two chambers is more clearly delineated.*<sup>1788</sup>

The recommendations of the *Final Report*, whilst concise, covered extensive areas of reform and the need to promote greater public awareness of the Constitution. The select committee recommended that a Joint Standing Committee for Constitutional Reform be established ‘to facilitate the updating and ongoing reform’ of the Western Australian Constitution, particularly through the promotion of understanding on the need for reform, making recommendations to Parliament on specific reforms.<sup>1789</sup> The recommended committee, which would report annually to Parliament, would also ‘promote wide public understanding of the draft Constitution of Western Australia and assist with the final form of the Bill to be introduced into the parliament.’<sup>1790</sup>

The select committee had developed a draft Consolidated Constitution of Western Australia, which included a preamble, and recommended this provide ‘the basis of a Bill to be brought before the parliament for its approval and that its assent be decided by a referendum of the

<sup>1785</sup> *Final Report, Vol. 1*, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, p.19.

<sup>1786</sup> *Final Report, Vol. 1*, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, p.19. *The report also noted that joint committees are formed through the concurrence of both Houses.*

<sup>1787</sup> *Final Report, Vol. 1*, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, p.44.

<sup>1788</sup> *Final Report, Vol. 1*, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, p.19.

<sup>1789</sup> *Final Report, Vol. 1*, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, p.22.

<sup>1790</sup> *Final Report, Vol. 1*, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, p.33.

people of Western Australia.<sup>1791</sup> It further recommended that public consultation and debate occur prior to any introduction of such a Bill into the Parliament.<sup>1792</sup> Finally, to allow the Constitution to be more accessible to the general public, the select committee recommended that its report and an information booklet containing both 1899 Acts establishing the Constitution be 'made widely available.'<sup>1793</sup>

### 12.3 The WA Inc. Royal Commission's Principles for Parliamentary Committees

Given that the system of Government in Western Australia was portrayed in dysfunctional terms by the WA Inc. Royal Commission, there was an expectation that part 2 of its report published in 1992 would provide a blueprint for radical reform. In fact, the WA Inc. Royal Commission recommended a Commission on Government (COG) 'be established, by legislation, without delay.'<sup>1794</sup> With an intervening change of Government in early 1993 from Labor, headed by Dr Carmen Lawrence, to a Liberal and National coalition led by Richard Court, there was a delay of nearly two years before the COG was created to inquire into 24 specific matters and any other relevant matter.<sup>1795</sup> Although the COG Royal Commission 'had been reluctant to indicate in any precise manner how a committee system should be configured,'<sup>1796</sup> its very clear and persuasive report enunciated a set of eight guiding principles for parliamentary committees which it considered should prevail in Western Australia. These are paraphrased below.

First, COG recognised that practical considerations imposed constraints upon how a committee system could be established in Western Australia. For example, the number of members of Parliament was relatively small, as was access to staffing and resources. Therefore, any expectations of 'an elaborate committee system' were considered unrealistic.<sup>1797</sup> Nevertheless, the COG also held that the Legislative Council had 'the greater capacity' to use members for committees and recommended review of Government become 'a very positive responsibility' of the Upper House.<sup>1798</sup>

Second, for committees to fulfil their purpose they must have:

- (a) a mandate that does not 'curtail, in any arbitrary or protective way, the matters into which they can inquire';

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<sup>1791</sup> *Final Report, Vol. 1*, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, p.33.

<sup>1792</sup> *Final Report, Vol. 1*, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, p.33.

<sup>1793</sup> *Final Report, Vol. 1*, Joint Select Committee of the Legislative Assembly and the Legislative Council on the Constitution, October 1991, p.35.

<sup>1794</sup> Harry Phillips et al (1998), *Representing the People: Parliamentary Government in Western Australia*, Fremantle: Fremantle Arts Centre Press, p.238.

<sup>1795</sup> Harry Phillips et al (1998), *Representing the People: Parliamentary Government in Western Australia*, Fremantle: Fremantle Arts Centre Press, p.239.

<sup>1796</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters (Part 2)*, Perth, Western Australia, Chapter 3, p.13.

<sup>1797</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters (Part 2)*, Perth: Western Australia, Chapter 3, p.15.

<sup>1798</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters (Part 2)*, Perth: Western Australia, Chapter 3, p.15.

- (b) 'ample' powers; and
- (c) sufficient 'support staff, resources and facilities' to allow them to undertake their functions 'fully and effectively.'<sup>1799</sup>

Indeed, the COG placed particular emphasis on the resourcing of committees, stating that 'an unsupported committee is a wounded committee.'<sup>1800</sup>

Third, the COG held that the Auditor General, the Ombudsman, and the Electoral Commissioner, together with the proposed Commissioner for Public Sector Standards and Commissioner for the Investigation of Corrupt and Improper Conduct,<sup>1801</sup> as independent accountability agencies, should be directly responsible to Parliament.<sup>1802</sup> Once this was established, their 'investigative and reporting powers' would provide some committees 'much valuable assistance' with their inquiries.<sup>1803</sup>

Fourth, COG saw no real reason why parliamentary committees should be chaired by a Government member or, in the case of the Legislative Council, by a member of the party holding the majority of seats. The COG held that the Western Australian Parliament should consider the House of Commons practice of appointing Chairs through party negotiations.<sup>1804</sup>

Fifth, to establish an organised system of committees to carry out review and accountability functions, it was held that care should be taken with the co-ordination and integration of committees. This could be achieved not only by taking local factors into account, but also looking to other Australian jurisdictions for guidance.<sup>1805</sup>

Sixth, in light of the size and complexity of the system of Government in Western Australia, the Commission strongly supported the establishment of a standing committee that would oversee the organisation and operation of the whole public sector. The Commission noted the Legislative Council's Standing Committee on Government Agencies was a step toward this. The proposed Commissioner for Public Sector Standards would be accountable to this new public sector oversight committee.<sup>1806</sup>

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<sup>1799</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (Part 2), Perth: Western Australia, Chapter 3, p.15.

<sup>1800</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (Part 2), Perth: Western Australia, Chapter 3, p.15.

<sup>1801</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (Part 2), Perth: Western Australia, Chapter 5, p.11.

<sup>1802</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (Part 2), Perth: Western Australia, Chapter 3, p.15.

<sup>1803</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (Part 2), Perth: Western Australia, Chapter 3, p.15.

<sup>1804</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (Part 2), Perth: Western Australia, Chapter 3, p.16.

<sup>1805</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (Part 2), Perth: Western Australia, Chapter 3, p.16.

<sup>1806</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (Part 2), Perth: Western Australia, Chapter 3, p.16.

Seventh, in noting that parliamentary committee review of the public sector often focussed on administrative processes the Commission emphasised that the investigative function of committees also encompassed reviewing the 'efficiency, the effectiveness and the appropriateness of administrative action investigative role,' all of which are 'of vital public interest.'<sup>1807</sup>

Eighth, and finally, the Commission held that 'the principle of individual ministerial responsibility' should not interfere with a committee's ability to examine a public sector official where that official holds responsibilities related to the committee's inquiry.<sup>1808</sup>

These guiding principles on parliamentary committees hovered over both the COG and Parliament responses to the WA Inc. Royal Commission's recommendations. Significantly, the Commissioners indicated that the investigative role of committees needed to be extended to the review of the efficiency, the effectiveness and the appropriateness of administrative action. Importantly, as the following shows, COG was to endorse this approach.

#### 12.4 Commission on Government Recommendations for Committees

The Commission on Government (COG) was established through the *Commission on Government Act 1994* (WA) in response to the WA Inc. Royal Commission. Its purpose was 'to inquire into certain matters relating to public administration and relevant to the prevention of corrupt, illegal or improper conduct in the public sector.'<sup>1809</sup> For the WA Inc. Royal Commission, the 'review of the processes, practice and conduct of government' is 'the cardinal' purpose of parliamentary committees.<sup>1810</sup> Given this, the Commission indicated that Parliament should 'bend its efforts' to meet this obligation 'as a matter of urgency,' arguing that the 'the rational and systematic use of standing committees for this purpose should be a priority.'<sup>1811</sup> In light of this, it is not surprising that the role of parliamentary committees in scrutinising the public sector was included in COG's terms of reference.<sup>1812</sup>

As well as conducting an extensive public awareness campaign on the issues, for each of the matters considered COG published a discussion paper, held public seminars at which public debate was encouraged, invited public submissions, held public hearings and consulted experts in relevant areas.<sup>1813</sup> In relation to public sector review by Parliament, COG produced a discussion paper that described the public sector and the concepts of public sector and ministerial responsibility. The discussion paper also provided information on the

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<sup>1807</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (Part 2), Perth: Western Australia, Chapter 3, p.16.

<sup>1808</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (Part 2), Perth: Western Australia, Chapter 3, p.16.

<sup>1809</sup> Long Title, *Commission on Government Act 1994* (WA).

<sup>1810</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (Part 2), Perth: Western Australia, Chapter 3, p.14.

<sup>1811</sup> *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (Part 2), Perth: Western Australia, Chapter 3, p.14.

<sup>1812</sup> Schedule 1, *Commission on Government Act 1994* (WA), particularly Specific Matters 17 and 18.

<sup>1813</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, p.14; and *Discussion Papers*, Perth: Commission on Government, 1995.

WA Inc. Royal Commission as context and outlined issues for consideration, including the use of parliamentary questions and parliamentary committees, the purpose of agency annual reports and statutory officials, and the parliamentary cycle.<sup>1814</sup>

COG shared the WA Inc. Royal Commission's view that 'the systematic use of parliamentary committees was the best means of bringing the Government system under the scrutiny of the Parliament.'<sup>1815</sup> The Commission therefore made recommendations 'to strengthen the parliamentary committee system and reinforce the relationships between parliamentary committees and the independent accountability agencies of the Parliament.'<sup>1816</sup> In relation to 'the prevention and exposure of improper conduct,' though, the situation was held to be 'more complex' and COG argued that 'additional safeguards' were necessary 'to protect individuals and to ensure the integrity of the process.'<sup>1817</sup>

COG proposed a system of parliamentary committees which it argued was essential 'for an effective system of parliamentary scrutiny of the public sector, and for ensuring the flow of information to the public on the performance of government.'<sup>1818</sup> COG's recommendations in relation to parliamentary committees covered four main areas—abuse of privilege, the specific committees to comprise the system, procedural matters and resourcing.

#### 12.4.1 Abuse of Privilege

Echoing the Parliamentary Standards Committee 1989 report, the COG recommended that each House establish a Standing Committee on Privilege to, first, prepare a Code of Conduct to guide members in matters of privilege, and, second, review alleged breaches of the Code.<sup>1819</sup> Persons adversely named in parliamentary proceedings, including committees, should have an opportunity to make a response, and where the complaint relates to alleged abuse of privilege, the Standing Committee on Privilege should decide the appropriate action to be taken.<sup>1820</sup>

#### 12.4.2 Specific Committees Comprising the Committee System

COG held that the Legislative Council committee system should provide for the review of all public sector agencies and all proposed legislation. On this basis, COG's recommendations involved the transfer of some existing committees from one House to the other. The Commission nominated four special-purpose standing committees for the Legislative Council, namely the Finance and Audit Standing Committee, the Public Administration

<sup>1814</sup> Commission on Government, *Discussion Paper No. 8. Specified Matters: 17&18. Public Sector Review by Parliament. Parliamentary Committees on Legislation*, Perth: Commission on Government, August 1995.

<sup>1815</sup> Commission on Government, *Report No. 2, Part 2*, Perth: Commission on Government, December 1995, p.104.

<sup>1816</sup> Commission on Government, *Report No. 2, Part 2*, Perth: Commission on Government, December 1995, p.104

<sup>1817</sup> Commission on Government, *Report No. 2, Part 2*, Perth: Commission on Government, December 1995, p.104 and pp.106–107.

<sup>1818</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 251, p.176.

<sup>1819</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 63, p.149.

<sup>1820</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 64, p.150.

Standing Committee, the Constitutional and Federal/State Affairs Standing Committee, and the existing Legislation Standing Committee.<sup>1821</sup>

The Finance and Audit Standing Committee should:

- i. *systematically consider annual reports and ensure follow up;*
- ii. *systematically consider reports of the Auditor General and ensure follow up; and*
- iii. *call for additional audit reports when required.*<sup>1822</sup>

As well as making general recommendations on the powers, membership and meetings of the Finance and Audit Committee, COG also suggested that the Auditor General and a Treasury officer attend all public committee meetings.<sup>1823</sup>

The Public Administration Committee would replace the Government Agencies Committee, and inquire into ‘matters of public administration relating to the probity, efficiency and effectiveness of the entire public sector,’ and monitor the activities of the Public Sector Standards Commissioner, the State Ombudsman and the proposed Commissioner for the Investigation, Exposure and Prevention of improper Conduct.<sup>1824</sup>

The Committee on Constitutional and Federal/State Affairs would scrutinise uniform legislation and intergovernmental agreements—previously the function of a Legislative Assembly committee—and take over the petitions function currently dealt with by the Constitutional Affairs and Statutes Revision Committee.<sup>1825</sup>

COG argued that the Legislative Assembly should have the Estimates and Financial Operations Committee as well as up to four portfolio-based committees. Each portfolio-based committee would examine legislation relevant to its area of responsibility.<sup>1826</sup> The Legislative Assembly’s Estimates and Financial Operations Committee was to ‘systematically consider the annual estimates and program statements,’ and should continue the Legislative Council’s Estimates and Financial Operations Committee practice of recommending to the House improvements to ‘the content, presentation and timeliness’ of documentation, particularly ‘through the use of information technology.’<sup>1827</sup> Once again a number of specifications accompanied this recommendation in relation to committee membership

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<sup>1821</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 110, pp.175–176; and Rec. 119, p.179.

<sup>1822</sup> Commission on Government, *Report No. 1*, Perth: Commission on Government, August 1995, Rec. 5.3.1.5, p.223.

<sup>1823</sup> Commission on Government, *Report No. 1*, Perth: Commission on Government, August 1995, Rec. 5.3.1.5, p.223.

<sup>1824</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 115, p.178.

<sup>1825</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 115, p.178.

<sup>1826</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 110, p.176; and Rec. 119, p.179.

<sup>1827</sup> Commission on Government, *Report No. 1*, Perth: Commission on Government, August 1995, Rec. 5.3.1.5, p.223; and Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 117, p.178.

that, together with other proposed requirements, made the Assembly's Estimates and Financial Operations Committee a virtual replica of the Legislative Council committee.<sup>1828</sup>

COG also recommended that two joint standing committees be established—the Joint Audit Committee and the Joint Standing Committee on Delegated Legislation—and that the Standing Committee on Uniform Legislation and Intergovernmental Agreements be abolished.<sup>1829</sup>

The Joint Audit Committee would combine the Legislative Council's Finance and Audit Committee and the Legislative Assembly's Estimates and Financial Operations Committee, and would have the considerable responsibilities of participating in the Auditor General's appointment, setting the budget for the Office of the Auditor General (OAG), approving the OAG's strategic plan and appointing external auditors to audit the OAG. In addition, the Joint Audit Committee would review the auditors' report on the OAG and the Auditor General's annual report on the 'recruitment and staffing policy' of the Office.<sup>1830</sup>

The detail concerning the parliamentary committee system did not stimulate much media attention, partly because its initial public tabling was contained in the voluminous December 1995 COG *Report No. 2* which also included 'a key recommendation for the creation of an omnibus corruption watchdog titled "The Commission for the Investigation, Exposure and Prevention of Improper Conduct"'.<sup>1831</sup> This was to replace the much criticised Official Corruption Commission which COG found played 'a limited role in the prevention and exposure of improper conduct.'<sup>1832</sup> As its name suggests, the Commission for the Investigation, Exposure and Prevention of Improper Conduct would investigate, expose and prevent improper conduct, doing this through carrying out the relevant functions of various existing agencies COG considered had 'to a greater or lesser extent, a role in the prevention and exposure of impropriety or corruption.'<sup>1833</sup>

COG's aim was also to ensure protection for whistleblowers and provide for the oversight of the management and protection of Government records. Given this, it is perhaps understandable that the COG recommendations on parliamentary committees were not the focus of media attention. There was a reference to the need for parliamentarians to have

<sup>1828</sup> Commission on Government, *Report No. 1*, Perth: Commission on Government, August 1995, p.223.

<sup>1829</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 110, p.176; and Rec. 119, p.179.

<sup>1830</sup> Commission on Government, *Report No. 1*, Perth: Commission on Government, August 1995, Rec. 5.3.1.5, p.224.

<sup>1831</sup> Harry Phillips et al (1998), *Representing the People: Parliamentary Government in Western Australia*, Fremantle: Fremantle Arts Centre Press, p.240; and Commission on Government, *Report No. 2*, Perth: Commission on Government, December 1995, p.127.

<sup>1832</sup> Commission on Government, *Report No. 2*, Perth: Commission on Government, December 1995, p.109.

<sup>1833</sup> Commission on Government, *Report No. 2*, Perth: Commission on Government, December 1995, p.126, p.127 and pp.108–109. These agencies were the Auditor General, Commissioner for Equal Opportunity, Director of Equal Opportunity in Public Employment, Director of Public Prosecutions, Electoral Commissioner, Information Commissioner, Parliamentary Commissioner for Administrative Investigations (the State Ombudsman) and the Commissioner for Public Sector Standards.

longer sitting hours, make better use of question time and receive more research assistance.<sup>1834</sup>

#### 12.4.3 Procedural Matters

To help accommodate the increased committee workload, COG recommended that not only should sitting hours be increased but that each parliamentary session should be extended by two sitting weeks and the Houses' Standing Orders provide that committees can meet while the House is sitting.<sup>1835</sup> Furthermore, and in recognition of the interruptions experienced by many former committees, COG recommended that committees be allowed to continue their work through the periods of prorogation.<sup>1836</sup>

COG also held that Ministers should not be members of scrutiny or review committees, and that the Chairs of such standing committees should receive remuneration to reflect the high status of the position.<sup>1837</sup>

Controversially, COG recommended that parliamentary committees have the power to call not only public servants, but also Ministers from either House.<sup>1838</sup> Chairs of Boards of corporatised statutory authorities should also be required to provide evidence when required, with or without their Minister present.<sup>1839</sup>

#### 12.4.4 Resourcing Parliamentary Committees

From the outset COG recognised that adjusting the existing parliamentary committee system would require more resources. COG recommended that Parliament establish a committee office, headed up by a committee director, to provide secretariat services to committees. It also recommended that the committee system be supported by an information technology plan and that 'adequate funding' should be provided to support the system of standing committees.<sup>1840</sup> In particular COG held that the Legislative Council's Finance and Audit Committee and the Legislative Assembly's Estimates and Financial Operations Committee should be 'properly resourced and supported by senior full-time staff qualified in accounting, policy analysis or law.'<sup>1841</sup> Committees would also be supported by a restructured Parliamentary Library which would provide specialist research services.<sup>1842</sup>

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<sup>1834</sup> Harry Phillips et al (1998), *Representing the People: Parliamentary Government in Western Australia*, Fremantle: Fremantle Arts Centre Press, p.240.

<sup>1835</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 113, p.177.

<sup>1836</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 114, p.177.

<sup>1837</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 110, p.176.

<sup>1838</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 118, p.178.

<sup>1839</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 150, p.191.

<sup>1840</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 111, pp.176–177.

<sup>1841</sup> Commission on Government, *Report No. 1*, Perth: Commission on Government, August 1995, Rec. 5.3.1.5, p.223 and p.224.

<sup>1842</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 112, p.177.

Approving travel expenditure by parliamentary committees would remain the responsibility of the Presiding Officers, with each House being responsible for its own committees' travel costs.<sup>1843</sup>

## 12.5 Joint Standing Committee on the Commission on Government (1994)

Parliament itself was required under Section 22 of the *Commission on Government Act 1994* (WA) to establish a Joint Standing Committee on the Commission on Government. The functions of the committee were to monitor and review COG's performance and report any matters that needed to be brought to Parliament's attention.<sup>1844</sup> Most importantly, the committee was to examine COG reports and advise the Houses 'on any matter appearing in, or arising out of, any such report.'<sup>1845</sup> It was also to report on any contracts entered into by COG for consultants to provide it with professional, technical or necessary assistance.<sup>1846</sup>

The membership of the Joint Standing Committee on the Commission on Government was a matter of contention between the Government and Opposition. Premier Richard Court's motion in the Legislative Assembly to establish the committee stated that five members would be appointed by each House.<sup>1847</sup> In response, the Opposition moved an amendment that three of the five Legislative Assembly members and two of the Legislative Council members should be nominated by the Opposition.<sup>1848</sup> This amendment did not succeed and the Premier's motion was passed.<sup>1849</sup> The Legislative Council's concurrence was given on 29 June 1994.<sup>1850</sup> The Joint Standing Committee on the Commission on Government comprised Assembly members Jim Clarko and Ian Osborne (Liberal), Geoff Gallop and Larry Graham (Labor), and Max Trenorden (National), and Council members Barry House and Murray Nixon (Liberal), Murray Montgomery (National), and Mark Nevill and John Cowdell (Labor).<sup>1851</sup> The committee had a majority of Government members and was chaired by Jim Clarko.

The joint standing committee's first report, which considered the nominations for the position of COG Commissioners, was not a consensus report. While the committee approved the appointment of Jack Gregor, Frank Harman, Campbell Sharman, Anne Conti and Reg Dawson as Commissioners, the Labor members of the committee presented a minority report arguing that the committee had 'failed to discharge its duties' as prescribed in the *Commission of Government Act 1994* (WA). In particular, the minority report drew attention to the lack of time available for scrutiny of, and deliberation on, nominees and the

<sup>1843</sup> Commission on Government, *Report No. 5*, Perth: Commission on Government, August 1996, Rec. 187, p.206.

<sup>1844</sup> Section 23, *Commission on Government Act 1994* (WA).

<sup>1845</sup> Section 23(c) and (d), *Commission on Government Act 1994* (WA).

<sup>1846</sup> Section 23(e), *Commission on Government Act 1994* (WA).

<sup>1847</sup> WAPD, Legislative Assembly, 16 June 1994, p.2051.

<sup>1848</sup> WAPD, Legislative Assembly, 16 June 1994, p.2058.

<sup>1849</sup> WAPD, Legislative Assembly, 16 June 1994, pp.2060–2061.

<sup>1850</sup> WAPD, Legislative Council, 29 June 1994, pp.2447–2449.

<sup>1851</sup> WAPD, Legislative Assembly, 17 August 1994, pp3778–3782; and WAPD, Legislative Council, 13 September 1994, p.3403. In accordance with the Legislative Assembly Standing Order No. 355, the Opposition requested a ballot be held for the membership.

fact that there was no consideration of the individual merits of nominees.<sup>1852</sup> The minority report also raised a number of concerns about the nominees' relevant knowledge and experience, their availability and their lack of familiarity with the COG findings. It also stated that one nominee had directly approached a Government Minister to secure nomination.<sup>1853</sup> Without doubt some of this criticism had some validity with regard to the nominees' knowledge and experience as none had been members of Parliament.

Later, Liberal Party MLA Rob Johnson became the Chairperson of the committee that tabled 11 reports between 20 October 1994 and 24 October 1996. Toward the end of this time, the committee produced a very useful synopsis of its responses to the recommendations in COG's first report.<sup>1854</sup>

Very few of COG's recommendations were explicitly rejected by the Joint Standing Committee on the Commission on Government, with many being accepted or supported in principle. As noted above, one of COG's major recommendations concerning committees related to the formation of the Standing Committee on Finance and Audit, and the Standing Committee on Estimates and Financial Operations. This recommendation was supported in principle, but the joint standing committee was of the opinion that 'consideration of proposals for a new Parliamentary Committee system should be addressed by the Parliament in the light of other, detailed reports on that very matter.'<sup>1855</sup> COG's recommendation that the proposed Joint Audit Committee determine the Auditor General's budget was not supported as the committee held that this was the Treasurer's role.<sup>1856</sup> The committee also stated that the proposed Joint Audit Committee appeared 'to be highly impractical, requiring an excessive number of members.'<sup>1857</sup>

The Joint Standing Committee on the Commission on Government also supported COG's recommendation in relation to each House establishing a Standing Committee on Privilege, but did not support the recommendation that these committees review their own effectiveness. According to the committee, Parliament should oversee the effectiveness of its committees.<sup>1858</sup> There was, though, a minority report that argued that the public should have a role in reviewing the effectiveness of measures aimed at combating abuse of

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<sup>1852</sup> Joint Standing Committee on the Commission of Government, *First Report. Minority Report*, October 1994, pp.1–2.

<sup>1853</sup> Joint Standing Committee on the Commission of Government, *First Report. Minority Report*, October 1994, p.2.

<sup>1854</sup> *Synopsis of the Joint Standing Committee on the Commission on Government's Response to the Recommendations in COG's First Report*, Parliament of Western Australia, 19 September 1996.

<sup>1855</sup> *Synopsis of the Joint Standing Committee on the Commission on Government's Response to the Recommendations in COG's First Report*, Parliament of Western Australia, 19 September 1996, p.16; and *Eighth Report*, Joint Standing Committee on the Commission on Government, 27 June 1996, p.8.

<sup>1856</sup> *Synopsis of the Joint Standing Committee on the Commission on Government's Response to the Recommendations in COG's First Report*, Parliament of Western Australia, 19 September 1996, p.16 and p.18; and *Eighth Report*, Joint Standing Committee on the Commission on Government, 27 June 1996, p.8.

<sup>1857</sup> Joint Standing Committee on the Commission on Government, *Eighth Report*, 27 June 1996, p.4.

<sup>1858</sup> *Synopsis of the Joint Standing Committee on the Commission on Government's Response to the Recommendations in COG's First Report*, Parliament of Western Australia, 19 September 1996, p.33.

privilege.<sup>1859</sup> The joint standing committee did not support COG's recommendation in relation to the remedies available to citizens to respond to statements made under privilege, arguing that this gave the Presiding Officers and committee Chairs the power to determine the validity of a complaint. It did, though, support the need for people to have remedies available and held that complaints should be made to the relevant House's Standing Committee on Privilege.<sup>1860</sup>

While not all of COG's recommendations were supported by the Joint Standing Committee on the Commission on Government, it cannot be argued that their endorsement of a strong parliamentary committee system was ignored. In fact, the Legislative Council established a select committee, chaired by experienced Liberal and future President, George Cash, to review its standing committee system. The Legislative Assembly gave its Standing Orders and Procedures Committee much of the task of considering the COG recommendations, although its own Standing Committee on Uniform Legislation, as well as the Joint Standing Committee on Delegated Legislation, was also consulted. The exercise of responding to the COG deliberations in a practical manner spanned from 1996 in the 34<sup>th</sup> Parliament to most of the 35<sup>th</sup> Parliament from 1997 until the end of 2000. This was to set in place a blueprint for a standing committee system of both Houses which remained in place, with only marginal change, for the next decade.

## 12.6 Legislative Council Review of its Standing Committee System (1997)

The Legislative Council Select Committee appointed in June 1997 was charged with the responsibility 'to review the constitution, effectiveness, efficiency and economy of the standing committee system' and to report to the House by 27 August 1997.<sup>1861</sup> Part of the motion to establish the seven-member Select Committee to Review the Standing Committee System stipulated that the President would be Chair of the committee and that a further three Government members would be appointed.<sup>1862</sup> In line with this, the members were George Cash (President as Chairman), Derrick Tomlinson and Barry House (Liberals), Murray Criddle (National), Helen Hodgson (Australian Democrats), Jim Scott (Greens) and Tom Stephens (Labor).<sup>1863</sup>

The Select Committee to Review the Standing Committee System report reminded the House of the Standing Orders under which the Legislative Council committee system operated, stating that:

*until the abolition of the Government Agencies Committee in December 1996, the system was administered under 3 separate groups of standing orders. That committee had its own rules adopted in 1982. Delegated Legislation is governed by the Council's standing orders applicable to select committees, and the remaining*

<sup>1859</sup> *Synopsis of the Joint Standing Committee on the Commission on Government's Response to the Recommendations in COG's First Report*, Parliament of Western Australia, 19 September 1996, p.34.

<sup>1860</sup> *Synopsis of the Joint Standing Committee on the Commission on Government's Response to the Recommendations in COG's First Report*, Parliament of Western Australia, 19 September 1996, p.35.

<sup>1861</sup> WAPD, Legislative Council, 11 June 1997, p.3778; and 26 June 1997, pp.4608–4609.

<sup>1862</sup> WAPD, Legislative Council, 11 June 1997, p.3778.

<sup>1863</sup> WAPD, Legislative Council, 26 June 1997, p.4602.

*committees operate under standing orders adopted in 1989/90. When the Public Administration Committee was established in substitution for the Government Agencies Committee the House took the opportunity to repeal the 1982 rules and apply the 'uniform' 1989 rules to the new committee.*<sup>1864</sup>

Based on its review of the accumulation of several years of standing committee experience in the Council, together with reference to the literature for the Australian Senate, the Select Committee to Review the Standing Committee System reported agreement on the following set of propositions:

1. *Standing committees should be general purpose with regard to ministerial portfolios which are, themselves, subject to alteration at the behest of the Government;*
2. *The committee system ought to be an integral part of the legislative and review process;*
3. *There is nothing intrinsically wrong with the procedures now in place;*
4. *The current system for discharging/appointing members requires further consideration;*
5. *There is in principle support for the provision of proxy/substitute members;*
6. *Committee Chairs should be invited to express their views on the system and how it might be improved;*
7. *Select committees should be retained as part of the committee system for narrow purpose inquiries;*
8. *The Legislative Council should retain its own system of standing committees; joint committees of both Houses are acceptable only where there is a common interest and a compelling need.*<sup>1865</sup>

#### 12.6.1 Recommendations Relating to Specific Committees

The report of the Select Committee to Review the Standing Committee System included recommendations relating to specific committees and to the committee system more generally. One key change resulting from the select committee's report was that the role of the Legislation Standing Committee was strongly affirmed, in that it was to have responsibility for statute revision which, at the time of the report, was within the purview of the Standing Committee on Constitutional Affairs and Statutes Revision.<sup>1866</sup> As discussed in Chapter 11, this standing committee, which had historically spent much of its time considering petitions, was to be changed to the Constitutional Affairs Committee,<sup>1867</sup> with the relevant amendments being passed in the Legislative Council on 12 March 1998.

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<sup>1864</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.6.

<sup>1865</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.7.

<sup>1866</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.4.

<sup>1867</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.5.

The report also argued that, ‘as part of the rationalization of the system,’ the Delegated Legislation Standing Committee should be administered through the 1989 version of the Standing Orders.<sup>1868</sup>

The Select Committee to Review the Standing Committee System did not suggest that special consideration be given to environmental matters, but did recommend ‘that all committees have regard to minority and regional interests in the course of each inquiry they undertake.’<sup>1869</sup> The committee also recommended that the major function of the Ecologically Sustainable Development Committee be amended to inquiring into and reporting on ‘any issue of significant community concern other than a matter that falls within the terms of reference of another Legislative Council committee or a bill.’<sup>1870</sup>

The select committee canvassed establishing a standing committee to consider issues relating to Aboriginal people.<sup>1871</sup> This stance was recommended by Mining and Pastoral Region MLC, Tom Stephens, a Labor committee member who formulated a minority report in which he recommended ‘that the Legislative Council explore further the option of moving to establish a dedicated Standing Committee on Indigenous Issues.’<sup>1872</sup>

Tom Stephens (who was later elected to the Legislative Assembly in 2005) had proven to be one of the most dedicated parliamentarians in committee service. Stephens felt that the committee system of the Legislative Council should be seen to be an integral part of that chamber’s role. He argued that:

*There is wide scope for greater participation and awareness by the public in the processes of the Committee system of the House. Currently, apart from the occasional controversial inquiry or the appearance of a high profile witness, the public, the media, the public service and community and industry groups have little awareness of the existence or operations of Parliamentary committees in this state.*<sup>1873</sup>

Eventually, though, the committee decided ‘that any issue involving or relating to Aboriginal affairs be considered by each committee in the normal course of an inquiry,’ did not put forward Tom Stephens’ recommendation.<sup>1874</sup>

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<sup>1868</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.6.

<sup>1869</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.5.

<sup>1870</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, pp.4–5.

<sup>1871</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.16.

<sup>1872</sup> Select Committee to Review the Legislative Council Standing Committee System, ‘Minority Report’, *Report*, Legislative Council, August 1997, p.8.

<sup>1873</sup> Select Committee to Review the Legislative Council Standing Committee System, ‘Minority Report’, *Report*, Legislative Council, August 1997, p.1.

<sup>1874</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.17.

### 12.6.2 Recommendations Relating to Procedural and Administrative Matters

In relation to the possibility of the duplication of committee functions, the Select Committee to Review the Standing Committee System argued that ‘the likelihood of serious duplication is very slight if only because the references for each committee require it to inquire into matters from a particular perspective.’<sup>1875</sup> Given this, it found that ‘no additional, formal strictures’ were necessary.<sup>1876</sup>

The report of the select committee also noted that since 26 June 1997, committee members were now appointed for a parliamentary term rather than a session, and made a number of recommendations regarding committee membership.<sup>1877</sup> First, it suggested that Standing Order 326 be amended to allow members of the Legislative Council who were not members of a particular committee to participate in that committee’s deliberations on an issue on invitation by the committee; such members would still not be able to participate in committee votes.<sup>1878</sup> Second, it also recommended that the substitution of committee members for a particular inquiry be allowed, with specific conditions to be met as part of this process.<sup>1879</sup> Third, in relation to potential conflict of interest issues, the select committee argued that members should ‘not vote on a question in which the member has a direct pecuniary or personal interest.’<sup>1880</sup>

While members were now appointed for a parliamentary term, committees were still not able to function during periods of prorogation. The select committee recommended that priority be given to introducing legislation to allow ‘either House, by resolution, to carry forward business from session to session within the life of a Parliament and also enable committees to meet and transact business during a recess.’<sup>1881</sup>

The report acknowledged the ‘recurrent difficulties’ associated with referring Bills to the Legislation Committee, particularly the time needed for consideration of a Bill and the potential for conflict with the Government’s schedule for the legislation to pass through the Houses.<sup>1882</sup> The select committee recommended a procedure for committee consideration of Bills which, while not reducing ‘the time taken by a committee,’ would improve the time

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<sup>1875</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.8.

<sup>1876</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.8.

<sup>1877</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.6. Under the revised SO 303, members could still resign or be discharged.

<sup>1878</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.2.

<sup>1879</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.2.

<sup>1880</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.3.

<sup>1881</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.2.

<sup>1882</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.19.

available overall and facilitate the ‘timely consideration of legislation by standing committees.’<sup>1883</sup>

Part of the recommended revised process was the establishment of a Business Management Committee to help ensure ‘better management of the Legislative Council.’<sup>1884</sup> The role of the Business Management Committee, which would comprise the Leader of the Government, the Leader of the Opposition and one representative each from the Greens (WA), the National Party and the Australian Democrats, would include the determination each week of ‘the specific business to be transacted on each day’ and the classification of Bills for referral to committees.<sup>1885</sup>

The committee made recommendations to repeal certain Standing Orders that duplicated others, but noted that ‘any major amendments’ should be considered by the upcoming review by the Standing Orders Committee.<sup>1886</sup> The committee recommended an amendment to Standing Order 334 to delete the required ‘notice of intention to table a report’ which, while ‘laudable’ in its intent, was not often observed.<sup>1887</sup> This would assist the House in considering committee reports.

There was no modification to the Legislative Council standing order, adopted on 3 July 1990, pertaining to the parliamentary presentation of committee reports, which read as:

*After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The leader of the Government or the Minister (if a member of the Council) shall report the Government’s response within 4 months*<sup>1888</sup>

Earlier, dated 21 February 1985, the Legislative Assembly Standing Orders Committee had formulated a standing order which stated:

*When a report of the Committee recommends that a particular action be taken by the Government with respect to a matter, the appropriate responsible Minister of the Crown shall, as soon as practicable, but within not more than three months, or at earliest opportunity after that time if Parliament is in adjournment or recess, report to the House as to the action (if any) proposed to be taken by the Government with respect to the recommendation of the Committee.*<sup>1889</sup>

<sup>1883</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, pp.19–20.

<sup>1884</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.4.

<sup>1885</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.1, p.4, p.8 and p.18.

<sup>1886</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.19.

<sup>1887</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.22.

<sup>1888</sup> Correspondence from the Clerk of the Legislative Council, Nigel Pratt (and Grant Hitchcock), 12 October 2017.

<sup>1889</sup> Report of the Standing Orders Committee of the Legislative Assembly on Amendments to the Standing Orders, 21 February 1985, p.10.

Ironically the Commission on Government had not presented literature on the significance of the government response factor. Nevertheless, this was more frequently debated in the years ahead as the effectiveness of a committee's recommendations and findings was often closely bound to the government action, which followed the tabling of the committee report.

The resourcing of committees was also an area considered by the committee. Recommendations were made in relation to the need to use and/or expand the use of communication and information technology to gather information for inquiries, and for members to receive draft reports in electronic form. In fact, such actions were seen as urgent, to maximise the effective use of resources.<sup>1890</sup> The select committee recommended the appointment of 'additional advisory/research officers and support staff for the Legislative Council committee office.'<sup>1891</sup> Another set of reforms to cater for an emerging new standing committee system in the 'other place' were being cast by the Legislative Assembly Select Committee on Procedure.

## 12.7 Legislative Assembly Review of its Standing Committee System

### 12.7.1 Select Committee on Procedure

The Legislative Assembly Select Committee on Procedure was established on 29 September 1994, in part, to 'provide an opportunity to analyse the existing system with respect to the practices and procedures in place at the moment,' including committees, with a view to improving the effective use of the Legislative Assembly's time.<sup>1892</sup> In moving to establish the select committee, George Strickland advised that there were questions relating 'to select committees versus standing committees, and the concept of what could be called sessional committees.'<sup>1893</sup> In relation to parliamentary committees, the select committee was to inquire into 'the value of developing a new committee system.'<sup>1894</sup>

The members appointed to the select committee were Geoff Gallop and Eric Ripper (Labor members), Robert Johnson and George Strickland (Liberal members) and Max Trenorden (National).<sup>1895</sup> With George Strickland as the Chair, the select committee went on to table three reports, one on 29 June 1995, another on 30 November 1994 and the final report on 27 June 1996.<sup>1896</sup>

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<sup>1890</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, pp.5–7.

<sup>1891</sup> Select Committee to Review the Legislative Council Standing Committee System, *Report*, Legislative Council, August 1997, p.26.

<sup>1892</sup> WAPD, Legislative Assembly, 29 September 1994, p.5238. The Opposition preferred that the review be dealt with by the Standing Orders and Procedure Committee. See: WAPD, Legislative Assembly, 29 September 1994, p.5244.

<sup>1893</sup> WAPD, Legislative Assembly, 29 September 1994, p.5239.

<sup>1894</sup> WAPD, Legislative Assembly, 29 September 1994, p.5238.

<sup>1895</sup> WAPD, Legislative Assembly, 29 September 1994, p.5248

<sup>1896</sup> WAPD, Legislative Assembly, 29 June 1995, p.6372; 30 November 1995, p.12044; and 27 June 1996, p.3457.

### 12.7.2 The Genesis of Portfolio-based Committees

Based on their understanding of the challenges associated with the then current committee system, the Select Committee on Procedure set out the following objectives for a new system:

- (a) to provide a co-ordinated approach to oversight of Government departments and implementation of policy;*
- (b) to provide an established avenue for referral of inquiries;*
- (c) to enhance accountability;*
- (d) to increase Parliament's role, and particularly that of backbenchers in the legislative process;*
- (e) to provide an avenue for public input into the legislative process;*
- (f) to co-ordinate the workload of Members more effectively.<sup>1897</sup>*

Chairman George Strickland suggested that the introduction of a structured committee system to replace the current 'ad hoc set of committee arrangements' would certainly be regarded as 'the major recommendation' of the select committee.<sup>1898</sup> Eric Ripper also argued that the recommendation for a new committee system was very important, and one that would counter a perceived myth that the Legislative Assembly did not have a committee system. He also described the (then) current system as 'ad hoc and uncoordinated' and reliant 'on individual members persuading their parties and then the House that they would like a select committee on a topic.'<sup>1899</sup>

As the Western Australian Parliament was relatively small and therefore not able to have an extensive committee system, the select committee recognised the Legislative Assembly could 'sustain only a modest number of committees.'<sup>1900</sup> Additionally:

*as the Legislative Assembly is the House through which the majority of legislation enters the Parliament and is the initiator of all legislation relating to public expenditure and taxation, it is considered appropriate that a new committee system be designed around a series of portfolio-related standing committees.<sup>1901</sup>*

The proposed portfolio-based standing committees were:

- (a) Education, Social Development and Community Affairs;*
- (b) Health and Justice;*
- (c) Primary Industry, Resources, Transport and Trade.<sup>1902</sup>*

In addition to these three committees, under the select committee's proposed system the existing Standing Committee on Standing Orders and Procedure would continue, as would the Public Accounts and Expenditure Review Committee. The select committee

<sup>1897</sup> Select committee on Procedure, *Final Report*, Legislative Assembly, 1996, pp.33–34.

<sup>1898</sup> WAPD, Legislative Assembly, 27 June 1996, p.3457.

<sup>1899</sup> WAPD, Legislative Assembly, 27 June 1996, p.3459.

<sup>1900</sup> WAPD, Legislative Assembly, 27 June 1996, p.3459.

<sup>1901</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, 1996, p.34.

<sup>1902</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, 1996, p.34.

recommended a parliamentary services committee which would combine the existing standing committees on the library, printing and the House, and a strengthening of the Estimates Committee process. It also recommended 'an amalgamated standing committee on delegated legislation and uniform legislation.'<sup>1903</sup> These recommendations are discussed further below.

Under the select committee's proposal, the Speaker would determine which areas would be allocated to which committee and table the schedules after the opening of the first session of each Parliament.<sup>1904</sup>

According to the select committee 'the ability for the House to refer Bills to the portfolio-related standing committees' after the second reading stage would provide the new committees with one of their 'most innovative and important features' as it allowed committees to obtain submissions and hear evidence on a Bill, and to propose amendments.<sup>1905</sup> This ability to propose amendments to Bills was held to have a number of advantages including:

- considerable efficiency improvements, particularly where aspects of a Bill needed to be clarified or where controversial or emotive issues were dealt with;
- careful consideration of a Bill by members who had developed current knowledge and expertise in their portfolio areas; and
- through greater public input and increased scrutiny of a Bill, subsequently fewer amendments would be necessary.<sup>1906</sup>

Moreover, the Committee suggested that the 'portfolio-related standing committees be given the power to initiate their own investigations,' a power currently held by the Public Accounts and Expenditure Review Committee, which was to retain this important function.<sup>1907</sup> The select committee suggested that portfolio-based committees would be able 'to use their discretion to investigate issues within their realm of expertise,' and be encouraged 'to be proactive in carrying out their scrutiny and review functions.'<sup>1908</sup> However, the adoption of a portfolio-based committee system was temporarily stalled. It was again debated in the last year of the Richard Court Government but was shelved until after the 2001 State election, at which the Labor Party was returned to power.

### 12.7.3 The Issue of Estimates Committees Continues

On several occasions consideration was given to the issue of the Estimates and to whether these should be referred to the portfolio standing committees for scrutiny given that the Legislative Council in May 1990 had appointed a Standing Committee on Estimates and Financial Relations.

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<sup>1903</sup> WAPD, Legislative Assembly, 27 June 1996, p.3459.

<sup>1904</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, 1996, p.34.

<sup>1905</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, 1996, p.37.

<sup>1906</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, 1996, p.37.

<sup>1907</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, 1996, p.38.

<sup>1908</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, 1996, p.38.

Prior to 1990 in the Legislative Assembly budget scrutiny occurred over several days on a line-by-line examination of the appropriation Bills in the House. Between 1990 and 1992 considerable attention was given to the budget Estimates process in the Legislative Assembly, with three different procedures being trialled, each varying the number of Estimate Committees to sit concurrently and the number of days they sat. The first trial was for three Estimates Committees sitting over three days; the second was for two Estimates Committees sitting over three days; and the third was for one Estimates Committee, sitting over five days.<sup>1909</sup> Based on this experience, in 1993 the Legislative Assembly 'adopted a Sessional Order for Estimates to be considered by two committees—Estimates Committee A and Estimates Committee B' over several consecutive days.<sup>1910</sup>

The Select Committee on Procedure argued that this Estimates Committee structure and procedure should be retained, but made recommendations to improve the process. Importantly, the committee felt that capital works estimates should be scrutinised, as should non-consolidated revenue fund agencies (for example, Homeswest, Alinta Energy and Western Power). Mindful of the extra time that would be needed for this expanded estimates process, the select committee suggested increasing the Estimates sitting time by half a day and debating the Appropriation (Consolidated Fund) Bills (Nos. 1 and 2) cognately.<sup>1911</sup>

Further recommendations on Estimates Committees were made in the various Standing Orders and Procedure Reports from 1993 to 2000. Sessional Orders were adopted each year to allow the consideration in detail stage of the appropriation Bills to take place in Estimates Committees A and B, meeting simultaneously over several days. This meant that each year the House went through the process of debating the formation of Estimates Committees, and each year the Leader of the House gave notice of motion to set them up. In the words of future Premier, Colin Barnett, 'it was like reinventing the wheel every year.'<sup>1912</sup>

#### 12.7.4 A Legislation Committee for the Legislative Assembly

The Select Committee on Procedure's *Second Interim Report* advised the House that it had 'resolved to trial a legislation committee' to see if that would 'increase the efficiency of the House, allow for more thorough examination of legislation and provide an avenue for public input into the legislative process.'<sup>1913</sup> The report provided a recommended sessional order detailing how the Legislation Committee should be constituted and operated.<sup>1914</sup>

The report detailed how that, if leave was not granted after the second reading to proceed directly to the third reading stage, the (then) procedure for handling the passage of a Bill through the Legislative Assembly was that it was examined by the whole House on a clause-

<sup>1909</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, 1996, p.15. Estimates Committees A, B and C sat on 13–15 November 1990; Estimates Committees A and B sat on 15–17 October 1991; and the single Estimates Committee sat on 12–16 October 1992.

<sup>1910</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, 1996, p.15.

<sup>1911</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, 1996, p.16.

<sup>1912</sup> WAPD, Legislative Assembly, 23 November 2000, p.3876.

<sup>1913</sup> Select Committee on Procedure, *Second Interim Report*, Legislative Assembly, 30 November 1995, p.2 and p.3.

<sup>1914</sup> Select Committee on Procedure, *Second Interim Report*, Legislative Assembly, 30 November 1995, pp.3–4.

by-clause basis.<sup>1915</sup> This stage was referred to as a Committee of the Whole House (now termed Consideration in Detail).<sup>1916</sup> There was also an alternative provision for a Bill once the second reading stage was complete—it could be referred to an ad hoc select committee. However, this provision was rarely called upon.<sup>1917</sup>

The select committee reported that 50 per cent of the House's time during the 1994–1995 parliamentary session was taken up with debating legislation. Approximately half of the Bills passed during that session were considered in the Committee of the Whole House, with 30 per cent of those taking more than two hours in that stage.<sup>1918</sup>

A survey of members of the Legislative Assembly conducted by the select committee indicated that 61 per cent of respondents, both Government and non-Government, were not satisfied with the current sitting hours as the scale of commitments faced by members meant that it was difficult to address their legislative and other duties.<sup>1919</sup>

In comparing the use of legislation committees in other jurisdictions, the select committee noted that the parliaments of the Australian Commonwealth, the United Kingdom and New Zealand, as well as some Australian state and Canadian provincial Legislatures, used legislation committees and these had the power to 'call for public submissions and hear evidence.'<sup>1920</sup>

The select committee saw a number of advantages to having a legislation committee of between six and 12 members (including the Chair) to consider Bills. A legislation committee would sit concurrently with the House and enable more than one piece of legislation to be considered at the same time. The membership nomination process would also allow independent members with a special interest in a piece of legislation to participate.<sup>1921</sup> Furthermore, the legislation committee process would provide for more direct public input into Parliament, increase 'committee members' understanding of varying views' on a Bill's subject matter and improve members' 'ability to consider the Bill in detail.'<sup>1922</sup>

In 1996 George Strickland advised the House that the trial of a legislation committee had met 'with some success.'<sup>1923</sup> Ultimately, though, the capacity to refer Bills to Legislation Committees was moved from the Sessional Orders to the permanent Standing Orders, but such a procedure was not consistently utilised. From the outset there was disagreement

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<sup>1915</sup> Select Committee on Procedure, *Second Interim Report*, Legislative Assembly, 30 November 1995, p.2.

<sup>1916</sup> When the Standing Orders of the Legislative Assembly were modernised as part of the 2000–2001 reforms, the new SO 174 changed this procedure from being a 'Committee of the Whole' to 'Consideration in Detail'. Consideration in Detail was designed to eliminate the fiction that the Committee of the Whole was different from the House, as well as eliminating the procedural steps of going to and from committee.

<sup>1917</sup> Select Committee on Procedure, *Second Interim Report*, Legislative Assembly, 30 November 1995, p.2.

<sup>1918</sup> Select Committee on Procedure, *Second Interim Report*, Legislative Assembly, 30 November 1995, p.3.

<sup>1919</sup> Select Committee on Procedure, *Second Interim Report*, Legislative Assembly, 30 November 1995, p.53.

<sup>1920</sup> Select Committee on Procedure, *Second Interim Report*, Legislative Assembly, 30 November 1995, p.2.

<sup>1921</sup> Select Committee on Procedure, *Second Interim Report*, Legislative Assembly, 30 November 1995, p.3.

<sup>1922</sup> Select Committee on Procedure, *Second Interim Report*, Legislative Assembly, 30 November 1995, p.2.

<sup>1923</sup> WAPD, Legislative Assembly, 27 June 1996, p.3458.

about whether such committees have the power to send for persons and papers, and to move from place to place.<sup>1924</sup>

#### 12.7.5 Parliamentary Services Committee

As noted, the Select Committee on Procedure recommended the consolidation of the three existing domestic committees that advised the Speaker and the President on the provision of services to Parliament—the House, the Library and the Printing Committees—into one committee, namely the Parliamentary Services Committee.<sup>1925</sup> This new amalgamated committee would ‘advise the Speaker on matters dealing with Hansard, Library, Catering and Building Management in the Parliament.’<sup>1926</sup> As this required the concurrence of the Legislative Council to alter the Joint Standing Orders, the Legislative Assembly needed to liaise with the Council to make the necessary amendments.<sup>1927</sup>

On 6 May 1996 in the Legislative Assembly, a motion was passed to establish a Parliamentary Services Committee of six members, one of whom would be the Speaker.<sup>1928</sup> This motion also deleted the Standing Orders for the existing domestic committees, including those relating to the current joint committees.<sup>1929</sup> The Legislative Council was advised accordingly and passed a motion to the same effect on 10 June 1998.<sup>1930</sup>

#### 12.7.6 Proposal for an Expanded Joint Standing Committee on Delegated Legislation

The Select Committee on Procedure in its 1996 *Final Report* took a contentious stance in recommending, subject to the concurrence of the Legislative Council, that the Standing Committee on Uniform Legislation and Intergovernmental Agreements be amalgamated with an expanded Joint Standing Committee on Delegated Legislation.<sup>1931</sup>

The Select Committee on Procedure provided the following as the rationale for this recommendation:

- This amalgamation would help meet the objective of a less cumbersome committee system and to address the issues of member availability and the potential for ‘conflicting workloads’;
- Neither of the standing committee’s functions required ‘in-depth investigation of all the issues in any proposed legislative scheme’; and
- Both were concerned with legislative power—the Standing Committee on Uniform Legislation and Intergovernmental Agreements with regulations, and the Joint

<sup>1924</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, June 1996, p.57.

<sup>1925</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, June 1996, p.49 and p.50; and WAPD, Legislative Assembly, 27 June 1996, p.3458.

<sup>1926</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, June 1996, p.50; and WAPD, Legislative Assembly, 6 May 1996, p.2406.

<sup>1927</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, June 1996, p.50.

<sup>1928</sup> WAPD, Legislative Assembly, 6 May 1996, p.2406.

<sup>1929</sup> WAPD, Legislative Assembly, 6 May 1996, p.2406.

<sup>1930</sup> WAPD, Legislative Council, 10 June 1998, p.3604.

<sup>1931</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, June 1996, p.44.

Standing Committee on Delegated Legislation with agreements between Australian jurisdictions.<sup>1932</sup>

However, firm opposition was expressed by the Chair of the Standing Committee on Uniform Legislation and Intergovernmental Agreements, Phillip Pandal. By this time Pandal was an Independent in the Legislative Assembly after eight years in the Legislative Council, where he had been one of the founders of the Legislative Council Standing Committee System. As Pandal pointed out, his committee's view was that the select committee didn't fully comprehend the 'substantially different roles and functions of' the two committees.<sup>1933</sup> Indeed, the criticism was that the select committee's report lacked 'conceptual basis' and that 'insufficient and superficial consideration was given to the quite clearly different' roles and functions of these standing committees.<sup>1934</sup>

Pandal further explained that:

*While some national uniform legislation may result in the need for subordinate legislation which would be, or should be, subject to review by the JSCDL this is only a minor part of the legislative picture. The role of [the Standing Committee on Uniform Legislation and Intergovernmental Agreements] is not only that of legislative review but involves looking at constitutional issues and matters involving legal and Commonwealth/State affairs.*

*The Commission on Government Report recognised that the functions of this Committee are more aligned to a Constitutional and Federal State/Affairs Committee.*<sup>1935</sup>

The Standing Committee on Uniform Legislation and Intergovernmental Agreements also suggested that the Select Committee on Procedure did not take into consideration COG's recommendations that it 'be amalgamated with a Constitutional and Federal State Affairs Committee,' a recommendation that 'clearly recognised the special and vital role' of the standing committee's work.<sup>1936</sup> The committee felt that its role should be retained because it provided leadership in intergovernmental relations, noting that its work on uniform legislation and intergovernmental agreements, and federal/State affairs, had led to the establishment of the Victorian Federal-State Relations Committee. The committee also argued that it facilitated 'liaison with Ministries and agencies.'<sup>1937</sup>

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<sup>1932</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, June 1996, pp.43–44.

<sup>1933</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.iv.

<sup>1934</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.

<sup>1935</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.iv.

<sup>1936</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.5 and p.10.

<sup>1937</sup> *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*, Legislative Assembly, June 1998, p.17.

The standing committee held that it was ‘not appropriate’ for its functions to be fulfilled by a committee in the Legislative Council first, because the Council was a House of review, and second, because most uniform legislation was introduced in the Legislative Assembly, with the Standing Committee on Uniform Legislation and Intergovernmental Agreements often being involved in discussion on pieces of uniform legislation prior to them being introduced into the House.<sup>1938</sup>

Giving weight to the arguments of the Standing Committee on Uniform Legislation and Intergovernmental Agreements, the Joint Standing Committee on Delegated Legislation was also not in favour of the merge. It argued that the reasons offered by the Select Committee on Procedure for the amalgamation of the two standing committees reflected ‘a fundamental misconception of the respective roles of the two committees’ and could possibly ‘undermine the apolitical impartiality’ for which the Joint Standing Committee on Delegated Legislation had ‘fought long and hard.’<sup>1939</sup>

The objections of both the affected standing committees were not accepted by the Legislative Assembly. The Standing Orders and Procedure Committee maintained its view that the Standing Committee on Uniform Legislation and Intergovernmental Agreements should be phased out in line with COG’s view that its functions be amalgamated with the Joint Standing Committee on Delegated Legislation (with staffing levels maintained).<sup>1940</sup> While recognising that the Standing Committee on Uniform Legislation and Intergovernmental Agreements had provided a lead in the area of uniform legislation, another two reports of the Legislative Assembly’s Procedure and Privileges Committee in 1998 and 1999 did not consider that this meant that it should continue as a separate committee.<sup>1941</sup>

The Legislative Assembly’s Standing Orders and Procedure Committee’s 1999 Volume 2 of its *Report on the Modernisation of the Standing Orders* proposed that at the beginning of each Parliament a Standing Committee on Delegated and Uniform Legislation be established upon ‘receipt of a message from the Council for the appointment of a Joint Standing Committee.’<sup>1942</sup> Thus the committee endorsed the 1996 recommendation of the Select Committee on Procedure.

However, when the rationalisation process was completed and agreement with the Legislative Council achieved, a Standing Committee on Uniform Legislation and General Purposes was established in the Legislative Council on 11 April 2002, which was early in the

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<sup>1938</sup> *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*, Legislative Assembly, June 1998, p.17.

<sup>1939</sup> Joint Standing Committee on Delegated Legislation, *Nineteenth Report: The Committee’s Response to the Final Report of the Legislative Assembly Select Committee on Procedure*, September 1996, p.3.

<sup>1940</sup> *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*, Legislative Assembly, June 1998, p.viii.

<sup>1941</sup> *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*, Legislative Assembly, June 1998, p.17.

<sup>1942</sup> Standing Orders and Procedure Committee, *Report on the Modernisation of the Standing Orders. Volume 2 - Existing Standing Orders, Proposed Standing Orders and Notes*, Legislation Assembly, May 1999, Standing Order 291, np.

36<sup>th</sup> Parliament.<sup>1943</sup> Chair of the new committee, Labor MLC Adele Farina, had the advantage of a law degree when considering the complicated federal web of intergovernmental matters. The new committee was to continue the valuable work originally commenced by Standing Committee on Uniform Legislation and Intergovernmental Agreements and become a permanent part of the standing committee structure of the Parliament, albeit with amended title—Uniform Legislation and Statutes Review—and with modified terms of reference.

## 12.8 Report on COG (1998) and Modernisation of Standing Orders (1999)

In November 1997 the Legislative Assembly referred 24 of the Commission on Government's (COG's) recommendations to the Standing Orders and Procedure Committee for its consideration.<sup>1944</sup> As discussed above, while many of COG's recommendations related to matters such as privilege, question time, the information requirements of members and a code of conduct for members, some of these related to parliamentary committees.

To undertake this review, the Standing Orders and Procedure Committee sought advice from the Legislative Assembly's Public Accounts and Expenditure Review Committee, the Joint Standing Committee on Delegated Legislation and the Standing Committee on Uniform Legislation and Intergovernmental Agreements. It was also guided by the Select Committee on Procedure.<sup>1945</sup>

The Standing Orders and Procedure Committee's June 1998 report made 48 recommendations, including some relating to committees. No suggestions were made in relation to the Legislative Council committees, but clearly negotiations with 'the other place' occurred in order to help establish the committee framework for the Parliament which was to be set in place for the beginning of the 35<sup>th</sup> Parliament in 2001.

The 1998 report revisited a number of positions adopted by the Legislative Assembly. Although supporting the COG recommendations 'in as much as they propose[d] improved estimates scrutiny,' the committee did not support the expansive proposals for the rearrangement of the Legislative Assembly Public Accounts and Expenditure Review Committee and the Legislative Council Standing Committee on Finance and Audit.<sup>1946</sup> Rather, it suggested that the Public Accounts and Expenditure Review Committee and Estimates Committees be retained.<sup>1947</sup> No further comment was made on the Legislative Council committee system as that was a matter for the other House.<sup>1948</sup>

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<sup>1943</sup> WAPD, Legislative Council, 11 April 2002, p.9411.

<sup>1944</sup> *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*, Legislative Assembly, June 1998, p.ii.

<sup>1945</sup> *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*, Legislative Assembly, June 1998, p.v.

<sup>1946</sup> *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*, Legislative Assembly, June 1998, p.6 and p.8.

<sup>1947</sup> *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*, Legislative Assembly, June 1998, p.8.

<sup>1948</sup> *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*, Legislative Assembly, June 1998, p.6.

The Standing Orders and Procedure Committee opposed COG Recommendation 120 which sought ‘automatic referral of Bills to committees,’ instead preferring the approach of the Select Committee on Procedure. In effect, the standing committee rejected the idea that all Bills should be referred to committees and that this should occur after the first reading stage. Therefore, it recommended that the Legislative Assembly:

- (a) *establish portfolio-related standing committees;*
- (b) *provide Legislation Committees with evidence gathering powers; and*
- (c) *agree that ministers should provide adequate information to committees to facilitate consideration of legislation, and that the minister should do everything reasonable to meet any committee request for such information.*<sup>1949</sup>

COG’s recommendation 110.6 ‘that no Minister be a member of a committee with scrutiny or review functions’ was supported ‘except in cases where legislation before the House is being examined.’<sup>1950</sup> COG recommendation 110.7 on the remuneration of standing committee Chairs was supported. Additionally, the Standing Orders and Procedure Committee supported COG recommendation 112.1, recommending that ‘research facilities in the Parliamentary Library be increased, with the level and scope of that increase to be determined by the Presiding Officers,’ and that ‘the Treasurer provide funds accordingly.’<sup>1951</sup>

Less than a year after the 1998 report, the Standing Orders and Procedure Committee tabled its two-volume report on the modernisation of the Legislative Assembly’s Standing Orders. In his Chairman’s Foreword to the report, the Speaker and Chairman George Strickland made the following observation:

*Procedural change should come in measured form and without surprise. Innovation has been gradually introduced in the House over the last five years and on each occasion the House has successfully used sessional orders and trials so that new processes can be properly evaluated.*<sup>1952</sup>

The successful introduction of the estimates committee system was cited as a good example of a trial process leading to understanding and acceptance of procedural change. Chairman Strickland went on to say that ‘after 100 years of procedural development and on the eve of a new century the time is right for the House to move forward.’<sup>1953</sup> Sometime later, Eric Ripper, as Deputy Leader of the Labor Opposition, indicated that George Strickland in his capacities as Chair of the Select Committee on Procedure and of the Procedure and

<sup>1949</sup> *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*, Legislative Assembly, June 1998, p.34.

<sup>1950</sup> *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*, Legislative Assembly, June 1998, p.18.

<sup>1951</sup> *Report of the Standing Orders and Procedure Committee on Commission on Government Recommendations*, Legislative Assembly, June 1998, p.20.

<sup>1952</sup> *Report on the Modernisation of the Standing Orders, Volume 1—Report*, Standing Orders and Procedure Committee, Legislative Assembly, May 1999, p.7.

<sup>1953</sup> *Report on the Modernisation of the Standing Orders, Volume 1—Report*, Standing Orders and Procedure Committee, Legislative Assembly, May 1999, p.7.

Privileges Committee had ‘played a very important part in the modernisation of the standing orders.’<sup>1954</sup>

The 1999 report of the Standing Orders and Procedure Committee reminded members that for more than 100 years the Western Australian Parliament had ‘operated with a set of standing orders largely drawn from South Australia which in turn were closely based on the standing orders and practices of the House of Commons.’<sup>1955</sup> Over that time necessary amendments to House and committee procedure had been made via Speaker’s and President’s rulings. The result was that the Standing Orders no longer reflected the procedures of the House. Many were ‘obsolete, obsolescent, or [...] varied so considerably that they bore little resemblance to current procedure,’ and it was increasingly necessary ‘to refer to a range of rulings and practices in order to understand the rules under which the Assembly operates.’<sup>1956</sup>

Given this, the standing committee argued that it was necessary to come to a decision on the standing committee system and that the House should debate and take a decision on the report’s recommendations for new Standing Orders. While such a debate had traditionally been negotiated through the Premier and Leader of the House, the report encouraged the Leader of the House to put to the Legislative Assembly a proposal based on the report recommendations, ideally ‘early in the second half of 1999.’<sup>1957</sup>

What was not discussed by the Standing Orders and Procedure Committee, even when focussed on committees, was a standing committee on corruption and misconduct matters which the WA Inc. Royal Commission and COG had strongly recommended. Presumably it was understood this was to be a joint standing committee arrangement. Since 1997 there had been a Joint Standing Commission on the Anti-Corruption Commission, which will now be addressed.

## 12.9 Joint Standing Committee on the Anti-Corruption Commission (1997)

Another important parliamentary standing committee established prior to 2001 was the Joint Standing Committee on the Anti-Corruption Commission, which in 2004 became the Joint Standing Committee on the Corruption and Crime Commission.

In 1988, after ‘a number of specialist anti-corruption and/or law enforcement agencies’ had been established by the federal Government and in State jurisdictions, Liberal MLA Andrew Mensaros, as an Opposition member, introduced a private member’s Bill to create an Official Corruption Commission in Western Australia.<sup>1958</sup> In moving that the Official Corruption Commission Bill 1988 be read a second time, Mensaros stated that it was one of

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<sup>1954</sup> WAPD, Legislative Assembly, 23 November 2000, p.3873.

<sup>1955</sup> *Report on the Modernisation of the Standing Orders, Volume 1—Report*, Standing Orders and Procedure Committee, Legislative Assembly, May 1999, p.16.

<sup>1956</sup> *Report on the Modernisation of the Standing Orders, Volume 1—Report*, Standing Orders and Procedure Committee, Legislative Assembly, May 1999, p.16.

<sup>1957</sup> *Report on the Modernisation of the Standing Orders, Volume 1—Report*, Standing Orders and Procedure Committee, Legislative Assembly, May 1999, p.34.

<sup>1958</sup> Harry Phillips et al (1998), *Representing the People: Parliamentary Government in Western Australia*, Fremantle: Fremantle Arts Centre Press, p.247.

the measures introduced to 'combat the widespread and damaging public perception of the lowest ever existing ethic in public life which can be, and is justifiably, called public corruption.'<sup>1959</sup> The Bill was assented to on 8 December 1988 and both Houses advised accordingly.<sup>1960</sup>

Under the *Official Corruption Commission Act 1988* (WA) the Commission was a small body of three Commissioners and their staff, with their role being 'essentially to receive complaints about official corruption and then pass them on to other agencies for investigation and any further action.'<sup>1961</sup> As former Commissioner of the Corruption and Crime Commission Len Roberts-Smith, QC, states, the Official Corruption Commission 'acted as a post-box or clearing house for allegations of corruption by public officers.'<sup>1962</sup> Although the Official Corruption Commission could refer matters on to those authorised to investigate any allegations, it had 'no power to compel anyone to do anything.'<sup>1963</sup>

Reviews of the *Official Corruption Commission Act 1988* in 1991 and 1992 led to amendments that first, allowed the Official Corruption Commission to 'report any findings of illegality to each House of Parliament,' but not to 'express ethical or other judgements,' and second, allowed it to make preliminary inquiries to 'determine if there were reasonable grounds to refer a complaint on to an agency with the power to investigate it.'<sup>1964</sup> Power was also granted to the Official Corruption Commission to request information and impose a penalty for noncompliance.<sup>1965</sup>

Following these reviews of the *Official Corruption Commission Act 1988* and the findings of the WA Inc. Royal Commission and COG, wideranging amendments were made to the principal Act through the *Official Corruption Commission Amendment Act 1996* (WA). This amending Act, which amended the title of the Act to the *Anti-Corruption Commission Act 1988*, established an Anti-Corruption Commission.<sup>1966</sup>

The function of the Anti-Corruption Commission was to 'receive allegations, carry out investigations or refer them to another agency to undertake investigations and to receive

<sup>1959</sup> WAPD, Legislative Assembly, 23 June 1988, p.1734.

<sup>1960</sup> *Official Corruption Commission Act 1988* (WA); WAPD, Legislative Assembly, 15 December 1988, p.6470; and WAPD, Legislative Council, 15 December 1988, p.6379.

<sup>1961</sup> Sections 5, 6 and 7, *Official Corruption Commission Act 1988* (WA); and Harry Phillips et al (1998), *Representing the People: Parliamentary Government in Western Australia*, Fremantle: Fremantle Arts Centre Press, p.247.

<sup>1962</sup> Commissioner Len Roberts-Smith QC, Corruption and Crime Commission, Speech to University of Notre Dame Australia, Fremantle, 19 May 2009, p.3.

<sup>1963</sup> Commissioner Len Roberts-Smith QC, Corruption and Crime Commission, Speech to University of Notre Dame Australia, Fremantle, 19 May 2009, p.3.

<sup>1964</sup> Commissioner Len Roberts-Smith QC, Corruption and Crime Commission, Speech to University of Notre Dame Australia, Fremantle, 19 May 2009, p.3.

<sup>1965</sup> Commissioner Len Roberts-Smith QC, Corruption and Crime Commission, Speech to University of Notre Dame Australia, Fremantle, 19 May 2009, p.3. For details of the reviews, see: Harry Phillips et al (1998), *Representing the People: Parliamentary Government in Western Australia*, Fremantle: Fremantle Arts Centre Press, p.247.

<sup>1966</sup> Harry Phillips et al (1998), *Representing the People: Parliamentary Government in Western Australia*, Fremantle: Fremantle Arts Centre Press, p.247.

reports on those investigations.’<sup>1967</sup> The powers given to the Anti-Corruption Commission to investigate and deal with official corruption were expanded considerably under the changes to the Act. The matters that came within its jurisdiction were also broadened to include ‘serious improper conduct’ and the list of offences under the Criminal Code with which the Commission could deal was extended. At the time the Act provided for the Commission to conduct its investigations completely in private.<sup>1968</sup> It was empowered to conduct surveillance, use telecommunications interception and ‘execute search warrants when authorized to do so by judicial warrant.’<sup>1969</sup>

Given that the Anti-Corruption Commission was independent of Government and only responsible to Parliament, entrusted with the responsibility of dealing with official corruption, and able to exercise extensive powers, the Joint Standing Committee on the Anti-Corruption Commission was established in 1997 to oversee the Anti-Corruption Commission in the performance of its functions.<sup>1970</sup> The terms of reference for the joint standing committee were based on the draft terms proposed in the September 1992 report of the Legislative Assembly Select Committee on the Official Corruption Commission Act, and were quite extensive, giving it responsibility for a number of other functions, such as to:

- report to Parliament ‘on issues affecting the prevention and detection of [...] “official corruption”’;
- monitor the effectiveness of Government corruption prevention programs;
- consider ways of avoiding duplication and enhancing cooperation between agencies;
- ‘assess the framework for public sector accountability’; and
- consider changes that might be necessary to relevant legislation.<sup>1971</sup>

In supporting the motion to establish the committee, Premier Richard Court indicated there had been some debate about whether the committee to oversee the Anti-Corruption Commission should be a joint standing committee or a committee of either of the Houses. In Premier Court’s opinion it was appropriate to establish a joint standing committee to monitor its operation for a time.<sup>1972</sup>

Cockburn MLA Bill Thomas, as the Labor spokesperson, supported the motion with a reminder that he had been advocating for such a committee for the last five or six years. It

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<sup>1967</sup> Commissioner Len Roberts-Smith, QC, Corruption and Crime Commission, Speech to University of Notre Dame Australia, Fremantle, 19 May 2009, p.3. The ACC could not determine a person’s guilt, direct that disciplinary action be taken against a person, or begin criminal prosecutions.

<sup>1968</sup> Harry Phillips et al (1998), *Representing the People: Parliamentary Government in Western Australia*, Fremantle: Fremantle Arts Centre Press, pp.247–250.

<sup>1969</sup> Commissioner Len Roberts-Smith QC, Corruption and Crime Commission, Speech to University of Notre Dame Australia, Fremantle, 19 May 2009, p.3.

<sup>1970</sup> Harry Phillips et al (1998), *Representing the People: Parliamentary Government in Western Australia*, Fremantle: Fremantle Arts Centre Press, pp.248–249; WAPD Legislative Assembly, 27 March 1997, pp.1070–1073.

<sup>1971</sup> WAPD Legislative Assembly, 27 March 1997, p.1070; WAPD, Legislative Council, 29 October 1996, p.7272; and *Report of the Legislative Assembly Select Committee on the Official Corruption Commission Act*, September 1992, Appendix iv.

<sup>1972</sup> WAPD, Legislative Assembly, 27 March 1997, p.1071.

had been a recommendation of the select committee of the Legislative Assembly in both 1991 and 1992. Thomas was disappointed that excuses were made to delay the appointment of the Joint Standing Committee on the Anti-Corruption Commission, which included waiting for COG to report. Then in late 1996, just one day before Parliament was to be prorogued for the 14 December 1996 election, a motion had been moved for the appointment of a committee and its members named. In Thomas' view this 'charade' of suggesting that some steps had been taken for a committee to oversee the Anti-Corruption Commission was 'cynical' and a 'shallow misuse of the forms of Parliament.'<sup>1973</sup> Finally, though, Thomas was pleased the 35<sup>th</sup> Parliament (1996–2001) would have the recommended joint standing committee in operation.<sup>1974</sup>

Following receipt of the Legislative Assembly's Message, the Legislative Council debated the motion to establish the Joint Standing Committee on the Anti-Corruption Commission, wanting to make some amendments to the wording of what constituted official corruption.<sup>1975</sup> However, ultimately, the terms of reference adopted for the committee mirrored the draft version, with the exception that the number of members was increased from six to eight, with four members coming from each House, and five members constituting a quorum.<sup>1976</sup> No Minister of the Crown or Parliamentary Secretary to a Minister could be appointed to the committee. Significantly, too, one section of the terms of reference and the Act made it clear that the committee's powers did not extend to reconsidering decisions of the Commission or being involved in operational matters; nor was the committee permitted access to detailed operational information.<sup>1977</sup>

In tabling the first report of the Joint Standing Committee on the Anti-Corruption Commission, Tomlinson acknowledged this point, stating that the committee was:

*... not a 'second Court' established to review particular decisions or actions of the Commission. Neither is it to intrude into current investigations. Both the Act and the Committee's terms of reference expressly deny access to detailed operational information. The Commission is an independent investigative body.*<sup>1978</sup>

While the committee's reports had to be tabled in each House, as it was administered by the Legislative Assembly it was the Assembly's Standing Orders that had to be followed by the committee 'as far as they could be applied.'<sup>1979</sup>

The Joint Standing Committee on the Anti-Corruption Commission faced an exacting task in a domain in which parliamentary committees had not gained experience in Western

<sup>1973</sup> WAPD, Legislative Assembly, 27 March 1997, p.1071.

<sup>1974</sup> WAPD, Legislative Assembly, 27 March 1997, p.1072.

<sup>1975</sup> WAPD, Legislative Council, 29 October 1996, p.7272.

<sup>1976</sup> Joint Standing Committee on the Anti-Corruption Commission, *Confidentiality and Accountability: Parliamentary Supervision of Anti-corruption and/or Law Enforcement Agencies in Australia*, Parliament of Western Australia, October 1997, pp.iii–iv.

<sup>1977</sup> WAPD, Legislative Assembly, 27 March 1997, p.1070.

<sup>1978</sup> Joint Standing Committee on the Anti-Corruption Commission, *Confidentiality and Accountability: Parliamentary Supervision of Anti-corruption and/or Law Enforcement Agencies in Australia*, Parliament of Western Australia, October 1997, p.iv.

<sup>1979</sup> WAPD Legislative Assembly, 27 March 1997, pp.1070–1071.

Australia. There were indications of divisions over the composition of the committee, with the Government not agreeing to Labor's wish to include the nomination of an Opposition Chair in the terms of reference. The issue of committee Chair was held to be 'a matter for the committee to determine from time to time as necessary.'<sup>1980</sup> Indeed, when the committee began its deliberations Liberal MLC Derrick Tomlinson became the Chairperson with Labor MLA Bill Thomas as Deputy Chair. The choice of the respected Tomlinson could be justified on the grounds that his parliamentary committee system experience was vast given his role in the Legislative Council and specific inquiries into police matters and police surveillance.

The committee's first annual report advised that The Working Group of Parliamentary Committees with a Role to Oversee Criminal Justice or Law Enforcement Bodies had been formed, with its first meeting held in Queensland in February 1998.<sup>1981</sup> This report detailed the members of the Working Group and the organisations they were required to monitor and review. It also provided examples of anti-corruption agencies in overseas jurisdictions and their supervision arrangements, giving significant attention to institutions in the United States of America.<sup>1982</sup>

Bearing in mind the restrictions imposed on the Joint Standing Committee on the Anti-Corruption Commission by its terms of reference, the report also identified 'the tension between confidentiality requirements regarding operational matters and the need for such matters to be subject to scrutiny if an agency is to be fully accountable.'<sup>1983</sup> The committee's October 1997 report on confidentiality and accountability examined this issue and explored the way in which other jurisdictions dealt with the problem.<sup>1984</sup>

A number of other themes relevant to the committee's role were also raised in the October 1997 report, arising from its examination of other jurisdictions, including:

- *the development of education programmes and the prevention of corruption;*
- *complaints regarding the activities of an agency or the conduct of its officers;*
- *the coercive powers exercised by specialist anti-corruption and/or law enforcement agencies;*
- *public vs private hearings during investigations;*
- *parliamentary oversight committee involvement in determining an agency's budget;*

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<sup>1980</sup> WAPD, Legislative Assembly, 12 November 1996, pp.8172.

<sup>1981</sup> Joint Standing Committee on the Anti-Corruption Commission, *Annual Report June 1997–December 1998*, Parliament of Western Australia, May 1999, pp.7–9.

<sup>1982</sup> Joint Standing Committee on the Anti-Corruption Commission, *Annual Report June 1997–December 1998*, Parliament of Western Australia, May 1999, pp.9–35.

<sup>1983</sup> Joint Standing Committee on the Anti-Corruption Commission, *Annual Report June 1997–December 1998*, Parliament of Western Australia, May 1999, p.vii, p.6 and p.36.

<sup>1984</sup> Joint Standing Committee on the Anti-Corruption Commission, *Confidentiality and Accountability: Parliamentary Supervision of Anti-corruption and/or Law Enforcement Agencies in Australia*, Parliament of Western Australia, October 1997, pp.5–16.

- *parliamentary oversight committee involvement in the selection and removal of the Chairman and other members of an agency;*
- *public hearings by oversight committees;*
- *secondment of police officers from within an agency's jurisdiction; and*
- *the question of whether parliamentary oversight committees should be established by statute or parliamentary resolution.*<sup>1985</sup>

While there had been some delay in tabling the Joint Standing Committee on the Anti-Corruption Commission's first annual report, which covered the June 1997 to December 1998 period, the committee noted that it had produced six reports and given consideration to its work program into 1999.<sup>1986</sup> One report specifically focussed on complaints made by Detective Sergeant Coombs against the Anti-Corruption Commission, Special Investigator Geoffrey Miller, QC, and others. The committee determined 'that there was no foundation to any of the allegations made by Det Sgt Coombs.'<sup>1987</sup> Another reported on the operational accountability of the Anti-Corruption Commission and the protection of rights under the *Anti-Corruption Commission Act 1988*, while another addressed the amendments to the Act considered necessary by the Commission itself and those recommended by the joint standing committee in its fourth report. These amendments were grouped into three key areas, namely:

- *the accountability of the ACC,*
- *the powers of the ACC over serious improper conduct; and*
- *the investigative powers the ACC.*<sup>1988</sup>

The Joint Standing Committee on the Anti-Corruption Commission continued to operate through the 35<sup>th</sup> Parliament from 2001 to 2004 with Derrick Tomlinson remaining as Chairperson. On the 28 June 2001 the Legislative Assembly and the Legislative Council agreed to the continued existence of the committee, and continuing its previous functions of monitoring and reviewing the Anti-Corruption Commission.<sup>1989</sup> The committee's functions and powers were set out in the Legislative Assembly Standing Orders 289, 290 and 264. It continued to report frequently in 2001, 2002 and 2003,<sup>1990</sup> with a regular focus being given to integrity within the public sector.<sup>1991</sup>

<sup>1985</sup> Joint Standing Committee on the Anti-Corruption Commission, *Confidentiality and Accountability: Parliamentary Supervision of Anti-corruption and/or Law Enforcement Agencies in Australia*, Parliament of Western Australia, October 1997, pp.17–18.

<sup>1986</sup> Joint Standing Committee on the Anti-Corruption Commission, *Annual Report June 1997–December 1998*, Parliament of Western Australia, May 1999, p.41.

<sup>1987</sup> Joint Standing Committee on the Anti-Corruption Commission, *Annual Report June 1997–December 1998*, Parliament of Western Australia, May 1999, p.37.

<sup>1988</sup> Joint Standing Committee on the Anti-Corruption Commission, *Annual Report June 1997–December 1998*, Parliament of Western Australia, May 1999, pp.37–38.

<sup>1989</sup> WAPD, Legislative Assembly, 30 May 2001, p.689; and WAPD, Legislative Council, 27 June 2001, p.1451.

<sup>1990</sup> These are listed in the Parliament of Western Australia Digest.

<sup>1991</sup> *Digest 2005*, No.31, Parliament of Western Australia, pp.50–51.

The committee's seventh report, tabled in both Houses on 4 December 2003, reported on the 2003 National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies. The conference, which represented the fourth meeting of the Working Group, was hosted at the Parliament of Western Australia on 30 September and 1 October 2003.<sup>1992</sup> At this time the Western Australian Parliament was in the final throes of passing the *Corruption and Crime Commission Act 2003* (WA).

The report on the 2003 National Conference of Anti-Corruption Committees demonstrates the evolution of oversight committees of this type operating in Australian jurisdictions since the Working Group was formed in 1998. At that stage the oversight committees were:

- *The Committee on the Office of the Ombudsman and the Police Integrity Commission, New South Wales;*
- *The Committee on the Independent Commission Against Corruption, New South Wales;*
- *The Parliamentary Crime and Misconduct Committee, Queensland;*
- *The Joint Standing Committee on the Anti-Corruption Commission, Western Australia: and*
- *The Parliamentary Joint Committee on the Australian Crime Commission, Commonwealth.*<sup>1993</sup>

The conference focussed on three distinct areas: improving public confidence; governance; and ethics education.<sup>1994</sup> The committee Chair (Tomlinson) drew attention to the value of both the formal and informal sharing of information between anti-corruption bodies, noting that the anti-corruption frameworks were at different stages of development in different jurisdictions based on the prevailing 'social and political influences and their experiences within the courts.'<sup>1995</sup>

From a Western Australian perspective, with the backdrop of the earlier WA Inc. Royal Commission and COG, the conference was conducted 'at a critical time, given the impending changes to the anti-corruption structure as a result of the findings of the Police Royal Commission,' the 2002 Kennedy Royal Commission into whether there had been corrupt or criminal conduct by any Western Australian Police Officer. The December 2002 *Interim*

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<sup>1992</sup> Joint Standing Committee on the Anti-Corruption Commission, *National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies 2003*, Parliament of Western Australia, December 2003.

<sup>1993</sup> Joint Standing Committee on the Anti-Corruption Commission, *National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies 2003*, Parliament of Western Australia, December 2003, p.vii.

<sup>1994</sup> Joint Standing Committee on the Anti-Corruption Commission, *National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies 2003*, Parliament of Western Australia, December 2003, p.vii.

<sup>1995</sup> Joint Standing Committee on the Anti-Corruption Commission, *National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies 2003*, Parliament of Western Australia, December 2003, p.viii.

*Report of the Kennedy Royal Commission recommended the Anti-Corruption Commission be replaced with a Corruption and Crime Commission.*<sup>1996</sup>

The Chairman of the Joint Standing Committee on the Anti-Corruption Commission (Tomlinson) noted that the proposed new structure for Western Australia's anti-corruption efforts drew 'on aspects of the Queensland and New South Wales' models.'<sup>1997</sup> This new structure saw the establishment of the Corruption and Crime Commission through the passage of the *Crime and Corruption Act 2003*. The Government accepted most of Justice Kennedy's recommendations, including giving the Corruption and Crime Commission 'extensive powers,' each 'constrained by appropriate checks and balances.'<sup>1998</sup> The establishment of the Commission also required changes to the role of the oversight committee. Thus, in 2004, the Joint Standing Committee on the Corruption and Crime Commission was established.

### 12.10 Portfolio-Based Standing Committees

On 6 April 2000, the last year of the Richard Court Coalition Government, Colin Barnett as Leader of the House moved what he described as 'a very significant motion,' one he saw as creating 'fundamental change' to the way in which the Legislative Assembly functioned 'in terms of its debate on issues and its method of operation.'<sup>1999</sup> Barnett expected the changes would come into effect following the 2001 State election.<sup>2000</sup> The motion was that the Legislative Assembly:

- (a) *supports the establishment of three portfolio-based Standing Committees to come into operation after the next election;*
- (b) *supports the retention of the Public Accounts Committee in its current form;*
- (c) *supports the amalgamation of the Joint Standing Committee on Delegated Legislation and the Standing Committee on Uniform Legislation and Intergovernmental Agreements, in accordance with recommendation 18 of the Final Report of the Select Committee on Procedure and subject to the concurrence of the Legislative Council; and*
- (d) *requests the Procedure and Privileges Committee to report by 15 June 2000 on the method of operation and Standing Orders which should apply to portfolio-based Standing Committees.*<sup>2001</sup>

In speaking to the motion, Barnett recalled some of the history of discussions on the role of parliamentary committees, drawing particular attention to the Commission on Government

<sup>1996</sup> Commissioner Len Roberts-Smith QC, Corruption and Crime Commission, Speech to University of Notre Dame Australia, Fremantle, 19 May 2009, p.4.

<sup>1997</sup> Joint Standing Committee on the Anti-Corruption Commission, *National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies 2003*, Parliament of Western Australia, December 2003, p.viii.

<sup>1998</sup> Commissioner Len Roberts-Smith QC, Corruption and Crime Commission, Speech to University of Notre Dame Australia, Fremantle, 19 May 2009, p.4.

<sup>1999</sup> WAPD, Legislative Assembly, 6 April 2000, p.6111.

<sup>2000</sup> WAPD, Legislative Assembly, 6 April 2000, p.6111.

<sup>2001</sup> WAPD Legislative Assembly, 6 April 2000, pp.6110–6111.

(COG) recommendations. The October 1996 Government response to the COG recommendations on parliamentary committees was that 'it was not up to the Executive [...] to determine committee matters'; rather, it was a matter for Parliament.<sup>2002</sup> Barnett agreed, saying that 'was an appropriate response by the Executive.'<sup>2003</sup>

The proposed changes to the committee system were significant in Barnett's opinion, and necessary 'for a modern, contemporary Parliament'; they would strengthen Parliament's role, 'and particularly the role of the Legislative Assembly.'<sup>2004</sup> He thought it appropriate that there would be some changes to 'the balance of accountability between Ministers, the executive and the Parliament.'<sup>2005</sup>

Barnett clearly saw service on a standing committee as an important part of a member's professional development as a parliamentarian, stating that:

*members of Parliament, particularly new members, should be conscious that this provides a more logical development of a parliamentary career ... A new member of Parliament is elected. A logical step in a career would be, first, to become a member of a standing committee to gain experience and to have involvement with the Executive, particularly with government agencies, to learn to understand the government system; hopefully aspire to become a chairman of a committee; then, logically, if that person is a member of a Government, to become a parliamentary secretary, then perhaps a minister and a Premier—who knows what.*<sup>2006</sup>

Barnett added that in the relatively small Legislative Assembly a standing committee system allowed members to progress in a relatively steady way. He also suggested that the changes should be seen in the context of the extensive reforms to the parliamentary system since 1993 (when the Court–Cowan Coalition came to office). These reforms included:

*Parliamentary proceedings are being covered by television; we have more parliamentary sitting days; sitting times have been modernised; question time has been brought forward to 2.00 pm every day as a standard time; the asking of supplementary questions during question time has been introduced; the requirement to answer questions on notice within three months has been introduced; the right of reply to statements made in the House has been given to members of the public; the budget estimates committee system has been expanded, with the inclusion of capital works expenditure giving greater accountability; Legislation Committees have been formed to allow the committee stages of bills to be dealt with independently of the main Chamber; explanatory memoranda for all government Bills are provided; pro forma procedures that allow amendments to be incorporated in legislation being debated have been introduced; private members' statements have been introduced; grievance debates are brought on in every sitting week; matters of public interest*

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<sup>2002</sup> WAPD, Legislative Assembly, 6 April 2000, p.6111.

<sup>2003</sup> WAPD, Legislative Assembly, 6 April 2000, p.6111.

<sup>2004</sup> WAPD, Legislative Assembly, 6 April 2000, p.6113.

<sup>2005</sup> WAPD, Legislative Assembly, 6 April 2000, p.6113.

<sup>2006</sup> WAPD, Legislative Assembly, 6 April 2000, p.6113.

*have been amended so that independent members have guaranteed speaking opportunities; we have had the very productive reports of the select and standing committees, particularly the reports relating to standing orders matters; time limits for second reading stages of Bills have been changed; and time limits for the committee stages of legislation have also been changed.*<sup>2007</sup>

Eric Ripper, Deputy Leader of the Labor Opposition, strongly supported the motion as an overdue reform, one that had been encouraged by a number of reviews.<sup>2008</sup> He reminded the House that the 1992 WA Inc. Royal Commission urged Parliament ‘to bend its efforts to the fulfilment of its review obligation as a matter of urgency. The rational and systematic use of standing committees for this purpose should be a priority.’<sup>2009</sup> He was confident that ‘if a portfolio based committee system has a continuing responsibility to scrutinise an area of Government we will have a better result.’<sup>2010</sup> Significantly, Ripper then observed something that had rarely, if ever, been articulated in more than a century of literature on parliamentary committees in Western Australia. For the very experienced Ripper, a ‘most important’ aspect of a standing committee system was that it would:

*better equip elected members of Parliament to compete with other players in the political system who are interested in influencing government policy. Members of Parliament on both sides of the House should be aware that there are many rivals for influence in the policy-making process. Ministerial advisors and officers are rivals to members of Parliament for influence on the details of policy. Senior public servants, lobbyists and members of the media are also rivals. That which distinguishes members of Parliament from all other players in the system is that members must be elected and are, therefore, accountable to the people of Western Australia. Although we have a vested interest in enhancing our influence in the system, a broader concern is that our influence in the system represents the outcome of democratic processes. Democracy is strengthened if the influence of elected people is placed above the influence of people who reach their positions of influence by other means. Information and expertise is power. Members of Parliament without a standing committee are less equipped to obtain the information and to obtain the expertise that will give them the ability to have proper influence in the policy-making system.*<sup>2011</sup>

As the Opposition spokesperson on Treasury matters, Eric Ripper agreed that the system must be ‘properly resourced, but he also expressed concern ‘about the bid for resources for a standing committee system.’<sup>2012</sup> He noted that ‘a significant amount of money’ was

<sup>2007</sup> WAPD, Legislative Assembly, 6 April 2000, p.6113.

<sup>2008</sup> The reviews referred to here are the WA Inc. Royal Commission (1992); the Commission on Government (1995); the Legislative Assembly Select Committee on Procedure (1996); and the Standing Orders and Procedure Committee (1999), all of which made specific proposals for a committee system.

<sup>2009</sup> Cited in WAPD, Legislative Assembly, 6 April 2000, p.6113.

<sup>2010</sup> Cited in WAPD, Legislative Assembly, 6 April 2000, p.6114.

<sup>2011</sup> WAPD, Legislative Assembly, 6 April 2000, p.6114.

<sup>2012</sup> WAPD, Legislative Assembly, 6 April 2000, p.6115.

already spent by the Legislative Assembly on committee work, but argued that it was not done efficiently, Rather, it was spent:

*on an ad hoc, unsystematic system of select committees that cannot provide consistent scrutiny of government activities. Members of Parliament need to understand that when we move towards a new system of standing committees, inevitably the system of ad hoc select committees will have to decline.*<sup>2013</sup>

Barnett agreed that use of select committees should be ‘an extremely rare occurrence,’ suggesting that:

*A unique issue of a social or conscience nature—such as the abortion debate—might be sent to a select committee but any normal issue of government or public policy should fit into the standing committee system.*<sup>2014</sup>

Another speaker, National Party Deputy Max Trenorden, indicated that he had been ‘a passionate supporter of a standing committee process in the House for some years.’<sup>2015</sup> It was Trenorden’s view, based on his considerable parliamentary committee experience and his role as the Chair of the Public Accounts Standing Committee, that committees help keep Parliament ‘in tune with what is happening in society’ and that Parliament needed to evolve with the times.<sup>2016</sup> Trenorden was of the opinion that by gaining committee experience ‘members gain knowledge and an extra level of satisfaction in Parliament.’<sup>2017</sup> And while he conceded that ‘the odd occasion on which a committee might embarrass the Government, the Parliament or the Opposition is a part of life,’ he argued that it would ‘not occur in the vast majority of cases.’<sup>2018</sup> Trenorden emphasised that Western Australia was not in the lead when it came to committees as most other Australian Parliaments had ‘well-established committee systems.’<sup>2019</sup> Interestingly, he commented that ‘when the history book is written’ on these matters, it would be the Leader of the House, namely Colin Barnett, who would be noted as being at the forefront of the changes in Western Australia in the 1990s.<sup>2020</sup>

Labor member for the Pilbara, Larry Graham, who resigned from the Labor Party in February 2000 (before the end of the 36<sup>th</sup> Parliament) to become an Independent, also supported the motion. He was very interested in procedural matters, had made a submission to the Commission on Government and was a member of the Standing Committee on Procedure and Privileges which was active in formulating the Legislative Assembly committee reforms.<sup>2021</sup>

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<sup>2013</sup> WAPD, Legislative Assembly, 6 April 2000, p.6115.

<sup>2014</sup> WAPD, Legislative Assembly, 6 April 2000, p.6115.

<sup>2015</sup> WAPD, Legislative Assembly, 6 April 2000, p.6115.

<sup>2016</sup> WAPD, Legislative Assembly, 6 April 2000, p.6116.

<sup>2017</sup> WAPD, Legislative Assembly, 6 April 2000, p.6116.

<sup>2018</sup> WAPD, Legislative Assembly, 6 April 2000, p.6116.

<sup>2019</sup> WAPD, Legislative Assembly, 6 April 2000, p.6116.

<sup>2020</sup> WAPD, Legislative Assembly, 6 April 2000, p.6115.

<sup>2021</sup> WAPD, Legislative Assembly, 6 April 2000, p.6119.

Graham, though, made a significant observation about the public not being able to influence legislation in the Legislative Assembly. It was Graham's contention that while people could talk to a Minister prior to legislation being introduced into the House and could talk to Opposition members at any time, the problem with the legislative process was that in the Legislative Assembly there was no way in which a member of the public could 'make a submission to the Parliament on a piece of legislation either in principle or in detail.'<sup>2022</sup> He believed this opportunity did exist in the Legislative Council via its Standing Committee on Legislation, and also in a number of other Parliaments around the world, particularly Westminster Parliaments. For Graham, introducing such a process into the Legislative Assembly 'would be a great initiative.'<sup>2023</sup>

Graham, though, rejected the Standing Committee on Procedure and Privileges' proposal that 'the Salaries and Allowances Tribunal strike a rate of payment for committee Chairs.'<sup>2024</sup> Graham also rejected Doug Shave's (Alfred Cove, Liberal) interjection that Deputy Chairs of select committees should also be paid.<sup>2025</sup> The issue of payment of committee members, though, was raised later as an initiative for the new millennium.

While the motion for the establishment of a portfolio-based committee system gained in principle support from Labor and National, there was some dissent from National MLA Bob Wiese on the issue of the amalgamation of the Joint Standing Committee on Delegated Legislation and the Standing Committee on Uniform Legislation and Intergovernmental Agreements.<sup>2026</sup> Wiese, who at the time was Chairman of the Joint Standing Committee on Delegated Legislation, and had spent nine of his 13 years in Parliament as a member of that committee, argued that the motion would 'impose a substantially increased workload.'<sup>2027</sup> He criticised those who had drafted the motion for not consulting members of the other House 'about the practicalities of what the motion attempts to achieve.'<sup>2028</sup>

He also thought the Legislative Assembly's understanding of 'the role of subordinate legislation, and the scrutiny' to which it was subjected was 'fairly minimal.'<sup>2029</sup> Wiese argued that subordinate legislation covers a wide 'range of instruments which have legislative effect' and 'has a major influence on the everyday life of every person in this State.'<sup>2030</sup> According to Wiese, 'this Parliament, especially this House, is way behind virtually all other States in dealing with subordinate legislation.'<sup>2031</sup> Given the Delegated Legislation Committee was already 'swamped with work,' Wiese argued that if the motion was successful, the new committee would not be able to effectively fulfil its role.<sup>2032</sup>

<sup>2022</sup> WAPD, Legislative Assembly, 6 April 2000, p.6119.

<sup>2023</sup> WAPD, Legislative Assembly, 6 April 2000, p.6119.

<sup>2024</sup> WAPD, Legislative Assembly, 6 April 2000, p.6119.

<sup>2025</sup> WAPD, Legislative Assembly, 6 April 2000, p.6210.

<sup>2026</sup> WAPD, Legislative Assembly, 6 April 2000, pp.6116–6119.

<sup>2027</sup> WAPD, Legislative Assembly, 6 April 2000, p.6116.

<sup>2028</sup> WAPD, Legislative Assembly, 6 April 2000, p.6117.

<sup>2029</sup> WAPD, Legislative Assembly, 6 April 2000, p.6116.

<sup>2030</sup> WAPD, Legislative Assembly, 6 April 2000, p.6116.

<sup>2031</sup> WAPD, Legislative Assembly, 6 April 2000, p.6116.

<sup>2032</sup> WAPD, Legislative Assembly, 6 April 2000, p.6116.

Wiese explained that the introduction of sunset clauses into Victoria's subsidiary legislation had halved the volume of such legislation under which Victorians lived. Western Australia had not adopted the same approach, meaning that potentially there was considerable 'superfluous and totally cost-ineffective' subsidiary legislation in this State.<sup>2033</sup> In fact, Wiese complained that many issues dealt with in regulations should have been part of the primary legislation, and cited racing legislation as a classic example.<sup>2034</sup>

Perhaps some of the major warnings enunciated by Wiese were taken into account as when the new millennium did arrive there was agreement between the Houses on a Joint Standing Committee on Delegation Legislation managed by the Council and a separate Standing Committee on Uniform Legislation also located in the Legislative Council (rather than in the Legislative Assembly as it had been originally).

#### 12.10.1 Deciding on the Range of Portfolio-Based Standing Committees

Nevertheless, the motion to establish the portfolio-based committee system was regarded very positively overall, and was ultimately passed.<sup>2035</sup> Whilst the in principle support for the motion was a clear signal that a portfolio-based standing committee system was likely to be introduced in 2001, there were changes to the designations of the portfolios.

As discussed above, the three portfolio-based standing committees recommended in the June 1996 report of the Select Committee on Procedure were:

- (a) *Education, Social Development and Community Affairs;*
- (b) *Health and Justice;*
- (c) *Primary Industry, Resources, Transport and Trade.*<sup>2036</sup>

Colin Barnett proposed what he thought was a 'more logical structure' for the standing committee system. In addition to a Public Accounts Committee, Barnett wanted standing committees on:

- (a) education and health;
- (b) justice, social development and community affairs; and
- (c) primary industry, resources, transport and trade.<sup>2037</sup>

Ultimately it was the Select Committee on Procedure (later re-formed as the Procedure and Privileges Committee) which formulated the final range of portfolio responsibilities, along lines which were close to Barnett's suggestions.

The standing committees of the Legislative Assembly established on 30 May 2001 were:

- (a) Economics and Industry;
- (b) Community Development and Justice;

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<sup>2033</sup> WAPD, Legislative Assembly, 6 April 2000, p.6117.

<sup>2034</sup> WAPD, Legislative Assembly, 6 April 2000, pp.6118–6119.

<sup>2035</sup> WAPD, Legislative Assembly, 6 April 2000, p.6120.

<sup>2036</sup> Select Committee on Procedure, *Final Report*, Legislative Assembly, 1996, p.34.

<sup>2037</sup> WAPD, Legislative Assembly, 6 April 2000, p.6112.

- (c) Education and Health; and
- (d) Public Accounts.

The work of these committees will be an integral component of Volume 2 of this publication.