Dear Madam President

RE: LEGISLATIVE DRAFTING SERVICES FOR PRIVATE MEMBERS, THE OPPOSITION AND MINOR PARTIES

Thank you for your letter of 16 May 2018 regarding the above matter.

I agree with you regarding the importance of debate of private member’s Bills in each House of Parliament, and hence the ability to have those competently and professionally drafted.

Firstly, I can advise that Parliamentary Counsel’s Office (PCO) is still providing a drafting service to Private Members. It is providing assistance in the drafting of amendments to Bills currently before the Parliament for members, as well as for Parliamentary committees. It is also in a position to provide drafting work for relatively uncomplicated private member’s bills.

However, in certain instances where the drafting work required for a requested private member’s Bill would be extensive, the PCO has declined to provide assistance. Beyond this, the PCO also has to ensure a fair distribution of drafting resources among the non-Government parties, and in some cases has declined to provide assistance to parties who have previously received significant assistance in the current Parliament.

As you are aware, since April 2017 PCO has suffered from a loss of drafting capacity for a variety of reasons outside of the office’s control. PCO has successfully recruited a number of new drafters, but most have no prior drafting experience. I am advised that it takes many years for newly hired drafters to be fully trained. This of course also puts an additional burden on existing drafters in training the new additions to the team.

Attempts to recruit or second experienced drafters from other jurisdictions have so far been unsuccessful, but the unfortunate fact remains that experienced drafters are a scarce resource across the English-speaking world.
I am advised that the previous arrangement of the Department of Premier and Cabinet tendering for private law firms to conduct drafting work was viewed as unsatisfactory for all parties involved. Members encountered significant delays to their drafting, and in the event the Bill was likely to become law, it still needed to be referred to the PCO to ensure the Bill would be legally effective.

I agree with you that private member's bills need to be drafted competently, but the unfortunate reality remains that private law firms are not trained in legislative drafting.

Ultimately, this is not a question of financial management or resourcing. As you are aware, the Government has an extensive agenda, and if there were avenues to increase our drafting capacity, we would take them. But the fact remains, experienced drafters are a scarce resource.

Yours sincerely

Mark McGowan MLA
PREMIER

CC: Minister Ellery, Minister Quigley

22 JUN 2018
16 May 2018

Honourable Mark McGowan MLA
Premier
5th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Premier

Legislative Drafting Services for Private Members, the Opposition and Minor Parties

I refer to my letter to you of 12 March 2018 regarding the above matter and note that I have not received a response from you to date. I have enclosed a copy of this letter for ease of reference.

On 8 May 2018, Mr Dylan Caporn of The West Australian newspaper penned an article titled “Right-to-die laws risk getting lost in backlog” and this, along with the budget reduction in the justice portfolio area of Services to Government, have increased my concerns about resources available for Private Members’ drafting.

I understand that the Government’s legislative program is Parliamentary Counsel’s Office first priority. However, as you would be aware, the introduction and debate of Private Members’ Bills is an important aspect of the work of each House of Parliament. Bills that do not give proper legal effect to the policy to be implemented by the Bill’s clauses or are otherwise poorly drafted do a disservice to this work. The fact that on some occasions Private Members’ Bills become law makes it important that they be drafted competently and professionally.

As the Office of Parliamentary Counsel has advised that it no longer has the resources to continue providing a drafting service for Private Members, I again request that you establish a suitable arrangement in Department of Premier and Cabinet as soon as possible to ensure important drafting service are provided to Private Members of the Legislative Council.

Yours sincerely

Hon Kate Doust MLC
President of the Legislative Council
12 March 2018

Honourable Mark McGowan MLA
Premier
5th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Premier

Legislative Drafting Services for Private Members, the Opposition and Minor Parties

It has come to my attention that over the past few months several Members of the Legislative Council have had their requests to the Office of Parliamentary Counsel for the provision of legislative drafting services for Private Member's Bills denied due to resource issues.

This is of significant concern as, given the current composition of the Legislative Council, the ongoing demand for the drafting of Private Member's Bills and bill amendments is likely to remain very high.

By way of background, I note that following a public tender process, the private law firm of Talbot Olivier Lawyers held a $100,000 per annum contract with the Department of Premier and Cabinet from 25 May 2005 until November 2008 for the provision of legislative drafting services to Opposition parties, Private Members and minor parliamentary parties. I understand that at the conclusion of that arrangement, the Department of Premier and Cabinet transferred its annual budget for the contract to the Attorney General's Department, and that the Office of Parliamentary Counsel then assumed the role of providing this service up until the present.

As the Office of Parliamentary Counsel have now advised that they no longer have the resources to continue to provide a drafting service for Private Members, I request that a suitable replacement arrangement be established by the Department of Premier and Cabinet as soon as possible to ensure the uninterrupted provision of this important service to Members of the Legislative Council.

Yours sincerely

Hon Kate Doust MLC
President of the Legislative Council