

**Submission
No 2**

INQUIRY INTO THE LEGISLATIVE COUNCIL COMMITTEE SYSTEM

Organisation: Western Australia Legislative Council

Date received: 10/02/2016



LEGISLATIVE COUNCIL

Your Ref: D15/33827
Our Ref:

Hon Scott Farlow MLC

Committee Chair

Select Committee on the Legislative Council Committee System

Legislative Council of New South Wales

Parliament House,
Macquarie Street
Sydney, NSW 2000

10 February 2016

Dear Mr Farlow

Select Committee on the Legislative Council Committee System
— preparing for the next 25 years

Thank you for the opportunity to contribute to the important work of your Committee. While it would be inappropriate for this House to comment on the suitability of the Committee structure of the New South Wales Legislative Council, it may be of utility to your Committee to receive some feedback of a general nature.

Firstly, Members and Staff of the Legislative Council of Western Australia read relevant committee reports published by the Legislative Council of New South Wales carefully and with genuine interest.

Second, your Committee might wish to particularly note the work of the Joint Standing Committee on Delegated Legislation in Western Australia. As the name suggests, this Committee is solely dedicated to the scrutiny of subsidiary legislation, with all disallowable instruments being automatically referred to the Committee for review and, if necessary, report.

The Delegated Legislation Committee's current order of reference is reproduced at Attachment A to this submission. In the current Parliament, this Committee has tabled 20 reports, touching on matters across the spectrum of its order of reference. For example:

- Explanatory Report in relation to the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* (Report 82, tabled 07/05/2015).
- Inquiry into a Proposed Template Waste Local Law (Report 77, tabled 27/11/2014).
- Identifying a Systemic Issue Arising out of Nine Court and Tribunal Instruments (Report 75, tabled 18/09/2014).
- Explanatory Report in relation to the *Firearms Amendment Regulations 2013* (Report 68, tabled 31/10/2013).
- Information Report in relation to *City of Fremantle Plastic Bag Reduction Local Law 2012* (Report 67, tabled 24/10/2013).
- *Supreme Court Amendment Rules 2013* (Report 66, tabled 24/10/2013).
- Information Report in relation to: *Children's Court (Fees) Amendment Regulations (No. 2) 2012, Civil Judgments Enforcement Amendment Regulations 2012, Coroners Amendment Regulations 2012, District Court (Fees) Amendment Regulations (No. 3) 2012, Evidence (Video and Audio Links Fees and Expenses) Amendment Regulations (No. 2) 2012, Magistrates Court (Fees) Amendment Regulations (No. 3) 2012, State Administrative Tribunal Amendment Regulations (No. 3) 2012, Supreme Court (Fees) Amendment Regulations (No. 3) 2012* (Report 63, tabled 19/09/2013).

In particular, your Committee might wish to note that Report 66 (*Supreme Court Amendment Rules 2013*) referred to above, recommended that the relevant instrument be disallowed on the basis that the judges had trespassed on legislative ground belonging to the Parliament. The Legislative Council subsequently voted to adopt Report 66 and disallowed the relevant rules.¹ Also of potential interest to your Committee, it may be worth noting that Report 67 (Information Report in relation to *City of Fremantle Plastic Bag Reduction Local Law 2012*) recognised that the instrument in question touched on regulatory issues about which reasonable minds might differ. A thorough canvassing of the issues in question was provided to the Legislative Council in Report 67 prior to the disallowance date. After considering the Report, the Council divided on the question that the local law be disallowed, with the question being resolved in the negative.² I enclose a copy of both Reports for your reference.

These reports, together with the inquiry processes that are part and parcel of Committee work, demonstrate the continued utility of scrutiny committees in the oversight of delegated legislation in this jurisdiction.

¹ Western Australia. *Hansard*, Legislative Council, Tuesday, 29 October 2013 pp 5562-5567.

² Western Australia. *Hansard*, Legislative Council, Tuesday, 29 October 2013 pp 5536-5542 & 5552-5562.

Finally, I would like to take this opportunity of bringing to the attention of Committee Members and Staff the forthcoming Australia-New Zealand Scrutiny of Legislation Conference to be held at Parliament House, Perth, Western Australia from 11 to 14 July 2016. I enclose an information brochure with this letter for your attention and hope to meet with you in Perth in July.

Yours sincerely

Nigel Pratt,
Clerk of the Legislative Council

Att: One Attachment and three Enclosures.

ATTACHMENT A

10. Joint Standing Committee on Delegated Legislation

10.1	A Joint Standing Committee on Delegated Legislation is established.	
10.2	The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chair must be a Member of the Committee who supports the Government.	
10.3	A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.	
10.4	(a)	A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.
	(b)	Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House's consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.
10.5	Upon its publication, whether under section 41(1)(a) of the <i>Interpretation Act 1984</i> or another written law, an instrument stands referred to the Committee for consideration.	
10.6	In its consideration of an instrument, the Committee is to inquire whether the instrument --	
	(a)	is within power;
	(b)	has no unintended effect on any person's existing rights or interests;
	(c)	provides an effective mechanism for the review of administrative decisions; and
	(d)	contains only matter that is appropriate for subsidiary legislation.
10.7	It is also a function of the Committee to inquire into and report on-	
	(a)	any proposed or existing template, <i>pro forma</i> or model local law;
	(b)	any systemic issue identified in 2 or more instruments of subsidiary legislation; and
	(c)	the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary

	legislation that has yet to be published.
10.8	In this order-
	“instrument” means -
(a)	subsidiary legislation in the form in which, and with the content it has, when it is published;
(b)	an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
	“subsidiary legislation” has the meaning given to it by section 5 of the <i>Interpretation Act 1984</i> .



The Australia - New Zealand Scrutiny of Legislation Conference

Perth Western Australia 11 - 14 July 2016

PARLIAMENTARY SCRUTINY, PARLIAMENTARY SOVEREIGNTY: WHERE ARE WE NOW AND WHERE ARE WE HEADED?

Invitation and Call for Papers

On behalf of the organising Committee, I have great pleasure in inviting you to attend the Australia-New Zealand Scrutiny of Legislation Conference to be held at Parliament House, Perth, Western Australia from 11 to 14 July 2016.

The Conference will examine and debate a number of themes within the umbrella topics of Parliamentary Scrutiny and Parliamentary Sovereignty including:

- Emerging issues and comparative approaches to legislative scrutiny
- Rights and freedoms and their role in legislative scrutiny
- Scrutiny of legislation in Pacific Island Parliaments
- Uniform legislation and Parliamentary Sovereignty
- The skeletal legislation phenomenon
- The scrutiny of delegated legislation
- Scrutiny of third party material, such as Standards, adopted into legislation.

Papers are invited from individuals in response to the major Conference theme or the themes outlined above. The deadline for providing an Expression of Interest in presenting a paper is **Friday, 19 February 2016**. Presentation of papers times are between 20 and 30 minutes followed by a Q & A and discussion session.

The Conference timeline is:

- | | |
|---|--------------------------|
| • Deadline for submitting an Expression of Interest to present: | Friday, 19 February 2016 |
| • Acceptances of Expressions of Interest to present advised by: | Friday, 26 February 2016 |
| • Issue of Conference Registration form and Program: | Friday, 4 March 2016 |
| • Abstract of papers and biographical details required by: | Friday, 27 May 2016 |
| • Electronic copy of the conference paper required by: | Friday, 17 June 2016 |

Expressions of Interest in presenting a paper and conference related questions can be directed to Suzanne Veletta, Clerk Assistant (Committees) on 08 9222 7250 or at lcco@parliament.wa.gov.au. The Conference website can be access at www.parliament.wa.gov.au.

Please make a note of this Conference in your diary.

I look forward to receiving Expressions of Interest in presenting a paper and meeting you in July 2016.

Hon Adele Farina MLC
Deputy President of the Legislative Council
Conference Chair