



A GUIDE FOR MINISTERIAL AND DEPARTMENTAL STAFF





A Guide for Ministerial and Departmental Staff

2021

Parliament of Western Australia

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Foreword

On behalf of the Presiding Officers of the Legislative Council and the Legislative Assembly, it is our pleasure to welcome you to the Parliament of Western Australia. For many people the rules and procedures of Parliament can seem intimidating, and even a little mysterious. This guide for ministerial and departmental staff is designed to introduce you to the practices and procedures of the two Houses of Parliament. It is our hope that that guide provides you with a better understanding of how parliament works, and also why it works the way that it does.

We hope that you acquire useful knowledge of parliamentary processes and procedures to make you more effective in your role.

This document contains a list of useful contacts for the three parliamentary departments, as well as DPC's Parliamentary and Executive Government Services Branch. We would encourage you to contact any of the people on the list should you have any questions about parliament and how it relates to your work.



Kirsten Robinson
Clerk of the Legislative Assembly



Nigel Pratt
Clerk of the Legislative Council and
Clerk of the Parliaments

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Chapter 1

Introduction

What this Guide contains

This Guide for Ministerial and Departmental Staff contains basic information about the essential features of procedure and practice in the two Houses of the Western Australian Parliament. This edition has been updated by the officers of the two Houses to assist new and current ministerial and departmental personnel who have contact with the Parliament as a necessary part of their duties.

Staff directly assisting Ministers and those departmental officers having responsibility as instructing officers for proposed legislation, or who may be called on to assist committees of either House, will be more effective in their role by having a better understanding of the procedures and practices of the two Houses in which their Ministers carry out their parliamentary functions.

In particular, ministerial and departmental staff will value the information provided about the legislative process, the tabling of papers and reports, the procedure for questions on notice and questions without notice, and the various other procedures and differences between the Houses. A list of contacts for matters associated with the Legislative Council and Legislative Assembly is at the front of the document and a glossary of terms is provided at the end of the Guide.

Chapter 2

Basic rules and protocols

Ministerial advisers and senior departmental officers are often required to assist when their Ministers have carriage of Bills progressing through the Houses. However, the procedures and administration of the two Chambers are somewhat different. These processes relating to the two Houses are dealt with separately.

2.1 Parking

Parking is available (whilst working inside Parliament) on the southern driveway (except for reserved parking for members and staff).

When undertaking ministerial or member-related business at Parliament House, ministerial and electorate office staff may park in the grassed visitor parking across from the Members' car park.

2.2 Passes

All ministerial and departmental staff are required to wear Security Access Card (SAC) passes within Parliament House at all times.

Permanent Parliament House Security Access Card

A limited number of permanent passes are issued to ministerial staff. Staff who regularly attend the Parliament should arrange for their Minister's Chief of Staff to contact the DPC Ministerial Liaison Officer (Amanda Low) in the first instance.

Any ministerial staff requiring access not in possession of a SAC may be registered as a guest by the Member or Chief of Staff. No other card holder has guest rights. Guests must be pre-registered by email (contact receptionservices@parliament.wa.gov.au).

2.3 Access to areas within the parliamentary building

Non-access areas are the:

- Speaker's corridor;
- President's corridor;
- division lobbies around the Chambers;
- members' lounge;

- press gallery of either House; and
- gymnasium.

Restricted access areas (access only permitted when accompanying a member) are the:

- strangers' lounge;
- members' dining room;
- members' offices (unless invited by members).

Access is available to all other public areas of the building with the security access card. The staff cafeteria (located on the ground floor) is only available to ministerial and electorate staff on days they are working with their Member at Parliament.

2.4 Television footage

All accredited media representatives are aware that permission must be sought and received from the Presiding Officers prior to television footage being taken within Parliament House. There may be occasions when ministerial staff will arrange a press conference for their Minister. When this occurs, ministerial staff need to be aware that prior permission must be granted by the Presiding Officers.

Permission can be sought from either:

Sergeant-at-Arms (Legislative Assembly)
phone: 9222 7219
email: imacphail@parliament.wa.gov.au

or

Usher of the Black Rod (Legislative Council)
phone: 9222 7303
email: jsealpollard@parliament.wa.gov.au

For press conferences outside of the building, permission can be sought from the Executive Manager Parliamentary Services, 9222 7474, rhunter@parliament.wa.gov.au.

2.5 Chamber protocols for the Legislative Assembly

Second reading stage of a Bill

Ministerial and departmental staff may be required to follow the second reading stage of a Bill. Staff can undertake this task from the Speaker's gallery. Staff are able to write notes whilst sitting in the Speaker's gallery, but must ensure that their mobile phones or laptops do not ring or make any noise.

When entering and leaving the Speaker's gallery, all guests in the gallery are required to show deference to the Chair by bowing, prior to being seated. Messages can be passed from staff to their Minister from the Speaker's gallery; a parliamentary officer will undertake this task. Conversely, Ministers can come to the rear of the Chamber and speak to advisers seated in the Speaker's gallery. Messages must not be passed, nor conversations conducted, over the Bar of the House.

Consideration in detail stage of a Bill

Ministerial and departmental staff may be invited onto the floor of the House to assist Ministers with Bills during the consideration in detail stage. When this occurs, advisers must:

- await permission from the Speaker prior to being escorted through the Bar of the House;
- await the attendance of a parliamentary officer, who will escort the adviser to a seat at the Table;
- acknowledge the Chair immediately prior to being seated at the Table of the House; and
- note that while they are on the floor of the Legislative Assembly, they are in attendance to their Minister, not other members. Given this, they are required to advise their Minister only, and must not respond directly to questions from other members.

Divisions

If a division is called during consideration in detail, advisers are escorted from the floor of the House by a parliamentary officer. After the division, the parliamentary officer will escort the advisers back to the Table.

Conclusion of consideration in detail

When the consideration in detail stage is concluded (including when debate is interrupted and the Legislative Assembly proceeds onto other business), the advisers at the Table will be escorted from the floor of the Legislative Assembly by a parliamentary officer.

2.6 Chamber protocols for the Legislative Council

Second reading stage of a Bill

Ministerial and departmental staff may be required to follow the second reading stage of a relevant Bill and can do so from behind the President's Chair in the Chamber (there are a number of seats at the rear of the Chamber provided for this purpose).

Advisers seeking to get a message to a Minister or member must ask a parliamentary officer to deliver the message on their behalf. Advisers are not permitted on the floor of the House during the second reading debate.

Access to the rear of the Chamber can be arranged through the Leader of the Government's office, the Government Whip or the Legislative Council Administration Office staff.

Ministerial and departmental staff can access the President's gallery. However, three points are important regarding the President's gallery:

- permission for access to the President's gallery must be sought by a member from the President of the Legislative Council – for advisers, their respective Minister will need to obtain this permission from the President directly or through the Leader of the Government's office;
- members and guests are not permitted to speak or pass notes over the Bar of the House or from either side of the President's gallery; and
- as with the Speaker's gallery, persons entering the President's gallery are required to show deference to the Chair by bowing to the Chair prior to being seated.

Given the above points, whilst access to the President's gallery is possible, it is not recommended for advisers given the alternative outlined.

Committee stage

When a Bill enters the committee of the whole stage, advisers may be requested to assist their Minister or Parliamentary Secretary with carriage of the Bill from the Table of the House. When this occurs, a parliamentary officer will collect the advisers from the rear of the Chamber and escort them to the Table of the House.

Advisers must:

- await escort from the Chamber staff;
- acknowledge the Chair immediately prior to being seated at the Table of the House; and
- note that advisers are on the floor of the Legislative Council in attendance to their Minister, not other members, and should only converse with their Minister.

Usually only one or two principal advisers are escorted to the Table – other advisers remain in the seats behind the President's Chair. An adviser seated at the Table can call

a parliamentary officer using the call button at the Table, in order to get a message to another adviser.

Divisions

If a division is called during the committee of the whole stage of a Bill, advisers are to leave the floor of the Legislative Council. A parliamentary officer will come to the Table to escort the adviser(s) from the floor. Advisers should exit the Chamber quickly. Papers can remain at the Table while the division is in progress.

Conclusion of committee of the whole stage

When the committee of the whole stage is concluded (or the debate is interrupted and the Legislative Council proceeds onto other business), the advisers at the Table will be escorted from the floor of the Legislative Council by a parliamentary officer.

Brochure – Rules for Ministerial Advisers

The Legislative Council has produced a brochure setting out rules of conduct for ministerial advisers. This is available in hard copy from the Legislative Council Administration Office and can be viewed on the Parliament's website in the Legislative Council publications section.

Chapter 3

Order of business

The Legislative Council and the Legislative Assembly transact business in a routine manner; however, this routine manner, known as the Order of Business, differs between the Houses. This Chapter describes the Order of Business for each House.

3.1 Introduction

Each House has a particular order of business provided for in its Standing Orders. This includes ‘routine’ or ‘formal’ business that occurs in a particular order at the commencement of a normal sitting day, such as the reading of prayers and the tabling of petitions and papers.

The daily business of each House is set out in a business program published at the commencement of each sitting day. The agenda contained in the business program is merely a guide, and each House may rearrange the business or deal with any of the matters listed on their respective notice papers. The notice papers list all of the business before the Houses at any time.

In each House, minutes of the day’s proceedings are taken. These constitute the official record of what occurred during the day. In the Legislative Council these are known as the Minutes of Proceedings and in the Legislative Assembly the Votes and Proceedings. Each is signed by the Clerk and Presiding Officer of the House.

These documents are available on the Parliament’s website by selecting “Parliamentary Business” > “Chamber Documents”.

3.2 Order of business in the Legislative Assembly

Below is the order of business in the Legislative Assembly on sitting days.

| Times | TUESDAY | WEDNESDAY | THURSDAY | Times |
|------------------|--|--|--|------------------|
| 9:00 - 9:10 am | | | 9:00 am - House Sits Acknowledgement of Country, Prayers, Petitions, Papers, Notices Brief Ministerial Statements | 9:00 - 9:10 am |
| 9:10 - 10:10 am | | | Grievances | 9:10 - 10:10 am |
| 10:10 - 11:00 am | | | Government Business (or Committee Reports) | 10:10 - 11:00 am |
| 11:00 - 12:00 pm | | | Government Business | 11:00 - 12:00 pm |
| 12:00 - 12:15 pm | | 12 noon - House Sits Acknowledgement of Country, Prayers, Petitions, Papers, Notices Brief Ministerial Statements | | 12:00 - 12:15 pm |
| 12:15 - 12:50 pm | | Government Business | | 12:15 - 12:50 pm |
| 12:50 - 1:00 pm | | | Members' Statements (90 Second Statements) | 12:50 - 1:00 pm |
| 1:00 - 2:00 pm | | | Lunch Break | 1:00 - 2:00pm |
| 2:00 - 2:05 pm | 2:00 pm - House Sits Acknowledgement of Country, Prayers, Brief Ministerial Statements | Question Time (approx. 45 minutes) | Question Time (approx. 45 minutes) | 2:00 - 2:05 pm |
| 2:05 - 2:45 pm | Question Time (approx. 45 minutes) | | | 2:05 - 2:45 pm |
| 2:45 - 2:50 pm | Petitions, Papers, Notices | Government Business (or Matter of Public Interest*) | Government Business (or Matter of Public Interest*) | 2:45 - 2:50 pm |
| 2:50 - 3:45 pm | Government Business (or Matter of Public Interest*) | Government Business | Government Business | 2:50 - 3:45 pm |
| 3:45 - 3:50 pm | Government Business | | | 3:45 - 3:50 pm |
| 3:50 - 4:00 pm | | Private Members' Business 4:00 - 7:00 pm | House Adjourns Approx. 5:00 pm | 3:50 - 4:00 pm |
| 4:00 - 5:00 pm | 4:00 - 5:00 pm | | | |
| 5:00 - 6:00 pm | Dinner Break | 5:00 - 6:00 pm | | |
| 6:00 - 7:00 pm | | 6:00 - 7:00 pm | | |
| 7:00 - 8:00 pm | Government Business | 7:10 - 8:00 pm | | |
| 8:00 - 9:00 pm | | 8:00 - 9:00 pm | | |
| 9:00 - 10:00 pm | | 9:00 - 10:00 pm | | |
| 10:00 pm | | House Adjourns Approx. 10:00 pm | | 10:00 pm |

Sitting times

The current sitting times for the Legislative Assembly are:

| | | | |
|------------------|--------------------|---------------------|---------------------|
| Tuesday | 2.00 pm – 6.00 pm | Dinner break 1 hour | 7.00 pm – 10.00 pm* |
| Wednesday | 12 noon – 7.00 pm* | No meal break | |
| Thursday | 9.00 am – 1.00 pm | Lunch break 1 hour | 2.00 pm – 5.00 pm* |

* These finishing times can vary.

Standing Orders

Standing Order 58 sets out the usual order of business for the Legislative Assembly as follows.

Prayers

The Speaker, escorted by the Sergeant-at-Arms, enters the Chamber at the time appointed to meet, takes the Chair, and reads an acknowledgement of country and prayers.

Petitions

Members in the Legislative Assembly may table petitions in the House to enable any individual or group to place grievances directly before Parliament. There are slightly different requirements for petitions in each House. The history and rules in relation to petitions and the different practices of the Houses are discussed separately in Chapter 4.

Tabling of papers

Provision is made for reports or documents to be tabled in the House.

Certain papers, namely annual reports of government departments, are required by statute, such as the *Financial Management Act 2006*, to be tabled in both Houses of Parliament.

Other papers tabled include subsidiary legislation (such as regulations or other statutory instruments that have been published in the *Government Gazette*), standing and select committee reports, reports and reviews of legislation and answers to parliamentary questions.

Legislative Assembly procedure differs slightly from the Legislative Council in that the tabling of papers is undertaken by the Clerk of the Legislative Assembly who reads the list of papers to be tabled rather than the responsible Minister or Parliamentary Secretary.

Tabled papers are further discussed in Chapter 5.

Giving notices of motion

Provision is made during formal business for the giving of notices of motion. Most motions require notice to be given but others may be moved without notice (motions without notice) and these are specified in Legislative Assembly Standing Order 115. A special procedure is provided for matters of public interest.

The Legislative Assembly divides notices of motion into government and private members' business.

Procedural matters and government notices of motion are listed on the notice paper under 'Business of the Legislative Assembly – Notices of Motion' or 'Government Business – Notices of Motion'.

Private members' notices of motion are listed under the heading 'Private Members' Business – Notices of Motion'.

Notices of motion in relation to the introduction of a Bill are listed on the Legislative Assembly notice paper under 'Bills – Notices of Motion', whether they are government Bills or private members' Bills.

Brief ministerial statements

Legislative Assembly Standing Order 149 allows for a Minister to make a brief ministerial statement to the House not exceeding three minutes. This occurs immediately prior to proceeding to business on the notice paper. The statements are not subject to debate.

Questions without notice

Questions without notice are taken in the Legislative Assembly at approximately 2.00 pm each sitting day. The process for questions without notice and questions on notice is described further in Chapters 10 and 11 respectively.

Matter of public interest

Under Standing Order 145, a member may raise a matter of public interest (MPI) by delivering a statement to the Speaker by 12.00 noon on the day it is proposed to be debated. Only one matter of public interest may be debated in a given sitting week. The proposed MPI, when called on by the Speaker, must be supported by five members for it to proceed. Debate cannot exceed 1 hour (with an extra 5 minutes if there are any independent members).

Matter of public interest debates are discussed further in Chapter 12.

Business of the Assembly – notices of motion

When a notice of motion that does not relate to a Bill is given by a Minister and it relates to the business of the House, it appears the next day on the Legislative Assembly notice paper under the heading ‘Business of the Assembly – Notices of Motion’. These motions often relate to changes to the Legislative Assembly Standing Orders, the arrangement of business on a particular day, or a change in a committee’s terms of reference or membership.

Bills – notices of motion

When a notice of motion for the introduction of a Bill has been given on a previous day, it will appear on the Legislative Assembly notice paper under ‘Bills – Notices of Motion’. That day, when the item of business is reached, the Minister or member who gave notice will stand and move the first reading of the Bill. If agreed to, the Minister will then move the second reading and read their second reading speech. If it is a private members’ Bill the member will move the second reading and read the second reading speech during Private Members’ Business between 4.00 p.m. and 7.00 p.m. on a Wednesday.

Bills and their passage are discussed further at Chapters 8 and 9.

Government business – notices of motion

Notices of motion in relation to matters that the government of the day wishes to progress are listed on the Legislative Assembly notice paper under the heading ‘Government Business – Notices of Motion’. These may be such matters as a new proposal by the government for a standing or select committee, or to deal with matters proposed by the government that require the approval of both Houses. For example, this includes the removal of a place from the register of heritage places under section 54 of the *Heritage of Western Australia Act 1990*.

Government business – orders of the day

These are usually Bills at various stages of their passage through the House, having been adjourned on a previous day and thus having become ‘Orders of the Day’. Other items listed under this heading are the adjourned consideration of messages from the Legislative Council, or an adjourned debate on one of the matters for which notice was given under ‘Government Business – Notices of Motion’.

Private members’ business – notices of motion

When a member who is not a Minister or a Parliamentary Secretary gives notice of a motion, it will appear in the Legislative Assembly notice paper under the heading ‘Private Members’ Business – Notices of Motion’. These motions are usually moved by opposition members seeking to criticise some aspect of government administration or a Minister’s decision or management of a portfolio. They may also include motions to

disallow subsidiary legislation such as regulations or by-laws, or to establish select committees. Private members' business usually takes place between 4.00 pm and 7.00 pm each Wednesday. Private members' business is detailed in Chapter 14.

Private members' business – orders of the day

These are motions that have been moved and debated at some earlier time and been adjourned, thereby becoming an 'Order of the Day' item. An example would be a private member's Bill that has been read a first time and adjourned after the second reading speech. The Bill would have been first listed under 'Bills – Notices of Motion' and once adjourned becomes an order of the day and would appear on the Legislative Assembly notice paper the next day under 'Private Members' Business – Orders of the Day'.

These orders of the day may be brought on for debate during the period of private members' business between 4.00 pm and 7.00 pm each Wednesday.

3.3 Order of business in the Legislative Council

Below is the order of business in the Legislative Council on sitting days.

| TIMES | TUESDAY | WEDNESDAY | THURSDAY | TIMES |
|---------|----------------------------------|---|---|---------|
| 10.00am | | | HOUSE MEETS FORMAL BUSINESS * | 10.00am |
| 10.15am | | | | 10.15am |
| 10.15am | | | NON-GOVERNMENT BUSINESS (80 minutes) | 10.15am |
| 11.35am | | | PRIVATE MEMBERS' BUSINESS (60 minutes) | 11.35am |
| 11.35am | | | | 11.35am |
| 12.35pm | | | ORDERS OF THE DAY | 12.35pm |
| 12.35pm | | | | 12.35pm |
| 1.00pm | | | | 1.00pm |
| 1.00pm | | HOUSE MEETS FORMAL BUSINESS * | LUNCH | 1.00pm |
| 1.15pm | | | | 1.15pm |
| 1.15pm | | | | 1.15pm |
| 2.00pm | | | | 2.00pm |
| 2.00pm | HOUSE MEETS FORMAL BUSINESS * | MOTIONS ON NOTICE (120 minutes) | ORDERS OF THE DAY | 2.00pm |
| 2.15pm | | | | 2.15pm |
| 2.15pm | ORDERS OF THE DAY | | | 2.15pm |
| 3.15pm | | | | 3.15pm |
| 3.15pm | | CONSIDERATION OF COMMITTEE REPORTS (60 minutes) ‡ | | 3.15pm |
| 4.15pm | | | | 4.15pm |
| 4.15pm | | AFTERNOON TEA | AFTERNOON TEA | 4.15pm |
| 4.30pm | | | | 4.30pm |
| 4.30pm | QUESTIONS WITHOUT NOTICE | QUESTIONS WITHOUT NOTICE | QUESTIONS WITHOUT NOTICE | 4.30pm |
| 5.00pm | | | | 5.00pm |
| 5.00pm | ORDERS OF THE DAY | ORDERS OF THE DAY † | ORDERS OF THE DAY † | 5.00pm |
| 5.20pm | | | | 5.20pm |
| 5.20pm | | | MEMBERS' STATEMENTS Δ | 5.20pm |
| 6.00pm | | | | 6.00pm |
| 6.00pm | DINNER | | | 6.00pm |
| 6.20pm | | | | 6.20pm |
| 6.20pm | | MEMBERS' STATEMENTS Δ | | 6.20pm |
| 7.00pm | | | | 7.00pm |
| 7.00pm | | | | 7.00pm |
| 7.30pm | | | | 7.30pm |
| 7.30pm | ORDERS OF THE DAY † | | | 7.30pm |
| 9.45pm | | | | 9:45pm |
| 9.45pm | MEMBERS' STATEMENTS Δ | | | 9:45pm |
| 10.25pm | | | | 10.25pm |

Note: Time periods above are not to scale, and many times are estimates only (see below).

* Formal Business is: prayers, Acknowledgement of Country, condolence motions, reporting of Governor's messages, presentation of petitions, statements by Ministers and Parliamentary Secretaries, presentation of papers for tabling, giving notices of questions, giving notices of motions to introduce Bills, giving notices of motions to disallow statutory instruments, giving notices of motions, and motions without notice (see SO 14). No maximum time is set for Formal Business - the House proceeds to other business after Formal Business has concluded.

‡ When the 60 minutes allocated for Consideration of Committee Reports concludes prior to 4.15 pm (afternoon tea), Orders of the Day will commence at that time.

† When in Committee of the Whole House immediately prior to the time for Members' Statements to commence, debate will be interrupted shortly prior to the assigned time to allow for reporting to the Council.

Δ Members' Statements may be extended by an additional 10 minutes, and Assembly Messages may be taken after Members' Statements, pursuant to Standing Order 5(5).

Sitting times

The sitting times for the Legislative Council are:

| Tuesdays | Wednesdays | Thursdays |
|--|--------------------|--|
| 2.00 pm – 6.00 pm Dinner break 1 hour 30 minutes 7.30 pm – 10.25 pm* | 1.00 pm – 7.00 pm* | 10.00 am – 1.00 pm Lunch Break 1 hour 2.00 pm – 6.00 pm* |

* These finishing times can vary.

Prayers and Acknowledgement of Country

The President, escorted by the Usher of the Black Rod, enters the Chamber at the time appointed to meet, takes the Chair, and reads prayers and an acknowledgement of country.

Condolence motions

Condolence motions are moved when a member or former member of the Legislative Council has passed away. There have been times when a distinguished member of the Legislative Assembly has received a condolence motion in the Legislative Council. Other occasions have included cases of significant disaster such as the terrorist attack in Bali, Indonesia on 12 October 2002.

The Leader of the House moves the condolence motion. There is no time limit on debate and each member can speak to the motion. At the end of the speeches, the President rises and thanks members for their kind remarks and asks members to stand in silence and in their places for one minute.

Messages from the Governor

The Governor sends a formal notice, known as a Governor's message, to the Legislative Council and the Legislative Assembly to indicate when His Excellency has assented to a Bill. In other words, when a Bill becomes an Act of Parliament.

Petitions

Members may table petitions in the House to enable any individual or group to place grievances directly before Parliament. The history and rules in relation to petitions are discussed separately in Chapter 4.

Statements from Ministers or Parliamentary Secretaries

Provision is made during formal business for Ministers and Parliamentary Secretaries to make statements.

At the appropriate time the President will call:

Are there any statements by Ministers or Parliamentary Secretaries?

and at this point Ministers or Parliamentary Secretaries rise, generally in order of Cabinet seniority, and deliver their statements.

Statements are to impart factual information and not remarks or opinions or debatable matter, other than debatable matter that is inherent in the content of the statement.¹

At the conclusion of the statement, the Minister or Parliamentary Secretary may table documents relevant to the statement.

Please advise the Leader of the Government's office on 9222 7246 as soon as you are aware of any ministerial statements to be made.

Ministerial statements are further discussed in Chapter 7.

Papers for tabling

Tabled papers are reports or documents that are tabled in the House.

Certain papers, namely annual reports of government departments, are required by statute, such as the *Financial Management Act 2006*, to be tabled in both Houses of Parliament.

Other papers tabled are petitions, subsidiary legislation such as regulations or other statutory instruments that have been published in the *Government Gazette*, standing and select committee reports, reports and reviews of legislation and answers to parliamentary questions.

If the President has papers for tabling, they will read out the heading of the document. The President then calls on Ministers and Parliamentary Secretaries to present papers. If a Minister or Parliamentary Secretary wishes to make a statement in connection with any paper he or she will usually present the paper separately during statements.

Tabled papers are further discussed in Chapter 5.

¹ Standing Order 103.

Notices of motions for disallowance

This type of motion allows members to revoke subsidiary legislation such as regulations, by-laws and rules under sections 40 and 42 of the *Interpretation Act 1984* and Standing Order 67. Other statutes such as the *Land Administration Act 1997* have separate procedures for disallowance.

Disallowance motions are discussed in detail in Chapter 6.

Some legislative instruments require approval by both Houses of Parliament before they can come into operation.

Notices of motions to introduce Bills

The Minister or member, when notices of motions to introduce Bills are called on by the President, moves the formal words:

I give notice that at the next sitting of the House I will move, That a Bill for an Act to (reads the long title of the Bill), be introduced and read a first time.

The notice of motion to introduce a Bill appears on the following days' notice paper under the heading 'Bills for Introduction'. The Leader of the House may on that day, or a later day, call for Bills for introduction to be taken, thereby permitting the Minister or member to move the first reading of the Bill. If the first reading is agreed to by the House, the Minister or member then proceeds to move the motion for the second reading and reads the second reading speech.

Bills are further discussed in Chapters 8 and 9.

Notices of motion

A motion is a formal proposal made to the House that it takes action of some kind, for example, that the House do something, order something to be done or express a particular opinion. Most motions require notice to be given (motions on notice) but others may be moved without notice (motions without notice).²

Notices of questions

Each sitting day provision is made for members to ask questions of Ministers or other members (except the President)³ in relation to the administration of their portfolios or in the case of a private member, the carriage of a Bill, motion or other matter for which that member is responsible.

² Standing Order 65.

³ Standing Order 104(b).

These questions may be either written (on notice) or oral (without notice), the latter procedure being the one best known by the public. Questions without notice occur at 4.30 pm each sitting day. Similarly, although provision is made for notices of questions (questions on notice) to be given during formal business, this process does not generally occur with a member standing to give notice while in the Chamber, but by providing notice of the question to the Legislative Council Procedure Office via the online questions on notice system.

The procedure for each type of questioning is discussed in detail in Chapters 10 and 11.

Motions without notice

Opportunity is given to members to move motions without notice. These motions are often procedural in nature.

On some occasions, motions without notice are moved to suspend Standing Orders to enable matters to be debated immediately. In most cases the matter concerns an issue of political importance to either side.

A common motion moved without notice is moved by the Leader of the House regarding the order of business on the notice paper. This is known as an 'order of business' motion and is expressly permitted under Standing Order 17(3) – (5). This permits a Minister to move a motion immediately to re-arrange the order of business listed for the day on the business program. Under Standing Order 19, Ministers or Parliamentary Secretaries in the Legislative Council may move a motion without notice connected with the business of the House at any time, without having to give notice of the motion.

Motions on notice

On Wednesdays, the first two hours of business after formal business has concluded comprises debate on motions on notice. These are motions for which notice has previously been given and are listed on the notice paper in the order in which notice was given. At the conclusion of two hours, if debate is continuing, the motion is interrupted and the House proceeds to consideration of committee reports. The motion remains on the notice paper to be debated at the next sitting when motions on notice are listed, until resolved or adjourned.

Currently, the Legislative Council has a Temporary Order in place in relation to motions on notice. Under the Temporary Order, motions are now debated for a maximum of two hours, then the question is put. Members have 20 minutes each to speak to the motion. This Temporary Order will expire at the end of the 41st Parliament.

Motions on notice are further discussed in Chapter 13.

Consideration of committee reports

Under Standing Order 15(3), the Legislative Council debates committee reports (other than those relating to Bills) previously tabled. This occurs on Wednesdays after formal business and consideration of motions on notice. Debate occurs in committee of the whole and is limited to one hour.

In the event that no committee reports are available, the House proceeds with orders of the day. This is often the case at the commencement of a new Parliament.

Non-government business

Under Standing Order 15(4) after the conclusion of formal business on a Thursday, non-government business takes place for 80 minutes. The non-government parties take turns during this time to introduce private members' Bills or debate motions. Motions debated at this time may be debated for a maximum of 80 minutes each and may not be amended or adjourned, and lapse at the conclusion of the debate without being put to a vote. An annual schedule allocating each sitting Thursday's non-government business is tabled by the President at the start of each year, and likewise during the year as required.

Non-government business is to be provided, together with the text of any motion without notice, to the Clerk by 4.00 pm on the Wednesday prior.⁴

Private members' business

Under Standing Order 15(5) after the conclusion of non-government business on a Thursday, private members' business is taken for 60 minutes. This time allows members who are not Ministers or Parliamentary Secretaries, but who support the government, to introduce private members' Bills or move motions. Motions debated at this time may be debated for a maximum of 60 minutes each and may not be amended or adjourned, and lapse at the conclusion of the debate without being put to a vote. An annual schedule allocating each sitting Thursday's private members' business by party is tabled by the President at the start of each year, and also during the year as required.

Private members' business is to be provided, together with the text of any motion without notice, to the Clerk by 4.00 pm on the Wednesday prior.⁵

⁴ Standing Order 111(3)(b).

⁵ Standing Order 112(3)(b).

Orders of the day

An order of the day is a Bill or other matter that the House has directed shall be listed for consideration at a future sitting or at a later stage of that sitting day.⁶ For example, a Bill that has been introduced and read a first time is usually adjourned to the next sitting of the House. The Bill will then appear on the Legislative Council notice paper under the heading 'Orders of the Day'. The majority of the matters listed on the notice paper are orders of the day. However, for convenience, items of business are listed under various headings other than orders of the day such as 'Bills referred to Committees', and 'Consideration of Committee Reports'.

Those matters that are not orders of the day (i.e. have not been adjourned, become an order of the day by reason of an order of the House, or pursuant to the Standing Orders) are listed under the headings 'Motions', 'Disallowance Motions' and 'Bills for Introduction'.

⁶ See the definition in Schedule 3 of the Standing Orders.

Chapter 4

Petitions

The Legislative Council and the Legislative Assembly have different procedures for tabling petitions.

4.1 Introduction

The right of a citizen to petition Parliament is one of the most ancient rights of the Westminster tradition. It allows any individual or group of individuals to place grievances directly before the Parliament.

4.2 History

The present form of petitions developed in the late 17th century, when the House of Commons passed the following resolutions in 1669:

That it is an inherent right of every Commoner of England to prepare and present petitions to the House in case of grievance; and of the House of Commons to receive them.

That it is the undoubted right and privilege of the House of Commons to adjudge and determine, touching the nature and matter of such Petitions, how far they are fit and unfit to be received.

The effect of these resolutions was inherited by the Western Australian Parliament and the right to petition thus became the right of every Western Australian.

4.3 Nature of a petition

A petition is a request for action. Any citizen or resident, or group of citizens or residents, may petition one or both of the Houses of Parliament.

For example, petitions may ask the House (not the government) to:

- introduce legislation;
- repeal or change existing legislation;
- take action for a certain purpose; or
- benefit a particular person.

A petition from an individual citizen may also seek the redress of a personal grievance, for example the correction of an administrative error.

The subject of a petition must be a matter on which the House has the power to act. Members of the public, for example, cannot petition the Legislative Council to act upon appropriation Bills (other than perhaps to refuse to pass them).

Petitions are tabled papers and as such are public documents. Copies of petitions presented to Parliament by members are available from the Legislative Council Administration Office or the Legislative Assembly Office. Summaries of each petition, including the topic, action requested, and number signatures are also available on the Parliament website under the Tabled Papers link.

4.4 Presenting petitions to the Legislative Assembly

Legislative Assembly Standing Orders Nos 64 to 67 outline the requirements for petitions presented to the Legislative Assembly. The Clerk must certify a petition that is proposed to be presented as complying with the Standing Orders before it can be tabled. No formal notice is required for presenting petitions in the House.

The procedure for presenting a petition is as follows. The Speaker will call for petitions, at which time the member rises immediately, addresses himself to the Speaker and makes a statement along the following lines:

Madam Speaker, I have a petition from (number) petitioners, regarding (subject of petition) and requesting (read prayer of petition)

A petition is automatically received without the need for a direction from the Speaker to bring it to the Table of the House.

4.5 Presenting petitions to the Legislative Council

Legislative Council Standing Orders Nos 101 and 102 outline the requirements for petitions presented to the Legislative Council. The Clerk must certify a petition that is proposed to be presented as complying with the Standing Orders before it can be tabled.

The procedure for presenting a petition is as follows. The President will, immediately after prayers, ask whether there are any petitions. The member will rise and address the President in the following terms:

Madam President, I have a petition from # residents of Western Australia couched in the following terms.

The member then reads the text of the petition.

Petitions presented to the Legislative Council automatically stand referred to the Standing Committee on Environment and Public Affairs for consideration. The Council does, however, have the discretion to order that a petition *not* be received.⁷

4.6 Further information

Each of the Houses has published a brochure to assist members of the public in drafting a petition so that it complies with the above Standing Orders. These are located on the Parliament website.

Alternatively you may wish to contact the Legislative Assembly Office on 9222 7390 or the Legislative Council Procedure Office on 9222 7255.

⁷ Standing Order 102(5).

Chapter 5

Tabled papers

The Legislative Council and the Legislative Assembly have different procedures for tabling papers.

5.1 Categories of papers

Papers tabled in the two Houses fall generally into six main categories:

- reports, such as annual reports, which are required by statute to be laid before both Houses of Parliament;
- subsidiary legislation, such as regulations, rules, by-laws, local laws and other regulatory instruments that are required to be tabled under the *Interpretation Act 1984* or other written law;
- reports of a Parliamentary nature, such as committee reports, Government responses to committee reports and reports on overseas travel;
- papers tabled by Ministers or Parliamentary Secretaries during debates;
- answers to questions on notice and questions without notice; and
- petitions.

5.2 Tabling Papers in the Legislative Assembly

Statutory requirement imposed on Ministers

It is commonplace for a statute to impose a requirement on a Minister to have a particular document 'laid before both Houses of Parliament', or in other words, to have the document tabled in both Houses. A Minister can choose to have the document tabled in the Assembly in one of two ways.

The first, and most frequently used method, is for the document to be provided by the Minister's Office to the Parliamentary and Executive Government Services Branch of the Department of the Premier and Cabinet with instructions for the document to be tabled. Parliamentary and Executive Government Services will then collate all documents ahead of the day's sitting with instructions before delivering them to the Legislative Assembly Office. At the time the Speaker calls for papers, the Clerk stands and reads the list of papers. When the Clerk finishes reading the list the Speaker says, 'Papers tabled'. A parliamentary officer will then physically, and ceremoniously, tap the

bundle of documents on the Table of the House. The documents are then regarded as tabled.

The second method a Minister may use for tabling a document is to rise and say 'I now table [the document]'. It is not uncommon for a Minister who has a statutory obligation to table a particular report, and, if the report itself is of public interest, to make a brief ministerial statement about the report, and then table the report at the conclusion of the Minister's speech.

Statutory requirement imposed on Speaker

The Speaker has tabling obligations in respect of the following Acts:

- *Freedom of Information Act 1992;*
- *Inspector of Custodial Services Act 2003;*
- *Members of Parliament (Financial Interests) Act 1992;*
- *Sentencing Act 1995*
- *State Records Act 2000.*

Reports of a Parliamentary nature

Committee reports are tabled by the Chair of the Committee, or a person authorised on the Committee's behalf.

Government responses to Committee reports can be tabled by the relevant Minister via either of the two methods outlined under the sub heading above Statutory requirement imposed on Ministers'.

Reports on overseas travel by the Office of the Speaker are tabled by the Speaker.

Minister's discretion

In the Legislative Assembly, a Minister can rise and table any document he or she desires, with or without a statutory requirement to do so.

Speaker's discretion

In the Legislative Assembly the Speaker can rise and table any document he or she desires, with or without a statutory requirement to do so.

5.3 Tabling Papers in the Legislative Council

In the Legislative Council, the President, Ministers and Parliamentary Secretaries table documents in relation to their portfolio responsibilities and in their capacity as representing Ministers in the Legislative Assembly.

At the start of the sitting the President calls for papers to be tabled, at which point the Leader of the House, Ministers in order of Cabinet seniority and Parliamentary Secretaries stand and table papers. The President tables papers from statutory officers defined by legislation or considered to be officers of the Parliament independent of executive government. These include reports from the Auditor General, the Parliamentary Commissioner for Administrative Investigations (Ombudsman), the Commissioner for Children and Young People, the Parliamentary Inspector of the Corruption and Crime Commission and the Inspector of Custodial Services. The President tables papers prior to Ministers and Parliamentary Secretaries.

In addition, Standing Order 20 enables the presentation of papers during the course of proceedings by:

- the President, a Minister or a Parliamentary Secretary who may present a paper in the course of related business or at any time when other business is not before the Council;
- other Members, by leave⁸, in the course of related business; and
- a Committee Chair, or other Member nominated by a Committee for this purpose, may present a Committee report at any time when other business is not before the Council.

5.4 Tabling of subsidiary legislation

The Parliamentary Counsel's Office (PCO) drafts the vast majority of subsidiary legislation, including regulations, and provides the Legislative Council Administration Office and the Legislative Assembly Office with a list of subsidiary legislation to be tabled each sitting week. PCO co-ordinates this important process. Subsidiary legislation that is not tabled within six sitting days after gazettal ceases to operate at the expiry of those six days.

The parliamentary officer in each House responsible for tabled papers prepares a list each sitting week. This sets out the subsidiary legislation and other papers to be tabled during formal business at the commencement of each sitting day. Each tabled paper is entered into a database.

5.5 Security of copies of reports and papers

Reports and papers received by the Houses respective offices are held under embargo until the Minister or Parliamentary Secretary (Legislative Council) or Clerk (Legislative Assembly) has tabled the report or paper has presented. Tabled papers are public

⁸ 'Leave' is special permission granted by the House, and may be denied by a single member stating leave is *not* granted.

documents and may be viewed and downloaded by members and the public from Parliament's website, or a hard copy will be provided on request.

5.6 Tabling requirements for reports and papers

Generally, the Parliamentary and Executive Government Services Branch of the Department of the Premier and Cabinet makes arrangements for the tabling of papers in both Houses, upon the request of Ministers. It requires a written request signed by the Minister's Chief of Staff or Executive Officer, twelve hard copies and an electronic version (PDF) of the paper to be tabled. These should be submitted by the Minister's office a minimum of one day prior to the day on which the paper is required to be tabled.

Exceptions to these arrangements include tabling errata (see 5.7 below) and tabling documents from agencies that report directly to Parliament. Agencies reporting directly to Parliament should ensure the cover letter of the report or paper for tabling provides details on the legislation that enables them to table in these particular circumstances. Twelve hardcopies (5 to the Legislative Council and 7 to the Legislative Assembly) of the report and an electronic version (PDF) should also be provided to the relevant office in the Houses (The Legislative Assembly Office or the Legislative Council Administration Office).

5.7 Errors in tabled papers

Sometimes reports are tabled with errors and it is appropriate to correct the record.

It is important to note that different processes apply in the Legislative Assembly and Legislative Council. Ministers have several options available to them to rectify errors in reports and other documents.

In the Legislative Assembly:

- the Minister may write to the Speaker advising that an error has occurred in the report, necessitating a correction to be made. The letter needs to identify the original report and exactly where the error occurred (section and page number) and attach a copy of the correction. The Speaker will then inform the Legislative Assembly that they have authorised for the correction to be attached to the original tabled paper; or
- the Minister may table an erratum page in respect of the report. If this process is undertaken the document will be treated as a separate tabled paper and will be linked to the original paper; or
- the Minister may table a new version of the report.

All options above are arranged by the Parliamentary and Executive Government Services branch of the Department of the Premier and Cabinet. Please contact them to correct the record.

In the Legislative Council, the responsible Minister or Parliamentary Secretary tables errata relating to their portfolio responsibilities or their representative capacity. Errata are usually tabled during the tabling of papers or following a brief ministerial statement at the commencement of the sitting.

In the Legislative Council:

- the responsible Minister or Parliamentary Secretary may table an erratum page in respect of the report. If this process is undertaken the document will be treated as a separate tabled paper and will be linked to the original paper; or
- the responsible Minister or Parliamentary Secretary may table a new version of the report.

Please note that the President has **no** role in the tabling of errata. Please do **not** forward an erratum to the President or Clerk of the Legislative Council.

Please also note that notwithstanding the above, the original report tabled in each House (which contains the error, or may have been tabled in error), is not removed from the public record, or otherwise altered. Thus, even if a replacement report is tabled, it is still possible for a member of the public to request and obtain a copy of the original (tabled) report.

It is advisable for ministerial or departmental officers overseeing this process to contact the Legislative Assembly Office or the Legislative Council Administration Office to discuss the process appropriate for tabling an erratum in that House.

5.8 Tabling of annual reports

An annual Public Sector Commissioner Circular sets out the requirements to be met by agencies in the preparation of their annual reports.

In addition, the Circular advises that agencies should follow the guidelines set out in the Annual Reporting Framework which is updated each year and is available on the Public Sector Commission website.

When an annual report has been approved by the relevant Minister for tabling in Parliament, a covering memorandum signed by the Chief of Staff or Executive Officer should be forwarded to the Parliamentary and Executive Government Services Branch of the Department of the Premier and Cabinet with **twelve** hard copies of the report

included (seven copies for the Legislative Assembly, five copies for the Legislative Council).

At the same time, an electronic copy of the report in Adobe Acrobat PDF format must be lodged by the relevant Minister's office with the Parliamentary and Executive Government Services Branch (email pegs@dpc.wa.gov.au).

Agencies are also required to directly lodge copies of their annual reports after they have been tabled in Parliament, with the State (four copies) and National (one copy) Libraries to meet their legal deposit requirements.

When the annual report is tabled in Parliament, a PDF version will be published on the tabled papers database and will be available on Parliament's website.

Agencies are responsible for ensuring that the PDF document that has been provided is identical to the document tabled in Parliament.

Format information

PDF files should be marked up to enable easy navigation from the main headings in the table of contents to the page in the document.

The PDF file should be written at screen resolution.

The make-up, timing and presentation requirements for annual reports to Parliament is covered by sections 61–64 of the *Financial Management Act 2006*.

Relevant extracts from the *Financial Management Act 2006* are to be found in **Appendix One**.

Obtaining a copy of a tabled paper

There are a number of ways to obtain a copy of a tabled paper:

- Hardcopies of recently tabled papers are available from the Legislative Assembly Office and the Legislative Council Administration Office
- Electronic copies of tabled papers are available from the Tabled Papers section of the Parliament website, hyperlink: [Tabled Papers](#)
- Written requests can also be sent to the relevant office to source tabled papers that are not available online. For Legislative Assembly tabled paper enquiries email: laquery@parliament.wa.gov.au For Legislative Council tabled paper enquiries email: lcadmin@parliament.wa.gov.au

Chapter 6

Disallowance of subsidiary legislation

Disallowance of subsidiary legislation is a highly technical area governed by legislation such as the *Interpretation Act 1984*, and the differing procedures of the two Houses. The majority of disallowance motions are moved in the Legislative Council.

6.1 Introduction

Many Acts of Parliament delegate the power to make regulations, rules, by-laws and orders, known collectively as ‘subsidiary legislation’, to the Executive Government. Subsidiary legislation, also known as ‘subordinate’ or ‘delegated legislation’, provides further detail to what is enacted in the parent Act (primary legislation) so as to carry out its object and purpose.

Subsidiary legislation has the same legal force as primary legislation. Unlike primary legislation, which requires passage through both Houses of Parliament, most subsidiary legislation is made by the government of the day – the Executive and not the legislature. The Executive can exercise this type of law-making because it has been delegated these powers by the legislature. However, the Parliament has enacted statutory procedures to permit either House to veto (or disallow) certain types of subsidiary legislation in whole or in part.

Section 42 of the *Interpretation Act 1984* provides one of the procedures for the disallowance by either House of certain types of subsidiary legislation. **Appendix Two** contains the relevant extracts of the *Interpretation Act 1984*.

These ‘disallowable instruments’ are restricted to regulations which are defined by section 42(8) to include regulations, rules, by-laws or local laws. Other types of subsidiary legislation which are not regulations, rules, by-laws or local laws such as orders, notices, town planning schemes and codes will not be disallowable unless:

- the parent Act specifies that the subsidiary legislation is to be treated as regulations for the purpose of the disallowance procedure in section 42 of the *Interpretation Act 1984*; or
- the parent Act specifies its own procedure for disallowance of the subsidiary legislation made under it.

There are therefore two broad categories of disallowable instruments. Those instruments that are subject to the disallowance procedure in section 42 of the

Interpretation Act 1984 and those instruments subject to their own unique disallowance procedure provided for by the parent Act.

6.2 Disallowance procedure under *Interpretation Act 1984*

Section 41 of the *Interpretation Act 1984* requires that all subsidiary legislation be published in the *Government Gazette*, while section 42 provides that all regulations shall be tabled in each House of Parliament within six sitting days following publication in the *Government Gazette*. The instrument does not take effect until it is published. In the case of regulations, a failure to also have the instrument tabled in both Houses within six sitting days will result in the regulations ceasing to have effect at expiry of the six days.

The object of the tabling requirement is to ensure members of both Houses are made aware that the regulations have been made. This enables members to consider the subsidiary legislation and decide whether to move to disallow the instrument. This may be for any reason, either legal/technical, such as the instrument is beyond the scope of the power in the parent Act to make it *ultra vires* or for political reasons, for example, the regulations have an adverse effect on a member's constituents.

Although both Houses have the power to disallow, the majority of disallowance motions are moved and debated in the Legislative Council. As the vast majority of subsidiary legislation is made by the Executive, the Legislative Assembly with its government majority (unless a minority government is in place) is unlikely to disallow government regulations. The disallowance procedure is better suited to a House of review such as the Legislative Council.

6.3 Procedure for disallowance in the Legislative Council

In the Legislative Council, Standing Order 67 regulates the manner in which disallowance motions are dealt with in that House. Unlike the Legislative Assembly, this Standing Order ensures that disallowance motions (not withdrawn) are debated and resolved in that House.

67. Motions to Disallow Regulations

- (1) For the purposes of this Standing Order, a 'regulation' includes any statutory instrument made subject to disallowance by a written law.
- (2) A notice of motion to disallow a regulation shall have precedence over other notices of motion.
- (3) If a notice of motion to disallow a regulation has not been moved at the expiration of 2 sitting days after the day on which notice was given, that motion shall be deemed to have been moved *pro forma* upon that expiration.
- (4) An order of the day to disallow a regulation has precedence over other orders of the day.
- (5) Where –
 - (a) on the 17th sitting day after the motion was moved (exclusive of the day on which the motion was moved); or
 - (b) on the proposed last sitting day prior to a general election,a motion to disallow a regulation remains unresolved, then the question shall be put before the Council rises on that day.

The procedure for disallowance under the *Interpretation Act 1984* and Standing Orders is as follows:

- a member must move a motion to disallow regulations within 14 sitting days of the regulations being tabled in the House;⁹
- the motion is moved automatically at the expiry of two sitting days after the day on which the notice was given and becomes an order of the day on the Legislative Council notice paper;¹⁰
- the motion for disallowance, once moved, has priority over all other business of the House.¹¹ If not dealt with earlier, the disallowance motion is required to be put to a vote on the 17th sitting day after the motion was moved (exclusive of

⁹ *Interpretation Act 1984*, section 42(2).

¹⁰ Standing Order 67(3).

¹¹ Standing Order 67(4).

the day on which the motion was first moved).¹² The Legislative Council notice paper will list the final ‘indicative date’ by which the disallowance motion must be debated and voted upon;

- if the House fails to deal with a disallowance motion in the time provided for under the Standing Orders or an unanticipated prorogation occurs, the disallowance motion lapses and the regulations remain in force. Where a prorogation is foreshadowed, however (such as where a general election is due to be held during a recess), the Standing Orders of the Legislative Council require the disallowance motion to be dealt with on the proposed last sitting day prior to the likely prorogation;¹³ and
- notice of the resolution of the House disallowing a regulation is to be published in the *Government Gazette* within 21 days of the passing of the resolution.¹⁴

The above procedure will apply to an instrument of subsidiary legislation that is not a regulation, rule, by-law or local law if the parent Act provides that the instrument is to be treated as a regulation for the purposes of the *Interpretation Act 1984* or otherwise indicates that this procedure will apply. For example, section 44 of the *Fish Resources Management Act 1994* provides that an order made by the Minister in relation to prohibiting fishing is:

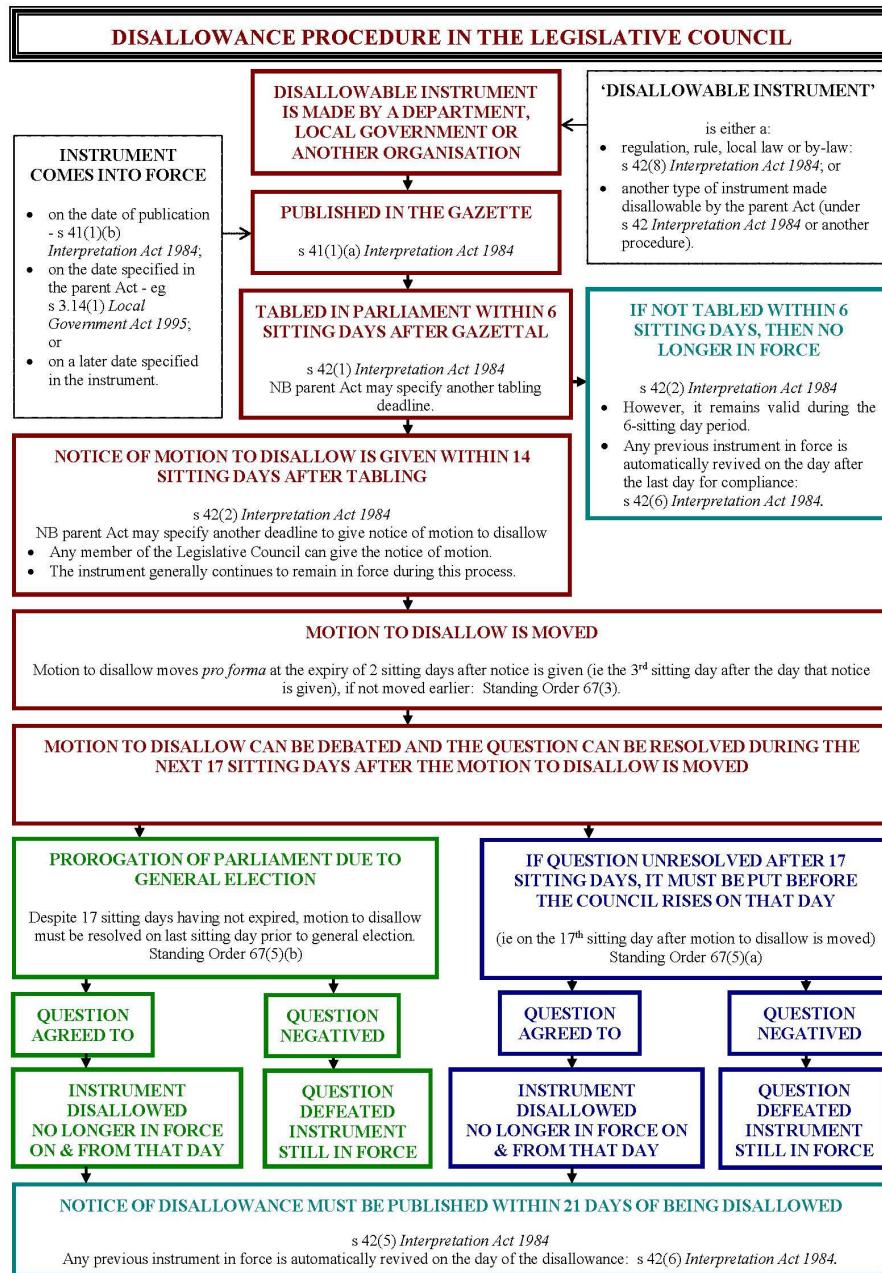
- subsidiary legislation for the purposes of the *Interpretation Act 1984*; and
- section 42 of the *Interpretation Act 1984* applies to and in relation to an order made under this division as if the order were a regulation.

A diagrammatic representation of the disallowance procedure in the Legislative Council follows.

¹² Standing Order 67(5).

¹³ Standing Order 67(5)(b).

¹⁴ *Interpretation Act 1984*, section 42(5).



6.4 Debate of disallowance motion

Legislative Assembly

In the Legislative Assembly, any motion moved by a member to disallow a regulation would normally be debated during private members' business time and if not brought

on for debate by either the opposition or the government, would lapse upon the prorogation of Parliament or under Standing Order 74.

Legislative Council

It has been the practice in the Legislative Council for the President to put the question on a disallowance motion at the conclusion of the last available sitting day available for debate under the Standing Orders (which is 20 sitting days after the disallowance motion is tabled, unless the House resolves to bring the matter on earlier or the House is prorogued earlier). The Leader of the House determines the specific timing of the debate on the day. Debate on disallowance motions has no set time limit, however, each member is limited to 45 minutes speaking time under Standing Order 21.

6.5 Disallowance under procedure provided for in parent Act

Although the procedure for disallowance under the *Interpretation Act 1984* is by far the most common, some instruments of subsidiary legislation have unusual disallowance provisions that are peculiar to the Act under which they are made. An Act may specify its own time limits for giving notice of motion. For example, section 56 of the *Planning and Development Act 2005* provides 12 days after tabling to give notice of motion to disallow an amendment to the Metropolitan Region Scheme but is silent in relation to how the Houses should deal with the notice once given.

Legislative Council

In these circumstances, the procedure provided by the Legislative Council Standing Orders may be used, as there is no direct inconsistency between the procedure in the Standing Orders and the procedure specified in the parent Act. This is not always the case; for example, section 43 of the *Land Administration Act 1997* specifies its own time periods for giving notice and debating a disallowance motion made under that provision. Care should be taken as the disallowance procedure provided for by the Legislative Council Standing Orders may conflict with a procedure that is set out in an Act and in these circumstances the Act provisions will prevail. This is because the Standing Orders do not have legislative authority.

Some Acts will be entirely inconsistent with the Legislative Council Standing Orders regulating the disallowance procedure and others will permit the Standing Orders procedure to operate.

***Land Administration Act 1997* – Class A reserves and conservation reserves**

An example where the Legislative Council's Standing Orders will not necessarily govern the procedure can be found in the *Land Administration Act 1997*, section 43(1), which provides for a special procedure in relation to certain changes to class A reserves and conservation reserves. Although the procedure provides for the same 14-day period as

the *Interpretation Act 1984* to give a notice of motion to disallow, any motion to disallow a proposal is to be resolved within 30 sitting days after the proposal is tabled.

The other unusual feature under the *Land Administration Act 1997* is that it is couched in the negative, providing that if the motion for disallowance is ‘not lost’ within the 30-day period then the proposal for excision, cancellation, change, grant or permission lapses. This procedure, like the scheme of the Legislative Council Standing Orders, ensures that the matter must be brought on for debate and the question determined, as a failure to do so within the 30-day period will result in the proposal being defeated by the effluxion of time.

As with other disallowance motions, the notice paper also informs members of the indicative date and number of days remaining until the disallowance motion must be resolved.

6.6 Effect of disallowance

Disallowance has the effect of repealing the regulation (if a selective disallowance) or the entire regulations (if the disallowance motion relates to the whole instrument). There is generally no regulatory hiatus resulting from disallowance as another effect of disallowance is that the previous regulations in force and repealed by the disallowed regulations are automatically revived.¹⁵ This will not be the situation in the case of inaugural regulations.

The effect of disallowance is not retrospective. It does not affect the validity or cure the invalidity of anything done during the period that the regulations were in force. For example, fines or fees paid under regulations that are subsequently disallowed are not required to be repaid by the enforcing authority unless a court finds that such payments were *ultra vires* the Act and therefore invalid.

It should be noted that there is nothing preventing the Executive Government from enacting regulations in exactly the same form that have been disallowed by the Legislative Council.

6.7 Joint Standing Committee on Delegated Legislation

First established in 1987, this joint committee of the Parliament has been delegated the task of scrutinising subsidiary legislation including that class of subsidiary legislation that is subject to disallowance by either House under section 42 of the *Interpretation Act 1984* or under any other written law.

The committee may recommend disallowance of a regulation in whole or in part. The recommendation for disallowance and the reasons supporting its views are generally

¹⁵ *Interpretation Act 1984* (WA), section 42(6).

contained in a report of the committee that is tabled in both Houses of Parliament prior to the motion for disallowance being debated and put to a vote in the Legislative Council. A member of the committee, who is also a member of the Legislative Council, will give notice of motion for disallowance as a result of a resolution of the committee. With a few exceptions, the Legislative Council will accept a recommendation of the committee to disallow an instrument.

Ministerial and departmental staff may be involved in the committee's inquiry into an instrument. Co-operation with the committee is essential as in the past the committee has recommended disallowance in circumstances where information requested by it has not been provided in a timely fashion. The committee will often give notice of motion to disallow an instrument in circumstances where it has not obtained all necessary information and the 14-day period under the *Interpretation Act 1984* in which to give a notice of motion would otherwise expire. The committee may also seek an undertaking that certain regulations be amended, as an alternative to pursuing a disallowance.

These notices of motion are known as 'protective' notices as they protect the power of the Legislative Council to disallow the regulations in the event that the committee's further inquiries result in a recommendation to disallow. On occasion, the committee has also sought and obtained ministerial undertakings which have averted a recommendation to disallow an instrument.

The scrutiny undertaken by the Joint Standing Committee on Delegated Legislation is limited to its terms of reference. The committee is discussed further in Chapter 16.

6.8 Approval of delegated legislation to enable commencement

Some statutes require that before certain delegated legislation can commence or be made, both Houses of Parliament must pass a resolution approving the proposed instrument. This is known as an affirmative resolution procedure in contrast to the negative resolution procedure for disallowances. An example of an instrument that required approval before it can be made was an order made by the Governor under former section 6 of the *Consumer Credit (Western Australia) Act 1996* adopting Queensland regulations as part of Western Australian law. The Governor's order could not be made unless a draft of the order had first been approved by each House of Parliament.

Chapter 7

Ministerial statements

The Legislative Assembly and the Legislative Council have different procedures for permitting Ministers to make statements to the House.

7.1 Legislative Assembly – brief ministerial statements

Legislative Assembly Standing Order 149 provides for a Minister to make a brief ministerial statement (BMS) to the House not exceeding three minutes (approximately 400 – 450 words), on which there is no further debate. Brief ministerial statements are given early in the day's proceedings during formal business, on Tuesdays immediately following prayers and Wednesdays and Thursdays following the tabling of papers and giving of notices of motion.

It is important for the drafters of brief ministerial statements to adhere to the word limit as there is no capacity to extend the time for Ministers to make these statements.

Parliamentary and Executive Government Services Branch requirements

An electronic copy of the BMS should be forwarded to the Parliamentary and Executive Government Services Branch (pegs@dpc.wa.gov.au) at least one hour before the BMS is to be made.

An electronic copy and 10 hard copies of any report that is intended to be tabled during the BMS must also be provided.

7.2 Legislative Assembly – ministerial statements

Legislative Assembly Standing Order 150 allows a Minister, who has leave of the House, to make a ministerial statement not exceeding twenty minutes and allows the Leader of the Opposition or his delegate up to fifteen minutes in response. An opposition party with at least five members is also permitted five minutes to reply. A ministerial statement must be given during a convenient break in proceedings as a Minister may not interrupt another member speaking to seek leave to make the statement. These types of statements can be made at any time during the sitting day.

It is a convention that copies of the statement and any report or paper that may be tabled (not reports that require an order of the House that the report be printed) along with the statement, should be supplied to the Leader of the Opposition, shadow Minister and all independent members in that House at least two hours before the statement is to be made.

Standing Order 150(1) of the Legislative Assembly's Standing Orders defines 'leave of the House' as leave granted by the Legislative Assembly without a dissentient voice. The convention of giving two hours' notice of the ministerial statement referred to above is to minimise the prospect of leave being denied by the House.

The ministerial statement must begin with the phrase: *'Madam Speaker, I seek leave to make a ministerial statement'*. If, as part of a ministerial statement, a report is to be tabled then the following words are to be included at the end of the statement: *'Madam Speaker, I table the report of ...'*.

Parliamentary and Executive Government Services Branch requirements

An electronic copy and at least 10 hard copies of the statement and any reports or papers to be tabled must also be supplied to the Parliamentary and Executive Government Services Branch at least two hours before the House sits that day or, preferably, the preceding day.

If the ministerial statement and/or associated report are of a contentious nature and it is reasonable to expect considerable interest among members and the media, then additional copies must be made available to the Legislative Assembly for distribution. This also applies to other papers to be tabled in the House.

7.3 Legislative Council – ministerial statements

Under Legislative Council Standing Order 103, ministerial statements can be made during formal business at the commencement of a sitting day. There is no time limit on making the statement but the Standing Orders require that the statement impart only factual information, and therefore they are usually brief.

To deliver a ministerial statement at other times requires leave of the House. As in the Assembly, there should not be a dissentient voice when leave is sought. The seeking of leave, and if granted the delivery of the statement, must be done during a break in proceedings so as not to interrupt another member speaking. Opposition and independent members of the Legislative Council must be informed as a matter of courtesy before leave to make a ministerial statement is sought. A failure to do so may result in leave being denied.

Parliamentary and Executive Government Services Branch requirements

A copy of the statement (that is to be made during formal business) must be provided to the Parliamentary and Executive Government Services Branch via email (pegs@dpc.wa.gov.au) **the day before** the day on which the statement is to be made.

Alternatively, a copy of the statement (that is to be made at another time) must be provided to the Parliamentary and Executive Government Services Branch via email **at the earliest opportunity** on the day on which the statement is to be made.

Chapter 8

Getting a Bill to Parliament

This Chapter sets out the process by which a Bill is prepared, considered and prioritised for its introduction to Parliament.

8.1 What is a Bill?

A Bill is a draft of a proposed Act of Parliament. The majority of Bills deal with the management of public affairs. A Minister or Parliamentary Secretary introduces Bills into one of the Houses of Parliament, although any member is entitled to introduce a Bill subject to its conforming with the Standing Orders of the House in which it is presented. A Bill introduced by a member who is not a Minister or Parliamentary Secretary is referred to as a ‘private member’s Bill’ (also refer to ‘private members’ business’ in Chapter 14).

The need for legislation usually arises from:

- an election platform or new policy of the government;
- the requirement for uniform legislation;
- public service administrative needs; or
- legal advice or in response to judgements from the courts.

This discussion will not attempt to delve into the mechanics of policy formulation; it will simply advise on procedures in place once a Bill is presented to Cabinet for approval to draft.

8.2 Cabinet approval to draft a Bill

The process of introducing a Bill into Parliament begins when a Minister presents to Cabinet a Cabinet submission that requests legislation be drafted. This Cabinet submission:

- explains in general terms the background to the proposed legislation;
- explains why the proposed legislation is needed;
- explains the intended effect of the proposed legislation, including any potential financial implications;

- explains any urgency for the legislation;
- seeks Cabinet's approval for the necessary Bill or Bills to be prepared by the Parliamentary Counsel's Office;
- unless there are exceptional circumstances, is accompanied by drafting instructions for the proposed legislation; and
- should not seek approval to print and introduce the legislation except in special cases or in exceptionally urgent circumstances.

For more information please refer to the *Cabinet Handbook*.

<https://www.wa.gov.au/organisation/departments-of-the-premier-and-cabinet/cabinet-handbook>

8.3 Drafting instructions

Unless there are exceptional circumstances, detailed drafting instructions should always accompany any Cabinet submission seeking approval to draft legislation.

Drafting instructions should not be finalised until appropriate consultations have been conducted with persons and bodies likely to be affected by the proposal (inside and outside government). For detailed information on the requirements for consultation, officers should consult the Cabinet procedures section of the Cabinet handbook.

In addition, more information on the format and preparation of drafting instructions can be found in the Parliamentary Counsel's Office document titled *Getting Legislation Drafted and Enacted: Guidelines and Procedures*.

<https://www.wa.gov.au/organisation/departments-of-justice/parliamentary-counsels-office>

This document explains the process by which legislation is drafted and enacted and sets out the roles and responsibilities that Parliamentary Counsel and officers of departments and organisations have in this process.

8.4 Cabinet approves the drafting of the Bill – what next?

Minister's office

Following Cabinet approval to draft a Bill, the Minister's office should notify the department of Cabinet's decision.

The Legislation Standing Committee of Cabinet (LSCC) will automatically list this item for consideration at its next meeting and assign a drafting priority for the Bill.

Instructing agency

When Cabinet has approved the drafting of a Bill, the instructing agency should immediately forward to Parliamentary Counsel's Office all relevant drafting instructions and associated material, including the date of the Cabinet decision. This contact with Parliamentary Counsel's Office should begin as soon as possible, regardless of whether the LSCC has allocated a drafting priority.

In many cases, in addition to the drafting instructions, these instructions to Parliamentary Counsel's Office can include:

- background material that will assist the drafter to understand the subject matter involved;
- copies of legislation from other jurisdictions, or other Western Australian legislation, that may assist in the drafting; and
- legal opinions or decisions of courts that may assist the drafter.

The instructing agency must also nominate an instructing officer. The instructing officer will be a senior officer of the department, who is totally conversant with the legislative proposal and its background and is able to make or readily obtain decisions on policy.

Parliamentary Counsel's Office

The Parliamentary Counsel's Office prepares Bills for the government's legislative program in accordance with priorities fixed by the government. Another important function is the preparation for the government of:

- regulations, rules, by-laws and other instruments of a legislative nature; and
- various Executive Council minutes, proclamations, orders, commissions, warrants, appointments etc.

Parliamentary Counsel's Office is a division of the Department of Justice and is located at:

David Malcolm Justice Centre
28 Barrack Street
PERTH WA 6000
Phone: 9264 1444

Parliamentary Counsel's Office also drafts private members' Bills and private members' amendments.

8.5 Drafting priority

Any suggested drafting priority or proposed timing of the introduction to, and passage through, Parliament in any Cabinet minute seeking the drafting of legislation should be outlined in the ‘urgency’ section of the Cabinet minute, not in the ‘Recommendation’ section.

When Cabinet approval to draft a Bill is given, the Bill will be listed for consideration and allocation of drafting priority by the Legislation Standing Committee of Cabinet (LSCC).

The LSCC sets drafting priorities for Bills approved for drafting by Cabinet and as a consequence determines the timing of their introduction into Parliament.

8.6 The Legislation Standing Committee of Cabinet (LSCC)

The LSCC comprises four Ministers, including the Leader of the House in the Legislative Assembly (Chair) and the Leader of the Government in the Legislative Council. The Parliamentary and Executive Government Services Branch, DPC provides secretariat support.

The Role of the LSCC

The LSCC sets drafting priorities for Bills approved for drafting by Cabinet and as a consequence determines the timing of their introduction into Parliament.

A priority coding system for legislation is used by the LSCC (see end of this section).

Cabinet must still approve the drafting and printing of legislation.

Amalgamation of amendments

Wherever possible, the LSCC will liaise with the responsible Minister to amalgamate proposed amendments to any one Act. This will reduce the overall number of Bills and in turn reduce the number of parliamentary debates each year on amendments to the same statute.

Repeals and minor amendments

Ministers are always encouraged to repeal unnecessary or redundant Acts. Please refer to section 8.13 regarding the preparation of annual or bi-annual Statutes (Repeals and Minor Amendments) Bills.

Timing of meetings

The LSCC meets as required or directed by the Chair.

8.7 Cabinet approval to print a Bill

Once the Parliamentary Counsel's Office has settled the draft legislation in conjunction with instructing and ministerial officers and with approval of the Minister, Cabinet approval to print the Bill must be sought.

This entails preparing a further Cabinet submission and returning the draft Bill to Cabinet in order to seek Cabinet approval to print the legislation.

At this point, the instructing officer should have also finalised or be well advanced in finalising the second reading speech and explanatory memorandum for the Bill.

8.8 Caucus approval

Political parties have internal parliamentary committees made up of a number of backbench members. Each of these committees has certain economic or social portfolio areas for which they are responsible. These committees review, among other things, legislative amendments proposed by Ministers and private members.

When Cabinet has approved the printing of a Bill, it is then the responsibility of the Minister to present the Bill and any associated explanatory material to Caucus for approval. The appropriate internal committee to review the legislation will be determined by the Caucus Secretary.

This process may take a week or longer before approval to introduce the Bill into Parliament is given.

8.9 Introducing the Bill into Parliament – the process explained

Who arranges for the Bill to be printed?

The Parliamentary and Executive Government Services Branch advises the Parliamentary Counsel's Office when Cabinet has approved the printing of a Bill. The Parliamentary Counsel's Office in turn arranges for the Bill to be printed.

The printed Bill is forwarded directly to the relevant House of Parliament and is held under lock and key until such time as the House agrees to the Minister's motion that the Bill be read a first time. It is only at this point, and not when notice is first given by the Minister of the intention to introduce the Bill, that the Bill becomes a public document.

What is the ‘notice of motion’ document?

When Cabinet has approved the printing of a Bill, Parliamentary Counsel’s Office prepares a document referred to as a ‘notice of motion’. The Minister reads out this document in the relevant House to give notice that he or she intends to introduce the Bill into Parliament. Copies of the ‘notice of motion’ document are issued to the Minister’s office, the instructing officer for the Bill and to the Parliamentary and Executive Government Services Branch.

The copy of the ‘notice of motion’ document sent to the Minister’s office can be filed as the Parliamentary and Executive Government Services Branch will provide its copy to the Minister once it is decided to introduce the Bill in Parliament.

Governor’s message

As part of this documentation received from Parliamentary Counsel’s Office, there may be a request to seek a Governor’s message. A Governor’s message is required for any proposed Bill that appropriates revenue. This is discussed further in Chapter 9.3 under ‘Money Bills’. The Parliamentary and Executive Government Services Branch will arrange the necessary documentation for seeking a Governor’s message. The Minister’s office does not need to action this requirement.

Any Bill that appropriates revenue and requires a Governor’s message must be first introduced into the Legislative Assembly.

8.10 Other documents required to introduce a Bill

The Parliamentary Counsel’s Office prepares the following:

- the Bill (copies of the printed Bill are sent directly to Parliament); and
- the notice of motion document.

The instructing officer prepares the following:

- the second reading speech; and
- the explanatory memorandum.

Second reading speech

The second reading speech is usually prepared by the instructing officer in conjunction with ministerial officer(s) and the Minister. The second reading speech explains, in broad terms, the policy objectives of the proposed legislation and should as a rule be kept as brief as possible – usually less than 1000 words. As a general rule, the second reading speech should not endeavour to describe the objective of every clause of the Bill. This level of detail should be outlined in the explanatory memorandum.

The second reading speech given for Bills in the Legislative Council must include a paragraph addressing Standing Order 126(1), and advise the House if the Bill is or is not a uniform legislation Bill and if it requires referral to the Uniform Legislation Committee. More detail can be found in section 9.14.

A good example of a second reading speech is attached in **Appendix Three**.

Explanatory memorandum

Legislative Assembly Standing Order 162(2) and Legislative Council Standing Order 121(3) require that an explanatory memorandum accompany every Bill introduced into that House at the time the Bill is first read.

The explanatory memorandum provides the reasons for the Bill being presented to Parliament as well as explaining the way in which the clauses of the Bill achieve its objectives. A well-drafted explanatory memorandum can help ease the passage of a Bill through Parliament and eliminate unnecessary enquiries to departments and Ministers in Parliament on what a Bill and its clauses are intended to achieve.

Although there are no formal requirements as to how an explanatory memorandum should be worded or formatted, it has become the practice that explanatory memoranda should be concise and written so that a reader with a good general knowledge can understand the object of each clause.

Requirements for Parliamentary and Executive Government Services Branch

Once Cabinet has approved the printing of a Bill, the Parliament and Executive Government Services branch will contact the Ministerial Office requesting the following:

1. the second reading speech:
 - a soft copy Word version of the second reading speech approved by the Minister and formatted according to the Minister's preferences.
2. the explanatory memorandum:
 - a soft copy of the explanatory memorandum approved by the Minister; and
 - 30 hard copies of the explanatory memorandum (12-point font, single spaced, double sided) to be made available to other members of Parliament when the Bill is introduced.
3. Contact details of advisers for the Bill

- Contact names and details (including after-hours numbers) for the officers or advisers who may be required to attend Parliament when the Bill is debated at a later stage.

8.11 Timing for a Bill's introduction

The Parliamentary and Executive Government Services Branch will liaise with the Minister's office in regard to the timing of the introduction of a Bill.

8.12 Priority coding system for legislation

| | |
|---------|---|
| OO | Assigned by the Premier for urgent Bills to be given priority above all others. |
| AA | Bill to be introduced in the autumn sittings of Parliament and be passed before the end of the autumn sittings. |
| AB | Bill to be introduced in the autumn sittings of Parliament and be passed before the end of the spring sittings. |
| BB | Bill to be introduced in the spring sittings of Parliament and be passed before the end of the spring sittings. |
| BX | Bill to be introduced in the spring sittings of Parliament but not necessarily passed before the end of the spring sittings in the same year. |
| A(year) | Bill to be introduced in the first half of the following year. |
| S(year) | Bill to be introduced in the second half of the following year. |
| SP | Special long-term projects for introduction in future years which require drafting in the current year. To be restricted to very large exercises. |

8.13 Omnibus Bills

The Statutes (Repeals and Minor Amendments) Bills (omnibus Bills) provide an avenue for introducing a range of minor legislative amendments and repeals that do not affect the substance of the law. Omnibus Bills make the government's legislative program and parliamentary business more efficient by reducing the number of Bills that would otherwise be required to deal with these minor amendments and repeals.

Examples of matters that may be suitable for inclusion include:

- the repeal of obsolete legislation;
- the correction of typographical, grammatical and other minor errors of presentation; and

- amendments to update names, titles, entities or designations.

A provision will be included in an omnibus Bill only if its effect is clear on the face of the provision.

An omnibus Bill is not a vehicle for implementing a change in government policy or dealing with an issue that may be controversial or legally or otherwise contentious.

A matter will not be included in an omnibus Bill if it:

- affects any existing right, obligation, power, or duty; or
- changes any process provided for in legislation; or
- involves the insertion of multiple new sections into an Act.

The Department of Justice is responsible for the preparation and introduction of omnibus Bills. A Minister wanting to have a matter dealt with in an omnibus Bill should make a request in writing to the Director General, Department of Justice, and provide details of a departmental instructing officer for further consultation.

The Department of Justice will scrutinise the proposed matter to ensure that it is suitable to be dealt with in an omnibus Bill. If the matter is suitable, the Department of Justice will forward the request to the Parliamentary Counsel's Office for drafting. The Department of Justice will liaise with the departmental instructing officer to prepare explanatory notes to accompany the omnibus Bill.

The final decision about whether a matter is suitable to be dealt with in an omnibus Bill lies with the Attorney General acting in consultation with the Leader of the Government in the Legislative Council.

The intention is that an omnibus Bill will be introduced annually or, if needed, in each of the Autumn and Spring sittings during a year.

The Bill is introduced into Parliament in the Legislative Council and is scrutinised by the Legislative Council's Standing Committee on Uniform Legislation and Statutes Review to ensure that it includes only matters that are suitable for inclusion in an omnibus Bill.

Chapter 9

Passage of a Bill through Parliament

This Chapter explains the passage of a Bill through the two Houses.

9.1 Introduction

The Western Australian Parliament makes, modifies or repeals laws by Acts of Parliament – often referred to as statutes or legislation. Bills (proposed laws) are passed by the two Houses and are given Royal Assent in the name of Her Majesty by the Governor and then become Acts of Parliament. The normal flow of the legislative process is that a Bill is introduced into one of the two Houses, is passed and transmitted to the other House for concurrence. If agreed to by the other House it is then given the Royal Assent by the Governor and converted, at that point, into an Act.

For the purposes of this Chapter, reference is made to the Minister in charge of the Bill. Most of the matters below also apply to other members who introduce a Bill.

9.2 Classification of Bills

Traditionally, there are two basic types of Bills:

- Public Bills – Bills that affect public policy or the public at large; and
- Private Bills – Bills introduced to affect a private purpose – extremely rare in modern times and not to be confused with private members' Bills (although a private member's Bill may be classified as a private Bill).

In modern times, it is more common to classify Bills according to the members who introduce them:

- government Bills (introduced by Ministers or Parliamentary Secretaries); and
- private members' Bills (introduced by a member who is not a Minister or Parliamentary Secretary).

9.3 Money Bills

Section 46 of the *Constitution Acts Amendment Act 1899* deals with the powers of the two Houses in respect of legislation and is set as follows:

46. Powers of the 2 Houses in respect of legislation

- (1) Bills appropriating revenue or moneys, or imposing taxation, shall not originate in the Legislative Council; but a Bill shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand of payment or appropriation of fees for licences, or fees for registration or other services under the Bill.
- (2) The Legislative Council may not amend Loan Bills, or Bills imposing taxation, or Bills appropriating revenue or moneys for the ordinary annual services of the government.
- (3) The Legislative Council may not amend any Bill so as to increase any proposed charge or burden on the people.
- (4) The Legislative Council may at any stage return to the Legislative Assembly any Bill which the Legislative Council may not amend, requesting by message the omission or amendment of any item or provision therein: provided that any such request does not increase any proposed charge or burden on the people. The Legislative Assembly, may if it thinks fit, make such omissions or amendments, with or without modifications.
- (5) Except as provided in this section, the Legislative Council shall have equal power with the Legislative Assembly in respect of all Bills.
- (6) A Bill which appropriates revenue or moneys for the ordinary annual services of the government shall deal only with such appropriation.
- (7) Bills imposing taxation shall deal only with the imposition of taxation.
- (8) A vote, resolution, or Bill for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor to the Legislative Assembly.
- (9) Any failure to observe any provision of this section shall not be taken to affect the validity of any Act whether enacted before or after the coming into operation of the *Constitution Acts Amendment Act 1977*.

In summary, the purpose of this section is to reflect the Westminster tradition that it is the House in which government is formed that controls finances and financial policy. This is reflected in the restrictions placed on the Legislative Council in respect to certain Bills. The Legislative Council cannot:

- initiate Bills appropriating revenue or moneys or imposing taxation;
- amend loan Bills, Bills imposing taxation, or Bills appropriating revenues or moneys for the ordinary annual services of the government; or
- amend any Bill so as to increase any proposed charge or burden on people of the State.

Governor's message approving appropriation

Section 46(8) prevents any vote, resolution or Bill for the appropriation of revenue or moneys from being passed unless the purpose of the appropriation has in the same session been recommended by message from the Governor to the Legislative Assembly. As the Governor acts on the advice and consent of the Executive Council, the Cabinet determines whether a Bill that requires the appropriation of revenue will be passed or not.

As indicated above, the Parliamentary and Executive Government Service's Branch assists with the arrangements for a Governor's message to be obtained recommending an appropriation.

Disputes between the Houses

There have been disputes between the Legislative Council and Legislative Assembly on the correct interpretation of section 46, particularly in relation to what constitutes an 'appropriation' and what constitutes 'the ordinary annual services of the government'. The broader interpretation, preferred by the Legislative Assembly, of what constitutes a Bill appropriating revenue or moneys views any Bill requiring funding from the public purse as a Bill appropriating revenue and moneys. The Legislative Council's view is that a Bill does not involve an appropriation merely because it will involve the expenditure of public moneys. The Bill must actually appropriate the funds from Consolidated Revenue. It is not a charge on revenue when expenditure appears to be involved in any proposal contained in a Bill if the funds can be provided from an existing vote contained in the appropriation Act or via a standing appropriation contained in a separate Act.

This difference of opinion has resulted in the vast majority of government Bills being introduced first into the Legislative Assembly.

Tacking

The scheme of section 46 also ensures that the power of the Legislative Council to amend Bills is not cut down by the Legislative Assembly including in a Bill that the Legislative Council cannot amend, matters which the Legislative Council could otherwise amend if they were contained in a separate Bill. This practice is known as ‘tacking’. For example, section 46 requires that:

- (1) a Bill which appropriates revenue or moneys for the ordinary annual services of the government shall deal only with such appropriation;¹⁶ and
- (2) Bills imposing taxation shall deal only with the imposition of taxation.¹⁷

The tacking onto an appropriation Bill of a matter dealing with funding new policies, for example the building of a new port or other new capital item, rather than a recurrent item for the ordinary annual services of the government would be in breach of section 46(6). Similarly, a Bill imposing taxation that dealt with a system of appeals from decision of the Commissioner for State Taxation would offend section 46(7).

The rule against tacking is now the sole reason for the parliamentary convention of providing two annual appropriation Bills, one dealing with recurrent expenditure for the ordinary annual services of government and the other dealing with capital expenditure. In the past, this convention was supported by the previous separation of public moneys into two funds; a consolidated account and a capital works and general loan fund. Amendments to the *Financial Administration and Audit Act 1985* in 1993 (section 6) (later replicated in section 8 of the *Financial Management Act 2006*) consolidated these into one Account leaving section 46(2) and (6) of the *Constitution Acts Amendment Act 1899* as the sole reason for separate appropriation Bills.

The rule against tacking is also the reason for separate taxing Bills, one imposing the tax and the other dealing with its incidence, collection and associated matters. Although the Legislative Council may not amend a ‘money Bill’ it may make a request to the Legislative Assembly that it amend the Bill as long as such a request would not increase the burden on the people of Western Australia, i.e. not involve a further appropriation. Should the requested amendment be rejected, the Legislative Council may ‘press’ that request, that is, repeat it.

9.4 Overview and history associated with the stages of a Bill

The first, second and third readings of Bills are stages through which a Bill must pass in each of the Houses. These stages of considering a Bill were developed in the Westminster Parliament before the invention of printing and when many members were illiterate. At

¹⁶ *Constitution Acts Amendment Act 1899*, section 46(6).

¹⁷ *Constitution Acts Amendment Act 1899*, section 46(7).

that time, the only practicable means of informing members of the contents of a Bill was by the Clerk reading it aloud. By the end of the 16th century, it had become the practice in both Houses (House of Commons and House of Lords) to have a Bill read on three separate occasions before being passed. The circulation of printed copies of Bills, and the increasing literacy of members, eventually made it unnecessary to read Bills at length. By the end of the 18th century, it had become the practice for the Clerk to read only the title and the first words. In the Legislative Assembly the long title of the Bill is read, in the Legislative Council, only the short title.

9.5 Introduction (day one)

Notice of Motion

When a Bill is to be introduced for the first time, the Minister gives notice of a motion that, at the next sitting of the House, he or she intends to introduce the Bill. This is the ‘notice of motion’ document prepared by the Parliamentary Counsel’s Office. A copy of the notice of motion is attached to the Minister’s parliamentary day sheet prepared by the Parliamentary and Executive Government Services Branch. This sheet is placed on the Minister’s desk in the Chamber before Parliament sits.

Once the notice is given, it appears the following day on the relevant notice paper for the House in which it is to be introduced. In the Legislative Assembly, it will appear under the heading ‘Bills – Notices of Motion’. In the Legislative Council it will appear under the heading ‘Bills for Introduction’.

LEGISLATIVE ASSEMBLY NOTICE PAPER

BILLS – NOTICES OF MOTION

1. **Criminal Law Amendment (Intimate Images) Bill 2018** (Notice given – 27/6/18)

The Attorney General: To move —

That a Bill for “An Act to amend *The Criminal Code* to introduce offences of distributing an intimate image and threatening to distribute an intimate image and to make consequential and other amendments to the *Restraining Orders Act 1997* and the *Working with Children (Criminal Record Checking) Act 2004*.” be introduced and read a first time.

2. **Strata Titles Amendment Bill 2018** (Notice given – 27/6/18)

The Minister for Lands: To move —

That a Bill for “An Act —

- to amend the *Strata Titles Act 1985*; and
- to make consequential and related amendments to other Acts; and
- for related purposes.”

be introduced and read a first time.

LEGISLATIVE COUNCIL NOTICE PAPER

BILLS FOR INTRODUCTION

1. **Public and Health Sector Legislation Amendment (Executive Payout Compensation) Bill 2017** (Notice given 6 December 2017)

Hon Tjorn Sibma: To move —

That a Bill for “An Act to amend the *Public Sector Management Act 1994* and the *Health Services Act 2016* to reduce payout compensation for executives appointed under those Acts.” be introduced and read a first time.

2. **Strong and Sustainable Resource Communities Bill 2018** (Notice given 22 March 2018)

Hon Colin Tincknell: To move —

That a Bill for “An Act to prioritise recruitment from local and regional communities in the vicinity of large projects during their operation.” be introduced and read a first time.

9.6 First and second reading (day two)

Moving of first reading

On a subsequent sitting day after a Minister has given a notice of motion for the introduction and first reading of a Bill, the Minister in charge of the Bill then moves the motion ‘That the Bill be now read a first time’. In the Legislative Assembly this is undertaken when ‘Bills – Notices of Motion’ is reached in the routine of business. In the Legislative Council this occurs when the Leader of the House moves, and the House agrees, ‘that Bills for introduction be now taken’.

The question for the first reading is then put and decided without amendment or debate. If the first reading is agreed, the Clerk reads out the title of the Bill. Once read a first time a Bill becomes a public document and it immediately becomes available to all other members of Parliament, the media and the public. Copies are available to the public from the Parliament’s website, together with the explanatory memorandum and second reading speech.

Moving of second reading and delivering second reading speech

The Minister then proceeds to move ‘That the Bill be now read a second time’, and delivers his or her second reading speech, which outlines the policy and purpose of the Bill. The Parliamentary and Executive Government Services Branch will arrange for a copy of the printed Bill, second reading speech and explanatory memorandum to be placed on the Minister’s desk in the Chamber. The relevant office supporting each Chamber has copies available for distribution to other members.

Adjournment of second reading debate

At the completion of the second reading speech the debate is adjourned. The adjournment of the Bill results in it becoming an ‘Order of the Day’. In the Legislative Assembly the Bill will appear on the notice paper under the heading ‘Government Business – Orders of the Day’. In the Legislative Council it appears on the notice paper under the heading ‘Orders of the Day’.

LEGISLATIVE ASSEMBLY NOTICE PAPER

GOVERNMENT BUSINESS – ORDERS OF THE DAY

1. **Ports Legislation Amendment Bill 2017** (Minister for Transport) (No. 52, 2r. – 29/11/17)

Second reading. Adjourned debate (Ms L. Mettam).

2. **Appropriation (Recurrent 2016–17) Supplementary Bill 2017** (Treasurer) (No. 55, 2r. – 29/11/17)

Second reading. Adjourned debate ((Ms L. Mettam).

LEGISLATIVE COUNCIL NOTICE PAPER

ORDERS OF THE DAY

1. ***Coroners Amendment Bill 2017 [LA 15–1]** *Leader of the House representing the Attorney General*

*Second reading continuation of remarks Hon Michael Mischin (Tuesday, 12 September 2017).

cf SNP 15 Issue 1 – 6 September 2017

2. **Building and Construction Industry Training Fund and Levy Collection Amendment Bill 2017 [LC 29–1]** *Minister for Education and Training*

Second reading adjourned (Wednesday, 6 September 2017).

In the Legislative Assembly, Standing Order 168(1) provides that the debate stands adjourned for three calendar weeks, on a Bill originating in that House.

In the Legislative Council, under Standing Order 125(2) a Bill is to be left on the notice paper for at least one calendar week before the second reading debate can recommence if it is a Bill originating in the Legislative Assembly, and for at least two calendar weeks if it is a Bill originating in the Legislative Council.

The reason for this delay is to enable members to familiarise themselves with the Bill, consult relevant interest groups and individuals, obtain advice on possible amendments and importantly enable time for the Bill to be discussed in the party rooms of opposition parties.

Briefing opposition parties

It has become a common practice for opposition and independent members to be offered briefings on the content and purpose of new legislative proposals put forward by government. Generally, the instructing officer, through the Minister's office, provides this briefing and it is offered after the Minister has delivered the second reading speech and before second reading debate on the legislation begins.

Urgent Bills

The three calendar week delay in the Legislative Assembly before the second reading debate can resume may be eliminated if the Legislative Assembly agrees to a motion moved under Standing Order 168(2) that the Bill be declared an 'urgent Bill'. If this occurs the second reading debate can proceed forthwith. In the Legislative Council, no motion to declare a Bill an urgent Bill is available. However, the Legislative Council may suspend its Standing Orders to deal with a Bill on an urgent basis, although this occurrence is rare given that House's review and scrutiny function.

9.7 Introduction of a Bill by message

When a Bill is passed by one House it is attached to a message seeking concurrence to the Bill as printed and transmitted to the other House.

The Standing Orders of the Houses require messages to be read into proceedings by the Presiding Officers. When a message is delivered to the Presiding Officer, it is read to the Chamber during a convenient break in proceedings. If the Legislative Assembly has passed a Bill and it is transmitted by message to the Legislative Council, the President will announce to members that she has received a message and reads it. The Minister in charge of the Bill will then stand and moves a motion without notice:

That the Bill contained in Legislative Assembly message No. ... be introduced and read a first time.

The question on the motion is then put by the President and, if the first reading is agreed to, the Minister will then move:

That the Bill be now read a second time

and proceed to deliver his or her second reading speech.

At the conclusion of the second reading speech the debate is adjourned to another sitting of the House. The Bill then proceeds through the various stages in the same manner as a Bill that originated in that House.

If a Bill originates in the Legislative Council, a message transmitting the Bill is delivered to the Legislative Assembly. The Speaker then reads the message. The Minister in charge of the Bill usually then stands and moves one of the following motions without notice:

I move that the First Reading of the Bill contained in Legislative Council Message No. XX be made an Order of the Day for the next sitting of the Assembly.

If the Minister chooses to move the motion above, once it is agreed to, the bill will become an Order of the Day listed on the Notice Paper. Then on the next sitting day (or a later day) the Order of the Day can be brought on during Government Business and the bill can be read a first time and then the Minister can deliver his or her second reading speech.

The other option is:

That the Bill contained in Legislative Council Message No. ... be now read a first time and I present an explanatory memorandum.

The question on the motion is then put by the Speaker and, if the first reading is agreed to, the Minister may then say:

I seek leave to proceed forthwith to the second reading of the Bill.

If there is no dissentient voice, the Minister will move:

That the Bill be now read a second time

and proceed to deliver his or her second reading speech. The Bill then proceeds through the various stages in the same manner as a Bill that originated in the Legislative Assembly.

9.8 Second reading debate stage

The Parliamentary and Executive Government Services Branch will advise the Minister's office when the second reading debate on a Bill is scheduled to commence. The Minister's office must advise the instructing officer(s) to be available at that time.

The scheduling of business in the Legislative Assembly is determined by the Leader of the House, and in the Legislative Council, by the Leader of the Government in that House.

The second reading debate is an important phase as it is at the conclusion of the debate that the main vote on the policy of the Bill is taken.

The length of the second reading debate is determined by the nature of the policy issues put forward in the proposed legislation and the number of members who wish to speak to the Bill.

When the debate on the second reading re-commences, all members are entitled to make one speech on the general principles of the Bill. These speeches tend to be wide-ranging within the subject matter of the Bill, and members may use their speeches to highlight matters in respect of which they seek clarification from the Minister in charge of the Bill.

Role of advisers

Advisers to the Minister in charge of the Bill usually locate themselves in the Speaker's Gallery (in the Legislative Assembly) or in the Chamber in the seats behind the President's Chair (in the Legislative Council) when the second reading stage is progressing. From these positions, advisers are able to send messages via the Chamber assistants to the Minister in charge of the Bill – this particularly occurs when other members request specific information from the Minister in charge of the Bill during their second reading speeches.

Cognate debate

In some instances, a Bill introduced to the House is part of a package of Bills – that is, there are two or more Bills which complement each other. An example of this is where a 'principal' Bill is introduced at the same time as another Bill that seeks to make consequential changes to other Acts as a result of the 'principal' Bill.

Standing Orders of both Houses specify that the Minister/member in charge of a Bill, where two or more Bills are complementary, may seek leave of the House to have the second reading stages of the Bills dealt with cognately (at the same time). Leave is sought before the second reading debate commences. Cognate debate occurs in the second reading stage of the 'principal' Bill (which is nominated by the Minister/member in charge of the Bills). Leave is only granted in circumstances where there is no dissentient voice when leave is requested. If leave is sought and granted for a cognate debate to occur, members will make their second reading speeches for all the Bills when the second reading stage of the 'principal' Bill is being debated – when the question for the second reading of the remaining complementary Bill(s) is put, no further debate is permitted.

Reply to second reading debate

The second reading debate is closed when the Minister/member in charge of the Bill makes his or her second reading speech in reply, which will normally include responses to any queries raised by other members. After this speech, the main vote on the second reading of the Bill is taken. By agreeing to the second reading, the Houses have agreed to the principles reflected in the Bill.

9.9 After the second reading stage

If a Bill successfully passes the second reading stage, there are a number of options available to the House. Having agreed to the principles of a Bill, the House may choose then to consider the Bill in detail, to ensure that the Bill will in fact adhere to the agreed principles. Whilst members may agree with the principles, they may also wish to make amendments to the Bill in order (in their view) to improve the Bill's capacity to conform to those principles.

The options available are:

- proceeding straight to the third reading stage;
- consideration in detail stage in the Legislative Assembly / committee of the whole House stage in the Legislative Council; or
- referral to a committee.

9.10 Proceeding straight to the third reading stage

Many Bills are non-controversial. For these Bills, when members on both sides of the House are confident that the agreed principles of the Bill will be applied into law by the Bill, the House may proceed straight to the third reading stage immediately after the second reading stage has been completed.

9.11 Consideration in detail / committee of the whole House stage

When members wish to discuss the specific details of a Bill or to move amendments, the House will move to the consideration in detail stage (in the Legislative Assembly) or the committee of the whole House stage (in the Legislative Council).

During this stage, the Minister in charge of the Bill will come to the Table of the House, and (after permission is granted by the Chair) is often joined by one or more advisers. The Bill is considered on a 'clause by clause' basis, with members asking specific questions regarding the precise impact of certain clauses, and potentially moving amendments to these clauses (including the insertion of new clauses).

Debate is strictly confined by the Chair to the subject matter of the clause under consideration. Advisers sit at the Table to assist the Minister/member in charge of the Bill in responding to these queries, or to provide advice in relation to amendments moved by other members. However, advisers cannot directly address members in the House.

9.12 Proposed amendments to legislation

Legislative Assembly

In the Legislative Assembly, if members wish to propose amendments to the Bill and wish them to be circulated, the proposed amendments appear at the back of the notice paper under the heading ‘Notices and Amendments’.

Legislative Council

In the Legislative Council amendments that members wish to be circulated are contained on supplementary notice papers published separately from the main daily notice paper. Amendments can be added at any time and in this case a new version of the supplementary notice paper is published. Each Bill has a separate supplementary notice paper and each version is numbered sequentially. Care should be taken to ensure that the correct supplementary notice paper is being referred to as more than one version may be published on any day.

Supplementary notice papers are updated regularly and each new amendment is allocated a code to indicate the order in which each amendment was received by the Clerk’s office.

In cases of conflict between amendments to the same clause and line, it is the amendment received first that obtains priority.

The supplementary notice paper amendments are an indication only of what members may intend to move. There is no need for a member to withdraw the amendments once called on. The members need only to indicate to the Chair of Committees that they do not wish to proceed with the amendment standing in their name on the supplementary notice paper.

In both Houses members may also move amendments not listed on the notice paper (Legislative Assembly) or a supplementary notice paper (Legislative Council), from the floor of the Chamber.

9.13 Proposed government amendments to legislation

The Minister or Parliamentary Secretary responsible for the legislation may also propose amendments to the Bill. The Parliamentary Counsel’s Office will prepare these amendments in conjunction with the instructing officer. The Minister must provide a signed hard copy of the amendment/s to the Parliamentary and Executive Government Services Branch, which will arrange for its lodgement with the relevant House for inclusion on the notice paper or supplementary notice paper. When an amendment is moved from the floor of the House, a signed hard copy must be provided to the Clerk’s

table so that the proposed amendment can be copied and circulated to other members during the debate.

9.14 Referral to a committee

The Legislative Assembly and Legislative Council committee systems are discussed in Chapter 16.

On occasions (particularly in the Legislative Council), a Bill is referred to a standing committee comprising members of the House (or more rarely a select committee) which considers the Bill and reports its findings and any recommendations back to the House. This committee can meet separately from the House, and has the power to call witnesses and subpoena documents. If the committee recommends amendments, these are usually drafted in statutory form and contained in a schedule to the committee's report. Either House, during consideration of the Bill in consideration in detail (Legislative Assembly) or committee of the whole House (Legislative Council) stage may adopt one or more of these amendments.

Legislative Assembly Legislation Committee

The Legislative Assembly's Standing Orders Nos 183 to 195 provide an option for the Legislative Assembly to refer a Bill to a legislation committee. The Legislative Assembly nominates a number of members to serve on the legislation committee (between 5 and 11, including the Minister) which may operate at any time considered convenient and appropriate by its members, including when the Legislative Assembly is sitting. The procedure used in the consideration in detail stage is followed, though advisers are able to address the committee with the approval of and in the presence of a Minister or Parliamentary Secretary.

The report of the legislation committee is then presented to the House, which may adopt it unconditionally, in which case the bill proceeds to the third reading stage. Alternatively, the House may commit all or some of the clauses to consideration in detail.

Legislative Assembly Estimates Committee

The Legislative Assembly's Standing Orders Nos 221 to 234 outline the process for the Legislative Assembly to refer the Appropriation bills (which provide the main recurrent and capital appropriations) to estimates committees. This is an annual process that takes place within a few weeks of the State budget being tabled in the Legislative Assembly. The estimates committees replace the consideration in detail stages of the Appropriation bills. Rather than considering the bills clause by clause, the estimates committees examine the bills and proposed expenditure contained in the Budget Papers.

Each estimates committee consists of a chairman; three members appointed by the Leader of the House and three members appointed by the Leader of the Opposition; and

the Minister or a Parliamentary Secretary responsible for the department, agency or enterprise under consideration. The Legislative Assembly appoints two estimates committees, Committee A and Committee B. Both chambers are normally used to hold hearings for a period of three days, between 9.00am and 10.00pm each day.

Each year an estimates schedule is determined by the estimates management committee. Once the estimates schedule is finalised and tabled in Parliament it becomes available on the homepage of the Parliament website, under the 'Quick Links' on the front page. Advisors forms, general information and Hansard transcripts are also located under this section of the website during estimates.

The Standing Orders of the House are applied as much as is possible, although advisers sit on the floor of the House and are able to address the committee with the approval of and in the presence of a Minister or Parliamentary Secretary.

During estimates proceedings Ministers/Parliamentary Secretaries may agree to provide supplementary information to the committee. A deadline for all supplementary information answers will be provided to the committee and advisors prior to the commencement of the hearings (note: all supplementary information answers are generally due one week after the estimates committees have concluded).

There are strict deadlines and requirements for supplementary information answers. For further information during the estimates period contact laestimates@parliament.wa.gov.au, or for general information in relation to the Legislative Assembly estimates committee process, contact the Legislative Assembly Office at: laquery@parliament.wa.gov.au or call 9222 7390.

After the bills have progressed through the process above, the next stage is the reporting of the estimates committees and then the third reading of the bills.

Uniform Bills in the Legislative Council

In the Legislative Council, certain legislation is (unless the House otherwise orders) automatically referred to the Uniform Legislation and Statutes Review Committee after the Minister or member in charge of the Bill has delivered their second reading speech. This will occur if the legislation ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the government of the State is a party; or which by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth. The committee has up to 45 calendar days to report back to the House, and debate on the second reading for these Bills cannot commence until the committee has reported.¹⁸

¹⁸ Standing Order 126.

When introducing a Bill that implements uniform legislation, departmental and ministerial staff must ensure that the second reading speech for the Bill:

- makes reference to the fact that the Bill (whether in whole or in part) falls within Legislative Council Standing Order 126 in relation to uniform legislation; and
- outlines the relevant intergovernmental agreement/memorandum of understanding pursuant to which the Bill has been introduced.

The Legislative Council also has a Standing Committee on Legislation but Bills are not automatically referred to this committee and must be referred by the House.

9.15 Third reading

The third reading stage commences with the Minister or member in charge of the Bill moving ‘That the Bill be now read a third time’ and, on occasions, making a short third reading speech in support of the Bill (and often, if applicable, thanking members for their support).

Other members are then able to make one speech. Debate is not wide-ranging and is restricted to the content of the Bill as agreed during the consideration in detail/committee of the whole House stage. The debate is closed when the Minister or member in charge of the Bill makes his or her speech in reply, and the final vote on the Bill is taken. If this vote is successful, the Bill has completed its passage through the House. If the Bill originated in that House it is then transmitted to the other House via message, seeking the concurrence of the other House where the same procedure for considering the Bill is undertaken.

9.16 Presentation of a Bill to the other House

The Parliamentary and Executive Government Services Branch will contact the Minister’s office or instructing officer to arrange for changes to be made to the second reading speech and explanatory memorandum to account for any amendments made to the Bill during its passage through the other House.

In addition, if the Bill originated in the Legislative Assembly, any reference to the Speaker, or Minister in the speech needs to be changed to account for the new House into which the Bill is to be now introduced.

If the speech was originally drafted for delivery by the portfolio Minister, it should also be amended to reflect that it is now being delivered by the Minister representing/Parliamentary Secretary.

9.17 Amendments made in the originating House

If amendments are made to a Bill during its passage through the originating House, the Bill is reprinted to incorporate these amendments (arranged by Parliament House officers and the Parliamentary Counsel's Office). The re-printed Bill is then signed by the Clerk of the House as having been passed and is attached to a message signed by the Presiding Officer advising that the Bill has been passed and requesting that the other House concur with the Bill.

In the case of a message from the Assembly to the Council, the message is usually carried by the Sergeant-at-Arms to the Council Chamber and handed by the Sergeant-at-Arms to a parliamentary officer of the Council over the Bar of the House. In the case of a message from the Council to the Assembly, the message is usually carried by the Usher of the Black Rod to the Assembly Chamber and handed by the Usher of the Black Rod to a parliamentary officer of the Assembly over the Bar of the House.

The Parliamentary Counsel's Office has a system to distinguish each new print of a Bill. Each Bill is allocated a number with another number after a dash or 'bar'. For example, a Bill when printed a first time may be numbered 300–1. These are known colloquially as 'bar one Bills'. If the Bill is amended by the originating House and re-printed it will be re-numbered 300–2. These are known as 'bar two Bills'. Bills may also be amended to correct typographical errors during the printing process. To distinguish these from versions that show amendments made by one of the two Houses a letter suffix is used so, for example, if the bar two version was changed by the printer to reflect a typographical error, the Bill would be marked 300-2b.

Care should be taken when advising Ministers in respect of a Bill that the correct version is being used.

9.18 Amendments made in the recipient House

If, after receiving a Bill, the other House passes any amendments to the Bill, these amendments are communicated to the originating House by message. The message seeks the concurrence of the other House to the amendments made which are contained in a schedule of amendments attached to the message. The Bill as passed by the originating House is returned with the message, signed by the Clerk of the House and indicating that amendments have been made.

The amendments made by the recipient House are then considered by the originating House, with the outcome of that consideration being communicated again to the recipient House by message. This process may occur on several occasions, with one House potentially disagreeing to the amendments made by the other House and substituting new amendments, or not insisting on their amendments in order to progress the Bill.

Both Houses must agree on the final form of the Bill for it to pass. To facilitate this outcome, informal negotiations between relevant members/parties may take place external to the formal parliamentary process. There also exists a formal process for the Houses to discuss their differences on a particular Bill. This is undertaken by a conference of managers, where each House appoints no less than three members as ‘managers’, with the appointed members from the Houses conferencing to discuss their differing perspectives. The results of these deliberations are reported to each House. In contemporary times, the conference of managers has been rarely used.

If both Houses disagree as to the final form of a Bill, the Bill is ‘laid aside’ which is polite parliamentary language for the Bill being defeated.

If the Houses do agree, the Bill will be prepared by the Clerk of the Parliaments (the Clerk of the Legislative Council) who has responsibility for preparing the Assent version of the Bill. This must reflect the Bill as agreed to by both Houses of Parliament.

9.19 Royal Assent by the Governor and proclamation

Once the Bill has passed both Houses of Parliament and the Assent version is prepared, it is presented to the Governor who, as the representative of the third part of the Parliament, is authorised to grant the Royal Assent on behalf of Her Majesty the Queen. The Bill thereupon becomes an Act of Parliament.

Proclamation, if required, occurs during a meeting of the Executive Council, which consists of all Cabinet Ministers, with the Governor presiding. The process of presenting proclamations for Executive Council approval is arranged by the Parliamentary and Executive Government Services Branch of the Department of Premier and Cabinet.

The Parliamentary and Executive Government Services Branch can be contacted at pegs@dpc.wa.gov.au.

9.20 When does an Act become operational?

An Act may become operational in four different ways:

- on a date specified in the Act;
- if specified, the day on which it receives the Royal Assent;
- by proclamation in the *Government Gazette*; or
- if none of the above applies, 28 days after Royal Assent.

Usually section 2 of the Act specifies when and how it will come into effect. It is also possible for a Bill to have a combination of the above methods so that various sections,

parts or divisions come into effect at different times (see: Section 20, *Interpretation Act 1984*).

Chapter 10

Questions without notice

The practice of asking questions without notice differs markedly between the Houses

10.1 Introduction

Questions without notice or ‘question time’ is the most recognised means by which members (particularly members of the opposition) obtain information from the Executive and test the knowledge of Ministers of the portfolios for which they are responsible.

10.2 Legislative Assembly

Question time in the Legislative Assembly commences at approximately 2.00 pm each sitting day and lasts approximately 45 minutes. The Speaker alternates the call between opposition and government members, with opposition members normally being allowed to ask a supplementary question in addition to their initial question. The Speaker also gives a fair opportunity to independent members (if any) to ask questions.

Questions without notice may also be directed to a Minister in his or her capacity representing another Minister in the other House of Parliament.

Government backbenchers may also ask questions without notice of Ministers during question time. These questions are colloquially known as ‘Dorothy Dix’ questions, in which a member asks a question, to allow the Minister to give a prepared reply. This process is co-ordinated by the Government Whip in the Legislative Assembly. The Government Whip’s office can be contacted on 9222 7201.

10.3 Legislative Council

Question time in the Legislative Council commences at 4.30 pm on each sitting day. The President allocates questions, usually the first two to the Leader of the Opposition and then to other members. Few questions are allocated to government members.

There are currently three Ministers in the Legislative Council. As a consequence, Ministers (and Parliamentary Secretaries) represent Ministers in the Legislative Assembly when answering questions without notice. As Legislative Council Ministers are not responsible for the portfolios of the Ministers they represent, some notice of the question must be given if a response is to be forthcoming. The Legislative Council has therefore developed a practice whereby the vast majority of questions, even questions to Legislative Council Ministers in relation to their own portfolio responsibilities, are

asked with some written notice. Very few questions that are genuinely without notice are asked in the Legislative Council.

Written notice of the question is submitted to Parliamentary and Executive Government Services personnel by 11.00am each sitting day (lcqwn@dpc.wa.gov.au). These questions are immediately forwarded to the relevant Minister's office to enable time for the question to be addressed by question time each sitting day.

If for some reason the information requested cannot be prepared in time to meet question time each sitting day, then the following response should be provided in writing:

I thank the member for some notice of this question. Providing the information in the time required is not possible and I request that the member place the question on notice.

This response should only be used if absolutely necessary. Every effort must be made to answer questions without notice the same day that they are asked.

It is the responsibility of the Minister's office to answer the question and have it approved by the Minister and returned to the Parliamentary and Executive Government Services Branch at least one hour before question time each sitting day.

10.4 Parliamentary questions search

The Parliamentary website contains a comprehensive database of all questions asked, both without notice and with notice, starting from the 35th Parliament, Session 4 (8 August 2000).

A detailed search of questions asked can be performed on the Parliamentary Questions Search page of the Parliamentary website (click on the tab 'Parliamentary Questions' then click on 'Search all Parliamentary Questions').

Chapter 11

Questions on notice

This Chapter sets out the administrative processes of how questions on notice are answered by Ministers.

11.1 Introduction

Each Minister may be asked written questions concerning matters under his or her portfolio responsibilities. Questions may also be directed to private members in relation to a motion, Bill or other matter connected to the business of the House of which the member has charge.

These questions may be asked by any other member of either House of Parliament. If the Minister is not in the House of the member asking the question, the question is directed to the Minister or Parliamentary Secretary in that member's House who represents that Minister.

A list of Ministers and representative Ministers and Parliamentary Secretaries for each House is available from the Legislative Assembly Office and the Legislative Council Administration Office.

11.2 Processing questions on notice

Procedure

The rules governing questions, both written (questions on notice) and oral (questions without notice) are set out in the Standing Orders of each House.¹⁹

Parliament House Questions on Notice Database

In each House members submit questions on notice by logging into a web based application (accessed at <https://www.questions.parliament.wa.gov.au>) and typing in their questions. The questions are then vetted by a Parliamentary Officer who checks that the questions comply with the Standing Orders. The questions are then submitted electronically to the Parliamentary and Executive Government Services Branch, Department of the Premier and Cabinet. This process occurs for each sitting day of Parliament.

When the questions are received by the Parliamentary and Executive Government Services Branch, they are forwarded to the relevant ministerial office via an internal

¹⁹ Legislative Assembly Standing Orders 75 to 82A, Legislative Council Standing Orders 104 to 109.

database system. Each ministerial office has assigned an officer(s) to co-ordinate responses to parliamentary questions and these staff members have access to the parliamentary questions (PQ) database via their office's internet browser. An internal office backup system should be in place to cope when the assigned officer is absent or on leave. If other officers require access to this database you will need to contact the Parliamentary and Executive Government Services Branch at pegs@dpc.wa.gov.au for assistance.

It is imperative that the Parliamentary and Executive Government Services Branch be notified immediately of any change to staff designated to receive and deal with parliamentary questions so access for new and past staff can be managed in a timely manner. The Parliamentary and Executive Government Services Branch is responsible for the co-ordination of responses to all parliamentary questions and the main method of contact is via email.

Ministers' offices are advised (via email) of the following:

- when new questions are available in the system;
- the due dates; and
- the category allocation, and any directions relating to responses.

Each sitting day the Legislative Council and Legislative Assembly produce a booklet that lists all questions asked for that day and all questions not previously answered (postponed questions). This document is referred to as the 'question booklet'. In the Legislative Council, the question book is published prior to questions without notice to enable members to ask follow-up questions to the answers they have received that day.

Questions in each House asked on any given day can be accessed via the 'Parliamentary Questions' tab on the Parliament intranet or external website. This list will assist in alerting officers to questions directed to more than one Minister or across a number of portfolios (refer to co-ordination of government responses in Chapter 11.4 below). All questions on notice should be dealt with as a priority and an answer provided the next day if possible. More complex questions should be answered within 7 days.

Formatting and attachments

When an answer to a question on notice includes a large table, graph or chart, it is important for the large table, graph or chart to be included as an attachment to the answer, and not incorporated into the answer itself. This is because the database can only handle small tables, and not large tables or complex formatted documents.

Answers should indicate attachments as follows: (See Tabled Paper No. #). Parliament House staff will then allocate a tabled paper number to the submission so that the

further information relating to the answer can be sourced under tabled papers. Six hard copies (Legislative Assembly) or three hard copies (Legislative Council) of the attachment to be tabled must be submitted to the Parliamentary and Executive Government Services Branch and a soft copy emailed to pegs@dpc.wa.gov.au.

Please only refer to attached papers where it is necessary – otherwise the data should be incorporated into your answer. If you are unsure of what should be done please contact Parliamentary and Executive Government Services.

Parliamentary and Executive Government Services Branch requirements

Answers that have been approved by your Minister should be returned to Parliamentary and Executive Government Services, including one original signed by the Minister, and also referred across in the database system. Please ensure that the signed copy of the question reads exactly as appears on the parliamentary questions database.

The answers that are successfully submitted will be checked and uploaded to the Parliament website. Once answers are uploaded, they cannot be changed; answers will then appear in Hansard and become part of the public record.

Further information

Further guidelines for the processing of parliamentary questions and procedural matters relating to the use of the Parliament House Questions on Notice database have been covered in training manuals that are available to ministerial officers and/or nominated users of the PQ system.

To obtain a copy of either manual, or to arrange for staff training, please contact the Parliamentary and Executive Government Services Branch at pegs@dpc.wa.gov.au.

11.3 Deadlines for submission of answers to questions on notice

Legislative Assembly and Legislative Council

Answers to questions on notice must be delivered to the Parliamentary and Executive Government Services Branch office at Parliament House by 10.00am each sitting day so as to meet the 12.00noon deadline set by the Houses.

Answers that are not received by the 10.00am deadline above are automatically postponed until the next sitting day.

All answers received by 10.00am on each sitting day are then checked by Parliamentary and Executive Government Services, who will contact the Minister's office in the event of any query or concern. If any problems are found, they will contact you and outline the problem. If everything is in order, the answers are transmitted to the relevant House for

processing by a parliamentary officer. Once approved in the relevant House, answers are released to members and included within Hansard.

Legislative Assembly

Under Standing Order 80(2) all questions on notice must be answered within one calendar month of the date they were asked. If a member has not received a response to a question on notice within that time, that member may rise at the conclusion of questions without notice and ask that Minister why no response has been forthcoming. The member may repeat this request after each succeeding month that the question remains unanswered.

Under Standing Order 80(1), answers received during a recess of greater than two weeks will be published on the first working day of each month over which the Legislative Assembly is adjourned.

Legislative Council

Under Standing Order 108(2) all questions on notice must be answered within 9 sitting days of the date they were asked. If a question remains unanswered after this time, the Minister or Parliamentary Secretary to whom the question is directed is to state at the conclusion of questions without notice on the next sitting day, the date on which an answer is expected to be provided.

11.4 Co-ordinating whole of government responses to parliamentary questions on notice asked of more than one Minister

On occasions the same question on notice can be directed to a number of different Ministers and at times, to all Ministers. The Parliamentary and Executive Government Services Branch provides a coordinating role for these types of questions. For further information, contact the Parliamentary and Executive Government Services Branch at pegs@dpc.wa.gov.au.

11.5 Parliamentary questions search

The Parliamentary website contains a comprehensive database of all questions asked, both without notice and with notice, starting from the 35th Parliament, Session 4 (8 August 2000).

A detailed search of questions asked can be performed on the Parliamentary Questions Search page of the Parliamentary website (click on the tab 'Parliamentary Questions' then click on 'Search all Parliamentary Questions').

Chapter 12

Matters of public interest (Legislative Assembly)

Once a week the opposition may raise and debate a matter of public interest in the Legislative Assembly.

12.1 Introduction

Matter of public interest (MPI) debates are unique to the Legislative Assembly. They are motions put forward, usually by the opposition, in relation to matters, issues or events considered topical or in the public's interest at that time. Under Standing Order 145, only one MPI debate is permitted each sitting week.

12.2 Procedure

The Standing Order requires that a member must present to the Speaker by 12.00 noon on that day a written statement of the matter proposed to be discussed. If more than one MPI is proposed on the same day, the Speaker may give priority to the matter which, in his or her opinion, is the most urgent and important. The Parliamentary Services and Executive Government Branch will advise the relevant Minister(s) when an MPI has been received.

When the MPI is raised in the House, five members (inclusive of the proposer) must support it for it to proceed. Standing Order 101 provides for a total of up to 30 minutes for opposition members, 30 minutes for government members and a total of 5 minutes for other members to speak. Debate cannot exceed one hour and 5 minutes.

Chapter 13

Motions on notice (Legislative Council)

Motions on notice are dealt with for two hours each week in the Legislative Council.

13.1 Introduction

Motions on notice are dealt with for two hours in the Legislative Council on Wednesdays.

Motions originate from notices of motion being given on a previous sitting day. Any member may give notice of a motion during the time to provide notice during formal business. These notices of motion appear the next day on the Legislative Council notice paper under the 'Motions' heading in the order they are delivered and received at the Table of the House. Unless the House orders otherwise, motions are taken in the order that they appear on the notice paper. At some subsequent sitting, the member moves the motion standing in his or her name. The member, at this point, gives the House reasons for the motion.

13.2 Debate

Currently, the Legislative Council is operating under a Temporary Order in relation to motions on notice. Under the Temporary Order, motions are debated for a maximum of two hours, then the question is put. Members have 20 minutes each to speak to the motion.

The Temporary Order provides for an allocation of motion opportunities based on quota derived from the proportion of party representation in the House. An annual schedule of allocation, which sets out the pro rata allocation of dates between political groups in accordance with their respective quota, is tabled by the President.

Chapter 14

Private members' business (Legislative Assembly)

Private members have three hours between 4.00 pm and 7.00 pm each Wednesday in the Legislative Assembly to debate matters of their choosing.

14.1 Introduction

In the Legislative Assembly, private members (members of the Assembly who are not Ministers or Parliamentary Secretaries) are allocated certain time during each sitting week to move and have debated their own motions and private members' Bills. This period is referred to as 'private members' business' and under Standing Order 60 usually takes place between 4.00 pm and 7.00 pm each Wednesday in the Legislative Assembly.

In practice, the bulk of private members' business is taken up by the opposition. Independent members and government backbenchers wishing to raise matters in private members' business typically seek an accommodation from the Manager of Opposition Business to enable them to do so.

14.2 Procedure

When a private member gives a notice of motion or notice of motion to introduce a private members' Bill, copies of this information are forwarded by the Parliamentary and Executive Government Services Branch to the relevant Minister's office.

The Minister's office should forward the information to the relevant department for advice. It may also be necessary for the Minister to discuss the Bill or motion in Cabinet and/or at Caucus in order that a whole of government position can be reached prior to the debate taking place.

On Tuesday afternoons, the Parliamentary and Executive Government Services Branch receives advice from the opposition regarding which specific matters will be raised the following day in private members' business and notifies the relevant Minister's office as soon as possible.

Chapter 15

Grievances (Legislative Assembly)

There are usually four grievances made each Thursday with the procedure taking just under an hour. Two grievances are put forward by opposition or independent members and two are put forward by government backbenchers.

15.1 Introduction

Under Legislative Assembly Standing Order 146, grievance debates take place every Thursday at approximately 9.00 am. There are usually four grievances made each Thursday with the procedure taking just under an hour. Two grievances are put forward by opposition or independent members and two are put forward by government backbenchers.

15.2 Procedure

Time limits for the debate are governed by Standing Order 101. Each grievance debate is restricted to a total of fourteen minutes – up to seven minutes for the member raising the grievance and up to seven minutes in reply by the Minister.

The Parliamentary and Executive Government Services Branch will notify a Minister's office on Wednesday afternoon if that Minister has an opposition grievance directed to them for the next day. Grievances proposed by government members are co-ordinated by the Legislative Assembly government whip's office at Parliament House.

Chapter 16

Committees

This Chapter explains the committee system of both Houses, as well as Joint Standing Committees.

16.1 What are committees?

Committees are delegates of the Houses of Parliament – the Legislative Assembly and Legislative Council. Service on committees is a responsibility equal to service in the House.

Committees carry out the detailed work of each of the Houses. Committees are a tool to assist the Houses of Parliament in their functions to legislate; monitor and review legislation; review public administration and expenditure; gather information; and publicise issues.

Committees have been appointed for almost as long as the institution of Parliament itself has existed. In Western Australia, the modern Legislative Council committee system has been in operation since 1989. The Legislative Assembly committee system has evolved over recent years. Both Houses refined their committee systems during the 36th Parliament, which commenced on 1 May 2001. The Legislative Council made further changes during the 37th Parliament, which commenced on 29 March 2005.

16.2 Why do committees exist?

A number of joint, select and standing parliamentary committees are established by each House during each session of Parliament (for a current list of established parliamentary committees and their members see the Parliament's website).

A committee's principal role is to inform Parliament about any issues arising out of its inquiries. Committee reports seek to enhance debate in the respective Houses and can have an appreciable influence on matters. For example, committee reports on Bills:

- have raised numerous issues for Parliament's consideration and in so doing enhanced debate on the Bills;
- have clarified issues with, and obtained information from, Ministers about matters of potential concern; and
- were influential, in the Legislative Council, in achieving the amendment of various Bills to address issues and concerns committees raised.

Reasons for the establishment of committees include:

More than one committee can meet at a time.

More suitable forum than a House. Committees can address, in detail, matters that are the business of Parliament but are not suitable to be dealt with in the House environment.

Committee proceedings are more intimate and less likely to be adversarial than proceedings in a House. Party politics are often less prominent in a committee setting than in a House. It can be useful for a committee to review a complex or contentious matter, and assist parliamentary debate by clarifying issues and establishing common ground between members of different parties.

More practicable forum than a House. Committees can perform functions which a House may not be well placed to perform. Committees may carry out investigations, hear evidence from witnesses, travel for inquiries, seek advice from experts, and deliberate on matters under inquiry before reporting their findings to the relevant House.

Avenue of public communication. Committees are a good avenue of communication between Parliament and the Western Australian community. The committee forum gives different community sectors the opportunity to participate in law-making and policy review by airing their views on a matter and having those views reported to Parliament.

16.3 Types of committees

The Western Australian Parliament uses three general types of committees:

Committees of inquiry. These are appointed by the Houses to inquire into matters the subject of business before the relevant House, or matters of public policy or government.

Domestic committees. These are committees established to consider matters of internal parliamentary administration.

Committee of the whole House. This is the House itself in a less formal guise. The Chair of Committees rather than the Presiding Officer presides over it. Only the Legislative Council operates by way of a committee of the whole.

16.4 Committees of inquiry – two broad categories

In Western Australia, the committee systems of the Legislative Assembly and Legislative Council have developed two broad categories of committees of inquiry, namely standing and select.

Standing committees

Legislative Assembly standing committees are established, and members are appointed, at the beginning of each Parliament. The committees have continuity until the Legislative Assembly expires or is dissolved prior to the next State general election.

Standing Orders establish Legislative Council standing committees and their existence survives dissolution of the Legislative Assembly.²⁰ Accordingly, the standing committees continue from one Parliament to the next. Members are appointed to committees and their membership can also continue. However, in practice, membership is usually for the life of the Parliament only.

Standing committees have a defined set of functions to perform, known as ‘terms of reference’. These empower some to initiate their own inquiries.

Select committees

Select committees are established to carry out a specialised inquiry into a particular matter. They have limited life, are defined by the terms of their appointment, and usually dissolve once their inquiry is completed or if Parliament is prorogued (whichever event first occurs). They may either be Select, if appointed by one House, or Joint Select if appointed by both Houses.

16.5 Committee members

Standing Orders enable other members to participate, in certain circumstances, in standing committee inquiries. Additionally, Legislative Council committee members may substitute for other committee members for the purposes of a specific inquiry. Some committees are also able to co-opt additional members for an inquiry.

The House makes changes to committee membership for resignations, deaths or appointments to the Ministry.

Each committee must have a Chair who is appointed by election at the first committee meeting. In the Legislative Council, the Chair and Deputy Chair are often determined by the House.

The Legislative Assembly generally appoints five members. The Legislative Council appoints either four or five members. Joint committees have members drawn from both Houses of Parliament. Membership ranges from ten members (five from each House) to four members (two from each House).

²⁰ Joint Standing Committees (administered by the Legislative Council) dissolve when the Legislative Assembly dissolves.

Most government backbench and non-government members serve on one or more committees. Committee work takes up a considerable amount of members' time and energy. It is a major part of backbench members' contribution to the workings of Parliament.

In the Legislative Assembly, Ministers do not serve on committees. To do so may conflict with their role in the Executive Government. In the Legislative Council, unless otherwise ordered by the House, a Minister shall not be appointed as a member of a standing or joint committee. However, Standing Orders do not specifically exclude a member appointed as a Minister from continuing to serve on a parliamentary committee. In practice, the Minister usually resigns immediately on becoming a Minister or after the conclusion of an ongoing committee inquiry.

16.6 Committee staff

Each House has a pool of staff to serve its committees, appointed as researchers, advisers and administrative assistants. The Legislative Assembly has Principal Research Officers and Research Officers. The Legislative Council has Advisory Officers and Committee Clerks.

Officers assist in the conduct of committee inquiries and the production of reports to Parliament. These tasks require extensive liaison with numerous relevant parties. A considerable period of time is spent on research, report writing and the management of inquiries. The balance of officers' time is spent on other responsibilities such as analysis of materials, preparation of briefing notes, dealing with correspondence and organising hearings.

16.7 Legislative Assembly Standing Committees

Since the commencement of the 36th Parliament on 1 May 2001, the Legislative Assembly committee system has comprised the following standing committees:

- Public Accounts Committee;
- Education and Health Standing Committee;
- Economics and Industry Standing Committee;
- Community Development and Justice Standing Committee; and
- Procedure and Privileges Committee.

Public Accounts Committee

The Public Accounts Committee is a very important committee, with the power to examine any matter connected with public expenditure.

The Standing Orders of the Legislative Assembly relevantly provide:

| Public Accounts Committee | |
|--|--|
| Establishment | |
| 285. At the commencement of every Parliament the Assembly will appoint a Public Accounts Committee to inquire into and report to the Assembly on any proposal, matter or thing it considers necessary, connected with the receipt and expenditure of public moneys, including moneys allocated under the annual appropriation Bills and Loan Fund. | |
| Powers of committee | |
| 286. The committee may – | |
| (1) Examine the financial affairs and accounts of government agencies of the State which includes any statutory board, commission, authority, committee, or trust established or appointed pursuant to any rule, regulation, by-law, order, order in Council, proclamation, ministerial direction or any other like means. | |
| (2) Inquire into and report to the Assembly on any question which – | |
| (a) it deems necessary to investigate; | |
| (b) (Deleted V. & P. p. 225, 18 June 2008); | |
| (c) is referred to it by a Minister; or | |
| (d) is referred to it by the Auditor General. | |
| (3) Consider any papers on public expenditure presented to the Assembly and such of the expenditure as it sees fit to examine. | |
| (4) Consider whether the objectives of public expenditure are being achieved, or may be achieved more economically. | |
| (5) The committee will investigate any matter which is referred to it by resolution of the Legislative Assembly. | |

Portfolio-related standing committees

The Education and Health Standing Committee, the Economics and Industry Standing Committee and the Community Development and Justice Standing Committee are the three portfolio-based standing committees created by the Legislative Assembly each Parliament. The functions of each of these three standing committees are to review and report to the Assembly on:

- the outcomes and administration of the departments within the committee's portfolio responsibilities;
- annual reports of government departments;
- the adequacy of legislation and regulations within its jurisdiction; and
- any matters referred to it by the Legislative Assembly including a Bill, motion, petition, vote or expenditure, other financial matter, report or paper.

Under Standing Order 287, the Speaker is required to determine and table a schedule showing the portfolio responsibilities for the three standing committees.

The Standing Orders of the Legislative Assembly relevantly provide:

| Portfolio-Related Standing Committees | |
|--|--|
| Appointment and functions | |
| 287. (1) | At the commencement of every Parliament the Assembly will appoint three portfolio-related standing committees, namely — <ol style="list-style-type: none">Community Development and Justice;Education and Health;Economics and Industry. |
| (2) | The functions of each committee are to review and report to the Assembly on — <ol style="list-style-type: none">the outcomes and administration of the departments within the committee's portfolio responsibilities;annual reports of government departments laid on the Table of the House;the adequacy of legislation and regulations within its jurisdiction; andany matters referred to it by the Assembly including a Bill, motion, petition, vote or expenditure, other financial matter, report or paper. |
| (3) | At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make. |

Procedure and Privileges Committee

The Standing Orders of the Legislative Assembly relevantly provide:

| Procedure and Privileges Committee | |
|---|--|
| 284. (1) | A Procedure and Privileges Committee will be appointed at the beginning of each Parliament to — <ol style="list-style-type: none">examine and report on the procedures of the Assembly; andexamine and report on issues of privilege; andwherever necessary, confer with a similar committee of the Council. |
| (2) | Membership of the committee will consist of the Speaker and four other members as the Assembly appoints. |
| (3) | Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker. |
| (4) | When consideration of a report from the committee is set down as an order of the day it will be considered using the consideration in detail procedure. |

Parliamentary Services Committee

The Standing Orders of the Legislative Assembly relevantly provide:

| Parliamentary Services Committee | |
|----------------------------------|---|
| 282. | (1) A Parliamentary Services Committee will be appointed at the beginning of each session to advise the Speaker on matters dealing with Hansard, Library, Catering and Building Management in the Parliament. |
| | (2) The committee will have power to meet while the Assembly is not sitting, to adjourn from time to time and to confer with a similar committee of the Council. |
| | (3) Membership of the committee will consist of the Speaker and five other members as the Assembly appoints. |
| | (4) Standing Orders 249, 251, 252, 253, 254, 257, 258, 259, 260 and 261 will apply to the committee. |

16.8 Legislative Council Standing Committees

The modern Legislative Council committee system has been in operation since 1989 (with some occasional refinements). During the 36th Parliament the Legislative Council amended its Standing Orders to facilitate a revision and realignment of the committees and their terms of reference. Its committee system is a significant development in the strengthening of the State's parliamentary system. It allows the House to more efficiently perform one of its roles as a House of review and to keep the Executive accountable for its actions.

The current Legislative Council standing committees are:

- Environment and Public Affairs Committee;
- Estimates and Financial Operations Committee;
- Legislation Committee;
- Procedure and Privileges Committee;
- Public Administration Committee; and
- Uniform Legislation and Statutes Review Committee.

Legislative Council standing committees are essentially generic, 'whole of government' committees with each having a broad, but distinct, focus on their potential inquiry subjects. Inquiries are not restricted to specific government portfolios, although each committee's terms of reference defines a broad area of responsibility to avoid an overlap with another committee's jurisdiction.

Procedure and Privileges Committee

The Standing Orders of the Legislative Council provide:

Procedure and Privileges Committee

- 1.1 A *Procedure and Privileges Committee* is established.
- 1.2 The Committee consists of 5 members, including the President and the Chair of Committees, and any Members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chair, and the Chair of Committees is the Deputy Chair, of the Committee.
- 1.3 With any necessary modifications, Standing Order 163 applies to a co-opted Member.
- 1.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the Council and its Committees, and recommend to the Council such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the Council or its Committees.

Environment and Public Affairs Committee

The Standing Orders of the Legislative Council provide:

| Environment and Public Affairs Committee | |
|--|--|
| 2.1 | An <i>Environment and Public Affairs Committee</i> is established. |
| 2.2 | The Committee consists of 5 Members. |
| 2.3 | The functions of the Committee are to inquire into and report on – <ul style="list-style-type: none">(a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment;(b) any Bill referred by the Council; and(c) petitions. |
| 2.4 | The Committee, where relevant and appropriate, is to assess the merit of matters or issues arising from an inquiry in accordance with the principles of ecologically sustainable development and the minimisation of harm to the environment. |
| 2.5 | The Committee may refer a petition to another Committee where the subject matter of the petition is within the competence of that Committee. |
| 2.6 | In this order “environment” has the meaning assigned to it under section 3 (1) and (2) of the <i>Environmental Protection Act 1986</i> . |

Estimates and Financial Operations Committee

The Standing Orders of the Legislative Council provide:

| Estimates and Financial Operations Committee | |
|--|--|
| 3.1 | An <i>Estimates and Financial Operations Committee</i> is established. |
| 3.2 | The Committee consists of 5 Members, 3 of whom shall be non-Government Members. |
| 3.3 | The functions of the Committee are to – <ul style="list-style-type: none">(a) consider and report on –<ul style="list-style-type: none">(i) the estimates of expenditure laid before the Council each year;(ii) any matter relating to the financial administration of the State; and(iii) any Bill or other matter relating to the foregoing functions referred by the Council; and(b) consult regularly with the Auditor General. |

Legislation Committee

The Standing Orders of the Legislative Council provide:

| Legislation Committee | |
|-----------------------|--|
| 4.1 | A <i>Legislation Committee</i> is established. |
| 4.2 | The Committee consists of 5 Members. |
| 4.3 | The functions of the Committee are to consider and report on any Bill referred by the Council. |
| 4.4 | Unless otherwise ordered, any amendment recommended by the Committee must be consistent with the policy of the Bill. |

Public Administration Committee

The Standing Orders of the Legislative Council provide:

| Public Administration Committee | |
|---------------------------------|--|
| 5.1 | A <i>Public Administration Committee</i> is established. |
| 5.2 | The Committee consists of 5 Members. |
| 5.3 | The functions of the Committee are to – <ul style="list-style-type: none">(a) inquire into and report on –<ul style="list-style-type: none">(i) the structure, efficiency and effectiveness of the system of public administration;(ii) the extent to which the principles of procedural fairness are embodied in any practice or procedure applied in decision making;(iii) the existence, adequacy, or availability, of merit and judicial review of administrative acts or decisions; and(iv) any Bill or other matter relating to the foregoing functions referred by the Council;and(b) consult regularly with the Parliamentary Commissioner for Administrative Investigations, the Public Sector Commissioner, the Information Commissioner, the Inspector of Custodial Services, and any similar officer. |
| 5.4 | The committee is not to make inquiry with respect to – <ul style="list-style-type: none">(a) the constitution, function or operations of the Executive Council;(b) the Governor's Establishment;(c) the constitution and administration of Parliament;(d) the judiciary;(e) a decision made by a person acting judicially;(f) a decision made by a person to exercise, or not exercise, a power of arrest or detention; or(g) the merits of a particular case or grievance that is not received as a petition. |

Uniform Legislation and Statutes Review Committee

The Standing Orders of the Legislative Council provide:

| Uniform Legislation and Statutes Review Committee | |
|---|---|
| 6.1 | A <i>Uniform Legislation and Statutes Review Committee</i> is established. |
| 6.2 | The Committee consists of 4 members. |
| 6.3 | The functions of the Committee are – <ul style="list-style-type: none">(a) to consider and report on Bills referred under Standing Order 126;(b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;(c) to review the form and content of the statute book; and(d) to consider and report on any matter referred by the Council. |
| 6.4 | In relation to function 6.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill or proposal may impact upon the sovereignty and law-making powers of the Parliament of Western Australia. |

The Uniform Legislation and Statutes Review Committee scrutinises all uniform legislation on behalf of the Legislative Council of Western Australia.

Uniform legislation is legislation that ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the government of the State is a party; or which by reason of subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth.

Pursuant to Standing Orders uniform legislation automatically stands referred to the committee for inquiry and report within 45 days of referral. On occasion, the Legislative Council may refer the legislation to another committee for inquiry and report.

To assist effective and efficient scrutiny of uniform legislation the following requirements should be noted.

Identification of Bills as uniform legislation

Departmental and ministerial staff should ensure that when a Minister introduces a Bill to the Legislative Council, the second reading speech specifies whether or not the Bill implements uniform legislation.

If the Bill is pursuant (in whole or in part) to uniform legislation, the Minister must outline the relevant intergovernmental agreement/memorandum of understanding.

Provision of information

To ensure that the passage of uniform legislation is not subject to undue delay, it is essential the committee is provided, within **three** working days of the referral of a Bill implementing (whether whole or in part) uniform legislation under Standing Order 126, with the following information:

- (a) a copy of the relevant intergovernmental agreement/memorandum of understanding, if one is available;
- (b) if (a) is not available, a copy of the communiqué from the Ministerial Council meeting at which it was agreed to introduce the legislation;
- (c) a statement as to any timetable for the implementation of the legislation;
- (d) a copy of the explanatory memorandum;
- (e) any public statement of the government's policy on the Bill;
- (f) the advantages and disadvantages to the State as a participant in the relevant scheme, agreement or laws;
- (g) advice as to relevant constitutional issues;
- (h) advice as to whether and by what mechanism the State can opt out of the scheme;
- (i) the mechanisms by which the Bill, once enacted, can be amended. That is, whether the intergovernmental agreement/memorandum of understanding places parameters on the type of and manner in which it is envisaged that amendments are to be made to the legislation, for example whether the agreement of the State, or a majority of States and Territories, is required;
- (j) if the legislation has been developed by reference to a model Bill, a copy of that model Bill; and
- (k) the name and contact numbers for:

- the policy officer who has carriage of the Bill;
- the instructing officer in the relevant department; and
- where relevant, any government experts(s) who can answer the technical questions posed by the legislation.

The information should be sent via email to unileg@parliament.wa.gov.au with hard copies also sent to:

Committee Clerk
Uniform Legislation and Statutes Review Committee
Legislative Council
4 Harvest Terrace
WEST PERTH WA 6005

The Committee Clerk can be contacted on 9222 7300.

Parliamentary Services Committee

The Standing Orders of the Legislative Council provide:

| Parliamentary Services Committee | |
|---|--|
| 11.1 | A <i>Parliamentary Services Committee</i> is established. |
| 11.2 | The Committee consists of 5 members. |
| 11.3 | It is the function of the Committee to advise the President on any matter under the joint control of the President and the Speaker and on any other matter referred to the Committee for its consideration by the President. |
| 11.4 | The Committee has power to confer with a committee of the Legislative Assembly having similar functions. |
| 11.5 | The Committee is not to exercise a power under section 4 or section 5 of the <i>Parliamentary Privileges Act 1891</i> without prior order of the Council on each occasion. |
| 11.6 | The President presides at any meeting of the Committee attended by the President. |

16.9 Joint Committees

Introduction

Joint committees differ from most other committees in that they consist of members from, and report to, both Houses of Parliament. There are four joint standing committees created by both Houses of Parliament each parliamentary session, being the:

- Joint Standing Committee on the Corruption and Crime Commission;
- Joint Standing Committee on the Commissioner for Children and Young People;
- Joint Standing Committee on Delegated Legislation; and
- Joint Audit Committee.

Joint Standing Committee on the Corruption and Crime Commission

The *Corruption, Crime and Misconduct Act 2003* confers extraordinary powers on the Corruption and Crime Commission (CCC), and on the CCC's overseer, the Parliamentary Inspector. As part of the accountability mechanisms contemplated by the *Corruption, Crime and Misconduct Act 2003*, the Houses, by exchange of messages at the beginning of each Parliament, create the Joint Standing Committee on the Corruption and Crime Commission (JSCCCC).

The JSCCCC has four members with two members drawn from each House.

The Legislative Assembly administers the JSCCCC and Legislative Assembly Standing Orders govern it.

The relevant Standing Orders are set out below.

| Joint Standing Committee on the Corruption and Crime Commission | |
|--|--|
| Appointment | |
| 288. | At the commencement of every Parliament, a Joint Standing Committee on the Corruption and Crime Commission will be appointed by resolution of the Assembly and forwarded to the Council for its concurrence. |
| Functions | |
| 289. | It is the function of the Joint Standing Committee to – <ul style="list-style-type: none">(a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;(b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and(c) carry out any other functions conferred on the committee under the <i>Corruption, Crime and Misconduct Act 2003</i>. |
| Membership | |
| 290. | The Joint Standing Committee will consist of four members, of whom – <ul style="list-style-type: none">(a) two will be members of the Assembly; and(b) two will be members of the Council. |
| Reports | |
| 291. | A report of the Joint Standing Committee will be presented to the Assembly and the Council by members of the Joint Standing Committee nominated by it for that purpose. |
| Certain Standing Orders to apply | |
| 292. | Without limiting the effect of anything contained in Standing Orders 288 to 291, the Standing Orders of the Assembly relating to standing and select committees will be followed as far as they can be applied. |

Joint Standing Committee on the Commissioner for Children and Young People

The *Commissioner for Children and Young People Act 2006* created the position of Commissioner for Children and Young People. The Commissioner's role is to advocate for children and young people in Western Australia and investigate, advise and report independently to Parliament about issues that concern children and young people.

Pursuant to section 51 of the Act, the Joint Standing Committee on the Commissioner for Children and Young People (JSCCCYP) was established in June 2008 by resolution in both Houses. The Act provides that the JSCCCYP will be composed of an equal number of members from each House and that the functions and powers of the joint standing committee will be determined by agreement between the Houses.

The JSCCCYP's function is one of oversight, which involves monitoring, reviewing and reporting to Parliament on the exercise of the functions of the Commissioner for Children and Young People. JSCCCYP oversight will help to ensure that the independence of the

Commissioner is maintained and that there is sufficient focus on the important work this office performs.

The Legislative Assembly administers the JSCCCYP and Legislative Assembly Standing Orders govern it. The terms of reference of the JSCCCYP are established by resolutions passed by both Houses at the beginning of each Parliament in the following terms:

Joint Standing Committee on the Commissioner for Children and Young People

Terms of Reference

That for the present Parliament –

- (1) Pursuant to section 51 of the *Commissioner for Children and Young People Act 2006*, a Joint Standing Committee on the Commissioner for Children and Young People be appointed by the Legislative Assembly and the Legislative Council.
- (2) The Joint Standing Committee shall comprise 2 members appointed by the Legislative Assembly and 2 members appointed by the Legislative Council.
- (3) It is the function of the Joint Standing Committee to –
 - i. monitor, review and report to Parliament on the exercise of the functions of the Commissioner for Children and Young People;
 - ii. to examine annual and other reports of the Commissioner; and
 - iii. to consult regularly with the Commissioner.
- (4) A report of the Joint Standing Committee will be presented to the Legislative Assembly and the Legislative Council by members of the Joint Standing Committee nominated by it for that purpose.
- (5) The Standing Orders of the Legislative Assembly relating to standing and select committees will be followed as far as they can be applied.

Joint Standing Committee on Delegated Legislation

The Joint Standing Committee on Delegated Legislation is administered by the Legislative Council and is subject to its terms of reference as set out below.

Joint Delegated Legislation Committee

- 10.1 A *Joint Delegated Legislation Committee* 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 *Interpretation Act 1984* 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, *pro forma* 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 *Interpretation Act 1984*.

The Joint Standing Committee on Delegated Legislation was established in November 1987. It scrutinises all regulations, by-laws, rules, local laws and other subsidiary legislation²¹ government departments and agencies make on behalf of the Parliament. The committee can review all subsidiary legislation but may choose to concentrate on disallowable instruments, those made subject to section 42 of the *Interpretation Act 1984* or made disallowable under other written laws.²² If the committee recommends disallowance of an instrument, a notice of motion of disallowance is tabled in the Legislative Council.

The [Premier's Circular](#) sets out what information must be provided to the committee and what information must be included in the explanatory memorandum.

²¹ Subsidiary legislation means any proclamation, regulation, rule, local law, by-law, order, notice, rule of court, town planning scheme, resolution, or other instrument made under any written law having legislative effect.

²² Under section 42 of the *Interpretation Act 1984* certain types of subsidiary legislation must be laid on the Table of each House of Parliament within 6 sitting days of publication in the *Gazette* and remain there for 14 sitting days to enable scrutiny by the members of Parliament. During this time Members may move a motion to disallow the subsidiary legislation. Members may also move to disallow some other forms of government regulation such as Metropolitan Region Scheme amendments.

**Joint Standing Committee on Delegated Legislation
Explanatory Memorandum requirements**

Ministers must ensure the JSCDL receives, within **10 working days** of the subsidiary legislation being published in the *Government Gazette*, the explanatory memorandum signed by the Chief Executive Officer of the Department or Agency and initialled or signed by the responsible Minister. In the event an Act specifically allows an instrument to be created by a person or entity other than the Minister, the explanatory memorandum must be signed by that person or the senior officer of that entity. A copy of information provided to the Committee should be forwarded to the Minister for reference.

AN EXPLANATORY MEMORANDUM MUST CONTAIN THE FOLLOWING —

- Title of the subsidiary legislation
- Date of publication of the instrument in the *Government Gazette*
- Express power(s) in the relevant Act that provides authority to make the subsidiary legislation
- Description of the purpose and effect of, and justification for, the subsidiary legislation (or any amendments to or repeals of it)
- Identification of any unusual or controversial provisions, with particular regard to the JSCDL's terms of reference (see <http://www.parliament.wa.gov.au>)
- Details of consultations undertaken including stakeholders consulted, a summary of their comments and any action taken in response
- Regulatory Impact Assessment lodged with the Department of Treasury's Better Regulation Unit (if applicable)
- Rationale for changes in fees (including fee caps), charges and penalties, and details of the amount of the fee, charge or penalty immediately prior to the change (if applicable). This information should be summarised in table form, as shown —

| Type of Fee | Date Last Updated Increase / Decrease | Old Fee (\$) | New Fee (\$) | Increase/ Decrease (%) | Increase / Decrease (\$) | % of cost recovery achieved | Cross subsidisation (Yes / No) |
|--|--|-----------------|-----------------|------------------------------|--------------------------------|-----------------------------------|--------------------------------------|
| Grant or renewal of fishing boat licence for | | | | | | | |
| • A boat less than 6.5 metres long | 10.09.11 decrease | 550.00 | 85.00 | -84.55 | 465 | 25 | No |
| • A boat that is 6.5 metres or longer | 10.09.11 increase | 550.00 | 600.00 | 9.09 | 50 | 100 | No |

- Costing systems used to set the fee cap or used to achieve cost recovery (if applicable) [The document footnotes the Office of the Auditor General, *Second Public Sector Performance Report 2010*, Report 12, November 2010, page 7]
- Any justifications for cross subsidisation, if applicable
- Contact details of relevant officers who may be contacted regarding the subsidiary legislation

Agencies must ensure the Explanatory Memorandum includes the printed names and signatures (or initial) of the responsible Minister and relevant Chief Executive Officer.

With respect to local laws, the committee must be provided with the information set out in the Department of Local Government, Sport and Cultural Industries' *Local Law Explanatory Memoranda Directions 2010* (Ministerial Circular No. 04-2010). This

document is posted on the committee's website at www.parliament.wa.gov.au/del. Local law explanatory memoranda must include a Statutory Procedures Checklist.²³

Where an explanatory memorandum is insufficient or late, a committee officer or the committee will advise the relevant government department and/or local government of the fact. An example of the pro forma letter for this purpose is set out on the next page.

²³ The template Statutory Procedures Checklist can be accessed on the Department's website at: <https://www.dlgc.wa.gov.au/Publications/Pages/Local%20Laws%20Explanatory%20Memoranda%20Checklist.aspx>

**Pro Forma Letter
Advising of a Late Explanatory Memoranda**

Our Ref:

Your Ref:

[Minister's name and address]

Dear Minister

[Subsidiary Legislation Title]

The Parliament has delegated to the Joint Standing Committee on Delegated Legislation the task of scrutinising subsidiary legislation.

For this reason, all [government agencies/local governments] are required to provide the Committee with explanatory material and copies of the subsidiary legislation in accordance with the requirements of [the Premier's Circular or Circular No 01–2014 Ministerial Directions – Local Laws Explanatory Memorandum Directions 2010]. The [Circular/ Directions] states that the material is to be provided 'within 10 working days of subsidiary legislation being published in the *Government Gazette*'.

As the above named Instrument was gazetted on [date of gazettal], this explanatory material should have been provided no later than [date]. It is now [number] weeks overdue.

The Committee operates under strict time limits governed by the *Interpretation Act 1984* and the Standing Orders of the Legislative Council. Failure or delay in providing the explanatory material and copies of the gazetted subsidiary legislation place the Committee under unnecessary pressure and significantly hampers its scrutiny role. As a result the Committee may recommend to Parliament that the subsidiary legislation be disallowed for non-compliance with [the Circular/the Directions] requirements regardless of whether the content offends any of its terms of reference.

Please provide the required material to the Committee by 4 pm [date] and for your information, the last day for disallowance of the Instrument is [date].

Yours sincerely

Committee Clerk

[date]

Where a notice of motion of disallowance is given, the committee will advise the relevant government department and/or local government of the fact. An example of the pro forma letter for this purpose is set out below

| Pro Forma Letter Advising Minister of a Disallowance Motion |
|---|
| Our Ref: Your Ref: |
| [Minister's name and address] |
| Dear Minister |
| [Subsidiary Legislation Title] |
| The Joint Standing Committee on Delegated Legislation considered the above [local law/by-laws/regulations] at its meeting on [date]. |
| The Committee resolved to give notice of motion in the Legislative Council to disallow the instrument. Notice will be given on [date]. The reason for giving notice is to protect the Parliament's right to disallow the instrument should the Committee recommend disallowance and to provide the Committee with additional time to scrutinise the instrument and if necessary obtain further information. |
| The giving of the notice should not be taken as indicating that the Committee has resolved to recommend disallowance at this stage. |
| If you or your departmental officers have any questions regarding the above please telephone the Committee's advisory officer, [contact name and number]. |
| Yours sincerely |
| Hon [Chair] |
| [date] |

The relevant Minister will be advised in the event the committee decides to proceed with the disallowance motion.

Committee reports, tabled in both Houses, set out the committee's reasons for recommending the disallowance of an instrument (or part of an instrument). In many instances, rather than recommend disallowance in Parliament, the committee seeks and obtains an undertaking from a Minister or local government to repeal or amend clause/s in subsidiary legislation. Local government and departmental undertaking lists and committee reports are posted on the committee's website at www.parliament.wa.gov.au/del.

For further information, contact the Committee Clerk of the Joint Standing Committee on Delegated Legislation on 9222 7300 or email: delleg@parliament.wa.gov.au

Joint Audit Committee

On 13 June 2013 the Houses agreed to the creation of the Joint Audit Committee, whose membership comprises the five members of the Assembly's Public Accounts Committee and the five members of the Council's Standing Committee on Estimates and Financial Operations. The Joint Audit Committee has the functions as set out in section 48 of the *Auditor General Act 2006* to:

- make recommendations as to the budget of the Office of the Auditor General;
- make recommendations as to the organisational structure or resources of the Office of the Auditor General; and
- to carry out a review of the operation and effectiveness of the *Auditor General Act 2006*.

The Joint Audit Committee is administered by the Legislative Council and is subject to its Standing Orders. The relevant Standing Orders are set out below.

| Joint Audit Committee | |
|------------------------------|--|
| 7.1 | A <i>Joint Audit Committee</i> is established. |
| 7.2 | The Committee consists of the Members of the Legislative Council Standing Committee on Estimates and Financial Operations and the Members of the Legislative Assembly Public Accounts Committee. |
| 7.3 | The Chair of the Standing Committee on Estimates and Financial Operations will be the Chair of the Joint Audit Committee. |
| 7.4 | The Standing Orders of the Legislative Council relating to Standing Committees will be followed as far as they can be applied. |

16.10 Powers of committees and witness entitlements

General powers

Committees have considerable powers, at law and delegated by the House which appoints them. The key power is the power to summon any person within the State's jurisdiction to appear before a committee and/or to produce documents. A person who fails to obey such a summons, or who misleads a committee, may be in contempt of Parliament and subject to reprimand, fine or even imprisonment. It is a contempt to attempt to influence a witness, to prevent a witness from giving evidence, or to persecute a witness for having done so.

Committees also have power to sit during an adjournment of the House (but not after the Parliament has been prorogued); travel to gather evidence; and appoint subcommittees. These are simple, but very broad, powers and there are few restrictions on committees' investigative powers.

Parliamentary privilege

The proceedings of committees are recognised as 'proceedings in parliament' and attract the same privileges and immunities as Parliament itself. Parliamentary privilege provides protection for what is said in proceedings. The purpose of parliamentary privilege is to enable parliamentarians and witnesses to speak candidly without fear of legal repercussions.

The protection is in the form of an immunity. This prevents both the proceedings themselves, and what was said or done by any person participating in those proceedings, from being used or inquired into in a judicial, inquisitorial or administrative process whether or not any legal consequence would flow to a person as a result of that use or inquiry.

For witnesses before parliamentary committees, the immunity means that what is said to a committee cannot be used against that witness in subsequent court proceedings or tribunals. Written evidence a committee receives is similarly protected.

Witness entitlements

Witnesses appearing before a committee:

- answer relevant questions from committee members;
- are given access to relevant documents;
- may be accompanied by legal counsel, but this is highly unusual and counsel are not permitted to answer questions on behalf of a witness;
- are entitled to respond to allegations made against them;
- may provide, or be required to provide, supplementary evidence;
- are able to raise objections to answering questions irrelevant to the inquiry; and
- may apply to the committee to have their evidence heard in private (most evidence is heard in open/public session).

Members and Ministers as witnesses

Members may voluntarily appear before committees of the House of which they are a member. However, if a committee wishes a member to attend, the Chair will write to

the member. If the member refuses, the committee will not take any further action, except to report the matter to the relevant House.

When a Legislative Council member is required to be examined by either the Legislative Assembly or a committee of the Legislative Assembly, a message is sent from the Assembly to the Council in order for the Council to give leave for the member to be examined. While the Legislative Council Standing Orders are silent in relation to a member of the Legislative Assembly appearing before a Council committee, an Assembly member may voluntarily appear before a committee of the Council. Otherwise, only the Assembly can order the appearance of an Assembly member before a Council committee (after a receiving a message from the Council). Legislative Assembly Standing Order 306 states that if the Legislative Council or one of its committees wishes to examine an Assembly member or officer, the Assembly may give leave for the member to attend if the member thinks fit, and it may order an officer to attend.

Ministerial and departmental staff providing information and appearing as witnesses

Public servants appear each year as witnesses before committees, as part of the parliamentary consideration of the Estimates and in reviews of agency annual reports. Committees also require public servants to provide information. This process allows for an open review of the Executive and provides departmental officers with an opportunity to explain programs and activities. The interaction between public servants and committees is generally positive, of mutual benefit and encourages the free flow of information between the public service, the Parliament and the public.

Public servants are required to administer the State in accordance with the law and government policy. They serve Ministers who are in turn accountable to the Parliament. It is the Minister who answers to Parliament for both policy and administration, by way of ministerial accountability. This relationship can affect the interaction between public servants and committees.

Public servants appear before committees as servants of the government of the day, but once required to appear before a committee, are obliged to appear and answer relevant questions. Failure to do so may constitute a contempt, notwithstanding any ministerial direction to the public servant.

A public servant may also appear on issues in relation to which the Minister has no right of direction such as when they appear in a personal capacity or in relation to the exercise of an independent statutory responsibility that has been vested in them.

16.11 Policy

The role of public servants is to explain existing government policy, the administrative arrangements and procedures involved in implementing policy, and to provide factual information. It is the Minister's responsibility to justify, advocate, defend or canvass the merits of a policy and any alternative proposals.

Given this protective framework, parliamentary committees expect that public servants will be co-operative, provide requested information promptly, and act in good faith in their dealings with committees. In factual situations where the dividing line between policy and administration is unclear, a committee may permit a public servant to seek advice and instructions from more senior officials or the Minister.

16.12 Government guidelines and protocols

Parliament has very broad powers to require public servants to appear before it (or its committees) and provide information. Parliament and its committees may summons or request information directly from public servants. There are government guidelines for the appearance of public servants before parliamentary committees. For example, the Public Sector Commissioner's Circular 2010-03: *Policy for Public Sector Witnesses Appearing before Parliamentary Committees*.²⁴

Departmental and ministerial staff should also inquire about any protocols and requirements within their organisation. For example, an organisation's protocol may require the Chief Executive Officer and/or Minister to be kept informed of committee requests for information or attendance at a hearing.

The Legislative Council has published its own guidelines regarding public sector employees and parliamentary committees²⁵.

16.13 How committees conduct inquiries

Overview

Committees do most of their work through a process of investigation. The process may vary from inquiry to inquiry as circumstances demand but usually consists of the following steps:

²⁴ <https://publicsector.wa.gov.au/document/public-sector-commissioners-circular-2010-03-policy-public-sector-witnesses-appearing-parliamentary-committees>

²⁵ [https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/resources/file-public-sector-employees-liason-with-parliamentary-committees/\\$file/Public%20Sector%20Employees%20Liaison%20with%20Legislative%20Council%20Committees.pdf](https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/resources/file-public-sector-employees-liason-with-parliamentary-committees/$file/Public%20Sector%20Employees%20Liaison%20with%20Legislative%20Council%20Committees.pdf).

- The House refers a matter or the committee self-initiates where the committee has the power to do so.
- Staff and relevant government departments provide background briefings and seminars (where appropriate).
- Terms of reference are established for the inquiry if not already adopted.
- Advertisements seeking submissions are placed in relevant major newspapers or, increasingly, online.
- Submissions are received and analysed.
- The committee conducts hearings with selected individuals and organisations. Hearings are usually open to the public.
- The committee consider evidence and prepare a draft report.
- The committee deliberate on and adopt the report.
- The report is tabled in Parliament. A copy is published on the website along with transcripts of public evidence and public submissions.
- The government considers the report.
- The government responds to the report.
- Committee reports may be debated in the House.

Inquiry process in more detail

Whether undertaking an inquiry on its own initiative or following a referral from the relevant House, a committee is largely free to decide how to conduct a particular inquiry, within the scope of the inquiry's (and the committee's) terms of reference. However, a common approach is usually adopted for the overall conduct of committee inquiries. Particular committees may have specific information requirements to which ministerial and departmental staff should have regard.

As discussed, a committee is charged with the task of investigating and reporting to the relevant House on matters referred to it. This involves seeking information, assessing its significance, and then reporting findings and recommendations to the House.

Committees:

- will seek information and comment from government departments and agencies relevant to the inquiry, as well as appropriate experts;

- may cast a wider net, seeking submissions from individuals and groups likely to be interested in or affected by the issues under inquiry. Where an inquiry is on a large scale a committee may advertise for submissions from the general public;
- may travel intrastate, interstate or internationally to gather evidence if required;
- in the case of Bills, will scrutinise legislation or proposed Bills; and
- will scrutinise relevant domestic and interstate parliamentary debates and reports.

Information may be sought by way of written submission and/or a hearing:

- As a general principle, evidence is received in the form of written submissions to the committee. Upon examination of such submissions, a decision is then made whether witnesses will be called to appear before the committee. Normally an advertisement is placed calling for submissions, although specific parties may be approached by the committee to provide a submission.
- Standing committee hearings are generally open to the public unless the committee orders that the proceedings be closed.

Preparation of report

Once the committee has collected necessary information, it will discuss the issues raised by the inquiry's terms of reference.

The committee will consider the arguments, evidence and data it has gathered, and agree findings and recommendations in a report. If one or more committee members do not agree with the majority's findings, they can submit a minority report detailing the points of difference.

Speaker's Procedural Rules

Committees of the Legislative Assembly, the Joint Standing Committee on the Corruption and Crime Commission and the Joint Standing Committee on the Commissioner for Children and Young People are required to follow the Speaker's Procedural Rules.

Two important rules are:

- if significant adverse references are made against a person in the course of a committee inquiry, that person will be given a reasonable opportunity to provide a response to the committee; and

- if a person is the subject of significant adverse findings, a committee will provide a copy of the relevant draft findings and allow a person a reasonable opportunity to respond to those findings.

Tabling the report in the House

The report is tabled in the House and all members of the committee have an opportunity to speak to the findings and recommendations. Only the reports of the joint standing committees are tabled in both Houses. In the Legislative Council committee reports are set down for discussion and debate in the House. The committee's formal involvement generally ends with the tabling of its report.

In the Legislative Council reports on Bills are discussed when the relevant debate on the Bill or Bills resumes. Where amendments to a Bill have been recommended by a committee and no other amendments have been published at the time at which the order of the day for the committal of the Bill is called, the Minister or member in charge of the Bill may move that those amendments be agreed to. If this motion is agreed to, the House may bypass the committee of the whole House stage and proceed immediately to the third reading. If the motion is not agreed to, the Bill is committed according to the order of the day.

Committee reports are public documents and are available on the Parliament website as well as the State Law Publisher, the state library and some university libraries.

Government response

In the Legislative Assembly, Committee reports can contain a direction that the relevant Minister report to the Assembly as to the action, if any, proposed to be taken by the government with respect to the recommendations of the committee.

Similarly in the Legislative Council a committee report may recommend action by, or seek a response from, the government.

The Minister (in the case of a report to the Legislative Assembly) or the government (in the case of a report to the Legislative Council, except for reports on Bills) has a fixed time within which to reply to reports tabled in the Houses:

- three months from the date of a report being tabled in the Legislative Assembly; and
- two months from the date of a report being tabled in the Legislative Council.

The government can accept, reject, modify or adopt the committee's recommendations.

The Executive Government Services Branch will forward details of committee reports to the relevant ministerial office when they are presented to Parliament.

16.14 Further information

If you want assistance or further information about a committee, its terms of reference or its inquiries, contact:

Legislative Assembly Committee Office
Level 1
11 Harvest Terrace
PERTH WA 6000
phone: 9222 7483
email: laco@parliament.wa.gov.au

Legislative Council Committee Office
Ground floor
18–32 Parliament Place
WEST PERTH WA 6005
phone: 9222 7300
email: lcco@parliament.wa.gov.au

Information about committees of the Legislative Assembly and Legislative Council can be obtained from the committee offices or viewed on the Parliament website at: www.parliament.wa.gov.au (choose ‘Committees’).

The website provides information on current and past committees with links to the roles and functions of committees; past reports, related submissions and transcripts of public evidence; and information sheets on being a witness or providing a submission to parliamentary committees.

When a committee inquiry is commenced the inquiry is placed onto the website. Viewers are able to follow the progress of a committee’s inquiry by viewing submissions, proposed hearings, transcripts of public hearings, committee reports and government responses to committee reports.

Chapter 17

Hansard and broadcasting

This Chapter highlights some of the important practical considerations that ministerial and departmental staff need to keep in mind when dealing with Hansard.

17.1 Hansard publications

The uncorrected *Hansard* of the full day's sitting is published on the Parliament's internet and POWAnet two to three hours after the house rises. It is an uncorrected proof, and may not be quoted. In addition, a partial or interim transcript, also uncorrected, is posted progressively during a sitting day (for example, afternoon sittings are loaded at the dinner suspension).

To access the uncorrected *Hansard* email list, please contact hansard@parliament.wa.gov.au

The corrected *Hansard* is available on the Parliament's website about two to three working days after the sitting, and the bound volumes of the debates for each calendar year are available by April the following year.

For copies of the bound volume *Hansard*, please contact the Hansard Office on 9222 7481.

17.2 Uncorrected Proofs

Members receive uncorrected proofs of their speeches via email about two hours after the speech was delivered, and they have until 4.00 pm the following day to suggest corrections. Any corrections received after this time may not be included in the finalised *Hansard*.

Suggested corrections should be confined to the correction of errors of transcription. Suggested corrections to a speech can be made only by the member who made the speech.

Corrections may be returned to the Hansard office on the Hay St side of Parliament House ground floor corridor within the PSD centre in hard copy or by email to hansard@parliament.wa.gov.au. Corrections should be clearly marked.

17.3 Notes and quotes

Hansard staff appreciate the provision of members' notes; this facilitates the production of an accurate and timely record of debates.

The Presiding Officers require that any material quoted from by a member during speeches must be provided to Hansard staff so that it can be accurately rendered in *Hansard*.

Notes and quotes may be emailed to hansard@parliament.wa.gov.au

17.4 Incorporations

Material provided for incorporation for questions without notice, questions on notice or Estimates must be in a compatible format suitable for publication. Word is the preferred format. On some occasions material cannot be incorporated because of an unsuitable format. If in doubt, contact Hansard prior to submission to check suitability.

17.5 Supplementary Information for Estimates

Please observe the deadlines for the submission of material as supplementary information for Assembly Estimates. Due to publishing deadlines, noncompliance may result in material not being published in the finalised Assembly Estimates *Hansard*.

17.6 Committee transcripts

Hansard provides a transcription service for parliamentary committees. Draft transcripts are usually provided to the committee secretariat within two to three working days. Each committee manages the distribution and publication of committee transcripts.

17.7 Broadcasting

All parliamentary debates are broadcast and streamed live on the internet and POWAnet. The Parliament also maintains an online archive of chamber broadcasts; these are available following a break in sittings (a morning session is available online after lunch; and Questions without Notice are made available within half an hour of completion) and the full record available within a few hours after the completion of sitting.

Members may request broadcast extracts of their speeches that can be provided on USB stick or delivered electronically through the website portal. Recordings are provided subject to conditions laid down by the Presiding Officers to be found on the broadcast archive page. Such requests should be directed to the Hansard office (481) or hansard@parliament.wa.gov.au.

17.8 Searching Hansard

The parliamentary website, under the tab ‘Hansard’, now hosts all *Hansard* records from 1870 to the latest sitting day, that can be searched using a variety of parameters. Help on searching Hansard is available on the Hansard page of Parliament’s website.

17.9 Contacts

Please contact the Hansard office if you have any queries:

Hansard Office
G.38— ground floor, Parliament House
phone: 9222 7481 or email: hansard@parliament.wa.gov.au

Appendix One

Extracts from the *Financial Management Act 2006*

- 63. Financial reports etc. to be submitted to Auditor General and Minister**
- (1) The accountable authority of an agency is to submit to the Auditor General —
- (a) the financial statements and key performance indicators referred to in section 61(1)(a) and (b); and
- (b) any other information referred to in section 61(1)(d) that is required by the Treasurer's instructions to be submitted to the Auditor General under this subsection.
- (2) The accountable authority of an agency is to submit to the Minister —
- (a) the annual report prepared by the accountable authority under section 61(1); and
- (b) unless the audit of the agency's accounts in respect of the relevant financial year has been dispensed with under the *Auditor General Act 2006* section 14(2) — a copy of the opinion of the Auditor General prepared and signed under section 15 of that Act.
- 64. Minister to table agency's annual report etc.**
- (1) The Minister is to cause to be laid before each House of Parliament, or dealt with under section 83, within the prescribed period after the end of a financial year of an agency —
- (a) a copy of the annual report for the financial year prepared by the accountable authority of the agency under section 61; and
- (b) unless the audit of the agency's accounts in respect of the financial year has been dispensed with under the *Auditor General Act 2006* section 14(2) — a copy of the opinion of the Auditor General prepared and signed under section 15 of that Act.
- (2) In subsection (1) —
- prescribed period means —
- (a) 90 days; or
- (b) any shorter period that is prescribed by the regulations for the purposes of this definition.
- 65. Minister to inform Parliament if annual report and Auditor General's opinion cannot be tabled on time**
- (1) If the Minister is not able to cause a copy of an annual report and if applicable, the opinion of the Auditor General referred to in section 64(1) to be laid before each House of Parliament, or dealt with under section 83, within the prescribed period after the end of a financial year of an agency, the Minister is to inform both Houses of Parliament, on or before the expiry of that period, of —
- (a) the Minister's inability to do so; and
- (b) the reasons for that inability; and
- (c) the anticipated date on which those documents will be tabled.
- (2) If the Minister is not able to comply with subsection (1) in respect of a House of Parliament because that House is not then sitting, the Minister is to inform that House as required by that subsection as soon as is practicable after the expiry of the prescribed period.
- (3) In this section —
- prescribed period** means the prescribed period referred to in section 64.

68. Abolition of agency, reporting after

- (1) Before, on or after the abolition of an agency, the Treasurer is to appoint a person to perform the duties set out in this section.
- (2) If the abolition takes effect at the end of a financial year of the agency, the reporting officer is to comply with the provisions of sections 61 and 63 in respect of the agency —
 - (a) for that financial year; and
 - (b) to the extent that those provisions have not been complied with for any earlier financial year of the agency.
- (3) If the abolition takes effect at a time other than the end of a financial year of the agency, the reporting officer is to —
 - (a) comply with the provisions of sections 61 and 63 in respect of the agency to the extent that those provisions have not been complied with for any financial year of the agency that ended before the abolition; and
 - (b) prepare and submit to the Minister a report in respect of the agency for the period starting from the end of the last financial year of the agency to have ended before the abolition and ending with the abolition.
- (4) The Treasurer may give the reporting officer written directions as to the preparation and submission of the final report.
- (5) On appointment under subsection (1), the reporting officer has a duty to prepare and submit any report required under this section and to comply with any directions given by the Treasurer under subsection (4).

69. Final report, contents of

- (1) The reporting officer is to include in the final report —
 - (a) financial statements of the kind referred to in section 61(1)(a); and
 - (b) information of the kind referred to in section 61(1)(f).
- (2) The reporting officer is also to include in the final report, to the extent that it is practicable for the reporting officer to do so —
 - (a) information of the kind referred to in section 61(1)(b) and (d); and
 - (b) a report of the kind referred to in section 61(1)(c); and
 - (c) if applicable, reports of the kind referred to in section 61(1)(e).

72. Reporting officers to submit financial statements etc. to Auditor General

- (1) Subject to any directions given by the Treasurer for the purposes of this Division, the reporting officer is to submit for the opinion of the Auditor General —
 - (a) the financial statements referred to in section 69(1)(a); and
 - (b) the information (if applicable) referred to in section 69(2)(a).
- (2) Subject to any necessary modifications, this Act applies to those financial statements and that information (if applicable) in the same way that it applies to —
 - (a) financial statements referred to in section 61(1)(a); and
 - (b) information referred to in section 61(1)(b) and (d).
- (3) Sections 64, 65 and 83 apply to the final report in the same way that they apply to an annual report referred to in section 61, but the prescribed period referred to in section 64(1) is taken to be 14 days after the final report is submitted to the Minister.

Appendix Two

Extracts from the *Interpretation Act 1984*

Part VI — Subsidiary legislation

40. Governor to make subsidiary legislation

If a written law provides that subsidiary legislation may or shall be made and does not provide by whom such subsidiary legislation may or shall be made, any subsidiary legislation made under such a provision shall be made by the Governor.

41. Publication and commencement of subsidiary legislation

- (1) Where a written law confers power to make subsidiary legislation, all subsidiary legislation made under that power shall —
 - (a) be published in the *Gazette*;
 - (b) subject to section 42, come into operation on the day of publication, or where another day is specified or provided for in the subsidiary legislation, on that day.
- (2) A power to fix a day on which subsidiary legislation shall come into operation does not include power to fix different days for different provisions of that legislation unless express provision is made in that behalf.

42. Laying regulations, rules, local laws and by-laws before Parliament, and disallowance

- (1) All regulations shall be laid before each House of Parliament within 6 sitting days of such House next following publication of the regulations in the *Gazette*.
- (2) Notwithstanding any provision in any Act to the contrary, if either House of Parliament passes a resolution disallowing any regulations of which resolution notice has been given within 14 sitting days of such House after such regulations have been laid before it or if any regulations are not laid before both Houses of Parliament in accordance with subsection (1), such regulations shall thereupon cease to have effect, but without affecting the validity or curing the invalidity of anything done or of the omission of anything in the meantime.
- (3) Subsection (2) applies notwithstanding that the period of 14 days referred to in that subsection, or part of that period, does not occur in the same session of Parliament or during the same Parliament as that in which the regulations are laid before the House concerned.
- (4) Notwithstanding any provision in any Act to the contrary, if both Houses of Parliament at any time pass a resolution originating in either House amending any such regulations or substituting other regulations for that which has been disallowed by either House under subsection (2), then on the passing of any such resolution —
 - (a) amending regulations, the regulations so amended shall, after the expiration of 7 days from the publication in the *Gazette* of the notice provided for in subsection (5), take effect as so amended;
 - (b) substituting regulations in place of regulations disallowed, the regulations so substituted shall, after the expiration of 7 days from the publication in the *Gazette* of the notice provided for in subsection (5), take effect in place of that for which the regulations are so substituted.
- (5) When a resolution has been passed under subsection (2) or (4), notice of such resolution shall be published in the *Gazette* within 21 days of the passing of the resolution.
- (6) Notwithstanding section 37(1), where —

- (a) regulations are disallowed under this section or are not laid before both Houses of Parliament in accordance with subsection (1); and
 - (b) those regulations amended or repealed regulations that were in operation immediately before the first-mentioned regulations came into operation,
- the disallowance or failure to comply with subsection (1) revives the previous regulations on and after the day of the disallowance or, in the case of failure to comply with subsection (1), on and after the day next following the last day for compliance with subsection (1).
- (7) If a written law empowers or directs the making of regulations by a person other than the Governor and requires that the regulations be confirmed or approved by the Governor or by any other person or authority before having the force of law, subsection (1) does not apply to such regulations unless they have been confirmed or approved as so required.
 - (8) In this section —
 - (a) a reference to regulations shall be construed as including a reference to a regulation or part of a regulation; and
 - (b) regulations includes rules, local laws and by-laws.

43. Power to make subsidiary legislation, general provisions about

- (1) Subsidiary legislation shall not be inconsistent with the provisions of the written law under which it is made, or of any Act, and subsidiary legislation shall be void to the extent of any such inconsistency.
- (2) Where any subsidiary legislation purports to be made in exercise of a particular power or powers, it shall be deemed also to be made in exercise of all powers under which it may be made.
- (3) It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of subsidiary legislation have been complied with and performed.
- (4) Where a written law confers a power to make subsidiary legislation, it shall be deemed also to include a power exercisable in the like manner and subject to the like conditions (if any) to amend or repeal any such subsidiary legislation.
- (5) Where a written law confers power on a person to make subsidiary legislation for any general purpose and also for any special purposes incidental thereto, the enumeration of the special purposes shall not derogate from the generality of the powers conferred with reference to the general purpose.
- (6) Subject to section 3(3), regulations, rules, local laws or by-laws made under a power conferred by an enactment passed after the commencement of this Act may provide that contravention of a provision thereof constitutes an offence and may provide for a penalty in respect of such a contravention not exceeding a fine of \$1 000.
- (7) A power to make subsidiary legislation may be exercised —
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which it is exercised —
 - (i) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provisions for the same case or class of case for different purposes of the legislation; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (8) Subsidiary legislation may be made —
 - (a) so as to apply —
 - (i) at all times or at a specified time;
 - (ii) throughout the State or in a specified part of the State;

- (b) so as to require a matter affected by the legislation to be —
 - (i) in accordance with a specified standard or specified requirement;
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of person or body;
 - (c) so as to confer a discretionary authority on a specified person or body or a specified class of person or body; and
 - (d) so as to provide, in a specified case or class of case for the exemption of persons or things or a class of persons or things from the provisions of the subsidiary legislation, whether unconditionally or on specified conditions or conditions additionally imposed and either wholly or to such an extent as is specified or otherwise determined.
- (9) In subsections (7) and (8) specified means specified in the subsidiary legislation.

44. Words and expressions in subsidiary legislation, meaning of

- (1) Words and expressions used in subsidiary legislation shall have the same respective meanings as in the written law under which the subsidiary legislation is made.
- (2) A reference in subsidiary legislation to the Act shall be construed as a reference to the Act under which the subsidiary legislation is made.

45. Fees and charges

- (1) Where provision is made by subsidiary legislation in respect of fees or charges, the subsidiary legislation may provide for all or any of the following matters —
 - (a) specific fees or charges;
 - (b) maximum or minimum fees or charges;
 - (c) maximum and minimum fees or charges;
 - (d) ad valorem fees or charges;
 - (e) the payment of fees and charges either generally or under specified conditions or in specified circumstances; and
 - (f) the reduction, waiver or refund, in whole or in part, of such fees or charges.
- (2) Where any reduction, waiver or refund, in whole or in part, of any fee or charge is provided for by subsidiary legislation, such reduction, waiver or refund may be expressed to apply or be applicable either generally or specifically —
 - (a) in respect of certain matters or transactions or classes of matter or transaction;
 - (b) in respect of certain documents or classes of document;
 - (c) when any event happens or ceases to happen;
 - (d) in respect of certain persons or classes of person; or
 - (e) in respect of any combination of such matters, transactions, documents, events, or persons,
 and may be expressed to apply or to be applicable subject to such conditions as may be specified in the subsidiary legislation or in the discretion of any person specified in the subsidiary legislation.
- (3) Subject to section 3(3), this section applies to subsidiary legislation made under a power conferred by an enactment passed after the commencement of this Act.

45A. Fees for licences, effect of power to prescribe

- (1) A power conferred by a written law to prescribe or impose a fee for a licence includes power to prescribe or impose a fee that will allow recovery of expenditure that is relevant to the scheme or system under which the licence is issued.
- (2) Expenditure is not relevant for the purposes of subsection (1) unless it has been or is to be incurred —
 - (a) in the establishment or administration of the scheme or system under which the licence is issued; or
 - (b) in respect of matters to which the licence relates.

- (3) The reference in subsection (1) to a fee for a licence includes reference to a fee for, or in relation to, the issue of a licence and a fee payable on an application for the issue of a licence.
- (4) In this section —
 - fee* includes charge;
 - issue* includes grant, give or renew;
 - licence* includes registration, right, permit, authority, approval or exemption.

46. Reference to written law includes reference to subsidiary legislation made under it

- (1) A reference in a written law to a written law shall be construed so as to include a reference to any subsidiary legislation made under that written law.
- (1a) An example of the operation of subsection (1) is that a reference in an Act to 'this Act' includes a reference to any subsidiary legislation made under the Act.
- (2) A reference in a written law to an Imperial Act or a Commonwealth Act shall be construed so as to include a reference to any subsidiary legislation made under that Act.

47. Acts done under subsidiary legislation deemed done under Act

Any act done under subsidiary legislation shall be deemed to be done under the written law under which the subsidiary legislation was made.

Appendix Three

Sample Second Reading Speech

ROYAL PERTH HOSPITAL PROTECTION BILL 2008

This government is committed to the retention of Royal Perth Hospital as a tertiary hospital on its present site. The previous government planned to scale back the health and hospital services offered on the site in favour of Fiona Stanley Hospital despite the fact that each year Royal Perth Hospital treats some 73,000 inpatients, receives about 225,000 outpatient attendants and has one of the busiest emergency departments in Australasia, with more than 60,000 presentations a year. Royal Perth Hospital, which is ideally located for eastern suburbs residents with a rail station at the hospital and easy freeway access from all directions, has been operating for 153 years.

It is one of Australia's largest hospitals and has the second-largest trauma workload in the country.

Royal Perth Hospital as an institution has a distinguished international record in patient care, teaching and research and hosting Nobel Prize winning research and world-leading experts in clinical care and medical research. This concentration of expertise and history must be retained.

The Royal Perth Hospital Protection Bill will do just that.

As members of the House would be aware, Royal Perth Hospital is located on two sites. The first site is in Selby Street, Shenton Park, and is known as Royal Perth Hospital Shenton Park Campus. The second site is the more familiar Central Business District site, which is located on properties that are bounded by Murray Street, Victoria Square, Lord Street and Moore Street and on land that is subject to the Certificate of Title Volume 1880, Folio 491. This Bill is designed to protect the functions of the hospital on the Central Business District site.

The Royal Perth Hospital Protection Bill will require the approval of both Houses of Parliament before the public hospital situated on that site can be closed. Such an action will put the fate of this major public hospital beyond the whim of a bureaucrat, instead requiring a comprehensive debate in both Houses before any closure can occur.

The commitment to maintain the hospital on its present site will not impact upon the development of the Fiona Stanley Hospital nor upon the present heritage listing of various components of the Royal Perth Hospital site or future government plans for the construction of a 400-bed facility with a new wing on the site. Careful planning for the Royal Perth Hospital precinct will ensure that the site remains suitable for the present and future purposes of a public hospital.

Similarly, the approval of both Houses of Parliament will be required to change the name of this historic public hospital that has served this State for so much of its history.

I commend the Bill to the House.

Appendix Four

Glossary

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| absolute majority | The nearest whole number above exactly half of the whole normal membership of the House. In the Legislative Assembly an absolute majority is 30 members and in the Legislative Council an absolute majority is 19 members. |
| Act | A written law which has passed both Houses of Parliament and been assented to by the Governor. Before an Act comes into effect it may be necessary for it to be proclaimed if specified in the Act. |
| address-in-reply | The address-in-reply is the House's response to the Governor's speech when opening a session of Parliament. Debate on this question usually occupies several sitting days and is normally quite wide-ranging in nature. Members are allowed and use this opportunity to speak on matters that can be particularly relevant to their electorate/region or for which they have a particular interest in or knowledge. |
| adjournment of the debate | The decision of the House to close further debate on the subject immediately before it. The adjournment, unless otherwise specified, is always understood to be until the next sitting day. |
| Assent | (See Royal Assent) |
| Bill | The draft form of what is intended to become an Act of Parliament. Bills become Acts of Parliament or statutes after they have completed their passage through Parliament and have received the Royal Assent. |
| Chair of Committees | The member of the Legislative Council who presides over the committee of the whole House. The Chair of Committees is also the Deputy President who fills the office of the President during her or his absence. |
| clause | One of the sequentially numbered parts of a Bill identifiable by a bold print numeral at its commencement. After a Bill becomes an Act its clauses are referred to as 'sections'. |

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| Clerks | The officers of the House whose duties include the organisation of the administrative work necessary to enable the House to carry out its functions; advising the Presiding Officer and members in matters of parliamentary procedure; and preparing and preserving the records, papers and all documents associated with the House. The Clerk of the Legislative Council and the Clerk of the Legislative Assembly are the senior officers of each House and the Clerk of the Legislative Council is also the Clerk of the Parliaments. Each Clerk is assisted by a Deputy Clerk and two Clerks Assistant. These officers are referred to as Table officers. |
| committee of the whole House | The stage of proceedings when the President leaves the Chair and the Chair (or Deputy Chair) of Committees presides over the detailed consideration of a Bill, message or other matter. |
| cross benches | The seats in the Chamber which are placed furthest from the President or Speaker and, in terms of physical layout, tend to curve around the Chamber and face toward the President/Speaker rather than face directly the members on the opposite side of the Chamber. |
| dissolution | The technical procedure which terminates the life of a Parliament. In Western Australia only the Legislative Assembly can be dissolved and this is done either by a deliberate act of the Governor (at the Premier's request) by proclamation or by the effluxion of time. |
| division | The procedure for determining which members favour and which members oppose any question. A division may be requested by any member who feels that the President's or Speaker's decision on the voices may not have been correct or that there is a need for members to publicly record their attitudes for or against a particular question. |
| Estimates/budget papers | The documents concerning proposed annual expenditure produced by the Treasurer providing the necessary detailed information supporting the Appropriation (Recurrent) Bill and the Appropriation (Capital) Bill. |
| Executive | The members of Parliament who are Ministers of the Crown. |
| Executive Council | The formal meeting of the Governor with the Ministers of the Crown. Many of the day-to-day activities of government require the approval of the Governor in Executive Council. |

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| front benches | The front row of seats provided for members immediately to the right (Ministers) and left (shadow Ministers) of the President or Speaker. |
| government | Properly, this term is synonymous with the executive. However, it is common in Australian Parliaments to include supporters of the government known as 'government members' within the general meaning of the word. These are to be distinguished from 'members of the government' which refers to those members who are Ministers of the Crown. |
| Governor | The Queen's representative in Western Australia charged with the responsibilities of governing the State, on the advice and consent of the Executive Council. |
| Hansard | The official report of speeches (parliamentary debates) made in Parliament. |
| lapsed Bill | A Bill that does not complete its passage through both Houses prior to the prorogation of any session lapses at prorogation. |
| Leader of the House | The government Minister who holds the position of 'Leader of the House' is responsible on behalf of the government for managing government business. |
| Leader of the Opposition | The member chosen by the largest political party sitting in opposition to the government of the day to lead that party. A Leader of the Opposition in the Legislative Council is also appointed to manage opposition business in that House. |
| leave of absence | A House may give leave of absence to any member on motion after notice, stating the cause and period of absence and such motion shall have priority over other motions. |
| leave of the House | The unanimous consent of all members present at the time when the question 'Is leave granted?' is put from the Chair. Because the granting of leave must be unanimous a single dissentient voice will result in a denial of leave. |
| long title | That part of the Bill prior to section 1 (short title) that sets out in general terms the purpose of the Bill and should cover everything in the Bill. |
| Maiden/inaugural speech | The first speech given by a new member of the Assembly or Council. It is traditional that this speech is heard without interruption from other members of the House. |

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| messages from and to the Assembly or Council | A formal manner of communication between the two Houses is by message. All Bills are transmitted from one House to the other by message as are proposals for amendments to those Bills and requests for conferences. If either House passes a resolution in which it desires the concurrence of the second House, this request is conveyed by message. |
| Minister | The holder of one of the principal executive offices of the government 'liable to be vacated on political grounds'. Section 43 of the <i>Constitution Acts Amendment Act 1899</i> limits the number of such offices to 17. However, that Act does not require that the positions must be held by members of Parliament other than to say that at least one of such offices must be held by a member of the Legislative Council. |
| ministerial statement | A statement made by a Minister relating to their portfolio pursuant to Standing Orders or by leave. |
| Minutes of Proceedings | The official record of the proceedings of the Legislative Council. |
| notice | Giving notice refers to the practice of giving advance indication to the House of intention to move a motion or ask a question. |
| notice of motion | The process of providing the House with notice of an intended motion. The notice of motion must be in writing, signed by the mover and orally presented at the time the Speaker or President calls for notices of motion at the beginning of the sitting day. |
| notice of motion to introduce a Bill | Bills originating in the Council may be introduced at any time by motion after notice, but not so as to interrupt any proceeding, by the Minister or member having charge of it moving 'That a Bill for an Act [long title] be introduced and read a first time'. Bills originating in the Assembly may be introduced by motion after notice, at the time when 'Bills – notices of motion' are called upon. The Minister or member having charge of the Bill moves 'That a Bill for an Act [long title] be introduced and read a first time' and a copy of an explanatory memorandum is also provided. |

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| notice of question | In the Council, a written notice of any question, signed by or on behalf of the member giving notice. If delivered to the Administration Office prior to the deadline provided for in the Standing Orders the question will appear in the supplementary notice paper referred to as the 'questions book'. The questions book contains questions, notice of which were given that day, and postponed questions: those questions for which notice has been previously given but have yet to receive a reply. |
| notice paper | The daily document setting out the business listed for that particular sitting day. This paper represents a full record of all outstanding business the House has to complete. There are however, 'supplementary notice papers' which may contain amendments or questions on notice. |
| Opposition | The largest political party sitting in opposition to the government. This has the formal title 'Her Majesty's Official Opposition'. |
| order of the day | An item of business that the House has directed shall be listed for consideration at a future sitting or at a later stage of that sitting day. |
| pairs | An arrangement entered into between the government and the opposition whereby an equal number of members may be absent from a division without disturbing the otherwise anticipated result of the division. |
| Parliament | The <i>Constitution Act 1889</i> states that 'The Parliament of Western Australia consists of the Queen and the Legislative Council and the Legislative Assembly'. |
| Parliamentary Counsel | The principal government officer responsible for drafting Bills and delegated legislation. |
| Parliamentary Secretary | The Governor in Council appoints and specifies the functions of Parliamentary Secretaries whose basic role is to assist Ministers with their portfolios as well as deputise for them. They could best be described as unpaid junior Ministers, although they may be paid an allowance if approved by the Premier and are expressly excluded from being considered a Minister (see section 44A <i>Constitution Acts Amendment Act 1899</i>). |
| petition | A formal request signed by at least one person placed before a House of Parliament with the object of persuading a House of Parliament to take some particular action. |

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| point of order | The proper way in which a member may raise, for the decision of the Chair, the question of whether or not the House is following its Standing Orders and established practices. |
| President | The Presiding Officer of the Legislative Council. |
| private Bill | As distinct from a public Bill, a private Bill is introduced for the purpose of assisting a select group of citizens. Such Bills are very rare in a modern Parliament. In the Legislative Council, they have special Standing Orders pertaining to them and are introduced at the cost of the citizens requesting them. Usually they relate to corporate bodies and religious institutions. |
| private member's Bill | A public Bill introduced by a private (non-ministerial) member. |
| proclamation | A public announcement made by the Governor in Council under statutory authority. Some Acts, or parts of Acts, do not come into operation until they have been proclaimed. This restriction, if applicable, is found in the commencement section of the Act. Proclamations are published in the <i>Government Gazette</i> . |
| progress | In the Council, the adjournment of proceedings in committee of the whole House is effected by a member moving 'That the Chair do now report progress'. If this motion is accepted, the Chair reports to the House that the committee has made progress on the Bill and seeks to sit again. |
| prorogation | The action taken by the Governor which has the effect of terminating a session of Parliament. Prorogation is usually followed by a period of recess prior to either the opening of a new session or the dissolution of the Assembly before a general election. Parliamentary business cannot be conducted after a prorogation and before the Parliament is recalled. |
| public Bills | All Bills, other than private Bills, are public Bills. |
| questions on notice | The manner in which members may ask written questions, usually to Ministers, seeking written answers in respect to matters of administration in a portfolio or matter for which the member is responsible. |
| questions without notice | A period during a sitting day where a member may ask an oral question without notice and may receive an immediate reply. |

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| recommittal/reconsideration of a Bill | The process of having a Bill reconsidered by the committee of the whole House in the Council or reconsidered in detail by the Assembly. A recommittal may be for the purpose of considering the whole Bill, several clauses of the Bill or a part of the Bill. A motion to recommit a Bill can only be considered prior to the question for the third reading being put. |
| readings of a Bill | Each Bill has three readings in each House of Parliament. Of these, the first is normally not debated, the second is open to wide-ranging debate and the third is subject to a more restricted debate (i.e. as to why the Bill should or should not be read a third time – a specific debate). The Clerk reads the title of the Bill after the House has agreed to each of the successive readings. |
| recess | The period between prorogation and the commencement of a new session. The term is also commonly, but inaccurately, used to describe a period of adjournment. |
| report stage of a Bill | In the Council, the stage when a Bill has completed its passage through committee of the whole House and is reported by the Chair to the House. The report is required to be adopted prior to the Bill proceeding to the third reading stage. It is possible for the Bill to be recommitted at this stage or before the question is put on the third reading. |
| rescinding a vote | The deliberate action of quashing a previous vote taken by the House. In the Council, rescinding a vote requires seven days' notice and the support of an absolute majority. |
| regulations | An Act may allow for the provision of subsidiary legislation to be made by the Governor in Executive Council so as to permit the government to make laws that give effect to legislation enacted by Parliament. Regulations are subsidiary legislation made under a power delegated by Parliament to the Executive or some other person or body by an Act. Parliament has placed controls over the exercise of this delegated power by requiring regulations to be published in the <i>Government Gazette</i> , tabled in Parliament and may be disallowed by a resolution of either House. (See <i>Interpretation Act 1984</i> sections 40–47.) |
| right of reply | The opportunity permitted under Standing Orders for the mover of a substantive motion or a Bill to speak in reply to the debate that has taken place. |

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| Royal Assent | The adding of the Governor's signature to a Bill signifying Royal approval. This is the final stage in the passing of a Bill through Parliament. Most Bills come into operation on Assent, unless the commencement section (usually section 2) of the Act states that the Act comes into operation upon proclamation or some future date or event. Additionally, this section may also state that some or all sections, Parts or Divisions of the Act only come into operation on proclamation. In the absence of a commencement clause, an Act comes into operation 28 days after Assent. |
| ruling | A decision from the Chair on a point of order or matter of procedure. |
| second reading speech | Although the term would include any speech to the debate on the second reading of a Bill, it is commonly used to refer specifically to the second reading introductory speech of the Minister/member in charge of the Bill. |
| section | Once a Bill has become an Act of Parliament, a clause of the Bill is referred to as a section. |
| select committee | A group of members from either House or both Houses, appointed to inquire into and report on a particular subject. A select committee ceases to exist when it has made its final report to the House or Houses or upon prorogation. |
| Sergeant-at-Arms | The officer of the Assembly who bears the Speaker's Mace and who is primarily responsible for the ceremonial and security aspects of the House. |
| session | A group of sittings of the Parliament, commencing with the opening ceremony and concluding at prorogation. |
| sessional committee | A group of members appointed to carry out some particular duty, usually of a domestic nature. The life of a sessional committee is terminated at prorogation. |
| sessional order | A resolution of the House concerning its procedures having effect for the period of that session only. |
| short title of a Bill | The first clause of each Bill is usually the short title. As distinct from the long title, which often expresses the purposes of a Bill, the short title simply denotes the name by which the Bill is to be known. |
| simple majority | More than half of the total votes of the members present and voting. |
| sitting | A sitting of Parliament commences when the President or Speaker takes the Chair and concludes with the adjournment of the House. |
| Speaker | The Presiding Officer of the Legislative Assembly. |

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| standing committees | Committees which have a life extending beyond any particular inquiry. Standing committees may be appointed for domestic purposes as well as for inquiries and may be appointed for the life of a Parliament. |
| Standing Orders | The permanent rules which govern the conduct of business in the Legislative Assembly or Legislative Council. |
| statute | An Act of Parliament. |
| sub judice | Under consideration or awaiting consideration by a court of law. A convention with certain exceptions whereby members do not debate matters that are pending in a court of record. |
| substantive motion | A self-contained proposal submitted for the approval of the House and drafted in such a way as to be capable of expressing a decision of the House. |
| Supply Bill | A Bill required under the <i>Financial Management Act 2006</i> , to make interim provision of money from the Consolidated Account so as to guarantee appropriation until such time as the appropriation Bills are passed. In its broadest expression a supply Bill will include all proposed Bills which, if passed, allow the government to appropriate moneys from the Consolidated Account for recurrent and capital expenditure. |
| suspension of sitting | When the Presiding Officer vacates the Chair, the proceedings of the House or the committee are suspended. It is possible for the suspension to be for either a fixed time or an indefinite period i.e. 'until the ringing of the bells'. |
| Table of the House | The Table in the centre of the Chamber on which are formally laid all documents required by statute or order of the House to be laid upon the Table. The Clerk's Table should be regarded as part of the Table of the House. |
| tabling | The formal presentation of papers to the House. |
| terms of reference | The precise description of the subject to be investigated by a standing committee, select committee or other inquiry. |
| title of a Bill | The long title is known as the title of a Bill. |

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| Usher of the Black Rod | This officer is the personal attendant upon the Crown's representative, the Governor. It is a ceremonial position steeped in tradition dating back to the reign of King Henry VIII in the sixteenth century. This officer is responsible for the maintenance of order in the Legislative Council. Upon instruction of the President the Usher has the power to arrest any member found guilty of a breach of privilege or other offence against the rules of the Council. |
| Votes and Proceedings | The official record of the proceedings of the Legislative Assembly. |
| Votes and Proceedings bound volumes | The Votes and Proceeding bound volumes contain the minutes and notice papers of both Houses. |
| whip | The members chosen by the government and the opposition to act as marshal for their respective groups. Arrangements for pairs are made through the whips and it is usual for the whips to be appointed as tellers during divisions. |