

Western Australia Parliamentary Chronicle July 2007 to August 2008

Liz Kerr and Harry Phillips*

The last fourteen months of the 37th Parliament in Western Australia was marked by a level of controversy and the announcement of an early election to be held on 6 September 2008. Highlights included the findings of a number of parliamentary committees, the reports of the Corruption and Crime Commission (CCC) with some of its recommendations being questioned by the Parliamentary Inspector of the CCC. Once again the lobbying activities of former Labor Premier Brian Burke and Minister Julian Grill, together with former Liberal Party Senator Noel Crichton-Browne featured in the controversy, and in the 12 months to August 2008 there were three changes of leadership in the Opposition Liberal Party, as the party suffered from internal divisions and indiscretions. Meanwhile the State's booming economy, which provided excellent indices in terms of growth, employment and investment, led observers to believe that the incumbent Labor Government would be returned to office. The major 'one vote one value' redistribution in 2007 contributed to this view as it gave more seats to metropolitan Perth in the Legislative Assembly which appeared to make it difficult for the Liberal and Nationals, historically the stronger parties in the country regions. The redistribution, however, gave rise to further tensions within the parties over pre-selections, leading to a spate of resignations and an increase in independent members, whose numbers had swelled from two to seven since the February 2005 election. A serious gas explosion on the North West shelf in early June 2008, high international oil prices and a bear stock market combined to further change the economic and political climate. At the same time there was debate about the reporting of politics in Western Australia with Premier Alan Carpenter and senior Minister Jim McGinty directly criticising *The West Australian* newspaper and in McGinty's case,

* Clerk Assistant, Legislative Assembly, Parliament of Western Australia; and Parliamentary Fellow, Western Australian Parliament; Honorary Professor, Edith Cowan University; Adjunct Professor Curtin University of Technology.

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excluding the paper from the list of organisations to receive media alerts. In the first half of 2008 the newspaper faced and survived a board challenge led by local media magnate Kerry Stokes.

Parliament and Privilege

The lobbyist Julian Grill was summoned to the Bar of the Legislative Assembly on 14 August 2007 to apologise for his role in leaking a confidential parliamentary committee report. Knowledge of Grill's actions had been revealed by the CCC whilst undertaking an investigation into the activities of the lobbyist's business partner Brian Burke. Before his scheduled appearance Grill wrote to all members of the Assembly urging them to refer the case back to the Procedures and Privileges Committee (PPC) or to grant him leave to give a wider explanation in the Parliament. Grill was led into the chamber by the Sergeant-at-Arms before a packed gallery of media, supporters and bemused onlookers, and became the first person to be called before the Bar of the House. Before rendering an apology, which he said was undertaken with 'a heavy heart', Grill unsuccessfully sought the permission of Speaker Fred Riebeling to speak on the substantive matters. The Speaker then, at the behest of the House, withdrew Grill's access to Parliament House and the facilities previously extended to him as a former member. The historic occasion did not conclude until Liberal MLA Matt Birney (Kalgoorlie) failed in a motion to suspend the Standing Orders to permit Grill to explain his actions. Birney argued that a level of natural justice was 'vital in maintaining the good standing and integrity of the Parliament'.

Further revelations from the CCC provided the impetus for the establishment in March 2007 of a Select Committee of Privilege by the Legislative Council to inquire into and report on whether there had been any unauthorised disclosures of the deliberations of its Standing Committee on Estimates and Financial Relations Operations (SCEFO). The alleged leak related to a proposed inquiry into the State's iron-ore industry. The Select Committee, chaired by Murray Criddle (National), and including Barry House (Liberal) and Adele Farina (Labor), presented a substantial report of some 500 pages (tabled on 13 November 2007). The report reflected the Committee's frustration at 'the unclear and inadequate' penalties of the *Parliamentary Privileges Act 1891*. It received national attention and was variously described as a 'bombshell' and a 'page-turner'. A number of findings of breaches of privilege and contempt of Parliament were made against a range of persons in what became known in the media as the 'Leaks to Lobbyists Affair'. Interesting aspects of the inquiry were that all hearings were conducted in private, counsel assisting was used to question witnesses in some of the hearings, and the Select Committee was provided with telephone intercepts and other audio surveillance evidence gathered by the CCC. Perhaps the most controversial of the Select Committee's recommendations was that consideration be given to two Members of the Legislative Council, Shelley Archer (ALP) and Anthony Fels (Lib), and a number

of other witnesses being prosecuted for providing false evidence to the Select Committee.

Throughout November and December 2007 the Select Committee's report was the subject of heated debate in the Legislative Council which extended to the Assembly, where motions were passed 'without dissent', that Shelley Archer and Anthony Fels were not fit and proper persons to be Members of Parliament. The President of the Council, Hon Nick Griffiths, ruled that the subsequent messages received from the Assembly in relation to the motions were out of order in that they offended the principles of comity between the two Houses and that the use of the words 'without dissent' was without precedent and was 'grossly inappropriate'. Despite the Premier's calls for the Members (one from each of the two main political parties) to be expelled from the Parliament, the Council instead accepted the penalties recommended by the Select Committee, being: a verbal apology to the House by both Members standing in their place; the banning of both from parliamentary committees for the remainder of the session; and compulsory training for the two Members on parliamentary privilege. Archer was then expelled from the Labor Party, which resulted in the Government effectively losing their legislative majority, which it had held with the Greens (WA), in the Council.

The Council also ordered lobbyists Brian Burke, Noel Crichton-Browne and Julian Grill to provide unreserved written apologies to the House for their role in the 'Leaks to Lobbyists Affair', but of the three only Burke complied in full, while Crichton-Browne provided a 'reserved' apology and Grill, through his lawyers, refused to provide any form of apology. Consequently, the Council's PPC recommended that Burke's apology be accepted and that no further action be taken against Crichton-Browne. However, in the case of Grill, the House resolved to admonish him in writing for his grave contempt, indefinitely revoke his rights enjoyed as a former member, and exclude him from Parliament's grounds for the duration of the Parliament. June 2008 saw the creation of another Legislative Council Select Committee into the *Appropriateness of Powers and Penalties for Breaches of Parliamentary Privilege and Contempts of Parliament*. This Committee, clearly established as a result of the previous Committee's frustrations in relation to the limited range of penalties that it could recommend, was expected to report in September 2008.

Crime and Corruption Commission (CCC) and Parliamentary Inspector McCusker

The 37th Parliament was the first to be fully covered by the relatively new *Corruption and Crime Commission Act 2003* (the Act). Section 40 of the Act provides for a Parliamentary Inspector, who has, among other things, the power to audit the operations of the CCC for the purpose of monitoring compliance with the laws of the State, to deal with matters of misconduct on the part of the CCC, and to assess the effectiveness and appropriateness of the CCC's procedures. A 'war of

words' (and reports) that erupted in 2007 between the Parliamentary Inspector, Malcolm McCusker and the CCC's Commissioner Len Roberts-Smith, accelerated in the period under review, with the scope of the Inspector's audit role a point of contention. McCusker had exercised his role as Parliamentary Inspector in relation to John D'Orazio in mid 2007, when the CCC reported on the newly Independent MLA for Ballajura's involvement in its investigation labelled '*Inappropriate Association*' between WA Police Officers and Pasquale Minniti. An embargoed copy of the report, which adversely referred to D'Orazio, had been leaked to the press in June 2007 through the office of the then Opposition Leader Paul Omodei. McCusker commented on the practices of the CCC in a July 2007 report, in particular the CCC's procedure of releasing 'embargoed' copies of its reports and of the need to provide adequate time for persons adversely affected to respond. Essentially ignoring McCusker's concerns, the CCC later claimed in a 21 December 2007 report that D'Orazio, as the Police and Justice Minister, had acted inappropriately by talking and meeting with Minniti about problems he was having with two speeding fines with which Minniti had offered to 'help'. On 7 April 2008 the disagreements between McCusker and Roberts-Smith continued, when the former reported on the CCC's opinion of 'inappropriate conduct' by MLA John D'Orazio, and concluded that 'the CCC lacked the power or justification to express that opinion, and also that there was no reasonable basis for it'. Meanwhile, on 18 March 2008 independent barrister Gail Archer presented her Review of the *Corruption and Crime Commission Act 2003* to the Parliament, in which she recommended, among other things, strengthening the agency's powers in relation to organised crime.

One of the CCC's hallmark investigations emanated from its receipt of an allegation in late 2005 concerning funding irregularities in a Busselton Shire Council election. The subsequent public hearings into a proposed Smiths Beach Development at Yallingup led to the activities of Burke, Grill and Crichton-Browne being widely publicised and in addition to the matters discussed earlier (and as previously reported in the Spring 2007 edition of this publication), Labor Ministers Norm Marlborough, Tony McRae and John Bowler lost their Cabinet posts in the 'fallout'. When the CCC tabled its report on the Smiths Beach affair on 5 October 2007, allegations of misconduct were made against a number of public officers, but the then Deputy Liberal Leader Troy Buswell, who had earlier had questions raised about a meeting he had in the parliamentary car park with Crichton-Browne, was given a 'clean bill of health'. Those accused of misconduct (in addition to former Minister Norm Marlborough) were Mike Allen from the Department for Planning and Infrastructure (DPI), Dr Wally Cox, Chairman of the Environmental Protection Authority (EPA), Paul Frewer, Deputy Director of DPI and Mark Brabazon, from the Department of Environment and Conservation. Busselton Shire Councillors Phillipa Reid, Anne Ryan and John Triplett were also named, prompting the CCC to recommend that the Department of Local Government and Regional Development review its election donation disclosure regime, introduce a uniform code of conduct and develop appropriate mechanisms to enable the suspension of a councillor

subject to an investigation pertaining to misconduct. On the recommendation of the CCC, the Director General of the DPI commissioned an investigation into the actions of Frewer and Allen and released the results early in February 2008, which in both cases found 'no breach of discipline' had occurred. On 8 February the Parliamentary Inspector's Report on the CCC's findings pertaining to Paul Frewer was released in which the Inspector said 'there was no justification' for finding Frewer guilty of misconduct, nor for recommending that a 'relevant authority' consider taking action against him. A month later, on 7 March 2008, McCusker was again critical of the CCC's procedures, suggesting it should publicly acknowledge that it was in error in finding that Mr Allen was guilty of misconduct. Following McCusker's findings, both Frewer and Allen were successful (under Standing Order 114 of the Legislative Assembly) in having a response to what they perceived as 'adverse comments' incorporated into *Hansard* on 3 April and 15 May 2008 respectively. Interestingly, McCusker had a similar response tabled in the Assembly on 27 November 2007 as did the lobbyist Noel Crichton-Browne on 19 June 2008. The McCusker request had arisen from a 22 November 2007 Question Without Notice from National MLA Max Trenordern, who asked the Premier whether he would institute an inquiry into the role McCusker had played as counsel for Cazaly Resources, which was implicated in the 'Leaks to Lobbyists Affair'.

Earlier in February 2008, the Director General of the Department of Agriculture, Ian Longson, cleared Dr Wally Cox of any breach of the Public Sector code of ethics in relation to the CCC claim that he should not have attended a lunch with Julian Grill and Brian Burke while the aforementioned Smith's Beach application was before the EPA. The Longson view was that the application was not before Cox or the EPA board at the time of the lunch. Subsequently, Cox requested the Supreme Court expunge the CCC findings against him from the Smiths Beach report and expressed the view that Longson's findings should be attached to the CCC Report. At the time of writing the Supreme Court had reserved its judgement on the matter.

Another controversial CCC investigation centred on an assessment as to whether misconduct by the high profile Dr Neale Fong, Director General of the Department of Health, occurred with regard to any and all communications with Brian Burke. The CCC's 25 January 2008 report included five specific recommendations, three dealing with Dr Fong and the other two related to the dissemination of official information and material to other agencies, and a suggested review of government handling of email communications. It was recommended that consideration be given to disciplinary action against Dr Fong for 'his misleading representation' regarding email communications with Brian Burke, and action was also sought against Dr Fong for his failure to report the disclosure to him by Burke of what the latter claimed to be confidential information from Cabinet. Significantly, the CCC recommended that the Director of Public Prosecutions (DPP) consider the prosecution of Dr Fong in respect of the disclosure to Burke of a restricted matter concerning Michael Moodie (a former Health Chief). Fong had, contrary to section 167 of the CCC Act, allegedly disclosed information to Burke relating to whether

Moodie was being investigated by the CCC. Dr Fong resigned in January 2008 as Director General of Health, but retained his Chairmanship of the WA Football Commission and his role as Chaplain of the West Coast Eagles Football Club. The DPP, Robert Cock, announced on 5 June 2008 that Fong would not be prosecuted, which ignited a public debate about the wisdom of his decision. Cock's explanation was that Fong had suffered enough by losing his job as the country's highest paid public servant and in Cock's view a prosecution would not disclose any further inappropriate action.

Also in June 2008 Liberal MLA John McGrath and two Labor Party MLAs, the colourful John Quigley and his colleague Ben Wyatt emerged as the mystery members under scrutiny by the CCC for allegations of misconduct. However, when a CCC report was tabled in the Assembly on 3 June 2008 by the Procedure and Privileges Committee, it cleared Quigley and Wyatt of misconduct in their dealings with Brian Burke as members of the Public Accounts Committee, and also cleared McGrath of misconduct for his dealings with Burke and Grill in relation to his Road Safety portfolio.

Political Parties

The troubled waters for several parliamentarians were not limited to CCC findings and at one stage the media coined the term 'yuck-factor' to describe incidents that called into question the behaviour of some prominent Members of Parliament. In early January 2008 the then Deputy Leader of the Liberal Party Troy Buswell faced allegations that in October 2007 he snapped open the bra-strap of a Labor staff member as he performed a 'party-trick' in the Speaker's chambers during a late night sitting of the House. Notwithstanding Buswell's actions, moves were afoot within the party to oust Paul Omodei, who had consistently rated poorly in the polls throughout his two year tenure as Leader, and replace him with Buswell, who was considered a talented parliamentary performer in spite of his antics. A spill motion on 17 January 2008 saw Buswell defeat Shadow Justice Spokesperson Rob Johnson by 17 votes to 10 following Omodei's last minute decision to withdraw from the contest. Prior to the meeting Carine Liberal MLA Katie Hodson-Thomas announced she would leave politics at the forthcoming election, citing inappropriate remarks from Buswell as one reason behind her decision and a notable absentee from the ballot was Nedlands MLA Sue Walker, who had become increasingly isolated within the party, and who refused to answer calls around the time of the leadership meeting. This culminated in Walker's announcement in early February to resign from the party and run as an Independent at the next election.

News of Buswell's win was overshadowed when it emerged that the Liberal Party whip MLA Trevor Sprigg had died suddenly on the morning of the meeting after returning early from a family holiday to attend the ballot. Sprigg, a prominent former footballer, was first elected to the lower House seat of Murdoch in February 2005, and was succeeded by former public prosecutor and law lecturer Christian

Porter (37), son of the former Liberal Party Director Chilla Porter, at the 23 February by-election. Porter assumed the shadow Attorney General Portfolio from newly independent Sue Walker, and was considered a strong opponent to veteran parliamentary performer and Labor Party heavyweight Jim McGinty.

Before Buswell's 'honeymoon' as Leader was over, further allegations emerged that he had 'sniffed the chair' of a Liberal Party staff member in 2005. Buswell eventually admitted this had taken place in a 'jocular moment' and on 5 May 2008 survived a further spill motion while Dr Graham Jacobs, the new Liberal Party whip, led the public criticism of his leader. Then a third spill motion on 17 June was again survived by Buswell with senior party figures Rob Johnson and Graham Jacobs retreating to the backbench. One key issue in the June spill had been Buswell's continuing support for Shadow Cabinet Minister John McGrath, who as previously mentioned had been the subject of a CCC inquiry and was proven to have had links with Brian Burke. Liberal MLC Anthony Fels, who had lost his shadow cabinet position following the 'Leaks to Lobbyists Affair', was also public with his criticism of Buswell. Both Fels and Paul Omodei were to resign from the Liberal Party after Fels was denied pre-selection and Omodei failed to gain a winnable position on the Liberal ticket for the South West region, a contest which had revealed party tensions with appeals necessary before the ticket was finalised. Meanwhile in May 2008 the State Liberal Party Director Mark Neehan resigned his post to assume a similar position in New South Wales and in July Ben Morton was named as his replacement.

Former Deputy Liberal Leader Dan Barron-Sullivan resigned from the party in February 2008 after indicating in October 2007 that he would not contest the next election after his lower House seat was redistributed out of existence. A strident opponent of the introduction of 'one vote one value' legislation, Sullivan made it clear he could no longer abide the policy direction of the Liberal Party, in particular citing its contemplation of support for the Government's plans to relax the laws on retail trading hours, despite the negative referendum result of 2005. In a surprise move in June 2008, he announced he would lead the newly formed WAFamilyFirst.com party, an off-shoot of its federal counterpart with some support stemming from former parliamentarians with links to the Labor, Liberal and One Nation parties.

The Labor Party had its share of pre-selection problems when in May 2008 Premier Carpenter unveiled his 'dream-team' for the forthcoming election, made up of a hand-picked mixture of high profile figures including the Premier's Chief of Staff Rita Saffiotti and Channel Seven news-reader Reece Whitby, with both choices upsetting sitting members Jaye Radisich and John D'Orazio respectively. Radisich had failed in her bid to secure the new seat of West Swan, which went to Saffiotti, and subsequently signaled her intention to retire at the next election. Former Minister John D'Orazio forced his way back into the party (and the caucus) in April before resigning in June 2008 to run as an Independent in the seat of Morley against Whitby. Other sitting Labor members not to survive the pre-selection process

included MLCs Sheila Mills and Batong Vu Pham, who in November 2007 became the State's first member of Vietnamese origin while recovering from the effects of serious illness, only to be given an un-winnable position on the party list for the East-Metropolitan Region for the next election. Former Minister and MLA Bob Kucera resigned from the Labor Party in June after failing to gain pre-selection for the seat of Mount Lawley. After initially threatening to contest the next election as an Independent, Kucera eventually decided to retire from politics altogether.

With the Premier forced to defend his pre-selection strategy, allegations emerged in May 2008 that in 2004 he had 'lifted the shirt' of parliamentary colleague Jaye Radisich at a Labor Party function, a claim he vehemently denied but which Ms Radisich would neither confirm nor deny. Energy Minister Fran Logan was also in the spotlight in May for making a suggestion in 2005 to a female staffer that she may wish to engage in a 'threesome', a comment he claimed was made in jest. Another troublesome moment for the government arose from Education Minister Mark McGowan's April gaffe in calling D'Orazio 'the worst ethnic branch-stacker in the history of the Labor Party in Western Australia'. This resulted in a protracted debate in the Assembly with the Minister apologising for his assertion.

The Nationals were the perhaps the only political party not affected by CCC investigations or party scandals, and under the youthful leadership of Brendan Grylls had developed a 'balance of power' strategy in both the lower and upper Houses, hoping to highlight their 'royalties to regions' policy. The decision of former leader Max Trenorden to accept the number one National Party position for the Agricultural Region in the Council enabled Grylls to contest the newly established Central Wheatbelt seat in the Legislative Assembly. Other incumbents Terry Waldron (Wagin), Terry Redman (Blackwood-Stirling), and Grant Woodhams (Moore) all had good prospects of electoral victory and the resignation of MLC Murray Criddle in January 2008 enabled party President Wendy Duncan to assume a Legislative Council Agricultural Region seat before seeking to win a Mining and Pastoral Region seat at the September 2009 election.

The two Greens (WA) MLCs, Giz Watson and Paul Llewellyn, whose votes were often critical to the passage of the Labor Government's legislation, maintained their hectic work loads. One instance when the Greens failed to gain any support in the Chamber occurred when the Private Member's Bill they tabled to ban uranium mining was defeated by a 26 to 2 vote. Nevertheless the Greens took every opportunity to promote the national debate on climate change, which had been given focus with Professor Ross Garnaut's February 2008 interim report on strategies for Australia to reduce greenhouse gas emissions. Garnaut, educated in WA, was the Rudd Government's chief advisor on climate change.

Redistribution and proportional representation (PR)

The electoral map for Western Australian changed significantly in 2007 as a consequence of the redistribution of the districts and regions following the passage in 2005 of the hard fought 'one vote one value' legislation. On 29 June 2007 the proposed boundaries were published by the Electoral Commissioners with the understanding that such boundaries were the main draft from which it was unlikely there would be substantial changes. As predicted there were now to be 42 (up from 34) metropolitan districts and 17 (down from 23) country districts in the Legislative Assembly, which had been increased from 57 to 59 seats. With some modifications the final boundaries were published on 29 October 2007 for an election expected at that juncture in early 2009. As provided in the legislation a similar timetable for redistribution would be undertaken two years after the next election, and unless there were fundamental changes to the law it could be postulated that it would result in only minimal changes to the boundaries. Employing the final October 2007 boundaries, the ABC's election analyst Antony Green undertook an examination of the proposals on behalf of the Western Australian Parliamentary Library. According to Green the return for Labor at the next election, based on its 2005 two-party preferred vote of 53.2 per cent, would be 38 seats against 21 for the combined 'forces of conservatism', which included two independents. For Labor to lose its majority of nine notional seats would require a uniform swing of some 5 per cent, yet it needed to be recognised that such notional calculations included figures in seats that were not previously but may now be regarded as marginal. The new Legislative Council also increased in size from 34 to 36 seats, with all regions now electing six MLCs. There were to be 18 metropolitan and 18 non-metropolitan seats and as analyst Green again pointed out the vote weighting remained unchanged with the ratio of average enrolment in the non-metropolitan to the metropolitan seats being 2.9 to 1.00. However, there were changes to average enrolments per MLC in non-metropolitan regions, falling 27 per cent for each seat in the Agricultural Region and 5 per cent in the Mining and Pastoral Region, but increasing by 18 per cent in the South West Region. Unusually in the Agricultural Region there were now six MLCs compared to only five contiguous Assembly districts.

Another change to the electoral law for the Council was an amendment to the proportional representation (PR) voting formula. For the next election the Weighted Inclusive Gregory Method would be used rather than the Inclusive Gregory Method of PR, which had also been the Senate formula since 1984. Following a Standing Committee on Environment and Public Affairs Report on the Local Government Amendment Bill 2006 (with Liberal Party dissent) a decision was also made to implement the Weighted Inclusive Gregory Method of PR for multi-member wards in the State's 144 local government authorities, where for single member wards the preference (or alternative vote) was instituted. These changes meant the abolition of the use of plurality (or first past the post) which had been the voting system since 1995 and in addition, local government elections were now to be conducted biennially in October rather than May.

Parliamentary Committees

The period to August 2008 saw much activity for the Parliament's committees. Apart from its inquiries into matters of privilege, the Legislative Assembly's PPC conducted a review of its Standing Committee System and of the potential for the introduction of an e-petition system, both of which were tabled in the period under review. Some of the key reports for the Assembly's Standing Committees included the Public Accounts Committee's report on its *Inquiry into Funding Arrangements for Western Australian Infrastructure Projects*. The report, tabled on 15 May 2008, included a number of recommendations principally focused on improving revenue sharing arrangements between the Commonwealth and State Governments. The Community Development and Justice Standing Committee finalised its *Inquiry into the Prosecution of Assaults and Sexual Offences*, tabled in the Assembly on 10 April 2008. The Inquiry's Terms of Reference prohibited the Committee from identifying 'any individual who had not faced trial, directly as a result of the Department of Public Prosecution's decision not to prosecute, whether or not any such individual [had] been charged and [was] currently before the court on any criminal matter.' Consequently, the Committee conducted closed hearings with both legal professionals and service providers and afforded that same protection from identification to victims who provided evidence to the Committee.

During 2007-2008 the Assembly's Economics and Industry Standing Committee (EISC) produced a discussion paper and two major reports. The discussion paper, tabled in November 2007 and titled *Used Oil Recovery and Recycling in Western Australia*, covered the significant stockpile of waste oil in storage tanks in North Fremantle and Kwinana, the declining market for used oil as burner fuel in power generation, and the possibility of inappropriate disposal of used oil. The EISC's first major report of the year, *Water Licensing and Services*, tabled in February 2008, was the result of an inquiry referred to the Committee by the Legislative Assembly in October 2007 and its second major report into the *Karrinyup Lakes Lifestyle Village* was tabled on 19 June 2008.

The Education and Health Standing Committee (EHSC) completed six reports in the period under review, the most recent being Report No. 13, *Ways Forward - Beyond The Blame Game: Some Successful Initiatives In Remote Indigenous Communities In WA*, tabled on 15 May 2008. The Committee's original Discussion Paper, *Where from, where to?* published in April 2007, was intended to provide a preliminary account of the history of remote indigenous communities in Western Australia and of the major changes taking place at all levels of government concerning Indigenous Affairs. Following from that paper the Committee tabled a range of related reports including, *Initiatives in the Remote Indigenous Communities of Cape York* on 21 June 2007, *A Successful Initiative — Family Income Management*, tabled on 29 November 2007 and *Initiatives in the Remote Indigenous Communities of the Torres Strait Region*, tabled on 4 February 2008. On 6 September 2007 the EHSC tabled a substantial report on its *Inquiry into the*

Cause and Extent of Lead Pollution in the Esperance Area. The Committee was referred the inquiry following community concerns after an estimated 9,000 bird deaths in the region that were believed to be the result of lead pollution caused by the transport of lead concentrate to, and handling through, the Port of Esperance. The Committee was particularly concerned that this lead pollution had found its way into the blood of some Esperance community members, including children, and after an extensive review, made some 192 findings and 46 recommendations. The report highlighted in great detail the sequence of events, making it clear through the findings how the pollution came about, and provided a clear direction to Government as to the changes the Committee viewed as essential to ensure that such events never occur again.

In the Legislative Council, the Standing Committee on Public Administration tabled an interim report on its inquiry into the governance of water resources in Western Australia and in August 2007 a Committee representative attended the World Water Week conference in Sweden, the theme of which was *Progress and Prospects on Water: Striving for Sustainability in a Changing World*. The Committee reported on the *Management of Asbestos Containing Materials in Western Australian State Schools* in June 2008 and at the time of writing had commenced a controversial inquiry into grievance procedures in the offices of statutory office-holders. The Standing Committee on Environment and Public Affairs inquired into an unusual petition relating to the alleged forced organ harvesting and illegal detention of Falun Gong practitioners in China. The Committee received evidence and held a private hearing, but formed the view that the matters raised in the petition and the remedies sought were matters more properly addressed to the Commonwealth Government. The Standing Committee on Legislation conducted inquiries into two controversial Bills during this period in particular its October 2007 report on the Acts Amendment (Consent to Medical Treatment) Bill 2006, which dealt with 'living wills' and advance health directives. In November 2007 the Committee commenced an inquiry into the Surrogacy Bill 2007, a bill with the purpose of regulating and giving legal recognition to certain kinds of surrogacy arrangements. The Committee tabled its report on this bill on 8 May 2008 and was continuing its review of and hearings into the *Jurisdiction and Operation of the State Administrative Tribunal* at the end of the period under review.

On 28 June 2007 the Council had referred to the Standing Committee on Estimates and Financial Operations an inquiry into the ill-fated Balga Works Program (BWP), a program for disadvantaged youth that had operated out of the Balga Senior High School with Department of Education and Training funding. The Committee reported in May 2008 and incorporated a raft of recommendations including that 'the Government reimburse all former employees of the Balga Works Program, who can demonstrate their claims for outstanding wages and superannuation'. This Committee also conducted inquiries into the 2007-08 budget papers in the form of ongoing hearings throughout the year and intensive hearings on 28 May 2008.

A further Select Committee was created in the Legislative Council to inquire into and report on all circumstances surrounding the police raid on *The Sunday Times* newspaper on 30 April 2008. The police raided the offices of the newspaper following a Cabinet leak that saw details of the Government's plan to increase its advertising budget by \$16 million splashed across that paper's front page. At the time of writing the Committee had held various hearings, some in private, to the frustration of assembled press, but was yet to report to the House. The Uniform Legislation and Statutes Review Committee continued its prolific reporting, tabling a total of eight reports covering 11 bills in the six-month period to June 2008 and continued its inquiry into the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations. Amongst the bills standing referred to the Committee at prorogation was the Statutes (Repeals and Minor Amendments) Bill 2008 (a type of bill commonly referred to as an 'omnibus bill'). The Committee was conducting a broader separate inquiry into the Purpose and Process of Statutes Repeals and Minor Amendments Bills, examining how omnibus bills can be more effectively scrutinised and dealt with by the House. The Joint Standing Committee on Delegated Legislation, which reviews subsidiary legislation including rules, local laws and by-laws (making it one of the busiest committees of the Parliament) hosted a seminar for all Members of Parliament titled 'Subsidiary Legislation and the Interpretation Act 1984...as clear as mud?' on 15 May 2008 and tabled two reports in relation to particular regulations over the six-month period to June 2008.

Key Legislation

There were a range of controversial and important pieces of legislation introduced in the period under review. Not all made it through the process before the Parliament was prorogued on 7 August 2008. It was anticipated however, that if the government was returned on 6 September 2008, some of those which lapsed would be re-introduced, meaning the potential for a repeat of some of the drawn out debates on the more controversial bills.

The Acts Amendment (Consent to Medical Treatment) Bill 2006, also known as the 'living wills bill', was assented to on 19 June 2008 and was intended to give people certainty when dealing with end of life issues, enabling terminally ill people to govern their medical treatment while protecting medical professionals who adhere to patients' wishes. While the Government did not purport to support euthanasia, it was considered that terminally ill people deserve the right to die with dignity and have their wishes about medical treatment respected. The Acts Amendment (Assaults on Police Officers) Bill 2008 was introduced early in the year with the purpose of amending two Acts in a number of respects such that minimum mandatory sentences be introduced for offences of serious assault on police and other public officers. The bill lapsed in the Legislative Assembly on prorogation of the Session. Another bill to lapse on prorogation was the Lobbying Disclosure and Accountability Bill 2007, introduced on 17 October 2007 by Dr Elizabeth Constable MLA, the Independent Member for Churchlands. Dr Constable's bill was

designed to ensure openness and accountability of professional lobbying activities and was directed at Members of Parliament, ministerial staff and other public officials in Western Australia and was intended to replace the Premier's lobbyists' register, established in the wake of the CCC's revelations.

The Children and Community Services Amendment (Reporting Sexual Abuse of Children) Bill 2007, assented to on 19 June 2008, was controversial legislation which required all teachers, directors, nurses and police officers to report suspected child sexual abuse. Another controversial legislative measure was the Prostitution Amendment Bill 2007, which the Legislative Council passed on a conscience vote of 14-13 on 1 April 2008, with disgruntled MLC and former Labor Party member Shelly Archer giving her crucial vote to the government. However, in early May 2008 the upper House failed to pass the government's Human Reproductive Technology Amendment Bill 2007, with a 18-15 conscience vote with Archer on this occasion voting against the bill.

Perhaps one of the most controversial bills to have missed passing the Houses by a matter of days was the Surrogacy Bill 2007, which provided for the regulation of surrogacy arrangements and for the parentage of children born as a result of those arrangements. The bill lapsed after the Legislative Council, which had read it for a third and final time, returned it to the Assembly with amendments on 26 June 2008, which as it transpired, was the final sitting day of the 37th Parliament.

Justice

On 31 July 2007 the CCC began what was expected to be several months of public hearings and deliberations over the wrongful conviction and jailing for 12 years of Andrew Mallard for the murder of Mosman Park jeweller Pamela Lawrence. Twice Mallard had unsuccessfully appealed against his conviction in the WA Courts before it was quashed by the High Court in September 2005. At least five senior police, parliamentarian John Quigley (who was instrumental in the Mallard fight for justice) and officers from the Office of the DPP were expected to come under the microscope. After warnings from CCC lawyer Jeremy Gormly that a raft of serious findings could be made, the Police Union President Mike Dean warned Police Commissioner Karl O'Callaghan of the need for the police officers under scrutiny to be given a 'fair go'. The Police Commissioner was again in the spotlight when senior officer Jack Lee publicly revealed that barrister Lloyd Rayney was the prime suspect for the August 2007 murder of his wife Corryn Rayney, a Supreme Court Registrar, and it was widely considered that Rayney was being denied the presumption of innocence. Inadequate procedures were admitted by O'Callaghan in a review of the case against Dante Arthurs, who was found guilty of the 2006 murder of young school girl Sofia Rodriguez-Urrutia-Shu. Then, just before Christmas 2007, the Commissioner was forced to issue a humbling apology to the Mickelberg brothers who were seeking an ex-gratia payment over their wrongful imprisonment for the 1982 Perth-Mint 'swindle'.

There was much public discussion about the merits of a Human Rights Act which Attorney General Jim McGinty had drafted and for which he provided scope for public submissions to an Advisory Committee headed by Fred Chaney, a former federal parliamentarian. However, with the election of the Rudd Labor Government in November 2007 the issue was given national consideration as the Labor platform had called for public consultation about the merits of a national legislative Charter of Rights. According to a submission by the Aboriginal Legal Service the proposed draft provided grossly inadequate protection to indigenous people.

Indigenous Affairs

The Federal Government's late June 2007 intervention (instigated by then Prime Minister John Howard and Indigenous Affairs Minister Mal Brough) to address 'the national emergency' of alcohol-fuelled sexual abuse of children in some 60 remote communities in the Northern Territory continued to cause friction between the tiers of government. Moreover, State Coroner Alistair Hope's early October 2007 investigation into at least 23 drug and alcohol related deaths in the Kimberley suggested that many indigenous people continued to live in atrocious conditions with poor health and high imprisonment rates. Prominent lawyer John Hammond, representing indigenous families in the region, regarded the situation as an indictment on the State Government. Statements by Hope and Hammond helped force the parliamentary tabling of a functional review by Dr Dawn Casey titled *Report of the Review of Indigenous Affairs* and three reports by Governor John Sanderson, the State Government's Special Advisor on Indigenous Affairs from September 2006. Sanderson's reported view was that the Federal Government should apologise to indigenous Australians as he believed the first step to redemption was confession. He also sought changes to the Department of Indigenous Affairs and a form of regional government to ensure that indigenous people were included in developing and implementing policies. Premier Carpenter was cool on the regional government concept and before long tension between the Government and Sanderson emerged. Eventually it became clear that Sanderson's role was unlikely to be extended into a further term of the Labor Government.

Another controversial issue was the call for an inquiry into why financially poor indigenous communities had been denied any hotel profits from the Fitzroy Crossing Trust in which they had a stake. Further, football legend Percy Johnson and one time ATSIC Chair Lionel Quartermaine expressed frustration that Health Minister Jim McGinty had not responded adequately to their concerns about child sex abuse and domestic violence at Fitzroy Crossing. Mining and Pastoral MLC Shelley Archer and Labor MLA Tom Stephens both called for a research project to assess the impact of a six month State Government ban on almost all take away alcohol at Fitzroy Crossing.

Local Government and Sports Stadium

The 2007 local government elections were conducted on the third Saturday in October as required by the 2006 legislation. There was much conjecture about whether the change from plurality voting to the preference (alternative) vote in single wards, and proportional representation in multi-member wards would create voter confusion. However, the low informal rate of 1.2 per cent indicated that electors recognised the similarity of the formulas with State and Federal elections and while the statewide turnout was 33.8 per cent, with higher figures in country areas, postal voting again proved popular. One mayoral contest which created particular interest was for the City of Perth, where Councillors Lisa Scaffidi, Michael Sutherland, Max Kay and two outside chances Bill Bradbury and Neil McKinnon nominated for the poll. In the end it was Scaffidi with her strong business connections who made history by becoming the first woman to gain the post. After 12 years with Peter Natrass as Lord Mayor, Scaffidi was keen to erase the capital's tag as 'Dullsville'.

The Local Government [Rules of Conduct] Regulations 2007 (the rules) signaled the adoption of a system for dealing with complaints of improper behaviour by local government elected members. Previously the only way to deal with misconduct of individual councillors was to suspend the entire council. As required by the legislation, a three person Standards Panel was created to deal with complaints of minor breaches of the rules and during the lead-up to the local government elections pressure to resign had mounted on the three aforementioned Busselton Shire councillors named in the CCC's Smith's Beach Inquiry. However, at that stage no sanctions could be imposed against them. In late October 2007, former City of Stirling Mayor, Adam Spagnolo, who had faced criminal charges after a 2005 CCC inquiry into the workings of the City of Bayswater, had the last charge against him withdrawn by the DPP. Meanwhile, with a Western Australian Local Government Association (WALGA) Sustainability Study indicating that 58 per cent of WA's 144 local councils were experiencing financial stress, there was (in mid 2008) public consideration given to legislation to create Super-councils to enable existing councils to voluntarily have some services performed on a regional scale.

In late May 2008 a grand plan to build six island hubs at Fremantle's North Quay was launched, and although the plan was backed by some leading investors Premier Carpenter did not give his imprimatur to the concept. Debate also surrounded the State Government's Perth Foreshore Plan, with Lord Mayor Scaffidi indicating that some of the Council's reservations reflected community concerns. On 18 December 2007 debate about the construction of a world class 60,000 seat stadium at either Kitchener Park (Subiaco) or East Perth was given focus in a day long summit between a team of government officials and football executives including Australian Football League (AFL) Chief Executive Officer Andrew Demetriou. Sport and Recreation Minister John Kobelke was keen to achieve an outcome and it was initially reported that a deal had been reached whereby: the WA Football

Commission (Football) gave in-principle approval to hand back the lease on Subiaco Oval; the State Government would underwrite Football's income at the new stadium; and the new stadium would be governed by an independent trust appointed by the State Government to ensure the interests of all sports were maintained, with Football the priority tenant. Yet within a few days doubts about 'the deal' were circulated, particularly in relation to the status and clarity of a two page document headed *Agreed Principles between the WA Government, the AFL and the WA Football Commission*. This included 15 principles which varied from the five included in an earlier communiqué.

Budget, Health and Education

Some early provision for the stadium was made in the State Budget which was delivered on 8 May 2008 five days ahead of the Federal Budget with the announcement of a substantial \$26 billion dollar capital works program. Some taxation relief was included to combat concern about house prices and despite a forecast economic growth figure of 6.25 per cent and a surplus of just over \$2 billion, State debt was expected to more than double over the next four years, sparking Opposition and Chamber of Commerce and Industry concern. Treasurer Eric Ripper was reminded that by 2011-12, the State's GST grants were forecast to decline to \$3.3 billion, notwithstanding solid growth in the national GST pool over this period and mooted changes to specific purpose grants.

An explosion on 3 June 2008 at the Apache Varanus Island gas processing plant in the North-West had posed a threat to some 30 per cent of the State's gas supply being delivered via the 1,530 km Dampier to Bunbury pipeline. A fortnight later Premier Carpenter made a television appeal to the public to reduce power consumption, but was soon under pressure to explain how the Government would avoid a repetition. With the Opposition floating the need for a Royal Commission, besieged Energy Minister Fran Logan indicated that as a first step the National Offshore Petroleum Safety Authority would make an inspection and prepare a report on the situation. At the time of writing the report had not been delivered.

The Government's decision to delay by over six months the release of former Curtin University Vice Chancellor Lance Twomey's \$480,000 blueprint for the education and training teaching workforce was controversial. A major recommendation was 'an immediate and significant' rise in teaching salaries to address the chronic shortage of teachers. However, by the time the report was released in late June 2008 the protracted pay dispute between the State School Teacher's Union (SSTU) and the Government had again gone to the Industrial Relations Commission with the union threatening to delay the introduction of some new Year 11 courses in 2009. There were earlier newspaper reports that the SSTU elections had resulted in the union becoming dominated by critics of Outcomes Based Education. Nevertheless the Curriculum Council had managed to counter many of the major objections to several of the subjects for tertiary entrance. In

February 2008 the SSTU conducted a half day strike as part of their campaign for higher wages, while a body of teachers maintained their refusal, despite a blunt threat of deregistration by Minister Mark McGowan, to pay a compulsory \$70 dollar fee for the Western Australian College of Teaching. Earlier, Opposition Education Spokesperson Peter Collier sought a new scale of rewards, particularly for established teachers. Yet to come was the impact of Federal Education Minister Julia Gillard's forecast of a national school curriculum covering Years 1 to 12 by 2010, together with the distribution of computers to Australian schools as committed in the 2007 Federal election campaign.

Health matters were central in the Federal election campaign and a re-elected Howard Government was prepared to fund 40 per cent of each State's health system in return for them agreeing to establish community boards for each of Australia's 750 public hospitals. Labor's plan was to seek State co-operation with the possibility of a referendum for the Federal government to gain health powers if their objectives, particularly with emergency clinics, were not achieved. The State's flagship Fiona Stanley Hospital was reported to be \$700 million above budget and (again) there was much criticism of Health Department Chief Neil Fong, who on a high salary of some \$600,000 per annum, had engaged a range of highly paid consultants. Many senior executives had left the Health Department since Dr Fong had taken over in June 2004.

Environmental matters, particularly climate change, figured prominently in the Federal election campaign and in July 2007 the State Water Resources Minister John Kobelke limited Perth's 165,000 backyard bore owners' sprinkler use to three times a week, while Greens (WA) MPs thought bores should be licensed, metered with charges for consumption. An important element of the Government's water strategy had been the opening of a desalination plant at Kwinana in November 2006, some 25 kilometres south of Perth. Then in May 2007 Premier Carpenter announced the State Government's intention to build WA's second seawater desalination plant. In August the Geraldton Iron Ore Alliance expressed concern that the State Government had set a precedent which placed flora before mining and could lead to widespread mining bans in the Mid-West. On the other hand in late December 2007, much to the chagrin of environmentalists, the Government announced that the State had underwritten a new \$500 million dollar coal fired power station in Collie.

Accountability Agencies

Concerns about the claims of declining standards of accountability led Greens (WA) MLC Giz Watson to seek the creation of a second Commission on Government. After an extensive debate the motion was supported on 25 October 2007 by the Liberal and National Party members in the Legislative Council. However, Labor MLCs rejected the initiative broadly claiming that the establishment of the CCC was enough to ensure good governance. A raft of criticisms were

directed at the Government over its refusal to release a number of reports and its plans to give Freedom of Information (FOI) decision powers to the State Administrative Tribunal. Darryl Wookey, the Acting FOI Commissioner for four years, made it publicly clear that she did not support the move as it would add another layer to the FOI process, delay decisions and be more costly for applicants. By November, the new acting Commissioner to replace Wookey was John Lightowers, a career public servant from the Department of the Premier and Cabinet.

Of some comfort for the Government was Auditor General Colin Murphy's confidential report in late November 2007 that due process had been followed when Alan Piper (a former Director General of Justice) was awarded a multi-million dollar contract to oversee the Fiona Stanley Hospital project. Murphy's findings followed Health Director General Neale Fong's request of the CCC to investigate how *The West Australian* newspaper became aware of revised upward budget estimates for the Fiona Stanley Hospital. Of continuing concern to the Under-Treasurer Tim Marney, highlighted by the Auditor General in June, were the budget blow-outs and delays associated with the Office of Shared Services. One widely praised initiative was the late December announcement of a massive \$73 million dollar injection into arts sector funding.

Condolences

Sir Charles Court, former Premier of Western Australia (1974-1982) and driving force in the State's industrial boom of the 1960s, died on 22 December 2007 at the age of 96. In October 2007 Kim Beazley senior's death was mourned as was the sudden death in November of respected political journalist Matt Price, the day after the Federal election. In January 2008, as previously mentioned, the Member for Murdoch, Trevor Sprigg who had entered the Parliament in 2005 died suddenly. Former MLA Robert (Bob) Bloffwitch, the Member for Geraldton between 1991 and 2001, died in January 2008 following a long illness. Then in March 2008, Fred McKenzie, a popular Labor Member of the Legislative Council from 1997 until 1993, also passed away. On 27 May 2008 Phillip Pental, who served a total of 23 years in the Parliament, 13 in the Legislative Council before making the transition to the Assembly, died suddenly. The condolence motions in both Houses were long, exemplifying Pental's integrity and commitment to the history of the Parliament. Upon retirement Pental had been made a Parliamentary Fellow and had been a key contributor to a number of publications focussing on the history of the Western Australian Parliament. ▲