

SHIRE OF BROOMEHILL–TAMBELLUP REMOVAL OF REFUSE, RUBBISH AND DISUSED MATERIALS LOCAL LAW 2012 — DISALLOWANCE

Motion

Pursuant to standing order 66(3), the following motion by Hon Sally Talbot was moved pro forma on 18 September —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the Shire of Broomehill–Tambellup Removal of Refuse, Rubbish and Disused Materials Local Law 2012 published in the *Government Gazette* on 6 July 2012 and tabled in the Legislative Council on 14 August 2012 under the Local Government Act 1995, be and is hereby disallowed.

HON SALLY TALBOT (South West) [9.38 pm]: This is one of the seven disallowance motions moved by the Joint Standing Committee on Delegated Legislation in this place based on the same issue, which is noncompliance with section 3.12 of the Local Government Act. I tabled this report on 27 September, and my tabling statement basically followed the same format as other tabling statements on this issue. Therefore, I do not intend to canvass at any length the points made in that statement. However, I refer honourable members to the report, which is the fifty-seventh report by the Joint Standing Committee on Delegated Legislation. The issue in this report is the noncompliance of the shire with the sequence in which local governments have to allow the minister to check what they are doing and to publicise the details of the local law in the *Government Gazette*. I draw the attention of honourable members to paragraphs 3.3 and 3.4 —

The Statutory Procedures Checklist for the City’s Local Law indicated that Statewide public notice was published in The West Australian on 2 May 2012 with the Minister sent a copy of the proposed Instrument and a copy of the Statewide public notice on 26 April 2012. This was received by the Department of Local Government on 30 April 2012.

The committee wrote to the shire to check that that sequence was correct. Honourable members will find at appendix 2 the letter from the shire, which reads —

In response to your letter of 20 August Council wishes to confirm that the notice to the Minister advising of Councils intention to create the above local law was posted six days before the state wide public notice of 02 May 2012.

Clearly, the council was not in compliance with the requirements of the act. At paragraph 5.4, members will find the following —

Therefore, as the process outlined in section 3.12(3)(b) of the Act has not been followed correctly, the Committee has formed the view that the Local Law is invalid and capable of disallowance.

As I said, the committee has made this finding on several occasions now; I think we are up to about the tenth or eleventh occasion. Members will find reported in paragraph 6.3 —

Sequential errors result in significant resources and rate payer money being expended by local governments to make laws which are ultimately found to be invalid and of no legal effect.

We found that local governments on the whole were unaware of the requirements of section 3.12. The committee has come up with a new term, which is “substantial compliance”. That indicates that the committee is not unhappy with the outcome of the process, but it is unhappy that the requirements of the act are likely to be found to be overly prescriptive. They need to be fixed. We have been talking about this now for many, many months. The minister has said that he is prepared to look at the fix, but we have not found it yet. Until we do, these disallowance motions will continue to be brought forward in this house.

I understand that this has broad support by members on both sides of the house, as it certainly did in the committee because it was a unanimous report.

HON ROBYN McSWEENEY (South West — Minister for Child Protection) [9.42 pm]: The government agrees with the committee’s conclusion and supports the committee’s recommendation that this local law be disallowed. The committee concluded that this local law was invalid due to the Shire of Broomehill–Tambellup not correctly following the lawmaking practices set out in the Local Government Act.

HON ROBIN CHAPPLE (Mining and Pastoral) [9.43 pm]: The Greens will support the motion. Having served on the Joint Standing Committee on Delegated Legislation for some considerable time, it seems to be a problem that has been going on for many years. The problem with the ability for shires to follow prescribed directions has been going on, as far as I am aware, for virtually the last 10 years. I do not know what we can do to assist local government in doing the right thing. I am sure that Hon Sally Talbot and other committee

Extract from *Hansard*

[COUNCIL — Tuesday, 27 November 2012]

p8954b-8955a

Hon Dr Sally Talbot; Hon Robyn McSweeney; Hon Robin Chapple; Hon Kate Doust

members would be aware that quite often the Council gets delegated legislation from one shire in the name of another. I just hope local government could be assisted to have a much more rigorous process.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [9:43 pm]: After having listened to Hon Sally Talbot explain the committee's position, the opposition will agree to the disallowance.

Question put and passed.