

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Forty-seventh Report — “Shire of Kellerberrin Parking and Parking Facilities Local Laws 2011” — Tabling

HON SALLY TALBOT (South West) [10.29 am]: I am directed to present the forty-seventh report of the Joint Standing Committee on Delegated Legislation in relation to the Shire of Kellerberrin Parking and Parking Facilities Local Laws 2011.

[See paper 4477.]

The PRESIDENT: Does the member wish to make a statement under standing order 189?

Hon SALLY TALBOT: I have a further report to table and I will make a statement after I have tabled the second report.

Forty-eighth Report — “Town of Kwinana Extractive Industries Local Law 2011” — Tabling

HON SALLY TALBOT (South West) [10.30 am]: I am directed to present the forty-eighth report of the Joint Standing Committee on Delegated Legislation in relation to the Town of Kwinana Extractive Industries Local Law 2011.

[See paper 4478.]

Hon SALLY TALBOT: The Joint Standing Committee on Delegated Legislation recommends that the house disallow these two local laws because they have not followed the mandatory procedure to make a local law prescribed in the Local Government Act 1995. The committee has found itself in the position of having to recommend the disallowance of these local laws based on the noncompliance with steps in the section 3.12 procedure, with the Town of Kwinana being out of order by six days and the Shire of Kellerberrin by two and a half weeks.

The committee understands that these time frames are relatively minor in the overall process of making a local law, but the wording of section 3.12(1) is clear: if the procedure is not completed in the correct order, the local law will not be valid. This is the point at which the committee steps in to bring the house’s attention to its concerns with the wording of section 3.12. When the committee first scrutinised these two local laws at the end of 2011, it found that the steps in section 3.12 of the Local Government Act 1995 were not completed in the correct sequence. Section 3.12 of the act explicitly states that a local government must follow the procedure described in this section in the sequence in which it is described. When the steps are completed out of order, the resulting local law is invalid and will be outside the power contained in the Local Government Act 1995 to make that local law.

The committee has previously recommended the disallowance of a local law that was also invalid, albeit for a different reason, and these two local laws raise the same issues of invalidity. The effect of a local law being invalid means that it did not ever validly exist in law, but this committee’s role is to not only consider technical legal issues with regard to local laws. In this case, the committee is also recommending that these invalid local laws be disallowed so that they are removed from the public record and no person may inadvertently rely on a law that does not legally exist.

The committee has resolved to also recommend to the house that the Minister for Local Government amend the wording of section 3.12 to provide for flexibility in circumstances in which there is no adverse impact on the integrity of a local law. The committee feels constrained to have to recommend disallowance of a local law that has not strictly followed the section 3.12 steps even though this contravention has not resulted in any damage or adverse impact on any relevant stakeholder. The committee considers that the insertion of an element of flexibility or discretion in the procedure in section 3.12 would add to the act’s workability while still maintaining the integrity of the local law-making process. In the case of the Town of Kwinana’s local law —

[Member’s time expired.]

Hon SALLY TALBOT: May I have a very short extension, please, Mr President; or may I table this piece of paper?

The PRESIDENT: The member seeks leave to table the remainder of that statement.

Leave granted. [See paper 4480.]

Forty-ninth Report — “Annual Report 2011” — Tabling

HON SALLY TALBOT (South West) [10.34 am]: I am directed to present the forty-ninth report of the Joint Standing Committee on Delegated Legislation in relation to the “Annual Report 2011”.

[See paper 4479.]

The PRESIDENT: Does the member wish to exercise her right to make a short statement?

Hon SALLY TALBOT: I do, which I will read a little more quickly than the previous one!

The Joint Standing Committee on Delegated Legislation tabled its “Annual Report 2011”, which outlines committee activities in 2011 and comments on issues arising from the committee’s deliberations. The committee scrutinises a large volume of delegated legislation. In 2011, the committee was referred 601 disallowable instruments, including 370 regulations and 130 local laws or by-laws.

The committee continues to spend a significant amount of its time considering fees and charges imposed by subsidiary legislation to ensure that fees and charges are authorised and do not over-recover the cost of providing the relevant service. The committee has notified ministers that departments and agencies need to develop robust costing systems and that fee increases in 2012 will be closely scrutinised.

The committee remains concerned about issues arising from delegated legislation adopting or, as it is usually termed, “calling up” standards published by Standards Australia. It is an important principle that people have a right to know the law that they are obliged to comply with. Unlike acts and subsidiary legislation accessible at no cost on the internet, members of the public have limited access to standards. The committee recommends that the government requires departments, agencies and local governments to advise on their internet site where standards called up in subsidiary legislation can be accessed at no cost.

Finally, as I commented before in my statement on the committee’s forty-seventh and forty-eighth reports, the committee takes issue with the strict terms of section 3.12 of the Local Government Act 1995. On many occasions, local governments have substantially, but not strictly, complied with the procedures for making local laws set out in section 3.12. In such cases, even when the technical noncompliance does not impact on the integrity of the law, the committee has no option but to recommend that the local law be disallowed. This unnecessarily impacts on committee, Parliament and local government time and resources. The committee awaits the government’s response to its recommendation in the forty-eighth report that the Minister for Local Government amend the Local Government Act 1995 to provide for flexibility in section 3.12 in circumstances in which there is no adverse impact on the integrity of the local law. I commend this report to the house.