

CITY OF GOSNELLS WASTE LOCAL LAW 2011 — DISALLOWANCE

Motion

Pursuant to standing order 152(b), the following motion by Hon Sally Talbot was moved pro forma on 18 October —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the City of Gosnells Waste Local Law 2011 published in the *Government Gazette* on 22 July 2011 and tabled in the Legislative Council on 10 August 2011 under the Waste Avoidance and Resource Recovery Act 2007 be and is hereby disallowed.

HON SALLY TALBOT (South West) [3.30 pm]: Earlier today, members will have noticed that I tabled the forty-sixth report of the Joint Standing Committee on Delegated Legislation entitled, “City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011”. The report recommends that those two local laws be disallowed. Although I understand the tradition in the other place is that members of the Joint Standing Committee on Delegated Legislation speak at some length on these reports, I will speak only very briefly. I ask the house to support the disallowance motion and I will give the reasons for that.

The committee was of the view that although the two local government authorities had obviously made considerable efforts to comply with the Waste Avoidance and Resource Recovery Act provisions to enact local laws for their waste collection and recycling services, they had gone somewhat over the top. The committee was able to take up a couple of concerns with these two local government authorities. Those concerns are documented in some detail in the report, so I will refer to them only very briefly. One concern was to do with the precise definition of waste; it is much easier to refer to material as “waste” rather than “material” because that can give rise to some confusion. I think it is also helpful if local government authorities refer to “local governments” rather than to “cities” or “shires” as that, too, can give rise to some confusion. We had no difficulty in rectifying those aspects in a very cooperative way. However, some considerable concern was expressed about the nature of the penalties that had been applied under the WARR act. For the sake of honourable members who perhaps do not take as close an interest in things to do with waste as I do, and as the other members of the delegated legislation committee are rapidly learning to do, I will just give a very brief —

Hon Kate Doust: We do on the environment committee.

Hon SALLY TALBOT: As Hon Kate Doust says, the Standing Committee on Environment and Public Affairs also takes these things very seriously.

I will just give honourable members a very brief flavour of the sorts of things that gave rise to the committee’s concerns and have led the committee to submit this report that supports the argument for disallowance. The act provides for fines of up to \$5 000, but it is up to local government authorities to then adapt provisions for local use. What we found in connection with the City of Gosnells was that a person who fails to keep the lid of their garbage bin closed is potentially subject to a fine of \$75. That seemed to us to be a little unreasonable for several reasons, not the least being that one frequently arrives home to find that the lid of one’s bin has been either left open by the people who emptied it or perhaps has been opened by other nefarious passersby with who knows what intent.

Hon Alison Xamon: Or the wind!

Hon SALLY TALBOT: Or, as Hon Alison Xamon says, by the wind. Therefore, the committee felt that a fine of \$75 for such an offence was perhaps a little on the strong side.

We found that someone indicted on the offence of having their rubbish bin visible from the road could be subject to the full \$5 000 fine. Obviously, there are occasions when one might want to take action against somebody who leaves their bin in a very inconvenient place. We held a public hearing with the City of Gosnells and that is on the record. Anybody who wants to look at the transcript of that will find that we had a very, very amicable discussion with the City of Gosnells about some of these things. Clearly, their intentions were very fine, but there was a bit of slippage between the intent and the way in which they drafted the local law. We felt that it is a bit over the top to charge someone \$5 000 for leaving their bin within sightline of the street.

These local laws also made it an offence to mark a bin. Clearly, everybody wants to protect property and we do not want bins vandalised and destroyed. However, if a child paints a wicket on the side of a rubbish bin and uses it as a wicket, it is a little heavy-handed to subject the owner of the bin to a \$5 000 fine. The local laws contained a variety of other things like this. The report does not mention any sort of insidious motives of the City of Gosnells. Clearly, the council’s motives were pure; it wants to avoid fly infestations and the like. The intentions were good, but we felt that there were some problems in the actual implementation of those provisions.

When it came to the Shire of Derby–West Kimberley, we found that no penalty notices would be issued; everybody would be subject to the maximum amount of the fines. Again, we thought that was a problem. Therefore, this report proposes that the two local laws should be disallowed.

I want to make an additional observation about something that is the subject of a bit of mystery to me. We have things called model local laws. In the case of the Department of Environment and Conservation there are two model local laws. I know that one relates to cemeteries and I think that the other relates to dogs; I am not absolutely certain of that, but it is something like that. These model laws are disallowable instruments. When they are finalised, they are gazetted and come before Parliament as disallowable instruments. Indeed, I noted that witnesses at the hearings walked in with files marked “Local Waste Model Law”. But this is not a model law. I understand that it is at the discretion of the Director General of the Department of Environment and Conservation whether such a law is gazetted as a local law.

For some reason, in the case of the waste laws, the decision has been made that it is not to be gazetted as local law. In fact, it is a pro forma law. My feeling is that that has led to some degree of confusion; local governments that sit down to draft their local laws assume that they are working with a model law. Certainly, some people were taken a bit by surprise when they were asked to appear before the delegated legislation committee to address these points. I do not know why the decision has been made to not have a waste local model law. It seems to me to be a prime candidate for such a device. However, I understand that a new draft is in process with the Western Australian Local Government Association and DEC. Perhaps, when that is finalised, the decision will be made about whether that will be a model law or a pro forma law. I shall pursue this as that draft gets closer to conclusion. I strongly suggest that the government gives consideration to asking the director general to explain why it should not be a model law, because that would clarify things quite considerably.

I commend the recommendations of the report to the house and I hope that members will support the Joint Standing Committee on Delegated Legislation in disallowing these two local laws.

The DEPUTY PRESIDENT (Hon Jon Ford): I should make the point that we are dealing with the disallowance of just one local law, and that is order of the day 1, City of Gosnells Waste Local Law 2011.

Hon SALLY TALBOT: I am sorry, Mr Deputy President. Perhaps I should explain my confusion. The report that I tabled this morning talks about two local laws and makes two recommendations. So I may have got that wrong, in which case I apologise.

The DEPUTY PRESIDENT: That is okay. I just merely make the point to the house.

HON ALYSSA HAYDEN (East Metropolitan) [3.40 pm]: As one of the members of the Joint Standing Committee on Delegated Legislation, I would like to stand briefly to support the speech that Hon Sally Talbot has just made and ask that this house support the recommendations in this report from the delegated legislation committee.

The City of Gosnells is in my electorate, so I have to say I was a bit hesitant at first to look at disallowing its request. However, once we had a chance to review what the City of Gosnells was planning to put through, it was obvious to every member of the committee that the City of Gosnells might have crossed some boundaries in putting forward its gazettal. One of the offences that the City of Gosnells was proposing to bring in was having the bin visible from the street. As people who have driven through the City of Gosnells would know, many of the homes do not have a garage with a roller door; they have a carport. It is not always possible for owners and tenants to tuck the bin behind a pillar so that it is not visible from the street. The committee felt that a \$5 000 penalty was maybe a little steep for having the bin visible from the street. The other offence that the City of Gosnells was proposing to bring in was leaving the bin lid open, and leaving the bin dirty. People put rubbish in the bin. The bin is always going to be dirty. To what level it can be dirty is something that was not explained. The committee found that people might be fined for committing offences for things that were beyond their control. My bin was collected today. When the bin was put down, the lid was flipped open. If this local law had passed through, obviously if I were a ranger I would be driving behind the garbage truck that was picking up the rubbish and giving out a fine for every bin that had the lid open. These were the things that unfortunately the City of Gosnells had put up. When the officers from the City of Gosnells came to our hearing, they were a little shocked, because the reasons behind what they were attempting to do were legitimate. They had issues of magpies pulling rubbish out of bins; and, in summer, they had flies breeding in the bins. So the city was looking at the issue from a hazard and health point of view, but it has forgotten, unfortunately, the human aspect to it all.

On that note—I said I would be brief—I would like to commend the report to the house and ask members to support the disallowance motion.

HON ROBIN CHAPPLE (Mining and Pastoral) [3.44 pm]: The Greens (WA) will obviously be supporting this disallowance motion, but I want to raise a couple of points, if I can. Certainly *Government Gazette* 139, City of Gosnells Waste Local Law 2011, and *Government Gazette* 174, Shire of Derby/West Kimberley Waste

Services Local Law 2011, in my view were in some regards ultra vires the principal act. Did the committee inquire into whether the local government authority or the Department of Local Government had done any evaluation of these local laws before they were even gazetted? One of the issues that I think the committee has suffered from for a long time is matters like this coming before the committee that could have been picked up by the Department of Local Government. I felt, as both members who have spoken previously have said, that the issue about thoroughly cleaning a rubbish bin is an interesting one. How do we keep a rubbish bin thoroughly clean?

The issues around the prescriptive nature of many of the clauses were indeed quite onerous on the community. For some of the rural blocks in the Kimberley, it might be difficult to ascertain whether the bins are visible and stored in a manner that is suitable at all times. Having said that, I do not know if the minister or the committee could articulate whether the Department of Local Government made any comment before the matter reached the committee.

HON ROBYN MCSWEENEY (South West — Minister for Child Protection) [3.45 pm]: We support the committee's recommendation that the City of Gosnells local law 2011 be disallowed. Given that the committee has also identified issues regarding —

The DEPUTY PRESIDENT: Order, members. I am sorry, minister. Your microphone is not on and there are three or four conversations occurring. Perhaps members can make an extra effort to be quiet.

Hon ROBYN MCSWEENEY: We are going to allow the local law 2011 to be disallowed. That is about all I need to say. There you go: short and to the point!

The DEPUTY PRESIDENT: The important part was recorded.

Question put and passed.