

41ST PARLIAMENT



Report 5

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Annual Report 2023

Presented by

Mr Geoff Baker MLA (Chair)

and

Hon Lorna Harper MLC (Deputy Chair)

April 2024

Joint Standing Committee on Delegated Legislation

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Mr Stuart Aubrey MLA

Hon Stephen Pratt MLC

Dr Katrina Stratton MLA (until 21 February 2023)

Mr Paul Lilburne MLA (from 21 February 2023)

Hon Lorna Harper MLC (Deputy Chair)

Hon Steve Martin MLC

Hon Martin Pritchard MLC

Ms Christine Tonkin MLA (until 29 June 2023)

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EXECUTIVE SUMMARY

Introduction

- 1 This report summarises the work of the Joint Standing Committee on Delegated Legislation (Committee) between 1 January 2023 and 31 December 2023 (Reporting Period).
- 2 The Committee's role is to scrutinise, on behalf of the Parliament, instruments made under statutory delegation by:
 - the Governor in Executive Council
 - Ministers
 - statutory bodies
 - local governments.
- 3 The Committee determines whether instruments are beyond the scope of the delegated power or are otherwise in breach of the Committee's terms of reference.¹

Committee activities

Scrutiny of delegated legislation

- 4 The Committee continues to scrutinise a large volume of delegated legislation.
- 5 In the Reporting Period, the Committee considered 324 instruments, including 148 regulations and 88 local laws.
- 6 Motions for the disallowance of delegated legislation usually do not proceed in the Parliament if the Committee receives satisfactory undertakings to amend the instrument. The Committee only recommends an instrument be disallowed as a last resort.
- 7 During the Reporting Period, the Committee received one departmental (Ministerial) and 38 local government undertakings.
- 8 The Committee tabled one report in the Parliament, recommending the disallowance of the *City of Gosnells Bush Fire Brigade Local Law 2023*. The Legislative Council followed the Committee's recommendation and disallowed this local law.

Other activities

- 9 The Committee participated in a Local Laws Working Group meeting on 4 May 2023.
- 10 The Committee also worked with the Department of Premier and Cabinet (DPC) to update Premier's Circular 2021/07 (now 2023/01).

Issues relating to regulations

- 11 The *Electricity Access Code Amendments 2023* ensured that the regulation of covered networks can facilitate critical, priority transmission network investments in a timely manner.
- 12 The changes facilitated a more flexible approach to the 'regulatory test'. This is an assessment by the Economic Regulation Authority to determine whether a proposed major network expansion maximises net benefits for those who generate, transport and consume electricity on the network. The regulatory test does not apply to projects specified to be

¹ The Committee's terms of reference appear on the back inside cover of this report.

'priority projects' identified through a Whole-of-System Plan (WOSP). A WOSP also identifies efficient network expansions that meets energy users' future needs.

- 13 The changes enabled the State Government to assess whether the power system can support a range of new information (such as meeting decarbonisation targets) without waiting for the next WOSP (due by 30 September 2025).
- 14 There is no specific provision in the *Electricity Industry Act 2004* authorising the *Electricity Networks Access Code 2004* (Code) to provide for a priority project determination. However, the Committee found this was authorised by a more general subsidiary legislation making provision.
- 15 The Committee also found that a new section should have been located elsewhere in the Code. The Minister for Energy undertook to move the section to a more appropriate position in the Code.

Issues relating to local laws

- 16 The Committee requested and obtained 38 undertakings from local governments to amend their local laws. This was a significant increase from previous years.
- 17 Ten of the undertakings sought the repeal of the relevant local laws in their entirety due to the significant number and extent of issues they contained.

1 Introduction

Overview

- 1.1 This report outlines the work of the Joint Standing Committee on Delegated Legislation (Committee) between 1 January and 31 December 2023 (Reporting Period). It discusses some of the instruments considered by the Committee and comments on significant issues arising from the Committee's scrutiny of delegated legislation.
- 1.2 The Committee holds a standing referral from the Legislative Assembly and Legislative Council to consider instruments of delegated legislation published in the Government *Gazette* or on the Western Australian Legislation website.² Like its predecessors, the Committee in this 41st Parliament considers only:
 - instruments that are subject to parliamentary disallowance³
 - instruments noted by an individual Member.
- 1.3 The majority of instruments the Committee considered in this Reporting Period were regulations made by the Governor in Executive Council. Others include local laws made by local governments, court rules, by-laws, planning schemes, orders, notices, plans and other variously-named instruments made by a range of persons or bodies.

Terms of reference

- 1.4 The Committee's Terms of Reference (TOR) are listed on the back inside cover of this report. They were adopted by the Parliament on 25 May 2021, when the Committee was established.⁴
- 1.5 The Committee operates under the Standing Orders of the Legislative Council.⁵
- 1.6 The Committee determines whether instruments are beyond the scope of the delegated power or are otherwise in breach of its TOR.

Committee members

- 1.7 The Committee had two changes of membership during the Reporting Period:
 - Dr Katrina Stratton was a member of the Committee until 21 February 2023 and was replaced by Paul Lilburne who joined the Committee on 21 February 2023.
 - Christine Tonkin was a member of the Committee until 29 June 2023 and was replaced by Magenta Marshall who joined the Committee on 10 August 2023.
- 1.8 The current Committee membership is noted on the front inside cover of this report.

² Either under section 41(1)(a) of the *Interpretation Act 1984* or another written law: Term of Reference 10.5: [Standing Orders of the Legislative Council](#), schedule 1, cl 10.5. The Western Australian Legislation website can be viewed [here](#), accessed 6 December 2023.

³ Pursuant to section 42 of the *Interpretation Act 1984* or another written law.

⁴ Hon Sue Ellery MLC, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)* 25 May 2021, pp 670-1.

⁵ [Standing Orders of the Legislative Council](#), schedule 1, cl 10.5.

Figure 1. *Committee members in 2023*



Back Row: Hon Martin Pritchard MLC, Hon Steve Martin MLC, Mr Stuart Aubrey MLA, Mr Paul Lilburne MLA

Front Row: Mrs Magenta Marshall MLA, Mr Geoff Baker MLA (Chair), Hon Lorna Harper MLC (Deputy Chair), Hon Stephen Pratt MLC

Committee process

- 1.9 When the Committee has questions about an instrument, it writes to the relevant Minister or local government President or Mayor, requesting further information to assist its examination. In many instances, the responses received address the Committee's questions and no further action is required.
- 1.10 When the Committee forms the view that a clause or clauses in an instrument offend its TOR, it usually seeks an undertaking from the responsible Minister or local government to amend or repeal the instrument.
- 1.11 The Committee normally requires the responsible Minister or local government to undertake to amend or repeal the instrument within six months of the date of the undertaking. The Committee monitors whether undertakings have been fulfilled within the agreed timeframe.
- 1.12 It is often necessary for the Committee to give notice of a motion to disallow an instrument in the Legislative Council.⁶ This gives time for agencies to answer questions or give undertakings on the instrument. Notice must be given within 14 sitting days after the instrument is tabled in the Parliament.⁷
- 1.13 Notices of motion to disallow an instrument in the Legislative Council:
 - protect Parliament's right to disallow the instrument if the Committee recommends disallowance
 - provide the Committee with additional time to scrutinise the instrument and possibly obtain further information.

⁶ The Legislative Council has procedures for dealing with motions for disallowance, including motions placed by the Committee: refer to [Standing Orders of the Legislative Council](#), standing order 67.

⁷ [Interpretation Act 1984](#), s 42. Note that other Acts may provide for a different period during which Notices of Motion to disallow their delegated legislation may be given.

- 1.14 Most of these notices of motion⁸ are later discharged from the Legislative Council Notice Paper following receipt of satisfactory responses from Ministers or local governments.⁹
- 1.15 The Committee only recommends the disallowance of an instrument as a last resort, that is:
- where agreement cannot be reached
 - where the identified defect in the instrument cannot be cured without re-making it—for example, because statutory procedures for the making of the instrument were not followed.
- 1.16 In those cases, the Committee reports to the Parliament recommending the disallowance of all or part of the instrument.
- 1.17 The motion is then debated by the Legislative Council, which may vote to disallow the instrument.

Undertakings lists

- 1.18 The Committee posts two lists of undertakings on its webpage ([Delegated Legislation Committee](#)), namely:
- departmental undertakings (undertakings provided by Ministers, government departments, agencies and statutory authorities)
 - local government undertakings.
- 1.19 These lists inform stakeholders of issues the Committee has raised and assist officers in drafting delegated legislation. The local government undertakings list allows local governments and their advisers to identify systemic problems in local laws.

Acknowledgements

- 1.20 The Committee relies on the assistance provided by relevant Ministers, departments, statutory bodies and local governments in scrutinising a large volume of delegated legislation within time constraints. The Committee extends its appreciation to those Ministers and people who provided that assistance throughout the Reporting Period.
- 1.21 In particular, the Committee thanks the:
- Department of Local Government, Sport and Cultural Industries (DLGSC)¹⁰
 - Western Australian Local Government Association (WALGA).¹¹

2 Committee activities in 2023

Volume and nature of work

- 2.1 The Committee held 18 meetings in the Reporting Period.
- 2.2 Table 1 provides a breakdown of the Committee's activities in respect of instruments published in the *Government Gazette* and on the Western Australian Legislation website during the Reporting Period.

⁸ These notices of motion usually become motions to disallow on the third sitting day after they have been given: [Standing Orders of the Legislative Council](#), standing order 67(3).

⁹ The statistics relating to this practice are contained in Table 1 on page 4.

¹⁰ The DLGSC acts as a valuable filter in dealing with problematic local laws, resolving many issues before the local laws are formally made, gazetted and then referred to the Committee.

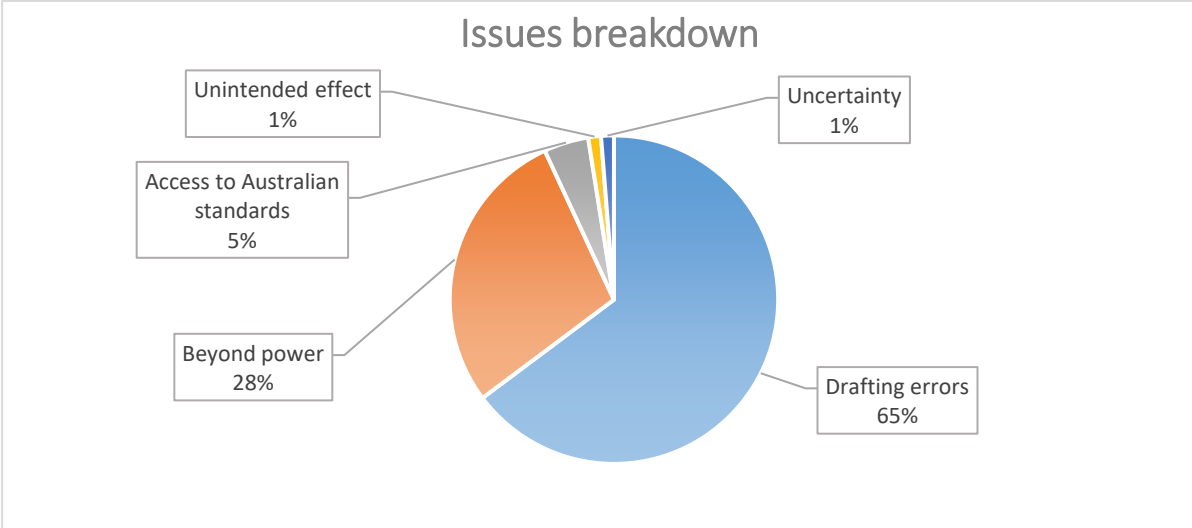
¹¹ WALGA is another valued source of local laws information and expertise for local governments.

Table 1. *The Committee’s work statistics for 2023*

Disallowable instruments published in the <i>Government Gazette</i> and on the Western Australian Legislation website and scrutinised by the Committee	324
• Regulations	148
• By-laws (made by the Executive)	7
• Local laws (made by local government)	88
• Rules	8
• Other instruments referred (including planning schemes, orders, codes, notices and plans)	73
Notices of motion for disallowance given	31
Motions to disallow discharged	32
Hearings held by the Committee	1
Instruments for which undertakings were provided to the Committee to amend the instrument	29
Instruments for which undertakings were provided to the Committee to repeal the instrument	10
Reports tabled	2
Disallowance reports tabled	1

2.3 Figure 2 displays information about the 39 instruments where undertakings were given to the Committee. It indicates the nature, number and frequency of issues the Committee considered. Some instruments (local laws) contained multiple issues.

Figure 2. *The nature, number and frequency of issues encountered by the Committee in 2023 where undertakings were provided*



2.4 The issues identified in Figure 2 are defined as follows:

- Unintended effect. Where an instrument has offended the Committee’s TOR 10.6(b), it has an unintended effect on any person’s existing rights or interests. This includes where an instrument attempts to erode fundamental common law rights such as personal liberty and proprietary rights.

- Access to Australian standards. Where an instrument incorporates Australian standards by reference, which become part of the law, but cannot be accessed by the public free of charge.¹²
- Beyond power. An instrument will be invalid if it is not authorised or contemplated by the empowering Act.
- Drafting errors. These can include—
 - typographical, grammatical or formatting errors
 - cross-referencing to the wrong clauses or schedules
 - clauses with missing text
 - other errors which make the clause difficult to understand.

Drafting issues

- 2.5 65 percent of the issues the Committee considered in 2023 related to drafting. This compares to 47 percent in 2022, 66 percent in 2021 and 70 percent in 2020.
- 2.6 Local laws contained most of the drafting issues.
- 2.7 Many of the drafting issues could have been avoided by local governments conducting thorough proofreading and cross-reference checks prior to publishing local laws.
- 2.8 Drafting issues also arise when local governments rely upon a local law of another district, without ensuring that:
- the Committee has not identified any issues in that local law
 - sufficient time has lapsed to ensure the Committee has scrutinised the precedent local law, noting that there is often a delay between local laws being published in the *Government Gazette* and the Committee finalising its scrutiny of a local law.

Committee reports

- 2.9 In the Reporting Period, the Committee presented the following reports to the Legislative Assembly and the Legislative Council:
- Report 3: *Annual Report 2022*, tabled in both Houses on 23 March 2023.
 - Report 4: *City of Gosnells Bush Fire Brigade Local Law 2023*, tabled in both Houses on 16 November 2023.
- 2.10 These reports can be viewed at [Delegated Legislation Committee](#) by choosing 'Reports'.

Undertakings

- 2.11 During the Reporting Period, the Committee received one departmental (Ministerial) and 28 local government undertakings. The lists of undertakings can be viewed at [Delegated Legislation Committee](#) and choosing 'Undertakings' and then 'Local Governments (Current)' and 'Government Departments and Agencies (Current)'.

Local Laws Working Group meeting

- 2.12 The Local Laws Working Group (Working Group) is hosted by the DLGSC and comprises representatives from a number of State and local government stakeholders. These include

¹² Joint Standing Committee on Delegated Legislation, report 84, [Access to Australian Standards adopted in delegated legislation](#), Western Australia, Legislative Council, 23 June 2016.

WALGA, Local Government Professionals WA, the Department of Health, the Department of Fire and Emergency Services and Committee members and staff.

- 2.13 The Working Group provides an opportunity for participants to discuss local law issues of concern, including issues raised in this report.
- 2.14 The Working Group met on 4 May 2023, having last met on 9 March 2022. As with past meetings, it provided a valuable forum to update participants on new developments and initiatives.
- 2.15 One practical outcome resulting from the Working Group was an update to the DLGSC website, giving the local government sector more information regarding:
- the confidentiality of Committee correspondence
 - adopted local laws being significantly different from those advertised by a local government.¹³
- 2.16 The Committee thanks the representatives of each of the bodies who attended the meeting and the DLGSC for hosting the meeting.

Subsidiary legislation now published on the Western Australian Legislation website

- 2.17 As of 1 July 2023, all subsidiary legislation drafted by Parliamentary Counsel's Office¹⁴ is published on the Western Australian Legislation website¹⁵ and no longer in the *Government Gazette*. This is because of the *Legislation Act 2021* and *Legislation Regulations 2023* coming into force.
- 2.18 Local laws are still published in the *Government Gazette*.

Update to Premier's Circular 2021/07

- 2.19 Premier's Circular, *Subsidiary legislation—explanatory memoranda* (Circular) directs delegated legislation makers to provide the Committee with the explanatory material it requires to perform its role.
- 2.20 The Department of Premier and Cabinet (DPC) reviewed the Circular following the commencement of the *Legislation Act 2021*. The suggested changes inserted references to the Western Australian Legislation website.
- 2.21 The Committee identified several other amendments to make the Circular clearer for agencies. These included:
- clarifying the provision of Explanatory Memoranda for amendments made by omnibus subsidiary legislation for instruments falling under the same Ministerial portfolio
 - inserting a definition of 'cross-subsidisation' to assist agencies to comply with cost recovery requirements.
- 2.22 The updated Premier's Circular 2023/01 was issued on 19 October 2023.¹⁶ The Committee extends its thanks and appreciation to DPC for incorporating its requested changes to the Circular.

¹³ Department of Local Government, Sport and Cultural Industries, *Local laws*, 2023, accessed 15 November 2023.

¹⁴ These include regulations made by the Governor, court rules, by-laws and orders.

¹⁵ [Western Australian Legislation](#).

¹⁶ [Premier's Circular 2023/01](#).

Template Waste Local Law amended

- 2.23 WALGA has template local laws in a ready-to-adopt and legislatively compliant format to assist local governments making their own local laws. They were reviewed by various former committees before their release.
- 2.24 On occasion, WALGA amends these template local laws following feedback from various sources, including from local governments, government agencies and the Committee.
- 2.25 WALGA requested the Committee's feedback on an amendment to its template waste local law, which proposed to insert a new clause governing building waste.
- 2.26 The Committee approved the new clause and advised WALGA of its decision.

3 Issues in regulations

- 3.1 The Committee found that regulations scrutinised in the Reporting Period were well drafted and had only minor issues, if any.

Electricity Networks Access Code Amendments 2023

- 3.2 The *Electricity Networks Access Code 2004* (Code) establishes a framework for third party access to electricity transmission and distribution networks. It promotes economically efficient investment in, and operation and use of, networks and services of networks in Western Australia.¹⁷
- 3.3 The *Electricity Access Code Amendments 2023* (Code Amendments) ensure that the regulation of covered networks can facilitate critical, priority transmission network investments in a timely manner. To enable this, the Code Amendments:
- expand the definition of a *Priority Project* in section 1.3 to include projects specified in a 'priority project determination' made by the Minister for Energy
 - establish a 'priority project determination' in sections 1.3 and 15.1A
 - require the Minister for Energy to provide reasons for such a determination in section 15.2A.
- 3.4 The changes facilitate a more flexible approach to the 'regulatory test' (an assessment by the Economic Regulation Authority to determine whether a proposed major network expansion maximises net benefits for those who generate, transport and consume electricity on the network). The regulatory test does not apply to projects specified to be 'priority projects' identified through a Whole-of-System Plan (WOSP), which also identifies efficient network expansions that meets energy users' future needs.
- 3.5 The changes enable the State Government to assess whether the power system can support a range of new information (such as meeting decarbonisation targets) without waiting for the next WOSP (due by 30 September 2025).
- 3.6 There is no specific provision in the *Electricity Industry Act 2004* authorising the Code to provide for a priority project determination. However, the Committee found this was authorised by either section 105(1)(d)(i) or (ii), which states:

105. Other matters for which Code may make provision

- (1) The Code may also make provision for or in relation to —

¹⁷ [Electricity Networks Access Code 2004, Introduction.](#)

- (d) the regulation of matters —
- (i) of a savings, transitional or supplementary nature;
 - (ii) that are otherwise necessary or convenient for the purposes of this Part.

- 3.7 The Committee regarded the Minister making a priority project determination as a supplementary means of ensuring that the regulation of covered networks can facilitate critical, priority transmission network investments in a timely manner. The changes are also a necessary and convenient method of promoting the full regulation of access to services.
- 3.8 The Committee also found that new section 15.1A should have been located elsewhere in the Code. This is because chapter 15 deals with transitional matters and section 15.1A is not transitional in nature.
- 3.9 The Minister for Energy undertook to move section 15.1A to a more appropriate position in the Code.

4 Issues in local laws

Cat local laws

Generally

- 4.1 The Committee reported its position on cat local laws that were inconsistent with the *Cat Act 2011* in its 2021 and 2022 Annual Reports.¹⁸ In the Reporting Period the Committee identified further cat local laws with this issue.
- 4.2 This is despite the DLGSC warning local governments that the Committee may request an undertaking to delete clauses that:
- ban cats from all public areas
 - place conditions on when a cat may be permitted in a public area
 - have the practical effect of limiting cats to their owner’s premises.
- 4.3 By checking the Committee’s [Local Government Undertakings list](#) and following the DLGSC’s advice, local governments can save time and cost by reducing the risk of their cat local laws being subject to undertakings.

Shire of Esperance Cat Local Law 2022

- 4.4 Clause 1.4 of the *Shire of Esperance Cat Local Law 2022* defined nuisance as follows:

Nuisance means behaviour that includes where a cat—

- (a) excretes or urinates on premises being premises where the cat is not normally resident;
- (b) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (c) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land;

¹⁸ Joint Standing Committee on Delegated Legislation, report 2, [Annual Report 2021](#), Western Australia, Legislative Council, June 2022, pp 9-10, and Joint Standing Committee on Delegated Legislation, report 3, [Annual Report 2022](#), Western Australia, Legislative Council, March 2023, pp 9-11.

- (d) interference which causes material damage to land or other property on the land affected by the interference; or
- (e) is, or is likely to be, injurious or dangerous to the health of any person or domestic or Australian indigenous animal.

4.5 Clause 2.2 governs nuisance cats. It states:

Cat not to be a nuisance

- (1) An owner shall not allow a cat to be or create a nuisance.
- (2) Where in the opinion of an authorised person, a cat is creating a nuisance, the local government may give written notice to the owner of the cat requiring that person to abate the nuisance.
- (3) When a nuisance has occurred and a notice to abate the nuisance is given, the notice remains in force for the period specified by the local government in the notice which shall not exceed twenty eight (28) days.
- (4) A person given a notice to abate the nuisance shall comply with the notice within the period specified in the notice.

4.6 Section 79(3)(e) of the *Cat Act 2011* authorises local laws to be made about cats creating a nuisance.

4.7 The Committee found paragraph (a) of clause 1.4 and the words ‘or is likely to be’ in paragraph (e) were unreasonable and should be deleted. This was because:

- Regarding paragraph (a), there is no way to control where a cat excretes or urinates. Further, when this occurs, it cannot always be regarded as a nuisance. For example, there is a significant difference between a cat excreting or urinating on a neighbour’s car as opposed to on their grass.
- Regarding paragraph (e), the inclusion of the words ‘or is likely to be’ could be effectively regarded as a ban on cats in public places and therefore inconsistent with the Act. A cat would be a nuisance merely by wandering outside the owners’ premises because it will likely be injurious or dangerous to the health of any domestic or Australian indigenous animal.

4.8 Despite the local law making power in section 79(3)(e), the definition of nuisance should not include behaviours which are not otherwise prohibited by the Act.

4.9 The Shire undertook to delete paragraph (a) and the words ‘or is likely to be’ in paragraph (e).

Bush fire brigade local laws

4.10 The former Committee found the *City of Rockingham Bush Fire Control and Bush Fire Brigades Amendment Local Law 2018* was not within power of section 62(1) of the *Bush Fires Act 1954* (Bush Fires Act).¹⁹ Section 62(1) states:

62. Local government may make local laws

- (1) A local government may make local laws in accordance with subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995* for and in relation to —

¹⁹ Joint Standing Committee on Delegated Legislation, report 16, *City of Rockingham Bush Fire Control and Bush Fire Brigades Amendment Local Law 2018*, Western Australia, Legislative Council, 27 June 2019.

- (a) the appointment, employment, payment, dismissal and duties of bush fire control officers; and
- (b) the organisation, establishment, maintenance and equipment with appliances and apparatus of bush fire brigades to be established and maintained by the local government; and
- (c) any other matters affecting the exercise of any powers or authorities conferred and the performance of any duties imposed upon the local government by this Act.

4.11 The former Committee stated:

the regulatory scheme created by the Act contemplates that where a local government decides to regulate areas that are the subject matter of section 62(1) it is required to do so by way of local law.²⁰

4.12 The former Committee noted there appeared to have been a fundamental misunderstanding by the City of Rockingham about what matters had to be dealt with by a bush fire brigades local law.²¹

4.13 The misunderstanding appeared to have arisen because of the word 'may' in section 62(1) of the Bush Fires Act. The Committee observed that the word 'may' is permissive. The City of Rockingham interpreted section 62(1) to mean that if it wishes to regulate the matters listed in section 62(1), it does not need to regulate those matters by local law.²²

4.14 The former Committee concluded the word 'may' is *prima facie* permissive and gives the City of Rockingham a discretion as to whether it will make a local law regulating those matters. The power to make such local laws is permissive because local governments are not compelled to make bush fire brigade local laws. The former Committee's view was, however, if a local government chooses to regulate bush fire brigade matters, it must do so by local law and not by another method.²³

4.15 Many bush fire brigades local laws included the matters required by section 62(1) of the Bush Fires Act in the Reporting Period.²⁴ Some, however, did not. This required the Committee to consider the interpretation of that section. The Committee endorsed the position of the former Committee in Report 16.²⁵

²⁰ Joint Standing Committee on Delegated Legislation, [City of Rockingham Bush Fire Control and Bush Fire Brigades Amendment Local Law 2018](#), p 2.

²¹ Joint Standing Committee on Delegated Legislation, [City of Rockingham Bush Fire Control and Bush Fire Brigades Amendment Local Law 2018](#), p 6.

²² Joint Standing Committee on Delegated Legislation, [City of Rockingham Bush Fire Control and Bush Fire Brigades Amendment Local Law 2018](#), p 6.

²³ Joint Standing Committee on Delegated Legislation, [City of Rockingham Bush Fire Control and Bush Fire Brigades Amendment Local Law 2018](#), p 6. The Parliament endorsed the Committee's position and disallowed the local law. See Legislative Council, [Debates](#), 7 August 2019, p 5095.

²⁴ Examples include:

Shire of Quairading Bush Fire Brigades Local Law 2023, Shire of Wagin Bush Fire Brigades Local Law 2023, Shire of Dumbleyung Bush Fire Brigades Local Law 2023, Shire of Pingelly Bush Fire Brigades Local Law 2023, Shire of Kojonup Bush Fire Brigades Local Law 2023, City of Busselton Bush Fire Brigades Local Law 2023.

²⁵ The Committee's reasons for this are set out in: Joint Standing Committee on Delegated Legislation, report 4, [City of Gosnells Bush Fire Brigade Local Law 2023](#), Western Australia, Legislative Council, November 2023, pp 6-7.

- 4.16 Most local governments agreed to the Committee's requests to amend their bush fire brigade local laws within six months to ensure compliance with section 62(1) of the Bush Fires Act.²⁶
- 4.17 The Council of the City of Gosnells, however, declined to provide an undertaking.
- 4.18 The Committee reported on the *City of Gosnells Bush Fire Brigade Local Law 2023* and recommended disallowance for three reasons, one of which was inconsistency with section 62(1) of the Bush Fires Act.²⁷ The Parliament disallowed the local law.²⁸

Shire of Esperance Cemeteries Local Law 2023

- 4.19 Clause 8.11 of the *Shire of Esperance Cemeteries Local Law 2023* prohibited the recording of any image or sound on film or video in a cemetery without the Shire's approval. It stated:

8.11 Recording on film or video

A person shall not, without the prior approval of the Board, record on film or video and [sic] any image or sound within a cemetery.

- 4.20 Clause 9.1 imposed a maximum penalty of \$500 for any offence against the local law. There was no modified penalty for a breach of clause 8.11.
- 4.21 The empowering provision is section 55(1) of the *Cemeteries Act 1986* (Cemeteries Act). It states:

55. Local laws and by-laws

(1) A Board may make local laws or by-laws, as the case may be, that are necessary or convenient for the purposes of this Act and in particular for any of the following purposes —

- 4.22 Subsections 55(1)(a) to (q) of the Cemeteries Act list various purposes. Subsection 55(1)(r) states:

generally for the doing of all such acts and things as are or may be necessary or convenient for the effective administration of a cemetery.

- 4.23 The Committee found that clause 8.11 was too broadly drafted and was unreasonable in its application. It could capture anyone filming anything in a cemetery at any time for any reason.
- 4.24 The Committee regarded clause 8.4 of the *City of Mandurah Cemeteries Local Law 2010* as a more reasonable and targeted provision. It states:

8.4 Recording


A person shall not record or film a funeral or memorial within the cemetery without the prior approval of the next of kin of the deceased person whose funeral or memorial is being held.

²⁶ The list of undertakings provided by local governments to the Committee can be viewed at [Local Government Undertakings 41st Parliament](#), accessed 16 November 2023.

²⁷ Joint Standing Committee on Delegated Legislation, report 4, [City of Gosnells Bush Fire Brigade Local Law 2023](#), Western Australia, Legislative Council, November 2023.

²⁸ Legislative Council, [Debates](#), 29 November 2023, pp 6736-6738.

4.25 The Committee sought and obtained an undertaking from the Shire of Esperance to amend the clause, together with several typographical and formatting errors.

A handwritten signature in black ink that reads "Geoff Baker". The signature is written in a cursive, slightly slanted style.

Mr Geoff Baker MLA

Chair

GLOSSARY

Term	Definition
Bush Fires Act	<i>Bush Fires Act 1954</i>
Cemeteries Act	<i>Cemeteries Act 1986</i>
Circular	Premier's Circular, <i>Subsidiary legislation—explanatory memoranda</i>
Code	<i>Electricity Networks Access Code 2004</i>
Code Amendments	<i>Electricity Access Code Amendments 2023</i>
Committee	Joint Standing Committee on Delegated Legislation
DLGSC	Department of Local Government, Sport and Cultural Industries
DPC	Department of Premier and Cabinet
Reporting Period	1 January to 31 December 2023
TOR	Terms of reference
WALGA	Western Australian Local Government Association
Working Group	Local Laws Working Group
WOSP	Whole-of-System Plan







Joint Standing Committee on Delegated Legislation

Date first appointed:

25 May 2021

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'10. Joint Standing Committee on Delegated Legislation

- 10.1 A Joint Standing Committee on Delegated Legislation 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 The Standing Orders of the Legislative Council relating to Standing Committees will be followed as far as they can be applied.
- 10.9 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*."



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