



THIRTY-EIGHTH PARLIAMENT

REPORT 41
**JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**
***SHIRE OF DARDANUP STANDING ORDERS LOCAL
LAW 2009***

Presented by Mr Joe Francis MLA (Chairman)

and

Hon Robin Chapple MLC (Deputy Chairman)

August 2010

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Date first appointed:

28 June 2001

Terms of Reference:

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

3. Joint Standing Committee on Delegated Legislation

- 3.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 3.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chairman must be a Member of the Committee who supports the Government.
- 3.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 3.4 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.
- 3.5 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.
- 3.6 In its consideration of an instrument, the Committee is to inquire whether the instrument -
- (a) is authorized or contemplated by the empowering enactment;
 - (b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;
 - (c) ousts or modifies the rules of fairness;
 - (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review;
 - (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable; or
 - (f) contains provisions that, for any reason, would be more appropriately contained in an Act.
- 3.7 In this clause -
- “**adverse effect**” includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;
- “**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*.

Members as at the time of this inquiry:

Mr Joe Francis MLA (Chairman)
Hon Robin Chapple MLC (Deputy Chairman)
Hon Alyssa Hayden MLC
Ms Janine Freeman MLA

Hon Jim Chown MLC
Mr Paul Miles MLA
Hon Helen Bullock MLC
Mr Andrew Waddell MLA

Staff as at the time of this inquiry:

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REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO THE

SHIRE OF DARDANUP STANDING ORDERS LOCAL LAW 2009

1 INTRODUCTION

- 1.1 The instrument of subsidiary legislation which is the subject of this report, the *Shire of Dardanup Standing Orders Local Law 2009 (the Local Law)*, falls within the definition of “instrument” in the Terms of Reference of the Joint Standing Committee on Delegated Legislation (**the Committee**). The Local Law was published in the *Western Australian Government Gazette (the Gazette)* on 22 March 2010 and stood referred to the Committee on gazettal. It came into operation 14 days after publication in the *Gazette*.
- 1.2 The Committee raised concerns with the Shire of Dardanup (**the Shire**) in relation to three clauses in the Local Law. Whilst the Committee’s concerns with respect to clause 4.7 were resolved, the Shire did not provide the undertakings sought in relation to clauses 7.12(3) or 8.4.
- 1.3 The Committee is of the view that clauses 7.12(3) and 8.4 of the Local Law are not authorised or contemplated by the *Local Government Act 1995 (the Act)*. As such, both clauses offend the Committee’s *Terms of Reference* 3.6(a) which states:
- In its consideration of an instrument, the Committee is to inquire whether the instrument...*
- (a) is authorized or contemplated by the empowering enactment;*
- 1.4 In its Report Number 38 *Issues of Concern Raised by the Committee between 1 May 2009 and 31 December 2009 with respect to Local Laws*, the Committee noted that it had considered a number of standing orders local laws during the reporting period which were problematic. The Committee observed that several of the local laws contained clauses with wording identical to clauses 7.12(3) and 8.4 of this Local Law.¹
- 1.5 In those cases, the Committee sought and received undertakings identical to those sought from the Shire.

¹ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report No. 38, *Issues of Concern Raised by the Committee between 1 May 2009 and 31 December 2009 with respect to Local Laws*, April 2010, pp12-13.

1.6 The Committee's position in relation to these clauses remains the same as that published in its Report Number 38.

2 COMMITTEE SCRUTINY

2.1 The Committee first scrutinised this Local Law at its meeting on 17 May 2010. The Committee sought further information from the Shire in relation to clause 4.7 and undertakings in relation to clauses 7.12(3) and 8.4. The Committee resolved to move a notice of motion of disallowance of the Local Law in the Legislative Council for the purposes of preserving its position under the Legislative Council Standing Orders, while giving the Local Law further consideration. The Shire was advised of that resolution by letter dated 18 May 2010 which is reproduced at **Appendix 1**.

2.2 A series of correspondence between the Committee and the Shire ensued. The Committee's concerns with respect to clause 4.7 were resolved, however the Shire did not provide the undertakings sought in relation to clauses 7.12(3) or 8.4. In its final letter to the Shire dated 29 June 2010, the Committee advised that it had resolved to proceed with its recommendation to Parliament that the Local Law be disallowed.

2.3 The series of correspondence items is reproduced at **Appendices 2-5**.

3 CLAUSE 7.12(3)

3.1 Clause 7.12(3) of the Local Law states:

Where the Presiding Member considers that a question asked is not succinct and to the point, but is prefaced by comment or other information, the Presiding Member may rule that the member has spoken on the matter and, in that event, the member must not speak again on the matter.

3.2 The Committee's view is that this clause may be used to deny elected members the opportunity to fully participate in Council meetings. This is contrary to section 2.10(d) of the Act, which expressly states that a councillor:

(d) participates in the local government's decision-making processes at council and committee meetings;

3.3 In the Committee's view, clause 7.12(3) also confers on the presiding person an unnecessary and subjective power to deem when members' questions are not "succinct and to the point". The consequence of this is that they may be deemed to have spoken on the matter and not permitted to speak again on the matter.

3.4 The clause also appeared to the Committee to be limiting the right of freedom of political communication implied in the Commonwealth Constitution.

3.5 The Committee has considered this clause in previous standing order local laws it has scrutinised, and on those occasions it sought and received undertakings to repeal the clause due to it not being authorised or contemplated by the Act. The Committee sought an undertaking from the Shire to repeal clause 7.12(3).

3.6 The Shire refused to provide the undertaking sought.

4 CLAUSE 8.4

4.1 Clause 8.4 of the Local Law states:

If a member –

(a) persists in any conduct that the Presiding Member had ruled is out of order; or

(b) fails or refuses to comply with a direction from the Presiding Member,

the Presiding Member may direct the member to refrain from taking any further part in that meeting, other than by voting, and the member must comply with that direction.

4.2 The Committee sought an undertaking from the Shire that it would repeal clause 8.4 or amend it by deleting the words “that meeting” after the words “part in” and insert the words “the debate of the item”.

4.3 In the Committee’s opinion, this clause as it is currently drafted may effectively silence elected members by denying them the opportunity to fully participate in Council meetings. It also confers on the presiding member a subjective power to deem when members’ conduct warrants them to be directed to refrain from taking any further part in the meeting.

4.4 There is no power in either the Act or the *Local Government (Administration) Regulations 1996* for presiding persons to direct members to refrain from taking part in any part of meetings. Indeed, as set out at paragraph 3.2 above, section 2.10 of the Act expressly states that the role of a councillor is to participate in the local government decision making processes at council and committee meetings. As such, the Committee was of the view that this clause is inconsistent with section 2.10 of the Act.

4.5 The Committee further considered that clause 8.4 is inconsistent with section 3.1 of the Act which provides that the general function of a local government is to provide for the good government of persons in the district. The clause as it is currently drafted undermines the fundamental principles of democratic local government.

4.6 The Committee has considered similar clauses in the standing orders local laws of several other local governments for which it sought and received undertakings that the clause be repealed or amended.

4.7 The Committee sought an undertaking from the Shire as outlined at paragraph 4.2 above.

4.8 The Shire refused to provide the undertaking sought.

5 STATUTORY PROVISIONS

5.1 The Shire advised the Committee that in making the Local Law it relied on the general powers provision in subdivisions 1 and 2 of Division 2 of Part 3 of the Act.

5.2 The legislative functions of local governments are found in Part 3, Division 2 of the Act. Section 3.5(1) of the Act states:

3.5. Legislative power of local governments

(1) A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.

5.3 Section 3.1 provides for the general function of the Act and states:

3.1. General function

(1) The general function of a local government is to provide for the good government of persons in its district.

(2) The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.

(3) A liberal approach is to be taken to the construction of the scope of the general function of a local government.

- 5.4 As can be seen above, the scope of the general function found in section 3.1(1) of the Act is a broad one and section 3.1(3) requires that its scope be interpreted liberally. However, it is limited under the Act by section 3.1(2).
- 5.5 The Committee observed that the general function in section 3.1 of the Act would not authorise the making of local laws that conflicted with existing provisions in the Act. As noted above, section 2.10 of the Act expressly states that the role of a councillor is to participate in the local government decision making processes at council and committee meetings. It was the Committee's view that clauses 7.12(3) and 8.4 are inconsistent with sections 2.10 and 3.1 of the Act as they undermine the fundamental principles of democratic local government.

6 CITY OF PERTH STANDING ORDERS LOCAL LAW

- 6.1 The Shire raised with the Committee the fact that the *City of Perth Standing Orders Local Law 2009 (City of Perth Local Law)* contains clauses identical to the two problematic clauses in this Local Law.
- 6.2 The Committee notes the Shire's reference to the existence of the problematic clauses in the City of Perth Local Law. The Committee has however, in the interim, published its position² and the existence of the City of Perth Local Law does not alter the Committee's views in relation to clauses 7.12(3) and 8.4 of this Local Law.

7 THE COMMITTEE'S CONCLUSIONS

Term of Reference 3.6(a)

- 7.1 The Committee concluded that the effect of clause 7.12(3) is to potentially deny the capacity of elected members to participate fully in Council meetings. This is contrary to section 2.10 of the Act.
- 7.2 The Committee also concluded that clause 8.4 was inconsistent with section 2.10 of the Act. This clause may operate to silence elected members by denying them the opportunity to fully participate in Council meetings. It also confers on the presiding member a subjective power to deem when members' conduct warrants them to be directed to refrain from taking any further part in the meeting. This outcome is inconsistent with section 3.1 of the Act.
- 7.3 The Committee concluded that clauses 7.12(3) and 8.4 offend its *Term of Reference 3.6(a)* on the basis that the Act does not authorise or contemplate the making of a local law containing provisions which are inconsistent with the Act.

² Ibid.

Recommendation 1: The Committee recommends that the *Shire of Dardanup Standing Orders Local Law 2009* be disallowed.

A handwritten signature in blue ink that reads "Joe Francis". The signature is written in a cursive style with a horizontal line underneath it.

**Mr Joe Francis MLA
Chairman**

12 August 2010

APPENDIX 1
COMMITTEE'S LETTER DATED 18 MAY 2010

APPENDIX 1

COMMITTEE'S LETTER DATED 18 MAY 2010



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your Ref: LEO10015
Our Ref: 3833/20

Mr Brad Day
Shire President
Shire of Dardanup
PO Box 7016
EATON WA 6232

18 May 2010

Attention: Mr Phillip Rowe

By Fax: 9724 0091

Dear Sir

Shire of Dardanup Standing Orders Local Law 2009

I refer to the above Local Law and to the supporting information provided to the Committee in March 2010. The Committee scrutinised this Local law at its meeting on 17 May 2010 and resolved to write to you about its preliminary concerns regarding a number of clauses.

The Committee has considered the Local Law in detail and notes that a number of clauses vary significantly from the WALGA Model Standing Orders Local Law and relevant provisions of the *Local Government Act 1995* (Act).

In particular, the Committee is concerned about the validity of the following clauses of the Local Law:

- clause 4.7 - Questions by members of which due notice has been given
- subclause 7.12(3) - Questions during debate
- clause 8.4 - Continued breach of order

Clause 4.7 - Questions by members of which due notice has been given

Clause 4.7 provides that a member who wishes to ask a question at a meeting of the Council is to give to the CEO written notice of the text of the question at least 8 hours before the Council meeting. This clause varies from the equivalent provision in the WALGA model local law (clause 3.10(1)) which requires that notice of at least 4 clear working days be given.

dg:3833.100518.tel001.bd (A228012)

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The requirement for a minimum of only 8 hours notice to be given is significantly less than the standard 4 clear working days. Please advise the Committee why clause 4.7 was modified from the equivalent clause of the WALGA model local law.

Clause 7.12(3) - Questions during debate

This subclause states that:

(3) Where the Presiding Member considers that a question asked is not succinct and to the point, but is prefaced by comment or other information, the Presiding Member may rule that the member has spoken on the matter and, in that event, the member must not speak again on the matter.

This subclause is not contained in the WALGA model local law. The Committee is concerned that this subclause potentially denies elected members the opportunity to fully participate in Council meetings, and confers on the presiding person an unnecessary and subjective power to deem when members' questions are not "succinct and to the point". The consequence of this is that they may be deemed to have spoken on the matter and not permitted to speak again on the matter.

The effect of the subclause is to potentially limit the capacity of elected members to participate fully in Council meetings. This is contrary to section 2.10 of the Act, which expressly states that the role of a councillor is to participate in the local government decision making processes at council and committee meetings. The subclauses also appear to be limiting the right of freedom of political communication as implied in the Commonwealth Constitution.

Similar clauses have been considered by the Committee in the standing orders local laws of several other local governments for which the Committee sought undertakings that the clause be repealed.

The Committee seeks an undertaking from the Shire to repeal subclause 7.12(3) from this Local Law.

Clause 8.4 - Continued breach of order

This clause states that:

If a member –

(a) persists in any conduct that the Presiding Member had ruled is out of order; or

(b) fails or refuses to comply with a direction from the Presiding Member,

the Presiding Member may direct the member to refrain from taking any further part in that meeting, other than by voting, and the member must comply with that direction.

Again, this clause is not contained in the WALGA model local law. The Committee is concerned that this clause may effectively silence elected members by denying them the opportunity to fully participate in Council meetings. It also confers on the presiding member a subjective power to deem when members' conduct warrants them to be directed to refrain from taking any further part in the meeting.

This outcome is inconsistent with section 3.1 of the Act which provides that the general function of a local government is to provide for the good government of persons in the district, as it undermines the fundamental principles of democratic local government. There is no power in either the Act or the *Local Government (Administration) Regulations 1996* for presiding persons to direct members to refrain from taking part in any part of meetings. Indeed, as set out above, section 2.10 of the Act expressly states that the role of a councillor is to participate in the local government decision making processes at council and committee meetings. As such, this clause appears to breach section 2.10 of the Act.

Similar clauses have been considered by the Committee in the standing orders local laws of several other local governments for which the Committee sought undertakings that the clause be repealed or amended. The Committee seeks an undertaking from the Shire to repeal clause 8.4 or amend it by deleting the words "that meeting" after the words "part in" and insert the words "the debate of the item".

Conclusion

In summary, the Committee requests the following from the Shire:

- Advice as to why the time frame in clause 4.7 was modified from the equivalent clause of the WALGA model local law from 4 clear working days to 8 hours;
- An undertaking to repeal subclause 7.12(3) from this Local Law;
- An undertaking to repeal clause 8.4 or amend it by deleting the words "that meeting" after the words "part in" and insert the words "the debate of the item";
- An undertaking that the problematic clauses will not be enforced in the interim; and
- An undertaking that the amendments will be made within six months.

Please provide a copy of the minutes of the Shire's meeting providing the undertakings.

Due to its concerns with this Local Law, the Committee resolved to give notice of motion to disallow the *Shire of Dardanup Standing Orders Local Law 2009* in the Legislative Council on 27 May 2010. However, the giving of notice should not be taken as indicating that the Committee has resolved to recommend disallowance at this stage.

Given the strict timeframes for disallowance of subsidiary legislation under the Legislative Council's Standing Orders and the *Interpretation Act 1994*, the Committee requests that the information and undertakings be provided by **5pm on Monday, 31 May 2010**.

If you have any queries, please telephone the Committee's Advisory Officer (Legal), Mrs Felicity Mackie on 9222 7406.

Yours sincerely



Hon Robin Chapple MLC

Deputy Chairman

Note that this document (including any attachments) is privileged. You should only use, disclose or copy the material if you are authorised by the Committee to do so. Please contact Committee staff if you have any queries.

APPENDIX 2
SHIRE OF DARDANUP'S LETTER DATED 27 MAY 2010

APPENDIX 2

SHIRE OF DARDANUP'S LETTER DATED 27 MAY 2010



Shire of Dardanup

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27 May 2010

Hon Robin Chapple MLC
Deputy Chairman
Joint Standing Committee on Delegated Legislation
Legislative Council Committee Office
Parliament House
PERTH WA 6000

Dear Sir

RE: SHIRE OF DARDANUP STANDING ORDERS LOCAL LAW 2009

Council is in receipt of the letter from the Joint Standing Committee on Delegated Legislation in regards to the Shire of Dardanup Standing Orders Local Law 2009, and concerns raised regarding three (3) clauses.

A late item was prepared for the Council meeting held on the 26th May 2010, with Council resolving as follows, an extract of the full item from the meeting minutes is attached.

That the Officer explanation in response as detailed above, in relation to the concerns raised by the Joint Standing Committee on Delegated Legislation be adopted as Councils position and that the Joint Standing Committee on Delegated Legislation be requested to allow the Shire of Dardanup Standing Orders Local Law 2009 to remain as gazetted with no changes.

The questions and responses included in the minutes are listed below:

Request

Please advise the Committee why clause 4.7 was modified from the equivalent clause of the WALGA model local law.

Response:

The Shire of Dardanup Standing Orders Local Law 2009 clause 4.7 is exactly the same as the City of Perth Standing Orders Local Law, gazetted on the 13th of October 2009.

The 8 hours notice for a question by an elected member to be presented to the Chief Executive Officer prior to a meeting is considered to be more effective in providing elected members greater opportunity to ask questions in a timely manner.

The agenda for meetings is required to be provided to elected members 72 hours prior to the meeting. By meeting the 72 hour requirement and allowing questions 8 hours prior to the meeting

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the clause gives the member plenty of time to consider the reports and prepare a question for the Council.

It is further contended that the question to Council can only be answered by the Council, therefore, only the Council during a formal meeting can respond to the question. If the question cannot be answered by the Council, then the matter can be deferred to the next meeting. As the Shire of Dardanup meets on a fortnightly basis there is minimal delay in responding to the question

Elected members are also able to ask questions of Council at the meeting on matters that are on the agenda, requiring no notice.

It should be noted that the contemporary Meeting Procedures (Council Meetings) model Standing Orders Local Law provided by WALGA and as shown below, has no time limit for elected members to submit questions of Council.

Extract from the WALGA contemporary Meeting Procedures (Council Meetings) Local Law

Part 7 - Questions by Members

- (1) Members may ask questions relating to an item on the notice paper or on matters related to the good government of persons in the district.
- (2) A Member requesting general information from an Officer at a Council meeting may ask a question without notice and with the consent of the Presiding Member, may ask one or more further questions of that Officer or another Officer present at the meeting.
- (3) Where possible the Officer shall endeavour to answer the question to the best of his or her knowledge and ability, however, if the information is unavailable or the answer requires research or investigation, the Officer may ask that -
 - (i) the question be placed on notice for the next meeting of Council; and
 - (ii) the answer to the question be given to the Member who asked it within 14 days
- (4) Every question and answer -
 - (i) is to be brief and concise; and
 - (ii) is not to be accompanied by argument, expression of opinion or statement of facts, except to the extent necessary to explain the question or answer.
- (5) In answering any question, an Officer may qualify his or her answer and may at a later time in the meeting or at a subsequent meeting alter, correct, add to or otherwise amend the original answer.

Request

The Committee seeks an undertaking from the Shire to repeal subclause 7.12(3) from this Local Law.

Response

The Standing Orders state and is intended to be interpreted that as the member has made comments and not asked questions, they have spoken on the item therefore under the rules of debate that member cannot speak a second time as per Standing Order clause 7.11 (1).

Members are not allowed to speak a second time unless there is a resolution of the Council for them to do so. Clause 7.12 (3) states that the presiding member may rule that the member has spoken already. The Council has the option of challenging that ruling.



The clause strengthens the rules of debate in that it requires elected members to be succinct about their comments and or questions, it is contended that the clause does not remove their rights under the Local government Act 1995, Section 2.10 (d).

Extract from the WALGA contemporary Meeting Procedures (Council Meetings) Local Law

8.8 Relevance

- (1) A Member is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.
- (2) The Presiding Member, at any time, may:
 - (a) call the attention of the meeting to:
 - (i) any irrelevant, repetitious, offensive or insulting language by a Member; or
 - (ii) any breach of order or decorum by a Member; and
 - (b) direct that Member, if speaking, to discontinue his or her speech.
- (3) A Member is to comply with the direction of the Presiding Member under subclause (2) by immediately ceasing to speak.

8.9 Speaking twice

- A Member is not to address the Council more than once on any motion or amendment except:
- (a) as the mover of a substantive motion, to exercise a right of reply;
 - (b) to raise a point of order; or
 - (c) to make a personal explanation.

Request

The Committee seeks an undertaking from the Shire to repeal clause 8.4 or amend it by deleting the words “that meeting” after the words “part in” and insert the words “the debate of the item”.

Response

The wording used in the Shire of Dardanup Standing Orders is exactly the same as the City of Perth Standing Orders gazetted on the 13th of October 2009.

The clause sends a clear message to belligerent elected members to improve their approach to debate. If the presiding member has tolerated bad behaviour from the same member and wishes to control the meeting and that member, then clause 8.4 gives the presiding member that power.

As with all decision by the presiding member the Council can over rule the ruling by resolution.

As can be seen below, the new WALGA draft Model (Council Meetings) Local Law, clause 9.6, contains almost the exact same wording and intent as that included in Councils Standing Orders Local Law.



Extract from the WALGA contemporary Meeting Procedures (Council Meetings) Local Law

9.6 Continued breach of order

If a Member

- (a) persists in any conduct that the Presiding Member had ruled is out of order; or
- (b) refuses to make an explanation, retraction or apology required by the Presiding Member under clause 9.5(3),

the Presiding Member may direct the Member to refrain from taking any further part in that meeting, other than by voting, and the Member is to comply with that direction.

Shire of Dardanup staff undertook a great deal of research before finally selecting and using the City of Perth Standing Orders Local Law as the template for Councils new Standing Orders Local Law. the history of this research is listed below:-

Council first looked at the existing Standing Orders model local law, enquiries were made in June 2009 with WALGA Local Government Advisory Services who advised that the Standing Orders Model Local Law was under a complete rewrite and there was no set date for the finish.

Initially it was decided to wait until the new model local law was available, checking at reasonable intervals on the progress of the proposed new model local law, in late October 2009, Council was advised by WALGA staff that the Meeting Procedures Model Local Law was still not finished and it was impossible to predict when it would be available.

During this intervening period Council staff had obtained copies of the following Councils Standing Orders (Meeting Procedures) Local Laws for comparison:

- City of Perth – Standing Orders Local Law 2009
- City of Stirling – Meeting Procedures Local Law 2009
- Town of Claremont – Standing Orders Local Law 2009
- City of Mandurah – Standing Orders Local Law 2008
- City of Belmont – Standing Orders Local Law 2006

Of these, WALGA staff advised Council that the most recently gazetted Local Law being the City of Perth Standing Orders Local Law 2009, gazetted on the 13th October 2009, included and best reflected many of the changes being proposed in the new Meeting Procedures model local law.

As there seemed to be no end in sight for the release of the new model Meeting Procedures Local Law, Council decided to carry out a full review of the recently gazetted City of Perth Standing Orders Local Law, once having reviewed the Local Law thoroughly came to the conclusion that this would be a good local law to adopt as it met all of Councils requirements.

Council commenced the process of adopting the Standing Orders Local Law, at the conclusion of the submission period Council received an 8 page letter from the Department of Local Government, providing comments in respect of drafting improvements, these were all of a formatting nature and did not change the actual wording, these changes were accepted and made.



As this Local Law had only recently been gazetted, staff enquired with the Department of Local Government after checking these drafting improvements with the City of Perth gazetted copy and finding the Shire of Dardanup's advertised Local Law to be exactly the same in wording and punctuation, the staff at the Department advised that they had more time to check the local law this time around which resulted in the suggested formatting changes.

On the 10th May 2010, Council received the new Local Laws Handbook, which states "The WA Local Government Association, LGMA WA and the Department of Local Government are developing a new Model Meeting Procedures Local Law. Once this project is completed, this Manual will be updated to incorporate the new Gazetted Model Local Law." (Copy enclosed)

They further state that in the meantime a contemporary Meeting Procedures (Council Meetings) Local Law based on recently reviewed and adopted Council Local Laws, is incorporated in this Manual. (Copy enclosed)

As such, when responding to the requests made in relation to the three (3) clauses on which concern were raised, Council referred to specific clauses in the contemporary Meeting Procedures as part of Council's response as these were considered to be more up to date than the existing Local Law which is soon to be replaced.

Council awaits your decision in this matter.

Yours sincerely

MR PHILLIP S ROWE
 Manager, Corporate & Community Services

12 ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

None.

13 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

OFFICER RECOMMENDED RESOLUTION & COUNCIL RESOLUTION

168/10 MOVED - Cr. P A Bass SECONDED - Cr. C N Boyce

THAT Council deal with:

- **Standing Orders Local Law 2009 – Concerns Raised by Joint Standing Committee on Delegated Legislation.**

as Business of an Urgent Nature.

CARRIED
10/0

Note: Manager Financial Services, Mr Stuart Eaton, Manager Planning Services, Mr Robert Quinn and Manager Building Services, Mr Peter Black, left the meeting [6.10pm].

13.1 Title: Standing Orders Local Law 2009 – Concerns raised by Joint Standing Committee on Delegated Legislation

Reporting Department: Corporate & Community services

Reporting Officer: Mr Phil Rowe – Manager Corporate & Community Services

Legislation: Local Government Act 1995

File Number: LE01 0004

Background -

Council has received a letter from the Joint Standing Committee on Delegated Legislation in regards to the Shire of Dardanup Standing Orders Local Law 2009, in which they raise concerns in regards to three clauses (Appendix ORD: 13.1).

As previously advised to Council around this time last year when consideration was given to adopting a new Standing Orders Local Law, the existing Model Local Law provided by WALGA was being completely rewritten as it was out of date.

Development of the new Model Meeting Procedures is progressing, but in the meantime WALGA has provided a contemporary Meeting Procedures (Council Meetings) Local Law, based on recently reviewed and adopted Council Local Laws, which has been incorporated into their new Local Laws manual which was received by Council on the 10th May 2010.

The questions raised by the Joint Standing Committee are referenced to the soon to be replaced and outdated Model Standing Orders Local Law.

The clauses raised in the letter are:-

- clause 4.7 – Questions by members of which due notice has been given.
- sub clause 7.12(3) – Questions during debate and
- clause 8.4 – Continued breach of order

The Chief Executive Officer and Manager of Corporate & Community Services provide the following responses after reviewing the concerns raised:

Joint Standing Committee comment and request – Re Clause 4.7 Questions by members of which due notice has been given:

Clause 4.7 provides that a member who wishes to ask a question at a meeting of the Council is to give to the CEO written notice of the text of the question at least 8 hours before the Council meeting. This clause varies from the equivalent provision in the WALGA model local law (clause 3.1(1) which requires that notice of at least 4 clear working days be given.

The requirement for a minimum of only 8 hours notice to be given is significantly less than the standard 4 clear working days.

Request- *Please advise the Committee why clause 4.7 was modified from the equivalent clause of the WALGA model local law.*

Response:

The Shire of Dardanup Standing Orders Local Law 2009 clause 4.7 is exactly the same as the City of Perth Standing Orders Local Law, gazetted on the 13th of October 2009.

The 8 hours notice for a question by an elected member to be presented to the Chief Executive Officer prior to a meeting is considered to be more effective in providing elected members greater opportunity to ask questions in a timely manner.

The agenda for meetings is required to be provided to elected members 72 hours prior to the meeting. By meeting the 72 hour requirement and allowing questions 8

hours prior to the meeting the clause gives the member plenty of time to consider the reports and prepare a question for the Council.

It is further contended that the question to Council can only be answered by the Council, therefore, only the Council during a formal meeting can respond to the question. If the question cannot be answered by the Council, then the matter can be deferred to the next meeting. As the Shire of Dardanup meets on a fortnightly basis there is minimal delay in responding to the question.

Elected members are also able to ask questions of Council at the meeting on matters that are on the agenda, requiring no notice.

It should be noted that the contemporary Meeting Procedures (Council Meetings) Model Standing Orders Local Law provided by WALGA and as shown below, has no time limit for elected members to submit questions of Council.

Extract from the WALGA contemporary Meeting Procedures (Council Meetings) Local Law
Part 7 - Questions by Members

- (1) *Members may ask questions relating to an item on the notice paper or on matters related to the good government of persons in the district.*
- (2) *A Member requesting general information from an Officer at a Council meeting may ask a question without notice and with the consent of the Presiding Member, may ask one or more further questions of that Officer or another Officer present at the meeting.*
- (3) *Where possible the Officer shall endeavour to answer the question to the best of his or her knowledge and ability, however, if the information is unavailable or the answer requires research or investigation, the Officer may ask that -*
 - (i) *the question be placed on notice for the next meeting of Council; and*
 - (ii) *the answer to the question be given to the Member who asked it within 14 days.*
- (4) *Every question and answer -*
 - (i) *is to be brief and concise; and*
 - (ii) *is not to be accompanied by argument, expression of opinion or statement of facts, except to the extent necessary to explain the question or answer.*
- (5) *In answering any question, an Officer may qualify his or her answer and may at a later time in the meeting or at a subsequent meeting alter, correct, add to or otherwise amend the original answer.*

Joint Standing Committee comment and request – Re Clause 7.12(3) Questions during debate:

The subclause state that:

- (3) *Where the Presiding Member considers that a question asked is not succinct and to the point, but is prefaced by comment or other information, the Presiding Member may rule that the member has spoken on the matter and, in that event, the member must not speak again on the matter.*

This subclause is not contained in the WALGA model local law. The Committee is concerned that this subclause potentially denies elected members the opportunity to fully participate in Council meetings, and confers on the presiding person an unnecessary and subjective power to deem when members' questions are not "succinct and to the point". The consequence of this is that they may be deemed to have spoken on the matter and not permitted to speak again on the matter.

The effect of the subclause is to potentially limit the capacity of elected members to participate fully in Council meetings. This is contrary to Section 2.10 of the Act, which expressly states that the role of a councillor is to participate in the local government decision making process at council and committee meetings. This subclause also appears to be limiting the right of freedom of political communication as implied in the Commonwealth Constitution.

Similar clauses have been considered by the Committee in the standing orders local laws of several other local governments for which the Committee sought undertakings that the clause be repealed.

Request: *The Committee seeks an undertaking from the Shire to repeal subclause 7.12(3) from this Local Law.*

Response

The Standing Orders state and is intended to be interpreted that as the member has made comments and not asked questions, they have spoken on the item therefore under the rules of debate that member cannot speak a second time as per Standing Order clause 7.11 (1).

Members are not allowed to speak a second time unless there is a resolution of the Council for them to do so. Clause 7.12 (3) states that the presiding member may rule that the member has spoken already. The Council has the option of challenging that ruling.

The clause strengthens the rules of debate in that it requires elected members to be succinct about their comments and or questions, it is contended that the clause does not remove their rights under the Local government Act 1995, Section 2.10 (d).

Extract from the WALGA contemporary Meeting Procedures (Council Meetings) Local Law:

8.8 RELEVANCE

- (1) *A Member is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.*
- (2) *The Presiding Member, at any time, may:*
 - (a) *call the attention of the meeting to:*
 - (i) *any irrelevant, repetitious, offensive or insulting language by a Member; or*
 - (ii) *any breach of order or decorum by a Member; and*
 - (b) *direct that Member, if speaking, to discontinue his or her speech.*
- (3) *A Member is to comply with the direction of the Presiding Member under subclause (2) by immediately ceasing to speak.*

8.9 SPEAKING TWICE

A Member is not to address the Council more than once on any motion or amendment except:

- (a) as the mover of a substantive motion, to exercise a right of reply,*
- (b) to raise a point of order; or*
- (c) to make a personal explanation.*

Joint Standing Committee comment and request – Clause 8.4 Continued breach of order:

This clause states that:

If a member –

- (a) persists in any conduct that the Presiding Member had ruled is out of order, or*
- (b) fails or refuses to comply with a direction from the Presiding Member,*

the Presiding Member may direct the member to refrain from taking any further part in that meeting, other than by voting, and the member must comply with that direction.

Again, this clause in not contains (sic) in the WALGA model local law. The Committee is concerned that this clause may effectively silence members by denying them the opportunity to fully participate in Council meetings. It also confers on the presiding member a subjective power to deem when members' conduct warrants them to be directed to refrain from taking any further part in the meeting.

This outcome is inconsistent with section 3.1 of the Act which provided that the general function of a local government is to provide for the good government of persons in the district, as it undermines the fundamental principles of democratic local government. There is no power in either the Act or the Local Government (Administration) Regulations 1996 for presiding persons to direct members to refrain from taking part in any part of meetings. Indeed, as set out above, section 2.10 of the Act expressly states that the role of a councillor is to participate in the local government decision making processes at council and committee meetings. As such this clause appears to breach 2.10 of the Act.

Similar clauses have been considered by the Committee in the standing orders of several other local governments for which the Committee sought undertakings that the clause be repealed or amended.

Request: *The Committee seeks an undertaking from the Shire to repeal clause 8.4 or amend it by deleting the words "that meeting" after the words "part in" and insert the words "the debate of the item".*

Response

The wording used in the Shire of Dardanup Standing Orders is exactly the same as the City of Perth Standing Orders gazetted on the 13th of October 2009.

The clause sends a clear message to belligerent elected members to improve their approach to debate. If the presiding member has tolerated bad behaviour from the same member and wishes to control the meeting and that member, then clause 8.4 gives the presiding member that power.

As with all decision by the presiding member the Council can over rule the ruling by resolution.

As can be seen below, the new WALGA draft Model (Council Meetings) Local Law, clause 9.6, contains almost the exact same wording and intent as that included in Councils Standing Orders Local Law.

Extract from the WALGA contemporary Meeting Procedures (Council Meetings) Local Law:

9.6 CONTINUED BREACH OF ORDER

If a Member:

(a) persists in any conduct that the Presiding Member had ruled is out of order; or

(b) refuses to make an explanation, retraction or apology required by the Presiding Member under clause 9.5(3),

the Presiding Member may direct the Member to refrain from taking any further part in that meeting, other than by voting, and the Member is to comply with that direction.

Legal Implications -

The Joint Standing Committee on Delegated Legislation has the power to allow or disallow the *Shire of Dardanup Standing Orders Local Law 2009*, Council has provided its reasons for the clauses under question, believing that the clauses do not require amendment or deletion, it will be up to the Committee to decide if they accept Councils position on each of these clauses and allow the local law.

Strategic Plan - None.

Environment - None.

Precedents -

Council has previously had a Standing Order Local Law, this was replaced with the current Local Law on which concerns to 3 clauses have been raised.

Budget Implications -

Additional advertising and gazettal costs should an amendment to the local law be necessary.

Budget – Whole of Life Cost - None

Council Policy Compliance - None

Officer Comment -

The Joint Standing Committee on Delegated Legislation has the role of reviewing Local Laws and provides legal advice on the validity of these laws. That the requirement for changes occurs after the local law has been gazetted at considerable cost is a matter for concern.

Staff contend that the Committee should be involved in the process much earlier, during the time calling for submissions. This would enable the Committees position to be applied to the draft before final adoption, resulting in reduced processing time and avoiding additional costs in repealing sections of recently adopted laws.

It is recommended that the process for adoption of local laws be reviewed with the involvement of the Joint Standing Committee on Delegated Legislation occurring prior to the final adoption by Councils.

It should be noted that the Local Government Act 1995 Section 3.16 requires Local Governments to review Local Laws at least every 8 years. The Act does not require that the review result in any changes, only that the review occur and a decision being made to either repeal, amend or retain the Local Law.

If Council resolves not to amend the Local Law as requested by the Committee, the Committee may proceed with their motion to disallow the Local Law, if this was to occur Council would continue to operate under Standing Orders Local Law 1998, published in the Government Gazette on the 4th May 2001.

Council Role - Legislative

Voting Requirements - Absolute Majority

OFFICER RECOMMENDED RESOLUTION & COUNCIL RESOLUTION

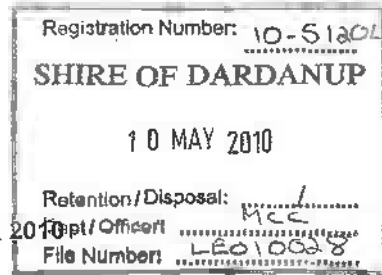
169/10 MOVED - Cr. K Hopper SECONDED - Cr. C N Boyce

THAT the Officer explanation in response as detailed above, in relation to the concerns raised by the Joint Standing Committee on Delegated Legislation be adopted as Council's position and that the Joint Standing Committee be requested to allow the Shire of Dardanup Standing Orders Local Law 2009 to remain as gazetted with no changes.

CARRIED
10/0
By Absolute Majority



REVISED LOCAL LAWS MANUAL 2010



The Western Australian Local Government Association is pleased to present subscribers to the Local Laws Service with a copy of the newly revised Local Laws Manual.

This Manual, completely reviewed for the first time since its inception, features commentary on best practice administrative procedure and contains the full suite of Model Local Laws, some of which are new or updated.

The content of the Manual is produced in an easy to read format, and presented in a logical sequence. This will assist your Local Government to understand the Local Law-making, management and review process, and access both the established and newly created Model Local Laws.

The accompanying CD-ROM provides the entire Manual contents in both Word and PDF versions; this will be particularly helpful for those Local Governments wishing to make a Local Law based on a Model contained within the Manual.

The Manual commences with the section 'Introduction to the Local Laws Manual', which is summarised below:

Introduction to the Local Laws Manual

The original Local Laws Manual incorporated a considerable amount of detail in the nature, purpose and procedures associated with the making and administration of Local Laws.

This was mainly due to the need to inform and educate the Sector on the introduction of Local Laws under the, as then, newly proclaimed Local Government Act 1995.

This revised version contains abridged yet detailed commentary on various aspects of Local Laws under the following chapter headings:

- Part 1 – What is a Local Law?
- Part 2 – How to Make a Local Law
- Part 3 – Managing Local Laws
- Part 4 – Reviewing, Repealing or Amending Local Laws
- Part 5 – Reference Material
- Part 6 – Appendices

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The Voice of Local Government

Following the Introduction section, the Local Laws Manual contains a tabbed section where all Model Local Laws can be easily located. Some of these Local Laws are new and a number of their features are explained below:

Meeting Procedures (Council Meetings) Local Law

The Western Australian Local Government Association is presently partnering the Department of Local Government and LGMA (WA) in developing a new Model Meeting Procedures (Council Meetings) Local Law – formerly Standing Orders Local Law. Once this project is completed, this Manual will be updated to incorporate the new Gazetted Model Local Law.

In the mean time, a contemporary Meeting Procedures (Council Meetings) Local Law, based on recently reviewed and adopted Council Local Laws, is incorporated in this Manual.

Public Places and Local Government Property

Developed in partnership with the Western Suburbs Regional Organisation of Councils and the City of Fremantle, this Local Law combines provisions from the existing 'Local Government Property Local Law' and 'Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Laws'.

The Manual also contains the existing versions of the 'Property' and 'Thoroughfares' Local Laws.

Waste Local Law

The commencement of the Waste Avoidance and Resource Recovery Act 2007 (WARR Act) had the effect of repealing from the Health Act 1911, Local Law making provisions in relation to waste services and setting of fees and charges for the collection of refuse. The head of power for these activities may be found in Section 64 and Sections 66 and 67 of the WARR Act.

Although Schedule 5 of the WARR Act contains transitional provisions for the continuance of Local Laws and waste collection services made under the Health Act 1911, WALGA has developed a draft Model Waste Local Law for adoption by Local Governments that wish to repeal refuse provisions from their Health Local Laws.

The WARR Act permits the Director General of the Department of Environment and Conservation to make and Gazette Model Local Laws; the Association is presently working with DEC in this regard and will update the Manual on completion of this project, should the Gazetted version differ in content to the draft Model.

WESTERN AUSTRALIA

Local Government Act 1995

[INSERT NAME OF LOCAL GOVERNMENT]
Local Government (Council Meetings) Local Law [INSERT YEAR]

ARRANGEMENT

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LOCAL GOVERNMENT ACT 1995

[INSERT NAME OF LOCAL GOVERNMENT]

Local Government (Council Meetings) Local Law [INSERT YEAR]

Under the powers conferred by the *Local Government Act 1995* and under all other relevant powers, the [INSERT NAME OF LOCAL GOVERNMENT] resolved on [INSERT DATE] to make the following local law.

Part 1 - Preliminary

1.1 Citation

- (1) This local law may be cited as the [INSERT NAME OF LOCAL GOVERNMENT] Local Government (Council Meetings) Local Law [INSERT YEAR].

1.2 Commencement

By virtue of section 3.14 of the Act, these Local Laws come into operation 14 days after the date of their publication in the *Government Gazette*.

1.3 Application and intent

- (1) These Local Laws provide rules and guidelines which apply to the conduct of meetings of the Council and its committees and to meetings of electors.
- (2) All meetings are to be conducted in accordance with the Act, the Regulations and these Local Laws.
- (3) These Local Laws are intended to result in:
- (a) better decision-making by the Council and committees;
 - (b) the orderly conduct of meetings dealing with Council business;
 - (c) better understanding of the process of conducting meetings; and
 - (d) the more efficient and effective use of time at meetings.

1.4 Interpretation

- (1) In these Local Laws unless the context otherwise requires:

“absolute majority” has the meaning given to it in the Act:

“absolute majority” means:	
(a)	in relation to a council, means a majority comprising enough of the members for the time being of the council for their number to be more than 50% of the number of offices (whether vacant or not) of member of the council;
(b)	in relation to any other body, means a majority comprising enough of the persons for the time being constituting the body for their number to be more than 50% of the number of offices (whether vacant or not) on the body. [Section 1.4 of the Act]

“75% majority” has the meaning given to it in the Act:

“75% majority”, in relation to a council, means a majority comprising enough of the members for the time being of the council for their number to be at least 75% of the number of offices (whether vacant or not) of member of the council. [Section 1.4 of the Act]

“Act” means the *Local Government Act 1995*;

“CEO” means the Chief Executive Officer of the Local Government;

“committee” means a committee of the Council established under section 5.8 of the Act;

“committee meeting” means a meeting of a committee;

“Council” means the Council of the [INSERT NAME OF LOCAL GOVERNMENT];

“Local Government” means the [INSERT NAME OF LOCAL GOVERNMENT];

- (3) A special meeting of the Council is held for the purpose of considering and dealing with Council business that is urgent, complex in nature, for a particular purpose or confidential.

3.2 Calling Council meetings

The calling of Council meetings is dealt with in the Act.

An ordinary or a special meeting of a council is to be held –

- (a) if called for by either –
 - (i) the mayor or president; or
 - (ii) at least 1/3 of the councillors, in a notice to the CEO setting out the date and purpose of the proposed meeting; or
- (b) if so decided by the council. [Section 5.4 of the Act]

3.3 Convening Council meetings

(1) The convening of a Council meeting is dealt with in the Act.

- (1) The CEO is to convene an ordinary meeting by giving each council member at least 72 hours' notice of the date, time and place of the meeting and an agenda for the meeting.
- (2) The CEO is to convene a special meeting by giving each council member notice, before the meeting, of the date, time, place and purpose of the meeting. [Section 5.5 of the Act]

Sections 9.50 to 9.54 of the *Local Government Act 1995* and sections 75 and 76 of the *Interpretation Act 1984* deal with how documents can be given to a person. Under these provisions, notice of a meeting may be given to a council member by –

- (a) personally handing the notice to the member; or
- (b) sending it by post to the last known address of the member.

- (2) Subject to subclause (3), the CEO is to give at least 72 hours notice, for the purposes of section 5.5, in convening a special meeting of the Council.
- (3) Where, in the opinion of the Mayor/President or at least one-third of the Members, there is a need to meet urgently, the CEO may give a lesser period of notice of a special Council meeting.

3.4 Calling committee meetings

The CEO is to call a meeting of any committee when requested by the Mayor/President, the Presiding Member of a committee or any two members of that committee.

3.5 Public notice of meetings

Public notice of meetings is dealt with in the Regulations.

- (1) At least once each year a local government is to give local public notice of the dates on which and the time and place at which –
 - (a) the ordinary council meetings; and
 - (b) the committee meetings that are required under the Act to be open to members of the public or that are proposed to be open to members of the public.
 are to be held in the next 12 months.
- (2) A local government is to give local public notice of any change to the date, time or place of a meeting referred to in subregulation (1).
- (3) Subject to subregulation (4), if a special meeting of a council is to be open to members of the public then the local government is to give local public notice of the date, time, place and purpose of the special meeting.
- (4) If a special meeting of a council is to be open to members of the public but, in the CEO's opinion, it is not practicable to give local public notice of the matters referred to in subregulation (3), then the local government is to give public notice of the date, time, place and purpose of the special meeting in the manner and to the extent that, in the CEO's opinion, is practicable. [Regulation 12 of the Regulations]

The local government may reduce* the number of offices of committee member required for a quorum at a committee meeting specified by the local government if there would not otherwise be a quorum for the meeting.
*Absolute majority required. [Section 5.15 of the Act]

4.11 Procedure where no quorum to begin a meeting

The procedure where there is no quorum to begin a meeting is dealt with in the Regulations.

If a quorum has not been established within the 30 minutes after a council or committee meeting is due to begin then the meeting can be adjourned –

- (a) in the case of a council, by the mayor or president or if the mayor or president is not present at the meeting, by the deputy mayor or deputy president;
- (b) in the case of a committee, by the presiding member of the committee or if the presiding member is not present at the meeting, by the deputy presiding member;
- (c) if no person referred to in paragraph (a) or (b), as the case requires, is present at the meeting, by a majority of members present;
- (d) if only one member is present, by that member; or
- (e) if no member is present or if no member other than the CEO is present, by the CEO or a person authorized by the CEO.

[Regulation 8 of the Act]

4.12 Procedure where quorum not present during a meeting

If at any time during a meeting a quorum is not present, the Presiding Member is:

- (a) immediately to suspend the proceedings of the meeting for a period of up to 15 minutes, and
- (b) if a quorum is not present at the expiry of that period, the Presiding Member is to adjourn the meeting to some future time or date.

4.13 Names to be recorded

At any meeting:

- (a) at which there is not a quorum present; or
 - (b) which is adjourned for want of a quorum,
- the names of the Members then present are to be recorded in the minutes.

Part 5 - Business of a meeting

5.1 Business to be specified

- (1) No business is to be transacted at any ordinary meeting of the Council other than that specified in the agenda, without the approval of the Presiding Member or the Council.
- (2) No business is to be transacted at a special meeting of the Council other than that given in the notice as the purpose of the meeting.
- (3) Subject to subclause (4), no business is to be transacted at an adjourned meeting of the Council other than that:
 - (a) specified in the notice of the meeting which had been adjourned, and
 - (b) which remains unresolved.
- (4) Where a meeting is adjourned to the next ordinary meeting of the Council then, unless the Council resolves otherwise, the business unresolved at the adjourned meeting is to be dealt with before considering Reports (Item 10) at that ordinary meeting.

5.2 Order of business

- (1) Unless otherwise decided by the Council the order of business at any ordinary meeting of the Council is to be as follows:
 - 1. Declaration of Opening/Announcement of Visitors
 - 2. Announcements from the Presiding Member
 - 3. Attendance
 - 3.1 Apologies
 - 3.2 Approved leave of absence
 - 4. Declaration of interest

(a)	a council to answer a question that does not relate to a matter affecting the local government;
(b)	a council at a special meeting to answer a question that does not relate to the purpose of the meeting; or
(c)	a committee to answer a question that does not relate to a function of the committee.

[Regulation 7 of the Act]

6.7 Other procedures for question time for the public

- (1) A member of the public who raises a question during question time, is to state his or her name and address.
- (2) A question may be taken on notice by the Council for later response.
- (3) When a question is taken on notice the CEO is to ensure that:
 - (a) a response is given to the member of the public in writing; and
 - (b) a summary of the response is included in the agenda of the next meeting of the Council.
- (4) Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to:
 - (a) declare that he or she has an interest in the matter; and
 - (b) allow another person to respond to the question.
- (5) Each member of the public with a question is entitled to ask up to 2 questions before other members of the public will be invited to ask their questions.
- (6) Where a member of the public provides written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.
- (7) The Presiding Member may decide that a public question shall not be responded to where:
 - (a) the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;
 - (b) the member of the public uses public question time to make a statement, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement as a question; or
 - (c) the member of the public asks a question that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory.
- (8) A member of the public shall have two minutes to submit a question.
- (9) The Council, by resolution, may agree to extend public question time.
- (10) Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.

6.8 Distinguished visitors

If a distinguished visitor is present at a meeting of the Council, the Presiding Member may acknowledge the presence of the distinguished visitor at an appropriate time during the meeting, and the presence of that visitor shall be recorded in the minutes.

6.9 Deputations

- (1) Any person or group wishing to be received as a deputation by the Council is to either :
 - (a) apply, before the meeting, to the CEO for approval; or
 - (b) with the approval of the Presiding Member, at the meeting, address the Council.
- (2) The CEO may either:
 - (a) approve the request and invite the deputation to attend a meeting of the Council, or
 - (b) refer the request to the Council to decide by simple majority whether or not to receive the deputation.
- (3) Unless the council resolves otherwise, a deputation invited to attend a Council meeting:
 - (a) is not to exceed 5 persons, only 2 of whom may address the Council, although others may respond to specific questions from Members;
 - (b) is not to address the Council for a period exceeding 10 minutes without the agreement of the Council; and,
 - (c) additional members of the deputation may be allowed to speak with the leave of the Presiding Member.

- 8.7 Presiding Member may take part in debates**
The Presiding Member may take part in a discussion of any matter before the Council, subject to compliance with these Local Laws.
- 8.8 Relevance**
- (1) A Member is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.
 - (2) The Presiding Member, at any time, may:
 - (a) call the attention of the meeting to:
 - (i) any irrelevant, repetitious, offensive or insulting language by a Member; or
 - (ii) any breach of order or decorum by a Member; and
 - (b) direct that Member, if speaking, to discontinue his or her speech.
 - (3) A Member is to comply with the direction of the Presiding Member under subclause (2) by immediately ceasing to speak.
- 8.9 Speaking twice**
A Member is not to address the Council more than once on any motion or amendment except:
 - (a) as the mover of a substantive motion, to exercise a right of reply;
 - (b) to raise a point of order; or
 - (c) to make a personal explanation.
- 8.10 Duration of speeches**
- (1) A Member is not to speak on any matter for more than 5 minutes without the consent of the Council which, if given, is to be given without debate.
 - (2) An extension under this clause cannot be given to allow a Member's total speaking time to exceed 10 minutes.
- 8.11 No speaking after conclusion of debate**
A Member is not to speak on any motion or amendment:
 - (a) after the mover has replied; or
 - (b) after the question has been put.
- 8.12 No interruption**
A Member is not to interrupt another Member who is speaking unless:
 - (a) to raise a point of order;
 - (b) to call attention to the absence of a quorum;
 - (c) to make a personal explanation under clause 8 13; or
 - (d) to move a procedural motion that the Member be no longer heard (see clause 11(1)(e)).
- 8.13 Personal explanations**
- (1) A Member who wishes to make a personal explanation relating to a matter referred to by another Member who is then speaking is to indicate to the Presiding Member his or her intention to make a personal explanation.
 - (2) The Presiding Member is to determine whether the personal explanation is to be heard immediately or at the conclusion of the speech by the other Member.
 - (3) A Member making a personal explanation is to confine his or her observations to a succinct statement relating to a specific part of the speech at which he or she may have been misunderstood.
- 8.14 No reopening of discussion**
A Member is not to reopen discussion on any Council decision, except to move that the decision be revoked or changed (see Part 16).
- 8.15 Adverse reflection**
- (1) A Member is not to reflect adversely on a decision of the Council except on a motion that the decision be revoked or changed (see Part 16).
 - (2) A Member is not:
 - (a) to reflect adversely on the character or actions of another Member or Officer; or
 - (b) to impute any motive to a Member or Officer.

- (2) Where an amendment has been proposed to a substantive motion, the substantive motion is not to be withdrawn, except by consent of the majority of Members present, until the amendment proposed has been withdrawn or lost.

10.16 Right of reply

- (1) The mover of a substantive motion has the right of reply.
 (2) The mover of any amendment to a substantive motion has a right of reply.
 (3) The right of the reply may only be exercised.
 (a) where no amendment is moved to the substantive motion – at the conclusion of the discussion on the motion; or
 (b) where one or more amendments have been moved to the substantive motion – at the conclusion of the discussion on the substantive motion and any amendments.
 (4) After the mover of the substantive motion has commenced the reply:
 (a) no other Member is to speak on the question;
 (b) there is to be no further discussion on, or any further amendment to, the motion.
 (5) The right of the reply is to be confined to rebutting arguments raised by previous speakers and no new matter is to be introduced.
 (6) At the conclusion of the right of reply, the substantive motion, or the substantive motion as amended, is immediately to be put to the vote.

Part 11 - Procedural motions

11.1 Permissible procedural motions

In addition to the right to move an amendment to a substantive motion (under Part 10), a Member may move the following procedural motions:

- (a) that the meeting proceed to the next item of business;
 (b) that the debate be adjourned;
 (c) that the meeting now adjourn;
 (d) that the question be now put;
 (e) that the Member be no longer heard;
 (f) that the ruling of the Presiding Member be disagreed with,
 (g) that the meeting be closed to the public (see clause 6.2).

11.2 No debate

- (1) The mover of a motion specified in paragraph (a), (b), (c), (f) or (g) of clause 11.1 may speak to the motion for not more than five minutes, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.
 (2) The mover of a motion specified in paragraph (d) or (e) of clause 11.1 may not speak to the motion, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

11.3 Who may move

No person who has moved, seconded, or spoken for or against the substantive motion, or any amendment to the substantive motion, may move any procedural motion which, if carried, would close the debate on the substantive motion or amendment.

11.4 Procedural motions - right of reply on substantive motion

The carrying of a procedural motion which closes debate on the substantive motion or amendment and forces a decision on the substantive motion or amendment does not deny the right of reply to the mover of the substantive motion.

11.5 Meeting to proceed to the next business

The motion “that the meeting proceed to the next business”, if carried, has the effect that:

- (a) the debate on the substantive motion or amendment ceases immediately;
 (b) no decision is made on the substantive motion;
 (c) the Council moves to the next item of business; and
 (d) there is no requirement for the matter to be raised again for consideration.

15.2 Effect of adjournment

Where any matter, motion, debate or meeting is adjourned under these Local Laws:

- (a) the names of Members who have spoken on the matter prior to the adjournment are to be recorded in the minutes;
- (b) debate is to be resumed at the next meeting at the point where it was interrupted; and
- (c) the provisions of clause 8.9 [speaking twice] apply when the debate is resumed.

Part 16 – Revoking or changing decisions

16.1 Requirements to revoke or change decisions

The requirements to revoke or change a decision made at a meeting are dealt with in regulation 10 of the Regulations.

(1)	If a decision has been made at a council or a committee meeting then any motion to revoke or change the decision must be supported - (a) in the case where an attempt to revoke or change the decision had been made within the previous 3 months but had failed, by an absolute majority; or (b) in any other case, by at least $\frac{1}{3}$ of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.
(1a)	Notice of a motion to revoke or change a decision referred to in subregulation (1) is to be signed by members of the council or committee numbering at least $\frac{1}{3}$ of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.
(2)	If a decision has been made at a council or a committee meeting then any decision to revoke or change the first-mentioned decision must be made - (a) in the case where the decision to be revoked or changed was required to be made by an absolute majority or by a special majority, by that kind of majority; or (b) in any other case, by an absolute majority.
(3)	This regulation does not apply to the change of a decision unless the effect of the change would be that the decision would be revoked or would become substantially different. [Regulation 10 of the Regulations]

16.2 Limitations on powers to revoke or change decisions

- (1) Subject to subclause (2), the Council or a committee is not to consider a motion to revoke or change a decision:
 - (a) where, at the time the motion is moved or notice is given, any action has been taken under clause 16.3 to implement the decision; or
 - (b) where the decision is procedural in its form or effect
- (2) The Council or a committee may consider a motion to revoke or change a decision of the kind described in subclause (1)(a) if the motion is accompanied by a written statement of the legal and financial consequences of carrying the motion.

16.3 Implementing a decision

- (1) In this clause:
 - (a) "authorisation" means a licence, permit, approval or other means of authorising a person to do anything;
 - (b) "implement", in relation to a decision, includes:
 - (i) communicate notice of the decision to a person affected by, or with an interest in, the decision; and
 - (ii) take any other action to give effect to the decision; and
 - (c) "valid notice of revocation motion" means a notice of motion to revoke or change a decision that complies with the requirements of the Act, Regulations and the Local Laws and may be considered, but has not yet been considered, by the Council or a committee as the case may be.
- (2) Subject to subclause (4), and unless a resolution is made under subclause (3), a decision made at a meeting is not to be implemented by the CEO or any other person until the afternoon of the first business day after the commencement of the meeting at which the decision was made.

Dated: [*INSERT DATE*]

The Common Seal of the [*INSERT NAME OF LOCAL GOVERNMENT*]
was affixed by the authority of a resolution
of Council in the presence of:

[*INSERT NAME OF MAYOR/PRESIDENT*]
Mayor/President

[*INSERT NAME OF CEO*]
Chief Executive Officer

APPENDIX 3
COMMITTEE'S LETTER DATED 15 JUNE 2010

APPENDIX 3

COMMITTEE'S LETTER DATED 15 JUNE 2010



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your Ref: LE010004
Our Ref: 3833/20

Mr Brad Day
Shire President
Shire of Dardanup
PO Box 7016
EATON WA 6232

15 June 2010

Attention: Mr Phillip Rowe

By Fax: 9724 0091

Dear Sir

Shire of Dardanup Standing Orders Local Law 2009

I refer to the above and to your letter to the Committee dated 27 May 2010. The Committee considered your letter at its meeting on 14 June 2010 and resolved to write to you regarding the matters raised.

The Committee accepted the Shire's position in relation to clause 4.7 and resolved to take no further action in relation to this clause.

In relation to clauses 7.12(3) and 8.4, the Committee re-iterates its position as set out in its letter to the Shire dated 18 May 2010. As set out in that letter and in its Report Number 38, *Issues of concern raised by the Committee between 1 May 2009 and 31 December 2009 with respect to Local Laws*, tabled in the Legislative Council on 22 April 2010, the Committee's view is that these clauses are inconsistent with section 3.1 of the *Local Government Act 1995* and in breach of section 2.10 of that Act. As such, the Committee continues to seek an undertaking from the Shire that it will:

- repeal subclause 7.12(3); and
- repeal clause 8.4 or amend it by deleting the words "that meeting" after the words "part in" and insert the words "the debate of the item".

As set out in its letter dated 18 May 2010, the Committee also requires an undertaking that the problematic clauses will not be enforced in the interim and an undertaking that the amendments will be made within six months.

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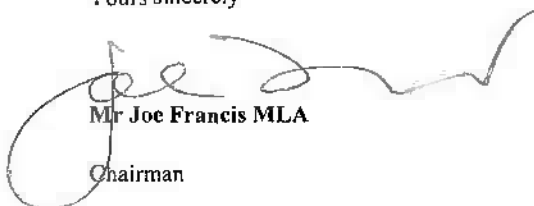
Please provide a copy of the minutes of the Shire's meeting providing the undertakings

The notice of motion to disallow the *Shire of Dardanup Standing Orders Local Law 2009* remains in place, and will be removed on receipt of the undertakings requested.

Given the strict timeframes for disallowance of subsidiary legislation under the Legislative Council's Standing Orders and the *Interpretation Act 1994*, the Committee requests that the undertakings be provided by **5pm on Thursday, 24 June 2010**.

If you have any queries, please telephone the Committee's Advisory Officer (Legal), Mrs Felicity Mackie on 9222 7406.

Yours sincerely



Mr Joe Francis MLA
Chairman

Note that this document (including any attachments) is privileged. You should only use, disclose or copy the material if you are authorised by the Committee to do so. Please contact Committee staff if you have any queries.

APPENDIX 4
SHIRE OF DARDANUP'S LETTER DATED 18 JUNE 2010

APPENDIX 4

SHIRE OF DARDANUP'S LETTER DATED 18 JUNE 2010



Shire of Dardanup

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18 June 2010

Mr D Driscoll
Committee Clerk
Delegated Legislation Committee
Legislative Council
Parliament House
PERTH WA 6000

Dear Mr Driscoll

RE: Shire of Dardanup Standing Orders Local Law 2009

Thank you for your facsimile received on the 15th June 2010, in relation to the decision handed down by the Joint Standing Committee on Delegated Legislation in regards to the Shire of Dardanup Standing Orders Local Law 2009.

As the Joint Standing Committee is still seeking an undertaking from Council in regards to repeal subclause 7.12(3) and amend or repeal clause 8.4, I wish to advise that Council will not be making these requested amendments.

This decision was made at the Council meeting on the 26th May 2010, and was included in the extract of minutes of that meeting provided to the Committee, under the "Officer Comment" the last two paragraphs read as follows:-

It should be noted that the Local Government Act 1995 Section 3.16 requires Local Governments to review Local Laws at least every 8 years. The Act does not require that the review result in any changes, only that the review occur and a decision being made to either repeal, amend or retain the Local Law.

If Council resolves not to amend the Local Law as requested by the Committee, the Committee may proceed with their motion to disallow the Local Law, if this was to occur Council would continue to operate under Standing Orders Local Law 1998, published in the Government Gazette on the 4th May 2001.

The resolution passed by Council was as follows:-

That the Officer explanation in response as detailed above, in relation to the concerns raised by the Joint Standing Committee on Delegated Legislation be adopted as Councils position and that the Joint Standing Committee be requested to allow the Shire of Dardanup Standing Orders Local Law 2009 to remain as gazetted with no changes.

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Council will await advice from the Committee on whether or not it will proceed to disallow the Shire of Dardanup Standing Orders Local Law 2009, Council does however give an undertaking not to enforce these two clauses whilst awaiting this advice.

I have been asked to enquire that as Council used the gazetted City of Perth Standing Orders as the template for the local law with these exact same clauses, will the City of Perth also be required to amend their local law in relation to these same clauses that the Committee considers to be inconsistent with section 3.1 of the Local Government Act 1995.

Thank you for your assistance with this matter.

Yours sincerely

MR PHILLIP S ROWE
Manager, Corporate & Community Services

APPENDIX 5
COMMITTEE'S LETTER DATED 29 JUNE 2010

APPENDIX 5

COMMITTEE'S LETTER DATED 29 JUNE 2010



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your Ref: LE010015
Our Ref: 3833/20

Mr Brad Day
Shire President
Shire of Dardanup
PO Box 7016
EATON WA 6232

29 June 2010

Attention: Mr Phillip Rowe

By Fax: 9724 0091

Dear Sir

Shire of Dardanup Standing Orders Local Law 2009

I refer to the above and to your letter to the Committee dated 18 June 2010. The Committee considered your letter at its meeting on 28 June 2010 and resolved to proceed with its recommendation to Parliament that the *Shire of Dardanup Standing Orders Local Law 2009* be disallowed.

If you have any queries, please telephone the Committee's Advisory Officer (Legal), Mrs Felicity Mackie on 9222 7406.

Yours sincerely


Mr Joe Francis MLA
Chairman

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