



THIRTY-EIGHTH PARLIAMENT

REPORT 47

**JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**

***SHIRE OF KELLERBERRIN PARKING AND PARKING
FACILITIES LOCAL LAWS 2011***

Presented by Mr Joe Francis MLA (Chairman)

and

Hon Sally Talbot MLC (Deputy Chair)

May 2012

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 Sally Talbot MLC (Deputy Chair)
Hon Alyssa Hayden MLC
Ms Janine Freeman MLA

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

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REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION
IN RELATION TO THE
SHIRE OF KELLERBERRIN PARKING AND PARKING FACILITIES LOCAL LAWS 2011

1 INTRODUCTION

- 1.1 The Joint Standing Committee on Delegated Legislation (**Committee**) has identified that the Shire of Kellerberrin did not follow the mandatory procedure prescribed in the *Local Government Act 1995* (**Act**) when it adopted its new parking local law.
- 1.2 The Shire of Kellerberrin (**Shire**) failed to correctly follow several sequential steps as prescribed in section 3.12 of the Act, which has resulted in the local law being invalid. The local law is therefore not authorised by the Act and offends the Committee's Term of Reference 3.6(a).
- 1.3 This report recommends that the House disallow the *Shire of Kellerberrin Parking and Parking Facilities Local Laws 2011*.

2 REFERRAL TO THE COMMITTEE

- 2.1 The *Shire of Kellerberrin Parking and Parking Facilities Local Laws 2011* (**Local Law**) falls within the definition of 'instrument' in the Committee's Terms of Reference. The Shire resolved to commence the process of adopting a new local law relating to parking at its meeting on 21 June 2011 and this Local Law was published in the *Western Australian Government Gazette* (**Gazette**) on 14 October 2011.
- 2.2 The Local Law was referred to the Committee upon gazettal and its full text is publicly available from the State Law Publisher's website at <http://www.slp.wa.gov.au/gazette/gazette.nsf>.
- 2.3 The Committee first scrutinised the Local Law at its meeting on 21 November 2011 and resolved to proceed to recommend the disallowance of the Local Law to the Parliament.
- 2.4 The Committee wrote to the Shire on 22 November 2011 to advise that the Committee was proceeding to recommend disallowance. The Committee also advised the Minister for Local Government of its decision to recommend disallowance on the same date.

3 NON-COMPLIANCE WITH SECTION 3.12 OF THE *LOCAL GOVERNMENT ACT 1995*

Disallowance of an invalid local law - the Committee's position

- 3.1 The Committee has previously stated its position on the status of invalid local laws and the prospect of disallowance in its 42nd report: *Shire of Capel Keeping and*

*Welfare of Cats Amendment Local Law 2009 and Shire of Koorda Standing Orders Local Law 2009.*¹

- 3.2 The Committee has also previously tabled an information report relating to the *Shire of Kellerberrin Dogs Local Law*, which raised the same issues with regard to the Shire not complying with the mandatory procedure in section 3.12 of the Act.² The Committee's recommendation in that report was that the Governor exercise his power in section 3.17 of the Act to repeal the invalid local law.
- 3.3 This Local Law raises the same issues in relation to the effect of non-compliance with the procedure in section 3.12 of the Act. The Committee has the power to recommend disallowance to the Legislative Council, which will result in the Local Law being removed from the public record.

4 SCRUTINY OF THE LOCAL LAW

- 4.1 The Committee has considered the information contained in the Statutory Procedures Checklist provided by the Shire and formed the view that the Local Law is invalid, as the Shire had not complied with sections 3.12(5) and (6) of the Act.
- 4.2 The Committee resolved to move a notice of motion in the Legislative Council to recommend disallowance of the Local Law on 21 November 2011, which was moved in the Legislative Council on 1 December 2011. Motion was moved pro forma on 8 March 2012.
- 4.3 The Committee wrote to the Shire with its view that the Local Law was invalid on 22 November 2011. The Shire responded by email on 29 November 2011, but did not appear to understand the issue of invalidity which the Committee raised. The Shire instead again provided copies of the Local Law, a letter sent to the Department for Local Government (but addressed to the Minister) and a copy of an advertisement from a newspaper, *The Pipeline*.
- 4.4 The documents provided again confirmed the Committee's view that the Shire of Kellerberrin has not complied with the mandatory requirements of section 3.12 of the Act in the order in which they are prescribed, thus rendering the Local Law invalid.

5 STATUTORY PROCEDURE FOR MAKING A LOCAL LAW

- 5.1 It is important to note that section 3.12(1) of the Act is as follows:

3.12 Procedure for making local laws

In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.

[Committee emphasis]

¹ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 42, *Shire of Capel Keeping and Welfare of Cats Amendment Local Law 2009 and Shire of Koorda Standing Orders Local Law 2009*, 16 September 2010.

² Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 45, *Shire of Kellerberrin Dogs Local Law*, 3 November 2011.

- 5.2 If the steps set out in section 3.12 are not followed exactly in the order in which they are outlined, then the requirements of the Act have not been correctly complied with and the local law is invalid.

Section 3.12(5) of the Act - giving a copy of a proposed local law to the relevant Minister

- 5.3 Section 3.12(5) requires that:

After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.

- 5.4 The Statutory Procedures Checklist provided by the Shire advised that the Local Law was published in the Gazette on 14 October 2011 but the Local Law had been sent to the Minister for Local Government on 3 October 2011: that is, 11 days prior to publication in the Gazette.
- 5.5 The Committee has confirmed in writing with the Shire that a letter was sent to the Department of Local Government on 3 October 2011 which enclosed the adopted version of the Local Law. A copy of that letter is attached to this report as **Appendix 1**.
- 5.6 The Committee has previously made its view clear that the wording of section 3.12(5) of the Act implies that a local government must give the Minister for Local Government a copy of the local law as it appears in the Gazette, rather than the local law which is adopted by the local government. The implication is that a local government may still amend the version which Council has adopted prior to its publication in the Gazette,³ but that once the local law is published in the Gazette, any subsequent amendments will trigger the procedure in section 3.12 of the Act.
- 5.7 As the process outlined in section 3.12(5) of the Act was not followed correctly by the Shire, the Committee has formed the view that the Local Law is invalid.

Section 3.12(6) of the Act - giving local public notice

- 5.8 The procedure in section 3.12(6) requires that:

After the local law has been published in the Gazette the local government is to give local public notice -

- (a) stating the title of the local law;*
- (b) summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and*

³ Section 3.13 of the Act limits the scope of amendments which a local government may make during the section 3.12 process to exclude amendments which will result in a “significantly different” local law from that which was first proposed.

(c) advising that copies of the local law may be inspected or obtained from the local government's office.

[Committee emphasis]

- 5.9 The Statutory Procedures Checklist which the Shire provided to the Committee advised that this final local public notice⁴ was given through an advertisement in *The Pipeline*, which is the local newspaper in the Shire of Kellerberrin (published by the Kellerberrin Community Resource Centre). This advertisement appeared in *The Pipeline* on 26 September 2011: that is, two and a half weeks before the Local Law was published in the Gazette.
- 5.10 The Committee confirmed that date with the Shire and received a copy of the page in *The Pipeline* showing the date of the advertisement. This reveals that the Local Law was advertised in the newspaper before it was published in the Gazette, in contravention of the step in section 3.12(6). A copy of that advertisement is included in the Shire's letter at Appendix 1 (page 9 of this Report).
- 5.11 The Committee has formed the view that the requirements of section 3.12(6) of the Act have not been followed correctly, therefore rendering the Local Law invalid and capable of disallowance.

6 THE COMMITTEE'S CONCLUSIONS

Term of Reference 3.6(a)

- 6.1 The Committee has concluded that the Local Law offends its Term of Reference 3.6(a) on the basis of non-compliance with two of the mandatory requirements in section 3.12 of the Act.
- 6.2 The Committee has therefore resolved to recommend that the House disallow the instrument as it is of the view that it is invalid and not authorised by the Act.

Consequences of disallowance

- 6.3 As outlined in previous reports, the Committee notes that a number of benefits exist in recommending the disallowance of invalid instruments, which include ensuring that invalid laws are quickly removed from the public record and reducing the risk of public misinformation.
- 6.4 This is the Shire's first complete local law relating to parking since 2006, when its 1950 parking local law was repealed. Disallowance of the Local Law will therefore result in the Shire continuing to operate without a parking local law in the district, as it has done since 8 August 2006. In the Committee's view, this should not be an impediment to recommending the disallowance of this invalid local law.

⁴ Section 7(1) of the Act defines 'local public notice' as being "*publication in a newspaper circulating generally throughout the district, exhibited to the public on a notice board at the local government's offices and exhibited to the public on a notice board at every local government library in the district*".

7 RECOMMENDATION

Recommendation 1: The Committee recommends that the *Shire of Kellerberrin Parking and Parking Facilities Local Laws 2011* be disallowed.



Mr Joe Francis MLA

Chairman

3 May 2012

APPENDIX 1

LETTER FROM THE SHIRE OF KELLERBERRIN DATED 29 NOVEMBER 2011

From: Katelin Bowyer [pa@kellerberrin.wa.gov.au]
Sent: Tuesday, 29 November 2011 12:13 PM
To: Legislation, Delegated
Cc: Darren Friend
Subject: Shire of Kellerberrin Parking & Parking Facilities Local Laws
Follow Up Flag: Follow up
Flag Status: Completed
Attachments: letter to DLG - 31011.pdf; pipeline advert - 26911.pdf; Parking Local Laws - Gazette.pdf

Hi Irina,

I refer to the Committee's letter dated 22 November 2011 regarding the disallowance of the above Local Laws.

It states that the Shire of Kellerberrin was non-compliant with Sections 3.12(5) and 3.12(6) of the Local Government Act 1995.

In reference to Section 3.12(5), we did send a copy of the Local Laws to the Minister for Local Government and we did publish the Local Laws in the Government Gazette. Attached is a copy of the Local Laws as they appeared in the Gazette and a copy of the letter that was sent to the Minister with a copy of the Local Laws on 3 October 2011.

In reference to Section 3.12(6), we did give local public notice that the Local Laws had been adopted. Attached is a copy of the advertisement that appeared in the "The Pipeline" on 26 September 2011.

These attachments were previously emailed on 11 November 2011 and hard copies were posted on 14 November 2011.

Please contact myself or Darren Friend on 9045 4006 if you have any queries in relation to this email.

Thank you

Katelin Bowyer
Personal Assistant

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COPY

Ref:DAF:KB:LLAW-08

Steven Elliot
Legislation Officer
Department of Local Government
GPO Box R1250
PERTH WA 6844

Dear Steven

Re: Adopted Parking and Parking Facilities Local Laws.

I refer to your email dated 23 September 2011 and enclose a signed and sealed copy of the adopted Shire of Kellerberrin Parking and Parking Facilities Local Laws.

Adoption date at has also been corrected.

Yours faithfully



DARREN FRIEND
Chief Executive Officer

3 October 2011



"The Pipeline"

Shire of Kellerberrin Parking and Parking Facilities Local Laws

Local Government Act 1995 (as amended) – section 3.12

Public Notice is hereby given that the Shire of Kellerberrin has adopted Parking and Parking Facilities Local Laws in accordance with the Road Traffic Act 1974 and Local Government Act 1995 at its Ordinary meeting held on 20 September 2011.

The Local Laws will be in effect from their date of publication in the Government Gazette.

A copy of the Parking and Parking Facilities Local Laws is available on Council's website www.kellerberrin.wa.gov.au, by emailing Katelin Bowyer on pa@kellerberrin.wa.gov.au or at the Council administration office.

DARREN FRIEND
Chief Executive Officer



PUBLIC NOTICE

DrumMUSTER CHEMICAL CONTAINER COLLECTION

Tuesday 27 September 2011 from 7:30am – 1pm

DRUMS TO BE;

Thoroughly drained and cleaned of all chemical residue by triple rinsing, pressure washing or a method that achieves the same result.

Free of odour and open at one end, no residue or rain may remain inside and to allow closer inspection.

Metal drums to be punctured at the base.

Please book your time by contacting the Shire Office on 9045 4006 and indicate the number of containers for collection.

DARREN FRIEND
Chief Executive Officer

