

## JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

### Internal Memorandum

**TO:** Committee Members  
JSCDL

**FROM:** Irina Lobeto-Ortega  
AOL

**SUBJECT:** Chair's Statement on Tabling of Report: Standing Order 189(2)  
*Shire of Kellerberrin Parking and Parking Facilities Local Laws 2011 and Town of Kwinana Extractive Industries Local Law 2011 (to be tabled 3 May 2012)*

**DATE:** 1 May 2012

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- The Joint Standing Committee on Delegated Legislation recommends that the House disallow these two local laws because they have not followed the mandatory procedure to make a local law prescribed in the *Local Government Act 1995*.
  - The Committee has found itself in the position of having to recommend the disallowance of these local laws based on the non-compliance with steps in the section 3.12 procedure, with the Town of Kwinana being out of order by 6 days and the Shire of Kellerberrin by two and a half weeks. The Committee understands that these timeframes are relatively minor in the overall process of making a local law, but the wording of section 3.12(1) is clear: if you do not complete the procedure in the correct order, then your local law will not be valid. This is where the Committee steps in to bring the attention of the House to its concerns with the wording of section 3.12.
  - When the Committee first scrutinised these two local laws at the end of 2011, it found that the steps in section 3.12 of the *Local Government Act 1995* were not completed in the correct sequence. Section 3.12(1) of the Act explicitly states that a local government must follow the procedure described in the section, in the sequence in which the procedure is described. When the steps are completed out of order, the resulting local law is invalid and will be outside the power contained in the *Local Government Act 1995* to make that local law.
  - The Committee has previously recommended the disallowance of a local law which was also invalid, albeit for a different reason, and these two local laws raise the same issues of invalidity. The effect of a local law being invalid means that it did not ever validly exist in law, but this Committee's role is not only to consider technical, legal issues with regard to local laws.
  - In this case, the Committee is also recommending that these invalid local laws be disallowed so that they are removed from the public record and no person may inadvertently rely on a law which does not legally exist.

- The Committee has resolved to also recommend to the House that the Minister for Local Government amend the wording of section 3.12 to provide for flexibility in circumstances where there is no adverse impact on the integrity of a local law. The Committee feels constrained to have to recommend disallowance of a local law which has not strictly followed the section 3.12 steps, but where this contravention has not resulted in any damage or adverse impact on any relevant stakeholder.
- The Committee considers the insertion of an element of flexibility or discretion into the procedure in section 3.12 would add to the Act's workability, while still maintaining the integrity of the local law-making process. In the case of the Town of Kwinana's local law, the Committee found no issue with the substance of any of the provisions, but was forced to recommend the disallowance of the local law due to technical non-compliance with the steps in section 3.12: a matter of six days. The Shire of Kellerberrin did not comply with two steps in section 3.12: an error of 11 days and 17 days, respectively. The Committee's recommendation in the Town of Kwinana disallowance report addresses this unreasonable burden on local governments and on the Committee's scrutiny role.
- I commend these two reports to the House.

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