

LOCAL GOVERNMENT ACT 1995

1. Citation

These directions are the *Local Laws Explanatory Memoranda Directions 2010*.

2. Application

2.1 These directions apply from 12 November 2010, the date of Ministerial Circular No. 04-2010.

2.2 Failure to comply with the directions may render the local law inoperable.

3. Repeal

The *Local Laws - Explanatory Memoranda Directions 2005* dated 7 November 2005, contained in Circular No. 28-2005 to all local governments are revoked.

4. Object

The object of these Directions, given by the Minister for Local Government under section 3.12(7) of the *Local Government Act 1995*, is to assist the Joint Standing Committee on Delegated Legislation with its examination of local laws and by-laws, and other subsidiary legislation which are subject to section 42 of the *Interpretation Act 1984*. The Committee is charged to perform this scrutiny function to assist the Parliament of Western Australia.

5. Terms used

The following terms are provided as an aid to understanding the Minister's Directions, what they mean, and what the requirements are when submitting the material about a local law.

gazette-ready format

This means the final version of the local law that was presented to council for adoption, in Word format and error-free as far as is practicable, that is near-ready for printing in the *Government Gazette*. The adopted version is the final version which has the date of adoption resolution inserted in the enacting formula and the date of affixing the common seal inserted in the concluding formula¹, and a copy of which is supplied to the State Law Publisher for printing in the Gazette. Once printed, the Gazette has the official version of the local law.

local public notice

Section 1.7 of the *Local Government Act 1995* sets out the requirements for this form of notice. It must be –

- (a) published in a newspaper circulating generally throughout the district;
- (b) exhibited to the public on a notice board at the local government's offices; and
- (c) exhibited to the public on a notice board at every local government library in its district.

Statewide public notice

The form for this type of notice is described in section 1.8 of the *Local Government Act 1995*. Where such notice is required to be given, section 1.7 applies except that the newspaper referred to in section 1.7(1)(a) is required to circulate generally throughout the State.

¹ Including the consent date of the Chief Executive Officer of the Department of Environment and Conservation, or the Executive Director of the Department of Health, as the case may be.

6. Local Laws Explanatory Material

After completing the procedural steps from sections 3.12(1) to 3.12(6) of the *Local Government Act 1995*, section 3.12(7) requires local governments to provide explanatory material for each local law gazetted.

- 6.1 The local government is to submit to the Committee, within 10 working days of the Gazette publication date², under a signed letterhead, hard copies of –
- (a) the official local law as it appears in the Government Gazette;
 - (b) the completed and signed **Explanatory Memorandum** (refer section 7);
 - (c) the completed and signed **Statutory Procedures Checklist** (refer section 8);
 - (d) **Supporting Material** (refer section 9); and
 - (e) a statement confirming that electronic copies will be sent by e-mail.
- 6.2 The local government is to also e-mail electronic copies of the following information to the Committee –
- (a) the official local law as it appears in the *Government Gazette* (as a pdf doc);
 - (b) the completed Explanatory Memorandum (as a Word doc);
 - (c) the completed Statutory Procedures Checklist (as a Word doc);
 - (d) Supporting Material (as pdf docs); and
 - (e) if the local law being submitted for scrutiny is an amendment local law, please supply electronic copy (as a Word doc) of the principal local law with all amendments consolidated up to a date immediately before this amendment local law.
- 6.3 Should a delay be experienced in sending the explanatory material, the local government should send an e-mail advice to delleg@parliament.wa.gov.au about the delay and provide a date by which the material will be sent.
- 6.4 The following directions describe the specific details on the material required.

7. Explanatory Memorandum

Each Explanatory Memorandum form must contain the following –

- 7.1 The name of the local government.
- 7.2 The Gazette publication date of the local law.
- 7.3 The title of the local law.
- 7.4 The identification of the section(s) of the statute(s) under which the local law is made.
- 7.5 A summary description of the purpose and effect of, and justification for, the local law (or any amendments to or repeal of it).
- 7.6 Additional information, depending on the type of local law, is to be included –

² Before preparing for the adoption of a local law, please take into consideration the timing of publications and notices, and the remaining clear working days available to submit the explanatory material to the Committee. For example, the *Government Gazette* is normally published every Tuesday and Friday; 'Local Government Notices' are usually published on Wednesdays and Saturdays in the State-wide newspaper, and the local notice is dependent on the frequency of local newspapers. Before determining the intended date of publication in the Gazette, the local government should carefully consider an appropriate timeframe for making all the necessary preparations first, allowing adequate time to prepare for the sequence of the documentation and the checking for accuracy.

- (a) For an **amendment local law that is made at the request of the Committee**, please also state –
- (i) the reference number and date of the Committee's letter(s) to the local government requesting information on the local law or requesting amendments to be made to the local law; and
 - (ii) the reference number and date of the local government's written undertaking(s) to make those amendment(s) to the local law.
- (b) If based on a **pro forma** from the *WALGA Local Laws Manual*, please give these details –
- (i) name of the *pro forma* local law;
 - (ii) page numbers of the *pro forma* local law;
 - (iii) which edition of the *WALGA Local Laws Manual* was used (that is, October 2003, April 2005 or May 2010);
 - (iv) identify to what extent, if any, the local law differs from the text contained in the *pro forma* local law; and
 - (v) the reasons for the changes.
- (c) If based on **another local government's local law** which was printed in the *Government Gazette*, please give these details –
- (i) full name of that printed local law;
 - (ii) date, issue number, and page numbers of the *Government Gazette*;
 - (iii) identify to what extent, if any, the local law differs from the text contained in the *Government Gazette*; and
 - (iv) the reasons for the changes.
- (d) If a **gazettal-by-reference** (and based on another local government's local law, or based on a Governor's local law³ printed as a *pro forma* in the *Government Gazette*), please give the following details –
- (i) full name of that printed local law;
 - (ii) date, issue number, and page numbers of the *Government Gazette*;
 - (iii) identify to what extent, if any, the local law differs from the text or from the standard wording contained in the *Government Gazette*; and
 - (iv) the reasons for the changes.
- (e) If created by **not using any of the above methods**, please give the following, where applicable –
- (i) the extent the local law differs from the former local law, if any; and
 - (ii) the reasons for the changes or new provisions.

7.7 Information on any unusual or controversial provisions contained in the local law.

7.8 A summary of any submissions received in response to the local government's public notice about the local law, public meetings or any other public consultation arranged by the local government, including summaries of the local government's responses to those submissions.

7.9 The reasons justifying any fees and/or charges or penalties and modified penalties where –

³ For example, from a Governor's local law made under section 62 of the *Waste Avoidance and Resource Recovery Act 2007* and published in the *Government Gazette*.

- (a) the new local law or an amending local law introduces or changes the amount of the fee, charge or penalty; or
- (b) a fee or charge is to be imposed by the local law but the quantum of the charge is to be set under section 6.16 of the *Local Government Act 1995*, and an estimate of what the fee or charge will be,

and details of the fee or charge or penalty amount, before and after the change must be summarised in a table with the following column headings –

- (a) type of fee or charge or penalty;
- (b) date last updated (increase or decrease);
- (c) old fee or charge or penalty;
- (d) new fee or charge or penalty; and
- (e) percentage increase or decrease.

- 7.10 A confirmation that the completed Statutory Procedures Checklist is attached to the Explanatory Memorandum.
- 7.11 A statement indicating that the Explanatory Memorandum is an aid to understanding only, and must not be substituted for the local law or made available to the public in any way.
- 7.12 The name, telephone number and e-mail address of a local government officer whom the Committee can contact if the Committee has any questions regarding the local law.
- 7.13 The full names (printed in BLOCK LETTERS) and signatures of both the Mayor/President and the Chief Executive Officer (CEO) (the authorised public officer witnesses).

8. Statutory Procedures Checklist

Each Statutory Procedures Checklist must indicate compliance with the relevant empowering Acts –

(a) *Local Government Act 1995* –

- (i) Section 3.6: the Governor has approved a local government to make a local law that applies the provisions of that local law outside its district.
- (ii) Section 3.12(2) to (8): completed the procedures for making the local law as outlined in this section (for it to be valid);

and in respect of

- (iii) Sections 3.12(3)(b) & 3.12(5): given to the other Minister, the required copies under the administration of –
 - *Agriculture and Related Resources Protection Act 1976* – Minister for Agriculture and Food – for pest plant local laws;
 - *Bush Fires Act 1954* – Minister for Emergency Services – for bush fire brigades local laws and fire-breaks local laws, with Fire and Emergency Services Authority of WA (FESA)'s approval, prescribing the manner owners and occupiers of land in the district clear and maintain fire-breaks, under section 33(5a) of that Act;
 - *Cremation Act 1929* – Minister for Health – cemeteries local laws prescribing cremation matters;

- *Dividing Fences Act 1961* – Minister for Commerce (currently assisted by the Department of Commerce) under section 24 of that Act – fencing local laws prescribing what constitutes a sufficient fence;
 - *Health Act 1911* – Minister for Health – health local laws;
 - *Waste Avoidance and Resource Recovery Act 2007* – Minister for Environment – local laws prescribing waste management matters.
- (b) *Waste Avoidance and Resource Recovery Act 2007* –
- (i) Section 61(1)(a): the local government made a waste local law in accordance with the procedural steps in the *Local Government Act 1995*;
- or
- (ii) Section 61(1)(b): the CEO of the Department of Environment and Conservation (DEC) directed the making of a waste local law with certain exemptions from the procedures in the *Local Government Act 1995*,
- and
- (iii) the CEO of DEC's signed consent to the final version of the local law.
- (c) *Health Act 1911* –
- (i) Executive Director, Public Health's signed consent has been obtained for health local laws.

9. Supporting Material

Supplementary documents, which prove the local government's fulfilment of the statutory procedure(s) for each local law, are to be supplied to the Committee. These are:

9.1 Copies of the published notices, as required under the *Local Government Act 1995* –

- (a) State-wide public notice (refer to section 3.12(3)(a));
- (b) local public notice (refer to section 3.12(3a)); and
- (c) local public notice (refer to section 3.12(6)),

and the above copies show, as evidence of publication, these details –

- name of the newspaper;
- date of the newspaper; and
- page number of the newspaper where the notice is printed.

9.2 Copy of the Council minutes with –

- (a) cover page showing council name, meeting type (eg Ordinary) and date; and
- (b) only the pages containing the part about the local law,

as written evidence of –

- (a) the purpose and effect of the proposed local law (refer to section 3.12(2));
- (b) the consideration of any submissions about the local law and the adoption of the local law by absolute majority (refer section 3.12(4)); or
- (c) the consideration of any submissions about the local law and the making of the local law subject to sections 3.12(4) and 3.13.

10. Submission of Explanatory Material

The hard copies are to be sent to –

Committee Clerk
Joint Standing Committee on Delegated Legislation
Legislative Council Committee Office
GPO Box A11
PERTH WA 6837

and electronic copies are to be e-mailed to: delleg@parliament.wa.gov.au .

11. Resources

11.1 For queries about submitting the explanatory material, the Legislative Council Committee Office's contact numbers are –

Tel: 9222 7300 Fax: 9222 7805

11.2 For queries about the statutory requirements in the completion of the local law process, the contact details for the Legislation Branch of the Department of Local Government are –

Tel: 9217 1494 & 9217 1581 Fax: 9217 1555 E-mail: info@dlg.wa.gov.au

11.3 Electronic copy of the blank forms (in MS Word) can be obtained by downloading from the WA Parliament's website: www.parliament.wa.gov.au by selecting [Committees](#), then [Current Committees](#) and then [Delegated Legislation Committee](#).

11.4 An electronic copy of the Minister's Directions and blank forms can also be obtained and downloaded from the Department of Local Government's website: www.dlg.wa.gov.au by selecting [Legislation](#) and [Local Laws](#).

11.5 The attached examples of a completed Explanatory Memorandum and a completed Statutory Procedures Checklist are provided as a guide only.

12. Local government records

12.1 The official correspondence and records of local governments are subject to public scrutiny and inspection under section 5.94(g) to (q) of the *Local Government Act 1995* and the *State Records Act 2000*, except where there are exemptions expressed in written legislation. Local government officers need to ensure that records of the legal entity, in any material or medium, are appropriately kept for transparency and accountability purposes.

12.2 Local governments need to ensure that the same documentation and material sent to the Committee, the State Law Publisher and the administering Minister(s) are properly kept and maintained in the local governments' record-keeping systems. Documents include the local governments' written undertakings to amend⁴ their adopted local laws in accordance with instructions from the Committee.

⁴ The amendments should be in an amendment local law that goes through the procedures of section 3.12 of the *Local Government Act 1995*. Otherwise, it will not be valid.