

**JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION**

CITY OF GOSNELLS WASTE LOCAL LAW 2011

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH,
MONDAY, 31 OCTOBER 2011**

Members

Mr Joe Francis (Chairman)
Hon Sally Talbot (Deputy Chairman)
Hon Alyssa Hayden
Hon Jim Chown
Ms Janine Freeman
Mr Paul Miles
Mr Andrew Waddell
Hon Helen Bullock

Hearing commenced at 10.08 am**ADAM, MS MARY****Manager, Legislation, Department of Local Government, sworn and examined:****TUCKER, MS BERNADINE****Manager, Governance, City of Gosnells, sworn and examined:****PERKINS, MR TREVOR****Director, Governance, City of Gosnells, sworn and examined:****McGOVERN, MR JAMES****Manager, Governance, Western Australian Local Government Association, sworn and examined:**

The CHAIRMAN: Thank you everyone for coming in. On behalf of the committee I would like to welcome you to the meeting. Before we begin I must ask you to take either the oath or affirmation.

[Witnesses took the oath or affirmation.]

The CHAIRMAN: You have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard can I ask you to please quote the full title of any document you refer to during the course of this hearing for the record and please be aware of the microphones and try to talk into them. Be sure you do not cover them with paper or make noise near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would anyone like to make an opening statement?

Mr Perkins: Before you start, we have a document that, if you wish you can circulate to all the members of the committee, as we were asked to bring any evidence with us.

The CHAIRMAN: I will start by stating briefly the role of the Joint Standing Committee on Delegated Legislation. Our committee is obviously governed by the standing orders of the Legislative Council. It is made up of four members of the Assembly and four members of the Council. Our job is basically to review all these kinds of local laws and government regulations, and recommend to the Legislative Council that they be disallowed in certain circumstances when they are in breach of our terms of reference. We make a recommendation to the Council; it is not necessarily something the Council has to uphold. We are kind of a set of eyes or gatekeeper to the Legislative Council and to the Parliament on these kinds of regulations. I guess this one stood out. I understand there are other laws with other councils that are fairly similar, but this one stood out purely on the basis of a commonsense alarm bell, I am sorry. When I see things such as fines of \$75 for leaving a bin lid open, \$150 for putting it out at the wrong time, not collecting it or not keeping

it clean I have to ask why. It is vague and uncertain and it seems a bit unnecessary in today's society. We have some questions prepared. If you want to start with that document, sir, that would be good.

Ms Tucker: I am not sure whether you want to progress through the issues in your letter.

The CHAIRMAN: I am happy if you want to start that way.

Ms Tucker: We addressed them point by point through the whole letter that was sent to the City of Gosnells.

The CHAIRMAN: Let us start with that.

Ms Tucker: First off it is an introduction in relation to the making of this local law. On 29 September this year the city received correspondence from the Joint Standing Committee on Delegated Legislation identifying a number of perceived anomalies in the City of Gosnells Waste Local Law 2011. As attachments referred to in that communication, being copies of correspondence to and from the Minister for Local Government, were not received, telephone contact was made with Ms Veletta, the committee's advisory officer, who in turn forwarded the copies through to the city. Ms Veletta was advised at the time of city's inability to meet the deadline that was required in relation to the undertakings of 12 October, which was our council meeting, as the agenda had already closed. We did at that time, though, give an undertaking to progress the matter through to the following council meeting. During the discussion, the city sought clarification in relation to a range of issues contained within the correspondence from the committee. We believe it was acceptable clarification, however that was not forthcoming, which made it difficult for us to progress those matters through to the ordinary council meeting. As a result, the city wrote to the committee on 29 September, seeking clarification of aspects of the local law that were deemed "too vague and uncertain", to enable it to place an appropriate recommendation before council that could provide an undertaking that would serve the greater good of the community.

On 5 October this year, following receipt of the copies of the minister's correspondence from Ms Veletta, the city wrote to the Director General of the Department of Local Government, requesting that agency to seek a ruling from the State Solicitor as to the use of the term "city" in the local law, rather than the generic "local government". On Saturday, 15 October, as the city had received no response from the committee, the director of governance forwarded an email to Ms Veletta, advising that he was in the process of drafting a report to council, but without response to the correspondence of 29 September clarifying the matters, it was somewhat difficult to seek that determination from council.

On 17 October, Ms Veletta phoned the director of governance to advise that correspondence clarifying the issues would not be forthcoming, and, further, he was to attend a hearing of the committee today.

On 25 October, the city received a response from the Department of Local Government, which in part stated —

As the Minister has accepted the Committee's view on this matter a further legal opinion is not required."

As a result of the above, the City of Gosnells tenders the following in support of its local law for the consideration of the committee. This sets out, point by point, the issues that were raised.

The first one that was raised by the committee was the term "city waste", which was in the beginning of the local law. With our local law, as has been identified by the committee, we have removed the term "local government" and replaced it with the term "city"; therefore, it is called "city waste". If it goes back to the original term, it is "local government waste", and "local government waste" is defined in the Waste Avoidance and Resource Recovery Act. But the City of Gosnells has taken that matter to council and has sought a resolution to remove the term "city

waste” from that part of the local law, so then it will just be referred to as “waste”. That has been through to council, and we do have that resolution.

Is the committee happy with that response, or would you like some more information in relation that?

The CHAIRMAN: Do any members want to ask about that? I do not think that is much of an issue.

Ms Tucker: Is that okay?

The next matter raised in the correspondence was in relation to the term “city”. I will not repeat all the words that were in the correspondence; on page 4 is the city’s response in relation to that. The committee is of the view that we should be following the model local law—that is what was pointed out in the correspondence, and the city does deviate from the model local law—but in relation to that, clause 3.8 of the Local Government Act says that following a model local law “may” occur, so there is the view that it is discretionary; you do not actually have to follow the model local law. Section 3.9(2) of the Local Government Act goes further, stating —

Model local laws have no effect except to the extent that they are adopted.

So, therefore, if the city does not adopt the model local law, it does not have effect. It is our view that a model local law does not have to be adopted. We can adopt it in part or in whole; in this situation with our model local law, we did not really follow the model.

In relation to the model local law, as well, a new model local law in relation to waste is actually being developed; that is still currently under review. Without pre-empting the response from WALGA, I believe that is still to have the sign off from the Department of Environment and Conservation, so that is still progressing through.

[10.20 am]

The CHAIRMAN: And that is the draft one you presented to us?

Mr Perkins: That is correct.

Ms Tucker: That is still progressing through. That one actually came out for consultation with the local government sector after our local laws went through, so we have not followed that one, obviously, because that was not in existence at that point in time. In relation to the term “city”, under section 2(5) of the Local Government Act, it says that local governments are created as bodies corporate; therefore, we do have the capacity of an actual person, and subsection (4) goes through saying that the corporate name of a local government is the combination of the district’s designation and name. For example, the City of Gosnells is the corporate entity or corporate name of the local government. I know that the committee does have a view and has expressed a view in relation to the terms “city” and “local government”. We have been discussing this and we have sought clarification from our own legal advisers, saying that the terms “local government” and “city” are correct, and our legal advisers said that the term “City of Gosnells” would be preferable to the generic term “local government”, so we have followed the legal advice that we have been provided; it is not just something that we came up with. It has been pointed out that the term “local government” is correct because that is what is referred to in the Local Government Act and also the Waste Avoidance and Resource Recovery Act. We are of the view that that is just the generic term, because it is unlikely to be referred to as a city, a shire or a town in those acts; they would just refer to a generic local government, but our local law has been referred to as the City of Gosnells Waste Local Law; therefore, reference through the local law to the “city”, we believe, is correct. Additionally, there is a seal that must be placed on the local law, and it is the seal of the City of Gosnells, not the seal of a local government. That is why we are of the view that “city” is the preferable term in relation to this local law, because it is specific to the City of Gosnells and it does not go outside our district or outside our boundary.

When we do develop a local law, we look at the committee's local government undertaking register, which is on the website, because it is a very useful document and it lets us go through and see what other points the committee has identified as being an issue, so we can go through and make sure we do not replicate those same mistakes, because we do not want to waste your time and we do not want to waste our time having to recreate the local law or the process. So, having a look at that register, there was no reference on there in relation to any local laws removing the term "city" and replacing it with "local government". Therefore, that is why we have continued with the word "city", as have other local governments used the terms "city", "shire" or "town" in their local laws. I believe that the letter that was delivered to us in relation to what went through to the minister about the City of Perth Parking Local Law 2010, and also the City of Mandurah Waste Management Local Law 2010, was not in relation to replacing the term "city" with "local government", but "city" with "council" in a couple of clauses. In the undertaking register that is published on the website, it did say that but it did not say to replace the term "city" with "local government", so it was just in relation to "council". The City of Perth Parking Local Law, although required by the committee to replace the word "city" in three of its clauses, has allowed no less than 63 other terms or reference to the word "city" allowed in that local law, so the rest of it went through. Only three clauses were an issue. I think it is because it should have been "council" and not "city", because there is a difference between the role of the city and the role of the council.

We have identified a number of other local laws that have used the specific terms "shire", "city" or "town" in their local laws. I have also identified four that are specific to their waste local laws that have gone through recently, and the term "local government" has not appeared in their local laws either, so I suppose, from our point of view, it is consistency to make sure that we are all doing the same thing, and if other local governments are using those terms because they are specific to their sector or to their local government district, then it is probably the preferable term. Again, it is not something that we have just gone out on a limb to do; it is something we have been following other local governments on and seeing what has been happening in that sector.

The next matter that was of concern to the committee was the term "recyclable material and the collection of bulk material", and that this should be defined more clearly in clause 1.2. The term "collection service of recyclable material" is, I believe, a common-use term—"recyclable material"—so I am a bit unsure whether the committee wants us to define "collection service" or "recyclable material". In any event, the Waste Avoidance and Resource Recovery Act refers to the term "recycled materials" or "recycled" throughout that act, and the act does not define the term "recycled". Therefore, I do not think it is proper that subordinate legislation should define a term that an overarching act does not define in the first place. Because it is not defined, I think we go back to the literal rule in relation to understanding what the term "recyclable" means, and I think it is a common term that most people would understand, so I am not sure if the committee wants us to define the term "recyclable". In any event, we have looked at the Waste Avoidance and Resource Recovery Act and believe that we can better define that clause instead of saying "recyclable material or bulk material", to align it more with the act and have it as "recyclable waste and bulk waste", because "waste" is the term that is used in the Waste Avoidance and Resource Recovery Act. If we used that term, it would be consistent.

The CHAIRMAN: I am guessing that your bulk waste is collected two or three times a year.

Ms Tucker: That is right, the kerbside collection, and that is clearly defined when we send out the rates notices for recyclable material; you have the yellow lid bins and the bulk rubbish collections that occur, like you say, two to three times a year.

Hon SALLY TALBOT: So is there a definition of that on your rates notice?

Ms Tucker: It does define what that is, and it does define what they collect and what they will not collect.

Hon SALLY TALBOT: Do you have a copy of that here, by any chance?

Ms Tucker: No.

The CHAIRMAN: Is it on your website as well, when they are scheduled for certain suburbs?

Mr Perkins: Yes.

Ms Tucker: Yes, so it is all clear for the residents when that will occur and what waste will be collected and when it will not be, because there are different types of collections as well. There are ones for green waste and there is one for recyclable materials.

The CHAIRMAN: Just on a tangent, if I could. Is it the experience of your council that certain areas might start their own trend on these things, where someone just puts rubbish out the front and the neighbours think, “Oh, okay, we’ve got a bulk collection coming up”, and they put their rubbish out, and before you know it, the whole suburb has bulk collection rubbish or waste out, and you have not even programmed it?

Ms Tucker: We do have that. That is covered under one of our other local laws—that they cannot put rubbish on the verge without it being a bulk rubbish collection; it is an offence and we can prosecute in relation to that.

The CHAIRMAN: Have you ever prosecuted anyone for that?

Ms Tucker: Not for rubbish, but we have prosecuted in relation to the parking of vehicle bodies on verges.

Mr Perkins: With that one, if I may, because of the proliferation of waste on verges, we generally ask that they put it out the weekend before, but quite often we get it four or five weeks ahead of the collection. We visit the site, and request that the people remove the rubbish and bring it back on the day prior to the collection. Generally we have a fairly good response; however, if they do not, as you know, once it is out there, it gets rifled through by everyone and gets spread all over the verge, and that creates a problem.

The CHAIRMAN: Absolutely; it is like a daily garage sale!

Mr Perkins: It is something that we would like not to have to provide, but the community just demands it.

The CHAIRMAN: Yes; sorry to get sidetracked on that. I will let you continue.

Ms Tucker: That is in relation to recyclable material and bulk material. As I said, we concede that it is probably better defined to be in line with the Waste Avoidance and Resource Recovery Act, to be defined as “recyclable waste and bulk waste”, because that is the term that is used in the overarching act. In relation to that again, other local governments use that term, and five waste laws that contain the same wording have gone through since 2009.

[10.30 am]

Then we come down to the issue in relation to offences and penalties. This is perhaps the area that we were most perplexed about in relation to what the actual issue was. We were not sure whether it was the monetary penalty attached to offences or whether it was making those offences in the first place.

Ms J.M. FREEMAN: It was both.

Ms Tucker: It was both; okay. In relation to making an offence in the first place, the clauses themselves throughout the local law actually give rise to an offence. If a clause gives rise to an offence, it is only proper that there is a penalty attached to it; otherwise, it should not be a clause in the first place. If a clause says that you shall not do this —

Ms J.M. FREEMAN: I will take you through the oc health and safety act!

Ms Tucker: If a clause says that you shall not do this and somebody does it, it is a breach of that clause. There should be a penalty attached to that. Perhaps Trevor would like to go through this

because a lot of these issues in relation to the penalties arise out of the old health regulations, and Trevor is more experienced than I am in relation to those.

Mr Perkins: A lot of the penalties you will find in all waste laws going through at the moment have been around since 1985–86 when the mobile garbage bins first came in. Take, for instance, the one in relation to the lid being closed on the bin. The City of Gosnells, with the gully, easterly winds that we get from October through to March–April every year, has a vortex that draws the rubbish out of the bins and it spreads it all around the community; hence, the design of the bins are such that when it is closed, it will not lift the bin. Similarly, our crows and magpies, which are everywhere at the moment, do likewise. If the lid is open on the bin, it draws it out. The third issue is fly attack. We get, especially from now on, flystrike in the bins, which creates a nuisance—both odour and fly breeding. That is the reason for it. The bins are designed so that the lid is closed and it does not allow those things.

Ms J.M. FREEMAN: But you are talking about when the bin is full, are you not?

Mr Perkins: Yes.

Ms J.M. FREEMAN: But that is not what your local law says.

Mr Perkins: No.

Ms J.M. FREEMAN: I get that you keep the bin closed when the bin is full, but when the bin is empty —

Ms Tucker: But there is still residual waste that is left in the bottom of bins.

Mr A.J. WADDELL: Follow your own trucks and watch what they do. They dump out the bin and then drop the bin back on the thing. You will find a percentage of those bins will have their lids open as a result of the dumping process. Essentially, an offence has been created by your own vehicles. How is that reasonable?

Mr Perkins: We do not disagree there, and I take the points that you are making. That is what we were not clear on. However, what I can say not only in this room is that our drivers are continually counselled that when they put the bin back, it has to be upright and the lid should be shut. If it is brought to our attention that when they are doing it, the lid is open, they are told to stop the vehicle and go and shut the lid. I heard a comment from the room that it is all of them. I would challenge that. It does not happen in the City of Gosnells, but I am not going to say it does not happen to a number of them.

The CHAIRMAN: I would say that the trucks that you use are exactly the same as the ones Cockburn uses in design and in operation. I live in Atwell. In fact, I spent two hours in the City of Gosnells yesterday, taking my dog for a walk just to have a look around. I am guessing the weather conditions that affect where I live are exactly the same. My collection day is Friday, and, honestly, one in four Fridays I will come home and I will find the bin, before it is emptied, blown over because the wind that comes through is quite surprising. It would be exactly the same for Gosnells.

Mr Perkins: Because of the sea breeze, yes.

The CHAIRMAN: Once the bin is emptied, it is anyone's guess as to how far down the road it is. A lot of times when the bin gets put back down, do not worry about the lid being shut—it is not even standing up. Most of the time the bin lids are open. In fact, I use it as a sign to know that the bin has been collected. When they are empty, they are light. A bit of wind will blow them over. Can you see how ridiculous it is —

Mr Perkins: I cannot comment on how Cockburn operates.

The CHAIRMAN: — to bring in a law to try to ping people \$75 for not having their bin shut?

Mr Perkins: Having come today, we can understand what you are on about, because, as I say, that has been in the local law right across Western Australia since 1985. But I can hear what you are

saying, so the terminology there does need a modification to cover that. But you do still have fly breeding after the bin has been emptied. If you see what people put in their bins from time to time, it is an issue. But I hear where you are coming from.

The CHAIRMAN: I will just flag a few other things like “by 6.00 am”. Really? I am going to ask you to explain. What if someone is a shift worker? What if someone is a fly in, fly out worker? What if someone is taken over to the eastern states for two days and they put their bin out on a Wednesday?

Mr A.J. WADDELL: Or they are booked on Qantas?

The CHAIRMAN: One of our committee members is. His bin is probably still sitting out the front of his house and might be for three days until he gets back. There are things outside people’s control just in the amazing lifestyles we live these days, with people flying in and out, travelling and going away. What if I did not put my bin out by 6.00 am because I was held up at night shift or had a late night the night before? What if my bin is only a third full and I choose not to put it out this week? Technically, is that an offence as well for not putting my bin out by 6.00 am when I am not even going to put it out?

Mr Perkins: Again, that takes a different slant on what we were looking at in the local law. If the bin is not out, it will not be collected. But if an individual fails for the very points that you just made and they ring the city and say, “For this reason, unfortunately, I could not get my bin out”, we will collect it. But if that same person week in week out does not put it out, their bin does not get collected.

The CHAIRMAN: Whose problem is that? That is their problem.

Mr Perkins: That is right; yes.

The CHAIRMAN: Are you going to fine them?

Mr A.J. WADDELL: That is our problem. You are criminalising behaviour which is not obnoxious in any way whatsoever. Why are you making it an offence for somebody to do something which is completely reasonable in today’s society to do?

Mr Perkins: Yes; I take your point.

Ms J.M. FREEMAN: I understand you are saying that it has probably come through the health regulations, but if you look at your language in terms of 2.3 of your government gazetted regulation, it says “an owner or occupier of premises shall”. So, on all occasions within a reasonable period before collection time, and no later than 6:00 am on the designated collection day, they shall do that. Attached to that is a penalty. I suppose we were saying that we want you to go back to your council and say to your council, “You have a look at these.” You are the people who work in your area and you are the people who represent your area and you need to come up with language that is actually realistic about these things, which is very much about “every endeavour shall be made” or what is reasonable. The language here is so prescriptive, and then a penalty attaches to that. That is what the concern is. You were writing local laws that people could not not breach. The problem we have when we come here is we often see laws that, by their regulations, people are forced into a situation of actually breaking your laws and our laws. That is not good at all. That is not good governance. That is what we were saying.

The CHAIRMAN: If people start piling bulk rubbish when it is not scheduled or leave car bodies—that is what I was hinting at before—that is fine; I understand you do not want the neighbourhood to look like a ghetto. But do you really, really, honestly think you need laws on how clean your rubbish bin has to be? Who is going to judge a dirty bin from a clean bin? If you do not put it out, tough luck. You do not really need a local law to do this. This is not even looking at the penalties for having it not visible from the street. This is going to create a great impost on some

people. They are going to have to buy screens or God knows what. Are you with me? Do you see what I am getting at?

Mr Perkins: I can answer that one inasmuch as one of the reasons for having it not visible from the street—things have changed over the last 15 or 20 years, because I have had, on more than one occasion, a full street load of bins removed or stolen and, on one occasion, every bin was still full of rubbish.

The CHAIRMAN: I have seen letterboxes stolen.

Mr Perkins: Yes; I take that point. I put that down to a different type of rubbish operation inasmuch as that was when the garden bags were moving across to 240-litre containers; hence, it was cheaper to borrow someone else's than buy a new one. During school holidays, if the bins are out and they are visible, they are taken for a walk down the street and dumped elsewhere. They are the reasons for that being put away and not visible to the general public.

Hon ALYSSA HAYDEN: What is your argument? A lot of people who live in your city would not have an enclosed garage; they would have a carport. If they have got it at the back of the carport, tucked away neatly, how is that an offence?

[10.40am]

Mr Perkins: If it is out of sight, it is no problem.

Mr J.M. FRANCIS: Only when the car is parked in the driveway.

Hon ALYSSA HAYDEN: But then they now need to go and purchase some material to make a barrier for them not to be seen from the road. What if it is a rental property?

Mr A.J. WADDELL: I will give a good example. I just inherited a house in the city of Gosnells and it has a driveway that comes straight off the road and the only place to put the bins is in there at the back of that driveway. It is visible from the road. There is no way, short of us creating paving to go around the back of the house, that you would actually be able to take that thing into a non-visible place, or erecting some sort of an enclosure to actually hide it. It seems an absurd length and cost that you are imposing on the community in order to avoid that maybe somebody might steal the bin. I mean, that house particularly has been broken into three or four times to my knowledge, and people went and smashed the window and took whatever they wanted to take. Whether that bin was in the front or whether it was in the back, if somebody had a mind to steal that thing, that bin was going. I do not see that this regulation benefits the community and leads to good governance in any particular way other than putting a high cost on the community.

Mr J.M. FRANCIS: There are a few other members with questions. What about kids using the bins to play cricket?

Hon SALLY TALBOT: I will just ask you a couple of questions about the theory and practice of the mechanisms you are setting up. Can you tell us, in the case of somebody who has contravened one of these provisions like the bin having been visible and having the lid open, what do you actually do?

Mr Perkins: We would generally, either through the rangers or through the waste collection service, visit the property and ask the people to amend their ways; and generally, as I say, they do that. But if we have a regular offender, then we look at alternative action.

Hon SALLY TALBOT: And that would be?

Mr Perkins: With this local law it would be an infringement.

Ms Tucker: With the infringements, of course, people can elect to have those dealt with in court. So, if we make a determination to infringe somebody, then we have to make sure, obviously, that there is a prima facie case before it goes through, and then be able to satisfy a magistrate that the charge that we have preferred has been correct.

Hon SALLY TALBOT: Let us just take one specific example. If you have somebody whose bin is visible and that is unacceptable under your provisions, do you police that? Does your report come from the ranger or from a neighbour?

Ms Tucker: Sometimes it comes from neighbours making complaints in relation to it, because sometimes with bins at the front we have issues of people setting fire to the bins out the front, we have people depositing other waste in bins that should not be put into those receptacles and so normally we act on a complaint.

Hon SALLY TALBOT: Okay. So, in relation to—I assume you have had a look at this information—all these things in the schedule, these prescribed offences, can you give us an idea about how many infringement notices you have issued over a certain period of time?

Mr Perkins: I can tell you exactly—none.

Ms J.M. FREEMAN: Infringements?

Mr Perkins: No, we have not. Under the former health local law we did not have that provision.

Hon SALLY TALBOT: Okay, so what about complaints, how many complaints have you dealt with?

Mr Perkins: I could not give you a specific number. As I say—and I go back in time when waste management was my area—as far as stolen bins, damage to bins, incorrect products in the bin, carcasses, motor engines, things of that nature I could not tell you in recent times because I have not been dealing with that for over 10 years.

Ms J.M. FREEMAN: But none of those people you had infringements on was because that was under the Health Act; is that what you are saying?

Mr Perkins: Yes. There was not an infringement provision under the old local law.

Ms J.M. FREEMAN: So how did you stop people doing it under the old local law?

Mr Perkins: As I say, simply by speaking to the people. And generally, nine times out of 10, once you bring something to their attention, the public, will do the right thing. But we continually have breaches—not these exact penalties—but when you look at the old health local laws, as Mary would attest, a range of issues were covered in there.

Hon SALLY TALBOT: I am just trying to get a feel for when you came to something like 2.3, which is failing to keep receptacle on premises so as not to be visible from the street or public place. You have got that in the list of prescribed offences. You have not been able to prosecute before but is that a problem in the city of Gosnells?

Ms Tucker: To issue a warning we have to give them a warning for something that they have done wrong. We cannot just issue a warning if it is not an offence, and we take a stepped approach in relation to enforcement. So a warning is always the first option that we take, and we ask somebody to comply and do the right thing, which —

Hon SALLY TALBOT: Okay, let me ask the question in the broadest possible way. Is there any connection between this list of prescribed offences and observed behaviour in the city of Gosnells?

Ms Tucker: Yes.

Mr Perkins: A number of them, yes.

Hon SALLY TALBOT: Which ones? You are saying you have not got any data.

Ms Tucker: We do not have information in relation to the amount of complaints that we have received. We have not got those with us today, but we receive complaints all the time about different types of offending, if you like; and rubbish is one of the biggest issues that we have in the city of Gosnells. People are illegally dumping waste, all the types of waste that they do put in bins. The city of Gosnells has a large ethnic community, a lot of Middle Eastern people and people from

non-English speaking backgrounds. They have brought with them customs that other suburbs perhaps do not get exposed to; for instance, they slaughter animals, they put carcasses in the bins. We have a large industrial area that, again, has the sort of waste that should not be in there, or oils and things like that. We have also got Western Australia's largest kennel zone, so there is waste from kennels as well. So they are issues that are specific to the city of Gosnells and I can understand that they perhaps would not be appropriate for some of the other local governments. But, again, that is the community that we have got and we are trying to enact something that can contain the waste that we are faced with within the city, because we do have to remove that waste; that is part of our jobs. But if somebody is putting something in the bin that is not correct, if it is not something in a law, we cannot tell them not to do it. So we have to be able to give a warning or something.

Hon ALYSSA HAYDEN: On that issue, is there an education program to the community? If you have a lot of ethnic people who do not speak English well, do you have a program to communicate to educate them what to put in the bin, and if it cannot go there what their alternative is?

Mr Perkins: Through the Rivers Regional Council, of which the City of Gosnells is a member, there is an education officer there and they run programs through the fortnightly newsletter that goes in the local paper that circulates the district.

Mr P.T. MILES: It is not working, though, is it; otherwise you would not have to do this?

Mr Perkins: Why do we have any laws? We educate the people trying to win and, unfortunately, we have got to have laws to enforce it, I suppose.

Hon SALLY TALBOT: But you do generally have some kind of KPIs associated with measures of this kind to test whether they are working.

Mr Perkins: Yes, compliance with —

Hon SALLY TALBOT: If you had a law that said everybody had to wear seatbelts to drive a car and nobody wore seatbelts, you would know that you had made a terrible mistake.

Mr Perkins: The only reason a lot of people wear seatbelts is because they would get a fine.

Hon ALYSSA HAYDEN: And education.

Mr Perkins: Yes.

Mr J.M. FRANCIS: Of which \$150 is exactly the same as a speeding ticket for doing 10 kilometres over the speed limit, but that is another issue.

Hon ALYSSA HAYDEN: Or saving a life in an accident.

Mr A.J. WADDELL: I think probably if we bore this down to the crux, the question that was asked is: how many prosecutions have there been in the past? The answer was none. You are saying that nine out of 10 people do the right thing, so we are talking about the one in 10 and I do not think we have got a clear answer yet as to what happened to that one in 10. But, this view that you need to have a law in order to enforce it, we certainly would agree that you obviously need some meat on the bone in order to get there, but do you need these particular laws? Do you need a law that says you must keep the lid clean? Can you not simply have a law that says, "You must maintain your rubbish in a way that does not cause a public health nuisance to the neighbourhood"? And then go through your stepped process whereby, in the event you become aware that there is a problem, you counsel them and then you bring a prosecution proving it; rather than going down this extremely prescriptive process which essentially, as my friend says, criminalises virtually everybody in the city, and essentially gives the ability—I am not suggesting for a moment that this is happening—for somebody with an axe to grind or simply has a very narrow view of the world to say, "That law is on the books, therefore I'm writing the infringement"—the sort of parking-fine mentality that you have in, say, the City of Perth, for instance. It is a short skip and jump to that point and once you have got a law on the books, there is the likelihood that somebody is going to say, "It's there, it's

the law, you must follow it and therefore we're going to enforce it." We cannot assume that the discretion that you are suggesting is in the system now will always be exercised.

Ms Tucker: But in issuing an infringement, there must still be a prima facie case; you must still be able to prove it in court because still somebody has that option to take it to court.

Mr A.J. WADDELL: True; absolutely, but at the moment if you say you must keep the lid closed, the prima facie case is the photograph that says the lid was not closed. Now, that bin may have been crystal clean and not presenting any danger whatsoever to the public health of the community. You are telling us that you need these laws to protect the public health of the community, and that is an honourable and good thing. Why not have a law that says, "You must maintain your bin in a state that maintains the good health of the community and does not cause a hazard", in which case somebody leaves their lid open and it is a flyblown mess full of manure or whatever? Then you go, "Yes, let's prosecute", because there is a prima facie case that they are causing a public health risk, rather than they left their lid open, which may or may not create a public health risk.

[10.50 am]

The CHAIRMAN: On that, exactly the same with the location and visibility from the street, why not just say it should be removed from the curb within a day of collection or something like that?

Ms J.M. FREEMAN: No, the actual comment you want to make is that they need to take action which protects your property, which is what you are saying: it takes away from your property. What you want to do is have something that says: it protects the city's property; it takes good care of the city's property.

Mr Perkins: Can I just make the comment that had I had this information—and the views that have come out in the last half hour are great because, having been in industry for so long, I suppose you get tunnel vision. The comments that you have made make me look at it in a different light. If we had had that information on 29 September, I probably could have given you an undertaking, because I knew where you were coming from.

The CHAIRMAN: It is not the job of the committee, with all due respect, to suggest to you how you draft your laws.

Mr Perkins: I know that.

Ms J.M. FREEMAN: But in response to that, what we were trying to say to you is: go back and talk to your councillors.

Mr P.T. MILES: I was just going to say that.

Ms J.M. FREEMAN: They are the people who deal with this on the ground. Some of this is so prescriptive. All you need is some sort of new technology, and suddenly you are going to have to change your bit of legislation, your bit of local government—to add that to not be thrown in the bin. What we are saying is: what are your objectives? Write your law around your objectives. Your objective is to protect your property, to make sure that there is safety and health, to make sure that people are using it in the right manner. If we are looking at the model local government law, there are two things: "No marking—The owner and occupier of premises shall not mark or disfigure the receptacle in any manner ..." Those road safety stickers —

The CHAIRMAN: The 50-kilometre-an-hour stickers.

Ms J.M. FREEMAN: I do not know whether the City of Gosnells is like the City of Stirling, but they hand them out everywhere, so you have got one department handing out something that is going to contravene the local law —

Mr Perkins: Absolutely.

Ms J.M. FREEMAN: You have not got that in yours.

The CHAIRMAN: And if you have got a population that has a limited amount of English understanding, why not stick a sticker on the bin with ticks and red crosses—what you can put in and what you cannot put in—in sign language. That would be the best way to educate people as to what you can and cannot put in the bin.

Mr Perkins: They do that with recycling.

Ms J.M. FREEMAN: Again, you do not have this in your law, but the law that WALGA is considering is not dissimilar to this; in fact it adds to it. “Other uses prohibited—The owner occupier of the premises shall not use the receptacle for any use other than the deposit of waste.” So every kid that goes and wheels it out and uses it as a cricket wicket—I know and you know that your people are not going to do that unless they wheel it out, use it as a cricket wicket and leave it on the public park for weeks on end. That is the point of what we are trying to make: look at your objectives. That is, protect your property—I get that; you want your property protected so that the city does not have to expend additional cost—protect public health; prevent nuisance from other people, so that they are not smelling really smelly bins that are sitting next to it. I suppose that is where we are at. That is what we were coming back with when we were saying you need to reconsider this. The language to put it best is that they almost feel trivial vague, uncertain. Because they are too prescriptive, they almost become unworkable. That is what we were trying to say.

Mr Perkins: It is interesting that the local law has been through Department of Environment and Conservation, the Department of Local Government and solicitors, and it needs you to direct us.

The CHAIRMAN: They have not got the commonsense test.

Mr A.J. WADDELL: Well, we get the big bucks!

Ms J.M. FREEMAN: Over waste bins!

The CHAIRMAN: As I said when I started, I know that other councils have similar laws. I do not want you to think that we are picking on the City of Gosnells; we are not. We are just using you as the line in the sand.

Mr P.T. MILES: You are the first one.

The CHAIRMAN: It just seems to me a bit nanny state-ish, to be honest. I just have some questions on penalties, if I can just move on to the way you have formulated the penalties. It dictates that a person who commits an offence is liable on conviction to a penalty not exceeding \$5 000 and, if there is an offence of a continuing nature, to a further penalty not exceeding \$500 each day or part of a day. I know these are maximum penalties. The question would be: why did you impose the maximum fine penalty when the legislation provides the option of lower penalties to reflect the seriousness of the offending conduct? Did you consider it reasonable that a person who fails to keep the lid closed on their bin could be prosecuted and subject to a fine of \$5 000?

Ms Tucker: First off, that was the reason for implementing the infringement penalties, because that is the lower amount, the modified penalty, that can be implemented. So the infringement notice, instead of using this clause that you pointed out—clause 3.1. Clause 3.1 would be used when there is a prosecution, so a modified penalty for whatever reason is not deemed appropriate. That penalty is available to a magistrate. At the end of the day, they never impose a maximum penalty anyway. It is up to the magistrate to determine the level of the severity of the offending and to determine an appropriate penalty. But the modified penalty that is imposed was to reduce that down and to have it something that is more reasonable than sending something to court.

The CHAIRMAN: I am just curious as to what your view would be on imposing maximum penalties. What maximum penalties would you recommend? That is more a question also for WALGA and the Department of Local Government.

Ms Tucker: That is the one that is actually in the WARR act, so that has just come straight out of the overarching act.

Ms J.M. FREEMAN: But you have given us a submission—in your new submission you have handed us—and you have said that you would look to change clause 3.13 to a modified penalty.

Mr Perkins: That is a provision that currently exists in the WALGA model waste local law—not the new WALGA local law; the existing one that has been in for some time.

The CHAIRMAN: I might ask if James and Mary if they can comment on that then, if that is okay.

Mr McGovern: Certainly. By way of background, WALGA has been working with the Department of Environment and Conservation for the last 18 months on developing a local law that is a generic starting point for local governments to use for waste. We received some financial assistance from the Waste Authority to test some of the legal aspects of the head of power of the WARR act to ensure that the local law then is developed. For a start it contains content that is allowable under the WARR act. It is also worded in such a way that it can be used by most local governments. We have already discussed a few things today that we have included in the document I have provided to you today, but it seems to be in conflict with what the committee believes is reasonable and is an expectation of the community.

In terms of the prescribed offences, though, our draft model does contain a broader range of offences and penalties than is contained in the City of Gosnells. Because we conduct consultation with the local government sector, and a lot of local governments came back and said they wanted a broader range of penalties included in the draft—particularly for things like depositing asbestos in a receptacle, which is something that is entirely inappropriate to do—but also things like keeping your lid open, when a lot of the waste that is contained in a bin is putrescible waste and leads to opportunities for disease to occur. However, we have also heard the committee say today that that is not acceptable, so I have made notes today of the sorts of aspects of the local law that can be changed to reflect the health issue as opposed to the activity offence, which is I think is what the committee is saying. You see an activity occurring that can be interpreted being an offence—leaving a bin open, wheeling a bin out into the street to play cricket. What we need to do with our model is to re-word it to prevent people from using it in certain ways that damages the property of the City of Gosnells, or any other local government, and is an abuse of someone's personal responsibility to maintain a healthy environment.

[11.00 am]

The CHAIRMAN: I think that is exactly what we are getting at. I cannot think of anyone who intentionally goes out and says, “My bin is out there, the lid is shut; I might go and open it.”

Hon ALYSSA HAYDEN: “I want to spread flies.”

Mr P.T. MILES: James, you said you worked with or had been working with the department of environment. Why not also with the Department of Local Government?

Mr McGovern: Well, the Department of Environment and Conservation has carriage of the WARR act. So, we initially engaged with the DEC to look at this local law. Eighteen months, two years ago, the department was going through a restructure. Mary's position did not actually exist. There was no manager of legislation. So there was a lack of capacity of the department at the time we started the process to engage with the department. However, when the model is complete, it will go to the department for their opinion on the technical drafting aspects as opposed to —

Mr P.T. MILES: But only on the technical drafting, not necessarily on whether it is a silly law or not?

Mr McGovern: It is the Director General of the Department of Environment and Conservation who has to sign off on the local law, not the Department of Local Government, in terms of their satisfaction with the content and meeting the head of power of the WARR. Act. Traditionally we work with —

Mr P.T. MILES: This committee would then actually sign off on it, to be honest, not him.

Mr McGovern: Sorry, it is a joint—they sign off on the proposed local law before it is made, is what I should say.

Ms Adam: I am currently manager of legislation at the Department of Local Government. My history is I have worked for local government as an environmental health officer. I have spent a bit of time looking in bins for my sins. Prior to coming to local government, I have spent the last eight years working on a new public health bill for Western Australia. I give you that information to indicate that I have, I think, some level of expertise in trying to find that balance between prescription and outcomes-based legislation. Prior to the health, I worked with Food Standards Australia New Zealand on food standards and there, again, trying to find a balance between a level of prescription and good outcomes-based —

The CHAIRMAN: I can blame you for no dogs in cafes as well!

Ms Adam: That was not a standard I was working on drafting!

So, basically, I think the Department of Local Government, as is its want, will always take the advice of the Joint Standing Committee on Delegated Legislation. However, we do have some level of expertise around what is an appropriate penalty and when prescription is—so up to now, we tend to, like Gosnells, look at the undertakings and the reports from the committee in going through our local laws.

On the level of penalties, having spent some time drafting legislation, there is a well-intentioned approach to putting the highest penalty in because it futureproofs your legislation to some extent. In the event that you are going to court, courts will generally go for a much lower penalty for first offences. In the event that somebody getting an infringement notice ended up to court, they could well end up with a lower penalty than if they got hit with an infringement notice. That is experienced with the Health Act. The Health Act is a good example of stuff where the penalties certainly are futureproofed; they may have been high some time ago.

I think on the level of prescription around bins, it is appropriate to have a certain level of prescription. Looking at public health outcomes, I think totally basing a penalty around “You have to keep your bin in such a manner as to prevent a public health nuisance to the neighbourhood” might be too large an outcome. At the same time, “keeping your bin clean” may be too vague, that could possibly be linked to an outcome.

I think public health—whilst it is under the WARR act now, the WARR act was drafted with a strong awareness of the health impacts of keeping your rubbish. So, I think there needs to be a level of reality about things like keeping your bin closed when it is on your premises. I take the point that “on your verge” is over the top because —

Hon ALYSSA HAYDEN: Beyond your control.

Ms Adam: Yes, it is beyond your control. Because that really is your last level of defence for keeping crows, possums, rats and flies out and a responsibility to keep your bin clean is a really important thing too because you do not need much in there before you have got maggots breeding. Oftentimes, prescription, when you have recidivists, and I have encountered a few—sometimes an infringement notice is enough to focus a person’s attention on the fact that it is an offence.

The CHAIRMAN: Do you have any other concerns with the clauses in these local laws?

Ms Adam: Some of the concerns the committee have brought up about “not visible from the street”, I take the committee’s point. On my first reading of that—I have gone back and re-read it—I thought it only applied to private bins. There is a good case for having the large bulk bins not visible from the street, but I understand that that could almost be—that is a traditional part of local government’s function, the amenity of an area. But whether that is covered in town planning or building matters these days, I am not sure. Otherwise, the Department of Local Government, I do not think, has—I mean, we are concerned in having the best possible local laws that, as you say, do

not create criminals for minor offences, but also provide an appropriate level of backup for local governments to actually maintain good government in their area, at the risk of sounding like a lawyer.

The CHAIRMAN: Very diplomatic—you are sounding like a politician!

Ms Adam: I have had a bit of practice lately watching you!

Hon ALYSSA HAYDEN: If I could just ask anyone on the panel: which offence do you think would deserve going to court and would deserve a \$5 000 penalty?

Ms Tucker: The \$5 000 penalty would be imposed by the court. If we cannot issue a modified penalty, then it would be put through the court system for a magistrate to adjudicate in relation to those issues. So that would be available to the magistrate.

Hon ALYSSA HAYDEN: You are putting up this model that could result in someone having to go to court, paying court fees and up to \$5 000 in penalty. In your opinion, which of these offences do you think is worthy of that? Because I, personally, do not see any that I think is worthy of a \$5 000 penalty.

Mr P.T. MILES: Leaving the lid open!

Ms Adam: If you looked at the practice of courts, the maximum penalty they will apply on the first offence is 10 per cent of the maximum penalty in the act. The lower you set the penalty, the less you are actually expecting the court to do. If you actually had, say, a business that was constantly ending back in court because they were keeping their lid off and the whole shopping complex was being inundated with flies, possums, rats and mice—I used to travel down the back lanes of Melbourne before they had trendy little bars in them and there was quite a bit of that —

Ms J.M. FREEMAN: So the answer is not local laws on bins; it is trendy bars down back alleys, really, is it not?

Ms Adam: Maybe Gosnells could become a lovely little bar area.

The reality is most people would stop before they got to the stage where a \$5 000 penalty would be put in place, but it is not beyond contemplation that —

Hon ALYSSA HAYDEN: Take the penalty away, which one of these offences deserves to go to court?

Mr McGovern: From WALGA's perspective, what we would presume of worthy of going to court is a wanton and deliberate act that was contrary to a clear direction or instruction or signage. The model contains an operation of waste facilities clause. I mentioned before asbestos being put in bins. If a load of asbestos was taken to a waste disposal facility and dumped completely contrary to signage and with the known health ramifications, that would need to go to court —

Hon ALYSSA HAYDEN: That does not come under any other law? It does not come under a hazard or any other —

Ms J.M. FREEMAN: It does.

Mr McGovern: It may indeed.

Ms J.M. FREEMAN: It comes under health laws.

Mr McGovern: But lighting of fires, depositing waste outside of a waste facility in road reserves, causing a considerable amount of litter —

Hon ALYSSA HAYDEN: That does not come under a litter —

Mr McGovern: The Litter Act does, but it is a higher level penalty.

[11.10 am]

Mr Perkins: I take your point. The placement of unauthorised material in a bin, historically, can create major damage to the vehicle —

The CHAIRMAN: Big blocks of metal, engine blocks and so on—I can imagine what that would do to the crusher.

Mr Perkins: — engine blocks, 20-litre drums of oil, asbestos, batteries and the like. There are a range of issues; it is the same as carcasses and things of that nature, though that does have the same type of impact.

The CHAIRMAN: It is a safety issue for the rubbish collectors.

Mr Perkins: Yes.

Hon ALYSSA HAYDEN: But with most of the stuff you have just listed, it is my understanding that there are already regulations to protect —

Mr Perkins: No; not depositing engine blocks in the bin or drums of oil, which is only covered under this type of local law. There is no provision there.

Mr A.J. WADDELL: I do not think we have a problem with you being prescriptive about those sorts of things. That is commonsense, and it is clear it should be an offence for people to do those things. It is the vagaries that we are getting at.

Mr Perkins: I take that on board—what I have gained out of today’s meeting. We have all been heading for the last 30 years in the one direction; we are all following one another’s local laws. As I said, I drafted the first waste local law for the City of Gosnells in 1984. Everyone has basically been going along that tangent over those years and we have not really deviated. The comments that you have made today have opened my eyes. I appreciate what you have said. I have said all along with this committee that we should not be wasting your time; it is not only wasting your time but my time and everyone else’s time. We should be putting to you a document that is sound and that is going to stand up out in the community, because you do not need to be assessing everything that we do.

Hon ALYSSA HAYDEN: Our biggest point is not to forget the human aspect when drafting regulations.

Mr Perkins: Yes.

Ms J.M. FREEMAN: I have one thing, and this is probably a bit cheeky. You own a bin and you want it cleaned because it has come to the point where it is maggot-infested. If someone has let their bin get maggot-infested and stuff like that, they are not going to clean it and meet the health objectives; they are probably going to clean it and maggot-infest their front garden and stuff like that.

Mr P.T. MILES: No! That is why you leave the lid open; it dries them out.

Ms J.M. FREEMAN: If you own it, why do you not clean it? I have a City of Stirling bin that I have to put inside my office. I had someone who would come and clean the bin, because it has to go inside my office. We have a bin that can get smelly and stuff like that, but there was a problem with the bin service. The City of Stirling continually picked it up on such an irregular basis on a Monday that the bin service sent my cheque back and said, “I am sorry, we will no longer clean your bin.” I have no capacity in my office to clean that bin. There is no water source to clean that bin. I am almost at the stage of writing to the city and saying, “You own it. I have no other way of doing something; you clean it!” I tried and I cannot. I suppose I am asking the question: if you open it, why can you not clean it?

Mr Perkins: We can, but at a price to you. We have been down that path. Many years ago I looked at that. I costed it and the general community did not want to meet that; and rightfully so because

the average person maintains their bin. So, to have a plant to go around and clean every bin in the district was cost prohibitive for the general person.

Ms J.M. FREEMAN: So you have investigated that?

Mr Perkins: Absolutely, yes.

The CHAIRMAN: I have a couple of final matters, if I can. I will revisit the definition of “city” and “local government”. This is probably a question to WALGA and the Department of Local Government. I ask your views on using the term “local government” rather than “city” in these kinds of local laws. Having heard what Gosnells has said to us, I would be keen to hear your view.

Mr McGovern: From our perspective, we have no problem with the terms city, town or shire being used because the interpretation clause of the local law makes it clear who that entity is. We use the term “local government”, and it goes on to say “means the”. It is far clearer in our model to say those words than to have “city/town/shire”—a pick and mix. As Trevor and Bernadine have already said, it is quite common for local governments to take out the phrase “local government” and put city, town or shire in there, but it is clear who they are talking about, because interpretation makes it clear.

Hon ALYSSA HAYDEN: Legislation states “local government”, so should we not follow legislation?

Mr McGovern: Legislation also says the designation of local government can be a city, town or shire, so there is a cross-reference.

Ms Adam: The department does not have a particular position. Basically, if the committee says it has to be X, then we have been following that, but if the committee changes its mind—I do not personally see a problem with city, shire, or town but the department does not have a particular position.

The CHAIRMAN: That is a good point: where to from here with a particular local law?

Mr P.T. MILES: But there is a distinct difference between the council and the administration.

Mr Perkins: Absolutely.

Mr P.T. MILES: When you say “the city”, what are you determining as the city?

Ms Adam: The changes that were made to the City of Perth local law when they were using “council” when they should have used “local government”—

Mr McGovern: They used “city” rather than “council”.

Ms Adam: Yes, something to that effect. They are two different things and that was appropriate, but when it comes to calling it a local government, the City of Gosnells has a valid point. But if the committee says they prefer it another way, the department will go along with that.

Mr P.T. MILES: I thought it said “city waste”.

Hon ALYSSA HAYDEN: That was in point 1; we are on point 2.

Mr A.J. WADDELL: We have made a fair bit of progress in communicating our concerns. The question is where to from here? We are at an impasse in terms of our view of the law as it stands and what your council or your city has approved at this stage. You have a number of undertakings in the document you have tabled, but obviously they do not go quite the distance that we as a committee were hoping. We now face the prospect of deciding whether to go with the disallowance motion or not or whether or not you want more time to reconsider where you are going.

Mr Perkins: I suppose if the committee is fixed in its views and will not deviate from what was in the letter of 29 September, I would say to go for disallowance, because it is a monumental rewrite. However, as I say, we have picked up your point on “city waste”; we agree with that. Having heard what you have said about the different clauses, I totally agree that it needs a rewrite. I could not say

that would be done overnight, so we would need an extended period there. As far as “city” goes, I would dearly love to hear you say that you support “city” because I have two other draft local laws on my desk at the moment which contain “city”. But that is a selfish reason. As I said, there is a considerable amount of work for us to take on board from what you have told us today. I support what you have said. I think it is a good way to go. If you are not going to deviate, then we will go to disallowance and we will start from scratch.

Hon SALLY TALBOT: I have one further question of Mr McGovern. You have tabled today—I am not sure if you have spoken to it—the draft of the revised model law. When are you likely to have that finalised, and when it is finalised, will it be gazetted?

Mr McGovern: It is not the intention of the Department of Environment and Conservation to create a model under the WARR act.

Hon SALLY TALBOT: Could it not be gazetted under section 62 of the WARR legislation?

Mr McGovern: That would be a decision of the Director General of the Department of Environment and Conservation, not anyone else. That is my understanding of how model local laws are made. We call this pro forma local law, not a model. Often the term “model” gets used a lot for what is in our local laws manual. I believe there are only three true models: standing orders, cemeteries and dogs, I think have been gazetted as local laws. I do not think anything else has been gazetted as a local law.

Hon SALLY TALBOT: So this is not a model.

Mr McGovern: No, it is a pro forma, a starting point for local laws. On the other point, we did hope at the waste and recycling conference in September to have this finished and available free of charge to anybody who wants to access it. One of the conditions of the Waste Authority providing financial assistance was to make it freely available to local governments. The Department of Environment and Conservation had one minor legal question they were asking the State Solicitor’s Office to answer, and they have yet to receive that answer.

Hon SALLY TALBOT: Was that anything to do with the issues we have raised today?

Mr McGovern: It is our understanding that they could not tell me the nature of the issues, because once they go to SSO, it is between them and SSO, so I do not think so. But I will now talk to the Department of Environment and Conservation again about the clarity of the wording. Whenever one gets involved in making local laws, we are looking at brevity, clarity and planning and those sorts of principles in making it. But as we see from today, when you do that you often contain your local law in such a way that it is very interpretive; for example, closing lids on bins, taking over the street playing cricket and things like that. Some become issues, so we need to have a bit of a rethink about what the wording means to the community, as the committee has said, and I will talk to the Department of Environment and Conservation about that before we finalise it.

[11.20 am]

The CHAIRMAN: That is what I was going to ask about this particular draft. Given the context of the conversation today, I suspect that you will probably be looking at making some further changes to that. While I am on this, obviously we have these two documents—one from Gosnells and one from yourself. Does anyone have an issue—it is fine if you do—with these being made public?

Mr Perkins: Not at all.

Mr McGovern: No.

The CHAIRMAN: Thank you.

Mr P.T. MILES: This question is to James again. WALGA and the Department of Local Government recently gazetted the Shire of Derby–West Kimberley Waste Services Local Law 2011. That includes many of the offences contained within the City of Gosnells that we have been

talking about today, but it does not prescribe any of the offences that modify penalties—
infringement notices offences. I understand that has an effect that the only option then is to
prosecute the offence on the penalty of the \$5 000 conviction.

Mr McGovern: I understand that the Shire of Broomehill–Tambellup, and perhaps Goomalling, did
the same thing. They were one of the first local governments to adopt waste local laws after the
WARR act came in in 2007. I only had an opportunity to make comment on one of those local laws,
because if I do not get asked, I do not know the development of the local law. It was my advice that
they develop prescribed offences with modified penalties. I believe that a couple of local
governments have gone down the path of just having \$5 000 with \$500 per day per offence. That is
the choice local governments make; they are autonomous and they have the right, I guess, to make
local laws as they see fit.

Mr P.T. MILES: Mary, that obviously comes to you to look at the Derby–West Kimberley waste
services law.

Ms Adam: Have they been gazetted?

Mr P.T. MILES: Yes.

Ms Adam: Okay, we will do that then.

Mr Perkins: They would have already been through the department.

Mr P.T. MILES: They copied you, Trevor!

Mr Perkins: That is right. They would have been through the department. Similar to the question
that was asked earlier about the draft pro forma model, our local laws have been through the
Director General of the Department of Environment and Conservation. They have signed off on it
and said they were happy with it. But now with your comments, the writing has to change. As I say,
I appreciate what you have told us because I can see the benefit of it.

Hon ALYSSA HAYDEN: I have just one last comment and will use the opportunity we have today
to communicate with you about the committee’s feeling about using the word “city”. As far as we
are concerned, we relate to the local government as “local government”, we relate to the council as
the “council” and we relate to the admin and executive as the “city”. So whenever we see the word
“city”, we have our concerns that maybe the city—as in the admin and the executives—will have
more power than they should have and that the councillors will not have the power. That is where
our determination on “city”, “local government” and “council” sits. We are always going to be
drilling down on where the word “city” is used.

Mr Perkins: On your issue of Perth City Council, you are 100 per cent correct because the issues
that were listed as “city” on the three occasions can only be determined by council, not by the CEO
or anyone else, so that was correct. The use of the word “city” in our law is the management side of
it. Anything to permit that to happen is either done through policy or through the delegated
authority from council. We use “city” to refer to management, but if there is a requirement for
approvals, it would refer to the council.

The CHAIRMAN: Any further questions, members? Thank you very much for your time. As I said
at the start, I do not want you to think that we are bashing Gosnells; you just happened to be the one
that popped up.

Mr Perkins: I will just make sure that Andrew gets double his rubbish back!

The CHAIRMAN: Thank you very much for your time. In closing, I remind you about the
publication of the transcript. Please note, as I said before, that until such a time as the transcript of
your public evidence is finalised, it should not be made public. I advise you that the publication or
disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and

may mean that the material published or disclosed is not subject to parliamentary privilege. Thank you all for your time.

Mr Perkins: Before we depart, can I ask for some direction from here? We have given that one undertaking, which does not address all your issues, and I think I said I could get back to you by about 10 November or something, but if we have to clarify all these issues, there is no way I will get an undertaking from council to address everything in the 29 September letter.

The CHAIRMAN: We will have to have a conversation among the committee in private and you will get guidance from us later today.

Mr Perkins: That is great. Thank you.

Hearing concluded at 11.25 am
