

PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE ON  
DELEGATED LEGISLATION**

**THIRD REPORT**

(October 1989)

**REPORT ON THE SWAN SHIRE BYLAWS RELATING TO  
REMOVAL OF MATERIALS**

Laid on the Table October 1989

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## REPORT ON SWAN SHIRE BYLAW

Bylaws made by Swan Shire Council relating to the removal of materials from land were referred to the Joint Standing Committee on Delegated Legislation in the Legislative Council by the Hon R G Pike on August 31 1989.

The principal bylaw reads as follows:

3. *If there is –*

- (a) *on any vacant land within the District any trees, scrub, undergrowth and rubbish; or*
- (b) *on any land within the District any refuse, rubbish or disused material whether of the same kind, or a different kind from that here specified, which in the opinion of the Council is likely to affect adversely the value of adjoining property or the health, comfort or convenience of the inhabitants thereof;*

*the Council may cause a notice under the hand of the Shire Clerk to be served on the owner or occupier of such land requiring, within the time specified in such notice, the clearance of such trees, scrub, undergrowth and rubbish, or the removal [sic] such refuse, rubbish or disused material from the land.*

The succeeding bylaws oblige the owner or occupier upon whom a notice is served to comply with it. Failure to do so constitutes an offence punishable by a fine not exceeding \$500 and a further daily penalty of \$50 while the offence continues. In the event of such failure, the Council is empowered to clear the offending material and recover the cost from the owner.

The referral was prompted by the Hon R G Pike's concern that the powers exercisable under the bylaws could be used arbitrarily in the absence of an opportunity for appeal, thus possibly infringing the rights and liberties of individuals, and that the power conferred by the bylaws to require removal of trees is unfettered.

Having considered submissions from the Swan Shire Council and its solicitors, and the Hon R G Pike MLC, the Committee considers that:

1. The bylaws have been drafted to follow as closely as possible section 202 of the *Local Government Act 1960* (the empowering provision) and are within power.
2. Section 202 of the *Local Government Act 1960* makes a local authority's power to require removal of refuse, rubbish or disused material from any land dependent on the opinion that non-removal would "*adversely affect the value of adjoining property or the health, comfort or convenience of the inhabitants thereof...*", whereas the decision to require removal of trees, scrub or undergrowth from vacant land may be made without any such opinion being formed.

This apparent unfettered discretion may be read subject to the provisions of the *Environmental Protection Act 1986*.

In this instance the Committee has received written assurances from Swan Shire that the powers under the bylaws have never been invoked to require removal of trees and that removal of a tree would only be required if it were shown to be diseased, dangerous or noxious. The Committee is satisfied that the way in which the Swan Shire exercises its discretion does not trespass unduly on personal rights and liberties.

The Committee does not however, necessarily dismiss the Hon R G Pike's contention that the reasonable use of the discretion depends on the goodwill and environmental attitude of the administering local authority and would view favourably an amendment to section 202 of the *Local Government Act* to make the removal of trees, shrubs and undergrowth also dependent on the opinion of a Council that their non-removal would adversely affect the value of adjoining property or the health, comfort and convenience of the inhabitants thereof.

The Committee is similarly concerned at the lack of an appropriate appeal or review mechanism in the Act.. The informal "appeal" to a Council ward member, the responsible Minister or the Parliamentary Commissioner referred to by Swan Shire solicitors is not the type which the Committee has in mind nor does it believe that the average ratepayer would consider it a viable option.

Given the recommendation of the Law Reform Commission in its "Report on Review of Administrative Decisions: Appeals" and the imminent review of local government legislation, the Committee would like to see the provision of formal appeal/review mechanisms in the new Act.

The Committee has followed its *modus operandi* as stated in its First Report to the House laid on the Table in November 1988 namely that –

*"The Committee has determined that in cases where it thinks further investigation is warranted, the department or other promoting body will be invited to comment on the regulations generally as well as the specific concerns of the Committee. If at the end of the consultation period the Committee remains unconvinced, the Chairman will approach the responsible Minister with the intention that the Minister intervene and enable amendment in line with the Committee's opinion. Failing all else, the Committee will recommend disallowance ..."*

Thus, following discussions with Swan Shire, the Committee is satisfied that the powers under the bylaws are exercised in a reasonable manner without undue trespass on personal rights and liberties but has, at the same time negotiated the Council's agreement to amend the bylaws. In future removal of both trees and rubbish will be conditional on an opinion that their non-removal would adversely affect the value of adjoining property or the health, comfort or convenience of the inhabitants thereof, and a notice requiring removal will be open to reconsideration by the Council within a certain time period if an owner/occupier wished to object.

Having received such willing co-operation from Swan Shire, the Committee finds that there are insufficient grounds to warrant disallowance.