

Received 14/08/03

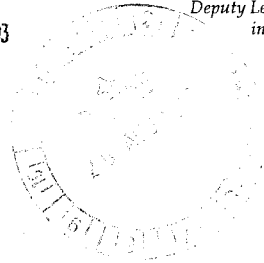


**MINISTER FOR LOCAL GOVERNMENT AND REGIONAL
DEVELOPMENT; HERITAGE; THE KIMBERLEY, PILBARA
AND GASCOYNE; GOLDFIELDS-ESPERANCE**

Tom Stephens MLC
Member for the Mining and Pastoral Region;
Deputy Leader of the Government
in the Legislative Council

Our Ref: 1-9963

13 AUG 2003



Ms Mia Betjeman
Clerk Assistant
Legislative Council
Parliament House
PERTH WA 6000

Dear Ms Betjeman

I refer to Report 7, May 2003, of the Joint Standing Committee on Delegated Legislation in relation to "POWERS OF ENTRY AND POWERS TO MAKE LOCAL LAWS THAT AFFECT PRIVATE LAND UNDER THE LOCAL GOVERNMENT ACT 1995" (the Report).

The following is provided as the Government's response to the Recommendations contained in the Report.

Recommendation 1: The Committee recommends that powers of entry conferred on local governments be expressly stated in the Local Government Act.

The Government agrees with this Recommendation.

Recommendation 2: The Committee recommends that these express powers be the extent of the powers of entry available to local governments to enter private land.

The Government agrees with this Recommendation.

Recommendation 3: The Committee recommends that any broadening of the capacity by local governments to enter private land continue to be by regulation.

The Government agrees with this Recommendation.

Recommendation 4: The Committee recommends that the Act be amended:

- a) to expressly state that the local law-making power provided under section 3.5(1) is constrained by sections 3.25, 3.27; and Schedules 3.1 and 3.2;
- b) so as to include in the list of matters contained in Schedule 3.1:
 - i) "the repair of all boundary fences";
 - ii) "the removal of bees"; and
 - iii) "the limiting or stopping of nuisance lights".

In relation to Recommendation 4(a), the Government agrees that legislation should clarify that the local law making power is constrained by sections 3.25 and 3.27, and Schedules 3.1 and 3.2. It is proposed that the clarification will be achieved by way of a new regulation under section 3.6(4) of the *Local Government Act 1995*.

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In relation to Recommendation 4(b), the Government confirms that Parliamentary Counsel has been instructed to include the amendments in a *Local Government Act 1995* Amendment Bill 2003. It is expected that this Bill will be introduced to Parliament early in the Spring 2003 session.

Recommendation 5: The Committee recommends that pending any amendments to the Act that are brought about by its review, the Minister direct the Department to issue a circular to WALGA, the Western Australian division of Local Government Managers Australia, and all local governments, advising that:

- a) section 3.5(1) of the Act is constrained by sections 3.25, 3.27; and Schedule 3.1 and 3.2 in relation to making local laws affecting private land;
- b) the power to enter private land pursuant to a local law made under section 3.5(1) of the Act can only be used in relation to those matters authorised by sections 3.25, 3.27; Schedules 3.1 and 3.2; and the procedure in Part 3, Division 3, Subdivision 3 of the Act must be followed when exercising the power to enter;
- c) any deviation from this position by a local government will result in the Committee recommending to the Parliament that the local law be disallowed under section 42(2) of the *Interpretation Act 1984*; and
- d) local governments wanting to insert additional matters to Schedule 3.1 and 3.2 should advise the Department of this now, while the Act is undergoing a review.

The Government confirms that the items in Recommendation 5 will be included in a circular to all local governments. A copy of the circular will be forwarded to the Joint Standing Committee on Delegated Legislation, WALGA and Local Government Managers Australia.

Recommendation 6: The Committee recommends that pending any amendment to Schedules 3.1 or 3.2, WALGA consider amending its *pro forma* Fencing, Beekeeping and Urban Environment and Nuisance laws in the following way, so as to comply with the requirements of the Act:

- a) clause 16 of the fencing *pro forma* law should be amended so that:
 - i) it only applies to fences that abut a public place; and
 - ii) notices of breach can only be issued to owners of private land.
- b) clause 12 of the beekeeping *pro forma* law should be amended so that it is clear that local government employees cannot enter private land pursuant to that clause.
- c) The Urban Environment and Nuisance *pro forma* law should be amended:
 - i) by deleting clause 2.3; and
 - ii) so that it is clear that local government employees cannot enter private land pursuant to clause 5.2.

The Government confirms that the Department is liaising with WALGA in relation to this Recommendation. The Department will continue to liaise with WALGA to follow up on its implementation.

Yours sincerely



Tom Stephens MLC
MINISTER FOR LOCAL GOVERNMENT AND REGIONAL
DEVELOPMENT; HERITAGE; THE KIMBERLEY, PILBARA AND
GASCOYNE; GOLDFIELDS-ESPERANCE