



THIRTY-NINTH PARLIAMENT

REPORT 80

**JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**

***SHIRE OF KELLERBERRIN: CEMETERIES LOCAL
LAW 2014; ACTIVITIES ON THOROUGHFARES AND
TRADING IN THOROUGHFARES AND PUBLIC
PLACES LOCAL LAW 2014; LOCAL GOVERNMENT
(COUNCIL MEETINGS) LOCAL LAW 2014 AND
FENCING LOCAL LAW 2014***

Presented by Mr Peter Abetz MLA (Chairman)

and

Hon Robin Chapple MLC (Deputy Chair)

March 2015

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Date first appointed:

28 June 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“10. Joint Standing Committee on Delegated Legislation

- 10.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 10.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chair must be a Member of the Committee who supports the Government.
- 10.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 10.4 (a) A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.
- (b) Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House’s consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.
- 10.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 10.6 In its consideration of an instrument, the Committee is to inquire whether the instrument –
- (a) is within power;
- (b) has no unintended effect on any person’s existing rights or interests;
- (c) provides an effective mechanism for the review of administrative decisions; and
- (d) contains only matter that is appropriate for subsidiary legislation.
- 10.7 It is also a function of the Committee to inquire into and report on –
- (a) any proposed or existing template, *pro forma* or model local law;
- (b) any systemic issue identified in 2 or more instruments of subsidiary legislation; and
- (c) the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary legislation that has yet to be published.
- 10.8 In this order –
- “instrument” means –
- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
- (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
- “subsidiary legislation” has the meaning given to it by section 5 of the *Interpretation Act 1984*.”

Members as at the time of this inquiry:

Mr Peter Abetz MLA (Chairman)

Hon Robin Chapple MLC (Deputy Chair)

Hon John Castrilli MLA

Hon Peter Katsambanis MLC

Hon Mark Lewis MLC

Ms Simone McGurk MLA

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**EXECUTIVE SUMMARY AND RECOMMENDATIONS FOR THE
REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION**

IN RELATION TO THE

***SHIRE OF KELLERBERRIN: CEMETERIES LOCAL LAW 2014; ACTIVITIES ON
THOROUGHFARES AND TRADING IN THOROUGHFARES AND PUBLIC PLACES LOCAL LAW
2014; LOCAL GOVERNMENT (COUNCIL MEETINGS) LOCAL LAW 2014 AND FENCING LOCAL
LAW 2014***

EXECUTIVE SUMMARY

- 1 The Joint Standing Committee on Delegated Legislation (**Committee**) is of the view that the Shire of Kellerberrin (**Shire**) did not follow the mandatory, sequential procedure described in section 3.12 of the *Local Government Act 1995 (Act)* when it made four local laws.
- 2 The procedure includes a requirement, under section 3.12(3)(b), to provide the Minister for Local Government and Communities with copies of the four proposed local laws and their Statewide public notices.
- 3 Further, the Shire failed to complete section 3.12(6) of the Act which required local public notice to be given after the four local laws had been published in the *Government Gazette*.
- 4 Being invalidly made, the four local laws offend *Committee Term of Reference 10.6(a)* in that they are not within power of the empowering enactment.
- 5 It is unfortunate that failing to follow the mandatory, sequential procedure in the Act has cost the Shire Council and ultimately rate payers, \$6,000. The Shire requires assistance from the Department of Local Government and Communities with the procedure for making a local law.

RECOMMENDATIONS

Recommendations are grouped as they appear in the text at the page number indicated:

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Recommendation 1: The Committee recommends that the *Shire of Kellerberrin Cemeteries Local Law 2014* be disallowed.

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Recommendation 2: The Committee recommends that the *Shire of Kellerberrin Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2014* be disallowed.

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Recommendation 3: The Committee recommends that the *Shire of Kellerberrin Local Government (Council Meetings) Local Law 2014* be disallowed.

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Recommendation 4: The Committee recommends that the *Shire of Kellerberrin Fencing Local Law 2014* be disallowed.

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Recommendation 5: The Committee recommends that the Minister for Local Government and Communities investigate the ongoing capacity of the Shire of Kellerberrin to make local laws and provide additional assistance to the Shire regarding the procedure for making local laws.

REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO THE

SHIRE OF KELLERBERRIN: CEMETERIES LOCAL LAW 2014; ACTIVITIES ON THOROUGHFARES AND TRADING IN THOROUGHFARES AND PUBLIC PLACES LOCAL LAW 2014; LOCAL GOVERNMENT (COUNCIL MEETINGS) LOCAL LAW 2014 AND FENCING LOCAL LAW 2014

1 REFERENCE AND PROCEDURE

1.1 On 15 October 2014, the Shire of Kellerberrin (**Shire**) gazetted the following four local laws.

- *Cemeteries Local Law 2014;*
- *Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2014;*
- *Local Government (Council Meetings) Local Law 2014;* and
- *Fencing Local Law 2014.*

1.2 Upon gazettal, the four local laws stood referred to the Joint Standing Committee on Delegated Legislation (**Committee**). Once the four local laws were tabled in the Parliament, they became instruments that may be subject to disallowance.

2 STATUTORY PROCEDURE FOR MAKING A LOCAL LAW AND NON-COMPLIANCE WITH THE LOCAL GOVERNMENT ACT 1995

2.1 The Explanatory Memoranda accompanying the four local laws revealed non-compliance with the procedure for making a local law described in section 3.12 of the *Local Government Act 1995 (Act)*.

2.2 The Committee's position on the status of invalidly made local laws arising from non-compliance with the procedure in section 3.12 is well established and documented in previous reports.¹ The procedure described there is both mandatory and sequential.

¹ For example, Parliament of Western Australia, Joint Standing Committee on Delegated Legislation, Report 42, *Shire of Capel Keeping and Welfare of Cats Amendment Local Law 2009 and Shire of Koorda Standing Orders Local Law 2009*, 16 September 2011, and Joint Standing Committee on Delegated Legislation, Report 45, *Shire of Kellerberrin Dogs Local Law*, 3 November 2011 and Joint Standing Committee on Delegated Legislation, Report 72, *Shire of Shark Bay Local Government Property Amendment Local Law 2014*.

A local law which does not follow that procedure in the sequence in which it is described is invalid.

3 PROCEDURAL SCRUTINY OF THE FOUR LOCAL LAWS

3.1 The Committee considered the four local laws made pursuant to the general, local government law making power in section 3.5(1) of the Act at its meeting on 18 February 2015.

3.2 The Committee resolved to conduct a procedural scrutiny of the four local laws, not a substantive scrutiny of their contents.

3.3 The Shire indicated in each of the *Statutory Procedures Checklists* accompanying the Explanatory Memoranda for the four local laws that it had not complied with:

- the requirement in section 3.12(3)(b) to give the Minister for Local Government and Communities copies of the four proposed local laws and their Statewide public notices “as soon as” the notices had been given in *The West Australian*. The Shire entirely omitted this step.
- the requirement in section 3.12(6) at the end of the sequence giving local public notice of the four gazetted local laws stating their titles; summarizing their purpose and effect; specifying the day on which they would come into operation; and advising that copies may be inspected or obtained from the Shire’s office local government’s office. The *Statutory Procedures Checklists* state that this step was “*Not Completed*”.

3.4 In a letter dated 18 December 2014, Shire President Forsyth advised that at its Ordinary, December 2014 meeting, the Council acknowledged its failure to comply with the above two sections of the Act. The Shire President’s letter is attached at **Appendix 1**.

3.5 As these two steps were not followed in the correct sequence, the four local laws are invalid.

4 THE IMPORTANCE OF THESE STEPS

4.1 The requirement in section 3.12(3)(b) to give the Minister copies of the four proposed local laws and their Statewide public notices is a critical step in their making. The section allows the Minister to intervene at an early stage to give advice on both the substantive content of a proposed local law as well as advising any structural or drafting defects. It provides the Minister with an oversight role and

alerts the Minister to the breadth of the use of section 3.5(1) of the Act by all local governments.²

- 4.2 The requirement in section 3.12(6) is also important. It communicates to the users of a local law details of when it becomes operational, its purpose and significantly in terms of public access, inspection details.
- 4.3 It is unfortunate that failing to follow the mandatory, sequential procedure in the Act has cost the Shire Council and ultimately rate payers, \$6,000.³ The Committee is of the view that the Shire requires assistance with understanding the procedure for making a local law.
- 4.4 This is the third occasion since 2011 the Committee has reported to the House, various problems the Shire has experienced with following the procedure for making a local law. The first was with the *Shire of Kellerberrin Dogs Local Law* in Report 45 tabled 3 November 2011.⁴ The second was the *Shire of Kellerberrin Parking and Parking Facilities Local Laws 2011* in Report 47 tabled 3 May 2012.⁵
- 4.5 This repetitive inability to make local laws following the procedure described in section 3.12 of the Act is the reason for recommendation 5.

5 CONCLUSIONS

- 5.1 Term of reference 10.6(a) states:

In its consideration of an instrument, the Committee is to inquire whether the instrument- (a) is within power

- 5.2 The four local laws are invalid for reasons of non-compliance with sections 3.12(3)(b) and 3.12(6) of the Act. They offend *Term of Reference* 10.6(a) (above). The Committee therefore recommends to the Legislative Council that the four local laws be disallowed.

² Section 3.5 is titled: *Legislative power of local governments*. Section 3.5(1) states: “A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.”

³ Letter from Mr Raymond Griffiths, Chief Executive Officer, Shire of Kellerberrin, 18 December 2014.

⁴ In that Report, the Shire failed to correctly follow several steps as set out in section 3.12 of the Act. The former Committee recommended that the Executive Council advise the Governor to invoke section 3.17 of the *Local Government Act 1995* to repeal the Shire of Kellerberrin Dogs Local Law.

⁵ In that Report, the Committee noted that the Shire had not complied with sections 3.12(5) and (6) of the Act.

5.3 There are a number of benefits in recommending the disallowance of invalid instruments, including ensuring that they are quickly removed from the public record thereby reducing the risk of public misinformation.

5.4 Should the Legislative Council disallow the four local laws, others being repealed by them will automatically revive.

6 RECOMMENDATIONS

6.1 The Committee makes the following recommendations.

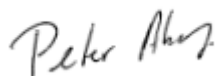
Recommendation 1: The Committee recommends that the *Shire of Kellerberrin Cemeteries Local Law 2014* be disallowed.

Recommendation 2: The Committee recommends that the *Shire of Kellerberrin Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2014* be disallowed.

Recommendation 3: The Committee recommends that the *Shire of Kellerberrin Local Government (Council Meetings) Local Law 2014* be disallowed.

Recommendation 4: The Committee recommends that the *Shire of Kellerberrin Fencing Local Law 2014* be disallowed.

Recommendation 5: The Committee recommends that the Minister for Local Government and Communities investigate the ongoing capacity of the Shire of Kellerberrin to make local laws and provide additional assistance to the Shire regarding the procedure for making local laws.



Mr Peter Abetz MLA
Chairman

12 March 2015

APPENDIX 1
LETTER FROM SHIRE OF KELLERBERRIN, DATED
18 DECEMBER 2014

APPENDIX 1

LETTER FROM SHIRE OF KELLERBERRIN, DATED 18 DECEMBER 2014



Our Ref:RG:LC: LLAW 02, 05, 06, 10, 11

Mr Peter Abetz MLA
Chairman
Joint Standing Committee on Delegated Legislation
Parliament House
PERTH WA 6000

18th December 2014

Dear Peter

Re: Shire of Kellerberrin – Cemeteries Local Law 2014; Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2014; Local Government (Council Meetings) Local Law 2014 and Fencing Local Law 2014

Council at its December 2014 Ordinary Meeting of Council considered the abovementioned Local Law processes as per your letter dated 8th December 2014.

Council adopted the following;

That Council acknowledges;

- 1. its failure to comply with Section 3.12 (3)(b) in not providing a copy to the Minister as soon as the notice was issued*
- 2. its failure to comply with Section 3.12 (6) in not advertising the Local Laws locally after gazetting the Local Law*
- 3. these errors as omissions and errors on behalf of Management as an oversight on the process*
- 4. and requests that the Joint Standing Committee understand and provide some understanding that these omissions weren't undertaken deliberately as this was the first time this process had been undertaken by the officer involved.*
- 5. And request the Joint Standing Committee to enable Council to fix the non-compliant issues and permit the Local Laws to stand as the process is a very expensive process for a Council the size of Kellerberrin.*

Council understands this isn't normal practice though due to the significant costs associated with re-gazetting the Local Laws which cost Council over \$6,000 the process becomes expensive. The errors/omissions that occurred throughout this process were purely an oversight.

Should you have any queries relating to the above please do not hesitate to contact myself on 9045 4006 during office hours.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Rodney Forsyth".

RODNEY FORSYTH
Shire President

Life as rich as the landscape

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