



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

**REPORT OF THE
JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION**

IN RELATION TO THE

**CITY OF MELVILLE LOCAL LAW
RELATING TO SIGNS,
HOARDINGS AND BILLPOSTING**

Presented by Ms Margaret Quirk MLA (Chairman)

and

Hon Ray Halligan MLC (Deputy Chairman)

Report 5
December 2002

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Date first appointed:

June 28 2001

Terms of Reference:

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

“6. Delegated Legislation Committee

- 6.1 A *Delegated Legislation Committee* is established.
- 6.2 The Committee consists of 8 members, 4 of whom are appointed from each House. The Chairman must be a member of the Committee who supports the Government.
- 6.3 A quorum is 4 members of whom at least 1 is a member of the Council and 1 a member of the Assembly.
- 6.4 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.
- 6.5 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.
- 6.6 In its consideration of an instrument, the Committee is to inquire whether the instrument –
- (a) is authorized or contemplated by the empowering enactment;
 - (b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;
 - (c) ousts or modifies the rules of fairness; or
 - (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review; or
 - (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable;
 - (f) contains provisions that, for any reason, would be more appropriately contained in an Act.
- 6.7 In this clause –
- “adverse effect” includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;
- “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:

Ms Margaret Quirk MLA (Chairman)	Hon Ljiljanna Ravlich MLC
Hon Ray Halligan MLC (Deputy Chairman)	Mr Rod Sweetman MLA
Hon Alan Cadby MLC	Mr Terry Waldron MLA
Hon Robin Chapple MLC	Mr Peter Watson MLA

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Government Response

This Report is subject to Standing Order 337:

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.

The four-month period commences on the date of tabling.

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REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO THE

CITY OF MELVILLE LOCAL LAW RELATING TO SIGNS, HOARDINGS AND BILLPOSTING

1 REFERENCE AND PROCEDURE

1.1 In exercising the scrutiny function delegated to it by the Parliament, the Joint Standing Committee on Delegated Legislation (“Committee”) is to consider whether an instrument is, amongst other things, authorised or contemplated by the empowering enactment.

1.2 Under its terms of reference “instruments” defined as:

subsidiary legislation in the form in which, and with the content it has, when it is published; and

an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law

stand referred to the Committee for inquiry.¹

2 THE CITY OF MELVILLE LOCAL LAW RELATING TO SIGNS, HOARDINGS AND BILLPOSTING

2.1 In exercising its scrutiny function, the Committee considered amendments to Schedule 2 in the *City of Melville Local Law Relating to Signs, Hoardings and Billposting* (“Local Law”) which is made under the *Local Government Act 1995* (“Act”). The amendments were published in the *Government Gazette* on July 12 2002 and tabled in the Legislative Council on August 21 2002.

2.2 Following preliminary investigations, the Committee resolved to give notice of motion to disallow the whole of the Local Law in the Legislative Council on October 16 2002 because of concerns about excessive percentage fee increases in the Scale of Fees in Schedule 2.

2.3 Ultimately the Committee did not recommend disallowance of the Local Law to the House and discharged the Order of the Day on November 27 2002. However, the

¹ Subsidiary legislation means any proclamation, regulation, rule, local law, by-law, order, notice, rule of court, town planning scheme, resolution, or other instrument, made under any written law and having legislative effect.

Committee resolved to provide this information Report to the Parliament about its concerns with the fee setting practices of the City of Melville (“City”).

3 BACKGROUND INFORMATION

3.1 The Local Law was first made in 1968. It was wholly repealed in 1983 and then remade in 1984.² It has not yet been remade under the new *Local Government Act 1995* but amended on 12 occasions. Part 3 deals with licences. Clause 3.1.1 states that:

(a) No person shall erect, make or maintain a sign or advertising device except pursuant to a licence issued under the Local Laws.

3.2 There are exemptions but otherwise, there are a number of conditions that attach to the grant of a licence. These include:

- the provision of duplicate plans, drawn to a scale;
- a certificate from a practising Structural Engineer certifying structural soundness of the building or structure upon which it is proposed to erect the sign and that the sign is itself of structurally sound design;³
- the furnishing of further particulars as may be required by the Building Surveyor; and
- a written consent to the erection of the sign signed by the body having the management of traffic control lights.

3.3 Thus, before a person applies for a sign licence, significant expenditure has been incurred.

The Scale of Fees

3.4 Although the Scale of Fees had not increased for five years, the Committee was concerned about the extent of the fee increase, which averaged approximately 470 per cent.

² *Government Gazette* (No. 76) of October 1984.

³ This is for roof or special pylon signs.

Type of Sign	1998 Licence Fee	2002 Licence Fee & % Increase
Pylon or Tower Sign	\$35	\$250 (614%)
Oversized Pylon or Tower Sign	\$55	\$250 (355%)
Illuminated Sign on Roof	\$55	\$250 (355%)
Illuminated Sign under Verandah	\$37	\$250 (575%)
Illuminated Sign other	\$37	\$250 (575%)
Development Sites	\$55	\$350 (536%)
Sign Panel	\$10	\$150 (1400%)
Hoardings (per annum)	\$75	\$150 (100%)
Any other sign	\$37	\$150 (305%)
Sale Signs (per six months) 1.8 square metres to 4.0 square metres	\$37	\$150 (305%)
Sale Signs (per six months) 4.1 square metres to 10.0 square metres	\$55	\$250 (355%)
Sale Signs (per six months) 10.1 square metres to 18.0 square metres	\$75	\$350 (366%)
Permanent Portable Signs	\$37	\$150 (305%)

4 FEES UNDER THE ACT

- 4.1 Part 6, Division 5 of the *Local Government Act 1995* titled: “*Financing local government activities*” contains information about a local government’s ability to receive revenue and income from particular sources.
- 4.2 Under section 6.16(2) a local government may, by absolute majority, impose and recover a fee or charge for any goods or service it provides other than a service for which a service charge is imposed. A fee can be charged for receiving an application for the issuing of a licence and those fees may be imposed during a financial year and amended from time to time during a financial year.
- 4.3 Section 6.17(1) states that in setting the level of fees and charges, the local government is required to take into consideration the following three factors:

(a) the cost to the local government of providing the service or goods;

(b) the importance of the service or goods to the community; and

(c) the price at which the service or goods could be provided by an alternative provider.

4.4 Section 6.17(3) states that the basis for determining a fee or charge is not to be limited to the cost of providing the service or goods other than a service —

(a) under section 5.96;⁴

(b) under section 6.16(2)(d);⁵ or

(c) prescribed under section 6.16(2)(f);⁶ where the regulation prescribing the service also specifies that such a limit is to apply to the fee or charge for the service.

4.5 One of the exceptions listed above, subsection (b), is the subject matter of this local law. Under section 6.17(3) fees can only be charged to recover the actual cost.

4.6 At first glance and in the absence of a sufficient explanation for the quantum in the scheduled Scale of Fees, the Committee considered that the fees appeared to breach section 6.17(3)(b) of the Act. The Committee then sought a justification for the fee increases from the City. Using just one example, the City provided a breakdown of the fee for a pylon/tower sign licence application.

⁴ This deals with people requesting copies of publicly available documents and only being charged the actual cost.

⁵ (d) is the local government receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorization or certificate.

⁶ (f) is any other prescribed matter.

PROCESSING SIGN APPLICATIONS - SIGNIFICANT SIGN - E.G. PYLON OR TOWER SIGN			
Building services annual Budget	\$ 699,275.00		
Hours worked per year	1976		
Cost per man hour	\$ 39.32		
Tasks			
Description	Duration	Hourly Rate	Cost
Advise and receive application	0.50	\$ 39.32	\$ 19.66
Prepare application form and file	0.50	\$ 39.32	\$ 19.66
Register Application into system.	0.25	\$ 39.32	\$ 9.83
Application to Building Surveyor	0.25	\$ 39.32	\$ 9.83
Assessment - research site records	0.50	\$ 39.32	\$ 19.66
Assessment - discuss with applicant	0.50	\$ 39.32	\$ 19.66
Assessment - site inspection	1.50	\$ 39.32	\$ 58.98
Assessment - prepare report	2.50	\$ 39.32	\$ 98.30
Assessment - To Development Adv. Unit.	0.50	\$ 39.32	\$ 19.66
Issue and despatch approval/refusal	0.50	\$ 39.32	\$ 19.66
Compliance check	1.00	\$ 39.32	\$ 39.32
Total estimated cost			\$ 334.22

- 4.7 The Committee sought comparative information from the Department of Local Government and Regional Development. The chart below indicates the range of fees across six local governments. The range may be accounted for by a number of factors, including under charging or under recovering.

Local government	Signs/Hoardings Application/ Licence Fee 2002	City of Melville Licence Fee 2002
City of Perth	Pylon Sign \$16	\$250
	Illuminated Sign on a Roof \$32 + planning/admin fees	\$250
	Illuminated sign under a verandah \$8	\$250
	Any other illuminated sign \$16	\$250
	A sign other than a pylon or illuminated \$8	\$150
City of Subiaco	Sign Licence Fee: \$40pa.	
	Hoarding Material on a Street: \$1.00 per month per square metre	
City of South Perth	Signs per application \$100	\$250

City of Swan	Pylon or Tower Sign \$125	\$250
	Illuminated Roof Sign \$60	\$250
	Illuminated Sign under verandah \$60	\$250
	Sign Panel \$135	
	Hoardings \$260 pa	\$150 pa
	Any other sign \$ 50	\$150
	Portable sign \$50	\$150
City of Fremantle	Sign licences \$5	
	Pylon Sign \$7	\$250
	Sign under an awning \$8	
	Annual Permits \$20	
City of Wanneroo	Pylon or Tower Sign application fee: \$75	\$250
	Hoardings \$100	\$150 pa
	Special Events Signs \$200	
	Community Events Signs \$ 40	
	Any other sign \$75	\$150 pa

- 4.8 The Committee held a public hearing on November 13 2002 and Mr Michael Duckett, Manager, Neighbourhood Amenity, City of Melville, gave evidence about how the City arrived at the Scale of Fees for processing sign licence applications.
- 4.9 Mr Duckett’s evidence was that when breaking down the constituent elements of the application fee for a pylon/tower sign licence, at every one of the 11 stages, the amount charged is a fee for a service rendered. Except for a hoarding licence, all other licence fees are a ‘one-off’ cost, not an annual fee like other local governments.⁷
- 4.10 Mr Duckett explained that at the City of Melville, each service area is fully costed and accounted for, even to the extent that the respective service budgets contain elements that relate to payment of centralised internal support services, such as financial services, information technology service and human resources service. For this reason, Mr Duckett was confident to say that the cost of running the building services area is \$699,275 and “...not an amount thereabouts”⁸.
- 4.11 Mr Duckett emphasised that the fees the local government imposes for provision of services, such as processing applications for approval, amount to no more than cost recovery. Mr Duckett said:

⁷ For example, the City of Stirling’s charges \$100 per annum and the City of Subiaco charges \$40 per annum.

⁸ Mr Michael Duckett, Transcript of Evidence, November 13 2002, page 1.

We also take the opportunity to ensure that we recover the costs of running those services, as provided in the legislation.⁹

5 METHOD OF ACCOUNTING

- 5.1 Given the accrual accounting system, the City does not use 'units with no minimum'¹⁰ in the manner that for example, an accounting firm might be required to achieve a percentage recovery. Rather, the City recovers 90 to 95 per cent of its total costs from direct service delivery and is in fact, subsidised five or 10 per cent from rate revenue.

6 EXPLANATION OF THE HIGH PERCENTAGE INCREASE OF FEES

- 6.1 According to Mr Duckett, the Council's accounting practices and the same mode of cost recovery have not changed between 1998 and 2002. Full cost recovery was sought for services in 1998 when the fees were last set.

- 6.2 The Committee queried whether the main cost of processing applications is in fact salaries. Mr Duckett explained that majority of cost is direct labour cost but also includes:

- vehicles that are used in the service area;
- stationery;
- office expenses; and
- telephone.

- 6.3 During the last four years the Committee considered that labour and other costs had not increased and with inflation rates low, the cost of office furniture and computers were relatively unaltered. Mr Duckett said:

We had it wrong in 1998, we had it wrong in 1999 and we had it wrong in 2000. We have now got it right.

...Our previous fee was \$35. That is less than one hour's work, based on our current costs. That is just not the reality.

... We just kept rolling the fees on, like a lot of local governments do, without paying them any due attention and without looking at them with the opportunity that is presented to us within the Local

⁹ Mr Michael Duckett, Transcript of Evidence, November 13 2002, page 1.

¹⁰ For example, a one-minute phone call equating to a six-minute unit.

Government Act of fully recovering the cost of the provision of these services.¹¹

6.4 Mr Duckett denied that the fees are calculated so as to cross-subsidise some of the other services and that it is fully costed to the building services program. He then stated that the calculation is not on the actual number of applications (approximately eight per month) and the actual time it is taking to process, but on the hourly cost of running building services as a factor against the outline process, which takes so many hours. This hourly rate is \$39.32 and includes:

- time in lieu;
- rostered days off;
- holiday pay, sick pay;
- superannuation; and
- the non-yield or non-productive time when staff are absent.

6.5 The salary level is 5, remunerating at between \$38 000 and \$44 000 with nine ‘full time equivalents’ in building services. However, the nine are not all employed in building services and no one person is employed solely in the City to deal with sign licence applications. The staff are multiskilled, some are employed in technical services and others are employed in health services. There have been 88 sign licence applications from January 31 2002 to November 13 2002.

7 COMMITTEE CONCERNS

Advertising

7.1 During the six-week advertising period the City received no submissions about the proposed changes to fees. The council meeting minutes indicated that the motion to pass the Scale of Fees attracted no dissent. Only the minimum advertising as required under the Act was undertaken. This was statewide public advertising in *The West Australian* and on the notice board on council premises. There was no advertising in the local community newspaper or pro-active consultation undertaken, for example, with the business enterprise unit or the Chamber of Commerce.

7.2 Although the City met the minimal requirements of the Act, the City’s efforts were just that, minimal. Given the high percentage increases, the Committee takes the view that the City should have pro-actively consulted with the business community and certainly advertised in the local community newspaper. In the Committee’s view, that would have amply satisfied the test in section 3.15 of the Act which states: “A local

¹¹ Mr Michael Duckett, Transcript of Evidence, November 13 2002, page 8.

government is to take reasonable steps to ensure that the inhabitants of the district are informed of the purpose and effect of all of its local laws.”

Accounting method

- 7.3 The witness was not able to estimate what percentage of one employee’s time is taken up in a sign licence application. Mr Duckett explained that the calculation is based on the total budget divided by the number of people who work in the service area and the fact that each officer works 1,976 hours per year. The costings presented to the Committee were based on what the Council specifies the process to be and this is 8.5 hours at \$39.32 per hour. That is, \$334.22, but the Council only charges \$250.
- 7.4 By contrast, the Committee considers that in order to calculate the true cost of an application, it is necessary to know specifically how much time sign applications take to process. To be able to work out how long it takes to process an application, the Council needs to know what percentage of overall time it takes for a person to perform other functions. The witness did not think that this method would produce a different result.
- 7.5 The Committee would prefer that local governments who are cost recovering follow the example of government agencies and phase in fee increases over a period of time to lessen their impact on the business community.

8 IS THE SCALE OF FEES AUTHORISED BY THE ACT?

- 8.1 The general thrust under accrual accounting is that the end user of local government provided products and services should pay the full cost which is the direct, indirect and capital related costs. Full cost is defined as “...*the total cost of all resources used in the production of anything for which a cost measure is required.*”¹² It includes:
- labour and associated salary and wage costs;¹³
 - materials;
 - operating expenses;¹⁴
 - accommodation¹⁵ and corporate overheads; and

¹² Financial Management Circular “Guidelines for Setting Fees and Charges imposed by Departments and Budget Sector Agencies 1997-1998, December 12 1996, p. 6.

¹³ These include: wages, salaries and overtime, superannuation contributions, payroll tax, leave loading and long service leave.

¹⁴ Travel expenses, stationary, postal and telephone, office equipment, fuel, light and power, insurance, consultants and incidentals.

¹⁵ Allowance for general building outgoings such as air conditioning maintenance, cleaning, security and general maintenance.

- capital related costs.¹⁶

8.2 The Committee has considered the question of whether an impost might in fact be a tax on a number of occasions in the past ten years.¹⁷ This considerable experience has derived from an analysis of the case law on the subject over the past 50 years and has relied on those decisions to make a determination. The principal case is *Matthews v Chicory Marketing Board* where Chief Justice Latham said:

... a tax . . . is a compulsory exaction of money by a public authority for public purposes, enforceable by law, and is not a payment for services rendered.¹⁸

8.3 In *Air Caledonie International v Commonwealth*¹⁹, the High Court of Australia considered and extended the comments made in *Matthews v Chicory Board* taking the position that if a levy is for services rendered, then it is likely to be a fee. If, on the other hand, it is primarily designed for the purposes of raising revenue, then it will be open to challenge as being a tax.

8.4 Section 45A of the *Interpretation Act 1984* was inserted in 1997 to modify the common law position in respect to licence fees by providing for such fees to be imposed to recover expenditure that is relevant to the scheme or system under which the licence is issued.

8.5 Mr Duckett's evidence suggested that, when breaking down the constituent elements of the fee for a pylon/tower sign licence application, at every one of the 11 stages, the amount charged for the licence application is a fee for a service rendered. There is no evidence to suggest that the impost is primarily designed to raise revenue and that the recovery of expenditure is relevant to the system under which the licence is issued.

9 CONCLUSION

9.1 The Scale of Fees does not breach section 6.17(3)(b) of the Act. However, the Committee was not satisfied with the explanatory memorandum that accompanied the Local Law and expects all local governments to justify fee increases by reference to the method of accounting used and to particularise the labour and associated salary and wage costs, materials, operating expenses, accommodation and corporate overheads as well as capital related costs factored into the fees. In this manner, parliamentary scrutiny will be enhanced.

¹⁶ Like depreciation.

¹⁷ See the Committee's previous Reports No 7 tabled November 1991; No 10 tabled November 5 1992; No 20 tabled November 7 1996; No 25 tabled August 26 1997 and more recently the current Committee's Report No 3 in the 36th Parliament tabled March 20 2002.

¹⁸ (1938) 60 CLR 263 at 276.

¹⁹ (1988) 165 CLR 462.

10 RECOMMENDATIONS

10.1 The Committee recommends that:

- the imposition of licence application fees should solely reflect cost recovery;
- in cases where there are substantial licence application fee increases such as the City of Melville, these fees be phased in over a period of time;
- stakeholder representative groups be advised of any proposed increases; and
- in addition to the requirement of advertising in *The West Australian*, advertisement in local community newspapers be undertaken.



**Margaret Quirk MLA
Chairman**

Date: December 5 2002