



THIRTY-NINTH PARLIAMENT

REPORT 77
JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION
INQUIRY INTO A PROPOSED TEMPLATE
WASTE LOCAL LAW

Presented by Mr Peter Abetz MLA (Chairman)

and

Hon Robin Chapple MLC (Deputy Chair)

November 2014

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 John Castrilli MLA
Hon Mark Lewis MLC
Mr Paul Papalia MLA

Hon Robin Chapple MLC (Deputy Chair)
Hon Peter Katsambanis MLC
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REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO THE

INQUIRY INTO A PROPOSED TEMPLATE WASTE LOCAL LAW

1 REFERENCE AND PROCEDURE

1.1 The Joint Standing Committee on Delegated Legislation (**Committee**) advised the Legislative Council and the Legislative Assembly of its intention to conduct an own motion inquiry, under its Term of Reference 10.7(a), into a proposed template waste local law developed by the Western Australian Local Government Association (**WALGA**).

1.2 The following Terms of Reference were tabled in both Houses on 11 September 2014:

The Committee will inquire into a proposed template Waste Local Law, being Draft 3 dated 18 July 2014, provided to the Committee by the Western Australian Local Government Association.

1.3 During the course of the inquiry and in order to address some of the Committee's concerns, WALGA provided the Committee with two further drafts of the proposed template, the last of which is headed "Draft FINAL: 20/10/14". A copy of that draft is attached at **Appendix 1**.

2 OTHER TERMS OF REFERENCE

2.1 As the proposed template will, in its final form, be relied on for the drafting of waste local laws, the Committee in undertaking this inquiry also considered its Term of Reference 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.

3 INQUIRY PROCESS

- 3.1 Details of the Inquiry were placed on the Committee's webpage. The Committee held a hearing with Ms Rebecca Brown, Manager, Waste and Recycling, WALGA during the course of the inquiry.
- 3.2 The Committee has some remaining areas of concern in relation to the proposed template, as identified on a clause-by-clause basis in this report.

4 BACKGROUND

- 4.1 In its Report 46 dated November 2011, the Committee recommended disallowance of the *City of Gosnells Waste Local Law 2011* and the *Shire of Derby/West Kimberley Waste Services Local Law 2011*.¹ The Committee considered certain clauses of those local laws to be disallowable as falling outside the contemplation of the Parliament in authorising the making of delegated legislation.
- 4.2 Specifically, the Committee took the view that a number of offence provisions in the local laws were too prescriptive and criminalised behaviour that was not obnoxious or hazardous in any way.²
- 4.3 The *City of Gosnells Waste Local Law 2011* and the *Shire of Derby/West Kimberley Waste Services Local Law 2011* were disallowed by the Legislative Council on motion proposed by this Committee, and the proposed template is the culmination of a drafting process commenced by WALGA following that disallowance.

5 STATUTORY PROVISIONS RELEVANT TO THE MAKING OF WASTE LOCAL LAWS

- 5.1 Local governments provide waste services pursuant to section 50(1) of the *Waste Avoidance and Resource Recovery Act 2007 (WARR Act)*, which provides that subject to that Act and the *Environmental Protection Act 1986*, a local government may provide, or enter into a contract for the provision on its behalf of, waste services.
- 5.2 The proposed template states that the local laws are made under the WARR Act and the *Local Government Act 1995 (LGA)* "and under all other enabling powers".

¹ Western Australia, Joint Standing Committee on Delegated Legislation, Report No. 46, *City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011*, 24 November 2011.

² Ibid, paragraphs 7.1 - 7.13.

WARR Act

5.3 The power to make local laws under the WARR Act is found in section 61(1), which provides:

A local government —

(a) may, if the CEO consents; and

(b) must, if the CEO so directs,

make local laws in accordance with the Local Government Act 1995 Part 3 Division 2 Subdivision 2 for the purposes specified in section 64 or generally for carrying into effect the provisions of this Part.

5.4 “CEO” means “chief executive officer of the department of the Public Service principally assisting in the administration of this Act”,³ which is the Department of Environment Regulation.

5.5 Section 64 of the WARR Act provides:

Local laws may be made for all or any of the following purposes –

(a) the provision and administration of waste services and related matters;

(b) the establishment, provision, use and control of receptacles for the deposit and collection of waste, whether temporary or otherwise;

(c) if a local government itself undertakes or contracts for removal of waste from premises, imposing on the owner or occupier of the premises requirements in connection with the removal so as to facilitate the removal, and prescribing the manner in which the requirement is to be complied with;

(d) if a local government or the holder of a waste collection permit does not itself undertake or contract for removal of waste from premises, imposing on the owner or occupier of the premises a requirement to remove waste from the premises, and prescribing the manner in which the requirement is to be complied with;

³ WARR Act s3(1).

- (e) *if a local government itself undertakes or contracts for the removal of waste, requiring the waste to be placed in waste receptacles provided by the local government;*
- (f) *prescribing intervals at which the contents of the receptacles will be removed by a local government;*
- (g) *requiring the temporary placing of waste receptacles in streets or lanes by owners or occupiers of property for collection of waste, and requiring the replacement of the receptacles on the property;*
- (h) *providing for the maintenance by owners and occupiers of waste receptacles provided by a local government;*
- (i) *providing for the issue of approvals to collect local government waste and remove it from premises;*
- (j) *fixing fees and charges in relation to waste services provided by a local government and the issue of approvals under paragraph (i), and prescribing the persons liable and the method of recovery of amounts not duly paid.*

5.6 The procedural requirements of LGA sections 3.12(3), 3.12(4) and 3.13 apply to waste local laws made under the WARR Act unless they are made pursuant to a direction of the CEO under WARR Act s 61(1)(b) or s 61(2).⁴

LGA

5.7 The LGA contains a broad law-making power in section 3.5(1):

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.

5.8 The “general function” of local government as set out in LGA section 3.1 is “to provide for the good government of persons in its district”. The scope of the general function is to be construed in the context of its other functions under the LGA or any other written law and any constraints imposed on the performance of its functions by the LGA or any other written law.⁵

⁴ WARR Act section 61(7).

⁵ LGA section 3.1(2).

5.9 The broad scope of the empowering provisions in both the WARR Act and LGA has been discussed in previous reports of the Committee.⁶ However it has been recognised, for example in relation to the *City of Gosnells Waste Local Law 2011*, the *Shire of Derby/West Kimberley Waste Services Local Law 2011* and the *City of Fremantle Plastic Bag Reduction Local Law 2012*, that there are policy questions that are more appropriately settled by the delegator than by the delegate bodies.⁷

6 COMMITTEE COMMENT ON SPECIFIC CLAUSES

Clause 2.6

6.1 Clause 2.6 of the proposed template provides:

1) *The local government or an authorised person may give a written direction to an owner or occupier of premises –*

(a) to place a receptacle in respect of those premises for collection; or

(b) to remove a receptacle in respect of those premises after collection.

2) *The direction under subclause (1) may specify when the placement or removal is to occur, or where the receptacle is to be placed, or both.*

3) *An owner or occupier of premises must comply with a direction given under this clause.*

6.2 The Committee notes that, as currently drafted, clause 2.6 would enable local governments to give unreasonably prescriptive directions as to the placing and removal of receptacles, with similar effect to the provisions considered by the Committee to offend the Committee's then Term of Reference 3.6(a) in the *City of Gosnells Waste Local Law 2011* and the *Shire of Derby/West Kimberley Waste Services Local Law 2011*.⁸

⁶ Western Australia, Joint Standing Committee on Delegated Legislation, Report No. 46, *City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011*, 24 November 2011, p 12-15; and Report No. 67, *Information Report in relation to City of Fremantle Plastic Bag Reduction Local Law 2012*, page 5.

⁷ Ibid, pages 18 and 9 respectively.

⁸ For example, clause 2.3(d) of the *City of Gosnells Waste Local Law 2011*, which required that a person 'shall' place their bin at a particular place by 6am for each collection day. The Committee noted that there was effectively the same clause in the *Shire of Derby/West Kimberley Waste Services Local Law 2011*.

6.3 All policy decisions (and legislative measures embodying these normative decisions) reflect a compromise in the tension that exists between utilitarian efficiency (greatest benefit to the most people at the lowest cost) on the one hand and individual rights, liberties and freedoms on the other. A local law will be offensive and not within power if it does not appropriately balance these competing interests; where the utilitarian benefit does not adequately compensate for the loss of individual rights, liberties and freedoms.

6.4 In response to a question from the Committee about clause 2.7 of the proposed template, Ms Brown stated that:

*The intention of clause 2.6 is to be more flexible; to be allowed to provide direction as needed and provide specific direction. Clause 2.7 is the more general direction.*⁹

6.5 Clause 2.7(b) of the proposed template, in the original draft, stated:

An owner or occupier of premises must – [...]

(b) within a reasonable period before collection time,¹⁰ place each receptacle¹¹ on the verge or other area as determined by the local government, adjoining the premises -

(i) within 1 metre of the carriageway;

(ii) so that it does not unduly obstruct any footpath, cycle way, right-of-way or carriageway; and

(iii) facing squarely to the edge of and opening towards the carriageway,

*or in such other position as is approved in writing by the local government or an authorised person.*¹²

⁹ Ms Rebecca Brown, Manager, Waste and Recycling, WALGA, *Transcript of Evidence*, 24 September 2014, p6.

¹⁰ Clause 1.5 defines “collection time” as “the time on the collection day determined by the local government for the collection of collectable waste in the district or a part of the district”.

¹¹ Clause 1.5 defines “receptacle” as:

“a receptacle –

(a) that has been supplied for the use of the premises by the local government or its contractor, or which has otherwise been approved by the local government; and

(b) the waste from which is collected and removed from the premises by the local government or its contractor.”

¹² See also paragraphs 6.25 – 6.39 below, in which the Committee raises as further issue in relation to this clause.

- 6.6 In answer to the Committee's questions regarding the mandatory nature of clause 2.7(b), Ms Brown stated that:

*The intent absolutely was not to say 'you have to put your bin out every week', because you do not. So we need to address that.*¹³

- 6.7 Consequently, clause 2.7(b) has been amended and is not mandatory in nature. It states:

An owner or occupier of premises must – [...]

(b) when placing a receptacle for collection on the verge adjoining the premises, or other area as determined by the local government, take reasonable steps to ensure that within a reasonable period before collection time, each receptacle is –

(i) within 1 metre of the carriageway;

(ii) so that it does not unduly obstruct any footpath, cycle way, right-of-way or carriageway; and

(iii) facing squarely to the edge of and opening towards the carriageway,

or in such other position as is approved in writing by the local government or an authorised person.

- 6.8 The requirement of reasonableness is to some extent ambiguous. Judicially, the term would be interpreted subjectively. The Committee does however note that the term has presumably been used to avoid the highly prescriptive nature of the requirements in the *City of Gosnells Waste Local Law 2011* and the *Shire of Derby/West Kimberley Waste Services Local Law 2011*.

- 6.9 Whilst this amendment dealt with the Committee's concerns in relation to clause 2.7, the Committee is of the view that the inclusion of clause 2.6 in the proposed template in its current form provides no limit on the mandatory directions which local governments could make in relation to the placement and removal of receptacles. As the clause refers to "premises" and not "specified premises", directions could be made under clause 2.6 relating to all premises in a local government district, and not just to individual premises as Ms Brown indicated in her evidence was the intention of the clause.

¹³ Ms Rebecca Brown, Manager, Waste and Recycling, WALGA, *Transcript of Evidence*, 24 September 2014, p7.

6.10 A local law is not authorised if it has an effect which is so unreasonable that it cannot be regarded as falling within the contemplation of the Parliament in enabling the making of delegated legislation reasonably proportionate to the empowering provisions of the Act.

6.11 The test of proportionality or unreasonableness was commented on in *Minister for Resources v Dover Fisheries* (1993) 116 ALR 54 as follows:

*The test of proportionality reflects an underlying assumption that the legislature did not intend the power to enact delegated legislation would be exercised beyond what was reasonably proportional to achieve the relevant statutory object or purpose; the test of reasonableness assumes that the legislature did not intend to confer a power to enact delegated legislation which enactment no reasonable mind could justify as appropriate and adopted for the purpose in issue and the subject matter of the grant. Whether one describes that test as one of “reasonable proportionality” or “unreasonableness”, the object is to find the limit set by the legislature for the proper exercise of the regulation or rule making power and then to measure the substantive operation of the delegated legislation by reference to that limit. In my view there is no substantive difference between the tests as stated.*¹⁴

6.12 Ultimately, the question is whether the delegated legislation is within the scope of what the Parliament intended when enacting the legislation which empowers the subordinate authority to make the laws.¹⁵

6.13 The Committee is of the view that a local law in the form of clause 2.6 would offend Committee Term of Reference 10.6(a), in that it would not be reasonably proportionate to the empowering provisions in the WARR Act and LGA and therefore not within power as required by the Committee’s term of reference 10.6(a).

6.14 In the Committee’s view, the issue could be resolved by the addition of the word “specified” before the word “premises” in the second line of clause 2.6(1).

Clause 2.10(2)

6.15 Clause 2.10(2) of the proposed template provides:

Where waste has been deposited on a verge for a verge waste collection –

(a) a person must not remove any of that waste for commercial purposes;

¹⁴ *Minister for Resources v Dover Fisheries* (1993) 116 ALR 54 per Cooper J at 74.

¹⁵ *Ibid*, per Gummow J at 66. The Committee considered these principles in its Report No. 46, *City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011*, 24 November 2011, at pp12-15.

(b) a person must not disassemble or otherwise interfere with waste deposited for collection; and

(c) subject to paragraphs (a) and (b), a person may remove any item of that waste.

6.16 In other words, a person may remove waste from a verge collection subject to the limitation that they not in any way “interfere” with it. WALGA stated that, in its view, clause 2.10(2) makes it clear that removal is not interference. The Committee does not agree with that view.

6.17 In its terms, clause 2.10(2)(c) provides that removal must not include interference. The Committee’s view is that such a provision is illogical and that a provision in these terms in a local law would not be within power and would thus offend its term of reference 10.6(a).

6.18 In relation to the term “disassemble” in clause 2.10(2)(b), WALGA stated that, in its view, for reasons concerned with health and safety, local laws should not allow disassembly of verge waste, even as part of the process of removing waste for non-commercial purposes. The Committee notes however that such an approach would preclude all disassembly of verge waste, even in situations where no health and safety issues arose.

6.19 The Committee suggests that clause 2.10(2) be redrafted so that:

- the prohibitions against disassembly and interference are separated out;
- sub-clause 2.10(2)(c) is no longer subject to the prohibition against interference;
- the prohibition against interference is expressly subject to the sub-clause permitting removal of verge waste for non-commercial purposes; and
- the prohibition against disassembly is limited to situations in which disassembly may be hazardous or otherwise of concern to WALGA.

Clause 5.1(2)

6.20 Sections 64(3) and (4) of the WARR Act provide:

(3) A local law may provide that contravention of a provision of the local law is an offence, and may provide for the offence to be punishable on conviction by a penalty not exceeding a fine of \$5 000.

(4) *If the offence is of a continuing nature, the local law may make the person liable to a further penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.*

6.21 Clause 5.2 of the proposed template provides:

(1) *A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law a person is prohibited from doing, commits an offence.*

(2) *A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to a further penalty not exceeding \$500 in respect of each day or part of a day during which the offence has continued.*

6.22 The Committee notes that clause 5.2 adopts the maximum allowable penalties under WARR Act section 64(3) and (4) in relation to all offences in the proposed template. WALGA has advised that, in its view, the maximum allowable penalties may be appropriate in some circumstances, given the hazardous nature of some waste.¹⁶

6.23 The Committee noted in Report 46:

*While acknowledging that the provisions in the [WARR] Act do not mandate that local laws create minimum penalties and different levels of penalties in a local law, the Committee considers that good government principles require that reasonable and appropriate maximum penalties be imposed for particular breaches of a local law.*¹⁷

6.24 The Committee does not express a view as to whether a local law in the form of clause 5.1(2) would offend any of its terms of reference, but reiterates its views on this issue as expressed in its Report 46.

Clauses containing a “determination device”

6.25 Clauses 1.5 (definition of “recycling waste”), 2.3(1)(b), 2.4(c), 2.5(c), 2.7(b) and 4.5(2) of the proposed template contain provisions by which a local government may make determinations as to specific matters affecting the operation of the local law.

¹⁶ Ms Rebecca Brown, Manager, Waste and Recycling, WALGA, *Transcript of Evidence*, 24 September 2014, p14.

¹⁷ Western Australia, Joint Standing Committee on Delegated Legislation, Report No. 46, *City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011*, 24 November 2011, paragraph 4.9.

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- 6.26 Clause 1.5 (definition of “recycling waste”) enables a local government to make a determination as to “any other waste” which constitutes recycling waste for the purposes of the local law.
- 6.27 Clauses 2.3(1)(b), 2.4(c) and 2.5(c) enable a local government to make determinations as to the permitted weight of waste which may be deposited in a receptacle.
- 6.28 Clause 2.7(b) enables a local government or an authorised person to approve in writing a permitted position (other than a verge) for the placement of a receptacle for collection.
- 6.29 Clause 4.5(2) enables a local government to determine the classification of any waste that may be deposited at a waste facility.
- 6.30 “Determination devices” involve the sub-delegation of law-making power to a resolution of a simple majority of the Council of the local government. The making of local laws by contrast requires an absolute majority of Council members.¹⁸
- 6.31 The Committee considers determination devices to be inappropriate. Such provisions tend to undermine Parliamentary sovereignty because Parliament is not given notice of the determinations in the same way it is given notice of delegated legislation. This means that Parliament is also denied the opportunity of reviewing and, where necessary, disallowing determinations.
- 6.32 In addition, the mandatory procedure for making local laws under section 3.12 of the LGA is not required to be followed in relation to determinations.
- 6.33 The Committee highlights the common law rule, in the absence of legislative authority to the contrary, against sub-delegation of legislative power. This rule is based on the principle that a body that has been delegated the power to make legislation cannot itself delegate this power, unless the power to sub-delegate is contained in the enabling legislation.¹⁹ Local governments have been delegated the power to make local laws by the Parliament enacting section 3.5(1) of the LGA, and in this case section 61 of the WARR Act. Neither the LGA nor the WARR Act contains a power to sub-delegate.
- 6.34 One approach to determining whether a determination device constitutes an unauthorised sub-delegation of law-making power has been to assess the extent to which the provision delegates administrative, rather than legislative, functions of a local government. Where the matters left to be carried out by the sub-delegate are questions of detail which merely fill the gaps left in the legislation itself, or which are

¹⁸ LGA section 3.12(4), which also applies to the law-making power in the WARR Act by virtue of section 61(7) of that Act.

¹⁹ For example, see *Hawke’s Bay Raw Milk Producers Co-op Co Ltd v New Zealand Milk Board* [1961] NZLR 218; *Turner v Owen* (1990) 96 ALR 119.

to be carried out in accordance with guidelines laid down in the legislation, the more likely it will be that the sub-delegate is exercising administrative powers only, and the sub-delegation will be valid.²⁰

6.35 All of the above clauses other than clause 4.5(2) involve the sub-delegation of essentially administrative function and are therefore in the Committee's view valid exercises of the legislative power under WARR Act section 61(1).

6.36 Clause 4.5(2) must be read in the context of clause 4.6(1)(b) which provides that:

unless authorised by the local government, a person must not, unless approved by the local government, deposit at a waste facility that is a landfill site any waste that is toxic, poisonous or hazardous, or the depositing of which is regulated or prohibited by any written law.

The proposed template contains no other provision limiting the type of waste which may be deposited at a waste facility. In other words, other than the limitations set out in clause 4.6(1)(b), the type of waste which may be deposited at a waste facility is left to the determination of the local government from time to time.

6.37 The Committee's view is that it would be preferable for local laws, as far as reasonably practicable, to state the classification of waste that may be deposited at a waste facility.

6.38 The Committee also raised with WALGA the secondary issue of whether, assuming a local law provided for the making of determinations on certain matters, the local law should also require a register of determinations be kept in addition to the relevant Council minutes. WALGA responded that it would instead recommend that maintaining a register of determinations be optional and include this proposal in the accompanying Guidance Note to Local Governments.

6.39 Local laws are publicly available by virtue of the requirements of section 3.12 of the LGA, including publication in the *Government Gazette*, Statewide public notice as defined in the Act, and the provision of a copy of the local law to any person requesting it. By contrast, a determination made by a local government pursuant to a local law is, in the absence of a register, only available in the minutes of the Council meeting at which the determination was made. The Committee notes that it would be less inclined to recommend disallowance of a determination device in a local law if the determinations in question were required by the local law to be listed in a publicly available register of determinations, giving them a similar level of public accessibility as local laws themselves.

²⁰ See the discussion in Pearce and Argument, *Delegated Legislation in Australia*, 4th edition, LexisNexis Butterworths 2012, paragraph 23.13, citing *Carltona v Commissioner of Works* [1943] All ER 560 at 563.

Clause 3.2(2)

6.40 Clause 3.2(2) of the proposed template states:

A person must not, without the approval of the local government, an authorised person or the owner or custodian of the receptacle, remove any waste from a receptacle.

6.41 WALGA has expressed the view that the term “custodian” in this clause has a sufficiently clear common meaning without further definition. The Committee remains concerned about the use of this undefined term and takes the view that clause 3.2(2) may be uncertain and therefore not within power as a result. In the Committee’s view it would be preferable if clause 3.2(2) employed the words “owner or occupier of the premises at which the receptacle is kept”, for clarity and consistency with clause 3.2(1).

Schedule 1 – “non-frangible metal”

6.42 Schedule 1 of the template sets out the meaning of “non-collectable waste” for the purposes of clause 2.2(1), which makes it unlawful to deposit or permit to be deposited in a receptacle any non-collectable waste.

6.43 As defined in Schedule 1, “non-collectable waste” includes “non-frangible metal”. The dictionary meaning of “frangible” is “1. capable of being broken; breakable. 2. of or pertaining to telegraph poles etc., designed to detach from a solid base at ground level upon the impact of a motor vehicle.”²¹

6.44 On its ordinary meaning, “non-frangible metal” would thus include any metal which is not capable of being broken. In its answer to a Question on Notice following the hearing, WALGA provided the Committee with the following further guidance as to the meaning of “non-frangible metal”:

*Non-frangible metal is ferrous material that does not bend, and therefore cannot be accommodated in any mechanised waste receptacle collection process. The intent is to avoid non-frangible metals being placed in receptacles which would cause damage to a waste collection truck or sorting facility. For example a thick piece of metal bar would not compact in the truck and could cause damage.*²²

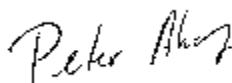
6.45 In the Committee’s view this term is insufficiently certain without further definition. Paragraph (i) of Schedule 1 would, if contained in a local law, therefore not be within power and would offend Committee term of reference 10.6(a).

²¹ *The Macquarie Dictionary*, 2nd edition, The Macquarie Library, 1991.

²² Response to Question on Notice dated 21 October 2014.

7 CONCLUSION

- 7.1 Other than as set out in this report, the Committee expresses its general approval of the proposed template.
- 7.2 The Committee notes however that it will assess any waste local law based on the proposed template on its merits and having regard to specific circumstances, and that any such local law would be subject to the usual Committee considerations regarding disallowance. The Committee emphasises that its comments regarding its general approval of the proposed template should not be taken as meaning that the Committee could not still recommend disallowance of a waste local law drafted in accordance with the final template.
- 7.3 The Committee commends its report to the Houses.



Mr Peter Abetz MLA

Chairman

27 November 2014

APPENDIX 1
PROPOSED TEMPLATE WASTE LOCAL LAW

APPENDIX 1
PROPOSED TEMPLATE WASTE LOCAL LAW

Draft FINAL: 20/10/14

[INSERT NAME OF LOCAL GOVERNMENT]

WASTE LOCAL LAW *[INSERT YEAR]*

Waste Avoidance and Resource Recovery Act 2007

[INSERT NAME OF LOCAL GOVERNMENT]

Waste Local Law [insert year]

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Waste Avoidance and Resource Recovery Act 2007

[INSERT NAME OF LOCAL GOVERNMENT]

Waste Local Law [insert year]

Under the powers conferred on it by the *Waste Avoidance and Resource Recovery Act 2007* and the *Local Government Act 1995* and under all other enabling powers, the Council of the [insert name of local government] resolved on [insert date] to make the following local law.

Part 1 - Preliminary

1.1 Short title

This is the [insert name of local government] Waste Local Law [insert year].

1.2 Commencement

This local law commences 14 days after the day on which it is published in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

[insert name of local law, or part of local law, to be repealed], published in the *Government Gazette* on [insert date], is repealed.

1.5 Meaning of terms used in this local law

(1) In this local law—

authorised person means a person appointed by the local government under section 9.10 of the LG Act to perform any of the functions of an authorised person under this local law;

collectable waste means local government waste that is not—

- (a) liquid refuse;
- (b) liquid waste; or
- (c) non-collectable waste;

collectable waste receptacle means a receptacle for the deposit and collection of collectable waste that is—

- (a) a recycling waste receptacle;

- (b) a general waste receptacle; or
- (c) an organic waste receptacle;

collection, when used in relation to a receptacle, means the collection and removal of collectable waste from the receptacle by the local government or its contractor;

collection day means the day determined by the local government for the collection of collectable waste in the district or a part of the district;

collection time means the time on the collection day determined by the local government for the collection of collectable waste in the district or a part of the district;

commencement date means the date on which this local law commences operation under clause 1.2;

costs of the local government include administrative costs;

Council means the council of the local government;

district means the district of the local government;

general waste receptacle means a receptacle for the deposit and collection of collectable waste that is not recycling waste;

LG Act means the *Local Government Act 1995*;

LG Regulations means the *Local Government (Functions and General) Regulations 1996*;

local government means [*insert name of local government*];

local government waste has the same meaning as in the WARR Act;

non-collectable waste has the meaning set out in Schedule 1;

occupier in relation to premises, means any or all of the following—

- (a) a person by whom or on whose behalf the premises are actually occupied; or
- (b) a person having the management or control of the premises;

organic waste means waste that decomposes readily, such as garden waste or food waste;

organic waste receptacle means a receptacle for the deposit and collection of organic waste ;

owner has the same meaning as in the LG Act;

public place includes a place to which the public ordinarily have access, whether or not by payment of a fee;

receptacle, means a receptacle—

- (a) that has been supplied for the use of the premises by the local government or its contractor, or which has otherwise been approved by the local government; and
- (b) the waste from which is collected and removed from the premises by the local government or its contractor;

recycling waste receptacle means a receptacle for the deposit and collection of recycling waste;

recycling waste means—

- (a) paper and cardboard;
- (b) plastic containers comprised of polyethylene terephthalate or high density polyethylene;
- (c) glass containers;
- (d) steel containers;
- (e) aluminium containers;
- (f) liquid paper board; and
- (g) any other waste determined by the local government to be recycling waste;

street alignment means the boundary between the land comprising a street and the land that abuts the street;

WARR Act means the *Waste Avoidance and Resource Recovery Act 2007*;

WARR Regulations means the *Waste Avoidance and Resource Recovery Regulations 2008*;

waste has the same meaning as in the WARR Act;

waste facility means a waste facility, as defined in the WARR Act, that is operated by the local government; and

waste service has the same meaning as in the WARR Act.

- (2) Where, in this local law, a duty or liability is imposed on an owner or occupier, or on an owner and occupier, the duty or liability is taken to be imposed jointly and severally on each of the owners or occupiers.

1.6 Local public notice of determinations

Where, under this local law, the local government has a power to determine a matter –

- (a) local public notice, under section 1.7 of the LG Act, must be given of the matter determined;
- (b) the determination becomes effective only after local public notice has been given;

- (c) the determination remains in force for the period of one year after the date that local public notice has been given under paragraph (a); and
- (d) after the period referred to in paragraph (c), the determination continues in force only if, and for so long as, it is the subject of local public notice, given annually, under section 1.7 of the LG Act.

1.7 Rates, fees and charges

The local government's powers to impose rates, fees and charges in relation to waste services are set out in sections 66 to 68 of the WARR Act and section 6.16 and 6.17 of the LG Act.

1.8 Power to provide waste services

The local government's power to provide, or enter into a contract for the provision of, waste services is dealt with in section 50 of the WARR Act.

Part 2 - Local government waste

2.1 Supply of receptacles

- (1) The local government is to supply, for the use of each premises that are, or are capable of being, occupied or used for residential purposes, one or more receptacles for the collection and removal, from those premises, of collectable waste.
- (2) The owner of premises to which subclause (2) applies must—
 - (a) ensure that the fee or charge (if any) imposed by the local government in relation to each receptacle is paid to the local government; and
 - (b) ensure that each receptacle is used, in respect of those premises, in accordance with this local law.

2.2 Deposit of waste in receptacles

- (1) An owner or occupier of premises must not deposit or permit to be deposited in a receptacle any non-collectable waste.
- (2) A person must not deposit waste in a receptacle that has been provided for the use of other premises without the consent of the owner or occupier of those premises.

2.3 General waste receptacles

- (1) An owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle—
 - (a) where the receptacle has a capacity of 240 litres—more than 70 kilograms of collectable waste; or
 - (b) where the receptacle has any other capacity—more than the weight determined by the local government.

- (2) Where the local government supplies recycling waste receptacles, an owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle any recycling waste.
- (3) Where the local government supplies organic waste receptacles, an owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle any organic waste.

2.4 Recycling waste receptacles

An owner or occupier of premises must not deposit or permit to be deposited in a recycling waste receptacle—

- (a) anything other than the particular type of recycling waste for which that receptacle was provided by the local government for those premises;
- (b) where the receptacle has a capacity of 240 litres— more than 70 kilograms of recycling waste; or
- (c) where the receptacle has any other capacity—more than the weight determined by the local government.

2.5 Organic waste receptacles

An owner or occupier of premises must not deposit or permit to be deposited in an organic waste receptacle—

- (a) anything other than the particular type of organic waste for which that receptacle was provided by the local government for those premises;
- (b) where the receptacle has a capacity of 240 litres - more than 70 kilograms of organic waste; or
- (c) where the receptacle has any other capacity - more than the weight determined by the local government.

2.6 Direction to place or remove a receptacle

- (1) The local government or an authorised person may give a written direction to an owner or occupier of premises—
 - (a) to place a receptacle in respect of those premises for collection; or
 - (b) to remove a receptacle in respect of those premises after collection.
- (2) The direction under subclause (1) may specify when the placement or removal is to occur, or where the receptacle is to be placed, or both.
- (3) An owner or occupier of premises must comply with a direction given under this clause.

2.7 Duties of owner or occupier

An owner or occupier of premises must —

- (a) except for a reasonable period before and after collection time, keep each receptacle in a storage space or area that is behind the street alignment;
- (b) when placing a receptacle for collection on the verge adjoining the premises, or other area as determined by the local government, take reasonable steps to ensure that within a reasonable period before collection time each receptacle is —
 - (i) within 1 metre of the carriageway;
 - (ii) so that it does not unduly obstruct any footpath, cycle way, right-of-way or carriageway; and
 - (iii) facing squarely to the edge of and opening towards the carriageway,
 or in such other position as is approved in writing by the local government or an authorised person;
- (c) take reasonable steps to ensure that the premises are provided with an adequate number of receptacles; and
- (d) if the receptacle is lost, stolen, damaged or defective, notify the local government, as soon as practicable, after the event.

2.8 Exemption

- (1) An owner or occupier of premises may apply in writing to the local government for an exemption from compliance with the requirements of clause 2.7(a) or (b).
- (2) The local government or an authorised person may grant, with or without conditions, or refuse an application for exemption from compliance under this clause.
- (3) An exemption granted under this clause must state—
 - (a) the premises to which the exemption applies;
 - (b) the period during which the exemption applies; and
 - (c) any conditions imposed by the local government or the authorised person.
- (4) An exemption granted under this clause ceases to apply –
 - (a) if the local government decides, on reasonable grounds, that there has been a failure to comply with a condition of the exemption; and
 - (b) from the date that the local government informs the owner or occupier of its decision under clause 2.8(4)(a).

2.9 Damaging or removing receptacles

A person, other than the local government or its contractor, must not—

- (a) damage, destroy or interfere with a receptacle; or
- (b) except as permitted by this local law or as authorised by the local government or an authorised person, remove a receptacle from any premises to which it was delivered by the local government or its contractor.

2.10 Verge collections

- (1) Where the local government has advertised a verge waste collection (such as a green waste, or a bulk waste, verge collection) a person, unless with and in accordance with the approval of the local government or an authorised person—
 - (a) must deposit waste only during the period of time, and in accordance with other terms and conditions, as advertised by the local government in relation to that verge waste collection; and
 - (b) must otherwise comply with those terms and conditions.
- (2) Where waste has been deposited on a verge for a verge waste collection –
 - (a) a person must not remove any of that waste for commercial purposes;
 - (b) a person must not disassemble or otherwise interfere with waste deposited for collection; and
 - (c) subject to paragraphs (a) and (b), a person may remove any item of that waste.
- (3) Clause 2.10(2) does not apply to the local government or a person engaged or contracted by the local government in relation to the verge waste collection.

Part 3 - General duties

3.1 Duties of an owner or occupier

An owner or occupier of premises must—

- (a) take reasonable steps to ensure that a sufficient number of receptacles are provided to contain all waste which accumulates or may accumulate in or from the premises;
- (b) ensure that each receptacle is kept in good condition and repair;
- (c) take all reasonable steps to—
 - (i) prevent fly breeding and keep each receptacle free of flies, maggots, cockroaches, rodents and other vectors of disease;

- (ii) prevent the emission of offensive or noxious odours from each receptacle ; and
- (iii) ensure that each receptacle does not cause a nuisance to an occupier of adjoining premises; and
- (d) whenever directed to do so by the local government or an authorised person, thoroughly clean, disinfect, deodorise and apply a residual insecticide to each receptacle .

3.2 Removal of waste from premises

- (1) A person must not remove any waste from premises unless that person is—
 - (a) the owner or occupier of the premises;
 - (b) authorised to do so by the owner or occupier of the premises; or
 - (c) authorised in writing to do so by the local government or an authorised person.
- (2) A person must not, without the approval of the local government, an authorised person or the owner or custodian of the receptacle, remove any waste from a receptacle.

3.3 Receptacles and containers for public use

A person must not, without the approval of the local government or an authorised person—

- (a) deposit household, commercial or other waste from any premises on or into; or
- (b) remove any waste from,

a receptacle provided for the use of the general public in a public place.

Part 4 - Operation of waste facilities

4.1 Operation of this Part

This Part applies to a person who enters a waste facility.

4.2 Hours of operation

The local government may from time to time determine the hours of operation of a waste facility.

4.3 Signs and directions

- (1) The local government or an authorised person may regulate the use of a waste facility—
 - (a) by means of a sign; or
 - (b) by giving a direction to a person within a waste facility.

- (2) A person within a waste facility must comply with a sign or direction under subclause (1).
- (3) The local government or an authorised person may direct a person who commits, or is reasonably suspected by the local government or the authorised person of having committed, an offence under this clause to leave the waste facility immediately.
- (4) A person must comply with a direction under subclause (3).

4.4 Fees and charges

- (1) Unless subclause (3) applies, a person must, on or before entering a waste facility or on demand by the local government or an authorised person, pay the fee or charge as assessed by an authorised person.
- (2) An authorised person may assess the fee or charge in respect of a particular load of waste at a rate that applies to any part of that load, even if that rate is higher than the rate that would apply to any other part of the load.
- (3) Subclause (1) does not apply—
 - (a) to a person who disposes of waste in accordance with the terms of—
 - (i) a credit arrangement with the local government; or
 - (ii) any other arrangement with the local government to pay the fee or charge at a different time or in a different manner; and
 - (b) to the deposit of waste owned by the local government, or in the possession of an employee on behalf of the local government.

4.5 Depositing waste

- (1) A person must not deposit waste at a waste facility other than—
 - (a) at a location determined by a sign and in accordance with the sign; and
 - (b) in accordance with the direction of an authorised person.
- (2) The local government may determine the classification of any waste that may be deposited at a waste facility.

4.6 Prohibited activities

- (1) Unless authorised by the local government, a person must not—
 - (a) remove any waste or any other thing from a waste facility;
 - (b) deposit at a waste facility that is a landfill site any waste that is toxic, poisonous or hazardous, or the depositing of which is regulated or prohibited by any written law;
 - (c) light a fire in a waste facility;

- (d) remove, damage or otherwise interfere with any flora in a waste facility;
 - (e) remove, injure or otherwise interfere with any fauna in a waste facility; or
 - (f) damage, deface or destroy any building, equipment, plant or property within a waste facility.
- (2) A person must not act in an abusive or threatening manner towards any person using, or engaged in the management or operation of, a waste facility;

Part 5 - Enforcement

5.1 Objection and appeal rights

Division 1 of Part 9 of the LG Act applies to a decision under this local law to grant, renew, vary or cancel –

- (a) an approval under clause 2.7(b);
- (b) an exemption under clause 2.8(2);
- (c) an approval under clause 2.10(1);
- (d) an authorisation under clause 3.2(1)(c);
- (e) an approval under clause 3.2(2); and
- (f) an approval under clause 3.3(3).

5.2 Offences and general penalty

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law a person is prohibited from doing, commits an offence.
- (2) A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to a further penalty not exceeding \$500 in respect of each day or part of a day during which the offence has continued.

5.3 Other costs and expenses

- (1) A person who is convicted of an offence under this local law is to be liable, in addition to any penalty imposed under clause 5.2, to pay to the local government the costs and expenses incurred by the local government in taking remedial action such as—
 - (a) removing and lawfully disposing of toxic, hazardous or poisonous waste; or
 - (b) making good any damage caused to a waste facility.
- (2) The costs and expenses incurred by the local government are to be recoverable, as a debt due to the local government, in a court of competent civil jurisdiction.

5.4 Prescribed offences

- (1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 9.16(1) of the LG Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 2.

5.5 Form of notices

- (1) Where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the LG Act is that of Form 1 in Schedule 1 of the LG Regulations;
- (2) The form of the infringement notice given under section 9.16 of the LG Act is that of Form 2 in Schedule 1 of the LG Regulations; and
- (3) The form of the infringement withdrawal notice given under section 9.20 of the LG Act is that of Form 3 in Schedule 1 of the LG Regulations.

Schedule 1 - Meaning of 'non-collectable waste'

non-collectable waste means –

- (a) hot or burning material;
- (b) household hazardous waste, including paint, acids, alkalis, fire extinguishers, solvents, pesticides, oils, gas cylinders, batteries, chemicals and heavy metals;
- (c) any other hazardous material, such as radioactive waste;
- (d) any explosive material, such as flares or ammunition;
- (e) electrical and electronic equipment;
- (f) hospital, medical, veterinary, laboratory or pathological substances;
- (g) construction or demolition waste;
- (h) sewage;
- (i) non-frangible metal;
- (j) 'controlled waste' for the purposes of the *Environmental Protection (Controlled Waste) Regulations 2004*;
- (k) any object that is greater in length, width, or breadth than the corresponding dimension of the receptacle or that will not allow the lid of the receptacle to be tightly closed;
- (l) waste that is or is likely to become offensive or a nuisance, or give off an offensive or noxious odour, or to attract flies or cause fly breeding unless it is first wrapped in non-absorbent or impervious material or placed in a sealed impervious and leak-proof container; and
- (m) any other waste determined by the local government to be non-collectable waste.

Schedule 2 - Prescribed offences

Item No.	Clause No.	Description	Modified Penalty
1	2.1(2)(a)	Failing to pay fee or charge	\$350
2	2.1(2)(b)	Failing to ensure lawful use of receptacle	\$350
3	2.2(1)	Depositing non-collectable waste in a receptacle	\$350
4	2.2(2)	Depositing waste in another receptacle without consent	\$350
5	2.3(1)	Exceeding weight capacity of a general waste receptacle	\$350
6	2.3(2) and (3)	Depositing unauthorised waste in a general waste receptacle	\$350
7	2.4(a)	Depositing unauthorised waste in a recycling waste receptacle	\$350
8	2.4(b) and (c)	Exceeding weight capacity of a recycling waste receptacle	\$250
9	2.5(a)	Depositing unauthorised waste in an organic waste receptacle	\$350
10	2.5(b) and (c)	Exceeding weight capacity of an organic waste receptacle	\$350
11	2.6(3)	Failing to comply with a direction concerning replacement or removal of a receptacle	\$250
12	2.7(a)	Failing to keep a receptacle in the required location	\$250
13	2.7(b)	Failing to place a receptacle for collection in a lawful position	\$250
14	2.7(c)	Failing to provide a sufficient number of receptacles	\$250
15	2.7(d)	Failing to notify of a lost, stolen, damaged or defective receptacle	\$50
16	2.9(a)	Damaging, destroying or interfering with a receptacle	\$400
17	2.9(b)	Removing a receptacle from premises	\$400
18	2.10(1)	Failing to comply with a term or condition of verge waste collection	\$400
19	2.10(2)(a)	Removing waste for commercial purposes	\$350
20	2.10(2)(b)	Disassembling or otherwise interfering with waste deposited for collection	\$250
21	3.1(a)	Failing to provide a sufficient number of receptacles	\$250
22	3.1(b)	Failing to keep a receptacle clean and in a good condition and repair	\$250
23	3.1(c)(i)	Failing to prevent fly breeding and vectors of disease in a receptacle	\$350
24	3.1(c)(ii)	Failing to prevent the emission of offensive odours from a receptacle	\$350
25	3.1(c)(iii)	Allowing a receptacle to cause a nuisance	\$350
26	3.1(d)	Failing to comply with a direction to clean, disinfect or deodorise receptacle	\$300
27	3.2(1)	Unauthorised removal of waste from premises	\$250

Item No.	Clause No.	Description	Modified Penalty
28	3.2(2)	Removing waste from a receptacle without approval	\$250
29	4.3(2)	Failing to comply with a sign or direction	\$500
30	4.3(4)	Failing to comply with a direction to leave	\$500
31	4.4(1)	Failing to pay the assessed fee or charge	\$500
32	4.5(1)	Depositing waste contrary to sign or direction	\$500
33	4.6(1)(a)	Removing waste without authority	\$250
34	4.6(1)(b)	Depositing toxic, poisonous or hazardous waste	\$500
35	4.6(1)(c)	Lighting a fire	\$300
36	4.6(1)(d)	Removing or interfering with any flora	\$300
37	4.6(1)(e)	Interfering with any fauna without approval	\$300
38	4.6(1)(f)	Damaging, defacing or destroying any building, equipment, plant or property within a waste facility	\$500
39	4.6(2)	Acting in an abusive or threatening manner	\$300