



**THIRTY-EIGHTH PARLIAMENT**

**REPORT 49**  
**JOINT STANDING COMMITTEE ON DELEGATED**  
**LEGISLATION**  
**ANNUAL REPORT 2011**

Presented by Mr Joe Francis MLA (Chairman)

and

Hon Sally Talbot MLC (Deputy Chair)

May 2012

# 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:

### 3. Joint Standing Committee on Delegated Legislation

- 3.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 3.2 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.
- 3.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 3.4 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.
- 3.5 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.
- 3.6 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;
  - (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review;
  - (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable; or
  - (f) contains provisions that, for any reason, would be more appropriately contained in an Act.
- 3.7 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 at the time of this report

Mr Joe Francis MLA (Chairman)

Hon Sally Talbot MLC (Deputy Chair)

Hon Alyssa Hayden MLC

Ms Janine Freeman MLA

Mr Andrew Waddell MLA

Mr Paul Miles MLA

Hon Jim Chown MLC

Hon Helen Bullock MLC

## Staff in 2011

Felicity Mackie, Advisory Officer (Legal)

Anne Turner, Advisory Officer (Legal) (to October 2011)

Linda Omar, Committee Clerk (to September 2011)

Irina Lobeto-Ortega, Advisory Officer (Legal)

Suzanne Veletta, Advisory Officer (from July 2011)

Rachel Wells, Committee Clerk (from October 2011)

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This Report is subject to Standing Order 191(1):

*Where a report recommends action by, or seeks a response from, the Government, the responsible Minister or Leader of the House shall provide its response to the Council within not more than 2 months or at the earliest opportunity after that time if the Council is adjourned or in recess.*

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



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# REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

## ANNUAL REPORT 2011

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### 1 INTRODUCTION

#### Overview

- 1.1 This *Annual Report 2011* outlines the activities of the Joint Standing Committee on Delegated Legislation (**Committee**) in 2011 and identifies issues arising from the Committee's deliberations.
- 1.2 Each year, hundreds of instruments of subsidiary legislation are made which affect the lives of Western Australians. Subsidiary legislation has the same force in law as primary legislation and creates legal rights, obligations, duties and penalties.
- 1.3 The Parliament has delegated the parliamentary function of scrutiny of delegated legislation to the Committee.
- 1.4 The Committee is an eight-member committee, comprising equal membership from the Legislative Assembly and Legislative Council. The Committee is staffed by legal Advisory Officers and a Committee Clerk from the Legislative Council Committee Office.
- 1.5 The Committee holds a standing referral from the Legislative Assembly and Legislative Council to consider all instruments of subsidiary legislation that are published,<sup>1</sup> whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law.
- 1.6 Due to statutorily imposed deadlines and limited resources, the Committee resolved shortly after its establishment to consider only those instruments that are subject to disallowance pursuant to section 42 of the *Interpretation Act 1984* or another written law, together with any other instruments that were noted by individual members. Upon publication, these instruments stand referred to the Committee for scrutiny.
- 1.7 The Committee scrutinises a large volume of instruments. The majority of instruments considered are regulations made by the Executive Government, via the Governor in Executive Council. A significant proportion of instruments considered are local laws made by the 140 local governments in Western Australia. The Committee also considers instruments made by statutory bodies and boards. Committee statistics for 2011 are noted at paragraph 2.2 of this report.

#### Committee Members

- 1.8 In 2011, the Committee was served by members noted on the inside cover of this report and Hon Robin Chapple MLC. Hon Robin Chapple MLC was Deputy Chairman until 6 April 2011 when he resigned from the Committee.

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<sup>1</sup> As defined in section 5 of the *Interpretation Act 1984*.

- 1.9 Hon Sally Talbot MLC, appointed to the Committee on 18 May 2011, was subsequently elected Deputy Chair of the Committee.

**Terms of reference**

- 1.10 The Committee's terms of reference are noted on the inside cover of this report.
- 1.11 As a result of the review of the Legislative Council Standing Orders, it is proposed to amend the Committee's terms of reference. This requires both Houses of Parliament to agree to the Committee's new terms of reference. As at the time of writing this report, the Committee's terms of reference have not been amended.

**2 COMMITTEE ACTIVITIES**

**Statistics**

- 2.1 The Committee held 21 meetings in 2011.
- 2.2 The following table provides a breakdown of the Committee's activities in 2011, noting comparable 2010 data:

<b>Calendar Year</b>	<b>2011</b>	<b>2010</b>
Total number of disallowable instruments referred	601	468
Total number of regulations referred	370	300
Total number of local laws/by-laws referred	130	93
Total number of rules referred	16	29
Total number of other instruments referred (including, orders, notices, plans and Metropolitan Regional Schemes)	85	46
Total number of notices of motion for disallowance given	28	46
Total number of notices of motion for disallowance withdrawn	24	36
Total number of hearings held by the Committee	4	6
Total number of instruments where undertakings provided to the Committee to amend/repeal the instrument	27	25
Total number of reports tabled	3	6
Total number of instruments disallowed on recommendation of the Committee	2	3

**Committee process**

- 2.3 Many instruments considered by the Committee are lengthy documents. Irrespective of their size, the instruments often involve complex issues that span a diverse range of subject matters.
- 2.4 In relation to a significant number of the instruments, the Committee writes to the relevant authority to request further information to assist examination of the instrument. In many instances, responses received address the Committee's queries and no further action is taken.
- 2.5 When the Committee identifies issues of concern, the usual course is for the Committee to seek an undertaking from the responsible Minister, department or local government to amend or repeal the instrument.

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- 2.6 Due to the strict legislative time constraints imposed on the Committee, the Committee often tables a notice of motion to recommend disallowance in the Legislative Council at this time to protect its power to recommend disallowance while the Committee awaits the response to investigations or its request for undertakings.
- 2.7 When requested undertakings are given, the usual course is for the Committee to accept the undertaking and remove the motion to disallow the instrument.
- 2.8 At the Committee's request, the responsible Minister, department or local government usually undertakes to amend or repeal the instrument within six months of the date of the undertaking.
- 2.9 As noted in the above table, 27 undertakings to amend or repeal an instrument were provided to the Committee in 2011.
- 2.10 Where circumstances require, including cases where requested undertakings are not provided, the Committee reports to the Parliament recommending the disallowance of an instrument.<sup>2</sup>
- 2.11 In 2011, the Committee recommended that two instruments be disallowed. The Legislative Council disallowed the two instruments (the *City of Gosnells Waste Local Law 2011* and *Shire of Derby/West Kimberley Waste Services Local Law 2011*).
- 2.12 Most issues raised by the Committee in relation to instruments arise because the Committee forms the view that the instrument or clause/s in the instrument are invalid and offend the Committee's term of reference 3.6(a). Term of reference 3.6(a) provides that the Committee is to inquire into whether an instrument '*is authorized or contemplated by the empowering enactment*'.
- 2.13 In 2011, the Committee's decision to request an undertaking or recommend that an instrument be disallowed was, in at least 85 per cent of these cases, made on the basis that the instrument offended term of reference 3.6(a).

*Undertaking databases published on the Committee's website*

- 2.14 The Committee posts two tables of undertakings provided to the Committee on its website,<sup>3</sup> namely:
- Departmental Undertakings (undertakings provided by government departments, agencies and statutory authorities); and
  - Local Government Undertakings.
- 2.15 These tables inform stakeholders of issues the Committee has raised and assist drafters in drafting instruments.

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<sup>2</sup> Either House of Parliament may pass a motion disallowing a regulation, provided that notice of that motion has been given within 14 sitting days after tabling of the regulation: Section 42 of the *Interpretation Act 1984*.

<sup>3</sup> The undertaking tables can be viewed at [www.parliament.wa.gov.au/del](http://www.parliament.wa.gov.au/del), then scroll down to *Local Government Undertakings* or *Government Undertakings*.

- 2.16 In particular, the Local Government Undertakings table is a point of reference for all local governments and their advisers to ascertain systemic problems with a particular local law and clauses the Committee has taken issue with.
- 2.17 The Committee has received very positive feedback regarding the online undertakings tables. The Committee will continue to provide this resource on its website.

### Reports

- 2.18 In 2011, the Committee presented the following three reports to the Legislative Assembly and the Legislative Council:<sup>4</sup>
- Report 44 - *Annual Report 2010*, tabled on 24 February 2011.
  - Report 45 - *Shire of Kellerberrin Dogs Local Law*, tabled on 3 November 2011.
  - Report 46 - *City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011*, tabled on 24 November 2011.

#### *Shire of Koorda Cemeteries Amendment Local Law (Report 43)*

- 2.19 The Committee's Report 43, *Shire of Koorda Cemeteries Amendment Local Law*, tabled on 25 November 2010, was debated in the Legislative Council on 15 February 2011.
- 2.20 The Committee took issue with a clause in this amendment law referring jurisdiction to review a decision to terminate the licence of a monument mason to the State Administrative Tribunal (SAT) because the enabling Act, the *Cemeteries Act 1986*, did not empower SAT to hear reviews from monument masons.
- 2.21 On 15 February 2011, the Legislative Council disallowed the *Shire of Koorda Cemeteries Amendment Local Law 2010*.
- 2.22 The Committee also recommended in its report that the Governor, on the advice of the Minister for Local Government, invoke section 3.17 of the *Local Government Act 1995 (LG Act)* to effect an amendment to delete from all local government cemeteries local laws clauses similar to the offending clause in the *Shire of Koorda Cemeteries Amendment Local Law 2010*. That is, the Committee recommended a global amendment for all local laws to address the problematic clause identified in the *Shire of Koorda Cemeteries Amendment Local Law 2010*. This recommendation was implemented through the gazettal of the *Cemeteries Amendment Local Law 2011*.

#### *Shire of Kellerberrin Dogs Local Law (Report 45)*

- 2.23 In Report 45, *Shire of Kellerberrin Dogs Local Law*, the Committee recommended that the Executive Council advise the Governor to invoke section 3.17 of the LG Act to repeal the *Shire of Kellerberrin Dogs Local Law*.<sup>5</sup>

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<sup>4</sup> Committee reports can be viewed at [www.parliament.wa.gov.au/del](http://www.parliament.wa.gov.au/del), then choose Reports.

- 2.24 This recommendation was made on the basis that the Shire of Kellerberrin did not follow the mandatory procedures for making local laws set out in section 3.12 of the LG Act and therefore the law was invalid.
- 2.25 The Government Response to this recommendation has not been tabled.
- 2.26 The issue of local governments not strictly complying with the procedures set out in section 3.12 of the LG Act has arisen in relation to a number of local laws. This issue is further discussed at paragraphs 5.5 to 5.14 of this report.

*City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011 (Report 46)*

- 2.27 In Report 46, *City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011*, the Committee recommended that both of these local laws be disallowed.
- 2.28 For the reasons outlined in the report, the Committee formed the view that a number of offence provisions in the instruments were too prescriptive and invalid.
- 2.29 The Legislative Council disallowed the *City of Gosnells Waste Local Law 2011* on 24 November 2011 and the *Shire of Derby/West Kimberley Waste Services Local Law 2011* on 1 December 2011.
- 2.30 Waste local laws are briefly discussed at paragraphs 5.2 to 5.4 of this report.

**Conference**

- 2.31 Mr Joe Francis MLA, Ms Janine Freeman MLA and Committee staff attended the Scrutiny of Legislation conference held at Parliament House, Brisbane between 26 and 28 July 2011.
- 2.32 This biennial conference was attended by Members and staff from parliamentary committees in Australia and New Zealand who deal with delegated legislation and others with an interest in their work. Speakers included Sir Gerard Brennan AC KBE, former Chief Justice of the High Court of Australia, and the Hon Paul de Jersey AC, Chief Justice of Queensland.
- 2.33 Ms Janine Freeman contributed to the conference by presenting a paper titled ‘*Calling up’ of standards: Are we creating a legislative labyrinth?*’
- 2.34 This topic is further discussed at paragraphs 3.3 to 3.11 of this report.

**3 REGULATIONS**

- 3.1 As noted above, the Committee was referred 370 regulations in 2011.
- 3.2 Regulations considered dealt with a range of subject matters of public interest including mobile phones and GPS in cars, road traffic, rail safety, building

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<sup>5</sup> Section 3.17 of the *Local Government Act 1995* provides the Governor with the power to amend or repeal a local law.

registration, fishing access licence fees, hospital parking fees and other fees and charges.

## Standards



- 3.3 The Committee remains concerned about issues arising from delegated legislation adopting (or, as it is usually termed, 'calling up') standards published by Standards Australia.<sup>6</sup>
- 3.4 The Committee continues to consider many instruments which call up the standards of Standards Australia.<sup>7</sup> The Committee appreciates that the purpose of adopting a standard is often to provide technical detail not appropriate for legislation.
- 3.5 The Committee is concerned about its capacity to scrutinise the law when, through delegated instruments, a further delegation occurs in the calling up of standards. The Committee questions whether it is Parliament's intention to provide this level of scrutiny.<sup>8</sup> Committee concerns are compounded when a standard calls up a number of further standards and documents.<sup>9</sup>

<sup>6</sup> While standards are usually called up in regulations, the Committee's comments in this section also apply to local laws and other subsidiary legislation that calls up standards.

<sup>7</sup> Standards Australia is the nation's peak non-government standards organisation. The prevalence of standards in Australia is indicated by the fact that as at 30 June 2011 there were 6 873 standards (and 1 346 standard amendments) and 252 standards and related documents were produced in 2010-11: Standards Australia, *Annual Review 2011*, p9.

<sup>8</sup> The Committee does not scrutinise standards. The Committee is not provided with access to or a copy of standards called up in subsidiary legislation.

<sup>9</sup> For example, it has been noted that the *Building Code of Australia* calls up over 700 documents including standards made by Standards Australia, International Standards, American Society for Testing and Materials Standards, CSIRO standards and industry-based documents: Productivity Commission of Australia, *Reform of Building Regulations*, Research Report, 17 November 2004, pp256 and 260 (referring to the submission of the Australian Building Code Board).

- 3.6 It is an important principle that people have a right to know the law that they are obliged to comply with.
- 3.7 The Committee is concerned that it is difficult for people to access the full content of the law when standards are called up in delegated legislation due to the limited access to standards and the cost of purchasing standards. Unlike the free online access to State Acts and subsidiary legislation provided by the State Law Publisher, access to Standards Australia documents may require the payment of significant amounts of money.
- 3.8 Also, subsidiary legislation may call up a standard as it applies from time to time. In these circumstances, public access to the current standard is important. In these circumstances, the subsidiary legislation calls up as law future amendments to the standard that the drafter of the subsidiary instrument may not be aware of when subsidiary legislation is published.
- 3.9 The Committee asks government departments, agencies and local governments how they notify the public about how they can access called up standards. The Committee's experience indicates that the public is not being provided with information on how to access standards.
- 3.10 The Committee is aware that the State Library of Western Australia provides the public with free access to Standards Australia documents,<sup>10</sup> WorkSafe (Department of Commerce) provides a free access service<sup>11</sup> and local government public libraries provide access to selected standards. The Committee is concerned that the public may not be aware of these methods of accessing standards.

**Recommendation 1: The Committee recommends that the Government requires departments, agencies and local governments to advise on their internet site where standards called up in subsidiary legislation can be accessed at no cost.**

- 3.11 It would also assist the Committee if departments, agencies and local governments advised the committee in their delegated legislation explanatory memorandum where on their internet site they advise the public where standards called up in the delegated legislation can be accessed.

#### **4 INSTRUMENTS IMPOSING FEES AND CHARGES**

- 4.1 The Committee continues to spend a significant amount of its time considering fees and charges (**fees**) imposed by subsidiary legislation, particularly at or around the end of the financial year when most subsidiary legislation increasing fees is published in the *Government Gazette*.

<sup>10</sup> The State Library of Western Australia pays an online subscription to Standards Australia and provides free public access to the standards on-site through the use of library computers and access to a hard copy of selected standards. See <http://www.slwa.wa.gov.au/find/collections/standards>.

<sup>11</sup> WorkSafe, Department of Commerce, provides free public access to the standards on-site through the use of library computers and access to a hard copy of standards called up in relevant subsidiary legislation. See <http://www.commerce.wa.gov.au/worksafe/Content/Services/Library/Library.html>.

### Committee approach

- 4.2 The Committee has previously tabled two reports dealing with unauthorised fees and taxes (Report 32 and Report 40).
- 4.3 The Committee is also informed by the comments made by the Auditor General in the Auditor General's *Second Public Sector Performance Report 2010* (Report 12, November 2010) where the Auditor General identified that all agencies should 'develop costing systems that provide sufficient detail of the costs of services being provided to support the fee being charged' and 'the costing system should be sufficiently robust to provide a reasonable estimate of the level of cost recovery being achieved'.<sup>12</sup>
- 4.4 In 2011 the Committee noted with some concern the ongoing practice by government departments of applying consumer price index (CPI) increases to fees where the base cost of the fee had not been ascertained.
- 4.5 On 23 May 2011, the Committee made the following resolutions in respect of 2011-12 financial year increases to fees:
- If an agency does not have a costing methodology and applies CPI, the Committee will allow the CPI increase.
  - If an agency has a costing methodology and cost recovery is at 100 per cent or just below and applies CPI, the fees are to be scrutinised.
  - If an agency has a costing methodology and the fees are under recovering, then to accept CPI depending on the quantum of the dollar increase rather than the size of the percentage increase.
- 4.6 The Committee scrutinised subsidiary legislation imposing fees in accordance with the above resolutions. This involved an increased analysis of a number of fees and Committee staff and/or the Committee seeking further information from a number of departments and agencies to ensure compliance with the resolutions. The Committee often sought further information in cases where the resolution did not apply to the circumstances of fees in a particular instrument.
- 4.7 The Committee routinely advised any government department or agency that did not have a costing system in place that they must develop a costing system in line with the Auditor General's report before presenting fee increases to the Committee in 2012.
- 4.8 In September 2011, the Committee wrote to all Ministers advising of the Committee's approach to scrutinising fee increases, giving notice that fee increases in 2012 will be closely scrutinised. This correspondence reads in part:

*The Committee is ... taking this opportunity to inform all Ministers of its revised approach to the scrutiny of fees and that all agencies are*

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<sup>12</sup> Office of the Auditor General of Western Australia, *Second Public Sector Performance Report 2010*, Report 12, November 2010, p7.

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*on notice to develop a robust costing system prior to the end of the financial year in 2012. The Committee will be closely scrutinising any fee increases in 2012 where the responsible agency cannot provide sufficient detail of the cost of its services to support the fee increases, including the percentage level of cost recovery being achieved.*

## **5 LOCAL GOVERNMENT LOCAL LAWS**

5.1 The Committee was referred 130 local laws in 2011.

### **Waste local laws**

5.2 As previously noted in this report, in November 2011 the Committee recommended, in its *City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011* report (Report 46), that these waste local laws be disallowed. The Legislative Council disallowed these local laws.

5.3 The reasons for the Committee's recommendations are contained in Report 46.

5.4 With this report, the Committee has put local governments on notice regarding its views on waste local laws. The Committee understands that the Department of Environment and Conservation will engage Parliamentary Counsel's Office to draft a model waste local law.

### **Section 3.12 of the Local Government Act 1995**

5.5 In 2011 the Committee identified a number of occasions where local governments did not correctly follow the strict mandatory procedures for making local laws set out in section 3.12 of the LG Act. Section 3.12 of the LG Act is attached at Appendix 1.

5.6 Section 3.12(1) of the LG Act provides:

*In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.*

5.7 Therefore, if the steps set out in section 3.12 of the LG Act are not followed exactly in the order in which they are outlined then the requirements of the LG Act have not been correctly complied with and the local law is not validly made.

5.8 The Committee takes this view based on the long-standing advice from the State Solicitor's Office (formerly the Crown Solicitor's Office). The advice confirms that the procedure set out in section 3.12 of the LG Act is mandatory and a local law which does not follow that procedure in the order in which it is outlined will be invalid.<sup>13</sup>

5.9 The Committee has previously raised the issue of non-compliance with section 3.12 of the LG Act in a number of reports where the local government did not comply with the mandatory procedures for making local laws including Report 42: *Shire of Capel*

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<sup>13</sup> A copy of the Crown Solicitor's Office advice dated 31 January 2002 can be viewed at Appendix 4 of 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.

*Keeping and Welfare of Cats Amendment Local Law 2009 and Shire of Koorda Standing Orders Local Law 2009, Report 45: Shire of Kellerberrin Dogs Local Law, and the recently tabled Report 47: Shire of Kellerberrin Parking and Parking Facilities Local Laws 2011 and Report 48: Town of Kwinana Extractive Industries Local Law 2011.*

- 5.10 Local governments on a number of occasions have substantially, but not strictly, complied with the procedures set out in section 3.12 of the LG Act. Their non-compliance with the prescribed procedures, often due to a simple administrative error or unclear instructions, could be best described as a technical non-compliance which does not, in the Committee's view, impact on the integrity of the local law in question. In some cases it is clear to the Committee that no harm or adverse impact is caused if the timing of procedures set out in section 3.12 is not complied with by a number of days.
- 5.11 For example, in considering the *Town of Kwinana Extractive Industries Local Law 2011* the Committee was put in the position where it considered that it had no choice but to recommend the disallowance of the law even though the procedures set out in section 3.12 of the LG Act had substantially been complied with and no harm was caused by the local government's error (see Report 48 for further detail). When the Committee considered the substance of the local law, it found no problematic clauses but due to the invalidly issue was forced to recommend disallowance of the instrument.
- 5.12 The Committee considers that recommending disallowance of a local law in these circumstances unnecessarily impacts on Committee, Parliament and local government time and resources.
- 5.13 In Report 48: *Town of Kwinana Extractive Industries Local Law 2011*, the Committee recommended at Recommendation 1:

*The Committee recommends that the Minister for Local Government amend the Local Government Act 1995 to provide for flexibility in section 3.12 in circumstances where there is no adverse impact on the integrity of the local law.*

- 5.14 The Committee awaits the Government Response to Recommendation 1 in Report 48.

#### **The term 'local government' in local laws**

- 5.15 Another issue deliberated in 2011 was the Committee's preference for local laws to refer to the '*local government*' rather than the '*City*', '*Shire*' or '*Town*' [of a district] throughout the local law.
- 5.16 Most local laws use the term '*local government*'. The Committee understands that the Department of Local Government advises local governments to use this term to reflect the Committee's view.

- 5.17 The Committee refers to its comments on this issue in Report 46, *City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011*.

### Local Laws Working Group

- 5.18 The Local Laws Working Group (**Working Group**), a group comprising of representatives from the Office of the Minister for Local Government, Department of Local Government, Local Government Managers' Association (Western Australia), Western Australian Local Government Association (**WALGA**), the Department of Health, Department of Environment and Conservation, and Committee members and staff met on 13 March 2012. The Working Group did not meet in 2011.
- 5.19 This forum provided an opportunity for participants to discuss local law issues of concern, including a number of issues commented on in this report.

### Template, pro forma or model local laws

- 5.20 WALGA publishes a *Local Laws Manual* which contains, it says '*the full suite of Model Local Laws*'.<sup>14</sup> Local governments often refer to and rely on the documents in this manual, commonly referred to as 'model local laws', when drafting local laws.
- 5.21 However, these WALGA 'model law laws' are not model local laws published in the *Government Gazette* pursuant to relevant legislation. These WALGA documents are best described as pro forma or template laws.
- 5.22 The LG Act and other legislation include provisions authorising model local laws to be published in the *Government Gazette*.<sup>15</sup> If model local laws are published in the *Government Gazette* under these provisions, the model local law would be referred to the Committee under its terms of reference for its consideration. However, the Executive has chosen to gazette very few model local laws under the various provisions.<sup>16</sup>
- 5.23 In the Committee's view, publishing model laws in the *Government Gazette* gives the law integrity and provides local governments with some certainty. The Committee

<sup>14</sup> Western Australian Local Government Association, *Revised Local Laws Manual 2010*, p1.

<sup>15</sup> Section 3.9(1) of the *Local Government Act 1995* provides that '*The Governor may cause to be prepared and published in the Gazette model local laws the provisions of which a local law made under the Act may adopt by reference, with or without modification*'. Section 62(1) of the *Waste Avoidance and Resource Recovery Act 2007*, section 343(1) of the *Health Act 1911*, section 56(1) of the *Cemeteries Act 1986* and section 49A(1) of the *Dog Act 1976* contain the same or similar wording providing that model local laws made under these respective Acts may be published in the *Government Gazette*.

<sup>16</sup> The Western Australian Local Government Association could also provide a pro forma law to the Department of Local Government or another department and request that they ask the Governor to gazette the law as a model local law. The Committee understands that the standing orders and cemeteries model local laws have been gazetted and three model by-laws gazetted under the *Health Act 1911* are still current: Email from Ms Mary Adam, Manager, Legislation, Department of Local Government, 8 November 2011, p1, and email from Mr Donald Howe, Scientific Officer, Department of Health, 8 November 2011, p1.

could scrutinise the gazetted model law and raise objections or issues of concern with the gazetted model that local governments may consider when drafting their local law.

5.24 The Committee is of the view that WALGA pro forma or template laws should only be referred to as pro forma or template laws as opposed to model laws.

5.25 The terms 'model local law' or 'model law' should only be used when referring to a model local law published in the *Government Gazette* pursuant to model local law legislation.

5.26 The Committee commends its report to the House.



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**Mr Joe Francis MLA**

**Chairman**

**3 May 2012**

## APPENDIX 1

### SECTION 3.12 OF THE *LOCAL GOVERNMENT ACT 1995*

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#### 3.12. Procedure for making local laws

- (1) In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.
  - (2) At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.
  - (3) The local government is to —
    - (a) give Statewide public notice stating that —
      - (i) the local government proposes to make a local law the purpose and effect of which is summarized in the notice;
      - (ii) a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and
      - (iii) submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;
    - (b) as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and
    - (c) provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.
  - (3a) A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.
  - (4) After the last day for submissions, the local government is to consider any submissions made and may make the local law\* as proposed or make a local law\* that is not significantly different from what was proposed.  
*\* Absolute majority required.*
  - (5) After making the local law, the local government is to publish it in the *Gazette* and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.
  - (6) After the local law has been published in the *Gazette* the local government is to give local public notice —
    - (a) stating the title of the local law;
    - (b) summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and
    - (c) advising that copies of the local law may be inspected or obtained from the local government's office.
  - (7) The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.
  - (8) In this section —  
**making** in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.
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