

Delegated Legislation

Delegated Legislation

An Act of Parliament is often passed in relatively broad terms leaving many of the details of administration to be 'delegated' to perhaps a minister, department, statutory authority or local government body. This delegated power is to make rules, regulations, by-laws and local laws, which have the force of law. These procedures which assist Parliament to pass a volume of legislation, often for complex matters, are collectively known as 'instruments' of delegated legislation. There are many other such 'instruments' including ordinances, and orders in council.

Each year hundreds of 'instruments' of delegated legislation are made which affect the lives of Western Australians. As delegated legislation has the same force in law as primary legislation and creates legal rights, obligations, duties and penalties there is a need for Parliament to ensure oversight and thorough scrutiny.

The Western Australian Parliament since 1987 has had a Joint Standing Committee on Delegated Legislation. After 2001 the Committee was made subject to the same standing orders of the Legislative Council, where motions for disallowance by the Committee are dealt with. The Committee, appointed at the beginning of each Parliament consists of 8 members, four from each House, with the Chairman of the Committee supporting the Governments. Staff members assisting the committee include a Committee Clerk and legal advisors.

Role of the Committee

The main roles of the Committee are to review all delegated legislation. There are specific terms of reference but they are drafted broadly to ensure that the delegated legislation:

- is within power;
- has no unintended effect on any person's existing rights or interests;
- provides an effective mechanism for the review of administrative decisions;
- contains only matter that is appropriate for delegated legislation.

The work of the Committee is exacting and often legalistic. Shortly after its establishment the Committee resolved to only consider instruments of delegated legislation subject to s.42 of the Interpretation Act 1984 ("the Act"), or another written law, or an instrument noted by an individual member. The Act indicates that the notice of motion to disallow an instrument must be given in either House within 14 sitting days of the instrument being tabled in Parliament.

A major role of the Committee is the review of local laws (for local governments) which, like other instruments of delegated legislation, are published in regular editions of the Government Gazette. Where the Committee finds that a local law may offend one or more terms of reference it will usually seek a written undertaking from the local government authority to amend or repeal the instrument in question. Where a local government does not comply with the Committee's request for an undertaking, the Committee may, as a last resort, resolve to report to the Parliament recommending the disallowance of the instrument in the Parliament.



Delegated Legislation

Local laws and disallowance

A large number of reports tabled by the Committee from 2001 to 2013 dealt with problematic local laws. The subject matters included parking fees and parking facilities, health provisions, egg produce regulations, signs and advertising devices, standing orders of local governments, codes of conduct, disclosure of confidential correspondence, dog laws, the keeping and welfare of cats and the regulation of plastic bags.

One Joint Standing Committee report of great interest to local government bodies, and the wider public, concerned the recommended disallowance of 'Joondalup Cat Local Law 2008'. The Legislative Council recorded a keen debate on the matter in support of the disallowance, not necessarily in opposition to the sterilisation of cats but as an objection to the City moving beyond its jurisdiction. This led to the recommendation that the Minister for Local Government seek to pass a state-wide law. Parliament eventually passed a state-wide *Cat Act 2011*. The law was implemented in two phases on 1 November 2012 and 1 November 2013, giving cat owners a long lead time to comply with the legislation. The law required all domestic cats six months and older to be sterilised, micro-chipped and registered with the relevant local council, and to wear a tag in a public place.



A more recent example of a local law that attracted a significant amount of public attention was the City of Fremantle Plastic Bag Reduction Local Law 2012. It was the first of its kind introduced by a local government in Western Australia, and possibly Australia, regarding the regulation of plastic bags. The Committee had to consider whether the subject matter of this local law could be included within the already broad range of matters on which local governments in Western Australia can make local laws pursuant to the *Local Government Act 1995*.



The local law sought to reduce the use of plastic shopping bags within the City of Fremantle by prohibiting retailers from providing "single use plastic bags" and requiring retailers to charge a minimum fee of 10 cents for each "alternative shopping bag" provided to customers. The City of Fremantle sought to justify the local law on the basis of waste reduction as well as to modify consumer behaviour for this purpose. In its Report to Parliament, the Committee recognised that its Members had a range of views as to whether the Local Law offended the Committee's Terms of Reference. The report set out those views for the information of the Parliament. The Legislative Council disallowed the local law on 29 October 2013. It should be observed that while the Legislative Council usually accepts the recommendations of the Committee this is not always the case. For instance in November 2009 the Legislative Council voted to override the same Committee's recommendation that sought to reject the Perth Parking Management Amendment Regulations (No.2) 2009 that had increased parking fees by approximately 200 per cent.

