

*Joint Standing Committee on Delegated Legislation — Second Report — Annual report 2021 — Motion*

Resumed from 23 November on the following motion moved by Hon Martin Pritchard —

That the report be noted.

**Hon MARTIN PRITCHARD:** Last week, my contribution was very much a defence of the Joint Standing Committee on Delegated Legislation and the work it does. I have reflected on that a little bit, because not everybody in the chamber would have had a stint on the delegated legislation committee or, indeed, other committees, so it is not surprising that they may not be aware of the role of the committee. I thought I would try to give a more positive contribution this week about the important role of committees and the annual reports, although annual reports seem to have taken on more significance in recent times than they did in previous Parliaments. There has been a lot of encouragement for members of the backbench of the government—I also encourage members of the backbench of the opposition—to make comments on committee reports. It should not be left up to just one or two people to do that. I encourage members to make comments; they are all worthwhile.

The Joint Standing Committee on Delegated Legislation really is an extension of this place. It oversees the authority that the house gives to ministers, for instance, when they make regulations and to local governments when they introduce by-laws to make sure that it is appropriate delegated legislation. That involves quite a number of aspects. As I mentioned last week, the committee staff do a lot of the work in putting together information for committee members to deliberate on, usually on a Wednesday during the sitting week. The parts of the annual reports that most people probably do not look at are the objectives and the standing orders of the particular committee.

I want to go to that part of this report for a moment, if I may. Paragraph 10.6 at the back of the annual report says —

In its consideration of an instrument, the Committee is to inquire whether the instrument —

(a) is within power;

Again, I am talking about other bodies using the delegated power that we give them to make by-laws and such. Although it may be laborious, could members imagine, with the number of councils in Western Australia, what the consequence would be if there was no oversight of the by-laws that they introduce? They range from the very large councils with big resources that can employ enough staff to do what needs to be done in this area to the smaller regional councils that are usually run on a shoestring. What I find happens is that once an instrument is introduced that is outside of what it should be, there tends to be a domino effect because of the resources that the local governments have or, more importantly, do not have. A lot of copying tends to go on with by-laws, and that can be a real concern. It is one of the things that the committee tries to keep control of.

One of the main functions of the committee is to make sure that the regulations or the by-laws are within power and that they do not exceed the authority that we give them. There is a head of power and the legislation allows for underpinning regulations to be made.

Another point that I have personal experience with is referred to in the next paragraph, which states —

(b) has no unintended effect on any person's existing rights or interests;

Members may remember that there was controversy a few years back over the Hillarys horse beach. Horse owners had been using this horse beach for many years. At the time, the local council, the City of Joondalup, was looking at closing access to the beach for horses. It would have meant that horse owners would have had to travel to Cockburn or somewhere equally far to exercise their horses. Of course, having horses in the sea is part of their rehabilitation. That particular regulation was disallowed by this chamber on the basis that it would have had an unintended consequence and a detrimental effect on the constituents we represent.

Another paragraph goes to a point that was made last week. It states —

(d) contains only matter that is appropriate for subsidiary legislation.

One thing that often comes before the committee are the fees that are charged by government departments. The fee is not to exceed the cost of recovery of doing the job, because, of course, if it exceeds the cost of doing a particular job, it becomes a tax. The committee has oversight of that. The committee does not have the resources to go into every department and investigate every fee, but it does have oversight and can seek further information from a department if a fee looks like it is exceeding the cost of recovery.

**Hon LORNA HARPER:** Apologies; I think I have springs in my feet today. I, too, rise to have a discussion on the annual report of the Joint Standing Committee on Delegated Legislation. As members may have noticed, I am the deputy chair, and, along with my committee colleagues in this house, Hon Martin Pritchard and Hon Stephen Pratt, we have had a very interesting year. I know that people do not normally associate the term “interesting” with talk about delegated legislation, but, as we all know, minute details matter, and making sure that these details are met ensures more clarity for members of the public.

When I was having a good look through the report, I noticed an issue with a page. It is at the very beginning; members cannot miss it. On page 2, there happens to be a photograph of committee members. I think that there must be a problem with the photograph because it appears that I am teeny tiny, and, as all members know, I am not teeny tiny, because I am standing here quite tall, so I think there might be an issue with that photograph.

**Hon Stephen Dawson:** It's fake news!

**Hon LORNA HARPER:** It could be fake news! I had the same issue when I stood next to the Premier and had my photo taken. I thought I looked teeny tiny and I thought that could not be true!

Being on the committee has been quite eye opening. As a member who has not previously worked on a council, as other members have, I had not delved deep into the machinations of councils and how they come up with some of their regulations. It has been very interesting. The scrutiny of delegated legislation is extremely important. The executive summary on page 1 summarises the scrutiny of legislation process —

The Committee scrutinised a significant volume of delegated legislation.

That means wading through thousands upon thousands of pieces of paper from councils regarding the laws they wish to change. The summary continues —

In the Reporting Period, the Committee considered 369 instruments, including 180 regulations and 118 local laws.

It is quite irrelevant whether they are about fees, fines, fences, pathways, cats or dogs; the important thing is the oversight. It continues —

Motions for the disallowance of delegated legislation usually do not proceed in the Parliament if the Committee receives satisfactory undertakings to amend the instrument. The Committee only recommends the disallowance of an instrument as a last resort. During the Reporting Period, the Committee received departmental ... undertakings covering seven instruments and local government undertakings covering 33 local laws.

The Committee tabled one report in the Parliament recommending the disallowance of the *City of Kalamunda Dogs Local Law 2021*. The Legislative Council disallowed this local law.

This was us working together in the Legislative Council, doing the job that we are meant to do, to ensure the appropriate oversight by the delegated legislation committee.

Jumping to page 5, “Undertakings”, the report states —

During the Reporting Period, the Committee received departmental (Ministerial) undertakings covering seven instruments —

It is very important that committee members read every single piece that comes through and that the material is explained to us if we have questions. Some of it can feel a wee bit dry and lawyer-ish—we all know how much we love listening to lawyers when they start talking to each other!—but looking through it is extremely important.

One of the things the committee looked at was the local government reform process. I am not sure that councillors are as happy about the scrutiny as we are. On page 12, part 5, “Local government reform process”, states —

On 10 November 2021 the Minister for Local Government announced proposed reforms to the Local Government sector, including reforms relevant to the Committee's work, such as:

- standardisation of local government council meeting procedures

This is a lot more important than people might imagine, because ratepayers want the right to stand up at council meetings and voice their opinion —

- development of new model local laws

Again, often the things that come before the delegated legislation committee involve a mistake that comes up again and again because somebody has copied a local law. I believe my colleague Hon Martin Pritchard mentioned that last week. New model local laws should reduce the frequency of that occurring —

- periodic review of local laws

We change, society changes and the boundaries of our councils occasionally change, depending on population increases, so it is important that we continuously review these local laws —

- specifying the roles and responsibilities of the Mayor or President, the Council and Councillors.

A lot of ratepayers would like to know exactly what the role is of the elected officials in their area. Having met a lot of mayors, I know that it varies from area to area. I am sure the Mayor of Perth's responsibilities are completely different from the mayor of Ashburton's.

**Hon Stephen Dawson:** It's a president.

**Hon LORNA HARPER:** There we go. I thank my regional colleagues. Similarly, mayoral responsibilities in the Town of Bassendean would be completely different from those in the City of Vincent. It is very important that ratepayers and members are aware of the roles and responsibilities of mayors, presidents, councils and councillors.

The report continues —

The DLGSC has summarised the proposed reforms on its website. These include amendments to the LGA and associated regulations.

As members, it is quite important that we have an idea of what is going on so that we can discuss it when people come to talk to us about it and we can direct them to the right people to further their conversations.

As the deputy chair of the committee, I have chaired only two or three meetings. I would like to thank our chair, Geoff Baker, for being there so much and for guiding us through what has been, as Hon Martin Pritchard said, quite an interesting year. Meeting remotely has been interesting but also very effective when dealing with so many rules, typos and issues that have been raised by the clerk for these meetings. That is all I have to say on the report at this time.

**Hon MARTIN PRITCHARD:** I am always happy to give way to Hon Lorna Harper, Deputy Chair of the Joint Standing Committee on Delegated Legislation. As I said last week, she and the member for South Perth, Geoff Baker, have made extraordinary contributions to the committee in a very tough year.

I want to go over a couple of things that Hon Lorna Harper raised. Getting back to the role of the committee, it is an important role, but it is not one that is designed to frustrate subordinate legislation. The committee goes to extraordinary lengths to work with local government ministers and departments to ensure that regulation designed to improve the lot of the people we represent actually makes it through. We spend a lot of time moving protective notices of motion in this chamber, but often they are not carried through to disallow the regulation. We spend a lot of time, in between times, dealing with the departments and local councils to try to get a commitment from them to ensure that the regulations and by-laws work appropriately.

I promised myself I would not get defensive about the committee, but there was some comment about typos and such. Some typos actually make no difference, and often we do not even submit a protective notice of motion. Rather, we get a commitment from the local council to improve the spelling in the next iteration of the by-law and we are satisfied. However, there are some typos and references that do make a big difference and sometimes make it impossible for the by-law to work appropriately or properly. Even typos may at some point create a problem. In those cases, we lodge a protective notice of motion to protect our position so that, if we cannot negotiate an appropriate outcome with the council or the department, we are able to recommend to the chamber that the regulation or such be disallowed, but, as I said, most do not get to that point.

The other point members should be fully aware of is that the committee makes only recommendations; the determinations are determinations of this chamber. Members can move disallowance motions in their own right; they do not have to go through the delegated legislation committee, but members can have confidence in the work of the staff and the members on that committee. In the absence of members taking an interest in those areas, the delegated legislation committee performs that oversight function on their behalf, raising the issues and bringing recommendations to the chamber for the chamber to determine.

As I said, it is not a sexy committee, but it is one that keeps the wheels running, particularly for local governments. Local governments have a propensity to go off the rails. I have a lot of respect for local government councillors. For someone like me, it would be very daunting to be on a local council; I never contemplated it. Councils are very much at the grassroots of representation and making legislation. I am sure it is not uncommon for councillors to receive visits at home and be petitioned on issues. It is very much grassroots. I prefer being in state Parliament and acting in the area of oversight. I have a lot of time for local councillors, but they can have a propensity to go off the rails, particularly when they are not well resourced. We have a number of local councils that operate on the smell of an oily rag. Those are the councils for which the committee tends to pick up inherent mistakes in legislation or by-laws.

Members can have confidence that this committee operates on their behalf. The committee staff are particularly diligent, and members can have confidence that they pick up anything that needs to be picked up. Also, committee members will raise issues on members' behalf that would normally be raised.

I am maybe not aware of other committees' roles. When their annual reports come through, I will be very interested to read how they operate.

I keep making the point—a voice from the opposition side of the chamber has also said this—that these annual reports are particularly important, and all members should make some sort of contribution to them. Government backbenchers, in particular, have taken up that challenge and often make contributions about committees that they

are not involved with. I encourage the opposition to take up that same cause; it is a very important call. These committee reports should not go uncommented on, and I encourage the opposition to also take up that mantle.

**Hon STEPHEN PRATT:** As a member of the Joint Standing Committee on Delegated Legislation, I want to take the opportunity to make a contribution on the annual report. As a new member of Parliament, coming into this committee was a baptism of fire. Hon Martin Pritchard perhaps articulated things better than I will be able to, but I remember sitting in the first meeting and seeing a recommendation to place a PNOM on an LDFD. I was thinking: What is going on here? What does this mean? They love to use acronyms, which regularly occur in the agenda papers. I quickly seared into my mind that a PNOM is a protective notice of motion and an LDFD is the last day for disallowance. Members of this house might have on occasion noticed that the deputy chairs—Hon Peter Foster, Hon Martin Pritchard and I—have had to move motions to disallow and remove them from the notice paper once the committee has been satisfied with the local government responses on some of their local laws.

The report has a few things that are worthy of highlighting. Hon Martin Pritchard said that this is not the sexiest committee, but some people out there probably find attention to detail and avoiding typos in things a bit sexy. I am not sure. Whatever makes you happy, I guess.

It is interesting to be on this end of the field after spending eight years in local government land, where we voted on passing new local laws or updating local laws at the council level. I now see the flip side and the importance of getting the wording right, and making sure that they do not have formatting errors and satisfy a state government committee. It has been a great experience.

I reiterate the comments made by my committee colleagues. Firstly, I acknowledge the work of the chair, Geoff Baker; the deputy chair, Lorna Harper; and the committee staff. It has been said that the committee staff and their attention to detail make our lives easier. We would certainly miss things if it were not for the staff being so astute, so I thank them for their work.

Figure 2 on page 4 of the annual report is a pie chart that breaks down by percentage the issues encountered by the committee. The chart shows that 66 per cent of issues were drafting errors, which is consistent with the past four annual reports. It is highlighted in the report that this is a consistent issue and a regular occurrence; over 50 per cent of what the committee deals with, year on year, is drafting errors. Most of the drafting issues are in local laws. Thanks to the advisory officer's vigorous attention to detail throughout the year, we were able to pick these up and make sure that they were fixed.

There was some discussion last week about the committee's scope and a suggestion that perhaps the committee's powers should be amended. I will not delve into that other than to say that the terms of reference clearly define the intent of this committee. I think it succeeds in fulfilling that role to a pretty solid extent, and that is probably not the right avenue to pursue.

I also reiterate Hon Martin Pritchard's comments about the regular appearance of local cat laws before the committee. Perhaps this could be looked at. Another regular issue that arose was the access to standards. That is also something we have looked into and there could be some remedies.

I covered the old PNOM and LDFD. Another thing is the activities the committee undertakes throughout the year, which are highlighted in the executive summary at the front of the annual report. Interested members can read the scope of work the committee undertook in the past 12 months. In that reporting period, the work included the consideration of 369 instruments, 180 regulations and 118 local laws. Although the majority of those matters are not considered sexy, a lot of reading needs to be done and a lot of attention goes into looking through their formation and whether they have been drafted properly. Paragraph 6 outlines that motions for disallowance do not come to the house if satisfactory undertakings are received by the committee. During the reporting period, the committee received departmental undertakings covering seven instruments and local government undertakings covering 33 local laws.

The last noteworthy point in that section is paragraph 7, which notes that the committee tabled a report recommending the disallowance of the City of Kalamunda Dogs Local Law 2021, and the Legislative Council went on to disallow that local law. I guess that is one example of when the committee can raise an issue, bring it to the house for debate and make a decision on it. For those who have not been involved in the delegated legislation committee, or *del lege* as some of the committee like to refer to it, I indicate that page 2 outlines the process of the committee. It outlines well how the committee undertakes its business.

In closing, I thank my colleagues for their support and the work we have done on the committee to date. I look forward to what will come in the following year.

**Hon MARTIN PRITCHARD:** The previous speaker raised an important point to which I alluded but did not expand on about the number of protective notices of motions in this reporting period. Table 1 on page 4 of the report refers to the notices of motion for disallowance given. That is when Hon Lorna Harper has to get up and read them out. At the beginning of the year, given we rose over the Christmas period, there were quite a number, and she spent nearly half an hour reading in a number of these PNOMs. Of the 44 for which notice was given to this house,

36 were discharged because of discussions between the committee and local governments about the commitments local governments and departments gave to remedy the mistakes we found. For the vast majority of instruments in which we find a problem, we can come to a resolution, which, in most cases, does not require the local government to go through the expense of resubmitting a new by-law, or local law. Given what I said before, some of these councils do not have a lot of money and an expense is associated with writing a local law. It usually has to be advertised and requires consultation, and there is an expense to the local government, as well as staff time spent on that. Rather than their having to go through the full expense of resubmitting local laws and gazetting and such, we come to an arrangement with them. In the norm, it is that they remedy the issue when they do the next iteration of that particular local law, the commitments they give to the committee are public and they do not enforce the local law inappropriately, given the mistakes that we have discovered.

I know that people are interested in this, and I am sure I am generating a lot of interest in delegated legislation now. People can see on the committee's website all the issues the committee has found and the resolutions it has managed to achieve. As I said, the committee is not there to frustrate; it is there to facilitate and make sure that the will of this house and the powers that we delegate are used appropriately. The committee does a particularly good job at that. I encourage all members to go to the website.

Constituents often write to the committee complaining about a particular by-law. I want to make the point that the committee exists to oversee the instrument; it is not there to be lobbied and it is not there to give advice to local councils, except in the broadest terms. The committee cannot be the judge and jury. We cannot give advice and then at the end of the day knock back that legislation. That would not be fair on local government. There are many ways in which local governments can get advice on local laws; the Western Australian Local Government Association is probably the most obvious. WALGA often writes a model law, which most councils take up. I encourage that because if they follow it true to form, it is appropriately written and is appropriate to the powers that they are allowed to have. It is only when they start deviating from those model laws that problems arise. As I mentioned before, unfortunately, local councils have to deal with some fairly difficult issues, such as the differences between cat owners and their aims and desires and those who feel that cats are pests and are killing machines of other local animals. There are often difficulties for councils to deal with in legislation and there is always a temptation for them to try to go further than the primary legislation allows them to do. It is a bit of a joke about delegated legislation that the issues we deal with the most relate to cat laws. People have very strong views about cats and whether they should be tethered or whether they should be released at night. I must stress that it is not for the committee to determine what is appropriate legislation—people often get this wrong—but to determine whether it has been written appropriately and within power. Policy issues are for the government of the day or Parliament to decide; the committee has oversight to ensure that it is written within the power that we confer upon it.

It is a success for the committee that of the 44 notices for which it found difficulty and put on a PNOM in this place, 36 have been resolved. Normally the committee staff deal directly with them in correspondence and it is then left for the committee to have oversight and make determinations on recommendations that go to this place. The committee is an extension of this place and I urge members to become interested in it. It may not be the sexiest committee, but it is part of the work we do for our constituents, and the committee and its staff do a marvellous job.

I know that many members want to speak. On the recommendation of the opposition we comment on committees and reports. We have taken that up and I encourage non-government members to also take that up and comment on these reports so that their feelings about the committees that we put so much trust in are on the record. The call is out: stand up, make a contribution and tell us what you think about the work of the committee. The committee is always interested in the views of this house, whether they be from government members or non-government members. The challenge is there for them.

*Visitors — St Mark's Anglican Community School*

**The DEPUTY CHAIR (Hon Peter Foster):** Before I give the call, I note that we have some special guests with us in the public gallery today, St Mark's Anglican Community School. Welcome to Parliament; we hope you have a great day with us. I give the call to Hon Pierre Yang.

*Committee Resumed*

**Hon PIERRE YANG:** Thank you, deputy chair. I will speak on this on the next occasion!

**Consideration of report postponed, pursuant to standing orders.**