

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Forty-fifth Report — “Shire of Kellerberrin Dogs Local Law” — Tabling

MR J.M. FRANCIS (**Jandakot**) [10.25 am]: I present for tabling the forty-fifth report of the Joint Standing Committee on Delegated Legislation entitled “Shire of Kellerberrin Dogs Local Law”.

[See paper 4178.]

Mr J.M. FRANCIS: By way of background, the Joint Standing Committee on Delegated Legislation has resolved to recommend that the Governor, with the advice and consent of the Executive Council, invoke his power under section 3.17 of the Local Government Act 1995 and repeal the Shire of Kellerberrin’s Dogs Local Law gazetted on 6 July 2011. The committee raised its concerns with the shire that the local law had not followed the procedure prescribed in the Local Government Act 1995, resulting in the local law being invalid and of no legal effect. The shire did not address the committee’s concerns regarding the possible invalidity of the local law and the committee has therefore resolved to recommend that the Governor take steps to address the invalid local law.

Section 3.12 of the Local Government Act 1995 sets out the mandatory procedure for a local government to follow when making or amending a local law. If any of the steps in this section are not followed, even if the rest of the local law is within power, that local law will not be authorised under the legislation and a court may ultimately find it to be invalid. The committee previously made its view clear on invalidity in its forty-second report on the Shire of Capel Keeping and Welfare of Cats Amendment Local Law 2009 and the Shire of Koorda Standing Orders Local Law 2009 that was tabled in the Legislative Council on 16 September 2010. The forty-fifth report refers to and builds upon the views expressed in that report.

One of the steps in the process in section 3.12 of the act requires a local government to send a copy of its local law to the Minister for Local Government after it is published in the *Government Gazette*. This requirement is mandatory; failure to follow this step exactly will render the local law invalid. In this case, the Shire of Kellerberrin sent a copy of the local law to the minister almost three weeks before it was published in the *Government Gazette*. The act also requires that after the local law has been published in the *Government Gazette*, local public notice be given to residents by publishing a notice in the district that advises of the new local law and its effects. The Shire of Kellerberrin posted a notice in its community newspaper two days before the local law appeared in the *Government Gazette*.

The committee formed the view that the shire has contravened two mandatory steps in section 3.12 of the act, which has resulted in the local law therefore being invalid and beyond the power of the Local Government Act 1995. The committee draws the house’s attention to its term of reference 3.6(a), which gives the committee responsibility to scrutinise all delegated legislation to determine whether it “is authorized or contemplated by the empowering enactment”. In this case, the Shire of Kellerberrin’s failure to correctly follow the steps of section 3.12 in the chronological order in which they are set out has rendered the shire’s local law invalid.

An administrative error unfortunately resulted in the committee losing the opportunity to recommend disallowance to the Parliament in this case, but the Governor still has the power to repeal this invalid local law under section 3.17 of the act. The committee notes that there are benefits in the Governor using his power under section 3.17 of the act to repeal the Shire of Kellerberrin local law that include reducing the risk of the public being misinformed by an invalid local law remaining on the public record. The committee therefore recommends that the house supports its recommendation that the Executive Council advise the Governor to invoke his power under section 3.17 of the act and repeal the Shire of Kellerberrin Dogs Local Law.