

SHIRE OF DARDANUP STANDING ORDERS LOCAL LAW 2009 — DISALLOWANCE

Motion

Pursuant to standing order 152(b), the following motion by Hon Robin Chapple was moved pro forma on 22 June —

That pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the Shire of Dardanup Standing Orders Local Law 2009, published in the *Government Gazette* on 22 March 2010 and tabled in the Legislative Council on 30 March 2010 under the Local Government Act 1995, be and is hereby disallowed.

HON ROBIN CHAPPLE (Mining and Pastoral) [3.55 pm]: This disallowance was moved by the Joint Standing Committee on Delegated Legislation. The committee tabled report 41 in relation to this matter. The report documents the committee's concerns with two problematic clauses in Shire of Dardanup Standing Orders Local Law 2009. It is important to note that, in fact, there previously was a standing order referred to as Standing Orders Local Law 1998 that was published in the *Government Gazette* on 4 May 2001. The amendments contained within Standing Orders Local Law 2009 were very few in relation to the original standing orders of 1998 but did contain a number of matters which, in the committee's view, offended the committee's terms of reference; that is, to confer on the presiding person an unnecessary and subjective power to direct members not to speak again on a matter or to refrain from taking any further part in a meeting and may be used to deny elected members the opportunity to fully participate in council meetings. The clauses are contrary to section 2.10(d) of the Local Government Act. The committee is also of the view that the clauses were inconsistent with section 3.1 of the Local Government Act 1995, which provides that the general function of a local government is to provide for the good governance of persons in the district. It is the committee's view that these two clauses of the local law are not authorised or contemplated by the Local Government Act 1995 and were in fact the principal reason the delegated legislation committee has sought to disallow Shire of Dardanup Standing Orders Local Law 2009. It is the committee's view that these two clauses of local law were not authorised or contemplated by the Local Government Act 1995 and, as such, the clauses offended the committee's terms of reference at 3.6(a), which states —

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

(a) is authorized or contemplated by the empowering enactment;

The committee has considered and reported on a number of standing local laws that were problematic. These included clauses with wording identical to the problematic clauses in this local law. In those cases the committee sought and received undertakings identical to those sought from this shire. The committee recommends the Shire of Dardanup Standing Orders Local Law 2009 be disallowed. I note that the Shire of Dardanup had refused to provide the undertakings that the committee requested in relation to the two problematic clauses. The committee does not usually proceed with selective disallowance except in circumstances where a particular provision in the local law could be severed without affecting the integrity of the rest of the local law. This only happens in exceptional circumstances and is not possible in this case as the clauses in question are fundamental to the local law.

The effect of disallowing the shire's current standing orders local law of 2010—the 2009 one that we are referring to here—is that the Shire of Dardanup will revert to its previous gazetted standing orders local law from 2001. This was revealed by the 2000 instrument that would be revived by this disallowance. The shire is aware of this fact, having made such a statement to its own councillors in the officer's comment in new business of an urgent nature at the introduction of a meeting. I have no information on when it was held. The memo from the officer in charge of this matter to the council states that if the council resolves not to amend the local law, as requested by the committee, the committee may proceed with a motion to disallow the local law. It also states that if this were to occur, the council will continue to operate under standing orders local law 1998, published in the *Government Gazette* on 4 May 2001. I hope that explains the committee's position on this disallowance. I would urge the house to support the committee's recommendations.

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [4.01 pm]: I do not wish to speak on behalf of the government other than to ask questions of the mover to clarify one aspect of this disallowance that is of some interest to me. If it is passed, the motion will disallow the Shire of Dardanup's local laws standing orders, which are in quite a significant document that contains 68 different standing orders. The effect of this disallowance would be to disallow all the standing orders when in fact the committee's concerns relate to two. I wonder if the member might explain to us when he sums up what will happen to the shire in the event that we disallow all its standing orders. Will there be something in their place or is it appropriate for us perhaps to amend the motion that the member is moving to relate only to those two clauses that are of concern to the committee.

We did have a brief discussion behind the chair, but I did not quite understand what the explanation was, so the member might inform the house before we vote as to whether that is a course of action that could be taken.

HON PETER COLLIER (North Metropolitan — Minister for Energy) [4.03 pm]: I thank Hon Robin Chapple, and we will be seeking clarification on that point, perhaps during committee. The government will not be opposing the disallowance. I would like to make a few points, though.

Hon Ken Travers: What is that—you will not be —

Hon PETER COLLIER: Opposing it.

Hon Ken Travers: Does that mean you are supporting it?

Hon PETER COLLIER: It means that we are not opposing the disallowance. We would like to put some points on the record. The joint standing committee has objections to two provisions in the Shire of Dardanup's local laws, as has been mentioned by Hon Robin Chapple. Clause 7.12(3) states —

Where the Presiding Member considers that a question asked is not succinct and to the point, but is prefaced by comment or other information, the Presiding Member may rule that the member has spoken on the matter and, in that event, the member must not speak again on the matter.

Essentially, the committee's concerns with this clause are that it confers on the presiding member unnecessary and subjective power to deem when members' questions are not succinct and to the point. The consequence of this is that a member may be deemed to have spoken on the matter and not permitted to speak again on the matter. Also, it appeared to the committee to be limiting the right of freedom of political communication implied in the Commonwealth Constitution. In response to that, I just point out that section 2.8(1)(a) of the Local Government Act 1995 states that the role of a local government mayor or president is to preside at meetings in accordance with the act. Clause 7.12(3) assists with this function. Section 2.10(d) of the act is intended to promote the orderly participation of councillors in decision-making processes. This clause achieves that end. The intent of clause 7.12(3) is to ensure that the behaviour of members conforms to widely accepted practice for the conduct of meetings. In this case, it is to ensure that members speak on only one occasion during the debate of motions unless they are the mover. The clause prevents members bypassing this conventional practice by using the power provided in the law to ask questions as an opportunity to essentially speak on the item. That, by way of clarification, does provide a bit of a question with regard to that clause.

Clause 8.4 reads —

If a member —

- (a) persists in any conduct that the Presiding Member had ruled is out of order; or*
- (b) fails or refuses to comply with a direction from the Presiding Member,*

the Presiding Member may direct the member to refrain from taking any further part in that meeting, other than by voting, and the member must comply with that direction.

Essentially, the committee is of the view that the clause as it is currently drafted may effectively silence elected members, as I understand it, by denying them the opportunity to fully participate in council meetings. It also confers on the presiding member subjective power to deem when members' conduct warrants them to be directed to refrain from taking any further part in the meeting, and it is inconsistent with the statutory role of a councillor as outlined in section 2.10 of the act. The committee sought an understanding from the shire that it would repeal clause 8.4 or amend it by deleting the words "that meeting" after the words "part in" and insert the words "the debate of the item".

The response to these issues was that this clause is designed to assist with ensuring that meetings operate effectively and are not continually disrupted by inappropriate behaviour by elected members who are participating in the meetings. Section 2.8(1)(a) of the act states that the role of a local government mayor or president is to preside at meetings in accordance with the act. Clause 8.4 assists with this function. Clause 8.4 is intended to enhance the effective debate of matters being considered by a local government and it does so in a matter compatible with the fundamentals of a representative democracy. All rights are balanced by a responsibility to use that right without unduly negatively impacting upon the rights of others. Rather than being inconsistent with section 3.1 of the act, requiring local government to provide for the good government of the people within the district, it underpins this role by giving the presiding member the power to provide for appropriate conduct during debate at council meetings. Clause 8.4 is not seen to be in conflict with section 2.10(d) or other provisions of the act, as it still allows for all members to vote. For example, sections 5.22(2) and (3) require that the elected members are to vote at meetings, as section 5.22(5) makes it an offence not to vote unless otherwise exempted—for example, through having a pecuniary interest in the matter. Section 2.10(d) is intended to promote the orderly participation of councillors in decision-making processes and this clause achieves that end.

These types of provisions are intended to be used as a last resort. It is considered necessary for there to be consequences for behaviour that continually breaches the meeting procedures expressed through the standing orders local law—otherwise the procedures would be ineffectual in keeping order in a meeting. A decision by the presiding member can be overruled by a decision of council. This places a moderating effect on the use of his power by the presiding member. The power to remove the right of the member to speak is similar, but more moderate than similar provisions in the standing orders of the Western Australian Parliament. For example, clause 45 of the Legislative Assembly's standing orders and clause 119 of the Legislative Council's standing orders permit the suspension of a member of Parliament in a similar situation. The question arises as to whether the direction to a member to refrain from taking any further part in a meeting, other than by voting, is too severe a censure. The committee takes the view that it is, and that the right of the presiding member to direct a member from taking further part in any discussion should be limited to the debate on that item.

Although the Minister for Local Government does not necessarily agree with the committee's recommendation on clause 7.12(3), and the reasons for this I have just outlined, he is prepared to accept the committee's recommendation for an amended clause 8.4. On this basis the government is not opposed to the disallowance motion.

HON COL HOLT (South West) [4.09 pm]: I want to add a little to this debate. I have talked to officers from the Shire of Dardanup and my understanding is that all local governments must review their standing orders fairly frequently—obviously every eight or 10 years. As the Leader of the House pointed out, the standing orders for the Shire of Dardanup cover 62 pages and had to be printed in the *Government Gazette*. Obviously there is an expense to local government to do that. If the standing orders are disallowed, I assume the shire will have to undertake a review of the standing orders and have them printed in the *Government Gazette* again. I wonder whether the Joint Standing Committee on Delegated Legislation sought some way of becoming part of the process of reviewing these standing orders that local government must submit earlier, so that the local government could avoid the expense of reprinting them in the *Government Gazette*.

Hon Ken Travers: The shire could have given an undertaking, because that is how the committee usually operates.

Hon COL HOLT: I stand corrected. I just raise it as an issue of concern.

The Western Australian Local Government Association itself is developing some draft standing orders for local governments to work on. I hope that WALGA has engaged in a process with the standing committee to examine those orders before they are adopted and put out to local governments to adopt.

HON KEN TRAVERS (North Metropolitan) [4.11 pm]: The spokesperson on behalf of the Labor Party is away on urgent parliamentary business, but I will —

Hon Simon O'Brien interjected.

Hon KEN TRAVERS: Pardon?

Hon Simon O'Brien: Nothing.

Hon Liz Behjat: He's gone to get some fibre-optic cable!

Hon Simon O'Brien: Urgent parliamentary business.

The DEPUTY PRESIDENT (Hon Jon Ford): Order!

Hon KEN TRAVERS: I am more than happy to look around and see which members on the other side of the house are not in the chamber at the moment and ask where they are.

Several members interjected.

The DEPUTY PRESIDENT: Order! Hon Ken Travers has the call.

Hon Peter Collier: Don't be so precious!

The DEPUTY PRESIDENT: We have only four minutes remaining before afternoon tea.

Hon KEN TRAVERS: Mr Deputy President, the opposition will support the disallowance motion as recommended by the Joint Standing Committee on Delegated Legislation. In doing so, I congratulate the committee on the report. It has a very important role and function to play on behalf of this house and on behalf of the people of Western Australia to monitor all subsidiary legislation which goes through the process and which, if not for that committee, would pass through this place with, I suspect, very little scrutiny of those key tests. In this case, the key test that the committee considered was whether the legislation was within the powers authorised or contemplated by the empowering legislation. The committee is of the view that the proposed

standing orders of the Shire of Dardanup do not fill that criteria and are, therefore, outside those powers. It is very important that that legislation be scrutinised in that way.

I know, from having served on the Joint Standing Committee on Delegated Legislation, that it is only as a last resort that the committee seeks to disallow legislation for local governments. The committee would usually seek an undertaking from a local government at the next opportunity that it would amend its standing orders. Obviously on this occasion, for whatever reason, the Shire of Dardanup has refused to give that undertaking.

Secondly, as a former member of the committee, I know that the committee tries to work with the Western Australian Local Government Association. I do not know whether the committee still does that. In the past the committee had regular meetings with WALGA to ensure that there was consistency in a range of standing orders and the like. Therefore, the interpretations and views of the parliamentary committee were conveyed to local governments in Western Australia so that there was that sense of consistency.

On that basis I am keen to get a little more information. Having read the report, I am not sure that I fully understand the subtle differences. I would welcome information in reply from one of the committee members or the deputy chairman on the difference between proposed standing order 8.4—I think it is—of the Shire of Dardanup and the model scheme in WALGA's proposal 9. They seem to be fairly similar. I do not know whether that is a matter that the committee has raised with WALGA. I refer to clause 9.6 of the draft model for council meetings on local laws. I would like a bit more explanation from the committee in regard to that matter. With those comments, I again congratulate the committee. I look forward to seeing more reports from the committee.

Debate interrupted, pursuant to temporary orders.

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Sitting suspended from 4.15 to 4.30 pm