JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Forty-first Report — "Shire of Dardanup Standing Orders Local Law 2009" — Tabling

MR J.M. FRANCIS (Jandakot) [10.07 am]: I present for tabling the forty-first report of the Joint Standing Committee on Delegated Legislation, titled "Shire of Dardanup Standing Orders Local Law 2009".

[See paper 2405.]

Mr J.M. FRANCIS: This instrument of subsidiary legislation that is the subject of this report on the Shire of Dardanup standing orders local law falls within the definition of "instrument" in the terms of reference of the Joint Standing Committee on Delegated Legislation. The local law was published in the *Western Australian Government Gazette* in March 2010 and stood referred to the committee on gazettal. It came into operation 14 days after publication in the *Government Gazette*. The committee raised concerns with the Shire of Dardanup about three clauses in the particular local law. Although the committee's concerns with respect to clause 4.7 were resolved, the shire did not provide the undertakings sought regarding clauses 7.12 or 8.4.

Clause 7.12(3) of the local law states, according to the report —

> *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.*

The committee is of the view that this clause may be used to deny elected members the opportunity to fully participate in council meetings. This is contrary to section 2.10(d) of the Local Government Act, which expressly states that a councillor can participate in the local government's decision-making processes at council and committee meetings. In the committee's view, clause 7.12 also confers on the presiding person an unnecessary and subjective power to deem when members' questions are not "succinct and to the point". The consequence of this is that they may be deemed to have spoken on the matter and not permitted to speak again.

Clause 8.4 of the local law states —

> *If a member —*
>
> *(a) persists in any conduct that the Presiding Member has 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.*

There is no power under either the Local Government Act or the Local Government (Administration) Regulations 1996 for presiding members to direct other members to refrain from taking part in a meeting. Indeed, as is set out in the committee report, the act expressly states that the role of a councillor is to participate in the local government decision-making process at council and committee meetings. As such, the committee is of the view that this clause is inconsistent with section 2.10 of the Local Government Act.

The committee further considered that clause 8.4 is inconsistent with section 3.1 of the Local Government Act. That section provides that the general function of local government is to provide for the good government of persons in the district. The committee is of the view that clause 8.4 as it is currently drafted undermines the fundamental principles of democratic local government. The committee has previously considered similar clauses in other standing order local laws, and on those occasions it has sought and received undertakings that the clause will be repealed or amended.

I turn now to the committee's conclusions. The committee concluded that the effect of clause 7.12(3) is to potentially deny the capacity of elected members to participate fully in council meetings. This is contrary to section 2.10 of the act. The committee concluded also that clause 8.4 is inconsistent with section 2.10 of the Local Government Act, because it may operate to silence elected members by denying them the opportunity to fully participate in council meetings. It also confers on the presiding member a subjective power to deem when members' conduct warrants them to be directed to refrain from taking any further part in the meeting. This outcome is obviously inconsistent with the Local Government Act.

In concluding, this matter comes down to the principle of whether a presiding officer, be it a mayor or a chairperson, has the right to silence democratically elected councillors from speaking out at meetings. The committee is of the view that this is against the principles of the Local Government Act. It is also against the principles of fair and open government. For that reason, the committee has recommended that these instruments be disallowed.

I thank my fellow committee members, and the staff of the committee, for their help in preparing this fairly quick and short report.

MS J.M. FREEMAN (Nollamara) [10.13 am]: I also want to make some comments on the Joint Standing Committee on Delegated Legislation forty-first report, "Shire of Dardanup Standing Orders Local Law 2009".

The ACTING SPEAKER (Mr P.B. Watson): Members!

Ms J.M. FREEMAN: It is all right, Mr Acting Speaker. Sorry; I am not questioning your ruling.

The ACTING SPEAKER: I am more concerned about Hansard.

Ms J.M. FREEMAN: This is a very important report for local governments to be aware of. Local governments should be allowed to manage their own business in their councils. However, I can imagine that in managing their own business, council meetings about a particular issue might become quite tense and contentious, and that might cause the councils to want to put in place standing orders that will give it the capacity to guide debate and move it forward to resolution. It was, therefore, with some concern that the committee embarked upon its examination of this standing orders local law and of the power of the presiding member, as the member for Jandakot—sorry; I was going to call him the member for Riverton, but I will get myself into trouble—has outlined.

The committee examined in particular clause 7.12(3) of the standing orders local law. That subclause 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 the member has spoken on the matter and in that event the member must not speak again on the matter.*

One can understand that such a subclause may be very important in ensuring the good running of council meetings. However, the issue is that the meaning that is given to the words "succinct and to the point" may be very subjective and contrary to the democratic principles underlined in the Local Government Act.

Clause 8.4 of the standing orders local law states —

> *If a member —*
>
> *(a) persists in any conduct that the Presiding Member has 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.*

This seemed to the committee be very heavy-handed, because rather than give councillors every opportunity to put their arguments and articulate their positions, it would basically allow for debate to be shut down. It was, therefore, the unanimous view of the committee that that is beyond the powers that are given to local government councils under the local government legislation.

It is interesting to note that many local government standing orders and local laws are based on the Western Australian Local Government Association model laws. That brings me to an important matter that I have raised in this place previously. The Joint Standing Committee on Delegated Legislation has no investigative powers. That means that any inquiry by the committee into a particular local law can commence only after that local law has been gazetted. For that reason, the committee is often seen by local governments as being obstructionist and difficult, and that serves only to add to the tension that sometimes exists between the state government and local governments. I believe—this is my personal view—that the committee would be able to carry out its role much more effectively, and the Parliament would be better served, if the committee was given the capacity to investigate and report on the whole issue of local government standing orders and local laws, because that would help foster the development of constructive and disciplined debate in local government.

The problem in local government is that council meetings may become very arduous and take a long time to come to a conclusion. That discourages many people from getting involved in local government. Many councillors do not renominate for local government for that same reason. In my previous occupation, when I was working at the Office of Women's Policy, I worked on a program that was being run by that office, in conjunction with the Local Government Association, to encourage women to make themselves available to run for local government. However, many of the women to whom I spoke were very reluctant to do that because of the time commitment that would be required.

A lot of consideration and scrutiny has gone into this committee report. My reason for standing up to speak on this report, other than to give the Minister for Commerce the opportunity to get a cup of coffee —

Mr D.A. Templeman: It was not enough time! He knows he is in for a grilling!

Ms J.M. FREEMAN: My reason for standing up to speak on this report is that I believe that the Legislative Council—so I guess I am also sending a message to the other place—needs to consider giving the delegated legislation committee the capacity to get on the ground when it comes to these sorts of issues. The committee is

often seen as being obstructionist and difficult, and as causing frustration and confusion for local governments, because a local government may ask us for advice prior to gazetting regulations, but we then have to go back to that local government and say, "That's not our role. You gazette the local law, and you make your mistakes, and we'll then tell you about those mistakes, and we might then not allow you to keep that piece of local law." It seems to me to be almost a sub-definition of red tape. If we are really trying to reduce that sort of thing in this day and age, we need to be much more facilitative and consultative with local government from our position as state parliamentarians and as members of the Joint Standing Committee on Delegated Legislation. However, we do not have that power or that capacity. Therefore, we are continuously left to bring reports into this place after the fact and having relationships breaking down between the Parliament and local government, which relationships I can only imagine the minister and the Department of Local Government must in some way mend.

On those points on the report, I commend the report to the house. It is worthwhile acknowledging that we made these decisions for this disallowance with great consideration and with a perspective to ensure people have their points of view put, and for democracy to be given its day in local council meetings over the rule of a presiding member. We also took into account our concern that the process undermined the capacity for people's voices to be heard which overrode some of the issues with respect to the orderly conduct and good management of meetings. I thank the house.