

TOWN OF KWINANA EXTRACTIVE INDUSTRIES LOCAL LAW 2011 — DISALLOWANCE

Motion

Pursuant to standing order 66(3), the following motion by Hon Sally Talbot was moved pro forma on 8 March —

That pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the Town of Kwinana Extractive Industries Local Law 2011, published in the *Government Gazette* on 28 September 2011 and tabled in the Legislative Council on 18 October 2011 under the Local Government Act 1995, be and is hereby disallowed.

HON SALLY TALBOT (South West) [2.16 pm]: I will speak for only a few moments on this disallowance. In making these remarks about order of the day 1, Town of Kwinana Extractive Industries Local Law 2011, I will also extend my comments to order of the day 2, Shire of Kellerberrin Parking and Parking Facilities Local Law 2011, because—I am speaking as deputy chair of the Joint Standing Committee on Delegated Legislation—the Joint Standing Committee on Delegated Legislation is putting forward the same argument for both orders of the day 1 and 2. That argument is the one that I outlined to the house when I tabled two reports from the Joint Standing Committee on Delegated Legislation, reports 47 and 48, in May 2012. I will briefly repeat the point I made then to refresh the memories of members of this house.

The committee pointed out that neither of the two local councils had followed the correct order set out in section 3.12(1) of the Local Government Act, which is headed “Procedure for making local laws”. The committee found itself in something of a dilemma. In both cases the contravention of section 3.12 is a relatively minor one. The committee was faced with having to make a principled statement about the failure of a local government to comply with the law in this way. The committee found itself in the position of having to recommend the disallowance of two local laws based on the noncompliance with steps in the section 3.12 procedure. Honourable members who take an interest in these matters might have gone to the trouble of looking up section 3.12. I have certainly done that, and it seems to me that there can be no doubt about the clarity of section 3.12(1), which reads —

In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.

Those are the key words—“in the sequence in which it is described”. Nobody is accusing the local government officers or councillors who made these decisions of acting in a way that was deliberately deceptive or that they had any intent in mind other than to pass what may well be a perfectly effective local law. But they did not follow the sequence laid out in the act. Honourable members might want to look at that and prescribe a remedy. In the reports I have just referred to, the Joint Standing Committee on Delegated Legislation has made a recommendation that section 3.12 be amended so that we do not have to do this anymore. State members of Parliament who have had anything to do with local governments know that local governments sometimes get it wrong. There is a reason for having that section of the Local Government Act, and that is to make sure that everybody is playing by the same rules and that the right people are informed about the intent and purpose of a law in the right order. If a council has not complied with that, is Parliament supposed to adjudicate on whether an offence under the act or a failure to comply with the act is a minor or major noncompliance? Members of the committee feel that that is not something that members of Parliament should have to look into. The law should be clear, and it should be followed by local government officers. That is why I support this disallowance motion today. I refer honourable members who want more detail to read either reports 47 and 48 or go back to statements I made in this house last month when I tabled the reports. With that, I will let honourable members decide how to treat the two disallowances.

HON ROBYN McSWEENEY (South West — Minister for Child Protection) [2.19 pm]: The government supports the disallowance of the Town of Kwinana Extractive Industries Local Law 2011 and the Shire of Kellerberrin Parking and Parking Facilities Local Law 2011. As Hon Sally Talbot has just said, under section 3.12 of the Local Government Act, the Town of Kwinana was required to provide the minister with a copy of the proposed local law after statewide public notice of the proposed law had occurred, and the Shire of Kellerberrin was required to provide the minister with a copy of the adopted local law after gazettal of the local law had occurred. The Minister for Local Government supports the committee’s recommendations in both cases. Therefore, we support the disallowance.

HON LJILJANNA RAVLICH (East Metropolitan) [2.20 pm]: The opposition supports the disallowance. It is from these sorts of reports that local government authorities generally become better at the job of preparing such instruments. There is no doubt that in this case there has been a contravention, or that what has occurred is ultra vires. There is no doubt that the conclusion of the committee that this law be disallowed is the appropriate way in which this matter should be dealt with. I am heartened that the minister has made comments about adopting the

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recommendations of the committee. Sometimes I think local governments suffer from a lack of resources or a lack of technical expertise, particularly in regional and rural areas where the number of lawyers floating around is sometimes very few, particularly in the case of small local government authorities. It is very hard for them to get the technical expertise that is required and sometimes, inadvertently, those smaller local government authorities —

Hon Liz Behjat: Kwinana?

Hon LJILJANNA RAVLICH: This one concerns Kwinana, but the other concerns the Shire of Kellerberrin. I am really speaking to both in that respect. Sometimes they can get it wrong because of that lack of availability of expertise. Clearly, Kwinana is not a case in point, but I certainly think that it is a due consideration with the Shire of Kellerberrin Parking and Parking Facilities Local Law 2011 in terms of the shire not having followed the proper sequence of events as per the requirement under section 3.12 of the Local Government Act, “Procedure for making local laws”. Having said that, we, too, will support this disallowance.

HON ROBIN CHAPPLE (Mining and Pastoral) [2.22 pm]: The Greens (WA) will also be supporting these two disallowances. I thank the Joint Standing Committee on Delegated Legislation, which has done a sterling job as always. In broader terms I sometimes wonder why, to a large degree, these sorts of things were not picked up before they got to the committee. I hope that the Minister for Local Government will genuinely look at the committee’s recommendations, but also enhance the department to possibly stave off some of these issues before they actually get to the committee in the future. In many cases, the committee ends up doing the work of agencies in finding the problems and then bringing them to the attention of the house. The Greens will be supporting the two motions. I again commend the committee for its work.

HON SIMON O’BRIEN (South Metropolitan — Minister for Finance) [2.24 pm]: I thank members for the brevity of their contributions to the debate on this disallowance motion. There is a lot of business to get on with today, including a couple of other disallowance motions. As a member for South Metropolitan Region, my attention was drawn to the Town of Kwinana Extractive Industries Local Law 2011 disallowance motion put forward on behalf of the Joint Standing Committee on Delegated Legislation. I read the committee’s report to inform myself about this matter. I noted the circumstances, which basically were that there had been a technical failure to follow procedure in that a public advertisement was lodged with the paper and the minister was told about that before the advertisement had appeared in print. It is hard to imagine a more slight breach. Although I am sure the Town of Kwinana will be disappointed with this outcome, the government and I support the standing committee of this house. I am sure that the committee weighed all of this carefully in coming to its recommendation. What I will say is that I have already conferred with the Minister for Local Government to raise my concerns and perhaps, as Hon Sally Talbot has pointed out to us, there does need to be some re-examination of how the section offended against operates. I agree with all of that. So it is with mixed feelings that I support the position of the government and the house on this matter.

Question put and passed.