

**JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION**

*Thirty-fourth Report — “City of Joondalup Cats Local Law 2008” — Tabling*

**MR J.M. FRANCIS (Jandakot)** [10.30 am]: I present for tabling the thirty-fourth report of the Joint Standing Committee on Delegated Legislation entitled “City of Joondalup Cats Local Law 2008”.

[See paper 1253.]

**Mr J.M. FRANCIS:** This report concerns three issues arising from the City of Joondalup Cats Local Law: firstly, a requirement for compulsory sterilisation of cats; secondly, a requirement to wear a registration tag, which creates an inconsistency in the local law; and, thirdly, an animal trespass offence, based on the transitory nature of cats, which does not provide adequate protection of the cat owner’s rights. The committee sought undertakings from the City of Joondalup to amend the local law in relation to these issues but the undertakings were not forthcoming. The committee now recommends disallowance of this local law.

The first issue is the compulsory sterilisation of cats, a requirement found in clause 7 of the City of Joondalup’s local law. The committee acknowledges at the outset that this is a significant area of public policy and notes that sterilisation of dogs is provided for in a statewide dog act. The committee did not wish to enter into the debate about the rights and wrongs of compulsory sterilisation of domestic pets. Its concern under its terms of reference was whether the Local Government Act authorised the making of a local law requiring compulsory sterilisation. As set out in the report, the committee was concerned about clause 7 from several aspects. I refer members to pages 6 to 9 of the report for the discussion of those concerns. Under the Local Government Act, the general function of local government is to provide for the good government of persons in the district. This function is to be liberally interpreted and is wide in its scope, though not without its limits. The committee is of the view that clause 7 is not authorised or contemplated by the general function powers of the Local Government Act and that it contains provisions that would be far more appropriately contained in a statewide act.

In summary, the committee found that clause 7 takes effect beyond the boundaries of the Joondalup district. It produces a permanent outcome. If a cat owner leaves the City of Joondalup to reside in an area where sterilisation is not compulsory, the cat remains sterilised resulting in inconsistency of application throughout the state. The committee also found that the general function did not authorise the making of local laws for matters that, by virtue of their unique and controversial nature and impact at state level, should be dealt with by an act of Parliament. The committee’s view is that Parliament did not contemplate the use of general function by local governments to legislate for the sterilisation of cats. In forming this view, the committee took note of the fact that Parliament specifically turned its attention to the Local Government Act to expressly provide for local governments to deal with animals, which may be privately owned, by way of impoundment, disposal and destruction. Finally, as a matter of significant new policy, it was the committee’s view that laws about cat sterilisation would be more appropriately dealt with in a statewide act made by this Parliament.

The second area of concern for the committee was the inconsistency of cat tags, which was an issue of inconsistency within the local law. The committee was of the view that the Local Government Act did not authorise or contemplate a local law that was internally inconsistent. This area is discussed on pages 10 and 11 of the report. The local law initially prescribes a choice for cat owners of methods of identification for their cats. Owners may identify their cats by one of three methods—namely, microchips, collars or collars with tags. Later in the local law it is prescribed that all cats must wear a registration tag, thus requiring the wearing of a collar and tag. The committee was concerned that these aspects of the local law were in conflict and created internal inconsistency within the City of Joondalup’s local law; the later requirement to wear a tag effectively removes the option initially created to have all relevant information regarding the tag included on a microchip, thus avoiding the need for a collar and tag.

The committee was also concerned by the local law’s creation of an offence. Clause 20(1)(b) of the local law creates an offence that arises from the unwanted presence of a cat on property following a complaint by the property owner or occupier. I refer members to pages 11 to 15 of the report, which deal with this issue. The committee formed the view that this clause created unreasonable outcomes and potentially had adverse effects on the legitimate expectations of an individual that was not contemplated by the act.

The committee’s concerns with the offence as it was created were that there was no requirement to substantiate the initial complaint by way of written evidence or by an authorised officer identifying the cat at that point and that there was no requirement to give notice to the cat owner of the initial complaint. These two aspects in the committee’s view created an outcome that was unreasonable and adversely impacted on the legitimate expectations of individuals that they would not be prosecuted or issued an infringement notice on the basis of an unsubstantiated complaint of which they had not been given any notice. The committee also found that the offence resulted in two further unreasonable outcomes; namely, that the offence is based on the cat’s mere

presence on the premises without a requirement for any additional problematic behaviour and that in order to avoid breaching the law, the cat must effectively be restrained at all times from leaving the cat owner's property, which would have a massive retrospective financial cost to existing cat owners.

In considering the issues that gave rise to its concerns, the committee was at all times cognisant of the fact that the issue arose not from matters that had been subject to parliamentary debate, but rather in local law made pursuant to a power delegated by Parliament through the Local Government Act.

I thank my fellow committee members who spent countless hours working on this report—the deputy chair of the committee, Hon Robin Chapple; Hon Alyssa Hayden; Hon Jock Ferguson, who is a cat owner; Hon Jim Chown; Janine Freeman, MLA, the member for Nollamara; Paul Miles, MLA, the member for Wanneroo; and my friend Andrew Waddell, MLA, the member for Forrestfield, who is also a passionate advocate for animal welfare and a fellow cat owner. I also thank the committee staff, especially Christine Kain who has spent countless hours thoroughly assisting us with our work.

I want to make a few personal observations on the controversial and emotional issue of cat control laws. Gandhi once said that the greatness of a nation and its moral progress can be judged by the way its animals are treated. I reckon that if he was looking down on us today, he would be horrified. In 2007, 13 000 healthy cats were destroyed in Western Australia by local council pounds, rangers and animal welfare groups. The Cat Haven in Shenton Park alone accepted 9 000 cats, 7 000 of which were euthanased. Nationally, the Royal Society for the Prevention of Cruelty to Animals last year saw a 68 per cent increase in the number of cats surrendered, totalling 58 480 cats, of which 33 343 were destroyed. I know that there are both cat haters and cat lovers in the world, but I challenge any member of this house to visit the Cat Haven in Shenton Park while it euthanases almost 100 kittens a day that cannot be homed. I believe that they will be deeply moved by what is effectively the society-inflicted genocide of cats. To the people who do not appreciate the company of animals as companions, that is their prerogative. But to the inhumane feral scumbag who a few weeks ago thought it was acceptable to shoot a cat with a crossbow I say this: “You are a sick individual. You do not deserve to be part of a humane society and you need to spend some serious time looking at your moral compass.” This is one reason why I have asked the Attorney General and the government to look at what we can do to increase penalties for people who are convicted of intentional and barbaric cruelty to animals. I endorse the call in this report for the government to consider a statewide act for the cat control issue.

In closing, although this report is founded on the legal arguments of authorisation, I personally say to councils such as the City of Joondalup and other councils that have tried to address cat laws that I may not agree with everything they are trying to achieve, but at least well done for having a go and recognising that this is a real issue in the community.

**MR A.J. WADDELL (Forrestfield)** [10.39 am]: They say the road to hell is paved with good intentions. I suggest that this issue is perhaps a very good illustration of that. There is no doubt in my mind that the City of Joondalup's intention is a good one. The council perceived that there was a problem with stray animals, cats in particular. It saw that cats were having an impact on local wildlife and that some of the cats were a nuisance to their neighbours. The council therefore sat down and formulated a policy, an approach that it felt would in fact resolve the problem. The difficulty is that local government in this instance, certainly in the view of the committee, completely overstepped its own boundaries. It seems the council is completely unaware of what its boundaries might be. The correspondence we saw from the Joondalup city council, and some of the press statements it made, seemed to indicate that it saw its role as catching the things we missed. The things that this Parliament failed to deal with, the Joondalup council felt it had a role in cleaning up, being the second line of defence, so to speak. It sounds great in theory. In practice, though, it is a failure to understand that these local councils are an instrument of this Parliament. Local councils have no existence other than through the legislation this Parliament has, in fact, enacted. They do not have any constitutional recognition. Their powers are completely limited to those that we have chosen to delegate to them. This was the issue the committee had.

That is a very technical and legal approach to things. It is very difficult to do that when dealing with an issue involving cute little furry kittens. As the committee went through the process we kept finding ourselves caught up in the emotion of that particular debate. It took us hours and hours of discussions before we were able to really distil this down to the essence of the issue. The essence was not whether we felt it was appropriate that such laws be enacted but whether we felt that this Parliament had intended for local government to be able to make such laws. There is a real danger in the approach the council took in this instance. The danger here is that, if councils feel there is some deficiency in the approach that the state Parliament takes, they can step in and create gap laws, so to speak. That sounds fine in theory until one day we turn up and find that our local council has passed a law that dictates what we can eat for breakfast. Essentially, that is where this approach leads. A council could say, “We think people are not getting enough fibre in their diet. Rather than the state enacting the fibre act of 2009, we will say that everyone needs to get 50 grams of fibre for every breakfast they eat.” That sounds ridiculous and, of course, it is a ridiculous notion. But we all know that is how these things happen: one

step is taken, then another step and another step and, before we know it, we have fallen into a situation in which I think any rational person would say, "No, we didn't want to go there." I do not think that when Parliament passed the Local Government Act, we intended to allow local government to become the backstop for this Parliament. I think we wanted local governments to do the best they could for their communities with their local laws and by providing good governance within those particular areas.

One of the particularly tricky points with the cat law the Joondalup council tried to pass was that, when we are talking about an animal, we are talking about property. It is not a person; it is a property; it is something that is owned by a member of the community. What is unique, of course, about an animal is that it is a piece of property with its own mind and is entirely mobile. One can imagine that we would be in all sorts of grief if our cars suddenly decided to turn themselves on in the morning and take a drive down the road on their own. I envisage that a time will come when we do have technology —

**The ACTING SPEAKER (Mr P.B. Watson):** Member for Eyre, do not just walk between the Speaker and the person speaking please.

**Mr A.J. WADDELL:** A time will come when we do in fact have technology that is independently mobile. We will actually need to start considering the impact of that technology on society as a whole. I expect that at that point in time that will be a matter for both the state and federal Parliaments to consider. But it would be terrible if local governments decided to implement laws for that type of technology.

I will restrict this matter to the animals concerned. If Joondalup passes a law that says cats must be identified as, say, A, B, C, D and must wear a certain collar and a chip, what will happen to a cat or a piece of property that belongs to somebody who does not live within the City of Joondalup and strays into the city? Suddenly these laws will come into effect and it will essentially give the local government the power to do something to a person's property when it has no capacity to pass laws with respect to that property. I think that comes down to the crux of our concern that, essentially, the City of Joondalup was trying to fill in a gap, thereby exceeding its legislative powers, and that would have had an impact on neighbouring areas.

The issue itself of cat laws is a very perplexing and difficult one and one that I hold very close to my heart. As the member said, I am a cat owner and a very passionate one. In fact, I have a couple of cats, one of which is pregnant, so I have a vested interest in these sorts of matters.

**Mr J.M. Francis** interjected.

**Mr A.J. WADDELL:** If I revealed my animal's names, people would be cracking my password, so I need to be careful about that!

It is a controversial topic, one we will be debating, and I look forward to working with the member for Jandakot on these laws. I expect it will be controversial because there are people with very deep feelings about their pets. I expect debate will be quite heated, but we need to think about this reasonably rationally and move very carefully through the issue.

One thing I would like to put on the record now is that we need to be cognisant of a report that has just been released in the United Kingdom. It is about dogs and concerns that dog breeders are intervening in their gene line and introducing a lot of genetic defects. This happens when we try to completely control the breeding of a species to the point at which we are not allowing ordinary variations to move through the gene line. If only breeders breed cats, they will breed pedigree cats primarily; there will be a great deal of interbreeding; and it will drastically reduce the gene pool. This will ultimately be quite damaging for the species as a whole, so we need to take the brakes off a little bit. However, we do not need to be entirely restrictive on the breeding of these animals. We need to implement laws that recognise that there are rational, reasonable and very responsible owners and they should have a relatively free rein. We need to put the protections in to stop those grubs out there who do the wrong thing. We therefore need to give local government appropriate powers to enforce the laws and to make clear to people what is responsible cat ownership. I think the view of the committee to call on the local government minister to implement cat laws reflects that point of view. I finish my speech by saying that the most remarkable element of this was the fact that the local government felt that it could enter into a negotiation with the delegated legislation committee over it. The council felt that, in some way, it had right on its side and could convince us of the need for these laws. That to me betrayed a deep, deep misunderstanding of exactly what our role is and what are the limits of the council's powers.

**MS J.M. FREEMAN (Nollamara)** [10.50 am]: I am also a member of the Joint Standing Committee on Delegated Legislation and have been entertained at various meetings with an ongoing discussion of the City of Joondalup Cats Local Law 2008. It really involves a technical argument. In any of these arguments, it gets down to the passion that surrounds pet ownership. Pet ownership is very important to many people in the community. I have put on record in the committee, and I should put on record in this place, that I am a bird lover, in particular a native bird lover, which does not necessarily make me a cat lover. I come from an extremely different

perspective. I have a tragic story about my own bird and a cat. There is no doubt that sometimes these things relate to our personal experiences. My personal experience is that cats are a concern to local residents in the seat of Nollamara; in particular nuisance cats. When I was out doorknocking, my colleagues would ask me what sort of issues came up. I said that the most perplexing one was the number of times the issue of cats was raised, with people asking how they can stop cats from spraying in their back gardens and how they can stop stray cats coming into the area. Finding a solution to that when trying to garner support was ably assisted by google but certainly not by any laws.

Whilst these laws are based on a technical argument, we also have to recognise and congratulate the City of Joondalup and the many local governments that have taken on this issue. It is an issue of major concern in their areas as it relates to the protection of wildlife, in particular birds, and the nuisance aspect to the community. It is also an issue because people are very emotional, and rightly so, about their pets because they are part of their families. I acknowledge that that is part of these issues. When we look at these sorts of things, we have to ensure that not only people on certain incomes have the privilege of owning a pet and the benefits that go with that. Those benefits are well documented. Animals have been introduced into some nursing homes to assist many elderly residents because of the emotional and physical bond that pets, particularly cats, can create.

The committee was very much involved in the legal and technical argument of these laws. It is interesting to note that we were faced with all sorts of quandaries, not in our time but certainly in previous committees. Smoking in alfresco areas was a particular issue. It is not uncommon for local governments to reflect opinion in our community, which government should then act upon. One of the most critical recommendations of the report is that there is a need for laws to be addressed by the Minister for Local Government.

I concur with the comments made by the member for Jandakot about the horrific nature of the abuse of cat ownership when it leads to the unnecessary death of animals in our community. The way that any community treats its animals is reflective of the humanity in our community. As an official of the Liquor, Hospitality and Miscellaneous Union, I had the privilege of working with some of the employees at the Cat Haven, particularly when they suffered quite serious illnesses. I represented them through the workers' compensation system. They found themselves working in jobs in harsh and difficult circumstances where, for the benefit of the community, they needed to put an end to the unwanted lives of many animals that people did not take responsibility for. The City of Joondalup Council was trying to address that issue, along with the issue of stray cats that it is faced with all the time, especially in much of its bushland and its many parks.

As an aside, I once read a book that had been written from a cat's perspective about cats that were dumped. It was a very good literary piece that gave a perspective on what it must be like for a cat to find itself completely shunned by the domestic world and living in the wilderness. It was an analogy on humanity. It was very much about what must occur in our communities. This issue needs to be addressed to ensure that we have respect for the animals that we keep as domestic pets in our community.

Apart from the issue of compulsory sterilisation, which is pretty difficult to bring into a community, especially when the local government says that residents have to bear the cost of it as it is a requirement of owning a cat, the biggest issue is cross-border problems. If a cat that lives in Wanneroo or wherever walks across the road into Joondalup and annoys the people who live on that road, what do we do then? I can foresee that many rangers would have massive problems with this. It is not quite the same with dogs, although I understand we can have cat runs, which seems to me like a good idea. I am sure that that would be contentious for many home owners. That was one of the major issues. That is one of the reasons we were in a position to say that the Joondalup council cannot impose these laws in isolation just because they are isolated laws. It does not have the power to do that, even though we say that the laws may be well thought out, and they certainly need to be debated in this house.

The committee did have deliberations on how we could remove the areas of compulsory sterilisation, registration tags and cross-border animal trespass to try to have something that could be a workable piece of local law for the City of Joondalup, understanding that it would have put a lot of time and effort into those laws. It is to be congratulated for the time and effort that it would have put in consulting with people, including local constituents and ratepayers and its officers. This should not be taken by the officers of the City of Joondalup as being a backhanded, "Don't do this." We are saying to them that it needs more consideration and it needs broader consideration across the whole state. I believe that state cat laws are imperative. They definitely should include microchipping. We should be able to identify where cats are so that we can protect our wildlife and birds and those occasional weeros in the front garden having a nice day out.

In conclusion, I would also like to thank the staff of the Joint Standing Committee on Delegated Legislation, who have dealt with the issues with a combination of anguish and frustration, as well as jest and lots of puns, to keep members focused and capable of delivering the report.

**Extract from *Hansard***

[ASSEMBLY - Thursday, 10 September 2009]

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Mr Joe Francis; Mr Andrew Waddell; Acting Speaker; Ms Janine Freeman

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