

**JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION**

*Forty-sixth Report — “City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011” — Tabling*

**MR J.M. FRANCIS (Jandakot)** [10.10 am]: I present for tabling the forty-sixth report of the Joint Standing Committee on Delegated Legislation entitled “City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011”.

[See paper 4247.]

**Mr J.M. FRANCIS:** I rise to speak on this report with some sense of frustration. I will indulge a short amount of the house’s time to explain why the committee has come to the view to recommend disallowing these local laws. I also make the point that it was good to see that the Joint Standing Committee on Delegated Legislation unanimously supported recommending the disallowance of these laws primarily because they failed the commonsense test, amongst other reasons. If ever there was an example of mission creep by local councils, this is a great one to look at. If ever there was an example of “nanny statism” gone mad, this is another great example to look at.

The committee takes issue with the unreasonably prescriptive nature of many offence provisions within these waste local laws. To give one example, it is an offence to keep the lid of a bin open, even if the bin is empty and perfectly clean, at any time except when depositing waste or cleaning the bin. The City of Gosnells Waste Local Law 2011 provides an offence for this, with an infringement notice penalty of \$75.

**Mr A.P. Jacob** interjected.

**Mr J.M. FRANCIS:** It is not funny; it is out of control.

The committee is of the view that the prescriptive offence provisions capture an unreasonably broad scope of conduct, creating offences that otherwise law-abiding citizens may inadvertently commit, and criminalise behaviour that does not cause harm. To give a few examples: a person who keeps their bin in a position visible from a street or public place—for example, in their carport or behind a picket fence—and who does not obtain approval from the local government, commits an offence. A fly in, fly out worker or shift worker who does not place their bin in a particular position by a particular time on collection day may commit an offence. A person who temporarily moves a bin from the premises or marks a bin, for example to play street cricket, commits an offence unless this conduct has been approved by the local government.

**Ms M.M. Quirk:** How un-Australian!

**Mr J.M. FRANCIS:** Absolutely un-Australian, member.

These offences attract an infringement penalty notice of \$150 or a fine not exceeding \$5 000 if prosecuted in court. In the committee’s view, waste local laws should be drafted to more directly reflect the objectives of the local law rather than being unnecessarily prescriptive.

**Mr A.P. O’Gorman:** Are you binning their laws?

**Mr J.M. FRANCIS:** I am binning their laws, absolutely!

**Mr M.J. Cowper:** It is rubbish.

**Mr J.M. FRANCIS:** It is rubbish. As I said, it is not actually funny. It is ridiculous that ratepayers’ money is used on these things.

The committee concluded that offence provisions in the two waste local laws offend the committee’s terms of reference 3.6(a) and 3.6(b) in that they are not authorised by the empowering provisions of the Waste Avoidance and Resource Recovery Act 2007, were not contemplated by Parliament when legislating this act, and have an adverse effect on legitimate expectations beyond giving effect to a purpose authorised or contemplated by the empowering act. The committee recommends that the City of Gosnells Waste Local Law 2011 and the Shire of Derby/West Kimberley Waste Local Law 2011 be disallowed.

I do not want to take up too much time. I know there are other members in this place who are interested in this. I will go through some of the causes for concern. Hopefully it will make perfect sense to everyone. The committee took issue with the following offences in the City of Gosnells Waste Local Law 2011. Clause 2.3 states —

An owner or occupier of premises shall—

...

- (b) at all times keep the lid of each receptacle closed except when depositing waste or cleaning each receptacle;

- (c) except for a reasonable period before and after collection time, keep each receptacle on the premises and located —
  - (i) behind the street alignment so as not to be visible from a street or public place; or

God knows what that will cost some people. By nature of house design, some people will have to spend money on screening just to stop a bin being seen! I am all for clean streets and presentable neighbourhoods, but really, do we need to fine people for not doing this? The clause continues —

- (ii) in such other position as is approved by an authorised person;
- (d) within a reasonable period before collection time, and no later than 6:00 a.m. on the designated collection day, place each receptacle on the verge (or other area as stipulated by an authorised person) adjoining the premises as close as practicable to the street alignment of the premises so that it does not obstruct any footpath, cycleway, right-of-way or carriageway and positioned facing square to the carriageway with the handle facing away from the kerb line.

I do not know about other members, but I do not know any other way of putting a bin out on collection day. I suspect that if I put my bin too far away from the kerb, if I put my bin out on Friday mornings after the rubbish collection truck has come and picked it up in the City of Cockburn where I live in Atwell, and I suspect that if I put it around the wrong way and, when I came home, my bin had not been emptied, I would probably have no-one to blame but myself. I suspect most people would probably only make that mistake once. I do not know if we necessarily need a fine to tell us how to put bins out.

An owner or occupier of premises shall not deposit or permit to be deposited in a receptacle certain prescriptive listings. I guess if I filled my rubbish bin with a couple of bricks and some engine blocks out of the old ute from the last rebuild, if the truck could not pick it up and I came home and found it still sitting there, it would probably be my fault as well. In all seriousness, I understand there should be limits on what can be put in certain bins for a number of reasons. I know some reasons were touched on yesterday when debating the container deposit legislation. I understand that we have to put guidelines on it. I suspect the best way to do that is probably to place a sticker on the bin to say this is what can go in this bin and this is what cannot go in this bin.

**Mr A.J. Waddell:** But you can't mark a bin!

**Mr J.M. FRANCIS:** That is right; I am getting to that—a person cannot mark a bin.

A member of the committee put a pretty sticker on their bin to make it look a bit more beautiful. I am not quite sure how that clause impacts stickers that say, “Keep a lookout for kids” in 50-kilometre-an-hour zones which some people put on their bins. I suspect those stickers would now be illegal if this law was to go ahead. There is no substitute for commonsense. Clearly, some people do not quite see it this way.

Clause 2.7 of the local law states —

- (1) Where a receptacle is supplied ... a person shall not, unless approved by an authorised person —
  - (a) damage, destroy or interfere with a receptacle;
  - (b) mark or disfigure the receptacle in any manner other than by placement of a street number or other property identifying mark; or

That is why those 50-kilometre-an-hour warning zones would not quite fit it. Continuing —

- (c) remove a receptacle from any premises unless permitted by this local law.

Another particular concern when it comes to the commonsense test was the fine for cleanliness of a bin. I am sure other members of the committee will go into this in a bit more detail. Who is the judge of whether a bin is dirty or not? If it is so dirty that it creates a public health risk, that should be the test, but to say someone will be fined because their bin is not clean—I probably have not cleaned my bin for about a year. Friday is my collection day in the City of Cockburn. Probably about half the time, when I get home, my bin lid is open because it was left open by the rubbish truck when the bin was put down. Probably about once a month every single bin on my street is lying down, as it gets windy in Western Australia, as we all very aware in the past 24 hours. If I lived in the City of Gosnells and, through no fault of my own, my bin was lying on the ground when I got home, I could well face a \$75 fine. It is just absolutely ridiculous—no-one leaves their bin lid open on purpose! I would be curious to find out, through a legal test, the situation if the driver of the rubbish collection truck puts the bins down in such a way that all the lids were open. Is he responsible for leaving my bin lid open? Is the City of Gosnells going to fine their own rubbish truck drivers? I do not know. I acknowledge that other local councils

have similar laws that have slipped through to the keeper, and I am sure that other committee members also acknowledge this; however, we have to draw a line in the sand somewhere. I do not mean to pick on the City of Gosnells and the Shire of Wyndham–East Kimberley, but I will make this comment for all local councils out there: beware of mission creep; beware of making laws that are just plain dumb, unenforceable and do not pass the commonsense test.

In closing, I want to thank the other committee members—I will not go through them by name—and the committee staff. This one was a bit of a no-brainer, and it was good to see everyone agreeing on something. It is good to be on a committee where everyone agrees on most things. I suggest to our colleagues in the Legislative Council that it might be in everyone's interests that they accept the recommended disallowance by the Joint Standing Committee on Delegated Legislation and send a little reminder to not only these councils but all councils that they should probably think a bit outside the box when they are writing local laws.

**MR A.J. WADDELL (Forrestfield)** [10.22 am]: I also rise to comment on the forty-sixth report of the Joint Standing Committee on Delegated Legislation. The member for Jandakot indicated that this was a no-brainer, a drop-dead easy decision; and certainly it appeared to everyone on the committee that this failed the commonsense test and much mirth and merriment was made of laws that simply made no sense. But perhaps the chilling fact in this is that this law was only drawn to our attention due to other minor drafting errors in the law. Our committee staff did not see a problem with these laws. The City of Gosnells did not see a problem with these laws. Through all of the various successive tests and checks, the commonsense test was not applied to these laws until it was brought to our attention and we said, “Hang on a second, this doesn't make any sense!” And there was quite a robust discussion on how we could in fact disallow these by-laws under the terms of reference of the Joint Standing Committee on Delegated Legislation; because I think there is probably an argument that these laws are legally made and that the City of Gosnells has the right—as other local governments have—to pass laws of this nature. We have empowered them to do so. We have empowered them to do so by including overly broad powers within the Local Government Act. I believe that giving local governments those broad powers is not necessarily a bad thing, but if we do that we need to do so with a sense of oversight, knowing we have the ability to review these things and say, “We don't know what's going on in your heads, but in our minds that has gone too far and that fails the commonsense test. We are not going to authorise a law of that nature.” I have made this call before, but I again call on the government to look at the terms of reference of some of our standing committees and to give us greater oversight of these things. As I said, it was a struggle to find the appropriate terms of reference by which we could knock this one off.

The City of Gosnells just happened to be in the crosshairs at the wrong time. When it was first suggested that we had a problem with this law, the city honestly could not understand what our problem was. It could not see why we would have a problem with a law of this nature. In fact, the council said, “We need these laws in order to maintain the health and safety of our community.” It said the city needed to be able to fine someone because they had left their rubbish bin lid open. In the hearing, we put it to the City of Gosnells that its own dump truck drivers would probably be offending this law and they would be the people mostly responsible for creating the fines. That was a fact that had not really occurred to the councillors, because in their minds they were not creating laws about issuing a fine for every bin that is left open. In their minds, they were not about fining someone for having a dirty bin; they were concerned about flyblown carcasses being dumped into bins. They were generally concerned about the health and safety of the community. That was their objective. So they crafted a law that dealt with that one in 10 000 or one in 100 000 event that they were concerned about. When we asked the council why it did not simply create a law about the one in 100 000 rather than the broader law, it simply had not occurred to it. In its mind, the council was going to exercise discretion; it was not going to fine the average person because their bin was facing the wrong way or the lid was left open. However, the reality is that the law would be on the books; and if it is on the books somebody can come along and say, “There is the law; you have broken the law. You are now responsible.” There is a consequence.

All too often we hear the argument: we will use discretion and we will do the right thing by people. Then, every so often, we hear about the exception. We hear about the copper who is sitting at the bottom of a steep hill with a radar gun or a Multanova clicking off fine after fine. I am sure when we brought in legislation about speed cameras, we said that people would use commonsense and use them only in dangerous areas. But, eventually, somebody works out that the law is the law. For example, if someone does not come to a complete stop at a stop sign, they have not stopped; the fact that they are only travelling at one centimetre an hour means they have not stopped. The law is the law and they will get a fine! We have to be very careful about that, and how proscriptive these laws are, and not simply trust the good nature of people to use their commonsense and not implement poor decisions. Unfortunately, commonsense is not a defence in the law. We cannot simply say, “Come on, everyone does that.” It is not an excuse to say that everyone's bin lid is open. If the law says a bin lid must be closed; it must be closed. It offended the committee that somebody was trying to bring in laws of this nature, and we decided to draw that line in the sand. The City of Gosnells was unfortunately the one in our crosshairs when we decided to draw the line in the sand. I challenge members here to look at the local laws that currently exist in

their own electorates. I think they would be incredibly surprised by how proscriptive and oppressive some of these laws are. The reality is that we are simply relying on the fact that they are not being enforced, and it is about time that we reflected the real intent in legislation and not really what we hope would happen. On those comments I shall sit down.

**The ACTING SPEAKER (Mr P.B. Watson):** Before we continue, member for Murray–Wellington, we have already had one incident this morning with mobile phones. The Speaker has already spoken this morning about mobile phones in the chamber. You can have them on silent; but you are not allowed to have them on a loud noise. That is the second warning today, and I think the Speaker, perhaps in question time, will be calling people to order—the next person today.

**MS J.M. FREEMAN (Nollamara) [10.30 am]:** I did have my mobile phone on silent. I also have my iPad on silent, but it seems my iPad has a setting so that when I touch —

**The ACTING SPEAKER:** Member, are you talking about the committee report?

**Ms J.M. FREEMAN:** I am, but I am just trying to clarify that it was my iPad that went off.

**The ACTING SPEAKER:** I am just trying to find the relevance in your statement.

**Ms J.M. FREEMAN:** The relevance is: what is the intent and what is the objective? My intent and my objective was not to cause any disruption in this house, and my intent and objective was upheld by —

**The ACTING SPEAKER:** Member, I will sit you down if you do not talk about the report!

**Ms J.M. FREEMAN:** Thank you, Mr Acting Speaker.

I also rise to speak on the forty-sixth report of the Joint Standing Committee on Delegated Legislation, entitled “City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011”.

Before I begin my comments, I would like to thank the staff for assisting, especially Suzanne Veletta, who, as the member for Forrestfield has outlined, had to deal with the committee raising issues that were sometimes difficult, given the breadth of the Local Government Act. I would particularly like to thank the City of Gosnells and the Western Australian Local Government Association, both of which came in for public hearings, although they were, at first, very defensive. I will tell members why they were defensive: it was because, frankly, they said they had the same laws “as everyone else” on this issue. If members look at local laws of the Cities of Joondalup and Swan and the Town of Bassendean—I certainly know the City of Stirling has the same laws—they would see that they are not dissimilar to those of the City of Gosnells. I know that to be fact because WALGA has been working with the Department of Environment and Conservation for the past 18 months on developing local waste laws that will be the generic starting point for local government. That was outlined to us in the public hearing, and when WALGA gave us a copy of what it was considering as its model—I will go to issues of model law in just a moment—it looked exactly like what we were looking into in this inquiry.

The member for Jandakot has outlined to members why we found those local laws to be in breach of our standing orders and the intention of the act, and the committee report outlines the legal principles of the establishment of good government and how not to set laws—local or otherwise—that actually encourage breaches; laws that, by their enactment, encourage people to act outside of the law, not intentionally, but because they are not commonsense. Because of the way this local law was worded, it put in place all of these absolutely mandatory provisions—it read “shall”; not “people should make every reasonable attempt to comply”—on those people who put the stickers on their bins to remind people to slow down, or people who did not get their bin out by 6.00 am. There was no way that a reasonable person could comply with the law. If a reasonable person whose intent is to comply with legislation and act in a lawful manner cannot do so, then we are making bad laws. That is what we were trying to say to the City of Gosnells. In evidence, Mr Perkins, to his credit, stated that he had been working in this area for a long time, including 1985 and 1986 when the mobile bins were introduced—all of these sorts of provision had been written into the local laws since about 1985—and that he had got himself caught in a mindset. He was saying, “We’ve got problems with crows, and if a bin is open they will take things from the bin.” I said, “Yes, but if there is nothing in the bin and the bin is open, people have still not complied with the law. They have still broken the law.” He said, “Yes; I hadn’t been thinking about it in that way, and I understand what you’re saying.”

As the member for Forrestfield outlined very well, the committee was trying to say that people need to look at their objectives and outcomes—what is the local law trying to achieve? The local law’s aim is to provide a healthy, safe, clean environment for waste management, and that should be done in a way that is respectful of the property that the council provides its residents. The residents pay rates for that service, and they want that done so that ratepayers’ money is not wasted and the property of the City of Gosnells is not unduly damaged, such as making sure that when the bin is pulled off the side verge, it is placed where the property of the city can be properly looked after.

Frankly, we did not intend to disallow these laws. In the first instance we contacted the council, told it our concerns, and asked it to reconsider its laws because they were too prescriptive and not commonsense, and they made people unintentionally break laws. The laws did not achieve the council's objectives and they really needed to go back and look at them. The council said it did not understand what the committee was asking it to do. The committee told the council to ask its elected members—the people on the ground—to talk to the ratepayers and ask them what they would like this law to achieve. We said to the council to ask its councillors whether they understood what the piece of law meant and whether they realised what this law would do to their ratepayers. I could be wrong, minister, but it does seem that often council officers come in and say, "This is how it's written everywhere; this is what's done; this is what's required; this is what we need; we need a penalty, otherwise we can't issue warnings; we can't say to people how things go; this is what we need." Councillors say, "Yes, it doesn't seem right." My view is that if it looks bad and smells bad, it usually is bad. But councillors feel like they have neither the authority nor the expertise to deal with these matters. The committee was saying, "This is stuff that is on the ground; as a city council, waste management is your core constituent work. This is what you do."

**Mr G.M. Castrilli:** There is a disconnect with the community.

**Ms J.M. FREEMAN:** We told the local government that it is doing it well, but it has to stop doing it in a manner that is prescriptive and basically ordering people around; it should bring people along. This also goes back to the container deposit legislation; the message is to bring people along. Some American states pay incentives for having less in a bin or having less bin pick-ups. They are providing an economic incentive to waste management behaviour, not imposing penalties.

In closing, I want to talk about model laws. The committee was told that this local law was the model law and that all the councils were doing it. But these model laws are not truly model; they are laws that are just used by all of them. This is an issue for the Minister for Local Government; if WALGA and the Department of Local Government were to put model laws before us, those model laws would lay before the house. We would all know what was intended by the model laws. At the moment, WALGA has an almost pro forma system—one council does it, then the next council follows, and then the next council, and then they might tweak it a bit. As the member for Forrestfield said, when something arises the committee might look at it and say, "Hang on—this makes no sense. It subverts people operating properly in the community, as they want to. Frankly, it is a ludicrous set of propositions." The committee has been told, "Well, you've let other pieces of law through; why have you suddenly decided to pick on us?" The City of Gosnells was a bit aggrieved about that. But it could be done differently. If WALGA and the Department of Local Government were to lay the local laws before the house, the delegated legislation committee could scrutinise them under our terms of reference, and then the councils would get proper, good guidance. They often ask us for guidance, but we cannot provide it because that is not our role. If WALGA put proper model laws before Parliament, instead of the pro forma laws that it seems to have, we would be in a better position to assist councils. Frankly, they must get frustrated. This would be frustrating for the City of Gosnells, which suddenly does not have an operating waste management law; it will go back to its old one, but this has operated since 1985.

**MR P.T. MILES (Wanneroo)** [10.39 am]: I am also a member of the Joint Standing Committee on Delegated Legislation. As outlined in the report, "City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011", we found this local government law a bit excessive. The commonsense rule should always be applied, as it was during my brief time on council. This is crazy local government stuff. All of a sudden we would start to have rubbish police. The council hoped that behind every rubbish truck would be a ranger vehicle so that it could fine residents as it pleased and increase revenue. The council wanted to fine people \$75 for not closing their rubbish bin lids. Residents can place their bins out on the verge providing they have placed them in the correct spot. Some councils want people to place their bins on the left or right-hand sides of their driveways depending on the agreement. People can get fined for not putting their bin in the right place. We know that the City of Wanneroo did that about 18 months ago to some residents in Alexander Heights. Residents of a seniors' village were each fined \$50 for every single one of their bins. The local councillor at the time, Maureen Grierson, became involved. Some members in this house know Maureen very well. At 80 years of age, she was not about to let those fines stand. When 50 bins from those units are placed on the verge, they may not be exactly a metre apart. That was one of the rules; bins had to be a metre apart to allow the grapplers to come in, pick up the bin and empty it.

We also heard that the bin lids need to be closed. One of the questions I posed to Mr Perkins in the hearing was, "Do your drivers make sure all the bins are closed once they have left that street?" He said, "Yes". I found it very remarkable that he would say that after a driver has gone down a street, all the bins are left shut. We put it to him that that would not be the case. The member for Southern River, who lives in the City of Gosnells, said that his bin is often left open; I hope that he contributes his \$75 on a weekly basis! Residents are no longer allowed to use their bins to play softball, soccer or whatever they want to use their bins for. As kids we used bins

for sport. We had metal bins and then moved to the plastic bins. We used to get in trouble from our parents because we used to destroy the metal bins. The big green plastic bins are ideal. These days we can go into stores or online and buy stickers to put wickets on the front or side of our bins so that they can be used on the driveway or even on the road, if the road is capable of taking a small cricket pitch.

To me, the backup should always be the elected members. The member for Nollamara touched on it very well. The administration of local government and/or government will always be highly technical and will contain jargon and legal aspects right down the line, so training of councillors needs to be at a certain level. But I am not fussed about that sort of training. The bottom line is that, as the member for Nollamara said to the minister, they should go back to a councillor and say, “This means that we will fine anybody who leaves their lid up or who leaves their bin in front of the house instead of down the side or at the rear of the house.” That is why we elect local councillors. The administration is just like public servants in government. They are not the government. The members of Parliament are elected people and councillors are elected people. They are the ones who sign off on these laws, not the administration. Administration was put up to have an argument. It is true that at the public hearing the council staff were absolutely gobsmacked that we challenged some of the rules and laws that they put up.

The Shire of Derby–West Kimberley used the local laws that the City of Gosnells put through and took out all the actual infringements and put up the law as it was. Therefore, a ranger could come around and someone accused of an infringement would have to go to court and justify to the magistrate why they should not get fined \$5 000 or more. This is absolutely crazy nonsense coming out of local government. This house and especially the government need to look at establishing a standing committee focused only on local government. I agree somewhat with what the member for Forrestfield said. We get lots of these. We get hundreds of local laws every year through the delegated legislation committee. We cannot scrutinise every one minutely. We have to pick out some and do the best we can. If we were to establish a standing committee on local government, we could look at further infringements held at the local government level. The delegated legislation committee does not look at all their charges and fees. We know that they are charging more than they should be on some of their fees, but we do not have the capacity to get in there and bring them to book.

Through Minister John Castrilli, we have been making some minor amendments to local government laws over a couple of years; that is good. We are tweaking the laws as we go and trying to bring them into a more modern style. There are more amendments to come over time. I do not want to chuck out that law completely. I think amending as we go is the right thing to do. However, there needs to be some control on some of the by-laws coming out of local governments. We have seen laws that provide that residents are no longer able to park their boat or caravan in front of their house. A gentleman in Wanneroo was doing up an old car, but because it was not licensed he was told that he had to have it in a garage or behind the house. He could not do that so he had to get rid of his hobby. He had the car on his front lawn. It was still on his property, but it was in view of the street. That is an example of local law getting out of control.

The member for Girrawheen said it quite rightly earlier when the member for Jandakot was talking: a lot of this stuff is un-Australian. Most people come here because of our freedoms and our open spaces, but local governments get tied up in their minute area and forget about that. Fortunately, in this state is a standing committee that can now and again recommend to the other house to disallow local laws. To have a standing committee focused purely on local government would allow us to vet that in a stronger and more detailed way. I recommend the report for everybody to read. It is not a very large report. I ask one of the attendants to get one. I know that the member for Southern River is doing that, because the City of Gosnells will be on the phone to him as soon as the day is out.