JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Forty-seventh Report — "Shire of Kellerberrin Parking and Parking Facilities Local Laws 2011" — Tabling

MR J.M. FRANCIS (Jandakot) [11.04 am]: I present for tabling the forty-seventh report of the Joint Standing Committee on Delegated Legislation entitled "Shire of Kellerberrin Parking and Parking Facilities Local Laws 2001".

[See paper 4773.]

Forty-eighth Report — "Town of Kwinana Extractive Industries Local Law 2011 — Tabling

MR J.M. FRANCIS (Jandakot) [11.04 am]: I present for tabling the forty-eighth report of the Joint Standing Committee on Delegated Legislation entitled "Town of Kwinana Extractive Industries Local Law 2011".

[See paper 4774].

Mr J.M. FRANCIS: The Joint Standing Committee on Delegated Legislation recommends that the house disallow these two local laws because they have not followed the mandatory procedure to make a local law as prescribed in the Local Government Act 1995.

The ACTING SPEAKER (**Mr P.B. Watson**): Order, members! If you want to have meetings, take them outside. This is a very important committee report.

Mr J.M. FRANCIS: It is very important, Mr Acting Speaker.

The committee has found itself in the position of having to recommend the disallowance of these local laws based on noncompliance with steps in the section 3.12 procedure of the Local Government Act, with the Town of Kwinana being out of order by six days and the Shire of Kellerberrin by two and a half weeks. The committee understands that these time frames are relatively minor in the overall process of making a local law, but the wording of section 3.12(1) is clear: if the procedure is not completed in the correct order, the local law will not be valid. This is where the committee steps in to bring to the attention of the house its concerns with the wording of section 3.12.

When the committee first scrutinised these two local laws at the end of 2011, it found that the steps in section 3.12 of the Local Government Act 1995 were not completed in the correct sequence. Section 3.12(1) of the act explicitly states that a local government must follow the procedure described in the section in the sequence in which the procedure is described. When the steps are completed out of order, the resulting local law is invalid and outside the power contained in the Local Government Act 1995 to make that local law.

The committee previously recommended the disallowance of a local law that was also invalid, albeit for a different reason, and these two local laws raise the same issues of invalidity. The effect of a local law being invalid means that it did not ever validly exist in law, but this committee's role is to consider not only technical issues, but also legal issues with regard to local laws. In this case, the committee is also recommending that these invalid local laws be disallowed so that they are removed from the public record so that no person inadvertently relies on a law that does not legally exist.

The committee has resolved to recommend to the house that the Minister for Local Government seek to amend the wording of section 3.12 to provide for flexibility in circumstances in which there are no adverse impacts on the integrity of a local law. The committee feels constrained to have to recommend disallowance of a local law that has not strictly followed the section 3.12 steps, but which contravention has not resulted in any damage or adverse impact on any relevant stakeholder. The committee considers the insertion of an element of flexibility or discretion into the procedure in section 3.12 would add to the act's workability, while still maintaining the integrity of the local law–making process. In the case of the Town of Kwinana's local law, the committee found no issue with the substance of any of the provisions, but was forced to recommend the disallowance of the local law due to technical noncompliance with the steps in section 3.12. As I said, it was a matter of only six days. The Shire of Kellerberrin did not comply with two steps in section 3.12, which was an error of 11 days and 17 days respectively. The committee's recommendation in the Town of Kwinana disallowance report addresses this unreasonable burden on local governments and on the committee's scrutiny role.

I commend these two reports to the house.

Forty-ninth Report — "Annual Report 2011" — Tabling

MR J.M. FRANCIS (Jandakot) [11.08 am]: I present the forty-ninth report of the Joint Standing Committee on Delegated Legislation entitled "Annual Report 2011".

[See paper 4775.]

Mr J.M. FRANCIS: The committee's "Annual Report 2011" outlines committee activities in 2011 and comments on issues arising from the committee's deliberations. The committee scrutinises a large volume of delegated legislation. In 2011, the committee was referred 601 disallowable instruments, including 370 regulations and 130 local laws or by-laws. The committee continues to spend a significant amount of its time considering fees and charges imposed by subsidiary legislation to ensure that fees and charges are authorised and do not over-recover the cost of providing the relevant service. The committee has notified ministers that departments and agencies need to develop robust costing systems and that fee increases in 2012 will be closely scrutinised.

The committee remains concerned about issues arising from delegated legislation adopting or, as it is usually termed, "calling up" standards published by Standards Australia. At this point, I would like to acknowledge the contribution of the member for Nollamara in bringing this particular issue to the attention of this and other committees, as this has allowed the committee the opportunity to present this issue to the chamber. It is an important principle that people have a right to know the law that they are obliged to comply with. Unlike acts and subsidiary legislation accessible at no cost on the internet, members of the public have limited access to standards. The committee recommends the government requires departments, agencies and local governments to advise on their internet sites where standards called up in subsidiary legislation can be accessed at no cost.

Finally, as I commented on earlier in my statement on the forty-seventh and forty-eighth committee reports, the committee takes issue with the strict terms of section 3.12 of the Local Government Act 1995. On many occasions, local governments have substantially, but not strictly, complied with the procedures for making local laws set out in section 3.12. In such cases, even when the technical noncompliance does not impact on the integrity of the law, the committee has no option but to recommend that the local law be disallowed. This unnecessarily impacts on committee, Parliament and local government time and resources.

The committee awaits the government's response to the recommendation in its forty-eighth report that the Minister for Local Government amend the Local Government Act 1995 to provide for flexibility in section 3.12 in circumstances in which there is no adverse impact on the integrity of the local law.

In closing, I will take this opportunity to acknowledge the work of my fellow committee members and the staff of the committee. I have said previously that this is probably the least sexy committee of the Parliament; nonetheless it has a very, very important role, and much of the material it covers is extremely dry and takes a lot of patience to get through. I place on the record my appreciation for the work of my fellow committee members and the staff of the committee, and I commend this report to the house.

MS J.M. FREEMAN (Nollamara) [11.12 am]: I, too, rise to speak to the Joint Standing Committee on Delegated Legislation's "Annual Report 2011". I thank the member for Jandakot for his kind comments about an issue that I have constantly raised and will continue to raise; namely, the reference to standards in legislation and regulation. Often of more concern is the reference to standards in legislation. Members may remember that a few years ago the government contemplated closing the library at WorkSafe, a sub-department of the Department of Commerce. I have worked with occupational safety and health legislation and regulations. If members look at the example of standards that are put into legislation as delegated or subsidiary legislation without the scrutiny of Parliament, they would see that that legislation is a very good example of the imperative for a copy of those standards to be made available to the community. Without that, members of the community are asked to comply with legislation that they in fact have no access to and can therefore get no understanding of—unless they are prepared to pay for it. That is only one of the difficulties we face as we move more and more towards skeletal legislation that refers us to legislation that in turn refers us to standards. Standards Australia is an organisation that relies on a profit-based arm. Although the setting of standards in Australia is done by a not-for-profit body, the printing of the standards documents has been sold off to an international agency, which prints, copyrights and therefore charges for the standards that we refer to.

The member for Scarborough has an understanding, for instance, of building legislation and would know how complex that legislation is. Some of the new building standards go for 30 pages—that is, building standards!—and to be able to access those in any conceivable way comes with, for many people, a quite hefty imposition. It is a fundamental premise of the work we do in this place in making legislation that the legislation can be accessed by the community free of charge; and that the subsidiary legislation—regulations—are accessible free of charge so that people can comply with the laws we make for them. What happens when we want to refer to standards in that legislation? There is good reason to refer to standards. People with great technical knowledge have achieved great capacity to write standards for the thickness of a rope to prevent falls or for the type of restraints required for going into confined spaces and all those sorts of aspects. There is no doubt about that. But, as time has gone on, standards have moved into less technical areas, such as those in codes of practice in business behavioural issues, including human resources and management areas—what we call policy areas rather than technical areas. It is a cause for great concern that, although compliance with legislation is expected, the public can access the information only by paying for it, which undermines the fundamental process of what we

do in this place. It is important that people take note of this and it is important to take seriously the committee's recommendation that the government should require departments, agencies and local governments to advise on internet sites where standards in subsidiary legislation can be accessed by the community at no cost. That information could be accessed either at a local library—through local government—or through an internet site. People at WorkSafe can access that information on library computers, although they cannot print out the information and take it away because of copyright problems. People cannot take a copy of the information. They are bound by copyright laws only to read the document at the WorkSafe library. But at least they have free access to that information.

It may be unusual—I do not know whether this is the first annual report to include a cartoon—but I draw members' attention to the fact that, as dull as standards are, we have tried to give some indication of how serious the issue is! That is because, frankly, this is the way we are going as we progressively devolve our power to the executive and to government agencies to write regulations that then call in the standards to those regulations. The greatest concern in the calling in of standards to regulation is that standards may be amended from time to time; therefore, not even the department has control of the process that calls in to law some very important technical and, in some cases, very procedural issues.

In closing, I will talk about the instruments for imposing fees and charges, and the very important role of the committee in this matter. It appears to committee members that departments, because of the continuing three per cent efficiency cuts, are increasingly meeting their costs by directly taxing or passing on costs through the imposition of fees. Departments need to be very careful that they do not tax people. Fees are, and should remain, a cost-recovery instrument. We cannot suddenly say that they are some sort of amorphous mass and that there is capacity to take them beyond cost recovery. I think that we should be very cautious because members of the community can only regard it to their detriment if, every time they front up at a Western Australian government agency, they have to pay a fee for everything the agency does, in addition to the various other state government taxes they already pay—be it payroll tax or other revenue aspects of this government. We have talked about that approach in the committee's annual report. Although this place will, I suppose, not take great notice of the report, I hope that government agencies take great heed of how stringent we are on, and how keen an eye we have, for the protection of those people who can least afford to pay these fees. This is just another example of the Barnett government's continuing increases in fees and charges across the board that are being collected by nearly every government department that seems to operate in Western Australia at this time.