

SHIRE OF KOORDA CEMETERIES AMENDMENT LOCAL LAW 2010 — DISALLOWANCE

Motion

Pursuant to standing order 152(b), the following motion by Hon Robin Chapple was moved pro forma on 21 October 2010 —

That pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the Shire of Koorda Cemeteries Amendment Local Law 2010 published in the *Government Gazette* on 10 August 2010 and tabled in the Legislative Council on 17 August 2010 under the Cemeteries Act 1986, be and is hereby disallowed.

HON ROBIN CHAPPLE (Mining and Pastoral) [8.15 pm]: I rise to speak tonight on behalf of the Joint Standing Committee on Delegated Legislation in respect of this matter. I moved pro forma, under standing order 152(b), on 21 October 2010 that, pursuant to the recommendation of the Joint Standing Committee on Delegated Legislation, the Shire of Koorda Cemeteries Amendment Local Law 2010, published in the *Government Gazette* on 10 August 2010 and tabled in the Legislative Council on 17 August 2010 under the Cemeteries Act 1986, be and is hereby disallowed.

Subsequent to that, on 25 November I presented to this chamber the forty-third report of the Joint Standing Committee on Delegated Legislation. The report dealt with an amendment to the cemeteries local law, which referred to the State Administrative Tribunal's purported jurisdiction to review a decision to terminate the licence of a monument mason—that is, a maker of gravestones—under the Cemeteries Act 1986. The committee found this to be a particularly problematic clause, and I will explain why. The committee formed the view that there was no provision in the enabling act—the Cemeteries Act 1986—that gives the SAT a power to hear reviews for monument masons. Because the committee found that to be unusual, the committee wrote to the Shire of Koorda, seeking an undertaking that the amending clause in the shire's cemeteries local law be deleted; the Shire of Koorda did not provide the requested undertaking.

The committee considered it inappropriate to have local laws in the public domain that are misleading and contain incorrect references to legislation. The committee then concluded that clause 6 of the Shire of Koorda Cemeteries Amendment Local Law 2010 offended term of reference 3.6(a), which basically requires instruments of delegated legislation to be authorised or contemplated by the empowering act. The committee then resolved to recommend to the house that clause 6 be disallowed, on the basis that this clause was not authorised in the Cemeteries Act 1986.

Then came another twist. The committee then found itself faced with the situation in which, by disallowing this clause, it would revert the Shire of Koorda's cemeteries local law to a version that it found to also be incorrect and not authorised by the enabling act. The previous version of the clause contained a reference to a provision in the Cemeteries Act 1986 that was repealed six years ago, in 2004. This deficiency in the Cemeteries Act 1986 was drawn to the Minister for Local Government's attention, and he shared the committee's concerns about this situation. On this basis the committee resolved to recommend to the house that the Governor, on the advice of the Minister for Local Government, invoke his power under section 3.17 of the Local Government Act 1995 to make an amendment to update all cemeteries local laws by deleting the incorrect clauses—a global amendment—to correct this situation for all affected local governments. We now understand that all local governments were operating with the deficient monument-makers clause. The committee has taken this additional step to ensure that there is consistency in all local laws and that the incorrect legislation is removed from the statute book in this state. On that basis, I hope that we can gain the support of the house for this motion of disallowance.

HON ROBYN McSWEENEY (South West — Minister for Child Protection) [8.20 pm]: The Joint Standing Committee on Delegated Legislation wrote to the Minister for Local Government on 16 November 2010 advising that the committee had resolved to disallow a clause in the recently gazetted Shire of Koorda Cemeteries Amendment Local Law 2010. The clause in question is considered to be unauthorised as it does not fall within a head of power under either the Cemeteries Act 1986 or the Local Government Act 1995. The government will support the joint standing committee's resolution to disallow clause 6 of the Shire of Koorda Cemeteries Amendment Local Law 2010. We share the committee's view that this clause is not contemplated by the Cemeteries Act 1986, as the clause purports to confer a right of review to monumental masons under section 19(2) of the Cemeteries Act when no such right exists in that legislation.

The committee has also recommended that section 3.17 of the Local Government Act 1995 be invoked to enable an amendment local law to be prepared to delete from all local government cemeteries local laws clauses which are identical to clause 6 of the Shire of Koorda's local law or which make reference to section 19(3) of the

Cemeteries Act, which was repealed in 2004. The above recommendation is also supported, and the Department of Local Government is progressing this matter. The government supports the disallowance.

HON LJILJANNA RAVLICH (East Metropolitan) [8.21 pm]: The opposition also supports the disallowance. I will make a few comments. I was a member of the Joint Standing Committee on Delegated Legislation a long time ago. When I was on that committee, it became very apparent to me that very small local government authorities such as Koorda—which has about 400 people within the local government authority; it is a very small LGA—often simply do not have technical expertise available within the local jurisdiction to provide the sort of assistance required to understand what can and cannot go into a local law. This is a clear case of a local government authority that has written a local law that is ultra vires the act and, as such, cannot be supported in any way, shape or form. I do not know whether this was intentional. There may be plenty of other examples of this sort of thing. I am sure that is the case. Under the current legislation, the only appeal provision is for funeral directors. Of course, there would need to be an amendment to the substantive act to change that. In the event that stonemasons were to be given appeal rights, an amendment would need to be made to the legislation.

I noticed that in its correspondence to the relevant minister, Hon John Castrilli, the committee recommended that the minister perhaps look at broadening the range of people to whom the appeal provisions apply. The minister said, “Well, look, it’s probably not going to be possible on account of the fact that it is only a small amendment. Being a small amendment, it is highly unlikely that I will take a minute to cabinet and do a whole drafting exercise to enable that.” I do not know whether the minister knows about omnibus bills, through which a whole lot of legal tidy-ups can be made.

Hon Giz Watson: Minor amendments.

Hon LJILJANNA RAVLICH: Minor amendments can be packaged together in an omnibus bill and brought to the Parliament. Such bills can make changes to a number of acts. That is something to which the Minister for Local Government should give some serious consideration. It is not a big ask. The legislation is quite restrictive as the only people who can make an appeal are funeral directors. Many people are involved in the death industry, if we like, in cemeteries and so on and so forth. Indeed, it is a growing industry given our ageing population. The minister should act as a matter of priority.

HON HELEN BULLOCK (Mining and Pastoral) [8.25 pm]: I want it noted in *Hansard* that this is a special occasion. As a committee member, I know that we do not make decisions such as this one lightly. Disallowance motions have been rejected on many occasions, but not on this one. So I say again, this is a special occasion and one that is worth noting.

Question put and passed.