

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Forty-third Report — “Shire of Koorda Cemeteries Amendment Local Law 2010” — Tabling

MR J.M. FRANCIS (Jandakot) [11.08 am]: I present for tabling a very, very important report, the forty-third report of the Joint Standing Committee on Delegated Legislation, titled “Shire of Koorda Cemeteries Amendment Local Law 2010”.

[See paper 2922.]

Mr J.M. FRANCIS: I am sure that members of the press are not going to rush into the gallery to listen to this one, but it is a very important report. It will not take very long, though.

This report deals with an amendment to a cemeteries local law that refers to the State Administrative Tribunal’s purported jurisdiction to review a decision to terminate the licence of a monumental mason—that is, a maker of gravestones in a cemetery—under the Cemeteries Act 1986. The problematic clause is clause 6 of the Shire of Koorda Cemeteries Amendment Local Law 2010. The committee formed the view that there is no provision in the enabling act—that is, the Cemeteries Act 1986—that gives SAT a power to hear reviews from monumental stonemasons. It is worth noting that we had a quick flick through the phone book. I do not think we found any stonemasons in Koorda, but one never knows; someone may want to become a monumental stonemason in the Shire of Koorda one day.

As is the usual practice of the committee, it wrote to the Shire of Koorda seeking an undertaking that the amended clause in the shire’s cemeteries local law be deleted. The Shire of Koorda did not provide the requested undertaking. The committee considers it inappropriate to have local laws in the public domain that are misleading and contain incorrect references to legislation. The committee has concluded that clause 6 of the Shire of Koorda Cemeteries Amendment Local Law 2010 offends the committee’s terms of reference, in particular 3.6(a), which requires instruments of delegated legislation to be authorised or contemplated by their empowering act. The committee has resolved to recommend to the house that clause 6 be disallowed on the basis that it is not authorised by the Cemeteries Act 1986. The committee is now faced with a situation in which disallowing this clause will revert the Shire of Koorda’s cemeteries local law to a version that is also incorrect and not authorised by the enabling act, as the previous version of the clause contained a reference to a provision of the Cemeteries Act 1986 that was replaced six years ago. This deficiency in the Cemeteries Act 1986 has been drawn to the attention of the Minister for Local Government, who shares the committee’s concerns with this situation. On this basis, the committee has 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 and update all cemeteries local laws by deleting the incorrect clauses—basically a global amendment—to correct this situation for all affected local governments. The committee has taken this additional step to ensure that there is consistency across all local laws and that incorrect legislation is removed from the statute book in this state.

I take this opportunity on probably the last sitting day of the year of this house to thank my fellow committee members. I have said before that this is probably the least sexy committee of the house, but it is nonetheless a very important committee. The committee staff do an outstanding job and work very long hours. I thank them for their assistance in this matter. I wish my fellow committee members and the staff of the Joint Standing Committee on Delegated Legislation a very safe, prosperous and merry Christmas and New Year.

MR A.J. WADDELL (Forrestfield) [11.11 am]: I rise to speak to the 43rd report of the Joint Standing Committee on Delegated Legislation. It would not appear to be the most earth-shattering report, as it would seem that the local council has made a small error in determining the rights of appeal and encapsulating those in the law. In fact, the committee has uncovered something far more insidious than a simple clerical error. It really goes to the heart of the way in which many local governments create their laws, which is by copying each other. Errors like this tend to creep through the system much like a virus—one copies another, which copies another. They all think that because some other local government has got it through or has it on its books, it is okay. They do not necessarily have appropriate previous laws or whatever else in place to make the new one make any sense. This is quite a problem. It is a problem that the Joint Standing Committee on Delegated Legislation would like to be able to investigate at a greater level. Unfortunately, as I have mentioned in this place before, the committee does not have referral powers, so it does not have the ability to proactively look into these sorts of issues and determine what could be done—it has to wait for an item like this to come forward. That is something we really need to put on the agenda going forward.

This matter also highlights an issue that all citizens of Western Australia should be concerned about. Local government authorities are duplicating each others’ laws and making slight alterations to them. Sometimes they get through the process and sometimes they do not. We are creating a bureaucratic nightmare. The Shire of

Koorda has a certain law about stonemasons. It was determined from our investigations that the shire had not utilised those laws for over 75 years, yet it still felt the need to modify them and to do so in such a way that did not make any sense. We have to ask: why are we creating all these unnecessary laws? Why does the Shire of Koorda need to create the same law as the Shire of Kalamunda and the Shire of Mundaring? We need to find a better model for the way in which the Local Government Act operates. If local governments are universally copying each others' laws, we probably need an alternative mechanism to create a central repository of standardised local government laws to which local governments would then be allowed to make slight amendments to deal with their local conditions. Generally speaking, if one wants to know about a cemeteries law, one goes to the state act or something to that effect—it is a one-stop-shop in that instance.

I recommend this report to the house. I also wish to thank all the staff who have put in a lot of hours. We have lost a number of staff this year. I think next year will be an interesting time.