

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

*Thirty-eighth Report — “Issues of Concern Raised by the Committee
between 1 May 2009 and 31 December 2009 with Respect to Local Laws” — Tabling*

MR J.M. FRANCIS (Jandakot) [10.09 am]: I present for tabling the thirty-eighth report of the Joint Standing Committee on Delegated Legislation titled “Issues of Concern Raised by the Committee Between 1 May 2009 and 31 December 2009 with Respect to Local Laws”.

[See paper 2025.]

Mr J.M. FRANCIS: As members know, the Joint Standing Committee on Delegated Legislation has a standing referral to consider all published instruments of subsidiary legislation. Due to the workload and statutory time lines, the committee currently considers only those instruments that are subject to a disallowance or those that are noted by particular members of the committee for consideration. This report, entitled “Issues of Concern Raised by the Committee between 1 May 2009 and 31 December 2009 with respect to Local Laws”, covers issues arising in local laws passed by the committee between those dates. During that period, 58 local laws were referred to the committee. Of these, the committee requested and received 13 written undertakings to amend particular clauses of the local laws identified as problematic under the committee’s terms of reference.

A number of examples of problematic laws are set out in the thirty-eighth report. These issues will be discussed at the next meeting of the working group of local law stakeholders, which is made up of committee members and staff, and representatives of the Department of Local Government, the Western Australian Local Government Association, and the Western Australian division of Local Government Managers Australia.

During the reporting period, the committee recommended that the Parliament disallow only one local law. The disallowance of an instrument is a last resort; most problems with local laws are addressed by seeking undertakings from local government authorities to amend or repeal the local law. An undertaking not to enforce the problematic laws in the interim is also sought, and the committee monitors compliance with undertakings on a regular basis.

The committee also tabled three information reports during this reporting period. Subsidiary legislation has an effect on the lives of all Western Australians. In order to increase public access to the committee’s decisions, the committee publishes undertakings provided by local governments and government departments on the Parliament of Western Australia website. This initiative also provides a point of reference for local governments and their advisers, and enables the Department of Local Government to trace compliance with undertakings and thus enhance good governance.

I would like to formally thank all the committee staff and members of the committee from both houses. At this point, I would also like to once again acknowledge the sad loss of the late Hon Jock Ferguson and the great contribution he made to this committee. His presence is still very much noted, and the committee will never be quite the same without him.

MR A.J. WADDELL (Forrestfield) [10.11 am]: During my time in this place, delegated legislation seems to have built up some momentum. Last year I attended a conference of delegated legislation committees from all over Australia to discuss the impact of skeletal legislation and how Parliaments around Australia and, in fact, the world, are dealing with skeletal legislation. Skeletal legislation is the increasingly preferred mechanism by which Parliaments put laws together. Simply put, we do not have the time to debate every nuance of every single issue that we wish to deal with, and we rely a great deal as a Parliament on government departments and other instrumentalities to put the flesh on the bones of legislation. We create the skeleton and the intent, and we then rely on others to do their bit to fill in the gaps, react to changing circumstances and ensure that the laws are comprehensive.

Most people would be of the view that laws are created in this place and that what we debate is, in fact, all that needs to be complied with. Most people would be quite surprised to know that many of the changes to laws that they rally against have not come from this place, and are often the result of a regulation change, which is often nothing more than some board or government department making a decision and pushing it up before a minister. Certainly, when I see the level of material that is put before the average minister, I can appreciate that ministers would have difficulty dealing with the complexities and sheer volume of material that comes before them.

To that end, a lot of delegated legislation and regulation changes fall before our committee. I have formed the view that we have become the last defence that this Parliament has to ensure that laws do not go off the rails, and that the intent of legislation when it is passed by Parliament is implemented when laws are put before the community. This is one of the difficulties that the committee is beginning to recognise—that there is an ongoing problem of regulations creeping up on laws. Regulations are creeping into areas to fill what well-meaning people might see as gaps in legislation; to fill in perceived cracks in legislation with regulations that were never

intended by the Parliament. A case in point that has been included in this report is the City of Joondalup Cats Local Law. There is no doubt that there is a feral cat problem within our community. I understand that the government has indicated that it will bring in a bill at a later time to deal with that problem, and I congratulate the government for taking those steps. In the meantime, however, the City of Joondalup felt that it needed to step in to deal with the problem, and it is certainly not an orphan in that respect; the report also refers to the City of Albany's attempts to deal with the same issue in much the same way.

However, in dealing with this problem, those local authorities had to create rather tough laws to deal with the ways in which cats can be kept, what can be done to them and how they can be controlled. In effect, they were talking about compulsory sterilisation of cats. That may not seem like such a big issue, but one needs to appreciate that a cat is the property of a person, and it is property that is unusual in the sense that it is very difficult to control. One can easily control a motor vehicle; it can be parked and it tends to stay where it is, unless it is stolen. A cat, on the other hand, has a mind of its own and tends to wander. The problem arises when a cat from a jurisdiction adjacent to Joondalup wanders into Joondalup. Why does the City of Joondalup have the power to control the property of somebody who is not a member of that community? Clearly, it was never the intent of this Parliament to create local laws that allow a local government to control what happens to people who do not live within its boundaries.

In this case, the committee felt that it was quite possible that the City of Joondalup had gone one step too far. I say this in a purely theoretical sense; I do not wish to impugn Joondalup in any particular way, especially as the Acting Speaker (Mr A.P. O'Gorman) may call me to account! Theoretically, the City of Joondalup may decide that all vehicles that pass through it must be electric. That is clearly nonsense; it does not have the power to mandate that all cars should be electric. That would be considered a completely ridiculous local law. In effect, the cats law was like that.

The problem is that when we create skeletal legislation, it can be manipulated and used to go far beyond the intent of Parliament. We, as a Parliament, need to consider this as a very serious threat to our sovereignty. We need to ensure that we properly resource the committees and the people who review this regulatory legislation so that we can ensure that we do not get into a situation in which people are required to follow laws that the Parliament would never, having considered all the facts, have allowed to pass through this place. The committee has, in this report and others that are to come, foreshadowed the need for some additional resources to begin to deal with that. We possibly need to reconsider the actual role of the committee and what regulatory legislation it can review and report on to ensure that we maintain that defence—that is, the sovereignty of the Parliament.

MS J.M. FREEMAN (Nollamara) [10.20 am]: As a member of the Joint Standing Committee on Delegated Legislation, I will comment briefly on its thirty-eighth report. Like the member for Forrestfield I, too, am concerned about the increasing amount of legislation and regulation that is coming from departments, through this Parliament, to the Joint Standing Committee on Delegated Legislation. It cannot be scrutinised as well as it would be if it were contained in primary legislation.

Some issues in this report go to how delegated legislation has been used by local government. It has resulted in a mishmash of local government laws, which in some ways have been assisted by the Western Australian Local Government Association model laws. As local government has tried to apply those laws they have found that in some cases they do not comply with the primary legislation. This issue goes to that part of the report on standing orders local law. At paragraph 8.5 of the report reference is made to WALGA model local laws and how they confer powers that may be outside the capacity given to them in primary legislation.

Increasingly, the committee defers much of its role to subsidiary and delegated legislation through regulation. I have a background in occupational safety and health in which that system works well, because that area is governed by a very small act but a large set of regulations. However, the regulations and the codes of practice are determined by a consultation process through the Occupational Safety and Health Commission, which is a bipartisan committee. The regulations that come from that commission are those that are required in the workplace. They are negotiated by the parties within the workplace and are realistic, relevant and applicable regulations. However, there may be some argument that they are not always efficient.

The problem with making regulation without involving stakeholders in a consultation process, is that it either does not reflect the intent of the principal act or is not a commonsense regulation. Although the regulation might fit within the confines of the legislation, it might not assist the community. In fact, it might restrict the community and some community rights, and that might not have been the Parliament's intention. I am concerned about the capacity of delegated legislation to be able to assess that.

The report refers to the committee raising many issues with local government. However, local government then sees the committee as a thorn in the side of good governance of local government. It undertakes a long and arduous process of drafting and gazetting local government laws. Those laws then come before the Joint Standing Committee on Delegated Legislation, which determines whether they would apply to their relevant

area, such as the cats local law. The community is then under the impression that the committee is obstructionist and is trying to prevent good local government. One difficulty experienced by the committee is that it is constrained by the feedback from and capacity to assist local governments in that area. Certainly, the committee is cognisant that the responsibilities, requirements and expectations on local government are more and more about transparency. The delegated legislation committee then places restrictions on these local government processes because of the way in which parliamentary privilege works. The committee's concerns over the past year are outlined in the report.

Although the Joint Standing Committee on Delegated Legislation is seen as a dry committee, its report is a short and interesting one that members might want to take account of. It contains issues that will concern them in their relationship with local government. It will also assist them when this house is considering legislation that refers to regulation. For example, this house will be considering the Approvals and Related Reforms (No. 4) (Planning) Bill 2009 in the near future and many provisions in that bill relate to regulation. Much of what will occur will become a regulatory process and will have an impact on the community. We need to know that the community will have some input to ensure that the regulations do not place them in a cumbersome bureaucracy. They must be given the capacity to have some input to ensure that the regulations are commonsense and practical applications. I commend the report to the house.