

Joint Standing Committee on Delegated Legislation — Third Report — Annual report 2022 — Motion

Resumed from 11 October on the following motion moved by Hon Lorna Harper —

That the report be noted.

Hon STEPHEN PRATT: It is a pleasure to stand today to talk about this report. After revisiting the report—of course, it goes back to 2022—the key takeaway is that if anyone is interested in the activities of the Joint Standing Committee on Delegated Legislation or how it works, the report clearly outlines the committee’s structure and form and provides some really good examples of some of the work that it undertakes. I will not go through the process of thanking all my colleagues on the committee, but I point out that in being a joint standing committee, it consists of members of both houses of Parliament, which is a good feature of the committee; it is nice to work with colleagues from the other house for a change.

This report, as I mentioned, outlines the activities the committee undertook from 1 January to 31 December 2022. On page 3 of the report, members can see a table that presents a clear picture of the committee’s undertakings in that period. The instruments the committee looked at across the year had quite a heavy emphasis on those published in the *Government Gazette* such as regulations, by-laws and local laws made by local government. They comprise the bulk of the committee’s work. There are also examples of some of the other items dealt with by the committee. Before I go into some of those, the executive summary of the report spells out the role and function of the committee—that is, to scrutinise the instruments made under statutory delegation by the Governor in Executive Council, ministers, statutory bodies and local governments. During my time on the committee, the largest proportion of items that we dealt with were local government local laws.

The hardworking committee staff closely analyse the wording and other features of the instruments that are presented to us, and the committee determines whether they are within the power of the authorising primary legislation or otherwise in breach of the committee’s terms of reference, which are also outlined in the report. In this reporting period, 329 instruments were gazetted, including 163 regulations, 99 local laws and 26 rules. Disallowance motions are used as a last resort. Often a PNOM—a protective notice of motion—is placed on the Council’s notice paper for disallowance. Members will be aware of this because, on occasions, they would have seen Hon Lorna Harper stand to move that they be removed from the notice paper. On other occasions, other members of the committee have undertaken this role. Often this is done prior to the last day for disallowance. The relevant organisation or body will have given the committee an undertaking to amend, for example, the local law that the committee has issue with. The committee will then move to remove the disallowance motion from the notice paper. I am not sure whether members have wondered why that happens from time to time. At times, the notice paper has a lot of disallowance motions listed. Hon Lorna Harper will stand and seek the Council’s approval to remove them.

During this reporting period, there were 24 undertakings from local governments to amend their local laws. That is 24 occasions on which an issue was identified, often with the wording of the local law because of drafting errors. These are identified and the committee alerts the local authority. The committee hopes that in the time provided, it is able to give an undertaking to amend the local law. Ten of the undertakings facilitated amendments to ensure that local laws were within the power of the Local Government Act 1995. The committee also obtained undertakings to correct drafting errors, which are often picked up under the scrutiny of our advising officers.

Page 2 of the report—the page that contains a lovely picture of me and my committee colleagues—goes through the process of the committee. The committee, through the chair, writes to the relevant minister or local government president or mayor and further information is requested by the committee, and the committee requests an undertaking when issues are identified.

Page 3 of the report contains an acknowledgement of the work of the Department of Local Government, Sport and Cultural Industries and the Western Australian Local Government Association for their assistance. They play a key role in these processes in providing guidance on template local laws so that local government authorities do not have to come up with them out of thin air. They can use these templates to assist with the drafting, which will eventually provide some consistency in the local laws presented.

As I mentioned, the table on page 4 provides a clear breakdown of the work of the committee during this time frame. Although some people would say that the subject matter is a bit dry, having served on the committee for this period, I clearly understand the important role that it plays and the impact it has on the citizens of Western Australia at both the local and state level. We need our laws to be consistent and drafted correctly so they can have the desired effect.

I will expand on some of the examples provided in the report. On page 9, members can see an example of cat local laws for cats in places that are not public. The example is the Town of Bassendean Cats Local Law 2021. Members can see the process that the committee went through in looking at that, as well as examples from the City of Kwinana and the City of Fremantle. That provides a bit of a snapshot of the large volume of local laws associated with the management of cats in the community. We can see that different local government authorities have made strong

representations about their efforts to try to make clear laws and give clear guidance to their communities on how they want to see cats treated across their jurisdictions.

Another example is property local laws, and paragraph 4.31 on page 12 identifies some issues. The bold type on page 13 refers to prohibiting mobile phone use in change rooms. I think everyone can understand why that would be instated. It also refers to the responsibilities of users of a community facility, including thoroughfares in smoke-free areas. The report goes on.

This report is from 2022, so it is a bit difficult to recall all the discussions that took place around some of these issues. It is a good report in that it highlights the work that we on the committee do and the important role that the committee plays. I will continue my remarks later.

Hon PIERRE YANG: I also stand to make a contribution on the third report of the Joint Standing Committee on Delegated Legislation, titled *Annual report 2022*. I think I made a contribution during the last sitting when this report came up for debate. From memory, it was in March. A lot of issues with the nature of regulations and local council by-laws came up for the Joint Standing Committee on Delegated Legislation to deal with, as the report correctly points out. Local councils are an important part of our democracy. Local councils provide that first line of communication for ratepayers and residents of a locality and are the decision-makers in that locality.

All members in this place, I am sure, have dealt with local councillors at different times in the past. Hon Shelley Payne, Hon Stephen Pratt and I have served as local councillors in the past. It is important to note that, as we speak, we are having local council elections. It is important that we encourage everyone we come across to participate in their local council election. I spoke with someone very recently about their local council election and they said that they were not too sure whom they were going to vote for because they did not know any of the candidates. I encouraged that person to read the statements from the candidates so that they could make an assessment as to whom they wanted to support. Obviously, local council elections are not mandatory. That means that people who choose not to vote will not face a fine after the election, unlike federal and state elections and referenda.

However, it is important to note that democracy is precious. Many people in many countries around the world would die to have what we have. It is important that we encourage everyone to vote.

Hon Nick Goiran: Honourable member, I don't think the fine is very big, actually. I don't think the fine to not attend is very big, actually.

Hon PIERRE YANG: Does the member mean in state and federal elections?

Hon Nick Goiran: Yes. I think it is quite small.

Hon PIERRE YANG: The member may have a view on whether the fine is small or big, but I think the principle is that we have democratic elections that are free and fair, and it is important that we acknowledge that and encourage people to participate.

In other countries, such as the UK and the US, elections are not mandatory and people choose not to participate. Therefore, candidates from different parties or factions running in those elections sometimes get fewer than 50 per cent of the votes but are declared the winner of the election. Our system is slightly different. We have a mechanism to encourage people to participate. We have proportional representation in the upper house of this state Parliament, and it is in other state jurisdictions. In the jurisdictions of Queensland and the two Australian territories, there is no upper house. In the Tasmanian Parliament, the electoral system is the other way around, as opposed to the rest of the country. However, these are important mechanisms that let people have a say. I would encourage everyone to participate in their local council elections, irrespective of the fact that no fine is attached to not participating. There are a number of days left to vote. Saturday is the last day. In many local councils, people can go to their local civic centres to cast their vote in person so they do not lose their vote.

Hon Dr Steve Thomas: Only about 10 or 12 of them. The rest are postal only.

Hon PIERRE YANG: I think people can still go to their local council to provide it in their postal ballot so they do not have to wait for the postal system to transport their vote and so that their vote can be counted.

I found it was really interesting to read in the report about the various local laws and the cat situation in those jurisdictions, but I will not spend too much time on that, as Hon Stephen Pratt has already talked about it. What I find very interesting is the part of the report that refers to the inconsistency between section 2.10 of the Local Government Act and the City of Stirling Meeting Procedures Local Law 2021.

Clause 4.5(6) of the City of Stirling Meeting Procedures Local Law 2021 requires that notices of motion must receive the prior written agreement of either two ward members or a ward member and the presiding member. Clause 5.5(6) imposes the same requirement of written notices before a councillor can table a petition. Clause 7.13(1)

prevents councillors from criticising previous council or committee decisions. As articulated in this report, the committee found that those clauses were inconsistent with the role of local government councillors.

I apologise. Hon Peter Foster also served as a local councillor prior to being elected to this place. I just talked about different members who have a local government background. I apologise to Hon Peter Foster for omitting that fact and I want to correct the record.

As I mentioned, the committee found that those clauses of the local laws were inconsistent with the role of councillors as articulated in the Local Government Act. In particular, the report states —

- Clause 4.5(6) is inconsistent with section 2.10(a) as it contemplates that councillors represent the interests of all residents in the local government district, not just their Ward.
- Clause 5.5(6) is inconsistent with section 2.10(c) on the same basis as clause 4.5(6).
- Clause 7.13(1) is inconsistent with section 2.10(d) by preventing councillors from validly criticising previous Council or committee decisions.

These are very interesting situations. I think the committee has rightly pointed out the inconsistencies. The Local Government Act and the role of councillors shall be upheld.

Hon AYOR MAKUR CHUOT: I stand to speak on the third report of the Joint Standing Committee on Delegated Legislation entitled *Annual report 2022*. I am standing here speaking for the first time on the delegated legislation committee report and I would like to acknowledge the chair, Mr Geoff Baker, MLA, and, of course, my parliamentary colleague Hon Lorna Harper. I also want to acknowledge Stuart Aubrey and Hon Stephen Pratt and Hon Steve Martin, who are also my colleagues. Hon Martin Pritchard and Christine Tonkin are also on the committee. I also acknowledge the staff of the committee: Alex Hickman and Sophia Simpson.

I want to talk a little bit about this important committee and give a summary of what it does. It does a lot of important work in making sure that it scrutinises instruments made under statutory delegation by the Governor in Executive Council and by statutory bodies and local governments on behalf of Parliament. The committee also determines whether the instruments are made within power of the authorising primary legislation or otherwise in breach of the committee's terms of reference, which is really important. This committee report is for the period between 1 January 2022 and 31 December 2022.

I would also like to give a little bit of a summary of what the committee has done. It has actually done a lot of work. There were 329 disallowable instruments published in the *Government Gazette*. I could list most of them, which is fantastic. The committee actually does a lot of work. Of the instruments, 163 were regulations; four were by-laws made by the executive; 99 were local laws made by local government, which is very important; 26 were rules; 37 were other instruments referred, including planning schemes, orders, codes, notices and plans; 13 were notices of motion for disallowance given; and 17 were motions to disallow discharged. I can see that there were zero hearings held by the committee. There were 24 instruments for which undertakings were provided to the committee to amend the instrument and three instruments for which undertakings were provided to the committee to repeal the instrument. There was also one report tabled, and zero disallowance reports tabled. As I am summarising this, I can see that a lot of work and incredible stuff was done by the committee.

Many things have been done by the committee. I will focus only on one thing that really stood out to me, which is something that all of us would really appreciate as members of Parliament as well as the public: the issues in local laws. I will speak particularly on the public disclosure of confidential committee correspondence. Confidentiality is very important. When someone from the community gets their first job or goes to hospital with a personal record, they really appreciate that their information is kept confidential. I really appreciate what this committee does to make sure that everybody in those sectors is protected by confidentiality.

I will read out one thing from the committee. It states —

All Committee correspondence to the Mayor or President of local government councils contains the following confidentiality warning:

This correspondence including any attachments is confidential and privileged.

I have said before that this is something that is very important. It continues —

Your local government may only discuss the content of this letter and any attachments with the Western Australian Local Government Association, the Department of Local Government and the Shire's legal advisors to the extent necessary to obtain information the Committee seeks. Each person to whom you distribute this material must be made aware of its confidential and privileged status.

Again, I would like acknowledge the wonderful and very important work of the committee. Someone would want to be in the position whereby confidentiality is privileged and protected.

Underneath paragraph 4.3 of the report, it states —

14. Unauthorised Disclosure

A person shall not, without the authority of the Council or a Committee, disclose or publish —

- (a) a document submitted to the Council, where the Council has ordered that document not be made public;
- (b) any private or in camera evidence received by a Committee;
- (c) *any material produced by a Committee*; or
- (d) any deliberation of a Committee.

I feel that is a very great thing that the committee does and I am really honoured to be speaking for the first time on this report. I can see that the committee does a lot of work, including outlining the responsibilities of users of community facilities. As a mother and a community member, it is a very tough decision to make because we never know what can happen in public bathrooms. Somebody might need to make an emergency phone call if something has happened to them. At the same time, we need to protect those vulnerable community members who might find themselves in that situation. The report states —

A person while in the administration centre or a community facility, shall not —

- (1) use a mobile phone, camera or other similar recording device in a change room ...

We would assume that normal people would not do that; they know they cannot take pictures of people in those areas. I feel that this is another way of protecting people who find themselves in that situation or environment. We are very lucky in Australia in that there are always people around in most of the centres. I am sure that most of the public bathrooms have an emergency button that can be pressed to call for help to ensure people's safety.

Another interesting thing that the committee looked at related to responsibilities of users of a community facility.

Consideration of report postponed, pursuant to standing orders.