

**CITY OF GOSNELLS BUSH FIRE BRIGADE LOCAL LAW 2023 — DISALLOWANCE**

*Motion*

Pursuant to standing order 67(3), the following motion by Hon Lorna Harper was moved pro forma on 14 September —

That pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the City of Gosnells Bush Fire Brigade Local Law 2023, published in the *Government Gazette* on 9 June 2023 and tabled in the Legislative Council on 13 June 2023 under the Local Government Act 1995, be and is hereby disallowed.

**HON MARTIN ALDRIDGE (Agricultural)** [6.01 pm]: I want to double-check. I understand from discussions behind the chair that Hon Matthew Swinbourn and I will be the only members contributing to this motion.

**Hon Dr Brad Pettitt** interjected.

**Hon MARTIN ALDRIDGE**: Okay. I was not made aware of that, and time has been allocated for the speakers.

**Hon Dr Brad Pettitt**: I don't need to.

**Hon MARTIN ALDRIDGE**: Okay, we will move on.

**The PRESIDENT**: Order! Perhaps a discussion could take place behind the chair while the honourable member is speaking.

**Hon MARTIN ALDRIDGE**: I rise to indicate that the opposition will be supporting the recommendation of the Joint Standing Committee on Delegated Legislation today. Obviously, members will have had an opportunity to consider the fourth report of the joint standing committee that I think succinctly outlines the three separate grounds on which a disallowance should be supported. There is one matter that relates to contravention of the Local Government Act and two that relate to the Bush Fires Act.

What was probably not clear to readers of the report was the extent to which there was communication between the City of Gosnells and the Joint Standing Committee on Delegated Legislation. The decision to disallow would not necessarily turn on this issue, but in terms of procedural fairness, I assume that the city would have been provided an opportunity to respond to the committee, and I understand from my engagement with the city that that was the case. Obviously, it is not uncommon for parties to offer a contrary or, indeed, competing view to that of the committee. Certainly, from my engagement with the City of Gosnells, I recognise that it has a different view from that of the committee as outlined in its fourth report.

By comparison, if we were to compare a similar report from 2019, when the Joint Standing Committee on Delegated Legislation in its sixteenth report reported on the City of Rockingham Bush Fire Control and Bush Fire Brigades Amendment Local Law 2018, the committee included in the appendix correspondence to and received from the City of Rockingham, and actually incorporated into the content of the report the competing arguments between the committee and the local government at that time. I say this as constructive feedback. Perhaps that may be a way of enhancing reports like this in the future.

It is fair to say that local governments are having some difficulty with bush fire brigade local laws. If we look at the committee's report, we see that numerous undertakings are made by local governments to the joint standing committee about bush fire brigade local laws. It would appear that some have made the same errors that have been articulated in this report, particularly with a skeletal approach being taken to the preparation and gazettal of local laws on bush fire brigades. There appears to be a preference for administrative guidelines or operating procedures for such local laws, contrary to the requirements of section 62 of the Bush Fires Act. On that point, I am aware that there are certain consultants, I guess, for want of a better term, who are assisting local governments from time to time with the preparation of local laws who certainly appear to be recommending a minimalist approach be taken and, indeed, are advocating against the adoption of model laws as prepared and proposed by, for example, the Western Australian Local Government Association through its model law.

The consequence of disallowance must be understood. At this point, I thank the Department of Local Government, Sport and Cultural Industries for the briefing that I received on Tuesday on this issue, facilitated by the Minister for Local Government. The consequence of disallowing this local law will result in the City of Gosnells having no local law. Members should be aware that this will not just mean that the city will roll back to a previous version; it will actually have no local law following the passage of this disallowance. That is problematic. We are facing a very difficult and impending fire season; in fact, it is already well and truly underway. The legal consequence of having no local law should be understood. Certainly, this is something that came to the attention of the sector in late 2022—I think it was actually on New Year's Eve—when it was identified by legal advisers in the Department of Fire and Emergency Services and on the advice of the State Solicitor's Office that nine local governments were operating in Western Australia at the time without a bush fire brigade local law. I asked a question in question time today.

That number has only reduced to six. In about 15 minutes' time, I assume that number will grow to seven because the City of Gosnells will not have a bush fire brigade local law.

There are a number of issues, not least of which is that DFES and WALGA are in agreement that based on independent legal advice, without a valid local law in this respect, there will be no legal validity to bush fire brigades, nor indeed the powers or protections afforded to their members. That is a matter of significance. There are probably other statutory implications. Just one that I will bring to members' attention is the application of the Road Traffic Code in Western Australia. Effectively, when someone is operating an emergency vehicle, which is defined in the Road Traffic Code as a vehicle of a fire brigade, they have certain exemptions. If they are sounding an alarm or have a flashing beacon on their roof that is red or blue in colour, they have certain exemptions under the Road Traffic Code of Western Australia. Those six, soon to be seven, local governments that do not have a bush fire brigade local law effectively do not have a bush fire brigade or bush fire brigade members. I think there are other legal consequences to this issue, which we have known about for nearly 12 months now, with respect, and I think there needs to be a greater and more urgent understanding of these consequences, particularly in the season that we now face. A workaround appears to have been confirmed by the Western Australian Local Government Association. Further advice was provided by the Minister for Emergency Services and the Department of Fire and Emergency Services via the Minister for Local Government to me following my briefing, which is that as long as a brigade and bush fire brigade members are directed by a properly appointed fire control officer, that would provide some protection because they are effectively carrying out the task directed by a fire control officer under the act. There are significant practical barriers in providing a bush fire brigade and bush fire brigade members that are instructed and directed by a fire control officer with the legal protection that they would otherwise have been afforded if they were a bush fire brigade or a member of a bush fire brigade under a local law and under the Bush Fires Act and other acts. That includes powers to enter property, take water and direct other persons and, as I said, it has exemptions to the enforcement of the Road Traffic Code.

It is interesting that this workaround with fire control officers is an issue that we are discussing now because this was one of the issues that the City of Gosnells has been taken to task over. Its local law does not provide for the appointment, remuneration, termination or regulation of fire control officers. It begs a question that remains unresolved. In question time today, the government confirmed that fire control officers can be validly appointed notwithstanding a local government not having a local law, yet one of the reasons that the City of Gosnells is being taken to task by the Legislative Council today is that it did not regulate, or provide for in its local law, the provision for the appointment of bush fire control officers. That issue needs to be reflected upon. Noting the time, I will let other members contribute.

**HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary)** [6.11 pm]: I rise to give the government's response to this disallowance motion. From the outset, I indicate that the government will support the motion, as is the convention when the Joint Standing Committee on Delegated Legislation puts forward a consensus report of this kind. In the last sitting week, the Joint Standing Committee on Delegated Legislation tabled its report that identified several issues with the City of Gosnells Bush Fire Brigade Local Law. The local law lacked several critical details that are necessary for the laws to operate effectively. The Bush Fires Act 1954 sets out the requirements for the scope of bush fire brigade local laws. That was the topic of a 2019 report by the delegated legislation committee. The City of Gosnells local law also attempts to contain critical aspects of the local law within policy documents that the CEO of the local government could subsequently revise at will without the same oversight from either the Council or Parliament. The committee found that is contrary to the Local Government Act 1995, which provides that local laws can be amended only via the proper lawmaking process. The issues identified by the committee are substantial and would potentially result in the local law being ultra vires and invalid. Accordingly, the government supports the committee's recommendation to disallow the City of Gosnells Bush Fire Brigade Local Law 2023.

**HON DR BRAD PETTITT (South Metropolitan)** [6.12 pm]: Apologies for the confusion earlier. Hon Dr Brian Walker is unwell and unable to be with us. He contacted my office and asked whether I could quickly rise to speak to give some perspective on this matter. He and his office have been liaising with the City of Gosnells on this issue for some time. He would like to be here to speak to it. I have a long letter that I will not read, noting the time, from the City of Gosnells. It is worth quickly highlighting its response broadly. I am happy to table this letter if that is appropriate to do at this point.

**The PRESIDENT:** Honourable member, do you seek leave to table the document?

**Hon Dr BRAD PETTITT:** I do, but I seek some clarification. I have only an electronic version at this point, but I can certainly find a way to table it.

**The PRESIDENT:** If the member would like to continue his contribution, I will seek advice on that.

**Hon Dr BRAD PETTITT:** The letter is from the director of business services at the City of Gosnells to Hon Dr Brian Walker. Fundamentally, to get to the heart of it, the letter states —

**Extract from *Hansard***

[COUNCIL — Wednesday, 29 November 2023]

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Hon Martin Aldridge; Hon Matthew Swinbourn; Hon Dr Brad Pettitt

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The City fundamentally disagrees with the Committee's position on issues that must be addressed in a Bush Fire Brigade Local Law. The City will make a new local law but is unlikely to shift its position on the appointment, employment, payment and dismissal of Bush Fire Control Officers or the inclusion of Brigade Operating Procedures in its local law.

It sounds like there is an impasse on this. There are a range of reasons given for this. I do not pretend to be an expert on this. Given that this is a significant issue for the city, it is appropriate, if it is possible, to table this letter.

**The PRESIDENT:** On the question of tabling the letter, you cannot table something that you physically do not have. You may take the opportunity to print the document and seek leave at another time, including during members' statements, to table that document if you wish.

Question put and passed.