

**40TH PARLIAMENT**



**Report 9**  
**JOINT STANDING COMMITTEE ON DELEGATED**  
**LEGISLATION**

*Shire of Chittering Repeal Local Law 2017*

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Presented by  
Ms Emily Hamilton MLA (Chair)  
and  
Hon Robin Chapple MLC (Deputy Chair)  
March 2018

## **Joint Standing Committee on Delegated Legislation**

### **Members as at the time of this inquiry:**

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Mr Ian Blayney MLA

Ms Elizabeth Mettam MLA

Mrs Robyn Clarke MLA

Hon Robin Chapple MLC (Deputy Chair)

Hon Kyle McGinn MLC

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Hon Charles Smith MLC

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## EXECUTIVE SUMMARY

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- 1 The Joint Standing Committee on Delegated Legislation (Committee) is of the view that the Shire of Chittering (Shire) did not follow the mandatory sequential procedure in section 3.12 of the *Local Government Act 1995* (Act) when it made the *Shire of Chittering Repeal Local Law 2017* (Local Law).
- 2 The procedure in section 3.12 required the Shire to publish Statewide public notice of its intent to make the Local Law and notify the Minister for Local Government of its intent to make the law.
- 3 The Committee finds that the level of compliance does not constitute substantial compliance with the law-making procedure outlined in the Act.<sup>1</sup>
- 4 Failure to comply with the steps in section 3.12 of the Act renders the Local Law invalid as it offends Committee Term of Reference 10.6(a) in that it is not '*within power*' of the Act.

### Recommendations

**Findings and recommendations are grouped as they appear in the text at the page number indicated:**

#### RECOMMENDATION 1

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The Committee recommends that the *Shire of Chittering Repeal Local Law 2017* be disallowed.

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<sup>1</sup> In order to address minor deficiencies in the procedure rendering local laws invalid, in 2015 the Parliament amended section 3.12 of the Act to insert subsection (2A). The invocation of this section can remedy some procedural defects in the making of laws if the law-making procedure has been substantially complied with.



## 1 Reference and procedure

- 1.1 On 7 July 2017 the *Shire of Chittering Repeal Local Law 2017* (Local Law) was published in the *Government Gazette*.
- 1.2 Upon gazettal, the Local Law stood referred to the Joint Standing Committee on Delegated Legislation (Committee). Once the Local Law was tabled in the Parliament, it became an instrument that may be subject to disallowance.

## 2 Statutory procedure for making a local law and non-compliance with the *Local Government Act 1995*

- 2.1 Local governments are empowered to make laws to enable them to perform their functions under the *Local Government Act 1995* (Act).<sup>2</sup>
- 2.2 The procedural steps necessary for a local government to make a local law are highly prescriptive and mandatory as set out in section 3.12 of the Act.
- 2.3 This process includes the following requirements as set out in section 3.12:
  - Publication of a Statewide public notice that the local government proposes to make a local law and the purpose and effect of that local law.<sup>3</sup>
  - As soon as the notice is given, the local government must give a copy of the proposed local law and a copy of the Statewide public notice to the Minister for Local Government.<sup>4</sup>
- 2.4 The Committee's position on the status of invalidly-made laws arising from non-compliance with the procedure in section 3.12 of the Act is well established and documented in previous reports.<sup>5</sup> The Committee is of the view that where a local government does not comply with the mandatory sequential procedure set out in section 3.12 of the Act, and this cannot be excused pursuant to section 3.12(2A) of the Act, the law is beyond power and invalid.

## 3 Confusion between local law making process and local law review process

- 3.1 The Committee first scrutinised the Local Law at its meeting on 9 October 2017.
- 3.2 The *Statutory Procedures Checklist* accompanying the Explanatory Memorandum for the Local Law indicated that the necessary procedural steps were taken by the Shire of Chittering (Shire). An analysis of the supporting documentation indicated that there were procedural deficiencies.
- 3.3 At its meeting on 15 February 2017 the Shire Council discussed its intention to initiate Local Planning Policy No. 5 relating to Signs, Hoardings and Bill Posting. The Council minutes

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<sup>2</sup> *Local Government Act 1995* s 3.5.

<sup>3</sup> *ibid.*, s 3.12(3)(a)(i).

<sup>4</sup> *ibid.*, s 3.12(3)(b).

<sup>5</sup> For example, Parliament of Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 42, *Shire of Capel Keeping and Welfare of Cats Amendment Local Law 2009 and Shire of Koorda Standing Orders Local Law 2009*, 16 September 2011, and Report 45, *Shire of Kellerberrin Dogs Local Law*, 3 November 2011 and, Report 72, *Shire of Shark Bay Local Government Property Amendment Local Law 2014*, 21 August 2014.

indicate that along with the adoption of a new Local Planning Policy, the Shire's Council was requested to commence the process to repeal local laws relating to signs, hoardings and bill posting.

3.4 To repeal a local law, a local government must follow the section 3.12 process to make a local law that repeals the existing law.

3.5 The Council minutes from the 15 February 2017 meeting indicate:

Council is also requested to commence the process to repeal the *Signs, Hoardings and Bill Posting 1993* local law. A separate report will be presented to Council following the 50 days of public consultation to complete the repealing process.

In reviewing a local law the Shire must comply with the provision of Section 3.12 of the *Local Government Act 1995*. The *Local Government (Functions and General) Regulations*, Regulation 3 states that for the purpose of Section 3.12(2) of the Act, the person presiding at a Council meeting is to give notice of the purpose of the local law by ensuring that the purpose and effect of the proposed local law is included in the agenda for that purpose and that the minutes of the meeting of the Council includes the purpose and effect of the proposed local law.<sup>6</sup>

3.6 However, the Shire Council did not resolve to make a proposed local law to repeal the '*Signs Hoardings and Bill Posting 1993* local law', rather it passed the following resolution:

That Council:

1. resolves to commence the review process of the *Shire of Chittering By-Law relating to Signs, Hoardings and Bill Posting* (gazetted 20 August 1993) in accordance with the *Local Government Act 1995, Section 3.16*.

3.7 A review of a local law under section 3.16 of the Act is different to making a local law to repeal an existing law.

3.8 A review of a local law is conducted by the local government pursuant to section 3.16 of the Act. That section requires local governments to conduct a review of each local law within eight years from when it was made.<sup>7</sup> The local government is required to advertise a notice of its review and call for submissions about the local law.<sup>8</sup> After receiving a report from the local government, the local government's Council may determine whether or not it considers that the local law should be repealed or amended.<sup>9</sup>

3.9 After a review, should a local government wish to repeal or amend a local law, it is required to follow the usual law-making procedure set out in section 3.12 of the Act to pass a repeal or amendment local law.

3.10 The Committee concludes therefore that the Shire erred in confusing a review of a local law under section 3.16 with the making of a repeal local law under section 3.12. This led to deficiencies in the section 3.12 process.

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<sup>6</sup> Shire of Chittering, Minutes for Ordinary Meeting of Council, 15 February 2017, p 43.

<sup>7</sup> *Local Government Act 1995* s 3.16(1).

<sup>8</sup> *ibid.*, s 3.16(2).

<sup>9</sup> *ibid.*, s 3.16(4).

## 4 Deficiencies in the Statewide public notice

- 4.1 The Shire provided the Committee with a copy of its Statewide public notice purporting to express its intention to make a proposed local law. This is extracted at Appendix 1.
- 4.2 The Statewide public notice is titled, '*Review of the By-laws Relating to Signs, Hoardings and Bill Postings*'. It invites submissions from the public on the by-laws. However, the public notice does not meet the requirements contained in section 3.12(3)(a)(i) of the Act in that it does not give notice that the local government proposes to make a (repeal) local law.
- 4.3 Consequently, it failed to follow the required steps in 3.12 of the Act by failing to signal its intent to repeal the *Shire of Chittering By-Law Relating to Signs, Hoardings and Bill Posting* in the Statewide public notice.

## 5 Deficiencies in the letter to the Minister regarding the proposed law

- 5.1 The Shire also provided the Committee with a copy of its letter to the Minister for Local Government dated 2 March 2017, which contained the resolutions from the Council's meeting on 15 February 2017. This letter is extracted and appears at Appendix 2.
- 5.2 In its letter the Shire refers to a '*Review of By-laws relating to Signs, Hoardings and Bill Posting*' and provides a copy of the Statewide public notice to the Minister.
- 5.3 Section 3.12(3)(b) of the Act requires that, when providing a Statewide public notice to the Minister for Local Government before a local law is made, the local government must also supply a copy of the local law. The letter from the Shire does not indicate that this was provided to the Minister for Local Government.
- 5.4 The Committee is of the view therefore that the Shire failed to follow the required steps in section 3.12 of the Act by failing to supply the Minister for Local Government with a copy of a proposed local law along with a copy of the Statewide public notice made for that purpose.

## 6 Was there substantial compliance with section 3.12 of the Act?

- 6.1 The Committee notes that recently enacted section 3.12(2A) of the Act provides that:

Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure. [emphasis added]
- 6.2 The Committee considered whether the level of compliance in this law-making process constituted substantial compliance.
- 6.3 The Committee is of the view that the Shire failed to substantially comply with the law-making procedure contained in section 3.12 of the Act. The Committee finds that failure to provide notice to the public and the Minister for Local Government of its intent to repeal a local law (rather than a mere review of a local law) is a critical error and may have resulted in stakeholders not being heard in relation to a change in the local laws. Consequently, the Committee is of the view that the Shire did not substantially comply with the law-making procedure.

## 7 Conclusion

7.1 Committee Term of Reference 10.6(a) states:

In its consideration of an instrument the Committee is to inquire whether the instrument is ... within power.

7.2 The Local Law is invalid by reason of non-compliance with section 3.12 of the Act. It offends Term of Reference 10.6(a). The Committee therefore recommends to the Legislative Council that the Local Law be disallowed.

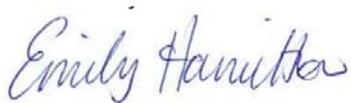
7.3 There are a number of benefits in recommending disallowance of invalid local laws, including ensuring that they are quickly removed from the public record thereby reducing the risk of public misinformation.

## 8 Recommendation

8.1 The Committee makes the following recommendation.

### RECOMMENDATION 1

The Committee recommends that the *Shire of Chittering Repeal Local Law 2017* be disallowed.



Ms Emily Hamilton MLA

**Chair**

## APPENDIX 1

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### STATEWIDE PUBLIC NOTICE RELIED UPON BY THE SHIRE OF CHITTERING



**INVITATION FOR PUBLIC COMMENT**

**REVIEW OF THE BY-LAWS RELATING TO SIGNS, HOARDINGS AND BILL POSTING**

At the Ordinary Meeting of Council held on 15 February 2017 Council resolved a motion to review the following local law:

- By-laws relating to Signs, Hoardings and Bill Posting

The **PURPOSE** of the By-law relating to Signs, Hoardings and Bill Posting is to provide for the regulation, control and management of signs within the district in support of the Shire of Chittering Town Planning Scheme provisions.

The **EFFECT** of the By-law relating to Signs, Hoardings and Bill Posting is to establish the requirements with which any person seeking to erect a sign within the district must comply and the means of enforcing those requirements.

The local law is available for inspection at the Shire of Chittering Administration Centre, 6177 Great Northern Highway, Bindoon during office hours. The local law is also available on the Shire's website ([www.chittering.wa.gov.au](http://www.chittering.wa.gov.au)).

**Deadline for public comments 4pm (WST) on Friday, 21 April 2016**  
Submissions on this document may be made in writing and sent to:  
Shire of Chittering  
PO Box 70  
BINDOON WA 6502  
Submissions may also be lodged via email to [chatter@chittering.wa.gov.au](mailto:chatter@chittering.wa.gov.au) with the subject line to read "Review By-Law Relating to Signs, Hoardings and Bill Posting".

**Further information**  
Contact Peter Stuart, Senior Planning Officer by email on [chatter@chittering.wa.gov.au](mailto:chatter@chittering.wa.gov.au) or telephone (08) 9576 4600.

**Alan Sheridan**  
Chief Executive Officer

[Source: *The West Australian*, 1 March 2017, p 90]

## APPENDIX 2

### THE SHIRE OF CHITTERING'S LETTER TO THE MINISTER FOR LOCAL GOVERNMENT

OUR REF: 01780861, 19/04/0004, 18/06/3  
Enquiries to: Peter Stuart, Senior Planning Officer



ABN 48 445 751 800

6177 Great Northern Highway  
PO Box 70 Bindoon WA 6502  
T: 08 9576 4600 F: 08 9576 1250  
E: chatter@chittering.wa.gov.au  
www.chittering.wa.gov.au

2 March 2017

Hon Paul Miles MLA  
Minister for Local Government  
2 Havelock Street  
PERTH WA 6005

Dear Minister

#### NOTIFICATION OF COUNCIL RESOLUTION 070217 Initiation of Local Planning Policy No.5 'Signs, Hoardings and Bill Posting'

At the Ordinary Meeting of Council held on 15 February 2017 Council resolved the following:

9.1.4 OFFICER RECOMMENDATION/COUNCIL RESOLUTION 070217  
Moved Cr Rossouw / Seconded Cr Gibson  
That Council:

1. resolves to commence the review process of the Shire of Chittering By-Law relating to Signs, Hoardings and Bill Posting (gazetted 20 August 1993) in accordance with the Local Government Act 1995, Section 3.16.
2. resolves to initiate the Local Planning Policy No. 5 - Signs, Hoardings and Bill Posting.
3. in accordance with Clause 2.4 of the Shire of Chittering's Town Planning Scheme No 6, publish a notice of the proposed Policy once a week for two (2) consecutive weeks in a newspaper circulating in the Scheme Area, giving details of the following:
  - a. Where the draft Policy may be inspected;
  - b. The subject and nature of the draft Policy; and
  - c. In what form and during what period (being not less than 21 days from the day the notice is published) submissions may be made.
4. pursuant to Clause 2.4 of the Shire of Chittering's Town Planning Scheme No 6, after the expiry of the period within which submissions may be made, all submissions will be tabled at the next available Council Meeting for its consideration.
5. refer the draft Local Planning Policy No. 5 – Signs, Hoardings and Bill Posting to Main Roads WA for comment.

THE MOTION WAS PUT AND DECLARED CARRIED 7/0  
BY AN ABSOLUTE MAJORITY  
7:58 PM

Office hours:  
Monday to Friday, 8.30am - 4.30pm

Accordingly the Shire advertised statewide and local public notice on 1 March 2017 (extracts attached).

Deadline for comments on the two documents are as follows:

- (1) Proposed Local Planning Policy No 5 'Signage' – **4pm on Tuesday, 28 March 2017**
- (2) Review of the By-laws relating to Signs, Hoardings and Bill Posting – **4pm on Friday, 21 April 2017.**

If further information is required please do not hesitate to contact Peter Stuart, Senior Planning Officer by email at [chatter@chittering.wa.gov.au](mailto:chatter@chittering.wa.gov.au) or telephone (08) 9576 4600.

Yours faithfully



**Jim Garrett**  
**Acting Chief Executive Officer**

Enc: Council Resolution 070217  
Statewide and Local Public Notice, 1 March 2017

CC: Attorney General, Department of Local Government  
Commissioner, Road Safety Commission  
Hon Liza Harvey MLA, Minister for Police; Road Safety

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# Joint Standing Committee on Delegated Legislation

## Date first appointed:

15 June 2017

## Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

### '10. Joint Standing Committee on Delegated Legislation

- 10.1 A Joint Standing Committee on Delegated Legislation is established.
- 10.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chair must be a Member of the Committee who supports the Government.
- 10.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 10.4 (a) A report of the Committee is to be presented to each House by a member of each House appointed for the purpose by the Committee.
- (b) Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House's consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.
- 10.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 10.6 In its consideration of an instrument, the Committee is to inquire whether the instrument -
- (a) is within power;
  - (b) has no unintended effect on any person's existing rights or interests;
  - (c) provides an effective mechanism for the review of administrative decisions; and
  - (d) contains only matter that is appropriate for subsidiary legislation.
- 10.7 It is also a function of the Committee to inquire into and report on -
- (a) any proposed or existing template, *pro forma* or model local law;
  - (b) any systemic issue identified in 2 or more instruments of subsidiary legislation; and
  - (c) the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary legislation that has yet to be published.
- 10.8 In this order-
- "instrument" means -
- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
  - (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
- "subsidiary legislation" has the meaning given to it by section 5 of the *Interpretation Act 1984*.



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