

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Integrity in Local Law making

Presented by

Ms Emily Hamilton MLA
Chair

Hon Robin Chapple MLC
Deputy Chair

2019 WALGA Convention
Perth Convention and Exhibition Centre
9 August 2019



Agenda

1 Committee's Purpose & Role

2 Integrity in Local Law making

3 Undertakings & Disallowance

4 Requirements of Local Laws

5 Past Issues

6 Questions



What is Delegated Legislation?

Act of Parliament

E.g. Local Government Act 1995

- An Act of Parliament can give authority to a person or body to make legislation about certain issues.

Delegated Legislation

E.g. Local Laws

Examples of Delegated Legislation:

- Local Laws
- Regulations
- Codes
- Planning Schemes

Committee's Role

- The Committee reviews delegated legislation
- The Committee can recommend that Parliament disallow the delegated legislation, if it offends any of the Committee's Terms of Reference



Committee Terms of Reference

- Must be authorised by the 'Parent' Act
- Must follow procedure set out in the 'Parent' Act.

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.

Must be not take away existing rights (e.g. a licence already granted by a previous Local Law, freedom of reasonable communication).

Must not remove access to the Courts or judicial review.

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.

Delegated legislation should only be used to 'supplement' the general framework provided by an Act.

Review Process

Local Law published in the Gazette



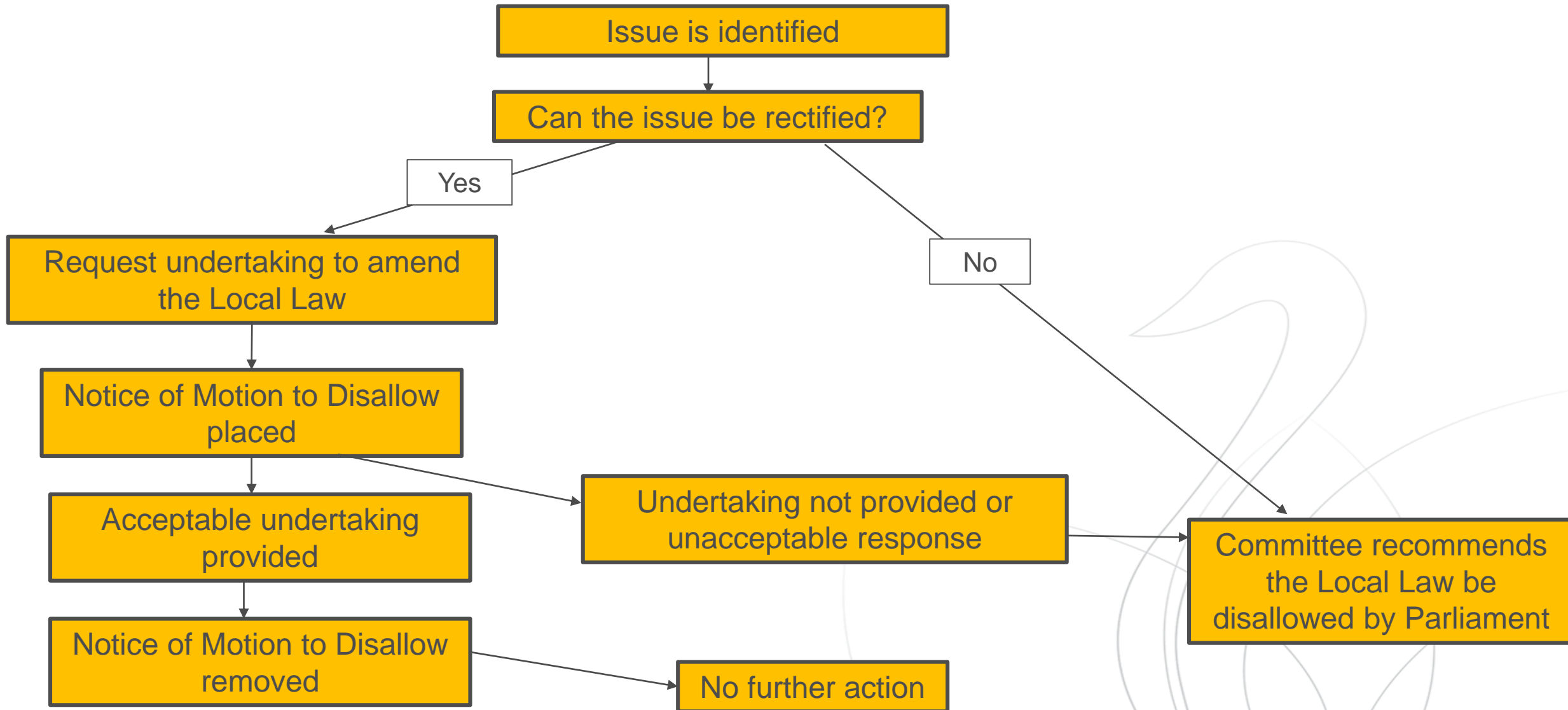
Tabled in Parliament within 6 sitting days
after published in Gazette



Local Law reviewed by Committee



Reviewing Local Law – Committee Process



Disallowance Process

Must be given within 14 sitting days of Local Law being tabled

Report tabled prior to question of disallowance being put to Parliament

Debated a maximum of 17 sitting days after the Notice of Motion is moved

Within 21 days of disallowance

Notice of Motion to Disallow

- Can be discharged at any point up until when disallowance is voted on
- Usually used as a protective measure

Report Tabled

- Sets out the issues identified and the recommendations of the Committee

Question of disallowance put to Parliament

- Historically, Parliament has followed the recommendations of the Committee

Local Law no longer in force

- If disallowed - no longer in force

Notice of Disallowance published in Gazette

- Published within 21 days of disallowance

Requirements of Local Laws

Within Power of Parent Act

Must not legislate beyond the power of the Act

Made following the correct procedure

Follow the Statutory Checklist exactly as required

Correct references

Check references to other Acts and cross-references to other clauses in the Local Law are current and correct

Reasonable

Should not remove any existing rights

Necessary

The Local Law should not overlap with another law

Appropriate Penalties

Should be adequate, but not excessive - in general, breach of Local Law should have similar impact from Council to Council

Clear, consistent language

People must be able to ascertain what their obligations under the Local Law are

Accessible

Local Law and all material referred to in the Local Law must be freely accessible to the public

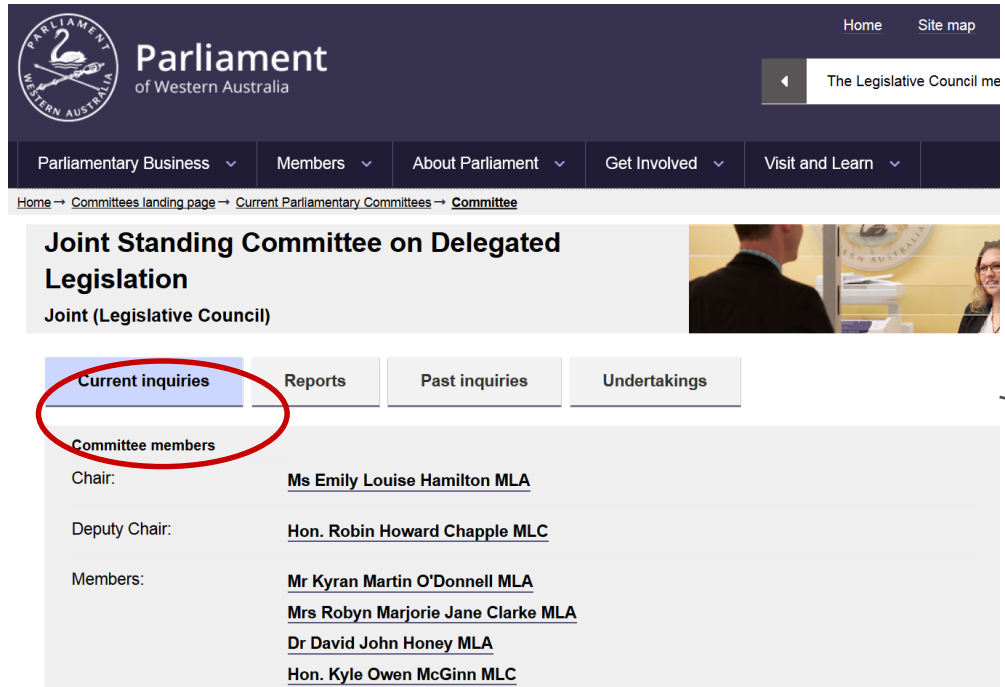


Past Issues

- Year given to the Local Law
- Incorrect cross-referencing
- Access to Standards
- Outdated references
- Procedure not followed
- Repeat punishment
- Pre-emptive punishment
- Unreasonable requirements
- Dealing with matters administratively rather than by Local Law
- Typographical/proof-reading errors



Website Resources



Parliament of Western Australia

Home Site map

The Legislative Council me

Parliamentary Business Members About Parliament Get Involved Visit and Learn

Home → Committees landing page → Current Parliamentary Committees → Committee

Joint Standing Committee on Delegated Legislation

Joint (Legislative Council)

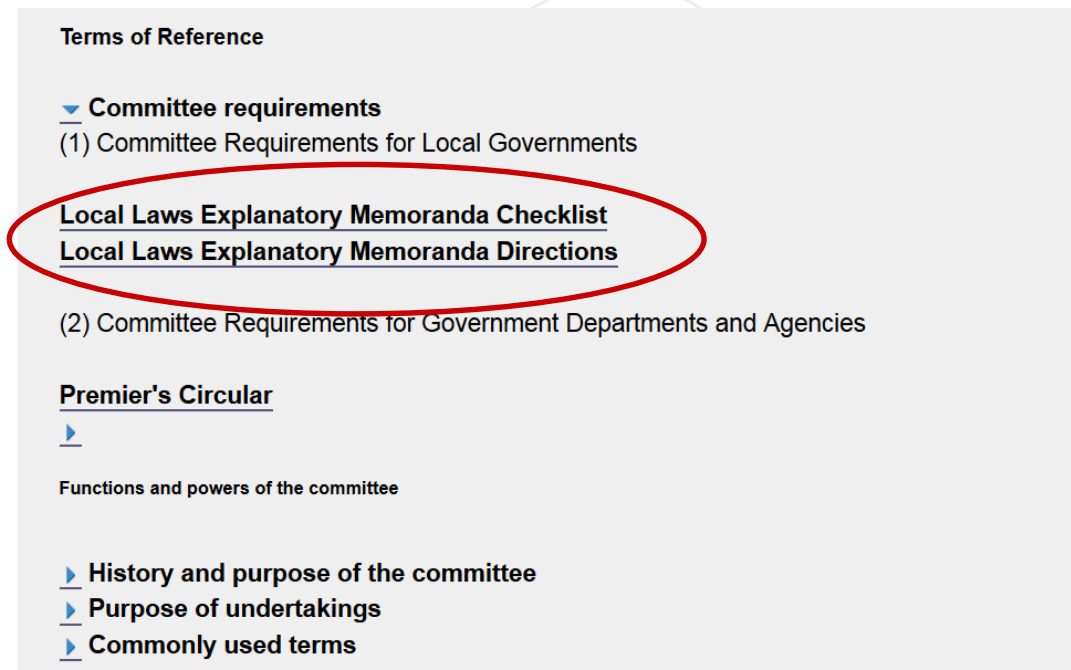
Current inquiries Reports Past inquiries Undertakings

Committee members

Chair: [Ms Emily Louise Hamilton MLA](#)

Deputy Chair: [Hon. Robin Howard Chapple MLC](#)

Members: [Mr Kyran Martin O'Donnell MLA](#)
[Mrs Robyn Marjorie Jane Clarke MLA](#)
[Dr David John Honey MLA](#)
[Hon. Kyle Owen McGinn MLC](#)



Terms of Reference

- ▼ **Committee requirements**
 - (1) Committee Requirements for Local Governments
 - Local Laws Explanatory Memoranda Checklist**
 - Local Laws Explanatory Memoranda Directions**
 - (2) Committee Requirements for Government Departments and Agencies

Premier's Circular

- ▶

Functions and powers of the committee

- ▶ **History and purpose of the committee**
- ▶ **Purpose of undertakings**
- ▶ **Commonly used terms**

Questions?

