

**JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION**

CITY OF PERTH CODE OF CONDUCT LOCAL LAW

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH,
WEDNESDAY, 8 MAY 2002**

SESSION 1

Members

**Ms Quirk (Chairman)
Hon Ray Halligan (Deputy Chairman)
Hon Ljiljana Ravlich
Hon Robin Chapple
Hon Alan Cadby
Mr Sweetman
Mr Watson
Mr Waldron**

Committee met at 9.50 am

FOWLER, MR TIM,
Principal Legislation Officer,
Department of Local Government and Regional Development,
Perth, examined:

The CHAIRMAN: On behalf of the committee I welcome you to the meeting. You signed a document entitled "Information for Witnesses". Have you read and understood that document?

Mr Fowler: Yes, I have.

The CHAIRMAN: These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote for the record the full title of any document to which you refer during this hearing. Please be aware of the microphones and try to talk into them and ensure that you do not cover them with papers or make noise near them. I remind you that the transcript will become available for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public or media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Would you like to make an opening statement to the committee?

Mr Fowler: I am pleased to be here today to help the committee with its inquiry into this rather difficult issue. The whole issue of council behaviour and the concept of tribunals and so on to control councillors is a difficult one. It will certainly test everyone's ability to handle it. The City of Perth has had particular problems and has decided to launch into something itself. The State Government has for a long time tried to deal with the issue of whether to make laws in this very vexed area. I can give some information about that later when we get to the questions.

The CHAIRMAN: For the record, we have provided you in advance with a copy of some questions that we want to canvass with you today. You mentioned in your opening statement that the City of Perth had some problems; what do you perceive them to be?

Mr Fowler: Most of those problems about the relationships of some councillors and some groups have probably been well documented in the Press. The problem of factions within local government is nothing new and the City of Perth has that problem from time to time. I suspect that it has responded to some concerns it has had in recent times.

Hon LJILJANNA RAVLICH: Following on from that, there seems to be a general trend of more councils getting into difficulties, for instance South Perth, Wanneroo, Cockburn and Gosnells. Is there a general view that there has been a drop in the standard of behaviour of council members; and, if so, what is driving that drop? Is there an increase in the factionalisation of councils and do they have an increased political role, or is there anything that you can put your finger on that may be the cause of increasing problems in a number of councils?

Mr Fowler: I have been in the department since 1980 and over that time problems of this sort have come and gone; they tend to go in cycles. I do not believe anything has happened now that is particularly greater than other circumstances that I have seen before. Often it depends on the personalities of the people involved; sometimes those people move on and things settle down.

Hon ROBIN CHAPPLE: They usually become politicians!

The CHAIRMAN: I will ask some general questions about codes before we go to specific questions. Are you able to tell the committee the intention of including codes of conduct in section 5.103 of the Local Government Act 1995?

Mr Fowler: The whole project of rewriting the Local Government Act, which started in the late 1980s and went through to the early 1990s, took the best part of 10 years. In the 1990s some local governments off their own bat started to adopt codes; however, some did not. The Western Australian Local Government Association - previously called the Western Australian Municipal Association - produced its own code and councils were encouraged by the department to adopt it. However, some councils at the time dragged their feet a bit and did not adopt it. It was decided when the new Act was put together that we would include a provision to require all local governments to adopt the code. The view at the time was that we would give the head of power for regulations to provide for a uniform code, but for the time being allow local governments to adopt the WALGA code or other variations that they believed were appropriate to their own circumstances. That is how the concept of section 5.103 came to be in the Act. The approach at that stage was fairly low key to require them to have a code but essentially to leave the content at that stage to local governments.

The CHAIRMAN: The committee is concerned with that question. You said that at that time it was considered appropriate for each council to have a specific code of conduct and that you left it up to the councils?

Mr Fowler: We left the content to the industry in the hope that councils would follow the WALGA model. However, we were making a law that said they had to have a code. It was like other provisions that went into the Act, such as the requirement for an annual report. Most councils prepared annual reports but some did not. It was unfortunate that we had to make a law stating that councils had to prepare an annual report. However, some of the 142 local governments throughout the State were dragging their feet on issues like that. Therefore, the concepts of strategic planning, preparing an annual report and complying with a code of conduct were mandatory provisions that went into the Act.

The CHAIRMAN: Was it your expectation that all councils would go to the model code, if they could?

Mr Fowler: The WALGA code appeared to be one of the best documents around at the time but I am sure some councils could have improved on it; however, it was left to the industry to sort that out for itself.

The CHAIRMAN: What is your understanding of the nature of a code of conduct?

Mr Fowler: A code of conduct usually deals with behavioural issues. Quite often it contains motherhood-type statements that are general in nature, such as concepts of honesty and integrity which, at the time for behavioural issues of that sort, were thought best placed in a code.

The CHAIRMAN: Was that really what was envisaged in those so-called motherhood statements and general statements of principle, rather than a more prescriptive statement?

Mr Fowler: That was the driving concept when section 5.103 was put together. However, right across the Act we knew that the local law making power we were giving local governments was extremely wide. At that time there was nothing in our view to prevent a local government from moving some of those matters into a local law in their standing orders if they believed it appropriate for their own administration.

Hon ROBIN CHAPPLE: Was there not a fear that giving local authorities that prescriptive level of power would give them the right to prescribe anything?

Mr Fowler: The Government of the day was concerned about issues of that sort when the Bill was first introduced into Parliament. It was decided that on balance the Government would go for a wide power but some checks and balances would be put into the legislation. One of those was the ability to make regulations to limit the powers of local governments in some areas. Therefore, rightly or wrongly, the view was taken that local governments were given a wide power but if there were problems with that, the State could make regulations to rein in some of these problems.

The CHAIRMAN: I want to talk about section 5.103 of the Local Government Act 1995, with which you are familiar. That section permits regulations to be made to prescribe the content of, and matters in relation to, codes of conduct. What regulations have been made in that regard?

Mr Fowler: Only one set of regulations has been made and I believe it was gazetted in April 1999. The regulations dealt with gifts that councils and staff might receive in the course of their business and what we call non-financial interests; that is, interests that might affect a person's impartiality to deal with an issue, such as being a member of a club or something of that sort. Therefore, provisions were put into the Act to require councils to include those two aspects in their code. Of course, we were aware that codes of conduct include a range of other matters, but the Government decided at that time that it would require those two matters to be included in the code.

The CHAIRMAN: Was there anything that prompted that occurring at that time?

Mr Fowler: I think at the time the outcome of the Royal Commission into the City of Wanneroo was the driving force for some of those changes. Some of the recommendations of the Wanneroo royal commission dealt with behavioural problems and the view of the Government at that time was to move that issue into the code.

The CHAIRMAN: Are any further regulations contemplated at this time?

Mr Fowler: Ultimately, further regulations would be a matter of government policy. In the meantime we are reviewing the Local Government Act right across the board and although I am unaware of any specific changes proposed, there is always the likelihood that something like that might come out of further work of the department.

Hon LJILJANNA RAVLICH: Did you see the City of Perth's local law code of conduct; and, if so, did you have any concerns about it?

Mr Fowler: In the middle of last year the City of Perth wrote to the Minister for Local Government and Regional Development advising him that it intended to provide for a code to be reflected in a local law. At the time the city supplied a version of the code which appeared to be similar to the WALGA code. The response was that the more the city was doing to improve behavioural problems on the ground in its own local government so much the better. We encouraged the city to make those advances and sort out its own problems in its own house, if it could. That occurred therefore and later in the year the city proposed a local law which, under the Act, it was required to put out for public comment. At that time the local law was sent to our department. We in the department, with the resources we have, run a system essentially to ensure that councils comply with the statutory requirements for making a law. We therefore concentrate our resources on ensuring that the right procedures have been followed. The main area of concern is that councils put out their codes of conduct for public comment in their districts so that the people there can see them and make comment on them. There is therefore community involvement in the whole issue within a district, recognising that one of the principles with which we are dealing in the Act is autonomy for local governments to do their own thing in their own districts.

[10.00 am]

That is one of the guiding principles that has always been in place. Most of our focus is on the procedure. The extent to which we have people in our department to go through the detail of every local law is governed by time that an officer has available. At this stage we have only half of one officer's time to go through the laws. At the moment we are mainly seeking to ensure councils are giving people in their own districts an opportunity to look at the laws themselves. The laws will impact on their own districts and it is critical that they have that opportunity. We know that the City of Perth uses a firm of solicitors to prepare all its local laws. Some local governments do not do that. Some country councils use their officers to knock together local laws and do not get any legal advice. At least we know that the City of Perth has some legal advice and uses lawyers to draft its proposed local laws. In the great scheme of things we normally expect the City of Perth to write laws that follow good drafting principles and remain within power etc. At the time, in the light of all our other workload, we would not have looked to a great extent at the content of the City of Perth law. We were aware that the City of Perth intended to adopt a code that was similar to the industry code. So at that point, due to our workload, we probably would not have analysed it further. I would like to have more people on staff to do that sort of thing but we operate within limited resources.

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Hon LJILJANNA RAVLICH: You said that it was your view that this is within power. However, some pretty heavy penalties are imposed under clause 6.2(4). If your view is that it is within power and it must be dealt with by a motion to disallow in the Parliament, does that not promote a fairly inefficient process? Would it not be better to tighten the requirements up-front by getting the template code right and limiting the power of councils, for example, to impose such heavy penalties rather than waste the Parliament's time on a disallowance motion because a by-law is unreasonable? The issue has arisen of whether parts of this regulation are ultra vires and there is concern about whether this is an efficient process. Is the work of the department not being foisted onto the Parliament to deal with delegated legislation inefficiencies?

Mr Fowler: In my earlier statement, I said that we understood the City of Perth had its own team of lawyers who could look at whether a local law was within power. I did not mean to imply that we had come to the view that it was necessarily within power. Certainly the issue Hon Ljiljanna Ravlich raised about some of the penalties in the local law, which the tribunal can deal with, appear to be questionable. I have no doubt that when you interview officers from the City of Perth you will ask why they feel that those things are within power. From a look within the department at the local law, I am keen to get more information from the City of Perth on two or three penalty issues. We do that in the normal course of departmental operations when something that has been brought to our attention is questionable and we want more information. I appreciate that the Parliament has the Standing Committee on Delegated Legislation, which has a function to perform within its own terms of reference and you are obliged to follow up matters.

Essentially, difficulties with local governments testing the boundaries of the local law-making powers is not new. Over many years the department's resources for looking at this issue have been limited, as have the committee's resources. As more resources are provided for looking at these matters the greater the number of questionable issues we might pick up. At the end of the day we must come back and reflect on what is the main subject here that councils are trying to deal with. Traditional areas of local law making were delegated decades ago, such as parking control or control of what people do on reserves and things of that sort. Councils need to have laws in those traditional areas. In many cases they have difficult laws to deal with practical issues on the ground. At the end of the day if councils write laws that allow for loose interpretation, which the courts cannot interpret properly when they try to get prosecution, the department's view is that it is a problem for the council. If it is not getting its local law quite right and not policing a matter that it wants to police, it must fix it and deal with it. It is all part of the autonomy of local governments to deal with those matters themselves. Although the department is available to provide advice and general assistance, when the 1995 Local Government Act came into operation it was generally accepted - these concepts are reflected in statements that previous chairpersons of this group have made in the past - that the new deal would be for local governments to be armed with that autonomy to be responsible for these matters. Part of the department's plan was to join with the Western Australian Local Government Association and produce model local laws to help them confine their local laws to the main traditional areas.

The CHAIRMAN: I think you said earlier that draft No 1 by the Perth City Council and draft No 2 differed radically and you effectively said that the council then did a different version.

Mr Fowler: That was not the point I was making. I said that the code itself, which is a separate document, appeared to be much the same. No council had seen its proposed local law until it was produced in about October. They then adopted the code to be part of the document that goes with the local law. Information on how the penalties would work was not available until they produced the law and put it out for public comment.

The CHAIRMAN: I think you said earlier that your resources are very limited and effectively half a person has responsibility for scrutinising local laws. Is that person legally qualified?

Mr Fowler: No.

The CHAIRMAN: I think you also said that to some extent, because that person has a lot to do, if a council has lawyers preparing its local laws they may well have less scrutiny because of the implication that they are done thoroughly because a reputable legal firm has prepared the laws?

Mr Fowler: That would influence the amount of time we might put into looking at a law. In the last financial year approximately 370 of them came through the department. We probably deal with more laws than the committee does because we deal with those that never become a local law. They are put out for public comment as a proposed local law but are not gazetted. Probably about a quarter or more local laws never see the light of day because if, when the council has put out a law for comment, feedback indicates that perhaps people do not want it, the council does not go ahead with it. The number of local laws the department deals with is higher than the number that this committee deals with.

Hon ROBIN CHAPPLE: Given that this code of conduct local law does not include the code of conduct, is it not dangerous for a law to prescribe to a code of conduct that might be changed from time to time to virtually anything?

[10.15 am]

Mr Fowler: We share your misgivings about councils adopting other documents that are not part of the law and that do not go through the proper scrutiny. However, when the Act was put together we acknowledged in the provisions dealing with the making of local laws that local laws can adopt codes and standards and other types of documents, which has generally been the case for a long time. As you might know, Australian standards exist and local laws and subsidiary legislation will often adopt Australian standards to provide the specific detail about a particular matter. Other codes, such as the building code of Australia, are adopted by local government legislation. That document exists and would not be scrutinised by this committee; it would not come here. Various pieces of legislation exist that adopt codes and Australian standards and so on. Due to the practical nature of what you are dealing with, you often need to do it that way.

Hon LJILJANNA RAVLICH: The members investigation committee is dealt with in paragraph 3.2 and contemplates members of these committees and persons engaged by them. What difficulties can you see, if any, with resourcing the investigation committee if other local governments adopt the local law, particularly country local governments? Clearly, resource implications arise out of this local law, and at the end of the day they will affect ratepayers because those costs will be passed on. Firstly, does the department have a role in regulating or whatever; and, secondly, what problems can you see arising as a result of that provision?

Mr Fowler: Initially the department would like to see local government sort out its own internal problems on the ground and deal with its local difficulties, because they are many and varied right throughout the State of Western Australia, varying with the size of local governments such as the City of Perth through to the Shire of Murchison which might have two staff. We identify the need for flexibility. The City of Perth has produced this detailed arrangement for dealing with behavioural problems and so on, and what it has produced might be quite suitable for that council and how it needs to deal with its problems. It would be unlikely that country local governments would go for something as high-powered as that; I do not think they would believe it was worthwhile. As you say, the issue of costs and a range of other issues might mean they would want to go for something slightly more streamlined when they look at the issue. The concept of a local law to deal with behavioural issues and codes of conduct is on the agenda of WALGA to look at, and in due course it will deal with it. A number of models have been produced over the past few years and a lot of country local governments will wait and see what the industry produces through WALGA, with departmental involvement, and may be more inclined to go for something of that sort. Many country councils often say that even those are much too high-powered and are produced for metropolitan local governments and do not necessarily reflect a simple arrangement for the country.

The CHAIRMAN: Have you heard of any other councils being interested in adopting this particular local law?

Mr Fowler: No. It has been gazetted only in the past few weeks. Local governments will be reading it with interest. There is always the danger that some might go away and adopt it by reference, and if it has difficulties and problems, the sooner they are ironed out the better.

The CHAIRMAN: Obviously there are sanctions for doing certain things within the Local Government Act itself. Was it contemplated when codes of conduct were first implemented that specific sanctions would be implemented for breaches, or was it contemplated that they would provide more of a guideline?

Mr Fowler: The whole concept of a code is that it is a non-legislative type of document dealing with issues that are often hard to convert into prescriptive law, because when you start to make laws about the behaviour of individuals it becomes quite subjective. When the concept of a code was put into the Act, we were dealing with a more generalised type of document, but councils could go away and make specific laws about specific matters if they wanted to and put them into their own local laws.

The CHAIRMAN: The Local Government Act regime was such that, as a general principle, these are the standards that we would expect for councils across the State. That was more the notion, rather than pinging individuals for local infractions of local laws.

Mr Fowler: Some local governments have provisions in their standing orders that are prescriptive. For example, it is traditional to have something that says that where a matter is confidential within a council meeting that confidentiality shall be preserved. I guess, if a councillor breaks confidentiality, that is a type of behavioural problem. That specific matter has been there for a long time. The local law contains an offence provision, and if from time to time councillors break that confidentiality requirement, people initially go to local government to take some action about it. I guess they can institute proceedings, if they want to, or take a councillor to task about that. If people do not find that works they come to our department and ask us to do something to make the local government follow its own law.

The CHAIRMAN: Perhaps I did not put that as succinctly as I should have. There are certain basic standards - some general principles - that the Department of Local Government and Regional Development and the Government as a matter of policy would want all local governments to comply with; that is, councillors attending meetings, councillors declaring their pecuniary interests, councillors not having conflicts of interest and so forth. One would hope they would apply across the board.

Mr Fowler: That is right. The Act contains specific things that require local governments to perform certain tasks, and the expectation would be that they should do them. We have inspectors who move throughout the State and respond to complaints about local governments. They conduct small inquiries into certain complaints, and if there are transgressions of that sort councils would be asked to comply with the Act.

The CHAIRMAN: In other words, you would hope standards apply across the State. Accordingly, there may be special local conditions where a council might have to make some minor adjustments to these general standards, but there should not be a need to be prescriptive about a range of issues; it should have been covered by those overriding principles.

Mr Fowler: If you are wanting to legislate for everything that might exist out in communities where local governments are involved, the laws would be far too big. Obviously, we have left local law-making with local government. Only one regulation I am aware of prevents a local government from making a particular local law, and that is the one that applies to Cottesloe that prevents it charging people to visit the beach and for beach parking. Since the Act has come into operation it has never produced any other specific limit.

Hon LJILJANNA RAVLICH: Do you think the current law is too wide and the Local Government Act should be amended so that the power of local councils is somewhat limited? When looking at the sections that can be used, it is clear that different factions within a council might employ certain tactics or provisions to alter the voting structure, for example. Looking at section 6.24, apart from the fact that one of the sanctions might be to prohibit a member using the dining room - you would never get away with that in Parliament - there would be a limitation on the use of council equipment, the payment of any allowances etc. However, you could get the case of a councillor being prohibited from taking part in a debate other than by recording his or her vote at any specific meeting or meetings of the council or a committee. A council could move in such a way in its voting as to basically silence a member who happened to be very vocal - Perth City Council has probably seen a bit of that anyway, without going into too much detail. There may not be a good case for the department to move to amend or limit the power of these councils to impose such sanctions by amending the parent Act.

Mr Fowler: One of the problems experienced for many decades was that it adopted the principle that councils could only do those things that were mentioned in the Act. That meant that hundreds of pages of specific things anticipated what a local government might want to do. Of course, each year we were preparing amendments to the Local Government Act, which would extend operational-type matters as far as the general community was concerned that local governments would normally be expected to deal with, but because the Act did not actually mention that a council could manage a community centre or a theatre or something of that sort, we would amend the Act to give it the power to provide that type of service. As time went by and new things happened, the legislation had to be changed. Every year a local government amendment Bill would be dealt with to amend these things. When the Act was reviewed the view was taken that this was a far too cumbersome arrangement and it was better - rightly or wrongly - to give local governments more general powers, and if the State was concerned about what local governments were doing it could then use the regulation-making power to rein them in in some way. We have usually found with local governments that where there has been a concern about a matter being somewhat over the top and non-traditional, that in liaising with them and the officers involved, they normally appreciate the problems and back away from that issue and go ahead and do something else.

The CHAIRMAN: Earlier you gave evidence about regulations for the content of codes of conduct, in relation to gifts and a couple of other matters. Are any sanctions provided if individuals breach those regulations?

Mr Fowler: We have not prescribed any sanctions under the Local Government Act, but local governments always have the ability to make local laws.

The CHAIRMAN: That would be consistent with the notion that was adopted at the time, that codes of conduct were not supposed to pose penalties and were more for guidance.

Mr Fowler: The driving principle at the time was that those sorts of behavioural issues were best placed in a code, but it was not intended that councils be reined in with local law-making in that area, because we did not put a limit in there. The Local Government Act contains sections where we have said that a council cannot make a local law about a particular thing.

The CHAIRMAN: Section 3.8 of the Local Government Act reads, in part -

(1) A local law made under this Act may adopt the text of -

...

(c) any code, rules, specifications, or standard issued by the Standards Association of Australia or by such other body as is specified in the local law.

Would you agree that that section contemplates codes from an external source, rather than its own code?

Mr Fowler: Certainly, when we were putting that legislation together, at the time that it was drafted, we were anticipating that that would be an outside code.

The CHAIRMAN: Thank you. I will ask a couple of questions on the complaints tribunal, before I see whether my colleagues have anything else. Are you currently looking at setting up a tribunal or other body to deal with complaints of misconduct in local government?

Mr Fowler: That would be a matter of government policy, but I can say that the minister has asked the department to prepare some draft proposals and options on the concept of a statewide tribunal to deal with behavioural problems. At this stage I am not quite sure where that policy development will go, but the minister has asked the department to provide advice on it.

The CHAIRMAN: Do you know whether that proposed body will deal with breaches of codes of conduct?

Mr Fowler: I cannot give the committee any definite information until that policy development occurs, but the whole area confronting everyone is the issue of codes of conduct. I would think that it would need to address that area.

The CHAIRMAN: Has the department had representations from any individual or body in relation to these particular City of Perth local laws?

Mr Fowler: Does that refer to complaints?

The CHAIRMAN: I refer to complaints or representations from individuals or bodies about this law.

Mr Fowler: We have received, I think, one request from one state member of Parliament for some information about it. My last look at the file only threw up for me that one inquiry about this local law.

The CHAIRMAN: We are conscious of the time, so we will not keep you much longer. Are there any other questions from the committee?

Hon ROBIN CHAPPLE: How can your office and the State Government possibly rein in wayward local governments when your department does not look at the substance of local laws?

Mr Fowler: The department certainly wants to look at the substance of the local laws. That is pretty much a resources issue. At the moment, I am hopeful that extra resources will be given to the department to assist it in looking at those issues. The Act has been in operation for the past five years. Initially, most local governments were adopting the models, which were prepared in a combined arrangement between the Western Australian Local Government Association and the department. We were all generally comfortable with the content of those models, and most local governments have been following them. However, there seems to have been a trend in the last year or so for some local governments to start deviating from the models, and to come up with other types of laws. This matter does need to be attended to, and the department will be responding with additional resources to look at it.

Hon ROBIN CHAPPLE: If the department gets the resources, are you telling the committee that the Department of Local Government will start reviewing local government laws in their entirety, to ensure their compliance?

Mr Fowler: We will still have to deal with them within the resources we have. The State Government has a view that local governments are autonomous bodies and essentially their local law making is for them to deal with, but the State certainly does need to keep an eye on the types of things that are happening. If things are happening out there that are against good government, the department will need to find a way of dealing with them. The department writes a whole range of advisory documents as well, including guidelines for local governments, to steer them in particular directions. It is a very large problem, dealing with 142 local governments of different shapes and sizes with only 50 people, half of whom would be corporate services people. It has always been a

small agency. At the moment it has been amalgamated with regional development, and has taken on another 30 or so people, but they are essentially dealing with regional development issues. This is nothing new - it has been a problem for decades - in a small local government department and a very large system of local government. It will always be a difficult issue. I cannot give the committee any guarantees that no situations will occur, even with our additional resources, that require further action.

Mr SWEETMAN: In your observations since 1980, have you seen any situation in any of those 142 shires, which the president and the council could not handle under the current act at the standing order available to them? I am asking this to be put in perspective.

Mr Fowler: The department has handled those problems in the past by preparing panels that go out to local governments and have sessions with the councillors to try to get them to work together. We have an advisory role, in which we go throughout the State, and where particular problems occur, panels including industry peers and departmental officials will go out and meet with those local governments. They will hold a general chat session to try to get down to the problems on the ground. Often, these issues are dealt with at that level, and that is enough to overcome those personality problems or difficulties. Often, new councillors do not understand how the system works, so it is an education process for them. Each year a weekend advisory session for new councillors is held in Perth to help them understand the principles and how local governments operate. Many proactive things are happening behind the scenes, which are not very well advertised or documented, where the department is working to minimise problems. These things have been occurring for some time, and are part of the department's ongoing programs. When councils feel that they have been through that process and it has not worked, they might need to get heavy, and deal with other ways of handling the problem.

Mr SWEETMAN: One of my observations, when I was in local government, was that councillors did not have a roving commission. They could not just walk through the offices and run an inquisition in each of the agencies to find out what was going on. They had more access to what was happening within the council. Under the new Act, there is something akin to the separation of powers between the administration and the elected representatives on council. There are many things that councillors cannot do now in relation to the administration, even down to the employing of senior staff in many situations. There seems to me to be a bit of an irony in all this, because a lot of this is driven by the administration, in trying to bring to heel some delinquent councillors from time to time. I do not think this is quite right, because on the one hand the administration has been able to enjoy some protection and immunity from the workings and deliberations of council, but on the other the administration is also trying to be prescriptive in trying to hobble, and bring to heel the councillors. That is looking at it from the outside, at the differences between the situation 10 to 15 years ago and the situation of today.

Mr Fowler: I can understand the view that you are putting. The new Act tried to deal with a whole range of administrative problems. One of the problems identified at the time was the difficulty of a particular councillor coming into the office premises, going directly to an officer and asking that officer to perform a particular function, without going through the chief executive officer. That has been a problem in the past, and the new Act attempted to deal with it, and provide a structure reflecting more modern management principles. That does not prevent staff and councillors getting together and organising other types of arrangements to keep a good rapport going, and councillors are encouraged to do that.

Hon ALAN CADBY: In your opening statement, you talked about the need for some councillors to be brought under control, if you like. Is self-regulation through specific codes of conduct a sensible way to go?

Mr Fowler: If we intend to look at the concept of a state tribunal to deal with problems, we could possibly get to the point at which there may need to be a uniform code of conduct throughout the

State, so that all local governments have a standard code under which they operate. When that point is reached, there will be more consistency and continuity between all those councils.

Hon ALAN CADBY: Would that include a safety net, which has been raised before, for those councillors who may be financially victimised by a powerful group within the council?

Mr Fowler: That runs into some interesting issues, because the principle of local government that we have at the moment is that the majority of the councillors determine what happens on the ground. At the moment, the majority of the councillors can, without even this local law, make decisions about limiting the access of certain councillors to particular facilities. This has been seen in relation to particular mayors who have been ostracised by councils in some areas. That issue comes back to the autonomy of the full council to deal with issues on the ground. I am not sure whether issues of that sort - about whether councils should be limited in doing those things - should go into a code. That is something that would need to be looked at further.

Hon ALAN CADBY: You would still have to think twice about going into the local council if you knew that it could break you financially, if you were not part of the ruling clique.

Mr Fowler: I can understand that people would have such concerns.

The CHAIRMAN: Thank you very much, Mr Fowler, for your cooperation and comprehensive answers. There is just one more question I would like to ask, and it requires a simple "yes" or "no" answer. Do you think that this local law is a disproportionate response to what is either a perceived or real problems in this particular council?

Mr Fowler: I sympathise with the City of Perth and other local governments that have had protracted problems, and feel they need to do something specific to deal with the problem.

The CHAIRMAN: Is that a "yes" or a "no"?

Mr Fowler: In my view, the council has come up with a method which it believes addresses its problem at this time. It could well be that the law sits there as a stick and is never used, but it is there as a stick which ultimately might be used to bring certain people to heel in a way which might overcome practical problems. One would hope they would never need to use it, but the fact that it is there could be a significant response which improves the situation on the ground. Many of the difficulties we are talking about here, about whether or not there is power to do a particular thing, may never arise. I cannot give an easy answer to that question.

The CHAIRMAN: Thank you very much Mr Fowler.