



THIRTY-NINTH PARLIAMENT

REPORT 64

**JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**

***TOWN OF VICTORIA PARK PARKING AND PARKING
FACILITIES AMENDMENT LOCAL LAW 2013***

Presented by Mr Peter Abetz MLA (Chair)

and

Hon Ljiljana Ravlich MLC (Deputy Chair)

September 2013

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Date first appointed:

28 June 2001

Terms of Reference:

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

“6. Joint Standing Committee on Delegated Legislation

- 6.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 6.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chairman must be a Member of the Committee who supports the Government.
- 6.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 6.4 (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.
- 6.5 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.
- 6.6 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.
- 6.7 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.
- 6.8 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*.”

Members as at the time of this inquiry:

Mr Peter Abetz MLA (Chair)
Hon John Castrilli MLA
Hon Peter Katsambanis MLC
Ms Simone McGurk MLA

Hon Ljiljana Ravlich MLC (Deputy Chair)
Hon Robin Chapple MLC
Hon Mark Lewis MLC
Mr Peter Watson MLA

Staff as at the time of this inquiry:

Felicity Mackie (Advisory Officer (Legal))
Anne Turner (Advisory Officer (Legal))
Stacey Martin (Committee Clerk)

Alex Hickman (Advisory Officer (Legal))
Steve Hales (Advisory Officer)

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222
lcco@parliament.wa.gov.au
Website: <http://www.parliament.wa.gov.au>
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EXECUTIVE SUMMARY AND RECOMMENDATION FOR THE
REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION
IN RELATION TO THE
TOWN OF VICTORIA PARK PARKING AND PARKING FACILITIES AMENDMENT LOCAL LAW
2013

EXECUTIVE SUMMARY

1. The Joint Standing Committee on Delegated Legislation (**Committee**) is of the view that the Town of Victoria Park (**Town**) did not follow the correct procedure when it made the *Town of Victoria Park Parking and Parking Facilities Amendment Local Law 2013* (**Local Law**).
2. In making a local law, a local government is required to follow the required procedure set out in section 3.12 of the *Local Government Act 1995* (**Act**) which includes a requirement, under section 3.12(3a), to exhibit a Statewide public notice as if it were a local public notice.
3. The Local Law is invalid as the Town failed to exhibit notice of the Local Law on a public notice board at the Town's offices or any local government library in the district. Consequently, it offends the Committee's term of reference 6.6(a) in that it is not within power of the empowering enactment.

RECOMMENDATION

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Recommendation 1: The Committee recommends that the Town of Victoria Park Parking and Parking Facilities Amendment Local Law 2013 be disallowed.

REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO THE

TOWN OF VICTORIA PARK PARKING AND PARKING FACILITIES AMENDMENT LOCAL LAW 2013

1 REFERENCE AND PROCEDURE

1.1 The *Town of Victoria Park Parking and Parking Facilities Amendment Local Law 2013 (Local Law)* published in the *Government Gazette* on 5 April 2013 falls within the definition of 'Instrument' in the terms of reference of the Joint Standing Committee on Delegated Legislation (**Committee**).

1.2 The Local Law was referred to the Committee upon its publication in the *Government Gazette*. Once a local law is tabled in the Parliament, it is an instrument which may be subject to disallowance.

2 STATUTORY PROCEDURE FOR MAKING A LOCAL LAW AND NON-COMPLIANCE WITH THE LOCAL GOVERNMENT ACT 1995

2.1 The Committee's position on the status of invalidly made local laws arising from non-compliance with section 3.12 of the *Local Government Act 1995 (Act)* is set out in a number of previous reports. This includes the fact that the procedure set out in section 3.12 is mandatory and a local law which does not follow that procedure in the order in which it is outlined will be invalid.¹

2.2 The Local Law is made pursuant to the general local government law making power in section 3.5(1) of the Act.

2.3 In making a local law, a local government is to follow the procedure set out in section 3.12 of the Act.

2.4 This process includes the requirements set out in section 3.12(3a), which provides:

(3a) A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.

¹ 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, p3; Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 45, *Shire of Kellerberrin Dogs Local Law*, 3 November 2011, p2.

2.5 Section 3.12(3)(a) provides:

(3) The local government is to —

(a) give Statewide public notice stating that —

(i) the local government proposes to make a local law the purpose and effect of which is summarized in the notice; and

(ii) a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and

(iii) submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;

2.6 Section 1.7 defines “local public notice” as:

1.7. Local public notice

(1) Where under this Act local public notice of a matter is required to be given, a notice of the matter is to be —

(a) published in a newspaper circulating generally throughout the district; and

(b) exhibited to the public on a notice board at the local government’s offices; and

(c) exhibited to the public on a notice board at every local government library in the district.

(2) Unless expressly stated otherwise it is sufficient if the notice

is —

(a) published under subsection (1)(a) on at least one occasion; and

(b) exhibited under subsection (1)(b) and (c) for a reasonable time, being not less than —

(i) the time prescribed for the purposes of this paragraph; or

(ii) if no time is prescribed, 7 days.

2.7 Therefore, if local public notice of the local law is not given, the local law is invalid and capable of disallowance.

3 SCRUTINY OF THE LOCAL LAW

Non-compliance with section 3.12(3a) of the Act

3.1 The Committee first considered the Local Law at its meeting on 19 June 2013 and requested a number of undertakings from the Town of Victoria Park (**Town**) to amend certain clauses.² A copy of this correspondence is available on the Committee's webpage.³

3.2 The Chief Executive Officer of the Town responded on 21 June 2013 and provided the undertakings sought by the Committee.⁴ A copy of this correspondence is available on the Committee's webpage.⁵

3.3 Following:

- further discussions between staff of the Committee and the Town; and
- further scrutiny of the Local Law by the Committee at its meeting of 26 June 2013,

it was noted the *Statutory Procedures Checklist* provided by the Town revealed it had not complied with the requirement in section 3.12(3a) of the Act to exhibit local public notice of the Local Law on notice boards in the Town or any local government library in the district.

3.4 This requirement is important as it assists in bringing to the attention of residents of the district changes in local laws made by the local government.

3.5 The Committee subsequently formed the view that the Local Law had been invalidly made, based on non-compliance with section 3.12(3a) of the Act and resolved to move a notice of motion to disallow it in the Legislative Council on 6 August 2013.

² Letter from Mr Peter Abetz MLA to Mr Trevor Vaughan, Mayor, Town of Victoria Park, 20 June 2013.

³ Go to:

<http://www.parliament.wa.gov.au/parliament/commit.nsf/all/E72B1759E16EF3AD4825794800070349?opendocument&tab=tab3>

⁴ Letter from Mr Athanasios (Arthur) Kyron, Chief Executive Officer, Town of Victoria Park to Mr Peter Abetz, 21 June 2013.

⁵ Go to:

<http://www.parliament.wa.gov.au/parliament/commit.nsf/all/E72B1759E16EF3AD4825794800070349?opendocument&tab=tab3>

Correspondence between Town and Committee staff

3.6 The Committee wrote to the Town with its view that the Local Law had been invalidly made on 26 June 2013.⁶ A copy of this correspondence is available on the Committee's webpage.⁷

3.7 The letter stated:

Although the error with section 3.12(3a) was noted in the Statutory Procedures Checklist, the checklist is an administrative document. The Committee's practice is to request written confirmation from the Council that a breach of section 3.12(3a) within the local law making process, has occurred.

I note that the next ordinary Council meeting is 2 July 2013. The Committee therefore requests that this matter be brought to the attention of the Council at that time and written confirmation provided by Friday, 5 July 2013.⁸

3.8 By this letter, the Committee was extending the Town the courtesy of giving it an opportunity to double check its administrative records and confirm that the Local Law had not complied with section 3.12(3a) of the Act.

3.9 The Chief Executive Officer of the Town responded on 28 June 2013, stating:

Due to the short time frame between the receipt of your letter and the Town's next Council meeting I am unable to put a report to Council asking them to confirm non-compliance with section 3.12(3a) as requested.

An item regarding the proposed amendment local law will be presented to Council at its August meeting.⁹

3.10 Subsequently, in an email from Mr Allan Lantzke, the Town's Manager for Health and Regulatory Services to the Committee's staff, sent on 23 July 2013, Mr Lantzke stated:

We will not be putting a report to Council asking them to confirm that a breach of section 3.12(3a) within the local law making process has occurred.

⁶ Letter from Mr Peter Abetz MLA to Mr Trevor Vaughan, Mayor, Town of Victoria Park, 26 June 2013.

⁷ Op.cit., n3.

⁸ Letter from Mr Peter Abetz MLA to Mr Trevor Vaughan, Mayor, Town of Victoria Park, 26 June 2013, p2.

⁹ Letter from Mr Athanasios (Arthur) Kyron, Chief Executive Officer, Town of Victoria Park to Mr Peter Abetz, 28 June 2013.

We are unsure why the Committee has requested this and don't feel that it's required.

Our current intention is to ask Council to make a new local law which will repeal and replace the Town's Parking and Parking Facilities Amendment Local Law 2013. In this way whether the local law is disallowed by Parliament or not we will be assured of having a local law which can not be challenged based on the process outlined in Section 3.12. We also have a number of other amendments which we'd like to make which can then be included.

Please let us know the outcome of Parliament's consideration of our amendment local law.¹⁰

- 3.11 The Committee's response to this correspondence from Mr Lantzke is set out in the Committee's letter to the Town's Mayor on 8 August 2013, as follows:

The Committee expects staff of a local government to tender copies of correspondence from a parliamentary committee to councillors of the local government. This is especially so when it involves the validity of a local law proposed by a council.

Staff exercising a discretion not to provide parliamentary committee correspondence is discourteous and means local government accountability to the Parliament of Western Australia is jeopardised.

The Committee draws this matter to your attention in order for you to direct your staff to the future requirement that all parliamentary committee correspondence be directed to yourself and other councillors.

.....

The Committee would appreciate your personal reassurance that the practice of not placing parliamentary Committee correspondence before councillors of the local government will be discontinued.¹¹

- 3.12 The Mayor responded in a letter dated 2 September 2013.¹²

¹⁰ Email from Mr Allan Lantze, Manager, Health and Regulatory Services, Town of Victoria Park, to Mr Alex Hickman, Advisory Officer (Legal), 23 July 2013.

¹¹ Letter from Mr Peter Abetz MLA to Mr Trevor Vaughan, Mayor, Town of Victoria Park, 8 August 2013, p1.

¹² Letter from Mr Trevor Vaughan, Mayor, Town of Victoria Park, to Mr Peter Abetz MLA, 2 September 2013.

3.13 A copy of this correspondence is available on the Committee's webpage.¹³

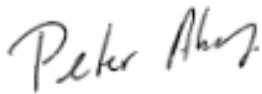
4 THE COMMITTEE'S CONCLUSIONS

Term of Reference 6.6(a)

- 4.1 The Committee has concluded that the Local Law offends its Term of Reference 6.6(a) on the basis of non-compliance with a mandatory and sequential requirement of section 3.12 of the Act. Accordingly, it is not within power of the Act.
- 4.2 The Committee has therefore resolved to recommend to the Legislative Council that the Local Law be disallowed.
- 4.3 There are a number of benefits to recommending the disallowance of invalid instruments, including ensuring that invalid laws are quickly removed from the public record and reducing the risk of public misinformation.

5 RECOMMENDATION

Recommendation 1: The Committee recommends that the Town of Victoria Park Parking and Parking Facilities Amendment Local Law 2013 be disallowed.



Mr Peter Abetz MLA
Chairman
19 September 2013

¹³ Op.cit., n3.