



THIRTY-NINTH PARLIAMENT

REPORT 72

**JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**

***SHIRE OF SHARK BAY LOCAL GOVERNMENT
PROPERTY AMENDMENT LOCAL LAW 2014***

Presented by Mr Peter Abetz MLA (Chairman)

Hon Robin Chapple MLC (Deputy Chair)

August 2014

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:

“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*.”

Members as at the time of this inquiry:

Mr Peter Abetz MLA (Chairman)

Hon Robin Chapple MLC (Deputy Chair)

Hon John Castrilli MLA

Hon Peter Katsambanis MLC

Hon Mark Lewis MLC

Ms Simone McGurk MLA

Mr Paul Papalia MLA

Hon Ljiljanna Ravlich MLC

Staff as at the time of this inquiry:

Stacey Martin (Committee Clerk)

Kimberley Ould (Advisory Officer (Legal))

Anne Turner (Advisory Officer (Legal))

Suzanne Veletta (Advisory Officer (Legal))

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

lcco@parliament.wa.gov.au

Website: <http://www.parliament.wa.gov.au>

ISBN 978-1-922047-85-4

CONTENTS

| | |
|--|----------|
| EXECUTIVE SUMMARY AND RECOMMENDATION | i |
| EXECUTIVE SUMMARY | i |
| RECOMMENDATION | i |
| REPORT..... | 1 |
| 1 REFERENCE AND PROCEDURE | 1 |
| 2 STATUTORY PROCEDURE FOR MAKING A LOCAL LAW AND NON-COMPLIANCE WITH THE <i>LOCAL GOVERNMENT ACT 1995</i> | 1 |
| 3 SCRUTINY OF THE AMENDMENT LOCAL LAW | 1 |
| Non-compliance with section 3.12(3)(b) of the Act | 1 |
| 4 CONCLUSIONS..... | 2 |
| Term of reference 10.6(a) | 2 |
| 5 RECOMMENDATION | 2 |

**EXECUTIVE SUMMARY AND RECOMMENDATION FOR THE
REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION
IN RELATION TO THE
*SHIRE OF SHARK BAY LOCAL GOVERNMENT PROPERTY AMENDMENT LOCAL LAW 2014***

EXECUTIVE SUMMARY

- 1 The Joint Standing Committee on Delegated Legislation (**Committee**) is of the view that the Shire of Shark Bay (**Shire**) did not follow the correct procedure when it made the *Shire of Shark Bay Local Government Property Amendment Local Law 2014* (**Amendment Local Law**).
- 2 In making a local law, a local government must follow a procedure set out in section 3.12 of the *Local Government Act 1995* (**Act**) in the sequence prescribed. This includes a requirement, under section 3.12(3)(b), to provide the Minister for Local Government (**Minister**) with a copy of the proposed local law and Statewide notice of the local law as soon as Statewide public notice of the proposed local law is given.
- 3 The Amendment Local Law is invalid because the Shire did not provide the Minister with a copy of the proposed local law and Statewide public notice. Therefore, the Amendment Local Law offends the Committee's term of reference 10.6(a) in that it is not within power of the empowering enactment.

RECOMMENDATION

Page 2

Recommendation 1: The Committee recommends that the *Shire of Shark Bay Local Government Property Amendment Local Law 2014* be disallowed.

REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO THE

SHIRE OF SHARK BAY LOCAL GOVERNMENT PROPERTY AMENDMENT LOCAL LAW 2014

1 REFERENCE AND PROCEDURE

- 1.1 The *Shire of Shark Bay Local Government Property Amendment Local Law 2014 (Amendment Local Law)* published in the *Government Gazette* on 18 March 2014 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 that may be subject to disallowance.
- 1.2 The Committee's position on the status of invalidly made local laws arising from non-compliance with the law making procedures in section 3.12 of the *Local Government Act 1995 (Act)* is well established and set out in previous reports.¹
- 1.3 The law making procedure set out in section 3.12 of the Act is mandatory and a local law which does not follow that procedure in the order in which it is outlined is invalid.

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

- 2.1 The Amendment Local Law is made pursuant to the general local government law making power in section 3.5(1) of the Act.
- 2.2 In making a local law, a local government is to follow the procedure set out in section 3.12 of the Act.
- 2.3 This process includes the requirement set out in section 3.12(3)(b), which provides:

The local government is to — ...

(b) as soon as the [Statewide public] notice is given, give a copy of the proposed local law and a copy of the notice to the Minister

- 2.4 Therefore, if a copy of the proposed local law and Statewide public notice is not given to the Minister for Local Government (**Minister**), the local law is invalid and should be disallowed.

3 SCRUTINY OF THE AMENDMENT LOCAL LAW

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

- 3.1 The Committee considered the Amendment Local Law at its meeting on 7 May 2014.
- 3.2 The Shire of Shark Bay (**Shire**) indicated in the *Statutory Procedures Checklist* and its Explanatory Memorandum for the Amendment Local Law that it had not complied with the requirement in section 3.12(3)(b) to give the Minister a copy of the proposed local law and Statewide public notice.

¹ For example, Parliament of Western Australia, 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 Joint Standing Committee on Delegated Legislation, Report 45, *Shire of Kellerberrin Dogs Local Law*, 3 November 2011.

- 3.3 This requirement is an important step in the consultation process for a local law as it brings to the attention of the Minister and the Department of Local Government and Communities the making of a new local law by a local government.
- 3.4 The Act is clear. Failure to forward the proposed local law and Statewide public notice to the Minister constitutes non-compliance with section 3.12(3)(b).
- 3.5 The Amendment Local Law is invalid for reasons of non-compliance with section 3.12(3)(b) of the Act.

4 CONCLUSIONS

Term of reference 10.6(a)

- 4.1 Term of reference 10.6(a) states:

In its consideration of an instrument, the Committee is to inquire whether the instrument —

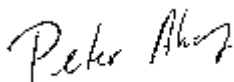
(a) is within power

- 4.2 The Amendment Local Law offends term of reference 10.6(a) on the basis of non-compliance with a requirement of section 3.12 of the Act. Accordingly, it is not within power of the Act.
- 4.3 The Committee therefore recommends to the Legislative Council that the Amendment Local Law be disallowed.
- 4.4 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

- 5.1 The Committee makes the following recommendation.

Recommendation 1: The Committee recommends that the *Shire of Shark Bay Local Government Property Amendment Local Law 2014* be disallowed.



**Mr Peter Abetz MLA
Chairman**

21 August 2014