



THIRTY-NINTH PARLIAMENT

REPORT 76

**JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**

***CITY OF GREATER GERALDTON ANIMALS,
ENVIRONMENT AND NUISANCE LOCAL LAW 2014***

Presented by Mr Peter Abetz MLA (Chairman)

and

Hon Robin Chapple MLC (Deputy Chair)

November 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 Ljiljana Ravlich MLC

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**EXECUTIVE SUMMARY AND RECOMMENDATION FOR THE
REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION
IN RELATION TO THE**

CITY OF GREATER GERALDTON ANIMALS, ENVIRONMENT AND NUISANCE LOCAL LAW 2014

EXECUTIVE SUMMARY

- 1 The Joint Standing Committee on Delegated Legislation (**Committee**) is of the view that Part 2 of the *City of Greater Geraldton Animals, Environment and Nuisance Local Law 2014 (Local Law)* must be disallowed because the Executive Director, Public Health, did not give consent prior to the making of Part 2 of the Local Law, as required by section 342 of the *Health Act 1911*.
- 2 This Local Law is somewhat unique in that while Part 2 of the Local Law, a part dealing with the keeping of animals, deals with subject matter that falls within the local law making powers in section 199 of the *Health Act 1911*, the remainder of the Local Law deals with other matters and is made under the law making power in section 3.5 of the *Local Government Act 1995*.
- 3 Hon Michael Mischin MLC, Attorney General, has advised the Committee that this consent is required under section 342 of the *Health Act 1911* for any Part of a law where the subject matter of the law falls within an area identified in section 199 of the *Health Act 1911*. The Minister for Health has advised that no consent was given.
- 4 The Committee seeks that only Part 2 and consequently Items 1 to 22 in Schedule 1 of the Local Law be disallowed because the validity issue only arises in relation to Part 2.
- 5 The Committee makes clear that the validity issue with Part 2 arises through no fault on the part of the City of Greater Geraldton or its officers who forwarded a copy of the proposed Local Law to the Executive Director, Public Health for his consideration.
- 6 The Committee concludes that Part 2 of the Local Law is invalid because the procedural requirement in section 342 of the *Health Act 1911* was not complied with and therefore offends the Committee's term of reference 10.6(a) in that it is not within power of the empowering enactment.

RECOMMENDATIONS

- 7 The Recommendation is grouped as it appears in the text at the page number indicated:

Recommendation 1: The Committee recommends that Part 2 and Items 1 to 22 in Schedule 1 of the *City of Greater Geraldton Animals, Environment and Nuisance Local Law 2014* be disallowed.

REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO THE

CITY OF GREATER GERALDTON ANIMALS, ENVIRONMENT AND NUISANCE LOCAL LAW 2014

1 REFERENCE AND PROCEDURE

- 1.1 The *City of Greater Geraldton Animals, Environment and Nuisance Local Law 2014 (Local Law)* published in the *Government Gazette* on 13 May 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 law making procedure set out in legislation is mandatory and a local law that does not follow a prescribed statutory procedure is invalid.

2 SCRUTINY OF THE LOCAL LAW AND THE STATUTORY PROCEDURE FOR MAKING PART 2 OF THE LOCAL LAW

- 2.1 The Local Law regulates a number of miscellaneous subject matters and includes Part 2, 'Keeping of Animals', which contains provisions regulating the keeping of birds and farm animals. A copy of the Local Law is attached at Appendix 1.
- 2.2 When the Committee initially considered the Local Law it noted that Part 2 involved subject matter that fell within the local law making powers in section 199 of the *Health Act 1911*. The Statutory Procedures Checklist provided by the City of Greater Geraldton (**City**) with the Explanatory Memorandum did not record that consent from the Executive Director, Public Health, had been obtained to make Part 2 of the Local Law.
- 2.3 The City later advised the Committee that they wrote to the Minister of Health on 24 January 2014 providing a copy of the proposed Local Law (with other local laws) and the response received was that only their *Health Local Law 2014* was referred to the Environmental Health Directorate, Department of Health, for consideration and comment.¹

¹ Letter from Mark Chadwick, Manager, Environmental Health and Sustainability, City of Greater Geraldton, 21 July 2014, p1.

2.4 The local law making power in section 199 of the *Health Act 1911* provides:

199. Local laws in respect of nuisances and offensive trades

Local laws may be made in accordance with Part XIV [of the Health Act] for all or any of the following purposes: ...

(2) Prohibiting the keeping of animals on any premises so as to be a nuisance or injurious to health;

(3) Regulating the situation, construction, and cleansing of structures, stables, and other buildings in which animals are kept.

(4) Regulating the keeping of poultry, pigeons, and other birds upon any premises; ...

2.5 Section 199 refers to the law making procedures in section 342 of the *Health Act 1911* (in Part XIV), which provides:

Local laws

(1) Every local government –

(a) may, if the Executive Director, Public Health consents; and

(b) shall, if the CEO or the Executive Director, Public Health so directs,

make local laws in accordance with subdivision 2 of Division 2 of Part 3 of the Local Government Act for the purposes specified in this Act or generally for carrying into effect the provisions of this Act.

2.6 Section 342 of the *Health Act 1911* therefore requires the Executive Director, Public Health to consent to a health local law, and that local law is made in accordance with certain procedures in the *Local Government Act 1995*. Section 3.5 (read with section 3.1) of the *Local Government Act 1995* also contains a broad local law making power.

2.7 The Local Law states that it is made under the *Local Government Act 1995*, not under the *Health Act 1911*.

2.8 This Local Law therefore raised a technical, legal question regarding the interaction of the law making provisions in the *Health Act 1911* and *Local Government Act 1995*. Whether consent under section 342 is required for making a local law (or a part of a local law) whose subject matter falls within the scope of section 199 of the *Health Act*

1911 even if the subject matter arguably falls within the broad law making powers in section 3.5 (read with section 3.1) of the Local Government Act 1995.

2.9 The Committee resolved to seek the views of Hon Dr Kim Hames MLA, Minister for Health, on this legal point. The Minister referred the Committee's request to the Attorney General. A copy of the Committee's letter to the Minister for Health dated 14 August 2014 is attached at Appendix 2.

2.10 The Attorney General advised the Committee that:

where the subject matter of a local law falls within an area identified by section 199 of the Health Act 1911, that local law must be made under and in accordance with the requirements of the Health Act 1911 ... [and]

to the extent that Part 2 of the Local Law purports to legislate in respect of matters falling within section 199 of the Health Act 1911 without the prior consent of the Executive Director, Public Health, it will be invalid.

2.11 A copy of the letter from the Attorney General dated 14 October 2014 is attached at Appendix 3.

2.12 The Minister for Health subsequently confirmed that the Executive Director, Public Health, did not provide consent under section 342 of the *Health Act 1911* and he did not oppose the Committee disallowing Part 2 of the Local Law. A copy of this letter is attached at Appendix 4.

2.13 The Committee is of the view that Part 2 of the Local Law deals with subject matter that falls within section 199 of the *Health Act 1911*. Therefore, Part 2 and consequently Items 1 to 22 in Schedule 1 of the Local Law are invalid for reasons of non-compliance with section 342 of the *Health Act 1911*. Consent of the Executive Director, Public Health was not obtained to make Part 2 of the Local Law.

3 CONCLUSIONS

Term of reference 10.6(a)

3.1 Term of reference 10.6(a) states:

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

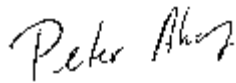
(a) is within power

- 3.2 Part 2 of the Local Law offends term of reference 10.6(a) on the basis of non-compliance with a requirement in section 342 of the *Health Act 1911*. Accordingly, it is not within power of the Act.
- 3.3 The Committee therefore recommends to the Legislative Council that Part 2 and consequently Items 1 to 22 in Schedule 1 of the Local Law be disallowed.
- 3.4 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.

4 RECOMMENDATION

- 4.1 The Committee makes the following recommendation.

Recommendation 1: The Committee recommends that Part 2 and Items 1 to 22 in Schedule 1 of the *City of Greater Geraldton Animals, Environment and Nuisance Local Law 2014* be disallowed.



**Mr Peter Abetz MLA
Chairman**

20 November 2014

APPENDIX 1

*CITY OF GREATER GERALDTON ANIMALS, ENVIRONMENT AND
NUISANCE LOCAL LAW 2014*

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**CITY OF
GREATER GERALDTON**

LOCAL GOVERNMENT ACT 1995
**ANIMALS, ENVIRONMENT AND NUISANCE
LOCAL LAW**

**LOCAL GOVERNMENT AND PUBLIC
PROPERTY LOCAL LAW**

LOCAL GOVERNMENT ACT 1995

CITY OF GREATER GERALDTON

ANIMALS, ENVIRONMENT AND NUISANCE LOCAL LAW 2014

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LOCAL GOVERNMENT ACT 1995

CITY OF GREATER GERALDTON

ANIMALS, ENVIRONMENT AND NUISANCE LOCAL LAW 2014

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Greater Geraldton resolved on the 25 March 2014 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *City of Greater Geraldton Animals, Environment and Nuisance Local Law 2014*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The following local laws are repealed—

- (a) the *City of Geraldton-Greenough Removal of Refuse, Rubbish and Disused Materials Local Law 2008* published in the *Government Gazette* of 24 November 2008;
- (b) the *Town of Geraldton By-law Relating to Clearing and Removal of Refuse, Rubbish or Material from Land* published in the *Government Gazette* of 1 May 1962;
- (c) the *Town of Geraldton Adoption of By-laws Relating to Clearing and Removal of Trees, Scrub, Undergrowth, Refuse, Rubbish and Vehicle Bodies from Land* published in the *Government Gazette* of 2 July 1982; and
- (d) the *Shire of Mullewa By-law Relating to Clearing and Removal of Trees, Scrub, Undergrowth, Refuse, Rubbish and Other Material from Land* published in the *Government Gazette* of 23 June 1964 and as amended and published in the *Government Gazette* of 24 April 1980.

1.5 Interpretation

(1) In this local law, unless the context specifies otherwise—

Act means the *Local Government Act 1995*;

affiliated person means a person who is a member of a poultry or pigeon club incorporated under the *Associations Incorporation Act 1987*;

amusement means anything conducted for amusement at a fair, a carnival or a show, whether conducted at a fair, a carnival or a show or elsewhere;

AS/NZS 3500: 2003 means the standard published by the Standards Association of Australia as AS/NZS 3500: 2003 called *Plumbing and Drainage*, “as amended from time to time”;

authorised person means a person appointed by the local government, under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

aviary bird means any bird, other than poultry or pigeons, kept or usually kept in an aviary or cage;

birds includes poultry;

builder means the holder of a building permit issued in respect of building works on a building site or a person in control of a building site;

Building Code means the latest edition of the *National Construction Code* published by, or on behalf of, the Australian Building Codes Board—

building permit means a permit granted under section 20 of the *Building Act 2011*;

building site means any lot for which a building permit is current;

Class 6 building means any Class 6 building as defined by the Building Code;

- Class 9 building** means any Class 9 building as defined by the Building Code;
- Code of Practice—Pigeon Keeping** means the document entitled *A Code of Practice –for Pigeon Keeping and Racing in Western Australia* published by the Pigeon Racing Federation of WA (Incorporated) and the Independent Racing Pigeon Federation (Incorporated), as amended from time to time;
- cow** includes an ox, calf or bull;
- development** has the meaning given to it in the *Planning and Development Act 2005*;
- development approval** means a development approval under a local planning scheme;
- development site** includes any lot or lots for which there is currently a development or subdivision approval in place, and upon which construction work, earthworks, clearing of scrub, trees or overgrowth or any other site works are taking or have taken place pursuant to or in relation to that approval;
- district** means the district of the local government;
- dust** means any visible granular or particulate material which has become airborne or has the potential to become airborne and includes organic and non-organic matter and sand, but does not include smoke;
- equipment** means equipment, machinery or vehicles used for or in connection with the development of land;
- farm animal** includes a horse, cow, sheep, goat, pig or other ungulates and Alpacas and Llamas of the Camelidae family;
- food premises** means any premises or vehicle used by a “food business” as defined by section 10 of the *Food Act 2008*;
- horse** includes an ass, mule, donkey or pony;
- land** includes any building or structure on the land;
- liquid waste** means waste from any process or activity that is in liquid form and includes paint, fuel, grease, fat, oil, degreaser solvent, detergent, chemical, animal waste, food waste, effluent and all discharges of liquid to land, air or water that are not otherwise authorised by a written law but does not include uncontaminated stormwater;
- livestock** includes cattle, sheep, pigs, goats and horses;
- livestock vehicle** means a vehicle that contains livestock or previously has been used for the carriage of livestock;
- local government** means the City of Greater Geraldton;
- local planning scheme** has the meaning given to it by the *Planning and Development Act 2005*;
- lot** has the meaning given to it by the *Planning and Development Act 2005*;
- manure receptacle** means a receptacle of sufficient capacity to receive all manure produced in one week on premises upon which a farm animal or farm animals are kept, constructed of smooth, durable, impervious materials, fitted with a fly proof, hinged cover and with no part of the floor lower than the adjoining ground;
- nuisance** means—
- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
 - (b) an unreasonable interference with the use and enjoyment by a person of his or her ownership or occupation of land; or
 - (c) interference which causes material damage to land or other property on the land affected by the interference;
- occupier** means any person who is in control of any land or part of any land or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to land to perform any work in relation to any land and includes a builder or contractor;
- permit** means a permit issued under this local law;
- permit holder** means a person who holds a valid permit;
- pigeon** includes homing pigeons and other domesticated breeds of the species *Columba livia*, but does not include native pigeons or doves whether or not the keeping of such birds is subject to the approval of the Department of Environment Regulation;
- poultry** includes fowls, roosters, ducks, peafowls, turkeys, geese, guinea fowls, pheasants and other birds commonly kept for the production of eggs or meat for domestic consumption;
- refuse** means any waste material including bricks, lime, cement, concrete, rubble, stones, iron, timber, tiles, bags, plastics, ashes, vegetation, timber, wood or metal shavings, sawdust, and waste food, and includes any broken, used, derelict or discarded matter;
- Regulations** means the *Local Government (Functions and General) Regulations 1996*;
- residential building** has the meaning given to it in the *Residential Design Codes of Western Australia*;
- residential zone** includes any area zoned “Residential” and “Urban Development” under a local planning scheme;
- rural zone** means any area zoned “Rural” or “Rural Residential” under a local planning scheme;
- sand** means granules or particles of rock, earth, clay, loam, silt and any other granular, particulate or like material, including dust and gravel;

Schedule means a schedule to this local law;

stormwater means any naturally occurring water that results from rainfall on or around a site, or water flowing onto the site;

subdivision approval means a subdivision approval under the *Planning and Development Act 2005*;

thoroughfare means any highway or thoroughfare which the public are entitled to use, including the verge and other things including bridges and culverts appurtenant to it;

townsite means all townsites within the district which are—

- (a) constituted under section 26(2) of the *Land Administration Act 1997*; or
- (b) referred to in clause 37 of Schedule 9.3 of the Act.

truck means a motor vehicle having a tare weight in excess of 3000 kilograms;

unreasonable noise has the meaning given to it by the *Environmental Protection Act 1986*; and

vermin includes rats, mice, flies, fleas, mites, lice, cockroaches and any other animal, whether vertebrate or invertebrate, which is known to be a vector of disease or likely to cause damage to human food, habitation or possessions.

(1) Any other expression used in this local law and not defined herein shall have the meaning given to it in the Act.

(2) Where in this local law a duty, obligation or liability is imposed on an “owner or occupier” the duty shall be deemed to be imposed jointly and severally on each owner and occupier.

(3) Where under this local law the local government is authorised to carry out actions or cause to be undertaken works as a consequence of the failure of any person to comply with the terms of a notice or other conduct, the right to enter land is at all times subject to the provisions of Part 3, Division 3, Subdivision 3 of the Act.

PART 2—KEEPING OF ANIMALS

Division 1- Keeping of birds

2.1 Keeping of poultry and pigeons in a residential zone

An owner or occupier of premises in a residential zone shall not keep or permit to be kept on the premises—

- (a) more than 12 poultry; or
- (b) more than 12 pigeons unless the owner or occupier is an affiliated person in which case the maximum number of pigeons may be increased to 100.

2.2 Conditions for keeping of poultry

A person who keeps poultry or permits poultry to be kept shall ensure that—

- (a) no poultry shall be kept less than 9 metres from any residential building;
- (b) no poultry is able to approach within 15 metres of a public thoroughfare, public building, commercial premises or food premises;
- (c) all poultry is kept in a properly constructed and securely fastened structure;
- (d) the structure has an impervious floor laid with a fall to the front of at least 1 in 50;
- (e) all structures or enclosures within which poultry are kept are maintained at all times in a clean condition; and
- (f) all poultry is kept continually confined.

2.3 Roosters, geese, turkeys and peafowl

Except on land with an area of 1 hectare or more or with the prior written permission of the local government, an owner or occupier of premises shall not keep any—

- (a) roosters;
- (b) geese;
- (c) turkeys; or
- (d) peafowls.

2.4 Conditions for keeping of pigeons

A person who keeps pigeons or permits pigeons to be kept shall ensure that—

- (a) all pigeons are kept in a properly constructed pigeon loft, except where registered homing pigeons are freed for exercise;
- (b) all structures or enclosures within which pigeons are kept are maintained at all times in a clean condition;
- (c) no opening to a pigeon loft, including openings for ventilation, is within 9 metres of any residential building; and
- (d) no opening to a pigeon loft, including openings for ventilation, is within 15 metres of a thoroughfare, public building, commercial premises or food premises.

2.5 Conditions of keeping aviary birds

A person who keeps, or permits to be kept, aviary birds shall ensure that the aviary or cage is kept in clean condition and good repair at all times.

2.6 Nuisance caused by birds

An owner or occupier of land shall not keep any bird or birds which—

- (a) are or create a nuisance; or
- (b) emit an unreasonable noise.

*Division 2—Keeping of farm animals***2.7 Keeping of farm animals**

Subject to clause 2.8, an owner or occupier of land shall not keep, or allow to be kept, any farm animal unless in a rural zone and in accordance with the provisions of any local planning scheme applicable to that zone.

2.8 Conditions for keeping farm animals

(1) An owner or occupier of premises upon which a farm animal or farm animals are kept, shall maintain the place or places where the animals are kept in clean condition and good repair at all times.

(2) An owner or occupier of premises in a rural zone shall not keep more than 1 pig other than on premises registered as a piggery pursuant to the provisions of the *Health Act 1911*, except with the express written approval of the local government.

PART 3—BUILDING, DEVELOPMENT AND LAND CARE*Division 1—Litter and refuse on building sites***3.1 Provision of refuse receptacles**

The owner or occupier of a building or development site shall at all times provide and maintain available for use on the site a refuse receptacle, to the satisfaction of an authorised person, and be of such design as will—

- (a) contain any refuse likely to be produced on the site; and
- (b) prevent refuse being blown from the receptacle by wind.

3.2 Control of refuse

(1) From the time of commencement of works on a building site or development site until the time of completion of such work, the owner or occupier of the site shall—

- (a) ensure all refuse on the site is placed and contained in the refuse receptacle and prevented from being blown from the site by wind;
- (b) keep the site as free as is reasonably practicable from any refuse;
- (c) maintain the thoroughfare verge, and any other reserve, immediately adjacent to the site free of refuse generated or originating from the building or development site; and
- (d) ensure the refuse receptacle is emptied when full.

(2) The owner or occupier of a building or development site shall ensure that within 2 days of completion of works on the site—

- (a) the site and the thoroughfare verge immediately adjacent to it is cleared of all refuse generated or originating from the building or development site; and
- (b) that all refuse receptacles are permanently removed from the site.

3.3 Unauthorised storage of materials

(1) No construction materials shall be stored on a building or development site without written approval of the local government.

(2) Written approval must be obtained from the local government prior to any proposal to store construction material on any thoroughfare verge.

*Division 2—Prevention of Dust and Liquid Waste***3.4 Prohibited activities**

(1) An owner and or occupier of land must take effective measures to—

- (a) stabilise dust on the land;
- (b) contain all liquid waste on the land; and
- (c) ensure no dust or liquid waste is released or escapes from the land, by means of wind, water or any other cause.

(2) Where the local government forms the opinion that an owner or occupier has not complied with subclause (1), the local government may serve on the owner and/or occupier of the land a notice requiring the owner and or occupier to do one or more of the following—

- (a) comply with subclause (1)(a) or (1)(b);
- (b) clean up and properly dispose of any released or escaped dust or liquid waste;

- (c) clean up and make good any damage resulting from the released or escaped dust or liquid waste; and
 - (d) take effective measures to stop any further release or escape of dust or liquid waste.
- (3) Where a notice is issued under subclause (2), the requirements set out in the notice must be complied with in the period as is specified in the notice.
- (4) Where the local government is of the opinion that dust or liquid waste may be released or escape as a result of an activity which is likely to be carried on from any land, the local government may give to the owner and or occupier a notice providing that the activity may only be carried on subject to conditions specified in the notice.

Division 3—Smoke

3.5 Burning of cleared vegetation prohibited

An owner or occupier of any building or development site shall ensure that no vegetation or other material cleared from the site is burnt on the site unless authorisation in writing is given by the Chief Bushfire Control Officer.

Division 4—Unsightly land and disused materials

3.6 Storage of vehicles, vessels and machinery

The owner or occupier of a lot shall not—

- (a) store, or allow to remain, in public view on any lot more than 1 vehicle, vessel or machinery (whether licensed or not) in a state of disrepair;
- (b) store, or allow to remain, in public view on any lot any vehicle, vessel or machinery in a state of disrepair for a period in excess of 1 month;
- (c) store, or allow to remain, in public view on any lot any vehicle, vessel or machinery parts (including tyres);
- (d) wreck, dismantle or break up any vehicle, part or body of a vehicle, vessel or machinery except where performed—
 - (i) inside a building; or
 - (ii) within an area enclosed by a fence or wall of not less than 1.8 metres in height and of such a nature as to screen all vehicles, parts or bodies of vehicles, vessels or machinery from the street and from adjoining properties; or
- (e) wreck, dismantle or break up a vehicle, vessel or machinery so as to cause a nuisance.

3.7 Disposing of disused refrigerators or similar containers

A person shall not place, leave or dispose of a disused refrigerator, ice-chest, ice-box, trunk, chest or other similar article having a compartment which has a capacity of 0.04 cubic metres or more on any land without first—

- (a) removing every door and lid and every lock, catch and hinge attached to a door or lid or otherwise rendering every door and lid incapable of being fastened; and
- (b) removing any refrigerants as per requirements of the *Environment Protection (Ozone Protection) Policy 2000*.

PART 4—NUISANCES AND DANGEROUS THINGS

Division 1—Light

4.1 Use of exterior lights

An owner or occupier of land on which floodlights or other exterior lights are erected or used shall not allow the floodlights or other exterior lights to shine directly onto any other premises.

4.2 Emission or reflection of light

An owner or occupier of land shall ensure that—

- (a) artificial light is not emitted or reflected from anything on the land so as to illuminate premises outside that land to more than 50 lux; and
- (b) natural light is not reflected from anything on the land so as to create or cause a nuisance to the occupier of any other premises or to a person lawfully using a thoroughfare.

4.3 Notice may require specified action to prevent emission or reflection of light

(1) Where—

- (a) floodlights or other exterior lights shine directly onto any other premises;
- (b) artificial light is emitted or reflected from anything on the land so as to illuminate premises outside the land to more than 50 lux; or
- (c) natural light is reflected from anything on the land so as to create or cause a nuisance to the occupier of any other premises or to a person lawfully using a thoroughfare, the local government may by notice in writing direct the owner or occupier to take such actions as necessary within the time specified in the notice.

(2) The notice referred to in subclause (1) may direct that—

- (a) floodlights or other exterior lights are used only during the hours specified in the notice;

- (b) the direction in which the lights shine be altered as specified in the notice; or
- (c) any reflective surfaces be painted or otherwise treated so as to abate the nuisance; or
- (d) any combination of these measures that the local government believes to be appropriate to the circumstances.

Division 2—Smoke, fumes, odours and other emissions

4.4 Burning rubbish, refuse or other material

(1) A person shall not on any land of an area 2000 square metres or less, set fire to rubbish, refuse or other materials on rural residential zoned property unless—

- (a) written approval has first been obtained from the local government;
- (b) the person demonstrates to the satisfaction of the local government that reasonable alternatives for the disposal of the rubbish, refuse or other material do not exist and the potential for pollution is low;
- (c) the material does not include any plastic, rubber, food scraps, green garden materials or other material likely to cause the generation of smoke or odour in such quantity as to cause a nuisance to other persons;
- (d) a haze alert has not been issued by the Bureau of Meteorology for the period during which burning is to take place; and
- (e) the burning complies with the *Bush Fires Act 1954*, any annual fire hazard reduction notice issued by the local government under that Act and any conditions of approval as determined by the local government.

(2) Subclause (1) shall not apply to any barbecue, solid fuel water heater, space heater or ovens fired with dry paper, dry wood, synthetic char or charcoal type fuel.

(3) Subclause (1) is subject to any fire danger rating as determined by the Bureau of Meteorology.

4.5 Escape of smoke, fumes, odours and other emissions

An owner or occupier of land or premises shall not cause or permit the escape of smoke, fumes or odours from the land so as to cause a nuisance to any person.

Division 3—Livestock carrying vehicles

4.6 Livestock vehicles

(1) A person shall not park a vehicle containing livestock in a townsite for a period in excess of 30 minutes.

(2) A person shall not park a vehicle which contains or has been used for the carriage of livestock so as to create or be a nuisance to any person, by reason of the odour emanating from the vehicle.

(3) If a person parks a vehicle containing livestock in a townsite in accordance with subclause (1), then the person does not contravene subclause (2).

4.7 Truck noise from residential land

A person shall not start or drive a truck on land or adjacent to land which is zoned, approved or used for residential purposes between the hours of 10.30 pm and 6.30 am on the following day without first obtaining the written consent of the local government.

Division 4—Stormwater management

4.8 Containment of stormwater

(1) Subject to subclause (2), the owner or occupier of a lot shall ensure that all stormwater received by any building, house, or other structure or any paved or sealed or other surfaced areas including any vehicle access ways on the lot is contained within the lot and is not permitted to discharge onto or run-off onto adjacent land so as to cause a nuisance, or cause damage to any structures situated on adjacent land.

(2) Subclause (1) shall not prevent the discharge of stormwater from a lot into a local government approved stormwater drain.

4.9 Guttering and downpipes

(1) The owner or occupier of a lot shall ensure that each building or house on the lot is provided with adequate guttering and downpipes sufficient to receive, without overflow, all stormwater from the roof of the building or house, in accordance with AS/NZS 3500.

(2) The owner or occupier of a lot shall ensure that all guttering and downpipes to each building or house on the lot are maintained in a good state of repair and free from obstruction.

4.10 Stormwater disposal systems

(1) The owner or occupier of a lot shall ensure that all stormwater from the roof of each building or house on the lot, or the overflow from rainwater storage tanks, is discharged into stormwater drainage system, or discharged by other methods approved by the local government, in accordance with AS/NZS 3500.

(2) The owner or occupier of a lot shall ensure that all stormwater from paved areas or other surfaced areas including any vehicle access ways of the lot is discharged into a stormwater drainage system of adequate capacity in accordance with AS/NZS 3500.

(3) The owner or occupier of a lot shall ensure that all stormwater drainage systems on the lot are maintained in a good state of repair and free from obstruction.

4.11 Containment and disposal of swimming pool and other wastewater

(1) The owner or occupier of a lot shall ensure that all wastewater and backwash water from swimming pool filtration systems or other water storage systems associated with a swimming pool shall be contained within, and disposed onto or into the lot on which the swimming pool is located.

(2) The owner or occupier of a lot shall ensure that the disposal of wastewater and backwash water from a swimming pool filtration system or other water storage system associated with a swimming pool into an approved disposal system or a soakwell system having a minimum capacity of 140 litres, and located a minimum of 1.8 metres away from any building or lot boundary, satisfies the requirement of subclause (1).

Division 5—Amusement activities

4.12 Nuisance

A person shall not, without written authorisation from the local government, provide or conduct any amusement on land so as to create or be a nuisance to any owner or occupier of land in the district.

4.13 Abatement by authorised person

Subject to Subdivision 3, of Division 3, of Part 3 of the Act, an authorised person may enter on any land where an amusement is provided or conducted and may do any act or thing reasonably required to abate a nuisance referred to in clause 4.12.

Division 6—Advertising, bill posting and junk mail

4.14 Placement of advertisement, bill posting or junk mail

(1) A person shall not without written approval from the local government, place or affix any letter, figure, device, poster, sign or advertisement on any building, fence or post.

(2) A person shall not place in or on any letter box, gate, fence or generally leave or distribute to any property in the district, any handbill, poster, pamphlet, flyer or other form of advertising or promotional material, where there is clearly displayed a sign or notice which states "no junk mail" or words of similar effect.

4.15 Exemptions

Clause 4.14 does not apply to—

- (a) delivery of articles by Australia Post;
- (b) documents issued under or for the purposes of an Act of Parliament;
- (c) an authorised person or member of the police force acting in the course of their duties;
- (d) electoral materials; or
- (e) the service of documents for the purposes of legal proceedings.

Division 7—Bird nuisance

4.16 Restrictions on feeding of birds

(1) A person shall not feed a bird—

- (a) so as to cause a nuisance, or
- (b) with a food or substance that is not a natural food of a bird.

(2) Where an authorised person forms the opinion that a person has not complied with subclause (1) the authorised person may serve the person a notice requiring the person to clean up and properly dispose of any feed or waste products specified in the notice.

PART 5—OBJECTIONS AND APPEALS

5.1 Objections and appeals

When the local government makes a decision under this local law as to whether it will—

- (a) grant a person a permit or authorisation;
- (b) vary or cancel a permit or authorisation; or
- (c) give a person a notice;

the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations shall apply to that decision.

PART 6—ENFORCEMENT

Division 1—Notice of breach

6.1 Notice of breach

(1) Where a breach of any provision of this local law has occurred, the local government may give a notice in writing to the person alleged to be responsible for such breach.

(2) A notice issued pursuant to subclause (1) shall—

- (a) specify the provision of this local law which has been breached;
- (b) specify the particulars of the breach; and

- (c) state the manner in which the recipient is required to remedy the breach to the satisfaction of the local government within a time period stipulated in the notice which shall be not less than 14 days from the giving of the notice.

(3) It is an offence to fail to comply with a notice issued by the local government pursuant to subclause (1).

6.2 Form of notices

Where this local law refers to the giving of a notice other than the giving of an infringement notice and no particular form is prescribed, it will be sufficient that the notice be in writing giving sufficient details to enable the owner, occupier or other person to whom the notice is issued to know the offence committed and the measures required to be taken or conditions with which compliance is required, as the case may be.

Division 2—Offences and Penalties

Subdivision 2—General

6.3 Offences and penalties

(1) A person who—

- (a) fails to do anything required or directed to be done under this local law;
 (b) fails to comply with the requirements of a notice issued under this local law by an authorised person; or
 (c) does anything which under this local law that person is prohibited from doing;

commits an offence.

(2) Where, under this local law, an act is required to be done or forbidden to be done in relation to any land or premises, the owner or occupier of the land or premises has the duty of causing to be done the act so required to be done, or of preventing from being done the act forbidden to be done.

(3) A person who commits an offence under this local law is liable to a maximum penalty of \$5000 and a maximum daily penalty of \$500 in respect of each day or part of a day during which the offence has continued.

Subdivision 3—Infringement notices and modified penalties

6.4 Prescribed offences

(1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1—

- (a) in the case of a first offence the modified penalty will be that prescribed in column 4 of Schedule 1; and
 (b) in the case of a subsequent offence the modified penalty will be that prescribed in column 4 of Schedule 1.

6.5 Form of infringement notices

For the purposes of this local law—

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
 (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
 (c) the form of the notice given under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the Regulations.

Schedule 1
PRESCRIBED OFFENCES

[cl. 6.5]

Item	Clause	Description of offence	Modified penalty— first offence	Modified penalty— subsequent offence
1	2.1(a)	Keeping more than 12 poultry	\$250	\$500
2	2.1(b)	Keeping more than 12 pigeons	\$250	\$500
3	2.2(a)	Keeping poultry within 9 metres of a residential building	\$250	\$500
4	2.2(b)	Poultry approaching within 15 metres of a building or thoroughfare	\$250	\$500
5	2.2(c)	Poultry not kept in a secure structure	\$250	\$500
6	2.2(d)	Poultry structure not having an impervious floor	\$250	\$500
7	2.2(e)	Not maintaining a poultry structure in a clean condition	\$250	\$500
8	2.2(f)	All poultry not being continually confined	\$250	\$500
9	2.3(a)	Keeping of roosters on land under 1 hectare	\$250	\$500
10	2.3(b)	Keeping of geese on land under 1 hectare	\$250	\$500
11	2.3(c)	Keeping of turkeys on land under 1 hectare	\$250	\$500
12	2.3(d)	Keeping of peafowls on land under 1 hectare	\$250	\$500
13	2.4(a)	Pigeons not being kept in a properly constructed pigeon loft	\$250	\$500
14	2.4(b)	Not maintaining a structure for pigeons in a clean condition	\$250	\$500
15	2.4(c)	Keeping of pigeons with 9 metres of a residential building	\$250	\$500
16	2.4(d)	A pigeon loft being within 15 metres of a thoroughfare or commercial building	\$250	\$500
17	2.5	Aviary cage not being kept in a clean condition	\$250	\$500
18	2.6(a)	Bird causing a nuisance	\$250	\$500
19	2.6(b)	Bird emitting and unreasonable noise	\$250	\$500
20	2.7	Keeping of a farm animal other than in a rural zone	\$250	\$500
21	2.8(1)	Fail to keep a place where farm animals are kept in a clean condition & good repair	\$250	\$500
22	2.8(2)	Keeping more than one pig other than on premises registered as a piggery	\$250	\$500
23	3.1	Failure to provide or maintain a refuse receptacle on a building or development site	\$250	\$500
24	3.2	Failure to control refuse on a building or development site	\$250	\$500
25	3.2(2)(a)	Failure to clear all refuse generated by building site.	\$250	\$500
26	3.2(2)(b)	Failure to remove refuse receptacles from site	\$250	\$500
27	3.3	Unauthorised storage of materials	\$250	\$500
28	3.4	Release or escape of dust or liquid waste from land	\$250	\$500
29	3.5	Burning cleared vegetation or other material on site	\$250	\$500
30	3.8(a)	Store or allow to remain on land more than one vehicle, vessel or machinery in a state of disrepair	\$250	\$500

Item	Clause	Description of offence	Modified penalty— first offence	Modified penalty— subsequent offence
31	3.6(b)	Store or allow to remain on land any vehicle, vessel or machinery in a state of disrepair for a period in excess of 1 month	\$250	\$500
32	3.6(c)	Store or allow to remain on land any vehicle, vessel or machinery parts (including tyres)	\$250	\$500
33	3.6(d)(i)	Wreck, dismantle or break up any vehicle part or body, vessel or machinery not inside a building	\$250	\$500
34	3.6(d)(ii)	Wreck, dismantle or break up any vehicle part or body, vessel or machinery not behind a sufficient fence or wall	\$250	\$500
35	3.6(e)	Wreck, dismantle or break up a vehicle, vessel or machinery so as to cause a nuisance	\$250	\$500
36	3.7(a)	Disposing of disused refrigerator or similar container with door or lid that can be fastened	\$250	\$500
37	3.7(b)	Disposing of disused refrigerator or similar container without removing refrigerant	\$250	\$500
38	4.1	Erection or use of lighting installations other than in accordance with requirements	\$250	\$500
39	4.2	Emitting or reflecting excessive artificial light, or reflecting natural light that causes nuisance	\$250	\$500
40	4.4(1)	Set fire to rubbish, refuse or other materials	\$250	\$500
41	4.5	Cause or permit the escape of smoke, fumes, odours and other emissions so as to cause a nuisance	\$250	\$500
42	4.6(1)	Parking a livestock vehicle in a townsite in excess of 30 minutes	\$250	\$500
43	4.7	Starting or driving a truck on residential land, or adjoining residential land, without consent	\$250	\$500
44	4.8(1)	Failure to ensure that all rainwater or storm water received by a lot and any building, house or structure on the lot, is contained within the lot	\$250	\$500
45	4.9(1)	Failure to have adequate guttering and downpipes sufficient to receive all stormwater	\$250	\$500
46	4.9(2)	Failure to maintain all guttering and down pipes in a good state of repair and free from obstruction	\$250	\$500
47	4.10 (3)	Failure to maintain all subsurface stormwater disposal systems in a good state of repair and free from obstruction	\$250	\$500
48	4.11(1)	Failure to contain or dispose of swimming pool wastewater on the lot on which the swimming pool is located	\$250	\$500
49	4.11(2)	Failure to have approved disposal system or soakwell with minimum capacity of 140 litres	\$250	\$500
50	4.12	Conducting an amusement so as to create a nuisance	\$250	\$500
51	4.14(1)	Unauthorised placement of advertisement, bill posting or junk mail	\$250	\$500
52	4.14(2)	Placement of advertisement, bill posting or junk mail where a "no junk mail", or equivalent, sign is displayed	\$250	\$500

13 May 2014

GOVERNMENT GAZETTE, WA

1507

Item	Clause	Description of offence	Modified penalty— first offence	Modified penalty— subsequent offence
53	4.16(1)(a)	Feeding a bird causing a nuisance	\$250	\$500
54	4.16(1)(b)	Feeding a bird a food/substance that is not a natural food	\$250	\$500
55	6.1(3)	Failure to comply with notice	\$250	\$500
56		All other Offences	\$250	\$500

Dated: 8th April 2014.

The Common Seal of the City of Greater Geraldton was affixed by authority of a resolution of the Council in the presence of—

IAN CARPENTER, Mayor.
KEN DIEHM, Chief Executive Officer.

APPENDIX 2

LETTER TO THE MINISTER FOR HEALTH DATED 14 AUGUST 2014



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your Ref:
Our Ref: 3926/2:SV

Hon Dr Kim Hames MLA
Minister for Health
13th Floor, Dumas House
2 Havelock Street
West Perth WA 6005

14 August 2014

By email: Minister.Hames@dpc.wa.gov.au

Dear Minister

Local law making provisions in the *Health Act 1911* and *Local Government Act 1995*

The Joint Standing Committee on Delegated Legislation requests your advice to assist the Committee in its consideration of the *City of Greater Geraldton Animals, Environment and Nuisance Local Law 2014 (Local Law)*.

Under its terms of reference (a), the Committee must consider if the Local Law is 'within power'. Prescribed law making procedures must be complied with for a law to be valid and 'within power'.

In considering the Local Law, questions have arisen regarding the interaction of the law making provisions in the *Health Act 1911* and *Local Government Act 1995 (LG Act)*.

The Local Law in question includes a Part 2, 'Keeping of Animals', which regulates the keeping of birds and farm animals. The Local Law states that the law is made under the LG Act, which contains a broad law making power at section 3.5. However, Part 2 of the Local Law covers a particular topic covered by a more specific law making power in section 199 of the Health Act, which provides a power to make local laws relating to the keeping of animals. This is relevant because laws made under the Health Act require the consent of the Executive Director, Public Health, under section 342 prior to making the Local Law. The City of Greater Geraldton did not obtain this consent when making the Local Law.

The Committee is aware that section 43(2) of the *Interpretation Act 1943* provides:

- (2) *Where any subsidiary legislation purports to be made in exercise of a particular power or powers, it shall be deemed also to be made in the exercise of all powers under which it may be made.*

The Committee is interested in your views on what law making power a local law should be purported to be made under when a local law covers a topic the subject of a particular power in the Health Act, and the advice the Department of Health gives to local governments in this regard.

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EMAIL (GENERAL OFFICE): council@parliament.wa.gov.au

The Committee questions if the effect of section 43(2) of the *Interpretation Act 1943* is that the procedural requirement in section 342 of the Health Act can be avoided if the local law purports to be made under the LG Act? On this point, the Committee notes that the well regarded text *Delegated Legislation in Australia* states that:

Where a designated procedure is laid down for the making of legislation dealing with a particular topic, the existence of a general power will not allow that procedure to be avoided: Dainford Ltd v Smith (1985) 58 ALR at 300¹

Committee requests

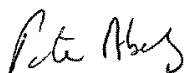
The Committee requests your response to the following questions:

- Where the subject matter of a local law falls within a particular topic covered by the law making powers in section 199 of the *Health Act*:
 - When is it required and when it is appropriate that the local law be purported to be made under section 199 of the Health Act?
 - In what circumstances must the law making procedure in section 342 of the Health Act, to obtain consent from the Executive Director, Public Health, be complied with? Only when the law states that it is a law made under the Health Act?
 - Does the deeming provision in section 43(2) of the *Interpretation Act 1943* mean that the requirement to obtain consent in section 342 of the Health Act need not be complied with if the local law states that it is made under the LG Act?
- Is Part 2 ('Keeping of Animals') of the *City of Greater Geraldton Animals, Environment and Nuisance Local Law 2014* invalid because section 342 was not complied with?
- If your view is that the LG Act may be relied on to make a local law when the Health Act also provides a power to make that local law, what is the purpose of the more specific local law making powers in the Health Act and why do they exist?

Due to the strict timelines applying to the work of the Committee and this instrument, the Committee requests your response to the above questions by Friday, **5 September 2014**.

If you have any questions, please contact Suzanne Veletta, Advisory Officer (Legal), on 9222 7250 or at delleg@parliament.wa.gov.au.

Yours sincerely



Mr Peter Abetz MLA
Chairman

¹ D Pearce and S Argument, *Delegated Legislation in Australia*, LexisNexis Butterworths, 4th Edition, p229.
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APPENDIX 3

LETTER FROM THE ATTORNEY GENERAL DATED 14 OCTOBER 2014



PUBLIC
15/10/14

ATTORNEY GENERAL; MINISTER FOR COMMERCE

Our ref: 44-12700
Your ref: 3929/2:SV

Mr Peter Abetz MLA
Chairman
Joint Standing Committee on Delegated Legislation
Parliament House
PERTH WA 6000

Dear Mr Abetz

LOCAL LAW MAKING PROVISIONS IN THE *HEALTH ACT 2011* AND *LOCAL GOVERNMENT ACT 1995*

I refer to your letter to Minister Hames dated 14 August 2014 in relation to the City of Greater Geraldton's *Animals, Environment and Nuisance Local Law 2014* (the *Local Law*). Minister Hames has asked me to respond to your letter.

In my view, where the subject matter of a local law falls within an area identified by section 199 of the *Health Act 1911*, that local law must be made under and in accordance with the requirements of the *Health Act 1911*. Absent a direction to make the local law by the Executive Director, Public Health or the CEO of the Department of Health, to the extent that a local government purports to make such a local law without the prior consent of the Executive Director, Public Health, the local law (or the affected provisions of the local law) will be invalid. Section 43(2) of the *Interpretation Act 1984* does not alter this position.

The position would be different if the *Health Act 1911* was no longer in force or did not provide for the making of local laws. In those circumstances, the local law making powers conferred by the *Local Government Act 1995* would be sufficiently wide to authorise the making of local laws addressing public health issues. As the *Health Act 1911* remains in force and continues to provide for the making of local laws on certain subjects, the requirements of that Act must be complied with in making such local laws.

Consequently, to the extent that Part 2 of the *Local Law* purports to legislate in respect of matters falling within section 199 of the *Health Act 1911* without the prior consent of the Executive Director, Public Health, it will be invalid.

Yours sincerely

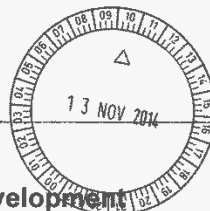
Hon. Michael Mischin MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE

At:

14 OCT 2014

Level 10, Dumas House, 2 Havelock Street, West Perth Western Australia 6005
Telephone: +61 8 6552 5600 Facsimile: +61 8 6552 5601 Email: Minister.Mischin@dpc.wa.gov.au

APPENDIX 4
**LETTER FROM THE MINISTER FOR HEALTH DATED
13 NOVEMBER 2014**



**Deputy Premier of Western Australia
Minister for Health; Training and Workforce Development**

Our Ref: 25-42743
Your Ref: 3926/2:SV

Mr Peter Abetz MLA
Chairman
Joint Standing Committee on Delegated Legislation
Parliament House
PERTH WA 6000

Dear Mr Abetz

Thank you for your letter of 15 October 2014 regarding the *City of Greater Geraldton Animals, Environment and Nuisance Local Law 2014*.

I confirm that the Executive Director, Public Health did not provide consent under section 342 of the *Health Act 1911* to make any part of that Local Law. Further, I do not object to the Committee's proposed course of action.

Local laws made only under the *Local Government Act 1995* are not considered by the Executive Director, Public Health (EDPH). The EDPH only considers for his consent, local laws made jointly under both the *Health Act 1911* and the *Local Government Act 1995*.

The *Health Act 1911* has been reviewed and a new Public Health Bill has been prepared to replace it.

I trust the information provided is of assistance.

Yours sincerely

Dr Kim Hames MLA
**DEPUTY PREMIER
MINISTER FOR HEALTH**

13/11/14

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www.premier.wa.gov.au/Ministers/Kim-Hames