



THIRTY-SEVENTH PARLIAMENT

REPORT 23

**JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**

**ISSUES OF CONCERN RAISED BY THE
COMMITTEE BETWEEN 1 MAY 2006 AND
30 APRIL 2007 WITH RESPECT TO LOCAL LAWS**

Presented by Mr Paul Andrews MLA (Chairman)

and

Hon Ray Halligan MLC (Deputy Chairman)

June 2007

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:

“3. Joint Standing Committee on Delegated Legislation

- 3.1 A *Joint Delegated Legislation Committee* is established.
- 3.2 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.
- 3.3 A quorum is 4 Members of whom at least 1 is a Member of the Council and 1 a Member of the Assembly.
- 3.4 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.
- 3.5 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.
- 3.6 In its consideration of an instrument, the Committee is to inquire whether the instrument –
- (a) is authorized or contemplated by the empowering enactment;
 - (b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;
 - (c) ousts or modifies the rules of fairness;
 - (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review;
 - (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable; or
 - (f) contains provisions that, for any reason, would be more appropriately contained in an Act.
- 3.7 In this clause –
- “adverse effect” includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;
- “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 during the period covered by this report:

Mr Paul Andrews MLA (Chairman)	Dr Graham Jacobs MLA
Hon Ray Halligan MLC (Deputy Chairman)	Ms Jaye Radisich MLA
Hon Shelley Archer MLC (until 20 March 2007)	Hon Barbara Scott MLC
Hon Vincent Catania MLC	Mr Tony Simpson MLA

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REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO THE

ISSUES OF CONCERN RAISED BY THE COMMITTEE BETWEEN 1 MAY 2006 AND 30 APRIL 2007 WITH RESPECT TO LOCAL LAWS

1 INTRODUCTION

1.1 One of the major initiatives that the Joint Standing Committee on Delegated Legislation (**Committee**) was involved in during the Thirty-Sixth Parliament was the establishment of the working group of local law stakeholders (**Working Group**), who are the:

- representatives from the Department of Local Government and Regional Development;
- representatives from the Local Government Managers Australia (WA Division);
- representatives from the Western Australian Local Government Association; and
- staff members of the Committee.

1.2 The Working Group last met on 2 June 2006.

1.3 The list of participants for that meeting also included two members of the Committee, Mr Paul Andrews MLA and Hon Ray Halligan MLC (accompanied by three Committee staff) and a representative from the Department of Health, which monitors and vets proposed health local laws.

1.4 So as to improve the dissemination of the previously informal information reports that were prepared by the Committee for the Working Group to identify and discuss issues of concern, the Committee has, since 2003, tabled these information reports in both the Legislative Council and the Legislative Assembly. Whereas those information reports were confidential to the Working Group participants, the tabled information reports are now publicly available on the Internet at www.parliament.wa.gov.au.

1.5 This is the fourth report of the Committee in a series of reports aimed at informing:

- the Parliament;
- local governments; and
- all other stakeholders in the local law making process,

of the Committee's position in relation to certain issues it has encountered with respect to local laws.

1.6 The Committee's last such report, Report No. 16, dealt with local laws considered between 1 May 2005 and 30 April 2006. This report covers issues arising from local laws scrutinised by the Committee between 1 May 2006 and 30 April 2007.

1.7 Selected for inclusion in this report are those local laws that the Committee has identified upon scrutiny as being problematic or as raising issues that the Committee wishes to highlight for the guidance of all local governments in the drafting of future local laws.

2 COMPLIANCE WITH UNDERTAKINGS

2.1 As the Committee stated in its Report No. 22, *Annual Report 2006*, it is the practice of the Committee to:

*obtain undertakings from the responsible Minister, Department or local government to amend or repeal instruments with which the Committee has raised a concern. When such undertakings are given, the Committee usually does not proceed with any motion to disallow that may have been tabled. Should the Committee wish to proceed, it does so by reporting to the Parliament, recommending the disallowance of instruments in the Legislative Council. The Committee only recommends disallowance as a last resort.*¹

2.2 Between December 2006 and February 2007, Committee staff conducted a review of compliance with undertakings provided by local governments to repeal or amend local laws found to offend the Committee's Terms of Reference. That review revealed that only 60 per cent of undertakings provided prior to 4 December 2004 had been complied with, with 36 undertakings provided prior to that date remaining outstanding. Of the undertakings that had been complied with, 11 had taken in excess of two years and 20 fell within the one to two year time period.

¹ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report No. 22, *Annual Report 2006*, 28 March 2007, paragraph 2.4, p5.

2.3 The Committee noted that a number of local governments explained lack of compliance by advising that the failure to repeal or amend had been an oversight. Local governments also cited lack of human and financial resources.

2.4 While recognising that its standard practice had been to request amendment when the local law was next reviewed, the Committee was concerned at the delay in compliance with undertakings. On 4 April 2007, the Committee made the following resolution:

When an undertaking is requested of a local government, the usual time for the undertaking to be completed shall be 2 years, unless the Committee designates some other time.

3 NON-COMPLIANCE WITH LOCAL LAW-MAKING PROCEDURE

3.1 The Committee highlighted this issue in its Report No. 16, *Issues of Concern raised by the Committee between 1 May 2005 and 30 April 2006 with respect to Local Laws*, when it observed that:

Section 3.12 of the Local Government Act 1995 governs the procedure for the making of all local laws (including local laws which amend or repeal other local laws)², regardless of the empowering Act.

3.2 Problems continued to arise in the period considered by this report, examples of which are set out below.

Health Act 1911 - Town of Mosman Park - Fees and Charges 2006

3.3 The Committee considered this local law at its meetings on Wednesday 23 and 30 August 2006, when it noted that the *Gazette* title for the instrument was “*Health Act 1911 Town of Mosman Park Fees and Charges 2006*”.³ However, the Explanatory Memorandum referred to the local law as “*these amendments*” and advised that the title of the local law was “*Town of Mosman Park Health (Eating Houses) Local Laws 2000*.”

3.4 The Committee wrote to the Town seeking clarification as to whether the local law:

- reflected a resolution of the Council to fix a fee or charge pursuant to subsection 344C(2) of the *Health Act 1911*; or
- was an amendment of the *Town of Mosman Park Health (Eating Houses) Local Laws 2000* pursuant to section 342 of the *Health Act 1911* and Subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995*.

² Section 43(3) of the *Interpretation Act 1984*.

3.5 The Committee noted in that letter that, if the former were the case, it had been provided with no information as to whether the Town had complied with all procedural requirements for a local law made pursuant to section 344C of the *Health Act 1911*.

3.6 The Town's response was that the local law reflected a resolution of the Council to fix a fee or charge pursuant to subsection 344C(2) of the *Health Act 1911*. However, the Town had not complied with subsection 344C(2)(b), which provides:

Fees or charges fixed under this section shall be fixed by resolution of a local government and notice of the resolution shall be published at least 14 days before the day on which the resolution is to take effect

— ...

(b) in a newspaper circulating generally throughout the district of the local government.

3.7 The Committee wrote to the Town confirming that failure to comply with the procedural requirements rendered this local law invalid.

Tamala Park Regional Council - Standing Orders Local Law 2006

3.8 The Committee considered this local law at its meeting on 27 September 2006, when it noted a drafting error in the enacting formula. The local law did not state the date the Council resolved to make the local law.

3.9 The Committee wrote to the Council requesting that this error be corrected when the local law was next amended.

Shire of Gingin Amendment Local Law

3.10 This local law was gazetted on 31 March 2006 and was scheduled for the Committee's consideration on 10 May 2006. However, the Shire had not provided the Committee with the materials required by the Minister for Local Government and Regional Development's Circular No. 28/2005 - *Local Laws Explanatory Memoranda to the Joint Standing Committee on Delegated Legislation*. Committee staff sought the requisite materials.

3.11 On 2 May 2006 the Shire advised the Committee that the process for adoption of the local law required by the *Local Government Act 1995* had not been complied with and that the Shire was recommencing the adoption process.

³ *Western Australian Government Gazette*, State Government Printer, Perth, Friday, 2 June 2006, p1983.

4 DRAFTING STYLE IN LOCAL LAWS

4.1 In its Report No.16, *Issues of Concern raised by the Committee between 1 May 2005 and 30 April 2006 with respect to Local Laws*, the Committee advised that it was keeping a ‘watching brief’ on drafting styles in local laws.⁴

4.2 The Committee has noted a practice of quoting the text of sections of relevant legislation (for example, the *Road Traffic Code 2000*) and local government codes in a gazetted local law and either incorporating that text as part of the substantive law or using it as a footnote.⁵ The Committee is concerned that this practice can lead to:

- invalidity - where the text incorporated as part of the local law is subsequently amended in the original legislation;⁶ or
- confusion - where the text is footnoted,

as well as persons being misled as to their obligations/rights in the event the relevant legislation is amended. An example of this practice is set out below.

Town of Bassendean - Standing Orders Local Law 2006 - incorporation of code of conduct

4.3 The issues arising when local governments attempt to give legislative force to their codes of conduct were considered in the Committee’s Report No. 4, *City of Perth Code of Conduct Local Law*.

4.4 The sub-delegation, avoidance of Parliamentary scrutiny and law making procedural issues that were of concern in respect of the *City of Perth Code of Conduct Local Law* are addressed when the text of a clause of a code of conduct is repeated as text of a local law. However, that practice does not address the question of whether any particular matters required by the *Local Government Act 1995*, or regulations made under that Act, to be dealt with in a code of conduct, can properly be the subject of a valid local law.

4.5 The *Town of Bassendean - Standing Orders Local Law 2006* purported to incorporate the text of certain clauses of its code of conduct, dealing with disclosure of interests by council members and staff, as part of that local law.

⁴ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report No. 16, *Issues of Concern raised by the Committee between 1 May 2005 and 30 April 2006 with respect to Local Laws*, 28 March 2007, paragraph 3.11, p7.

⁵ The *Town of Bassendean - Standing Orders Local Law 2006* is an example of the first practice and the *City of Joondalup - Standing Orders Local law 2005* is an example of the second. A footnote does not form part of the substantive law - section 32(2) of the *Interpretation Act 1984*.

⁶ A local law that is inconsistent with any written law is inoperative to the extent of that inconsistency - section 3.7 of the *Local Government Act 1995*.

- 4.6 The *Local Government Act 1995*, in Subdivision 1 of Division 6 of Part 5, contains a detailed statement as to what is required of council members and employees in respect of disclosure of “*interests*” as defined in sections 5.60 - 5.61 of that Act and the consequences of non-compliance.
- 4.7 Regulation 34C of the *Local Government (Administration) Regulations 1996* provides that a code of conduct made by a local government is to contain certain provisions in respect of “*disclosure of interests affecting impartiality*”. “*Interests*” as defined in the *Local Government Act 1995* are expressly excluded from the definition of “*interests*” in regulation 34C of the *Local Government (Administration) Regulations 1996*.
- 4.8 There was overlap, but also difference, between the definition of “*interests*” required to be disclosed under the *Local Government Act 1995* and the *Local Government (Administration) Regulations 1996* and the incorporated clauses of the code of conduct in the *Town of Bassendean - Standing Orders Local Law 2006*, with the consequence that the local law imposed disclosure obligations co-existent and additional to those found in the *Local Government Act 1995* and permitted by the *Local Government (Administration) Regulations 1996*.
- 4.9 The Committee observed that Subdivision 1 of Division 6 of Part 5 of the *Local Government Act 1995* and regulation 34C of the *Local Government (Administration) Regulations 1996* suggested a legislative intent to impose disclosure obligations in respect of “*interests*” as defined in the Act through the Act; and “*interests*” as defined in the Regulations through a Code of Conduct. In these circumstances, the Committee considered that it was questionable whether the *Local Government Act 1995* contemplated additional, or co-existent, obligations to disclose interests being imposed through a local law.
- 4.10 The Committee raised its concerns with the Town of Bassendean but in the interim, the *Local Government (Official Conduct) Amendment Act 2007* was assented to on 28 March 2007.⁷ That amendment Act provides for regulations to prescribe the rules of conduct that must be observed by council members, including disclosure of interests. Those regulations have not yet been gazetted.
- 4.11 In light of the proclamation of the *Local Government (Official Conduct) Amendment Act 2007*, the Town of Bassendean agreed not to enforce the disclosure of interest provisions in its local law pending the gazettal of regulations prescribing rules for the conduct of council members, and provided an undertaking to amend its local law to reflect those rules when prescribed.
- 4.12 In the circumstances, it was not necessary for the Committee to reach a concluded opinion on the wider question.

⁷ While sections 1 and 2 came into effect on assent, the balance of the *Local Government (Official Conduct) Amendment Act 2007* has yet to be proclaimed.

5 ISSUING NOTICES

5.1 The Committee has a long-standing concern with local governments assuming a right to issue notices in respect of activities on private land beyond the rights conferred in the *Local Government Act 1995*, regulations made under that Act or some other enactment. An example of this practice in the reporting period is set out below.

City of Armadale Environment, Animals and Nuisance Amendment Local Laws 2006

5.2 The Committee considered this amendment local law at its meeting on 14 June 2006.

5.3 Clause 7 of the amendment local law purported to amend Part 4 of the principal local law by inserting a new Division 4 - Dangerous Excavations. The new clause read:

Dangerous excavations to be made safe

55A *Where it appears to an authorised person that a pit, well or other excavation on any land is dangerous, the authorised person may by notice in writing direct the owner or occupier to:*

- (a) fill in the excavation;*
- (b) fence the excavation; or*
- (c) take such other actions as the authorised person considers necessary to eliminate or minimise the danger caused by the excavation within the time specified in the notice."*

5.4 Regulation 11 of the *Local Government (Uniform Local Provisions) Regulations 1996* provides power for a local government to issue a notice to an owner where an excavation is "*in a public thoroughfare or land adjoining a public thoroughfare*".

5.5 However, where the excavation is not "*in a public thoroughfare or land adjoining a public thoroughfare*" the legislation does not provide for a local government to issue a notice to an owner. Clause 55A was not limited to the prescribed circumstances.

5.6 The Committee requested an undertaking from the City of Armadale to:

- repeal Division 4 of Part 4 of the local law; and
- not to enforce it in the interim.

5.7 That undertaking was provided by the City.

6 RETROSPECTIVITY

- 6.1 The Committee notes that the rule at common law is that a statute ought not be given a retrospective operation, where to do so would affect an existing right or obligation, unless the language of the statute expressly or by necessary implication required such construction.⁸ This principle has application to delegated legislation as well as Acts.
- 6.2 A legislative intention to permit retrospectivity needs to be gathered by considering both the enabling Act and the instrument made under it.⁹ If retrospectivity is beyond the power conferred by the enabling Act, the instrument is not authorised by the enabling Act.
- 6.3 A general local law-making power for all things necessary or convenient to give effect to an Act does not permit the making of retrospective local laws as being in the public interest.¹⁰
- 6.4 The Committee doubts that the common law position is altered by section 41(1) of the *Interpretation Act 1984*, which provides:

Where a written law confers power to make subsidiary legislation, all subsidiary legislation made under that power shall:

- (a) be published in the Gazette;*
- (b) subject to section 42, come into operation on the day of publication, or where another day is specified or provided for in the subsidiary legislation, on that day.*

- 6.5 The Committee is of the general view that the words “*another day*” in section 41(1) of the *Interpretation Act 1984* do not include a day ‘prior to’ the day of publication.
- 6.6 An example of a local law with retrospective operation is set out below.

City of Subiaco Eating-House Local Law 2005

- 6.7 This local law contained the following provisions:

- clause 4(3), which provided:

To the extent that clause 2(4) of The City of Subiaco Health Laws 1999 (published in the Government Gazette on 1 June 1999) repealed

⁸ *Rodway v The Queen* (1990) 169 CLR 515.

⁹ Bennion, F, *Statutory Interpretation*, 4th Ed., Butterworths, 2002, p273.

¹⁰ *Broadcasting Co of Australia Pty Ltd v The Commonwealth* (1935) 52 CLR 52 and *Maxwell v Murphy* (1957) 96 CLR 261.

Part 8 of The City of Subiaco Health By-Laws 1994 (published in the Government Gazette on 11 November 1994) that repeal is repealed and Part 8 is revived with effect from 1 June 1999 until the day prior to the commencement of this Local Law, and on the date of commencement of this Local Law is repealed; and

- clause 4(4), which ensured that those parts of the schedules to the *City of Subiaco Health By-Laws 1994* that related to Part 8, being forms and fees, were also revived.

6.8 This local law was the subject of the Committee's Report No. 17, *City of Subiaco Eating-House Local Law 2005*, tabled on 20 June 2006. The local law was disallowed by the Legislative Council.

7 PARKING LOCAL LAW

City of Fremantle Parking Local Law 2006

7.1 This local law raised a number of issues, the most serious of which are set out below.

Determination device

7.2 The Committee reviewed the use of determination devices in its Report No. 16, *Issues of Concern raised by the Committee between 1 May 2005 and 30 April 2006 with respect to Local Laws*, when it noted that:

The use of determination devices avoids scrutiny by both the Department of Local Government and Regional Development and the Parliament in a manner similar to the use of a policy made by a simple majority of council in the City of Perth Code of Conduct Local Law. This is because the mandatory procedure for making a local law under s 3.12 of the Local Government Act 1995 is not required to be followed in order to make, repeal or amend a determination/resolution. The determination device also bypasses the requirements of s 42 of the Interpretation Act 1984 in relation to publication of the determination in the Gazette, tabling in both Houses of Parliament and the possibility of disallowance.

It could not have been the intention of Parliament for the procedures contained in s 3.12 of the Local Government Act 1995 and s 42 of the Interpretation Act 1984 to be avoided. Any local law that attempts to evade scrutiny by the Department of Local Government and Regional Development or the Parliament (via the Committee) is not authorized by the Local Government Act 1995, is inconsistent with the Interpretation Act 1984 and is void.

There is also an argument that determinations amount to a subdelegation of legislative power, since determinations are made by a simple majority of council members, whereas local laws must be made by an absolute majority of council members under s 3.12(4) of the Local Government Act 1995.¹¹

7.3 Clause 7 of the *City of Fremantle Parking Local Law 2006* provides:

*The Local Government may **by resolution or by delegated authority**, constitute, determine and vary from time to time, and also indicate by signs —*

- (a) metered zones, metered stalls and ticket issuing machine zones;*
- (b) permitted times and conditions of parking therein depending on and varying with locality;*
- (c) permitted classes of vehicles to park therein;*
- (d) manner of parking therein;*

but such discretionary authority shall not be exercised in a manner inconsistent with the provisions of this Local Law. (Committee's emphasis)

7.4 There were equivalent provisions in respect of parking stations (clause 19), declaring when the requirement to pay metered fees would not apply (clauses 11 and 22), and determination and variation of requirements with respect to stopping and parking of vehicles (clause 36).

7.5 The Committee endeavours to take a pragmatic approach to parking local laws and has permitted limited matters to be dealt with by council resolution, rather than amendment of a local law, in light of the cost and time involved in that latter process.¹² However, it appeared to the Committee that in providing for such determinations to be made in respect of such a wide range of issues, and by delegated authority as well as council resolution, the City was taking matters a step further than could be considered contemplated by the *Local Government Act 1995*.

¹¹ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 16, *Issues of Concern raised by the Committee between 1 May 2005 and 30 April 2006 with respect to Local Laws*, 28 March 2007, p30.

¹² Where, for example, parking zones are also required to be clearly linked with signs, the Committee has been less inclined to query the validity of a local law.

Behaviour

7.6 Subclause 30(5) of the local law provides:

A person shall not drive a vehicle in a parking station so as to cause any person present in or near the parking station apprehension of danger to such driver, such person present, or any other person, or apprehension of damage or injury to any property.

7.7 The Committee noted that the general formulation of such a prohibition in criminal law was that a person must not:

- cause actual danger; or
- threaten danger so as to cause a genuine, and reasonably based, apprehension that danger will eventuate.

7.8 It was the Committee’s view that a mere apprehension of danger was too subjective and too vague to form a basis for a legal obligation and for that reason was not authorised or contemplated by the *Local Government Act 1995*.

Responsibility for acts of minors

7.9 Subclauses 35(2) and (3) provide:

(2) *A person shall not permit, cause to permit, or neglect to prevent a minor of whom they are parent, guardian, or at the relevant time having the charge, control or welfare of such minor, to remove, damage, deface or misuse any parking meter or ticket machine or any fitting or equipment of a parking station or any part thereof, or attempt to do any such acts.*

(3) *In this clause —*

“minor” means any person under the age of 18 years or, in the absence of positive evidence as to age, any person appearing to be under the age of 18 years or any person defined as a child under the Children’s Court of Western Australia Act (No.2) 1988.

7.10 Clause 84 provides that any person who breaches a provision of the local law commits an offence.

7.11 The Committee considered that subclause 35(2), when considered with clause 84, offended the general common law principle that a defendant is responsible for an

offence only if he or she personally performed, or participated in, the conduct proscribed and did so with the requisite mental element.

- 7.12 In forming this view, the Committee noted that in describing the conduct required for participation, Cussen ACJ said, in *R v Russel* [1933] VR 59:

All the words abovementioned are, I think, instances of one general idea, that the person charged as a principal in the second degree is in some way linked in purpose with the person actually committing the crime, and is by his words or conduct doing something to bring about, or rendering more likely, such commission.

- 7.13 It also noted that section 7 of the *Criminal Code* provides:

When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say —

- (a) *Every person who actually does the act or makes the omission which constitutes the offence;*
- (b) *Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;*
- (c) *Every person who aids another person in committing the offence;*
- (d) *Any person who counsels or procures any other person to commit the offence.*

In the fourth case he may be charged either with himself committing the offence or with counselling or procuring its commission.

- 7.14 Subclause 35(2) did not fall within any of the accepted limited exceptions to the prohibition on vicarious criminal liability.

- 7.15 The Committee's view was not affected by section 58 of the *Young Offenders Act 1994*, which provides:

- (2) *If a young person is found guilty of an offence and a fine is imposed or the payment of compensation, restitution, or costs is ordered, the court, having regard to the financial circumstances of the young person and any person who is a responsible adult, may order that payment of the fine or other*

amount be made by the young person, by any person who is a responsible adult, or by any of them in such proportions as the court may determine.

- (3) *An order for any payment by the young person may be accompanied by an order that, in default of payment by the young person, the payment be made by a person specified in the order who is a responsible adult.*

as that section requires the conviction of the young offender, not the responsible adult.

- 7.16 With respect to subclause 35(3), the inclusion of responsibility for any person who “appears” to be under the age of 18 was particularly unsatisfactory. The Committee noted that “apparent age” was sufficient to attract the jurisdiction of the Children’s Court (section 3 of the *Children’s Court of Western Australia Act 1988*). However, this is a beneficial provision, designed to protect children who may not be 18 years from adult criminal liability in the event that age is uncertain. It was not, in the Committee’s opinion, appropriate to second the extended definition of a child in the *Children’s Court of Western Australia Act 1988* to extend liability for the acts of others.

Conflict with regulation - penalty

- 7.17 Clause 54 provides:

- (1) *A driver shall not stop or park a vehicle on any land which has been set aside within a parking region as a parking bay for use of a disabled person unless a current ACROD sticker is displayed inside the vehicle in a prominent position in such a manner so the particulars thereon are clearly visible to and able to be read by an authorised person from outside of and from the front of the vehicle at all times while the vehicle remains stopped or parked in such bay.*

- 7.18 Clause 84 provides that penalty for breach of any provision of the local law is \$5,000.

- 7.19 However, regulation 3 of the *Local Government (Parking for Disabled Persons) Regulations 1988* provides:

A person shall not stand or park a vehicle, other than a vehicle referred to in regulation 5, on any land which has been set aside within a parking region as a parking bay for use of a disabled person.

Penalty: \$1 000.

7.20 Regulation 5 reads:

The vehicle of a disabled person shall be identified, for the purposes of regulation 3, by displaying a current ACROD sticker, which shall be displayed in a prominent position, in such a manner as to be clearly visible from the front of the vehicle.

7.21 Section 3.7 of the *Local Government Act 1995* provides:

A local law made under this Act is inoperative to the extent that it is inconsistent with this Act or any other written law.

“Written law” is defined in section 5 of the *Interpretation Act 1984* to include subsidiary legislation.

Ongoing discussion

7.22 The Committee is currently discussing the matters noted, and other issues with this local law, with the City of Fremantle. However, the Committee was of the view that the matters noted were of sufficient concern to be raised in this report.

8 LOCAL GOVERNMENT (OFFICIAL CONDUCT) AMENDMENT ACT 2005

8.1 In its Report No. 4, *City of Perth Code of Conduct Local Law*, the Committee recommended that the Government enact a Uniform Code of Conduct by regulation. It was anticipated that this would specify what ethical/conduct issues were to have legal enforceability/consequences and which were to be dealt with administratively.

8.2 The *Local Government (Official Conduct) Amendment Act 2007* (“**the Amendment Act**”), which was assented to on 28 March 2007,¹³ amends the *Local Government Act 1995* to provide a framework to deal with misconduct by council members. It provides for regulations to be made prescribing rules of conduct to be observed by council members.

8.3 It appears to the Committee that the Amendment Act may resolve the uncertainty as to what ethical/conduct issues are to have legal consequences and what are not in respect of council members. However, the Committee notes that the Amendment Act does not address ethical/conduct issues by council employees.

8.4 The Committee looks forward to the gazettal of regulations pursuant to the Amendment Act.

¹³ While sections 1 and 2 came into effect on assent, the balance of the *Local Government (Official Conduct) Amendment Act 2007* has yet to be proclaimed.

9 CONCLUSION

- 9.1 The Committee's report is intended as a means of assistance and guidance to local governments in formulating their local laws.
- 9.2 The Committee acknowledges the assistance it receives from the Department for Local Government and Regional Development, the Department for Health and the various local governments in resolving the issues that from time to time arise and looks forward to its continuation through 2007.



Mr Paul Andrews MLA

Chairman

7 June 2007