

41ST PARLIAMENT



Report 4

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

City of Gosnells Bush Fire Brigade Local Law 2023

Presented by

Mr Geoff Baker MLA (Chair)

and

Hon Lorna Harper MLC (Deputy Chair)

November 2023

Joint Standing Committee on Delegated Legislation

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EXECUTIVE SUMMARY

1 The Joint Standing Committee on Delegated Legislation (Committee) has concluded that the *City of Gosnells Bush Fire Brigade Local Law 2023* (Gosnells Local Law) is invalid and offends its term of reference (a) because it:

- is not authorised by the *Local Government Act 1995* (LGA)
- is inconsistent with section 62(1)(a) of the *Bush Fires Act 1954* (Bush Fires Act)
- contains an unauthorised sub-delegation of legislative making power.

Not authorised by the *Local Government Act 1995*

2 The Committee has concluded that the City of Gosnells (City) did not follow the correct procedure when it made the Gosnells Local Law.

3 In making a local law, a local government is to follow the procedure set out in section 3.12 of the LGA. This includes a requirement to give local public notice of the proposed local law and invite submissions.

4 The LGA provides that the local government, after considering any submissions received, may make a local law that is not significantly different from the proposed local law. If the local government decides to make a local law that is significantly different from the proposed local law, it is to recommence the law making procedure.

5 The Gosnells Local Law is invalid because it is significantly different from the proposed local law and the City did not recommence the law making procedure. The proposed local law, of which local public notice was given, did not deal with the governance of bush fire brigade meetings and its operational structure. In contrast, the adopted local law did.

6 The Gosnells Local Law is invalid and offends the Committee's term of reference (a) because it is not authorised by the LGA.

Inconsistent with section 62(1)(a) of the *Bush Fires Act 1954*

7 The regulatory scheme created by the Bush Fires Act contemplates that where a local government decides to regulate matters specified in section 62(1)(a), it is required to do so by local law.

8 The Gosnells Local Law does not deal with the appointment, employment, payment, dismissal and duties of bush fire control officers. It presumably leaves to the bush fire brigade operating procedures (Procedures) substantive matters governing its structure.

9 The Gosnells Local Law is invalid by failing to regulate the matters covered by section 62(1)(a) of the Bush Fires Act. Subsidiary legislation, including local laws, must not be inconsistent with the provisions of the written law under which it is made.

Unauthorised sub-delegation of legislative making power

10 The Gosnells Local Law, in providing for the Chief Executive Officer to establish and implement the Procedures, contains an unauthorised sub-delegation of legislative making power.

11 The Gosnells Local Law is invalid and offends the Committee's term of reference (a) as the sub-delegation is not authorised by the Bush Fires Act.

12 The Committee has recommended that the Gosnells Local Law be disallowed.

Recommendation

The recommendation appears in the text at the page number indicated:

RECOMMENDATION 1	Page 9
The <i>City of Gosnells Bush Fire Brigade Local Law 2023</i> be disallowed.	

1 Reference and procedure

- 1.1 On 9 June 2023 the *City of Gosnells Bush Fire Brigade Local Law 2023* (Gosnells Local Law) was published in the *Government Gazette*.
- 1.2 Upon gazettal, the Gosnells Local Law stood referred to the Joint Standing Committee on Delegated Legislation (Committee).¹

2 Breach of section 3.12(4) of the *Local Government Act 1995*

- 2.1 The Committee has concluded that the City of Gosnells (City) did not follow the correct procedure when it made the Gosnells Local Law. The Gosnells Local Law is invalid and offends the Committee's term of reference (a) because it is not authorised by the empowering enactment.

Statutory procedure for making a local law

- 2.2 The power to make the Gosnells Local Law was derived from section 3.5(1) of the *Local Government Act 1995* (LGA) and section 62(1)(a) of the *Bush Fires Act 1954* (Bush Fires Act). Section 3.5(1) of the LGA states:

A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions² under this Act.

- 2.3 Section 62(1) of the Bush Fires Act is at Appendix 1.
- 2.4 Part 3, Division 2, Subdivision 2 of the LGA sets out the procedure that a local government must follow when making a local law. In the case of the Gosnells Local Law, sections 3.12(4) and 3.13 are most relevant. Sections 3.12 and 3.13 of the LGA are at Appendix 2.
- 2.5 Importantly, section 3.12(4) requires that, after local public notice of a proposed local law has been given and after the last day for submissions, the local government:

is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.
(underlining added)

*Absolute majority required.

- 2.6 Section 3.13 of the LGA states:

Procedure where significant change in proposal

If during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure. (underlining added)

¹ Committee term of reference 10.5: [Standing Orders of the Legislative Council](#), Schedule 1, clause 10.5, accessed 7 November 2023.

² The general function of a local government is 'to provide for the good government of persons in its district': s 3.1 [Local Government Act 1995](#), accessed 7 November 2023.

2.7 The Department of Local Government, Sport and Cultural Industries (Department) created a Statutory Procedures Checklist to assist local governments complete the mandatory procedural steps prescribed by section 3.12 of the LGA to pass a valid local law. Part C of the checklist contains the requirements of section 3.12(4) of the LGA.³

The procedure for making the *City of Gosnells Bush Fire Brigade Local Law 2023*

2.8 The City proposed the Gosnells Local Law at an Ordinary Council Meeting on 28 February 2023 (Proposed Local Law). The Proposed Local Law is at Appendix 3.

2.9 The stated purpose of the Proposed Local Law was to:

provide for the establishment and administration of a bush fire brigade.⁴

2.10 The Proposed Local Law included clauses 2.1, 2.2 and 2.3 which deal with:

- the establishment of a bush fire brigade
- the naming of, and appointment of officers to, the bush fire brigade
- the duties of the captain and other officers of the bushfire brigade.

2.11 The Proposed Local Law also contained clause 3.1 which deals with responsibility for administrative arrangements.

2.12 The Proposed Local Law was then advertised for public comment pursuant to section 3.12(3) of the LGA.⁵ Two submissions were received.

2.13 One submission was received from the Department which advised it has no significant issues with the Proposed Local Law.⁶

2.14 The second submission was received from the Department of Fire and Emergency Services (DFES). DFES noted that the Proposed Local Law dealt only with the provision of appliances, equipment, apparatus, and funding for the bush fire brigade.⁷ DFES suggested that the City should consider including other administrative provisions in the Proposed Local Law. This was based on a 2019 report by the Committee⁸ on what should be included in a bush fire brigade local law.⁹

2.15 On review of DFES's submission, the City of Gosnells Council (Council) adopted several amendments to the Proposed Local Law. The amendments:

- inserted 2 new definitions:
 - *bush fire brigade operating procedures* means the Brigade Operating Procedures approved by the Chief Executive Officer as amended from time to time

³ Government of Western Australia, 1 September 2023, see: [Statutory Procedures Checklist](#), accessed 7 November 2023.

⁴ *City of Gosnells Bush Fire Brigade Local Law 2023*, Explanatory Memorandum, p 1.

⁵ The proposed Local Law appeared on the City of Gosnells website, was advertised in the *Gosnells Examiner* Newspaper, on notice boards at the City of Gosnells Civic Centre and every library and posted on the City of Gosnells Facebook page.

⁶ City of Gosnells [Minutes](#), Ordinary Council Meeting, 23 May 2023, p 31, accessed 7 November 2023.

⁷ Clause 3.2(1) of the Proposed Local Law.

⁸ Joint Standing Committee on Delegated Legislation, report 16, [City of Rockingham Bush Fire Control and Bush Fire Brigades Amendment Local Law 2018](#), Western Australia, Legislative Council, June 2019, accessed 7 November 2023.

⁹ City of Gosnells [Minutes](#), Ordinary Council Meeting, 23 May 2023, accessed 7 November 2023, p 31.

- *Chief Executive Officer* means the Chief Executive Officer of the City of Gosnells
 - inserted a new clause 2.4 which deals with bush fire brigade meetings
 - amended clause 3.1(1) and inserted new clauses 3.1(2) and (3) which deal with the administration of bush fire brigades.
- 2.16 The Proposed Local Law, including these amendments, was adopted by the Council on 23 May 2023.¹⁰ The Gosnells Local Law is at Appendix 4.
- 2.17 In summary, the Proposed Local Law did not contain provisions about how meetings of the bush fire brigade are to be conducted or operating procedures for the bush fire brigade. The adopted Gosnells Local Law contained these provisions.

Instrument is 'significantly different' from what was proposed

- 2.18 The Committee is of the view that the Gosnells Local Law is 'significantly different' from the Proposed Local Law.
- 2.19 The LGA does not define 'significantly different'.
- 2.20 Edleman J in a 2017 High Court judgment stated:
- where a statute employs a term in its ordinary sense, there can be no warrant for the extension of the meaning beyond its ordinary sense.¹¹
- 2.21 The Macquarie Dictionary defines 'significant' to mean 'important; of consequence'¹² and 'different' to mean 'differing in character; having unlike qualities; dissimilar'.¹³
- 2.22 There is limited legislative guidance on the meaning of 'significantly different'.
- 2.23 In *Clark v Cook Shire Council* [2008] 1 Qd R 327, the Queensland Court of Appeal unanimously approved of a 'macrocosm' view of the legal test for 'significantly different'. The Court found that the modifications to a proposed planning scheme must have the consequence that the modified scheme as a whole is significantly different from the proposed scheme as notified.¹⁴ (underlining added)
- 2.24 A former committee has observed that in determining if a law made is significantly different from a proposed law, each case turns on its own facts.¹⁵
- 2.25 Examples of where the Committee has found a local law to be 'significantly different' from an adopted local law include:
- *City of Kalamunda Dogs Local Law 2021*: The proposed local law permitted 4 dogs to be kept on certain premises, whereas the adopted local law only permitted 2 dogs to be kept. The Legislative Council disallowed the local law on the Committee's recommendation.¹⁶

¹⁰ City of Gosnells [Minutes](#), 23 May 2023, accessed 7 November, p 32.

¹¹ *SZTAL v Minister for Immigration and Border Protection* [2017] HCA 34 at para 94.

¹² *Macquarie Dictionary*, 2023, Macquarie Dictionary Publishers 2023. See: [Macquarie Dictionary](#), accessed 14 September 2023.

¹³ [Macquarie Dictionary](#), accessed 14 September 2023.

¹⁴ *Clark v Cook Shire Council* [2008] 1 Qd R 327, para 5.

¹⁵ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, report 62, [City of Nedlands Parking and Parking Facilities Local Law 2012](#), November 2012, accessed 7 November 2023, p 6.

¹⁶ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, report 1, [City of Kalamunda Dogs Local Law 2021](#), September 2021, accessed 7 November 2023.

- *City of Subiaco Waste Local Law 2022*: The adopted local law increased a penalty for breach of a provision from \$50 to \$250. The City of Subiaco undertook to repeal the local law and make a new one complying with section 3.12 of the LGA.
- 2.26 Former committees have found a significant difference between proposed local laws and those which, after local public notice had been given, were adopted. Examples include local laws which:
- lowered the thickness threshold for reusable plastic bags from 60 microns to 35 microns¹⁷
 - inserted a clause which prevented the owner or occupier of premises adjacent to a verge charging a fee for parking on the verge¹⁸
 - prescribed prickly lettuce as a pest plant, where the main purpose of the local law was to prescribe pest plants for the district¹⁹.

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- 2.27 The Committee concludes that inserting clauses that deal with the governance of bush fire brigade meetings and its operational structure is a significant change.
- 2.28 Further, the Committee's view is that these additional clauses are a material aspect of the Gosnells Local Law. The governance of bush fire brigade meetings and its operational structure are key provisions of the Gosnells Local Law. Inserting these additional clauses changes the Gosnells Local Law as a whole.
- 2.29 The modification to the Proposed Local Law after the consultation period had closed meant the public was not consulted about how bush fire brigade meetings are to be conducted. Clauses 2.4(1) and 3.1(2) of the Gosnells Local Law contain the only references to the bush fire brigade operating procedures (Procedures). Members of the public should have had an opportunity to comment on these clauses and the reference to the Procedures. There was no opportunity to consider the new clauses prior to the adoption of the Gosnells Local Law.
- 2.30 The Committee's view is that this is contrary to one of the intents of sections 3.12 and 3.13 of the LGA, which is to:
- ensure that local governments engage in community consultation prior to making a local law. This consultation process is particularly important when new laws are being proposed or inserted into a local law.²⁰
- 2.31 The consultation process required by the LGA is rendered meaningless if the proposed local law is then adopted with significant changes.

¹⁷ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, report 6, [*Town of East Fremantle Plastic Bag Reduction Local Law 2017*](#), November 2017.

¹⁸ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, report 62, [*City of Nedlands Parking and Parking Facilities Local Law 2012*](#), November 2012, accessed 7 November 2023.

¹⁹ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, report 9, [*Issues of concern raised by the Committee between December 20 2003 and June 30 2004 with respect to Local Laws*](#), August 2004, accessed 7 November 2023.

²⁰ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, report 62, [*City of Nedlands Parking and Parking Facilities Local Law 2012*](#), November 2012, accessed 7 November 2023, p 6.

Can section 3.12(2A) of the *Local Government Act 1995* save the instrument from invalidity?

2.32 Section 3.12(2A) of the LGA provides that:

Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.

2.33 The Committee is of the view that in failing to recommence the procedure for making the Gosnells Local Law, it is invalid by reason of non-compliance with sections 3.12(4) and 3.13 of the LGA.

2.34 It is not possible to comply substantially with the local law-making procedure if the requirements of section 3.12(4) of the LGA are not satisfied. It is a vital step in the process.

2.35 Consequently, section 3.12(2A) of the LGA cannot be relied upon to save the Gosnells Local Law from invalidity due to that non-compliance.

3 Inconsistency with section 62(1)(a) of the *Bush Fires Act 1954*

3.1 The Committee has concluded that the Gosnells Local Law is inconsistent with section 62(1)(a) of the Bush Fires Act and offends the Committee's term of reference (a) in that it is not authorised by the empowering enactment.

3.2 Section 62(1) of the Bush Fires Act is at Appendix 1.

Exercise of power under section 62(1)(a) of the *Bush Fires Act 1954*

3.3 In its Report 16,²¹ the former Committee found that the *City of Rockingham Bush Fire Control and Bush Fire Brigades Amendment Local Law 2018* was not within power of section 62(1) of the Bush Fires Act.

3.4 The former Committee stated:

the regulatory scheme created by the Act contemplates that where a local government decides to regulate areas that are the subject matter of section 62(1) it is required do so by way of local law.²²

3.5 It noted:

The advice given to the City's Council was that many matters prescribed in the principal local law did not have to be prescribed, and could instead be regulated administratively by the City. There appears to have been a fundamental misunderstanding about what matters had to be dealt with by a bush fire brigades local law, and that misunderstanding has led to many matters being removed from the principal local law-matters which the Act contemplates will be regulated by local laws.

The misunderstanding appears to have arisen because the word 'may' in section 62(1) of the Act (quoted above). As the word 'may' is permissive, the adviser has

²¹ Joint Standing Committee on Delegated Legislation, report 16, *City of Rockingham Bush Fire Control and Bush Fire Brigades Amendment Local Law 2018*, Western Australia, Legislative Council, 27 June 2019, accessed 7 November 2023.

²² Joint Standing Committee on Delegated Legislation, [report 16](#), accessed 7 November 2023, p 2.

interpreted section 62(1) to mean that the City, if it wishes to regulate the matters listed in that section, does not need to regulate those matters by local law.

The word 'may' is *prima facie* permissive and gives the City a discretion as to whether it will make a local law regulating those matters. The power to make such local laws is permissive because local governments are not compelled to make bush fire brigade local laws. However, if a local government chooses to regulate bush fire brigade matters, it must do so by local law, not by another method.²³

3.6 The Parliament endorsed the former Committee's view and disallowed the *City of Rockingham Bush Fire Control and Bush Fire Brigades Amendment Local Law 2018*.²⁴

3.7 The Committee's position regarding the interpretation of section 62(1)(a) of the Bush Fires Act has not changed. This is based on the following additional factors:

- The view that section 62(1)(a) conveys a discretionary power ignores High Court case law on the modern approach to statutory interpretation. This requires the context of the provision as well as the purpose of the legislation as a whole to be considered rather than the strict literal or grammatical meaning of the words. Statutory interpretation is not just concerned with the classification of a provision as mandatory or discretionary but also with whether an act done in breach of the provision is invalid.²⁵ The classification is the end of the enquiry, not the beginning.
- Statutory powers of the type set out in section 62(1)(a) are not mere powers a local authority has an option to exercise or not according to its unfettered choice. They are powers conferred for the purpose of attaining statutory objects. Parliament has conferred an authority on local governments to make local laws. It must therefore be exercised if a local government has decided to establish, maintain and equip a bush fire brigade. In this sense, 'may' means 'must'.
- In identifying the purpose behind section 62(1)(a), assistance can be obtained from the Long Title of the Bush Fires Act, in the absence of an 'objects and purposes' provision. It states:

An Act to make better provision for diminishing the dangers resulting from bush fires, for the prevention, control and extinguishment of bush fires, for the repeal of the *Bush Fires Act 1937* and for other purposes.

Section 62(1)(a) confers a local government with authority. That authority must be exercised if the circumstances call for it. Long Title's purposes are achieved when local governments make local laws for the matters they contain. The Parliament has considered these matters to be critical in better providing for diminishing bush fire danger.

- One purpose in the Long Title is to prevent, control and extinguish bush fires. This purpose would be defeated without departmental and parliamentary oversight of the subject matters covered by section 62(1)(a). If a local government chose to regulate these matters by administrative action rather than by a local law, the matters would:
 - not be transparent to residents and ratepayers
 - exclude the community in the democratic process of law making on a subject matter of particular historical and current importance to those residents and ratepayers

²³ Joint Standing Committee on Delegated Legislation, [report 16](#), Appendix 1, accessed 7 November 2023, p 2.

²⁴ Legislative Council, [Debates](#), 7 August 2019, accessed 7 November 2023, p 5095.

²⁵ [Project Blue Sky v Australian Broadcasting Authority](#), (1998) 194 CLR 355, at paragraph 78, accessed 7 November 2023.

- exclude Ministerial and departmental oversight
 - not be referred to the Parliament for scrutiny.
- 3.8 In summary, the Parliament intended that when a local government decides to establish a bush fire brigade and regulate the matters in section 62(1)(a) it must do so by making a local law.

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- 3.9 Appointment, employment, payment, dismissal and duties of bush fire control officers are matters covered by section 62(1)(a) of the Bush Fires Act. The Gosnells Local Law does not provide for these matters.
- 3.10 The Gosnells Local Law is invalid by failing to regulate all matters covered by section 62(1)(a) of the Bush Fires Act. Subsidiary legislation, including local laws, must not be inconsistent with the provisions of the written law under which it is made.²⁶

4 Sub-delegation of legislative power

- 4.1 The Committee has concluded that providing for the Chief Executive Officer to establish and implement the Procedures in clause 3.1(2) of the Gosnells Local Law amounts to an unauthorised sub-delegation of legislative making power. This offends the Committee's term of reference (a) in that it is not authorised by the empowering enactment.
- 4.2 Clause 3.1(2) of the Gosnells Local Law is contained in Appendix 4.

Principles of sub-delegation

4.3 It is a fundamental principle that legislative power should only be delegated in appropriate cases and to appropriate persons. Further, there is a general rule against sub-delegation; namely, a person cannot, without authority, delegate legislative power that has been delegated.²⁷ This rule is based on the principle that a body that has been delegated the power to make legislation cannot itself delegate this power.

4.4 However, there is a distinction to be drawn between the sub-delegation of administrative and legislative power.

4.5 It has been said that:

The wider the field of operation left to the subdelegate, the more likely it is that the court will take the view there has been a subdelegation of legislative power. Where, on the other hand, the matters left to be carried out by the subdelegate are questions of detail which merely fill the gaps left in the legislation itself, or which are to be carried out in accordance with guidelines laid down in the legislation, the more likely it will be that the courts will determine that the subdelegate is exercising administrative powers only, and the subdelegation will be valid.²⁸

4.6 The distinction between legislative powers and administrative powers is not always clear. The terminology used by the courts in identifying a valid sub-delegation of administrative power

²⁶ [Interpretation Act 1984](#), s 43(1), accessed 7 November 2023.

²⁷ DC Pearce and S Argument, *Delegated Legislation in Australia*, Fifth Edition, LexisNexis Butterworths, Australia, 2017, p 391.

²⁸ DC Pearce and S Argument, *Delegated Legislation in Australia*, p 391.

is not consistent. However, in general, the following principles apply and assist the Committee in identifying possibly invalid sub-delegations:

- legislative power:
 - establishes a broad policy framework
 - is expressed in mandatory or prohibitive terms
 - includes penalties for breaches of its provisions
- administrative power:
 - does not involve any wide policy considerations
 - is the application of general rules to particular cases
 - provides the details under the broad policy framework established by legislative power
 - is often exercised by express reference to guidelines established by legislative power.

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- 4.7 Establishing and implementing Procedures involves developing a broad policy framework. The requirement to do so is expressed in clause 3.1(2) in mandatory terms by the use of the words ‘is to establish and implement’. This is a legislative power.
- 4.8 Clause 3.1(2) is not authorised by the Bush Fires Act. If Parliament intended for chief executive officers to make Procedures, it would have provided for that in the Bush Fires Act. The Bush Fires Act does not authorise or contemplate a chief executive officer to make Procedures.
- 4.9 Clause 3.1(2), in purporting to authorise the Chief Executive Officer to establish and implement the Procedures, is an unauthorised sub-delegation of legislative making power. The Bush Fires Act does not authorise this to occur when the Gosnells Local Law intends for the Procedures to deal with matters required to be dealt with by a local law.

5 Conclusion

- 5.1 The Committee’s 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.

- 5.2 The Gosnells Local Law offends the Committee’s term of reference (a) in that it is not authorised by the empowering enactment on the basis of:
- non-compliance with mandatory requirements in the LGA
 - inconsistency with the Bush Fires Act
 - unauthorised sub-delegation of legislative power.

Benefits to recommending disallowance

- 5.3 There are a number of benefits to recommending the disallowance of invalid instruments. These include ensuring that invalid laws are quickly removed from the public record and reducing the risk of public misinformation.

6 Recommendation

6.1 The Committee makes the following recommendation:

RECOMMENDATION 1

The *City of Gosnells Bush Fire Brigade Local Law 2023* be disallowed.

A handwritten signature in black ink that reads "Geoff Baker". The signature is written in a cursive style and is centered within a light gray rectangular box.

Mr Geoff Baker MLA
Chair

APPENDIX 1

SECTION 62 OF THE *BUSH FIRES ACT 1954*

Bush Fires Act 1954
Miscellaneous **Part V**

s. 62

62. Local government may make local laws

- (1) A local government may make local laws in accordance with subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995* for and in relation to —
 - (a) the appointment, employment, payment, dismissal and duties of bush fire control officers; and
 - (b) the organisation, establishment, maintenance and equipment with appliances and apparatus of bush fire brigades to be established and maintained by the local government; and
 - (c) any other matters affecting the exercise of any powers or authorities conferred and the performance of any duties imposed upon the local government by this Act.
- (2) Where a regulation made by the Governor under this Act is inconsistent with or repugnant to a local law previously made by a local government under subsection (1) and still in force, the regulation prevails and the local law to the extent by which it is inconsistent with or repugnant to the regulation is deemed to be repealed.

[Section 62 amended: No. 14 of 1996 s. 4.]

APPENDIX 2

SECTIONS 3.12 AND 3.13 OF THE *LOCAL GOVERNMENT ACT 1995*

	<i>Local Government Act 1995</i>
Functions of local governments	Part 3
Legislative functions of local governments	Division 2
	s. 3.12

3.12. Procedure for making local laws

- (1) In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.
- (2A) Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.
- (2) At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.
- (3) The local government is to —
 - (a) give local public notice stating that —
 - (i) the local government proposes to make a local law the purpose and effect of which is summarized in the notice; and
 - (ii) a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and
 - (iii) submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;and
 - (b) as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and
 - (c) provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.

[(3a) deleted]

Local Government Act 1995

Part 3 Functions of local governments

Division 2 Legislative functions of local governments

s. 3.12

- (4) After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.

* *Absolute majority required.*

- (5) After making the local law, the local government is to publish it in the *Gazette* and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.
- (6) After the local law has been published in the *Gazette* the local government is to give local public notice —
- (a) stating the title of the local law; and
 - (b) summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and
 - (c) advising that the local law is published on the local government's official website and that copies of the local law may be inspected at or obtained from the local government's office.
- (7) The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.
- (8) In this section —
- making** in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.

[Section 3.12 amended: No. 1 of 1998 s. 8; No. 64 of 1998 s. 6; No. 49 of 2004 s. 16(4) and 23; No. 26 of 2016 s. 5; No. 16 of 2019 s. 8.]

3.13. Procedure where significant change in proposal

If during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure.

APPENDIX 3

PROPOSED CITY OF GOSNELLS BUSH FIRE BRIGADE LOCAL LAW 2023

OCM 28 FEBRUARY 2023

APPENDIX 13.5.7B

LOCAL GOVERNMENT ACT 1995
BUSH FIRES ACT 1954

CITY OF GOSNELLS BUSH FIRE BRIGADE LOCAL LAW 2023

Under the powers conferred by the *Local Government Act 1995*, the *Bush Fires Act 1954* and under all other powers enabling it, the Council of the City of Gosnells resolved on **dd** **Month Year** to make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the City of Gosnells Bush Fire Brigade Local Law 2023.

1.2 Commencement

This local law will come into operation 14 days after the day on which it is published in the *Government Gazette*.

1.3 Interpretation

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

Act means the *Bush Fires Act 1954*;

brigade area means the district;

bush fire brigade is defined in section 7 of the Act;

brigade officer means a person holding a position referred to in clause 2.2(1)(b);

district means the district of the local government;

local government means the City of Gosnells;

normal brigade activities is defined by section 35A of the Act; and

State Government means the State Government of Western Australia.

1.4 Application

This local law applies throughout the district.

PART 2 - BUSH FIRE BRIGADE

2.1 Establishment of Bush Fire Brigade

- (1) The local government may establish a bush fire brigade for the purpose of carrying out normal brigade activities.
- (2) A bush fire brigade is established on the date of the local government's decision under subclause (1).
- (3) A bush fire brigade established by the local government prior to the day on which this local law comes into operation is to be taken to be a bush fire brigade established under and in accordance with this local law.

2.2 Name and Officers of a Bush Fire Brigade

- (1) On establishing a bush fire brigade under clause 2.1(1), the local government is to—
 - (a) give a name to the bush fire brigade;
 - (b) ensure appropriate processes are in place to appoint—
 - (i) a Captain;
 - (ii) a First Lieutenant;
 - (iii) a Second Lieutenant; and
 - (iv) additional Lieutenants if the local government considers it necessary.
- (2) When considering the appointment of a person to the positions in subclause (1)(b), the local government is to have regard to the qualifications and experience which may be required to fill the position.

2.3 Duties of Captain

- (1) The duties of the Captain are to—
 - (a) provide leadership to the bush fire brigade;
 - (b) liaise with the local government concerning bushfire risk mitigation and brigade activities.
- (2) The duties of other brigade officers are to support the Captain in the exercise of their duties.

PART 3 - ADMINISTRATION OF BUSH FIRE BRIGADE

3.1 Local government responsible for structure

The local government is to ensure appropriate administrative arrangements exist for the operation of its bush fire brigade.

3.2 Equipment in bush fire brigade area

- (1) The local government is to provide the bush fire brigade with appliances, equipment and apparatus for which funding has been provided by the State Government.
- (2) The local government may provide the bush fire brigade with additional appliances, equipment or funding at its discretion.

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

TERRESA LYNES
MAYOR

IAN COWIE PSM
CHIEF EXECUTIVE OFFICER

APPENDIX 4

CITY OF GOSNELLS BUSH FIRE BRIGADE LOCAL LAW 2023

LOCAL GOVERNMENT ACT 1995

BUSH FIRES ACT 1954

City of Gosnells

BUSH FIRE BRIGADE LOCAL LAW 2023

Under the powers conferred by the *Local Government Act 1995*, the *Bush Fires Act 1954* and under all other powers enabling it, the Council of the City of Gosnells resolved on 23 May 2023 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the City of Gosnells Bush Fire Brigade Local Law 2023.

1.2 Commencement

This local law will come into operation 14 days after the day on which it is published in the *Government Gazette*.

1.3 Interpretation

In this local law unless the context otherwise requires—

Act means the *Bush Fires Act 1954*;

brigade area means the district;

brigade officer means a person holding a position referred to in clause 2.2(1)(b);

bush fire brigade is defined in section 7 of the Act;

bush fire brigade operating procedures means the Brigade Operating Procedures approved by the Chief Executive Officer as amended from time to time;

Chief Executive Officer means the Chief Executive Officer of the City of Gosnells;

district means the district of the local government;

local government means the City of Gosnells;

normal brigade activities are defined by section 35A of the Act; and

State Government means the State Government of Western Australia.

1.4 Application

This local law applies throughout the district.

PART 2—BUSH FIRE BRIGADE

2.1 Establishment of Bush Fire Brigade

(1) The local government may establish a bush fire brigade for the purpose of carrying out normal brigade activities.

(2) A bush fire brigade is established on the date of the local government's decision under subclause (1).

(3) A bush fire brigade established by the local government prior to the day on which this local law comes into operation is to be taken to be a bush fire brigade established under and in accordance with this local law.

2.2 Name and Officers of a Bush Fire Brigade

(1) On establishing a bush fire brigade under clause 2.1(1), the local government is to—

(a) give a name to the bush fire brigade;

(b) ensure appropriate processes are in place to appoint—

(i) a Captain (also a Bush Fire Control Officer);

(ii) a First Lieutenant;

(iii) a Second Lieutenant; and

(iv) additional Lieutenants if the local government considers it necessary.

(2) When considering the appointment of a person to the positions in subclause (1)(b), the local government is to have regard to the qualifications and experience which may be required to fill the position.

2.3 Duties of Captain and other brigade officers

(1) The duties of the Captain are to—

(a) provide leadership to the bush fire brigade;

(b) liaise with the local government concerning bushfire risk mitigation and brigade activities.

(2) The duties of other brigade officers are to support the Captain in the exercise of their duties.

2.4 Meetings of bush fire brigade

(1) All bush fire brigade meetings are to be conducted in accordance with the bush fire brigade operating procedures.

(2) In this clause, a reference to a bush fire brigade meeting means—

(a) an annual general meeting of a bush fire brigade to be held in June of each year;

(b) an ordinary meeting of a bush fire brigade; or

(c) a special meeting of a bush fire brigade.

(3) The Captain is to forward a copy of the minutes of the annual general meeting of the bush fire brigade to the local government within one month after the meeting.

PART 3—ADMINISTRATION OF BUSH FIRE BRIGADE

3.1 Local government responsible for structure

- (1) The local government is to ensure that there is an appropriate structure through which the organisation of bush fire brigades is maintained.
- (2) The Chief Executive Officer is to establish and implement bush fire brigade operating procedures.
- (3) The local government may make other applicable rules, policies and procedures as determined necessary by the local government.

3.2 Equipment in bush fire brigade area

- (1) The local government is to provide the bush fire brigade with appliances, equipment and apparatus for which funding has been provided by the State Government.
- (2) The local government may provide the bush fire brigade with additional appliances, equipment, or funding at its discretion.

Dated 1st June 2023.

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

TERRESA LYNES, Mayor.
IAN COWIE PSM, Chief Executive Officer.

GLOSSARY

Term	Definition
Bush Fires Act	<i>Bush Fires Act 1954</i>
City	City of Gosnells
Committee	Joint Standing Committee on Delegated Legislation
Council	City of Gosnells Council
Department	Department of Local Government, Sport and Cultural Industries
DFES	Department of Fire and Emergency Services
LGA	<i>Local Government Act 1995</i>
Gosnells Local Law	<i>City of Gosnells Bush Fire Brigade Local Law 2023</i>
Procedures	Bush fire brigade operating procedures
Proposed Local Law	The <i>City of Gosnells Bush Fire Brigade Local Law 2023</i> proposed by the City of Gosnells at an Ordinary Council Meeting on 28 February 2023

Joint Standing Committee on Delegated Legislation

Date first appointed:

25 May 2021

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 The Standing Orders of the Legislative Council relating to Standing Committees will be followed as far as they can be applied.
- 10.9 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*."



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