



THIRTY-SEVENTH PARLIAMENT

REPORT 11
JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION
SHIRE OF NANNUP LOCAL LAW PARKING
AND PARKING FACILITIES

Presented by Mr Peter Watson MLA (Chairman)

and

Hon Ray Halligan MLC (Deputy Chairman)

August 2005

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Date first appointed:

June 28 2001

Terms of Reference:

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

“3. Delegated Legislation Committee

- 3.1 A *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; or
 - (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review; or
 - (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable;
 - (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 as at the time of this inquiry:

Mr Peter Watson MLA (Chairman)	Mr Tony Simpson MLA
Hon Ray Halligan MLC (Deputy Chairman)	Ms Judy Hughes MLA
Hon Barbara Scott MLC	Hon Shelley Archer MLC
Dr Graham Jacobs MLA	Hon Vincent Catania MLC

Staff as at the time of this inquiry:

Mr Paul Grant, Advisory Officer (Legal)	Kerry-Jayne Braat, Committee Clerk
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CONTENTS

1	BACKGROUND TO LOCAL LAW	1
2	INCORRECT REFERENCE TO THE <i>ROAD TRAFFIC CODE</i>	2
3	ACTION TAKEN BY THE COMMITTEE.....	3

REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO THE

SHIRE OF NANNUP LOCAL LAW PARKING AND PARKING FACILITIES

1 BACKGROUND TO LOCAL LAW

- 1.1 The *Shire of Nannup Local Law Parking and Parking Facilities* was published in the *Government Gazette* on January 11 2005.
- 1.2 This local law provides for the orderly conduct of vehicle parking within the Shire of Nannup.
- 1.3 This is a new local law made pursuant to section 3.8 of the *Local Government Act 1995*, which states:

(1) A local law made under this Act may adopt the text of—

- (a) any model local law, or amendment to it, published under section 3.9;*
- (b) a local law of any other local government; or*
- (c) any code, rules, specifications, or standard issued by the Standards Association of Australia or by such other body as is specified in the local law.*

(2) The text may be adopted —

- (a) wholly or in part;*
- (b) as modified by the local law; or*
- (c) as it exists at a particular date or, except if the text of a model local law is being adopted, as amended from time to time.*

(3) The adoption may be direct, by reference made in the local law, or indirect, by reference made in any text that is itself directly or indirectly adopted.

- 1.4 The *Shire of Nannup Local Law Parking and Parking Facilities* adopts the text of the *Shire of Coorow's Parking and Parking Facilities Local Law* (published in the *Government Gazette* on October 4 1999) with minor adjustments.

2 INCORRECT REFERENCE TO THE ROAD TRAFFIC CODE

- 2.1 Under s 100 of the *Road Traffic Act 1974*, that Act and any Code made under it apply to every local government. The current *Road Traffic Code 2000* provisions are specified as regulations and give effect to an inter-governmental agreement designed to standardise road rules throughout Australia. The *Road Traffic Code 2000* was made under s 111 of the *Road Traffic Act 1974* which provides that regulations can be made in relation to road traffic.
- 2.2 In adopting by reference the Shire of Coorow's local law, the Shire of Nannup has inadvertently taken on a significant flaw. The *Road Traffic Code 1975* expressly mentioned in both local laws has been repealed and replaced with the current *Road Traffic Code 2000*.
- 2.3 The Shire of Nannup can choose to adopt the text of another local government's local law, but if that particular local law is not effective because it refers to a repealed law then the Shire is left with an ineffective law and does not achieve its object of regulation with respect to that particular subject matter.
- 2.4 The Committee understands that the Shire of Nannup is not a member of the Western Australian Local Government Association (WALGA) and therefore may have been unaware of the new *Road Traffic Code 2000* when it decided to adopt the Shire of Coorow's local law as its own. The WALGA Manual advises local governments that:

"The Road Traffic Code 2000 became operative on December 1 2000. "No Standing" becomes "No Stopping" and this means that where these signs are installed vehicles shall not stop unless held up by traffic, in an emergency, or involved in a crash. Where there is a "No Parking" sign, a person can stop, only briefly (2 minutes maximum) to drop off or pick up people or goods, but the driver must not move more than 3 metres from the vehicle. Under the new "No Stopping" provisions, the distances within which the prohibition applies from children's crossings, pedestrian crossings and the like, change and in order to promulgate the new traffic rules, it is now thought essential to build these changes into the Model Law. Another interesting change is that ACROD vehicles now have extended privileges and these too are built into the Model."

- 2.5 WALGA also notified local governments that the Town of Cottesloe gazetted an updated version of the *Parking and Parking Facilities Local Law Model* for the *Road Traffic Code 2000* on December 10 2001.

- 2.6 If the Shire of Nannup had adopted the Shire of Coorow's local law "*as amended from time to time*" and the Shire of Coorow had rectified its local law so that references to the *Road Traffic Code 1975* were replaced with references to the *Road Traffic Code 2000*, then this would flow on to the Shire of Nannup local law. Unfortunately, the enacting formula does not contain the phrase "*as amended from time to time*" and it does not appear that the Shire of Coorow has updated its local law for the *Road Traffic Code 2000*.
- 2.7 The overall result is that the Shire of Nannup's local law in respect of the adopted provisions is ineffective.

3 ACTION TAKEN BY THE COMMITTEE

- 3.1 The Committee scrutinized this local law at its meeting on May 4 2005. In a letter of that same date to the Shire of Nannup the Committee requested an undertaking that the Shire would either:
- amend the local law so that references to the *Road Traffic Code 1975* are amended to refer to the new *Road Traffic Code 2000*; or
 - repeal the local law altogether and then adopt the *Town of Cottesloe Parking and Parking Facilities Local Law* (as published in the *Government Gazette* on December 10 2001) by reference.
- 3.2 Although the Committee had some concerns, which have previously been raised with WALGA, over certain provisions in the *Town of Cottesloe Parking and Parking Facilities Local Law* and WALGA's Model, the second option was the Committee's preferred option.
- 3.3 The Committee further sought an undertaking from the Shire of Nannup that no prosecutions would be initiated based on the provisions of the local law referring to the repealed *Road Traffic Code 1975*.
- 3.4 Whilst the above undertakings were being sought from the Shire of Nannup, the Committee authorized a notice of motion for the disallowance of this local law as a protective device to preserve the Parliament's power to disallow the local law, if necessary.
- 3.5 In an email to the Committee dated May 23 2005, Mr Shane Collie, the Chief Executive Officer of the Shire of Nannup stated

"I advise that Council will not undertake any prosecutions under the local law. I will not have an opportunity to review this matter for some time and I expect we will either repeal the local law or amend it to ensure that it complies with the Road Traffic Code 2000 as

requested. With our limited resources we will take the least cumbersome outcome. For your information we have introduced the local law with an eye to the future and have no intent to introduce control measures at this stage, but desire the mechanism to do so if required further down the track.”

- 3.6 On May 25 2005, the Committee wrote to the Shire of Nannup, noting the email undertaking but requesting that the undertaking be in writing and signed by the Shire President. The Committee also requested that details be provided of a specific Council resolution to either repeal or amend the local law. The Committee followed this request up with a further letter on June 22 2005.
- 3.7 The Committee understands that Mr Collie contacted the Committee’s staff by telephone on June 23 2005 and generally repeated the contents of his email, citing resource constraints as an obstacle to committing the Shire to a swift correction of the local law.
- 3.8 In the absence of any evidence of the requested resolution of the Council of the Shire of Nannup and a signed written commitment from the President of the Shire of Nannup to correct the invalid provisions of the *Shire of Nannup Local Law Parking and Parking Facilities* as soon as possible, the Committee recommends the disallowance of this local law.

Recommendation 1: The Committee recommends that the *Shire of Nannup Local Law Parking and Parking Facilities*, published in the *Government Gazette* on January 11 2005 be disallowed.



Mr Peter Watson MLA
Chairman
August 23 2005