

**40TH PARLIAMENT**



## **Report 17**

# **JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION**

*Annual Report 2019*

---

Presented by

Ms Emily Hamilton MLA (Chair)

and

Hon Robin Chapple MLC (Deputy Chair)

June 2020

## **Joint Standing Committee on Delegated Legislation**

### **Members as at the time of this inquiry:**

Ms Emily Hamilton MLA (Chair)

Dr David Honey MLA

Mr Kyran O'Donnell MLA

Mrs Robyn Clarke MLA

Hon Robin Chapple MLC (Deputy Chair)

Hon Kyle McGinn MLC

Hon Martin Pritchard MLC

Hon Robin Scott MLC

### **Staff as at the time of this inquiry:**

Shoshanna McNerney (Advisory Officer (Legal))

Clair Siva (Committee Clerk)

Laura Hutchinson (Advisory Officer (Legal))

### **Address:**

Parliament House

4 Harvest Terrace, West Perth WA 6005

Telephone: 08 9222 7300

Email: [lcco@parliament.wa.gov.au](mailto:lcco@parliament.wa.gov.au)

Website: [www.parliament.wa.gov.au](http://www.parliament.wa.gov.au)

**ISBN 978-1-925578-99-7**



# CONTENTS

---

- Executive summary..... i**
- 1 Introduction ..... 1**
  - Overview .....1
  - Terms of Reference.....1
  - Committee Members.....1
  - Committee process .....2
  - Acknowledgments .....3
- 2 Committee activities in 2019 ..... 4**
  - Volume and nature of work.....4
  - Committee reports .....6
  - Undertakings.....6
  - Circulars relating to explanatory memoranda.....6
  - 2019 WA Local Government Convention .....6
- 3 Issues in regulations..... 8**
  - Limitation periods in subsidiary legislation .....8
  - The effect of regulations regarding camera surveillance units.....8
- 4 Issues in local laws..... 10**
  - Most local laws do not require amendment ..... 10
  - Undertakings in relation to Local Laws ..... 10
  - Amendment of section 3.12 of the *Local Government Act 1995*..... 11
  - The definition of ‘nuisance’ in local laws ..... 12
  - An unintended effect on a person’s rights or interests ..... 12
- Appendix 1 Local Government Act 1995 section 3.12 ..... 14**
- Glossary..... 16**
- Figures**
  - Figure 1. *Committee Members in 2019* ..... 2
  - Figure 2. *The nature, number and frequency of issues encountered by the Committee in 2019 where undertakings were provided* ..... 5
  - Figure 3. *A comparison of the percentage of drafting issues encountered by the Committee in 2018 and 2019*..... 5
  - Figure 4. *Percentage of local laws requiring amendment in 2018 and 2019* .....10
- Tables**
  - Table 1. *The Committee’s work statistics for 2019* ..... 4

# EXECUTIVE SUMMARY

---

## Introduction

- 1 This report discusses some of the key activities of the Joint Standing Committee on Delegated Legislation (Committee) between 1 January and 31 December 2019.
- 2 The Committee's role is to scrutinise, on behalf of the Parliament, instruments made under statutory delegation by:
  - the Governor in Executive Council
  - Ministers
  - statutory bodies
  - local governments.
- 3 The Committee determines whether the instruments are beyond the scope of the delegated power or are otherwise in breach of the Committee's terms of reference.

## Committee activities

- 4 The Committee continues to scrutinise a large volume of delegated legislation. In the reporting period, the Committee was referred 338 instruments, including 160 regulations and 99 local laws.
- 5 The Committee tabled one report in the Parliament recommending disallowance of a local law. The local law was subsequently disallowed by the Legislative Council.
- 6 Motions for the disallowance of delegated legislation usually do not proceed in the Parliament if satisfactory undertakings are given to the Committee. The Committee only recommends the disallowance of an instrument as a last resort. During 2019, the Committee received five departmental (Ministerial) and 28 local government undertakings.

## Issues relating to regulations

- 7 The Committee found that most regulations in 2019 were well drafted and had minor issues, if any.
- 8 One set of regulations contained a limitation period which the Committee considered under its term of reference 10.6(d) should be contained within an Act. An undertaking addressing the Committee's concerns was received from the Minister for Environment and no further action was required.
- 9 Another set of regulations contained a provision that included an unintended effect on a person's rights or interests, which the Committee considered under its Term of Reference 10.6(b). An undertaking was received from the Minister for Transport.

## Issues relating to local laws

- 10 Of interest was a 2019 amendment to section 3.12 of the *Local Government Act 1995*. Section 3.12 governs the procedure for making local laws and the result of the amendment is that local governments no longer need to give state wide notice of a proposed local law. Local public notice is still required by section 3.12(3)(a).

# CHAPTER 1

## Introduction

---

### Overview

- 1.1 This report:
- outlines the activities of the Joint Standing Committee on Delegated Legislation (Committee)<sup>1</sup> between 1 January and 31 December 2019
  - discusses some of the more notable instruments considered by the Committee
  - comments on significant issues arising from the Committee’s scrutiny of delegated legislation.
- 1.2 The Committee holds a standing referral from the Legislative Assembly and Legislative Council to consider instruments of delegated legislation that have been published.<sup>2</sup> Like its predecessors, the Committee in this 40<sup>th</sup> Parliament considers only:
- instruments that are subject to parliamentary disallowance<sup>3</sup>
  - instruments noted by an individual Member.
- 1.3 The majority of the instruments considered are regulations made by the Executive Government via the Governor in Executive Council. Other instruments include local laws made by 139 local governments,<sup>4</sup> court rules, by-laws, planning schemes, orders, notices, plans and other variously-named instruments made by a range of persons or bodies.

### Terms of Reference

- 1.4 The Committee’s terms of reference (TOR) are listed on the back inside cover of this report. They were adopted by the Parliament on 15 June 2017, when the Committee was established. The Committee operates under the *Standing Orders of the Legislative Council*.<sup>5</sup>
- 1.5 The Committee considers whether an instrument complies with or offends any of the requirements set out in item 10.6 of its TOR, including whether the instrument is ‘within power’ or ‘contains only matter that is appropriate for subsidiary legislation’.

### Committee Members

- 1.6 In 2019, the Committee was constituted by the Members noted on the front inside cover of this report.

---

<sup>1</sup> The Committee of the 40<sup>th</sup> Parliament was established by both Houses on 15 June 2017: Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 15 June 2017, p 951 and Legislative Assembly, *Parliamentary Debates (Hansard)*, 15 June 2017, p 1048.

<sup>2</sup> Either under section 41(1)(a) of the *Interpretation Act 1984* or another written law: Committee term of reference 10.5: *Standing Orders of the Legislative Council*, schedule 1, cl 10.5.

<sup>3</sup> Pursuant to section 42 of the *Interpretation Act 1984* or another written law.

<sup>4</sup> Department of Local Government, Sport and Cultural Industries, 26 July 2018, Government of Western Australia, Perth, viewed 16 January 2019, <<https://www.dlgsc.wa.gov.au/localgovernment>>.

<sup>5</sup> *Standing Orders of the Legislative Council*, standing order 156.

Figure 1. *Committee Members in 2019*



*Back (left to right): Hon Martin Pritchard MLC, Mrs Robyn Clarke MLA, Hon Kyle McGinn MLC, Hon Charles Smith MLC*

*Front (left to right): Ms Emily Hamilton MLA (Chair), Hon Robin Chapple MLC (Deputy Chair)*

*Missing from photograph: Dr David Honey MLA, Mr Kyran O'Donnell MLA*

## **Committee process**

- 1.7 When the Committee has questions about an instrument, it usually writes to or contacts the relevant Minister or local government President or Mayor and requests further information to assist in its examination of the instrument. In many instances, the responses received address the Committee's questions and no further action is taken.
- 1.8 When the Committee identifies an issue of concern and forms the view that a clause or clauses in the instrument offend the Committee's TOR, it usually seeks an undertaking from the responsible Minister or local government to amend the instrument.
- 1.9 At the Committee's request, the responsible Minister or local government usually undertakes to amend or repeal the delegated legislation within six months of the date of the undertaking. The Committee monitors whether delegated legislation has been amended within the agreed timeframe.
- 1.10 While the Committee awaits the response to investigations or its request for undertakings on a particular instrument, it is often necessary to authorise a Committee Member to give notice of a motion to disallow the instrument in the Legislative Council.<sup>6</sup> Notice must be given within 14 sitting days after the instrument is tabled in the Parliament.<sup>7</sup> The majority of these

<sup>6</sup> The Legislative Council has procedures in place for dealing with motions for disallowance, including those motions which are instigated by the Committee: refer to *Standing Orders of the Legislative Council*, standing order 67.

<sup>7</sup> *Interpretation Act 1984* s 42. Note that other Acts may provide for a different period during which Notices of Motion to disallow their delegated legislation may be given.

notices of motion<sup>8</sup> are later discharged from the Legislative Council Notice Paper following receipt of satisfactory responses from Ministers and local governments.

- 1.11 When requested undertakings are provided, the usual course is for the Committee to accept the undertakings and recommend the discharge of the motion to disallow.<sup>9</sup> However, when required, the Committee reports to the Parliament recommending the disallowance of all or part of the instrument.
- 1.12 The Committee only recommends the disallowance of an instrument as a last resort, that is:
- where agreement cannot be reached on acceptable arrangements
  - where the identified defect in the instrument cannot be cured without re-making the instrument—for example, because statutory procedures for the making of the instrument were not followed.

### Undertakings lists

- 1.13 The Committee posts two lists of undertakings on its webpage ([www.parliament.wa.gov.au/del](http://www.parliament.wa.gov.au/del)), namely:
- departmental undertakings (undertakings provided by Ministers, government departments, agencies and statutory authorities)
  - local government undertakings.
- 1.14 These lists inform stakeholders of issues the Committee has raised and assist departmental and local government officers in drafting delegated legislation. In particular, the local government undertakings list allows local governments and their advisers to identify systemic problems in local laws.

### Acknowledgments

- 1.15 The Committee relies on the assistance provided by relevant Ministers, departments, statutory bodies and local governments in undertaking its function of scrutinising a large volume of delegated legislation within time constraints. The Committee extends its appreciation to those Ministers and contact persons who provided that assistance throughout the year.
- 1.16 In particular, the Committee thanks the:
- Department of Local Government, Sport and Cultural Industries (DLGSC), which acts as a valuable filter in dealing with problematic proposed local laws, thus resolving many issues before the local laws are formally made, gazetted and then referred to the Committee
  - Western Australian Local Government Association (WALGA), another valued source of local laws information and expertise for local governments.

---

<sup>8</sup> Which usually become motions to disallow on the third sitting day after they have been given: *Standing Orders of the Legislative Council*, standing order 67(3).

<sup>9</sup> The statistics relating to this practice are contained in Table 1 on page 4.

## CHAPTER 2

### Committee activities in 2019

---

#### Volume and nature of work

2.1 The Committee held 18 meetings in 2019. Table 1 provides a breakdown of the Committee's activities in respect of instruments gazetted during that period.

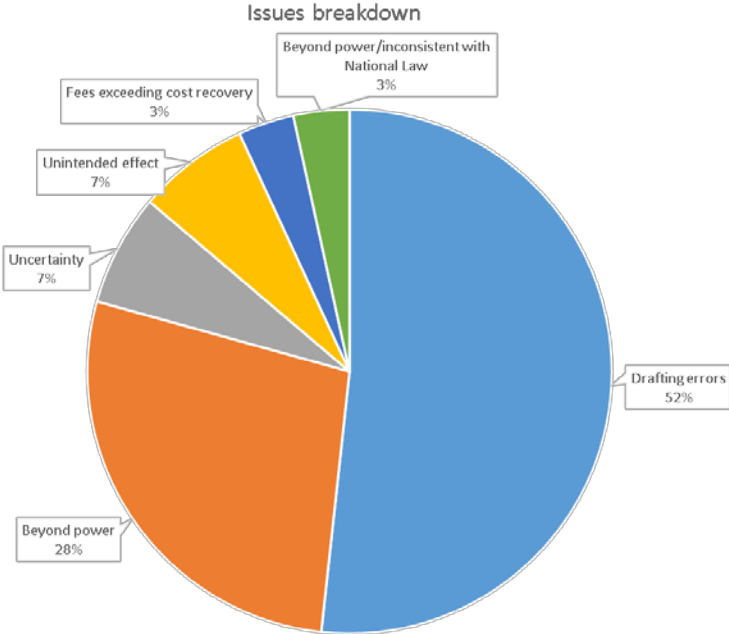
Table 1. *The Committee's work statistics for 2019*

Disallowable instruments gazetted:	338
• Regulations	160
• By-laws (made by the Executive)	4
• Local laws (made by local government)	99
• Rules	12
• Other instruments referred (including planning schemes, orders, notices and plans)	63
Notices of motion for disallowance given	20
Motions to disallow discharged	29
Hearings held by the Committee	1
Instruments for which undertakings were provided to the Committee to amend the instrument	33
Reports tabled	2
Disallowance reports tabled	1
Instruments disallowed on recommendation of the Committee	1

2.2 Figure 2 sets out information about the 33 instruments where undertakings were given to the Committee. It provides an indication of the nature, number and frequency of issues encountered by the Committee. Some instruments contained multiple issues.



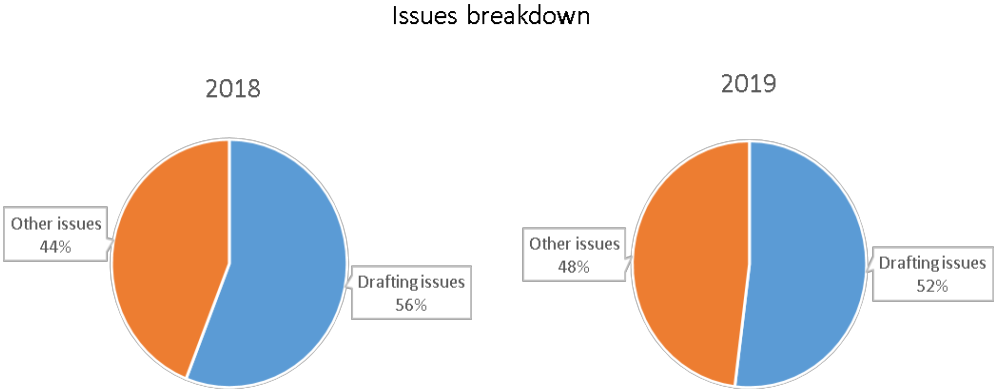
Figure 2. The nature, number and frequency of issues encountered by the Committee in 2019 where undertakings were provided



*Drafting issues*

- 2.3 Fifty two percent of the issues encountered in 2019 related to drafting. In 2018 drafting issues comprised 56 percent of issues. See Figure 3.
- 2.4 The majority of drafting issues detected by the Committee were in local laws. Drafting issues in local laws is discussed further in Chapter Four.
- 2.5 There has not been a significant change in the percentage of drafting issues encountered by the Committee from 2018 to 2019. Figure 3 shows the comparison in the percentage of drafting issues encountered by the Committee in 2018 and 2019.
- 2.6 The Committee hopes to see a reduction of drafting errors in 2020.

Figure 3. A comparison of the percentage of drafting issues encountered by the Committee in 2018 and 2019



## Committee reports

- 2.7 In 2019, the Committee presented the following reports to the Legislative Assembly and the Legislative Council:
- Report 16 - *City of Rockingham Bush Fire Control and Bush Fire Brigades Amendment Local Law 2018*, tabled on 27 June 2019.
  - Report 15 - Annual Report 2018, tabled on 4 April 2019.
- 2.8 These reports can be viewed at [www.parliament.wa.gov.au/del](http://www.parliament.wa.gov.au/del) by choosing 'reports'.

## Undertakings

- 2.9 During the reporting period, the Committee received five departmental and 28 local government undertakings. The lists of undertakings can be viewed at [www.parliament.wa.gov.au/del](http://www.parliament.wa.gov.au/del) by scrolling down to 'Undertakings provided to the Committee'.

## Circulars relating to explanatory memoranda

- 2.10 Three years ago the Committee provided suggestions for the review of the following two government circulars in its *Annual report 2017*:
- Premier's Circular Number 2014/01, *Subsidiary legislation—explanatory memoranda*, directed at State government departments and agencies
  - Ministerial Circular Number 04-2010, *Local Laws Explanatory Memoranda Directions 2010*, directed at local governments.
- 2.11 These two circulars direct delegated legislation makers to provide the Committee with the explanatory material that it requires to perform its role. At the date of this report, the two circulars have not been updated.

## 2019 WA Local Government Convention

- 2.12 From 7 August to 9 August 2019, the Chair and Deputy Chair of the Committee, Ms Emily Hamilton MLA and Hon Robin Chapple MLC attended the WA Local Government Convention.
- 2.13 The Convention is organised by WALGA and is presented for those engaged in the local government sector. The topics discussed at the Convention include:
- Local law making
  - Waste management
  - Community engagement
  - Social media and local government
  - Strengthening local government.
- 2.14 The Chair and Deputy Chair presented at the Convention. Approximately 100 people attended the session from various local and regional councils.
- 2.15 The presentation looked at the making of local laws, in particular the statutory requirements around that process. The role of the Committee and some recurring issues in local laws were also discussed.

- 2.16 After the formal presentation, the Chair, Deputy Chair and two advisory officers of the Committee participated in an interactive question and answer session.
- 2.17 The Committee received positive feedback about the presentation and panel session. Themes included participants gaining a greater understanding of the Committee's role and functions. At the request of the participants, a summary of the presentation was uploaded onto the Committee's webpage.
- 2.18 The Committee was pleased with the level of engagement around its presentation and extends thanks to WALGA for the opportunity to take part. The Committee welcomes similar opportunities to engage with local law makers in the future.

## CHAPTER 3

### Issues in regulations

---

#### Limitation periods in subsidiary legislation

- 3.1 The *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulations 2019* deal with a Container Deposit Scheme, which will allow consumers to return empty, eligible beverage containers to a collection point and receive a 10 cent refund.
- 3.2 The regulations are made under the *Waste Avoidance and Resource Recovery Act 2007*.
- 3.3 The Committee's term of reference 10.6(d) provides:
- In its consideration of an instrument, the Committee is to inquire whether the instrument –
- (d) contains only matter that is appropriate for subsidiary legislation.
- 3.4 The Committee was concerned that regulation 36(4) created a limitation period for bringing proceedings against a coordinator for an alleged contravention of provisions of the Act and regulations.<sup>10</sup> In the Committee's view, as a limitation period affects the existence, extent and enforceability of rights and liabilities of parties, it is subject matter that should be located in the empowering Act. The Committee also noted that amendments to limitation periods that are the subject of an Act will be subject to parliamentary scrutiny before enactment. The Committee requested that the Minister for Environment undertake to:
- remove regulation 36(4)
  - notify any affected stakeholders of the amendment to the regulations
  - not enforce regulation 36(4) until the undertaking has been actioned.<sup>11</sup>
- 3.5 The Minister provided an undertaking to the Committee on 26 June 2019.<sup>12</sup> On 17 December 2019, the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment Regulations 2019* were gazetted and contained a clause which deletes regulation 36(4).

#### The effect of regulations regarding camera surveillance units

- 3.6 The *Transport Regulations Amendment (Road Passenger Services) Regulations (No 2) 2019* deal with various aspects of passenger transport reform, such as safety requirements of vehicles, the calculation and collection of fares and camera surveillance units for rank and hail vehicles.
- 3.7 The regulations form part of a staged implementation of the new regulatory regime under the *Transport (Road Passenger Services) Act 2018*.
- 3.8 Under the new legislative regime all rank and hail taxis must be equipped with security cameras. Regulation 35ZF(3) enables the provider of an authorised On-Demand Booking Service (ODBS) to view, download, copy, play or edit any recording made on a camera surveillance unit for an authorised purpose.

---

<sup>10</sup> Regulation 36(4) states 'An application for a civil penalty order may be made no later than 6 years after the alleged contravention.'

<sup>11</sup> Hon Robin Chapple MLC, Deputy Chair, Joint Standing Committee on Delegated Legislation, letter, 13 June 2019, p 2.

<sup>12</sup> Hon Stephen Dawson MLC, Minister for Environment, letter, 26 June 2019, p 1.

3.9 The Committee's term of reference 10.6(b) provides:

In its consideration of an instrument, the Committee is to inquire whether the instrument has no unintended effect on any person's existing rights or interests.

- 3.10 Under the previous legislative scheme<sup>13</sup> review of the camera surveillance could only be undertaken by the police or Department of Transport. The new regulation 35ZF(4) expanded the classes of persons permitted to review surveillance by providing a wide definition of 'authorised person', permitting an ODBS provider to authorise a person to view, download, copy, play or edit any recording made on the ODBS's behalf. The Committee noted there was no limitation to the classes of persons who could be authorised to access the surveillance recordings. The Committee considered that the effect of the regulation was too broad. For example, there was no requirement for the third party accessing the footage to be an employee or contractor of the ODBS.
- 3.11 On 21 November 2019 the Committee wrote to the Minister for Transport seeking an undertaking that regulation 35ZF(4) be amended to limit the scope of 'authorised people' able to carry out functions on behalf of the ODBS provider to employees or contractors of the ODBS.<sup>14</sup>
- 3.12 On 26 November 2019 the Minister undertook to amend regulation 35ZF(4) within six months.<sup>15</sup>
- 3.13 On 4 February 2020 the *Transport (Road Passenger Services) Amendment Regulations 2020* were published in the *Government Gazette*, which gave effect to the undertaking provided by the Minister.

---

<sup>13</sup> *Taxi Regulations 1995* reg 13E.

<sup>14</sup> Emily Hamilton MLA, Chair, Joint Standing Committee on Delegated Legislation, letter, 21 November 2019, p 1.

<sup>15</sup> Hon Rita Saffioti MLA, Minister for Transport, letter, 26 November 2019, p 1.

## CHAPTER 4

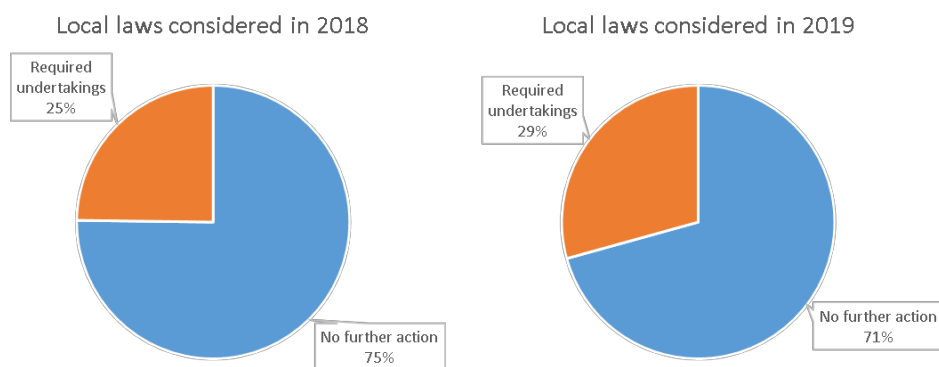
### Issues in local laws

---

#### Most local laws do not require amendment

4.1 Most local laws received by the Committee do not require amendment. The Committee received a total of 99 local laws for review in 2019. Out of the 99 local laws, the Committee requested amendments to 29 of these. In 2018, the Committee reviewed 121 local laws and requested undertakings in relation to 30 of those local laws. Figure 4 shows the comparison between the percentage of local laws requiring amendments in 2018 and 2019.

Figure 4. Percentage of local laws requiring amendment in 2018 and 2019



4.2 The Committee is pleased to note that 71 percent of local laws reviewed by the Committee in 2019 did not require amendment.

4.3 The Committee has noted that local governments are often:

- using the WALGA model law templates or another recently gazetted local law as a template and
- reviewing prior Committee decisions by utilising the Committee's undertakings list.

4.4 The Committee's scrutiny of local laws has been assisted by the above measures. The percentage of local laws requiring amendment from 2018 to 2019 is similar. The Committee is pleased that the Committee's undertakings list is utilised by local governments to identify previous issues raised by the Committee. The Committee hopes to see a decrease in the amount of local laws that require amendment in 2020.

#### Undertakings in relation to Local Laws

4.5 The Committee noted that drafting issues were the majority of issues detected in local laws in 2019. The drafting issues ranged from minor grammatical issues to more significant issues, which, in some clauses led to an incorrect construction of the local law.

4.6 In 2019, the Committee requested that undertakings be provided to amend issues in 29 local laws. The Committee received undertakings for 28 of those local laws.

4.7 Out of 28 instruments, 23 contained drafting issues. Sixteen of the 23 instruments contained drafting issues that changed the meaning of the local law. Examples of these drafting issues included:

- cross-referencing to the wrong clauses or schedules

- using a defined word in a clause, which changes the intention of the clause to something that was not intended by the local government
- changing the WALGA template slightly, which changes the meaning of a clause
- clauses with missing text that do not make sense
- referring to Australian Standards that do not exist
- errors in a clause do not allow for the application of a penalty where a penalty is intended
- the clause creates an obligation to do something, which was not intended
- the local law does not contain a definition of something that is integral to the local law.

4.8 Where a drafting issue changes the meaning of a local law, the Committee usually requests an undertaking that the issue be amended within six months and that the local law is not enforced to the contrary before the amendment occurs.

#### *Minor drafting issues*

4.9 Where a local law contains a minor drafting issue, the Committee usually requests an undertaking from the local government that the local law be amended when it is next reviewed.

### **Amendment of section 3.12 of the *Local Government Act 1995***

4.10 Section 3.12 of the *Local Government Act 1995* provides local governments with a procedure for making local laws. Prior to 5 July 2019, section 3.12(3a) required local governments to give state wide notice of a proposed local law.

4.11 On 5 July 2019, the *Local Government Legislation Amendment Act 2019* amended section 3.12 to delete 3.12(3a).<sup>16</sup>

4.12 The effect of the amendment is that local governments no longer need to give state wide notice of a proposed local law. Local public notice is still required under section 3.12(3)(a) of the Act.

4.13 The DLGSC has prepared a local laws checklist to assist local governments to comply with the requirements of section 3.12 of the Act. All local governments must send the completed local laws checklist to the Committee along with a copy of the local law, explanatory memorandum and associated material.

4.14 The Committee provides a link to the DLGSC local laws checklist on their committee web page. The Committee noticed in November 2019 that the local laws checklist had not been updated to reflect the change made by the *Local Government Legislation Amendment Act 2019*.

4.15 In 2019, the Committee requested that the DLGSC update the local laws checklist. The local laws checklist has now been updated and is available on the DLGSC website at <https://www.dlgsc.wa.gov.au/local-government/local-governments/local-laws>.

---

<sup>16</sup> See Appendix 1.

## The definition of 'nuisance' in local laws

4.16 The *City of Bunbury Cat Local Law 2018* included provision for nuisance abatement notices for cats creating a nuisance. The term 'nuisance' was defined in clause 1.4 of the Local Law as:

- (a) excretes or urinates on property where the cat does not normally reside or is registered at;
- (b) 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;
- (c) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land;
- (d) interference which causes material damage to land or other property on the land affected by the interference; or
- (e) is, or is likely to be, injurious or dangerous to the health of any person or domestic or native fauna.

4.17 The Committee had previously allowed a definition of nuisance comprising paragraphs (b) to (d) of this definition, in some cat local laws and other local laws. Those paragraphs are contained in the WALGA template *Urban Environment and Nuisance Local Law*.

4.18 The Committee obtained undertakings from the City of Bunbury<sup>17</sup> to remove paragraphs (a) and (e) of the definition on the basis that those paragraphs were not within power under the *Cat Act 2011* and the *Local Government Act 1995*, as they:

- purport to apply to situations outside the ordinary and legal meanings of 'nuisance'
- were unreasonable.<sup>18</sup>

4.19 As noted in its 2017 Annual Report, the Committee continues to monitor the use of a definition of 'nuisance' in local laws, with particular reference to the WALGA template local laws, some of which include a definition of the term.<sup>19</sup>

## An unintended effect on a person's rights or interests

4.20 The *City of Perth Alfresco Dining Local Law 2019* established laws for the management of outdoor dining areas within the City of Perth.

4.21 The dining local law contained clause that an application for a permit may be refused if 'the proposed permit holder has been convicted during the preceding 5 years of any written offence against the local law or any written laws affecting outdoor dining.'<sup>20</sup>

4.22 The Committee has previously raised concerns with laws that punish people for previous offences. The effect of the dining local law is to punish someone repeatedly for the one

---

<sup>17</sup> Gary Brennan, Mayor, City of Bunbury, letter, 4 April 2019, p 1.

<sup>18</sup> The Committee noted that paragraph (a) of the definition would capture single-instance behaviour which would already come within paragraphs (b) or (c) if it was of a repeated or ongoing nature. Paragraph (e) was too broad in its effect and extended the definition to include matters falling outside the legal and ordinary meanings of nuisance.

<sup>19</sup> Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 10, *Annual Report 2017*, 17 May 2018, p 20.

<sup>20</sup> *City of Perth Alfresco Dining Local Law 2019* cl 2.5(2)(c).



offence. The Committee also considered that the dining local law may restrict the Chief Executive Officer from deciding an application on its individual merits.

- 4.23 The Committee considered that any previous conduct or convictions relevant to the application can be taken into account when determining whether the applicant is a 'fit and proper person' to hold a permit.<sup>21</sup> Therefore, there would be no prejudice to the City if the clause was deleted.
- 4.24 The City undertook to delete the clause and to not enforce the clause until the amendments have taken effect.<sup>22</sup>.



Ms Emily Hamilton MLA  
**Chair**

---

<sup>21</sup> *City of Perth Alfresco Dining Local Law 2019* cl 2.5(2)(d).

<sup>22</sup> Eric Lumsden, Chair of Commissioners, City of Perth, letter, 6 August 2019, p 1.

# APPENDIX 1

---

## LOCAL GOVERNMENT ACT 1995 SECTION 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*]

- (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.]*

# GLOSSARY

---

Term	Definition
<b>Committee</b>	Joint Standing Committee on Delegated Legislation
<b>DLGSC</b>	Department of Local Government, Sport and Cultural Industries
<b>ODBS</b>	On demand booking service
<b>TOR</b>	Terms of reference
<b>WALGA</b>	Western Australian Local Government Association

# Joint Standing Committee on Delegated Legislation

## Date first appointed:

15 June 2017

## 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*."



---

Parliament House,  
4 Harvest Terrace, West Perth WA 6005  
Telephone: +61 8 9222 7300  
Email: [lcco@parliament.wa.gov.au](mailto:lcco@parliament.wa.gov.au)  
Website: <http://www.parliament.wa.gov.au>