

ATTACHMENT A – COMMENTS FROM DEPARTMENT OF LOCAL GOVERNMENT AND COMMUNITIES

The Department's comments to the City of Greater Geraldton's proposed *Health Local Law 2013* are below:

Health Local Law 2013

(A) Clause 1.1

It is suggested the title of the local law should be changed to *Health Local Law 2014* to account for the fact the local law will most likely be made and gazetted in 2014.

(B) Clause 1.5

It is suggested to insert the following definitions into clause 1.5: "Schedule" and "cooking facilities".

The standard definition for "Schedule" is provided below.

Schedule means a Schedule to this local law;

It is also suggested the term "nuisance" is defined. Previous local governments have defined nuisance with the following:

nuisance means —

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

(C) Australian / New Zealand Standards

Clause 1.5 provides definitions for Australian and New Zealand Standards. The Delegated Legislation Committee has recently placed more scrutiny on the use of Australian Standards in local laws. The Shire should double check to ensure the references to the Australian Standards are correct and up to date. If the citation is not accurate, the Committee may request the citation be amended.

In clause 1.5, it is also suggested to insert a definition for **AS/NZS** and a separate definition for **AS**.

In addition, where a reference is made to Australian Standards, the Committee has previously requested that the reference include the words "as amended from time to time". One suggestion may be to include this in the **AS** and **AS/NZS** definitions in clause 1.5.

The Committee has also expressed that where Australian Standards are used, the general public should be informed by the Shire as to where they can freely access these standards. The Committee may inquire as to how this information will be made available to the public.

(D) Clause 5.4

Clause 5.4(b) concerns the prohibition of spitting on public transport. The Shire should consider how it may enforce the clause as the offence may be committed on a vehicle run by an external Public Transport Authority.

(E) Clause 5.9

It is suggested the definition of "catteries" be deleted as it is not used or referred to in Division 2.

(F) Clause 5.16

Similarly, it is suggested the definition of “animal” be deleted as it is not used or referred to in Division 3.

(G) Clause 5.20

Clause 5.20(3) makes reference to a “health nuisance”. For clarity, it is suggested to define the term in the clause.

(H) Clause 6.20

The effect of subclause 6.20(3) requires a person to comply with a direction within the time specified. It is suggested subclause (3) provide more detail so the clause is less vague. As it currently stands, it is not specific who is issuing a direction, and whether the time specified is in a notice or by an authorised officer.

(I) Clause 6.3

Clauses similar to paragraph 6.3(a) have previously been raised as an issue with the Delegated Legislation Committee. Such a clause may potentially create an offence that people in many circumstances may unavoidably commit. For example, subclause 6.3(a) would not account for events outside an owner/occupier’s control such as a strong wind or actions of another person that would cause the rubbish receptacle to not be tightly sealed at all times. It is advised that if the subclause is left unchanged, the Committee may raise it as an issue.

(J) Clause 8.11

Subclause 8.11(b) makes reference to Standard 3.2.3 of the Food Standards Code. It is suggested the full reference for Standard 3.2.3 be included. For example: “Standard 3.2.3 of the Food Standards Code called Food Premises and Equipment, as amended from time to time”.

(K) Schedule 2 and 3

Schedule 2 and 3 concern an application for registration of a cattery and makes reference to clause 5.12(7)(b) and 5.12(8)(a) respectively which do not appear in the local law. It is suggested the Shire delete Schedules 2 and 3.

(L) Page numbers

It is suggested the page numbers be removed from the bottom of the pages. These numbers may no longer be accurate when the local law is published in the *Government Gazette*.

In the event the Shire chooses to maintain a public version of the local law in hard copy or electronic format, the Shire can choose to retain the contents page with page numbers.

(M) Tables

The local law contains a number of tables, for example in clauses 5.20 and 5.22. It is suggested these tables be placed in separate schedules so that they do not interfere with the clause structure. Placing the tables in separate schedules will also make these tables easier to amend in the future.

(N) Minor edits

The following minor edits are suggested:

- Contents page: Change alignment of Schedule to “left”;
- Clause 1.5: in the definition of habitable room, paragraph (a), delete “but”;
- Clause 4.3(2)(c): replace “Executive Director Public Health” with “Executive Director, Public Health”;
- Clause 9.16(1): replace **Specified** with **specified**; and
- For numerals of 4 digits and more, remove the comma and insert a space, e.g. “4,000” replace with “4 000”, and “20,000” with “20 000”.

Minister's Directions – pursuant to s 3.12(7) of the Local Government Act 1995

Please note: Once the City has published a local law in the *Government Gazette*, you must comply with the requirements of the Minister's *Local Laws Explanatory Memoranda Directions 2010*. The City, within 10 working days of the gazettal publication date, needs to forward the signed EM material to the Committee at the current address -

Committee Clerk
Joint Standing Committee on Delegated Legislation
Legislative Council Committee Office
GPO Box A11
PERTH WA 6837

Tel: 9222 7300 Fax: 9222 7805
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A copy of the [Minister's Directions and EM forms](#) can be downloaded from the Department's webpage. Failure to comply with the Directions may render the local law inoperable.

My comments:

- have been provided to assist you with drafting matters;
- do not constitute legal advice;
- have been provided in good faith for your consideration; and
- should not be taken as an approval of content.

You should ensure that your proposed local law has had a detailed editorial analysis, and that the content is in accordance with your Council's policies and objectives.

Please feel free to contact me if you have any queries regarding any of the comments above.

Kind regards

Bei Bei Guo

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