



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your Ref: RMP:BYL11
Our Ref: 38102/10

Councillor Graeme Campbell
President, Shire of Broome
Corner of Weld and Haas Street
PO Box 44
Broome WA 6725

Attention:

Rochelle Piggin by facsimile to: 9191 3455

13 November 2012

Dear Councillor Campbell

Shire of Broome Local Government Property and Public Places Local Law 2012

Thank you for your letter dated 30 October 2012 enclosing an Explanatory Memorandum and other materials regarding the above named Local Law. The Joint Standing Committee on Delegated Legislation considered the Local Law at its meeting on 12 November 2012 and resolved to write to you regarding the following matter.

Clause 6.1(c)

The Explanatory Memorandum states that clause 6.1 gives more power to the swimming pool manager or attendant to control the behaviour of patrons of the pool. It states:

6.1 Powers of manager or attendant

The manager or attendant of a pool premises may—

(a) set aside the pool premises for the use of certain persons to the exclusion of others;

(b) temporarily suspend admission to, direct to leave or remove from the pool premises all persons or any person, if in her or his opinion such action is necessary or desirable;

(c) refuse admission to, direct to leave or remove, or cause to be removed from the pool premises any person who, in the opinion of the manager or attendant—

(i) is a child of the age of 10 years or under who is unaccompanied by a responsible person over the age of 16 years;

(ii) is committing a breach of any provision of this local law;

(iii) is by reason of her or his past, or present conduct, within or about the pool premises, has created or is creating a nuisance;

(iv) is under, or apparently, under the influence of intoxicating liquor or drugs; or

(v) is apparently suffering from a contagious, infectious or cutaneous disease or skin complaint;

(d) suspend admission for a minimum period of one week to any person who has committed a breach of any provision of this local law in relation to the pool premises; and

(e) direct a person as to that person's use of the pool premises.

The Committee noted clause 6.1 deviates from the WALGA *proforma* which states:

When entry must be refused

5.1 A Manager or an authorized person shall refuse admission to, may direct to leave or shall remove or cause to be removed from a pool area any person who –

(a) in her or his opinion is -

(i) under the age of 6 years and who is unaccompanied by a responsible person over the age of 14 years;

(ii) suffering from any contagious, infectious or cutaneous disease or complaint, or is in an unclean condition; or

(iii) under the influence of liquor or a prohibited drug; or

(b) is to be refused admission under and in accordance with a decision of the local government for breaching any clause of this local law.

The Committee is of the view that clause 6.1(c) gives the Manager or Attendant discretionary power to admit persons to the pool area whereas the WALGA *proforma* does not and is a substantial deviation.

The Committee noted that pool entry is not covered in the *Health (Aquatic Facilities) Regulations 2007* but notably, the clause appears to conflict with the Department of Health's "Code of practice for the design, operation, management and maintenance of aquatic facilities", a Code adopted pursuant to regulation 6 of the *Health (Aquatic Facilities) Regulations 2007*.¹ It states:

7.9 MINIMUM ENTRY AGE

The operator of an aquatic facility shall ensure that children under 10 years of age are not permitted to enter the facility unless under the supervision of a person 16 years or older, in accordance with Guideline SU 1.11 – Parental Supervision - 1996 of the Pool Safety Guidelines. Waterslides are exempted from complying with 4.2 of this guideline.

¹ It states: (1) The Code is adopted to the extent to which it is applied by these regulations. (2) These regulations prevail over the provisions of the Code to the extent to which the provisions of the Code are inconsistent with these regulations.

Under the Code, a Manager or Attendant lacks discretionary power to admit persons to a facility which would include the pool area. It is thus the Committee's preliminary view that clause 6.1(c)(i) of the Local Law is inconsistent with a Code which has been incorporated in *Health (Aquatic Facilities) Regulations 2007*.

With respect to clause 6.1(c)(v), this clause again gives a Manager or Attendant a discretion to admit or not admit a person who is "apparently suffering from a contagious, infectious or cutaneous disease or skin complaint" but is inconsistent with regulation 24 of the *Health (Aquatic Facilities) Regulations 2007* which states:

Division 1 — Hygiene and use of facilities

24. Certain persons not to enter or use water body

(1) A person must not enter or use, or attempt to enter or use, a water body of an aquatic facility if the person is —

(a) suffering from any gastrointestinal disease, skin infection or other disease that is communicable in an aquatic environment; or

(b) in an unclean condition; or

(c) wearing unclean clothes; or

(d) under the apparent influence of alcohol, drugs or alcohol and drugs; or

(e)....

'Water body' in the 2007 Regulations means "a spa pool, swimming pool, swimming bath, water slide, wave pool, and any other aquatic amenity or facility that is controlled or used by or in connection with any club, school, business, association or body corporate." Regulation 24 thus contemplates that persons with infections or contagions cannot enter either a facility (in this case a pool area) or the water whereas the clause provides the Manager or Attendant with a discretionary power to admit such persons.

It is the Committee's view that clause 6.1(c)(v) of the Local Law is inconsistent with regulation 24 of the *Health (Aquatic Facilities) Regulations 2007* and void pursuant to section 43 of the *Interpretation Act 1984*.

I advise that the Committee recently scrutinised the same problematic clause in the *Shire of East Pilbara Public Places and Local Government Property Local Law 2011*.

The Committee requests the Shire provide an undertaking to amend clause 6.1 to remove the discretionary power given to pool Managers and Attendants by Friday, 23 November 2012 in order to prevent a *Motion of Notice* to disallow the Local Law being moved in the Legislative Council.

If you have any queries, please contact the Committee's Advisory Officer (Legal), Ms Anne Turner on 9222 7828, by fax: 9222 7805 or via email at delleg@parliament.wa.gov.au

The Committee has no objection to the Shire discussing this matter with the Department of Local Government, WALGA or the Shire's legal advisers.

Yours sincerely

A handwritten signature in cursive script that reads "Paul".

Mr Paul Miles MLA
Chairman