



TO ALL LOCAL GOVERNMENTS

CIRCULAR NO: 10-2003

LOCAL LAWS CIRCULAR

This Circular has been prepared to assist local governments in the making of their local laws. The *Local Government Act 1995* offers the power for local governments to make any local laws considered necessary for the good government of their districts. A local law is invalid to the extent that it is inconsistent with any State or Federal law.

The Circular deals with particular matters which have been raised with the Department since the last local laws Circular was distributed to local governments in December 2000. It provides information about procedural requirements and the role of the Joint Standing Committee on Delegated Legislation and explains a number of specific local law issues that have been raised by the Committee. The Circular also includes a flow chart that sets out the processes involved in making a local law.

The content of this Circular has been prepared in association with the Local Laws Working Group. The Working Group, which was formed to assist local governments in making effective and enforceable local laws, consists of representatives from:

- the Joint Standing Committee on Delegated Legislation (JSCDL);
- the Department of Local Government and Regional Development (DLGRD);
- the Local Government Managers Australia (LGMA); and
- the Western Australia Local Government Association (WALGA).

If you would like an electronic copy of this information, the Circular is available from the Department's website at www.dlgrd.wa.gov.au/legislation.htm.

Would you please forward this information to the appropriate officers within your local government.

Cheryl Gwilliam
DIRECTOR GENERAL

July 2003

Enc

LOCAL LAWS CIRCULAR

INDEX

1. RESOURCES.....	1
2. ADOPTION PROCEDURES.....	1
2.1 <i>Public Consultation</i>	1
2.2 <i>Submitting First Copy of Proposed Local Law</i>	2
2.3 <i>Submitting National Competition Policy (NCP) Review Forms</i>	2
2.4 <i>Drafting Standards</i>	3
2.5 <i>Correcting</i>	3
2.6 <i>Gazetting by Reference</i>	3
2.7 <i>Amending (s.3.12), Repealing (s.3.12) or Reviewing (s.3.16)</i>	4
2.8 <i>Time Limits</i>	4
3. THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION (THE COMMITTEE)...	4
4. EXPLANATORY MEMORANDA DIRECTIONS.....	4
4.1 <i>Committee's Address</i>	5
4.2 <i>Unsigned Explanatory Memoranda</i>	5
4.3 <i>Late Responses</i>	5
5. SPECIFIC LOCAL LAW ISSUES.....	5
5.1 <i>Adoption of Policies</i>	5
5.2 <i>Code of Conduct</i>	6
5.3 <i>Election Signs</i>	6
5.4 <i>Extending boundaries – Governor's Approval</i>	6
5.5 <i>Extractive Industries Local Law</i>	7
5.6 <i>Fees in Local Laws</i>	7
5.7 <i>Graffiti Clauses</i>	8
5.8 <i>Local Government Property Local Law - Model</i>	8
5.9 <i>Ouster Clauses</i>	9
5.10 <i>Verge Treatments and Indemnity Clauses</i>	10
5.11 <i>Outdated Parking Local Laws</i>	10
5.12 <i>Powers of Entry on to Private Land</i>	11
5.13 <i>Sand Drift Local Laws</i>	12
6. LOCAL LAW PROCESS – FLOW CHART (S.3.12).....	13

1. Resources

Local law information is accessible from the internet in the local law section of the Department's website at www.dlgrd.wa.gov.au/legislation.htm or by using the link towards the bottom right of the Department's home page. The Department keeps a register of all local laws made by each local government. The register may be viewed and Circulars are available on the website.

The 'Local Laws Manual' is available upon subscription to WALGA's local law advisory service. The manual is a comprehensive and practical guide to making local laws. Model local laws within the manual provide examples of laws that local governments may wish to consider adopting. Revisions to the manual are presently being drafted by WALGA.

If you want to ask questions about local laws, the following people at the Department may be contacted for assistance:

- Sheryl Argyle Simpson (ph: 9217 1581, email: sargyle@dlgrd.wa.gov.au),
- Tighe Whelan (ph: 9217 1538, email: twhelan@dlgrd.wa.gov.au),
- Carolyne Gatward (ph: 9217 1494, email: cgatward@dlgrd.wa.gov.au) or
- Tim Fowler (ph: 9217 1575, email: tfowler@dlgrd.wa.gov.au).

Whilst information and suggestions will be offered, local governments will at times need to obtain independent legal advice on specific issues.

2. Adoption Procedures

2.1 Public Consultation

Section 3.12(3)(a)(iii) requires local governments to advertise their proposed local laws providing the public with a period of at least six weeks in which to lodge submissions. Some local governments do not provide sufficient statutory time for the public to make submissions.

When calculating the last date on which submissions can be made, which must be at least six weeks after the notice was advertised, remember to **exclude** both the first day of advertising the notice **and** the last day on which submissions can be made. This is a requirement of s.61(1)(f) of the *Interpretation Act 1984*. Also, the last day on which submissions can be made cannot be a Saturday, Sunday or public holiday, but rather the next possible working day. It is far better to provide a longer public consultation period than to risk invalidating the local law.

The following is an example calculating the minimum public consultation period. If your notice is to be advertised in the paper on Wednesday 8 October 2003, exclude this day from the 6 weeks period. Then add **42** days to the date on which the notice is to be published. The next day shall be the earliest day by which submissions must be made, being Thursday 20 November 2003.

Similarly, ensure that *all* the required information is included in the notices. These requirements are set out at section 3.12(3)(a)(i)–(iii) for the first public notice (proposed local law) and at section 3.12(6)(a)-(c) for the final public notice (adoption of local law).

The Department monitors local law advertisements to check compliance with the requirements of the Act. When it is noted that the full requirements have not been met, local governments are advised to re-advertise to ensure that the local law is made within power. Example notices are available from the Department upon request or samples are also provided in the WALGA Local Laws Manual (Section 5).

2.2 Submitting First Copy of Proposed Local Law

It is necessary to provide the Department with a copy of the proposed local law (s.3.12(3)(b)) *exactly as it is intended to be published* in the Government Gazette so that assistance can be given to eliminate problems before the adoption process is substantially advanced and the local government unnecessarily expends its resources.

Local governments are therefore required to forward a copy of proposed local laws in the intended *gazettal format*, that is, in the format you intend to submit the local laws to the State Law Publisher.

If your local government intends to adopt local laws by reference (that is, adopt local laws already published by another local government), you need to supply a copy of the abridged version that you are intending to publish. It is also helpful for Departmental staff if the full version accompanies the abridged version.

If your local government is substantially adopting a WALGA model, it would be appreciated if you would indicate in italics, or by similar means, the variations being undertaken.

Where another Minister administers the Act (e.g. *Health Act 1911*, *Bush Fires Act 1954* and *Agriculture & Related Resources Protection Act 1976*), a copy of the proposed local law must be provided to that Minister in addition to the copy for the Minister for Local Government (see s.3.12(3)(b) & s.3.12(5)). The *Health Act 1911* also requires the approval of the Executive Director Public Health prior to making local laws under that Act.

2.3 Submitting National Competition Policy (NCP) Review Forms

An NCP review involves looking at a local law to see if any clauses restrict competition and if so, that the restrictions can be justified in terms of overall public benefit outweighing the disadvantages. It should also be established that the objectives of the local law can only be achieved by the restrictions.

NCP forms should be submitted to the Department *at the same time* as the proposed local laws are submitted. This indicates that competition policy restrictions, where applicable, have been assessed during the preparation of the proposed local laws. The NCP report should be available for inspection and comment by the public along with the proposed local law.

Please refer to Departmental Circular No. 824 for sample forms and Departmental Circular No. 916 which lists local laws that are exempt from NCP review. These Circulars are available from the Department's website.

2.4 Drafting Standards

Some local governments submit local laws with problems such as:

- typographical errors;
- attempting to adopt under the wrong Act (e.g. a Dog Local Law made under the *Local Government Act 1995* instead of the *Dog Act 1976*);
- errors of law (such as incorrect impounding provisions; incorrect appeal rights);
- resolution dates in the preamble to local laws which are clearly not the date on which the local laws were actually made by special majority of the council under section 3.12(4) of the Act.

Care needs to be taken to ensure that these problems do not occur.

2.5 Correcting

Once an error has been published, it cannot be changed simply by publishing a correction notice in the gazette. A notice can only be used where a printing error has been made by the State Law Publisher or the error is different from what the local government resolved to adopt by resolution. Any other changes, however small, must be made by way of a new amendment local law, requiring fresh and full compliance with all of the steps of the section 3.12 process.

2.6 Gazetting by Reference

If your local government is adopting the text of another local government's local law, be careful to check the accuracy and details of the law you will be adopting. Several local laws using this method have needed to be amended to rectify the transmission of errors from the original gazetted local law.

Local governments should confirm that the *gazettal date* of the local law being adopted by reference is the date the law was *actually published in the gazette* and not the date it was passed by the council. Otherwise your local law will attempt to adopt a law which does not legally exist.

If you want to adopt both the text of another local government's local law and an amendment (possibly a correction) to this law, you need to specify both dates in your enacting statement.

Local governments are advised against the practice of adopting gazettals by reference which include any *future* amendments to the gazettal. Under section 3.8, this practice may apply for the adoption of model local laws (section 3.9) but not for adopting another local government's local laws. Also, by including future amendments, you would incorporate another local government's decisions about their local law into your local law without your council having any input, consultation or (often) knowledge of these decisions whenever they occur in the future.

2.7 Amending (s.3.12), Repealing (s.3.12) or Reviewing (s.3.16)

Some local governments are not aware that when you are amending or repealing a local law, this needs to be done under section 3.12 of the Act, the same procedure for ‘making’ a local law. This is because amendment or repeal local laws are new local laws in themselves and must follow the full compliance process to be properly made.

Section 3.16 of the Act is used for reviewing local laws – it cannot be used for amending or repealing legislation. If, at the end of a review, a local government decides to amend or repeal a local law, it must then commence the process outlined in section 3.12 to implement the change.

2.8 Time Limits

While the *Local Government Act 1995* does not expressly prescribe a timeframe in which the procedure for making local laws is to be completed, the procedure should be undertaken with ‘all convenient speed’ in line with the *Interpretation Act 1984*. It is the Department’s understanding that local law procedures that take more than a year could be subject to questions of legal validity. Accordingly, if the local law process has had delays of more than a year, then the procedure for making a local law should be restarted.

3. The Joint Standing Committee on Delegated Legislation (the Committee)

The Committee has been delegated by Parliament the task of scrutinising subsidiary legislation, including local laws, in accordance with its terms of reference.

Local laws can be disallowed by either House of Parliament under section 42 of the *Interpretation Act 1984*. Scrutiny by the Committee and disallowance are accountability mechanisms to guard against the making of local laws that are either unlawful by going beyond the power that is delegated or offending one of the Committee’s terms of reference.

The Committee recommends disallowance as a last resort. Such action will usually only occur in circumstances where the local government does not satisfy the concerns of the Committee. In the majority of cases to date, local governments have been willing to provide the Committee with a suitable written undertaking to amend or repeal parts of local laws so as to deal with the particular concerns.

The terms of reference and copies of all reports tabled by the Committee can be downloaded from the Parliament of Western Australia website at www.parliament.wa.gov.au.

4. Explanatory Memoranda Directions

The Directions (see Circular 12-2002) set out the information to be sent *directly* to the Committee (not the Department) as soon as a local government has gazetted a local law. This material needs to be provided to the Committee so it can carry out its duty of looking at the gazetted local laws. Preparing an explanatory memorandum forms

part of the process of making a local law (s.3.12(7) of the Act). Circular 12-2002 provides examples and a checklist of the material to send.

4.1 Committee's Address

The Committee's address is Advisory Officer, Delegated Legislation Committee, Legislative Council, Parliament House, Perth WA 6000. The email address is delleg@parliament.wa.gov.au.

4.2 Unsigned Explanatory Memoranda

In accordance with Circular 12-2002, the Committee requires explanatory memoranda that have been signed by both the Mayor/President and the Chief Executive Officer. The reason is that the Chief Executive Officer is the head of the executive arm of local government, responsible for administering the local law and the Mayor or President is the representative of the legislative arm of local government that enacted the local law.

4.3 Late Responses

It is essential to respond to Committee requests within the advised timeframes. The Committee works under strict time limits governed by the *Interpretation Act 1984* and the Standing Orders of the Legislative Council. In cases where the time limit set by the Committee for a response cannot be met, local government officers should immediately contact Committee staff to determine whether an extension of time can be granted. In circumstances where an extension of time is simply not possible, the Committee recommends that your council convene a special meeting under Part 5, Division 2 of the *Local Government Act 1995* to resolve the matter and inform the Committee of the council's decision by the requested date.

Submitting material late or failing to address the Committee's concerns may result in the Committee recommending disallowance of the local law.

5. Specific Local Law Issues

5.1 Adoption of Policies

Under s.3.8(1)(c) of the *Local Government Act 1995*, a local law may adopt the text of an external document such as *'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.'*

The Committee is of the view that making laws which adopt internal policies such as for advertising signs or codes of conduct do not fall within the above powers of the Act. Adopting these documents is considered to be a method of avoiding the scrutiny of Parliament by making laws outside of the s.3.12 process.

For example, when assessing the need for a signs local law which adopts policies, local governments should determine whether a local law or a town planning scheme will best meet their particular needs. The adoption of scheme policies is not possible

under the *Local Government Act 1995*. The *Town Planning and Development Act 1928* has been drafted for that purpose.

It is understood that amendments are being developed to the planning legislation to provide for the inclusion of infringement notices which local governments may need for enforcement purposes.

5.2 Code of Conduct

The Report of the Committee regarding the City of Perth Code of Conduct Local Law recommended that local governments not include any enforcement provisions concerning codes of conduct in local laws. There are questions about the legality of this practice and such matters should more properly be dealt with under uniform legislation establishing a disciplinary tribunal under the *Local Government Act 1995*.

Accordingly, local government should wait until the proposed new legislation dealing with a local government tribunal and related standards panels has been enacted. This will provide for disciplinary action that may be taken against council members.

5.3 Election Signs

Local governments are reminded of the need to ensure that their signs local laws do not place absolute prohibitions on the erection of election signs for Federal, State and Local Government elections. Absolute prohibitions may pose legal difficulties in terms of the implied guarantee of freedom of communication in the Commonwealth Constitution.

The Committee considers that the majority of electoral signs should be permitted without the need to obtain a licence or special permit and the conditions placed upon the erection of electoral signs should be set out in the signs local law.

It is understood that WALGA will consider amending its model local law to reflect the Committee's concerns.

5.4 Extending boundaries – Governor's Approval

Some coastal local governments using the extension clause in WALGA's model Local Government Property Local Law have been forgetting to obtain Governor's approval to extend their boundary. If your local government is planning to extend the application clause to outside of your district's boundaries (e.g. to apply 200 metres seaward from low tide in order to control water activities), remember:

A local government can only make a local law that applies outside its District if approval is first obtained from the Governor (see s.3.6 of the Act).

A letter to the Department asking for the Governor's approval for an extension will set the process in motion. Note that you must not proceed with making the local law until you have been notified that the approval is granted. A failure to first obtain the Governor's approval will result in the local law being invalid to the extent that it attempts to apply beyond the District's boundaries. Prosecutions would be

jeopardised and the local government and possibly authorised persons could also be exposed to legal action in the event that a person was removed from an area in which the local government had no jurisdiction.

If local governments are aware that they have previously gazetted an extension clause without approval, the Department can provide advice and examples on how to correct the local law.

5.5 Extractive Industries Local Law

Some local governments have been modifying WALGA's Extractive Industries model local law by adding a new clause 2.3(3) as follows:

"The local government may exempt a person making application for a licence under subclause (1) from providing any of the data otherwise required under subclause (1), if, in the opinion of the local government, the location and size of the proposed excavation are such that no significant adverse environmental affects will result therefrom."

It is recognised that there are cogent reasons to permit exemptions from many of the requirements for the granting of a licence. However, the Committee is concerned by the lack of any specific criteria in the clause to guide the council when it exercises its discretion. The Committee perceives the above clause as being beyond the power (*ultra vires*) of the *Local Government Act 1995*. After negotiation with a number of local governments, it has been agreed that the following phrasing is acceptable to the Committee:

"Where in relation to a proposed excavation –

- (a) the surface area is not to exceed 2000m²; and*
- (b) the extracted material is not to exceed 2000m³;*

the local government may exempt a person making application for a licence under subclause (1) from supplying any of the data specified in paragraphs (b), (d), (e) and (i) of subclause (1)".

It is understood that this wording will be added to the WALGA model when it is next revised.

5.6 Fees in Local Laws

1. General

Fees and charges for local law matters can be fixed by council resolution under s.6.16 of the *Local Government Act 1995* as part of the annual budget process. These local government resolutions are not normally able to be scrutinised by the Committee unless the fees and charges that are set by those resolutions are also included in the text of a local law. Please be reminded that the fees for receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate must be limited to cost recovery (s.6.17(3)(a)&(b)).

2. Health Fees

The Committee has become aware that councils are not gazetting their health local law fees as required under the *Health Act 1911*. Section 344C of the *Health Act 1911* provides that certain health fees and charges may be fixed by resolution of the local government, and sets out the notification requirements of such resolutions. A notice of the resolution must be published in the Gazette and a newspaper circulating generally throughout the district of the local government at least 14 days before the day on which the resolution is to take effect. The notice must also specify the day on which the resolution is to take effect and amounts of the fees or charges. Local government resolutions to fix health fees and charges may be scrutinised and disallowed in the same way as regulations, rules and local laws.

5.7 Graffiti Clauses

The Committee has observed a number of local laws containing clauses to control graffiti by, for example, requiring a person who lives next to a public place or reserve to treat their newly erected fences with a non sacrificial graffiti protection paint and affix a plate to the wall indicating the name of the non sacrificial paint. Existing fences may require such treatment when directed by the local government.

The Committee considers that the prescriptive nature of such clauses is *ultra vires* of the *Local Government Act 1995* to make on the grounds of unreasonableness. Such clauses:

- expose individuals to a financial burden; and
- punish home owners/ business owners for the criminal activities of others by making them “offenders” if they fail to comply with the local law.

While the end sought to be achieved by a local government is the removal of graffiti in the District so as to maintain amenity, the means of achieving this is disproportionate. Its effect is to punish the home owner/occupier who may not be able to pay either for the non-sacrificial paint or the modified penalty if there is a failure to comply with the local law. That home owner/occupier has already suffered damage to his or her property and is not given the option of less expensive means of ameliorating the problem.

Further, the Committee views graffiti eradication as essentially a ‘whole of community’ problem, rather than an individual home owner/occupier problem. Accordingly, the Committee considers that the community should bear the cost of graffiti protection and removal and will therefore continue to require the repeal of such clauses in local laws, or recommend their disallowance. More detailed information from the Committee about this matter is available from the Department.

5.8 Local Government Property Local Law - Model

The Committee has become aware of a flaw in the WALGA Local Government Property Model Local Law whereby the onus of proof in relation to permit holders and drivers of boats has been shifted beyond that contemplated by the *Local Government Act 1995*. There are 3 scenarios covered in a clause which reverses the

onus of proof. However, the *Local Government Act 1995* only authorises the reversal in one of those scenarios. Clause 10.4(2) of the model states that where:

- a vehicle; or boat; or
- a permit holder unlawfully causes damage to local government property

then, the person in control of the vehicle or the boat or the permit holder is deemed to have caused the damage unless there is proof to the contrary.

The general principle of the common law reflected in the *Criminal Code* is that the onus of proof in establishing the elements of an offence is on the prosecution. As section 9.13 of the *Local Government Act 1995* only reverses the onus of proof in a specific situation, that is, cases involving vehicles, a permit holder or boat owner is placed in a situation of manifest injustice. For example, if a reveller damages a local government venue, the permit holder is held to have damaged the property. It is then up to the permit holder to prove that he did not commit the damage. This reverses the common law. The parts of the clause as they applied to persons in control of boats and the holders of permits are beyond the power of the Act to make.

It is understood that WALGA will consider amending its model local law to reflect the Committee's concerns.

5.9 Ouster Clauses

The Committee has observed a trend amongst local governments of ousting the jurisdiction of the courts to hear claims or review decisions of inferior courts or tribunals. An example of an 'ouster' clause is stated below:

“A [golf] player or other person is not entitled to make any claim by way of damages or otherwise against the local government, an authorised person, local government employee, local government appointed subcontractor or person for whose acts the local government is responsible in law, for any injury or damage sustained by that player or person through any act, default or omission of an authorised or other person.”

Section 9.56 of the *Local Government Act 1995* provides protection from personal liability in tort to councillors, council employees and agents who perform acts or omissions in good faith. However, the protection does not extend to 'the local government'. The Committee has concluded that the above clause is inconsistent with section 9.56(4) of the Act and is not authorised by the local law making power in section 3.5. This is because it purports to prevent a golfer or other person from bringing an action against the local government for injury and loss sustained as a result of its negligence, breach of statutory duty or otherwise.

Where such inconsistency occurs, the local law is inoperative under section 3.7 of the *Local Government Act 1995* and is also void by operation of section 43(1) of the *Interpretation Act 1984*. A local government might be able to exclude liability by contract, but local governments seeking to do this should obtain independent legal advice on this matter.

In the Committee's opinion, the general legislative making power in section 3.5(1) of the *Local Government Act 1995*, is insufficient to make a local law abrogating the fundamental right to sue a local government for a cause of action recognised by the common law or statute. The Committee will continue to require local governments to provide written undertakings to repeal ouster clauses. If an undertaking is not provided, the Committee will recommend that such clauses be disallowed. More detailed information from the Committee about this matter is available from the Department.

5.10 Verge Treatments and Indemnity Clauses

The Committee has also observed a trend of local governments deviating from the WALGA Thoroughfares Model Local Law in relation to verge treatments by including an indemnity clause. The following is an example-

“An owner or occupier who installs and maintains a verge treatment shall indemnify the Council against all or any damage or injury caused to any person or thing including any street, pavement, footpath or crossover or any pipe or cable and shall make good at such owner's or occupier's expense all such damage caused;”

The above indemnity clause contemplates that if a passerby trips over on a permissible verge treatment (grass or sprinkler) and is injured, then that person might sue the council, as occupier of the land. If a court finds the local government liable and damages are awarded, then the council can rely on the indemnity imposed on the owner/occupier by the local law to recover the damages. Such indemnity clauses directly impact on civic-minded ratepayers who maintain front verges with permissible verge treatments, such as grass, at their own expense. Home insurance cover is unlikely to cover the owner/occupier, leaving the assets of the owner/occupier exposed to satisfy the indemnity.

The Committee has consistently taken the approach that a local law which imposes an indemnity on homeowners is inconsistent with the *Local Government (Uniform Local Provisions) Regulations 1996*, particularly Regulation 17. In the Committee's opinion, verge treatments (e.g. reticulation pipes, sprinklers, plants) are not 'constructions' and this is why the WALGA model does not require the person installing a permissible verge treatment to obtain indemnity insurance. The Committee will continue to request the repeal of such clauses, or recommend to Parliament that they be disallowed. More detailed information from the Committee about this matter is available from the Department.

5.11 Outdated Parking Local Laws

If you choose to model your parking local law on the WALGA Parking and Parking Facilities proforma, note the most recent version in the manual which includes the updates for the 2000 *Road Traffic Code*, rather than the old 1975 *Road Traffic Code*. A new version was prepared, rather than an amendment being made, because of the extent of the changes – so make sure you use this latest version!

5.12 Powers of Entry on to Private Land

In May 2003, the Committee tabled a Report in Parliament regarding '*Powers of Entry and Powers to Make Local Laws that Affect Private Land under the Local Government Act 1995*'. This report may be downloaded from the Parliamentary website at www.parliament.wa.gov.au.

The Committee was concerned by local laws which aimed to:

- a) regulate the activities conducted on private land by the owners/occupiers of that land; and
- b) authorise local government employees to enter onto that land,

in circumstances beyond those listed in Schedules 3.1 and 3.2 of the *Local Government Act 1995*. Examples of matters on private land now being included in some local laws are nuisances arising from amusements, reflective surfaces, use of floodlights, truck noise from residential land during the night, unsightly material in backyards, non-compliant signs and people dumping cabinets in an unsafe condition.

Local governments are advised that:

- the local law-making power provided by section 3.5(1) of the Act is constrained by sections 3.25 and 3.27; and Schedules 3.1 and 3.2 in relation to making local laws affecting private land;
- where a local government relies on section 3.5(1) for making a local law in relation to entry onto private land, the power can only be used in relation to those matters authorised by sections 3.25, 3.27 and Schedules 3.1 and 3.2. Also, local governments must comply with the procedure for entering private land set out in Part 3, Division 3, Subdivision 3 of the Act.

Deviation from this position by a local government will result in the Committee recommending disallowance under s.42(2) of the *Interpretation Act 1984*.

As part of the process of amending the *Local Government Act 1995* in the next amendment Bill, four additional items will be included in Schedules 3.1 and 3.2. These new powers will allow a local government to issue a notice:

- for the removal of bees from private property,
- to repair a boundary fence,
- to limit or stop nuisance lighting (Schedule 3.1); and
- to allow a local government to carry out works on private thoroughfares (Schedule 3.2).

A Circular will be issued to local governments once these amendments become law.

It is noted that the WALGA Urban Environment and Nuisance Local Law contains clauses which provide a local government with a power of entry to abate a nuisance caused by an amusement that is being conducted at a fair, carnival or show. It is

understood that this wording will be considered for amendment in the WALGA model when it is next revised.

5.13 Sand Drift Local Laws

In November 2000, the former Committee disallowed a clause regarding the power of a local government to place a charge on land on which the local government had undertaken work pursuant to a notice served on the owner/occupier of the property. The Committee determined that the clause was *ultra vires* the *Local Government Act 1995*. There is no power in the Act to specify that an amount expended by the local government, in carrying out work required in a notice, can be a charge on the land on which the work was carried out.

The former Committee was also concerned about the power and procedure for clauses in local laws that authorise entry onto private property. The procedure for entry onto private property should be consistent with the entry procedures provided in sections 3.28-3.36 of the Act.

The current Committee will continue to maintain this position on sand drift local laws.

6. Local Law Process – Flow Chart (s.3.12)



