

PART 14: THE LAW

The Western Australia Constitution Act 1899 prescribes:

Part IIIB — Local government

[Heading inserted by No. 88 of 1979 s. 3.]

52. Elected local governing bodies

- (1) The Legislature shall maintain a system of local governing bodies elected and constituted in such manner as the Legislature may from time to time provide.
- (2) Each elected local governing body shall have such powers as the Legislature may from time to time provide being such powers as the Legislature considers necessary for the better government of the area in respect of which the body is constituted.

[Section 52 inserted by No. 88 of 1979 s. 3.]

Note the requirement of S52 (2) for "better government"

Consequent to the Western Australia Constitution, the powers granted to local government by Parliament **MUST** be "NECESSARY" for the better government of the area in respect of which the body is constituted".

Therefore, Parliament is not authorised to grant powers not "necessary for the better government of the area in respect of which the body is constituted". It follows that subsidiary legislation made by local governments – ie local laws - must also be shown to be "necessary for the better government of the area in respect of which the body is constituted".

It also follows that **POWERS** granted or assumed by local governments themselves to themselves - ie local laws and delegated authorities - must also be shown to be "necessary for the better government of the area in respect of which the body is constituted".

This ban has the effect that by preventing the public contributing to local government considerations and decisions, better local government cannot be achieved - ie 40,000 heads are better than 14.

It also prevents Councillors from fulfilling their duty as prescribed by S2.10 (c) of the Local Government Act to facilitate communication between the community and the council.

The underlying ethos of the local government is that it – and it alone - knows best what is best for those whom it governs.

The Western Australia Interpretation Act 1984 prescribes at S56:

56. “May” imports a discretion, “shall” is imperative

- (1) Where in a written law the word *may* is used in conferring a power, such word shall be interpreted to imply that the power so conferred may be exercised or not, at discretion.
- (2) Where in a written law the word *shall* is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.

The term "shall" as used in S52 of the Western Australia Constitution Act 1899 therefore means there can be no purpose in the Local Government Act other than "better government" – ie **better government MUST be effected**.

Since the City of Armadale and the Department of Local Government and Communities have decreed this ban is lawful, it is a mystery as to why Parliament would grant powers that breach international law and Australian constitutional law.

One reason might be that the world has moved on but the WA Parliament remains in the draconian era when the current Local Government Act was composed.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --

That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.

But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."

Transcript of Declaration of Independence (1776) - IN CONGRESS, July 4, 1776.
The unanimous Declaration of the thirteen united States of America,

OFFICIAL CLAIMED LEGAL BASIS SUPPORTING THE ILLEGAL BAN

In relation to the ban, the Department of Local Government and Communities has since ruled (by its interpretation of the relevant Regulation) that a decision or ruling from the person presiding is *absolute* and cannot be challenged or changed by anyone (forever). (Apparently, it would seem, even a Court of Law).

The Department of Local Government and Communities has determined this *absolute* discretionary power is granted by S5.24 (2) of the WA Local Government Act 1995:

5.24. Question time for public

- (1) *Time is to be allocated for questions to be raised by members of the public and responded to at —*
(a) *every ordinary meeting of a council; and*
(b) *such other meetings of councils or committees as may be prescribed.*
- (2) *Procedures and the minimum time to be allocated for the asking of and responding to questions raised by members of the public at council or committee meetings are to be in accordance with regulations.*

The relevant Regulations, being Local Government (Administration) Regulations 1996, prescribe the following:

7. Procedures for question time for the public — s. 5.24(2)

- (1) *Procedures for the asking of and responding to questions raised by members of the public at a meeting referred to in regulation 6(1) are to be determined —*
(a) *by the person presiding at the meeting; or*
(b) *in the case where the majority of members of the council or committee present at the meeting disagree with the person presiding, by the majority of those members, having regard to the requirements of subregulations (2), (3) and (5).*
- (2) *The time allocated to the asking of and responding to questions raised by members of the public at a meeting referred to in regulation 6(1) is to precede the discussion of any matter that requires a decision to be made by the council or the committee, as the case may be.*
- (3) *Each member of the public who wishes to ask a question at a meeting referred to in regulation 6(1) is to be given an equal and fair opportunity to ask the question and receive a response.*
- (4) *Nothing in subregulation (3) requires —*
(a) *a council to answer a question that does not relate to a matter affecting the local government;*
(b) *a council at a special meeting to answer a question that does not relate to the purpose of the meeting; or*
(c) *a committee to answer a question that does not relate to a function of the committee.*
- (5) *If, during the time allocated for questions to be raised by members of the public and responded to, a question relating to a matter in which a relevant person has an interest, as referred to in section 5.60, is directed to the relevant person, the relevant person is to —*
(a) *declare that he or she has an interest in the matter; and*
(b) *allow another person to respond to the question.*

There is no requirement in law for the minutes of a meeting to record the substance of a question submitted, any response, or not responded to at all.

That situation is determined by the relevant Regulations, being Local Government (Administration) Regulations 1996, prescribe the following:

**11. Content of minutes of council or committee meetings —
s. 5.25(1)(f)**

The content of minutes of a meeting of a council or a committee is to include —

- (e) *a summary of each question raised by members of the public at the meeting and a summary of the response to the question; and*

Note: The term “**at the meeting**” means questions submitted in advance pursuant to City of Armadale Local Law Standing Orders 2000 - but then subsequently assessed and voided by the ban - are exempt from this Regulation because they would not have been raised “at the meeting”.

i.e. the law requires that no record of such questions be made – either to Council or to the public.

It is therefore the case that applying Regulation 11(e), if a question is rejected – ie not accepted by the CEO or Person Presiding, then it has been ruled “Invalid”. Therefore - because it is not a “public question” and there is no response - it need not be referenced to Council or appear in the official minute of that meeting.

That is obscene and blatant political censorship.

There is no requirement in law for discretionary rulings (decisions) to be justified or supported by factual or subjective argument or rationality.

If this discretion is applied administratively by the CEO personally, a complaint may be submitted to the Council (via the CEO), however no Councillor or even the full Council has the power to instigate remedial action.

If this discretion is applied administratively by an officer acting under delegated authority, a complaint may be submitted to the CEO, whose decision is final.

The Western Australia Department of Local Government and Communities has determined all of the above is lawful.

It has also confirmed in writing on behalf of the Minister for Local Government, that the WA Government has no intention to change that situation.

As recently as late 2015 the City of Armadale *unanimously* amended its Local Law Standing Orders 2000 (2014), planning to increase the fine upon the public for breaching *any* part of *any* Standing Order from \$1,000 to \$5,000 plus a daily penalty of \$500 - further demonstrating its draconian condescending approach to dialogue with its Electors in its Council, Committee and Elector meetings.

Source: City Strategy Committee Meeting 16 February 2015 - pages 41 and 130

"Part 19 – Enforcement

New clause added to deal with breaches of Standing Orders in accord with legislation."

City Strategy Committee 16 March 2015 - page 41 : Motion carried unanimously

Council Meeting 23 March 2015 – pages 9-13: Motion carried unanimously

Recommendation CS24/3/15 - Local Law Review

MOVED Cr M Geary (Note: one of my two Ward Representatives)

Note: The statement "*in accord with legislation*" is a deception because **there is no legislation requiring this penalty** - in fact since 2007 the Local Government Act provides no money penalties at all for breaches of "Official Conduct" or "Codes of Conduct".

It was revealed later by Council that the \$5,000 penalty was adopted to fulfil the industry policy of lobbyist organisation WALGA and had nothing to do with legislation.

This is official coercion and spin - big time. Some might describe it as "lies" or "deliberate deception".

Your Council demands the same public "respect" to itself as given a court of law - but respect is earned in the courts where evidence is carefully considered, judgements are supported by full and complete explanations, the text of hearings is documented, decisions are justified by the evidence and there is a right of appeal.

None of those attributes apply in the City of Armadale where minutes of Committee and Council meetings do not record debates (if and when they may occasionally occur) or who said what and who voted for what.

The City has claimed its audio recordings of meetings are destroyed after the minutes are transcribed, so it is not possible for a citizen to acquire impartial factual evidence to support a disputed record.

The City of Armadale's attitude is that "respect" is their right - achieved and enforced

by threats of substantial penalties.

The 2015 amended City of Armadale Local Law Standing Orders 2000 also made it an offence not to use "respectful" language - penalty \$5,000

"All persons possessing any portion of power ought to be strongly and awfully impressed with an idea that they act in trust and that they are to account for their conduct in that trust to the one great Master, Author, and Founder of society."

"In their nomination to office they will not appoint to the exercise of authority as to a pitiful job, but as to a holy function."

Edmund Burke (1729 – 1797)
