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## LGEMA POLICY POSITION

### DOMESTIC CAT CONTAINMENT BY LOCAL GOVERNMENT COUNCIL LOCAL LAWS

Local government *business as usual* means intolerable animal welfare outcomes, the obliteration of myriad species, and the immiseration of billions of humans. Local government *business as usual* needs to be stopped<sup>1</sup>, especially in respect of cat management. All local governments must be supported now in their adoption of local laws to contain domestic cats.

#### PREAMBLE

The domestic cat (*Felis catus*) is a noxious invasive species on Australian urban and non-urban, land and waters. Cats are also a much-loved animal that as responsibly owned pets can bring considerable joy and benefit to their owners. The WA political legislative response to cats has the legal (but unhelpful and confusing) separation of cats into feral, stray and domestic cats, notwithstanding the fact that they are the same species each requiring cost-effective management. Local government Councils can regulate all cats through local laws but have a particularly important role in fostering responsible ownership of pet cats and effective management of stray cats<sup>2</sup>.

In WA, local governments are agents of the WA state government. Local government's jurisdiction covers most of WA land (including some islands) and close coastal waters, except crown lands that are roads, national parks and/or reserves<sup>3</sup>. However, the boundaries of parks and reserves usually abut lands under local government jurisdiction from which cats can escape or roam<sup>4</sup>. Local governments manage small parcels of crown land and local roads.

Local law legislative functions in WA uniquely place local governments in a position to effectively regulate responsible ownership of pet cats as part of their management of widespread invasive species, such as cats. It is urgent, proportionate and necessary for local governments to require containment of domestic pet cats<sup>5</sup>, on animal welfare, environmental threat and public health grounds. Central to cat management in Western Australia is the ability of local governments to enforce prevention of free-roaming pet cats.

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<sup>1</sup> adapted from The Monthly Summer Reading December 2023 – January 2023, page 44, *Writing in Nature* by Tim Winton; scientists estimate that pet cats are killing 390 million animals each year in Australia; on 27bJanuary 2023, Perth Lord Mayor called for, ... *Cat Prohibited Areas across Perth parks and the Swan River foreshore*

<sup>2</sup> TrapNeuterRelease of stray cats (TNR) is not effective *stray* cat management according to the Australian Veterinary Association and the WA Feral Cat Working Group

<sup>3</sup> Department of Biodiversity, Conservation and Attractions (DBCA) is responsible for the management of Class 1 reserves in major cities, including Kings Park and Bold Park. Cats and all domestic animals are prohibited on conservation reserves under the BC Act

<sup>4</sup> noting DCBA require to consult with local governments when developing a management plan for land within the local government's district: *Conservation and Land Management Act 1984* (WA) (CALM Act) s.59(2)

<sup>5</sup> in consultation with other land managers, including DBCA and Indigenous land managers (the latter are responsible for managing over a third of WA land)



## EXECUTIVE SUMMARY

1. The *Local Government Act 1995* (LG Act) provides wide powers that enable and authorise Councils to enact Domestic Cat Containment Local Laws to stop domestic cats roaming, in exercising their inherent legislative functions<sup>1</sup>.
2. Councils do not need the enabling authority of another Act to enact Domestic Cat Containment Local Laws, including *not* the *Cat Act 2011* (Cat Act)<sup>2</sup>.
3. A Council's power to make a Cat Local Law is *not* tethered to the Cat Act.
4. Separately, the Cat Act authorises and enables Councils' enactment of a Domestic Cat Containment Local Laws<sup>3</sup> and the Governor's authorisation of Cat Act regulations.
5. The *Joint Standing Committee on Delegated Legislation* (JSCDL) 2014 disallowance of the Dardanup Cat Containment Local Law<sup>4</sup> (Disallowance Decision), based on its opinion that the statutory provisions of the Cat Act do not authorise Domestic Cat Containment Local Laws, was and is an error of law<sup>5</sup>. Furthermore, the efforts of local governments to couch cat containment objectives through the law of *nuisance* is fraught with unnecessary difficulties.
6. If the 2014 Disallowance Decision was based on policy grounds in an exercise of JSCDL discretion, this is no longer a *legally reasonable* justification. The JSCDL 2014 approach is outdated by contemporary scientific research and data evidence. Moreover, significant policy changes since 2014 reflect the step-change in the increasing societal intolerance of roaming pet cats<sup>6</sup>. A fit-for-purpose discretionary decision must be merit-based, and reflect contemporary knowledge and policy.
7. Since 2014, the mounting evidence informing state and federal government policy changes shows the need for local governments to exercise their legislative powers to stop domestic cats from roaming through cat containment. Furthermore, an increasing number of local governments are recognising this urgent need to require domestic cat containment as a core part of responsible pet cat ownership.
8. The JSCDL inconsistency in disallowing some cat containment local laws and not others<sup>7</sup> suggests decision-making that may be indicative of poor faith, arbitrariness at worst, or poor administration at best.

## BACKGROUND

### *JSCDL Review Procedures*

The parliamentary function of scrutinising delegated legislation (also known as subsidiary legislation) has been delegated by Parliament to the Joint Standing Committee on Delegated Legislation (JSCDL). The JSCDL is an eight-member committee, comprising equal membership from each House of Parliament: four from the Legislative Assembly and four from the Legislative Council. Accordingly, the JSCDL is joint committee of both houses. The Committee's secretariat is based in the Legislative Council Committee Office<sup>8</sup>. The JSCDL *Terms of Reference* are found in Schedule 1 Part 10 of the Legislative Council Standing Orders.

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<sup>1</sup> LG Act s.3.5(1)

<sup>2</sup> LG Act s.3.5(1)&(3)

<sup>3</sup> LG Act s.3.5(3)

<sup>4</sup> and a number of similar disallowances since

<sup>5</sup> see *Castledine Gregory* legal opinion by M Gregory 3 May 2023

<sup>6</sup> see below for many of these changes

<sup>7</sup> Northam, Narrogin, Christmas Island

<sup>8</sup> JSCDL website accessed 10 October 2024



The mechanism by which the JSCDL requests amendments to local laws adopted by local governments is to request an Undertaking from the local government Council<sup>1</sup> to change the local law<sup>2</sup>. The JSCDL keeps a register of undertakings on its website but which has not been updated since 1 April 2021<sup>3</sup>. Local governments that give an undertaking to the JSCDL and subsequently change their mind based on new information are advised by the JSCDL that *they* may be held on contempt of the JSCDL<sup>4</sup>.

### ***JSCDL Disallowance of Domestic Cat Containment Local Laws***

The JSCDL has disallowed provisions of cat local laws that seek to contain cats, define them as a nuisance and/or require owners to reside with their registered cat(s)<sup>5</sup>.

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<sup>1</sup> based on any of the following grounds:

- that an instrument is 'not within power' for various reasons, including but not limited to the instrument
- is an unreasonable exercise of the delegated legislative power
- is procedurally invalid
- abrogates a fundamental common law principle without express or necessarily implied authority from the empowering Act
- is inconsistent with its empowering Act or other legislation,

from JSCDL presentation to WALGA state conference 9 August 2019

<sup>2</sup> JSCDL website accessed 10 October 2024: Undertakings represent commitments made by local governments, government departments or agencies to the Committee that certain actions will be completed within a certain time frame. The requesting of undertakings relating to Instruments from local governments, departments and agencies is a serious matter. The Committee allows Instruments to pass unimpeded into law subject to the commitment that the relevant local government, department or agency will abide by the undertakings they give. The Committee accepts undertakings provided on the following terms:

- all consequential amendments arising from the undertakings will be made;
- offending clauses will not be enforced in a manner contrary to the undertakings given;
- the undertakings will be completed within six months of the date the local government, department or agency's letter provides the undertakings;
- where the instrument is made publicly available, whether in hard copy or electronic form, it be accompanied by a copy of the undertakings; and
- in the case of a local government, it will provide a copy of the minutes of the meeting at which the relevant council resolves to provide the undertakings.
- Every six months, the Committee conducts a review of the Internet Undertakings List for viewing by Local Governments and the Internet Undertakings List for viewing by Departments and Agencies to check for compliance with provided undertakings. Reminders are sent to local governments, departments or agencies where compliance with undertakings has not occurred within the required time, accessed 10 October 2024

<sup>4</sup> *Parliamentary Privileges Act 1891* s.8(a) applies Act to JSCDL but it appears if a withdrawal of an Undertaking could be held to be a contempt, say under LC *Standing Orders* Order 94(1) ) then it appears arguable that only the Legislative Council could make a contempt finding against a local government Council's change of mind about an Undertaking already given, but not by the JSCDL; noting the broad powers of a local government Council to make local laws: LG Acts.s.3.5; and the power of a local government Council to change its mind about the content of a local law: LG Act s.3.16(4), which power must be construed liberally: LG Act s.3.1(3)

<sup>5</sup> noting the following list does not include any local government Councils, who stopped the process of domestic cat containment by local law before adopting the local law, and who are desirous of pet cat containment local laws. History recorded on JSCDL Annual Reports or on JSCDL website of disallowance of cat containment or nuisance laws adopted by local government Councils include:

**2015: Ashburton, Mundaring;**

**2016: Chittering, Donnybrook-Balingup, Kalgoorlie-Boulder**

**2019: Bunbury**

**2020: Manjimup**

**2021: Bassendean**

**2022: Bayswater, Kwinana, Fremantle, Gosnells**

**2023: Ashburton, Esperance, Augusta-Margaret River, Claremont, Chittering, Dumbleyung, Kalamunda, Kojunup, Waroona, Dardanup**



The Council of the Shire of Dardanup (Council) enacted a *Cat Local Law 2023*. The JSCDL recommended disallowance of the domestic cat containment provisions and required the Council to give an undertaking that they would amend the local law accordingly within 6/12 (Undertaking). The Council initially agreed to the Undertaking on 27 March 2024 but subsequently reversed its position 8:1. In 2014, the JSCDL recommended disallowance of the *Shire of Dardanup Keeping and Control of Cats Local Law 2014*, which required domestic cat containment on grounds<sup>1</sup> that,

1. The Cat Act covers the field of cat regulation.

**Agree**

The Cat Act covers the field for domestic cat *regulation*. However, while local government local laws regulate, *regulations* and *local laws* are made differently, and are different forms of subsidiary legislation<sup>2</sup> made under different powers. The Cat Act does not exclusively cover the field for local government cat local laws, such as for feral cats<sup>3</sup>, biodiversity protection, human health and farm animal health risks, nuisance and loss of local amenity associated with feral, stray and roaming domestic cats, cat welfare or safe disposal of dead cats.

2. The Cat Act s.79(1) local law making power is not limited by s.79(3)(g).

**Agree**

However, the Cat Act does not define *effective control*, which leaves it open to local government Councils to decide what this means through a local law. Domestic cat containment by a local law is *proportionate* because it does not prohibit pet cats altogether; and is *reasonable* because it seeks to prohibit harm from roaming domestic cats. Cats are an introduced invasive species causing environmental damage by killing native wildlife<sup>4</sup> and harming human health, (including babies and children); reducing adverse animal welfare outcomes for pet cats from roaming impacts (e.g. vehicle strike, disease, animal attack), and the contribution of pet cats to stray and feral cat populations.

3. The Cat Act s.79(3)(g) delineated the scope of a valid local law as to the confinement of cats.

**Disagree**

The Cat Act s.79(3) does not exclusively list or limit what matters can be addressed in a Cat Act based local law because it references and is interpreted by applying the broad head of power under the Cat Act s.79(1). The High Court authority<sup>5</sup> for deciding if a regulation (not a local law) is lawful is if the regulation is a *reasonable* and *proportionate* response to the issue at hand. This common law test can usefully be applied in part to subsidiary legislation, including a *local law*. The *Tanner* test identifies some helpful questions to ask including if a local law made using the LG Act inherent local law making powers,

- departs from any positive provisions
- goes outside the local government's field of operations
- widens the purpose of local government
- adds new or different means of management beyond that authorised by the LG Act, and/or
- departs from or varies the plans parliament adopted to obtain its local government ends.

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*Disallowance Undertaking Register* includes following: Shire of **Ashburton** (CCL), Shire of **Augusta-Margaret River**(CCL), City of **Kalamunda** (CCL), Shire of **Chittering** (CCL), Shire of **Waroona** (nuisance), Town of **Claremont** (nuisance), Shire of **Dardanup** (CCL), Shire of **Serpentine-Jarrahdale** (suitability of premises), Shire of **Kojunup** (owner must reside with cat)

<sup>1</sup> see JSCDL Annual Report 2014 Part 7 page 10 cl.7.8 > cl.7.20; and which reasons have continued until today

<sup>2</sup> see *Interpretation Act 1984* s.3

<sup>3</sup> ... defined as cats that live and reproduce in the wild and survive by hunting or scavenging. They are found in all WA habitats including forests, woodlands, grasslands, wetlands, heathlands, and arid areas. They live as wild animals independent of people, and their behaviour is often different from domestic or stray cat: WA Feral Cat Strategy 2023 – 2028, page 4

<sup>4</sup> evidence based on research shows a roaming pet cat kills around 190 animals a year (taken night and day) ; for example such as possums from poisoning by fatal cat bites releasing bacteria into the possum's bloodstream

<sup>5</sup> *South Australia v Tanner* (1989) 166 CLR 161 (*Tanner*) at para.165; like *Martin* cited by JSCDL, *Tanner* concerned regulation making, not local law making, which is a different (from regulations) process using different powers



4. The Cat Act s.79(3) did not clearly extend to restricting cats in public places.

**Disagree**

The Cat Act interpretation of *premises* meaning **any place**, leaves it open to a local government to define the scope of public places in its cat local law.

5. Requiring the containment of pet cats was a significant change in policy direction not authorised by the Cat Act, citing *R v Commissioner of Patents; Ex parte Martin* (1953) 89 CLR 381 (*Martin*) in support of the proposition that a containment local law provision without more was *ultra vires* the Cat Act.

**Disagree**

*Martin* is *not* authority for the asserted proposition. *Martin* concerned the power of a Governor to make patent regulations under Patent Act. In *Martin*, the Governor's regulation making power was held to be tethered to the Patent Act, and thus the Governor could not depart from that Act when authorising regulations, which would otherwise be *ultra vires* the Governor's powers. A local government Council power to make a cat local law is *not* tethered to the Cat Act and does not concern a regulation making power.

Furthermore, ten years later<sup>1</sup> the evidence of the harm done by domestic cats to native species through roaming and their contribution to the feral cat population from stray, dumped, discarded or lost domestic cats is irrefutable and has informed state and federal government policy changes.

6. Pet cat containment was repugnant (inconsistent with) to the Cat Act.

**Disagree**

The Cat Act *does not prohibit* cat containment so inconsistency is not arguable. Furthermore, the Cat Act clearly provides for domestic cat containment local laws<sup>2</sup> as shown in the Cat Act second reading speeches in the Assembly and the Council.

The Cat Act<sup>3</sup> indirectly authorises domestic cat containment by providing for prohibiting domestic cats everywhere except premises to which they are registered.

The Cat Act<sup>4</sup> can require part of a premises to be enclosed so as to confine a cat.

Any doubt about this can be resolved by the words of the long title to the Cat Act<sup>5</sup> and its second reading speeches in the Assembly and the Council.

## MATERIAL LEGISLATIVE AND POLICY CHANGES SINCE JSCDL 2014 DISALLOWANCE

*What is a function appropriate to government may be answered differently in different ages and under the influence of differing social and political theories of the State*<sup>6</sup>.

Since 2014 the attitude to cat management in Australia, including best practice pet cat ownership, has changed, amid the growing evidence of harm caused by cats to native animals and human health, and the negative outcomes for domestic cat welfare from roaming, as demonstrated by:

**2015:** the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) identified predation by feral cats as a key threatening process, which was categorised as *extreme threat*, which

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<sup>1</sup> since 2014 JSCDL disallowance

<sup>2</sup> at s.79(1)

<sup>3</sup> at s.79(f)

<sup>4</sup> at s.79(g)

<sup>5</sup> *An Act to —*

- *provide for the control and management of cats; and*
- *promote and encourage the responsible ownership of cats, and for related matters.*

<sup>6</sup> Australian **High Court** in *Superannuation Fund Investments v Commissioner of Stamps* (1979) 145 CLR 330, cited with approval in *Western Australian Sports Centre Trust and Town of Victoria Park* [2021] WASAT 78, para.172



is the highest category, where *key threatening process* is one that *threatens or may threaten the survival, abundance or evolutionary development of a native species or ecological community*<sup>1</sup>.

**2015:** The EPBC Act *Threat Abatement Plan for Predation by Feral Cats* was adopted, noting the plan is about to be updated

**2015, 15 July:** All Australian Environment Ministers endorsed *National Declaration of Feral Cats as Pests*

**2016:** *Management of Cats in Australia:* Australian Veterinary Association

**2016:** Federal government State of the Environment Report

**2016:** *Biodiversity Conservation Act 2016* (WA) enacted by WA parliament (BC Act)

**2016:** Biosecurity Senior Officer's Group, including local government representation, established under the *Biodiversity and Agriculture Management Act 2007* (BAM Act)

**2016:** The new *Public Health Act 2016* (WA) was enacted by the WA parliament

**2016:** *Shire of Narrogin Cat Local Law 2016* enacted<sup>2</sup> requiring the containment of domestic cats, which has not been disallowed, and was consolidated 6 January 2022

**2018:** Feral cats<sup>3</sup> declared a pest in WA under the BAM Act

**2018:** *Shire of Christmas Island Cats Local Law 2018* enacted<sup>4</sup> requiring the containment of domestic cats<sup>5</sup> has not been disallowed

**2019, 14 June:** DPIRD Sustainability and Biosecurity Invasive Species Policy Statement: *Feral cat declared pest – minimise risk to domestic cats* adopted

**2019:** State government review of the Cat Act recommended that domestic cats be confined to premises

**2019:** State government survey reported 73% of respondents supported containment of domestic cats

**2019:** *Shire of Northam Cat Local Law 2019* enacted<sup>6</sup>, requiring the containment of domestic cats, has not been disallowed

**2021:** Australian parliamentary House of Representatives Standing Committee on the Environment and Energy inquiry released its report (Report) into *impact of feral and domestic cats*, where recommendation 5 at cl.6.48(c) was that, ... *night curfew and containment programs*; recommendation 6 at cl.6.58(f) was that *local governments are resourced appropriately to deal with cats, including requiring all local governments to develop and implement domestic cat management plans consistent with relevant state and territory laws*.

**2022:** Australian government response to the Report was, ... *Containment programs are more effective than night curfews*, and suggesting that, ... *containment is implemented by local government* because it considers that containment programs are more effective than night time curfews, and that local government Councils actively consider 24/7 containment options in their municipalities

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<sup>1</sup> in WA, 36 mammals, 22 birds and 11 reptile species are vulnerable to predation by feral cats and roaming domestic cats; feral cats have played major role in extinction of a least 27 mammal species and currently endanger 147 Australian mammals, birds, reptiles and frogs: Department of Primary and Regional Development (DPIRD) Q&A 14 June 2018

<sup>2</sup> under powers of LG Act and Cat Act

<sup>3</sup> *Felis catus*

<sup>4</sup> enacted under LG Act s.3.12(5) as applied by the *Christmas Island Act 1958*

<sup>5</sup> and prohibited importation of domestic cats under Cth quarantine laws, regulated the number of domestic cats that can be kept, *to protect the amenity of the town and the environment*

<sup>6</sup> made under the Cat Act, LG Act and any other laws enabling the local law



**2022:** ACT passed domestic cat containment laws

**2022:** Federal government State of the Environment Report published<sup>1</sup>

**2023:** WA *Feral Cat Strategy 2023 – 2028* adopted

**2023:** LG Act amended to include matters to which local governments must regard when exercising their general functions, which include legislative local law function, where the matters include *the need to promote economic, social and environmental sustainability* of their District, and to consider potential long-term consequences and impacts on future generations of all their decisions

**2024:** As at 18 May 2024 more than 1/3 of Australian local laws have to contain domestic cats 24/7, and survey suggests 2/3 of Australians support domestic cat containment laws

**2024:** WALGA Position is to prioritise reforms to the Cat Act 2011, in accordance with the Statutory Review undertaken and tabled in the State Parliament on 27 November 2019<sup>2</sup>

**2024, 10 September:** Federal government announcement for plans to manage feral cats, which include recommendations for nationwide capping number of domestic cats per household, and nationwide cat curfews by 24/7 containment.

**2024:** Increasing number of local government Councils seeking containment of domestic cats.

#### **In Summary:**

A lawful exercise of power includes the absence of *legal unreasonableness*<sup>3</sup>. Legal reasonableness or an absence of legal unreasonableness is an essential element of lawful decision-making<sup>4</sup>. Similarly, there is a public interest in the peace, order and good government of Western Australia for the JSCDL to act in a *legally reasonable* manner and not disallow domestic cat containment local laws.

#### **LOCAL GOVERNMENT ACT 1995 (WA) (LG ACT)**

##### **Generally**

1. The WA Constitution<sup>5</sup> requires elected member bodies to govern localities as *agents* of the state government. The LG Act established Councils as local governments' governing body where Council governance includes exercising legislative power for their locality (being a District), such as local domestic cat management by local laws.
2. The LG Act is intended to result in *better* decision making, and *greater community participation* in decisions and affairs of local government (such as risk to biodiversity, and to human and animal health from roaming domestic cats); and more *efficient* and *effective* local government (such as wise expenditure on effective implementation of informed cat local laws)<sup>6</sup>.

##### **Local Government Functions**

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<sup>1</sup> see *State of the Environment Report* Australian Government 2022; see WA Organisms List (WAOL) published under BAM Act for details of prohibited and permitted organisms

<sup>2</sup> Cat Act 2019 parliamentary review found strong support for cat confinement to be implemented statewide in legislation rather than through individual local laws to provide consistency among local governments

<sup>3</sup> see *Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts* [2020] WASC 350 where writ of prohibition ordered by Court to stop Minister unreasonably suspending Council

<sup>4</sup> *Silkchime Pty Ltd v Valuer General* [2022] WASC 253, para. 37; and *Silkchime Pty Ltd v Valuer-General* [2023] WASCA 114 (dismissing appeal, which reviewed *legal unreasonableness* principles)

<sup>5</sup> *Constitution Act 1889* (WA) s.52

<sup>6</sup> LG Act s.1.3(2)



3. Local governments' general functions include legislative functions<sup>1</sup>. A *liberal approach* must be taken to the construction of the scope of local governments' general functions<sup>2</sup>, including to the construction of the scope of Councils' power to make cat local laws.
4. Identifying the core functions of local government may be easily done but on the margins the scope can become harder to discern ... *What is a function appropriate to government may be answered differently in different ages and under the influence of differing social and political theories of the State*<sup>3</sup>, such as strong evidential need to contain domestic cats by 2024.

### **Local Government Law Making**

5. Parliament has conferred legislative powers on local government Councils that have legislative effect, which are subsidiary legislation as defined in the *Interpretation Act* s.5<sup>4</sup>.
6. The *power* and the *procedure* to make local laws are in the LG Act. Only a local government Council can make a local law<sup>5</sup>. The purpose(s) for Councils making local laws is/are found in the LG Act and/or other Acts.
7. Local government Councils are authorised to make local laws under the inherent power of LG Act for **all** matters<sup>6</sup> *required or permitted or* which are *necessary or convenient* to perform any of its functions<sup>7</sup>, including functions under any other written law<sup>8</sup>. *Barrett* provides the test for whether or not a local law is *necessary* and *convenient* for the good government of a District, such as to perform,
  - its community, environmental and social functions under the LG Act
  - its *public health* functions under the Public Health Act<sup>9</sup>
  - *effective cat control* and *responsible cat ownership encouragement* functions under the Cat Act
  - safe waste management of dead cats under Waste Avoidance Act
  - biodiversity protection under state and federal laws
  - protection of the amenity of the District<sup>10</sup>
  - eradication of feral and stray cats<sup>11</sup>,  
having regard to LG Act s.3.1(1A) matters<sup>12</sup>.

### **Broad Purposes for Cat Local Laws**

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<sup>1</sup> LG Act s.3.4

<sup>2</sup> LG Act s.3.1(3)

<sup>3</sup> Australian **High Court** in *Superannuation Fund Investments v Commissioner of Stamps* (1979) 145 CLR 330, cited with approval in *Western Australian Sports Centre Trust and Town of Victoria Park* [2021] WASAT 78, para.172

<sup>4</sup> and see *Barrett v City of Cockburn* [2023] WASC 384 (*Barrett*) para.54

<sup>5</sup> LG Act s.3.12(4) because a decision requiring a Council *absolute majority* cannot be delegated: LG Act s.5.43(a)

<sup>6</sup> DLGSC advises on their Cat Local Law page accessed 27 September 2024 that a local law can be made if, ...any other written law do not already cover that matter; and there appears a sufficient need for additional regulation in that area; or their community may advise (through integrated planning process) that there is a need for particular areas of cat control

<sup>7</sup> LG Act s.3.5

<sup>8</sup> LG Act s.3.1(3), and see *Barrett* para.58

<sup>9</sup> noting DLGSC advises on its Cat Local Law website accessed 27 September 2024 that local law can be made to regulate,

- cats creating a nuisance;
- specifying places where cats are prohibited absolutely;
- requiring that in specified areas a portion of the premises on which a cat is kept must be enclosed in a manner capable of confining cats ...

and see permitted *Christmas Island Cat Local Law 2018* Objects cl.1.3(e) *to reduce potential health risks (e.g. Toxoplasmosis) and nuisance to the community caused by cats*; and see *Shire of Christmas Island Animals, Environment and Nuisance Local Law 2018* cl.2.2 which regulates the cleanliness of premises where cats are kept

<sup>10</sup> see permitted *Christmas Island Cat Local Law 2018* cl.3.5 factors to be considered when determining cat permits include, ... *likely effect on the amenity of the surrounding area of the proposed use*

<sup>11</sup> see *Christmas Island Cat Local Law 2018* Objects cl 1.3(h)

<sup>12</sup> *Barrett* para.59



9. Local government cat related functions are broader than those identified in the Cat Act and can arise under,
- *Biodiversity Conservation Act 2016* (BC Act)  
In WA, the BC Act provides for the conservation and protection of biodiversity and biodiversity components<sup>1</sup>. The BC Act objects include to conserve and protect WA biodiversity<sup>2</sup> having regard to the principles of ecologically sustainable development (ESD). ESD includes that decision-making processes should effectively integrate long- and short-term economic, social and equitable considerations<sup>3</sup>, and the conservation of biodiversity<sup>4</sup>. Local governments are *public authorities* for the purpose of the BC Act. Public authorities are required to have regard to biodiversity management programmes<sup>5</sup>, recovery plans<sup>6</sup>, and interim recovery plans<sup>7</sup> relevant to their Districts. A BC Act *public authority*<sup>8</sup> is a responsible authority if it has care, control and management of land within a closed area<sup>9</sup>. Given the significant percentage of WA land and close coastal waters within local government jurisdictions, it is proportionate and reasonably necessary for local government functions to include local laws for prohibiting domestic cats from roaming and destroying wildlife.
  - *Biosecurity and Agriculture Management Act 2007* (BAM Act)  
Local governments have a role in managing biosecurity incursions that impact their community, and they have biosecurity responsibilities as land managers<sup>10</sup>. Local governments may assist owners and occupiers to control declared pests<sup>11</sup>, noting declarations under the BAM Act mean local governments can apply for funding for feral cat management<sup>12</sup>.
  - *Biosecurity and Agriculture Management (Declared Pest Account) Regulations 2014*, wherein local government Districts can be prescribed as declared pest areas, such as for cats. Entities, including local governments, formalised the Biosecurity Senior Officer's Group (BSOG) in 2016 as the main forum where they can collaborate<sup>13</sup> and decide how to best integrate their collective resources to implement the Plan and Strategy, which can include regulating the containment of domestic cats through local laws to stop them joining stray and/or feral cat populations.
  - *Public Health Act 2016*<sup>14</sup> provides for local government general public health functions<sup>15</sup> and identifies local government environmental health officers to be authorised officers for but not

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<sup>1</sup> BC Act long title

<sup>2</sup> BC Act s.3(1)(a), noting permitted *Christmas Island Cat Local Law 2018* Objects cl 1.3(a) to *protect the iconic native fauna*

<sup>3</sup> BC Act s.4(a)

<sup>4</sup> BC Act s.4(d)

<sup>5</sup> BC Act s.80

<sup>6</sup> BC Act s.103

<sup>7</sup> BC Act s.113

<sup>8</sup> noting local governments are also public authorities for purpose of *Environmental Protection Act 1986* (EP Act) s.3, responsible authorities for purpose of planning schemes: EP Act s.3

<sup>9</sup> BC Act s.164

<sup>10</sup> *Western Australian Biosecurity Strategy 2016 – 2025*, page 13

<sup>11</sup> BAM Act s.41.

<sup>12</sup> including exclusion fencing, baiting, trapping, cage traps, shooting; and see [www.pestsmart.org.au](http://www.pestsmart.org.au), and DPIRD Pest and Diseases Information Service (PaDIS) on 08 9363 3080

<sup>13</sup> LG Act s.3.1(1A)(c)

<sup>14</sup> **public health** means the health of individuals in the context of —

(a) the wider health and wellbeing of the community; and

(b) the combination of safeguards, policies and programmes designed to protect, maintain, promote and improve the health of individuals and their communities and to prevent and reduce the incidence of illness and disability...: *Public Health Act* s.2

<sup>15</sup> LGs general functions under *Public Health Act 2016* s.16 include to:

(a) to initiate, support and manage public health planning for its local government district;

(b) to develop and implement policies and programmes to achieve the objects of this Act within its local government district;

(c) to perform the functions that are conferred on local governments by or under this Act;

(d) to administer and enforce this Act within its local government district in accordance with the objects and principles of this Act.



limited to Cat Act purposes<sup>1</sup>. The LG Act inherent powers authorise local laws to regulate cats for reasons that include,

- **roaming pet cats, stray cats and feral cats** can contract and spread a wide variety of diseases
- children are vulnerable to cat diseases from **cat scratches** or **cat faeces**
- infectious diseases that spread from cats to humans via direct contact with either the cat or its **cat faeces**: even though feral cats typically avoid humans their faeces can be a disease vector
- **roaming domestic cats** are likely to interact with a variety of other animals and wildlife, and these types of interactions have the potential to increase the risk of disease exposure and transmission, especially if the cat is not vaccinated
- human infection rates from cats can be lowered by reducing the number of **stray cats** living in towns and cities, keeping **pet cats** securely contained indoors or in a secure cat run, reducing transmission rates via food and from the environment with hygiene practices and in some cases encouraging people not to keep pet cats; noting some local governments have *Animal Local Laws* relating to the disposal of **dead cats**, which appear to be based on public health concerns. Public health risks from cats include,
  - cat scratch disease from cat who is infected with a *Bartonella* bacteria harboured in flea dirt (flea excrement) carried on a **cat's claws**
  - toxocariasis
  - toxoplasmosis (**cat** most commonly encountered **host** in Australia, for *T. gondii* > toxoplasmosis from eating infected rodents or birds)
  - contagious diseases such as herpes viral conjunctivitis, feline AIDS, leukemia, and infectious peritonitis (common in **roaming cats**)
  - toxoplasmosis, cutaneous larval migrans and various vector-borne diseases have been shown to be associated with **roaming cats**
  - parasites such as ticks, fleas, worms and mites, and ringworm in **cat hosts**
  - allergens in **cat fur, skin, and saliva** can cause an allergic reaction in some people, which can trigger symptoms of asthma such as wheezing, coughing, and shortness of breath, where allergic asthma develops when the immune system mistakenly recognises cat proteins as allergens
  - *sporotrichosis* from a **cat scratch or bite** from a cat infected with the *Sporothrix brasiliensis* fungus which can be severe in immune-compromised people
  - nuisance from **cat noise, odour, faeces** and **urine spraying**
- *Public Works Act (PW Act) Schedule 1 – Classes of public works* at cl.14 include *Animal pounds (including cat management facilities under the Cat Act 2011 (inserted in 2023)*; where a **public work** means a work<sup>2</sup>, facility, building, structure or other thing: PW Act s.2 , so the need to regulate pounds that contain cats, and regulate pound containment of cats can be included in a local law
- *Waste Recovery and Avoidance Act 2007 (Waste Avoidance Act)*  
The Waste Avoidance Act Includes proposals for local government Waste Plans<sup>3</sup>, noting local governments can be required to adopt a Waste Plan<sup>4</sup>, can agree to adopt or be directed to adopt Waste Management Local Laws<sup>5</sup>, which can be made for any of listed exclusive purposes<sup>6</sup>. A cat local law can regulate the safe disposal of **dead cats**<sup>7</sup>.

<sup>1</sup> *Public Health Act 2016* s.17(1), s.312(1)(b)(vi)

<sup>2</sup> *Waste Avoidance and Resource Recovery Act 2007 (Waste Avoidance Act)* s.61

<sup>3</sup> LG Act s.5.56; s.40 Waste plans, noting proposed Waste Plan inclusions: *Waste Avoidance Act* s.40(3)

<sup>4</sup> *Waste Avoidance Act* s.40(4)

<sup>5</sup> *Waste Avoidance Act* s.64(2)

<sup>6</sup> *Waste Avoidance Act* s.64(2)

<sup>7</sup> landfills, composting, burial, and burning; noting dead cats pose odour nuisance, and note possible public health harm from cat carcasses harbouring vermin



- *Animal Welfare Act 2002*<sup>1</sup> (AW Act) appoints local government CEOs to authorise general inspectors and authorised office officers to issue animal (including for cats) welfare infringement notices<sup>2</sup>, and authorises the Governor to make animal welfare regulations<sup>3</sup>. The AW Act does not authorise a specific local government Animal Welfare Local Law, but a local government Council could decide to include laws about the humane treatment of cats in a cat local law using their inherent LG Act powers.

Accordingly, in relation to domestic cat local laws, local governments' functions include containment of domestic cats for biodiversity protection<sup>4</sup> and minimising public health risks<sup>5</sup> under the LG Act powers, whether or not there are other authorising Acts.

### **Relevant Considerations**

10. When exercising a cat local law making function, Councils *must* have *regard* to the District's need to,
  - promote its economic<sup>6</sup>, social<sup>7</sup> and environmental sustainability<sup>8</sup>
  - consider potential long term consequences
  - consider any impacts on future generations, and
  - consider collaboration with other local governments<sup>9</sup>.
11. Local government Councils are not *required* to make a cat containment local law but they are *permitted* to if it is *necessary* or *convenient* to perform any of their local government functions. Courts have analysed the meaning of *necessary* or *convenient*, which show us that a relevant policy position is enough to activate authorisation of a local law. Cat containment local laws are needed for local governments to *perform their public health functions* under the LG Act, the Public Health Act and the Waste Avoidance Act, providing the local law is not inconsistent with those Acts<sup>10</sup>.
12. Local government employees are authorised to impound cats whose owners do not comply with a local law<sup>11</sup>.

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<sup>1</sup> AW Act Long Title: *An Act to provide for the welfare, safety and health of animals, to regulate the use of animals for scientific purposes, and for related purposes*

<sup>2</sup> AW Act s.33(2)(v), s.64(1)(e)

<sup>3</sup> AW Act s.94

<sup>4</sup> LG Act s.3.1(1A)(a)

<sup>5</sup> LG Act s.3.5(4B)

<sup>6</sup> there are material economic risks from pathogens introduced to Australia by cats that cost the Australian economy estimated at \$6 billion a year in medical and other direct costs, including lost income; furthermore there may be cost savings in not having to devote resources to avoiding harm to roaming domestic cats when catching feral cats, if domestic cats are contained

<sup>7</sup> includes public health

<sup>8</sup> plant and animal pests damage agriculture, forests, the environment, social amenity and public health, costing Australia billions of dollars annually. ... The cost of animal pests was estimated in 2014 at between \$400 million and \$800 million.<sup>3</sup> With Western Australia (WA) accounting for 18% of agricultural output for Australia in 2018- 19, pests pose a significant economic risk to the nation and the State while the livelihoods of producers and communities depend on that production: OAG Report 31 August 2020 *Managing the Impact of Plant and Animal Pests: Follow up* page 3

<sup>9</sup> LG Act s.3.1(1A)

<sup>10</sup> *Barrett* paras.59 > 60

<sup>11</sup> *Local Government (Functions and General) Regulations 1996* Reg.29 as at 30 June 2023



13. Just because the WA state government may be making or has made model cat laws or regulations does not mean that a local government Council cannot make its own cat local law<sup>1</sup>, as long as the local law is not inconsistent<sup>2</sup> with other relevant Acts and regulations,<sup>3</sup>.

### **Adopting Other Local Laws**

14. A local government Council can adopt the local law of another local government such as the *Town of Northam Cat Local Law 2019*, noting local governments do not hold intellectual property rights in their local laws<sup>4</sup>.

### **CAT ACT**

The Cat Act second reading speeches show that parliament clearly intended that local government Councils would be empowered to make local laws to contain domestic cats<sup>5</sup>.

The purpose of the *Cat Act 2011* (WA) (Cat Act) is to

- *provide for the control and management of cats; and*
- *promote and encourage the responsible ownership of cats, and for related matters*<sup>6</sup>.

The Cat Act authorises the *necessary or convenient* implementation details *required or permitted* to achieve the Cat Act purpose through,

- general regulations<sup>7</sup> made by the Governor (which can contain offence provisions) which can act as local government local laws<sup>8</sup>, and/or
- local government local laws made by Councils (which can contain offence provisions) to enable local government cat offences to be prosecuted by local government employees<sup>9</sup>.

The Cat Act<sup>10</sup> provides that, *A local government is to administer its local laws and may do all other things that are necessary or convenient to be done for, or in connection with, performing its functions under this Act.*

The Cat Act s.79(1) authorises Cat Act local laws to assist achieving the Cat Act purposes. It is a wide-ranging power not constrained by the Cat Act s.79(3).

The Cat Act<sup>11</sup> provides for a local government to adopt the text of the local law of another local government, thus reproducing the similar LG Act provision<sup>12</sup>.

There is nothing in the Cat Act or extrinsic materials to suggest that parliament intended the Governor to have exclusive powers to make subsidiary legislation relating to cat control.

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<sup>1</sup> LG Act s.3.2

<sup>2</sup> dictionary definition may be sufficient where there is no material jurisprudence; dictionary meaning is incongruity, incompatibility, or lack of harmony: *Barrett* para.69;

<sup>3</sup> LG Act s.3.7

<sup>4</sup> LG Act s.3.8(1)(b)

<sup>5</sup> Legislative Assembly 15 June 2011 GM Castrilli Minister for Local Government at 12.42pm; Legislative Council 21 September 2011 Hon Robyn McSweeney 9.40pm; Legislative Council 18 and 19 October 2011 Hon Robyn McSweeney; Legislative Council Hon Lyn McLaren 19 October 2011; see *Interpretation Act 1984* s.19(2)(e)&(f)

<sup>6</sup> Cat Act long title

<sup>7</sup> Cat Act s.76

<sup>8</sup> Cat Act s.77

<sup>9</sup> Cat Act s.79

<sup>10</sup> at s.42

<sup>11</sup> at s.82(1)(b)

<sup>12</sup> at s.3.8(1)(b)



## SUMMARY

The Governor's power to make cat regulations is tethered to the Cat Act<sup>1</sup>.

Local government Councils' powers to make cat local laws are not tethered to the Cat Act.

Parliament has enacted the Cat Act, which requires local governments to administer Cat Act regulations enacted by the Governor<sup>2</sup>, and to apply Cat Act regulations as if they are local laws<sup>3</sup>. The Cat Act does not require but permits local government Councils to make their own Cat Act local laws<sup>4</sup>, if Councils decide they are necessary and/or convenient. The Cat Act provides for local government Councils to require the containment of domestic cats. The Cat Act is one but not the only authority for making cat local laws.

Local government Councils are authorised to make cat local laws that are necessary and convenient to address amenity, public health and biodiversity risks posed by domestic, stray and/or feral cats, provided they are not inconsistent with other Acts, including the Cat Act and Cat Act regulations<sup>5</sup>. Federal and many State government policies demand that local government Councils properly require twenty four hour containment of domestic cats, as prudent Councils will implement as a matter of urgency.

It is now, arguably, the function of local government Councils to make a domestic cat containment local laws for a number of purposes, whether or not they are authorised by the Cat Act.

## WAY FORWARD

One way forward would be for local government Councils to adopt a Domestic Cat Containment Local Law and refuse a disallowance by the JSCDL by not giving an undertaking to amend the local law. This would mean the Legislative Council members of parliament would have to form a position and then vote on the local law in the Upper House. Such a pathway could well mean that this matter becomes a state election issue.

Yours faithfully

Sandra Boulter on behalf of the LGEMA committee

LGEMA Chair

**LGEMA:** Local Government Elected Members Association Inc. supporting LG Elected Members striving for LG best practice good governance with integrity

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**Whadjuk People:**

LGEMA acknowledges the Whadjuk people who are the traditional custodians of the land we are working on

LGEMA acknowledges and respects the continuing culture of the Whadjuk people and the contribution they make to the life of Cottesloe and this region

**Incorporated** 7 August 2019 **AIRN** A1030822L **ABN** 14455851094

## APPENDIX One: JSCDL Terms of Reference<sup>6</sup>

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<sup>1</sup> see for example in relation to parking laws: *Barrett* para.52

<sup>2</sup> Cat Act s.77(4)

<sup>3</sup> Cat Act s.77(3)

<sup>4</sup> Cat Act s.79(1)

<sup>5</sup> Cat Act s.77(6)

<sup>6</sup> accessed on parliamentary website 10 October 2024



## 10. Joint Delegated Legislation Committee

10.1 A Joint Delegated Legislation Committee 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 The Standing Orders of the Legislative Council relating to Standing Committees will be followed as far as they can be applied.

10.9 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*.