

## **COMPARISON COMMENTS**

WALGA = Western Australian Local Government Association

VROC = Southern Link Voluntary Regional Organisation of Councils (Broomehill-Tambellup, Cranbrook, Kojonup, Plantagenet)

~~Local Laws~~ = the Shire of Kojonup does not have these local laws

### **SHIRE OF KOJONUP**

#### **Activities in Thoroughfares and Public Places and Trading Local Law 2020**

The Shire of Broomehill-Tambellup Chief Executive Officer's (CEO) initial Local Law Review states that the existing version of this local law is relatively consistent between all VROC local governments except for where details are locally specific and where there is an absence of clauses relating to shopping trolleys in the Shire of Cranbrook's local law that the other VROC shires and WALGA's model local laws contain - the reference to shopping trolleys has been removed from the WALGA model local law for the Shire of Cranbrook.

The Shire of Plantagenet's existing Activities in Thoroughfares and Public Places and Trading Local Law 2008 contains information referring to a person in control of a horse, and horse excreta, as well as the definition for a 'person in control of a horse' – these references have not been added into the Shires of Broomehill-Tambellup, Cranbrook or Kojonup's new WALGA model based local laws.

There are variations between all existing local law prescribed offences/modified penalties (listed in Schedule 1) and the WALGA model local law. Using the WALGA model local law schedule of prescribed offences and modified penalties will bring consistency across the VROC Councils.

The Shire of Kojonup local law is based on WALGA's model Activities in Thoroughfares and Public Places and Trading Local Law; nil recommendations from the Shire of Broomehill-Tambellup's initial Local Law Review have been included.

#### **Repealed Local Law**

The *Shire of Kojonup Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law* as appears in the *Government Gazette* of 16 May 2000.

#### **Bush Fire Brigades Local Law 2020**

The Shire of Kojonup has not previously had a Bush Fire Brigades Local Law and resolved to adopt one at its April 2018 Ordinary Meeting (32/18), as per the initial Local Law Review.

The Shire of Broomehill-Tambellup CEO's initial Local Law Review states that the Shires of Cranbrook and Plantagenet's existing Bush Fire Brigade Local Laws follow the standard local law whilst the Shires of Kojonup and Broomehill-Tambellup administer Bush Fire Brigades through policy and standard operating procedures.

#### **Repealed Local Law**

Nil

#### **Cats Local Law 2020**

The Shires of Cranbrook and Broomehill-Tambellup CEO's and the Shire of Kojonup Council have indicated they do not wish to consider having a Cats Local Law. The Shire of Plantagenet CEO previously indicated an interest in considering the City of Kalgoorlie Boulder's Cats Local Law. WALGA does not provide a model Cats Local Law (although had one previously that was superseded by the *Cat Act 2011*). Reference to cats is contained within a draft combined Health, Animals, Environment and Nuisance Local Law, for future consideration by Council.

## **Cemeteries Local Law 2020**

Appendix 1 (since removed) of this model Local Law advises of sections and/or clauses to remove if certain services don't exist. Nil of the VROC councils have a crematorium; hence, clauses relevant to this service have been removed. The existence of lawn or memorial plaque sections varies throughout VROC shires and information pertaining to these sections has been retained as has information relating to where ashes may be placed, allowing options that don't exist at this time to be covered should they be introduced in the future (wording is such that a Board *may* grant permission for each method of disposal in the list). All of the VROC shires existing cemetery local laws contain the following schedules: Modified Penalties, Infringement Notice and Withdrawal of Infringement Notice.

The CEO and staff of the Shires of Broomehill-Tambellup and Cranbrook are recommending the removal of the forms (and reference to them) for ease of updating if/when required. The Shire of Kojonup recommendation is to retain the forms and make an addition of Clause 8.8 *Application for Exhumation* to the model local law. Forms 5 and 6, relating to cremation, have been removed from this local law. The Boscabel Cemetery has been added to Kojonup's list of cemeteries.

## **Repealed Local Law**

The *Shire of Kojonup Cemeteries Local Law 1999* published in the *Government Gazette* on 16 May 2000.

## **Dogs Local Law 2020**

The Shires of Broomehill-Tambellup and Plantagenet Dogs Local Laws are the same as the model local law at both 3.2 (1) and (2); that is, 4 dogs are able to be kept on premises outside townsites; however, the Shire of Cranbrook's existing local law states under 3.2 (2) (b) that 6 dogs are able to be kept (the Shire of Kojonup does not have an existing Dogs Local Law). The model local law has been amended for the Shire of Cranbrook to reflect the keeping of 6 dogs on premises outside of townsites and the Shire of Kojonup's proposed new Dogs Local Law is based on the model local law (4 dogs outside of townsites).

Clauses 5.1 & 5.2 of existing local laws are not contained in the model local law – ('Places where dogs are prohibited absolutely' and 'Places which are dog exercise areas', respectively). Councils are now able to adopt, by absolute majority, such places (*Dog Act 1976* – Part VI, Division 1, s.31 2 (B) and 3 (A)). If Councils wish to retain this specific information, they would need to adopt it elsewhere if they haven't already done so (if not wishing to place them back into the model local law where the process takes longer to change details, if desired, in the future).

As clause 2.4 of existing local laws (No breaking into or destruction of pound) does not exist in the model local law, the corresponding modified penalties also don't exist in the modified penalty section of the model local law. In addition, the modified penalty for an offence under clause 5.1 (2) (as referred to above) has also been removed. Note: two of the three offences still contained in the model local law (clauses 4.9 and 6.1 (2)) are higher than the penalties in existing local laws.

Offences attracting modified penalties in both existing and model local laws:

- 3.1 Failing to provide means for effectively confining a dog – equal in both existing and model local laws
- 4.9 Failing to comply with the conditions of a licence – increased by \$100 to \$200 for modified penalty
- 6.1 (2) Dog excreting in prohibited place – increased by \$60 to \$100 for modified penalty

## **Repealed Local Law**

Nil

### **Extractive Industries Local Law 2020**

The Shire of Kojonup resolved, at its April 2019 (37/19), to not adopt this local law. The Shires of Broomehill-Tambellup and Plantagenet currently have Extractive Industries Local Laws; Cranbrook staff are considering its recommendation.

### **Fencing Local Law 2020**

The Shire of Broomehill-Tambellup is the only VROC member with an existing Fencing Local Law. The WALGA model local law includes a table of offences and modified penalties not found in the existing Fencing Local Law 2008; other information is similar if not the same. The Shire of Kojonup has resolved (32/18) to have a Fencing Local Law and the Shires of Cranbrook and Plantagenet have advised they don't wish to have this local law. The model local law has been adapted for the Shires of Broomehill-Tambellup and Kojonup with the offences and modified penalties being an addition for the Shire of Broomehill-Tambellup. A clause relating to the keeping of large animals in the gazetted townsite has been added for consideration (clause 2.6).

### **Repealed Local Law**

Nil

### **Landfill and Transfer Station Facility Local Law 2020**

The Shire of Plantagenet is the only VROC member with an existing Landfill and Transfer Station Local Law; WALGA doesn't have this template. Officers of the Shires of Broomehill-Tambellup, Cranbrook and Kojonup are not recommending the taking on of this local law.

### **Pest Plants Local Law 2020**

The Shires of Broomehill-Tambellup and Plantagenet currently have a Pest Plants Local Law. WALGA advice is that this local law refers to an Act that has since been replaced by the *Biosecurity and Agriculture Management Act 2007* and contains control measures and enforcement powers. This local law is the subject of a Repeal Local Law for the Shires of Broomehill-Tambellup and Plantagenet.

### **Local Government Property Local Law 2020**

Clauses included in the WALGA model L/G Property Local Law that are not in Kojonup's existing law include:

Part 5 – (Beaches and Golf Course clauses added), Part 7 – Jetties and Bridges, Schedules 2 - Determinations & 3 – Golf Course Reserve

The model local law has been modified by removing the clauses that are irrelevant to the Shire of Kojonup and by adding Golf Course details at Schedule 3.

The Shire of Broomehill-Tambellup Local Government Property Local Law 2008 (updated 6 January 2015) includes a clause (1.9 at the end of Part 1) relating to 'Application as to assistance animals' (Local Government Amendment (Property) Local Law 2014). The Local Government Amendment (Property) Local Law 2014 also states that each other VROC member local government has had the inclusion of this clause gazetted at various times (Kojonup – 16/05/2000, Cranbrook – 23/04/2002, Plantagenet – 11/04/2008) although it doesn't appear in their existing Property Local Laws. The following question was asked of WALGA:

*'In the L/G Amendment (Property) Local Law 2014 all four VROC councils are stated as having the inclusion of Clause 1.9 in their Property local law, gazetted on varying dates. Only one of the councils has Clause 1.9 appearing in its existing Property Local Law. All four councils are looking to adopt the WALGA model local law; however, I can't see reference to Clause 1.9 in the model law – has something occurred that would have caused this clause to be omitted?'*

WALGA's response was as follows:

*'Around 2013, there was a global amendment to all Property and Cemetery Local Laws to clarify the application of the Disability Discrimination Act 1992 (Commonwealth) in relation to assistance animals. We therefore deleted the reference to assistance animals that used to exist in our template Local Laws but on reflection, inclusion of this reference is helpful to understanding.*

*We have updated our template Local Law (attached) to once again include reference to assistance animals in clause 1.4(2).'*

The clause referring to assistance animals is included in each VROC member's local law.

Of the prescribed offences contained in Schedule 1 of the Shire of Kojonup's existing property local law that are in WALGA's model local law, all of the modified penalties are slightly different. Prescribed offences relating to the clauses irrelevant to the Shire of Kojonup have been removed.

#### Repealed Local Law

*The Shire of Kojonup Local Government Property Local Law published in the Government Gazette on 16 May 2000.*

#### **Meeting Procedures Local Law 2020**

All VROC members have existing Council Meetings/Standing Orders Local Laws – the Shire of Broomehill-Tambellup's (2016) and Shire of Plantagenet's (2008) are similar but do not contain the quantity of clauses in the model local law; the Shire of Cranbrook's local law was gazetted in 1998 and the Shire of Kojonup's (gazetted in 1997) provides a comparatively limited number of standing orders (seven).

The model Meeting Procedures Local Law has been adapted for the Shires of Kojonup, Cranbrook and Broomehill-Tambellup.

#### Repealed Local Law

*The Shire of Kojonup Local Laws relating to Standing Orders published in the Government Gazette on 01 August 1997.*

#### **Waste Services Local Law 2020**

The Shire of Kojonup has opted to not have a Waste Services Local Law. The Shires of Broomehill-Tambellup and Plantagenet have this local law, the Shire of Cranbrook doesn't.

#### **Parking and Parking Facilities Local Law 2020**

The Shire of Plantagenet is the only VROC member to have a Parking and Parking Facilities Local Law with the other VROC members having indicated that they do not require this local law (as per the Local Law Review report).

#### **Urban Environment and Nuisance Local Law 2020** (replaced 'Removal of Refuse & Disused Material Local Law')

The Shire of Broomehill-Tambellup is the only VROC member shire to have a Removal of Refuse & Disused Material Local Law. WALGA's Urban Environment and Nuisance Local Law replaces the Removal of Refuse and Disused Material Local Law; clauses relating to these matters will be considered within a draft combined Health, Animals, Environment and Nuisance Local Law for future consideration.

**In progress and for future Council consideration:**

**Health Local Laws 2020**

The Shire of Broomehill-Tambellup CEO's Local Law Review states that all existing VROC members' Health Local Laws appear to be the same. Existing Health Local Laws, under the *Health Act 2011*, will become defunct in the near future when the process of forming a new Public Health Act is complete.

The following advice, regarding the Health Local Laws, was obtained from the Environmental Health Officer (EHO) who services the Shires of Broomehill-Tambellup, Cranbrook and Kojonup.

*'From a regulatory officer point of view, under the provisions of the Health Local Laws and because of their head of power being the Health Act 1911, the ultimate enforcement provisions (after site visits, polite requests, written follow ups etc.) involve a trip to court. There are no other avenues available and enforcement is generally restricted to EHOs. The time it takes to resolve a customer request/complaint can lead to a fair bit of community/neighbourhood angst, negative press etc.; particularly, if the matter is, for example, a crowing rooster in the middle of a town site. The penalties imposed at Court very rarely cover the costs associated with the enforcement.'*

*The Public Health Act 2016 is being implemented over five stages. We are up to Stage 4. During Stage 3, the Health Act 1911 was renamed the Health (Miscellaneous Provisions) Act 1911. All subsidiary legislation made under the Health Act 1911 (now Health (Miscellaneous Provisions) Act 1911) remains in effect; this includes our Health Local Laws. However, when Stage 5 is implemented (scheduled for 2020-2021), all local laws made under the Health Act will be repealed.*

*What does this mean for us and our review? According to a Senior Policy Officer at the Department of Health, Vic Andrich, all health local laws can be considered to be "good governance" under the provisions of the Local Government Act 1995. The recommendation is that any new Health Local Laws be made under the head of power of the Local Government Act 1995. They could still be called 'Health Local Laws', if we wish. Alternatively, and perhaps preferably, we could combine the City of Karratha's (formerly Shire of Roebourne's) two local laws 'Health Local Law 2012' and 'Animals, Environment and Nuisance Local Law 2012' (combined these contain very similar content to our existing Health Local Laws (they also contain a section relating to cats) but do so with the Local Government Act 1995 as head of power. Because the Local Government Act 1995 is a more modern piece of legislation, modified penalties (infringement notices) are available. Infringement notices are an additional 'tool in the tool belt' to bring about voluntary compliance. Usually the threat alone of an infringement notice brings compliance about very expediently; it also lessens the likelihood of a matter being taken to court (and the associated costs being incurred). It also enables the appointment of a range of authorised officers.*

*Once the new Public Health Act 2016 (Act) is fully operational, we would then still have some enforceable provisions. The new Act will not be prescriptive so, if Councils consider the existing provisions relevant, then the local laws are the place to include some prescriptive requirements such as setbacks for certain animals, blanket prohibitions of certain animals in town sites etc that can be applied if necessary.*

*It is not recommended to 'do nothing/maintain the status quo' as, come Stage 5, any subsidiary legislation made under the Health Act 1911 will be repealed and we could be without useful enforcement provisions/tools.'*

It is also recognised that the provisions within the current Health Local Laws for each Shire, relating to large animals, are largely unmanageable with cases of large animals having being present within most town sites throughout the VROC region, without prior approval, for many years. The Shire of Kojonup's Senior Ranger has also suggested that this makes it difficult to manage dog attacks which invariably seem to occur where there are inadequate (so far as being dog proof) fences to prevent stray dogs attacking. Given the difficulty in retrospectively expecting approval to be obtained by people who already have large animals in a town site, without approval, the Ranger recommends fences in the gazetted town site be constructed of a type that prevents large animals escaping and dogs from

entering – a clause reflecting this requirement has been included as a recommended addition to the Fencing Local Law (clause 2.6).

*Options provided by our EHO:*

1. Make no changes and have no enforceable provisions come implementation of Stage 5 of the new *Public Health Act 2016* in 2020-21;
2. Remove 'animal related' clauses from the existing Health Local Laws and form another local law for them under the *Local Government Act 1995* so that modified penalties (perhaps based on the Shire of Roebourne's/City of Karratha's local law) can be applied. The remaining health clauses of the Health Local Laws would need to be changed to have a new head of power under the *Local Government Act 1995* (enabling modified penalties to be available), in order to solve the 'straight to court' scenario when requests, letters etc have failed, and to avoid them becoming defunct (automatically repealed) in 2020-21; or
3. (*EHO preferred option*) Combine the Shire of Roebourne's (City of Karratha's) Health Local Law 2012 and Animals, Environment and Nuisance Local Law 2012 to be a 'Health, Animals, Environment and Nuisance Local Law 2020' with the head of power being the *Local Government Act 1995*.

Since the writing of the Shire of Broomehill-Tambellup CEO's Local Law Review (Review), the Shire of Kojonup resolved (April 2018) to form an Urban Environment and Nuisance Local Law in accordance with WALGA's Model Local Law, as per the Review's recommendation.

WALGA's Urban Environment and Nuisance Local Law has been compared with the Shire of Roebourne's Animals, Environment and Nuisance Local Law and then against the relative clauses in the Shire of Kojonup's Health Local Laws and modified as per recommendations made by the EHO. The Shire of Roebourne's Animals, Environment and Nuisance Local Law 2012 contains clauses (in addition to animal matters) that are addressed by WALGA's Urban Environment and Nuisance model local law and, in some cases, applies its own variations.

The Shire of Broomehill-Tambellup is the only VROC member that has a Removal of Refuse and Disused Material Local Law (2012) – this local law deals with the removal of abandoned/unwanted materials, material not being used for its original purpose and deposited on property, motor vehicles on property for the purpose of dismantling, and wood, trees etc deposited on property.

WALGA's model Urban Environment and Nuisance Local Law, while dealing with disposal of disused refrigerators, also addresses Noise, Light, Amusements, Abatement by an Authorised Person, Parking of Livestock Trucks, Truck Noise, Objections & Appeals, Enforcement (notices, offences, infringement and penalties, form of notices, and a schedule of prescribed offences).

In addition to WALGA's clauses, the Shire of Roebourne's Animal, Environment and Nuisance Local Law 2012 also addresses Advertising, Bill Posting and Junk Mail; Bird Nuisance; Stormwater Management; Swimming Pool backwash management; Smoke, fumes, odours and other emissions.

A draft copy of a new combined Health, Animals, Environment and Nuisance Local Law, as recommended by the EHO and based on the City of Karratha's (formerly Shire of Roebourne) Health Local Law 2012 and Animals, Environment and Nuisance Local Law 2012 and using *Local Government Act 1995* as its head of power (Part 3, Division 1, 3.1 – General Function & Part 3, Division 2, subdivision 2 – allows for prescribing of penalties for offences) was distributed to VROC CEO's in February 2019 for consideration. The copy used the Shire of Roebourne's local laws as the base document and showed (in green font) items contained in the Shire of Kojonup's Health Local Laws (where not recommended to keep, these were crossed through), wording not in the Shire of Kojonup's (or WALGA's Urban Environment and Nuisance Local Law) version but recommended to be kept (in blue font), yellow highlighted sections requiring further advice from the EHO and explanatory comment/additional or alternative wording (in red font); other crossed through sections were Shire of Roebourne wording not recommended for retention.

Officers of the Shires of Broomehill-Tambellup, Cranbrook and Kojonup have opted to recommend a combined Health, Animals, Environment and Nuisance Local Law be adopted in the future with further advice to be received from the EHO and consideration given to sections relating to cats, prescriptive requirements for certain animals in townsites, and zoning implications associated with those considerations before this local law is taken to Councils for proposal. **Further consideration pending prior to presentation of this combined local law to Councils.**

#### Repeal Local Law

The *Shire of Kojonup Health Local Laws 2000* published in the *Government Gazette* on 13 May 2002.