

Inconsistency between Parking Local Laws and Road Traffic Code

By Nathan Sloan

On 8 December 2021, Mr Gilbert was convicted in the Fremantle Magistrates Court of an offence of parking a vehicle on a footpath, contrary to clause 33(f) of the City of Cockburn Parking and Parking Facility Local Law 2007 (**Local Law**). Mr Gilbert subsequently appealed the conviction to the Supreme Court of Western Australia. Mr Gilbert's primary ground of appeal was that the clause under which he was prosecuted was invalid because it was inconsistent with a regulation contained in the *Road Traffic Code 2000* (**Code**). On 9 December 2022, Justice Forrester refused Mr Gilbert's application for leave to appeal and dismissed the appeal. Her Honour found there was no inconsistency and held that, even if there was an inconsistency, that would not render the Local Law invalid or of no application.

The case of *Peter John Gilbert v CEO Chief Executive Officer Cockburn Council* [2022] WASC 419 has significant implications for local government, as Justice Forrester's decision definitively confirms the scope of local government authority to create local laws which regulate parking within a local government district. The upshot of her Honour's decision is that a parking local law can validly operate alongside the wider provisions of the Code.

Ground of Appeal

The primary ground of appeal advanced by Mr Gilbert was that there was an inconsistency between clause 33(f) of the Local Law and regulation 166 of the Code, which had the effect of rendering clause 33(f), the clause under which Mr Gilbert was prosecuted, invalid.

Clause 33(f) of the Local Law provides:

'Subject to any law relating to intersections with traffic control signs, a person shall not stop or park a vehicle so that any portion of the vehicle is –

...

- *on or over a footpath or place of refuge for pedestrians.'*

Regulation 166(1) of the Code states:

'A driver must not stop a vehicle so that any portion of the vehicle is in front of a path, in a position that obstructs access by vehicles or pedestrians to or from that path, unless –

- *the driver is stopping off, or picking up, passengers; or*

- *the driver stops in a parking bay and the driver is permitted to stop in the parking bay under these regulations.'*

The essence of Mr Gilbert's argument was that the defence contained in regulation 166(1)(a) of the Code gave rise to an inconsistency between the two provisions, as there was no such defence also contained in clause 33(f). To support his argument, Mr Gilbert relied on section 3.7 of the *Local Government Act 1995 (LGA)*, which in effect stated that a local law made under the LGA 'is inoperative to the extent that it is inconsistent with this Act or any other written law'. Given that, in Mr Gilbert's view, the Local Law was inconsistent with the provisions of the Code, being 'another written law', it rendered the Local Law invalid.

Court's Decision

In her Honour's decision, Justice Forrester considered that the anterior issue was whether, if there was an inconsistency, it would have the effect of rendering the Local Law invalid.

In addressing this issue, her Honour had regard to reg 8 of the Code. Reg 8(1) provided:

'Where, in any particular case, the parking or stopping of a vehicle constitutes an offence against local laws in force in a local government district under the provisions of Part 3 Division 2 Subdivision 1 of the Local Government Act 1995, the parking or stopping of that vehicle does not constitute an offence against the provisions of this Code (other than regulation 108).'

Her Honour found that regulation 8 expressly contemplated that local laws will be made in relation to the parking or stopping of vehicles and, in the event of a conflict, the local law would prevail over the Code. As a result, if the parking of Mr Gilbert's vehicle constituted an offence under the Local Law, it could not also constitute an offence under the Code. As regulation 8 of the Code operated to prevent Mr Gilbert's conduct from being an offence under the Code, her Honour held that section 3.7 of the LGA had no application in this case.

Even though the Court's decision as to the anterior issue represented a complete answer to Mr Gilbert's argument, her Honour nevertheless addressed the question of whether there was an inconsistency between clause 33(f) of the Local Law and regulation 166 of the Code.

Firstly, her Honour found that section 3.7 of the LGA could not have the effect of rendering the Local Law 'invalid'. At its highest, the section could only mean that the Local Law would not 'operate' insofar as there was an inconsistency. It could not make it invalid.

Secondly, her Honour found that the words 'path' and 'footpath' were separately defined in the Code, such that 'path' had a wider meaning than 'footpath'. Furthermore, her Honour found that the words 'in front of' in reg 166 did not mean the same as 'on'. The latter means 'on top of', while the former means 'ahead of'. Accordingly, her Honour held that the Code addressed a different situation to clause 33(f) with the effect that there was no inconsistency. While her Honour accepted that it was possible to contemplate a factual scenario which constituted an offence against both the Code and clause 33(f) (such as where a vehicle is parked partly on and partly in front of a footpath), assuming reg 8 of the Code did not apply, this would not assist Mr Gilbert because his vehicle was parked wholly 'on' a footpath.

Conclusion

This case is important for local government in Western Australia as it has the effect of confirming the ability of local government to create, and enforce, parking local laws notwithstanding the operation of the Code. While some local law provisions may in some circumstances overlap or conflict with similar provisions of the Code, regulation 8 of the Code makes clear that section 3.7 of the LGA will not have application in that context.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. For further information on matters discussed in this Update please contact Nathan Sloan by email to nsloan@mcleods.com.au.

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