



Hon David Templeman MLA
Minister for Local Government; Heritage; Culture & the Arts

Our Ref: 66-12319

TO ALL LOCAL GOVERNMENTS

CIRCULAR N^o 03-2020

LOCAL GOVERNMENT (COVID-19 RESPONSE) ORDER 2020

As you would be aware, the *Local Government Amendment (COVID-19 Response) Act 2020* was passed by Parliament on 16 April 2020 and came into effect on 21 April 2020.

This Act provided a power to enable the Minister to modify or suspend provisions of the Local Government Act 1995 and Regulations while a State of Emergency declaration is in force and where the Minister considers that such an order is necessary to deal with the consequences of the COVID-19 pandemic.

I have made the first Order under this legislation to deal with issues relating to requirements to hold public meetings, for access to information when council offices are closed due to the COVID-19 pandemic, and budgetary matters. This will be published on 8 May 2020, coming into effect on that day.

Some of these measures will assist ratepayers who have been adversely impacted by this COVID-19 pandemic. As you are displaying through your actions in freezing rates, fees and charges during these extraordinary times, it is vital to maximise assistance to get our economy back on track.

The Order recognises that the local government is in the best position to assess whether a person in their district is in hardship but does provide that those residential and small business ratepayers that are suffering financial hardship because of the consequences of the COVID-19 pandemic will not be charged interest in the 2020/21 financial year. Local governments will be able to assess whether any other ratepayers are in hardship and should be provided with assistance.

Local governments are encouraged to adopt a financial hardship policy. This will address the manner in which the local government will deal with financial hardship that may be suffered by ratepayers and other persons who are required to make payments to the local government. Local governments with such a policy in place will be able to charge a maximum of 5.5% for instalment interest as they are formally

recognising and providing for other groups that are in hardship. This recognises that the 5.5% will apply to those who wish to pay by instalments but are not in hardship.

If a local government does not have in place a financial hardship policy, the interest rate that can be charged for payment by instalments will be capped at 3%.

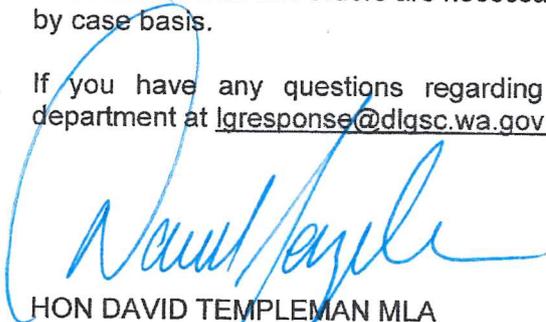
Interest rates that can be charged for late payments are being capped at 8%, which aligns with the interest rate charged by the Australian Taxation Office.

Other measures will directly assist local governments through removing red tape and compliance requirements which are not considered to be necessary while local governments and the community deal with the pandemic. This includes a number of measures that are designed to assist local governments that resolve to not increase the rate in the dollar from those applied last year.

The attachment details the modifications made to the operation of the *Local Government Act 1995*.

The Department of Local Government, Sport and Cultural Industries and the Western Australian Electoral Commission will continue to monitor council vacancies to determine if further orders are necessary to deal with electoral matters on a case by case basis.

If you have any questions regarding these provisions, please contact the department at lgresponse@dlgsc.wa.gov.au



HON DAVID TEMPLEMAN MLA
MINISTER FOR LOCAL GOVERNMENT;
HERITAGE; CULTURE AND THE ARTS

08 MAY 2020

Local Government (COVID-19 Response) Order 2020

The order deals with issues relating to requirements to hold public meetings, access to information when council offices are closed due to the COVID-19 pandemic, and budgetary matters, including financial hardship of ratepayers.

Specifically, the order provides for:

Clause 2: Commencement

The order comes into effect on the day it is published in the *Gazette*.

Clause 3: Terms Used

Key terms relate to the definition of an excluded person. This is a residential or small business ratepayer who is considered by the local government to be suffering financial hardship as a consequence of the COVID-19 pandemic.

A small business has the same meaning as under the *Small Business Development Corporation Act 1983*:

a business undertaking which is wholly owned and operated by an individual person or by individual persons in partnership or by a proprietary company within the meaning of the *Corporations Act 2001* of the Commonwealth and which —

- (i) has a relatively small share of the market in which it competes; and
- (ii) is managed personally by the owner or owners or directors, as the case requires; and
- (iii) is not a subsidiary of, or does not form part of, a larger business or enterprise.

Clause 4: Section 5.27 – Electors' general meetings

Section 5.27 of the Local Government Act requires a general meeting of electors to be held once every financial year and within 56 days after the local government accepts the annual report for the previous financial year. Holding such a meeting would breach the prohibition on gatherings direction and could result in health risks to attendees.

The requirement for the holding of a general meeting of electors under section 5.27(2) has been modified so that any meeting for 2019/20 that has not yet been held is to be held within 56 days of the date on which the state of emergency declaration ceases to have effect, but not while a declaration is in effect.

Clause 5: Section 5.28 modified – Electors’ special meetings

Section 5.28 requires a local government to hold an electors’ special meeting within 35 days of receiving a request from 5% (or 100 if less) of the electors of that district. At least 14 days’ notice must be given of the meeting. As above this presents health risks and is contrary to the prohibition on public gatherings.

The requirement for holding an electors’ special meeting under section 5.28(4) has been modified so that any meeting is to be held within 35 days after the end of the state of emergency declaration but not while a declaration is in effect.

Clause 6: Section 5.94 modified – Public can inspect certain local government information

Section 5.94 provides a list of information that must be available for inspection free of charge to a person who attends the local government office during office hours. The effect of the pandemic has been to close local government offices, removing the ability for members of the community to access information thereby reducing transparency and accountability. Access to information is likely to become even more important to the community as the length of the state of emergency extends and the economic impacts on local governments and the community become more pressing.

Section 5.94 is modified so that during the closure of a local government office due to the COVID-19 pandemic, the local government is to provide access to the information listed in 5.94 either by having it available on their website or by providing a free copy to the person by mail or email. This does not override the current provisions in section 5.95 which limits access to certain information, including confidential information.

Clause 7: Section 6.2 modified – Local government to prepare annual budget

Section 6.2(2) provides that in preparing the annual budget, the local government is to have regard to the contents of the plan for the future. The aspirations of the community as reflected in the plan for the future are not at the current time the best basis for the 2020/21 budget, but rather the more pressing and unforeseen consequences of the COVID-19 pandemic.

Section 6.2(1) has been modified such that in preparing the budget for 2020/21 a local government is to have regard to the consequences of the COVID-19 pandemic (rather than the plan for the future, although this can also be considered by the local government).

Clause 8: Section 6.13 modified – Interest on money owing to local governments

Section 6.13 allows local governments to charge interest on overdue amounts, with the rate set by the local government in its budget. The rate is capped in the *Local Government (Financial Management) Regulations 1996* at 11%.

Recognising the substantial hardship likely to be caused because of consequences of the pandemic, local governments will be unable to charge interest on money owing by any person they consider to be in financial hardship in these circumstances for the 2020/21 financial year.

Local governments will need to resolve (when setting their interest rate on overdue amounts) that this will not apply to a person who is considered by the local government to be suffering hardship as a consequence of the COVID-19 pandemic.

The interest that can be charged on amounts owing by others will be capped at 8% – the interest rate used by the Australian Taxation Office on overdue amounts.

Clause 9: Section 6.33 modified – Differential general rates

Where a local government is imposing differential rates and the rate to be imposed on one category is more than twice the lowest differential rate to be imposed in another category, Ministerial approval must be obtained under section 6.33(3).

Local governments that resolve to freeze their rates in the dollar at or below those imposed in 2019/20 recognising the economic impacts of the pandemic, are being released from the requirement to obtain Ministerial approval if they obtained Ministerial approval under this section in that year. This reduces the regulatory burden on those local governments that are assisting ratepayers by not increasing the rate in the dollar.

Clause 10: Section 6.34 modified – Limit on revenue or income from general rates

Section 6.34 provides that local governments must set their rates at a level to cover between 90 and 110% of the estimated budget deficiency, unless the Minister otherwise approves. As local governments have been requested to freeze their rate in the dollar, it is likely that, due to the effects of the COVID-19 pandemic, revenue from rates will be less than 90% of the estimated deficiency.

Recognising that local governments are likely to be receiving less income, section 6.34(b) is modified so that the yield from the general rate for the 2020/21 financial year is not to be less than 80% of the amount of the budget deficiency (rather than 90%). Approval for less than 80% (or more than 110%) can still be sought from the Minister for Local Government.

Clause 11: Section 6.35 modified – Minimum payment

Section 6.35 allows a local government to set a minimum payment for rates on any land. Certain conditions apply, including that more than half of the properties in a category cannot be paying the minimum. An exception to this is if there is a differential rating category for vacant land for which a minimum is applied, and if the Minister approves more than half the properties being subject to the minimum.

The effect of this variation is to remove the requirement for Ministerial approval for those local governments that are not increasing their differential rates or minimum payments from 2019/20 and that obtained Ministerial approval for those minimum payments last year. This reduces the regulatory burden on those local governments that are assisting ratepayers by not increasing the rate in the dollar or the minimum payment.

Clause 12: Section 6.36 modified – Local government to give notice of certain rates

Section 6.36 sets out the process that a local government must go through to advertise and set their rates. This requires local governments that are seeking to impose differential general rates or minimum payments to give local public notice and seek submissions for a minimum of 21 days and then consider these submissions before imposing the rates. A document describing the objects of, and reasons for, each proposed rate must be prepared and published on the local government's website.

To address the economic consequences of the COVID-19 pandemic, it is understood that many local governments are in the process of agreeing to freeze their rates in the dollar at the levels imposed in 2019/20. For those local governments, the process set out in 6.36 is unnecessary, meaningless and costly in a time when budgets are being negatively impacted.

Local governments that resolve to set differential general rates and minimum payments at a level no higher than that imposed in 2019/20 will not have to comply with the provisions of section 6.36.

Local governments will be required to publish the differential general rates and minimum payments on their website within ten days of the resolution or of this notice coming into effect whichever is later.

Clause 13: Section 6.45 modified – Options for payment of rates or service charges

Section 6.45(3) allows a local government to charge an additional amount if a payment of rates or service charge is made in instalments. This is capped at 5.5% in the *Local Government (Financial Management) Regulations 1996*.

Recognising the substantial hardship likely to be caused to many ratepayers because of consequences of the pandemic, local governments will be unable to charge excluded persons interest for payment by instalments for the 2020/21 financial year.

If a local government does not have in place a financial hardship policy, the interest rate that they can charge other ratepayers for payment by instalments will be capped at 3%.

Local governments that have a policy in place that addresses the manner in which the local government will deal with financial hardship that may be suffered by ratepayers and other persons who are required to make payments to the local government will be able to charge a maximum of 5.5%. This recognises that the local government will be able to distinguish those that are in hardship and make appropriate provisions regarding their payments.

Clause 14: Section 6.51 modified – Accrual of interest on overdue rates or service charges

Section 6.51 allows local governments to charge interest on overdue amounts of rates and service charges. The rate is set by the local government by resolution when it imposes the rate or service charge. The rate is capped in the *Local Government (Financial Management) Regulations 1996* at 11%.

Recognising the substantial hardship likely to be caused to many ratepayers because of consequences of the pandemic, local governments will be unable to charge excluded persons interest on overdue rates or service charges for the 2020/21 financial year. This will be reflected in a resolution of council when they set the interest rate.

This provides relief for those residential and small business ratepayers who are experiencing financial hardship because of the COVID-19 pandemic. Local governments will determine the applications for hardship.

The interest that can be charged on amounts owing by others will be capped at 8% – the interest rate used by the Australian Taxation Office on overdue amounts.

Clause 13: Section 9.51 modified – Giving documents to local governments

Section 9.51 deals with the giving of documents and states that a document is given to a local government if given personally to an employee of the local government at its office or sent by post to the local government's postal address. A consequence of the pandemic is that any hand delivery is no longer possible.

Section 9.51 has been modified so that a document may be given to a local government electronically.