



Department of Local Government, Sport and Cultural Industries
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SUBMISSION

- Review of the 'Local Government Act 1995'

Firstly, thank you for providing the opportunity for public input to the review of the 'Local Government Act 1995'. I have noted the various discussion papers produced to assist the development of Phase 2 of the review, vis-à-vis the nine topic areas:

1. Beneficial enterprises
2. Financial management
3. Rates, fees and charges
4. Council meetings
5. Administrative efficiencies – local laws
6. Interventions
7. Elections
8. Complaints management
9. Community engagement – integrated planning and reporting

In the course of the review, City of Bunbury staff prepared a Review Paper (RP), which posed questions on each review topic, The RP presented a practical way of promoting thought and facilitating dialogue and as a City Councillor, I took the initial (albeit crude) approach of answering the questions with a simple **YES** or **NO**. In reality, at least in some cases, there is no simple yes/no response to the topics that are subject to reform discussion. Therefore, the challenge was not to solely accept or reject a reform position, but to devise qualified responses that serve to guide reform, by articulating conditional statements. Given the need for a set of assessment criteria, I posed the following questions, as each might relate to the nine topic areas.

How does the reform:

- i. Help prevent corruption and malfeasance?
- ii. Maintain and protect the right to free speech?
- iii. Address the issue of political bias (party membership)?
- iv. Benefit the electors, residents and ratepayers of a district?
- v. Promote grass-roots democracy?

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The following submission provides my personal **YES/NO** answers to the nine topic areas and where appropriate, comment and observations.

Topic Area 1: Beneficial enterprises

Questions:

1. Should reform support a CCO or other form of beneficial enterprise? **NO**
2. If yes to CCO, should there be regulation as to which local governments can establish a CCO, for example:
 - a. ability to form based on a percentage of annual expenditure; or
 - b. ability to form based on the SAT bands; or
 - c. ability to form based on a risk assessment currently conducted by the Department, which places local governments in a risk category; or
 - d. ability to form based on minimum annual expenditure. **N/A**
3. Control and accountability, for example what levels of control should exist, i.e. Ministerial approval, audits by auditor general etc. If YES, the highest control level possible. **N/A**

COMMENT: on balance beneficial enterprises present more risks than benefits, particularly given it is public money at risk. It could be argued that the initiation of beneficial enterprises increase risks across three of the five assessment criteria (above). The complexity and jeopardies that would arise from beneficial enterprises are self-evident, as they consume resources and energy and cause a drift away from core local government business. Beneficial enterprises would also create an environment apt for corruption, thus the reform does not help prevent corruption or malfeasance. If the answer was to be yes, conditions and controls required would likely make any cost benefit to ratepayers void.

Topic Area 2: Financial management

Questions:

1. Should restrictions on investments be relaxed? **NO**
If so, could this be managed through:
 - a. an investment policy that addresses risk; or
 - b. introducing a tiered approach to investments? **N/A**
2. Should the rules around how debt is incurred be relaxed i.e. could assets be used to borrow against? **NO**
3. Should the tender threshold be increased commensurate with State Government rules? **YES**

COMMENT: Local Governments do not have a great record with investments, aptly illustrated during the GFC. When ratepayers' funds are involved, a prudent and conservative approach provides a solid backdrop to management. In a wide sense this aspect of reform does not help prevent corruption and malfeasance. If the answer was to be yes, some form of State Government guarantee would be highly desirable, to effectively underwrite local government risk taking. Financial management is one aspect of local government where community perception must be taken as the reality. Any loss of confidence in financial management can have a cascading impact on the transparency of local government and community trust.

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Topic Area 3: Rates, fees and charges

Questions:

1. Should every land owner be required to pay rates, or at least a minimum contribution? **YES**
2. Could concessions for rates be made via Council determination (rather than prescribed in legislation)? **YES**

COMMENT: Broadly speaking all properties using ratepayers' facilities to operate should contribute their share to the cost. Currently the system provides an unfair advantage to so-called charities, which from time to time skirt the line as to their nature. This area of reform should be strongly supported.

Topic Area 4: Council meetings

Questions:

1. Could public question time be modernised to expand the ways in which questions can be asked? **YES**
2. Should a time set aside for public statements be introduced? **YES**
3. Should the rules for remote attendance be modernised to include areas outside of the state of Western Australia? **YES**
4. Should the requirement to hold a general electors' meeting be scrapped? **NO**
5. Should the number of electors' signatures needed to call a special electors' meeting be increased? **NO**

COMMENT: Anything that has the potential to reduce the opportunity and options to practise grass roots democracy is not supported. Any reform that reduces opportunity does not / cannot maintain and protect the right to free speech. Thus an increase in the number of forums for electors to have their say must be supported. Reform should not include removing opportunities for the public to participate in civics.

Topic Area 5: Administrative efficiencies

Questions:

1. Should the grants commission and advisory board be combined? **YES***
2. Should changes be made to legislation to allow greater alignment between the Local Government Act and Acts/Regulations that are administered by local government? **YES**
3. Should changes be made to the property disposal provisions to redefine public auction/tender to include property marketed through a licenced real estate agent? **YES**

*reservedly given the issue of perceived political bias in appointments.

COMMENT: In response to the supposition "*Accountability measures that go too far can become regulatory burdens that create unnecessary costs that outweigh their compliance benefits*". Local Government can never be "*too accountable*". However practical efficiencies are desirable. With respect to Part 3, the market should be encouraged in the tender process, albeit with controls that address the potential for favouritism and/or corruption and malfeasance.

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Topic Area 6: Interventions

Questions:

1. Should the complaints process be simplified such that all complaints are channelled through the Director General? **YES**
2. Should the provisions regarding “*improper use of position*” be extended to employees? **YES**
3. Should harmonisation of the powers and procedures within the Act be undertaken so that they are consistent with similar powers and procedures in other legislation? **YES**

COMMENT: Given my personal experience in 2018, when I asked for a policy to prevent City staff being used to prepare cases against elected members, and the interim answer from the City (to do nothing), the matter of complaints demands a response that supports a process that cannot be corrupted. Essentially, for any complaints officer to afford a complainant with the use of staff resources to prepare a complaint is a recipe for disreputable and unethical behaviour. Complaints should also require a complainant to be questioned and his or her motives interrogated. A positive outcome that prevents the compromising of subordinate staff, who may be directed by superiors to collect evidence on behalf of a third party, is highly desirable. This area of reform is highly desirable.

Topic Area 7: Elections

Questions:

1. Should compulsory voting be introduced for WA local government elections? **YES**
2. Should FPP voting be retained, or should this be changed to preferential? **PREFERENTIAL**
3. Should electronic (online) voting be introduced? **YES**
4. Should the current election cycle of every 2 years be modified? **NO**
5. Should the council member number be determined by elector population? **YES**
6. Should there be a consistent approach for the method of electing a mayor/president? **YES** If not should the mechanism to amend the method from “*by the community*” to “*by the Council*” be made simpler i.e. by Council decision? **NO (see first part)**
7. Should there be rules in place to determine when/how many ward can be in place i.e. population thresholds? **YES**
8. Should the provisions regarding electoral gifts be consistent with the broader gift provisions for local government? **YES**
9. Should electoral donors also have to make a declaration of a gift or is this duplication? **YES**

COMMENT: The statement “*Elections are a fundamental part any democracy*”, profoundly emphasises the primary means of holding local governments to account. There is no doubt that local government elections give communities a direct voice and are the foundation of grassroots democracy. As such, it is strongly recommended that Topic Area 7 be chiefly addressed in a wider sense by a formal committee of the WA Electoral Commission, in context of the relevant Electoral Act legislation. Whereas the requirement for disclosure of donations/gifts to candidates is

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essential, these rules need to be strengthened to provide greater transparency of political donations. There is also a case to consider the requirement for candidates to show more transparency as to their affiliation with registered political parties.

Topic Area 8: Complaints management

Questions:

1. Should it be mandatory for local governments to have documented complaint handling procedures and processes? **YES**

COMMENT: It makes sense for there to be a legislative requirement for local governments to have a standardised complaint handling process. Legislation would support standards, policies and procedures that clearly set out how the local government handles complaints, including provisions for the how, what, who and when of matters to be considered.

Topic Area 9: Community Engagement and Integrated Planning and Reporting

Questions:

1. Should it be mandatory for local governments to have in place a community engagement charter or similar? **YES**

2. Should it be mandatory for local governments to have in place a social media policy? **NO**

3. Should reporting within the IPR be standardised to some degree to enable benchmarking against other WA local governments? **YES**

COMMENT: The broadest principles of grass roots democracy decision-making demand that decision be made in conjunction (in step) with the community. This may cause some discomfort from time to time, to both elected members of local government and their staff. However it is fundamental to democracy that the community be given as much opportunity as possible to participate in civic processes, against a set of standards that are easily accessed and simple to follow. With regard to social media policy, it would be difficult to ensure that the subsequent interpretation of any policy devised would include guarantees that served to maintain and protect the right to free speech.

Additional Topic Area: Committees of Council

Under Section 5.8 of the 'Local Government Act 1995' (the Act), the City of Bunbury Council may establish advisory committees of three (3) or more persons to assist it in discharging the operations and duties of the City of Bunbury. These committees can comprise Councillors only or a mixture of Councillors and employees and may include 'other' persons, defined by the Act as "a person who is not a council member or an employee".

The CEO of the City of Bunbury has previously advised that representatives on Council Advisory Committees, who are not elected members or Council staff, are not bound by way of any recourse for breaches that occur of the City's Code of Conduct.

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Without a formal commitment to the Code of Conduct, or any other prescribed commitment of fidelity, the risk of malfeasance in local government is elevated by the presence of individuals who are not bound to an articulated code of behaviour.

- **This particularly applies to lobby groups who may wish to inveigle their way into the local government decision making process.**

COMMENT: Local Government reform should include some resolve to develop a position that governs the conduct of persons appointed to Council Advisory Committees, who are not Council members or Council employees. This would assist to avert misconduct, corruption and fraud by persons who are appointed to Advisory Committees, however are not bound by any Code of Conduct or associated Statement of Business Ethics

I thank the Minister for Local Government on his initiative in these reform proposals and look forward to positive outcomes.

Yours faithfully

Brendan Kelly

COUNCILLOR
CITY OF BUNBURY

29th March 2019

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