

Local Government Act Review – City of Gosnells Submission

Section of Legislation	Title	Policy Change	Rationale for Change
2.4A	New Provision – Differentiating between Local Governments	Insert a new provision to differentiate between local governments based on capacity.	This will reduce the compliance burden on smaller local governments with limited capacity and provide additional opportunities for local governments with capacity.
2.11	Method to Elect Mayor/President	Delete the poll provisions in relation to changing the method of election of the Mayor/President.	Local Governments should determine this outcome
New Provision	Stand down when contesting State or Federal Election	Amend so that following the issuing of writs, Elected Members are to take leave of absence from all aspects of their role.	To avoid confusion about roles
2.22(1)	Disqualification because of Convictions	Add a section which disqualifies a person if they have been convicted of an offence against the Planning and Development Act, or the Building Act, in the preceding five years.	A planning or building system conviction is potentially more serious than a Local Government Act conviction because of local government's prominent role in planning and building control and the significant personal benefits which can be illegally gained through these systems.
3.12	Procedure for Making Local Laws	Eliminate the requirement to consult on model local laws.	Models are approved for sector wide use
3.16	Periodic Review of Local Laws	Eliminate the periodic review requirements for model local laws.	Models are approved for sector wide use
3.50B	New Provision – Closure of Bridge for Repairs	Allow a bridge to be closed for urgent repairs and maintenance without notice, even if it will have significant adverse effects on users.	The closure of a bridge will often have significant adverse effects on users. However, bridges may need to be closed for urgent repairs if there is a sign of weakness and, currently the Act does not provide capacity to take this action without giving local public notice if the closure will be greater than four weeks.

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3.51	Notification of Affected Owners	Section 3.51 to be amended to achieve the following effects: <ul style="list-style-type: none"> • To limit definition of “person having an interest” to those persons immediately adjoining the proposed road works (i.e. similar principle to town planning consultation); and • To specify that only significant, defined categories of proposed road works require local public notice under Section 3.51(3)(a). 	To provide clarity and efficiency
3.53	Control of Certain Unvested Facilities	That Section 3.53 be repealed and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.	To reflect the State’s ownership of this land
3.60	No Capacity to Form body Corporates	Allow local governments with capacity to form bodies corporate (Council controlled organisations) for particular commercial activities.	Follows the New Zealand approach and enables local governments to undertake key place making activities more efficiently and effectively.
3.66	Regional Local Governments	Reduce compliance burden on regional local governments.	This supports the proposal to differentiate between local governments
4.20(4) + 4.61(4)	CEO to be the Returning Officer unless Other Arrangements Made	Allow the Commonwealth Electoral Commission or any other body competent in conducting elections to be responsible for conducting an election and, in particular, a postal election.	To enable competition and competitive efficiencies to be achieved
4.61(1)	Methods of Conducting an Election	Allow people to vote online if they so choose.	To reflect the use of modern technology and to increase voter turnout. Online voting should only be introduced in a technological environment which ensures the secrecy of the vote and which minimises the potential for fraudulent activity. Online voting should be offered as an additional method of voting; not as a complete replacement for postal voting.
4.65	Voluntary Voting	Maintain current policy.	People should not be forced to vote

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4.88(a)(b)	Electoral Offence: Misleading, False or Defamatory Statements	Amend to make it an offence for a person to make or publish false or defamatory statements about official acts undertaken by an elected member seeking re-election during the conduct of an election campaign.	It is already an offence to make or publish false or defamatory statements in relation to personal character or conduct. It is considered appropriate that this principle carries through to false or defamatory statements about official conduct.
5.27	Electors' General Meetings	Delete requirement for general electors' meetings.	To improve local government efficiency. The public now has numerous ways in which to engage with Councils, including special electors' meetings, and the need for annual meetings, which are often attended by a paltry number of people, is redundant.
5.28(1)	Electors' Special Meetings	Increase the number of people required to convene a special electors' meeting to 500 from 100.	It is too easy to gain 100 signatures to convene special electors' meetings in large local governments
5.28(2)	Electors' Special Meetings	Limit the number of special electors' meetings which can be held on the same matter. Once a matter has been discussed at a special electors' meeting, the same matter, or a very similar matter, should not be able to be discussed at another special electors' meeting for 12 months or until after the next Ordinary Local Government Election, whichever happens first, unless Council determines otherwise.	This allows people to have their say but prohibits people calling special electors' meetings too regularly
5.36A	New Provision – Public Sector Commission or Local Government Commissioner Role	Insert a new section which would require either the Public Sector Commission or a new Local Government Commissioner to guide and support local governments in CEO recruitment and performance review.	CEO recruitment and performance review would benefit from the guidance and support of an independent authority such as the Public Sector Commission or an independent Local Government Commissioner
5.37(2)	Senior Employees	Delete the provision.	While the deletion of the legislative provision is supported, there needs to be close liaison between a CEO and the Council in the appointment and dismissal of senior staff

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5.38	Annual Review of Employee Performance	Delete the requirement for annual performance reviews for staff other than the CEO	This provision was introduced at a time when the regular performance review of staff was a new concept. It is no longer needed in such a strict form.
5.41	Functions of CEO	Insert a requirement for the CEO to be responsible for establishing a system for the performance review of all other staff.	A consequential amendment following amendment of S5.38 which will bring the legislation up to date
5.94	Public Inspection of Local Government Information	Amend this section to require the information to be available online and allow the public to attend a local government's office to inspect, if they so wish.	The advent of the online world enables this information to be provided more easily and accessibly than by visiting a local government office
New Provision	Vexatious and Frivolous Complainants	Insert a new provision to specifically allow a local government to declare a member of the public and their complaints vexatious. Such a declaration would prevent that person from speaking at either Council meetings or electors meetings, allow a local government to file, but not respond, to correspondence from the person, and refuse to answer phone calls.	Local governments have no explicit statutory power to prevent a member of the public from bullying, abusing or harassment, particularly when speaking at meetings. The Ombudsman has produced guidelines for dealing with vexatious people and local governments should be specifically empowered by law to declare people vexatious (which would prevent them from speaking at meetings) if the principles within this guideline are followed. Here it is noted that the State Government recently gave the Standards Panel the power to decide that people were being vexatious.
6.14	Power to Invest	Allow local governments with capacity to invest in accordance with the Trustees Act in the manner that existed prior to the Global Financial Crisis.	<p>The Global financial Crisis was a once in a generation experience (1987 and 1929 were the two previous financial crashes of extreme magnitude). Legislation should not be based on a worst case scenario but on a routine and general operating environment.</p> <p>Prior to the Global financial Crisis, the previous legislation was adequately controlling local government investments.</p>

Section of Legislation	Title	Policy Change	Rationale for Change
6.16(2)(b) +(e)	Imposition of Fees and Charges	<p>Many local governments will supply small consumer items at a variety of facilities. These include selling theatre tickets and supplying food and drink at venues.</p> <p>It is inappropriate to require local governments to establish fees at the start of the year for these items which respond to consumer demand in a commercial environment.</p>	Allow local governments to set and amend fees and charges for small scale goods and services outside of the current requirements of the Act.
6.20(2)	Power to Borrow	Delete the requirement for one month's public notice of the intent to borrow.	To enhance local government efficiency
6.21(1)(b)	Restrictions on Borrowing	Allow local governments to give security over freehold land as well as general purpose grants.	To reflect the fact that borrowings are often made against freehold land and a local government should be able to borrow against such land
6.26(2)	Rateable Land	Introduce a requirement for State Government trading enterprises, including the Housing Authority, to pay rates on their commercial land rather than making rate equivalent payments to the State Government.	It is inappropriate for State Government trading enterprises to pay rate equivalents to the State Government when it is local government which constructs the local roads used by these enterprises and which collects the rubbish generated
6.26(2)(g)	Rateable Land	Amend to exclude independent living units for seniors from being a charitable purpose for which a rate exemption can be claimed.	Independent living units are generally provided at market rates so there is no charity for the user. This outcome was acknowledged in a State government report about a decade ago.
6.28 + 6.33(1)	Basis for Rates and Differential General Rates.	Enabling differential rating based on the time land remains vacant is supported.	While local governments can introduce a differential rate for vacant land, this rate applies to all vacant land. It is appropriate to differentiate between land held vacant for long periods for speculative or land banking purposes and land which is vacant on a short term, interim basis. It would be up to a local government to determine the number of years which would divide one category from the other.

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6.41	Service of Rate Notice	Amend the provisions around the service of rate notices to allow for electronic delivery of notices where a ratepayer's electronic address is known.	The Act was developed in an era when the internet hardly existed. Electronic communications are now commonplace and used for significant financial transactions.
6.41 + 6.45(1)	Options for Payment of Rates	Amend so that the standard rate payment is in six equal instalments throughout the year with no single rate notice issued unless requested.	The Water Corporation moved to this system of billing several years ago for water rates. It eliminates the need for the Water Corporation to send out one very large rate bill and minimises negative public response. As this system has worked well for the Water Corporation, it will work well for the local government sector. Local governments would still retain the option of providing other payment options. A six equal instalment option would further smooth bills for ratepayers.
6.56	Recovery of Rates in Court	Amend to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to 'cost of proceedings'.	To improve operational effectiveness
9.13(6)	Onus of Proof	Amend by introducing a definition of 'responsible person' to enable Local Governments to administer and apply effective provisions associated with vehicle related offences.	To improve operational effectiveness
Schedule 2.1 2(1)(d)	Creating, Changing and Abolishing Districts	Increase the number of electors required to put forward a proposal for boundary change from 250 to 500.	The current number is considered too small
Schedule 2.2 3(1)(a)	Provisions About Wards	Increase the number of electors required to put forward a proposal for ward change from 250 to 500.	The current number is considered too small
Schedule 4.1	Method of Voting	Maintain current policy.	

Financial Management Regulations			
Regulation 4	Exempt from AASB 124	Provide an exemption from the application of AASB 124 'Related Party Transactions' of the Australian Accounting Standards (AAS).	Local Government legislation provides adequate transparency
Regulation 68	Maximum Interest Component on Instalments	Amend so that the prescribed interest rate is set at the average variable overdraft interest rate for small business, as published by the Reserve Bank of Australia.	The maximum interest rate on instalments, as currently stipulated, is inflexible and can become out dated over time.
Regulation 70	Maximum Interest on Overdue Rates	Amend so that the prescribed interest rate on overdue rates and service charges is set at twice the amount which applies to the interest rate which applies to the payment of rates in instalments under Regulation 68.	The rate setting regulation is inflexible and can become out dated over time.

Long Service Leave Regulations			
7(1)(d)	Taking Leave	Amends so that employees can take long service leave in more than three separate periods.	To reflect contemporary practice, allow employees to take their long service leave in more than three separate periods, subject to the agreement of the employer. This would provide greater flexibility for both the employer and the employee. Employees should be entitled to take long service leave in periods as little as one day at a time in keeping with the provisions which apply to State Government officers.

Administration Regulations			
10	Revoking or Changing Decisions	<p>Clarify the rights of a Councillor to seek a revocation or change.</p> <p>Particularly amend to reflect situations where one part of a multiple part motion has not been completed.</p>	<p>Regulation 10 provides a mechanism for the revocation or change to a previous decision of Council. It does not however, contain any provision clarifying that the provisions do not apply to Council decisions that have already been implemented. This regulatory deficiency is currently managed administratively, but warrants an appropriate amendment to clarify the rights of a Councillor to seek a revocation or change.</p>
19B	Payment to Employee in Addition to Contract or Award	<p>Amend to state that the number of positions within the salary band should be identified, rather than the number of employees entitled to the salary. Further, the \$100,000 amount identified in the Regulations should be increased to \$150,000 to reflect inflation.</p>	<p>This reflects the fact that it is important to identify the positions paid over the specified amount rather than the number of employees that fill the positions. The amount should be raised as it has not been increased for many years.</p>
New Regulation	Repaying of Advance Annual Payments	<p>Regulations enabling the recovery of advance annual payments have yet to be made and it is recommended this matter be prioritised.</p>	<p>The Local Government Legislation Amendment Act 2016 introduced Section 5.102AB, which provides that Regulations may be made relating to the recovery of advance payments of annual allowances or annual fees made to a person who subsequently ceases to hold office during the period to which the payment relates.</p>

Functions and General Regulations			
11(1)	Tender Threshold	<p>Increase the tender threshold to align with the State Government tender threshold (\$250,000).</p>	<p>Increasing the tender threshold improves local government efficiency and aligns to State agency requirements.</p>
30(3)	Disposition of Property	<p>Delete any financial threshold limitation (currently \$75,000 on a disposition) where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.</p>	<p>To improve local government efficiency and operational effectiveness.</p>