

29 March 2019

Local Government Act Review Team
Department of Local Government, Sport and Cultural Industries
GPO Box 8349
Perth Business Centre WA 6849

Dear Reform Team,

Local Government Act Review Phase 2 – Committee for Perth Submission

The Committee for Perth is the leading think-tank focused on the liveability and competitiveness of Greater Perth. Our vision is for Perth to be a region with world-class amenity that is culturally diverse, sustainable and economically prosperous. We undertake research in order to understand Perth's opportunities and challenges as it grows to a region of 3.5 million people.


This submission has been prepared by the Committee for Perth with input from our Reshaping and Reforming Working Groups, whose combined expertise covers planning, professional services, design, development, construction, infrastructure, policy and local government.

The Committee supports the proposed objective for Western Australia to have a new, modern Act that empowers local government to be more agile, smart and inclusive. Our submission has been informed by the Committee's long-term advocacy to reform local government and includes evidence drawn from a range of sources available on our website – www.committeeforperth.com.au.

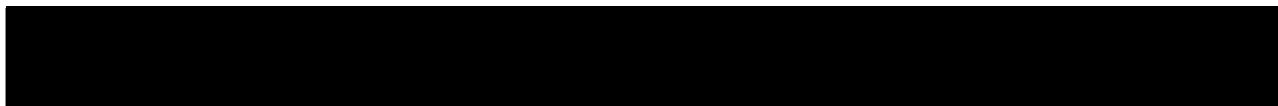
We give our thanks to Sheryl Siekierka for providing a briefing to the Reshaping and Reforming Working Groups and staff of the Committee for Perth. We welcome the opportunity to further engage with the Department of Local Government, Sport and Cultural Industries as this key piece of new legislation is drafted.

Should you require any additional information or clarification on the Committee's submission, please do not hesitate to contact me.

Yours sincerely,



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Comments – *Local Government Act 1995* Review

The Committee generally supports the proposed review of the *Local Government Act 1995*, and agrees that local governments across Western Australia need to be agile, smart and inclusive in their operations to service the community. In saying this, the Committee recommends that in conducting this review, it is crucial to consider the comparison between legislation versus regulation.

An increasingly disruptive global environment requires, as suggested, agile entities which have the ability to quickly adapt policy and strategy to suit the current community needs.

Specifically, the Committee supports the reform objectives that seek to:

- Create agile local government entities that can adapt to changing conditions;
- Increase the effectiveness of local government operations by implementing smart processes; and
- Increasing the involvement of communities in decision-making across Western Australia and ensuring local governments accurately represent their communities.

The Committee recommends that the review team consider each of the proposed reforms in terms of their capacity to be implemented through regulation rather than enshrined in legislation so that the regulatory environment can be responsive and agile too.

In providing feedback on the proposed amendments, the Committee acknowledges the difficult task in providing an Act that caters to the diversity of local government across Western Australia. It is therefore an important consideration of the Act to ensure scalability in its application depending on a local government's size and ability to carry out each of the functions delegated to it.

Strategic local governance

In undertaking a review of the *Local Government Act 1995*, the Committee believes that there are a number of additional considerations that should be addressed to ensure appropriate and adequate strategic planning is carried out at the local government level.

The Committee for Perth has been a long-term advocate for strategic metropolitan planning, beginning with the launch of our report *Towards a Bright Future – A vision for Perth as a region of 3.5 million people* in 2012. This report called for the development of a shared vision for the future of the metropolitan region through a public, participatory process that provides goals and a strategic pathway for Perth's social, cultural, economic, environmental, land use and transport future (Committee for Perth, 2012).

As part of achieving a strategic and shared vision, the Committee recognised that the current form of local government needed to be reformed in order to develop a metropolitan governance framework. This would reduce local fragmentation and create a formal regional governance structure that facilitated regional integration and collaboration and enable the preparation and delivery of a collective, integrated regional vision and strategy for the future (Committee for Perth, 2012).

Additional research to examine 60 years of strategic planning in metropolitan Perth and Peel was conducted by the Committee for Perth in 2016. It found that the implementation of strategic plans for the Perth and Peel regions have relied upon policy consistency and co-ordination at a local government level, and as such has been an obstacle to the

implementation of strategic plans for Perth since the 1960s and 1970s (Davis & Harford-Mills, 2016a).

In order to progress strategic planning across the metropolitan region, the Committee's *Get a Move On!* report recommended Perth and Peel prepare of an overarching, evidence based, integrated strategy that aligns regional land use, economic, environmental and transport objectives is required (Committee for Perth, 2016). Once prepared, all strategic, spatial and statutory plans in Perth and Peel should be consistent with this overarching strategy, including that of local government.

Over the past 11 years the Committee for Perth has undertaken research, strategic thinking and stakeholder engagement to propose solutions to improve Perth and Peel's cultural diversity, economic prosperity, sustainability and world-class amenity. During this period, we have consistently identified the need for strategic planning and thinking at a metropolitan level. The Committee therefore recommends that in addition to the reforms proposed in the *Local Government Act 1995* review, that there needs to be a reconsideration of strategic planning so as to ensure metropolitan wide goals are met, and supported by the functions of local government.

Beneficial enterprises

The Committee supports the introduction of beneficial enterprises in giving local governments the ability to form independent corporations. In saying this, there are a number of issues that should be considered prior to implementation.

- Any beneficial enterprise being established by a local government should be a non-competing entity that fills a specific gap in the market and the mandate should be stated as an intended community benefit.
- A local government established beneficial enterprise should have the ability to participate in a joint venture under appropriate disclosure arrangements.
- The board of such an establishment should be independent from the council, be comprised of commercially minded people and include local government representation in the minority. It should be chaired by an independent i.e. non-government person.
- A local government should not guarantee the debts of the beneficial enterprise, as questioned on page 9 of the 'Beneficial Enterprises Discussion Paper'. The Committee believes that ratepayers should not bear the financial risk undertaken by a beneficial enterprise in the case of an unsuccessful project.

In determining which local governments have the ability to form a beneficial enterprise, as discussed on pages 10 to 13 of the 'Beneficial Enterprises Discussion Paper', the Committee supports the assessment that all local governments should have the ability to form a beneficial enterprise. In saying this, the Act needs to include standards for each local government to meet depending on their financial and operating capacity to ensure the local government does not put ratepayers at risk.

The Committee supports using a combination of the proposed methods to determine the appropriateness of establishing a beneficial enterprise, and should include the Financial Health Indicator coupled with the project being no more than a set percentage of local government expenditure. In saying this, the Committee proposes that a local government should be able to apply for Ministerial approval in establishing a beneficial enterprise in which it does not meet the required thresholds yet is proposing to undertake a mandatory service for the community.

Beneficial enterprises should also be established with the support of the community, which would require adequate and widespread consultation prior to approval.

Administrative efficiencies – local laws

The Committee for Perth believes that local laws need to be more consistent, and where possible standardised across the Perth and Peel region. In addition, the Committee does not support the proposal that local laws should only be required to be reviewed when a local government believes it is appropriate to do so. Increasing uncertainty and disruption on a global scale means that a review of local laws every eight years, or sooner, should still be carried out to ensure they are still relevant and provide the best outcomes for community members. In addition, a review should be able to be triggered by State Government or a designated proportion of the community in order to remain contemporary.

In addition, the Committee supports the provision of model local laws for local governments to enact or modify based on local circumstances who do not have the capacity to do so. The Committee proposes that local governments should not be charged to access a template local law, as those doing so are more likely under-resourced than those local governments with the ability to draft and enact their own local laws. Free access would also work towards standardisation of local laws.

Interventions

The Committee supports the proposed reforms to allow the Department more flexibility in investigating matters of misconduct and increase their ability to work in partnership with local governments to address governance issues, as outlined in the 'Interventions Discussion Paper'.

In reforming the complaints process, the Committee believes that the Act requires an intervention mechanism whereby local government employees can report to the Department on issues within the local government and that these issues should not be limited to the action of the council. In the case of a formal complaint, the individual should have the option to receive advice and mentoring on how to approach the issues or the Department should determine, with the assistance of the individual, whether further investigation is required. The individual reporting such an issue should have confidential protection so as to ensure they can continue their role within the local government.

In addition to the above, the Committee supports the proposed remedial action process, allowing the State Government to issue a remedial notice to a local government requiring the provision of information or the performance of an action or activity; the appointment of a person to the local government administration to assist the local governments with its operations; and requiring the local government to participate in a capacity building program.

The Committee also supports amending the Act to enable the State Government to embed a person with suitable expertise and experience into a council as a municipal monitor.

Community engagement

Committee for Perth research has long highlighted the potential benefits that arise from an engaged community, with key examples including our *What We Thought Would Kill Us* series of case studies. In addition, the case studies also identify the potential backlash and outcry that can be heard by communities if they feel their voices aren't being heard (Davis, 2011; Davis, 2011a; Davis, 2011b; Davis and Harford-Mills, 2014; Davis and Harford-Mills, 2015; Davis and Harford-Mills, 2016; Harford-Mills, 2017).

In addition, findings of the report to examine strategic planning across Perth and Peel over the last 60 years identified that “localised community resistance to strategies for urban infill and urban consolidation have been a barrier to implementation since first proposed in the late 1980s” (Davis & Harford-Mills, 2016a, pp. 18).

The Committee for Perth therefore agrees with the intent on page 2 of the ‘Community Engagement Discussion Paper’, in that community engagement is more impactful when decision-making is done in conjunction with the community from the beginning of a project proposal or policy change.

In a soon to be released report, the Committee for Perth has combined the learnings of the seven case studies undertaken to examine controversial projects across Perth and Peel, the *What We Thought Would Kill Us* series. It identifies the common factors associated with land use and development conflict and controversy and proposes 10 recommendations to provide a best practice guide in the planning and delivery of major projects that will increase community engagement. They are as follows (Davis, 2019):

1. Long-term planning is informed by the community
 - Shared vision, goals and objectives for future growth of a region
 - Early engagement needed during strategic planning process with European and Indigenous groups
 - Improves transparency
 - Builds public and political support
2. Rigorous project assessment, planning and selection processes
 - Project consistent with strategic regional goals
 - Broad assessment of opportunities, challenges and options
 - Evidence-based criteria including social, cultural and environmental costs
 - Meaningful engagement to identify and address community concerns
3. Identify/consider potential for high public interest or opposition to the proposal
 - Understand common controversial features of projects
4. Assess conditions for community engagement
 - Successful community engagement is dependent on project characteristics
 - Likely beneficial if: high community interest; likely controversial; mandate is needed; respected community member participation; existing distrust in government decision-making; decision-making doesn’t require substantial technical knowledge
5. Identify an appropriate level of community engagement
 - Understand spectrum or continuum of community engagement
 - Go beyond current statutory requirements to a level in which the community has influence on project outcomes where appropriate
6. Provide opportunities for community engagement and establish a mandate
 - Can increase acceptance and awareness to avoid costly delays or changes later in the project process
 - Develop a mandate to establish majority agreement regarding core project elements

7. Incorporate good design principles; maximise potential benefits; and deliver benefits for a broad spectrum of the community
 - Elitist and privatised projects often perceived negatively
8. Anticipate, identify and respond to community concerns
 - Increased potential for conflict and backlash if decision-makers fail to listen to, respond or address concerns expressed by the community
 - Often concerns are common amongst major projects, which allows for early anticipation and response
9. Rigorously assess and carefully manage environmental impacts
10. Successful project management and best practice project procurement and funding
 - Time delays and budget overruns can generate controversy and criticism
 - Best practice project management, procurement and funding models can ensure efficient and effective outcomes

Elections

Councilors have a significant role to play in the growth and development of the Perth and Peel region. As such, the importance of local government elections cannot be underestimated as they provide elected members with responsibilities and the authority to make decisions on behalf of the community.

The Committee for Perth supports the following reform opportunities to ensure council members elected are reflective of their community:

- Compulsory voting – this is an important part of combatting the vocal minority overpowering the silent majority on a number of issues.
- Permitting electronic and online voting – in conjunction with ensuring that voting is compulsory, the Committee strongly recommends the introduction of online voting. In an increasingly digitised world, outdated methods of in-person and postal voting should be replaced for more modern and up to date techniques. This will also remove some of the cost burden placed on local governments due to postal requirements for elections. The risks to online voting through deliberate voter manipulation are not negated in postal voting systems, which also have the ability to be tampered with. Therefore the Committee believes that the benefits from electronic voting, to increase voters and reduce the cost of elections, significantly outweigh the potential risks.
- Removal of ward structure – the Committee recommends the removal of the ward structure system entirely, as it risks resulting in the politicisation of local government elections and entrenches individual councilors focusing on small patch issues rather than making decisions in the best interests of the entire local government community.

Additional comments

In addition to the comments provided in direct response to the *Local Government Act 1995* review, the Committee suggests that best practice sharing in the sector is encouraged through regular events and communications to showcase best in breed solutions.

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