

2017-2019 Review of Local Government Act 1995

Citizen Submission - Phase 2

Submitted by D.R. Grimwood

a resident, ratepayer, elector, occupier, land owner, citizen, constituent, governee, member of the public and "a person" domicile in a local government district.

EXECUTIVE SUMMARY:

This submission is an extension of my comprehensive Phase 1 submission and claims the current status of local government having autonomy from the Ministry of the Crown is a costly mistake which puts the traditional system of democratic government in danger of fragmenting.

This submission claims that local government has incrementally degenerated to a point where it no longer understands why it exists and where it is going.

1. BENEFICIAL ENTERPRISES

Current advocacy by the local government industry for Parliament to permit in law discretionary powers for local governments to create and operate business enterprises – euphemistically described as "beneficial enterprises" - is a case in point.

Local governments are exempt from the Commonwealth Trade Practices Act and the checks and balances it provides. Local government is thereby exempt from the Australian Consumer Law, which provides hard-won protections for consumers from unscrupulous enterprises.

The history of local government attitudes and practices is one which demonstrates scruples are typically absent in interfaces and dealings with its constituents and customers, because the prevailing ethos is that the local government is always right and is never responsible for its actions, errors or omissions.

Discretionary ad-hoc decision making is stock in trade.

To translate those behaviours into commercial law simply deepens the dysfunction.

It is claimed the primary reason for the establishment of "beneficial enterprises" is to distance Councils from the consequences of their activities, in much the same manner that large corporations establish subsidiaries to limit liability of the parent.

2. LOCAL LAWS

In 1996, The Parliament of Western Australia, Joint Standing Committee On Delegated Legislation Declared:

"The system of government in Western Australia is that of a parliamentary democracy based on the rule of law."

Source:

[http://www.parliament.wa.gov.au/parliament/commit.nsf/%28Report+Lookup+by+Com+ID%29/783AB65DEB9BC334482578320034D824/\\$file/slguide1.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/%28Report+Lookup+by+Com+ID%29/783AB65DEB9BC334482578320034D824/$file/slguide1.pdf)

Note: This declaration coincided with the introduction of the Local Government Act 1995.

Traditionally, local laws were created to aid in preserving order in the community – i.e. orderly conduct, orderly planning, orderly provision of infrastructure and services.

However over time the capacity to create local laws has expanded, now encompassing a suite of subsidiary legislation encompassing Town Planning Schemes, Council Policies, Strategic Plans, Corporate Plans etc, and more recently, Council's Code of Conduct. (Council is an executive legislature).

Ironically, it is Town Planning Schemes which are at the top of the tree, exhibiting huge fines for minor breaches.

Local laws generally do not record their history in relation to amendments or revisions in a similar manner to Acts and Regulations.

Hence the current Local law is that which appears on an administrative typist's computer as a stand-alone document.

Such loose recording and archiving practice is not legitimate in a government.

Laws must always be independently verifiable.

3. COMMUNICATION OF LAW

"The acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it."

Lord Reid

Source:

[http://www.parliament.wa.gov.au/parliament/commit.nsf/%28Report+Lookup+by+Com+ID%29/783AB65DEB9BC334482578320034D824/\\$file/slguide1.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/%28Report+Lookup+by+Com+ID%29/783AB65DEB9BC334482578320034D824/$file/slguide1.pdf)

Discretionary and/or retrospective law voids that right.

The interconnected matrix of Acts and Regulations and Local Laws which local government discretionally interprets and administers are presented in such manner that in many cases – particularly those which are applied discretionally or upon whim after the event – it is not possible for a citizen to be able to know in advance what legal consequences will flow from this form of governance.

The widespread use of "Disclaimers" feeds and supports uncertainty.

In particular, strategic plans, town plans, forward budgets, policies etc. are only as reliable as the paper they are written on in the "now", because each Council is refreshed every two years, so whatever is may not be.

Similarly, when a new CEO is appointed the old order is, by default, no longer valid as the new incumbent strives to gain respect and recognition for his or her governance and to satisfy the demands of Council.

GOLDEN RULES FOR COMMUNICATION UNDER THE RULE OF LAW:

1. If you want people to do what you want them to do then you must tell them what you want them to do so it is more likely they might do what you want them to do and get the result you want.
 2. Use simple language that people might comprehend and understand.
 3. Say what you mean and mean what you say.
 4. Entrapment via ambiguity or ignorance of the law is an effective tool for regulators and prosecutors but is ineffective for preventing non-compliance or effecting behavioural change across a whole society.
 5. Unless clear holistic objects and definitions are expressed, law is reduced to a set of unconnected discrete rules for subjective interpretation and application in implied discreet circumstances by persons whose purpose may be no more than an expression of their own personal social, religious or political ideologies.
 6. The power of the State travels from the top downwards
 7. Compliance is conditional upon awareness of requirements.
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To give effect to the above, and having regard to the fact that we have 137 different, separate and independent local governments in Western Australia who administer more than 100 Acts and Regulations, have created more than 4,000 local laws, 137 Town Planning Schemes, 137 Codes of Conduct, 137 Suites of Policies, it is necessary to consider the impact upon inhabitants within a Local Government District and those who enter into a Local Government District for whatever purpose.

This will include the more than 400,000 visitor/tourists who have so done during the past year.

IGNORANCE OF THE LAW IS NOT A DEFENCE

Consequently, to give practical effect to the above and ensure compliance, it is desirable and recommended that at each major entry/exit point where Districts

adjoin, the following notice be prominently displayed at all local government district boundaries, bus terminals, train stations, wharves and airports as an official Order:-

SAMPLE ONLY – THIS IS NOT AN OFFICIAL DOCUMENT

NOTICE

**You are now entering the
Western Australia Local Government District
of
City/Shire of XXXX**

Take notice that City/Shire of XXXX:

- Local Laws
- Policies
- Town Planning Schemes
- Decisions of Council
- Delegated authorities under State Legislation
- Discretionary Directions, Notices or Orders by Authorised Officers

apply to all persons located at all times within the boundaries of the District.

This includes all residents, ratepayers, landowners, electors, inhabitants, occupiers, visitors, tourists, aliens, buses, taxis, service vehicles, emergency vehicles, persons engaged in business, trade or commerce and all or any persons temporarily passing through the District.

Non-compliance is prohibited. Breaches may result in summary prosecution via Infringement Notice or criminal prosecution via summons. Minors are not exempt. Penalties up to \$25,000 per day apply.

City/Shire of XXXX Local Laws, Policies, Town Planning Schemes, Decisions of Council and Delegated Authorities may be viewed on-line at:

- <http://www.xxxx.wa.gov.au/public-documents>

or during normal business hours at:

- City/Shire libraries
- The City/Shire Administration Office

State Acts, Regulations and other applicable subsidiary legislation may be viewed on-line at:

<https://www.legislation.wa.gov.au/legislation/statutes.nsf/actsif.html>

<https://www.slp.wa.gov.au/legislation/statutes.nsf/subsif.html>

Ignorance is not an excuse – Compliance is mandatory.

No further warnings or reminders will be issued.

By Order:
City/Shire of XXXX Local Government

Editor Note: To give effect to the above, this suggested Notice should be displayed at all local government district boundaries, bus terminals, train stations, wharves and airports as an official Order.