



## **Review of Local Government Act 1995 (WA)**

### ***Background***

The Commonwealth, through the Department of Infrastructure, Regional Development and Cities (Infrastructure) is responsible for good governance in the Territory of Christmas Island and the Territory of the Cocos (Keeling) Islands through the maintenance and improvement of the overarching legislative framework, laws and services.

To provide a comprehensive set of state-type services to the Territories, the Commonwealth has introduced legislation that has the effect of applying the laws of Western Australia as Commonwealth laws in the Territories. These are known as applied laws.

It is within this context that the following submission should be considered.

### ***Local Government run businesses (beneficial enterprises)***

Infrastructure does not support the establishment of local government authority (LGA) run businesses for LGAs with low revenue streams. Under the *Local Government Act 1995* (the Act), LGAs can form a regional subsidiary with neighbouring councils to deliver shared services, for example corporate services. Infrastructure supports the establishment of regional subsidiaries by LGAs where practical.

### ***Financial management***

Infrastructure supports LGAs having an investment policy and the introduction of a two-tier system for low risk and high risk investments, with tier two investments requiring due diligence through the development and approval of investment plans by the Department of Local Government, Sport and Cultural Industries (DLGSC) or another regulator.

LGAs should continue to follow existing requirements of the Act in relation to giving one month's public notice in relation to borrowings to maintain financial transparency.

Currently LGAs are required to publish their procurement policies. Infrastructure supports the alignment of local government procurement with the WA State Government procurement rules, Common Use Agreements (CUA) and the WA Local Government Association (WALGA) Preferred Suppliers Program. This would see tender thresholds aligned with those of the WA State Government:

<b>Purchases</b>	<b>Methods permitted</b>
Up to \$50,000	Direct sourcing, verbal quotations and written quotations
Between \$50,000 up to \$250,000	Written quotations (goods or services not on the CUA)
Over \$250,000	Open tender

Following the WA State Government procurement rules would ensure that procurement of goods and services achieves the best value for money outcome, against written evaluation criteria. This approach would be a one-size-fits-all rule, instead of a methodology based on the Salaries and Allowances Tribunal bands, or banding based on expenditure, operating budgets or risk assessment. LGAs using the CUAs would benefit from the buying power of the WA Government.

Rules regarding exemptions should be clarified in the *Local Government Act* (the Act), particularly where there is only one supplier, as may be the case for regional or remote LGAs, or use of the WALGA Preferred Suppliers Program.

Infrastructure supports the State Supply Commission's graduated consequences for non-compliance with tendering rules.

Infrastructure supports the alignment of LGA invoice payments with State Government agencies, requiring payment within 30 days of the provision of the goods or services (whichever is later).

Currently the regional price preference to a regional tenderer is up to 10% for goods and services or 5% for building services up to a maximum price reduction of \$50,000. Infrastructure supports the retention of this cap and extension of scope to include all purchases.

Infrastructure supports the current requirement for LGAs to prepare a monthly report to Council detailing the list of accounts paid by the CEO under delegated authority.

LGAs are currently required to prepare an audited financial statement annually. The statement is required to meet the Australian Accounting Standards as modified by the Act and Regulations. Legislation requires that local governments calculate and publish seven financial ratios in their annual financial statements, as a performance indicator. In 2013, the DLGSC established benchmarks for each of the ratios. Infrastructure supports the retention of the existing seven ratios in WA to reflect LGA performance.

### ***Rates, fees and charges***

Infrastructure supports the introduction of a requirement for LGAs to develop a Rates and Revenue Strategy, which could include:

- rating categories (and potentially how they are determined);
- rates in the dollar;
- objects and reasons for each rating category;
- fees, charges and levies including the methodology where appropriate; and
- long-term rating strategy.

The Strategy would be published on the LGA's website and used as a basis for consultation on rates, in conjunction with the schedule of fees and charges. Introduction of this Strategy would provide transparency to ratepayers.

Similar to the New South Wales model for rate categories, include categories of residential, semi-rural, commercial/industrial, farmland, mining, exploration and prospecting.

Other than land used or held by the Crown for a public purpose, rate exemptions also apply to the following land uses:

- land used or held exclusively for churches (religious bodies);
- land used or held exclusively for schools;

- land used exclusively for charitable purposes;
- land vested in trustees for agriculture or horticultural show purposes;
- land owned by Co-operative Bulk Handling Limited (CBH); and
- land exempted by the Minister for Local Government.

Rate exemptions can have a significant impact on the capacity of LGAs to raise rate revenue, especially in regional and remote areas. It is then left to the ratepayers to make up the shortfall.

A number of organisations currently receiving exemptions provide important services within the community with very limited funding. If these organisations were required to pay rates, it may impact on the ability for them to continue to provide services.

Infrastructure supports the retention of the existing rate exemption categories, including land used exclusively for charitable purposes.

### ***Local laws***

The Act enables LGAs to make local laws considered necessary for the good government of their districts.

The DLGSC currently provides detailed comments to LGAs to assist in finalising a local law that will be enforceable and effective, although the LGA does not have to adopt the advice. WALGA has templates for local laws which are available for a fee. In WA local laws must be approved by the Parliament, and are examined by the Parliamentary Joint Standing Committee on Delegated Legislation. Some jurisdictions, not WA, have a requirement for a legal practitioner certificate stating the local law is within the principles of the Act. Infrastructure supports the current six week timeframe for public submissions on local laws, as well as a requirement for a legal practitioner to review proposed new local laws prior to their adoption by Council.

The current WA review period of 8 years for local laws is supported by Infrastructure.

### ***Administrative efficiencies***

Infrastructure supports the combining of the Local Government Grants Commission and the Local Government Advisory Board. Membership of the combined Board should be drawn from metropolitan Perth as well as regional and remote Western Australia.

The LGA to have responsibility for drafting a question and summary document for electors, for review and endorsement by the combined Grants Commission/Advisory Board, prior to any electors poll changing the method of election of the Mayor/President.

Infrastructure supports the following proposal relating to amendments:

- an ability for the Advisory Board to refuse to accept a proposal on the basis that the proposal is incomplete (does not meet the requirements set out in the Regulations);
- a requirement for affected electors who sign a petition to acknowledge they have read the summary of the proposal and have seen a plan or map detailing any proposed changes;
- a requirement to provide the affected local government(s) details of a proposal prior to submission of a proposal to the Advisory Board; and
- the ability for an applicant to be able to withdraw a proposal, prior to a recommendation being made to the Minister, subject to the Advisory Board supporting the withdrawal.

### ***Council meetings***

Public question time is a standard item on all Council agendas. Introducing a framework for the submission of questions, in advance of the meeting, is supported by Infrastructure.

Attendance of Councillors remotely may assist in the LGA having a quorum of members present. Infrastructure supports a Councillor attending a meeting by telephone or video conferencing if the Councillor is located within either Western Australia or Australia at the time of the Council meeting and technology is available to support the remote attendance.

Infrastructure supports increasing the definition of elected member proximity interest to include developments in the same street as the member's property and workplace.

Infrastructure supports the responsibility for keeping minutes transferring to the Chief Executive Officer (CEO), and clarification around the inclusion of confidential matters being included. Infrastructure endorses that the rules be revised to explicitly state that the rules concerning revoking or changing decisions of Council do not apply after the decision has been implemented.

Infrastructure supports the retention of the General Electors' Meeting which requires the LGA to submit its annual report to the community.

Infrastructure suggests introducing a requirement for Minutes for all Council meetings, including Electors Meetings and Audit Committees to be published on the LGAs website within 10 business days of the meeting being held. LGAs should also be required to publish Agendas on their website at least two business days prior to the scheduled meeting date. LGAs should incur a breach or punishment if minimum content standard or website publishing timeframes are not met.

To ensure transparency of Council decisions, Council Agendas and Minutes, including Committee meetings and Audit Committee meetings are to meet a minimum standard, which include officer reports and recommendations, discussion on the agenda item and resolutions.

Owing to the number of electors at regional and remote LGAs, Infrastructure supports the current requirement to call a Special Electors' Meeting at either 100 electors or 5% of the total number of electors.

### ***Council conduct and governance - Interventions***

Infrastructure supports a common practice for minor breaches (contravening a rule of conduct or a local law relating to meeting procedures) and serious breaches (committing an offence under a written law and an element of the offence is that they are a Council member) of the Act to be made to the DLGSC Director General to decide the process, and referral to the State Administrative Tribunal if appropriate. This process would negate the need for LGAs to have a complaints officer.

Infrastructure considers that the Act needs to clarify actions for non-compliance. The Act has dates/timing for submitting reports/audits, etc but what is the action taken when these timeframes are not met? Continued failure to meet deadlines should incur a breach or penalty.

Infrastructure supports the Victorian model of embedding an appointed person into a Council as a "Municipal Monitor" or "Authorised Inspector" to monitor governance processes and practice, provide advice to Council on governance improvements and report to the Minister on its effectiveness. The external person should be appointed by the Minister, and paid for by the local government.

Infrastructure supports an extension of the improper use of information offence to former council members, committee members or employees up to a five year period.

Infrastructure supports an amendment to the Act to:

- include an “improper use of position” offence which applies to council members, CEOs and employees of a local government, and former council members, CEOs and employees;
- provide that the CEO or an employee of a local government must not deliberately or negligently provide false or misleading information to council; and
- provide that the non-compliance of tendering requirements is an offence.

Infrastructure supports the introduction of an infringement notice scheme for the following offences:

- failure to invite tenders before entering into a contract;
- failure to vote during a council or committee meeting;
- failure to lodge a primary return by the required date;
- failure to lodge an annual return by the required date;
- disclosing information about a Serious or Minor Breach Complaint before the matter is determined;
- giving false or misleading information in a Serious or Minor Breach Complaint;
- failing to comply with a notice from the DLGSC Director General or Minister to provide information; and
- failing to comply with a direction of an authorised person, hindering or obstructing, or knowingly giving false or misleading evidence to an authorised person.

The DLGSC Director General to have discretion whether to issue an infringement notice or prosecute the offence in court.

To ensure that any local laws which do not specify penalties for offences are enforceable, the Act could be amended to include a provision for a default penalty to apply.

Amending the Act to include:

- an ability for a local government to provide a notice which requires the owner to secure a building, to avoid vandalism or squatting;
- expand the list of disused materials to enable a LGA to direct a person to remove items other than vehicles and machinery from land that it considers to be untidy or causing a hazard; and
- provide a clear framework for local governments to dispose of property. This would include the type of property that may be disposed, when property is to be disposed and how property is to be disposed.

### ***Community engagement***

Currently, LGAs are required to engage with the community when creating their ten year Strategic Community Plan. The community must also be consulted on such matters as local laws, differential rates, planning and other matters and aspirations that are relevant to the diverse needs of individuals within a community. The revised Act should include a model for community engagement, such as the existing Queensland model which would adapt to the WA environment:

“Local governments must abide by five principles to ensure that they are accountable, effective, efficient and sustainable. These principles are:

- transparent and effective processes, and decision-making in the public interest;

- sustainable development and management of assets and infrastructure, and delivery of effective services;
- democratic representation, social inclusion and meaningful community engagement;
- good governance of, and by, local government; and
- ethical and legal behaviour of Councillors and council employees.”

Community engagement needs to consider the communication needs of community groups including young people, seniors, families, people with disabilities, Aboriginal people and people from Culturally and Linguistically Diverse (CALD) communities.

Community engagement policies are to be made publically available on the LGAs website. Outcomes of community engagement activities should be reported back to full Council meetings.

Infrastructure supports the requirement for LGAs to adopt a social media policy. The policy would not only address the use of social media by council members and staff, but also the appropriate use of social media in community engagement.

### ***Integrated Planning and Reporting***

Infrastructure supports the requirement for Local Health Plans, Disability and Access Plans, and Town Planning Schemes being incorporated into the Integrated Planning and Reporting (IPR) process.

Minimum requirements for community engagement should be included in the IPR with consideration to the LGAs size, location and demographics. A feedback mechanism to the community on the IPR is also essential.

### ***Complaints management***

Infrastructure supports all LGAs being required to adopt the Australian/New Zealand guidelines for complaints management in organisations AS/NZ 10002:2014 Standard (the Standard), including the following key requirements:

- the adoption of a clear definition of complaints in line with the Standard;
- policies and procedures that clearly set out how the local government handles complaints, for example providing timeframes and requiring a person independent of the initial matter to be responsible;
- provisions for how complaints are to be resolved and for when matters are referred to an external body, for example the Ombudsman; and
- a requirement for local governments to make their policies and procedures easily accessible to the public.

The revised Act should include the requirement for LGAs to have a Customer Service Charter which is publicly available through its website. The Charter should include:

- the principles relating to the services provided by the council;
- the procedures for dealing with complaints relating to services provided by the council; and
- any other information a LGA deems essential.

The discussion paper considers an internal independent review process for unresolved complaints. This would provide an additional cost impost on LGAs, where LGAs already have an avenue to progress complaints to the State Ombudsman.

## ***Elections***

Infrastructure supports introducing compulsory voting in local government elections, similar to Victoria, NSW, Queensland and the NT, which would increase the number of votes in an election.

Although online voting may be seen as convenient, the unreliability of internet services in some regional and remote locations would not support this method of voting. Security of the voting system, and verification of voters are also seen as high risk issues. Infrastructure supports the retention of voting in person elections and postal elections.

The Act could be amended to enable third parties other than the WA Electoral Commission to conduct elections, including the Australian Electoral Commission, individual LGAs or private companies.

Infrastructure supports the introduction of caretaker provisions for local government elections, similar to Federal and State elections, to place a moratorium on major decisions prior to an election.

Infrastructure supports the direct election of a Mayor or President by electors in a district to increase public confidence and accountability to the community.

In WA residents and non-resident property owners may vote. Owners of property, including Corporations, are currently eligible to vote on the basis that they contribute to a local government through the payment of rates. Infrastructure supports people who lease rateable property in a district should be entitled to vote.

A cost-saving suggestion is suggested to hold Council elections every four-years – offset at the midway between the State Government elections. Infrastructure supports elections remaining at two-yearly intervals for half the council members.

Currently election gifts over \$200 must be declared in WA. Infrastructure supports the NSW model where election gifts are not permitted from anonymous donors, property developers, the tobacco industry or the liquor and gambling industry.

Infrastructure does not support the requirement for a minimum population of 2,000 to introduce a ward system. This is consistent with WA where at least 12 local governments with populations of less than 1,000 people have ward systems.

Infrastructure supports linking the number of Councillors to the population, particularly in regional and remote locations. Consideration should be given to ensure LGAs with Aboriginal people/communities and CALD communities are able to be represented on the Council.