

The WA Local Government Act Review

I attended a review session in Joondalup a couple of months ago and saw your request for feedback. I have used the time since then to reflect on the experience. I shall use the heading of “What does a local government look like in the 21st century” to discuss the extent to which the community should have a real say in how Councils should operate. My basic position is that the term ‘community consultation’ is flawed. What is needed is community empowerment not consultation. Some might view this as radical but by using by real examples, some from my own interaction with Joondalup Council and some from the way other people have been dealt with by Joondalup Council, I intend to demonstrate that a fundamental shift in the governance of Councils is necessary to be considered satisfactory in their respective communities and therefore sustainable in the longer term.

There are four main sections. The first section reflects on some items raised during from the Joondalup Review Session I attended which are relevant here. The second section provides a small set of examples that are sufficient rich to demonstrate why such a shift is necessary. These examples are taken from my direct interactions with Joondalup Council and from information available on the internet. The third section lists lessons and conclusions I have reached based on these examples and then in the last section I spell out a manifesto for change.

Reflections on the Review Session I attended at Joondalup Council regarding changing the Act

The first topic for reflection was brought up by another group at the end of the evening at the Joondalup review session. They suggested that residents should have real power and control over the Council – i.e. both councillors and senior public officers. The analogy was that of shareholders who own shares in private business. In such companies, senior executives can be voted in or out, bonus recommendations accepted or rejected and so on. It was my strong impression that this suggestion was warmly received by the majority of those present. The facilitator did suggest this was somewhat radical; however, this was disputed by others in the audience on the grounds of it being they only way to ensure real accountability and transparency. The underlying question here is why should all employees but especially senior Council executives enjoy special treatment with regard to their performance when their counterparts in private enterprise do not? It is my view that the majority of the community do not feel positively about the manner with which they are often dealt. Descriptors such as frustration and apathy would be typical and would be happy to see real change. It was the realisation that I was by no means alone in my viewpoint regarding Council behaviour that has spurred this feedback.

The second reflection is to note something about what I learned that evening that is relevant here. I have relatively little direct exposure or association with my local authority or any other and I suspect many other participants would be in a similar position. In 26 years as a Joondalup ratepayer, I have had only three occasions in which I needed to contact about matters that I considered needed attention. However, during the course of the initial session and with the help of the facilitators present (who by the way were overall helpful, supportive and informative) it was reinforced to me that due to the wide range of size and nature of Councils (some rural and some not), “one size” or very specific solutions would be inappropriate. While I can see it would be ideal to get very specific suggestions, I feel it often would be better to encourage feedback at a more general level as well as where possible get more specific feedback. Indeed, it could be argued that more abstract feedback is more relevant as it can then more sensibly be applied to the different circumstances of different

Councils. As it happened, this very point about the level of detailed feedback came up in the review session when a participant made a suggestion along the lines of 'we need a mechanism to do something....'. Immediately it was strongly suggested to him by the facilitator that he needed to be more specific about the exact detail of the suggested mechanism, which he was unable to do. This point is particularly relevant in the discussion below since the details of the suggestions made would require to be tailored to individual councils taking account of size, geography, number of residents and so on. In summary, I intend to present my ideas at a high but nevertheless appropriate degree of abstraction i.e. at the level of 'mechanisms' if you will and allow the law writers the space to specify them at a more appropriate level of detail, Council by Council. The art of law writing should be to encapsulate the essential tenets of proposed legislation while at the same time allowing it to remain as relevant as possible over time as a set of principles and not become ineffectual through being out of date, redundant, irrelevant or incomplete.

Exemplars of the need for fundamental change

Approximately 12 years ago Joondalup Council wrote to ratepayers in the so-called CBD - my own house down is some 800 meters from the Council offices, is near a lake and in my opinion should not be considered part of the CBD. They informed us all that we would be paying a fee to obtain parking permits to allow us to park outside our own house in the street. This generated considerable complaint and resulted in a group of over 200 residents a meeting outside the Council offices. When a meeting was held with the Council, again very well attended, we were told that the Council had already consulted the ratepayers over this. When this was queried it emerged that the 'consultation' consisted of A4 flyers being put in libraries and 2" by 1" adverts placed in the back pages of a few newspapers! When it was put to the CEO that a 'reasonable person' would not consider this an acceptable level of consultation, the CEO replied that this was all the Council was obliged to do by the Act. In other words, it wasn't about acting in a reasonable, transparent, responsible, considerate manner to a situation that was clearly emotive; rather it was (in my view) solely about political expediency and manoeuvring and of course money. Anyway, the Council did relent afterwards and permits were issued free. Fast forward 12 years and the Council in 2018 wrote to us informing us of a reduction in the number of permits per household that would be 'free'. But again, they chose not to write to us in advance of the Council meeting thereby allowing the community to engage prior to the decision being taken. Yet, both the Councillors for the ward were the same elected councillors 12 years previously so ignorance was no excuse.

There have been current issues to do with tree planting in other suburbs of Joondalup (i.e. not mine). See <https://www.watoday.com.au/national/western-australia/residents-angry-after-council-rips-up-turf-and-paving-to-plant-verge-trees-20170919-gykjgg.html> for details. In this clip, a ratepayer (who had medical documentation to support this) presented with a serious health risk of anaphylactic shock from a particular type of tree recently planted by the Council on her verge but the Council refused to be flexible over this. Yet it is verifiable on the internet that other Councils do respond and act positively to these concerns (as they should). Why should such a basic health and safety matter that clearly falls under duty of care be allowed to be ignored by a Council and what role if any did this lady's councillor play in intervening on behalf of the ratepayer?

Lessons and conclusions regarding Council behaviour

Through the above I learned the following:

- Councils (through senior staff) are deliberately choosing to run their 'business' in ways that avoid reasonable input from the community by hiding behind minimum levels of service defined in the Act.
- Where the community has not been consulted the only recourse the community has is to launch belated action after the fact which may or may not have any effect
- The regular Council meetings are clogged up with 'Council business' and do not allow for real and frequent community input or feedback
- Councillors are effectively powerless through being stymied by existing legislation which is difficult to change retrospectively and so through that, the original intent of the role of the Councillor is in practice much more limited
- The Council website is replete with warm fuzzy statements about commitment to community consultation, transparency and accountability yet this is inconsistent with how they behave
- That there is a major power imbalance in terms of the resources and defences that the Council has at its disposal compared to the resources and avenues an individual has to make a complaint.
- The vast majority of ratepayers do not have the financial resources to mount a legal case against a Council in court
- The local Government Ombudsman tends to arbitrate on the basis of whether due process has been followed (even if such processes are steeped in antiquated laws) rather than whether there is moral issue at stake such as with the lady whose life was endangered by the threat of anaphylactic shock
- Behind these specific observations and reflections above it is evident that many of the problems encountered were deep-rooted concerning the inflexibility of the law, poor culture and poor management style which leads to the conclusion that true independent arbitration is necessary where disagreement exists

A manifesto for change

It is clear to me that these problems are systemic and require change to be imposed externally and monitored externally if anything of value is ever to happen. Elsewhere in Australia in recent times we have seen the largescale failure of our institutions caused by lack of proper oversight. Self-regulation simply doesn't work. One only has to reference the Banking Royal Commission, institutional child abuse, foreign donations to political parties, political parties monitoring their members' dual citizenship – the list goes on. Neither are independent regulators (such as ASIC) successful unless they have set up with real teeth and are prepared to use their powers (see <https://www.smh.com.au/business/banking-and-finance/after-previous-failures-doubts-linger-over-the-ability-of-apra-and-asic-to-lift-their-game-20190205-p50vqc.html>).

In order to present my vision of a 21st Century Council and revisions to the Act that will address these underlying systemic issues, I will use the following question to elucidate my ideas.

What are the main constituents of a legal, cultural and management Governance Framework that provide for effective and ongoing oversight of Council business by the community?

I shall now comment on each of the key words in the above statement:

Legal

The problem with the law is that it is relatively static (when was the Act last reviewed?) and currently changing it requires a great deal of time and effort to the point where it is often seen as more expedient to expend effort in retaining (defending) the current law rather than update it. So how can this be changed? Now while I accept that currently Councils do have the capability to make changes to some degree, what I am saying is that this needs to be defined far more explicitly and powerfully in the Act:

- within a framework of rules that permit reasonable means of arbitration open to the community,
- that these means of arbitration must be clearly communicated to the community
- and that mechanisms to then change the law are embedded within the Act

Later I will also be proposing that it be mandated that Councils have to demonstrate transparency and accountability and communicate how well they have responded to matters of arbitration.

Management

Significant change is required in respect of management style and structure. Specifically change is required in evaluating the performance and the accountability of both senior public officers and councillors and in how their performance is transparently communicated to the community. I suggest the following mechanisms.

State Legal Counsel. I suggest the State appoints qualified and sufficiently experienced lawyers to perform these above evaluative roles in each Council. As such these individuals would enjoy complete independence from Councils and would be paid by the State applying a levy from each Council sufficient to cover salary, support services and staff.

Annual Performance Review. Each Council would be subject to an annual performance review. The performance of all staff at director level plus the CEO would be reviewed. The team conducting the evaluation would include State Legal Counsel as chair, CEO (when the CEO was not the individual being evaluated), two elected members of the local community and one co-opted director from a different community. Attending the review would be the director of the area to which the review related. The team would be empowered to make decisions on final warnings and redundancy as well as remuneration. A similar process would be undertaken for councillors, the team consisting of State Legal Counsel as chair, Mayor (where the Mayor was not the individual being evaluated), two elected members of the local community and one co-opted councillor from a neighbouring community. The councillor concerned would also be in attendance. Of particular focus in both these reviews should be input from the community in which feedback is obtained as to the degree of satisfaction obtained from their interactions with the public – let's call this a 'Community Response Satisfaction Survey' (CRSS). For both groups (directors and councillors) the review team would be required to publish the outcome of these reviews in a suitably appropriate but detailed manner to the local community. See effective section below.

Appeals Tribunal. There is a real need to have an independent tribunal that has the power to overturn poor decisions taken by Councils. Such decisions would set precedent law for future similar cases. The team conducting the evaluation would include State Legal Counsel as chair, CEO, two elected members of the local community and one co-opted director from a different community.

Attending the appeal would be the director of the area to which the appeal related plus individual staff from that area connected with the appeal as well as any councillor involved.

Review of Councillor role and powers. Councillors are paid for the work they do and so should be subject to the same level of expectation in performance as directors (whether it be private or public) and indeed the rest of society. Leaving it to the next election is simply not good enough. Having said that, I have formed the impression, as stated earlier, that to some degree their hands are tied through outdated legislation which is impossible to change in real time and Councils who, in my view, have spent decades building 'administrative defence walls' to limit the ability of Councillors to make changes. So often the role of the Councillor boils down to hand holding and for passing the problem to the appropriate department and then bearing the responsibility for communicating the bad news back to the ratepayer. Clearly the role needs to be restructured so that the Councillor, where the cause is valid (for example in the case of the anaphylactic shock ratepayer), can actively and positively take the part of the ratepayer. I recommend a restructuring of the role and responsibilities of Councillors so that the above can take place. This will also require that the process of Council business needs to be rethought and redefined by examining the proportion of time councillors spend on value added activity from a community perspective so that Councillors are left with more time and powers to directly assist the ratepayer. This recommendation needs some detailed work perhaps through a focus group to identify how this would work in practice.

Effective

The above framework will only work if KPIs are used that measure community satisfaction and that these KPIs are a centrepiece of the Reviews. One can envisage using Likert scales or numeric scales (e.g. satisfaction out of 10) as mechanisms for starting these discussions, especially if each major area, say Parking for example, is subclassified into suitable components. In addition, comparison statistics e.g. comparison to previous years, comparison to other Councils and so on, would also form part of the basic set of statistics used in Reviews. A Balanced Scorecard approach may prove effective here. Another source of useful information 'for discussion' at Performance Reviews would be tabulations of the outcomes of the Appeals Tribunal. Such performance (and exception) reporting is standard practice elsewhere in all good businesses so I won't waste any more time here, except to reiterate that the 'report card' must go to the public.

Ongoing

The existing system of writing an Act and then leaving that Act as an essentially static entity for decades with only a slow, cumbersome process for changing is a contributory cause to the problems with Councils and must be changed to be more dynamic. This can be addressed by having a clear demarcation between principles in the Act which cannot and must not be violated and what may be termed 'local rules' which can be used to overcome clear oversights and miscarriages in the Act.

Culture

In the earlier examples we saw what I consider is poor behaviour of a Council in its dealings with the community. Behaviour betrays attitude and attitude betrays culture. So how best to measure culture?; indeed can it be measured and can it be changed? This was addressed under management, yet a real 'honest' change in culture and approachability seems to me to be the single best measure that ratepayers want to see in respect of addressing community concerns, so this should be an ongoing measure in the CRSS e.g. by asking the Community 'out of 10 how do you rate the culture in the Council?'.

Governance

In an important sense everything discussed so far have been facets of governance. Governance is about bringing together a coordinated set of management practices that in a mutually supportive way serve to meet the strategic direction of an organisation. So rather than seeing the above components as separate the point about governance is that components need to be harmonious and synergistic with respect to each and build on each other so that the overall goal is achieved.

However, there remain a few loose ends which have not been covered.

State wide strategic review. In the section entitled 'ongoing ' above there was a distinction made between principles in the Act which were non-negotiable and local rules. One likely consequence of this across WA is that it could or would lead to disparities and inequities between Councils. So there would also need to be a system for consolidating these local rules where appropriate taking account of the differing natures of Councils and the communities they serve. This could be done at the State level say bi-annually or tri-annually by bringing together the members (i.e. the lawyers and support staff) of the State Legal Counsel for this task.

E-governance. Much of the discussion above relates the management and legal aspects of governance 'for the 21st Century' with relatively little attention paid to how information technology could support and indeed empower cultural change. Yet, without information technology how can Councils be nimble and economic especially in respect of their obligations to transparency, accountability and responsiveness to the needs and wants of the people they are there to serve? While there will inevitably always be a tail end of the community that will choose not (or not be able) to use technology, the vast majority have already moved to heavy reliance on technology and this will only continue.

- One obvious example of good e-governance practice that would be well received by the community is that all reporting of Annual Performance Reviews (Directors and Councillors) and Appeals Tribunals (redacted where necessary) should be online. Clearly, the use of information technology affords many possible solutions here, too many to elucidate here. However, by way of illustration three further suggestions (e-resources if you will) are provided:
- Create the ability for members of the community to create an e-forum relating to a specific topic of concern e.g. trees. At the moment, Councils I believe are deliberately using a 'divide and conquer' approach that keeps ratepayers out of touch with other ratepayers concerning a specific topic (e.g. issues with trees). The act of creating this facility via the Council website would be a demonstration of its commitment to openness and transparency and go a long way to dispelling negative views held by many in the community. Of course, some degree of forum moderation would be necessary.
- Create an e-petition system that allows members of the local community to create a petition topic online and inform others in the community who have opted in to this to join and contribute. Once the details of the petition are clear and once a previously agreed number of ratepayers have 'signed' the petition it would then be referred to the Council for deliberation. I believe Stirling has already done this. Anyway, it should be obligatory for all Councils not least those that are rural.
- The best way to formulate an e-governance strategy that will complement the Governance framework is possibly to workshop it. While this may have been done based on the current

modus operandi, what I am saying is that any future e-governance strategy needs to be community, transparency and accountability focussed as discussed above. Ideas globally, ideas from different business sectors should be considered – there is a lot happening in this space if the WA Government is willing to embrace this. But importantly, the overriding consideration must be that e-governance should be ongoing in the sense of being awake to adding new e-resources to support transparent and accountable governance.

In summary, I have put forward a cohesive case for more accountable oversight by the community of local government in the 21st century. A critical mass of the above will be required in order to effect real and lasting change for the community.

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