

Local Government Act Review

Submission on Stage 2

Introduction

The stated objective the Local Government Act Review is for Western Australia to have a new, modern Local Government Act that empowers local governments to better deliver quality governance and services to their communities now and into the future.

The vision is for local governments to be agile, smart and inclusive.

This submission has largely been constructed around the topics of the discussion papers released for Stage 2 of the Local Government Act Review, preceded by comments on the scope of the review and the proper role of local government. It does not deal specifically with each and every topic, but focuses on those the author regards as most important.

The Need For And Process Of Review

It is nearly 25 years since the *Local Government Act, 1995*, became law. It clearly makes sense for such an Act to be reviewed after such a period of time, especially when it originally represented a very substantial change from the previous legislation and model of local government.

However, neither the discussion papers nor any other documentation relating to the Review clearly defines problems that the Review is intended to address. Instead, they set out a broad vision for local government without providing a context for assessing whether proposed reforms would improve the performance of local government. This is particularly pertinent in the case of the pro-forma surveys attached to each of the detailed discussion papers, which ask for simplistic responses (eg 'Yes', 'No', 'Unsure') to a series of questions without adequate (or, in many cases, any) supporting information.

There is a fundamental problem with the Review, in that it launched straight into solutions and proposals without identifying the nature and extent of real and perceived problems, other than those 'known' to the designers of the Review but unstated in the Review documents.

The surveys and the workshops being held contemporaneously with the written submission period should have been held prior to (and assisting in) the preparation of the discussion papers, in order to define the parameters of the Review.

General Principles

Beyond the details addressed in this submission under the main discussion paper headings, there are some key strategic issues that are important to address:

- **The *Local Government Act* must support and facilitate local governments in working for their communities by minimising restrictive regulation whilst ensuring that actions and activities primarily benefit those communities and do not create responsibilities or incentives that conflict with the primary responsibility of local governments to residents and ratepayers of their districts. This would be assisted by inclusion in the *Act* of a clear statement of the role and responsibilities of local governments.**

Somewhat strangely, the *Local Government Act, 1995*, does not specify the role or objectives of local governments, although it does, for example, set out the roles and function of elected members. It is not unreasonable to take it as implied that the role of local government is primarily to serve the needs of the 'people of the district', but this is not clear and, in its absence, there is sometimes a perceived need to restrict the activities of local governments by regulation.

- **The *Local Government Act* must not restrict or prevent local governments from raising rate or other revenue sufficient to meet the costs of services it provides, whether these be prescribed by legislation, imposed (or increased) by administrative action of another body (cost-shifting) or at the behest of the communities they serve.**

Cost-shifting (through transfer of responsibilities, mainly from State to local governments but also Federal to local) without funding¹ directly affects the ability of local governments to provide services to their communities. It can also be the case that local government responsibilities effectively change because another level of government fails to or ceases to provide services inline with community expectations.

As the WA Local Government Association has stated:

With the withdrawal or insufficient levels of State Government services, Local Governments are also increasingly funding health, education, social and medical services within their communities...including schools chaplaincy programs, CCTV and graffiti management, mosquito control and drug and alcohol education programs.

Whilst these examples demonstrate the growing role – and associated costs – for Local Government in activities previously undertaken by the State, the list is certainly not exhaustive...other examples include coastal management, waste, housing and citizenship.²

In addition, *apparent* cost-shifting (eg collection of the FESA levy through local government rates notices) creates the false appearance of local government inefficiency and ‘charging’ the community too much, especially when the amount is increased for reasons that local government has no ability to influence.

Even in the absence of cost-shifting or other changes imposed by state or federal legislation, changes in circumstances and the differing situations of individual local governments will require that those local governments have the ability to adjust rates, fees and charges to meet changing circumstances and changes in the expectations of their communities.

Restrictions (such as rate-capping), other than those inherent in the democratic process, have been shown (eg in NSW) to adversely affect services that can be provided by local governments and to have unforeseen and unforeseeable consequences in the reduction or cessation of some such services.³

- **The *Local Government Act* must facilitate, and not restrict or impede, local governments’ performing their roles under other legislation.**

The discussion papers focus on the direct responsibilities of local governments under the *Local Government Act, 1995*, but local governments have responsibilities that go beyond those established by the *Local Government Act*. The most substantial of these responsibilities are under:

- The *Planning and Development Act, 2005*, which is currently under review;

¹ See, eg, *Western Australian Local Government Association Submission House of Representatives Standing Committee on Health and Ageing Inquiry into Health Funding* (file://localhost/Users/ianker/Downloads/http_www.aphref.aph.gov.au_house_committee_haa_.healthfunding_subs_sub034.pdf) and *Rates and Taxes - a fair share for responsible local government*, https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=efpa/localgovt/report.htm (esp, Chapter 3)

² WA Local Government Association. *Cost Shifting 2017*. <https://walgga.asn.au/getattachment/News,-Events-and-Publications/Publications/Western-Councillor/WAL6367-WC-Aug-Sep-2017-WEB.pdf>. See attachment A for full document.

³ Ironically, rate-capping established by the NSW Government was a major factor in the poor viability of many local governments that was a substantial driver of that same government’s push to forcibly amalgamate local governments. As in WA, the attempt to forcibly amalgamate local governments was fiercely resisted by many, which has resulted in an inconsistent approach to local government structure and continuing pressure to de-amalgamate some councils.

- The *Public Health Act, 2016*, and the supporting *Public Health (Consequential Provisions) Act, 2016*⁴; and
- The *Main Roads Act, 1930*.

Changes in responsibilities and functions, including decision-making powers, under other legislation can have a significant effect on both the resources required for local governments to operate effectively and efficiently and, importantly, on the community's perception of how well a local government is performing.

Most significantly, changes to (mainly reduction of) local government planning and development decision-making powers, with the establishment of Development Assessment Panels has both increased the resources required by local governments and led to community confusion and concern (even anger), much of which has been directed (rightly or wrongly) towards local governments.

Proposed Reforms 1: Beneficial Enterprises

The local government sector has been requesting that it be given additional powers to form independent corporations. These entities could be used to manage part of a local government's existing business activity or pursue new commercial opportunities.

Somewhat strangely, the *Local Government Act, 1995*, does not specify the role or objectives of local governments, but it is not unreasonable to take it as implied that the role of local government is primarily to serve the needs of the 'people of the district'.

At the time of the passing of the 1995 *Act*, one of the most significant changes was said to be that from 'ultra vires' legislation, under which local governments could only do what the *Act* specifically empowered them to do, to 'presumed competence' model, under which local governments would be able to do anything they were not specifically prohibited from doing by the *Act* or, more generally, by any other state or federal legislation.

To this end, section 2.5 of the 1995 *Act* created local governments as 'body corporate' with the legal capacity of a 'natural person'.

- 2.5. Local governments created as bodies corporate**
- (1) When an area of the State becomes a district, a local government is established for the district.
 - (2) The local government is a body corporate with perpetual succession and a common seal.
 - (3) The local government has the legal capacity of a natural person.

A natural or legal person may make binding amendments to their rights, duties and obligations, including entering into contracts and establishing business arrangements, unless the law bars a person from entering into such arrangements. It is not clear, therefore, what the impediments are to local governments' establishing enterprises of various kinds.

⁴ "Local government continues to have a crucial role in being the lead enforcement agency responsible for managing public health matters at a localised level under the new Public Health Act, including:

- Matters related to the built environment (asbestos, public buildings, cooling towers)
- Body art and personal appearance services (tattoo parlours, body piercers and beauty therapists)
- Events and mass gatherings (concerts, festivals and other community events)
- Pest and vector control (mosquito management, rodents, midgies and other vectors)
- Water quality and wastewater issues (septics, recreational waters, aquatic facilities) and
- Emergency management (cyclones, bushfires, contamination)"

(Public Health Act 2016 Handbook: A resource to support local government authorised officers.

https://ww2.health.wa.gov.au/~media/Files/Corporate/general_documents/Public_Health_Act/Handbook/PHA-Handbook-for-LG.pdf)

However, without any clear and legally-binding statement in the *Act* of the role and responsibilities of local governments, the 'presumed competence' model inevitably leads to uncertainty about what local governments may actually do (and how they may do it) and, in the event of over-reaching, to ad-hoc restrictions on the presumed competence powers. This approach is not conducive to effective governance.

Whether or not local governments currently have the power to form independent corporations or other entities, their functions under the *Local Government Act* and other legislation must remain their primary focus. Any change to allow additional forms of organisation must not create responsibilities or incentives that conflict with the primary responsibility of local governments to residents and ratepayers of their districts.

The *Local Government Act* should include a clear statement of the role and responsibilities of local governments to provide context for the 'presumed competence' model of governance.

Proposed Reforms 2: Financial Management

No comments as part of this submission.

Proposed Reforms 3: Rates, Fees and Charges

A key issue for local governments is the difficulty of raising sufficient revenue from rates to deliver the services they are required by law to provide or which their communities increasingly demand. This is particularly the case when local government responsibilities change – either because of statutory/regulatory change by another level of government, or because that other level of government fails to provide services inline with community expectations.

With the withdrawal or insufficient levels of State Government services, Local Governments are also increasingly funding health, education, social and medical services within their communities. Some examples of services now funded by Local Governments include school chaplaincy programs; CCTV and graffiti management; mosquito control; Aboriginal health, and drug and alcohol education programs.

Government Rate Exemptions

Local governments do not obtain rate revenue from State-government-owned properties, unless those properties are leased to non-government commercial organisations. The extent of this burden is unequally shared by local governments, depending on the location of those organisations.

In some cases, eg schools, the organisation is providing a service to local communities. In others, the service is statewide or regional in nature (including, for example, the Department of Education (as distinct from individual schools)) or commercial or pseudo-commercial (such as the Public Transport Authority).

With regard to commercial/pseudo-commercial enterprises, the then WA Government established 'Tax Equivalent Regimes' in the 1990s, in part to 'level the playing field' between public and private organisations. It would be logical to extend this to the payment of local government rates, with the money paid direct to local governments as is the case with private-sector owners of property.

In the case of non-commercial government organisations, the issue is less one of competitive neutrality and more one of inequitable burden of costs; such organisations are not equally dispersed across the metropolitan area or the state.

All state government commercial enterprises and organisations that do not primarily have a local function should be required to pay rates to the local government in which they are located.

Periodic Revaluations

The Discussion Paper discusses issues of differential rating but does not address the issue of how land is valued for rating purposes nor, in particular, how changes in valuations are translated into the local government's rate in the dollar and the actual amount an individual property-owner has to pay.

Periodic, municipality-wide, revaluations of properties do not, themselves, have any impact on either the amount of revenue a local government needs to raise from rates or the ability of the business and residential communities to pay the required amounts. They do, however, potentially alter the incidence of rates; properties that increase in value by more than the average pay more while those that decrease in value (or increase by less than average) pay less.

In some cases, an increase in value is due to improvements to or redevelopment of the property. In such cases, the reason for the increase in rates payable is self-evident and easy to explain.

In most cases, however, changes to the amounts due from individual property owners are due to variations in the revaluation percentages across a local government. Valuations are made by the WA Valuer-General, with little or no transparency, every three years, for metropolitan local governments, and periodically for non-metropolitan ones. Over a three-year period, especially for a large local government, there can be large variations, which, in turn, result in an equally large range of changes in the amount of rates payable on individual properties.

A sudden increase in the amount payable in rates is particularly problematic for older people, who can be 'asset-rich', simply because of where they live and have lived for a long time, but 'income-poor'.

Changes in property valuation for rating purposes, where not resulting from modifications to the property itself, should be phased-in over the period between revaluations.

State Government and Rates

The discussion paper mentions the requirement for local governments to seek Ministerial approval for differential rates more than twice the lowest rate it charges. It suggests that this is one reason why WA does not have rate-capping or other similar state government interventions into local government rates. The logic of this argument is not clear, as rate-capping is generally applied to total rate revenue or the rate in the dollar, not to differentials in rates within a local government.

As previously noted in this submission, the cost of services provided by local governments is affected by both cost-shifting and changes in community expectations and the effect of these will vary from one local government to another. Any across-the-board specification of maximum rate rises, therefore, runs the risk of penalising those communities where the need for increased resources is greatest.

Similarly, restrictions imposed at any point in time will penalize those local governments that have already undertaken actions to improve efficiency and reduce costs relative to those that have yet to do so and, therefore, have greater capacity to reduce costs, rather than reduce services, in response to restrictions on rate revenue.

The *Local Government Act* must not restrict or prevent local governments from raising rate or other revenue sufficient to meet the costs of services it provides, whether these be prescribed by legislation, imposed (or increased) by administrative action of another body (cost-shifting) or at the behest of the communities they serve.

Proposed Reforms 4: Administrative Efficiencies and Local Laws

It is not clear why 'administrative efficiencies' and 'local laws' have been grouped together (indeed, there are two separate discussion papers). However, no comments are made as part of this submission.

Proposed Reforms 5: Council Meetings

Public Question and Statement Time

The discussion paper notes the extent to which requirements relating to public question and statement times may vary between local governments. There may be good reasons for this, including, for example, that large local governments generally have to deal with a larger amount of business at Council meetings with, presumably, a correspondingly larger number of interested people wanting to seek information or to make a statement on or to clarify an item currently being considered by Council.

The discussion paper makes a number of suggestions for managing public question time, but many of these (eg prior notice, maximum period for questions) run into the problem of arbitrarily curtailing community input to and oversight of council processes.

Prior notice requirements, in particular, because of the short period between the agenda becoming available and the meeting itself, is likely to disadvantage those who wish to address matters of fact, argument or interpretation in a report to be considered by the Council at that meeting. More particularly, they preclude rebuttal of matters raised in questions, statements or Administration responses to them – although there is, admittedly, a line to be drawn here between rebuttal of erroneous information and holding a debate in the public gallery.

I do not support measures that arbitrarily limit public questions at Council meetings. In particular, requiring prior notice of questions (or statements) is unfair to those who become aware of a matter being considered by Council too close to a Council meeting.

All questioners or makers of statements should be able to present in person and not have the Administration read the question or statement. This is particularly important where the person might wish to add or delete material depending on what has been said previously by others.

It would be appropriate, however, to limit questions or statement to matters that are actually for consideration and decision at the specific meeting, provided that there are other equivalent and effective means (eg with similar reach – all elected members, the public and the media) for raising questions or making statements on any other matters relating to the local government and Council.

Different Means of Asking Questions (or Making Statements)

Two of the key benefits of asking a question or making a statement at a Council meeting are:

- It puts the question (and answer, whether oral at the meeting or in writing at a subsequent meeting) or statement into the public domain; and
- It places the same information before all elected members who will be making the decision.

With regard to the 'public domain' issue, there would be value in providing an alternative mechanism, such as a 'question and answer' page on the local government's website. This would also assist those who are unable to attend council meetings in person.

The 'same-information' issue is somewhat more difficult to address, as there are few opportunities, other than email, to address all elected members with exactly the same information. Even email does not ensure that elected members have taken the time actually to read it.

Any alternative means of asking questions or making statements must have similar reach (ie all elected members, the public and the media) to raising them at Council meetings. One possibility is the use of local government websites for Q & A forums, to which elected members must be subscribed and the public and media can also subscribe.

Voting at Council Meetings: Mayoral/President's Vote(s)

Voting in Council Meetings is not raised by the discussion paper, but can be an important to both the reality and the perception of the local government decision-making process.

In some Councils, the Presiding Member has both a deliberative and, in the event of an equality of votes for and against, a casting vote. This is not unreasonable, whether the Mayor/President is elected by Council or by the community at large.

In the former case, denying a deliberative vote to the Mayor/President would reduce the representation of the ward that member represents.

In the latter case, the interests of the community as a whole, as reflected through the electoral process, may differ in some respects from the sum of their component parts (wards).

The issue of a casting vote should, however, be viewed through a different lens.

Arguably, since local governments in Western Australia exist in the context of a Westminster style of government, the conventions of that system should be followed.

Whilst the Standing Orders of the WA Legislative Assembly⁵ do not set out how the Speaker shall use their casting vote, the Australian House of Representatives clearly sets out the convention for a casting vote:

- The Speaker should always vote for further discussion, where this is possible;
- Where no further discussion is possible, decisions should not be taken except by a majority; and
- A casting vote on an amendment to a bill should leave the bill in its existing form.⁶

In my 14 years as an elected councilor for the, then, Town of Vincent, it was effectively standard practice for the Mayor to cast his casting vote the same as his deliberative vote. In some instances, this would meet the criterion of allowing further discussion, but in the majority of cases this actually prevented further discussion.

The Presiding Member of Council should have a deliberative vote, the same as other elected members, but in exercising a casting vote, in the event of an equality of votes for and against, the Presiding Member should follow the Westminster convention.

Proposed Reforms 6: Interventions

No comments as part of this submission

Proposed Reforms 7: Community Engagement and Integrated Planning and Reporting

It is not clear why 'community engagement' and 'integrated planning and reporting' have been grouped together (indeed, there are two separate discussion papers). However, no comments are made as part of this submission.

⁵ Standing Orders of the Legislative Assembly of the Parliament of Western Australia. As amended on 30 November 2017. [http://www.parliament.wa.gov.au/WebCMS/WebCMS.nsf/resources/file-assembly-standing-orders/\\$file/Assembly_Standing_Orders_25012018.pdf](http://www.parliament.wa.gov.au/WebCMS/WebCMS.nsf/resources/file-assembly-standing-orders/$file/Assembly_Standing_Orders_25012018.pdf)

⁶ House of Representatives: Powers, Practice and Procedure (7th Edition) http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter6/The_Speaker,_Deputy_Speakers_and_officers

Proposed Reforms 8: Complaints Management

The discussion paper on 'Complaints Management' fails to identify the problem for which a solution is being sought – more specifically, it fails to establish the scale and significance of any problem that might exist.

It also fails to state that, in addition to the WA Ombudsman, there is also a Local Government Standards Panel, established under the *Local Government Act, 1995*. The Standards Panel's function is to receive and deal with complaints, made by any person, of alleged breaches by a council member of any rule of conduct in the Regulations or a provision of a local government's local law relating to conduct of council members at council or committee meetings.⁷

In broad terms:

- The Ombudsman deals with complaints about administrative actions or lack of actions by local governments; and
- The Local Government Standards Panel deals with complaints about the governance of local councils, in particular the behaviour of individual elected members.

It is clearly desirable that local governments act in such a way as to minimise the incidence of formal complaints, and to that extent, the discussion paper's suggestions about clarity of how problems will be addressed, before they become formal complaints, are supported. However, it is by no means clear that it would be in anyone's interest for formal complaints to be dealt with by the local government itself.

The Ombudsman

The Ombudsman comes into play only when a complaint cannot be resolved between the complainant and the local government itself. This, itself, is a function of several factors, including:

- The extent of actions or decisions causing dissatisfaction with the local government;
- The extent to which those aggrieved feel able to complain to the local government itself;
- The perceived and actual ability of local governments to deal with complaints adequately.

The Victorian Ombudsman is currently examining how local government handles, resolves and records complaints from the public following advice on complaints handling released in 2015⁸. Rather than risk reinventing the wheel, the Government should liaise with the Victorian Ombudsman on the question of complaints management.

The Local Government Standards Panel

With regard to the Local Government Standards Panel, there is a tendency to sensationalise. For example, the *West Australian*, in reporting on the 2017-18 Annual Report of the Panel focussed on the **increase** in complaints rather than the overall picture.⁹

The substance, however, provides a rather less dramatic picture.

Overall, there were fewer than six complaints per ten councils and less than one-third of those determined were upheld. That's less than one upheld complaint for every five councils in WA over the whole year.

⁷ *Annual Report of the Local Government Standards Panel, 2017-18*.
[http://www.parliament.wa.gov.au/publications/tables/papers_nsf/displaypaper/4011623a58e1eb7c0c121e964825830500335e4b/\\$file/1623.pdf](http://www.parliament.wa.gov.au/publications/tables/papers_nsf/displaypaper/4011623a58e1eb7c0c121e964825830500335e4b/$file/1623.pdf)

⁸ <https://www.governmentnews.com.au/ombudsman-to-probe-council-complaints>

⁹ 'Councillors face complaints surge', *West Australian*, 14 September, 2018.

For metropolitan councils, if we exclude Melville, which accounted for over a quarter of metropolitan complaints, there was less than one complaint per council.

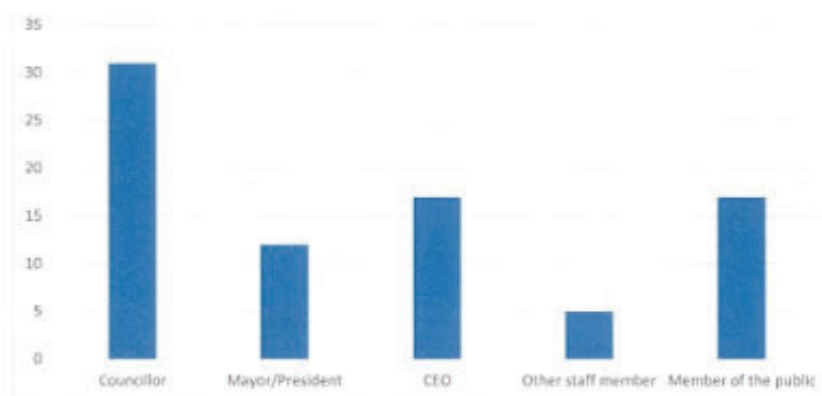
For non-metropolitan councils, if we exclude Port Hedland, which accounted for nearly 20% of regional complaints, there was one complaint for every three councils.

These rates are hardly evidence of a systemic problem. Indeed, it could be argued that were the rates any lower it would be evidence that people didn't care sufficiently about local government or that there were substantial barriers to individuals' registering a complaint. If anything, these rates are a strong suggestion that Melville and Port Hedland should be looked at much more closely for issues specific to them.

Even a 44% increase in such a small number is evidence of the axiom that "100% of very little is still very little" (usually expressed more bluntly than that) rather than anything else. There is not even any mention (nor was there in the LGSP report) of whether the 21 findings that a breach occurred was an increase on previous years, although this is surely a more important measure than the simple increase in the number of complaints.

Most important of all, the report (not to mention WALGA's reported response) ignores the fact only 17 of 82 complaints (just one per eight councils) came from the communities local councils serve.

Chart 3: Source of complaints to the Standards Panel



Source: Local Government Standards Panel Annual Report 2017-18

The small number of formal complaints to the Local Government Standards Panel, especially from members of the public, does not suggest the existence of a major problem between local councils and their communities, unless it can be shown that the process of lodging a complaint is itself too daunting or is seen as being unfairly weighted in favour of local governments. Most complaints to the Panel are, in effect, dealing with matters internal to an individual local government and might best be dealt with by mediation.

The large proportion of complaints represented by two local governments suggests that an early-identification process for such local governments would be a more productive approach than after-the-event intervention.

Between Governance and Administration: A Grey Area

The roles of the Ombudsman and the Local Government Standards Panel leave one area uncovered – that is matters relating to the local government Administration's interpretation and application of Council policies.

It is by no means uncommon for elected members who were involved in and responsible for the development of Council policies to be surprised, often unpleasantly, by Administration interpretation

and application of those policies in specific instances, whether in recommendations to Council (which elected members do at least see and have the opportunity to correct) or in actions taken by the Administration, including under specifically-delegated authority.¹⁰ In the latter case, elected members often only become aware of the issue through its physical manifestations or when an individual complains about what has been done – and it is often too late for any remedial action to be taken.

For matters to be determined by elected Council, individual elected members can, at least, draw attention to the errors and move to have a matter deferred for further consideration. In other cases, however, neither elected members nor aggrieved members of the community have any avenue for rectification. This is particularly so for development approvals based on erroneous interpretation of planning policies, where there is currently no avenue for third-party appeals and none is envisaged by the recent Green Paper on the Review of the WA Planning System.

Planning and development approvals raise many of the same issues, at various levels of the process, of consistency of decisions with adopted plans and policies.

Whilst it is acknowledged that development approvals and related matters do not come under the *Local Government Act*, **the current review of the *Local Government Act* should pay specific attention to improving consistency between decision-making, which often does not have specific community input, and adopted policies and plans, which are required to be developed in consultation with the community.**

Proposed Reforms 9: Elections

Elections are a fundamental part of local democracy. Local government draws its legitimacy through elections. Elections provide a direct voice for the community and provide the primary means of holding local government accountable.

Detailed Discussion Paper: Elections

Voting Method: Councillors

First Past The Post (FPTP) voting is simple, easily-understandable and provides clear-cut results with a minimum of difficulty. Unfortunately, it fails to achieve the fundamental objective of ensuring that decisions are made by a representative body that reflects the interests and views of the community.

With, say, four candidates, you can be elected with less than 30% of the votes even if the other three candidates all actively oppose your platform. With typical low voter turnout, even with postal voting, that's less than 10% of electors, with twice that number opposing you and around three-quarters of the electorate expressing no opinion.

It can be argued that, with the preference system there is a greater propensity to game the system, ie a candidate runs to win but gets several other people (say, a senior, a woman & a young person) to run dead, but still soak up some votes and direct preferences to the candidate. Whether or not this has actually happened, it is even easier with FPTP. A person simply puts up dummy candidates claiming to have similar platforms to his/her opposing candidates and splits his/her opposition's vote; this doesn't even have to rely on the uncertainties of preferences.

FPTP is, in fact, a misnomer, as there is no 'winning post' – the winning candidate can be elected with substantially less than fifty percent of the votes cast, with the required proportion depending primarily on the number of candidates standing for each position. Whilst the discussion paper does draw attention to the potential for a winning candidate to be elected with a low proportion of the total votes, it omits to raise significant implications of this:

¹⁰ Based on the experience of over 14 years as an elected councillor for the then Town of Vincent.

- Where two (or more) opposing views are represented, the votes for the majority view may be split among more candidates than the minority view with the largest single vote being recorded by a candidate representing the minority view.
- Given the situation above, the potential exists for dummy or diversionary candidates, notionally espousing the majority view, to stand simply to split the vote for that majority view. A similar situation potentially exists with optional preferential voting.

Optional preferential voting does not necessarily overcome these concerns, as voters might vote only for one of the 'majority-view' candidates and the total preferences will not represent the true view of the community.

In analytical terms, optional preferential voting effectively assumes that voters are indifferent between all those candidates for who they do not express a preference, but this is highly unlikely to be the case – simply that those candidates do not meet the threshold for the voter to 'support' them.

The method of election for local councils should be changed from First Past The Post to Full Preferential.

Voting Method: Mayors and Presidents

At present, Councils may choose whether to have their Mayor/President elected by Councillors from among their own number or by the community as a whole.

Mayors/Presidents should reflect the overall interests of the community, without regard to factions that might exist on the elected Council. This can be difficult to achieve, especially for local governments with substantial divergences of history, demographics, economic situation or other interests.

Election by Council of one of their number runs the risk of one ward being in some way preferenced, if its representative is also the leader of the Council. In addition, because the Mayor/President is reliant on the support of a majority of Councillors, there may be a perception (or reality) of factionalism that would potentially undermine confidence in the Council and its decisions.

The fairest means of ensuring that the leader (Mayor or President) of a Council not only reflects the interests and views of the community as a whole but, importantly, is not in any way beholden to any group or faction of elected Councillors, is for election to be by the whole community.

When Should Elections Be Held?

Few elected members will have been in the position of having a totally new Council – and some of those who have been will have been so as a result of returning democratic elections to a local government where the previous Council has been sacked or suspended.

In 1995, I was elected to the inaugural Town of Vincent Council. The Council consisted of a Mayor and two councilors with experience of the previous City of Perth and six newcomers (myself included) with no direct experience of local government (other than, in my case, 6 months employment in a lowly clerical position in a newly-created London Borough in 1965).

There was a tough period for the first couple of years as we all came to grips with the newly-created Town of Vincent and, more importantly:

- What local government can and can't do;
- Plans and policies inherited from the City of Perth and the rationale for them; and
- The respective roles of Elected Council and the Town's Administration.

In this situation, where the majority of elected members have a steep learning curve to follow, there is a huge burden on the few elected members with experience and also on the Administration. There is also a large potential for decisions to be made, by Council or by Administration, that conflict with the rationale for or even the letter of plans and policies, as many of those who adopted those plans and policies are no longer able to articulate it (see 'Between Governance and Administration: A Grey Area', above).

Whilst some of the issues could be addressed by training for new elected members, much is specific to an individual local government.

The risk of this situation's occurring is best minimised by continuing the current practice of electing half the Council every two years, so that no more than half the elected councillors and, every second election, the Mayor/President can be new at any one time.

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ECONOMIC UPDATE

COST SHIFTING 2017

In recent weeks, there has been considerable public debate around the State's financial position, as Treasurer Ben Wyatt handed down his first budget in the face of multi-billion dollar debt and deficits.

In trying to balance the books, the Treasurer is clearly frustrated that the State is being short changed as a result of a Commonwealth process in the GST distribution. The 'unfairness' of the process has meant that it is not just a topic for discussion at COAG, but one which has resonated with the public for many years now.

While Western Australians are well aware of the impact that the Commonwealth Grants Commission process is having on the state's budget, many probably don't realise that Local Governments are also coming under financial pressure as a result of decisions by other levels of Government.

While reductions in grant funding from both the Commonwealth and the State have created revenue challenges for Councils, one of the key issues plaguing the sector is cost shifting.

Amidst growing concerns from the sector about this issue, WALGA recently undertook a survey to identify where cost shifting is occurring, and to quantify the impact on Council budgets.

The results showed that the most common area where the State Government is passing costs onto Local Government is in relation to emergency management. This issue was identified by a third of respondents, particularly Councils in the regions and on the periphery of the metropolitan area.

The biggest cost impost in emergency management related to functions under the Bushfires Act 1964, such as bushfire brigades, prevention and preparedness activities. Although Councils receive funding from the Emergency Services Levy (ESL) through the Local Government Grants Scheme to undertake these activities, this is often insufficient to cover costs. Respondents to the survey reported that additional spending to support bushfire activities ranged from \$5,000 to as high as \$1.1 million per annum, and was directed towards activities such as issuing burning permits, and administration support for bushfire brigades.

The collection of the ESL on behalf of the State Government is also an issue for many Councils. This activity distorts the bottom line on the council rate notice and creates suspicion in the minds of ratepayers who aren't aware that it is a State Government tax. It also generates a significant cost impost. Although the State Government provides an administration fee to cover the cost of these activities, this has not changed for a number of years, and in many cases is leaving Local Governments out of pocket.

Planning and building activities were also an area of concern for Local Governments across the state. Local Governments have been absorbing the significant costs associated with their functions

under the Planning and Development Act 2005, by virtue of the State's failure to index planning fees and charges since 2013. Respondents to the survey indicated that the gap ranged from \$5,000 to \$1.8 million each year.

The sector also faces a shortfall in cost recovery for functions under the Building Act 2011, with respondents reporting an impact of \$2,000 to \$700,000 on their annual budget. On top of this, Councils are required to collect the Building Services Levy and Building and Construction Industry Training Fund Levy on behalf of the State Government, which is reported to come at a net cost of between \$1,000 and \$35,000 per annum.

Animal management is also a common area where costs are being shifted to Local Governments due to restrictions on fees and charges and the withdrawal of the State Government from some service areas.

Around a quarter of respondents to the survey indicated that statutory registration fees and fines for cats and dogs failed to cover the associated management costs. This is adding between \$20,000 and \$1.2 million to Councils' budgets.

Cost shifting isn't just an issue for the management of domestic pets, with many regional Councils taking on responsibility for controlling of wild animals. These biosecurity management and enforcement activities that were previously undertaken by the Department of Agriculture and Food are costing individual Local Governments tens of thousands of dollars per year. These types of activities can include capture and control of feral animals such as foxes, wild dogs, pest birds and rabbits, in addition to weeds.

With the withdrawal or insufficient levels of State Government services, Local Governments are also increasingly funding health, education, social and medical services within their communities. Some examples of services now funded by Local Governments include school chaplaincy programs; CCTV and graffiti management; mosquito control; Aboriginal health, and drug and alcohol education programs.

While these examples demonstrate the growing role – and associated costs – for Local Government in activities previously undertaken by the State, the list is certainly not exhaustive. The survey results revealed a range of areas where Councils are bearing the brunt of cost shifting, with other examples including coastal management; waste; housing; and citizenship.

As Treasurer Wyatt continues with the difficult task of restoring the budget, it is critical that the Government finds genuine savings, rather than shifting costs to other sectors. Local Governments simply cannot absorb additional spending responsibilities without access to an appropriate source of funding.

WALGA will continue to work with the State Government to protect the sectors' financial position and ensure that budgets at all levels of Government are set with the community's best interests front and centre.

About the Author

The author of this submission is a retired transport planner with 50 years experience, mainly in urban transport and specifically in Perth, and has been an elected local government Councillor.

During his time, at the WA Department of Transport (1987-2001), he had team leadership and primary responsibility for:

- *Perth Metropolitan Region Bikeplan* (1985).
- *Transporting Perth into the 21st Century* (1992) – Report of the Transport Strategy Committee on Future Perth.
- *Western Australian Joint Agency Submission to the Industry Commission Inquiry into Urban Transport* (1993) – Department of Transport, Main Roads, Transperth, and Department of Planning and Urban Development.
- *Perth Metropolitan Transport Strategy* (1995) – Department of Transport, Main Roads, Ministry for Planning, Westrail, Metrobus, and Fremantle Port Authority.
- *Going Out and Getting There: Action Plan for Accessible Public Transport in Perth* (1996) – Department of Transport
- *Bike Ahead: Bicycle Strategy for the 21st Century* (1996) – Department of Transport.
- *Perth Bicycle Network Plan* (1996) – Department of Transport.
- *TravelSmart* (1997-2001) – Department of Transport.

During his time at the DoT, he advised the Director General of Transport in his role as a member of the WA Planning Commission and deputized for him on a number of occasions. He was the DoT representative on:

- *The Steering Committee for the Road Reserves Review* (1991)
- *The Advisory Group for the Burswood Bridge and Road City ByPass and Access Study* (1993)

As a consultant (2001-2016), he was responsible for or a substantial contributor to:

- *A Guide to the External Costs of Transport* (2003) – for the WA Department for Planning and Infrastructure.
- *Bus-Bike Interaction Within the Road Network* (2004) – for Austroads.
- *Easy Steps: A toolkit for planning, designing and promoting safe walking* (2005) – for Queensland Transport.
- *Minimising Pedestrian-Cyclist Conflicts on Paths* (2006) – for Australian Bicycle Council and Austroads.
- *Cycling: Getting Australia Moving: Barriers, facilitators and interventions to get more Australians physically active through cycling* (2008) - for Australian Department of Health and Ageing
- *Cost and Health Benefit of Active Transport in Queensland*. FOR Health Promotion Queensland.
- *Guidelines for Preparation of Integrated Transport Plans* (2012) – for the WA Planning Commission;

He was also an elected Councillor for the Town (now City) of Vincent, from its creation in 1995 to 2009. This period saw:

- The adoption of a new Town Planning Scheme.
- Development of planning and other policies appropriate to the needs of the Vincent community to replace those inherited from the City of Perth.
- Establishment of a Municipal Heritage Inventory.
- Establishment of precinct groups and advisory groups to facilitate involvement of the community in matters affecting Vincent.