

Submission on Western Australian Local Government Act 1995 Review, phase 2

Submission Format

This submission will be based on the key topics of *General Competency, Agile, Smart & Inclusive*, as set out in the **Discussion Paper**, with an additional section related to issues not discussed in the Paper. Each section concludes with dot-point summaries of topics covered for legibility.

General Competency

Support: Principles of *General Competency*. These should be captured in an evidence-based legislative framework. Due to the very diverse nature of Local Government in Western Australia this framework should include a Size and Scale Compliance regime.

The General Competency principles are important in acknowledging the breadth of skills, commitment and experience embedded in Local Government, and in so doing will foster community confidence in ‘their Council’.

The submitter was a member of the *Expert Forum on Constitutional Recognition for Local Government* (Canberra August 2008). One of the themes being, that for Local Government to flourish as a credible tier of Australia’s governance it must be treated with the same respect as State and Federal Governments. This is hard to achieve whilst Local Government is considered “a creature of the state”.

Local Government ought be subject to an efficient compliance regime; which should engender confidence and competency in the sector, allowing Local Government to legislate autonomous decisions of an operational nature, without State Government or Ministerial approval. This would continue the devolution of control from State to Local Government embedded in the 1995 Act.

Metropolitan and Rural Local Governments are different organisations, with very different needs and operational structures. There ought be statutory recognition for this in any new Local Government Act.

Support: WALGA's concept of de-cluttering;

Instead of an overregulated framework, the sector has called for principles around effective governance, rather than restrictive regulation that bogs down Local Governments in administrative bureaucracy.

Support:

- 1. The principles of *General Competency*.**
- 2. Devolution of power from State Government to Local Government.**
- 3. The Concept of De-cluttering.**

Requirement for:

- 1. Statutory recognition of differences between Rural and Metropolitan Local Governments.**

Agile

Support: Local Governments being able to enter into forming ***Beneficial Enterprises***, generally based on the New Zealand model.

Support: An increase in the tender threshold to align with the State Government tender threshold (\$250 000).

Support: Amendment to regulation 30(3) of the Local Government Act 1995, to delete any financial threshold limitation (currently \$75,000) on a disposition where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a *trade-in* activity.

Support: Review to remove the fees and charges from section 6.16 of the Local Government Act 1995, and allow Council to be empowered to set fees and charges for Local Government services that are commensurate with providing such services to the community.

Support: Deletion of Section 6.20(2) of the Local Government Act 1995. Deletion of this Section (which requires Local Governments give notice of proposals to borrow, amounts not included, in the Annual Budget, but do not require the consideration of submissions received) will *Reduce Red Tape*.

Support: Review of Section 6.28 of the Local Government Act 1995 to examine the limitations of the current methods of valuation of land, *Gross Rental Value* or *Unimproved Value*, and explore other alternatives. Unimproved land has a negative impact on Local Government capacity to plan the Urban Form; and inhibits the application of ***Directions 2031***.

Support: Amendment of Section 6.28 of the Local Government Act 1995 to enable *Differential Rating* based on the time land remains undeveloped.

Some Local Governments (Fremantle included) are severely restricted in their provision of services to their communities due to significant numbers of organisations and industries being exempt from paying Rates. These provisions are historical in nature and some no longer appropriate for the contemporary situation.

Submitter requests: A broad review be conducted into the rationale for, and fairness of all *Rating Exemption* categories currently prescribed under Section 6.26 of the Local Government Act 1995. Where it is decided not to levy Rates directly on Exempt property/organisations a form of Rates Equivalency Payments ought be considered. Particular attention being paid to:

- Independent living units operated in an open market.
- Property owned or operated by Religious organisations, in particular when the subject property allows the religious organisation to compete in the marketplace for provision of goods and services.
- Property owned or operated by Educational institutions, in particular when the educational usage is operated on a fee for service basis.
- Government trading entities that operate in the market place. Eg LandCorp, Port Operations and Power, Water and Sewerage Utilities.

Support: Amendment of Section 6.56 of the Local Government Act 1995 to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to the 'cost of proceedings'.

Support:

- 1. Beneficial Enterprises**
- 2. Increased Tender Threshold**
- 3. Amendment to Reg. 30(3); relating to removal of thresholds on disposition of property**
- 4. Removal of Fees & Charges from S. 6.16; allowing LG to determine their own Fees & Charges**
- 5. Deletion of S. 6.20(2); will reduce red tape**
- 6. Review of land valuation, other than GRV or UV**
- 7. Amendment of S. 6.28; relating to differential rating on unimproved land**
- 8. Complete review of S. 6.26; relating to uses that exempt rates being levied**
- 9. Amendment to S. 6.56; related to debt recovery costs**

Smart

Local Governments in Western Australia vary markedly in size, capacity and service aspirations. A *one-size-fits-all* approach will foster compromises that serves nobody well. The Act ought engage with Local Governments based on their different sizes and capacities.

Local Laws need to strike a balance between consistency across the sector and individual Community needs. An *Appendix* to the Act could include a suit of Local Laws covering issues frequently addressed by the Sector. These templates could have a *Fast-Track Approval* regime; those Local Governments wishing to tailor Local Laws to their individual needs could still have an opportunity to go through a full approval process. It is noted that some Local Laws adopted by Local Governments lead to considerations of those issues by the State Government. An example is *Short Stay Accommodation*, where Local Governments have used Local Laws to regulate this industry; now the State Government has released a Discussion

Paper on the topic. Other Local Laws, such as for *Dog Control* would be best served by consistent legislation across the sector. These initiatives will *Reduce Red Tape*.

Support: Combining Local Government Grants Commission and Advisory Board.

Support: Amendment to Schedule 2.1 of the Local Government Act 1995 so that the electors of a Local Government affected by any boundary change or amalgamation proposal are entitled to petition the Minister for a *Binding Poll*.

Support: Continuation of devolution of control of the State over Local Government, initiated in the 1995 Act.

Support: Section 3.53 of the Local Government Act 1995 being *Repealed*, and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.

Support: Retention of Absolute Majority Decisions in certain situations. Also support a review of when that requirement ought be imposed. This is because there are instances when a higher bar is necessary for good governance; take BREXIT in the UK as an example.

Support: Amendment of Schedule 2.1 Clause 2(1)(d) so that the prescribed number of Electors required to put forward a proposal to LG Advisory Board for change be increased from 250 (or 10% of electors) to 500 (or 10% of electors) whichever is fewer.

Communities vary as much as Local Governments do as such *Meeting Procedures* and management of *Public Question Time* need to be tailored for different Local Governments.

Support: Autonomy of individual Local Governments in managing those issues within a broader framework that engages the community in Civic matters.

Managing Elected Member (EM) Interests is a 'wicked problem', there seems to be no jurisdiction that has the ideal solution. In the submitters' experience some EM's seem unclear as to their responsibilities regarding Impartiality Interests and regrettably defer to advice from

the CEO. Yet only the EM truly knows if they can, or cannot bring impartiality to the debate, and this cannot be legislated. Good training would assist EMs understand their responsibilities in this regard. In terms of legislation, WA needs to avoid the Queensland model that apparently allows an EM with a Direct Pecuniary Interest to debate and vote on Development Applications. These matters are further complicated by Common Law obligations requiring EMs to be present and vote, conflicting with Local Government Act regulations on Interests. This dichotomy requires addressing.

Annual Meetings of Electors ought be at individual Local Government's discretion. Provisions for Annual Meetings of Electors ought **Remain**, but **Not** mandated.

Support: The numbers of constituents able to request a Special Council meeting ought be raised from 100 (5%) to 500 (5%). The advent of social media makes achieving petition numbers easier, sometimes without any commitment (or understanding) from the signer.

Not support: Amending Reg. 11 to require information in a meeting agenda to be repeated in the minutes of that meeting. This should be at the discretion of individual Local Governments.

Support: Amendments that clarify rules concerning *Rescission of a Determination*, do not apply if that decision has been implemented.

Support: Amendment to Local Government (Administration) Regulations to allow attendance at meetings via technology from locations determined by individual Councils.

Support: An agreement between State and Local Government to facilitate the transfer of accrued leave entitlements for staff between the two sectors of Government. Removing impediments for Local Government to develop a skilled workforce is important to the sector.

Support: Amending Section 9.13 of the Act to introduce a definition for *Responsible Person* to enable Local Governments to administer and apply effective provisions associated with vehicle related offences.

Support:

- 1. Regulations that acknowledge the different sizes and capacities of Local Government across the State**
- 2. Streamlining Local Laws to give consistency across the sector, while allowing Local Governments the ability to tailor their own Local Laws**
- 3. Amalgamation of LG Grants Commission and LG advisory Board**
- 4. Amendments to Schedule 2.1; to allow Boundary Change Poll**
- 5. The devolution of control of State over Local Government**
- 6. Repeal of S. 3.53; regarding returning facilities on Crown Land**
- 7. Retention and Review of Absolute Majority provisions**
- 8. Amendment to S. 2.1 Clause 2(1)(d), relating to application for changes lodged with LG Advisory Board**
- 9. Autonomy of each LG in matters of Meeting Procedures and Question Time**
- 10. Addressing conflict between Common Law obligation to Vote and LG Act Responsibilities to leave the Chamber when An Interest is declared**
- 11. The status quo with regard to interests, backed up by appropriate training of members**
- 12. Annual Meetings of Electors ought be a matter for individual Local Governments to decide**
- 13. Number of signatures to initiate a Special Council Meeting ought be raised from 100 (5%) to 500 (5%)**
- 14. Clarification that Rescission motions cannot apply when the Adopted motion has been implemented**
- 15. E-attendance at Council Meetings at each Local Government's discretion**
- 16. An agreement between State and Local Government to facilitate transfer of accrued leave entitlements**
- 17. Amending Section 9.13; regarding introduction of a definition for Responsible Person in regard to motor vehicle offences**

Do Not Support:

- 1. Amending Regulation 11 to require information presented in a Council or Committee Agenda be included in the Minutes of that Meeting**

Inclusive

It is important Local Governments work with their communities in a collaborative way. Unfortunately the media seems to only report on conflict, which puts the sector in a poor light. Clear and simple communications between Local Governments and their communities are essential for good governance.

Support: Integrated Planning and Reporting (IPR).

Support: Participatory Budgeting. This is a fundamental way communities can achieve a meaningful input into Local Government operations whilst experiencing the complexities of bringing down a responsible Budget.

Support: A grant for Local Governments wishing to achieve Participatory Budgeting.

Support Amendments to legislation allowing Local Governments to declare a person as vexatious or frivolous complainant, incorporating the following points:

- a. Create a head of power to determine whether a community member is vexatious (potentially establish a new body through legislation and give it this power of determination);
- b. Define vexatious behaviour broadly to include the extent and nature of communication between the alleged vexatious person and the Local Government (using words such as 'unreasonable', 'persistent', 'extensive', 'malicious' and 'abusive');
- c. Outline the restrictions to statutory rights, which can be imposed on a person if he or she is declared by the independent body to be vexatious;
- d. Establish a process, if necessary, to enable a Local Government to present its case for the alleged.

Support: A Local Government Act amendment to allow the Australian Electoral Commission (AEC) and/or any other approved third party provider to conduct Postal Elections.

Support: Voting in Local Government Elections being **Preferential** and **Compulsory**, to align Local Government with Australia's other two tiers of Government.

Support: Western Australian Local Government Association (WALGA) investigating secure *On-Line Voting* methods.

Support: Councils retaining decision on how their Mayor or President will be elected.

Support: Amendment to the **Local Government Act** requiring Elected Members take leave of absence when contesting State or Federal Elections.

Support:

1. IPR
2. **State funded Participatory Budgeting**
3. **An amendment to nominate a complainant as vexatious or frivolous**
4. **Allowing approved 3rd party provider to run Postal Elections**
5. **Compulsory and Preferential Voting in Local Government Elections**
6. **WALGA investigations into On-Line Voting**
7. **Individual Councils deciding on method for Election of Mayor or President**
8. **Amendment requiring Elected Members take leave of absence when contesting State or Federal elections.**

Additional Issues for Consideration

This process is referred to in the Local Government industry as the phase-2 review of the Local Government Act 1995, however the Department refers to it as developing a **new Local Government Act 2021**. This definition is important, because if the outcome is to be a **New Act**, rather than an **Amended Act** then greater opportunities become available for drafting an **Act**. If this were the case it would be a once in a generation opportunity to modernise the format of the Act to be more suitable for our contemporary communities. Such an Act ought be much simpler in format and limited to not-negotiable directions on how Local Government is to perform its duties. An example is the *Occupation Health and Safety Act 1984*, which has only 61 Sections despite its huge area of responsibility. This is achieved by relying on a comprehensive regime of **Regulations**.

Local Government receives only 2% of Funds collected by all tiers of Government in Australia, whilst “Vertical-Cost-Shifting” is still prevalent. Local Government has the skills and understanding to deliver services to the Australian Community, and is capable of accepting the increased responsibility, but it is severely constrained by lack of available funds. Local Government is poised to do more work in more areas, but needs a systemic review of its funding stream to do this. A more efficient revenue stream to Local Government from Federal government would assist in this issue. State Government needs to be the initiator of any such changes.

Local Government has been a leader in providing and facilitating sustainable communities. Reducing *Regulations* that thwarts this work will allow Council’s to work more effectively with their community. One initiative used elsewhere in Australia allows Councils to fund *Photo Voltaic Cells* and associated Batteries, recouping the costs through a *Special Rates* provision.

Suggest: Amendment to S.54 of the Local Government (Financial Management) Regulations 1996 to include “renewable energy infrastructure” (or similar) as a *Prescribed Service Charge*, under section 6.38(1) of the Act, to allow Local Governments to fund sustainable environmentally complementary initiatives on privately owned property.

The issue of Compulsory training has been discussed across the sector. The democratic process could be put at risk by this concept, if it results in legally elected persons not being allowed to sit in the Chamber. However some form of training is very desirable, WALGA provide a selection of training options that should be encouraged. There ought be a real incentive to undertake a Minimum amount of training once elected.

Suggest: Members Allowance to be pegged at amounts commensurate with the amount of training undertaken. The current practice of awarding Councillors an Allowance ought be amended to consider it a Wage or Salary. This way Superannuation will become part of the total package. Remuneration should vary according to definable attributes a Councillor brings to their role, such as experience, training and willingness to engage in Council issues such as Committees and Workshops.

Support: The new **Act** ought focus on *enabling* the Local Government sector, rather than applying a rule based regime.

Support: Better integration of the **Local Government Act 2021** with other **Acts** and **Regulations** that the sector is subject to; eg *Planning and Development Act, Health Act or Environmental Act*. There ought be a *plug-in* for those when considered in the context of the **Local Government Act**.

A new **Local Government Act 2021** needs to create connections to the State. Local Government needs to have *joined-up* relations with the State Government.

There ought to be mechanisms for **Traditional Owners** to have input into Local Government operations and decisions.

Suggest:

1. **A simpler and approachable Act supported by Regulations**
2. **Local Government increasing its role in providing for the community, facilitated by Review of the funding streams from the other 2 tiers of Government**
3. **Amendment to S.54 to allow Local Governments to apply a Special Rate to recoup investment on Photo Voltaic infrastructure on private property**
4. **Mechanisms to strongly encourage Elected Member Training**
5. **The new Act should be designed to enable the Local Government sector**
6. **Allowances should be changed to become a Salary**
7. **Any new Local Government Act requires better integration with existing Acts that Local Governments work under**
8. **A need for joined-up relations between Local Governments and State legislature**
9. **A formal mechanism for Traditional Owners Voice into Local Government**

Conclusions

Western Australian Local Government has proved itself to be a competent, innovative and reliable tier of Government. It has learned to do more with less, due to vertical-cost-shifting increasing their workload, with little commensurate change in funding streams.

In the experience of the submitter the Local Government sector in Western Australia has led in a variety of fields, including Climate Change, Town and City Planning and Transport/Transit infrastructure Planning. These initiatives have been delivered in light of only 2% of the National *Tax-take* going to Local Governments.

Local Government in Western Australia is poised to deliver very real services and benefits to the people of Western Australia, because, being close to our communities, Local Government knows what is needed, wanted and expected. Significant factors holding the sector back are restrictive legislation and insufficient funding. Reducing Red Tape, and extending the General Competency provisions of the current **Local Government Act 1995** to achieve sector autonomy will remove constraints preventing Local Government from achieving it's potential. Commensurate to that is provision of adequate funding to enable Local Governments to provide the services and infrastructure their communities demand. The most efficient way of delivering services is by the tier of Government closest to the recipient communities, in so many cases that is **Local Government**.

Whether the new **Act 2021** is built from the bottom up, or culminates in an **Amendment** to the **1995 Act** the authors of the **Local Government Act 2021** ought endeavour to create a simplified, plain language document which sets out clear principles of Governance at the Local Government level, and relies then upon Regulations and Policies to provide guidance.

The submitter welcomes this *once in a generation* opportunity to develop a new Local Government Act, and the ability to have meaningful input into the final product. I'm sure the Western Australian Community, both rural and metropolitan, will greatly appreciate what the new Act will offer for improved processes of efficient service and infrastructure delivery.