

Department of Local Government, Sport and Cultural Industries

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

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This submission is in response to a request by the department for community consultation as part of a general review of the *Local Government Act 1995* (WA) (LGA) of 4 October 2018, for the community of Carnarvon. In addition to the above positions I served as a councillor on the council of the Shire of Carnarvon from October 2013 – October 2015.

I propose:

As to qualifications for holding office on the council (Div 5); Division 5 prescribes certain qualifications and conditions of disqualification of persons to serve on council.

- **Limitation of consecutive terms.** While no limitation to the number of terms a parliamentarian may serve in Australia's federal and state parliaments, it has become evident that serving excessive consecutive terms has led to the concept of 'professional parliamentarians'.

In some cases parliamentarians have served around 30 years. That has left them open to accusations of being portrayed as elitist and out of touch. There is no doubt they become very practiced and apt at parliamentary processes and procedures. Indeed many have become senior appointments such as Prime Ministers and Premiers. Unfortunately those very people have had the greatest criticisms of being 'out of touch' leveled at them.

Detailed philosophical debate as to the value of long-term, professional parliamentarians is beyond the scope of this submission, however at a local government level is the focus on 'professionalism of processes and procedures' a more dominant characteristic than 'being in touch'?

The arguably most dominant representative position in the World – the President of the United States of America is limited to two consecutive terms. A great number of public company boards also seek to maximize director skills, qualifications and representation by limiting the number of consecutive terms a director may stand for re-election.

Given that a primary intent of the LGA is to have 'greater community participation in the decisions and affairs of local governments;' (s 1(2) (b)) it is proposed that a limitation of two consecutive terms be placed on councillors seeking re-election to local councils under the LGA.

- **Limitation of age.** While discrimination of any kind on the employment of persons generally is an anathema to modern Australian society. Compulsory retirement ages have been removed for all occupations with few exceptions:
 - Judges over the age of 70 years cannot be appointed to Australian courts (s 72 of *The Constitution*, though there is no limit to them remaining in office after attaining that age while serving; and
 - Members of the Australian Defence Forces.

Local councils have three general and reasonably broad functions:

Legislative – to make local laws;

Executive – to perform the same functions as State Cabinet does for the state at a district level; and

Quasi-judicial – to make determinations such as building and planning approvals for land development.

It is the third factor that this proposal focuses on. While individual differences will influence the effectiveness of age on a person's capability to judge impartially and effectively, it appears that at a state and federal level a person cannot be appointed a judge over the age of 70, but at a local level a person could be appointed to make judgements at age 90, if elected as a local councillor.

To correct the discrepancy it is proposed that, subject to the proposal above, a person be disqualified from seeking election or re-election to the post of councillor once she/he has attained the age of 70 years.

Currently, that provides an outcome of a person being a councillor at the age of 74. **There remains a degree of discrimination however, as the retirement age for members of the Defence Force provides for exceptions in individual circumstances, similar exceptions could be provided for councillors who have reached the age of 74 to seek re-election.**

- **Reinstatement of a preferential voting system**

Schedule 4.1 of the LGA prescribes the election of candidates to be determined by a simple majority. While at first blush this method appears fair and reasonable. The person with the greatest support from electors is appointed to represent them.

In the case of two candidates, that result means that the candidate with the higher number of votes has the support of more than half of the voters. That premise is found entirely throughout the LGA as a reference to 50 per cent plus one is termed in many sections of the Act, except in some circumstances where a majority of 75 per cent is called for.

The same system is prescribed where there are multiple vacancies and multiple candidates. In that case the three highest votes from four or more candidates are elected, and so forth.

The system appears reasonable, simple and effective. However it may not be truly reflective of the overall support of electors. In the case where four candidates were to contest one vacancy then the candidate with highest number of votes may not, in fact enjoy the majority support of electors.

An example:

Total population of valid votes for four candidates: 1000

Candidate A 350 (35%)

Candidate B 300 (30%)

Candidate C 200 (20%)

Candidate D 150 (15%)

Under the current provisions Candidate A is elected with a mere 35 per cent of the total votes. That is a long way from a majority support.

It may be that the voters who preferred Candidates C and D in the first instance may in fact prefer Candidate B. In that case Candidate B would enjoy an overwhelming majority support of 65 per cent, compared to the candidate elected under the current system.

Both Federal and State Parliaments are elected on a preferential voting basis to avoid that situation from arising. In Australia a combined ballot paper listing the order of preference was introduced to replace common alternatives such as multiple preliminary elections, or 'run-offs' as occurs in many other nations. Previous local government elections were held using the preferential voting system.

There is no certainty, other than where only two candidates nominate, that the elected councillor enjoys the majority support of electors. Further, the system may well discourage other candidates who wish to have the majority view demonstrated from nominating. Alternatively it may encourage unscrupulous candidates, with limited support and virtually no chance of being elected, to nominate purely to reduce the number of votes required by their preferred candidate to succeed.

This proposal suggests a restoration of the preferential voting system for local government elections.

- **Introduction of compulsory voting in local government elections**

A media release by the Western Australian Electoral Commission in 2017 stated:

Interest in Local Government elections in WA appears to be undergoing a resurgence of interest, judging by the increased participation rate in Saturday's Local Government elections.

The WAEC conducted elections for 89 of the State's local councils, with an overall participation rate of approximately 34.5%.

"While I would like to see the rate go up even more, this is a pleasing increase on recent elections," Electoral Commissioner, David Kerslake said.

The overall participation rate at the last Local Government elections in 2015 was 27.5%.

"Local Governments continue to play a very important role and it is great to see more electors getting out to have their say in who governs their local community," Mr Kerslake said.

Voter turnout was even higher in most of the mayoral elections conducted by the Commission, with councils such as Cottesloe, Claremont, Fremantle, Mosman Park and Subiaco all recording above 40%.

The Shires of Mount Marshall and Victoria Plains (West Ward) achieved the highest turnout rates, with both recording 81%.

Media Release Date

Monday, 23 October, 2017

While the range achieved an acceptable level of 81 per cent compared to that participation rate at the state election in the same year, 2017, the modal average is less than half that at 34.5 per cent.

Statistically, it is possible that the electoral result for the whole of the electorate may change little from a larger sample. However if data from the example illustrated above is applied to the average participation rate of 34.5 per cent as published by the WA Electoral Commission then the elected Candidate A would represent a mere 12 per cent of voters, or 350 voters out of a possible population of nearly 3000.

The optional participation system, coupled with the 'first-passed-the-post' counting system does not instill confidence that the elected councilors truly reflect community views.

It is proposed that a compulsory voting system in line with state and federal election rules is implemented for local council elections in WA.