

LG Act - LG Professionals WA Proposed Submission

Section of Legislation	Title	Policy Change	Rationale for Change
2.4A	New Provision - Differentiating Between Local Governments	Insert a new provision to differentiate between local governments based on capacity. The State Administrative Tribunal Banding model is an illustration of potential grouping for local governments.	This will reduce the compliance burden on smaller local governments with limited capacity and provide additional opportunities for local governments with capacity.
2.11	Method to Elect Mayor / President	Delete the poll provisions in relation to changing the method of election of the Mayor/President. Local Governments should determine this outcome.	This will deliver consistency in the approach to change.
2.22	Disqualification Because of Convictions	Add a section which disqualifies a person if they have been convicted of an offence against the Planning and Development Act, or the Building Act, in the preceding five years.	A planning or building system conviction is potentially more serious than a Local Government Act conviction because of local government's prominent role in planning and building control and the significant personal benefits which can be illegally gained through these systems. It may also be appropriate to include breaches of other legislation.
3.12	Procedure for Making Local Laws	Eliminate the requirement to consult on model Local Laws.	Models are approved for sector wide use.
3.16	Periodic Review of Local Laws	Eliminate the periodic review requirement for model Local Laws.	Models are approved for sector wide use. They should be reviewed frequently by the body making the model with advice provided regularly to all local governments.
3.50B	New Provision - Full Closure of Bridge and Roads for Repairs	Allow a bridge and roads to be fully closed for urgent repairs and maintenance without notice, even if it will have significant adverse effects on users.	The closure of a bridge and road will often have significant adverse effects on users. However, bridges may need to be fully closed for urgent repairs if there is a sign of weakness and, currently, the Act does not provide capacity to take this action without giving local public notice if the closure will be greater than four weeks.
3.51	Notification of Affected Owners	Section 3.51 of the Local Government Act 1995 concerning "Affected owners to be notified of certain proposals" should be amended to specify that only significant, defined categories of proposed road works require local public notice under Section 3.51 (3) (a).	To provide clarity and efficiency.
3.53	Control of Certain Unvested Facilities	That Section 3.53 be repealed and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.	To reflect the State's ownership of this land.
3.60	No Capacity to Form Body Corporates	Allow local governments with capacity to form bodies corporate (Council controlled organisations) for particular commercial activities.	Follows the New Zealand approach and enables local governments to undertake key place making activities more efficiently and effectively.

3.66	Regional Local Governments	Reduce compliance burden on regional local governments in parallel with the proposal to differentiate between local governments.	To improve the efficiency of regional local governments; in particular those undertaking limited functions.
4.20 (4) 4.61 (4)	CEO to be the Returning Officer Unless Other Arrangements Made	Allow the Commonwealth Electoral Commission or any other body competent in conducting elections to be responsible for conducting an election and, in particular, a postal election.	To enable competition and competitive efficiencies to be achieved.
4.61 (1)	Methods of Conducting an Election	Allow people to vote online if they so choose.	To reflect the use of modern technology and to increase voter turnout. Online voting should only be introduced in a technological environment which ensures the secrecy of the vote and which minimises the potential for fraudulent activity. Online voting should be offered as an additional method of voting; not as a complete replacement for postal voting.
4.88 (1)(b)	Electoral Offence: Misleading, False or Defamatory Statements	Explore the potential of making it an offence for a person to make or publish false or defamatory statements about official acts undertaken by an elected member seeking re-election during the conduct of an election campaign.	It is already an offence to make or publish false or defamatory statements in relation to personal character or conduct. It is considered appropriate that this principle carries through to false or defamatory statements about official conduct.
5.24B	New Provision – Vexatious People and Complaints	Insert a new provision to specifically allow a local government to declare a member of the public and their complaints vexatious. Such a declaration would prevent that person from speaking at either Council meetings or electors meetings, allow a local government to file, but not respond, to correspondence from the person, and refuse to answer phone calls.	Local governments have no explicit statutory power to prevent a member of the public from bullying, abusing or harassment, particularly when speaking at meetings. The Ombudsman has produced guidelines for dealing with vexatious people and local governments should be specifically empowered by law to declare people vexatious (which would prevent them from speaking at meetings) if the principles within this guideline are followed. Here it is noted that the State Government recently gave the Standards Panel the power to decide that people were being vexatious.
5.27	Electors' General Meetings	Remove the requirements to have Electors' General Meetings	To improve local government efficiency. The public now has numerous ways in which to engage with Councils, including special electors' meetings, and the need for annual meetings, which are often attended by a paltry number of people, is redundant.
5.28 (1)	Electors' Special Meetings	Increase the number of people required to convene a special electors' meeting.	It is too easy to gain 100 signatures to convene special electors' meetings in large local governments. This also does not correspond with the scalability needed for local governments of different sizes. To achieve this policy change the number required to call a meeting could be increased from 100 to 500 or, 10% of total number of electors, whichever is less.
5.28 (2)	Electors' Special Meetings	Limit the number of special electors' meetings which can be held on the same matter. Once a matter has been discussed at a special electors' meeting, the same matter, or a very similar matter, should not be able to be discussed at another special electors' meeting for 12 months unless Council determines otherwise.	This allows people to have their say but prohibits people unreasonably calling special electors' meetings on issues already determined.

5.36A + B	New Provision - Public Sector Commission / Local Government Commissioner Role	<p>Insert a new section which would require the Public Sector Commission to expand its role or an introduction of a Local Government Commissioner to take on a guidance and support role to independently assist local government with CEO recruitment and performance reviews, with Council still being primarily responsible.</p> <p>That, in circumstances where the CEO reports an Elected Member to either the CCC, the Standards Panel or any other regulatory or investigative body, the CEO or Mayor/President can request an independent commissioner become the final decision maker in terms of the CEO's performance review or contract renewal for a period of five years.</p>	<p>CEO recruitment and performance review would benefit from the guidance and support of an independent authority.</p> <p>When a CEO reports an Elected Member or Members, those reported will form an opinion about the CEO which will bias future decision making on the performance of the CEO. To eliminate this bias, an independent authority should become the final decision maker in terms of the CEO's performance and contract renewal.</p>
5.90B New Training Provision	New Provision - training budget and plan for officers	Require each local government to have a training budget and plan for professional development for officers.	This will facilitate capacity building within the sector.
6.14	Power to Invest	Allow local governments with capacity to invest in accordance with the Trustees Act in the manner that existed prior to the Global Financial Crisis.	<p>The Global Financial Crisis was a once in a generation experience (1987 and 1929 were the two previous financial crashes of extreme magnitude). Legislation should not be based on a worst case scenario but on a routine and general operating environment.</p> <p>Prior to the Global Financial Crisis, the previous legislation was adequately controlling local government investments.</p>
6.16 (2)(b) ( e )	Imposition of Fees and Charges	<p>Many local governments will supply small consumer items at a variety of facilities, for example leisure centres and theatres. These include selling theatre tickets, supplying food and drink at venues. Non-metropolitan local governments also set rents for staff housing, etc.</p> <p>It is impractical to require local governments to establish fees at the start of the year for these items which respond to consumer demand in a commercial environment.</p> <p>The legislation for fees and charges, including all consumable small goods and leisure centre fees, need to be agile and flexible for local government to make changes throughout the year.</p>	Allow local governments to set and amend fees and charges for small scale goods, leisure centre fees and services and the rental of staff housing outside of the current requirements of the Act.
6.20 (2)	Power to Borrow	That Section 6.20(2) of the Local Government Act, requiring one month's public notice of the intent to borrow, be deleted.	This is particularly pertinent for small local governments needing funds for crisis recovery. The one month requirements in emergency situations is not practical and does not allow for an agile approach.
6.26 (2)	Rateable Land	Introduce a requirement for State Government trading enterprises, including the Housing Authority, to pay rates on their commercial land rather than making rate equivalent payments to the State Government.	It is inappropriate for State Government trading enterprises to pay rate equivalents to the State Government when it is local government which constructs the local roads used by these enterprises and which collects the rubbish generated.

6.26 (2)	Rateable Land	Require resource projects which are covered by State Agreement Acts to pay local government rates where possible.	It is inappropriate for the State Government to waive local government rates when negotiating State agreements.
6.26 (2)(g)	Rateable Land	Amend to provide clear descriptions of what is charitable, for example exclude independent living units for seniors from being a charitable purpose for which a rate exemption can be claimed.	Independent living units are generally provided at market rates so there is no charity for the user. This outcome was acknowledged in a State Government report about a decade ago. Better clarification of what is charitable purposes would also provide consistent treatments of various entities across local governments.
6.28 6.33(1)	Basis for Rates and Differential General Rates	Enable differential rating based on the time land remains vacant.  In addition, once the differential rate has been granted by the Minister, the decision should remain for the subsequent years unless there are significant changes to the valuation.	While local governments can introduce a differential rate for vacant land, this rate applies to all vacant land. It is appropriate to differentiate between land held vacant for long periods for speculative or hoarding purposes and land which is vacant on a short term, interim basis. It would be up to a local government to determine the number of years which would divide one category from the other.  For efficiency purposes, instead of an annual approval process, once the differential rate has been granted by the Minister, the decision should remain for the subsequent years unless there are significant changes to the valuation.
6.41	Service of Rate Notice	Amend the provisions around the service of rate notices to allow for electronic delivery of notices where a ratepayer's electronic address is known.	The Act was developed in an era when the internet hardly existed. Electronic communications are now commonplace and used for significant financial transactions.
6.41 6.45(1)	Options for Payment of Rates	Amend to reduce prescription and increase flexibility in relation to rate payment options.	Follows the New Zealand approach and enables local governments to undertake key place making activities more
6.56	Recovery of Rates in Court	Amend 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 'cost of proceedings'.	To improve operational effectiveness.
Schedule 2.1 2(1)(d)	Creating, Changing and Abolishing Districts	Increase the number of electors required to put forward a proposal for boundary change from 250 to 500. Alternatively, apply a scalability approach here again.	The current number is considered too small and does not take into account the varying different sizes of local governments.
Schedule 2.2 2.3(1)(a)	Provisions About Wards	Increase the number of electors required to put forward a proposal for ward change from 250 to 500. Alternatively, apply a scalability approach here again.	The current number is considered too small and does not take into account the varying different sizes of local governments.
<b>Administration Regulations - LG Professionals WA Proposed Submission</b>			
Section of Regulations	Title	Policy Change	Rationale for Change
10	Revoking or Changing Decisions	Amend Regulation 10 to assist clarifying the rights of a Councillor to seek a revocation or change. Particularly amend to reflect situations where part of a multiple part motion has not been completed.	Regulation 10 provides a mechanism for the revocation or change to a previous decision of Council. It does not however, contain any provision clarifying that the provisions do not apply to Council decisions that have already been implemented. This regulatory deficiency is currently managed administratively, but warrants an appropriate amendment to assist clarify the rights of a Councillor to seek a revocation or change.

19B	Payment to Employee in Addition to Contract or Award	Amend to state that the number of positions within the salary band should be identified, rather than the number of employees entitled to the salary.  In addition, increase the \$100,000 to an amount which reflects inflation since the value was initially legislated. Further, increase the amount in future years in line with salary increases determined by the Salaries and Allowances Tribunal.	This reflects the fact that it is important to identify the positions paid over \$100,000 rather than the number of employees that fill the positions.  Further, inflation is devaluating the \$100,000 amount each year.
<b>Financial Management Regulations - LG Professionals WA Proposed Submission</b>			
Section of Regulations	Title	Policy Change	Rationale for Change
4	Exempt from AASB 124	That Regulation 4 of the Local Government (Financial Management) Regulations be amended to provide an exemption from the application of AASB 124 'Related Party Transactions' of the Australian Accounting Standards (AAS).	Local government legislation provides adequate transparency.
<b>Functions and General Regulations - LG Professionals WA Proposed Submission</b>			
Section of Regulations	Title	Policy Change	Rationale for Change
4A	Regional Price Preference (RPP)	Add clarification that regional local government can apply their RPP's policy to all purchases, including those under the tender threshold.	Clarity required and to provide consistency.
11 (1)	Tender Threshold	Increase the tender threshold to align with the State Government tender threshold (\$250,000). Further clarity is also required on whether the threshold applies to total project cost, and the implications on rolling contracts where the annual cost is under the threshold.	Increasing the tender threshold improves local government efficiency and aligns to State agency requirements.
30 (3)	Disposition of Property	That Regulation 30(3) be amended 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.	To improve local government efficiency and operational effectiveness.
<b>Long Service Leave Regulations - LG Professionals WA Proposed Submission</b>			
Section of Regulations	Title	Policy Change	Rationale for Change
7 (1)(d)	Taking Leave	Amend so that employees can take long service leave in more than three separate periods.	To reflect contemporary practice, allow employees to take their long service leave in more than three separate periods, subject to the agreement of the employer.
<b>Regional Subsidiary Regulations - LG Professionals WA Proposed Submission</b>			
Section of Regulations	Title	Policy Change	Rationale for Change
8	No Capacity to Undertake Trading Undertaking or Land Transaction	Remove the restrictions on land transactions and commencing a trading undertaking.	A regional subsidiary should be able to acquire land in its own rights (such as land for a waste transfer station) and conduct a commercial enterprise (such as the sale of goods received at the transfer station).
11	Power to Borrow	Remove the restriction on borrowing.	A regional subsidiary should be able to borrow money in its own right