

Kenneth Parker

Department of Local Government, Sport and Cultural Industries

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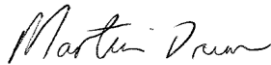
Dear Mr Parker

Re: review of Western Australia's *Local Government Act 1995*.

I write to you in response to your invitation to make a contribution to the review of Western Australia's *Local Government Act 1995*. My contribution principally focuses on the "inclusive" theme within the review, although I have commented on several aspects of the "smart" theme also. I hope that my participation assists the review in determining its findings.

Please note that this submission is written in my own capacity and not on behalf of the University of Notre Dame Australia.

Yours Sincerely



Associate Professor Martin Drum

University of Notre Dame Australia

1. Declaration of party membership

WA has benefitted from the problems associated with other jurisdictions where party politics has infected local decision-making. In some NSW councils, the same political party has held power for decades. While running candidates on party tickets is unhealthy at a local level, transparency at all levels of government is critical. There is nothing wrong with a candidate for local government being a member of a political party, as this is a legitimate and valuable form of political participation in itself, however it is essential that this is disclosed to the voting public because party membership helps voters understand what a candidate stands for. Voters should have the ability to make an informed decision at all times, and membership disclosure is no different to disclosure of relevant financial interests in this respect.

2. Compulsory voting

Local government is often less visible than other levels of government. This is despite the fact that it plays a critical role in people's lives. An outcome of this lack of visibility is the low turnout in local government elections in WA. At the last local government elections in (2017) the turnout was just 34.2%. This pales in comparison to the turnout at the WA election in the same year (86.9%) and the WA turnout at the Federal election of 2016 (88.4%).

There are a number of reasons why we have compulsory voting in Federal and State elections, and the reasons behind it are no less relevant to local government. The first is that a result is less democratic when turnout is low. In simple terms, you can't argue that you have the support of the people for you or your policies if fewer numbers of them are voting. A second reason is that voting is a responsibility for all citizens, given that governments should be there to serve them. A further important consideration is that candidates are not reduced to simply energising their own supporters to vote, they are required to reach out to voters across the community and sell their policies to them. Many analysts argue that compulsory voting insulates electoral outcomes from extremism.

All of these reasons apply equally to local government. Some people might argue that voting for local government should not be compulsory because this level of government is not significant. Such assumptions fail to appreciate the importance of local government; decisions at the local level impact on many aspects of our lives and their elections should be taken seriously by all citizens.

If voting were made compulsory, it may make sense for voters to elect all members of council at the one time, every four years. This is the practice in other state and territory jurisdictions in Australia. The benefit of this is that the performance of the whole council is assessed at the one time, rather than in stages. Staged voting is especially problematic in those councils where the Mayor is still elected by council members.

3. Optional Preferential Voting

Within every other state or territory jurisdiction in Australia, voters use preferential voting. This has been trialled in local government in Western Australia (2007) but the system has moved back to first-past-the-post. First past the post is not an ideal electoral system because it does not allow voters to choose their favourite candidate yet still influence the eventual outcome. Preferential voting better captures the precise intentions of voters, and so is a fairer system.

While Federal and State (WA) elections use compulsory preferential voting, this is more difficult to justify in a local setting, since some candidates may be completely unknown to voters. Voters should have the choice whether they allocate preferences or not.

4. Public comment on council decisions and policies

Current provisions within the Local Government Act (cf. 2.8 (1) (d)) have been frequently used to restrict elected representatives from being honest with the public regarding their views on council matters.

The issue is a complex one because the restrictions derive from Codes of Conduct enacted by individual councils rather than the text of the Act. Restrictions on media comment have sometimes been explained with references to cabinet solidarity, the process through which Government Ministers are bound to publicly support Cabinet decisions, and are prohibited from leaking information about these decisions unless this is authorised. A local government is profoundly different to a cabinet though; it is more akin to a parliament. Each member is elected by different cohorts within a community. There are no formal tickets at local government level which could be regarded as similar to political parties, and some councils explicitly ban “binding caucus votes”, similar to those undertaken within political parties (cf. City of Perth, Code of Conduct 5.6). Such bans should be seen as positive measures, as they allow elected members to focus on the merits of an issue, rather than merely going along with their colleagues. It is unfair and undemocratic to prohibit public dissent from an elected representative regarding decisions taken by governments, regardless of the level.

There is a need to find balance on this issue:

1. It is appropriate to have some restrictions on elected members and local government employees commenting on issues which are currently subject to confidential council processes, especially tenders;
2. When a formal decision is taken by council, it is reasonable for councillors to publicly state their view on it, provided they make it clear that this is their own view and that they are not speaking on behalf of the council. They are also bound to avoid misleading the public with regard to the facts of the matter;
3. Existing restrictions in areas such as personal abuse and defamatory comments should remain. The level of personal abuse on social media gives rise to concerns in this area; and
4. Where possible formal meetings of council should be livestreamed in the interests of transparency, so that ratepayers, the media and other interested persons can see for themselves how elected representatives respond to contentious issues of decisions. The draft minutes of council meetings should be posted online within a short period of time for the same reason.

Unlike elected representatives, employees within local government have a more direct responsibility to convey aspects of council policy

5. Minutes of Council meetings

The responsibility for keeping minutes of council meetings should belong to the Chief Executive Officer, as it is an administrative function (my understanding is that this happens in some local governments already). It is also expected that the CEO is regarded as impartial in compiling the

minutes. The CEO is also not engaged in debate over contentious issues. In principle, all council minutes must be made public and where Council decides to keep motions and discussion confidential the rationale for this must be made clear.

6. Political donations

All political donations to councillors should be declared within a short period of time (real time disclosure). The threshold for declarations needs to be low, so that any donations which may have a significant impact are disclosed. As the money spent on local government campaigns is typically lower than federal or state/territory campaigns, the threshold should be lower. The rules around election donations and non-election gifts should be consistent in this respect. Rules surrounding disclosure of donations and gifts should also be consistent whether the recipient is a candidate for office or an elected member.

Campaign spending limits are often very difficult to enforce. One of the tactics to get around spending limits is for third party organisations to spend money promoting certain candidates or attacking their rivals.