

# HON. ROBIN CHAPPLE MLC

## Submission to the Review of the Local Government Act 1995

Hon. Robin Chapple MLC

Via email: [actreview@dlgsc.wa.gov.au](mailto:actreview@dlgsc.wa.gov.au)

To whom it may concern,

I make this submission as a Member for Mining and Pastoral Region, the Local Government portfolio holder in on behalf of The Greens (WA) in the Legislative Council, a former Councillor on the Port Hedland Shire Council (now the town of Port Hedland) for 7 years and as a member and Deputy Chair of the Delegated Legislation Committee - Joint Committee. Please note that I do not make this submission on behalf of the Delegated Legislation Committee.

Local Government provides a valuable role as the third tier of government. I believe that Commonwealth and State Constitutions should ensure and enshrine the right of Local Governments to express the will of their constituents. Local Government should be recognised in the Commonwealth Constitution.

I will outline my key recommendations for reform of the Local Government Act, reforms that I believe will strengthen local democracy and governance.

### **Elections:**

Local Government is of the people, by the people and for the people. To achieve this, a number of changes are needed to bring about the reinvigoration of democracy in this sector.

**Business and property franchise** must be abolished. This is an issue in many local government areas, and particularly regional areas. In some cases, votes from business and property owners absent from the area make up a significant proportion of all votes, diluting the power of residents to make decisions about their local area. Voting rights for business owners in particular is a hangover from colonial times and has no place in a modern democracy. We do not accept this in the State or Commonwealth electoral systems, and it should be purged from local elections just the same.

**WAEC should be responsible for setting boundaries** for local government areas and wards, with a view to retain communities and adhere to geographic common sense where practical. The decisions on local government boundaries should mimic the way that the WAEC decides electorate boundaries. That said, residents should not face undue disruption and transfer between local governments unnecessarily, and as such the wards within a local government where applicable should be the focus of WAEC responsibility.

**Compulsory voting** is a necessary reform for electing local representatives. Voter turnout at the local level is extremely low, with only 34.2% of eligible voters participating in the 2017 local government elections. This rate drops even lower in some areas. We cannot have a democratic system that reflects the voice of the community with turnout this low. Compulsory voting would dramatically lift the turnout at local elections, although perhaps over several cycles as cultural change takes hold. This would lend legitimacy to elected councils and bolster faith in local democracy. This can be achieved through postal voting.

**Optional preferential voting** must be adopted to ensure candidates properly represent their community. This is a system that can work within both single member and multi member electorates. I trust that the arguments in favour of preferential voting over first past the post (FPTP) are familiar in terms of delivering a more democratic and popular representative. Specifically, ensuring that a voter can decide whether or not to allocate their preferences past their first choice would reduce the chance of a wasted ballot. I believe this is a simple but absolutely critical reform for local democracy in WA.

**Postal voting conducted by the WAEC** should be mandated for all local governments, with WAEC returning officers appointed for individual areas or regions where appropriate. Currently, local governments can opt to involve the WAEC in elections should they wish, and I wish to congratulate the councils that have taken this route. However, elections with ensured integrity from start to finish should not be opt in – they should be mandatory. To strengthen democratic processes in local government, the WAEC must be involved and take responsibility for running elections, increasing faith in the process by voters.

**Mayors and Presidents should be elected by councillors** to reduce the deadlock that can occur in local governments between a popularly elected mayor and councillors. While I note that some councils with the system of a directly elected Mayor function extremely well, many face difficulties that would be resolved by the Mayor/President requiring a majority of Councillors to be elected – and by extension, a majority that agree enough to ensure there would not be extreme deadlock. Election of the Mayor or President should require an absolute majority, that is to say elected members should be present for the Mayor/President vote.

**Staggered elections** must come to an end and be replaced by elections that give voters a chance to endorse or turf out a sitting council in its entirety. Although there are examples of staggered elections to legislatures across the world, most prominently in the Australian and United States' Senates, I believe that this is a system unsuitable to local community governance. The pace of change is much faster at a local level, and communities deserve the chance to replace an entire council should they see fit.

### **Governance:**

The governance of councils is a recurring theme for aggrieved residents and ratepayers, as well as those familiar with the work of the WA Parliament's delegated legislation committee. This is an area that requires serious overhaul, with an emphasis on oversight and sensible management by councillors rather than unelected staff.

**Local Government Managers and CEOs** must have their roles clarified and set firmly aside from any process of advising councils on overall policy direction, but rather advice on the implementation of

policy. Many of the Delegated Legislation Committee reports tabled over the last few years in both houses of Parliament show a lack of understanding by the Local Government Managers of what their role as administrators of councils is and indeed what is lawful or indeed possible in attendant legislation. It is noted that in many cases the Local Government Managers ascribe to themselves decision making capacity, as well as spokesperson responsibilities well beyond their mandate.

**Training for Councillors if it is to be mandated**, it should be for all councillors past present and future, Mayors and Local Government Managers, with specific reference to knowledge of fiduciary responsibilities, so that incoming members are fully cognizant of their responsibilities under the Act. While I note with some amusement and irony the lack of mandated training for incoming members of the Parliament of Western Australia or the Federal Parliament, I do believe that local government processes and decision making on financial matters would be enriched and strengthened by training. The current training modules offered by WALGA go some way, but do not cover all aspects. The responsibility for training should be that of the Local Government Department. Training in the legal requirements, responsibilities and administration of the Local Government Act 1995 must be provided to all Local Government Managers.

### **Accountability:**

**Gifts and donations** declarations must be overhauled and transparency dramatically increased. As with all levels of government, transparency with regards to donations is a necessary reform to reinvigorate faith in democracy. Specifically, reporting of donations should be done in as close to real time as possible.

**Standing orders should protect free speech** and allow Councillors to speak their mind in public about council decisions. In all parliaments when a decision is made, representative can publicly critique the decision. This is not the case under many local government standing orders where Councillors are prohibited from making comments about decision-making of the council or the passage of regulations, a norm that I consider to be highly undemocratic. All Councillors, without fear or favour, as long as they are not defaming anybody, should be able to speak their mind openly in relation to matters that they are concerned about or indeed the electors they represent are concerned about. Local government standing orders need to have a level of uniformity across WA. When I was a councillor on the Shire of Hedland I quite often spoke against the decisions of council whether it be fiscal or administrative. Unfortunately, many councils now preclude council members from speaking against a majority decision of council.

**An independent Ombudsman or other authority should be created** to have oversight over the local government sector in WA and ensure integrity in decision making and operations. If we are to have local government respected as an independent third tier of government, there needs to be a structure of oversight that is able to monitor for corruption and mismanagement. I believe that there is a role for the Department to play in general complaints handling, however a dedicated oversight body would provide real teeth and serve to keep councils and their staff in line with both the law and community expectations.

**Local Government Department should provide templates for forms, pro formas and local laws, not WALGA.** As part of a broader overhaul of the role of WALGA in advising councils and councillors, I believe that many of the powers of WALGA must be reassumed by the Department. In my role as a member of the Delegated Legislation Committee of the WA Parliament, we regularly move to disallow

local laws for a variety of reasons, and while I do not lay the blame for that at WALGAs feet, a proper level of advice and review by the Department would be a more effective vehicle for ensuring uniform standards across local governments. I understand the Government is already considering such a move.

**Joint Development Assessment Panels should be democratised** to allow greater weighting to community voices. Currently, JDAPs are weighted towards developers, in an effort to ensure projects have a greater chance of going ahead. I recognise the merit in this – infill is a necessary and important part of development in the metropolitan area and in order to meet infill targets there is a role for JDAPs. The issue arises in the weighting of panel members away from the community. I propose that panels should have additional seats allocated to local councillors to make sure that local voices are represented, and to ensure that community representatives can participate more fully in advising a developer of the circumstances under which a revised proposal may be accepted. If Governments want to override local decision making they already have the power to do so and should accept the political responsibility in doing so and not hide behind the JDAP decisions

I hope that my submission is of assistance.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'R. H. Chapple'.

The Hon Robin Chapple MLC  
**Member for the Mining and Pastoral Region**  
**31<sup>st</sup> March 2019**