



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

DETAILED
DISCUSSION PAPER

SMART

Administrative Efficiencies

Our vision is for the local government sector to be agile, smart and inclusive.

Our objective is to reform local government so that it is empowered to better deliver quality governance and services to their communities now and into the future.

A new Local Government Act will be drafted, Transforming Local Government.

Smart includes those topics that focus specifically on how local governments can best use their resources efficiently and rationally. It is important that they are transparent and accountable to their communities.

The topics addressed in this theme are:

- Administrative efficiencies;
- Council meetings;
- Interventions; and
- Local laws.

Have your say!

We need your input to inform how local government will work for future generations.

Submissions

The simplest way to have your say is to answer the questions via the online surveys.

The survey questions relate to the matters discussed in the papers and we encourage you to read the relevant paper before completing the survey.

While you may lodge multiple written submissions via email at actreview@dlgsc.wa.gov.au, you will only be able to complete each online topic survey once. The public submission period closes on 31 March 2019. This is the last day that you will be able to respond to the surveys.

Note: Unless marked as confidential, your submission (including survey responses) will be made public and published in full on the Department of Local Government, Sport and Cultural Industries' (the Department) website. Submissions that contain defamatory or offensive material will not be published.

Introduction

No-one likes red tape. It gets in the way and makes simple tasks seem difficult.

Distinguishing red tape from vital checks which ensure our government acts in a fair manner, protects members of the community, and that everyone abides by the law can be difficult.

Modern organisations must strike a delicate balance between oversight and red tape. Accountability measures that go too far can become regulatory burdens that create unnecessary costs that outweigh their compliance benefits.

A goal of effective regulation is to impose the least amount of resistance to activity for the lowest cost possible, while providing a governance framework to prevent or reduce the number, or seriousness, of issues in a timely manner.

This paper identifies a number of options for increasing efficiencies within the current *Local Government Act 1995* (the Act) and Regulations. If you have other suggestions for ways to streamline the legislation, please complete the questions at the end of this paper.

Potential administrative efficiencies

One size fits all approach to local governments in Western Australia

Local governments in Western Australia vary considerably in respect to their capacity to raise revenue and their expenditure. For example, the combined operating budget of the State's 40 smallest local governments is less than the annual operating expenditure of the State's largest local government.

The Act currently treats all local governments the same, regardless of their size and capacity. Through their peak bodies, the local government sector has long advocated for amendments which provide a tailored approach to local government governance to allow for the differences in capacity that are found across the State.

Possible areas of reform where a tailored approach to regulation could be adopted have been addressed throughout the discussion papers.

Local Government Grants Commission and the Local Government Advisory Board

Introduction

The local government legislation in Western Australia creates three boards, commissions or panels, these being:

- Local Government Grants Commission (Grants Commission);
- Local Government Advisory Board (Advisory Board); and
- Standards Panel.

On 20 September 2017, the Premier instructed all agencies to review the ongoing need for boards and committees, particularly where there are costs involved. While

the Standards Panel was discussed in earlier consultation on the Act Review, the composition and use of the Grants Commission and Advisory Board was not.

It is therefore appropriate as part of continued consultation of the Act Review to consider the composition and use of both the Grants Commission and Advisory Board.

Local Government Grants Commission

The Grants Commission provides advice and makes recommendations to the Minister for Local Government on the amount of Commonwealth Financial Assistance Grants paid to local governments each financial year.

In order to receive Commonwealth funding, a Grants Commission must be established.

The Grants Commission comprises of the following membership:

- Chair (nominated by the Minister);
- Deputy Chair (Officer from the Department); and
- A representative (nominated by the Western Australian Local Government Association (WALGA)) from:
 - Metropolitan local governments;
 - Country urban local governments; and
 - Country rural local governments.

Deputies are appointed for each member of the Grants Commission who attend in the absence of the respective commission member. All nominations for membership are approved by Cabinet.

Local Government Advisory Board

The Advisory Board makes recommendations to the Minister for local government on proposals to change local government boundaries, wards or councillor numbers.

The Advisory Board is comprised of the following membership:

- Chair (nominated by the Minister);
- Deputy Chair (Officer from the Department);
- Two people with experience as an elected member of a council (nominated by WALGA); and
- One person with experience as a Chief Executive Officer of a local government (nominated by Local Government Professionals Australia (LG Pro)).

Deputies are appointed for each member of the Advisory Board who attend in the absence of the respective board member. As with the Grants Commission, all nominations for membership are approved by Cabinet.

What are the opportunities for reform?

Combining the Grants Commission with the Advisory Board

As described above the composition of the Grants Commission and the Advisory Board are somewhat similar, in that the skills and knowledge required to be appointed as a member of either of these bodies is an in-depth knowledge and experience in the local government sector. This knowledge and experience enables members to consider the appropriate factors, weigh the information before them and provide the appropriate recommendations to the Minister.

While the current duties and responsibilities of the Grants Commission and the Advisory Board are different, the composition and selection of board and commission members are very similar. The only differences are:

- Grants Commission members are appointed on their geographic location; and
- One member of the Advisory Board is nominated by LG Pro in addition to members being nominated by WALGA.

As well as the composition of the Grants Commission and Advisory Board being similar, other synergies also exist. Having substantial knowledge of the grants program may assist with the consideration of ward and boundary reviews and conversely may assist with deliberations about grant funding. Both bodies are already supported by the same team within the Department.

A similar review was recently undertaken by South Australia which resulted in the enactment of the *Local Government (Boundary Adjustment) Amendment Act 2017*. Amendments were made to the relevant pieces of legislation to provide that the Grants Commission is also responsible for the assessment of local government boundary changes and provides a similar function as the Advisory Board in Western Australia. Similar changes could occur in Western Australia if it was determined to be efficient, effective and appropriate to do so.

Board requirement to determine the question and summary

At present, if a local government decides to proceed with a proposal to change the method of election of the Mayor/President from 'election by electors' to 'election by the council', the Advisory Board is required to determine the question to be voted on by electors and prepare a summary of the case for each way of voting on the question.

It may be more appropriate for the affected local government to prepare the question and the summary case as they are the body in the best position to provide an accurate summary. After the local government has drafted the question and summary it could be submitted to the Advisory Board for approval/endorsement before any poll is conducted.

Boundary changes, abolishing districts, names and ward representations

The quality and content of proposals submitted to the Advisory Board varies significantly. This can result in a significant amount of the Advisory Board's executive staff's time being used contacting various parties to gather the relevant information. The required information, set out in Regulations, allows the Advisory Board to form a view in line with the principles set out in the Act and ultimately make recommendations to the Minister on each proposal. Submissions received either from the public or from local governments sometimes do not provide sufficient detail to inform the decision-making of the Advisory Board. Often this is because they have not read the original proposal.

A local government (or other applicant) may wish to withdraw an application that has been made to the Advisory Board. At present this cannot be done with the Advisory Board being required to make a recommendation to the Minister even if the applicant does not wish to proceed with the proposal.

To improve these processes, it is proposed that the following amendments could be made:

- An ability for the Advisory Board to refuse to accept a proposal on the basis that the proposal is incomplete (does not meet the requirements set out in the Regulations);
- A requirement for affected electors who sign a petition to acknowledge they have read the summary of the proposal and have seen a plan or map detailing any proposed changes;
- A requirement to provide the affected local government(s) details of a proposal prior to submission of a proposal to the Advisory Board; and
- The ability for an applicant to be able to withdraw a proposal, prior to a recommendation being made to the Minister, subject to the Advisory Board supporting the withdrawal.

A number of submissions (including submissions from WALGA and LG Pro) suggested the number of electors required to submit a proposal under Schedules 2.1 and 2.2 should be raised from 250 electors to 500 electors. In major metropolitan local governments, 250 people represents only a very small portion of the population which may lead to a proposal being submitted that is not a true representation of the community's view.

As the threshold consists of two components, an increase to the threshold would only effect local governments with a population over 25,000. This would only effect 29 out of 137 local governments in the State.

Local Government (Miscellaneous Provisions) Act 1960

Introduction

When the *Local Government Act 1960* (1960 Act) was enacted it repealed many pieces of legislation including the *Municipal Corporations Act 1906* and *Road Districts Act 1919*. In 1995 the majority of the 1960 Act was replaced by the *Local Government*

Act 1995. The remainder of the 1960 Act was renamed the *Local Government (Miscellaneous Provisions) Act 1960*.

Large parts of the 1960 Act were later incorporated into building legislation. It is appropriate to consider whether the sections that remain in the 1960 Act are still required.

What are the opportunities for reform?

Section 364 — New street alignments, prescribing and effect of etc.

This section was enacted as part of the original 1960 Act and has remained substantially the same since then.

The purpose of this section is to provide a local government with the power and mechanism to compulsorily acquire land required to realign a street if other parties have an interest in the land, although it is limited to land that 'lies between the proposed alignment and the old street alignment'.

To the Department's knowledge this power has only been used twice since 1995.

The process starts with the passing of a local law which realigns a road. Once the local law can no longer be disallowed, the land is then revested in the Crown at which time the local government pays the former owner an agreed amount or, if there is no agreement, the price is determined via the *Commercial Arbitration Act 2012*.

Currently, there are two other mechanisms to acquire land (for street realignment or any other public purpose) available to a local government: either by purchasing the land from the owner or through Part 9 of the *Land Administration Act 1997*.

Under Part 9, a local government may take an interest in land that is required for public works, including the construction of roads. To start the acquisition, the Minister (in this instance the Minister for Lands) must issue a notice of intention to take the interest in the land and serve that notice on any interested parties. The *Land Administration Act 1997* also provides the framework for compensation to be paid and dispute resolution mechanisms to be used if required.

Part XX Cattle trespass, pounds, poundkeepers and rangers

This Part relates to the impounding of cattle although it also allows for actions to be taken against other livestock.

Broadly speaking, it provides local governments and individual members of the public with the power to impound cattle if cattle stray upon their land. The local government is considered to be the land owner of all public places within their district and any unfenced land abutting those areas. The 1960 Act also provides very detailed requirements that are placed upon local governments, poundkeepers and individuals that have impounded cattle in relation to what they are to do with the cattle.

Local governments operate facilities that house animals (for example dog pounds) and have the power through other pieces of legislation to appoint authorised persons that can, among other things, impound animals.

Additionally, the Act provides the framework that enables local governments to impound a number of things (including animals) when they are in contravention of the Act or if the presence of the animal presents a hazard to public safety or obstructs the lawful use of any place.

While a minor amendment to the local government legislation would clearly enable local governments to impound cattle, it needs to be determined if there is still a requirement for members of the public to be able to impound cattle.

Offences

A number of offences are included in the 1960 Act:

Offences relating to poundkeepers (or any person that has impounded cattle)

Section 452 - A failure to maintain the pound to an acceptable standard;

Section 454 - Milking cattle without permission;

Section 455 - A failure to maintain the pound register appropriately;

Section 461 - Unlawful impounding;

Section 469 - Knowingly and wilfully incorrectly describing the cattle in the public notice; and

Section 474 – Failure to label cattle on sale.

Other offences

Section 481 - Cattle being driven from land without the cattle owner's consent;

Section 482 - Unlawful rescue or release of impounded cattle;

Section 482 - Damage to the pound;

Section 482 - Threats against the pound keeper;

Section 483 - Removal of a fence to allow cattle to trespass; and

Section 484 - Owner permitting cattle to stray.

The majority of these offences can be dealt with by prosecuting the offender under other pieces of legislation for example the *Criminal Code* or *Animal Welfare Act 2002*.

The only conduct that cannot be dealt with via another means are:

Section 483 - Removal of a fence to allow cattle to trespass; and

Section 484 - Owner permitting cattle to stray.

Information provided to and decisions made by the Department and the Minister

When the *Local Government Act 1995* was enacted it fundamentally changed the powers of local governments providing them with greater autonomy. It removed a great deal of control from the Minister and provided local governments with the ability to make a greater range of decisions without having the State Government reviewing or approving those decisions.

While the Act heralded a marked shift and devolution of control, there are still many sections within the Act that require a local government to provide information to the

Minister or Department prior to, or after a decision is made, and a number of other general reporting requirements.

The assessment of what information is to be provided was primarily made in the mid-1990s when the majority of the Act and Regulations were enacted. It is appropriate to review what information should be provided, what reports should be submitted, and which decisions should still be made by the Minister.

Absolute majority decisions

The council is the decision-making body of a local government. The Act sets out how decisions are to be made by the council members that form the council. In most cases this is via a 'simple majority', that is, a decision is made if over half of the council members present at the meeting vote for it. In some cases, a higher bar has been set. An 'absolute majority' requires half of the total number of council member positions to vote for a matter for the decision to be made. Thus, if there are 11 positions on council but at a particular meeting two council members were absent, five votes would be needed for a simple majority and six for an absolute majority.

It is appropriate to review which decisions should be made by an absolute majority.

What do you think?

The easiest way to have a say on the future of your community is to complete the survey available [here](#).

Your responses to this survey will inform the review and will take approximately 15 minutes to complete.


We ask that you take care in completing a survey. While you may lodge multiple written submissions via email at actreview@dlgsc.wa.gov.au, you will only be able to complete each online topic survey once.

The public submission period closes on 31 March 2019. This is the last day that you will be able to respond to the surveys.

Unless marked as confidential, your submission (including survey responses) will be made public and published in full on the Department's website. Submissions that contain defamatory or offensive material will not be published.

The questions in the survey are provided below but we encourage you to complete the survey online which is available [here](#).

Survey - Administrative Efficiencies

1. Have you read the discussion paper associated with this survey?
 - a. Yes
 - b. No
2. Who are you completing this submission on behalf of?
 - a. Yourself
 - b. An organisation, including a local government, peak body or business
3. What is the name of that organisation? Shire of Carnarvon
4. What is your name? David Burton
5. What best describes your relationship to local government?
 - a. Resident / ratepayer
 - b. Staff member or CEO
 - c. Council member, including Mayor or President
 - d. Peak body
 - e. State Government agency
 - f. Supplier or commercial partner
 - g. Community organisation
6. What best describes your gender?
 - a. Male
 - b. Female
 - c. Other
 - d. Not applicable / the submission is from an organisation
7. What is your age?
 - a. 0 – 18
 - b. 19 – 35
 - c. 36 – 45
 - d. 46 – 55
 - e. 56 – 65
 - f. 66 – 75
 - g. 76+
 - h. Not applicable
8. Which local government do you interact with most? Shire of Carnarvon
9. Would you like to be updated on the progress of the *Local Government Act 1995* review and further opportunities to have your say?
 - a. Yes
 - b. No
10. Do you wish for your response to this survey to be confidential?
 - a. Yes
 - b. No
11. What is your email address?


12. To what extent do you support the following statements?

	Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive
“All local governments regardless of their size should have the same level of powers and responsibilities.”		x			
“The functions of the Grants Commission and the Advisory Board should be combined under one Board.”				x	
“Membership of the Local Government Advisory Board and the Local Government Grants Commission should be required to be drawn from specific geographic locations, for example, metropolitan Perth as well as regional and remote Western Australia.”				x	
“Prior to conducting a poll to change the method of election of the Mayor/President from election by electors to election by the council, the local government should be required to draft the question and summaries and submit the question to the Advisory Board.”				x	
“The Advisory Board should not assess a proposal for changes to boundaries that does not meet the minimum requirements.”		x			
“The petition of affected electors should require each signatory to sign an acknowledgement that they have read the summary of the proposal and have seen a plan or map detailing any proposed changes.”				x	
“The affected local government(s) should be provided with a copy of the proposal prior to it being submitted to the Advisory Board.”					x
“The applicant should be able to withdraw a proposal at any time prior to a recommendation being made to the Minister, providing there are circumstances which, in the Advisory Board’s view, warrant withdrawal of the proposal.”				x	

13. Currently a proposal to the Advisory Board from the community must be signed by 250 people or 10% of the community whichever is less. Should proposals from districts with a population over 5,000 be increased to 500 signatures?

- a. Yes
- b. No
- c. Unsure

14. To what extent do you support the following statements?

	Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive
“People need the power to impound stray cattle.”				x	
“Local governments need the power to impound stray cattle.”				x	
“People need the power to detain and dispose of stray goats, pigs and poultry.”				x	
“Offences that apply to pound keepers should also apply to similar facilities maintained by local governments, for example cats and dogs.”				x	

15. Which of the following pieces of information should be provided by local governments to the Department and the Minister for Local Government?

Section		Yes	No	Unsure
s 4.79	Provide a report on the result of an election (ordinary or extra-ordinary election)	x		
s 5.3	Advise of the failure to hold council meetings within the last 3 months	x		
s 7.12A	Provide a copy of the report that addresses the issues identified in the audit report	x		
LG (Audit) Reg 14	Provide a copy of the compliance audit report	x		
LG (Audit) Reg 15	Provide a certified copy of the compliance audit return		x	

Section		Yes	No	Unsure
LG (Constitution) Reg 11FA	Provide a report on the result of an election (election of Mayor/President and Deputy Mayor/President)	x		
LG (Constitution) Reg 11H	Advise the outcome of the Court of Disputed Returns (election of Mayor/President and Deputy Mayor/President)	x		
LG (Constitution) Form 2	Request for a poll on a recommended amalgamation	x		
LG (Elections) Reg 86	Advise the outcome of the Court of Disputed Returns (ordinary or extra-ordinary election)	x		
LG (Financial Management) Reg 33	Provide a copy of the annual budget	x		
LG (Financial Management) Reg 33A	Provide a copy of the review and determination of the reviewed annual budget		x	
LG (Financial Management) Reg 51	Provide a copy of the annual financial report	x		

16. Which of the following decisions should be made by the Minister?

Section		Yes	No	Unsure
s 2.25	Approval for a leave of absences greater than six consecutive council meetings	x		
s 3.53	Ordering which local government is responsible for managing a facility that is located within two or more districts (only when the local governments themselves do not agree about how to manage the facility)	x		
s 3.59	Commencing or undertaking a major land transaction or trading undertaking (as required under the regulations)	x		
s 3.61	Establishing a regional local government		x	
s 3.65	Amending the establishment agreement of a regional local government		x	
s 3.69	Establishing a regional subsidiary		x	

Section		Yes	No	Unsure
s 3.70	Amendment to a regional subsidiary's charter		x	
s 5.7	Reducing the number of people required for a quorum or absolute majority	x		
s 5.69	Approval to participate in a meeting (after disclosing an interest)			x
s 5.69A	Exemption from some or all disclosure of interest requirements for committee members	x		
s 6.35	Minimum payment of rates on vacant land		x	
s 6.74	Approval to re-vest land to the State for non-payment of rates		x	
s 9.63	Direction to two or more local governments on how to resolve a dispute	x		

17. How should the following decisions be resolved by council?

Section		Simple Majority	Absolute Majority	Unsure
ss 3.12 & 3.16	Making local laws	x		
s 3.59(5)	Undertaking major land transactions or major trading activities		x	
s 4.17	Deciding if a councillor's seat should remain vacant prior to the next ordinary election (if the vacancy occurs between January and July in an election year)	x		
s 4.20	Appointing the Electoral Commissioner to conduct an election or appointing a returning officer	x		
s 4.57	Appointing a person to be a Councillor if no nominations are received twice for a vacant position		x	
s 4.61	Deciding if an election should be a postal election		x	
s 5.8	Establishing committees to assist council in the performance of powers and duties		x	

Section		Simple Majority	Absolute Majority	Unsure
ss 5.10 & 5.11A	Appointing members (and deputies) to a committee	x		
s 5.15	Reducing the number of offices required to form a quorum at a committee meeting (if required)	x		
s 5.16	Delegating or revoking any local government powers and duties to a committee		x	
s 5.36	Decisions on CEO's employment contract		x	
s 5.42 & 5.45	Deciding to delegate powers or duties to the CEO (and revoke this delegation)		x	
s 5.54	Accepting the annual report for a financial year		x	
s 5.98A	Deciding to pay the deputy mayor an additional allowance		x	
s 5.99	Deciding to pay council members the prescribed minimum fee or a fee within the prescribed range		x	
s 5.99A	Deciding to pay council members an annual allowance or an allowance that has been set for expenses		x	
s 6.2	Preparing and adopting a budget for the financial year		x	
s 6.3	Imposing a supplementary general rate or specified area rate		x	
s 6.8	Spending money from the municipal fund that was not in the annual budget		x	
s 6.11	Changing the purpose of a reserve account		x	
s 6.12	Granting a discount for the early payment of money, waiving or granting concessions, or writing off any amount owed to the local government		x	
s 6.13	Deciding to require a person to pay interest on an amount owed to a local government	x		

Section		Simple Majority	Absolute Majority	Unsure
s 6.16	Imposing (or amending) a fee for goods or services	x		
s 6.20	Deciding to borrow and spend borrowed money		x	
s 6.32	Imposing a general rate on rateable land or a supplementary general rate in an emergency		x	
s 6.46	Granting a discount or other incentive for the early payment of any rate or service charge	x		
s 6.47	Deciding to waive a rate or service charge	x		
s 6.51	Deciding to impose interest on a rate or service charge or costs of proceedings to recover amounts unpaid	x		
s 7.1A	Appointing audit committee members	x		
s 7.1B	Delegating powers and duties to the audit committee		x	
Sch 2.2 clause 4	Deciding to propose to the Advisory Board that a submission should be rejected or dealt with as a minor matter that does not require public submissions		x	
Sch 2.2 clause 5	Making a proposal to the Minister or the Advisory Board to change the name of a district or ward	x		
Sch 2.2 clause 9	Making a proposal to the Advisory Board to change ward boundaries, the name of the district or wards, or the number of councillors	x		
LG (Admin) Reg 10(2)	Deciding to revoke or change a decision made by absolute majority		x	
LG (Admin) Reg 14A	Deciding to approve a member to be present at a meeting via telephone	x		
LG (Admin) Reg 19C and 19DA)	Adopting a strategic community plan and corporate business plan		x	

Section		Simple Majority	Absolute Majority	Unsure
LG (Financial Management) Reg 33A	Determining whether to adopt a review of the budget or recommendations in the budget review		x	

18. Which regulatory measures within the Act should be removed or amended to make the legislation more efficient? Please provide detailed analysis with your suggestions.

Local Laws should be sent to the Joint Standing Committee on Delegated Legislation earlier in the process of making a local law rather than a final step to assist in the development of the local law and save time and cost if the local law is not likely to get approved.

Briefly describe the red tape problem you have identified.

What is the impact of this problem? Please quantify if possible.

What solutions can you suggest to solve this red tape problem?

You can also email your suggestions to actreview@dlgsc.wa.gov.au.