
12.5	COUNCIL SUBMISSION TO LOCAL GOVERNMENT ACT REVIEW
Location:	N/A
Proponent:	N/A
File Ref:	ADM0015
Date of Report:	7 th February 2019
Business Unit:	Strategy and Governance
Officer:	V Fordham Lamont – Deputy CEO
Disclosure of Interest:	Nil

ATTACHMENTS

- Attachment 1 – WALGA Advocacy Position Paper: Local Government Act Review

PURPOSE OF THE REPORT

For Council to adopt a Shire of Gnowangerup submission on the Local Government Act Review to the Department of Local Government, Sport and Cultural Industries (DLGSC).

BACKGROUND

In 2017 the McGowan Government announced a review of the *Local Government Act 1995*. This is the first significant reform of local government conducted in more than two decades. The objective is for Western Australia to have a new, modern Act that empowers local governments to better deliver for the community. DLGSC's vision is for local governments to be agile, smart and inclusive.

Local governments and community were invited to have their say on the priority reforms last year, and the drafting of a Bill which includes universal training for candidates and council members, council member code of conduct, improvements to CEO recruitment and performance review and a simplified gift framework is now underway.

COMMENTS

Council has indicated that it wants to make a submission to the review. The submission is based on WALGA's position paper (Attachment 1).

CONSULTATION

Nil

LEGAL AND STATUTORY REQUIREMENTS

Nil

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

Strategic Community Plan

Theme: A Sustainable and Capable Council

Objective: For the Shire to demonstrate advocacy in promoting the needs and ambitions of the district and the advancement of Local Government.

Strategic Initiative: Advocate and influence political direction to achieve local and regional development.

STRATEGIC RISK MANAGEMENT CONSIDERATIONS:

Nil

IMPACT ON CAPACITY

Nil

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Nil

CONCLUSION

Council has discussed this matter and offers the following as its submission to the review of the *Local Government Act 1995*:

WALGA ADVOCACY POSITIONS **LOCAL GOVERNMENT ACT REVIEW**

LOCAL GOVERNMENT ACT REVIEW PRINCIPLES

That State Council endorse the following general principles as being fundamental to its response to the review of the Local Government Act:

- (a) Uphold the General Competence Principle currently embodied in the Local Government Act;
- (b) Provide for a flexible, principles-based legislative framework; and
- (c) Promote a size and scale compliance regime

Council supports these principles, and considers point (c) above to be crucial to the ongoing viability of local government.

BENEFICIAL ENTERPRISES

Position Statement	The Local Government Act 1995 should be amended to enable Local Governments to establish Beneficial Enterprises (formerly known as Council Controlled Organisations).
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WALGA has been advocating for Local Governments to have the ability to form Beneficial Enterprises (formerly known as Council Controlled Organisations) for approximately ten (10) years.

A Beneficial Enterprises is a standalone arm's length business entity to carry out commercial enterprises and to deliver projects and services for the community. Local Governments would have the ability to create Beneficial Enterprises through the Local Government Act, however the stand alone business entity would be governed by the Corporations Act (i.e. normal company law).

Beneficial Enterprises provide services and facilities that are not attractive to private investors or where there is market failure. A Beneficial Enterprise cannot carry out a regulatory function of a Local Government.

Examples

- Urban regeneration; A Land Development may not be attractive to a private developer, however the ability to develop the land may be beneficial for the Local Government in respect to strategic development/connection of an area. Or may be worth a joint venture with a developer.
- Measures to address economic decline in Regional WA – A small business may not be viable for a private citizen, however maybe considered an essential service for the Local Government. i.e. Could be the local Pharmacy or local mechanical workshop.

Benefits of establishing a Beneficial Enterprise include:

- (a) The ability to employ professional directors and management with experience specific to the commercial objectives of the entity;
- (b) Removal of detailed investment decisions from day-to-day political processes while retaining political oversight of the overarching objectives and strategy;
- (c) The ability to take an overall view of commercial strategy and outcomes rather than having each individual transaction within a complex chain of inter-related decisions being subject to the individual notification and approval requirements of the Local Government Act;
- (d) The ability to quarantine ratepayers from legal liability and financial risk arising from commercial or investment activities;
- (e) The ability to set clear financial and non-financial performance objectives for the entity to achieve; and
- (f) Greater flexibility to enter into joint venture and partnering relationships with the private sector on conventional commercial terms.

Council supports the WALGA position statement in relation to Beneficial Enterprises.

FINANCIAL MANAGEMENT

Tender Threshold

Position Statement	WALGA supports an increase in the tender threshold to align with the State Government tender threshold of \$250 000, with a timeframe of one financial year for individual vendors.
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Council supports WALGA's position in relation to Tender Thresholds. Clarifying the timeframe over which contributing purchases are calculated in relation to the threshold will simplify the procurement requirements for officers.

Procurement

WALGA seeks inclusion of the following position, to permit a procurement activity involving a disposal trade-in activity to qualify as a broad exemption under Regulation 30(3) of the Local Government (Functions and General) Regulations:

Position Statement	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.
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Council supports WALGA's position in relation to Procurement.

Imposition of Fees and Charges: Section 6.16

Position Statement	That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.
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Council supports WALGA's position in relation to the Imposition of Fees and Charges.

Power to Borrow: Section 6.20

That Section 6.20(2) of the Local Government Act, requiring one month's public notice of the intent to borrow, be deleted.

Council supports WALGA's position in relation to the Power to Borrow.

Basis of Rates: Section 6.28

That Section 6.28 be reviewed to examine the limitations of the current methods of valuation of land, Gross Rental Value or Unimproved Value, and explore other alternatives including simplifying and providing consistency in the rating of mining activities.

Council supports WALGA's position in relation to the Basis of Rates.

Differential General Rates: Section 6.33

That Section 6.33 of the Local Government Act be reviewed in contemplation of time-based differential rating, to encourage development of vacant land.

Council supports WALGA's position in relation to Differential General Rates.

Member Interests - Exemption from AASB 124

Elected Member obligations to declare interest are sufficiently inclusive that WALGA seeks an amendment to create an exemption under Regulation 4 of the Local Government (Financial Management) Regulations relating to AASB 124 'Related Party Transactions' of the Australian Accounting Standards (AAS).

Council strongly supports WALGA's position in relation to Member Interests.

RATES, FEES AND CHARGES

Imposition of Fees and Charges: Section 6.16

Position Statement	That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.
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Council supports WALGA's position in relation to the Imposition of Fees and Charges.

Rating Exemptions – Charitable Purposes: Section 6.26(2)(g)

1. Amend the Local Government Act to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth Aged Care Act 1997;
2. Either:
 - (a) amend the charitable organisations section of the Local Government Act 1995 to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or
 - (b) establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates; and

3. Request that a broad review be conducted into the justification and fairness of all rating exemption categories currently prescribed under Section 6.26 of the Local Government Act.

Council supports WALGA's position in relation to Rating Exemptions for Charitable Purposes.

Rating Exemptions – Rate Equivalency Payments

Position Statement	Legislation should be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government.
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Council supports WALGA's position in relation to Rating Exemptions for Rate Equivalency Payments.

Rates or Service Charges Recoverable in Court: Section 6.56

Position Statement	That Section 6.56 be amended 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 the 'cost of proceedings'.
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Council supports WALGA's position in relation to Rates or Service Charges Recoverable in Court.

Rating Restrictions – State Agreement Acts

Position Statement	Resource projects covered by State Agreement Acts should be liable for Local Government rates.
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Council supports WALGA's position in relation to Rating Restrictions for State Agreement Acts.

ADMINISTRATIVE EFFICIENCIES

Control of Certain Unvested Facilities: Section 3.53

WALGA seeks consideration that Section 3.53 be repealed and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.

Council supports WALGA's position in relation to Control of Certain Unvested Facilities.

Local Government Grants Commission and Local Government Advisory Board

WALGA seeks inclusion of a proposal to allow electors of a Local Government affected by any boundary change or amalgamation proposal entitlement to petition the Minister for a binding poll under Schedule 2.1 of the Local Government Act

Council supports WALGA's position in relation to Local Government Grants Commission and Local Government Advisory Board.

Schedule 2.1 – Proposal to the Advisory Board, Number of Electors

That Schedule 2.1 Clause 2(1)(d) be amended so that the prescribed number of electors required to put forward a proposal for change increase from 250 (or 10% of electors) to 500 (or 10% of electors) whichever is fewer.

Council supports WALGA's position in relation to Schedule 2.1 – Proposal to the Advisory Board, Number of Electors.

Schedule 2.2 – Proposal to amend names, wards and representation, Number of Electors

That Schedule 2.2 Clause 3(1) be amended so that the prescribed number of electors required to put forward a submission increase from 250 (or 10% of electors) to 500 (or 10% of electors) whichever is fewer.

Council supports WALGA's position in relation to Schedule 2.2 – Proposal to amend names, wards and representation, Number of Electors.

Transferability of employees between State & Local Government (Questions 82-84)

A General Agreement between State and Local Government should be established to facilitate the transfer of accrued leave entitlements (annual leave, sick leave, superannuation and long service leave) for staff between the two sectors of Government. This will benefit public sector employees and employers by increasing the skills and diversity of the public sector, and lead to improved collaboration between State and Local Government.

Council supports WALGA's position in relation to Transferability of employees between State & Local Government.

Proof in Vehicle Offences may be shifted: Section 9.13(6)

That Section 9.13 of the Local Government Act be amended by introducing the definition of 'responsible person' to enable Local Governments to administer and apply effective provisions associated with vehicle related offences.

Council supports WALGA's position in relation to Proof in Vehicle Offences.

COMPLAINTS MANAGEMENT

Querulous, Vexatious and Frivolous Complainants

The Complaints Management commentary contemplates the issue up to the point of unresolved complaints and then references the Ombudsman resources with regard to unreasonable complainants. WALGA seeks inclusion of commentary and questions relating to Local Governments adopting within their proposed complaints management framework, the capacity to permit a Local Government to declare a member of the public a vexatious or frivolous complainant, subject to the declaration relating to the nature of complaint and not to the person.

Amend the *Local Government Act 1995*, to:

- Enable Local Government discretion to refuse to further respond to a complainant where the CEO is of the opinion that the complaint is trivial, frivolous or vexatious or is not made in good faith, or has been determined to have been previously properly investigated and concluded, similar to the terms of section 18 of the *Parliamentary Commissioner Act 1971*.
- Provide for a complainant, who receives a Local Government discretion to refuse to deal with that complainant, to refer the Local Government's decision for third party review.
- Enable Local Government discretion to declare a member of the public a vexatious or frivolous complainant for reasons, including:
 - Abuse of process;
 - Harassing or intimidating an individual or an employee of the Local Government in relation to the complaint;
 - Unreasonably interfering with the operations of the Local Government in relation to complaint.

Council supports WALGA's position in relation to Querulous, Vexatious and Frivolous Complainants.

COUNCIL MEETINGS

Electors' General Meeting: Section 5.27

Position Statement	Section 5.27 of the Local Government Act 1995 should be amended so that Electors' General Meetings are not compulsory.
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Council supports WALGA's position in relation to Electors' General Meetings.

Special Electors' Meeting: Section 5.28

That Section 5.28(1)(a) be amended:

- a) so that the prescribed number of electors required to request a meeting increase from 100 (or 5% of electors) to 500 (or 5% of electors), whichever is fewer; and
- b) to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise.

Council supports WALGA's position in relation to Special Electors' Meetings.

Minutes, contents of: Regulation 11

Regulation 11 should be amended to require that information presented in a Council or Committee Agenda must also be included in the Minutes to that meeting.

Council supports WALGA's position in relation to Contents of Minutes.

Revoking or Changing Decisions: Regulation 10

That Regulation 10 be amended to clarify that a revocation or change to a previous decision does not apply to Council decisions that have already been implemented.

Council supports WALGA's position in relation to Revoking or Changing Decisions.

Elected Member attendance at Council meetings by technology

The current Local Government (Administration) Regulations 1996 allows for attendance by telephone, however only if approved by Council and in a suitable place. A suitable place is then defined as in a townsite as defined in the Land Administration Act 1997. This restricts an Elected Members ability to attend the meeting to a townsite in Western Australia.

This requirement does not cater for remote locations or the ability to attend via teleconference whilst in another state or overseas. The regulations require amendment to consider allowing attendance at a meeting via technology from any location suitable to a Council.

Council supports WALGA's position in relation to Elected Member attendance at Council meetings by technology.

INTERVENTIONS

Remedial intervention; Powers of appointed person; Remedial action process

In respect to remedial intervention, the appointed person should be a Departmental employee with the required qualifications and experience. This provides a connection back to the Department and its requirements.

The appointed person should only have an advice and support role. Funding of the remedial action should be by the Department where the intervention is mandatory. The Local Government to pay where the assistance is requested.

This area relates to the bigger picture of differentiating between Local Governments based on their size and scale. Suitable arrangements to determine a size and scale compliance regime should be prioritized.

Council supports WALGA's position in relation to Remedial intervention; Powers of appointed person; Remedial action process.

ELECTIONS

Conduct of Postal Elections: Sections 4.20 and 4.61

Position Statement	The Local Government Act 1995 should be amended to allow the Australian Electoral Commission (AEC) <u>and or any other third party provider</u> to conduct postal elections.
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Council supports WALGA's position in relation to Conduct of Postal Elections.

Voluntary Voting: Section 4.65

Position Statement	Voting in Local Government elections should remain voluntary.
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Council supports WALGA's position in relation to Voluntary Voting.

Method of Election of Mayor/President: Section 2.11

Position Statement	Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.
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Council supports WALGA's position in relation to the Method of Election of Mayor/President.

On-Line Voting

That WALGA continue to investigate online voting and other opportunities to increase voter turnout.

Council supports WALGA's position in relation to On-Line Voting.

Method of Voting - Schedule 4.1

Position Statement	Elections should be conducted utilising the first-past-the-post (FPTP) method of voting.
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Council supports WALGA's position in relation to Method of Voting.

Leave of Absence when Contesting State or Federal Election

Amend the Act to require an Elected Member to take leave of absence when contesting a State or Federal election, applying from the issue of Writs. The options to consider include:

- (i) that an Elected Member remove themselves from any decision making role and not attend Council and Committee meetings; or
- (ii) that an Elected Member take leave of absence from all aspects of their role as a Councillor and not be able to perform the role as specified in Section 2.10 of the Local Government Act.

Council supports WALGA's position in relation to Leave of Absence when Contesting State of Federal Election.

In addition, Council includes the following positions in its submission:

Cost Shifting by State and Federal Government

The Act should include protection for local government from cost shifting activities by State and Federal Government. If legislative changes are planned which will result in new responsibilities for local government, negotiations should firstly be held with local government representatives to ensure that adequate resources are provided by the upper tiers of government. It is not acceptable for local government to bear the cost of these additional activities.

VOTING REQUIREMENTS

Simple Majority

COUNCIL RESOLUTION

Moved: Cr F Gaze

Seconded: Cr C Thomas

0219.6 That Council:

- 1. Endorses the officer's draft submission above; and**
- 2. Authorises the CEO to forward the submission to the Department of Local Government, Sport and Cultural Industries.**
- 3. Authorises the Shire President to take the submission to the March State Council Meeting of WALGA.**

UNANIMOUSLY CARRIED: 5/0