

Our Ref: F160489  
Your Ref:  
Enquiries: [REDACTED]



14 February 2019

Department of Local Government, Sport and Cultural Industries  
G.P.O. Box 8349  
Perth Business Centre  
**PERTH WA 6849**

Attention: Local Government Act Review Team

Dear Sir/Madam,

**Submission on Local Government Act Review – Phase 2**

Thank you for inviting the Shire of Manjimup to provide the Department of Local Government, Sport and Cultural Industries (DLGSCI) with comment with regard to the Phase 2 Review of the *Local Government Act 1995* by 31 March 2019.

The Manjimup Shire Council considered the content of the Phase 2 Review at its Ordinary Council Meeting held 7 February 2019. Attached to this submission is a summary of the recommendations made to and subsequently adopted by Council at that meeting. A broader discussion of the recommendations made to Council on the Local Government Act Phase 2 Review can be found under the Agenda & Minutes section on the Shire of Manjimup's website; <https://www.manjimup.wa.gov.au/our-documents/agendas-and-minutes>.

[REDACTED]

Yours sincerely,

[REDACTED]

Attachment: Shire of Manjimup Comment on Phase 2 – Local Government Act Review

## **Shire of Manjimup Council Resolution on Phase 2 – Local Government Act Review**

The Shire of Manjimup Council determined to make the following resolution on 7 February 2019 as being fundamental to its response to Phase 2 of the Local Government Act Review. Officer discussion on each item listed is provided following the council resolution.

### **COUNCIL RESOLUTION:**

**MOVED: Daubney, L      SECONDED: Salomone, J**

**27724**

**That Council, in response to the ‘Phase Two’ review of the *Local Government Act 1995* instructs the Chief Executive Officer to prepare a submission that:**

- 1. Supports the proposed reform of the *Local Government Act 1995* relating to:**
  - i. The enabling of local governments to create beneficial enterprises (Council Controlled Organisations), subject to provisions being included that in the new Act:**
    - preventing the privatisation of core business activities,**
    - prevent anti-competitive behaviour in the provision of services to local communities, and;**
    - provide for the adequate assessment of organisational risk prior to the commencement of a beneficial enterprise in a local government area.**
  - ii. Increasing the tender threshold for \$150,000 to \$250,000 to align with the tendering policy of the Western Australian State Government, with a timeframe of one financial year for individual vendors;**
  - iii. The review of financial ratios to establish a consistent approach across all local governments in the State of Western Australia;**
  - iv. The introduction of a Rates and Revenue Strategy;**
  - v. That the Act be reviewed in contemplation of time-based differential rating, to encourage development of vacant land;**

- vi. **The rating of habitable buildings and commercial enterprises on land that is currently rates exempt;**
- vii. **A definition being included in the new Act that clearly describes a “charitable organisation”;**
- viii. **The elimination of rates exemptions for charitable organisations that conduct commercial business activities, or alternatively enable the ability for a local government to seek compensation for the loss of rates income;**
- ix. **The setting of fees and charges that permits the local government to recover costs for the services it provides to communities;**
- x. **The amalgamation of the Local Government Grants Commission and Local Government Advisory Board;**
- xi. **A review of the ‘Absolute Majority’ decisions required to be made by a Council;**
- xii. **The retention of the ability to make Local Laws specific to a local government area, but based on a model Local Law;**
- xiii. **The provision of “Public Statement Time” as part of the Ordinary Council Meeting agenda;**
- xiv. **A provision included in the new Act that supports the remote attendance of a Council member in the event of a special circumstance, subject to further investigation in regards to cost, and effectiveness;**
- xv. **The strengthening of provisions regarding the revocation or amendment of decisions made by Council, provided that the decision does not contravene State or Commonwealth law;**
- xvi. **The retention of General Electors’ Meetings within the new Act;**
- xvii. **Increasing the number of electors from 100 to 500 (or 5%) to request a Special Electors’ Meeting;**
- xviii. **The provision that a Special Electors’ Meeting can only be called on the same issue once within a 12 month period, unless Council deem otherwise;**
- xix. **Simplification of the complaints process so that all complaints made against Council members are made directly to the Director General of Local Government;**

- xx. The inclusion of a provision to be able to embed a suitably qualified individual into a 'dysfunctional' Council to monitor governance processes and report directly to the Minister of Local Government on the activity of the local government, subject to clear advice on the allocation of cost for the intervention;
- xxi. The amendment of the *Local Government Act 1995* to make the improper use of information an offence that extends to former Council members, committee members or employees in accordance with the provisions of the *Limitations Act 2005*;
- xxii. The inclusion of provisions that provide an ability to hold accountable local government employees that knowingly misuse their employment position;
- xxiii. The inclusion of provisions that provide an ability to hold accountable local government employees that knowingly provide false or misleading information to Council;
- xxiv. The inclusion of provisions that provide an ability to hold accountable local government employees and Council members that knowingly act in a manner that is in non-compliance with tendering requirements;
- xxv. The inclusion of default penalties for offences not specified within a Local Law;
- xxvi. The inclusion of an amendment that specifies that local governments are to adopt a social media policy for Council members and staff alike;
- xxvii. Adoption of Australian/New Zealand Standard AS/NZ 10002:2014 to aid in local government complaints management processes;
- xxviii. The maintenance of the 'First Past the Post' voting method for local government elections;
- xxix. The phased use of electronic voting for local government elections, on the proviso that the technology being used is immune to manipulation and is cost effective;
- xxx. The maintenance of local government elections on a 2 year cycle;
- xxxi. The inclusion of provisions that place a financial cap on funding of local government election campaigns, based on the population of a local government and scaled appropriately; and

- xxxii. Provisions being included in a new Act that control the use of social media by candidates during local government elections.
2. Does not support the reforms proposed to be made to the *Local Government Act 1995* inclusive of:
- i. The use of social media and electronic mail as platforms for local ratepayers to ask a question of Council as part of Public Question Time;
  - ii. The proposition that the Presiding Member should cede responsibility of maintaining a correct and true record of Council Minutes to the Chief Executive Officer;
  - iii. The requirement to develop a 'Community Engagement Charter'. Maintenance of the status quo in community engagement by local governments should be maintained.
  - iv. That voting in local government elections should be made compulsory for all electors; and
  - v. The utilisation of a preferential voting methodology for local government elections.

## **Comment on Proposed Reforms – Phase 2**

### Beneficial Enterprises

Whilst this proposed reform is viewed favourably, the Shire of Manjimup supports this reform subject to additional provisions being included that preclude local governments establishing an enterprise if it is proven that the same service is being adequately provided in the local community by private enterprise. Local governments however, would also need to additionally consider the risk in the undertaking of a beneficial enterprise as part of detailed considerations and additionally it is recommended that provisions be included that prevent local governments from privatising its core business activities to ensure continuance of existing services being provided to the community.

### Power to Borrow

The Shire of Manjimup supports this reform, as it will provide local governments' greater financial flexibility, and an ability to secure cash funds at a competitive rate if necessary to address, for example, an emergency situation.

### Tendering/Procurement

The Shire of Manjimup supports WALGA's position, that being tender threshold being increased from \$150,000 to \$250,000, aligning the current tender process with the procurement rules of the State Supply Commission (SSC) which oversees state government agency tenders. A timeframe of one financial year would apply to individual vendors is also supported. It is widely acknowledged, including by the Commissioner of the Corruption and Crime Commission, that tendering and procurement is an area most vulnerable to corruption. It is important that any reforms consider the risks in terms of corruption. The proposed increase in both tender value and governance over this process is considered to be in local government's interest. It would allow local governments to engage local suppliers more easily, but retaining a strong measure of oversight in the awarding of a tender.

### Financial Ratios

The Shire of Manjimup strongly supports the review of financial ratios to establish a consistent approach among all local governments in Western Australia. Financial ratios are a key tool in local government performance measurement in other Australian states and it is important that the metrics used in Western Australia are meaningful and useful.

### Rating – Rates and Revenue Strategy

Local governments would be required to make the Rates and Revenue Strategy available on their website and it would be used as a basis for consultation on rates. The Shire of Manjimup is supportive of a Rates and Revenue Strategy that addresses the proposed criteria as it would be considered a useful tool in

managing ratepayer expectations by giving considered reasoning for an increase or reduction in rates raised by local governments.

### Differential General Rates

WALGA advocates that the Act be reviewed in contemplation of time-based differential rating, to encourage development of vacant land. The Shire of Manjimup supports this proposed reform to differential general rating.

### Rates Exemptions

The Shire of Manjimup is of the opinion that the residential and commercial use of currently rates exempt land be rated. For example, a property may contain a church building and a residence ancillary to church building. The residence on the property, due to its habitable nature would be rated by the local government no different to any other residential property, but the church building would not be subject to rating given it is utilised for a community use. It is recommended that WALGA support this alternative approach, as it would provide some equity in the rating of land regardless of its ownership. This may have a flow on effect in that there would be a reduced financial burden on existing ratepayers.

### Charitable Organisations

Reforms to the charitable organisation exemptions hinge on clarifying who is or isn't eligible to receive a rates exemption. It is noted that WALGA supports an amendment to the charitable organisation section of the Act to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations, or alternatively support the establishment of a compensatory fund for local governments, similar to pensioner discount provisions, whereby if the State Government believes charitable organisations remain exempt from payment of local government rates, then compensation would apply. In light of this, the Shire of Manjimup supports WALGA's position that the elimination of exemptions for charitable organisations should be undertaken.

### Fees and Charges

Currently, fees and charges are set during the local government annual budget process. By moving the setting of fees from the annual budget process and combining it into the Rates and Revenue Strategy, the methodology for cost recovery of fees could be included. This would make it more transparent for ratepayers. The Shire of Manjimup recommends that DLGSCI support this proposed reform.

### Absolute Majority Decisions

It is appropriate to review which decisions should be made by an absolute majority. The Shire of Manjimup supports the review of this process.

## Amalgamation of Local Government Grants Commission and Local Government Advisory Board

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. Given the synergies between the two bodies, the Shire of Manjimup supports the combination of both boards.

## Local Laws

It is the opinion of the Shire of Manjimup that the flexibility in making Local Laws to local requirements should be retained. The construction of the Local Law should incorporate the provisions of a model local law when and if possible.

## Public Question Time

Discussion of this aspect at the Council workshop held 17 January 2019 indicated a lack of support from members for this proposed reform of allowing questions to Council to be taken electronically. The Shire of Manjimup does not support the use of electronic media for Council's to take questions during its Ordinary Meetings.

## Public Statement Time

The Shire of Manjimup supports the inclusion of Public Statement Time as part of an Ordinary Meeting of Council.

## Remote Attendance

A number of potential issues with remote attendance arise when the cost of providing this service is to be considered, the reliability of phone or internet connection, the ability to enforce Standing Orders remotely, and undertaking voting. It is also arguable that in-person attendance aids in promoting trust and relationship-building between Council members. Nevertheless, the provision of legislation allowing for remote attendance under special circumstances was supported by the Shire of Manjimup. However, further investigation into remote attendance needs to be undertaken to ensure that remote attendance can be effective.

## Keeping of Council Minutes

This aspect of the reform is not supported, as the minutes are a record of Council's business, not the administrators. The Shire of Manjimup supports that the Presiding Member retain this responsibility.



### Revoking or Changing Council Decisions

The Shire of Manjimup supports the review and strengthening of decision-making rules, provided the decision is not contrary to State or Commonwealth laws.

### General Electors' Meetings

It is recommended that General Electors Meetings be retained, as these meetings are considered to serve a purpose in community engagement.

### Special Electors' Meetings

It is noted that WALGA's position is that the number of electors be increased from 100 to 500 (or 5% of electors) to request a meeting, and the provision of the ability to preclude the calling of a Special Electors' Meeting on the same issue within a 12 month period, unless the local government determines otherwise. The Shire of Manjimup supports WALGA's position on this aspect.

### Councillor Complaints Process

Whilst this reduces red tape for local governments as it removes the requirement for the complaints officer of a local government to receive complaints, it is not expected to be supported by the State. There are other avenues in which a complaint on Councillor conduct can be made, such as through the Corruption and Crime Commission, Public Sector Commissioner and State Ombudsman. The reform may also have an effect on Public Interest Disclosures made to the local government. Nevertheless, as this proposed reform has been proposed by the DLGSCI, the Shire of Manjimup supports it due to it being a simplified, expedient methodology to resolve a complaint.

### State Government Assistance in 'dysfunctional' Councils

The inclusion of this proposed reform is supported by the Shire of Manjimup subject to clear advice as to the allocation of cost for the intervention of the State Government to take remedial action within a local government.

### New Offence - Improper Use of Information

The Act could be amended to extend the improper use of information offence to former Council members, committee members or employees for a particular period. It is recommended the Council support this aspect of the reform as it will ensure that those who use information to the detriment of Council, the administration or community are held responsible for their actions. The liability period for misuse of information is recommended to be within the existing Western Australian Statute of Limitations located in the *Limitations Act 2005*.

Time limits within the *Limitations Act 2005* vary, depending on the offence committed.

#### New Offence – Improper Use of Position

It is considered in the interest of the Shire of Manjimup to support this reform. It supports greater penalties, and will hold those with an active role in local government accountable for knowingly misusing their position.

#### New Offence – Providing False or Misleading Information to Council

The Shire of Manjimup supports that the Act could be amended, within fairness and reason, to provide that the Chief Executive Officer or an employee of a local government must not deliberately provide false or misleading information to Council. This would ensure that a Council, as the decision-making body of a local government is provided with accurate information from its Chief Executive Officer and employees.

#### New Offence – Tendering requirements

It is noted that local governments spend around \$1 billion dollars on goods and services annually. The tendering requirements under the Act ensure that local governments provide the community with goods and services which are of the best value and that there is transparency in the procurement process. To ensure that these requirements and obligations are enforced, the Shire of Manjimup recommends that the Act could be amended to provide that the non-compliance of tendering requirements is an offence.

#### Default Penalties for Local Laws

To ensure that any local laws which do not specify penalties for offences are enforceable, the Act could be amended to include a provision for a default penalty to apply. The inclusion of default penalties in the new Act is supported by the Shire of Manjimup.

#### Community Engagement Charter

It is the opinion of the Shire of Manjimup that the current status quo in community engagement be maintained. A community engagement charter may have an adverse effect in that it could potentially stymie development and decision making within a local government if consultation is legislated any further. In any case, should a local government council believe that further consultation on a community activity or decision making proposal need to be undertaken prior to a decision, it has the ability to determine that further consultation with the community on a matter be required. Council can also determine the limits of that consultation. It is additionally expected that widening the scope for consultation would have cost implications to the local government.

### Social Media Policy

A social media policy would be supported by the Mandatory Code of Conduct that will apply to Council members and local government candidates and is being introduced as part of earlier Act Review consultation. The Shire of Manjimup supports this imposition of this proposed reform.

### Complaints Management

The Shire of Manjimup supports the need for clear provisions and procedures to handle complaints that provide both the local government and community with adequate avenues to resolve their grievance and close the loop on what can be a resource burn for local governments. A recommendation to this effect will be made in the submission should Council elect to support this reform.

### Compulsory Voting

The Shire of Manjimup supports maintenance of the status quo in terms of compulsory voting. Electors should be able to retain the choice of participation in a local government election or not.

### Voting Methodology

While changing the voting method has been applied to the Western Australian local government sector previously, it was not wholly supported by the sector. Having an optional preferential voting system for electors could be seen as an adequate compromise. However, the Shire of Manjimup recommends that First Past the Post (FPP) voting be maintained as the voting method. FPP is easily understood by electors, with the vote they cast going directly to the candidate. A preferential voting system can become increasingly complex, and serve to over politicise elections.

### Electronic Voting

While there is no evidence of instances of deliberate voter manipulation through online voting in Australia, there is a level of risk with all internet applications. These risks would necessitate the continuous application of best practice with respect to security and also need to be balanced against the risks inherent in conventional paper based systems. The Shire of Manjimup recommends that electronic voting should be phased in over time, provided that the technology being used is immune to manipulation and it is affordable and within the reach of the local government.

### Frequency of Elections

It has been suggested that Council elections coincide with State election every 4 years. This is not supported by the Shire of Manjimup as this may serve to unnecessarily politicise local government elections. A 2 year election cycle retains organisational knowledge, acting as a succession plan for local governments.

#### Limits on Local Government Advertising Campaigns during Council Election periods

The Shire of Manjimup is of the opinion that there should be a cap on funding of election campaigns. This financial cap would be tied to the population of the ward and scaled appropriately.

#### Use of Social Media by Candidates

Provisions being included in the new Act that control the use of social media by candidates during local government elections is supported by the Shire of Manjimup.