

SHIRE OF TRAYNING SUBMISSION

ON PHASE 2 OF THE REVIEW OF THE LOCAL GOVERNMENT ACT 1995

Beneficial Enterprises

Comment

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.

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 Position

That the Local Government Act 1995 be amended to enable Local Governments to establish Beneficial Enterprises (formerly known as Council Controlled Organisations).

Financial Management

Comment

Currently there is a number of restrictions placed on local governments in the financial management area that are overly restrictive, create unnecessary cost to the local government (especially statewide advertising), don't allow the local government full cost recovery (as is happening in many instances with state government agencies) in such areas as tender regulations, fees and charges, power to borrow to name a few.

In relation to the matters raised in the Department of Local Government, Sport and Cultural Industries Discussion Paper the Council positions are detailed below.

The Discussion Paper raises the issue of 'timely payment of suppliers' but given the ability of local governments to make payments outside of the Council meeting process by EFT this should not be a major issue.

Council Position

1. The current requirement for statewide advertising of tenders should become optional rather than mandatory with publication in a newspaper circulating in the area the minimum mandatory requirement.

2. The Tender threshold should be increased to align with the state government amount of \$250,000 before the calling of tenders is required.
3. 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.
4. That the setting of fees and charges be removed from section 6.16 of the Act and local governments be allowed to determine the fees and charges they wish to impose subject to them being able to demonstrate the actual cost of providing the service.
5. The requirement to give one month's notice of a local government's intention to borrow funds outside of the normal budget approval process be deleted by the removal of section 6.20 of the Act.
6. That the Financial Management Regulations be amended to provide an exemption for Elected Members being required to complete the 'Related Party Transactions' declaration

Rates

Comment

The current restrictions on differential rating and the threshold requirement to seek Ministerial approval is too low and results in an unnecessary administrative burden on the local government when wanting to utilise this method of rating. The difference between the lowest and highest differential rate should be at least three to four times and not the current 'more than twice' and the percentage of minimums criteria should be removed. Council would support the advertising of all rates in a local newspaper circulating in the area allowing for public comment.

The development of 'over 50/55's retirement villages' by charitable or 'not for profit' organisations has created an additional financial burden on local governments who are now not able to rate these properties but are still required to provide the many numerous services and facilities that these active seniors demand. In addition these organisations are in many instances charging these seniors an entry fee that is equivalent to the normal cost to purchase a property outright.

The original intention of providing a rate exemption to those organisations that are providing full care and respite to the very elderly has now been lost in the current environment and the Act should be amended to only provide rate exemptions where full care is being provided. The Act should allow the local governments to rate the 'over 50/55's properties like any other residential dwelling and the individual tenants of these properties should be entitled to the state government rebate if eligible.

The Act legislation should be amended to allow for local governments to levy rates against state government agencies and trading entities such as Western Power etc.

Council Position

1. That the Local Government Act be amended to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth Aged Care Act 1997.
2. Provide access to the pensioner rates discount provisions to individual tenants of these properties should they qualify for the state government rebate.
3. Amend the charitable organisations section of the Local Government Act 1995 to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations.

4. 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.

Council Meetings

Comment

The annual electors meetings are either very poorly attended or are now being used by many residents to raise issues with the local government that could quite easily be dealt with by the Administration staff or at a normal council meeting and also to take the opportunity to denigrate and reflect adversely on the local government and its Elected Members, whereas in fact the annual meeting of electors primary purpose is to receive the annual report and financial statements of the local government.

Council's should be encouraged to engage more on a regular basis with their local community members and then there would not be the need or requirement to hold the annual meeting of electors.

Whilst not an issue with this local government the current number of electors required to sign a petition calling for a special meeting of electors is considered too low as in the medium top larger local government it's very easy to get 100 signatures from a small group of disgruntled electors which then results in an unnecessary cost to the local government to call and hold the special meeting of electors. By increasing the prescribed number electors from the current 100 or 5% to 500 or 5%, whichever is the lower, will not disadvantage the electors in smaller local government but will ensure in the medium larger local governments that a balance is achieved.

In the situation where an Elected Member can't attend a Council meeting in person the requirement for them to be at a suitable place (defined as only a townsite) is unreasonable and overly restrictive on the Elected Member. This requirement does not cater for remote locations or the ability to attend via teleconference whilst in another state or overseas.

Council Position

That section 5.27 of the Local Government Act 1995 should be amended so that Electors' General Meetings are not compulsory.

That Section 5.28(1)(a) should 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.

That the Local Government (Administration) Regulations be amendment to consider allowing attendance at a meeting via technology from any location suitable to a Council.

Community Engagement

Comment

Community engagement continues to be an ongoing issue on how best to inform and engage with the community. The use of social media especially Facebook is not support as the being one of the ideal solutions for community engagement because as pointed out in the Discussion Paper Shire Facebook pages and in general community Facebook pages are being hijacked by 'keyboard warriors' who now use this medium to attack local governments individual elected members and anybody else that disagrees with their view at time using fictitious identities.

The suggestion to adopt a social media policy does not address the issues that arise because like the Code of Conduct the policy only works when people, including elected members, agree to abide by the rules. Unless there is some significant penalty introduced for clear breaches it serves no purpose.

The Code of Conduct is a good example in that there are no penalties if one continues to breach the Code of Conduct guidelines and the current process where minor breaches are reported to the Standards Panel is both cumbersome and excessively long before any decisions are made with complaints mostly taking

six to eight months to be dealt with a determination made. By this time the breach has all been forgotten about and any penalty imposed other than dismissal of the elected member is rendered ineffective and does not result in any deterrent or change in behaviour of the offending party.

In fact given the length of time before a decision is publicly made available the community generally view the decisions as a recent attack by one elected member on another and are not aware of the original breach or offence and in many instances the offender is seen by community members as the victim.

Council Position

That the introduction of legislation to make the adoption of a social media policy by local governments compulsory is not supported unless there are some clear penalties for offenders attached to the policy and that the Act be reviewed to include the provision of penalties for any breaches of the local government Code of Conduct by elected members or alternatively its compulsory adoption be rescinded.

Elections

Comment

Currently under the Act if a local government determines that it wishes to hold its local government elections by the postal voting method it has no option but to utilise the services of the Australian Electoral Commission (AEC). This is overly restrictive and providing other parties can demonstrate their ability to undertake the process to current legislative requirements they should be permitted to tender/quote for the service.

If the state government is concerned about a third party's ability to undertake the election then perhaps tenders could be called from interested organisations and a list of 'preferred suppliers' could be endorsed by the state government from which a local government could then seek quotations.

Whilst there has been ongoing debate about the merits or otherwise of voluntary versus compulsory voting in local government elections, sometimes driven by the low turnout of numbers, voluntary voting and the 'first past the post' method does ensure that those who the majority of electors vote for get elected and in many instances it has seen the ongoing absence of party politics in local governments in Western Australia.

Finally the election of the Mayor/President continues to be a point of contention although generally it's found that in most instances when the community wants to have a say in the election of the Mayor/President it's the result of dissatisfaction with some decisions of the Council and not whether it's a better process.

Council Position

That:

1. The Local Government Act 1995 should be amended to allow the Australian Electoral Commission (AEC) and or any other third party provider to conduct postal elections.
2. Voting in Local Government elections should remain voluntary
3. Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.
4. Elections should be conducted utilising the first-past-the-post (FPTP) method of voting

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