

28 March 2019

Minister for Local Government

actreview@dlgsc.wa.gov.au

Dear Sir or Madam

Re: Submission on Review of the Local Government Act

The Midland Society Inc have read the discussion papers in relation to Phase 2 of the review into the Local Government Act 1995 and wish to make the following comments and suggestions.

1. Beneficial Enterprises

We are concerned that the Western Australian Local Government Association (WALGA)'s proposed Council Controlled Organisations (CCO) Scheme will take the control of ratepayers' funds away from elected representatives who are accountable to the public and hand that control over to corporations with no public accountability.

The 1992 WA Royal Commission into Commercial Activities of Government found: "The public is entitled to insist that government be conducted openly and that it be, and be seen to be, accountable for its actions. Nowhere is the need for this more apparent than when it undertakes initiatives which put public funds and resources at risk".

We submit that the proposed safeguards, such as basing eligibility on the Salaries and Allowances Tribunal bands, are inadequate. For example a band 1 local government may have the highest paid CEO but not necessarily have good standards of governance or accountability. The Financial Health Indicator, which is derived from inputs provided by local government staff, lacks independence and has the same weakness as Tribunal bands.

We believe the current legislation is not strong enough to protect the public from the risks involved in speculative ventures by local governments, and the proposed CCO scheme will make it even easier for public funds to be misappropriated.

2. Compliance

As we have seen in City of Swan, the Midland Oval Redevelopment involved purchasing \$32.5 million in land around the Oval, much of it well over market value, without advertising a business plan as per section 3.59 of the Local Government Act 1995 (LGA).

As there is no penalty prescribed under section 3.59 of the LGA it appears that some local governments regard such provisions of the LGA as optional.

These "optional" provisions are a serious loophole in the current Act potentially providing opportunities for corruption and the discussion papers do not address this problem.

3. WALGA

We believe that WALGA is responsible for the "us versus them" culture that has become so prevalent in local government. An example is its webinar on 21 February 2019 which said "There is always a segment of the community that feels they were not listened to."

It appears to us that WALGA is providing local governments with the tools to ignore valid community dissent which is having a detrimental effect on democracy and accountability. We recommend that Part 9 Division 5 of the

current LGA be removed.

4. Adverse Reflection

The WALGA Communications Webinar for Elected Members (5 July 2016) says "Publicly criticising Council decisions or fellow Councillors may lead to an allegation of a breach of the Rules of Conduct Regulations". This was reiterated in a WALGA media statement on 14 February 2019.

We believe it is not in the best interests of the public for elected members to be prevented from commenting on Council decisions and the performance of other councillors or staff. As long as the comments are not derogatory or offensive then comments (including criticism) should be permitted as part of a robust democracy. It appears that the discussion papers do not address this problem.

5. Review Reference Group

We are concerned that the present review process is apparently managed by a Reference Group that has a membership largely comprised of representatives of WALGA and Local Government Professionals WA.

As one of our concerns with the current legislative regime relates to the continued existence of WALGA as a statutory body it presents a conflict of interest for a significant part of the Reference Group.

To remedy this situation we recommend a Parliamentary committee as the appropriate forum for conducting this very important review into the LGA.

Thank you for this opportunity to participate in this very important reform process.

Yours faithfully

Kelly Ovens
President
Midland Society