



## **SUBMISSION TO THE REVIEW OF THE LOCAL GOVERNMENT ACT 1995**

### **Executive Summary**

The Government has initiated a review of the Local Government Act 1995 with the stated objective “for Western Australia to have a new, modern Act that empowers local governments to better deliver for the community. Our vision is for local governments to be agile, smart and inclusive.”

The objective of the review is in itself a concern. The review does not recognize that the provisions of the Act, in its current form, has failed to adequately address and protect the community’s interests. Some provisions of the Act which are intended to protect community interests and transparency and accountability have no sanctions or penalties for non-compliance.

Rather than identifying the shortcomings in the present Act and addressing these inadequacies, the Review seems to be focused on “new, modern, agile, smart and inclusive”. The practicality and effectiveness of the Act seems to be less important than a polished finish.

One of the glaring inadequacies in the Act is that the community who are the principal parties affected by the Act have no authority or ability to ensure that the provisions of the Act are complied with by the executive. The only recourse for an individual or a community group is to incur significant expenses taking matters to the Supreme Court. The Act should include provisions where matters which establish precedents or clarify the law are fully funded by the Local Government Authority, as ultimately it is the entire community that benefits from such an exercise.

The process used by the Local Government Department (LGD) in this review is also of serious concern. The drivers of the review are the Local Government Department, the West Australian Local Government Association (WALGA) and the Local Government Professionals Australia (LGP). All three of these entities are in a partnership agreement. Community consultation has been well orchestrated so that pre-determined outcomes are achieved. No independent community representatives have been involved in determining the process or as part of the Reference Panel.

The proposed amendments erode the rights of the community and increase the powers of the executive. While the review uses the guise of reducing red tape as the reason for transferring powers to the executive, the reality is that the community and the community’s elected representatives are being fettered and the executive are being given a free rein.

The Review needs to be reviewed. The proposed changes need to be reviewed independently of the “partnership” which is tainted by conflicts of interest. Community representatives must be involved in the review and the proposed changes before they are tabled in Parliament.

## **Inadequacies in the Act**

In *SWAN FORESHORE PROTECTION ASSOCIATION INCORPORATED -v- CITY OF MELVILLE* [2018] WASC 211, Justice Allanson found that although the City had failed to comply with the specific requirements of the Act, decisions made by the City in the course of that non-compliant process were not invalidated and there were no sanctions or penalties for non-compliance within the provisions of the Act.

There are no provisions in the Act which gives Community members standing to take matters relating to non-compliance to the State Administrative Tribunal for review. Complaints to the Standards Panel may only be made in relation to breaches by elected members and there are no appeal processes.

Complaints against employees of the City come within the jurisdiction of the Public Services Commission for a minor breach or the Corruption and Crime Commission (CCC) for serious breaches. Each of these organisations have their own discretion whether to investigate complaints or refuse to investigate. These organisations are too close to the executive. In one instance, the CCC commended a CEO with an award. When a complaint was lodged against the CEO it was not investigated. Even if there was insufficient evidence, the failure to investigate increased the perception of a conflict of interest and a refusal to conduct their duties because of a bias.

Why is it that this review is not addressing these very important issues?

The review must work through each and every provision in the Act to determine its currency, relevancy, clarity, effectiveness and enforceability. That would be a thorough review. Making it “new” and agile is not addressing the deficiencies in the Act. The review of the Act must result in changes that protects and enhances the rights of the community and ensures good governance, accountability, transparency and compliance.

## **The Process**

The LGD has the carriage of this review. Together with its partners WALGA and LGP, the Department has moved ahead in the first phase to propose changes to the Act.

While the LGD has called for submissions from the community and has held community consultation forums, the reality is that these procedures have all been carefully orchestrated so that the LGD can claim that the community has been involved in the Review, while in fact the LGD have already pre-determined the outcome.

From any objective perspective, when the LGD receives a submission from a partner organization and receives a different submission from a member of the community, there is no probability that the LGD will give equal weight to both the submissions. It could be contended that to do so would potentially breach the partnership agreement, which always implies if not requires, the partners to act consistently with the goals and objectives of the parties individually and jointly. To disregard a partner’s submission would not be consistent with that agreement.

The Councils of Subiaco, Melville, South Perth, Stirling, Cottesloe, Cambridge, Mundaring and Wiluna have all passed the same motion asking the Minister for Local Government to appoint elected members independent of WALGA and members of the public to the current Policy Reference Group and then refer the draft legislation to a Parliamentary Committee to allow greater public

participation. This action has been initiated because of the widespread concern in the community that the process of the review is flawed and tainted by the partnership agreement between the LGD and WALGA and LGP.

To ignore the level of concern and proceed to introduce the changes is to compound an already serious mistake.

### **The Proposed Changes**

One of the proposed changes removes the requirement to obtain Councils' approval for appointments of senior employees by the CEO.

The current provision only provides the Council with a veto power if they have and provide good reasons for not approving. This measure of control does not interfere with the CEO's ability to appoint senior employees but it does allow Council a measure of intervention in the case that they as representatives of the community have concerns with particular appointments or the allocation or use of resources. The existing provisions do not run counter to the underlying principles of the Act but in fact were put in place originally because they support the underlying principles of the Act.

Section 2.7 (1) (a) provides that the role of the Council is to "govern" the Local Government's affairs. Govern means to control or exercise control over. Section 2.7(2)(a) requires Council to oversee the allocation of resources, which term includes employees. The proposed change is therefore contrary to the underlying principles of the Act and have been sought by the LGP because of their self interest in increasing the CEO's powers.

The CEO recruitment and performance policy position is vague and does not provide sufficient information. The involvement of the Public Sector Commission as the reviewer is removing the authority of elected members as representatives of the community and placing the authority in the Public Sector Commission who are also "public sector" employees. The intention of the Act is for the Council to govern and control and this proposal undermines the underlying principles of the Act.

The Public Notice policy position does not refer to any sanctions or penalties that may apply for non-compliance. It does not address the consequences of non-compliance in any way, such that related decisions are automatically deemed to be void ab initio, where the notice provisions are not strictly implemented.

The standards of behavior policy position proposes a mandatory code of conduct for elected members but not for employees. There is no reason why employees should not also be subject to a mandatory code of conduct. The introduction of a mandatory code of conduct for elected members and not for employees allows the CEO to threaten elected members with complaints of breaches and control elected members and therefore needs to be re-considered.

The universal training policy is a means to provide further income to WALGA. While training for elected members is supported, the current techniques used by WALGA comprises indoctrination and not training. If knowledge and experience of elected members needs to be improved then there should be entry level thresholds for candidates. That is only candidates with relevant tertiary qualifications in relevant disciplines such as accounting, engineering, law etc. should be eligible to be elected members. This will ensure that elected members are adequately trained before they are elected and ratepayer funds will not be spent on training candidates who have no ability or aptitude for finance, engineering or legal matters that can be expected to be encountered when governing what is generally a large multi-million dollar Local Government.

## **Conclusion**

The review so far has failed to follow appropriate process or proper community consultation. The involvement of the LDG, WALGA and LGP partnership in the process and on the Reference Panel has tainted the proposed changes. The proposed changes are inconsistent with the underlying principles of the Act and erodes community interests.

For the above reasons the outcome of Phase 1 of the review needs to be independently reviewed with community involvement and the following phases needs to ensure that the community is properly represented in the ongoing process.

Clive Ross  
Chairman

29 March 2019