

Local Government Act Submission

Mr Don Punch MLA, Member for Bunbury

Local government is the tier of government closest to the community and as such is it essential it is reflective of and responsive to the community.

The review of the *Local Government Act 1995* provides the opportunity to amend the legislation, and/or the related regulations, to strengthen direct connections between local governments and the community with a view to increasing community participation in local government processes in a manner that is reflective of broader community needs and aspirations.

This submission is presented in two parts; firstly it details a set of principles to be considered to underpin amendments to the Act, and secondly it identifies key clauses within the Act that amended will improve transparency, increase community confidence in local government and contribute to greater participation in local government by the community.

Underpinning Principles

Applying the following principles to amendments to *Local Government Act 1995* will ensure local government is responsive to and reflect of our communities.

1. Commitment to consultation

All provisions regarding requires for local government to consult and engage with the community should be strengthened and reporting in this regard required. Reporting against consultation and engagement requirements should then be considered by any performance audits of a local government.

Consultation should be considered and encouraged in the broadest possible sense. Current, local governments are required to consult with the community regarding future planning for the community in the form of the required Community Strategic Plan and public comments periods are required for a range of decisions, but little is required beyond this.

Community clinics that require decision makers to make themselves available in people's local neighbourhoods are an effective method of increasing the direct engagement between local governments and their constituents. Local governments committing to holding occasional meeting in suburban location is also effective in engaging the community to directly participate in local government processes. Opportunities to encourage more expansive and innovative methods of direct community engagement and consultation should be encouraged.

2. Diversity

Local Governments should reflect the full diversity of the community, in the makeup of the Council or Shire, in their committees, in their staff and in the

community cohorts they consult with. Diversity, however, is not a key performance indicator local governments are required to report on, nor are they required to implement strategies to encourage diversity in all facets of their activities.

Local governments with ward systems are more likely to attract grassroots candidates. Campaigning in a single ward rather than across the breadth of a local government area is more affordable and it is easier to advocate for localised issues within a specified area. In the absence of wards, special interest candidates are more likely to succeed and potentially to reduce the representative diversity in elected positions.

More and more local governments have abandoned the ward system and as such it is becoming essential for local governments to be required to report on diversity within their operations and on the strategies they are employing to encourage diversity. Diversity should be considered from all perspectives, including age, culture, ethnicity, gender and socio-economics.

3. Transparency

The greater the transparency of local government operations the more confidence the community has in their local government. This extends to the manner in which the community is engaged to participate in local government activities.

Specific Amendments

The following specific clauses of the current Act and associated regulation are recommended for consideration for amendment.

1.7. Local public notice

(1) Where under this Act local public notice of a matter is required to be given, a notice of the matter is to be —

(a) published in a newspaper circulating generally throughout the district; and

(b) exhibited to the public on a notice board at the local government's offices; and

(c) exhibited to the public on a notice board at every local government library in the district.

(2) Unless expressly stated otherwise it is sufficient if the notice is —

(a) published under subsection (1)(a) on at least one occasion; and

(b) exhibited under subsection (1)(b) and (c) for a reasonable time, being not less than —

(i) the time prescribed for the purposes of this paragraph; or

(ii) if no time is prescribed, 7 days.

The requirements for public notices are now outdated. The circulation and readership of newspapers is declining. Rapid improvements in the capacity for online transactions is resulting in few people attending local government offices where they would see notice boards and the same issues are reducing the number of people making in person visits to local libraries. If public notices are not made in a manner that places them in the view of the public they fail to achieve their intended purpose. This clause should be amended to reflect contemporary electronic communications.

The use of website notice should be mandatory. The use of email is getting close to universal amongst households presenting local governments with a cost and time effective method of communicating directly with ratepayers and other constituents.

It is not advocated that electronic communications be employed in a manner to deter face to face interactions between decision-makers/staff and the public, the Act should be amended to reflect contemporary communication methods for the purpose of improving the effectiveness of public notices.

4.17. Cases in which vacant offices can remain unfilled

(1) If a member's office becomes vacant under section 2.32 on or after the third Saturday in July in the election year in which the term of the office would have ended under the Table to section 2.28, the vacancy is to remain unfilled and the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

(2) If a member's office becomes vacant under section 2.32 —

(a) after the third Saturday in January in the election year in which the term of the office would have ended under the Table to section 2.28; but

(b) before the third Saturday in July in that election year, the council may, with the approval of the Electoral Commissioner, allow the vacancy to remain unfilled and, in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.

(3) If a councillor's office becomes vacant under section 2.32 and under subsection (4A) this subsection applies, the council may, with the approval of the Electoral Commissioner, allow the vacancy to remain unfilled and, subject to subsection (4), in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.*

** Absolute majority required.*

(4A) Subsection (3) applies —

(a) if —

(i) the office is for a district that has no wards; and

(ii) at least 80% of the number of offices of member of the council in the district are still filled; or

(b) if —

(i) the office is for a ward for which there are 5 or more offices of councillor; and

(ii) at least 80% of the number of offices of councillor for the ward are still filled.

(4) If an ordinary or an extraordinary election is to be held in a district then an election to fill any vacancy in the office of councillor in that district that was allowed to remain unfilled under subsection (3) is to be held on the same election day and Division 9 applies to those elections as if they were one election to fill all the offices of councillor for the district or ward that need to be filled.

[Section 4.17 amended by No. 49 of 2004 s. 31; No. 66 of 2006 s. 8; No. 17 of 2009 s. 12.]

It is concerning elected offices can, under the Act as it stands, be left vacant for periods of almost two years upon the resignation of a sitting Councillor.

Keeping an elected position vacant for such an extended period of time undermines the democratic representation of the community and the potential for effective diversity within the elected body.

The period an elected position can be left vacant should be limited to 12 months with the period being measured from the date of the Councillor resignation being provided to the local government. It is recognised extraordinary election impose a financial burden on local governments and a vacancy limit of 12 months provides a balance between the community's right to representation and the financial implications for the local government.

4.52. Candidates' details etc., exhibition of

(1) If a nomination is accepted, the returning officer is to ensure that the details and profile of the candidate are exhibited to the public (with the details and profiles of any other candidates) on a notice board at the local government's offices.

(2) The details and profiles are to remain on exhibition —

(a) if section 4.55 or 4.57(2)(a) apply, until the result is declared under section 4.77; or

(b) otherwise, until 6 p.m. on election day.

(3) In this section — details, in relation to a candidate, means —

(a) the candidate's name; and

(b) the name to appear on the ballot paper; and

(c) the ward (if any) in respect of which the candidate has nominated; and

(d) the office for which the candidate has nominated; and

(e) the type of election in which the candidate has nominated.

[Section 4.52 inserted by No. 64 of 1998 s. 24(1).]

As stated previously in this submission, the requirements for local governments to provide information to the public must be updated to reflect contemporary communication methods and ensure broad and convenient community access to the information. 4.52(1) should also mandate this information is made available on the local government's website and not confined to a physical noticeboard.

4.75. Giving effect to elector's wishes

(1) The returning officer may accept a ballot paper that, in his or her opinion, clearly indicates the elector's wishes as required or authorised by section 4.69 even if the ballot paper is not marked precisely in accordance with regulations.

(2) In accepting a ballot paper under subsection (1) the returning officer, if appointed under section 4.20(4), is to have regard and give effect to any directions or guidelines given by the Electoral Commissioner.

4.75(1) provides broad scope for a returning officer to assess the validity of a vote. Any lack of consistency in the assessment of validity will appear to lack transparency and lead to the undermining of community confidence in the local government.

For example, 4.69(2) says "If 2 or more offices are to be filled at the election, an elector is to cast his or her vote by marking the ballot paper in accordance with regulations so as to indicate the candidate or candidates named on the ballot paper whom the elector wishes to be elected but is not to mark votes for more candidates than the number of offices to be filled".

There have been instances in local government election where returning officer have accepted ballot papers with every box numbered in order of preference even when the number of offices is far exceeded the number of candidates. The justification is that if there are six offices, for example, accepting votes of the candidates numbered one to six clearly indicates the elector's wishes. Other returning officers would give prominence in their decision making to 4.69(2) and reject the ballot.

Greater definition should be given to instances in which ballots are declared valid or invalid to minimise inconsistencies in the interpretation of the Act.

5.27. Electors' general meetings

(1) A general meeting of the electors of a district is to be held once every financial year.

(2) A general meeting is to be held on a day selected by the local government but not more than 56 days after the local government accepts the annual report for the previous financial year.

(3) The matters to be discussed at general electors' meetings are to be those prescribed.

General meetings of electors with benefit from updates to the provisions regarding public notice as this will increase community awareness of the opportunity to participate.

Public notice for electors' general meetings should go further. While question time and deputations during local government meetings provide regular opportunities for electors to speak directly to their elected representatives, electors' general meeting offer a rare opportunity for electors to move motions from the floor to be considered by the local government. Public notices regarding these meeting should be required to explain the purpose of the meetings and the opportunity they offer to electors. This

will encourage participation are require local governments to consider more issues of local community importance.

5.53. Annual reports

(1) The local government is to prepare an annual report for each financial year.

(2) The annual report is to contain —

(a) a report from the mayor or president; and

(b) a report from the CEO; and

[(c), (d) deleted]

(e) an overview of the plan for the future of the district made in accordance with section 5.56, including major initiatives that are proposed to commence or to continue in the next financial year; and

(f) the financial report for the financial year; and

(g) such information as may be prescribed in relation to the payments made to employees; and

(h) the auditor's report prepared under section 7.9(1) or 7.12AD(1) for the financial year; and

(ha) a matter on which a report must be made under section 29(2) of the Disability Services Act 1993; and

(hb) details of entries made under section 5.121 during the financial year in the register of complaints, including —

(i) the number of complaints recorded in the register of complaints; and

(ii) how the recorded complaints were dealt with; and

(iii) any other details that the regulations may require; and

(iv) such other information as may be prescribed.

[Section 5.53 amended by No. 44 of 1999 s. 28(3); No. 49 of 2004 s. 42(4) and (5); No. 1 of 2007 s. 6; No. 5 of 2017 s. 7(1).]

The requirements of annual reporting should be expanded to include assessments of diversity and progress towards any diversity targets within all areas of local government operations, including the effectiveness of any strategies to increase diversity.

Reporting on community engagement and consultation activities should also be required.

It would be useful for local government to report on their achievements in terms of buy local policies across all areas of operations and to provide a clear listing of all grants and funding provided by the local government to outside organisations and entities.

Expanding annual reporting in this way would demonstrate the local government's commitment to and achievements within its jurisdiction. Recognition of the need for diversity and engagement would encourage participation by the community in local government activities. Reporting on the local governments direct economic

contributions to the community would improve transparency and increase community confidence in and support for their representative body.

5.95. Limits on right to inspect local government information

(3) Subject to subsection (4), a person's right to inspect information referred to in section 5.94 does not extend to the inspection of information referred to in paragraph (n) or (p) of that section if the meeting or that part of the meeting to which the information refers —

(a) was closed to members of the public; or

(b) in the CEO's opinion, could have been closed to members of the public but was not closed.

5.95(3)(b) allows a CEO to deny the public information that was previously available to the public. Some citizens will have access to that information while others will not which could lead to misunderstanding and community dissent. The ability to, in effect, retrospectively close a meeting should be removed.

Division 9 — Conduct of certain officials

There is no public process available for complaints to be made against CEOs. CEOs are regularly the complaints officer for a local government which means should a complaint be made that effectively alleges misconduct by a CEO in collusion or with the support of elected members, there is no impartial avenue for members of the public to register that complaint.

Consideration should be given to expanding the role of the Standards Panel to include complaints against CEOs when the complainant has no confidence the matter can be properly addressed by the elected members of the Council or Shire.

9.49. Documents, how authenticated

A document, is, unless this Act requires otherwise, sufficiently authenticated by a local government without its common seal if signed by the CEO or an employee of the local government who purports to be authorised by the CEO to so sign.

It is not adequate for a document to be considered authentic when signed by an employee who "purports" to be authorised to do so by the CEO.

Just as local governments are required to keep a register of responsibilities delegated to employees, so to should there be a register of employees authorised to sign certain classes of documents.

This amendment would improve transparency and community confidence in local government.

Regulations

Local Government (Administration) Regulations 1996

19B. Information about numbers of certain employees to be included (Act s. 5.53(2)(g)) For the purposes of section 5.53(2)(g) the annual report of a local government for a financial year is to contain the following information —

(a) the number of employees of the local government entitled to an annual salary of \$100 000 or more;

(b) the number of those employees with an annual salary entitlement that falls within each band of \$10 000 over \$100 000.

[Regulation 19B inserted in Gazette 31 Mar 2005 p. 1032.]

As previously stated, local governments should be required to report on diversity within all areas of their activity included within their staff. This clause in the regulations should be expanded to include reporting on diversity which could include age, cultural/ethnic identity and disability.