

Dear Sir/Madam

RE: LOCAL GOVERNMENT ACT 1995 REVIEW 2017

Having read through the Phase 1: Consultation Paper several times, evaluating its content and considering its 126 'guidance questions', my view on this matter is as follows...

A single agency (or department) should be established immediately, having suitably trained staff to oversee and audit all aspects of local government. The current system is unsatisfactory with its many agencies overlapping, limited jurisdiction and with little investigative authority except for the CCC.

1. This agency would be the *first port of call* for all queries and complaints, be they from a local government or the public. This agency would evaluate all queries and complaints and if necessary ensure that rectifications were implemented where necessary. More serious matters would be referred to an appropriate authority with full jurisdiction to resolve these matters.

Mandatory training in all aspects of local government is essential and should apply to Elected Members as well as CEOs and Senior Officers.

1. A short 'introductory course' should be established through TAFE or University concentrating on the Powers and Duties of a local government employee, with emphasis on the Local Government Act and Regulations, i.e. the Do and Don'ts.
2. It should be a prerequisite to have satisfactorily completed such a course before nominating for council or gaining senior level employment in a local government.
3. Subsequent mandatory courses immediately after being elected, or entering local government employment, with further follow-ups are essential to keep abreast of the ever evolving issues affecting local governments.
4. These courses should not only clearly state the differing powers and duties between Elected Members and Officers/Staff but also reinforce the meaning of the Act/Regulations making it clear who does *what, how and when*, eliminating 'self-interpretations' of the Act/Regulations and other relevant Acts and Regulations that we see happening all too frequently.

With respect to the Code of Conduct, the Government should be the only author, eliminating the current system with its multiple Codes of Conduct across the sector. In March 2016 I made a submission with comments on the Rules of Conduct. This concentrated on the Rules of Conduct and other issues raised in this review of the Local Government Act. I have attached a copy for your reference (see below).

I am of the view that once the above matters have been implemented the majority of the issues raised in this Consultation Paper will resolve themselves. I consider these have arisen due to lack of any proper established formal training.

I do not know of any other industries or organisations serving the community that are permitted to do so without those involved being appropriately trained for the task.

Yours sincerely

Eigil Nielsen

Dear Ms Hill

Thank you for your presentation at the briefing on the 22nd February 2016 at the East Fremantle Yacht Club. It was extremely helpful and reinforced my concerns regarding good governance and transparency.

Having looked closely at the Consultation Paper I do have reservations about some of the proposals which I do not think will go far enough towards restoring the good governance and transparency that Mr Simpson, Minister for Local Government is looking for. I take the view that a broader Reform of the whole sector is necessary.

In order to restore good governance, accountability and transparency in local government it is necessary to place all councils on an equal footing. Some of the following should be considered.

1. Formal training/education of all new candidates prior to standing for election.
2. Regular refresher training/education of all elected members.
3. The introduction of a uniform Code of Conduct applicable to elected members as well as employees, officers, staff, CEOs with the inclusion of a uniform Conflict of Interest provision.
4. A single independent body having full jurisdiction and investigative power to oversee compliance by all elected members, employees, officers/managers on contract and the CEO.
5. The following of the recommendation in the Public Accounts Committee Report No. 12 (Improving Local Government Accountability) for the Auditors General to audit all local government activities.

I have attached a few comments on matters raised in the Consultation Paper.

Yours sincerely

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SUBJECT: Comments on Review of Local Government (Rules of Conduct) Regulations 2007.

RE: Price signals to deter improper, unsound and trivial complaints (page 20, refers).

To charge an application fee can become problematic and it raises a number of questions-

- Who decides what a minor breach is and what is unsound and trivial?
- Is the complainant in a position to ascertain what is a minor breach or if it is unsound and/or trivial?
- A seemingly minor breach in the first instance may in fact prove to be a small stepping stone to more serious matters. What is the threshold between a minor breach and a more serious matter?
- An application fee and the uncertainty of what is a minor breach may deter an applicant and they may resort to seek 'trial by media' instead?

RE: Regulation 6 – Unauthorised disclosure of information (pages 28 - 32, refers).

This particular matter has become an issue in recent times in that it is controlled by one person, the CEO. It is not clear what should be confidential.

With one person having the sole discretion it lends itself to criticism of lack of transparency or even abuse (cover up). Mr Simpson, the Minister for Local Government has raised concerns about lack of appropriate transparency.

Proposal 7.4 – Regulation 6, Item 3 (page 31, refers). This proposed amendment is too broad in its context. Not all legal advice is necessarily of a confidential nature. Often these can be seeking a general guidance for the Council and the community for that matter; a clarification and guidance on due process for example.

Such legal advice, if not in favour of the 'council's' intentions, could be unduly 'deemed confidential'. The same applies to a non-disclosure agreement or commercially sensitive information that ought to be defined as to what that is. One has seen the attempt to turn a disclaimer agreement into a confidentiality agreement.

RE: Regulation 8 – Misuse of local government resources (pages 36 - 37, refers).

This is a difficult matter, particularly around election time. For a sitting member seeking re-election it can become somewhat difficult to establish to what extent local government resources can be used. A solution may be to place Council in 'caretaker mode' with restricted access to local government

resources during the election period. This will go a long way towards placing sitting members on equal footing with new candidates.

The use of local government resources whilst attending to a 'secondary job' is problematic and needs clarification.

RE: Regulation 10 – Relation with local government employees (pages 39 – 47, refers).

Rather than amending Regulation 10 a uniform Code of Conduct applicable to all councils would improve working relationships at all levels and reduce the workload of dealing with minor breach complaints.

A uniform Code of Conduct applicable to all members, employees, officers and management would eliminate councils from having two or more often conflicting Codes of Conduct, one for Elected Members and another for Employees and with none for officers on contract.

RE: Proposal 7.9 New Regulation - Public statements (pages 48 – 49, refers).

The Proposal 7.9 – New Regulation (Public statements) Item 2 is a preposterous suggestion that has all the hallmarks of a proposal made by the City of Melville.

In August 2015 an article in the local paper reported that the CEO had *“issued a decree to elected members ordering them to report to him all contact they have with members of the public.”* The article also reported that the CEO's *“decree tightens the screws even further on elected members at Melville, who already operate under some of the most restrictive self-imposed conditions in WA”*. This situation has been allowed to develop over recent years to the point where there is little or no constructive interaction between elected members and the public. This brings into question the elected members ability to diligently comply with Section 2.10 (Role of councillors) of the Act.

Any issues of concern finding their way out into the media are usually justified and a tell-tale sign of lack of good governance that may require further investigation. We saw an example of that during the council amalgamation process.

It really raises the question of whether this new proposed regulation is an attempt to curtail whistle-blowers by making it an offence to do so. Such 'restriction' is contrary to what a 'whistle-blower' is afforded elsewhere.

The proposed regulation would not only impinge on a council member's basic right of freedom of speech but also have implications for sitting members seeking re-election on a platform containing just the slightest hint of concerns that require improvement.

The suggestion of extending the requirement to apply to social media such as blogs, e-newsletters, Facebook and the like is equally as absurd. With the Standards Panel's limited jurisdiction and no investigative power any matters arising from such media cannot be independently verified.

RE: Proposal 7.10 New Regulation – Interactions with council members (pages 49 – 51, refers).

Inappropriate behaviour is often a tell tail sign of frustration often brought on by poor management and training within an organisation. This proposal will only serve to escalate disharmony further and increase submission for ‘alleged’ minor breaches.

Appropriate recognised training/education (e.g. TAFE or similar) prior to becoming a council member is essential and as we know does not exist. Continued refresher courses conducted by the same institution (e.g. TAFE or similar) for all sitting members is vital in order for members to stay on course.

I do not know of any other profession where a person can walk straight in off the street and take on responsibilities affecting hundreds if not thousands of people without prior ‘approved qualifications’.

RE: Proposal 7.12 - Regulation 12 (pages 57 – 59, refers).

The inclusion of the definition “nominal gift” appears appropriate and will go towards a better understanding what a reasonable gift is.

The current Regulation 12 (1) ***prohibited gift***, (a) (b) appears reasonable particularly when dealing with Hospitality and Cash gifts. Automatic CPI adjustment would be appropriate.

In the event of any suspicion of breaches the matter should be investigated by an appropriate authority (e.g. CCC or similar) and not left for the municipality to deal with, having little or no investigative experience/qualifications.

RE: 7.13 Application of Rule of Conduct to election candidates (pages 59 – 60, refers).

Until such time new candidates have undertaken formal training/education prior to standing for council it would be most inappropriate to consider raising complaints for minor breach on a new member after they have been elected.

RE: Standards Panel Procedure and Practice (pages 60 – 71, refers).

I have some reservation with the effectiveness of the Local Government Standards Panel in its present form as it only deals with one section of a local government, the elected members.

The Standards Panel conduct proceedings in private (*i.e. usually parties to a complaint and members of the public are not in attendance*), a process that is opposite to our judiciary system, and not having the investigative powers and jurisdiction required to independently verify a complaint against an elected member from other sources (third party) the proceedings may be unbalanced.

The Standards Panel has jurisdiction to deal with misconduct related to meetings. Such meetings will on many occasions have local government employees attending where a minor breach may occur involving both an employee and an elected member. The Standards Panel have no jurisdiction over the employee but can ‘quite comfortably’ address any alleged minor breach against an elected member without due

investigation and examination of all parties involved; that is in my opinion a miscarriage of natural justice.

RE: 9.1 Independent conduct review panels (pages 72 - 73, refers).

I am not in favour of establishing panels of independent investigators to advise councils on alleged breaches let alone letting councils decide what sanctions may be imposed on fellow councillors who breach the rules.

It is paramount that there needs to be an appropriately structured independent body that can oversee compliance and deal with breaches and sanctions where necessary but from 'an arm's length' from local government!

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Egil (Ike) Nielsen