

LG Act 1995 Review -Phase 1 - Submission

by Humphrey Boogaerd

The first part of this submission are general comments, the latter part is based on the LGA Review paper. Text extracted from the LGA Review Consultation draft paper are in italics and with my response below it.

LGs do not exist in a vacuum, society is changing rapidly and is likely to continue to do so. Part of this change is the increase in population. This requires unfill and puts more strain on the environment. Climate change will also have its impact. For these reasons the new LGA has to incorporate processes for LGs to deal with these issues and legislating for the status quo is not an option.

One of the issues is for LGs have to start incorporating in their governance is the cost of externalities. Following here is some background information regarding externalities. There is acceptance that climate change is real. That means we do not live an era where the status quo regarding the environment is acceptable and desirable. As a society we are morally obliged to change the way we run the economy in order to make it sustainable. This should be reflected in the revised LGA.

The 'western' world has become in part rich due the history of colonisation based on "pillage". This is unfair and not sustainable. Our economic modelling, thinking and actions are still based on this pillage mentality. The real cost of human activity has to be calculated and included in our products, that is externalities have to be included, using methods like Full Cost Accounting (Antheaume, 2004 & 2012). Or, going even further with changing the economic system with amongst others "Doughnut Economics" (Raworth, 2017) and the "Circular Economy" (Rau & Oberhuber, 2017). In addition there may be a need for a more humane and inclusive approach to economic issues as described by Brown (2017) in her book 'Buddhist Economics : an Enlightened Approach to a dismal Science'. These new approaches to economics provide sustainable alternatives.

In 2018 it is not acceptable any more to argue that economics for a company are more important than the environment. Companies have to start paying for externalities. In Wikipedia the definition of externality is given as follows : "In economics, an **externality** is the cost or benefit that affects a party who did not choose to incur that cost or benefit. Economists often urge governments to adopt policies that 'internalize' an externality, so that costs and benefits will affect mainly parties who choose to incur them". The concept of paying for externalities is not new, in 1920 it was suggested by Arthur Pigou. Now taxes raised to cover these types of costs were named after him, namely 'pigouvian taxes', a current example would be a carbon tax. Externalities are paid for by government, the taxpayer. If externalities are paid for by companies tax rated could be lower since governments do not have these costs. The LGs should start incorporating these concepts in their financial statements.

Neoliberals may see this as lefty talk but it is really about the survival of the next generations by fighting climate change and pillaging the earth.

Canopy cover in LGs is dramatically reducing, this needs to be reversed. Loss of tree canopy increases the health risk of heat islands (Brown, 2013). Many LGs actively trying to improve canopy cover, but that maybe not enough. For this reason there is a need for some legislation to ensure our towns and cities have the power to become more biophylic (Beatley, 2017; Matan & Newman, 2017). E.g. by requiring a minimum percentage of green space at a development. Or, any tree even on private land of let say 2m tall should require a permit to be removed. As incentive to keep the tree give concessions in sustainable building design.

In this context it maybe tempting to use the word “sustainability”. In business the word sustainability is regularly used, but with that they do not necessarily mean the same as an environmentalist. It is often used as greenwashing or just meaning that the business sustains making profit (Schaltegger & Burritt, 2010). So in legislation one has to careful how to use it.

The period for public comment on development submissions submitted around Christmas need to be extended beyond the ‘standard’ period. One month extra should be good. During the Christmas and New Year period people are busy or on holidays and so have not the opportunity to comment. A precedent for this extension is set by the ATO which normally expects payments 28 days after the quarter ends, so 28 April, 28 July and 28 October. But 28 January is extended to 28 February. This is very important from transparency point of view.

It appears that LGs often do urbanplannning with the status quo in mind. They should be more forward thinking about it and presenting options to the community, whose comments will indicate if certain suggestions are too outlandish or not. To explain these better an example of the Town of Cambridge. In 2017 as part of updating the local Planning Strategy they got consultants to prepare a draft for public comment in which they provided three scenarios for the required infill. The three scenarios were just variations of the status quo. There was no scenario that suggested let say in 10 years’ time, that most vehicles will be electric, many self-driving and often shared. The latter will reduce the amount of road and parking spaces needed. Indicating the start of an era when transport is used as a service (Seba, 2017). No innovative style of subdivisions, or minimum “green space” requirements for new developments. For more details see Boogaerdt’s submission to Town of Cambridge (2017-b).

Large development applications which involve land clearing etc., submitted to an LG do not get properly assessed by LG staff. Reasons for this are not enough staff to go in detail through all the documents and/or lack of expertise in certain fields. As result the LG accepts the proposal by the developer on the basis of an executive summary. For example, I went through all the documents of the development application by Satterley for developing an estate in Upper Swan (City of

Swan). As a geoscientist picked various mistakes and omissions¹ for solutions to some problems, all highlighted in my submission (Boogaerdt, 2017-a). Therefore I suggest that the WAPC creates a special taskforce of experts on call for LGs. This taskforce with a wide range expertise that can comb through document presented by developers. These experts would have picked up and queried the developer about points as highlighted in my submission. It cannot be expected that an LG has all in house expertise which is needed to asses all parts of the development application, even a large one like City of Swan. LGs to have a statutory requirement to make use of this taskforce.

A different example is when Hanson Australia Pty Ltd applied for an expansion of their Red Hill quarry and submitted plans with the City of Swan for approval, because it falls within the metropolitan area. The plan presented was drawn up by urban planners. As a geoscientist I would expect that a mine expansion needs to be assessed by a geological or mining consultant under strict guidelines (JORC-code² compliant). A quarry is only a different type of mine due to the material extracted. The consultant would and could not have accepted the proposed shape of the quarry expansion due to geotechnical safety concerns³. No blame can be laid to the urban planner or City of Swan because they do not have the expertise in this field and view the application as an urban planning issue. I suggest that all quarrying related issues need to be assessed by Department of Mines on behalf of the LG.

LG financial statements should be clearer. Often there are no options to drill down deeper to find out more details.

LGs, neither Landcorp, should be properly developers, e.g. at the Midland oval redevelopment. The whole process becomes very murky with a lack of transparency, often shrouded in “commercial confidentiality” statements.

The revised LGA is to have a clause which makes it compulsory for LGs to adhere to special legislated areas like the Swan Valley which is covered by the Swan Valley Planning Act.

In the Review paper at various times the issue of transparency is raised. I suggest that there should be transparency diagrams or tables that show the disclosure of funding independence of an institution, a consultancy or individual expert. There are many university and research institutions that get sponsored by industry, and so their researchers could be compromised.

1 Examples are : ‘Trees labelled as on maps “exotic” were actually 25m high native gumtrees. Resulting in these tree be allowed to get removed’ or ‘In the reports waterlogging was indicated, but no satisfactory environmentally friendly solutions was given’.

2 JORC = The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the ‘JORC Code’ or ‘the Code’) sets out minimum standards, recommendations and guidelines for Public Reporting in Australasia of Exploration Results, Mineral Resources and Ore Reserves. http://www.jorc.org/docs/JORC_code_2012.pdf

3 The geotechnical safety concerns regarding the shape of the proposed quarry is that its quarry walls likely will collapse. This inappropriate design resulting in possible **fatal injuries** to personnel operating in the quarry.



This diagram from the LGA review doc.

In theory the above diagram is how it should work. My impression is that this separation of powers does not always work and this view was confirmed by many people from different councils who attended one of the LGA Review workshops. It was often the criticism on the relationship Mayor & CEO. They often have right of veto to start/stop conversation about a topic. In practice the CEO drives everything because having too much power. Enumeration and contract renewal appear to be nearly automatic, because council not strong/independent enough. Link CEO & Mayor becomes stronger when they belong to the same political party.

Especially for new councillors the power of a CEO can be too great.

A part solution could be to have maximum term in office for CEO, say two times 5 year terms max.

Perceived or real the power of the CEO blocks transparency of processes.

16) Do you have any other suggestions or comments on training?

There is a need for ongoing training. As mentioned in the Review draft training for new candidates and for candidates with previous LG experience they should undergo refresher course.

Part of training should also be acquiring skills in ADR (alternative dispute resolution and in mediation provided by accredited mediators⁴) instead of being only adversarial in their approach to conflict.

While limiting the holding of office to those who have completed training or will complete training may seem to be undemocratic, it represents one of a series of preconditions to be an elected member.

Yes

Training would need to be made available in a range of modes, including online, to allow elected members throughout the State to undertake the training with minimal disruption to their working and personal lives.

Yes

All councils must adopt a councillor code of conduct which needs to be publicly available on the council's website.

Yes

22) Do you support a reduction in the time frame in which complaints can be made? Is three months adequate?

No

⁴ *Mediator* = Mediators do not advise upon, evaluate or determine disputes. They assist in managing the process of dispute and conflict resolution whereby the participants agree upon the outcomes, when appropriate. Mediation is essentially a process that maximises the self-determination of the participants. The principle of self-determination requires that mediation processes be non-directive as to content.

Mediation = A mediation process is a process in which the participants, with the support of the mediator, identify issues, develop options, consider alternatives and make decisions about future actions and outcomes. The mediator acts as a third party to support participants to reach their own decision.

All complaints where a person believed that the outcomes were breached would be submitted through the local government complaints officer (usually the CEO) to the reviewing body.

There should be a choice of where to go to with a complaint, the LG complaints officer or to a more independent officer (part of WALGA?). Likely more people with complaints will come forward.

25) Should the rules of conduct that govern behaviour of elected members be extended to all candidates in council elections? Please explain.

Yes if they cannot behave as candidate then they should not be councillors.

Council is required to establish by resolution a panel of conduct reviewer. Councils may share a panel of conduct reviewers.

There should be a database with all the complaints.

28) Is it appropriate to require the existence and details of a complaint to remain confidential until the matter is resolved? Why? 3.4 Reforms to the Local Government Standards Panel and the means to review alleged breaches of the Rules of Conduct Regulations

Keeping it confidential enhances the opportunity for the issue to be resolved with ADR. So creating the opportunity for both parties to go forward in the same workplace.

39) Do you support the inclusion of mediation as a sanction for the Panel? Why or why not?

As pointed out under the training section mediation is essential (see footnote 4). Mediation should be the first call to settle a dispute. Also mediation deals with grievances in the workplace and can put processes in place that help restore trust and cooperation.

69) Would a 'cooling off' period before a council can terminate the CEO following an election assist strengthening productive relationships between council and administration?

Agree.

The State Government cannot intervene in lawful decisions made by a local government, even when these lawful decisions are inconsistent with broader community views.

How will these views be established?

82) Should local and State government employees be able to carry over the recognition of service and leave if they move between State and local government?

Yes, it would create a bigger pool of people. When a transfer occurs all the entitlements should be transferred as well. So the liabilities, from State or LG viewpoint, that were occurred should be transferred, paid out to the new entity. Some admin costs involved but now in a digital era all that should be simple.

83) What would be the benefits if local and State government employees could move seamlessly via transfer and secondment?

A larger pool of talent, opportunities and expertise. Need a system where liabilities like sick-leave can be transferred.

All other jurisdictions in Australia have addressed this issue by amending their legislation to account for new technology. The particular approach differs from State to State.....

City of Stirling's online mapping is best and should be a standard for all others.

Everything that is available in paper copy however cumbersome should be made available online. A lot of websites need to be streamlined to do this job easily. Now there are often appear that they do not want you to find anything.

May not be accessible for certain demographics

Setup 'opt out' using paper or 'opt in' and give it x years to transition to totally electronic.

96) Which general option do you prefer for making local public notices available? Why?

Should be all on the LGs website with the provision the websites are easily navigated and searched. This is often not the case, the problem also exist outside the LGs.

113) Is it necessary for some employees to be designated as senior employees? If so, what criteria should define which employees are senior employees?

That depends on size of the LG.

95) Do you have any other suggestions or comments on this topic? Transparency.

The operation of local government websites; the issuing of electronic notices; and online access to public documents.

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I am an independent concerned citizen.

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