SUBMISSION TO THE REVIEW OF THE LOCAL GOVERNMENT ACT (1995)

BY
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INTRODUCTION

How to get local Government to be more responsive and inclusive, less autocratic and belligerent while operating in the public interest is one of the great conundrums of public governance.

To qualify as a form of representative government, a body requires some form of popular mandate and local government does not meet that basic criteria.

Representative government is created by a constitution or legislation, has a definite tenure and involves the power to carry out some governmental function/s; should the majority of points in the discussion paper ever be introduced they will take us a long way from those ideals.

That is because the discussion paper does not meaningfully address any of the fundamental issues confronting local government in Western Australia.

Apart from the Legislative Council, local government is the last vestige of colonialism in our State; the voting entitlement provisions of S4.30 of the Local Government Act best highlight this.

These provisions bestow property-voting rights to non-residents owning or occupying rateable property within a local government area.

This property franchise is at odds with any understanding of modern democratic processes and the colonial landed gentry's rights of this type were abolished at State level in WA in the 1890's and nationally in 1902.

It is time local government was dragged towards adopting the democratic advances of the century before last.

The Local Government Act is a very dated piece of legislation that attempts to pre-empt proper process and democratic outcomes by imposing detailed and legislated procedures. The Act suffers from legislators attempting to remediate trivial detail with lengthy and prescriptive law; this approach almost always fails.

Any thinking person attending nearly any Council meeting will attest to a slavish focus on process at the expense of merit. Outcomes, cost and civic inconvenience are mostly disregarded whilst Councils wrangle over rigid adherence to obtuse bureaucratic/legislative processes.

Modern laws creating general powers, with the detail being addressed in regulations, have long replaced that 19th century formulaic approach to lawmaking.

These modern options always produce more competent legislation by creating heads of power whilst allowing relatively rapid regulatory change that can better respond to changing circumstances.

Later, I will address a more appropriate process for reviewing this legislation; but for now I submit that the current public consultations, while well meant, are definitely not the optimum vehicle for such a complex and far-reaching review.

The fundamental problem confronting local government is that it lacks any constitutional basis, is wanting for universal franchise while suffering inordinately low voter turnouts and all of the other issues addressed in the discussion paper pale into insignificance when compared to establishing some form of legitimacy for this level of government.

Until that legitimacy is in place, local government's claims (and those of their fellow travellers) to being either a functioning democratic system or a legitimate level of Government should be ignored.

PRELIMINARY

There are some preliminary matters that need addressing.

The major reason why local government is the most dysfunctional and least accountable level of government is that most of the regulatory, Parliamentary, political and public oversight measures that operate at every other level government are non-existent at this level.

The combination of the lack of democracy and competent oversight negates all of the accepted checks and balances that typify a modern democratic system; their absence is compounded by local government's structural unsoundness.

That structural unsoundness stems from antiquated local government borders that entrench high costs and inefficiencies; these lines on maps are based on long forgotten and irrelevant historical decisions.

There is no doubt that local government boundaries need to be modernised to reflect 150+years of civic change.

Even if we overlook (and I trust we will not) that major structural issue, this review of the Local Government Act is immaterial unless its recommendations for change are based on the very accurate and recent Public Accounts Committee and Crime and Corruption Commission reports and comments about local government.

Because it accurately encapsulates the issues confronting local government, particular emphasis should be placed on the CCC report into Exmouth and the ensuing recommendations (released on 2 May 17).

However, the structure of this Review dictates that this outcome is unlikely. As it is unlikely that the review will adequately address any of the fundamental issues confronting local government.

Parliamentary Committees are best placed to conduct comprehensive Legislative reviews of this type. These committees have the ability to travel, hold public hearings, take formal public evidence and submissions; draft laws, make recommendations and monitor their progress at a Parliamentary level in a way that this review cannot.

Instead of that open, transparent Parliamentary system, the reference group for this review excludes the public and comprises a group mainly with interests in retaining the status quo within the local Government club:

- Western Australian Local Government Association, and
- Local Government Professionals Australia (WA), and
- Western Australian Electoral Commission, and
- Western Australian Council of Social Service, and
- Regional Chamber of Commerce and Industry and
- WA Rangers Association.

As the Parliamentary option has not been adopted, it is a perfectly reasonable demand that there be some public involvement in this review process.

There is a monumental difference between the public being consulted, which it is, albeit in a minor manner, and the public being part of the decision-making, which it is not.

It is untenable for the major regulator in the local government system (i.e. the Department) to be the arbiter of change; as it is unreasonable that there is no civic representation (notwithstanding the public consultations) at any level.

This is demonstrably a case of the club reviewing the club and most likely acting in the interests of the club; the political attraction of this process is that involving the most vocal critics of change ensures they will not offer any.

The downside of that soft political option is that much needed reform is unlikely to be forthcoming.

Another important matter worthy of consideration is the introduction of the State Administrative Tribunal (SAT) processes and its impact on diminution of local planning powers. These initiatives have significantly reduced the power, role and function of local government.

The impact of SAT and other centralist planning bodies are dramatic changes that have disenfranchised local communities and severely diminished their ability to influence development within their local government areas.

It is my view that local communities should be the final arbiter on important decisions that affect their amenity and lifestyles. It is also my view that the relevant planning

legislation should be amended to reinstate local/third party input into every level of decision making in planning.

However, while these planning responsibilities have shifted to the State, the cost of local government has increased in real terms.

Competent planning is another entire subject that remains unaddressed in local government but what the changes that have occurred mean is that as local government's responsibilities have diminished, the cost has gone up – please explain?

Australia is a democracy, not a technocracy or bureaucracy and the current Act appears to be constructed on the premise that anyone elected cannot be trusted; while anyone not elected, can be.

This attitude reverses the very important democratic principle of the primacy of those elected and, even more inappropriately, many State Departmental responsibilities for training, advice and governance have shifted to WALGA.

WALGA

Formed under the Gallop Government with the intent of providing advice to the Government on matters relating to local government WALGA arose out of an amalgamation of all the previous local government organisations.

WALGA is not a body that represents the public interest; it defines itself as:

"The WA Local Government Association is the voice of Local Government in Western Australia. As the peak industry body WALGA advocates on behalf of the 139 WA Local Governments and negotiates service agreements for the sector"

WALGA has a vision to:

...be powerful and influential in representing, supporting and leading Local Government."

And says that:

"The WA Local Government Association (WALGA) lobbies and negotiates on behalf of 139 WA Local Governments. As the peak lobbying and advocacy organisation, we have a strong influence on how policy decision are made that affect the sector"

It is important to note that WALGA is not a local government, has no regulatory powers and has no authority over Councils; but since its inception it has self promoted itself into the mainstream of decision making in a way that no other lobby group in WA has ever been able to.

WALGA is now a centralised monolith that occupies a large city office building and so dominates discussion on local government that it has become decidedly dangerous to any meaningful democratic discourse.

Many incumbent councilors routinely turn to WALGA for advice on Council matters and many of them are surprised to find that it (WALGA) is not the Department responsible for regulating and monitoring local government.

That dominance is not in the public interest and challenges the very nature of local government. Local governments can be small country towns, larger country urban councils; suburban or city based and each of these bases has different dynamics, demands and requirements.

At times what is being advocated by WALGA can be advantageous to one kind of council while disadvantaging others and these matters are decided behind closed doors inside WALGA.

Representatives making these deals have no mandate whatsoever from the vast bulk of Western Australians and whilst WALGA office holders may be elected (albeit with low turnouts) in their relative constituency; the privately negotiated decisions they make affect all citizens and are devoid of either democratic input or public scrutiny.

The best example of this public disconnect was the process related to local government amalgamations. The local government campaign was a work of beauty; it was a scare campaign that was brilliantly presented by those protecting their own interests.

When the results of their amalgamation polls/referenda were assessed, voters stayed away in their droves and the polls clearly failed even the most rudimentary democratic test.

- The highest voter turnout was 54.68% in East Fremantle with 75.93% or 2,145 of those voting against the merger proposals; the required democratic majority was 2,589 votes.
- Kwinana was next highest turnout with 52.93%; 87.98% or 8,462 opposed and they also fell short of the 9,104 needed for a democratic outcome.
- Victoria Park: 4,697 voted against and the target needed was 10,068.
- South Perth: 10,572 voted against and the target needed was 13,394.
- Cockburn: 18,654 voted against and the target needed was 30,944.

Even with all the preceding controversy and media coverage, these five local governments had an average voter turnout of 46.52%; meaning that the majority of the voting public stayed away and consequently there was never a majority of eligible voters rejecting the amalgamation proposals.

Only in local government world could not getting a democratic majority in a referendum be claimed as a win; but claimed it was.

And that corrupted claim changed the political agenda, removed mergers and amalgamations from the public arena with the effect of simultaneously entrenching high costs on ratepayers and rewarding vested interests.

Therein lies the dilemma. In a democracy, when the public does not vote, there can be no public mandate or electoral legitimacy and the best our locally elected ones can ever claim is a license to consult.

And local government consulting with their communities is traditionally met with similar levels of involvement as voting; that is, the public largely ignores it.

But the reality is that the local government boundaries in WA largely reflect colonial times and if they did not exist, any person suggesting the current boundaries be adopted would be laughed out of the room.

It is obvious from that poor voter turnout that the public is not concerned about changing boundaries, as it is clear that the power of the status quo and vested interests overrode that public view.

Has there ever been a time in Australia's history when voters have asked for more government? I don't think so and a most significant and important change to the Act should be to enable boundary changes to be made easier, more effective and reflective of the realities of modern civic life.

It is equally obvious from the moves to regional council bodies that local government itself understands that, in order to reduce the unit costs of delivering services, they need to expand and are amalgamating in everything but name.

But whilst they are regionalising, local government is simultaneously retaining the multitudes of councillors, administrations and executives that are all paid for by ratepayers; these unnecessary and entrenched costs are sustained by higher rates and the poorer provision of community amenities.

In my hometown, the litmus test would be to ask any ratepayer if they would prefer less highly paid executives and councillors or a swimming pool? The answer is obvious, but the result has been more highly paid functionaries.

Unless changes to boundaries and elections are meaningfully addressed, this review cannot, and will not, deal with the most substantive and fundamental issues confronting local government.

ELECTORAL MATTERS

Local government consistently claims to be "grass roots" and describes itself as the level of government closest to the people; for their part, the people reward this view by staying as far away from local government as possible.

An examination of the turnout for elections is illuminating and I have used the figures from Toodyay, but I suspect a wider examination will confirm a similar trend elsewhere.

The turnout for the last local government elections was the highest ever; and while that is a great thing that demonstrates something, it does not demonstrate any meaningful democratic outcome.

It was a huge improvement, but that record turnout was still the lowest of any of the recent elections in the town:

- 1017 - Turnout for Toodyay Shire Council elections
- 1117 - Turnout for same sex marriage plebiscite
- 1442 - Turnout for 2017 State Election
- 1595 - Turnout for 2016 Federal Election

That is pathetic – even at its record high (50.86%), the local government election turnout is significantly lower than the postal vote on same sex marriage (76.3%) and this is a very valid comparison; because, unlike the obligatory voting at State and Federal levels, both these ballots were voluntary postal votes.

No person elected under that deficient system can claim any sort of electoral mandate or legitimacy; but even those who are brave enough to claim it are undermined by the farcical first past the post voting system.

I reiterate that, while it has such pathetic voter turnouts and such a terrible voting system, local government cannot make any meaningful claim to being either a representative democratic system or a legitimate level of government.

There are a number of initiatives and legislative changes that could address this:

- The WA Electoral Commission being required to conduct all council elections.
- All council elections should use postal voting systems (Requires amendments to S4.61).
- The introduction of compulsory voting.
- The removal of property based voting rights.
- The removal of first past the post voting.
- The introduction of optional preferential voting.
- The removal of ward systems.
- Introducing a legislative requirement that councillors elected unopposed only hold office until someone nominates against them; then the position is immediately declared vacant until an election is held.

As pointed out earlier, the anachronistical property based voting right is a hangover from colonial days that has not been implemented since the 18th century Georgists; it does not exist, nor would it be accepted, in any other level of government and it should be abolished.

The combined effect of the above proposals would be to re-engage local government with the community, provide some electoral legitimacy, remove corruptions of the system and replace the large chunks of the current act that relate to elections with one section referring to a suitably amended Electoral Act.

VOTING

For whatever reason, past state legislators thought that continuity was important so they required staggered elections; thereby making it impossible to vote a council out of office.

No such provision could, or would, exist in any other level of government.

Can you imagine the response to the unlikely scenario of the newly elected Premier, Mark McGowan being required to have former Liberal/National Ministers in his cabinet for "continuity purposes"?

It is nonsense – local government is not supposed to be political so there is no formal party representation; and while can be both a good and bad thing, it means that there are no legitimate and loyal oppositions.

The effect of this is that policy, procedures and decisions are usually uncontested publicly and the public cannot vote any party or group in or out of power.

That absence of formal parties and oppositions means that when the public may wish to vote out an existing council, staggered terms for councillors thwarts that legitimate civic desire.

In our most recent elections, the town voted for change and got none because a rump of councillors who did not have to contest this election remained in office and the status quo prevails.

It poses the very important question that if citizens do not have the right to change their council, what is the point of voting?

I reiterate that the electoral system for local government badly needs overhaul and until that is competently done; the current system invalidates any claims of democratic legitimacy.

That lack of legitimacy demolishes the rhetorical nonsense that local government is the level of government closest to the people and, I recommend that:

- Postal voting be legislatively imposed as the method of election for all local government elections; and
- all elections be administered by the WAEC; and
- anyone elected unopposed should only hold the position until someone nominates, then an election be held; and
- Councillors all face election/re-election simultaneously

WARDS

Wards are a corruption.

They are a poor imitation of the State and Federal Parliamentary systems, where winning a majority of seats grants government – as discussed in the previous part, no such system exists in local government.

Across our Shire there were 11 Candidates for 5 Vacancies; however, because in one ward there was only one candidate; that person was deemed elected uncontested and is now our Shire President.

This is not, and should not be, considered a personal attack on that individual, but how can the leader of the elected representatives claim any legitimacy when they are appointed and not elected?

Appointing people to positions that are intended to be directly elected has no role in a democracy and while candidates being elected unopposed is unhealthy at any time, the ward system magnifies the issue of elected representatives having no public mandate or authority to act.

Aside from abolishing wards (which I strongly recommend) people appointed into any local government elected position should only hold it until someone wishes to contest their position; once someone expresses that desire an election should be held without delay.

The ward system undermines the provisions of S4.56 of the Act that lays out the process when there are more candidates than vacancies, subverts the will of the people and I note that:

- There are no residency requirements in the ward system (nor should there be), and
- prior to elections there is no requirement for a candidate to have ever visited a ward, and
- there are no restrictions on nominating in a ward where a candidate has never lived.

Wards are an abomination that should be abolished.

COUNCILLOR/CEO PAYMENTS

Since the 1980's, the concept of centralised wage fixing has been dead in this country, however in local government it remains alive and well.

As it is subservient to the State, local government is bound by direction from, and decisions of, that superior level of government and the introduction of the State Salaries and Allowances Tribunal to set payments has had a deleterious effect.

The introduction of obligatory payments for Councillors was a fundamental error; the system operated for over 150 years with unpaid volunteers and, self interest aside, there was no substantive reason for this to change.

There is no meaningful consideration given to a community's ability to pay.

In a town that has fire and ambulance services fully staffed by unpaid volunteers prepared to put their lives at risk in the interests of the community, it is offensive that volunteer councillors who may go to meetings (but don't even have to attend them) in air conditioned offices then get paid to do it.

Previously Councillors were unpaid volunteers working in the interests of the community and no charitable person objected to them being reimbursed reasonable expenses incurred doing that.

But what has happened is that the expenses have been retained after the payment system was introduced. This has resulted in councillors being paid while still receiving ratepayer's funds for iPads, clothing, travel within the Shire, child minding and unverified phone/communications expenses.

That is a classic case of double dipping, however a bigger outrage is the remuneration of CEO's; a community's ability to pay what are now large salary packages is ranked 10th out of the 13 points of consideration by the Tribunal.

It is interesting to note that, whilst there are proposals for mandatory training for elected representatives; there are no qualifying requirements for CEO's; basically anyone can do the job if Council gives it to them. Please note that I am not recommending this change, I am simply highlighting the duplicitous nature of the proposals for mandatory Councillor training.

The change to the Tribunal setting payments for CEO's arose out of a previous Minister's indignation at what he considered to be the (then) high level of CEO payments; as the following shows, that Minister's intent of controlling CEO pay and conditions has failed.

- State MP salary: $156,536
- Band 3 CEO salary: $156,356 - $256,711
- State Minister: $277,230
- State Premier: $355,681

I have chosen Band 3 because it reflects a small to medium size council, but I note that Band 1 ranges from $247,896 - $375,774 which absurdly places the income of a Council CEO some $20,000 pa higher than the State Premier.

When one considers the roles, responsibilities and demands placed on each of those positions, that paradox is further highlighted.

Contrast the responsibility for State Government expenditure this year of $30.7 Billion and 166,000 FTE's with the combined expenditure of ALL local governments in WA of approximately $5.5 billion and 22,000 FTE's. Then factor in the pay for ONE of those jurisdictions at $20,000 pa above the person with responsibility for the entire state, including local government and the absurdity is plain to all.

This bizarre outcome is what happens when decisions are taken without any direct financial responsibility being incurred by the decision maker and is a process that can only operate in the absence of meaningful market forces; it screams out for reform.

Much will be made of privacy, however the balance is currently too heavily weighed against the public's right to know what they are paying for. Because they pay for it,

ratepayers have every right to know all the detail relating to the total cost to them of CEO and staff salary packages.

It is interesting to note that in the 5 Nov 17, Sunday Times the Mayor of Cambridge, Keri Shannon, said:

"There appears to be reluctance in local government to accurately disclose the total remuneration paid to senior staff and CEO's. This has been acquiesced to by the Department of Local Government and Communities, which has interpreted "annual salary entitlement" to mean only the cash component of the salary paid. Given reforms in the corporate sphere, this position is no longer tenable."

Mayor Shannon is completely correct and the legislation should change to reflect this modern, open and transparent reporting requirement.

The legislation should also change to require Councils to take direct responsibility for their CEO's pay, conditions and performance; AND the legislation should require Councils and Councillors be held accountable for those matters by way of external public assessment and audit by the Department.

CEO's POWERS

Individually Councillors have little power over CEO's, but collectively they are legally required to oversight the operations of the CEO.

The plethora of reports into local government make it plain that many Councillors do not understand their role in this regard; it is also clear that many Councillors do not have the skills necessary to address this matter.

These matters were addressed by the CCC report of 2 May 17; bizarrely this comprehensive and important report from the State's top corruption body was rejected by WALGA on 3 May 17, the very next day!

While many Councillors are oblivious of the fact that the CEO is not their friend or their boss; the reality is that the CEO sits at the centre of many local government processes. Many well meaning attempts to oversight CEOs are frustrated by the tried and proven defense of classifying those attempts as either witch-hunts, being politically motivated or retributive.

I am not recommending that this change but it is interesting to note that there are no formal qualifications required to become a CEO of a Council, as there is little electoral accountability of Councillors for any appointment made.

I reiterate that there are no mandatory training requirements for CEO's and because Councils provide safe political cover for them, CEO's are effectively insulated from the consequences of their decisions.

That insulation is strengthened by the current Act's range of provisions that place the CEO of a Council in the position as the holder of information, source of official advice,

the protector of process, hirer, firer and manager of staff, usually the person to whom complaints should be referred and, frequently, as the election returning officer.

Any person with control of those functions is in an extremely dominant position in an organisation; this was highlighted by the WA Corruption and Crime Commissioner, the Hon John McKechnie's May 2017 statement relating to the Shire of Exmouth, that said:

"Importantly, the report spotlights the failure of a council to exercise oversight over its CEO."

And

"The report into the activities at Exmouth underlines disturbing features that have proved common to other local government authorities and are areas worthy of assessment and focus by all local governments."

McKechnie then went on to list the areas that ALL local governments should assess and focus on, including:

- "inadequate governance, whether due to placing friendship above probity, ignorance of robust procedures or some other reason;
- a culture of entitlement;
- lack of adherence to local government policy and inadequate oversight;
- authority and responsibility for very significant procurement and contract management resting with administrators who are not necessarily appropriately qualified, experienced or monitored;
- councillors who are ill-equipped to oversight complex and often high-stakes activities, particularly in the area of procurement and contract management;
- confusion as to the extent to which a councillor can make enquiries of administrative staff; and
- difficulty and conflicts arising for people who are aware of potentially corrupt activity, but reticent to speak up."

This powerful statement from the State's peak anti corruption body paints a decidedly unhealthy picture that should alarm legislators and regulators.

I restate that this statement was officially rejected by WALGA the day after its public release and few, if any, Councils appear to have acted on the sage advice provided by the CCC.

This review needs to act on the CCC recommendations by recommending amendments to the relevant provisions of the Act aimed at correcting the significant power imbalance between local government administrations and their elected representatives.

But this is where the biased and conflicted nature of the reference group comes into play.

If this matter was to be dealt with on a Council and any Councillors were as conflicted as the reference group is; those Councillors would not be allowed in the room when this matter was being discussed.

In this case the fundamental flaw is that the reference group for this study consists vested interests that are highly unlikely to ever agree to the sort of changes that are necessary to redress the power imbalance in local government.

That unhealthy influence is reflected in the discussion document provisions that relate to:

- The shortening of complaint times, and
- mandatory training, and
- conditions relating to the transfer of staff between levels of government, and
- CEO appointment/contracts/termination.

Whilst those matters may be of importance to the vested interests, few, if any of them are matters that should be enshrined in a modern law and I doubt any dispassionate citizens spontaneously raised them.

Apart from creating general heads of power allowing Councils to hire, fire, monitor CEO's and the specific provisions requiring open reporting of the full cost of pay and allowances, all those matters that relate to CEO contracts should be removed from the Act and any applicable detailed conditions should be contained in the Regulations.

It is often the case that senior management of a Council is a hot topic at council elections times and the proposals aimed at preventing this by setting time periods for contract renewals are as unworkable and as open to rorting as are the current provisions.

If implemented the only effect of the suggested changes will be to shift the time of contract deliberations to a period prior to whatever is set as the statutory requirement.

Operative dates, extensions of contracts, contract details, entitlements and costs of executive staff should all be required to be published in the same way as entitlements of MP's are and Councils should be free to hire and fire at will.

The only restriction on those powers should be the terms of any contract (terms preventing public disclosure should be invalid), the laws, rules and processes of the relevant Industrial Relations/Public Sector Management systems.

Any legislative changes should preclude any terms and conditions of senior staff and CEO contracts being withheld from publication. Either the law or regulations should make it clear that the expiration of a contract should not favourably predispose Council towards rewarding incumbency.

Another failing in the current Act are the provisions relating to Senior Employees; under the provisions of S5.37 it is optional for Council to designate such positions.

The provisions of S5.37 (2) are subverted if Councils do not take the appropriate actions; it is hard to envisage a Council operating competently without these positions and those holding executive positions within councils should be required to be designated accordingly.

Unless that occurs and puts in place the desired checks and balances; a CEO has unfettered and unhealthy power to dismiss or replace executive staff without involving the Council.

In order to facilitate public input into the critical decision of who should hold executive positions, all details should be required to be prominently and locally advertised PRIOR to council making a decision to hire.

I am not advocating any public veto on an appointment, however the public advertising initiative alone would preclude secrecy and negate the issues of timing and non-disclosure.

RATES

The GRV residential rate on my small (2bedroom) 1890's home has increased from $608.39 in 2005 to $1574.98 last year; these figures relate purely to the rate paid and not services that I (may) use such as the Emergency Services Levy or rubbish collection.

Apart from driving on the roads, I use no other Council facilities and my rates constitute a tax for living in my town. This cost has increased far in excess of what it would have been had simple CPI adjustments been applied.

There is no redress to these formulaic and unwarranted rate increases because the complex, expensive and anachronistic way of setting and adjusting rates drives dysfunction. The irrational defence used to justify rate increases is usually that other Councils have increased by more and increases are within the band of "normalcy".

The usual council budgetary process starts with the setting of an expenditure figure and then working backwards to set a rate in the dollar. Given the poor democratic inputs into councils, rate increases are automatically driven by this process and are not subject to any meaningful external scrutiny.

The current rating system depends on an expensive process where the Valuer General periodically issues a valuation and then Council decides on a rate in the dollar for properties; there are legislative prohibitions of rates being struck based on location alone or land size alone.

Whilst there are extensive Parliamentary processes and committees and government departments that scrutinise State and Federal budgets, there are no similar provisions at the local level.

Councils meet in secret and decide budget matters that are then ratified in open meetings and, provided the struck rate complies with the legislation; there is no meaningful examination or assessment of it.

Then that simple, and perennial, blame shifting exercise of Councils pointing the finger at the Valuer General as the primary instigator of rate increases follows to obfuscate disgruntled ratepayers.

These anachronistic processes could be replaced by a simple council tax based on a combination of the use of the property (i.e. commercial/residential/rural/recreation etc.) and land size.

Even if the current system is retained, the accountability and transparency of budget processes requires significant alteration and modernisation and a new Act should require this to occur by creating an independent, external and public auditing power.

MANDATORY TRAINING

John Curtin did not need training to oversee WW2; Paul Keating did not need an economics degree to reform our economy and Charlie Court was not a miner, but he oversaw the development of the iron ore industry.

And that is because our entire system of Government is based on elected generalists acting in the public interest by overseeing experts – to do so competently the elected ones have to be able to take advice and the experts have to be able to give it.

Mandatory training is a popular red herring, but in the scheme of things it is a minor diversionary tactic.

The best Shire I have ever lived in was the Shire of Bayswater where the long term Mayor was a chemist; and there are many other "untrained" Councillors elsewhere who do a great job.

John Bowler in Kalgoorlie, Peter Brown in Claremont, Gary Brennan in Bunbury were senior people at the state level who have shifted to local government and are doing an outstanding job.

Why would those people need to have mandatory basic training funded by their ratepayers?

And, after being democratically elected, what would happen if they refused it?

At page 27 of the discussion document there is a note that WALGA recommends mandatory training – what a surprise!

The body that will charge to deliver this service says we need more of it.

This is a great example of what is wrong with local government – there is a clear and direct pecuniary interest in that recommendation and yet that conflict is completely overlooked.

Then that conflicted recommendation is granted validity and credence by being included in official reports and discussion papers.

One wonders how this issue would have manifested itself if WALGA not raised and promoted it; I doubt too many ratepayers are volunteering to pay more or make do with less so WALGA can be paid to train Councillors.

This conflicted process borders on official corruption.

Inductions should not be classified as mandatory training; they are important and mandatory public reporting of attendance at them should be legislated for.

The arguments against mandatory training are simple, but powerful:

- As already stated, there is no such requirement at any other level of government.
- The effect of mandatory training is to make the people we elect to represent us subservient to an administrative process that we have no say in, and no control over; and that alone raises serious questions:
    - Will names of those undergoing training be published?
    - Will long-term sitting Councillors be required to undergo training?
    - Will those undergoing training be required to pass exams?
        - If so, and an elected representative fails – what happens?
        - If not, what is the point?
- The cost of mandatory training for every Councillor in WA will be significant, with a far greater proportionate cost falling on smaller country Shire Councils

As Councillors are now paid, they already have the publicly funded resources to attend any training they wish and their legitimate costs will be compensated by the taxation system.

It is our right as electors to vote in or out those we want to represent us and with the changes recommended to democratise local government, that task should be more inclusive.

It is not the role of WALGA and bureaucracies to restrict that democratic right. (Albeit I accept general provisions that are pretty much the same exclusions as those applying at State level).

CODES OF CONDUCT

Local government advocates, and this discussion document persistently promotes the nonsensical premise that local government is a free standing level of government that is in control of its own destiny; but it is not.

It has no electoral or constitutional legitimacy and only exists as a subordinate level to the State Government.

Codes of conduct exist in many places including industry, other levels of government, sporting bodies and professional associations, but only local government seems to struggle with the requirements of operating according to social, ethical or professional norms.

Most formal investigations/enquiries (e.g. Joondalup & Exmouth) conclude that office holders are usually unaware of, or fail to follow their own procedures or policies; two Parliamentary enquiries and the CCC have also expressed concern in this regard.

I know for certain that our local council office holders do not understand the implications of policy, as I also know that most of them have not read the Act.

Councillors have a duty to oversee the operations of the Council, set policy, monitor and modernise policy, plan and make decisions; and these are the tasks they struggle with – they find making decisions hard and most Councillors I have ever spoken to want the law, policy and regulations to tell them what to do.

That is not how it works; their job is detail and decision-making and when it is not carried out competently, petty officialdom and the status quo become the norm with the consequential stagnation, civic dysfunction and administrative pedantry.

All of which constitute major impediments to good public governance.

When confronted with the mix of banal officialdom of local government, people lash out and attack what they see as the obstacles; if that results in a complaint it is most likely to be considered a petty grievance and dismissed accordingly – however the issues that gave rise to the complaint in the first instance usually remain unaddressed.

Result: The complicated and pedantic complaints process drives a citizen with a legitimate issue to angrily disengage from local government.

Unless a local government is one of the very few where openness and transparency is the norm, the requirement to instigate enquiries with the local government concerned is counterproductive and counter intuitive.

Genuine complaints made in this way often attract retributive and belligerent responses from Councils and it is often the case that the person to whom the complaint must be made can be the very person to whom the complaint refers.

The public's responsibility is to conduct themselves civilly; but the truth is that members of the public neither know nor care whether a matter is minor, major, serious or corrupt and they have little opportunity to access the detail necessary to make formal complaints.

Of course there should be codes of conduct – but they apply to office holders and staff and not the public with the salient questions being; to whom does one complain and who investigates the complaint.

The options presented in the paper are once again based on perceptions of local government's autonomy and I repeat, this is a myth. Local governments are not autonomous.

Local government is totally subservient to the state and it follows that the State operate the complaints system (I note that Auditor General's powers are to be expanded) but that still leaves the question of general complaints open.

The CCC has some powers, as does the Ombudsman; however those independent statutory bodies should not be responsible for day-to-day indiscretions/misdemeanours that are clearly the responsibility of the investigative branch of the Department of Local Government.

That Department is the appropriate regulatory authority.

Knowing a little about the time necessary to research and develop a formal complaint I am amazed that any ever happen.

The options in the discussion paper are further flawed in that they seek to allow three months as the period after which complaints are deemed to be no longer applicable; the effect of this will be that administrations that cover up indiscretions for three months will never be called to task.

The normal process is that a matter comes to council; it is considered at staff level, then put to Council after a period of time (that may already be two months) then Council makes a decision and this is confirmed in the minutes a month later.

At that time the three months may have already expired. That is a wonderful bureaucratic catch 22 - a complaint cannot be instigated until some basic facts are determined and if determining them consumes the allotted time - there is no complaint.

What kind of gobbledygook is that?

Even the current two year provision is an artificial inhibitor; there is no need for any such provision in the Act, nor is there any need for any regulatory restriction. All that may be required is a stipulation that the only time constraint on the complaint processes of local government is the statute of limitations.

POLITICAL DONATIONS/GIFTS

Unlike a lot of other countries, and apart from family and religious occasions, Australia does not have a culture of gift giving to public office holders.

Some public office holders appear under the misapprehension that folks just give them gifts because they really are nice people; that is not the case. Public gift giving is not

about spontaneous generosity; it is about exercising or establishing influence over public office holders by creating an obligation/connection to the giver.

Whether those in public office accept gifts, or not, is solely a decision for them; but the public has a right to know who is giving, what they gave and there should be no minimum threshold on this disclosure.

Once accepted, there are no valid reasons why any donation/gifts given to holders of public office should be concealed from the public. If gifts are official gifts to the organisation, they are not personal and as such should be immediately disclosed by the organisation and not the recipient; and because these gifts are public property they should remain as such.

Those opposing disclosure will talk at length about the impost of having to report, however the advent of modern technology makes the public reporting of gifts a relatively minor administrative impost.

Once adopted, mandatory live time reporting of gifts is a simple task of sending one email.

Any candidate or office holder receiving a donation or gift of any value should be required to electronically transmit details to the Council by close of business on the day following the giving taking place.

Similar provisions should apply to any donor; that is, within the required time they are also compelled to electronically transmit gift details to the Council.

Not only should Council be obligated to publicly report the same within 24 hours; any details of gifts should be also be prominently re-promulgated in the agenda of any related matters that come before Council.

I suggest that anyone who does not understand the need to report receiving gifts whilst in public office, does not deserve to hold office and I recommend that the legislation and regulations change in order to:

- make anonymous donations/gifts illegal; and
- require disclosure of the source of all donations/gifts; and
- require identification of the person/organisation making the donation/gift; and
- set a number for breaches after which the mandating of removal from office of those not reporting. (I prefer one breach only, but I accept that there needs be some genuine discussion over the number of times a public office holder can breach these provisions.) Such a decision should relate to the number of breaches and not the amount concerned; and
- mandate heavy penalties for those incorrectly reporting; and
- require gift information to be published in related matters coming before Council.

RED TAPE

The matters raised in the discussion paper about "Red Tape" are interesting, but, when compared to the more significant issues confronting this level of government, they are also of little account.

Many rules and regulations that are called "Red Tape" are in fact imposed on local governments by the State's central decision making bodies. Decisions that make perfect sense in a meeting room on St George's Terrace can be quite absurd when trying to be implemented across the entirety of a state the size of WA; however there is nothing local government can do about that.

Local "Red Tape" is another matter that can only be meaningfully addressed at a local level. This is only likely to occur when there is competent and confident government in place; even then, the issue is an extremely subjective one.

If "Red Tape" means those local rules that affect building restrictions, setbacks, lot sizes, heritage, community free space, litter, signage, pets, animals and other ancillary matters, the community attitude is generally one of silent support for well thought out rules that impose improved conditions.

That general support does not manifest itself vocally in the public arena; that is in direct contradiction to the very noisy public opponents shouting about how "Red Tape" is killing them, their community or their business.

The issue needs to be accurately defined before it can even be rationally discussed because one person's well-meaning regulation aimed at improving the well-being and amenity of their community is another person's "Red Tape".

As described earlier, the lack of public support for local government severely hampers Council's endeavours to act in the community interest. Another significant issue affecting how Councillors deal with "Red Tape" is their ability, or otherwise, to effectively and positively discriminate between personal/commercial interests and the public interest.

Personal and commercial interests are probably the most quoted arguments against regulating; however neither of those is the responsibility of local government and I submit that the Local Government Act ONLY empowers Councils to act in the public interest and not an individual/company's interest.

This proposition is best supported by Part 1; Section 1.3 (2) of the Act that says:

"(2) This Act is intended to result in -

- *a. better decision-making by local governments; and*
- *b. greater community participation in the decisions and affairs of local government; and*
- *c. greater accountability of local governments to their communities; and*
- *d. more efficient and effective local government."*

Whilst there is always a delicate balance to be struck; it is obvious from that part of the Act that the Parliament did not want local government minimising regulation because it deleteriously affects an individual or a business.

It may be that this review recommends such a change to the Act; however, before the embarking on such a brave and adventurous move, I recommend the review panel read the reports of the Royal Commission into Commercial Activities of Government.

I also strongly recommend that they refresh their memories of the CCC May 2017 statements about where the focus of ALL local governments should lie. If local authorities address ALL those matters, the problems regarding "Red Tape" will solve themselves.

Given that the most likely outcome to address the imposition of excessive local "Red Tape" is for the State to impose some of their own "Red Tape" through the introduction of obligatory reporting regimes.

One wonders how many will appreciate the delicious irony of that.

GENERAL

There are a number of other matters, which, if the panel decides to act on, will require legislative changes.

- Whilst I understand the issues surrounding portability of entitlements, there are ways of dealing with that that do not fly in the face of the recommendation of Commissioner Ian Fletcher in Exmouth, who said the Department:

  "...needed to crack down on officials who were able to move from shire to shire after being exposed doing the wrong thing."

  The discussion about freeing movement of staff between authorities clearly and directly contradicts that sensible and fundamental accountability reform proposed by Commissioner Fletcher. The soft suggestions put forward by the local government sycophants that are contained in the discussion paper should never be countenanced.

  Simply put Commissioner Fletcher is correct and the discussion paper suggestions are not.

  Even if his recommendation is unpopular with local government, what Commissioner Fletcher has proposed is a probity and governance initiative aimed at reducing the chances of further corrupt behaviour.

  To not heed his advice would be sheer negligence.

- Depending on the circumstances, and after the appropriate level of enquiry, the relevant Minister should have the authority to dismiss entire Councils, individual Councillors or groups of Councillors.

Again, after the appropriate level of enquiry, the relevant Minister should also have the power to order training or any other corrective measure entire Councils, individual Councillors or groups of Councillors; on the sole proviso that it is aimed at improving governance and performance of a Council.

The current bizarre requirement that an entire council be removed because of the actions of one errant individual is silly, poor governance and it is expensive.

It needs changing.

- Local government claims to have no political involvement – however the truth is the opposite of that because in many jurisdictions, partisan politics based on pettiness and personalities plays a major role. It is the lack any of political apparatus to manage those divisions that is a serious issue confronting local government.

  Office holders are regularly subjected to "bullying" from on high – by way of threats, intimidation and improper use of the gag under the pretext of "adverse reflection". The intent and provisions of the LGA are poorly understood and often totally ignored and similar things can be said for the legislated roles and responsibilities of office holders.

- The direct election of Mayors/Presidents is most likely to entrench dysfunction by producing office holders who have no genuine electoral authority and can lack the collegiate support of their peers.

  Direct election of Mayors/Presidents is an unwarranted Americanism inserted into a system that has none of the necessary executive supports. If it is to be maintained then we should adopt the entire US system at a local level, including an independent executive staff and stand alone oversight bodies.

  However, my preference is to revert to the collegiate system of electing one Councillor to be the first among equals.

- S5.94 of the LGA prescribes what information the public can access and notwithstanding the subsequent disclaimer, this section is at odds with the general right of access created by the FOI Act. This section should be removed and the provisions of FOI then apply unfettered as with every other level of government.

  That step alone would assist bringing local government into the modern world of disclosure and would have the added benefit of overcoming the old fashioned backroom mentality that afflicts local government.

  If there are things that are required to be disclosed/reported (e.g. CEO contracts) a specific obligatory clause requiring the matters in the regulations to be reported is a far better way of handling these issues.

- Local government has argued strongly on both sides of the debate about whether it should, or should not, be in the Federal Constitution without ever fully comprehending the consequences of a shift to the Federal system.