

## *Local Government Act 1995*

### Local Government Advisory Board - position paper

October 2017

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The purpose of this paper is to set out the position and/or suggestions of the Local Government Advisory Board (the Board) relating to the provisions in the *Local Government Act 1995* (the Act) that deal with the role of the Board in relation to the constitution of local government in Western Australia.

The positions and suggestions concern the statutory responsibilities of the Board. There are also positions and suggestions that are provided in the capacity of Board members' experience as senior members in the local government sector and which might strictly fall outside the statutory responsibilities of the Board.

#### **Wards (Section 2.2 and schedule 2.2)**

1. Clause 6 requires local governments that have wards to carry out a review of ward boundaries and councillor numbers every eight years. The Board secretariat also analyses councillor to elector ratios after every two year election cycle. It has been Board practice to direct local governments to carry out a review where the analysis shows ratios that vary more than plus or minus 10 per cent.

It is the Board's observation that these reviews do not necessarily result in a better ward and representation outcome for communities and there is a concern that councillor vested interests may sometimes seek to override the expressed interests of the community.

The conduct of the two yearly analysis by the Department of Local Government, Sport and Cultural Industries, the conduct of the reviews by local government and the consideration of the reviews by the Board is a large body of work that is arguably disproportionate to the result. There is certainly a case for decreasing the regulatory burden (red tape) without negatively affecting the outcome. Other Australian jurisdictions employ less red tape heavy provisions in relation to ward and representation reviews.

2. It is the opinion of some Board members that the interests of local government would be best served by the abolition of wards altogether. It is well established that elected members represent the interests of electors, ratepayers and residents of the whole district and not just their ward. Further, electors who own property in more than one ward are able to vote for more than one councillor.
3. It was also suggested that there could be a tiered requirement in relation to whether or not to include wards, e.g. where the population is below say 35,000 there should be no wards; above 35,000 there could be a choice between having wards and not having wards.

4. An opinion has also been expressed that a penalty should be imposed on local governments who do not carry out a review as required.

### **Method of election of mayors/presidents**

The Act allows local governments two options for a mayor/president election – popularly elected or elected by councillors. There is a view that council election is a better option and that the Act could be amended to -

1. Remove the option for popular election, or
2. Have a tiered approach where local governments with a population below, say 35,000 must have a council elected mayor, and those above 35,000 could maintain the two current options.

### **Section 2.12A(2)(a)**

If a local government decides to proceed with a proposal to change the method of election of the mayor/president from election by electors to election by the council, the Board is currently required to determine the question to be voted on by electors and also to prepare a summary of the case for each way of voting on the question.

It might be more appropriate for the affected local government to prepare the question and the summary case. In order to add a degree of independence and integrity to the process, the documentation could then be submitted to the Board for approval/endorsement before any poll is conducted.

### **Policies relevant to the Board**

The Act could be amended to allow the Minister to advise the Local Government Advisory Board on any general or specific Government policy that may be relevant to local governments or to a particular inquiry. An amendment to this effect was included in the Local Government Amendment Bill 2013. This lapsed with the proroguing of Parliament in 2017.

### **Schedule 2.1**

#### **Clause 1 - Terms used**

The difference between an amalgamation and a merger by boundary amendment continues to confuse local governments. The Act does not define an amalgamation. The only reference to an amalgamation in the Act is contained in Clause 8 which refers to 'the making of an order to abolish two or more districts and amalgamate them into one or more districts'. These same circumstances can also apply to a boundary change where two or more districts are abolished and are subsumed by another local government which is the continuing entity. Amending the Act to clarify this issue is suggested.

(Discussion on the application of poll provisions further below.)



## **Boundary changes and amalgamation proposals – Schedule 2.1**

### **Clause 2 - Making a proposal**

Where local governments have a small number of electors (as an example, a proposal supported by as little as 12 electors), the Board may be required to undertake an inquiry, as this would represent the minimum requirement of 10 per cent of 120 electors.

It is argued that the 250/10 per cent provisions in these circumstances are inadequate and the limit should either be increased or some other formula should be considered for local governments with small elector numbers.

The quality and content of proposals currently submitted to the Board varies significantly. A template for proposals is being prepared following discussion of the issue at the Board's governance workshop of July 2017, and should assist proponents to present valid proposals with better supporting information to assist the Board in its deliberations.

If the new template does not achieve this outcome, aspects of a proposal submission could be mandated in amendments to the *Local Government (Constitution) Regulations 1998*. Amendments could provide that if sufficient information (as set out in the regulations) is not provided, then the Board can refuse to accept a proposal on the basis that it is not valid.

Additionally, Form 1 (petition of affected electors) should be amended to ensure that signatories to a proposal acknowledge that they have read the summary of the proposal and have seen a plan or map detailing any proposed changes.

A further amendment to the Act or regulations will require the proponent to engage with affected local government/s prior to submission of a proposal – with evidence of that engagement to be provided with the proposal. As a minimum requirement, it is suggested that the affected local governments should be given a copy of the proposal.

The Act does not make provision for a local government to withdraw a proposal once it is received by the Board. There is an argument that a local government should be able to withdraw a proposal at any time prior to a recommendation being made to the Minister, providing there are circumstances which, in the Board's view, warrant withdrawal of the proposal. In these circumstances, consideration should also be given to recouping costs where the process is substantially advanced and costs have been incurred by the Board.

### **Clause 3 - Dealing with proposals**

Clause 3 provides that the Board is to consider any proposal unless subclause 2 or 3 applies, i.e.

- a substantially similar proposal has been received in the last two years;
- a proposal made by affected electors has been withdrawn by them;

- the proposal is considered frivolous or otherwise not in the interests of good government; or
- the proposal is one of a minor nature.

There is some opinion within the Board that the term 'interests of good government' requires definition in the Act on the basis that the term could be said to be somewhat nebulous (the provisions around this term have rarely been used).

Given that this clause requires the Board to consider all proposals, it could be said that subclauses 2 and 3 are designed to filter out those proposals that would clearly be a waste of time and resources to inquire into. Subclause 2(b) is aimed at those types of proposals that cannot be as clearly distinguished/defined as 'one of a minor nature', or substantially similar etc.

The Board agreed that while it was important to find the right balance in defining this term, it was difficult to be more precise, as too narrow a definition may result in the Board being required to undertake inappropriate inquiries.

#### **Clause 5 – Conduct of inquiry**

Subclause 2 lists eight matters that the Board is to have regard to in an inquiry. A review of these would be wise to ensure that they are a) still appropriate for contemporary times and b) that they have the flexibility to be relevant into the future.

#### **Clauses 8 and 10 - Electors may demand poll on a recommended amalgamation**

The Board has concerns about a) the ability of small numbers of electors to be able to demand a poll and b) the ability of small numbers of voters to prevent a proposed amalgamation.

The following are suggested:

1. Broaden the poll provisions to apply to boundary changes where the intended result of the boundary change is the same as an amalgamation;
2. Delete the poll provisions (noting that this is unlikely to be supported – the Western Australian Local Government Association has a strong position against deletion);
3. Increase the number of electors that can request a poll from a minimum of 250 or 10 per cent of electors to a minimum of 500 or 30 per cent of electors;
4. Currently, a majority vote in only one of the affected local government districts against an amalgamation will prevent the amalgamation. It is suggested that this be changed to requiring a majority vote across all of the affected districts to prevent an amalgamation.

There is also the suggestion that the Act could be clearer on the meaning of 'other electors of districts directly affected by the recommendation' as clause 8 requires these to be notified of any recommendation abolishing two or more districts (in addition to notifying affected local governments and affected electors, both of which are defined).



## **Clause 11 - Transitional arrangements for orders about districts**

1. There is opinion within the Board that it should have the power to make recommendations as to some of the transitional matters to be included in Governor's orders, e.g. interim councils, designation and shire/city etc.
2. In the event of an amalgamation, subclause 5 requires that the rights and entitlements of a person whose contract is transferred from one local government to another are to be no less favourable had the transfer not occurred. This clause has caused confusion mainly due to the terms 'rights and entitlements' and whether this has the same meaning as 'terms and conditions'. It therefore may require further definition.
3. Recommendations from the metropolitan local government reform process included corrections to anomalous boundaries, e.g. where there is a boundary running through a property, or where there is an unnecessary deviation in a boundary which is no longer relevant. It is the Board's position that the Board could be given the power to recommend changes to address these anomalies by having the capacity to bring these proposals forward.

## **Schedule 2.2**

### **Clause 3 - Who may make submissions about ward changes etc**

The requirements for an electors' proposal to a local government are considered to be minimal. This includes the appropriate number of signatures on a Form 3 ('Community Submission about Changes to Wards, Name or Representation') and the nature of the proposed order. Amendments to the *Local Government (Constitution) Regulations 1998* could set out detailed requirements for such proposals.

## **Section 2.3**

Section 2.3(1) of the Act makes provision for designating an area of the State to be a district and to include an order naming the district. This should be amended to also include that the district be designated a shire, town or city.

### **Other issues for consideration**

The Board agreed that there were a number of issues to be considered in addition to those already noted in this position paper. These include, but are not limited to, the following:

#### **Changes to District Boundaries**

- Requires consequential amendments to accommodate ward structures.
- May have material impact on councillor to elector ratios.

#### **Changes to Councillor Numbers**

- May have material impact on councillor to elector ratios.
- There is a lack of clarity as to what constitutes a minor matter when local governments propose changes to the number of offices of councillor.

### **Changes to Ward Structures**

- May have material impact on councillor to elector ratios.
  - May require that the councillors be allocated to different wards.
  - May impact on the order of retirement from office (Schedule 4.2).
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