

Shire of Lake Grace



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Please address all correspondence to the Chief Executive Officer

Your Ref:

Our Ref: 0204/XRef:I31526/O9675

Enquiries: D Gobbart

Director General
LGA Review
Department of Local Government, Sport and Cultural Industries
PO Box 8349
Perth Business Centre
Western Australia 6849

Dear Director General,

LOCAL GOVERNMENT ACT 1995 REVIEW – PHASE 1 SUBMISSION

Please be advised that Council, at its 28 February 2018 Ordinary Meeting, endorsed that the Local Government Act 1995 Review – Phase 1 Submission be made to the Department of Local Government, Sport and Cultural Industries as presented in the body of this letter.

In assist with guiding Councillors to determine a position on the consultation paper they were presented with all the supporting documentation and participated in two (2) workshops occurring late February 2018.

The submission the Shire of Lake Grace wishes to put forward on the above Review is outlined below;

1. Relationships between Council and the Administration (Questions 1-5)

The current role statements in the Local Government Act for the Council, Elected Member and CEO are considered reasonable, however a number of Local Governments have indicated that interpretation of the current wording is ambiguous and have indicated that stronger clarification of the roles of the Council and the CEO would be beneficial.

Problems occur when people do not comply with the requirements of their role as prescribed by the Act. An effective system for dealing quickly and efficiently with people who deviate from their prescribed roles would assist. A more streamlined Standards Panel process is recommended.

The Act is clear that the CEO is responsible for the employment, management, supervision, direction and dismissal of all employees; however the separation of powers becomes unclear where the Council has a role in relation to Senior Employees.

It is recommended that section 5.37(2) of the Local Government Act be deleted to remove any inference or ambiguity as to the role of Council and the separate Chief Executive Officer's function under Section 5.41(g) regarding the appointment of other employees (with consequential amendment to Section 5.41 (g) accordingly).

2. Training (Questions 6-16)

1. Supports and encourages all Elected Members to carry out the Elected Member Skillset, as a minimum, that comprises;
 - i. Understanding Local Government;
 - ii Serving on Council;
 - iii Understanding Financial Reports and Budgets;
 - iv Conflicts of Interest; and,
 - v Meeting Procedures and Debating.
2. Requests the State Government through the Minister for Local Government to provide funding assistance to Local Governments to enable all Elected Members to receive training;
3. Supports Local Governments being required to establish an Elected Member Training Policy to encourage training and include budgetary provision of funding for Elected Members; and
4. Supports Local Government election candidates being encouraged to attend a candidate's information session, either in person or on-line, as an eligibility criteria for nomination as an Elected Member.

3. The Behaviour of Elected Members (Questions 17-55)

Codes of Conduct

Codes of conduct core requirements should be consistent between all Local Governments; however a Local Government should be able to self-impose additional standards for their own local circumstances.

Codes of Conduct should be able to be enforced by the Chief Executive Officer in the case of employees, Council in the case of the CEO and the Standards Panel in the case of the Elected Members.

Rules of Conduct

The current Rules of Conduct provisions require streamlining to make the standards panel process more responsive and to include confidentiality for all parties for the entire process. Support for the time frame to make complaints to be set at three months is considered adequate.

There is also a need for greater accountability for Elected Member behaviour.

The Local Government (Rules of Conduct) Regulations 2007 require amending, to tighten provisions relating to Elected Member behaviours, specifically in regard to:

- Interactions with and communications about Local Government employees, including in forums other than meetings and official Local Government events, to ensure employee workplace safety.
- Application of the Rules of Conduct Regulations to all Elected Member public communications (i.e. social media, social situations, other non-Local Government community events).

Stand Down

Supports, in principle, a proposal for an individual elected member to be 'stood down' from their role when they are under investigation; have been charged; or when their continued presence prevents Council from properly discharging its functions or affects the Council's reputation, subject to further policy development work being undertaken.

Further policy development of the Stand Down Provisions must involve specific consideration of the following issues of concern to the Sector:

1. That ... the established principles of natural justice and procedural fairness are embodied in all aspects of the proposed Stand Down Provisions; and
2. That activities associated with the term 'disruptive behaviour', presented as reason to stand down a defined Elected Member on the basis their continued presence may make a Council unworkable, are thoroughly examined and clearly identified to ensure there is awareness, consistency and opportunity for avoidance.

Sector Conduct Review Committees

The proposal for sector conduct review committees is not supported. This is seen as another layer of a complaint procedure and is not required. The Sector's preference is to strengthen and streamline the current Standard Panel process.

4. Local Government Administration (Questions 56-74)

1. That Section 5.38 either be deleted, or amended so that there is only a specific statutory requirement for Council to conduct the Chief Executive Officer's annual performance review.
2. That the legislation include requirements for the following:
 - Local government CEO to have some form of certificate of competency;
 - Local governments be encouraged to obtain independent support for any CEO recruitment process, however the Zone does not support the Public Sector Commissioner being mandated as the independent support; and
 - The matter of an Acting CEO be clarified in the legislation.
 - There should be a 'cooling off' period of six months prior to or after a Council election for Council to terminate a CEO.
3. That offences such as 'Stealing as a Servant' or 'Fraud' should exclude a person from being employed.

5. Supporting Local Governments in challenging times (Questions 75-81)

Remedial intervention; Powers of appointed person; Remedial action process

In respect to remedial intervention, the appointed person may be an external party with the required local government qualifications and experience.

The appointed person should only have an advice and support role. Funding of the remedial action should be by the Department where the intervention is mandatory. The Local Government to pay where the assistance is requested.

This area relates to the bigger picture of differentiating between Local Governments based on their size and scale. Suitable arrangements to determine a size and scale compliance regime should be prioritized.

The following general principles are considered fundamental to the shire's response to the review of the Local Government Act:

- I. Uphold the General Competence Principle currently embodied in the Local Government Act
- II. Provide for a flexible, principles-based legislative framework; and
- III. Promote a size and scale compliance regime.

6. Transferability of employees between State & Local Government (Questions 82-84)

A General Agreement between State and Local Government should be established to facilitate the transfer of accrued leave entitlements (annual leave, sick leave, superannuation

and long service leave) for staff between the two sectors of Government. This will benefit public sector employees and employers by increasing the skills and diversity of the public sector, and lead to improved collaboration between State and Local Government.

7. Gifts (Questions 85-95)

That any revised legislation reflect the following:

- There be one section for declaring gifts. Delete declarations for Travel.
- No requirement to declare gifts received in a genuinely personal capacity, as gifts only to be declared in respect to an Elected Member or CEO carrying out their role.
- Gift provisions only for Elected Members and CEO's.
- Other staff fall under Codes of Conduct from the CEO to the staff.
- Gifts only to be declared if above \$500.00.
- There will not be any category of notifiable gifts or prohibited gifts.
- Exemptions for ALGA, WALGA and LG Professionals (already achieved).
- Exemption for electoral gifts received that relate to the State and Commonwealth Electoral Acts, so Elected Members who are standing for State or Federal Parliament will only need to comply with the State or Federal electoral act and not declare it as a Local Government gift.
- A revised process is in place for declaration of gifts in a manner similar to declaration of interest at local government meetings in that all gifts received are declared at each Ordinary Meeting of the Council.

8. Access to Information (Questions 96-104)

Sections 1.7 and 1.8 of the Local Government Act should be amended to remove the statutory requirements for statewide and local public notice to be placed in a newspaper circulating statewide or locally, to be replaced with the requirement for a Local Government to place public notices electronically.

It should be left to the discretion of each Local Government as to whether a print notice is given. The Act should not mention a specific form of electronic technology as the electronic landscape is ever changing.

All items that are available to the public under the Local Government Act should be made available electronically with the exception of contracts of employment for the CEO and senior staff, Primary and Annual Returns, Rate Records and the Electoral Roll.

Local Governments in WA are highly transparent, with Council meetings open to the public and public access to information legislated. As a result, the introduction of additional transparency measures are not considered necessary.

9. Available information (Questions 105-108)

Expanding information provided to the public

It should be up to each individual Local Government to respond to their communities and proactively provide information relevant to their community.

Information around performance reviews of the CEO and senior staff should not be made available to the general public and should remain confidential under S.5.23(2).

Information that should be made public is as follows;

- i. Website to provide information on differential rate categories
- ii. District maps and ward boundaries
- iii. Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission.

Minutes, contents of: Regulation 11

Regulation 11 should be amended to require that information presented in a Council or Committee Agenda must also be included in the Minutes to that meeting.

10. Reducing Red Tape (Questions 109-120)

1. that any revised legislation give visibility to the following principles:
 - the General Competence Principle currently embodied in the Local Government Act;
 - provide for a flexible, principles-based legislative framework; and
 - promote a principle of a size and scale compliance regime.
2. that Section 5.37(2) of the Local Government Act, related to Senior Employees, be deleted.
3. that Regulation 4 of the *Local Government (Financial Management) Regulations* be amended to provide an exemption from the application of AASB 124 'Related Party Transactions' of the Australian Accounting Standards (AAS).
4. that Regulation 30(3) be amended to delete any financial threshold limitation (currently \$75,000) on a disposition where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.

11. Regional Subsidiaries (Questions 121-126)

WALGA and the Local Government sector have been advocating for many years for Local Governments to be able to establish Regional Subsidiaries in Western Australia. The Local Government Act 1995 was amended late in 2016 to enable Local Governments to establish Regional Subsidiaries.

The burden of accountability oversight for a Regional Subsidiary should primarily be contained in the Regional Subsidiary's charter and not in Regulations. The charter is well-placed to address accountability matters such as procurement, financial and reporting requirements and other important matters. This approach would ensure that the Regional Subsidiary model benefits – flexibility and the ability to establish a subsidiary that is fit-for-purpose – are realised.

In support of the view that the charter should be the primary governing instrument, the sector argues that there are sufficient compliance obligations inherent in the model including:

1. The obligation of the constituent Councils to undertake their due diligence and be satisfied that entering into a regional subsidiary is in the best interests of their organisation and community;
2. Ministerial Approval of the proposed charter, which provides a significant opportunity for oversight by the regulatory body;
3. Establishment of a Board of Management that can include independent skills-based directors depending on the collaborative function of the subsidiary;
4. Reporting requirements to the board of management which will consist of members from the constituent Councils; and,
5. Reporting requirements to the constituent Councils.

The Local Government (Regional Subsidiaries) Regulations 2017, which were enacted in January 2017, contain significant restrictions on regional subsidiaries.

The Regulations require a complete review in order to achieve the simplified model Local Government was expecting. A specific review is required of the financial reporting requirements, the power to borrow money, and the ability to conduct commercial activities.

12. Other

Unreasonable, Vexatious or Querulous Complainants

Amend the Local Government Act 1995, to:

- Enable Local Government discretion to refuse to further respond to a complainant where the CEO is of the opinion that the complaint is trivial, frivolous or vexatious or is not made in good faith, or has been determined to have been previously properly investigated and concluded, similar to the terms of section 18 of the Parliamentary Commissioner Act 1971.
- Provide for a complainant, who receives a Local Government discretion to refuse to deal with that complainant, to refer the Local Government's decision for third party review.
- Enable Local Government discretion to declare a member of the public a vexatious or frivolous complainant for reasons, including:
 - Abuse of process;
 - Harassing or intimidating an individual or an employee of the Local Government in relation to the complaint;
 - Unreasonably interfering with the operations of the Local Government in relation to complaint.

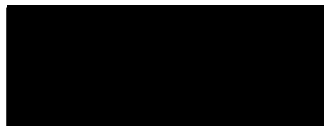
Role of the Department of Local Government

The Department has a core role in compliance and an important role to play in capacity building. As the regulator, the Department must necessarily focus on compliance from a legislative and regulatory point of view and therefore be a direct service provider.

Capacity building should remain a responsibility of the Department in ensuring the improvement of the Local Government sector.

Please do not hesitate to contact the undersigned on 08 9890 2500 should you have any queries or require any additional information regarding this matter.

Yours faithfully,



Denise Gobbart
CHIEF EXECUTIVE OFFICER

8 March 2018
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