

Local Government Act Review

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To whom it may concern

My name is Deputy Mayor Ben Kunze of the City of Canning, and I have been an elected member representing Bannister Ward since October 2015. I provide the following feedback on the proposed reforms – the following is my own personal opinion and does not necessarily reflect the views of the City of Canning, or its Council.

It should be noted that Council endorsed its own feedback at its February Ordinary Council Meeting for submission to WALGA as part of its response to the State Government.

I offer these comments on the following points, which are either slightly different, or in addition to the views put forward by Council – I have chosen not to include the other points which were covered in Council's submission:

1.3 Conduct Panel

It is widely accepted that the Local Government Standards Panel needs reformed; however it is unclear how the proposed conduct panel would work in reality. There are several issues with the current process, namely:

- The complaints process has at times been hijacked by vexatious complainants, and people who have an axe to grind with the Local Government, the Council, or specific Councillors (see 1.6 Vexatious Complainant Referrals).
- Elected Members are requested to respond to a complaint before the Local Government Standards Panel has reviewed the complaint to determine whether it is frivolous, trivial, vexatious, misconceived or without substance. Elected Members are currently investing a substantial amount of time responding to complaints that the Panel subsequently refuses to deal with under S.5.110 (3A). There needs to be a triage system to determine whether a complaint has substance before requesting the elected member to respond to the allegations.
- The process is lengthy in time, with elected members who are subject to a complaint having a cloud over their head for many months, even if the relevant complaint is found to have no substance as outlined above.

1.4 Review of Penalties

The Local Government Act 1995 previously gave the Local Government Standards Panel discretion to dismiss the complaint, even if it was found that a breach had been found. There are examples where a breach has been found on a technicality; however the breach was inadvertent and likely to have little to no practical consequence, and that there is no need for an element of specific deterrence in relation to the councillor.

This discretion to dismiss a complaint/breach, even if it has been substantiated, should be returned to any future panel system/arbitrator.

1.5 Rapid Red Card Resolutions

Whilst every Local Government may be different with respect to their standing orders (noting they're set to be standardised), there are currently limited options for the chair of a Canning council meeting to address negative behaviour from those sitting in the public gallery.

During my six years on Council, Elected Members have almost always adhered to direction given by the relevant Presiding Member; however there have been numerous times where members of the public have failed to adhere to the direction of the chair, sometimes leading to their removal from the chambers. A red card system would help the Local Government document ongoing unruly behaviour by people in the public galley, as well as any adverse conduct by elected members.

1.6 Vexatious Complaint referrals

It is apparent across the Local Government sector, including in Canning, that significant resources are being diverted to deal with individual members of the public who display vexatious behaviour and appear to have an axe to grind. There are however limitations with respect to how a local government may deal with people deemed to be vexatious, and so there needs to be more capacity for a local government to officially identify a person as vexatious and refuse to deal with them, or dismiss with a vexatious complaint early.

Currently there are issues with confidentiality that protect people deemed to be acting in a vexatious manner. When an individual overloads a local government with a litany of questions, freedom of information requests, complaints (including to the Local Government Standards Panel) – they are protected by confidentiality and it is hard to expose that vexatious behaviour.

If an individual is lodging multiple complaints against several local government elected members, the complaints are kept confidential unless the panel finds a breach has been

found. Even if the Panel itself refuses to deal with complaint/s due to the vexatious behaviour, it is kept confidential. The behaviour is therefore kept hidden, and it is ratepayers that have to expend thousands of dollars dealing with the matters, instead of investing it into local infrastructure and services.

Some of these people who behave in this manner, take their concerns to social media in an attempt to garnish support for their views, even if they are incorrect. Under the current model, it is often difficult for elected members to respond to the misleading information, especially when the person in question has a history of submitting complaints to the Panel.

More needs to be done to deal with individuals who act in a vexatious manner, and such conduct needs to be made public. Currently minor breaches that have been affirmed by the Standards Panel are published on a public register – so too should vexatious complaints. It is in the public interest for this information to be provided freely, and not hidden behind confidentiality.

4.3 Introduction of Preferential Voting

This is a step backwards. Local Government Elections are not compulsory, and whilst that is the case, first past the post should be the method used.

Preferential voting does not necessarily lead to the most popular or liked candidate being elected, but the least disliked candidate being elected.

Voter turnout for Local Government elections is already relatively low, due in part to the fact that voters often don't know the candidates. It is incumbent on candidates to get out there, knock on doors and ensure they are known to electors. Sometimes voters only come to know one of the candidates, and decide to support that candidate.

The preferential system will introduce another barrier for participation – residents won't simply choose their preferred candidate, but have to rank candidates in order of preference. Given many are unsure of the candidates to begin with, it will provide another reason why voters may choose not to participate in an election.

It is argued in the paper that preferential voting is used in both State and Federal elections, as well as local government elections in other states; however, it is not mentioned that it is compulsory for electors to vote in these jurisdictions, besides Tasmanian and South Australian Local Government elections. It is also not noted that official party representation exists in most other state and territory local governments – meaning that if residents don't know the candidates, they may decide upon party lines. Western Australia has neither party

representation within Local Government, nor compulsory voting – the comparison is not relevant as it is apples and pears.

Lastly, preferential voting will likely encourage factionalism, with candidates coming together to form preference deals.

There is no evidence that this change to preferential voting would lead to better outcomes for the community. At the very minimum, if the State Government intends to implement preferential voting irrespective of the sector's concerns, then it should be 'optional preferential voting – voters should not be required to preference candidates that they do not know.

5.6 Standardised Election Caretaker period

Whilst a caretaker period does make sense to a degree, it should be noted that the functions of Local Government continue irrespective of the election, and the community still requires representation. There are already rules prohibiting "electioneering" at Council events and on Council property, so any further changes need to be considered carefully, and not restrict the rights of the community to be represented by their democratically elected representative/s for their full term. A caretaker period limiting the rights of elected members could potentially have unintended consequences if not carefully thought out.

Thank you for taking the time to consider my feedback, and for the opportunity to provide this submission.

Kind regards

Cr Ben Kunze