

2.1 - REVIEW OF LOCAL GOVERNMENT ACT 1995

WARD : ALL
FILE No. : M/562/17
DATE : 11 September 2017
REF : TM
RESPONSIBLE : Executive Director
MANAGER : Corporate Services

In Brief:

- This Report presents for Council's consideration a Discussion Paper prepared by WALGA to facilitate the sector's response to the State Government's recently announced review of the *Local Government Act 1995*;
- The Discussion Paper captures the various positions taken by the sector over time and seeks a Council response to each matter;
- The Report Recommendation presents a proposed response by Council to each of the matters raised by WALGA;
- *Several proposed Council responses were changed by Committee*

Tabled Items

Nil

Officer Interest Declaration

Nil

Strategic Implications

- 4.1 Visionary Civic Leadership and sound governance
 - 4.1.2 make decisions that are sound, transparent and strategic;
 - 4.1.3 support the role of the elected body

Legislation Implications

Local Government Act 1995 and its associated Regulations

Council Policy/Local Law Implications

Nil

Budget/Financial Implications

Nil

Consultation

- Western Australian Local Government Association (WALGA)
- Management Executive Group (MANEX)

BACKGROUND

The Minister for Local Government, Hon David Templeman, wrote to WALGA on 14 June 2017 to announce the commencement of the Review of the *Local Government Act 1995*. The correspondence is outlined as follows:

“Due to the scope of the likely amendments and my desire to see early progress, I have decided that the work will be undertaken in two phases:

The first will focus on modernising Local Government, with the policy work and consultation to be completed in 2017 with a Bill in 2018. Key topics in this phase will be increasing elector participation, electronic disclosure (making information more readily available), simplifying the disclosure of gifts and some reducing red tape provisions.

The theme for the second phase is delivering for the community, with the policy work and consultation to be completed in 2018 with a Bill in 2019. Key themes for this phase will be improving behaviour and relationships, increasing community participation, enabling local government enterprises, improving financial management and reducing red tape.

The following are the issues that the Minister’s office has put forward:

Phase 1: ‘Modernising local government’ - 2017

- Increasing participation in local government elections*
- Strengthening public confidence in local government elections*
- Making information available online*
- Restoring public confidence (includes the gift provisions)*
- Reducing red tape*
- Regional Subsidiaries*

Phase 2: ‘Services for the community’ - 2018

- Increasing community participation*
- Improving financial management*
- Improving behaviour and relationships*
- Reducing red tape*

The Minister also expressed the Review’s Principles and Vision thus:

Vision

The vision for local government in Western Australia is: Agile, Smart, Inclusive.

Principles

The review will deliver on this through application of the following principles:

- Transparent – providing easy access to meaningful, timely and accurate information about local governments (S, I);*
- Participatory – strengthening local democracy through increased community engagement (I);*
- Accountable – holding local governments accountable by strengthening integrity and good governance (S, I);*
- Efficient – providing a framework for local governments to be more efficient by removing impediments to good practice (A, S); and*
- Modern – embracing contemporary models for governance and public sector management (A, S, I).*

The Minister has invited WALGA and Local Government Professionals WA to participate in a reference group on the review. The Minister’s office has advised that there may be some flexibility as to what issues are to be considered in Phase 1 or Phase 2.

In July 2017, State Council considered and adopted the following Consultation Process:

- *An Infopage will be distributed to Local Governments including a Discussion Paper on issues that have been identified over the last 8 years including advocacy positions resolved by the sector. This will include a request for Local Governments to submit additional items for consideration in the Act review process. Councils can submit individually or collectively through their Zone.*
- *WALGA to hold Zone/regional group forums on the Act/Regulatory amendment suggestions. Can be held in-conjunction with a Zone meeting or separately.*
- *Finalise feedback and provide recommendations on legislative and regulatory change through a State Council agenda item that would go through the Zones.*

It is expected that this process will be carried out between July and November 2017 with the State Council item being considered at the 6 December meeting."

WALGA in response to the Minister's announcement have prepared a Discussion Paper for the sector with comments as follows:

"The following key issues have previously been brought to the attention of WALGA and identified as priorities, and will form part of the consultation process with the sector on Act amendments:

- a) *Gifts*
 - *Exempt gifts received in a genuinely personal capacity*
 - *Gift declarations threshold to commence at \$500.00 with no upper limit*
 - *Gift provisions to apply to Elected Members and CEO only*
- b) *Regional Subsidiaries*
 - *Amend Regulations to permit borrowings*
 - *Amend Regulations to permit dealing in land transactions*
 - *Amend Regulations to permit trading undertakings*
- c) *Rating Exemptions:*
 - *Charitable Purposes provisions*
 - *Rate Equivalency Payments of Government Trading entities*
- d) *Financial Management Issues:*
 - *Borrowings*
 - *Investments**
 - *Fees and Charges*
 - *Financial ratios*

(Regulation 19C(2)(b) of the Financial Management Regulations was amended on 12 May 2017 to permit fixed term deposits to be invested for up to 3 years,)*

- e) *Administration:*
 - *Electors' General Meetings to be optional*
 - *Designated Senior Officer section to be reviewed*
 - *Public Notices (modernisation of the Act to acknowledge electronic means)*

- f) *Functions of Local Governments:*
 - *Tender Thresholds*
 - *Establish Council Controlled Organisations (Local Government Enterprises)*
 - *Regional Council provisions (review of compliance requirements)*
- g) *Poll Provisions relating to amalgamations and boundary adjustments.*
 - *The poll provisions contained in Schedule 2.1 of the Local Government Act should be extended to provide any community whose Local Government is undergoing a boundary change or amalgamation with the opportunity to demand a binding poll of electors.*

Sector Principles

Key foundations of the Act, which the sector would like considered, relate to the retention of the 'general competence' principle and consideration of a size and scale compliance regime. The Act review will incorporate regulatory amendments."

DETAILS OF PROPOSAL

Presented as an Attachment to this Report is WALGA's Discussion Paper for Council's consideration and response.

WALGA's Discussion Paper:

- has been forwarded to all local governments;
- draws on a number of resources representing long-standing positions of Act amendments by WALGA that were developed by the sector and sector representatives such as for example:
 - ✓ *WALGA Advocacy positions* representing a collation of advocacy positions determined by formal State Council resolutions inclusive of motions passed at the Association's Annual General Meeting;
 - ✓ *WALGA Zone proposals and resolutions* requesting WALGA seek amendment to the Local Government Act 1995;
 - ✓ *Local Government Reform Steering Committee Report May 2010* proposals developed by the then *Legislative Reform Working Group*.

WALGA are committed to conducting a comprehensive consultation process to provide member local governments with as much opportunity as possible to contribute.

Council's endorsed positions on the matters raised in the Discussion Paper are to be forwarded to WALGA no later than 20 October 2017. The final collated feedback will be prepared as a State Council Agenda item for zone consideration during the November/December 2017 round of zone meetings. State Council will ultimately determine its position at its meeting on 6 December 2017.

The first (3) columns of the Attachment are a direct lift from WALGA's Discussion Paper with the last column being MANEX's suggested response for Council's consideration and endorsement.

COMMENT

ANALYSIS

At this stage of the *Local Government Act 1995* Review process, the suggested approach by Council in responding to the positions put forward by WALGA is to simply either agree or disagree, rather than attempt to capture the relevant reasons why, i.e. a strategic rather than detailed approach.

The opportunity for Council to further elaborate its reasons for or against a position/stance taken on a particular matter will occur subsequently based on further advice and guidance from WALGA.

If however Council has particular views on a position/stance and wants to capture those views at this stage, then that too is fine providing it's couched in concise terms of a guiding principle(s).

OPTIONS

Given this is the first major review of the *Local Government Act 1995* since its inception (22) years ago and that during this time, the landscape in which local governments operate has changed considerably and continues to change, it is advisable that Council actively contribute to the Review process rather than be an observer.

CONCLUSION

The following Report recommendation (noting that the Table brings forward from the Attachment the essence of each matter) is presented for Council's endorsement with or without modification.

ATTACHMENTS

1. ↓ Discussion Paper on Review of the Local Government Act

Committee Discussion

Committee paged through the Attachment making several agreed changes. Committee's agreed changes are shown in red italics in the following Table in the column titled 'COA Response to WALGA Position'.

RECOMMEND

CS63/9/17

That Council, as part of the State Government’s review of the Local Government Act 1995, convey to WALGA the following Council responses to their Discussion Paper, i.e.

Proposal	WALGA Position	COA Response to WALGA Position
Local Government Act 1995		
Local and Statewide Public Notice – S1.7 and 1.8	The Association welcomes the opportunity to modernise the requirements of giving public notice of particular matters, as prescribed in the Local Government Act.	Agreed
Method of Election of Mayor/President – s2.11	Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.	Agreed
Elected Member Training	WALGA opposes legislative change that would: 1. Require candidates to undertake training prior to nominating for election; 2. Incentivise Elected Member training through the fees and allowances framework; or 3. Mandate Elected Member training. Further, if mandatory training becomes inevitable, WALGA will seek to ensure that it: a) Only applies to first time Elected Members; b) Utilises the Elected Member Skill Set as the appropriate content for mandatory training; c) Applies appropriate Recognition of Prior Learning (RPL); d) Requires training to be completed within the first 12 months of office; and	Agreed subject to: <i>Delete part (a)</i> <i>2 years rather than 12 months</i>

	e) Applies a penalty for non-completion of a reduction in fees and allowances payable.	<i>Delete (e)</i> <i>Add a part (f) – More accessible training outside office hours, Mon to Fri</i>
Stand Down when Contesting State or Federal Election	Amend the Act to require an Elected Member to stand down when contesting a State or Federal election	Agreed
Notification of Affected Owners – s3.51	Section 3.51 of the <i>Local Government Act 1995</i> concerning “Affected owners to be notified of certain proposals” should be amended to achieve the following effects: 1. to limit definition of “person having an interest” to those persons immediately adjoining the proposed road works (i.e. similar principle to town planning consultation); and 2. to specify that only significant, defined categories of proposed road works require local public notice under Section 3.51 (3) (a).	Agreed
Control of Certain Unvested Facilities – s3.53	It is recommended Section 3.53 of the Act be deleted and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.	Agreed
Regional Local Governments – Part 3, Division 4	The compliance obligations of Regional Local Governments should be reviewed.	Agreed
Council Controlled Organisations – Part 3, Division 4	The Local Government Act 1995 should be amended to enable Local Governments to establish Council Controlled Organisations (CCO) - also referred to as ‘Local Government Enterprises’ i.e WALGA’s Systemic Sustainability Study 2008.	Agreed
Local Government (Functions and General) Regulations 1996		
Tender Threshold – Reg 11(1)	WALGA supports an increase in the tender threshold to align with the State Government tender threshold (\$250 000).	Agreed
Dispositions of Property – Reg 30(3)	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.	Agreed
Local Government (Regional Subsidiaries) Regulations 2017		
Regional Subsidiaries	That WALGA advocate for legislative and regulatory amendments to enable Regional Subsidiaries to: 1. Borrow in their own right; 2. Enter into land transactions; and, 3. Undertake commercial activities.	Agreed
Local Government Act 1995		
Conduct of Postal Elections – s4.20 and 4.61	The <i>Local Government Act 1995</i> should be amended to allow the Australian Electoral Commission (AEC) and Local Governments to conduct postal elections.	Agreed
Voluntary Voting – s4.65	Voting in Local Government elections should remain voluntary.	Agreed
On-Line Voting	WALGA has received requests from three (3) Zones to explore the possibility of introducing on-line voting in Local Government elections.	Agreed
Electors’ General Meeting – s5.27	Section 5.27 of the <i>Local Government Act 1995</i> should be amended so that Electors’ General Meetings are not compulsory.	Agreed <i>Disagreed – Delete s5.27 entirely</i>
Special Elector’s Meeting – s5.28	That Section 5.28(1)(a) be amended: (a) so that the prescribed number of electors required to	Agreed

	request a meeting increase from 100 (or 5% of electors) to 500 (or 5% of electors), whichever is fewer; and (b) to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise.	
Senior Employees – s5.37(2)	That Section 5.37(2) be deleted to remove any inference or ambiguity as to the role of Council in the performance of the 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).	Agreed
Annual Review of Certain Employees Performance – s5.38	It is recommended 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.	Agreed
Gifts and Contribution to Travel – s5.82 and 5.83	WALGA representatives have been advocating for the following: • There be one section for declaring gifts. Delete declarations for Travel. • No requirement to declare gifts received in a genuinely personal capacity. • 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. • There will not be any category of notifiable gifts or prohibited gifts. • Gifts only to be declared in respect to an Elected Member or CEO carrying out their role. • 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.	Agreed <i>subject to:</i> <i>Change to \$200 \$50*</i>
Vexatious and Frivolous Complaints	It is recommended that a statutory provision be considered, permitting a Local Government to declare a person a vexatious or frivolous complainant.	Agreed
Local government (Administration) Regulations 1996		
Revoking or Changing Decisions – Reg 10	This regulatory deficiency is currently managed administratively, but warrants an appropriate amendment to assist clarify the rights of a Councillor to seek a revocation or change.	Agreed
Minutes, Content of – Reg 11	It is recommended that an amendment be considered as an aid to community understanding of the decision-making process of the Council.	Disagreed
Repayment of Advance Annual Payment	Regulations enabling the recovery of advance annual payments have yet to be made and it is recommended this matter be prioritised.	Agreed
Local Government (Rules of Conduct) Regulations 1996	WALGA supports: 1. Official Conduct legislation to govern the behaviour of Elected Members; 2. An efficient and effective independent Standards Panel process; 3. An ability for the Standards Panel to dismiss vexatious and frivolous complaints; and, 4. Confidentiality for all parties being a key component of the entire process.	Agreed

Local Government Act 1995		
Imposition of Fees and Charges – s6.16	That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services. Additionally, it is recommended that Section 6.16 be amended so that it only relates to statutory application fees and charges and not consumer items, facility entrance fees, ad hoc minor fees and charges etc.	Agreed
Power to Borrow – s6.20	Section 6.20(2) simply stops the exercise of power to borrow for one month, and it is recommended it be deleted.	Agreed
Restrictions on Borrowings – s6.21	Section 6.21 of the <i>Local Government Act 1995</i> should be amended to allow Local Governments to use freehold land, in addition to its general fund, as security when borrowing.	Agreed
Rating Exemptions – Charitable Purposes – s6.26	WALGA's policy position regarding charitable purposes is as follows: 1. Amend the Local Government Act to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth <i>Aged Care Act 1997</i> ; 2. Either a) amend the charitable organisations section of the <i>Local Government Act 1995</i> to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or b) establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates.	Agreed
Basis of Rates – s6.28	1. That Section 6.28 be reviewed to examine the limitations of the current methods of valuation of land, Gross Rental Value or Unimproved Value, and explore other alternatives.	Agreed
Differential General Rates – s6.33	It is recommended the issue of time-based differential rating should be examined, to address some Local Governments view that vacant land should be developed in a timely manner.	Disagreed
Service of Rates Notice – s6.41	That Section 6.41 be amended to: (a) permit the rates notice to be issued to electronically; and (b) introduce flexibility to offer regular rate payments (i.e. fortnightly, monthly etc) without requirement to issue individual instalment notice.	Agreed
Rates or Service Charges Recoverable in Court – s6.56	That Section 6.56 be amended to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to the 'cost of proceedings'.	Agreed
Rating Exemptions – Rate Equivalency Payments	Legislation should be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government.	Agreed
Rating Restrictions – State Agreements Act	Resource projects covered by State Agreement Acts should be liable for Local Government rates.	Agreed
Local Government (Financial Management) Regulations 1996		
Exemption from AASB 124 – Reg 4	A Zone has requested that an exemption be allowed from the implementation of AASB 124 'Related Party Transactions' due to the current provisions in the Act on declarations of interest at meetings and in Primary and Annual returns.	Agreed
Local Government Act 1995		
Audit	State Government will pay the cost for the conduct of	Agreed

	performance audits.	
Scrutiny of the Affairs of Local Government		
Stand Down Provision	WALGA 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.	Agreed
Miscellaneous Provisions		
Onus of Proof in Vehicle Offences may be Shifted – s9.13(6)	Amend Section 9.13 by introducing the definition of ‘responsible person’ and enable Local Governments to administer and apply effective provisions associated with vehicle related offences.	Agreed
Schedule 2.1 – Creating, Changing Boundaries and Abolishing Districts		
Poll Provisions	Schedule 2.1 of the <i>Local Government Act 1995</i> should be amended so that the electors of a Local Government affected by any boundary change or amalgamation proposal are entitled to petition the Minister for a binding poll.	Agreed
Number of Electors – Clause 2.1(1)(d)	That Schedule 2.1 Clause 2(1)(d) be amended so that the prescribed number of electors required to put forward a proposal for change increase from 250 (or 5% of electors) to 500 (or 5% of electors) whichever is fewer.	Agreed
Schedule 2.2 – Provisions about Names, Wards and Representation		
Who may make Submission – Clause 3(1)	That Schedule 2.2 Clause 3(1) be amended so that the prescribed number of electors required to put forward a submission increase from 250 (or 5% of electors) to 500 (or 5% of electors) whichever is fewer.	Agreed
Schedule 4.1 – How to Count Votes and Ascertain Result of Election		
Method of Voting	Elections should be conducted utilising the first-past-the-post (FPTP) method of voting.	Agreed

Moved Cr M Geary
MOTION CARRIED

(7/0)

* Amended by Council at OCM of 26 September 2017