

Shire of Dardanup Submission to the Review of the Local Government Act 1995

- **Local and Statewide Public Notice (s.1.7 and 1.8) (City of Bunbury (CoB) proposal)**

The Shire supports an amendment to the local and statewide public notice requirements to take advantage of the wider audience available through web based advertising and public notifications via social media.

Local Governments should have the option to advertise in statewide and local print media as circumstance suit the needs of the individual authority.

- **Role of Council (s 2.7) (Shire of Dardanup (SoD) proposal)**

The Act requires changes to s 2.7 to be more specific about the role of a council, being to set policy, strategic direction and to adopt the Corporate Business Plan and the annual budget.

The existing terminology under s 2.7 is far too broad, ambiguous and leaves too much room for misinterpretation, especially when 2.10 (e) refers to performing such other functions as are given to a councillor by this Act or any other written law. The table below explains the concerns more fully:

<p>2.7. <i>Role of council</i></p> <p><i>(1)The council —</i></p> <p style="padding-left: 40px;"><i>(a) governs the local government's affairs; and</i></p> <p style="padding-left: 40px;"><i>(b) is responsible for the performance of the local government's functions.</i></p>	<p><i>The wording is ambiguous enough to enable interpretation by elected members to involve themselves in operational matters, including directing staff.</i></p> <p><i>Elected members that either intentionally or unintentionally involve themselves in administration and or guiding the actions of staff create unnecessary angst between themselves the Chief Executive Officer and staff. The anxiety affects staff as they are aware of what the Act and Code of Conduct says but are vulnerable because they do not wish to cause the elected member or their supervisors grief.</i></p> <p><i>Even publishing a protocol to guide elected members and staff causes angst as some may not agree with the direct nature of such guidelines and feel that they are being disempowered even though they should understand what the Act says.</i></p> <p><i>Recommendation to amend this section: -</i></p> <p><i>(1)The council is responsible for —</i></p> <p style="padding-left: 40px;"><i>(a) governing the local government's affairs; and</i></p> <p style="padding-left: 40px;"><i>(b) is responsible for the performance of the local government's functions, through;</i></p>
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	<p>(2) Without limiting subsection (1), the council is to —</p> <p>(a) (c) the oversee oversight of the allocation of the local government's finances and resources; and</p> <p>(b) (d) by determine determining the local government's policies.</p>
<p>(2) Without limiting subsection (1), the council is to —</p> <p>(a) oversee the allocation of the local government's finances and resources; and</p> <p>(b) determine the local government's policies.</p>	Supported

- **Role of Councillors (s 2.10) (SoD)**

The Act requires changes to make s.10 more specific about the role of a Councillor, being to set policy, strategic direction and to adopt the Corporate Business Plan and the annual budget.

The existing terminology under s 2.10 is far too broad, ambiguous and leaves to much room for misinterpretation. The table below explains the concerns more fully.

<p>2.10. Role of councillors A councillor —</p>	
<p>(a) represents the interests of electors, ratepayers and residents of the district; and</p>	Supported
<p>(b) provides leadership and guidance to the community in the district; and</p>	Supported
<p>(c) facilitates communication between the community and the council ; and</p>	<p>Clarity is required to establish that the facilitation doesn't include being the intermediary for the community member/developer that seeks the information from officers then passes it on to third parties.</p> <p>Recommended amendment to this section: -</p> <p>(c) facilitates communication between the community and the council, through the adopted communication strategy of the council ; and</p>
<p>(d) participates in the local government's decision-making processes at council and committee meetings; and</p>	Supported

(e) performs such other functions as are given to a councillor by this Act or any other written law.

Supported, however requires clarification, refer to 2.7 Role of Council, e.g. governs the affairs of council, responsible for performance of the local governments functions.

- **Elected Member Training (SoD)**

Professional development of elected members is supported, and can only be enforced if legislation requires it and if there is a consequence for not attending training.

The consequence should be either suspension or a reduced allowance until the training has been attended.

- **Extraordinary Vacancies (Division 6 of Part 2) (CoB)**

At present, if a sitting Councillor is elected by the electors to the office of Mayor or President, an extraordinary vacancy occurs pursuant to section 2.32(f). The vacancy created by that Councillor being elected to the office of Mayor or President can only then be filled at an extraordinary election.

It is suggested that where an ordinary election is required (ie more candidates than vacancies), that the vacancy created by virtue of the sitting Councillor being elected to the position of Mayor or President be filled by the candidate who records the next highest number of votes in that election.

The Shire supports the City of Bunbury proposal.

- **Legislative Power of Local Government (s3.5) (SoD)**

The Act enables Local Government to make local laws.

There is a flaw in the making of local law process that can be readily corrected by a change in the process.

Currently Local Government go through a lengthy process of preparing a draft local law, presenting the draft to the public (via statewide public notice), reporting submissions to Council, then presenting the local law to the relevant Minister and subsequently the Parliamentary committee on delegated legislation.

It is invariably at the end of the process when the parliamentary committee assesses the local law that there are errors and/or ultra vires wording that the committee then moves a disallowance motion in the Parliament to reject the local law. The Local Government is sent back to the starting point at significant cost in resources.

The process can be made more efficient and reasonable if the Act was amended to require the State Solicitors Office or the legal counsel for the Parliamentary committee on delegated legislation to review the draft before it is presented to the public to ensure that the contents of the proposed law is not at odds with any other legislation, and the wording is of a nature that it can be defended in a court of law if challenged.

An alternative to the above suggestion is that all local laws be created as model local laws that are validated by the State Solicitors Office or the Department of Local Government to ensure their compliance. Each Local Government should then only be required to insert maps or diagrams as relevant to their district.

These changes would align with the State Governments call for Local Governments to be more collaborative across boundaries by adopting the same policies and local laws to remove or reduce the confusion that landowners and developers voice objection to when dealing with various local governments.

- *Control of Certain Unvested Facilities (s3.53) (CoB)*

The Act includes provisions, under section 3.53, that have been carried forward from section 300 of the former *Local Government Act 1960*. Former Section 300 stated:

s300. A council has the care, control, and management of public places, streets, ways, bridges, culverts, fords, ferries, jetties, and drains, which are within the district, or, which although not within the district, are by this Act placed under the care, control, and management, of the council, or are to be regarded as being within the district, except where and to the extent that under an Act, another authority has that care, control, and management.

Section 3.53 refers to infrastructure as an *'otherwise unvested facility'*, and is defined to mean *"a thoroughfare, bridge, jetty, drain, or watercourse belonging to the Crown, the responsibility for controlling or managing which is not vested in any person other than under this section."*

Section 3.53 places responsibility for an otherwise unvested facility on the Local Government in whose district the facility is located. Lack of ongoing maintenance has resulted in much infrastructure falling into a dilapidated state. This, together with the uncertain provenance of many of these facilities, particularly bridges, can place an unwarranted and unfunded burden on Local Governments.

The City supports the deletion of section 3.53 of the Act, and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.

The Shire of Dardanup supports the City of Bunbury's proposal.

- ***Tender Threshold (Reg 11 Local Government (Functions and General) Regulation 1996) (CoB)***

The City supports an increase to the tender threshold from \$150,000 to \$250,000, which is consistent with the State Government tender threshold. This would allow better responsiveness by Local Governments when procuring relatively low value goods and services.

It must be noted that any purchases up to the tender threshold are already governed by a Local Governments purchasing policy developed under regulation 11A, which ensures probity in all facets of procurement up to the tender threshold.

The Shire of Dardanup supports the City of Bunbury's proposal.

- ***Regional Subsidiaries (CoB)***

The Act was amended in late 2016 to enable Local Governments to establish regional subsidiaries. The *Local Government (Regional Subsidiaries) Regulations 2017*, which were enacted in early 2017, contain significant restrictions that limit flexibility, and reduce the benefits of the regional subsidiary model. In particular, the regulations prevent regional subsidiaries from borrowing from any organisation other than a constituent local government, entering into a land transaction, or commencing a trading undertaking.

The City of Bunbury supports legislative change that would enable regional subsidiaries to:

1. Borrow in their own right;
2. Enter into land transactions; and
3. Undertake commercial activities.

The Shire of Dardanup supports the City of Bunbury's proposal.

- ***Eligibility of non-resident owners and occupiers to be enrolled s4.30 (SoD)***

It is recommended that consideration be given to amend the Act to allow non-resident owners of property in the district to be automatically included on the electoral roll for local government elections as the owner/s are responsible for the funding of services and facilities that are provided through their property rates.

- ***Conduct of Postal Elections (s.4.20 and 4.61) (CoB)***

Currently, the WA Electoral Commission has a legislatively enshrined monopoly on the conduct of Local Government postal elections.

The City of Bunbury supports any change to legislation that would also allow the Australian Electoral Commission and Local Governments to conduct postal elections, thus making the process more competitive and removing the current monopoly.

The Shire of Dardanup supports the City of Bunbury's proposal.

- ***Electors' General Meeting (s5.27) (CoB)***

The Act currently requires a general meeting of electors be held each financial year. There is adequate provision in the Act for the public to participate in Local Government matters and access information by attending meetings, participating in public question time, lodging petitions, and requesting special electors' meetings.

Accordingly the City of Bunbury supports any amendment to legislation that does not make meetings of electors mandatory.

The Shire of Dardanup supports the City of Bunbury's proposal.

- **Code of Conduct (s5.103) (SoD)**

The Act is mandatory for all Local Governments to comply with, however, s5.103 requires each Local Government to prepare and adopt a code of conduct, the code ought to be identical for all Local Governments and not be subject to alteration, a standard code should apply across the industry so that there is no ambiguity or misinterpretation if elected members and officers consult with each other from different Local Governments and because of subtle differences confusion arises.

- **Gifts and Contributions to Travel (s.5.82 and 5.83) (CoB)**

The current gift provisions in the Act are very confusing and overly prescriptive. The City of Bunbury supports WALGA's position in advocating for the following through the Department of Local Government's Gift Working Group:

1. That there only be one section in the Act for declaring gifts; remove declarations for travel;
2. That there be no requirement to declare gifts received in a genuinely personal capacity;
3. That gift provisions apply only for Elected Members and Chief Executive Officers. Other staff should be covered under the Local Government's Codes of Conduct;
4. That only gifts above \$500.00 need to be declared;
5. That there be no defined categories of notifiable or prohibited gifts; and
6. That there be exemption for electoral gifts received that relate to the State and Commonwealth Electoral Acts. Therefore, 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.

The Shire of Dardanup supports the City of Bunbury proposal.

- **Complaints Officer (s5.120) (SoD)**

The Act requires each Local Government to designate a senior employee to be its complaints officer. A senior employee is defined under s 5.37: -

5.37. Senior employees

- (1) *A local government may designate employees or persons belonging to a class of employee to be senior employees.*
- (2) *The CEO is to inform the council of each proposal to employ or dismiss a senior employee, other than a senior employee referred to in section 5.39(1a), and the council may accept or reject the CEO's recommendation but if the council rejects a recommendation, it is to inform the CEO of the reasons for its doing so.*
- (3) *Unless subsection (4A) applies, if the position of a senior employee of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.*

- (4A) *Subsection (3) does not require a position to be advertised if it is proposed that the position be filled by a person in a prescribed class.*
- (4) *For the avoidance of doubt, subsection (3) does not impose a requirement to advertise a position where a contract referred to in section 5.39 is renewed.*

Many Local Governments do not have designated senior employees (including the Shire of Dardanup); therefore the Chief Executive Officer is automatically the complaints officer.

It is unfair and unreasonable that an officer of council, a designated senior employee or a Chief Executive Officer should be the complaints officer that has to deal with complaints against elected members.

This is particularly unreasonable for a Chief Executive Officer. It is clear that there is potential for bias and for procedural fairness to be compromised when an officer has the task of investigating and reporting to the Standards Panel about allegations of breaches of the Rules of Conduct by a Councillor, whom will at some point in time sit in judgement of that officer.

It is recommended that the role of complaints officer be a task assigned to the Department of Local Government. All costs can be recovered from the Local Government and the sanction against an elected member may include the penalty of reimbursing these costs to the Local Government.

If a complaint is found to be unproven then no costs are awarded to either party. If a complaint is proven to be vexatious then consideration needs to be given to the complainant paying the costs.

The consequence of punitive penalties will be a deterrent to repetitive recalcitrant behavior and time wasting complaints.

- *Revoking or Changing Decisions (Reg. 10 Local Government (Administration) Regulations 1996) (CoB and SoD change).*

Regulation 10 of the *Local Government (Administration) Regulations 1996* provides a mechanism for the revocation or change to a previous decision of Council. It does not however, contain any provision clarifying that the provisions do not apply to Council decisions that have already been implemented.

At present, this regulatory deficiency is managed administratively (through Standing Orders), but warrants an appropriate legislative amendment to assist in clarifying the rights of an Elected Member seeking a revocation or change.

Reg. 10 states : -

- (1a) *Notice of a motion to revoke or change a decision referred to in subregulation (1) is to be signed by members of the council or committee numbering at least $\frac{1}{3}$ of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.*

It is recommended that the regulation be amended to insert the words after the words Notice of a motion *as prescribed by the local governments standing orders.*

(1a) will then read

- (1a) *Notice of a motion as prescribed by the local governments standing orders to revoke or change a decision referred to in subregulation (1) is to be signed by members of the council or committee numbering at least $\frac{1}{3}$ of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.*

The Shire of Dardanup supports the City of Bunbury proposal and the insertion of the words *as prescribed by the local governments standing orders*, after the words Notice of motion.

- *Local Government (Rules of Conduct) Regulations 2007 (CoB with SoD change)*

The City of Bunbury supports the implementation of official conduct legislation to govern the behaviour of Elected Members. It is suggested that the General Principles of Behaviour outlined in regulation 3 of these regulations would be an appropriate starting point.

3. *General principles to guide the behaviour of council members*
- (1) *General principles to guide the behaviour of council members include that a person in his or her capacity as a council member should —*
- (a) *act with reasonable care and diligence; and*
 - (b) *act with honesty and integrity; and*
 - (c) *act lawfully; and*
 - (d) *avoid damage to the reputation of the local government; and*
 - (e) *be open and accountable to the public; and*
 - (f) *base decisions on relevant and factually correct information; and*
 - (g) *treat others with respect and fairness; and*
 - (h) *not be impaired by mind affecting substances.*
- (2) *The general principles referred to in subregulation (1) are for guidance of council members but it is not a rule of conduct that the principles be observed.*

The Shire of Dardanup supports the City of Bunbury proposal.

- ***Rating Exemptions – Charitable Purposes (s.6.26(2)(g)) (SoD)***

The Shire of Dardanup supports an amendment to the Act that removes the rate exemption for independent living units that are located within estates operated by charitable organizations and community housing dwellings located throughout the district.

There is sufficient evidence that the independent living units and community housing stock are occupied by residents that continue to enjoy the services and facilities provided by the ratepayers of the district and the fact that they move from one dwelling to another does not remove their right to have access to these services and facilities, however it should not remove their responsibility to make a continued contribution to the provision, maintenance and future replacement of such facilities.

- ***Basis of Rates (s.6.28) (CoB)***

The method of valuation of land to be used as the basis of rating in Western Australia is either:

- Gross Rental Value for predominantly non-rural purpose; or
- Unimproved value of land for rural purposes.

These are the only two methods available under the section 6.28 of the Act in Western Australia. Eastern State Local Governments can elect to rate on one of the following options:

1. Site Value - levy on the unimproved value of land only and disregards the value of buildings, personal property and other improvements;
2. Capital Value - value of the land including improvements; and
3. Annual Value - rental value of a property (same as GRV).

The City of Bunbury supports the examination of the limitations of the current methods of valuation of land in Western Australia, with a view to exploring other alternatives.

The Shire of Dardanup supports the City of Bunbury proposal.

- ***Differential Rates (s.6.28 and 6.33) (CoB)***

It is noted that concern has previously been raised by metropolitan Local Governments at the amount of vacant land remaining in an undeveloped state for an extensive period of time and holding up development opportunities.

The City of Bunbury supports any amendment to the current legislative provisions in relation to differential rating to enable a differential rate to be applied on the basis of the length of time a property has remained in an undeveloped state.

The Shire of Dardanup supports the City of Bunbury proposal.

- ***Exemption from AASB 124 (Reg. 4 Local Government (Financial Management) Regulations 1996) (CoB)***

Regulation 4 of the *Local Government (Financial Management) Regulations 1996* provides a mechanism for an exemption from the Australian Accounting Standard. Regulation 16 is an example of the use of this mechanism, relieving Local Governments from the requirement to value land under roads.

The City of Bunbury supports an amendment that would allow an exemption 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. This is regarded as providing appropriate material declaration and disclosure of interests associated with function of Local Government.

The Shire of Dardanup supports the City of Bunbury proposal.

- ***Suspension or dismissal of individual Elected Members – New proposal (SoD)***

The Minister for Local Government has publicly stated that legislation is being drafted to give the Minister power to suspend or dismiss an elected member that is found to have consistently breached the Rules of Conduct.

This proposal is supported on the basis that it is profoundly unfair that the entire council has to be punished when the issue is that one or two councillors are causing the problems with the functions of the Council and the delivery of good government to the district.

The Shire of Dardanup supports this proposal as proposed by the Minister.

- ***Commercial Enterprises by Local Government s3.59 (7)***

S3.59 (7) The local government can only commence the undertaking or enter into the transaction with the approval of the Minister if it is of a kind for which the regulations require the Minister's approval.

The Local Government (Functions and General) Regulations 1996, Part 3, Regs 7, 8 and 9, state that a Local Government outside the metropolitan area and not being a regional centre as defined by the Act (20,000 population) has a limit of \$2,000,000 on a transaction that does not require the approval of the Minister.

It is recommended that the Act be amended to empower all Local Governments to have complete autonomy to undertake a commercial undertaking, including the buying and selling of land by a decision of absolute majority of the Council, following the publication of a business plan and the receiving and considering public submissions.