

SHIRE OF HARVEY SUBMISSION – REVIEW OF LOCAL GOVERNMENT ACT 1995

The Shire of Harvey provides the following submission on the current review of the 1995 Local Government Act (*The Act*). The submission was endorsed by Council at its meeting held on 23rd January 2018. Council appreciates the opportunity to provide feedback on this very important industry issue and has developed its submission with the understanding that many other stakeholders, including the representative body of WALGA, will be, or already have made submissions.

Council's submission is phrased by denoting the relevant Section of the Act and then providing commentary. Some sections are taken as a whole with the areas of Gifts and Elections being the two main areas where an overall substantial review is requested.

Control of Certain Unvested Facilities - Section 3.53

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:

300. 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 and accreting age 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 Shire 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.

(Acknowledgement is provided to the City of Bunbury for the drafting in part of this section).

Disposal of Assets – Section 3.58

Similar to the recent issues that arose in the area of gifts there has been a new “interpretation” applied to this area, in particular when it comes to the purchase of and trade of plant and machinery. Council has sought advice through the Department of Local Government on a number of occasions recently as to why the act of purchasing a new item and trading an old item need to be considered as separate transactions for compliance with the Act.

For many years local governments in regional areas have conducted numerous trades of plant and equipment to ensure that road construction and maintenance services are in place for communities. The traditional way of undertaking these transactions was by Tender in accordance with the Act and the competitive process included the trade in of an older item of equipment. It is understood that two separate transactions need to occur per the current Act requirements which is both unwieldy and needlessly expensive, particularly when councils require the transactions to occur at the same time to minimise machine downtime and interruption to operations.

WALGA have a vested interest in this matter as they operate an industry trade service where they receive a percentage of the transaction fee hence they are not in a position to provide an impartial view on this matter.

The current legislation has exemptions however they are complicated, not needed, and sets a range that is not applicable to the majority of transactions. Council sees no reason why a fair Tender process for purchase and trade cannot occur as many local governments used to do. Currently the purchase and trade are guided by two sets of incompatible processes. *“The purchase of goods and services must comply with the Tender Regulation requirements, whereas the sale provisions are not as onerous”* – advice from the Department of Local Government. A “practical” review of the relevant purchase and sale provisions is requested.

The applicable Regulations for this area were reworked in September 2015 and a Departmental Circular issued at the time which effectively placed restrictions on conducting the trade of items of plant and equipment in a single transaction.

Automatic Electoral Enrolment for Property Owners – Section 4.30 (1) (c)

Council supports the automatic inclusion on the Owners and Occupiers Roll based on change of property ownership. This currently needs to occur by application and Council forwards letters to new owners advising of this, however many new owners do not enrol.

This process could be streamlined and add to the democratic election process if automatic inclusion on the Roll occurs at property settlement, similar to the removal of owners from the Roll when they no longer own property in the district. Likewise the “Occupiers” section of the Roll is recommended to be reviewed based on residency as per the State/Federal Roll. The recommendation is that these matters be considered in the current legislative change.

Electoral Candidate Deposits – Section 4.50 and Local Government (Elections) Regulation 27

The deposit amount of \$80 was set many years ago and is an amount that now is considered ineffective in respect of the original intended purpose. Additionally the return of deposits to unsuccessful candidates is based on a percentage of votes received which is also considered too low. The percentage is calculated based on votes cast rather than ballot papers issued which is considered unfair and unreasonable.

The original intent of the deposit return was to discourage frivolous or dummy candidates from running and the \$80 deposit system does not now appear to achieve that aim. The recommendation is for a change to legislation to either increase the deposit amount, or remove it if it is not serving the purpose it was intended for, and for the return of deposits to be based on ballot papers issued not number of votes.

Electors' General Meeting – Section .5.27

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.

Council has previously requested an amendment to the Act to remove the compulsory requirement to hold Electors' General Meetings and advised the Department of Local Government accordingly. A letter acknowledging this position was received from the Department of Local Government on 22nd February 2017 (File Reference H1-20 E1706179). This position has not changed.

Gifts and Contributions to Travel – Sections 5.82 and 5.83

The current gift provisions in the Act are very confusing and overly prescriptive. The Shire 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; removing 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 CEOs. Other staff should be covered under the local government's Codes of Conduct.
4. That only gifts above \$500 need to be declared.
5. That there be no defined categories of notifiable or prohibited gifts.
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.

(Acknowledgement is provided to the City of Bunbury and the WA Local Government Association for the drafting in part of this section).

Council considers that this matter be addressed as a priority given the negative impact on the industry over recent years involving the Lord Mayor of the City of Perth and the precedents set in that case. Those precedents now make much of the current legislation unworkable and appealable due to precedent case law.

Additionally the requirement to publish a Gift Register online is illogical when there is no legislative requirement for any local government to have an online presence.

Rating Exemptions for Charitable Purposes – Section 6.26(2)(g)

Exemptions under this section of the Act have extended beyond the original intention and now provide rating exemptions for non-charitable purposes, which increase the rate burden to other ratepayers. There may be an argument for exemptions to be granted by State or Federal legislation, with examples including exemptions granted by the Commonwealth *Aged Care Act 1997*, as well as group housing for the physically and intellectually disabled which is supported under a government scheme such as a Commonwealth-State Housing Agreement or Commonwealth-State Disability Agreement.

The Shire has provided previous representation on this matter and fully supports the WALGA State Council positions being:

1. That the Act be amended to clarify that Independent Living Units should only be exempt from rates where they qualify under the *Commonwealth Aged Care Act 1997*; and
2. That either:
 - a. the charitable organisations section of the Act be amended to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or
 - b. that a compensatory fund for local governments be established, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of local government rates.

(Acknowledgement is provided to the City of Bunbury and the WA Local Government Association for the drafting in part of this section).

Tender Threshold - Regulation 11 Local Government (Functions and General) Regulations 1996

The Shire 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.

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Regional Subsidiaries

A submission on this matter was forwarded to the Department of Local Government in September 2016. This submission generally did not support the introduction of Regional Subsidiaries, in the main as current mechanisms already exist for regional local government cooperation.

Collaboration, resource and information sharing between local governments already exists in formats that are much less complex than the Regional Subsidiaries model. As such it is not surprising that the take up of Regional Subsidiaries has not occurred. 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, contains significant restrictions that limit flexibility, and reduce the benefits of the Regional Subsidiary model. The Shire of Harvey willingly participates in a number of regional organisations including the Bunbury Harvey Regional Council utilising existing formats to achieve its aims.

Conduct of Local Government Elections

This feedback is global in nature and relates to the whole area of local government elections rather than specific sections of the Act.

The recommendation is for Electronic Voting to be considered. In 2019 and beyond the use of electronic voting is the significant advance that if implemented successfully would have a number of key positives for the industry. It is acknowledged that the last census had a number of issues where an electronic system was used for the first time. Hopefully the issues that arose can be rectified and a system put in place at the different levels of government that is both effective and workable. An electronic voting system would have the following advantages –

1. Cost. Once an effective electronic system is put in place the cost to Council and the industry as a whole would be expected to be much less than current.
2. Participation would be expected to increase by making it easier for voters to vote – a more democratic outcome would be achieved.
3. Increased voting participation from younger voters. The use of smart phone and other electronic devices to vote would be expected to see an increase in younger people voting.
4. Efficiency and Security. With the right systems in place this should be able to be improved.
5. The use of Australia Post for the conduct of elections in the future is not supported.
6. The Electoral Commission having a monopoly on the conduct of postal elections is not supported. Electronic voting would address this.

Revoking or Changing Decisions (Reg. 10 Local Government (Administration) Regulations 1996)

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.

(Acknowledgement is provided to the City of Bunbury for the drafting in part of this section).

Local Government (Functions and General) Regulations 1996 – Section 16 (3) (c)

It is recommended that the issue of confidentiality around Tenders be reviewed. Currently members of the public are permitted to be at a Tender opening, however are prevented from knowing the key piece of information, the price, of Tenders received. A fully open and accountable process is recommended whereby the consideration (price) is disclosed at the opening, and then again in the Council report, negating the need for a confidential item (and the accompanying accusations of Council trying to hide something).

This process would then be fair, open and accountable to Tenderers, members of the community, Councillors and Council Officers. This will also ensure that adequate reasons are put forward for a Tender selection as well as making sure that the specifications and selection criteria are thoroughly put together again demonstrating full transparency in the selection process.

Local Government (Rules of Conduct) Regulations 2007

The current legislation is inadequate and has been proven to be ineffective in dealing with elected member behaviour. While there have been no issues at the Shire of Harvey unfortunately the industry as a whole has suffered as a result of issues at the City of Perth and the inability to deal with them in an effective and timely manner.

Official conduct legislation that governs the behaviour of elected members in a fair and impartial manner with appropriate enforceable penalties is what is required, particularly when it comes to individual Councillors.

Penalties such as a small newspaper advertisement offering a token and forced apology often more than a year after any said incident is insufficient as a deterrent for poor conduct. Additionally the Code of Conduct required to be adopted by Council pursuant to Section 5.103 of the Act is not enforceable to elected members in terms of realistic penalty when a breach occurs, rendering the document effective only as disciplinary means for employees of Council. Councillors are not employees.

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

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 Shire 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 the function of local government.

The introduction of AASB 124 requirements to local government in Western Australia as from the 2016/17 financial year, without the enacting of any State based legislation, was both unnecessary and administratively cumbersome.

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