

Council

LOCAL GOVERNMENT REVIEW PANEL FINAL
REPORT RECOMMENDATIONS

Local Government Review Panel Submission

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SHIRE OF PLANTAGENET

SUBMISSION ON THE LOCAL GOVERNMENT REVIEW PANEL FINAL REPORT

INTRODUCTION

Extensive sector and community consultation on stage two of the Local Government Act Review between September 2018 and March 2019 was undertaken by the Department of Local Government, Sport and Cultural Industries (the Department).

Following this consultation, to better understand the issues confronting local government, the areas in need of reform and possible options for reform, the Minister established a panel of experts to provide more detailed consideration and to develop policy responses to guide the development of the new Act. The role of the Panel was to guide the review's strategic direction and to consider and recommend high level guiding principles of the new Act.

The Local Government Review Panel completed their Final Report in May 2020 which was then released by the Minister. The final report contains a series of recommendations under what the Panel called critical high-level elements being, 'Clear Legislative Intent, An Agile System, Inclusive Local Democracy, Smart Planning and Efficient Service Delivery, Enhanced Accountability and Self-Regulation and Integrity.'

Despite there not being any consultation or submission period on the Final Report Council felt that it's important that it consider the recommendations in the Report and make a submission to the Minister on the Panel's recommendations. Whilst Council is supportive of a number of the recommendations it also has concerns about the intention of others, whilst some require further information to allow a final conclusion. The following therefore indicates the Council's support or opposition to each recommendation together with some comment when appropriate.

Council is supportive of recommendations:

1, 2, 3, 4, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 24, 25 (c), (d) and (f), 26(b), (d), (e), and (f), 27, 28, 29(a) to (h) and (j) and (k), 30, 31, 32(1) and (2)(a) and (b), 33, 34, 36, 37(a) to (f) and (h), 38 (c) to (e), 39, 40, 41(a) to (g) and (i), 42, 43, 44, 45(a) to (c), 46, 47, 48, 49, 50, 51, 52, 54(a) and (b), 55(a) and (b), (d) and (g) to (i), 56, 62, 63, 64 and 65(a) to (e).

Council is opposed or suggests that further clarification is required to the industry in relation to the following recommendations.

Clear Legislative Intent

Introduction

5. The Panel recognises the diversity of local governments in Western Australia and supports a new Act which is responsive to this but does not recommend the adoption of a multi-tiered legislative framework.

Comment: Whilst Council appreciates that the Review Panel has recommended that the new Act to apply minimum standards, which they consider will provide flexibility and will

enable a diversity of obligations, Council is still concerned that some of the **very small local** governments, that struggle to attract and retain experienced staff, will find it very onerous to comply with Act requirements to the level required.

An Agile System

Enabling Structural Reform

- 9. The Panel supports a legislative framework for a system of local government which promotes local democracy and has the in-built flexibility to enable different models of governance which facilitate community participation, provide for representation of the whole community, and for efficient and effective service-delivery for the community.**

Comment: Council is not opposed to the intent of this recommendation and provides conditional support but is opposed to any intention to remove the poll provisions currently include in Clause 8, Schedule 2.1 of the Act.

- 10. The Panel recommends that through their Partnership Agreement and the proposed Local Government Commission, State and local government consider options to facilitate structural reform that will strengthen the capacity and resilience of the local government system. Those options should include:**

- a. Revised processes for boundary changes and mergers.**
- b. Substantially increased cooperation between local governments through an enhanced model of joint subsidiaries.**
- c. Provision for the establishment of community boards within local government areas.**

Comment: Council is not opposed to the intent of this recommendation and provides conditional support but is opposed to any intention to remove the poll provisions currently include in Clause 8, Schedule 2.1 of the Act.

Inclusive Local Democracy

Elections

- 22. Local government elections are held once every four years, two years after but to otherwise accord with the timing of the State election.**

Comment: Council is concerned that the introduction of a four year election cycle could potentially result in, the loss of leadership in the Council (if all elected members were defeated), the introduction of election campaigns where a group of candidates promote a group ticket vote that could be based on single issues to remove the existing elected members and a difficulty to maintain long term financial planning if there was a continual majority changeover of elected members every four years.

- 23. All local government elections should be overseen by the Western Australian Electoral Commissioner.**

Comment: Whilst Council currently engages the WA Electoral Commission to oversee its elections, it maintains that local governments should be allowed to choose the method they

consider best suits them, whether its postal voting or in-person voting. Smaller local governments with a low number of electors and voting turnout are well placed to run efficient and compliant elections at a cost substantially less than the Electoral Commission.

25. The Panel makes the following further recommendations in relation to elections:

- a. Postal voting be required, with lodgement of these votes to be allowed in person on and before election day.**
- b. The election process extended to provide more time for the issuing and receipt of postal votes.**
- e. The donor and the candidate should co-sign each declaration of a gift made.**

Comment: In line with Council's comment on recommendation 24, local governments should be allowed to determine the most suitable method of conduction elections be it postal or in-person voting.

Currently a majority of electors choosing to vote, via the postal voting system, do so by returning their voting packages in the first two or three weeks of receival, so Council questions the need to extend the existing period for the issuing and receipt of postal votes.

The local government elections gift register form currently requires the candidate to provide details of the person/organisation that is providing an election gift so Council questions the need to also have the donor sign the gift register form as it appears to serve no meaningful purpose.

26. In respect to elected member representation, the Panel recommends:

- a. Population should be used to determine the number of elected member positions:**
 - (i) Population of up to 5,000 – 5 councillors (including President).**
 - (ii) Population of between 5,000 and 75,000 – 5 to 9 councillors (including Mayor/President).**
 - (iii) Population of above 75,000 – 9 to 15 councillors (including Mayor).**
- c. Current classification bands 3 and 4 should not have multiple wards unless the Local Government Commission permits it in the interests of ensuring local democracy is enabled in certain communities.**

Comment: Council supports the number of councillors in part (i) above should be broadened to 5-7 (I lieu of only 5) and in part (iii) above to up to 15 (in lieu of 9 to 15).

Council opposes part c above as each local government should have the right to determine if it wants to have multi wards and not be allowed to have them just because they are a small local government in the 3 and 4 band classifications.

Redefinition of Roles and Responsibilities

29. The Panel recommends the following as the role of council: The council —

- (i) provides a safe working environment for the CEO, officers and councillors;**

Comment: As Council only has the power to employ one person, the CEO and has no authority over other staff the word 'officers' should be removed from part (i) above as that is the responsibility of the CEO.

32. The Panel recommends the following as the functions of the CEO:

- (2) The CEO must inform and consult the council when determining, or making, significant changes to –**
 - (b) the processes, terms or conditions that are to apply to the appointment of senior executive officers; or**
 - (c) the appraisal scheme that is to apply to senior executive officers.**

Comment: The CEO is responsible for the management of all staff within the local government, not the Council, so the CEO should not have to inform or consult with the Council on these matters.

Community Engagement and Governance

35. The Panel recommends the Annual Electors' Meeting is replaced by an Annual Community Meeting whereby:

- a. As a minimum, councils provide information on their achievements and future prospects;**
- b. Councils report on the local government's financial performance and performance against relevant Council Plans;**
- c. Both the mayor/president and the Chair of the Audit Committee address the meeting;**
- d. There is ample time for questions; and**
- e. Wider community participation is encouraged through different delivery mechanisms.**

Comment: In the past there has been discussions about removing the Annual Electors meeting as a requirement of the Act and allowing each local government to determine the most suitable method to communicate with their community. Other than the proposal to include of the Audit Committee Chair addressing the community, the format to be followed in the proposed Annual Community Meeting almost identical to the current Annual Electors meeting so the suggested change does not appear to provide any additional benefits to the community.

Council is still of the opinion that the statutory requirement to have an Annual Electors Meeting should be removed from the Act.

Smart Planning and Service Delivery

Enhanced Integrated Planning and Reporting

37. The Panel recommends:

- g. The Audit, Risk and Improvement Committee (see Recommendations 53 and 54) should monitor the local government's performance in implementing the IPR framework, including compliance with relevant statutory obligations, and report its assessment to the community (for example, as an addendum to the council's annual report and/or as a statement to the Annual Community Meeting proposed in Recommendation 35).**

Comment: Given that Council is opposed to recommendations 35 and 53, part (g) of this recommendation is also not supported by Council.

Minimum Service Levels

38. The Panel recommends:

- a. As a minimum, local governments must seek to identify and provide, or offer, to all its citizens, a minimum level of services to meet statutory obligations.**
- b. The Minister should have the power to direct a local government if it fails to provide or offer these services.**

Comment: Individual local governments should have the authority to determine what services and to what minimum level they should be provided which will generally be based on the amount of rates that community members are prepared to contribute. The Minister should not have the power to direct a local government to offer or provide minimum levels of service to its community as it may impose financial sustainability issues on the local government.

Local and Joint Subsidiaries

41. The Panel recommends that 'beneficial enterprises' not be introduced as a new mechanism for local government commercial activities, but that instead an updated and more flexible subsidiary model should provide for the following:

- h. The requirement for employees of the subsidiary to be employed under the same award or agreement conditions as the relevant local government/s and within the jurisdiction of the Western Australian Industrial Relations Commission.**

Comment: Council does not support this proposal because if a local government is to operate a subsidiary on a commercial basis the subsidiary should be allowed to negotiate employee conditions. Should a local government wish to transfer existing employees to a subsidiary then those employees should be allowed to retain all existing benefits and entitlements provide by their current local government.

Procurement

45. The Panel recommends that local government procurement thresholds, rules and policies are, where applicable, aligned with the State Government, including (but not limited to):

- d. Using TendersWA as the primary tender platform.**

Comment: Council is opposed to TendersWA being the primary tender platform given that the current system of advertising in a state wide newspaper and also WALGA's Tenderlink platform is working okay.

Accountability, Self-Regulation and Integrity

Enhanced Accountability and Self-Regulation

53. The Panel recommends the role of audit committees be expanded to become Internal Audit, Risk and Improvement Committees and:

- a. The majority of the Committee members, including the Chair, should be independent of the local government and should be drawn from a suitably qualified panel.**
- b. To address the impost on small local governments, the committee could be established on a regional basis.**

Comment: Council is very strongly opposed to this proposal for independent Audit Committee members as it will firstly, impose an additional cost burden onto local governments for no perceived benefit and secondly remove the ability for elected members to have a hands on role in relation to audit and risk of their local government.

54. The Panel recommends the main roles of the Audit, Risk and Improvement Committee should include:

- c. Conducting the mandatory internal audits as outlined in the audit plan; and**
- d. Providing advice to the council in relation to these matters.**

Comment: Under the current Act the day to day management of a local government's operations is the responsibility of the CEO, including mandatory internal audits and that person should be allowed to retain that power to determine whether the CEO wishes to undertake these audits or wishing to engage an external contractor to complete the tasks.

Renewed Focus on Integrity

55. In relation to governance, the Panel recommends:

- c. Elected members who believe that they are unable to maintain impartiality on a particular matter should be permitted to withdraw from that part of the meeting provided a quorum is maintained.**
- e. As a minimum, audio recordings of public parts of council meetings should be available on the local government's website when the minutes become available, with livestreaming to be encouraged.**

- f. CEO contracts should be standardised and consistent with the Public Sector Commission's policy and relevant conditions for public sector employees.**
- g. CEO contracts should be no more than five years and after two terms the local government must readvertise the position.**
- h. The department should facilitate additional oversight in the recruitment and management processes of CEOs. This could include representation on the selection panel and/or screening of applicants.**

Comment: Council considers that the current provisions in the Act and Regulations in relation to Impartiality Interest for elected members is adequate and does not require alteration. Councillors already have the ability to leave the meeting if they so desire.

Council does not support the audio recording of council meetings as it believes it will provide a disincentive for robust debate by elected members as elected members don't have any exemptions from legal action, similar to what state and federal parliamentarians enjoy.

Each local government should be allowed to determine the terms and conditions of the contract that it employs its CEO under as the Council is best placed to make that determination. Western Australia local governments are very different in regards to location, climate, attractiveness to employees etc. and conditions relevant to one local government or area may not be suitable for another.

In regards to CEO contracts the Council is best placed to determine if it wishes to employ its current CEO for a period longer than two five year terms based on the relationship with Council and the performance of the CEO and not a statutory requirement to advertise after a set period. Council does not believe that this is a requirement of the current state government so why would it be imposed on local government.

Similar to previous comments made on this recommendation Council considers that each local government is best placed to facilitate the recruitment of a CEO and whilst a number of local governments, including smaller ones, are utilising the services of external experienced recruitment consultants to assist in this process, this should be left to each individual local government to make that decision.

A New Early Intervention Framework

- 57. The Panel recommends that there should be an early intervention framework of monitoring to support local governments. The department should have additional powers to appoint and support the monitor with councils responsible for the direct costs of the monitor.**

Comment: Council does support the early intervention by the department to assist local governments when required as the current system of essentially waiting until it's too late and then initiating an enquiry into the local government, which also generally results in the dismissal of the Council does not benefit the community, employees and elected members. It can also result in a financial impact on the local government if the Minister determines that the local government is required to meet the enquiry cost.

However Council considers that if the department initiates the early intervention framework of monitoring that the department and/or state government should be responsible for the direct costs of the monitoring.

58. The Panel recommends the Minister should have the power to direct local governments and make declarations in respect to the Local Government Act during a declared state of emergency.

Comment: Council does not support the Minister being given this wide ranging power during a state of emergency without any limitations and the current requirement of having to apply to the State Emergency Coordinator is a suitable balance.

Establishment of an Office of the Independent Assessor

59. The Panel recommends establishing an Office of the Independent Assessor that should:

- a. Be an independent body to receive, investigate and assess complaints against elected members and undertake inquiries. This removes the CEO from being involved in processing and determining complaints.**
- b. Be a statutory appointment by the Governor.**
- c. Upon assessment, refer the complaint back to the council (behaviour-related), the State Administrative Tribunal (SAT) (serious breaches), or to another appropriate body (such as, Corruption and Crime Commission, Public Sector Commission, Ombudsman) according to the subject of the complaint.**
- d. Replace the Standards Panel by investigating and making determinations on Rules of Conduct breaches. SAT will determine the penalties.**
- e. Amongst other powers, have the power to investigate, to order compulsory mediation and to deal with abuses of process.**
- f. Be required to notify the CEO and council of any matters on a confidential basis.**

Comment: Council is not opposed to this proposal in place of the current Standards Panel, which is clearly not working or effective and it considers that removing the CEO from being involved in the processing and determining of complaints is a positive move as it will assist in improving the relationship between the CEO and elected members.

However before fully supporting the recommendation Council would request that local governments be provide with further clarification on the level of resources that will be provide to the Office of the Independent Assessor as its success or failure will be very much determined by the level of resources provided by the state government.

One of the primary impediments of the current Standards Panel process is that it does not have any investigation powers so giving the Office of the Independent Assessor the powers outlined in part (e) above is essential for it to be able to achieve suitable outcomes.

- 60. The Panel recommends consideration should be given to the appropriate recognition and management of complaints by an elected member against a CEO or other senior officer, with one option for these to be investigated by the Office of the Independent Assessor.**

Comment: Council considers that the dealing with complaints against a CEO should remain with the Council with the Code of Conduct providing clear direction on the process to be followed. As Council is also the body that employs the CEO it needs to be able to deal with these complaints.

Other Matters

Classification Bands

- 61. The Panel recommends:**

- a. The new Act should set principles for determining classification bands for local governments.**
- b. These classification bands should be used by the Salaries and Allowances Tribunal for determining councillor and CEO payments, as well as providing a framework for distinguishing between local governments in relation to other matters.**

Comment: The current system whereby the Salaries and Allowance Tribunal determines into which band a local government will be placed should be retained. Some local governments will experience a significant change in their local government, generally driven by a population change and the current system allows that local government to provide a submission to the SAT for a review of the band that they are currently in.

Operational Provisions

- 65. The Panel also identified the following operational matters to be considered when drafting the new Act:**

- f. Employment entitlements for local government employees should be transferrable across all three levels of Government.**

Comment: Council is generally not opposed to this recommendation but would like to see further consultation with local governments before this proposal was implemented.