

12 March 2018

LGA Review
Department of Local Government, Sport and Cultural Industries
Perth Business Centre
Western Australia 6849

via email: legislation@dlgsc.wa.gov.au

Dear Sir/Madam

Local Government Act 1995 Review

Thank you for the opportunity to provide a submission on Phase 1 of the *Local Government Act (LGA) 1995 Review* (Consultation Paper). We kindly request that this submission is classified as confidential due to the specific references to confidential reviews the AICD has completed of local government authorities (**LAs**).

The Australian Institute of Company Directors (**AICD**) is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership of more than 42,000 includes directors and senior leaders from business, government and the not-for-profit sectors.

The AICD welcomes the Consultation Paper as part of a comprehensive review of the Local Government Act. It is evident through discussions with our members that the current legislative and regulatory framework needs improvement to address the performance and governance of LAs. As revealed in the 2018 Edelman Trust Barometer the majority of Australians considered government to be 'broken' with 56 percent of Australians saying it is the most broken institution.

Governance is concerned with the systems, processes and practices by which informed decisions are made and implemented by an organisation. Good governance has a positive effect on various aspects of LAs including consultation policies and practices, meeting procedures, service quality protocols, councillor and officer conduct, role clarification and good working relationships. Good governance is essential for sustainable economic, societal and environmental outcomes for the short, medium and long term. It enhances community confidence in its council and improves the trust that elected members and officers have in their own local government and its decision-making processes.

Such outcomes can be achieved through the adoption of a consistent governance framework for all local government authorities supported by a robust and transparent reporting mechanism. In our view, this framework should be developed by building on the existing governance frameworks that exist across the listed, not-for-profit and government sectors. These frameworks include the *ASX Corporate Governance Council's Principles and Recommendations* and *AICD's Good Governance Principles and Guidance for not-for-profit organisations*.

In our view, legislative changes on their own will not solve the complex issues currently facing LAs in Western Australia

The AICD has been working with LAs in Western Australia using our Governance Analysis Tool, with specific application for local authorities, to assist in identifying and improving civic governance practices to support enhanced performance outcomes, and better management of risks, for the local authority. By the end of Financial Year 17/18 the AICD will have completed 32 reviews across metropolitan and Regional Western Australia.

These findings, as well as the experience of our membership, provide us with a unique perspective on the current challenges faced by LAs.

They include:

- Lack of clarity and understanding in the role of Elected Members versus management, resulting in too much focus on operational matters and not sufficient focus on strategy and risk management;
- Interpersonal clashes and differences of perspective between some Elected Members intruding upon Council functionality;
- Unauthorised and questionable information leakage to the media of the business and civic affairs;
- Opportunity for ongoing professional development, education and training for Councillors;
- Difficulties in getting the right mix of skills and experience of Elected Members, given the open election environment;
- Opportunity for improvement in the quality, relevance and succinctness of information availability and flow from management to Elected Members;
- Issues within Councils regarding CEO appointment, performance management, setting of performance measures and lack of performance management of the Elected Members themselves; and
- Integrity issues regarding personal benefits.

When considering changes to the current LGA we would suggest particular focus is applied to some key areas of governance.

Culture

A strong principles based ethical framework that clearly sets out a desired culture is critical to improved outcomes. Culture is at the heart of how an organisation and its staff think and behave. The Council (as a whole) is ultimately responsible for the definition and oversight of culture within the local government authority. Setting the culture and embedding this within the organisation is the collective role of both the Council and senior management and needs to be recognised within their respective role descriptions. We recommend that the ethical framework include the adoption of a written code of ethics (or code of conduct) that is not just applicable to the Council and Elected Members, but also to all staff. It should:

- set out explicit expectations for ethical decision-making and personal behaviour;

- include processes for recording and evaluating compliance and for dealing with breaches of the code;
- be communicated to employees and embedded within relevant training;
- be published and reported on; and
- be reviewed by the Council periodically and the Council should monitor and enforce adherence to the code for management in addition to Elected Members.

Role of Council and Elected Members, CEO and Management

The role of Council and Elected Members, the Mayor, the CEO and management should be clearly articulated for the LA. Clear definition is required about the distinct role of the Elected Representatives versus employees, including management, of the LA. Good practice principles would ensure that such a definition includes:

- the approval of the strategy and monitoring its implementation by the CEO and the management team (including the review of material risks relevant to the strategy);
- the role in relation to the engagement and communication with LAs constituents and stakeholders;
- appointment, removal and annual performance setting and assessment of the CEO;
- the roles in relation to establishment, communication and compliance with a code of conduct (as discussed above); and
- oversight responsibility for the management and direction of the LA. This may include the development, approval and review of systems, policies and practices of a governance nature including those that relate to performance and reporting and compliance with all applicable laws, regulations and legal requirements.

Skills, knowledge, experience and attributes and performance assessment

Good practice indicates that an effective Council should have an appropriate balance of skills, diversity, knowledge, experience and attributes. This is espoused in many corporate governance frameworks as well as throughout LAs across Australia. While we are conscious of the difficulties of managing a skills mix in a publicly elected setting, the benefits are too strong to ignore. LAs are complex businesses with community responsibilities. Therefore appropriately skilled and experienced Elected Members are needed to effectively fulfil the responsibilities of office.

A published skills matrix is good governance practice across all sectors and could be modified and used as part of council election processes in order to provide transparency to constituents about the contribution (in terms of skills, diversity, knowledge, experience and attributes) a candidate could make to the Council.

We note that during our consultation for this submission a consistent theme was the perceived lack of skills of Elected Members. This concern particularly applies to officials who are newly elected.

We note that this concern is not unique to Western Australia and has been expressed in similar reviews across Australia. Some Governments have responded to this by requiring a

minimum standard of training for elected officials. Another option is requiring senior officials to completed ongoing professional development requirements similar to those required in the legal and accounting professions.

To the extent to which there are 'gaps' in skills, diversity, knowledge, experience and attributes of Elected Members, education and training will need to be designed to fill these gaps. Other guidelines to consider within a corporate governance framework could include:

- The allocation of time and resources for Elected Members to gain and retain a sound understanding of their responsibilities – through a comprehensive induction as well as ongoing training;
- A rigorous formal process for evaluating performance of the Council, individual Elected Members and the Mayor (not just the CEO); and
- Reporting on the above information, including training and evaluation processes, profile of their experience and length of service.

Integrity issues regarding personal benefits

We are concerned about the possibility of an exemption from accounting standard AASB 124 *Related party disclosures* as part of an initiative to reduce duplication or overlap with the LGA. This standard has been developed by Government following extensive consultation with all reporting entities around Australia. It covers transactions, whether financial or non-financial in nature, and includes a useful definition of a related party. In particular, 'a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged', is considered a related party transaction. We consider that if any duplication exists, it should be rectified in the LGA rather than exempting compliance with the whole standard, given its general acceptance in the community.

Governance requirements around ethics and culture, and training and education should assist staff, the Council and individual Elected Members in identifying appropriate behaviour and relevant public disclosures if needed.

Next steps

We hope our comments will be of assistance. If you would like to discuss any aspect of this submission, please contact Ms Kerry Hicks, Senior Policy Adviser, on [REDACTED]

Yours sincerely

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MATT PRITCHARD

Head of Government Relations and Media