



**Small Business
Development Corporation**

Our ref: D18/132

Local Government Act Review
Department of Local Government, Sport and Cultural Industries
legislation@dlgsc.wa.gov.au

To the Review Team

Review of the *Local Government Act 1995*

On behalf of the Small Business Development Corporation (SBDC), I wish to thank you for the opportunity to submit comments to the *Review of the Local Government Act 1995 – Phase One* (the Review). I wish to acknowledge the considerable effort that goes into this type of review, and applaud the Department of Local Government, Sport and Cultural Industries on the level of detail that has been included in the Phase One consultation paper.

The role of the SBDC

The SBDC is an independent statutory authority established in 1984 with the purpose of assisting the growth and development of small businesses in Western Australia (WA). The SBDC's mission is to deliver and facilitate relevant, practical support to small businesses and to foster the development of policy conducive to the growth of a thriving sector in this State.

The SBDC provides a range of services specifically targeted at assisting small businesses, particularly in their interactions with local government, including:

- the Business Licence Finder;
- a commercial tenancy advisory service;
- a business advisory service;
- an alternative dispute resolution and mediation service (for small business disputes with another business or a government body); and
- whole-of-government small business advocacy.

One of the primary strategic objectives of the organisation is to build strong engagement with, and commitment from, all key stakeholder groups. The SBDC considers local governments to be an important stakeholder in recognition of the significant role they have in the lifecycle and success of a small business.

The SBDC's interaction with local government

Local government plays a central role in the establishment and continued viability of small businesses. They regulate the types of businesses that can be carried out from every building or public space, the licences that must be applied for, the fees that must be paid, as well as having responsibility and oversight of building, health and environmental approvals, signage and parking.

The number of small businesses regulated by local governments is substantial. Combined, WA's local governments regulate 221,837 small businesses, which make up 97% of all businesses in the State. Their role and influence in the small business and economic development arena cannot be underestimated.

The SBDC has an ongoing interest in the local government sector. For some time the SBDC has been involved in small business disputes with local governments, and provided guidance to some small businesses appealing local government decisions through the State Administrative Tribunal.

Over the past three years, the SBDC has managed 80 small business disputes with local governments, with a number proceeding to formal mediation. These disputes involved the following issues:

- leasing, where the local government is the landlord;
- contractual issues, including non-payment by the local government;
- planning decisions;
- parking requirements;
- local government works and the impact this has had on business profitability;
- home-based businesses;
- mobile food van applications;
- rates valuations;
- competitive neutrality; and
- zoning and permitted use.

The SBDC's involvement in the local government sector also extends to commenting on local planning strategies and schemes, and successfully advocating for reforms to the model scheme text, now captured in the model provisions of the Planning and Development (Local Planning Schemes) Regulations 2015. The SBDC has also partnered with local governments to deliver small business workshops, and has long advocated for a reduction in red tape at the State and local government level.

The SBDC recognises there is considerable value in working closely with local governments to achieve positive outcomes for small businesses and the economy. In August 2016, the SBDC and the then Minister for Small Business launched the Small Business Friendly Local Governments (SBFLG) initiative which seeks to recognise those local governments that are working proactively to support their small business communities, and are committing to continuous improvement.

As at 23 February 2018, 19 local governments from around the State are participating in the SBFLG initiative. Combined, these local governments regulate 35% of all small businesses in WA.

All 19 of these participating local governments have made a commitment to the SBFLG Charter (attached), which sees them committing at a minimum to supporting small business, providing helpful customer service, reducing red tape, and paying small business invoices within 30 days. It is the SBDC's goal that over time, the intent of the SBFLG Charter will be adopted by a larger proportion of the local government sector, and there will be a unified, concerted effort to support small businesses and the jobs they inevitably create.

The SBDC understands that the WA Local Government Association has commenced a project aimed at developing an economic development framework for the local government sector. This closely aligns with what the SBDC hopes to achieve with the SBFLG initiative, and may prove a useful tool in guiding local governments in the role they can play in developing their local economies. It would be appropriate for the Review Team to keep abreast of the work being undertaken in this area, and any amendments to the *Local Government Act 1995* supports the recognised role of local government in economic development.

The SBDC's submission to the Review

The SBDC has considerable insight and long-held views of the operations of the local government sector, informed through small business enquiries and complaints, as well as a long standing agenda to identify unnecessary red tape. In this regard, the SBDC wishes to comment on the following three sections of the Review consultation paper:

- Section 8 – Access to information
- Section 9 – Available information
- Section 10 – Red tape reduction

Access to information – public notices

From a small business and community perspective, public notices play an important role in communicating decisions and proposals, and are particularly valuable in eliciting support or objections from ratepayers in order to inform local government decision making.

The use of public notices by government agencies and local governments was previously raised by the Red Tape Reduction Group (RTRG), which highlighted the considerable cost associated with advertising public notices in newspapers¹. The RTRG commented that if agencies were permitted to have more flexibility in how notices were advertised (such as using electronic means) the costs of advertising public notices could be greatly reduced.

While the SBDC agrees with the RTRG, the ability for agencies (and local governments in this instance) to advertise notices electronically has broader benefits than cost alone, particularly as the community consumes a significant amount of information in this manner.

The SBDC has reviewed the supplementary information related to public notices provided in the Review consultation paper and believes that a considerable proportion of these situations are of relevance to small business operators (particularly the situations where State-wide notice is required). For this reason, the SBDC supports Option 3 in the consultation paper:

¹ Government of Western Australia, 2009 *Reducing the Burden – Report of the Red Tape Reduction Group*, Chapter 21 Public notices, Available at: http://www.treasury.wa.gov.au/uploadedFiles/Home/Publications/Independent_Reports/reducing_the_burden.pdf?n=1005. [23 February 2018].

- Local notices: print **or** electronic notices required
- State-wide notices: print **and** electronic notices

The SBDC deems this option as striking the right balance between local government transparency, reaching the widest audience and not disadvantaging those members of the community that do not have ready access to digital information.

Access to information – information available for public inspection

The SBDC has received various enquiries and managed a number of disputes where the policy, fee or local law has either been very difficult to find on a local government’s website or is not available publicly. This has proved problematic for a number of reasons: firstly it means the business operator is not able to easily understand and follow their obligations and secondly, it makes it difficult to assist these clients without contacting the local government directly to seek copies of the relevant information.

As is well understood, small business operators are typically time poor and justifiably focused on the day-to-day running of their businesses. Understanding all of their regulatory requirements can sometimes not be a priority, or may be difficult to do so due to language or educational barriers, or simply that the relevant information is not easy to find. For that reason, the way local governments make information available to their business constituents can either aid or hinder compliance. Requiring these business operators to go into a local government administration office to physically access information can be challenging, costly and an immense inconvenience, particularly if the business operator has to leave their work to do this during business hours.

In this modern age, it is reasonable to expect that a large proportion of information held by local governments is available digitally for the public to access. The SBDC has reviewed the list of information that is currently required to be made public² and believes that the following should be made available on all local government websites:

- Annual Reports
- Annual Budgets
- Future plan for the district
- Minutes of council, committee and elector meetings
- Notice papers and agendas of meetings
- Reports tabled at a council or committee meeting
- Gifts
- Codes of conduct
- Complaints register
- Register of delegations to committees, CEO and employees
- Schedule of fees and charges
- Proposed local laws
- Gazetted local laws (and any other law that has been adopted by the district)
- Tenders register

The SBDC also acknowledges the importance of not disadvantaging members of the public that do not have access to the internet, so maintains the view that all information available

² Pages 94-95 of the Review consultation paper.

digitally should also be made available at the local government's administration office for viewing by the public, free of charge.

Available information – expanding the information provided to the public

The Review consultation paper seeks input on the additional information that could be reported by local governments and made available for public inspection. The SBDC has reviewed the list³ and provides comments below.

Table 1: Proposed information to be made publicly available by local governments

Proposal	Should this information be made available?
Live streaming video of council meetings on local government website	Required. Due to the costs associated with this proposal, the SBDC suggests there should be a generous lead-in time for implementation, and assistance from the Department of Local Government, Sport and Cultural Industries to help establish low-cost technology solutions to assist smaller, less resourced local governments to comply.
Elected member attendance rates at council meetings	Required. The SBDC supports increased transparency of council meetings to ensure elected members are acting in the best interests of the business community.
Elected member representation at external meetings/events	Required.
Complaints made to the local government and actions taken	Required
Website to provide information on differential rate categories	Required
District maps and ward boundaries	Required
Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission	Required

The SBDC considers that all other types of information should be optional for local governments to make publicly available.

Reducing red tape

The SBDC has been focused for some time on the red tape local governments impose on the business community, and welcomes the opportunity to raise these issues as part of the Review. The SBDC acknowledges that the following points may be more applicable to Phase Two of the Review, or not covered by the *Local Government Act 1995* itself, but submits these for consideration nonetheless to give a broad overview of what local government red tape looks like from a small business perspective.

³ Page 100 of the Review consultation paper

While many local governments have been actively working to reduce red tape, particularly those participating in the SBFLG initiative, the SBDC has observed a number of causes of compliance burden for small businesses (outlined in Table 2).

These red tape issues are either administrative, financial or cultural, and can result in unnecessary time delays, costs, uncertainty and unfair outcomes for small businesses.

Table 2: Local government red tape for small businesses

Red tape problem
Not all forms available online.
Not all information can be submitted online.
Not all fees can be paid online.
Not all policies and fee schedules are published online.
Different fees, forms, policies and laws in different local governments for the same business type. This has a particular impact on small businesses operating across local government areas, adds unnecessary confusion and can make it difficult for a business operator to undertake their forward budgets and business plans.
Setting fees in a manner that is not permitted under legislation. The SBDC is aware of a case where a local government set a fee of a set dollar value plus a percentage of business revenue for a water sports hire business to use a section of the beach for their business operations. After further questioning of the legality of this fee by the SBDC this fee was amended by the local government to be a set dollar value only.
Local government officers (particularly those in planning and approval roles) not undertaking a risk-based approach to regulation, being adversarial in nature or not working collaboratively with those they regulate.
Inconsistent interpretation of planning schemes and local laws by officers within the same local government area and in different local government areas. The SBDC is aware of planning officers declining applications (including home-business applications) based on their incorrect interpretation of the applicable local planning scheme. In one case, the small business challenged the decision at the State Administrative Tribunal, and subsequently had the decision reversed and their business application approved.
Unreasonable local laws and policies. The SBDC is aware of a regional small business that was unable to park their mobile food trailer on their residential acreage due to a local law that set a three metre height limit restriction on commercial vehicles being stored on residential premises. The lack of rationale for this restriction, particularly in a regional location, added to the unreasonableness of this policy.
Unreasonably high cash-in-lieu parking fees in the absence of the required number of car bays.
Asking for information on repeated occasions (such as for licence renewals), even when the same information has been submitted previously by the business operator.
Not providing clear information about approval processes and stages, and what information needs to be provided throughout the process. This includes 'resetting the clock' and lack of timeliness of decision-making.

Lack of contact information on the local government website. While some local governments have published contact details of each team, other local governments only have a feedback form which can prove very frustrating for business operators who may wish to talk to someone at the particular point in time.

Lack of information about why applications were declined or the appropriate avenues for appeal.

The SBDC asserts that the regulatory burden imposed by local governments can be considerable, however there are actions that can rectify this. A number of these red tape reduction measures include:

- increasing the amount of information available, including through a number of channels (e.g. online, social media, etc.) and languages;
- clearly published and adhered to timeframes;
- consistent interpretation of planning schemes, local laws and policies;
- risk-based approach to regulation;
- minimising required information, and only asking for this information once;
- clear rationale for policies, fees and decisions;
- commitment to customer service and creating a culture that is focused on assisting small businesses meet their compliance requirements;
- customer service standards, complaints policy and dispute resolution processes; and
- commitment to paying invoices as early as possible – ideally within 15 or 30 days.

While many local governments are moving down the right path and making meaningful reforms in how they regulate and support small businesses, more could be done. Whether this is through a mandate to improve local government regulatory practice that is enshrined in legislation, a regulatory code or in policy, the SBDC would welcome the opportunity to partner with the Department of Local Government, Sport and Cultural Industries in its development.

Thank you again for the opportunity to submit comments to the Review. For further information on this submission, please contact [REDACTED] or at [REDACTED].

Yours sincerely

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2 March 2018