



Department of
**Local Government, Sport
and Cultural Industries**

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Dear Mr Ritter

MINISTERIAL REVIEW OF THE STATE INDUSTRIAL RELATIONS SYSTEM

Thank you for the opportunity to make a submission to the Ministerial review into the State industrial relations system.

The Department of Local Government, Sport and Cultural Industries (the Department) administers the *Local Government Act 1995* (the LG Act) and provides advisory and support services to Western Australia's local governments.

I note that point 8 of the Terms of Reference states that the review will consider whether local government employers and employees in Western Australia should be regulated by the State industrial relations system, and if so, how that outcome could be best achieved.

The Department's role providing advice and support in local government industrial relations matters tends to be limited to matters prescribed in the LG Act. The Western Australian Local Government Association (WALGA) provides extensive industrial relations support services to its members.

Notwithstanding, I am advised that the status of local government industrial relations within the national industrial relations system is complex and unique.

Western Australia has 137 local governments and 11 'regional local governments', which are separate entities formed by two or more local governments. The LG Act also applies to the Indian Ocean Territories of the Shire of Christmas Island and the Shire of Cocos (Keeling) Islands.

Western Australian local governments are a major employer with more than 20,000 people employed across the state. Reflecting the diversity of our state, each local government's number of full time equivalents varies from close to one thousand to fewer than twenty.

Most Western Australian local governments currently operate in the federal industrial relations system, while there are some local governments, mostly in regional areas, that operate in the State jurisdiction.

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Complicating matters further, section 5.36 of the LG Act provides that local government Chief Executive Officers are simultaneously an employee of the local government and the employer of all other local government employees.

In Western Australia, the national industrial relations system, regulated by the *Fair Work Act 2009*, covers Pty Ltd businesses, incorporated partnerships and associations, and other non-profit bodies that are trading or financial corporations.

The State industrial relations system regulated by the *Industrial Relations Act 1979* and the *Minimum Conditions of Employment Act 1993* covers private sector businesses that are sole traders, unincorporated partnerships, the State public sector and incorporated associations, and other non-profit bodies that are not trading or financial corporations.

Whether an organisation sits within the Federal or State jurisdiction is determined by the status of that organisation as a 'constitutional corporation' under Commonwealth law. A constitutional corporation is defined in Australia's Constitution as a 'foreign, trading or financial corporation'.

The status of Western Australian local governments within the national industrial relations framework has been tested on several occasions with different results.

- In 2008, the Western Australian Industrial Relations Commission (WAIRC) determined that the Shire of Dalwallinu was a trading corporation and thus within the Federal jurisdiction.
- However, in 2009, the WAIRC ruled that the Shire of Ravensthorpe was not a trading corporation and thus in the State industrial relations system.
- Similar competing decisions have been made regarding the Shire of Yalgoo and other local governments.

These contrasting decisions are significant because often the shires in question share similarities in their geographical size, financial turnover and staff level.

This inconsistency can be costly and inefficient to local government. In the event of an industrial relations dispute, the parties must first establish in what jurisdiction the dispute may be heard. This can lead to thousands of dollars being spent before the substance of the matter is heard.

Other states have clarified the industrial regulation of their respective local government authorities by either referring powers to the Commonwealth (thus placing all local governments in the National system), or by enacting State-based legislation to exempt the authorities from the scope of the National system and seeking endorsement from the Federal Minister.

I note that both WALGA and Local Government Professionals Australia WA (LG Pro) advocate for local governments to be under one system. Having all local governments within a single industrial relations framework will reduce red tape and be more efficient.

In August 2017, the Premier along with the Minister for Local Government and representatives of WALGA and LG Pro signed the State and Local Government Agreement. The agreement establishes a new era of cooperation between the spheres of government and recognises the importance of communication and consultation between state and local government.

The agreement prescribes that for proposals that will have a significant impact on local government responsibilities or operations that consultation with the sector of at least 12 weeks should occur.

I recommend that you consider the State and Local Government Agreement in the context of your review.

You may also be interested to know that the Department is undertaking a review of the LG Act. As part of the review, the Department is seeking views on reforms that would make it easier for employees to move between the core state public service and local government.

Reforms that allow employees to transfer their leave entitlements or directly move between the spheres of government could create greater workforce flexibility for both the State Government public sector and local government. These reforms could also boost the attractiveness of public sector and local government careers, especially in regional and remote Western Australia where research has shown that career progression is a barrier to employee retention.

An important outcome of simplifying movement between the sectors would be a self-sustaining enhancement of the capacity and sustainability of the local government sector, local government expertise and experience in the state government sector, and the potential for more collaborative relationships between the sectors.

Recommendations of the review of the LG Act will need to be considered within the context of the Ministerial review into the State industrial relations system and I have asked the Department to continue to liaise with the Department of Mines, Industry Regulation and Safety.

I invite you to make a submission of the LG Act review. The LG Act review consultation paper will be available for comment from 8 November 2017 until 9 February 2018 at www.dlqc.wa.gov.au/lgareview.

Yours sincerely



Duncan Ord OAM
Director General

6 November 2017