

7.14 TPRC RESPONSE TO THE PROPOSED REFORM OF THE LOCAL GOVERNMENT ACT 1995 - LATE ITEM

Responsible Officer:	Chief Executive Officer
Attachments:	TPRC <i>Local Government Act 1995</i> proposed reform submission
Voting Requirements:	Simple Majority

RECOMMENDATION

That the Council **ENDORSES** and **FORWARDS** the TPRC submission regarding the *Local Government Act 1995* proposed reforms to the Department of Local Government, Sport and Cultural Industries by 4 February 2022 and to WALGA by 12 January 2022.

PURPOSE

For Council to consider the submission to the Department of Local Government, Sport and Cultural Industries (the 'Department') in response to the proposed reforms to the *Local Government Act 1995* ('the Act').

POLICY REFERENCE

N/A

LOCAL GOVERNMENT ACT/REGULATION

Local Government Act 1995

PREVIOUS MINUTES

Nil

FINANCIAL/BUDGET IMPLICATIONS

N/A

RISK MANAGEMENT IMPLICATIONS

Risk Ref: 2	Risk Rating:
Strategic - Stable and effective governance environment.	Moderate
Action:	
TPRC provide reports/information to Council Meetings.	

BACKGROUND

The Minister for Local Government announced the commencement of a review of the Act in June 2017.

On 10 November 2021, the Minister for Local Government announced significant proposed reforms to the Act based on six themes:

1. Earlier intervention, effective regulation and stronger penalties;
2. Reducing red tape, increasing consistency and simplicity;
3. Greater transparency and accountability;
4. Stronger local democracy and community engagement;
5. Clear roles and responsibilities;
6. Improved financial management and reporting.

The comment period for the proposed reforms closes 4 February 2021.

WALGA intends to convene a Special Meeting of State Council to finalise a sector position prior to the 4 February 2022 deadline. WALGA has requested that submissions be made to them by 12 January 2022.

COMMENT

The submission in the attachment is a draft submission for Councillor comment. It is proposed that Council consider which of the proposed reforms are relevant to Tamala Park Regional Council, and what comments Councillors determine are appropriate to represent TPRC's position.

A Councillor or member of the community who has a different point of view on the consensus reached on any of the key themes may make a separate submission to the Department by 4 February 2022.

CONCLUSION

It is recommended that Council endorses the submission regarding the proposed reforms to the *Local Government Act 1995* to ensure the TPRC's views are considered by the Department of Local Government, Sport and Cultural Industries and WALGA.

Appendix 7.14

TAMALA PARK REGIONAL COUNCIL
LOCAL GOVERNMENT ACT 1995 PROPOSED REFORM RESPONSE

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
1.4 Review of Penalties		
<p>There are currently limited penalties in the Act for certain types of non-compliance with the Local Government Act.</p>	<ul style="list-style-type: none"> • Penalties for breaching the Local Government Act are proposed to be strengthened. • It is proposed that the suspension of councillors (for up to three months) is established as the main penalty where a councillor breaches the Local Government Act or Regulations on more than one occasion. • Councillors who are disqualified would not be eligible for sitting fees or allowances. They will also not be able to attend meetings or use their official office (such as their title or council email address). • It is proposed that a councillor who is suspended multiple times may become disqualified from office. • Councillors who do not complete mandatory training within a certain timeframe will also not be able to receive sitting fees or allowances. 	<p>TPRC is concerned about the consequences that may arise from a councillor being suspended due to their actions in relation to their parent Council. Under this proposal would the alternate for that councillor take their place on TPRC? If so, would they be paid the sitting fee that the suspended councillor has relinquished? This may also have implications in achieving quorum.</p>

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
1.7 Minor Other Reforms		
<ul style="list-style-type: none"> Other minor reforms are being considered to enhance the oversight of local government. Ministerial Circulars have traditionally been used to provide guidance to the local government sector. 	<ul style="list-style-type: none"> Potential other reforms to strengthen guidance for local governments are being considered. For example, one option being considered is the potential use of sector-wide guidance notices. Guidance notices could be published by the Minister or Inspector, to give specific direction for how local governments should meet the requirements of the Local Government Act and Regulations. For instance, the Minister could publish guidance notices to clarify the process for how potential conflicts of interests should be managed. It is also proposed (see item 1.1) that the Inspector has the power to issue notices to individual local governments to require them to rectify non-compliance with the Act or Regulations. 	<p>TPRC is broadly supportive of the proposals, however, does have some concern about the requirement to comply with sector-wide guidance notices. TPRC has limited administration capacity and may struggle to respond in a set time frame and comply with these notices and requirements. A one size fits all approach does not consider the variety of challenges faced by smaller Regional Councils.</p>

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
2.1 Resource Sharing		
<ul style="list-style-type: none"> The Act does not currently include specific provisions to allow for certain types of resource sharing – especially for sharing CEOs. Regional local governments would benefit from having clearer mechanisms for voluntary resource-sharing. 	<ul style="list-style-type: none"> Amendments are proposed to encourage and enable local governments, especially smaller regional local governments, to share resources, including Chief Executive Officers and senior employees. Local governments in bands 2, 3 or 4 would be able to appoint a shared CEO at up to two salary bands above the highest band. For example, a band 3 and a band 4 council sharing a CEO could remunerate to the level of band 1. 	<p>TPRC strongly supports this proposal and has already engaged in resource sharing arrangements with its member Councils.</p>

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
2.4 Streamline Local Laws		
<ul style="list-style-type: none"> Local laws are required to be reviewed every eight years. The review of local laws (especially when they are standard) has been identified as a burden for the sector. Inconsistency between local laws is frustrating for residents and business stakeholders. 	<ul style="list-style-type: none"> It is proposed that local laws would only need to be reviewed by the local government every 15 years. Local laws not reviewed in the timeframe would lapse, meaning that old laws will be automatically removed and no longer applicable. Local governments adopting Model Local Laws will have reduced advertising requirements. 	<p>TPRC strongly supports any proposed reform which will remove administrative burden from it.</p>

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
2.6 Standardised Meeting Procedures, Including Public Question Time		
<ul style="list-style-type: none"> Local governments currently prepare individual standing order local laws. The <i>Local Government Act 1995</i> and regulations require local governments to allocate time at meetings for questions from the public. Inconsistency among the meeting procedures between local governments is a common source of complaints. 	<ul style="list-style-type: none"> To provide greater clarity for ratepayers and applicants for decisions made by council, it is proposed that the meeting procedures and standing orders for all local government meetings, including for public question time, are standardised across the State. Regulations would introduce standard requirements for public question time, and the procedures for meetings generally. Members of the public across all local governments would have the same opportunities to address council and ask questions. 	<p>As a regional Council TPRC's Meeting Procedures Local Law has some unique elements. Standardisation whilst supported at TRPC may require some changes specific for a Regional Council.</p>

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
3.1 Recordings and Live-Streaming of All Council Meetings		
<ul style="list-style-type: none"> • Currently, local governments are only required to make written minutes of meetings. • While there is no legal requirement for livestreaming or video or audio recording of council meetings, many local governments now stream and record their meetings. • Complaints relating to behaviours and decisions at meetings constitute a large proportion of complaints about local governments. • Local governments are divided into bands with the largest falling in bands 1 and 2, and smaller local governments falling bands 3 and 4. The allocation of local governments into bands is determined by The Salaries and Allowances Tribunal based on factors such as: <ul style="list-style-type: none"> ○ Growth and development ○ Strategic planning issues ○ Demands and diversity of services provided to the community ○ Total expenditure ○ Population 	<ul style="list-style-type: none"> • It is proposed that all local governments will be required to record meetings. • Band 1 and 2 local governments would be required to livestream meetings and make video recordings available as public archives. • Band 1 and 2 are larger local governments are generally located in larger urban areas, with generally very good telecommunications infrastructure, and many already have audio-visual equipment. • Band 1 and 2 local governments would be required to livestream meetings and make video recordings available as public archives. • Several local governments already use platforms such as YouTube, Microsoft Teams, and Vimeo to stream and publish meeting recordings. • Limited exceptions would be made for meetings held outside the ordinary council chambers, where audio recordings may be used. • Recognising their generally smaller scale, typically smaller operating budget, and potential to be in more remote locations, band 3 and 4 local governments would be required to record and publish audio recordings, at a minimum. These local governments would still be encouraged to livestream or video record meetings. • All council meeting recordings would need to be published at the same time as the meeting minutes. Recordings of all confidential items would also need to be submitted to the DLGSC for archiving. 	<p>This is currently unachievable for TPRC (and MRC) because we don't have our own chambers and are reliant on using member Council premises. Their recording equipment is not available for our use. We would need more time and consideration on this proposal as we would need to negotiate resource sharing with TPRC's member Councils.</p>

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
3.3 Clearer Guidance for Meeting Items that may be Confidential		
<ul style="list-style-type: none"> • The Act currently provides broad definitions of what type of matters may be discussed as a confidential item. • There is limited potential for review of issues managed as confidential items under the current legislation. 	<ul style="list-style-type: none"> • Recognising the importance of open and transparent decision-making, it is considered that confidential meetings and confidential meeting items should only be used in limited, specific circumstances. • It is proposed to make the Act more specific in prescribing items that may be confidential, and items that should remain open to the public. • Items not prescribed as being confidential could still be held as confidential items only with the prior written consent of the Inspector. • All confidential items would be required to be audio recorded, with those recordings submitted to the DLGSC. 	<ul style="list-style-type: none"> • TPRC routinely deals with items which are commercially sensitive in nature and are required to be dealt with in confidence. TPRC would urge that consideration be given to its function and objectives as a Council overseeing a large land development within a corporate partnership under a Development Management Agreement. It may be the case that TPRC will have to work with the Inspectorate to draw up a separate protocol exempting it from the proposed provisions. • TPRC has serious concerns about the audio recording and distribution of commercially sensitive information. The dissemination of this information, accidental or otherwise, has the potential to greatly impact the commercial viability of the project, and the investment made by Member Councils.

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
3.4 Additional Online Registers		
<ul style="list-style-type: none"> Local governments are required to provide information to the community through annual reports, council minutes and the publication of information online. Consistent online publication of information can substitute for certain material in annual reports. Consistency in online reporting across the sector will provide ratepayers with better information. These registers supplement the simplification of financial statements in Theme 6. 	<p>It is proposed to require local governments to report specific information in online registers on the local government's website. Regulations would prescribe the information to be included.</p> <p>The following new registers, each updated quarterly, are proposed:</p> <ul style="list-style-type: none"> Lease Register to capture information about the leases the local government is party to (either as lessor or lessee) Community Grants Register to outline all grants and funding provided by the local government Interests Disclosure Register which collates all disclosures made by elected members about their interests related to matters considered by council Applicant Contribution Register accounting for funds collected from applicant contributions, such as cash-in-lieu for public open space and car parking Contracts Register that discloses all contracts above \$100,000. 	<ul style="list-style-type: none"> While TPRC supports this proposal, it notes that some of the nominated registers are not applicable to TPRC operations. It would also add to TPRC staff workload. Currently TPRC only has 3 FTE staff.

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
3.5 Chief Executive Officer Key Performance Indicators (KPIs) be Published		
<ul style="list-style-type: none"> • It is a requirement of the <i>Local Government Act 1995</i> that CEO performance reviews are conducted annually. • The Model Standards for CEO recruitment and selection, performance review and termination require that a local government must review the performance of the CEO against contractual performance criteria. • Additional performance criteria can be used for performance review by agreement between both parties. 	<p>To provide for minimum transparency, it is proposed to mandate that the KPIs agreed as performance metrics for CEOs:</p> <ul style="list-style-type: none"> • Be published in council meeting minutes as soon as they are agreed prior to (before the start of the annual period) • The KPIs and the results be published in the minutes of the performance review meeting (at the end of the period) • The CEO has a right to provide written comments to be published alongside the KPIs and results to provide context as may be appropriate (for instance, the impact of events in that year that may have influenced the results against KPIs). 	<p>KPIs which are specifically employer to employee and are inwards focused should not be made publicly available. KPIs which are outward focused and are aligned to the Corporate Business Plan can be considered appropriate to be made public.</p>

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
4.1 Community and Stakeholder Engagement Charters		
<ul style="list-style-type: none"> • There is currently no requirement for local governments to have a specific engagement charter or policy. • Many local governments have introduced charters or policies for how they will engage with their community. • Other States have introduced a specific requirement for engagement charters. 	<ul style="list-style-type: none"> • It is proposed to introduce a requirement for local governments to prepare a community and stakeholder engagement charter which sets out how local government will communicate processes and decisions with their community. • A model Charter would be published to assist local governments who wish to adopt a standard form. 	<p>TPRC has limited engagement with the community in the same way other local governments do. Given the Council is made up of seven member Councils who represent a landholding, it is difficult to see how such a requirement could be complied with.</p>

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
5.3 Council Communication Agreements		
<ul style="list-style-type: none"> The Act provides that council and committee members can have access to any information held by the local government that is relevant to the performance of the member in their functions. The availability of information is sometimes a source of conflict within local governments. 	<ul style="list-style-type: none"> In State Government, there are written Communication Agreements between Ministers and agencies that set standards for how information and advice will be provided. It is proposed that local governments will need to have Council Communications Agreements between the council and the CEO. These Council Communication Agreements would clearly specify the information that is to be provided to councillors, how it will be provided, and the timeframes for when it will be provided. A template would be published by DLGSC. This default template will come into force if a council and CEO do not make a specific other agreement within a certain timeframe following any election. 	<p>TPRC supports this proposal, however, would note that the nature of its function will necessitate a different approach to communication between its CEO and councillors to other local governments. TPRC is satisfied that the proposed provision can accommodate this.</p>

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
5.4 Local Governments May Pay Superannuation Contributions for Elected Members		
<ul style="list-style-type: none"> Elected members are eligible to receive sitting fees or an annual allowance. Superannuation is not paid to elected members. However, councillors can currently divert part of their allowances to a superannuation fund. Councils should be reflective and representative of the people living within the district. Local governments should be empowered to remove any barriers to the participation of gender and age diverse people on councils. 	<ul style="list-style-type: none"> It is proposed that local governments should be able to decide, through a vote of council, to pay superannuation contributions for elected members. These contributions would be additional to existing allowances. Superannuation is widely recognised as an important entitlement to provide long term financial security. Other states have already moved to allow councils to make superannuation contributions for councillors. Allowing council to provide superannuation is important part of encouraging equality for people represented on council – particularly for women and younger people. Providing superannuation to councillors recognises that the commitment to elected office can reduce a person’s opportunity to undertake employment and earn superannuation contributions. 	<p>If this is additional to their allowance it would increase TPRCs costs. TPRC currently operates on a very low budget which is funded by the project and the member councils as we are not a rate generating Council.</p>

CURRENT PROVISION	PROPOSED REFORMS	TPRC COMMENTS
5.6 Standardised Election Caretaker period		
<ul style="list-style-type: none"> • There is currently no requirement for a formal caretaker period, with individual councils operating under their own policies and procedures. • This is commonly a point of public confusion. 	<ul style="list-style-type: none"> • A State wide caretaker period for local governments is proposed. • All local governments across the State would have the same clearly defined election period, during which: <ul style="list-style-type: none"> ○ Councils do not make major decisions with criteria to be developed defining 'major' ○ Incumbent councillors who nominate for re-election are not to represent the local government, act on behalf of the council, or use local government resources to support campaigning activities. ○ There are consistent election conduct rules for all candidates. 	<p>TPRC are supportive of the concept but will require further detail to determine the impact of this proposal on its operations.</p>

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
6.5 Amended Financial Ratios		
<ul style="list-style-type: none"> Local governments are required to report seven ratios in their annual financial statements. These are reported on the MyCouncil website. These ratios are intended to provide an indication of the financial health of every local government. 	<ul style="list-style-type: none"> Financial ratios will be reviewed in detail, building on work already underway by the DLGSC. The methods of calculating ratios and indicators will be reviewed to ensure that the results are accurate and useful. 	<p>While TPRC supports this proposal, it would encourage consideration to be given to the unique nature of the TPRC. For example the assets held by TRPC are minimal and replacement is rare which often shows an unavoidable and reoccurring adverse trend.</p>

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
6.6 Audit Committees		
<ul style="list-style-type: none"> Local governments must establish an Audit Committee that has three or more persons, with the majority to be council members. The Audit Committee is to guide and assist the local government in carrying out the local government's functions in relation to audits conducted under the Act. The Panel Report identified that Audit Committees should be expanded, including to provide improved risk management. 	<ul style="list-style-type: none"> To ensure independent oversight, it is proposed the Chair of any Audit Committee be required to be an independent person who is not on council or an employee of the local government. Audit Committees would also need to consider proactive risk management. To reduce costs, it is proposed that local governments should be able to establish shared Regional Audit Committees. The Committees would be able to include council members but would be required to include a majority of independent members and an independent chairperson. 	<ul style="list-style-type: none"> TPRC is concerned about the potential cost impacts of this reform, the disincentive for Councillors to participate in Audit Committees and unintended inefficiencies that may result. In order to give effect to the requirement that Audit Committee have a majority of independent members would require either the downsizing of TPRC's current Audit Committee or the appointment of a further six independent members. If the Audit Committee were downsized then this would mean that a limited number of Councillors would have involvement in the audit process. This would result in audit items being reconsidered at Council meetings. TPRC understands that the Minister proposes to allow meeting fees to be paid to independent members. If more independent members were added to create an independent majority, then this would create a large added cost to TPRC in sitting fees. It may prove challenging for a Council like TPRC to appoint suitably qualified independent members, given that they will be competing with larger Councils for the services of independent members. How would non-Councillors be chosen? Given the TPRC's unique situation we could potentially have committee

CURRENT PROVISIONS	PROPOSED REFORMS	TPRC COMMENTS
		members who have no understanding of what the TPRC does.