



Department of Local Government and Regional Development
Government of Western Australia

System

APPENDIX 18 (b)

Your Ref: 03097
Our Ref: D0303107

Mayor John Bombak JP
City of Joondalup
PO Box 21
JOONDALUP WA 6919

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A	NOTE
	ATT

City of Joondalup
DOCUMENT REGISTRATION
Ref 03097
No 308696
Action Officer MM CCL

cc: CEO
cc: MAYOR



Dear Mayor Bombak

I acknowledge receipt of a letter from the City of Joondalup dated 13 March 2003 in which the City sought comment from this Department on the legality and appropriateness, in terms of the manner in which decisions were made at Council's meeting of 11 March 2003, relating to the Wanneroo Basketball Association.

Senior Department officers met with the City Chief Executive Officer and two other senior City officers on Tuesday 18 March 2003 to discuss the matter further and clarify some issues.

The Department accepts that the decisions taken complied with the requirements of the *Local Government Act 1995* (the Act), however, it does have serious concerns over the appropriateness of the process undertaken to arrive at those decisions.

Those concerns arise because the process used falls within the concerns expressed by the recent Inquiry Panel into the City of South Perth. The Inquiry Panel identified its primary focus as recommending whether the Council of the City should be dismissed. That focus centred around whether the Council provided for the good government of the City.

The proclaimed long title of the Act states that it is, "*An Act to provide for a system of local government in Western Australia, to amend the Local Government Act 1960 and for related purposes*".

Section 1.3 of the Act states:

- (1) This Act provides for a system of local government by;
- (a) providing for the constitution of elected governments in the state;
 - (b) describing the functions of local governments;
 - (c) providing for the conduct of elections and other polls; and
 - (d) providing a framework for the administration and financial management of local government and for the scrutiny of their affairs.

(2) This Act is intended to result in:

- (a) better decision-making by local governments;
- (b) greater community participation in the decisions and affairs of local governments;
- (c) greater accountability of local governments to their communities; and
- (d) more efficient and effective local government.

The Inquiry Panel stated that *"It can be inferred from section 1.3 that the legislature intended that local government would be improved by the provisions of the 1995 Act, which replaced those of the 1960 Act. It can also be inferred from that subsection that the legislature intended that the good government of the local government might be measured by the quality of (a) its decision-making, (b) community participation in its decision and affairs, (c) its accountability to its community, and (d) its efficiency and effectiveness"*.

The Department is concerned that the Council through the quality of its decision making and accountability to the community at its meeting of 11 March 2003 failed to meet the intent of the Act.

Good decision-making requires the decision-maker to give proper consideration to all relevant and material facts and circumstances prior to decisions being made. It is also essential that irrelevant considerations are not taken into account. Councils must avoid making decisions in order to fulfil some "agenda" not compatible with the Council's legal responsibilities. Councils who do not continually maintain high standard decision making procedures open the door for their decisions to be challenged, overturned, severely criticised or found to be improper.

The Act, in emphasising better decision-making, prescribes a role for the Chief Executive Officer (CEO) in ensuring that advice and information is available to the Council so that informed decisions can be made. The CEO must also advise the Council in relation to the functions of the local government under the Act and other written laws.

The Act protects elected members from actions of tort while they are acting in good faith. The question arises as to whether elected members who participate in a decision-making process without allowing the CEO to fulfil his or her legal responsibility under the Act are acting in good faith.

The Department's concerns over the failure of the Council to be accountable to its community centre around the decisions of Council to write off a significant amount of money owed to the City without first considering the affects of the write off on other sections of the Community. One elected member by way of explanation highlighted that Council did not need a report from the CEO as all elected members are aware of the amount of the debt. It is not the amount of the debt that the CEO would be expected to report on, but the implications to the finances of the City and other services if the debt was written off. The same would apply to the decision of Council to fund the strategic feasibility study at an estimated maximum cost of \$30,000. If Council at any time wishes to redirect funding it should always advise the CEO where the funding is to be redirected from.

The decisions taken at the meeting of 11 March 2003 relating to writing off the debt and the City assuming responsibility for general maintenance of the stadium are conditional on other events, the Department believes that in the interest of providing for the good government of the City and protecting individual elected members that Council take the opportunity to consider advice from the CEO before committing the City. Additionally where an expenditure commitment has been made, Council identify the funding source.

It would be appreciated if this letter could be presented to Council at its next meeting.

Yours sincerely



Cheryl Gwilliam
DIRECTOR GENERAL

19 March 2003