

22 April 2020

COVID-19 response - Amendment to Western Australian local government laws

A series of amendments have been made to local government legislation over the past month, in response to the COVID-19 pandemic, and the impact that the virus is having on the day to day operations of the State.

The declaration of the State of Emergency (made pursuant to the *Emergency Management Act 2005 (EM Act)*) has provided breathtaking speed to our Act-making process. New legislation usually takes a very restrained pace through both Houses of Parliament – and can take more than one session of Parliament to be passed.

Last week, an Amendment was made to the *Local Government 1995 (LG Act)* that was first, second and third read in each House on consecutive days! Surely some kind of record.

The following update aims to give an overview of the most recent changes. Moharich and More are closely monitoring the *Government Gazettes* and the Parliament of Western Australia's business to bring you changes that might affect you and your organisation. The following is a summary of the most recent amendments to local government legislation.

Ministerial powers to suspend or modify laws

The law that was passed last week in record time is the *Local Government Amendment (COVID-19 Response) Bill 2020*. The Act introduces a new Part 10 to the LG Act, which grants powers to the Minister for Local Government in section 10.3 to issue an order which modifies or suspends specific provisions of the LG Act or any regulations made under the LG Act.

The order must be published in the *Government Gazette* and laid before each House of Parliament as if it were a regulation. An order can apply to all local governments, local governments of a specified class (say, for example, only metropolitan local governments) or to a specified local government.

The order has effect for 3 months after the COVID emergency declaration is lifted or such earlier day specified in the order.

Powers are also granted to local governments to suspend the operation of a specified local law (made under either the LG Act or any other Act) or provision thereof, by resolution made by absolute majority. This power can only be invoked where the local government considers that it is necessary to deal with the consequences of the COVID-19 pandemic. If the pandemic was to get worse, one could see local government potentially suspending obligations under the local laws such as the Lodging House local laws where there was a requirement, for example, to be able to quarantine people in buildings not licenced for such a purpose. What will be interesting is whether local governments will read this provision strictly or liberally to allow, for

example, greater street vending or al fresco dining area should social distancing require a long period where restaurants and cafes can not operate at full capacity.

Changes to Council processes

Local governments would be aware of the regulations that came into effect on 26 March 2020 which allowed for some Council processes to be altered to address growing concerns regarding COVID-19. Included in these changes was the ability to hold Council meetings electronically and receive public questions in writing ahead of time.

Changes to financial requirements and obligations

As the demand on local government services and support has continued to increase, the State has recognised the need for further amendments to various regulations of the LG Act. Accordingly, the *Local Government Regulations Amendment Regulations 2020* were published in the *Government Gazette* on Thursday 9 April 2020. In addition to including the definition of a state of emergency declaration to reflect the *Emergency Management Act 2005*, the key changes are as follows:

Regulation	Issue	Amendment
<i>Local Government (Financial Management) Regulations 1996</i>		
18	Changing the use of money in the reserve	A local government does not need to give public notice of proposed changes to the way money in its reserve account is used, provided that: <ul style="list-style-type: none"> (a) there is a state of emergency; (b) the change of use addresses a need arising from the declared state of emergency; (c) the amount affected does not exceed \$5000; and (d) the decision and reasons for it are recorded in formal Council minutes.
20, 21	Borrowing money and changing its use	A local government does not need to give public notice that it is borrowing money, or changing the use of borrowed money provided that: <ul style="list-style-type: none"> (a) there is a state of emergency; (b) it addresses a need arising from the declared state of emergency; (c) the decision and reasons for it are recorded in formal Council minutes; and

		(d) (in the case of a change of use) the amount does not exceed \$5000; or the amount has been approved by the CEO or Mayor under section 6.8(1)(c) of the Act.
<i>Local Government (Functions and General) Regulations 1996</i>		
	Public tender thresholds and advertising	In addition to situations previously included in the regulations, tenders now do not have to be publicly invited at all if: <ul style="list-style-type: none"> (a) the supply of goods and/or services is at all related to the state of emergency; and (b) the local government seeks to renew or extend a contract for no more than twelve months during the time of a state of emergency, that would have otherwise expired within three months of the renewal/extension.
<i>Local Government (Long Service Leave) Regulations</i>		
	Calculating service	Long service leave entitlements will not be affected if an employee has any period of absence from work as a result of a state of emergency (and/or the hazards and impacts of said emergency). This leave will be considered continuous service.
7. 7A(2)	Taking long service leave	Employees can now take long service leave in two or more separate periods by agreement. Employees are also able to take long service leave in advance by agreement if they have completed at least seven years of continuous service, and leave is granted during a time of a state of emergency.

These changes are useful because they allow local governments to adapt to changing financial pressures and to be able to remain dynamic and supportive without being burdened by notice period delays. Similarly, they allow a local government to give some additional certainty to its employees, and some flexibility about leave.

It does not appear that the increase of the tender threshold amount is limited to a time of state emergency, but this should be monitored after the state of emergency declaration is resolved.

Whilst the amendments relax some processes to facilitate faster response times, local governments must be careful to ensure governance frameworks remain intact.

It is important for local governments to maintain their usual practices as far as is possible or practicable, and to ensure the relevant authorisations and checks are upheld when exercising powers under the new amendments. Now is the time to ensure relevant authorisations and delegations are validly in place, and that internal procedures exist to facilitate efficient but compliant responses to the changing landscape.

Other Considerations

In addition to the above amendments, local governments should be aware of the changes to the planning system, which are outlined in our circulars available on our website.

The Minister for Planning has made it clear through statutory changes and official messaging that the State Government expects local government to play a significant support role for the community and local economies at this time, which includes rethinking approaches to enforcement and compliance action.

This should not be seen as a blank cheque for policy changes and framework amendments, and similarly, local governments are not being disempowered from pursuing inequitable, inappropriate or unsafe breaches of relevant regulations and Local Laws etc.

Further advice?

Moharich and More remains open and available to assist clients navigate these uncertain times and rapidly changing regulatory frameworks.

Please give us a call on 9367 5559 and leave a message, or email us at info@moharichandmore.com.au for further assistance.