Department of
Local Government, Sport and Cultural Industries

GOVERNMENT OF WESTERN AUSTRALIA

Local Government Act 1995 review
Agile • Smart • Inclusive

Master copy as at 28 Feb 2017

Local Government Act 1995 Review

Agile • Smart • Inclusive – Local governments for the future

Phase 1: Consultation Paper

The review will be undertaken in two phases. Phase 1 of the review considers the following matters:

- meeting community expectations of standards and performance
- transparency
- making more information available online
- red tape reduction.

Introduction

The McGowan Government has committed to undertaking a review of the Act. The following principles underpin the review:

- Transparent – providing easy access to meaningful, timely and accurate information about local governments.
- Participatory – strengthening local democracy through increased community engagement.
- Accountable – holding local governments accountable by strengthening integrity and good governance.
- Efficient – providing a framework for local governments to be more efficient by removing impediments to good practice.
- Modern – embracing contemporary models for governance and public sector management.
- Enabled – local governments will be empowered to deliver for communities as autonomous bodies with powers and responsibilities specified in legislation.

The review will be conducted in two phases as outlined below:

Phase 1	Phase 2
Making information available online	Increasing participation in local government elections
Meeting public expectations for accountability	Increasing community participation
Meeting public expectations of ethics, standards and performance	Introducing an adaptive regulatory framework
Building capacity through reducing red tape*	Improving financial management
	Building capacity through reducing red tape*
	Other matters raised in phase 1 consultation

**matter to be dealt with in both phases*

Meeting community expectations of standards and performance

This review presents the opportunity to consider whether reforms are required to strengthen accountability by modernising the governance model that frames local government decision making and operations.

1. Relationships between council and administration

The effectiveness of a local government in Western Australia is largely dependent on the relationship the council has with the administration, primarily the CEO. Running alongside this is the requirement for a council to act independently when it is making decisions in the best interests of, and on behalf of, the community it was elected by.

Defining the roles of council and administration: Guidance questions

1) How should a council's role be defined? What should the definition include?

Response Q1

Council's role as specified in the LG Act (WA) is generally considered sufficient in its current format.

The word "governs" however may be too broad or ambiguous and could be more definitive.

Consider the incorporation of the additional QLD provision which applies to "elected members" to assist with clarification - for example:

the council —

- governs the local government's affairs by participating in council meetings and decision-making, for the benefit of the local government area and is responsible for the performance of the local government's functions, which includes (although is not limited to) overseeing the allocation of the local government's finances and resources.

2) How should the role of the CEO and administration be defined?

Response Q2

The roles of the CEO and administration roles as specified in the LG Act (WA) are generally considered sufficient in current format

See response to Question 4

3) What other comments would you like to make on the roles of council and administration?

Response Q3

Within the LG Act (WA) consider the inclusion of a provision (similar to QLD or VIC) within the role of an "individual councillor" or within the role of "council" which specifies what the role does not include – for example:

> The role of a councillor does not include the performance of any functions that are specified as functions of the CEO

4) Are there any areas where the separation of powers is particularly unclear? How do you propose that these are improved?

Response Q4

The City's view is that further to defining the actual "roles" some complication exists in instances, when reading the LG Act (WA), when references are made to either "local government" instead of "CEO" or "Council" – for example:

> Regulation 14(2a) of the LG F&G Regulations states:
>
> '…the local government must, before tenders are publicly invited, determine…'

Clarification and continuity to whether a reference within the Act to 'local government' means CEO or Council and is a matter which can be delegated or is part of the administrative function of the CEO could assist from an operational perspective. Where there is a reference to 'local government' continuity in or specification of whether the task/role can be delegated or needs to be delegated would assist (at the point of reference). It is evident that there is a need/desirability for simplification and clarification of particular terms to assist in clarification of their intention.

Response Q4 continued

Additional note: Further consideration may be given, to assist with clarity or distinction of roles or delegations (although potentially Phase 2) by defining, further defining or simplifying references to the following within the LG Act (WA)/Regs:

- CEO
- Council
- Local government (question posed whether the words “City”, “Town” or “Shire” may assist?)
- Authorisation
- Acting under; and
- Administration

Improving relationships between council and administration: Guidance question

5) Do you have any other suggestions or comments on this topic?

Response Q5

Section 5.44 provides the power of sub delegation for “any power under this Act”. Clarification is sought as to whether that includes a s. 214 Notice under the P&D Act, which is able to be delegated to the CEO under s.5.42(b).

N.B. Additional content in relation to Delegations under the P&D Act addressed in response to Q95.

Section 5.92 of the LG Act (WA) relating to access to information should be reviewed to provide greater clarity to its intended use.

2. Training

Training for elected members has been recommended by successive inquiries and reports by the Corruption and Crime Commission. Making elected member training compulsory has also been raised.

Elected member competencies: Guidance questions

6) What competencies (skills and knowledge) do you think an elected member requires to perform their role?

Response Q6

Specific competencies (skills and knowledge) should not be predetermined for elected members. It is considered satisfactory that members bring their own unique experiences and skills. Consideration of some compulsory training, once elected, is worthwhile and appropriate as part of an induction process and training.

It is acknowledged however that some minimum requirements which could form part of compulsory training, for elected members (not candidates) may be beneficial. Suggested areas might include:

- financial management;
- local government issues and/or governance;
- the role of an elected member
- town planning

Setting minimum requirements at the cost of eliminating individual candidates from eligibility for election would be to the detriment of the community and hence this training should be post-election. Some candidates may have specific expertise, experience or representation which may be desirable.

In addition, determining competencies which are measurable (to any extent) is difficult. Measuring skills and knowledge should not be at the expense of a Council which is reflective of the local community.

Improvements are apparent since the local government sector enhanced training mechanisms for Councillors. Continued support and dissemination of information (designed to enhance understanding of local government operations for Councillors) provides necessary base level skills and knowledge which assists with a more coherent Council – Administration operation.

7) Do these vary between local governments? If so, in what way?

Response Q7

Yes

One reason that it is difficult to stipulate particular requirements for elected members (in terms of skills and knowledge) is that local governments vary greatly in location, size and demographic diversity.

For example:

- The resources available for supporting elected members may be impacted by the size of a local government (such as financial resources for training).
- The level of support from local government administration may also be impacted by the size of the local government (and subsequently the size and diversity of the administration)

One suggestion could be to link the requirement to training to the local government banding (e.g. local governments in a Level 1 band may be required to do additional training to those in a Level 4 band).

Funding training: Guidance questions

8) Who should pay for the costs of training (course fees, travel, and other costs)?

Response Q8

The Department could develop and/or pay for the core/basic level training however outside of this, local governments should bear the cost of their own elected member training.

9) If councils are required to pay for training, should a training fund be established to reduce the financial impact for small and regional local governments? Should contribution to such a fund be based on local government revenue or some other measure?

Response Q9

Councils should not be required to contribute a portion of their annual revenue to an established training fund for the purpose of sharing costs across the sector.

The City's preferred position (as indicated above) is for the Department to pay for core/basic training and the local government to pay for the balance of training.

Some scope for further subsidies (from the department) for local governments which are very remote or particularly small may be considered (in instances where provision of additional training may otherwise be significantly impaired).

Development of available online training programs may however resolve some of these issues and reduce costs.

Despite the above, local governments should always take it upon themselves and be encouraged to pool resources including the pro-active creation of resource sharing for any training (e.g. potentially local governments within specified WALGA zones could initiate joint opportunities).

Mandatory training: Guidance questions

10) Should elected member training be mandatory? Why or why not?

Response Q10

Yes elected member training should be mandatory to reinforce an understanding of roles of Council and Councillors.

A proposal for mandatory training for elected members could include (in accordance with page 26 of Phase 1 Consultation Paper) training for:

- the role of an elected member
- town planning
- meeting procedures
- knowledge of the Local Government Act and other legislation
- financial reporting

plus potentially 2 further 'electives' from WALGA learning and development pathways for:

- budgeting and rates setting
- long term financial planning
- engaging with the community
- policy development
- asset management
- recruitment and performance appraisal.

This proposal would provide for the development of a broad range of skills across the Council without every elected member having to do significant amounts of training.

The position above is made with acknowledgement that potential complications may exist in relation to:

- Retrospective considerations for returning members
- whether a penalty would be applicable if training was not undertaking
- whether members have to show/demonstrate understanding/competency

11) Should candidates be required to undertake some preliminary training to better understand the role of an elected member?

Response Q11

The City considers that the current requirements for eligibility for election is satisfactory and elected members should continue to be elected without pre-specified skills or knowledge.

Most local governments do, in any case, offer voluntary training to candidates which should be encouraged but not necessarily mandatory (refer further comments in relation to candidates under Q 25)

Making online information about the role elected members accessible (as opposed to actual training) may be an alternative whereby candidates can access and inform themselves.

The City's preference is for training funds to be directed to elected members (as opposed to candidates).

12) Should prior learning or service be recognised in place of completing training for elected members? If yes, how would this work?

Response Q12

In association with the response provided to question 10 above, potentially prior learning or service could be recognised in place of completing 'electives' for elected member training.

Elected members could be required to do the core units once every 8 years (2 terms) as opposed to completing core units at the commencement of each consecutive 4 year term.

13) What period should apply for elected members to complete essential training after their election?

Response Q13

Elected members should complete essential training within 6 months of an initial 4 year term.

If circumstances where training was not completed within the required timeframe (6 months) a financial penalty could apply or payment of allowances may be held over (staged, if necessary) until training is completed.

Again, consideration could be given to linking the time within which training must be completed to the local government band levels.

Continuing professional development: Guidance questions

14) Should ongoing professional development be undertaken by elected members?

Response Q14

Additional to the mandatory training and electives (referred to in Q10 – Q13) ongoing professional development should be discretionary to individual local governments and voluntary to elected members. Individual local governments may create policy enabling elected members to continue to develop useful skills (e.g. completion of WALGA's Diploma in Local Government).

15) If so, what form should this take?

Response Q15

Ongoing professional development is considered important but should be voluntary for elected members. Voluntary professional development will allow/enable elected members to improve in areas which suit their individual skills and strengths (and are relevant to the local government) and ensure financial resources are not being expended unnecessarily.

Additional note: A suite of optional policy templates (similar to WALGA model local laws) could be established and made available to local governments, for the purpose of elected member professional development (and other similar or related matters). Local governments should however, ultimately be able to develop/formulate the content of their own policies to meet the individual local government's needs.

Training: Guidance question

16) Do you have any other suggestions or comments on training?

Response Q16

Elected members may also benefit from training as to when the CEO is required, by law, to report on breaches to the CCC.

3. The behaviour of elected members

In 2015, responding to concerns about the timeliness and effectiveness of the process raised through the Local Government Governance Roundtable, a review of the *Local Government (Rules of Conduct) Regulations 2007* and associated minor breach complaint administration was initiated.

The key concerns highlighted by the sector about the minor breach process during initial consultation were that:

- the process is perceived to be slow, legalistic and non-transparent; and
- there is low sector confidence in the Standards Panel and minor breach framework and concern that the original objectives are not being met.

Codes of conduct: Guidance questions

17) Should standards of conduct/behaviour differ between local governments? Please explain.

Response Q17

A common model could be adopted however a common model should allow for the addition of other components which are more reflective of individual local government requirements (providing additions do not conflict with other parts of the LG Act (WA)).

The reasons for enabling some flexibility/addition of components is that it likely that:

- some individual local governments will have a need to guard against a certain types of behaviour (more so than others); and
- certain types of behaviour are more prevalent in one local government than another.

In other words, potentially, you could end up with a base model Code of Conduct which can incorporate additional or different standards reflecting the preferences/management requirements of individual local governments.

This provides each local government with some continuity but also with some control over issues which are considered integral to local operations and which can be/are to be dealt with at a local level.

18) Which option do you prefer (refer page 36/37 of Consultation Paper) for codes of conduct and why?

Response Q18

Of Options 1 – 6 the City had a preference for Options 3 & 6 both which were discussed as potential preferences.

Option 3 (status quo) – is compatible with the response to question 17 and provides for a prescribed Code of Conduct with the potential for local governments to expand their local requirements.

Option 6 – was determined to be the most desirable

Option	Advantages	Disadvantages
Codes of conduct are required. The codes will only cover the matters which local governments have a discretion to decide. All other matters are to be addressed in Act and Regulations.	The legislation will be reorganised to better reflect the role which a code of conduct serves.	These won't cause any practical changes to the current system.

Response Q18 continued

Option 6 would:

- Standardise a system for a necessary code of conduct; and
- Eliminate too many different layers of discretionary conduct (giving clear distinction between non-discretionary matters covered in the Act and Regs and discretionary matters which are addressed in the code of conduct).

Additional note: Once decisions are made in relation to the structure of codes of conduct, a guideline document could be produced by the Department to summarise the content and structure of elected member conduct considerations (include *Public Sector Management Act 1994* and/or the *Western Australian (WA) Public Sector Code of Ethics,* if appropriate)

The establishment of a guideline may assist elected members understand overall conduct requirements and also assist local governments to establish an appropriate code of conduct (by eliminating the duplication of conduct requirements).

19) How should a code of conduct be enforced?

Response Q19

The City accepts that the intention is for code of conduct breaches to be enforced within the local government

The use of informal panels compiled (potentially from surrounding local governments or non-compulsory WALGA panels) for use of mediation to assist with resolving or prevention of escalation of code of conduct related issues is supported.

Streamlined rules of conduct: Guidance questions

20) Do you support streamlined Rules of Conduct regulations? Why?

Response Q20

The Rules of Conduct Regulations themselves are not considered overly lengthy in their current format and assist in ensuring elected members are accountable for their behaviour, with consistent rules across the local government sector. Streamlining issues which may otherwise constitute a minor breach is not considered effective as it may unreasonably overburden the local government/CEO with resolving issues which ultimately have no avenue for recourse. These issues are more effectively dealt with as a minor breach under the Rules of Conduct.

The behaviour of elected members is imperative to the reputational integrity of a local government and subsequently the trust of a local community, therefore, the City is in support of retaining a certain standard of conduct for which breaches can be referred externally (even if the current processes and rules have to be retained).

The City would however support streamlining processes associated with how breaches of the Rules of Conduct are managed, perhaps through a reduction of lengthy natural justice principles, and solutions which focus on behaviours as opposed to outcomes.

The City would also support the establishment of panels of industry professionals which local governments can on a voluntary basis engage to assist in the early management of matters which might otherwise result in a breach of the Rules of Conduct. This additional support being available may prevent breaches being lodged.

21) If the rules were streamlined, which elements should be retained?

Response Q21

The City considers that the Rules of Conduct in their current form are not overly lengthy (or excessive) and that the current elements of the Rules of Conduct could be refined if necessary, but should be retained.

Certainly elements relating to misuse of information, disclosure of interest and securing personal advantage or disadvantaging others should be retained.

In principle the City is not supportive of removing elements of the Rules of Conduct which may otherwise burden local governments or Councils with breaches for which there is no avenue for reasonable recourse.

The City is not in favour of streamlining the process by instituting a 'Conduct Review Committee' which would add an additional layer to the process (rather provide additional powers/resources to the Standards Panel itself).

22) Do you support a reduction in the time frame in which complaints can be made? Is three months adequate?

Response Q22

The City does support a reduction to the timeframe within which complaints can be made (currently 12 months).

The City would support a reduction of the timeframe from 12 months to 3 months.

Revised disciplinary framework: Guidance questions

23) Do you support an outcome-based framework for elected members? Why or why not?

Response Q23

No, an outcome based framework may not give enough protection from behaviour that is inconsistent with expectations. While it sounds good in theory an outcome based framework will only look at instances where the behaviour has an actual outcome which may not be enough of a deterrent as the actual outcome may not always be tangible – for instance an attempt to direct a local government employee by an elected member may not result in an actual outcome (as they may not be influenced) but the attempt is still inconsistent with conduct expectations.

24) What specific behaviours should an outcomes based framework target?

Response Q24

N/A – the City does not support the outcomes based framework.

Application of the Rules of Conduct: Guidance question

25) Should the rules of conduct that govern behaviour of elected members be extended to all candidates in council elections? Please explain.

Response Q25

Yes, the Rules of Conduct could be extended to the extent that it applies to a candidate.

The Rules of Conduct could apply from the date that a candidate is nominated. A signed declaration by candidates could capture a candidates awareness and acknowledgement of the Rules of Conduct (and potentially any other pre-nomination terms and conditions) and an agreement to abide by the Rules. Any breaches could be dealt with as a minor breach post-election, if the candidate was elected.

Offence Provisions: Guidance questions

26) Should the offence covering improper use of information be extended to former members of council for a period of twelve months? Why?

Response Q26

Yes – an offence covering improper use of information could be extended to former members of council until such time as information is no longer confidential, This would allow for sufficient time for determinations to be made and confidential matters to be settled before a former elected member could use information (improperly) which may otherwise result in a detrimental outcome to or for the local government.

27) Should this restriction apply to former employees? Please explain.

Response Q27

Yes, the restriction covering improper use of information could apply to former employees to provide sufficient time for determinations to be made and confidential matters of the local government to be settled.

Confidentiality: Guidance question

28) Is it appropriate to require the existence and details of a complaint to remain confidential until the matter is resolved? Why?

Response Q28

Yes, it is appropriate for the details of a complaint to remain confidential until the matter is resolved as many complaints are not proven or are frivolous and may have an unnecessarily negative impact on the person who is the subject of the complaint.

Sector conduct review committees: Guidance questions

29) What do you see as the benefits and disadvantages of this model (refer page 48/49 of Consultation Paper)?

Response Q29

One disadvantage is that creation of a "Sector Conduct Review Committee" potentially creating an additional layer of complexity which is unnecessary (as discussed in the response to Q19 and 20).

Additional note: Consideration, rather than creating a Conduct Review Committee, there may be scope to increase the resources within the Standards Panel to sort out, deal with and improve the review process and/or implement an informal peer review process whereby issues can be referred voluntarily (for assistance) by the individual local governments, ideally to stop matters progressing to the point that a formal complaint is made to the Standards Panel. Local governments could consider using zone panels of peers plus 1 expert mediator to either de-escalate matters prior to a complaint being submitted to the Standard Panel or to resolve matters which are referred back to the local government from the Standards Panel

30) What powers should the Conduct Review Committee have?

Response Q30

The City is not generally in support of creation of a "Conduct Review Committee" however in the event that this option were to be pursued it is agreed that a "Conduct Review Committee" should not be able to order a public apology and potentially should be able to order mediation or a WALGA panel member to enter the local government for the purpose of mediation or support.

31) In your opinion what matters should go directly to the Standards Panel?

Response Q31

The City's view is that all complaints against the Rules of Conduct Regulations should go directly to the Standards Panel unless they can be resolved/de-escalated at local government level before a formal complaint is lodged (refer Response Q29 - Additional note re zone panels).

32) Who should be able to be a member of a panel: elected members, people with local government experience, independent stakeholders?

Response Q32

N/A - The City is not in support of creation of a "Conduct Review Committee"

33) Who should select the members for the pool?

Response Q33

As above

34) How many members should there be on the Review Committee?

Response Q34

As above

35) Are the proposed actions for the Review Committee appropriate? If not, what do you propose?

Response Q35

As above

Review of elected member non-compliance: Guidance questions

36) Which of the options for dealing with complaints do you prefer? Why?

Response Q36

Option 1 - Status Quo

Creation of another level of governance, another appeal option or another process for review is not considered necessary.

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37) Are there any other options that could be considered?

Response Q37

Alternative options for consideration for dealing with complaints:

- Allow more ability for the Standards Panel to determine whether a minor breach has occurred and, if not, refer back to local government or order mediation, WALGA panel member to enter local government
- Standards panel to engage sector/industry based professionals (rather than panel being created as a separate Review Committee).
- SAT to have more discretion to make decisions and to determine whether a "breach" has occurred
- Ensure processes are in place to enable appeal rights only to affected parties (not complainants).
- Provide the Standard Panel with more power to determine what constitutes a breach and ability to escalate or de-escalate to complaint.

38) Who should be able to request a review of a decision: the person the subject of the complaint, the complainant or both?

Response Q38

Neither the complainant nor the subject of the complaint should have the right of review on the basis that the consequences of minor breaches are not significant. In addition the process fully investigates complaints.

Mediation: Guidance question

39) Do you support the inclusion of mediation as a sanction for the Panel? Why or why not?

Response Q39

Yes, the City supports the inclusion of mediation as a sanction and considers mediation to be an appropriate alternative action which should be available as an option for the Standards Panel (subject to the mediation being carried out by independent, trained mediators).

Complaints are often in response to interpersonal issues and mediation is considered an appropriate mechanism for aiding the management of future/ongoing complaints of this nature.

Prohibition from attending council meetings: Guidance questions

40) Do you support the Panel being able to prohibit elected members from attending council meetings? Why or why not?

Response Q40

No, the City does not support the Standards Panel being able to prohibit elected members from attending council meetings:

- an elected member includes an obligation to sit at council meetings
- the prohibition of sitting at state or federal level is not enforceable in this matter (without ill effect)
- the breach is minor by nature and definition

If it becomes a repe**ti**tive breach there may be a requirement for action to be taken potentially this could include, where appropriate, the ability for an individual councillor to be stood down.

41) How many meetings should the Panel be able to order the elected member not attend?

Response Q41

N/A

42) Should the elected member be eligible for sitting fees and allowances in these circumstances?

Response Q42

N/A

Compensation to the local government: Guidance questions

43) Do you support the Panel being able to award financial compensation to the local government? Why or why not?

Response Q43

Yes –

- a councillor or a staff member who breaches, for example, a confidentially issue can compromise the financial security of the local government
- an issue resulting from a breach can create a financial loss to the City

44) What should the maximum amount be?

Response Q44

$10,000 (on the assumption that the Standards Panel apply the same or similar principles that apply to the awarding of costs in a court of law).

Complaint administrative fee: Guidance questions

45) Do you support this option? Why or why not?

Response Q45

Yes, the City is supportive of a complaint administrative fee which may potentially deter vexatious/frivolous complaints

46) Do you believe that a complaint administrative fee would deter complainants from lodging a complaint? Is this appropriate?

Response Q46

A complaint administrative fee could potentially deter complainants from lodging a complaint.

The fee should not be so excessive that it deters legitimate complaints from being lodged (refer Q48).

The fee is unlikely to deter legitimate complaints if it is refundable upon finding of a minor breach.

47) Would a complaint administrative fee be appropriate for a sector conduct review committee model? Why or why not?

Response Q47

No, the City is not in support of creation of the "sector conduct review committee model" for the reasons provided above (Q19 & Q20). See above responses.

48) What would be an appropriate fee for lodging a complaint?

Response Q48 - The fee should not be in excess of lodging a complaint (serious breach or recurring breach) with State Administrative Tribunal ($465). A lower fee may be considered reasonable so as to not deter legitimate complaints.

49) Should the administrative fee be refunded with a finding of minor breach or should it be retained by the Department to offset costs? Why or why not?

Response Q49 -Yes the administrative fee should be refunded with a finding of a minor breach.

Cost recovery to local government: Guidance questions

50) Do you support the cost of the panel proceedings being paid by a member found to be in breach? Why or why not?

Response Q50

No, panel proceedings costs should not be paid by a member found in breach. It may be appropriate however (as an alternative to Q43) for the Standards Panel to impose a fine as a penalty.

Publication of complaints in the annual report: Guidance question

51) Do you support the tabling of the decision report at the Annual Report? Why or why not?

Response Q51

The City supports publication of a simple statistical summary in the annual report. The purpose of the annual report is to outline local governments' performance for the year and a statistical summary report is suitable for this purpose.

The City does not support the publication of detailed decision reports on complaints in the annual report.

Tabling decision report at Ordinary Council Meeting: Guidance question

52) Do you support this option? Why or why not?

Response Q52

Publication of the summary of a decision report, for an instance where there is found to be a breach, at an Ordinary Council meeting is supported to increase transparency and make elected members more accountable". The City considers that tabling a summary of a decision report at an Ordinary Council meeting enables the meeting to focus on its business and is more likely to be noted by the community than tabling a complaints report in an annual report.

Elected member interests: Guidance questions

53) Should not-for-profit organisation members participate in council decisions affecting that organisation? Why or why not?

Response Q53

It is felt that members of not for profit organisations should declare any impartiality interest and financial interests. If the interest is solely an impartiality interest then not-for-profit organisation members should be able to vote/participate in council decisions affecting that organisation. If the interest is or includes a financial interest then not for profit organisation members should declare their interest and not be able to vote/participate unless the Council agrees.

Excluding elected members from voting because they are a member of a not for profit is not generally considered desirable as it can potentially hamper local government decision making (given that elected members are often active in this sector of the community). It is felt that the current noting of an interest is sufficient in most cases to hold elected members to account.

54) Would your response be the same if the elected member was an office holder in the organisation?

Response Q54

No, an office holder of an organisation should not be able to participate in council decisions affecting the organisation of which they are an office holder/bearer (effectively treated as a financial interest).

The above should also apply to an elected member who is a member of a board.

The Act should deal with/take into consideration the effect of "bias" (in addition to how memberships in organisations are dealt with generally) in order to alleviate the reliance on case law.

Improving the behaviour of elected members: Guidance question

55) Do you have any other suggestions or comments on this topic?

Response Q55

A. Additional note (refer Q15): A suite of policy templates (similar to WALGA model local laws) could be established and shared among local governments, for the purpose of elected member professional development (and other similar or related matters). Local governments should however, ultimately be able to develop/formulate their own the content of the policies to meet the individual local government's needs.

B. Additional note (refer Q18): Once decisions are made in relation to the structure of codes of conduct, a guideline document could be produced by the Department to summarise the content and structure of elected member conduct considerations (include *Public Sector Management Act 1994* and/or the *Western Australian (WA) Public Sector Code of Ethics,* if appropriate)

   The establishment of a guideline may assist elected members understand overall conduct requirements and also assist local governments establish an appropriate code of conduct (by eliminating the duplication of conduct requirements).

C. Additional note (refer Q29): Rather than creating a Conduct Review Committee consideration could be given to increasing the resources within the Standards Panel to sort out, deal with and improve the review process.

D. Consideration may be given to extending legislation to ensure it captures the declarations of interest of elected members in instances when they are representing the local government (as a Councillor) outside of a formal Council meeting or meeting scenario. This may assist in ensuring that an elected member (when performing in their official role) does not unduly secure a personal advantage.

4. Local government administration

4.1 Recruitment and selection of local government Chief Executive Officers

The pitfalls associated with CEO recruitment were highlighted in the independent inquiry into the City of Joondalup in 2005. Among other things, the inquiry found that the council had failed to run an appropriate selection process for their CEO which resulted in the appointment of a candidate who had misrepresented their qualifications. This ultimately led to the dismissal of the council. While the example from the City of Joondalup is over a decade old and can be viewed as an isolated incident, the provisions in the Act concerning CEO recruitment remain largely unchanged. Furthermore, it demonstrated that such issues can impact local governments regardless of their size.

Option 1: Local governments to engage the services of the Public Sector Commission to provide support and guidance to council during the selection of a CEO

Option 2: Councils to involve third-parties in CEO selection

Option 3: Local governments to adopt a CEO recruitment standard

Option 4: Status Quo

Recruitment and selection of local government CEOs: Guidance questions

56) Would councils benefit from assistance with CEO recruitment and selection? Why?

Response Q56

Assistance for Councils in relation to CEO recruitment should not be mandated or legislated – enforced assistance for CEO recruitment is potentially in conflict with the principles of general competence which the LG Act (WA) is based on.

Councils may benefit from some optional assistance with CEO recruitment which could be encouraged through updating the LG Guideline Number 10 “Appointing a CEO”. Councils could be encouraged to use the expertise of independent people (potentially approved by the Public Sector Commission (PSC), WALGA or accredited organisations in the private sector) however it should not be required.

Local governments’ ability to retain some autonomy in this regard means they can engage expertise appropriate for their own specific needs depending on the size, location and needs of individual local governments.

57) How could the recruitment and selection of local government CEOs be improved?

Response Q57

Voluntary access to a list of approved providers/independent external advisors should be encouraged without the requirement to include an external panel member from another local government, peak body or public sector agency on the selection panel. Requirements should not be mandated however a support structure, available to local governments could be formalised.

A review of LG Guideline #10 would assist.

58) Should the Public Sector Commission be involved in CEO recruitment and selection? If so, how?

Response Q58

The PSC could *potentially* be involved in local government recruitment for assistance with compiling approved panels or to be engaged by individual local governments (upon request) for guidance and support with CEO selection or selection processes. A fee could be applicable, payable by the local government, for access to PSC engagement.

Too much involvement by the PSC could restrict the ability of and flexibility required by local governments to develop an approach most suitable to deal with local issues.

59) Should other experts be involved in CEO recruitment and selection? If so, who and how?

Response Q59

Experts could be engaged by local governments, on a voluntarily basis, to be involved in CEO recruitment/selection (as above – could be independent selection of experts by the local government or local governments could have the option of choosing from pre-established panels). The process should however not be mandated.

60) What competencies, attributes and qualifications should a CEO have?

Response Q60

Local governments vary too much to determine a prerequisite list of particular competencies, attributes and qualifications required across the whole state. Required competencies, attributes and qualifications may depend on location and requirements of individual local governments (particularly given the size and diversity of WA). Each local government has unique knowledge and should be the ultimate decision makers in this regard. For example, the criteria for a CEO for the City of Perth would vary considerably to the CEO at the Shire of Sandstone.

If local governments determine that they are not capable or confident in this regard local governments should seek external assistance.

Although it is acknowledged that it may be desirable under certain circumstances to have consistency in the quality of recruitment and selection of the CEO, because of the vast diversity in LG in WA, in the majority of instances the current system appears satisfactory.

The CEO recruitment process, contract and performance review process should be strong enough to provide sufficient regulation to retaining a satisfactory level of leadership.

4.2 Acting Chief Executive Officers

The process for appointing an acting CEO is usually set out in council policy. In the absence of such a policy, this matter can cause confusion, especially if the CEO is absent unexpectedly.

Acting CEOs: Guidance questions

61) Should the process of appointing an acting CEO be covered in legislation? Why or why not?

Response Q61

No, the process of appointing an acting CEO in legislation is not considered necessary. Council policy/process is the preferred option over legislation. Legislation could however require that a policy is created by each Local Government in relation to the appointment of an acting CEO where the role is vacant or where a 'long term' appointment is necessary. It is considered appropriate that a policy cover both short and long term appointments of an acting CEO although generally short term appointments are considered most appropriately made by the CEO as the CEO is most familiar with the strengths and attributes of staff and should be capable of appointing an acting CEO to cover 'short term' situations/circumstances.

62) If so, who should appoint the CEO when there is a short term temporary vacancy (covering sick or annual leave for example)?

Response Q62

The City views are reflected above. The appointment of an acting CEO in short term or temporary situations should be done by the CEO (with this to be outlined through a policy). Neither short nor long term appointment of the Acting CEO should be prescribed in legislation.

63) Who should appoint the CEO if there will be vacancy for an extended period (for example, while a recruitment process is to be undertaken)?

Response Q63

The City views are reflected above. In instances of 'long term' or extended vacancies of the CEO the Council should have a policy on appointment of an Acting CEO and it may be appropriate in such cases that the Council have active input into the appointment. The appointment of an Acting CEO should not be covered under legislation. Legislation could require a policy is adopted to cover long term Acting CEO scenarios.

4.3 Performance review of local government Chief Executive Officers

The review of a CEO's performance can be particularly difficult when relationships between the council and CEO are not professional. Both hostile and overly friendly relationships between council and CEO can be equally problematic.

Option 1: Approved third-party to be involved in the performance review of CEOs

Option 2: Local governments to adopt a CEO performance review policy

Option 3: Local governments to conform to a standard for CEO performance review

Performance review of local government CEOs: Guidance questions

64) Who should be involved in CEO performance reviews?

Response Q64

The CEO performance review process does not need to be legislated. The CEO's contract can and should provide the agreed basis for performance reviews.

In these instances Council and CEO would predetermine the process of who would be the reviewer(s) (e.g. Council and/or Mayor and/or deputy Mayor etc)

The CEO should have the ability to have a third party present (which can be reflected in the CEO's contract) and which should be at sole discretion of CEO (for the CEO's own purposes).

Response Q64 continued

Council may have an option to engage a third party for the purpose of advice and guidance. Any option for third party representing Council during a CEO performance review should be by agreement only (outlined in contract) and not formulated in legislation.

Additional comment - potentially an external grievance process (not currently in existence) could be formalised and put in place – but this would also normally be included in a contract.

65) What should the criteria be for reviewing a CEO's performance?

Response Q65

There are too many variations – to be determined by individual local governments.

Additional note: Potential training for elected members may assist in enhancing elected members decisions regarding criteria for CEO performance.

To eliminate cursory assessments, WALGA training for elected members could include appropriate criteria for the review of CEO operational responsibilities and how these can be utilised to counter balance outcomes/project based performance. Exclusive focus on outcomes (project achievement) may otherwise jeopardise the operational integrity of the local government potentially decreasing operational strengths and increasing vulnerability to balance and sustainability issues.

66) How often should CEO performance be reviewed?

Response Q66

The CEO's performance should be reviewed annually as currently provided for in the LG Act (however refer to response Q74 – Additional note 2)

67) Which of the above options do you prefer? Why?

Response Q67

The City's preferred option is to outline any specific agreed terms for performance reviews in the contract. Option 2 – "Local governments to adopt a CEO performance review policy" is more consistent with this position in that it should not be essential to have approved third-party involvement (as suggested in Option 1) or the requirement to conform to a specified 'standard' for performance (as suggested in Option 3). Of the three options provided Option 2 is therefore the preferred option however the City is not strictly committed to the view that a policy is necessary.

68) Is there an alternative model that could be considered?

Response Q68

An alternative model could require the process to be included in the CEO's contract.

Extension or termination of the Chief Executive Officer contract immediately before or following an election

As CEO contract may be extended or terminated by council at any time, though financial penalties will apply to early termination. This can create situations where a newly elected council dismisses the CEO immediately after an election, or where a council extends the contract of the CEO before an election for an extended period thus binding incoming elected members.

Termination or extension of CEO contract around an election: Guidance questions

69) Would a 'cooling off' period before a council can terminate the CEO following an election assist strengthening productive relationships between council and administration?

Response Q69

A legislated 'cooling off' period is not considered necessary.

It is common for CEO contracts to contain a clause allowing a CEO to be terminated for any reason subject to payment of an amount equivalent to 100% of their annual remuneration package. If a Council wants to terminate a CEO then they should be able to do so in accordance with this provision and by paying the specified amount under the contract.

A cooling off period will not ultimately stop a Council from terminating the CEO if they want to, and may lead to potential disharmony within the organisation during the cooling off period.

Additional note – Potentially the PSC should be/could be engaged or involved in any termination of CEO contract outside of the contract expiry date.

70) What length should such a cooling off period be?

Response Q70

N/A

71) For what period before an election should there be a restriction on a council from extending a CEO contract? Should there be any exceptions to this?

Response Q71

A specified period prior to an election to restrict the renewal of a CEO's contract does not need to be legislated. The current systems (incorporating CEO performance, contract renewal and termination) are considered satisfactory.

4.4 Public expectations of staff performance

In respect to employment, the Act states that a person should not be employed unless the CEO believes that the person is suitably qualified for the position. It further states that employment should be based on merit and equity without nepotism, patronage or discrimination.

Public expectations of staff performance: Guidance questions

72) Is greater oversight required over local government selection and recruitment of staff?

Response Q72

One of the objectives of this review is to 'Reduce red tape' – this proposal is contrary to this objective.

The current general principles in relation to local government selection and recruitment of staff should be retained. The CEO is considered capable and greater oversight is not required.

It is not considered necessary or appropriate for the State or Council to be involved in overseeing local government staff selection or recruitment. Nor is it considered necessary for legislation to provide the basis for staff selection.

73) Should certain offences or other criteria exclude a person from being employed in a local government? If so, what?

Response Q73

Existing criteria which exclude a person from being employed in local government are considered satisfactory. No other offences or criteria, other than those which already exists are considered necessary.

For example currently discrimination laws and protection under labour laws provide effective mechanisms for protection of unwarranted exclusion and should be applied as they are now.

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Strengthening local government administration: Guidance question

74) Do you have any other suggestions or comments on this topic?

Response Q74

Performance should not be legislated.

Ratepayers elect Council, Councils engage the CEOs, CEOs employ staff therefore decisions have been made in accordance with generally accepted 'chain of responsibility' and for the reasons of democratic process.

Additional note: (refer Q65) The City supports unlegislated methods for ensuring CEO performance is counter balanced against performance, achievement of projects/outcomes by linking performance to the functioning and health of administration issues, recruitment, retention and employment of appropriate staff.

Additional note: Potential reconsideration of the word 'annual' in relation to the requirement to conduct staff performance reviews may facilitate more contemporary and regular feedback processes.

5. Supporting local governments in challenging times

A range of options and approaches is needed that is geared towards improving governance for the public, while supporting local democracies. These options ideally should be focused on intervening early, building capacity in local governments and working in partnership.

Providing the State Government with the legislative power to formally implement a process to ensure local governments are providing good governance to their communities could take many forms including:

- issuing a remedial notice requiring the performance of an action or activity.
- the appointment of a person to the local government to assist local governments with a part of their operations.
- requiring the local government to participate in a capacity building program.

Remedial intervention: Guidance questions

75) Should the appointed person be a departmental employee, a local government officer or an external party? Why?

Response Q75

If a remedial action process was directed by State Government to local government it should be for the purpose of 'guidance, advice and support' only and it should be provided by an external party such as WALGA (with Department involvement) or other party providing they are fit for purpose and with relevant experience. It is important that an appointed person would have significant, relevant local government experience and knowledge (regardless as to whether they are from the department or otherwise) in order to implement practical solutions. An independent external party (such as WALGA) removes bureaucratic elements to obtain practical solutions while encompassing/retaining an intimate knowledge of local government issues and legislation.

76) Should the appointed person be able to direct the local government or would their role be restricted to advice and support? Please explain.

Response Q76

An appointed person should be restricted to advice and support – this provides the local government with additional (and potentially necessary) knowledge (where knowledge may otherwise be lacking) while allowing the local government to retain anonymity and the ability to manage their own decisions and outcomes and resolve issues in a manner that the local government feels capable of achieving.

Other avenues exist to deal with more serious issues.

77) Who should pay for the appointed person? Why?

Response Q77

The Department of Local Government should bear the cost of Authorised Inquiries because it forms part of its general 'oversight role' of Local Governments.

Powers of appointed person: Guidance question

78) What powers should an appointed person have?

Response Q78

To perform their duties, the appointed person could:

- make recommendations to the Council, CEO and the Department;
- mediate between parties;
- arrange for training;
- review, and make practical recommendations; and
- refer the matter to other jurisdictions.

Remedial action process: Guidance questions

79) Do you think the proposed approach would improve the provision of good governance in Western Australia? Please explain.

Response Q79

The provision of advice and guidance could improve good governance within the sector.

In relation to the proposed approach improvement may occur where voluntary programs and Directions Notices were retained and remedial notices issued only in instances where the functions of the local government were not meeting the desired standard and advice was objective and provided from an appropriate source.

This portion of the proposed approach could add an additional layer of support to the local government and reassurance to the community.

A less 'Regimented' approach may prove to be beneficial if practising personnel were appointed to conduct the Inquiry.

80) What issues need to be considered in appointing a person?

Response Q80

Appointment of a person for the purpose of assisting a local government to address the issues raised in remedial notices or to assist with advice as to the provision of good governance generally should initially be voluntary.

A list of approved persons could be compiled however the local governments' use of the approved list should initially be voluntary. Specialists could be voluntarily selected from a range of industry professionals depending on the circumstance which require improvement/rectification. The experience and credentials of an appointed person need to be appropriate for the circumstances.

It is accepted that instances may arise where a local government is unable to demonstrate the ability/capacity to resolve certain issues which may ultimately require the local government to be required to work with an intervening party. This should not occur unless all alternative actions (suggested above) have been exhausted.

Supporting local governments in challenging times: Guidance question

81) Do you have any other suggestions or comments on this topic?

Response Q81

Additional note: For further discussion (potentially Phase 2) consider the prospects of creation of the ability of the Governor upon recommendation of the Minister to suspend/dismiss individual Councillors instead of whole Council (refer s.8.25 LG Act (WA)) depending on type of dysfunction or whether dysfunction may be attributed to an individual.

It is not considered appropriate that the whole Council be suspended / dismissed if the cause of the issue relates to individual Councillors.

Additional note: Ability under the Act for CEO to be dismissed should also be inserted however PSC involvement should be required.

6. Making it easier to move between State and local government employment

Reforms to simplify and encourage the transfer of employees between local and state government would require a whole of government approach and amendments to the *Public Sector Management Act 1994, Financial Management Act 2006,* and *Local Government Act 1995*.

Transferability of employees: Guidance questions

82) Should local and State government employees be able to carry over the recognition of service and leave if they move between State and local government?

Response Q82

Yes, local and State government employees should be able to carry over the recognition of service and specifically long service leave between local and State government entities.

The City does not feel that annual leave or sick leave should be carried over.

83) What would be the benefits if local and State government employees could move seamlessly via transfer and secondment?

Response Q83

The benefit of transfer and secondment of staff between local and State government would be access to a more diverse staff base in particular this would be of benefit in regional areas where professional and experienced staff can be more difficult to find. It would also provide staff in regional areas with increased opportunities.

Making it easier to move between State and local government employment: Guidance question

84) Do you have any other suggestions or comments on this topic?

Response Q84

Transitional arrangements would need to be clarified / put in place.

7. Gifts

7.1 Simplifying the gift provisions

It is widely acknowledged that current approach to gifts is overly complex and requires reform. With the review of the Act it is timely to consider the proposed way forward is aligned to public expectations of accountability and transparency.

Key elements of the proposed approach

The current framework sets three different categories for gifts with different thresholds:

- $50 for a notifiable gift;
- $200 for a disclosable gift; and
- $300 for a prohibited gift.

Notifiable and prohibited gifts apply in situations where there is likely to be a perceived conflict of interest – where the donor has matters which require council decisions.

Replacing notifiable and prohibited gifts with a single category

Under the proposed approach, there would no longer be such a thing as a "prohibited" gift. Instead, the appropriateness of the acceptance of the gift will be a matter for the recipient.

Consolidating 'gifts' and 'contributions to travel'

In the interests of simplifying the disclosure requirements while still maintaining a level of probity, accountability and transparency, it is recommended that separate treatment of "contributions to travel" be discontinued.

Having a single threshold of $500

Replacing the categories of 'notifiable' and 'prohibited' gifts with a monetary threshold of $500 would simply gift provisions significantly. Any gifts under $500 would be exempt from disclosure.

Increasing the disclosure threshold to $500 would:

- align Western Australia with the requirements in South Australia and Victoria; and
- align with the proposed gift framework more generally and reduce the confusion stemming from the differing disclosure amounts, leading towards a simplified and streamlined approach.

Disclosure timeframes

In the interests of promoting accountability and transparency and ensuring the community is aware of expensive gifts received by elected members it is recommended that the prescribed time period be 12 months.

Who should the framework apply to?

The working group recommended that the new gift disclosure provisions apply only to local government elected members and CEOs, with each local government required to adopt a gifts policy with which all other employees must comply.

Empowering local governments to develop their own gifts policies for employees gives the sector the flexibility to determine what gifts should and should not be accepted and to tailor each policy to the requirements of the district.

Excluding gifts from relatives

Gifts received from a relative do not need to be disclosed.

Consistent with the recommendations of the working group, it is proposed that the definition of relative is expanded to ensure foster and adopted children and grandchildren are also classed as relatives.

It is also intended that the definition of gift specifically refers to fiancés and fiancées. This will remove any uncertainty about the giving of an engagement ring.

Penalties for non-disclosure or provision of false information

The working group recommended that existing penalties for non-disclosure and giving false and misleading information be retained.

A new framework for disclosing gifts: Guidance questions

85) Is the new framework for disclosing gifts appropriate?

Response Q85

It is agreed that the current compliance requirements for gifts are in urgent need of review. They are basically unintelligible and unworkable.

Yes – the new framework for disclosing gifts is appropriate to apply to Councillors, CEO's and employees who report directly to the CEO and/or are senior officers under the LG Act (WA) (if retained).

These people or classes of people have sufficient influence on decisions to be accountable in relation to the proposed new gift provisions (and this provides for appropriate accountability).

As outlined in response to Q91

86) If not, why?

Response Q86

See above. New Gift arrangements are supported as they are a vast improvement on the existing arrangements.

87) Is the threshold of $500 appropriate?

Response Q87

Yes, the threshold of $500 is appropriate (providing there is a regular review mechanism for potential increase over time – mechanism in Regulations as opposed to Act).

88) If no, why?

Response Q88

N/A

89) Should certain gifts – or gifts from particular classes or people – be prohibited? Why or why not?

Response Q89

Gifts from developers over a certain value (to be determined) should potentially be prohibited however it is felt there would then be a need for a provision which catered for exemptions where gifts are genuinely given in a "personal capacity".

90) If yes, what gifts should be prohibited?

Response Q90

See response to Q95

Excluding gifts received in a personal capacity: Guidance questions

91) Should gifts received in a personal capacity be exempt from disclosure?

Response Q91

In order to keep gift provisions simple, gifts received in a personal capacity should not be exempt from disclosure (qualified however by response to Q89).

Generally if a gift is received over the value of $500 it should be declared removing any need for exempting or defining gifts received in a "personal capacity".

It is acknowledged that difficulties arise in relation to defining "personal capacity".

If however the decision were made to exempt gifts received in a personal capacity then there is a need for a clear definition of personal capacity (there should not be any reasonable prospect of future donor/local government influence/relationship).

Further consideration is imperative to the definition of 'personal capacity' and 'gift'. Complications arise in certain circumstances. For example when a service or intangible favour or loan is exchanged between parties:

- Depending on the definition of 'gift' does the exchange in fact constitute a 'gift'; and
- Depending on the definition of 'personal capacity' uncertainty can arise – for example in a rural environment is a neighbourly favour or exchange or loan of equipment considered a 'gift' and if so, is it necessarily considered a 'personal exchange' regardless of potential personal/professional conflicts which may arise.

92) If yes, how could 'personal capacity' be defined?

Response Q92

In accordance with Q91 the City is suggesting that gifts received in a personal capacity should not be exempt from disclosure.

If however a decision was made to exempt gifts it may be possible to consider application of the wording currently used under term 'notifiable gift'. For example:

'personal capacity' means a circumstance where a person giving a gift is not undertaking (or seeking to undertake) an activity involving local government discretion and is not planning to seek to undertake an activity involving a local government discretion within the next 12 months.

An activity involving a local government discretion includes, although is not limited to:

- any activity which cannot take place without the authorisation or approval of the local government; and
- any commercial dealings

A sub-clause could be included at an appropriate point which would requires that in the event that a donor/gift or (or gift giver) does have a dealing with the local government within 12 months the recipient makes a declaration of the "gift" at that point.

"Personal capacity' could also exclude relatives.

93) Should there be any other exemptions from the requirement to disclose a gift over the threshold?

Response Q93

N/A

94) If so, what should these be? Please justify your proposal.

Response Q94

N/A

Gifts: Guidance question

95) Do you have any other suggestions or comments on this topic?

Response Q95

A. Definitions

More guidance/consideration is required as to a global, simple, unambiguous, transparent definition of "gift" and "personal capacity". Decisions would be required to be made on whether the exchange of favours, services and/or other intangible exchanges constitute a "gift".

B. Decision makers – acting under delegation

Once an appropriate structure is determined in relation to definitions, anti-avoidance, gifts to Councillors, CEO and senior officers etc (if retained) consideration should then be turned to officers making delegated decisions to prevent potential further undue inducement issues.

Consideration of whether a policy at Council level is sufficient to manage the consequences of 'relevant person' or 'decision makers' in relation to gifts?

A situation should not arise whereby a Council could/would impose a stricter regime for 'relevant person' than are imposed on themselves.

There may be some prospect of enabling Council to extend the same provisions as are applied upon themselves to 'relevant persons' or 'officers acting under delegation' but safeguard against a council being able to impose more complicated measures which will then create confusion across the industry.

C. Additional Note:

Currently, a "relevant person" is required to comply with s5.82. A "relevant person" includes a "designated employee". "Designated employee", under Part 5, means, inter alia, *"(b) an employee, other than the CEO, to whom any power or duty has been delegated under Division 4*."

Clause 84 of the deemed provisions of the Planning Regs provides the "*LGA 1995 sections 5.45 and 5.46 apply to a delegation made under this Division as if the delegation were a delegation under Part 5 Division 4 of that Act*".

As it stands, employees with delegations under the Planning Regs (as defined as coming within Part 5 Division 4 of the LGA) should be complying with the requirements of s5.82 of the Act. Consider if this is intentional drafting as there are significant consequences for employees.

It is unclear whether the wording of the P&D Regs created an unintended consequence or the wording has been drafted intentionally to create 'relevant persons' with the potential of subsequent repercussions (declaration of gifts etc).

The department may clarify whether the department wants/intends to extend the effect of 'relevant person' to people who have delegations under the P&D Act/Regulations.

8. Access to information

Access to technology has changed the way that information is shared, received and discovered. Current trends indicate that people are turning away from traditional print media in favour of the internet and social media.

As a result, the review is considering how the Act should account for electronic disclosure and what approach is the most appropriate.

8.1 Public notices

General options

Option	Local notice requirements	State-wide notice requirements
1	No change to notice requirements	
2	Print **or** electronic notices	No change to State-wide notice requirements
3	Print **or** electronic notices	Print **and** electronic notices
4	Print **or** electronic notices	
5	Electronic notice required Additional print notices are optional	
6	Print **and** electronic notices	
7	Electronic notice on local government website	Electronic notice published on centralised website

Public notices: Guidance questions

96) Which general option do you prefer for making local public notices available? Why?

Response Q96

Preferences are for Option 4 or 7 if a centralised website was established by the Department or WALGA.

The City prefers option 4 which provides discretion to each local government. The City prefers the option of electronic notices which is a more cost effective and less time consuming exercise than placing external print notices with newspapers (potentially requiring quotes etc). The City is mindful however that the exclusive use of electronic notices may have on detrimental impact on demographics which are reliant on hard copy print notices.

An option of print notices should therefore remain (to allow for demographics which are still transitioning to online communication). As in the instance with the City of Busselton the aging population who often contribute to submission requests rely more heavily on hard print publications. Each local government can determine if print notices are appropriate for them as the City feels that more broadly each local government should be able to choose the way in which it communicates with its community.

An alternative to hard copy print notices may be a weekly list of public notices. The list (as opposed to the actual notices) could be published in the local paper. The list could provide the topics which are the subject of the public notices and advise where the electronic notices can be accessed. This may assist with the further transition away from hard print notices to exclusively electronic notices.

Publication of notices on a centralised website is likely to be beneficial. One site where interested parties could obtain information pertaining to their district or local governments generally is a reliable and sensible option which will also reduce advertising costs.

97) Which general option do you prefer for State-wide public notices? Why?

Response Q97

Electronic publication on a centralised website (as above) is preferred for state-wide public notices. It is expected electronic state-wide publication would be as broadly available (if not more broadly available) to interested parties not residing within the local government district than publication in a state-wide newspaper.

98) With reference to the list of public notices, do you believe that the requirement for a particular notice should be changed? Please provide details.

Response to Q98

Situations where local public notices are required by the Local Government Act or associated regulations:

Provision	Situation	Recommendation
Section 3.12	Local law is made and gazetted by the local government - Notice must specify the date the local law activates and where it can be inspected	Status quo – overarching requirement to remain as it finalises the local law process which can then be referred to in the gazette (could however reduce the length of notice by removing the requirement to state the purpose and effect as the purpose and effect is already advised in previous notices and Council report)
Section 3.50	Closure of a thoroughfare for more than 4 weeks - Public notice must be issued before closure can occur	Status quo – requirement to remain – the requirement is only for instances of more than 4 weeks and is considered important for community awareness and not overtly burdensome for the intention and frequency
Section 3.51	Alterations to property in a way that will affect any individual - After public notice is issued, a “reasonable time” must be given before work can commence	Add discretion (or potentially remove) - There are instances where a notice in writing to each person having an interest (s.3.51(4)(a)) is sufficient without the need for public notice (s.3.51(4)(b)) (e.g. in relation to alterations to a thoroughfare). Potentially the altering of water drainage from a public thoroughfare may be of very little consequence to the broader community as may a minor alteration to the level of a public thoroughfare. The wording of clause 3.51(4) could be amended to potentially reflect a discretion (e.g. replace the word “and” with “or” and add a clause to reflect instances that both (a & b) are required).
Section 3.58	Disposing of certain kinds of property other than via an auction or tender - Notice must invite submissions from the local community (2 week minimum)	Status quo – although there are instances where the overarching requirement is not strictly considered necessary (e.g. some leases and circumstances where substantial public comment has already been sought) it is difficult to determine where the line may otherwise be drawn. Requirements for $ values should be increased from $20k to $50k. Some discretion could also be added to certain asset categories (e.g. motor vehicles, plant materials etc) however potentially be compulsory to land.
Section 5.29	Convening a meeting of local electors - Public notice must be issued at least 14 days prior to the meeting	Status quo – retain this public notice requirement, broadly accepted as a necessary requirement.
Section 5.50(1)	Policies regarding the making of extra payments to terminated employees - Public notice must be issued after policy is adopted	Remove – the Act requires a LG to prepare a policy in relation to termination of employment. Policies are publicly available after adopted. The policy is adopted in the public forum of a Council meeting and that would be in the Council minutes

Provision	Situation	Recommendation
		and on the LG's website, this requirement seems unnecessary.
Section 5.50(2)	Extra payments made to terminated employees - Public notice only required if amount exceeds the policy made under section 5.50(1)	Remove – additional payments which exceed the provision of the Regulations and the policy would be the subject of a Council report. Consideration may be required to ensure the Council report was not confidential.
Section 5.55	Release of annual report - Public notice must be issued as soon as practicable after the report is accepted by the council	Remove – the annual report is adopted through Council and it is on website
Section 6.11	Proposal to use reserve account for a purpose other than what the money was originally reserved - Public notice must be given a month before the proposal is put into operation	Remove - At the present time, other than the proposal to create a Reserve being contained in the budget and possibly the accompanying report there is no requirement to advise or seek the consent of ratepayers. Similarly therefore, there should be no additional burden if the Council wishes to change the purpose of the Reserve. A report and Council resolution should be sufficient, in which instance the requirement for public notice can be removed.
Section 6.19	Proposal for the local government to set a new fee or charge - Public notice only required if changing fee or charge other than at the start of a financial year	Remove - the Act requires a LG to advertise its Fees and Charges if they are not contained in the budget. Fees and Charges include the provision of 'goods'. Imagine for example that a LG opens a new Recreation Centre during the year (where the Fees and Charges have not been included in the budget) which has a shop that contains goods that range from a can of Coke, a Mars bar to swimming goggles (apart from a wide range of entry fees for each service provided) etc. Strictly speaking, the LG would have to advertise every product and service available to be purchased to comply with this section of the Act.
Section 6.20	Proposal for the local government to borrow money or obtain credit - Public notice must be given a month before the proposal is put into operation	Remove – this is a requirement for report in the local governments budget and Council resolutions
Section 6.36	Proposal to impose differential rates and minimum payments - The notice must provide information on the rates being imposed and invite public submissions (3 week minimum)	Edit (Retain and Remove) – Retain only to the extent that it applies to the introduction of differential rates. Remove any other requirement in the Act for the following reasons: • The Act requires a LG with Differential rates to advertise those rates for 21 days – even when the differential rates do not change. • If a LG does not have Differential rates, ie utilises a single rate, it may double the rate and not advertise it. • After the advertising period for differential rates, the LG may then adopt a different 'Differential rate' from that advertised

Provision	Situation	Recommendation
		without further notice.
Schedule 2.2 Clause 7	Local government seeks to carry out a review of the district ward boundaries - Public notice must invite public submissions (6 week minimum)	Retain – this requirement should be retained for the purpose of obtaining public submissions
Schedule 6.3 Clause 1	Local government seeks to sell land for non-payment of rates - Public notice must be issued if the ratepayer cannot be notified personally through usual means	Retain – Accepted as a traditional method of advice where there appears to be no other conventional means of advising a ratepayer of the local governments intention in this regard.
Administration Regulation 12	Council meeting dates - Public notice must be issued once a year and list the meeting dates for the next 12 months	Remove – Council meeting dates should be accessible on the website without a formal Public Notification process
Administration Regulation 19D	Release of strategic community plan - Notice must specify where the plan is available for inspection	Remove – the Strategic Community Plan is adopted through Council and is available on the website.
Constitution Regulation 11H	Validity of election results is challenged - Notice must be issued once a decision is reached in the Court of Disputed Returns	Retain – considered a legitimate notification for the purpose of raising awareness of decisions related to contentious issues (potentially promoting openness and transparency and legal probity)
Elections Regulation 73	Local election is to be postponed to a future time - Notice must be issued stating that the election is postponed	Retain - considered a legitimate notification
Elections Regulation 80	Final results of local election are available - Public notice must set out the results in the prescribed form	Retain - considered a legitimate notification
Elections Regulation 92	Poll to determine how presiding member of council is to be appointed - Public notice must set out the results in the prescribed form	Retain - considered a legitimate notification
Regional Subsidiaries Regulation 4	Proposal to establish subsidiary - Notice must state where the business plan may be inspected and invite submissions (6 week minimum)	Retain

Situations where State-wide notice is required:

All of these options could potentially go onto a centralised website (with DLG / WALGA) in accordance with above proposals. If so, supplementary information could also be included on the website (e.g. copies of local laws) to reduce requirements of hard copies of supplementary information having to be printed and distributed to libraries etc.

Provision	Situation	Details
Section 2.12A	Proposal to change the method of electing the presiding member of council - Public notice must invite public submissions on the proposal (6 week minimum)	Retain

Provision	Situation	Details
Section 3.12	Proposal to introduce new local law - Public notice must invite public submissions on the draft local law (6 week minimum)	Retain – Public submissions should be sought and in the instance of a centralised website for advertising state-wide notices (and potentially local notices) is a cost effective means of reaching a broader community. (The requirement to advertise the purpose and effect could be discretionary as could the requirement for hard copies of the local laws to be available at libraries/Administration buildings depending on the demographic etc of each local government – already publicly available via council minutes and could be placed on the local government website for the purpose of submission)
Section 3.16	Review of an existing local law - Public notice must invite public submissions on the existing local law (6 week minimum)	Retain – as per above comments s. 3.12
Section 3.59	Major trading undertakings or land transactions - Public notice must invite public submissions on the business plan (6 week minimum)	Edit and retain – it is accepted that submissions should be actively sought for acquiring disposal interest or when undertaking ventures to produce profit. The public notice/submission period of 6 weeks however is considered too long. Some clarification could be implemented to improve the understanding of the 10% and $value thresholds as they relate, for example, to leases. It is unclear whether the value of the threshold relates to the lease over a 50 year period or does it apply to annual rates.
Section 4.39	Closing date for enrolment in election - The notice must include details on how a person can become an elector	Retain – considered appropriate for public awareness
Section 4.47	Nomination of candidates in election - The notice must specify how many seats are up for election and how nominations can be submitted	Retain
Section 5.36	Advertising a vacancy for a CEO position - Also applies to senior employee positions	Retain - the requirement as it applies to the CEO position only (should not be a requirement for senior employee positions which should be at the discretion of the local government)
Schedule 6.3	Sale of land - The notice must include a description of the land and any improvements sold with the land	Retain – Accepted as a traditional method of advice where there appears to be no other conventional means of advising a ratepayer of the local governments intention in this regard. Relates to rates and services being unpaid.
Functions and General Regulation	Invitation for tenders - Tender process applies whenever the local government seeks to acquire	Retain – The intention is to seek best value for money for the benefit of the rate payers however is to be subject to retention of same

Provision	Situation	Details
14	goods or services above a prescribed amount	exemptions that currently exist.
Functions and General Regulation 21	Expression of interest for prospective suppliers - This process is used to obtain a group of prospective suppliers prior to formal tender process	Retain – The intention is to reach prospective suppliers (seeking interest and ultimately best value for money for the benefit of rate payers).
Functions and General Regulation 24AD	Panel of pre-approved suppliers - Similar to tender process, but conducted in advance	Retain
Functions and General Regulations 24E	Regional price preference policy - Notice must specify the region to which the policy will apply and invite submissions (4 week minimum)	Remove - Section 24E of the Functions and General Regulations provides that where a LG prepares a policy in relation to Regional Price Preference, it must first give State-wide public notice of the policy and allow a period of 4 weeks for public comment. Council must then consider any submissions but is not required to change the advertised policy. Given the policies limited impact, this process is also considered unnecessary. In addition it is expected that individuals to conduct due diligence in relation to informing themselves of price preference options.

99) For the State-wide notices in Attachment 3, are there alternative websites where any of this information could be made available?

Response Q99

The suggestion made previously is that state wide notices may best be published on a centralised website with the Department of Local Government and/or WALGA. The establishment of a website for this particular purpose could be developed to ensure current information pertaining to each local government could be searched for and located. The website could also use a RSS feed facility so that the user is automatically informed when a post is made to a particular subject.

8.2 Information available for public inspection

Information available for public inspection: Guidance questions

100) Using the following table, advise how you think information should be made available:

Provision	Documents	In person only	Website only	Both	Neither
Section 5.53	Annual Report			both	
Section 5.75 & 5.76	Primary and Annual returns – for Elected members Includes – sources of income Trusts Debts Property holdings. Interests and positions in corporations.	In person only			
Section 5.87	Discretionary disclosures generally				Neither
Section 5.82	Gifts (already required to be on the website)		website only		
Section 5.83	Disclosure of travel contributions (already required to be on the website)		website only		
Elections Regulations 30H	Electoral gifts register		website only		
Section 5.98A	Allowance for deputy mayor or deputy president		website (Already in budget)		
Section 5.100	Payments for certain committee members		website		
Functions and General Regulations 17	Tenders register		website		
Section 5.94 & Administration Regulations 29	Register of delegations to committees, CEO and employees		website		
	Minutes of council, committee and elector meetings		website		
	Future plan for the district			both	
	Annual Budget		website		

	Notice papers and agendas of meetings			both	
	Reports tabled at a council or committee meeting			both	
	Complaints register (concerning elected members)	In person			
	Contracts of employment of the CEO and other senior local government employees				Neither
	Schedule of fees and charges		website (budget)		
	Proposed local laws		website		
	Gazetted Local laws (and other law that has been adopted by the district)		website		
	Rates record	In person only			
	Electoral roll	In person only			

101) Should the additional information (shown below) that is available to the public in other jurisdictions be available here? If so which items? How should they be made available: in person, website only or both?

Response Q101

No, sufficient information in relation to the below 'additional information' is either already available from annual reports, websites, gazetted information, SAT decisions etc. Publication of the 'additional information' should be at the discretion of the local government.

Additional Information
Rates information generally
District maps that contain ward boundaries
Adverse findings by the Standards Panel or State Administrative Tribunal against elected members

102) Is there additional information that you believe should be made publicly available? Please detail.

Response Q102

No

103) For Local Governments: How often do you receive requests from members of the public to see this information? What resources do you estimate are involved in providing access in person (hours of staff time and hourly rate)?

Response Q103

N/A

Access to information: Guidance question

104) Do you have any other suggestions or comments on this topic?

Response Q104

A. The Building Act does give some scope for the release of 'Building Records' to 'Interested Persons'. 'Interested Persons' are restricted (effectively to a prescribed class of persons – such as owners, police officers etc) in the Building Regulations and do not extend broadly to release to the general public. This does clarify what Building Records consist of and what may be released and to who. Something parallel, in relation to defined 'Planning Records' could be structured (whether in the P&D Act or LG Act).

B. A further suggestion is that a fee structure is put in place for the provision of information.

   The purpose of implementation of a fee structure would be to offset costs and resources of compiling information for the purpose. Particularly where the production of information is for developers (for financial gain), individuals wanting to access copies of records which may otherwise be available (or provided by the local government previously). It is accepted that this may be dealt with by way of policy however if it is raised as an issue by other local governments could possibly be supported by City of Busselton.

9.1 Expanding the information provided to the public

Option 1: Status Quo

Option 2: Additional reporting requirement

Option 3: Policy requirement

Expanding the information provided to the public: Guidance questions

105) Which of these options do you prefer? Why?

Response Q105

Status Quo - as things stand the public can already access the majority of information held by the local government, one way or another. As recorded earlier, there are many examples where the provision of information should be reduced – not increased.

The proposals outlined (detailed in the below table) do not only propose to make additional information available to the public but also require the compilation and reporting of additional information. Some of the information proposed can already be accessed by the public (e.g. by public attending Council meetings or keeping track of the attendance rates of elected members from Council minutes) without additionally burdening the local government. Information such as the attendance of elected members at council meetings is not information which the local government is currently restricting access to. The additional requirement of compiling information and maintaining information in a particular format is adding unnecessary additional burden to the local government (essentially counterproductive to the proposal to reduce red tape).

106) In the table below, please indicate whether you think the information should be made available, and if so, whether this should be required or at the discretion of the local government:

Response to Q106

Consistent with the previous comments, all of the below should be optional with the exception of 'Performance reviews of CEO and senior employees' which are considered a matter between the local government and employee (whether CEO or senior employee).

Proposal	Should this be made available: No, optional, required?
Live streaming video of council meetings on local government website	Optional (should not be 'required' because the costs involved in having to attain live streaming are unrealistic for small local governments)
Diversity data on council membership and employees	Optional
Elected member attendance rates at council meetings	Optional – but normally included in Annual Report
Elected member representation at external meetings/events	Optional
Gender equity ratios for staff salaries	Optional
Complaints made to the local government and actions taken	Optional
Performance reviews of CEO and senior employees	No
Website to provide information on differential rate categories	Optional
District maps and ward boundaries	Optional
Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission.	Optional (available through an ordinary meeting)
Financial and non-financial benefits register	Optional

107) What other information do you think should be made available?

Response Q107

No additional information to be made available

Expanding the information available to the public: Guidance question

108) Do you have any other suggestions or comments on this topic?

Response to Q108

No, no further comments

9. Reducing red tape

Although this part of the review seeks to cover all aspects of the Act and associated regulations, it does not concern the individual decisions or internal policies used by a local government. These matters will be considered in phase 2 of the review.

Defining red tape: Guidance questions

109) Which regulatory measures within the Act should be removed or amended to reduce the burden on local governments? Please provide detailed analysis with your suggestions.

Response Q109

Whilst one of the objectives of Phase one of this review is to reduce tape, many of the proposals contained in this paper have the potential to significantly increase red tape. Care should be taken to absolutely minimise changes to the LG Act & Regulations that require increased compliance.

The City has already identified and provided details of possible areas which could be examined to reduce red tape and this has already been provided to the Dept. A summarised list of these suggestions is contained at Q120.

Two further examples are provided under questions 109 and 110 below, the additional suggestions are also provided immediately underneath.

a) Briefly describe the red tape problem you have identified.

Duplication of approval processes generally (e.g. erection of a sign on a thoroughfare)

b) What is the impact of this problem? Please quantify if possible.

In the example provided erection of a large sign on a thoroughfare (in a particular incident) required an individual to obtain planning approval, a building permit, an authorisation under the Uniform Local Provision regulations, a permit under a Thoroughfares Local Law and (as it was on a main road) a referral process to Main Roads (who have their own regulatory approaches).

c) What solutions can you suggest to solve this red tape problem?

Reassess the relationships between agencies (and associated legislation) where there are cross overs – the solution is not obvious or apparent however is potentially one of the biggest contributors to red tape issues to community members and burdening local governments.

Some standardisation is required for duplicate approvals and processes.

Although there are some provisions or ability to reduce the local law permit processes in some instances this does not alleviate the broader legislated duplications in processes and approvals.

110) Which regulatory measures within the Act should be removed or amended to reduce the burden on the community? Please provide detailed analysis with your suggestions.

Response Q110

Two examples are provided under questions 109 and 110 below, additional suggestions are also provided immediately underneath.

a) Briefly describe the red tape problem you have identified.

A minor amendment to a local law

b) What is the impact of this problem? Please quantify if possible.

Complicated and lengthy processes are in place to even correct errors (which don't impact the purpose and effect of the local law itself)

c) What solutions can you suggest to solve this red tape problem?

Defining a 'minor amendment' may be difficult. Discussion may determine whether the Joint Standing Committee could be given the power under the LG Act (WA) to decide whether an amendment was a 'minor amendment' which subsequently could circumvent some of the lengthy process which is required for making a 'substantial amendment'.

In instances where a local government is asked to provide an undertaking to the Joint Standing Committee on Delegated Legislation (JSC) in response to a minor amendment to a gazetted Local Law an additional clause could be added into the LG Act (WA) that may enable the JSC undertaking 'not to requiring public consultation' (in instances where the amendment would constitute a minor amendment) and subsequently require only one report to Council.

Consideration should be given as to whether there are any current local laws that are sufficiently consistent across the state, whereby amendments to overarching legislation (such as recent changes to the Dog Act) may reduce the need for adoption of overly complex local laws

Special majority: Guidance question

111) Should the provisions for a special majority be removed? Why or why not?

Response Q111

Yes the provision for a special majority should be removed. An absolute majority decision can replace the requirement for a special majority decision. In many instances a special majority will, in any case, become an absolute majority requirement if there are not more than 11 elected members.

Senior employees: Guidance questions

112) Is it appropriate that council have a role in the appointment, dismissal or performance management of any employees other than the CEO? Why or why not?

Response Q112

No, management of staff should be left to the CEO who is employed to perform that function. It is unlikely that Council would be in a position to understand all of the factors impacting on the performance of an employee or understand all aspects of their performance as they do not see them operate in the same way as the CEO does.

This should not however prevent the CEO from inviting elected members from participating where it might be appropriate (e.g. on selection panels).

113) Is it necessary for some employees to be designated as senior employees? If so, what criteria should define which employees are senior employees?

Response Q113

No, it is not necessary for some employees to be designated as senior employees. Management of staff should be left to the CEO, therefore removing the need to classify senior employees. Probation periods may apply which provides an opportunity to provide feedback on senior staff performance to the CEO and for the CEO to ultimately decide on continued engagement of staff.

Exemption from accounting standard AASB124 - Related party disclosures: Guidance questions

114) Are the existing related party disclosure provisions in the Act sufficient without the additional requirements introduced by AASB 124? Why or why not?

Response Q114

The addition of the AASB disclosure requirements are considered an unnecessary overlap for the purpose of disclosure and accountability. The existing party disclosure provisions are sufficient under the LG Act (WA). Remove any additional requirements introduced by AASB124. Exemption may potentially be done through Regulation without the need to make changes to the Act.

Disposal of property: Guidance questions

115) The threshold for trade-ins was set originally to $50,000 in 1996 and raised to $75,000 in 2015. Should that threshold be raised higher, if so how high?

Response Q115

Yes the current thresholds for trade-ins could be raised from $75,000 to $150,000 (in line with tender regulations) due to inflation and for practical reasons to cover major plant items with the ability for future amendments to be made to thresholds under Regulations.

116) Should the threshold remain at $75,000 but with separate exemptions for specific types of equipment, for example plant?

Response Q116

The City considers the overall threshold of $75,000 should be raised to $150,000 .Even if the threshold for trade-ins remained at $75,000, an increase for specific types of equipment, such as heavy plant, to $150,000 would still be desirable.

117) The general $20,000 threshold was put in place in 1996 and has not been amended. Should the threshold be raised higher than $20,000? If so, what should it be and why?

Response Q117

The current thresholds for property that has a market value of less than $20,000 could be increased to $50,000 due to inflation.

Quite often local government has land which it wants to dispose of to adjoining neighbours etc and $20,000 is no longer required sufficient and $50,000 is proposed instead.

118) Would raising these thresholds create an unacceptable risk that the items would not be disposed of to achieve the best price for the local government?

Response Q118

No, the principles of achieving best price for local government property still apply and the local government is still accountable.

119) Is there an alternative model for managing the disposal of property? Please explain.

Response Q119

The City does not have a proposal for a new model for managing the disposal of property which may otherwise further reduce risk in this regard.

Reducing red tape: Guidance question

120) Do you have any other suggestions or comments on this topic?

Response Q120

A. The clauses under 9.49A pertaining to the Execution of documents. Clause under s. 9.49A should be reviewed and simplified. The original intended purpose of using a common seal has changed (under other legislation - Corporations Act). Clarification of when the common seal *must* be used or *may* be used for the purpose of local governments would be beneficial. This requirement may also now (with changes to other legislation) be able to be separated from what actually constitutes when a document can be considered 'duly executed'.

B. Although potentially for consideration under Phase 2 of the consultation - consider reviewing Schedule 3.1 of the LG Act (WA) in respect of the issuing of a Notice under s. 3.25 for the removal of items from land currently considered to be untidy/unsightly. An amendment to the LG Act which provides local governments with the expressed ability to have removed from a property excess accumulation of rubbish or other items which may have an adverse impact (including dangers or ill-effects) on adjoining properties and the public (not just items defined as 'unsightly' or 'untidy') may assist to streamline current requirements. Current reliance on case law (refer Saliba v Town of Bassendean [2013]) may be alleviated and subsequently simplified for local governments if an appropriate solution is adopted under the LG Act.

C. **Plus, in accordance with previous submissions made by City of Busselton to Department of Local Government:**
   i. Remove - The requirement to hold an Annual meeting of electors in accordance with S 5.27 is unnecessary given the 'Public Question time' access provisions of the Act
   ii. Edit - The requirement to hold a Special meeting of electors called by only 100 electors in accordance with S 5.28 needs serious review. A number of 5% or 750 (whichever is the lesser) is more realistic.
   iii. Revise - S5.56. Planning for the future – needs to be replaced with current IPR framework.
   iv. Section 6.26(2)(d) & (g) and (6) Rateable land – these exemptions are unclear and cause the industry issues where often costly court proceedings are required to determine who is and who is not exempt, in particular this is very much the case with "(g) land used exclusively for charitable purposes;". More clarity needs to be included within the provisions.
   v. S6.26 (2)(i) and (3) CBH should not be exempted nor should the minister be in a position to determine what should be paid by CBH– there should be a clearer directive for example CBH pays 50% of the Rate that would otherwise be imposed. Interestingly CBH now has competitors in this market which don't seem to have the same level of treatment.
   vi. S6.35. Minimum payment – regulations need to be changed to increase the

current $200 prescribed amount to $500

vii. The need to amend S 6.37 (1) of the Act by deleting the words “by it” to allow LG’s to contract out works required to be performed where Special Area Rates are levied.

viii. The requirement to include instalment due dates in the annual budget under “section 27 (c) (1) of the Local Government (Financial Management) Regulations” could be removed as this effectively places time limits on the issue of the annual rate notices which as a result, must be produced in time to meet the instalment due dates specified in the budget document. There are situations where annual rate notices may be delayed (difficulties with billing processes, printing, postage etc) and the late issue of the annual notices would require an unnecessary amendment to the budget to change the previously determined instalment due dates.

ix. Basis of Rates

Section 6.28 of the Act requires that the Minister approves (or not) whether a property(s) should be rated on an Unimproved Valuation or Gross Rental Valuation basis. In our view this is not an effective use of the Ministers time and is considered unnecessary because the LG, having regard for Departmental policy and guideline documentation is best placed to determine how the property (or part thereof) is used. Currently, it is our experience that, in almost all instances, the Minister approves the recommendation of the Councils request for amendment and in this light there is no reason why the Council decision could not be the final decision on the matter. The Minister may however wish to be the final arbiter in the case of an appeal by a ratepayer(s) to any such amendment adopted by Council (or such an appeal could be lodged with SAT – whichever process is preferred).

x. Pensioner rate rebate systems

A further suggestion that would result in significant savings for LG and the Water Corp would be to overhaul the entire pension rate rebate system as it currently stands. Presently there is substantial paperwork/management in the entire registration and claim process performed by all LG’s (and Water Corp) in the processing of pensioner rebates. The pensioner rebate system dates back to the 1970’s at least and an overhaul is long overdue. The current rebate system was amended in 1992 (Rates and Charges (Rebates and Deferments) Act 1992) and has over the years become a very cumbersome, time consuming and difficult process to manage. Several organisations are involved including the initial ratepayers, Water Corporation, Local Government, Centrelink and finally the Department of OSR.

Response Q120 continued

Pensioner rate rebate systems (continued)

In light of recent changes such as the introduction of a capped amount ($750) in 2016 and the reduction of the seniors rebate (now $100 only for 2017) it would be timely for the entire pensioner rate rebate system to be reviewed and simplified. For instance if this system were to be replaced by something similar to the fuel rebate/concession amount where the eligible pensioners receive an amount upfront, possible via a card system, that could only be spent on rates and or rent – this would mean that all pensioners are treated equally and could spend that given amount without the need for LG's (and Water Corp) to go through the annual processes of registrations, claims and reviews. This would save substantial amounts of time/workloads by their respective staff.

10. Regional Subsidiaries

Currently, many local governments are concerned that the regulatory requirements are too stringent to pursue the establishment of regional subsidiaries and at this time there are no regional subsidiaries in operation in WA.

Regional subsidiaries are designed to carry out many of the activities which could be performed by a local government. They cannot, however, undertake commercial enterprises or speculative investments.

The local government sector has requested that regional subsidiaries be permitted to borrow money, either from financial institutions or the Treasury.

Option 1: Status quo

Option 2: Regional subsidiaries are permitted to borrow from Treasury Corporation.

Option 3: Regional subsidiaries are permitted to borrow from financial institutions

Regional subsidiaries: Guidance questions

121) Which option do you prefer?

Response Q121

Regional subsidiaries should be permitted to borrow from treasury institutions *and/or* financial institutions (Options 2 and 3 are preferred over the status quo)

122) Should regional subsidiaries be allowed to borrow money other than from the member councils?

Response Q122

Yes

123) Why or why not?

Response Q123

Provided budgets have been prepared and loans and repayments etc are within normally accepted ratio limits.

124) If a regional subsidiary is given the power to borrow directly, what provisions should be put in place to mitigate the risks?

Response Q124

No cap or additional reporting is required because that the money would not be able to be borrowed unless it was in the budget and justifiable. The WATC and the commercial banking industry will not lend funds if ratios are not within defined limits.

Regional subsidiaries: Guidance question

125) Do you have any other suggestions or comments on this topic, including on any other aspect of the Local Government (Regional Subsidiaries) Regulations 2017?

Response Q125

In order to ensure regional subsidiaries are more flexible and responsive to community needs, the removal from compliance with legislative requirements is considered essential in order to become efficient.

Local Government Act review: Guidance question

126) You are invited to make comment and put forward suggestions for change on other matters which have not been covered in this paper.

Response Q126

A. Training for specified officers in relation to CCC breaches

After considering requirements of the CCC Act training should be considered for delivery to the CEO and/or the local government's PID Officer as to requirements by law to report on breaches to CCC or other governing bodies and minor misconduct reports to PSC.

Response Q126 continued

B. Clarification

a) Sections 2.28(2) and 2.34(2)

Some ambiguity appears to exist in the current reading of the Act. Clarification of what happens if a Councillor Mayor is re-elected as a Councillor, does he/she continue in the role of Mayor until the next meeting where the office of Mayor is filled? Sched. 2.3, clause 3 provides that the CEO is to preside at the meeting until the office is filled, but s**.** 2.28(2) Item 11 and 2.34(2) suggests the role of Mayor is ongoing post the Saturday election?

Further Section 2.28(2) Item 11 states the term only ends when the "mayor is next elected at or after the local government's next election". Clarification as to if the Mayor is not re-elected as a Councillor, when does their term end is sought?

Proposal - the current Mayor remains Mayor up to close of polling booth at which time powers default to the CEO, in a caretaking capacity, until a new Mayor is sworn in.

b) Section 5.41(b)

In relation to s. 5.41 the 'Functions of the CEO' some clarity may be beneficial to provide for what constitutes or is considered sufficient in terms of the provision of "advice and information" to council "so that informed decisions can be made". Issues arise in instances where an alternative motion is raised without the ability for the CEO to compilation/provide relevant advice or information to enable an informed decision. Although this may potentially be dealt with by other means (such as Standing Orders Local Law) any additional clarification within the LG Act (WA) may benefit the process of informed decisions making and assist with a more cohesive understanding between elected members and Administration.

C. Borrowing

Clarification is sought as to whether money may be borrowed from the Reserve Fund particularly in instances where (possibly towards the end of a financial year) a local government may run low of municipal monies.

Issues exist as to accessing reserve funds which are for particular purposes (none of which include subsidising the operations of municipal fund); and that the reserve fund is a cash fund.

Clarity as to whether borrowing from the Reserve Fund is possible or required in these instances (where showing borrowings in accounts and is budgeted to be repaid) whether reserve funds may be accessed.

cont…..

D. Service Charges

Service charges levied under 6.38 should be able to be imposed outside of the annual budget process. Consideration could be given as to whether there are any other prescribed services or works which may be incorporated into the Regulations (such as coastal services) which reflect more contemporary issues. Committee members, appointment of (s. 5.20)

After the initial appointment of an employee as a committee member to a committee (under s. 5.10 of the LG Act (WA)), consideration could be given to providing the local government with the ability change the local government representative (employee) without the need to do so at a further council meeting. For example power provided for the representative to be appointed in the capacity of their position rather than by name or potentially an exemption could be made for the requirement to return to a council meeting if the employee/representative is being changed to another employee/representative (of similar or equivalent position) after the establishment of the committee and board member requirements.