

Review of Local Government Act 1995

City of Wanneroo Council Submission

This submission by the City of Wanneroo was approved by Council on [insert date] and sets out the City of Wanneroo's position in respect of the consultation paper into the review of the Local Government Act 1995 - "Agile, Smart, Inclusive – Local Governments for the Future".

Any references to the **Act** are references to the Local Government Act 1995.

CEO means the Chief Executive Officer.

Department means the Department of Local Government, Sport and Cultural Industries.

Elected Members means the members of a local government council elected by that local government's constituents.

Department of Local Government, Sport, & Cultural Industries Phase 1 Consultation Paper Comment and Questions	City of Wanneroo Council Submission
DEFINING THE ROLES OF COUNCIL AND ADMINISTRATION	
1) How should a council's role be defined? What should the definition include? 2) How should the role of the CEO and administration be defined? 3) What other comments would you like to make on the roles of council and administration 4) Are there any areas where the separation of powers is particularly unclear? How do you propose that these are improved? 5) Do you have any other suggestions or comments on this topic?	<p>Although the Act provides for local governments to operate under the principle of 'general competence' and was intended to provide a broad outcomes-based framework, there are sections that are "too high level". Elected Members have a range of obligations not captured in legislation</p> <p>There is a need for clarity regarding the broader obligations that Council, Elected Members, the CEO and Administration are required to comply with.</p> <p>Council's focus should continue to be at the strategic and policy level with the CEO's focus on establishing and maintaining an appropriate organisational structure to implement Council's strategic direction.</p> <p>The Act should clearly define and articulate the distinction between the strategic and operational areas and functions and the respective roles of Council, Mayor/President, Councillor and CEO.</p>
ELECTED MEMBER COMPETENCIES	
6) What competencies (skills & Knowledge) do you think an elected member requires to perform their role?	<p>Elected Members are democratically elected by their constituents and are "taken as they are" irrespective of their skills, knowledge and experience.</p> <p>The following is a list of baseline competencies that are considered appropriate for an Elected Member to have to perform their role:</p> <ul style="list-style-type: none"> • Sound financial Awareness. • Understanding and engaging with the community. • Understanding risk. • Learning for others – mentoring. • Strategic thinking and planning. • Sound understanding of legislation and operation of local government.
7) Do these vary between local governments? If so, in what way?	<p>Irrespective of the size, demographic or location of the local government the legislative obligations and requirements for Elected Members must be the same. The base level competencies required of an Elected Member are dictated by the requirements of their role.</p>
FUNDING TRAINING	
8) Who should pay for the costs of training (course fees, travel, and other costs)? 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?	<p>The State Government should provide funding for training for Elected Members inclusive of course fees and associated travel costs.</p>
MANDATORY TRAINING	
10) Should elected member training be mandatory? Why or why not?	<p>Training should not be compulsory nor be a legislative obligation. There is no such requirement for State Parliamentarians and therefore there should not be a requirement for Elected Members.</p> <p>It is not appropriate to penalise an Elected Member who chooses not to participate or complete mandatory training.</p>
11) Should candidates be required to undertake some preliminary training to better understand the role of an elected member? 12) Should prior learning or service be recognised in place of completing training for elected members? If yes, how would this work? 13) What period should apply for elected members to complete essential training after their election? 14) Should ongoing professional development be undertaken by elected members? 15) If so, what form should this take? 16) Do you have any other suggestions or comments on training?	<p>It is considered appropriate that potential candidates for local government councils are required to attend and complete compulsory induction/awareness training sessions prior to their nomination being formalised to ensure that the prospective candidate is fully aware of the legislative obligations and requirements of the role of an Elected Member.</p> <p>Such mandatory candidate training can be undertake either through face to face sessions or online training sessions (webinars) for those constrained by time commitments or due to distance. It should be noted that such mandatory training may deter prospective candidates.</p> <p>Candidates should not be permitted to finalise their nomination to contest a local government election unless they have completed the candidate training program.</p>

Department of Local Government, Sport, & Cultural Industries Phase 1 Consultation Paper Comment and Questions	City of Wanneroo Council Submission
	<p>The training requirements for Elected Members should not be any different to State Parliamentarians.</p> <p>It is considered appropriate that there be a legislative obligation for a local government CEO to deliver a comprehensive induction program aligned to core competencies for newly Elected Members which covers base level competencies but also contextualised for the respective local governments.</p>
CODES OF CONDUCT	
<p>17) Should standards of conduct/behaviour differ between local governments? Please explain?</p> <p>18) Which option do you prefer for codes of conduct and why?</p> <p>19) How should a code of conduct be enforced?</p> <p>20) Do you support streamlined Rules of Conduct regulations? Why?</p> <p>21) If the rules were streamlined, which elements should be retained?</p>	<p>Elected Members' Code of Conduct (Code) should be standardised across the local government sector. A model Code should be developed by either the Department or the Public Sector Commission as an independent integrity body. Local governments should have the authority and discretion to contextualise their respective Codes as required but without authority to depart from the base model Code.</p> <p>The jurisdiction of the Standards Panel to include acting as a judiciary and enforcement body in relation to the Code, standards of ethical conduct and behaviours and for good governance. The Standards Panel to also have the authority to stand down individual Elected Members whose behaviour brings the local government into disrepute.</p> <p>Local Governments to be legislatively required to develop and adopt a Corporate Governance Framework.</p> <p>The composition of the Standards Panel should be reviewed to include a representative of an independent governance body (for example the Governance Institute of Australia).</p> <p>The Code to provide for fair support to those who have been accused of allegedly breaching the Code including maintaining confidentiality.</p>
<p>22) Do you support a reduction in the time frame in which complaints can be made? Is three (3) months adequate?</p>	<p>It is not considered an appropriate time frame of two years (too long) or three months (inadequate) in which complaints can be made. Complaints should be made within twelve months of when the breach/offence has occurred.</p>
<p>23) Do you support an outcome/based framework for elected members? Why or why not?</p>	<p>Yes.</p>
<p>24) What specific behaviours should an outcomes based framework target?</p>	<p>The following are specific behaviours that should be targeted by an outcome based framework:</p> <ul style="list-style-type: none"> • Personal behaviour. • Honesty and integrity. • Respect. • Exercise reasonable care and diligence.
<p>25) Should the rules of conduct that govern behaviour of elected members be extended to all candidates in council elections? Please explain?</p>	<p>It is considered appropriate that the behaviour of candidates contesting a local government election also be governed by the Rules of Conduct. The current situation provides an unfair advantage to non-Elected Member candidates. A candidate should conduct themselves (and be held to account for their conduct and behaviour) in the same manner as if they were an Elected Member. This would limit some of the inappropriate behaviours demonstrated by candidates during campaign periods.</p> <p>There is no support for a Caretaker Policy.</p>
OFFENCE PROVISIONS	
<p>26) Should the offence covering improper use of information be extended to former members of council for a period of twelve months? Why?</p> <p>27) Should this restriction apply to former employees? Please explain</p>	<p>It is appropriate to restrict the improper use of information by former Elected Members and local government officers for a period of twelve months after leaving office however it is noted that it would be difficult to regulate and enforce. The principle to apply is that there should not be an improper gain or detriment.</p>
CONFIDENTIALITY	
<p>28) Is it appropriate to require the existence and details of a complaint to remain confidential until the matter is resolved? Why?</p>	<p>Yes, this provides procedural fairness and natural justice.</p> <p>There could be undue influence, reputational issues and impact the ability for Elected Members to undertake their role if not kept confidential.</p>
SECTOR CONDUCT REVIEW COMMITTEES	
<p>29) What do you see as the benefits and disadvantages of this model?</p> <p>30) What powers should the Conduct Review Committee have?</p> <p>31) In your opinion what matters should go directly to the Standards Panel?</p>	<p>The Conduct Review Committee would provide a triage service for complaints however it would seem that this would be a waste of resources. A preferable model would be to appropriately resource the Standards Panel to deal with all complaints and to provide the Standards Panel the authority to recommend alternative dispute resolution including mediation.</p>

Department of Local Government, Sport, & Cultural Industries Phase 1 Consultation Paper Comment and Questions	City of Wanneroo Council Submission
32) Who should be able to be a member of a panel: elected members, people with local government experience, independent stakeholders? 33) Who should select the members for this pool? 34) How many members should there be on the Review Committee? 35) Are the proposed actions for the Review Committee appropriate? If not, what do you propose?	As a minimum there should be three members of the Standards Panel including a member with legal experience, a former (not serving) Elected Member or senior local government officer with extensive local government experience and an independent member (from either the Department or the Public Sector Commission). There should be a pool of Standards Panel members from which the Department Director General will alternatively select to be on the Standards Panel when the Standard Panels sits. The Standards Panel should have the authority proposed for the Review Committee.
REVIEW OF ELECTED MEMBER NON-COMPLIANCE	
36) Which of the options for dealing with complaints do you prefer? Why? Option 1: Status quo Option 2: Sector Conduct Review Committees 37) Are there any other options that could be considered? 38) Who should be able to review a decision: the person the subject of the complaint, the complainant or both?	The status quo is preferred but with an expanded role for the Standards Panel to have the authority proposed for the Review Committee. Either the complainant or the person subject of the complaint should have the right to request a review of the decision.
MEDIATION	
39) Do you support the inclusion of mediation as a sanction for the Panel? Why or why not?	Yes, the Standards Panel should have the authority to impose mediation on the parties including other forms of alternative dispute resolution where the matter is suitable to be resolved in that manner.
PROHIBITION FROM ATTENDING COUNCIL MEETINGS	
40) Do you support the Panel being able to prohibit elected members from attending council meetings? Why or why not? 41) How many meetings should the Panel be able to order the elected member to not attend? 42) Should the elected member be eligible for sitting fees and allowances in these circumstances?	It is considered appropriate that the Standards Panel has the authority to prohibit Elected Members from attending Council meetings however this should only be for offences where the Elected Member's behaviour or conduct has been disruptive or detrimental to a Council meeting. The Standards Panel should only be able to prohibit an Elected Member from attending a maximum of three Council meetings and the Elected Member should not be entitled to sitting fees or allowances for the duration of the prohibition.
COMPENSATION	
43) Do you support the Panel being able to award financial compensation to the local government? Why or why not? 44) What should the maximum amount be?	It is not considered appropriate for the Standards Panel to have the authority to impose that an Elected Member be required to pay compensation.
COMPLAINT ADMINISTRATIVE FEE	
45) Do you support this option? Why or why not? 46) Do you believe that a complaint administrative fee would deter complainants from lodging a complaint? Is this appropriate? 47) Would a complaint administrative fee be appropriate for a sector conduct review committee model? Why or why not? 48) What would be an appropriate fee for lodging a complaint? 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?	It is not considered appropriate to require an administration fee to be paid when lodging a complaint as this could deter legitimate complaints. There is a need to consider a legislative mechanism to disincentivise and penalise vexatious complainants.
COST RECOVERY TO LOCAL GOVERNMENT	
50) Do you support the cost of the panel proceedings being paid by a member found to be in breach? Why or why not?	It is not considered appropriate that an Elected Member who is found to be in breach to pay the costs of the Standards Panel proceedings considering that the Standards Panel would have imposed a sanction.
PUBLICATION OF COMPLAINTS IN THE ANNUAL REPORT	
51) Do you support the publication of complaints in the Annual Report? Why or why not?	Complaints should not be published in the Annual report especially as this has the potential to undermine the credibility of Elected Members especially where the Standards Panel has determined there has been no breach. Further the purpose of the Annual report is to showcase the local government as opposed to highlighting the negatives resulting from complaints.
TABLING DECISION REPORT AT ORDINARY COUNCIL	
52) Do you support this option? Why or why not?	It is not considered appropriate to table a Standards Panel decision report at a Council meeting as there is no decision for Council to make and all Standards Panel findings of breach are published in a register that is available for public inspection.

Department of Local Government, Sport, & Cultural Industries Phase 1 Consultation Paper Comment and Questions	City of Wanneroo Council Submission
ELECTED MEMBER INTERESTS	
53) Should not-for-profit organisation members participate in council decisions affecting that organisation? Why or why not?	It is considered appropriate that where a not-for-profit organisation member has an impartiality interest then that Elected Member should be allowed to participate in Council decisions. It is noted that the legislation currently provides for an Elected Member to be able to request Council to allow them to participate.
54) Would your response be the same if the elected member was an office holder in the organisation?	
IMPROVING THE BEHAVIOUR OF ELECTED MEMBERS	
55) Do you have any other suggestions or comments on this topic?	The term "not-for-profit" is not defined and the legislation must have a clear and concise definition to ensure that Elected Members and practitioners can act and advise accordingly. If the matter concerns a Financial or Indirect Financial Interest, then the Elected Member should leave chambers. It is immaterial if the Elected Member is an office bearer, they can still be quite influential.
RECRUITMENT AND SELECTION OF LOCAL GOVERNMENTS CEOS	
56) Would councils benefit from assistance with CEO recruitment and selection? Why? 57) How could the recruitment and selection of local government CEOs be improved? 58) Should the Public Sector Commission be involved in CEO recruitment and selection? If so, who and how? 59) Should other experts be involved in CEO recruitment and selection? If so who and how? 60) What competencies, attributes and qualifications should a CEO have?	It is considered that Option 4 – Status quo is the most appropriate however the Public Sector Commission should be required to provide guidelines for local governments in recruiting and selecting CEOs. Local governments should be able to seek assistance if they do not have the requisite skills or experience to undertake the recruitment and selection of the CEO.
ACTING CEOS	
61) Should the process of appointing an acting CEO be covered in legislation? Why or why not? 62) If so, who should appoint the CEO when there is a short term temporary vacancy (covering sick or annual leave for example)? 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)?	It is not considered appropriate for appointing an Acting CEO to be covered in legislation. This is a function of the CEO who is well versed in the skills and knowledge of the local government's senior staff. It is appropriate that the Acting CEO be a senior employee. The Act to provide for Council to delegate this decision to the CEO and if the situation warrants, the delegation can be withdrawn. If the acting period is likely to be longer than three months or for periods of unplanned absences, then the appointment is to be referred to Council.
PERFORMANCE REVIEW OF LOCAL GOVERNMENT CEOS	
64) Who should be involved in CEO performance reviews? 65) What should the criteria be for reviewing a CEO's performance? 66) How often should CEO performance be reviewed? 67) Which of the above options do you prefer? Why? 68) Is there an alternative model that could be considered?	All the Elected Members should be involved in the performance review of the CEO with the assistance of an independent external consultant chosen by Council at the discretion of the Council. It is considered that Option 1 is most appropriate and that regional local governments would benefit from the services of an external consultant. CEO performance reviews should occur at least annually.
TERMINATION OR EXTENSION OF CEO CONTRACT AROUND AN ELECTION	
69) Would a 'cooling off' period before a council can terminate the CEO following an election assist strengthening productive relationships between council and administration?	Yes.
70) What length should such a cooling off period be?	Six months.
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?	Six months.
PUBLIC EXPECTATIONS OF STAFF PERFORMANCE	
72) Is greater oversight required over local government selection and recruitment of staff? 73) Should certain offences or other criteria exclude a person from being employed in a local government? If so, what? 74) Do you have any other suggestions or comments on this topic?	All local government staff are employed by the CEO and the CEO, as a CEO executive function, can exercise the discretion as to the recruitment of all employees. It is considered appropriate that "working with children" and police clearance checks be mandatory as there is a high level of public trust placed on local government officers.
REMEDIAL INTERVENTION	
75) Should the appointed person be a departmental employee, a local government officer or an external party? Why? 76) Should the appointed person be able to direct the local government or would their role be restricted to advice and support? Please explain? 77) Who should pay for the appointed person? Why?	It is considered appropriate for an external party to assist a local government to resolve issues when there is a requirement to remove the CEO and the appointment of a replacement CEO. The appointed person's authority to be restricted to providing advice and support, especially by making recommendations to the Council.

Department of Local Government, Sport, & Cultural Industries Phase 1 Consultation Paper Comment and Questions	City of Wanneroo Council Submission
	The State Government should pay for the appointed person unless the assistance of the appointed person is specifically requested by the local government, which the local government would pay.
POWERS OF APPOINTED PERSON	
78) What powers should an appointed person have?	It is considered appropriate that the appointed person be only authorised to provide advice, support and make recommendations to the Council or the Minister.
REMEDIAL ACTION PROCESS	
79) Do you think the proposed approach would improve the provision of good governance in Western Australia? Please explain? 80) What issues need to be considered in appointing a person?	It is considered appropriate and good governance that the Minister have the authority to issue a remedial notice which the local government must comply with however the local government should be afforded the right to: <ul style="list-style-type: none"> • discuss the remedial notice with the Minister; • determine the appropriate approach to comply with the remedial notice; or • object to the remedial notice and have access to an appeal mechanism.
SUPPORTING LOCAL GOVERNMENTS IN CHALLENGING TIMES	
81) Do you have any other questions or comments on this topic?	It is considered appropriate for local governments to have the ability to make a request to the Minister or the Director General for assistance with issues that are beyond the expertise or resources of the respective local government.
TRANSFERABILITY OF EMPLOYEES	
82) Should local and State governments employees be able to carry over the recognition of service and leave if they move between State and local government? 83) What would be the benefits if local and State government employees could move seamlessly via transfer and secondment? 84) Do you have any other suggestions or comments on this topic?	It is considered appropriate for local and State government employees to be able to carry over their recognition of service and leave between local and State government. There may be a requirement to establish a central body to monitor/manage benefits such as long service leave so that it does not become a liability for individual authorities. This would allow for secondments between state and local government and provide a "pool" of appropriately skilled and qualified people.
A NEW FRAMEWORK FOR DISCLOSING GIFTS	
85) Is the new framework for disclosing gifts appropriate? 86) If not, why? 87) Is the threshold of \$500 appropriate? 88) If no, why? 89) Should certain gifts - or gifts from particular classes or people - be prohibited? Why or why not? 90) If yes, what gifts should be prohibited?	The legislative framework for disclosing gifts for Elected Members and local government officers should be no different as that in place for State Government Parliamentarians and employees.
EXCLUDING GIFTS RECEIVED IN A PERSONAL CAPACITY	
91) Should gifts received in a personal capacity be exempt from disclosure? 92) If yes, how could 'personal capacity' be defined? 93) Should there be any other exemptions from the requirement to disclose a gift over the threshold? 94) If so, what should these be? Please justify your proposal. 95) Do you have any other suggestions or comments on this topic?	All gifts received in a personal capacity should be exempted from any disclosure requirements. Such gifts have no capacity to influence an Elected Member or local government officer in undertaking their role.
PUBLIC NOTICES	
96) Which general option do you prefer for making local public notices available? Why? 97) Which general option do you prefer for State-wide public notices? Why? 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? 99) For the State-wide notices in Attachment 3, are there alternative websites where any of this information could be made available?	Both, electronic and newspaper notices.
INFORMATION AVAILABLE FOR PUBLIC INSPECTION	

Department of Local Government, Sport, & Cultural Industries Phase 1 Consultation Paper Comment and Questions	City of Wanneroo Council Submission
100) Using the table, advise how you think information should be made available: 101) Should the additional information 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? 102) Is there additional information that you believe should be made publicly available? 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)? 104) Do you have any other suggestions or comments on this topic?	Live Streaming of meetings: No District Maps and Ward Boundaries to be available on the web site. Complaints and Adverse findings: No Primary and Annual Returns: Legislation should be amended to remove the requirement to make this information publically available.
EXPANDING THE INFORMATION PROVIDED TO THE PUBLIC	
105) Which of these options do you prefer? Why? 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 107) What other information do you think should be made available? 108) Do you have any other suggestions or comments on this topic?	It is considered that Option 1 – Status quo is most appropriate with the exception of Primary and Annual Returns to remove the requirement to make available to the public.
DEFINING RED TAPE	
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. a) Briefly describe the red tape problem you have identified b) What is the impact of this problem c) What solutions can you suggest to solve this red tape problem	All bureaucratic processes should be stream-lined to minimise costs and deliver the required outcome. Any identified risks must be managed appropriately but also in the context of the process and must not be overly-regulated.
SPECIAL MAJORITY	
111) Should the provisions for a special majority be removed? Why or why not?	It is considered appropriate to remove the Special Majority provision however consider that the legislation should only provide for all Mayors be publicly elected.
SENIOR EMPLOYEES	
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?	It is not considered appropriate for Elected Members or Council to be involved in the appointment, dismissal or performance management of any employee except for the CEO. Refer specifically to Section 5.41(g) that states that the CEO is responsible for the employment, management, supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees. Considering that the CEO is the only employee that Council directly employs and that all other employees are employed by the CEO, this change is considered appropriate.
113) Is it necessary for some employees to be designated as senior employees?	It is necessary for some employees to designated as senior employees for the sole purpose that only a senior employee can be designated as the local governments Complaints Officer and Acting CEO.
EXEMPTION FROM ACCOUNTING STANDARD AASB124 - RELATED PARTY DISCLOSURES	
114) Are the existing related party disclosure provisions in the Act sufficient without the additional requirements introduced by AASB125? Why or why not?	It is considered appropriate that the existing related party disclosures are sufficient however compliance with the requirements of AASB125 is still required.
DISPOSAL OF PROPERTY	
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? 116) Should the threshold remain at \$75,000 but with separate exemptions for specific types of equipment, for example plant?	It is considered appropriate to raise this threshold considering that some plant and equipment that are valued at amounts higher than the threshold. An exemption may not be appropriate as it may not include all the required items.
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? 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? 119) Is there an alternative model for managing the disposal of property? Please explain 120) Do you have any other suggestions or comments on this topic?	The threshold should match the threshold applied to State government especially as the risk and processes are the same between local governments and State government.
REGIONAL SUBSIDIARIES	

Department of Local Government, Sport, & Cultural Industries Phase 1 Consultation Paper Comment and Questions	City of Wanneroo Council Submission
121) Which option do you prefer? Option 1: Status Quo. Option 2: Permitted to borrow from Treasury Corporation. Option 3: Permitted to borrow from financial institutions.	It is considered that Option 3 is most appropriate but with the implementation of appropriate financial management regulations to mitigate risk.
122) Should regional subsidiaries be allowed to borrow money other than from the member councils? 123) Why or why not? 124) If a regional subsidiary is given the power to borrow directly, what provisions should be put in place to mitigate the risks? 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?	It is considered appropriate for regional subsidiaries to be allowed to borrow money from other member councils providing that appropriate financial management regulations are implemented. Appropriate to provide Regional Subsidiaries the powers and authority that would otherwise be provided to Council Controlled Organisations considering that the Act and Regulations already provide for Regional Subsidiaries notwithstanding the current restrictions in place.
LOCAL GOVERNMENT ACT REVIEW	
126) You are invited to make comment and put forward suggestions for change on other matters which have not been covered in this paper.	The legislation should allow for local governments to create Council Controlled Organisations to undertake provision of services in a competitive market providing that the requirements of the National Competition Policy are met and appropriate financial management regulations are implemented.