



Department of
**Local Government, Sport
and Cultural Industries**



Local Government Act 1995 review
Agile • Smart • Inclusive

Local Government Act 1995 **Review**

Agile • Smart • Inclusive – Local governments for the future

Phase 1: Consultation Paper

8 November 2017

Name: Dan Bull

1. Relationships between council and administration

Introductory questions

- 1) Would you like your submission to remain anonymous?
No
- 2) Postcode:
6053
- 3) Who are you submitting on behalf of?
Yourself
- 4) Local government name:
- 5) Organisation name
- 6) Are you a:
Elected member

Defining the roles of council and administration: Guidance questions

- 7) How should a council's role be defined? What should the definition include?
- 8) How should the role of the CEO and administration be defined?
- 9) What other comments would you like to make on the roles of council and administration?
- 10) Are there any areas where the separation of powers is particularly unclear?
- 11) How do you propose that these are improved?

Improving relationships between council and administration: Guidance question

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

2. Training

2.1 Competencies required to be an elected member

Elected member competencies: Guidance questions

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

Finance and budgeting; strategic planning; policy development; ability to recognise and deal with conflicts of interest.

- 14) Do these vary between local governments?

No

- 15) If so, in what way?

2.2 Funding training

Funding training: Guidance questions

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

- 17) 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?

- 18) Should contribution to such a fund be based on local government revenue or some other measure?

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

Utilisation of technology to deliver training and reduce costs should be looked at.

2.3 Mandatory training

Mandatory training: Guidance questions

19) Should elected member training be mandatory?

Yes

20) Why or why not?

The role of a Councillor is complex both in terms of the way a Cr should perform, as well as the legislative/regulatory framework in which the role is undertaken. That framework also continues to evolve.

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

Yes

22) Should this be Compulsory?

No

23) Should prior learning or service be recognised in place of completing training for elected members?

No

24) If yes, how would this work?

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

As soon as possible, and before the end of the year (on the assumption council elections continue to occur in October).

2.4 Continuing professional development

Continuing professional development: Guidance questions

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

Yes

27) If so, what form should this take?

Seminars and on-line training.

Training: Guidance question

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

3. The behaviour of elected members

3.1 Current Situation

Codes of conduct: Guidance questions

29) Should standards of conduct/behaviour differ between local governments?

No

30) Please explain.

All local governments should operate at the highest standard and with the most ethical and professional level of conduct.

Which option do you prefer for codes of conduct and why?

31) How should a code of conduct be enforced?

Through an independent panel of experts.

3.2 Regulation of elected member conduct: rules of conduct

Streamlined rules of conduct: Guidance questions

32) Do you support streamlined Rules of Conduct regulations?

33) Why?

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

35) Do you support a reduction in the time frame in which complaints can be made?

36) Is three months adequate?

Revised disciplinary framework: Guidance questions

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

- 39) What specific behaviours should an outcomes based framework target?

3.3 Other matters recommended in the 2015-16 review

Application of the Rules of Conduct: Guidance question

- 40) Should the rules of conduct that govern behaviour of elected members be extended to all candidates in council elections?

Yes

- 41) Please explain.

The act of making a complaint is serious in itself. There is the risk that it may be used as a tool to discredit an elected member. Keeping it confidential until resolved would assist in managing this risk.

Offence Provisions: Guidance questions

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

Yes

- 43) Why?

- 44) Should this restriction apply to former employees?

Yes

- 45) Please explain?

Confidentiality: Guidance question

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

Yes

- 47) Why?

The act of making a complaint is serious in itself. There is the risk that it may be used as a tool to discredit an elected member. Keeping it confidential until resolved would assist in managing this risk.

3.4 Reforms to the Local Government Standards Panel and the means to review alleged breaches of the Rules of Conduct Regulations

Sector conduct review committees: Guidance questions

- 48) What do you see as the benefits and disadvantages of this model?

- 49) What powers should the Conduct Review Committee have?

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

- 51) Who should be able to be a member of a panel: elected members, people with local government experience, independent stakeholders?
- 52) Who should select the members for the pool?

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

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

Review of elected member non-compliance: Guidance questions

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

- 57) Are there any other options that could be considered?

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

3.5 Sanctions and other Standard Panel matters

Mediation: Guidance question

- 59) Do you support the inclusion of mediation as a sanction for the Panel?
No
- 60) Why or why not?

Mediation should be used as a tool to assist in resolving disputes, as opposed to it acting as a sanction.

Prohibition from attending council meetings: Guidance questions

- 61) Do you support the Panel being able to prohibit elected members from attending council meetings?
No
- 62) Why or why not?

It may create circumstances where people are not represented. This is of greatest risk in respect to single member wards.

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

- 63) Should the elected member be eligible for sitting fees and allowances in these circumstances?
- 64) Why

Compensation to the local government: Guidance questions

- 65) Do you support the Panel being able to award financial compensation to the local government?

No

- 66) Why or why not?

While a fine may be utilised as a form of sanction, awarding financial compensation (presumably in line with the financial loss suffered) does not seem to be a sound principal of discipline. Additionally, it may be impracticable to determine the appropriate level of compensation payable depending on the ability to quantify the loss.

- 67) What should the maximum amount be?

Complaint administrative fee: Guidance questions

- 68) Do you support this option?

- 69) Why or why not?

- 70) Do you believe that a complaint administrative fee would deter complainants from lodging a complaint?

- 71) Is this appropriate?

- 72) Would a complaint administrative fee be appropriate for a sector conduct review committee model?
- 73) Why or why not?
- 74) What would be an appropriate fee for lodging a complaint?
- 75) Should the administrative fee be refunded with a finding of minor breach or should it be retained by the Department to offset costs?
- Yes
- 76) Why or why not?

Cost recovery to local government: Guidance questions

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

Publication of complaints in the annual report: Guidance question

- 79) Do you support the tabling of the decision report at the Ordinary Council Meeting?
- 80) Why or why not?

Tabling decision report at Ordinary Council Meeting: Guidance question

- 81) Do you support this option?
- 82) Why or why not?

3.6 Elected member interests

Elected member interests: Guidance questions

83) Should not-for-profit organisation members participate in council decisions affecting that organisation?

84) Why or why not?

Where a conflict of interest arises a councillor should recuse themselves. Issues can arise in smaller councils however where a number of councillors are members of the same organisation.

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

Improving the behaviour of elected members: Guidance question

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

The behaviour of an elected member may be influenced by a large community group or those with influence in their District or Ward. This has the potential for an elected member to possibly place greater weight on such a group's views as compared to the broader views of the district when making their decisions. Compulsory voting may assist in ameliorating this risk.

4. Local government administration

4.1 Recruitment and selection of local government Chief Executive Officers

Recruitment and selection of local government CEOs: Guidance questions

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

88) Why?

The status quo should remain.

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

90) Should the Public Sector Commission be involved in CEO recruitment and selection?

No

91) If so, how?

92) Should other experts be involved in CEO recruitment and selection?

93) If so, who and how?

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

4.2 Acting Chief Executive Officers

Acting CEOs: Guidance questions

- 95) Should the process of appointing an acting CEO be covered in legislation?

Yes

- 96) Why or why not?

The appointment of an acting CEO should be undertaken through the Council process.

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

The Council

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

The Council

4.3 Performance review of local government Chief Executive Officers

Performance review of local government CEOs: Guidance questions

- 99) Who should be involved in CEO performance reviews?

The Council, with the option for external assistance.

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

The performance should be measured against properly formed and Council approved KPIs.

101) How often should CEO performance be reviewed?

Minimum quarterly.

102) Which of the above options do you prefer?

103) Why?

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

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

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

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

No

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

Such issues should be regulated pursuant to the CEO's employment contract.

107) For what period before an election should there be a restriction on a council from extending a CEO contract?

108) Should there be any exceptions to this?

4.5 Public expectations of staff performance

Public expectations of staff performance: Guidance questions

- 109) Is greater oversight required over local government selection and recruitment of staff?
- 110) Should certain offences or other criteria exclude a person from being employed in a local government?
- 111) If so, what?

Strengthening local government administration: Guidance question

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

5. Supporting local governments in challenging times

Remedial intervention: Guidance questions

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

External party

114) Why?

It will provide greater independence.

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

116) Please explain.

117) Who should pay for the appointed person?

118) Why?

Powers of appointed person: Guidance question

119) What powers should an appointed person have?

The appointed person should have access to all information.

Remedial action process: Guidance questions

120) Do you think the proposed approach would improve the provision of good governance in Western Australia?

121) Please explain.

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

**Supporting local governments in challenging times:
Guidance question**

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

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

Transferability of employees: Guidance questions

124) 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?

125)

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

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

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

7. Gifts

7.1 Simplifying the gift provisions

A new framework for disclosing gifts: Guidance questions

128) Is the new framework for disclosing gifts appropriate?

129) If not, why?

Personal gifts with no connection to the local government, or are unlikely to should not be captured.

130) Is the threshold of \$500 appropriate?

No

131) If no, why?

Should be lower.

132) Should certain gifts – or gifts from particular classes or people – be prohibited?

133) Why or why not?

134) If yes, what gifts should be prohibited?

Excluding gifts received in a personal capacity: Guidance questions

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

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

Yes, to the extent the gift does not relate to the local government discretion or is reasonably unlikely to.

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

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

Gifts: Guidance question

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

8. Access to information

8.1 Public notices

Public notices: Guidance questions

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

Option 6

Why?

It will allow for the widest distribution.

141) Should the requirements for any notice in the Supplementary Information - Public Notices be changed?

142) Please list and explain the reasons for the proposed change.

143) Could any of the notices in the Supplementary information be published on alternative websites?

144) Please provide details

8.2 Information available for public inspection

Information available for public inspection: Guidance questions

145) 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				
Section 5.75 & 5.76	<p>Primary and Annual returns – for Elected members</p> <p>Includes – sources of income</p> <p>Trusts</p> <p>Debts</p> <p>Property holdings.</p> <p>Interests and positions in corporations.</p>				
Section 5.87	Discretionary disclosures generally				
Section 5.82	Gifts (already required to be on the website)				
Section 5.83	Disclosure of travel contributions (already required to be on the website)				
Elections Regulations 30H	Electoral gifts register				
Section 5.98A	Allowance for deputy mayor or deputy president				
Section 5.100	Payments for certain committee members				
Functions and General	Tenders register				

Regulations
17

Section 5.94 & Administration Regulations 29

Register of delegations to committees, CEO and employees

Minutes of council, committee and elector meetings

Future plan for the district

Annual Budget

Notice papers and agendas of meetings

Reports tabled at a council or committee meeting

Complaints register (concerning elected members)

Contracts of employment of the CEO and other senior local government employees

Schedule of fees and charges

Proposed local laws

Gazetted Local laws (and other law that has been adopted by the district)

Rates record

Electoral roll

Note: There is no intention to amend the current limitations imposed by section 5.95 of the Act which limits the disclosure of certain information.

146) Should the additional information that is available to the public in other jurisdictions be available here?

147) If so which items?

148) How should they be made available: in person, website only or both?

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

150) For Local Governments: How often do you receive requests from members of the public to see this information?

151) What resources do you estimate are involved in providing access in person (hours of staff time and hourly rate)?

Access to information: Guidance question

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

9. Available information

9.1 Expanding the information provided to the public

Expanding the information provided to the public: Guidance questions

153) Which of these options do you prefer?

Option 2: Additional reporting requirement

154) Why?

Increased transparency and easier access to information for the community.

155) 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:

Proposal	Should this be made available: No, optional, required?
Live streaming video of council meetings on local government website	
Diversity data on council membership and employees	
Elected member attendance rates at council meetings	
Elected member representation at external meetings/events	
Gender equity ratios for staff salaries	
Complaints made to the local government and actions taken	
Performance reviews of CEO and senior employees	

Proposal	Should this be made available: No, optional, required?
Website to provide information on differential rate categories	
District maps and ward boundaries	
Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission.	
Financial and non-financial benefits register	

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

Gift registers, travel registers, developer contact registers,

Expanding the information available to the public: Guidance question

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

Defining red tape: Guidance questions

158) 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.

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

I

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

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

159) 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? Please quantify if possible.

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

10.1 Potential red tape reductions

Special majority: Guidance question

160) Should the provisions for a special majority be removed?

161) Why or why not?

Senior employees: Guidance questions

- 162) 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?

- 163) Is it necessary for some employees to be designated as senior employees?

- 164) If so, what criteria should define which employees are senior employees?

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

- 165) Are the existing related party disclosure provisions in the Act sufficient without the additional requirements introduced by AASB 124?

- 166) Why or why not?

Disposal of property: Guidance questions

- 167) 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,

- 168) if so how high?

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

- 170) 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?

- 171) If so, what should it be and why?

- 172) 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?
- 173) Is there an alternative model for managing the disposal of property? Please explain.

Reducing red tape: Guidance question

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

11.1 Risks and benefits of borrowing

Regional subsidiaries: Guidance questions

- 175) Which option do you prefer?
- 176) Should regional subsidiaries be allowed to borrow money other than from the member councils?
- 177) Why or why not?

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

Regional subsidiaries: Guidance question

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

Local Government Act review: Guidance question

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