



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: Dennis GRIMWOOD

1. Relationships between council and administration

Introductory questions

- 1) Would you like your submission to remain anonymous?
No
- 2) Postcode:
6112
- 3) Who are you submitting on behalf of?
Yourself
- 4) Local government name:
- 5) Organisation name
- 6) Are you a:
Other

Defining the roles of council and administration: Guidance questions

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

A Councillor should represent the community he or she is elected to serve
However a Councillor is only one of many so can only achieve with the consensus and support of fellow Councillors. That is a political process independent of facts, logic, rationality or evidence.

ALL Councillors are required to vote on ALL matters before Council so ALL Councillors are involved in ALL issues and business

That can only be achieved by Councillors acting together collectively

Hence a Ward system which divides voters into sub-units of the district has the effect that each Councillor has limited influence on Council, because their power base - as evidenced by actual elector votes - is always small relative to the total eligible vote

Those Councillors "elected unopposed" cannot demonstrate ANY support from the electorate at all so theoretically have no voter base

The (sub) Committee system further diminishes Councillor influence by dividing the available number of Councillors into smaller units

On the other side of the scales a Councillor is responsible to no-one because Council itself is responsible or accountable to no-one

The existing roles are fine excepting they must be supported by a mandatory requirement to present elector issues to Council using a prescribed process. The present situation in law permits Councillors to ignore electors, ignore community issues, ignore complaints and ignore demands for action on community issues in a favour of being part of "the team" called "Council"

- 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?
Yes
- 11) How do you propose that these are improved?

The present system provides a Council, which is not a legal entity (person) is granted powers to decide for or against business presented by the CEO - business which affects every man, woman and child in their community

This is an all-care, no responsibility system because a Council is not accountable for its decisions - the LG is as a whole entity - which means the people of the district pay for their mistakes - which means in the real world it is "the people" who are accountable for their Council's actions or inactions, errors or omissions

Councillors MUST be personally accountable in law for their actions, so they will perform their statutory functions as intended

The Commonwealth Corporations Act might be a good starting point

Improving relationships between council and administration: Guidance question

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

The present system establishes a "virtual wall" between the CEO and Council

This is OK in theory but impracticable in the real world

It is written that "no man can serve two masters" and this is true for LG.

It is therefore essential that the staff report to the CEO ONLY

It is however essential that ALL Councillors should have free access to the CEO to discuss and explore issues and items of business. This may be done in a formal manner as prescribed by Regulation but it must be an available process to ensure that those Councillors, and particularly a Mayor, who have covert access may not gain advantage

It would also serve to satisfy elector enquiries submitted via their Councillor without having electors to present themselves to a Committee or Council meeting to ask a question which may or not be accepted, responded to or dismissed or provided with a misleading response

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?

Working knowledge of the key provisions of the LG Act 1960 and 1995

Working knowledge of all LG Regulations and subsidiary legislation

Working knowledge of all Local Laws

Understanding of duties and obligations to fairly represent electors within their district or ward

It is critical that Councillors understand that their office is a POLITICAL office and as such is open to public scrutiny in the same manner and to the same degree as Federal and State Parliamentary representatives

This applies individually as well as collectively

- 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)?

Each LG should pay for its training costs with perhaps state subsidies to small LG's

Training could be provided by TAFE or a similar institution - not the DLGC because it has shown in the past to be incapable of rational interpretation of legislation and unwilling to reveal its own shortcomings in legislation drafting by recommending constructive changes

A supplementary issue is the cost of training would be proportional to the number of Councillors. Fewer Councillors = lower training cost.

In Ward based LG's they currently have discretionary powers to determine the number of Wards and the number of representatives for each Ward.
Fewer Wards = lower training cost.

- 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?

Yes

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

State subsidies to small LG's based upon LG RATES revenue

"Revenue" includes grants and business activities and should not be included in supporting training which supports a political process

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

Yes.

It is fundamental principle of management that if you want someone to do what you want you have to tell them what you want

It is a further principle of management that unless a person has the skills and experience essential to performing a task then the result cannot be assured

2.3 Mandatory training

Mandatory training: Guidance questions

- 19) Should elected member training be mandatory?

Yes

- 20) Why or why not?

Because busy people will excuse themselves on grounds of not having time

Experienced Councillors will argue that they know it all already

A Council should be like a court jury - independent citizens bringing a wide variety of attitudes from a wide variety of backgrounds - so diversity is crucial to good government

Formal structured training should be AFTER election - not before

- 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?

Yes

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

No

- 24) If yes, how would this work?

Can't work because so long as each LG is autonomous then prior LG experience is irrelevant

RPL also enhances the standing of long-serving members to the disadvantage of new members - ie a "pecking order" is created

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

six months

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?

The LG Act, Regulations, Local laws, DLGC guidance documents etc are constantly changing

Hence ongoing training should be via the same process and by the same training delivery mechanism as the original training

The frequency of PD training could be at two yearly intervals to coincide with the election schedule - ie alongside new members

Training: Guidance question

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

Training should be delivered by persons independent of the LG system - eg TAFE

Past experience shows the bad habits of Councillors who have delivered in-house training for the DLGC have been passed on to future generations of Councillors, resulting in endemic manipulation of the LG system to the disadvantage of the community it serves

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.

It is outrageous that each of the 137 different LG's should have different stand-alone Codes for their conduct

Efficiency in government demands a UNIFORM Code of Conduct for ALL Councillors throughout the state.

Few State laws apply locally because they deem ALL people EQUAL before the law throughout the state. Not so in Local Government where each LG can devise their own laws and own Codes to suit their own standards

However the LG Act itself applies uniformly throughout the state as do the regulations, notices and orders

Why not ask criminals to write the Criminal Code - same scenario ?

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

Codes of Conduct can only ever be guidance documents because human behaviour - particularly political behaviour - often strives to operate outside the law

Local governments are masters at manipulating language and law so whatever might be written will be interpreted as to how they want it interpreted

To be effective a Code of Conduct MUST apply to a WHOLE Council COLLECTIVELY with provision for individual Members to lodge complaints when one or more members breach it - much like a football team is penalised (eg a "free kick") when one of its members breaches rules

It is relevant that the Uniform Building Code of Australia is a nationally implemented standard, routinely administered and enforced by Local Governments.

There can be no case for individual Codes for each LG

It is noted CEO's and staff are not included in a Council's Code of Conduct because they are employees. To have effect a Code of Conduct must include all "public officers" because they operate with delegated powers as if they were Council - ie they have "power of attorney" as well as being a servant and agent

In terms of accountability, there is a deep void between CEO and Council in which there is no accountability. Any CEO who has the support of Council is effectively immune from critique and accountability from the citizens he or she serves. The situation is even worse for executives and admin staff where the only avenue for complaint is via the CEO, who may simply choose to discretionally ignore complaints

31) How should a code of conduct be enforced?

The present system of a slap on the wrist is pathetic because it achieves absolutely nothing in the real world. It is a lip-service device to enable disgruntled Councillors a forum to which they might complain

In contrast, a Standing Orders Local Law - which usually includes conduct provisions - has immediate effect with penalties, however they are not enforced because that would be "rocking the boat" and destabilising a Council

In the City of Armadale Standing Orders Local Law there is provision for "members of council or the public" to be prosecuted for critiquing (speaking adversely) Council, councillors, executives or staff for their actions or inactions.

However there is NO provision for lodging complaints or allegations to Council since all correspondence must be to the CEO, who is a subordinate to Council

This citizen has been unreasonably and without justification both banned from asking public questions to the City and publically labeled an "adverse reflector" for asking reasonable public questions about serious matters of conduct. Formal complaints to DLGC have resulted in no action so a Code of Conduct is meaningless lip-service waffle.

Hence enforcement of a Code of Conduct must be by an independent agency - perhaps a unit within DLGC - where disaffected persons may lodge complaints alleging breaches

My recommendation is for Standing Orders prohibited from being a Local Law so that any breaches of conduct may be dealt with by enforcement of the uniform code.

Money penalties should apply as is the case with Regulations which control LG administration

It is essential members of the Public, Ratepayers and Electors be given the right to lodge complaints about alleged breaches of Codes of Conduct

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?

No

33) Why?

Because local governments are incapable of governing themselves with integrity. They do not deal with breaches at present so it is not expected that giving them local ability to solve breaches would work.

How would they do this ? Council sit as a Tribunal in judgement of itself or its Members ? That would be a breach of "natural justice"

Unless Regulations are sufficiently prescriptive and apply uniformly then each LG may mix and match interpretations to suit each individual case - favouring the popular Councillors and persecuting the unpopular - that's human nature

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

The "Minor Breaches" is a copout system. A breach is a breach.

Unless the system is applied uniformly then bias and favouritism will appear

In any other field of law there is no minor or major breach of law - one either complies or does not comply

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

No

36) Is three months adequate?

No

Revised disciplinary framework: Guidance questions

37) Do you support an outcome-based framework for elected members?

No

38) Why or why not?

Human behaviour is many and varied

Murder and rape are criminal offences carrying severe penalties but people still do them

Graft and corruption are prevalent in LG in a myriad of creative ways and past laws have not prevented their continuance, but gathering evidence is beyond the capacity of a citizen because processes, decision making and critical documentation are covert and suppressed

There is an offence of "careless driving" sometimes used as a catch-all for motorists. There is no reason why a similar creative offence could be designed for Councils

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

No

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.

Because complainants are not protected against libel

If a complaint is found to be unfounded or exaggerated then it can be filed away as resolved

Furthermore some complaints require investigation by higher authorities to discover facts and evidence not available to the complainant. Public declaration of complaints would also give advance warning to others, including colleagues, who may be able to withhold or tamper with evidence before an investigation is complete

"To be forewarned is to be forearmed"

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?

12 months is too short

In criminal law there is no time limit and in civil law it is six years

Councils make decisions which affect the lives of every citizen within its jurisdiction and should be accountable for those decisions and their consequences

What happens if a building collapses, or a disease or health condition results later on, or what happens if inept financial decisions or investments reap their harvest years later ?

What happens if land zoning changes affect people adversely in a manner which does not manifest until many years later ?

44) Should this restriction apply to former employees?

Yes

45) Please explain?

An organisation is responsible for its employees and what they do
In LG it is the CEO who bears this responsibility and is paid well for it
Hence a CEO should remain accountable for actions, inactions, errors or omissions.

Some form of professional indemnity insurance could cover the financial risk but there are risks other than financial which can cause harm

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?

Because complainants are not protected against libel

If a complaint is found to be unfounded or exaggerated then it can be filed away as resolved

Furthermore some complaints require investigation by higher authorities to discover facts and evidence not available to the complainant. Public declaration of complaints would also give advance warning to others, including colleagues, who may be able to withhold or tamper with evidence before an investigation is complete

"To be forewarned is to be forearmed"

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?

Complaints alleging breaches do not automatically go to a Standards Panel

In my case despite being supported with substantial documented evidence, several formal complaints submitted over several years have not gone anywhere near a Standards Panel, being summarily dismissed

In the case of in-house complaint review it must be acknowledged that notwithstanding LG's ALREADY have Codes of Conduct and complaints policy statements in place they invariably regard them as non-essential appendages supported by undefined practices and procedures

If I want to make a formal complaint I can look up my LG website and search away with no result. Then I must approach the front counter and declare to all present that I want to formally complain

If this process is to work it must be completely independent of the LG - ie a third party review

Those running the LG system seem to be paranoid about LG losing its independence and discretionary powers

49) What powers should the Conduct Review Committee have?

First it should not be a committee

A camel is a horse designed by a committee

Committees are all-care and no-responsibility entities which attract people who like to talk and participate in status generating activities

There are sufficient LG's and complaints to support an independent body - eg from a different government department to LG but one devoid of bias

An in-house LG committee is incapable of judging its own without bias either towards or against the complainee

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

ALL - Option 2 without the LG component - ie Standards Panel only

Matters may be accepted for consideration or rejected with reasons - eg insufficient evidence

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

Independent stakeholders

52) Who should select the members for the pool?

DLGC

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

Four - a chairperson and three members

Chairperson to vote when tied

54) Are the proposed actions for the Review Committee appropriate?

No

55) If not, what do you propose?

Members of LG's belong to an exclusive club of narcissistic personalities having a common purpose - which is perceived public glory and accolade

Their behaviour, supported by law, policies, practices and procedures, exudes hubris

To have such a body review the conduct of its club members is ludicrous

Just ask WALGA how good LG is. It's wonderful. No need for change - is great as is

Review of elected member non-compliance: Guidance questions

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

OPTION 2 - less step 1:- LG Complaints Officer

Is efficient, effective and allows the Rule of Law to prevail

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

Am OK with that

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

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?

Yes

- 60) Why or why not?

Can take the heat out of disagreement and offer potential for reconciliation

Offers CEO's opportunity to change policies, practices and procedures without formal censure

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?

Councillors are elected members and should be able to participate in meetings

In practice the only role a Councillor has in meetings is to speak to motions and vote so how can there be angst or malice in that process ?

It is the right of every elected Member to challenge each and every item of business

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

Nil

Banning a Member from participating disenfranchises electors

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

Yes

64) Why

Any form of penalty which excludes a Member from performing his statutory duty and function is wrong and misdirected

People do not lose their Drivers' Licence because they overstay a parking time zone

A monetary penalty is appropriate and might just reform Member conduct

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?

A LG is managed by highly paid persons who know very well what they are doing and what they should be doing. It is they who create the conditions for breaches

If complainants are to liable to compensate LG's then LG's can do what they want with no fear of correction or penalty

A LG is a corporate entity whereas it is individuals who perform breaches of law

Consequently each Councillor or Officer should be subject to monetary penalties but complainants should not be subject to cost penalties for failed outcomes

67) What should the maximum amount be?

NIL

Complaint administrative fee: Guidance questions

68) Do you support this option?

No

69) Why or why not?

If by the LG then yes because it acts as a deterrent to non-compliant behaviour

But NO if to be paid by the complainant

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

Yes

71) Is this appropriate?

No

72) Would a complaint administrative fee be appropriate for a sector conduct review committee model?

No

73) Why or why not?

Again, complainants act in the community interest in good faith against persons who they consider have not acted in the community interest

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

NIL

75) Should the administrative fee be refunded with a finding of minor breach or should it be retained by the Department to offset costs?

No

76) Why or why not?

Because government is government - ie a public function paid for by taxes

State and local government simply share functions within the same domain
If the DLGC fails to devise appropriate laws and processes for efficient and effective governance the it too should carry its share of costs

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?

No

78) Why or why not?

It should be paid by the LG as a deterrent to supporting that member's conduct

At most a period of four years would elapse before the next election and if the electorate believes the costs appropriate then they can vote that person out of office

if the electorate believes the costs not appropriate then they can vote that person back into office and thereby the community will carry the cost. Again the ward system disadvantages those not involved.

Publication of complaints in the annual report: Guidance question

79) Do you support the tabling of the decision report at the Ordinary Council Meeting?

Yes

80) Why or why not?

Transparency in government is a paramount and vital to informing the public/electors who has done what in their name

Tabling decision report at Ordinary Council Meeting: Guidance question

81) Do you support this option?

Yes

82) Why or why not?

Yes with reservations

If the report concerns private personal matters then it should remain private but if relating to abuse of office or undue influence or graft or corruption etc then it should be made public

Noting Council meetings are subject to the laws of libel, perhaps the way to do this is to extract from the decision report sufficient information for the public to understand the allegation and outcome without detail.

3.6 Elected member interests

Elected member interests: Guidance questions

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

No

84) Why or why not?

Promotes pork-barreling policies of grants, subsidies, concessions and other no-public forms of support such as providing LG staff to mow lawns, landscape, replace worn facilities and equipment etc

Councils have always used "sport" as a vote catcher and most maintain sporting facilities such as ovals, football and cricket ovals, swimming pools and "recreation centres which support indoor sports. In some case such facilities cost many millions of dollars up front, then perpetual recurring expenditure for maintenance and repair

Initial capital investment is unlikely to be attached to a particular NFP organisation even though there may only be one or two organisations who could potentially use it

Aged Care facilities and Senior Citizen Centres are another grey area for this topic

Recently the City of Armadale spent 4 million on a "community hall" which is in the grounds of the Dale Cottages Inc lands and is notionally dedicated to their exclusive use via a sham lease agreement. The City pays for maintenance and repair. That organisation does not pay rates, but owns a

thriving business leasing properties to aged residents who themselves do not pay rates. The site occupies 16 acres in the heart of the Armadale CBD, which makes this organisation very wealthy. The City has a representative on the Board of this NFP.

Although the arrangement is legal it is not equitable because every other aged pensioner landholder in the district has to pay 50% normal rates to the City. They receive little in return

The City Council has UNANIMOUSLY endorsed this arrangement several times over a very long period

It is a fine line between "community benefit" and wanton expenditure to win votes

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

Yes

Improving the behaviour of elected members: Guidance question

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

CITIZENSHIP:

There is no requirement for an elected member to be an Australian Citizen or Permanent Resident

Foreign nationals may stand for election to LG

Given the wide publicity describing the takeover of Australian agricultural, pastoral and mining lands by foreign government agents in recent years as part of their forward strategy to vertically integrate food and fuel supplies, it is essential to prevent such agents from influencing local government decisions which may enhance that strategy

Therefore it is imperative that the requirements of Section 44 (i), (ii) and (iii) of the Constitution of the Commonwealth of Australia be incorporated into the Local Government Act

CHAPTER I SECT 44

Disqualification

44. Any person who-

(i) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or

(ii) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or

(iii) Is an undischarged bankrupt or insolvent: or

(iv) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or

(v) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons: shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

Subsection (iv), "Holds any office of profit under the Crown," will exclude public servants and employees of OTHER LG's.

"any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth:" should not apply

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?

Yes

88) Why?

Councils are essentially self-interest entities having a focus on enforcing "their way" onto the community. Many have a natural tendency to enhance their powers and sphere of influence using "process" as their primary tool.

It follows a compliant CEO displaying dictatorial qualities and willing to subserviently serve as Council's compliant agent is the way forward

This bias is likely to distort the recruitment and selection process, so balance is required to deliver "better government" and to protect the community interest

CEO's in the metro area can have large workforces and it is essential for good government and administration that the best qualified person be appointed

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

Minimum standards set for selection criteria - ie education, qualifications, skills, experience, leadership abilities and track record

Psychological profiling/assessment for compatibility with the role

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

Yes

91) If so, how?

as above - eg provide a panel of experienced specialists independent of LG

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

Yes

93) If so, who and how?

Independent selection panel - preferably having standing members comprising an HR specialist, behavioural psychologist, experienced politician, experienced management specialist

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

Within the scope of LG a CEO performs the role of a community GOVERNOR and MUST relate to and SERVE the community which he or she serves as custodian of the community's assets

It is not a "them and us" function but a "WE" function

The role of CEO is similar to that of a CEO in a large private corporation so requires an incumbent who is capable of addressing many issues and performing many tasks simultaneously

A CEO is primarily a MANAGER and a LEADER

To perform function effectively a CEO must have strong managerial and leadership skills supported by a working knowledge of law and government (state and federal)

The functional areas of LG can be managed by their specialist respective directors or executives hence it is not essential for a CEO to know everything

Most importantly a CEO is given wide latitude in the role via legislation and delegated powers so a CEO MUST be a responsible person not prone to irrational decisions and actions

A CEO is required to report unlawful conduct by Councillors so must have a willingness to stand for truth, justice and propriety in face of personal risk

It is desirable for a university Degree programme covering LG Management, Community Governance, Administration and Law be established for future generational improvement in the LG industry

Most LG's operate "businesses" so skills in business management and operations management are also essential

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?

Because when the Acting CEO is in the role of CEO he or she IS the CEO

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

The CEO is the best person to assess the attributes of a replacement but may choose an incompetent for self-preservation

Maybe the CEO could recommend a suitable replacement to Council in advance on an "when-needed" basis, with Council making the actual appointment

Given Councillors are prohibited from interacting with staff it is theoretically the case that Councillors will not know their employees so whatever information they have will be hearsay

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 Public Service Commissioner or DLG from a panel of suitable applicants - not necessarily from the subject LG

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?

Uniform assessment across all LG's is desirable to ensure minimum state-wide standards for performance are being met

Independent standing panel of specialists

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

Uniform minimum state-wide standards

Confidential interviews with individual Councillors (to remove covert bias)

Confidential interviews with first tier executives

Confidential interviews with a sample of front-line staff

Normal organisational performance criteria such as KRA, KPI

101) How often should CEO performance be reviewed?

Annual

Scheduled for around February each year to enable results to be finalised and presented to Council within its current term of office - ie between elections

102) Which of the above options do you prefer?

Mix of Options 1, 2 and 3

Appointment of third-party assistance can be biased by Council's preferences so choice of third-party specialists should be via selection from a register of specialists chosen by the PSC

103) Why?

Yes

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

Always scope for improvement and a better way of doing things

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?

Yes

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

six months minimum

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

Six months

This question presents a problem in that if the schedule termination date is within that period then the CEO is in limbo

On the other hand if the CEO cannot be terminated within a defined period before or after an election then the CEO may become uncontrollable by Council - particularly if those Councillors responsible for termination remain in office

Best option is to configure CEO period contracts to a timeline which falls between elections - ie terminates 12 months before elections. This has the effect that an incoming Council will always be stuck with the selection of its predecessor

Another option is to not have qualifying periods for termination or dismissal but for a Council seeking CEO termination/dismissal to refer to an

independent authority such as the PSC or SAT for determination of the issue

108) Should there be any exceptions to this?

No

But a CEO must ALWAYS have a right to defend his record and performance and respond to all or any allegations made against him or her in a court or tribunal having sufficient capability to determine the matter fairly and justly

Councillors are politicians and that class of persons is not renowned for its integrity

Compensation should be payable against malicious or unfair dismissal

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?

No

110) Should certain offences or other criteria exclude a person from being employed in a local government?

Yes

111) If so, what?

Any breach of the Criminal Code of the Commonwealth or any State

Strengthening local government administration: Guidance question

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

LG administration is currently a basket case.; It is work creating and hence cost creating.

There are far too many discretionary areas resulting in an uneven application of statutory powers to the community

Far too much administration activity is performed in secret, preventing public scrutiny and enabling misuse of office

"Process" is used as a weapon against the community to prevent it discovering what is actually happening or planned to happen

The overlap between LG and town planning laws results in irrational and oppressive planning decisions having the force of law

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?
- 114) Why?

- 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?

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?

130) Is the threshold of \$500 appropriate?

131) If no, why?

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?

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?
Why?
- 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 Regulations 17	Tenders register
Section 5.94 & Administrati on	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?

154) Why?

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	
Website to provide information on differential rate categories	

Proposal	Should this be made available: No, optional, required?
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?

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.

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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.