



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

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1. Relationships between council and administration

Introductory questions

- 1) Would you like your submission to remain anonymous?
No
- 2) Postcode:
6055
- 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?

Aside from what is detailed above a councillor's prime role is to serve the ratepayers of the community who elected him/her. A councillor must act in the best interests of his/her constituents and not simply follow the party line. Councillors must make their own investigations into the business that requires a vote and not become reliant on officers' recommendations.
- 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?

Newly elected councillors should be mentored by outgoing councillors for a period of three months as well as being trained in the workings of local govt and financial management.

Improving relationships between council and administration: Guidance question

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

CEO packages should not be linked to the size of council, size of staff or the revenue raised they should be linked to operating within a budget that grows no greater than inflation. CEO KPIs must be linked with reducing the costs of operating a locality and for ratepayer satisfaction.

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?

Integrity and honesty.

- 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)?

State Govt should establish an investment fund so that training can be funded from investment income. Councillors who only stay one term and then retire should be called upon to make a pro-rata contribution to the fund. If the councillor is only one term but voted out they do not pay. If they go past one term then they do not have to pay.

- 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?

It should be state govt funded via the education budget and based upon the size of the entire local govt revenue and population.

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

I feel that given the size of the sector and the amounts of money involved these councillors and CEOs etc are basically running very large businesses and as such, they should be subject to the exact same laws as company directors. Remove all the "protections" from them and if they lie cheat and deceive their "shareholders" read in ratepayers then they can be prosecuted by ASIC for breaches of the Corporations Act. These are big businesses and as such these people must be held to account for their actions and decisions. Local Govt should be treated exactly the same way as the rest of Australians. No more sheltered workshops for those who could not get a job elsewhere in the private sector. Pay councillors more money so they can devote the time needed to be an effective member but hold them to account. Once a few have been jailed that would make the rest of them take notice and may just weed out some candidates who stand for the wrong reasons.

2.3 Mandatory training

Mandatory training: Guidance questions

19) Should elected member training be mandatory?

Yes

20) Why or why not?

Many new councillors have never been involved in running a business the size of a council budget so let's train these poor saps before they blow our money on frivolous items of perceived luxury.

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

No

22) Should this be Compulsory?

No

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

Yes

24) If yes, how would this work?

If a person has completed a company directors course where one is trained in looking after shareholder value then this should be taken into acct. Some additional units may still be required of course but at least the basics are in place.

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

6 months with 3 months of mentoring by an experienced councillor. NOT the CEO!!

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?

Online training, reading of relevant papers etc. Take a leaf out of the CPD regime of the Aust Inst of Company Directors.

Training: Guidance question

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

Get some.

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.

I feel that given the size of the sector and the amounts of money involved these councillors and CEOs etc are basically running very large businesses and as such, they should be subject to the exact same laws as company directors. Remove all the "protections" from them and if they lie cheat and deceive their "shareholders" read in ratepayers then they can be prosecuted by ASIC for breaches of the Corporations Act. These are big businesses and as such these people must be held to account for their actions and decisions. Local Govt should be treated exactly the same way as the rest of Australians. No more sheltered workshops for those who could not get a job elsewhere in the private sector. Pay councillors more money so they can devote the time needed to be an effective member but hold them to account. Once a few have been jailed that would make the rest of them take notice and may just weed out some candidates who stand for the wrong reasons.

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

See above

31) How should a code of conduct be enforced?

See above

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?

All of this can be covered off if councillors were treated as directors under the ASIC laws.

- 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?

Again if councillors were treated as directors penalties already apply.

- 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.

Prejudicial otherwise. innocent until proven guilty. Not trail be media.

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?

- 43) Why?

Does it apply to members of Parliament? If so then yes if not then no. Why should the councillors have a more restrictive working environment than the person making these laws?

- 44) Should this restriction apply to former employees?

- 45) Please explain?

I know of an ex-town planner who made a fortune using the knowledge of a particular site that the Govt was going to sell.

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?

Prejudicial otherwise. innocent until proven guilty. Not trail be media.

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?

Again if the councillors are treated the same as directors and come under Corps Law then this all goes away.

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?

Ditto previous comments. ASIC laws and regs take care of all of this.

- 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?
- 60) Why or why not?

Prohibition from attending council meetings: Guidance questions

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

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?

66) Why or why not?

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?

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?
Yes
- 82) Why or why not?
Open Govt is how it should run yes?

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?
Regardless of status, there is still a conflict of interest.
- 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?

I repeat bring them under the control of ASIC and Corporations Act and it is all done.

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?
- Many councillors are not recruiters of such an important position so yes they will need guidance.
- 89) How could the recruitment and selection of local government CEOs be improved?
- CEOs positions should have a four-year cycle and at the end of that, they must reapply. The overlap should work like this. 1 year after a council election has taken place the CEO position is declared vacant and they need to reapply. This will give the newly elected councillors 1 year working with the CEO to ensure he performs. This will stop the entrenched sheltered workshop - a job for life mentality that some LGA CEOs have.
- 90) Should the Public Sector Commission be involved in CEO recruitment and selection?
- Yes
- 91) If so, how?
- Guidance and the supply of requested information.
- 92) Should other experts be involved in CEO recruitment and selection?
- Yes
- 93) If so, who and how?
- Depending on the role and size of the council it may be prudent to spread the search thus using a recruitment service.

- 94) What competencies, attributes and qualifications should a CEO have?
The same as one would expect from a corporate CEO of a similarly sized business.

4.2 Acting Chief Executive Officers

Acting CEOs: Guidance questions

- 95) Should the process of appointing an acting CEO be covered in legislation?
No
- 96) Why or why not?
No point overcomplicating matters.
- 97) If so, who should appoint the CEO when there is a short term temporary vacancy (covering sick or annual leave for example)?
Councillors
- 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)?
Councillors or the minister depending on the size of the budget.

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?
Third party HR companies to run the process and the committee of councillors.
- 100) What should the criteria be for reviewing a CEO's performance?

Financial management and keeping costs in line with inflation. Keeping rate increases in line with inflation. Operating an efficient workforce and ensuring services are delivered to the community. Ensuring ratepayers are satisfied with council via surveys and feedback.

101) How often should CEO performance be reviewed?

6 months after initial appointment then 12 months.

102) Which of the above options do you prefer?

Hmm a combination of all three. Have a standard form that creates a guidance policy that can be modified to suit the particular council as one size does not fit all and then have a third party be involved in the process to look at matters without bias.

103) Why?

Yes

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

Have a look at what the ASX top 200 companies do and copy that. It works for them and the size of op

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?

12 months to give new councillors time to assess the CEOs effectiveness but if they are acting outside the terms of their employment sooner.

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

6 months

108) Should there be any exceptions to this?

No

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?

Yes

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

Yes

111) If so, what?

Child-related offences and fraud, major theft etc. Anything that carries a possible 12-month prison sentence.

Strengthening local government administration: Guidance question

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

As I have said repeatedly place them all in the same legal framework as ASIC and corps law. All of this is solved and the administration of it becomes a matter for ASIC and the feds.

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?

No bias or political leanings one way or the other. Perception is everything if a council is in trouble.

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.

I feel that the NSW model looks reasonable so the role would be to guide and assist and if need be take control as a last resort.

117) Who should pay for the appointed person?

State Govt

118) Why?

Local Govt is a delegated authority of the State Govt as such effectively acts as agents for the state. Ergo principal and agent may apply.

Powers of appointed person: Guidance question

119) What powers should an appointed person have?

Guide assist and if need be to take control.

Remedial action process: Guidance questions

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

Yes

121) Please explain.

If an LGA is failing it would be better to educate them rather than replace them as the cost has to be considered. However in the case of a particular Lord Mayor removal should have been open to the Minister. Again it is not a sheltered workshop!!

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

Experience in a large corporate environment.

Supporting local governments in challenging times: Guidance question

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

If we look at these as businesses and bring them under ASIC yes yes I have said it before!!!

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?

If they wish to move they can have their leave entitlements paid out and then start fresh. They can take cash or leave.

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?

Public service is a job not a job for life so if they change employers they change employers same as everyone else.

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?

Yes

129) If not, why?

It appears a sensible approach.

130) Is the threshold of \$500 appropriate?

Yes

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?

Yes

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

Gifts from associates and friends known to the person before they became a CEO or councillor. This may be a hard one to administer, however.

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

No

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? Make sense to have both used. In some areas, the older folks will still read a paper but in other areas where there are no papers then electronics will be used and but where papers are used both mediums should be used to capture all electors.

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

Both

Section 5.100 Payments for certain committee members

Both

Functions and General Regulations 17

Tenders register

Both

Section 5.94 & Administration Regulations 29

Register of delegations to committees, CEO and employees

Both

Minutes of council, committee and elector meetings

Both

Future plan for the district

Both

Annual Budget

Both

Notice papers and agendas of meetings

Both

Reports tabled at a council or committee meeting

Both

Complaints register (concerning elected members)

Both

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

Both

Schedule of fees and
charges

Both

Proposed local laws

Both

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

Both

Rates record

Both

Electoral roll

Both

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?

Transparency will help to restore faith in the LGA and politics in general. Exemptions to live streaming may be needed in some smaller LGAs where the cost will not create any additional benefit due to the number of ratepayers who cannot access the internet.

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	Required
Diversity data on council membership and employees	Required
Elected member attendance rates at council meetings	Required
Elected member representation at external meetings/events	Required
Gender equity ratios for staff salaries	Required
Complaints made to the local government and actions taken	Required
Performance reviews of CEO and senior employees	Required

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

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.

Planning approvals and the burdens thereof are crazy in this state and the LGAs hide behind Dept of Planning saying it is their regulations that create the stupid situations where arse covering is what it is about not good planning or common sense.

I

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

Projects costs blow out and then either become unviable thus they don't get done or the end cost to the end user is way higher than it needed to be. Holding costs are crazy in this environment.

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

Reduce the amount of silly reports that are required and keep the WAPC out of it.

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.

Example. I was told by a planning officer at the City of Belmont that I needed an independent traffic management study done for a small scale change of use for a building I was going to buy. I thought that was a bit stupid so called the Mayor who basically told me it was an arse covering exercise require by the WAPC so BCC could not be sued if there was a car accident with traffic accessing my building. I had the study done by an independent company of traffic engineers and then gave it to council. I was told that the officer did not believe the study and I had to do it again. I told them that I had done what was asked and if they did not believe it then they could do their own. After nearly six months of being stuffed about like this I gave up kept my few million dollars and moved on. The building is still there empty and unused 12 months later. Not a great use of buildings in a locality is it? It is not a good look to have too many empty buildings laying about but council officers do not see that or care one bit.

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

5 Million dollars worth of investment moved on. How many more 5 or 10 million dollar projects have been lost to this sort of nonsense.

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

Make the councils funding it receives from the state dependant on the number of development projects it approves within a particular time frame. If they fail to meet the quota the funds are reduced. If they make target they get the funds if not it is reduced on a sliding scale.

10.1 Potential red tape reductions

Special majority: Guidance question

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

No

161) Why or why not?

It does not affect many councils so why change it.

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?

In some cases, there may be a conflict between a new CEO and senior staff. If the CEO has the ultimate right to hire and fire senior staff without any oversight I could see a situation in some cases where the CEO could load the senior staff with "mates" which could lead to all sorts of rorts and shenanigans.

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

Yes

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

Those who report directly to the CEO. These people handle staff, portfolios and budgets.

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?

No

166) Why or why not?

Keep it standard across corporates and LGA that way if these folks come under ASIC control it is simple.

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,

Yes

168) if so how high?

200k

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

Yes

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?

No

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

Obvious I would have thought.

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?

No

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?

Make the planning process a bit easier with less arse covering:-)

11.1 Risks and benefits of borrowing

Regional subsidiaries: Guidance questions

175) Which option do you prefer?

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

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

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

177) Why or why not?

Creates options

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.

Can't wait for the next phase relating to rating systems!!!