



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



Communications Agreements Consultation Paper

Local Government Reforms

Background

The *Local Government Amendment Act 2023* (2023 Amendment Act) was passed by Parliament in May 2023 and made a series of amendments to the *Local Government Act 1995* (the Act).

The 2023 Amendment Act implements several key reforms, including those relating to local government elections, as well as some changes which are yet to commence. These include the requirement for a communications agreement between the council and the administration of a local government.

To implement these reforms, the Western Australian (WA) Government has prepared the draft Local Government Regulations Amendment Regulations 2025 and the draft Local Government (Default Communications Agreement) Order 2025.

These proposed draft regulations and the draft order are published on the Department of Local Government, Sport and Cultural Industries (DLGSC) website and are available for public comment until **Friday 25 July 2025**. This consultation paper sets out the aims of these reforms and the proposed legislative requirements.

DLGSC invites local governments, council members, CEOs, local government employees and members of the community to consider the proposed regulations and provide feedback. The feedback received will inform the finalisation of draft regulations and the draft order and the implementation of these changes.

Submissions can be made to DLGSC's Act Review team by:

1. email to actreview@dlgsc.wa.gov.au
2. post to:
DLGSC Act Review
PO Box 8349
PERTH BUSINESS CENTRE WA 6849

Your say and your privacy

Submissions will be treated as public documents unless explicitly requested otherwise.

If you do not consent to your submission being treated as a public document, you should mark it as confidential, or specifically identify the confidential information, and include an explanation.

Please note, even if your submission is treated as confidential by DLGSC, it may still be disclosed in accordance with the requirements of the *Freedom of Information Act 1995* (WA) or any other applicable written law.

DLGSC reserves the right to redact any content that could be regarded as racially vilifying, derogatory or defamatory to an individual or an organisation.

Establishing regulations for communications agreements

The communications agreement is intended to function as a fundamental governance instrument within each local government to set out minimum expectations for formal communications between council members and employees of the local government.

Communications agreements currently exist between each Minister of the WA Government and the agencies that support them. These agreements set out who Ministers and their staff may contact within an agency, what they may request, how they can expect their request to be dealt with and when they can expect a response.

In a local government context, new sections 5.92A – 5.92C inserted by the 2023 Amendment Act provide that:

- each local government must have a communications agreement which deals with the matters required by the Act and regulations
- a local government may adopt a communications agreement by the council and the CEO **both agreeing** to its terms
- if a local government does not adopt or is unable to adopt a communications agreement, the default communications agreement set out in a ministerial order applies.

The draft Local Government Regulations Amendment Regulations 2025 seek to address minimum requirements for and enforcement of communications agreements.

Administration Regulations (amending regulations 3 to 8)

Amending regulations 3 to 8 set out a series of amendments to the Local Government (Administration) Regulations 1996 to deal with communications agreements.

Amending regulation 4 inserts a definition of communications agreements into the regulations.

Amending regulation 5 clarifies that the regulations regarding the employee code of conduct apply to employees of the local government, not contractors.

Amending regulation 6 requires the employee code of conduct to require a local government employee to comply with the communications agreement.

Amending regulation 7 inserts new regulations 28C and 28D.

Regulation 28C provides that in addition to the matters set out in the to be proclaimed section 5.92A of the Act, a communications agreement needs to set out the circumstances in which correspondence sent by the Mayor or President on behalf of the local government must be provided to all council members by the CEO.

Regulation 28D provides that there must be certain minimum content in a communications agreement adopted by a local government and its CEO.

Subregulation (1) provides definitions of an administrative matter and a request for information.

Subregulation (2) provides that a communications agreement must address:

- how council members and committee members can make requests for information
- the time within which a response to a request for information must be given
- the way in which information must be provided in response to a request for information
- a dispute resolution process
- which local government employees, council members and committee members may communicate or have dealings with relating to requests for information.

Subregulation (3) clarifies that the communications agreement does not apply to:

- deliberations at a council or committee meeting
- the process that needs to be undertaken for the recruitment, performance review or employment termination of the CEO.

This recognises that a Mayor or President and duly authorised council members may need to communicate with employees or contractors of the local government other than through the CEO to facilitate the recruitment, performance review or termination process.

Subregulation (4) provides that a communications agreement must address:

- how council members and committee members can make request for administrative assistance
- the time within which a response to a request for administrative assistance must be given
- the way in which information must be provided in response to a request for administrative assistance
- which local government employees, council members and committee members may communicate or have dealings with relating to administrative matters.

Subregulation (5) provides for circumstances where commissioners are administering the local government. This regulation provides that the commissioner may request information or assistance in the manner determined by the commissioner from any local government employee and that, if requested, it must be provided to the commissioner as soon as practicable. Where there is a dispute, it is resolved by the commissioner (or the chair commissioner if there is more than one commissioner).

This reflects that the circumstances that require the appointment of commissioners are unique, and as a result a commissioner should typically not be constrained by a communications agreement when undertaking the process required to restore good government to a local government district.

Regulation 8 provides for the default communications agreement ministerial order to be made prior to 19 October 2025.

Model code of conduct (amending regulations 9 & 10)

To ensure council and committee members comply with the communications agreement, it is proposed that contraventions of the agreement be dealt with under the code of conduct for council members, committee members and candidates.

Amending regulation 10(1) provides that a contravention of section 5.92(3) of the Act, which states that a council member or committee member must comply with the communications agreement, will be a behavioural breach. This means that the breach is dealt with internally by the local government, rather than through the Local Government Standards Panel process. Circumstances where a council member involves themselves in the administration of the local government without authority, or where a council member seeks to direct a local government employee, will remain a rule of conduct breach.

Amending 10(2)-(3) makes an amendment to clause 20 of the model code of conduct. Clause 20 currently provides that a council member or candidate cannot direct a local government employee. This amendment clarifies that the rule of conduct against directing a local government employee does not apply where the council member is acting consistently with the communications agreement in seeking information or administrative assistance.

Default Communications Agreement Order

The 2023 Amendment Act inserted new section 5.92B, which provides for the Minister for Local Government, by order, to set out a form of default communications agreement. This will be considered the communications agreement of the local government at any time that the local government has not adopted a communications agreement of its own or the agreement has expired.

A local government's communications agreement will expire at the end of the local government's caretaker period following an ordinary election, or otherwise at the end of the employment of the CEO who agreed to that communications agreement.

It is important to note the range of circumstances where a local government will fall onto this default agreement. If unable to form an agreement of their own, a local government will be bound by this default agreement. If local governments and CEOs wish to alter something contained in the default agreement, they will need to reach an agreement on an alternative communications agreement.

The proposed default communications agreement is contained in Schedule 1 of the draft Local Government (Default Communications Agreement) Order 2025.

Preliminary provisions (Division 1 of the draft order)

The preliminary components of the agreement include definition and application clauses which address how the agreement is to be interpreted and applied.

The definition of an 'administrative matter' is important in that it clarifies what is considered an administrative matter for a council members' potential request.

Clause 3 (Application) provides that this agreement does not apply to:

- deliberations at a council or committee meeting (which to be dealt with by standardised meeting procedures)
- the process of CEO recruitment, performance reviews or termination of employment, in accordance with the CEO employment standards of the local government.

This covers practical situations, such as the Mayor or President needing to engage closely with the local government's human resources function and consultants in relation to certain instances of managing the employment of the CEO.

General provisions (Division 2 of the draft order)

Clauses 4 to 7 provide a series of general provisions.

Clause 4 addresses the general principles of the agreement:

- That the CEO supports council and committee members to fulfill their functions, including by providing information and administrative assistance that allows them to do so, and ensuring that employees communicate with council members in accordance with the agreement.
- That the council and committee members conduct themselves in accordance with the agreement to ensure the orderly running of the local government.

Clause 5 provides that, in general, all council members should receive a copy of formal correspondence sent by the Mayor or President on behalf of the local government. This reflects the Mayor or President's role of as a spokesperson of the local government, consistent with the decisions of the council. In exceptional circumstances the Mayor or President can decide it is not appropriate to provide such correspondence to all council members. If this is done where exceptional circumstances do not exist, it may constitute a breach of the agreement by the Mayor or President.

Clause 6 clarifies that requests for information or administrative should not be made during social or incidental dealings with employees or contractors, as these interactions are not an appropriate time to seek information.

Clause 7 clarifies that this agreement does not prevent social or incidental dealings or communications between council members and employees.

Clause 8 provides for the nomination of employees by the CEO, which is an important aspect of this agreement as it provides for who within the local government council members may speak with. This is similar to the approved contacts list used for WA Government communications agreements between Ministers and their agency(s).

These employees should be the most relevant employees for the council members to appropriately interact with, such as a local government's governance team, their directors (or equivalents), the executive assistant to the CEO, the communications manager or similar roles.

The clause specifies the number of employees to be nominated for each class of local government, reflecting the size of those local governments. It further clarifies that a CEO may specify that the employee is nominated for particular types of enquiries, such as nominating a communications manager for media enquiries. The CEO is required to maintain an up to date register for council and committee members of these employees and what they are able to be contacted for.

Clause 9 makes clear that the CEO determines who responds to a request for information.

Clause 10 further clarifies that nothing in this agreement requires a CEO or any other employee to respond to a request outside of office hours.

Requests for information generally (Division 3 of the draft order)

Clauses 11 to 16 deal with general requirements that apply to all requests for information.

Clause 11 provides for council and committee members to make requests for information.

Clause 12 sets out the types of information a member may request and the types of additional information a Mayor or President may request from the local government; however, this clause does not limit what information may be sought.

Clause 13 addresses certain things a council member must provide to assist the local government to respond to the request. This includes an appropriate scope, or a copy of correspondence received by the council member where they are seeking advice that relates to the correspondence.

Clause 14 deals with the circumstances where information does not need to be provided to a member, being:

- where the agreement has not been followed
- if the council member is not entitled to that information
- if the information is not held by the local government and unable to be reasonably obtained
- if in the CEO's view, preparing or providing the information would require substantial diversion of the local government's resources.

Clause 15 deals with disputes regarding the provision of information. This provision provides that a council member who is unhappy with a refusal of information may dispute the matter. Initially this should be sought to be resolved at a meeting between the council member, Mayor or President and CEO. If this does not resolve the matter, the council member should refer the matter to the council to resolve whether the information should be provided or not.

Clause 16 clarifies that the Mayor or President may discuss a media enquiry with the CEO or an appropriate nominated employee without making a request for information. This reflects that media enquiries often require urgent responses that are best dealt with promptly.

Responding to requests for information (Division 4 of the draft order)

Clause 17 to 24 deal with responding to requests for information that do not relate to administrative assistance.

Clause 17 provides that this division does not relate to an administrative request for information.

Clause 18 provides that a request for information is to be made to the CEO or an appropriate nominated employee in writing by email or such other electronic means approved by the CEO (such as a portal or similar).

Clause 19 requires the CEO to ensure that a request is acknowledged in writing within 2 working days of the request being made. This does not require the CEO to personally acknowledge the request, just ensure that a mechanism is established for their acknowledgement.

Clause 20 provides that for the purpose of responding to a request for information the CEO or other appropriate employee can discuss the request with the member for the purpose of clarifying the scope or subject of the request and enabling the request to be considered amended as a result of those discussions.

Clause 21 deals with the provision of a response to a request by providing:

- The request must be dealt with as soon as practicable.
- If a request relates to a matter on the agenda of an upcoming council or committee meeting, best endeavours are made to provide the response before that meeting.
- Requests are dealt with within 10 working days by either providing a final response or providing notice of when the final response will be given.
- Final responses should be in writing and include any advice or information relating to the request.
- If the final response is to refuse or partially refuse the request, the reasons for the refusal are given to the council member.

Clause 22 provides that a response to a request for information should generally be provided to all council members and relevant committee members, ensuring all members receive the same information. However, there are proposed exceptions to this where:

- The request is for advice on correspondence received by an individual council member. In these cases, the advice should only be given to the member or members who received the correspondence.
- The request relates to matters that only the Mayor or President can request; in which case those replies should only be given to the Mayor or President.
- The council member and the CEO agree that the matter should be treated confidentially because it is appropriate in the particular circumstances.

Clause 23 provides that the member may discuss the response to their request with the CEO or an appropriate nominated employee in order to clarify or address queries with the response.

Clause 24 provides that the CEO may arrange for a briefing, meeting or other discussion for members on the particular information requested. Members may be provided with information through these avenues, including members being able to seek further information following a briefing, meeting or other discussion.

Responding to administrative requests (Division 5 of the draft order)

Clause 25 to 28 deal with responding to administrative requests.

Clause 25 provides that administrative requests encompass an administrative request for information or a request for administrative assistance.

Clause 26 provides that a member may request administrative assistance regarding an administrative matter.

Clause 27 provides that these requests are:

- To be made to the CEO or the appropriate nominated employee.
- These requests may be made verbally, but the CEO or employee can refuse to deal with the request unless it is in writing.
- If a request is made in writing it must be made via email or other electronic means approved by the CEO (such as a portal).

Clause 28 deals with the provision of a response to an administrative request by providing:

- The request must be dealt with as soon as practicable.
- Requests are dealt with within 10 working days by either providing a final response or providing notice of when the final response will be given.
- Final responses to an administrative request may be verbally or in writing.

Commissioners (Division 6 of the draft order)

Clauses 29 and 30 deal with this agreement in relation to a commissioner appointed to administer a local government.

Clause 29 provides that the agreement applies to a commissioner as if the commissioner were the council and the Mayor or President.

Clause 30 provides that the commissioner:

- may request information from any local government employee for provision to the commissioner as soon as practicable
- where there is a dispute, it is to be resolved by the commissioner or the chair commissioner (if there is more than one commissioner).

This reflects that the circumstances that require the appointment of commissioners are unique, and as a result a commissioner should typically not be constrained by a communications agreement when undertaking the process required to restore good government to a local government district.



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