

AR054: REVIEW OF THE LOCAL GOVERNMENT ACT 1995

Business Entity Name	: City of Albany
Attachments	: Nil
Report Prepared By	: Manager Governance & Risk (S Jamieson)
Responsible Officers:	: Chief Executive Officer (A Sharpe)

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Theme:** Leadership.
 - **Objective:** To provide strong, accountable leadership supported by a skilled and professional workforce
 - **Community Priority:** Provider positive leadership that delivers community outcomes.

In Brief:

- WALGA is offering an opportunity for member Local Governments submissions to consider, review, amend and add to the advocacy positions endorsed by State Council in March 2018 following the Phase 1 review process.
- Council is asked to review, endorse and/or amend the positions and recommendations (attached) and detailed in the report.

RECOMMENDATION

AR054: RESOLUTION

VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR DOUGHTY

SECONDED: COUNCILLOR MOIR

THAT the WALGA Policy Positions and Recommended Courses of Action, detailed in the report be ENDORSED, specifically the following position statements:

- The Local Government Act 1995 should be amended to enable Local Governments to establish Beneficial Enterprises (formerly known as Council Controlled Organisations).
- The tender threshold should be increased to align with the State Government tender threshold of \$250,000, with a timeframe of one financial year for individual vendors.
- That Regulation 30(3) be amended to delete any financial threshold limitation (currently \$75,000) on a disposition where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.
- That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.
- Legislation should be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government.
- That Section 6.56 be amended to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to the 'cost of proceedings'.
- Resource projects covered by State Agreement Acts should be liable for Local Government rates.
- Section 5.27 of the Local Government Act 1995 should be amended so that Electors' General Meetings are not compulsory.

- **The Local Government Act 1995 should be amended to allow the Australian Electoral Commission (AEC) and or any other third party provider to conduct postal elections.**
- **Voting in Local Government elections should remain voluntary.**
- **Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.**
- **Elections should be conducted utilising the first-past-the-post (FPTP) method of voting.**

CARRIED 13-0

AR054: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR TERRY

SECONDED: COUNCILLOR DOUGHTY

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED 7-0

AR054: COMMITTEE RECOMMENDATION

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- Resource projects covered by State Agreement Acts should be liable for Local Government rates.
- Section 5.27 of the Local Government Act 1995 should be amended so that Electors' General Meetings are not compulsory.
- The Local Government Act 1995 should be amended to allow the Australian Electoral Commission (AEC) and or any other third party provider to conduct postal elections.
- Voting in Local Government elections should remain voluntary.
- Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.
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BACKGROUND

2. The Minister for Local Government commenced a review of the Local Government Act with both a community and a Local Government consultation process in 2017.
3. It is anticipated an Amendment Bill dealing with matters raised under **Phase 1** – gifts, training for Council members, behaviours, administrative efficiencies etc. - will soon be presented to Parliament.
4. The Department developed detailed Discussion Papers for each of the 11 themes with accompanying questionnaires.
 - a. **Agile:** Beneficial Enterprises | Financial Management | Rates
 - b. **Smart:** Administrative Efficiencies | Local Laws | Council Meetings | Interventions
 - c. **Inclusive:** Community Engagement | Integrated Planning and Reporting | Complaints Management | Elections
5. The Department is seeking and accepting responses from Local Governments, individual Elected Members, Officers and the general community.
WALGA Feedback Opportunity:
6. WALGA's intention is to provide a means for Local Governments to offer submissions on any aspect of the 11 themes discussed under the 'Smart, Agile, Inclusive' headings or any other matter of interest that can feed into the Act review process.
7. WALGA has requested local governments respond so that an Agenda Item can be presented to the Zone Meetings leading up to the March 2019 State Council Meeting.
8. In addition to this opportunity, WALGA is planning a State-wide Forum on the future of Local Government in late January/ early February 2019. The forum will include a review of the information coming through from the Local Government Act forums and submissions.

DISCUSSION

WALGA Advocacy Positions & Review Principles:

9. That State Council endorse the following general principles as being fundamental to its response to the review of the Local Government Act:
 - a. Uphold the General Competence Principle currently embodied in the Local Government Act;
 - b. Provide for a flexible, principles-based legislative framework; and
 - c. Promote a size and scale compliance regime.

Key Topic Area: Agile

Agile includes topics that focus specifically on how local governments can best use their resources to adapt to changing conditions. It is important that they can strike a balance between community expectations, the practical limitations of revenue and expenditure and external pressures.

10. **Local government run businesses (beneficial enterprises)** [fact sheet and discussion paper](#).
11. Ideas for change:
 - Modernise the legislation to provide local governments with the option to form beneficial enterprises.
 - Local government to develop a business plan to address community expectations and ensure transparency of funding and viability arrangements.
 - Introduce eligibility criteria that a local government must meet before it can establish a beneficial enterprise.

BENEFICIAL ENTERPRISES

Position Statement: The Local Government Act 1995 should be amended to enable Local Governments to establish Beneficial Enterprises (formerly known as Council Controlled Organisations).

WALGA has been advocating for Local Governments to have the ability to form Beneficial Enterprises (formerly known as Council Controlled Organisations) for approximately ten (10) years.

A Beneficial Enterprises is a standalone arm's length business entity to carry out commercial enterprises and to deliver projects and services for the community. Local Governments would have the ability to create Beneficial Enterprises through the Local Government Act, however the stand alone business entity would be governed by the Corporations Act (i.e. normal company law).

Beneficial Enterprises provide services and facilities that are not attractive to private investors or where there is market failure. A Beneficial Enterprise cannot carry out a regulatory function of a Local Government.

Examples:

- **Urban regeneration:** A Land Development may not be attractive to a private developer, however the ability to develop the land may be beneficial for the Local Government in respect to strategic development/connection of an area. Or may be worth a joint venture with a developer.
- **Measures to address economic decline in Regional WA** – A small business may not be viable for a private citizen, however maybe considered an essential service for the Local Government. i.e.: could be the local Pharmacy or local mechanical workshop.

Benefits of establishing a Beneficial Enterprise include:

- The ability to employ professional directors and management with experience specific to the commercial objectives of the entity;
- Removal of detailed investment decisions from day-to-day political processes while retaining political oversight of the overarching objectives and strategy;
- The ability to take an overall view of commercial strategy and outcomes rather than having each individual transaction within a complex chain of inter-related decisions being subject to the individual notification and approval requirements of the Local Government Act;
- The ability to quarantine ratepayers from legal liability and financial risk arising from commercial or investment activities;
- The ability to set clear financial and non-financial performance objectives for the entity to achieve; and
- Greater flexibility to enter into joint venture and partnering relationships with the private sector on conventional commercial terms.

12. **Financial management** [fact sheet and discussion paper](#).

13. Ideas for change:

- Align purchasing rules with the State Government.
- Change the threshold for advertising public tenders.
- Modernise rules for investments.
- Modernise rules for borrowing.

FINANCIAL MANAGEMENT

Tender Threshold

Position Statement: WALGA supports an increase in the tender threshold to align with the State Government tender threshold of \$250 000, with a timeframe of one financial year for individual vendors.

Procurement

WALGA seeks inclusion of the following position, to permit a procurement activity involving a disposal trade-in activity to qualify as a broad exemption under Regulation 30(3) of the Local Government (Functions and General) Regulations:

FINANCIAL MANAGEMENT

Procurement

Position Statement: That Regulation 30(3) be amended to delete any financial threshold limitation (currently \$75,000) on a disposition where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.

Imposition of Fees and Charges: Section 6.16

Position Statement: That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.

Power to Borrow: Section 6.20

That Section 6.20(2) of the Local Government Act, requiring one month's public notice of the intent to borrow, be deleted.

Basis of Rates: Section 6.28

That Section 6.28 be reviewed to examine the limitations of the current methods of valuation of land, Gross Rental Value or Unimproved Value, and explore other alternatives including simplifying and providing consistency in the rating of mining activities.

Differential General Rates: Section 6.33

That Section 6.33 of the Local Government Act be reviewed in contemplation of time-based differential rating, to encourage development of vacant land.

Member Interests - Exemption from AASB 124

Elected Member obligations to declare interest are sufficiently inclusive that WALGA seeks an amendment to create an exemption under Regulation 4 of the Local Government (Financial Management) Regulations relating to AASB 124 'Related Party Transactions' of the Australian Accounting Standards (AAS).

14. **Rates, fees and charges** [fact sheet and discussion paper](#).

15. Ideas for change:

- Introduce a requirement to develop and consult on a Rates and Revenue Strategy.
- Remove or amend exemptions from rates.
- Standardise rating categories between local governments.
- Fees and charges to be set at cost recovery.
- Remove requirement for Ministerial approval of large disparities in rates.

RATES, FEES AND CHARGES

Imposition of Fees and Charges: Section 6.16

Position Statement: That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.

Rating Exemptions – Charitable Purposes: Section 6.26(2)(g)

1. Amend the Local Government Act to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth Aged Care Act 1997;
2. Either:
 - (a) amend the charitable organisations section of the Local Government Act 1995 to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or
 - (b) establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates; and
3. Request that a broad review be conducted into the justification and fairness of all rating exemption categories currently prescribed under Section 6.26 of the Local Government Act.

Rating Exemptions – Rate Equivalency Payments

Position Statement: Legislation should be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government.

Rates or Service Charges Recoverable in Court: Section 6.56

Position Statement: That Section 6.56 be amended to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to the 'cost of proceedings'.

Rating Restrictions – State Agreement Acts

Position Statement: Resource projects covered by State Agreement Acts should be liable for Local Government rates.

Key Topic Area: Smart

Smart includes topics that focus specifically on enabling local governments to better meet the needs and expectations of their communities through being transparent and accountable.

16. **Reducing red tape (administrative efficiencies – local laws)** [fact sheet and discussion paper](#).

17. Ideas for change:

- Local Laws:
 - Provide more consistency in local laws between districts.
 - Require local governments to have their local laws certified by a legal practitioner.
 - Combine the functions of the Local Government Grants Commission which provides financial assistance grants to local governments across Australia, and the Advisory Board, which makes recommendations to the Minister for Local Government on proposals to change local government boundaries, wards and councillor numbers.
 - Remove outdated sections of the Act.
- Administrative efficiencies:
 - Combining the Grants Commission with the Advisory Board
 - Review of decisions that require absolute majority
 - Impounding provisions

ADMINISTRATIVE EFFICIENCIES

Control of Certain Unvested Facilities: Section 3.53

WALGA seeks consideration that Section 3.53 be repealed and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.

ADMINISTRATIVE EFFICIENCIES

Local Government Grants Commission and Local Government Advisory Board

WALGA seeks inclusion of a proposal to allow electors of a Local Government affected by any boundary change or amalgamation proposal entitlement to petition the Minister for a binding poll under Schedule 2.1 of the Local Government Act.

Schedule 2.1 – Proposal to the Advisory Board, Number of Electors

That Schedule 2.1 Clause 2(1)(d) be amended so that the prescribed number of electors required to put forward a proposal for change increase from 250 (or 10% of electors) to 500 (or 10% of electors) whichever is fewer.

ADMINISTRATIVE EFFICIENCIES

Schedule 2.2 – Proposal to amend names, wards and representation, Number of Electors

That Schedule 2.2 Clause 3(1) be amended so that the prescribed number of electors required to put forward a submission increase from 250 (or 10% of electors) to 500 (or 10% of electors) whichever is fewer.

Transferability of employees between State & Local Government (Questions 82-84)

A General Agreement between State and Local Government should be established to facilitate the transfer of accrued leave entitlements (annual leave, sick leave, superannuation and long service leave) for staff between the two sectors of Government. This will benefit public sector employees and employers by increasing the skills and diversity of the public sector, and lead to improved collaboration between State and Local Government.

Proof in Vehicle Offences may be shifted: Section 9.13(6)

That Section 9.13 of the Local Government Act be amended by introducing the definition of 'responsible person' to enable Local Governments to administer and apply effective provisions associated with vehicle related offences.

18. **Council meetings** [fact sheet and discussion paper](#).

19. Ideas for change:

- Introduce 'public statement time' at council meetings for community members who are not asking a question.
- Modernise question time through the use of new technologies.
- Expand opportunities for council members to attend meetings remotely.
- Extend the rules for disclosure of interests.
- Remove the requirement for annual and special electors meetings.
- Clarify the rules for revoking or changing decisions.

COUNCIL MEETINGS

Electors' General Meeting: Section 5.27

Position Statement: Section 5.27 of the Local Government Act 1995 should be amended so that Electors' General Meetings are not compulsory.

Special Electors' Meeting: Section 5.28

That Section 5.28(1)(a) be amended:

- (a) so that the prescribed number of electors required to request a meeting increase from 100 (or 5% of electors) to 500 (or 5% of electors), whichever is fewer; and
- (b) to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise.

COUNCIL MEETINGS

Minutes, contents of: Regulation 11

Regulation 11 should be amended to require that information presented in a Council or Committee Agenda must also be included in the Minutes to that meeting.

Revoking or Changing Decisions: Regulation 10

That Regulation 10 be amended to clarify that a revocation or change to a previous decision does not apply to Council decisions that have already been implemented.

Elected Member attendance at Council meetings by technology

The current Local Government (Administration) Regulations 1996 allows for attendance by telephone, however only if approved by Council and in a suitable place. A suitable place is then defined as in a townsite as defined in the Land Administration Act 1997. This restricts an Elected Members ability to attend the meeting to a townsite in Western Australia.

This requirement does not cater for remote locations or the ability to attend via teleconference whilst in another state or overseas. The regulations require amendment to consider allowing attendance at a meeting via technology from any location suitable to a Council.

20. **Council conduct and governance (interventions)** [fact sheet and discussion paper](#).

21. Ideas for change:

- All complaints of a breach of the Act are referred to the department for investigation.
- Issue infringement notices for some offences.
- Embed an experienced and suitably qualified person into council and/or administration to assist with decision making.
- Introduce an offence that applies to employees or CEOs who provide false or misleading information to council.
- Introduce an offence for breaches of the tendering requirements.

INTERVENTIONS

Remedial intervention; Powers of appointed person; Remedial action process

In respect to remedial intervention, the appointed person should be a Departmental employee with the required qualifications and experience. This provides a connection back to the Department and its requirements.

The appointed person should only have an advice and support role. Funding of the remedial action should be by the Department where the intervention is mandatory. The Local Government to pay where the assistance is requested.

This area relates to the bigger picture of differentiating between Local Governments based on their size and scale. Suitable arrangements to determine a size and scale compliance regime should be prioritized.

Key Topic Area: Inclusive

Inclusive focuses specifically on local governments representing and involving their communities in decision-making. As the tier of government closest to the community, there is an expectation that local governments represent the whole community, recognise diversity within their district and are responsive to community needs.

22. **Community engagement** [fact sheet and discussion paper](#).

23. Ideas for change:

- Better define the role of local government.
- Local governments to have a community engagement charter, which includes minimum standards for community engagement.
- Require councils to adopt social media policies, including appropriate use in community engagement.

24. No recommendations or policy positions proposed by WALGA.

25. **Complaints management** [fact sheet and discussion paper](#).

26. Ideas for change:

- Adoption of the Australian/New Zealand standard for complaints management.
- Implementation of a Customer Service Charter to be made publicly available.
- Legislative requirement for local governments to adopt a fit-for-purpose complaints management process.
- Internal independent review process for unresolved complaints.

The Complaints Management commentary contemplates the issue up to the point of unresolved complaints and then references the Ombudsman resources with regard to unreasonable complainants. WALGA seeks inclusion of commentary and questions relating to Local Governments adopting within their proposed complaints management framework, the capacity to permit a Local Government to declare a member of the public a vexatious or frivolous complainant, subject to the declaration relating to the nature of complaint and not to the person.

COMPLAINTS MANAGEMENT

Querulous, Vexatious and Frivolous Complainants

Amend the Local Government Act 1995, to:

- Enable Local Government discretion to refuse to further respond to a complainant where the CEO is of the opinion that the complaint is trivial, frivolous or vexatious or is not made in good faith, or has been determined to have been previously properly investigated and concluded, similar to the terms of section 18 of the Parliamentary Commissioner Act 1971.

- Provide for a complainant, who receives a Local Government discretion to refuse to deal with that complainant, to refer the Local Government's decision for third party review.
- Enable Local Government discretion to declare a member of the public a vexatious or frivolous complainant for reasons, including:
 - Abuse of process;
 - Harassing or intimidating an individual or an employee of the Local Government in relation to the complaint;
 - Unreasonably interfering with the operations of the Local Government in relation to complaint.

27. **Elections** [fact sheet and discussion paper](#).

28. Ideas for change:

- Electronic voting.
- Reduce frequency to four years to align with other states.
- Review voter eligibility.
- Introduce preferential voting (the person that is most preferred wins – requires numbering candidates by preference when voting).
- Set a campaign advertising limit.
- Publish candidate profiles on the local government website.

ELECTIONS

Conduct of Postal Elections: Sections 4.20 and 4.61

Position Statement: The Local Government Act 1995 should be amended to allow the Australian Electoral Commission (AEC) and or any other third party provider to conduct postal elections.

Voluntary Voting: Section 4.65

Position Statement: Voting in Local Government elections should remain voluntary.

Method of Election of Mayor/President: Section 2.11

Position Statement: Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.

On-Line Voting

That WALGA continue to investigate online voting and other opportunities to increase voter turnout.

Method of Voting - Schedule 4.1

Position Statement: Elections should be conducted utilising the first-past-the-post (FPTP) method of voting.

Leave of Absence when Contesting State or Federal Election

Amend the Act to require an Elected Member to take leave of absence when contesting a State or Federal election, applying from the issue of Writs. The options to consider include:

- i. that an Elected Member remove themselves from any decision making role and not attend Council and Committee meetings; or
- ii. that an Elected Member take leave of absence from all aspects of their role as a Councillor and not be able to perform the role as specified in Section 2.10 of the Local Government Act.

GOVERNMENT & PUBLIC CONSULTATION

- 29. To inform the development of a new Local Government Act for Western Australia, WALGA and the Department of Local Government Sport and Cultural Industries hosted a series of Local Government Act Review Forums.
- 30. These facilitated forums were held generally in WALGA Zone groupings between 10 October and 15 November 2018.
- 31. Specifically to Albany the Department of Local Government, Sport and Cultural Industries organised a drop in session 5pm to 7pm, 28 November 2018.

STATUTORY IMPLICATIONS

- 32. Feedback provided will be considered as part of the Local Government Act review.

POLICY IMPLICATIONS

- 33. Nil

RISK IDENTIFICATION & MITIGATION

- 34. The risk identification and categorisation relies on the City’s Enterprise Risk and Opportunity Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<p>Reputation & Operational:</p> <p><i>Risk: There is a risk that by not providing feedback, legislation will be developed that does not take into account Council’s view.</i></p>	<i>Likely</i>	<i>Moderate</i>	<i>High</i>	<i>Facilitate providing community feedback.</i>
Opportunity: <i>Community engagement opportunity.</i>				

FINANCIAL IMPLICATIONS

- 35. No direct financial implications related to this report.

LEGAL IMPLICATIONS

- 36. Nil

ENVIRONMENTAL CONSIDERATIONS

- 37. Nil

ALTERNATE OPTIONS

38. Council may choose to endorse or not endorse the WALGA State Council general principals in full or in part.

CONCLUSION

39. It is recommended that Council communicate its position on the listed elements.

Consulted References	:	Review Discussion Papers: https://www.dlgsc.wa.gov.au/localgovernment/strengthening/Pages/LG-Act-Review.aspx <ul style="list-style-type: none"> ○ Beneficial enterprises ○ Financial management ○ Rates, fees and charges ○ Administrative efficiencies – local laws ○ Council meetings ○ Interventions ○ Community engagement – IPR ○ Complaints management ○ Elections
File Number (Name of Ward)	:	All Wards
Previous Reference	:	Not applicable