Local Government Act 1995 Review

Phase 2 Consultation Submission

Table of Contents

Introduction

The City of Joondalup has been an active and cooperative participant in all legislative and reform reviews, surveys and analysis of the local government sector, including the WA Local Government Association *Systemic Sustainability Study* in 2006 and the Ministerial-initiated voluntary Local Government reform initiative in 2009, and Metropolitan Local Government Reform Process 2011-2013.

In 2017 the State Government announced a review of the *Local Government Act 1995* (the Act) which is the first significant reform of local government conducted in more than two decades. The objective of the review, conducted in phases, is for Western Australia to have a new, modern Act that empowers local governments to better deliver for their communities. In November 2017 the Department of Local Government, Sport and Cultural Industries (the Department) released a discussion paper that is structured around Phase 1 of the review of the Act. Phase 1 focused on:

- making information available online
- meeting public expectations for accountability
- meeting public expectations of ethics, standards and performance
- building capacity through reducing red tape.

At its meeting held on 20 February 2018 (Item CJ012-02/18 refers) Council endorsed the City's submission to the Phase 1 consultation process. In August 2018 the Minister for Local Government, the Hon. David Templeman MLA announced the outcomes and positions of the Phase 1 review consultation process and identified various changes would now proceed to the drafting of an Amendment Bill.

In September 2018 the Minister for Local Government further announced Phase 2 of the consultation process and called on Western Australians to help shape the future of local government in their community by having a say on the reform of the Act, which aims to empower local governments to better deliver quality governance and services to Western Australian communities now and into the future.

The Department has prepared a series of discussion papers and online surveys for public comment. The discussion papers are focused on the State Government's vision for local governments to be agile, smart and inclusive. Phase 2 of the review is focused on the following key topic areas within three themes:

- Agile
  - Beneficial enterprises.
  - Financial management.
  - Rates, fees and charges.
- Smart
  - Administrative efficiencies / local laws.
  - Council meetings.
  - Interventions (Council Conduct and Governance).
- Inclusive
  - Community engagement.
  - Integrated planning and reporting.
  - Complaints management.
  - Local government elections.

City of Joondalup comment and positions

Through the Phase 1 and Phase 2 consultation processes, the Minister and the Department have stated the review attempts to modernise the Act to empower local governments to better deliver for their communities, as well as to remove red tape and overly burdensome bureaucracy. Local governments, due to their existence as being a product of statute, are bureaucratic in nature and are required to comply with numerous reporting and oversight regimes.

However, some of the suggestions being made in the discussion paper in both Phase 1, and now again in Phase 2, are by their very suggestion are contributing to red tape as opposed to reducing it. This includes requiring additional policies to be made; additional administrative / governance requirements to implemented; or additional levels of oversight to be had.

Overall, the Act should remain principle-based in which local governments have the flexibility to ability to operate in, with good governance principles and standards in mind. Considering the capacity of different local governments, a size and scale compliance regime should be introduced based on possible banding methodology, similarly used by the Salaries and Allowance Tribunal for allowance and salaries for local governments, or other suitable methodology.

Notwithstanding, the City supports the proposed framework of undertaking the review in two phases being modernising local government (Phase 1) and services to the community (Phase 2). Further, the City supports the review's principles and vision.

The City provides comments and recommendations within this submission in relation to the Department's released discussion papers around Phase 2 of the Act review. The responses to the discussion papers are, in the main, based on the City's comprehensive submissions to the Metropolitan Local Government Review Panel of December 2011; May 2012; April 2013, and other previously endorsed positions.

The various Phase 2 discussion papers and fact sheets provided by the Department have not provided definitive options in terms of changes, or indeed, what specific drafting will be made in the new legislation; but rather a series of closed questions, in survey form, with limited opportunity to provide context or justification around ideas for change. It would be concerning if any change to the Act is based on majority support of concepts or ideas, rather than assessing or analysing the reasonings behind any stated positions.

In view of this, the City's response aims to be brief in its approach; focused on the ideas presented in the discussion papers; and whether the City' supports such ideas, but more importantly and support or otherwise is coupled with justification to stated positions. The City's Phase 2 submission is based on the ideas presented in the 10 key topic areas, as detailed below:

- Part 1 - Agile
  - Beneficial enterprises.
  - Financial management.
  - Rates, fees and charges.
- Part 2 -Smart
  - Administrative efficiencies / local laws.
  - Council meetings.
  - Interventions (Council Conduct and Governance).
- Part 3 - Inclusive
  - Community engagement.

- Integrated planning and reporting.
- Complaints management.
- Local government elections.

The City recognises its submissions are but one element of the consultation to be undertaken and will consider further discussion papers and information distributed by the Minister or the Department on issues that have been identified, including advocacy positions resolved by the sector. This will include a request for local governments to submit additional items for consideration in the Act review process as well as providing more definitive positions once they become clearer, should that opportunity arise.

PART 1 – AGILE

1.1 Beneficial enterprises

In addition to its regulatory functions, local governments provide a broad range of services to the community which can have a commercial orientation for example: gymnasiums, pools, parking facilities, childcare facilities, sport complexes, caravan parks and regional airports.

While these activities provide services to the community, they also add to the complexity of the local government's business structure. In some cases, these services are large enough to be carried on as an individual business.

The local government sector has long been requesting additional powers to form independent corporations. These entities could be used to manage a local government's existing business activity or pursue new commercial opportunities. Currently under the Act, local governments have two options for forming independent corporate bodies:

- Regional local governments.
- Regional subsidiaries.

Under the Act a local government cannot form or take part in forming, or acquire an interest giving it the control of, an incorporated company or any other body corporate other than a regional local government or a regional subsidiary.

However, in other state jurisdictions such as Queensland and Victoria the business or trading activities undertaken by local governments are called "beneficial enterprises". These organisations provide local governments with a more efficient mechanism to better serve their communities and provide various services to the community where the private sector or State Government are unable or unwilling to do so. Local governments in New Zealand also possess the power to form corporations known as "Council Controlled Organisations" (CCOs). A CCO is designed to serve a far broader role than the role that local government corporations serve in Australia.

The Western Australian Local Government Association (WALGA) has long advocated for local governments to establish corporate entities that are independent of the local government and which operate under normal company law, like the CCO schemes introduced in New Zealand, and based on their structure and limitations.

The discussion paper on beneficial enterprises suggests if the ability for a local government to create beneficial enterprises is permitted, should a local government:

- be limited to certain corporate structures as this itself could restrain a local government from the most efficient operation as possible
- be able to guarantee the debts of the beneficial enterprise.

There is also the question of what funding will be provided to the enterprise to enable it to operate and which local government should have the ability to form a beneficial enterprise. For instance, this ability could be based on:

- percentage of annual expenditure
- assigned bands of the local government from the Salaries and Allowances Tribunal
- financial health indicators developed by the Western Australian Treasury Corporation

- risk assessment and category assigned by the Department of Local Government, Sport and Cultural Industries
- a local government's annual average expenditure
- limiting which local governments can form beneficial enterprises.

With the establishment of a beneficial enterprise, there are a number of control and accountability matters to also consider. While a beneficial enterprise would be a separate legal body from the local government, it would still be one that has been created with public money and assets. As such it raises questions about what, if any, additional accountability measures should be required as part of a governance regime.

Several different accountability mechanisms have been suggested such as:

- Ministerial approval in terms of compliance with process
- audits by the Auditor General
- possible public meetings.

Beneficial enterprises are complex and present risks to local governments and their ratepayers. With the need to obtain legal and financial advice there are significant costs to establish such an organisation.

In summary, ideas for change presented in the discussion paper around beneficial enterprises include:

- **modernising the legislation to provide local governments with the option to form beneficial enterprises**
- **limiting the type of functions local government beneficial enterprises can undertake**
- **introducing eligibility criteria that a local government must meet before it can establish a beneficial enterprise**
- **local governments developing a business plan to address community expectations and ensuring transparency of funding and viability arrangements around beneficial enterprises**
- **establishing control and accountability mechanisms for local government beneficial enterprises.**

City assessment

As part of its December 2011 submission to the Metropolitan Local Government Review, the City provided comment on local government enterprises, or beneficial enterprises. The local government sector has long argued that it needs to find new and innovative solutions to the many challenges faced both to ensure its own sustainability and to meet the expanding needs of its constituents.

WALGA's discussion paper *Local Government Enterprises as a Means of Improving Local Government* proposes a new model intended to empower local governments, with the consent of its communities through detailed consultation processes, the establishment of corporate entities known as local government enterprises, governed by directors appointed for their relevant expertise, to manage and develop assets using normal commercial arrangements.

It is considered that the State Government needs to examine legislative change that will provide flexibility for local governments to act as a catalyst for long-term strategic economic

development initiatives that have the capacity to make contributions to the needs of local communities. As is demonstrated in WALGA's Discussion Paper as well as the discussion paper of the Department that forms part of the Phase 2 review, Western Australia is unique among Australian jurisdictions in that local governments are prohibited in utilising commercial enterprise structures for the benefit of their communities. In both Queensland and New Zealand, for example, it is common practice for local authorities to place their commercial activities in wholly-owned corporate subsidiaries under the control of external boards.

Some of these companies control assets valued at hundreds of millions of dollars that are run on a commercial basis but are ultimately owned and controlled by local government. In South Australia such separation is mandatory.

The need for alternative revenue streams other than rates is a matter that is well overdue for examination by the State Government. There is a well-considered case for change that need to be underpinned by a detailed process of reporting and accountability to ensure that an appropriate balance is maintained between transparency and commercial efficiency.

The City of Joondalup Council at its July 2010 meeting supported in principle the 'Comprehensive Approach', as detailed within WALGA's discussion paper, involving general repeal of the statutory constraints of the Act, so as to enable local government to conduct itself under normal commercial procedures and structures for any or all of its non-regulatory operations, but with specific legislative provisions to govern the establishment and operation of corporate subsidiaries.

WALGA has suggested the 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 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
- greater flexibility to enter into joint venture and partnering relationships with the private sector on conventional commercial terms.

Overall and in terms of the recent discussion paper, the City supports the modernising of legislation to provide local governments with the option to form beneficial enterprises and the benefits identified by WALGA are continually supported.

There are many activities that are undertaken by local governments that would benefit significantly from being able to operate on a more commercial footing which would be enabled by beneficial enterprise legislation. Such activities include running a leisure facility; undertaking a land development proposal; implementing parking management regimes; and performing waste management activities.

The ability to respond to market changes quickly (such as changing fees and charges); being able to mortgage land to facilitate development (without impacting the rest of the borrowing capacity of the local government); and being able utilise the skills and resources of

experienced independent directors, are some examples of advantages legislative change would provide.

It would be preferable for the legislation to designate the types of activities that shouldn't be undertaken by beneficial enterprises, rather than those that should, to enable flexibility and overall guidance around the State Government's parameters around commercial activities by local governments. It is suggested that regulatory type functions should not be permissible by beneficial enterprises and should be retained by a local government itself. For example, managing parking operations could be operated by a beneficial enterprise but the enforcement of parking prohibitions should not.

There should be criteria for being able to establish a beneficial enterprise and these should be based around a business case and appropriate model, accompanied by a public consultation process. Eligibility criteria based around measures such as Salary and Allowance Tribunal salary bands, financial health indicators, percentage of expenditure and the like are not supported as these are arbitrary measures, and in some cases, open to manipulation and in other cases irrelevant to the business case and model proposed.

Appropriate control and accountability mechanisms are supported and indeed necessary, but care needs to be exercised in that these measures are meaningful and not tokenistic. For example, operating as a private company there is no value in requiring a beneficial enterprise to have a public Annual General Meeting (as required by the *Corporations Act 2001* (Cwlth)), but there should be requirements on the local government to publicly report on the performance of its investment in the beneficial enterprise.

Proposed City of Joondalup position:

The City of Joondalup:

- SUPPORTS modernising the legislation to provide local governments with the option to form beneficial enterprises
- SUPPORTS specifying the type of functions and activities local government beneficial enterprises cannot undertake as opposed to those activities that can be performed
- SUPPORTS having appropriate and meaningful eligibility criteria that a local government must meet before it can establish a beneficial enterprise
- SUPPORTS local governments being required to develop a business case/plan and model and undertake a public consultation process around the proposed establishment of beneficial enterprises
- SUPPORTS establishing control and accountability mechanisms for local government beneficial enterprises.

1.2 Financial management

To deliver services efficiently and effectively, local governments must be prudent users of public funds. Local governments must be transparent and accountable and strike a balance between community expectations and the practical limitations of revenue and expenditure.

There are a number of accountability measures in place that provide financial oversight of local governments, including:

- the Office of the Auditor General, which takes responsibility for local government audits
- the requirement to give public notice for rates and other financial matters
- publication of annual reports including the development and reporting of financial ratios.

To manage finances, local governments are required to prepare a budget annually. The Act requires that a local government is to, having regard for its integrated planning and reporting documents, prepare an estimate of its upcoming expenditure, the revenue and income it will receive independent of rates, and the amount in rates required to make up any deficiency.

This approach means that local governments are required to establish their budget by first determining the amount they wish to spend and then estimate the revenue sources required to fund this outlay.

The discussion paper around financial management matters, highlight a number or items that the Department suggests, could be considered for reform, including:

- investments
- debt
- procurement
- payments
- regional price preference
- authorising of payments
- annual reporting of financial ratios
- building upgrade finance.

Investments

Section 6.14 of the Act allows local governments to invest surplus funds. Many local governments hold significant amounts in cash reserves, including those obtained through development contributions. The types of investments that local governments are permitted to make are restricted by regulation 19C of the *Local Government (Financial Management) Regulations 1996*. This regulation states that local governments may not invest in:

- deposits with an institution except an authorised institution
- deposits for a fixed term of more than three years
- bonds that are not guaranteed by the Commonwealth Government or a State or Territory government
- bonds with a term to maturity of more than three years
  or
- a foreign currency.

The discussion paper indicates the current approach to regulating investments has been criticised by the local government sector as overly restrictive. The discussion paper suggests

one approach to resolve this situation involves the introduction of a mandatory requirement for local governments to have an investment policy which would be endorsed by Council and regularly reviewed. It is suggested the policy would describe:

- restrictions on allowable instruments
- provisions for portfolio diversification
- suitable benchmarks for measuring performance
- allowance for both financial and social investments
- valuations for reporting purposes to be on a market-to-market basis, with real property being valued every three years at a minimum, and ideally on an annual basis
- provisions for minimum reporting requirements
- processes for the selection and review of investment advisors.

The discussion paper also suggests local government investments could also be defined as either Tier One or Tier Two. Tier One investments would incorporate low risk investments that local governments would be able to use with minimal regulatory oversight. Tier Two investments would require additional due diligence such as the development and approval of investment plans by the Department of Local Government, Sport and Cultural Industries or another regulator.

Debt

Section 6.20 of the Act provides local governments with the power to borrow money or obtain credit. Local governments do not need to seek external approval to borrow although financial indicators (including a debt service ratio) must be reported in annual reports. Additionally, local governments are restricted in that borrowings may be secured only by giving security over their income from general rates or untied Government grants (section 6.21 of the Act). Under section 6.21(3) of the Act, the Treasurer has the power to make directions to local government in respect to borrowing.

Local governments are required to give one month's public notice in relation to borrowing in three circumstances:

1. Borrowing that has not been included in the annual budget.
2. Where a local government has exercised its power to borrow for a purpose but no longer wishes to use the funds for that purpose.
3. Where a local government has exercised its power to borrow for a purpose and has funding left over.

The discussion paper suggests ceasing the requirement to give public notice would relieve an administrative burden (which local governments argue rarely generates community interest) but on the other hand may decrease financial transparency for this element of local government finances.

As stated above. local governments are currently restricted from borrowing in that their borrowings may be secured only by giving security over their income from general rates or untied Government grants. The discussion paper suggests freeing local governments from this requirement may increase the legitimacy of borrowing as a financial management tool and serve to reduce the stigma associated with local government debt.

Some local governments have contended that they should be permitted to secure funds using their assets. Furthermore, some local governments have suggested that 'commercial' assets such as property and infrastructure (like airfields) could be used to secure loans at competitive

rates however many land assets held by a local government are under their care and control, not outright ownership. Some local governments however do own land freehold.

Procurement

The *Local Government (Functions and General) Regulations 1996* establish procurement rules for local governments. Currently, local governments are exempt from the requirement to invite tenders in relation to contracts involving an estimated expenditure or receipt of an amount of less than $150,000. When inviting public tenders, the local government is required to issue a state-wide public notice providing at least 14 days for interested parties to respond.

Under regulation 24AD of the *Local Government (Functions and General) Regulations 1996*, local governments are also permitted to establish a panel of pre-qualified suppliers. In these cases, local governments are required to issue an invitation to apply to join the panel.

When assessing publicly advertised tenders, regulation 18(4) of the *Local Government (Functions and General) Regulations 1996* requires local governments employ a written evaluation to determine the tender that satisfies the criteria and whether the tender is the most advantageous to the local government to accept.

The discussion paper highlights local governments have consistently advocated for raising the threshold where public tenders must be advertised. The discussion paper states some local governments have argued that Council should have discretion in setting their own rules for procurement, including tender thresholds. Local governments have called for less prescription in procurement rules because of the investment required to comply with open tender rules. Notwithstanding, procurement practices must be balanced with the need for a framework that provides confidence for suppliers and the community.

State Government procurement rules are set by the State Supply Commission (SSC) under its own legislation. Under that legislation, the SSC has the power to publish procurement policies that state agencies must adhere to and these procurement policies cover matters such as value for money; open and effective competition; procurement planning; contract management; and tender thresholds. While the monetary threshold before public advertising used by the State Government is greater than local government, the SSC's regime of procurement policies means that in general, local governments enjoy greater autonomy and fewer procurement oversights than their State Government counterparts.

Local governments vary considerably in respect to their expenditure and the variation between local governments complicates setting a single tender threshold for the sector. Some solutions presented in the discussion paper include:

- scaling the tender threshold to local government size and capacity
- establishing tender threshold based on:
    - local government expenditure
    - the establish based assigned band from the Salaries and Allowances Tribunal
    - risk profiling.

Exemptions for public advertising of tenders reflect that in some circumstances the need to efficiently supply the goods outweighs the benefits of an open tender process. Exemptions also exist based on the notion that certain contracts can be filled using alternative tender processes that afford appropriate levels of due diligence.

Some local governments have suggested that the rules concerning exemptions need to be clarified in the Act. They argue that the current rules concerning the definition of a "contract" can create confusion and lead to varying interpretations. For example, on occasions local governments have sought clarification about whether the reoccurring supply of services such as repairs to a sporting facility's lights, or services with indefinite cost such as legal fees, should be regarded as a single contract or multiple contracts over a period for the purposes of the threshold.

Local governments are provided with considerable autonomy in selecting the criteria to be used for assessing advertised tenders. Regulation 18(4) of the *Local Government (Functions and General) Regulations 1996* requires that local governments employ a written evaluation to determine the tender that satisfies the criteria and if the tender is the most advantageous to the local government to accept.

Reforms to the regulations, as suggested by the discussion paper, could provide greater clarity of the criteria that local governments must use globally for assessing tenders. In line with State Supply Commission's policies, this criterion could include value for money and acting in the public interest.

While the Act establishes tendering rules, the legislation does not establish consequences for non-compliance. For State Government agencies, the *State Supply Commission Regulations 1991* sets out graduated consequences for non-compliance. Under the regulations the SSC may do the following:

- Give notice of the non-compliance to the agency asking that the matter be addressed within a prescribed period.
- Require that an agency attends a meeting with the SSC.
- Appoint a person to supervise procurement at the cost of the agency.
- Publish the name of the agency in its annual report.
- Recommend to the Minister that the agency's ability to procure under the *State Supply Commission Act 1991* is revoked and that purchasing powers revert to the SSC.

Payments

The legislation does not prescribe standards for timely payments. The Regional Chamber of Commerce and Industry and the Small Business Development Corporation have called for reforms that ensure the timely payment of suppliers. Therefore, the discussion paper suggests reforms could mandate local governments adopting a policy for invoice payment and/or specify a maximum allowed payment period.

Another option presented is to align the rules for timely payment of suppliers with State Government requirements. *Treasurer's Instruction 323* requires State Government agencies to make payments within 30 days of the receipt of the invoice, or within 30 days of the provision of the goods or services (whichever is later).

Regional price preference

The *Local Government (Functions and General) Regulations 1996* enables a local government outside the metropolitan area to offer a regional price preference. The regional price preference encourages governments to use locally sourced suppliers allowing local governments to assess a tender from a regional supplier as if the price bids were reduced.

The maximum permitted regional price preference to a regional tenderer is up to 10% for goods and services or 5% for building services up to a maximum price reduction of $50,000. Under State Government tendering rules, the maximum permitted regional price reduction is $250,000.

Both local government and the Regional Chamber of Commerce and Industry (RCCI) have called for the cap to be increased in line with the State Government limits and the discussion paper highlights this as a matter of possible reform.

Authorisation of payments

Regulation 12 of the *Local Government (Financial Management) Regulations 1996* provides a council with autonomy to determine what payments a Chief Executive Officer is authorised to make. If a council delegates authority to make payments, Regulation 13 requires the Chief Executive Officer to prepare a list of accounts each month that shows details of the payment including the amount paid and details of the payee, the date and amount of the payment.

During Phase 1 of the review, some employees within local government asserted that the autonomy provided in the regulations contributes to confusion around the roles and responsibilities between a council and the respective administration. Some employees asserted that regulation 12 of the *Local Government (Financial Management) Regulations 1996* allows councils to establish a delegation approach that results in routine payments being queried by a council. To clarify who can authorise payments, some have called for the regulations to prescribe thresholds for when Council approval is required, which the discussion paper has highlighted a possible matter for reform.

Annual reporting of financial ratios

Local governments are required to prepare an audited financial statement annually. The statement is required to meet the Australian Accounting Standards (AAS) as modified by the Act and relevant regulations.

Legislation also requires that local governments calculate and publish seven financial ratios in their annual financial statements. Financial ratios are increasingly used across Australia as an important performance indicator for public sector entities, including local government. Financial ratios are a key tool in local government performance measurement in other Australian states and it is important that the metrics used in Western Australia are meaningful and useful. Across Australia, local governments are required to calculate and publish different ratios and this lack of consistency makes the comparison of financial performance across local governments around the country more complex.

In Western Australia, benchmarks for the seven ratios that local governments must report on were set in Departmental guidelines published in 2013. While these benchmarks are not legislated, the use of the benchmarks to inform the Department's risk management approach means that they are of considerable interest to local governments.

Notwithstanding, the choice of ratios used in Western Australia has been the subject of criticism. Some in the sector view the ratios as an ineffective metric that can be misrepresented and do not give a true reflection of financial performance and asset management. It has been suggested by the discussion paper, that altering the financial ratios local governments are required to calculate and report on may improve awareness and understanding of local government financial performance.

Building Upgrade Finance

Building Upgrade Finance (BUF) is a scheme whereby a local government administers loans issued by financiers to non-residential building owners to upgrade their buildings. The local government uses a levy on the building owner to recover the funds on behalf of the financier. The approach has been used in Victoria, South Australia and New South Wales as a mechanism to encourage non-residential property owners to invest in environmentally conscious building upgrades.

BUF involves three parts:

1. The building owner agrees to undertake works.
2. A financier agrees to finance the works.
3. The local government agrees to recoup the loan (known as a building upgrade charge).

The arrangement means that the loan is tied to the property rather than property owner. Responsibility to pay for the loan shifts if the ownership of the property changes. In other Australian States that have employed this approach, the local government is by law not financially liable for any non-payment by the building owner however local governments are required to use their best endeavours to recover the loan. As the loan is recovered via the same powers as rates or a service charge, in the event of non-payment, local governments have the same powers available to recover unpaid rates or service charges. This can include taking possession of the land and selling the property.

The City of Perth and the Property Council of Australia have advocated for reforms to Western Australian legislation that would enable local governments to guarantee finance for building upgrades for non-residential property owners. In addition to building upgrades to achieve environmental outcomes, advocates have identified an opportunity to use this approach to finance general upgrades to increase the commercial appeal of buildings for potential tenants. In this way, BUF is viewed as means to encourage economic investment to meet the challenges of a soft commercial lease market in Perth and achieve economic growth.

More recently, BUF has been identified as a possible mechanism to assist building owners to undertake remedial works to address the inclusion of non-compliant unsafe use of combustible cladding in buildings (measured against the most recent version of the Building Code of Australia).

It is possible that, for some building owners, the cost of remediation will be extensive and unaffordable, and owners may be unable to secure finance to undertake the work. The scope of this cladding audit could be expanded in the future. Also, other unforeseen issues may arise with the use of certain contemporary building materials or construction methods, which would need to be addressed in a similar way to the current cladding audit and remedial measures required.

BUF would be a means of creating the ability for building owners to deal with such unforeseen circumstances in the future.

BUF enables building owners to obtain finance that they may not normally have access to. For local government, the approach may allow for the achievement of strategic community objectives and provide an additional revenue stream. For lenders, the scheme is said to be a way for financers to participate in environmentally conscious investments and support technology like solar and have additional security because in the event of bankruptcy, recovery of the BUF takes precedence over other outstanding payments.

Overall, ideas for change presented in the discussion paper around financial management include:

- **modernising rules for local government investments including the mandatory development of an investment policy and the introduction of tiered investment strategies**
- **modernising rules for borrowing including:**
  - **removing the requirement to public advertise borrowing activities**
  - **permitting borrowing against assets other than income**
- **amending procurement rules such as:**
  - **changing the threshold for advertising public tenders**
  - **aligning purchasing rules with the State Government and polices set by State Supply Commission**
  - **providing greater and uniform clarity around assessing tenders**
  - **implementing regulatory framework for non-compliance with procurement requirements**
  - **instituting prescribed payment requirements**
- **establishing a threshold where Council approval is required to make payments**
- **altering the financial ratios to uniformly report financial performance across Australian local governments**
- **establishing the ability to institute building upgrade finance schemes.**

City assessment

Investments

The removal of some of the current prescriptive restrictions around investments with the replacement by a mandatory requirement for local governments to adopt an investment policy is supported. Most local governments already have investment policies that can be expanded if required, and this could be supported by a requirement for reporting on investments against the investment policy criteria.

However, the suggestion for a tiered investment structure is not supported at this stage as it is difficult without specific detail to understand how this would function in a practical sense if a third party was approving investment plans.

Debt

The City supports reforms to the Act provisions relating to debt and borrowing to:

- enable borrowings to be secured against specific assets
- removing the requirements for public advertising of borrowings.

Proposed borrowings should be included in the adopted budget and all subsequent changes; change in purpose; using surplus loan funds; and entering into new borrowings, should only require Council approval in the same way as any other change to the budget.

Procurement

The City does not support bringing local government under the same State Supply Commission regime as required by State Government agencies. The legislative and governance framework between the two tiers of government is completely different and this would also introduce yet another State Government oversight agency.

The City has a concern that a one size fits all approach to the procurement regulatory framework does not work for local government. There can never be a reasonable set of criteria that can be applied equally to a large metropolitan local government that may be managing more than a billion dollars of assets versus a small regional local government. In view of this there needs to be a two or three-tiered structure approach to procurement, based around a local government's financial size.

In regard to the lack of consequences for non-compliance with regulatory requirements for procurement, responsibility lies with the Chief Executive Officer and a local government's council. Non-compliance could be an offence for individuals but how would it be determined which individuals are responsible in a situation where multiple layers of approvals and authorisations or even a council resolution is involved. This could be in a situation where it was all undertaken in the belief the correct requirements were being followed and for no personal gain. The bigger issue is how would it be known if there had been non-compliance if it was undertaken intentionally and disguised.

Payments

The suggested changes about mandating criteria for the payment of invoices are not supported. Sound governance and financial management principles should ensure that local governments already have policies or protocols in regard to payment of invoices. Prompt payment of invoices is a key element of managing supplier relationships but a local government, as for any other purchaser, needs to have flexibility to address issues of quality, compliance with specification and other purchase issues.

It is also questioned if such mandatory payment regimes are introduced, which agency would enforce such compliance. It could be difficulty for the Department (if so intended), with its limited resources to perform this function.

Regional price preference

This does not apply to metropolitan local governments and the City therefore does not have a view on the matters put forward in the discussion paper.

Authorisation of payments

The proposal for regulations to prescribe thresholds for when council approval is required is not supported and will simply lead to even more confusion. The biggest issue with regulation 13 of the *Local Government (Financial Management) Regulations 1996* is that the list serves no useful purpose. The report is for noting and does not require approval but the mere reporting of it to a local government council invites debate on day-to-day operations. The whole premise of the local government governance framework, and that which is mandated in the Act is that elected members and that of a council, should not be involved in a local government's day-to-day operations.

Notwithstanding, there is another important issue with the list of accounts. The intent of regulation 13 in terms of openness and transparency is acknowledged, however the issue

unfortunately, in this day and age, is that this level of public disclosure where all of a local government's payment transactions showing which business is being conducted; and the volume, frequency and value of those transactions, represents a significant cyber-attack risk for local governments as well as possible fraud and corruption opportunities.

The reporting of payment activity provides the perfect opportunity for an identified supplier's systems to be attacked for the specific purpose of then impersonating the supplier, generating false transactions or trying to induce changes to payment arrangements. It makes little sense for a local government to be investing in the best security and controls on the one hand while at the same time openly providing all the key information needed to those trying to defeat that security and control.

Overall it is supported to remove the provisions around the reporting the list of payments to council, however if it were to be retained regulation 4A of the *Local Government (Administration) Regulations 1996* could amended to provide that the list produced under regulation 13 of the *Local Government (Financial Management) Regulations 1996* is a matter prescribed for the purposes of section 5.23(2)(h) of the Act (therefore being confidential). However, this would mean closing a council meeting to the public each time that matter is discussed.

Annual report of financial ratios

It is acknowledged that financial ratios have value for both assessing performance and benchmarking other local governments provided there is adequate context to support the assessment and benchmarking. Without context they can be misleading.

For example, comparing asset ratios such as asset sustainability between an inner metropolitan local government (with well-established and very mature infrastructure) that undertakes a significant amount of infrastructure renewal projects, with an outer metropolitan local government with mostly new infrastructure, and that has very little renewal requirements, is meaningless even though in financial, population and area terms, both may be on the same scale. Even more misleading is that a younger local government (even though it wasn't actually spending on renewals) could be setting aside funds in a renewal reserve equivalent to the amount of the more mature local government was actually spending. This would not be reflected in the ratios.

Similar comparison issues apply to matters like revenue where typically metropolitan local governments have high components of rates but in many regional local governments grants are the dominant revenue source.

The issue with sites such as MyCouncil is that context around comparisons is non-existent and users are left to draw their own conclusions around a local government's performance. An improvement would be to provide firstly more commentary to users around the issues that they need to be aware of when using the various statistics and what some of the shortcomings are. Secondly, it would be useful if all local governments were put into pools of like local governments so that a genuine like for like benchmark can be provided. It may be that local governments are in different pools for different statistics.

At the national level, notwithstanding the issues described above, any comparison is compromised if there aren't consistent methods of calculation of ratios. The City would therefore support establishing consistent methodologies but in reality, this may be difficult to achieve considering the different regulatory regime and requirements that are placed on local governments throughout Australia.

Building Upgrade Finance

The concept of Building Upgrade Finance will have application to some local governments. It is very unlikely to have application to the City of Joondalup in the short term and therefore the City does not have a position on this matter, but also does not oppose establishing the ability to institute building upgrade finance schemes, given they may be able to be used for costly remedial works required to buildings as a result of unforeseen circumstances in the future.

Proposed City of Joondalup position:

The City of Joondalup:

- SUPPORTS modernising rules for local government investments including the mandatory development of an investment policy
- DOES NOT SUPPORT the introduction of tiered investment strategies until such time that the regime is understood and determined
- SUPPORTS modernising rules for borrowing including:
    - removing the requirement to public advertise borrowing activities
    - permitting borrowing against assets other than income
- SUPPORTS amending procurement rules such as:
    - changing the threshold for advertising public tenders
    - a tiered approach to procurement rules applying to different local governments based on financial size
- DOES NOT SUPPORT amending procurement rules such as:
    - aligning purchasing rules with the State Government and polices set by State Supply Commission
    - providing greater and uniform clarity around assessing tenders
    - implementing regulatory framework for non-compliance with procurement requirements
    - instituting prescribed payment requirements
- DOES NOT SUPPORT establishing a threshold where Council approval is required to make payments
- DOES NOT SUPPORT the removal of the requirement to report a local government's monthly list of payments to Council
- SUPPORTS altering the method of calculation of the financial ratios to uniformly report ratios across Australian local governments

- SUPPORTS the provision of more context and genuinely comparative benchmarks with the publication of financial ratios

- DOES NOT OPPOSE establishing the ability to institute building upgrade finance schemes.

1.3 Rates, fees and charges

Local governments impose rates to raise revenue to fund services and facilities. The quantum of rates payable is determined by three factors:

1. The method of valuation of the land.
2. The valuation of the land.
3. The rate in the dollar applied to that valuation by the local government.

Each property in Western Australia is assigned a method of valuation which is either the unimproved value (UV) or gross rental value (GRV). The Act specifies a property used for rural purposes is rated as UV and a property used for non-rural purposes will be rated as GRV. In practical terms, land used predominately for residential purposes is generally classified as GRV.

The Act requires that in the period from 1 June to 31 August a local government is to prepare and adopt an annual budget. As part of preparing the budget, each local government must raise enough in rates to cover the shortfall (budget deficiency) between its predetermined expenditure and available revenue. It does this by applying a rate in the dollar to the valuation of each property. Rates can be imposed uniformly (a single rate in the dollar) or differentially (different rates in the dollar for different categories).

An option presented in the discussion paper is to introduce the requirement for local governments to develop a Rates and Revenue Strategy, which could include:

- rating categories (and potentially how they are determined)
- rates in the dollar
- objects and reasons for each rating category
- fees, charges and levies including the methodology where appropriate
- long term rating strategy.

It has also been suggested by the discussion paper that the Rates and Revenue Strategy, including the schedule of fees and charges, would be prepared prior to the budget process and would be adopted by council before the budget is adopted. Local governments would be required to make the strategy available on their website and it would be used as a basis for consultation on rates.

<u>Public notice</u>

Local governments are currently required to advertise their intended differential general rates prior to considering and adopting their annual budget. Local governments must issue a notice that details each rate or minimum payment they intend to impose and the objects and reasons for doing so. The local government must then allow 21 days for submissions and consider each submission at a meeting of the council, where it can then either choose to adopt the

advertised rates or amend the rates. In considering potential reforms, an overarching question the discussion paper has posed is whether local governments should be required to consult on the proposed rates or simply notify their ratepayers.

If a local government introduces a rating strategy as detailed above, that uses a uniform rate in the dollar (unlike differential general rates) the discussion paper suggests there is no requirement for public notice to be given. This means that there is no opportunity for the community to provide a submission and there is no need for local governments to justify the rate in the dollar.

A possible reform highlighted by the discussion paper includes local governments being required to:

- give public notice of all rates
- prepare objects and reasons for the rating strategy
- provide 21 days for submissions
- consider each submission at a meeting of council.

Differential rates

Differential general rates are generally imposed to ensure that the rate burden is more evenly distributed across ratepayers, with those requiring or using more services being charged a higher rate in the dollar.

Local governments are currently permitted to impose differential general rates according to land zoning, land use (including if the land is vacant) and a combination of the two. While the categories must comply with the Act, there is still scope for a variety of rating categories which does not allow comparability across local governments. While increasing the ability for local governments to expand the current categories would reduce the ability for comparability between local governments, it may ensure that rates are set at a more appropriate level for groups of ratepayers. It also has the potential however to lead to more inequities.

Some local governments have requested that the differential rate categories be expanded to enable categories specific to long term vacant land, holiday houses or timeshare properties. Possible options for reform presented in the discussion paper include differential rate categories being set in legislation (as per New South Wales) or alternatively local governments could increase the types of differential rate categories in addition to land zoning or land use (including if the land is vacant) as per the proposed model for Victoria.

Minister's approval

Local governments have the autonomy in the way they set rates in the dollar to make up the budget deficiency with some limitations. A local government that seeks to impose a rate in the dollar that is more than twice the lowest must seek Ministerial approval. The application process adds an administrative burden not only for the local government but also the Department which assesses all applications.

While Western Australia appears to be the only jurisdiction that provides for Ministerial approval in relation to approving differential rates more than twice the lowest, it is also a jurisdiction that does not currently have rate capping or an equivalent. The discussion paper suggests there are several opportunities to reform the controls that are currently in place on differential rating.

One option is to increase the differential from two times the lowest to three or four times the difference before Ministerial approval is required. This would reduce the regulatory burden on both local governments and the Department and it would also provide an element of oversight to ensure that local governments are not imposing significant differences.

Alternatively, the difference could be set to a maximum of four times with no ability to seek Ministerial approval. This is consistent with Victoria. This may introduce greater fairness between categories, especially for the mining sector which is levied a significantly higher rate in the dollar than other categories by some local governments.

Minimum payment and maximum rates

A minimum payment can be imposed by a local government irrespective of what the rate assessment would be if the rate is applied to the property valuation. The purpose of a minimum payment is generally to ensure that every ratepayer makes a reasonable contribution to the rate burden.

While the Act allows local governments to impose a minimum payment that is greater than the general rate would otherwise be, there are regulatory limits that apply. Unless the general minimum is $200 or less, a minimum payment cannot be imposed on more than 50 per cent of properties in any category. Local governments can apply to the Minister for a minimum payment that does not comply with these limitations, but only for a minimum payment that applies to a differential rate on vacant land.

Rate exemptions

The Act provides that all land is rateable unless it is listed as exempt land. Not all land is required to pay rates. While the Act sets out a number of specific categories, it also provides the power for the Minister to approve other land as exempt from rates. Other than land used or held by the Crown (State Government) for a public purpose, a local government or a regional local government, exemptions from rates apply to land:

- used or held exclusively for churches (religious bodies)
- used or held exclusively for schools
- used exclusively for charitable purposes
- vested in trustees for agriculture or horticultural show purposes
- owned by Co-operative Bulk Handling Limited (CBH)
- exempted by the Minister for Local Government.

Rather than requiring everyone to pay rates (which has been floated as an option), an alternative approach presented in the discussion paper could be to require every occupier of land to pay a contribution to the local government. It has been suggested the capped rate could be the minimum payment set by the local government, or alternatively, an amount set in legislation.

Concessions can also be used by local governments, including to reduce the rate burden on a ratepayer when there have been significant valuation changes. Currently, offering a concession is at the discretion of individual local governments.

One of the more contentious exemptions is for ‘land used exclusively for ‘charitable purposes’. The meaning of ‘land used exclusively for charitable purposes’ is not defined in the Act and

differing interpretations of the meanings of ‘charity’ and ‘charitable purposes’ have continued to prove challenging across all levels of government in Australia. Each jurisdiction has taken a different approach to defining ‘charity’ and ‘charitable purposes’.

In Western Australia the meaning of what constitutes ‘land used exclusively for charitable purposes’ has been the subject of several key decisions by the State Administrative Tribunal. These decisions have been a matter of contention for the local government sector as exemptions have been provided to facilities for aged care even when residents are paying market rates for the individual housing within an estate, and to industry associations because they have a training arm.

Any reforms to the charitable organisation exemptions hinge on clarifying who is or isn’t eligible to receive a rates exemption.

Fees and charges

Local governments are to set fees and charges for a range of services. Services can be categorised into three areas:

1. Basic community services, such as waste collection.
2. Additional services, such as providing security.
3. Competitive services, such as services provided by other business in the area (for example gymnasiums).

At the time of issuing a rates’ notice, local governments can impose a uniform or differential rate, a minimum payment, specified area rate or service charges. In other States, a range of other charges can also be imposed. For instance, under Victorian legislation, local governments can impose a municipal charge to cover some administrative costs. In Tasmania, local governments can impose a separate rate or charge for the purpose of planning, carrying out, making available, maintaining or improving anything.

To increase transparency and accountability, the discussion paper presents the Act could be amended to allow local governments to impose a levy on all ratepayers to fund a particular service, facility or activity that benefits the entire community. Some States require local governments to develop and publish a Rates and Revenue Strategy and this strategy includes a schedule of fees and charges set by local governments, including the methodology where the fees are set at cost recovery.

Currently, fees and charges are set during the annual budget process. The discussion paper suggests by moving the setting of fees from the annual budget process and combining it into the Rates and Revenue Strategy (as discussed earlier), the methodology for cost recovery of fees could be included and this would make it more transparent for ratepayers.

Overall, the ideas for change presented in the discussion paper around rates, fees and charges include:

- **introducing a requirement to develop and consult on a Rates and Revenue Strategy**
- **implementing mandatory public notices for rate setting, not just for differential rates**

- **revising the framework around the setting of differential rate categories including the thresholds needed for Ministerial approval**
- **removing or amending exemptions from rates**
- **standardising rating categories between local governments**
- **removing the requirement for Ministerial approval of large disparities in rates.**
- **imposing fees and charges at cost recovery and including these fees and charges in a new Rates and Revenue Strategy as opposed to the annual budget process.**

City assessment

Public notice

The purpose of giving 21 days' notice and inviting submissions in regard to proposed differential rates is widely misunderstood by the community. While there are not usually many submissions around the imposition of differential rates, it is the City's experience that the submissions received are by and large about budget matters generally.

The City would support the removal of the requirement for 21 days public notice and it being replaced by local governments being required to adopt a Rating Strategy. The Rating Strategy could be reviewed at any time but must be reviewed at least within a nominated period (for example within three years). The Rating Strategy would be required regardless of whether general or differential rates were proposed to be applied by a local government. The rating adopted as part of the budget would not be permitted to depart from the adopted strategy without the difference being clearly identified and an explanation for the difference adopted as part of the budget.

Differential rates

Comparability between local governments is not considered an issue in regard to differential rates. The whole concept of differential rating is that within the parameters for the basis of setting differential categories, a local government can establish differential rates that address its particular circumstances, issues and concerns.

It is the City's view that trying to make the differentials comparable between local governments is pointless and serves no purpose. It must be recognised the differentials imposed are not the only factor influencing the rates calculation. The level of the minimum payment, whether refuse is included in rates will all influence this. If it is desired to compare what rates are being paid in different local governments, then the real comparable is simply what are the total amounts of rates for each property.

The City would not support changing the current approach where only the basis for determining differentials is set out in the Act. The City would support a change, however, to include the time that a property has been used or is in a particular state as one of the basis for determining differentials; for example, being able to apply a differential rate on vacant land on the basis that it has been vacant for longer than a certain period.

Minister's approval

The City has applied differential rating since 2008-09 but the highest differential has never been more than twice the lowest, so it has never had to apply to the Minister. There has been no information provided in the discussion paper to indicate what the volume of these

applications are, or the outcomes of the assessment by the Department. It could be implied from the commentary that describes them as a *"regulatory burden on both local governments and the Department"* that the Department views the Ministerial approval requirements as being of little real value.

The City would support lifting the current two times cap for Ministerial approval or putting an absolute cap and no ability for Ministerial approval.

Minimum payment and maximum rates

The City is comfortable with the current minimum rate payment provisions and would be opposed to any proposal for a maximum.

Rate exemptions

The rate exemption provisions, in particular the provisions in regard to 'land used exclusively for charitable purposes' is one of the provisions in the Act that needs the greatest reform and is having a significant real financial impact on the City. For 2018-19 the rate value of exempt properties in the City of Joondalup is approximately $1.3 million, equivalent to a rate increase of 1.3% (and this is just for properties that the City has a value for and can calculate). $600,000 of this relates to charitable purpose exemptions. Some agencies are openly taking advantage of this loop whole by outsourcing housing stock to not-for-profits, who promptly claim charitable exemption status.

In an ideal world there should be no exemptions however given this is very unlikely to occur, at the very least not having a definition of charitable purpose in the Act needs to be addressed. There is a distinct lack of understanding of what constitutes charitable purpose among the community and it is all too easy to appeal to State Administrative Tribunal with very little cost to the applicant, but the local government can incur tens of thousands of dollars defending it successfully.

There needs to be a definition of charitable purpose in the Act that all can clearly see and any property that generates an income from rent, hire or some form of use of the property should be required to pay rates in accordance with a local government's adopted Rating Strategy.

Lease for life aged accommodation should not be exempt from rates. Rates should be paid for these properties in exactly the same way as a person who owns a private residence with an ability to claim pensioner or senior entitlements if applicable in the same manner.

Fees and charges

There are a couple of different issues under fees and charges that are not necessarily related.

The first part presents an idea of a local government being able to impose a levy on all ratepayers to fund a particular service, facility or activity that benefits the entire community. Although the City does not have any particular use identified it does see that there could be benefits in being able to apply this as a substitute for a valuation-based rate.

In terms of the other suggestion that fees and charges could be rolled into a Revenue and Rating Strategy, this is not supported. Fees and charges cover a vast range of different matters some which are within the local governments control and many aren't, either set by statute or capped by statute. Even for the fees and charges the local government control, some are driven by cost recovery and some are in relation to services in highly competitive markets.

The discussion paper refers to wanting local governments to be agile but there is nothing agile about the current fees and charges regime that requires them to be in the budget once a year and then if there is a change they need to be adopted by Council (because an absolute majority is required) and advertised. A significant improvement to support agility, particularly in the leisure space, would be to have the ability for Council to set a range for a fee with the fee then able to be set and changed within that range by the Chief Executive Officer under delegation.

Proposed City of Joondalup position:

The City of Joondalup:

- SUPPORTS introducing a requirement to develop and consult on a Rates and Revenue Strategy in lieu of mandatory public notices for rate setting
- DOES NOT SUPPORT implementing mandatory public notices for rate setting, not just for differential rates, subject to a Rates and Revenue Strategy requirement being introduced
- SUPPORTS revising the framework around the setting of differential rate categories including the thresholds needed for Ministerial approval
- SUPPORTS removing the exemption for lease for life tenancies
- SUPPORTS including a definition of charitable purpose in the Act
- DOES NOT SUPPORT standardising rating categories between local governments
- SUPPORTS removing the requirement for Ministerial approval of large disparities in rates
- DOES NOT SUPPORT imposing fees and charges at cost recovery and including these fees and charges in a new Rates and Revenue Strategy as opposed to the annual budget process
- SUPPORTS being able to impose a levy on all ratepayers to fund a particular service, facility or activity that benefits the entire community
- SUPPORTS having greater flexibility in setting and changing fees and charges under delegated authority within a range determined by Council.

PART 2 - SMART

2.1 Administrative Efficiencies / Local Laws

Local laws

The Act enables local governments to make local laws considered necessary for the good government of their districts. Local laws can only be made when authorised by the Act or other written laws but cannot be inconsistent with any State or Federal legislation.

The discussion paper highlights many submissions were received during Phase One of the Act review, concerning the inconsistency of local laws from one local government district to another. While these concerns may be valid and consistency of local laws across districts is important, requiring a local government to enact a local law in a certain form impacts upon a local government's ability to tailor a local law to local conditions or the wishes of the local community. The discussion paper suggests model local laws provide consistency and make the local law-making process easier. On the other hand, a purpose of local laws is to provide local governments with the ability to tailor local laws to suit the local community.

The discussion paper highlights another mechanism used to achieve consistency is the State Government enacting regulations that act as local laws. An example of this is the *Local Government (Uniform Local Provisions) Regulations 1996* and the possibility of using regulations was raised during the policy forums, particularly in relation to health, parking, cemeteries, cats and dogs. While regulations will achieve consistency, they will also remove or limit the ability of a local government to tailor local laws to meet its community's expectations.

The local law development process is prescribed in the Act and needs to be flexible and robust to ensure local laws are well drafted and within the powers of the local government. These laws are made under delegated power from the Parliament and the Parliament, on advice from the Joint Standing Committee on Delegated Legislation, will void any local law that it identifies as being outside power, poorly drafted or that as not followed the correct process for consultation and adoption by council.

Currently the Department monitors and provides an advisory function to assist local governments with the making of their local laws. It works closely with WALGA and the Joint Standing Committee on Delegated Legislation to ensure that the content of proposed local laws complies with legislative requirements. The Act requires that copies of proposed laws are forwarded to the Minister for Local Government and other relevant State Ministers. The Department examines the proposed local laws on behalf of the Minister for Local Government.

Western Australia is the only jurisdiction that requires a local law to be provided prior to enactment (that is publishing in the *Government Gazette*), and most state and territory jurisdictions rely on a certification from a legal practitioner - a reform suggestion that is being proposed in the discussion paper.

Local laws are also required to be reviewed every eight years. The local government must conduct a review by consulting with the community; prepare a report; and council must determine if it considers that a local law should be repealed or amended. The discussion paper highlights local governments believe a review of their local laws should only be required to be undertaken when the local government believes it is appropriate to do so in response to changing circumstances. Five of the seven Australian jurisdictions which have local governments require a local government to review or re-enact a local law after a prescribed period.

Administrative efficiencies

The Act currently treats all local governments the same, regardless of their size and capacity. The local government sector has long advocated for amendments which provide a tailored approach to local government governance to allow for the differences in capacity that are found across the State.

Various administrative functions of local governments in Western Australia are supported by a range of boards or committees to assist in review, compliance or resource allocation. In view of this local government legislation creates three boards, commissions or panels, being the:

- Local Government Grants Commission (Grants Commission)
- Local Government Advisory Board (Advisory Board)
- Local Government Standards Panel.

The composition of the Grants Commission and the Advisory Board are somewhat similar, in that the skills and knowledge required to be appointed as a member of either of these bodies is an in-depth knowledge and experience in the local government sector. This knowledge and experience enable members to consider the appropriate factors; weigh the information before them; and provide the appropriate recommendations to the Minister.

While the current duties and responsibilities of the Grants Commission and the Advisory Board are different, the composition and selection of board and commission members are very similar. The only differences are:

- the Grants Commission members are appointed on their geographic location
- one member of the Advisory Board is nominated by LG Professionals (WA branch) in addition to members being nominated by WALGA.

As well as the composition of the Grants Commission and Advisory Board being similar, other synergies also exist. The discussion paper suggests having substantial knowledge of the grants program, may assist with the consideration of ward and boundary reviews and conversely, may assist with deliberations about grant funding. Both bodies are already supported by the same team within the Department.

Another matter presented in the discussion paper relates to the way under the Act the Advisory Board determines matters around changing the method of electing of mayors, and ward boundary reviews. At present under section 2.12A of the Act, if a local government decides to proceed with a proposal to change to the method of election of the Mayor/President from ‘election by electors’ to ‘election by the council’, the Advisory Board is required to determine the question to be voted on by electors, at a poll, and prepare a summary of the case for each way of voting on the question.

The discussion paper suggests it may be more appropriate for the affected local government to prepare the question and the summary case, as they are the body in the best position to provide an accurate summary. After the local government has drafted the question and summary case, it could be submitted to the Advisory Board for approval/endorsement before any poll is conducted.

In terms of boundary changes and names, abolishing districts and ward representation levels, these provisions are detailed within Schedules 2.1 and 2.2 of the Act. The discussion paper suggests the quality and content of proposals submitted to the Advisory Board varies significantly and this can result in a significant amount of the Advisory Board’s executive staff’s time being used contacting various parties to gather the relevant information.

The required information, set out in Regulations, allows the Advisory Board to form a view in line with the principles set out in the Act and ultimately make recommendations to the Minister on each proposal. Submissions received either from the public or from local governments sometimes do not provide sufficient detail to inform the decision-making of the Advisory Board.

The provisions in the Act provide that a local government (or other applicant) may wish to withdraw an application that has been made to the Advisory Board. At present this cannot be done with the Advisory Board being required to make a recommendation to the Minister even if the applicant does not wish to proceed with the proposal.

To improve these processes, the discussion paper suggests the following amendments could be made to the Act:

- An ability for the Advisory Board to refuse to accept a proposal on the basis that the proposal is incomplete (does not meet the requirements set out in the Regulations).
- A requirement for affected electors who sign a petition to acknowledge they have read the summary of the proposal and have seen a plan or map detailing any proposed changes.
- A requirement to provide the affected local government(s) details of a proposal prior to submission of a proposal to the Advisory Board.
- The ability for an applicant to be able to withdraw a proposal, prior to a recommendation being made to the Minister, subject to the Advisory Board supporting the withdrawal.

Local Government (Miscellaneous) Provisions Act 1960

When the *Local Government Act 1960* (1960 Act) was enacted it repealed many pieces of legislation including the *Municipal Corporations Act 1906* and *Road Districts Act 1919*. In 1995 the majority of the 1960 Act was replaced by the *Local Government Act 1995*. The remainder of the 1960 Act was renamed the *Local Government (Miscellaneous Provisions) Act 1960*.

Large parts of the *Local Government (Miscellaneous Provisions) Act 1960* were later incorporated into building legislation and the discussion paper questions whether the remaining sections of the *Local Government (Miscellaneous Provisions) Act 1960* are still required. Some of these sections include:

- the power and mechanisms to compulsorily acquire land for new street alignments
- the power for local governments and individuals to impound cattle if it strays upon their land
- a range of offences relating to pound keepers and cattle.

Information provided to and decisions made by the Department and the Minister

When the Act came into operation it fundamentally changed the powers of local governments and provided them with greater autonomy. The Act (as compared to the *Local Government Act 1960)* removed a great deal of control from the Minister and provided local governments with the ability to make a greater range of decisions without having the State Government reviewing or approving those decisions.

While the Act was heralded a marked shift and devolution of control, there are still many sections within the Act that require a local government to provide information to the Minister or Department prior to, or after a decision is made, as well as a number of other general reporting requirements.

For instance, the following pieces of information are currently provided to the Department and the Minister for Local Government at varying times:

- A report on the result of an election (ordinary or extra-ordinary election).
- Advice on the failure to hold council meetings within the last three months.
- A copy of the report that addresses the issues identified in the audit report.
- A copy of the compliance audit report.
- A certified copy of the compliance audit return.
- A report on the result of an election (election of Mayor/President and Deputy Mayor/President).
- Advice on the outcome of the Court of Disputed Returns (election of Mayor/President and Deputy Mayor/President).
- Request for a poll on a recommended amalgamation.
- Advice on the outcome of the Court of Disputed Returns (ordinary or extra-ordinary election).
- A copy of the annual budget.
- A copy of the review and determination of the reviewed annual budget.
- A copy of the annual financial report.

Furthermore, the following decisions are currently made by the Minister:

- Approval for a leave of absences greater than six consecutive council meetings.
- Ordering which local government is responsible for managing a facility that is located within two or more districts (only when the local governments themselves do not agree about how to manage the facility).
- Commencing or undertaking a major land transaction or trading undertaking (as required under the regulations).
- Establishing a regional local government.
- Amending the establishment agreement of a regional local government.
- Establishing a regional subsidiary.
- Amendment to a regional subsidiary's charter.
- Reducing the number of people required for a quorum or absolute majority.
- Approval to participate in a meeting (after disclosing an interest).
- Exemption from some or all disclosure of interest requirements for committee members.
- Minimum payment of rates on vacant land.
- Approval to re-vest land to the State for non-payment of rates.
- Direction to two or more local governments on how to resolve a dispute.

The assessment of what information is to be provided was primarily made in the mid-1990s when the majority of the Act and Regulations were enacted. The discussion paper suggests it is now appropriate to review what information should be provided; what reports should be submitted; and which decisions should still be made, by the Minister.

Absolute Majority decisions

The Act sets out how decisions are to be made by Council and in most cases these decisions are made by councils through a 'simple majority' vote (that is, a decision is made if over half of the elected members present at the meeting vote for in favour of the motion). With some decisions, a higher bar has been set through a required 'absolute majority' vote, which requires half of the total number of elected member positions to vote for a matter for the decision to be made.

The discussion paper highlights whether it is appropriate to review which decisions should be made by an absolute majority decision.

Overall, the ideas for change presented in the discussion papers on local laws and administrative efficiencies include:

- **providing more consistency in local laws between districts, either through the development of model local laws to be adopted by local governments or through regulations**
- **requiring local governments to have their local laws certified by a legal practitioner**
- **removing the requirement to have a mandatory eight-year review of local laws**
- **reviewing the powers of local governments based on their size**
- **combining the functions of the Local Government Grants Commission and the Local Government Advisory Board**
- **requiring changes to the ward and boundary review provisions through:**
    - **an ability for the Local Government Advisory Board to refuse to accept a proposal on the basis that the proposal is incomplete (does not meet the requirements set out in the Regulations)**
    - **a requirement for affected electors who sign a petition to acknowledge they have read the summary of the proposal and have seen a plan or map detailing any proposed changes**
    - **a requirement to provide the affected local government(s) details of a proposal prior to submission of a proposal to the Advisory Board**
    - **the ability for an applicant to be able to withdraw a proposal, prior to a recommendation being made to the Minister, subject to the Advisory Board supporting the withdrawal**
- **removing outdated sections of the *Local Government (Miscellaneous Provisions) Act 1960***
- **revisiting what information should be provided; what reports should be submitted; and which decisions should still be made, by the Minister**
- **revising which decisions of Council still require an 'absolute majority' decision to be made.**

City assessment

Local laws

The ability for local governments to develop local laws enables equity and amenity issues to be catered for and addressed, based on the various expectations of a local government's community. Local laws provide an effective regime for enforcement and adherence to these community standards.

While the development of regulations around certain matters will provide a consistent approach across the State, the implementation or Regulations will inhibit a local government's flexibility from developing and tailoring laws and enforcement regimes based on their own community's expectations. In view of this the development of Acts and Regulations should not be supported to enable this flexibility to continue.

WALGA has developed a series of 'model local laws' that local governments can adopt however at times these 'model local laws' have encountered drafting issues that offend the terms of reference of the Joint Standing Committee on Delegated Legislation, thereby requiring the local law to be amended, or in extreme cases, being disallowed by Parliament. In view of this the Department should provide a more active role in developing model local laws itself, drawing on the expertise of the State Solicitor's Office, the Joint Standing Committee on Delegated Legislation, and experienced officers within the local government industry.

Should this not be possible and fall outside of the scope of the Department, WALGA's model local laws should be vetted by the Joint Standing Committee on Delegated Legislation to minimise requests for amendments or motions of disallowance in Parliament. However, this will require the terms of reference of the Joint Standing Committee to be amended, which in all probability, is unlikely to occur.

Requiring local governments to have their local laws certified by a legal practitioner, instead of publishing in the *Government Gazette* will add to the administrative costs for local governments in developing their local laws and in any event may not prevent a local law from being disallowed or forthcoming amendment request by the Joint Standing Committee on Delegated Legislation. There are examples of this occurring through the local law creation process, such as the City of Perth's proposed Rules of Conduct Local Law, the City of Joondalup's proposed Cats Local Law, and the City of Fremantle's Plastic Bag Reduction Local Law to name a few. In a general sense the legal test of a local government's local law will be undertaken by the courts.

As part of the City's submission to Phase One consultation process, it was suggested that the legislative requirement to review local laws every eight years should be deleted as local governments, through administering their local laws, will determine when it is necessary to amend or revoke a local law in terms of meeting its needs for its inhabitants of its district. Requiring local governments to undertake this process is considered unnecessary red tape and administratively burdensome. Members of the community have a number of avenues to express their concerns with a local government's local laws, such as raising matters at Council meetings; submission of petitions; and direct engagement with elected members and of course a local government's administration.

The City's Phase One submission also purported to remove the requirement to give state-wide public notice when a local government is proposing to make a local law. Limiting to local public notice, as well as publicising on a local government's website is considered sufficient in addressing and informing inhabitants of the district.

<u>Administrative efficiencies</u>

As presented in a Local Government Professionals Discussion Paper related to local government capacity building "*local government needs a legislative framework that differentiates between local governments, that recognises that some have significant capacity and can be relied upon to take on greater responsibility, while others have very limited capacity and simply can't afford to carry the same levels of compliance and administration, and instead need to focus on core functions.*

Local governments should operate within a legislative framework that promotes transparency and accountability and that governs core operations, but there must be an appropriate balance between compliance and performance.

Treating local governments equitably doesn't mean treating them equally. There has to be an understanding that each local government faces different challenges, just as each community has different needs.

Legislation and regulation need to be flexible enough to allow governments to effectively respond to these differences. Currently, this is not the case, and local governments and local government officers are held back by unnecessary red tape, which limits the service they can provide to their communities, and provides little in return.

There is already mechanism that creates categories within local governments based on size, complexity and capacity, such as the band system used by the Salaries and Allowances Tribunal, which allows for local governments to move up or down, depending on changes."

Given the varying sizes and capacities of local governments it may be appropriate to split the sector into bands or categories for the purposes of tailored policy-making and regulation. Such an approach will enable greater flexibility for government in legislative issues and policy-making and would enable the State to better target its initiatives and achieve its objectives for the sector.

Turning to the statutory bodies that support local government functions and activities, both the Local Government Grants Commission and the Local Government Advisory Board perform significantly different functions and it is not viewed that any deliberations on grant funding would be impacted on any deliberations or activity of the Local Government Advisory Board. The suggestion for amalgamation put by the discussion paper may be a result of the State Government's rationalisation of State Government boards and committees, as opposed to promoting an agile, smart and inclusive local governments for the future.

The Metropolitan Local Government Review Panel's Final Report (July 2012) made a recommendation the Local Government Advisory Board be dissolved and its operating and process provisions in the *Local Government Act 1995* be rescinded with the Local Government Commission taking over its roles, including consideration of representation reviews. The Panel's Final Report provides that the proposed "*Local Government Commission, combining State and local government representatives reporting to the Premier could help manage the critical relationship between State and local government. While local government is essentially a 'creature of the state', the Commission would go some way towards equalising the power in the relationship. The Commission could negotiate and oversee future changes in the role of local government. It could also oversee the implementation of the Panel's recommendations, including the boundary change process. The Local Government Commission would need an independent chair and members with significant experience in State and local government."*

Council in its response, supported this recommendation at is special meeting held on 2 April 2013 (JSC01-04/13 refers), and therefore some attention should be given to the recommendations of the Independent Panel in terms of establishing a Local Government Commission with broad functions and roles, which could include those functions of the Local Government Grants Commission and the Local Government Advisory Board.

The discussion paper's position around the role of the Local Government Advisory Board's around changes to the method of electing mayors / presidents from an "elector method" to a "council method" is supported as a local government would be best placed to determine the question around such matters and the summary case. The Mayor of the City of Joondalup is currently elected by the electors of the district and the provisions of section 2.12A of the Act would apply should a change to this method be made.

The discussion paper highlights the difficulties being experienced by the Advisory Board in terms of submissions made by local governments or the public for boundary changes and ward representation reviews. It would be beneficial for the Department therefore to firstly update its October 2017 information package and guides on review of wards and representation levels to provide better clarity and examples in what the Advisory Board desires to be included.

The City of Joondalup last undertook a Ward Boundary Review in 2013, which resulted in a change to the ward boundaries of the North Ward and North-Central Ward, by transferring the suburb of Connolly from the North Ward to the North-Central Ward (Item CJ246-12/13 refers). Schedules 2.1 and 2.2 of the Act in the main are complex and difficult to interpret in relation to the provisions for changes to districts, ward boundaries and ward representation levels and some simplification or re-drafting should entail.

As part of its December 2011, May 2012 and April 2013 responses into the Metropolitan Local Government Review undertaken by the Independent Panel, the City supported:

- the establishment and review of external local government boundaries by an independent body
- the review of external local government boundaries being undertaken on a regular basis.

The City continues to support this position.

Local Government (Miscellaneous) Provisions Act 1960

The provisions of *Local Government (Miscellaneous) Provisions Act 1960* (1960 Act) are outdated and should be repealed. In terms of new street alignments, the discussion paper highlights there is currently two mechanisms outside of the 1960 Act for local governments to acquire land; being Part 9 of the *Land Administration Act 1997* or through purchase provisions under the *Local Government Act 1995*.

The provisions relating to cattle under the 1960 Act do not affect the City of Joondalup but may affect other country and regional local governments. However, the *Local Government Act 1995* currently provides a framework for the impounding of animals (in public areas) and it should not be requirement that members of the public have an ability to impound cattle if it encroaches on their land (for legal and animal welfare reasons). However, powers to employees of a local government could be investigated where such instances arise. To facilitate this, it may be possible for the entry in an emergency provisions under section 3.25 of the Act to be revised to give such powers to impound animals (or other materials) where the property owner gives consent for the local government to do so. This would require a level of legal analysis in terms of protecting a property owner's right to the quiet enjoyment of their land.

Information provided to and decisions made by the Department and the Minister

The question around what information is provided to the Department or the Minister, and what decision are required of the Minister is best placed to be asked of the Department and the Minister, depending on what level of autonomy local governments are to be given, and how useful the information supplied is to the Department and the Minister. A majority of information supplied to the Minister or the Department is available publicly; or through Council meeting agendas and minutes; or able to be acquired from the local government or a third party, should the Minister or the Department request such information.

Part 8 of the Act provides an ability for the Minister, or the Department to make inquiries into the affairs and performance of local governments (including the ability for information to be provided, should the need arise) and this provision may circumvent the need for certain routine information to be provided, where a concern of the Minister or the Department arises. Notwithstanding, the balance between ensuring good governance and effective local government rests with the Minister and therefore what level of information is supplied to enable that comfort to be realised, should be revisited.

In terms of the decision to be made by the Minister, it is considered that Parliament, in drafting the legislation, determined the aspect of a local government's functions should rest with the Minister due to the impact on the local government itself, or a local government's community. It is considered that the current Minister decisions are appropriate, other than possibly those matters around Council meetings and meeting operations. Seeking Ministerial approval for some of these matters (such as approving leave of absences over an extended period; enabling disclosing members participation at meetings; exemption from disclosing interests for committee members) can delay the Council's decision-making processes and an overall effective local government. These provisions and legislative framework could be included in a local governments meeting procedures local law or standing orders local law.

Absolute Majority decisions

As the discussion paper has alluded to, a higher bar has been set through a required 'absolute majority' vote for certain decisions and it is considered that the current decisions that require an absolute majority should be retained. Reducing some matters to a simple majority could place the local government in a compromised position that is only supported by a small minority or elected members.

For instance, should there on be seven elected members at a City of Joondalup Council meeting (the required number for a quorum and therefore a constituted meeting), a simple majority at that meeting would be just four elected members. Should four elected members support a proposal that currently requires an absolute majority', this would only reflect under a third of the total elect body number.

In view of the high impact of the current decisions that require an absolute majority decision, the current majorities as provided in the Act should be retained.

Proposed City of Joondalup position:

The City of Joondalup:

- DOES NOT SUPPORT certain matters being incorporated into Acts or Regulations as such action removes and limits the flexibility for local governments to develop local laws that cater for the expectations and desires of their localised communities
- SUPPORTS the Department of Local Government, Sport and Cultural Industries playing a more active role in developing 'model local laws', in consultation with WALGA, Local Government Professionals (WA branch), the State Solicitor's Office and the Joint Standing Committee on Delegated Legislation

- DOES NOT SUPPORT a mandated requirement for local laws to be certified by a legal practitioner due to the additional costs for local governments and considering such certification may not minimise disallowance or amendment by the Joint Standing Committee on Delegated Legislation

- SUPPORTS a review of the terms of reference of the Joint Standing Committee on Delegated Legislation to enable greater advice to local governments in drafting and advising local governments on their local laws prior to them being published in the *Government Gazette*

- SUPPORTS the removal of the provision relating to the mandatory eight-year review of local laws as local governments are well placed to determine the relevance and needs of their local law framework

- SUPPORTS the removal of the provision relating to the state-wide advertising of a proposed local law as local public notice would suffice

- REITERATES its support for the Department of Local Government, Sport and Cultural Industries examining as part of the review of the Act to differentiate between local governments, to apply regulation, compliance and administration requirements that are reflective of the capacity and needs of local governments

- DOES NOT SUPPORT the establishment of a Local Government Commission

- SUPPORTS changes to section 2.12A of the Act to allow local governments to determine the question at a poll, and the development of a summary case, in terms of changing the method of voting for a mayor / president from an 'elector method' to a 'council method'

- SUPPORTS changes to schedules 2.1 and 2.2 of the Act to improve the processes around ward reviews, boundary changes and ward representation levels

- SUPPORTS the *Local Government (Miscellaneous) Provisions Act 1960* being repealed as other mechanisms are in place to cater for the various provisions currently in place in that Act

- SUPPORTS an examination of changes to section 3.25 of the Act to give additional powers to local governments to enter property in an emergency, including the impounding of stray animals (or other materials) where the property owner gives consent

- SUPPPORTS the Act being reviewed to determine which information is necessary to be supplied to the Minister and/or the Department to enable oversight of good governance and effective local government

- SUPPORTS the current matters requiring Ministerial approval being retained other than those matters relating to Council meetings and meeting processes

- SUPPORTS the current matters requiring an absolute majority decision being retained.

2.2 Council Meetings

Public participation at meetings

The Act establishes the framework for council meetings and this framework is further supported by a local government's meeting procedures local law (also known as standing orders). These meeting procedures typically deal with matters such as:

- the order of business and standing items
- procedures for debating motions
- procedures for taking public questions
- procedures for making representations at council meetings, known as deputations.

The Act provides that a minimum of 15 minutes is allocated to public questions at each council meeting (or committee meeting where a committee has delegated authority). It is thought that public question time serves as an important opportunity for people to interact with their council and is seen by many in the public as a way to apply scrutiny and rigour to a council's decision-making.

Currently, there are no provisions in the Act that regulate how individuals may ask questions, though it is generally a given that the person would be present at the meeting. Attending a council meeting is not always convenient or possible for everyone in the community and the discussion paper suggests the use of technology to ask questions may present a way for question time to be modernised. It has been suggested using email or social media as a means of accepting questions may foster greater community interaction; strengthen inclusivity; and increase the utility of public question time. Live streaming of council meetings has also been suggested and would enable people to receive answers even when not in attendance.

As a means of encouraging public engagement and promoting transparency, the discussion paper also suggests time to allow members of the public to address council without asking a question (that is public statement time).

Managing interests

Currently, a member with an interest in a matter to be discussed at a meeting is required to disclose the interest to the Chief Executive Officer prior to the meeting, or at the meeting before the matter is discussed. The interest is then brought to the attention of the meeting, through the presiding member, prior to the relevant matter being discussed. The Act currently identifies several different types of interests: direct financial interests, indirect financial interests and proximity interests. There are also impartiality interest provisions within the *Local Government (Rules of Conduct) Regulations 2007* (for elected members) and the *Local Government (Administration) Regulations 1996* (for employees).

Under the Act there are situations in which a person is not required to declare an interest in a matter, as well a range of exemptions. This includes where an interest is common to a significant number of electors or ratepayers. However, the term "significant number" is unclear and can cause confusion as to whether the interest needs to be declared.

The current legislative framework is quite prescriptive regarding interests and has been developed as a comprehensive scheme, seeking to capture all potential instances of conflict between an elected member's role and their private interests, rather than being a more general test of 'material personal interest'.

However, as the discussion paper suggests potential gaps still exist in the definitions of interest. There are questions as to what would qualify for exemption as an interest that affects a sufficient number of ratepayers, or as membership to a not-for-profit organisation. An example put in the discussion paper is when an elected member may be a member of an organisation (such as a sporting club or other social association) which has an application before council for a grant or waiver of rates. Although an impartiality interest would probably need to be disclosed in this instance, a disclosing elected member can remain in the room, thereby exposing the council to possible exploitation, particularly if the elected member in question is a prominent member or holds a level of influence in that local government.

The discussion paper also suggests the definition of proximity interest may be too narrow. The current legislation requires a proximity interest to be declared, among other instances, where a proposed development is directly adjacent to, or across from, the elected member's property. The discussion paper suggests it seems reasonable that developments occurring on the same street as the member's property could have a significant influence on the member's decision, yet this is outside of the current provisions. The same may be said for developments in the vicinity of the person's workplace or their children's school.

The Act requires elected members who make a disclosure must not participate in the meeting where it relates to their interest, unless permitted by council or the Minister. The other elected members can only decide to allow the member to participate if they deem that the interest is trivial enough to not influence decision-making or is common to a significant number of electors and ratepayers.

Council or the Chief Executive Officer may apply to the Minister to allow the disclosing member to participate in the part of the meeting relating to the matter. This can occur if the Minister is satisfied that there wouldn’t be enough elected members to form a quorum to deal with the matter, or if it is in the interests of the ratepayers to do so. Council or a Chief Executive Officer may also apply to the Minister to exempt the members of a committee from the disclosure of interests.

However, the discussion paper identifies the current legislation does not prevent the disclosing member from discussing or participating in the decision-making process on the question of whether an application for an exemption should be made to the Minister and that this may be an issue if the elected member is able to sway opinion on the matter.

Reporting interests

There remains a need to simplify the subject of interests and how they are dealt with during council meetings and these requirements are dealt with in the Act. During Phase 1 of the Review, the discussion paper identified several submissions which recommended reforms that would also require another elected member or employee to report an interest of another and any disclosure of this kind could potentially be dealt with in two ways:

1. by the Mayor or President determining that an interest existed, and the person should not participate in the meeting
   or
2. by the Council voting on the matter.

The discussion paper highlights it may be possible that the Mayor or President has the conflict, in which case having that person decide on such matters of participation would compromise the decision-making process. The discussion paper suggests while this concept may strengthen the identification of interests and accountability, it needs to be considered in the context of Council cohesiveness and conduct.

Remote attendance

Currently regulations allow elected members to attend council meetings remotely in specific circumstances. To be eligible for remote attendance, the person (unless they have a disability) must be located in a council-approved place in a townsite that is at least 150km from the meeting venue. Even if a person is eligible, it is council's decision whether they approve the remote attendance or not. A council is also not permitted to have members attend remotely for more than half of the meetings in a given financial year.

A member is present if they are in audio contact, by telephone or other means, with the other members of the meeting. The advancement of technology has made video calls part of everyday life and the discussion paper recognises this should be reflected in modern meeting practices.

The discussion paper also highlights expanding the instances in which remote attendance is allowed, will help to ensure that local issues are heard and voted on by all elected members. It may also reduce the number of instances in which a quorum is not present, thereby allowing the local government to run more effectively. Some of the restrictions around remote attendance have also been suggested such as reducing, or removing altogether, the 150km distance expanding the legislation to allow individuals to participate from interstate or even internationally.

Meeting procedures

It is important for council meetings to be governed by a set of rules to ensure they are transparent and effective. These rules are set out individually by each local government in local laws.

The discussion paper highlighted submissions in Phase 1 of the Act review recommended the responsibility for keeping minutes of council be shifted to the Chief Executive Officer rather than the Presiding Member as the keeping of minutes is an administrative function that, as the head of the administrative arm of local government, should be the responsibility of the Chief Executive Officer.

The discussion paper suggests there has been some confusion regarding the taking and publication of minutes in relation to confidential matters. The Act requires minutes of council meetings must include, among other things, details of each motion moved at the meeting and the outcome of the motion, including confidential motions. However, the discussion paper suggests confidential minutes are not to be published and it is suggested that greater clarity is required in legislation to emphasise this distinction.

The discussion paper proposes it may be beneficial to further clarify and strengthen the rules regarding revoking or changing council decisions. It is proposed that these rules be revised to explicitly state that the rules concerning revoking or changing decisions of council do not apply after the decision has been implemented. This change will assist in ensuring certainty of council decisions without affecting their flexibility, as subsequent decisions on the matter can still be made if need be.

Meetings of electors

Under the Act, a general meeting of the electors of a district is to be held once every financial year and the purpose of the annual electors meeting is to discuss the contents of the annual report and any other general business.

The discussion paper highlights the Western Australian Local Government Association (WALGA) and the local government sector have long called for the requirement to hold an Annual General Electors' Meeting to be scrapped on the basis that very few members of the community attend and there are other opportunities to ask questions of council through a range of forums and established meeting processes. It should be noted that annual electors' meetings are not required in any state or territory other than Western Australia.

Furthermore, under the Act, special electors' meetings may be called if a sufficient number of people within a district request one. The current requirement to call a meeting under the Act is either 100 electors or 5% of the total number of electors, whichever is less. These meetings are usually called by electors to discuss an issue affecting the district.

Special electors' meetings are held in varying circumstances in other States. None of the States that provide for special electors' meetings allow for the public to call such a meeting. For instance, in Queensland, the Mayor and Chief Executive Officer may decide to call a special electors' meeting, while in Tasmania a special meeting may be convened by the Mayor and this only takes place at the request of three or more elected members. As electors' meetings are hardly used in other States, this may imply that these meetings are not essential to the functioning of local government in those jurisdictions.

In order to ensure that special electors' meetings are called only when necessary, the discussion paper suggests the threshold of electors required to call a meeting could be raised. Increasing the number of electors required from say 100 to 500 may assist in preventing unnecessary meetings. In order to prevent numerous meetings on an issue, a requirement that a meeting cannot be held to discuss the same issue more than once in a 12-month period, could also be introduced.

If special electors' meetings are to remain, the discussion paper highlights it may be worthwhile to ensure the procedures for electors' meetings are in accordance with the meeting procedures adopted by the respective council. It is stated such a change would replace the rules set by the presiding member of the meeting as is currently the case.

Access to information for elected members

Section 5.92 of the Act states that elected members can have access to any information held by the local government that is relevant to the performance of the elected member's functions. The current legislation provides a mechanism to limit the information that elected members and committee members have access to, in that it must pertain to the functions and duties that they are currently undertaking.

As the legislation is currently written, the power to decide what is relevant rests with the Chief Executive Officer. The question of what is relevant to the performance of an elected member's function is a subjective one, and currently it is based on the opinion of the Chief Executive Officer alone. The discussion paper suggests it may be appropriate to include a mechanism within the Act to allow the review of that decision by the Chief Executive Officer to review that decision and considering the very nature of the question and the possible confidentiality of the material, may be a question most appropriately reviewed by the council itself.

The discussion paper proposes a mechanism could be used is to allow the elected member to move a motion in a council meeting to request the information. The moving of the motion will trigger debate, wherein the council can consider why the elected member requires the information and can assess the utility of providing the information.

Overall, the ideas for change presented in the discussion paper around council meetings include:

- **modernising public question time through standardised rules and the use of new technologies**
- **introducing 'public statement time' at council meetings for community members who are not asking a question**
- **reviewing the provisions as to when a disclosing member can participate in discussion and voting on certain matters**
- **extending the rules for disclosure of interests including third party reporting of another's interest in a matter**
- **expanding opportunities for elected members to attend meetings remotely and removing some provisions around remote attendance**
- **clarity around the keeping of minutes and the details to be included in minutes**
- **clarifying the rules for revoking or changing decisions**
- **removing the requirement for annual and special electors' meetings or revisiting the ability for them to be called and what procedures to be followed**
- **revising the requirements and processes around elected members seeking information from the City's administration.**

City assessment

Public participation at meetings

The City of Joondalup meeting processes have for some time supported public questions being submitted by email or in writing prior to the meeting being held, in addition to questions being asked verbally at meetings. The City's processes have also included a period of public statement time at both its Briefing Sessions and Council meetings as a way to promote further engagement with the community, and where appropriate, involved in the decisions and affairs of Council.

However, legislatively mandating process matters, above what is currently in place for question time, is not supported and it should be left to an individual local government to determine how its meeting processes are developed (through local laws or other adopted procedures) and how members of the public are able to interact with the meeting and become involved in Council's decision-making process (or a committee where the circumstance requires). It is also not supported that changes be made to the Act to allow members of the public to ask questions remotely due to possible technical limitations; inability to identify or confirm a member of the public during this process; and possible difficulties of a Presiding Member to manage the transaction of business and proper order of the meeting.

Public statement time is also afforded to the community at City of Joondalup Briefing Sessions and Council meetings. Again, mandating this requirement in legislation is not supported as it should be left to individual local governments to determine on how its meeting processes are developed (through local laws or other adopted procedures) and how members of the public are able to interact with the meeting.

It also needs to be recognised that members of the public are not prevented from interacting with the City's administration, elected members, or the Council (through the lodgement of petitions) should they have concern with a particular issue or activity of the local government. Local governments continually engage with their communities through various consultation and engagement processes where members of the community can also have their opinions and views heard. This level of public access is somewhat not afforded to the community in other spheres of government as local government is often referred to the 'closest to the community'.

The audio of City of Joondalup Council meetings is currently streamed across the City's website, where members of the community can listen to the business of the meeting without being in attendance. During the meeting it has been the City's experience that a very small number of people listen to the live audio stream of a meeting, however it does depend upon the items being considered at any particular point of time. This would indicate that there is little interest in people listening to Council business across websites, and through live audio streaming.

Legal issues around audio and video streaming of meetings have been widely publicised and have been critical of this activity, considering the decisions a council makes; elected members' various roles at meetings (for instance quasi-judicial roles); the limited protection offered to elected members and others from defamation; and transmitting data and images across a wide, and more so, global audience. It has been said that the minutes of a Council meeting should remain as the basic public record of meetings, without the additional processes or exposure and scrutiny which are often proposed by local government critics, as well as being presented in the discussion paper.

Any decision of a local government to stream any audio or video of its meetings is a matter for those local governments to determine, as opposed to mandating this requirement through any legislative change. Some local governments may not have the resources or capability to perform such functions and would therefore likely to incur additional expenditure or additional resourcing and may have limited capacity to do so.

Managing and reporting interests

One important aspect of any local governments decision-making responsibilities is how conflicts of interests are identified, recorded and treated throughout the organisation. It is not only important to ensure that real or potential conflicts of interests are handled appropriately, but also perceived conflicts of interests.

The nature of the City's business is conducive to conflicts of interests arising between an elected member's and/or employee's personal interests and the performance of their public or professional duties. Genuine or perceived conflicts of interests may arise from a range of sources, including friends, relatives, close associates, financial investments, past employment and the like. Conflicts of interest are not necessarily wrong but how they are identified, recorded and managed is important and can affect good governance as well as the integrity of decisions that are made.

First and foremost, declarations of interests should remain the responsibility of the conflicted elected member or employee, and them alone. Therefore, reporting the interests of another is not considered appropriate as the reporting person may not have the full facts or understanding of another's interests, and may be misinformed or basing their comments on outdated and possible malicious information, which could create unnecessary tension between elected members and a council's overall cohesiveness. Such third-party reporting may be evident in various boards and other private committees, but the business of such

meetings is not in the public eye and can be resolved behind closed doors and without a high level of public scrutiny.

It should also be noted that any person can make a complaint about an elected member, through the minor or major breach provisions under the Act, if a person believes an elected member has not complied with their disclosure responsibilities, although this does not occur before any decision is potentially made and therefore tainted.

The participation at meetings by a disclosing member should not be the subject of a decision of the Mayor / President or Council, over and above what is currently in place under the Act. In situations where the Mayor (or Council through resolution) have allowed participation, it could compromise the conduct of the Mayor / President or alternatively the Council as a whole. The ability to participate should be based on clear legislative provisions and supporting guidelines that provide a range of examples and scenarios. It should be noted that the Department's operational guidelines around disclosure of interests have not been updated since 2011 and a revision of this should be undertaken to better clarify what is required and to support local government elected members and employees make better decisions.

In the main, a review of the entire conflict of interest provisions is recommended to provide better clarity and operation, not only for the Act but also the *Local Government (Rules of Conduct) Regulations 2007* and the *Local Government (Administration) Regulations 1996.*

Remote attendance

The City generally supports the discussion paper's suggestions to change the distance limitation for remote attendance provisions within the Act, however, it is not considered to be an issue in terms of metropolitan local governments unless elected members are travelling outside of the local government's district. It is also not considered that the current provisions have ever affected the ability for a quorum to be present at any particular meeting.

Remote attendance for meetings however does pose a series of operational issues. For instance, technology would need to be available within a local government's council chamber or meeting room for the elected member to call in, or video call in, to the meeting. Voting activity would need to be carefully managed so that an elected member's vote is recorded at the same time as other elected members present in-person, so as not to influence a decision or potential voting outcome. It would also be difficult to conduct any secret ballots with a remote elected member, and movements of the remote elected member, in terms of leaving or entering the "meeting room" (for reasons such as declaration of financial interests) would be challenging administratively. If technical issues occur, for instance the technology "drops out", is the meeting suspended or adjourned until the technical issue is resolved, or would the meeting still carry on with its business? It would be interesting to know the experiences of local governments that have to use the current provisions in the Act.

The discussion paper suggests that matters of voting or secret ballots could be overcome by local governments implementing electronic voting systems. Generally speaking electronic voting systems are localised and cannot be implemented outside of the meeting room environment and such suggestions therefore lack an understanding of such systems and meeting processes. This suggestion also lacks an understanding of the ballot requirements that are prescribed under the Act, particularly Schedule 2.3 of the Act in terms of how mayors, deputy mayors / deputy presidents are elected by council (including presiding members for committees).

Remote attendance is not an opportunity afforded to members of parliament at both the State Government and Federal Government level, so it is also questioned why this provision only applies to local governments, considering the type of decisions all tiers of government make.

Meeting procedures

The City's submission to the Phase One Review supported the Chief Executive Officer being responsible for the keeping of minutes at meetings as opposed to the Presiding Member. The Presiding Member is responsible for the conduct and proceedings of meetings whereas the keeping of minutes is an administrative function that should be given, and under the responsibility of the Chief Executive Officer. Consideration might also be given to the requirement of the Presiding Member to sign the minutes should also be removed as confirmation of Council, or the Committee, should suffice.

The discussion paper incorrectly references the matter of confidential minutes, and states confidential minutes are not published. There is no such thing as confidential minutes and any resolution made at a meeting, regardless whether it is a matter openly discussed, or a confidential matter to be discussed behind closed doors, needs to be included in the official public record, being the Council (or committee) minutes.

The content of minutes is quite clearly prescribed within regulation 11 of the *Local Government (Administration) Regulations 1996* which states, "the content of minutes of a meeting of a council or committee meeting is to include details of each motion passed at the meeting, the mover and the outcome of the motion". The discussion paper may be confusing the issue of confidential reports, and it has been the City's practice to not include this material in either the meeting agenda or public accessible minutes of the meeting. However, if greater clarity is required for local governments to understand these provisions, the City supports such amendment.

The City also supports the proposal to clarify and strengthen the rules regarding revoking and changing decisions in that such action cannot be done if the decision has been implemented. However, the term "implemented" needs to be defined. It is also suggested the need to give support to consider a decision to revoke or change a decision be removed, before it is actually considered (regulation 10(1) of the *Local Government (Administration) Regulations 1996*). As the decision to revoke a previous decision needs to be made by an absolute majority, this need to give support upfront does create confusion at times and does not serve any purpose in terms of progressing the matter to a formal resolution.

Meetings of electors

Generally, it is considered there is adequate provision in the Act for the public to participate in local government matters and access information by attending meetings, participating in public question time, lodging petitions, and requesting special electors' meetings. With regard to the City of Joondalup, annual general electors' meetings have historically been poorly attended and require significant resources to administer for what is considered nominal benefit, given existing mechanisms to engage with the Council.

In response to WALGA's discussion paper on Phase One of the *Local Government Act 1995* Review, the City of Joondalup Council, at its meeting held on 10 October 2017, supported the position that section 5.27 of the Act be amended so that electors' general meetings are not compulsory (Item CJ161-10/17 refers). However, discretion of local governments to hold or otherwise, would cause inconsistency across local governments therefore a decision one way or the other should be made.

While it is considered there are adequate mechanisms for member of the community to engage and interact with local government it is considered that it is a democratic right of communities to request a special meeting on a matter that is of importance to them.

However, the prescribed number increase as indicated in the discussion paper is supported as the cost to initiate a special electors' meeting can be quite significant if required to be held in a venue exceeding the local government's capacity. The ability to preclude the calling of electors' special meeting on the same issue within a 12-month period, unless Council determines, is also supported. These positions also formed part of the City's response to WALGA's discussion paper on Phase One of the Act review (Item CJ161-10/17 refers).

It is generally supported that the procedures for electors' meetings be in line with a local government's meeting procedures local law or standing orders local law. Although the business conducted at these meetings are more informal that the decision-making responsibilities of a council when meeting, it allows known and approved processes to be implemented and communicated. However, the presiding member should still be able to determine some of the procedures for elector's meetings and use the local law as a guide.

Access to information for elected members

Elected members have a specific role under the Act, one of which relates to participating in the local government's decision-making processes at council and committee meetings.

The decision review mechanism proposed in the discussion paper is not supported and section 5.92 of the Act, as it currently stands, should remain. Elected members should not be given an unfettered right to access information of the local government, however it is considered unlikely that a Chief Executive Officer would deny such access to information, on balance with the need for the information to perform an elected member's role, and the resources and effort it would take for a local government's administration to supply that information.

It should also be noted that in is rule of conduct that an elected member must not misuse the resources of the local government or undertaking a task that contributes to the administration of the local government, unless authorised by council or the Chief Executive Officer.

Notwithstanding, information can be obtained under the *Freedom of Information Act 1992* and this mechanism can be used to obtain information that may be denied, rather than using the Council meeting process to determine such minor administrative matters. Having a council to decide on such matters that are considered insignificant could cause tension between the elected body and a Chief Executive Officer, overly burden an administration to prepare a report, and take up value meeting and debate time at council meetings.

Proposed City of Joondalup position:

The City of Joondalup:

- DOES NOT SUPPORT changing the current minimum public question time provisions within the Act, noting it should be left to individual local governments to determine how public question time is to be conducted including the approved communication channels that public questions can be lodged

- DOES NOT SUPPORT prescribing additional public question time provisions within the Act, noting the City of Joondalup currently allows public statement time at Council meetings and Briefing Sessions, and it should be left to individual local governments to determine if public statement time is a meeting process to be implemented

- DOES NOT SUPPORT legislating the requirement to audio and visual stream proceedings of meetings as this should be left to the discretion of individual local governments in view or the benefits and risks involved, and their individual capacity to do so

- DOES NOT SUPPORT rules on how public question time is to be handled at meetings as this level of prescription impedes a local government's flexibility to manage this appropriately and a "one size fits all" approach would not be in the best interests of local governments

- SUPPORTS a comprehensive review of the interest provisions within the Act, the *Local Government (Rules of Conduct) Regulations 2007* and the *Local Government (Administration) Regulations 1996* to provide better clarity and a balance between a person's personal interests and public duties

- SUPPORTS the Department of Local Government, Sport and Cultural Industries undertaking a review of its operational guidelines around conflicts of interests at meetings

- SUPPORTS changes to the remote attendance provisions to remove the 150km restriction currently in place

- SUPPORTS the Chief Executive Officer being responsible for the keeping of minutes as opposed to the Presiding Member

- SUPPORTS the removal of the section in the Act requiring the Presiding Member to sign the minutes to certify confirmation as this is a formal resolution of Council / Committee when confirming the minutes

- SUPPORTS amendments to the *Local Government (Administration) Regulations 1996* to better clarify the required content of minutes of council and committee meetings

- SUPPORTS the removal of regulations 10(1)(a) and (1a) of the *Local Government (Administration) Regulations 1996* for the need to give support before a motion to revoke or change a decision is considered

- SUPPORTS section 5.27 of the Act being amended so that Annual General Electors' Meetings are not compulsory

- SUPPORTS section 5.28(1)(a) of the Act being amended:
    - so that the prescribed number of electors required to request a meeting increase, to 500 (or 5% of electors) whichever is the lesser
    - to preclude the calling of Electors' Special Meeting on the same issue within a 12-month period, unless Council determines otherwise.
- SUPPORTS electors' meetings complying with the procedures of a local governments meeting procedures / standing orders local law
- DOES NOT SUPPORT section 5.92 of the Act being amended to include a review mechanism of a decision to deny access to information requested by an elected member.

2.3 Interventions (Council conduct and governance)

The Act provides means to regulate the conduct of local government officers and elected members and sets out powers to scrutinise the affairs of local governments. In providing a disciplinary framework for elected members and councils, the Act provides the Minister with the ability to:

- establish an inquiry by an Inquiry Panel
- suspend councils
- suspend or dismiss individual elected members
- appoint commissioners
- dismiss a council via an order made by the Governor.

The Act also provides the Director General of the Department with the power to:

- conduct authorised inquiries
- refer allegations of serious or recurrent breaches to the State Administrative Tribunal
- commence prosecution for an offence under the Act.

Local governments themselves are given powers to enforce the legislation, namely, to:

- enter premises
- arrest a person suspected of committing an offence who fails to give certain information to a local government employee
- issue infringement notices
- commence a prosecution for an offence under the Act.

There is a community expectation that the misconduct of local government officers and organisational dysfunction and governance issues within local governments are dealt with appropriately. This is achieved through balancing the ability of the State Government to intervene in local government matters and enabling local governments to operate as autonomous bodies in managing their own operations and affairs.

The discussion paper highlights taking an approach which enables the Department to work in partnership with local governments has the potential to improve good governance and performance across the local government sector and strengthen local government capacity. It is also suggested by the discussion paper that reforms could enable the Department to be more flexible in investigating matters and enforcing the Act. Some of these suggestions follow.

Investigations and inquiries

A person who suspects that an elected member has committed a breach of the Act may make a complaint to their local government or to the Department, depending on what type of breach the complaint relates to. There are two types of breaches under the Act, namely minor breaches and serious breaches. The process for lodging a complaint about an alleged breach of the Act differs depending on the type of breach involved.

The discussion paper suggests an amendment to the Act could be made to simplify the process of making a complaint so that both minor breach and serious breach complaints are to be made to the Director General who then decides how the complaints should be dealt with. It is suggested this reduces red tape for local governments as it removes the requirement for the complaints officer of a local government to receive complaints.

Assistance by State Government

The options that are available under the Act to support local governments in challenging times are currently limited and can escalate to direct interventions such as suspending a council and installing a commissioner or dismissing the council or individual elected members.

Building on the feedback from previous consultation regarding the power to appoint a person to the administration of a local government, the discussion paper suggests the appointed person could be provided with the ability to direct the administration to perform certain actions and to override decisions made by the administration. The view presented in the discussion paper suggests this would increase the ability of the appointed person to ensure that the administration takes the necessary action to address the issues in question.

Additionally, the discussion paper suggests the Act could be amended to enable the State Government to embed a person (with suitable expertise and experience) into a council. This person could have the ability to direct the council to perform certain actions and to override decisions made by the council if they were illegal or contrary to the interests of the community. This may take the form of the appointed person taking over the roles and responsibilities of the Mayor or President.

The intention of embedding a person into council, as the discussion paper suggests, is to allow the council members to remain on council and for the appointed person to work with elected members to address the matters of concern. This may be particularly effective in situations where a council is dysfunctional.

This option of embedding an appointed person into a council is based on the model in Victoria where the Victorian Minister can appoint a “Municipal Monitor” to a council (following written notice to the council of the appointment). The role of the “Municipal Monitor” or “Authorised Inspector” could include monitoring governance processes and practices, providing advice to a council on governance improvements, and reporting to the Minister on any steps or actions taken by council to improve its governance and the effectiveness of those steps or actions.

Improper use of information

Under section 5.93 of the Act, a person who is an elected member, a committee member or an employee must not make improper use of any information acquired in the performance of his or her functions to gain an advantage for themselves or any other person, or to cause detriment to the local government or any other person. This offence does not apply to former elected members, committee members or employees who use information (which they acquired when they were engaged with a local government) improperly.

The discussion paper suggest the Act could be amended to extend the improper use of information offences to former council members, committee members or employees for a particular period.

New offence – improper use of position

Under regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007*, an elected member must not make improper use of his or her Office as an elected member to gain directly or indirectly an advantage for themselves or any other person, or to cause detriment to the local government or any other person.

As this regulation only applies to elected members, there is no equivalent "improper use of position" offence under the Act which applies to chief executive officers or employees of a local government.

The discussion paper suggests an amendment to the Act could be made to include an "improper use of position" offence which applies to elected members, chief executive officers and employees of a local government, and former elected members, chief executive officers and employees. It is purported this would ensure that chief executive officers and employees do not escape liability for improperly using their position, especially in situations where the conduct of the individual does not fall within the jurisdiction of the Corruption and Crime Commission or the Public Sector Commission.

New offence – providing false or misleading information to council

In making decisions, Council may consider written reports which have been prepared by the Chief Executive Officer or employees of the local government and verbal information provided by local government employees (normally senior executive staff) during a Council meeting.

The discussion paper highlights the Department of Local Government, Sport and Cultural Industries has received complaints whereby elected members have been provided with a written report from a Chief Executive Officer or employee of their local government which contains false or misleading information. There is currently no provision under the Act which makes it an offence for a Chief Executive Officer or employee to provide false or misleading information to council.

The discussion paper highlights the Act could be amended to provide that the Chief Executive Officer or an employee of a local government must not deliberately or negligently provide false or misleading information to council. It is purported this would ensure that a council, as the decision-making body of a local government is provided with accurate information from its Chief Executive Officer and employees.

New offence – tendering requirements

The Act requires a local government to invite tenders before it enters into certain contracts for the supply goods or services. The *Local Government (Functions and General) Regulations 1996* set out the requirements regarding when tenders must be publicly invited and how the tendering process is to be undertaken.

Currently, the Act does not provide that a breach of the tendering provisions under the Act and regulations is an offence. Therefore, a person who does not comply with the tendering requirements cannot be prosecuted unless their conduct constitutes an offence under another provision.

Local governments spend around $1 billion dollars on goods and services annually. The tendering requirements under the Act ensure that local governments provide the community with goods and services which are of the best value and that there is transparency in the procurement process. To ensure that these requirements and obligations are enforced, the discussion paper suggests the Act could be amended to provide that the non-compliance of tendering requirements is an offence.

Enforcement of the Act

Infringements allow breaches of legislation to be resolved by way of a fixed penalty and can be an effective way of deterring people from further non-compliance. The Department can commence a prosecution against local governments and individuals for offences under the Act but may be reluctant to do so due to the costs involved in legal proceedings.

While not all the offences are suitable to be dealt with via an infringement notice, the discussion paper suggests it may be appropriate for some of the following offences to be included in an infringement notice scheme under the Act:

- Failure to invite tenders before entering into a contract.
- Failure to vote during a council or committee meeting.
- Failure to lodge a primary return by the required date.
- Failure to lodge an annual return by the required date.
- Disclosing information about a serious or minor breach complaint before the matter is determined.
- Giving false or misleading information in a serious or minor breach complaint.
- Failing to comply with a notice from the Director General or Minister to provide information.
- Failing to comply with a direction of an authorised person, hindering or obstructing, or knowingly giving false or misleading evidence to an authorised person.

It is suggested the Department would have the discretion to decide whether to issue an infringement notice or commence prosecution for the offence in the courts.

Harmonisation

The Act allows authorised local government persons (such as rangers) to, among other things, require suspected offenders to provide their personal details; examine vehicles; and arrest people if they give false information or obstruct the officer from performing their duties. Authorised persons are also given powers to issue infringement notices and can also commence prosecutions.

Since 1995, major reforms have been made to the criminal investigation, criminal procedure and road traffic legislation, which means that certain powers contained within the Act do not represent current "best practice". Accordingly, to modernise the Act, the discussion paper highlights the harmonisation of the powers and procedures for authorised persons could be undertaken so that they are consistent with similar powers and procedures in other legislation.

Default penalties for local laws

The Act allows local governments to make local laws and there are various pieces of legislation that enable local governments to set penalties for offences in their local laws. If a local government fails to provide a penalty for an offence contained within a local law, the local government is unable to enforce that offence.

To ensure that any local laws which do not specify penalties for offences are enforceable, the discussion paper suggests the Act could be amended to include a provision for a default penalty to apply.

Powers under the Act

During earlier consultation in the Act review, the discussion paper states several submissions were received from local governments that raised issues with the ability of a local government to issue a notice to a land owner or the occupier of land, requiring the person to undertake certain actions. Examples of notices include directing a person to prevent water dripping/running from a building onto another piece of land and directing a person to remove overgrown vegetation, rubbish or disused material. If a person fails to comply with the notice, the local government can do anything it considers necessary to give effect to the notice. The local government can also recover the cost of undertaking those activities.

The discussion paper highlights amendments could be made to the Act:

- to include an ability for a local government to provide a notice which requires the owner to secure a building (where a vacant building is vandalised and / or used inappropriately by squatters)
- expanding the list and type of disused materials to enable a local government to direct a person to remove items other than vehicles and machinery from land that it considers to be untidy or causing a hazard
- to provide a clearer framework for local governments to dispose of property including the type of property that may be disposed; when property is to be disposed; and how property is to be disposed.

Overall, the ideas for change presented in the discussion around paper interventions (Council conduct and governance) include:

- **all minor breach and serious breach complaints of the Act being referred to the Director General of the Department for investigation**
- **embedding an experienced and suitably qualified person into council and/or administration to assist with decision-making and improve administrative functions**
- **amending the Act to extend the "improper use of information" offence to former elected members, committee members or employees for a particular period**

- **amending the Act to include an "improper use of position" offence which applies to elected members, Chief Executive Officers and employees of a local government, and former elected members, Chief Executive Officers and employees**
- **introducing an offence that applies to employees or CEOs who provide false or misleading information to Council**
- **introducing an offence for breaches of the tendering requirements**
- **issuing infringement notices and infringement scheme for some offences under the Act**
- **implementing default penalties for local law offences where an enforceable offence is not specified**
- **revising the powers under the Act in terms of servicing notices on property owners and the circumstances in which they can be served**
- **clarifying the disposal of property provisions.**

City assessment

Investigations and inquiries

The proposal to lodge all minor breach and serious breach complaints to the Director General is supported. As it currently stands, a local government's Chief Executive Officer is not involved in determining or deciding on a minor breach complaint, and only forwards it on to the Director General of the Department. However, it does remove the ability for a Chief Executive Officer to be aware of any such complaints being made in the early stages, meaning any remedial action in the interim, could not be investigated or implemented. In receiving a complaint, the Director General, as soon as practicable should provide details of the complaint to the respective local government.

Assistance by State Government

Local governments have a fundamental responsibility to implement good governance practices that meet the obligations of legislative requirements and community expectations. It should also be responsible in the first instance for the management of its own affairs.

The matter around supporting local governments in challenging times was highlighted in the Phase One consultation process. As part of its submission, the City supported a review of the Act to differentiate between local governments, to apply regulations, compliance and administration requirements that are reflective of the capacity and needs of each local government, possibly through a banding structure as currently used by the Salaries and Allowance Tribunal. Such an approach is an important first step (proactive) prior to establishing a remedial action process (reactive) but it is recognised that remedial action processes are necessary in some instances.

An approach that allows for a local government to work in partnership with the Department can be supported as it allows for not only clarity with regard approach, but consistency in its methodology. The appointment of an independent "authorised person" with suitable qualifications and extensive local government experience is supported and was reflected in the City's submission to the Phase One consultation process.

However, the involvement of the appointed person should be restricted to advice and support only, including:

- making recommendations to the Council, Chief Executive Officer and the Department
- mediating between parties
- arranging for training
- reviewing, and making recommendations on, practices and procedures.

Any appointed person should not take the place of the functions and role of the Chief Executive Officer, the Council or the Mayor. The State Government has recently introduced changes to the Act that gives the power to the Minister to suspend individual elected members in certain situations, which can help with resolving any dysfunction certainly where it is being created by one elected member or a few.

Improper use of information

In 2015-16 the (then) Department of Local Government and Communities completed a substantial review of the *Local Government (Rules of Conduct) Regulations 2007* and undertook comprehensive consultation with the local government sector. A final report was released in 2016 and the City provided a comprehensive submission regarding the review, which was endorsed at the Council meeting held in February 2016 (Item CJ013-02/16 refers).

http://www.joondalup.wa.gov.au/files/councilmeetings/2016/Attach11brf090216.pdf

As part of this submission, the City's support was given to amend section 5.93 of the Act to extend to persons who were formerly elected members, committee members or employees as misuse of sensitive / confidential information may well be detrimental to the local government. However how this would be managed and what time limit would apply was a matter that needed to be resolved.

New offence - improper use of position

As the discussion paper suggests, elected members, chief executive officers and other employees are considered 'public officers' and are subject to the provisions within the *Corruption, Crime and Misconduct Act 2003*. Under this Act, "*misconduct occurs if:*

(a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment; or

(b) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or

(c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment; or

(d) a public officer engages in conduct that:

(i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or

(ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or

(iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or

(iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,

and constitutes or could constitute:

(vi) a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct)."

The definition of misconduct under the *Corruption, Crime and Misconduct Act 2003* is broad and the investigatory procedures and processes have been developed by the Public Sector Commission and the Corruption and Crime Commission, depending upon whether the matter falls within the realm of serious or minor misconduct.

Outside of this, a local government's code of conduct, which is required to be developed by a local government and observed by elected members, committee members and employees, should detail disciplinary actions for breaches of the code, or reflect the disciplinary procedures that will be instituted by the local government.

In view of this it is considered there is sufficient investigatory and disciplinary framework, around ethical and proper conduct and the suggestion for a new offence therefore, is not supported. It also would be difficult for a local government to take action against former employees or elected members, as technically they are no longer in the services of the local government, and therefore could not use their position improperly, as the no longer have a position within the local government, although civil remedies could be pursued. If such provisions are enshrined in legislation, it is unclear on who or what agency would pursue such an offence through the courts, and it is unlikely that the respective local government, or the Department itself, would have such capacity to do so.

<u>New offence – providing false or misleading information to council</u>

The suggestion of a new offence is not supported. How any council would prove that any false or misleading information supplied by Chief Executive Officer or employee was a deliberate and/or negligent act is problematic. Furthermore, who would pursue such an offence is not clear as an elected member could not do so on behalf of the local government, as they have no power to do so.

Again, it is considered that a sound ethic conduct framework exists through the *Corruption, Crime and Misconduct Act 2003* and a local governments code of conduct. Where a local government believes that a Chief Executive Officer is providing misleading information, such matters could be address by the Mayor or form part of an annual performance review process. Serious matters could be report to the Corruption and Crime Commission.

New offence – tendering requirements

The suggestion of a new offence is not supported. The City is not aware of how many offences that are currently within the Act have been pursued by the Department or other third parties through the courts, which would indicate if such penalties are worthy of actually being included into the Act. Local governments are required to develop a purchasing policy under the Act which are generally supported by internal procedures and protocols.

Again, it is considered that a sound ethic conduct framework exists through the *Corruption, Crime and Misconduct Act 2003* and a local governments code of conduct.

Enforcement of the Act

The suggestion to include infringement penalties in the Act, as a way to ensure compliance and an enforcement mechanism does not support effective local government. The Department, as the discussion paper suggests, should be working with local governments to ensure good governance and educating on compliance matters and best practice regimes as opposed to being an enforcement arm of the Minister and the State Government.

In terms of relevance to the discussion paper proposals, infringements generally only relate to minor matters and only straightforward issues of law and fact as to whether an infringement is to be issued. It is not considered that any infringements under the Act would be either minor matters or indeed straight forward. Interestingly, section 9.16(2) of the Act details the following provisions in terms of infringements issued under a local law:

"(2) A local government can only prescribe an offence for the purposes of subsection (1) if a prosecution for the offence could be commenced by the local government or any of its employees and the local government is satisfied that:

(a) commission of the offence would be a relatively minor matter; and

(b) only straightforward issues of law and fact would be involved in determining whether the offence was committed, and the facts in issue would be readily ascertainable."

In law, infringements need to be issued within a specified time period or when the offence is actually committed. Furthermore, with any infringement process there should also be appeal right that applies, as per the current instituted infringements provisions within legislation at both State and local government levels. It is questioned how this would occur and whether the Department would be resourced to defend matters in court. If matters are taken to court, it would more than likely be the local government that would need to cover any potential court or legal costs, considering an offender would be acting in their role when an infringement is issued, unless the offence is proven.

The suggestion of infringement provisions are therefore not supported.

Harmonisation

Local governments are required to enforce a wide breadth of legislation, all of which contain different provisions relating to authorised persons, and how authorised persons are to perform their functions. Modernising the Act to ensure consistency of powers for 'authorised persons", similar to the reforms made in other legislation, is generally supported.

There is a large amount of inconsistency currently between the processes to be followed in making appointments of authorised persons (for instance who / what body makes the appointment); the identification required (for instance some legislation requires an identification card with different standards); and what the person is called (some legislation calls such persons authorised persons, enforcement officers and the like). Changes could be made to the Act that states where there is inconsistency with the appointment provisions and processes between the *Local Government Act 1995* and any other Acts, the provisions contained within the *Local Government Act 1995* prevail.

The appointment of authorised persons should also be made by the Chief Executive Officer of a local government, not the local government itself, and this was raised in the City's Phase One submission in terms of clarifying the roles between 'local governments' and 'chief executive officers'.

Alternatively, authorised person provisions could be removed entirely, and it could be stated that any employee of a local government is appointed as an authorised person to perform certain functions that are consistent with their role and position description. A similar provision currently exists in terms of section 9.24 of the Act where a person acting in the course of his or her duties as an employee of a local government (or a regional local government) can commence prosecutions. It also exists in other legislation such as the *Litter Act 1979* where an employee of a local government can enforce the provisions of the *Litter Act 1979.*

Default penalties for local laws

In part, section 3.10 of the Act states the following in relation to creating offences and prescribing penalties for local laws:

"(1) A local law made under this Act may provide that contravention of a provision of the local law is an offence, and may provide for the offence to be punishable on conviction by a penalty not exceeding a fine of $5 000.

(2) If the offence is of a continuing nature, the local law may make the person liable to a further penalty not exceeding a fine of $500 in respect of each day or part of a day during which the offence has continued."

Section 9.17(3) of the Act states the following in relation to modified penalties for infringement notices issued under local laws:

"(3) Unless otherwise prescribed by regulation, the modified penalty that a local law may prescribe for an offence is not to exceed 10% of the maximum fine that could be imposed for that offence by a court."

Therefore, infringement penalties under a local law cannot be more than $500 (being 10% of the maximum fine that could be imposed by a court, being $5,000). It is unlikely that a local government would draft a local law that would not state a modified penalty for a contravention of a local law provision, however the suggestion put in the discussion paper is supported to cater for those local governments that may have missed the identification of contravention that would require a modified penalty.

Powers under the Act

Most local governments have the ability to pursue action against property owners for contraventions of certain land use under the *Planning and Development Act 2005* however the process and provisions are unwieldy, and can take some time to resolve. Any ability for a local government to have timely resolution around certain land use matters will assist in protecting the overall amenity of communities and the suggested changes proposed in the discussion paper therefore are supported.

It is suggested that further engagement be undertaken with the local government sector to review the entire provisions within Subdivisions 2 and 3, of Division 3, of Part 3 of the Act, which relates certain provisions about land, and the powers of entry onto land to perform particular functions.

Proposed City of Joondalup position:

The City of Joondalup:

- SUPPORTS amendments to the Act so that all minor breach and serious breach complaints about elected members are lodged with the Director General of the Department of Local Government, Sport and Cultural Industries, with information being provided to the relevant local government

- DOES NOT SUPPORT an appointed person, engaged for a local government remedial process, from directing administrative functions; being imbedded into a council; or taking over the roles and responsibilities of the Mayor / President

- SUPPORTS the proposed role of the appointed person being restricted to advice and support only including:

    - making recommendations to the Council, Chief Executive Officer and the Department
    - mediating between parties
    - arranging for training
    - reviewing, and making recommendations on, practices and procedures

- SUPPORTS IN PRINCIPLE amendments to section 5.93 of the Act to apply to former elected members, committee members and employees, noting the difficulties in managing any such change

- DOES NOT SUPPORT a new offence being included in the Act relating to improper use of position offence that would apply to elected members, chief executive officers and employees of a local government, and former elected members, chief executive officers and employees, as:

    - the provision of the *Corruption, Crime and Misconduct Act 2003* and a local governments code of conduct should cover such matters
    - administrative and investigatory difficulty would exist in pursuing former elected members or employees

- DOES NOT SUPPORT a new offence being included in the Act for a chief executive officer or employee providing false or misleading information to council

- DOES NOT SUPPORT a new offence being included in the Act for contravention of the tendering requirements under the Act and the *Local Government (Financial Management) Regulations 1996*

- DOES NOT SUPPORT the introduction of infringement provisions and modified penalties on any matters or offences under the Act

- SUPPORTS the harmonisation of authorised persons provisions within the Act, including the need for the provisions of the Act to prevail over other legislation that requires similar appointments to be made, or alternatively changing the Act to state an employee of a local government is considered an authorised person if it falls within their role and responsibilities

- SUPPORTS a default modified penalty provision being inserted in the Act where a local government fails to identify an offence within its operational local laws

- SUPPORTS changes to the Act:

    - to include an ability for a local government to provide a notice which requires the owner to secure a building (where a vacant building is vandalised and / or used inappropriately by squatters)
    - expanding the list and type of disused materials to enable a local government to direct a person to remove items other than vehicles and machinery from land that it considers to be untidy or causing a hazard
    - to provide a clearer framework for local governments to dispose of property including the type of property that may be disposed; when property is to be disposed; and how property is to be disposed

- SUPPORTS engagement with the local government sector on a comprehensive review of Subdivisions 2 and 3, of Division 3, of Part 3 of the Act, relating to certain provisions about land, and the powers of entry onto land to perform particular functions.

PART 3 - INCLUSIVE

3.1 Community engagement

Consultation charters

Community engagement is the process of working collaboratively with and through groups of people affiliated by geographic proximity, special interest, or similar situations to provide input that enhances decision making processes on issues that may impact on their well-being or interests. It can be used as a key method for local government to navigate community priorities. It encompasses the way in which local governments inform, consult, engage and empower activity by the community.

The community must be consulted on matters such as creating and review a local government's ten-year Strategic Community Plan, local laws, differential rates, planning and other matters and aspirations that are relevant to the diverse needs of individuals within a community.

Community engagement can be done in many effective ways to allow participation in decision-making on projects that impact members of the community. Due to the diverse needs and requirements of local governments in Western Australia, it has been suggested that methods of community engagement should be scaled to best reflect their respective communities.

The International Association for Public Participation (IAP2) spectrum of public participation can help local governments identify when and how to engage the relevant stakeholders in a community however there is currently no requirement for community engagement beyond Integrated Planning and Reporting in Western Australia. The discussion paper suggests identifying the role of the community clearly in the objects of the Act is a good starting point to identify how engagement should be determined.

There is currently nothing in Western Australia to guide community engagement although some local governments undertake community engagement and have developed charters and polices that allow a streamlined opportunity for local governments to communicate when, how and on what matters the community will be engaged.

The discussion paper suggests legislating the development of a charter could help local governments to identify the importance of matters to engage on; evaluate the resources needed; and provide guidance on the best methods to engage on issues. To achieve a cohesive framework, the charter could cover the following:

- Set engagement requirements.
- Set principles that can deliver performance outcomes to ensure that engagement must be genuine, inclusive and respectful, fit for purpose, informed and transparent and processes must be reviewed and improved.
- Set methods to measure performance.

The discussion paper also suggests the Act could set out principles that guide how a local government should address community engagement, including how it will engage with those that are socially disadvantaged. It suggests by providing a principle-based framework instead of being prescriptive on how engagement should be conducted, there is an opportunity to create a space for genuine engagement instead of just another criterion with which local governments must comply. The discussion paper mentions local governments would then be able to determine how to best put the principles into practice.

Social Media

Though it can be great tool for community engagement, social media has unfortunately also given rise to “keyboard warriors” who have launched attacks against elected members and local government employees. Other than pursuing defamation, there is no specific legislation that addresses this issue.

An option for reform suggested in the discussion paper is to introduce a legislative requirement that local governments must adopt a social media policy. The policy would not only address the use of social media by elected members and staff, but also the appropriate use of social media in community engagement.

This policy would be supported by the Mandatory Code of Conduct that will apply to elected members and candidates that is being introduced as part of phase 1 Act Review consultation process.

Overall, the ideas for change presented in the discussion paper on community engagement include:

- **better defining the role of local government and the community in the objects of the Act**
- **the development of community engagement charters, which includes minimum standards for community engagement, principles and performance measurement**
- **establishing a principle-based framework addressing community engagement activities, including engagement with socially disadvantaged**
- **requiring local government to adopt social media policies, including appropriate use in community engagement activities.**

City assessment

Consultation charters

Local governments, by their very nature and their statutory requirements, engage closely with its communities. The City contends that capacity in this area will vary between local governments, due to the amount of resources required to effectively develop and deliver consultation and engagement processes. The discussion paper implies that inadequate community engagement is endemic across local government, a position the City would strongly oppose and does not believe that sufficient evidence exists to draw such a conclusion.

The City of Joondalup’s policy position and operational practices promote and enact best practice community engagement approaches which are strongly aligned to the IAP2 spectrum and utilised according to the engagement circumstances. The City has comprehensive engagement mechanisms and processes, and these are continually being reviewed and updated to ensure they remain contemporary and relevant.

The City’s *Community Consultation and Engagement Policy* provides a clear statement of Council’s intention to make itself aware of community opinion to inform decision-making. The policy seeks to ensure that all groups in the community can engage with Council on matters that affect them and will contribute to an improved quality of the decisions reached, and greater acceptance of the final Council decision by members of the community. Decisions which are owned by the community are far more likely to be sustainable.

Behind the City's policy is a comprehensive protocol and a set of associated processes to ensure there is a consolidated approach to community consultation across the organisation, including specific consultation processes for individual programs.

The City has very clear processes regarding how and when consultation is undertaken and is committed to undertaking consultation efforts with its community to assist in decision-making and building strong relationships. Every community engagement process is unique, and the City would be opposed to legislating standardised approaches across the broad local government sector, including which societal demographics must be paid specific attention. However, efficiency and quality of outcomes can be achieved by applying consistent practices based on past experiences and best practice standards. The development of an engagement process should take into consideration the following:

- A model Community Engagement Policy that outlines the principles of community consultation and engagement to encourage greater community participation in the decisions and affairs of the local government.
- Appropriate use of community engagement processes and tools. To this end guidelines and best practice examples of processes and tools could be developed by the Department that might be used by all levels of government.
- How to frame an engagement process based on the issues and community sectors the local government is working with and whom should be engaged.
- Past experience and current activities.
- Professional judgement.

The City has also examined tools such as participatory budgeting; Simultaneous Multi-Attribute Trade Off (SIMALTO); citizen juries; deliberative processes and the like, and uses them depending on the individual circumstances of the engagement outcomes desired. It is not considered necessary to legislate for such practices but to provide information on how these tools can be used by local government to enhance their engagement proposition.

Social media

The City uses a range of social media platforms as a way to communicate and engage with its community. Council at its meeting held on 20 November 2012 endorsed the City's initial social media platforms and acknowledged the need for guidelines to be developed for users who interact with the City and other parties on these platforms (Item CJ233-11/12 refers). The City's *Social Media Guidelines* are used to inform the community of the standards the City sets on using and posting on its platforms. The City currently has approximately 40,000 followers across its social media platforms which is a significant target audience.

The use of social media is now a part of everyday life and is a new form of social communication and interaction that does see the opinions and views, whether they be right or wrong, being expressed broadly and to a wide audience. Social media activity and postings is supported in some way a person's Constitutional right of freedom of political expression although the rules of defamation need to be closely considered by people using such platforms.

Elected members and employees are personally responsible for the content they publish in a personal capacity on any form of social media platform, and in this regard must understand their legal obligations. Unlike other communication channels, what is said on social media platforms is written down and is permanent.

If using social media for elected member or council activities, elected members must recognise the potential damage that may be caused (either directly or indirectly) to the City in certain circumstances via personal use of social media when they can be identified as an elected member of a local government.

As civic leaders, elected members must comply with the requirements of the Act and the *Local Government (Rules of Conduct) Regulations 2007* and such obligations extend to when elected members use social media to communicate with the community.

In particular, the *Local Government (Rules of Conduct) Regulations 2007* requires that elected members must not:

- cause detriment to the City, other elected members, City officers or any other person
- disclose information that an elected member has derived from a confidential document or acquired from a closed meeting, or otherwise considered confidential in nature.

The City has developed social media guidelines for its elected members and officers and this should be the level that is needed by local governments, as opposed to implementing legislative change to require a policy to be developed. However, whether it be a developed policy or guideline the level of enforceability remains the same.

Elected members are required to comply with the *Local Government (Rules of Conduct) Regulations 2007* and observe a local government's adopted code of conduct (employees also are required to observe a local government's code of conduct are bound to comply with it through their employment contracts and obligations). Should the Department feel the use of social media is an issue for elected members, a review of the *Local Government (Rules of Conduct) Regulations 2007* should be undertaken.

The suggestion put in the discussion paper to legislate the development of a policy would neither strengthen the current arrangements in place (as detailed above) or provide an avenue to control the behaviour of members of the community in their use of social media. It is therefore not supported and would be another example or additional red tape.

Proposed City of Joondalup position:

The City of Joondalup:

- DOES NOT SUPPORT legislative change requiring local governments to develop community engagement charter or a principle-based framework for community engagement as local governments are best placed to determine their specific consultation framework in view of their communities' desires and wishes

- SUPPORTS capacity building through the development of a model community engagement charter or a principle-based framework to guide best practice community engagement that local governments may adopt/amend depending on their individual circumstances

- DOES NOT SUPPORT legislative change requiring local governments to develop a social media policy as this should rest with a local government to determine based on its operational requirements

3.2 Integrated planning and reporting

Integrated Planning and Reporting (IPR) is a foundation of modern local government and enables community members and stakeholders to participate in shaping the future of the community and in identifying issues and solutions. IPR is a process designed to:

- articulate the community's vision, outcomes and priorities
- allocate resources to achieve the vision, striking a considered balance between aspirations and affordability
- monitor and report progress.

In addition, IPR aims to encourage local governments to link with and influence planning by others that also impact on community outcomes including regional planning bodies, State and Federal agencies and community organisations.

In 2010, the IPR Framework and Guidelines were introduced to assist local governments with the IPR process and are aligned with nationally consistent practices. The guidelines outline each component of the IPR Framework – its purpose; the process; the role of the community, council and administration – and how the components fit together. The following key local government planning processes are addressed in the guidelines:

- Preparation of the *Strategic Community Plan*, resulting in a ten-year plan informed by community aspirations. It includes a clear definition of the council's strategic priorities, intentions for asset management and service delivery, and resourcing implications over the ten-year period.

- Preparation of the *Corporate Business Plan*, resulting in a plan that mobilises resources to implement the first four years of the *Strategic Community Plan*. It gives effect to the first four years of the *Strategic Community Plan* and is pivotal in ensuring that the medium-term commitments are both strategically aligned and affordable.

The framework and guidelines also establish mechanisms to review and report on all elements of the IPR process.

Section 5.56 of the Act and the associated Regulations require local governments to plan for the future of their district. At a minimum, regulations require local governments to develop a ten-year *Strategic Community Plan* and a four-year *Corporate Business Plan* that delivers on the Strategic Plan. Other provisions in the Act regulate the Annual Budget and Annual Report of local governments.

<u>Reporting</u>

The IPR framework incorporates two distinct but integrated parts, planning and reporting. IPR provides a structure for local government to report on their progress meeting strategic objectives and community aspirations informed by engagement and achievements.

Local governments are required to have regard to strategic performance indicators - the ways of measuring its strategic performance by the application of those indicators in the *Strategic Community Plan*. This requirement is supported by the IPR Framework and Guidelines, which recommends that local governments measure progress delivering their IPR through a monitoring framework. It is currently open to local governments to design complementary means of reporting progress and outcomes to the community. However, the discussion paper

suggests the monitoring and reporting in respect to IPR in some local governments could be improved.

In the decade since IPR's introduction, attention has been largely focused on embedding the planning aspects of the framework within the sector. Beyond the requirement for local governments to have regard for the strategic performance indicators and report certain financial measures in their annual financial report (which are collated and presented on MyCouncil.wa.gov.au) there is no formal performance reporting mechanism for local government in Western Australia.

The discussion paper suggests measuring achievement across local government has significant benefits by enabling the identification of the success or failure of social policies and programs, or where greater investment may be required by local governments. It is suggested it further provides a means to increase local government accountability and performance to the community and tools for the community and council to make evidence-based decisions when assessing performance.

As the discussion paper suggests, the concept of a central reporting framework has been visited several times in Western Australia and implemented to varying extents in other jurisdictions. A central reporting framework requires the development of specified and consistent measures and methods. One of IPR's strengths is its flexibility and adaptability to all local governments regardless of size and capacity. Under IPR, local governments may choose their own performance indicators because different local governments offer many different services and have different priorities.

Integration and alignment

The discussion paper suggests integration is critical to the effectiveness of IPR and can include alignment across the organisation with other activities, ensuring that the strategies are delivered, and alignment between the long, medium- and short-term priorities.

Some local governments integrate IPR into their whole organisation's structure and processes by incorporating it into their Chief Executive Officer's Key Performance Indicators, flowing right down to employee's position descriptions. Other local government plans are less integrated and function as standalone documents.

The discussion paper also suggests it is important to also link any issue specific strategies and plans, such as an information and communication technology (ICT) plan, recreation strategy or age-friendly community plan into the IPR suite.

State Government and local government alignment

The State Government has a number of statutory plans which local governments are required to develop such as Local Health Plans, Disability and Access Plans and Town Planning Schemes. Currently there is no requirement for these plans to be integrated with the IPR documents and each plan has different timeframes for completion and review. The discussion paper suggests administrative efficiencies are likely to result from integrating these plans with IPR and this would also assist in informing the IPR process. However as highlighted these statutory plans are controlled by different State Government departments which can make alignment challenging but if there was support for this approach the Department would work with these other agencies to better align the requirements with IPR.

The discussion paper highlights a stronger partnership between the State Government and local government through the development of IPR documents could result in greater consistency between State and local priorities and enhancing the delivery of both State and local policy and programs.

Community engagement

Community consultation and engagement plays a pivotal role in the IPR process and a number of local governments have adopted engagement plans which are recommended in the IPR framework and guidelines.

The IPR framework and guidelines includes a section on community engagement good practice and how local governments can have better collaboration with the community. The framework and guidelines are not prescriptive and remain flexible recognising that the engagement process will often differ depending on the local government's size, location and demographics. The discussion paper questions the level of engagement the community should be involved in integrated planning and reporting and possible engagement requirements.

Framework flexibility

The IPR framework and guidelines establish that IPR is not a "one size fits all" model and each local government should use IPR at a scale appropriate to the size and needs of their organisation and community. It is also recognised that local governments will have different approaches to IPR. The framework and guidelines were deliberately written with the flexibility that reflects this.

Some local governments like the ability to establish their own methodologies according to their particular circumstances. However, the discussion paper suggests some local governments have indicated they would like more direction in the framework and guidelines to assist them in the IPR process and ensure consistency across all local governments.

Advisory Standards

The Advisory Standards published by the Department refer to the minimum regulatory requirements as well as "Achieving", "Intermediate" and "Advanced" Standards of IPR performance. It was expected that local governments should be on a pathway of continuous improvement, moving steadily through Achieving, Intermediate or Advanced Standards of IPR.

The discussion paper reports some local governments feel as though the advisory standards are not appropriate for them due to their size, location or capacity. For example, a small local government may not be able move from the "Achieving Standard" in regard to a Workforce Plan as the criteria in the "Intermediate Standard" is not relevant to them. Tailoring advisory standards depending upon a local government's size, location and capacity may be a suggestion that is being put forward in the discussion paper

Overall, the ideas for change presented in the discussion paper on integrated planning and reporting include:

- **different integrated planning and reporting requirements based on a local government's population, geographical size, local or salary and allowances banding**
- **improvements in monitoring and reporting strategic performance**
- **formal reporting mechanisms that are measured across the local government sector**
- **a centralised reporting framework including the development of specified and consistent measures and methods**
- **better integration and alignment with whole of organisational structures, processes and plans**
- **better integration and alignment with a variety of statutory plans reported to other State Government agencies**
- **improved role of the community in a local government integrated planning and reporting and possible engagement requirements**
- **improved framework and guidelines to assist local governments with their IPR processes**
- **tailoring advisory standards and regulatory requirements based on a local government's size, location and capacity.**

City assessment

There is no doubt that the introduction of Integrated Planning and Reporting (IPR) has provided local governments with a universal framework for establishing local priorities and to link this information to operational functions.

Following an extensive review of the IPR Guidelines in 2016, the City is focusing on the regulatory aspects of IPR only; that is, the requirements of IPR as listed in the *Local Government Act 1995, Local Government (Administration) Regulations 1996* and corresponding *Advisory Standard* from which compliance with IPR is assessed. It is not the intention of the review process to reconsider the content of the supporting IPR Guidelines that were recently revised in 2016. The City has representation on the Local Government Professionals Integrated Planners Network which involves corporate planning practitioners from throughout the State, and this body provides valuable advice to the Department on improvements to the Guidelines and process.

The City is a strong advocate of IPR and supports the betterment of practices, knowledge and understanding in this field.

Generally, the reform proposals of the Department are supported by the City (and in the main already undertaken by the City in its IPR processes) and the following comments are made:

- The review suggests that different IPR requirements based on a local government's population, geographical size, local or salary and allowances banding be implemented.

  Whilst the City supports the initiation of a legislative framework that differentiates between local governments, that recognises that some have significant capacity and can be relied upon to take on greater responsibility, while others have very limited capacity and simply can't afford to carry the same levels of compliance and administration, and instead need to focus on core functions, it is considered that such differentiation not apply to significant

matters such as IPR which are integral to guiding the future planning of a local government and its community.

It is considered that it may be more appropriate to determine what the minimum requirements are with regard IPR that all local governments must comply with and allow those local governments that have the capacity or desire (from within the community or the Council) to enhance their plans for the future to meet their particular needs, be supported. Should a local government wish to implement an IPR above minimum standards it should not be 'restricted' by a standardised banding/category regime.

- Legislative provisions within the Act related to IPR are very 'simple' and within the Regulations too prescriptive and considered to not value-add. It is suggested the Department give consideration as to whether the IPR requires more prominence in the Act and redrafting and/or incorporating other relevant review sections of the Act into the IPR framework and expanded guidelines meaning possible development of a more streamlined Act/Regulations that eliminates unnecessary red tape; opportunity for misinterpretation and duplication. More importantly, the IPR framework could support more autonomy for local governments which engage effectively with their communities.

- With regard to there being *"no formal performance reporting mechanism for local government in Western Australia"* this is a long outstanding matter that has been of concern to the sector. The current performance monitoring is considered to be flawed as there is no consistency in the methodology for collection of indicators, and the timing of some of the measures is also questioned as being a true reflection of a local government's financial health.

  The City supports a uniform core set of performance indicators for local governments, linked to IPR requirements, to ensure ongoing performance monitoring is adequately resourced, however, as identified within the discussion paper it is recognised this also comes at a cost. It is suggested that the State Government enter further discussions with the sector to ascertain how formal performance monitoring that is of benefit to local governments and the community can be implemented.

  Any reporting framework should also be utilised to assist the Government in capacity building rather than a simple compliance approach aimed at *"identification of the success or failure of social policies and programs"*.

  It is noted that the City of Joondalup is a participant in the Local Government Professionals/PwC Australasian approach to benchmarking, which is enabling local governments to comprehensively and comparatively benchmark their performance with others. This program is helping identify areas where local governments are performing well and areas that are proving challenging. Such a program could also assist the State Government in better understanding the operational issues within the sector.

- It is considered that that there is a desire of local government to work more collaboratively and strategically with the State Government and to ensure that local, regional and State strategic plans are more closely aligned, however, it is important to differentiate between plans that are strategic in nature and align specifically with a local government's strategic aspirations versus another plan's compliance regime.

  The proposal for the Department to work with State Government agencies to assist in improving the alignment of statutory plans which local governments are required to develop and which local governments could integrate within their IPR is supported.

Proposed City of Joondalup position:

The City of Joondalup:

- DOES NOT SUPPORT development of different IPR requirements based on a local government's population, geographical size, local or salary and allowances banding.
- SUPPORTS IPR being given more prominence in the Act and redrafting and/or incorporating other sections of the Act into the IPR framework and expanded guidelines.
- SUPPORTS a uniform core set of performance indicators for local governments, linked to IPR requirements, and recommends the State Government enter further discussions with the sector to determine a monitoring framework that is of benefit to local governments and the community, and how it can be resourced and implemented.
- SUPPORTS the proposal for the Department to work with State Government agencies to assist in improving the alignment of State Government statutory plans which local governments are required to develop and which local governments could integrate within their IPR.

3.3 Complaints management

Standard adoption

Local governments deal with many complaints each year due to their very nature of being the first point of contact for the public and are an important way for the management of an organisation's broader public accountability. If not handled well, complaints can lead to a significant breakdown in trust and can spill over into other areas of the local government's operations.

When complaints are not effectively dealt with by the local government, complainants have the option to take their complaint to the WA Ombudsman. The Ombudsman is an independent officer of Parliament with the responsibility to investigate the actions of public authorities including local governments. One of the principal functions of the Ombudsman's office is receiving, investigating and resolving complaints from the public sector, local governments and universities.

The Australian/New Zealand Standard for complaints management in organisations recommends that organisations should implement a complaints management system. The standard states that an organisation should establish an explicit complaints management policy setting out its commitment to the effective management of complaints. The policy should be supported by procedures dealing with how the complaints will be managed by the organisation, who will be involved in that process, and their roles.

There is currently no legislative requirement for local governments to have complaint handling processes. The discussion paper suggests a legislative requirement for complaints management may encourage local governments to adopt and actively work on better

complaints management. In South Australia for example, the legislation prescribes the minimum procedures that local governments must address, whereas in Queensland, the legislation simply provides that local governments must have written policies and procedures that support complaints management.

The discussion paper highlights all local governments could be required to adopt the standard, including the following key requirements:

- The adoption of a clear definition of complaints in line with the Standard.
- Policies and procedures that clearly set out how the local government handles complaints, for example providing timeframes and requiring a person independent of the initial matter to be responsible.
- Provisions for how complaints are to be resolved and for when matters are referred to an external body, for example the Ombudsman.
- A requirement for local governments to make their policies and procedures easily accessible to the public.

Customer service charter

A customer service charter is a policy document used to provide the principles and guidelines a local government may use for complaints management. A charter is a fit-for-purpose tool to identify complaints management policies and procedures. The discussion paper suggests the charter should be available on a local government's website to outline how a local government manages complaints from the public. A customer service charter should provide:

- the principles relating to the services provided by the local government
- the procedures for dealing with complaints relating to services provided by the local government
- any other information a local government deems essential.

Clear policies and procedures to handle complaints should provide both the local government and community with adequate avenues to resolve their grievance and close the loop on what can be a resource burn for the industry. The nature of complaints means that not every issue will be satisfactorily resolved. To ensure due process, the discussion paper suggests the Act could require a local government to specify a process for the review of decisions.

The discussion paper suggests this review process could be carried out by a person who is independent from the original decision maker or service provider. It is suggested an internal independent reviewer may take the form of a different staff member, a committee created by the local government, tabling of the decision for review by Council or hiring an independent reviewer.

Overall, the ideas for change presented in the discussion paper on complaints management include:

- **adoption of the Australian/New Zealand standard for complaints management**
- **mandating the implementation of a Customer Service Charter to be made publicly available**
- **legislating the requirement for local governments to adopt a fit-for-purpose complaints management process**
- **establishing an internal independent review process for unresolved complaints.**

City assessment

Standard adoption

The City of Joondalup's complaints management processes and procedures are modelled and cognisant of the Australian / New Zealand standard AS/NZ 10002:2014 as well as *Australian Standard AS/ISO 10002-2006 - Customer satisfaction - Guidelines for complaints handling in organisations* and the *Ombudsman WA Guidelines on Effective Handling of Complaints.* In support of its established processes and protocols, the City has a Customer Relations Advocate that is employed to assist City customers with complaints about the City's services or facilities. The WA Ombudsman is also used and promoted to customers where they feel the City's services or service delivery is not in keeping with their expectations, or the City's response is not satisfactory.

While adherence and recognition of the standard is considered best practice, it is not appropriate to legislate a local government's complaints management processes (being an administrative function), and such matters should therefore be left to the local government's administration to determine the best solution for its operations. The provision of such requirements in legislation, similar to other jurisdictions around Australia, imposes a level of red tape and bureaucracy this review is trying to resolve.

Of interest, the discussion paper highlights in Western Australia, a local government's annual report is to include:

- details of the entries made under section 5.121 of the Act during the financial year in the register of complaints, including:

    - the number of complaints recorded in the register of complaints
    - how the recorded complaints were dealt with
    - any other details that the regulations may require
    - such other information as may be prescribed.

It needs to be clarified that this requirement relates only to minor breach and serious breach complaints made against elected members, not general complaints by members of the community about a local government's services or service delivery.

Customer service charter

The City has a *Customer Service Charter* that is published on the City's website and available at its two customer service centres and other facilities. Again, legislating the need for customer service charter is a level of red tape and bureaucracy this review is trying to resolve. Local governments are best to determine those service standards, policies and procedures that it deems applicable for service delivery and communicating service expectations.

As previously indicated, the City has an established Customer Relations Advocate who is an independent person from the original decision maker or Business Unit at the City. It is not considered appropriate for a committee of the council to be established to review administrative decisions, as the performance of the administration of the City rests with the Chief Executive Officer, and that person alone.

Proposed City of Joondalup position:

The City of Joondalup:

- DOES NOT SUPPORT legislating the adopting of the Australian / New Zealand standard for complaints management as such administrative functions should be determined by a local government, noting the City's complaints management processes are based on this standard
- DOES NOT SUPPORT legislating the need for a customer service charter or the requirement to publish the charter on a local government's website, noting the City has a charter which is available on its website and at other City facilities within the district
- DOES NOT SUPPORT legislating an internal independent review process for unresolved complaints, noting the City has an established Customer Relations Advocate who provides an independent review of service complaints at the City.

3.4 Local Government Elections

The Act and the *Local Government (Elections) Regulations 1997* (the Elections Regulations) establish the rules for local government elections, including how elections are to be conducted; the eligibility for voting and running for Office; the timing of elections; and how local government districts can be further divided into wards.

Historically, voter turnout in local government elections in Western Australia is poor compared to other jurisdictions. In most local government elections fewer than one-third of eligible electors cast a vote. In the 2017 ordinary elections across the State, approximately 34.2% of eligible electors cast a vote. Participation rates have been relatively unchanged since the introduction of postal voting in the late 1990s. Prior to the availability of postal voting in most local government elections, participation rates averaged just 15%.

The Act provides that each local government can choose to conduct an election as either a voting 'in person' election or as a 'postal voting' election.

Elections must have a high level of integrity to ensure public confidence in the outcome and also conducted in a way that maximises participation of eligible voters in an efficient manner while supporting the principles that are the foundation of our democracy.

Some of the ways to change how elections are conducted include:

- compulsory voting
- voting method (first-past-the-post)
- permitting electronic and online voting
- requiring postal voting to be offered in all districts
- mandating the use of the Western Australian Electoral Commission (WAEC) to conduct elections
- allowing third-parties to conduct postal voting
- methods to resolve ties

- methods to fill vacancies in lieu of extraordinary elections
- caretaker provisions.

The reasoning and substance behind these changes are detailed below.

Compulsory voting

It is a requirement of every elector to cast a vote in both State and Federal elections throughout Australia, but this same requirement does not extend to all local government elections. In Western Australia, voting in a local government election is not compulsory.

Western Australia, South Australia and Tasmania do not compel people to vote in local government elections. On the other hand, Victoria, New South Wales, Queensland and the Northern Territory do have compulsory voting for local government elections.

The discussion paper suggests introducing compulsory voting for local government elections could ensure greater turnout in elections however, there may be little desire for such a change to occur from the broader community as it would impose an obligation on electors that was not there previously.

First-past-the-post

The current voting method for local government elections in Western Australia is first-past-the-post (FPP). Simply put: the person with the most votes win. FPP is inconsistent with the voting method applied at both a State and Federal level where preferential voting is required.

While changing the voting method has been applied to the Western Australian local government sector previously, it was not wholly supported by the sector. Having an optional preferential voting system for electors could be seen as an adequate compromise and one which the discussion paper highlights as a possible option.

Electronic voting

Electronic voting is an alternative to traditional voting methods where the voter records their vote digitally rather than marking a ballot paper and lodging at a polling booth or via post. Online voting is a specific type of electronic voting where a vote made digitally is recorded remotely.

Online voting is seen as convenient, more efficient and in the long term more cost effective. Despite these benefits, online voting has not been adopted widely principally due to concerns with the integrity of voter registration, the casting and scrutiny of votes and the high costs in establishing and conducting elections online. The discussion paper suggests this may be an option for local governments going forward.

Allowing third parties to conduct postal elections

Under the Act, only the WAEC is permitted to conduct postal elections. WALGA has asked for the Act to be amended to enable third parties to run postal elections on behalf of local government. This could include the Australian Electoral Commission, individual local governments or private companies.

Method to resolve ties

Under Schedule 4.1 of the Act, in situations where two or more candidates receive the same number of votes, lots are drawn to determine who is elected. This method has been required occasionally, including in 2017 when lots were drawn to determine who would serve as the Mayor of the City of Gosnells. Leaving a matter as important as the outcome of a local government election to chance has been criticised in the past.

During earlier consultation on the Act review, local governments called for an amendment to Schedule 2.3 of the Act that following an initial tie in the vote for a mayor or president by elected members, the meeting is to be adjourned and recommenced in no more than seven days. Instead, submissions recommended that the section reflects that a second election be held as soon as practicable and the discussion paper seeks comment on such a proposal.

Methods to fill vacancies in lieu of extraordinary elections

If an Office on a council becomes vacant due to circumstances such as the death, resignation or disqualification of a sitting elected member, an extraordinary election is used to fill that position for the duration of the elected member's term. The date of the extraordinary election may be set by either the Mayor or President, or by a council but cannot occur more than four months after the vacancy occurs, unless approved by the Electoral Commissioner.

Local government elections are held on the third Saturday in October in every second year. If a vacancy occurs on or after the third Saturday in July in an election year, the vacancy is filled at the October election. If the vacancy occurs on or after the third Saturday in January in an election year but before the third Saturday in July, the local government can apply to the Electoral Commissioner for permission to fill the vacancy at the October election and therefore avoid the need for an extraordinary election.

The discussion paper suggests that holding the vacancy open to the next ordinary election could be seem as reduced representation and can impact upon the number of elected members available for a valid vote at a council meeting.

Another option detailed in the discussion paper, is using the results of the last ordinary election as a form of countback, where the recipient of the second greatest number of votes could be given the option of completing the term. The discussion paper suggests this approach may be appropriate for local governments that do not have wards and would be more efficient than holding an extraordinary election but may be an unreasonable reduction of voter franchise.

Caretaker provisions

In the lead-up to State and Federal elections, a caretaker period is enacted which places a moratorium on major decisions. Western Australian local governments are not required to employ a caretaker period, although some local governments, generally those in metropolitan Perth or larger local governments, do so voluntarily.

Caretaker provisions that limit the types of decisions a government can make during the period before an election are an accepted convention in Federal and State Government elections and are mandatory in Queensland, Victoria and New South Wales local government elections.

The discussion paper highlights this as an issue or matter that could be implemented by local governments.

Leave of absence when contesting State or Federal elections

In its submission to earlier consultation on the Act review, WALGA requested amendments to the Act be made to require an elected member to take a leave of absence when contesting a State or Federal election. This proposal was intended to provide clear separation between Council and State and Federal election campaigns and avoid potential or perceived conflicts of interest and is a matter for comment in the discussion paper.

Election of Mayor and Shire Presidents

Mayors and Shire Presidents can be elected by the community or elected from the pool of councillors by the elected members. If the Mayor or Shire President is elected by the elected members, they can decide to change to have the position elected by the community. If the Mayor or Shire President is elected by the community, only the electors can decide to change back through a successful ballot of the electors.

The discussion paper suggests the direct election of a Mayor or President strengthens the role of electors in a district and in turn can increase public confidence. Elections for Mayor and President positions have the highest elector participation rates. The paper also adds direct election can also create greater visibility for the mayor and reinforce the role of the mayor as a community leader that is accountable to electors.

The discussion paper highlights in other jurisdictions, the popular election of mayors or presidents has been linked to greater politicisation and a source of instability in councils and popularly elected mayors or presidents may seek to direct council citing a mandate from the community. The discussion paper suggests this can lead to considerable friction within a council and may lead to a dysfunctional local government.

Property franchise

Under the Act owners of property are currently eligible to vote in local government elections on the basis that they contribute to a local government through the payment of rates. With property franchise (as per the current provisions in the Act), a person may vote in multiple districts (or wards) in which they own property. A maximum of two owners can enrol to vote per property. Some see property franchise as archaic and contrary to the principles of one person, one vote.

Property franchise is not linked to voter eligibility in State or Federal elections but is a feature of local government elections in all other States except Queensland, which removed the practice in 1921.

During earlier consultation in the Act review process, submissions were received that called for this requirement to be removed to enable foreign property owners to vote in local government elections, and this has been presented in the discussion paper for discussion.

Corporations' and occupiers' eligibility to vote

The eligibility of land owners to vote also extends to corporations. A company is entitled to a maximum of two persons to vote on the company's behalf, in each district in which the company owns land. Corporations like other ratepayers make a significant contribution to local government revenue through the payment of rates. Queensland is the only State that prevents corporations from voting and this is presented in the discussion paper for discussion.

In terms of occupiers, they can make an application to a local government to vote in local government elections. Occupiers can include people leasing property such as small business operators who are impacted by a local government's decisions and make a financial contribution to the local government through the payment of fees and charges and indirectly through rates paid to the lease holder.

The discussion paper does not make any proposals around this issue; however, it could be concluded that given its position around property franchise, a review of corporations and occupier eligibility may be what is being suggested.

Elected member eligibility

In accordance with the Act, people who are in prison or have been convicted of a serious local government offence within the last five years, or of an offence for which the indictable penalty was or included imprisonment for life, or imprisonment for more than five years, are not eligible to be an elected member. A serious local government offence is an offence under the Act which carries a penalty of one year's imprisonment or a $5,000 fine.

Elected members perform a unique and important role in planning and building control. It has been suggested in the discussion paper, based on previous comments, that a person who has been convicted under planning and building legislation in the previous five years or a similar offence also be disqualified.

Frequency of elections

Western Australia is the only jurisdiction that holds local government elections every two years. Holding elections every two years for elected members that hold four-year terms is intended to provide greater continuity on a council. One alternative presented in the discussion paper is to hold elections every four years, offset with State Government elections.

It is purported that holding elections every two years creates additional costs for local governments and it may also contribute to voter fatigue. Alternatively, the greater frequency of elections may provide greater accountability by enabling the public to more regularly have a say through elections.

Limits on advertising campaigns

Election campaigns are the most public component of local government elections and the Act provides a basic framework for election campaign rules. Candidates are required to submit a written profile with their nomination of no more than 150 words which is confined to their biographical information and statements of the candidate's policies or beliefs. This information is not to contain information that the Returning Officer considers to be false, misleading or defamatory.

Anecdotally, the discussion paper suggests the average cost of local government campaigns has increased in recent years and this increase in costs may be tied to the growing number of candidates standing in many metropolitan local governments and the resulting greater competition.

Election campaigning either requires personal financial investment from the candidate or receipt of campaign donations. The greater the cost of campaigning, the greater the investment required.

In Tasmania, a campaign advertising limit is set for all candidates at $8,000. Tasmanian local government candidates are required to lodge a return with the Tasmanian Electoral Commissioner stating how much they spent on advertising. In Queensland, the concept of an advertising cap was considered following recommendations from the QCCC. In Queensland, candidates are already required to operate a dedicated bank account during the candidate disclosure period that is used to audit disclosures.

The discussion paper has highlighted the issue around the possibility of implementing election campaign limits.

Reform to election gifts rules

The rules regulating the acceptance and declaration of election gifts and non-election gifts differ considerably. In addition to different monetary thresholds for the declaration of gifts, different rules exist for the process and timeline for gift declaration.

The parallel gift rules are a potential source of confusion for elected members, candidates and the public. It can be argued that the complexity of the current approach is a weakness that reduces the effectiveness of the rules intended to strengthen transparency.

One option presented in the discussion paper is to, where practicable, align the two gift frameworks to achieve greater consistency in what gifts must be declared; the timetable for declaration; and how these gifts must be reported.

As highlighted during earlier consultation on the Act review, the current rules for declaring non-election gifts with varying categories for notifiable and prohibited gifts was too convoluted to effectively align to an election gift framework.

Providing a single framework for the declaration of gifts requires amendments to the rules for:

- what gifts must be declared, including a monetary threshold
- the timetable for declaring gifts
- to whom gifts are declared
- how gifts are published.

In addition to achieving greater consistency with the new proposal for non-election gifts, the revised alternative approach for election gifts presented in the discussion paper is intended to account for matters and perceived inconsistencies that have been identified with the current election gift framework.

These matters could include:

- providing consistency in the election gift rules for existing elected members and non-elected members
- accounting for increasingly long election campaigns which result in donations being received more than six months prior to the election
- ensuring that election gift information is available online, increasing transparency and accountability.

Under the revised approach to election gifts as presented in the discussion paper, both elected members and non-elected members would operate under the same rules.

Two Australian jurisdictions prohibit donations from certain entities. In New South Wales, donations from property developers, the tobacco industry and liquor and gambling entities are not permitted to be accepted. In Queensland, legislation was amended in May 2018 to prohibit donations from property developers in both local and state government elections.

During the last ordinary local government elections, and in submissions received during earlier consultation in the Act Review, the Department highlighted concerns that were raised regarding the growing reliance on donations from certain organisations and perceptions of greater politicisation resulting from the need to source funding to conduct a competitive campaign. The discussion paper again highlights the possible need for reform around who is prohibited from giving gifts during an election campaign.

Regulation 30CA of the *Local Government (Elections) Regulations 1997* extends the election gift declaration requirements to donors as well as recipients. This requirement was introduced as an added incentive for disclosure. The requirement for donors to also complete a declaration exists in New South Wales. The discussion paper suggests this has been viewed as a duplication of the requirement placed on election gift recipients and is inconsistent with the rules for non-election gifts. While requiring donors to declare gifts may strengthen transparency, it could be argued that the benefits are limited by the lack of a requirement to publish the register of donors.

In several other jurisdictions, the respective electoral commission has responsibility for administering the election gift register rather than the local government Chief Executive Officer. The discussion paper suggests a change in the responsibility for administering the election gift register could provide greater consistency and quality assurance and better reflect the broader roles of the Election Commission and Chief Executive Officer.

The change could also remove one of the potential areas of conflict between elected members and chief executive officers. This would, however, be inconsistent with the requirement for the maintenance of the non-election gift register and would mean that publication would be on the WAEC's website rather than the local government's website.

<u>Candidate nomination and information</u>

In Western Australia, candidates are required to complete a candidate profile as part of their nomination. Anecdotally, this is often the only information that electors may have to make their selection, especially in larger local government areas.

It has been suggested in the discussion paper that requiring candidates to provide additional information in their candidate profile may assist electors in making more informed decisions. Examples of information that could be required in the candidate's profile include:

- profession / primary source of income
- membership of political party.

Candidate profiles are published on the WAEC's website for WAEC elections. The Act also requires that the candidate profiles are exhibited on a notice board at the local government offices. Requiring local governments to publish the candidate profiles on their website during the election period, as suggested by the discussion paper, could also increase elector awareness.

In addition, nominees must complete a form to stand for Council. This form asks candidates to provide their date of birth and contact information but no other statistical information. This means that it is impossible to statistically measure the diversity of nominees or elected members. Introducing changes that ask demographic questions and a requirement for the Returning Officer to submit accepted nomination forms to the Department would allow, according to the discussion paper, for a better understanding of the representativeness of council members.

Wards and representation

Section 2.2 of the Act provides that a local government district may be divided into wards and ward structures are intended to ensure that all parts of a district are fairly represented. The Act, however, explicitly requires councillors to represent their entire district and not just their ward. The Act permits an elector to nominate in any ward, regardless of where they reside.

Ward structures are set by the Governor on the Minister's recommendation which are in turn based on the recommendations of the Local Government Advisory Board (LGAB). To amend ward boundaries, a minimum of 250 affected electors (or 10% whichever is lower) can make a submission to the local government, who in turn, must refer it to the LGAB along with a decision whether to support or not support the amendment. Local governments may also propose amendments to LGAB and must at least every eight years review their ward structure.

Some suggestions presented in the discussion paper, in terms of ward boundary and representation aspects include:

- set a minimum population threshold where a local government may be divided into wards and a minimum proportion of electors in each ward
- set a minimum threshold or circumstances where a local government must be divided into wards
- the Electoral Commissioner to oversee ward structures
- explicitly linking population to councillor numbers.

Overall, the ideas for change presented in the discussion paper on local government elections include:

- **introducing compulsory voting in local government elections**
- **introducing alternative voting methods for local governments to select from**
- **introducing electronic voting methods**
- **expanding who can perform postal elections on behalf of local governments**

- **reviewing the Schedule requirements on resolving ties in elections and secret ballots for positions**
- **revising the procedures for holding extraordinary elections where vacancies occur**
- **instituting caretake provisions around certain types of decisions**
- **mandating leave of absences where an elected member is contesting a State or Federal election process**
- **mandating elections of Mayors or Presidents by the community not from amongst elected members**
- **reviewing voter eligibility criteria, such as:**
  - **property franchise voting capabilities**
  - **the eligibility for corporations to nominate persons to vote on the company's behalf**
  - **occupier's eligibility to vote**
- **restricting local government election candidacy where a person has been convicted of a planning and /or building legislation offence**
- **reducing frequency of elections to every four years to align with other states**
- **setting campaign advertising limits**
- **overhauling the electoral gift provisions to provide consistency and fairness to elected member and non-elected member candidates as well as implement stronger governance regimes around gift declaration and reporting**
- **publishing candidate profiles on the local government website**
- **requiring additional demographic information during an elected member nomination process**
- **reviewing thresholds and oversight structures of ward boundaries and elected member representation.**

City assessment

Compulsory voting

Although voting at local government elections in Western Australia is optional, compulsory voting has existed in Australia at the State level since 1915 and the Federal Government in 1924 and currently about 25 countries and their jurisdictions have compulsory voting yet only about 10 enforce it.

The Australian Electoral Commission notes the following arguments are advanced for/against compulsory voting, although some of the points may be more relevant to State and Federal elections:

Arguments used in favour of compulsory voting

- *Voting is a civic duty comparable to other duties citizens perform (for example taxation, compulsory education, jury duty).*
- *Teaches the benefits of political participation.*
- *Parliament reflects more accurately the "will of the electorate".*
- *Governments must consider the total electorate in policy formulation and management.*
- *Candidates can concentrate their campaigning energies on issues rather than encouraging voters to attend the poll.*
- *The voter isn't actually compelled to vote for anyone because voting is by secret ballot.*

Arguments used against compulsory voting:

- *It is undemocratic to force people to vote – an infringement of liberty.*
- *The ill-informed and those with little interest in politics are forced to the polls.*
- *It may increase the number of "donkey votes".*
- *It may increase the number of informal votes.*
- *It increases the number of safe, single-member electorates – political parties then concentrate on the more marginal electorates.*
- *Resources must be allocated to determine whether those who failed to vote have "valid and sufficient" reasons.*

The City accepts that participation in local government elections as an elector is an important and valuable opportunity. The City has undertaken a range of activities aimed at encouraging members of the community to participate in the electoral process, including:

- writing to non-resident owners of businesses within the City encouraging them to enrol to vote
- use of local media and social media
- targeted advertising in local media and social media
- articles in City publications, public notice boards and website
- conducting candidate information sessions.

However, low voter turnout figures remain.

Since 2011 the Western Australian Electoral Commission and the former Department of Local Government Culture and the Arts undertook coordinated advertising to encourage members of the community to vote. It is not considered that there is much more the City can do to encourage members of the community to vote in voluntary elections.

In 2008, the City considered its position on the local government voting system and compulsory voting as a result of a discussion paper released by WALGA. Council agreed upon a position on this matter noting that a range of alternatives may be available to the current processes for local government elections and which may increase elector participation, however, on balance it resolved to support compulsory voting.

The City also acknowledges that citizens have a broad suite of opportunities for participation in local government matters and access to information including via public question time at council meetings; comment on the draft annual budget; calling for special elector meetings; lodging petitions and access to local government elected members to raise issues and concerns.

The City notes also that local governments are also subject to scrutiny from an active local media/press and that citizens can lodge complaints with a range of public sector organisations including the WA Ombudsman, Freedom of Information Commissioner, State Administrative Tribunal and Local Government Standards Panel.

The City reversed its decision of 2008 at its meeting held on 13 December 2011 and has continued to purport that it does not support compulsory voting in local government elections in the various submissions it has made since that time.

Compulsory voting in local government is more complex in terms of a property owner or occupiers right to nominate persons to vote. While compulsory voting works in State and Federal elections (as it is based on the principles of one person one vote), property rights in local government elections does not lend itself to compulsory voting, unless significant electoral reform is implemented to either remove this right or implement compulsory voting exemptions.

First-past-the-post

For the 2007 local government elections, changes were made to the Act where the established first-past-the-post voting method was changed to the methods of preferential voting (single member vacancies) and proportional preferential voting (multi-member vacancies).

At that time and in response to a discussion paper released by WALGA, the City of Joondalup Council, at its meeting held on 15 July 2008 (Item CJ125-07/08 refers) resolved in part that it supports the introduction of optional preferential voting in local government elections as an alternative to proportional preferential voting given that the State Government will not reintroduce the first-past-the post method of voting.

Following this decision however, in August 2009 the WA Parliament passed the *Local Government Amendment (Elections) Act 2009* that reverted the voting method back to first-past-the-post, due to the complexity of the voting method.

The City does not have a substantive position in relation to a preferred voting system, however, it is considered that some of the benefits and disadvantages of the first-past-the-post system are, but not limited to:

Advantages
- It provides a clear-cut choice for voters between candidates.
- It is easy and quick to count.
- Informal voting is negligible.
- Voters can assess the performance of individual candidates rather than just having to accept a list of candidates, as can happen under some proportional representation electoral systems.
- It gives a chance for popular 'independent' candidates to be elected.

Disadvantages
- It leaves a large number of wasted votes which do not go towards the election of any candidate.
- It can cause vote-splitting. Where two similar candidates compete, the vote of their potential supporters is often split between them, thus allowing a less popular candidate to win the seat.
- Representatives can get elected on a minority of public support as it does not matter by how much they win, only that they get more votes than other candidates.
- It encourages tactical voting, as voters vote not for the candidate they most prefer, but against the candidate they most dislike.

WALGA's formal position is that local government elections should be conducted using the first-past-the-post method. Given the advantages of the first-past-the-post method in an environment where it is difficult to attract a high voter turnout, it is suggested that a simple voting system should be supported.

Electronic voting

WALGA has previously received requests from three of its zones to explore the possibility of introducing on-line voting in local government elections. A State Council Item for noting was prepared in May 2017 advising that WALGA staff will liaise with the WAEC regarding the use of the iVote system and also seek feedback from the local government sector on online voting and other opportunities to increase voter turnout.

As part of the City's response to WALGA's *Discussion Paper on the Local Government Act Review* (phase one) the City supported opportunities being examined that will increase voter turnout to elections but deferred consideration of endorsing a position pending receipt of the WALGA discussion paper on the opportunities to increase voter turnout, including the use of the iVote system (CJ161-10/17 refers).

As the discussion paper highlights there is a level of risk with all internet applications, and any on-line voting system needs to balance those risks against increasing the ability to vote in local government elections, as a way to increase voter turnout.

Allowing third parties to conduct postal elections

The electoral process of local governments is the most significant local government activity undertaken which has the potential to call into question political neutrality and perceptions of bias. It is imperative therefore that the coordination of local government elections is undertaken by specialists in that field, being cognisant of the Western Australian electoral environment.

The City has been conducting postal elections through the WAEC since its inaugural election in December 1999 and the voting turnout figures since that time are as follows:

Election date	**Election method**	**Voter turn-out**
May 1997	In-person	6.51%
December 1999	Postal	28.2%
May 2001	Postal	29.7%
May 2003	Postal	25.9%
May 2006 *	Postal	27.2%
October 2007	Postal	27.2%
October 2009	Postal	26.9%
October 2011	Postal	23.8%
October 2013	Postal	22.1%
October 2015	Postal	20.2%
October 2017	Postal	31.3%

** Election under Section 4.14 of the Local Government Act 1995.*

While the City supports local government elections being by postal election, conducted by the Western Australian Electoral Commission, in April 2013 it considered whether the Commission should retain its 'monopoly' on their conduct, and whether local governments should be permitted to undertake their own postal elections.

From an operational perspective the WAEC provides an 'at-arms-length' and independent management of the electoral process beneficial both to candidates and a local government's administration. The WAEC also has sophisticated processes and systems in place to manage postal elections that would be difficult for individual local governments to manage effectively.

The City considered this matter in its April 2013 Metropolitan Reform Submission as well as in its 2017 submission to the WALGA Discussion Paper on the Local Government Act Review. In all those submissions, the City supported that all local government postal elections being conducted by the Western Australian Electoral Commission and this position still stands.

Method to resolve ties

The discussion paper highlights some of the criticisms of Schedule 4.1 of the Act for the drawing of lots to resolve ties and highlights one recent example. This Schedule comes into operation for not only normal local government elections but also the elections for mayors, presidents, deputy mayors and deputy presidents by a council itself. It is considered that this schedule only poses difficulty of the election of mayors, presidents, deputy mayors and deputy presidents by a council itself, as it is highly unlikely that a tie would occur in a general local government election.

Under Schedule 2.3, before the drawing of lots occurs, two elections by secret ballot are conducted before the drawing of lots is put into operation. It is considered necessary to have a “circuit breaker” to resolve ties, otherwise the election process could continue infinitely or until a result is achieved. The discussion paper is suggesting that it may be worth changing the Act so that the election of mayors and shire presidents is by an elector election and if this was implemented the drawing of lots provision will unlikely cause future issue. It is not supported that the Act be amended to remove the drawing of lots to resolve ties.

In a further matter, the City raised concern as part of its phase one submission with the current operation of Schedule 2.3 of the Act which contains the provisions around when and how mayors, presidents, deputy mayors and deputy presidents are elected by a council.

Under both subclauses (5) and (9) it is a requirement that if there is an equally of votes for candidates running in an election, that the council meeting is to be adjourned for not more than seven days. An adjournment of this nature poses a range of administrative and procedural issues in terms of giving notice, distributing agendas and the like, as well as delaying any business that is also listed on the agenda after the said election being held.

In view of this the City supports amending Schedule 2.3 to reflect that a second election is to be held immediately as opposed to requiring the meeting to be adjourned.

Methods to fill vacancies in lieu of extraordinary elections

The provisions around filling extraordinary vacancies should be amended to simply the process in that if an extraordinary vacancy occurs, the vacancy should be filled at the next local government ordinary election, as opposed to holding an extraordinary election in certain circumstances. While this may affect elected member representation levels, it is unlikely that a number of vacancies would occur at the one time to effect voting at council meetings. This would also avoid local governments for conducting sometimes expensive local government election processes outside of a normal ordinary local government election cycle.

The Act provides an ability for a local government to approach the Minister to reduce number for quorums and certain majorities if need be (section 5.7). It should also be noted under section 2.10 of the Act a councillor (as well as a Mayor or President) is required to represent tine interests of electors, ratepayers and residents of the entire district, not just the ward in which elects them. Therefore, electors should be represented by the full elected body not just a particular councillor in the Ward in which they reside.

The suggestion put in the discussion paper of using the results of a last ordinary election to fill an extraordinary vacancy is opposed. Interest in being a local government elected member may change over time, in terms of new candidates potentially coming forward, or indeed previous candidates wanting to continue to be considered as a potential candidate. Voters expectations and preferences could indeed change overtime and therefore may not want to vote for a particular candidate who they previously voted for.

Where an extraordinary vacancy occurs, a local government should conduct a fresh election, noting that this will be an additional expense to a local government. This will ensure the democratic process of selecting appropriate representation is maintained.

Caretaker provisions

The local government electoral process is one of the most significant local government activities undertaken which has the potential to call into question political neutrality and perceptions of bias. It is important therefore that local governments refrain from any activities which could cast doubt on its neutrality and impartiality or making decisions that could compromise or commit an incoming council.

Election caretaker conventions exist at both State and Federal government levels and have been introduced by a number of Western Australian local governments. The purpose of these conventions is to avoid bodies making major decisions prior to an election which would bind an incoming body (such as Parliament or Council); prevent the use of public resources in ways seen to be advantageous to, or promoting, elected members who are seeking re-election or new candidates; and to ensure the City and employees act impartially in relation to local government election process.

While there is no evidence to suggest that any such activity has occurred in City of Joondalup elections over recent times, good governance principles support the implementation of caretaker provisions that would assist to establish protocols of preventing actual and perceived advantage or disadvantage leading up to local government elections. In view of this, the City of Joondalup Council, at its meeting held on 11 December 2018 (CJ229-12/18 refers) adopted an *Elections Caretaker Policy.*

As such the City supports caretaker positions being implemented however suggests that this should be left to local governments to consider rather than legislated, in view of their individual size and needs. WALGA has developed a model policy for local governments to consider in developing a policy position that is tailored to an individual local government's needs.

As part of its phase one submission, the City suggested it may be worth defining "election period" to assist with clarifying when certain offences in terms of an election are in play. This will also assist with establishing caretaker periods, which in terms of the City's policy, is the close of the candidate nomination period.

Leave of absence when contesting State or Federal elections

The City responded to WALGA's discussion paper around this matter at its meeting held on 10 October 2017 (Item CJ161-10/17 refers).

This matter has been previously raised by WALGA's East Metropolitan Zone which has identified that, under the Act, there is no requirement for an elected member to either stand down or take leave of absence if they are a candidate for a State or Federal election. If elected to Parliament the elected member is immediately ineligible to continue as an elected member. Currently it is up to an individual elected member to determine if they wish to take a leave of absence. In some cases, elected members have voluntarily resigned which has resulted in extraordinary vacancies.

It is recognised that the concerns raised by the East Metropolitan Zone are legitimate, however, there is also an argument that as elected members are elected to represent the electors of the district, having a mandatory stand down provision will diminish that representation and could place an additional burden on remaining elected members and a council, although one elected member standing down (or a small number) would not have a significant effect.

It is suggested the City defer consideration of a position in relation to this proposal until further information on the advantages and disadvantages of the proposal is forthcoming.

Election of Mayor and Shire Presidents

There are a variety of advantages and disadvantages between 'council elected mayors/presidents' and 'elector elected mayor/presidents.

The City provided, in its May 2012 and April 2013 Metropolitan Reform Submissions as well as its submission to the WALGA discussion paper in 2017, that given the City of Joondalup's method of filling the office of Mayor is by direct election by electors of the district, the City maintain this position. However, it should be a local governments decision as to which method it wishes to use.

Property franchise

In its Final Report (July 2012) the Metropolitan Local Government Review Panel suggested consideration be given as to whether businesses and property owners should continue to receive a vote or if the ability to vote should be limited to one vote per individual as is the case for State and Federal elections. The Panel notes that in Queensland, for example, the 'property franchise' has been removed, including for the City of Brisbane. There is no explanation by the Panel with regard the implications of such a proposal, which would be most significant for business owners.

While the City does not have a position with regard the matter of property franchises, owners of properties continue to be ratepayers and consumers of local government services. As such it may not be reasonable to expect that they be denied a right to vote. Increased complexity of property franchise provisions ensues where compulsory voting methods are also considered. In such a scenario, owners of properties may find themselves compelled to vote more than once in each district (or ward), or across multiple districts.

The City therefore should continue to promote its response in its April 2013 submission to the Metropolitan Review Final Report, that it supports in principle a full review of the current legislation being conducted to address the issue of property franchise in local government elections.

Corporations' and occupiers' eligibility to vote

The eligibility and enrolment provisions under the Act for non-resident owners and occupiers is overly complex (Division 8 of Part 4 of the Act) and should be reviewed. As part of its phase one submission, the City proposed the following suggested changes to the Act within this Division:

- **Section 4.31 – Rateable property: ownership and occupation** – consideration might be given to what constitutes occupation including a reference to a separate and distinguishable portion of a rateable property (s4.31(1D)(ii)). It has been known in the past for electors to be approved for leasing small non-habitable sections of rateable properties which goes against the intent of the provisions of occupation.

- **Section 4.32 – Eligibility to enrol under s 4.30, how to claim** - consideration might be given to prescribing an amount for rent, under s 4.32(3) and the *Local Government (Elections) Regulations 1997*. This would prevent token rental being applied to buildings and other areas of rateable property.

- **Section 4.33 – Claim of eligibility to enrol under s 4.30, expiry of** – consideration might be given to simplification of the expiry of enrolment eligibility claims on the basis of occupation (s4.33(2A) and (2B)). It is suggested the expiry of the claim should occur after the third election regardless on the date in which the claim is made. This would simplify procedures around managing the owners and occupiers roll.

- **Section 4.34 – Accuracy of enrolment details to be maintained** – consideration might be given to deletion of this section as it is aligned to the CEO's role under section 5.41(h) and section 4.32(6).

- **Section 4.35 - Decision that eligibility to enrol under s.4.30 has ended** – procedurally if an elector no longer owns or occupies property, the CEO under this section is still required to give written notice to that person before making a decision that a person is no longer eligible to vote. Administratively it is somewhat nonsensical for a local government to write to a person at an address where there is evidence that they no longer live there, or where their new address is not known. Consideration might be given to inserting new sub-clauses under s.4.35(1) might be inserted to indicate if the CEO is satisfied that the person no longer owns the property, or where their claim has expired under s4.33.

For past elections, the City has engaged extensively with non-resident owners and occupiers (especially businesses) to encourage nominations to vote in its local government elections. For the 2017 City of Joondalup local government elections, the City's non-resident owners and occupiers roll consisted of only 258 electors, as compared to 110,846 on its Residents Roll (prepared by the WAEC). Non-resident owner and occupier elector numbers are a fraction of resident voters, which may suggest that businesses and other non-resident owners and occupiers are not interested in voting in local government elections.

The removal of voter eligibility for non-resident owners and occupiers (including corporations) may not be an issue for some local governments, considering the various channels that such owners and occupiers can engage with their respective local governments. However, the removal on eligibility of non-resident owners and occupiers may create election issues for local governments like the City of Perth, that have a small resident population as compared to the number of business that within their district.

There is also the argument that businesses and other non-resident owners and occupiers contribute to a local governments funding; utilise a local government's resources; and therefore, should be entitled to vote. On the other hand, various visitors and workers that live outside a local government's district also consume a local governments services and facilities and may not contribute to a local government providing such services and facilities.

Local government elector eligibility and entitlement, and the legislative processes that surround the mechanisms to facilitate enrolment, is a complex proposition that requires more in-depth consultation and engagement with local governments and the WA community.

Elected member eligibility

Elected members are often regarded from amongst their respective communities, as the main civic leaders, are held in high regard and to ethical and moral standards above most other people in the community. This is demonstrated through the various requirements and obligations an elected member has in performing their duties and fulfilling their role of Office. Elected members perform a quasi-judicial role in planning matters, in that they must base their decision-making responsibilities on relevant information and facts and the relevant legislative provisions that are applicable.

In view of this the suggestion put forward in the discussion paper is supported subject to a clear definition around what constitutes an offence under both planning and building legislation. Some offences may be minor in nature and therefore should not restrict a person from becoming an elected member.

Frequency of elections

The City supports local government elections being held every two years, as it currently stands. While elections are a considerable cost impost on local governments, the continuity of experienced elected members supports good governance being maintained and minimises the chance of a full new council being elected based on a singular community concern that may be apparent in an election process.

Limits on advertising campaigns

Inserting new provisions within the Act, limiting the monetary value of advertising campaigns is not supported.

It should remain an unlimited activity of a particular candidate, and with the invent of social media platforms such as Facebook and Twitter, campaigning activities can be relatively inexpensive and far reaching, as opposed to traditional mail outs and letter box drops.

Candidates in elections are required to disclose electoral gifts received which provides a level of transparency in terms of any contributions a candidate may receive for campaigning activity. It would also be difficult to oversee such a requirement and is another example of additional red tape being inserted into the Act – a matter that this Act review was trying to resolve.

Reform to election gifts rules

As part of its Phase One submission, the City supported the need to streamline the gift disclosure requirements under legislation with a preference of one section around the declaration of gifts which could include the deletion of 'gift' and 'travel contribution' requirements under the Act and revised provisions being included in the *Local Government (Rules of Conduct) Regulations* 2007, the *Local Government (Administration) Regulations 1996* and the *Local Government (Elections) Regulations 1997.*

Following the phase one consultation process, the Department stated a new direction would be introduced around declaration of gift by elected members and chief executive officers (*Information Sheet – Gifts policy position*). It is not considered this new direction rectifies the extensive problems with the multiple gift arrangements in place, let alone providing any indication that the changes will streamline the gift provisions into one section of the Act.

Notwithstanding the alignment of the gift frameworks as suggested supports the City's previous stated position however the detail needs to be further explored and carefully drafted into legislation. The discussion paper also suggests a range of organisations or people may be prohibited from giving electoral gifts to candidates. This has merit on face value, but it would be difficult to ascertain any linkage between a person within such organisations, and who may give an "electoral gift" in a personal capacity.

Instead of providing restrictions, which would be difficult to enforce and monitor, any changes to election gift provisions should focus on clarifying the rules around declarations with the continuation of financial interest provisions under the Act, thereby requiring an elected member to remove themselves if the donor of an electoral gift has a matter for determination before Council.

The City supports the removal of gift declaration requirements for donors as it is considered a duplication of effort in terms of declarations around electoral gifts. The onus should be a candidate to declare their electoral gifts not imposing requirements onto donors.

However, it is not supported that the electoral commission be responsible for the maintenance and administering of the electoral gift register, as this responsibility should remain with a local government's chief executive officer. Contrary to the position put in the discussion paper, it is not considered the maintenance of the electoral gift register would cause conflict between an elected member and a chief executive officer, as the register is only a record of gift declarations received. Members of the public at times have viewed these entries and a local government should hold these records, as it is an activity relating to that local government's election, not a process on conducting the election (in terms of issuing ballots and undertaking counts).

The discussion paper also wrongly suggests the register is published on a local government's website. Only declarations of gifts and contributions to travel under sections 5.82 and 5.83 of the Act are currently required to be published on a local government's website. The electoral gift register is however available for public inspection at the offices of the local government.

Candidate nomination and information

Under regulation 24 of the *Local Government (Elections) Regulations 1997* a candidate's profile is not to contain more than 150 words. While this limitation could not possibly detail the full background of a particular candidate, it is supposed to provide a snapshot of biographical information and any policy positions or beliefs of that candidate. Feedback received from City of Joondalup election candidates previously have suggested the word limitation be increased to allow greater detail about the candidate to be given.

It is not considered to be in the public interest for members of the community to be informed of a candidate's profession / primary source of income, or their membership to political parties or other bodies. Voters should base their voting decisions on the biographical information supplied in a candidate's profile, as well as any stated policies or beliefs that has been portrayed by the candidate either through their profile or election campaign material. Contact details of the candidate are also provided in a profile, and should a voter have any questions or concerns about a candidate, they are free to contact them directly.

The City as a matter of practice also publishes the candidate profiles on its website as a way on publicising profiles to the district and changes to the electoral regulations along these lines is supported.

Ward and representation

The City of Joondalup was established on 1 July 1998 and adopted a preferred ward structure and representation model on 27 August 1999. The City has maintained a ward structure since that time and in accordance with the Act has undertaken statutory reviews of its ward boundaries and representation levels in 2005 and 2013, respectively. Ward and representation reviews are conducted in accordance with Schedule 2.2 of the Act.

As part of its 2011 submission the City supported local government external boundaries being set by an independent body and reviewed at regular intervals to ensure 'arm's length' objective assessments. This would ensure a similar process to that adopted by the State Government for its electorates and divisions.

It was suggested, however, that:

- any independent body should include local government representation
- there must continue to be an opportunity for the local government and electors of a district under review to provide comment on any proposals.

The 2011 submission also suggested, for internal boundaries (that is a local government's ward structure) local governments should retain the right to initiate the process (including the creation, or abolition) of ward review, but external evaluation, and ultimate approval should also take place at 'arm's length'. The Local Government Advisory Board is well placed and regarded to undertake this task. The City continues to support this position.

As part of the City's 2017 submission to WALGA on its discussion paper on the Act Review, the City supported in principle that Schedule 2.2 of the Act be amended so that the prescribed number of electors required to put forward a proposal for a change, increase from 250 (or 10% of electors) to 500 (or 5%of electors) whichever is the fewer.

In terms of a local governments ward system, there are a range of advantages and disadvantages to a ward structure:

Advantages

- Different sectors of the community can be represented ensuring a good spread of representation and interests among councillors.
- There is more opportunity for councillors to have a greater knowledge and interest in the issues in their particular ward.
- It may be easier for a candidate to be elected if they only need to canvass one ward.
- Councillors may be more accessible to electors of the ward they represent.

Disadvantages

- Councillors can become too focused on their wards and less focused on the affairs of other wards and the whole local government.
- An unhealthy competition for resources can develop where electors in each ward come to expect the services and facilities provided in other wards, whether they are appropriate or not.
- The community and councillors can tend to regard the local government in terms of wards rather than as a whole community.
- Ward boundaries may appear to be placed arbitrarily and may not reflect the social interaction and communities of interest of the community.
- Balanced representation across the local government may be difficult to achieve, particularly if a local government has highly populated urban areas and sparsely populated rural areas.

It may be worthy for population thresholds and circumstances to be developed in terms of when a local government's district is divided into wards, however this should be a consideration for a local government through the current ward boundary review process under Schedule 2.2 of the Act. Under section 2.18 of the Act the Governor, on the recommendation of the Minister, may make an order:

- changing the number of offices of councillor on a council
- specifying or changing the number of offices of councillor for a ward
  or
- as to a combination of those matters

However, the Minister can only make a recommendation if the LGAB has recommended as such under Schedule 2.2 of the Act. The legislative provisions as they currently stand gives a local government, and its community the ability to determine its structure and representation levels and can make a case to change such matters through a formal process to the LGAB. It is suggested therefore that the provisions as the currently stand should remain in place and not amended.

Proposed City of Joondalup position:

The City of Joondalup:

- DOES NOT SUPPORT compulsory voting in local government elections which should remain voluntary

- SUPPORTS the retention of first-past-the-post voting method in local government elections

- DOES NOT SUPPORT introducing alternative voting methods for which local governments can choose from as this will create confusion throughout the local government sector

- SUPPORTS opportunities being examined that will increase voter turnout to local government elections and SUGGESTS further investigation and discussion with WALGA, the Western Australian Electoral Commission and the local government sector on the use of on-line voting systems

- DOES NOT SUPPORT the Act being amended to allow the Australian Electoral Commission (AEC) and/or local governments to conduct postal elections

- SUPPORTS all local government elections being conducted by the Western Australian Electoral Commission

- DOES NOT SUPPORT changes to Schedule 4.1 Of the Act to remove the ability to resolve ties through the drawing of lots

- SUPPORTS changes to Schedule 2.3 of the Act to reflect that a second election is to be held at the conclusion of the first election, as opposed to requiring the meeting to be adjourned before the second election is to be held

- SUPPORTS changes to the provisions around filling extraordinary vacancies to permit all extraordinary elections, whenever the vacancy occurs, being held at the time of a local government's next ordinary local government election

- DOES NOT SUPPORT extraordinary vacancies being filled using the results of a last ordinary election

- SUPPORTS local governments developing policy provisions around local government election caretaker periods as opposed to legislative amendments

- SUPPORTS a definition of "election period" being inserted into the Act to assist with caretaker period provisions and to clarify when certain electoral offences are in effect

- DEFERS consideration of endorsing a position to amend the Act to require an elected member to stand down when contesting a State of Federal election, until further information on the proposal is received

- SUPPORTS retaining the option for local governments on which method they may wish to use in electing their mayors or shire presidents, noting the City of Joondalup's method of filling the Office of Mayor is by direct election by electors of the district

- SUPPORTS IN PRINCIPLE a full review of the current legislation being conducted to address the issue of property franchise in local government elections

- SUPPORTS IN PRINCIPLE a full review of non-resident owner and occupier voting eligibility, including whether voting entitlement applies for corporations, occupiers and other people, and this be facilitated through a more in-depth discussion with the Western Australian community

- SUPPORTS amendments to the Act that a person who has been convicted under planning and building legislation in the previous five years or a similar offence be disqualified from becoming an elected member, subject to a clear definition being inserted as to what constitutes an offence under both planning and building legislation

- DOES NOT SUPPORT local government elections being held every four years

- DOES NOT SUPPORT limits on local government election campaigns being inserted into the Act

- REITERATES the need to streamline the gift disclosure requirements under legislation with a preference of one section around the declaration of gifts which could include the deletion of 'gift' and 'travel contribution' requirements under the Act and revised provisions being included in the *Local Government (Rules of Conduct) Regulations 2007*, the *Local Government (Administration) Regulations 1996* and the *Local Government (Elections) Regulations 1997*

- DOES NOT SUPPORT restrictions being placed on particular donors of electoral gifts and suggests improved clarity in terms of the rules around declarations and the continuation of the financial interest provisions under the Act, in relation to donor of an electoral gift being classed as a "closely associated person"

- SUPPORTS the removal of gift declaration requirements for donors of electoral gifts as it is considered a duplication of effort

- DOES NOT SUPPORT the electoral commission, or other third party, maintaining the electoral gift register as this responsibility should continue to rest with a local government's chief executive officer

- DOES NOT SUPPORT amendments that require a candidate's profile to include their profession / primary source of income, or membership to political parties, as voter decisions should be based on the biographical information supplied, as well as any stated or know policies or beliefs

- SUPPORTS candidate profiles being published on a local government's website, noting this practice currently occurs at the City of Joondalup

- SUPPORTS Schedule 2.2 of the Act being amended so that the prescribed number of electors required to put forward a proposal for a change, increase from 250 (or 10% of electors) to 500 (or 5%of electors) whichever is the fewer

- SUPPORTS the creation or abolition of a local government wards should be a decision of the local government, in consultation with its electors and stakeholders, consistent with the current provisions of the Act

- SUPPORTS all proposals for establishment and/or review of local government external and internal boundaries being by open and transparent means ensuring the local government and electors are granted the opportunity to be actively involved

- SUPPORTS local governments determining their councillor numbers and representation levels, in consultation with its electors and stakeholders, consistent with the current provisions of the Act.

Local Government Act review – other matters for consideration

The discussion papers provide an opportunity to make comment and put forward suggestions on other matters which have not been covered in the discussion papers.

The City has, over many years made a variety of comments and stated positions on a vast array of discussion papers and feedback requests from a number of state government agencies and industry bodies.

Comprehensive comments have previously been provided in the City's submission on the Phase 1 (adopted by Council at its meeting held on 20 February 2018 - CJ012-02/18 refers) review and might be referred to by the Department as part of the Phase 2 review. Many of the suggestions were also included in the City's response to the WALGA Discussion Paper on the Local Government Act Review and as supported by Council at its meeting held on 10 October 2017 (Item CJ161-10/17 refers).