

WALGA ADVOCACY POSITIONS LOCAL GOVERNMENT ACT REVIEW

LOCAL GOVERNMENT ACT REVIEW PRINCIPLES

That State Council endorse the following general principles as being fundamental to its response to the review of the Local Government Act:

- a) Uphold the General Competence Principle currently embodied in the Local Government Act;
 - b) Provide for a flexible, principles-based legislative framework; and
 - c) Promote a size and scale compliance regime
- The City supports the three general principles as they should lead to an Act which is less prescriptive and promotes accountability, innovation and transparency.

BENEFICIAL ENTERPRISES

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| Position Statement | The Local Government Act 1995 should be amended to enable Local Governments to establish Beneficial Enterprises (formerly known as Council Controlled Organisations). |
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- The City supports the Act allowing local governments to form beneficial enterprises, on the basis that current requirements place local governments at commercial disadvantage
- The benefit to local government would be the ability to form independent corporate entities to manage leisure centres, waste management and land development / urban renewal.
- The City notes that there may be an impact on industrial relations, including employee contract conditions, and therefore local governments should retain the discretion to stipulate what employee conditions are applicable for beneficial enterprises.

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

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

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

Examples

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

Benefits of establishing a Beneficial Enterprise include:

- (a) The ability to employ professional directors and management with experience specific to the commercial objectives of the entity;
- (b) Removal of detailed investment decisions from day-to-day political processes while retaining political oversight of the overarching objectives and strategy;

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- (c) The ability to take an overall view of commercial strategy and outcomes rather than having each individual transaction within a complex chain of inter-related decisions being subject to the individual notification and approval requirements of the Local Government Act;
- (d) The ability to quarantine ratepayers from legal liability and financial risk arising from commercial or investment activities;
- (e) The ability to set clear financial and non-financial performance objectives for the entity to achieve; and
- (f) Greater flexibility to enter into joint venture and partnering relationships with the private sector on conventional commercial terms.

FINANCIAL MANAGEMENT

Tender Threshold

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| Position Statement | WALGA supports an increase in the tender threshold to align with the State Government tender threshold of \$250 000, with a timeframe of one financial year for individual vendors. |
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- [The City supports this, and notes that it aligns with the threshold for Council approval of tenders as set out in the City’s Procurement Policy.](#)

Procurement

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

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| Position Statement | That Regulation 30(3) be amended to delete any financial threshold limitation (currently \$75,000) on a disposition where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity. |
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- [The City supports this as it improves the efficiency of trade-in of equipment.](#)

Imposition of Fees and Charges: Section 6.16

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| Position Statement | That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services. |
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- [The City supports this, as it will enable setting of fees and charges to be appropriate for the services provided, and relevant to each local government context.](#)

Power to Borrow: Section 6.20

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

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- The City supports this, as it assists in ensuring local governments can borrow money in an efficient manner, taking advantage of rates and benefits made available to other sectors of the economy.

Basis of Rates: Section 6.28

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

- The City supports this. The City's position is that local government should determine the method of valuation as it has a better understanding of land use and value within its boundaries.

Differential General Rates: Section 6.33

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

- The City supports this on basis that it will incentivise development of land.

Member Interests - Exemption from AASB 124

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

- The City does not support exemption for Council Members from Financial Management Regulation 4 if this means a departure from compliance with Australian Accounting Standards (AAS). The City is supportive of the broad compliance with the AAS to the extent that is practical and relevant to do so.

RATES, FEES AND CHARGES

Imposition of Fees and Charges: Section 6.16

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| Position Statement | That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services. |
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- The City supports this, as it will enable setting of fees and charges that are appropriate for the services provided, and relevant to each local government context.

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

1. Amend the Local Government Act to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth Aged Care Act 1997;

- The City does not support independent living units being exempt from rates in any circumstances. The City's position is that all land should be rateable, with no exemptions, however local governments should have the discretion to waive rates.

2. Either:

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- (a) amend the charitable organisations section of the Local Government Act 1995 to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or
 - (b) establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates; and
- The City supports option 'a' preferably, but would be supportive option 'b' if there was sufficient long term certainty about the compensation arrangements.
3. Request that a broad review be conducted into the justification and fairness of all rating exemption categories currently prescribed under Section 6.26 of the Local Government Act.
- The City supports a review as set out above. The City's view is that there should be no rates exemptions, with rates to be waived at the discretion of the local government.

Rating Exemptions – Rate Equivalency Payments

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| Position Statement | Legislation should be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government. |
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- The City supports this as it is fair that the local government receives rates for all land within the district, unless waived.

Rates or Service Charges Recoverable in Court: Section 6.56

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| Position Statement | That Section 6.56 be amended to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to the 'cost of proceedings'. |
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- The City supports this so long as there is discretion in its application.

Rating Restrictions – State Agreement Acts

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| Position Statement | Resource projects covered by State Agreement Acts should be liable for Local Government rates. |
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- The City supports this as it is fair that the local government receives rates for all land within the district, unless waived.

ADMINISTRATIVE EFFICIENCIES

Control of Certain Unvested Facilities: Section 3.53

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

- The City supports this as facilities on unvested crown land, such as roads and bridges, should be the responsibility of the body that is responsible for the land (which is the Crown / State

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Government if the land is unvested). If the State intends that a local government be responsible for facilities on the land, the land should be vested in the local government for a particular purpose.

Local Government Grants Commission and Local Government Advisory Board

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

- The City supports this as it is important for local governments to be representative and accountable and provide this avenue for electors to provide comments in respect to proposed boundary changes or amalgamation proposals.
- The City notes that the current conditions as included in Schedule 2.1 should apply, which means 50 per cent of all electors would need to respond to the poll for it to be binding.

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

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

- The City supports this increase on basis that 500 is more representative.

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

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

- The City supports this increase as 500 is more representative.

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

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

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

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

- The City supports a definition of 'responsible person' being included, and proposes that definition should be:
“the driver of a vehicle liable, accountable and being in the control of a vehicle at the time of any vehicle offence.”

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COMPLAINTS MANAGEMENT

Querulous, Vexatious and Frivolous Complainants

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

Amend the *Local Government Act 1995*, to:

- Enable Local Government discretion to refuse to further respond to a complainant where the CEO is of the opinion that the complaint is trivial, frivolous or vexatious or is not made in good faith, or has been determined to have been previously properly investigated and concluded, similar to the terms of section 18 of the *Parliamentary Commissioner Act 1971*.
- Provide for a complainant, who receives a Local Government discretion to refuse to deal with that complainant, to refer the Local Government's decision for third party review.
- Enable Local Government discretion to declare a member of the public a vexatious or frivolous complainant for reasons, including:
 - Abuse of process;
 - Harassing or intimidating an individual or an employee of the Local Government in relation to the complaint;
 - Unreasonably interfering with the operations of the Local Government in relation to complaint.

- The City supports this, as it will ensure Administrations' and Council Members' time and resources are not taken up with frivolous or vexatious complaints, and enables Administration to more effectively deal with these types of complainants.

COUNCIL MEETINGS

Electors' General Meeting: Section 5.27

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| Position Statement | Section 5.27 of the Local Government Act 1995 should be amended so that Electors' General Meetings are not compulsory. |
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- The City does not support this, on basis that an annual electors' meeting supports accountability and representation, and therefore it should not be at the discretion of a local government to hold one.

Special Electors' Meeting: Section 5.28

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

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

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Minutes, contents of: Regulation 11

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

- The City supports this as it aligns with the City's objectives of transparency and accountability.

Revoking or Changing Decisions: Regulation 10

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

- The City supports this.

Elected Member attendance at Council meetings by technology

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

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

- The City supports this, on basis that requirements need to be updated to align with contemporary technology and changes in the way people work (that is, the City supports flexible and remote working).
- The City notes that local governments need to have the discretion to include a criteria governing when the use of technology is acceptable in their relevant local law (City's Meeting Procedures Local Law), as this will allow local governments to stipulate when the use of technology is appropriate (i.e. if an elected member is on holiday).

INTERVENTIONS

Remedial intervention; Powers of appointed person; Remedial action process

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

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

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

- The City supports this review and for arrangements to differentiate between different size and scale local governments.

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ELECTIONS

Conduct of Postal Elections: Sections 4.20 and 4.61

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| Position Statement | The Local Government Act 1995 should be amended to allow the Australian Electoral Commission (AEC) <u>and or any other third party provider</u> to conduct postal elections. |
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- The City supports this, as it should increase participation in elections and therefore representation.

Voluntary Voting: Section 4.65

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| Position Statement | Voting in Local Government elections should remain voluntary. |
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- The City supports compulsory voting on the basis that it is more representative.

Method of Election of Mayor/President: Section 2.11

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| Position Statement | Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community. |
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- The City supports the above.
- However, if the method of election of the Mayor is by the community then it should only be possible for this method to be changed by the community (therefore the Council cannot change the method of election from direct election of the Mayor).

On-Line Voting

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

- The City supports online voting being introduced at the discretion of the local government. The City notes that it may have a higher initial cost, but this would be offset by benefits arising from greater participation. However, while the City is very supportive of any other investigation of opportunities to increase voter turnout, this needs to be considered against the financial costs of implementing the changes by each local government.

Method of Voting - Schedule 4.1

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| Position Statement | Elections should be conducted utilising the first-past-the-post (FPTP) method of voting. |
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- If voting was compulsory, the City supports preferential voting.
- If voting remains voluntary, then first past the post is appropriate.

Leave of Absence when Contesting State or Federal Election

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

- (i) that an Elected Member remove themselves from any decision making role and not attend

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- (ii) Council and Committee meetings; or that an Elected Member take leave of absence from all aspects of their role as a Councillor and not be able to perform the role as specified in Section 2.10 of the Local Government Act.
- The City supports this, as it is a transparent and accountable approach and would assist in preventing any perceived or actual conflict of interest arising.