

## ITEMS FOR DISCUSSION

Item	Description	Comments
1	Part 6 & Financial Management Regs. - Financial Ratios	<p>All Ratios need to be reviewed, specifically the inclusion of FAGS revenue into the ratios.</p> <p>Currently FAGS are not included, which reflects poorly on LGAs. As stated under section 3 of the <i>Local Government (Financial Assistance) Act 1995</i> the Australian Government provides financial assistance for local government purposes by means of grants to the states and self-governing territories for the purpose of improving:</p> <ul style="list-style-type: none"> <li>• <i>The financial capacity of local governing bodies;</i></li> <li>• <i>The capacity of local governing bodies to provide their residents with an equitable level of services;</i></li> <li>• <i>The certainty of funding for the local governing bodies;</i></li> <li>• <i>The efficiency and effectiveness of local governing bodies; and</i></li> <li>• <i>The provision, by local governing bodies, of services to Aboriginal &amp; Torres Strait Islander communities.</i></li> </ul> <p>For the DLGC to determine the FAG revenue should form part of the LGA ongoing recurrent revenue (similar to rates, fees and charges, etc.) is ludicrous and contradicts Commonwealth legislation.</p> <p><b>Recommend that rather than change the ratios, the Financial Health Indicator should take the FAGs into account. Suggestions for alternative ratios to be considered. In addition the Zones raise it as a concern on the manner in which ratios are calculated</b></p>
	Reg 17A Financial Management Regs	<p><b>17A. Assets, valuation of for financial reports etc.</b></p> <p>(1) <i>In this regulation —</i>  <b><i>fair value</i></b>, in relation to an asset, means the fair value of the asset measured in accordance with the AAS.</p> <p>(2) <i>Subject to subregulation (3), the value of an asset shown in a local government’s financial reports must be the fair value of the asset.</i></p> <p>(3) <i>A local government must show in each financial report —</i></p> <p>(a) <i>for the financial year ending on 30 June 2013, the fair value of all of the assets of the local government that are plant and equipment; and</i></p> <p>(b) <i>for the financial year ending on 30 June 2014, the fair value of all of the assets of the local government —</i></p>

(i) that are plant and equipment; and

(ii) that are —

(I) land and buildings; or

(II) infrastructure;

and

(c) for a financial year ending on or after 30 June 2015, the fair value of all of the assets of the local government.

(4) A local government must revalue all assets of the local government of the classes specified in column 1 of the Table to this subregulation —

(a) by the day specified in column 2 of the Table; and

(b) by the expiry of each 3 yearly interval after that day.

<b>Class of asset</b>	<b>Day</b>
<i>Plant and equipment</i>	<i>30 June 2016</i>
<i>Land, buildings and infrastructure for which the fair value was shown in the local government's annual financial report for the financial year ending on 30 June 2014</i>	<i>30 June 2017</i>
<i>All other classes of asset</i>	<i>30 June 2018</i>

(5) A revaluation under subregulation (4) must be based on the value of the asset as at a time that is as close as possible to the day by which the revaluation is due.

[Regulation 17A inserted in Gazette 20 Apr 2012 p. 1699-700; amended in Gazette 21 Jun 2013 p. 2451.]

		<p>Asset Revaluations (Fair Value) – Remove the need for assets (i.e. Building; Plant &amp; Infrastructure) to be revalued every three years.</p> <p>In most small LGAs this is an excessive cost to the Rate payers, when values do not vary much (if at all). This also distorts the Financial Statements as values (particularly Infrastructure Assets) can change significantly as this is subject to the individual Valuer.</p> <p><b>Recommend that Asset Revaluations only be required to be undertaken every five years, as is the Queensland requirement.</b></p> <p><b>If five years is not to be considered then an alternative recommendation is that the Salaries Administrative Tribunal bands be used, ie if in Band 4 only require revaluation every “x” amount of years</b></p> <p><b>Recommend that it is questionable the benefit of valuing assets which cannot be sold and infrastructure of assets. Does not give a true reflection of the Councils financial situation as the value of these assets only inflates the financial position but in reality those assets cannot be sold</b></p>
2	Section 2.1, Schedule 2.1; & Constitution Reg. - Provisions about creating, changing the boundaries of, and abolishing districts	<p>Amend legislation to ensure poll option is required for boundary adjustment if required by an affected local government authority.</p> <p>The issue is that Clause 8 of Schedule 2.1 only allows poll provisions for the amalgamation of two or more districts, not for boundary adjustments.</p> <p>The argument is a district(s) could be merged with its neighbour simply by adjusting boundaries and not wholesale amalgamation of two districts.</p> <p>Local Governments have been stalked in the past on such boundary adjustment concepts however there is no poll provisions allowed under the legislation in such instances.</p> <p><b>Recommendation is that Schedule 2.1 needs to be amended to ensure any LGA with boundary adjustments being imposed or suggested, that they have the right to poll their constituents as they do with an amalgamation.</b></p>

3	Section 2.1; Schedule 2.2; & Constitution Reg. - Ward Representation	<p>The current State Government position of +/- 10% of Electors to Elected Members is unfair when the rate/revenue contribution of the various area of LG district is not taken into account as well.</p> <p>Unable to determine if the ratio is set by legislation, which sets the +/- 10% ratio and believe this is simple a position of the State Government, probably at the recommendation of Executive Government, which has then been a direction to the Local Government Advisory Board.</p> <p>In the Shire of Somewhere as an example the Electors are approximately 50:50 under the current Ward system, whereas the rate revenue is significantly weighted to the UV areas (i.e. 82% UV – v – 18% GRV).</p> <p>It is being suggested the Rate Revenue only should be the basis of revenue source of an LGA and the WALGGC population ratio linked to FAGS revenue would also need to ne included into the calculations.</p> <p>A combination of a number of criteria needs to be included as part of the Ward Representation ratio rather than just using the Electors – v – Elected members in isolation.</p> <p>Regional &amp; remote LGAs opposed the State at the time they introduced the <i>One Vote – One Value</i> procedure for establishing State Electoral boundaries, yet we did not fight against the same concept for our own Ward Boundary representation, which is based on the same concept.</p> <p><b>Recommend that the appropriate body, be it the DLGC or WALGA investigate the possibility of a criteria being developed to accommodate the above</b>  <b>Note this is not legislated but a directive. In addition the calculating of rate revenue as a basis is not in keeping with the definition of “electors”</b></p>
4	Section 2.31 – Resignation of Elected Member	<p>Section 2.31 (3) requires</p> <p><i>Written notice of resignation is to be signed and dated by the person who is resigning and delivered to the CEO.</i></p> <p><b>Recommendation that his section be amended to reflect an emailed resignation with undisputed proof the email is from the Elected Member should satisfy the requirements of being a signed &amp; dated resignation delivered to the CEO.</b></p>

5	Division 2– Subdivision1& Functions & General Regs. – Local Laws made under the Act	<p>The Local law process is extremely complex and difficult. This whole area needs to be reviewed to simplify the process of adopting new and/or reviewing existing local laws.</p> <p><b>Recommend that the DLGC undertake a comprehensive review with industry input on the process in reviewing Local Laws. The process needs simplification and an alternative needs to be established and considered by the sector.</b></p>
6	Section 3.53 – Control of certain unvested facilities	<p>Section 3.53(2) states:</p> <p><i>“A local government is responsible for controlling and managing every <u>otherwise unvested facility</u> within its district unless subsection (5) states that this section does not apply.”</i></p> <p>The interpretation of <u>otherwise unvested facility</u> in the Act is:</p> <p><i>“<b>otherwise unvested facility</b> means a thoroughfare, bridge, jetty, drain, or watercourse belonging to the Crown, the responsibility for controlling or managing which is not vested in any person other than under this section.”</i></p> <p>The issue with this legislation is the LGA is responsible for all unallocated crown land (e.g. fire control, removal of abandoned vehicles, etc.)</p> <p><b>Recommend that this section needs to be removed or, if LGAs are to remain responsible for this land then they should be able to either rate the Crown or seek reimbursement of costs from the crown for works that are required.</b></p>
7	Part 4 – Elections & Other Polls (Section 4.62)& Election Regs	<p>If an LGA is conducting a Postal Election or Referendum then the need to man a Polling Place on the day of the Election/Referendum should be removed.</p> <p>It is an added expense to have the WAEC &amp; staff sitting at a Polling Place all day for limited or no votes collected.</p> <p>The Counting of Votes should still be held after 6pm on the election/referendum day.</p> <p><b>Recommend that the requirement to man a polling place when undertaking an election by postal vote be removed.</b></p>

8	Subdivision 4 – Electors Meetings	<p>Amend this legislation to allow a LGA to determine if they want (or don't want) to conduct an Electors Meeting.</p> <p>Remove set number of days (i.e. 56) a LGA must hold an Electors meeting after accepting the Annual Report.</p> <p>Remove requirement for Minutes of an Electors meeting having to be presented to the <b><i>first ordinary meeting after the Electors Meeting</i></b>. This is not always possible. Perhaps state the minutes need to go to Council no more than three meetings after the Electors meeting being held.</p> <p><b>Recommend that the above changes be undertaken</b></p>
9	Section 5.37 – Senior Employees	<p>Remove section 5.37(2) regarding:</p> <p><i>“....and the council may accept or reject the CEO’s recommendation but if the council rejects a recommendation, it is to inform the CEO of the reasons for its doing so.”</i></p> <p>This does not make sense and the CEO should only be required to advise Council of his/her decision to employ/dismiss a Senior Employee.</p> <p>Also remove sections 5.37(3) &amp; (4A) i.e.</p> <p>(3) <i>Unless subsection (4A) applies, if the position of a senior employee of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.</i></p> <p>(4A) <i>Subsection (3) does not require a position to be advertised if it is proposed that the position be filled by a person in a prescribed class.</i></p> <p>The way the CEO advertises and fills any position (senior or not) should be considered operational and be at the discretion of the CEO.</p> <p><b>Recommend that the above changes be undertaken</b></p>

10	5.38. - Annual review of certain employees' performances	<p>Section 5.38 states</p> <p><i>The performance of each employee who is employed for a term of more than one year, including the CEO and each senior employee, is to be reviewed at least once in relation to every year of the employment.</i></p> <p>It is interpreted that this requires all employees to be reviewed annually. In smaller local authorities it appears to be a non sense to have this requirement. Senior staff/supervisors predominantly know the performance of all employees due to their close working relationship with them. Further this legislative requirement is again regulating an operational process and reviews should be at the discretion of the individual LGA.</p> <p>For CEO and Senior Employees, they have performance reviews stipulated in their contracts.</p> <p><b>Recommend that this section be deleted as is an operational matter and should not be legislated.</b></p>
11	5.56. Planning for the future -Integrated Planning & Reporting	<p>The current requirements for Integrated Planning &amp; Reporting (IPR) are too onerous, specifically for smaller LGAs with limited resources.</p> <p>The most recent review undertaken by the DLGC has only exacerbated the resource requirements on LGAs to review their IPR.</p> <p>There must be different levels of requirements placed on LGAs of different sizes &amp; resource capacity. The current IPR set up has resulted in smaller LGAs having to increase rate revenue to obtain external services/consultants to step these LGAs through the process.</p> <p>Long Term Financial Plans and Asset Management Plans linked to basic Strategic Community Plans is all that should be required.</p> <p>Corporate Business Plans &amp; Workforce Plans are superfluous.</p> <p><b>Agreed, however it was noted that it is not the actual legislation but the Department and their one size fits all 'guidelines' that are the problem. Guidelines using 'banding' to reflect capacity of local governments would be better. Noted that Strategic Community Plans legislation in Queensland was abolished as the plans were unrealistic and unachievable financially for many rural local governments</b></p> <p><b>Also a concern that directives coming from DLGC are telling LG what they should do. It's a LG decision not the DLGC.</b></p>

12	Division 9 & Rules of Conduct Regs. – Conduct of certain officials	<p>Penalties for breaches (other than a <i>serious breach</i>) under the Act and Code of Conduct need to be harsher as in instances this has not deterred an elected member for continuing a breach.</p> <p><b>5.110 Dealing with complaint of minor breach</b></p> <p>(5) If a standards panel finds that a council member has committed a minor breach, the standards panel is required to give the council member an opportunity to make submissions about how the breach should be dealt with under subsection (6).</p> <p>(6) The breach is to be dealt with by —</p> <ul style="list-style-type: none"> <li>(a) dismissing the complaint; or</li> <li>(b) ordering that — <ul style="list-style-type: none"> <li>(i) the person against whom the complaint was made be publicly censured as specified in the order; or</li> <li>(ii) the person against whom the complaint was made apologise publicly as specified in the order; or</li> <li>(iii) the person against whom the complaint was made undertake training as specified in the order;</li> </ul> </li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>(c) ordering 2 or more of the sanctions described in paragraph (b).</li> </ul> <p><b>5.113. Punishment for recurrent breach</b></p> <p>If, on an allegation under section 5.112, the State Administrative Tribunal finds that a person committed a recurrent breach, it may make any of the orders described in section 5.117</p> <p><b>5.117. Punishment for serious breach</b></p> <p>(1) If, on an allegation under section 5.116(2), the State Administrative Tribunal finds that a person committed a serious breach, it may —</p> <ul style="list-style-type: none"> <li>(a) order that — <ul style="list-style-type: none"> <li>(i) the person against whom the allegation was made be publicly censured as specified in the order; or</li> <li>(ii) the person against whom the allegation was made apologise publicly as specified in the order; or</li> <li>(iii) the person against whom the allegation was made undertake training as specified in the</li> </ul> </li> </ul>
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		<p>order; or</p> <p>(iv) the person against whom the allegation was made is suspended for a period of not more than 6 months specified in the order; or</p> <p>(v) the person against whom the allegation was made is, for a period of not more than 5 years specified in the order, disqualified from holding office as a member of a council;</p> <p>Current penalties are to week and lack consequence for inappropriate actions by Elected Members</p> <p><b>Recommend that the DLGC review all penalties for breaches under Rules of Conduct Regulations.</b></p>
13	<p>6.33. Differential general rates;</p> <p>6.36. Local government to give notice of certain rates; and</p> <p>Financial Management Regs.</p>	<p>Process of advertising and advertising intention to impose differential rates is unwieldy, specifically the timing issues and having to determine a rate in the dollar before the property revaluations are available. These rates are unavailable incorrect as it isn't possible to determine property valuation prior to Landgate releasing these figures, therefore making it necessary to report the rates variations in the Budget.</p> <p>An easier process needs to be introduced.</p> <p><b>Recommend that the DLGC undertake a complete review of the WA rating system make it comparable to the methodology of other States.</b></p>
14	<p>Admin Reg. 10 - Revoking or changing decisions (Act s. 5.25(1)(e))</p>	<p>Regulation 10 states:</p> <p>(1) If a decision has been made at a council or a committee meeting then any motion to revoke or change the decision must be supported —</p> <p>(a) in the case where an attempt to revoke or change the decision had been made within the previous 3 months but had failed, by an absolute majority; or</p> <p>(b) in any other case, by at least <math>\frac{1}{3}</math> of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.</p> <p>(1a) Notice of a motion to revoke or change a decision referred to in subregulation (1) is to be signed by members of the council or committee numbering at least <math>\frac{1}{3}</math> of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.</p>

		<p>(2) If a decision has been made at a council or a committee meeting then any decision to revoke or change the first-mentioned decision must be made —</p> <p>(a) in the case where the decision to be revoked or changed was required to be made by an absolute majority or by a special majority, by that kind of majority; or</p> <p>(b) in any other case, by an absolute majority.</p> <p>(3) This regulation does not apply to the change of a decision unless the effect of the change would be that the decision would be revoked or would become substantially different.</p> <p><i>[Regulation 10 amended in Gazette 31 Mar 2005 p. 1030.]</i></p> <p>It is questionable that a majority of local governments would follow the above process and would simply move a motion to revoke/change a motion. The process is cumbersome and needs to be changed.</p> <p><b>Recommend that Regulation 10 be amended to remove the notice to be signed by all elected members and simply require a Council to change or revoke a motion by a motion with an absolute majority to pass that motion.</b></p>
15	Admin Reg. 14A - Attendance by telephone etc. (Act s. 5.25(1)(ba))	<p>This section is too restrictive and needs to be relaxed (e.g. the 150km distance is unrealistic).</p> <p><b>14A. Attendance by telephone etc. (Act s. 5.25(1)(ba))</b></p> <p>(1) A person who is not physically present at a meeting of a council or committee is to be taken to be present at the meeting if —</p> <p>(a) the person is simultaneously in audio contact, by telephone or other means of instantaneous communication, with each other person present at the meeting; and</p> <p>(b) the person is in a suitable place; and</p> <p>(c) the council has approved* of the arrangement.</p> <p>(2) A council cannot give approval under subregulation (1)(c) if to do so would mean that at more than half of the meetings of the council, or committee, as the case may be, in that financial year, a person (other than a person with a disability) who was not physically present was taken to be present in accordance with this regulation.</p>

		<p>(3) A person referred to in this regulation is no longer to be taken to be present at a meeting if the person ceases to be in instantaneous communication with each other person present at the meeting.</p> <p>(4) In this regulation —</p> <p><b>disability</b> has the meaning given in the <i>Disability Services Act 1993</i> section 3;</p> <p><b>suitable place</b> —</p> <p>(a) in relation to a person with a disability — means a place that the council has approved* as a suitable place for the purpose of this paragraph; and</p> <p>(b) in relation to any other person — means a place that the council has approved* as a suitable place for the purpose of this paragraph and that is located —</p> <p style="padding-left: 40px;">(i) in a townsite or other residential area; and</p> <p style="padding-left: 40px;">(ii) 150 km or further from the place at which the meeting is to be held under regulation 12, measured along the shortest road route ordinarily used for travelling;</p> <p><b>townsite</b> has the same meaning given to that term in the <i>Land Administration Act 1997</i> section 3(1).</p> <p>With current technology local government should be embracing the opportunity to have Councillors participate, irrespective of distance or type of location (i.e. townsite).</p> <p><b>Recommend that the 150km limit be removed from regulation 14A.</b></p>
16	Admin Reg. 18F - Remuneration and benefits of CEO to be advertised	<p>The purpose of this regulation is questioned due to the remuneration of CEO's are set by the Salaries &amp; Allowances Tribunal.</p> <p><b>Recommend that this section be deleted as serves no purpose in the governance of a LG</b></p>
17	Audit Reg. 15 - Compliance audit return	<p>Recommend this requirement be removed sue to the plethora of other audits required.</p> <p><b>Agreed and question why it is a legislative requirement that it has to go to an Audit Committee</b></p> <p><b>Further the actual legislative need for an Audit Committee is questioned when the whole Council can undertake the same role.</b></p>

18	Audit Reg. 17 - CEO to review certain systems and procedures	<p>The CEO is to review the appropriateness and effectiveness of a local government's systems and procedures in relation to —</p> <ul style="list-style-type: none"> <li>(a) risk management; and</li> <li>(b) internal control; and</li> <li>(c) legislative compliance.</li> </ul> <p>This is onerous and should be removed or amended. Not sure why this would need to go to the Audit Committee then to Council. If retained then should go directly to Council with the Council then determines if any items raised needs further investigation and then putting this to the Audit Committee.</p> <p>In many instances the process is very onerous on the CEO and therefore external assistance is used which comes at a cost to the Council.</p> <p><b>Recommend that there should be different requirements for different 'bands' of local governments and DLGC's expectations need to be amended to allow reviews to be done in house.</b></p>
19	Annual Reports	<p><b>Recommend that there should be different levels of requirements for different 'bands' of local governments Also question the actual need for them considering little are read by electors.</b></p>
20	Annual Financial Reporting	<p>Currently there is a one size fits all model for the annual financial process and Corporate Business Planning Process. Could a scenario where there is a tiered process that requires a higher level of reporting for larger LG's, similar to the tiered approach that exists with company reporting.</p> <p><b>Recommend that the DLGC develop a "tiered" process on the level of reporting for each LG and on the level of compliance</b></p>
21	Annual Returns	<p>Where a Councillor or designated employer has had no change to their previous Annual Return, they are required to place "No change" "nil" "none" within each box of the return. This does not occur in many cases and Auditors are determining that a Annual Return is not complete due to some boxes in the return have not been marked "none", "nil" or "no change."</p> <p><b>Recommend that the Annual Returns be changed to introduce the ability to declare 'no change from previous year' instead of having to mark every area. This will also assist in the storing of annual returns where only one page needs to be kept on record and not four as is the current case. This does not sound like an issue, however when you have a member that has been on Council for many years, the accumulation of four pages of an annual report does build up.</b></p>

22	Tender Regulations	<p>Operating issues with current regulations, road building materials such as bitumen, asphalt and aggregate should be exempt as are fuel and oils.</p> <p><b>Recommend that road building materials should be exempt from Tender provisions</b></p> <p>Concern that auditors and the DLGC are interpreting the \$150,000 threshold can go over more than two, three or even more financial years which is an issue with the provision of some services, ie tyres from the one firm. Industry belief it only relates to a financial year</p> <p><b>Recommend that the \$150,000 threshold should be per financial year or per project if a project spans more than one financial year.</b></p>
23	Section 3.5.8 Disposal of Property	<p>Issue is that if a LG gets a Real Estate Agent to sell land on its behalf and that land is sold, then the LG still has to go through the advertising process</p> <p><b>Recommend be changed to allow disposal through real estate agent (without having to go through 3.58 advertising provisions, ie be an exemption) as advertising has been undertaken and the public are well informed of the proposal to sell.</b></p>
24	Exemption of rates	<p><b>Recommend be changed to allow Council to decide whether or not to allow exemption to each 'charitable organisation' and any other organisation (eg CBH)</b></p>
25	Financial Workshops	<p>The Department needs to assist local government more rather than being a policeman all the time. One example is where the Department will send you a letter if you forget to supply them with a copy of the annual financials. Instead of waiting for the deadline they could be more helpful and send a reminder prior to the deadline. Most smaller LG's generally rely on one person to undertake this type of function, if they get sick or are on leave there is generally no one to do the role. Also the audit partner could send the annuals document when they advise the Department that the audit has been signed off.</p> <p><b>Recommend that the Department should be providing templates for annual reports, budgets etc, instead of Councils having to pay Moore Stephens to attend workshops, receive templates. Generally the Department should have more of a focus on "helping", not "policing"</b></p>

	General Compliance Requirements	<p><b>Many of the difficulties experienced are as a result of Departmental Guidelines/expectations as opposed to the actual Local Government Act 1995 and Regulations. It is recommended that a tiered approach towards compliance needs to be taken by the Department, and not apply a one size fits all as many smaller local governments do not have the staff or financial resources to ensure the compliance strictly in accordance with the DLGC expectations. It appears that DLGC go over and beyond what the actual legislative requirements are.</b></p>
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