



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

DETAILED  
DISCUSSION PAPER

SMART

## Council Meetings

Our vision is for the local government sector to be agile, smart and inclusive.

Our objective is to reform local government so that it is empowered to better deliver quality governance and services to their communities now and into the future.

A new Local Government Act will be drafted, Transforming Local Government.

Smart includes those topics that focus specifically on how local governments can best use their resources efficiently and rationally. It is important that they are transparent and accountable to their communities.

The topics addressed in this theme are:

- Administrative efficiencies;
- Council meetings;
- Interventions; and
- Local laws.

### Have your say!

We need your input to inform how local government will work for future generations.

### Submissions

The simplest way to have your say is to answer the questions via the online surveys.

The survey questions relate to the matters discussed in the papers and we encourage you to read the relevant paper before completing the survey.

While you may lodge multiple written submissions via email at [actreview@dlgsc.wa.gov.au](mailto:actreview@dlgsc.wa.gov.au), you will only be able to complete each online topic survey once. The public submission period closes on 31 March 2019. This is the last day that you will be able to respond to the surveys.

**Note:** Unless marked as confidential, your submission (including survey responses) will be made public and published in full on the Department of Local Government, Sport and Cultural Industries' (the Department) website. Submissions that contain defamatory or offensive material will not be published.

## Introduction

Council meetings are the mechanism by which council makes decisions. To ensure transparency council meetings are held in public, although certain matters can be heard behind closed doors. Council meetings also provide an opportunity for public question time.

The *Local Government Act 1995* (the Act) establishes the framework for council meetings. This framework is further supported by standing orders set by council and enacted as a local law. These standing orders typically deal with matters such as:

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

The rules concerning the operation of council meetings today have not changed significantly since 1995. Within the legislative framework opportunities may exist to modernise council meetings and ensure that current practices align with community expectations.

## Public question time

Legislation provides that a minimum of 15 minutes of each council or committee meeting is allocated to public question time. Public question time is 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 council decision making.

Managing time during question time can be difficult due to people:

- Wanting to make statements rather than ask questions;
- Asking repetitive questions;
- Asking inappropriate questions; and
- Asking a large number of questions.

At the same time, dissatisfaction with the management of public question time and perceptions about the quality or comprehensiveness of answers provided at question time is often a catalyst for distrust between council and residents and can escalate to larger issues of governance and ineffective community engagement.

What are the opportunities for reform?

In order to engage a greater number of ratepayers in council meetings, it may be necessary to alter the way the public interact with elected members.

## Different means to ask questions

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. The use of technology may present a way for question time to be modernised. For example, 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 would enable people to receive answers even when not in attendance.

### **Managing public question time effectively**

Managing public question time can be challenging. The freedom afforded to local government in the Act means that different rules for public question time exist across local governments. Greater prescription in the Act could provide clear and consistent rules for public question time. This, in turn, may assist in managing the expectations of public question time in areas such as:

- Whether a question must be lodged prior to the meeting;
- If a question must be lodged, how the question is to be lodged;
- When a question must be lodged;
- The maximum length of a question per person;
- The maximum number of questions per person;
- The maximum period for questions;
- Information that the person asking the question must provide;
- The process for taking questions on notice; and
- The process for asking questions that could not be asked due to time constrictions.

### **Public Statement Time**

As a means of encouraging public engagement and promoting transparency, a period of time allowing members of the public to address council without asking a question could be introduced.

### **Managing interests**

Councils often need to make important and difficult decisions that impact the community. It is important that these decisions are free from improper bias or influence. Council members are part of the community they serve. Many councillors also have a full-time or part-time job, which might include running their own business and are likely to be involved in community groups and sporting associations. It is inevitable that council members will from time to time will have conflicts of interests. Providing an appropriate framework for these real and potential conflicts of interest is key.

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 to be brought to the attention of the meeting prior to the relevant matter being discussed.

The Act identifies several different types of interests: direct financial interests, indirect financial interests and proximity interests.

### **Financial interests**

A person has a financial interest if it is reasonable to expect that a council decision on a matter will result in a financial benefit or detriment to that person. These interests arise commonly as council decisions regularly affect businesses and financial outcomes.

### **Proximity interests**

A person has a proximity interest in a matter if it concerns a proposed change to a planning scheme, zoning, or development of land that adjoins the person's land. The affected land must adjoin the councillor's land to qualify as an interest. This may be too narrow a definition, as developments on the councillor's street, for example, may also be likely to influence decision making.

### **Indirect financial interests**

An indirect financial interest results from a financial relationship existing between the councillor and a person who requires a local government decision in relation to a matter.

### **Impartiality interests**

An impartiality interest is an interest that may adversely affect the impartiality of the person and includes an interest arising from kinship, friendship or membership of an association. These must be disclosed when they arise but the council member participates in the discussion on the matter and votes.

### **Gifts**

Reforms to the Act announced in August 2018, specify that a conflict of interest will exist for any elected member if a matter comes before council from the donor of any gift or gifts totalling over \$300 in a twelve-month period. The council member must declare the conflict and remove themselves from the meeting while the matter is considered.

### **Interests not requiring disclosure**

There are a number of situations in which a person is not required to declare an interest in a matter. This includes the situation where an interest is common to a significant number of electors or ratepayers. The term "significant number" is unclear and may cause confusion as to whether the interest needs to be declared.

Changes in the valuation of land are not deemed to be an interest if the change affects a planning scheme for an area or the zoning or development of land in a district. That is, there is no interest where the person's land is affected generally, as part of a larger area, rather than individually.

## Exemptions granted by the Minister

A council member who makes a disclosure must not participate in the meeting where it relates to their interest, unless permitted by the council or Minister. The other council 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.

The 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 council members to form a quorum to deal with the matter, or if it is in the interests of the ratepayers to do so.

A council or a Chief Executive Officer may apply to the Minister to exempt the members of a committee from the disclosure of interests. The Minister may grant the exemption if the Minister believes it is in the interests of the people to do so.

### Related party transactions

During earlier consultation of the review, submissions were received concerning the related party transactions. Amendments to these provisions will be considered as part of broader reforms to the financial management framework.

### What are the opportunities for reform?

The current legislative framework is quite prescriptive regarding interests. It is a comprehensive scheme seeking to capture potentially all instances of conflict between a councillor's role and their private interests, rather than a more general test of 'material personal interest'.

However, 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. As an example, a council 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. The council may be open to exploitation, particularly if the member in question is a prominent member or holds a level of influence in that local government.

The definition of proximity interest may be too narrow. The current regulations require a proximity interest to occur where a proposed development is directly adjacent to, or across from, the member's property. 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 regulations. The same may be said for developments in the vicinity of the person's workplace or their children's school.

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. This may be an issue if the councillor is able to sway opinion on the matter.

### **Reporting interests**

During earlier consultation of the review, several submissions recommended reforms that would also require another member or employee to report an interest of another. A disclosure of this kind could potentially be dealt with in two ways: by the Mayor or President determining that an interest existed and the person should not participate in the meeting, or alternatively by the council voting on the matter. It may be the Mayor or President that has the conflict. While this concept may strengthen the identification of interests and accountability, it needs to be considered in the context of council cohesiveness and conduct.

There remains a need to simplify the subject of interests and how they are dealt with during council meetings.

### **Remote attendance**

Currently regulations allow council 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 the 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 this should be reflected in modern meeting practices. Remote attendance is of particular benefit in remote areas where elected members would otherwise have to travel great distances to be present.

#### **What are the opportunities for reform?**

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.

Reducing, or removing altogether, the 150km distance requirement may improve outcomes for elected members and the community. This increased flexibility may facilitate more efficient use of councillor's time and possibly encourage a larger pool of individuals interested in nominating to become an elected member.



The advancement of modern technology allows individuals to be in contact with the members present at the meeting from anywhere in the world. In modern times, the requirement that a councillor be in an approved townsite does not appear to serve a functional purpose.

There is some ambiguity as to whether the person must be within their local government district to attend remotely. This is not specified within the current Act, however there is an interpretation that a person must be within Western Australia for Western Australian law to apply. There is then a potential opportunity to expand the legislation to allow individuals to participate from interstate or even internationally by specifying that the law that applies is the law in the jurisdiction of the district.

A potential issue with remote attendance arises when a secret ballot is required. As they would have to submit the vote electronically or on the phone, it would be very easy to identify the remote attendee's vote. This issue could be remedied by implementing electronic voting for all council members. It is also arguable that in-person attendance aids in promoting trust and relationship-building between council members.

## Meeting procedures

It is important that council meetings are 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. As there are 137 local governments in Western Australia, there is scope for great inconsistency.

What are the opportunities for reform?

### **Minutes of council and committee meetings**

Submissions to earlier consultation of the Act Review recommended that the responsibility for keeping minutes of council be shifted to the Chief Executive Officer rather than the presiding member. This is because 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.

### **Minutes of confidential portions of meetings**

There has been some confusion regarding the taking and publication of minutes in relation to confidential matters. The minutes of council meetings must include details of each motion moved at the meeting and the outcome of the motion, including confidential motions. However, confidential minutes are not to be published. It has been suggested that greater clarity is required in legislation to emphasise this distinction.

### **Revoking or changing decisions**

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.

## General Electors' Meetings

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

What are the opportunities for reform?

The Western Australian Local Government Association (WALGA) and the local government sector have long called for the requirement to hold a General Electors' Meeting to be scrapped on the basis that very few members of the community attend and that there are other opportunities to ask questions of council. Annual electors' meetings are not required in any State or Territory other than Western Australia.

Another opportunity for reform is to combine the General Electors' Meetings with an OCM.

## Special Electors' Meetings

Special Electors' Meetings may be called if a sufficient number of people within a district request one. The current requirement to call a meeting 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.

These meetings provide an opportunity for people to have their say but may be unhelpful due to the potential for conflict between the council and electors. There is also nothing currently preventing a number of Special Electors' Meetings being called on the same matter. While the local government is obligated to call the meeting if the required number of electors request it, any resolutions passed at the meeting are not binding upon the council.

What are the opportunities for reform?

Special Electors' Meetings are not held in Victoria, New South Wales or South Australia and 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. In Queensland, the Mayor and Chief Executive Officer may decide to call a Special Electors' Meeting, whilst in Tasmania a special meeting may be convened by the Mayor. This only takes place at the request of three or more councillors. 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 order to ensure that Special Electors' Meetings are called only when necessary, the threshold of electors required to call a meeting could be raised. Increasing the number of electors required from 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 be introduced.

If Special Electors' Meetings are to remain, it may be worthwhile to ensure the procedures for electors' meetings are in accordance with the meeting procedures adopted by the council. This would replace the rules set by the presiding member of the meeting as is currently the case. This allows known and approved processes to be followed.

## Access to information for council members

During earlier consultation of the Act Review, several submissions from current and former council members dealt with the application of section 5.92 of the Act, which states that council or committee members can have access to any information held by the local government that is relevant to the performance of the council member's functions.

These submissions argued that the local government administration had withheld information from them that was relevant to their duties or that this information had only been provided after considerable effort and repeated requests.

### What are the opportunities for reform?

The current legislation provides a mechanism to limit the information that council and committee members have access to – it must pertain to the functions and duties that they are currently undertaking. This limitation is important so as to not expend a local government's resources finding information about decisions or activities undertaken that bear no relevance to the current issues.

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

A mechanism that could be used is to allow the council member to move a motion in council to request the information. The moving of the motion will trigger a debate, wherein the council of the local government can consider why the council member requires the information and can assess the utility of providing the information.

## What do you think?

The easiest way to have a say on the future of your community is to complete the survey available [here](#).

Your responses to this survey will inform the review and will take approximately 15 minutes to complete.

We ask that you take care in completing a survey. While you may lodge multiple written submissions via email at [actreview@dlgsc.wa.gov.au](mailto:actreview@dlgsc.wa.gov.au), you will only be able to complete each online topic survey once.

The public submission period closes on 31 March 2019. This is the last day that you will be able to respond to the surveys.

Unless marked as confidential, your submission (including survey responses) will be made public and published in full on the Department's website. Submissions that contain defamatory or offensive material will not be published.

The questions in the survey are provided below but we encourage you to complete the survey online which is available [here](#).

## Survey - Council Meetings

1. Have you read the discussion paper associated with this survey?
  - a. Yes
  - b. No
2. Who are you completing this submission on behalf of?
  - a. Yourself
  - b. An organisation, including a local government, peak body or business
3. What is the name of that organisation? Shire of Carnarvon
4. What is your name? David Burton
5. What best describes your relationship to local government?
  - a. Resident / ratepayer
  - b. Staff member or CEO
  - c. Council member, including Mayor or President
  - d. Peak body
  - e. State Government agency
  - f. Supplier or commercial partner
  - g. Community organisation
6. What best describes your gender?
  - a. Male
  - b. Female
  - c. Other
  - d. Not applicable / the submission is from an organisation
7. What is your age?
  - a. 0 – 18
  - b. 19 – 35
  - c. 36 – 45
  - d. 46 – 55
  - e. 56 – 65
  - f. 66 – 75
  - g. 76+
  - h. Not applicable
8. Which local government do you interact with most? Shire of Carnarvon
9. Would you like to be updated on the progress of *the Local Government Act 1995* review and further opportunities to have your say?
  - a. Yes
  - b. No
10. Do you wish for your response to this survey to be confidential?
  - a. Yes
  - b. No
11. What is your email address? [REDACTED]

12. To what extent do you support the following statements?

	Very unsupportive	Unsupportive	Neutral	Supportive	Very Supportive
“The process for public question time should be consistent between councils.”				x	
“Public question time is an important feature of council meetings.”				x	
“People unhappy with the quality of the answer given at public question time should be able to escalate the matter to an independent person.”		x			

13. Should council members be able to participate in meetings remotely?

- a. Yes
- b. No
- c. Unsure

If yes, how? Video conference.

14. Could General Electors Meetings be combined with or held consecutively with an Ordinary Council Meeting?

- a. Yes
- b. No
- c. Unsure

15. Should Council Meetings be live streamed? **This should be optional for the Councils that want to do it.**

16. To what extent do you support the following statements?

	Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive
“Legislation should set rules for recording confidential items in minutes.”				x	

	Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive
“Local governments should be required to publish unconfirmed council meeting minutes prior to the local government’s next council or committee meeting.”				x	
“The CEO rather than the Presiding Member should be responsible for the minutes of council and committee meetings.”			x		
“The rule concerning council’s ability to revoke or change a decision should be amended to clarify that it only applies to decisions that are yet to be implemented.”				x	

17. To what extent do you support the following statements?

	Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive
“The requirement to hold an annual electors meeting should be removed.”			x		
“The ability to call a special electors meeting should be removed.”				x	
“The number of times that a special electors meeting can be called on the same matter should be restricted.”				x	
“The number of electors required to hold a special electors meeting should be increased.”				x	
“The Local Government’s standing orders should apply to special electors meetings.”				x	
“The way special electors meetings are conducted should be uniform between local governments.”				x	

18. Do you have any additional comments on the topic of council meetings?  
Additional information can also be provided to the review team via email at [actreview@dlgsc.wa.gov.au](mailto:actreview@dlgsc.wa.gov.au).

The Annual Electors Meeting should be considered optional for Councils but not mandatory. This will remove the requirement where there is little value in the meeting but retain it for the Shires that do have meetings well attended and also interaction with the general public.