



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

DETAILED
DISCUSSION PAPER

INCLUSIVE

Elections

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.

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

The topics addressed in this theme are:

- Elections;
- Community engagement;
- Integrated planning and reporting; and
- Complaints management.

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, 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 Submissions that contain defamatory or offensive material will not be published.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

Elections are a fundamental part of local democracy. Local government draws its legitimacy through elections. Elections provide a direct voice for the community and provide the primary means of holding local government accountable.

Local government ordinary elections are held every two years. At ordinary elections, nominations are called for half of a council's positions. This approach is intended to allow for continuity in a council's leadership. Mayors and Presidents are either elected by the community at large or elected from the pool of councillors by the elected members.

The *Local Government Act 1995* (the Act) and the *Local Government (Elections) Regulations 1997* (the 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, 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%.

Local government elections are often closely contested. With relatively small elector populations compared to State and Federal electorates and low participation rates, only a handful of votes often separates successful and unsuccessful candidates. Likewise, the percentage of the total vote received by any one candidate is often low – a successful candidate may only receive votes from 8% of the eligible voters.

Social media

Concerns were expressed by many with the way social media was used in the 2017 local government election period to disparage candidates. Amendments resulting from earlier consultation of the Act review will address this through the development of a new Code of Conduct for council members which will include provisions on social media. In addition, the requirement to abide by the Code of Conduct will be extended to candidates in local government elections.

How elections are conducted

Each local government can choose to conduct an election as either a voting 'in person' election or as a postal voting election.

When voting in an 'in person' election, the principal method of casting votes is by the elector personally voting at a polling place in the local government district on election

day. However, votes can also be cast in person before election day at a polling place in the local government district (early vote), in person at another local government district up to 4.00pm on the fourth day before election day (absent vote) or by post (postal vote) by application.

Each local government can choose to conduct an election as a postal election in preference to a voting 'in person' election. In this case, a ballot paper is sent to every elector for that district and these can be returned by post or delivered to the electoral officer on or before election day. All postal elections must be conducted by the Western Australian Electoral Commission.

What are the opportunities for reform?

Elections must have a high level of integrity to ensure public confidence in the outcome. Elections must also be 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; and
- Caretaker provisions.

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.

Historic voter turnout in local government elections in Western Australia is significantly low with only 34.2% of eligible voters casting a vote in the 2017 ordinary elections. This raises the question as to how reflective local government councils are of the communities they represent.

Introducing compulsory voting for local government elections would 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.

FPP can often lead to outcomes that do not adequately represent the community's preferences with many successful candidates being elected without a clear majority of votes. For example, a successful council candidate can be elected even though they may only receive 8% of the total votes cast or a successful mayoral/presidential candidate may receive significantly less than 51% of total votes cast.

Ensuring our elected representatives adequately reflect our broad communities is essential to maintain confidence in our democratic institutions.

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.

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 was trialled in the 2017 Western Australian State Government elections and has been used in the 2011 and 2015 New South Wales State Government elections. The concept has also been investigated by a Commonwealth Parliamentary Inquiry in 2014, a Victorian Parliamentary Inquiry in 2017, and in the Western Australian Parliament's Community Development and Justice Standing Committee report into the 2017 Western Australian State Election. On each occasion both the benefits and risks of online voting have been highlighted.

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. In New South Wales, the average cost of every vote cast electronically in the 2011 elections was \$74. This compares to a cost of \$3.59 per elector in elections conducted by the WAEC in 2017. iVote in New South Wales have been popular. In 2015, over 230,000 votes or over 5% were cast in the New South Wales State Government election.

While there is no evidence of instances of deliberate voter manipulation through online voting in Australia, there is a level of risk with all internet applications. These risks

would necessitate the continuous application of best practice with respect to security and also need to be balanced against the risks inherent in conventional paper based systems.

Require postal voting to be offered

Local governments may elect to offer postal voting. Since 1995, the number of local governments offering postal voting has increased substantially. At the 2017 local government elections, 89 of the State’s 137 local governments offered postal voting. Over 98% of the State’s electors live in a district that provides postal voting.

Postal voting has become an accepted and popular method of conducting elections. Following postal voting’s introduction, participation in local government elections across the State grew significantly.

Postal voting is becoming more expensive and with the decline in postal services becoming less appealing. This may result in some local governments considering not providing postal voting into the future.

Require the WAEC to conduct all local government elections

Local governments may elect to contract the WAEC to conduct elections (except for postal elections which must be conducted by the WAEC). Typically, contracting the WAEC and offering postal voting goes hand in hand. As is the case with postal voting, over 98% of the State’s electors live in a district where elections are conducted by the WAEC. If the WAEC does not conduct the election, it is the responsibility of the Chief Executive Officer to act as the returning officer and manage the election.

Many local governments choose to run their own elections because historically elections in the district tend to be resolved without the need for a vote. As shown in the table below, at the 2017 ordinary elections almost half of Chief Executive Officer-run elections were resolved without an election or were unfilled.

Election runner	WAEC	CEO
Vacancies	450	204
Election unopposed	46	85
Unfilled vacancy	0	7
Percentage of vacancies filled without election or unfilled	10%	45%

Cost is a major deterrent for local governments in contracting the WAEC. At the 2017 elections, the average cost per elector for WAEC elections across the State was \$3.59. However, for smaller local governments the direct costs of engaging the WAEC, such as the fees paid to returning officers and advertising, make up a significant proportion of WAEC costs. While these costs are split on a proportional basis with local

governments with a smaller population subsidised by larger local governments, the per-electoral costs in small locations are greater.

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 the winner. 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 which states that following an initial tie in the vote for a mayor or president by council 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.

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 member, an extraordinary election is used to fill that position for the duration of the council member's term. The date of the extraordinary election may be set by either the Mayor or President, or by 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 odd years. 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, 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.

Extraordinary elections can be costly and time-consuming. Holding the vacancy open to the next ordinary election means reduced representation and can impact upon the number of elected members available for a valid vote at council.

Another option that has been raised 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. 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.

Leave of absence when contesting State or Federal elections

In its submission to earlier consultation on the Act Review, WALGA requested that amendments to the Act be made to require a council 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.

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. Twenty-five local governments currently use direct election with the remainder elected by a ballot of council members.

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. 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.

Particularly in other jurisdictions, the popular election of mayors or presidents has been linked to greater politicisation and a source of instability in council. Popularly elected mayors or presidents may seek to direct council citing a mandate from the community. This can lead to considerable friction within a council and may lead to a dysfunctional local government.

Who may vote and run for office?

Eligibility to participate in elections as a voter and as a candidate is a fundamental part of the rules concerning elections.

Every adult that lives in a district of Western Australia and is eligible to vote in the State and Federal elections is also entitled to vote in the local government election for that district. In addition, certain non-residents are entitled to vote based on their

ownership of property. Corporations that own land within a district are also entitled to vote.

To nominate for council, a person must be an elector of the district. A person is not eligible if they, among other things:

- Are a member of State or Federal Parliament;
- Are an insolvent under administration;
- Are a nominee of a company;
- Have been convicted of a serious local government offence within the last five years; or
- Have been convicted of an offence for which the indictable penalty was or included imprisonment for life; or imprisonment for more than five years.

What are the opportunities for reform?

The eligibility criteria to vote and nominate for election establishes who can have their say in a local government's future. Currently, the criteria in Western Australia is broad and includes owners of property and corporations that are not eligible to vote in other elections.

Property franchise

Owners of property are currently eligible to vote on the basis that they contribute to a local government through the payment of rates. With property franchise, a person may vote in multiple districts in which they own property. A maximum of two owners can enrol 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. The table below shows who may vote in each jurisdiction.

To be eligible to vote, property owners must be enrolled as an elector for the purposes of State or Federal elections. During earlier consultation in the Act Review, submissions were received that called for this requirement to be removed to enable foreign property owners to vote in local government elections.

Jurisdiction	Who may vote
Western Australia	Residents and non-resident property owners
New South Wales	Residents and non-resident property owners
Victoria	Residents and non-resident property owners (only one vote per property in district)

Jurisdiction	Who may vote
Queensland	Resident/individual enrolment only
South Australia	Residents and non-resident property owners
Tasmania	Residents and non-resident property owners
Northern Territory	Resident/individual enrolment only

Corporations eligibility to vote

The eligibility of land owners to vote also extends to corporations. A company is entitled to a maximum of two votes in each district in which the company owns land. Corporations like other rate payers make a significant contribution to local government revenue through the payment of rates. Queensland is the only State that prevents corporations from voting.

Occupiers' eligibility to vote

While land owners and residents are permitted to vote, occupiers are not. Occupiers can include people leasing property such as small business operators who are impacted by council 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.

Council member eligibility

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 5 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.

Council members perform a unique and important role in planning and building control. It has been proposed that a person who has been convicted under planning and building legislation in the previous five years of a similar offence also be disqualified.

When should elections be held?

Elections in Western Australia are held every two years with nominations sought for half of a council's positions at each election. The Act prescribes the timetable for elections which typically results in ordinary elections being held on the third Saturday in October.

Local government elections are conducted according to a timetable specified in the Act. Prior to the election day, a series of events must take place according to this timetable. These events include the local government deciding whether electors will have the option of a postal vote, the opening and closing of nominations, the opening

and closing of the owners and occupiers roll and the final day where notice of the election can be issued.

Ballot papers in postal elections may not be issued until these steps are completed. The minimum period that postal voting is open is currently 19 days. In the 2017 ordinary elections, the distribution of ballot papers commenced 25 days before the closing of the polls.

What are the opportunities for reform?

Revising when elections are held and the timetable for elections may improve voter participation and make the conduct of elections more efficient.

Frequency of elections

Western Australia is the only jurisdiction that holds council elections every two years. Holding council elections every two years for council members that hold four-year terms is intended to provide greater continuity on council. One alternative is to hold elections every four years offset with State Government elections.

Holding elections every two years creates additional costs for local governments. 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.

In regional Western Australia, where attracting candidates can be a challenge, changing the frequency of elections could impact on the number of nominees, either positively or negatively, depending on the circumstances and history of the council.

Election campaigns

Election campaigns are the most public component of elections. 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.

Any printed electoral material is required to specify the person who authorised it, and any person must not during the campaign print, publish or distribute misleading or deceptive material. Australian courts have consistently found that misleading or deceptive material only applies to material that attempts to influence how a person marks their ballot paper.

Rules also exist for the disclosure of gifts received or promised that relate to the candidate's candidature six months prior to an election, through to three days after the election for unsuccessful candidates and up to the start day for financial interests for people elected to council. The regulation also requires donors of gifts to disclose gifts given to candidates. These rules are intended to provide greater transparency of political donations.

What is an election gift?

Regulations define an election gift as a disposition of property, or the conferral of any financial benefit, made by one person in favour of another.

A gift can include but is not limited to money, non-monetary gifts of value, a gift in kind, a discount, financial or other contribution to travel, or a firm promise or agreement to give a gift in the future.

A gift is only relevant if the value is \$200 or more, or more than one gift has been given by the same donor during the set period amounting to \$200 or more.

A gift does not include a gift by will, a gift by a relative as defined in section 5.74(1) of the Act, or the provision of volunteer labour.

Importantly, gifts that do not relate to the candidate's candidature are also exempt.

The rules concerning election gifts are intended to provide for transparency in campaign donations. The regulation requires that a record of all election gifts is to be maintained by the Chief Executive Officer. The public has access to the electoral gift register at the local government office.

The following table compares the election gift rules in each Australian jurisdiction.

Jurisdiction	Election gift rules summary
Western Australia Local Government	Election gifts over \$200 must be declared.
Western Australian State Government	The Electoral Commissioner declares a "specified amount" as the monetary threshold. For the 2017 State Government elections, the specified amount was \$2,300 or above.
New South Wales	Election gifts to candidates are capped. The annual cap for 2018/19 for election gifts is \$2,800. Election gifts over \$1,000 must be declared annually. Election gifts are not permitted from anonymous donors, property developers, the tobacco industry or liquor and gambling industry
Victoria	Election gifts over \$500 must be declared no more than 40 days after the last ordinary election. Councils are required to publish a summary of election gift information on their website.
Queensland	Election gifts over \$500 must be declared within seven days.

Jurisdiction	Election gift rules summary
	Election gifts from property developers are prohibited.
South Australia	Election gifts over \$500 must be declared within thirty days of the election.
Tasmania	No requirements concerning declaration of election gifts.

What are the opportunities for reform?

Recent local government campaigns have been marked by increased concerns about conduct during elections and greater politicisation. Providing a level-playing field for local government election campaigns that maximises public participation and contributes to fair and free elections is in the public interest.

Limits on advertising campaigns

Anecdotally, the average cost of local government campaigns has increased in recent years. 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.

A well-financed campaign is not inherently improper. In fact, a well-financed campaign can be in the public interest as it can contribute to a more informed and engaged voter base. At the same time, the escalating cost of campaigns can contribute to an 'arms-race' and lead ultimately to problems.

Good local democracy relies on maximising participation not just of voters but also potential candidates. An escalation of the costs of campaigning necessary to have a reasonable chance for success can reduce the percentage of people able to be a council member. High campaign costs can lead to candidates relying heavily on donors which, if unchecked, can lead to perceptions of impropriety and undue influence. The consequences of problematic political donations at a local government level were recently highlighted in a Queensland Crime and Corruption Commission (QCCC) report.¹

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

¹ <http://www.ccc.qld.gov.au/corruption/operation-belcarra/operation-belcarra-reforming-local-government-in-queensland>

operate a dedicated bank account during the candidate disclosure period that is used to audit disclosures.

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 council 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 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.

Following earlier consultation, a proposal for a revised approach to non-election gifts has been announced by McGowan Government. This will require council members to declare (non-election) gifts valued at \$300 or more received in their official capacity.

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; and
- How gifts are published.

The table below summarises an alternative election gift framework that aligns with the new, proposed non-election gift framework.

	Proposed new non-election gift framework	Current election gift framework	Alternative election gift framework
What is the definition of a gift?	The receipt of property or a benefit for inadequate consideration.	Disposition of property, or the conferral of any financial benefit, made by one person in favour of another that relates to a candidate's candidature.	The receipt of property or a benefit for inadequate consideration received by a person that relates to their possible or actual candidature as a council member.

	Proposed new non-election gift framework	Current election gift framework	Alternative election gift framework
What gifts must be declared?	Any gift received over \$300 by a council member in their official capacity.	Any election related gift (donation) over \$200 received by a person.	Any election related gift (donation) over \$300 received by a person
Are gifts cumulative if received by the same donor?	Yes	Yes	Yes.
When must gifts be declared?	The duration of a person being a council member	Election gifts are declared if they are received no more than six months prior to the relevant election day and: <ul style="list-style-type: none"> • Three days after the election for unsuccessful candidates; or • On the start day for financial interest returns for successful candidates. 	Election gifts must be declared that are received: <ul style="list-style-type: none"> • In the period between the day after the last ordinary election and the closing date for nominations. • In the period between the closing date for nominations and the day of the election.
Who must declare gifts	Council members	<ul style="list-style-type: none"> • Council members • Candidates 	<ul style="list-style-type: none"> • All persons receiving gifts that relate to their possible or actual candidature as a council member.
Timetable for gift declaring	Disclosed within ten days of receipt	<ul style="list-style-type: none"> • Within three days of nomination for gifts received within six months of the relevant election day but 	<ul style="list-style-type: none"> • Election gifts received in the period between the day after the last ordinary election and the closing date for nominations

	Proposed new non-election gift framework	Current election gift framework	Alternative election gift framework
		<p>prior to nomination.</p> <ul style="list-style-type: none"> • After a nomination has been made within three days of receiving the gift. 	<p>received by any person must be disclosed within 10 days of the closing date for nominations.</p> <ul style="list-style-type: none"> • Elections gifts received in the period between the closing date for nominations and the day of the election must be declared within ten days of receipt.
Where are they available?	Published on the local government's website within ten days of notification.	CEO register kept at the appropriate local government office.	Published on the local government's website within ten days of notification.
Time limitations	No	Election gifts received by unsuccessful candidates are required to be kept for a period of at least two years.	No
Anonymous gifts permitted	Yes	No	No
Donor to also declare gift	No	Yes	No
Exemptions	There are no exemptions from declaration for gifts received in	<ul style="list-style-type: none"> • A gift by will. • A gift by a relative. • A gift that does not relate to the 	<ul style="list-style-type: none"> • A gift that does not relate to the candidate's candidature. • The provision of volunteer labour.

	Proposed new non-election gift framework	Current election gift framework	Alternative election gift framework
	an official capacity.	candidate's candidature. <ul style="list-style-type: none"> • The provision of volunteer labour. 	

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

These matters include:

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

Under the revised approach to election gifts, both council members and non-council members would operate under the same rules. For example, the alternative approach would close a loophole that allows non-council members to receive but not declare election gifts more than six months prior to an election. The approach would also boost transparency by publishing election gifts online as is currently the case with non-election gifts.

Election gifts received by council members running for State or Federal election

The declaration of donations received by council members who are or will be candidates for State or Federal election has been raised.

The new proposed framework for non-election gifts will provide clarity for these types of gifts.

A council member running for State or Federal election will not be required to declare donations received for State or Federal elections because the gift is not being received in the capacity of the council member's role. Council members in this situation would still need to abide by relevant State or Federal donation rules. They would, however, have to declare any gift from a person who has a matter come before council and would not be able to vote or participate in discussions on the matter.

Do election gifts need to be declared in the non-election gift register?

Council members have queried whether election gifts need to be declared in the non-election gift and in the election gift register.

Under the new proposed framework for nonelection gifts, election gifts would not be required to be declared in the non-gift register because non-election gifts must only be declared if they relate to a council member's official capacity. It is proposed that the definition of election gifts will continue to be limited to gifts received that relate to a candidature.

Prohibited election gifts

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 developments in both local and state government elections.

During the last ordinary council elections and in submissions received during earlier consultation in the Act Review, concerns 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.

Donor to declare gifts

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. On occasion this has been viewed as a duplication of the requirement placed on election gift recipients and is inconsistent with the rules for nonelection gifts. While requiring donors to declare gifts may strengthen transparency, it can be argued that the benefits are limited by the lack of a requirement to publish the register of donors.

Electoral commission to be responsible for gifts register

In several other jurisdictions, the respective electoral commission has responsibility for administering the election gift register rather than the local government Chief Executive Officer. 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 council 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.

Candidate nomination and information

Studies in New Zealand have found that lack of knowledge about candidates contributes to low voter turnout. 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.

Candidate's profile

Regulation 24 of the *Local Government (Elections) Regulations 1997* states that the candidate profile must be in English and not contain more than 150 words (excluding the candidate's name).

The content of the candidate profile must be confined to biographical information about the candidate and their policies and beliefs. The profile must not contain information that the Returning Officer considers to be false, misleading or defamatory.

The candidate profile is not required to include the candidate's address but is required to provide details of where and how they may be contacted.

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 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 council members. Introducing changes that ask demographic questions and a requirement for the returning officer to submit accepted nomination forms to the Department would allow 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.

Wards 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. While councillors are only elected by voters in a ward, they must represent everyone in the district and make decisions that are in the best interests of the entire district. The Act permits an elector to nominate in any ward, regardless of where they reside.

Fifty-four of the 137 local governments currently employ a ward system, including 19 of the State's 20 most populous local governments. The least populated local government has a population of approximately 100 people split into two wards.

Wards have the effect of reducing the overall pool of candidates from which electors can choose and reduce the total number of votes required to be elected as a councillor. Statistically, there is little or no correlation in Western Australian local government elections between wards and voter turnout.

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.

What are the opportunities for reform?

Wards can create quirks in the electoral system. In 2017, the City of Gosnells, which has no wards, had 31 candidates contest seven positions on council. In this election the candidate who received the most votes received a total of 8.3% of the vote. In the same year, the successful candidate in a different local government became a council member after receiving 12 of the 13 valid votes lodged in their district's ward.

Reforms to smooth the variability and achieve greater consistency in representation have been proposed from time to time. These reforms include setting population thresholds that would determine whether local governments must or must not have wards, alternatives to the current means to review wards and amendments to councillor numbers.

Set a minimum population threshold where a local government may be divided into wards and a minimum proportion of electors in each ward

Some local governments with low populations further divide their population into wards. Twelve local governments with fewer than 1,000 electors employ wards. There are also 16 local government wards that have fewer than 100 electors. In 10 of these ward elections in 2015 and 2017 were resolved without contest.

Local governments with small populations that employ wards are generally very large geographically and/or have multiple population centres. These factors provide impetus for ward structures where most of the population lives in one ward. Fourteen wards have fewer than 10% of their district's electors.

Setting a minimum population threshold before a local government could introduce wards would create greater consistency in local government representation. For example, requiring local governments to have at least 2,000 electors before they could subdivide these into wards would streamline the ward system in 13 local governments. Mandating that a ward have at least 10% of the total district's population would give legislative effect to a long-standing LGAB policy.

Set a minimum threshold or circumstances where a local government must be divided into wards

With a population of over 125,000, the City of Gosnells is by far the largest local government without wards. The City of Gosnell's population is more than three times larger than the second largest local government without wards, the City of Kwinana.

Large local governments without wards tend to have sizeable numbers of nominees. In Kwinana in 2017, 17 nominees contested four vacancies, while 11 nominees contested four vacancies in 2015. In Bunbury in 2017, 22 nominees contested six vacancies, while in 2015, 18 nominees contested six vacancies.

Large numbers of candidates running in a district provide greater choice for electors but can make it difficult for electors to know about a candidate and their platform. The costs of running for local government in a district may be greater as campaigning may be required across a district.

Setting a population threshold where a local government must be divided into wards may result in a better representation and more efficient elections.

Alternatively, reforms could require local governments that meet certain characteristics to employ wards. These characteristics could include having multiple population centres or being formed as a result of an amalgamation.

Electoral Commissioner to oversee ward structures

Ward structures are ultimately determined by the Governor on the Minister's recommendation following a review by LGAB. As an alternative, the Electoral Commissioner could be empowered to oversee the establishment and modification of ward boundaries.

State electoral boundaries are reviewed by three Electoral Distribution Commissioners. This temporary agency conducts a review of electoral boundaries following each State Government election. Like reviews conducted by LGAB, reviews conducted by the Commission consider factors including community of interest, land use patterns and demographics. This reform could streamline the setting and review of ward boundaries, provide a regular schedule for review that is aligned with local

government elections and deliver consistency with State and local government. It would, however, be costlier than the current system.

Amend council member numbers

The number of council members within a local government is set upon the establishment of the local government and may be varied by the Minister following a recommendation of the LGAB. The number of council members across the State's local government varies from six through 15, with the most common number being nine.

With the great variability in population across local government districts, the number of elected representatives per elector varies greatly. Explicitly linking population to councillor numbers could result in greater consistency.

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, 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 - Elections

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 the 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?

	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
“Voting should be compulsory.”		x			
“Voting should be conducted via a preferential voting system.”	x				
“Electronic and online voting should be made available for local government elections.”				x	
“The use of electronic or online voting would not change my confidence in the voting system.”			x		
“Legislation should be introduced that would permit online voting to be trialled.”				x	

13. Which local governments should be required to offer postal voting?

- a. **Postal voting should not be required to be offered**
- b. All local governments
- c. Local governments with a population greater than 1,000 people
- d. Unsure

14. Which local governments should be required to use the WA Electoral Commission?

- a. **No local governments should be required to use the WA Electoral Commission**
- b. All local governments
- c. Local governments with a population greater than 1,000 people
- d. Unsure

15. Should the WA Electoral Commission be the only organisation authorised to conduct local government postal voting?

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

16. What method should be used to resolve ties in council elections?

- a. **Drawing of lots (random selection)**
- b. Unsure
- c. Other (please specify)

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

	Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive
“A count-back from the previous election result should be used if available to fill vacancies between elections.”		x			
“Local governments should be required to adopt a caretaker period that restricts council from making major decisions during a local government election period.”			x		
“Caretaker periods are only required in large local governments.”			x		
“Council members who contest a State or Federal election should be required to take a leave of absence on the day of their nomination for a State or Federal election campaign.”		x			

18. To what extent do you agree with the following statements?

	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
“People who have been convicted under planning or building legislation offences in the past should be disqualified from serving as a council member.”			x		
“Council elections should be held every four years rather than every two years with all council members being elected at the same time.”	x				
“A cap should be set on the maximum amount that a candidate may spend on their campaign.”			x		
“Prospective candidates should be required to declare their profession or primary source of income on the nomination form.”			x		

	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
"Local governments should be required to publish candidate profiles on the website."				x	
"Information collected on the nomination form should include demographic information such as gender and ethnicity."			x		

19. To what extent do you agree with the following statements?

	Very unsupportive	Unsupportive	Neutral	Supportive	Very Supportive
"People who own land but who do not live in a district should be eligible to vote."				x	
"People who lease rateable property in a district should be entitled to vote."				x	
"Corporations that own property in a district should be entitled to vote."				x	
"Corporations that lease property should be entitled to vote."				x	
"Occupiers of land, for example, commercial lease holders, should be eligible to vote."				x	
"Only people over the age of 18 who live in a district should be eligible to vote."		x			

20. How should the position of Mayor or Shire President be determined?

- a. Vote by electors
- b. Vote by council members
- c. A method determined by council**
- d. Unsure

e. Other (please specify)

21. To what extent do you agree with the following statements?

	Very unsupportive	Unsupportive	Neutral	Supportive	Very supportive
“The rules regulating non-election gifts and elections should be aligned.”				x	
“Election gifts and donations should be declared regardless of when they are received.”				x	
“A register of election gifts and donations should be available online.”				x	
“Donors should also be required to declare election gifts and donations made.”		x			

22. Should gifts or donations from any of the following be prohibited? (please select all options that apply)

- a. Real estate agents
- b. Property developers
- c. Political parties
- d. Liquor or gambling business entities
- e. Tobacco industry business entities
- f. No election gifts or donations should be prohibited
- g. All election gifts or donations should be prohibited
- h. Other (please specify)

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

	Very unsupportive	Unsupportive	Neutral	Supportive	Very Supportive
“A local government should be required to have a ward structure if it reaches a certain population threshold.”		x			
“A local government with fewer than 800 people should not have wards.”		x			

	Very unsupportive	Unsupportive	Neutral	Supportive	Very Supportive
“Ward boundaries should be set by the Electoral Commissioner.”		x			
“The number of members that a council has should be linked to the local government’s population.”		x			

24. How can participation be increased to ensure that Western Australia’s diverse population is represented in local government? **Electronic voting may allow greater participation. It also needs to be recognised that low voter turnout is not always a sign of disinterest in the local government but that the people are happy with the performance of the local government.**

25. Do you have any other comments or feedback on local government elections? Additional information can also be provided to the review team via email at actreview@dlgsc.wa.gov.au.