

## 10.4.2 LOCAL GOVERNMENT ACT REVIEW

File Reference	19.6.3
Disclosure of Interest	The Author has no Impartiality, Financial or Proximity Interests that requires disclosure.
Applicant	Shire of Narrogin
Previous Item Numbers	Item 10.3.013, 28 February 2018, Resolution 0218.014
Date	18 February 2019
Author	Dale Stewart – Chief Executive Officer
Authorising Officer	Dale Stewart – Chief Executive Officer
Attachments	1. WALGA Advocacy Positions

### Summary

In 2017, the McGowan Government announced a review of the Local Government Act 1995. This is the first significant reform of local government conducted in more than two decades. The objective is for Western Australia to have a new, modern Act that empowers local governments to better deliver for the community.

The Department of Local Government, Sport and Cultural Industries (DLGSCI) invited Local Governments and their communities to have their say on the priority reforms for a new Local Government earlier this year and the drafting of a Bill which includes universal training for candidates and council members, council member code of conduct, improvements to CEO recruitment and performance review and a simplified gift framework is now underway.

[Read the policy positions on the priority reforms](#) here.

The next stage will result in a new Local Government Act and focuses on delivering for the community based on the themes *Agile, Smart and Inclusive*. It considers nine key topic areas as outlined below and local governments and community members are currently invited to have a say on some or all of the reform areas.

Phase 2 submissions are open to 31 March 2019, however WALGA is seeking to collate submissions to their State Council by 22 February 2019 (WALGA has noted Narrogin's Meeting on 27 February will still be considered if sent by 28 February 2019).

WALGA's position will then be submitted to:

- 15 March to 22 March 2019 – Zone Meetings
- Tuesday 26 March 2019 at 4.00 pm – WALGA State Council meeting.

## Background

With respect to phase 1 of the Review of the Local Government Act 1995, Council at its meeting of 28 February 2018 resolved:

*“Endorse the attached Local Government Act 1995 Review – Phase 1: Consultation Paper and the responses contained within the document and provide this to the Department of Local Government Sport and Cultural Industries and WALGA prior to the closing date for submissions”.*

## Comment

The Author is supportive of many of the proposals contained within the review, so far, and in particular the proposals for:

- The establishment of *Local Government Bands/Categories* differentiating between local governments to apply regulation, compliance and administrative requirements that are reflective of the capacity of local governments.
- Improved clarity regarding the *roles of the Council, Mayor/President, Councillors and CEO*.
- Developing practice guidelines and standards to assist Councils to undertake transparent, fair and robust *CEO Recruitment and Performance Review Processes*.
- *Mandatory training* being introduced for all newly elected members, and support for continuing elected members to undertake further development, recognising their experience and existing knowledge.
- Supporting the State Government establishing a training fund for local government officers, for management, leadership, and competency-based training.
- Simplifying the *gift provisions* so they are fair, consistent and related to the officer's or elected member's role.
- Reviewing the standards panel and introduction of a mandatory universal code of conduct for elected members to help improve behaviour.
- The proposal to develop a *remedial action process* that assists with early intervention, building capacity and working in partnership to ensure good governance of a local government.
- The ability for local governments to form *beneficial enterprises*.
- Reviewing land exempted from rates and in particular the provisions in regard to 'land used exclusively for charitable purposes'.
- Development of a *model governance framework* that can be adapted by each local government or at the minimum a Departmental Operational Guideline that clearly articulates the intent of the legislation and provides guidance to all key players (including the community).
- Providing local governments with greater autonomy by replacing prescriptive decision-making processes with requirement to comply with higher-level principles requiring transparency, accountability and sound financial management.
- The Public Sector Commission expanding its role or an introduction of a Local Government Commissioner to take on a guidance and support role to independently assist local government with CEO recruitment and performance reviews, with Council still being primarily responsible.
- Establishing a framework to create safe work environments where harassment and bullying within the workplace is not tolerated.
- A uniform set of performance indicators for local governments being developed to drive continuous improvement.

- Integrated Planning and Reporting (IPR) being the principal strategic leadership tool for local governments however improvements being examined through:
- strengthening the IPR principles in the Act more broadly, setting minimum standards and defining process through guidelines.
- removing duplication from other parts of the Act, where the principle or practice is already captured in the IPR framework.
- ensuring that local, regional and State strategic plans are more closely aligned.
- There is also an argument that due to the complexity of business local government councils should behave and act like a Board of Directors. However, people are selected, through rigorous processes, to sit on boards because they have specific skills and experience, be it financial, legal or other expertise. In local government, members are elected in a similar way to those who sit in State and Federal Parliament. This means that local governments are designed to operate on a Parliamentary rather than a Board like basis.
- Model Local Laws for all and all having the ability to have local determinations ...far simpler.
- 138 Local Governments that are diverse and complex and distant to deal with the vast State in which we live and serve – one size doesn't fit all.
- The need for the development of sector wide benchmarks not just key financial indicators.
- The observation that the DLGSCI has been continuously eroded over the years to be one of reactive retrospective compliance rather than proactive guiding and support and capacity building.
- Legislation is required that is flexible and agile with technology, global village realisations and dealing with rising social media and community expectations.

Summary of Officer specific supported position statements:

LG Act – Shire of Narrogin Proposed Submission			
Section of Legislation	Title	Policy Change	Rationale for Change
2.4A	New Provision - Differentiating Between Local Governments	Insert a new provision to differentiate between local governments based on capacity.  The State Administrative Tribunal Banding model is an illustration of potential grouping for local governments.	This will reduce the compliance burden on smaller local governments with limited capacity and provide additional opportunities for local governments with capacity.
2.11	Method to Elect Mayor / President	Delete the poll provisions in relation to changing the method of election of the Mayor/President. Local Governments should determine this outcome.	This will deliver consistency in the approach to change.

Section of Legislation	Title	Policy Change	Rationale for Change
2.21	Disqualification Because of Convictions	Add a section which disqualifies a person if they have been convicted of an offence against the Planning and Development Act, or the Building Act, in the preceding five years.	A planning or building system conviction is potentially more serious than a Local Government Act conviction because of local government's prominent role in planning and building control and the significant personal benefits which can be illegally gained through these systems. It may also be appropriate to include breaches of other legislation.
3.12	Procedure for Making Local Laws	Eliminate the requirement to consult on model Local Laws.	Models are approved for sector wide use.
3.16	Periodic Review of Local Laws	Eliminate the periodic review requirement for model Local Laws.	Models are approved for sector wide use. They should be reviewed frequently by the body making the model with advice provided regularly to all local governments.
3.50B	New Provision - Full Closure of Bridge and Roads for Repairs	Allow a bridge and roads to be fully closed for urgent repairs and maintenance without notice, even if it will have significant adverse effects on users.	The closure of a bridge and road will often have significant adverse effects on users. However, bridges may need to be fully closed for urgent repairs if there is a sign of weakness and, currently, the Act does not provide capacity to take this action without giving local public notice if the closure will be greater than four weeks.
3.51	Notification of Affected Owners	Section 3.51 of the Local Government Act 1995 concerning "Affected owners to be notified of certain proposals" should be amended to achieve the following effects:  - To limit definition of "person having an interest" to those persons immediately adjoining the proposed road works (i.e. similar principle to town planning consultation); and  - To specify that only significant, defined categories of proposed road works require local public notice under Section 3.51 (3) (a).	To provide clarity and efficiency.
3.53	Control of Certain Invested Facilities	That Section 3.53 be repealed and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.	To reflect the State's ownership of this land.
3.60	No Capacity to Form Body Corporates	Allow local governments with capacity to form bodies corporate (Council controlled organisations) for particular commercial activities.	Follows the New Zealand approach and enables local governments to undertake key place making activities more efficiently and effectively.

Section of Legislation	Title	Policy Change	Rationale for Change
3.66	Regional Local Governments	Reduce compliance burden on regional local governments in parallel with the proposal to differentiate between local governments.	To improve the efficiency of regional local governments; in particular those undertaking limited functions.
4.20 (4) 4.61 (4)	CEO to be the Returning Officer Unless Other Arrangements Made	Allow the Commonwealth Electoral Commission or any other body competent in conducting elections to be responsible for conducting an election and, in particular, a postal election.	To enable competition and competitive efficiencies to be achieved.
4.61 (1)	Methods of Conducting an Election	Allow people to vote online if they so choose.	To reflect the use of modern technology and to increase voter turnout. Online voting should only be introduced in a technological environment which ensures the secrecy of the vote and which minimises the potential for fraudulent activity. Online voting should be offered as an additional method of voting; not as a complete replacement for postal voting.
4.88 (1)(b)	Electoral Offence: Misleading, False or Defamatory Statements	Explore the potential of making it an offence for a person to make or publish false or defamatory statements about official acts undertaken by an elected member seeking re-election during the conduct of an election campaign.	It is already an offence to make or publish false or defamatory statements in relation to personal character or conduct. It is considered appropriate that this principle carries through to false or defamatory statements about official conduct.
5.24B	New Provision – Vexatious People and Complaints	Insert a new provision to specifically allow a local government to declare a member of the public and their complaints vexatious. Such a declaration would prevent that person from speaking at either Council meetings or electors meetings, allow a local government to file, but not respond, to correspondence from the person, and refuse to answer phone calls.	Local governments have no explicit statutory power to prevent a member of the public from bullying, abusing or harassment, particularly when speaking at meetings. The Ombudsman has produced guidelines for dealing with vexatious people and local governments should be specifically empowered by law to declare people vexatious (which would prevent them from speaking at meetings) if the principles within this guideline are followed. Here it is noted that the State Government recently gave the Standards Panel the power to decide that people were being vexatious.
5.27	Electors' General Meetings	Remove the requirements to have Electors' General Meetings	To improve local government efficiency. The public now has numerous ways in which to engage with Councils, including special electors' meetings, and the need for annual meetings, which are often attended by a paltry number of people, is redundant.

Section of Legislation	Title	Policy Change	Rationale for Change
5.28 (1)	Electors' Special Meetings	Increase the number of people required to convene a special electors' meeting.	It is too easy to gain 100 signatures to convene special electors' meetings in large local governments. This also does not correspond with the scalability needed for local governments of different sizes. To achieve this policy change the number required to call a meeting could be increased from 100 to 500 or, 10% of total number of electors, whichever is less.
5.28 (2)	Electors' Special Meetings	Limit the number of special electors' meetings which can be held on the same matter. Once a matter has been discussed at a special electors' meeting, the same matter, or a very similar matter, should not be able to be discussed at another special electors' meeting for 12 months unless Council determines otherwise.	This allows people to have their say but prohibits people unreasonably calling special electors' meetings on issues already determined.
5.36A + B	New Provision - Public Sector Commission / Local Government Commissioner Role	<p>Insert a new section which would require the Public Sector Commission to expand its role or an introduction of a Local Government Commissioner to take on a guidance and support role to independently assist local government with CEO recruitment and performance reviews, with Council still being primarily responsible.</p> <p>That, in circumstances where the CEO reports an Elected Member to either the CCC, the Standards Panel or any other regulatory or investigative body, an independent commissioner become the final decision maker in terms of the CEO's performance review or contract renewal for a period of five years.</p>	<p>CEO recruitment and performance review would benefit from the guidance and support of an independent authority.</p> <p>When a CEO reports an Elected Member or Members, those reported will form an opinion about the CEO which will bias future decision making on the performance of the CEO. To eliminate this bias, an independent authority should become the final decision maker in terms of the CEO's performance and contract renewal.</p>
5.90B New Training Provision	New Provision - training budget and plan for officers	Require each local government to have a training budget and plan for professional development for officers.	This will facilitate capacity building within the sector.

Section of Legislation	Title	Policy Change	Rationale for Change
6.14	Power to Invest	Allow local governments with capacity to invest in accordance with the Trustees Act in the manner that existed prior to the Global Financial Crisis.	The Global Financial Crisis was a once in a generation experience (1987 and 1929 were the two previous financial crashes of extreme magnitude). Legislation should not be based on a worst case scenario but on a routine and general operating environment. Prior to the Global Financial Crisis, the previous legislation was adequately controlling local government investments.
6.16 (2)(b) ( e )	Imposition of Fees and Charges	Many local governments will supply small consumer items at a variety of facilities. These include selling theatre tickets, supplying food and drink at venues. Non-metropolitan local governments also set rents for staff housing, etc. It is impractical to require local governments to establish fees at the start of the year for these items which respond to consumer demand in a commercial environment. The legislation for fees and charges need to be agile and flexible for local government to make changes throughout the year.	Allow local governments to set and amend fees and charges for small scale goods and services and the rental of staff housing outside of the current requirements of the Act.
6.20 (2)	Power to Borrow	That Section 6.20(2) of the Local Government Act, requiring one month's public notice of the intent to borrow, be deleted.	This is particularly pertinent for small local governments needing funds for crisis recovery. The one month requirements in emergency situations is not practical and does not allow for an agile approach.
6.26 (2)	Rateable Land	Introduce a requirement for State Government trading enterprises, including the Housing Authority, to pay rates on their commercial land rather than making rate equivalent payments to the State Government.	It is inappropriate for State Government trading enterprises to pay rate equivalents to the State Government when it is local government which constructs the local roads used by these enterprises and which collects the rubbish generated.
6.26 (2)	Rateable Land	Require resource projects which are covered by State Agreement Acts to pay local government rates where possible.	It is inappropriate for the State Government to waive local government rates when negotiating State agreements.
6.26 (2)(g)	Rateable Land	Amend to exclude independent living units for seniors from being a charitable purpose for which a rate exemption can be claimed.	Independent living units are generally provided at market rates so there is no charity for the user. This outcome was acknowledged in a State Government report about a decade ago.

Section of Legislation	Title	Policy Change	Rationale for Change
6.28 6.33(1)	Basis for Rates and Differential General Rates	Enabling differential rating based on the time land remains vacant is supported as suggested in the WALGA Discussion Paper.	While local governments can introduce a differential rate for vacant land, this rate applies to all vacant land. It is appropriate to differentiate between land held vacant for long periods for speculative or hoarding purposes and land which is vacant on a short term, interim basis. It would be up to a local government to determine the number of years which would divide one category from the other.
6.41	Service of Rate Notice	Amend the provisions around the service of rate notices to allow for electronic delivery of notices where a ratepayer's electronic address is known.	The Act was developed in an era when the internet hardly existed. Electronic communications are now commonplace and used for significant financial transactions.
6.41 6.45(1)	Options for Payment of Rates	Amend to reduce prescription and increase flexibility in relation to rate payment options.	This will improve efficiency and responsiveness to ratepayers.
6.56	Recovery of Rates in Court	Amend to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to 'cost of proceedings'.	To improve operational effectiveness.
Schedule 2.1 2(1)(d)	Creating, Changing and Abolishing Districts	Increase the number of electors required to put forward a proposal for boundary change from 250 to 500. Attentively, applying a scalability approach here again.	The current number is considered too small and does not take into account the varying different sizes of local governments.
Schedule 2.2 2.3(1)(a)	Provisions About Wards	Increase the number of electors required to put forward a proposal for ward change from 250 to 500. Attentively, applying a scalability approach here again.	The current number is considered too small and does not take into account the varying different sizes of local governments.
Admin Reg 10	Revoking or Changing Decisions	Amend Regulation 10 to assist clarifying the rights of a Councillor to seek a revocation or change.  Particularly amend to reflect situations where part of a multiple part motion has not been completed.	Regulation 10 provides a mechanism for the revocation or change to a previous decision of Council. It does not however, contain any provision clarifying that the provisions do not apply to Council decisions that have already been implemented. This regulatory deficiency is currently managed administratively, but warrants an appropriate amendment to assist clarify the rights of a Councillor to seek a revocation or change.



Section of Legislation	Title	Policy Change	Rationale for Change
Admin Reg 19B	Payment to Employee in Addition to Contract or Award	Amend to state that the number of positions within the salary band should be identified, rather than the number of employees entitled to the salary.  In addition, increase the \$100,000 to an amount which reflects inflation since the value was initially legislated. Further, increase the amount in future years in line with salary increases determined by the Salaries and Allowances Tribunal.	This reflects the fact that it is important to identify the positions paid over \$100,000 rather than the number of employees that fill the positions.  Further, inflation is devaluating the \$100,000 amount each year.
Financial Mgmt Reg 4	Exempt from AASB 124	That Regulation 4 of the Local Government (Financial Management) Regulations be amended to provide an exemption from the application of AASB 124 'Related Party Transactions' of the Australian Accounting Standards (AAS).	Local government legislation provides adequate transparency.
Functions & General Reg 4A	Regional Price Preference (RPP)	Add clarification that regional local government can apply their RPP's policy to all purchases, including those under the tender threshold.	Clarity required and to provide consistency.
Functions & General Reg 11 (1)	Tender Threshold	Increase the tender threshold to align with the State Government tender threshold (\$250,000). Further clarity is also required on whether the threshold applies to total project cost, and the implications on rolling contracts which its annual cost is under the threshold.	Increasing the tender threshold improves local government efficiency and aligns to State agency requirements.
Functions & General Reg 30 (3)	Disposition of Property	That Regulation 30(3) be amended to delete any financial threshold limitation (currently \$75,000 on a disposition) where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.	To improve local government efficiency and operational effectiveness.
LSL Reg. 7 (1)(d)	Taking Leave	Amends so that employees can take long service leave in more than three separate periods.	To reflect contemporary practice, allow employees to take their long service leave in more than three separate periods, subject to the agreement of the employer.
Regional Subsidiary Reg 8	No Capacity to Undertake Trading Undertaking or Land Transaction	Remove the restrictions on land transactions and commencing a trading undertaking.	A regional subsidiary should be able to acquire land in its own rights (such as land for a waste transfer station) and conduct a commercial enterprise (such as the sale of goods received at the transfer station).

Section of Legislation	Title	Policy Change	Rationale for Change
Regional Subsidiary Reg 8	Power to Borrow	Remove the restriction on borrowing.	A regional subsidiary should be able to borrow money in its own right

## Consultation

Elected Members are asked to review the proposed discussion points and contribute to or amend the Officer perspectives as deemed appropriate.

Shire of Narrogin Officer's and Elected Members also had the opportunity of contributing at a WALGA Zone Forum facilitated by the DLGSC in Narrogin on 11 October 2018. Several senior staff and Elected Members participated.

The community, and indeed officers and Elected Members, have also had opportunity from the DLGSCI, over the previous several months, via a workshop in Narrogin, public notices, advertisements, media releases and news articles, inviting public feedback on the various issues papers and proposals.

Surveys to the public are still open until 31 March 2019.

The approximately nine (9) unique forum areas and policy positions (of the DLGSCI) can be accessed via this website:

<https://www.dlgsc.wa.gov.au/localgovernment/strengthening/Pages/LG-Act-Review.aspx>

The nine topic areas are:

### Agile

- Beneficial enterprises
- Financial management
- Rates, fees and charges

### Smart

- Administrative efficiencies — local laws
- Council meetings
- Interventions

### Inclusive

- Community engagement — IPR
- Complaints management
- Elections

## Statutory Environment

There are no relevant statutory implications or requirements.

## Policy Implications

There are no relevant policy implications for consideration.

## Financial Implications

There are no relevant considerations for the Budget nor Long Term Financial Plan as a result of the Officers Recommendation or consideration of this item.

## Strategic Implications

Shire of Narrogin Strategic Community Plan 2017-2027	
Objective	4. Civic Leadership Objective (Continually enhance the Shire's organisational capacity to service the needs of a growing community)
Outcome:	4.1 An efficient and effective organisation
Strategy:	4.1.1 Continually improve operational efficiencies and provide effective services
Strategy:	4.1.2 Continue to enhance communication and transparency

## Voting Requirements

Simple majority

### OFFICERS' RECOMMENDATION

That with respect to Phase 2 of the Local Government Act Review, Council:

1. Endorse the attached WALGA Consultation Review together with the responses contained within this report and provide these to the Department of Local Government, Sport and Cultural Industries and WALGA; and
2. Encourage the community to have their say either via the Department's web portal or direct to the State Government, via promoting the opportunity on Facebook and in the Media.

### COUNCIL RESOLUTION 0219.022

Moved: Cr Wiese      Seconded: Cr Seale

That with respect to Phase 2 of the Local Government Act Review, Council:

1. Endorse the attached WALGA Consultation Review together with the responses contained within this report, as amended, with the respect to the item at 6.26(2)(g) and provide these to the Department of Local Government, Sport and Cultural Industries and WALGA; and
2. Encourage the community to have their say either via the Department's web portal or direct to the State Government, via promoting the opportunity on Facebook and in the Media.

**CARRIED 7/0**

Reason for change: Council requested amendment to the officer comment associated with item 6.26(2)(g) below to more accurately express Council's concerns to ensure continuing exemptions for housing providers that were truly providing subsidised housing for the aged.

6.26 (2)(g)	Rateable Land	Amend to exclude independent living units for seniors from being a charitable purpose where there is no discernible market rent discount, for which a rate exemption can be claimed.	Where independent living units (ILUs) are provided at market rates so there is no charity for the user. This outcome was acknowledged in a State Government report about a decade ago. It should be acknowledged that some ILUs are provided at a discount to market rent and therefore should continue to satisfy the exemption from rates.
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## **LOCAL GOVERNMENT ACT REVIEW PRINCIPLES**

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

- (a) Uphold the General Competence Principle currently embodied in the Local Government Act;
- (b) Provide for a flexible, principles-based legislative framework; and
- (c) Promote a size and scale compliance regime

## **BENEFICIAL ENTERPRISES**

<b>Position Statement</b>	The Local Government Act 1995 should be amended to enable Local Governments to establish Beneficial Enterprises (formerly known as Council Controlled Organisations).
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WALGA has been advocating for Local Governments to have the ability to form Beneficial Enterprises (formerly known as Council Controlled Organisations) for approximately ten (10) years.

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

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

### Examples

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

### Benefits of establishing a Beneficial Enterprise include:

- (a) The ability to employ professional directors and management with experience specific to the commercial objectives of the entity;
- (b) Removal of detailed investment decisions from day-to-day political processes while retaining political oversight of the overarching objectives and strategy;
- (c) The ability to take an overall view of commercial strategy and outcomes rather than having each individual transaction within a complex chain of inter-related decisions being subject to the individual notification and approval requirements of the Local Government Act;

- (d) The ability to quarantine ratepayers from legal liability and financial risk arising from commercial or investment activities;
- (e) The ability to set clear financial and non-financial performance objectives for the entity to achieve; and
- (f) Greater flexibility to enter into joint venture and partnering relationships with the private sector on conventional commercial terms.

## **FINANCIAL MANAGEMENT**

### **Tender Threshold**

<b>Position Statement</b>	WALGA supports an increase in the tender threshold to align with the State Government tender threshold of \$250 000, with a timeframe of one financial year for individual vendors.
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### **Procurement**

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

<b>Position Statement</b>	That Regulation 30(3) be amended to delete any financial threshold limitation (currently \$75,000) on a disposition where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.
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### **Imposition of Fees and Charges: Section 6.16**

<b>Position Statement</b>	That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.
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### **Power to Borrow: Section 6.20**

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

### **Basis of Rates: Section 6.28**

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

### **Differential General Rates: Section 6.33**

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

## Member Interests - Exemption from AASB 124

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

## RATES, FEES AND CHARGES

### Imposition of Fees and Charges: Section 6.16

<b>Position Statement</b>	That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.
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### Rating Exemptions – Charitable Purposes: Section 6.26(2)(g)

1. Amend the Local Government Act to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth Aged Care Act 1997;
2. Either:
  - (a) amend the charitable organisations section of the Local Government Act 1995 to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or
  - (b) establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates; and
3. Request that a broad review be conducted into the justification and fairness of all rating exemption categories currently prescribed under Section 6.26 of the Local Government Act.

### Rating Exemptions – Rate Equivalency Payments

<b>Position Statement</b>	Legislation should be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government.
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### Rates or Service Charges Recoverable in Court: Section 6.56

<b>Position Statement</b>	That Section 6.56 be amended to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to the 'cost of proceedings'.
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### Rating Restrictions – State Agreement Acts

<b>Position Statement</b>	Resource projects covered by State Agreement Acts should be liable for Local Government rates.
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## **ADMINISTRATIVE EFFICIENCIES**

### **Control of Certain Unvested Facilities: Section 3.53**

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

### **Local Government Grants Commission and Local Government Advisory Board**

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

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

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

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

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

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

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

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

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

## **COMPLAINTS MANAGEMENT**

### **Querulous, Vexatious and Frivolous Complainants**

The Complaints Management commentary contemplates the issue up to the point of unresolved complaints and then references the Ombudsman resources with regard to unreasonable complainants. WALGA seeks inclusion of commentary and questions relating to Local Governments adopting within their proposed complaints management framework, the capacity to permit a Local Government to declare a member of the public a vexatious or



frivolous complainant, subject to the declaration relating to the nature of complaint and not to the person.

Amend the *Local Government Act 1995*, to:

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

## **COUNCIL MEETINGS**

### **Electors' General Meeting: Section 5.27**

<b>Position Statement</b>	Section 5.27 of the Local Government Act 1995 should be amended so that Electors' General Meetings are not compulsory.
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### **Special Electors' Meeting: Section 5.28**

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

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

### **Minutes, contents of: Regulation 11**

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

### **Revoking or Changing Decisions: Regulation 10**

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

### **Elected Member attendance at Council meetings by technology**

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

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

## **INTERVENTIONS**

### **Remedial intervention; Powers of appointed person; Remedial action process**

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

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

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

## **ELECTIONS**

### **Conduct of Postal Elections: Sections 4.20 and 4.61**

<b>Position Statement</b>	The Local Government Act 1995 should be amended to allow the Australian Electoral Commission (AEC) <u>and or any other third party provider</u> to conduct postal elections.
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### **Voluntary Voting: Section 4.65**

<b>Position Statement</b>	Voting in Local Government elections should remain voluntary.
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### **Method of Election of Mayor/President: Section 2.11**

<b>Position Statement</b>	Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.
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### **On-Line Voting**

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

### **Method of Voting - Schedule 4.1**

<b>Position Statement</b>	Elections should be conducted utilising the first-past-the-post (FPTP) method of voting.
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### **Leave of Absence when Contesting State or Federal Election**

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

- (i) that an Elected Member remove themselves from any decision making role and not attend Council and Committee meetings; or
- (ii) that an Elected Member take leave of absence from all aspects of their role as a Councillor and not be able to perform the role as specified in Section 2.10 of the Local Government Act.