Submission to the Local Government Act Review – March 2019

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1 Introduction and Summary

This submission is offered by the Swan Foreshore Protection Association Incorporated (**SFPA**), a community organisation based in the City of Melville, supported by over 1,000 community members. SFPA is also a member organisation of the WA Residents and Ratepayers Association Incorporated (**WARRA**).

The perceptions of corrupt and dysfunctional Local Government (**LG**) in WA are rooted in the current Local Government Act 1995 (**Act**). The Act affords the LG administrations considerable power and autonomy but with insufficient accountability. The Act curtails the power of elected members relative to Administrations thereby ensuring that communities are not adequately represented in the process of LG. The Department (**DLGSC**) is compromised and is unable or unwilling to administer the Act effectively.

The themes of the proposed Review of: Transparency, Participatory, Accountable, Efficient, Modern and Enabled are appropriate and would address the problem provided that they are prioritised in the order shown, which is the same order as shown in the consultation paper.

The progress of the Review to date shows that the fundamental issues are not being addressed, and the prioritisation is reversed. Suggested changes to date, as indicated by the Phase 1 policy positions clearly shows the Review to be assigning yet more power to the LG administrators while further constraining elected members and further denying the community of adequate representation.

The structure of the review is flawed with DLGSC being conflicted and compromised by its agreements with interested parties WALGA and LGPro who explicitly represent LG Administrations, not the community. Unless this is changed, the Review will be counterproductive and will aggravate the discontent which has led to the need for the Review.

The Review needs to be restructured to ensure its independence and integrity. A Royal Commission or an independent parliamentary committee might suffice.

It is imperative that the imbalance of power be addressed by having adequate community representation on any advisory or reference panels.

2 First principles

2.1 Theme of the Review

There is a widespread perception in WA that local government (LG) is corrupt. This is no accident. It has arisen from a Local Government Act (Act) that is astonishingly weak in providing rules for the conduct of LG employees and it is weak in providing sanctions for breach of those rules. It has also arisen from the even weaker appetite of the Local Government Department (DLGSC) to enforce the rules that exist. The Act provides some constraints and sanctions on elected members but few on city administrators.

The Act review theme of “Smart, Agile and Inclusive” which has been widely promoted glosses over the important issues. The Phase 1 Consultation Paper spells these out better: Transparent, Participatory, Accountable, Efficient, Modern and Enabled. Democratic principles require that this sequence be hierarchical, in the order listed, and that any changes made in the review should pass the test of each criterion in the stated order. A change that Enables LG by reducing transparency would be attractive from a totalitarian perspective but unacceptable to a democratic hierarchy of values. There is evidence from the Phase 1 policy positions that the sequence has been reversed, with focus on enablement at the expense of the other five.

2.2 Balance of power

Successful LG depends upon the balance of power between Elected Members and the Administration. The present Act has clearly been written to constrain and inhibit the conduct of the elected members. The elected members face a range of sanctions specified in the Act and may be held accountable by the community at every election time - a fact that is regularly brought to the attention of electors by DLGSC and the Minister. By contrast, there is little in the Act for which LG employees are accountable and they can be effectively shielded from sanction by a protective or complicit CEO. DLGSC and the Minister have only limited (if any) disciplinary power over CEOs or employees, so how can DLGSC or the Minister administer an Act which is implemented by those over whom they have little authority?

The collective Administration has established its own lobby group WALGA which, liberally funded by ratepayers funds, and endorsed in the Act serves as an official lobbyist for its members. There is nothing in the WALGA constitution about representing the community. WALGA unashamedly represents LG administrations to the detriment of the community. In fact, WALGA has made submissions to this Local Government Act Review that would actively undermine the democratic rights of the community who fund it. WALGA is no friend of the community, nor of elected members who attempt to represent the community. By its official status in the Act, its agreements for cooperation with DLGSC, and its substantial funding, WALGA is a major factor supporting the substantial imbalance of power between administrations and elected members, with the community regarded as a necessary evil.

Administrations are also supported by the LG Professionals, an organisation dedicated to supporting LG staff, providing advocacy on their behalf and "shaping the sector", explicitly to the advantage of its membership. This review of the Act may be seen as just such an exercise. Elected members have no such support and this too contributes to the imbalance of power. Again, the community is not considered.

The balance of power is further affected by the relative deficit of experience and training of elected members compared with administrators. This review purports to address this by delivering more training to elected members. While the concept of training is supported, the delivery of training must be questioned when the training deliverer, WALGA, is clearly more aligned with the administration than with the community represented by the elected members. In this situation, training becomes indoctrination supporting the imbalanced status quo.

The consequences of this imbalance are that elected members are at a severe disadvantage in any interaction with the administration, that there is no check on the power of the administration and that the community who must foot the bill have no say at all in the direction that LG wishes to take them.

The consequences are also clearly identified in the feedback to the Phase 1 Community Consultation, that

- More than 60% of community respondents are equally or more concerned with the behaviour and performance of the administration, particularly CEOs
- Community is concerned that behaviours are not being managed effectively
- Local government has a desire for swift and punitive justice, (but only for elected members, as staff are generally immune from sanction if protected by the CEO)

The consequence is also seen in the widely held view that local government is corrupt.

Addressing this imbalance should be the first priority of the Review, and if the themes promoted in the Phase 1 Consultation paper were to be followed in the right order, this would happen.

2.3 Going the other way?

Feedback from the Phase 1 consultation generally demonstrated overwhelming community support for most of the five themes spelled out in the Consultation Paper. It is therefore disturbing to note that each of the six policy positions arising from Phase 1 of the Act review contains regressive elements that, if legislated, serve to make LG LESS Transparent, Participatory, Accountable, Efficient, Modern or Enabled.

The State and Local Government Partnership Agreement contains the provision that *"State and Local Government must lead by example and demonstrate an unequivocal commitment to high standards of governance and transparency to maintain community confidence in government decision making".*

It would appear that the six policy positions arising from Phase 1 are all in breach of this agreement as they variously lower standards of governance and transparency and /or reduce community confidence.

Each of the six policy positions plainly reflects, and reinforces, the imbalance of power in that in some respect, the power of the administration is enhanced and that of the elected members and community is further constrained.

Power corrupts. Correcting this imbalance of power should be the first priority of the review and a change of direction is needed.

2.4 Structure of the Review

According to the official website, the Review reference group comprises:

- Department of Local Government, Sport and Cultural Industries
- Western Australian Local Government Association (WALGA)
- Local Government Professionals (WA) (LGPro)
- WA Rangers Association
- Australian Services Union
- Regional Chamber of Commerce and Industry
- Office of the Minister for Local Government

The only ratepayers on this list are the CCI. The community is nowhere to be seen.

WALGA and LGPro are powerful voices in the group. Each is a self-professed self interest group. Neither represents the community at all (check their constitutions). WALGA and LGPro have each made submissions to the Review. There is clear conflict of interest here, if they also sit on the panel considering the submissions.

Further to this conflict of interest, both of these have made submissions that clearly disadvantage the community interest. Some of their recommendations are evident in the Phase 1 policy positions.

DLGSC, WALGA and LGPro are parties to a partnership agreement which states:

"When consulting at a State level, ***WALGA and LG Professionals should be the first point of contact****. These two peak bodies are able, through formal and informal policy development processes, to develop representative responses and submissions on behalf of their respective memberships".* (my emphasis)

DLGSC is bound by this agreement to give these self-interested parties first priority. The other members of the reference group must ask “Why bother?”

DLGSC is clearly compromised and conflicted here. There is an explicit lack of independence in the Review which cannot be allowed to proceed on this basis.

The Review must be handled by a body that is independent of the DLGSC and the all-too-cosy relationship with LG interest groups.

The community, who after all, is the major stakeholder here as it pays all the bills and wears all the consequences, must be represented on any review panel.

3 Transparent

3.1 The need for openness

Transparency – this has always been and remains the best weapon to use in any democracy against corruption. Deals done in secret are very rarely in the public interest. As stewards of the community’s assets, Local Government has no right to any secrecy in how these assets are managed, acquired or disposed of. After all, the assets belong to the community, not to the local government employees. All Council matters should be open to the community. Why should the community be denied information on how its assets are managed?

In an open transparent system there is no reason at all for closed meetings or confidential documents, other than certain private personnel data. Businesses negotiating with LG should do so in the knowledge that the negotiation is public knowledge, and will negotiate accordingly. This implies open and honest dealing, as it is harder to cheat in public. The concept may seem frightening to some who have become accustomed to operating in secret, but it is a perfectly viable modus operandi. LG should have nothing to hide from its ratepayers, who are also its shareholders.

3.2 Executive employment packages

An asset class that is of critical importance to the community is the CEO and key senior staff contracts of employment. Not only do these contracts cost the community millions of dollars, but the terms of the contracts have a major influence on how the City is managed. LG is supposedly set up to operate on a corporate model, and it must follow the corporate lead. Public listed companies explain the remuneration, reward packages and KPIs of senior executives in considerable detail. Investors take note and make investment decisions based on whether or not the executive remuneration is structured to benefit the executive, the shareholders, or both parties. The same should apply to LG.

The performance of a CEO and senior staff in relation to the legitimate expectations of them is crucial to successful government. KPIs must be clear, quantifiable, measurable and open to the public. Performance against KPIs must be measured and publicised. How else is the performance of the executive to be judged?

The Policy Position on Public Notices would withdraw public access to these documents. This is a seriously regressive step affecting both transparency and accountability.

3.3 Public submissions

A process for treatment of public submissions on any topic must be included in the new Act. It is far too easy for the LG to treat the submissions as a poll, simply counting FOR and AGAINST without addressing any of the issues raised, or to manipulate the results in other ways. There must be at

least a list of issues raised, a description of each issue, with a count of those supporting or opposing each issue. There must be public access to ALL submissions – if a submission is confidential, then that should apply only to the identity of the author, not to the content of the submission. There must be a minimum period set for the public to review all submissions before the administration prepares its report and submits to council for a decision.

3.4 Gagging of Dissent

An elected member is prevented from expressing a dissenting opinion on a matter that has been decided upon by council. This prevents the councillor from representing the constituency that elected him/her. It effectively precludes review of bad decisions. This continues to apply even though the circumstances of the original decision might have changed. It fails the tests of Transparent, Participatory, Efficient, and should be reviewed.

The democratic process thrives only in the context of free speech. Parliamentary democracies are effective and accountable by virtue of a healthy opposition, public debate and extensive media coverage. None of these applies to LG in WA. To compensate for this the freedom of elected members to speak out and to represent their constituency must be protected.

This feature of the LG model must be changed.

(In our LG we have seen a series of policy changes in the past year: Question time, Deputations to Council, Special Electors Meetings, Dealing with Unreasonable Customers, Legal Representation for Employees and EMs. We have also seen letters from our CEO to DLGSC and an initially secret submission to this Review by the CEO. Every one of these documents was aimed at gagging community criticism. A truly totalitarian response…but on seeing the Phase 1 policy positions the writer realises that this is not an isolated case.)

3.5 False information

There is no sanction in the Act for provision of false or misleading information by the CEO (or his officers) to elected members. There is no sanction for information knowingly withheld from elected members by the CEO or his officers for council decision making. There is no requirement in the Act for officers or elected members to speak the truth. There is no sanction on CEOs or Mayors who regularly make false statements to the media.

There are many examples of this type of conduct and this is a serious failure of governance in the Act which needs redress. Penalties are required for employees who provide untruthful information, or who withhold relevant information. Repeated offence should be grounds for dismissal.

4 Participatory

This is taken to mean the increased participation of the community in LG decision making, which requires firstly the adjustment of the balance of power between elected members and the administration. This balance can be assisted by increasing the transparency and accountability of the administration. It can be helped by removing some of the constraints on elected members that prevent them from effectively representing their electorates. Some of those measures are mentioned in this submission.

Participation can be improved by requiring administrations to act on motions passed by the community at Special Electors Meetings, or to provide reasons why no action should be taken, instead of simply recommending that the motion be “Noted” and no action taken.

The review theme Participatory must consider the far-too-cosy relationship that exists between the WALGA, LGPro and the DLGSC. The composition of the Act Review Reference Group reflects this far-too-cosy relationship and needs to be changed to include community representation and elected member representation that is not nominated by WALGA, but independently selected.

This cosy relationship is reflected in the Phase 1policy positions which all serve to restrict the ability of elected members to effectively represent the community that elected them, or further reduce transparency and accountability of the Administrators.

Participatory means that Councils are able to hire and fire CEOs – using external professional advice if they choose, but not constrained by the PSC, and not answerable to DLGSC. It means that Councils may have an opinion, as provided in the existing Act, on the appointment or dismissal of senior staff. The Phase 1 policy positions would curtail the existing rights of Council and reduce Council participation in key decisions.

Participatory also means that elected members, where they have been elected on a policy platform, should be free to represent their electors and not be hogtied by ambiguous restrictions such as those in the Gifts policy position, which can be manipulated and selectively applied by CEOs to negate any policy position on which a member was elected. The generalised wording of this provision can be used as a pervasive net to disempower elected members and disenfranchise the community. The need for an elected member to declare interest and withdraw from the meeting must be restricted to only those situations where there is a clear financial interest of the donor in the matter before council.

It appears that those directing the Review have paid only lip service to the key themes of the Review. Their recommendations are the opposite of their stated objectives.

5 Accountable

5.1 What is Accountable?

For accountability there must be agreed or mandated standards, agreed or mandated criteria for assessing performance against those standards and sanctions for non compliance.

In SWAN FORESHORE PROTECTION ASSOCIATION INCORPORATED -v- CITY OF MELVILLE : Justice Allanson wrote: *"The sanction or consequence for failure of a local government to perform its functions properly lies in pt 8 of the Act which provides for scrutiny of the operations and affairs of a local government."*

In other words, it is the responsibility of the Minister for Local Government to decide the consequences for failure to comply with his legislation. The task of making these decisions requires that the Act provide measures for determining accountability and penalties that hold LGs accountable for their conduct and performance

There also needs to be a clear process of assessment.

5.2 Elected Members

The Act contains some standards for elected members such as rules for disclosure and regulations for conduct, and these are generally, but not always, appropriate to the role of elected member. In some instances there are penalties specified for transgression.

Elected members are potentially held accountable for their performance at election time. This depends upon whether the electorate is paying attention. Suffice to say that if the electorate is dissatisfied elected members will be held accountable.

Elected members are held accountable by the LG Standards Panel for minor misconduct, and this is an area in serious need of review, discussed later in this submission.

Elected members can also be held accountable for serious misconduct, and at present this function should be performed by DLGSC, which has the responsibility for enforcing the Act. In practice, DLGSC does not appear to perform this function, but sometimes refers this to the CCC. DLGSC nevertheless invites serious misconduct complaints to be submitted to DLGSC even though it is unclear what happens to them there. There does not appear to be any clear process in the Act, or in the DLGSC, for assessing serious misconduct complaints and they lie idle for months and years without apparent action. They even get "lost" and it is left to the complainant to repeatedly resubmit before the complaint is even acknowledged, let alone actioned.

DLGSC is responsible for administration and enforcement of the Act. Ideally DLGSC should assess complaints for breach of the Act but DLGSC is compromised by its partnership agreement with WALGA and LGPro because complaints against elected members form an important part of the power play between elected members and LG administrations.

If complaints are referred to the CCC, there is no obligation on the CCC to investigate and the complaint fails for want of action and it is better that complaints are assessed independently, but under the authority of the LG Act. The Act Review should ensure that breaches of the Act carry appropriate penalties.

Where there is offence under other acts, such as the Criminal Code or the Corruption Crime and Misconduct Act, the independent reviewer must nevertheless investigate and be able to refer these matters for prosecution.

The Act requires clear process for dealing with serious misconduct complaints, including time limits for each stage of the process.

5.3 The DLGSC Standards Panel

The standards panel is a major player in holding elected members accountable, yet is structurally flawed. Complaints against elected members play a major part in the power play between elected members and LG administrations, so the Standards Panel is an important component of the present malaise in LG. On the one hand it is purportedly independent, so is accountable to nobody. On the other hand it is led by *"an officer of the Department"* , (Act Sch5.1) and so is beholden to DLGSC. The DLGSC / WALGA / LGPro partnership agreement further compromises the independence of the Standards Panel as WALGA and LGPro are not disinterested parties. The fact that the elected members on the Standards Panel are nominated by WALGA is yet another factor compromising the panel. WALGA is not a disinterested party in the power imbalance that needs to be corrected by this Act review. WALGA must be removed from this role.

There appears to be little control over the personnel selection of the panel and some supposedly independent members of the panel have close family connections with LG participants. While the conflict of interest may be theoretically managed by not assigning individual panel members to specific cases involving family members, in practice the perceived or real conflict through association and friendship between panel members persists. Where there is a close family connection there will also be a cultural predisposition to act in a way that is less likely to be objective.

It is probably better that the panel expressly excludes a "*person who has experience as a member of a council"* (Sch5.1) and this will enable complaints to be dealt with on the facts and not coloured by individual experiences, prejudices or associations, noting that there is no requirement for this person to have any specific training.

The process of the standards panel is also flawed. It has no investigative power, so requires a complainant to submit all evidence to support a complaint. It then scrutinizes the evidence to legalistic standards that are well beyond the capacity of the ordinary citizen to meet. This is notwithstanding that the Act requires the panel only to satisfy itself that it is more likely that the event occurred than that it did not occur – the balance of probability. By contrast, the member who is the subject of the complaint need provide no evidence, and experience has shown that a simple statement such as "I didn't do it" or "that was not my intention" appears to be sufficient to provide exoneration as the panel seems to accept such statements without question, regardless of the requirement to form its opinion on the balance of probability.

In the interest of natural justice the member subject to the complaint is given the opportunity to review and respond to all the evidence provided by the complainant. Such response may be true or false, but the complainant has no opportunity to answer what may be false statements, nor to provide further evidence either to refute the statement or if the panel has deemed the evidence provided to be insufficient.

The panel does appear to interview complainants.

The complainant can get no review by the Panel of its decision.

Either party may appeal to SAT. For the complainant this is at his/her own cost. In many LGs the subject elected member's legal costs may be reimbursed by the LG at the CEO's discretion, so this is not a level playing field.

The result of this is that the process is hopelessly loaded against a complainant if the panel chooses this to be so. But the panel does not always make this choice and there is a strong perception among those with some experience of the standards panel that it lacks impartiality. An elected member who may be a dissident, or one who challenges a CEO, is far more vulnerable to adverse findings for sometimes relatively trivial misconduct. A "compliant" elected member, one who cooperates with the CEO, is comparatively "bulletproof" and is exonerated from even well documented, well founded complaints when the panel applies the processes described above.

The DLGSC is compromised by the partnership agreement with WALGA and LGPro, who are essentially in competition with elected members. It clearly can not fulfil its role of impartial assessor. Essential changes are:

- The Standards Panel to be independent of DLGSC in practice as well as in theory, with independent, trained personnel
- Selection of panel members to be scrutinized for competence and potential conflict of interest
- WALGA not to nominate panel members
- Complainant to be given the opportunity to review the subject's response and make further submission as required
- Complainant to be notified if evidence deemed insufficient, can either abandon the complaint or provide the necessary evidence.

Desirable changes are:

- Panel not to include those with LG history or associations
- Panel to interview complainant

5.4 Accountability for LG Employees

There is relatively little in the Act about employees' conduct.

Minor misconduct complaints must be submitted to the PSC. This body may make a finding but has no authority to discipline an employee as LG employees are employed by the LG and not by the State. The PSC can refer the finding to the relevant LG CEO for action, but if the CEO is sympathetic or complicit, no action need follow.

Complaints of serious misconduct may be submitted to DLGSC or to the CCC who, for reasons determined solely by the CCC, may choose whether or not to investigate a complaint. This is not satisfactory as CCC does not necessarily share the same priorities as DLGSC. Nevertheless, DLGSC may refer these complaints to the CCC. A sympathetic or complicit CEO may intervene on behalf of the employee and the CCC, for whatever reasons, may drop the case or proceed to find no fault. In some cases, the CCC has referred complaints against an LG employee back to the LG for investigation, disregarding the fact that the LG does not have the powers of the CCC necessary to perform the investigation. Again, with a complicit or sympathetic CEO, no action follows.

It is even more difficult to obtain an adverse finding against an employee than against an elected member and so LG employees feel free to breach or ignore the Act with impunity and in fact do just that.

5.5 Penalties

The Act needs to include penalties for breaches, though in some but not instances it is first necessary to define the breach. Penalties are essential for:

- Breach of s3.58 and s3.59 – acquisition or disposal of property. This is an area with rich potential for corruption and has been repeatedly breached with impunity.
- Providing false or misleading information, be it to council, the public, the media or in answer to questions to Council.

There is an important loophole to be plugged in s5.71. This begins with the words *"If, under Division 4, an employee has been delegated……"* . The words "*under Division 4*" are cited in argument that unless the employee has been specifically delegated the task in writing in accordance with D4 there is no requirement to declare an interest or to refuse the work. Many delegations are done by oral instruction and this loophole clearly defeats the intention of the Act that employees should not undertake work in which they have an interest. The words *"under Division 4*" must be removed.

5.6 Key Performance Indicators - KPIs

KPIs are crucial in any executive employment package. They must be clear and quantifiable. They must be measured, assessed and reviewed on a regular basis. For transparency they must be public, particularly those of the CEO.

This must be stipulated in the Act as in the present situation, KPIs in many CEO contracts are either set so low as to be useless or they are so vague, convoluted or obfuscated as to be incapable of meaningful interpretation. KPIs can and should be successfully used to improve the accountability of CEOs to council.

5.7 Audit

This is another means of accountability that has been severely watered down. In the writer's LG it appears from examining the annual reports that the auditor has written out a list of things that the LG is supposed to have done, the LG has ticked off the list and signed it to say 'Yes we have done this' and the auditor has sent in the bill. There are important errors the accounts affecting hundreds of millions of dollars of ratepayer value that have gone undetected.

This is clearly not good enough and the Act needs to set more rigorous standards for audit. Removal of red tape often removes accountability and in the case of the LG Act this has gone too far.

5.8 Public Notices Policy Position

Public notices are an important and necessary element of transparency, important enough that accountability for compliance requires enforcement.

The Public Notice policy position needs sanctions or penalties that may apply for non-compliance. It does not address the consequences of non-compliance in any way. It is both logical and necessary that related decisions should be automatically deemed to be void and unenforceable where the notice provisions are not strictly implemented.

Including this provision in the Act would mean that the matter could be handled by DLGSC instead of the time cost and inconvenience of going through the courts.

6 Efficient

6.1 Measuring performance

Efficiency can only be attained through measurement of performance and ongoing monitoring for improvement. The fact that rate increases over the past decade have been far larger than inflation suggests that efficiency is not improving, but in fact deteriorating. This suits the CEOs who appear to be reimbursed in proportion to the annual turnover of their LGs and so are incentivised to spend more.

There are some measures of finance published on My Council and these are available for comparison.

This system needs to be examined to ascertain whether the right parameters are being measured to ensure efficient financial management, and extended to the operations of LG. Measures of the efficiency of LG activities must be published for comparison, for goal setting, and for setting executive KPIs. Such measures should include unit performance measurement or unit costs of garbage collection, of recycling, road maintenance (cost per sq m of tarmac?), park maintenance (cost per Ha of parkland?).

It would also be wonderful to examine that massive cost bucket called "Governance". What do ratepayers get for their money and how should costs be contained, rather than relying on the simple remedy of raising the rates.

6.2 Beneficial Enterprises

LGs love to advocate the potential for reduction on rates if only they were allowed to run more businesses. Unfortunately this is not the case and there are sound reasons for this.

LG employees work in the LG sector because, simply put, they are not entrepreneurs. If they were entrepreneurial they would be out in the private sector making good money.

Private enterprise is very efficient largely because entrepreneurs invest their own money and put this at risk in order to obtain good returns. LG does not invest its own money, but that of ratepayers, and so does not have this very important incentive to contain costs and manage efficiently, so will never produce good returns. Ratepayers would rather not have ratepayer funds put at risk by those who have no incentive to make best use of them.

To maximise efficiency in LG, it is neccesary that LG stick to the work that it is good at – the traditional services to community where skills and techniques have been evolved over many decades – waste, roads, services.

LG must avoid any attempt to compete with its own ratepayers, firstly because LG is there to regulate, not to compete; secondly because it creates an uneven competitive situation where LG competes with its ratepayers; thirdly because LG does not have the skills or experience to compete successfully; fourthly because LG should not have the right to put ratepayer funds at risk, but rather has an obligation of stewardship; fifthly, it creates an increased incentive for corruption in LG.

To improve efficiency, LG must stick to its knitting.

7 Modern

Modern management requires Transparency, Participation, Accountability, and Efficiency. Provided the shortfalls in these things are made good by the Review, there is no need to legislate for Modernity itself. It follows from the first four review themes.

8 Enabled

This topic suggests changes to Act to enable LG to invest in and operate beneficial enterprises. For the reason stated above, LG should not invest in for-profit businesses as this places ratepayer assets at an unacceptable level of risk. LG should be enabled only to invest in not-for-profit enterprises that provide necessary services to the community.

Investment of LG funds should be guided by conservative principles which should be set out in the Act. LG is not an entrepreneurial institution, it is a government, the steward of public assets and should invest accordingly.

The appropriate degree of autonomy for LG must be gauged by the principle of LG as a democratic government. This means that it exists to serve its community and not the other way round. The current Review has been called because of the widespread perception that LG is more concerned with serving its own interests than those of the community. This self-serving culture comes with a culture of entitlement and the often vindicated perception that LG is corrupt.

Corruption is enabled by power. The current Act has granted too much power to LG administrations and the review is necessary to check this and to restore appropriate levels of Transparency, Community Participation, Accountability of LG administration and Efficiency in its stewardship of ratepayer funds and assets.

9 Conclusions

It is clear that despite the good intentions for reform expressed in the original Consultation Paper, the review to date is simply not addressing the problems that have brought about the need for the review in the first place.

The underlying problem is the imbalance of power between LG administrations and elected members, whereby elected members are constrained in their ability to represent their communities.

With considerable power and autonomy, but very little accountability, LG Administrations have developed a culture of entitlement which is evident to the community who have responded with increasing frustration and conflict.

The LG administration representative bodies WALGA and LGPro do not represent the community, but explicitly represent the constituencies of LG administration and LG management. The Partnership agreement between these interested parties and DLGSC compromises the DLGSC and the conflict of interest makes it unsuitable to manage any review of the Act.

The evidence to date shows clearly that the Review is prioritising changes to the Act in the reverse order from what is required to address the problem. The Review policy positions from Phase 1 all serve to either reduce transparency, add to the administration power or reduce the power of elected members, hence their ability to adequately represent their communities.

This direction is counterproductive and can only lead to a worse Act and aggravated problems.

To address this it is firstly necessary that the Community has adequate representation on any Review panel or reference board.

Secondly it is necessary that the review be carried out by a body that is independent of the compromised DLGSC. A royal Commission of independent parliamentary committee might have such independence.