

Our Ref: 05-034-01-0007

29 March 2019

Mr Duncan Ord  
Director General  
Department of Local Government, Sport and Cultural Industries



Dear Mr Ord,

### **Local Government Act Review Submission**

Please find attached the Western Australian Local Government Association's submission to the Local Government Act Review, unanimously supported at the State Council meeting of 27 March 2019.

The Local Government sector participated in a comprehensive process leading up to the adoption of the advocacy positions, as detailed below:

#### Facilitated Workshops

WALGA partnered with the Department of Local Government, Sport and Cultural Industries to deliver facilitated workshops across all WALGA Zones, held throughout October and November 2018.

Approximately 500 Elected Members and senior administrators attended 19 workshops held in each of the 17 WALGA Zones.

#### Future of Local Government Statewide Forum

WALGA, LG Professionals and the Department of Local Government, Sport and Cultural Industries partnered in hosting the Future of Local Government Forum. The Statewide Forum was held at Curtin University on Wednesday 30<sup>th</sup> January 2019 and was attended by 230 participants.

#### Sector Feedback

A total of 73 member Local Governments provided responses to the WALGA consultation process, either through an individual response or a Zone/regional group response. 42 individual Local Governments responded with additional collective responses from 3 WALGA Zones representing a further 31 member Local Governments.

WALGA's submission follows the following format:

- Key Principles
- Detailed Discussion Paper themes of:
  - Agile
  - Smart
  - Inclusive



---

## **LOCAL GOVERNMENT ACT REVIEW PRINCIPLES**

1. That State Council endorse a ‘Principles over Prescription’ approach to the Local Government Act Review and actively promote the benefits of the general principles listed below, intended to safeguard against the new Local Government Act becoming overly prescriptive:
  - (a) Uphold the General Competence Principle currently embodied in the Local Government Act;
  - (b) Provide for a flexible, principles-based legislative framework;
  - (c) Promote a size and scale compliance regime;
  - (d) Promote enabling legislation that empowers Local Government to carry out activities beneficial to its community taking into consideration the Local Governments role in creating a sustainable and resilient community through;
    - i. Economic Development
    - ii. Environmental Protection
    - iii. Social Advancement;
  - (e) Avoid red tape and ‘de-clutter’ the extensive regulatory regime that underpins the Local Government Act; and
  - (f) The State Government must not assign legislative responsibilities to Local Governments unless there is provision for resources required to fulfil the responsibilities.
2.
  - (a) Support the continuance of the Department of Local Government, Sport and Cultural Industries as a direct service provider of compliance and recommend the Department fund its capacity building role through the utilisation of third party service providers.
  - (b) Call on the State Government to ensure there is proper resourcing of the Department of Local Government, Sport and Cultural Industries to conduct timely inquiries and interventions when instigated under the provisions of the Local Government Act 1995.

## THEME - AGILE

### BENEFICIAL ENTERPRISES

<b>Position Statement</b>	The Local Government Act 1995 should be amended to enable all Local Governments to establish Beneficial Enterprises (formerly known as Council Controlled Organisations).
---------------------------	---

### FINANCIAL MANAGEMENT

#### No Rate Capping

<b>Position Statement</b>	The Local Government sector opposes rate capping or any externally imposed limit on Local Government's capacity to raise revenue as appropriately determined by the Council.
---------------------------	--

#### Financial Management Review – Part 6

<b>Position Statement</b>	Conduct a complete review of the Financial Management provisions under Part 6 of the Local Government Act and associated Regulations
---------------------------	--

#### Tender Threshold

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

#### Procurement

<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.
---------------------------	---

#### 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.
---------------------------	--

#### Power to Borrow: Section 6.20(2)

<b>Position Statement</b>	That Section 6.20(2) of the Local Government Act, requiring one month's public notice of the intent to borrow, be deleted.
---------------------------	--

### Restrictions on Borrowings: Section 6.21

<b>Position Statement</b>	That Section 6.21 of the Local Government Act 1995 should be amended to allow Local Governments to use freehold land, in addition to its general fund, as security when borrowing.
---------------------------	--

### Member Interests - Exemption from AASB 124

<b>Position Statement</b>	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).
---------------------------	--

### Financial Ratios

<b>Position Statement</b>	<p>That Regulation 50 of the Local Government (Financial Management) Regulations be reduced and amended to the following financial ratios :</p> <ul style="list-style-type: none"> <li>- <i>Operating Surplus ratio</i></li> <li>- <i>Net Financial Liabilities ratio</i></li> <li>- <i>Asset Renewal Funding Ratio</i></li> </ul> <p>Target ratios for Local Governments be considered in line with the size and scale principle. A review of the formulas for the ratios be undertaken.</p>
---------------------------	---

### Building Upgrade Finance

<b>Position Statement</b>	That WALGA advocate for amendments to the Local Government Act that enable a Building Upgrade Finance mechanism in Western Australia.
---------------------------	---

### Energy Infrastructure Service Charge

<b>Position Statement</b>	That WALGA advocate for amendment to Regulation 54 of the Local Government (Financial Management) Regulations to include 'renewable energy infrastructure' as a prescribed charge.
---------------------------	--

## **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.
---------------------------	--

### **Rating Exemptions – Section 6.26**

<b>Position Statement</b>	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 – Charitable Purposes: Section 6.26(2)(g)**

<b>Position Statement</b>	<ol style="list-style-type: none"> <li>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; and</li> <li>2. Either:           <ol style="list-style-type: none"> <li>(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</li> <li>(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.</li> </ol> </li> </ol>
---------------------------	--

### **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.
---------------------------	---

### **Rating Restrictions – State Agreement Acts**

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

### Basis of Rates: Section 6.28

<b>Position Statement</b>	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

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

### 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'.
---------------------------	---

### Recovery of Mining Tenement Rates

<b>Position Statement</b>	Mining tenements should not be renewed by the appropriate State Agency until the Local Government rates are paid.
---------------------------	---

## THEME - SMART

### ADMINISTRATIVE EFFICIENCIES

#### Simple / Absolute Majority Decisions

<b>Position Statement</b>	That WALGA support a review of those decisions requiring simple and absolute majority.
---------------------------	--

#### Notification of Affected Owners: Section 3.51

<b>Position Statement</b>	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: a) 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 b) to specify that only significant, defined categories of proposed road works require local public notice under Section 3.51 (3) (a).
---------------------------	--



### Control of Certain Unvested Facilities: Section 3.53

<b>Position Statement</b>	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.
---------------------------	---

### Disposal of Property and Commercial Enterprises: Section 3.58 and 3.59:

<b>Position Statement</b>	That WALGA include in the Local Government Act 1995 Review submission, a review of Section 3.58 'Disposing of Property' and Section 3.59 'Commercial Enterprises' to be redrafted to reflect current commercial and contractual practices in Western Australia.
---------------------------	---

### Proposal to the Advisory Board, Change of Boundaries or Amalgamation: Schedule 2.1

<b>Position Statement</b>	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.
---------------------------	--

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

<b>Position Statement</b>	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.  For Local Governments with total electors of less than 500, then the requirement be a minimum of 25% of electors.
---------------------------	---

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

<b>Position Statement</b>	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.  For Local Governments with total electors of less than 500, then the requirement be a minimum of 25% of electors.
---------------------------	---

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

<b>Position Statement</b>	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.
---------------------------	---

### Regional Local Governments: Part 3, Division 4

<b>Position Statement</b>	The compliance obligations of Regional Local Governments should be reviewed.
---------------------------	--

### Local Government (Long Service Leave) Regulations

<b>Position Statement</b>	That a review be undertaken of the Local Government (Long Service Leave) Regulations to identify opportunities to amend and improve the Regulations to address ambiguity and readability to enable consistent interpretation and application of a key sector entitlement.
---------------------------	---

### Audit Committee

<b>Position Statement</b>	Remove the requirement to hold a separate Audit Committee meeting if all Elected Members are appointed to the Audit Committee.
---------------------------	--

## COMPLAINTS MANAGEMENT

### Querulous, Vexatious and Frivolous Complainants

<b>Position Statement</b>	<p>That a statutory provision be developed, permitting a Local Government to :</p> <ul style="list-style-type: none"> <li>• 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 <i>Parliamentary Commissioner Act 1971</i>.</li> <li>• 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.</li> <li>• Enable Local Government discretion to declare a member of the public a vexatious or frivolous complainant for reasons, including: <ul style="list-style-type: none"> <li>- Abuse of process;</li> <li>- Harassing or intimidating an individual, Elected Member or an employee of the Local Government in relation to the complaint;</li> <li>- Unreasonably interfering with the operations of the Local Government in relation to the complaint.</li> </ul> </li> </ul>
---------------------------	--



## **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.
---------------------------	--

### **Special Electors' Meeting: Section 5.28**

<b>Position Statement</b>	<p>That Section 5.28(1)(a) be amended:</p> <p>(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</p> <p>(b) to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise.</p> <p>For Local Governments with total electors of less than 500, then the requirement be a minimum of 25% of electors.</p>
---------------------------	---

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

<b>Position Statement</b>	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: Administration Regulation 10**

<b>Position Statement</b>	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.
---------------------------	---

### **Attendance at Council Meetings by Technology: Administration Regulation 14A**

<b>Position Statement</b>	That there be a review of the ability of Elected Members to log into Council meetings.
---------------------------	--

## INTERVENTIONS

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

<b>Position Statement</b>	<p>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.</p> <p>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.</p>
---------------------------	---

### **Disqualification Because of Convictions: Section 2.22**

<b>Position Statement</b>	<p>Add a new disqualification criteria which disqualifies a person from being an Elected Member if they have been convicted of an offence against the Planning and Development Act, or the Building Act, in the preceding five years.</p>
---------------------------	---

## **THEME - INCLUSIVE**

### COMMUNITY ENGAGEMENT

#### **Community Engagement Policy**

<b>Position Statement</b>	<p>That the Local Government Act 1995 include a requirement for Local Governments to adopt a Community Engagement Policy, with each Local Government to determine how to implement community engagement strategies.</p>
---------------------------	---

## ELECTIONS

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

<b>Position Statement</b>	<p>The Local Government Act 1995 should be amended to allow the Australian Electoral Commission (AEC) and or any other third party provider (including a Local Government) to conduct postal</p>
---------------------------	--

### **Voluntary Voting: Section 4.65**

<b>Position Statement</b>	<p>Voting in Local Government elections should remain voluntary.</p>
---------------------------	--

**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.
---------------------------	---

**On-Line Voting**

<b>Position Statement</b>	That WALGA supports online voting.
<b>Position Statement</b>	That WALGA continue to investigate 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.
---------------------------	--

**Leave of Absence when Contesting State or Federal Election**

<b>Position Statement</b>	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.
---------------------------	---

**LOCAL LAWS**

<b>Position Statement</b>	WALGA Procedure for making local laws – Local Governments’ local laws generally affect those persons within its district. The requirement to give state-wide notice under subsection (3) should be reviewed and consideration being given to Local Governments only being required to advertise the proposed local law by way of local public notice.
	Eliminate the requirement to consult on Local Laws when a model is used.

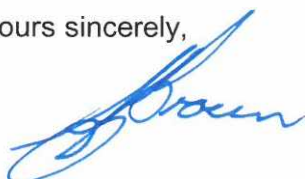
---

	Periodic review of local laws – consideration be given to review of this section and whether it could be deleted. Local Governments through administering local laws will determine when it is necessary to amend or revoke a local law in terms of meeting its needs for its inhabitants of its district. Other State legislation is not bound by such periodic reviews, albeit recognising such matters in subsidiary legislation are not as complex as matters prescribed in statute.
	Introduce certification of Local Laws by a legal practitioner in place of scrutiny by Parliament’s Delegated Legislation Committee.

Thank you for the opportunity to provide comment and we look forward to continued participation in the Local Government Act Review and the future development of a new Local Government Act.

If you have any queries please contact me directly on [REDACTED]

Yours sincerely,



**Tony Brown**  
**Executive Manager, Governance and Organisational Services**

cc Minister for Local Government, Heritage, Culture and the Arts