



Department of  
**Local Government, Sport  
and Cultural Industries**



Local Government Act 1995 review  
Agile • Smart • Inclusive

# ***Local Government Act 1995*** **Review**

## **Agile • Smart • Inclusive – Local governments for the future**

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Phase 1: Consultation Paper

8 November 2017

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# 1. Relationships between council and administration

## Introductory questions

- 1) Would you like your submission to remain anonymous?  
No
- 2) Postcode:  
6052
- 3) Who are you submitting on behalf of?  
Yourself
- 4) Local government name:
- 5) Organisation name
- 6) Are you a:  
Elected member

## Defining the roles of council and administration: Guidance questions

- 7) How should a council's role be defined? What should the definition include?

as it currently is.

It is useful to note that the role of a board of directors and a council are nigh identical. Case in point, BHP state that the Boards role is to represent the shareholders and be accountable to them for creating and delivering value through the effective governance of the Group.

BHP also state that governance influences:

- how the objectives of the Company are set and achieved,
- how risk is monitored and assessed and
- how performance is optimised.

This similarity in function should be maintained.

- 8) How should the role of the CEO and administration be defined?

- 9) What other comments would you like to make on the roles of council and administration?
- 10) Are there any areas where the separation of powers is particularly unclear?  
Yes
- 11) How do you propose that these are improved?

Role of Mayor - s2.8 (1) (f) liaises with the CEO on the local government's affairs and the performance of its functions.

What does liaise mean? Google suggests - "cooperate on a matter of mutual concern."

What extent does 'cooperate' go to?

I believe this looseness in wording is a concern and provides an opportunity for a Mayor to morph into a sole decision maker.

### **Improving relationships between council and administration: Guidance question**

- 12) Do you have any other suggestions or comments on this topic?

This doesn't need to be over-thought. Separation of powers is a pretty clear line for even the most 'carefree' elected member to understand. All CEO's should obviously ensure there is a suitable induction for new Elected Members and this induction needs to ensure separation of powers is a major focus.

## 2. Training

### 2.1 Competencies required to be an elected member

#### Elected member competencies: Guidance questions

- 13) What competencies (skills and knowledge) do you think an elected member requires to perform their role?

Common sense & and a willingness to apply themselves to the role.

- 14) Do these vary between local governments?

No

- 15) If so, in what way?

### 2.2 Funding training

#### Funding training: Guidance questions

- 16) Who should pay for the costs of training (course fees, travel, other costs)?

Either the State govt. or the local govt.

- 17) If councils are required to pay for training, should a training fund be established to reduce the financial impact for small and regional local governments?

No

- 18) Should contribution to such a fund be based on local government revenue or some other measure?

There should be no contribution. Each LG should cover their costs, or the State cover everyone's cost.

Do you have any other suggestions or comments on this topic?

These 'Funding training' questions should have come after 'Mandatory training' questions.

## 2.3 Mandatory training

### Mandatory training: Guidance questions

- 19) Should elected member training be mandatory?

No

- 20) Why or why not?

Is State or Federal govt training mandatory? Why should Local be any different?

In one breathe you claim to want to reduce red-tape, and in another you want to add to it.

- 21) Should candidates be required to undertake some preliminary training to better understand the role of an elected member?

Yes

- 22) Should this be Compulsory?

No

- 23) Should prior learning or service be recognised in place of completing training for elected members?

Yes

- 24) If yes, how would this work?

It is already recognised ... by the electorate before they make their voting decisions.

Why should the State govt now get involved?

- 25) What period should apply for elected members to complete essential training after their election?

It shouldn't occur.

## 2.4 Continuing professional development

### Continuing professional development: Guidance questions

26) Should ongoing professional development be undertaken by elected members?

No

27) If so, what form should this take?

This definitely should not occur, because at almost every council/committee meeting or workshop, elected members are learning new things.

### Training: Guidance question

28) Do you have any other suggestions or comments on training?

As someone who completed a B.Comm as a mature student, then an MBA, the Diploma in Local Government (elected members) and is now near completion of a graduate diploma in corporate governance, I value study. However consider it very inappropriate for the State to dictate elected members MUST do study. It will also discriminate against some portions of the community who may not be suited to further education.

Leave it to the electorate to decide who are their representatives.

And what are you going to do if someone doesn't pass their study or participate in any red-tape creating continuing professional development - kick them out? That would be the antithesis of democracy.

## 3. The behaviour of elected members

### 3.1 Current Situation

#### Codes of conduct: Guidance questions

29) Should standards of conduct/behaviour differ between local governments?

No

30) Please explain.

Key elements of appropriate behaviour should be uniform.

Which option do you prefer for codes of conduct and why?

The content of a code is partially prescribed in regulations, but is otherwise at the local government's discretion

31) How should a code of conduct be enforced?

Monetary fine &/or referral to Standards Panel.

### 3.2 Regulation of elected member conduct: rules of conduct

#### Streamlined rules of conduct: Guidance questions

32) Do you support streamlined Rules of Conduct regulations?

No

33) Why?

n/a

34) If the rules were streamlined, which elements should be retained?

35) Do you support a reduction in the time frame in which complaints can be made?

No

36) Is three months adequate?

No

### Revised disciplinary framework: Guidance questions

37) Do you support an outcome-based framework for elected members?

No

38) Why or why not?

It is too subjective, and as such will be open to appeals.

39) What specific behaviours should an outcomes based framework target?

No

### 3.3 Other matters recommended in the 2015-16 review

#### Application of the Rules of Conduct: Guidance question

- 40) Should the rules of conduct that govern behaviour of elected members be extended to all candidates in council elections?

Yes

- 41) Please explain.

Only complaints made during elections. If the complaint relates to a serving elected member, then it should not be confidential. You either believe in transparency or you don't; I do.

#### Offence Provisions: Guidance questions

- 42) Should the offence covering improper use of information be extended to former members of council for a period of twelve months?

Yes

- 43) Why?

12 months or longer.

Because in their role as councillor they became aware of confidential information.

- 44) Should this restriction apply to former employees?

Yes

- 45) Please explain?

Standard workplace conditions mean that former employees can not share confidential information.

#### Confidentiality: Guidance question

- 46) Is it appropriate to require the existence and details of a complaint to remain confidential until the matter is resolved?

Yes

47) Why?

Only complaints made during elections. If the complaint relates to a serving elected member, then it should not be confidential. You either believe in transparency or you don't; I do.

### 3.4 Reforms to the Local Government Standards Panel and the means to review alleged breaches of the Rules of Conduct Regulations

#### Sector conduct review committees: Guidance questions

48) What do you see as the benefits and disadvantages of this model?

I question the abilities of some neighbouring local government Cr's.

On one hand you are suggesting that Cr's need training just to perform their existing duties, on the other you are exploring giving them powers to determine an elected members conduct.

If you do go down this route, an option would be to only allow members with sufficient education to sit on the review committee. Rather than making education compulsory, provide a carrot.

49) What powers should the Conduct Review Committee have?

1. dismissing the complaint due to non-compliance
2. dismissing the complaint for being trivial, frivolous or vexatious or without substance
3. ordering a public apology
4. directing the complaint to the Standards Panel

50) In your opinion what matters should go directly to the Standards Panel?

If you go down the Review committee route, then none should go direct to Standards Panel.

51) Who should be able to be a member of a panel: elected members, people with local government experience, independent stakeholders?

Elected Members

52) Who should select the members for the pool?

The Minister.

53) How many members should there be on the Review Committee?

6

54) Are the proposed actions for the Review Committee appropriate?

Yes

55) If not, what do you propose?

### **Review of elected member non-compliance: Guidance questions**

56) Which of the options for dealing with complaints do you prefer? Why?

I'm not too fussed either way.

57) Are there any other options that could be considered?

Definitely do not explore allowing the Mayor/President to decide.

58) Who should be able to request a review of a decision: the person the subject of the complaint, the complainant or both?

Both

### 3.5 Sanctions and other Standard Panel matters

#### Mediation: Guidance question

59) Do you support the inclusion of mediation as a sanction for the Panel?

No

60) Why or why not?

Costly and time consuming.

#### Prohibition from attending council meetings: Guidance questions

61) Do you support the Panel being able to prohibit elected members from attending council meetings?

Yes

62) Why or why not?

Good idea. This should occur whenever there is a public censure.

Perhaps the panel could also instruct training in whatever WALGA course applies to the breach.

How many meetings should the Panel be able to order the elected member not attend?

Maximum 3.

63) Should the elected member be eligible for sitting fees and allowances in these circumstances?

No

64) Why

A financial penalty is appropriate. However how can this be implemented when some LG's make the payment annually in advance?

#### Compensation to the local government: Guidance questions

65) Do you support the Panel being able to award financial compensation to the local government?

No

66) Why or why not?

I don't really understand the question. Compensation for what?

67) What should the maximum amount be?

### Complaint administrative fee: Guidance questions

68) Do you support this option?

No

69) Why or why not?

Again, I'm not sure what this refers to as it does not relate to the text at the top of the webpage.

70) Do you believe that a complaint administrative fee would deter complainants from lodging a complaint?

Yes

71) Is this appropriate?

No

72) Would a complaint administrative fee be appropriate for a sector conduct review committee model?

No

73) Why or why not?

74) What would be an appropriate fee for lodging a complaint?

75) Should the administrative fee be refunded with a finding of minor breach or should it be retained by the Department to offset costs?

Yes

76) Why or why not?

### **Cost recovery to local government: Guidance questions**

77) Do you support the cost of the panel proceedings being paid by a member found to be in breach?

No

78) Why or why not?

Possibly, but it depends on how much it could be. I don't think it should be more than \$1,000.

### **Publication of complaints in the annual report: Guidance question**

79) Do you support the tabling of the decision report at the Ordinary Council Meeting?

Yes

80) Why or why not?

Transparency is good.

### **Tabling decision report at Ordinary Council Meeting: Guidance question**

81) Do you support this option?

Yes

82) Why or why not?

Transparency is good.

## 3.6 Elected member interests

### Elected member interests: Guidance questions

- 83) Should not-for-profit organisation members participate in council decisions affecting that organisation?

Yes

- 84) Why or why not?

You will not have a quorum on many items if you take this exemption away.

- 85) Would your response be the same if the elected member was an office holder in the organisation?

Yes

### Improving the behaviour of elected members: Guidance question

- 86) Do you have any other suggestions or comments on this topic?

Declarations of interest rules are a shambles and should be sorted out.

Our new CEO believes there is ambiguity over whether a declaration of interest needs to be disclosed for items where council is accepting a report. He's a smart guy, and if he thinks this then there is ambiguity. As such at our last meeting there were about 30 declaration of interest made, and, in my opinion, most shouldn't have.

The Dept. needs to state that if council is just accepting a report, then no dec of interest needs to be made on any links to groups within the report.

Furthermore, elected members should have the right to leave the room even for an impartial interest. The Dept. has previously come out saying that if its impartial the elected member should remain.

## 4. Local government administration

### 4.1 Recruitment and selection of local government Chief Executive Officers

#### Recruitment and selection of local government CEOs: Guidance questions

87) Would councils benefit from assistance with CEO recruitment and selection?

No

88) Why?

89) How could the recruitment and selection of local government CEOs be improved?

It can't.

The status quo works well.

90) Should the Public Sector Commission be involved in CEO recruitment and selection?

No

91) If so, how?

Oh please, why more bureaucratic red-tape?

92) Should other experts be involved in CEO recruitment and selection?

Yes

93) If so, who and how?

Council currently has the right to use a recruitment agent if they so wish.

94) What competencies, attributes and qualifications should a CEO have?

This could become a thesis.

Please don't start dictating what competencies, attributes and qualifications CEO's must have.

## 4.2 Acting Chief Executive Officers

### Acting CEOs: Guidance questions

95) Should the process of appointing an acting CEO be covered in legislation?

No

96) Why or why not?

The CEO is the sole employee of the council. They need to determine the appropriate method of employing their employee.

If the State govt. start getting involved then you may end up with the dysfunctional situation where the council does not get along with the CEO.

97) If so, who should appoint the CEO when there is a short term temporary vacancy (covering sick or annual leave for example)?

council

98) Who should appoint the CEO if there will be vacancy for an extended period (for example, while a recruitment process is to be undertaken)?

council

## 4.3 Performance review of local government Chief Executive Officers

### Performance review of local government CEOs: Guidance questions

99) Who should be involved in CEO performance reviews?

council

100) What should the criteria be for reviewing a CEO's performance?

Whatever the KPI's which council set are.

101) How often should CEO performance be reviewed?

6 monthly. But you don't need to legislate this.

102) Which of the above options do you prefer?

Leave it to the council.

103) Why?

104) Is there an alternative model that could be considered?

#### 4.4 Extension or termination of the Chief Executive Officer contract immediately before or following an election

##### **Termination or extension of CEO contract around an election: Guidance questions**

105) Would a 'cooling off' period before a council can terminate the CEO following an election assist strengthening productive relationships between council and administration?

No

106) What length should such a cooling off period be?

107) For what period before an election should there be a restriction on a council from extending a CEO contract?

3 months.

108) Should there be any exceptions to this?

No

## 4.5 Public expectations of staff performance

### Public expectations of staff performance: Guidance questions

109) Is greater oversight required over local government selection and recruitment of staff?

Yes

110) Should certain offences or other criteria exclude a person from being employed in a local government?

Yes

111) If so, what?

The normal stuff - theft, corruption etc

### Strengthening local government administration: Guidance question

112) Do you have any other suggestions or comments on this topic?

There was no free text box under the "Is greater oversight required over local government selection and recruitment of staff?" question, so I will use this.

Council should have the right to explore and investigate (should they see a need) of the LG recruitment. In my experience, when you get a director or

manager come across from a different LG, you normally get an influx of subordinates from the previous LG also getting jobs in the new LG.

Of greater importance is that the LG Act precludes council from participating in the appointment of all staff except for the CEO. This is contrary to Principle 12 of the Commonwealth Association for Corporate Governance Guidelines which states the board should at least “participate in the appointment of senior management. This is because “the board must have confidence in the management to implement its strategies, plans and policies. In this regard, the board owes its duty to the corporation and is thereby accountable to the owners of the corporation’s capital (shareholders) for the performance of the business enterprise.”

Simply put, council needs to be assured that the Director's are able to implement their strategic vision.

## 5. Supporting local governments in challenging times

### Remedial intervention: Guidance questions

- 113) Should the appointed person be a departmental employee, a local government officer or an external party?
- 114) Why?  
There shouldn't be one.
- 115) Should the appointed person be able to direct the local government or would their role be restricted to advice and support?
- 116) Please explain.
- 117) Who should pay for the appointed person?
- 118) Why?

### Powers of appointed person: Guidance question

- 119) What powers should an appointed person have?  
There shouldn't be one.

### Remedial action process: Guidance questions

- 120) Do you think the proposed approach would improve the provision of good governance in Western Australia?  
No
- 121) Please explain.  
Just create red-tape.

122) What issues need to be considered in appointing a person?

They need common sense and a practical understanding of local government.

**Supporting local governments in challenging times:  
Guidance question**

123) Do you have any other suggestions or comments on this topic?

Just give the Minister a simpler method to sack an entire council if he so wishes. Politically, the Minister would only use this power if a council was well off the rails.

The Minister could offer to appoint a person for remedial action if he thought the council worth saving.

## 6. Making it easier to move between State and local government employment

### **Transferability of employees: Guidance questions**

124) Should local and State government employees be able to carry over the recognition of service and leave if they move between State and local government?

125)

126) What would be the benefits if local and State government employees could move seamlessly via transfer and secondment?

More tax.

### **Making it easier to move between State and local government employment: Guidance question**

127) Do you have any other suggestions or comments on this topic?

## 7. Gifts

### 7.1 Simplifying the gift provisions

#### **A new framework for disclosing gifts: Guidance questions**

128) Is the new framework for disclosing gifts appropriate?

Yes

129) If not, why?

130) Is the threshold of \$500 appropriate?

Yes

131) If no, why?

132) Should certain gifts – or gifts from particular classes or people – be prohibited?

No

133) Why or why not?

134) If yes, what gifts should be prohibited?

#### **Excluding gifts received in a personal capacity: Guidance questions**

135) Should gifts received in a personal capacity be exempt from disclosure?

No

136) If yes, how could 'personal capacity' be defined?

137) Should there be any other exemptions from the requirement to disclose a gift over the threshold?

No

138) If so, what should these be? Please justify your proposal.

Definitely not the current "An electoral gift disclosable under the Elections Regulations".

### **Gifts: Guidance question**

139) Do you have any other suggestions or comments on this topic?

I like the simplicity of what is being proposed. I do fear though that developers may start offering \$500 to councillors.

## 8. Access to information

### 8.1 Public notices

#### Public notices: Guidance questions

- 140) Which general option do you prefer for making local public notices available?  
Option 5  
Why? Insisting on print is pointless nowadays; print should be optional.
- 141) Should the requirements for any notice in the Supplementary Information - Public Notices be changed?  
Yes
- 142) Please list and explain the reasons for the proposed change.
- 143) Could any of the notices in the Supplementary information be published on alternative websites?
- 144) Please provide details

### 8.2 Information available for public inspection

#### Information available for public inspection: Guidance questions

- 145) Using the following table, advise how you think information should be made available:

Provision	Documents	In person only	Website only	Both	Neither
Section 5.53	Annual Report Both Both				
Section 5.75 & 5.76	Primary and Annual returns – for Elected members Includes – sources of income Trusts Debts Property holdings. Interests and positions in corporations. Neither				
Section 5.87	Discretionary disclosures generally Website only				
Section 5.82	Gifts (already required to be on the website) Website only				
Section 5.83	Disclosure of travel contributions (already required to be on the website) Website only				
Elections Regulations 30H	Electoral gifts register Website only				
Section 5.98A	Allowance for deputy mayor or deputy president				

Website only

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Section  
5.100

Payments for certain  
committee members

Website only

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Functions  
and  
General  
Regulations  
17

Tenders register

Website only

---

Section  
5.94 &  
Administrati  
on  
Regulations  
29

Register of delegations  
to committees, CEO  
and employees

Website only

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Minutes of council,  
committee and elector  
meetings

Website only

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Future plan for the  
district

Website only

---

Annual Budget

Website only

---

Notice papers and  
agendas of meetings

Website only

---

Reports tabled at a  
council or committee  
meeting

Website only

---

Complaints register  
(concerning elected  
members)

Website only

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Contracts of  
employment of the CEO  
and other senior local  
government employees

Website only

---

Schedule of fees and  
charges

Website only

---

Proposed local laws

Website only

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Gazetted Local laws  
(and other law that has  
been adopted by the  
district)

Website only

---

Rates record

Neither

---

Electoral roll

Neither

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**Note:** There is no intention to amend the current limitations imposed by section 5.95 of the Act which limits the disclosure of certain information.

146) Should the additional information that is available to the public in other jurisdictions be available here?

147) If so which items?

148) How should they be made available: in person, website only or both?

149) Is there additional information that you believe should be made publicly available? Please detail.

1. Attendance register of elected members to council/committee meetings & workshops.

2. KPI's of CEO & Directors.

- 150) For Local Governments: How often do you receive requests from members of the public to see this information?
- 151) What resources do you estimate are involved in providing access in person (hours of staff time and hourly rate)?

### **Access to information: Guidance question**

- 152) Do you have any other suggestions or comments on this topic?

## 9. Available information

### 9.1 Expanding the information provided to the public

#### Expanding the information provided to the public: Guidance questions

153) Which of these options do you prefer?

Option 1: Status Quo

154) Why?

155) In the table below, please indicate whether you think the information should be made available, and if so, whether this should be required or at the discretion of the local government:

Proposal	Should this be made available: No, optional, required?
Live streaming video of council meetings on local government website	Optional
Diversity data on council membership and employees	Not Required
Elected member attendance rates at council meetings	Required
Elected member representation at external meetings/events	Required
Gender equity ratios for staff salaries	Not Required
Complaints made to the local government and actions taken	Optional
Performance reviews of CEO and senior employees	Optional
Website to provide information on differential rate categories	Required

Proposal	Should this be made available: No, optional, required?
District maps and ward boundaries	Required
Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission.	Optional
Financial and non-financial benefits register	Required

156) What other information do you think should be made available?

### Expanding the information available to the public: Guidance question

157) Do you have any other suggestions or comments on this topic?

Certain Cr's use social media (ie facebook) to create community groups. It should be disclosed if a Cr has a page role on any social media pages. Currently it is open to abuse.

<https://perthvoiceinteractive.com/2017/09/29/maylands-mystery/>

## Defining red tape: Guidance questions

158) Which regulatory measures within the Act should be removed or amended to reduce the burden on local governments? Please provide detailed analysis with your suggestions.

a) Briefly describe the red tape problem you have identified.

"Local government with wards to review periodically" is a waste of time. You insist on a review, yet council can have whatever outcome they want. Just leave it to the council to decide if they want to do a review.

Why do you need a poll of electors to change the Mayor election from a popular vote to a council vote ?!

b) What is the impact of this problem? Please quantify if possible.

c) What solutions can you suggest to solve this red tape problem?

159) Which regulatory measures within the Act should be removed or amended to reduce the burden on the community? Please provide detailed analysis with your suggestions.

a) Briefly describe the red tape problem you have identified.

b) What is the impact of this problem? Please quantify if possible.

c) What solutions can you suggest to solve this red tape problem?

## 10.1 Potential red tape reductions

### Special majority: Guidance question

160) Should the provisions for a special majority be removed?

No

161) Why or why not?

Removing it isn't reducing red tape.

### Senior employees: Guidance questions

162) Is it appropriate that council have a role in the appointment, dismissal or performance management of any employees other than the CEO? Why or why not?

It is imperative that council has the faith that senior management (directors) have the abilities to fulfill council's strategic vision.

Principle 12 of the Commonwealth Association for Corporate Governance Guidelines which states the board should at least "participate in the appointment of senior management. This is because "the board must have confidence in the management to implement its strategies, plans and policies. In this regard, the board owes its duty to the corporation and is thereby accountable to the owners of the corporation's capital (shareholders) for the performance of the business enterprise."

163) Is it necessary for some employees to be designated as senior employees?

No

164) If so, what criteria should define which employees are senior employees?

Director level.

### Exemption from accounting standard AASB124 - Related party disclosures: Guidance questions

165) Are the existing related party disclosure provisions in the Act sufficient without the additional requirements introduced by AASB 124?

No

166) Why or why not?

It is too confusing.

## Disposal of property: Guidance questions

167) The threshold for trade-ins was set originally to \$50,000 in 1996 and raised to \$75,000 in 2015. Should that threshold be raised higher,

Yes

168) if so how high?

\$250,000

169) Should the threshold remain at \$75,000 but with separate exemptions for specific types of equipment, for example plant?

No

170) The general \$20,000 threshold was put in place in 1996 and has not been amended. Should the threshold be raised higher than \$20,000?

Yes

171) If so, what should it be and why?

\$100,000

172) Would raising these thresholds create an unacceptable risk that the items would not be disposed of to achieve the best price for the local government?

No

173) Is there an alternative model for managing the disposal of property? Please explain.

Council will always seek the best return for ratepayer assets unless corruption is involved.

## Reducing red tape: Guidance question

174) Do you have any other suggestions or comments on this topic?



## 11.1 Risks and benefits of borrowing

### Regional subsidiaries: Guidance questions

175) Which option do you prefer?

Option 1: Status quo

176) Should regional subsidiaries be allowed to borrow money other than from the member councils?

Option 1: Status quo

177) Why or why not?

178) If a regional subsidiary is given the power to borrow directly, what provisions should be put in place to mitigate the risks?

### Regional subsidiaries: Guidance question

179) Do you have any other suggestions or comments on this topic, including on any other aspect of the *Local Government (Regional Subsidiaries) Regulations 2017*?

### Local Government Act review: Guidance question

180) You are invited to make comment and put forward suggestions for change on other matters which have not been covered in this paper.