

LOCAL GOVERNMENT ACT 1995 – REVIEW

DEPARTMENT OF LOCAL GOVERNMENT, SPORT AND CULTURAL INDUSTRIES PHASE ONE: CONSULTATION PAPER

Defining the roles of council and administration: Guidance questions

Q1 – 4 The current role statements are considered reasonable and have withstood the test of time.

Problems occur when people do not comply with the requirements of their role as prescribed by the Act. Creating more prescription around role statements will do nothing to address non-compliance.

Improving relationships between council and administration: Guidance question

Q5 An effective system for dealing quickly and efficiently with people who deviate from their prescribed roles would assist.

Elected member competencies: Guidance questions

Q6 – 7 The operations of large local governments are considerably more complex than those of local governments with limited capacity. Consequently, the competencies required to oversee a large local government are likely to be greater.

Funding training: Guidance questions

Q8 – 9 Local governments should pay the costs of training for Elected Members. A training fund is considered the most appropriate method for ensuring that all local governments provide adequate training. Revenue would be an obvious basis to determine relative contributions to a training fund; but with a cap at the upper end to ensure that large local governments do not pay an exorbitant amount for elected member training.

Mandatory training: Guidance questions

Q10 – 13 The City provides tailored training to newly elected members and supports ongoing training for more experienced elected members.

Training is critical for all areas of human activity, including being an elected member.

The benefits of mandatory training are questionable, as people cannot be forced to learn. That said, if training were to be mandatory, this should only be for new elected members without experience in local government. Such training should be undertaken within the first few months of being elected.

Continuing professional development; Training : Guidance questions

Q14 – 16 Elected members should be committed to training; and continuing professional development opportunities should be available.

Codes of conduct: Guidance questions

Q17 – 19 Yes, codes should differ in response to local circumstances as local governments are separate and independent entities. That said, some core elements should apply to all local governments and these are the matters included in the Rules of Conduct. It is the Rules of Conduct which should be enforced in an efficient and timely way.

Streamlined rules of conduct: Guidance questions

Q20 – 22 The City provided extensive comments on a Departmental review of the Rules of Conduct recently. The current Rules are broadly supported if amendments are made in line with the recommendations from the previous Departmental review. A reduction in the time frame to make complaints is considered appropriate and three months appears reasonable.

Revised disciplinary framework: Guidance questions

Q23 - 24 The City previously supported the Departmental proposals to improve the Rules of Conduct. These changes are considered preferable to the establishment of a new disciplinary system.

Application of the Rules of Conduct: Guidance question

Q25 Yes, in accordance with the outcomes of the 2015/16 review of the Rules of Conduct.

Offence Provisions: Guidance questions

Q26 – 27 Yes, in accordance with the outcomes of the 2015/16 review of the Rules of Conduct.

Confidentiality: Guidance question

Q28 Yes, in accordance with the outcomes of the 2015/16 review of the Rules of Conduct.

Sector conduct review committees: Guidance questions

Q29 – 35 No, the Department should not “off-load” its current responsibilities to Sector Conduct Review Committees because the current system is too slow and working ineffectively. It should seek to rectify the current system by implementing the Departmental review recommendations made in 2015/16.

Review of elected member non-compliance: Guidance questions

Q36 – 38 The Standards Panel option is preferred but with the poor performance of the Standards Panel being addressed by the implementation of the recommendations proposed in the 2015/16 review. Both the complainant and the person complained about should be able to request a review of a decision.

Mediation: Guidance question

Q39 Yes, mediation could assist if an issue was identified early enough. This was recommended in the 2015/16 review.

Prohibition from attending council meetings: Guidance questions

Q40 – 42 Suspension was not a sanction recommended in the 2015/16 review and, consequently, it is not supported. The Standards Panel is designed to deal with behaviours which are at the lower end of the scale and a breach should not prevent the elected member from representing their community.

Compensation to the local government: Guidance questions

Q43 - 44 Yes, financial penalties were recommended in the 2015/16 review.

Complaint administrative fee: Guidance questions

Q45 – 49 This was not recommended in the 2015/16 review and is not supported. If implemented, the fee set is unlikely to be large or it would unreasonably prevent people using the system. A low fee is considered unlikely to reduce the number of complaints.

Cost recovery to local government: Guidance questions

Q50 Yes, financial penalties were recommended in the 2015/16 review.

Publication of complaints in the annual report: Guidance question

Q51 No, it is up to the complaints body, the Standards Panel, to publish the decision.

Tabling decision report at Ordinary Council Meeting: Guidance question

Q52 No, it is up to the complaints body, the Standards Panel, to publish the decision.

Elected member interests: Guidance questions

Q53 – 54 The impartiality provisions adequately cover this matter.

Improving the behaviour of elected members: Guidance question

Q55 No further comment.

Recruitment and selection of local government CEOs: Guidance questions

Q56 – 60 CEO recruitment would benefit from the guidance and support of an independent authority such as the Public Sector Commission.

Acting CEOs: Guidance questions

Q61 – 63 Arrangements for appointing acting CEOs for period of up to one year should be left to the individual local government and not prescribed in legislation.

Performance review of local government CEOs: Guidance questions

Q64 – 68 CEO performance reviews would benefit from the guidance and support of an independent authority such as the Public Sector Commission. The City of Gosnells currently uses an independent third party for this role. A performance review should be conducted as often as is necessary, but at least once per year.

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

Q69 – 71 This may be an issue for some Local Governments. Involving the Public Sector Commission in the review and performance review process will help to prevent unreasonable actions.

Public expectations of staff performance: Guidance questions

Q72 – 73 The City of Gosnells conducts extensive checks on staff before employment. It is not considered necessary that such requirements be legislated. A guideline from the Department would be sufficient.

Strengthening local government administration: Guidance question

Q74 No further comment.

Remedial intervention; Powers of appointed person; Remedial action process: Guidance questions

Q75 – 81 These questions relate to the bigger picture of differentiating between local governments based on their capabilities. Suitable arrangements to differentiate should be determined as quickly as possible.

Transferability of employees; Making it easier to move between State and local government employment: Guidance questions

Q82 – 84 It is possible to move between sectors now if employees are motivated. Legislating for alignment is considered unnecessary administration and red tape.

A new framework for disclosing gifts: Guidance questions

Q85 – 90 The new framework developed by the gifts working group is supported. (Note: I was on this working group!)

Excluding gifts received in a personal capacity: Guidance questions

Q91 – 94 Yes. It should be defined in accordance with the current definition in the Rules of Conduct regulations about doing business with a local government.

Gifts: Guidance question

Q95 No.

Public notices: Guidance questions

Q96 – 99 The Act should require electronic notices. It should be left to the discretion of each local government as to whether a print notice is given. There is no guarantee that newspapers will be around in ten years' time, based on the rapid expansion of digital communication. The Act should not mention a specific form of electronic technology. Mentioning a specific technology will stifle innovation and prevent a local government from taking advantage of the advancements which are continually occurring in the digital landscape and the changes in public preferences within this landscape.

Information available for public inspection: Guidance questions

Q100 All items available to the public should be made available electronically with the exception of contracts for senior employees. Such contracts are not made available for Directors General of State Government departments and it is considered inappropriate for the State Government to apply this provision to local government but not to its own senior staff.

Q101 – 104 Local governments are highly transparent in their operations; indeed, much more so than decision making at the State and Commonwealth Government levels. The introduction of new regulations for additional transparency measures are not considered necessary.

Expanding the information provided, and available, to the public: Guidance questions

Q105 – 108 It should be up to individual local governments to respond to their communities. If further accountability and transparency requirements are desired, they should apply to large local governments with capacity rather than smaller local governments with limited capacity.

Defining red tape: Guidance questions

Q109 – 110 The changes the City of Gosnells is seeking to the current Act are outlined in the attachment. This provides the policy change desired and the rationale for the change. Many of the suggested changes relate to red tape, such as the constraining Long Service Leave Regulations.

Special majority: Guidance question

Q111 Yes, the special majority requirement should be abolished. The current absolute majority provisions are considered adequate.

Senior employees: Guidance questions

Q112-113 The current provisions were designed as a compromise and they are considered to operate effectively in this space.

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

Q114 Yes. The previous provisions were considered sufficient and the new requirements create red tape. They should be dropped.

Disposal of property: Guidance questions

Q115 – 119 The Department needs to adopt a practice of changing monetary values regularly in line with inflation. It is inappropriate that 1996 values are used over 20 years later.

Reducing red tape: Guidance question

Q120 See attachment for suggestions.

Regional subsidiaries: Guidance questions

Q121 – 125

It makes no sense to prevent regional subsidiaries from borrowing. How can a group of local governments establish a waste transfer facility through a regional subsidiary if the subsidiary itself is not allowed to borrow? Option three is preferred.

Local Government Act review: Guidance question

Q126

See attachment for suggestions.

DRAFT

Attachment 1

City of Gosnells submission to WALGA

DRAFT

Local Government Act Review - Council submission to WALGA

Section of Legislation	Title	Policy Change	Rationale for Change
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1.7 (1)(a) (2)(a) + 1.8

Local and Statewide Public Notice

Delete newspaper requirement.
Insert requirement to publish on website.

When the Act was introduced, the internet hardly existed. The internet and websites are the main source of information about local government now. Advertising on a local government's website makes the information available to anyone

2.4A

New Provision - Differentiating Between Local Governments

Insert a new provision to differentiate between local governments based on capacity

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.

New Provision - Mandatory Training

Training is critical for all areas for human activity, including being a local government elected member. Elected Members should be committed to training and continuing Professional Development opportunities should be available. The sector would be best served with multiple training providers and with training provided in local areas rather than centrally. The benefits of mandatory training are questioned as a person cannot be forced to learn.

New Provision	Stand down when contesting State or Federal Election	Amend as per suggestion (b) in the Discussion Paper	
2.22 (1)	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
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

3.50B	New Provision - Closure of Bridge for Repairs	Allow a bridge to be closed for urgent repairs and maintenance without notice, even if it will have significant adverse effects on users	The closure of a bridge will often have significant adverse effects on users. However, bridges may need to be 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	Amend as per Position Statement	
3.53	Control of Certain Unvested Facilities	Delete provision as per Position Statement's suggestion	
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
3.66	Regional Local Governments	Reduce compliance burden on regional local governments in parallel with the proposal to differentiate between local governments	

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.
4.65	Voluntary Voting	Maintain current policy as per Position Statement	
4.88 (1)(b)	Electoral Offence: Misleading, False or Defamatory Statements	Amend to make 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.

5.18
+ 5.46
+5.88

Registers

Delete the word 'register' and replace it with 'record'

A register gives the impression of a listing in a book whereas, today, using computerised systems, local governments will keep records on servers which can be searched electronically.

5.27

Electors' General Meetings

Delete requirement for general electors' meetings as per Position Statement

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.

5.28 (1)

Electors' Special Meetings

Increase the number of people required to convene a special electors' meeting to 500 from 100

It is too easy to gain 100 signatures to convene special electors' meetings in large local governments

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 or until after the next Ordinary Local Government Election, whichever happens first, unless Council determines otherwise.

This allows people to have their say but prohibits people calling special electors' meetings too regularly

5.36A	New Provision - Public Sector Commission Role	Insert a new section which would require the Public Sector Commission to guide and support local governments in CEO recruitment and performance review	CEO recruitment and performance review would benefit from the guidance and support of an independent authority such as the Public Sector Commission
5.37 (2)	Senior Employees	Delete the provision as per suggestion in the Discussion Paper	While the deletion of the legislative provision is supported, there needs to be close liaison between a CEO and the Council in the appointment and dismissal of senior staff
5.38	Annual Review of Employee Performance	Delete the requirement for annual performance reviews for staff other than the CEO	This provision was introduced at a time when the regular performance review of staff was a new concept. It is no longer needed in such a strict form
5.41	Functions of CEO	Insert a requirement for the CEO to be responsible for establishing a system for the performance review of all other staff	A consequential amendment following amendment of S5.38 which will bring the legislation up to date
5.82	Gifts and	Harmonise the gift/contribution to travel provisions in all areas of the legislation and exempt gifts given in a personal capacity. The dot points in the Discussion Paper are supported	The gift provisions are complicated and confusing. Establishing one threshold level which applies in all places will bring clarity and the provisions should focus on gifts from people requiring a decision from, or likely to require a decision from, the local government
+ 5.83	Contributions to Travel		

5.94	Public Inspection of Local Government Information	Amend this section to require the information to be available online and allow the public to attend a local government's office to inspect, if they so wish	The advent of the online world enables this information to be provided more easily and accessibly than by visiting a local government's offices
Part 5 Division 9	Conduct of Certain Officials	Make amendments in accordance with WALGA's Position Statement, with the inclusion of the word 'timely' in the second statement	The Department undertook extensive work to improve these provisions and the associated Rules of Conduct regulations
+ Rules of Conduct Regulations			
New Provision	Vexatious and Frivolous Complainants	Amend as per suggestions in the Discussion Paper	
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 and supplying food and drink at venues.

Allow local governments to set and amend fees and charges for small scale goods and services outside of the current requirements of the Act

It is inappropriate 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. This is in keeping with WALGA's Position Statement.

6.20 (2)

Power to Borrow

Amend as per suggestion in the Discussion Paper

6.21 (1)(b)

Restrictions on
Borrowing

Allow local governments to give security over freehold land as well as general purpose grants

To reflect the fact that borrowings are often made against freehold land and a local government should be able to borrow against such land

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)(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.

**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 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 land banking 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 so that the standard rate payment is in six
equal instalments throughout the year with no
single rate notice issued unless requested

The Water Corporation moved to this system of
billing several years ago for water rates. It
eliminates the need for the Water Corporation to
send out one very large rate bill and minimises
negative public response. As this system has
worked well for the Water Corporation, it will work
well for the local government sector. Local
governments would still retain the option of
providing other payment options. A six equal
instalment option would further smooth bills for
ratepayers.

6.56

Recovery of
Rates in Court

Amend as per suggestion in the Discussion Paper

New Proposal

Stand Down
Provisions

More clarification is required in relation to this
proposal before an informed response can be
provided. For instance, what type of investigation
would trigger the use of the stand down provision?
It is also noted that a person is presumed innocent
until found guilty.

9.13 (6)	Onus of Proof	Amend as per suggestion in the Discussion Paper	
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	The current number is considered too small
Schedule 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	The current number is considered too small
Schedule 4.1	Method of Voting	Maintain current policy as per Position Statement	

Regional Subsidiary Regulations

Regulation 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)
Regulation 11	Power to Borrow	Remove the restriction on borrowing	A regional subsidiary should be able to borrow money in its own right

Financial Management Regulations

Regulation 4	Exempt from AASB 124	Amend as per suggestion in the Discussion Paper	
Regulation 68	Maximum Interest Component on Instalments	Amend so that the prescribed interest rate is set at the average variable overdraft interest rate for small business, as published by the Reserve Bank of Australia in the month immediately preceding the instalment date	The maximum interest rate on instalments, as currently stipulated, is inflexible and can become outdated over time

Regulation 70

Maximum Interest on Overdue Rates

Amend so that the prescribed interest rate on overdue rates and service charges is set at twice the amount which applies to the interest rate which applies to the payment of rates in instalments under Regulation 68

The rate setting regulation is inflexible and can become outdated over time

Long Service Leave Regulations

Regulation 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. This would provide greater flexibility for both the employer and the employee. Employees should be entitled to take long service in periods as little as one day at a time in keeping with the provisions which apply to State Government officers.

Administration Regulations

10

Revoking or Changing Decisions

Amend as per suggestion in the Discussion Paper

- 11** Minutes Amend as per suggestion in the Discussion Paper
- 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. Further, the \$100,000 amount identified in the Regulations should be increased to \$150,000 to reflect inflation.

This reflects the fact that it is important to identify the positions paid over the specified amount rather than the number of employees that fill the positions. The amount should be raised as it has not been increased for many years.

New Regulation Repaying of Advance Annual Payments

Amend as per suggestion in the Discussion Paper

Functions and General Regulations

- 11 (1)** Tender Threshold Amend as per Position Statement
- 30 (3)** Disposition of Property Amend as per suggestion in Discussion Paper