



City of Perth

Local Government Act 1995 Review

City of Perth Response to Phase One Consultation Paper

Defining the roles of council and administration: Guidance questions

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

Council's role should include focus on the development and review of the Strategic Community Plan, Corporate Business Plan and Long Term Financial Plan and the implementation of these documents at an executive or strategic level.

The documents guide the strategy and focus of the local government and are formed using significant community consultation as their basis. Therefore, decision making by Council should be in line with these documents.

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

The provisions of Part 5 of the Act for the CEO is sufficient. However, it is suggested for more guidance on the interaction between the administration and the Council or individual councillors be provided within the *Local Government Act 1995* (Act).

3) What other comments would you like to make on the roles of council and administration?

The laws regarding permitted communication between a local government's council and administration require amendment to ensure clarity. Section 5.41 of the Act in relation to the CEO's functions, and regulation 10 of the *Local Government (Rules of Conduct) Regulations 2007* (Rules of Conduct Regulations) provide some guidance but further detail is required.

Under the current legislative arrangements, it appears that the only way for a Councillor to communicate with the administration is via a Mayor or President. The Mayor or President must then relay the Councillors' communications direct to the CEO. There is no mechanism in the legislation that allows for a Councillor to deal directly with the CEO or any other designated employee, including members of the Executive.

The City recommends that the CEO function includes the ability to establish protocols for communication between the Mayor and other Elected Members and the administration. While this is implied as the CEO's functions include responsibility for employment and management other employees and to manage the day to day operation of local government it is not explicitly stated.

4) Are there any areas where the separation of powers is particularly unclear? How do you propose that these are improved?

Where the separation of powers is known there may be little consequence for failing to comply. Please see response to question five.

Improving relationships between council and administration: Guidance question

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

As noted in the Department of Local Government and Communities Consultation Paper, *A Review Of The Local Government (Rules Of Conduct Regulations) 2007 and Minor Breach Disciplinary Framework*, Elected Members are not necessarily covered by either the *Fair Work Act 2009* or the *Occupational Safety and Health Act 1984*. To address this, the implementation of amendments proposed in the Paper to regulation 10 of the Rules of Conduct regulations are recommended to address bullying behaviour towards staff.

It is also suggested to include a requirement for Elected Members to ensure their conduct is consistent with a safe workplace. This will also provide a mechanism for addressing bullying behaviour between Elected Members.

Elected member competencies: Guidance questions

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

There is essential knowledge that all Elected Members are required to know to fulfil their roles properly including the majority of those outlined in the consultation paper:

- the role of an elected member (including the Rules of Conduct regulations).
- meeting procedures .
- knowledge of the Local Government Act and other legislation, including local laws and their processes.
- understanding financial reports.
- budgeting and rates setting.
- long term financial planning.
- town planning and approvals.
- engaging with the community (local governments may wish to develop Engagement Frameworks to support this).
- recruitment and performance appraisal (especially for Elected Members who are on a CEO performance Committee).
- policy development (particularly policy alignment with the Strategic Community Plan).

7) Do these vary between local governments? If so, in what way?

Tailoring training to the needs of the local government will be necessary. For example, the planning and development circumstances of rural environments are different to those of metropolitan councils. The community interest and interactions with council will also vary between Councils. Legislation may also only impact certain local governments. For example, the *City of Perth Act 2016* primarily affects the City of Perth rather than other local governments.

However, it is still important to have a base level of training. While Elected Members may not encounter all potential circumstances within their local government having training and guidance when unexpected or infrequent matters occur issues is necessary.

Funding training: Guidance questions

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

The local government should be responsible for the payment of training costs. This allows local governments to access training quickly when needed for elected members. It also allows the local government to tailor the timing and content to their specific circumstances (which may be restricted where payment is made by another party).

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

A training fund for these purposes is supported.

Mandatory training: Guidance questions

10) Should elected member training be mandatory? Why or why not?

Mandatory training is supported to ensure Elected Members to have the required skills and knowledge to be able to perform the duties effectively.

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

Preliminary training and information sessions should be encouraged by both the Department and local governments to allow candidates to understand both the role they will be undertaking and proper conduct required during the election. Reducing any barriers to candidates undertaking training by providing free and online training models with essential content is supported.

However, mandatory training for candidates is not supported as it may place barriers on participation.

12) Should prior learning or service be recognised in place of completing training for elected members? If yes, how would this work?

Recognition of prior learning or service is supported. For example, a qualified accountant would not require training on understanding financial reports.

Length of service does provide a significant amount of experience. However, gaps in knowledge can still occur in experienced Elected Members. Continuing professional development and refresher courses are supported to address this.

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

A reasonable time frame is recommended for completing essential training. It is noted that Elected Members often has ongoing outside obligations and intensive inductions may be difficult to manage. Within the first three months is recommended.

Continuing professional development: Guidance questions

- 14) Should ongoing professional development be undertaken by elected members?**

Ongoing professional training is supported. It will allow elected members to develop skills and refresh their knowledge.

- 15) If so, what form should this take?**

A continuing development format is supported. Any mandatory training should be available online to encourage participation and ensure accessibility (or available in multiple formats).

It is recommended the course includes refreshers on essential training and updates to legislation affecting elected members. In addition, targeted Department training could address Code of Conduct matters that appear to be recurrent issues or the subject of misunderstandings.

Training: Guidance question

- 16) Do you have any other suggestions or comments on training?**

No.

Codes of conduct: Guidance questions

- 17) Should standards of conduct/behaviour differ between local governments? Please explain.**

The standards expected for local governments should not be different.

- 18) Which option do you prefer for codes of conduct and why?**

Option five, (Codes of Conduct are required - local governments must adopt a model code, with certain clauses subject to modification) is recommended.

Uniform Codes provide clarity and can allow the Department to provide uniform advice on requirements that include the Code of Conduct. In addition, legal advice sought in relation to the code of conduct will be applicable to other local governments – allowing local governments to pool resources.

- 19) How should a code of conduct be enforced?**

The Local Government Standards Panel (Standards Panel) or another body should have the ability of enforce breaches of the Code of Conduct in relation to Elected Members.

While administration can take disciplinary action in relation to employees who have not abided by the code there is currently limited action that can occur in relation to breaches of the Code of Conduct by Elected Members that do not amount to a minor or serious breach, even where behaviour is repeated.

To address this, the Standards Panel or another body should have the opportunity to enforce the Code of Conduct. It is recommended to apply the recommendations of the 2015-16 Review of the Rules of Conduct to this question. This paper include the option of a panel of investigation to review these matters.

In addition, a broader range of penalties then those that are currently available are supported to allow the penalty to be tailored to the circumstances.

Recommended additions include allowing the Standards Panel (or other body) to recommend or require:

- specific training to be undertaken;
- mediation between parties involved in conflict;
- the inclusion instances of breaches of the code of conduct in the local government's annual report; and
- financial penalties for the individual where repeated breaches of the code of conduct occurs.

Any financial penalties are recommended to be of a reasonable and not excessive amount. Alternatively, a minor suspension in accordance with the response to question 40 is an option.

These broader penalties are also recommended to be available to the Standards Panel for minor breaches.

Streamlined rules of conduct: Guidance questions

20) Do you support streamlined Rules of Conduct regulations? Why?

The streamlined Rules of Conduct regulations in the manner described by the paper is not supported. Option One proposes that breaches of the matters excluded from the Rules Of Conduct regulations could be dealt with internally by the local government (e.g. as a breach of the code of conduct). As noted above there is currently limited means to address breaches of the Code Of Conduct by Elected Members internally and this should be considered prior to removal of any elements. The streamlined approach is not supported without the accompanying mechanisms that allow for enforcement.

It is recommended to apply the recommendations of the 2015-16 Review of the Rules of Conduct.

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

It is recommended to apply the recommendations of the 2015-16 Review of the Rules of Conduct.

In particular, the amendments proposed to current legislation contained within the paper is supported. Alternatively, regulations moving to a more outcomes based approach is also supported.

22) Do you support a reduction in the time frame in which complaints can be made? Is three months adequate?

There does not appear to be a significant portion of complaints made after three months based on the data the Department has provided. However, acting in a timely manner is supported as late complaints could result in ongoing improper behaviour in the interim.

Three months is generally adequate time for the local government to conduct any required investigations. However, three months should be taken from discovery of the circumstances.

An option to consider is allowing the Standards Panel to consider complaints after three months where they determine it is in the public interest to do so or other exceptional circumstances apply. This was proposed in the 2015-16 Rules of Conduct Review.

Revised disciplinary framework: Guidance questions

23) Do you support an outcome-based framework for elected members? Why or why not?

An outcome based framework appears to allow more flexibility to address behaviour detrimental to local government that does not fit within the narrow definitions of the current model.

However, it is currently recommended to apply the recommendations of the 2015-16 Review of the Rules of Conduct in relation to the proposed amendments to the Rules of Conduct

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

It is currently recommended to apply the recommendations of the 2015-16 Review of the Rules of Conduct.

Application of the Rules of Conduct: Guidance question

25) Should the rules of conduct that govern behaviour of elected members be extended to all candidates in council elections? Please explain.

It is recommended that all candidates have model rules of conduct that they must comply with. While not all rules of conduct are applicable to candidates the majority

Offence Provisions: Guidance questions

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

Yes. Formerly elected members should not use information received during their role for an improper purpose. Releasing or using confidential or sensitive information could have significant detrimental implications for the local government. Additionally, the person could improperly advantage themselves by using such information.

- 27) Should this restriction apply to former employees? Please explain.**

Yes. Information received during the course of employment should not be used for an improper purpose. Releasing or using confidential or sensitive information could have significant detrimental implications for the local government. Additionally, the person could improperly advantage themselves by using such information.

Confidentiality: Guidance question

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

Yes. Until the matter is resolved the providing partial details without the full content a that would come with final determination is more likely to lead to misinformation then allowing comment.

Sector conduct review committees: Guidance questions

- 29) What do you see as the benefits and disadvantages of this model?**

- 30) What powers should the Conduct Review Committee have?**

- 31) In your opinion what matters should go directly to the Standards Panel?**

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

- 33) Who should select the members for the pool?**

- 34) How many members should there be on the Review Committee?**

- 35) Are the proposed actions for the Review Committee appropriate? If not, what do you propose?**

In relation to Questions 29 to 35 it is instead recommended to implement the recommendations of the 2015-16 Review of the Rules of Conduct.

The following additional comments are made:

Sector Conduct Review Committees could provide support to the Standards Panel and improve processing times. However, the key to the viability of this proposal is that the members of any committee have independence, significant relevant knowledge, and there is a low likelihood of decisions becoming politicized. The appointment process, if this model was implemented, should be similar to that of the Standards Panel.

If independence and sufficient appropriate members cannot be guaranteed, additional resources (including additional Panel members) for the current Standards Panel is preferred.

Review of elected member non-compliance: Guidance questions

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

It is recommended to implement the recommendations of the 2015-16 Review of the Rules of Conduct and retain the Standards Panel option.

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

As above.

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

Both the complainant and the person complained about should be able to request a review of a decision. However, reviews of the decision to find a complaint trivial, vexatious or frivolous should not be allowed for either party.

Mediation: Guidance question

39) Do you support the inclusion of mediation as a sanction for the Panel? Why or why not?

Yes. Mediation as a “sanction” is supported as it may address the primary cause of conduct issues. The City of Perth has included the following clause into its Code of Conduct.

“8.2 Internal Referral to Mediation

The CEO, may, in appropriate cases, refer an alleged breach of this Code relating to values or conduct (other than an alleged breach of any law) by an Elected Member to an independent mediator who will attempt to resolve the matter via a mediation process. For example, this may occur where mediation may assist in resolving an alleged case of rudeness.

If a matter is referred for mediation each party is to engage in the process in good faith.”

Prohibition from attending council meetings: Guidance questions

40) Do you support the Panel being able to prohibit elected members from attending council meetings? Why or why not?

It is supported to allow this sanction to be available. It is noted that this sanction could also apply to Committee meeting and other specified functions. As an Elected Members role is to represent the community this sanction should not be used for less significant breaches matters as it would directly conflict with their primary role.

The sanction would appear ideal where the Elected Member’s behaviour is directly and unduly disruptive to the function of Council or Committee meetings. However, given the current space

between the actual breach and the sanction being applied it is unlikely to prevent behaviour when it is occurring.

The stand down provisions proposed by WALGA may be useful to address this if developed further.

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

Up to three Ordinary Council or Committee Meetings.

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

It is not generally appropriate to be paid for attendance which has not occurred and it would be questioned by the community if attendance fees were paid for a meeting not attended.

However, for some local governments this will create a financial penalty in addition to the sanction while at others it would not. The Standards Panel would need to be aware of the full impact of their decisions in order to give consistent and appropriate sanctions for the circumstances.

Compensation to the local government: Guidance questions

43) Do you support the Panel being able to award financial compensation to the local government? Why or why not?

No, the sanctions referred to above in question 19 are seen as sufficient.

44) What should the maximum amount be?

A maximum amount is difficult to quantify due to the variety of means an individual Elected Member may have available to them.

Complaint administrative fee: Guidance questions

45) Do you support this option? Why or why not?

No. This would place barriers on members of the public with lower mean making complaints where they believe they are founded. Barriers to making complaints regarding breaches could undermine public faith in the system.

Restrictions on making complaints regarding the conduct of an elected representative are addressed should not be based on means in a representative democracy.

Where individuals appear to be making complaints without sufficient knowledge of the systems it is recommended that guidance and education be provided to support them. It is recommended to implement the recommendations of the 2015-16 Review of the Rules of Conduct in this regard.

In addition, provisions to deem an individual a vexatious complainant to reduce the likelihood of personal grievances being unnecessarily brought to the Panel are recommended.

46) Do you believe that a complaint administrative fee would deter complainants from lodging a complaint? Is this appropriate?

A fee may deter some complainants from making complaints. This is not considered appropriate for the reasons outlined in the response to question 45.

47) Would a complaint administrative fee be appropriate for a sector conduct review committee model? Why or why not?

No. Payment of a fee is not considered appropriate for the reasons outlined in the response to question 45. The sector conduct review committee process is not an exception.

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

No fee is deemed appropriate.

49) Should the administrative fee be refunded with a finding of minor breach or should it be retained by the Department to offset costs? Why or why not?

No fee is deemed appropriate.

Cost recovery to local government: Guidance questions

50) Do you support the cost of the panel proceedings being paid by a member found to be in breach? Why or why not?

The costs of panel proceedings can be significant and may not be a reasonable financial penalty in the circumstances. This should be assessed on its own merits.

It instead is recommended to include the cost of panel proceedings paid by the local government to be reported in Annual Reports.

Publication of complaints in the annual report: Guidance question

51) Do you support the tabling of the decision report at the Ordinary Council Meeting? Why or why not?

This is supported if there is a restriction on statements made during the meeting in relation to the decision report. This will assist in ensuring Elected Members and community are aware of the decision but avoid politicisation of the decision.

Tabling decision report at Ordinary Council Meeting: Guidance question

52) Do you support this option? Why or why not?

As above.

Elected member interests: Guidance questions

- 53) Should not-for-profit organisation members participate in council decisions affecting that organisation? Why or why not?**

No, participation should not occur. The conflict of interest exists despite the body being not-for-profit.

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

Yes, but an office holder is a more significant concern.

Improving the behaviour of elected members: Guidance question

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

No.

Recruitment and selection of local government CEOs: Guidance questions

- 56) Would councils benefit from assistance with CEO recruitment and selection? Why?**

Yes, guidance from appropriate bodies such as the Public Sector Commission could ensure the correct principles are used in the employment of the CEO. External independent advice is strongly supported.

- 57) How could the recruitment and selection of local government CEOs be improved?**

The mandatory training of Elected Members, including training specifically related to recruitment of a CEO is recommended.

- 58) Should the Public Sector Commission be involved in CEO recruitment and selection? If so, how?**

Yes. It is recommended they (or a similar independent body) act primarily as an observer and to provide guidance rather than an active participant.

- 59) Should other experts be involved in CEO recruitment and selection? If so, who and how?**

Additional consultants or experts required beyond this could be determined at the Department's discretion.

- 60) What competencies, attributes and qualifications should a CEO have?**

The CEO should have sufficient skills to undertake the functions required of a CEO under the Act and taking sufficient consideration for the circumstances of the local government. It is not recommended that any specific qualifications be prescribed as a variety of experiences, backgrounds and qualifications could meet these requirements.

The suitable candidate should be determined by the local government.

Acting CEOs: Guidance questions

- 61) **Should the process of appointing an acting CEO be covered in legislation? Why or why not?**
Yes, outlining the process via the Act will avoid lack of clarity regarding an important Council role.
- 62) **If so, who should appoint the CEO when there is a short term temporary vacancy (covering sick or annual leave for example)?**
The CEO.
- 63) **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.

Performance review of local government CEOs: Guidance questions

- 64) **Who should be involved in CEO performance reviews?**
All Elected Members should be involved given Council as a whole is responsible for the recruitment or dismissal of the CEO.
- 65) **What should the criteria be for reviewing a CEO's performance?**
The delivery of the local government's Corporate Business Plan within the endorsed timeframes and costs structures should be a key criteria of the CEO's performance along with the budget.
- 66) **How often should CEO performance be reviewed?**
Annually.
- 67) **Which of the above options do you prefer? Why?**
Option One (Approved third-party to be involved in the performance reviews of CEOs) is recommended provided that approved third-party is an independent body with sufficient expertise such as the Public Sector Commission. This is recommended to provide independence and expertise. However, it is recommended they act primarily as an observer and to provide guidance rather than an active participant.
- 68) **Is there an alternative model that could be considered?**
It is recommended as outlined above that the third-party should act as an independent observer to both maintain local government autonomy and ensuring the process is sound.

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

- 69) **Would a 'cooling off' period before a council can terminate the CEO following an election assist strengthening productive relationships between council and administration?**
This is not supported, it would only prolong an untenable situation.

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

This is not supported. A newly formed Council should be able to appoint a CEO in line with its vision. However, the training noted above and the involvement of an independent body as outlined above should be required prior to any termination.

71) For what period before an election should there be a restriction on a council from extending a CEO contract? Should there be any exceptions to this?

Council should not extend contracts near and election but instead make interim arrangements during the transition period. Extensions should not occur with less than six months before an ordinary election.

Public expectations of staff performance: Guidance questions

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

No, the current processes are adequate.

73) Should certain offences or other criteria exclude a person from being employed in a local government? If so, what?

A high standard of integrity is an inherent requirement of positions related to enforcement, procurement, maintaining confidential information and providing compliance or regulatory advice. Exclusions based on criminal history should be relevant to the position.

Generally, offences considered serious misconduct should exclude individuals from being employed by local government as well as offences that indicate unsuitability for local government employment such as fraud. The local government has the ability to ensure this without this being legislated.

The current processes are considered adequate in recruiting appropriate individuals for the role.

Strengthening local government administration: Guidance question

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

No.

Remedial intervention: Guidance questions

75) Should the appointed person be a departmental employee, a local government officer or an external party? Why?

If this model is implemented the Minister should appoint best suited person to the circumstances.

76) Should the appointed person be able to direct the local government or would their role be restricted to advice and support? Please explain.

The appointed person should have an advisory and support role with the ability to report to the Department during their appointment.

The appointed person should have the power to compel evidence/documents to the same degree as a directions notice.

77) Who should pay for the appointed person? Why?

The local government should pay for the appointed person as they will have the benefit of the advice and support.

Powers of appointed person: Guidance question

78) What powers should an appointed person have?

The appointed person should have the power to compel evidence/documents to the same degree as a directions notice. In addition the should have the ability to report to the Department.

Remedial action process: Guidance questions

79) Do you think the proposed approach would improve the provision of good governance in Western Australia? Please explain.

This approach may improve the ability of the Department to address specific concerns within a timely manner.

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

The person appointed must be independent, impartiality and have sufficient knowledge of the issue they are to assist in the remediation of.

Supporting local governments in challenging times: Guidance question

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

No.

Transferability of employees: Guidance questions

82) 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?

This is not considered to be required at this stage. However, the transfer of sick leave can have a significant individual impact and should be considered.

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

No response.

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

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

No.

A new framework for disclosing gifts: Guidance questions

- 85) Is the new framework for disclosing gifts appropriate?

- 86) If not, why?

- 87) Is the threshold of \$500 appropriate?

- 88) If no, why?

- 89) Should certain gifts – or gifts from particular classes or people – be prohibited? Why or why not?

- 90) If yes, what gifts should be prohibited?

In relation to Question 85 to 90, the new framework is supported. It provides clear and streamlined framework which avoids confusion of the three separate categories (notifiable, disclosable and prohibited).

Excluding gifts received in a personal capacity: Guidance questions

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

Yes.

- 92) If yes, how could ‘personal capacity’ be defined?

The State Solicitors Officers will be in the best position to determine an appropriate definition for personal capacity as the determination is often based on the specific circumstances.

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

No, other than those currently available, or those that will be available once the new gifts framework is implemented.

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

N/a

Gifts: Guidance question

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

The consultation should consider whether the current gifts guidelines provided by the Department require further information in relation to what defines occupation and consideration given recent legal decisions.

96) Which general option do you prefer for making local public notices available? Why?

Option five – Electronic Notices are required, additional print notices are optional is preferred. The internet is now a more accessible and frequently used means of communication.

97) Which general option do you prefer for State-wide public notices? Why?

Option five – electronic notices are required, additional print notices are optional is preferred. The internet is now a more accessible and frequently used means of communication.

98) With reference to the list of public notices, do you believe that the requirement for a particular notice should be changed? Please provide details.

The submission of the Local Government Professionals Association recommending the following requirements for local public removed or amended:

- section 6.20(2) – to remove to allow borrowing without public notice for efficiency;
- section 3.50B – to amend to add an exception to the notice requirement closure of bridges to allow a bridge to be closed immediately for urgent repairs; and
- section 3.51 (3) (a)- to specify that only significant, defined categories of proposed road works require local public notice.

These recommendations are supported.

99) For the State-wide notices in Attachment 3, are there alternative websites where any of this information could be made available?

Public notices should easily accessible. Whether the information is available from a State or local government website or another centralised site, the key is the information is easily found (e.g. from a front page) and accessible.



City of Perth

Information available for public inspection: Guidance questions

100) 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, It is also recommended to have copies accessible at a local governments libraries where practicable.	
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.			Both	
Section 5.87	Discretionary disclosures generally			Both – this is currently already provided	

Provision	Documents	In person only	Website only	Both	Neither
Section 5.82	Gifts (already required to be on the website)			Both - this is currently already provided	
Section 5.83	Disclosure of travel contributions (already required to be on the website)			Both - this is currently already provided	
Elections Regulations 30H	Electoral gifts register			Both	
Section 5.98A	Allowance for deputy mayor or deputy president			Both - this is currently already provided	
Section 5.100	Payments for certain committee members			Both	
Functions and General Regulations 17	Tenders register			Both.	
Section 5.94 & Administration Regulations 29	Register of delegations to committees, CEO and employees			Both - this is currently already provided	

Provision	Documents	In person only	Website only	Both	Neither
Section 5.94 & Administration Regulations 29	Minutes of council, committee and elector meetings			Both - this is currently already provided	
Section 5.94 & Administration Regulations 29	Future plan for the district			Both - this is currently already provided	
Section 5.94 & Administration Regulations 29	Annual Budget			Both - this is currently already provided	
Section 5.94 & Administration Regulations 29	Notice papers and agendas of meetings			Both - this is currently already provided	
Section 5.94 & Administration Regulations 29	Reports tabled at a council or committee meeting			Both - this is currently already provided	
Section 5.94 & Administration Regulations 29	Complaints register (concerning elected members)			Both - this is currently already provided	
Section 5.94 & Administration Regulations 29	Contracts of employment of the CEO and other senior local government employees	In person only.			

Provision	Documents	In person only	Website only	Both	Neither
Section 5.94 & Administration Regulations 29	Schedule of fees and charges		Both - this is currently already provided		
Section 5.94 & Administration Regulations 29	Proposed local laws		Both - this is currently already provided		
Section 5.94 & Administration Regulations 29	Gazetted Local laws (and other law that has been adopted by the district)		Both - this is currently already provided		
Section 5.94 & Administration Regulations 29	Rates record	In person only to protect individual privacy.			
Section 5.94 & Administration Regulations 29	Electoral roll	In person only to protect individual privacy.			

- 101) Should the additional information that is available to the public in other jurisdictions be available here? If so which items? How should they be made available: in person, website only or both?**

Rates information and district maps should be available both via the internet and in person.

Adverse findings by the Standards Panel or State Administrative Tribunal Against elected Members are generally publically available via those bodies. However, a requirement to make these available will provide another avenue of giving relevant information to electors and the public and is supported.

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

No.

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

This is difficult to estimate but there are not resources required to provide and maintain these registers and information is not insignificant.

As the capital city, the City of Perth may be in a unique position of heightened information requests relative to other local governments so our experience may not be directly applicable to other local governments.

Access to information: Guidance question

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

No.

Expanding the information provided to the public: Guidance questions

105) Which of these options do you prefer? Why?

Option two, requiring additional information is supported with some caveats.

The majority of the proposals are supported. In particular:

- Elected members attendance rates at council meetings;
- Elected members representation at external events meeting (where the elected member has been appointed to an external body);
- Website information on differential rates categories;
- District maps and ward boundaries;
- Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission; and
- Diversity data (including gender equity ratios).

Livestreaming is not opposed. However, it may be difficult to quickly and easily implement depending on the capacity of the local government. Provision of audio recordings within a reasonable time following the meeting is a reasonable alternative.

The provision of performance reviews and detailed financial information of the CEO and staff is not supported. It is believed the currently available information is sufficient. It is noted that these requirements do not apply to State Government staff.

The Department should consider the capacity of individual local governments to provide this information prior to making these requirements mandatory.

106) 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	This should be optional. Audio recordings provided within a reasonable timeframe is a suitable alternative.
Diversity data on council membership and employees	Yes
Elected member attendance rates at council meetings	Yes
Elected member representation at external meetings/events	Yes, where the meeting is a for Council appointed role. Providing information for events in general would administratively burdensome.
Gender equity ratios for staff salaries	Yes.
Complaints made to the local government and actions taken	This depends on how complaint is defined and is likely to be excessively administratively burdensome unless only specific categories of complaints are included.
Performance reviews of CEO and senior employees	No.
Website to provide information on differential rate categories	Yes.
District maps and ward boundaries	Yes.
Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission.	Yes

Proposal	Should this be made available: No, optional, required?
Financial and non-financial benefits register	This information is available in primary and annual returns. Especially, in relation to staff, this information should be made available in person only to avoid unnecessary risk of privacy violations. It is noted that this information is not made public for public servants employed by the state.

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

N/a

Expanding the information available to the public: Guidance question

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

No.

Defining red tape: Guidance questions

109) 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.
- b) What is the impact of this problem? Please quantify if possible.
- c) What solutions can you suggest to solve this red tape problem?

The standardisation of local laws is supported as long as the ability of local governments to make individual determinations is retained. This will assist in avoiding the lengthy and procedural local law process.

110) 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?

The removal of the requirement for an Annual General Meetings of Electors is recommended.

Special majority: Guidance question

111) Should the provisions for a special majority be removed? Why or why not?

Yes. The absolute majority provision are sufficient and the special majority provisions are an unnecessary addition.

Senior employees: Guidance questions

112) 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?

No. It is recommended that the provisions related to senior employees are removed and this function is retained only by the CEO. Involvement by council creates a lack of clarity in the separation of powers between the Council and the administration.

113) Is it necessary for some employees to be designated as senior employees? If so, what criteria should define which employees are senior employees?

Please see response to question 112.

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

114) Are the existing related party disclosure provisions in the Act sufficient without the additional requirements introduced by AASB 124? Why or why not?

These provision are an unnecessary duplication of information required to be provided in Primary and Annual Returns and other disclosures.

Disposal of property: Guidance questions

115) 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, if so how high?

Thresholds should be regularly reviewed to ensure they do not become an unnecessary administrative burden in relation to the disposal. As the most recent review was in 2015, this is still deemed accepted.

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

Plants equipment and fleet should have additional exemptions if the above trade in exemption is not reviewed over time as it is standard industry practice to trade these in.

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

Thresholds should be regularly reviewed to ensure they do not become an unnecessary administrative burden and prevent the local government making commercial decisions. Some threshold could be applied to encourage commerciality. However, the advertising costs for disposals are significant in comparison to the amount of \$20,000 and higher thresholds should be considered on this basis.

- 118) 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?**

While this could create an increased risk, a local government is required to manage its assets appropriately in any event and this should be noted.

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

No comment.

Reducing red tape: Guidance question

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

To legislate the acceptance of contributed assets to local governments as it will incur liability.
Who has the power to accept contributed asset and their associated to

Regional subsidiaries: Guidance questions

- 121) Which option do you prefer?**

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

Yes.

- 123) Why or why not?**

Regional subsidiaries are supported by more than one local government. They are unlikely to be high risk on this basis.

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

The agreement of the member local governments should be required.

Regional subsidiaries: Guidance question

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

No.

Local Government Act review: Guidance question

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

See attached.

Local Government Act 1995 Review**City of Perth Submission: Building Upgrade Finance****Recommendation**

Through the review of the *Local Government Act 1995*, enable a building upgrade finance (BUF) scheme that will attract business investment and deliver social and environmental benefits in existing, underutilised building stock.

Details

Building upgrade finance (BUF); also known as environmental upgrade agreements, or EUAs, is an agreement between a local government, building owner and financier to fund projects that deliver environmental performance improvements in buildings. Victoria, New South Wales (NSW) and South Australia (SA) have all established BUF through relevant amendments to their states' Local Government legislation.

BUF functions by obtaining finance from a lender for building upgrades, with loans paid back through the levy of an upgrade charge against the building (similar to rates), collected by the local council and repaid to the financier. Loan repayments are typically offset by the energy savings produced from the building upgrade.

The Clean Energy Finance Corporation (CEFC) provides finance for BUF schemes, either directly (to council-operated funds) or through its \$80 million environmental upgrade program with aggregation partners, National Australia bank and Eureka Funds Management (Eureka). The City has consulted extensively with CEFC and with Eureka, who both support the adoption of a BUF scheme in Western Australia.

Background

Commercial buildings are responsible for 51 per cent of carbon emissions in the City of Perth local government area. They represent a significant opportunity to lower emissions and meet the City's commitments under its Environment Policy (8.0), Towards an Energy Resilient City Policy (8.5), and its *Environment Strategy*, to work with its community to achieve a 30% reduction in city-wide greenhouse gas emissions by 2030. By incentivising upgrades and retrofits, BUF can address the 'embedded emissions' from existing commercial buildings that planning schemes and design guidelines cannot.

Concurrently, the Perth CBD office market vacancy rate has reached the highest level in over 20 years. In the near-term, tenants are adopting a flight-to-quality approach and occupying Prime and A-grade buildings. As a result, mid-tier commercial buildings, particularly the B-grade segment, are experiencing the largest increases in vacancy rates, at 30.3% in the six months to January 2017. Commercial building owners need new tools and incentives to maintain the relevance of older buildings to attract new tenants into the CBD.

Benefits of BUF

Buildings with higher environmental performance deliver a “green premium in value”, leading to higher investment yields, lower operating costs, higher asset values and lower vacancy rates. BUF also addresses two key barriers: access to capital and, split (owner-occupier) incentives. BUF allows building owners to either pass-through or recoup a certain proportion of the costs *and* the savings associated with the building upgrades.

Other benefits include:

- Job creation boost by increasing the demand for infrastructure, including sustainable technologies and solutions that improve building performance;
- Increased occupancy rates can enable the repositioning of vacant assets and attract other business investment into the area, including retailers and hospitality;
- Revitalising underutilised areas with aging building stock, particularly mid-tier buildings, to increase social engagement in the area;
- Driving carbon emissions reductions across the state, by driving efficiencies in energy, waste and water consumption, and increased use of renewable energy;
- Long-term financing solutions with competitive interest rates available at fixed terms for 10 years or longer:
 - This reduces the refinancing risk and provides more flexibility than traditional financing terms (2-5 years);
 - Longer-term finance with lower annual repayments delivers immediate cash flow benefits to the owner, incentivising a long-term approach to upgrades;
- The BUF agreement is tied to the land, rather than the owner (meaning the loan stays with the property if sold).

The application of BUF and its benefits are not limited to Perth and the metropolitan area, or just commercial buildings. It is worth noting some of the highest uptake of BUF, in states with the scheme enabled, has been in rural areas. Building upgrade improvements can include small-scale renewable energy technologies like solar photovoltaics, and this has been particularly popular in light-industrial applications in regional Victoria.

Legislative considerations for the *Local Government Act 1995*

Based on lessons learned from the experiences and legislation of NSW, Victoria and SA, the City contends that establishment of a BUF scheme will require the creation of a new part or division in the *Local Government Act 1995* that specifically allows for BUFS (as per the sections in the NSW act, or as otherwise determined). This is most likely to come under Part 6 of the Act, which relates to financial management.

Enabling BUF may also require regulations to support the process (as per the NSW model) and/or amendment to current regulations; but these amendments will be dependent on the

exact model the State chooses to proceed with. There are potential consequential amendments required to the:

- [Local Government \(Financial Management\) Regulations 1996](#); and the
- [Local Government \(Functions and General\) Regulations 1996](#).

The State would need to determine rules as to:

- Definitions (new section, with potential consequential amendments);
- Conditions of the BUF Agreement between all parties (new section);
- Conditions to be met before Council enters into an agreement - and any guidelines a council should have consideration of (new section);
- How the charge will be levied (e.g. either an amendment to the definitions of a 'rate', a 'service charge', or a new specific term with related processes. This could alter various sections of Part 6);
- Any consequential amendments to s.6.15 (e.g. in relation to the types of income a local government can receive. This may require amendment to state specifically that BUF repayments can be received);
- Responsibilities of council (new section);
- Whether BUF repayments made to Council would be considered within a council's annual budget – and if so, in what manner;
- How BUF repayments will be recovered (i.e. dependant on how it is defined, and the rules the State wishes to incorporate, BUF may require its own specific provisions, or alternatively amendment to provisions relating to recovery of rates, service charges or other fees);
- Delegated authority (e.g. some other state models do not allow delegation beyond the CEO. This would require amendment to s.5.44 if the State wished to impose a similar rule);
- The City also notes that this is intended to be a charge against the house, and, depending on the formulation that the State Solicitors Office and Parliament proceeds with, a method of recording the charge against the property would also need to be determined. This may be a requirement to record the charge in a rates statement or to issue a certificate stating this.

Cost implications

In all other jurisdictions, the State has subsidised the establishment of BUF through grants to councils. There have also been allocations of funding to manage the programs. For example, the SA State Government has allocated \$1.9 million to establish its program.

A full cost analysis will need to be conducted for Western Australia to understand the cost implications of:

- Establishing the program, including legislative and regulatory considerations;
 - Ongoing management and administration of the program, by either:
 - A third-party, centralised administrator, (e.g. Sustainable Melbourne Fund model); or
 - Each individual council (e.g. NSW model); and
 - The role of and funding from State Government for local councils to participate.
-

BUF in other jurisdictions

Victoria, New South Wales and South Australia have all established building upgrade finance programs. There are variations between each program, particularly in regards to legislative considerations; administrative models; and the breakdown of costs borne by the owner (lessor) and the tenant (lessee).

Legislation

The City of Melbourne was the first council to launch BUF, then known as EUAs. Legislation was passed in September 2010 by amendments made to the *City of Melbourne Act 2001* (Vic) to include a Part 4B ('the Victorian Act'). This has now been replaced with the introduction of amendments into the Victorian *Local Government Act 1989* so all Victorian councils can participate.

Victoria introduced an amendment to the *Local Government Act 1989* and to the City of Melbourne Act 2001 through a Local Government Legislation called *Local Government Legislation Amendment (Environmental Upgrade Agreements) Bill 2015*. This Bill proposed changes to the definitions in the first section and then adds a new division (2A) into Part 8 of the *Local Government Act 1989*.

The provisions in the Victoria amendments include:

- 181A: Definitions of an Environmental Upgrade Agreement and details on how it functions
- 181B: Conditions to be met before Council can enter into an environmental upgrade agreement, such as statutory declarations and mortgagee arrangements
- 181C: Environmental Upgrade Charge and how it is levied
- 181D: Environmental Upgrade Agreement provisions which stipulate how the funding can be used and how this needs to be declared in the agreement
- 181E-F: Liability of Council to recover Environmental upgrade charge and other Council responsibilities

- 181G-H: CEO responsibilities
- 181I: Guidelines in relation to other VIC legislation

BUF was enabled in New South Wales in 2010 through changes made to the *Local Government Act 1993* (NSW), enabling the scheme across the entire state of NSW. NSW Councils can ‘opt-in’ to offer the scheme to commercial and industrial buildings in their local government area. Currently six councils, including City of Sydney, offer the scheme.

South Australia formally adopted BUF in 2017 through amendments to its *Local Government Act 1999*, called the *Local Government (Building Upgrade Agreements) Amendment Bill*. This amendment authorises all South Australian councils to enter into BUF agreements. Within this proposed bill there have been insertions/changes to interpretation, delegation and certificate of liabilities. ‘Schedule 1B’ has then been inserted into the Act outlining Building Upgrade Agreements. Some amendments have also been made to existing schedules.

The provisions in the South Australian amendments include:

- Definitions
- How a Building Upgrade Agreement is formed and paid, and responsibilities of all parties involved
- Voluntary nature of the agreements
- Variations and termination of agreements
- Contents of agreements
- Declaration of building upgrade charge
- Payment of the charge
- Levy of charge against land
- Sale of land for non-payment of charge
- Repayments of advances to finance provider
- Liability of council to recover building upgrade charge
- Recovering of contribution
- Register of upgrades
- Ministerial reporting
- Further regulations

Models

Models differ by jurisdiction based on how the BUF scheme is administered and resourced. Although the scheme has been expanded state-wide, the Victorian model is still centrally administered. The Sustainable Melbourne Fund (SMF), an independently-managed and commercially-oriented trust established by the City of Melbourne, administers the scheme on behalf of all other local councils in the state. SMF operates on a fee-for-service basis; the

Victorian legislation allows charging of an ongoing administration fee. In 2015, CEFC provided \$10 million directly to SMF to finance BUF agreements across Victoria.

NSW councils administer BUF individually and internally, and must ‘opt-in’ to offer the scheme. With only six councils offering BUF, this has led to a ‘patchworking effect’ across the state and even within Greater Sydney. Building owners with a portfolio of property assets across multiple councils cannot necessarily enter into BUF agreements for all of their assets. Conversely, the NSW model and contract is regarded as the least complicated by the main financiers, CEFC and Eureka. To streamline WA’s adoption of BUF, CEFC and Eureka recommend adopting the NSW model and contract.

The SA model was enabled state-wide but is focused on Adelaide city commercial properties. It is likely the SA model will follow the SMF model. In an Australian first, SA’s scheme will also support building owners to undertake restoration and upgrades of heritage buildings, including modifications to meet building rules and disability code compliance. This measure is designed to address long term vacancy.

Tenant considerations

Under the Victorian scheme, the conjunction of section 27M(1) and 27N of the Act requires building owners to obtain individual consent from tenants in order to pass a share of the cost through to tenants. Alternatively, if the owner does not wish to pass the cost along they do not require tenant consent to enter into an EUA.

Section 54N of the NSW legislation allows lessors to pass on the costs of an EUA not exceeding ‘a reasonable estimate of the cost savings to be made by the lessee’. So when the lessee is placed in a position of a) benefit or B) no-loss by the lessor entering into the EUA, the cost up to a maximum of any savings resulting from the EUA can be passed along.

The SA scheme combines the pass on of costs to tenants of both the VIC and NSW schemes: owners can either obtain individual consent from tenants to pass-through costs, or apply a ‘no worse off’ test (similar to NSW).

Local Government Act 1995 Review

City of Perth Parking Submission

City of Perth Parking (CPP) operates as a business unit within the City of Perth's Community and Commercial Services Directorate.

The business is currently responsible for 11,853 off-street and over 5,000 on-street fee-paying bays. It is estimated that over 10 million motorists park at CPP's on and off street facilities annually, enabling CPP to deliver over \$71 million of gross revenue per annum (2016/17).

Unlike services such as on-street parking, the off-street parking business is arguably distinct from the core functions of local government. CPP is operated as a parking business in direct competition with private operators. As such, direct management by a local government of a distinctly commercial enterprise raises issues such as risk, efficiency and regulatory separation.

As a business unit within the City of Perth, CPP is subject to restrictions and controls formulated to regulate the function of local government. Matters such as pricing, financial control, asset management, procurement, management accounting and decision making are subject to the confines of local government legislation, policy and procedure. These mechanisms do not necessarily accommodate the commercial nature of the business nor allow it to compete freely against competition in an open market. An example of the restriction is the requirement for CPP to acquire Council approval and provide public notice of a "set" fee schedule for each of its facilities. Conversely, private operators enjoy the flexibility of changing fees without equivalent approval or notice.

Section 3.60 of the Local Government Act 1995 (WA), "No capacity to form or acquire control of body corporate", directly restricts Western Australian Local Governments from structuring its operations to form optimal and efficient entities or trading vehicles including Government Trading Enterprises. This section of the WA Act is unique in so far as no other local government act in Australia imposes this restriction.

The separation of the business from Council may allow greater efficiencies in decision making. The requirement for Council or Committee approval for matters such as fee setting, pursuit of business development opportunities and broader financial and strategic planning exposes the business to additional process requirements as well as influences from parties with potentially divergent interests. As a commercial operation it is important that the business can act independently of factors such as political pressure and conflict of interest.

Moreover, operating in a commercial environment requires sufficiently segregated financial and asset management; without which the control and visibility of business revenue and assets could be compromised.

In line with the general downturn of the WA economy, CPP has recently observed a decrease in parking revenue. This decline has exposed a need for greater efficiency and effectiveness in operational practice as well as a sharpened focus on long term financial sustainability. In addition, the requirement to future proof against potential risks (such as road tolls and autonomous vehicles) is becoming more acute.

The separation of the business from the mechanics of Council will allow the business to explore these issues without exposing rate payers and other stakeholders to associated direct financial risk.

ATTACHMENT 3

Local Government Act 1995 Review

City of Perth Submission: Rates processes

Recommendation

To make the following amendments to assist in the processes related to rates

a. Rate Exemptions contained within section 6.26 of the *Local Government Act 1995* (Act).

The definitions require review. In particular, the definitions for 'charitable purposes' should be amended to explicitly exclude independent living facilities that are run for profit.

Where residents pay significant fees or market rates to organisations to live in a facility there is no charity for the user.

Review of what is considered a religious purpose under section 6.26 of the Act is also recommended. Where land is held by a religious body it is exempt regardless of use, including where the land is vacant and unused.

b. Public Notices

To provide through guidelines further instructions on public notices are advertised for differential rating.

c. Pensioner rebates

It is recommended removing the requirement for local government and Water Corp to administer to the rebates.

The rebates are costly and an administrative burden.

This has become very costly and time consuming for both organisations since its implementation. Local governments have had to upgrade their systems to cope with the specific requirements of the Department of Finance (such as capping amounts and percentage of rebate eligibilities).

Late declaration of capping amounts also creates challenges for local governments wishing to issue rates notices on 1 July each year as rates for a new year cannot be levied without the correct rebate amounts.

It is suggested that the Department of Human Services is in a better position to provide payment for 'rates relief.' The Department has pensioner details, eligibility information and bank details.

This would streamline the process and alleviate the need for the large volume of work that is created from the process for local government's and Water Corp.

- d. **Section 6.39(2)(b) – A local government may amend the rate record for the five years preceding the current financial year.**

Local governments are currently being advised by Landgate Valuation Services that their policy states they cannot precede valuations prior to 1 July of the current financial year.

The advice of landgate should be reviewed as it appears inconsistent with legislation.

- e. **Debt Collection –**

Ssection 6.60 – Local Government requires lessee to pay rent.

There is unlimited information in the Act or the *Local Government (Financial Management) Regulations 1996* to describe what processes following a failure to pay rent in accordance with the notice.

Further guidance could be provided through the Act or within guidelines.

Section6.56 (1)

If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery in a court of competent jurisdiction.

It is recommended that the Department issue further guidelines in relation to what is appropriate to recover in line with recent case law or provide a definition within the Act.

This will avoid inconsistency between council regarding what is appropriate to charge in these circumstances.