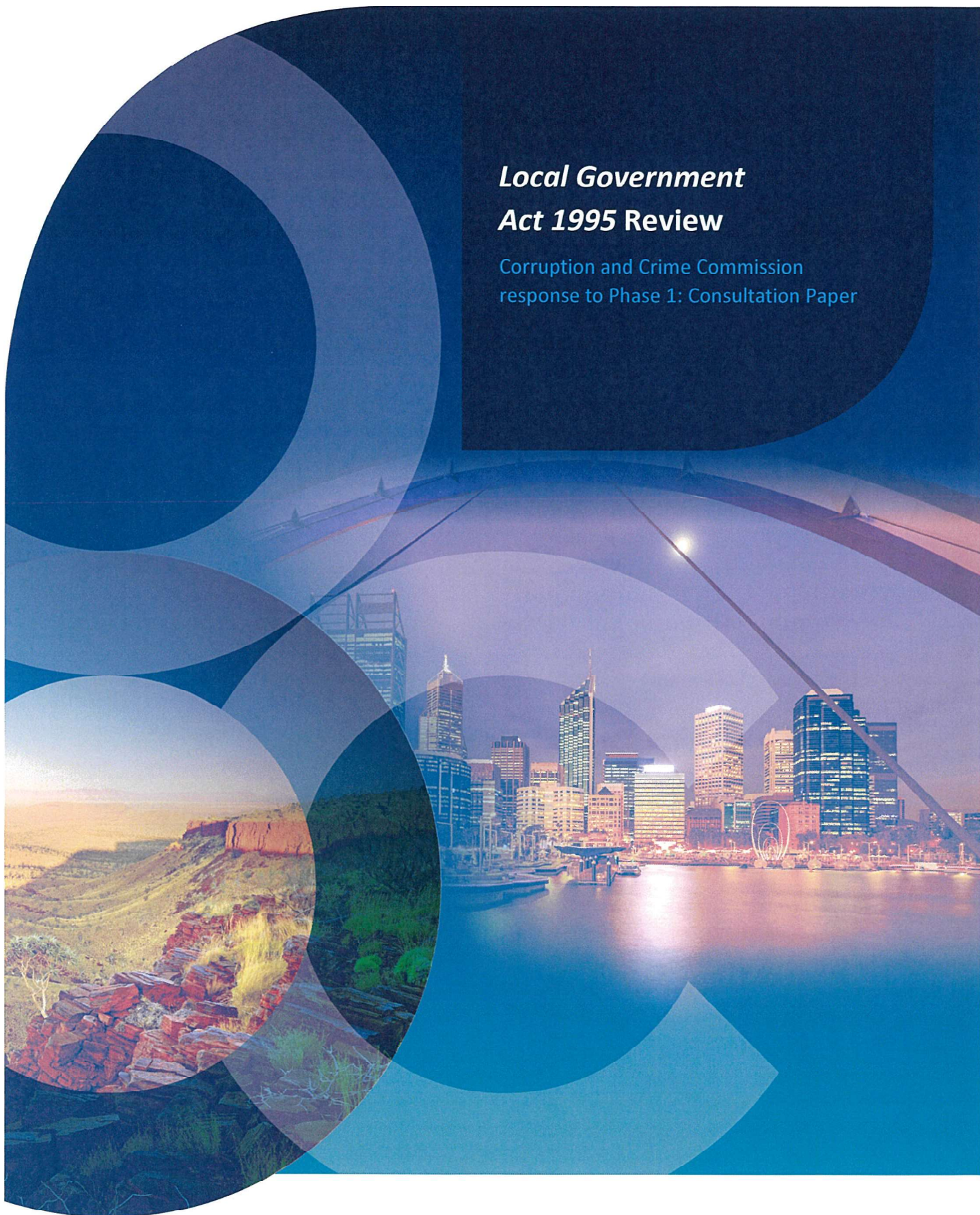


## ***Local Government Act 1995 Review***

Corruption and Crime Commission  
response to Phase 1: Consultation Paper





## Introduction

The Corruption and Crime Commission ("the Commission") appreciates the opportunity to comment on the issues raised in the Phase 1 Consultation Paper of the review of the Local Government Act 1995. Since its inception, the Commission has invested substantial resources towards addressing serious misconduct in the local government sector. This sector has been of ongoing concern to the Commission due to the complexity of the environment in which it operates, the nature of services it delivers, the degree of engagement it has with the public and business community, and the volume of public funds for which it has responsibility.

The Commission is supportive of any legislative amendments that improve the accountability of employees and elected members in Western Australian local governments. The Phase 1 Consultation Paper identifies a number of concerns that have been previously raised by the Commission in reports to Parliament. The Commission's position regarding the concerns raised and recommendations made in those reports remains unchanged.

The Phase 1 Consultation Paper raised 11 issues for consideration. The Commission makes the following comments in relation to the issues relevant to the Commission's functions:

### 1. Relationships between council and administration

The Commission has previously highlighted the serious misconduct risks that arise from a lack of understanding of, or attempts to subvert, the separation of powers between council and administration in local governments.

The Commission's 2017 *Report on Matters of Serious Misconduct in the Shire of Exmouth* identified risks that arise from a lack of council oversight of local government CEOs, as well as confusion about the extent to which elected members can make enquiries of administrative staff. The Commission's 2016 *Report on a Matter of Governance at the Shire of Dowerin* raised similar issues, including risks arising from a council's lack of financial oversight over the CEO and administration.

The Commission agrees that roles of, and separation of powers between, council and administration require clarification.

### 2. Training

The Commission has previously recommended training for elected members in successive inquiries and reports. This includes the Commission's 2016 *Report on a Matter of Governance at the Shire of Dowerin* and the Commission's 2009 *Report on the Investigation into Allegations of Misconduct by Councillors or Employees of the City of Bayswater*.

The Commission would strongly encourage elected members to undertake both formal training and ongoing professional development as part of their roles, to ensure the proper and appropriate exercise of their legislative functions.

### 3. Behaviour of elected members

The Commission agrees with the concerns raised in the Consultation Paper regarding the inefficiencies with the current system for addressing 'minor breaches' by elected members. The Commission supports this being simplified and more effective and looks forward to commenting on proposed amendments to the current system.

The Consultation Paper proposes the expansion of restrictions on the disclosure of complaints made during campaign periods. The Commission does not support an increased prohibition on the disclosure of complaints. Doing so may dissuade people from disclosing those complaints to the Commission if they relate to matters involving serious misconduct.

### 4. Local Government Administration

The Commission highlighted that insufficient performance reviews of CEOs by local government councils can be a serious misconduct risk, in the Commission's 2016 *Report on a Matter of Governance at the Shire of Dowerin*.

The Commission supports improvements to the CEO selection process, including the provision of guidance by a third party such as the Public Sector Commission. The Commission also supports improved vetting processes for local government employees.

### 5. Supporting Local Governments in challenging times

The Commission considers that State Government should have expanded powers to undertake remedial intervention in local governments.

### 6. Gifts

The Commission appreciates that the current legislative regime relating to the acceptance and disclosure of gifts is complex and requires simplification. The Commission has seen consistent examples of elected members, CEOs and local government employees engaging in corruption, or failing to manage their serious misconduct risk, in this area. The Commission has published numerous reports that have addressed this issue.

The Commission proposes that elected members be required to declare gifts over \$200 and be prohibited from receiving gifts over \$1000, cumulative over a 12-month period. Gifts from relatives and reasonable hospitality would be excluded from these requirements.

Elected members should be prohibited from voting on any item involving a donor from whom they have received a gift during their current term as an elected member, or during the subsequent term, if the gift was received during the election period.

The Commission is concerned by the proposal that local governments adopt their own gift policies for employees other than the CEO. The Commission has not seen evidence of the ability of local governments to self-manage in this area, particularly in regional and remote local governments.

In the Commission's view, no employees, including CEOs, should receive gifts. This should be consistent across Western Australia.



## 7. Access to, and availability of, information

The Commission regularly obtains local government information to support its process of assessing notifications and reports relating to serious misconduct in local government. The Commission supports increased transparency in this area and for local government information to be made more easily accessible.

To increase transparency and accountability, the Commission proposes that minutes of Council meetings that are closed to the public also be kept. While it is not proposed that these minutes be made publicly available, documenting them would enable improved transparency for matters that may be subject to later scrutiny. Minuting meetings that are closed to the public would assist the Commission with its role in identifying and dealing with serious misconduct.

### Other concerns

Conflicts of interest in the local government sector is an area of significant misconduct risk that regularly requires Commission attention. The Commission frequently receives notifications involving the alleged failure of elected members to disclose interests in council meetings pursuant to the requirements of the *Local Government Act 1995* and the *Local Government (Rules of Conduct) Regulations 2007*. While briefly mentioned in this Consultation Paper, this legislative review provides a good opportunity to consider mechanisms for simplifying the current system of disclosing conflicts of interest and enhancing accountability of elected members.

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