



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



Local Government Act 1995 review
Agile • Smart • Inclusive

Local Government Act 1995 **Review**

Agile • Smart • Inclusive – Local governments for the future

Phase 1: Consultation Paper

8 November 2017

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1. Relationships between council and administration

Introductory questions

- 1) Would you like your submission to remain anonymous?
No
- 2) Postcode:
6017
- 3) Who are you submitting on behalf of?
Company/Organisation/Other
- 4) Local government name:
- 5) Organisation name
HIA
- 6) Are you a:
Other

Defining the roles of council and administration: Guidance questions

- 7) How should a council's role be defined? What should the definition include?
- 8) How should the role of the CEO and administration be defined?
- 9) What other comments would you like to make on the roles of council and administration?
- 10) Are there any areas where the separation of powers is particularly unclear?
- 11) How do you propose that these are improved?

Improving relationships between council and administration: Guidance question

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

No comment as not related to HIA

2. Training

2.1 Competencies required to be an elected member

Elected member competencies: Guidance questions

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

Councilors need to understand their role and responsibilities, but also need to understand that framework within which they and the officers work. This is both in an operational sense and a technical sense.

All Councilors should be briefed on planning legislation and systems to ensure that they understand the intent of the planning system and can make decision which are reflective of that.

All Councilors need to understand the scope of power of the LGA and understand those things that that power controls, such that accurate decisions can be made about the impact of proposed changes.

- 14) Do these vary between local governments?

Yes

- 15) If so, in what way?

2.2 Funding training

Funding training: Guidance questions

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

No comment as not related to HIA

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

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

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

2.3 Mandatory training

Mandatory training: Guidance questions

19) Should elected member training be mandatory?

Yes

20) Why or why not?

To enable effective decision making

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

Yes

22) Should this be Compulsory?

Yes

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

Yes

24) If yes, how would this work?

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

2.4 Continuing professional development

Continuing professional development: Guidance questions

- 26) Should ongoing professional development be undertaken by elected members?
- 27) If so, what form should this take?

Training: Guidance question

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

3. The behaviour of elected members

3.1 Current Situation

Codes of conduct: Guidance questions

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

No

30) Please explain.

All local governments should behave in the same manner. Consistency between local government operations provides a considerable benefit to the economy by reducing the administrative burden associated with working with councils.

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

31) How should a code of conduct be enforced?

3.2 Regulation of elected member conduct: rules of conduct

Streamlined rules of conduct: Guidance questions

32) Do you support streamlined Rules of Conduct regulations?

Yes

33) Why?

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

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

Revised disciplinary framework: Guidance questions

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

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

3.3 Other matters recommended in the 2015-16 review

Application of the Rules of Conduct: Guidance question

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

No

- 41) Please explain.

Offence Provisions: Guidance questions

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

Yes

- 43) Why?

- 44) Should this restriction apply to former employees?

Yes

- 45) Please explain?

Confidentiality: Guidance question

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

No

- 47) Why?

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

Sector conduct review committees: Guidance questions

- 48) What do you see as the benefits and disadvantages of this model?
- 49) What powers should the Conduct Review Committee have?
- 50) In your opinion what matters should go directly to the Standards Panel?
- 51) Who should be able to be a member of a panel: elected members, people with local government experience, independent stakeholders?
- 52) Who should select the members for the pool?
- 53) How many members should there be on the Review Committee?
- 54) Are the proposed actions for the Review Committee appropriate?
- 55) If not, what do you propose?

Review of elected member non-compliance: Guidance questions

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

- 57) Are there any other options that could be considered?
- 58) Who should be able to request a review of a decision: the person the subject of the complaint, the complainant or both?

3.5 Sanctions and other Standard Panel matters

Mediation: Guidance question

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

Prohibition from attending council meetings: Guidance questions

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

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

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

Compensation to the local government: Guidance questions

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

- 67) What should the maximum amount be?

Complaint administrative fee: Guidance questions

- 68) Do you support this option?
- 69) Why or why not?
- 70) Do you believe that a complaint administrative fee would deter complainants from lodging a complaint?
- 71) Is this appropriate?
- 72) Would a complaint administrative fee be appropriate for a sector conduct review committee model?
- 73) Why or why not?
- 74) What would be an appropriate fee for lodging a complaint?
- 75) Should the administrative fee be refunded with a finding of minor breach or should it be retained by the Department to offset costs?
- 76) Why or why not?

Cost recovery to local government: Guidance questions

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

Publication of complaints in the annual report: Guidance question

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

Tabling decision report at Ordinary Council Meeting: Guidance question

- 81) Do you support this option?
- 82) Why or why not?

3.6 Elected member interests

Elected member interests: Guidance questions

- 83) Should not-for-profit organisation members participate in council decisions affecting that organisation?
Yes
- 84) Why or why not?

The role of NPOs can be broad reaching, and thus there is a risk that there would be an unreasonable number of items that individuals need to be excluded from. Further, in NPOs, individuals do not have a deciding interest and their influence is not comp

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

Improving the behaviour of elected members: Guidance question

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

*Note for Officer holder question above - the Officer holder must be a voluntary position. Paid positions should be separated.

4. Local government administration

4.1 Recruitment and selection of local government Chief Executive Officers

Recruitment and selection of local government CEOs: Guidance questions

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

Yes

88) Why?

The selection of an appropriate CEO is critical to ensuring good process and sound cultures are developed in the LGA operations. Without competence in this critical leadership position, the whole operation loses effectiveness.

Councilors are not necessarily skilled in identifying quality executive staff, and as necessitated by law, do not understand the nuances of the Council operations. External support in the recruitment process would enable the analysis of the organisation and the identification of a candidate of an appropriate fit. Specifics of how this should be achieved are not relevant to HIA.

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

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

91) If so, how?

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

93) If so, who and how?

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

4.2 Acting Chief Executive Officers

Acting CEOs: Guidance questions

- 95) Should the process of appointing an acting CEO be covered in legislation?
- 96) Why or why not?
- 97) If so, who should appoint the CEO when there is a short term temporary vacancy (covering sick or annual leave for example)?
- 98) Who should appoint the CEO if there will be vacancy for an extended period (for example, while a recruitment process is to be undertaken)?

4.3 Performance review of local government Chief Executive Officers

Performance review of local government CEOs: Guidance questions

- 99) Who should be involved in CEO performance reviews?

Professionals capable of assessing the performance of an executive should be employed to assist the Council in determining the adequate performance of the CEO. Councilors are not permitted to engage with the officer workforce and thus may miss some critical elements of performance. Councilors should also have support in establishing relevant

KPIs to which the CEO is to perform. An external consultant will also be able to provide feedback from other senior officials without damaging the their relationship with the Council.

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

101) How often should CEO performance be reviewed?

102) Which of the above options do you prefer?

103) Why?

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

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

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

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

Yes

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

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

108) Should there be any exceptions to this?

4.5 Public expectations of staff performance

Public expectations of staff performance: Guidance questions

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

Yes

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

111) If so, what?

Strengthening local government administration: Guidance question

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

The culture in a local government organisation is what dictates how well it engages with its community. The appropriate selection of staff, particular senior staff, is essential to ensuring that the LGA operates to the genuine and holistic benefit of th

5. Supporting local governments in challenging times

Remedial intervention: Guidance questions

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

114) Why?

Perhaps a tiered system is appropriate, where in the instance of inconsistency creating issues, the State can provide support to align the local government to the appropriate way of operating. In more severe cases, an external consultant with the appropriate experience should be appointed to resolve the technical and cultural deficiencies that exist. This will enable a completely independent view of the circumstances and should allow for quality guidance that the state may be able to enforce parts of.

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

116) Please explain.

The state should be able to enforce changes onto a LGA operation. External parties should provide guidance.

117) Who should pay for the appointed person?

Local Government Operations

118) Why?

The need to address these issues are due to operational deficiencies. Where there are significant changes created through state based legislation, the state should provide that support, however this is not normally the case.

Powers of appointed person: Guidance question

119) What powers should an appointed person have?

Review, engage, suggested, direct (as above)

Remedial action process: Guidance questions

120) Do you think the proposed approach would improve the provision of good governance in Western Australia?

Yes

121) Please explain.

The proposed process is a step towards improvement.

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

Supporting local governments in challenging times: Guidance question

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

'Challenging times' should not be crisis point. Support and guidance should be given where the community consistently raises concerns with operations.

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

Transferability of employees: Guidance questions

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

125)

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

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

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

No comment as not related to HIA

Consistency between local governments should make staff more transferable.

7. Gifts

7.1 Simplifying the gift provisions

A new framework for disclosing gifts: Guidance questions

128) Is the new framework for disclosing gifts appropriate?

129) If not, why?

130) Is the threshold of \$500 appropriate?

131) If no, why?

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

133) Why or why not?

134) If yes, what gifts should be prohibited?

Excluding gifts received in a personal capacity: Guidance questions

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

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

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

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

Gifts: Guidance question

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

No comment as not related to HIA

8. Access to information

8.1 Public notices

Public notices: Guidance questions

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

Option 7

Why?

Centralised information source simplifies use. Online notices, provided they are presented in a consistent manner, in an easy-to-locate position on the website, are an effective way of conveying information. Where individuals request, alternative supply of information may be considered.

141) Should the requirements for any notice in the Supplementary Information - Public Notices be changed?

Yes

142) Please list and explain the reasons for the proposed change.

143) Could any of the notices in the Supplementary information be published on alternative websites?

Yes

144) Please provide details

8.2 Information available for public inspection

Information available for public inspection: Guidance questions

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

Provision	Documents	In person only	Website only	Both	Neither
Section 5.53	Annual Report Website only Website only				
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. In person only				
Section 5.87	Discretionary disclosures generally Website only				
Section 5.82	Gifts (already required to be on the website) Website only				
Section 5.83	Disclosure of travel contributions (already required to be on the website) Website only				
Elections Regulations 30H	Electoral gifts register Website only				
Section 5.98A	Allowance for deputy mayor or deputy president				

	In person only
Section 5.100	Payments for certain committee members In person only
Functions and General Regulations 17	Tenders register Website only
Section 5.94 & Administration Regulations 29	Register of delegations to committees, CEO and employees Website only
	Minutes of council, committee and elector meetings Website only
	Future plan for the district Website only
	Annual Budget Website only
	Notice papers and agendas of meetings Both
	Reports tabled at a council or committee meeting Website only
	Complaints register (concerning elected members) Website only

Contracts of employment of the CEO and other senior local government employees
In person only
Schedule of fees and charges
Website only
Proposed local laws
Both
Gazetted Local laws (and other law that has been adopted by the district)
Both
Rates record
Both
Electoral roll
In person only

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

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

Yes

147) If so which items?

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

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

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

Access to information: Guidance question

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

Providing a central website which links through to each local government would allow improved awareness of public notices.

9. Available information

9.1 Expanding the information provided to the public

Expanding the information provided to the public: Guidance questions

153) Which of these options do you prefer?

Option 2: Additional reporting requirement

154) Why?

Accountability is created through exposure to key stakeholders

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

Proposal	Should this be made available: No, optional, required?
Live streaming video of council meetings on local government website	Optional
Diversity data on council membership and employees	Optional
Elected member attendance rates at council meetings	Required
Elected member representation at external meetings/events	Required
Gender equity ratios for staff salaries	Optional
Complaints made to the local government and actions taken	Required
Performance reviews of CEO and senior employees	Optional

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

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

Expanding the information available to the public: Guidance question

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

Defining red tape: Guidance questions

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

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

Significant red tape is confronted due to the different processes and procedures adopted by local governments. HIA understand this to be the subject of the following review phase. Consistency between local governments is essential to reduce costs for LGAs, industry and consumers.

Specifically in regards to items of red-tape created in the Act, we make the following suggestions:

- Remove 3.5(4A, 4B) as this create unnecessary inconsistency with the BCA and the Building and Health Acts
- Provide for standard local law templates and promote restricted variations
- 3.7 Improve clarity of the hierarchy of laws and provide for state policies
- 3.8 Provide for efficient correction of local laws based on model laws, including automatic adoption of amendments
- 3.14 Extend transition period for local laws to allow time for awareness and adoption by industry
- 5.44 Delegated authority to be advertised to inform the public of the decisions making process
- 9.51 Submit information by email

Providing as much consistency through the Act and the provision of model laws will enable more LGAs to apply consistent law and process.

I

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

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

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

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

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

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

10.1 Potential red tape reductions

Special majority: Guidance question

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

161) Why or why not?

Senior employees: Guidance questions

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

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

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

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

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

Disposal of property: Guidance questions

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

- 169) Should the threshold remain at \$75,000 but with separate exemptions for specific types of equipment, for example plant?
- 170) The general \$20,000 threshold was put in place in 1996 and has not been amended. Should the threshold be raised higher than \$20,000?
- 171) If so, what should it be and why?

- 172) Would raising these thresholds create an unacceptable risk that the items would not be disposed of to achieve the best price for the local government?
- 173) Is there an alternative model for managing the disposal of property? Please explain.

Reducing red tape: Guidance question

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

The Act should promote consistency between local governments. This is essential for reducing the burden on red tape.

11.1 Risks and benefits of borrowing

Regional subsidiaries: Guidance questions

- 175) Which option do you prefer?
- 176) Should regional subsidiaries be allowed to borrow money other than from the member councils?
- 177) Why or why not?

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

No comment as not related to HIA

Regional subsidiaries: Guidance question

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

No comment as not related to HIA

Local Government Act review: Guidance question

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

HIA look forward to contributing in detail to the assessment of red tape in Local Government processes.