



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

Name: Murray Cook

1. Relationships between council and administration

Introductory questions

- 1) Would you like your submission to remain anonymous?
No
- 2) Postcode:
6230
- 3) Who are you submitting on behalf of?
Yourself
- 4) Local government name:
- 5) Organisation name
- 6) Are you a:
Elected member

Defining the roles of council and administration: Guidance questions

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

There is nothing wrong with the current definition but the relationship between the Mayor/President needs to change.
- 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?
No
- 11) How do you propose that these are improved?

As mentioned; have the Mayor/President direct the CEO as to priorities and emphasis.

Improving relationships between council and administration: Guidance question

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

No

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?

A broad range from relationship with the CEO to understanding financials and budgeting and their civic roles.

- 14) Do these vary between local governments?

No

- 15) If so, in what way?

2.2 Funding training

Funding training: Guidance questions

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

The Local Government but training need to be a lot more decentralised than it is now.

- 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?

Yes

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

Probably, or the count of actual Ratepayers.

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

No

2.3 Mandatory training

Mandatory training: Guidance questions

- 19) Should elected member training be mandatory?

Yes

- 20) Why or why not?

Yes but; only core topics (like understanding Local Government, Budgets, Planning and the Role of Councillors)

- 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?

Targetted - a Certified Practicing Accountant should not need training in reading financial reports etc.

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

9 Months

2.4 Continuing professional development

Continuing professional development: Guidance questions

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

Yes

27) If so, what form should this take?

Refresher courses every 4 years.

Training: Guidance question

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

No

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.

Community standards/expectations do not change within the State's borders.

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

Codes of conduct are required

Local governments must adopt a model code, with certain clauses subject to modification

31) How should a code of conduct be enforced?

Non-compliance with the Act.

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?

Because any rules/guidelines etc need to be simple to understand, implement and be administered.

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

Act with honesty and integrity, with reasonable care and diligence and lawfully.

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

Yes

36) Is three months adequate?

Yes

Revised disciplinary framework: Guidance questions

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

Yes

38) Why or why not?

Because, at the end of the day positive and tangible outcomes should be the aim.

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?

Yes

- 41) Please explain.

It preserves natural justice and could save further litigation down the track.

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?

Because some planning issues, Town Planning Schemes etc, can take years and years to bring to fruition. A sitting member today could learn of future plans, leave Council and purchase property etc that will improve in value when the changes are implemented.

- 44) Should this restriction apply to former employees?

Yes

- 45) Please explain?

For the same reasons as articulated above.

Confidentiality: Guidance question

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

Yes

- 47) Why?

It preserves natural justice and could save further litigation down the track.

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?

As long as the local Complaints Officer has the power to negotiate an outcome, it will reduce the time it takes for matters to be handled. A disadvantage is, in very small Local Governments, that the Complaints Officer may be too close to the issue; it may be best for a neighbouring Council Complaints Officer to become involved at a very early stage to avoid such a conflict.

49) What powers should the Conduct Review Committee have?

They should be able to implement outcomes with the agreement of both parties. If agreement cannot be reached, the matter has to be pushed to the Standards Panel.

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

Those matters directly involving a CEO or President/Mayor.

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

People with local government experience

52) Who should select the members for the pool?

The Minister via their Department.

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

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

Yes

55) If not, what do you propose?

Review of elected member non-compliance: Guidance questions

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

Option 2 because the closer to home the resolution is made, the likelihood of a better and sustainable outcome.

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

Not that I can think of.

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

Both

3.5 Sanctions and other Standard Panel matters

Mediation: Guidance question

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

Yes

60) Why or why not?

A mediated outcome is the best outcome as long as the combatants leave the room smiling, the job is done.

Prohibition from attending council meetings: Guidance questions

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

Yes

- 62) Why or why not?

Because if the elected member has been found to be disruptive/bringing the Local Government into disrepute there must be a 'punishment' that will reduce their influence (albeit for a short period of time).

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

3

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

No

- 64) Why

Because we should be aiming for an outcomes based system. If a member cannot/does not attend meetings, they should suffer financially.

Compensation to the local government: Guidance questions

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

No

- 66) Why or why not?

All costs should be borne by each party.

67) What should the maximum amount be?

N/A

Complaint administrative fee: Guidance questions

68) Do you support this option?

Yes

69) Why or why not?

To ensure complaints lodged have been thought through to such a degree that the complainant is prepared to pay a fee (albeit a token fee).

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

Yes

71) Is this appropriate?

Yes

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

Yes

73) Why or why not?

Even though complaints would be handled quicker and cheaper, a small impediment would help keep the volume of complaints down.

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

In today's terms, \$50

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

Yes

76) Why or why not?

To help offset costs.

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?

Yes

78) Why or why not?

Because it is a form of punishment - no breach, no payment.

Publication of complaints in the annual report: Guidance question

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

Yes

80) Why or why not?

Because it better informs the public about Elected Members behaviour and gives them the opportunity to vote them out at the next election.

Tabling decision report at Ordinary Council Meeting: Guidance question

81) Do you support this option?

Yes

82) Why or why not?

Because it then becomes on the public record and will help stop the reporting of trivial or vexatious matters.

3.6 Elected member interests

Elected member interests: Guidance questions

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

No

- 84) Why or why not?

I do believe that members of NFP's should be able to be present after declaring an impartiality interest but any "Office Bearer" of a NFP, should leave the room. My reasoning is that "ordinary" members have very little say in NFP matters (probably spend most of their time trying to fund raise) but Office Bearers are decision makers within the NFP and should not vote on matters before Council.

- 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?

It is such a difficult topic. More training (mandatory?) perhaps to explain that Councils are not Parliaments and different debating rules apply. Many people come into Council expecting to be able to make forceful debate under privilege and can say whatever they like about any topic or person.

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?

Because "lay" Councillors probably do not have the expertise and/or impartiality required to carry out the recruitment process.

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

By the inclusion of a recruitment specialist on the selection panel.

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

Yes

- 91) If so, how?

Appoint a member to the Local Government Selection Panel and facilitate the process.

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

No

- 93) If so, who and how?

Not required if the Public Sector Commission is involved.

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

A person who has empathy, drive, vision, experience, leadership qualities, be personable, be prepared to serve the community, able to work within a budget and provide outcomes that help the community enjoy and love where they live. Would hold a tertiary qualification probably with a finance or economic major and be town planning savvy.

4.2 Acting Chief Executive Officers

Acting CEOs: Guidance questions

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

No

- 96) Why or why not?

Too trivial to be enshrined in legislation.

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

CEO

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

Council

4.3 Performance review of local government Chief Executive Officers

Performance review of local government CEOs: Guidance questions

99) Who should be involved in CEO performance reviews?

A panel of elected members supported by an independent expert.

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

Judged against predetermined KPIs which should include financial and physical outcomes (community amenity).

101) How often should CEO performance be reviewed?

12 Months

102) Which of the above options do you prefer?

Option 1 - it is the closest to the existing process but should also be supported by a Policy (Option 2)

103) Why?

No

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?

6 Months

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

6 Months

108) Should there be any exceptions to this?

Only for severe misconduct etc.

4.5 Public expectations of staff performance

Public expectations of staff performance: Guidance questions

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

Yes

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

Yes

111) If so, what?

Criminal offences relating to fraud and/or violence.

Strengthening local government administration: Guidance question

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

I would certainly like to see the CEO become a direct report of the President/Mayor. This is the case in Brisbane and is required to ensure that Council resolutions are enacted in, not only a timely manner, but also with the "intent" be recognised and implemented. Everyone needs a boss and the CEO needs someone rather than the collective.

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?

Departmental employee

114) Why?

Best placed to understand the complexities involved and is the lynch pin between to Local Government and the Government.

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

Direct the local government

116) Please explain.

It a Council is in such a parlous state, direction is required.

117) Who should pay for the appointed person?

The State

118) Why?

Because, ultimately, they are the ones whom will bear the cost of a failed Council.

Powers of appointed person: Guidance question

119) What powers should an appointed person have?

Recommend to the Minister the suspension of a Council. Appoint an Administrator. Remove the CEO.

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.

Using a Departmental Officer ensures consistency in application across the State and ensure impartiality. The "threat" of an Officer coming in with extensive powers (including the removal of an ineffective CEO) will help Council perform according to community needs and expectations.

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

Needs to be a person capable of being a CEO in a major Local Government who understand the Act, community expectations and a good financial knowledge.

Supporting local governments in challenging times: Guidance question

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

Expand the Role of Council (s.2.7) The State provide recurrent funding to Regional Cities to assist ratepayers support regional facilities such as convention centres, art gallery, and museums etc. The City of Bunbury is, in many ways, similar to Perth in that it provides major infrastructure to support the residents that live within an hour of it's boundaries. Perth does not pay to support the Art Gallery, Museum, Convention Centre etc; so why should Bunbury's 16,500 ratepayers have to bear this burden (to support over 80,000 people in the Bunbury Geographe region)? Some assistance is provided to the Regional Art Gallery and Regional Library but it is insufficient. At today's values, I believe that \$2.5M is required, per annum; not a lot of money in the overall scheme of things but it would make a huge difference to Bunbury's viability and sustainability.

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?

Retention of expertise.

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?

Not really, it is a no brainer. The departing Council/Department should pay the costs, not the receiving Council/Department. Money should always be

held in preservation accounts to cover the costs of transferring out employees.

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?

No

129) If not, why?

No gifts - physical objects, in-kind support, financial support, event tickets etc should be accepted by Elected Members or Local Government employees from any non-related person or entity. Gifts of a personal nature, Birthdays, Weddings etc are acceptable provided they are valued at less than \$250 and are from friends and/or relations. No gifts or support are acceptable from any business. No election costs or to be provided by a 3rd party.

130) Is the threshold of \$500 appropriate?

No

131) If no, why?

It should be zero, except in the circumstances discussed above.

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

Yes

133) Why or why not?

As articulated above

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?

Yes

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

Relation or close personal friend and under \$250.

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

No

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

Gifts: Guidance question

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

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 2

Why?

Because information needs to be published in all forms. We still have a demographic who read papers but those requiring information electronically (including Social media) need to be reached.

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

No

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

Social Media needs to be embraced to extend our reach.

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

Yes

144) Please provide details

Social Media needs to be embraced to extend our reach.

8.2 Information available for public inspection

Information available for public inspection: Guidance questions

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

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

Section 5.98A	Allowance for deputy mayor or deputy president Both
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
	Minutes of council, committee and elector meetings Both
	Future plan for the district Both
	Annual Budget Both
	Notice papers and agendas of meetings Both
	Reports tabled at a council or committee meeting Both

Complaints register (concerning elected members)	Both
Contracts of employment of the CEO and other senior local government employees	Both
Schedule of fees and charges	Both
Proposed local laws	Both
Gazetted Local laws (and other law that has been adopted by the district)	Both
Rates record	Both
Electoral roll	Both

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?

No

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?

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?

Because we need to be seen to be operating in a transparent manner.

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	Required
Diversity data on council membership and employees	Required
Elected member attendance rates at council meetings	Required
Elected member representation at external meetings/events	Required
Gender equity ratios for staff salaries	Required
Complaints made to the local government and actions taken	Required
Performance reviews of CEO and senior employees	Required

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.

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?

No

161) Why or why not?

Some matters are more important than others and I believe it is good that we recognise that one size does not fit all situations.

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?

Because the appointed employees need to work for and recognise that the CEO is their boss. on the other hand; The role of mayor or president (s.2.8 (f)) and Functions of CEO (s.5.41(e)) That sections 2.8(f) and 5.41(e) are amended to provide the Chief Executive Officer report directly to the Mayor, to assist with diminishing any grey areas in implementing Council decisions. This is the case in Brisbane where the CEO is a direct report of the Mayor. Currently the CEO only answers to the collective body and, as happened in the past, “ordered” the Mayor provide a resolution before he would act on a request. It is not a healthy situation when the inner workings of Council require good-will and a close relationship between the 2 leaders. We need something more tangible.

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

No

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

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?

Yes

- 166) Why or why not?

Because the AA SB 124 rules are onerous and serve no real purpose.

Disposal of property: Guidance questions

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

Yes

168) if so how high?

\$100K

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

No

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

Yes

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

\$50K to retain relevance according to the increase in financial values.

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

No

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

Reducing red tape: Guidance question

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

11.1 Risks and benefits of borrowing

Regional subsidiaries: Guidance questions

175) Which option do you prefer?

Option 2: Regional subsidiaries are permitted to borrow from Treasury Corporation

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

Option 2: Regional subsidiaries are permitted to borrow from Treasury Corporation

177) Why or why not?

It broadens the opportunities and would allow borrowing from Treasury.

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

Regional subsidiaries: Guidance question

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

Local Government Act review: Guidance question

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

Part 2 – Constitution of local government, Division 6 – Terms of office on the council and vacation of office. That Division 6 is amended to limit the number of consecutive terms served by a Mayor/President to two terms (8 years), and Councillors to three terms (12 years). Candidates would be re-

eligible to be elected for mayor/president or councillor following a two year break. There are cases of Councillors who have served diligently for periods of over 30 years but there are others who have only been “seat warmers”. Breaking the cycle would afford the opportunity for new blood to be elected and yet leave the door open for a return in 2 years time, should the electorate so decide.

Also... I would like to see the introduction of Compulsory voting at Local Government Elections. Having 70% of electors not vote does not auger well for good representative Government. People do not understand the current system - it is compulsory at the State and Federal levels but not Local Government. Also... we need electronic voting by 2019, PLEASE. Making it compulsory and introducing electronic voting at the same time would make the changes more palatable for the community.