Local Government Act 1995 Reform Submission

"To stand for a local government as an Elected Member with expertise and experience in local government administration, with altruistic ambitions, with an unaligned priority to serve your community, not being a member of a club and having a passion to improve governance practices – you might find you are poorly suited to the work. The reason for the lack of suitability is the current Local Government Act."

Sandra Boulter 8 March 2018

SUBMITTER'S QUALIFICATIONS

I am currently a local government Councillor.
I have worked as an employed local government director/manager.
I was a UWA law school prize winner in planning and development law.
I qualified as a general nurse, midwife and intensive care specialist. I specialised in mental health law as a Principal Solicitor. I have seen and understand the impacts of unsafe work practices and an unsafe work environment.
I have worked as a lawyer in administrative law.
I am regularly contacted for information and support by Elected Members from many different local governments who know of my reputation and are desperate for help with many of the issues identified below. There is rarely anything that I can advise that would provide independent expert confidential help.
I believe wholeheartedly in local government.

My opinion and observations are that the Elected Members, public and community dissatisfaction with local government arise from poor administration, poor service and wasteful expenditure associated with rising rates, and generally not from the very few Elected Members who are found to be corrupt or knowingly guilty of failing to declare interests.

There is a clear lack of understanding within the community because of the improper use of the word "Council" by the media and local government administrations. Council which does this or that, where it is so often the administration that has done or not done this or that without Council knowledge, but hides this under the use of the word "Council".

The Local Government Act is heavily weighted against Elected Members in favour of local government administrations.

WA CORRUPTION AND CRIME COMMISSION

I submit that **all** CCC findings should be carefully analysed as part of informing the current LG Act reform process. A few examples follow:

City of Perth

[18] The making of an allegation does not imply that there is substance to it. Reporting an allegation of serious misconduct is a statutory duty imposed on the CEO:
https://www.ccc.wa.gov.au/sites/default/files/Report%20into%20Allegations%20of%20Serious%20Misconduct%20by%20Councillors%20of%20the%20City%20of%20Perth%20between%2021%20and%2024%20October%202017.pdf
Reform Position: The first statement above needs to be stated in the Act. Furthermore, the CEO should have a test imposed by the Act that the CEO should have some evidence of the truth or accuracy of the allegation, before reporting it.

Shire of Exmouth

The Commission has formed an opinion of serious misconduct in respect of Mr Price and Mr Forte. As senior officers of Exmouth, they were under a duty to give truthful evidence to the Commission concerning Exmouth's affairs and did not do so. As in the case of agenda item 11.3, they were prepared to fabricate a document to support their position. [232] The Commission also recommends that consideration be given to the prosecution of Mr Price and Mr Forte.85 …

[247] It was not until the Hon. Minister for Local Government and Communities took action that Council, who is required to perform an oversight role, appears to have asserted itself over its CEO. .

It was not until the Hon. Minister for Local Government and Communities took action that Council, who is required to perform an oversight role, appears to have asserted itself over its CEO. [248] Mr Fletcher has recommended that the Minister order a panel enquiry into the Council. [249] In light of the stunning indifference to the ratepayers of Exmouth in increasing Mr Price's leave entitlements and Council's failure to act promptly and appropriately to discipline Mr Price, the Commission supports this recommendation. [250] The Commission has formed no opinion of serious misconduct in respect of the Council. Neither the Commission nor the Public Sector Commission have jurisdiction…

Mr Jolly stated that whilst not required by the legislation, Mr Jolly would favour independent preparation of a local government's mandatory annual compliance audit report.140 Mr Jolly noted that independent verification would improve confidence and rigour around the process. Mr Jolly gave evidence that the scope of the compliance audit return has been substantially reduced and significantly streamlined. The cost to a local government to have their compliance audit report independently verified would be unlikely to send even a mendicant local government 'broke'.141…

Mr Jolly has acknowledged lessons to be learned and some things to be improved. [215] Although DLGC has an important role to play, the LGA clearly places responsibility on the council to govern the local government's affairs and for the performance of its functions. 148 …
https://www.ccc.wa.gov.au/sites/default/files/Report%20on%20Matters%20of%20Serious%20Misconduct%20in%20the%20Shire%20of%20Exmouth.pdf

Reform Position:

The Act and Regulations must be amended as follows:

The indifference of CEOs to ratepayers must be remedied in the roles and responsibilities of CEOs and Councillors and Council under the Act.

1. **Require independent preparation of local governments annual compliance reports, which requires independent consultation with Councillors and the Community.**
2. **Expand the scope of the compliance audit report, especially as it relates to the administration's compliance with the Act and Council policy, and any complaints received against it.**
3. **Review any possible captured influence on the DLGC.**
4. **Remove the prohibition against Elected Members speaking out against maladministration, incompetent administration and corrupt administration. If the canary in the coalmine cannot sing, then local government dies, or remains mismanaged at the expense of residents and ratepayers it is required by the Act to serve.**

Dowerin

… If the DLGC identifies that a local government is at high risk, that may trigger an intervention in the form of a probity audit. A probity audit assesses the local government's compliance with a

range of legislative obligations.130 A probity audit is not a statutory intervention, so it relies on the cooperation of the local government. However, Mr Jolly noted that in the DLGC's experience it tends to receive cooperation because the local government understands that the alternative may be for DLGC to exercise its compulsive powers of inquiry under Part 8 of the LGA.131… Mr Jolly noted that as a result of the Commission's inquiry there are lessons to be learnt by the DLGC in terms of how the Department might improve. 139…
https://www.ccc.wa.gov.au/sites/default/files/Report%20on%20a%20Matter%20of%20Governance%20at%20the%20Shire%20of%20Dowerin.pdf

Reform Position: The issue at Dowerin was with the CEO. However, the Council was criticised for not having the proper governance structures in place or understanding their role under the Act. This was not all the fault of the Councillors. The lack of understanding was entirely the fault of the CEO in his own interests. DLGC was criticised and agreed that their response could have been better. Sadly, it is the CEO role to ensure Crs are trained and understand. When a minority Elected Member starts raising the issue, as the canary in the coal mine, they can be ignored, bullied, criticised for not being a team player by *en bloc voting Councillors and/or the CEO* – see the Re matter - there is nowhere to go until a majority of Councillors understand and agree there is a problem, which may never happen, and/or an investigative body steps in. The lack of accountability of the local government administration system, propped up by the Local Government Act, requires the protection of "shooting the messenger" (any employee or Elected Member).

An expert independent body must be established to support these wonderful and necessary Elected Member canaries in the coalmine. This CCC report shows the circular route that again and again comes back to an unaccountable CEO having all the power and Elected Members having none, and Councils having all responsibility and no power, which mostly they have given away to the CEO. A corrupt and/or incompetent CEO can do much more damage than one or two corrupt Elected Members – just look at the list of damages to Dowerin, sadly and explicitly itemised in the Dowerin Report.

The ticking boxes syndrome for accountability facilitated by the Act and local government administrations, and the consequent lack of true accountability that besets the Local Government Act reporting mechanisms inhibits open, accountable, transparent and improved governance in the Local Government sector.

GENERAL

1. The concentration on and wide public condemnation of Local Government Elected Members to the exclusion of similar condemnation of poorly performing local government administrators is condemned by this submitter in the strongest possible terms.
2. Elected Members come and go but CEOs are there forever protecting their power, it seems. CEOs have power, influence, knowledge and mentor support to manage "Elected Members" under the guise of giving advice to Elected Members by the power given to them by the Local Government Act. CEOs not being held responsible for selective advice to Elected Members
3. and treating Elected Members differently (reporting some and not others for example) is a real issue that should be punished where it occurs.
4. Elected Members, often minority Elected Members, are often the first messengers of bad practice. The apparent practice of WALGA, DLGC and CEOs of ignoring, minimising, dismissing, or shooting the messenger rather than supporting the messenger is not

reaching the core problem of dissatisfaction of the community with their local governments.

5. The Act closely involves CEOs in what are or should be Council business, and the Act should be carefully analysed for this crossover murkiness and it should be stopped.
6. The Act must more clearly delineate the role of Council and Elected Members, and CEOs and employees. For example: some CEOs deliberately or simply do not understand the difference between consulting Councillors as a body and Council decision making.
7. Some local governments are in a state of maladministration. See for example where residents and ratepayers make complaint after complaint (see Melville and Perth) and nothing is done until the problem is so exposed that much more damage is done to the local government's residents and ratepayers and the amenity of their community, that would have been done if complaints had been taken seriously much earlier: see CCC Dowerin report about the DLGC responses.
8. A close examination of WALGA, including whether or not it has been captured in the Stigler[1] sense, must be made.
9. Local Government CEOs and Senior Manager in many circumstances appear unaccountable in any meaningful way. Poorly performing CEOs and Senior Managers are disguised by saying that all the things, which are wrong with local government, are the fault of the poor performance of Elected Members, and by WALGA being perceived to move CEOs on when things get a bit hot.
   The Awards Doctrine also kicks in – where LG administrators spend ratepayers time and money applying for awards that they can then wave in the face of complainants.
   One or two Mayors or Elected Members who have improperly accepted travel gifts, or not declared financial or proximity interests cannot destroy the proper functioning and prudent administration of local government, especially if prudent best practice CEOs exercise an independent mind to their role. It seems to me that whichever other organisations are saying otherwise have been captured by local government administrators who appear to me to be very busy deflecting attention from themselves onto Elected Members.
10. It is often minority Elected Members who are in the firing line. They are often the canary in the coal mine. They need to be listened to and heard, and be safe in their workplace.
11. The CCC has found in some matters before it that it is the problem with CEOs and administration, and Elected Members who did not understand their job and Elected Members trusted, as it turned out – wrongly, the advice or omission of advice of their corrupt CEO[2].

SPECIFIC

12. Where a CEO is required to do something under the Act, there must be an identified consequence for not doing it.
13. The Act must identify where and what name are the Prescribed Forms and Regulations made under the Act, because it is a secret dog's breakfast that is impossible for non-lawyers to make their way through and find.
14. The Act needs to deal with sexual harassment and bullying in the work place. For example, if an employee discloses to an Elected Member that sexual harassment or bullying is taking place and is too scared of the CEO to approach the CEO about it, or the CEO is the culprit, then the Act needs to explain very clearly what to do about it. For

[1] https://en.wikipedia.org/wiki/Regulatory_capture

[2] CCC report on Dowerin

example, if a minority Elected Member is being bullied by a member of the administration, where do they go to ensure a proper response? Where is the expert training about that by independent legal experts?

15. Councils should be informed, in confidence, of any issue relating to an employee that might be a crime or breach of the LG Act, so as to ensure governance structures are appropriately improved and such employees are not just moved onto another unsuspecting local government.

SPECIFIC SUBMISSIONS ON SECTIONS OF THE LOCAL GOVERNMENT ACT

The items below relate to specific sections of the Local Government Act and my PRELIMINARY submissions on them:

S1.3(2): should include requirements for a safe workplace, which is a defined responsibility of the CEO and Mayor
S1.4: The 75% majority rule should be applied more often
S1.6: The Crown should be bound by the Local Government Act
S1.7: Keep requirement for advertisement in local newspaper
S2.1: This should be a decision of the parliament, not the Minister
S2.7: "affairs" and "peformance" requires definition.The liaison with the CEO on local government affairs and performance of its functions under ss.8(f) tends to set up a partnership between the CEO and Mayor to the exclusion of Elected Members. Such liaison must be open and accountable and the content of such liaison disclosed to Elected Members ahead of any decision being made by the CEO and Mayor on the basis of this liason – which MUST not be secret. This section has the potential to set up an unhealthy relationship between a CEO and Mayor, especially when you have a CEO who is dominant and domineering in that relationship. The role of Council should be expanded to reflect all the CCC comments and authorises that Councils:

1. Are responsible for strategic leadership and ensuring delivery of Council objectives
2. Can review compliance of CEO with delegated authority
3. Can engage third parties to conduct regular review of service and governance practice

S2.10: There are CCC reports, which sheet blame home to CEO and/or administrative errors, incompetence and/or fraud. Such errors may have been raised in the first instance by minority Elected Members who were ignored and/or bullied and/or marginalised. Furthermore, complaints and issues raised by ratepayers are not required by the LG Act to be reported to Crs. These must be reported to Council, so that Council can identify trends and issues with the administration – this can be done withourt revealing the identity of resident/ ratepayer concerned. S 2.10 needs to add the words to s2.10(c) and specifically require *facilitate communication between the community and the administration*.
S2.11: Mayor and Deputy Mayor should only be elected by the people
S2.15: the election of the deputy mayor should be the person who recorded the second most number of votes in the election where this is by the people and this will tend to ensure a representation of the people's will in the leadership of Council.
S2.19: an Elected Member should be required to be an Australian citizen, to be elected to Council and this qualification should be expressed in the Act.
S2.21: There needs to be a penalty for non-disclosure
S2.22: A person should be disqualified from membership of Council AND from being a local government employee – there needs to be the same accountablity rules for administration and Elected Members, especially where administratros are there for far longer than Elected Members. There needs to be added to the list of permanent exclusions, any conviction for serious misconduct, fraud, misrepresentation or related offences in relation to the local

government workplace while working as a local government employee or elected member, whether or not they have received a spent conviction . Note that a CEO who had finding against him in CCC and a criminal convicition is now working as a local government CEO. Furthermore, the reference to 5 years should be reduced to 2 years in all instances including in the definition of serious local government offence. It is easy pickings to target Elected Members but a much closer look needs to be made of CEOs who have a much greater access to mispending and hiding the mis-expenditure of ratepayers funds.

S2.25: Leave should be granted to a particular date rather than number of meetings, given the power of the CEO in consultation with the Mayor to set meeting dates.

s2.26: A Local Government employee, where-ever the employee is employed, should have to stand down and not be paid when standing for Council, from the the commencment of the caretaker period and should be required to notify the CEO of their possible intention as soon as practically possible.

S2.27: There needs to be a consequence expressed for failure to do so.

S2.27 (3): The CEO should not have this role – and the form of words should be prescribed by regulation. The CEO should not have power of influence over the way Elected Members conduct themselves, especially when there are so many circumstances where CEOs have conflict with Elected Members. There should be a requirement for notice of this issue to be given confidentially to Council, and if established, required to be published.

S2.27(9) and s 2.29(4): The penalties should only apply to a person who "knowingly" acts" as a member of Council, or "should have known".

S2.29: The Act must say where exactly – what rule or regulation the presribed form is to be found. There are so many regulations and their name does not give indication of what might be in them. Alternatively, all LG regulations should be combined into one regulation.

S2.13: The resignation should be handed to the Mayor and Council, with copy to the CEO. This is not the proper role of the CEO, nor should it be.

S2.34: There is a lot of confusion about whether or not an Elected Member who has not completed their term, has to stand down or be disqualified from completing their term if they stand for mayor. The Act should expressly state the position, to avoid confusion and the risk of eligible Elected Members not standing for Mayor – ie that a sitting Elected Member can stand for Mayor without losting the remainder of their term, if they are unsuccessful.

S2.42; State where the prescribed form is.

s2.44: The Local Government Advisory Board is WALGA dominated and should not be so dominated. The Board membership should be open to nominees who are mayors or experienced Elected Members and this should be the majority.

S3.1 The word "persons" requires definition if it remains. However, is it the good government of persons or good government of the locality that is meant? – this is a most bizarre wording in my opinion.

S3.5: Add a new section 4B to have the same effect as 4A but for the Health Miscellaneous Provisions Act and Public Heath Act.

S3.9: There needs to be a list of model local laws that the Department is <u>required</u> to make and update annually. Many local governments do not have the capacity to undertake this work from scratch. If there were regularly updated model local laws from the Deparment, this would go a long way to improving the governance of local governments and provide a model of best practice for Elected Members to consult and use in debate. The model local laws that are crying out to be made are the ones that many CEOs and WALGA and the DGLSC may resist, but these model local laws would vastly improve local government administration and governance and should include by way of example:

- Officer Reports to Council format and content
- Council Policy Format
- Standing Orders

- Delegation Register
- Briefs and Tenders for Contracts Best Practice
- Purchasing and Procurement
- Assessing Efficiency and Effectiveness of the delivery of services
- CEO performance and contracts
- Community Members on Council Committees

S3.12 Is there a standard for whether or not "s" and "z" are used because there is a "z" in this and many other sections. I thought WA used "s"? The rest of the Act should be checked and be consistent.

S3.16: There needs to be a consequence for a CEO not bringing timely reviews of local laws to Council in compliance with the requirements of the Act. There are many obligations on the CEO in the Local Government Act, but few have consequences expressed for non-compliance. One example of a consequence would be for any such non-compliance to be required to be raised as the CEO Performance Review.

S3.18(3)(c) This is an important requirement but useless motherhood statement. There must be required measuring tools. How can a Council measure the efficiency and effectiveness of the services and facilities it provides through its administration without appropriate disclosure relating to performance and compliance failures and measuring tools?

S3.21(b)(i) The words "trees and green infrastructure" need to be added after the word "fences"

S3.22: These provisions and any compensation decisions must not be delegated to the administration. There is too much room for corruption and hiding the causes of the need for compensation from Council. I understand in some Councils, the CEO can authorise a compensation payout without reference of the matter to Council – that is unacceptable practice. The Administration need to be accountable to Council about the need for compensation payouts and by being able to delegate this, the incidents and any need for administrative efficiency and effective reform may be missed. This decision should be prohibited to be delegated.

S3.23: The decisions around arbitration MUST not be delegable, for reasons that are included and expressed above.

S3.25: Any litigation that Council is engaged in MUST be required to be reported to Council for the reasons outlined above in 3.22.

S3.27: Which regulation? – it should be named here so it is easily found.

S3.33: An entry under warrant decision should not be able to be delegated and must be reported to Council.

s.3.34: There should be an additional requirement "(d) occupational health and safety".

s3.50(4): This decision should not be delegable. I am aware of a LG Engineer who gave a license to close a thoroughfare by way of a gate licence so that the neighbours of that section of the thoroughfare could have exclusive use of part of the public road. This ended costing the LG a lot of money and time to resolve the issue.

S3.52(4): The words "up to date" need to be added prior to the word "plans". I am aware that many local governments have laneways and right of ways – some in green title - under their control where there are encroachments (including swimming pools and boundary fences in the wrong place). The cost of obtaining up to date surveys is high and so the requirements on local government must be absolutely clear and that they must be kept up to date, to avoid costly disputes that can lead to costly adverse possession claims. Council taking ownership of a lane or Right of WAy without first undertaking a formal recent survey may be considered reckless by some and the Act should guard against this.

S3.54(1): The identity and name with all land details of any unvested land and reserves under the control of local government must be listed and kept up to date in a public register that can be inspected at the LG office and local library at any time in business hours.

S3.57: The tender amounts should not only be a fixed amount but should also include a not less than total ?% of the total budget of a local government because of the wide disparity in Local

Government budgets: $150,000 is small to some local govenrments and a significant percentage of a budget for others. Regulations should require a public register of contracts under the tender limit as well anad that contract and tender submisisons are NOT confidential items on Council agendas, to ensure the decisions are open and accountable. If local government administrations depart from their Council Purchasing and Procurement Policy, this should be knowable by Council and the community. Quotes sought for a particular purchases must be required to have the Act to have a written record keeping obligation because a "no paperwork response" should not be good enough. When failures are not exposed through open and accountable governance, how can local government administration improve?

S4.9(3) What is the consequence if the CEO does not do this? There must be a consequence. Also the CEO should be obliged by the Act to inform Council of any departures from Council policy, before and after (if breach made without approval) the event

S4.20 The CEO should never be the returning officer and administration employees should be not be officers at the vote count of the local government where they are employed. They are conflicted.

S4.32 This is not the role for a CEO. The CEO is conflicted.

S4.34 This should have an public register that can be inspected. There should be a consequence for not doing this.

S4.65: Voting in local government elections – Mayor and Councillors - should be compulsory and first past the post. Large clubs who are promised largesse can and do influence the outcome of local government elections. One way to minimise this influence is to make the voting compulsory. Such clubs lead to the poor and wasteful expenditure of ratepayers' funds. First past the post will tend to reduce the increasing influence of political parties on local government elections.

S4.71: Voting should not be electronic or by the internet in any way.

There must be a caretaker period of three months where decisions that have significant financial or amenity impacts must not be made (especially beneftis to clubs), and officer reports to Council or Committees cannot be made about such issues in that period.

At one Council there were two mayoral candidates who were both sitting Elected Members. One Elected Member was member of a particular club and one was not. The CEO put up 2 reports about recommending a significant donation to that club out of the donation cycle and recommending granting an extended liquor licence to that club – long fought against by the community - just before the election. The club member Elected Member voted for both and the non club member Elected Member voted for neither. The next day the club put out a notice in its newsletter to vote for their member and Elected Member who voted for these two items.

A caretaker period would have inhibited this practice. Furthermore, if the Elected Member being a member of the club was required to declare a financial interest and thus being prohibited from voting might have led to a different election environment. The Act could do a lot more to improve the local government election process. A caretaker period should apply to Council and Council Committees, and Council news and media releases, and publications.

S4.87 This needs to be tightened up. See for example above. Is an electoral notice published within a newsletter without attribution caught where the general publisher of the newspaper/ club newsletter states who publishes it? It should be clearly caught by clear expression in the Act.

S5.2 A restructure of an entire LG administration without reference to or authority of the Council for the restructure and the costs of the restructure should be expressly prohibited.

S5.5 The CEO MUST not be the sole arbitrator of what appears on Council agendas. For example outstanding Council resolutions can be just left in abeyance – years in some cases - because it does not suit the CEO for some reason or another. The CEO sets the prioirty of Council business by this section and even if it is in consulation with the Mayor. Mayors are not required to consult with or disclose to Elected Members about outcomes of these discussions.

The Prioritisation of Council business is a political as well as adminitrative one – and agenda setting MUST NOT be in the sole control of the CEO.

S5.7: Where a quorum cannot be met the Council should be authorised to permit Elected Members to appear electronically by video link for the purpose of establishing a quorum, and contentious matters should be deferred where possible at the call of the non-attending Elected Members. A CEO is otherwise empowered to bring a matter to Council knowing that a particular EM is absent and that absence will change an outcome to one that the CEO prefers.

S5.9: There should be no delegations permitted to Council committees for committees identified at 5.9(2) (b)-(f). Otherwise non- elected members who are unaccountable will be influencing Council business. Council employees must not be voting members of any Council committees – the employees are conflicted and can be influenced by the CEO.

S5.10

1) An Elected Member should be permitted to join any committee they choose, otherwise the system can be manipulated to form blocs by the current provision of only being required to be on one committee.
2) Standing Orders must expressly apply to all committees and all committee members, including community members
3) There must be consequences of committee members including community members who have voting rights, who do not declare financial interest.
4) The CEO should be prohibited from making recommendations about which community members should be appointed to a Council committee. Otherwise, as it currently permitted under the Act, the CEO is influencing the outcome of committee decision making, which are political and governance matters, not an operational matter.This is an example of the murky crossover enlivend by the Act. This must be prohibited. It is not an operational matter.
5) The Act should require that the Elected Member voting members on any Council committee should always outnumber the voting community members by at least one, otherwise the power of Elected Members who are, unlike the community members, accountable to their community.
6) The Act should not require the mayor or president to be appointed to a committee, especially where the mayor or president has a financial or proximity interest or any interest that requires them to not participate or vote.
7) The CEO MUST not be able to require that an employee be a voting member of a Council committee.
8) There must be a requirement in the Act that the first meeting of a Council committee must be held within 1(one) month of that committee being established or by the date as resolved by Council if that date is earlier. If the CEO decides not to call a committee meeting in a timely way, there is little Elected Members can do about it.

S5.16 Delegations should lapse if they have not been specifically reviewed by Council each year

S5.17 All delegated decisions – as listed in the Act - must be reported to Council in the first meeting after that decision was made. The list in the Act should include all planing and development decisions and their conditions, buildling licences and their conditions, and expenditure over and above $20,000, all compliance actions or decisions not to act.

Delegated decisions must not be represented to the community or recipient as a decision of Council. Under administrative law principles there are some grounds to invalidate a delegated decision that is not stated on the face of the decision to be made under delegated authority and which delegation it was made under.

The Act should reflect this good governance principle and require such wording on the face of all delegated decisions. The current practice of some local governments using the word Council

mispresents the fact that most decisions are made under delegated authority by the administration.
Responsiblibilty for how decisions are made should be required to be made crystal clear to the community under the open and accountable objectives of the Act.
S5.21 The minutes of all decisions of Council and Council committee members should be required to reflect how each Elected Member and Committee Member voted, not just only when an Elected Members asks for this to be recorded. Transparency and accountability of Elected Members will be vastly improved with this reform.
S5.21 Dissenting Councillors should be given a maximum of 100 words to record in the minutes of Council meetings, their reasons for dissent, especially when their decisoin relates to governance matters, which should be recorded. The reasons minority members voted the way they did can be so easily recharacterised. For example, an Elected Member may support a certain project but object to the lack of community consultation or the vague costings, and vote against it for those reasons. The current lack of transparency means that the Elected Member can be said to be aganst the project when the vote against it related to governance issues around the project, which concerns should be recorded.
S5.22 This section must be amended to include a s5.22(4), which provides that the Minutes of any meeting under the Act must be a courteous, respectful record of a meeting, without objectionable material, and that criticism of specific Elected Members by naming cannot be included.
S5.23 Minutes of any meeting under the Act should be required to be submitted to the chair of the meeting for approval before being circulated in a Council agenda or Meeting agenda.
S5.23 There should be an additional item for reason for confidentiality and this should be when discussing matters affecting the reputation, or health or safety of employees or Elected Members, where holding that part of the meeting in public might reasonably be expected to exacerbate any risks to a particular employee or Elected Member.
S5.24 The separation between public statements and question time should be discontinued, as it is arbitrary and unmanageable. Any resident or ratepayer should be permitted to have 2 minutes of question/ statement and whethe ror not the item is on the agenda. This must be a clear right under the Act so it cannot be manipulated by Mayors and CEOs to avoid embarrassing questions/ statements, as so often happens now. The answers to the questions must be recorded in the minutes and if any questions have been submitted with 2 days notice and relates to an item on the agenda, the questions must be answered at that meeting.
S5.28 The bar for a special meeting MUST NOT BE CHANGED. CEOs will have even less accountability if the bar is raised. Issues at special meetings often relate to services and administration not Elected Member behaviour or decision making. IT MUST STAY 100 ELECTORS OR 5% to achieve the objectives of the ACt for openness and accountability.
S5.29 It should be the Mayor convening Elector's meetings. Electors elect Elected Members and it is the Mayor who should call the meeting and set the agenda in consultation with the CEO.
There should be consequences identified in the Act for not calling the meeting within the required time frame.
S5.31 The Act must prescribe and make clear that Standing Orders Local Law apply to Electors Meetings and communiyt members of Council committees.
S5.32 This section requires tightening up to avoid abuse of the minute taking. Minutes of Electors Meetings should only record decisions, and questions and answers. Minutes must be prohibited from recording personal attacks on Elected Members or Employees, and must be requred by the Act not to contain objectionable material. For example: Where a defammatory statement is made about an Elected Member was permitted to be stated at the meeting (which it should not have been permitted) and which is then recorded in the minutes. There needs to be a safe workplace for Elected Members.

S5.33 This section is not worded clearly enough. AEM Decisions can be "considered" without being acted on. The next Council meeting must be required to resolve the issue or have a clearly dated plan of action for completion in 3 months, not just consider it.
S5.35 (2) This CANNOT be a role for the CEO to decide who will be mayor or acting Mayor. This should not involve the CEO in any way. It is not operational and not the CEO's business.
S 5.36 The appointment of a CEO should be by special majority of 75% of Council.
S5.36(5A) The position of CEO MUST always be required to be advertised, and no exception.
S5.37 All senior employees MUST be designated employees, there should not be a choice, and the CEO and three most senior employees of a local government must always be designated employees.
S5.38 to the word "reviewed" add the words "and completed" because just starting the review and not finishing it should clearly and expressly not satisfy the requirements of the Act. The should be a list in the Act of what is the minimum requirements for a CEO review, which should include review of KRAS/KPIs; and review of compliance with Council policy and resolutions. There should be a consequences for CEOs who do not organise their review with Council in a timely way.
S5.40 "Nepotism" and "patronage" should be clearly defined. Having more than one member of a family as an employee or Elected Member should require a number of strict hurdles before that can happen. Nepotism happens, and it needs to be stamped out.
S5.40 This section should include another criterion "promoting a safe work place".
S5.41 Functions of a CEO should include best practice officer report writing to Council; reporting litigation to Council; reporting serious employee concerns to Council; compliance with Council policy and direction; providing a safe workplace for employees and Elected Members.
s.5.43 Limits on CEO delegation should specifically state that delegated decisions must be made in compliance with Council policy, and no legal advice is obtained without Council authorisation of the brief, which must always be written down. Just picking up the phone for legal advice without a written brief can manipulate the outcome of legal advice to suit the administration.
S5.44 The public register must contain all the conditions of any sub-delegation by the CEO
S5.45 Delegations should lapse after a year if not reviewed.
S5.50 This decision should require a special majority of 75%.
S5.53 The annual report from the Mayor should not be drafted by the CEO and should be written independently of the CEO and the Act should state this expressly.
S5.53(hb) All complaints should be reported to Council in the annual report, not only the formal complaints made to the Public Sector Commissioner and/or the DLGC.This is one way of Council reviewing the effectiveness and the efficiency of the administration by reviewing all complaints or issues raised by ratepayers with the administration. The name and address do not necessarily have to be identified but Council needs to know: for example, if complaints are taking longer than a year to resolve, or are not answered truthfully, or with good manners or appropriate follow up.
S5.60A The Act must be changed to make membership of a club (or children of Elected Members who are members of a club) a financial interest that must be declared when the club is seeking financial support or a liquor licence or anything else that is a financial benefit to the club, whether or not the club is a not for profit entity. This is one of the **biggest issues that is corrupting influence** is so many local governments – especially the smaller local governments.
S5.68 It should be only a 75% special majority that can permit a disclosing member to stay and vote.
S5.74 This should apply to all voting Council committee members.
S5.88 The Act needs to specifically require that a copy of each and every return must be in the public register of financial interests. Only keeping the latest return in the public register should

not be a possible interpretation under the Act anad this needs to be clearly expressed, especially since a return can state “no change”.
There must be general consequence provisions for CEOs who do not comply with their obligations under the Act, even if only a requirement to report departures to their annual performance review. The provisions about public registers especially needs a consequence for non-compliance.

Division 9

1) This requires complete reform. This Division needs to be fair and equal between complaints against staff and complaints against Elected Members, espeically where they are made against each other.
2) The Standards Panel should be abolished and a new branch of the State Administrative Tribunal established for hearing complaints against Elected Members and complaints against CEO and Employees. At present a CEO can keep making unfounded complaints against an Elected Member. No advance notice of the complaint is required to be given to the Elected Member, the CEO is not required to give the Elected Member a chance to comply before making the complaint. It is a recipe for bullying and intimidaton of an Elected Member by the CEO. CEOs can choose to report some Elected Members and not others. Each Standards Panel hearing can cost the ratepayers around $1,000 and the CEO is not required to reimburse the ratepayers if the complaint is dismissed. And where does an Elected Member go when the workplace is so unsafe from CEO bullying, especially if that Elected Member is the proverbial canary in the coal mine?
3) No Elected Member should be found guilty of an offence unless they were “knowingly” guilty. If the Elected Member has asked for advice from CEO or DLGSC or someone qualified to give that advice, an opinion should be given – not refused as is the current case - which opinion can be produced in evidence. <u>The current process fails all possible tests under the rule of law.</u>

S5.113 This section is about Punishment for recurrent breach but what about Punishment for recurrent vexatious complaints that are dismissed?
S5.121 This record should not record complaints that are dismissed, and should not record the first three faliures to declare impartiality breaches on the public record – as these are minor, usually are an oversight, and do not have any impact on the decision making of Council because the Elected Member can still stay, debate and vote even on declaring an impartiality breach. The consequences for such a minor breach being published can be devastating and influential. It’s an unfair catch 22 that not to declare is a breach and declaring financial or proximity interests wrongly is a breach, when no-one is requred to give the Elected Member advice when it is requested.
S5.123 The campaign period under this section MUST be expanded to include a caretaker period
S5.124 There needs to be a penalty for this provision expressed in the section.
S6.2 Councils should be prohibited from finalising their budgets before all the land valuations are known. Some Council do this and then find out they have set their rates too high or too low because all the informaton was not before Council. This is bad politics for the Elected Members and bad financing for the community, just to satisfy a CEOs desire to get the budget done earlier than required. This practice should be prohibited.
S6.5 This should include a specific requirement for CEO and Senior Managers to report any financial irregularities to Council at the first meeting after the irregularity is discovered. There should be a presumption that such a report is not confidential.
S6.12 The waiver power in this section should only be granted by a 75% special majority of Council.
S6.33 There should be broader powers for Council to differentially rate. The current housing crisis could be in part ameliorated by having much higher rates for empty properties – empty

urban land or empty houses. Council should also be able to differentially rate based on tree cover and open space on private land, and contaminated land.
S7.2 Local Government Auditors should be required to be changed every 5 years, until the state govt takes over.
S7.13 Regulations about audits should require auditor to check compliance with Councils' Purchasing and Procurement Policy as this policy can be honoured in the breach rather than compliance. All local governments should be required to have a purchasing and procurement policy based on a model produced by the Department, noting the CCC findings on local government procurement.
S8.11 The failures are stated in this section to be an offence but no penalty is provided and there should be.
S8.15C Suspended Councillors and /or Mayors should not receive any of their usual payments, that is they should stop and be prohibited from being paid anything while suspended.If the reason for suspension is not upheld then back pay could be issued. If the complaint is dismissed then the legal fees of the victim should be paid by the local government.
S8.43 Surely this section should apply to employees as well?
S 9.29 There should be a public register showing which lawyers have represented local government in litigation so conflicts of interest can be easily identified.
S9.58 WALGA should be disbanded[3]. While technically WALGA is not a regulatory agency[4], in a general sense WALGA appears to have been "captured"[5] by CEOs and Senior Management employees of local government. It appears not to represent the interests of local government. It appears not to protect Elected Members or junior employees from bullying and unsafe work places, and it does not appear to have the appetite for it.
A new organisation should be set up specifically for Elected Members and to support Elected Members. There are countless organisations that support CEOs and none for Elected Members. If WALGA is to remain it needs to :

1) Understand Capture Theory and work hard against it

---

[3] *"…Likelihood of regulatory capture is a risk to which an agency is exposed by its very nature.[6] This suggests that a regulatory agency should be protected from outside influence as much as possible. Alternatively, it may be better to not create a given agency at all lest the agency become victim, in which case it may serve its regulated subjects rather than those whom the agency was designed to protect. A captured regulatory agency is often worse than no regulation, because it wields the authority of government. However, increased transparency of the agency may mitigate the effects of capture. Recent evidence suggests that, even in mature democracies with high levels of transparency and media freedom, more extensive and complex regulatory environments are associated with higher levels of corruption (including regulatory capture)*…[7]
https://en.wikipedia.org/wiki/Regulatory_capture

[4] https://www.tandfonline.com/doi/abs/10.1080/01900692.2014.903266?src=recsys&journalCode=lpad20

Capture Theory and the Public Interest: Balancing Competing Values to Ensure Regulatory Effectiveness "… Problems arise when a regulatory agency acts in the interests of the industry it is charged with regulating, rather than in the public interest. When a governmental agency established to regulate an industry for the benefit of society acts instead for the interests of the industry it is regulating, it has been "captured" by the industry. This article examines the level of input received from the regulated community and the tendency of regulatory agency capture. " Here, the proposed zone of effectiveness suggests a balance between the two scopes by incorporating a stronger focus on public interest…."

2) Comply with its Constitution in all its spheres and operation, and obtain independent yearly audits as to whether or not this is happening.
3) Work harder at protecting the interests of ratepayers and residents
4) Better understand the difference between legislative rules and interpretative rules[6] and provide sophisticated unbiased legal advice to its members and especially Elected Members by well qualified experienced independent legal experts.
5) Be subject to the Freedom of Information Act
6) Stop bullying of Elected Members and staff
7) Stop protecting and advancing what is widely referred to as the "purple circle" of CEOs, where those CEOs have a demonstrated lack of fitness for local government leadership.
8) Reform its approach to Elected Members. At the moment the WALGA approach to training Elected Members appears to many Elected Members to be "Scare them witless, so they are too afraid to do anything and do not tell them anything that really helps."
9) Stop taking secret commissions from preferred providers
10) Stop permitting local government employees to engage in local government policy workshops where they do not represent the resolved position of their local government, and thus on the face of it be in apparent breach of the WALGA constitution, such as appears to have happened with the Third Party Appeal Discussion Workshops
11) Start undertaking education for Elected Members by lawyers independent of WALGA and DLGSC about how to complain effectively about poor administration of local governments and unsafe workplaces.
12) Start sending WALGA information, especially its Discussion Papers and Notice of its Workshops, directly to Elected Members so the CEOs cannot filter which Discussion Papers and workshops they choose to send or not send on, and when, to Elected Members.

NB: Late submssion
Recently, a local government did not advertise the time and date of the reconvened council meeting, which had been adjourned. The administration formed the view and did not ask Council, that the reconvened time and date did not need to be advertised.
This is the response from the department. The Act clearly needs amending to ensure the requirement that notice is given of the date and time of any reconvened previously adjourned Council meeting.

DLGSC response:
Under the legislation, a local government is required to give local public notice of all ordinary council meetings and special council meetings unless it is not practicable to do so.

Sandra Boulter LLB

[6] https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5263&context=journal_articles