



**SUBMISSION TO THE DEPARTMENT OF
LOCAL GOVERNMENT, SPORT AND
CULTURAL INDUSTRIES**

ON

**LOCAL GOVERNMENT ACT 1995 REVIEW
- PHASE 1 CONSULTATION PAPER**

FEBRUARY 2018

BACKGROUND

The Minister for Local Government recently confirmed the commencement of a review of the Local Government Act and associated Regulations. This will be the most comprehensive review since the commencement of the legislation in July 1996. The Minister has confirmed that the Act review process will take place in 2 stages and provided information on the key themes of issues to be considered, stating:

"The first will focus on modernising Local Government, with the policy work and consultation to be completed in 2017 with a Bill in 2018. Key topics in this phase will be increasing elector participation, electronic disclosure (making information more readily available), simplifying the disclosure of gifts and some reducing red tape provisions."

"The theme for the second phase is delivering for the community, with the policy work and consultation to be completed in 2018 with a Bill in 2019. Key themes for this phase will be improving behaviour and relationships, increasing community participation, enabling local government enterprises, improving financial management and reducing red tape."

1. Relationships between council and administration

The role of the Council, individual councillors and the Mayor/President should continue to be defined in the Local Government Act and whilst the current wording in the Act for the role of councillor is considered suitable it is recommended that the following clauses be added:

- ❖ The role of a councillor does not include the performance of any functions that are specified as functions.
- ❖ To participate in council meetings, policy development and decision making, for the benefit of the local government area.

Currently there is some ambiguity and confusion around when Councillors should speak on Council matters and it not be interpreted that they are 'speaking on behalf of the local government' which is clearly a role under the Act for the mayor/president. This clarity is becoming increasingly important with the increased use of social media to post information about Council decisions.

2. Training

2.1 Competencies required to be an elected member

It is important to appreciate that the diversity and different strengths, knowledge and experience/qualifications that each councillor brings to the local government when elected is one of the strengths of the local government system. However, it is acknowledged that some additional training to acquire relevant skills to enhance their role as a councillor are required and should be mandatory for all newly elected councillors.

In order to reduce some of the cost burden on individual local governments it is recommended that some of the core training units mentioned in the discussion paper could be provided in-house by the local government such as meeting procedures, budgeting and rate setting and long term financial planning due to there being slight variations in how each local government undertakes the process. Therefore, it's recommended that the core training units indicated in the discussion paper be endorsed as the minimum training requirements for newly elected councillors with their provision being as follows:

- Provided internally by the local government
 - ❖ Meeting procedures
 - ❖ Understanding financial reports
 - ❖ Budgeting and rates setting
 - ❖ Long term financial planning

- Provided externally by a training provider
 - ❖ The role of an elected member
 - ❖ Knowledge of the Local Government Act and other legislation
 - ❖ Town planning and approvals
 - ❖ Engaging with the community
 - ❖ Policy development
 - ❖ Recruitment and performance appraisal of the CEO

2.2 Funding training

The costs for funding of training should be a joint partnership between local government and the State Government with the external provider costs being shared 50:50.

If the proposal in regards to internal and external training is supported there would not be any requirement to introduced a Local Government Training Fund as individual local governments would have the capacity to meet the 50% of external training costs for councillors.

2.3 Mandatory training

In October 2015 Council considered a WALGA discussion paper on elected member training and indicated its support for the introduction of mandatory elected member training in Western Australia for all elected members based on the following:

1. Newly elected members and those elected in the two years, prior to the legislation being passed, be required to complete the required training modules (4) within one year, of the legislation for compulsory training, being passed; and
2. Elected members first elected more than two (2) years prior to the legislation being passed, be required to complete the training modules (4) within two (2) years from when legislation is passed.
3. The minimum mandatory training requirements that Elected Members in Western Australia should be required to complete would be the following four modules (or current WALGA equivalent):
 - ❖ Introduction to Local Government;
 - ❖ Legal Responsibilities;
 - ❖ Council and Committee Meetings; and,
 - ❖ Financial Management and Reporting.

Council also supported the reduction of elected member annual allowances (meeting fees) by a set percentage when they have not completed the required minimum agreed modules within the legislative time frame with a penalty of up to 25%.

The attendance by local government candidates at an information session prior to nominating for election, whilst beneficial and does provide the candidates with a good understanding of what is required in regards to time commitments etc., is not consider an essential requirement and therefore Council does not support candidates being required to undertake some preliminary training before being elected or nominating for Council.

2.4 Continuing professional development

All councillors should be encouraged to participate in continuing professional development, whether that is training courses or various conferences and forums, but it should not be made compulsory. Continuing professional development should be undertaken because the councillor wants to undertake it not because it's compulsory and a requirement for them to retain their position as a councillor.

3. The behaviour of elected members

3.1 Code of Conduct

There should be a standard code of behaviour for all local governments across the state because it should not matter whether you are a Councillors at the smallest or largest local government the standard of behaviour expected of each elected member towards each other, staff, when in the public etc. should be similar. This should be achieved by having a model Code of Conduct throughout the state that details minimal standards expected by all elected members but that also allows for individual local governments to add additional clauses if preferred.

Like other minor breaches any breaches of the Code of Conduct should be dealt with by the Standards Panel or similar body as it does not work with having minor breaches dealt with internally. Generally it is the CEO who is tasked with the responsibility of lodging complaints or breaches and progressing them through an internal committee, which in turn leads to tension in the elected member/CEO relationship and at times also affects and influences the annual performance review and contract renewals for the CEO.

If it is felt that these breaches should not be referred to the Standards Panel then the establishment of Regional Councillor Conduct Panels, similar to the existing Development Assessment Panels, would be the next best option.

3.2 Rules of Conduct

Whilst there is support for the streamlining of the current Rules of Conduct so that they focus on the misuse of information, disclosures of interest and securing personal advantage or not disadvantaging others, any formal complaints in regards to breaches of the Code should be dealt with externally and not internally. Whilst local governments should be encouraged to deal with internal relationship issues either between elected members or between elected members and staff at an early stage to endeavour to resolve them informally once a formal complaint is lodged in writing it should be dealt with externally. The time period for lodging these complaints should be restricted to a maximum of three months after the offence first occurred.

The proposal for the introduction of an 'Outcome-based framework' is not supported because as indicated in the Consultation Paper it would create some uncertainty about what behaviours constitute a breach, may lead to an increase in complaints and require increased resources, otherwise the timeframe in dealing with complaints would escalate and it is already taking too long under the current system.

3.3 Other Matters

The extending the Rules of Conduct part that governs the behaviour of elected members to candidates in local government elections is difficult to enforce as the sanction would only apply if the candidate was elected and also the period that elapses before a decision is reached is quite lengthy at times making the final outcome irrelevant, so extending these provisions to candidates is not supported.

The proposal to make it an offence for former elected members and employees making improper use of information for a period of twelve (12) months after ceasing to be an elected member or employee and including it in the rules of conduct is supported. This would especially cover situations where the elected member or employee has parted company with the council not on favourable terms.

3.4 Reforms to the Standards Panel

The establishment of Regional Sector Conduct Review Committees or Regional Councillor Conduct Panels, similar to the existing Development Assessment Panels, to deal with minor breach complaints, is supported as this would reduce the number of complaints being considered by the Standards Panel and assist in having these complaints deal with quickly and efficiently.

Current elected members (but not from the local government who is a party to the complaint), former elected members and experienced former local government employees should be eligible to nominate for the Regional panels with the Minister for Local Government being responsible for the appointment of the members of each Committee/Panel.

Whilst there may be a time lapse between the lodging of a complaint and the imposing of a sanction the ability to prohibit an elected member from attending a number of council meetings may result in a sufficient deterrent to cease the practice. The current process, where a public apology in a local newspaper is required, is no deterrent at all. If the suspension was coupled with the loss of meeting fees for that period of suspension then it may have some impact.

3.5 Sanctions and other Standard Panel matters

The inclusion of mediation in some instances can produce a positive outcome in a relatively short period of time compared to the current system where the determination of a sanction or outcome takes a considerable period of time, so as first step in the process the introduction of mediation is supported.

The comment in the discussion paper (page 53) 'it must be noted that there are likely to be a considerable period between the inappropriate behaviour and the sanction.' is an ongoing concern to local government in all of the deliberations by the Standards Panel when dealing with complaints. The success of any future sanctions in regards to public apologies etc. will only be successful if the deliberations and outcome time frame is improved.

Allowing the Standards Panel to direct an individual elected member after an appropriate investigation not to attend council meetings for a set period is supported. Legislation should consider such matters as voluntary and compulsory 'stand down' provisions during an investigation on being charged with an offence, the Standards Panel determining the dismissal or 'stand down', the period of 'stand downs' and whether meeting fees and allowances be paid during a 'stand down, period.

The seriousness of the breach and whether it is a first or subsequent offence should be taken into consideration when imposing a non-attendance at council meetings with a first minor breach incurring a one or two meeting stand down and then increasing by a similar number for subsequent offences (i.e. 3-4 meetings for a second offence). During this period of not being able to attend council meetings the elected member should be required to forfeit any sitting fees and allowances.

The introduction of an administration fee may assist in reducing the number of trivial or vexatious complaints but the whole process of collecting and refunding the fee introduces additional administration costs and burdens on a local government that are hard to justify and unnecessary.

The proposal for the elected member, found to be in breach, being responsible for the panel proceedings cost is not supported as firstly the costs could far outweigh the breach and secondly if the state government wishes to establish a complaints process, via a Standards Panel, then it should meet the cost of this service.

Local Government are currently required to report annually in their annual report details of complaints received so extending this information to cover additional details as indicated in the discussion paper is not unreasonable. The tabling of decisions that result in a minor breach finding against an elected member would increase the level of accountability for both the council and the community.

3.6 Elected Member interests

As indicated in the discussion paper not allowing elected members, who are members of not-for-profit organisations, from voting on matters coming before council could have a serious impact on that council's ability to make decisions that are in the best interest of the community.

This could be a major issue in very small local governments where a number of the elected members could be members of numerous organisations in their community and for this reason the current practice of only being required to declare an impartiality interest should remain.

Whether they are an officer holder or not the current provision should apply, but if as an office holder they are receiving remuneration for undertaking that role then clearly they should declare a financial interest and not vote.

4. Local government administration

4.1 Recruitment and selection of the CEO

Given that the recruitment of a CEO is the only employee that the council has a direct input into it is critical that the Council, whether that be all the elected members or a selection committee of elected members, are substantially involved in the process, because generally the ongoing success of a positive council, Mayor/President and elected members working relationship with the CEO will very much depend on the successful candidates ideas matching that of the council's.

The engagement of a suitably qualified external recruitment person or organisation, selected by the council is supported as it brings a level of independent advice, transparency and professionalism to the recruitment process. The cost for such a service will generally be linked to the size of the organisation, but even the smaller local governments would be able to engage a suitable person for about \$10,000 which is not an excessive cost given that the recruitment could be for a 3-5 year period where the total package could be \$600,000 to \$1m plus and if the council gets it wrong they could possibly be incurring a lot more than \$10,000 in a termination payout.

There is no evidence that the engagement of the Public Sector Commission in the recruitment of the CEO would provide any better outcome than an external recruitment person or organisation that understands local government would provide. In fact, if the Public Sector Commission was to apply its criteria to the process the outcome might in fact be worse, especially if there is no alignment with the council expectations. The statement in the discussion paper that 'The involvement of the PSC in the recruitment could expand the pool of available candidates' is interesting because in council's view, the location, size of the council, facilities provided (including for partner and family), package and climate in the council have more impact on the number of candidates applying than who is running the recruitment.

The level of competencies attributes and qualifications that a CEO is required to have will depend on whether the recruitment is for a large local government in the metropolitan area or for a small remote local government in the Wheatbelt or Goldfields area. This is a matter for the council and recruitment person/organisation to determine and find the person that best fits their needs.

4.2 Acting CEOs

The appointment of an Acting CEO should be covered by a council policy and generally if it is only for a short period of 1-3 months the CEO should have the authority to make the appointment. For appointment exceeding this period there should be consultation with the elected members or at the very least the Mayor/President.

4.3 Performance review of CEO

The elected members led by the Mayor/President must be involved in the annual review of the CEO even if an external consultant is appointed. This can be all of the elected members or a CEO Performance Review committee involving some of the elected members. The inclusion of clause in section 2.8 of the LG Act 'Role of mayor or president' to indicate that the mayor or

president is to lead the performance review would assist in further clarifying who is to drive the review.

The Shire of Capel has utilised the services of an external consultant to facilitate the annual CEO performance review for the last sixteen (16) years. At a cost of \$3,000 - \$5,000 it is funds well spent and would be especially important to utilise an external provider if there is some tension between the CEO and elected members. Council does not support the involvement of the Public Sector Commission in the CEO performance review process but some general guidelines and/or adoption of an industry wide performance review policy that contains specific elements and allows for some flexibility for those local governments that want to do more would be supported.

4.4 Extension or termination of the CEO before or after an election

A 'cooling off' period after a local government election before a council can terminate the CEO may assist in some cases in allowing the new council and the CEO discuss the council's new strategic direction and/or differing views before making a decision on the future employment of the CEO.

However, in many instances where the CEO's contract is terminated immediately after an election as the result of dissatisfaction by newly elected members and/or the mayor/president with decision/s that the CEO has previously made that have no relationship to the overall performance of the CEO. In this instance no amount of 'cooling off period' will rectify the problem and you are only putting off the inevitable outcome. This appears to be more prevalent where the mayor is elected by the community and quite often comes into the position on a platform of removing the CEO.

Whilst the Local Government (Administration) Regulations indicates that the maximum amount of money that a CEO or senior employee is entitled to if their contract is terminated before the expiry date is the value of one year's remuneration (or the balance of the contract), that provision only applies if that wording is included in the CEO contract. If the contract indicates a lesser amount, then that is all the CEO is entitled to or the balance of the contract whichever is the lesser amount.

Where an existing council makes a decision to terminate a CEO then applying the clause in the existing contract is reasonable however where the contract of a CEO is terminated immediately after a local government election for no valid reason other than the incoming elected members or mayor/president does not want the CEO in the position then the LG Act should be amended to ensure that the CEO is entitled to the balance of their contract or at the very least the value of one year's remuneration.

4.5 Public expectations of staff performance

Whilst the existing selection and recruitment of staff in local government may not be ideal in all local governments, Council does not believe that the incidence of poor staff performance and conduct is any worse than in the state public service. There is also no evidence to indicate that not requiring a probationary period (staff just make sure that they perform satisfactory during this period), not advertising some positions (quite often due to internal promotions) and staff not being Australian citizens (sponsored staff from overseas is a legitimate career opportunity for both parties) results in an increase in the level of poor staff performance or conduct.

Council therefore does not support a greater level of oversight in local government selection and recruitment of staff. In regards to certain offences excluding a person from being employed in local government, council considers that this is a matter for each individual local government to determine taking into consideration the role and responsibility of the position and the offence committed.

5. Supporting local governments in challenging times

The current intervention process where the Minister has to initiate a formal enquiry into a local governments performance before implementing specific remedial actions, which may also include dismissal of the local government is cumbersome, a lengthy process and very expensive for the local government involved. Also following the dismissal of the local government for a period of time, quite often when new elections are held, a majority of the elected members previous on the council are re-elected so the issues/problems don't go away.

The ability to instigate targeted remedial action or notices at an early stage will greatly assist in addressing the issues before they escalate, will result in a substantial reduced cost to the local government and will allow the elected members to continue to represent the community that elected them. If the remedial action or notice does not resolve the issue/s then the Minister still has the option to initiate a formal inquiry.

The person appointed for the remedial intervention could be a department employee or an experienced local government employee or elected member and that person should only be able to make recommendations to the council and CEO not direct them. If the recommendations are not accepted then the person has the option of reporting to the Minister who could then formally issue a remedial notice.

Any costs incurred in related to the appointed person and any other costs associated with an enquiry or remedial notice should be borne by the local government.

6. Making it easier to move between State and Local Government

Whilst there are ongoing examples of local government and state government employees being successful in moving from one sector to the other the ability to be able to transfer and have recognised existing entitlements for personal, annual and long service leave would further enhance these opportunities.

7. Gifts

The current scenario where there is two types of gifts, being notifiable and prohibited and general gifts, plus a separate category for travel (which is still essentially a gift) and where general gifts also includes in an elected member or employee's personal capacity is completely unworkable and an unnecessary intrusion on peoples personal affairs.

Council has for some time argued that the current notifiable and prohibited gifts thresholds of \$50 and \$300 respectively are too low as they have not been increased since first introduced. Introducing a higher minimum and no maximum initially may appear to be going too far the other way. However it needs to be remembered that when these amounts were first introduced there was no requirement to have these declarations of gifts received put onto the local government's website for all to see. Given that the level of transparency has now been substantially raised it could be argued that it is now unlikely that an elected member or employee will be willing to accept a large gift or in fact any gift as all details, including the provider of the gift's details on the local government's website, so not having a maximum amount may not be an issue and the level of transparency required could be self-regulating.

Council is fully supportive of the position put forwarded by WALGA in relation to this matter which is a follows:

- There is one section for declaring gifts. Delete declarations for Travel.
- No requirement to declare gifts received in a genuinely personal capacity.
- Gift provisions only for Elected Members and CEOs. Other staff fall under the Code of Conduct.
- Gifts only to be declared if above \$500.00.
- There will not be any category of notifiable gifts or prohibited gifts.
- Gifts only to be declared in respect to an Elected Member or CEO carrying out their role.
- Exemptions for ALGA, WALGA and LG Professionals (already achieved).

- Exemption for electoral gifts received that relate to the State and Commonwealth Electoral Acts. So Elected Members who are standing for State or Federal Parliament will only need to comply with the State or Federal electoral act and not declare it as a Local Government gift.

8. Access to information

8.1 Public Notices

The current requirement to provide some notices in a statewide newspaper is promoted on the basis of transparency in that it provides the opportunity for people outside of the district to see these notices. In regards to general local government's notices, in many instances these are placed in the newspaper either in the general section or local government section and often in small print and unless a person is well aware of this situation and looks in this specific section they would never see them, so the original intent is not being met.

In relation to matters like tenders, sale of plant and equipment more local governments are now moving to the WALGA preferred supplier model or online platforms like 'Tenderlink', so advertising in a state wide newspaper become irrelevant other than to comply with the current statutory requirements,

Moving to an entirely electronic position is too much of a transformation at this time given that not everybody in the community uses or has access to internet. The removal of the requirement to advertise in the statewide newspaper would result in a substantial reduction costs to a number of local governments and would be a positive first step.

8.2 Information available for public inspection

Whilst the only documents that are required to be placed on a local government website are the gifts register, contributions of travel register and the annual report, the reality is that local government have taken the initiative far exceeded this minimum requirement by responding to their local communities' requests and placing a whole range of documents and publication on their websites. This also make sense from an efficiency point of view as it allows the community access to these documents at their leisure and reduces the amount of staff time allocated to photocopying and dealing with these community requests in person.

Following further consultation on a possible list council would support legislative changes to the current requirements to increase the number of documents available on a council website (as indicated below) for the community as it considers that local governments are currently and will continue to exceed the statutory requirements in being responsive to the needs of their communities.

Table 1: Information available for public inspection

Documents	In person only	Website only	Both	Neither
Annual Report			√	
Primary and Annual returns – for Elected Members includes – sources of income: Trusts, Debts, Property Holdings. Interests and positions in corporations	√			
Discretionary disclosures generally			√	
Gifts (already required to be on the website)			√	
Electoral gifts register			√	
Allowance for deputy mayor or deputy president	Provided as part of the annual report with other Elected Member fees		√	
Payments for certain committee members		√		
Tenders register	√			
Regulations 17			√	
Register of delegations to committees, CEO and employees			√	
Minutes of council, committee and elector meetings			√	
Future plan for the district			√	
Annual Budget			√	
Notice papers and agendas of meetings			√	
Reports tabled at a council or committee meeting			√	
Complaints register (concerning elected members)			√	
Contracts of employment of the CEO and other senior local government employees	√			
Schedule of fees and charges			√	
Proposed local laws			√	
Gazetted Local Laws (and other law that has been adopted by the district)			√	
Rates record	√			
Electoral roll	√			

9. Available information

There is support from council to increase the amount of information that a local government should provide on its website to increase the level of transparency, which as indicated previously many local governments are already doing this. Is there a need for increased legislation? Council is not sure that there is, as it would prefer that local governments respond to their community and do it voluntarily.

In regards to the additional proposals in the discussion paper that could be considered to be made available to the public the following comment is provided.

Table 2: Information to be made available to the public

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	No
Elected member attendance rates at council meetings	Required – already in Annual Report
Elected member representation at external meetings/events	No
Gender equity ratios for staff salaries	No
Complaints made to the local government and actions taken	Required – already in Annual Report
Performance review of CEO and senior employees	No
Website to provide information on differential rate categories	Required
District maps and ward boundaries	Optional
Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission	Required
Financial and non-financial benefits register	Required

10. Reducing red tape

10.1 Defining red tape

Requirement to seek Ministerial approval for differential rating

A local government must seek approval from the Minister for Local Government to levy differential rates if:-

1. A general differential rate within a category (GRV or UV) is twice the lowest differential rate; and
2. A minimum payment is imposed on more than 50% of a differential rating category (all categories with the same rate in the dollar are grouped together for this calculation)

A local government must advertise after May 1 in the given year and must give at least 21 days for ratepayers to make submissions.

In addition to the requirements prescribed the Act, Ministerial guidelines require that a local government provide a copy of:-

- Minutes that reflect that Council reviewed and considered budget efficiency measures;
- Objects and reasons;
- Minutes where Council adopted these objects and reasons;
- Letters to ratepayers where there are less than 30 in a category;
- Submissions received;
- Response to submissions;
- Council minutes that reflect the reason for deviation from the rating strategy in the CBP and LTFP;
- Public Notice;
- Council agenda and minutes where submissions were considered; and
- Minutes where Council resolved to make an application to the Minister

This requires the preparation of a substantial submission to the Department for Local Government, Sport and Cultural Industries that seems to constantly change each year requiring more information than the previous year.

Council should be allowed to make appropriate financially sustainable decisions on rating and then advertise its proposals without having to seek Ministerial approval.

Power to Borrow

Section 6.20(2) requires, where a power to borrow is proposed to be exercised and details of the proposal are not included in the annual budget, that the Local Government must give one month's public notice of the proposal (unless an exemption applies). There is no associated requirement to request or consider written submission prior to exercising the power to borrow, as is usually associated with giving public notice. Section 6.20(2) simply stops the exercise of power to borrow for one month.

Where a council proposes to borrow funds outside of the annual budget process it would be via an agenda item to the ordinary council meeting for approval to borrow so there is the opportunity for the community to address council on the matter. In many instances advertising matters requesting written submissions receives very little and at times no submissions so the benefit of undertaking this is questionable and surely a local government should have the power to make these decisions on behalf of the community without additional administrative procedures.

Council therefore supports the removal of section 6.20(2) of the Local Government Act 1995, requiring the advertising of a proposal to borrow funds for public comment, when it is not included in the annual budget.

Restrictions of Borrowings

Section 6.21 of the *Local Government Act 1995* should be amended to allow Local Governments to use freehold land, in addition to its general fund, as security when borrowing.

An amendment to the Local Government Act 1995 to allow a local government to utilise freehold land as security when borrowing funds seems to be a reasonable position, as it excludes all other assets on reserves etc. that are not freehold. This would allow a Regional Council to borrow say for a Waste Site/Operation using the freehold land, rather than relying on the member local government to have to borrow on its behalf, as currently happens.

Council therefore supports an amendment to section 6.21 of the Local Government Act 1995 to allow local governments to use freehold land, in addition to its general fund, as security when borrowing is supported.

10.2 Potential red tape reductions

Special Majority

There does not appear to be any justification for requiring a 'special majority' decision (75% of the council) requirement for 18 local governments from a total of 139, when the remainder of the local governments are permitted to make a similar decision by an absolute majority. Therefore council would support the removal of section 1.10 of the LG Act.

Senior Employees

There is clearly some ambiguity between section 5.37(2) and 5.41(g) of the Act as one section (5.41) indicates that the CEO is responsible for the employment and dismissal of staff, whilst the other section (5.37) indicates that the CEO is to inform the Council of any decision to employ or dismiss a senior employee and more importantly section 5.37(2) goes on to say 'the council may accept or reject the CEO's recommendation *but if the council rejects a recommendation, it is to inform the CEO of the reasons for its doing so.*'

The last part of the above clause is interesting because it does not indicate what happens if the council rejects the CEO's recommendation. Does it mean that the senior employee cannot be employed or dismissed or does the CEO just ignore the council's rejection and proceed regardless? I have previously raised this question with the Department of Local Government and they have not been able to provide a clear direction on the matter.

So there either needs to be additional wording added to section 5.37(2) that provides some very clear direction to both the council and CEO as to what happens if council rejects the CEO's recommendation or section 5.37(2) needs to be removed.

Exemption from AASB 124 – Related Party Transaction

It is questionable as to what this new legislative requirement is going to achieve that cannot be covered under the existing Primary and Annual Returns and declarations of interest at council and committee meetings. Council considers that these current requirements provide appropriate material declaration and disclosure of interests associated with function of Local Government.

This new legislation just adds another layer of compliance that appears to be unnecessary and council supports either the requirements being removed from legislation or for local government to have an exemption from the implementation of AASB 124.

Disposal Of property

The current requirement where the disposal of property (generally land) can only take place through a public auction or by public tender, without having to advertise for submissions is too restrictive and does not allow a local government to be proactive and respond to market demand or economic opportunities.

If an interested party approaches a local government with a proposal to purchase land owned by the local government council is not in a position to be accept/negotiate an offer without having to advertise the proposal for public submissions and provide specific details in the advertising (name of purchaser, proposed sale price, valuation etc.), after which time council then has to consider any submissions and make a decision. This can potentially take a minimum of 1-2 months before the interested party can be given a response, by which time they may have lost interest.

A better alternative would be to allow the local government to dispose of the property either by private treaty (direct by the local government) or through a real estate agency, without having to advertise the proposal, where the disposal price of the land is equal to or greater than the valuation obtained from an authorised valuer. If the proposal sale price is less than the valuation, then the current legislation (advertising for submissions etc.) would apply.

A number of local governments are now utilising the WALGA 'Preferred Supplier' Procurement Process to purchase plant and where this involves large plant the plant being traded in will have a value exceeding \$75,000 (i.e. loaders, graders etc.) resulting it not be able to be disposed of as part of the procurement process. This results in the local government being required to either call tenders for the supply of the new plant and trade-in of the existing, incurring additional expense and time or call a separate tender for the disposal of the plant item being replaced after utilising the WALGA procurement process.

Council would therefore support an addition to the existing legislation to provide an exemption for any property that is disposed of as part of a trade-in where a local government purchases that property through the WALGA Preferred Supplier Procurement Process.'

11. Regional Subsidiaries

The *Local Government (Regional Subsidiaries) Regulations 2017*, which were enacted in early 2017, contains significant restrictions that limit the flexibility, will reduce the benefits of the regional subsidiary model and virtually make it an option that is not worth pursuing.

In particular, the regulations prevent regional subsidiaries from borrowing from any organisation other than a constituent Local Government, entering into a land transaction, and commencing a trading undertaking.

Council supports changes to the current legislation and regulations to enable Regional Subsidiaries to:

1. Borrowing in their own right;
2. Enter into land transactions; and,
3. Undertake commercial activities.



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