



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

Submitter Contact Person: Vanessa Green

1. Relationships between council and administration

Introductory questions

- 1) Would you like your submission to remain anonymous?

No

- 2) Postcode:

6415

- 3) Who are you submitting on behalf of?

Local Government

- 4) Local government name:

Merredin Shire

- 5) Organisation name

- 6) Are you a:

Local government employee

Defining the roles of council and administration: Guidance questions

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

As applicable now with addition from NSW legislation being:

- To participate in the development of IPR framework
- To make all reasonable efforts to acquire the skills necessary to perform the role of a Councillor

- 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?

Nil

Improving relationships between council and administration: Guidance question

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

Nil

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?
- Basic competency training to be mandatory (serving on Council, effective community leadership, meeting procedures & debating) with electives as voluntary
 - That there be an online induction upon appointment around the role of Councillor
 - All training should be available online
 - Elections (Stage 2) strengthen the rules of conduct for candidates
 - RPL – needs to be based on relevant experience
- 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)?
- If the State Government imposes a condition of training for being an elected member the cost should be met by the State Government
- 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?
- As an additional comment to the above question (which does not allow anything but a yes/no answer), funding should be provided from the State.

Alternatively, membership to WALGA could contain a portion of funding which is allocated to a reserve/LGIS type fund for that specific local government's Councillors to attend training.

Should be based on the number of Councillors with a formula based around the turnover of Councillors, similar to LGIS membership

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

Nil

2.3 Mandatory training

Mandatory training: Guidance questions

19) Should elected member training be mandatory?

Yes

20) Why or why not?

Core modules/competencies should be mandatory as above

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

No

22) Should this be Compulsory?

No

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

Yes

24) If yes, how would this work?

So long as it is relevant experience based

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

12 months, so long as it is available on line or via USB or provided in the regions, subject to available funding

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?

But should not be mandatory.

Form should be the same as for core competency units

Training: Guidance question

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

1. Determine what other courses and qualifications are available within the market place.
2. Training needs to provide outcome of formal qualification rather than professional development.
3. Specific training for larger LGs due to complexity of land and property developments may be appropriate.

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.

If all local governments operate under the one Act, then this should be consistent across all Councils.

Which option do you prefer for codes of conduct and why? Should reflect the requirements of NSW/VIC model & be consistent across the State

- 31) How should a code of conduct be enforced?

Public Service Commission or CCC should be considered

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?

Should be in the legislation with penalties.

If simple, easily investigated & quantifiable

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

More emphasis on conduct which would impair decision making or public confidence in the LG

As no more than a yes/no answer can be given to the below question of whether 3 months is adequate, our response is that it is, but with the ability of a 12 month extension given exceptional circumstances

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?

It's more practical and the code needs to have consequences for breaches

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

Yes

3.3 Other matters recommended in the 2015-16 review

Application of the Rules of Conduct: Guidance question

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

No

- 41) Please explain.

It breaches natural justice, openness and transparency

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 it could be used for personal advantage

- 44) Should this restriction apply to former employees?

Yes

- 45) Please explain?

This provision applies to senior employees on contract already but would be difficult to enforce on award/EBA based staff

Confidentiality: Guidance question

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

No

- 47) Why?

It breaches natural justice, openness and transparency

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?

Time reduction but increased costs should this model be adopted.
Resolution may better be undertaken by other agencies i.e. Ministerial appointment, PSC, CCC

- 49) What powers should the Conduct Review Committee have?

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

Serious breaches, minor breaches dealt with by the Review Committee which can then be referred if deemed necessary

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

- 52) Who should select the members for the pool?

There is no option for "all of the above" as an answer to the above question (being the panel should be made up of elected members, people with local government experience & independent stakeholders.

The Minister should appoint suitable qualified persons

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

1-3

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

- 55) If not, what do you propose?

Review of elected member non-compliance: Guidance questions

- 56) Which of the options for dealing with complaints do you prefer? Why?
Option 1 - Status Quo
- 57) Are there any other options that could be considered?
PSC/CCC processes and procedures
- 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?
No
- 60) Why or why not?
It has no outcome

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?
It avoids the potential for dysfunction to occur

How many meetings should the Panel be able to order the elected member not attend? The time it takes to conclude the investigation, with the disqualification for non-attendance at meetings as proscribed in the Act being suspended.

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

Yes

- 64) Why

If not this becomes a penalty prior to any decision on the conduct being made. It also may not be practical when Councillors receive an annual allowance. However, if a Councillor is found to be in breach then fees and allowances should be refunded.

Compensation to the local government: Guidance questions

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

Yes

- 66) Why or why not?

Local governments should not be financially disadvantaged

- 67) What should the maximum amount be?

\$10,000

Complaint administrative fee: Guidance questions

- 68) Do you support this option?

Yes

- 69) Why or why not?

It removes the potential for frivolous/vexatious complaints

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

No

- 71) Is this appropriate?

- 72) Would a complaint administrative fee be appropriate for a sector conduct review committee model?
- Yes
- 73) Why or why not?
- Makes it standard for the industry
- 74) What would be an appropriate fee for lodging a complaint?
- \$150-\$250 set by regulation
- 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?
- Fee should be refunded if the complaint is genuine and proven

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?
- Cost recovery and financial penalties can be effective

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?
- Openness, transparency and accountability & raising elector awareness

Tabling decision report at Ordinary Council Meeting: Guidance question

81) Do you support this option?

Yes

82) Why or why not?

Openness, transparency and accountability & raising elector awareness

3.6 Elected member interests

Elected member interests: Guidance questions

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

Yes

84) Why or why not?

The is no option to include additional information in the above yes/no only answer - but declarations need to be made (i.e. impartiality interest) if Council is making a financial decision which may alter the declaration (i.e. financial interest)

Impractical in small population areas

Also, as there is no option to include further comment to the below question, the answer is no if receiving remuneration as an office holder position

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

No

Improving the behaviour of elected members: Guidance question

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

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?
- 88) Why?
- Some would, however assistance is already available through WALGA or other employment agencies/consultants. Status quo works fine as if and when Councils require external assistance it is available. This is a true Council responsibility as the CEO is the
- 89) How could the recruitment and selection of local government CEOs be improved?
- Councillor training, with emphasis on Chair/President, specific to recruitment & selection
- 90) Should the Public Sector Commission be involved in CEO recruitment and selection?
- No
- 91) If so, how?
- 92) Should other experts be involved in CEO recruitment and selection?
- Yes
- 93) If so, who and how?
- As above, already occurs when/if required as applicable to each local government
- 94) What competencies, attributes and qualifications should a CEO have?
- As currently included in legislation

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?
Covered under current legislation
- 97) If so, who should appoint the CEO when there is a short term temporary vacancy (covering sick or annual leave for example)?
Internal arrangement through Delegated Authority
- 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 is responsible for the appointment of the CEO, with this scenario being the appointment of a new CEO where there is no current incumbent

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?
Council and an external consultant/coordinator
- 100) What should the criteria be for reviewing a CEO's performance?
Specific KPI information as per contract only, no personality issues
- 101) How often should CEO performance be reviewed?
Formal process once per year, otherwise informally ongoing

102) Which of the above options do you prefer?

Option 1

Allows the specific circumstances of each local government to be taken into consideration which would not be available via the other 2 options.

Allows autonomy of individual local governments.

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?

3 months prior & 3 months post

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

Depends on contractual rearrangements

108) Should there be any exceptions to this?

4.5 Public expectations of staff performance

Public expectations of staff performance: Guidance questions

- 109) Is greater oversight required over local government selection and recruitment of staff?
- No
- 110) Should certain offences or other criteria exclude a person from being employed in a local government?
- No
- 111) If so, what?
- Could be discriminatory and doesn't aid rehabilitation or reintroduction to the community

Strengthening local government administration: Guidance question

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

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?
External party
- 114) Why?
Because the Department may need to undertake punitive action
Independence and skills necessary to undertake the role
- 115) Should the appointed person be able to direct the local government or would their role be restricted to advice and support?
Restricted to advice and support
- 116) Please explain.
- 117) Who should pay for the appointed person?
Council
- 118) Why?
It's the organisation with the problem/dysfunction

Powers of appointed person: Guidance question

- 119) What powers should an appointed person have?
As per Discussion Paper

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.

As the current system would appear to be deficient

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

Require relevant expertise and creditability

Supporting local governments in challenging times: Guidance question

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

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?

Providing it doesn't politicise local government employees as public sector staff

Entitlements would need to be consistent between the local and state government

Possible benefits in retaining and attracting staff and families to rural communities

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?

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?

Requires simplifying & clarifying

130) Is the threshold of \$500 appropriate?

Yes

131) If no, why?

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

No

133) Why or why not?

134) If yes, what gifts should be prohibited?

Excluding gifts received in a personal capacity: Guidance questions

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

Yes

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

Anything not related to work or Councillor function

- 137) Should there be any other exemptions from the requirement to disclose a gift over the threshold?
- 138) If so, what should these be? Please justify your proposal.

Gifts: Guidance question

- 139) Do you have any other suggestions or comments on this topic?
- Provide a clear definition of “gift”

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?

Why? No specific option selected as it needs to be any way which reaches the majority of the district and this will vary between local governments

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

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

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

144) Please provide details

8.2 Information available for public inspection

Information available for public inspection: Guidance questions

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

Provision	Documents	In person only	Website only	Both	Neither
Section 5.53	Annual Report 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. In person only
Section 5.87	Discretionary disclosures generally In person only
Section 5.82	Gifts (already required to be on the website) Website only
Section 5.83	Disclosure of travel contributions (already required to be on the website) Website only
Elections Regulations 30H	Electoral gifts register Website only
Section 5.98A	Allowance for deputy mayor or deputy president Neither
Section 5.100	Payments for certain committee members Neither
Functions and	Tenders register

General Regulations 17	Website only
Section 5.94 & Administration Regulations 29	Register of delegations to committees, CEO and employees Website only
	Minutes of council, committee and elector meetings Website only
	Future plan for the district Website only
	Annual Budget Website only
	Notice papers and agendas of meetings Both
	Reports tabled at a council or committee meeting Neither
	Complaints register (concerning elected members) Website only
	Contracts of employment of the CEO and other senior local government employees Neither

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

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

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

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?

Infrequently

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 1: Status Quo

154) Why?

Meets the current need, other options would take more time and more resources

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

Proposal	Should this be made available: No, optional, required?
Live streaming video of council meetings on local government website	Optional
Diversity data on council membership and employees	Optional
Elected member attendance rates at council meetings	Optional
Elected member representation at external meetings/events	Optional
Gender equity ratios for staff salaries	Optional
Complaints made to the local government and actions taken	Optional
Performance reviews of CEO and senior employees	Not Required

Proposal	Should this be made available: No, optional, required?
Website to provide information on differential rate categories	Optional
District maps and ward boundaries	Optional
Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission.	Optional
Financial and non-financial benefits register	Not 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.
This is a task which should be undertaken by a specific committee as per WALGA submission

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.
This is a task which should be undertaken by a specific committee as per WALGA submission

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?

Yes

161) Why or why not?

Absolute majority is sufficient

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?

CEO is the only Council employee, goes back to the separation of administration and governance roles

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?

Doesn't provide any relevant information and is unnecessary

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,

No

168) if so how high?

Why are thresholds required? They should be removed

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?

No

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

As above - why are thresholds required? They should be removed

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

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

Review S3.58 to reduce complexity, specifically around valuation, definition of "disposal"

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 3: Regional subsidiaries are permitted to borrow from financial institutions

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

Option 3: Regional subsidiaries are permitted to borrow from financial institutions

177) Why or why not?

Allows Regional Subsidiary to be autonomous from its members

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

The current requirements are too complicated

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*?

The current requirements are too complicated

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.