



Submission

Local Government Act 1995 Review

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Introduction

In relation to the current review of the *Local Government Act 1995* (the Act) the Department of Local Government, Sport and Cultural Industries has produced a discussion paper that is structured around phase 1 of the review of the Act. Phase 1 is focused on:

- making information available online
- meeting public expectations for accountability
- meeting public expectations of ethics, standards and performance
- building capacity through reducing red tape.

Phase 2 of the review is focused on:

- increasing participation in local government elections
- increasing community participation
- introducing an adaptive regulatory framework
- improving financial management
- building capacity through reducing red tape
- other matters raised in phase 1 consultation

Town of Victoria Park comment and positions

The Town's Administration supports the proposed framework of undertaking the review in two phases being to focus on modernising local government (phase 1) and services to the community (phase 2). Further, the City supports the review's principles and vision:

The discussion paper provided by the Department of Local Government, Sport and Cultural Industries has not provided definitive options in terms of the changes or indeed what specific changes will be made in the legislation, but rather provided open ended questions. This has proven difficult in providing a clear position. Notwithstanding the Town's Administration response aims to be brief in its approach, focusing on a defined position in relation to each of the questions raised in the discussion paper around the following parts as listed in the discussion paper:

- Relationships between Council and administration (Part 1).
- Training (Part 2).
- The behaviours of elected members (Part 3).
- Local government administration (Part 4).
- Supporting local government in challenging times (Part 5).
- Making it easier to move between State and local government employment (Part 6).
- Gifts (Part 7).
- Access to information (Part 8).
- Available information (Part 9).
- Reducing red tape (part 10).

- Regional subsidiaries (Part 11).

The Town's Administration recognises that this response to the discussion paper is but one element of the consultation to be undertaken, and will consider further discussion papers and information distributed by the Minister or the Department on issues that have been identified over the last eight years including advocacy positions agreed by the sector. This will include a request for local governments to submit additional items for consideration in the Act review process as well as providing more definitive positions once they become clearer.

1 Relationships between Council and Administration

Local governments are made up of several components and the Act articulates the role of the Council, the CEO, the Mayor / President and Council.

Despite the roles and functions being defined there is often tension between the components of a local government, certainly in terms of the separation of powers. The discussion paper highlights a number of different provisions relating to elected members in other state jurisdictions that are over and above what is detailed in the Act. It also suggests that while the roles are defined broadly, very little detail is provided about the tasks that should be undertaken by the Council and the CEO.

In terms of the review, the discussion paper raises the following questions:

1. *How should a council's role be defined? What should the definition include?*
2. *How should the role of the CEO and administration be defined?*
3. *What other comments would you like to make on the roles of council and administration?*
4. *Are there any areas where the separation of powers is particularly unclear? How do you propose that these be improved?*
5. *Do you have any other suggestions or comments on this topic?*

Town's Administration Assessment

One of the significant aspects of the review of the 1995 Local Government Act was clearly defining the separation of roles between the Council and CEO. When the current Act was introduced to Parliament, the then Minister for Local Government remarked in his second reading speech that:

"there will be a clear specification of the roles of key players; that is, council, mayor or president, and councillors. This is designed to promote efficient administration at the local government levels and to avoid conflicts caused by uncertainty. The lack of role clarity has led to some Mayors/presidents and councillors becoming involved in administrative matters which should be handled by staff. The new Act will provide a clear distinction between the representative and policy making role of the elected councillors and the administrative and advisory role of the CEO and other staff."

The roles as defined by the Act have not provided the clarity that was anticipated in the 1995 review, and this has been a major criticism of the current Act ever since. Section 19(2)(f) of the *Interpretation Act 1984* permits consideration of a second reading speech made by the responsible Minister in ascertaining the meaning of legislative provisions, and therefore greater clarity around the separation of roles is fundamentally needed.

It is considered integral to the current review that there is a clear specification of the roles of the Council, Mayor/President, Councillors and CEO. It is considered that the current roles of key players as defined by the Act are not clearly defined in order to provide clarity on the respective roles and responsibilities; definitive; nor aligned to the roles as intended by the then Minister for Local Government in his remarks to the Parliament when it was introduced.

The referenced provisions related to the roles of the Council/Elected Members in other State jurisdictions, that are not included in the WA legislation are of interest. In the main these provisions provide more clarity related to roles and can be used as a foundation by the Minister upon which roles can be better defined.

However, no matter how clear the roles of the Council, Mayor/President, Councillors and CEO purport to be in the legislation there are likely to be differing interpretations and therefore there is a need for guidance. An understanding and acceptance of the different roles of Mayor, Councillors and employees, with cooperation between all parties, underpins good governance and as such more guidance is integral by the Department.

It is considered that the CEO's role as defined by the Act is relatively straightforward and easy to comprehend. It appears from Question 3 to this discussion paper that there may be some misunderstanding with regard the definition of separation of roles and as such the responsibilities of the CEO. The separation of powers as defined by the Department in its discussion paper is not a clear reflection on how separation of powers is understood; defined and operates within the local government sector.

Separation of roles between the Council (governing the affairs of the local government) and the CEO (managing day-to-day operations) may be better understood as follows:

Council

- Sets direction.
- Responsible for the performance of the local government's functions.
- Decides on matters of policy.
- Ensures that services and facilities are integrated with and do not unnecessarily duplicate other services, particularly that of State Government or agencies.
- Oversees the allocation of the local government's finances and resources.
- Monitors the local government's performance through the CEO to ensure efficiency and effectiveness in service provision.

CEO

- Provides professional and technical advice to the Council.
- Implements the decisions of the Council.
- Liaises with the Mayor/President.
- Manages the day-to-day operations.
- Responsible for the employment and management of employees.
- Monitors the performance of employees to ensure efficiency and effectiveness in service provision.

It is suggested that the Department liaise with the local government sector to consider what the separation of roles might constitute in order to better structure and articulate the general roles as defined in the Act.

To facilitate better understanding and clarity, the Town of Victoria Park has established a *Governance Framework* to set out the roles of elected members and

the organisation, and their relationships, along with financial, legal and ethical considerations. The framework defines what the separation of roles is between key players and this provides the context upon which roles are defined and agreed.

There are a range of benefits that can be derived from the development and implementation of an effective governance framework in local government. These include:

- providing clear guidelines for the roles of the Council, elected members and the CEO, ensuring that all responsibilities are properly allocated and performance expectations are well understood
- enshrining best practice in relation to 'board processes' (which are relevant to the elected Council)
- assisting Council and the CEO in delivering good governance
- ensuring legal and ethical compliance
- influencing processes throughout the organisation by setting guidelines for strategic planning at all levels
- acting as a point of reference for disputes
- assisting as an induction tool for new elected members and employees.

It is suggested that the Minister give consideration to the development of a model governance framework that can be adapted by each local government or at the minimum a Departmental Operational Guideline that clearly articulates the intent of the legislation and provides guidance to all key players.

Of relevance to this matter is the need to review the Act in its entirety to provide greater certainty as to the function and role of a local government, and in the main, whom or which entity within it performs the function or duty under the Act.

Where a function is conferred on a local government it is generally intended to be exercisable by a council rather than by the CEO. The Act itself makes it clear that:

- a council's role is not to exercise administrative (or management) powers, but to exercise broader governance powers (as per section 2.7 of the Act)
- a CEO has the principal administration or management role of the local government – reflected in specific statutory function to 'manage the day to day operations of the local government (as per section 5.41(d) of the Act).

There are many instances and references within the Act that makes it clear that the role of a 'local government' is not exercisable by Council but by the CEO, in performing the day to day management of operations (such as the appointment of authorised persons). There are some references in the Act that the term local government was clearly intended by Parliament to mean Council (such as the making of local laws). In some instances it is unclear on who should be performing the function. The discussion paper uses the term 'local government' and 'council' interchangeably which is confusing.

Relevant in this context and consistent with the governance / administration distinction, is the prohibition, under regulation 9 of the *Local Government (Rules of*

Conduct) Regulations 2007, against any council member (including a Mayor / President and councillors) becoming involved in administrative matters. Therefore a complete review of the Act to better clarify the specific intent would also assist the sector in understanding the separation of roles and powers to make a clear distinction of the governance related function of councils and the day-to-day management function of the CEO.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS a comprehensive review of the roles of the Council, Mayor / President, Councillors and the CEO in order that the separation of roles is succinct; definitive and clear not only to the key players but the community to whom the Council / local government serve.**
- **SUPPORTS the current role of the CEO as detailed in the current Act.**
- **REQUESTS that the Department of Local Government Sport and Cultural Industries engage with the local government sector to ensure there is clarity with regard what defines separation of roles.**
- **SUPPORTS development of a model Governance Framework and / or a Departmental Operational Guideline that clearly articulates the intent of the legislation in relation to the roles and responsibilities of the Council, Mayor/President, Council and the CEO.**
- **SUPPORTS the Act being reviewed to provide clarity around the function and role of a local government, and the desired intent as to whether:**
 - **the function was a broad governance power to be performed by the Council**
 - **the function was an administrative (day to day management) power to be performed by the CEO.**

2 - Training

2.1 Competencies required to be an elected member

It is not considered that a core set of competencies will vary between local governments. The complexity of issues may vary between local governments as may the frequency at which complex matters are dealt with. However all elected members, regardless of their specific local government, should maintain the same core competencies.

In terms of the review, the discussion paper raises the following questions:

6. *What competencies (skills and knowledge) do you think an elected member requires to perform their role?*
7. *Do these vary between local governments? If so, in what way?*

Town's Administration Assessment

There would be a significant risk to treat the required skills of elected members on an arbitrary basis dependent on the size, or some other criteria, of their local government. An effective elected member also has opportunities to represent their district on external boards/committees and/or local government bodies/committees, and an established set of competencies would assist and be relevant to all.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS** the Department of Local Government, Sport and Cultural Industries developing a core set of competencies (skills and knowledge) considered instrumental for all elected members to undertake their roles adequately.
- **DOES NOT SUPPORT** variation of those competencies among local governments due to the inter-relationships local governments have with each other and the need to ensure consistency of approach and greater understanding at regional levels.

2.2 Funding training

The discussion paper suggests that a training fund might be appropriate to cater for elected member professional development to offset the financial impact for small and regional local governments.

Should a training fund be established, provision of funding subsidisation toward professional development should not be restricted to small and regional local governments.

In terms of the review, the discussion paper raises the following questions:

8. *Who should pay for the costs of training (course fees, travel, other costs)?*
9. *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? Should contribution to such a fund be based on local government revenue or some other measure?*

Town's Administration Assessment

Overall, professional development and training is the simplest and most affordable way to add capacity to the local government sector and it can have both a positive short-term and long-term impact for the sector.

**Proposed Town Of Victoria Park Position:
The Town:**

- **SUPPORTS** in the first instance the relevant local government paying for the costs of training and professional development of its elected members.
- **SUPPORTS** all local governments developing a training and professional development policy / internal protocol and budgetary provision to build the capacity of their elected members and employees however this should not be mandated through legislative change.
- **SUPPORTS IN PRINCIPLE** the State Government establishing a training fund for elected members and local government officers, for management, leadership, and competency based training, on the condition that access to a training fund being available to all local governments and further engagement being undertaken with the local government sector to determine an appropriate funding mechanism to support a training fund.

2.3 Mandatory training

As part of WALGA's 2008 *Systemic Sustainability Study* it was recommended that a comprehensive induction or foundation training program be mandated and supported by payment for attendance. The discussion paper recognises the advantages and disadvantages of mandatory training programs and who should it apply to (that is first time elected members; all elected members; or all elected members with exemptions given to those who complete recognition of prior learning process).

There is also a suggestion in the discussion paper that candidates could be required to complete an induction program as part of their nomination process as a means for ensuring that they better understand the roles and responsibilities of the position for which they are nomination. Requiring candidates to complete an induction could reduce the number of potential candidates but improve their understanding of the complex and challenging role they are preparing to undertake, should they be successful at an election.

In terms of the review, the discussion paper raises the following questions:

10. *Should elected member training be mandatory? Why or why not?*
11. *Should candidates be required to undertake some preliminary training to better understanding the role of an elected member?*
12. *Should prior learning or service be recognised in place of completing training for elected members? If yes how would this work?*
13. *What period should apply for elected members to complete essential training after their election?*

Town's Administration Assessment

If local governments do not conduct candidate information sessions the Department of Local Government, Sport and Cultural Industries in partnership with WALGA should examine how they can both support the sector with materials to be able to undertake such sessions to improve potential nominees understanding of the role of an elected member.

In view of this it is considered that the requirement to undertake training following election is the matter that requires determination (not prior to) as significant local government resources can be directed to an effort that may not provide any particular positive return on that investment.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS** elected members being provided with appropriate training to encourage strategic leadership and board-like behaviour, recognising, however, that councils are not a board of directors but are an elected representative body.
- **SUPPORTS** mandatory training of elected members on the following conditions:
 - **Only applies to first time elected members**
 - **Utilises the elected member skill set as the appropriate content for mandatory training**
 - **Applies appropriate Recognition of Prior Learning (RPL)**
 - **Requires training to be completed within the first 12 months of office**
 - **Applies a penalty for non-completion of a reduction in fees and allowances payable.**
- **SUPPORTS** the Department of Local Government, Sport and Cultural Industries requiring local governments to undertake an induction session of newly elected members based on a consistent framework and materials of support developed in consultation with WALGA and Local Government Professionals.
- **DOES NOT SUPPORT** potential candidates being required to undertake preliminary and mandatory training to better understanding the role of an elected member.

2.4 Continuing professional development

The discussion paper suggests that requiring local governments to adopt a training policy that incorporates the concept of continual professional development is one

option to build the capacity of councils through ongoing skills development and training.

In terms of the review, the discussion paper raises the following questions:

14 Should ongoing professional development be undertaken by elected members?

15 If so, what form should this take?

16 Do you have any other suggestions or comments on training?

Town's Administration Assessment

It is supported that all local governments are encouraged to develop a training and professional develop policy / internal protocol and budgetary provision to build the capacity of their elected members and staff, however this should not be mandated through legislative change.

It is suggested that the Department review its current operational guidelines that are available to local governments, elected members and members of the community to assist in enhancing understanding of the many responsibilities elected members have. Many of these guidelines have not been reviewed since their creation and a number simply reflect the legislative provisions that are in play, without providing any real practical examples or contextual information as to the legislation's intent. This could be done in partnership with WALGA and the Local Government Professionals.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS** all local governments being encouraged to develop a training and professional develop policy / internal protocol and budgetary provision to build the capacity of their elected members and employees however this should not be mandated through legislative change.
- **SUPPORTS** the Department of Local Government, Sport and Cultural Industries reviewing its current operational guidelines to better assist local governments understanding the complex legislative environment in which they operate.

3 - The Behaviour of Elected Members

3.1 Current situation

Under the Act, local governments are required to adopt a code of conduct that is to be observed by elected members, employees and committee members. This is in addition to an elected members' requirement to comply with the *Local Government (Rules of Conduct) Regulations 2007* and the Act also establishes a disciplinary framework for investigation and penalties for non-compliance or breaches of the Regulations.

While codes of conduct are mandatory for local governments they have limited enforceability in relation to elected members, and become an internal disciplinary matter for employees. In view of this, the code of conduct provisions in other jurisdictions were detailed in the discussion paper and the State Government is therefore investigating whether codes of conduct are necessary and if so, the level of prescription to be articulated.

In terms of the review, the discussion paper raises the following questions:

- 17. Should standards of conduct / behaviour differ between local governments?
Please explain*
- 18. Which option do you prefer for codes of conduct and why?*
- 19. How should a code of conduct be enforced?*

Town's Administration Assessment

In 2015-16 the (then) Department of Local Government and Communities completed a substantial review of the *Local Government (Rules of Conduct) Regulations 2007*, and had undertaken comprehensive consultation with the local government sector. A final report was released in 2016.

The implementation of the Department's recommendations remain outstanding, however, represent a significant step in more clearly articulating the rules of conduct for elected members; tightening the rules to avoid technical loopholes and unintended consequences; and improving the experience for officers involved in the complaint process.

The vast majority of this work is already completed. All that is required is to draft and introduce the new regulations.

It is considered that while there should be a consistent set of standards of conduct/behaviour for all local governments (that is model code provisions), there should also be the ability to modify certain clauses to suit the local government's culture and values and any particular circumstances it considers are standards that are integral to its professional standing (promotion of accountability and ethical decision-making) as long as these do not contradict the standard model.

Any code of conduct as required by the Act should not apply to elected members as the Local Government (Rules of Conduct) Regulations 2007 should be the basis and preferred method of dealing with conduct matters. Nor should a code of conduct apply to committee members, of which aspects of a local government's code, would not apply or indeed be relevant.

Contrary to the view expressed by the Department in its discussion paper, an elected member's failure to comply with a local government's code could not be interpreted as non-compliance with the Act. There is no penalty associated with failure to observe a local government's code, and for employees, non-observance is an internal disciplinary matter.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS** the recommendations arising from the *2016 Review of the Rules of Conduct for Elected Members Regulations* being implemented.
- **SUPPORTS** a model set of conduct/behaviour provisions to be adopted by all local governments, and that individual local governments are provided with the ability to modify / insert certain clauses as long as these do not contradict the standard model.
- **SUPPORTS** codes of conduct being enforced through internal administrative mechanisms for employees.
- **DOES NOT SUPPORT** codes of conduct applying to elected members due to their unenforceability noting such conduct and behavioural matters being included within the *Local Government (Rules of Conduct) Regulations 2007*.
- **DOES NOT SUPPORT** codes of conduct applying to committee members noting that meeting procedures and standing orders of a local government would cover aspects of a committee member's behaviour.

3.2 Regulation of elected member conduct: rules of conduct

Since 2007 and with the introduction of the *Local Government (Rules of Conduct) Regulations 2007*, the Act has provided for a disciplinary framework to deal with minor, recurrent and serious breaches of conduct by individual elected members. A Standards Panel has been established by the Department for the purposes of investigating and resolving complaints. However, issues have been raised in relation to the time taken to resolve complaints, and the level of complaints that are made that do not result in any action being taken due to a lack of substance.

The current regulations are very prescriptive and an opportunity exists to introduce reforms that provide greater flexibility and agility to resolving allegations of breaches, and the discussion paper details the framework used in other jurisdictions throughout Australia.

The discussion paper offers two options.

The first option proposed is to streamline the *Local Government (Rules of Conduct) Regulations 2007* and place more emphasis on conduct that is likely to:

- be a detriment to the local government
- result in Council dysfunction

or

- impair public confidence in decision-making.

This option proposes to minimise the rules that constitute a minor breach and which are dealt with externally, with those behaviours removed being included into a local government's code of conduct, and will therefore be handled internally.

The second option proposes a disciplinary framework that is less prescriptive and outcome-based, requiring elected members to refrain from conduct likely to impair the integrity, operational performance or reputations of the local government. The current rules-based disciplinary model generally does not capture all dysfunctional conduct whereas a more flexible outcome-based misconduct management model may provide greater focus on impact, intent and context of the conduct. Complaints would still be investigated by a third party.

Both options have highlighted the possibility of reducing the time limit for submitting a complaint from two years after the incident to three months (with a provision to extend of up to 12 months in exceptional circumstances).

In terms of the review, the discussion paper raises the following questions:

20. *Do you support streamlined Rules of Conduct regulations? Why?*
21. *If the rules were streamlined, which elements should be retained?*
22. *Do you support a reduction in the time frame in which complaints can be made? Is three months adequate?*
23. *Do you support an outcome-based framework for elected members? Why or why not?*
24. *What specific behaviours should an outcome based framework target?*

Town's Administration Assessment

The streamlined approach detailed in the discussion paper (Option 1) could result in deteriorated relationships between the elected body and the administration, especially where there are adverse findings. There could potentially be a lack of consistency in findings and outcomes, and if a complaint is made by a member of the community (of which the result is not to the community member's desired outcome) criticism of the approach and investigation method could arise, in terms of bias, favouritism or lack of thorough investigative procedure. This in itself could also create dysfunction during Council meetings and inappropriate public questions or statements being raised.

Local governments spend considerable internal effort and resources in resolving potential disputes and issues for employees and having local governments to attend to elected member conduct issues, would place additional burden on those internal resources, particularly a CEO's time and effort, as it would be more likely than not be, the CEO having to deal with such matters. One option is for local government to engage the services of an external investigator or mediator; however this would be a cost to the local government.

Option 2 does not provide any greater clarity in terms of the type of behaviour or conduct that is expected of an elected member and is subjective and overly complicated. The current disciplinary framework the *Local Government (Rules of Conduct) Regulations 2007* and the Act offers, should continue noting the proposals within the *2016 Local Government (Rules of Conduct) Regulations 2007 and Minor Breach Disciplinary Framework Review*. The current framework would benefit from guidelines and standards that could assist local governments in understanding the intent of the legislation as well as the community in terms of what would be a minor breach under the current regulations.

In terms of reducing the timeframe to lodge a complaint, while this may have merit in terms of reducing the amount of complaints being made or in line with current experience, it goes against the principles of natural justice in terms of time restricting complaints, which in fact, may not become apparent for some time.

In relation to the complainant's anonymity it should be protected to prevent reprisals particularly where the CEO or an employee makes a complaint about an elected member.

Proposed Town Of Victoria Park Position:

The Town:

- **DOES NOT SUPPORT a streamlined Rules of Conduct Regulations as:**
 - **requiring local government to manage disputes internally risks conflict manifesting between the elected body and the administration**
 - **substantial internal resources would be required to manage such matters not covered by a streamlined approach**
 - **possible claims of bias, favouritism or lack of thoroughness could result.**

- **DOES NOT SUPPORT** a reduction in the time frame in which complaints can be made.
- **DOES NOT SUPPORT** an outcome-based framework for elected members as the proposals of the 2016 *Local Government (Rules of Conduct) Regulations 2007 and Minor Breach Disciplinary Framework Review* should be investigated and further refined.
- **SUPPORTS** the recommendations arising from the 2016 Review of the Rules of Conduct for Elected Members Regulations being implemented.
- **SUPPORTS** that the complainant's anonymity be protected to prevent reprisals.

3.3 Other matters recommended in the 2015-16 review

In 2015 a review was undertaken of the minor breach administrative process under the Act due to concerns expressed around its timeliness and effectiveness. In the main the process was perceived to be slow, legalistic and non-transparent and there was low sector confidence in the Standards Panel and the overall minor breach framework.

The focus of this 2015-16 review was on amendments to the regulations but it also noted that a relatively inflexible rules-based system is not well equipped to deal with the complexities of local government culture and sometimes volatile relationships, as well as a vulnerability to manipulation.

This review made a number of other recommendations:

- Applying the Rules of Conduct to all candidates in local government elections.
- Extending penalty provisions for misuse of information to former elected members for a period of twelve months following their cessation from office.
- Extending the confidentiality of complaint proceedings beyond just election periods.

In terms of the current review, the discussion paper raises the following questions:

25. *Should the rules of conduct that govern behaviour or elected members be to all candidates in council elections? Please explain.*
26. *Should the offence covering the improper use of information be extended to former members of council for a period of twelve months? Why?*
27. *Should this restriction apply to former employees? Please explain.*
28. *Is it appropriate to require the existence and details of a complaint to remain confidential until the matter is resolved? Why?*

Town's Administration Assessment

Local government elections are heavily regulated processes often requiring citizens to embark on a steep learning curve around the election process and legislative requirements as an election candidate. Many of the current rules in the *Local Government (Rules of Conduct) Regulations 2007* would not apply to a candidate in an election period.

It should be noted that Division 11 of Part 4 of the Act details the range of electoral offences that apply for local government elections and the penalties that apply. Consideration could be given to improving these provisions including the *Local Government (Elections) Regulations 1997* as opposed to requiring candidates to conform to the requirements of the *Local Government (Rules of Conduct) Regulations 2007*.

In terms of improper use of information, it is supported that this provision apply to former elected members and employees. However this should not be restricted to a twelve month period from ceasing to be a local government elected member or employee, but in perpetuity. It is unclear why a 12-month period was selected however information acquired in a person's particular role could be used inappropriately long after a person has left the local government. In practical terms, it would be difficult and highly unlikely that a local government would pursue a person for such breaches or indeed could prove improper use has occurred.

The investigation of complaints against any person (whether that be conduct or criminal behaviour) should always be based on the principles of natural justice and procedural fairness. It is therefore important that any complaints and the investigation of such, offers that opportunity for an elected member the subject of the complaint. Publication of complaints / allegations should only occur at the conclusion of an investigation, along with the findings and outcomes. The publication of complaints that have not yet been fully investigated could damage the reputation of the elected member, even if the findings are unwarranted and unjustified.

Proposed Town Of Victoria Park Position:

The Town:

- **DOES NOT SUPPORT the *Local Government (Rules of Conduct) Regulations 2007* applying to all candidates in elections as the Act and the *Local Government (Elections) Regulations 1997* currently provide a framework and offence provisions that would be applicable to all candidates.**
- **SUPPORTS extending the penalty provisions for misuse of information to former elected members and employees, however in perpetuity not only for a 12 month period.**
- **SUPPORTS extending confidentiality of complaint proceedings beyond election periods as it supports the principals of natural justice and procedural fairness.**

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

The Local Government Standards Panel currently reviews alleged minor breaches of the *Local Government (Rules of Conduct) Regulations 2007* and is appointed by the Minister with/under specific provisions as highlighted in the Act. Serious breaches are investigated by the Departmental CEO (Director General of the Department of Local Government, Sport and Cultural Industries).

Of the number of complaints made to the panel between its commencement in 2007 and 2015, 68% were generated from less than 10% of the State's local governments, where 80 local governments have not used the system at all. The current system is supported by the local government sector, but can be slow and does not necessarily allow for early intervention to address inappropriate behaviour.

The discussion paper details the panel requirements across other State jurisdictions, that range from stand-alone panels to internal resolution procedures. In view of this the discussion paper offers a number of options:

- Option 1 – Status Quo – maintain the current standards panel system.
- Option 2 – Establish a sector based Conduct Review Committee.

In terms of the review, the discussion paper raises the following questions:

29. *What do you see as the benefits and disadvantages of this model (Option 2)?*
30. *What powers should the Conduct Review Committee have?*
31. *In your opinion what matters should go directly to the Standards Panel?*
32. *Who should be able to be a member of a panel: elected members, people with local government experience, independent stakeholders?*
33. *Who should select the members from the pool?*
34. *How many members should there be on a Review Committee?*
35. *Are the proposed actions for the Review Committee appropriate? If not, what do you propose?*
36. *Which of the option for dealing with complaints do you prefer? Why?*
37. *Are there any other options that could be considered?*
38. *Who should be able to request a review of a decision: the person the subject of the complaint; the complainant or both?*

Town's Administration Assessment

As part of the 2016 *Local Government (Rules of Conduct) Regulations 2007 and Minor Breach Disciplinary Framework Review* the Department offered several proposals in terms of improving processing times and efficiency. In the main the following points were offered:

- Provide mechanisms to help prospective complainants determine whether they have valid grounds for alleging a contravention resulting in a minor breach and guidance on describing a contravention.

- Replace the current complaint form with a more structured version that requests the specific information needed to demonstrate the essential elements of a contravention for each regulation, and to advise the outcome of any dispute resolution processes undertaken. There is potential to regulate information requirements under section 5.107(2)(d) of the Act.
- Provide guidance material to complaints officers.
- Develop guidance for local governments concerning treatment of complaints that are not made in accordance with the Act.
- Establish and enforce timeframes for receipt of responses of parties to information requests.
- Introduce a prioritisation system for complaints received by the Panel, based on the significance of the potential consequences for local government, the extent to which the conduct indicates deliberate intent rather than poor judgement, and whether there has been a pattern of inappropriate behaviour and complaints made against that council member
- Further simplify and streamline panel reports on findings and decisions, consistent with the needs of the audience.
- In the longer term, consider amending the Act to align the handling of minor breach complaints with the current serious breach complaint process to create a single pathway for receipt of breach complaints.
- Under this model, complaints of minor breach would initially be sent by complaints officers to the CEO of the Department, who, on the advice of the Department, would decide whether to make an allegation of minor breach to the Standards Panel.

The model of establishing a sector review committee seems to put in another layer to an already slow assessment process, and therefore it is questioned what benefit will result other than dealing with low level matters. Appeal processes would still apply to the Standards Panel or the State Administrative Tribunal.

With the proposed membership being selected from a pool of potential members (being elected members, people with local government experience and independent stakeholders), it is felt that potential conflicts of interest or bias could arise due to relationships or impartiality. The local government sector is small in terms of knowledge of personnel within the sector, so awareness of a particular person and their activity is likely to occur.

The continuation of the current Standards Panel framework is supported. However in terms of the panel's workload management, the Minister could consider additional panels, possibly on a regional basis similar to the Joint Development Assessment Panels established under the *Planning and Development Act 2005* or in line with the zone framework of WALGA.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS** the current system of breaches of the *Local Government (Rules of Conduct) Regulations 2007* being referred to a Standards Panel.
- **SUPPORTS** the creation of more standards panels (possibly on a regional basis) to minimise the workload on the current Standards Panel.

3.5 Sanctions and other Standard Panel matters

Section 5.100(6) of the Act outlines the actions the Standards Panel can impose when a minor breach is found, namely:

- dismissing the complaint
- ordering that a person must undertake specified training
- ordering that the person must publicly apologise
- ordering that the person be publicly censured.

The discussion paper details the various sanctions that apply in other State jurisdictions and has offered the following additional sanction being included:

- Mediation.
- Prohibition from attending Council meetings.
- Compensation to the local government.
- Complaint administrative fee.
- Cost recovery to the local government.
- Publish complaints in the annual report.
- Table decision report at Ordinary Council meeting.

In terms of the review, the discussion paper raises the following questions:

39. *Do you support the inclusion of mediation as a sanction for the Panel? Why or why not?*
40. *Do you support the Panel being able to prohibit elected members from attending council meetings? Why or why not?*
41. *How many meetings should the Panel be able to order the elected member not attend?*
42. *Should elected member be eligible for sitting fees and allowances in these circumstances?*
43. *Do you support the Panel being able to award financial compensation to the local government? Why or why not?*
44. *What should the maximum amount be?*
45. *Do you support this option? Why or why not?*
46. *Do you believe that a compliant administrative fee would deter complainants from lodging a complaint? Is this appropriate?*

47. *Would a complaint administrative fee be appropriate for a sector conduct review committee model? Why or why not?*
48. *What would be an appropriate fee for lodging a complaint?*
49. *Should the administrative fee be refunded with a finding of a minor breach or should it be retained by the Department to offset costs? Why or why not?*
50. *Do you support the cost of the panel proceedings being paid by a member found to be in breach? Why or why not?*
51. *Do you support the tabling of the decision report at the ordinary Council meeting? Why or why not?*
52. *Do you support this option? Why or why not?*

Town's Administration Assessment

The ability to have mediation as a current solution to minor breach complaints is supported. An external mediator could assist with improving ongoing relationships or clarify misunderstandings.

In terms of prohibiting the attendance at Council meetings, this is not supported. One of the fundamental roles of an elected member, as prescribed under the Act, is to participate in the local government's decision-making processes and to represent the interests of the electors, ratepayers and residents of the district. Preventing an elected member from participating in Council meetings, goes against this fundamental role of an elected member and could taint the local government decision-making processes, in terms of majority voting.

In most situations, a local government would have sufficient standing orders or meeting procedures to deal with disruptive behaviour at Council and committee meetings, such as prevent a person from not speaking on an item, but not removing their entitlement to vote. This avenue should be used by local governments, rather than legislative sanction, as it puts the power of the action in the hands of the relevant presiding member, or Council (through a majority vote) should disruption occur at a Council or committee meeting.

The suggestion of requiring compensation to be paid to the local government if a breach is said to be found is also not supported. The discussion paper suggests awarding financial compensation is likely to only occur or be imposed in circumstances where there has been a clear financial impact to the local government. It is unlikely that a local government would be able to quantify such a value, and in terms of the minor breach areas currently within the *Local Government (Rules of Conduct) Regulations 2007* is unlikely to occur (that is a financial impact from the misuse of information; securing personal advantage or disadvantaging others; misuse of local government resources; involvement in the administration; relationships with employees; disclosure of impartiality interests; and gifts). Any financial impact, even if able to be quantified, is unlikely to be realised for a period of time long after the breach would have been found to occur. However, consideration could be given to imposing a fine on an elected member found to have committed a breach.

Requiring a complaint administration fee to be paid is also not supported as it could serve as a deterrent in making a complaint that warrants investigation. Furthermore complaints may come from the local government itself (be it the CEO or an employee) or elected members may request the CEO to make a complaint on their

behalf to avoid personal payment. Administrative fees on a local government, or parties within it, would be to the detriment of the particular local government's ratepayers.

The payment of a complaint fee will also be administratively burdensome as the complaint is lodged with the local government's CEO, and the CEO would then need to arrange a funds transfer (through a cheque or EFT payment) to the Standards Panel who would return those funds if a breach was found to have occurred. The purpose of this review is to remove areas of red tape and this suggestion adds red tape through additional processes.

Notwithstanding cost recovery to the local government is supported. As part of the current framework, local governments are required to pay some costs associated with processing minor breach complaints. Generally the fee reflects the time spent by the legal panel member on the complaint, which is in the vicinity of \$1,187 per complaint. Similarly where the Standards Panel orders a public apology, the cost of a public notice (if any) is borne by the local government, not the member that is sanctioned. Therefore there is no financial impact on the elected member for any breach and costs are paid by the local government. This could be seen as unacceptable by the community. However if cost recovery is implemented there may need to be a value or limit placed on that cost to be recovered by the local government as some costs (such as advertising costs and standards) are at the discretion of the local government itself.

Under the Act certain minor breach details are already required to be published in the local government's annual report. It is considered that also including information about cost reimbursed to the Standards Panel for processing those complaints would not add any value in terms of transparency or making an elected member accountable for their actions. The current level of complaint reporting is considered adequate. The Town does not publish on its annual report costs of recovering other sorts of debts, so it is not considered warranted for cost recovery for minor breach findings.

Tabling of the Standards Panel's decision report at an ordinary Council meeting is also not supported. Council having to receive the report at a meeting, could provide an opportunity (through debate) for other elected members to speak to the item at a meeting; possibly adversely reflecting on the decision, or indeed the elected member who is the subject of the specific breach.

If a complaint is made by an elected member against another, this will more than likely provide an avenue to further deteriorate relationships between elected members. It would also create additional burden for the administration to create the report, although it would be a simple standard report.

One option that could be explored is for a local government to publish the decision report on its website, which could achieve the awareness the discussion paper is suggesting. Although all reports should be able to be viewed from the Department's website, which is currently the case.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS** the inclusion of mediation as a sanction available to the Standards Panel.
- **DOES NOT SUPPORT** the Standards Panel sanctioning elected members from attending Council meetings.
- **DOES NOT SUPPORT** the Standards Panel being able to award financial compensation to a local government but the imposition of a fine could be considered as an alternative.
- **DOES NOT SUPPORT** a complaint administrative fee being applied for minor breach complaints to be made to the Standards Panel.
- **SUPPORTS** the costs of panel proceedings and a local government's public notice costs (if any) being paid by an elected member found to be in breach, subject to a limit being applied.
- **DOES NOT SUPPORT** an additional minor breach information being placed in a local government's annual report that is not already prescribed under section 5.53(2)(hb) of the *Local Government Act 1995*.
- **DOES NOT SUPPORT** the tabling of the decision reports at ordinary Council meetings however the publishing of the report on the local government's website could achieve the desired outcome.

3.6 Elected member interests

The discussion paper has made a suggestion that elected members, who are members of not-for-profit organisations, are required to remove themselves from a Council meeting, where a matter about that not-for-profit organisation is being considered at a Council meeting. Currently the Act provides an exemption for members of not-for-profit organisations to disclose a financial interest. Elected members are required to disclose an impartiality interest under the *Local Government (Rules of Conduct) Regulations 2007* due to their association or relationship with that organisation.

In terms of the review, the discussion paper raises the following questions:

53. *Should not-for-profit organisation members participate in council decisions affecting that organisation? Why or why not?*
54. *Would your response be the same if the elected member was an office holder in the organisation?*

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

Town's Administration Assessment

Elected members are active members of the community and are involved with a vast array of not-for-profit organisations throughout their particular local government district. While elected members are involved in many organisations, it is not the Town's experience that a large number of elected members are members of the same not-for-profit organisation.

It should be noted that the disclosure of financial interests under the Act relate to the reasonable belief that because of an elected members involvement in a decision-making process on a matter, they would or could benefit or lose financially as a result of that decision. If a decision is made about that organisation it is unlikely that the elected member would be subject to any sort of financial impact, benefit or loss directly. Notwithstanding an interest affecting impartiality should continue to be disclosed under the *Local Government (Rules of Conduct) Regulations 2007*.

The discussion paper suggests that if this exemption were to be removed, a request could be made to the Minister to allow the disclosing members to participate. This in itself creates additional red tape for what is considered a relatively insignificant matter. Such requests would also slow down the decision-making process of Council and could affect the way a not-for-profit association operates.

In view of this requiring elected members to not participate in decisions affecting not-for-profit organisations, is not supported.

Proposed Town Of Victoria Park Position:

The Town DOES NOT SUPPORT the removal of the exemption for not-for-profit organisations under section 5.63(1)(f) of the Act noting that declaring an interest affecting impartiality is required under the *Local Government (Rules of Conduct) Regulations 2007*.

4 Local Government Administration

4.1 Recruitment and selection of local government Chief Executive Officers

The Act requires a local government to employ a CEO that the Council believes is suitably qualified and the Regulations require the Council to approve the process used to select and appoint a CEO before the position is advertised. A CEO's contract has a maximum duration of five years however it does not prevent the contract being renewed. The Act also requires that the CEO's performance should be reviewed at least once per year.

The discussion paper highlights a range of misgivings in the current CEO appointment process and has drawn information from previous independent inquiries into local governments as well as a number of reform and review papers instigated by the Department. Information relating to the recruitment provisions from other State jurisdictions is also highlighted.

In examining potential improvements in this area a number of options are presented in the discussion paper:

- Option 1 – Local governments engage the services of the Public Sector Commission to provide support and guidance to Council during the selection of the CEO.
- Option 2 – Councils to involve third-parties in CEO selection.
- Option 3 – Local government to adopt a CEO recruitment standards.
- Option 4 – status quo.

In terms of the review, the discussion paper raises the following questions:

56. *Would councils benefit from assistance with CEO recruitment and selection? Why?*
57. *How could the recruitment and selection of local government CEOs be improved?*
58. *Should the Public Sector Commission be involved in CEO recruitment and selection? If so, how?*
59. *Should other experts be involved in CEO recruitment and selection? If so, who and how?*
60. *What competencies, attributes and qualifications should a CEO have?*

Town's Administration Assessment

The selection of the CEO is one of the most crucial decisions to be made by a council. The relationship between council and the CEO is fundamental to the performance of the local government in providing services to its community.

Therefore, it is imperative that there is significant input and involvement of the governing body into the selection of the CEO.

Proposals related to State Government oversight for senior local government employee appointments, salary determinations and key performance indicator developments, are unnecessary. Assistance, guidance and support should be the new focus and role of the Department of Local Government, Sport and Cultural Industries, as well as other applicable agencies and commissions.

This supports the principle under the Act that the Council appoints and remunerates its CEO, as part of an appropriate corporate employer–employee relationship, who in turn determines and manages the appointment and remuneration of staff (including senior employees). Allowing an external party, within a separate tier of Government, to impose determinations on these activities is considered inappropriate.

The *Metropolitan Local Government Review Final Report* recognised that the State Government should not have direction or control over recruitment and management, but rather, there should be representation from the Public Sector Commission on CEO recruitment panels; in contract negotiations; and performance management. Councils may benefit from assistance with recruitment and selection, but that determination should be made by the individual local government. The support and assistance provided by the Commission may be by way of government documentation used to recruit SES appointments.

Improvements in the recruitment process could be undertaken by requiring Council to undertake the following:

- 1 Agreement to the terms and conditions of the recruitment process.
- 2 Determination of the key elements of any contract of employment.
- 3 Determination of the key principles of the key performance indicators for the position.

The recruitment process could also be enhanced by the encouragement of Council to seek external professional consulting advice as part of the recruitment process. However, there should be no regulations in relation to the recruitment and selection process beyond what is currently within the legislation. In this way, the option is available to the individual local governments or Council to seek external support rather than being required to adhere to a regulated process.

It is considered that local governments already have access to advice and assistance through the WA Local Government Association's Workplace Solutions, which has significant experience and expertise in CEO appointments and performance management. It is suggested that any assistance provided by the Public Sector Commission in recruitment, contract negotiations and performance management be at the discretion of the local government, as is the services of the WA Local Government Association's Workplace Solutions.

The determination of competencies, attributes and qualifications will vary and depend upon the individual local government, its size, its location and maturity of its

community. While academic qualifications can provide evidence of the capacity of an individual in terms of their intellect, formal qualifications alone are not adequate for someone to undertake the role of a CEO.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS access to the Public Sector Commission providing advice and assistance to local governments in the appointment and performance management of local government Chief Executive Officers and Public Sector Commission representation on relevant selection panels and committees, solely at the discretion of the local government.**
- **SUPPORTS local government Councils improving their recruitment processes by:**
 - **agreeing to the terms and conditions of the recruitment process**
 - **determining the key elements of any contract of employment**
 - **determining the key principles of the key performance indicators of the position.**
- **SUPPORTS local governments having discretion in terms of the involvement of other third parties and experts in the recruitment process.**

4.2 Acting Chief Executive Officers

The Act states that an employee may act in the position of the CEO or senior employee for a term not exceeding one year without a written contract, however the Act is silent on who is responsible for appointing the acting CEO.

In terms of the review, the discussion paper raises the following questions:

61. *Should the process of appointing an acting CEO be covered by legislation?*
62. *If so, who should appoint the CEO when there is a short term temporary vacancy (covering sick or annual leave for example)?*
63. *Who should appoint the CEO if there will be a vacancy for an extended period (for example, while a recruitment process is to be undertaken)?*

Town's Administration Assessment

The vast majority of acting appointments for the position of CEO are for short durations of annual leave or long service leave. Therefore, there is no requirement

for a formal process of appointing the Acting CEO other than a determination being made by Council in some form about acting appointments.

For instance the Town of Victoria Park Council has currently delegated authority to the CEO to appoint an acting CEO under the following conditions:

1. The Town employee holding the substantive position of 'Director';
2. Directors will be appointed to the role of Acting Chief Executive Officer at the discretion of the Chief Executive Officer, subject to performance and dependent on availability and operational requirements;
3. Appointments to the role of Acting Chief Executive Officer shall be made in writing for a period that does not exceed 3 months;
4. The Chief Executive Officer is to advise Elected Members when a Director is to be designated Acting Chief Executive Officer; and
5. A Council resolution is required when it is proposed to appoint a person as Acting Chief Executive Officer for a period exceeding 3 months due to the planned absence of the Chief Executive Officer for a period exceeding 3 months.

It is understood that local governments may have similar type of arrangements in place for the appointment of acting CEOs either through policy positions, delegations or council resolutions.

The Act already provides a legislative restriction on when an acting CEO can be appointed outside a written contract, currently 12 months. The current provisions as they stand are therefore appropriate and no further legislative change is considered needed.

If an appointment was to be for a period of longer than six months up to the maximum of the legislation of 12 months it may be appropriate for local governments to have a policy on the process in that instance and possibly requiring councils making such appointments.

Proposed Town Of Victoria Park Position:

The Town:

- **DOES NOT SUPPORT** the process of appointing an acting CEO being covered by legislation.
- **SUPPORTS** local governments determining their own arrangements and parameters around the appointment of acting CEOs.

4.3 Performance review of local government Chief Executive Officers

The Act requires the performance of the CEO is to be reviewed at least once every year and it is Council's responsibility to undertake this review.

The discussion paper provides information around the review process throughout other State jurisdictions and offers the following options in terms of minimising problems experienced by some local governments around the review process:

- Option 1 – Approved third-party to be involved in the performance review of CEOs.
- Option 2 – Local governments to adopt a CEO Performance Review Policy.
- Option 3 – Local governments to conform to a standard for CEO performance review.

In terms of the review, the discussion paper raises the following questions:

64. *Who should be involved in CEO performance reviews?*
65. *What should the criteria be for reviewing a CEO's performance?*
66. *How often should CEO performance be reviewed?*
67. *Which of the above option do you prefer? Why?*
68. *Is there an alternative model that could be considered?*

Town's Administration Assessment

The performance review of the CEO should be based on achievement of agreed key performance indicators; the interaction with elected members and key stakeholders of the local government; and completion of key projects and compliance with statutory legislation processes of the local government.

It is important that Council or a committee of Council is involved in the CEO performance review. Council may determine to seek external advice from a professional consultant to assist with the review process. It is also important that the contract of the employment of the CEO specifies the performance review process, timing and involvement of any third parties.

The Town currently applies a rigorous process in the development, measurement and assessment of its CEO key performance indicators, including the establishment of a CEO Performance Review Committee to fulfil the roles associated with managing and reviewing the Chief Executive Officer's achievements in accordance with his/her contract. Imposing new conditions to this already significant process would be considered an unnecessary duplication that may not meet the needs of the Town.

As previously highlighted the Town supports the Public Sector Commission providing advice and assistance to local governments in the performance management of local

government CEOs. Third parties could also offer support and guidance however this should be at the discretion of the particular local government.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS access to the Public Sector Commission providing advice and assistance to local governments in the performance management of local government CEOs.**
- **SUPPORTS local government councils developing criteria it considers appropriate in assessing the Chief Executive Officer's performance in his / her role.**
- **SUPPORTS the retention of the current legislative provisions that a Chief Executive Officer's performance be reviewed at least once annually.**
- **SUPPORTS Option 1 - Approved third-party to be involved in the performance review of Chief Executive Officers, noting the Town of Victoria Park currently utilises the services of a third party in its performance review of its CEO.**

4.4 Extension or termination of the CEO contract immediately before or following an election

CEO employment contracts contain provisions around contract extension and contract termination. The discussion paper raises questions around the appropriateness of extensions and terminations around biennial local government election periods. The paper also touches on the recommended reforms in the New South Wales Independent local government review where in terms of a CEO's contract, a six month cooling off period following an election is recommended, and a limitation on extension prior to an election.

In terms of the review, the discussion paper raises the following questions:

69. *Would a 'cooling off' period before a council can terminate the CEO following an election assist strengthening productive relationships between Council and administration?*
70. *What length should such a cooling off period be?*
71. *For what period before an election should there be a restriction on a Council from extending a CEO contract? Should there be any exception to this?*

Town's Administration Assessment

The appointment of a suitably qualified and professional CEO is an important task to be undertaken by any council. In the main recruitment and appointment processes

can be lengthy but necessary to ensure a local government employs a CEO that best suits the needs of the Council, the local government and the overall community.

This process at any time of the year, or at anytime within a Chief Executive Officer's contract term needs to be carefully managed and indeed methodical to minimise disruption and to support the continuity and effectiveness of the local government's operations. It is not felt that a cooling off period or a restriction period for contract renewal after or before an election period would minimise this disruption.

A statutorily implied cooling off period is unlikely to result in a change of heart in relation to the incumbent CEO. The contract of employment should specify a minimum period of advice or notice to be given to the termination of the services (six months). This would act as an effective cooling off period.

An employment of a CEO would preferably not be negotiated within six months of an election, the only exception to this might be if an individual local government was encountering difficulties with retention of staff at a senior level.

Proposed Town Of Victoria Park Position:

The Town:

- **DOES NOT SUPPORT a legislated cooling off period following an election before a council can terminate the CEO.**
- **DOES NOT SUPPORT a legislated restriction on a Council from extending a CEO contract before an election.**

4.5 Public expectations of staff performance

The Act contains provisions that the CEO must be satisfied that a person should not be employed by the local government unless the CEO believes that the person is suitably qualified for the position. The Act also contains principles around merit and equity without nepotism, patronage and discrimination.

The discussion paper purports that there is a higher level of trust and scrutiny placed on local government employees due to their roles and responsibilities; decision-making activities; and their overall 'connectedness' with the community. It also indicates that local governments are not held to the same type of employment standards or higher requirements that apply to state government agencies and the overall public service.

In terms of the review, the discussion paper raises the following questions:

72. *Is greater oversight required over local government selection and recruitment of staff?*
73. *Should certain offences or other criteria exclude a person from being employed in a local government? If so, what?*
74. *Do you have any other suggestions or comments on this topic?*

Town's Administration Assessment

Individual local governments undertake the necessary recruitment and selection processes satisfactorily and cognisant of the particular need of each local government.

It is a misrepresentation to indicate that local governments do not have recruitment and employment practices in accordance with the levels and standards set by state government agencies.

The requirement to mandatorily advertise vacant positions (other than the CEO and senior employees) is a cost burden to local governments and ratepayers (both in money and lost time through unnecessary recruitment activities) and does not offer flexibility for local governments to promote advancement or succession from within their own organisations. Merit and equity can be demonstrated in ways other than by just advertising positions (that is the ability to direct appoint a fixed and long-term employee into a position). Any criteria for selection should be set by a local government based on the requirements of the role; its responsibilities; and the tasks to perform.

Recruitment of employees is subject to a range of legislation that protects prospective employee rights and obligations and as such additional legislative scrutiny could unnecessarily increase this legislative burden. In addition to existing provisions within the Act, local government must also be mindful of:

- *The Fair Work Act 2009* (Cwlth)
- *Age Discrimination Act 2004* (Cwlth)
- *Australian Human Rights Commission Act 1986* (Cwlth)
- *Disability Discrimination Act 1992* (Cwlth)
- *Racial Discrimination Act 1975* (Cwlth)
- *Sex Discrimination Act 1984* (Cwlth)
- *Equal Employment Opportunity Act 1984*.

In some circumstances, the current legislative requirements could be considered too restrictive in allowing local governments to implement current and modern recruitment and appointment processes such as effective succession planning models that could reward high performing employees through promotion.

The suggestion of exclusion from employment of individuals based on a previous offence/s would need to be managed on a case-by-case basis. A decision to employ could be based on whether those offences were criminal, civil or employment related and whether the offence had an implication in relation to the role being recruited for. The Town considers trying to identify a list of offences (particularly criminal) where an employment exclusion may apply is problematic as it would be difficult to determine by what criteria an offence could be assessed against to determine if an employment exclusion should apply.

If an exclusion were to apply perhaps it could be developed related to those employees who have been summarily dismissed or dismissed from the employment of a local government for breaches of the employment contract to be in-eligible for re-employment.

Notwithstanding the general protections provisions related to prospective employees may also have an impact in this regard.

Overall it is considered existing oversight is too restrictive and no additional oversight is warranted. Local governments should be able to manage recruitment and selection activities in their own right being mindful of the extensive legislative environment it operates in.

Proposed Town Of Victoria Park Position:

The Town:

- **DOES NOT SUPPORT** greater oversight over local government selection and recruitment of employees noting adequate principles are specified in the *Local Government Act 1995* around merit and equity without nepotism, patronage and discrimination.
- **SUPPORTS** local governments given autonomy to undertake employee selection and recruitment processes based around the legislative environment which it operates and as per the current employment principles specified in the *Local Government Act 1995*.

5 Supporting Local Governments in Challenging Times

Under the Act, there are limited options for the State Government to implement remedial actions to ensure good governance of a local government. This includes situations where a local government, an elected member, the CEO or an employee has failed or is failing to comply with provisions under the Act or regulations. There are also limited intervention options when there is reason to believe that a person or persons within a local government are engaging in behaviour adversely affecting the ability of the local government to properly perform its functions.

In view of this, the discussion paper highlights that a range of options and approaches is needed that is geared towards improving governance for the public, while supporting local democracies. These options ideally should be focused on intervening early, building capacity in local governments and working in partnership.

The discussion paper proposes a revised mechanism whereby there will be a range of options for working in partnership with a local government to deal with issues commensurate with the risk and, if necessary, provides ways to escalate the matter. Regardless of the severity, the proposed approach follows a repeatable sequence that allows a consistent, transparent but scalable approach to ensure good governance.

The discussion paper indicates that there should be an appointed person to manage a remedial action process, if implemented, and would need to be suitably qualified with relevant expertise. The appointed person would work with the local government for a set period and report on progress regularly to the Department. Depending on

the nature of the matters of concern, the appointed person may assist the CEO or relevant employee, or the appointed person may oversee the administration.

The appointed person should have wide-ranging powers and the ability to employ a variety of strategies. This role could include:

- making recommendations to the council, CEO and the Department
- mediating between parties
- arranging for training
- reviewing, and making recommendations on, practices and procedures.

In terms of the review, the discussion paper raises the following questions:

- 75 *Should the appointed person be a departmental employee, or a local government officer or an external party? Why?*
- 76 *Should the appointed person be able to direct the local government or would their role be restricted to advice and support? Please explain.*
- 77 *Who should pay for the appointed person? Why?*
- 78 *What powers should an appointed person have?*
- 79 *Do you think the proposed approach would improve the provision of good government in Western Australia? Please explain.*
- 80 *What issues need to be considered in appointing a person?*
- 81 *Do you have any other suggestions or comments on this topic?*

Town's Administration Assessment

Local governments have a fundamental responsibility to implement good governance practices that meet the obligations of legislative requirements and community expectations. They should also be responsible in the first instance for management of their own affairs.

As presented in a Local Government Professionals Discussion Paper related to local government capacity building it states *“local government needs a legislative framework that differentiates between local governments, that recognises that some have significant capacity and can be relied upon to take on greater responsibility, while others have very limited capacity and simply can't afford to carry the same levels of compliance and administration, and instead need to focus on core functions.*

Local governments should operate within a legislative framework that promotes transparency and accountability and that governs core operations, but there must be an appropriate balance between compliance and performance.

Treating local governments equitably doesn't mean treating them equally. There has to be an understanding that each local government faces different challenges, just as each community has different needs.

Legislation and regulation need to be flexible enough to allow governments to effectively respond to these differences. Currently, this is not the case, and local governments and local government officers are held back by unnecessary red tape, which limits the service they can provide to their communities, and provides little in return.

There is already mechanism that creates categories within local governments based on size, complexity and capacity, such as the band system used by the Salaries and Allowances Tribunal, which allows for local governments to move up or down, depending on changes.”

Given the varying sizes and capacities of local governments it may be appropriate to split the sector into bands or categories for the purposes of tailored policy-making and regulation. Such an approach will enable greater flexibility for government in legislative issues and policy-making, and would enable the State to better target its initiatives and achieve its objectives for the sector.

It is considered that such an approach is an important first step (proactive) prior to establishing a remedial action process (reactive). It is recognised that remedial action processes are necessary and the approach presented in the discussion paper appears reasonable, however, further detail is required given the significance of the proposal to the sector.

Notwithstanding an approach that allows for a local government to work in partnership with the Department can be supported as it allows for not only clarity with regard approach, but consistency in its methodology.

The discussion paper suggests that set of criteria for being an appointed person be established, including but not limited to that person being suitably qualified and having extensive experience working in the local government sector. It is also important that such a person be seen to be an independent arbitrator with no perception of bias. While the proposed role as presented can be supported, it is not considered a Departmental appointment is appropriate. Notwithstanding the Departmental CEO and/or Minister should retain the ability to direct the local government or suspend a Council.

Should there be a requirement for a remedial action process requiring appointment of a suitably qualified person with relevant expertise to assist, the local government should, in consultation with the Department of Local Government, Sport and Cultural Industries, agree on the terms and costs related to the process, and bear these costs. The costs associated with any remediation process represent the accountability of the local government to its community for its actions.

As is detailed in the discussion paper concerns have been expressed about the capacity of some local governments to respond to the remediation action process and recommendations that might be made. The Department of Local Government, Sport and Cultural Industries, WALGA and Local Government Professionals will all play a critical role with regard ensuring that local governments and its elected members and employees are supported through these processes.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS** the Department of Local Government, Sport and Cultural Industries examining as part of the review of the *Local Government Act 1995* differentiating between local governments, to apply regulation, compliance and administration requirements that are reflective of the capacity and needs of local governments.
- **SUPPORTS IN PRINCIPLE** the Department of Local Government, Sport and Cultural Industries proposal for an improved remedial action process, subject to further information being provided with regard the methodology proposed.
- **SUPPORTS** the Department of Local Government, Sport and Cultural Industries establishing a set of qualification criteria for any person being considered an appointed person to manage a local government remedial action process, including but not limited to that person being suitably qualified and having extensive experience working in the local government sector.
- **DOES NOT SUPPORT** the appointed person being a Department of Local Government, Sport and Cultural Industries employee to ensure independence and potential bias.
- **SUPPORTS** the costs of an appointed person being negotiated between the Department of Local Government, Sport and Cultural Industries and the local government, however, costs being borne by the local government.
- **SUPPORTS** the proposed role of the appointed person being restricted to advice and support including:
 - making recommendations to the Council, CEO and the Department
 - mediating between parties
 - arranging for training
 - reviewing, and making recommendations on, practices and procedures.
- **AGREES IN PRINCIPLE** that the proposed remedial action approach would improve the provision of good government in Western Australia.

6 Making it Easier to Move between State and Local Government Employment

Local government employees are defined in Western Australia legislation as 'public officers' but have a unique status that complicates the ability of employees to transfer their entitlements between local government and State government agencies.

It is suggested in the discussion paper that some of the legislative and industrial relations barriers be removed to allow transfers and secondments between local and State government agencies which has the potential to greatly increase the skills and capacity of both State and local government workforces.

In terms of the review, the discussion paper raises the following questions:

82. *Should local government and State government employees be able to carry over the recognition of service and leave if they move between State and local government?*
83. *What would be the benefits if local and State government employees could move seamlessly via transfer and secondment?*
84. *Do you have any other suggestions or comments on this topic?*

Town's Administration Assessment

Transfer of leave entitlements has the potential to further exacerbate the need to manage leave liabilities and increase the levels of liability on a local government by either:

- the local government having to maintain or transfer real dollars to cover its proportion of liability for an exiting employee
- incurring liabilities for leave earlier than they otherwise would have - thereby accelerating the cost (and creating a potential liability that otherwise would not have been obtained by an employee starting with no accrued or pro rata entitlements)
- or
- creating potential to incur additional costs for paying leave entitlements that was not accrued in the service of the local government due to differing rates of pay.

Differences in the way the various types of leave are calculated and applied at the local government level will be different to the State level and even across other local governments. This in itself is problematic in calculating carry over leave entitlements.

Service recognition has the same potential to create additional liabilities associated with benefits earned due to length of service such as:

- parental leave rights
- recognition of service benefits
- classification and salary (incremental progression removed).

The question concerning the ability to move seamlessly via transfer and secondment needs to be answered separately for both transfers and secondments, and whether the nature of a transfer is temporary or not, and involves redeployment transfer or not.

The definition of transfer usually prescribes that the employer to whom the employee is transferring to, becomes contractually responsible for that employee (pay rates, leave and the like). Whereas secondment is temporary in nature, transfer need not be temporary and in fact is more aligned with a permanent movement.

If that is the definition implied by transfer, then the notion of transfers becomes impractical as local governments have totally different pay rates and conditions of employment to the State Government. These are contractual conditions and cannot be easily overcome, or unilaterally altered. In this respect little benefit could be gained from the ability to transfer between local government and State Government entities. In view of this the definition of what constitutes transfer needs to be very clear and unambiguous (that is transfer should not incorporate the concept of redeployment).

Secondments based on professional development could be supported, subject to appropriate host versus primary employer obligations being clearly understood (that is who is responsible for paying the employee, clearance of annual leave and the like). In appropriate circumstances, the benefits could include:

- career development for the employee
- increased skills, knowledge and experience for employees
- transfer of knowledge between industry
- greater understanding between local governments and State Government Departments of the challenges and issues each face
- a significantly increased pool of individuals that could potentially be tapped to deliver outcomes, projects, etc on either side of the ledger.

However, given that State Government employment practices may well be in a state of change due to the “Blueprint for Reform” document published in December 2017, it is perhaps a premature to determine how these concepts could or if they should apply.

Proposed Town Of Victoria Park Position:

The Town:

- **DOES NOT SUPPORT** the carrying over the recognition of service and leave between local government and State Government agencies.
- **SUPPORTS IN PRINCIPLE** secondments based on professional development between local governments and State Government agencies, subject to appropriate host versus primary employer obligations being clearly understood and agreed to.

7 Gifts

7.1 Simplifying the gift provisions

The Act and associated regulations contain a number of gift disclosure requirements that apply to elected members and employees. The three major sets of gift reporting laws applying to elected members are:

- the gift 'disclosure' requirements of section 5.82 of the Act
- the 'notifiable gift' (and 'prohibited gift') requirements of regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* (Rules of Conduct Regulations)
- electoral gift reporting requirements under regulation 30B of the *Local Government (Elections) Regulations 1997* (Elections Regulations).

Local government employees are required to comply with the gift reporting laws under regulation 34B of the *Local Government (Administration) Regulations 1996* (Admin Regulations), and also for 'designated employees' (that is employees with delegated authority), the gift disclosure requirements of section 5.82 of the Act.

Section 5.82 of the Act:

- applies to elected members and 'designated employees'
- requires the 'disclosure' of each 'gift' as defined in section 5.82(4) – except a gift from a 'relative' (as defined) or where the gift does not exceed the threshold (of \$200)
- provides for an offence and imposes a penalty of a fine of \$10,000 or imprisonment for two years for any breach.

Regulation 12 of the Rules of Regulations:

- applies only to elected members
- applies where the donor is 'undertaking an activity involving a local government discretion' (as defined)
- requires the 'notification' of each 'gift' (as defined in section 5.82(4) of the Act, but with more exceptions) and also does not apply to a gift from a 'relative' (as defined) or where the gift does not exceed the threshold (of \$300);
- prohibits the acceptance of gifts that exceed the threshold (of \$300)
- provides for a breach to be dealt with under disciplinary proceedings, rather than criminal proceedings.

Regulation 34B of the Administration Regulations requires certain gift disclosure requirements to apply to employees, which are the same as the gift disclosure requirements for elected members under the Rules of Conduct Regulations (as detailed above). However no disciplinary proceedings are prescribed in the legislation for employees which are determined by individual local governments in terms of the disciplinary framework under its particular adopted code of conduct.

In general terms, under each set of provisions, the person receiving the gift must, within 10 days of its receipt/ acceptance, give to the CEO in writing details of:

- the name (and, in the case of the Act, the address) of the donor
- the date on which the gift was received/accepted
- a description and the estimated value of the gift
- the nature of the person's relationship with the donor.

The complexities of the laws are increased because:

- the reporting threshold under the Act is \$200 or more, whereas under the Rules of Conduct Regulations and the Admin Regulations it is \$50-\$300
- under the Act, where more than one gift is received from the same donor the calculation of the total value of the gifts is over a 12-month period, but over a 6-month period under the Rules of Conduct Regulations and the Admin Regulations
- under the Act, the gift must be disclosed within 10 days of receipt, whereas under the Rules of Conduct Regulations and the Admin Regulations the gift must be notified within 10 days of acceptance (with 'receipt' and 'acceptance' having different legal meanings and, depending on the circumstances, different outcomes)
- under the Act, the name and address of each donor must be disclosed to the CEO, whereas under the Rules of Conduct Regulations and the Admin Regulations, the address of the donor is not required to be notified to the CEO
- under the Act, the CEO is required to publish on the local government's website all the disclosed details of the gift, whereas under the Rules of Conduct Regulations and the Admin Regulations there is no requirement to publish the notified details on the local government's website.

In terms of candidates in elections, which can apply to sitting elected members, gift disclosure requirements also apply under the under Part 5A of the Election Regulations. The Election Regulations:

- applies to candidates in elections as well as donors of gifts
- requires the 'disclosure' of each 'gift' as defined by the Regulations (which is different to the definition of gift under the Act) which the value is \$200 or more – except a gift from a 'relative' (as defined); a gift by will; a gift that does not relate to a candidate's candidature; or the provision of voluntary labour
- requires a disclosure period of six months before the election day and concludes differently depending upon whether a candidate is elected or not
- require both the candidate and the donor of the gift to make a declaration to the CEO within three days of the making, receipt (or promise) of the gift, once a candidate has nominated
- provides for an offence and imposes a penalty of a fine of \$5,000.

The majority of gift reporting requirements apply only where there has been a 'gift', as defined in section 5.82(4) of the Act. (However, there are two exceptions that apply under the Rules of Conduct Regulations that do not apply under the Act. One

relates to an electoral gift and the other to a gift from a statutory authority, government instrumentality or non-profit association for professional training.)

According to section 5.82(4) of the Act, a **gift** means:

“any disposition of property, or the conferral of any other financial benefit, made by one person in favour of another otherwise than by will (whether with or without an instrument in writing), without consideration in money or money’s worth passing from the person in whose favour it is made to the other, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or other contribution to travel”.

The definition is highly legalistic but in essence, a ‘gift’, has three components:

- Any disposition of property, or the conferral of any other financial benefit.
- Made by one person in favour of another.
- The absence of ‘consideration’, or anything less than ‘fully adequate’ consideration, passing from the recipient to the donor.

The definition of gift currently does not include any financial or other contribution to travel (which is required to be disclosed under section 5.83 of the Act).

In September 2016, a Gift Working Group was established with representatives from the former Department of Local Government, WALGA, Local Government Professionals, the Department of the Premier and Cabinet, the Mayor of Armadale, Shire President of Morawa and the CEO’s of the Cities of Swan and Vincent. The working group proposed that a new framework should:

- provide for a transparent system of accountability where members of the community can have confidence in the decision-making or their representatives
- create a simplified legislative framework to deal with gifts received by elected members and employees.

The working group agreed on an overhaul of the current requirements that included six parts:

1. There would no longer be separate money thresholds to determine what ‘type’ of gift has been received, as is currently the case with ‘notifiable’ and ‘prohibited’ gifts and gifts under section 5.82 of the Act.
2. All gifts received by local government elected members and CEOs valued at \$500 or more received from a donor in a 12 month period must be disclosed.
3. Recipients of gifts valued at \$500 or more would be prohibited from voting on matters before Council concerning the donor of the gift. The Minister for Local Government may, at their discretion and upon application, allow elected members to vote on such matters.
4. Exemptions from the gift provisions would be minimal to aid simplicity
5. ‘Gifts’ from a “relative” will continue to be exempt from disclosure; however, the definition of “relative” will be expanded to include adopted and foster children and grandchildren.

6. All local governments will be required to develop and adopt a gifts policy for employees other than the CEO. Individual local governments can determine what gifts can or cannot be accepted by employees, and applicable threshold amounts and disclosure requirements.

In terms of the review, the discussion paper raises the following questions:

85. *Is the new framework for disclosing gifts appropriate?*
86. *If not, why?*
87. *Is the threshold of \$500 appropriate?*
88. *If not, why?*
89. *Should certain gifts – or gifts from particular classes of people – be prohibited? Why or why not?*
90. *If yes, what gifts should be prohibited?*
91. *Should gifts received in a personal capacity be exempt from disclosure?*
92. *If yes, how could “personal” capacity be defined?*
93. *Should there be any other exemptions from the requirement to disclose gifts over the threshold?*
94. *If so, what should these be? Please justify your proposal?*
95. *Do you have any other suggestions or comments on this topic?*

Town’s Administration Assessment

Appropriate gift disclosure requirements have an important place in dealing with conflicts of interest and potential conflicts of interest. There needs to be transparency to ensure public confidence in the integrity of decisions made and actions taken by public officials. Specifically in this context, it is essential that decisions are made and actions are taken – and are seen to be made and taken – without fear or favour. It is well recognised that this may be a factor when a gift is involved.

There are three major issues with the current gift disclosure laws applying to local government members and employees.

The first is that that are very difficult to understand and apply because they have been drafted in a way that is unnecessarily complex. The drafting is not only overly prescriptive; it also provides different sets of laws that may apply simultaneously – with apparently little or no regard having been given to achieving uniformity or simplicity in the requirements of each.

The second is that they are unnecessarily and inappropriately wide. They fail to balance the underlying objectives relating to conflicts of interest with the intrusion into the private lives of elected members, employees and others.

The third is that they impose serious criminal consequences for actions that would reasonably be regarded as trivial, including a short delay in meeting the 10-day disclosure deadline. In contrast, a breach of the disclosure requirements applying to State politicians and senior employees does not constitute a criminal offence attracting criminal penalties and therefore investigation by agencies such as the Public Sector Commission or the Corruption and Crime Commission.

In terms of ensuring accountability and transparency in a local government's decision-making process, disclosing interests where there may be a conflict or perceived conflict in that decision making is paramount. To this the value of elected members and employees disclosing gifts and contributions to travel where such gifts or contributions have no relevance on a person's decision-making role in local government is questioned. One option could be to delete the gift disclosure provisions under the Act and rely on revised and uniform gift disclosure provisions under the Rules of Conduct Regulations, the Admin Regulations and the Election Regulations, which could also include contributions to travel.

Generally, it is difficult to comment on the proposed framework without a clear understanding on the drafting of the legislation, and to which pieces of legislation is intended to be amended (that is it is unclear whether the proposed changes apply to the Act, the Rules of Conduct Regulations, the Admin Regulations and the Election Regulations). In the absence of such information a position in terms of supporting whether the proposed framework is satisfactory or not cannot be indicated with any clarity.

The definition of 'gift' requires examination and review as it is highly legalistic and deficient in interpretation. Currently the definition excludes a gift from a statutory authority, government instrumentality or non-profit association for professional training (prohibited gifts and notifiable gifts only). However the definition of 'travel' does not exclude an exemption from such organisations (other than travel contribution from Commonwealth, State or local government funds – the meaning of which is again not clear).

Section 5.82(2) of the Act makes an exception that an elected member or designated employee is not required to disclose a gift received if the donor or the gift was a relative. Under the Act, relative means:

a) *a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or the relevant person or of the relevant person's spouse or de facto partner*

or

b) *the relevant person's spouse or de facto partner or the spouse or de facto partner of any relative specified in paragraph (a),*

whether or not the relationship is traced through, or to, a person whose parents were not actually married to each other at the time of the person's birth or subsequently, and whether the relationship is a natural relationship or a relationship established by a written law.

The Working Group highlighted that the term relative should exclude adopted and fostered children and grandchildren. However, it is evident that the current definition of relative would also not include, for example, a cousin, nor would it include a mother-in-law or father-in-law. It would be reasonable to conclude that the community would consider these type of people relatives, in terms of being part of an extended family unit. This anomaly is considered an unreasonable and unfair consequence of the current provisions under the Act and requires correction.

Of greater significance is the need to exempt gifts given to elected members and employees in their personal capacity (that is not given, aligned or as a result of the performance of their role). For instance, elected members and designated employees are currently required to disclose gifts from friends that are over the \$200 value (as well as some relatives not excluded as detailed above). This means, for instance, a gift given by a friend at a wedding of an elected member or designated employee would need to be recorded and declared, if the value exceeds \$200. It is reasonable to conclude that the community would see such a proposal as over and above the intent of the Act, being to protect the integrity of a local government's decision-making framework.

State (as well as Federal) politicians and senior employees of the State, are also subject to gift disclosure requirements or guidelines. However, none are comparable to the reach and severity of the laws applying to local government elected members and employees. It is understood that gift disclosure requirements applying under the Ministerial Code of Conduct for State Ministers expressly excludes gifts given to Ministers or their immediate families by family members or personal friends in a genuinely personal capacity. Some form of amendment to the definition of a gift along these lines would be supported.

The legislation should also exclude the receipt of modest hospitality particularly where provided to an elected member or employee in the course of carrying out their functions. There is a particular issue of concern to local governments relating to the construction of the gift disclosure provisions in section 5.82 of the Act and their application in terms of meals or hospitality, particularly when provided to an elected member in his or her capacity as a council member. The question of application in such circumstances is very much dependent upon the circumstances of each case in view of the definition of a gift, which has raised extensive confusion across the sector.

This problem could be addressed by excluding from the relevant definitions of 'gift', reasonable meals and hospitality provided in connection with meetings, briefings and other functions attended by elected members and designated employees in carrying out their functions. It should also exclude 'a prize from a game of chance', such as a door prize or raffle while a relevant person attends an event such as conferences, workshops, community events and other functions.

Electoral gifts received relating to State or Federal Electoral Acts should also be exempt as there are separate disclosure requirements under these pieces of legislation.

The community expects that public officers (being elected members and employees) are free from bias in their decision-making and should not be seen to be benefitting unreasonably in the performance of their role and in undertaking their responsibilities. It is considered the community would also accept that some gifts could be received to a certain value, as long as they are appropriately disclosed. In view of this it is important that the requirements around 'notifiable' and 'prohibited' gifts are retained (albeit the value threshold should be increased) rather than

requiring gifts only above \$500 from being disclosed by elected members and only the CEO.

The suggested threshold of \$500 is considered appropriate for a prohibited gift limit and consideration should be given to the cumulative value of two or more gifts over the \$500 threshold that may be given by a donor within a 12 month period. This is currently the requirements under the Act, the Rules of Conduct Regulations and the Admin Regulations (albeit the cumulative total is different under some pieces of legislation). The value of a notifiable gift should also be increased to \$100, as some genuine hospitality could exceed the current \$50 limit, and the 12 month cumulative total of simple coffee meetings could also exceed \$50, but would not be considered to influence a decision-making responsibility.

Gift disclosure should not be restricted to elected members and the CEO only; but rather all employees. 'Senior employees' (as defined in the Act) as well as other employees have delegated authority to make decisions on behalf of a local government and it is important that disclosure requirements are still maintained for employees comparable with the levels and requirements set for elected members and the CEO. This ensures consistency across all parties within a local government.

It is also recommended that the disclosure requirements for employees be standardised across the industry and not be left to individual local governments to adopt gift policies. This would assist in retaining knowledge and conduct requirements, especially for employees that move between local governments. Having local governments adopt their own policy requirements, would potentially increase the risk for misconduct, because gift disclosure provisions may not be known or unclear.

In turning to the need to leave meetings, one of the roles of an elected member (as specified in section 2.10 of the Act) is to participate in the local government's decision-making processes at Council and committee meetings. However section 5.65 of the Act requires a council member who has an interest in any matter to be discussed at a council or committee meeting that will be attended by the member to disclose the nature of the interest, with some interests requiring the member to leave the meeting and not participate in any discussion or decision-making procedure relating to that matter.

Under section 5.60 of the Act an elected member has an interest in a matter if either the member or a person with whom the elected member is closely associated has either a direct or in-direct financial interest in the matter or a 'proximity interest' in the matter. One category of a person who is closely associated with an elected member is a person who, since the member was last elected, has given the member a gift, or made a contribution to travel undertaken by the member, which section 5.82 (gifts) and section 5.83 (contributions to travel) requires the member to disclose. A person is also classed as a 'closely associated person' if the person gave a notifiable gift required to be disclosed under the Election Regulations.

An elected member is required to declare notifiable gifts (between \$50 and \$300) under the Rules of Conduct Regulations from a person who is undertaking or

seeking to undertake, or who it is reasonable to believe is intending to undertake an activity involving local government discretion. However there is no requirement for an elected member to declare an interest at a council or committee meeting where the person giving a notifiable gift (under the Rules of Conduct Regulations) may require a council to make a decision on an item. This would be of interest to note in terms of impartiality and transparency in the local government's decision-making processes, but is not currently provided for.

In the main the gift disclosure requirements across the range of legislative provisions need review, become simpler in their application, and reasonable in terms of the level of reporting the community would expect from parties within a local government.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS** the need to streamline the gift disclosure requirements under legislation with a preference of one section around the declaration of gifts which could include the deletion of 'gift' and 'travel contribution' requirements under the Act and revised provisions being included in the *Local Government (Rules of Conduct) Regulations*, the *Local Government (Administration) Regulations* and the *Local Government (Elections) Regulations 1997*.
- **SUPPORTS** simplicity in terms of exemptions from the gift provisions and these exemptions should, where possible, be consistent across all gift disclosure requirements under all legislation.
- **SUPPORTS** the definition of 'relative' to include:
 - foster children and grandchildren
 - cousins
 - other persons that are reasonably considered as relatives through either blood or marriage (such as mother-in-law and father-in-law).
- **SUPPORTS** the definition of 'gift' also exempting:
 - gifts given to elected members and employees by personal friends in a genuinely personal capacity
 - reasonable meals and hospitality provided in connection with meetings, briefings and other functions attended by elected members or employees in carrying out their functions
 - prizes from a game of chance
 - electoral gifts relating to State and Federal Electoral Acts.

- **SUPPORTS** the retention of a provision in respect to the need to declare a gift if the cumulative total or two or more gifts from the same donor exceeds \$500 in a 12 month period.
- **DOES NOT SUPPORT** only gifts over \$500 only being declared by elected members and the CEO as the gift disclosure requirements should apply to elected members and all employees.
- **DOES NOT SUPPORT** local governments being required to develop a gifts policy for employees, as such provisions should be retained in Regulation so that consistency is delivered across all Western Australian local governments.
- **DOES NOT SUPPORT** the Minister for Local Government, at their discretion and upon application, allowing elected members to vote on such matters as such processes are overly administratively burdensome and such approval is unlikely to be received in time, where a matter where an interest lies, is being considered by Council.

8 Access to Information

8.1 Public Notices

The Act (as well as other pieces of legislation) requires certain matters to be advertised by either a local public notice (consisting of a written notice being placed in a newspaper circulating the district and/or a state-wide notice (consisting of a written notice being placed in a newspaper circulating the State). It is also a requirement of a local and state-wide notice that the notice also has to be displayed to the public on a notice board at the local government offices, and every local government library in its district.

Many other jurisdictions in Australia have amended legislation to account for new technology such as local government websites and social media.

In reviewing the legislation the discussion paper highlights a number of general options as follows:

Option	Local Notice Requirements	State-wide Notice Requirements
1	No change to notice requirements	
2	Print or electronic notices	No change to state-wide notice requirements
3	Print or electronic notices	Print and electronic notices
4	Print or electronic notices	
5	Electronic notice required Additional print notices are optional	
6	Print and electronic notices	
7	Electronic notice on local government website	Electronic notice published on centralised website

The question also arises as to whether a particular type of notice is still appropriate in its current form. For instance for each type of notice, there are several options which are available:

- a) the requirement can remain unchanged
- b) the type of notice required by the Act may be changed from state-wide notice to local notice
- c) the form of the notice can be changed from print to electronic
- d) the requirement to issue the notice may no longer be necessary

In determining the way forward, the discussion paper raises the following questions:

- 96. *Which general option do you prefer for making local public notices available? Why?*
- 97. *Which general option do you prefer for state-wide public notices? Why?*
- 98. *With reference to the list of public notices, do you believe that the requirement for a particular notice should be changed? Please provide details?*
- 99. *For state-wide notices in Attachment 3, are there alternative websites where any of this information could be made available?*

Town's Administration Assessment

The Town uses both its official website and local newspapers in publishing notices. The Town considers this section should be amended to reflect changes in technology and modernise the methods of local governments communicating with their communities. It would be preferable for local governments being required to publish local public notices on its official website and making it discretionary for it to publish notices in newspapers circulating throughout its district, considering the delay that can often occur from when a decision is made and the ability to submit a notice to the Community Newspaper Group for relevant insertion, and the need to effectively consult and engage with affected community members. The cost to the Town of compulsory local public notice is approximately \$15,000 per annum. In some instances the delivery of local community newspapers does not occur to all local residences and the Town is therefore reliant on a third party to deliver its notice information.

Considering matters of local governments only generally require or affect members of their communities, it is considered removal, or amendment of, provisions around state-wide public notices should be considered. State-wide notices only generally apply to local laws; business cases for major trading undertakings; election provisions and the sale of rateable land where rates and service charges are unpaid (Schedule 9.3). It is considered that local public notice of the matters should suffice. The cost to the Town of compulsory state-wide public notice is approximately \$16,000 per annum.

In terms of the options presented in the Department's discussion paper, option 5 supports the Town's position. All other options are not considered effective in terms of communicating notices to the community and/or costly for the local government to comply with.

There are numerous requirements under the Act for local public notices to be given, either to seek comment or to publicise an outcome of a decision made by the local government. In terms of outcomes, most if not all of the requirements are after the fact the decision being made, and therefore serve little benefit in the ability of the community to influence a decision. In most instances the decision is that of Council,

and therefore the position and reasoning behind it is included in the local government's Council agenda and subsequent minutes for that meeting. Members of the public do have an opportunity to comment or ask questions at meetings or provide comment through consultation processes. In situations where property is affected (such as temporarily closing a thoroughfare) owners and occupiers are advised as required by the legislation.

Using a third party to display all public notices of a local government would be burdensome and would rely on the abilities and capacity of the third-party organisation. There would be no control over advertising standards, and with 137 local governments throughout the state, the level and breath of possible notices would be extraordinarily wide.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS option 5 for making notices available as this option is considered the most appropriate in terms of effectiveness in communicating information and reduces costs to local governments in terms of public notice advertising.**
- **SUPPORTS local public notices being given for those matters listed in the discussion paper, with the exception of:**
 - **Section 3.50(4) – seeking comment on closure of thoroughfare for period exceeding 4 weeks**
 - **Section 3.51 – seeking comment on the closure of thoroughfare due to altering, fixing or draining water from a thoroughfare**
 - **Section 5.50 – advertising intent of policy adopted on the payment of employees in addition to contract or award**
 - **Section 5.55 – Release of Annual Report**
 - **Section 6.11 – seeking comment on the change of purpose to a reserve account before being put into operation**
 - **Section 6.20 – advertising intent to borrow money for another purpose**
 - **Regulation 80 of Election Regulations – Public notice of election result, only where it is applicable to election of Deputy Mayor.**
- **SUPPORTS the removal of the requirement for state-wide notices noting the Town's position to support making notice available on-line and optional printed notices where the Town believes such notices are required.**
- **DOES NOT SUPPORT notices being advertised on alternative websites as the Town would not have control over advertising standards and this suggestion would not be an effective mechanism to advertise notices throughout the State.**

8.2 Information available for public inspection

Local governments are required to produce and maintain a number of registers and documents and the Act provides for a range of information and corporate documents being available for public inspection. The only documents that are statutorily required to be placed on a local government's website is the register of gifts and contributions to travel (under section 5.82 and 5.83 of the Act) and the local government's annual report.

The discussion paper highlights the type of other information that is made available in other jurisdictions (such as rates information, ward maps and adverse findings by the Standards Panel against elected members) as well as the risks and benefits of making information fully electronic.

The general options proposed are as follows:

- a) The requirement can remain unchanged: Information is provided in person on demand, with placement on a website discretionary.
- b) A hybrid approach depending upon the nature of the information: Some information is required to be placed on a local government website, while other more sensitive information is only provided in person.
- c) Electronic disclosure replaces physical registers completely: All information is provided to a local government website and no information is provided in person. This would represent a significant increase in the availability of information to the public.
- d) Electronic disclosure is required for all information, in addition to providing it in person: this will increase the level of transparency, although it may create additional costs to publish the information online. A local government could simply print out the information if requests for it in person.

In terms of the review, the discussion paper raises the following questions:

100. *Using the following table, advise how you think information should be made available?*
- 101 *Should the additional information that is available to the public in other jurisdiction be available here? If so which items? How should they be made available: in person, website or both?*
- 102 *Is there additional information that you believe should be made publicly available? Please detail?*
- 103 *For local governments: how often do you receive request from members of the public to see this information? What resources do you estimate are involved in providing access in person (staff time and hourly rate)?*
- 104 *Do you have any other suggesting or comments on this topic?*

Town's Administration Assessment

The Act requires that certain information is made available to the public, and the local government can copy and provide that information for a fee.

In freely publishing information on the Town's website, there needs to be a balance between transparency and accountability and protecting the rights of confidentiality of certain information (such as personal details). This was not highlighted as a concern in the discussion paper.

An example of this concern across the industry is the current requirement to publish on a local government's website the name and addresses of donors of gifts and contributions to travel that are given to relevant persons under the disclosure requirements specified in the Act. Some donors may consider the publishing of such material and information will breach their confidentiality. Making some information freely available on the Town's website could pose risks for identity fraud or maybe used to cause mischief by third parties.

The Town currently publishes on its website numerous documents and information that is required for public inspection. In view of the above it is not considered that the current arrangements should change.

Proposed Town Of Victoria Park Position:

The Town SUPPORTS the current requirement of making information available to the public unchanged with placement of the website discretionary

9 Available Information

9.1 Expanding the information provided to the public

The discussion paper highlights that through initial consultation with the sector additional information which could be reported and made available for public inspection. The proposals are as follows:

- Live streaming video of council meetings on local government website.
- Diversity data on council membership and employees.
- Elected member attendance rates at council meetings.
- Elected member representation at external events.
- Gender equality ratios for staff salaries.
- Complaints made to the local government and actions taken.
- Performance reviews of CEO and senior employees.
- Website to provide information on differential rate categories.
- District maps and ward boundaries.
- Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission.
- Financial and non-financial benefits register.

For each proposal the following options were identified:

- Option 1 – Status quo – the reporting requirements under the Act will remain unchanged.
- Option 2 – Additional reporting requirement – local governments will need to provide additional information on the local government’s website.
- Option 3 – Policy requirement – local governments will not be required to report additional information to the public. Instead, the local government will be required to develop a policy which states:
 - whether the information is available for public inspection
 - if so, how this information may be accessed by the public.

In determining the way forward, the discussion paper raises the following questions:

105. *Which of these options do you prefer? Why?*

106. *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?*

107. *What other information do you think should be made available?*

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

Town’s Administration Assessment

Some of the information that is proposed to be made available is already made available to the public, either as a stand-alone document or through other documents that are published by the Town. In terms of other proposals identified in the discussion paper, it is questioned what value members of the community would place on such material or information being made available. The discussion paper does not recognise the need to balance between transparency and accountability and the need to protect personal information.

The suggestions seem to go over and above what is required for state government agencies that do not have the same magnitude or breadth of information being publicly available. Some matters are internally focused and under the management control of the CEO.

Some suggestions, such live video streaming of council meetings where technology is costly to implement (in terms of capital costs and staff resources to manage the system) would be an unnecessary burden on many local governments. The suggestion of mandatory video feeds could pose as a capacity issue for smaller local governments that may not have the required resources to implement such proposals. There is no evidence to suggest that such a proposal would improve public access to the decision-making process. Contrary to the suggestion, there may also be privacy issues in terms of videoing persons in the gallery who may not wish such images to be transmitted across the website, and indeed it may inhibit members of the public from asking questions or raising issues if they know they are being filmed.

Under the *Freedom of Information Act 1992* local governments are required to publish an information statement which is to include, among other things:

- a description of the kinds of documents that are usually held by the Town including:
 - (i) which kinds of documents can be inspected at the Town under a written law other than the FOI Act (whether or not inspection is subject to a fee or charge)
 - (ii) which kinds of documents can be purchased
 - (iii) which kinds of documents can be obtained free of charge
- a description of the agency's arrangements for giving members of the public access to documents.

Local governments should be free to decide on what information it considers appropriate to be published externally, or be available for its community, being cognisant of the legislative environment in which it operates and in balancing those items that are in the public interest.

Proposed Town Of Victoria Park Position:

The Town SUPPORTS Option 1 being the current reporting requirement remains unchanged.

10 Reducing Red Tape

10.1 Defining red tape

Red tape is comprised of time-consuming and excessive processes, procedures and paperwork. It imposes costs on government, businesses and individuals through duplicative and confusing regulations, overly complicated forms and excessive compliance burdens.

In the context of this review, some examples of red tape reduction burdens could be:

- unnecessary or out-of-date reporting requirements imposed on local governments – regulatory requirements that may no longer have any benefit in the present day operations of local governments, or where the rationale for imposing these requirements no longer exists
- the one size fits all approach where smaller local governments are disproportionately and negatively affected by compliance requirements
- requiring local governments to collect unnecessary data or requesting data that is already collected elsewhere within State Government. If the information can be sourced elsewhere, this should be preferred over requiring a local government to collect, store and submit information to State Government
- poor coordination between local government and other State Government agencies regarding applications and approvals

- local governments having outdated processes or requirements in their interactions with business and the community

In determining the way forward, the discussion paper raises the following questions:

109. *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.*
- Briefing describe the red tape problem you have identified.*
 - What is the impact of this problem? Please quantify if possible.*
 - What solution can you suggest to solve this red tape problem?*
110. *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*
- Briefing describe the red tape problem you have identified.*
 - What is the impact of this problem? Please quantify if possible*
 - What solution can you suggest to solve this red tape problem*

Town's Administration Assessment

The definition of red tape as presented in the discussion paper is quite broad and can encompass a number of items. Local governments, due to their existence being a product of statute are bureaucratic in nature and are required to comply with numerous reporting and oversight regimes.

It is of interest that some of the suggestions being made in the discussion paper are contributing to red tape as opposed to reducing it. This includes requiring additional policies to be made; additional administrative / governance requirements to be implemented; or additional levels of oversight to be had. The potential suggestion of red tape reductions as prescribed in 10.2 of the discussion paper are not considered red tape and not good examples of matters that local governments should focus on.

The Act should remain principle-based in which local governments have the flexibility and ability to operate in, with good governance principles and standards in mind. Considering the capacity of different local governments a size and scale compliance regime should be introduced based on possible banding methodology, similarly used by the Salaries and Allowance Tribunal for allowance and salaries for local governments.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS** the following general principles as being fundamental to the review of the *Local Government Act 1995*:
 - Uphold the General Competence Principle currently embodied in the *Local Government Act 1995*.
 - Provide for a flexible, principles-based legislative framework.
 - Promote a size and scale compliance regime.
- **SUPPORTS** the stated comments within “Section 12 – Local Government Act Review – other matters for consideration” of this submission being considered as part of red tape reduction initiatives and / or other improvements to the legislative framework in which local governments’ operate.

10.2 Potential Red Tape Reductions

Special Majority

The Act makes reference to special majority which in cases of Council decisions means a decision made by a council with more than 11 members, through a 75% majority. In cases where there are 11 elected members or fewer, decision that require a special majority may be made through an absolute (more than 50 per cent) majority. There are only a limited number of decision under the Act that require a special majority decision, such as when changing the method of filling the Office of Mayor, from a council method to the election by the electors’ method.

In determining the way forward, the discussion paper raises the following question:

111. Should the provisions for a special majority be removed? Why or why not?

Town’s Administration Assessment

As the Town currently uses the electors’ method for filling the office of Mayor, the Town has no objection to the requirement being removed. As stated a special majority is required very infrequently and by only a few local governments therefore it is not considered contentious if it is removed.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS the removal of the special majority provision within the Act as the Town already elects its Mayor by the electors of the district, and the need therefore does not apply.**

Senior employees

The Act provides that a local government may designate employees to be senior employees and currently local government CEOs are required to inform their councils of a proposal to employ or dismiss a senior employee.

The Act does not define what criteria should be used to determine if an employee is to be designated as a senior employee, however most local governments designate senior employees as those that report directly to the CEO and / or have large portfolios and budgets.

It is often said that the involvement of council in employment matters provides confusion and tension between a CEO and a council and often confuses the separation of roles between the governing role of a council and the management role of the CEO.

In determining the way forward, the discussion paper raises the following questions:

112. *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?*
113. *Is it necessary for some employees to be designated as senior employees? If so what criteria should define which employees are senior employees?*

Town's Administration Assessment

It is not considered appropriate that a council has a role in the appointment, dismissal or performance management of any employees other than the CEO.

The CEO has a number of statutory responsibilities including:

- establishing and maintaining an organisation structure
- the day to day management of the local government's operations.

These responsibilities extend to not only having an employment structure in place but ensuring the organisation acts in accordance with the employment law frameworks.

There should be a clear legislative distinction between a Council (as employer of the CEO) and the CEO (as the employer of administrative employees) making it explicit that elected members have no role in any staff employment issues. However, while the CEO has discretion over staffing levels, this is ultimately contingent on the funds

allocated by a Council in the annual budget. This matter again relates to the separation of roles dealt with earlier in the discussion paper.

The CEO, as the key accountable person to Council, should be granted the discretion and responsibility to employ a workforce that will meet the aspirations of the Council, the organisation and the community, while meeting employment obligations, without interference. Any such amendment would be viewed as a restriction of the powers and responsibility of the CEO to manage the day-to-day operations of the local government.

It is problematic for any group or body not involved in a recruitment or selection process to have any role in the appointment process because without involvement in the actual recruitment itself and the information (interview, referee, psychometric testing, practical testing and the like) that process collects, involvement could be ill informed, and decisions made without basis.

The general protection provisions of the *Fair Work Act* relating to prospective employees should also be considered when determining whether Council has a role in appointment processes of employees.

On the basis this is referring to employer initiated separation (that is dismissal based on poor performance, misconduct, for cause and the like), dismissal is governed by a range of legislative and common law requirements that a local government must comply with to afford employees with a range of protections against actions that could be considered harsh, unfair or unreasonable. Providing Council with a role in dismissal matters further complicates the already complex legislative and contractual provisions a local government must deal with.

Councils may be placed in a difficult position in having a role in dismissal matters, given that this goes directly to the employment relationship and day to day management of the workforce. Council not having direct involvement in the management of employees will not be informed as to the basis for dismissal actions, and this could prejudice the concept of applying fairness and natural justice to the decision-making processes that dismissal requires.

If a role was to be provided to a Council, it would need to be clearly articulated as to what that role would be:

- Is it a decision-making role (in which case how do you overcome the lack of involvement in the operational management of poor performance or dismissal activities)?
- Is it a decision review role (that is a pseudo appeal body role)?
- Does the role encompass an authority to overturn or alter the outcomes of a decision to dismiss?

If Council has a decision-making role it should be noted that elected members would potentially be required to attend unfair dismissal actions in the Fair Work Commission to prove the decision was appropriate (the onus of proof rests upon the ultimate decision maker).

The current provisions within the Act around 'senior employees' are somewhat flawed in any case. As it currently stands the CEO only is required to inform his / her Council on a decision to employ or dismiss a senior employee. Council therefore has no role in the actual decision of employment and / or dismissal as this rests with the CEO. This provision causes a significant amount of confusion within the sector as to roles and responsibilities should be removed to provide clarity, again focusing on the separation of roles.

While the Town does not necessarily see any benefit in having employees designated as 'senior employees', if it was determined that there was merit in having designated 'senior employees', the Act should include specifying the criteria for which a senior employee is designated to ensure a consistent approach across the sector or remove the requirement to designate some employees as senior employees. The following criteria could be considered as examples:

- The actual level of seniority in the local government (position in hierarchy).
- The level of interaction with the Council and/or individual elected members.
- Organisational influence of the overall direction of the local government.
- Organisational influence on the financial operations of the local government.
- Linked to an existing local government/public service executive band or salary threshold.
- Have significant management responsibilities evidenced by appropriate delegations.
- Report directly to the CEO.
- Employed under a contract by the CEO.

Proposed Town Of Victoria Park Position:

The Town:

- **DOES NOT SUPPORT** the Council having a role in the appointment, dismissal or performance management of any employees other than the CEO.
- **SUPPORTS** the removal of the provisions relating to 'senior employees' as the recruitment, appointment and management of all employees is a management function and statutory activity performed by the CEO, however if such provisions were retained a criteria should be established to define a senior employee.

Exemptions from Accounting Standard AASB124 – Related Party Disclosures

In July 2016 changes were made to *AASB 124 - Related Party Disclosures*. The Standard requires that transactions made between 'related parties' are to be disclosed. Related parties are defined as entities with a close relationship and in the

context of local governments could include regional subsidiaries, key management personnel like the mayor or president, elected members and CEO, close family members of key management personnel, and entities that are controlled by key management personnel. Only related party transactions that are material (significant) are required to be disclosed.

Provisions in the Act already require local governments to disclose certain financial interests. Interests must be disclosed through the form of a primary return or annual return by the elected member and senior staff, and lodged with the CEO (or in the case of the CEO disclosing an interest, it must be lodged with the mayor or president). This must be done within three months of the day that they take up that position. The CEO (or the mayor or president) must also provide written acknowledgement of receipt of the disclosure.

The AASB disclosure requirements may represent a duplication or overlap as most related party transactions should already be addressed by the Act's disclosure provisions. Alternatively, it can be argued that the AASB requirements introduce consistency between local governments and private entities, and thus strengthen accountability.

In determining the way forward, the discussion paper raised the following question:

114. Are the existing related party disclosure provision in the Act sufficient without the additional requirements introduced by AASB 124? Why or why not?

Town's Administration Assessment

The disclosure requirements of AASB 124 are different to the Act's disclosure requirements and serve a different purpose, focussing on the potential financial impact and risk. It is seeking to establish whether there is any related party issues that may have a material financial impact on the Annual Financial Statements so that the impact can be disclosed in the Annual Financial Report. The Act disclosure of interests provisions do not capture these requirements; are not required to be quantified to determine the material financial impact; and are not required to be disclosed in the Annual Financial Report.

Although it adds an additional layer of information capture once the system for doing so is established the additional requirements are modest.

Proposed Town Of Victoria Park Position:

The Town SUPPORTS local government compliance with AASB 124 - Related Party Disclosures as it offers different disclosure requirements that already provided in the Act, focussing on potential financial impact and risk.

Disposal of property

Section 3.58 of the Act outlines the process that a local government is required to follow in order to dispose of property. Disposal is defined as 'to sell, lease or otherwise dispose of any property (other than money)'.

Property can be disposed of:

- through a public auction to the highest bidder; or
- through public tender to the most acceptable tender.

Alternatively, a local government can dispose of property if a local public notice is given and submissions sought on the proposed disposal of the property.

There are some exemptions to these requirements with respect to real property, property disposed of as part of a trading undertaking, and other exemptions set out in regulations. Two exemptions concern property that has a market value of less than \$20,000, and property that is disposed of during a 'trade-in' when less than \$75,000 is paid. It has been suggested that these thresholds create a burden that is not commensurate with the monetary value of the property involved.

Trading-in property when purchasing new property of a similar type is a method of asset disposal that is widely used and accepted in the community. The threshold as currently set can create issues with the disposal of major equipment that is used by local governments such as graders, trucks or buses as an item valued over \$75,000 will need to be offered for sale by public auction or public tender.

In determining the way forward, the discussion paper raised the following questions:

115. *The threshold for trade-ins was set at \$50,000 in 1996 and raised to \$75,000 in 2015? Should that threshold be raised higher, if so how high?*
116. *Should the threshold remain at \$75,000 but with separate exemption for specific types of equipment, for example plant?*
117. *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? If so what should it be and why?*
118. *Would raising the thresholds create an unacceptable risk that the items would not be disposed of to achieve best price for the local government?*
119. *Is there any other alternative model for managing the disposal of property? Please explain.*

Town's Administration Assessment

It is considered that the threshold should be raised. While \$100,000 could be an appropriate level, an assessment should be done on the current typical second hand

value of large plant items such as waste removal trucks, earth moving equipment and the like and using this to set a new limit.

It is not considered necessary to have a new exemption in terms of specific type of equipment as the current exemption provision in relation to trade-ins already narrows the range of application of this provision. Notwithstanding the general \$20,000 threshold should also be raised to the same level as trade-ins. The cost of disposal is not insignificant as it can be many thousands of dollars to run tender and public auction processes for such disposal of relatively insignificant amount in terms of a local government's overall expenditure.

Raising the thresholds would not create an unacceptable risk if managed properly and one way of achieving this may be a requirement to have a policy for disposal of property in same way as local governments are required to have a purchasing policy. It should also be noted that the best price is not the gross disposal price - it's the net return after costs of disposal.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS the raising of the trade-in threshold from \$75,000 to \$100,000 NOTING an assessment should be undertaken on the typical second hand value of large scale plant and equipment.**
- **DOES NOT SUPPORT a new exemption for certain type of plant as it would be hard to define and the current exemption relating to trade-ins would typically cover most current plant and equipment.**
- **SUPPORTS the general threshold of property being raised from \$20,000 to \$100,000 or commensurate with the trade-in level exemption limit.**

11 Regional subsidiaries

Under the Act, local governments have the ability to form a corporate entity known as a regional subsidiary.

This arrangement allows multiple local governments to pool their resources to carry out their statutory functions, provide services across multiple districts or provide other benefits to their communities.

Regional subsidiaries are designed to carry out many of the activities which could be performed by a local government. They cannot, however, undertake commercial enterprises or speculative investments.

Under the *Local Government (Regional Subsidiaries) Regulations 2017*, subsidiaries are currently only able to borrow money from the local governments that form the subsidiary (the member councils). This restriction was put in place to ensure that regional subsidiaries would not incur excessive liabilities and cause risk to ratepayer money.

The local government sector has requested that regional subsidiaries be permitted to borrow money, either from financial institutions or the Treasury.

Further feedback from the sector has indicated that the restriction on borrowing is a major impediment to using regional subsidiaries to deal with matters such as waste management and other activities.

The discussion paper provides a number of options:

- Option 1 – Status Quo: The existing rules will remain unchanged and subsidiaries can only borrow from member councils.
- Option 2 – Regional subsidiaries are permitted to borrow from Treasury Corporation: Treasury will lend money to the subsidiary in reasonable circumstances and subject to reasonable terms however member local governments will be liable for the debt at the cost of their ratepayers if the debt cannot be repaid by the subsidiary.
- Option 3 – Regional subsidiaries are permitted to borrow from financial institutions: there are a number of advantages and disadvantages with this option and Government would need to review what legislative protections might be necessary to ensure borrowing does not cause excessive risk to ratepayer money.

In determining the way forward, the discussion paper raises the following questions:

120. *Which option do you prefer?*
121. *Should regional subsidiaries be allowed to borrow money other than from member councils?*
122. *Why or why not?*
123. *If a regional subsidiary is given the power to borrow directly, what provision should be put in place to mitigate the risks?*
124. *Do you have any other suggestions or comments on this topic, including on any other aspect of the Local Government (Regional Subsidiaries) Regulations 2017?*

Town's Administration Assessment

The Town supports regional subsidiaries being able borrow money from the Treasury Corporation (Option 2). Almost all local government borrowing is from Treasury Corporation in any case as financial institutions are generally not competitive.

A regional subsidiary needs to be able to operate and make business decisions in the best interests of its charter. To achieve this it needs to be able to make those decisions independently. Requiring borrowing from member local governments leads to governance issues by creating an opportunity for one member to hold the rest to ransom by not proceeding with a borrowing for a particular proposal even though it is within its charter, the majority wish to proceed and the Council of the regional subsidiary has resolved to do so.

The same mitigation measures that currently apply to local governments would apply to regional subsidiaries. Treasury Corporation has clear financial benchmarks and requirements that must be met before they will lend money to local governments generally and these standards and benchmarks will need to apply to regional subsidiaries.

However there is really very little value in setting up a regional subsidiary under the current provisions. Anything that a regional subsidiary can do can also be achieved by two or more local governments simply getting together and agreeing to do it jointly. Some activities are already undertaken by regional councils. This could be achieved without all the bureaucracy and 'red tape' associated with a formal regional subsidiary.

The real benefit in legislation allowing subsidiaries would be to address those areas which currently are very difficult to do by other means. This includes commercial land and business development, partnerships with commercial operators, commercialising intellectual property for example. This also means having a subsidiary that is not regional but just of one local government.

Consideration could be given for local governments to be able to establish corporate entities to provide more flexibility in undertaking developments with the private sector.

Proposed Town Of Victoria Park Position:

The Town:

- **SUPPORTS Option 2 for regional subsidiaries being permitted to borrow from Treasury Corporation.**
- **SUPPORTS regional subsidiaries being subjected to the same mitigation measures that apply to local governments when borrowing from Treasury Corporation.**
- **SUPPORTS local governments being able to create corporate entities.**

12 Local Government Act Review – Other Matters for Consideration

The discussion paper provides an opportunity to make comment and put forward suggestions on other matters which have not been covered in the discussion paper. Some aspects may be considered in phase 2 of the consultation period, being:

- increasing participation in local government elections
- increasing community participation

- introducing an adaptive regulatory framework
- improving financial management
- building capacity through reducing red tape
- other matters raised in phase 1 consultation.

While some of the following may be captured as part of the Phase 2 consultation process, the following comments are also provided (under each relevant Part of the Act).

Part 2 – Constitution of Local Government

Schedule 2.3 - This schedule contains the provision around when and how mayors, presidents, deputy mayors and deputy presidents are elected by Council. Under both subclauses (5) and (9) it is a requirement that if there is an equality of votes for candidates running in an election, that the Council meeting is to be adjourned for not more than seven days. An adjournment of this nature poses a range of administrative and procedural issues in terms of giving notice, distributing agendas and the like, as well as delaying any business that is also listed on the agenda after the said election being held. Consideration might be given to amending these subclauses to reflect that a second election is to be held as opposed to requiring the meeting to be adjourned.

Local Government (Constitution) Regulations 1998

11F. Declaration and notice of result of election - consideration might be given to deletion of this clause of the regulations to remove the requirement for local governments to give local public notice of results of an election for deputy mayors. It also should be clarified that notices are not required for election of presiding member of committees, as the election of presiding members is to follow the procedures detailed in Schedule 2.3 of the Act.

11FA. Report to Minister (Sch. 2.3 cl. 4 and 8) - consideration might be given to deletion of this clause of the regulations to remove the requirement for local governments to give a report to the Minister of the results of an election for deputy mayors. It also should be clarified that a report is not required for election of presiding member of committees, as the election of presiding members is to follow the procedures detailed in Schedule 2.3 of the Act.

Part 3 – Functions of Local Governments

Section 3.12 - Procedure for making local laws - Local governments' local laws generally affect those persons within its district. The requirement to give state-wide notice under subsection (3) should be reviewed and consideration being given to local governments only being required to advertise the proposed local law by way of local public notice.

Section 3.16 - Periodic review of local laws - consideration might be given to review of this section and whether it could be deleted. Local governments through administering local laws will determine when it is necessary to amend or revoke a local law in terms of meeting its needs for its inhabitants of its district. Other State

legislation is not bound by such periodic reviews, albeit recognising such matters in subsidiary legislation are not as complex as matters prescribed in statute.

Part 4 – Elections and Other Polls

Section 4.1 – terms used – consideration might be given to including a definition in terms of what an election period means. This will assist with clarifying when certain offences in terms of an election are at play (for instance publishing of advertising material). It will also assist local governments with establishing caretaker periods.

Section 4.31 – Rateable property: ownership and occupation – consideration might be given to what constitutes occupation including a reference to a separate and distinguishable portion of a rateable property (s4.31(1D)(ii)). It has been known in the past for electors to be approved for leasing small non-habitable sections of rateable properties which goes against the intent of the provisions of occupation.

Section 4.32 – Eligibility to enrol under s 4.30, how to claim - consideration might be given to prescribing an amount for rent, under s 4.32(3) and the *Local Government (Elections) Regulations 1997*. This would prevent token rental being applied to buildings and other areas of rateable property.

Section 4.33 – Claim of eligibility to enrol under s 4.30, expiry of – consideration might be given to simplification of the expiry of enrolment eligibility claims on the basis of occupation (s4.33(2A) and (2B)). It is suggested the expiry of the claim should occur after the third election regardless on the date in which the claim is made. This would simplify procedures around managing the owners and occupiers roll.

Section 4.34 – Accuracy of enrolment details to be maintained – consideration might be given to deletion of this section as it is aligned to the CEO's role under section 5.41(h) and section 4.32(6).

Section 4.35 - Decision that eligibility to enrol under s.4.30 has ended – procedurally if an elector no longer owns or occupies property, the CEO under this section is still required to give written notice to that person before making a decision that a person is no longer eligible to vote. Administratively it is somewhat nonsensical for a Local Government to write to a person at an address where there is evidence that they no longer live there, or where their new address is not known. Consideration might be given to inserting new sub-clauses under s.4.35(1) might be inserted to indicate if the CEO is satisfied that the person no longer owns the property, or where their claim has expired under s4.33.

Section 4.87 – Printing and publication of electoral material – consideration might be given to modifying this section to include publishing material by electronic means (such as websites and social media platforms).

Section 4.88 – Misleading, false or defamatory statements, offence – consideration might be given to including an offence in terms of publishing deceptive material on electronic media, such as websites and social media platforms, however the term “publish” may include such mechanisms due to its generic nature (ie it *includes* publish by radio or television).

Part 5 – Administration

Section 5.21 – Voting – consideration might be given to amending the section to require all members of a committee to vote, regardless if a power or duty has been delegated to that committee or not. Currently voting is only required for those committees where delegation has been given. Where a committee member chooses to abstain from a vote it could affect the ability for a motion being carried, by way of lack of decision-making.

Section 5.22 – Minutes of Council and Committee meetings – consideration might be given to ensuring that the CEO be responsible for the keeping of minutes at meetings as opposed to the Presiding Member. The presiding member is responsible for the conduct and proceedings of meetings whereas the keeping of minutes is an administrative function that should be given, and under the responsibility of the CEO. Consideration might also be given to the requirement of the presiding member to sign the minutes should also be removed and confirmation of Council, or the Committee, should suffice.

Section 5.31 – Procedures for electors’ meetings – consideration might be given to ensuring the procedures for electors meetings be in accordance with the meeting procedures adopted by the Council as opposed to those determined by the presiding member. This allows known and approved processes to be implemented.

Section 5.55 – Notice of Annual Reports - consideration might be given to removal of this section as through the Council meeting notification and adoption process, the annual report is available for inspection. Alternatively the clause could be modified specifying that the local government is to make available its annual report on its website.

Section 5.62 – Closely associated persons - consideration might be given to amending the section to include a closely associated person is a parent or relative and is living with the relevant person (s.5.62(1)(e)).

Section 5.63 – Some interests need not be disclosed – consideration might be given to defining a significant number of ratepayers to remove the ambiguity of the term and the judgement as to what constitutes significance.

Section 5.79 – Real property – consideration might be given to removal of the need to declare real property of adjoining districts as the decision of a local government are not likely to affect those properties of adjoining districts. Any local government should only be concerned with the properties within a relevant district of that local government.

Section 5.80 – Source of income – consideration might be given to excluding income a relevant person derives from fees and allowances obtained from the Western Australian Local Government Association, the Australian Local Government Association, Regional Local Governments or other statutory boards or committees.

Section 5.86 – Dispositions of Property – consideration might be given to removing the requirement to declare properties disclosed in adjoining districts as this has no relevance to the decision making of elected members or employees for their particular local government.

Section 5.100A – Gifts to council members – consideration might be given to clarifying exemptions that may apply to council members in terms of other gifts given to elected members by a local government during the elected member’s term. For instance an exemption could include gifts given to elected members in performing their statutory role (such as tickets to networking events with stakeholders).

Proposed Town Of Victoria Park Position:

The Town SUPPORTS the Department of Local Government, Sport and Cultural Industries’ consideration of the matters raised above in terms of reducing red tape as part of this phase of the consultation process or in future phases