

**SUBMISSION IN RESPONSE TO:**  
**LOCAL GOVERNMENT REFORMS (2021)**  
**- SUMMARY OF PROPOSED REFORMS -**

**Author:**                      **Cole Corporate**  
   **Steven Cole**

**Date:**                              **13 December 2021**

**Overview**

It is timely and appropriate for the Local Government Act 1995 (“LGA”) and related legislative and regulatory enablers to be amended to provide for a stronger, more consistent framework for local governments across Western Australia. Regrettably, despite the best efforts of the 1995 legislators, the current legislative and regulatory framework has failed in practice to assure the delivery of an appropriate standard of governance of local authorities (“LAs”) that the communities served by those LAs are entitled to expect.

The opportunity afforded to the community to respond to the Summary of Proposed Reforms published by the Department of Local Government Sport and Cultural Industries is very much appreciated.

The art and the science of governance of organisations has evolved and matured significantly over recent years since 1995.

The same, or substantially similar in most material respects, principles of “governance” that apply to corporations and organisations generally in society, whether commercial corporations, community/NFP/charitable based organisations or public sector authorities, should also apply to LAs established under the LGA.

In this context when reviewing the existing legislative governance framework for LAs considerable insights might be gained by considering the accepted principles for “good governance” that apply to corporations and organisations generally in society.

This submission to the Summary of Proposed Reforms responds in terms of the following:

1. By way of background, Part 1 of our response to the Phase 1 Consultation “Local Governments for the Future” (copy attached) raises a number of philosophical issues concerning the governance of LAs and their effective regulation which may assist policy formulation in framing proposed changes to the LGA.

2. Specific responses to each element of the Summary of Proposed Reforms where Cole Corporate believes it has valuable insights to contribute.

Cole Corporate welcomes the opportunity to engage further concerning the issues raised in this submission. The important role played by LAs in the community must be respected as well as the desire to ensure that the legislative and regulatory framework for LAs, and for those who govern, direct and manage LAs, are appropriate, are not unduly burdensome from an administrative and regulatory compliance perspective, and are fit-for-purpose. This will assist in optimising the prospect of delivering enhanced performance outcomes and better managing risks for the districts and communities served by the LAs.

Theme	Sub-Theme	Comments
1. Early Intervention, Effective Regulation and Stronger Penalties	1.1 Early intervention powers	<p>(a) The existing regime of primary reliance on Authorised Inquiries and ultimately suspensions/dismissals of Councils, and appointments of Commissioners, is:</p> <ul style="list-style-type: none"> <li>• cumbersome;</li> <li>• “blunt” as a regulatory instrument;</li> <li>• expensive;</li> <li>• strategically and operationally disruptive;</li> <li>• inefficient with material delays before resolution;</li> <li>• inflexible to meet the nuanced needs of each situation.</li> </ul> <p>(b) In the majority of cases, the principal findings have been material dysfunctionality either within the Council itself, or between the Council and the CEO/Administration, rather than egregious conduct giving rise to legislative prosecutions.</p> <p>(c) The concepts of a standing Chief Inspector, Office of Inspectorate, panel of Local Government Monitors and a new Conduct Panel are conceptually supported in principle subject to satisfaction as to the detail of their mandate and proposed operations, with lessons to be learnt from the shortcomings of the historical regulatory framework.</p> <p>(d) It is noted, and agreed, that “minor” complaints should be handled by the LGA itself. The recent propensity for Elected Members to refer petty matters to a third party/panel is inefficient and ineffective with delays and penalties of questionable deterrence, as well as an abrogation by Elected Members to take personal responsibility to resolve their own interpersonal issues with others.</p> <p>(e) Greater flexibility of timing and nature of intervention, with a view to a facilitated/supported “righting the ship”, implementation of early stage remedial improvement initiatives and restoration of good governance standards, should be the objectives rather than:</p> <ul style="list-style-type: none"> <li>• legally focused enquiry and forensic evidence based adverse findings; and</li> <li>• culpability attribution for prior perceived failings.</li> </ul>

Theme	Sub-Theme	Comments
		<p>(f) Importantly though:</p> <ul style="list-style-type: none"> <li>• natural justice principles will need to prevail;</li> <li>• matters will need to be addressed expeditiously in a non-threatening, co-operative and supportive environment</li> <li>• existing powers of more formal Authorised Enquires, suspensions of Council and appointment of Commissioners will still need to exist by way of back up support in case of a non-cooperative response from a local authority;</li> <li>• the quality of the system is likely to be largely dependent on the quality, experience and demeanour of the proposed “Local Government Monitors” – refer below</li> </ul>
	<p>1.2 Local Government Monitors</p>	<p>(a) The concept of a “Monitor” being assigned to a local authority to assist it in resolving governance, management, financial or human resource/behavioural (including at Council level) perceived problems, has appeal as an early stage “soft and responsive” measure.</p> <p>(b) The array of qualified specialists’ attributes proposed appears to reasonably cover the scope of likely skills and experience that may be needed.</p> <p>(c) Potentially, depending on the circumstances of the matter, more than one “Monitor” (each with a different relevant skills/experience base) appointed on a joint basis, may be desirable.</p> <p>(d) A transparent and credible process would need to be established as to:</p> <ul style="list-style-type: none"> <li>(i) accreditation of Monitors;</li> <li>(ii) base standards of relevant skill and experience of Monitors;</li> <li>(iii) relevant continuing professional development of Monitors as part of their continuing accreditation;</li> <li>(iv) equitable selection of Monitors from the Panel for specific assignments.</li> </ul>

Theme	Sub-Theme	Comments
		<p>(e) Further detail and consideration for the following aspects would also need to be addressed by regulation:</p> <ul style="list-style-type: none"> <li>(i) powers of Monitors (including coercive if appropriate);</li> <li>(ii) confidentiality of Monitors' working papers and reports;</li> <li>(iii) to whom is the Monitor primarily accountable (the Inspector or the Local Authority);</li> <li>(iv) whether or not a "report" is required of the outcome of the intervention, and who should receive a copy of that report (Council/CEO in confidence, Inspector, the public?);</li> <li>(v) fee structures for the Monitor's work and responsibility for payment; and</li> <li>(vi) assurance of Monitor integrity and lack of conflict of interest.</li> </ul>
	1.3 Conduct Panel	<ul style="list-style-type: none"> <li>(a) It is noted that the proposed "Conduct Panel" is proposed to have powers to make findings and to impose significant penalties.</li> <li>(b) That being so, such a panel would appear to be taking on a significant administrative law/quasi-judicial function akin to that currently undertaken by the State Administrative Tribunal</li> <li>(c) With such a function, it is difficult to envisage how such a body can act other than within a strict regime of administrative procedures, forensic analysis, quasi-legal processes and natural justice. This should include rights of appeal.</li> <li>(d) To whom should appeal rights against the "Conduct Panel's" determination be made and what will be the process therefor.</li> <li>(e) In the circumstances, and given the severity of the powers intended to be conferred, I question whether proceedings before the "Conduct Panel" can meet the perceived "quick, reflective and simple" aspirations of the intended reform.</li> </ul>

Theme	Sub-Theme	Comments
	1.4 Review of Penalties	<p>(a) Penalties for legislation/regulatory breach should:</p> <ul style="list-style-type: none"> <li>• act as a deterrent to the commission of a breach;</li> <li>• provide a measured degree of social sanction or retribution for the breach</li> </ul> <p>(b) For whatever reason, penalties available and dispensed under the current regime fail on both accounts, even where action is taken.</p> <p>(c) Financial penalties alone, unless materially increased, are likely to be an insufficient deterrent/sanction.</p> <p>(d) Suspension and/or disqualification from office, without entitlement to fees and allowances, is likely to be more powerful and effective.</p> <p>(e) The philosophical issue then is the removal from democratically elected office of an official (the elected member) by an administrative body. CCC/ICAC-like tribunals comparisons come to mind.</p> <p>(f) In this context please also refer to our response to sub-theme 1.3 (Conduct Panel).</p>
	1.5 Rapid Red Card Resolutions	<p>(a) It is agreed that disruptive behaviour of some elected members not only diminishes the efficiency of Council meetings, but also diminishes the standing of the local authority (and its officers) in the mind of the community and therefore the community's trust in an important institution in the government framework of Australia.</p> <p>(b) Presiding Members at Council meetings have minimal formal powers to effectively intervene to sanction disrupters other than more extreme powers to adjourn the relevant meeting to maintain order.</p> <p>(c) The Speaker in Parliament has more formal powers to "name" a house member and in extreme cases to cause the Sergeant to "remove" such a member. Comparable formal "removal" rights at a local authority level begs questions of personal liberty and personal assault and may well be problematic in practice.</p>

Theme	Sub-Theme	Comments
		<p>(d) The formalisation and enforcement of such powers at a local authority level risks added bureaucracy, formality and cost, and even then assumes that the disrupting member will in fact comply with the direction. Will the local authority need to have a security agent on guard in case enforcement action becomes necessary, and then what will be the scope of the security agent's physical reasonable coercive powers?</p> <p>(e) Further, in the case of a factionalised Council, there is risk of power being exercised by the Mayor/President in a capricious manner, especially if the disrupting member's vote cannot be taken if they have been removed from the meeting.</p> <p>(f) Finally, in our experience, although disruption may become evident at Council meetings, it is the "behind the scenes" behaviours and disrespectful undermining conduct that causes greatest dysfunctionality. At least at publicly attended Council meetings, other than for a degree of "grandstanding to the public gallery" disruptive members are reluctant to go too far for fear of loss of respect by their factional colleagues and public supporters.</p> <p>(g) Interestingly in broader governance circles (ASX, NFP, public sector/statutory authorities) governing body chairs have scant formal authority to discipline and/or remove meeting disrupters other than a general obligation to maintain meeting order, with the primary formal "tool" to deal with meeting disruption, to adjourn the meeting. Generally power exerted by meeting chairs is less formal out of respect for the purpose of the meeting, the institution of meetings having chairs to guide them, and the person holding the office of chair.</p>

Theme	Sub-Theme	Comments
		<p>(h) Coming now to the “red card” concept and some constructive suggestions:</p> <p>(i) a “graded” card system may be less blunt in its application, similar to that used in sporting environments:</p> <ul style="list-style-type: none"> <li>- “green card” (warning for minor infraction)</li> <li>- “yellow card” (warning for multiple minor infractions or for a more serious infraction)</li> <li>- “red card” (severe sanction for multiple yellow/green cards or for an egregious offence)</li> </ul> <p>(ii) consequences of being “carded”</p> <ul style="list-style-type: none"> <li>- progressive publicly available register or record of being “carded” maintained by CEO</li> <li>- “red cards” are referred to the Inspectorate for information</li> <li>- multiple “red cards” during term of office may result in action before the Conduct Panel.</li> </ul> <p>(i) Otherwise the “card” system merely gives some fine tuning to the presiding member’s existing powers</p> <p>(j) It should be up to all Councillors to support the Presiding Member in maintaining order of the meeting out of respect for the institution of the Council meeting, the need for good order at such meetings and respect for the office of Mayor/President (even if there may not be personal respect for the person).</p> <p>(k) Perhaps the formal role and responsibility of Elected Members in their mandated Code of Conduct could even be extended to impose such an obligation to support the Presiding Member’s lead in maintaining good order at Council and Committee meetings.</p> <p>(l) With respect to the other issues raised in the consultation paper we agree that reasonable standardisation of Standing Orders may be useful, perhaps with a uniform base model, but still allowing some flexibility given the variable needs of local authorities be they large “band 1” cities or small “band 4” regional shires.</p>



Theme	Sub-Theme	Comments
	1.6 Vexatious Complaint Referrals	No comment or objection to the proposal which appears to have value.
	1.7 Minor other reforms	<p>(a) The provision of Departmental “guidance notes” appears to be a useful addition to assist in legislative/regulatory interpretation.</p> <p>(b) However care needs to be taken to ensure such “guidance notes” do not become de facto regulations in practice with attendant breach of the philosophical divide between legislative and executive functions of government.</p> <p>(c) The manner in which ASIC approaches its role is a case in point. Notably ASIC recently issued a c.50 guidance note ancillary to a 1 page legislative enactment. Perhaps not a desirable outcome (refer 2 following – Red Tape reduction).</p>
2. Reducing Red Tape, Increasing Consistency and Simplicity	2.1 Resource Sharing	<p>(a) The initiative is strongly recommended and the concept should be encouraged not just for the CEO, but importantly also for:</p> <ul style="list-style-type: none"> <li>• other senior executives (e.g. planning officers)</li> <li>• community facilities</li> <li>• local authority services</li> </ul> <p>(b) Although given history, forced local authority mergers are not part of the reform agenda, where adjoining smaller local authorities do share resources and “back office” functions effectively and to a greater degree, efficiencies can be gained and the political stigma of “merger” is materially reduced.</p> <p>(c) Experience in the maturation of governance frameworks in other sectors, where historical regional / district models need to change in order to gain economies of scale and scope (only available through larger organisational resources), has shown that if alignment and resource sharing can first be achieved at a functional and administrative level, then the pathway to formal consolidation / merger becomes much easier.</p>

Theme	Sub-Theme	Comments
	2.2 Standardisation of Cross-Overs	No Comment
	2.3 Introduce Innovative Provisions	<p>(a) Extreme caution is encouraged before giving wholesale powers to local authorities to directly engage in commercial enterprises, although in appropriate (rare) cases, especially in remote regional areas, more flexibility may be warranted for “essential services” to the community e.g. fuel, general store etc.</p> <p>(b) Even in such extreme cases, preferably support from the local authority should be indirect e.g. provision of premises, rating concessions or financial support to a co-operative of local residents rather than the local authority itself directly operating the venture.</p> <p>(c) Currently many local authorities are struggling to effectively govern and manage their own core/basic civic responsibilities let alone effectively take on new commercial endeavours where they may not have the requisite inherent skill, experience or commercial competitive acumen.</p>
	2.4 Streamline Local Laws	<p>(a) Initiatives towards red-tape reduction and civic efficiency are to be commended.</p> <p>(b) Existing differences between local laws of different local authorities are not only burdensome for the local authority, but a material productivity and development inhibitor for businesses, especially business with some scale of operation with brand or agency outlets across multiple local authority districts.</p> <p>(c) The standardisation of local laws to the greatest extent practicably possible should be the goal with uniform model templates encouraged to be adopted.</p> <p>(d) If and to the extent to which Model Local Laws materially have been adopted, then a 15 year review can be supported.</p>

Theme	Sub-Theme	Comments
		<p>(e) Where and to the extent to which discrete Local Laws have been adopted, then perhaps a 10 year review cycle is appropriate.</p> <p>(f) Care should be taken not to inadvertently create a “local law void” if local laws are not reviewed in a timely manner. Such an outcome risks developmental anarchy and potential gaming of the system. Local authorities and their Councils/CEOs merely need to be held to account by the Department if their local laws are not reviewed when required.</p>
	<p>2.5 Simplify approvals for small business and community events</p>	<p>(a) Supported.</p> <p>(b) These are largely administrative functions of local government under the management of the CEO/Administration team, rather than strategic/governance functions where the Council/Elected Members should be involved.</p> <p>(c) Initiatives to allow the local authority’s CEO/administration to get on with the day to day management of the district and to encourage the Council/Elected Members to focus more on strategic and governance issues, are all to be encouraged.</p>
	<p>2.6 Standardised Meeting Procedures including public question time</p>	<p>(a) Please also refer to the comments in response to sub-theme 2.4.</p> <p>(b) Relative standardisation of core “Standing Orders” would be appropriate subject to allowance of some flexibility to accommodate variances in the size and complexity of the local authority’s operations and the level of public engagement in the district’s civic affairs.</p> <p>(c) Aspects of public question time (PQT) warranting attention include:</p> <ul style="list-style-type: none"> <li>• bona fide questions v’s veiled statements of opinion and/or rebuke;</li> <li>• PQT being dominated by a co-ordinated group of residents all focussing on the same issue asking serial petty questions to embarrass or influence and thereby restricting fair opportunity for other residents to raise other issues;</li> </ul>

Theme	Sub-Theme	Comments
		<ul style="list-style-type: none"> <li>• PQT being an ancillary opportunity for residents to hold the local authority to account rather than becoming the dominant feature of Council meetings, with risk of material time and efficiency intrusive into the Council discharging its other civically vital business.</li> </ul>
	2.7 Regional Subsidiaries	<p>(a) Please also refer to the genre of comments with respect to items 2.1 and 2.3 above.</p> <p>(b) Caution needs to be maintained yet if such regional subsidiaries are effective for resource sharing purposes, then support for their establishment might be encouraged.</p>
3. Greater Transparency and Accountability	3.1 Recordings and live streaming of all Council meetings	<p>(a) To a degree there is conflicting counter balance between:</p> <p>(i) meeting efficiency with minimal formality and opportunity to either:</p> <ul style="list-style-type: none"> <li>• play to the public; or</li> <li>• be constrained in voicing honest commentary for fear of electorate displeasure (given that Elected Members must govern for the district and its community as a whole, not merely on a ward basis or to satisfy special interest groups whose favour and support may have been determinant in the particular Councillor's election to office)</li> </ul> <p>(ii) principles of transparency and accountability (especially given that unlike Federal and State Parliaments, the majority of local government decision making is executive in nature – noting that at Federal and State levels doctrines of Cabinet and public sector confidentiality see most executive decision making taken behind closed doors).</p>

Theme	Sub-Theme	Comments
		<p>(b) Nevertheless principles of community engagement, consultation, transparency and accountability are so entrenched in the local government psyche that it would be a brave government to propose initiatives counter to such principles.</p> <p>(c) Livestreaming will provide convenience to the public and may even diminish “in person” attendance.</p> <p>(d) There will need to be clarity as to whether live-streaming is “observer” status only or could a resident also ask questions in PQT through on-line means?</p> <p>(e) There will be a cost in giving effect to the initiative. Consideration needs to be given to the cost/benefit analysis of the initiative. The relative burden will be greater on smaller regional local authorities although the benefit may be greater in the context of travel distance for residents to attend Council meetings in person.</p> <p>(f) Recordings, even of confidential items/behind-doors matters, will be captured under the existing Record Keeping legislation in any event. It would duplicate matters if they were also required to be sent to the Department for archiving.</p> <p>(g) Freedom of Information availability of recordings or confidential/behind-doors matters should be addressed by the proposal.</p>
	3.2 Recording all votes in Council Minutes	<p>(a) Many local authorities already observe this practice in any event.</p> <p>(b) It would aid in transparency and accountability.</p>
	3.3 Clearer guidance for meeting items that may be confidential	<p>(a) Please also refer to the comments in item 3.1(a) above with similar principles applying here.</p>

Theme	Sub-Theme	Comments
		<p>(b) Although “Guidance” may be useful (refer item 1.7 above), caution should be observed in becoming too prescriptive as to what is appropriately “confidential”.</p> <p>(c) Preferably “principled” based descriptors should be preferred to tightly prescriptive circumstances as the scope and range of issues that may arise and be suitable for being dealt with “confidentially” cannot reasonably all be predicted for the future at any point in time.</p> <p>(d) Continued reference back to the Inspector for clearance of confidential matters could become administratively cumbersome and burdensome given there are 130(+) local authorities in WA.</p>
	3.4 Additional On-line Registers	<p>(a) Any additional registers adds to the “red-tape” burden and is counter to Theme 2 of this consultation process.</p> <p>(b) Ordinary course of business matters should not require further disclosure e.g. lease register and contracts register.</p> <p>(c) The other proposed registers have greater legitimacy to support assured public disclosure.</p> <ul style="list-style-type: none"> <li>• community grants</li> <li>• disclosure of interests</li> <li>• applicant contributions</li> </ul> <p>(d) With respect to the “lease” register, is this intended to only refer to leases of real property or also personal/moveable property e.g. computer/photocopier/vehicle leases?</p> <p>Contemporary accounting standards already address extended treatment and disclosure in annual statements of such “right of use” assets.</p>

Theme	Sub-Theme	Comments
	3.5 Chief Executive Officer's KPIs to be published	<p>(a) Extreme caution is urged with respect to publication of CEO KPIs.</p> <p>(b) Where such KPIs relate to general local authority business and performance outcome matters, then will such KPIs better inform the public more than a statement of such forward looking business planning matters by the local authority?</p> <p>(c) Certain KPIs may be more sensitive and confidential in nature e.g.:</p> <ul style="list-style-type: none"> <li>• personal development, behavioural and inter-personal attribute improvement by the CEO him/herself?</li> <li>• HR related initiatives/KPIs which may be relevant to the performance and/or workplace security of other officers or staff;</li> <li>• early stage initiatives of a confidential nature on behalf of the local authority when disclosure of the initiative may act to the strategic detriment and cost of the local authority and therefore its community.</li> </ul>
4. Stronger Local Democracy and Community Engagement	4.1 Community and Stakeholder engagement charters	<p>(a) It is believed that many local authorities already have policies or charters of such a nature based on international and Australian best practice standards.</p> <p>(b) The nature and scope of local authorities need to be borne in mind when prescribing such matters:</p> <ul style="list-style-type: none"> <li>• bands 1-4;</li> <li>• metro – regional</li> </ul> <p>(c) Certainly a base model charter by way of "Guidance" (refer item 1.7 above) could assist.</p>
	4.2 Ratepayer satisfaction surveys (Band 1 and 2 only)	(a) Good governance practice would suggest that such an initiative should apply to ALL local authorities, large and small, metro and regional.

Theme	Sub-Theme	Comments
		<p>(b) Care needs to be taken through to ensure flexibility so that the relevant survey is attuned to the needs and nature of the relevant local authority and its community.</p> <p>(c) Again a “Guidance Note” (refer item 1.7 above) could assist in this respect.</p>
	4.3 Introduction of Preferential Voting	<p>(a) No material preference either for or against the proposal is held, with valid arguments on both sides of the ledger noted.</p> <p>(b) However, there is fear held that a move towards preferential voting will accentuate the development of voting cliques and the greater “politicisation” of local government as patronage will sought to be gained through preferential endorsements. This will work counter to the current “largely” (with some exceptions) relatively low incidence of politicisation of local government across WA as a whole.</p>
	4.4 Public Vote to Elect the Mayor and President	<p>(a) As a recognised expert in good governance practice, my strong recommendation is to resist the proposal.</p> <p>(b) In fact my recommendation is:</p> <ul style="list-style-type: none"> <li>• all local authorities be treated the same irrespective of band 1-4 categorisation (the argument has not been made to treat Band 1 &amp; 2 local authorities differently, with mere size not being a justification in itself);</li> <li>• all Councils should elect their Mayor/President from their own number (my following comments explain why).</li> </ul> <p>(c) An essential player in effective local authority governance is the Mayor/President with those local authorities which have a Mayor/President who has the support and respect of the Council, and an excellent working relationship with the CEO, having extraordinarily low incidence of dysfunctionality and underperformance.</p>



Theme	Sub-Theme	Comments
		<p>(d) The proper governance role of chairs of governing bodies (ie. in local government terms, the Mayor/President of the Council) has been authoritatively described as being “first amongst equals”, with only some additional meeting procedural, speaking on behalf of the organisation (in accordance with positions resolved by the organisation, not spurious personal views), and ceremonial responsibilities, relative to an “ordinary” elected member.</p> <p>(e) The enhancement of the Mayor/President role to one of presidential style and quasi-executive function and authority must be strongly resisted.</p> <p>(f) Unless the Mayor/President has the overwhelming respect and support of the Council as a whole, then dysfunctional outcomes risk having a high level of occurrence, especially given the Mayor/President would be elected for a 4 year electoral cycle term.</p> <p>(g) A Mayor/President elected by the Council members, holds office at the pleasure of the Council.</p> <p>(h) This position is consistent with the governance frameworks of most organisations although a number of community/sporting NFP organisation persist with a member/constituent elected chair of their governing bodies.</p>
	4.5 Tiered limits on the number of Councillors	<p>(a) Reasonably broadly accepted contemporary “good governance practice” for governing bodies favours relatively smaller numbers of members of governing bodies than historically may have been more common.</p> <p>(b) The same principles should apply to local authority Councils.</p>

Theme	Sub-Theme	Comments
		<p>(c) The following guidelines would be consistent with contemporary standards (inclusive of the Mayor/President)</p> <p>(i) smaller population/revenue base – 5 to 7 elected members</p> <p>(ii) medium population/revenue base – in the range of 7 to 9</p> <p>(iii) large population/revenue base - in the range of 9 to 11 elected members.</p>
	<p>4.6 No wards for Small Councils (Band 3 and 4 Councils only)</p>	<p>(a) The solemn duty at law of an Elected Member is to act in the best interests of the local authority as a whole, not to any ward or special interest group or cause which may have been instrumental in the election of the Elected Member to office.</p> <p>(b) In an era of modern communication the ward concept has largely lost its rationale for being.</p> <p>(c) In fact it is probable that in remote regional centres, where local authority districts cover vast areas with extended travel distances, and where local authorities tend to be smaller Band 3 or 4 Councils, the justification for wards may be stronger than for larger Band 1 or 2 metropolitan based Councils.</p> <p>(d) Notwithstanding (c) above, the concept of wards generally for all local authorities should be abolished.</p> <p>(e) Such universal abolition will assist focus Elected Members on where their duties need to be directed and will materially reduce “ward based factionalism” amongst Councils.</p>
	<p>4.7 Electoral Reform – Clear Lease Requirements for Candidate and Voter Eligibility</p>	<p>(a) No material comments to add.</p> <p>(b) Generally the proposal is supported which will help strengthen the integrity of our local government system and prevent it being “gamed” for the benefit and influence of clique groups.</p>

Theme	Sub-Theme	Comments
	4.8 Reform of Candidate Profiles	Proposal supported in the interests of providing the public with more information to assist them in exercising their vote.
	4.9 Minor other Electoral Reforms	Proposal supported in the interests of enhanced assurance of integrity of process.
5. Clear Roles and Responsibilities	5.1 Introduce Principles into the Act	<p>(a) Principled based legislation is strongly preferred over prescriptive specific regulatory style legislation.</p> <p>(i) it enhances “understanding” as opposed to merely following direction;</p> <p>(ii) it allows flexible application of the principle even where the specific circumstance could not have been envisaged and covered at the time of enactment of the prescriptive regulation.</p> <p>(b) Subject to review of the detail, the philosophy of the approach is strongly supported and could be extended more broadly beyond the specific items mentioned.</p>
	5.2 Greater Role Clarity	<p>(a) The concept of greater definition of roles and responsibilities of Councillors, Mayors/Presidents and CEO runs counter to a “principled based” approach recommended in Item 5.1.</p> <p>(b) Essentially the legislation needs to clearly state, in absolute unambiguous terms, that Councillors, Mayors/Presidents and CEOs owe a “fiduciary duty’ to the local authority ie, the body corporate constituted under the Local Government Act with civic responsibility for the relevant district and community.</p> <p>(c) Such a statement then enlivens centuries of legal precedent and judicial clarification.</p>

Theme	Sub-Theme	Comments
		<p>(d) If the legislated bifurcation of role and responsibility between the Council (as the governing body) and the CEO (as the executive arm of the local authority with day to day management responsibility for the local authority) is to be continued with, then as these 2 roles are not necessarily mutually exclusive, some “Guidance” (refer Item 1.7 above) may assist in the interpretation of the interface between the two.</p>
	5.2.1 Mayor/President Role	<p>(a) With respect from a general governance perspective, the role of the Mayor/President is currently more prescribed and clarified than is the role of the chair in most other organisation.</p> <p>(b) Chairs of governing bodies are regarded as “first amongst equals” with some additional meeting procedural, speaking and ceremonial responsibilities.</p> <p>(c) They largely exercise their powers informally by support (or at least acquiescence) of other members of the governing body and the organisation and respect for the person and office.</p> <p>(d) If the Mayor/President cannot garner that support and respect, then perhaps they are not the correct person to hold that office.</p> <p>(e) Please also refer to our comments under item 4.4 above concerning the risk of public popularly elected Mayors/Presidents.</p>
	5.2.2 Council Role	<p>(a) Please refer to our comments under 5.2 above with preference towards a “principled” rather than a “prescriptive” approach.</p> <p>(b) Councils have responsibility to “govern” local authorities. Provided that what is included in any proposed “precise wording” of their role is by way of “inclusive example” or “Guidance” (refer 1.7 above), or even specific statutory responsibilities (not in derogation or limitation of their general law powers and responsibilities), rather than an exhaustive prescription of the scope of their roles, then the proposal is endorsed.</p>

Theme	Sub-Theme	Comments
		<p>(c) The real challenge is in the professional development of Councillors to get them to properly understand their roles and responsibilities as members of a “governing body”, and to distance themselves from the day to day administrative affairs (although at the same time having “oversight” of the same).</p>
	<p>5.2.3 Elected Member (Councillor) Role</p>	<p>(a) Please refer to our earlier comments under this item 5.2 generally the tenor of which apply equally here and therefore will not be repeated. The concept of a “fiduciary” responsibility is all embracing.</p> <p>(b) Restricting the misuse of “title” of office is supported. However, again it is embraced in the concept of the duties of a “fiduciary”.</p>
	<p>5.2.4 CEO Role</p>	<p>(a) The proposal is supported given the apparent intention to continue the bifurcated source of power and authority between the Council and the CEO.</p> <p>(b) If the Council is generally accorded the power and authority to “govern” (but not to both “govern and manage”, which is typical for many other corporate structures), then by clearly specifying the legislative powers of the CEO to “manage”, greater clarity is also thereby given as to exclusions of the scope of powers/authority of the Council, but without prejudice to the proper role of “governance” which will include management “oversight”, and therefore governance intervention if the lack of effective management by the CEO and administration team becomes material.</p>
	<p>5.3 Council Communication Agreements</p>	<p>(a) Many local authorities have moved towards adopting formal “Councillor Information Request” – style policies designed around principles to better assure:</p> <ul style="list-style-type: none"> <li>• transparency of information</li> <li>• equality of information flow to all Councillors</li> <li>• oversight by the CEO</li> <li>• non-intrusion into the local authority’s administration</li> <li>• efficiency of information gathering</li> </ul>

Theme	Sub-Theme	Comments
		<p>(b) Modern IT/digital technologies aid the implementation of such an approach.</p> <p>(c) A standardised template for formal adoption by local authorities would be useful along with “Guidance” (refer Item 1.7 above). This should be imposed by regulation (compare Code of Conduct) rather than by “agreement” between Council members and Administration.</p>
	<p>5.4 Superannuation Contribution to Elected Members</p>	<p>(a) In the general corporate community, statutory superannuation payment obligation by corporations apply in respect of fees paid to directors/members of their governing bodies.</p> <p>(b) The same principles should apply with respect to local authorities, not at the election of Councils (why wouldn't a Councillor wish to be paid an extra 10% into his/her superannuation fund) but by way of regulated outcome.</p> <p>(c) The question is whether or not the current fee allowances determined by the Salaries and Allowances Tribunal have had regard to the fact that currently superannuation is not an “add-on” to the fee allowances for Elected Members.</p> <p>(d) Managing the implementation of such an approach will be important via the Salaries and Allowances Tribunal to mitigate the perception of a 10% fee uplift/windfall gain by Elected Members at times when other staff of the local authority may be subject to wage constraints.</p>
	<p>5.5 Education Allowance</p>	<p>(a) As previously averred to, some of the greatest causes of local government dysfunctionality are:</p> <ul style="list-style-type: none"> <li>• lack of understanding by Elected Members of their roles and responsibilities</li> <li>• interpersonal relations and EQ (emotional intelligence) short-comings in the application of their roles (even if they have understanding of them).</li> </ul>

Theme	Sub-Theme	Comments
		<p>(b) Professional development and education and training is an essential to overcome these aspects.</p> <p>(c) Many local authorities already have policies to accommodate enhanced professional development of their elected members beyond mere “Essentials” courses, including local authority budgetary support therefor either:</p> <ul style="list-style-type: none"> <li>• on an individual basis; or</li> <li>• on a group basis through facilitated briefing sessions to all Councillors organised by the local authority itself.</li> </ul> <p>(d) The proposal providing for restrictions on the style of course or training program should be applied with caution. Obviously the program should relate to the enhancement of the role of the Elected Member on Council (and not be for purely selfish development reasons), but the program could relate to the personal development of the Elected Member (e.g. public speaking skills, EQ development, being able to express an argument etc) where the local authority could well benefit therefrom as well.</p>
	5.6 Standardised Election Councillor Period	(a) Supported in principle although care needs to be taken so that local authorities are not neutered from their essential civic responsibilities and ability to properly act (e.g. emergency or critical need) over this period.
	5.7 CEO Recruitment	<p>(a) The establishment of an “accredited” list of CEO recruitment consultants is supported by way of “Guidance” (refer Item 1.7) support to local authorities.</p> <p>(b) However, local authorities should not be constrained from using other professional and skilled consultants who may not be on that list.</p> <p>(c) The prior approval of the Inspector is such a constraint.</p>

Theme	Sub-Theme	Comments
		<p>(d) However, perhaps rather than requiring the Inspector's prior approval, if the local authority uses a consultant not on the "accredited" list, the local authority be obliged to inform the Inspectorate and provide justifying rationale as to why the selected consultant was chosen over others on the list.</p>
<p>6. Improved Financial Management and Reporting</p>	<p>6.1 Model finance statements and tiered financial reporting</p>	<p>(a) In principle the proposal is supported provided that appropriate high standards of public sector accountability, transparency and integrity are maintained.</p>
	<p>6.2 Simplify Strategic and Financial Planning</p>	<p>(a) The publication by way of "Guidance" (refer Item 1.7 above) of templates may well be useful, especially if the same have regard to the needs of different genres of local authority:</p> <ul style="list-style-type: none"> <li>• large v's small</li> <li>• metro v's regional</li> </ul> <p>(b) However such templates should be by way of aid for consideration and adoption/adaptation, rather than mandatory use.</p> <p>(c) Local authorities should be encouraged to be innovative in their strategic planning and develop plans optimally suited to their own needs and those of their districts and communities.</p>
	<p>6.3 Rates and Revenue Policy</p>	<p>(a) A rates and revenue policy should not be a stand-alone policy, subject to change from time to time, but rather integrated into each local authority's IP&amp;R framework including Strategic Community Plan, Business Plan, Long Term Financial Plan so that it is responded to as part of each local authority's annual budget and rate/fee setting program.</p> <p>(b) Of necessity it needs to be a high level principled based statement rather than a prescriptive bind, which may be unresponsive to critical shorter or longer term needs of the local authority.</p>



Theme	Sub-Theme	Comments
		<p>(c) The use of a “template” is not supported for risk of being too prescriptive and assuming that “one size fits all”, which it will not. Perhaps this may be another productive use of “Guidance” (refer Item 1.7 above).</p>
	<p>6.4 Monthly Reporting on Credit Card Statements</p>	<p>(a) The proposal is totally inappropriate and misguided and presumes the use of credit cards is tantamount to an improper clandestine dealing with public funds. It is not supported.</p> <p>(b) Credit cards are merely an efficient form of non-cash payment and reimbursement, providing detailed audit and accountability of transactions made which can then be scrutinised (as appropriate) for integrity purposes.</p> <p>(c) Each local authority’s internal and external audit protocols exist to protect against the “agency risk” of inappropriate or improper use of credit cards.</p> <p>(d) The proposal would work counter to the overall proposals’ recommendations of “red tape reduction” (refer Theme 2).</p> <p>(e) The proposal would risk fuelling the waste of public question time at OCMs with petty/vexatious/judgemental questions as to what was spent by whom, where.</p>
	<p>6.5 Amended Financial Ratios</p>	<p>(a) The review of the current financial reporting ratio regime is fully supported.</p> <p>(b) The current regime operates such as to assume all local authorities are coming from a common base position.</p> <p>(c) It is unresponsive to the variable and nuanced starting points, existing levels of asset and district development, and future needs and demands of certain local authorities.</p> <p>(d) The ratios in their current form can therefore be misleading relative to the nuanced financial, asset and future development positions (as per each local authority’s IPR regime).</p>

Theme	Sub-Theme	Comments
	6.6 Audit Committees	<p>(a) Generally the proposals should be strongly resisted even if the principles upon which they are premised may have some merit.</p> <p>(b) There are 4 discrete proposals outlined. Each will be addressed discretely on their merits.</p> <p>(c) <u>Independent Chair</u></p> <p>(i) Although an Audit Committee chair wholly independent of Council and Administration is an acceptable outcome, it is not the only outcome, nor necessarily the best outcome. There are lessons to be learned from broader governance principles here:</p> <ul style="list-style-type: none"> <li>• chair of Audit Committee: <ul style="list-style-type: none"> <li>- must be independent of the local authority's management/administration; and</li> <li>- must not be the Mayor/President</li> <li>- must have high order relevant accounting/financial skills and experience;</li> <li>- may be a suitably skilled/qualified/experienced Elected Member.</li> </ul> </li> <li>• compared with a wholly independent chair, an appropriately skilled/qualified/experienced Elected Member has a relatively greater depth of knowledge of the affairs, operations, issues and risks facing the local authority</li> <li>• based on our experience, wholly independent chairs of Audit Committees are often largely dependent on the provision of information from management/administration and from Elected Members to adequately inform them of relevant issues and any nuances relevant to those issues.</li> </ul>

Theme	Sub-Theme	Comments
		<p>(ii) It is recommended that the chair of Audit Committee may be wholly independent or may be an appropriately skilled/qualified/experienced Elected Member able to satisfy the foregoing.</p> <p>(d) <u>Proactive Risk Management</u></p> <p>(i) The recommendation is strongly recommended.</p> <p>(ii) Our experience is that, in general (subject to some exceptions), risk management is not a governance discipline that has been adequately embraced with a local authority governance. Although many CEO/management/administration teams may be reasonably abreast of issues, many Councils have effectively abrogated responsibilities for risk management oversight to the CEO/management/administration teams, or at least to the Audit Committee.</p> <p>(iii) Where risk management oversight is part of the Audit Committee's remit, often it plays the role of "second cousin" to audit and financial management oversight.</p> <p>(iv) To address the above it is recommended:</p> <ul style="list-style-type: none"> <li>• Audit Committee terms of reference are materially broadened to better embrace risk management oversight [OR] a discrete Risk Committee with its own terms of reference be established (this would be our recommended preferred outcome especially for larger Band 1 and 2 Councils, depending on the size of the local authority).</li> </ul>

Theme	Sub-Theme	Comments
		<p>(e) <u>Regional Risk Committees</u></p> <p>(i) The recommendation is not favoured as each local authority's risks need to be addressed discretely.</p> <p>(ii) However, the sharing of resources with respect to risk management analysis and outcomes, especially for smaller regional local authorities should be encouraged (refer recommendation 2.1 (Resource Sharing) above).</p> <p>(f) <u>Majority of Audit Committee members to be independent with an independent chair</u></p> <p>(i) Regarding independent chair – refer comments in item 6.6(c) above.</p> <p>(ii) Regarding the suitability of Elected Members to be on the Audit Committee – yes they should be, although desirably they at least would have a good understanding or knowledge of accounting principles, financial matters and public sector accountability principles.</p> <p>(iii) Regarding the desirability of having non-Elected Members on the Audit Committee – yes, they may add to assurance of integrity but not necessarily as Audit Committee chair (refer item 6.6(c) above). However certainly they need not be in the majority.</p> <p>Importantly neither the CEO nor any member of the administrative team should be members of the Committee – their presence is by way of standing invitation only with opportunity for their exclusion at any time. Likewise the Mayor/President may be an Audit Committee member, but not as Audit Committee chair.</p>

Theme	Sub-Theme	Comments
	6.7 Building Upgrade Finance	<p>(a) Extreme caution should accompany this recommendation with the opportunity only available where there may be some profound civic benefit or heritage preservation issue to accompany the loan.</p> <p>(b) Dangerous precedents risk being set depending on how such powers may be exercised.</p> <p>(c) If the recommendation is to progress then it is recommended that tight controls be included as to:</p> <ul style="list-style-type: none"> <li>• absolute majority resolution;</li> <li>• maximum loan amounts;</li> <li>• independent consultant's report a to civic relevance and benefit;</li> <li>• limitations on loan amounts, interest rate considerations, loan terms and security for repayment.</li> </ul>
	6.8 Cost of Waste Services to be specified on Rates Notices	(a) No objection in detail to the proposal although it does result in more red-tape / regulated requirements (and therefore overhead cost) for the local authority that ultimately will be reflected in higher rates and fees to the community.
7. Other Themes for Consideration as suggested by Cole Corporate	7.1 Council Performance Evaluation and Skill/experience base	<p>(a) As has become recommended industry best practice standards for the governing bodies of most organisations:</p> <p>(i) the Council adopt and apply a regime of Council/Committee/Councillor annual performance evaluation over each 4 year electoral cycle with at least once during that 4 year period, a comprehensive review facilitated by an external consultant;</p>

Theme	Sub-Theme	Comments
		<p>(ii) at least once every 2 years the Council undertake a skills/experience matrix exercise to determine:</p> <ul style="list-style-type: none"> <li>• the optimal skills/experience that the local authority would like to have on its Council to best achieve the local authority's strategic objectives and needs;</li> <li>• the skills/experience that the current Councillors actual have;</li> <li>• a "gap" analysis of the absent (or "light on") skills/experience/attributes</li> <li>• the publication of that "gap" analysis to the local authority's community to assist them in their voting intent at the next forthcoming election and to act as an incentive for residents with those absent skills/experience to stand for office.</li> </ul>