Department of
Local Government, Sport
and Cultural Industries

GOVERNMENT OF
WESTERN AUSTRALIA

Local Government Act 1995 review
Agile • Smart • Inclusive

Local Government Act 1995 Review

Agile • Smart • Inclusive – Local governments for the future

Phase 1: Consultation Paper

8 November 2017

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Minister's foreword

The McGowan Government is undertaking a review of the Act to modernise local governments and better position them to deliver services for the community.

Western Australia's local government system is unique in Australia and reflects the State's colonial heritage through the establishment of roads boards as some of the State's first forms of European municipal government.

While the Western Australian *Constitution Act 1889* provides for a system of local government throughout the State, the powers and functions of local governments are conferred by the *Local Government Act 1995* (the Act).

The review will be undertaken in two phases. Phase 1 of the review considers the following matters:

- meeting community expectations of standards and performance
- transparency
- making more information available online
- red tape reduction.

These matters address reforms that have the potential to modernise local government, empower and enable local government, meet community expectations for accountability and transparency, and relieve regulatory burden. Local government autonomy in decision-making remains a key feature of Western Australia's local government system.

Where possible, I would like the detail relating to the powers and responsibilities for local government to be addressed in regulations rather than a prescriptive Act to ensure that the legislation is more flexible and adaptable to changing needs.

This consultation paper seeks your comment to inform the government's position. While the consultation deals with specific matters, comment is welcome on all aspects of the Act.

This paper presents a range of options that aim to modernise local government, restore the reputation of the sector, simplify regulation and improve services. I seek your valuable feedback to inform this review.

Western Australians deserve local government that is smart, agile and inclusive.

Hon David Templeman MLA
MINISTER FOR LOCAL GOVERNMENT

Introduction

The *Local Government Act 1995* (the Act) provides the framework for Western Australian local government. Local governments are created by the Act which sets out the functions, responsibilities and powers of local government.

Western Australia has changed greatly since the Act was introduced in 1995. Public expectations of government and what can be achieved through technology have evolved. While the Act has been regularly amended, key aspects seem outdated.

It is time to modernise the Act to match public expectations of local government.
As a consequence, the McGowan Government has committed to undertaking a review of the Act. The following principles underpin the review:

- Transparent – providing easy access to meaningful, timely and accurate information about local governments.
- Participatory – strengthening local democracy through increased community engagement.
- Accountable – holding local governments accountable by strengthening integrity and good governance.
- Efficient – providing a framework for local governments to be more efficient by removing impediments to good practice.
- Modern – embracing contemporary models for governance and public sector management.
- Enabled – local governments will be empowered to deliver for communities as autonomous bodies with powers and responsibilities specified in legislation.

The review will be conducted in two phases as outlined below:

Phase 1	Phase 2
Making information available online	Increasing participation in local government elections
Meeting public expectations for accountability	Increasing community participation
Meeting public expectations of ethics, standards and performance	Introducing an adaptive regulatory framework
Building capacity through reducing red tape*	Improving financial management
	Building capacity through reducing red tape*
	Other matters raised in phase 1 consultation

**matter to be dealt with in both phases*

While this consultation paper deals with the matters listed above in phase 1, responses and proposals for reform are invited on any aspect that contributes to the principles underpinning the review of local government legislation.

A second consultation paper will be released in 2018.

This review is examining all of the legislation that sets the framework for local government: the *Local Government Act* and the twelve sets of regulations that underpin it.

Local government makes a big difference in our everyday lives. Local governments define the places where Western Australians live, work and play.

In Western Australia's regions they are often a major employer and glue for communities. They can support local economies, businesses and the environment and have an important role supporting our communities, including vulnerable people and must carefully balance these competing priorities. Local governments have a tough job and often have to make controversial decisions.

Local governments are an expression of their community and like Western Australians communities, are increasingly diverse and face complex issues. They manage an aging population, provide safe and inclusive public spaces and deliver high quality services and infrastructure.

To meet contemporary community expectations, local governments need a contemporary legislative framework that provides boundaries for their operations. The framework will need to account for the diversity of Western Australia's local governments and the varying roles that they perform to service their unique communities.

While the Act establishes local government and the key rules for its operation, this Act is just one of many legislative instruments administered across multiple portfolios that inform how local governments conduct their business. For example, local governments' role in planning is defined in planning laws and their role in public health matters is defined in the *Public Health Act 2016*. Some of the matters raised in this review may therefore impact other legislation.

Consultation to date

Modernising the legislative framework by which local governments operate is a complex task. The views of local government, the community and business are all needed to achieve the best result.

In June 2017, a reference group was established to provide expertise and advice to the review. The reference group members are drawn from the:

- Western Australian Local Government Association (WALGA);
- LG Professionals Australia WA (LG Professionals WA);
- Western Australian Council of Social Service;
- Western Australian Electoral Commission;
- Regional Chamber of Commerce and Industry; and
- Western Australian Rangers Association.

In July and August 2017, the Department of Treasury and the Department of Local Government, Sport and Cultural Industries (the Department) hosted three red tape workshops. The workshops were attended by representatives from WALGA, LG Professionals WA and various industry groups.

In July 2017, the Department presented its findings to the Minister for Citizenship and Multicultural Interests' Multicultural Reference Group.

In preparing this consultation paper, the Department has also met with local governments, industry groups and community sector advocates on an individual basis.

Having your say

Submissions

The State Government invites submissions on the consultation. Submissions can be sent via:

completing the online submission form:
www.dlgsc.wa.gov.au/lgareview

email:
legislation@dlgsc.wa.gov.au

post:
LGA Review
Department of Local Government, Sport and Cultural Industries
PO Box 8349
Perth Business Centre
Western Australia 6849

Your submission will be made public and published in full on the Department's website unless you ask for it to be confidential. Submissions that contain defamatory or offensive material will not be published.

Submissions close on Friday 9 March 2018.

Community workshops

The Department will be conducting community workshops across Western Australia to promote the paper and seek your views.

Attend one of our workshops in your region and tell us how you think the local government legislation can be improved.

Details of the workshops are on the Department's website at
www.dlgc.wa.gov.au/LGAReview

About local government in Western Australia

Western Australia's constitution establishes a system of elected local government bodies empowered through State Government legislation.

Much of Western Australia's system of local government can be traced back to road boards created in the 19th century. Over the past 120 years, there have been various pieces of legislation establishing local municipalities and their functions. The most recent of these is the *Local Government Act 1995*.

Reflecting Western Australia's unique history and geography, the State has the nation's most diverse local government sector. The State's 137 local governments and the two Indian Ocean Territories feature the largest and smallest in the country by size, the nation's thirteenth most populous local government and the nation's least populous.

Over 90 per cent of the State's population live in the State's largest 40 local governments, with the remaining 10 per cent living in the State's other 97 local governments. The combined population of the State's 34 least populated local governments is less than 1 per cent of the State's total population.

All local governments regardless of their size or population are framed by the Act which in line with the power of general competence provides significant autonomy to local governments.

Councils appoint a Chief Executive Officer (CEO) to manage the day to day operations of the local government. The CEO is responsible for hiring all other local government staff.

The council is the primary decision-maker in the local government, although they can delegate some powers to an officer. The CEO is responsible for implementing council's decisions.

While the term is not used within the Act, local governments in Western Australia operate under the principle of 'general competence'. This means that local governments are autonomous bodies established to provide for the good government of persons in their district.

The degree of autonomy is an ongoing challenge. On one hand, many local governments believe that they do not have enough autonomy. On the other hand, some industry groups and members of the community are concerned that local government decision making is inconsistent, and that greater oversight and

accountability is required. This tension between autonomy and oversight is a constant and is not unique to Western Australia.

At the time of its introduction, the current Act was intended to replace prescriptive legislation with a broad outcomes-based framework. The Act reduced the number of areas where the Minister's approval was required down to 30, from approximately 150 in the previous Act.

The Act is still considered quite prescriptive, in the sense that it establishes rules for particular matters, especially as they relate to accountability, while giving local governments autonomy on other matters.

Given the diversity in their size, location and population, it is not surprising that local governments in Western Australia provide a variety of services, and to varying standards. All local governments in Western Australia provide core services including waste, roads, parks, playgrounds and gardens, as well as having statutory responsibilities in planning, development approvals, public health and various licencing requirements.

In response to community expectations, some local governments also provide other services such as community centres, libraries, swimming pools, gyms, child care, seniors and youth programs, environmental and land care programs, health programs, local infrastructure including marinas and airports, as well as programs to support tourism, local events and businesses.

In general, the scope and range of services provided by local governments are expanding. While some may argue that this is due to cost-shifting from other tiers of government, local governments ultimately determine the majority of the services they choose to provide.

While Western Australia's local government structure is unique, lessons can be learned from other jurisdictions. Victoria, New South Wales, Tasmania, and the Northern Territory are conducting, or have recently concluded, major reviews of their local government legislation.

Meeting community expectations of standards and performance

Local governments today have many complex responsibilities. They deal with potentially controversial matters such as town planning, assessment of development applications and domestic animal management, and provide an increasing variety of community services.

Elected members and local government officers have a challenging job and their communities have high expectations of standards, ethics and performance.

Largely, the Western Australian community is well served by local government. However, on occasion poor governance or ineffective management can result in community expectations not being met.

This review presents the opportunity to consider whether reforms are required to strengthen accountability by modernising the governance model that frames local government decision making and operations.

Areas where opportunities may exist include:

- improving relationships between council and administration,
- improving behaviour and managing misconduct,
- increasing training for elected members,
- reforming CEO selection and recruitment, and
- improving the way that a CEO's performance is reviewed.

1. Relationships between council and administration

Introduction

The effectiveness of a local government in Western Australia is largely dependent on the relationship the council has with the administration, primarily the CEO. Running alongside this is the requirement for a council to act independently when it is making decisions in the best interests of, and on behalf of, the community it was elected by.

Local governments are made up of several components:

Local government

The Western Australian *Constitution Act 1889* states that Parliament will maintain a system of local government throughout the State. This is given effect through local government legislation which confers powers and functions on local governments. A local government is a corporate body which can sue and be sued.

Council

The council is elected by the community and is the governing body of a local government. It is made up of between six and fifteen elected members and is led by a mayor or president. Councils are responsible for the governance of their local government's affairs and functions. This includes oversight of the planning and allocation of finances and resources, and the determination of local government policies.

Chief Executive Officer (CEO)

The CEO is employed by the council to head the administration and manage the day to day operations, or executive functions, of the local government and to implement council policies and decisions.

Staff

The staff are employed by the CEO to perform the functions of the local government.

The community

The community is comprised of residents, ratepayers including property owners that do not live in the district and those renting business premises within the district, as well

as the extended community that are impacted by council decisions but do not live within its district.

Defining the roles of council and administration

In 1995, when the current Act was introduced to Parliament, the then Minister for Local Government remarked in his second reading speech:

> "*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 level 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 chief executive officer and other staff*."[1]

Under the Act the council —

- governs the local government's affairs; and
- is responsible for the performance of the local government's functions, which includes (although is not limited to):
    - overseeing the allocation of the local government's finances and resources; and
    - determining the local government's policies.

The role of an individual councillor includes:

- representing the interests of electors, ratepayers and residents of the district;
- providing leadership and guidance to the community in the district;
- facilitating communication between the community and the council;
- participating in the local government's decision-making processes at council and committee meetings; and
- performing such other functions as are given to a councillor by the Act or any other written law.

The mayor or president has the following additional roles:

- presiding at meetings in accordance with the Act;
- providing leadership and guidance to the community in the district;
- carrying out civic and ceremonial duties on behalf of the local government;
- speaking on behalf of the local government;

[1] Western Australia, *Parliamentary Debates,* Legislative Assembly, 31 August 1995, 7548-9 (Hon Paul Omodei MLA).

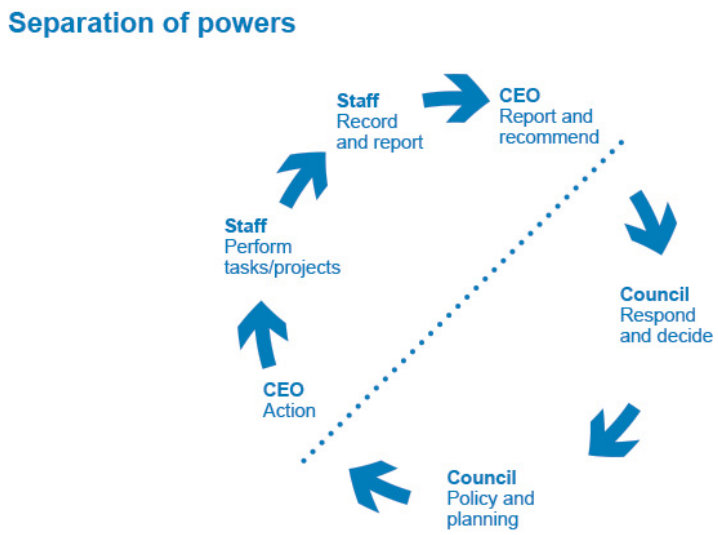
- performing such other functions as are given to the mayor or president by the Act or any other written law; and
- liaising with the CEO on the local government's affairs and the performance of its functions.

The CEO's functions under the Act are to:

- advise the council in relation to the functions of a local government under this Act and other written laws;
- ensure that advice and information is available to the council so that informed decisions can be made;
- cause council decisions to be implemented;
- manage the day to day operations of the local government;
- liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;
- speak on behalf of the local government if the mayor or president agrees;
- be responsible for the employment, management, supervision, direction and dismissal of other employees;
- ensure that records and documents of the local government are properly kept for the purposes of the Act and any other written law; and
- perform any other function specified or delegated by the local government or imposed under the Act or any other written law as a function to be performed by the CEO.

Despite this, tension still arises within local governments. This appears to be due to a lack of understanding of the separation of powers between the council and the administration, or deliberate attempts to act outside this separation.

The diagram below sets outs how the Department believes an effective relationship between a local government council and the administration should operate:



While it is expected that training and education would clarify the roles of a council and the administration, the roles as currently defined are drafted broadly. Very little detail is provided about the tasks that should be undertaken by the council and the CEO.

Delegations

Councils may delegate certain functions and powers to the CEO or senior staff. Delegations are an important tool for local governments as they mean that many matters do not need to be considered by council, which saves time.

Different local governments delegate different powers, with some only delegating very limited powers to the CEO, while other local governments delegate everything, retaining only specific, stated powers.

Delegations are occasionally a point of contention between council and administration, and the decision whether to delegate certain powers is sometimes viewed as a test of the council's confidence in the CEO.

Across Australia

Each Australian jurisdiction has a broadly similar set of roles and responsibilities for their members of council. The table below highlights the differences.

Jurisdiction	Additional provisions relating to elected members, not included in the Western Australian legislation
New South Wales	• To participate in the development of the integrated planning and reporting framework • To make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor
Victoria	• The role of a councillor does not include the performance of any functions that are specified as functions of the CEO
Queensland	• To participate in council meetings, policy development, and decision-making, for the benefit of the local government area • A member of a council has no direct authority over an employee of the council with respect to the way in which the employee performs his or her duties
South Australia	• To participate in the deliberations and civic activities of the council

Jurisdiction	Additional provisions relating to elected members, not included in the Western Australian legislation
	• To keep the council's objectives and policies under review to ensure that they are appropriate and effective • To keep the council's resource allocation, expenditure and activities, and the efficiency and effectiveness of its service delivery, under review
Tasmania	• To develop and monitor the implementation of strategic plans and budgets • To determine and monitor the application of policies, plans and programs for: o the efficient and effective provision of services and facilities o the efficient and effective management of assets o the fair and equitable treatment of employees of the council • To facilitate and encourage the planning and development of the municipal area in the best interests of the community • To appoint and monitor the performance of the general manager • To determine and review the council's resource allocation and expenditure activities • To monitor the manner in which services are provided by the council • In performing any function under this Act or any other Act, a councillor must not– o direct or attempt to direct an employee of the council in relation to the discharge of the employee's duties; or o perform any function of the mayor without the approval of the mayor
Northern Territory	• To ensure, as far as practicable, that the council acts honestly, efficiently and appropriately in carrying out its statutory responsibilities • However, a member of the council has no power to direct or control staff, or to interfere with the management of staff

Defining the roles of council and administration: Guidance 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 are improved?

Improving relationships between council and administration: Guidance question

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

2. Training

Introduction

Elected members have a unique and challenging role. Internal support available to elected members is often limited, especially in smaller local governments.

They are elected officials who represent their often diverse communities and oversee multi-million dollar budgets. No qualifications are required to be a candidate. Elected members are often elected in contests where less than one third of eligible voters cast a ballot. Elected members are frequently elected unopposed in regional areas. The 2016 Census of Western Australian Elected Members conducted by the University of Western Australia on behalf of the Department found that approximately one in four elected members completing the survey had not completed year 12.

It could be argued that elected members should be provided with the knowledge and skills to be able to properly understand and perform their role.

Training for elected members has been recommended by successive inquiries and reports by the Corruption and Crime Commission. Making elected member training compulsory has also been raised.

Elected member training through the Country Local Government Fund

To encourage more elected members in regional Western Australia to participate in training, the State Government invested more than $1.5 million over four years to provide subsidised training in four core areas.

Between June 2014 and June 2017, more than 500 individual elected members participated in at least one training unit of the Country Local Government Fund (CLGF) elected member training program. This represented approximately 55 per cent of the more than 900 elected members in regional areas who could have undertaken the training.

The program has achieved a breadth, if not depth of coverage, with 105 of the 109 country local governments represented at one or more sessions. There were 24 local governments which did not have a single elected member attend a training session.

On average, elected members who have attended training through the CLGF participated in 2.4 units. Some elected members attended the same course on multiple occasions with two elected members attending all four of the courses twice.

Elected members currently have access to training provided on a commercial basis by WALGA. WALGA provides training courses in topics including, but not limited to, serving on council; meeting procedures and debating; effective community leadership; and land use planning. WALGA's suite of training for elected members culminates in an Elected Member Diploma, through the Western Australian Training Accreditation Council. Undertaking any of these courses is currently voluntary.

Since 2013-14, WALGA has delivered more than 340 training courses to elected members across the State. Over the same period, approximately 70 elected members have enrolled in the Elected Member Diploma.

WALGA elected member training

	2013-14	**2014-15**	**2015-16**	**2016-17**
Courses delivered	61 (including 8 CLGF funded courses)	89 (including 31 CLGF funded courses)	90 (including 41 CLGF funded courses)	106 (including 76 CLGF funded courses)
Individual registrations	625 (including 41 registrations at CLGF funded courses)	899 (including 308 registrations at CLGF funded courses)	838 (including 423 at CLGF funded courses)	930 (including 595 at CLGF funded courses)

In some circumstances, elected members are required to receive training. Under the *Planning and Development (Development Assessment Panels) Regulations 2011*, elected members appointed as a Development Assessment Panel (DAP) members are required to complete training approved by the Department of Planning, Lands and Heritage. This requirement reflects that to perform certain duties elected members require specialist skills that they may not yet possess.

Across Australia

Until recently, South Australia was the only State that required elected members to be trained. However, across Australia, moves are underway to introduce mandatory training. New South Wales has amended its legislation to require councils to implement induction programs and professional development, and serious consideration is being given to the concept in Tasmania and the Northern Territory.

While training in Queensland is not mandatory, a culture of professional development has been embedded in the State, with 90 per cent of elected members and a high percentage of candidates voluntarily undergoing training.

Jurisdiction	Status
Western Australia	Voluntary
New South Wales	Mandatory Regulations under development
Victoria	Voluntary
Queensland	Voluntary – high participation rates due to use of an in-house training unit
South Australia	Mandatory: • A council must prepare and adopt a training and development policy for its members • Council policies must comply with training standards • The training standards cover introduction to local government, legal responsibilities, council and committee meetings, financial management and reporting
Tasmania	Voluntary - but under consideration
Northern Territory	Voluntary - but under consideration

2.1 Competencies required to be an elected member

With an operating budget of over $4 billion and assets worth over $40 billion, Western Australian local government is a big business.

Local government elected members take on a uniquely challenging role. They are responsible for representing their district and providing oversight for the complex operations of a local government, with varying levels of support from local government administration. The complex role of elected members is summarised in the councillor position description included as Attachment 1. This was developed by the Department in 2015 to assist potential candidates better understand the role.

In Western Australia, WALGA has developed an elected member learning and development pathway that includes courses covering matters like ‘serving on council’, ‘effective community leadership’ and ‘meeting procedures and debating’. Many of these modules are linked to units of competency under the National Training Qualification Framework.

In considering ways to provide elected members across Western Australia with the competencies required to do their difficult role, there may be benefits in identifying core training units as part of a new elected member professional development training package along with training units which provide advanced skills. These skills could include matters such as:

- the role of an elected member
- meeting procedures
- knowledge of the Local Government Act and other legislation
- understanding financial reports
- budgeting and rates setting
- long term financial planning
- town planning and approvals
- engaging with the community
- policy development
- recruitment and performance appraisal.

Elected member competencies: Guidance 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?

2.2 Funding training

While the benefits of training are widely recognised, there is a cost to training. These costs include the actual fees for the training courses, travel costs (particularly for those in regional areas) and lost time from the elected member’s job or business. Currently, the costs associated with training are variously met by local governments (the community) and individual elected members.

Some councils allocate funds towards the professional development of elected members and directly fund all or part of elected member training. In other cases, elected members undertake and pay for training as part of their role as an elected member or generally as part of their profession.

In the past, concerns have been raised that the benefits of dedicating funding to training elected members is constrained by the turnover in elected members. An elected member may only perform the role for a single four-year term. Countering this are the benefits gained by the local government and the community in having elected members who are well-equipped to perform their best. Turnover in new elected members may potentially be reduced if they felt more confident in their ability to undertake the role competently.

A local government's financial capacity will determine its ability to absorb the costs of training. Local governments with less revenue may find allocating funds for training more difficult than larger local governments. Similarly it will be costlier for country local governments to pay for travel to attend face-to-face courses.

One solution may be the establishment of a training fund to which local governments could contribute in proportion to their annual revenue. This would provide a means of sharing the costs of training across the sector.

Funding training: Guidance 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?

2.3 Mandatory training

Based on participation rates on the state-funded councillor training programs, it appears that providing heavily subsided or free training does not provide sufficient incentive for many elected members to undertake training. To increase participation rates in training alternative methods are required.

Mandatory training would result in all local government elected members being better prepared to undertake their challenging role.

WALGA's 2008 *Systemic Sustainability Study* recommended that a comprehensive induction or foundational training program be mandated and supported by payments for attendance. The report further stated that, "More generally, a culture of continuing professional development for elected members should be encouraged to ensure ongoing exposure and insights to the role of local government."[2]

[2] http://walga.asn.au/getattachment/Policy-Advice-and-Advocacy/WALGA-Advocacy-Position-Statements/2-2-2006-SSS-Panel-Report-In-your-Hands-Final-Report.pdf.aspx?lang=en-AU

The Corruption and Crime Commission (CCC) observed in its report on the actions of the former CEO of the Shire of Dowerin that it was difficult see how the responsibilities of an elected member could be fulfilled without some training.

Reforms to require elected members to undertake an induction was also a recommendation of the City of Canning Inquiry.[3]

The case against requiring elected members to undertake mandatory training has three main arguments:

- training is not mandatory for State and Commonwealth parliamentarians;
- mandatory training would dissuade people from standing for office; and
- limiting the holding of office to people who have completed or will complete training is undemocratic.

It is difficult to assess whether mandatory training would dissuade people from standing for office. In regional Western Australia especially, unopposed elections are common. In the 2015 ordinary elections, 153 of the 169 (90 per cent) uncontested elections took place in country local governments.

While limiting the holding of office to those who have completed training or will complete training may seem to be undemocratic, it represents one of a series of pre-conditions to be an elected member. The eligibility criteria currently covers items such as not being insolvent, or having previously been convicted of a serious local government offence, or other indictable offence. It could be argued that being prepared to complete the training required to perform this important role could also be a minimum criterion.

In South Australia, mandatory training operates by requiring a local government to adopt a training policy that must comply with the training standard. The content of the training standard is specified in regulations.

Implementation of mandatory training would need to take into account the barriers that currently exist to training, including cost, time and access to training, particularly in regional and remote areas. Training would need to be made available in a range of modes, including online, to allow elected members throughout the State to undertake the training with minimal disruption to their working and personal lives.

Who should be required to undertake training?

One of the key questions around mandatory training is who should be required to complete training. It could apply to:

[3] https://www.dlgc.wa.gov.au/publications/documents/inquiry_City_Canning_report.pdf

- all elected members,
- all elected members, with exemptions given to those who complete a recognition of prior learning process, or
- only first-time elected members.

Some local governments have previously advocated that only first-time elected members should be required to undertake mandatory training. Due to the relatively high turnover of elected members, requiring only first-time elected members to complete training would still result in a significant proportion of elected members receiving training. At the 2015 ordinary local government elections, almost half of the candidates elected (306 of 655) had not previously served on council.

Training for all elected members regardless of their previous service would provide the greatest coverage and ensure the best performing councils. As noted in successive inquiries, experience does not necessarily equate to competence when it comes to the evolving and complex role of an elected member.

In addition, candidates could be required to complete an induction program as part of their nomination process. This would ensure that they better understood the role and responsibilities of the position for which they are nominating. In Western Australia, candidates are currently encouraged to attend web-based sessions to increase their awareness of the roles and responsibilities of elected members, but only a fraction of candidates participate. 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.

Mandatory training: Guidance questions

10) Should elected member training be mandatory? Why or why not?

11) Should candidates be required to undertake some preliminary training to better understand 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?

2.4 Continuing professional development

While there are benefits to training that builds essential basic skills, the ongoing professional development of elected members has the potential to improve and maintain capacity in the long-term.

Continuing professional development is an accepted part of many professions in fields like law, finance and accounting. Continuing professional development reflects the complexity of these professions and the need to be aware of innovations and changing requirements and responsibilities.

Being an elected member shares many of the complexities of these professions. Like these professions, elected members are best placed to serve the community if they are aware of evolving best practice in matters such as community engagement, planning, auditing and finance.

Continuing professional development also better equips elected members to perform their legislated functions and work constructively with the CEO to improve the efficiency and effectiveness of local government services.

Many elected members already undertake continuing professional development through training providers such as WALGA. WALGA's Diploma in Local Government is one example; however, training programs offered on topics such as planning, financial management, and governance are also available.

In New South Wales legislation was introduced in 2016 that requires elected members to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of the elected member. In doing so, New South Wales embedded continuing professional development as a requirement to be an elected member.

Requiring councils to adopt a training policy that incorporates the concept of continuing professional development is one option to build the capacity of councils through ongoing skills development and training.

Many professions require their members to gain a specific number of credit points each year by undertaking additional training. Relevant courses, seminars and other activities are allocated credit points on the basis of their duration and complexity.

Continuing professional development: Guidance questions

14) Should ongoing professional development be undertaken by elected members?

15) If so, what form should this take?

Training: Guidance question

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

3. The behaviour of elected members

The Act regulates the conduct of local government elected members and employees through provisions that prescribe:

- that each local government must adopt a code of conduct to apply to elected members and employees (which is managed by individual local governments);
- a system for dealing with 'minor breaches' by elected members (which is administered by the Local Government Standards Panel);
- a process for dealing with 'serious breaches' by elected members (which is administered by the Department with referral to the State Administrative Tribunal);
- offences against the Act; and
- powers[4] for the Minister and/or Department to investigate where conduct impacts the ability of the local government to perform its functions properly.

In 2015, responding to concerns about the timeliness and effectiveness of the process raised through the Local Government Governance Roundtable, a review of the *Local Government (Rules of Conduct) Regulations 2007* and associated minor breach complaint administration was initiated.

The 2015-16 review analysed minor breach complaints received by the Panel between November 2007 and November 2015, considered inter-jurisdictional models and undertook targeted consultation with departmental officers, Standards Panel members, the WA local government sector and the State Solicitor's Office.

The key concerns highlighted by the sector about the minor breach process during initial consultation were that:

- the process is perceived to be slow, legalistic and non-transparent; and
- there is low sector confidence in the Standards Panel and minor breach framework and concern that the original objectives are not being met.

The analysis of the minor breach complaints received since 2007 revealed that the regulations are poorly understood. Over 60 per cent of complaints received related to inconsequential conduct that posed no risk to the effective performance of the local government. The evidence suggested that many complainants appear to regard the system as a grievance mechanism, a political tool or a way to enlist the State in matters that should be resolved locally.

In contrast, some clearly dysfunctional behaviour that had potential to impact the effectiveness of council was found not to result in a minor breach because the conduct

[4] under Part 8 of the Act

is not defined in the regulations or the conduct did not occur within the very narrow circumstances to which the regulation applies.

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

With the review of the Act it is timely to consider potential reforms to improve the overall framework for managing allegations of minor breaches.

3.1 Current Situation

Under the current Act, all local governments are required to have a code of conduct for elected members, committee members and employees.

This is in addition to rules of conduct set by regulations which elected members are required to observe. These are discussed in the following sections.

A code of conduct is required to include the information prescribed in the *Local Government (Administration) Regulations 1996*. This includes provisions relating to prohibited gifts, notifiable gifts, and disclosure of interest.

All other matters in a code of conduct are up to the local government to decide, as long as they are not inconsistent with the Act.

While codes of conduct are mandatory for local governments, they have limited enforceability. Non-compliance is to be dealt with by the local government as an internal disciplinary matter.

Across Australia

The differences between the systems in other States are contrasted below:

Jurisdiction	Code of conduct required?	Content	Enforceability for members and employees
Western Australia	Yes	The code must contain certain provisions as prescribed in regulations. The remaining content is left to the	Failure to comply with the code is interpreted as non-compliance with the Act. However, non-compliance is not defined as an

Jurisdiction	Code of conduct required?	Content	Enforceability for members and employees
		discretion of the local government, provided it does not contradict the Act.	offence or a form of misconduct in itself.
New South Wales	Yes	Local governments must adopt the model code of conduct as prepared by the Minister. The model may be supplemented with additional provisions, provided the existing model isn't contradicted.	Members who fail to comply with the code commit misconduct and can be reported for investigation. The code has no legislative effect on employees.
Victoria	Yes	The code must contain certain provisions as set in regulations. The remaining content is left to the local government's discretion, provided it does not contradict the Act.	Members who fail to comply with the code commit misconduct and can be reported for investigation. The code has no legislative effect on employees.
Queensland	No Conduct requirements are addressed by Act and Regulations. Code of conduct is optional.	None	The code has no application to councillors. Employees are required to comply with a code if one exists.
South Australia	No Conduct requirements are	None	Not applicable

Jurisdiction	Code of conduct required?	Content	Enforceability for members and employees
	addressed by the Act and Regulations. Code of conduct is optional.		
Tasmania	Yes	Local governments must adopt the model code of conduct as prepared by the Minister. Variations can be made if the regulations state that this variation is permitted. The model may be supplemented with additional provisions, provided the existing model isn't contradicted.	Members who fail to comply with the code commit misconduct and can be reported for investigation. The code has no legislative effect on employees.
Northern Territory	Yes	The code must contain certain provisions as set in regulations. The remaining content is left to the local government's discretion, provided it does not contradict the Act.	Members who fail to comply with the code commit misconduct and can be reported for investigation. The code has no legislative effect on employees.

As the above comparison shows, the jurisdictions differ regarding the requirements for a codes content.

Code of conduct requirements

As part of the review of the Act, the State Government is investigating whether codes of conduct are necessary and if so, whether the level of prescription should be changed.

The consideration of other jurisdictions raises potential options outlined below:

Option	Advantages	Disadvantages
Codes of conduct are no longer required.	Increased autonomy for local governments. Mandatory conduct requirements could be addressed in regulations.	Local governments may not clearly specify (in any form) the standard of behaviour expected of employees and elected members leading to increased uncertainty about expectations. May require a strengthening of the Rules of Conduct Regulations.
Codes of conduct are required but the content is left to the local government's discretion.	Increased autonomy for local governments. Mandatory conduct requirements could be addressed in regulations.	Risk of code imposing improper requirements. Local governments may not clearly specify the standard of behaviour expected of employees and elected members leading to increased uncertainty about expectations.
Codes of conduct are required. The content of a code is partially prescribed in regulations, but is otherwise at the local government's discretion.	Status quo	Risk of code imposing improper requirements. Local governments may not clearly specify the standard of behaviour expected of employees and elected members leading to increased uncertainty about expectations.

Option	Advantages	Disadvantages
Codes of conduct are required. The content of a code is prepared by a local government and approved by the Minister.	The Minister's approval could prevent the imposition of improper or unclear requirements while maintaining local government autonomy.	Increased burden on Department and Ministerial staff to assess draft codes. Increased red tape. Reduced autonomy for local governments.
Codes of conduct are required Local governments must adopt a model code, with certain clauses subject to modification	Create more uniformity in the codes of conduct between districts. It will make codes of conduct easier to draft, since most of it will be derived from the model.	Reduced autonomy for local governments.
Codes of conduct are required. The codes will only cover the matters which local governments have a discretion to decide. All other matters are to be addressed in Act and Regulations.	The legislation will be reorganised to better reflect the role which a code of conduct serves.	These won't cause any practical changes to the current system.

Codes of conduct: Guidance 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?

3.2 Regulation of elected member conduct: rules of conduct

Since 2007, the Act has provided for a disciplinary framework to deal with minor, recurrent and serious breaches of conduct by individual elected members. The minor breach system is intended to provide a mechanism to deter inappropriate conduct by individual elected members that may lead to council dysfunction, loss of trust between council and administration, impairment of the local government's integrity and operational performance, and a consequent reduction in public confidence. The current minor breach system complements local government codes of conduct with enforceable standards for specified conduct that focuses on governance and integrity.

The foundation of the minor breach system is the *Local Government (Rules of Conduct) Regulations 2007*[5]. This provides for the reporting of contraventions of the regulations to the Local Government Standards Panel, which comprises members appointed by the Minister.

The current regulations are very prescriptive and an opportunity exists to introduce reforms that provide greater flexibility and agility to resolving allegations of breaches.

Across Australia

Jurisdiction	
New South Wales	Councils are required to adopt a Model Code of Conduct which outlines the expected standards of behaviour. The Code is a legal document.
Victoria	All councils must adopt a councillor code of conduct which needs to be publicly available on the council's website. There are various levels of misconduct: Misconduct – repeatedly contravenes the councillor conduct principles or does not comply with the internal resolution procedure or sanctions imposed for breaching the code; Serious misconduct – behaviour that is more disruptive to good governance at a local level; Gross misconduct – breaches of the councillor conduct principles and certain sections of the Local Government Act (Vic).

[5] enforced through the complaints process set out in Part 5 Division 9 of the Act

Jurisdiction	
Queensland	The Local Government Act (Qld) sets out the conduct and performance of councillors. Councils are responsible for managing inappropriate behaviour (low level matters that are not misconduct). Matters of misconduct (defined in the Act) are referred to a regional conduct review panel or the Tribunal. A mandatory, uniform Code of Conduct is proposed.
South Australia	Code of Conduct for Council Members is published in the *Gazette*. The Code applies to all elected members. The Code addresses general principles with which an elected member must comply and determines what is misconduct.
Tasmania	Model Code of Conduct sets out the standard of behaviour for all Councillors. The Model addresses a range of matters, including decision making, conflict of interest, use of office and use of resources.

Current situation

The Rules of Conduct Regulations provide the general principles to guide the behaviour of elected members, including that they should:

- act with reasonable care and diligence
- act with honesty and integrity
- act lawfully, and
- avoid damage to the reputation of the local government.

While it is not a rule that elected members have to observe the principles set out in the regulations, there are a number of rules where non-compliance constitutes a minor breach. Alleged breaches are considered by the Standards Panel.

The Rules of Conduct prescribe the following behaviour as a minor breach:

Disclosing information

Regulation 6 states that an elected member must not disclose information that an elected member derived from a confidential document or acquired from a closed meeting (unless the information was from a non-confidential document).

There are a number of exceptions, including if the information is already in the public domain or provided to an officer of the Department, the Minister or a legal practitioner for the purpose of obtaining legal advice.

Securing personal advantage or disadvantaging others

Regulation 7 states that an elected member must not make improper use of the person's office to gain advantage for the person or to cause detriment to the local government or any other person.

Misuse of local government resources

Regulation 8 prohibits an elected member from using the resources of a local government to persuade electors to vote in a particular way or for any other purpose unless authorised by council or the CEO.

Involvement in administration

Regulation 9 prohibits an elected member from undertaking a task that contributes to the administration of the local government unless authorisation is granted by the council or CEO.

Relations with local government employees

Regulation 10 provides that an elected member is not to direct, attempt to direct or attempt to influence a person who is a local government employee.

It also prohibits an elected member attending a council meeting, committee meeting or other event where members of the public are present, from making statements that a local government employee is incompetent or dishonest, or from using offensive or objectionable expressions about a local government employee.

Disclosure of interest

Regulation 11 defines an interest as '*an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association*'.

In accordance with the regulations, a person who has an interest in any matter that is to be discussed at a council or committee meeting is required to disclose the interest both in writing to the CEO and at the meeting before the matter is discussed.

Interests referred to in the Rules of Conduct Regulations differ from financial and proximity interests defined under the Act. An interest in accordance with the Rules of Conduct Regulations does not preclude a member from participating in the matter to be discussed. Rather the interest needs to be noted at the meeting and recorded in the minutes. It is a minor breach if an interest is not disclosed.

Option 1: Streamlined Rules of Conduct

Option 1 proposes that the Rules of Conduct are streamlined and more emphasis is placed on conduct that is likely to:

- be a detriment to the local government,
- result in council dysfunction, or
- impair public confidence in decision making.

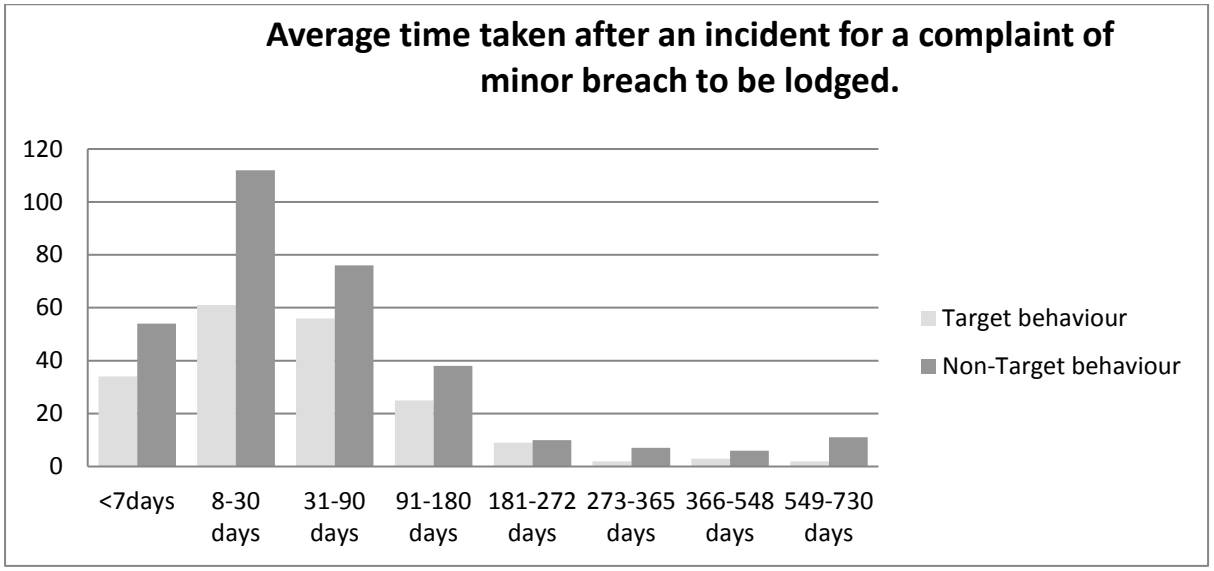
This option proposes to minimise the rules that constitute a minor breach and which are dealt with externally. It is intended that those which are removed will be captured under the local government's Code of Conduct and will be dealt with locally. This reinforces the principle of autonomy.

The streamlined rules will focus on:

- misuse of information,
- disclosure of interest, and
- securing personal advantage or disadvantaging others.

This will increase the responsibility of local governments to manage disputes at a local level. Matters relating to relationships between elected members, and between staff and elected members, could be seen to be more appropriately dealt with at a local level. This could result in those types of issues being dealt with more rapidly and before they escalate.

A review of complaints has identified that most complaints are made within three months of the incident, with very few made later than six months, as identified in the graph below.



Target behaviour is that which has significant potential consequences for local government integrity, performance or reputation. Non-target behaviour has no significant consequences for the local government.

The time limit for submitting a complaint could be reduced from the existing two years after the incident to three months, with a provision for an extension of up to 12 months to be granted in exceptional circumstances.

Streamlined rules of conduct: Guidance 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?

Option 2: Revised disciplinary framework

Option 2 proposes that a disciplinary framework that is less prescriptive and more outcome-based is introduced. Such a scheme would require elected members to refrain from conduct likely to impair the integrity, operational performance or reputation of the local government, and they would be held accountable should they fail to do so. The focus would be on abuses of position, breaches of trust, dishonesty and bias that can be demonstrated.

Rule-based disciplinary models, such as the current minor breach system, are generally not able to capture all dysfunctional conduct, or exclude all minor lapses that might result in vexatious complaints. A more flexible outcome-based misconduct management model may provide greater focus on the impact, intent and context of the conduct. The investigation, evidence gathering and determination process required is likely to be considerably more resource intensive compared to the current situation or Option 1.

In a practical sense, the current Rules of Conduct regulations would be repealed and the Act would be amended to set out that an elected member is to refrain from:

- impairing the integrity of the local government;
- impairing the operational performance of the local government;
- impairing the reputation of the local government; and
- any other matters as set out in regulations.

All complaints where a person believed that the outcomes were breached would be submitted through the local government complaints officer (usually the CEO) to the

reviewing body. The reviewing body would assess complaints based on whether the integrity, operational performance or reputation of the local government has been impaired, rather than whether a breach of a specific regulation has occurred. This proposal may create uncertainty as to what behaviours would constitute a breach and could result in an increase in the number of complaints received.

As with Option 1, the time limit for submitting a complaint could be reduced from two years after the incident to three months, with provision for an extension of up to 12 months to be granted in exceptional circumstances.

The options for complaint management are discussed in the next section.

Revised disciplinary framework: Guidance questions

23) Do you support an outcome-based framework for elected members? Why or why not?

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

3.3 Other matters recommended in the 2015-16 review

Application of Rules of Conduct

The 2015-16 review recommended that the rules governing behaviour be extended to candidates in local government elections. In this case sanctions would only apply for any minor breaches if the candidate was ultimately elected. This change would ensure that all nominees for election would be held to the same high standard of behaviour, as currently councillors seeking re-election must conform with the rules of conduct while other nominees do not.

Application of the Rules of Conduct: Guidance question

25) Should the rules of conduct that govern behaviour of elected members be extended to all candidates in council elections? Please explain.

Offence provisions

It was further proposed that the restriction relating to improper use of information acquired in the performance of their role apply to persons who were formerly elected members, for a period of 12 months after their separation from local government. This offence carries a maximum penalty of $10,000 or imprisonment for 2 years, and currently only applies to elected members, committee members and employees.

Offence Provisions: Guidance questions

26) Should the offence covering 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.

Confidentiality

Currently, the Act restricts a person who makes a complaint or becomes aware of any detail of a complaint made during the campaign period from disclosing that a complaint has been made or any details. This restriction applies up until election day. This provision was inserted to prevent the complaints system being used as a tool in an election period against a candidate seeking re-election.

The 2015-16 review proposed that this restriction on the disclosure of the existence or details of a complaint apply at all times and not only during campaign periods.

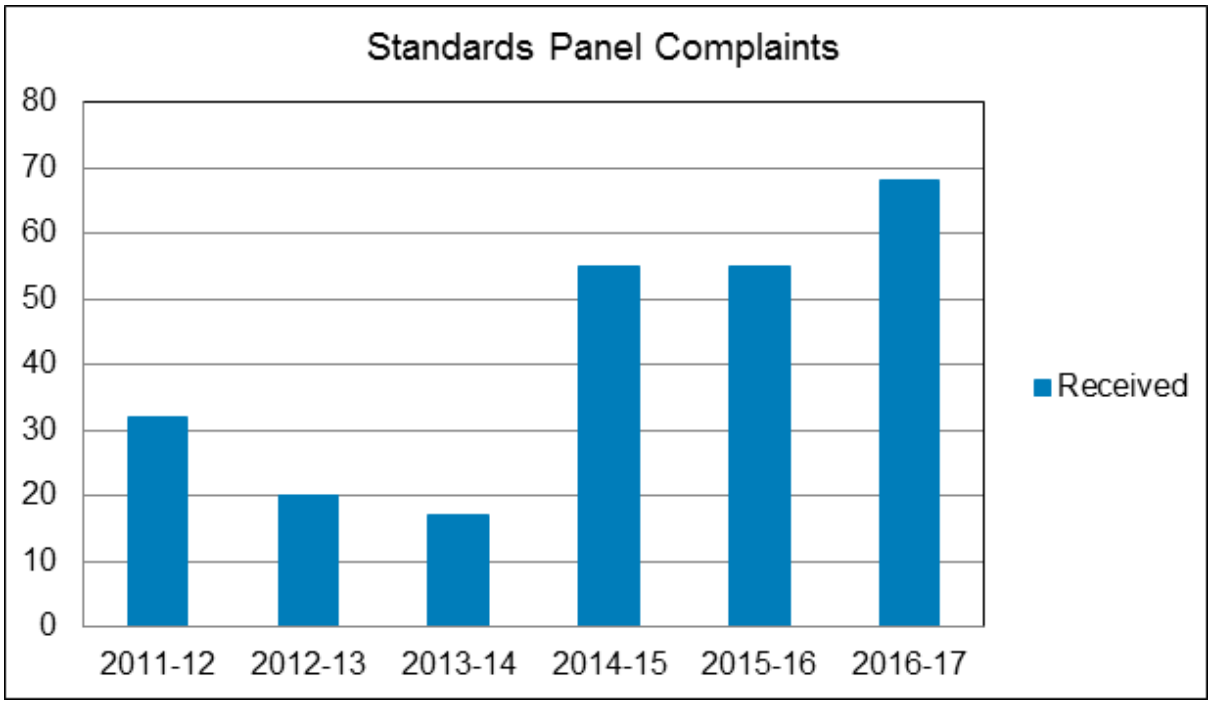
Confidentiality: Guidance question

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

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[6] currently reviews alleged breaches of the Rules of Conduct Regulations. In practice, most local governments and most elected members have little or no contact with the minor breach system. Between the commencement of the system in late 2007 and August 2015, 68 per cent of the total minor breach allegations (343 allegations out of 507 in total) were generated from less than 10 per cent of the State's local governments and involved complaints against just 6 per cent of all elected members. 80 local governments have not used the system at all.

A graph of the number of complaints received by the Panel since 2011-12 shows that there have been large increases in complaints over the past three financial years.



While the minor breach system appears to be supported in principle by the local government sector, the current system can be slow, and does not necessarily allow for early intervention to address inappropriate behaviour. The significant number of complaints – and procedural fairness requirements – mean that the process is lengthy. The goal to deter inappropriate conduct by individual elected members may consequently be lost. A breach finding may be an overreaction to a matter which is relatively minor, and which could be better dealt with in other ways.

[6] The Standards Panel is established by the Minister under section 5.122 of the Act and provisions about the Panel are outlined in Schedule 5.1.

Of the 59 complaints of minor breach that were finalised by the Panel during 2016-17[7], the Panel made findings that:

- 14 minor breaches had occurred
- No minor breach had occurred in relation to 22 complaints.

Of the remaining complaints:

- There were five complaints that were finalised on the basis that the Panel did not have jurisdiction to consider them or there was no allegation of minor breach.
- There were 10 complaints which were finalised by becoming suspended as a consequence of the councillor, the subject of the complaint, ceasing to be an elected member.
- The Panel refused to deal with eight complaints because it was satisfied that the complaints were either frivolous, trivial, vexatious, misconceived or without substance.

Across Australia

Jurisdiction	
New South Wales	Local governments are required to manage any breach to the Model Code of Conduct at a local level, including the appointment of a person to review allegations. Council is required to establish by resolution a panel of conduct reviewer. Councils may share a panel of conduct reviewers[8].
Victoria	Local government councils are required to have an internal resolution procedure to address a breach of a code of conduct, including providing for an independent arbiter. If the elected member does not comply with the internal resolution process or repeatedly breaches the code of conduct (considered misconduct), the breach is referred to an independent Councillor Conduct Panel. The Councillor Conduct Panel is established by the Minister for Local Government and comprises legal and non-legal members (five members in total).
Queensland	The Regional Conduct Review Panel is an independent body established under the *Local Government Act 2009*

[7] Local Government Standards Panel Annual Report 2016-17 http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/4010618aa75348cc3a9c03324825819a0019a8c7/$file/618.pdf

[8] https://www.olg.nsw.gov.au/sites/default/files/Procedures-for-Administration-of-Model-Code-of-Conduct.pdf

Jurisdiction	
	(Qld) to hear and decide on complaints of misconduct. The Panel consists of three members from a pool of suitably qualified persons appointed by the Department. The Panel is supported by the Department. A Remuneration and Discipline Tribunal is also established to deal with remuneration for elected members and determine cases of serious misconduct. The Tribunal consists of three people appointed by the Governor. Changes are proposed to this system following a report tabled in Parliament in July 2017 recommending the introduction of an Independent Assessor to consider all complaints against councillors[9]. The Assessor will be able to assess and prosecute complaints. The report follows an independent Councillor Complaints Review Panel that was appointed in April 2016 to review how complaints about local government councillors were dealt with[10].
South Australia	The Code of Conduct outlines the review process for complaints and misconduct. Complaints of misconduct, which are specified in the Code of Conduct, can be reported to the Council, Ombudsman, Electoral Commission (for specific breaches) or Office for Public Integrity.
Tasmania	The Minister has established a Local Government Code of Conduct Panel which is responsible for the investigation and determination of code of conduct complaints.

Option 1: Status Quo

Option 1 is to maintain the Status Quo where all complaints against the Rules of Conduct Regulations are referred to the Standards Panel. The three person Panel consists of a person from the Department, a person who has experience as a member of a council and a person with relevant legal knowledge.

[9] https://www.dilgp.qld.gov.au/resources/publication/local-government/councillor-complaints-review-report-government-response.pdf
[10] https://www.dilgp.qld.gov.au/resources/publication/local-government/councillor-complaints-review-report.pdf

While the Act provides that more than one panel can be established, to date only one has been created. Currently, the Panel meets at least monthly and considers four or more complaints at each meeting, depending on the complexity of the complaints.

Local governments are charged for processing minor breach complaints. The fee reflects the time spent by the legal panel member on the complaint. No fee is charged to the person making the complaint, and elected members found to have committed a breach are not required to repay the local government.

Local governments paid approximately $1,187 per complaint in 2016-17 (with an average of 1.7 allegations per complaint), but the real cost to the public is likely to be several times this amount, once State and local government administrative costs are factored in, including the time of the other panel members. In addition there are intangible costs such as reduced local government productivity and distress to participants.

Amendments made to the Act in 2016 introduced the ability for the Panel to refuse to consider frivolous, vexatious and misconceived complaints and those lacking in substance. While potentially reducing the time taken to consider and rule on complaints, resources are still required for assessment and the recording of decisions.

Option 2: Sector Conduct Review Committees

Under this option, minor breach complaints would be processed by the local government complaints officer and forwarded to a sector-based Conduct Review Committee.

The Conduct Review Committee would be limited to the following actions:

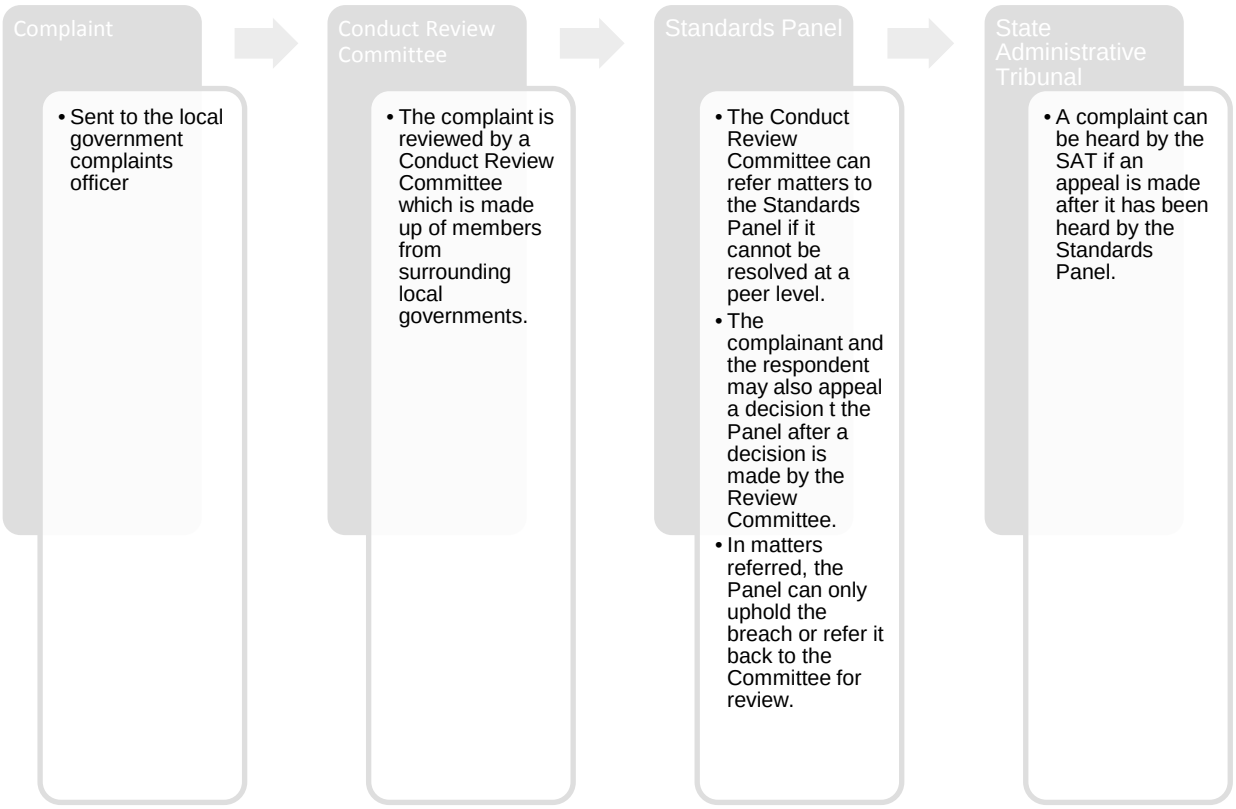
- dismissing the complaint due to non-compliance
- dismissing the complaint for being trivial, frivolous or vexatious or without substance
- ordering mediation
- ordering a public apology
- directing the complaint to the Standards Panel.

The Conduct Review Committee could refer a matter to the Standards Panel if it believes that a breach warrants the Panel's involvement. Regulations could prescribe matters that must be sent directly to the Panel.

Under this model, a pool of potential members for the Conduct Review Committee would be established. Membership could be sought from one or more of the following groups: elected members, people with local government experience and independent stakeholders. Appointments to the pool could be made by the Director General of the Department, which is consistent with the Queensland model. Alternatively,

assessment of the applications to be included in the pool could be made jointly by the Director General of the Department, WALGA and LG Professionals WA.

The flow chart below outlines the approach of Option 2:



A party to the complaint would be able to seek a review by the Standards Panel, with regulations setting out the circumstances where this could occur. The State Administrative Tribunal would remain the ultimate appeal body.

The local government from which the complaint originated would be responsible for the cost of establishing the Conduct Review Committee, including travel and accommodation expenses. This option may incur additional costs to cover committee membership expenses.

It is expected that this option would reduce the number of complaints referred to the Standards Panel and would speed up the review of minor breach complaints. A further potential advantage is that it could lead to greater support being provided by the sector to a local government that was experiencing multiple complaints being lodged.

Guidelines could be prepared similar to those in New South Wales for the Conduct Review Panels to assist Conduct Review Committee members understand their duties and obligations.

Sector conduct review committees: Guidance questions

29) What do you see as the benefits and disadvantages of this model?
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 for the pool?
34) How many members should there be on the Review Committee?
35) Are the proposed actions for the Review Committee appropriate? If not, what do you propose?

Review of elected member non-compliance: Guidance questions

36) Which of the options 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?

3.5 Sanctions and other Standard Panel matters

Section 5.110(6) of the Act outlines the actions that the Standards Panel can impose when a minor breach is found:

- dismissing the complaint (the breach is found but no sanction is applied)
- ordering that the person must undertake specified training
- ordering that the person must publicly apologise
- ordering that the person be publicly censured.

Across Australia

Jurisdiction	Available sanctions
New South Wales	A full spectrum of sanctions is available as matters can be dealt with by councillors, the general manager or the New South Wales Civil and Administrative

Jurisdiction	Available sanctions
	Tribunal. This includes censure, training and the requirement to apologise.
Victoria	Following an internal review of a code of conduct breach, a council can: • direct an elected member to apologise • direct an elected member to not attend up to, but not exceeding, two council meetings • remove the elected member from committees or representative roles of the local government.
Queensland	The Remuneration and Discipline Tribunal, which considers cases of misconduct, has various powers available including ordering that an elected member: • receive counselling • make an apology • participate in mediation with another person • forfeit an allowance, payment, benefit or privilege • reimburse or make a payment to the local government. The Tribunal can also recommend to the Director General of the Department that they monitor the councillor or local government for compliance with the Local Government Act. The Tribunal can recommend to the Minister that the councillor is suspended or dismissed or can make a recommendation to the Crime and Misconduct Commission or Police Commissioner to further investigate the conduct.
South Australia	Sanctions available to councils when dealing with complaints include: • take no action • pass a censure motion • request a public apology (written or verbal) • request the member attend specific training • resolve to remove or suspend the member from a position within council • request the member repay monies to the council.
Tasmania	A Code of Conduct Panel can apply the following sanctions:

Jurisdiction	Available sanctions
	• a caution • a reprimand • an apology • counselling or training • suspension from office for up to three months (no allowances).
Northern Territory	A Local Government Disciplinary Committee can impose the following sanctions: • take no disciplinary action • reprimand the member • impose a fine • recommend to the Minister the member is removed from office.

Mediation

The Standards Panel cannot currently order that mediation is undertaken. A benefit of mediation is that it could address underlying issues and lack of understanding between elected members or between an elected member and another person. This is likely to lead to improved ongoing relationships and reduce the likelihood of the breach recurring.

Mediation: Guidance question

39) Do you support the inclusion of mediation as a sanction for the Panel? Why or why not?

Prohibition from attending council meetings

In some cases, minor breach complaints relate to inappropriate behaviour at council meetings. If an elected member is found to have committed a minor breach of this nature, it may be useful if the Panel could direct the member to not attend council meetings for a set period. While this could be seen as a circuit breaker, it must be noted that there is likely to be a considerable period between the inappropriate behaviour and the sanction.

The member would not be suspended from undertaking their other duties as an elected member. This sanction could have a financial impact on the elected member if they are not eligible for sitting fees or allowances associated with attendance at those council meetings.

Prohibition from attending council meetings: Guidance questions

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 the elected member be eligible for sitting fees and allowances in these circumstances?

Compensation to the local government

Another sanction option could be to require the person who has been found to have committed a minor breach to pay the local government an amount of compensation. The amount that could be ordered would have a limit, such as $10,000. It is expected that this sanction would only be imposed in circumstances where there has been a clear financial impact to the local government.

This option exists under the equivalent breach systems in Tasmania, the Northern Territory, Queensland and South Australia.

Compensation to the local government: Guidance questions

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?

Complaint administrative fee

This option proposes that a fee accompanies a complaint when it is lodged with a complaints officer. In the event that a breach is found, the fee would be refunded to the complainant. If no breach is found, the fee would be retained by the Department to partly off-set some of the administrative costs associated with the panel proceedings.

The benefit of requiring a complainant to pay a fee is twofold. Firstly, it would encourage complainants to only lodge a complaint where, in their opinion, there is strong evidence of a breach. It is expected that this would encourage more complaints to be dealt with at a local level and reduce the use of the Panel as a mechanism for dealing with personal grievances.

Secondly, a reduction in the number of trivial or vexatious complaints that need to be considered by the Panel will allow the Panel to consider breaches which may be causing serious dysfunction in a more expedient manner.

An administration fee for lodging an application is currently required by other bodies, such as the Liquor Commission Western Australia and Racing Penalties Appeal Tribunal.

Complaint administrative fee: Guidance questions

45) Do you support this option? Why or why not?

46) Do you believe that a complaint 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 minor breach or should it be retained by the Department to offset costs? Why or why not?

Cost recovery to the local government

An alternative to imposing a financial sanction is to require the elected member who has committed the breach to reimburse the local government the cost of the panel proceedings. Currently, the local government pays the cost.

Cost recovery to local government: Guidance questions

50) Do you support the cost of the panel proceedings being paid by a member found to be in breach? Why or why not?

Publish complaints in the annual report

This proposal is that local governments are required to publish in their annual report the number of minor breach allegations, the number of findings of breach and the costs reimbursed to the Standards Panel relating to those complaints. This would increase transparency to the community and make elected members more accountable for their actions.

This is a requirement under the Tasmanian framework for dealing with the conduct of elected members. New South Wales also requires a statistical report of complaints to be published within three months of the end of September each year.

Publication of complaints in the annual report: Guidance question

51) Do you support the tabling of the decision report at the Ordinary Council Meeting? Why or why not?

Table decision report at Ordinary Council Meeting

This proposal is that the council is required to table any decision reports which result from a minor breach finding against one of their elected members at the next Ordinary Council Meeting that is open to the public.

Currently where there is a breach finding the report is published on the Department's website. This proposal is more likely to ensure that all elected members and the local community are made aware of the minor breach finding.

This is a requirement under the Tasmanian framework. It is expected to increase transparency while acting as a deterrent.

Tabling decision report at Ordinary Council Meeting: Guidance question

52) Do you support this option? Why or why not?

3.6 Elected member interests

The Act requires elected members to disclose any financial interest they have. They are not allowed to participate in decision making related to that interest[11].

Section 5.63(f) provides an exemption for members of not-for-profit organisations. Specifically, it states that if a member is, or intends to become, a member of a not-for-profit organisation, the member does not need to disclose a financial interest.

They are, however, required to disclose what is known as an 'impartiality interest' under the Rules of Conduct Regulations. This must be recorded in the minutes of the relevant meeting but does not limit the member from participating in the decision making.

This option proposes that the Act is amended to remove the exemption. This would mean that members of not-for-profit organisations would no longer be able to participate in discussion or decision making on matters relevant to that organisation.

[11] Part 5, Division 6

While this would limit elected members' ability to use their role to potentially benefit their organisation, it could also interfere with the decision making of councils. Elected members are often very involved with their communities and are members of various community groups. It is possible that a majority of elected members could be members of the same not-for-profit organisation. If they are prohibited from participating in decisions that relate to those groups, it could affect the ability of council to make a decision if there is no longer a quorum. The Act, however, contains two provisions to mitigate that risk.

Where a member has disclosed an interest, the other elected members at the meeting can decide that the interest is so trivial or insignificant to be unlikely to influence the member's conduct or that the interest is common to a significant number of electors or ratepayers.[12] In these circumstances the other elected members can allow that member to participate in the discussions and vote on the matter. This must be recorded in the minutes.

An application can also be made to the Minister by the council or CEO when an interest has been disclosed.[13] The Minister may decide to allow one or more members to participate in the decision making where this is necessary to provide a quorum or where it is in the public interest. The Minister can impose conditions on such an approval.

It could be argued that declaring an impartiality interest and having it recorded in the minutes is adequate to ensure transparency and accountability.

Elected member interests: Guidance 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?

Improving the behaviour of elected members: Guidance question

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

[12] Under s 5.68
[13] Under s 5.69

4. Local government administration

4.1 Recruitment and selection of local government Chief Executive Officers

Local governments are given considerable autonomy when it comes to employing a CEO. The Act requires a local government to employ a CEO that the council believes is suitability qualified.[14] Regulations require the council approve the process used to select and appoint a CEO before the position is advertised. The Act also requires that the CEO's performance should be reviewed by council at least once per year. Local government CEOs are appointed under a contract with a maximum duration of five years.

As the employing authority, the council has the power to employ, review the performance and dismiss a CEO ensuring that the CEO remains accountable to the council. Some elected members believe, however, that CEOs have too much power, leaving the council with no option but to renew a CEO's contract and to agree to the conditions requested.

High profile cases of governance failures in recent years indicate that, in some cases, selection outcomes could be improved. Likewise, a common issue expressed by small, regional councils is the difficulty in attracting high-calibre candidates. Reforms to the way CEOs are recruited and selected would potentially assist in expanding the pool of recruits and finding the right people.

The importance of an effective local government CEO with a strong and healthy relationship with council has been identified by multiple independent inquiries including the 2012 Metropolitan Local Government Review (the Robson Report) and inquiries into the Cities of South Perth (2002) and Canning (2014), the 2003 report on the Act by the Western Australian Parliament Standing Committee on Public Administration and Finance, and the Corruption and Crime Commission's report into the actions of the former CEO of the Shire of Dowerin.

The pitfalls associated with CEO recruitment were highlighted in the independent inquiry into the City of Joondalup in 2005. Among other things, the inquiry found that the council had failed to run an appropriate selection process for their CEO which resulted in the appointment of a candidate who had misrepresented their qualifications. This ultimately led to the dismissal of the council. While the example from the City of Joondalup is over a decade old and can be viewed as an isolated incident, the provisions in the Act concerning CEO recruitment remain largely

[14] Section 5.36

unchanged. Furthermore, it demonstrated that such issues can impact local governments regardless of their size.

This section examines whether improvements can be made in this area.

Across Australia

Jurisdiction	Provisions
New South Wales	New South Wales requires councils to use a merit based selection process and abide by equal employment opportunity provisions.
Victoria	A council must appoint a person after it has invited applications in a state-wide newspaper. In its Directions for a new Local Government Act paper, it is proposed to introduce the requirement for the Mayor to obtain independent advice when overseeing CEO recruitment.
Queensland	A council must appoint a 'qualified' person to be its CEO. A qualified person is someone that has the ability, experience, knowledge and skills that the local government considers appropriate.
South Australia	Councils are required to advertise the position in a state-wide newspaper and appoint a selection panel to make recommendations to the council on an appointment.
Tasmania	Councils are required to advertise the position but the Act does not currently prescribe principles or a detailed process. The draft bill provides the Minister with powers to specify the principles governing the selection of a general manager and their performance management.
Northern Territory	Legislation requires councils appoint CEOs in accordance with the relevant Ministerial guidelines.

Option 1: Local governments to engage the services of the Public Sector Commission to provide support and guidance to council during the selection of a CEO

A case has previously been made, most prominently in the 2012 Robson Report, that the Public Sector Commission (PSC) should be involved in the selection of local government CEOs. The rationale for this proposal is four-fold:

- the PSC is currently responsible for leading the recruitment of State Government agency CEO positions by examining the applications and making a recommendation to the Government;
- the expertise of elected members, as democratically elected representatives, may not necessarily extend to CEO recruitment and selection;
- elected members may not have the resources required to undertake a suitably intensive and wide-reaching recruitment and selection process to select a high-performing CEO, particularly if this process is to be conducted independently of the existing CEO; and
- local governments in regional areas have frequently reported difficulties in attracting suitably-qualified candidates. The involvement of the PSC in recruitment could expand the pool of available candidates.

Local governments could be encouraged, or required through amendments to the Act, to use the expertise of independent people approved by the PSC, or the PSC itself. Currently, local governments may use the services of a recruitment agency or other independent assistance. However, concerns exist with the overall quality and consistency of this support and the capacity of small local governments to pay for private recruitment services.

By adapting the process used to recruit State government CEOs, the PSC could support councils with recruitment by providing a shortlist of applicants. Council would then determine whether to appoint one of the shortlisted candidates or an alternative candidate.

Option 2: Councils to involve third-parties in CEO selection

The knowledge and experience within Western Australia's local government sector and the public sector more broadly represents an underutilised resource for councils when selecting a CEO. Greater assistance could be provided in two areas: in assisting with, or participating on the selection panel in an advisory capacity.

Under this approach, a list would be maintained of approved providers that are 'accredited' to provide expert advice to local governments during the selection of a CEO. The support provided could include general advice, recruitment and short-listing services, background checks on candidates and support to selection panels. Importantly it could include early discussion on the particular skills and experience required by the CEO to deliver that local government's Strategic Community Plan under direction of the council.

The list of approved people could include private recruitment agencies, representatives from peak bodies and independent senior public servants.

The availability of approved providers would ensure that all councils could access high-quality recruitment services. Local governments would be required to meet the costs associated with contracting private recruitment specialists but would benefit from a high-quality recruitment process.

This approach also proposes reforms that require a council to include an experienced panel member from another local government, peak body or public sector agency on the selection panel. This could improve the diversity of panels and better equip local governments in making this important decision.

Several entities may be suitable to perform the role of accrediting representatives: This could include the Department, the Local Government Advisory Board, or the Public Sector Commission.

Option 3: Local governments to adopt a CEO recruitment standard

A CEO recruitment standard could be developed in consultation with the sector. It could be required that local governments adopt the standard through amendments to the Act, or the sector could be supported in the application of the standards, by the PSC or other relevant third parties.

The standard could formalise the existing guidance on good practice for CEO recruitment and detail the matters that local governments should have regard to when selecting a CEO. It would set out steps or processes that should be undertaken.

The standard could draw on best practice guidance published by the Public Sector Commission and describe the characteristics and attributes that a CEO should possess together with desirable experience, competencies and qualifications.

Option 4: Status Quo

A council's autonomy in selecting a CEO is a fundamental element of the current Act. Reforms to the way CEOs are selected may be seen as a restriction on the autonomy of local governments. Most CEOs employed in the sector are highly competent and manage their local governments effectively. In addition, it can be argued that local government CEO positions are unique and elected members, who must work closely with their CEO, are best positioned to select a candidate. This does not, however, address any lack of skills or experience in the elected members who are undertaking the selection process.

Recruitment and selection of local government CEOs: Guidance 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?

4.2 Acting Chief Executive Officers

From time to time due to the absence of the CEO it is necessary for the local government to appoint an acting CEO. Absences can be temporary, when the CEO is on leave or temporarily absent for other reasons; or permanent, when the CEO has resigned, died or when the CEO's employment has been terminated.

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.[15] The Act is silent as to who has the responsibility for appointing the acting CEO.

Competing arguments exist as to whether the appointment of an acting CEO should be the responsibility of the CEO, council, or council in conjunction with the CEO. It can also be argued that there is a difference between the appointment of an acting CEO for a temporary absence and a situation where the appointed CEO will not be returning to the position.

The process for appointing an acting CEO is usually set out in council policy. In the absence of such a policy, this matter can cause confusion, especially if the CEO is absent unexpectedly.

[15] Section 5.39(1a)

Across Australia

Jurisdiction	Provisions
New South Wales	Appointed by council, although legislation is silent on temporary vacancies for short term absences.
Victoria	Nil
Queensland	The council appoints a qualified person to act in the absence of the CEO.
South Australia	If the CEO is absent and there is a deputy, the deputy acts as the CEO. If not, the acting CEO is appointed by council.
Tasmania	Acting CEOs are appointed by the mayor and confirmed by the council. The legislation is silent on temporary vacancies.
Northern Territory	If the CEO is absent and there is a deputy, the deputy acts as the CEO. If not, the CEO nominates a person and informs the council.

As illustrated above there is no one approach that has been adopted across Australia.

Acting CEOs: Guidance questions

61) Should the process of appointing an acting CEO be covered in legislation? Why or why not?

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 vacancy for an extended period (for example, while a recruitment process is to be undertaken)?

4.3 Performance review of local government Chief Executive Officers

The Act requires that the performance of each employee who is employed for a term of more than one year, including the CEO, is to be reviewed at least once every year.[16] While the CEO is responsible for reviewing the performance of officers, it is the council that is solely responsible for reviewing the CEO's performance.

[16] Section 5.38

Councils have significant autonomy in selecting the method and means to review the performance of the CEOs. Some councils appoint a sub-committee of elected members, while others use external independent experts, including WALGA, to assist the process. For some councils, this can be a cursory assessment.

Reviewing the performance of a CEO is a critical matter. Like recruitment, elected members may not have any expertise in performance review. The review of a CEO's performance can be particularly difficult when relationships between the council and CEO are not professional. Both hostile and overly friendly relationships between council and CEO can be equally problematic.

Across Australia

Jurisdiction	Provisions
New South Wales	Section 338 of the NSW *Local Government Act 1993* requires general managers and other senior council staff to be employed under performance based contracts and empowers the Chief Executive of the Office of Local Government to approve a standard form of contract for the general manager and senior staff. Part 7 of the approved standard contract for General Managers requires councils and General Managers to enter into a performance agreement setting out agreed performance criteria and for their performance to be reviewed regularly based on the performance criteria The role of the mayor prescribed under legislation includes to lead performance appraisals of the general manager in consultation with the councillors. The Office of Local Government has issued guidelines on the appointment and oversight of general managers. These include information on convening of performance review panels, their membership and the performance review process. Councils are required to consider the guidelines.
Victoria	At least once each year a council must review the performance of its Chief Executive Officer (section 97A(1) of the *Local Government Act 1989* (Vic)). The Chief Executive Officer's contract of employment must specify performance criteria for the purpose of that person's performance reviews (section 95A(2)). There is currently no legislative requirement for a council to engage independent advice regarding Chief Executive Officer performance matters, nor is there an existing

Jurisdiction	Provisions
	requirement for a council to maintain a policy concerning Chief Executive Officer performance. Reforms are being considered that will require all councils to have a CEO remuneration policy that broadly aligns with the policy that applies to executive positions in the Victorian Public Service. The directions paper also proposes that each council's audit and risk committee monitor and report on the council's performance against the remuneration policy, and further proposes that councils obtain independent professional advice in overseeing CEO recruitment, contractual arrangements and performance monitoring.
Queensland	The council is solely responsible for the performance review of the CEO as led by the Mayor and has autonomy to do so (nothing is prescribed). This often involves a group led by the Mayor, sometimes consultants are involved and sometimes it involves all councillors led by the Mayor.
South Australia	The *Local Government Act 1999* (SA) does not prescribe specific standards or processes in relation to CEO performance. Each council must have a chief executive officer. The CEO's performance standards are set by council. Section 97(1)(iv) of the Act enables termination of the CEO's appointment based on, amongst other things, failings of '…any performance standards specified by the council or in any contract relating to his or her appointment'. Section 99 covers the functions and some expectations of the CEO role and the Act contains other requirements of the CEO, however, does not contain quantitative performance measures. The Office of Local Government publishes guidance material for councils. This material addresses the selection process for a CEO but does include a short section covering the setting of CEO performance criteria by a council.
Tasmania	Section 28(2)(d) of the *Local Government Act 1993* requires the council to appoint and monitor the performance of the General Manager. External recruitment firms specialising in executive appointments are often engaged to assist with the appointment process, but are not mandated in legislation. Councils generally appoint a Council Committee under section 23 of the Act to undertake performance reviews of General Managers and report to the full council. Some

Jurisdiction	Provisions
	councils engage external consultants to assist with the performance review process but again this is not mandated. Amendments to the Act are currently being developed that would give a power to the Minister to develop Ministerial Orders regarding the appointment and performance of general managers. Specifically the Order would provide the processes and procedures to be followed by a council in monitoring the performance of a General Manager.
Northern Territory	While the Minister in the Northern Territory has issued guidance material, CEO performance review is a matter for the council.

Option 1: Approved third-party to be involved in the performance review of CEOs

As councils work with CEOs daily, they are uniquely positioned to assess CEO performance. Providing additional tools such as guidance material for councils to review performance is an alternative to legislative reform. Without the skills or expertise to use these tools, however, they may be of little benefit.

Elected members do not necessarily have the competencies or experience in conducting performance reviews and may face difficulties balancing the professional performance of the CEO with community concerns about the implementation of unpopular decisions.

Involving an approved third-party can mitigate some of these challenges and ensure that CEO performance is assessed based on evidence. It may result in more rigorous and fair performance reviews.

The Public Sector Commission manages performance agreements with State Government agency CEO's and equivalents. The role of the Public Sector Commission to participate in local government CEO performance reviews could be expanded by:

- providing advice to local governments;
- maintaining panels of experts that local governments could contract to assist with reviews; or
- participating in performance reviews with councils.

Other experts that local governments could involve include experienced elected members or senior public servants. Alternatively, councils could contract services from WALGA or other consultants.

Option 2: Local governments to adopt a CEO performance review policy

Councils adopting a CEO performance review policy that contains specified elements could achieve greater consistency between local governments and result in more rigorous and fair performance reviews.

Items to be included within a CEO performance review policy could include:

- who is required to participate in the performance review; and
- what matters should be considered in the review such as key performance indicators, benchmarks and progress towards achieving the Strategic Community Plan and Corporate Business Plan.

Requiring local governments to adopt a CEO performance review policy would mandate a practice that is already employed by some local governments across the State but could provide further guidance on the contents of such policies. This in turn may result in improvements to the conduct of CEO performance reviews.

Option 3: Local governments to conform to a standard for CEO performance review

Providing a standard for CEO performance review represents another option that could achieve greater consistency, fairness and rigour in CEO performance review. A standard would take the concept of policy a step further by specifying the methods for performance review and the matters to be considered.

Performance review of local government CEOs: Guidance 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 options do you prefer? Why?

68) Is there an alternative model that could be considered?

4.4 Extension or termination of the Chief Executive Officer contract immediately before or following an election

As an employee directly appointed by the council, a CEO contract may be extended or terminated by council at any time, though financial penalties will apply to early termination. This can create situations where a newly elected council dismisses the

CEO immediately after an election, or where a council extends the contract of the CEO before an election for an extended period thus binding incoming elected members.

Dismissal of a CEO immediately after an election can be a political decision, rather than one based on performance and can lead to a lack of continuity and dysfunction during the time when a new council is settling in to their role. Western Australian legislation specifies that a CEO or senior employee who has their contract terminated is entitled to be compensated the value of the contract to a maximum of one year's remuneration, which means that while there is a financial consequence for terminating a CEO, it is not so great as to dissuade councils from terminating CEOs.

Council decisions regarding CEO contract management should be based on the CEO's performance and achievement. The current legislative framework does not provide significant protections to ensure that the grounds for extension or termination of the CEO are valid.

In New South Wales the Independent Local Government Review Panel[17] recommended reforms that would introduce:

- a six month 'cooling off' period following a general election where a CEO's contract could not be terminated; and
- limits on the capacity of councils to extend CEO contracts prior to an election.

These reforms are being considered by the New South Wales Government.

A cooling off period could enable new councils and CEOs to establish a productive relationship, identify priorities and avoid potentially rushed or emotional decisions to remove a CEO.

Termination or extension of CEO contract around an election: Guidance 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 exceptions to this?

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17 http://www.localgovernmentreview.nsw.gov.au/documents/LGR/Revitalising%20Local%20Government%20-%20ILGRP%20Final%20Report%20-%20October%202013.pdf

4.5 Public expectations of staff performance

Western Australian local government employees perform important roles delivering services, regulating local businesses, supporting communities and ensuring that the local governments themselves are well managed.

While the public has high expectations for public officers at all levels of government, the public expectations of local government employees may be heightened because the community interacts so frequently with local government employees.

Local government employees are entrusted with public money, and must make sure that their decision making is fair and free of bias, and that private information is stored and used appropriately.

With over 15,000 employees across Western Australia, it is not surprising that, on occasion, public expectations of staff conduct and performance are not met. In Western Australia, the Public Sector Commission is responsible for oversight of minor misconduct for public officers and for misconduct and education programs. Matters of serious misconduct and corruption are the focus of the Corruption and Crime Commission.

There are clear benefits to preventing misconduct and raising the standard of public officer performance and conduct. The first step is employing the right people.

In respect to employment, the Act states that a person should not be employed unless the CEO believes that the person is suitably qualified for the position. It further states that employment should be based on merit and equity without nepotism, patronage or discrimination.

Local governments have greater autonomy than the State public service in determining the methods of selecting, renumerating and managing their workforce.

The Public Sector Commissioner's Instruction No.2 Filling a Public Sector Vacancy applies to State government agencies but not local government. This means there are no uniform requirements that local governments must advertise positions other than the CEO or senior employee. Officers are not required to complete a probationary period or meet other criteria such as being an Australian citizen or permanent resident.

Likewise, unless specified by an individual local government recruitment process, applicants are not required to provide evidence of a criminal record check, working with children check, health clearance or information regarding outstanding or completed disciplinary processes.

This gives local governments freedom to manage their operations more efficiently, but relies heavily on the diligence of CEOs.

Where oversight is not sufficient, poor workforce management decisions can be costly. Lack of diligence in the selection of staff can be particularly damaging in small local governments which have fewer staff. Remote local governments with small workforces are at greatest risk because they have fewer resources and may have difficulty attracting high quality applicants.

Many roles within local government involve significant levels of public trust. Some roles involve collecting and using private information, advising on important regulatory matters, procuring goods and services and enforcing local laws. Given the sensitivity and high public expectations of accountability, diligence and personal conduct in many local government roles, it could be argued that people found to have committed certain offences should be excluded from holding local government roles. Such exclusions would need to conform with discrimination laws.

Public expectations of staff performance: Guidance 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?

Strengthening local government administration: Guidance question

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

5. Supporting local governments in challenging times

The power of general competence means that the circumstances in which the State Government can reasonably intervene in local government affairs are limited. For instance, the State Government cannot intervene in lawful decisions made by a local government, even when these lawful decisions are inconsistent with broader community views.

Under the current Act, there are limited options for the State Government to implement remedial actions to ensure the good governance of a local government. This includes situations where a local government, a member of council, a CEO or 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 council, its members or employees, or the local government to properly perform its functions.

In most cases, the need for remedial action is due to relatively minor issues in governance. Typically, a remedial action may be required because a local government:

- fails to meet statutory compliance requirements including budgeting, annual reporting or rate setting;
- does not comply with responsibilities under the Act or regulations including tender provision requirements or reviews of internal procedures; or
- poor relationships between the administration and the council impacting the performance of a local government's functions.

Remedial actions currently take the form of direct interventions. Suspending a council and installing a commissioner is an option of last resort and is neither an appropriate or effective approach to respond to the smaller governance issues that impact local governments from time to time.

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.

Across Australia

Jurisdiction	Provisions
New South Wales	In New South Wales there are early intervention powers which are intended to provide the Minister with power to intervene early in a council that is experiencing difficulties. This may include the performance of a general manager (CEO). The Minister can issue performance improvement orders (PIO), and, in more serious circumstances, can suspend the governing body for up to 3 months (which can be extended for a further 3 months). A PIO can be aimed at addressing administrative deficiencies in the council. The Minister can appoint a temporary adviser to assist the council in implementing a PIO. Generally this is to assist the administrative body of council, but in some circumstances it is to assist the governing body. A financial controller can also be appointed to implement financial controls, and other functions relating to council finances, as specified by a PIO or a subsequent order appointing the financial controller. The cost is met by the Council.
Victoria	The Minister can appoint a municipal monitor at a local government to investigate complaints. The municipal monitor's function is to monitor council governance processes and practices, advise the council on governance improvements they should make, report to the Minister on any steps or actions taken by the council to improve its governance and the effectiveness of those steps, investigate any referred complaint received by the Minister, provide advice to and prepare a report for the Minister in relation to a complaint, and monitor and report to the

Jurisdiction	Provisions
	Minister on any other matters determined by the Minister. The cost is met by the Council.
Queensland	If information gathered by the department CEO shows a local government or councillor is not performing their responsibility properly or complying with the *Local Government Act 2009*, the information may be provided to the Minister along with recommendations about what remedial action to take. Remedial action is an action to improve the performance or compliance of a local government or councillor. The Minister may take remedial action that the Minister considers appropriate. Remedial action may include, for example, directing— (a) the local government or councillor to take the action that is necessary to comply with the *Local Government Act 2009*; or (b) the local government to replace a resolution that is contrary to a *Local Government Act 2009* with a resolution that complies; or (c) the local government to amend a local law by removing a provision that is contrary to the *Local Government Act 2009* If the local government is not performing appropriately, an advisor can be appointed. The advisor's role is to help the local government build its capacity to perform its responsibilities properly or comply with the *Local Government Act 2009* and perform other related duties as directed by the department CEO. If the local government is not performing appropriately, a financial controller can be

Jurisdiction	Provisions
	appointed to implement financial controls as directed by the department CEO; and perform other related duties as directed by the department CEO. Payments from an account kept by the local government require the financial controller's approval. The costs are paid to the State by the local government.
South Australia	Can appoint an administrator to undertake the affairs of the council if a council is dismissed for not undertaking its duties. The remuneration of an administrator is paid out of the funds of the defaulting council.
Tasmania	Can appoint a Commissioner to assist the Council, but no powers exist to assist with the administrative functions of the Council. The defaulting council is to pay the Commissioner.
Northern Territory	The Minister may establish a Commission of Inquiry to consider the affairs of a particular council. If deficiencies are identified, the Minister can recommend to the council specified remedial action to ensure the deficiencies are addressed. The Minister may place the council under official management if the deficiencies are serious enough or if the council has not remedied the situation. This applies to the council and not to the administration. Council pays for the official manager. The official manager has full power to transact any business of the council and perform any of its normal functions.

Proposed Remedial Action Process

The introduction of more sophisticated ways to work with local governments to improve financial management, governance and performance has the potential to prevent large-scale issues and to strengthen local government capacity.

Currently, capacity building strategies, such as Better Practice Reviews, governance programs, service delivery reviews, asset management programs and tailored one-on-one support are employed. While these programs have strengthened local government capacity significantly, they are voluntary. As voluntary programs, their reach is limited to local governments that wish to participate and participation varies considerably across the sector.

The other tool available is a Directions Notice, which requires the local government to provide certain information.

Providing the State Government with the legislative power to formally implement a process to ensure local governments are providing good governance to their communities could take many forms including:

- issuing a remedial notice requiring the performance of an action or activity.
- the appointment of a person to the local government to assist local governments with a part of their operations.
- requiring the local government to participate in a capacity building program.

Through a remedial action process, matters could be addressed more quickly and efficiently. The proposed process would allow the State Government to direct local governments to address concerns where the capacity to do so exists, or in more serious cases, to appoint a person to the local government where specific expertise is required.

In contrast to the current approach, the process described below presents 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.

Under the proposed approach, if a local government fails to comply with the Act or regulations, behaves in a manner that affects the ability of the local government to perform its functions, or other factors considered relevant, a remedial notice may be issued to the local government.

The remedial notice would describe the matter of concern and the actions that the State Government has determined are required to resolve the matter. The remedial notice would be backed by the Act with legislative power as a written statutory direction

that would require, by law, that the notified recipient undertake works or activities detailed in the notice.

If the matter detailed in the remedial notice is addressed then the remedial action process would be completed. This would be typical in breaches of the Act for minor matters.

However, if the matter is not resolved satisfactorily, the revised approach presents options for scaled, proportional responses. One option that has been identified previously is appointing a person to assist the local government to implement strategies to resolve the matter.

In 2016, this approach was used on a voluntary basis to assist a shire to strengthen its financial management. This arrangement has been successful and presents an option for improving performance of local governments in areas beyond governance. Unlike the voluntary approach used in this case, the proposed approach would be formally incorporated within the Department's risk and compliance approach.

An appointed person would need to be a suitably qualified person 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 staff, or the appointed person may oversee the administration.

Remedial intervention: Guidance questions

75) Should the appointed person be a departmental employee, 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?

To perform their duties, the appointed person would require wide-ranging powers and have 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; and
- reviewing, and making recommendations on, practices and procedures.

Powers of appointed person: Guidance question

78) What powers should an appointed person have?

A key role for the appointed person would be making recommendations to the Department about the success of the remedial action and whether escalation is required. In line with the current approach, in the rare event that a local government is failing to provide good governance for their district, the Minister will retain the ability to suspend a council and install a commissioner.

Discussion

The proposed remedial approach presents considerable benefits over the existing approach. It expands the narrow power of the existing directions notice to enable the Department to ensure that local governments are performing to the high standard expected by the community.

In situations where local governments are not meeting their obligations, the approach provides a scalable, repeatable and transparent approach that focuses on resolving the issue to the benefit of the community in a timely manner. In doing so, the approach is not focused on punishing the local government and by extension the wider community but on providing support.

The process may reduce costs in the long term by enabling intervention in local governments well before the need for formal inquiries. The process could provide councils and staff with the confidence of an independent evaluation that is key to identifying the issues that may be limiting the provision of good governance.

Views from local government peak bodies have been sought in the development of this proposal. While peak bodies have been broadly supportive, it is recognised that the suitability of the approach would be dependent on key, detailed aspects of its implementation. These include the details and conditions of employment of an appointed person including the responsibility for payment of the salary. Concerns were also expressed about the capacity of some local governments to respond to the remediation action process.

Remedial action process: Guidance questions

79) Do you think the proposed approach would improve the provision of good governance in Western Australia? Please explain.

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

Supporting local governments in challenging times: Guidance question

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

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 recognition of service and the ability of employees to transfer between local and State government.

These complications can make movement between local and State government less appealing for employees and limit the opportunity for transfers and secondments that currently give greater flexibility for State government agencies.

Removing these barriers has the potential to greatly increase the skills and capacity of both State and local government workforces. Both can be viewed as 'closed shops', and increasing the cross-pollination between these two major employers could result in exchange of skills, experience and capability that will benefit both tiers of government and the community.

While there are no specific prohibitions in place that would prevent individual State government agencies from recognising a new employee's service with a local government employer (or vice versa) in respect to long service leave and personal leave, the practice is not common. This is in part because no avenue currently exists for employers to recover the costs of the employee's leave entitlements.

Further legislative and industrial relations barriers exist to the seamless transition for employees between local and State government.

Local governments are defined in the *Public Sector Management Act 1994* as Schedule 1 entities. Other Schedule 1 entities include Western Australia's public universities, electoral officers of members of Parliament and government corporations.

Due to historic agreements, portability of leave (and recovery of the associated costs) to State government positions is possible for some schedule 1 entities but not all. It does not currently apply to local governments.

Reforms to simplify and encourage the transfer of employees between local and state government would require a whole of government approach and amendments to the *Public Sector Management Act 1994, Financial Management Act 2006,* and *Local Government Act 1995*.

Transferability of employees: Guidance questions

82) Should local and State government employees be able to carry over the recognition of service and leave if they move between State and local government?

83) What would be the benefits if local and State government employees could move seamlessly via transfer and secondment?

Making it easier to move between State and local government employment: Guidance question

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

Public confidence in Local Government

Elected members make decisions on how funding is raised by the local government and how that money is spent. They decide development applications and give building approvals, determine what services will be provided and how these will be delivered. These decisions fundamentally affect the nature, function and appearance of our towns and suburbs.

Senior officers prepare reports and provide recommendations to council on a wide variety of matters. Officers are also responsible for the implementation of council decisions.

The community places their trust in their elected members and the local government administration to make decisions that are in the best interests of the broader community and to act without bias or favour. Occasionally local governments can misuse that trust.

One area where the potential exists for this to occur is in the acceptance of gifts.

7. Gifts

7.1 Simplifying the gift provisions

Background

Councillors and local government employees, as everyone does, occasionally receive gifts. Given the important role of council members and many local government employees as decision-makers in positions of power, the public has a reasonable expectation that the important decisions that a local government makes are free from improper influence.

There is nothing inherently wrong with accepting gifts when they are offered. It is critical, however, that their receipt is openly and transparently acknowledged and recorded, and that those records are made freely available to the community. Non-disclosure of gifts that may have an effect on, or could be perceived as possibly having an effect on, the decision-making of elected members runs the risk of damaging the reputation of the local government sector and the trust placed in elected members by their communities. In extreme cases this could leave councils unable to perform their primary function of providing for the good government of people in their districts.

The rules concerning the declaration of gifts must also be sensible and not create an unreasonable burden or compromise the council member's rights to maintain a private life beyond their service as a councillor.

Gifts and contributions to travel are regulated under the Act and three sets of Regulations – the *Local Government (Administration) Regulations 1996, Local Government (Elections) Regulations 1997 and Local Government (Rules of Conduct) Regulations 2007*. Each regulation has a different framework for declaring gifts and contributions, which has led to confusion in the sector. Attachment 2 outlines the provisions currently applying in Western Australia.

It is widely acknowledged that current approach to gifts is overly complex and requires reform. Acknowledging the need for change, in September 2016 a gift working group was established with representatives from the Department of Local Government, WALGA, LG Professionals WA, the Department of the Premier and Cabinet, the Mayor of Armadale, Shire President of Morawa and the CEOs of the Cities of Swan and Vincent.

Prior to the formation of the working group WALGA, as the peak body representing the sector, prepared a policy position based on consultation with its members. While the working group did not accept all of these positions, the document formed the basis for the discussion and the working group's initial recommendations. Following

consideration of the matter, the individual working group member's positions have been refined.

With the review of the Act it is timely to consider the recommendations of the group to ensure that the proposed way forward is aligned to public expectations of accountability and transparency.

Across Australia

A summary of local government gift disclosure requirements across Australia is provided below:

State	Threshold	Exemptions
New South Wales	$500 gift, $250 travel	• Relatives • Political donation captured under other legislation. • Travel from public funds, political parties, relatives
Victoria	$500	• Relatives • Reasonable hospitality. • Gifts received more than 12 months prior to becoming an elected member or employee (not including election campaign donations)
Queensland	$500 gift, travel considered a "sponsored hospitality benefit"	• Relatives • Someone else related by blood or marriage. • Friends • Sponsored hospitality benefits where there could not be a perception of a conflict of interest
South Australia	$750 in annual return, $100 in register of interests	• Hospitality of reasonable value • Relatives by blood or marriage or family members
Tasmania	N/A	Not set at state-wide level
Northern Territory	N/A	Not set at a state-wide level
Australian Capital Territory	N/A	N/A

It is clear there is no “one size fits all” solution for the disclosure of gifts in the local government sector.

Current situation

The current framework for the disclosure of gifts and travel is outlined in detail in Attachment 2 and is summarised below:

Elements of Disclosure	Current requirements
Gift disclosure	✓
Travel disclosure	✓
Prohibited gifts	✓
Notifiable gifts	✓
Election gifts	✓
Monetary threshold	• $50 for a notifiable gift • $200 for a disclosable gift • $200 for an election gift • Over $300 for a prohibited gift
Prescribed timeframe for cumulative acceptance of gifts	Six or 12 months (depending on the regulation)
Who is required to disclose	Elected members and designated employees for gifts and travel contributions. Notifiable and Prohibited gifts apply to elected members only.
Exemptions (vary depending on the category of gift)	• A gift or travel from a relative • A gift or travel under $200 • Travel contribution from Commonwealth, State or local government funds • Travel contribution as part of occupation of the person (not related to council duties) • Travel contribution was from a political party, of which the person is a member, for the purpose of political activity or representation • An electoral gift disclosable under the Elections Regulations • A gift from a statutory authority, government instrumentality or non-profit association for

Elements of Disclosure	Current requirements
	professional training (prohibited and notifiable gifts only) • A gift from WALGA, the Australian Local Government Association or Local Government Managers Australia WA (for prohibited and notifiable gifts only)

Recommendations of the gifts working group

The gifts 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 of their representatives; and
- create a simplified legislative framework to deal with gifts received by elected members and senior staff.

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

- There would no longer be separate monetary 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.
- 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.
- Recipients of gifts valued at $500 or more would be prohibited from voting on matters before the 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.
- Exemptions from the gift provisions would be minimal to aid simplicity.
- 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.
- 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, any applicable threshold amounts and disclosure requirements.

Some members of the reference group sought additional changes, after agreement was reached on these positions.

Key elements of the proposed approach

The current framework sets three different categories for gifts with different thresholds:

- $50 for a notifiable gift;
- $200 for a disclosable gift; and
- $300 for a prohibited gift.

Notifiable and prohibited gifts apply in situations where there is likely to be a perceived conflict of interest – where the donor has matters which require council decisions.

Replacing notifiable and prohibited gifts with a single category

Under the proposed approach, there would no longer be such a thing as a "prohibited" gift. Instead, the appropriateness of the acceptance of the gift will be a matter for the recipient.

This would simplify disclosure requirements while still maintaining a level of probity, accountability and transparency.

All gifts could be accepted regardless of the amount, but that acceptance of gifts over the threshold would disqualify the recipient of such a gift (being an elected member) from voting on matters relating to the donor. This would apply for the term in which they received the gift, or for the term following their election in the case of a gift received in the election period. This deals with any perception of bias in decision-making.

The Minister for Local Government would have the discretion to approve voting by elected members on such matters and on application from the local government where this is considered to be in the public interest. This approach would be consistent with section 5.69 of the Act, which gives the Minister the statutory authority to allow elected members who have disclosed an interest to continue to participate in meetings.

This would:

- allow elected members and CEOs to use their own judgement on the acceptance of gifts of any value without the concern that they are "prohibited"
- demonstrate that there is nothing inherently wrong with accepting a gift when it is offered, provided acceptance is properly regulated and disclosed
- deal with the critical matter to be addressed, being any attempt to influence decision-making through the provision of gifts
- make it clear to recipients and donors alike that while any and all gifts can be accepted regardless of value, they can have no perceived or actual impact on the recipient's decision-making as the recipient will not be able to vote on matters relating to the donor
- provide for a level of independent Ministerial oversight by requiring recipients to apply for approval to vote on matters concerning the donor in circumstances

where this is considered necessary (for example, if a quorum can no longer be formed).

Consolidating ‘gifts’ and ‘contributions to travel’

Consolidating gifts and contributions to travel would further streamline the gift provisions. At present, different information must be recorded depending on whether a gift or contribution to travel is received. What constitutes a contribution to travel can be a source of confusion, particularly when work trips may be extended for personal purposes. In addition, components of a trip may come under the definition of a gift rather than a contribution to travel.

In the interests of simplifying the disclosure requirements while still maintaining a level of probity, accountability and transparency, it is recommended that separate treatment of “contributions to travel” be discontinued.

In addition, using “gift” as an umbrella concept which includes travel will simplify and streamline the existing disclosure requirements for elected members and reduce red tape. The consolidation of the two also recognises that contributions to travel, including accommodation, are in practice a form of gift.

Having a single threshold of $500

Replacing the categories of ‘notifiable’ and ‘prohibited’ gifts with a monetary threshold of $500 would simply gift provisions significantly. Any gifts under $500 would be exempt from disclosure.

The argument for increasing the threshold is two-fold: to compensate for removing multiple exemption categories and so that the threshold was set at a level that would not generally capture gifts received from friends or multiple small gifts from the same person or organisation such as hospitality. Removing exemptions (see details in the table above) would further simplify the provisions, leading to less confusion on what should be disclosed.

The working group recommended $500 as the threshold as it would capture many of the gifts that it was considered that members of public would reasonably expect council members to receive in the course of their everyday life – what could be considered to be personal gifts.

While it is acknowledged that raising the threshold to $500 would allow more expensive gifts to be accepted without the requirement to disclose, there is also a significant reduction in red tape and administrative burden through the proposed lessened disclosure requirements.

Increasing the disclosure threshold to $500 would:

- align Western Australia with the requirements in South Australia and Victoria; and
- align with the proposed gift framework more generally and reduce the confusion stemming from the differing disclosure amounts, leading towards a simplified and streamlined approach.

New South Wales has the highest disclosure threshold, being $1,000. However, New South Wales is also more restrictive in prohibiting donations from particular donors, perhaps as a method of offsetting its relatively high disclosure threshold.

Disclosure timeframes

Regulations currently prescribe a six-month timeframe for cumulative acceptance of gifts to the $50 and $300 notifiable and prohibited thresholds. The cumulative threshold for disclosable gifts and contributions to travel is $200 in a 12-month period. The working group recommended that these should be amended to $500 over a 12-month period.

Raising the threshold and extending the prescribed time period will have the effect of reducing the administrative burden on elected members. For example, attendance at regular meetings including a meal worth $40 would add up to $480 over a year. It is less likely that, with a threshold of $500 in 12 months, reasonably priced hospitality would be disclosable.

A timeframe of six months effectively doubles the threshold. Gifts of $1,000 are likely to be significant enough that there is a strong public interest argument for disclosing them.

In the interests of promoting accountability and transparency and ensuring the community is aware of expensive gifts received by elected members it is recommended that the prescribed time period be 12 months.

Who should the framework apply to?

The working group recommended that the new gift disclosure provisions apply only to local government elected members and CEOs, with each local government required to adopt a gifts policy with which all other employees must comply.

Allowing each local government to set its own gifts policy provides the opportunity to tailor requirements to a local government's unique situation. With 137 local governments across the State and staffing numbers ranging from fewer than 20 to more than 800, there is no practical "one size fits all" approach.

The current framework captures all manner of employees which, while potentially appropriate in theory, is not actually necessary or practical. While those who choose

to run for office and represent their community as an elected member are public figures, and are therefore expected to make reasonable concessions as to their personal privacy, there is no compelling public interest reason for all local government employees, who are private citizens, to be required to disclose gifts.

Empowering local governments to develop their own gifts policies for employees gives the sector the flexibility to determine what gifts should and should not be accepted and to tailor each policy to the requirements of the district.

Excluding gifts from relatives

Gifts received from a relative do not need to be disclosed. A relative is currently defined as any of the following —

> (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant of the person or of the person's spouse or de facto partner;
>
> (b) the 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. [18]

Consistent with the recommendations of the working group, it is proposed that the definition of relative is expanded to ensure foster and adopted children and grandchildren are also classed as relatives. This is consistent with the definition of "relative" in the *Members of Parliament (Financial Interests) Act 1992*, which includes that "an adopted person shall be treated as the legitimate child of his adopters".

It is also intended that the definition of gift specifically refers to fiancés and fiancées. This will remove any uncertainty about the giving of an engagement ring.

Penalties for non-disclosure or provision of false information

The working group recommended that existing penalties for non-disclosure and giving false and misleading information be retained. Under section 5.89B of the Act a failure to comply with the disclosure requirements is an offence with a penalty of $10,000 or imprisonment for two years.

Similarly, it is an offence to give false or misleading information in a return lodged under various sections of the Act (including the gift provisions) with the same penalty of a $10,000 fine or two years' imprisonment.

[18] section 5.74

A new framework for disclosing gifts: Guidance questions

85) Is the new framework for disclosing gifts appropriate?

86) If not, why?

87) Is the threshold of $500 appropriate?

88) If no, why?

89) Should certain gifts – or gifts from particular classes or people – be prohibited? Why or why not?

90) If yes, what gifts should be prohibited?

Excluding gifts in a genuine personal capacity

More recently, local government peak bodies have advocated for reforms in addition to the working group's initial recommendations by seeking for gifts in a genuine personal capacity to also be excluded

The argument for this exemption is that gifts from friends are a personal matter and not relevant to the performance of an elected member's functions. The value of some of these gifts may be over the threshold limit.

The difficulty with this option is how to define 'personal capacity'. A substantial gift from a property developer, for example, could be given to coincide with the elected member's birthday and said to be given in a personal capacity.

It is the role of elected members to make decisions on matters affecting the community, including on planning and other approvals and on expenditure of funds raised from rates and other charges. A gift could influence the recipient's views on the donor and result in decision making that may not be in the public interest. This can be mitigated in one of two ways: banning the receipt of gifts or requiring the giving of the gift to be made public. The second method allows the community to judge whether they believe decision-making has been affected.

An alternative treatment is to set a threshold at an amount that would exclude gifts that could be considered to be a personal gift.

Excluding gifts received in a personal capacity: Guidance questions

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 a gift over the threshold?

94) If so, what should these be? Please justify your proposal.

Gifts: Guidance question

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

Transparency

Local governments are required to make a variety of information available as a matter of accountability and transparency. This includes issuing public notices on tenders, advertising annual electors meetings and keeping registers on a range of subjects. Other documents are required to be available for public inspection at the council office during business hours.

These requirements have not kept up with technology. In the digital age, people expect to be able to access information when and where they want. For many people, finding a notice in a newspaper is old-fashioned and not easily accessible. In fact, in the Kimberley and other areas of the State, the West Australian newspaper is no longer available.

All local governments now have a website and some have social media accounts.

This section examines what changes need to be made to meet current community expectations on information availability.

8. Access to information

It is vital that local governments take positive steps to provide information to their communities. This ensures that:

- Local governments operate in a transparent manner;
- Residents are sufficiently engaged in community affairs; and
- The public recognises the work and service that local governments provide to the community.

The Act provides many situations where local governments must provide information to the community. This includes issuing public notices, keeping registers on a variety of subjects and making certain documents available for public inspection.

Access to technology has changed the way that information is shared, received and discovered. Current trends indicate that people are turning away from traditional print media in favour of the internet and social media.

This shift in information consumption has significantly reduced the impact of the print notices required by the Act. It has also brought into question the practice of keeping physical documents available for inspection, which requires a person to attend the local government's offices during business hours.

It is difficult to justify the cost and inconvenience of continuing these practices when the same information could be made available electronically. In addition to being cheaper, electronic disclosure has the potential to be more accessible and convenient.

All other jurisdictions in Australia have addressed this issue by amending their legislation to account for new technology. The particular approach differs from State to State, but each jurisdiction now provides for:

- the operation of local government websites;
- the issuing of electronic notices; and
- online access to public documents.

Western Australia is the only jurisdiction that has yet to follow suit. The Act is generally silent on electronic disclosure and local governments have been left to address this issue themselves.

As a result, the review is considering how the Act should account for electronic disclosure and what approach is the most appropriate.

8.1 Public notices

The Act requires local governments to provide public notice to the community in a variety of circumstances. The Act specifies two forms of notice:

(a) written notice in a newspaper circulating in the district ("local notice"); and
(b) written notice in a newspaper circulating in the State ("state-wide notice").

The Act requires public notices to be issued in many situations. A complete list of the notices required by the Act is listed at the end of this section as supplementary information-Pubic notices.

The introduction of electronic notices on local government websites would have a number of positive benefits, but also have a number of drawbacks. These impacts are summarised below:

Benefits of electronic notice	Drawback of electronic notice
Cheaper than print media	Increased IT costs
Doesn't require the services of an external publisher	Requires IT skills provided internally or via a contractor
Accessible and convenient for the general population	Inconvenient for people who lack internet access
Available to be viewed from any location with internet access	Unlikely to be viewed by people outside the district
Can operate in conjunction with accessibility software	May not be accessible for certain demographics
Modernises sector standards for local governments	Makes local governments more dependent on website operations

The ultimate effect that electronic notices will have on the sector depends on the role that these notices will play in legislation.

For example:

- If an electronic notice were introduced as a replacement for a print notice, this could represent a significant reduction in red tape and its associated costs.
- If an electronic notice were to replace a State-wide notice, this could reduce transparency since people outside the district would generally have no reason to check the local government's website.
- If local governments were required to issue an electronic notice instead of providing the option of an electronic or print notice, this would improve sector standards at the cost of flexibility.

- If an electronic notice were required in addition to print notices, this would increase the regulatory burden imposed on the sector, with an associated increase in costs.

Across Australia

In other Australian jurisdictions, the requirement to issue electronic notices on websites is generally in addition to print notices.

This approach improves transparency, maximises the coverage of notices and ensures that local governments take advantage of electronic communication.

However, this approach also represents an increase in total regulatory burden and cost. This undermines one of the primary advantages of electronic notice, which is its potential to reduce costs.

Jurisdiction	Public notice requirements
Western Australia	Print notice only
New South Wales	Print and electronic notice required
Victoria	Print and electronic notice required
Queensland	Print and electronic notice required
South Australia	Print and electronic notice required
Tasmania	Print and electronic notice required
Northern Territory	Print and electronic notice required

General options

The general options available for public notice are 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

Option	Local notice requirements	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

Specific options

In addition to reviewing how notices are made available, the question also arises as to whether a particular type of notice is still appropriate in its current form.

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.

How appropriate these options are will depend on the type of notice and the reason for its issue.

Public notices: Guidance 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 the State-wide notices in Attachment 3, are there alternative websites where any of this information could be made available?

8.2 Information available for public inspection

Under the Act there are a number of registers and documents that local governments are required to produce and maintain. These documents are required to be available for inspection at the local government office on request.

Information that is currently required to be available to the public:

Information required to be made available
Annual Report
Annual Budget
Future plan for the district
Minutes of council, committee and elector meetings
Notice papers and agendas of meetings
Reports tabled at a council or committee meeting
Primary and Annual returns – for elected members Includes – Sources of income Trusts Debts Property holdings Interests and positions in corporations
Discretionary disclosures generally
Gifts (already required to be on the website)
Electoral gifts register
Disclosure of travel contributions (already required to be on the website)
Allowance for deputy mayor or deputy president
Payments for certain committee members
Codes of Conduct
Complaints register (concerning elected members)
Contracts of employment of the CEO and other senior local government employees
Register of delegations to committees, CEO and employees
Schedule of fees and charges

Information required to be made available
Proposed local laws
Gazetted local laws (and any other law that has been adopted by the district)
Rates record
Electoral roll
Tenders register

Currently the only documents that are required to be placed upon a local government's website are the gifts register and contributions of travel register, and annual report following the amendments to the auditing provisions.

It may also be appropriate to make additional information available to enhance the transparency of local governments.

Across Australia

Information required to be available in other States includes:

Additional Information
Rates information generally
District maps that contain ward boundaries
Adverse findings by the Standards Panel or State Administrative Tribunal against elected members

Broadly speaking the impacts of requiring information to be made available on the local government's website are assessed as follows:

Benefits of electronic registers	Drawback of electronic register
Accessible and convenient for the general population without having to attend a local government office Available to be viewed from any location with internet access More likely to be viewed by members of the local community	Increased IT costs Requires IT service via internal staff or contractor Makes local governments more dependent on website operations

Benefits of electronic registers	Drawback of electronic register
Can operate in conjunction with accessibility software	
Modernises sector standards for local governments	
Potentially reduces staff time in providing access to the registers at the office	

The impact that electronic disclosure will have depends on how the information is provided.

General options

The options available 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 on 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 on 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 requested for it in person.

Information available for public inspection: Guidance questions

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

Provision	Documents	In person only	Website only	Both	Neither
Section 5.53	Annual Report				
Section 5.75 & 5.76	Primary and Annual returns – for Elected members Includes – sources of income Trusts Debts Property holdings. Interests and positions in corporations.				
Section 5.87	Discretionary disclosures generally				
Section 5.82	Gifts (already required to be on the website)				
Section 5.83	Disclosure of travel contributions (already required to be on the website)				
Elections Regulations 30H	Electoral gifts register				
Section 5.98A	Allowance for deputy mayor or deputy president				
Section 5.100	Payments for certain committee members				
Functions and General	Tenders register				

Regulations 17		
Section 5.94 & Administration Regulations 29	Register of delegations to committees, CEO and employees	
	Minutes of council, committee and elector meetings	
	Future plan for the district	
	Annual Budget	
	Notice papers and agendas of meetings	
	Reports tabled at a council or committee meeting	
	Complaints register (concerning elected members)	
	Contracts of employment of the CEO and other senior local government employees	
	Schedule of fees and charges	
	Proposed local laws	
	Gazetted Local laws (and other law that has been adopted by the district)	
	Rates record	
	Electoral roll	

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

101) Should the additional information that is available to the public in other jurisdictions be available here? If so which items? How should they be made available: in person, website only 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 requests from members of the public to see this information? What resources do you estimate are involved in providing access in person (hours of staff time and hourly rate)?

Access to information: Guidance question

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

9. Available information

9.1 Expanding the information provided to the public

Initial consultation with the sector highlighted additional information which could be reported and made available for public inspection.

The list of these proposals is provided below:

Proposal	Reasoning
Live streaming video of council meetings on local government website	Streamed meetings will give the public a better understanding of council matters. It will also allow community members an opportunity to directly scrutinise the behaviour of elected members during meetings.
Diversity data on council membership and employees	Reporting this information will identify whether a local government's council and employment practices are reflective of local demographics.
Elected member attendance rates at council meetings	Reporting this information will give the public an indication of whether elected members are attending meetings in accordance with their statutory duties.
Elected member representation at external meetings/events	This information will give the public an understanding of how often the council sends representatives to external events. The information will also assist ratepayers to assess whether an appropriate level of representation is occurring and whether the expenses are reasonable.
Gender equity ratios for staff salaries	This information will indicate whether the local government is operating in a diverse and equitable manner.
Complaints made to the local government and actions taken	This information will inform the public of how the local government deals with

Proposal	Reasoning
	complaints and how often action is taken to resolve these issues.
Performance reviews of CEO and senior employees	Providing these reviews will allow ratepayers to assess whether the CEO and senior staff are pursuing their duties with appropriate diligence.
Website to provide information on differential rate categories	This information will assist ratepayers to understand the rate system and how it applies in practice.
District maps and ward boundaries	This information will assist the public to identify the limits of their local government's jurisdiction. This will also mean that the public can identify the correct authority to which they should refer a complaint or query.
Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission	This will inform district residents of critical governance matters of which they might not otherwise be aware. While adverse findings may be the subject of public media, there is never a guarantee that this will occur.
Financial and non-financial benefits register	This would inform ratepayers of the amount spent on each elected member and senior employee for: (a) remuneration (b) superannuation payments (c) other monetary benefits (d) fringe benefits, and (e) any other non-monetary benefit which is significant and capable of being quantified.

For each proposal, the following options have been identified:

Option 1: Status Quo

Under this option, the reporting requirements under the Act will remain unchanged. This will prevent any increase in regulatory burden, but it will represent a lost opportunity for increasing the transparency standards applicable to the sector.
While there will not be a legislative requirement to provide the information, local governments will still be able to provide it voluntarily.

Option 2: Additional reporting requirement

Under this option, local governments will need to provide the additional information on the local government's website.

This will increase transparency, better informing community decision-making. It will, however, represent an increase in regulatory burden.

Option 3: Policy requirement

Under this option, 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:

(a) whether the information is available for public inspection; and
(b) if so, how this information may be accessed by the public.

This policy will need to be made available on the local government's website.
This option will slightly increase transparency of local governments, since it will assist the public to determine what kind of information is accessible to them. It does not make the information readily available.

The option will slightly increase the regulatory burden on local governments, although this burden will be restricted to the creation and disclosure of policy documents. Any further burden will depend on what level of information the local government chooses to make disclosable to the public.

Expanding the information provided to the public: Guidance 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:

Proposal	Should this be made available: No, optional, required?
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 meetings/events	
Gender equity 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	

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

Expanding the information available to the public: Guidance question

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

Red Tape Reduction

No-one likes red tape. It gets in the way and makes simple tasks seem difficult.

Distinguishing red tape from vital checks which ensure our government acts in a fair manner, protects members of the community, and that everyone abides by the law, can be difficult.

Local governments may be subject to unnecessary red tape. Similarly, they may be unintentionally creating red tape for businesses and members of the community. This aspect of the review seeks to identify examples of red tape so these can be addressed.

10. Reducing red tape

Modern bureaucracies must strike a delicate balance between oversight and red tape. Accountability measures that go too far can become regulatory burdens that create unnecessary costs that outweigh their compliance benefits.

A goal of effective regulation is to impose the least amount of resistance to activity, for the lowest cost possible, while providing a governance framework to prevent or reduce the number, or seriousness, of issues in a timely manner.

The Department has identified a number of options for reducing red tape within the current Act and regulations. These only represent a partial list of potential options to streamline the legislation that provides the framework for local government.

Although this part of the review seeks to cover all aspects of the Act and associated regulations, it does not concern the individual decisions or internal policies used by a local government. These matters will be considered in phase 2 of the review.

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.

Defining red tape: Guidance 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.

a) Briefly describe the red tape problem you have identified.
b) What is the impact of this problem? Please quantify if possible.
c) What solutions 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.

a) Briefly describe the red tape problem you have identified.
b) What is the impact of this problem? Please quantify if possible.
c) What solutions can you suggest to solve this red tape problem?

Red Tape Rapid Assessment Tool

The Department of Treasury administers the Red Tape Rapid Assessment Tool (RAT) to provide a framework for examining processes and procedures. The RAT helps identify customers' and agencies' points of frustration or failures in a given process, and clarify options for improvement.

The RAT allows users to take a step back to see the whole picture, and map out the journey of how different stakeholders interact to achieve the desired outcome. This is appropriate when there is a specific process to be mapped to pinpoint areas for improvement (e.g. delays, duplication, bottlenecks, waste, and capacity issues).

Regulatory Burden Measure

The Department of Treasury administers the Regulatory Burden Measure (RBM) to assist in calculating the compliance costs of regulatory proposals on business, individuals and community organisations using an activity-based costing methodology. The tool also calculates the cost of administering regulatory proposals. This helps to illustrate the cost burden on government of enforcing and monitoring a particular regulatory process.

The quality of the cost analysis through the RBM is dependent on the quality of data available. This can help paint a better picture of the administrative and compliance activities imposed, including the volume of work, steps required and time taken to comply. This information will feed into an RBM assessment.

As an alternative to calculating a final dollar saving, other means of articulating a red tape reduction saving include:

- Number of licences, registrations and documents being moved online
- Number of hours/days/weeks/months saved from going online, reduced waiting times, fewer delays
- Number of paper pages no longer required or being published online

All feedback received on this topic will be analysed and considered for implementation. Easy to implement and well-considered suggestions may be implemented in phase 1. More complicated suggestions will be considered for inclusion in phase 2 of the review.

10.2 Potential red tape reductions

Special Majority

Section 1.10 of the Act defines a special majority decision as one made by a council with more than 11 members through a 75 per cent majority. In cases where there are 11 elected members or fewer, decisions that require a special majority may be made through an absolute (more than 50 per cent) majority.

The rules concerning special majorities currently apply to just 18 of the State's local governments, and a special majority is only required when changing the method of filling the office of mayor or president.

This means that a special majority is required very infrequently and by only a few local governments.

Special majority: Guidance question

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

Senior employees

A local government may designate employees to be senior employees.[19] Currently, local government CEOs are required to inform the council of a proposal to employ or dismiss a senior employee. The council may accept or reject the CEO recommendation but if council rejects the CEO's recommendation it must provide reasons for doing so.

Some local government CEOs have argued that council involvement in workforce matters related to senior employees confuses the separate roles of council and

[19] section 5.37 of the Act.

administration established elsewhere in the Act, and can be source of tension between council and CEOs[20].

For employees other than senior employees, the Act provides the CEO with broad workforce management powers, including the power to employ, direct, and dismiss employees. As a responsibility of the CEO, council has no role in the recruitment, selection and performance management of non-senior employees.

The Act does not define what criteria should be used to determine if an employee should be designated as a senior employee. A local government could, if it wished, designate all employees as senior employees.

Most commonly, local governments will designate employees that report directly to the CEO as senior employees. As these people are key personnel, often responsible for large portfolios and budgets, council may wish to retain the current oversight provisions.

An alternative view is that, as council cannot direct local government staff (other than the CEO), council involvement in workforce issues (beyond those involving the CEO) is an unnecessary expansion of council responsibility. It also can be viewed as a restriction of the powers and responsibility of the CEO to manage the day to day operations of the local government and implement council decisions.

Across Australia

Jurisdiction	Status
New South Wales	Senior staff are a defined category of person linked to the Executive Band of the Local Government (State) Award. The CEO can appoint (and dismiss) although must consult with council
Victoria	Nil
Queensland	Senior employees are a defined category and are appointed by a panel that includes the mayor, CEO and one other
South Australia	No separate senior employee category. The Deputy CEO is appointed by the CEO with the concurrence of the council. All other appointments are made by the CEO.

[20] Local governments have also queried whether the council is required to be informed of a decision to renew the contracts of senior employees.

Jurisdiction	Status
Tasmania	No separate category and the CEO is responsible for the appointment of all staff
Northern Territory	No separate category and the CEO is responsible for appointment of all staff

Senior employees: Guidance 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?

Exemption from Accounting Standard AASB124 — Related Party Disclosures

The Australian Accounting Standards Board (AASB) establishes Accounting Standards that regulate financial transactions and management of financial matters. Local government treatment of financial reporting must conform with AASB Standards, although regulations provide that if a provision of the Australian Accounting Standards is inconsistent with a provision of the *Local Government (Financial Management) Regulations 1996*, the provision of the regulations prevails to the extent of the inconsistency.

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.

Exemption from accounting standard AASB124 - Related party disclosures: Guidance questions

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

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.

Regulation 30 of the *Local Government (Functions and General) Regulations 1996* provides for a number of exemptions from these requirements predominately with respect to land transactions. Other exemptions exist where the requirements of the Act have been complied with but the property was not disposed of.

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.

Disposal of property: Guidance questions

115) The threshold for trade-ins was set originally to $50,000 in 1996 and raised to $75,000 in 2015. Should that threshold be raised higher, if so how high?

116) Should the threshold remain at $75,000 but with separate exemptions 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 these thresholds create an unacceptable risk that the items would not be disposed of to achieve the best price for the local government?

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

Reducing red tape: Guidance question

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

Regional Subsidiaries

Local governments are finding themselves under increased pressure to maintain community services in the current economic climate. The Act provides local governments with several mechanisms by which they can cooperate and pool resources. This includes the ability to form semi-independent entities known as regional subsidiaries. This model provides the ability for two or more local governments to provide a service or carry on an activity jointly with fewer compliance obligations under the Act.

Currently, many local governments are concerned that the regulatory requirements are too stringent to pursue the establishment of regional subsidiaries and at this time there are no regional subsidiaries in operation in WA.

The State Government strongly support local governments working collaboratively, and an effective subsidiary model will assist in delivering positive outcomes for local communities.

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.

The characteristics of a regional subsidiary are:

- a separate legal entity from the local governments that form it
- governed by a binding charter which sets out its powers, functions and duties
- managed by a board appointed by the member councils, which can consist fully or partly of non-local government members (that is, people who are not elected members or employees)
- In the event of a regional subsidiary being wound up, the assets would become the property of the local governments that formed it, and those local governments would be liable for any debts
- required to release an annual report and financial statement, with any other reporting requirements to be set out in the charter
- not allowed to pursue commercial enterprises or borrow money except from the local governments which form it

This model was designed as a low risk-low compliance one. That is, most of the reporting and other statutory obligations under the Act would not apply to a regional subsidiary as it would be undertaking activities that would not present a significant risk to the forming local governments and therefore to the communities in those districts.

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 implications of this proposal are discussed below.

11.1 Risks and benefits of borrowing

Regional subsidiaries were designed to be used as a form of collaborative service provision. The intent was that the model would allow local governments to pool their resources to provide new services and more effective existing services. They could also use the model to share back-office functions, such as accounting, records management and human resources.

For this reason, much of the financial management and reporting controls in the Act have not been applied to regional subsidiaries.

Importantly, for a regional subsidiary to be created, the Minister must approve an Establishment Charter which sets out the purpose of the regional subsidiary and its governance arrangements prior to its creation.

If subsidiaries were permitted to borrow money, this could have a number of advantages:

Advantage	Reasoning
Subsidiaries will have a greater capacity to obtain funds	The subsidiary could borrow money which can be used to pursue the subsidiary's goals. The subsidiary will be able to obtain funds for unexpected situations or emergencies. Establishment of subsidiaries will be easier, since once the subsidiary is formed, it can borrow money to assist with setting up its operations.
Subsidiaries will be less dependent on financial contributions from the member councils	Subsidiaries will require less funding from member councils, since they can borrow money when needed. Borrowing money from a bank is less complex than obtaining funding from the member councils.

Advantage	Reasoning
Subsidiaries will be more attractive to local governments	If the subsidiary model is more flexible, there is more chance that local governments will consider using the model.
Complexity will be reduced for the member councils	The forming councils do not have to consider how the loan will be apportioned between them.

Allowing subsidiaries to borrow money would also involve a number of risks and disadvantages which are set out below:

Disadvantage	Reasoning
Increased vulnerability	If a subsidiary incurs significant levels of debt, this will make the subsidiary more vulnerable to financial or economic shocks.
Increased chance of insolvency	If a subsidiary is unable to pay its debts, the member councils will be required to pay the debts on the subsidiary's behalf. This could cause significant financial loss and the loss of jobs. It will also cause significant damage to public confidence.
Reduced control by member councils	Member councils will have less control over the borrowing activities of the subsidiary, with the degree of control and reporting entirely dependent upon any restrictions placed in the charter. Member councils may not foresee the need for these at the time of forming the subsidiary or may not have sufficient skills in this area to ensure that adequate safeguards are put in place. There is no requirement for the managing body of a regional subsidiary to have any members from the local governments (whether elected members or officers).
Repayments	Once a subsidiary borrows money, it will need to pay the money back in addition to interest repayments.

Disadvantage	Reasoning
	This will place the subsidiary under pressure to earn revenue to repay the loan. Any money spent on interest repayments will divert money which could have been spent on service provision. If a subsidiary is unable to pay back a loan, the member councils will be liable for any interest which is unpaid as well as the principal loan.
Subprime lending	The debts of a subsidiary will always be guaranteed by member councils. Banks will have little incentive to ensure that the subsidiary itself can repay the loan, since the debt can always be recovered from ratepayer money. Banks that make risky loans to a subsidiary will actually be rewarded if the debt spirals out of control, since this increases the total profit that the bank will receive.

While the borrowing of money would lead to a number of risks, the danger could be mitigated by ensuring sufficient protections.
These legislative protections could include one or more of:

- Increasing the required reporting requirements of a subsidiary;
- Requiring the subsidiary to obtain consent to borrow;
- Only allowing borrowing to occur when permitted by the charter;
- Limiting the purposes for which money can be borrowed; or
- Limiting the amounts which can be borrowed by a subsidiary.

Each one of these precautions would lower the risk of a subsidiary, but would also represent a reduction in the model's flexibility.

Across Australia

Each Australian jurisdiction has a different approach regarding whether subsidiaries are allowed to borrow money. Subsidiaries in this situation has been interpreted widely to be the most applicable model in that jurisdiction. The range of approaches is as follows:

Jurisdiction	Status
Western Australia	Subsidiaries can borrow money, but only from member councils that formed it.
New South Wales	Subsidiaries can borrow money with Ministerial approval.
Victoria	Subsidiaries can borrow money with Ministerial approval.
Queensland	Subsidiaries cannot borrow money.
South Australia	Subsidiaries can borrow money when permitted by the charter and with the consent of member councils.
Tasmania	Subsidiaries can borrow money, but Ministerial approval is needed if liabilities exceed 30 per cent of subsidiary's revenue.
New Zealand	Subsidiaries can borrow money as necessary. Debts are not guaranteed by member councils.

11.2 Options:

Option 1: Status quo

This option proposes that the existing rules will remain unchanged and subsidiaries can only borrow from member councils.

This option will mean that subsidiaries do not gain the advantage of being able to borrow money from external bodies to pursue their objectives. It will mean, however, that subsidiaries will remain low-risk.

The current provisions have not provided the incentive for local governments to establish regional subsidiaries. Consequently, the collaborative benefits sought in the development of the legislation have not eventuated.

Currently, there are no regional subsidiaries in operation in WA.

Option 2: Regional subsidiaries are permitted to borrow from Treasury Corporation.

This option proposes that regional subsidiaries will be permitted to borrow money from the Treasury Corporation.

This will mean that subsidiaries have less chance of becoming insolvent. The Treasury will only lend money to the subsidiary in reasonable circumstances and subject to reasonable terms.

There is still a possibility that the subsidiary may borrow money it lacks the capacity to repay. Member councils will still be liable for the debt at the cost of their ratepayers.

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

This option proposes that regional subsidiaries will be permitted to borrow money from financial institutions if permitted by the charter.

This course of action would result in the complete range of advantages and disadvantages listed in the previous section.

If this option is taken, the Government would need to review what additional legislative protections might be necessary to ensure that borrowing does not cause excessive risks to ratepayer money.

Regional subsidiaries: Guidance questions

121) Which option do you prefer?

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

123) Why or why not?

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

Regional subsidiaries: Guidance question

125) Do you have any other suggestions or comments on this topic, including on any other aspect of the *Local Government (Regional Subsidiaries) Regulations 2017*?

Local Government Act review: Guidance question

126) You are invited to make comment and put forward suggestions for change on other matters which have not been covered in this paper.

For more information, please contact:

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Translating and Interpreting Service (TIS) – Telephone: 13 14 50

Attachment 1: Councillor position description

Councillor position description	
Role as prescribed by the *Local Government Act 1995*	• represent the interests of electors, ratepayers and residents of the district • provide leadership and guidance to the community district • facilitate communication between the community and the council • participate in the local government decision making process at council and committee meetings • perform such other functions as are given to councillor by the *Local Government Act 1995* or any other written law
Accountabilities, as prescribed by the *Local Government Act 1995*	• an understanding of the role and structure of local government as prescribed by the *Local Government Act 1995* • an understanding of the quasi-judicial town planning role of local government, as prescribed by the *Planning and Development Act 2005* • an understanding of Integrated Strategic Planning – the strategic plans for the future of local government, the processes involved and the strategic role of a councillor • an understanding of the process of managing the Chief Executive Officer's performance • ability to read and understand financial statements and reports • a basic understanding of legal processes
Governance and ethical standards	• an understanding of the 'separation of powers' between councillors and the administration (the difference between governing and managing) • an understanding of meeting process, including Standing Orders • an appreciation for policy development processes

Councillor position description	
	• an awareness of risk management strategies • an understanding of the accountability framework prescribed by *the Local Government Act 1995* and the *Corruption and Crime Act 2003*, and other legislation
Values, characteristics and commitment to the role	• the ability to communicate, debate and actively participate in meetings; ability to enhance discussion and assist discussions to reach closure; ability to disagree, without being disagreeable • the ability to develop and maintain effective working relationships and to manage interpersonal conflicts • ability to exercise independent judgements

Attachment 2: Gifts

The current gift framework

The current framework is established by section 5.82 of the Act for gifts and section 5.83 of the Act for contributions to travel. Under these sections, relevant persons are required to disclose gifts and contributions to travel over a prescribed amount, in writing, to the CEO within 10 days of receipt. The disclosures must be recorded in a register using a set form, which must then be made available on the local government's official website. There is currently no timeframe for disclosures to be published on the local government website.

Gift disclosures must include:

- a description of the gift;
- the name and address of the person who made the gift;
- the date on which the gift was received;
- the estimated value of the gift at the time it was made; and
- the nature of the relationship between the relevant person and the person who made the gift.

Section 5.82(4) of the Act defines a "gift" as:

"…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 contributions to travel…".

Section 5.82(2) provides for the following exemptions from disclosure:

- if the gift did not exceed the prescribed amount ($200), unless it was:
    - one of two or more gifts made by one person at any time during a year; and
    - the sum of those two or more gifts exceeded the prescribed amount;

or

- the donor was a relative of the person.

Travel disclosures must include:

- a description of the contribution;
- the name and address of the person who made the contribution;
- the date on which the contribution was received;
- the estimated value of the contribution at the time it was made;

- the nature of the relationship between the relevant person and the person who made the contribution;
- a description of the travel; and
- the date of travel.

A "contribution to travel" is not explicitly defined in the Act but section 5.83(4) states that it includes "accommodation incidental to a journey". Regulation 34D of the *Local Government (Administration) Regulations 1996* defines a "travel contribution" as:

"…in relation to a person, means a financial or other contribution that has been made to any travel undertaken by the person."

Section 5.83 provides for the following exemptions from disclosure:

- if the contribution was made from Commonwealth, State or local government funds; or
- the contribution was made by a relative of the person; or
- the contribution was made in the ordinary course of an occupation of the person which is not related to his or her duties as an elected member or employee; or
- the amount of the contribution did not exceed the prescribed amount unless it was –
    - one of two or more contributions made by one person at any time during a year; and
    - the sum of those two or more contributions exceeded the prescribed amount;

or

- the contribution was made by a political party of which the person was a member and the travel was undertaken for the purpose of political activity of the party, or to enable the person to represent the party.

If an elected member receives a gift or contribution to travel that needs to be disclosed under section 5.82 or 5.83 then for the remainder of their term in which the gift was received, the donor is deemed to be a "closely associated person" under section 5.62(1)(eb). As a consequence, the member will then have a financial interest (section 5.60) and need to disclose that interest in accordance with s. 5.65 if the donor requires (or has a financial relationship with someone who requires) a local government decision.

Section 5.103 of the Act requires every local government to prepare or adopt a code of conduct to be observed by elected members, committee members and employees. Regulations may prescribe the content or matters that are to be included, being the *Local Government (Administration) Regulations 1996.* Further information on codes of conduct can be viewed in Chapter 3.1 of this paper.

Section 5.104 of the Act states that elected members are required to observe rules of conduct which are set out in regulations, specifically the *Local Government (Rules of Conduct) Regulations 2007*.

In addition to the requirements set out in the Act, there are three sets of Regulations dealing with disclosure of gifts and contributions to travel:

- *Local Government (Rules of Conduct) Regulations 2007* (Rules of Conduct Regulations)
- *Local Government (Administration) Regulations 1996* (Admin Regulations)
- *Local Government (Elections) Regulations 1997* (Election Regulations)

Each set of regulations sets out different requirements including disclosure periods, monetary thresholds and exemption categories.

Rules of Conduct Regulations

The Rules of Conduct Regulations are "general principles to guide the behaviour of elected members". This includes acting with reasonable care, diligence, honesty and integrity, acting lawfully, avoiding damage to the local government's reputation, and being open and accountable to the public.

Regulation 12 sets out the requirements surrounding acceptance and disclosure of gifts received by elected members.

Regulation 12 broadly aligns with the definition of gift under section 5.82(4) of the Act except for the following exemptions:

- a gift from a relative as defined in section 5.74(1) of the Act – parent, grandparent, sibling, uncle, aunt, nephew, niece, lineal descendant, spouse/de facto; or
- an electoral gift disclosable under the *Local Government (Elections) Regulations 1997* Regulation 30B; or
- a gift from a statutory authority, government instrumentality or non-profit association for professional training; or
- a gift from WALGA, the Australian Local Government Association or Local Government Managers Australia WA.

Types of gifts

The Rules of Conduct Regulations provide for two distinct types of gift with two monetary thresholds.

A notifiable gift is any gift between $50 and $300, or any series of gifts from the same donor which would come to that amount in value in a six-month period. Notifiable in

this context means that any gift between $50 and $300 must be disclosed to the CEO and entered into the notifiable gift register.

A prohibited gift is any gift worth over $300, or any series of gifts from the same donor which would come to that amount in value in a six-month period. Elected members cannot accept prohibited gifts if the donor is undertaking, is seeking to undertake, or it is reasonable to believe will seek to undertake, an "activity involving local government discretion".

An activity involving local government discretion is defined at *regulation 12(1) of the Rules of Conduct Regulations*. It means "an activity that cannot be undertaken without an authorisation from the local government or by way of a commercial dealing with the local government". A practical example of such an activity in a local government context could be a property developer seeking to build an apartment block – such a change would require an application to the local government for approval.

These provisions sit alongside the section 5.82 and 5.83 provisions. Where a gift is valued between $200 and $300 and the donor is undertaking, or seeking to undertake, an activity involving local government discretion, disclosure will be required in both registers.

Administration Regulations

The Administration Regulations provide for administrative matters for local governments, including meeting procedures, employment requirements, reporting and planning, and disclosure of financial interests. This includes disclosure by local government employees of gifts.

The Administration Regulations mirror the Rules of Conduct Regulations in most matters relating to gifts.

Relevant regulations

Regulation 25 prescribes the amount of a gift for the purposes of section 5.82(2)(a) of the Act. The prescribed amount is $200.

Regulation 26 prescribes the amount of a contribution to travel for the purposes of section 5.83(2)(d) of the Act. The prescribed amount is also $200.

Regulation 34B prescribes that local governments must have a code of conduct regarding the acceptance of gifts. The code of conduct provisions only apply to employees. Regulation 34B of the Administration Regulations otherwise mirrors Regulation 12 of the Rules of Conduct Regulations.

The types of gifts established in Regulation 12 of the Rules of Conduct Regulations are, again, mirrored in Regulation 34B of the Admin Regulations.

Election Regulations

The Election Regulations prescribe requirements for the holding and management of local government elections.

Relevant regulations

Regulation 30A provides that gifts of $200 or more, or gifts with a total value of $200 or more received from the same person in the "disclosure period" are relevant for the purposes of the Election Regulations.

Regulation 30BA provides that candidates cannot receive gifts unless the name and address of the donor are known to them. Such gifts are not taken to have been received if, as soon as they become aware of the gift, the candidate takes reasonable steps to either return the gift or give it to the CEO for disposal.
Regulation 30B provides for the disclosure requirements.

Regulation 30CA provides that the donor of the gift must also disclose to the CEO within a required time.

Regulation 30C outlines the disclosure period. The disclosure period commences six months before election day and concludes three days after election day for unsuccessful candidates. For successful candidates, the disclosure period concludes on the start day as defined in section 5.74 of the Act. This effectively means that any electoral gifts received six months prior to and three days after the election must be disclosed.

Regulation 30D provides that disclosure must be made by completing a set form and lodging it with the CEO, within three days of the making, receipt or promise of a gift once the person has nominated to be a candidate. Gifts received earlier than the nomination date but within six months of the election must be disclosed within three days of nomination.

Regulation 30F outlines the information to be provided: description of the gift, date of receipt/making/promise, value and name/address of each donor.

Regulation 30G requires the CEO to maintain an electoral gifts register. Disclosures relating to unsuccessful candidates must be removed after the disclosure period (that is, three days after election day) and be retained separately for at least two years. Similarly, for successful candidates, the CEO must remove disclosures following the completion of the person's term of office. Those forms must be retained separately for at least two years.

Regulation 30H requires the electoral gifts register be kept at the local government's offices for public access.

Supplementary Information: Public notices

Situations where local public notices are required by the Local Government Act or associated regulations:

Provision	Situation	Details
Section 3.12	Local law is made and gazetted by the local government	Notice must specify the date the local law activates and where it can be inspected
Section 3.50	Closure of a thoroughfare for more than 4 weeks	Public notice must be issued before closure can occur
Section 3.51	Alterations to property in a way that will affect any individual	After public notice is issued, a “reasonable time” must be given before work can commence
Section 3.58	Disposing of certain kinds of property other than via an auction or tender	Notice must invite submissions from the local community (2 week minimum)
Section 5.29	Convening a meeting of local electors	Public notice must be issued at least 14 days prior to the meeting
Section 5.50(1)	Policies regarding the making of extra payments to terminated employees	Public notice must be issued after policy is adopted
Section 5.50(2)	Extra payments made to terminated employees	Public notice only required if amount exceeds the policy made under section 5.50(1)
Section 5.55	Release of annual report	Public notice must be issued as soon as practicable after the report is accepted by the council
Section 6.11	Proposal to use reserve account for a purpose other than what the money was originally reserved	Public notice must be given a month before the proposal is put into operation
Section 6.19	Proposal for the local government to set a new fee or charge	Public notice only required if changing fee or charge other than at the start of a financial year

Provision	Situation	Details
Section 6.20	Proposal for the local government to borrow money or obtain credit	Public notice must be given a month before the proposal is put into operation
Section 6.36	Proposal to impose differential rates and minimum payments	The notice must provide information on the rates being imposed and invite public submissions (3 week minimum)
Schedule 2.2 Clause 7	Local government seeks to carry out a review of the district ward boundaries	Public notice must invite public submissions (6 week minimum)
Schedule 6.3 Clause 1	Local government seeks to sell land for non-payment of rates	Public notice must be issued if the ratepayer cannot be notified personally through usual means
Administration Regulation 12	Council meeting dates	Public notice must be issued once a year and list the meeting dates for the next 12 months
Administration Regulation 19D	Release of strategic community plan	Notice must specify where the plan is available for inspection
Constitution Regulation 11H	Validity of election results is challenged	Notice must be issued once a decision is reached in the Court of Disputed Returns
Elections Regulation 73	Local election is to be postponed to a future time	Notice must be issued stating that the election is postponed
Elections Regulation 80	Final results of local election are available	Public notice must set out the results in the prescribed form
Elections Regulation 92	Poll to determine how presiding member of council is to be appointed	Public notice must set out the results in the prescribed form
Regional Subsidiaries Regulation 4	Proposal to establish subsidiary	Notice must state where the business plan may be inspected and invite submissions (6 week minimum)

Situations where State-wide notice is required:

Provision	Situation	Details
Section 2.12A	Proposal to change the method of electing the presiding member of council	Public notice must invite public submissions on the proposal (6 week minimum)
Section 3.12	Proposal to introduce new local law	Public notice must invite public submissions on the draft local law (6 week minimum)
Section 3.16	Review of an existing local law	Public notice must invite public submissions on the existing local law (6 week minimum)
Section 3.59	Major trading undertakings or land transactions	Public notice must invite public submissions on the business plan (6 week minimum)
Section 4.39	Closing date for enrolment in election	The notice must include details on how a person can become an elector
Section 4.47	Nomination of candidates in election	The notice must specify how many seats are up for election and how nominations can be submitted
Section 5.36	Advertising a vacancy for a CEO position	Also applies to senior employee positions
Schedule 6.3	Sale of land	The notice must include a description of the land and any improvements sold with the land
Functions and General Regulation 14	Invitation for tenders	Tender process applies whenever the local government seeks to acquire goods or services above a prescribed amount
Functions and General Regulation 21	Expression of interest for prospective suppliers	This process is used to obtain a group of prospective suppliers prior to formal tender process
Functions and General Regulation 24AD	Panel of pre-approved suppliers	Similar to tender process, but conducted in advance

Provision	Situation	Details
Functions and General Regulations 24E	Regional price preference policy	Notice must specify the region to which the policy will apply and invite submissions (4 week minimum)