



Late Item 8.5

Review of the Local Government Act August 2020

Ordinary Council Meeting

26 August 2020

Item 8.5

Attachment (1) and (2)

8.5 Local Government Review Panel Final Report – Review of the Local Government Act

File reference			
Report date			23 August 2020
Applicant/proponent			WALGA, Avon-Midland Country Zone, Minister for Local Government
Officer disclosure of interest			Impartial Interest, Mr Fletcher has a training Contract With WALGA
Previous meeting references			
Prepared by			Sean Fletcher, Governance Officer
Authorised by			CEO
Attachments			
Attachment 1	Page	15	Local Government Review Panel final report
Attachment 2	Page	68	WALGA - Local Government Review Panel Final Report (05-034-01-0001 TB)

PURPOSE

Council is asked to consider supporting WALGA's recommendations to State Council regarding the Local Government Review Panel's Final Report into the Local Government Act.

BACKGROUND

Local Government Review Panel

In November 2019 a panel of experts was formed to progress the development of a new Local Government Act for Western Australia.

The Local Government Review Panel was established to consider and recommend high-level direction and guiding principles for the new Act.

The panel met from November 2019 to May 2020 and looked at best practice models in Australia and overseas as well as the recent consultation on WA's Local Government Act 1995.

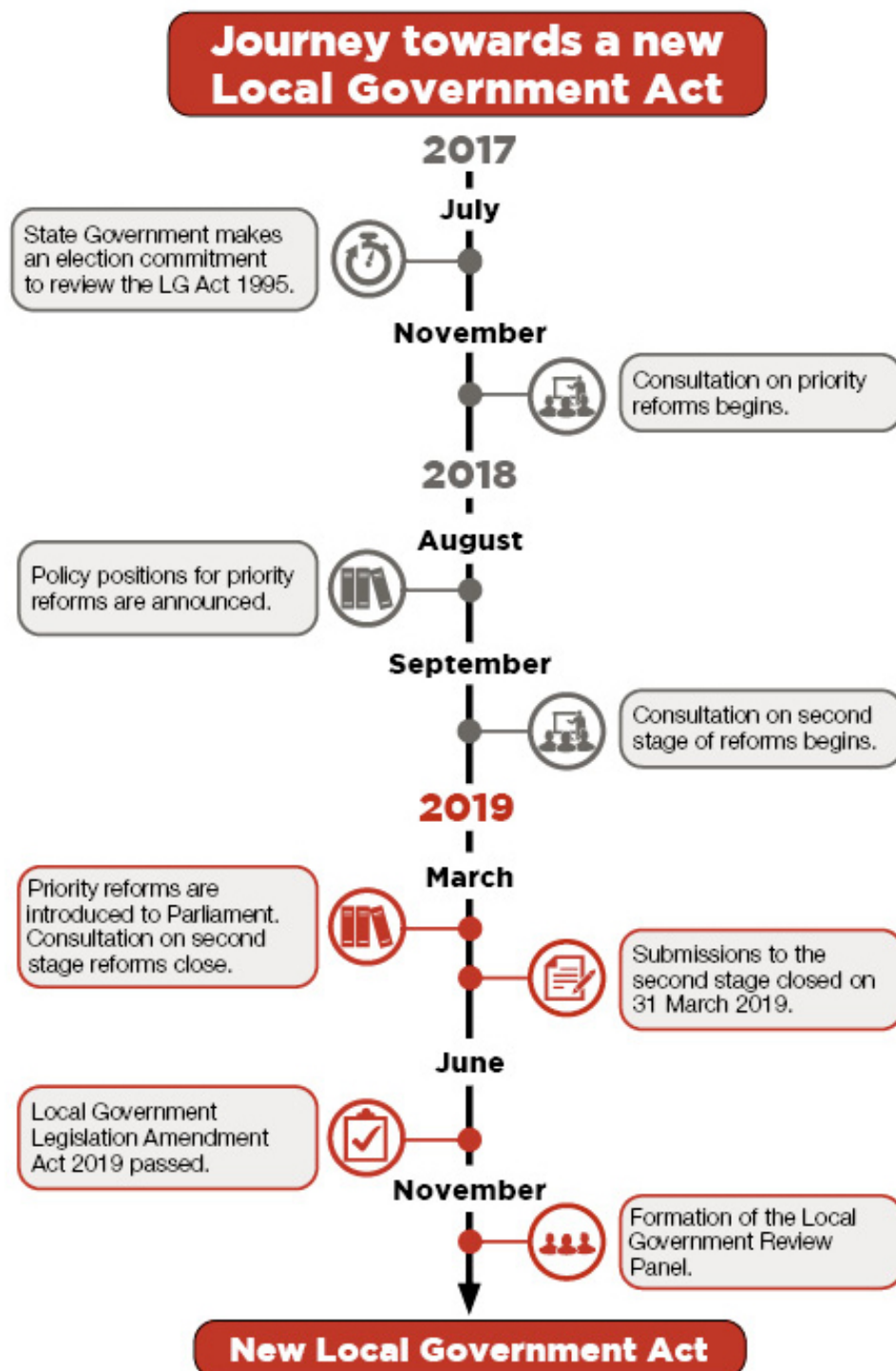
On 4 August 2020, the final report of the Local Government Review Panel was released by the Hon. Minister for Local Government, David Templeman:

- The report will now be considered by the McGowan Government
- In preparing the report the panel considered extensive consultation and international best practice models

The report, by the Local Government Review Panel, follows on from significant legislative reforms passed by Parliament last year including mandatory training and a new gift declaration framework for all elected members.

The panel made 65 recommendations for the proposed legislation that focus on future-proofing local governments in Western Australia and promoting healthy, connected and engaged local communities.

The panel closely considered national and international best practice models as well as drew on the extensive feedback from the recent consultation conducted by the Department of Local Government, Sport and Cultural Industries. The timeline for the review of the Act is as follows:



Recent Consultation

Consultation on proposed Code of Conduct and CEO Standards

On 27 June 2019, the Local Government Legislation Amendment Act 2019 was passed in Parliament. The Act includes a requirement for the introduction of:

- a mandatory code of conduct for council members, committee members and candidates (Code of Conduct); and
- mandatory minimum standards covering the recruitment, selection, performance review and early termination of local government Chief Executive Officers (CEO Standards).

The department sought feedback on a draft Code of Conduct and draft CEO Standards and accompanying guidelines. Submissions closed on 6 December 2019. Over 400 responses were received during the consultation period. The Code and Standards are currently being drafted, taking into account that feedback.

Current consultation

Local Government Regulations Amendment (Consequential) Regulations 2020 will bring into effect measures relating to:

- The harmonisation of the appointment of authorised persons across multiple pieces of legislation in the local government portfolio;
- Local and state-wide public notices; and
- Improved access to information, including through publication on the local government's website.

A consultation draft and explanatory notes have been prepared. We seek your comment on these regulations. Feedback was expected by Monday 13 July 2020.

The Local Government Industry's Response to the Review Panel's Final Report

On Thursday, 20 August 2020, the Shire President advised the CEO (and the Governance Officer) of a late item going to the Zone meeting the next day regarding the Local Government Act Review Panel Report and may like to provide input.

The Governance Officer responded later that day to the President and CEO with comments in general regarding the final part of the Local Government Act Review and WALGA's submission to the Zone's for the Minister's consideration.

During the Zone meeting on Friday 21 August 2020, the Shire President advised the CEO (and the Governance Officer) that individual Councils have been asked to consider WALGA's position on the Local Government Act Review Panel Report as soon as possible. The President also asked if it was possible to submit a late item to Council for consideration at today's meeting. The notes taken by the President at the Zone meeting consist, in part, the following:

- WALGA hasn't been asked to provide feedback to the Minister but they are going to;
- State council meeting beginning of Sep. WALGA would like to put a position to the Minister through state council;
- The document prepared for today's Zone meeting is a working document;
- Unlikely State Gov will draft new legislation prior to the election in 6th months. WALGA believes State Gov will formulate some policies that they take into the election to draft into legislation should they get back in;
- Wanted to get the document in front of the Zones as quick as possible & before the upcoming State Council Meeting;
- WALGA has been working on this as late as this morning;
- Understand we can't get Councils to consider this prior to today's Zone meeting. However our Zone's State Council Representative will have to make a decision on this position at the

upcoming state council meeting. The Zone is therefore given an opportunity to provide a position today;

- A second motion was made that delegates take WALGA's position back to their Councils & provide individual responses from each shire to WALGA. Do they support WALGA position? Is there any positions Shires are at odds with?
- Most positions around the state so far are supporting WALGA's position.

Mr Robert Dew, Executive Officer to the Avon-Midland Country Zone, subsequently advised the Shire President by email later that day:

To All Zone Members & Delegates I attach an updated version of the State Council Agenda Item 5.5 - Local Government Review Panel Final Report. WALGA has advised that some discrepancies have been noticed in the report distributed yesterday. The updated changes are highlighted on yellow.

At today's Zone meeting the Zone resolved to -

1. Support WALGA recommendations to State Council; and.
2. Request all Zone members review the agenda item to State Council and the Local Government Review Panel's Final report and to provide comment and feedback to the Zone and WALGA in time for consideration by State Council at its meeting to be held 2 September 2020.

Mayor Tracey Roberts, who was in attendance at today's meeting, stressed the importance of feedback on the recommendations in the Panel Final Report to guide WALGA in this matter. Input will be consolidated into a recommendation to State Council. Mayor Roberts also commented that due to the tight time-frame, WALGA would be happy to receive comment from local governments who have not been able to formally consider and adopt a resolution in regards to this matter.

It was suggested that if possible comment and feedback be provided by Friday 28 August 2020.

The Minister for Local Government has accepted an invitation to attend the State Council Meeting on 2 September 2020 to discuss the Panel's Final Report and recommendations.

To this end, WALGA's Tony Brown, *Executive Manager Governance and Organisational Service* and James McGovern, *Manager Governance* have advised in their report to State Council:

WALGA carried out an extensive consultation process on Phase 2 of the Local Government Act Review in 2018/19, culminating in sector positions being endorsed by State Council in March 2019. This agenda item considers the Local Government Review Panel's recommendations in the context of the sector's current advocacy positions.

The Minister for Local Government has not considered the Panel's recommendations at this stage and has not requested a consultation process on the report. WALGA is taking the opportunity to obtain a sector opinion on the recommendations to provide to the Minister.

The Recommendations below are subject to Zone input and all Zone recommendations will be collated into a consolidated recommendation that will be provided for State Council consideration at its meeting on 2 September 2020.

COMMENT

It is, perhaps, unusual that the Minister for Local Government did not ask for WALGA's

feedback regarding the Review Panel's Final Report. As requested by the Zone, presented for Council's consideration is the WALGA agenda item and recommendations to State Council. The author's comments are as follows:

Some Preliminary Thoughts

Local Government Professionals has also gone out to its membership at the same time. One issue that LG Pro has raised is that the City of Perth Inquiry Report does not overshadow the current review of the LG Act. In particular, Jamie Parry (LG Pro President) stresses:

The City of Perth Inquiry Report contains a total of 341 recommendations, 215 which relate to the City and a further 126 that relate to sector-wide action.

He has written to the Minister stressing that we cannot allow the findings and recommendations of Inquiries such as that from the City of Perth as a mechanism to continue to overregulate, over control, and impose yet more bureaucracy, and the focus on undertaking the review of the Local Government Act with the objectives to modernise, empower and enable local government, to better meet community expectations for accountability and transparency, not be lost.

Specific Comments on Each Recommendation and WALGA's Position

The Chair of the Review Panel has addressed in the foreword of the report that the:

Recommendations in this review are a road-map to more agile and inclusive local governments, with a clear purpose to deliver for the enhanced wellbeing of their communities. A new legislative framework that ensures community consultation and integrated planning is a centrepiece of a local government's operations, as well as an emphasis on regional and intergovernmental collaboration.

The recommended renewed focus on integrity, self-regulation and accountability will give local governments the tools to ensure good governance and continuous improvement.

An Act based on this report would prepare local governments in Western Australia not just for the challenges of today, or the next few years, but for the long-term, and would put them in good stead to continue to foster healthy, connected and engaged local communities.

The Final Report contains 65 recommendations for consideration. WALGA's comments and those of the author regarding each recommendation and comment are as follows:

Recommendations 1, 2, 3, 4, 6, & 7 Introduction and Role of Local Government

Agree with comments here. They provide for a more focused level of government and principle based approach rather than to keep prescribing matters in the Act and its Regulations.

Recommendation 5 – Introduction and Role of Local Government

Agree with WALGA that the promise was for a size and scale compliance regime and not the minimum standards to all local governments now proposed.

Recommendation 8 – Structural Reform

Makes sense to have the Grants Commission and Advisory Board be one body: Local Government Commission. They are currently supported by the same staff.

Recommendation 9 Structural Reform

Support

Recommendation 10

Support. However, matters re the removal of the Dadour Provisions are tricky.

Recommendation 11

Support the concept of community boards. Need to settle on an effective criteria. New Zealand does this extremely well (refer to the empowerment column in the IAP2 Engagement model).

Recommendations 12, 13 & 14 – Expanded Regional Cooperation

Support the concept of regional cooperation models instead of formal regional local governments (which currently must operate the same as a normal local government).

Recommendation 15 – State Local Government Partnership Agreement

This will make it clear regarding local government's position in the role of government.

Recommendations 16, 17 & 18 – Aboriginal Matters

Makes sense that local governments are adequately supported and resourced regarding aboriginal communities.

Recommendation 19 - Optional Preferential Voting

Yes, agree with WALGA to oppose. Elections must be first past the post. The author can confirm that the previous experiment with preferential proportional voting was a complete disaster. It was confusing and on election night the community could not follow the count.

Recommendations 20 & 21 & 27 Review of Property Franchise

WALGA wants to undertake consultation rather than implement one vote only at this point in time for local government elections.

My view is that it is time for one vote instead of a person having a vote as a resident, owner occupier and even as a director of a business in the district. So, a person at the moment can end up having two votes in their home district and a vote in another district.

Recommendation 22 – 4 Year Election Cycle

WALGA wants to engage with the LG Sector re moving to a four yearly election cycle. The issue is, perhaps loss of "corporate knowledge." The author's view is it will bring a level of stability.

Recommendations 23, 24 & 25 – Conduct of Elections

WALGA has advocated for more than one electoral provider. The author's view is that it is just fine to continue with the WA Electoral Commission.

Caretaker policy provisions – fair enough. Will be more relevant should LG go to a four year election cycle.

Crowdfunding could be tricky to monitor.

Recommendation 26 Elected Member Numbers Based on Population

The author believes this is fair enough re representation numbers:

WALGA Recommendation: Oppose Recommendation 26(a) and propose that a review of the relative benefits and merits of changes to reduce numbers of Elected Members on Council be supported, on the following basis:

- (iv) Populations up to 5,000 – 5 to 7 Councillors (incl. President)
- (v) Populations between 5,000 and 75,000 – 5 to 9 Councillors (incl. Mayor/President)
- (vi) Populations above 75,000 – up to 15 Councillors (incl. Mayor)

President/Mayor either elected by Council or the Community to continue – support.

WALGA opposes abolition of wards for Band 3 and 4 LGs. Common-sense is required here. The trend is for more local governments to abolish wards.

Recommendations 28 – 32 – Redefinition of Roles & Responsibilities

Agree that explaining better what the role of an elected member is long overdue. It will remove ambiguity.

Agree that the reference to senior employees needs to be removed. Thus is the role of the CEO and the outcome of the Canning Inquiry saw the Rules of Conduct Regulations amended to ensure elected members did not become involved in these issues (the Administration).

Recommendations 33, 34 – Community Engagement & Governance

Yes to community engagement principles and an adoption of a community charter. This has been promoted in WALGA elected member community development training for quite some time now.

Recommendation 35 – Annual Engagement with Electors

WALGA wants non-compulsory annual elector's meetings as the community can participate in a whole range of other ways eg public question time.

The Review has proposed an Annual Community Meeting that is more modern and forward thinking. I actually think this is a good idea.

Recommendation 36 and 37 – Enhanced Integrated Planning and Reporting

Support enhancements to IPR. It makes sense to improve the current system along the lines that the Review proposes. WALGA supports this.

Recommendation 38 – Service Levels & IPR

Yes, local government needs to be better re levels of service: what they are and what is realistic to achieve.

Recommendations 39 – 42 – Local & Joint Subsidiaries

Support WALGA's position re these recommendations. Joint beneficial enterprises need to be explored. Local Government has limited income streams. This was a key finding of the Systemic Sustainability Study (WALGA SSS Report).

41(h) is a real issue re industrial relations jurisdiction in this matter (State vs Commonwealth).

Recommendations 43 and 44 – Modern Financial Management

Support.

WALGA notes that the Report of the Inquiry into the City of Perth makes a number of recommendations relating to financial management of all Local Governments including:

- Recommendation 188 : Establishment of Financial Management Instructions;
- Recommendation 189 : The 'WA Accounting Manual' dated September 2012 be reviewed and updated. (It is a little dated and sections are incomplete);
- Recommendation 190 : The format of format of the annual budget and financial report be prescribed for consistency across local government' (Most are using the Moore Stephens template such as SoVP (So, this makes sense).

Recommendations 45 – 49 - Procurement

Support.

It is time local government procurement aligned with the State. It makes sense that there is model policy applied to all local governments and breaches are referred to an independent investigator.

Recommendations 50 – 52 Rating Revenue

Support. So, this says no to rate capping. Fees and charges based on actual cost to provide. LG's to prepare rating strategy. The Valuer General to advise on rating strategies

Recommendations 53,54 – Accountability and Self Regulations

Agree with WALGA to oppose – 53 a and b will be difficult to achieve re majority members are independent members with suitable skills.

Agree re 54 to expanding the role of the Audit Committee.

Recommendation 55 Integrity & Governance

Refers to Mandatory CEO Standards. Support WALGA re comments to support except for 55 (c) – councillors can withdraw re matters of conflict and (g) CEO position must be advertised after two terms that is 10 years.

Recommendation 56 – Training and Developments

Confirms and updates T & D for elected members

Compulsory training for new CEO's as agreed during the CEO appointment process.

Recommendation 57,58 – Early Intervention Framework

WALGA supports 57 – early intervention re helping local governments improve performance.

WALGA opposes 58 – Minister to direct LGs in an emergency. Agree this should stay as is currently required re the emergency provisions.

Recommendation 59 & 60 – Office of Independent Assessor

WALGA supports 59 – Take over the functions of the Standards Panel. It has been quite ineffectual.

WALGA opposes 60 – Agree. Minefield as set out re investigating the performance of the CEO.

Recommendation 61 – Classification Bands

WALGA opposed. Yes, creating the bands in the Act will cause a conflict with Recommendation 26 (c) re removing wards for Bands 3 & 4.

Recommendation 62, 63 – Harmonisation of Local Laws

Yes, model local laws with deemed provisions are essential.

Recommendation 64 - WALGA

Agreed – WALGA should stay referenced in the Act.

Recommendation 65 – Operational Provisions

Agreed - the new Local Government Act be based on a flexible, principles-based legislative framework that avoids red tape and 'de-clutters' the current extensive regulatory regime.

Final Comments

WALGA's comments and recommendations to State Council, in general make sense and are reflective of the Local Government Sector's position on most issues. The key issues to note therefore are:

- The new Act should be principles based, rather than extensive sections on what a local government can and can't do. This has seen the Act and its regulations expand extensively since their introduction and which has led to an increased compliance burden;
- Minimum compliance standards for all local governments is an issue, this is not what the Minister indicated early in the review. A one size fits all approach has been a key issue and seen small and medium local government struggle in this space;
- The development of community boards is worth exploring;
- Voting in local government elections must remain first past the post. It is the most simple and effective to understand and administer;
- The WALGA proposal re the capping of elected member numbers for each community makes sense;
- A much more clear definition of the roles and responsibilities of elected members is welcomed. The community in particular still struggles widely on what the role of a councillor is;
- Improvements to the Integrated Planning and Reporting Framework will make it easier to implement, review and use;
- More effective ways to engage with the community makes sense;
- WALGA's comments on improvements to the financial management framework and criteria for local government make perfect sense and are welcomed;
- Rate capping must be opposed. NSW has constantly shown the struggle it has due to this mechanism. Local and Joint subsidiaries will provide local governments the opportunity to explore other income streams;
- The establishment of the Office of an Independent Assessor to deal with complaints against elected members is worth exploring further;
- It is important the red tape is reduced as much as possible.

CONSULTATION

Shire President

STATUTORY CONTEXT

The Review of the Local Government Act by the McGowan Government is considered a once in lifetime of generational review.

CORPORATE CONTEXT

Strategic Community Plan

Civic Leadership		<i>to better allocate scarce resources and effectively interact with the community</i>
5.1	Implement measures to improve relationship and communication between Council and community	<ul style="list-style-type: none"> • <i>Implementation of initiatives to better connect Council with the community and associated matters.</i>
5.2	Improve elected member performance	
5.3	Develop an advocacy and lobbying capacity	
5.4	Measures to improve organisational efficiency	

The review of the local government act is a key reform to assist with strategies 5.1, 5.3 and 5.4.

Risk Governance Framework

The Shire of Victoria Plains has a responsibility and substantial interest in participating in the review of the local government act. Although risks cannot be attributable to the Shire for not participating in the review in the short term, longer term there are a couple of matters to note:

- This is a once in a generational opportunity to participate in a review of legislation that is designed to assist local government operate more effectively, both in terms of its statutory obligations and in terms of the services and facilities it provides to its communities;
- If the Shire did not make a comment into the final review, the Shire's reputation could be impacted through both the community, the Zone and the broader industry as failing to participate in a process that is designed to improve the role of local government and assist with empowering its communities;
- Although the matter is not one of compliance, it has the potential to lessen the burden (red tape) on local governments at all levels.

FINANCIAL IMPLICATIONS

Nil

VOTING REQUIREMENTS

Absolute majority required: No

2008-0	Council Resolution
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Moved Cr _____

Seconded Cr _____

1. The Shire of Victoria Plains **SUPPORTS** the recommendations by WALGA to State Council regarding the Local Government Review Panel final report as follows:

1. That **WALGA SUPPORT** the following Recommendations from the Local Government Review Panel Final Report:

- Recommendations 1, 2, 3, 4, 6 and 7;
- Recommendation 8;
- Recommendation 11;
- Recommendations 12, 13 and 14;
- Recommendation 15;
- Recommendations 16 and 17;
- Recommendation 24;
- Recommendations 25(b) to (f);
- Recommendations 26(b), (d), (e) and (f);
- Recommendations 28, 29, 30, 31, 32(1)(a) to (o) and 32(2)(a);
- Recommendations 33 and 34;
- Recommendations 36 and 37;
- Recommendations 38(c), (d) and (e);
- Recommendations 39, 40, 41(a) to (g) and (i);
- Recommendation 42;
- Recommendations 43 and 44;
- Recommendations 45, 46, 47, 48 and 49;
- Recommendations 50, 51 and 52;
- Recommendation 54;
- Recommendations 55(a), (b), (d), (e), (f), (h) and (i);
- Recommendation 56;
- Recommendation 57;

- Recommendation 59;
 - Recommendations 62 and 63;
 - Recommendation 64(c);
 - Recommendations 65(a) to (e).
2. That WALGA **OPPOSE** the following Recommendations from the Local Government Review Panel Final Report:
- Oppose Recommendation 5;
 - **Oppose Recommendation 19;**
 - Oppose Recommendations 23 and 25(a);
 - Oppose Recommendation 26(c);
 - Oppose Recommendations 32(2)(b) and (c);
 - Oppose Recommendation 35;
 - Oppose Recommendations 38(a) and (b);
 - Oppose Recommendation 41(h);
 - Oppose Recommendations 53(a) and (b);
 - Oppose Recommendations 55(c) and (g);
 - Oppose Recommendation 58;
 - Oppose Recommendation 60;
 - Oppose Recommendation 61;
3. That WALGA **CONDITIONALLY SUPPORT** the following Recommendations from the Local Government Review Panel Final Report as described:
- Recommendations 9 and 10 and but oppose any proposal to remove the poll provisions (Dadour provisions) in Schedule 2.1, Clause 8 of the Local Government Act;
 - Recommendation 18 and reiterate WALGA's current advocacy position that there be adequate funding of legislative responsibilities assigned to Local Governments in relation to service delivery to remote Aboriginal communities;
 - Recommendations **20, 21 and 27** in support of a broad review of the property franchise including a community consultative process;
 - Recommendation 26(a) conditional upon a review of the relative benefits and merits of changes to reduce numbers of Elected Members on Council be supported, on the following basis:
 - Populations up to 5,000 – 5 to 7 Councillors (incl. President)
 - Populations between 5,000 and 75,000 – 5 to 9 Councillors (incl. Mayor/President)
 - Populations above 75,000 – up to 15 Councillors (incl. Mayor);
4. That WALGA carry out further consultation on the following Recommendations from the Local Government Review Panel Final Report:
- Recommendation 22 – **All In/All Out Elections;**
 - Recommendations 64(a) and (b) - WALGA
 - Recommendation 65(f) – Transfer of Employee Entitlements

2. That the CEO **SUBMIT** to the Avon-Midland Country Zone and WALGA the decision of Council regarding Point 1 by Friday 28 August 2020.

For _____ / Against _____



Local Government Review Panel

Final Report

Recommendations for a new Local Government Act
for Western Australia

May 2020



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

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FOREWORD

‘Rates, Roads and Rubbish’ was a catch-cry I heard frequently when I was elected to Local Government 15 years ago. This ‘Roads Boards’ viewpoint was not appropriate then, and is certainly not fit-for-purpose for Western Australian communities in 2020 and into the future.

Since the 1995 Act was proclaimed, our society and the technologies we use continue to change at an unstoppable pace, and with this change, community needs and expectations of local government are also increasing. These demands on the sector will continue to expand, especially in the aftermath of, and recovery from, the COVID-19 pandemic.

The recommendations in this review are a road-map to more agile and inclusive local governments, with a clear purpose to deliver for the enhanced wellbeing of their communities.

A new legislative framework that ensures community consultation and integrated planning is a centrepiece of a local government's operations, as well as an emphasis on regional and intergovernmental collaboration.

The recommended renewed focus on integrity, self-regulation and accountability will give local governments the tools to ensure good governance and continuous improvement.

An Act based on this report would prepare local governments in Western Australia not just for the challenges of today, or the next few years, but for the long-term, and would put them in good stead to continue to foster healthy, connected and engaged local communities.

Thank you to the many contributors to this report, including those in the sector and community who made a submission or otherwise assisted in the process.

I especially thank panel members for their significant individual contributions, as well as the secretariat at the Department who supported the panel with high quality research and assistance, as without their diligence, this report would not have been possible.

David Michael MLA
Chair



BACKGROUND

In 2017 the McGowan Government announced a review of the *Local Government Act 1995*. This is the most significant and comprehensive reform of local government legislation conducted in more than two decades. The objective is for Western Australia to have a new, modern Act that empowers local governments to better deliver for the community. The vision is for local governments to be agile, smart and inclusive.

Given the breadth of matters covered by the Local Government Act, a staged approach to the review has been adopted:

- Stage one: priority reforms
- Stage two: wide ranging reforms

The majority of the stage one priority reforms are now in place following the passage of the *Local Government Legislation Amendment Act 2019*. These reforms include:

- A new gift framework for elected members;
- A mandatory online induction for all candidates;
- Universal training for elected members;
- Changes to the Standards Panel; and
- Easier access to information to provide greater transparency to the community.

The remaining priority reforms which are expected to be implemented later this year include:

- New mandatory code of conduct for elected members, committee members and candidates;
- Best practice standards for Chief Executive Officer (CEO) recruitment, performance review and early termination; and
- Further transparency measures.

Extensive community consultation was conducted on stage two topics between September 2018 and March 2019 by the Department of Local Government, Sport and Cultural Industries (the Department) with the input of a stakeholder reference group.

More than 3,000 survey responses and written submissions were received from community members, ratepayer associations, industry groups, local governments, elected members, and peak bodies.

After this significant community and sector consultation to better understand the issues confronting local government, the areas in need of reform and possible options for reform, a panel of experts was formed to provide more detailed consideration and to develop policy responses to guide the development of the new Act. The role of the Panel was to guide the review's strategic direction and to consider and recommend high level guiding principles of the new Act.



The members of the Panel are:

- Mr David Michael MLA, Member for Balcatta (Chair)
- Professor John Phillimore, Executive Director, John Curtin Institute of Public Policy
- Mr Graham Sansom, Adjunct Professor, Institute for Public Policy and Governance, University of Technology Sydney
- Ms Anne Wood, Partner, Kott Gunning Lawyers
- Mr Henry Zelones OAM LGM JP, former Mayor City of Armadale
- Mr Duncan Ord OAM, Director General, Department of Local Government, Sport and Cultural Industries

Commencing in November 2019, the Panel formally met on nine occasions. In addition, invitations were extended to a range of organisations to provide advice and test ideas at separate roundtables.

It should be noted that an overwhelming majority of recommendations were agreed to unanimously by all members of the panel, with only a small number either having a minority of panellists expressing an opposing view or excluding themselves due to a potential conflict of interest.

Meetings were structured around the following six broad topic areas:

1. A Vision for Local Government
2. Planning for a New Local Government Act
3. Supporting Communities and Local Democracy
4. Growing the Economy
5. Sustainable Service Delivery
6. Building Trust and Integrity

This report reflects the work of the Panel. It is divided into two sections: Part A provides the strategic overarching direction, with Part B outlining the Panel's detailed recommendations within that framework.



PART A – THE STRATEGIC FRAMEWORK

The Minister asked the Panel members to consider and recommend overarching, high-level directions for local government that would flow into policies and principles to guide the development of a ‘new’ Local Government Act. This Part of the Panel’s report sets out a strategic framework for the new Act that addresses not only the underlying issues identified when the Panel began its work, but crucially the emerging imperatives that flow from the COVID-19 crisis and its aftermath.

Why a ‘New’ Act?

When the Western Australia Government launched the Local Government Act Review its objectives were to produce ‘a new, modern Act that empowers local governments to better deliver for the community’, and that local government should be ‘Agile, Smart and Inclusive’. Those objectives remain valid, but there is now also the question of how they can and should be pursued in the aftermath of COVID-19.

Western Australia’s system of local government has remained largely unchanged for several decades. Even before the COVID-19 crisis, local governments demonstrated the full spectrum of capacities and behaviours, ranging from outstanding to good, to average, to, in a few cases, poor. This is not surprising given the very large number of local governments and their variable size and capacity. Many have responded positively and swiftly to the crisis with initiatives to support local communities and businesses – through rate freezes, waiving of fees, increased flexibility in dealing with planning applications, and so on – complementing the State government’s initiatives. However, the crisis has also highlighted the system’s limited capacity, sustainability and resilience. Rather than being a crucial and reliable source of support to communities, many local governments themselves require considerable funding from other levels of government simply to perform their basic statutory obligations and keep their operations running, rather than to expand services.

Having numerous local governments, including a majority that are small in terms of population and/or area and that lack financial and human resources, also makes the system cumbersome and costly to operate. In addition to financial support, local government requires significant State Government resources for oversight, advice, capacity building and regulation, including interventions to ensure good governance.

Further areas of concern are the generally low levels of community participation and regional cooperation. Local government should be truly the level of government ‘closest to the people’, but the system of voluntary, first-past-the-post voting attracts only a low turnout at elections, and the extent to which many councils can be considered to be properly representative of their diverse communities can be questioned. At the same time, only limited use is being made of opportunities for local governments to share information, skills and resources at a regional level, and to undertake collaborative planning and service delivery.

So, can local government in Western Australia ‘better deliver for the community’ without fundamental change? Is it sufficient for councils simply to perform their current functions more efficiently and effectively? What sort of local government will be needed to tackle a slow and fragile post-COVID-19 recovery and to play a valued ongoing role in advancing community wellbeing and regional development?



The Panel's view is that the new Act must address these questions and underpin a program of systemic reform to ensure that local government can meet the needs of communities in what may well be a very different operating environment. The Act itself must be truly renewed. It should look and feel different, 'tell the story' of change, and outline a fresh agenda. The Panel's package of key reforms is set out below.

What Sort of 'New' Act?

Local Government Acts are among the most lengthy and complex pieces of legislation in any jurisdiction. As a result, their strategic intent and important linkages between different sections of the Act can easily be lost in the mass of detail. Currently the 1995 Western Australia Act and Regulations run to more than 700 pages, while there are also elements of the *Local Government (Miscellaneous Provisions) Act 1960* that are still operational.

Some jurisdictions have tackled this problem by having multiple Acts: Queensland has a separate Electoral Act; New Zealand has a separate Rating Act; British Columbia has a 'Community Charter' that deals with key elements of local democracy and complements the Local Government Act.

So, what should a new Western Australian Act look like? How can it 'tell a story' rather than swamp the reader (and the sector) with a torrent of regulatory detail? The Panel proposes the following:

- Start with an introductory section that sets the tone – the Northern Territory Act offers an excellent example of how this can be done (refer to **Attachment 1**).
- Structure the new Act around strategic issues and the ways in which local government relates to its communities and partners, rather than the mechanics of local administration.
- Include sets of principles that offer guidance on how key objectives of the new Act should be pursued.
- Shorten the main text considerably (aim for at least a 50% reduction) by consigning regulatory detail to schedules or a separate 'operations' Act (the Panel was advised that extensive use of schedules may be inconsistent with current drafting practice).
- Incorporate new measures to expand self-regulation (notably independent Audit, Risk and Improvement Committees) as part of a flexible regulatory regime that can respond quickly to unexpected circumstances (such as COVID-19).
- Minimise the use of Regulations (which tends to enable more extensive and detailed oversight and intervention, and which requires time-consuming parliamentary drafting) by providing standardised guidelines and model codes, charters and local laws. Local governments could modify these 'minimum' provisions but would have to justify significant departures from them to the Joint Standing Committee on Delegated Legislation.

Moving Quickly

The current direction of the review, reflected in the initial instructions to the Panel, is for a complete re-write of the existing Local Government Act. However, experience in other States indicates that will require more resources than appear available at present and take a very long time, and that bold new directions may get lost along the way. The Panel is therefore of the view that the Government's objectives could best be achieved by developing the new Act in two stages, focusing first on a limited number of strategic elements (such as overarching principles, building the sector's capacity, Integrated Planning and Reporting (IPR), and enhanced accountability), while leaving matters of operational detail (a number of which require further investigation) until later.



The Panel also believes that the Government needs to legislate as soon as possible in order to strengthen local government's capacity for the post-COVID-19 recovery and likely ongoing changes in its operating environment. While it appreciates that resources are currently focused on short-term responses to the impact of COVID-19, the Panel's assessment is that a substantial package of strategic changes to the Local Government Act is required within months, not years. This could be done in one of three ways:

- (a) Amend and restructure the existing Local Government Act to bring together its key strategic elements as a 'front end', but leaving most of its provisions unchanged for the time being;
- (b) A new 'framework' Act initially limited to essential changes, but which would later progressively absorb updated material from the current Act (along the lines of the approach taken previously when the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960* replaced the *Local Government Act 1960*); or
- (c) A permanent 'companion' Act to the current Act that deals with 'high-level directions' (similar to the approach taken in British Columbia with its 'Community Charter' Act).

The decision on how to proceed is of course one for Government and will depend on several factors including other Parliamentary priorities. On balance, the Panel favours options (b) or (c), which most decisively reflect the Government's commitment to produce a 'new' Act – something that 'looks and feels' different. The risk with option (a) is that it could become too complex and might boil down to just a series of amendments scattered through hundreds of pages of existing provisions, without clearly setting out a fresh agenda. This is what happened after the 2013 review in New South Wales.

The High-Level Package

The critical high-level elements of the legislative package proposed by the Panel are detailed below. These elements need to be drafted and juxtaposed in a new or restructured Act or Acts in such a way that the inter-relationships between them are made clear. In several instances supportive policy statements will be essential to convey fully Government's intentions.

Clear Legislative Intent

- **An introductory section** that acknowledges the status of local government as a sphere of government and the importance of all facets of local democracy; that recognises the rights and interests of Aboriginal peoples; that focuses on the need to enhance community wellbeing, including acceptable standards of local government service delivery for all; and that calls for open, accountable and ethical governance (refer to **Attachment 1** for an example).
- **A statement of the role and functions of local governments**, including the power of general competence (refer to **Attachment 2** for an example of the functions of a local government).
- **Guiding principles** for effective local and regional governance, complemented by more detailed policy principles in those parts of the Act for IPR, community engagement, decision-making, financial management, integrity and inter-government relations.



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

An Agile System

- **Establishment of a Local Government Commission** that brings together and extends the work of the Grants Commission and Advisory Board to promote and facilitate capacity building and continuous improvement across the sector as well as, where necessary, structural reform (including mergers and/or regional governance).
- **A fresh approach to enabling structural reform**, including voluntary mergers and the option of replacing merged councils with community boards (see below) – recognising that the ‘Dadour’ provisions can now be by-passed by simply extending the boundaries of one council to subsume its neighbour, and the consequent need for a new pathway for change (refer to **Attachment 3** for an example).
- **Expanded regional cooperation**, including streamlined arrangements for the establishment of joint subsidiaries (which could then replace existing regional local governments); requirements for cooperative regional planning as part of IPR; and if necessary, a new form of ‘regional authority’ that overlays local government areas and can bring together local governments, state and federal agencies and other key stakeholders (for example Aboriginal communities) to address specific issues.
- **Advancing inter-governmental relations** through a set of legislated principles that could be linked to the State Local Government Partnership Agreement (refer to **Attachment 4** for an example); additional consultative mechanisms if required; and arrangements for collaborative governance at the regional level (including involvement of federal agencies where appropriate).

Inclusive Local Democracy

- **Specific provisions for engagement with Aboriginal peoples and communities**, including new consultative mechanisms and an obligation to plan for, and where appropriate undertake, delivery of essential services to local communities.
- **Four-yearly elections for all councillors**, plus a continued requirement for regular ‘representation reviews’ that involve the community in consideration of electoral issues such as the number of councillors, how the mayor is elected, the use of wards and whether the councillors are sufficiently representative of the broader community.
- **Re-definition of roles and responsibilities** for the governing body of council (councillors working collectively), mayors, individual councillors and CEOs, coupled with the new principles for decision-making.
- **More effective community engagement and governance**, including a requirement for all local governments to formulate and adhere to a Community Engagement Charter and an option to establish community boards in selected localities (similar to the New Zealand model).



Smart Planning and Efficient Service Delivery

- **Improved IPR**, clearly positioned as the centrepiece of local governments' operations and linking strategic and corporate planning, regional cooperation, community engagement, financial management, service delivery and monitoring and reporting of outcomes.
- **Increased Ratepayer Value for Money** through the introduction of a Rating and Revenue Strategy to increase transparency in setting rates, fees and charges, aligning services and programs to the IPR framework, a new focus on continuous improvement and reporting on a wider set of financial and service delivery indicators.
- **Modernised financial management**, based on a new set of principles, and including requirements for program budgets and regular service reviews involving community consultation.
- **New provisions for local and joint subsidiaries** that enable local governments to play an effective role in economic and regional development, and in the case of joint subsidiaries, provide a vehicle for regional cooperation.
- **Ensuring a minimum level of service** from local government is available to all Western Australians

Enhanced Accountability, Self-Regulation and Integrity

- **Robust accountability and self-regulation** through standardised performance and annual reporting; a revamped Annual Community Meeting along the lines of a company Annual General Meeting; and the establishment of independent Audit, Risk and Improvement Committees to undertake a wide range of internal audit functions and ensure good governance and continuous improvement.
- **A renewed focus on integrity** through the work of Audit, Risk and Improvement Committees and the establishment of a new Office of the Independent Assessor to deal with conduct complaints (similar to the Queensland model).
- **Rigorous training and professional development** of mayors/presidents, councillors and CEOs.
- **A new 'early intervention' framework** to support local governments experiencing governance or operational problems (a variation of the Victorian model of municipal monitors).



PART B – DETAILED RECOMMENDATIONS

Clear Legislative Intent

Introduction

1. The Panel recommends that the new Act be structured and drafted in such a way as to highlight the key strategic elements set out in Part A of this report, and that further consideration be given to the ‘two Acts’ options presented in Part A, at least as a transitional measure.

The basis for this recommendation was explained in Part A. The Panel considers it essential to move decisively and as quickly as possible to strengthen the capacity and resilience of Western Australian local government, and to set a fresh agenda, particularly in light of the COVID-19 crisis and its likely aftermath.

2. The Panel recommends the following statement of intent (vision) for a new Act:

An Act to provide for a system of local government relevant to Western Australia that develops and supports sustainable, accountable, collaborative and capable local governments through democratic representation, the provision of services, opportunities and enhanced well-being for each and every community.

It was determined that the vision for local government included in a new Act should be responsive to the changing face of Western Australia’s communities. The long title of a legislative instrument is intended to provide a clear statement of the legislature’s intention. The Panel considered how a statement of intent (vision) for a local government legislative framework would meet the future needs of Western Australia’s communities and local government sector.

3. The Panel recommends the adoption of the following objectives for a new Act:

- a. Democratic and accountable local government that recognises the diversity of and within Western Australia’s communities.
- b. Recognition of the specific needs and culture of Western Australia’s Aboriginal people.
- c. Promotion and improvement of the community’s economic, social and environmental well-being.
- d. An adaptive and forward-looking legislative framework, which supports and enables councils to provide local leadership for the whole community, and to collaborate with each other and with other key stakeholders at a regional level.
- e. Open and transparent community participation in the decisions and affairs of local governments.
- f. Enhanced capability of the local government sector, with a focus on continuous improvement and sustainability.
- g. Efficient and effective service delivery and regulation that is responsive to current and future community needs.



- h. **Informed decision-making by local governments which is in the interest of their communities, within a legislative framework that supports balance and certainty in relation to the different interests of their communities.**
- i. **Accountability of local governments to their communities through processes that demonstrate good governance.**
- j. **Support for approaches and opportunities which foster collaboration and cooperation both within the local government sector and across all levels of Government.**

The Panel considered what the objectives for a legislative framework would be to support local governments having the agility, adaptability and flexibility to respond to changing community expectations and technology, and deliver long-term sustainability. In doing so, the Panel considered examples from across Australian jurisdictions and international best practice.

4. The Panel recommends an Act that is considerably shorter, less prescriptive and minimises the use of regulations by establishing clear principles, robust processes, model charters, guidelines and templates.

The Panel endorsed the Western Australian Local Government Association's (WALGA) call for a principles-based approach to the development of a new legislative framework.

This approach needs to be supported by robust processes for planning and decision-making, as well as model charters, guidelines and templates to set appropriate standards in areas such as establishment of subsidiaries, community engagement and local laws.

An enhanced internal audit and reporting regime is also essential to promote effective self-regulation and greater accountability to local communities (refer to Recommendation 59 regarding Audit, Risk and Improvement Committees).

5. The Panel recognises the diversity of local governments in Western Australia and supports a new Act which is responsive to this but does not recommend the adoption of a multi-tiered legislative framework.

The Panel considered the capacity and capability of Western Australia's local government sector more broadly, and the application of a legislative framework to support this.

The Panel explored having different requirements and obligations under the new Act depending on a local government's size, scale and/or demographics. However, finding the balance of what local governments should be required to do and for what reasons proved difficult. The Panel decided that a more practical approach was for the new Act to apply minimum standards to all local governments and, where applicable, to provide flexibility within the new Act that enables a diversity of obligations to be placed on or assumed by local governments dependent on their capacity and capability.



The Role and Functions of Local Government

6. The Panel recommends the inclusion of a statement of the role and principal functions of local governments that makes it clear their basic statutory responsibilities, retaining the overall power of general competency in the current Local Government Act.

Communities and stakeholders need to be able to distinguish between local governments' basic statutory responsibilities for planning, service delivery and good governance on the one hand, and their discretionary activities on the other. This can be achieved by including a short statement that summarises statutory obligations. The South Australian Act offers a useful model (refer to **Attachment 2**).

The power of general competence provides significant autonomy to local governments. Under the *Local Government Act 1995* local governments are considered to be autonomous bodies established to provide for the good government of persons in their district. This general competency power is not, however, unlimited – local governments must comply with Commonwealth and State legislation.

Guiding Principles

7. The Panel recommends that the following overarching guiding principles are included in the new Act:

To ensure the system of local government is sustainable, accountable, collaborative and capable, councils should:

- a. Provide democratic and effective representation, leadership, planning and decision-making;
- b. Be transparent and accountable for decisions and omissions;
- c. Be flexible, adaptive and responsive to the diverse interests and needs of their local communities, including the traditional owners of the land;
- d. Consider the long term and cumulative effects of actions on future generations;
- e. Ensure that, as a general rule, all relevant information is released publicly, readily available and easy to understand;
- f. Provide services in an equitable manner that is responsive and accessible to the diverse needs of the community;
- g. Seek to continuously improve service delivery to the community in response to performance monitoring;
- h. Collaborate and form partnerships with other councils and regional bodies for the purposes of delivering cost-effective services and integrated planning, while maintaining local representation of communities and facilitating community benefit; and
- i. Participate with other councils and with the State and Federal government in planning and delivery of services, setting public policy and achieving regional, State and Federal objectives.



When developing the principles, the Panel considered the following to be important:

- Local governments should be effective, accountable and transparent institutions with inclusive processes which actively engage communities, build trust in government, and are responsive to their communities' needs;
- A collaborative approach across all levels of government to support sustainable development and effective decision making for the economic, social and environmental well-being of all Western Australians;
- A system of local government which supports continuous improvement and a highly capable local government sector, with accountable councils and administrations.
- Transparent and appropriate governance processes which uphold principles of integrity and build trust in the local government sector.



An Agile System

Establishment of a Local Government Commission

8. The Panel recommends:

- a. The Local Government Grants Commission and the Local Government Advisory Board should be combined into a single body responsible to the Minister and named the Local Government Commission, and including the functions of the Grants Commission in accordance with Commonwealth legislation.
- b. The role of the Local Government Commission should be to:
 - (i) Provide recommendations on major local government boundary changes, amalgamations and other necessary reforms;
 - (ii) Manage the distribution of Commonwealth grant funding to local governments in WA; and
 - (iii) Monitor the overall health and performance of the local government sector by identifying key issues and trends, and advise the Government and sector peak bodies accordingly.
- c. Members should be appointed to the Local Government Commission on the basis of their skills rather than as representatives.
- d. The Local Government Commission should consider the financial viability of local governments in making recommendations to the Minister.
- e. The Minister and sector peak bodies should have the power to refer matters to the Commission for assessment and advice.
- f. The Commission should play an independent role in monitoring the capacity and the financial health of the sector in collaboration with the Auditor General.
- g. Minor boundary adjustments where both local governments agree should be handled by the department.

The Panel considered that there were substantial opportunities and benefits in combining the existing Grants Commission and Advisory Board and in providing the new body with a more strategic role. The Grants Commission has access to considerable financial data on local governments and an understanding of the challenges facing the sector. This could be valuable in making recommendations to the Minister on boundary changes and other matters.

The Grants Commission's visiting program also means that it is in a position to identify and promote best practice and to identify local governments that would benefit from capacity building.

It was agreed that the new body should continue to provide recommendations on significant local government boundary changes and amalgamations, including all of those proposals where parties were not in agreement. To remove unnecessary regulatory burden, boundary changes of a minor nature which had the agreement of both local governments and the ratepayers in the affected area should be handled by the department in a streamlined process. Examples of this would be changing the responsibility for a road or park, or ensuring that a property (such as a farm) is in a single district.



In addition to managing the distribution of Commonwealth grant funding to local governments in Western Australia and making recommendations on boundary changes, the role of the combined body should include monitoring the overall health of the sector by identifying issues and trends and advising the Minister. This combined body should be charged with providing frank and fearless advice to the Minister, the department, and local governments.

The new body should be constituted of members of varied skills, with administrative support provided by the department.

Enabling Structural Reform

9. **The Panel supports a legislative framework for a system of local government which promotes local democracy and has the in-built flexibility to enable different models of governance which facilitate community participation, provide for representation of the whole community, and for efficient and effective service-delivery for the community.**
10. **The Panel recommends that through their Partnership Agreement and the proposed Local Government Commission, State and local government consider options to facilitate structural reform that will strengthen the capacity and resilience of the local government system. Those options should include:**
 - a. **Revised processes for boundary changes and mergers.**
 - b. **Substantially increased cooperation between local governments through an enhanced model of joint subsidiaries.**
 - c. **Provision for the establishment of community boards within local government areas.**

Making specific proposals for structural reform – in particular ‘forced’ amalgamations – was beyond the Panel’s terms of reference. However, as noted in Part A of this report, the COVID-19 crisis has focused attention on the need to maximise the capacity and resilience of the *system* of local government. Various options for structural reform have a role to play, and the new Act should include measures to facilitate necessary adjustments.

The Panel sees significant flaws in the current provisions for boundary changes and amalgamations of local government areas. Procedures for minor boundary changes appear unnecessarily complex, whilst the use of the boundary change mechanism to undertake de facto amalgamations – as approved by the Supreme Court in 2014 – raises serious issues about due process. It effectively bypasses the ‘Dadour’ provisions for local referenda, which themselves can be seen as unduly restrictive when local government needs to adapt to changing circumstances.

These issues have been debated repeatedly across Australia. The Panel saw potential in the new provisions for boundary changes and mergers adopted in early 2019 in South Australia (sections 26-28). The process was negotiated with the Local Government Association. It is based on a set of principles (refer to **Attachment 3**); administered *independently* by the Grants Commission; requires detailed investigation and extensive community consultation on major boundary adjustments and amalgamations; but has no requirement for referenda.



The new Local Government Commission proposed under Recommendation 8 could play a similar role in Western Australia, monitoring the capacity and health of the local government system, identifying action required to address any deficiencies, and handling major boundary changes. The Panel is also recommending that the structural reform 'toolkit' be augmented with an improved model of joint subsidiaries (Recommendations 14 and 39), plus a new option for establishing community boards (Recommendation 11). Robust, multi-functional joint subsidiaries could offer an alternative to amalgamations, whilst community boards could be used to maintain local identity, democracy and services in merged local government areas.

11. The Panel recommends an additional legislative option for local governments to establish community boards.

The Panel noted that with 137 local governments ranging in populations from less than 200 to over 200,000, Western Australian local governments can be either too small to meet their responsibilities, or too big to be properly representative of different localities within them, and respond adequately to varying community needs and demands. Accordingly, there is a need for mechanisms in the new Act that would, on the one hand, encourage small councils to combine their efforts 'upwards' through regional cooperation and/or mergers, and on the other, enable large councils to devolve some of their responsibilities 'downwards' in order to promote effective community governance.

The Panel concluded that the new Act should therefore include an option for local governments to establish community boards along the lines of those that have operated successfully in New Zealand for more than 30 years, but with flexibility to tailor implementation of the model to particular local circumstances. Community boards could either replace councils that have been merged into a larger entity, thus maintaining local identity and democracy in former local government areas; or be established for specific localities within a large local government area – a suburb or group of suburbs, a rural district with a distinct identity and a sense of community, a town within a large shire, a remote Aboriginal settlement, and so on.

Key features of the community boards model should include:

- Ultimate authority to rest with the 'parent' local government, which would determine the functions and budgets (if any) of boards in its area – the boards would not be incorporated as local governments in their own right.
- Empowering the Local Government Commission to require the establishment of boards as part of a merger.
- Giving local communities the right to petition the Local Government Commission for the establishment of a board.
- No requirement for boards to cover the whole of a local government area.
- Membership options ranging from a majority being locally elected to all members being appointed by the 'parent' local government after a community nomination process.
- Mechanisms for boards to advocate to the 'parent' local government on behalf of their communities, and to play a significant advisory role in planning and budgeting processes.



Expanded Regional Cooperation

12. The Panel recommends that the new Act should promote and mandate expanded regional cooperation between local governments by:

- a. Making increased collaboration a specific objective and principle.**
- b. Providing an improved model of joint (regional) subsidiaries that can be used for strategic planning, resource sharing, shared services delivery and commercial enterprises (see also Recommendations 14 and 39).**
- c. Requiring regional cooperation as part of IPR (see also Recommendation 35).**

13. The Panel recommends that consideration also be given to the potential need for a new form of ‘regional authority’ to enable collaboration on specific issues between governments and with other key stakeholders.

While there are promising signs of increasing regional cooperation between local governments for certain functions and in some parts of the state, the Panel formed the view that much more could and should be done – as proposed in WALGA’s 2008 report *The Journey: Sustainability into the Future*. The evident limitations of the current model of regional subsidiaries is a particular concern. The Panel proposes that increased collaborative working should be framed as a specific objective of the new Act: that could be realised through a streamlined model of joint subsidiaries and by adding a regional dimension to IPR, as explained under Recommendations 34 and 35.

The Panel also noted the potential need for a new form of collaborative ‘regional authority’ that overlays local government areas and can bring together local governments, state (and where necessary, federal) agencies and other key stakeholders to address specific issues. Such an arrangement might be required when regional issues, such as provision of services to remote Aboriginal communities or complex environmental management problems, exceed the scope of local governments and joint subsidiaries.

14. The Panel recommends:

- a. The regional council model is discontinued.**
- b. A flexible model of joint (regional) and single (local) subsidiaries be introduced in order to enable:**
 - (i) collaboration between local governments; and/or**
 - (ii) involvement of local government in economic development including commercial activities.**

Greater cooperation and collaboration is one way to address financial sustainability and capacity of local governments without the fear of loss of identity. The Panel noted that there are a range of areas that could potentially be delivered jointly by local governments, such as corporate services, economic development, IPR, waste management and community planning.

The current Local Government Act provides for two formal approaches: regional local governments and regional subsidiaries. The Panel recommends that there would be benefits to having only one broader legislative model of collaboration. A single flexible model could reduce complexity and provide for a more tailored compliance regime. Local governments would still have the flexibility to enter into voluntary arrangements outside of the legislated model. This would remove the regional



local government model under the new Act, noting the need for appropriate transitional provisions for those already established.

Further discussion and recommendations on this new flexible model, including its use for economic development, can be found under Smarter Planning and Service Delivery at Recommendations 37 to 40.

Advancing Intergovernmental Cooperation

15. The Panel recommends that the new Act include a set of principles for intergovernmental relations that make clear local government's role and obligations as part of the broader system of government, and that underpin a range of ongoing arrangements such as the State Local Government Partnership.

The Panel welcomed the progress being made through the State Local Government Partnership Agreement. It appreciated the difficulty of requiring such agreements under legislation, but at the same time sees an opportunity to promote and support ongoing improvements to state-local relations by including relevant principles in the new Act. The British Columbia Community Charter Act includes a set of principles that may offer a starting point for further discussion (refer to **Attachment 4**). The Panel noted, however, that any set of principles must make clear not only the need for mutual respect, consultation and cooperation, but also local government's responsibility to see itself and act as *government*, and to accept its ongoing obligations to plan, deliver services and provide good governance as part of the broader public sector.



Inclusive Local Democracy

Relations with Aboriginal Peoples and Communities

16. The Panel recommends that the new Act recognises the unique status of Aboriginal people as traditional owners of the land and ensures that they are empowered to engage in decision-making in their local communities.
17. The Panel recommends that further consideration is given to the manner of recognition, and the options for inclusion, engagement and shared decision making between local governments and Aboriginal communities, through consultation with the Department of Premier and Cabinet and the Aboriginal Advisory Council of Western Australia, and with reference to practices in other states, the Northern Territory and New Zealand.

The Panel identified a need for the new Act to include specific provisions for engagement with Aboriginal peoples and communities, including new consultative mechanisms and an obligation to plan for, and where appropriate undertake, delivery of essential services to local communities.

The Panel noted that while legislative statements mandating general recognition of the diversity of communities are common in the local government context, statements recognising the unique role of Aboriginal people in the community and the potential role of local government in partnering to achieve outcomes are less common in local government legislation in Australian State jurisdictions.

Models that should be further explored include the *Local Government Act 2020* (Victoria) where the definition of 'municipal community' includes 'traditional owners of the land in the municipal'; the *Local Government Act 2002* (New Zealand) which specifically references the need to provide opportunities for Maori people to contribute to the decision making process and the *Local Government Act 2008* (Northern Territory) which includes in its preamble "the rights and interests of Indigenous traditional owners, as enshrined in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Native Title Act 1993* (Cth), must also be recognised and the delivery of local government services must be in harmony with those laws".

18. The Panel recommends further consideration is given to the issue of service delivery by local governments in remote communities, and appropriate adjustments to Integrated Planning and Reporting requirements.

There is a need for local governments to work closely with indigenous communities and accept their responsibilities to ensure that adequate services are offered to all citizens, by the local government itself and/or in conjunction with other governments and agencies. While it was recognised that there are unique challenges with service delivery to remote communities, IPR processes should require identification of their needs, plus effective engagement and shared decision making with Aboriginal people.



Elections

19. Optional preferential voting be adopted in place of the current first past the post system.

The Panel discussed voting methodologies and agreed that the first past the post system can often lead to outcomes that do not adequately represent the community's preferences with successful candidates being elected without a clear majority of votes.

There was support for the adoption of optional preferential voting, a variant to preferential voting whereby the voter can mark their preference of all or some of the candidates on the ballot paper, with "1" indicating their first preference. It was considered that this would provide results that are most representative of the community's views and would not require electors to vote for candidates about which they had little knowledge.

20. The principle of one vote per person be included in the legislation, subject to Recommendation 21 below.

21. Property franchise voting should be replaced with the requirement for local governments to introduce mechanisms for regular and effective consultation with the business community.

The Panel considered that there are two sides to local democracy: involvement in local decision-making to influence and inform the decisions that are being made by council, and elections. If structures and processes are in place to ensure all segments of the community are engaged, there may no longer be a need to extend election franchise beyond residents of the district.

The Panel noted that the introduction of compulsory voting was previously recommended by the Robson Review and was suggested by several submissions, but believes that before this change is considered, recommendations contained within this report should be implemented to increase voter participation and possibly negate the need for the introduction of compulsory voting.

The Panel considered democratic principles, the right of business owners and operators to participate in and inform local government decision-making, the relatively small take-up of the property electoral franchise and the administrative burden for local governments to retain a separate register for the small number of owner occupiers that are currently registered to vote. The Panel believed that there are other avenues that local governments could and should use to ensure that business and landowner views are adequately heard through mechanisms such as a business advisory group.

22. Local government elections are held once every four years, two years after but to otherwise accord with the timing of the State election.

The Panel discussed the merits and disadvantages of all elected members being elected at the same time. While acknowledging the potential for loss of corporate knowledge if no councillors were re-elected, the benefits of one election held every four years midway between State Government elections has the potential to increase participation and would reduce costs for local governments.



23. All local government elections should be overseen by the Western Australian Electoral Commissioner.

The Panel decided that the Western Australian Electoral Commission (WAEC) was the most appropriate organisation to coordinate local government elections. Having the one body responsible for conducting elections would allow for greater consistency across local governments. It was acknowledged that there would be higher costs associated with WAEC run elections; however, this would be offset by elections being held only every four years.

24. Provision in the new Act for electronic/online voting to be introduced in the future once the integrity of the process can be assured (including allowing for a pilot).

While believing that electronic and online voting was not yet mature enough to be introduced, the Panel decided that new technologies would be likely to become practical in the life of the new Act and that the legislation should allow for the piloting and introduction of these. In the event online voting is introduced, postal / in person voting should remain an option.

25. The Panel makes the following further recommendations in relation to elections:

a. Postal voting be required, with lodgement of these votes to be allowed in person on and before election day.

To improve equity, the Panel determined all elections should be postal with the ability to lodge those votes in person, including on election day, being retained. The need for voting to be able to be carried out via the post has been demonstrated by the current COVID-19 pandemic.

b. The election process extended to provide more time for the issuing and receipt of postal votes.

To optimise participation in the electoral process and in recognition of the changes to postal services in Australia, an extension to the electoral timeframe is recommended. This should allow additional time for the issuing of postal votes and more time for electors to return their votes. The timeframe should be set through regulations in consultation with the Western Australian Electoral Commissioner.

c. The information local government candidates must provide at nomination should be expanded to ensure that adequate information is given for voters to make an informed decision. Candidate nomination forms should also include declaration of membership of a political party and these forms should be published and available during the election period.

The Panel discussed methods to increase community knowledge of candidates including increasing the length of the candidate profile statements, providing more structure for these, and publishing candidate answers to WAEC approved questions on local governments' websites. The Panel was supportive of additional information being provided by candidates in local government elections. This would enable voters to make more informed voting decisions, rather than relying on the 150-word statement. This could be achieved through set questions in regulations to which candidates would respond in the form of a statutory declaration. The Victorian provisions serve as a model.



- d. A caretaker policy should be introduced barring elected members up for re-election from representing the council at events, handing out council grants or donations and moving substantive notices of motion in the period before the election, and a requirement to comply with this policy should be included in the Code of Conduct.**

The Panel also considered ways to increase transparency and accountability and reduce conflicts during a local government election period. The Panel agreed that the Code of Conduct should include caretaker provisions to be imposed from the close of nominations to the date of the election.

The Panel acknowledged the need to protect the CEO from potential conflicts during the caretaker period and, consistent with Recommendation 59, the CEO would no longer receive or investigate complaints.

- e. The donor and the candidate should co-sign each declaration of a gift made.**

In order to ensure integrity in the election process, the Panel agreed that there should be a requirement for the declaration of a gift to be signed by both the candidate and the donor.

- f. Donations via crowd funding platforms should be regulated so far as possible.**

The Panel also acknowledged the increasing likelihood that candidates will receive donations through crowd funding platforms which makes identifying individual donors difficult and determined that the department should investigate the legality and practicality of regulating crowd funding donations to ensure integrity in the election process is upheld.

26. In respect to elected member representation, the Panel recommends:

- a. Population should be used to determine the number of elected member positions:**
- (i) Population of up to 5,000 – 5 councillors (including President).**
 - (ii) Population of between 5,000 and 75,000 – 5 to 9 councillors (including Mayor/President).**
 - (iii) Population of above 75,000 – 9 to 15 councillors (including Mayor).**
- b. Ward boundary reviews, to ensure equitable representation is maintained, should be conducted every four years by the Office of the Electoral Distribution Commissioners, with the support of the WAEC and should be conducted using similar processes and principles that are in place for state electoral boundaries as contained in the *Electoral Act 1907*.**
- c. Current classification bands 3 and 4 should not have multiple wards unless the Local Government Commission permits it in the interests of ensuring local democracy is enabled in certain communities.**
- d. The changes to wards and elected member numbers due to the above recommendations should be phased in.**



The Panel gave careful consideration to the recommendations of the Local Government Advisory Board in relation to wards and councillor numbers. Wards in local governments with small populations were seen as unnecessarily increasing fragmentation and detracting from the requirement for elected members to act in the best interests of the entire community.

However, the Panel acknowledged there may be situations, for example remote communities, where it is important to ensure there is balanced representation on council. The Panel decided local governments in bands 3 and 4 can apply to the new Local Government Commission for wards should it be necessary to enable local democracy in their districts.

The Panel considered that it was desirable for councils to have an odd number of positions.

e. With the introduction of four-year elections, council elected mayors/presidents should be elected for two-year terms.

The Panel considered that it was important to provide a council with the ability to elect a new mayor/president to replace one who had lost the confidence of the other members of council within their four-year term. The Panel decided the fairest and most efficient way to do this was to have two year terms for council elected mayors and presidents which will provide the opportunity for council to replace them after this period should there be dissatisfaction with their performance amongst council.

f. No restriction should be placed on the number of terms an elected member or mayor/president can serve.

The Panel agreed that there should be no change made to the current situation with no limits applying to the number of terms a councillor and mayor/president can serve.

27. The Panel recommends further consideration should be given to strengthening the provisions of the City of Perth Act to reflect the unique role the City of Perth plays in the development of the State economy. In addition, consultation should be undertaken with the City of Perth and other relevant stakeholders as to whether property franchise voting should be retained in the City of Perth.

The Panel noted that property franchise voting may nevertheless be appropriate for the City of Perth and suggested that the Department could undertake further consultation to determine if the *City of Perth Act 2016* should be amended so property franchise voting continues to apply in the City of Perth.

The Panel recognised the *City of Perth Act 2016* might be appropriate legislation to further strengthen the relationship between the State Government, business and the City of Perth in promoting the social and economic interests of the whole State.



Redefinition of Roles and Responsibilities

28. The Panel recommends significant changes in the Act to the current statements of roles and responsibilities for mayors/presidents, councillors and CEOs and that the Act should include a new statement of responsibilities for the ‘council’ which captures the roles and responsibilities of all councillors acting collectively as the council.

The revised statements of roles and responsibilities seek to address more clearly the following issues:

- Community leadership
- Strategic planning
- Continuous improvement
- Executive function (for mayors/presidents)
- Guiding the CEO (for mayors/presidents)
- Training

29. The Panel recommends the following as the role of council:

The council —

- (a) considers the diversity of interests and needs of the local community;
- (b) is accountable to the community for the local government’s performance;
- (c) ensures adequate opportunities and mechanisms for engagement with the local community;
- (d) ensures the timely development and adoption of the strategic plans, programs and policies of the council and promotes the effective and consistent implementation of these;
- (e) develops and adopts strategic plans and a budget for the local government;
- (f) keeps the local government’s resource allocation, expenditure and activities and the efficiency and effectiveness of its service delivery, under review;
- (g) provides strategic direction to the CEO in order to achieve high-quality administration and performance of the local government’s functions in accordance with the Local Government Act and local government’s policies;
- (h) carries out an annual performance review of the CEO and in agreement with the CEO adopts Key Performance Targets for the following year;
- (i) provides a safe working environment for the CEO, officers and councillors;
- (j) reviews annually the delegations of the council; and
- (k) performs such other functions as are given to a council by this Act or any other written law.



30. The Panel recommends the following as the role of councillors:

A councillor —

- (a) without bias represents the current and future interests of all people who live, work and visit the district;
- (b) provides leadership and guidance to the community in the district;
- (c) facilitates communication between the community and the council;
- (d) accurately represents to the community the policies and decisions of the council;
- (e) participates in the development of strategic plans;
- (f) must be prepared to –
 - (i) participate with an open mind in the local government’s decision-making processes;
 - (ii) be an active and contributing member of the council; and
 - (iii) make considered and well-informed decisions;
- (g) makes all reasonable efforts to acquire and maintain the skills necessary to perform the role of councillor; and
- (h) performs such other functions as are given to a councillor by this Act or any other written law.

31. The Panel recommends the following as the role of the mayor/president:

In addition to the responsibilities of a councillor, the mayor or president —

- (a) provides leadership and guidance to the community in the whole district;
- (b) carries out civic and ceremonial duties on behalf of the local government;
- (c) acts as the principal spokesperson on behalf of the council and explains and upholds the decisions of the local government;
- (d) encourages good working relations between councillors, and between the council and the CEO;
- (e) provides guidance to councillors about what is expected of a councillor including in relation to:
 - (i) the role of a councillor;
 - (ii) the councillor code of conduct; and
 - (iii) standing orders
- (f) liaises with the CEO on the local government’s affairs and the performance of its functions;
- (g) presides at meetings in accordance with this Act;
- (h) leads the development of strategic plans;
- (i) promotes partnerships between the council and key stakeholders;
- (j) leads and facilitates the presentation of the annual Council budget;



- (k) initiates the annual performance appraisal of the CEO; and
- (l) performs such other functions as are given to the mayor or president by this Act or any other written law.

32. The Panel recommends the following as the functions of the CEO:

(1) The CEO's functions are to —

- (a) advise and assist the council in relation to the functions of a local government under this Act and other written laws;
- (b) ensure that timely and accurate advice and information is available to the council so that informed decisions can be made;
- (c) ensure that the mayor and other councillors are given the administrative and professional support necessary to effectively discharge their role;
- (d) advise the council on appropriate forms of community engagement;
- (e) advise and consult the mayor and council on the development and implementation of the strategic plans, programs, strategies and policies of the council;
- (f) prepare, in consultation with the mayor and council, the draft budget;
- (g) ensure that the policies and lawful decisions of the council are implemented in a timely and efficient manner;
- (h) conduct the day-to-day management of the local government in accordance with the strategic plans, programs, strategies and policies of the council;
- (i) ensure the effective and efficient management of the local government in a way that promotes —
 - (i) the effective, efficient and economical management of public resources;
 - (ii) excellence in service delivery; and
 - (iii) continual improvement;
- (j) maintain systems to enable effective planning and accurate reporting of the financial and service performance of the local government to the council and community;
- (k) speak publicly on behalf of the local government when approved by the mayor or president to do so;
- (l) be responsible for the employment and management of local government employees, except with respect to the position of CEO, through management practices that —
 - (i) promote equal employment opportunities;
 - (ii) are responsive to the local government's policies and priorities; and
 - (iii) provide a safe working environment;



- (m) ensure the local government complies with this Act and any other written law;
- (n) ensure that records, proceedings and documents of the local government are properly kept for the purposes of this Act and any other written law; and
- (o) perform any other function specified or delegated by the council or imposed under this Act or any other written law as a function to be performed by the CEO.

(2) The CEO must inform and consult the council when determining, or making, significant changes to –

- (a) the organisational structure for the staff of the local government; or
- (b) the processes, terms or conditions that are to apply to the appointment of senior executive officers; or
- (c) the appraisal scheme that is to apply to senior executive officers.

Community Engagement and Governance

33. The Panel recommends that the following community engagement principles should be included in the new Act:

- a. Councils actively engage with their local communities;**
- b. Councils are responsive to the needs, interests and aspirations of individuals and groups within its community;**
- c. Community engagement processes have clearly defined objectives and scope;**
- d. Participants in community engagement have access to objective, relevant and timely information to inform their participation;**
- e. Participants in community engagement are representative of the persons and groups affected by the matter that is the subject of the community engagement;**
- f. Participants in community engagement are entitled to reasonable support to enable meaningful and informed engagement; and**
- g. Participants in community engagement are informed of the ways in which the community engagement process will influence council decision-making.**

The Panel considers the community key to the effective functioning of the local government, with the local government being there for and to respond to the community. It is therefore vital that all segments of the community are heard and can participate in decision-making.

34. The Panel recommends a Community Engagement Charter be required as a mechanism for guiding and enhancing community participation in local decision-making, and that a model charter be prepared to set parameters and provide guidance on mechanisms to be used.

The Panel agreed that all local governments should be required to have a Community Engagement Charter, with individual local governments responsible for ensuring they are fit for purpose. The



department should provide suitable guidance material and templates for those local governments that wish to utilise these.

The Panel proposed that triggers for consultation be included, such as borrowing, change of purpose in land use, and major changes to strategy.

The Panel considered that the Charter should be accessible, flexible, and include the deliberative community engagement requirements for IPR. The Charter should also include a reporting mechanism in the annual report.

The Panel believed that elected members have an important role to play in community engagement in listening to the community and that this should be outlined in the Charter. Training should be available to elected members in this area.

35. The Panel recommends the Annual Electors' Meeting is replaced by an Annual Community Meeting whereby:

- a. As a minimum, councils provide information on their achievements and future prospects;**
- b. Councils report on the local government's financial performance and performance against relevant Council Plans;**
- c. Both the mayor/president and the Chair of the Audit Committee address the meeting;**
- d. There is ample time for questions; and**
- e. Wider community participation is encouraged through different delivery mechanisms.**

The Panel recommended the retention of an annual meeting (to replace the Annual Electors' Meetings) which will facilitate community participation through more modern delivery mechanisms to reach people who may not be able to attend ordinary council meetings (for example, using Zoom and/or webinars). At this meeting there should be an annual performance statement made by the mayor/president, a report from the chair of the Audit, Risk and Improvement Committee and a question and answer session.



Smart Planning and Service Delivery

Enhanced Integrated Planning and Reporting

36. The Panel recommends the following IPR Principles are included in the new Act:

- a. Councils plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services to meet the diverse needs of the local community;
- b. Strategic planning identifies and incorporates, where appropriate, regional, State and Federal objectives and strategies concerning the economic, social, physical and environmental development and management of the community;
- c. Strategic planning addresses the community's vision;
- d. Strategic planning takes into account the resources needed for effective implementation;
- e. Strategic planning identifies and addresses the risks to effective implementation; and
- f. Strategic planning is a key accountability tool that provides for ongoing monitoring of progress and regular reviews to identify and address changing circumstances.

37. The Panel recommends:

- a. IPR be given greater prominence in the new Act as the centrepiece of 'smart' planning and service delivery.
- b. The new Local Government Commission and the department should take steps to improve understanding and skills across the sector to ensure consistent implementation of IPR requirements.
- c. IPR provisions in the Act should be expanded to include the issues currently covered in the regulations (suitably updated in accordance with these recommendations).
- d. IPR provisions and guidelines should be amended to, amongst other things –
 - (i) Highlight the central goal of advancing community well-being (economic, social, cultural and environmental).
 - (ii) Replace the current requirement for a Strategic Community Plan with a more flexible framework for 'Community Strategies'.
 - (iii) Reframe Corporate Business Plans as broader 'Council Plans' prepared by each incoming council.
 - (iv) Mandate deliberative community engagement in the preparation of both Community Strategies and Council Plans.
 - (v) Require a 'regional issues and priorities' section within Council Plans, to be prepared in consultation with neighbouring/nearby local governments.
- e. Provision should be made for a baseline reporting system as part of the IPR framework, and local governments should be required over time to report against a



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wider range of performance measures covering financial management, service delivery, governance and community wellbeing.

- f. Annual reports should include a statement of performance against the objectives, programs and projects set out in Community Strategies and Council Plans.**
- g. The Audit, Risk and Improvement Committee (see Recommendations 53 and 54) should monitor the local government's performance in implementing the IPR framework, including compliance with relevant statutory obligations, and report its assessment to the community (for example, as an addendum to the council's annual report and/or as a statement to the Annual Community Meeting proposed in Recommendation 35).**
- h. That all IPR plans be reviewed every four years (to align with the new election cycle), two years or one year depending on the plan.**

The Panel believes that strengthening and reframing the Act's provisions for IPR would promote and link more effective strategic and corporate planning, regional cooperation, community engagement, financial management, service delivery, and monitoring and reporting of outcomes.

The Panel noted some excellent examples of emerging regional cooperation in strategic planning, and opportunities for creative use of IPR to promote a more holistic approach to community wellbeing, and in particular for collaborative planning with Aboriginal peoples and communities. However, it was concerned that the current IPR framework is not fully understood across the sector, and that implementation remains patchy. There is an evident need for more work to develop and explain the framework, and for further assistance to individual local governments and regional groups to enhance their ability both to meet basic IPR requirements, and to grasp opportunities to make better use of IPR as a tool to achieve desired outcomes for places and communities.

The Panel concluded that reframing the current requirements for Strategic Community Plans and Corporate Business Plans would be helpful in explaining the scope and intent of IPR. This would involve:

- Clarifying the difference between 'aspirational' strategies on the one hand, and plans that commit a council to pursue specific courses of action on the other.
- Demonstrating how IPR offers pathways for local governments to work together at a regional level, as well as to plan with communities for districts and neighbourhoods.

The Panel therefore proposes that Strategic Community Plans be replaced by multi-level 'Community Strategies' that could be prepared for regions, individual local government districts, and smaller areas/localities within a local government district. Corporate Business Plans should be reframed as broader 'Council Plans' that give effect (as far as possible) to Community Strategies. These proposals draw on current practice in Victoria (council plans and community planning) and New South Wales (joint organisations developing regional strategies).

The Panel also examined the requirement for Victorian local governments to report on a wide range of key performance indicators and considered this type of reporting to the community to be highly desirable. To alleviate the burden this could place on some local governments, it proposes that reporting should be phased in, starting with indicators for financial management, service delivery and governance, and expanding to broader well-being measures over time. Reporting should be made freely available through a statewide online platform.



Part of the reporting framework could be an annual declaration that the local government is successfully meeting its obligation to provide essential basic services to its community. This could be a function of the Audit, Risk and Improvement Committee.

Minimum Service Levels

38. The Panel recommends:

- a. **As a minimum, local governments must seek to identify and provide, or offer, to all its citizens, a minimum level of services to meet statutory obligations.**
- b. **The Minister should have the power to direct a local government if it fails to provide or offer these services.**
- c. **The new Act should incorporate financial sustainability principles which also link to the IPR framework.**
- d. **Local government services and programs should be aligned to the IPR framework.**
- e. **Local governments conduct regular reviews of services and service levels including community consultation.**

The Panel strongly believed that all citizens in Western Australia are entitled to a minimum level of service delivery, whether it be a metropolitan local government or a remote community. However, the diversity of the sector means that services may vary significantly between local governments. The Panel felt that while there are some services where it is reasonable to have discretion, there are some minimum services that all local governments must provide.

The Panel was cognisant of the financial constraints and capability of local governments to be able to deliver basic services and in some cases, providing services independently would be challenging. In these situations, local governments should collaborate using the joint subsidiary model.

As noted earlier, service delivery to remote communities was identified as an area that could be particularly challenging due to financial constraints, isolation and access (among other things). The Panel strongly supported identification of service needs through the IPR process and minimum services being delivered. However, financial and cultural barriers will sometimes need to be addressed through broader whole of government initiatives. New mechanisms may be needed to facilitate such initiatives (such as the South Australian Outback Communities Authority). A community should have the right to decline a particular service or services if they have other arrangements in place.

The Minister should have a qualified reserve power to intervene in certain situations and provide enforceable directions to local governments. This would include where minimum services were not being provided and in the event of a natural disaster or pandemic.

Local and Joint Subsidiaries

39. **The Panel recommends local governments should continue to play an active role in economic development at both local and regional levels. The IPR framework should encourage local governments to be cognisant of State Government plans when developing strategies for economic development.**



40. The Panel recommends that the new Act should provide the freedom for local governments to be involved in commercial activities where it is in the public interest and subject to competitive neutrality principles.

The Panel noted that local government provides an important stimulus in the economy, especially in regional areas, and that it is important that a legislative framework does not unnecessarily restrict the ability for local governments to be involved in economic development.

The Panel was of the view that there are not currently any specific barriers in the Local Government Act that hinder the ability for local government to grow their economy. They also noted that local governments' involvement in economic development should be voluntary, and subject to the needs and desires of the local community. The new Act should provide appropriate governance and accountability measures covering these activities.

41. The Panel recommends that 'beneficial enterprises' not be introduced as a new mechanism for local government commercial activities, but that instead an updated and more flexible subsidiary model should provide for the following:

- a. Local government autonomy to establish a single or joint subsidiary to:
 - (i) Carry out any scheme, work or undertaking on behalf of the council;
 - (ii) Manage or administer any property or facilities on behalf of the council;
 - (iii) Provide facilities or services on behalf of the council; and/or
 - (iv) Carry out any other functions on behalf of the council.
- b. The subsidiary to be established through a charter.
- c. The charter to be certified by an independent and suitably experienced legal practitioner as within power and National Competition Policy.
- d. Public notice of the proposal to establish the subsidiary to ensure that there are no private operators that would be significantly disadvantaged.
- e. The subsidiary to be able to undertake commercial activities (within the limits of competitive neutrality and a thorough risk assessment).
- f. The subsidiary to have the ability to acquire, hold, dispose of or otherwise deal with property.
- g. Dividends able to be paid to member local governments.
- h. The requirement for employees of the subsidiary to be employed under the same award or agreement conditions as the relevant local government/s and within the jurisdiction of the Western Australian Industrial Relations Commission.
- i. No requirement for ministerial approval at the outset, but reserve powers for the Minister for Local Government to intervene if issues arise should be included.

42. The Panel recommends local governments should utilise the subsidiary models and, as a general rule, should not form entities outside this, such as under the Associations Incorporation Act, except as a means of establishing or maintaining partnerships with other local or regional organisations in those instances where the local government is not the dominant party.



The Panel noted that the current regional subsidiaries model could be improved in relation to their establishment, scope of operations and governance. It was noted that the current model has not been utilised by the sector as its scope is perceived to be too limiting.

While the Panel supported local governments being innovative and able to operate when market failure is identified, it was of the view that the new Act should explicitly require that local governments operate in accordance with competitive neutrality principles when establishing a subsidiary and setting fees and charges.

The Panel also noted concerns that a local government may use a subsidiary to reduce employee pay and conditions and considered that this should be prohibited in the Act.

The introduction of a new subsidiaries model, similar to the Tasmanian model, would allow local governments the flexibility to operate on a commercial basis (within reason). It is recommended that if this is to occur, adequate controls would need to be introduced, including community consultation, model charters, appropriate reporting and audit measures and providing the ability for the Minister to intervene if considered necessary.

The legislative framework for the model should provide autonomy for local governments to establish a subsidiary without Ministerial oversight while retaining reserve powers for the Minister if required. There should be measures to ensure greater transparency and accountability to the community.

The Panel also discussed concerns with local governments using the Associations Incorporation Act to establish entities outside the Local Government Act and considered that as a general rule this be prohibited under the new Act. Local governments should encourage non-government providers to establish and govern associations where appropriate for community-led service delivery, with local governments only stepping in if the association cannot operate effectively or needs to be wound up.

Modernise Financial Management

43. The Panel recommends the following financial management principles be included in the new Act:

- a. **Councils should have regard to achieving intergenerational equity, including ensuring the following:**
 - (i) **Policy decisions are made after considering their financial effects on future generations;**
 - (ii) **The current generation funds the cost of its services; and**
 - (iii) **Long life infrastructure may appropriately be funded by borrowings.**
- b. **Revenue, expenses, assets, liabilities, investments and financial transactions are managed in accordance with the council's financial policies and strategic plans;**
- c. **Financial risks are monitored and managed prudently having regard to economic circumstances;**
- d. **Financial policies and strategic plans, including the Revenue and Rating Strategy and Investment policy, seek to provide stability and predictability in the financial impact on the community; and**



- e. **Accounts and records that explain the financial operations and financial position of the council are kept.**

44. Having regard to the need for sound financial decision-making and accountability, the Panel recommends the following:

- a. **Local governments should be required to adopt or justify departures from a model investment policy to the Audit, Risk and Improvement Committee and relevant State Government Agency.**
- b. **Local governments should be able to use freehold land to secure debt.**
- c. **Debt should not be used for recurrent expenditure except in an emergency situation.**
- d. **Notice should continue to be required to be given for borrowings not included in the local government's annual budget.**
- e. **Building upgrade finance is permitted for specific purposes such as cladding, heritage and green improvements.**
- f. **Local governments should adopt program budgeting to more clearly show the actual cost of delivering a service or undertaking an activity.**
- g. **Local governments should report on the percentage of their expenditure spent on local businesses in their annual report.**

It is important that local governments are enabled through the legislation to invest their reserves effectively to maximise revenue. Given that the funds are public money, this must be balanced to ensure that local governments and their communities are not unnecessarily exposed to risk. The Panel agreed that local governments should be required to prepare an investment policy, dealing with approved investments and risk levels amongst other things.

Local government legislation in Queensland contains a tiered investment structure, with local governments having the power to invest based on their tier. This takes into consideration risk levels and credit ratings. The Panel suggested that further expert analysis be undertaken to inform potential implementation in Western Australia.

Local governments generally have low levels of debt relative to security, income levels and service responsibilities. The Panel noted that there are benefits to using debt for financial management when the benefits of the capital investment are multi-generational. On this basis, the Panel recommended expanding the ability for local governments to use freehold land to secure debt.

Building upgrade finance, which is operating in some other jurisdictions, is a scheme whereby a local government administers loans issued by financiers to non-residential building owners to upgrade their buildings. The Panel saw merit in allowing the introduction of the scheme for prescribed purposes such as upgrading heritage buildings or environmental upgrades. The introduction of building upgrade finance will need to have appropriate safeguards in place which could be modelled on the approach used in other States.

The Panel was of the view that the budget needs to be more closely integrated with IPR processes. As one measure to achieve this alignment, local governments should transition to budgeting on the basis of service delivery. This would require each service or program to be fully costed, ensuring elected members (and ultimately the community) understand the cost of providing the service and



encourage critical review of costs. This would also allow the community to provide more informed input into the Council Plans.

Program budgeting will result in better information leading to more informed decisions. Reporting on actual cost of services could result in decisions to allocate limited resources in different ways and gain greater acceptance by the community.

The positive impact a local government can have on their local economy through using businesses within their district and region were noted by the Panel. The view was held that there would be benefits for the community in seeing how much the local government had spent locally and with which businesses. This would be included in the Annual Report as a “local content” report.

Procurement

45. The Panel recommends that local government procurement thresholds, rules and policies are, where applicable, aligned with the State Government, including (but not limited to):

- a. **Tender threshold (currently \$250,000);**
- b. **Procurement rules and methods for goods and services under the tender threshold;**
- c. **Procurement policies, including sustainable procurement, procuring from disability enterprises, buy local (where ‘local’ refers to Western Australia or a specific region of the state determined by the local government) and Aboriginal businesses; and**
- d. **Using TendersWA as the primary tender platform.**

The Panel agreed that procurement needs to be open, transparent, fair and ensure adequate market testing, value for money and local consideration.

The Panel supported aligning local government and State Government procurement frameworks, including the tender threshold, procurement rules under the tender threshold and the publication of tenders and high value contracts on TendersWA. By increasing consistency between State and local government, and transparency of procurement rules and processes it creates a business-friendly environment and increases confidence in the process.

Local governments should be able to advertise tenders on other platforms, in addition to TendersWA, if they so choose.

46. The Panel recommends the development of a model procurement policy for all local governments. If a local government chooses to deviate from the policy it should to be required to explain its reasoning to the responsible State Government agency.

In keeping with the recommended alignment to the State procurement framework, a model procurement policy should be developed that is consistent, as much as practicable, with the State rules that apply for purchasing goods under the tender threshold. The Panel believed development of a model procurement policy would assist local governments with the procurement process and increase consistency between local governments. If a local government chose to deviate from the model, local governments should have to justify the deviation by explaining their reasoning.



47. The Panel recommends enhancing legislation to regulate and guide the establishment and management of panel contracts.

It was acknowledged that local government preferred supplier panels are important and need to be retained; however, their establishment and operation needs to be regulated. The Panel supported the continuance of the WALGA Preferred Supplier Panel, subject to regular oversight and checks and balances to ensure that it is constituted correctly and there is accountability.

48. The Panel recommends a requirement for local governments to have an open register of local businesses with local governments determining what is considered 'local' to their community.

The Panel recommended the introduction of an open register of local businesses where local businesses can register with the local government and outline the services and goods they provide. This will assist local governments to support local businesses when procuring goods under the tender threshold, and in informing them of open tenders. Local governments should determine what is considered 'local' to their community.

49. The Panel recommends breaches of the local government procurement rules to be referred to the Office of the Independent Assessor to use the appropriate powers under the new Local Government Act.

There are currently limited penalties for non-compliance with the procurement rules in the Local Government Act. The Panel supported the compliance model in the State Government procurement rules whereby greater oversight and less autonomy is the result of compliance breaches and believed the Office of the Independent Assessor should have the power to address cases of non-compliance. (See Recommendation 54 for more information on the Office of the Independent Assessor).

Rating and Revenue

50. The Panel recommends:

- a. Rate capping should not be introduced.
- b. Local governments should be required to develop and publish a rates and revenue strategy, that would amongst other things replace the need to have fees and charges set in the annual budget.
- c. The Economic Regulatory Authority (ERA) should be asked to undertake a review of the rating system, including a thorough examination of the case for the current wide range of exemptions.
- d. The current rates exemptions should be retained until after the ERA review.
- e. Property owners seeking an exemption should be regularly required to prove they meet the criteria for an exemption.
- f. Local governments should charge a separate waste charge applying to all properties which have a waste service, including exempt properties.



g. The Valuer General should be asked to undertake a review of the rating methodology with the aim of smoothing out significant fluctuations in valuations.

The Panel noted the importance of rates as local government's principal own source revenue, but equally the need to ensure transparency and fairness in the way rates are calculated and imposed.

With local governments increasingly being required to provide more services and to a higher level to their communities, as well as maintaining their existing assets, the Panel noted that there is concern as to how local governments will continue to fund this in the future given their limited revenue sources.

Of all revenue sources, the most important own source revenue for local governments is rates revenue. Local governments are permitted to impose differential general rates according to land zoning, land use (including if the land is vacant) or a combination of the two.

The Panel was supportive of local governments being required to develop a rates and revenue strategy, as is in place in other jurisdictions. The strategy would include the schedule of fees and charges set by local governments (currently included in the budget), the methodology where the fees are set at cost recovery, the rate/s in the dollar and associated objects and reasons for differential general rates. This would increase transparency for ratepayers and enable local governments to demonstrate the actual cost of services to consumers.

It was acknowledged that there are limitations on local governments' ability to raise revenue due to the current rate exemption categories. Rate exemptions result in local governments needing to cover the rates shortfall by other means, raising the funds from other groups of ratepayers or alternatively reducing services or asset maintenance.

It was accepted that there may be sound reasons why certain exempt categories should be retained, including linkages to State Government policies and initiatives. The Panel recommends that applicants should be required to prove each year that they still fit the criteria for the exemption, especially for organisations claiming charitable status.

51. The Panel recommends that local governments should be able to set reasonable fees and charges according to a rating and revenue strategy, with the oversight of the Audit, Risk and Improvement Committee.

52. The Panel recommends that local governments and State Government apply cost recovery principles when setting fees and charges.

While local governments have the power to set their own fees and charges generally, there are a number of fees and charges that local governments have no control over. Only a few of these are set under the current Local Government Act.

The Panel agreed that fees and charges set in legislation can provide consistency between local governments. It was also noted that while the fees and charges may be consistent, there is likely to be a different level of service provided by local governments.

It was also noted that while local governments are encouraged to adopt a cost recovery model when setting fees and charges, there may be circumstances where it is appropriate to set them lower for certain population groups (for example, seniors) or to encourage certain outcomes in the community.



Accountability, Self-Regulation and Integrity

Enhanced Accountability and Self-Regulation

53. The Panel recommends the role of audit committees be expanded to become Internal Audit, Risk and Improvement Committees and:

- a. The majority of the Committee members, including the Chair, should be independent of the local government and should be drawn from a suitably qualified panel.**
- b. To address the impost on small local governments, the committee could be established on a regional basis.**

54. The Panel recommends the main roles of the Audit, Risk and Improvement Committee should include:

- a. Developing an audit plan which focuses on compliance, risk (including procurement), financial management, fraud control, governance and delivery of the Council Plans;**
- b. Identifying continuous improvement opportunities and monitoring programs and projects in this area;**
- c. Conducting the mandatory internal audits as outlined in the audit plan; and**
- d. Providing advice to the council in relation to these matters.**

The Panel supported the expansion and strengthening of the role of local government audit committees to become Audit, Risk and Improvement Committees. Moving to a principles-based Act and providing local governments with more autonomy emphasises the need for self-regulation. This requires a robust process for accountability and transparency, justifying the need for the committee to have an independent chair. The Panel also concluded that, given the committee's expanded and critical role, there should be a majority of members not associated with the local government in any way and appointed and remunerated for their skills.

This aligns with the changes occurring within the State Government and the Office of the Auditor General recommendations.

Audit, Risk and Improvement Committees should be required to review matters such as compliance, risk management, financial management, fraud control and governance of the local government.

The Panel was of the view that an Audit, Risk and Improvement Committee could have a role in providing advice to council on decisions across a range of matters, including good governance, financial and risk management, and continuous improvement. The Chair could have a more public role, including in addressing council on relevant matters, reporting at the Annual Community Meeting and preparing a statement in the local government's annual report.

To address cost and access to suitable personnel to take on this role, regional Internal Audit, Risk and Improvement Committees should be permitted. In addition, consideration should be given to establishing a panel of approved independent members from which councils could choose.



Renewed Focus on Integrity

55. In relation to governance, the Panel recommends:

- a. Meeting procedures are standardised across all local governments, allowing for both a committee system and a public briefing system.
- b. Elected members should be required to lodge a declaration of interest as well as a confirmation of impartiality prior to meetings.
- c. Elected members who believe that they are unable to maintain impartiality on a particular matter should be permitted to withdraw from that part of the meeting provided a quorum is maintained.
- d. All votes should be recorded in the minutes on each motion with details of how each councillor voted.
- e. As a minimum, audio recordings of public parts of council meetings should be available on the local government's website when the minutes become available, with livestreaming to be encouraged.
- f. CEO contracts should be standardised and consistent with the Public Sector Commission's policy and relevant conditions for public sector employees.
- g. CEO contracts should be no more than five years and after two terms the local government must readvertise the position.
- h. The department should facilitate additional oversight in the recruitment and management processes of CEOs. This could include representation on the selection panel and/or screening of applicants.
- i. Primary and Annual Returns should include disclosure of membership of political parties and associations likely to be seen as exerting an influence on decision-making.

The Panel discussed ways to ensure council decision-making was transparent and accountable. It recommends that not only should actual conflicts of interest be declared before the council meeting, but that each councillor should make a declaration in relation to any item on the agenda on which they may not be impartial. This would include, for example, items where they had taken a public position or lobbied in relation to the matter before the meeting. If the councillor believes that they are unable to put those interests aside and make a decision in the best interests of the district as a whole, the person should be able to remove themselves from the meeting for that item, providing a quorum is maintained so that a vote can be taken. A declaration prior to the meeting would assist the CEO in determining whether or not a quorum is available for a matter.

While webcasting (livestreaming) of council meetings was preferred, given the technology constraints that could be experienced by some local governments, audio recordings of the meetings was considered as a practical minimum to ensure greater transparency in the decision making process. These recordings would be State records under the *State Records Act 2000*. The recordings should be required to be published on the website by the time the minutes were published.

The Panel agreed that the department should play an active role in assisting the council in the CEO recruitment and performance review processes. Another option is that prior to selection, the



Department could provide a reference check and possible recommendations for training for the shortlisted candidates for the positions of CEO.

To increase transparency and foster greater trust in local government, the Panel believed that elected members should declare in their Primary and Annual Returns interests that could be perceived as affecting decision-making. This would include membership of political parties, business associations and the holding of any office in an incorporated association such as a sporting club.

Expanded Requirements for Training and Professional Development

56. The Panel recommends the following in relation to training:

- a. New CEOs (including CEOs moving to a substantially larger local government) should be required to undertake training and ongoing professional development as recommended by the selection panel.**
- b. There should be compulsory induction training and ongoing professional development for all councillors, including specific programs for mayors and presidents.**
- c. Training modules for all councillors should include in-depth material on IPR and land use planning.**
- d. The Minister should have discretion to exempt completion of training within the stipulated time on compelling grounds.**
- e. Expanded use of peer review and support should be encouraged both to help improve the performance of individuals and local governments.**

The Panel discussed the importance of training for elected members, including training beyond the foundation units in such areas as land use planning. Additional training should also be required of mayors and presidents to provide them with such skills as leadership, conducting meetings and managing disputes. Training for new CEOs was also considered vital so that they had knowledge across the whole portfolio of their responsibilities. This need should be identified during the recruitment process and training should commence shortly after appointments are made. The Department could also identify training needs in CEOs and senior staff and advise the relevant mayor/president.

A New Early Intervention Framework

57. The Panel recommends that there should be an early intervention framework of monitoring to support local governments. The department should have additional powers to appoint and support the monitor with councils responsible for the direct costs of the monitor.

The Panel agreed that the department should assist councils through early intervention to remedy weaknesses and provide mentoring and support. This would be in addition to the department's role in policy development, legislation and statutory approvals.

A key benefit of an early intervention model would be the ability for the department to work with local governments to improve their performance, governance and compliance with legislation and to strengthen the capacity of local governments.



This model should enable the department to appoint a monitor to support local governments that are experiencing governance issues. The role of a monitor would be to observe governance processes and report back on issues; provide advice to councils that are experiencing governance issues, and to make recommendations to the Minister for Local Government for further action. The relevant council should be advised of the terms of the monitor appointment.

The Panel saw value in a power to extend the role of a monitor to temporarily take over certain functions of a local government when good governance practices are not being adopted or services are not being delivered to segments of the community.

They also saw value in Department staff having the right of access to council meetings, including closed meetings.

58. The Panel recommends the Minister should have the power to direct local governments and make declarations in respect to the Local Government Act during a declared state of emergency.

The COVID-19 situation has highlighted the need for the Minister to be able to direct local governments and make declarations without having to apply to the State Emergency Coordinator so that the Local Government Act can be applied flexibly and adapt to the changing environment of an emergency.

Establishment of an Office of the Independent Assessor

59. The Panel recommends establishing an Office of the Independent Assessor that should:

- a. Be an independent body to receive, investigate and assess complaints against elected members and undertake inquiries. This removes the CEO from being involved in processing and determining complaints.
- b. Be a statutory appointment by the Governor.
- c. Upon assessment, refer the complaint back to the council (behaviour-related), the State Administrative Tribunal (SAT) (serious breaches), or to another appropriate body (such as, Corruption and Crime Commission, Public Sector Commission, Ombudsman) according to the subject of the complaint.
- d. Replace the Standards Panel by investigating and making determinations on Rules of Conduct breaches. SAT will determine the penalties.
- e. Amongst other powers, have the power to investigate, to order compulsory mediation and to deal with abuses of process.
- f. Be required to notify the CEO and council of any matters on a confidential basis.

60. The Panel recommends consideration should be given to the appropriate recognition and management of complaints by an elected member against a CEO or other senior officer, with one option for these to be investigated by the Office of the Independent Assessor.



The Panel considered the range of bodies that currently play a role in ensuring the integrity of local governments. They supported the continuation of the Ombudsman's role in dealing with complaints related to local government administrative decisions.

The Panel supported the creation of an Office of the Independent Assessor, an independent "one stop shop" body to investigate and assess complaints against elected members. The Independent Assessor could assess and prioritise all complaints and, depending on the outcome of its investigations, refer it to the relevant agency. This could include the Corruption and Crime Commission, the Public Sector Commission, or the State Administrative Tribunal for mediation, possible further investigation and determination of a sanction/s. Where a complaint involves behaviour it could be referred back to the council to deal with under Part B of the new Code of Conduct provisions. It was suggested that the Queensland model for an Independent Assessor may provide appropriate guidance.

The Office of the Independent Assessor would require a team of investigators and the Panel considered that the Office could take over the department's current role in conducting inquiries and investigations. The Independent Assessor could advise the Minister on suspension and dismissals of elected members and councils. It could also have powers to make recommendations to the State Administrative Tribunal and local governments.

The Office of Independent Assessor would replace the Standards Panel, and have the power to investigate complaints of breach of Part C of the Code of Conduct. Its findings in relation to breaches of conduct could be referred to the State Administrative Tribunal for imposition of the penalty.

The Panel considered that there should be a power under the Act for the appointment of an acting CEO to temporarily take the place of a CEO if an investigation by the Office of Independent Assessor reveals serious deficiencies in the way the local government is administered.



Other Matters

Classification Bands

61. The Panel recommends:

- a. The new Act should set principles for determining classification bands for local governments.
- b. These classification bands should be used by the Salaries and Allowances Tribunal for determining councillor and CEO payments, as well as providing a framework for distinguishing between local governments in relation to other matters.

The Panel was of the opinion that the principles behind the setting of bands for the payment of salaries and allowances should be set in the new Local Government Act, rather than by the Salaries and Allowances Tribunal, with the Tribunal responsible for the setting of the monetary figures for each category.

These bands should have wider application; being used to determine whether a local government should have wards, as an example. This would create a level of consistency in treatment of local governments considered to be similar according to the principles.

Local Laws

62. The Panel recommends the increased harmonisation of local laws through the development of model local laws and deemed provisions.

63. The Panel recommends requiring local governments to justify to the Joint Standing Committee on Delegated Legislation any variation from the model or deemed provisions.

The Panel saw merit in laws being harmonised throughout the State; however, agreed that there should be flexibility for local governments to tailor local laws to address certain, limited, local matters.

The Panel also saw value in the introduction of deemed provisions which operate in a manner similar to the Planning and Development deemed provisions regulations. Deemed provisions are essentially uniform local laws which will operate across the State. They can also be amended from time to time and will override any inconsistent local laws.

The benefit of deemed provisions is that there is more consistency across the State for matters where harmonisation is considered important. It also reduces the need for local governments to develop their own laws with the accompanying capability and capacity implications.

The development of model local laws which complement the deemed provisions will allow local governments the flexibility to introduce specific provisions to their districts. The “local” would be delivered through the identification of certain elements that could be district or region specific, with the council having the power to specify these.

The Joint Standing Committee on Delegated Legislation, in approving the model local laws or deemed provisions, would approve the extent to which these could be altered without referral back to the Committee. Further public consultation would not be required on these variations but could be undertaken by the local government.



The use of model local laws and deemed provisions would reduce the administrative burden on local governments to consult. If a local government wanted to introduce provisions outside the model or deemed provisions, consultation would be required and the law would need to be scrutinised by the Joint Standing Committee on Delegated Legislation. The local government should have to justify to the Committee why such a deviation was necessary or desirable.

The Panel also supported a restriction on the range of matters over which a local government could introduce a local law; with approval necessary outside of this.

Western Australian Local Government Association

64. In relation to WALGA, the Panel recommends:

- a. WALGA not be constituted under the new Act;**
- b. A transition period is provided to ensure continuity in operations of WALGA while it is re-formed under other legislation; and**
- c. Recognition of WALGA's Preferred Supplier Program and mutual insurance coverage in the legislation should be accompanied by appropriate oversight measures, including auditing.**

The Panel deliberated the merits of WALGA being constituted under the Local Government Act and determined that it was not appropriate to incorporate a member body under this legislation. This created confusion as to the extent of the Minister's powers over the organisation and WALGA's level of independence.

More appropriate legislation would appear to be the *Associations Incorporation Act 2015*. Transitional provisions should be included in the new Local Government Act to allow for the orderly reconstitution of WALGA without affecting their operations.

This change would not restrict the new Act (or other Acts) from referencing WALGA membership on boards and committees.

The Panel saw merit in the sector being able to use its aggregated buying power through use of WALGA's preferred supplier program and their mutual insurance coverage. Recognition of these initiatives in the legislation should be accompanied by a power for the Auditor General to conduct regular audits of these programs and related processes.



Operational Provisions

65. The Panel also identified the following operational matters to be considered when drafting the new Act:

- a. The powers of entry in the current Local Government Act should be retained.**
- b. The current evidence requirements in legal proceedings should be retained, however the requirement for the CEO to certify the documents should be removed. This should be delegated and the range of items that can be certified expanded after consultation with local governments.**
- c. The new Act should be updated to reflect the modern signing of contracts.**
- d. A more streamlined ability to dispose of impounded goods needs to be developed for the new Act.**
- e. The new Act should enable councillors and members of the community (in the case of public questions and deputations) to remotely participate in council and committee meetings.**
- f. Employment entitlements for local government employees should be transferrable across all three levels of Government.**



ATTACHMENT 1

Example of Introductory Sections

Northern Territory Local Government Act 2019 Part 1.2

Section 4(1).

The underlying principles of this Act are as follows:

- (a) Local government is a distinct and essential sphere of government.
- (b) The system of local government:
 - i. needs to be flexible and adaptable to the diverse interests and needs of the many communities within the Territory; and
 - ii. needs to be comprehensive, democratic, responsive to community needs and accountable both to local communities and the public generally.

Section 5.

The rights and interests of Indigenous traditional owners, as enshrined in the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) and the Native Title Act 1993 (Cth), are to be recognised and the delivery of local government services must be in harmony with those laws.

Section 6.

This Act provides for the following:

- (a) the establishment of a democratic and effective system of local government that recognises the diversity of communities in the Territory;
- (b) the conferral of wide powers on councils to act for the advancement, and in the best interests, of their local communities;
- (c) the enabling of councils to play a broad role in promoting the social, economic, environmental, and cultural well-being of their local communities;
- (d) the imposition of high standards of ethical conduct on council members;
- (e) the requirement on councils of high standards of governance, service delivery, asset management and financial accountability;
- (f) the requirement on councils to promote and assist constructive participation by their local communities in achieving effective local government for their areas.



ATTACHMENT 2

Example of Functions of a Local Government

South Australia Local Government Act

Section 7: Functions of a council

The functions of a council include—

- (a) to plan at the local and regional level for the development and future requirements of its area;
- (b) to provide services and facilities that benefit its area, its ratepayers and residents, and visitors to its area (including general public services or facilities (including electricity, gas and water services, and waste collection, control or disposal services or facilities), health, welfare or community services or facilities, and cultural or recreational services or facilities);
- (c) to provide for the welfare, well-being and interests of individuals and groups within its community;
- (d) to take measures to protect its area from natural and other hazards and to mitigate the effects of such hazards;
- (e) to manage, develop, protect, restore, enhance and conserve the environment in an ecologically sustainable manner, and to improve amenity;
- (f) to provide infrastructure for its community and for development within its area (including infrastructure that helps to protect any part of the local or broader community from any hazard or other event, or that assists in the management of any area);
- (g) to promote its area and to provide an attractive climate and locations for the development of business, commerce, industry and tourism;
- (h) to establish or support organisations or programs that benefit people in its area or local government generally;
- (i) to manage and, if appropriate, develop, public areas vested in, or occupied by, the council;
- (j) to manage, improve and develop resources available to the council;
- (k) to undertake other functions and activities conferred by or under an Act.



ATTACHMENT 3

Possible Approaches to Structural Reform

South Australia Local Government Act

Following negotiations between the State government and the Local Government Association the South Australian Act was amended in 2018 to introduce a new, more flexible process for structural reform, set out in sections 26-32C (see below). Importantly, section 26(d) states that *the Commission should, so far as is relevant, give preference to structural changes that enhance the capacity of local government to play a significant role in the future of an area or region from a strategic perspective.*

Other principles (section 26(1)(c)) are as follows:

- i. the resources available to local communities should be used as economically as possible while recognising the desirability of avoiding significant divisions within a community;
- ii. proposed changes should, wherever practicable, benefit ratepayers;
- iii. a council should have a sufficient resource base to fulfil its functions fairly, effectively and efficiently;
- iv. a council should offer its community a reasonable range of services delivered on an efficient, flexible, equitable and responsive basis;
- v. a council should facilitate effective planning and development within an area, and be constituted with respect to an area that can be promoted on a coherent basis;
- vi. a council should be in a position to facilitate sustainable development, the protection of the environment and the integration of land use schemes;
- vii. a council should reflect communities of interest of an economic, recreational, social, regional or other kind, and be consistent with community structures, values, expectations and aspirations;
- viii. a council area should incorporate or promote an accessible centre (or centres) for local administration and services;
- ix. the importance within the scheme of local government to ensure that local communities within large council areas can participate effectively in decisions about local matters;
- x. residents should receive adequate and fair representation within the local government system, while over-representation in comparison with councils of a similar size and type should be avoided (at least in the longer term);
- xi. a scheme that provides for the performance of functions and delivery of services in relation to 2 or more council (for example, a scheme for regional governance) may improve councils' capacity to deliver services on a regional basis and therefore offer a viable and appropriate alternative to structural change.

Key elements of the process set out in sections 27-32C of the Act include:

- Responsibility for processing boundary changes transferred from the former Boundary Adjustments Facilitation Board to the Grants Commission, which operates with a very high level of independence and determines the guidelines under which the process operates.
- The Minister is limited to being one party who can propose boundary changes or mergers for the Commission's consideration, and making the final decision to accept or reject the



Commission's recommendation – a decision to reject the Commission's recommendation must be reported to Parliament.

- Changes or mergers can also be proposed by local governments (groups or individual), by either house of Parliament, and by a specified number of eligible electors.
- The Commission can decide not to investigate a proposal it considers trivial, a repeat of a previous proposal, or in some other way inappropriate or contrary to the public interest.
- Minor ('administrative') proposals can be processed quickly by the Commission with or without community consultation.
- A two-stage process is required for major ('general') changes – preliminary analysis followed (if considered appropriate) by detailed investigation and extensive community consultation (some sort of public inquiry).
- No requirement for binding referenda.
- All the Commission's findings and recommendations must be reported publicly on a website.



ATTACHMENT 4

Example of Principles for Inter-Governmental Relations

British Columbia Community Charter Act

Section 23. Agreements with other public authorities

- (1) A council may make agreements with a public authority respecting
 - a) activities and services within the powers of a party to the agreement, including agreements respecting the undertaking, provision and operation of activities and services,
 - b) operation and enforcement in relation to the exercise of authority to regulate, prohibit and impose requirements within the powers of a party to the agreement, and
 - c) the management of property or an interest in property held by a party to the agreement.

Principles of municipal-provincial relations (given effect in sections 276 and 277)

- (1) The citizens of British Columbia are best served when, in their relationship, municipalities and the Provincial government
 - a) acknowledge and respect the jurisdiction of each,
 - b) work towards harmonization of Provincial and municipal enactments, policies and programs, and
 - c) foster cooperative approaches to matters of mutual interest.
- (2) The relationship between municipalities and the Provincial government is based on the following principles:
 - a) the Provincial government respects municipal authority and municipalities respect Provincial authority;
 - b) the Provincial government must not assign responsibilities to municipalities unless there is provision for resources required to fulfill the responsibilities;
 - c) consultation is needed on matters of mutual interest, including consultation by the Provincial government on
 - (i) proposed changes to local government legislation,
 - (ii) proposed changes to revenue transfers to municipalities, and
 - (iii) proposed changes to Provincial programs that will have a significant impact in relation to matters that are within municipal authority;
 - d) the Provincial government respects the varying needs and conditions of different municipalities in different areas of British Columbia;



- e) consideration of municipal interests is needed when the Provincial government participates in interprovincial, national or international discussions on matters that affect municipalities;
- f) the authority of municipalities is balanced by the responsibility of the Provincial government to consider the interests of the citizens of British Columbia generally;
- g) the Provincial government and municipalities should attempt to resolve conflicts between them by consultation, negotiation, facilitation and other forms of dispute resolution.

5.5 Local Government Review Panel Final Report (05-034-01-0001 TB)

Tony Brown, Executive Manager Governance and Organisational Service
James McGovern, Manager Governance

WALGA carried out an extensive consultation process on Phase 2 of the Local Government Act Review in 2018/19, culminating in sector positions being endorsed by State Council in March 2019. This agenda item considers the Local Government Review Panel's recommendations in the context of the sector's current advocacy positions.

The Minister for Local Government has not considered the Panel's recommendations at this stage and has not requested a consultation process on the report. WALGA is taking the opportunity to obtain a sector opinion on the recommendations to provide to the Minister.

The Recommendations below are subject to Zone input and all Zone recommendations will be collated into a consolidated recommendation that will be provided for State Council consideration at its meeting on 2 September 2020.

Recommendations

1. That WALGA SUPPORT the following Recommendations from the Local Government Review Panel Final Report:

- Recommendations 1, 2, 3, 4, 6 and 7;
- Recommendation 8;
- Recommendation 11;
- Recommendations 12, 13 and 14;
- Recommendation 15;
- Recommendations 16 and 17;
- Recommendation 24;
- Recommendations 25(b) to (f);
- Recommendations 26(b), (d), (e) and (f);
- Recommendations 28, 29, 30, 31, 32(1)(a) to (o) and 32(2)(a);
- Recommendations 33 and 34;
- Recommendations 36 and 37;
- Recommendations 38(c), (d) and (e);
- Recommendations 39, 40, 41(a) to (g) and (i);
- Recommendation 42;
- Recommendations 43 and 44;
- Recommendations 45, 46, 47, 48 and 49;
- Recommendations 50, 51 and 52;
- Recommendation 54;
- Recommendations 55(a), (b), (d), (e), (f), (h) and (i);
- Recommendation 56;
- Recommendation 57;
- Recommendation 59;

- Recommendations 62 and 63;
 - Recommendation 64(c);
 - Recommendations 65(a) to (e).
2. That WALGA **OPPOSE** the following Recommendations from the Local Government Review Panel Final Report:
- Oppose Recommendation 5;
 - **Oppose Recommendation 19;**
 - Oppose Recommendations 23 and 25(a);
 - Oppose Recommendation 26(c);
 - Oppose Recommendations 32(2)(b) and (c);
 - Oppose Recommendation 35;
 - Oppose Recommendations 38(a) and (b);
 - Oppose Recommendation 41(h);
 - Oppose Recommendations 53(a) and (b);
 - Oppose Recommendations 55(c) and (g);
 - Oppose Recommendation 58;
 - Oppose Recommendation 60;
 - Oppose Recommendation 61;
3. That WALGA **CONDITIONALLY SUPPORT** the following Recommendations from the Local Government Review Panel Final Report as described:
- Recommendations 9 and 10 and but oppose any proposal to remove the poll provisions (Dadour provisions) in Schedule 2.1, Clause 8 of the Local Government Act;
 - Recommendation 18 and reiterate WALGA's current advocacy position that there be adequate funding of legislative responsibilities assigned to Local Governments in relation to service delivery to remote Aboriginal communities;
 - Recommendations **20, 21 and 27** in support of a broad review of the property franchise including a community consultative process;
 - Recommendation 26(a) conditional upon a review of the relative benefits and merits of changes to reduce numbers of Elected Members on Council be supported, on the following basis:
 - Populations up to 5,000 – 5 to 7 Councillors (incl. President)
 - Populations between 5,000 and 75,000 – 5 to 9 Councillors (incl. Mayor/President)
 - Populations above 75,000 – up to 15 Councillors (incl. Mayor);
4. That WALGA carry out further consultation on the following Recommendations from the Local Government Review Panel Final Report:
- Recommendation 22 – **All In/All Out Elections;**
 - Recommendations 64(a) and (b) - WALGA
 - Recommendation 65(f) – Transfer of Employee Entitlements

Executive Summary

- In 2017 the State Government announced a review of the *Local Government Act 1995*.
- Given the breadth of matters covered by the Local Government Act, a staged approach to the review was adopted:
 - Stage one: priority reforms
 - Stage two: wide ranging reforms leading to a new LOCAL Government Act
- This agenda item relates to the Stage 2 reforms. The Department of Local Government carried out a consultation process in 2018/19 where over 3,000 submissions were received.
- The Minister for Local Government appointed an Independent Panel to consider submissions received by the Department of Local Government Sport and Cultural Industries on the review of the Local Government Act in November 2019.
- The Panel's report has made 65 recommendations
- The Panel's report does not represent Government policy; the Minister for Local Government has stated the report will be considered as part of the Act Review process.
- This agenda item seeks a sector position on the recommendations. The recommendations to support, oppose or seek further consultation or information is proposed in this item.

WALGA Process

The Association recognizes the Report is a high level document that is based on identifying principles that will drive the development of a modern Local Government Act. The Association therefore considered the Report from the perspective of the sector's current advocacy positions.

This Item provides commentary on support for recommendations that met or where similar to adopted advocacy positions. This Item also identifies significant departure from advocacy to the extent that support cannot be recommended without further sector consideration of WALGA's position.

Attachment

The Panel's Report can be found [here](#).

Comment

The following comment is a comparison of State Council's record of advocacy on matters raised in the Local Government Review Panel Final Report:

CLEAR LEGISLATIVE INTENT**Recommendations 1 to 7 – Introduction and Role and Functions of Local Government****Local Government Act Reference: Part 1**

Recommendation 1 proposes a strategic approach to the consideration of the Report recommendations.

Recommendation 2 introduces a new statement of intent that will explain the legislations purpose:

An Act to provide for a system of local government relevant to Western Australia that develops and supports sustainable, accountable, collaborative and capable local governments through democratic representation, the provision of services, opportunities and enhanced well-being for each and every community.

Recommendation 3(a) to (j) proposes objectives for the legislative framework ‘to support Local Governments having the agility, adaptability and flexibility to respond to changing community expectations and technology’.

Recommendation 4 proposes a shorter, less prescriptive Act that minimizes the use of regulations in favour of a principles-based approach.

Recommendation 5 proposes recognition of the diversity of Local Governments however it does not support a multi-tiered (size and scale) legislative framework.

Recommendation 6 proposes upholding the power of general competence predicated in the current Local Government Act.

Recommendation 7 (a) to (i) proposes guiding principles for sustainable, accountable, collaborative and capable Local Governments.

WALGA Comment – WALGA advocacy supports many of the proposals in Recommendations 1 to 7, principally that the Local Government Act Review be based on a ‘Principles over Prescription’ approach that avoids red tape and ‘declutters’ the extensive regulatory regime that currently exists¹ (Recommendations 3 and 4) and maintaining the general competence principle² (Recommendation 6) which frees Local Governments to make any decision that does not conflict with statute or common law. Recommendation 7 aligns with WALGA advocacy for enabling legislation.³ Recommendation 5 is unsupportive of WALGA advocacy that promotes a size and scale compliance regime⁴ and it is recommended that WALGA maintain its current advocacy for a Local Government Act that is reflective of the differences and diversity of Local Governments in Western Australia.

WALGA Recommendation: Support Recommendations 1, 2, 3, 4, 6 and 7. Oppose Recommendation 5

¹ State Council Resolution 06.3/2019 Items 1, 1(b) and 1(e)

² State Council Resolution 06.3/2019 Item 1(a)

³ State Council Resolution 06.3/2019 Item 1(d)

⁴ State Council Resolution 06.3/2019 Item 1(c)

AN AGILE SYSTEM

Recommendations 8 to 11 - Structural Reform

Local Government Act Reference: Part 1; Section 2.1(2) and Schedule 2.1, cl. 8

Recommendation 8 proposes to combine the Local Government Grants Commission and Local Government Advisory Board to form a Local Government Commission, with roles assigned that will engender a strategic approach to its operation including monitor the performance and financial health of the sector, the latter in collaboration with the Office of the Auditor General, in addition to traditional functions such as distributing Commonwealth grant funding to Local Governments and boundary changes. Establishment of the Commission under this strategic framework will require skills-based appointments rather than by representation.

Recommendations 9 and 10 supports a legislative framework that is flexible, responsive and resilient and capable of facilitating community participation. There are also specific proposals for structural reform including revised processes for boundary changes and mergers, enhanced model of joint subsidiaries (see Recommendation 14) and provision for the establishment of community boards. Commentary associated with Recommendation 9 sees flaws in the current poll provisions found in Clause 8 of Schedule 2.1 ('Dadour provisions') as being '*...unduly restrictive when Local Governments need to adapt to changing circumstances*'.

Recommendation 11 proposes the potential to establish community boards, with reference to examples of successful international models. While community boards might be formed in response to mergers or for use by large Local Governments to devolve certain responsibilities to community representatives, the proposal makes clear that the overall responsibility for decision-making and authority will rest with the 'parent' Local Government. See also Recommendation 33 'Community Engagement'.

WALGA Comment – WALGA does not have an advocacy position in relation to Recommendation 8 'Local Government Advisory Board' and this may be a matter for sector consultation. Recommendations 9 and 10 propose a legislative framework that has similar themes to WALGA's advocacy that the Local Government Act Review promote a flexible, principles-based legislative framework⁵.

WALGA has a long-standing advocacy position for the retention of the Dadour provisions that give electors a right to demand a poll on recommended amalgamations⁶. This advocacy is tied to the principle that the Dadour provisions are the ultimate expression of community support or rejection of amalgamation proposals. Although not a specific recommendation, the commentary appears contradictory to the general themes expressed throughout the Report for increased opportunities for community consultation⁷. The community board proposal in Recommendation 11 is similar to WALGA advocacy for community engagement that is based on principle rather than prescription⁸.

WALGA Recommendation: Support the general intent of Recommendations 8 and 9. Oppose any proposal to remove the poll provisions (Dadour provisions) in Schedule 2.1, Clause 8 of the Local Government Act. Support Recommendation 11.

⁵ State Council Resolution 06.3/2019 at 1(b)

⁶ State Council Resolution 06.3/2019; 121.6/2017; 108.5/2014

⁷ For example, Recommendations 9, 10(c), 11, 33, 34, 35

⁸ State Council Resolution 06.3/2019

Recommendations 12, 13 and 14 - Expanded Regional Cooperation**Local Government Act Reference: Part 3, Division 4**

Recommendations 12 and 13 promotes expanding opportunities for regional cooperation between Local Governments under improved regional subsidiaries model for shared services, and through a new form of regional authority for specific issues. Recommendation 14 proposes an end to the regional council model in favour of regional cooperation models set out in the previous recommendations.

WALGA Comment – WALGA has a strong advocacy history in support of regional subsidiaries⁹ and is disappointed that the complexity of the existing legislative provisions means that no regional subsidiaries have formed since the Act amendment of 2016. WALGA has independently developed a revised version of regulations that limits unnecessary compliance without diluting transparency and accountability of regional subsidiaries, and therefore welcomes recommendations that will facilitate regional cooperation under this model.

WALGA is cognisant that regional councils are often formed for a singular purpose, most commonly waste management, yet compliance obligations are generally equivalent to that of a Local Government. It is current WALGA advocacy that the compliance obligations of regional councils should be reviewed¹⁰. It appears the recommendations will create a suitable opportunity for the transition of regional councils to a model more suitable to the participant Local Governments.

WALGA Recommendation: Support Recommendations 12, 13 and 14.**Recommendation 15 - State Local Government Partnership Agreement****Local Government Act Reference: Section 3.18**

Recommendation proposes a set of principles for intergovernmental relations that makes clear Local Government's role and obligations as part of a broader system of government.

WALGA Comment – WALGA's advocacy is for a communication and consultation protocol that ensures a consultation process precedes regulatory or compliance changes that affect the sector¹¹. The current Partnership Agreement signed in 2017 is currently under review.

Section 3.18 'Performing executive functions' includes apparently similar objectives to Recommendation 15, whereby a Local Government considers matters such as; integration and coordination; avoidance of inappropriate duplication; and effective and efficient management of services and facilities that may also be provided by the State and Commonwealth. This creates adequate space for the general competence principle to apply when a Local Government considers the range and scope of its executive functions, services and facilities.

WALGA Recommendation: Support Recommendation 15.

⁹ State Council Resolutions 121.6/2017; 106.6/2016; 94.4/2011; 114.5/2010

¹⁰ State Council Resolution 06.3/2019

¹¹ State Council Resolution 2.1/2012

INCLUSIVE LOCAL DEMOCRACY

Recommendations 16 and 17 - Relations with Aboriginal Peoples and Communities and Recommendation 18 - Service Delivery in Remote Communities

Local Government Act Reference: Not mandated

Recommendations 16 and 17 contemplate a Local Government Act that includes recognition of the unique status of Aboriginal peoples and inclusion of mechanisms for consultation and engagement. Recommendation 18 recommends further consideration of service delivery to remote communities through improved integration with Integrated Planning and Reporting requirements.

WALGA Comment – WALGA's advocacy recognises and respects Aboriginal cultural practices and places through development of Reconciliation Action Plans¹², and is supportive of efforts to improve the living conditions and governance in Aboriginal communities.¹³

There are 287 discrete Aboriginal communities in WA accommodating approximately 17,000 Aboriginal people spanning 26 Local Government districts. It is therefore inevitable that service delivery considerations are coordinated with State and Federal Government departments and agencies with relevant responsibilities, to mitigate against cost-shifting responsibility to individual Local Governments with limited financial capacity.

WALGA adopted the advocacy position that *'the State Government must not assign legislative responsibilities to Local Governments unless there is provision for resources required to fulfil the responsibilities'*¹⁴.

The commentary associated with Recommendation 18 raises a necessary discussion regarding service delivery to remote Aboriginal communities but lacks detail on how the inter-governmental responsibilities and funding arrangements associated with efficient and timely service delivery can be better achieved.

WALGA Recommendation: Support Recommendations 16 and 17, and reiterate WALGA's current advocacy position in relation to Recommendation 18, that there be adequate funding of legislative responsibilities assigned to Local Governments in relation to service delivery to remote Aboriginal communities.

Recommendation 19 - Optional Preferential Voting

Local Government Act Reference: Section 4.69, 4.74 and Schedule 4.1

The Report recommends a system of voting that better represents the community's preference for candidates that is not currently delivered by a first past the post system, where a candidate does not require a clear majority of votes to be elected.

WALGA Comment – WALGA's advocacy position supports the current 'first past the post' system. WALGA has previously opposed other forms of voting¹⁵ and the system of proportional preferential

¹² State Council Resolution 118.5/2012

¹³ State Council Resolution 64.3/2014

¹⁴ State Council Resolution 06.3/2019 at 1(f)

¹⁵ State Council Resolutions 185.2/2007 and 427.5/2008

voting was briefly introduced to the Local Government Act for one election cycle before being repealed and returned to first past the post voting in 2009¹⁶.

WALGA Recommendation: Oppose Recommendation 19 and any alternative voting system in favour of retaining the first past the post system.

Recommendations 20, 21 and 27 - Review of Property Franchise

Local Government Act Reference: Sections 4.30 → 4.35; Section 4.66

Recommendation 20 proposes mandating one vote per person, which is currently prescribed in Section 4.65 albeit in the context of the property franchise. Recommendation 21 proposes discontinuing enrolment entitlement through ownership or occupation of rateable property. Property franchise claims result in enrolment on the Owner's and Occupiers Roll, forming the second limb of voter entitlement alongside the Residents Roll.

The Expert Panel proposes increasing participation, consultation and involvement of business owners and operators by Local Governments including mechanism such as business advisory groups. Recommendation 27 recommends consultation be undertaken to determine whether the property franchise continue within the City of Perth, in concert with a review of the *City of Perth Act 2016*.¹⁷ Currently, Part 4 of the Local Government Act applies to the election of council members of the City of Perth, and Section 20 of the *City of Perth Act 2016* applies to the election of the Lord Mayor.

WALGA Comment – WALGA has not adopted an advocacy position relevant to the recommendations.

It is recommended that support be given to a broad consultative process with Local Governments, the business sector, communities and relevant stakeholders to assess whether or not owners and occupiers of rateable property should have a right to vote in a modern democratic electoral system.

WALGA Recommendation: Conditionally Support Recommendations 20, 21 and 27 in support of a review of the property franchise including a broad community consultative process.

Recommendation 22 - All In/All Out 4 Year Election Cycle

Local Government Act Reference: Section 4.5

Recommendation 22 proposes Elected Members be elected at the same time, every four years. This aligns with the election of State Parliamentarians. An acknowledged detriment is the potential loss of corporate knowledge due to non-election of experienced councillors, whereas benefits include potential increased participation by candidates and electors and reduced election costs to Local Governments.

WALGA Comment – There is no WALGA advocacy position relevant to this proposal. It is therefore recommended that the sector be consulted and the resultant views be considered in developing WALGA's advocacy position.

WALGA Recommendation: That the sector be consulted prior to WALGA considering its advocacy position in relation to Recommendation 22.

¹⁶ Local Government Amendment (Elections) Act 2009

¹⁷ City of Perth Inquiry Report, Recommendation 144

Recommendations 23, 24 and 25(a) – Conduct of Elections**Local Government Act Reference: Section 4.20 and 4.61**

Recommendation 23 is that the Western Australian Electoral Commission (WAEC) take responsibility for all Local Government elections, with the consequence that a Local Government CEO will no longer be the Returning Officer of first resort. Recommendation supports electronic/online voting. Recommendation 25(a) adds to the currently mandated role of the WAEC by proposing all elections are by postal voting, ending the option on in-person voting.

WALGA Comment – WALGA advocates for an end to the WAEC's enshrined monopoly on the conduct of postal elections by amending legislation to permit third parties to be service providers of postal elections¹⁸.

WALGA Recommendation: Support Recommendation 24; Oppose Recommendations 23 and 25(a); WALGA reiterates its position that third parties be permitted as service providers for postal elections.

Recommendations 25(b) to (f) - Other Election Proposals

Recommendation (b) proposed the extension of the election process to optimise participation. Recommendation 25(c) 'Candidate Nomination Information' is adapted from a model similar to Victorian legislation that requires candidates to respond to a set of questions prescribed by regulation in the form of a statutory declaration. Recommendation 25(d) – Caretaker Policies are increasingly evident in Local Government; in 2016, WALGA committed to develop the currently-available template Caretaker Policy¹⁹.

Recommendation 25(e) seems to reflect current legislation²⁰ and Recommendation (f) identifies the prospect that potential donations can be crowdfunded in the absence of a gift declaration and this is likely to undermine integrity of the election process.

WALGA Recommendation: Support Recommendations 25(b) to (f)

Recommendation 26(a) - Elected Member Numbers Based on Population**Local Government Act Reference: Section 2.17**

The Report proposes the following structures for Elected Member positions on Council:

- (i) Population up to 5,000 – 5 Councillors (incl. President)
This proposal will capture approximately 81 Local Governments (1 metro, 80 non-metro)
- (ii) Population between 5,000 and 75,000 – 5 to 9 Councillors (incl. Mayor/President)
This proposal will capture approximately 47 Local Governments (19 metro, 28 non-metro)
- (iii) Population above 75,000 – 9 to 15 Councillors (incl. Mayor)
This proposal will capture approximately 11 Local Governments (10 metro, 1 non-metro)

¹⁸ State Council Resolution 06.3/2019

¹⁹ State Council Resolution 16.1/2016

²⁰ Regulations 30B and 30CA of the *Local Government (Elections) Regulations*

WALGA Comment – WALGA adopted an advocacy position in 2011 opposing a previous proposal to reduce the number of Elected Members to between 6 and 9²¹. At the time, WALGA requested a proper examination of the relative benefits and merits of any proposal to reduce numbers of Elected Members be conducted. There is still merit in reviewing numbers on Council and the proposal is worthy of consideration although limiting populations of up to 5,000 to a fixed number of 5 Councillors lacks the flexibility that is easily resolved by extending the maximum number of Councillors to 7.

WALGA Recommendation: **Conditionally Support Recommendation 26(a) conditional upon a review of the relative benefits and merits of changes to reduce numbers of Elected Members on Council be supported, on the following basis:**

- (i) Populations up to 5,000 – 5 to 7 Councillors (incl. President)
- (ii) Populations between 5,000 and 75,000 – 5 to 9 Councillors (incl. Mayor/President)
- (iii) Populations above 75,000 – up to 15 Councillors (incl. Mayor)

Recommendation 26(b) to (f) – Wards, Mayor/President Election and Term Limits

Local Government Act Reference: Part 2 and Part 4; Schedule 2.2

Recommendation 26 (b) to (f) proposes a number of adjustments associated with Recommendation 8 - Local Government Advisory Board/Local Government Commission. These proposals include:

- Recommendation 26(b) - system of ward boundary reviews;
- Recommendation 26(c) - discontinuance of ward boundaries for Band 3 and 4 Local Governments;
- Recommendation 26(d) - phasing in of proposals under Recommendation 26(a);
- Recommendation 26(e) - continuance of two year election cycle for Council-elected Mayors/Presidents; and
- Recommendation 26(f) - no limits to be placed on terms Elected Members and elected Mayor/President can serve.

WALGA Comment – Recommendation 26(e) aligns with WALGA advocacy that Local Governments retain the right to determine whether the Mayor / President will be elected by the Council or the community.²² WALGA has not adopted advocacy positions specific to the remaining proposals however Recommendation 26(c) conflicts with the general competence principle and the current self-determination inherent in the current ward review system. WALGA supports the ability for all Local Governments, not merely those in Band 3 and 4, to consider the merits of its system of representation and election on the basis of community of interest; physical and topographical features; demographic trends; economic factors and the ratio of Councillors to electors in the various wards.²³

²¹ State Council Resolution 08.1/2011 – ‘Reject the reduction in the number of Elected Members to between 6 and 9, and request the Minister engage the Department of Local Government in research to determine the relative benefits and merits of the proposal prior to further discussion with the Local Government sector’

²² State Council Resolution 06.3/2019; 121.6/2017

²³ How to conduct a review of wards and representation for local governments with and without a ward system – Department of Local Government, Sport and Cultural Industries - October 2017, Page 6

WALGA supports the general intent of Recommendation 8 and similar support is proposed to the exclusion of Item (c).

WALGA Recommendation: Support Recommendations 26(b), (d), (e) and (f). Oppose Recommendation 26(c).

Recommendations 28 to 32 - Redefinition of Roles and Responsibilities

Local Government Act Reference: Sections 2.7, 2.8, 2.10 and 5.41

Recommendation 28 sets the scene for Recommendations 29 to 32 by suggesting revised statements of roles and responsibilities that are specific to address the following issues:

- Community leadership
- Strategic planning
- Continuous improvement
- Executive function (for mayors/presidents)
- Guiding the CEO (for mayors/presidents)
- Training

WALGA Comment – Recommendations 28, 29, 30 and 31 are supported. Recommendations 32(1)(a) to (o), and 32(a) are supported. WALGA opposes Council involvement in matters relating to senior employees²⁴ as this conflicts with the role of the CEO as employing authority of all employees under Sec. 5.41(g) of the Local Government Act.

Recommendations 32(2)(b) and (c) are opposed. These recommendations seek to perpetuate ongoing Council involvement in matters relating to senior employees. WALGA points out that Regulation 9(1) of the *Local Government (Rules of Conduct) Regulation* was amended on 15 August 2020 to remove reference to Councillor involvement in administration where authorised by the Council to undertake that task.

This amendment directly relates to past findings such as the City of Canning Inquiry 2014, where the Inquirer noted this Regulation was used to involve Council in a matter directly related to the CEO's employing authority functions:

*'Reg. 9(1) of the Local Government (Rules of Conduct) Regulations 2007 is a rule of conduct, and is not, by itself, a source of authority for intervention by the Council in Administration activities.'*²⁵

WALGA Recommendation: Support Recommendations 28, 29, 30, 31, 32(1)(a) to (o) and 32(a). Oppose Recommendations 32(2)(b) and (c) to conclusively ensure that a Council cannot involve itself in the functions of the Chief Executive Officer as set out in Section 5.41 of the Local Government Act.

Recommendations 33 and 34 – Community Engagement and Governance

Local Government Act Reference: Sections 2.7, 2.8, 2.10 and 5.41

Recommendation 33 proposes a range of community engagement principles, and Recommendation 34 proposes a Community Engagement Charter be required as a mechanism for guiding and enhancing community participation in local decision-making.

²⁴ State Council Resolution 123.6/2017

²⁵ Report of the Panel of Inquiry into the City of Canning, May 2014 at 9.53

WALGA Comment – WALGA advocates that Local Governments adopt a Community Engagement Policy, with each Local Government to implement the most appropriate means of engagement²⁶.

WALGA Recommendation: Support Recommendations 33 and 34.

Recommendation 35 – Annual Engagement with Electors

Local Government Act Reference: Sections 5. 27

Recommendation 35 proposes a lesser version of the opportunity already available to electors but poorly attended historically. This raises the prospect that, in the absence of the opportunity to move motions at meetings, the proposed annual meeting will follow a similar trend.

WALGA Comment – WALGA advocates that Elector's General Meetings should not be compulsory, on the basis that there is adequate opportunity for the public to participate in the affairs of the Local Government through attendance at Council Meetings, participating in public question time, requesting special electors' meetings etc²⁷.

WALGA Recommendation: Oppose Recommendation 35 and seek amendment to the Act to ensure Electors' General Meetings are not compulsory.

²⁶ State Council Resolution 06.3/2019

²⁷ State Council Resolution 06.3/2019; 121.6/2017; 09.1/2011

SMART PLANNING AND SERVICE DELIVERY

Recommendations 36 and 37 - Enhanced Integrated Planning and Reporting

Local Government Act Reference: Section 5.56; Local Government (Administration) Regulations Part 5, Division 3

Recommendation 36 and 37 propose enhanced Integrated Planning and Reporting principles and provisions and that Audit, Risk and Improvement Committee monitor performance against baseline measures including financial management, service delivery and community well-being.

WALGA Comment – WALGA has supported the Integrated Planning and Reporting framework dating back to the Systemic Sustainability Study of 2008 and broadly supported the regulatory amendments introduced in 2011.

WALGA Recommendation: Support Recommendations 36 and 37

Recommendations 38(a) and (b) – Minimum Service Levels

Local Government Act Reference: Section 3.18

Recommendations 38(a) and (b) are separated for independent consideration due to the potential for extensive consequences to the Local Government sector. Recommendation 38(a) proposes a minimum level of service delivery established as a statutory obligation, and Recommendation 38(b) proposes a qualified reserve power whereby the Minister for Local Government responds to a failure to deliver the minimum services by issuing an enforceable direction.

WALGA Comment: WALGA's closest advocacy positions to Recommendation 38 is 'principles over prescription' together with upholding the General Competence Principle²⁸. Recommendation 38(a) appears intended to create a commonality of service delivery that is potentially measurable across the sector, with service delivery outcomes either legislated or directed by the Minister for Local Government. This approach is anathema to the General Competence Principle that permits Local Governments to independently determine appropriate levels of service.

It is noted that continuance of the General Competence Principle is supported in Recommendation 6, but the contradictory nature of Recommendation 38(a), that determination of some services will be taken out of the hands of Local Governments and their communities, is neither identified nor examined in the Report.

Recommendation 38(b) is intended as a qualified reserve power however the associated commentary includes reference to directions relating to a natural disaster or a pandemic. The Local Government sector's experiences during the COVID-19 pandemic did not bring to light any deficiency in the capacity of the State Government to manage issues arising from a pandemic that would require the Minister for Local Government to assume emergency direction powers – see also Recommendation 58. WALGA advocates that the State Government ensure there is proper provision for resources required to fulfil any legislated responsibility²⁹.

WALGA Recommendation: Oppose Recommendation 38(a) and (b) and reiterate support for Recommendation 6 'General Competence Principle'.

²⁸ State Council Resolution 06.3/2019 Items 1(a) and (b); 120.6/2017

²⁹ State Council Resolution 06.3/2019 Item 1(f)

Recommendations 38(c), (d) and (e) – Service Levels and IPR**Local Government Act Reference: Section 5.56; Part 5, Division 3 Local Government (Administration) Regulations**

Recommendations 38(c), (d) and (e) propose a range of measures to align financial sustainability principles and services and programs to the integrated planning and reporting framework, and to conduct regular service delivery reviews including community consultation.

WALGA Comment: WALGA supported the introduction of the Integrated Planning and Reporting 'planning for the future' provisions and the above recommendations broadly align with current level of maturity in community consultation processes and examination of service delivery leading to the development of Strategic Community Plans and Corporate Business Plans.

WALGA Recommendation: Support Recommendations 38(c), (d) and (e)**Recommendations 39 to 42 - Local & Joint Subsidiaries****Local Government Act Reference: Part 3, Division 4**

Recommendation 39 proposes Integrated Planning and Reporting frameworks be cognisant of State Government plans when developing strategies for economic development.

Recommendation 40 proposes the new Local Government Act provide freedom for commercial activities, linking with Recommendation 41 which, whilst recommending against a beneficial enterprise model, makes positive recommendations for the support of commercial activities under an updated subsidiary model required to observe competitive neutrality principles. Recommendation 42 supports the use of regional subsidiary models unless qualified by the requirement to form an entity where the Local Government is not the dominant party.

WALGA Comment – It is noted that Recommendation 41(a) to (i) details the elements required for a flexible subsidiary model, including a proposal under 41(h) that employees of a subsidiary fall within the jurisdiction of the WA Industrial Relations Commission. This conflicts with current WALGA advocacy that such a transfer is conditional upon modernisation of the State system to be more consistent with the Federal industrial relations system³⁰.

WALGA has a long-held advocacy position for the creation of Beneficial Enterprises³¹ with support for a vehicle for commercial activity ('Council-controlled organisations') dating back to WALGA's Systemic Sustainability Study 2008³².

WALGA Recommendation: Support Recommendations 39, 40, 41(a) to (g) and (i) and 42. Oppose Recommendation 41(h).

³⁰ State Council Resolution 78.5/2018

³¹ State Council Resolutions 06.3/2019; 121.6/2017; 107.5/2010; 114.5/2010

³² *The Journey: Sustainability into the Future* - Action 21, Page 49

Recommendations 43 and 44 - Modernise Financial Management**Local Government Act Reference: Part 6; Local Government (Financial Management) Regulations**

Recommendation 43 proposes a modern set of principles to modernise financial management.

Recommendation 44 proposes a selection of measures in support of sound financial decision-making.

WALGA Comment – WALGA supports the general intent of the recommendations, aligning as they do with a number of advocacy positions³³ including:

- Conduct a complete review of financial management provisions
- Freehold land be used to secure debt
- Enable Building Upgrade Finance

WALGA notes that the Report of the Inquiry into the City of Perth makes a number of recommendations³⁴ relating to financial management of all Local Governments including:

- Recommendation 188 : Establishment of Financial Management Instructions;
- Recommendation 189 : The 'WA Accounting Manual' dated September 2012 be reviewed and updated;
- Recommendation 190 : The format of format of the annual budget and financial report be prescribed for consistency across local government'

WALGA Recommendation: Support Recommendations 43 and 44**Recommendation 45 to 49 - Procurement****Local Government Act Reference: Section 3.57; Local Government (Functions and General) Regulations Part 4**

Recommendation 45 proposes procurement thresholds, rules and policies be more closely aligned with the State Government. Recommendation 46 proposes a model Procurement Policy be adopted by all Local Governments. Recommendations 47 and 48 propose enhancing panel contracts and encouraging local business to register as local content providers. Recommendation 49 introduces the prospect that breaches of procurement rules be referred to an Independent Assessor for investigation.

WALGA Comment – WALGA has consistently supported the alignment of the tender threshold with that of the State Government³⁵ and broadly supports the principle that suppliers of goods, services and works competing for contracts will benefit where procurement processes across State and Local Government has more similarities than differences. These proposals will also assist recent endeavours of both State and Local Government to enhance opportunities for local and regional suppliers to access contracts and boost local economies in the post COVID-19 recovery phase.

WALGA Recommendation: Support Recommendations 45, 46, 47, 48 and 49

³³ State Council Resolution 06.3/2019

³⁴ City of Perth Inquiry Report, Volume 3, Page 83

³⁵ State Council Resolution 06.3/2019

Recommendations 50, 51 and 52 - Rating and Revenue**Local Government Act Reference: Part 6; Local Government (Financial Management) Regulations**

Recommendation 50(a) opposes rate capping and 50(c) proposes a broad review of rate exemptions available under Section 6.26(2) of the Local Government Act in recognition of the limitation this places on capacity to raise revenue. Further proposals include development and publication a Local Governments rates and revenue strategies (50b) and a review by the Valuer General of rating methodologies (50 g). Recommendation 51 aligns with the current provisions in Sec 6.17 of the Local Government Act which requires the setting of fees and charges to consider; the cost of providing the service; importance of the service to the community; and the price of alternative providers might charges for similar service.

Recommendation 52 recommends cost recovery principles be adopted when Local Government and State Government set fees and charges.

WALGA Comment – WALGA's advocacy opposes rate capping³⁶ and there is long-standing support for a review of general rate exemption provisions and charitable land use rate exemptions³⁷ initially examined by the Local Government Advisory Board in 2005³⁸. WALGA also supports a review of the basis of rates³⁹ and this may be incorporated in Recommendation 50(g).

WALGA's advocacy position in relation to Recommendation 52 is that Local Government to be empowered by legislation to set fees and charges for all services it provides in favour of the current arrangement whereby many fees and charges are determined by State Government legislation⁴⁰.

The Office of the Auditor General regularly audits State Government fee-setting in line with Government policy:

It is general government policy that fees should fully recover the cost of providing related services. If fees under-recover costs, this could mean the general public is subsidising customers, while over-recovery could mean customers are being charged too much. Any under or over-recovery of costs requires approval from the Minister or authority from legislation, respectively.⁴¹

WALGA's long-held concern is that the State Government's policy is inadequately applied to Local Government service delivery (town planning fees, building fees, dog and cat registration etc) and Local Governments experience a net revenue loss due to inherent issues of:

- Lack indexation
- Lack from regular review
- Lack a transparent methodology in setting of fees and charges

WALGA Recommendation: Support Recommendations 50, 51 and 52; continue to advocate for legislation that empowers Local Governments to set fees and charges for all services it delivers.

³⁶ State Council Resolution 06.3/2019; 96.6/2015; 118.7/2015 incl. Rate Setting Policy Statement

³⁷ State Council Resolution 06.3/2019; 122.6/2017; 118.7/2015; 5.1/2012

³⁸ Local Government Advisory Board's Inquiry into the Operation of Section 6.26(2)(g) of the Local Government Act 1995 – November 2005

³⁹ State Council Resolution 06.3/2019; 123.6/2017

⁴⁰ State Council Resolution 06.3/2019; Metropolitan Local Government Reform Submission 2012

⁴¹ Report 13 'Fee-setting by the Department of Primary Industries and Regional Development and Western Australia Police Force' December 2019 - Executive Summary, Page 3

ACCOUNTABILITY, SELF-REGULATION AND INTEGRITY

Recommendations 53 and 54 - Accountability and Self-Regulation

Local Government Act Reference: Part 7 (Audit); Local Government (Audit) Regulations

Recommendation 53 recommends an expanded Audit, Risk and Improvement Committee with Recommendation 53(a) and (b) proposes that skills-based independent members hold the majority of numbers, and the Chair, of the Committee, and regional committees be formed to offset potential increased costs.

Recommendation 54 proposes an expanded role for the Audit, Risk and Improvement Committee including an audit plan approach focussing on compliance, risk (including procurement), financial management, fraud control, governance and delivery of plans.

WALGA Comment – WALGA's advocacy supported the Office of the Auditor General WA conducting Local Government finance and performance audits⁴². The self-regulation themes within Recommendation 54 are supported, however Recommendation 53(a) and (b) proposals for a majority of independent members, potentially drawn from a panel of approved suppliers or shared through regional cooperation arrangements, does not include a benefits analysis and there is no evidence the regional cooperation approach will lessen internal audit costs particularly for rural and regional Local Governments.

WALGA Recommendation: Oppose Recommendation 53(a) and (b). Supports Recommendation 54.

Recommendation 55 – Integrity and Governance

Local Government Act Reference: Part 7 (Audit); Local Government (Audit) Regulations

Recommendation 55(a) to (i) propose a range of governance measures to improve integrity, oversight and public participation.

WALGA Comment – Recommendations (f), (g) and (h) align with the Department of Local Government, Sport and Cultural Industries current development of Mandatory CEO Standards for Recruitment, Performance Review and Termination (associated with the *Local Government Amendment Legislation Act 2109*) and it is likely this body of work will continue to be dealt with independent of this Report. WALGA's current advocacy position includes opposition to item (g), the mandatory readvertising of the CEO position upon completion of two five year terms.⁴³

The proposal under item (c), permitting elected members unable to maintain impartiality to withdraw from a meeting and not vote, is clearly unworkable where the meeting quorum comes under threat and is opposed.

WALGA Recommendation: Support Recommendation 55(a), (b), (d), (e), (f), (h) and (i). Oppose Recommendations 55(c) and (g).

⁴² State Council Resolution 7.1/2018

⁴³ State Council Resolution 145.7/2019

Recommendation 56 – Training and Development**Local Government Act Reference: Section 5.126 and Regulations 35 and 36 of the Local Government (Administration) Regulations**

Recommendation 56 updates the recently introduced Elected Member training provisions.

WALGA Recommendation: Support Recommendation 56**Recommendation 57 and 58 – Early Intervention Framework****Local Government Act Reference: Part 8**

Recommendation 57 proposes an early intervention framework whereby the Department of Local Government, Sport and Cultural Industries works with Local Governments to improve performance, governance and compliance. Recommendation 58 proposes the Minister for Local Government should have powers to direct Local Governments and make declarations during a declared state of emergency.

WALGA Comment – WALGA does not have advocacy positions in relation to either recommendation. Recommendation 38(b) introduced commentary on this topic and it is reiterated the Local Government sector's experiences during the COVID-19 pandemic did not bring to light any deficiency in the capacity of the State Government to manage issues arising from the pandemic that would require providing the Minister for Local Government with additional emergency powers. A matter of this significance should be considered in the broad context of the State Government's assessment its capacity to respond during the present state of emergency period, rather than dealt with piecemeal in a review of the Local Government Act.

WALGA Recommendation: Support Recommendation 57. Oppose Recommendation 58.**Recommendations 59 and 60 – Office of the Independent Assessor****Local Government Act Reference: Part 8; Section 5.41**

Recommendation 59 (a) to (f) proposes conditions upon which an Office of the Independent Assessor might be established, including taking the functions of the Local Government Standards Panel.

Recommendation 60 proposes consideration of managing complaints by Elected Members against a CEO or other senior officer, with potential complaints be investigated by the Independent Assessor.

WALGA Comment – WALGA has a long-standing advocacy position for improvement to the operational efficiency of the Local Government Standards Panel.⁴⁴

The proposal in Recommendation 59 to create the Office of the Independent Assessor resonates in some regard with Recommendation 323, 324 and 325 of the Report of the Inquiry into the City of Perth.⁴⁵

⁴⁴ State Council Resolution 43.2/2011

⁴⁵ City of Perth Inquiry Report Recommendations Pp. 108 - 110

Recommendation 60 has the potential to overlay with other statutory provisions relating to employment law, and it is unclear whether the Report has considered the appropriateness of a proposal which will permit individual Elected Members, rather than the Council acting collectively as the employing authority, to instigate actions relating to a CEO's performance. Similarly, it is current practice that all complaints relating to other local government employees fall within the function of the CEO as the employing authority under Section 5.41(g) of the Act.

WALGA Recommendation: Support Recommendation 59. Oppose Recommendation 60.

OTHER MATTERS

Recommendation 61(a) and (b) – Classification Bands

Local Government Act Reference: Schedule 2.2

Recommendation 61(a) proposes the principles for determining classification and for Local Governments should be set out in the new Act, and Recommendation 61(b) states that once established they be utilized by the Salaries and Allowances Tribunal to determine Councillor and CEO allowances and remuneration.

WALGA Comment – WALGA has a long-standing advocacy position in relation to appropriate levels of remuneration for Elected Members.⁴⁶ The commentary accompanying Recommendation 61(b) informs the rationale for removing the classification band process from the *Salaries and Allowances Act 1975* to the *Local Government Act 1995* is to provide a broader application of the band system to other matters including whether a Local Government should have wards. This ties Recommendation 61(a) and (b) to Recommendation 26(c) that has the intent of discontinuing wards in Band 3 and 4 Local Government, which WALGA does not support.

WALGA Recommendation: Oppose Recommendation 61.

Recommendations 62 and 63 - Harmonisation of Local Laws

Local Government Act Reference: Section 3.5 to 3.17

Recommendations 62 and 63 propose increased harmonisation of Local Laws by developing model Local Laws and deemed provisions, with Local Government responsible for justifying any departure or variation from the models or provisions.

WALGA Comment – WALGA advocates for improvements to the current local law-making process and independent local law scrutiny conducted by Parliament's Delegated Legislation Committee⁴⁷. Consistent Models and deemed provisions will greatly enhance certainty in the local law-making process whilst ensuring the right for Local Governments to argue for and justify departures and variances that suit local conditions, issues and needs.

WALGA Recommendation: Support Recommendations 62 and 63

⁴⁶ State Council Resolution 06.3/2019; WALGA Submission to the Salaries and Allowances Tribunal – 21 February 2019

⁴⁷ State Council Resolution 06.3/2019

Recommendation 64 - WALGA**Local Government Act Reference: Section 9.58**

Recommendation 64 recommends the following in respect to WALGA;

- (a) WALGA not be constituted under the new Act;
- (b) A transition period is provided to ensure continuity in operations of WALGA while it is re-formed under other legislation; and
- (c) Recognition of WALGA's Preferred Supplier Program and mutual insurance coverage in the legislation should be accompanied by appropriate oversight measures, including auditing.

WALGA Comment – From the Local Governments sector perspective it is critical to retain WALGA's services status in the legislation and regulations relating to the Preferred Supplier Program and the Insurance service, as these programs provide significant savings for the Local Government sector.

In respect to whether WALGA's establishment is referenced in the Local Government Act, it is appropriate for the Association to obtain legal advice on any negative consequences this may have.

WALGA Recommendation: Support recommendation 64(c) for WALGA services retention in the Local Government Act relating to the Preferred Supplier Program and the Local Government Insurance Service. Further advice required in respect to recommendation 64(a) and (b)

Recommendation 65 – Operational Provisions**Local Government Act Reference: Various**

Recommendation 65 (a) to (f) proposes a number of operational matters for future consideration.

WALGA Comment – The proposals align with WALGA's advocacy to the extent that the new Local Government Act be based on a flexible, principles-based legislative framework that avoids red tape and 'de-clutters' the current extensive regulatory regime.⁴⁸

There is general support is therefore for these operational provisions, however Recommendation 65(f) – transfer of employee entitlements across all three levels of Government – though well intended is highly likely to raise extensive legal, industrial and financial ramifications prior to being capable of implementation. Further research and industrial consideration is therefore inevitable.

WALGA Recommendation: Support Recommendations 65(a) to (e). Conditionally support Recommendation 65(f) pending further research and industrial consideration.

⁴⁸ State Council Resolution 06.3/2019 Items 1(b) and (e)