

# Advocacy Positions for a New Local Government Act

**Key issues from recent inquiries  
into Local Government**

**December 2020**

## About WALGA

The WA Local Government Association (WALGA) is working for Local Government in Western Australia. As the peak industry body, WALGA advocates on behalf of 139 Western Australian Local Governments. As the united voice of Local Government in Western Australia, WALGA is an independent, membership-based organization representing and supporting the work and interests of Local Governments in Western Australia. WALGA provides an essential voice for 1,220 Elected Members, approximately 22,000 Local Government employees (16,500 Full Time Equivalent's) as well as over 2.5 million constituents of Local Governments in Western Australia.

## Contacts

Nick Sloan  
Chief Executive Officer  
[nsloan@walga.asn.au](mailto:nsloan@walga.asn.au)

Tony Brown  
Executive Manager Governance and  
Organisational Services  
[tbrown@walga.asn.au](mailto:tbrown@walga.asn.au)

James McGovern  
Manager Governance and Procurement  
[jmcgovern@walga.asn.au](mailto:jmcgovern@walga.asn.au)

Tim Lane  
Manager Strategy and Association  
Governance  
[tlane@walga.asn.au](mailto:tlane@walga.asn.au)

## Contents

|                                        |          |
|----------------------------------------|----------|
| <b>About WALGA</b>                     | <b>2</b> |
| Contacts                               | 2        |
| <b>Recommendations</b>                 | <b>4</b> |
| <b>Background</b>                      | <b>7</b> |
| Local Government Review Panel          | 7        |
| City of Perth Inquiry                  | 7        |
| Select Committee into Local Government | 7        |
| <b>Key Issues</b>                      | <b>8</b> |
| New Local Government Act               | 8        |
| Legislative Intent                     | 9        |
| Intergovernmental Cooperation          | 12       |
| Elections                              | 13       |
| Rating Exemptions                      | 16       |
| Fees and Charges                       | 17       |
| Road Funding                           | 18       |
| Regional Collaboration                 | 19       |
| Community Engagement                   | 22       |
| Roles and Responsibilities             | 24       |
| External Oversight                     | 26       |
| Financial Management and Procurement   | 28       |
| Accountability and Audit               | 33       |

## Recommendations

### New Local Government Act

That the State Government prepare a new Local Government Act as a priority.

### Legislative Intent

That the following key principles be embodied in the Local Government Act:

1. Uphold the general competence principle currently embodied in the Local Government Act
2. Provide for a flexible, principles-based legislative framework
3. Promote a size and scale compliance regime
4. Promote enabling legislation that empowers Local Government to carry out activities beneficial to its community taking into consideration Local Governments' role in creating a sustainable and resilient community through:
  - i. Economic development
  - ii. Environmental protection, and
  - iii. Social advancement
5. Avoid red tape and 'de-clutter' the extensive regulatory regime that underpins the Local Government Act, and
6. The State Government must not assign legislative responsibilities to Local Governments unless there is provision for resources required to fulfil the responsibilities.

### Intergovernmental Cooperation

That a Partners in Government Agreement promoting a collaborative partnership approach be signed by the Premier, Minister for Local Government, Western Australian Local Government Association and Local Government Professionals WA at the commencement of each term of the State Government.

### Elections

The Local Government sector supports:

1. Four year terms with a two year spill
2. Greater participation in Local Government elections
3. The option to hold elections through:
  - Online voting
  - Postal voting, and
  - In-person voting
4. Voting at Local Government elections to be voluntary
5. The first past the post method of counting votes



6. Local Governments being enabled to determine the number of Elected Members required on the Council between six and 15 (including the Mayor/President)
7. Local Governments to determine if the Mayor or President is elected by the Council or the community at large.
8. Continuation of the property franchise.

### **Rating Exemptions**

That an independent review of all rate exemptions be undertaken.

### **Fees and Charges**

That:

1. An independent review be undertaken to remove fees and charges from legislation and regulation and,
2. Local Government be empowered to set fees and charges for Local Government services.

### **Road Funding**

That the Government returns to Local Government at least 27 percent of motor vehicle licence fee collections.

### **Regional Collaboration**

That:

1. Local Governments be empowered to form single and joint subsidiaries, and beneficial enterprises, and
2. Compliance requirements of Regional Councils be reviewed and reduced.

### **Community Engagement**

The Local Government sector supports:

1. Responsive, aspirational and innovative community engagement principles
2. Encapsulation of aims and principles in a community engagement policy, and
3. The option of hosting an Annual Community Meeting to present on past performance and outline future prospects and plans.

### **Roles and Responsibilities**

That clarification of roles and responsibilities for mayors / presidents, councillors and CEO's be considered to ensure that there is no ambiguity.

## **External Oversight**

The Local Government sector supports:

1. Establishing an Office of the Independent Assessor to replace the Standards Panel to provide an independent body to receive, investigate and assess complaints against elected members and undertake inquiries.
2. Remove the CEO from being involved in processing complaints
3. That an early intervention framework of monitoring to support local governments be provided with any associated costs to be the responsibility of the State Government.

## **Financial Management and Procurement**

That the Local Government sector:

1. Requests the Minister for Local Government to direct the Department of Local Government to prepare a Model set of Financial Statements and Annual Budget Statements for the Local Government sector, in consultation with the Office of the Auditor General;
2. Requests the Department of Local Government to re-assess the amount of detail required to be included in annual financial reports, in particular for small and medium sized entities as suggested by the Office of Auditor General;
3. Supports Local Governments being able to use freehold land to secure debt;
4. Supports Building Upgrade Finance being permitted for specific purposes such as cladding, heritage and green improvements;
5. Supports the alignment of Local Government procurement thresholds, rules and policies with the State Government.

## **Accountability and Audit**

That audit committees of Local Government, led and overseen by the Council, have a clearly defined role with an Elected Member majority and chair.

## Background

Three significant inquiries relating to Local Government in Western Australia have released their final reports in August and September 2020.

This paper, which was endorsed by State Council on 2 December 2020 (Resolution 142.6/2020), aims to distil key issues raised by these reports and identify strategic advocacy positions of the Local Government sector to inform the strategic direction of legislative reform.

## Local Government Review Panel

As part of the Review of the Local Government Act, the Local Government Review Panel was formed to guide the strategic direction of the review and to recommend high level guiding principles for a new act.

The [Local Government Review Panel Final Report](#) was released on 5 August 2020.

## City of Perth Inquiry

The Authorised Inquiry into the City of Perth was announced on 24 April 2018 by the Minister for Local Government.

The report contains 341 recommendations, of which 132 have implications for the Local Government sector.

The [Report of the Inquiry into the City of Perth](#) was tabled in Parliament on 11 August 2020.

## Select Committee into Local Government

The Legislative Council Select Committee into Local Government commenced on 26 June 2019.

The Committee had broad terms of reference to inquire into Local Government in Western Australia and made a number of recommendations relating to key Local Government sector issues.

The [Select Committee into Local Government Final Report – Inquiry into Local Government](#) was tabled in Parliament on 22 September 2020.

## Key Issues

### New Local Government Act

The Local Government Review Panel Final Report states:

*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.*

### Discussion

The current *Local Government Act 1995* was proclaimed in 1996 and has been effective at enshrining the general competence principle which has enabled Local Governments to govern in the best interests of their communities. However, over the last 25 years there has been significant regulation and compliance obligations added to the legislation.

The current Local Government Act contains ten parts and totals 490 pages. In addition, there are 13 sets of regulations comprising a further 460 pages. This is a legislative burden on the Local Government sector and requires a significant reduction and a move to a principle over prescription approach to a new Act.

The Local Government Act should facilitate Local Governments utilising their general competence powers within a legislative framework that provides for good governance and accountability to the community for decision-making. The Local Government sector seeks a reduced regulatory approach accompanied by best practice guidance, support and assistance.

With a State Election due in March 2021 it is appropriate for the sector to seek a commitment for the progression of a new Local Government Act.

### Local Government Position:

**That the State Government prepare a new Local Government Act as a priority.**



## Legislative Intent

The Local Government Review Panel Final Report recommends:

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.*
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.*
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.*
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.*
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.*



The Select Committee into Local Government recommends:

1. *The Government consider implementing a compliance regime that differentiates between local governments based on their size and scale where appropriate.*

## **Discussion**

Throughout WALGA's consultation with the sector on the Local Government Act review, there has been overwhelming support for *principles over prescription*, an approach that avoids red tape and declutters the extensive regulatory regime. The following key principles are fundamental drivers of future Local Government legislation.

### ***General competence***

The Local Government Act is founded on the general competence powers principle, which gives Local Governments the legal capacity to do anything that is not prohibited by law. This principle is uniformly supported by the Local Government sector and that it should not be diluted by over-regulating the operations of Local Government.

The general competence principle recognises the democratic mandate of Local Government to represent, plan, and provides services for its community.

### ***Flexible, principles-based legislative framework***

The Local Government Act works well when Local Governments apply their general competence powers within a legislative framework that provides for good governance, with accountability to the community for decision-making.

The Local Government Act should focus on principles and objectives, not on process. Best practice, guidance material and smart people working together to solve problems drive innovation; prescriptive regulation drives compliance for the sake of compliance.

To focus on the process and not the principles and objectives risks embedding today's practice into legislation instead of allowing Local Governments the flexibility to innovate and adapt to new methods and new technologies. Not everything a Local Government should do needs to be legislated. Ultimately, Councils are considered to be generally competent and are accountable to the community through democratic elections held every two years.

### ***Size and scale compliance regime***

There is a marked appetite to differentiate between Local Governments based on size and scale. There is a significant difference in the compliance requirements of the City of Stirling compared to the Shire of Murchison. Areas such as the integrated planning and reporting framework, internal audits and model procurement policies are example areas that could be considered on a size and scale approach.

### ***Promote enabling legislation***

Promote enabling legislation that empowers Local Government to carry out activities beneficial to its community taking into consideration the Local Government's role in creating a sustainable and resilient community through:

- Economic development
- Environmental protection, and
- Social advancement.

There is a need to provide enabling legislation with a 'menu of opportunities' for the sector. Legislation should enable Local Governments to carry out a range of activities, even though all Local Governments may not want to undertake the activity.

### ***Reduce red tape***

WALGA has called for the de-cluttering of the extensive regulatory regime that underpins the Local Government Act. The legislative and regulatory regime represents a considerable challenge to the delivery of effective and efficient governance.

The State Government must not assign legislative responsibilities to Local Governments unless there is provision for resources required to fulfil the responsibilities.

The State Government should not impose responsibilities to Local Governments without adequate resourcing. This principle is contained within the British Columbia Community Charter and is supported by the Local Government sector.

### **Local Government Position:**

**That the following key principles be embodied in the Local Government Act:**

- 1. Uphold the general competence principle currently embodied in the Local Government Act**
- 2. Provide for a flexible, principles-based legislative framework**
- 3. Promote a size and scale compliance regime**
- 4. Promote enabling legislation that empowers Local Government to carry out activities beneficial to its community taking into consideration Local Governments' role in creating a sustainable and resilient community through:**
  - i. Economic development**
  - ii. Environmental protection, and**
  - iii. Social advancement**
- 5. Avoid red tape and 'de-clutter' the extensive regulatory regime that underpins the Local Government Act, and**
- 6. The State Government must not assign legislative responsibilities to Local Governments unless there is provision for resources required to fulfil the responsibilities.**

## Intergovernmental Cooperation

The Local Government Review Panel Final Report recommends:

- 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.*

### Discussion

Local Government strongly supports the enhanced collaboration between State and Local Government, as two spheres of government responsible for delivering public infrastructure and services for the benefit of the Western Australian community.

A Partners in Government Agreement, to be signed by the Premier, Minister for Local Government and Local Government leaders should contain:

- A preamble highlighting the importance of collaboration and partnership
- Objectives and principles
- Meetings of the Partners in Government Group comprising senior State and Local Government decision makers
- Collaboration aims and ideals, and
- Key focus areas.

Collaboration and partnership between the State and Local Government sectors aims to leverage the strengths of both spheres of Government for the benefit of Western Australia: the State's leadership and policy direction, and Local Government's on-the-ground presence in every community in our large and diverse state.

### Local Government Position:

**That a Partners in Government Agreement promoting a collaborative partnership approach be signed by the Premier, Minister for Local Government, Western Australian Local Government Association and Local Government Professionals WA at the commencement of each term of the State Government.**



## Elections

The Local Government Review Panel Final Report recommends:

19. *Optional preferential voting be adopted in place of the current first past the post system.*
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.*
22. *Local government elections are held once every four years, two years after but to otherwise accord with the timing of the State election.*
23. *All local government elections should be overseen by the Western Australian Electoral Commissioner.*
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).*
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.*
  - b. *The election process extended to provide more time for the issuing and receipt of postal votes.*
  - 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.*
  - 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.*
  - e. *The donor and the candidate should co-sign each declaration of a gift made.*
  - f. *Donations via crowd funding platforms should be regulated so far as possible.*
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.*

## Discussion

The overwhelming majority of Local Governments support retaining four year terms with a half spill every two years. A principle of the current two year election cycle is to support the continuity of knowledge and experience of the Local Government. A key risk of a proposal for an all in/all out term is the loss of knowledge and the influence of a Council.

Promoting voting participation in Local Government elections is a priority and can be achieved through a range of voting options, such as:

- On-line voting
- Postal voting, and
- In-person voting.

In respect to voting methods, Local Governments over the past 40 years have experienced preferential voting, proportionate preferential voting and the current first past the post method. Due to its simplicity, and ease of understanding, the Local Government sector supports first past the post voting.

The Local Government sector opposes compulsory voting in Local Government elections.

In respect to Elected Member representation, the general competence principle should apply, enabling a Local Government to determine the appropriate number, between six and 15 elected members (including the Mayor/President), depending on local requirements. This philosophy also extends to the decision to have a Mayor or President elected by the Council or elected at large by the community.

The Local Government sector supports continuation of the status quo with regards to the property franchise.

**Local Government Position:**

**The Local Government sector supports:**

- 1. Four year terms with a two year spill**
- 2. Greater participation in Local Government elections**
- 3. The option to hold elections through**
  - Online voting**
  - Postal voting, and**
  - In-person voting**
- 4. Voting at Local Government elections to be voluntary**
- 5. The first past the post method of counting votes**
- 6. Local Governments being enabled to determine the number of Elected Members required on the Council between six and 15 (including the Mayor/President)**
- 7. Local Governments to determine if the Mayor or President is elected by the Council or the community at large**
- 8. Continuation of the property franchise.**

## Rating Exemptions

The Local Government Review Panel Final Report recommends:

50(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.*

The Select Committee into Local Government recommends:

- 8 *Recognising that the current charitable purposes rate exemption produces perverse outcomes and may inappropriately shield commercial operations from paying rates, the Government clarify the charitable purposes rate exemption in any new local government Act.*
- 9 *The Government conduct a broad review of the rate exemptions to be included in any new local government Act.*

## Discussion

Exemptions from rates represent significant revenue leakage for Local Government. Recent data indicates that revenue foregone represents approximately two percent of rate revenue. This shortfall in lost revenue must then be made up from other ratepayers.

Rating exemptions relating to charitable purposes are particularly concerning as this exemption has extended in scope beyond its original intent to provide rating exemptions for the commercial undertakings of not-for-profit organisations. For instance, Independent Living Units, which often cost far more than the median house, are often exempt from rates. The net result of this is that millions of dollars of revenue is lost to Local Government which then has to be recouped from other ratepayers, many of whom would not be in a position to afford an Independent Living Unit themselves.

The rating exemptions that are of concern for the sector relate to the following:

- Rating of Charitable Purpose properties
- Department of Housing: Leasing to Charitable Organisations
- Government Trading Entities
- State Agreement Act projects
- State Owned Unallocated Crown Land

On this basis, the Local Government sector supports an independent review of all rating exemptions to enhance equity among ratepayers in the community.

### Local Government Position:

**That an independent review of all rate exemptions be undertaken.**



## Fees and Charges

The Local Government Review Panel Final Report recommends:

- 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.*

### Discussion

Fees and charges represent a significant source of discretionary revenue for Local Governments. Examples include dog registration fees, fees for building approvals and swimming pool entrance fees.

Currently fees and charges are determined by legislation or regulation, with an upper limit set by legislation, or by the Local Government. Fees mandated by legislation often do not keep pace with the cost of delivery meaning that ratepayers will subsidise particular activities without any ability to have input into the setting of the fee.

While cost recovery should be a consideration for the setting of fees and charges, there are some services that Local Governments may choose to subsidise to encourage activities with overall community benefit.

Setting fees and charges is a core government function and should be a deliberative decision of the Council.

### Local Government Position:

**That:**

1. **An independent review be undertaken to remove fees and charges from legislation and regulation and,**
2. **Local Government be empowered to set fees and charges for Local Government services.**

## Road Funding

The Select Committee into Local Government recommends:

7. *The Government consider returning to local governments at least 27 percent of motor vehicle licence fee collections.*

### Discussion

Local Governments are responsible for 127,500km of roads in Western Australia, representing 88 percent of the public road network.

With a replacement value close to \$30 billion, the Local Government road network is a significant state asset that connects people and places and facilitates economic activity across all of Western Australia.

In their final report, the Select Committee into Local Government found that the shortfall between local government expenditure on road preservation and the amount required to maintain roads at their current condition has continued to increase over the past five years to \$155.74 million in 2018-19.

To that end, the Local Government sector advocates for road funding from the State Government to return to 27 percent of vehicle licence fees.

### Local Government Position:

**That the Government returns to Local Government at least 27 percent of motor vehicle licence fee collections.**

## Regional Collaboration

The Local Government Review Panel recommends:

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.*
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.*
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.*
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.*

## Discussion

The Local Government sector supports streamlined and effective regional collaboration to leverage economies of scale, combined resources and enhanced accountability.

Regional collaboration provides many benefits for the community, including:

- Efficient service delivery leveraging economies of scale
- Enhanced accountability for specific functions, and
- Reduced risk by quarantining ratepayer funds in a separate legal entity

Flexibility for local governments to select and adapt the most suitable collaborative model to local circumstances is crucial for the benefits of regional collaboration to be realised. While competitive neutrality is important, and should be respected, the ability to undertake commercial activities is important, particularly to address instances of market failure.

The subsidiary model, governed by a charter, provides simplicity and can be customised to meet local and service delivery needs.

The beneficial enterprises model provides for a commercial focus while increasing accountability and reducing risk by quarantining ratepayer funds.

To that end, the local government sector supports the ability to utilise a range of fit-for-purpose regional collaborative models.

## **Local Government position**

### **That:**

- 1. Local Governments be empowered to form single and joint subsidiaries, and beneficial enterprises, and**
- 2. Compliance requirements of Regional Councils be reviewed and reduced.**

## Community Engagement

The Local Government Review Panel Final Report recommends:

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.*
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.*
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.*

## Discussion

With a local presence in every community in Western Australia, community engagement is core business for Local Government.



Principles and methods supporting responsive, aspirational and innovative community engagement are supported. Local Governments are often on the frontier of innovative community engagement methods, such as participatory budgeting and deliberative democracy.

To that end, the Local Government sector supports community engagement aims and principles to be encapsulated in a policy. However, the content of such a policy should not be prescribed; Local Governments, with knowledge and regular touchpoints with their communities, are best placed to determine the content of a community engagement policy.

An optional Annual Community Meeting is supported, at which Local Governments could present their annual report, financial performance and recent achievements, and outline their future prospects and plans.

#### **Local Government Position:**

##### **The Local Government sector supports:**

- 1. Responsive, aspirational and innovative community engagement principles**
- 2. Encapsulation of aims and principles in a community engagement policy, and**
- 3. The option of hosting an Annual Community Meeting to present on past performance and outline future prospects and plans.**

## Roles and Responsibilities

The Local Government Review Panel Final Report recommends:

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.*
- 29-32. *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*

The Select Committee into Local Government Report recommends:

26. *The Government clarify the roles of council and the chief executive officer, and the distinction between governance and operational matters, in any new local government Act.*

## Discussion

The *Local Government Act 1995* is predicated on separate roles and responsibilities for Elected Members and the administration, as summarised in the Second Reading Speech:

*'The new Act will provide a clear distinction between the representative and policy making role of the elected Councillors and the administrative and advisory role of the chief executive officer and other staff.'*<sup>1</sup>

The Inquiry Report's recommendations for training and induction are reflective of the mandatory training and continuing professional development requirements introduced in the *Local Government Legislation Amendment Act 2019*.

WALGA has long advocated for absolute certainty in responsibilities and separation of powers associated with employees. Appointing and dismissing senior designated employees falls within the function of the CEO.

From this perspective, clarification of roles and responsibilities requires similar consideration of a clearly defined separation of powers between the governing body and the administration.

---

<sup>1</sup> Government of Western Australia, Local Government Bill Second Reading, 31 Aug. 1995 pp. 7547-7551

**Local Government Position:**

**That clarification of roles and responsibilities for mayors / presidents, councillors and CEO's be considered to ensure that there is no ambiguity.**

## External Oversight

The Local Government Review Panel Final Report recommends:

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.*
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.*
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.*

The City of Perth Inquiry Report recommends:

- 323-332. *An Office of Inspector of Local Government (Inspector) be established as an independent statutory office, responsible to the Minister for Local Government.*

The Select Committee into Local Government Report recommends:

25. *The Government give active consideration, as part of the review of the Local Government Act 1995, to establishing a new independent statutory body to regulate and support the local government sector.*



## Discussion

The recommendation from the Local Government Act Review Panel to replace the Standards Panel with an Office of the Independent Assessor is worth supporting. The proposal is to set-up 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, which has previously put the CEO in an invidious position.

An early intervention framework of monitoring to support Local Governments should also be provided, with costs to be the responsibility of the State Government.

### **Local Government Position:**

#### **The Local Government sector supports:**

- 1. Establishing an Office of the Independent Assessor to replace the Standards Panel to provide an independent body to receive, investigate and assess complaints against elected members and undertake inquiries.**
- 2. Remove the CEO from being involved in processing complaints**
- 3. That an early intervention framework of monitoring to support local governments be provided with any associated costs to be the responsibility of the State Government.**

## Financial Management and Procurement

The Local Government Review Panel Final Report recommends:

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.*
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.*
- 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 be required to explain its reasoning to the responsible State Government agency.*
- 47. *The Panel recommends enhancing legislation to regulate and guide the establishment and management of panel contracts.*
- 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.*
- 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.*

The Select Committee into Local Government recommends:

- 12. *The Government give active consideration to providing, through the Department of Local Government, Sport and Cultural Industries, an accounting advice helpdesk service to the local government sector similar to the service provided by the Department of Treasury to the State government sector.*
- 13. *The Government:*
  - *consider reducing the financial reporting requirements on local governments*
  - *in doing so, take into account the information provided by the Office of the Auditor General, set out at Appendix 3 and Appendix 4 of this report.*
- 14. *The Department of Local Government, Sport and Cultural Industries and the Government consider the introduction of tiered financial reporting for local governments.*

The City of Perth Inquiry Report recommends:

- 188. *The State Government consider amendments to the Local Government Act 1995 to provide for better practice financial management through the establishment of Local Government Financial Management Instructions (similar to the Treasurer's Instructions for State Government) that establish a minimum set of standards and*



*requirements for the financial administration of local government (Financial Management Instructions).*

189. *The “WA Accounting Manual” be reviewed, updated and promulgated by the Department within the next 12 months.*
190. *The Minister for Local Government consider prescribing the format of the annual budget and financial report to provide consistency across local government.*

## **Discussion**

The sector has considered a number of the recommendations from the reports and supports reviewing the financial reporting requirements for Local Governments.

### **Model Financial Statements**

WALGA has recently formed a Sector Reference Group to review the current financial ratios and to suggest more appropriate ratios. The Reference Group believes the first action to be taken should be for the Department of Local Government to prepare a Model set of Financial Reports for the Local Government sector. This is to enable consistent financial reporting across the sector which would then allow for ratios to be more meaningful for sector analysis.

The following is an excerpt of notes from the group;

*The Working Group discussed the possibility of progressing this resolution as soon as possible, rather than waiting for the work on financial ratios to be completed. It was decided that this should be actioned as a priority. A signal from the Minister for Local Government as to whether this proposal is supported will assist in guiding the group's next steps, noting that the actual development of a model set of accounts would take time and resources. The group also noted that the Office of Auditor General (OAG) have made complementary recommendations relating to financial reporting. For example, in the [Audit Results Report – Annual 2018-19 Financial Audits of Local Government Entities](#), it was recommended that DLGSC re-assess the amount of detail required to be included in annual financial reports.*

*Resolved:*

*That WALGA advocates to the Minister for Local Government that the Department of Local Government to prepare a Model set of Financial Reports for the Local Government sector, in consultation with the Office of the Auditor General.*

The concept on a model set of accounts is not new. Every other State produces one in some form. This document would be produced annually by the Department and be endorsed by the OAG.



The proposal would involve a detailed set of accounts, including notes, would be available to the industry in March of each year. The document would provide a template for Statements and Notes. These items would include references to legislation and Accounting Standards so the user can gain an appreciation as to why the information is required. Accompanying text could provide a greater understanding of the information and the cross referencing to other information. For example, the note on calculating financial ratios would include how those ratios are calculated, hence doing away with the need for Departmental Guidance Notes.

The benefits that would accrue to the Local Government sector and the community would be substantial. One set of model reports that could provide clear outcomes, rather than waiting for the annual audit to see if a Local Government had interpreted the standards and legislation correctly. Small Local Government would benefit as they may not have qualified accountants on staff and this would provide cost savings. Accessing information about each Local Government would be simplified. The audit process would also be simplified. All of these measures have the ability to lower costs incurred by Local Government in producing the annual financial report.

### ***Use of Debt***

The sector's long held position is that the Act should allow Local Governments to use freehold land, in addition to its general fund, as security when borrowing. Currently a Local Government can only borrow against its cash. In most cases this is sufficient, however there have been examples of Local Governments borrowing for large scale infrastructure projects that would benefit from being able to use their freehold land as security.

### ***Building Upgrade Finance***

Building Upgrade Finance would enable Local Governments to guarantee finance for building upgrades for non-residential property owners. In addition to building upgrades to achieve environmental outcomes, Local Governments have identified an opportunity to use this approach to finance general upgrades to increase the commercial appeal of buildings for potential tenants. In this way, BUF is viewed as means to encourage economic investment to meet the challenges of a soft commercial lease market and achieve economic growth.

### ***Procurement***

WALGA has consistently supported the alignment of the tender threshold with that of the State Government 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.

**Local Government Position:**

**That the Local Government sector:**

- 1. Requests the Minister for Local Government to direct the Department of Local Government to prepare a Model set of Financial Statements and Annual Budget Statements for the Local Government sector, in consultation with the Office of the Auditor General;**
- 2. Requests the Department of Local Government to re-assess the amount of detail required to be included in annual financial reports, in particular for small and medium sized entities as suggested by the Office of Auditor General;**
- 3. Supports Local Governments being able to use freehold land to secure debt;**
- 4. Supports Building Upgrade Finance being permitted for specific purposes such as cladding, heritage and green improvements;**
- 5. Supports the alignment of Local Government procurement thresholds, rules and policies with the State Government.**

## Accountability and Audit

The Local Government Review Panel Final Report recommends:

53. *The Panel recommends the role of audit committees be expanded to become Internal Audit, Risk and Improvement Committees and:*
- 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.*
  - 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:*
- Developing an audit plan which focuses on compliance, risk (including procurement), financial management, fraud control, governance and delivery of Council Plans;*
  - Identifying continuous improvement opportunities and monitoring programs and projects in this area;*
  - Conducting the mandatory internal audits as outlined in the audit plan; and*
  - Providing advice to the council in relation to these matters.*

The Select Committee into Local Government recommends:

11. *The Government give active consideration to facilitating, through the Department of Local Government, Sport and Cultural Industries, a shared internal audit service for the Local Government sector, particularly to assist small and medium councils.*

## Discussion

The Local Government sector supports a robust self-regulation audit framework, which includes a role for the audit committee overseen by council, and a role for the Office of the Auditor General in conducting financial and performance audits of Local Government.

In accordance with the principles of self-governance and self-regulation, majority independent membership of audit committees is not supported. Oversight of the affairs of the Local Government is a fundamental role of the Council, and should not be confused by diffusing responsibility among an audit committee comprised of a majority of non-elected members. Notwithstanding, the Local Government sector acknowledges that some independent expertise may be beneficial to the audit committee process.

The Local Government sector supports a clearly defined role for the audit committee, led and overseen by the elected Council.

**Local Government Position:**

**That audit committees of Local Government, led and overseen by the Council, have a clearly defined role with an Elected Member majority.**