



WESTERN AUSTRALIA

INQUIRY UNDER DIVISION 2 PART 8 LOCAL
GOVERNMENT ACT 1995

INQUIRY INTO THE CITY OF JOONDALUP

27 September 2005

Executive Summary

The Joondalup Inquiry

"The notion of "public service" is indisputably value laden, just as the vocation of politics is an ethical enterprise. Much of the work of public officials – elected or appointed – involves "choices amongst values", indeed it is this characteristic of their role in a liberal democracy that often makes their decisions contestable, debatable and requiring public justification. Therefore, nothing is more dangerous to the wellbeing of the body politic than a public official who is technically competent or strategically astute but ethically illiterate or unfit."

Preston, N (ed) Ethics for the Public Sector: Education and Training, Federation Press, 1994.

1. The Council of the City of Joondalup was suspended by the Minister for Local Government and Regional Development on 5 December 2003. Pursuant to Section 8.16 of the *Local Government Act 1995* this Inquiry Panel was appointed on 26 May 2004 on 27 September 2004. Public hearings commenced on 27 September 2004 and concluded on 22 June 2005. The following findings are reached in the Report.
2. The Council unreasonably failed to offer a renewal of contract to its inaugural CEO Mr Lindsay Delahaunty whose contract expired in September 2001.
3. The Council subsequently engaged in a poor decision-making process in engaging a recruitment consultant. The recruitment consultant had no local government experience. It undertook an executive search process and relied on, among other things, a curriculum vitae provided by Mr Denis Smith (then the General Manager of Warringah Council) which represented that he had certain educational qualifications.

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4. The recruitment consultant relied on the qualifications represented by Mr Smith in recommending him for a short list of candidates. Mr Smith misrepresented his educational qualifications.
5. Mr Smith was not the most highly rated candidate of the councillors involved in the selection process and was not, objectively, the best candidate but was recommended as the preferred candidate by the recruitment consultant ostensibly because he was the most enthusiastic and on the basis of the recruitment consultant's belief that Mr Smith was preferred by the then Mayor Mr John Bombak. Mr Smith was thus appointed in preference to a candidate of greater merit.
6. In *The West Australian* of 20 November 2002 and *The Sunday Times* of 15 December 2002 it was reported that Mr Smith was found to have lied to the District Court of New South Wales in Sydney in the defamation case of *Jones v Sutton* concerning of his qualifications (and to have given unsatisfactory evidence in other respects in that case).
7. The Council paid insufficient regard to the significance of these reports and did not adequately inform itself of the issue which they raised about Mr Smith's probity.
8. The Council relied on a memorandum from Mr Smith which detailed various so-called qualifications of which certificates had been shown to the Mayor and the Human Resources Manager. The Council failed to investigate those matters, but, instead, the Council meeting of 17 December 2002 passed a motion of confidence in the CEO. Cr Don Carlos, the only dissenter, argued strongly in debate at that they should not do so before investigating the veracity of Mr Smith's qualifications.
9. That decision was an error which set in train a course of conduct in which a majority of the Council made a series of decisions supporting the CEO, Mr Smith.
10. Cr Carlos moved in February 2003 to have Mr Smith suspended and his qualifications and aspects of his conduct at Warringah investigated. The majority opposed that position and censured Cr Carlos, reaffirmed their confidence in Mr Smith and authorised Mr Smith to seek legal advice in relation to the allegations made by Cr Carlos.
11. In May 2003 Mr Carlos was elected as Mayor and sought to view Mr Smith's qualifications. The Mayor's position was the subject of state-wide media attention. Mr Smith obtained legal advice that he was not obliged to comply with the Mayor's request.
12. The Council appointed Freehills Solicitors to provide advice in relation to the CEO's obligations and the liability of the City if it purported to terminate the CEO's contract. Freehills outlined a process of inquiry, which included an investigation of Mr Smith's qualifications. Mr Smith asserted that Freehills had a conflict of interest, having represented Ruth Sutton in the proceedings of *Jones v Sutton*. The Council decided that it was expeditious (without reaching a view as to any conflict of interest) to appoint Minter Ellison to replace Freehills.

13. Minter Ellison gave advice on 17 and 24 June 2003 that the Council, in the light of its previous decisions supporting Mr Smith, should not question Mr Smith's qualifications any further, and should reiterate their support of Mr Smith and make not public statements on the matter. The Council accepted that advice.
14. In July 2003 an investigation by the Major Fraud Squad concluded that Mr Smith had no case to answer in respect of a complaint of fraud.
15. Following that decision, media interest in the issue intensified. Two Councillors made public statements about the matter and Mayor Carlos then made further public statements concerning the Smith issue.
16. In the same month the Legislative Council Standing Committee on Public Administration and Finance, at the request of the Minister, commenced a limited inquiry into the matter.
17. The City agreed to a Governance Review in August 2003 led by an officer of the Department of Local Government and Regional Development and in November set up a Working Group to negotiate the terms of a termination of Mr Smith's employment
18. Meetings of the Council were attended by significant numbers of members of the public raising questions about the CEO's qualifications commencing in late November 2003. On 1 December a meeting became rowdy, causing councillors to adjourn the meeting due to the refusal of members of the public to leave the Council Chamber and allow the Council to resume meeting behind closed doors.
19. On 2 December the Council resolved by a majority to seek its own suspension and the Minister suspended the Council on 5 December 2003.
20. The majority of councillors failed to pay due regard to the interest of the City of Joondalup in preserving public confidence in the honesty and integrity of its CEO.
21. A number of councillors contributed to the failure to provide good government by engaging in conduct, which has been specifically identified in Chapter 3, which was not ethical because it did not comply with the Code of Conduct. Such conduct contributed to poor relationships between councillors and in turn caused a breakdown of the level of co-operation between councillors, which is necessary for a Council to perform its function of providing good government.
22. Where the Council of the City of Joondalup, as a group, failed to provide good government was in failing, in various instances identified in Chapter 3, to make ethically sound decisions. In those instances the decisions of the Council were not rational, or not adequately informed and otherwise not in the interests of the City.

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23. Mr Carlos, both as a councillor and as Mayor, adopted a principled position in relation to the investigation of the probity of Mr Smith, but alienated other councillors by the occasionally unsatisfactory manner in which he pursued the matter, such as—

- his use of the public media to comment adversely on other councillors;
- his carelessness with the truth in relation to certain matters of fact of significance to other councillors; and
- his failure to take appropriate steps to reveal to other councillors information upon which he based his views,

all of which contributed to a loss of confidence in him by a number of councillors.

24. He was, therefore ultimately unsuccessful as a leader of the Council and ought to have resigned when that position became irreversible.

25. The misrepresentations in the CVs Mr Smith provided to the recruitment consultants to the Coff's Harbour City Council, the Warringah Council and the City of Joondalup and his untruthful evidence before Judge Gibson in the District Court of New South Wales, were deserving of investigation. Once ascertained they irreparably damaged his reputation for honesty and integrity to a point where no public sector employer, such as the City of Joondalup, could continue to employ him, because of the impact on its own reputation; regardless of his capabilities as an administrator.

26. The tortuous process which commenced with the decision in March 2001 not to renew the position of Mr Delahaunty as CEO and ended with the suspension of the Council on 5 December 2003, was one in which elected members strayed many times from the path of rational and otherwise ethical behaviour, both in the way in which they behaved individually towards one another and in the way they behaved as a group, by reason of their decisions, towards the electors whom they were representing. They significantly failed in that regard to provide good government to the City of Joondalup.

Recommendation 1: It is recommended that the Council be dismissed

Recommendation 2: An assessment is made of the arguments for and against the continuation of elected councils as opposed to appointed boards of commissioners for local government.

Recommendation 3: The role of Councils should be to set policy and as a watchdog against unresponsiveness, incompetence and corruption and away from the administration of service provision.

Recommendation 4: If recommendation 3 is not followed, then Councils should be fashioned and procedures adopted more akin to those of a cabinet style of government, including principles of cabinet secrecy and solidarity.

Recommendation 5: If neither of recommendations 3 or 4 is regarded as desirable, then serious consideration should be given to the appropriate role, responsibilities and procedures of elected Councils.

Recommendation 6: Consideration should be given to whether it remains appropriate for the local government Council and electors of a local district to decide that a Mayor is to be elected by the electors of a district. The recommendation of this Inquiry is that the Mayor should continue to be popularly elected by the electors of the district.

Recommendation 7: A CEO of a local government performs statutory functions under the LGA and so, like other public sector CEO should be appointed by the Governor, or the Local Government Commission proposed by this report, to perform those functions and the LGA should be amended to so provide.

Recommendation 8: A statutory body, such as the Local Government Commission proposed by this Report, should be responsible for the appointment and supervision of all CEOs for all local authorities within the State. Such a statutory body would be obliged to consult with the elected Council of each local government as to the specific requirements of the district. The statutory body should be accorded powers similar to those given to the Public Sector Standards

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Commissioner under the *Public Sector Management Act 1994* and should have power to set salaries and allowances similar to the powers set out under the *Salaries and Allowances Act 1975*.

Recommendation 9: A Local Government Commission should be established to appoint and supervise CEO's and assume the functions of the Minister and Executive Director under Part 8 of the *Local Government Act 1995* with power to perform the functions of a Commissioner under Part 2, Division 7 of the LGA and the functions of the Advisory Board under Part 2, Division 8 of the LGA.

Recommendation 10: There should be established a Local Government Assistance Authority to perform the present role of the Capacity Building Division of the DLGRD and co-operatively manage or assist in providing the educational and assistance roles being provided by voluntary local government industry associations to local governments.

Recommendation 11: The proposed Local Government Commission and Local Government Assistance Authority be funded from a combination of State and Commonwealth local government funding.

Recommendation 12: Local authorities should ensure that they obtain media advice and the assistance of media research when the public media is reporting on matters relevant to the local authority, to assist them in identifying publicly reported problems related to a local authority and responding appropriately.

Recommendation 13: A committee of the Council of the City of Joondalup should be established to supervise the answering of public questions and report on and recommend action relating to the answers to questions to the Council.

Recommendation 14: A local government, when recruiting a CEO should verify the professional and academic qualifications of candidates for appointment.

Recommendation 15: Local governments should engage a media research officer or consultant to identify information concerning the public reputation of any candidate for the position of CEO.

Recommendation 16: Local governments should require authorities from candidates for the position of CEO to obtain information from police and other regulatory authorities as to any record of convictions or investigations and conclusions of regulatory authorities relevant to the candidate.

Recommendation 17: Local governments should not hesitate to obtain alternative legal advice or a second opinion, where elected members are divided or hesitant about any advice given.

Recommendation 18: When elected members are considering advice from legal practitioners they should be careful to follow legal advice, so as to ensure that they are not otherwise acting improperly, but Councillors, employees and legal advisers should be careful also to ensure that a distinction is drawn between advice which is legal advice and advice which is strategic advice,

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and be aware of the discretion which remains in elected members to make decisions inconsistent with strategic advice.

Recommendation 19: The meeting procedures for local authorities should preclude the provision of written legal advice without adequate time to read and understand it before it is acted upon.

Recommendation 20: Contracts of employment of senior employees of a local authority are generally legal documents of a degree of complexity which should preclude their execution without legal advice as to the content of the contract and the process leading to execution

Recommendation 21: Local authorities and the DLGRD should co-operate to keep a central register of legal advices which may be of general assistance to local governments, in so far as that may occur without impacting on the need to preserve legal professional privilege.

Recommendation 22: A policy should be established by the Council of the City of Joondalup which facilitates full access to legal advice by elected members.

Recommendation 23: The City of Joondalup should consider establishing Council Committees to conduct some aspects of the business of the Council, as a means of establishing co-operative working relationships between elected members.

Recommendation 24: The Code of Conduct of the City of Joondalup should be reviewed and a process of adjudication of alleged breaches by an independent referee added, and elected members should be trained in its content.

Recommendation 25: Section 8.2(1) of the LGA should be amended to permit the Executive Director to require any person in a local government to provide any relevant information in that person's possession.

**SUBMISSION TO MINISTER FOR LOCAL GOVERNMENT AND
REGIONAL
DEVELOPMENT**

ON

**THE REPORT OF THE INQUIRY INTO THE CITY OF
JOONDALUP**

November 2005

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The Inquiry Report was made available to the City on 11 October 2005 in accordance with section 8.23 of the *Local Government Act 1995*. The City was given 35 days after receiving the report to provide the Minister written advice on:

- (a) The things that it has done or proposes to do to give effect to the recommendations in the report; or
- (b) If the report recommends that the council be dismissed, its comments on that recommendation.

This submission contains the City's advice to the Minister for Local Government in response to the Inquiry Report.

Background

On 26 May 2004, under the terms of section 8.16 of the *Local Government Act 1995* the Minister for Local Government and Regional Development announced the appointment of the Panel to inquire into and report on the operations and affairs of the City of Joondalup. The formal hearings commenced in July 2004 and continued until June 2005.

The Minister tabled the Report in Parliament on 11 October 2005 and the City received a copy of the Report on the same day.

The Panel made twenty-five (25) recommendations, and this submission provides the City's response to those. The recommendations contained in the Inquiry Report are as follows:

1. It is recommended that the Council be dismissed;
2. An assessment is made of the arguments for and against the continuation of elected councils as opposed to appointed boards of commissioners for local government;
3. The role of Councils should be to set policy and as a watchdog against unresponsiveness, incompetence and corruption and away from the administration of service provision;
4. If recommendation 3 is not followed, then Councils should be fashioned and procedures adopted more akin to those of a cabinet style of government, including principles of cabinet secrecy and solidarity;
5. If neither of recommendations 3 or 4 is regarded as desirable, then serious consideration should be given to the appropriate role, responsibilities and procedures of elected Councils;
6. Consideration should be given to whether it remains appropriate for the local government Council and electors of a local district to decide that a Mayor is to be elected by the electors of a district. The recommendation of this Inquiry is that the Mayor should continue to be popularly elected by the electors of this district;
7. A CEO of a local government performs statutory functions under the LGA and so, like other public sector CEO should be appointed by the Governor, or the Local Government Commission proposed by this report, to perform those functions and the LGA should be amended to so provide;
8. A statutory body, such as the Local Government Commission proposed by this Report, should be responsible for the appointment and supervision of all CEOs for all local authorities within the State. Such a statutory body would be obliged to consult with the elected Council of each local government as to the

specific requirements of the district. The statutory body should be accorded powers similar to those given to the Public Sector Standards Commissioner under the *Public Sector Management Act 1994* and should have power to set salaries and allowances similar to the powers set out under the *Salaries and Allowances Act 1975*;

9. A Local Government Commission should be established to appoint and supervise CEO's and assume the functions of the Minister and Executive Director under Part 8 of the *Local Government Act 1995* with power to perform the functions of a Commissioner under Part 2, Division 7 of the LGA and the functions of the Advisory Board under Part 2, Division 8 of the LGA;
10. There should be established a Local Government Assistance Authority to perform the present role of the Capacity Building Division of the DLGRD and co-operatively manage or assist in providing the educational and assistance roles being provided by voluntary local government industry associations to local governments;
11. The proposed Local Government Commission and Local Government Assistance Authority be funded from a combination of State and Commonwealth local government funding;
12. Local authorities should ensure that they obtain media advice and the assistance of media research when the public media is reporting on matters relevant to the local authority, to assist them in identifying publicly reported problems related to a local authority and responding appropriately;
13. A committee of the Council of the City of Joondalup should be established to supervise the answering of public questions and report on and recommend action relating to the answers to questions to the Council;
14. A local government, when recruiting a CEO should verify the professional and academic qualifications of candidates for appointment;
15. Local governments should engage a media research officer or consultant to identify information concerning the public reputation of any candidate for the position of CEO;
16. Local governments should require authorities from candidates for the position of CEO to obtain information from police and other regulatory authorities as to any record of convictions or investigations and conclusions of regulatory authorities relevant to the candidate;
17. Local governments should not hesitate to obtain alternative legal advice or a second opinion, where elected members are divided or hesitant about any advice given;
18. When elected members are considering advice from legal practitioners they should be careful to follow legal advice, so as to ensure that they are not otherwise acting improperly, but Councillors, employees and legal advisors should be careful also to ensure that a distinction is drawn between advice which is legal advice and advice which is strategic advice, and be aware of the discretion which remains in elected members to make decisions inconsistent with strategic advice;
19. The meeting procedures for local authorities should preclude the provision of written legal advice without adequate time to read and understand it before it is acted upon;
20. Contracts of employment of senior employees of a local authority are generally legal documents of a degree of complexity which should preclude their execution without legal advice as to the content of the contract and the process leading to execution;
21. Local authorities and the DLGRD should co-operate to keep a central register of legal advices which may be of general assistance to local governments, in so far as that may occur without impacting on the need to preserve legal professional privilege;

22. A policy should be established by the Council of the City of Joondalup which facilitates full access to legal advice by elected members;
23. The City of Joondalup should consider establishing Council Committees to conduct some aspects of the business of the Council, as a means of establishing cooperative working relationships between elected members;
24. The Code of Conduct of the City of Joondalup should be reviewed and a process of adjudication of alleged breaches by an independent referee added, and elected members should be trained in its content;
25. Section 8.2(1) of the LGA should be amended to permit the Executive Director to require any person in a local government to provide any relevant information in that person's possession.

In accordance with Section 8.23(4) of the Local Government Act 1995, the City was given 35 days from receipt of the Report to provide the Minister with written advice setting out:

- (a) the things that it has done or proposes to do to give effect to the recommendations in the report; or
- (b) if the report recommends that the council be dismissed, its comments on that recommendation.

Details

Whilst this submission will provide the City's response to each of the recommendations the following is the City's overall response to the Report:

1. The City takes the Report and the recommendations contained therein very seriously and has taken great care, time and effort in its response to the Minister;
2. The lessons learnt from the Inquiry will be used to inform the City's future strategies and direction;
3. The Report reflects unfavourably on the operations of the Council as a body for the period covered by the Inquiry.
4. The City views the Report as an opportunity to implement improvements to a number of processes and practices;
5. The City had already instituted a number of measures to restore good governance prior to the release of the Report (and these will be detailed in the submission).
6. The City is committed to high standards of governance and accountability and will continue to implement measures, in a systematic and structured manner, to ensure that the spirit, intent and purpose of the Local Government Act 1995 is achieved (better-decision making, greater community participation, greater accountability, and greater efficiency and effectiveness).

The recommendations can be categorised according to the following:

- Recommendations that are specific to the City of Joondalup;
- Recommendations that relate to local government in Western Australia; and
- Recommendations that relate to the operations of the Department of Local Government and Regional Development.

The following matters are not considered to be within the scope of this submission:

- Issues relating to individual Council Members – all Council Members named in the report have been given the opportunity to provide the Minister with individual submissions (the Council of the day made a decision for the City not to be represented at the Inquiry and therefore it is difficult to provide comment on these matters);
- Issues relating to adverse findings against staff – this will be the subject of a separate report to the Council and each member of staff has been given the opportunity to provide the CEO with comments regarding the Report.

The City, as noted previously, has implemented a number of measures that pre-empt some of the recommendations of the Inquiry. The following provides a summary of these measures:

Employment and Performance Review of the CEO	The content of the employment contract for the current CEO, and the process for the execution of the contract was developed following legal advice. The Contract includes the requirement that the Performance Review Committee consults with and seeks guidance from an external or independent human resource expert. This process is now in place and was utilised during the recent performance review of the current CEO.
Development of the Governance Framework	The Framework provides Council Members with a 'plain English' document which sets out legislative issues and requirements, roles and responsibilities, and working relationships. The Framework contains a set of Governance Principles and a Governance Charter that details the desired actions/behaviour to achieve the Principles. The Framework also contains a self-assessment tool to enable the Council to review performance (individually and collectively) against the Principles and Charter.
Review of Standing Orders	The review has resulted in a set of procedures to assist in the good conduct of meetings of the Council and Committees, and new Standing Orders have been developed for consideration by the Council.
Development of Protocols and Procedures relating to Strategy and Briefing Sessions	The review has resulted in the development of a revised set of protocols for Briefing and Strategy Sessions based on the recommendations of the Governance Review.
Review of Public Question Time (and implementation of Public Statement Time)	A Review of Public Question Time (including the development of Public Statement Time) has been undertaken including consultation with members of Council's Advisory Committees. Council, and a public comment period. The review has resulted in clear guidelines for public question time and the instigation of a public statement time.
Written Questions from the Public	A new procedure has been put in place to ensure that all public questions receive a considered response. The Procedure is detailed in the City's Procedure Manual.

<p>Review of Induction Program for Council Members (including development of an ongoing training and development program).</p>	<p>A detailed Elected Member Development Program has also been prepared to assist members become further aware of their responsibilities. The program is based on the training modules offered by the Western Australian Local Government Association.</p> <p>The Induction Program includes:</p> <ul style="list-style-type: none"> • Swearing-In ceremony and special meeting of the Council to elect the deputy Mayor; • A series of sessions over the first week to discuss roles and responsibilities, the business and strategic direction of the City of Joondalup, and the relevant legislative requirements. • A proposed development weekend to allow more in depth discussion and training in the various businesses of the City of Joondalup. <p>The intention is that no formal decision making meetings of the Council will be held for the first two weeks (other than the requirement to appoint the Deputy Mayor) in order to enable newly elected members to receive adequate induction prior to assuming formal decision making responsibilities.</p> <p>Significant emphasis has been placed on teamwork, roles, and effective working relationships in the preliminary modules of the Induction and Training Programs.</p>
<p>Public Participation Policy and Strategy</p>	<p>The City has placed considerable emphasis on the development of a public participation strategy to support the policy. The Strategy has been developed (following extensive research into best practice documents from other organisations).</p> <p>The Strategy includes a toolkit containing a number of templates to assist staff in conducting public participation exercises and evaluating their success, and a staff training program is currently being prepared for inclusion in the Corporate Training Calendar on use of the toolkit (and Strategy).</p> <p>The Strategy also supports the identification of those projects that require public participation and the inclusion of such projects in the annual budget to ensure adequate resourcing.</p>

Establishment of Policy Committee	<p>Council has established a Policy with the following terms of reference:</p> <ul style="list-style-type: none"> a) Make recommendations to Council on the development and review of strategic (Council) policies to identify the direction of the Council; b) Initiate and formulate strategic (Council) policies; c) Devise and oversee the method of development (level and manner of community consultation) for the development of strategic (Council) policies.
Organisational Review and restructure	The restructure incorporates a new Directorate of Governance and Strategy to facilitate greater focus, coordination and alignment in the priority areas of governance and strategy.

The following is the City's response to each of the recommendations contained in the report. Those recommendations relating specifically to the City are considered to be the first priority for consideration and response. It is important to note that no advice has been taken from subpoenaed staff or suspended Council Members in relation to this submission:

No	Recommendation	City's Response
1	It is recommended that the Council be dismissed.	The City will not comment on this recommendation as it deals with matters relating to the suspended elected body. It is deemed appropriate that the Minister deal with this recommendation on the basis of submissions received from suspended elected members. The City's concern is that if in the event the Minister decides to dismiss the Council, elections should be held at a suitable time to allow for a smooth transition from Commissioners to an elected Council.
2	An assessment is made of the arguments for and against the continuation of elected councils as opposed to appointed boards of commissioners for local government.	That the elected government sphere of local government has been in place for many decades and is an integral part of community at a grassroots level. There is nothing in the Report that has identified the requirement for such a bold and significant change.
3	The role of Councils should be to set policy and as a watchdog against unresponsiveness, incompetence and corruption and away from the administration of service provision.	The Local Government Act 1995 provides adequately for the roles and responsibilities of elected Councils.
4	If recommendation 3 is not followed, then Councils should be fashioned and procedures adopted more akin to those of a cabinet style of government, including principles of cabinet secrecy and solidarity.	Please note response to Recommendation 2 above. This is not the style of local government throughout Australia and it would see a significant change in local government procedure if implemented.
5	If neither of recommendations 3 or 4 is regarded as desirable, then serious consideration should be given to the appropriate role, responsibilities and procedures of elected Councils.	Any consideration of the roles and responsibilities and procedures of elected councils would need to be in consultation with local governments throughout Western Australia and bodies such as LGMA and WALGA.

No	Recommendation	City's Response
6	Consideration should be given to whether it remains appropriate for the local government Council and electors of a local district to decide that a Mayor is to be elected by the electors of a district. The recommendation of this Inquiry is that the Mayor should continue to be popularly elected by the electors of this district.	The election of the Mayor is adequately dealt with in the current provisions of the LGA 1995. Any change to the popular election of the Mayor is also dealt with under the Act.
7	A CEO of a local government performs statutory functions under the LGA and so, like other public sector CEO's should be appointed by the Governor, or the Local Government Commission proposed by this report, to perform those functions and the LGA should be amended to so provide.	A more appropriate recommendation would be the development of standard procedures for the appointment of a Chief Executive Officer and model contract so that the local government would be able to work within the confines of these standard procedures and make appropriate amendments that they deemed necessary. The appointment of a CEO by a third party would not necessarily take into consideration factors such as 'regional fit' or appropriateness for the position and may lead to entrenched ideas of local government by the appointment of long-term local government officers from a small pool of individuals at the detriment to innovative practices from individuals sourced from all sectors of industry.
8	A statutory body, such as the Local Government Commission proposed by this Report, should be responsible for the appointment and supervision of all CEOs for all local authorities within the State. Such a statutory body would be obliged to consult with the elected Council of each local government as to the specific requirements of the district. The statutory body should be accorded powers similar to those given to the Public Sector Standards Commissioner under the <i>Public Sector Management Act 1994</i> and should have power to set salaries and allowances similar to the powers set out under the <i>Salaries and Allowances Act 1975</i> .	This recommendation is not agreed with. It would impinge upon local government autonomy and erode key principles of the 1995 legislation. It would effectively make local government an arm of state government. Furthermore, the reporting chain for a CEO would lead to layered management with the CEO reporting to Council, the Community and the Commission.

No	Recommendation	City's Response
9	A Local Government Commission should be established to appoint and supervise CEO's and assume the functions of the Minister and Executive Director under Part 8 of the <i>Local Government Act 1995</i> with power to perform the functions of a Commissioner under Part 2, Division 7 of the LGA and the functions of the Advisory Board under Part 2, Division 8 of the LGA	It is not necessary to have a Local Government Commission to appoint and supervise CEO's if the Minister and Executive Director were given wider powers to step in and deal with supervisory matters that relate to a CEO. There are powers already under the Act that allow for the Minister and the Executive Director under Part 8 of the 1995 Act to step in and investigate matters before they require the suspension of Council. (A matter referred to in the Report at Chapter 3, Part 7.) The potential for significant interference by a third party in the Administrative affairs of a local government may be disruptive and unwarranted unless in serious circumstances. Training for CEOs and performance appraisals by Council submitted to the Minister for review may allow for the accountability of the CEO without the disruption. The autonomy of local governments to make their own decisions would also be eroded by a body that itself has limited accountability other than to the Minister.
10	There should be established a Local Government Assistance Authority to perform the present role of the Capacity Building Division of the DLGRD and co-operatively manage or assist in providing the educational and assistance roles being provided by voluntary local government industry associations to local governments.	Mandatory training of elected members would be useful. At the moment limited training is provided that does not fully prepare elected members for the rigour of local government. Mediation for dispute resolution by an Authority would also be of use. To date LGMA and WALGA provide a significant amount of educational assistance. The City is also in the process of reviewing its induction processes for elected members.
11	The proposed Local Government Commission and Local Government Assistance Authority be funded from a combination of State and Commonwealth local government funding.	That is a matter of Departmental Policy and is for the Minister to decide in consultation with these parties.
12	Local authorities should	The City currently has a media advisor and

No	Recommendation	City's Response
	ensure that they obtain media advice and the assistance of media research when the public media is reporting on matters relevant to the local authority, to assist them in identifying publicly reported problems related to a local authority and responding appropriately.	believes that this recommendation is already adequately dealt with. The City has on occasion used media research and consultants to assist with contentious issues.
13	A committee of the Council of the City of Joondalup should be established to supervise the answering of public questions and report on and recommend action relating to the answers to questions to the Council.	This recommendation does not take into account the turnaround time for the answering of Council questions nor the fact that information with regard to answering questions will be obtained from officers regardless of a committee involvement. A committee would be time consuming and lead to delay in dealing with questions. The City currently has reviewed its Public Question Time procedure.
14	A local government, when recruiting a CEO should verify the professional and academic qualifications of candidates for appointment.	This recommendation is agreed with. The City has followed this recommendation with the recruitment of the current CEO, with the request for original documentation of qualifications being produced.
15	Local governments should engage a media research officer or consultant to identify information concerning the public reputation of any candidate for the position of CEO.	It is not necessary to appoint a specific media research officer as such information may be obtained from a thorough search of media archives by an officer. Furthermore, a background check of a candidate is a standard requirement of a recruitment agency and should be undertaken.
16	Local governments should require authorities from candidates for the position of CEO to obtain information from police and other regulatory authorities as to any record of convictions or investigations and conclusions of regulatory authorities relevant to the candidate.	This recommendation is agreed with as it is a requirement of recruitment for a number of local governments that a Police Clearance Check be obtained as part of an application. However, issues of unlawful discrimination need to be addressed.
17	Local governments should not	Financial considerations may be relevant in

No	Recommendation	City's Response
	hesitate to obtain alternative legal advice or a second opinion, where elected members are divided or hesitant about any advice given.	this regard as is the ability of a local government to rely on legal advice provided. In the event that the opinions conflict does this mean that further legal opinion be sought by another firm and the question this raises is when will the amount of legal advice sought be enough? A local government should provide elected members not only with the legal advice but also the scope and instructions under which this legal advice was obtained.
18	When elected members are considering advice from legal practitioners they should be careful to follow legal advice, so as to ensure that they are not otherwise acting improperly, but Councillors, employees and legal advisors should be careful also to ensure that a distinction is drawn between advice which is legal advice and advice which is strategic advice, and be aware of the discretion which remains in elected members to make decisions inconsistent with strategic advice.	Agree. A clarification as to what constitutes legal advice and strategic advice is required to ensure that local governments are familiar with the distinction. Elected members should be provided with the instructions provided to legal advisors and relevant background information so that they may make informed decisions.
19	The meeting procedures for local authorities should preclude the provision of written legal advice without adequate time to read and understand it before it is acted upon.	It is agreed that ideally this should be the case and that local governments should aim for this to occur, however, it is not always possible given the requirement of expediency for Council decisions when there are third party timeframes imposed on Council. For example, where a planning decision has been made and an injunction is sought to prevent a third party from undertaking an action, or there is the requirement of an emergency response.
20	Contracts of employment of senior employees of a local authority are generally legal documents of a degree of complexity which should preclude their execution without legal advice as to the content of the contract and the process leading to execution.	Legal advice is usually sought in relation to the drafting of contracts of senior employees. The process for the current CEO has been to obtain legal advice in drafting the contract and ensuring that the contract is properly executed.
21	Local authorities and the	This recommendation is not agreed with. A

No	Recommendation	City's Response
	DLGRD should co-operate to keep a central register of legal advices which may be of general assistance to local governments, in so far a that may occur without impacting on the need to preserve legal professional privilege.	legal register would require the instructions and the circumstances as to why the legal advice was obtained. In isolation, any advice contained on the register would be of little precedent value to other local governments. It would be more appropriate for WALGA to provide a legal service (similar to its Tax Service) for local governments whereby legal questions affecting local governments could be researched and answered by appropriate legal advisors.
22	A policy should be established by the Council of the City of Joondalup which facilitates full access to legal advice by elected members.	<p>A policy would need to be within the confines of legal professional privilege and would also need to take into consideration issues of privacy and the function of the CEO under Part 5 of the Act to deal with administrative matters relating to employees. Issues such as CCC matters for which legal advice may have been obtained would not necessarily as of right be appropriately circulated to elected members.</p> <p>Generic advice should be sent to elected members with the condition that it will be subject to s. 5.93 of the Act and legal professional privilege. An individual elected member may not waive privilege.</p> <p>There needs to be a clear understanding of the implications for an elected member for failure to follow such a process.</p>
23	The City of Joondalup should consider establishing Council Committees to conduct some aspects of the business of the Council, as a means of establishing co-operative working relationships between elected members.	<p>This recommendation is not agreed with. The Council does have committees that relate to policy and strategic direction. The primary committees are the Policy Committee and the Strategic and Financial Management Committee. The three week meeting cycle currently utilised is the most inclusive process for involvement of all elected members.</p> <p>Committees generally have a membership of only part of the elected body and can result in a minority having greater knowledge of an issue than the entire elected Council. Local government in general has a history of developing alternative meeting structures such as committees or liaison groups to facilitate co-operative working relationships to suit its needs. The Report suggests establishing Council committees but it does not provide any analysis on the kinds of committees to develop or the quantifiable aims of such committees.</p>

No	Recommendation	City's Response
24	The Code of Conduct of the City of Joondalup should be reviewed and a process of adjudication of alleged breaches by an independent referee added, and elected members should be trained in its content.	Under the Governance Review the Code of Conduct is to be reviewed at the time that a new Council is elected. Notwithstanding, the Code of Conduct has little enforceability with regard to elected members. The Department should progress the proposed Code of Conduct Regulations to provide appropriate legislative standards of behaviour at Council.
25	Section 8.2(1) of the LGA should be amended to permit the Executive Director to require any person in a local government to provide any relevant information in that person's possession	This is a matter for the Minister in consultation with all local governments to determine.

Miscellaneous Issues

Three matters have been raised in addition to the recommendations that require comment. Firstly, in relation to the credit card procedures. At paragraph 102 on page 3-434 it states that 'The departure from the formal process was not identified until 17 months later during the Deloitte's audit, which commenced in December 2003.' This statement is factually incorrect and in evidence, the City's Director Corporate Services stated it was he who discovered the departures during his internal investigation that commenced on 10 November 2003 (transcript 8815). This evidence was supported by Mr Langridge under cross examination by Mr McLeod (transcript 10473).

Secondly, in relation to FBT and GST. Conclusion F on page 3-366 of the Report is inconsistent with paragraph 146 on page 3-339. The fact that it remains included in the report appears to have been an oversight on the part of the Inquiry Panel.

Related to this is the third comment with regard to GST and the findings of the Inquiry Panel at paragraph 147 on page 3-339. It is the opinion that the findings are incorrect as the Inquiry has not taken into account section 111.5 of A New Tax System (Goods and Services) Act 1999, which specifically covers 'Expense Payment Benefits' on behalf of an employee and Taxation Ruling GSTR 20001/3.

The City believes that these matters need to be noted by the Minister as they cast factual doubt upon these sections of the Report.

Conclusion

A number of matters have been raised in the report that will require further investigation and future action. These matters are not dealt with in this submission however they will be the subject of further reports to the Council.

The circumstances leading to the suspension of the Council, the establishment of the Inquiry into the City of Joondalup, and the Report have impacted significantly on the operations and public image of the City.

In this regard the Inquirers comments in relation to officers of the City are welcome, those being:

Each of the persons –

- (a) *was committed to the role he or she was assigned to perform;*
- (b) *at all times performed his or her role with sincerity, in good faith and to the best of his or her ability;*
- (c) *at all times performed his or her role competently;*
- (d) *at no time engaged in any act of impropriety.*

Notwithstanding these comments, the Report does provide the City with a platform for the improvement of a number of processes and practices. Some of these have already been implemented, and the City will continue with a systematic and structured approach to continual improvement.

It will take time to restore public confidence in the City however the City is committed to accountability, integrity and openness and has, in a relatively short time frame, already instituted a number of improvements and, hopefully, gone some way towards restoring good governance at the City and improving relations between the City and its community.

The approach adopted by the City has been gradual with an emphasis on restoring stability within the organisation and the community. The change program, which has already addressed a number of matters raised by the Inquiry Report, has been consultative and the City intends to continue with that program of change, and to continue its commitment to strong local government into the future.

Whilst the Inquiry raises a number of issues and recommendations from a legal and process perspective it is worth noting that the circumstances at the City of Joondalup leading up to the Inquiry were extraordinary.

The major issues impacting on the good governance of the City related to self interest, poor relationships between council members, and between council members and management, and although a number of processes can be put in place to address the legal issues it is difficult to address the more complex issue of working relationships if the will does not exist from all parties for constructive working relationships.

The City has, in the development of the Governance Framework placed considerable emphasis on working relationships and clearly defined roles and working relationships and this will be a major focus on the Induction and Training Program.

It is fair to say that significant changes have occurred in the governance area from the instigation of the Inquiry and the present day and there is now a requirement for organisations (including local government) to meet stricter governance standards.

The City has begun to address this through the completion and endorsement of the Governance Framework (including a set of governance principles, a governance charter, and a self assessment tool), and the establishment of a directorate focussing on governance and strategy. This emphasis on governance matters will continue to be a major focus.

The Inquiry Report has raised a number of matters that have been the subject of careful consideration by the City. It has, however, consumed significant resources of the City (financial and staff time) and although lessons have been learnt it is the City's opinion that such Inquiries are unsustainable into the future.

Consideration should be given to the development of an alternative method to the Inquiry process that would include the following key stakeholders (including but not limited to):

- Department of Local Government and Regional Development
- WALGA
- LGMA
- Law Society

The challenge for the existing Council, or a newly elected Council, and the organisation is to now move forward from the Inquiry and the circumstances leading to the Inquiry and focus on the future rather than the past.