



# **REVIEW OF LOCAL GOVERNMENT ACT 1995**

## **DISCUSSION PAPER**

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## Executive Summary

The Minister for Local Government, Hon David Templeman wrote to the Association on 14 June 2017 to announce the commencement of the review of the *Local Government Act 1995*. The correspondence is outlined below:

*Due to the scope of the likely amendments and my desire to see early progress, I have decided that the work will be undertaken in two phases:*

*The first will focus on modernising Local Government, with the policy work and consultation to be completed in 2017 with a Bill in 2018. Key topics in this phase will be increasing elector participation, electronic disclosure (making information more readily available), simplifying the disclosure of gifts and some reducing red tape provisions.*

*The theme for the second phase is delivering for the community, with the policy work and consultation to be completed in 2018 with a Bill in 2019. Key themes for this phase will be improving behaviour and relationships, increasing community participation, enabling local government enterprises, improving financial management and reducing red tape.*

The following are the issues that the Minister's office has put forward:

Phase 1: 'Modernising local government' - 2017

- Increasing participation in local government elections
- Strengthening public confidence in local government elections
- Making information available online
- Restoring public confidence (includes the gift provisions)
- Reducing red tape
- Regional Subsidiaries

Phase 2: 'Services for the community' - 2018

- Increasing community participation
- Improving financial management
- Improving behaviour and relationships
- Reducing red tape

The Minister also expressed the Review's Principles and Vision thus:

**Vision**

*The vision for local government in Western Australia is: Agile, Smart, Inclusive.*

**Principles**

*The review will deliver on this through application of the following principles:*

- *Transparent – providing easy access to meaningful, timely and accurate information about local governments (S, I);*
- *Participatory – strengthening local democracy through increased community engagement (I);*
- *Accountable – holding local governments accountable by strengthening integrity and good governance (S, I);*
- *Efficient – providing a framework for local governments to be more efficient by removing impediments to good practice (A, S); and*
- *Modern – embracing contemporary models for governance and public sector management (A, S, I).*

The Minister has invited WALGA and Local Government Professionals WA to participate in a reference group on the review. The Minister's office has advised that there may be some flexibility as to what issues are to be considered in Phase 1 or Phase 2.

In July 2017, State Council considered and adopted the following Consultation Process:

- An Infopage will be distributed to Local Governments including a Discussion Paper on issues that have been identified over the last 8 years including advocacy positions resolved by the sector. This will include a request for Local Governments to submit additional items for consideration in the Act review process. Councils can submit individually or collectively through their Zone.
- WALGA to hold Zone/regional group forums on the Act/Regulatory amendment suggestions. Can be held in-conjunction with a Zone meeting or separately.
- Finalise feedback and provide recommendations on legislative and regulatory change through a State Council agenda item that would go through the Zones.

It is expected that this process will be carried out between July and November 2017 with the State Council item being considered at the 6 December meeting.

## Local Government Priorities

The following key issues have previously been brought to the attention of WALGA and identified as priorities, and will form part of the consultation process with the sector on Act amendments:

a) Gifts

- Exempt gifts received in a genuinely personal capacity
- Gift declarations threshold to commence at \$500.00 with no upper limit
- Gift provisions to apply to Elected Members and CEO only

b) Regional Subsidiaries

- Amend Regulations to permit borrowings
- Amend Regulations to permit dealing in land transactions
- Amend Regulations to permit trading undertakings

c) Rating Exemptions:

- Charitable Purposes provisions
- Rate Equivalency Payments of Government Trading entities

d) Financial Management Issues:

- Borrowings
- Investments\*
- Fees and Charges
- Financial ratios

(\* Regulation 19C(2)(b) of the Financial Management Regulations was amended on 12 May 2017 to permit fixed term deposits to be invested for up to 3 years,)

e) Administration:

- Electors' General Meetings to be optional
- Designated Senior Officer section to be reviewed
- Public Notices (modernisation of the Act to acknowledge electronic means)

f) Functions of Local Governments:

- Tender Thresholds
- Establish Council Controlled Organisations (Local Government Enterprises)
- Regional Council provisions (review of compliance requirements)

g) Poll Provisions relating to amalgamations and boundary adjustments.

- The poll provisions contained in Schedule 2.1 of the Local Government Act should be extended to provide any community whose Local Government is undergoing a boundary change or amalgamation with the opportunity to demand a binding poll of electors.

## Sector Principles

Key foundations of the Act, which the sector would like considered, relate to the retention of the 'general competence' principle and consideration of a size and scale compliance regime. The Act review will incorporate regulatory amendments.

## Previous Amendments to the Local Government Act

The current *Local Government Act 1995* commenced on 1 July 1996, and has provided communities with an effective system of Local Government where locally governing Councils have general competence powers to determine the general functions and scope of services provided for the good government of people in their districts. Since 1996, the following major amendments have been promulgated:

- Local Government Amendment Act 1998	Assented to 26 March 1998
- Local Government Amendment Act (No 2) 1998	Assented to 12 January 1999
- Local Government Amendment Act 2004	Assented to 12 November 2004
- Local Government Amendment Act 2006	Assented to 8 December 2006
- Local Government Amendment Act 2007	Assented to 25 June 2007
- Local Government (Official Conduct) Amendment Act 2007	Assented to 28 March 2008
- Local Government Amendment (Elections) Act 2009	Assented to 17 August 2009
- Local Government Amendment Act 2009	Assented to 16 September 2009
- Local Government Amendment Act 2012	Assented to 4 April 2012
- City of Perth Act 2016	Assented to 3 March 2016
- Local Government Legislation Amendment Act 2016	Assented to 21 September 2016

## About this Discussion Paper

This Discussion Paper draws on a number of resources upon which WALGA's proposals for Act amendment are based. These resources represent long-standing positions on Act amendments that were developed by the Sector and Sector representatives.

It is acknowledged that only formally adopted State Council advocacy positions can be truly regarded, for the purpose of this Discussion Paper, as representing the collective views of Local Government. Ultimately, this Discussion Paper aspires to honour all views on Local Government Act reform identified through research of the following resources:

- **WALGA Advocacy Positions:** A document representing a collation of WALGA's advocacy positions determined by formal State Council resolutions, inclusive of motions passed at the Association's Annual General Meeting.
- **WALGA Zone Proposals:** This Discussion Paper attempts to capture WALGA Zone resolutions requesting WALGA seek amendment to the Local Government Act.
- **Local Government Reform Steering Committee Report May 2010:** Proposals developed by the Legislative Reform Working Group. Some proposals have already been implemented through Local Government Act amendments since 2010, with the remaining recommendations presented in this Paper for consideration.

This Paper gathers the information from these sources and presents in order of the relevant Part of the Act and associated Regulation. The relationship between Parts of the Act and Regulations is shown in this Table:

LG Act	Regulation
Part 2 →	Constitution Regulations 1998
Part 3 →	Functions and General Regulations 1996 / Regional Subsidiaries Regulations 2017
Part 4 →	Elections Regulations 1996
Part 5 →	Administration Regulations 1996 / Rules of Conduct Regulations 2007
Part 6 →	Financial Management Regulations 1996
Part 7 →	Audit Regulations 1996
Part 8 →	No Regulations
Part 9 →	Uniform Local Provisions Regulations 1996
Schedules	Uniform Local Provisions Regulations 1996

## LOCAL GOVERNMENT ACT AMENDMENT PROPOSALS

### Part 1 – Introductory Matters

#### Local and Statewide Public Notice: Sections 1.7 and 1.8

The Association welcomes the opportunity to modernise the requirements of giving public notice of particular matters, as prescribed in the Local Government Act. The Minister for Local Government has indicated an intention to deal with this in Phase 1 of the Review process, by making information available online. It is already common practice within the Local Government sector to place statutory public notices on official websites, despite there being no legislated requirement to do so.

### Part 2 – Constitution of Local Government

#### Method of Election of Mayor/President: Section 2.11

Position Statement	Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.
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State Council Resolution	March 2012 – 24.2/2012
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#### Elected Member Training: New Proposal

Position Statement	<p>WALGA opposes legislative change that would:</p> <ol style="list-style-type: none"><li>1. Require candidates to undertake training prior to nominating for election;</li><li>2. Incentivise Elected Member training through the fees and allowances framework; or</li><li>3. Mandate Elected Member training.</li></ol>
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Further, if mandatory training becomes inevitable, WALGA will seek to ensure that it:

- a) Only applies to first time Elected Members;
- b) Utilises the Elected Member Skill Set as the appropriate content for mandatory training;
- c) Applies appropriate Recognition of Prior Learning (RPL);
- d) Requires training to be completed within the first 12 months of office; and
- e) Applies a penalty for non-completion of a reduction in fees and allowances payable.

State Council Resolution	December 2015 – 119.7/2015 October 2008 – 399.4/2008
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## Stand Down when Contesting State or Federal Election: New Proposal

Amend the Act to require an Elected Member to stand down when contesting a State or Federal election, applying from the issue of Writs. The options to consider include:

- (a) that an Elected Member stand down from any decision making role and not attend Council and Committee meetings; or
- (b) that an Elected Member stand down from all aspects of their role as a Councillor and not be able to perform the role as specified in Section 2.10 of the Local Government Act.

### Background

The East Metropolitan Zone has identified that, under the *Local Government Act 1995*, there is no requirement for an Elected Member to either stand down or take leave of absence if they are a candidate for a State or Federal election. If elected to Parliament the Elected Member is immediately ineligible to continue as an Elected Member. Currently it is up to an individual Elected Member to determine if they wish to take a leave of absence. In some cases Elected Members have voluntarily resigned.

## Part 3 – Functions of Local Government

### Notification of Affected Owners: Section 3.51

#### Position Statement

Section 3.51 of the *Local Government Act 1995* concerning “Affected owners to be notified of certain proposals” should be amended to achieve the following effects:

1. to limit definition of “person having an interest” to those persons immediately adjoining the proposed road works (i.e. similar principle to town planning consultation); and
2. to specify that only significant, defined categories of proposed road works require local public notice under Section 3.51 (3) (a).

State Council Resolution      February 2009 – 480.1/2009

### Control of Certain Unvested Facilities: Section 3.53

The Local Government Act 1995 includes a provisions, under Section 3.53, that is carried forward from Section 300 of the former Local Government Act 1960. Former Section 300 stated:

*300. A council has the care, control, and management of public places, streets, ways, bridges, culverts, fords, ferries, jetties, and drains, which are within the district, or, which although not within the district, are by this Act placed under the care, control, and management, of the council, or are to be regarded as being within the district, except where and to the extent that under an Act, another authority has that care, control, and management.*

Section 3.53 refers to infrastructure as an ‘otherwise unvested facility’, and is defined to mean: “a thoroughfare, bridge, jetty, drain, or watercourse belonging to the Crown, the

*responsibility for controlling or managing which is not vested in any person other than under this section.”*

Section 3.53 places responsibility for an otherwise unvested facility on the Local Government in whose district the facility is located. Lack of ongoing maintenance and accreting age has resulted in much infrastructure falling into a dilapidated state. This, together with the uncertain provenance of many of these facilities, particularly bridges, is reported as placing an unwarranted and unfunded burden on a number of Local Governments.

It is recommended Section 3.53 of the Act be deleted and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.

## Regional Local Governments: Part 3, Division 4

Position Statement	The compliance obligations of Regional Local Governments should be reviewed.
Background	<p>Currently, Regional Local Governments are treated by the <i>Local Government Act 1995</i> for the purposes of compliance, as if they were a Local Government.</p> <p>The Association believes that this places an overly large compliance burden on Regional Local Governments. The large compliance burden reduces potential cost savings that aggregated service delivery may achieve through increased efficiency and acts as a disincentive for Local Governments to establish Regional Local Governments.</p>
State Council Resolution	January 2012 – 9.1/2012

## Council Controlled Organisations: Part 3, Division 4

Position Statement	The <i>Local Government Act 1995</i> should be amended to enable Local Governments to establish Council Controlled Organisations (CCO) - also referred to as 'Local Government Enterprises' i.e WALGA's Systemic Sustainability Study 2008.
Background	The CCO model is available to Local Governments in New Zealand where they are used for a variety of purposes. The model allows one or more Local Governments to establish a wholly Local Government owned commercial organisation. The Association has developed the amendments required for the CCO model to be implemented in Western Australia.
State Council Resolution	<p>October 2010 – 107.5/2010</p> <p>October 2010 – 114.5/2010</p>

## Local Government (Functions and General) Regulations 1996

### Tender Threshold: Regulation 11(1)

Position Statement	WALGA supports an increase in the tender threshold to align with the State Government tender threshold (\$250 000).
Background	The tender threshold should be increased to allow Local Governments responsiveness when procuring relatively low value good and services.
State Council Resolution	July 2015 – 74.4/2015 September 2014 – 88.4/2014

### Dispositions of Property: Regulation 30(3)

That Regulation 30(3) be amended to delete any financial threshold limitation (currently \$75,000) on a disposition where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.

## Local Government (Regional Subsidiaries) Regulations 2017

### Regional Subsidiaries

Position Statement	That WALGA advocate for legislative and regulatory amendments to enable Regional Subsidiaries to: <ol style="list-style-type: none"> <li>1. Borrow in their own right;</li> <li>2. Enter into land transactions; and,</li> <li>3. Undertake commercial activities.</li> </ol>
Background	<p>The <i>Local Government Act 1995</i> was amended in late 2016 to enable Local Governments to establish regional subsidiaries, and this represents a significant advocacy achievement for the Local Government sector;</p> <p>The <i>Local Government (Regional Subsidiaries) Regulations 2017</i>, which were enacted in early 2017, contain significant restrictions that limit the flexibility and will reduce the benefits of the regional subsidiary model;</p> <p>In particular, the regulations prevent regional subsidiaries from borrowing from any organisation other than a constituent Local Government, entering into a land transaction, and commencing a trading undertaking; and,</p> <p>This item recommends legislative and/or regulatory amendments to remove these restrictions that unnecessarily prevent regional subsidiaries from becoming an effective and efficient collaborative service delivery mechanism.</p>

State Council Resolution      March 2017 – 5.1/2017

## Part 4 – Elections and Other Polls

### Conduct of Postal Elections: Sections 4.20 and 4.61

Position Statement	The <i>Local Government Act 1995</i> should be amended to allow the Australian Electoral Commission (AEC) and Local Governments to conduct postal elections.
Background	Currently, the WAEC has a legislatively enshrined monopoly on the conduct of postal elections that has not been tested by the market.
State Council Resolution	March 2012 – 24.2/2012

### Voluntary Voting: Section 4.65

Position Statement	Voting in Local Government elections should remain voluntary.
State Council Resolution	427.5/2008 – October 2008

### On-Line Voting

WALGA has received requests from three (3) Zones to explore the possibility of introducing on-line voting in Local Government elections.

A State Council Item for Noting was prepared in May 2017 advising that WALGA staff will liaise with the WAEC regarding the use of the iVote system and also seek feedback from the Local Government sector on online voting and other opportunities to increase voter turnout. The Minister for Local Government has indicated that online voting is likely to be considered in the context of increasing elector participation.

## Part 5 - Administration

### Electors' General Meeting: Section 5.27

**Position Statement**                      Section 5.27 of the *Local Government Act 1995* should be amended so that Electors' General Meetings are not compulsory.

**Background**                                There is adequate provision in the Local Government Act for the public to participate in Local Government matters and access information by attending meetings, participating in public question time, lodging petitions, and requesting special electors' meetings.

*NOTE: The current Local Government Amendment (Auditing) Bill 2017 proposes that a Local Government's Annual Report is to be placed on its official website within 10 days of being received.*

**State Council Resolution**              February 2011 – 09.1/2011

### Special Electors' Meeting: Section 5.28

That Section 5.28(1)(a) be amended:

- (a) so that the prescribed number of electors required to request a meeting increase from 100 (or 5% of electors) to 500 (or 5% of electors), whichever is fewer; and
- (b) to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise.

### Senior Employees: Section 5.37(2)

That Section 5.37(2) be deleted to remove any inference or ambiguity as to the role of Council in the performance of the Chief Executive Officer's function under Section 5.41(g) regarding the appointment of other employees (with consequential amendment to Section 5.41(g) accordingly).

### Annual Review of Certain Employees Performance: Section 5.38

Section 5.41(g) of the Act prescribes the function of responsibility for all employees, including management supervision, to the Chief Executive Officer. Section 5.38 therefore creates unnecessary ambiguity; unnecessary in terms of the certainty that Section 5.41(g) already provides. It is recommended that Section 5.38 either be deleted, or amended so that there is only a specific statutory requirement for Council to conduct the Chief Executive Officer's annual performance review.

## Gifts and Contributions to Travel: Sections 5.82 and 5.83

The current Gift Provisions in the Local Government Act are very confusing and overly prescriptive. The Department of Local Government and Communities have established a Gift Working Group to look at completely reviewing the gift provisions for changes following the March 2017 State Election. WALGA is a participant in this working group. WALGA representatives have been advocating for the following:

- There be one section for declaring gifts. Delete declarations for Travel.
- No requirement to declare gifts received in a genuinely personal capacity.
- Gift provisions only for Elected Members and CEO's. Other staff fall under Codes of Conduct from the CEO to the staff.
- Gifts only to be declared if above \$500.00.
- There will not be any category of notifiable gifts or prohibited gifts.
- Gifts only to be declared in respect to an Elected Member or CEO carrying out their role.
- Exemptions for ALGA, WALGA and LG Professionals (already achieved).
- Exemption for electoral gifts received that relate to the State and Commonwealth Electoral Acts. So Elected Members who are standing for State or Federal Parliament will only need to comply with the State or Federal electoral act and not declare it as a Local Government gift.

## Vexatious and Frivolous Complainants: New Provision

It is recommended that a statutory provision be considered, permitting a Local Government to declare a person a vexatious or frivolous complainant. Section 5.110(3a) of the Act was recently introduced in relation to the Local Government Standards Panel ruling on vexatious and frivolous Rules of Conduct Regulations breach allegations:

*“...a standards panel can at any stage of its proceedings refuse to deal with a complaint if the standards panel is satisfied that the complaint is frivolous, trivial, vexatious, misconceived or without substance.”*

Given the extensive cost and diversion of administrative resources currently associated with vexatious and frivolous complainants across the Local Government sector, it is recommended that a more general mechanism, based on the principles associated with the introduction of Section 5.110(3A), be investigated.

Amendments to the legislation would need to cover the following points to implement the proposed arrangements:

- Create a head of power to determine whether a community member is vexatious (potentially establish a new body through legislation and give it this power of determination);
- Define vexatious behaviour broadly to include the extent and nature of communication between the alleged vexatious person and the Local Government (using words such as ‘unreasonable’, ‘persistent’, ‘extensive’, ‘malicious’ and ‘abusive’);
- Outline the restrictions to statutory rights which can be imposed on a person if he or she is declared by the independent body to be vexatious;
- Establish a process, if necessary, to enable a Local Government to present its case for the alleged vexatious person to defend himself/herself;
- Determine what appeal rights are necessary.

## Local Government (Administration) Regulations 1996

### Revoking or Changing Decisions: Regulation 10

Regulation 10 provides a mechanism for the revocation or change to a previous decision of Council. It does not however, contain any provision clarifying that the provisions do not apply to Council decisions that have already been implemented. This regulatory deficiency is currently managed administratively, but warrants an appropriate amendment to assist clarify the rights of a Councillor to seek a revocation or change.

### Minutes, contents of: Regulation 11

Regulation 11 contains a potential anomaly in that the content requirements relating to Minutes of a Council or Committee meeting do not make reference to the reports and information that formed the basis of the Agenda to that meeting. Despite it being a common practice that Agenda reports and information are included in most Minutes, this is not universally the case, and it is recommended that an amendment be considered as an aid to community understanding of the decision-making process of the Council.

### Repayment of Advance Annual Payments: New Regulation

The Local Government Legislation Amendment Act 2016 introduced Section 5.102AB, which provides that Regulations may be made relating to the recovery of advance payments of annual allowances or annual fees made to a person who subsequently ceases to hold office during the period to which the payment relates:

#### **5.102AB. Repayment of advance annual payments if recipient ceases to hold office**

(2) *Regulations may be made —*

*(a) requiring the repayment to a local government, to the extent determined in accordance with the regulations, of an advance payment of an annual allowance or annual fee in the circumstances to which this section applies; and*

*(b) providing for a local government to recover any amount repayable if it is not repaid.*

Regulations enabling the recovery of advance annual payments have yet to be made and it is recommended this matter be prioritised.

## Local Government (Rules of Conduct) Regulations 2007

Position Statement	<p>WALGA supports:</p> <ol style="list-style-type: none"> <li>1. Official Conduct legislation to govern the behaviour of Elected Members;</li> <li>2. An efficient and effective independent Standards Panel process;</li> <li>3. An ability for the Standards Panel to dismiss vexatious and frivolous complaints; and,</li> <li>4. Confidentiality for all parties being a key component of the entire process.</li> </ol> <p><i>NOTE: Point 3 achieved under the Local Government Legislation Amendment Act 2016</i></p>
State Council Resolution	<p>March 2016 – 10.1/2016          July 2012 – 55.3/2012          December 2008 – 454.6/2008</p>

## Part 6 – Financial Management

### Imposition of Fees and Charges: Section 6.16

Position Statement	That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services
Background	<p>Local Governments are able to impose fees and charges on users of specific, often incidental, services. Examples include dog registration fees, fees for building approvals and swimming pool entrance fees.</p> <p>In some cases, Local Governments will recoup the entire cost of providing a service. In other cases, user charges may be set below cost recovery to encourage a particular activity with identified community benefit, such as sporting ground user fees or swimming pool entry fees.</p> <p>Currently, fees and charges are determined according to three methods:</p> <ul style="list-style-type: none"> <li>• By legislation</li> <li>• With an upper limit set by legislation</li> <li>• By the Local Government.</li> </ul> <p>Fees determined by State Government legislation are of particular concern to Local Governments and represent significant revenue leakage because of:</p> <ul style="list-style-type: none"> <li>• Lack of indexation</li> <li>• Lack of regular review (fees may remain at the same</li> </ul>

nominal levels for decades)

- Lack of transparent methodology in setting the fees (fees do not appear to be set with regard to appropriate costs recovery levels).

Examples of fees and charges of this nature include dog registrations fees, town planning fees and building permits. Since Local Governments do not have direct control over the determination of fees set by legislation, this revenue leakage is recovered from rate revenue. This means all ratepayers end up subsidising the activities of some ratepayers.

When fees and charges are restricted by legislation, rather than being set at cost recovery levels, this sends inappropriate signals to users of Local Government services, particularly when the consumption of those services is discretionary. When legislative limits allow consumers to pay below 'true cost' levels for a discretionary service, this will lead to overprovision and a misallocation of resources.

Under the principle of 'general competence' there is no reason why Local Governments should not be empowered to make decisions regarding the setting of fees and charges for specific services.

Additionally, it is recommended that Section 6.16 be amended so that it only relates to statutory application fees and charges and not consumer items, facility entrance fees, ad hoc minor fees and charges etc. The exhaustive listing of relatively minor fee and charge items, together with the technical requirement to give public notice of any change after the adoption of the annual budget, is both inefficient and costly.

## **Power to Borrow: Section 6.20**

Section 6.20(2) requires, where a power to borrow is proposed to be exercised and details of the proposal are not included in the annual budget, that the Local Government must give one month's public notice of the proposal (unless an exemption applies). There is no associated requirement to request or consider written submission prior to exercising the power to borrow, as is usually associated with giving public notice. Section 6.20(2) simply stops the exercise of power to borrow for one month, and it is recommended it be deleted.

## Restrictions on Borrowings: Section 6.21

Position Statement	Section 6.21 of the <i>Local Government Act 1995</i> should be amended to allow Local Governments to use freehold land, in addition to its general fund, as security when borrowing.
Background	<p>Borrowing restrictions in the <i>Local Government Act 1995</i> act as a disincentive for investment in community infrastructure. Section 6.21(2) states that a Local Government can only use its 'general funds' as security for borrowings to upgrade community infrastructure, and is restricted from using its assets to secure its borrowings. This provision severely restricts the borrowing capacity of Local Governments and reduces the scale of borrowing that can be undertaken to the detriment of the community.</p> <p>This is particularly relevant since the Global Financial Crisis. Treasury now requires member Local Governments to show as contingent liabilities in their balance sheet their proportion of contingent liabilities of the Regional Local Government of which they are a member. Given that the cost of provision of an Alternative Waste Disposal System is anything up to \$100 million, the share of contingent liabilities for any Local Government is significant. Even under a 'Build-Own-Operate' financing method, the unpaid (future) payments to a contractor must be recognised in the balance sheet of the Regional Local Government as a contingent liability.</p> <p>This alone is likely to prevent some Local Governments from borrowing funds to finance its own work as the value of contingent liabilities are taken into account by Treasury for borrowing purposes.</p>
State Council Resolution	January 2012 – 8.1/2012

## Rating Exemptions – Charitable Purposes: Section 6.26(2)(g)

Position Statement	<p>WALGA's policy position regarding charitable purposes is as follows:</p> <ol style="list-style-type: none"><li>1. Amend the Local Government Act to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth Aged Care Act 1997;</li><li>2. Either<ol style="list-style-type: none"><li>a) amend the charitable organisations section of the Local Government Act 1995 to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or</li><li>b) establish a compensatory fund for Local</li></ol></li></ol>
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Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates.

#### Background

Exemptions under this section of the Act have extended beyond the original intention and now provide rating exemptions for non-charitable purposes, which increase the rate burden to other ratepayers. There may be an argument for exemptions to be granted by State or Federal legislation. Examples include exemptions granted by the Commonwealth *Aged Care Act 1997* and group housing for the physically and intellectually disabled which is supported under a government scheme such as a Commonwealth-State Housing Agreement or Commonwealth-State Disability Agreement.

State Council Resolution     December 2015 – 118.7/2015  
January 2012 – 5.1/2012

### Basis of Rates: Section 6.28

1. That Section 6.28 be reviewed to examine the limitations of the current methods of valuation of land, Gross Rental Value or Unimproved Value, and explore other alternatives.

The method of valuation of land to be used as the basis of rating in Western Australia is either: Gross Rental Value for predominantly non-rural purpose; or unimproved value of land for rural purposes. These are the only two methods available under the Section 6.28 of the Local Government Act in Western Australia.

Eastern State Local Governments can elect to rate on one of the following options:

- Site Value - levy on the unimproved value of land only and disregards the value of buildings, personal property and other improvements;
- Capital Value - value of the land including improvements;
- Annual Value - rental value of a property (same as GRV).

Alternative land valuation methods came under the scope of the WALGA Systemic Sustainability Study, particularly Capital Improved Valuations which is in operation in Victoria and South Australia.

2. Advocate for amendment to Section 6.28 to enable Differential Rating based on the time land remains undeveloped.

Concern at the amount of vacant land remaining in an undeveloped state for an extensive period of time and holding up development opportunities.

North Metropolitan Zone advocates an amendment to the current legislative provisions in relation to differential rating to enable a differential rate to be applied on the basis of the length of time a property has remained in an undeveloped state.

## Differential General Rates: Section 6.33

This section outlines the characteristics that Local Governments may take into account when imposing differential general rates. It is recommended the issue of time-based differential rating should be examined, to address some Local Governments view that vacant land should be developed in a timely manner.

## Service of Rates Notice: Section 6.41

That Section 6.41 be amended to:

- (a) permit the rates notice to be issued to electronically; and
- (b) introduce flexibility to offer regular rate payments (i.e. fortnightly, monthly etc) without requirement to issue individual instalment notice.

## Rates or Service Charges Recoverable in Court: Section 6.56

That Section 6.56 be amended to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to the 'cost of proceedings'.

## Rating Exemptions – Rate Equivalency Payments

**Position Statement**                      Legislation should be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government.

**Background**                                A particular example is the exemption granted to LandCorp by the *Land Authority Act 1992*. In 1998, the Act was amended to include provisions for LandCorp to pay the Treasurer an amount equal to that which would have otherwise been payable in Local Government rates, based on the principle of 'competitive neutrality'.

This matter is of concern to Local Governments with significant LandCorp holdings in their district. The shortfall in rates is effectively paid by other ratepayers, which means ratepayers have to pay increased rates because LandCorp has a presence in the district.

**State Council Resolution**              January 2012 – 6.1/2012

## Rating Restrictions – State Agreement Acts

**Position Statement**                      Resource projects covered by State Agreement Acts should be liable for Local Government rates.

## Background

In 2011, the State Government introduced a new policy on 'the application of Gross Rental Valuation to mining, petroleum and resource interests' (the GRV mining policy). The Policy was extended in 2015 and remains in place. The primary objectives of the policy were to clarify the circumstances where Local Governments could apply GRV rating to mining land and enable the use of GRV rating on new (i.e., initiated after June 2012) mining, petroleum and resource interests. This included the application of GRV rating to new State Agreement Acts.

However, existing State Agreement Acts continue to restrict Local Government rating. Rating exemptions on State Agreement Acts mean that Local Governments are denied an efficient source of revenue. There are also equity issues associated with the existing exemptions since they only apply to a select group of mining companies whose projects are subject to older State Agreement Acts. Removing the rates exemption clauses from the pre-July 2012 State Agreement Acts would provide a fairer outcome for all other ratepayers, including the proponents of new resources projects.

## State Council Resolution

September 2014 – 89.4/2014  
March 2014 – 10.1/2014  
October 2011 – 116.5/2011

## Local Government (Financial Management) Regulations 1996

### Exemption from AASB 124: Regulation 4

Regulation 4 of the Financial Management Regulations provides a mechanism for an exemption from the Australian Accounting Standards (AAS). Regulation 16 is an example of the use of this mechanism, relieving Local Governments from the requirement to value land under roads.

A Zone has requested that an exemption be allowed from the implementation of AASB 124 'Related Party Transactions' due to the current provisions in the Act on declarations of interest at meetings and in Primary and Annual returns. This is regarded as providing appropriate material declaration and disclosure of interests associated with function of Local Government.

## Part 7 – Audit

The Local Government Amendment (Auditing) Bill 2017, before Parliament at the time of writing, will substantially replace much of Part 7 to provide for the auditing of Local Governments by the Auditor General. New legislation will allow the Auditor General to contract out some or all of the financial audits but all audits will be done under the supervision of the Auditor General and Office of the Auditor General. State Government will pay the cost for the conduct of performance audits.

## Part 8 – Scrutiny of the Affairs of Local Government

### Stand Down Provision: New Proposal

#### Position Statement

WALGA supports, in principle, a proposal for an individual elected member to be 'stood down' from their role when they are under investigation; have been charged; or when their continued presence prevents Council from properly discharging its functions or affects the Council's reputation, subject to further policy development work being undertaken.

Further policy development of the Stand Down Provisions must involve specific consideration of the following issues of concern to the Sector:

1. That ... the established principles of natural justice and procedural fairness are embodied in all aspects of the proposed Stand Down Provisions; and
2. That activities associated with the term 'disruptive behaviour', presented as reason to stand down a defined Elected Member on the basis their continued presence may make a Council unworkable, are thoroughly examined and clearly identified to ensure there is awareness, consistency and opportunity for avoidance.

#### Background

In 2008 a Discussion Paper was circulated seeking feedback regarding legislative amendments to suspend an individual Elected Member, as follows:

- An elected member to have the ability to stand down where they are being investigated or have been charged;
- An elected member to be forcibly stood down where they are being investigated or have been charged and whose continued presence prevents Council from properly discharging its functions and affects its reputation and integrity or where it is in the public interest;
- The Standards Panel to make the stand down decision;
- Such matters to be referred to the Standards Panel only by a Council (absolute majority), a statutory

- agency or the Department;
- Three to six months stand down periods with six month extensions;
- The elected member to remain entitled to meeting fees and allowances; and
- Inclusion of an offence for providing false information leading to a stand down.

State Council Resolution      August 2008 – 400.4/2008

## Part 9 – Miscellaneous Provisions

### Onus of Proof in Vehicle Offences may be Shifted: Section 9.13(6)

Amend Section 9.13 by introducing the definition of ‘responsible person’ and enable Local Governments to administer and apply effective provisions associated with vehicle related offences

#### Background:

This proposal from the North Metropolitan Zone emerged due to an increase in cases when progressing the prosecution of vehicle related offences in court (at the request of the vehicle owner) resulted in dismissal of charges by the Magistrate when the owner of the vehicle states that he does not recall who was driving his vehicle at the time of the offence.

The *Litter Act 1979* was amended in 2012 to introduce the definition of ‘responsible person’ (as defined in *Road Traffic Act 1974*) so that a ‘responsible person’ is taken to have committed an offence where it cannot be established who the driver of the vehicle was at the time of the alleged offence. This also removes the ability for the responsible person to be absolved of any responsibility for the offence if they fail to identify the driver. It is suggested that a similar amendment be made to Section 9.13 of the Act in order to ensure that there is consistent enforcement in regards to vehicle related offences.

## Schedule 2.1 – Creating, Changing Boundaries and Abolishing Districts

### Poll Provisions: New Proposal

Position Statement	Schedule 2.1 of the <i>Local Government Act 1995</i> should be amended so that the electors of a Local Government affected by any boundary change or amalgamation proposal are entitled to petition the Minister for a binding poll.
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State Council Resolution      December 2014 – 108.5/2014

### Number of Electors: Clause 2.1(1)(d)

That Schedule 2.1 Clause 2(1)(d) be amended so that the prescribed number of electors required to put forward a proposal for change increase from 250 (or 5% of electors) to 500 (or 5% of electors) whichever is fewer.

## **Schedule 2.2 – Provisions about Names, Wards and Representation**

### **Who may make Submission: Clause 3(1)**

That Schedule 2.2 Clause 3(1) be amended so that the prescribed number of electors required to put forward a submission increase from 250 (or 5% of electors) to 500 (or 5% of electors) whichever is fewer.

## **Schedule 4.1 – How to Count Votes and Ascertain Result of Election**

### **Method of Voting**

Position Statement	Elections should be conducted utilising the first-past-the-post (FPTP) method of voting.
Background	The FPTP method is simple, allows an expression of the electorate's wishes and does not encourage tickets and alliances to be formed to allocate preferences.
State Council Resolution	427.5/2008 – October 2008

This State Council resolution influenced amendment to Schedule 4.1 in 2009 that returned Local Government elections to a first past the post system from the preferential proportional Representation. The resolution is reiterated here as an indication of the sector's ongoing preference for this vote counting system.

## Submission of Feedback

### How to get involved

WALGA will conduct a comprehensive consultation process to provide Member Local Governments with as much opportunity as possible to contribute. This process will also assist WALGA determine its advocacy position on whether proposed changes should be dealt with in Phase 1 or Phase 2 (see Executive Summary).

During August and September 2017, WALGA will hold Zone and Regional Group forums on the Local Government Act Review. Local Governments can choose to contribute in conjunction with a Zone/Regional Group meeting, separately by lodging a Council endorsed submission, or both.

The final collated feedback will be prepared as a State Council Agenda Item for Zone consideration during the November/December 2017 round of Zone meetings. State Council will ultimately determine its position at its meeting of 6 December 2017.

Council endorsed submission on the issues raised in this Discussion Paper, as well as any other relevant matters, can be forwarded by Friday 20<sup>th</sup> October 2017 to:

James McGovern, Manager Governance - [jmcgovern@walga.asn.au](mailto:jmcgovern@walga.asn.au)  
or 9213 2093

Should you have any questions or queries about any aspect of the Discussion Paper or review process, please contact James McGovern at the above contacts, or Tony Brown on 9213 2051 or [tbrown@walga.asn.au](mailto:tbrown@walga.asn.au)

### **CITY OF JOONDALUP SUBMISSION TO THE WALGA DISCUSSION PAPER ON THE LOCAL GOVERNMENT ACT REVIEW**

#### **Introduction**

The City of Joondalup has been an active and cooperative participant in all legislative and reform reviews, surveys and analysis of the Local Government sector, including the WA Local Government Association Systemic Sustainability Study in 2006 and the Ministerial-initiated voluntary Local Government reform initiative in 2009, and Metropolitan Local Government Reform Process 2011-2013.

With regard the current review of the Local Government Act 1995 WALGA has produced a Discussion Paper (attached) that is structured around each section of the Act.

This Discussion Paper draws on a number of resources upon which WALGA's proposals for Act amendment are based. These resources represent long-standing positions on Act amendments that were developed by the Sector and Sector representatives.

All positions are up for review as part of this process. In addition WALGA welcome any other item to be brought forward.

#### **City of Joondalup Comment and Recommendations**

The City of Joondalup provides the following comments and recommendations in relation to the WALGA Discussion Paper.

The City of Joondalup's response to the Discussion Paper is, in the main, based on the City's comprehensive submissions to the Metropolitan Local Government Review Panel of December 2011; May 2012; April 2013, and previously endorsed positions.

The City's response aims to be brief in its approach, focusing on a defined position in relation to each of the Recommendations.

The City recognises that this response to the Discussion Paper is but one element of the consultation to be undertaken, and will consider further discussion papers and information distributed by the Minister on issues that have been identified over the last eight years including advocacy positions resolved by the sector. This will include a request for Local Governments to submit additional items for consideration in the Act review process.

As such this submission should not be considered a definitive response to the review.

## General Comment

The City of Joondalup welcomes the Minister for Local Government Heritage; Culture and the Arts the Hon David Templeman's announcement of the commencement of the review of the *Local Government Act 1995*.

The City supports the proposed framework of undertaking the review in two phases being to focus on modernising Local Government (Phase 1) and services to the community (Phase 2). Further, the City supports the Review's Principles and Vision:

### ***Vision***

*The vision for Local Government in Western Australia is: Agile, Smart, Inclusive.*

### ***Principles***

*The review will deliver on this through application of the following principles:*

- *Transparent – providing easy access to meaningful, timely and accurate information about Local Governments (S, I);*
- *Participatory – strengthening local democracy through increased community engagement (I);*
- *Accountable – holding Local Governments accountable by strengthening integrity and good governance (S, I);*
- *Efficient – providing a framework for Local Governments to be more efficient by removing impediments to good practice (A, S); and*
- *Modern – embracing contemporary models for governance and public sector management (A, S, I).*

## **Local Government Priorities**

The following key issues have previously been brought to the attention of WALGA and identified as priorities, and will form part of the consultation process with the sector on Act amendments:

- a) Gifts
- b) Regional Subsidiaries
- c) Rating Exemptions
- d) Financial Management Issues
- e) Administration
- f) Functions of Local Governments
- g) Poll Provisions relating to amalgamations and boundary adjustments.

## **Sector Principles**

The City supports the priorities identified by WALGA taking into account the key foundations of the Act, which the sector would like considered, related to the retention of the 'general competence' principle and consideration of a size and scale compliance regime. The Act review will incorporate regulatory amendments.

## Local Government Act Amendment Proposals

### Part 1 – Introductory Matters

#### Local and Statewide Public Notice: Sections 1.7 and 1.8

##### *WALGA Resolution/Position*

*That the requirements of giving public notice of particular matters, as prescribed in the Local Government Act be modernised by making information available online. It is already common practice within the Local Government sector to place statutory public notices on official websites, despite there being no legislated requirement to do so.*

The City of Joondalup utilises a range of methods for local and statewide public notices as follows:

- **Section 1.7 – Local Public Notice** – The City uses both its official website and local newspapers in publishing notices. The City considers this section should be amended to reflect changes in technology and modernise the methods of Local Governments communicating with its community. It would be preferable for Local Governments being required to publish local public notices on its official website and making it discretionary for it to publish notices in newspapers circulating throughout its district, considering the delay that can often occur from when a decision is made and the ability to submit a notice to the Community Newspaper Group for relevant insertion, and the need to effectively consult and engage with affected community members. The cost to the City of compulsory local public notice is approximately \$20,000 per annum.
- **Section 1.8 – Statewide public notice** – Considering matters of Local Governments only generally require or affect members of their communities, it is considered removal, or amendment of, provisions around statewide public notices should be considered. Statewide notices only generally apply to local laws; business cases for major trading undertakings; election provisions and the sale of rateable land where rates and service charges are unpaid (Schedule 9.3). It is considered that local public notice of the matters should suffice. The cost to the City of compulsory statewide public notice is approximately \$22,000 per annum.

##### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's proposal to modernise the requirements of giving public notice of particular matters, as prescribed in the Local Government Act 1995 by making information available online.

## Part 2 – Constitution of Local Government

### Method of Election of Mayor/President: Section 2.11

#### **WALGA Position**

*Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.*

*State Council Resolution      March 2012 – 24.2/2012*

The City of Joondalup provided in its May 2012 and April 2013 Metropolitan Reform Submission that given the City of Joondalup's method of filling the office of Mayor is by direct election by electors of the district, the City maintain this position. It is considered that the WALGA position can be supported.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's position that Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.

### Elected Member Training: New Proposal

#### **WALGA Position**

*WALGA opposes legislative change that would:*

- 1. Require candidates to undertake training prior to nominating for election;*
- 2. Incentivise Elected Member training through the fees and allowances framework; or*
- 3. Mandate Elected Member training.*

*Further, if mandatory training becomes inevitable, WALGA will seek to ensure that it:*

- Only applies to first time Elected Members;*
- Utilises the Elected Member Skill Set as the appropriate content for mandatory training;*
- Applies appropriate Recognition of Prior Learning (RPL);*
- Requires training to be completed within the first 12 months of office; and*
- Applies a penalty for non-completion of a reduction in fees and allowances payable.*

*State Council Resolution      December 2015 – 119.7/2015  
October 2008 – 399.4/2008*

Policy development aiming to increase Elected Member participation in training is predicated on the supposition that there are benefits for the individual Elected Member, their Council and the Local Government sector to be realised from training and professional development.

For individuals, training and professional development can be valuable in assisting Elected Members to navigate their increasingly complex and demanding role. Managing competing demands, fully understanding complex issues and working within the confines of a unique

legislative and regulatory system can be challenging, particularly for new or inexperienced Elected Members.

WALGA released a comprehensive Discussion Paper *Policy Options to Increase Elected Member Training Participation*, in late 2015, circulated to Elected Members at the time for comment. The Council did not adopt a position in relation to the options presented.

The only positions that the City of Joondalup provided were in its May 2012 and April 2013 Metropolitan Reform Submissions that it had adopted a Governance Framework, with one of the primary principles related to Roles and Relationships. The objective of this principle is to ensure:

- There is clarity about the roles of Local Government and there exists a sophisticated approach to defining and implementing these.
- There are effective working relationships that are promoted and supported within and between the Elected Members, CEO and administration.

The Framework recognises the leadership role of Elected Members and the separation of roles that are undertaken by elected representatives and the administration. It also recognises the need for Elected Members to attend a comprehensive Induction Program and appropriate Conferences and Training to enable them to develop and maintain skills and knowledge relevant to their role as a representative of the City.

It is considered that it should be the function of each Local Government to invest in the on-going training and development of its elected body during the terms of elected members, and should not only apply to new elected members that are appointed to office.

The Council, in its April 2013 Metropolitan Reform Submission, supported Elected Members being provided with appropriate training to encourage strategic leadership and board-like behaviour, recognising, however, that Councils are not a board of directors but are an elected representative body.

It is considered that the WALGA position can be supported in principle at this time. Given the significance of this item it is considered that the Council give future consideration to this matter of compulsory training as part of the Act review process to determine a policy position.

### **Proposed City of Joondalup Position**

The City of Joondalup:

1. SUPPORT IN PRINCIPLE at this time WALGA's position that it opposes legislative change that would:
  1. Require candidates to undertake training prior to nominating for election;
  2. Incentivise Elected Member training through the fees and allowances framework;
  - or
  3. Mandate Elected Member training.

Further, if mandatory training becomes inevitable, WALGA will seek to ensure that it:

- Only applies to first time Elected Members;
- Utilises the Elected Member Skill Set as the appropriate content for mandatory

- training;
  - Applies appropriate Recognition of Prior Learning (RPL);
  - Requires training to be completed within the first 12 months of office; and
  - Applies a penalty for non-completion of a reduction in fees and allowances payable.
2. SUPPORTS Elected Members being provided with appropriate training to encourage strategic leadership and board-like behaviour, recognising, however, that Councils are not a board of directors but are an elected representative body.

## **Stand Down when Contesting State or Federal Election: New Proposal**

### ***WALGA Position***

*WALGA proposes to amend the Act to require an Elected Member to stand down when contesting a State or Federal election, applying from the issue of Writs. The options to consider include:*

- (a) that an Elected Member stand down from any decision-making role and not attend Council and Committee meetings; or*
- (b) that an Elected Member stand down from all aspects of their role as a Councillor and not be able to perform the role as specified in Section 2.10 of the Local Government Act.*

The City of Joondalup does not have a position in relation to Standing Down Provisions.

This matter has been raised by the East Metropolitan Zone which has identified that, under the *Local Government Act 1995*, there is no requirement for an Elected Member to either stand down or take leave of absence if they are a candidate for a State or Federal election. If elected to Parliament the Elected Member is immediately ineligible to continue as an Elected Member. Currently it is up to an individual Elected Member to determine if they wish to take a leave of absence. In some cases Elected Members have voluntarily resigned.

It is recognised that the concerns raised by the East Metropolitan Zone are legitimate, however, there is also an argument that as elected members are elected to represent the electors of the district having a mandatory stand down provision will diminish that representation and could place an additional burden on remaining elected members and the Council.

It is considered that the City defer consideration of a position in relation to this proposal until further information on the advantages and disadvantages of the proposal is forthcoming.

### **Proposed City of Joondalup Position**

The City of Joondalup DEFER consideration of endorsing a position to amend the Act to require an Elected Member to stand down when contesting a State or Federal election, applying from the issue of Writs, until further information on the proposal is received.

## Part 3 – Functions of Local Government

### Notification of Affected Owners: Section 3.51

#### *WALGA Position*

*Section 3.51 of the Local Government Act 1995 concerning “Affected owners to be notified of certain proposals” should be amended to achieve the following effects:*

- 1. to limit definition of “person having an interest” to those persons immediately adjoining the proposed road works (i.e. similar principle to town planning consultation); and*
- 2. to specify that only significant, defined categories of proposed road works require local public notice under Section 3.51 (3) (a).*

*State Council Resolution      February 2009 – 480.1/2009*

It is considered that the proposal from WALGA not be supported as the definition of “person having an interest” provides a Local Government with discretion as to who it considers should be consulted. The type of works in subsection (2) is specific enough to identify the types of works that are significant to require notification to occur. However subsection (4)(b) could be deleted as it is considered an unnecessary burden and cost for Local Governments to give local public notice, by a newspaper circulating the district as well as notices on public notice boards. If affected property owners are advised by a written notification this should suffice.

#### **Proposed City of Joondalup Position**

The City of Joondalup:

1. NOT SUPPORT the WALGA position in relation to proposed amendments to Section 3.51.
2. SUPPORT deletion of Section 3.51 (4)(b) as it is considered an unnecessary burden and cost for Local Governments to give local public notice, by a newspaper circulating the district as well as notices on public notice boards

### Control of Certain Unvested Facilities: Section 3.53

#### *WALGA Position*

*That Section 3.53 of the Act be deleted and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.*

It is considered that the WALGA position can be supported.

The proposal to delete this section is supported, to ensure that the responsibility for maintaining unvested facilities located on Crown Land does not become the financial burden of Local Governments. Obtaining access to data to effectively manage unvested assets can be challenging and burdensome and should be the responsibility of State Government to

manage as the current land manager, unless otherwise negotiated with a Local Government through an MOU.

The City is not aware of any significant unvested facilities the City currently manages on behalf of the Crown.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT the WALGA position in relation to proposed deletion of Section 3.53 and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.

### **Regional Local Governments: Part 3, Division 4**

#### ***WALGA Position***

*That the compliance obligations of Regional Local Governments be reviewed.*

*State Council Resolution      January 2012 – 9.1/2012*

The issue is that the provisions of the Act treat Regional Local Governments as is they are Local Governments in terms of all the compliance requirements and that this adds an administrative burden which in many cases adds little value.

Regional Local Governments do not levy rates, there are no public elections for Council Members to mention a few but they are required to comply as if they did.

The proposal is that these provisions be reviewed with the intention to reduce unnecessary compliance requirements.

It is considered that the WALGA position can be supported.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT the WALGA position in relation to the proposed review of the compliance obligations of Regional Local Governments in Part 3, Division 4.

### **Council Controlled Organisations: Part 3, Division 4**

#### ***WALGA Position***

*The Local Government Act 1995 should be amended to enable Local Governments to establish Council Controlled Organisations (CCO) - also referred to as 'Local Government Enterprises' i.e WALGA's Systemic Sustainability Study 2008.*

*State Council Resolution      October 2010 – 107.5/2010  
October 2010 – 114.5/2010*

This is party discussed under the heading Regional Subsidiaries below.

WALGA's Discussion Paper *Local Government Enterprises as a Means of Improving Local Government* (2010) proposed a new model intended to empower local governments, with the consent of its communities through detailed consultation processes, the establishment of corporate entities known as *Local Government Enterprises*, governed by directors appointed for their relevant expertise, to manage and develop assets using normal commercial arrangements.

The Council of the City of Joondalup at its July 2010 meeting supported in principle the 'Comprehensive' Approach, involving General Repeal of the Statutory Constraints of The Local Government Act 1995, so as to enable Local Government to conduct itself under normal commercial procedures and structures for any or all of its non-regulatory operations, but with specific Legislative Provisions to govern the establishment and operation of corporate subsidiaries.

What the recent Regional Subsidiaries legislation didn't address is the ability for Local Governments to have Local Government enterprises (or Council Controlled Model) as separate corporate bodies able to operate on a commercial basis. These types of structures operate in other jurisdictions most notably New Zealand. Their advantage is to be able to operate on almost the same commercial basis as private organisations with a governance structure that facilitates this.

The City has experienced first-hand with the Office Development Project the difficulties that the current legislative structures create when dealing in the commercial space. A separate entity operating as a Local Government enterprise on a commercial basis supported by an appropriate governance structure would greatly facilitate this and similar such ventures.

It is considered that the City reiterate its position of 2010.

#### **Proposed City of Joondalup Position**

The City of Joondalup REITERATE its July 2010 decision to SUPPORT IN PRINCIPLE the 'Comprehensive' Approach, involving General Repeal of the Statutory Constraints of The Local Government Act 1995, so as to enable Local Government to conduct itself under normal commercial procedures and structures for any or all of its non-regulatory operations, but with specific Legislative Provisions to govern the establishment and operation of corporate subsidiaries.

## **Local Government (Functions and General) Regulations 1996**

### **Tender Threshold: Regulation 11(1)**

#### ***WALGA Position***

*WALGA supports an increase in the tender threshold to align with the State Government tender threshold (\$250 000).*

*State Council Resolution      July 2015 – 74.4/2015  
September 2014 – 88.4/2014*

The current tender threshold requirement for calling tenders is \$150,000. The proposal is to increase this to \$250,000 in line with State Government.

This is the maximum threshold above which tenders must be called. Nothing precludes a tender being called for a lesser value purchase. The City does this with existing tender threshold where it is considered that a tender is the best way of achieving value for money. The City's Purchasing Policy and Protocols set out the requirements for purchases below the threshold where a tender is not called.

The proposal reflects the growth in value of purchases and would enable greater flexibility and responsiveness in procurement. It is considered that the WALGA position can be supported.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT the WALGA position to increase the tender threshold to align with the State Government tender threshold (\$250,000).

### **Dispositions of Property: Regulation 30(3)**

#### ***WALGA Position***

*That Regulation 30(3) be amended to delete any financial threshold limitation (currently \$75,000) on a disposition where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.*

Section 38 of the Act sets out the requirements for the disposition of property but Local Government (Functions and General) Regulations 1996 regulation 30 provides for a number of exemptions. Regulation 30(3) provides in part that a disposition other than land is exempt where:

- (b) *the entire consideration received by the Local Government for the disposition is used to purchase other property, and where the total consideration for the other property is not more, or worth more, than \$75,000.*

This provision essentially relates to where a disposal is part of a purchase and typically this occurs where plant and equipment is traded in as part of the purchase of new plant and equipment.

The current limit has the effect of forcing old plant and equipment above the limit to be disposed of by a separate disposal process even though a better net change over may be achieved by trading it in. The proposal is to retain the exemption but remove the \$75,000 limit.

The impact of the change would be particularly relevant to those Local Governments who have fleets with large high value earth moving and waste disposal equipment. The impact for the City of Joondalup will be limited but it is considered the proposal should be supported.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT the WALGA position to amend Regulation 30(3) of the Local Government (Functions and General) Regulations 1996 to delete any financial threshold limitation (currently \$75,000) on a disposition where it is used exclusively to

purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.

## Local Government (Regional Subsidiaries) Regulations 2017

### Regional Subsidiaries

#### *WALGA Position*

*That WALGA advocate for legislative and regulatory amendments to enable Regional Subsidiaries to:*

- 1. Borrow in their own right;*
- 2. Enter into land transactions; and*
- 3. Undertake commercial activities.*

*State Council Resolution     March 2017 – 5.1/2017*

The State Government recently amended the Local Government Act 1995 to include new provisions in relation to allowing the creation of Regional Subsidiaries and introduced the Local Government (Regional Subsidiaries) Regulations 2017 to support the Act.

The introduction of these provisions followed widespread industry consultation. The Western Australian Local Government Association prepared a submission.

The new provisions are disappointing. They do address issues of the governance constraints of a Regional Council (these have around for long time eg MRC and TPRC) by enabling two or more Local Governments wishing to form a regional subsidiary to deliver shared services in a structure that does not have those governance constraints. Despite this however in broad terms the new provisions do not allow a regional subsidiary to do anything that can't already be done by a Regional Council or by two or more Local Governments simply entering an agreement between them.

The Minister has recently acknowledged some short comings indicating that the Regulations will be amended to allow regional subsidiaries to own or lease land where it is required to deliver a service under the subsidiaries Charter. The subsidiary will still not be able, however to buy, sell or undertake land development

What the legislation didn't address however is the ability for Local Governments to have Local Government enterprises as separate corporate bodies able to operate on a commercial basis. These types of structures operate in other jurisdictions most notably New Zealand. Their advantage is to be able to operate on almost the same commercial basis as private organisations with a governance structure that facilitates this.

The Council of the City of Joondalup has not resolved a formal position of its own in regard to regional subsidiaries but has supported WALGA in its submissions. However, the Council of the City of Joondalup at its July 2010 meeting supported in principle the 'Comprehensive' Approach, involving General Repeal of the Statutory Constraints of The Local Government Act 1995, so as to enable Local Government to conduct itself under normal commercial procedures and structures for any or all of its non-regulatory operations, but with specific Legislative Provisions to govern the establishment and operation of corporate subsidiaries.

It is considered that the WALGA position can be supported.

**Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA to advocate for legislative and regulatory amendments to enable Regional Subsidiaries to:

1. Borrow in their own right;
2. Enter into land transactions; and
3. Undertake commercial activities.

## Part 4 – Elections and Other Polls

### Conduct of Postal Elections: Sections 4.20 and 4.61

#### *WALGA Position*

*The Local Government Act 1995 should be amended to allow the Australian Electoral Commission (AEC) and Local Governments to conduct postal elections.*

*State Council Resolution      March 2012 – 24.2/2012*

The City considered this matter in its April 2013 Metropolitan Reform Submission.

The City supported all Local Government elections being conducted by the Western Australian Electoral Commission.

The City of Joondalup accepts that participation in Local Government elections as an elector is an important and valuable opportunity.

The City has been conducting postal elections since its inaugural election in December 1999. At the 1997 election voter turnout was 6.51%. Voter turnout for elections held since that time, using the postal election method, has been between 20.2% (2015) and 29.7% (2001). The metropolitan average voter turnout is 27.5%.

Whilst the City supports Local Government elections being by postal election, conducted by the Western Australian Electoral Commission, it considered in April 2013 whether the Commission should retain its 'monopoly' on their conduct, and whether Local Governments should be permitted to undertake their own postal elections. From the City's perspective the Commission provides an 'at-arms-length' and independent management of the electoral process beneficial both to candidates and administration. The Commission also has sophisticated processes and systems in place to manage postal elections that would be difficult for individual Local Governments to manage effectively.

#### **Proposed City of Joondalup Position**

The City of Joondalup:

1. Does NOT SUPPORT the WALGA position that the Local Government Act 1995 should be amended to allow the Australian Electoral Commission (AEC) and Local Governments to conduct postal elections.
2. SUPPORT all Local Government elections being conducted by the Western Australian Electoral Commission.

## Voluntary Voting: Section 4.65

### *WALGA Position*

*Voting in Local Government elections should remain voluntary.*

*State Council Resolution 427.5/2008 – October 2008*

Although voting at local government elections in Western Australia is optional, compulsory voting has existed in Australia at the State level since Queensland in 1915 and the Federal Government in 1924 and currently about 25 countries and their jurisdictions have compulsory voting yet only about 10 enforce it.

The Australian Electoral Commission notes the following arguments are advanced for/against compulsory voting, although some of the points may be more relevant to State and Federal elections:

#### ***Arguments used in favour of compulsory voting***

- Voting is a civic duty comparable to other duties citizens perform eg. taxation, compulsory education, jury duty
- Teaches the benefits of political participation
- Parliament reflects more accurately the "will of the electorate"
- Governments must consider the total electorate in policy formulation and management
- Candidates can concentrate their campaigning energies on issues rather than encouraging voters to attend the poll
- The voter isn't actually compelled to vote for anyone because voting is by secret ballot.

#### ***Arguments used against compulsory voting:***

- It is undemocratic to force people to vote – an infringement of liberty
- The ill informed and those with little interest in politics are forced to the polls
- It may increase the number of "donkey votes"
- It may increase the number of informal votes
- It increases the number of safe, single-member electorates – political parties then concentrate on the more marginal electorates
- Resources *must be allocated to determine whether those who failed to vote have "valid and sufficient" reasons.*

The City of Joondalup accepts that participation in local government elections as an elector is an important and valuable opportunity.

The City has undertaken a range of activities aimed at encouraging members of the community to participate in the electoral process, including:

- Writing to non-resident owners of businesses within the City encouraging them to enrol to vote.
- Use of local media.
- Targeted advertising in local media.
- Articles in City publications, public notice boards and website.
- Conducting Candidate Information Sessions.

However, low voter turnout figures remain.

Since 2011 the Western Australian Electoral Commission/Department of Local Government Culture and the Arts undertook coordinated advertising to encourage members of the community to vote. It is not considered that there is much more the City can do to encourage members of the community to vote in voluntary elections.

In 2008, the City considered its position on the local government voting system and compulsory voting as a result of a discussion paper released by WALGA.

The Council agreed upon a position on this matter noting that a range of alternatives may be available to the current processes for local government elections and which may increase elector participation, however, on balance it resolved to support compulsory voting.

The City also acknowledges that citizens have a broad suite of opportunities for participation in local government matters and access to information including via public question time at council meetings, comment on the draft annual budget, calling for special elector meetings, lodging petitions and access to local government Elected Members to raise issues and concerns.

The City notes also that local governments are also subject to scrutiny from an active local media/press and that citizens can lodge complaints with a range of public sector organisations including Ombudsman, Freedom of Information Commissioner, State Administrative Tribunal and Local Government Standards Panel.

The City of Joondalup reversed its decision of 2008 in its December 2011, May 2012 and April 2013 Metropolitan Reform Submissions whereby it agreed that it does not support compulsory voting in Local Government elections.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's position that voting in Local Government elections should remain voluntary.

#### **On-Line Voting**

WALGA has received requests from three Zones to explore the possibility of introducing on-line voting in Local Government elections.

A State Council Item for Noting was prepared in May 2017 advising that WALGA staff will liaise with the WAEC regarding the use of the iVote system and also seek feedback from the Local Government sector on online voting and other opportunities to increase voter turnout. The Minister for Local Government has indicated that online voting is likely to be considered in the context of increasing elector participation.

### **Proposed City of Joondalup Position**

The City of Joondalup:

1. SUPPORT opportunities being examined that will increase voter turnout to Local Government elections.
2. DEFER consideration of endorsing a position in relation to on-line voting at Local Government elections pending receipt of the WALGA Discussion Paper on opportunities to increase voter turnout to Local Government elections including use of the iVote system.

## Part 5 - Administration

### Electors' General Meeting: Section 5.27

#### *WALGA Position*

*Section 5.27 of the Local Government Act 1995 should be amended so that Electors' General Meetings are not compulsory.*

*State Council Resolution February 2011 – 09.1/2011*

As WALGA provide in the Discussion Paper, it is considered there is adequate provision in the Local Government Act for the public to participate in Local Government matters and access information by attending meetings, participating in public question time, lodging petitions, and requesting special electors' meetings. As such it is considered that the WALGA position can be supported.

With regard the City of Joondalup, Electors' General Meetings have historically been poorly attended and require significant resources to administer for what is considered nominal benefit, given existing mechanisms to engage with the Council.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT the WALGA position that Section 5.27 of the Local Government Act 1995 be amended so that Electors' General Meetings are not compulsory.

### Special Electors' Meeting: Section 5.28

#### *WALGA Position*

*That Section 5.28(1)(a) be amended:*

- (a) so that the prescribed number of electors required to request a meeting increase from 100 (or 5% of electors) to 500 (or 5% of electors), whichever is fewer; and*
- (b) to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise.*

Whilst it is considered there are adequate mechanisms for member of the community to engage and interact with Local Government it is considered that it is a democratic right of communities to request a special meeting on a matter that is of importance to them.

It is considered that further discussion needs to be had regarding what might be the appropriate number of electors that can request a meeting. It is considered that the prescribed number increase as the cost to initiate a Special Electors' Meeting can be quite significant if required to be held in a venue exceeding the Local Government's capacity.

The ability to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise is supported.

### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT the WALGA position that Section 5.28(1)(a) of the Local Government Act 1995 be amended:

1. so that the prescribed number of electors required to request a meeting increase, however, the number be further discussed by the sector; and
2. to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise.

### **Senior Employees: Section 5.37(2)**

#### ***WALGA Position***

*That Section 5.37(2) be deleted to remove any inference or ambiguity as to the role of Council in the performance of the Chief Executive Officer's function under Section 5.41(g) regarding the appointment of other employees (with consequential amendment to Section 5.41(g) accordingly).*

The intent of section 5.37 (2) of the Local Government Act 1995 has been the subject of Departmental and legal advice, however, it is considered appropriate that the ambiguity or inference as to the role of Council in the performance of the Chief Executive Officer's function under Section 5.41(g) regarding the appointment of other employees (with consequential amendment to Section 5.41(g) accordingly) requires clarification. As such it is considered that the WALGA position can be supported.

### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT the WALGA position that Section 5.37(2) be deleted to remove any inference or ambiguity as to the role of Council in the performance of the Chief Executive Officer's function under Section 5.41(g) regarding the appointment of other employees (with consequential amendment to Section 5.41(g) accordingly).

### **Annual Review of Certain Employees Performance: Section 5.38**

#### ***WALGA Position***

*That Section 5.38 either be deleted, or amended so that there is only a specific statutory requirement for Council to conduct the Chief Executive Officer's annual performance review.*

As provided in the WALGA Discussion Paper Section 5.41(g) of the Act prescribes the function of responsibility for all employees, including management supervision, to the Chief Executive Officer. Section 5.38 therefore creates unnecessary ambiguity; unnecessary in terms of the certainty that Section 5.41(g) already provides. It is recommended by WALGA that Section 5.38 either be deleted, or amended so that there is only a specific statutory requirement for Council to conduct the Chief Executive Officer's annual performance review.

It is considered that the section does not purport that performance reviews need to be conducted by Council for all employees, rather that employees' performances are to be regularly reviewed. Support of WALGA's position might undesirably lead to performance reviews of employees not being undertaken on a regular basis, because there is no requirement to do so.

It is considered that the WALGA position not be supported.

### **Proposed City of Joondalup Position**

The City of Joondalup:

1. NOT SUPPORT the WALGA position that Section 5.38 either be deleted, or amended so that there is only a specific statutory requirement for Council to conduct the Chief Executive Officer's annual performance review.
2. SUPPORT Section 5.38 being amended so that:
  - a. There is a specific statutory requirement for Council to conduct only the Chief Executive Officer's annual performance review.
  - b. There is a requirement for the Chief Executive Officer to ensure annual performance reviews are conducted of all other employees.

### **Gifts and Contributions to Travel: Sections 5.82 and 5.83**

#### ***WALGA Position***

*That:*

- *There be one section for declaring gifts. Delete declarations for Travel.*
- *No requirement to declare gifts received in a genuinely personal capacity.*
- *Gift provisions only for Elected Members and CEO's. Other staff fall under Codes of Conduct from the CEO to the staff.*
- *Gifts only to be declared if above \$500.00.*
- *There will not be any category of notifiable gifts or prohibited gifts.*
- *Gifts only to be declared in respect to an Elected Member or CEO carrying out their role.*
- *Exemptions for ALGA, WALGA and LG Professionals (already achieved).*
- *Exemption for electoral gifts received that relate to the State and Commonwealth Electoral Acts. So Elected Members who are standing for State or Federal Parliament will only need to comply with the State or Federal electoral act and not declare it as a Local Government gift.*

There is no doubt that the current gift provisions in the Local Government Act 1995 have caused significant confusion and are overly prescriptive. The Department of Local Government, Sport and Cultural Industries has established a Gift Working Group to look at completely reviewing the gift provisions for changes following the March 2017 State Election. WALGA is a participant in this working group. WALGA representatives have been advocating for the position as above.

## Section 5.82 – Gifts

It is considered that this section needs to be removed from the provisions around annual returns and a comprehensive review of the gift provisions, and similar standards, is required under the *Local Government Act 1995*, the *Local Government (Rules of Conduct) Regulations 2007*, the *Local Government (Administration) Regulations 1996* and the *Local Government (Elections) Regulations 1997*.

In terms of WALGA's advocacy, it is considered that the City:

- Support that there should only be one section around the declaration of gifts however does not support to deletion of the contributions to travel.
- Support that there should be no requirement to declare gifts received in a genuinely personal capacity
- Support that gift provisions should apply to elected members and the CEO however the *Local Government (Administration) Regulations 1996* which highlights what a code of conduct should contain, should include similar provisions for employees
- Not support that only gifts over \$500 being declared as there should still be a prohibited gift limit.
- Not support the removal of notifiable gift/prohibited gift categories however agrees that the level should be increased to \$100 to \$499 for notifiable gifts. At the City of Joondalup Council meeting held February 2016 when considering Rules of Conduct provisions it was suggested the notifiable gift base level be lifted from \$50 to \$100.
- Supports elected members, CEO and designated employees declaring gifts in respect to carrying out their role, however the inclusion of excluding gifts received in a personal capacity achieves this requirement.
- Supports an exemption for electoral gifts received relating to State or Federal Electoral Acts.

## Section 5.83 – Contribution to travel

It is considered that this section needs to be removed from the provisions around annual returns and a comprehensive review undertaken. It is suggested that WALGA's position not supported as travel is not currently considered a gift (in terms of the definition). Contributions should exclude those from the Western Australian Local Government Association, the Australian Local Government Association, regional Local Governments or other statutory boards or committees. It should also exclude contributions received in a general personal capacity of a person – expanding on relatives.

### Proposed City of Joondalup Position

The City of Joondalup:

1. In terms of WALGA's advocacy, it is considered that the City:

- SUPPORT that there should only be one section around the declaration of gifts however does NOT SUPPORT deletion of the contributions to travel.
- SUPPORT that there should be no requirement to declare gifts received in a genuinely personal capacity
- SUPPORT that gift provisions should apply to elected members and the CEO however the *Local Government (Administration) Regulations 1996* which highlights what a code of conduct should contain, should include similar provisions for

employees

- NOT SUPPORT that only gifts over \$500 being declared as there should still be a prohibited gift limit.
- NOT SUPPORT the removal of notifiable gift/prohibited gift categories however agrees that the level should be increased to \$100 to \$499 for notifiable gifts.
- SUPPORT elected members, CEO and designated employees declaring gifts in respect to carrying out their role, however the inclusion of excluding gifts received in a personal capacity achieves this requirement.
- SUPPORT an exemption for electoral gifts received relating to State or Federal Electoral Acts.

2. SUPPORTS the provisions related to Annual Returns being reviewed.

## **Vexatious and Frivolous Complainants: New Provision**

### ***WALGA Position***

*That a statutory provision be considered, permitting a Local Government to declare a person a vexatious or frivolous complainant, and that any amendments to the legislation be consider the following points to implement the proposed arrangements:*

- *Create a head of power to determine whether a community member is vexatious (potentially establish a new body through legislation and give it this power of determination);*
- *Define vexatious behaviour broadly to include the extent and nature of communication between the alleged vexatious person and the Local Government (using words such as 'unreasonable', 'persistent', 'extensive', 'malicious' and 'abusive');*
- *Outline the restrictions to statutory rights which can be imposed on a person if he or she is declared by the independent body to be vexatious;*
- *Establish a process, if necessary, to enable a Local Government to present its case for the alleged vexatious person to defend himself/herself;*
- *Determine what appeal rights are necessary.*

It is considered that WALGA's position not be supported, in the main due to the proposal to potentially establish a new body through legislation and give it a power of determination as to whether a complaint is trivial or vexatious.

It is considered however that the ability to determine a vexatious or trivial complaint be one that is at the discretion of the CEO, through established guidelines. The WALGA proposal places an unnecessary legislative process around an administrative and operational issue. Members of the public already have an avenue in terms of reviewing administrative procedures of Local Governments through the WA Ombudsman and the Standards Panel.

It may be more appropriate to create provisions whereby:

- The Chief Executive Officer is provided with the authority to determine vexatious and trivial complaints.
- There is a definition of vexatious behaviour broadly which includes the extent and nature of communication between the alleged vexatious person and the Local Government (using words such as 'unreasonable', 'persistent', 'extensive', 'malicious' and 'abusive');

- The restrictions to statutory rights are detailed which can be imposed on a person if he or she is declared to be vexatious or trivial;

The Chief Executive officer is required to inform Elected Members of any determination of a vexatious or trivial complaint.

- Appeal rights are determined.

### **Proposed City of Joondalup Position**

The City of Joondalup:

1. NOT SUPPORT WALGA's position that a statutory provision be considered, permitting a Local Government to declare a person a vexatious or frivolous complainant.
2. SUPPORT provisions that permit a Chief Executive Officer to determine a person a vexatious or frivolous complainant.

## **Local Government (Administration) Regulations 1996**

### **Revoking or Changing Decisions: Regulation 10**

#### ***WALGA Position***

*Regulation 10 provides a mechanism for the revocation or change to a previous decision of Council. It does not however, contain any provision clarifying that the provisions do not apply to Council decisions that have already been implemented. This regulatory deficiency is currently managed administratively, but warrants an appropriate amendment to assist clarify the rights of a Councillor to seek a revocation or change.*

It is considered that the WALGA position can be supported.

It is suggested that the change should also remove the requirement for one third support to consider a motion to revoke or change a decision before it is carried by an absolute majority. The voting requirement should suffice in terms of the level of support needed to revoke a previous decision.

### **Proposed City of Joondalup Position**

The City of Joondalup:

1. SUPPORT WALGA's position to review Regulation 10 of the Local Government (Administration) Regulations 1996 related to revoking or changing decisions.
2. SUPPORT WALGA giving consideration in its review to removing the requirement for one third support to consider a motion to revoke or change a decision before it is carried by an absolute majority.

## Minutes, Contents of: Regulation 11

### ***WALGA Position***

*Regulation 11 contains a potential anomaly in that the content requirements relating to Minutes of a Council or Committee meeting do not make reference to the reports and information that formed the basis of the Agenda to that meeting. Despite it being a common practice that Agenda reports and information are included in most Minutes, this is not universally the case, and it is recommended that an amendment be considered as an aid to community understanding of the decision-making process of the Council.*

It is considered that the WALGA position can be supported.

It is noted that this is a standard practice used at the City of Joondalup, however, the information contained in a confidential report should not be included in the minutes.

### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's position to review Regulation 11 of the Local Government (Administration) Regulations 1996 related to the contents of minutes, excluding information on confidential reports.

## Repayment of Advance Annual Payments: New Regulation

### ***WALGA Position***

*That Regulations enabling the recovery of advance annual payments be initiated.*

The Local Government Legislation Amendment Act 2016 introduced Section 5.102AB, which provides that Regulations may be made relating to the recovery of advance payments of annual allowances or annual fees made to a person who subsequently ceases to hold office during the period to which the payment relates:

Regulations enabling the recovery of advance annual payments have yet to be made and it is recommended this matter be prioritised.

It is considered that the WALGA position can be supported.

### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's position to initiate Regulations enabling the recovery of advance annual payments.

## Local Government (Rules of Conduct) Regulations 2007

### **WALGA Position**

WALGA supports:

1. Official Conduct legislation to govern the behaviour of Elected Members;
2. An efficient and effective independent Standards Panel process;
3. An ability for the Standards Panel to dismiss vexatious and frivolous complaints; and,
4. Confidentiality for all parties being a key component of the entire process.

*NOTE: Point 3 achieved under the Local Government Legislation Amendment Act 2016*

State Council Resolution      March 2016 – 10.1/2016  
July 2012 – 55.3/2012  
December 2008 – 454.6/2008

The City of Joondalup made a detailed submission in the response for feedback on the review of the Local Government (Rules of Conduct) Regulations 2007 and Disciplinary Framework in February 2016 (CJ013-02/16 refers).

[http://www.joondalup.wa.gov.au/files/councilmeetings/2016/CJ160216\\_MIN.pdf](http://www.joondalup.wa.gov.au/files/councilmeetings/2016/CJ160216_MIN.pdf)

The Department of Local Government, Culture and Industries has not progressed the review.

It is considered that the WALGA position can be supported.

### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's position that there be:

1. Official Conduct legislation to govern the behaviour of Elected Members;
2. An efficient and effective independent Standards Panel process;
3. An ability for the Standards Panel to dismiss vexatious and frivolous complaints; and,
4. Confidentiality for all parties being a key component of the entire process.

## Part 6 – Financial Management

### Imposition of Fees and Charges: Section 6.16

#### *WALGA Position*

*That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.*

Local Governments currently apply fees and charges based either on:

- The fee or charge is fully legislated and the Local Government has no control,
- The fee or charge is legislated with an upper limit and the Local Government may choose to charge less than the limit, and
- The Local Government sets the fee and charge.

It is unreasonable that a Local Government should be expected to deliver a service but not have the ability to set the fees or charges for that service. It is somewhat ironic that the Local Government Act prescribes a process for how a Local Government is to go about setting fees and charges for those that it sets itself but there is no transparency at all for legislated fees and charges.

It is also noted that the current provisions of Section 6.16 are quite outdated. A vast array of relatively minor fees and charges, such as photocopies, are required to be approved as part of the budget or require an absolute majority decision of Council and public advertising to change during the year. It is considered that this is a somewhat unrealistic requirement for the modern Local Government environment. Some parts of the City's business such as Leisure Centres operate in a competitive commercial environment and need to have an ability to be more flexible to change fees and charges to respond to the market.

There needs to be some ability to deal with the less significant fees and charges differently. WALGA have suggested that only statutory application fees be required to follow the current regime.

The City, in its December 2011 Metropolitan Reform Submission, provided *“that the State Government needs to undertake periodic reviews of the legislation and regulations they impose on Local Governments, to assess both their rationale and their benefits and costs. If Local Government is required to deliver a service then it needs to be able to set appropriate fees and charges relative to that service.”*

It is considered that the WALGA position can be supported.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's position that a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.

## **Power to Borrow: Section 6.20**

### ***WALGA Position***

*That Section 6.20(2) of the Local Government Act 1995 requiring, where a power to borrow is proposed to be exercised and details of the proposal are not included in the annual budget, that the Local Government give one month's public notice of the proposal (unless an exemption applies), be deleted.*

This issue in the WALGA Discussion Paper relates to a technical point. Where a Local Government proposes to borrow but it is not included in the budget it is currently required to advertise the proposal but then there is no requirement to request or consider submissions.

WALGA proposes the section be deleted. There is an argument that the requirements are there to ensure that the community is informed however if it had been included in the budget they would not have been separately informed although the budget is a public document.

It is considered that the WALGA position can be supported.

## **Restrictions on Borrowings: Section 6.21**

### ***WALGA Position***

*That Section 6.21 of the Local Government Act 1995 be amended to allow Local Governments to use freehold land, in addition to its general fund, as security when borrowing.*

*State Council Resolution    January 2012 – 8.1/2012*

Section 6.21 (2) of the Act stipulates that:

- (2) *Where, under section 6.20(1), a Local Government borrows money, obtains credit or arranges for financial accommodation to be extended to the Local Government that money, credit or financial accommodation is only to be secured by giving security over the general funds of the Local Government.*

A Local Government is therefore prevented from using specific assets such as vacant freehold land as security for borrowings. The WALGA Discussion Paper suggests this severely restricts the borrowing capacity of Local Governments and reduces the scale of borrowing that can be undertaken to the detriment of the community.

The paper cites that contingent liabilities are taken into account in determining borrowing capacity under the current provisions, and those associated with Regional Local Governments, which if they are involved in alternative waste disposal operations can be as much as \$100m, can have a substantial impact on a Local Government's borrowing capacity. Enabling borrowings using specific assets as security would overcome this restriction.

The current provisions do limit the borrowing capacity of Local Governments and it could be argued that this is a prudent natural control preventing Local Governments over extending their borrowing. Also, contingent liabilities are taken into account for good reason. There is sometimes a perception that contingent liabilities relating to Regional Local Governments are a negligible or very low risk and the commitments will not be called upon. This is not

true, they represent a real potential risk of default and those arrangements need to be well managed to contain this risk.

Despite these points there may well be circumstances where the ability to use freehold land to secure borrowing may be advantageous. This could be beneficial when it is proposed to undertake development of the land being used as security. In a multi-year project, this could in effect contain the liability to the intended project. This would then minimise the impact on the Local Governments normal funding and borrowing program by the borrowing requirements of a major project.

It is worth noting that the City of Joondalup's current borrowings are \$17m and it does have a contingent liability on its books in regard to the Resource Recovery Facility of approximately \$14.7m but under the current loan provisions of the Act the City's additional borrowing capacity is approximately \$115m.

It is considered that the WALGA position can be supported.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's position that Section 6.21 of the Local Government Act 1995 be amended to allow Local Governments to use freehold land, in addition to its general fund, as security when borrowing.

#### **Rating Exemptions – Charitable Purposes: Section 6.26(2)(g)**

##### ***WALGA Position***

*That:*

- 1. The Local Government Act 1995 be amended to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth Aged Care Act 1997;*
- 2. Either:*
  - a) amend the charitable organisations section of the Local Government Act 1995 to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or*
  - b) establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates.*

*State Council Resolution     December 2015 – 118.7/2015  
January 2012 – 5.1/2012*

The WALGA Discussion Paper makes several references to issues of Rates Exemption, Charitable Purposes Section 6.26 (2)(g), Rate Equivalency Payments and State Agreement Acts.

In regard to Charitable Purposes Section 6.26 (2)(g) the City of Joondalup Council has had a position since November 2006 and it has been previously conveyed to and supports that of WALGA. Council previously resolved in part CJ215-11/06:

*“That the Minister for Local Government & Regional Development be provided with the following response in relation to the issue of Local Government rating of land used for charitable purposes and a copy be provided to the Western Australian Local Government Association as follows:*

- 2 That the Minister be urged to give serious consideration to a whole of State approach to the issue of rating exemptions for land used for charitable purposes, such that individual Local Governments are not unfairly burdened due to the amount of land within their Local Government area that is used for charitable purposes. There should be equity and fairness in rating or exemption of these types of facilities in the same way that there is a whole of State approach to the provision of rebates and deferrals for pensioners.*
- 3 WALGA be advised of this response and in relation to point 2 be urged to advocate to the State Government the need for a whole of state approach to the issue of exemptions for land used for charitable purposes.”*

One of the issues is that the Act does not define charitable purpose and in fact there are hardly any legislative definitions. The interpretation of charitable purpose is almost entirely subject to case law of which there are many but this makes it difficult to have a clear definitive view and encourages determinations to be contested through the judicial system.

The position in regard to rate exemptions has grown progressively worse over the years. As an example the Housing Authority used to pay rates on its rental properties that were let to those that are disadvantaged has rolled out a new model where its housing stock for the disadvantaged is leased long term to charitable bodies to manage. These bodies are then entitled to claim a rate exemption and no rates are paid on these properties.

The City's position of November 2006 which is aligned with WALGA's position should continue to be supported.

Rate Equivalency payments apply mainly to Government agencies who operate in a commercial environment and although otherwise exempt from Local Government rates are required to make a rate equivalent payment to the State Treasury based on competitive neutrality principles. There are only a few agencies that are in this position, the most relevant example is Landcorp. WALGA's position is that such payments should be made to the Local Government.

The City does not have a position on this but it is considered should support WALGA's position. Landcorp have a number of land holdings in the City and these are not rated until they are sold.

### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's position that:

- 1 The Local Government Act 1995 be amended to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth Aged Care Act 1997;
- 2 Either:
  - a) amend the charitable organisations section of the Local Government Act 1995 to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or

- b) establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates.

## **Basis of Rates: Section 6.28**

### ***WALGA Position***

*That:*

- 1. Section 6.28 be reviewed to examine the limitations of the current methods of valuation of land, Gross Rental Value or Unimproved Value, and explore other alternatives.*
- 2. WALGA advocate for amendment to section 6.28 to enable Differential Rating based on the time land remains undeveloped.*

There are two issues referred to in the WALGA Discussion Paper.

The first is in regard to the method of valuation used for calculating rates. The legislation currently restricts the methods to unimproved or gross rental value. Unimproved is generally used only in rural situations and GRV in urban areas. A Local Government cannot elect to use unimproved value in an urban area.

Methods used in other States include site value (equivalent to unimproved) capital value (value of land and improvements) and annual value (equivalent to GRV) and the Local Government can elect which one they use.

There is value in having consistency of methods across Local Governments. It makes comparability easier, there is consistency of understanding of methodology particularly where owners have property in more than one Local Government and would be simpler for valuers.

What type of valuation method should be used is a more difficult question. The issue with GRVs is that in the real market rentals can change fairly quickly but GRVs do not. 2017 is a revaluation year but the GRVs that have been applied were assessed as at 1 August 2015. They are based on a two year old data point before they are even used and will be five years old by the time of the start of the third year that they are valid for. The general property owner finds it very difficult to understand the concept of GRV given that most don't rent their property and generally are not familiar with rental markets. Even when they do understand the concept there is quite often disparities between the GRV and the current rental situation.

It could be that capital value may offer a better option if it reflected valuation movements that are less volatile and might provide a value that property owners can better relate to. This would need some investigation before it could be determined whether or not to support this.

The City's position therefore should be that exploring alternative valuation methods to determine if there are better options is supported but allowing individual Local Governments to select a valuation method from small list of options is not supported.

The second issue is a proposal to amend section 6.28 to enable differential rating based on the time land remains undeveloped. This is a change that the City has advocated for through the WALGA North Zone.

As an inducement to develop land the City levies a higher differential on vacant land than developed land. In doing this though the Act doesn't allow the Local Government to differentiate between land that has remained undeveloped for some time and land that has been recently purchased and is in the process of being developed. An unfortunate consequence is that this captures property that has only recently been purchased and is proceeding on the development path eg new home builders. Working through selecting designers and builders, doing design, approvals, construction and the like can easily take two years even when all goes according to plan and in the meantime the property owner is paying a higher vacant land rate.

The proposal is that Local Governments be able to differentially rate vacant land based on how long it has remained undeveloped eg rate at same rate as developed land for first two years and then rate at a higher undeveloped vacant land rate after that.

This proposal supports the position the City has advocated to WALGA North Zone and should be supported.

### **Proposed City of Joondalup Position**

The City of Joondalup:

1. NOT SUPPORT WALGA's position that Section 6.28 be reviewed to examine the limitations of the current methods of valuation of land, Gross Rental Value or Unimproved Value, and explore other alternatives.
2. SUPPORT WALGA exploring alternative valuation methods to determine if there are better options, but allowing individual Local Governments to select a valuation method from small list of options is not supported.
3. SUPPORT WALGA advocating for amendment to section 6.28 to enable Differential Rating based on the time land remains undeveloped.

### **Differential General Rates: Section 6.33**

#### ***WALGA Position***

*That the issue of time-based differential rating should be examined, to address some Local Governments view that vacant land should be developed in a timely manner.*

Reference should be made to commentary provided on the Basis of Rates above which is the same issue.

It is considered that the WALGA position can be supported.

### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's position that the issue of time-based differential rating should be examined, to address some Local Governments view that vacant land should be developed in a timely manner.



## **Service of Rates Notice: Section 6.41**

### ***WALGA Position***

*That Section 6.41 be amended to:*

- (a) permit the rates notice to be issued electronically; and*
- (b) introduce flexibility to offer regular rate payments (i.e. fortnightly, monthly etc) without requirement to issue individual instalment notice.*

This proposed WALGA amendment is to explicitly provide that a rate notice can be issued electronically and to have greater flexibility with rate payments to allow payment arrangements without the need to issue instalment notices.

From the City's perspective there is nothing currently prohibiting both of these from happening. While amending the Act to specifically provide for them doesn't do any harm it also doesn't add much value.

It is considered that the WALGA position can be supported.

### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's position that Section 6.41 of the Local Government Act 1995 be amended to:

- (a) permit the rates notice to be issued electronically; and
- (b) introduce flexibility to offer regular rate payments (i.e. fortnightly, monthly etc) without requirement to issue individual instalment notice.

## **Rates or Service Charges Recoverable in Court: Section 6.56**

### ***WALGA Position***

*That Section 6.56 be amended to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to the 'cost of proceedings'.*

This proposal is to extend the ability to recover costs in a court action for rates and service charges which is currently restricted to the cost of proceedings. The cost of proceedings is generally just the fees charged by the court. Legal representation and other associated costs, conducting searches and investigations to locate owners and the like are generally not recoverable.

The proposal should be supported in principle but there may be requirements to amend other legislation in addition to the Local Government Act.

### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT IN PRINCIPLE WALGA's position that Section 6.56 be amended to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to the 'cost of proceedings'.

## **Rating Exemptions – Rate Equivalency Payments**

### **WALGA Position**

*Legislation should be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government.*

*State Council Resolution      January 2012 – 6.1/2012*

The City of Joondalup does not have a position on rate equivalency payments but it is considered it should support WALGA's position. For example, Landcorp has a number of land holdings in the City and these are not rated until they are sold.

### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's position that legislation be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government.

## **Rating Restrictions – State Agreement Acts**

### **WALGA Position**

*Resource projects covered by State Agreement Acts should be liable for Local Government rates.*

*State Council Resolution      September 2014 – 89.4/2014  
March 2014 – 10.1/2014  
October 2011 – 116.5/2011*

State Agreement Acts have no impact on the City and the City does not have a position on these, however, it is somewhat aligned to the principles of rate exemptions referred to above.

It is suggested that the City support in principle the WALGA position.

### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT IN PRINCIPLE WALGA's position that resource projects covered by State Agreement Acts should be liable for Local Government rates.

## Local Government (Financial Management) Regulations 1996

### Exemption from AASB 124: Regulation 4

#### **WALGA Position**

*That an exemption be allowed from the implementation of AASB 124 'Related Party Transactions' due to the current provisions in the Act on declarations of interest at meetings and in Primary and Annual Returns.*

WALGA advise in the Discussion Paper that a Zone has requested an exemption be allowed from the implementation of AASB 124 'Related Party Transactions' due to the current provisions in the Act on declarations of interest at meetings and in Primary and Annual returns. This is regarded as providing appropriate material declaration and disclosure of interests associated with function of Local Government.

From the City of Joondalup's perspective, Regulation 4 provides a mechanism for an exemption from compliance from the Australian Accounting Standards. The proposal is that an exemption be allowed from compliance with AASB 124 Related Party Disclosures.

The basis of the proposal is that the current requirements on declaration of interests at meetings where matters are dealt with and Primary and Annual Returns is considered as providing an appropriate level of disclosure.

The problem with the proposals is that AASB 124 is addressing a quite different level of disclosure. It is seeking to establish whether there is any related party issues that may have a material financial impact on the Annual Financial Statements so that the impact can be disclosed in the Annual Financial Report. The Local Government Act disclosure of interests do not capture these requirements, are not required to be quantified to determine the material financial impact and are not required to be disclosed in the Annual Financial Report.

It is considered that the WALGA position should not be supported.

#### **Proposed City of Joondalup Position**

The City of Joondalup NOT SUPPORT WALGA's position that an exemption be allowed from the implementation of AASB 124 'Related Party Transactions' due to the current provisions in the Act on declarations of interest at meetings and in Primary and Annual Returns.

## **Part 7 – Audit**

The commentary in the WALGA Discussion Paper simply acknowledges the recent changes to the Act to facilitate the Auditor General taking over responsibility for Local Government audits.

No further comment is required.

## Part 8 – Scrutiny of the Affairs of Local Government

### Stand Down Provision: New Proposal

#### *WALGA Position*

*WALGA supports, in principle, a proposal for an individual elected member to be 'stood down' from their role when they are under investigation; have been charged; or when their continued presence prevents Council from properly discharging its functions or affects the Council's reputation, subject to further policy development work being undertaken.*

*Further policy development of the Stand Down Provisions must involve specific consideration of the following issues of concern to the Sector:*

- 1. That the established principles of natural justice and procedural fairness are embodied in all aspects of the proposed Stand Down Provisions; and*
- 2. That activities associated with the term 'disruptive behaviour', presented as reason to stand down a defined Elected Member on the basis their continued presence may make a Council unworkable, are thoroughly examined and clearly identified to ensure there is awareness, consistency and opportunity for avoidance.*

#### *State Council Resolution     August 2008 – 400.4/2008*

The City of Joondalup Council considered a 2008 WALGA Discussion Paper seeking feedback regarding proposed legislative amendments to suspend an individual Elected Member, at its meeting held July 2008 (ItemCJ119-07/08 refers) where it was resolved as follows:

*That Council ENDORSES a response to the West Australian Local Government Association on the proposed amendments to the Local Government Act to stand down Elected Members in the following terms:*

- The concept of Elected Members standing down voluntarily is considered acceptable;*
- There are broad concerns about forcing Elected Members to stand down while they are under investigation;*
- A person should be considered innocent while they are under investigation;*
- The Department's proposals appear unfocused and there are questions about whether the proposals are designed to deal with disruptive behaviour by Elected Members or Elected Members who bring the sector into disrepute. This matter needs to be resolved to enable appropriate provisions to be established;*
- It is unclear how the proposal would work in relation to complaints before the Crime and Corruption Commission.*
- An Elected Member must be able to make a public statement as to why he/she made the decision to stand down voluntarily.*
- Forcibly standing down an Elected Member while they are being investigated goes against a citizen's right to "Natural Justice" and could give the impression of guilt of the Member to the Council and its community no matter how sensitively the stand down is handled.*
- Elected Members should remain entitled to meeting fees and allowances on the basis that the only stand down provisions are voluntarily and are made by an Elected Member which encourages the Elected Member to make the correct decision without being unduly penalised.*

Further, at the North Metropolitan Zone meeting held on 24 July 2008, the following motion was carried:

*MOVED Cr Stewart SECONDED Cr Tyzack that:*

- 1 the North Metropolitan Zone and the WALGA State Council not support the proposed Stand Down Provisions;*
- 2 should further policy development occur, then the Department of Local Government and Regional Development be advised that it must involve active consultation with the Association and specific consideration of the following issue of concern to the sector:*
  - That the Department of Local Government and Regional Development endeavour to ensure established principles of natural justice and procedural fairness are embodied in all aspects of the proposed Stand Down Provisions.*

It is considered that the City reiterate its position of 2008.

#### **Proposed City of Joondalup Position**

The City of Joondalup REITERATE its position of July 2008 in relation to stand down provisions, being that it supports amendments to the Local Government Act to stand down Elected Members in the following terms:

- The concept of Elected Members standing down voluntarily is considered acceptable;
- There are broad concerns about forcing Elected Members to stand down while they are under investigation;
- A person should be considered innocent while they are under investigation;
- The Department's proposals appear unfocused and there are questions about whether the proposals are designed to deal with disruptive behaviour by Elected Members or Elected Members who bring the sector into disrepute. This matter needs to be resolved to enable appropriate provisions to be established;
- It is unclear how the proposal would work in relation to complaints before the Crime and Corruption Commission.
- An Elected Member must be able to make a public statement as to why he/she made the decision to stand down voluntarily.
- Forcibly standing down an Elected Member while they are being investigated goes against a citizen's right to "Natural Justice" and could give the impression of guilt of the Member to the Council and its community no matter how sensitively the stand down is handled.
- Elected Members should remain entitled to meeting fees and allowances on the basis that the only stand down provisions are voluntarily and are made by an Elected Member which encourages the Elected Member to make the correct decision without being unduly penalised.

## Part 9 – Miscellaneous Provisions

### Onus of Proof in Vehicle Offences may be Shifted: Section 9.13(6)

#### ***WALGA Position***

*Amend Section 9.13 by introducing the definition of ‘responsible person’ and enable Local Governments to administer and apply effective provisions associated with vehicle related offences.*

The WALGA Discussion Paper provides that this proposal emanated from the North Metropolitan Zone (November 2015), raised by the City of Stirling, due to an increase in cases when progressing the prosecution of vehicle related offences in court (at the request of the vehicle owner) resulted in dismissal of charges by the Magistrate when the owner of the vehicle states that he does not recall who was driving his vehicle at the time of the offence.

It is considered that the WALGA position can be supported.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA’s position that Section 9.13 of the Local Government Act 1995 be amended by introducing the definition of ‘responsible person’ and enable Local Governments to administer and apply effective provisions associated with vehicle related offences.

## Schedule 2.1 – Creating, Changing Boundaries and Abolishing Districts

### Poll Provisions: New Proposal

#### *WALGA Position*

*That Schedule 2.1 of the Local Government Act 1995 be amended so that the electors of a Local Government affected by any boundary change or amalgamation proposal are entitled to petition the Minister for a binding poll.*

*State Council Resolution      December 2014 – 108.5/2014*

The Council of the City of Joondalup considered the poll provisions under the Local Government Act 1995, regarding amalgamations through boundary changes. (CJ185-10/14 refers), whereby it was resolved as follows:

*Council ADVISES the Western Australian Local Government Association that the City of Joondalup supports the Local Government Act 1995 being amended so that the community of a local government could demand a poll where there is a 10% variation in rateable properties, revenue or electors as a result of a local government boundary change.*

It is considered that the City reiterate its position.

#### **Proposed City of Joondalup Position**

The City of Joondalup REITERATE its position of October 2014 that the City of Joondalup SUPPORT the Local Government Act 1995 being amended so that the community of a local government could demand a poll where there is a 10% variation in rateable properties, revenue or electors as a result of a local government boundary change.

### Number of Electors: Clause 2.1(1)(d)

#### *WALGA Position*

*That Schedule 2.1 Clause 2(1)(d) be amended so that the prescribed number of electors required to put forward a proposal for change increase from 250 (or 10% of electors) to 500 (or 5% of electors) whichever is fewer.*

As above, the Council of the City of Joondalup considered the poll provisions under the Local Government Act 1995, regarding amalgamations through boundary changes. (CJ185-10/14 refers), whereby it was resolved as follows:

*Council ADVISES the Western Australian Local Government Association that the City of Joondalup supports the Local Government Act 1995 being amended so that the community of a local government could demand a poll where there is a 10% variation in rateable properties, revenue or electors as a result of a local government boundary change.*

There is no information provided by WALGA to detail any argument in support of the proposed increase.

It is considered that the WALGA position can be supported in principle subject to further information as to the issues related to this matter.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT IN PRINCIPLE WALGA's position that Schedule 2.1 Clause (1)(d) be amended so that the prescribed number of electors required to put forward a proposal for change increase from 250 (or 10% of electors) to 500 (or 5% of electors) whichever is the fewer.

## **Schedule 2.2 – Provisions about Names, Wards and Representation**

### **Who may make Submission: Clause 3(1)**

#### ***WALGA Position***

*That Schedule 2.2 Clause 3(1) be amended so that the prescribed number of electors required to put forward a submission increase from 250 (or 10% of electors) to 500 (or 5% of electors) whichever is fewer.*

Whilst the City of Joondalup has not established a formal position on the prescribed number of electors that may put forward a submission, the Council of the City of Joondalup considered the poll provisions under the Local Government Act 1995, regarding amalgamations through boundary changes. (CJ185-10/14 refers), whereby it was resolved as follows:

*Council ADVISES the Western Australian Local Government Association that the City of Joondalup supports the Local Government Act 1995 being amended so that the community of a local government could demand a poll where there is a 10% variation in rateable properties, revenue or electors as a result of a local government boundary change.*

There is no information provided by WALGA to detail any argument in support of the proposed increase.

It is considered that the WALGA position can be supported in principle subject to further information as to the issues related to this matter.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT IN PRINCIPLE WALGA's position that Schedule 2.2 Clause 3(1) be amended so that the prescribed number of electors required to put forward a submission increase from 250 (or 10% of electors) to 500 (or 5% of electors) whichever is fewer.



## **Schedule 4.1 – How to Count Votes and Ascertain Result of Election**

### **Method of Voting**

#### ***WALGA Position***

*Elections should be conducted utilising the first-past-the-post (FPTP) method of voting.*

State Council Resolution     427.5/2008 – October 2008

The City of Joondalup in its April 2013 Metropolitan Reform Submission supported the first-past-the-post method as the most appropriate voting system.

It is considered that the WALGA position can be supported.

#### **Proposed City of Joondalup Position**

The City of Joondalup SUPPORT WALGA's position that elections should be conducted utilising the first-past-the-post (FPTP) method of voting.

## Additional Provisions for Consideration

The following additional matters are suggested be considered by WALGA as part of its review of the Local Government Act 1995:

### General

The term 'Local Government' in the Act often causes difficulty in determining whether the action or function is to be performed by the governing body (that is the Council) or as an administrative function performed by the CEO. Previous legal advice and positions of former Departments has suggested the term 'Local Government' means the Council.

The Act should be reviewed in totality to provide a clear distinction between:

- The administrative functions to be performed by the CEO.
- The governing functions to be performed by the Council.

### Part 2 – Constitution of Local Government

**Schedule 2.3** – This schedule contains the provision around when and how mayors, presidents, deputy mayors and deputy presidents are elected by Council. Under both subclauses (5) and (9) it is a requirement that if there is an equality of votes for candidates running in an election, that the Council meeting is to be adjourned for not more than seven days. An adjournment of this nature poses a range of administrative and procedural issues in terms of giving notice, distributing agendas and the like, as well as delaying any business that is also listed on the agenda after the said election being held. Consideration might be given to amending these subclauses to reflect that a second election is to be held as opposed to requiring the meeting to be adjourned.

### Local Government (Constitution) Regulations 1998

**11F. Declaration and notice of result of election** — consideration might be given to deletion of this clause of the regulations to remove the requirement for Local Governments to give local public notice of results of an election for deputy mayors. It also should be clarified that notices are not required for election of presiding member of committees, as the election of presiding members is to follow the procedures detailed in Schedule 2.3 of the Act.

**11FA. Report to Minister (Sch. 2.3 cl. 4 and 8)** – consideration might be given to deletion of this clause of the regulations to remove the requirement for Local Governments to give a report to the Minister of the results of an election for deputy mayors. It also should be clarified that a report is not required for election of presiding member of committees, as the election of presiding members is to follow the procedures detailed in Schedule 2.3 of the Act.

### Part 3 – Functions of Local Governments

**Section 3.12 – Procedure for making local laws** – Local Governments' local laws generally affect those persons within its district. The requirement to give statewide notice under subsection (3) should be reviewed and consideration being given to Local Governments only being required to advertise the proposed local law by way of local public notice.

**Section 3.16 – Periodic review of local laws** – consideration might be given to review of this section and whether it could be deleted. Local Governments through administering local laws will determine when it is necessary to amend or revoke a local law in terms of meeting

its needs for its inhabitants of its district. Other State legislation is not bound by such periodic reviews, albeit recognising such matters in subsidiary legislation are not as complex as matters prescribed in statute.

## **Part 4 – Elections and Other Polls**

**Section 4.1 – terms used** – consideration might be given to including a definition in terms of what an election period means. This will assist with clarifying when certain offences in terms of an election are at play (for instance publishing of advertising material). It will also assist Local Governments with establishing caretaker periods.

**Section 4.31 – Rateable property: ownership and occupation** – consideration might be given to what constitutes occupation including a reference to a separate and distinguishable portion of a rateable property (s4.31(1D)(ii)). It has been known in the past for electors to be approved for leasing small non-habitable sections of rateable properties which goes against the intent of the provisions of occupation.

**Section 4.32 – Eligibility to enrol under s 4.30, how to claim** - consideration might be given to prescribing an amount for rent, under s 4.32(3) and the *Local Government (Elections) Regulations 1997*. This would prevent token rental being applied to buildings and other areas of rateable property.

**Section 4.33 – Claim of eligibility to enrol under s 4.30, expiry of** – consideration might be given to simplification of the expiry of enrolment eligibility claims on the basis of occupation (s4.33(2A) and (2B)). It is suggested the expiry of the claim should occur after the third election regardless on the date in which the claim is made. This would simplify procedures around managing the owners and occupiers roll.

**Section 4.34 – Accuracy of enrolment details to be maintained** – consideration might be given to deletion of this section as it is aligned to the CEO's role under section 5.41(h) and section 4.32(6).

**Section 4.35 - Decision that eligibility to enrol under s.4.30 has ended** – procedurally if an elector no longer owns or occupies property, the CEO under this section is still required to give written notice to that person before making a decision that a person is no longer eligible to vote. Administratively it is somewhat nonsensical for a Local Government to write to a person at an address where there is evidence that they no longer live there, or where their new address is not known. Consideration might be given to inserting new sub-clauses under s.4.35(1) might be inserted to indicate if the CEO is satisfied that the person no longer owns the property, or where their claim has expired under s4.33.

**Section 4.87 – Printing and publication of electoral material** – consideration might be given to modifying this section to include publishing material by electronic means (such as websites and social media platforms).

**Section 4.88 – Misleading, false or defamatory statements, offence** – consideration might be given to including an offence in terms of publishing deceptive material on electronic media, such as websites and social media platforms, however the term “publish” may include such mechanisms due to its generic nature (ie it *includes* publish by radio or television).

## **Part 5 – Administration**

**Section 5.12 – Presiding members and deputies, election of** - consideration might be given to remove the requirement for the CEO to give notice of the result of the election in accordance with the regulations (see cl.4(7) and 8(7) of Schedule 2.3). A declaration should still be made by the CEO/Presiding Member at the meeting in which the election occurs.

**Section 5.21 – Voting** – consideration might be given to amending the section to require all members of a committee to vote, regardless if a power or duty has been delegated to that committee or not. Currently voting is only required for those committees where delegation has been given. Where a committee member chooses to abstain from a vote it could affect the ability for a motion being carried, by way of lack of decision-making.

**Section 5.22 – Minutes of Council and Committee meetings** – consideration might be given to ensuring that the CEO be responsible for the keeping of minutes at meetings as opposed to the Presiding Member. The presiding member is responsible for the conduct and proceedings of meetings whereas the keeping of minutes is an administrative function that should be given, and under the responsibility of the CEO. Consideration might also be given to the requirement of the presiding member to sign the minutes should also be removed and confirmation of Council, or the Committee, should suffice.

**Section 5.31 – Procedures for electors’ meetings** – consideration might be given to ensuring the procedures for electors meetings be in accordance with the meeting procedures adopted by the Council as opposed to those determined by the presiding member. This allows known and approved processes to be implemented.

**Section 5.55 – Notice of Annual Reports** - consideration might be given to removal of this section as through the Council meeting notification and adoption process, the annual report is available for inspection. Alternatively the clause could be modified specifying that the Local Government is to make available its annual report on its website.

**Section 5.62 – Closely associated persons** - consideration might be given to amending the section to include a closely associated person is a parent or relative and is living with the relevant person (s.5.62(1)(e)).

**Section 5.63 – Some interests need not be disclosed** – consideration might be given to defining a significant number of ratepayers to remove the ambiguity of the term and the judgement as to what constitutes significance.

**Section 5.74 – terms used** – consideration might be given to expanding the definition of “relative” to include cousins and mother and father in-laws.

**Section 5.79 – Real property** – consideration might be given to removal of the need to declare real property of adjoining districts as the decision of a Local Government are not likely to affect those properties of adjoining districts. Any Local Government should only be concerned with the properties within a relevant district of that Local Government.

**Section 5.80 – Source of income** – consideration might be given to excluding income a relevant person derives from fees and allowances obtained from the Western Australian Local Government Association, the Australian Local Government Association, Regional Local Governments or other statutory boards or committees.

**Section 5.86 – Dispositions of Property** – consideration might be given to removing the requirement to declare properties disclosed in adjoining districts as this has no relevance to the decision making of elected members or employees for their particular Local Government.

**Section 5.100A – Gifts to council members** – consideration might be given to clarifying exemptions that may apply to council members in terms of other gifts given to elected members by a Local Government during the elected member's term. For instance an exemption could include gifts given to elected members in performing their statutory role (such as tickets to networking events with stakeholders).

**Section 5.103 – Codes of conduct** – consideration might be given to the framework for Codes of Conduct which might include but not be limited to:

- Requirements to observe the Code of Conduct if a member of the public is a committee member.
- Requirements to observe the Code of Conduct when it is the statutory responsibility of the CEO to be responsible for the employment, management, supervision, direction and dismissal of other employees.
- Establishment of guidelines or framework to manage Code of Conduct complaints in a consistent manner.
- Establishment of guidelines on how elected members might be disciplined for breaches of the Code of Conduct.

### **Local Government Financial Management Regulations 1996 – Financial Ratios to be included in Annual Financial Report Regulation 50**

Regulation 50 sets out seven financial ratios that are required to be reported in the Annual Financial Report. It includes definitions of the terms and shows how they are to be calculated. They are required to be shown for the current and two preceding years. There is concern whether some of the ratios are of value and that seven are probably too many. It is also noted that there is no requirement for any explanatory notes or commentary, the absence of which can make it very difficult to understand the context for movements in the ratios over the years.

The current required ratios are:

- a) the current ratio; and
- b) the asset consumption ratio; and
- c) the asset renewal funding ratio; and
- d) the asset sustainability ratio; and
- e) the debt service cover ratio; and
- f) the operating surplus ratio; and
- g) the own source revenue coverage ratio.

It is acknowledged that when dealing with such diversity of scale and range of activities as there is across all Local Governments in WA trying to determine financial performance ratios that are equally relevant to all is very difficult. The following is offered to improve the ratios that are currently required but is acknowledged that they are coming from the City of Joondalup's perspective:

- a) Current Ratio - the current ratio is intended as a measure of liquidity. The problem that most liquidity measures suffer from is that they are simply a snapshot at a point in time in this case at 30 June. It is felt that five (5) average in addition to the current year would add value and context to the information conveyed.
- b) Asset Consumption Ratio - this should be retained, however, it is understood that the methodology of determining the ratio requires further discussion within the sector. and

again it is felt that five (5) average in addition to the current year would add value and context to the information conveyed.

- c) Asset Renewal Funding Ratio – consideration might be given to removal of this ratio. It is considered there are deficiencies with this ratio in particular its consistency of use as the methodology of determining renewals is based on projected renewal requirements and expenditure, which is unreliable for most Local Governments due to the absence of detailed Asset Management Plans. As such the methodology to calculate the ratio is highly subjective at present. It is more appropriate to consider this ratio in the context of Asset Management Plans or long terms financial management plans.
- d) Asset Sustainability Ratio. It is suggested that this be retained but the method of calculation be revised. The current calculation is based on just the current year. There can be large variations from one year to the next particularly where renewals or replacement projects vary in scale. It is suggested the calculation be based on a 5 year rolling average so as to smooth out major variations.
- e) Debt Service Coverage Ratio. It is suggested that this be retained but the method of calculation be revised. There is also a major limitation in that it fails to recognise the liabilities of interest-only loans. The calculation currently excludes depreciation which is appropriate since it should focus on cash. However it includes profit/loss on disposals. In the City's situation over the last few years with land disposals profit/loss can involve significant non cash transactions. It is suggested that this calculation should exclude profit/loss on disposals.
- f) Operating Surplus Ratio. It is suggested that this be retained but the method of calculation be revised.
  - Currently profit/loss on disposals is included in revenue but this is volatile and not a consistent source of revenue. It is suggested revenue used in this calculation should not include profit/loss on disposals.
  - Currently the denominator used in the calculation is Own Source Revenue which does not include grants. For comparative purposes this causes big distortions as some Local Governments have significant operating grant income to fund some of the services they are providing particularly in the welfare area. It is suggested the denominator should be operating revenue inclusive of grants.
  - As with the other ratios the current calculation of the Operating Surplus Ratio is based on just the current year. There can be large variations from one year to the next for a variety of one off events. It is suggested the calculation be based on a 5 year rolling average so as to smooth out major variations.
- g) Own Source Revenue Coverage Ratio. This ratio is not consistently important to all Local Governments. There are many that will never be in a position to achieve a high ratio. It is suggested it be deleted.
- h) Net Financial Liabilities Ratio. This is a suggested new ratio. It is another view on liquidity compared to the Current Ratio. This is calculated by dividing net financial liabilities by operating income. This therefore includes non-current as well as current. This overcomes the limitation of the Debt Service Coverage Ratio described above.