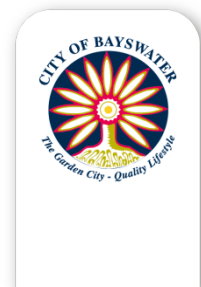




Submission ***Local Government Act 1995 (WA) Review***

City Of Bayswater



Background

On 20 June 2017, the Local Government Minister announced that the Department of Local Government and Communities would conduct a review of *the Local Government Act 1995* (WA).

The review will be the first to be conducted in more than 20 years, and is being undertaken to ensure that the Act meets the current and future needs of both the Western Australian community and the Local Government sector.

At the Council Meeting held on 13 February 2018, the Council authorised the Chief Executive Officer to finalise a submission on behalf of the Council following additional input of elected members at a Councillor workshop.

Accordingly, the City of Bayswater commends the decision of the State Government to review the Act and has prepared the following submission for consideration by the Minister. The Council also welcomes the opportunity to further discuss the submission should the opportunity arise.

SUBMISSIONS

Defining the roles of Council and Administration: Guidance Questions

QUESTION 1

How should a council's role be defined? What should the definition include?

City's answer

In addition to the role definition contained within the current Act, the additional provisions from the *Local Government Act 2009* (Qld) identified on page 21 of the discussion paper as well as the following provisions from the *Local Government Act 1993* (Tas):

- To appoint and monitor the performance of the general manager (CEO)
- To monitor the manner in which services are provided by the Council

There is also a need to have a clearer definition and clarity around the terms 'local government' and 'council' being used interchangeably.

There is also a need to better educate the community about the roles of councillors versus the role of staff.

QUESTION 2

How should the role of the CEO and administration be defined?

City's answer

The current definition is sufficient.

QUESTION 3

What other comments would you like to make on the roles of council and administration?

City's answer

No comment.

QUESTION 4

Are there any areas where the separation of powers is particularly unclear? How do you propose that these are improved?

City's answer

The current framework requires additional clarity. As an example, the framework around Council Committees such as the role and functions of the audit committee is unclear and needs to be amended to ensure that the separation of powers is clear.

Improving relationships between Council and Administration: Guidance Question**QUESTION 5**

How should a council's role be defined? What should the definition include?

City's answer

No comment.

Elected Member Competencies: Guidance Questions**QUESTION 6**

What competencies (skills and knowledge) do you think an elected member requires to perform their role?

City's answer

The following competencies should be mandatory for an elected member:

- Finance and budgeting
- Strategic planning
- Policy development

QUESTION 7

Do these vary between local governments? If so, in what way?

City's answer

No.

Funding Training: Guidance Questions**QUESTION 8**

Who should pay for the costs of training (course fees, travel, other costs)?

City's answer

Both the Local and State Governments should pay for these costs.

QUESTION 9

If councils are required to pay for training, should a training fund be established to reduce the financial impact for small and regional local governments? Should contribution to such a fund be based on local government revenue or some other measure?

City's answer

No, but there is a need to look at greater use of technology to deliver training to reduce costs. For example, accredited training could be completed online through webinars.

Mandatory Training: Guidance Questions**QUESTION 10**

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

City's answer

No.

QUESTION 11

Should candidates be required to undertake some preliminary training to better understand the role of an elected member?

City's answer

No.

QUESTION 12

Should prior learning or service be recognised in place of completing training for elected members? If yes, how would this work?

City's answer

No.

QUESTION 13

What period should apply for elected members to complete essential training after their election?

City's answer

Whilst the Council does not support mandatory training, in the event that it was introduced then a period of three months should be applied.

Continuing Professional Development: Guidance Questions

QUESTION 14

Should ongoing professional development be undertaken by elected members?

City's answer

Yes.

QUESTION 15

Should ongoing professional development be undertaken by elected members? If so, what form should this take?

City's answer

See comments at question 16.

Continuing Professional Development: Guidance Questions

QUESTION 16

Do you have any other suggestions or comments on training?

City's answer

Rather than individual elected members undertaking training, it may be more appropriate to deliver a skills/competency framework that each local government could use to determine what is needed. This framework would be similar to a Board which recruits for necessary skills and ensures that the local government then meets the overall level of competence rather than individual Councillors having to gain all competencies. Whilst this may see some areas of speciality, the community overall would be better served. Specific areas of focus should be drawn from the *Act*, for example Council receives and notes the monthly financial report etc. but they do not have to know or understand financial reporting.

Codes of Conduct: Guidance Questions

QUESTION 17

Should standard of conduct/behaviour differ between local governments? Please explain.

City's answer

No.

QUESTION 18

Which option do you prefer for codes of conduct and why?

City's answer

The second model on page 37 of the discussion paper which recommends minimum standards, but with the capacity to add any other provisions relevant to local circumstances is preferred. This is similar to other model documents which are then tailored to suit local conditions.

QUESTION 19

How should a code of conduct be enforced?

City's answer

An independent panel with reports being provided by complainants.

Streamlined Rules of Conduct: Guidance Questions

QUESTION 20

Do you support streamlined Rules of Conduct regulations? Why?

City's answer

Rules of Conduct should be removed from the relevant sections and moved to the Act to help clearly define the roles of councillors and officers. There should then be a penalty provision in the Act to deal with breaches. The behavioural issues should be dealt with through the Code of Conduct.

QUESTION 21

If the rules were streamlined, which elements should be retained?

City's answer

No comment.

QUESTION 22

Do you support a reduction in the time frame in which complaints can be made? Is three months adequate?

City's answer

No comment.

Revised Disciplinary Framework: Guidance Questions**QUESTION 23**

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

City's answer

Yes, subject to relevant checks and balances.

QUESTION 24

What specific behaviours should an outcomes based framework target?

City's answer

No comment.

Application of the Rules of Conduct: Guidance Questions

QUESTION 25

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

City's answer

No.

Offence Provisions: Guidance Questions

QUESTION 26

Should the offence covering improper use of information be extended to former members of council for a period of twelve months? Why?

City's answer

No comment.

QUESTION 27

Should this restriction apply to former employees? Please explain.

City's answer

No comment.

Confidentiality: Guidance Questions

QUESTION 28

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

City's answer

Yes. If the matter is unsubstantiated it is not in the public interest to release details, especially in the event that complaints are malicious or vexatious.

Sector Conduct Review Committees: Guidance Questions

QUESTION 29

What do you see as the benefits and disadvantages of this model?

City's answer

No comment.

QUESTION 30

What powers should the Conduct Review Committee have?

City's answer

Ensure that sufficient processes are maintained.

QUESTION 31

In your opinion what matters should go directly to the Standards Panel?

City's answer

No comment.

QUESTION 32

Who should be able to be a member of a panel: elected members, people with local government experience, independent stakeholders?

City's answer

No comment.

QUESTION 33

Who should select the members for the pool?

City's answer

No comment.

QUESTION 34

How many members should there be on a Review Committee?

City's answer

No comment.

QUESTION 35

Are the proposed actions for the Review Committee appropriate? If not, what do you propose?

City's answer

No comment.

Review of Elected Members Non-Compliance: Guidance Questions

QUESTION 36

Which of the options for dealing with complaints do you prefer? Why?

City's answer

No comment.

QUESTION 37

Are there any other options that could be considered?

City's answer

No comment.

QUESTION 38

Who should be able to request a review of a decision: the person the subject of the complaint, the complainant or both?

City's answer

No comment.

Mediation: Guidance Questions

QUESTION 39

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

City's answer

Mediation should be offered prior to decision making, but should not be compulsory.

Prohibition from attending Council Meetings: Guidance Questions

QUESTION 40

Do you support the Panel being able to prohibit elected members from attending council meetings? Why or why not?

City's answer

No. This may create an environment in which the community may not be represented - for example, in single member wards.

QUESTION 41

How many meetings should the Panel be able to order the elected member not attend?

City's answer

No comment.

QUESTION 42

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

City's answer

No, but would need to take into consideration circumstances where members are paid an annual allowance and this would then need to be based on pro-rata calculation.

Compensation to the Local Government: Guidance Questions

QUESTION 43

Do you support the Panel being able to award financial compensation to the local government? Why or why not?

City's answer

Yes, the current sanctions are not sufficient to stop the behaviour of some members. However, it should be reserved for only serious matters with a maximum fine rather than compensation. This could also be structured around a percentage of the maximum based on the Band of the relevant local government.

QUESTION 44

What should the maximum amount be?

City's answer

It should be linked to the State Administrative Tribunal Banding for a local government and as a percentage of maximum payments available, as an example, 20% of the maximum annual payment to a councillor for a Band 1 Council with this being adjusted if the Councillor was a Mayor or Deputy Mayor.

Complaint Administrative Fee: Guidance Questions

QUESTION 45

Do you support this option? Why or why not?

City's answer

Yes, there should be a fee but there would also need to some flexibility but based on financial hardship of the complainant allowing for discounting or waiving of the fee..

QUESTION 46

Do you believe that a complaint administrative fee would deter complainants from lodging a complaint? Is this appropriate?

City's answer

Yes.

QUESTION 47

Would a complaint administrative fee be appropriate for a sector conduct review committee model? Why or why not?

City's answer

No comment.

QUESTION 48

What would be an appropriate fee for lodging a complaint?

City's answer

\$100 would be an appropriate fee.

QUESTION 49

Should the administrative fee be refunded with a finding of minor breach or should it be retained by the Department to offset costs? Why or why not?

City's answer

Yes.

Cost Recovery to Local Government: Guidance Questions

QUESTION 50:

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

City's answer

Yes, however this would be conditional on there being no fine imposed on top of the cost recovery requirements. The cost recovery requirements should also be capped as a percentage of the Band that the Council falls within.

Publication of Complaints in the Annual Report: Guidance Questions

QUESTION 51

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

City's answer

Yes, this is simply good governance. If there have been multiple complaints and none have substance, then this will make it clear to the community. If there have been proven breaches then the community should be aware of the substance and nature of these.

Tabling Decision Report at Ordinary Council Meeting: Guidance Questions

QUESTION 52

Do you support this option? Why or why not?

City's answer

Yes, as above.

Elected Member Interests: Guidance Questions

QUESTION 53

Should not-for-profit organisation members participate in council decisions affecting that organisation? Why or why not?

City's answer

The current provisions are appropriate.

QUESTION 54

Would your response be the same if the elected members was an office holder in the organisation?

City's answer

Yes.

Improving the behavior of Elected Members: Guidance Questions**QUESTION 55**

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

City's answer

Provision should be made to allow for a "Standing public disclosure" e.g. membership of community groups etc which may result in impartiality interests having to be disclosed at every Council meeting. They could simply be published on the website and incorporated into the agenda.

Recruitment and selection of Local Government CEOs: Guidance Questions**QUESTION 56**

Would councils benefit from assistance with CEO recruitment and selection? Why?

City's answer

The status quo should remain the same. There may also be some merit in a more detailed background checking process for the preferred candidate being implemented and this could be included in recommended guidelines for the recruitment process.

QUESTION 57

How could the recruitment and selection of local government CEOs be improved?

City's answer

No comment.

QUESTION 58

Should the Public Sector Commission be involved in CEO recruitment and selection? If so, how?

City's answer

No.

QUESTION 59

Should other experts be involved in CEO recruitment and selection? If so, how?

City's answer

It should remain a Council decision based on their requirements at the time.

QUESTION 60

What competencies, attributed and qualifications should a CEO have?

City's answer

No comment.

Acting CEOs: Guidance Questions

QUESTION 61

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

City's answer

Yes, the Council needs to be involved and this arrangement should be included in the Act, either as a specific clause or through the requirement of Council to adopted a policy to deal with the matter.

QUESTION 62

If so, who should appoint the CEO when there is a short term temporary vacancy (covering sick or annual leave for example)?

City's answer

In the case of a short term temporary vacancy, appointment of the CEO should be governed by Council policy.

QUESTION 63

Who should appoint the CEO if there will be a vacancy for an extended period (for example, while a recruitment process is to be undertaken)?

City's answer

In the case of a vacancy for an extended period, appointment of the Acting CEO should be a Council decision unless it is otherwise covered in an approved policy.

Performance Review of Local Government CEOs: Guidance Questions

QUESTION 64

Who should be involved in CEO performance reviews?

City's answer

The Council should be involved in CEO performance reviews with the option for external assistance based on the provisions of the individual contract of employment.

QUESTION 65

What should the criteria be for reviewing a CEO's performance?

City's answer

The CEO's performance should be reviewed alongside KPI's developed and approved by Council.

QUESTION 66

How often should CEO performance be reviewed?

City's answer

There should be a minimum of four (4) quarterly reviews.

QUESTION 67

Which of the above options do you prefer? Why?

City's answer

Option 2 is preferred.

QUESTION 68

Is there an alternative model that could be considered?

City's answer

No comment.

Termination or Extension of CEO contract around an election: Guidance Questions

QUESTION 69

Would a 'cooling off' period before a council can terminate a CEO following an election assist strengthening productive relationships between council and administration?

City's answer

No. Current contract provisions require notice of intention to renew which could conflict with any agreed cooling off period. If a CEO is immediately terminated following an election then the Council should be required to publish the details of the separation including any payouts or costs to the community.

QUESTION 70

What length should such a cooling off period be?

City's answer

No comment.

QUESTION 71

For what period before an election should there be a restriction on a council from extending a CEO contract? Should there be any exceptions to this?

City's answer

. All contracts should contain a renewal and termination provision and this should govern the arrangements rather than enshrined in the legislation. However, a period of six (6) months should apply unless contrary to provisions of the contract renewal

Public Expectations of Staff Performance: Guidance Questions

QUESTION 72

Is greater oversight required over local government selection and recruitment of staff?

City's answer

No.

QUESTION 73

Should certain offences or other criteria exclude a person from being employed in local government? If so, what?

City's answer

Yes, the exclusions should be role specific. For example, a finance officer convicted of fraud should not be employed in the finance area of Council.

Strengthening Local Government Administration: Guidance Questions

QUESTION 74

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

City's answer

No comment.

Remedial Intervention: Guidance Questions

QUESTION 75

Should the appointed person be a departmental employee, a local government officer of an external party? Why?

City's answer

An external party should be appointed, as this would provide for greater independence. There would need to be a good basis on which to appoint any external party and this could potentially be driven from the outcomes of the Auditor General Performance Audits.

QUESTION 76

Should the appointed person be able to direct the local government or would their role be restricted to advice and support? Please explain.

City's answer

The appointed person should provide advice and support, otherwise this would be an equivalent to the appointment of a commissioner/administrator.

The decision to commence remedial action should be linked to the Auditor General performance audits or outcomes of reviews by other specific bodies (ie CCC). That is, based on some science from the audit process, not arbitrary reasons.

QUESTION 77

Who should pay for the appointed person? Why?

City's answer

It should be determined based on the circumstances, but the majority should be paid by the State Government if it is to be implemented for reasons other than a suspension of the Council.

Powers of Appointed Person: Guidance Questions

QUESTION 78

What powers should an appointed person have?

City's answer

The appointed person should have:

- Access to all information
- The ability to direct staff to provide/assist with the data provision

Remedial Action Process: Guidance Questions

QUESTION 79

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

City's answer

No comment.

QUESTION 80

What issues need to be considered in appointing a person?

City's answer

The person must have worked in the Local Government industry and have a sound current knowledge of the sector.

Supporting Local Governments in Challenging Times: Guidance Questions

QUESTION 81

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

City's answer

No comment.

Transferability of Employees: Guidance Questions

QUESTION 82

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

No.

QUESTION 83

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

City's answer

No.

Making it easier to move between State and Local Government Employment: Guidance Questions

QUESTION 84

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

City's answer

No comment.

A New Framework for Disclosing Gifts: Guidance Questions

QUESTION 85

Is the new framework for disclosing gifts appropriate?

City's answer

No.

QUESTION 86

If not, why?

City's answer

Gifts of a personal nature/capacity are captured in the new framework. If a Register of Discretionary Disclosures was created this would allow members to disclose gifts received in a personal capacity. This could be reviewed by the Auditor General as part of the audit process but not made a public register. Any disclosures of concern could then be explored by the auditors. This could apply to gifts received, for example, for weddings, birthdays, Christmas etc.

QUESTION 87

Is the threshold of \$500 appropriate?

City's answer

Yes. This needs to be considered over a 12 month period and divided by the number of gifts givers. As an example, if 5 people put in for a single gift, the total value should be based on the value of the gift divided by 5 for the purposes of the disclosure.

QUESTION 88

If no, why?

City's answer

It reflects unchanged values from more than a decade ago.

QUESTION 89

Should certain gifts - or gifts from particular classes or people - be prohibited? Why or why not?

City's answer

No comment.

QUESTION 90

If yes, what gifts should be prohibited?

City's answer

No comment.

Excluding Gifts received in a Personal Capacity: Guidance Questions

QUESTION 91

Should gifts received in a personal capacity be exempt from disclosure?

City's answer

Refer to response to Q 86

QUESTION 92

If yes, how could 'personal capacity' be defined?

City's answer

No comment.

QUESTION 93

Should there be any other exemptions from the requirement to disclose a gift over the threshold?

City's answer

No comment.

QUESTION 94

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

City's answer

No comment.

Gifts: Guidance Questions

QUESTION 95

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

City's answer

No comment.

Public Notices: Guidance Questions

QUESTION 96

Which general options do you prefer for making local public notices available? Why?

City's answer

Option 4, as it allows for decisions to be made based on the issues. This should also be underpinned by Council policy.

QUESTION 97

Which general option do you prefer for State-wide public notices? Why?

City's answer

No comment.

QUESTION 98

With reference to the list of public notices, do you believe that the requirement for a particular notice should be changed? Please provide details.

City's answer

No comment.

QUESTION 99

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

City's answer

Both.

Information available for Public Inspection: Guidance Questions

QUESTION 100

Using the following table, advise how you think the information should be made available?

City's answer

In person availability should be viewed online at Council premises and only printed in rare circumstances.

QUESTION 101

Should the additional information that is available to the public in other jurisdictions be available here? If so which items? How should they be made available: in person, website only or both?

City's answer

No comment.

QUESTION 102

Should certain gifts - or gifts from particular classes or people - be prohibited? Why or why not?

City's answer

No comment.

QUESTION 103

For Local Governments: How often do you receive requests from members of the public to see this information? What resources do you estimate are involved in providing access in person (hours of staff time and hourly rate)?

City's answer

Minimal - up to 50 hours each year. Requests are mostly received from property owners concerned with dividing fences.

Access to Information: Guidance Questions

QUESTION 104

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

City's answer

No comment.

Expanding the Information provided to Public: Guidance Questions

QUESTION 105

Which of these options do you prefer? Why?

City's answer

No comment.

QUESTION 106

In the table below, please indicate whether you think the information should be made available, and if so, whether this should be required or at the discretion of the local government:

City's answer

No comment.

QUESTION 107

What other information do you think should be made available?

City's answer

No comment.

QUESTION 108

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

City's answer

No comment.

Defining Red Tape: Guidance Questions

QUESTION 109

Which regulatory measures within the Act should be removed or amended to reduce the burden on local governments? Please provide detailed analysis with your suggestions:

- (a) Briefly describe the red tape problem you have identified?
- (b) What is the impact of this problem?
- (c) What solutions can you suggest to solve this red tape problem?

City's answer

No comment.

QUESTION 110

Which regulatory measures within the Act should be removed or amended to reduce the burden on the community? Please provide detailed analysis with your suggestions:

- (a) Briefly describe the red tape problem you have identified?
- (b) What is the impact of this problem?
- (c) What solutions can you suggest to solve this red tape problem?

City's answer

No comment.

Special Majority: Guidance Questions

QUESTION 111

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

City's answer

Yes, as they are rarely if ever used.

Senior Employees: Guidance Questions

QUESTION 112

Is it appropriate that council have a role in the appointment, dismissal or performance management of any employees other than the CEO? Why or why not?

City's answer

Yes, but senior employees should only be considered if they are direct reports to the CEO.

QUESTION 113

Is it necessary for some employees to be designated as senior employees? If so, what criteria should define which employees are senior employees?

City's answer

Yes, as above.

Exemption from Accounting Standard AASB124 - Related Party Disclosures: Guidance Questions

QUESTION 114

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

City's answer

With primary and annual return requirements, gift disclosure requirements etc, this additional requirement by AASB 124 is not required. With the move to Auditor General audits, this is something that could be addressed through the audit.

Disposal of Property: Guidance Questions

QUESTION 115

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

City's answer

No comment.

QUESTION 116

Should the threshold remain at \$75,000 but with separate exemptions for specific types of equipment, for example plant?

City's answer

No comment.

QUESTION 117

The general \$20,000 threshold was put in place in 1996 and has not been amended. Should the threshold be raised higher than \$20,000? If so, what should it be and why?

City's answer

No comment.

QUESTION 118

Would raising these thresholds create an unacceptable risk that the items would not be disposed of to achieve the best price for the local government?

City's answer

No comment.

QUESTION 119

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

City's answer

For the disposal of assets there is a need for a public report on the benefits and outcomes, as this will provide the appropriate level of accountability. Local governments should adopt their own policy in relation to thresholds and agree by absolute majority the policy position. This would allow each local government to consider and adopt based on their current position.

Reducing Red Tape: Guidance Questions**QUESTION 120**

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

City's answer

The disposal of land for commercial gains needs to have additional provisions in the Act to allow exemption from public advertising due to commercial sensitivities with approval by the Minister. This would still require the completed process to be completed but instead of public advertising the Minister would be required to review and approve. This would allow for greater commercial opportunities for Council with the private sector and at the same time keeping in place relevant checks and balances.

Regional Subsidiaries: Guidance Questions**QUESTION 121**

Which option do you prefer?

City's answer

No comment.

QUESTION 122

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

City's answer

No comment.

QUESTION 123

Why or why not?

City's answer

No comment.

QUESTION 124

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

City's answer

No comment.

QUESTION 125

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

City's answer

There is a need to free up the Regional Subsidiaries model even further and the South Australian example should be considered as the minimum standard.

There is also a need to look at more options to allow local governments to establish Local Government Owned Corporations (LGOC) to allow some operations in the commercial space. A formal process needs to be established and allow for a mix of local governments and private sector involvement. The move to an LGOC would allow Councils to work cooperatively in partnership arrangements as shareholders rather than the current model of the Regional Local Government. The current model prevents Council from directing their representatives from taking a particular course of action in relation to Regional Local Governments.

Local Government Act Review: Guidance Questions

QUESTION 126

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

City's answer

Wherever possible the legislation should be simplified and principle based rather than prescriptive legislation.