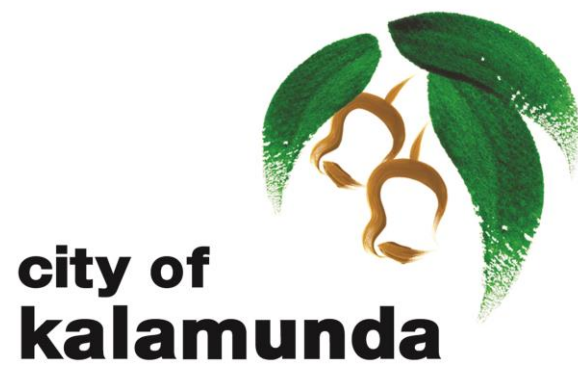


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CITY OF KALAMUNDA  
2 RAILWAY ROAD, KALAMUNDA

## LOCAL GOVERNMENT ACT REVIEW

On the 8 November 2017, the Department of Local Government, Sport and Cultural Industries (**Department**) released its *Local Government Act 1995 Review – Phase 1: Consultation Paper (Consultation Paper)*.

The review will be undertaken in two phases. Phase 1 of the review considers the following matters:

- meeting community expectations of standards and performance;
- transparency;
- making more information available online; and
- red tape reduction.

The Consultation Paper is seeking the City of Kalamunda’s comment on questions raised by the Consultation Paper, as well as any other comment on other aspects of the Act that in the City’s view should be reformed. While the Consultation Paper deals with the matters listed above, responses and proposals for reform are invited on any aspect that contributes to the principles underpinning the review of local government legislation.

The Minister is seeking a comprehensive reform of the law and regulations that governs the local government section, noting:

*“Where possible, I would like the detail relating to the powers and responsibilities for local government to be addressed in regulations rather than a prescriptive Act to ensure that the legislation is more flexible and adaptable to changing needs.”*

Minister David Templeman (Page 8, Consultation Paper)

This report seeks to collate the City’s response to the Consultation Paper, with the report endorsed by Council in relation to WALGA Discussion Paper (**attached**) and submissions made separately to EMRC.

Submissions close on Friday 9 March 2018. A second consultation paper will be released in 2018.

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## 1. RELATIONSHIP BETWEEN COUNCIL AND ADMINISTRATION

### Defining Council and Elected Members

Under the Act, the council –

- governs the local government’s affairs; and
- is responsible for the performance of the local government’s functions, which includes (although is not limited to):
  - overseeing the allocation of the local government’s finances and resources; and
  - determining the local government’s policies.

The role of an individual Councillor includes –

- representing the interests of electors, ratepayers and residents of the district;
- providing leadership and guidance to the community in the district;
- facilitating communication between the community and the council;
- participating in the local government’s decision-making processes at council and committee meetings; and
- performing such other functions as are given to a councillor by the Act or any other written law.

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

The Council has no issue with retaining the current decision-making, budgeting and policy-making functions as they are currently defined under the Act.

However, the role of council should be broadened to include the following functions:

- developing an integrated planning and reporting framework, particularly the Strategic Plan;
- delivering, facilitating or funding a range of quality services for the district;
- developing and reviewing local laws;
- advocating on behalf of the district's community to State and Federal levels of government, statutory authorities and other sectors.

With regard to a Councillor's role, consideration should be given to:

- removing the wording "providing leadership and guidance to the community" – this is language common to a 'top-down' command style of government of the 80s/90s which is becoming less popular in the 'bottom-up' community empowerment model of the modern era;
- the obligation to participate in strategic planning, budgeting and policy making for effective and efficient provision of services, facilities and assets;
- the obligation to acquire and maintain skills necessary to perform the role of a Councillor;
- the obligation to performance review the CEO;
- recognise the quasi-judicial role of Councillors, and how this may conflict with existing obligations as a Councillor; and
- ensure that the council acts honestly, efficiently and appropriately in carrying out its statutory functions (Northern Territory provision).

In the City's response to the WALGA Discussion Paper it stated:

*"The City does not believe that enough consideration has been given to updating the role of Councillor under section 2.10 of the LGA. This matter was also raised at the Eastern Metropolitan Regional Council meeting of 18 August 2017.*

*A recent State Planning Commission deliberation indicated that the role of Councillors is not only to uphold the views of the ratepayers, but also to uphold other legislation, such as the Town Planning Act and the Health Act.*

*The City is of the opinion that section 2.10 of the LGA should be amended to reflect the contemporary expectations of the role of Elected Members."*

## Defining CEO and administration

The CEO's functions under the Act are to:

- advise the council in relation to the functions of a local government under this Act and other written laws;
- ensure that advice and information is available to the council so that informed decisions can be made;
- cause council decisions to be implemented;
- manage the day to day operations of the local government;
- liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;
- speak on behalf of the local government if the mayor or president agrees;
- be responsible for the employment, management, supervision, direction and dismissal of other employees;
- ensure that records and documents of the local government are properly kept for the purposes of the Act and any other written law; and
- perform any other function specified or delegated by the local government or imposed under the Act or any other written law as a function to be performed by the CEO.

<p><b>2. How should the role of the CEO and administration be defined?</b></p>
<p>The role of the CEO should be broadened to include the following:</p> <ul style="list-style-type: none"> <li>• Developing processes for major strategic planning exercises with Councillors and administration.</li> </ul> <p>Other than this inclusion, the City is satisfied with the current definition of the role of the CEO.</p>
<p><b>3. What other comments would you like to make on the roles of council and administration?</b></p>
<p>Nil.</p>
<p><b>4. Are there any areas where the separation of powers is particularly unclear? How do you propose that these are improved?</b></p>
<p>No the current separation of powers is clear.</p> <p><u>Senior Employees – section 5.37(2)</u></p> <p>The Council supports retention of the section 5.37 (2)</p> <p><u>Annual Review of Certain Employees Performances – section 5.38</u></p> <p>The Council supports the removal of section 5.38, however wished to amended Section 5.41(g) should be changed to include the CEO undertake a review of all senior management positions and report findings to Council annually.</p>
<p><b>5. Do you have any other suggestions or comments on this topic?</b></p>

Additionally, the City of Kalamunda supports WALGA's position that:

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

#### External Committee Members

The City of Kalamunda requests that section 5.100 of the *Local Government Act 1995* (WA) be amended to allow for reimbursement of Any cost incurred by committee members on external committees.

## 2. TRAINING

The 2016 Census of Western Australia Elected Members conducted by the University of Western Australia on behalf of the Department found that approximately one in four elected members completing the survey had not completed Year 12. It could be argued that elected members should be provided with the knowledge and skills to be able to properly understand and perform their role.

Since 2013-14, WALGA has delivered more than 340 training courses to elected members across the State. Over the same period, approximately 70 elected members have enrolled in the Elected Member Diploma.

	2013-14	2014-15	2015-16	2016-17
<b>Courses delivered</b>	61	89	90	106
<b>Individual registrations</b>	625	899	838	930

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

In the City's response to the WALGA Discussion Paper it stated:

*"The City considers that the most important areas of training are:*

- a) Planning;*
- b) Finance;*
- c) Interest and Gift Disclosures;*
- d) Obligations under the Local Government Act; and*
- e) Standing Orders."*

Furthermore, the City contends that strategic planning, reporting and leadership are also key competencies for an elected member.

<p><b>7. Do these vary between local governments? If so, in what way?</b></p>
<p>No. The obligations and role of an elected member is the same across the local government industry.</p>
<p><b>8. Who should pay for the costs of training (course fees, travel, other costs)?</b></p>
<p>The Local government should be responsible for the arrangement and payment of training.</p> <p>However, the City is supportive of a training fund being established across the local government sector to assist with the costs of training.</p> <p>The purpose of each local government contributing a proportion of their annual revenue is to share the cost of training across the sector, and assist smaller, regional local government Shires that may struggle to source appropriate training courses for their Councillors.</p>
<p><b>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?</b></p>
<p>A training fund should be established to reduce the financial impact on small and regional local governments. However, an emphasis should be on supporting regional councils.</p> <p>The Town of East Fremantle is a small local government authority, but is geographically closer and has greater access to support and training for their Councillors. This is not the case for regional councils – for example, the Shire of Dowerin which was recently subject to a CCC investigation.</p> <p>The measure of contribution should be based on geographical isolation, not just revenue of the local government authority.</p>
<p><b>10. Should elected member training be mandatory? Why or why not?</b></p>
<p>In the Council does not support mandatory training. Many Councilors are highly trained and come from varied backgrounds. Those that have gaps in knowledge should be able to self-determine their training needs.</p>
<p><b>11. Should candidates be required to undertake some preliminary training to better understand the role of an elected member?</b></p>
<p>In the City's response to the WALGA Discussion Paper it stated:</p> <p><i>“The City agrees that candidates should not be required to undertake training prior to nominating for election.</i></p> <p><i>The City of Kalamunda ran a mock Council meeting instead of a Candidate Information Session, which was attended by the WAEC. This event was well attended by candidates, and had them roleplaying the consideration of two complex planning matters. The City believes that local governments should take a greater role in promoting these kinds of creative information sessions, rather than mandate training for candidates.”</i></p>

<p><b>12. Should prior learning or service be recognized in place of completing training for elected members? If yes, how would this work?</b></p>
<p>In the City’s response to the WALGA Discussion Paper it stated:</p> <p><i>“Most professions require employees to undertake Continued Professional Development to update their knowledge and skills. The City considers this should be the same case for Elected Members, as long as the training seeks to enhance, update or continue their current knowledge, and takes recognition of prior learning of long-term Elected Members into account.”</i></p> <p>A mechanism should be outlined in the revised Act which allows for a Councillor to make an application to the Department of Local Government to consider prior learning. The Department will then make a determination and inform the Councillor. Any decision can be appealed to the Minister for review of the decision.</p>
<p><b>13. What period should apply for elected members to complete essential training after their election?</b></p>
<p>This should be determined by the individual councillors based on their time availability and any other matters that may impact on their ability to.</p>
<p><b>14. Should ongoing professional development be undertaken by elected members?</b></p>
<p>Yes if elected members so choose.</p>
<p><b>15. If so, what form should this take?</b></p>
<p>The WA Local Government Association (WALGA) is WA local government’s peak industry body. WALGA advocates on behalf of 138 WA local governments and negotiates service agreements for the sector. WALGA also delivers training for Councillors.</p> <p>WALGA should be the preferred training body running a CPD programme for Councillors, however WALGA should not be mandated as the only training body as this will decrease potential competition from other competent trainers.</p>
<p><b>16. Do you have any other suggestions or comments on training?</b></p>
<p>None.</p>

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### 3. THE BEHAVIOUR OF ELECTED MEMBERS

<p><b>17. Should standards of conduct/behavior differ between local governments? Please explain.</b></p>
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No. This will allow of consistent expectation on behalf of all local governments, but particularly the Department, who will be able to advise each local government with regard to conduct with assurity.

The City notes WALGA's position on standards of conduct:

*"WALGA supports:*

- 1. Official conduct legislation to govern the behavior 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."*

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

The City's preference is Option Five. A model Code of Conduct would result in an easier adoption process with less administrative work, and consistency across the local governments. It is a process that appears to have worked well for constitutions (Model Rules) with the most recent review of the *Associations Incorporation Act 2015* (WA).

**19. How should a code of conduct be enforced?**

A breach of a Code of Conduct should result in an internal disciplinary matter for individual councils to determine. Multiple breaches of the Code of Conduct should result in referral to the Standards Panel.

**20. Do you support streamlined Rules of Conduct regulations? Why?**

Yes. The City supports streamlined Rules of Conduct regulations.

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

In the event that the Rules of Conduct are streamlined, then the following elements should be retained:

- Disclosing information;
- Securing personal advantage/disadvantage of others;
- Misuse of local government resources;
- Disclosure of interests.

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

The City contends that three months to make a complaint is adequate. As shown on Page 40 of the Consultation Paper, most complaints are made within three months of the incident.



<p><b>23. Do you support an outcome-based framework for elected members? Why or why not?</b></p>
<p>No. The City favours a prescriptive approach to regulating conduct. The City submits that establishing a framework which is vague will lead to confusion and abuse of the complaint system. The City agrees with the point raised in the Consultation Paper, “this proposal may create uncertainty as to what behaviours would constitute a breach and could result in an increase in the number of complaints received.”</p>
<p><b>24. What specific behaviours should an outcomes based framework target?</b></p>
<p>In the event that a specific outcomes-based framework is introduced, the City is supportive of those behaviours on page 41 as guiding good behaviour.</p>
<p><b>25. Should the rules of conduct that govern behavior of elected members be extended to all candidates in council elections? Please explain.</b></p>
<p>Yes. The Rules of Conduct should apply to all candidates in an election.</p> <p>The following are comments from 17 October 2017:</p> <p><i>“Local Government Minister David Templeman said he was ‘dismayed’ by the number of reports of online bullying by candidates and community members in the lead-up to local government elections.</i></p> <p><i>Mr Templeman said, while he was delighted a record number of candidates had nominated across the State, reports of bullying were a major concern.</i></p> <p><i>‘I call on candidates and community members to show more respect in the way in which they are behaving, as trolling and negativity does not attract quality and diverse candidates,’ he said.</i></p> <p><i>‘If we want a vibrant, diverse and quality local government sector, we must ensure that people feel safe, respected and valued when they put themselves forward.’”</i></p> <p style="text-align: right;">David Templeman, Minister for Local Government</p>
<p><b>26. Should the offence covering improper use of information be extended to former members of council for a period of twelve months? Why?</b></p>
<p>Yes. Elected Members owe a fiduciary obligation to the Council. It is arguable that this obligation shouldn’t cease once the person is no longer an Elected Member, and that person might have access to information that is still current and required to be kept confidential.</p>

<b>27. Should this restriction apply to former employees? Please explain.</b>
Yes. Staff should be restricted in their use of confidential information obtained as a result of their former position with a local government authority.
<b>28. Is it appropriate to require the existence and details of a complaint to remain confidential until the matter is resolved? Why?</b>
Yes. It is very important that all the facts of a matter are known and an outcome is reached before details are made public of any complaint.
<b>29. What do you see as the benefits and disadvantages of this model?</b>
The City submits that the merits of the Conduct Review Committee model are outlined on page 47 to 48 of the Department's Consultation Paper.
<b>30. What powers should the Conduct Review Committee have?</b>
<p>The City submits that the powers of Conduct Review Committee have been outlined on page 47 of the Consultation Paper:</p> <p><i>The Conduct Review Committee would be limited to the following actions:</i></p> <ul style="list-style-type: none"> <li>• <i>Dismissing the complaint due to non-compliance</i></li> <li>• <i>Dismissing the complaint for being trivial, frivolous or vexatious or without substance</i></li> <li>• <i>Ordering mediation</i></li> <li>• <i>Ordering a public apology</i></li> <li>• <i>Directing the complaint to the Standards Panel.</i></li> </ul>
<b>31. In your opinion what matters should go directly to the Standards Panel?</b>
All matters should be referred to the Conduct Review Committee in the first instance.
<b>32. Who should be able to be a member of a panel: elected members, people with local government experience, independent stakeholders?</b>
Members of the Standards Panel should be assessed based on their skills not their current position.
<b>33. Who should select the members for the pool?</b>
Minister for Local Government.
<b>34. How many members should there be on the Review Committee?</b>

<p>The City submits that there should be three members of the Conduct Review Committee, with deputy members appointed to sit when there is an absent member of the Committee. Additionally, elected members who are on the same Council as the person against whom a complaint is being made should not sit to hear that complaint.</p>
<p><b>35. Are the proposed actions for the Review Committee appropriate? If not, what do you propose?</b></p>
<p>The City believes that the proposed actions for the Review Committee are appropriate.</p>
<p><b>36. Which of the options for dealing with complaints do you prefer? Why?</b></p>
<p>The City supports Option 2 – Sector Conduct Review Committees.</p>
<p><b>37. Are there any other options that could be considered?</b></p>
<p>None.</p>
<p><b>38. Who should be able to request a review of a decision: the person the subject of the complaint, the complainant or both?</b></p>
<p>Any person is who is party to the complaint (either the complainant or the person against whom the complaint is made) should be able to request a review of the decision.</p>
<p><b>39. Do you support the inclusion of mediation as a sanction for the Panel? Why or why not?</b></p>
<p>Yes. Mediation is an increasingly popular method which allows parties to resolve a dispute. Mediation keeps the dispute in the control of the parties themselves, rather than handing control to a third party. It would work best if kept inform and quick. The success of any mediation will likely be driven by the quality of the mediator, and this should be a consideration.</p>
<p><b>40. Do you support the Panel being able to prohibit elected members from attending council meetings? Why or why not?</b></p>
<p>No. Complaints are to remain confidential, and Elected Members are required to perform their duties as a Councillor until such time as they are found to have breached their conduct obligation.</p>
<p><b>41. How many meetings should the Panel be able to order the elected member not attend?</b></p>
<p>In the event that the new Act is amended to allow the Panel to prohibit elected members from attending council meetings, this should be for no longer than 3 months after the complaint is lodged.</p>

<p><b>42. Should the elected member be eligible for sitting fees and allowances in these circumstances?</b></p>
<p>Yes.</p>
<p><b>43. Do you support the Panel being able to award financial compensation to the local government? Why or why not?</b></p>
<p>No. It is unclear what loss is being compensated.</p>
<p><b>44. What should the maximum amount be?</b></p>
<p>In the event that the new Act is amended to allow the Panel to award financial compensation to the local government, this amount should be a defined percentage of the Elected Members annual sitting fee.</p>
<p><b>45. Do you support this option? Why or why not?</b></p>
<p>The City is neither for nor against this option. Most courts require the payment of a fee to commence a case. If a fee is to be introduced, it should not be so onerous that it would deter a genuine complaint from commencing.</p>
<p><b>46. Do you believe that a complaint administrative fee would deter complainants from lodging a complaint? Is this appropriate?</b></p>
<p>An administrative fee would be unlikely to deter either a valid or frivolous/vexatious complaint – as both would likely be equally motivated for different reasons.</p> <p>The new Act should be careful about imposing anything which may deter any complaint. All complainants should have equal access to have their complaint heard, and this should not be deterred by access to financial resources.</p> <p>Clear and proscriptive rules around behavior should result in less frivolous and vexatious complaints.</p>
<p><b>47. Would a complaint administrative fee be appropriate for a sector conduct review committee model? Why or why not?</b></p>
<p>The City is neither for nor against this option.</p>
<p><b>48. What would be an appropriate fee for lodging a complaint?</b></p>
<p>An appropriate fee for lodging a complaint may be similar to that of a Freedom of Information application. An amount of \$50 to \$100 would be appropriate if a fee was going to be imposed under the new Act.</p>

<p>It should be noted that it is difficult for local governments to advise on how much the administrative fee should be, as this amount should be determined by the costs associated with running the Standards Panels.</p>
<p><b>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?</b></p>
<p>If an administrative fee is to be introduced, then it should be refunded to the applicant when the complaint is determined in favour of that applicant.</p>
<p><b>50. Do you support the cost of the panel proceedings being paid by a member found to be in breach? Why or why not?</b></p>
<p>Any councilors found to be not guilty of a breach should be allowed to have their legal cost reimbursed, however this should be capped by the Council.</p>
<p><b>51. Do you support the tabling of the decision report at the Ordinary Council Meeting? Why or why not?</b></p>
<p>The decision report should be presented to an Ordinary Council meeting once finalised.</p>
<p><b>52. Do you support this option? Why or why not?</b></p>
<p>Yes. The City supports councils being required to table any decision reports which result from a minor breach finding against one of their elected members at the next Ordinary Council Meeting that is open to the public whether found to be guilty or not.</p>
<p><b>53. Should not-for-profit organization members participate in council decisions affecting that organization? Why or why not?</b></p>
<p>Question 53 can only be answered, if there is a clear understanding of what “member” means. If an Elected Member is a board member or officer of a not-for-profit, then they should be required to declare an interest on a decision effecting that organization.</p> <p>This would be similar to Key Management Persons being required to make declarations of Related Party Transactions. However, if an Elected Member is merely a “member” of a not-for-profit, subscribing to the organisation’s objectives under the constitution, then that person shouldn’t have to declare a conflict.</p> <p>In this event, the Elected Member has limited control over the direction of the organization other than likely voting rights at a general meeting.</p>

**54. Would your response be the same if the elected member was an office holder in the organization?**

See 53 above. Office holders and officers should be required to declare their interest in the organisation.

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

The City also supports WALGA's position with regard to frivolous and vexatious complainants:

*"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.*

*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 behavior 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."*

And:

*"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 behavior', 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.*
3. *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."*

#### Conflicts of Interest

Additionally and as per an EMRC recommendation, the City believes that section 5.60 of the LGA should be updated to include impartiality interests and allow section 5.67 to disqualify the members, having disclosed the impartiality interest, from participating in the meeting.

Sections 5.65 and 5.67 of the LGA stipulates that a Councillor or Committee member who has a section 5.60 financial interest in a matter before the Council, must disclose the nature of the interest, depart the meeting room and not participate in the decision-making process.

On the other hand, members that do have an impartiality interest within the scope of r 11 of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* having disclosed the interest affecting impartiality may continue to remain at the meeting and vote on the matter. This appears to conflict with the well-established common law rule against bias.

The Department of Local Government and Communities Operational Guideline No. 01 - January 2011, which is provided to local government Elected Members in WA makes the DGLC's understanding of the obligation to vote clear in the following terms (OG s.3) –

*'There are very different outcomes resulting from disclosing an interest affecting impartiality compared to that of a financial interest.*

*For example, with the declaration of a financial interest an elected member leaves the room and does not vote (unless permitted to do so by the meeting or the Minister).*

*With the declaration of an impartiality interest, the elected member stays in the room, participates in the debate and votes. In effect then, following disclosure of an interest affecting impartiality, the member's involvement in the meeting continues as if no interest existed.'*

Under common law, a decision by a body such as a local government Council is liable to be set aside as invalid if one of the Council members was disqualified for bias, actual or apprehended (see *Dickason v Edwards* (1910) 10 CLR 243 at 259; *1W v City of Perth* (1997) 71 ALJR 943 at 969; and *Irwin v Meander Valley Council* [2007] TASSC 79 at [37]).

A Council member who considers that he/she has an interest in a matter before the Council which is sufficiently significant to justify a disclosure of the interest as affecting impartiality, runs a clear risk of being considered to have an actual or apprehended bias, and on the principle mentioned above, that bias in the absence of statutory provisions to the contrary, could result in the Council decision on judicial review being set aside as invalid, and other related consequences.

#### CEO's as Complaints Officer

The CEO should remain the complaints officer.

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## 4. LOCAL GOVERNMENT ADMINISTRATION

### **56. Would councils benefit from assistance with CEO recruitment and selection? Why?**

The recruitment of an appropriate and competent Chief Executive Officer is one of the most important decisions a Council will make with respect to the district. CEO's are incredibly influential figures with respect to the strategic, operational and financial future of the local government.

A mediocre CEO may succeed at keeping the organization ticking over, however a great CEO can:

- set and encourage excellence throughout the organization;
- maintain morale and provide inspiration;
- keep the organization focused on its goals; and
- boost support from the community, funders and partners.

Councillors selected to appoint a CEO might not fully appreciate what makes a good local government CEO, or additionally, might not fully appreciate the qualities that they want in the CEO that is right for their local government.

### **57. How could the recruitment and selection of local government CEOs be improved?**

Recruitment and selection of local government CEOs could be improved in the following areas:

- Establishing appropriate position descriptions which allow for the measurement of annual performance; increasing the link between initial position description and the annual requirement of Council to review CEO performance.
- Remuneration – at present it is very difficult for local governments to benchmark remuneration packages. Greater transparency and data is required with respect to CEO remuneration and employment packages across the State.



<p><b>58. Should the Public Sector Commission be involved in CEO recruitment and selection? If so, how?</b></p>
<p>It may be appropriate for the Public Sector to offer their services. This may particularly be of benefit to smaller regional councils.</p>
<p><b>59. Should other experts be involved in CEO recruitment and selection? If so, who and how?</b></p>
<p>The involvement of experts should be at the discretion of each individual Council.</p>
<p><b>60. What competencies, attributes and qualifications should a CEO have?</b></p>
<p>The City is broadly of the opinion that key competencies should be left for Councils to determine, however at minimum all CEOs should have the following skills:</p> <ul style="list-style-type: none"> <li>• Financial management;</li> <li>• Knowledge of planning law;</li> <li>• Strategic planning and vision setting;</li> <li>• HR/OD; and</li> <li>• Governance.</li> </ul>
<p><b>61. Should the process of appointing an acting CEO be covered in legislation? Why or why not?</b></p>
<p>No. Acting positions should be at the discretion of the local government.</p>
<p><b>62. If so, who should appoint the CEO when there is a short term temporary vacancy (covering sick or annual leave for example)?</b></p>
<p>The appointment of an acting CEO should be at the current CEO's discretion. The CEO is best positioned to know the needs of the role over vacancy period.</p>
<p><b>63. Who should appoint the CEO if there will be vacancy for an extended period (for example, while a recruitment process is to be undertaken)?</b></p>
<p>This should be the responsibility of the current Council.</p>
<p><b>64. Who should be involved in CEO performance reviews?</b></p>
<p>Currently, section 5.38 of the <i>Local Government Act 1995</i> (WA) requires that the CEO's performance is reviewed at least once in relation to every year of employment. The LGA does not prescribe the manner in which that performance review is to be conducted. Specifically, however, the City would like to see the LGA amended to exclude Councillors who have actual or perceived bias from being</p>

involved fundamentally in the performance review process. This would need to be a decision of the Council.

A Councillor should be excluded, for example, when there is a current complaint made about that Councillor by the CEO. It is not uncommon for the CEO of a local government authority to be the one to make a complaint against a Councillor for a potential breach of the Act or Regulations on behalf of the City.

**65. What should the criteria be for reviewing a CEO performance?**

As a general rule, the criteria for reviewing a CEO's performance should be left to the discretion of the local government in question, however Council's should be required to develop a public policy on the criteria by which its CEO will be assessed.

**66. How often should CEO performance be reviewed?**

The CEO's performance should be reviewed annually.

**67. Which of the above options do you prefer? Why?**

The City supports Option 2 – that local governments are to adopt a CEO performance review policy.

**68. Is there an alternative model that could be considered?**

None.

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

The Council believes the termination of a CEO should be at its discretion.

**70. What length should such a cooling off period be?**

The City believes that this 'cooling off' period should be a six month period.

**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?**

The Council submits that there should be a restriction on a council from extending a CEO's contract for a period of three months prior to the day of the election.

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

No. This should be subject to individual local government processes, and ultimately should form part of the CEO's performance review if important. In that case, Councils would require a behavior of their CEO to be the quality recruitment and development of executive staff.

<b>73. Should certain offences or other criteria exclude a person from being employed in a local government? If so, what?</b>
This would be heavily dependent on the roll and nature of the offence. Effective HR processes and background checks should efficiently address this matter outside of legislation.
<b>74. Do you have any other suggestions or comments on this topic?</b>
None.

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## 5. SUPPORTING LOCAL GOVERNMENT IN CHALLENGING TIMES

<b>75. Should the appointed person be a departmental employee, a local government office or an external party? Why?</b>
The City submits that any appointed person appointed under a remedial notice should be an external party (which can include a departmental employee). This would be similar to administration under the <i>Corporations Act 2001</i> , however the City does note that administration would be more similar to the replacement of Council. There also needs to be a right of appeal.
<b>76. Should the appointed person be able to direct the local government or would their role be restricted to advice and support? Please explain.</b>
Yes. The appointed individual(s) should be able to direct the local government until such a time that the local government is able to provide for the good governance of the district. The aim of intervention should be to intervene to deliver back to Council and administration.
<b>77. Who should pay for the appointed person? Why?</b>
As the decision would be that of the State Government, it should be the responsibility of the State to ensure payment of the appropriate appointed person(s).
<b>78. What powers should an appointed person have?</b>
Consideration should be given to section 437A of the <i>Corporations Act 2001</i> – Role of administrator: <ul style="list-style-type: none"> <li>(1) <i>While a company is under administration, the administrator:</i> <ul style="list-style-type: none"> <li>(a) <i>Has control of the company's business, property and affairs; and</i></li> <li>(b) <i>May carry on that business and manage that property and those affairs; and</i></li> <li>(c) <i>May terminate or dispose of all or part of that business, and may dispose of any of that property; and</i></li> <li>(d) <i>May perform any function, and exercise any power, that the company or any of its officers could perform or exercise if the</i></li> </ul> </li> </ul>

*company were not under administration.*

*(2) Nothing in subsection (1) limits the generality of anything else in it.*

Again, the City notes that not all of this section is useful, as it contemplates powers which would be available to a Commissioner if they replaced the Council.

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

The City cannot comment on whether this would improve the provision of good governance in Western Australia for local government. More consultation and research would be required before that question could be answered. However, the City notes that administration has been effective in improving corporate governance.

**80. What issues need to be considered in appointing a person?**

This is for the State Government to determine.

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

None.

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**6. MAKING IT EASIER TO MOVE BETWEEN STATE AND LOCAL GOVERNMENT EMPLOYMENT**

**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?**

Yes. The ability for local and State Government employees to be able to carry over the recognition of services and leave if they move between local government and the State will make it easier for employees to move employment. Easy transfer of employees between the two will be good for the sector.

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

See Part 82 above.

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

None.

## 7. GIFTS

<p><b>85. Is the new framework for disclosing gifts appropriate?</b></p>
<p>The City believes that a revamp of the gift provisions is required to streamline and simplify the area. The City would like to ensure that contributions to travel are included in the definition of ‘gift’ and the requirement to disclose separately be deleted.</p> <p>As such, the City notes WALGA’s position on gifts and contributions to travel:</p> <p><i>“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:</i></p> <ul style="list-style-type: none"> <li>• <i>There be one section for declaring gifts. Delete declarations for Travel;</i></li> <li>• <i>No requirement to declare gifts received in a genuinely personal capacity;</i></li> <li>• <i>Gift provisions only for Elected Members and CEO’s. Other staff fall under Codes of Conduct from the CEO to the staff;</i></li> <li>• <i>Gifts only to be declared if above \$50,000;</i></li> <li>• <i>There will not be any category of notifiable gifts or prohibited gifts;</i></li> <li>• <i>Gifts only to be declared in respect to an Elected Member or CEO carrying out their role;</i></li> <li>• <i>Exemptions for ALGA, WALGA and LG Professionals (already achieved);</i></li> <li>• <i>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.”</i></li> </ul>
<p><b>86. If not, why?</b></p>
<p>See Part 85 above.</p>
<p><b>87. Is the threshold of \$500 appropriate?</b></p>
<p>The legislative threshold should be in line with the requirements placed on the State Government. Additional, more stringent, rules should be set through policy at Council’s discretion.</p>
<p><b>88. If no, why?</b></p>
<p>N/A</p>
<p><b>89. Should certain gifts – or gifts from particular classes or people – be prohibited? Why or why not?</b></p>

No. The most important consideration is that gifts are declared when received.
<b>90. If yes, what gifts should be prohibited?</b>
N/A
<b>91. Should gifts received in a personal capacity be exempt from disclosure?</b>
<p>The City believes that strict clarity should be given to what is in a “gift received in a genuinely personal capacity”. As a general rule, the City is not supportive of exemptions for gifts received in a “personal capacity”.</p> <p>Gifts from family should be exempt. However, careful safeguards should be put in place to ensure that gifts aren’t provided to a Councillor through a family member.</p>
<b>92. If yes, how could ‘personal capacity’ be defined?</b>
See Part 91 above.
<b>93. Should there be any other exemptions from the requirement to disclose a gift over the threshold?</b>
No. The City is supportive of the general position of the gifts working group outlined on page 82.
<b>94. If so, what should these be? Please justify your proposal.</b>
N/A
<b>95. Do you have any other suggestions or comments on this topic?</b>
None.

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## 8. ACCESS TO INFORMATION

<b>96. Which general option do you prefer for making local public notices available? Why?</b>
<p>As per an EMRC recommendation, the City believes that sections 1.7 and 1.8 of the LGA be amended to remove the requirement for publication in a newspaper and instead provide for publication to any medium that would provide circulation sufficient to inform the people of the district and the State.</p> <p>The LGA requires newspaper notices to inform the public. Newspapers have long been deemed the best outlets for these notices because they are widely accessible, relatively inexpensive, have a documented list of subscribers and are easily preserved for records.</p>

With the proliferation of online websites and a declining readership to printed newspapers, posting public notices on websites can save ratepayers money. Because of those changing patterns of readership, the proposal to move public notices to online will save local government significant expenditure.

The City is in support of modernizing requirements for public notices. The City therefore supports option 6 which replaces the need to print notices with print and electronic notices for both local and state notice.

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

See Part 96 above.

**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.**

No.

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

The City is in support of the development of a central portal for local government notices.

**100. Using the following table, advise how you think information should be made available:**

- Annual Report – both;
- Primary and Annual Returns – both;
- Discretionary disclosure generally – both;
- Gifts – both;
- Disclosure of travel contributions – both;
- Electoral gifts register – both;
- Allowance for deputy mayor or deputy president – website;
- Payments for certain committee members – website;
- Tenders register – website;
- Register of delegations to committees, CEO and employees – both;
- Minutes of council, committee and elector meetings – website;
- Future plan for the district – both;
- Annual Budget – both;
- Notice papers and agendas of meetings – website;
- Complaints register – both;
- Contracts of employment of the CEO and other senior local government employees – neither;
- Schedule of fees and charges – both;
- Proposed local laws – website;

<ul style="list-style-type: none"> <li>• Gazetted local laws – website;</li> <li>• Rates record – both;</li> <li>• Electoral roll – both.</li> </ul> <p>Most medium to large local governments would make the majority of this information assessable through their website as a matter of course however requiring all of this information to be placed on the City’s website could result in a significant increase in work load for smaller regional local governments.</p>
<p><b>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?</b></p>
<p>Adverse findings by the Standards Panel or State Administrative Tribunal against elected members.</p>
<p><b>102. Is there additional information that you believe should be made publicly available? Please detail.</b></p>
<p>No.</p>
<p><b>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)?</b></p>
<p>N/A</p>
<p><b>104. Do you have any other suggestions or comments on this topic?</b></p>
<p>None.</p>

## 9. AVAILABLE INFORMATION

<p><b>105. Which of these options do you prefer? Why?</b></p>
<p>The City is supportive of Option 3. Local governments will not be required to report additional information to the public, however the local government will be required to develop a policy position on each part of additional information and whether it does or doesn’t choose to release that information.</p>
<p><b>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:</b></p>
<ul style="list-style-type: none"> <li>• Live streaming – Council does not support living stream given the associate costs and the impact upon debate.</li> </ul>



<ul style="list-style-type: none"> <li>• Diversity data – required;</li> <li>• Elected member attendance – required;</li> <li>• Elected member attendance at external meetings/events – optional;</li> <li>• Gender equity ratios for staff salaries – required;</li> <li>• Complaints/actions – required;</li> <li>• Performance reviews of CEO – optional;</li> <li>• Website information on rate categories – required;</li> <li>• District maps and ward boundaries – required;</li> <li>• Adverse findings of SP/SAT and CCC – required; and</li> <li>• Financial and non-financial benefit register – required.</li> </ul>
<p><b>107. What other information do you think should be made available?</b></p>
<p>None.</p>
<p><b>108. Do you have any other suggestions or comments on this topic?</b></p>
<p>None.</p>

**10. REDUCING RED TAPE**

<p><b>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.</b></p> <p>a) Briefly describe the red tape problem you have identified.  b) What is the impact of this problem? Please quantify if possible.  c) What solutions can you suggest to solve this red tape problem?</p>
<p>No comment.</p>
<p><b>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.</b></p> <p>a) Briefly describe the red tape problem you have identified.  b) What is the impact of this problem? Please quantify if possible.  c) What solutions can you suggest to solve this red tape problem?</p>
<p>No comment.</p>
<p><b>111. Should the provisions for a special majority be removed? Why or why not?</b></p>

The City is neither for, nor against, the removal of the provision for a special majority. The City understands that purpose of the special majority is to ensure that it has the support of the majority of Council for more important decisions.

**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?**

No the current arrangements with designated senior employees are adequate.

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

Employees should only be designated as senior employees if there is a purpose in that designation.

The *Corporations Act 2001* (Cth) requires that an 'officer' exercise their powers and discharge their duties with care and diligence (section 180).

This duty is subject to a business judgement rule that requires officers to:

- make a judgement in good faith and for a proper purpose;
- not to have a material personal interest in the subject matter of the judgement;
- inform themselves about the subject matter of the judgement to the extent they reasonably believe to be appropriate; and
- rationally believe that the judgement is in the best interests of the corporation.

In addition, officers of a company must exercise their powers and discharge their duties in good faith in the best interests of the corporation and for a proper purpose (section 181). They are prohibited from improperly using their position to gain an advantage for themselves or someone else or to cause detriment to the corporation (section 182) and are prohibited from using information obtained as a consequence of their role with the company to gain an advantage for themselves or someone else or to cause detriment to the corporation (section 183).

All of the provisions give rise to civil obligations. They are also civil penalty provisions. In a case where a court determines that a civil penalty provision has been contravened, it must make a declaration to that effect and may order the person pay the Commonwealth a *pecuniary* penalty of up to \$200,000 and may order the person compensate the company for any loss as a result of that contravention (Part 9.4B). The court may also disqualify the person from managing corporations for a period the court considers appropriate (section 206C).

The *Corporations Act 2001* (Cth) also sets out criminal offences where an officer acts recklessly or is intentionally dishonest in their failure to exercise their powers and discharge their duties in good faith and in the best interests of the company or for a proper purpose. Similarly, criminal offences are created where a person recklessly or intentionally dishonestly misuses their position or information they have gained through their position with the company (section 184).

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

<p>With respect to the <i>Local Government (Financial Management) Regulations 1996</i>, the City supports WALGA's proposal that:</p> <p><i>“Regulation 4 of the Financial 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.</i></p> <p><i>A Zone has requested that an exemption be allowed from the implementation of AASB 123 ‘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.”</i></p> <p>The City supports this proposal. The definition of what would be a related party, and thus in need of disclosure, is broader than the Act. For example, a “closely associated person” required with respect to a financial declaration under the Act would not capture all people who would need to be declared as a result of Related Party Transaction declarations (eg. parents and siblings).</p>	
<b>115.</b>	<b>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?</b>
The City proposes that threshold for trade-in's be raised to \$100,000.	
<b>116.</b>	<b>Should the threshold remain at \$75,000 but with separate exemptions for specific types of equipment, for example plant?</b>
See Part 115 above.	
<b>117.</b>	<b>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?</b>
The City proposes that the threshold for all property be raised to \$150,000 in line with the tender threshold.	
<b>118.</b>	<b>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?</b>
No. Individual local governments could get an evaluation if they had any doubt as to the value of the item.	
<b>119.</b>	<b>Is there an alternative model for managing the disposal of property? Please explain.</b>
N/A	

<b>120. Do you have any other suggestions or comments on this topic?</b>
None.

## 11. REGIONAL SUBSIDIARIES

<b>121. Which option do you prefer?</b>
<p>The City of Kalamunda supports WALGA's position with regard to Regional Subsidiaries:</p> <p><i>That WALGA advocates for legislative and regulatory amendments to enable Regional Subsidiaries to:</i></p> <ol style="list-style-type: none"> <li>1. <i>Borrow in their own right;</i></li> <li>2. <i>Enter into land transactions; and</i></li> <li>3. <i>Undertake commercial activities.</i></li> </ol> <p>The City supports both Options 2 (Regional Subsidiaries are permitted to borrow from Treasury Corporation) and Option 3 (Regional subsidiaries are permitted to borrow from financial institutions).</p>
<b>122. Should regional subsidiaries be allowed to borrow money other than from the member councils?</b>
See Part 121 above.
<b>123. Why or why not?</b>
See Part 121 above.
<b>124. If a regional subsidiary is given the power to borrow directly, what provisions should be put in place to mitigate the risks?</b>
The establishment of appropriate governance framework to guide decision-making, financial management, risk management, compliance and strategic planning.
<b>125. Do you have any other suggestions or comments on this topic, including on any other aspect of the <i>Local Government (Regional Subsidiaries) Regulations 2017</i>?</b>
None.
<b>126. You are invited to make comment and put forward suggestions for change on other matters which have not been covered in this paper.</b>

Voluntary Voting – section 4.65 of the LGA

The City of Kalamunda supports the following WALGA proposal:

*Voting in Local Government elections should remain voluntary.*

Administration Regulations

The City supports WALGA's proposal with regards to the *Local Government (Administration) Regulations 1996*:

*“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 [does] not apply to Council decisions that have already been implemented. This regulatory deficiency is currently managed administratively, but warrants an appropriate amendment to assist [clarifying] the rights of a Councillor to seek a revocation or change.”*

And:

*“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.”*

And:

*“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.”*

Financial Regulations

The City supports WALGA's proposal with regards to Financial Management:

*“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.”*

And:

*“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.”*

And:

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

And:

*“WALGA’s policy position regarding charitable purposes is as follows:*

- 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;*
- 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.*

Additionally, EMRC recommended that amendments should be made to the Act to allow a local government authority to make the decisions on providing concessions to charitable organisations where appropriate. The Act should be amended to clarify those circumstances where rating exemptions for charitable purposes are waived under contractual arrangements with local governments. A review of section 6.26(2)(g) should at least be considered prior to any new Act coming into force.

And:

*“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.*

And with regard to Differential General Rates – section 6.41:

*“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..”*

And:

*“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.”*

And:

*“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 to be recoverable and not be limited by reference to the ‘cost of proceedings’.”*

And:

*“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.”*

And:

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

#### Audit

The City supports WALGA’s position that:

*“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.”*

#### Miscellaneous Provisions

The City supports the following proposals from WALGA:

*“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.”*

And:

*“Schedule 2.1 of the Local Government Act 1995 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.”*

And:

*“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.”*

With respect to particular functions of local government, the City of Kalamunda supports the following WALGA positions:

*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).*

And:

*The Local Government Act 1995 includes a provision, under Section 3.53, that is carried forward from Section 300 of the former Local Government Act 1960...*

*It is recommended 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.*

And:

*The compliance obligations of Regional Local Governments should be reviewed.*

And:

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

And:



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

However, in the above case, the City believes that the value of the tender threshold limit for each local government should be established having regard to the respective size of local government in accordance with the SAT banding subject to an upper limit threshold.

And:

*That Regulation 30(3) (of Local Government (Functions and General) Regulations 1996) 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.*

#### Cooperative Bulk Handling

The City submits that consideration should be given to the amendment of section 6.26(2)(i) and 6.26(3) of the LGA in order to provide for a more accurate rate equivalent setting for the 'contribution' provided by Cooperative Bulk Handling to local government districts in which Cooperative Bulk Handling owns land.

At present, Cooperative Bulk Handling is exempt from the requirement to pay local government rates pursuant to section 6.26(2)(i) of the LGA, however, is required to pay an agreed 'contribution' in lieu thereof. This contribution is determined by reference to the tonnes of grain stored on the relevant site and the contribution agreement is subject to Ministerial oversight in the event Cooperative Bulk Handling and the relevant local government cannot agree on terms.

At present, the audit of storage of grain is undertaken by Cooperative Bulk Handling, rather than an independent third party auditor, which, in the City's submission would be appropriate, and additionally, a scalable mechanism should be applied to any calculation to ensure that the effective 'contribution' be representative of the comparative rateable value of the land.

The agreement in force is currently heavily in favour of CBH with review provisions untenable as it requires the assent from other local authorities with similar CBH facilities. Attempts to compare agreements have not been possible due to the confidentiality involved in the arrangements of each agreement.

Comparable new organisations who are in competition with CBH do not enjoy similar rate exemptions.

#### Penalties under the Act

As per an EMRC recommendation, the City believes that the penalties allowed under the LGA should be increased to a sufficient amount to discourage breaches.

Penalties are imposed to discourage breaches and reflect the severity of those breaches. The maximum penalty allowed under the LGA is \$5,000. It is submitted that to achieve its intended purpose, the *value* of the \$5,000 penalty established in 1995 must be reconciled, as since that time, the comparative value of this monetary imposition has significantly eroded due to inflation and general living standards.

In 2013, the Supreme Court of Western Australia considered the powers of local governments to issue notices under section 3.25 of the LGA, in the case of *Saliba v Town of Bassendean [2013] WASC 93*.

#### Privacy Policy

As per an EMRC recommendation, the City believes that the LGA be amended to provide support for the open and transparent management of personal information in compliance with the Australian Privacy Principles (AAP) or such a code.

The APP do not apply to local governments or state or territory governments. Section 6C of the *Privacy Act 1988* (Cth) states that entities which are state or territory authorities or prescribed instrumentalities of a state or territory (including local governments) are not classified as organisations. As these entities are not organisations they are exempt from the coverage of the APPs. Some states have privacy laws that cover state and local government bodies.

The state public sector in Western Australia does not currently have a legislative privacy regime. Various confidentiality provisions cover government agencies and some of the privacy principles are provided for in the *Freedom of Information Act 1992* (WA) overseen by the Office of the Information Commissioner (WA).

Local governments have access to a significant amount of information including a ratepayer's database. To ensure legislative support, it is considered imperative that the LGA supports the efforts of local governments to manage personal information in an open and transparent way.

#### Business Planning

Current consideration between EMRC local governments is being given to the issue of a land transaction being caught up in the requirement to prepare a business plan if it is "preparatory to" a major land transaction.

It is possible for a local government to acquire a property (enter into a contract to purchase the property) at which point a business plan becomes preparatory to a major land transaction. Having done so, it is then impossible to complete the acquisition, as a local government authority must do the business plan before entering into the transaction, however the requirement to do the business plan does not kick in until it has entered into the contract to purchase.

Many local governments are now entering into larger and increasingly more complex land transactions to achieve positive development outcomes in their districts. These transactions can involve long, complex arrangements including buying land, amalgamating it, subdividing it, developing it, building facilities etc. There may be multiple agreements to achieve these purposes. These transactions will become increasingly common as Perth seeks to complete infill development. The business planning provisions do not realistically allow for this to occur as they are drafted for smaller, one-off transaction. The legislation currently provides a very narrow path of compliance. Some thought needs to be given to a set of provisions that will enable local governments to proceed with these larger more complex developments and still provide the necessary accountability, public input and reporting.

#### Financial Provisions

The City of Kalamunda would like a review to be considered of the following sections of the *Local Government Act 1995* (WA):

- section 6.16(2)(b) – *a fee or charge may be imposed for the following – supplying a service or carrying out work at the request of a person*

The City of Kalamunda notes that it cannot charge an administration fee for processing the State Government rebates on rates and ESL payments. A resident in the district wanted the Office of State Revenue to process the rebate. This resulted in the City having to refund monies due to the vague wording of the Act in this area. The Department didn't consider managing the administration of the claim as a form of service, despite the administration including document checks, administering the rebates through the local government's finance systems (ie. payments, rejections, refunds etc) and answering queries from the resident. The City has a dedicated Rates Officer who undertakes administration work, however no compensation from the Office of State Revenue flows to the City, and there is no power available for the City to charge an administration fee.

- section 6.26(1)(d)
- section 6.26(1)(e)
- section 6.26(1)(g)

A significant amount of rates revenue is lost through exempt organisations. These organisations still enjoy the amenities provided by the local government. At present, religious organisations are running retirement homes and claiming exemption under the banner of charitable purposes. In addition, Homeswest (under the Department of Housing) which owns significant housing stock across local governments has started transferring the responsibilities for rental properties to Community Housing Authorities, a body exempt from rates using section 6.26(g) of the Act.