

Shire of Bruce Rock Submission

Local Government Act 1995 Review Phase 1: Consultation Paper

Prepared by:

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1. Relationships between council and administration

Minister's Questions

Defining the roles of council and administration: Guidance questions

1) How should a council's role be defined?

Provisions should remain as applicable now with inclusion of NSW additional provisions, being:

- To participate in the development of the integrated planning and reporting framework
- To make all reasonable efforts to acquire the skills necessary to perform the role of a Councillor

What should the definition include?

As above

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

As is, no change

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

Nil

4) Are there any areas where the separation of powers is particularly unclear?

No

How do you propose that these are improved?

N/A

Improving relationships between council and administration: Guidance question

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

The roles and responsibilities need to be clear and emphasised to all newly elected members. This could be done through an introductory online training session that could be distributed via email to all Councillors, prior to their first meeting.

2. Training

Minister's Questions

Elected member competencies: Guidance questions

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

- A basic competency training to be mandatory (serving on Council, effective community leadership, meeting procedures & debating) with other modules as voluntary
- That there be an online induction upon appointment around the role of Councillor
- All training should be available online
- Undertake AIM Board of Directors training which is assessed and provides a formal qualification, to be paid for with Councillors allowance
- Elections (Stage 2) strengthen the rules of conduct for candidates
- RPL – needs to be qualified not experienced

7) Do these vary between local governments?

Core competencies should be standard across all local governments

If so, in what way?

N/A

Funding training: Guidance questions

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

If the State imposes a condition of training for being an elected members the cost should be met by the State Government

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?

Yes, the cost of training should be subsidised by the Department of Local Government and delivered in the regions.

Membership to i.e. WALGA contains a portion of funding which is allocated to a reserve type/LGIS type fund for that specific local government's Councillors to attend training

Should contribution to such a fund be based on local government revenue or some other measure?

Should be based on the number of Councillors with a formula based around the turnover of Councillors, similar to LGIS membership

Mandatory training: Guidance questions

10) Should elected member training be mandatory?

Yes, but only the following core modules should be mandatory for newly elected members who have not been on Council previously in their first term. Any additional modules should be elective and be left up to the individual;

- Serving on Council (Roles & Responsibilities)
- Effective Community Leadership
- Meeting Procedures & Debating

However, these training modules should be made available in both in person and online.

Why or why not?

Full compulsory training would be a large deterrent for elected members who live in the regions and therefore limit the pool of prospective candidates.

Some training modules are also not as relevant in some areas such as Town Planning in small regional towns who rarely receiving planning or development applications.

Many Wheatbelt Councillors are in the agricultural business and find it difficult to attend training when it is on immediately following the election as it is their busiest time of the year.

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

Preliminary training should be made available in person and online, however this should not be compulsory as mandatory training would be an impediment to the democratic process

12) Should prior learning or service be recognised in place of completing training for elected members?

Yes, so long as it is formal training, not experience based (i.e. being an accountant negates the requirement for financial training)

If yes, how would this work?

Upon application to a training body, WALGA or the Department and this would be via a standard assessment.

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

Any essential training should be completed within 12 months, as long as it is available online, via USB, in person and provided in the regions (at a suitable time – not seeding and harvest periods), and subject to available funding.

Continuing professional development: Guidance questions

14) Should ongoing professional development be undertaken by elected members?

Yes, but not mandatory and it should be made available online

15) If so, what form should this take?

Same as for core competency units

Training: Guidance question

16) Do you have any other suggestions or comments on training?

- Determine what other courses and qualifications are available within the market place
- Training needs to provide outcome of formal qualification rather than participation certificate and perhaps the Councillors could use the formalised training in future roles outside of Council (creating more incentive to undertake training).
- Perhaps there needs to be specific training for larger Local Governments due to complexity of land and property developments

3. Behaviour of Elected Members

3.1 Minister's Questions

Codes of conduct: Guidance questions

17) Should standards of conduct/behaviour differ between local governments?

No

Please explain.

There should be the same standards and expectations for all councillors across the board.

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

The Code of Conduct should reflect the same requirements as the NSW and Victoria models and be consistent across the State.

19) How should a code of conduct be enforced?

By the Public Sector Commission or perhaps CCC could be considered

Streamlined rules of conduct: Guidance questions

20) Do you support streamlined Rules of Conduct regulations?

Yes, and they should be in the legislation with penalties

Why?

They need to be simple, easily investigated and quantifiable

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

- There should be more emphasis on conduct which would impair decision making or public confidence in the Local Government
- The four core should be retained

22) Do you support a reduction in the time frame in which complaints can be made?

Yes

Is three months adequate?

Yes, but with an extension to 12 months given exceptional circumstances

Revised disciplinary framework: Guidance questions

23) Do you support an outcome-based framework for elected members?

Yes

Why or why not?

It's more practical and the code needs to have consequences for breaches

24) What specific behaviours should an outcomes based framework target?

- Public confidence and impairment of decision making
- avoiding dysfunction in the organisation

- Enforce the separation between operations & governance (breach of roles & responsibilities of the Councillor)

Application of the Rules of Conduct: Guidance question

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

Not supported

Please explain.

It's not practical to enforce, however there needs to be a strengthening of rules around the conduct of candidates in elections, this may be separate rules and more general

Offence Provisions: Guidance questions

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

Yes

Why?

Because the improper use of information could be used for personal advantage

27) Should this restriction apply to former employees?

Yes, however only for senior employees

Please explain.

This provision already applies to senior employees in terms of employment in contracts

Confidentiality: Guidance question

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

No

Why?

It breaches natural justice, openness and transparency provisions

Sector conduct review committees: Guidance questions

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

Time reduction but increased costs should this model be adopted, resolution may better be undertaken by other agencies i.e. Ministerial appointment or Public Sector Commissioner

30) What powers should the Conduct Review Committee have?

No comment

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

Serious breaches, minor breaches dealt with by the Review Committee which can then be referred either higher or lower

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

All of the above

33) Who should select the members for the pool?

Public Sector Commissioner to appoint suitable qualified persons

34) How many members should there be on the Review Committee?

There should be three members

35) Are the proposed actions for the Review Committee appropriate?

Yes

If not, what do you propose?

N/A

Review of elected member non-compliance: Guidance questions

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

Option 1 – Status Quo

Why?

No further comment

37) Are there any other options that could be considered?

Public Sector Commissioner and CCC processes and procedures

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

Both to maintain natural justice

Mediation: Guidance question

39) Do you support the inclusion of mediation as a sanction for the Panel?

No do not support

Why or why not?

Do not support this as there it has no relevant outcome

Prohibition from attending council meetings: Guidance questions

40) Do you support the Panel being able to prohibit elected members from attending council meetings?

Yes

Why or why not?

This is supported as it avoids potential dysfunction occurring within Council and during meetings

41) How many meetings should the Panel be able to order the elected member not attend?
The time it takes to conclude the investigation, with the disqualification of non-attendance at meetings being suspended

42) Should the elected member be eligible for sitting fees and allowances in these circumstances?
- No, as this reinforces the penalty, however this may not be practical for payment of annual allowances
- If found to be in breach the fees and allowances are to be refunded

Compensation to the local government: Guidance questions

43) Do you support the Panel being able to award financial compensation to the local government?
Yes

Why or why not?
Local governments should not be financially disadvantaged

44) What should the maximum amount be?
\$10,000

Complaint administrative fee: Guidance questions

45) Do you support this option?
Yes

Why or why not?
It removes the potential for nonsense or frivolous complaints

46) Do you believe that a complaint administrative fee would deter complainants from lodging a complaint?
No, if it's a genuine complaint an individual would still make the complaint

Is this appropriate?
No comment

47) Would a complaint administrative fee be appropriate for a sector conduct review committee model?
Yes

Why or why not?
This would make it standard across the industry

48) What would be an appropriate fee for lodging a complaint?
\$150 - \$250 set by regulation

49) Should the administrative fee be refunded with a finding of minor breach or should it be retained by the Department to offset costs?
The administration fee should be refunded if complaint is genuine and proven

Why or why not?

The complainant should not be out of pocket should the complaint be proven

Cost recovery to local government: Guidance questions

50) Do you support the cost of the panel proceedings being paid by a member found to be in breach?

Yes

Why or why not?

Cost recovery and financial penalties can be effective

Publication of complaints in the annual report: Guidance question

51) Do you support the tabling of the decision report at the Ordinary Council Meeting?

Yes

Why or why not?

This creates openness, transparency and accountability & raises elector awareness

Tabling decision report at Ordinary Council Meeting: Guidance question

52) Do you support this option?

Yes

Why or why not?

This creates openness, transparency and accountability & raises elector awareness

Elected member interests: Guidance questions

53) Should not-for-profit organisation members participate in council decisions affecting that organisation?

Yes, but declarations need to be made (i.e. impartiality interest) if Council is making a financial decision which may alter the declaration (i.e. financial interest)

Why or why not?

Impractical in small population areas as majority of Councillors may sit on a not for profit committee, or be a member of a sporting club etc.

54) Would your response be the same if the elected member was an office holder in the organisation?

No, only if receiving remuneration as an office holding position

Improving the behaviour of elected members: Guidance question

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

Uncertainty does occur from time to time with not-for-profit organisation members. For example, Council may need to award a quote for service or allocation of community cropping program and clarity is sometimes difficult. The elected member may not be receiving a benefit but if they sit on a committee of a community group quoting there is potential for perceived views. The problem occurs when a majority of your Council are on various committees that may be involved in that quote or request for community cropping.

4. Local Government Administration

Minister's Questions

Recruitment and selection of local government CEOs: Guidance questions

56) Would councils benefit from assistance with CEO recruitment and selection?

- Some Local Governments would, however assistance is already available through WALGA Workplace Solutions or other employment agencies/consultants such as LOGO Appointments

Why?

- Status quo is adequate and if a Local Government requires external assistance they can seek that service and support
- The recruitment and appointment of the CEO is a true Council responsibility as it is their only employee

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

- Councillor training, with emphasis on President / Mayor to undertake specific training to recruitment and selection.
- Improved awareness to Councils on external options for CEO recruitment

58) Should the Public Sector Commission be involved in CEO recruitment and selection?

- No this is Council's decision and a Council's autonomy in selecting a CEO is fundamental.
- Overall Council supports option 4 with the status quo in recruiting the CEO. Individual Councils can be unique and Councils are better equipped to understand what type of CEO they need for their local government and its community

If so, how?

N/A

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

It should not be mandatory for "experts" to be involved, there is already assistance available through WALGA Workplace Solutions or other employment agencies/consultants such as LOGO Appointments

60) What competencies, attributes and qualifications should a CEO have?

As currently included in legislation

Acting CEOs: Guidance questions

61) Should the process of appointing an acting CEO be covered in legislation?

No

Why or why not?

Already covered under current legislation

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

Internal arrangement through Delegated Authority or through Council if for more than a five day period.

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)?

Council is responsible for the appointment of the CEO, with this scenario being the appointment of a new or Acting CEO where there is no current incumbent

Performance review of local government CEOs: Guidance questions

64) Who should be involved in CEO performance reviews?

Council and should Council and CEO agree to elect to an external consultant could be appointed

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

- Specific KPI relevant to the local government and its current goals and direction
- Should be relevant to information as per contract only and not personality issues

66) How often should CEO performance be reviewed?

Formal process once per year, otherwise informally ongoing

67) Which of the above options do you prefer?

Option 2 Local Governments to adopt their own CEO Performance Review Policy

Why?

- Allows the specific circumstances of each local government to be taken into consideration which would not be available via the other 2 options
- Allows autonomy of individual local governments

68) Is there an alternative model that could be considered?

No further comment

Termination or extension of CEO contract around an election: Guidance questions

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

It may assist in allowing a settling in period

70) What length should such a cooling off period be?

3 months prior to election & 3 months post and election

71) For what period before an election should there be a restriction on a council from extending a CEO contract?

Depends on the terms set out in the CEO's terms of employment in their contract

Should there be any exceptions to this?

No further comment

Public expectations of staff performance: Guidance questions

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

No as the Council should remain responsible for the CEO and the CEO is responsible and held accountable for recruitment of all other staff

73) Should certain offences or other criteria exclude a person from being employed in a local government?

Depends on the type of offence, it could be discriminatory and doesn't aid rehabilitation or reintroduction to the community

If so, what?

Offences such as misappropriation of funds, fraud or stealing as a public servant could preclude an officer from being employed, however it depends on the severity

Strengthening local government administration: Guidance question

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

No further comment

5. Supporting Local Governments in Challenging Times

5.1 Minister's Questions

Remedial intervention: Guidance questions

75) Should the appointed person be a departmental employee, a local government officer or an external party?

External party because the Department may need to undertake punitive action

Why?

Independence and skills necessary to undertake the role

76) Should the appointed person be able to direct the local government or would their role be restricted to advice and support?

This should remain as advice and support only

Please explain.

No further comment

77) Who should pay for the appointed person?

Council

Why?

It's the organisation with the problem/dysfunction

Powers of appointed person: Guidance question

78) What powers should an appointed person have?

As per Discussion Paper

Remedial action process: Guidance questions

79) Do you think the proposed approach would improve the provision of good governance in Western Australia?

Yes, as the current system would appear to be deficient

Please explain.

No further comment

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

Require relevant and practical expertise in the sector and have sound creditability

Supporting local governments in challenging times: Guidance question

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

No further comment

6. Making it Easier to Move Between State and Local Government Employment

6.1 Minister's Questions

Transferability of employees: Guidance questions

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, providing it doesn't politicise local government employees as public sector staff

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

Entitlements would need to be consistent between the 2, possible benefits to retaining and attracting staff and families to rural communities

Making it easier to move between State and local government employment: Guidance question

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

No further comment

7. Public Confidence in Local Government

7.1 Minister's Questions

A new framework for disclosing gifts: Guidance questions

85) Is the new framework for disclosing gifts appropriate?

No it is not appropriate

86) If not, why?

The disclosure of gifts provisions needs simplifying and clarity. There is too much uncertainty around the definition of a gift. Staff who receive a legitimate wedding gift or birthday present should not have to be declaring them.

87) Is the threshold of \$500 appropriate?

Yes

88) If no, why?

N/A

89) Should certain gifts – or gifts from particular classes or people – be prohibited?

No

Why or why not?

No further comment

90) If yes, what gifts should be prohibited?

N/A

Excluding gifts received in a personal capacity: Guidance questions

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

Yes, this is the biggest issue surrounding the whole disclosure of gifts framework

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

Anything not related to work or Councillor roles or function

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

No further comment

94) If so, what should these be?

N/A

Please justify your proposal.

N/A

Gifts: Guidance question

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

There needs to provision for a clear definition of "gift"

8. Transparency

Public notices: Guidance questions

96) Which general option do you prefer for making local public notices available?

Via online platform and our community paper which is only distributed within the Shire of Bruce Rock

Why?

Placing an article in the West Australian Newspaper is most likely not going to be seen by our local community, unless they are looking for it. There is no official regional newspaper in our area so preference would be to be online or just in our locally distributed community paper.

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

The creation of a Departmental online portal and placed on Council's website

Why?

Similar to State tenders, all information for all LGs will be in the one place

98) With reference to the list of public notices, do you believe that the requirement for a particular notice should be changed?

No comment

Please provide details.

N/A

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

The creation of a Departmental online portal and placed on Council's website

Information available for public inspection: Guidance questions

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

Provision	Documents	In person only	Website only	Both	Neither
Section 5.53	Annual Report			✓	
Section 5.75 & 5.76	Primary and Annual returns for Elected members Includes – sources of income, Trusts, Debts, Property holdings, Interests and positions in corporations.	✓			
Section 5.87	Discretionary disclosures generally				✓
Section 5.82	Gifts (already required to be on the website)		✓		
Section 5.83	Disclosure of travel contributions (already required to be on the website)		✓		
Elections Regulations 30H	Electoral gifts register		✓		
Section 5.98A	Allowance for deputy mayor or deputy president				✓
Section 5.100	Payments for certain committee members				✓

Function and General Regulations 17	Tenders Register		✓		
Section 5.94 & Administration Regulations 29	Register of delegations to committees, CEO and employees				✓
	Minutes of council, committee and elector meetings		✓		
	Future plan for the district		✓		
	Annual Budget		✓		
	Notice papers and agendas of meetings		✓		
	Reports tabled at a council or committee meeting				✓
	Complaints register (concerning elected members)		✓		
	Contracts of employment of the CEO and other senior local government employees				✓
	Schedule of fees and charges			✓	
	Proposed local laws		✓		
	Gazetted Local laws (and other law that has been adopted by the district)		✓		
	Rates record	✓			
	Electoral roll	✓			

101) Should the additional information that is available to the public in other jurisdictions be available here?

No comment

If so which items?

N/A

How should they be made available: in person, website only or both?

N/A

102) Is there additional information that you believe should be made publicly available? Please detail.

No comment

103) For Local Governments: How often do you receive requests from members of the public to see this information?

N/A

What resources do you estimate are involved in providing access in person (hours of staff time and hourly rate)?

N/A

Access to information: Guidance question

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

No comment

Expanding the information provided to the public: Guidance questions

105) Which of these options do you prefer?

Option 1 Status quo

Why?

Meets the current need, other options would increase red tape and increase workloads, administrative burden and require additional resources. Local Governments should be able to determine which of the addition information they wish to provide that meets the needs of their community. Allot of additional work to make available information that some communities are not interested in.

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:

Proposal	No	Optional	Required
Live streaming video of council meetings on local government website		✓	
Diversity data on council membership and employees		✓	
Elected member attendance rates at council meetings		✓	
Elected member representation at external meetings/events		✓	
Gender equity ratios for staff salaries	✓		
Complaints made to the local government and actions taken		✓	
Performance reviews of CEO and senior employees	✓		
Website to provide information on differential rate categories		✓	
District maps and ward boundaries		✓	
Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission.			✓

Financial and non-financial benefits register	✓		
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107) What other information do you think should be made available?

No comment

Expanding the information available to the public: Guidance question

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

The placing of staff reviews in the public domain is completely inappropriate and should not be placed in the public domain. You do not see the performance reviews of employees in business or other sectors made available so why should this occur for Local Government staff.

This is especially inappropriate in regional, rural and remote Council's where the community all know the staff individually and many interact regularly at a social level. To have their work performance judged by everyone in the town and subject of "pub talk" would make it very uncomfortable for staff to interact in the community that they live.

9. Red Tape Reduction

Minister's Questions

Defining red tape: Guidance questions

109) Which regulatory measures within the Act should be removed or amended to reduce the burden on local governments?

- This is a task which should be undertaken by a specific committee
- Council supports the WALGA submission in relation to Red Tape Reduction

Please provide detailed analysis with your suggestions.

Council supports the WALGA submission in relation to Red Tape Reduction

a) Briefly describe the red tape problem you have identified.

N/A

b) What is the impact of this problem?

N/A

Please quantify if possible.

N/A

c) What solutions can you suggest to solve this red tape problem?

N/A

110) Which regulatory measures within the Act should be removed or amended to reduce the burden on the community?

N/A

Please provide detailed analysis with your suggestions.

N/A

a) Briefly describe the red tape problem you have identified.

N/A

b) What is the impact of this problem?

N/A

Please quantify if possible.

N/A

c) What solutions can you suggest to solve this red tape problem?

N/A

Special majority: Guidance question

111) Should the provisions for a special majority be removed?

Yes

Why or why not?

The provision for special majority should be removed as an absolute majority should be deemed as sufficient.

Senior employees: Guidance questions

112) Is it appropriate that council have a role in the appointment, dismissal or performance management of any employees other than the CEO?

Yes

Why or why not?

Not in the selection process, however for Council to rubber stamp the appointments, following the selection process.

113) Is it necessary for some employees to be designated as senior employees?

Yes

If so, what criteria should define which employees are senior employees?

No comment

Exemption from accounting standard AASB124 - Related party disclosures: Guidance questions

114) Are the existing related party disclosure provisions in the Act sufficient without the additional requirements introduced by AASB 124?

Yes

Why or why not?

It doesn't provide any relevant information, is an unnecessary additional red tape burden on local government and a waste of staff time and resources.

Disposal of property: Guidance questions

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?

Why are thresholds required? They should be removed altogether.

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

As above

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?

As above

If so, what should it be and why?

N/A

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?

As above

119) Is there an alternative model for managing the disposal of property?

Standard arrangements allow for public notice of disposal through budget and local public notice which is transparent

Review S3.58 to reduce complexity, specifically around valuation and clarity around the definition of "disposal".

Please explain.

N/A

Reducing red tape: Guidance question

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

No Comment

10. Regional Subsidiaries

Minister's Questions

Regional subsidiaries: Guidance questions

121) Which option do you prefer?

Option 3 Where regional subsidiaries are permitted to borrow from financial institutions

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

Yes

123) Why or why not?

Allows Regional Subsidiary to be autonomous from its members

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

They should be similar to those powers of local governments

Regional subsidiaries: Guidance 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*?

It is too complicated and it should be easier to establish and run, this in term would see the Regional Subsidiaries model worth pursuing