

Local Government Reform

City of Armadale Submission

December 2021

1.1 Early Intervention Powers

Supported.

The City supports the establishment of a Chief Inspector of Local Government, supported by an Office of the Local Government Inspector.

Early intervention is supported, and the introduction of the Inspectorate will support a swift response to disruptive or dysfunctional behaviours.

The City does have concern with the local government being responsible for dealing with minor behavioural complaints and submits to the Department that this also be within the scope of the Inspectorate.

The City does not support the process of peer decision making for behavioural complaints due to the potential to increase animosity or conflict within local governments. Professional intervention at the earliest opportunity by an independent body is preferred.

These matters should be dealt with by the Inspectorate in completeness with the ability to recoup complaint costs from local governments per current practice with the Local Government Standards Panel.

1.2 Local Government Monitors

Supported.

The City supports the establishment of Local Government Monitors. This process will support swift resolution as identified in the City's response at 1.1.

1.3 Conduct Panel

Supported, in part.

Not supported – the creation of a duplicate body to the Inspectorate

Whilst the City generally supports the overarching concept proposed for conduct complaints management, the City does not support the creation of another body to deliver this function. It is suggested that the proposed remit comes under the auspice of the Local Government Inspectorate. The City supports a process where serious or repeat breaches be within the responsibility of the Office of the Independent Assessor, with appeals to be heard by the State Administrative Tribunal rather than prosecution through the courts.

1.4 Review of Penalties

Supported.

The City supports a review of penalties and notes there is limited information provided in terms of the scale of the penalty to be applied and what breaches/offending is prescribed. The penalty should be commensurate with the seriousness of the offence or history of offending and set as an “up to X months” etc so the penalty is scalable.

Councillors who are suspended should not get sitting fees or allowances while subject to a suspension.

The City supports clarity and certainty around when a councillor will be disqualified for multiple offences.

1.5 Rapid Red Card Resolutions

Supported.

The City supports the principle of Rapid Red Card Resolutions and requests the regulations provide clear guidance to ensure consistent application of the power given to presiding members.

There is the potential for this power to be abused, therefore consideration should be given to the ability for other councillors to call point of order to overrule the presiding member by absolute majority.

Requiring a “red carded” member to sit silent for the rest of the meeting is not supported, they should be given a first and final warning and be able to speak to and move motions as to do otherwise may infringe implied political freedom of speech and may be unconstitutional (see: *McCloy v NSW [2015] HCA 34*). There should be clarity about when a member can be directed to leave the chamber (first and final warning and then you are out but ejection by Presiding Member should also be subject to point of order too). A Mayor should not only have to notify the Inspector of an ejection but provide the video and/or audio recording.

1.6 Vexatious Complaint Referrals

Supported.

This should encompass an entity as well as a person to deal with vexatious complainant-like conduct from organised groups who have the capacity to consume an inordinate amount of City resources.

In respect to 3), supported provided that the function is optional rather than mandatory and the CEO still retains the ability to make their own determination as to whether a complainant is vexatious in accordance with Council policy.

1.7 Minor Other Reforms

Supported.

The City welcomes operational guidance from the DLGSC and agrees such practices will lead to consistent understanding and application of statutory provisions by local government.

2.1 Resource Sharing

Supported.

It is noted by the City the objective of this proposed reform is to encourage resource sharing practices among smaller regional local governments. It is not practical for band 1 local governments to implement practices such as sharing a CEO, however such practices will be beneficial to smaller regional local governments and will encourage regional collaboration. The City strongly supports implementation of reform for resource sharing.

2.2 Standardisation of Crossovers

Supported.

The City would encourage the provision of additional information to local governments in order to make valuable submissions on the Standardisation of Crossovers. There are a broad range of crossover requirements that exist across the state and vary according to land use and soil classifications.

The City understands WALGA have been involved in the working group of the Minister on red tape reduction for standardisation of crossovers. The reform is supported in principle.

2.3 Introduce Innovation Provisions

Supported.

It is noted limited information is available on the proposed new provisions which would allow exemptions for certain requirements of the *Local Government Act 1995*. This is not a reform which was previously contemplated by the Panel Report. The City supports the principle of Innovation Provisions, however requests local governments be provided with further information to make valid and meaningful submissions on the proposal.

2.4 Streamline Local Laws

Supported in part.

Item 2 is not supported.

The proposed automatic deletion is not supported and should be replaced with an automatic roll over to a model local law so that there is no vacuum of regulation that could affect public safety.

The City welcomes further information for local governments consideration with respect to the proposed Model Local Laws.

2.5 Simplifying Approvals for Small Business and Community Events

Supported.

The City supports initiatives which would simplify the process for approvals for small business and community events. This again is an area not previously contemplated by the Panel Report. There is limited information available with respect to the proposed reforms however the principle supports the Small Business Friendly Approvals Program. The City advocates for the program and encourages processes which streamlines the processes of obtaining licences and permits from local government authorities for small business.

The City welcomes the provision of detailed criteria which would need to be provided and allow for further submissions.

2.6 Standardised Meeting Procedures, Including Public Question Time

Conditionally supported.

The City supports the implementation of standardised meeting procedures to provide greater clarity for ratepayer and community engagement with the local government meeting processes. Such a proposal should improve community understanding of the process and increase engagement.

It is recommended the prescribed standing orders allow for the range of variations in councils such as those operating under a committee system. A standardised model should also consider matters such as a 'Welcome to Country' introduction and public question time procedures.

2.7 Regional Subsidiaries

Supported in part.

With respect to employee conditions, not all local governments have the same Enterprise Agreements and henceforth different conditions and benefits apply. The employees of a regional subsidiary should have the Local Government Award as their base conditions with the ability for their own enterprise agreement to be negotiated.

3.1 Recordings and Live-Streaming of All Council Meetings

Supported, with further clarification requested regarding confidential items.

It is noted the City supported this recommendation following the Panel Report.

The City supports the principle of recording and live-streaming all Council meetings for band 1 and 2 local governments. The City has recently resolved to progress investigations into live-streaming options. The proposal lacks some detail which the City would like the opportunity to make further submissions with respect to.

Of particular concern is the requirement to record confidential items and the submission of those recordings to the DLGSC for archiving, particularly pertaining to confidential legal advice.

There is insufficient information available regarding the controls to be put in place to ensure confidential recordings remain confidential, and what the purpose is for archiving by the DLGSC, how Freedom of Information will be treated by the DLGSC, how access will be authorised and local governments notified. The City recommends the sector have further opportunity to make submissions with respect to the detail of this element of the proposal.

3.2 Recording All Votes in Council Minutes

Supported.

It should be noted that Councillors have the ability to call for votes to be recorded now, but for the majority of items this is not necessary. This is a practice not currently adopted by the City, however it is acknowledged it is an evolving common practice and the City supports this proposal.

3.3 Clearer Guidance for Meeting Items that may be Confidential

Supported, however refer to the City's submission at 3.1.

Clarity is required in respect to confidential information per 3.1 above and legal advice provided to Elected Members during Council meetings, or which requires discussion. The requirement of these items to be recorded is of concern with respect to maintaining confidentiality.

Not all local governments who have currently adopted recording and live-streaming policies, record confidential items.

3.4 Additional Online Registers

Supported.

The City acknowledges the additional administrative costs of implementing this proposal however supports the improvement to ease of access to information to the public, should they require that information.

It is noted much of the information to be included in registers is already readily available to the public via alternate sources (website, public notices, minutes etc).

3.5 Chief Executive Officer Key Performance Indicators (KPIs) be Published

Conditionally supported.

This is not a current practice at any level of the public sector and the City seeks clarification on why it is proposed this practice be imposed on local governments.

A foreseeable consequence of this initiative is that CEO KPIs will become broad and vague, with the potential for unmeasurable or unworkable KPIs to be made. The Local Government Amendment Act 2019 removed the requirement for a CEO's contract of employment to be available for public inspection. This proposal seems to contradict that.

The recent statutory changes to the CEO recruitment and performance management process has improved employment practices related to CEOs. The benefit to the publication of CEO KPIs does not appear to be a valuable benefit, and while the City will conditionally support the proposal, the requirement for this proposal is questioned. The City would welcome further detail on this proposal to make submissions.

4.1 Community and Stakeholder Engagement Charters

Supported, however the City maintains a proposed model Charter must take into account the varying needs and geographical factors across the sector. The sector must be consulted on the content of the proposed Charter.

A community engagement charter, which includes minimum standards for community engagement, allows a streamlined opportunity for local governments to communicate clearly when, how and on what matters the community will be engaged. A charter can help councils identify the matters on which to engage, evaluate the resources needed and provide guidance on the best methods to engage on a particular issue.

Council has previously adopted policy COMD 2 Community Engagement.

4.2 Ratepayer Satisfaction Surveys (Band 1 and 2 local governments only)

Supported, in principle, but with minimum requirements.

The City supports the principle of ratepayer satisfaction surveys, and notes the City already regularly undertakes such surveys, with both general and tailored questions to ensure the Council receives greatest value from the feedback from the community.

The City supports an approach that requires local governments to conduct surveys of both ratepayers and the wider community, but one which is not a 'one size fits all', limiting the value of the survey to Councils who may be seeking feedback around particular initiatives or matters unique to their area. Operational Guidelines around the survey approaches would add value to the process, similar to the Integrated Planning and Reporting Guidelines.

4.3 Introduction of Preferential Voting

Not supported.

The City strongly opposes the introduction of preferential voting.

It is a long-standing position of objection by WALGA and the sector generally that preferential voting is not supported nor needed in local government. The City supports WALGA's position. Preferential voting in other jurisdictions in Australia is in effect on the premise that voting is compulsory. Compulsory voting should be mandated if preferential voting is adopted. There are no relevant case studies in Australia to reference for preferential voting where voting is not compulsory, so the success of this approach cannot be measured. It is not supported.

4.4 Public Vote to Elect the Mayor and President

Not supported.

The City strongly objects to this proposal and notes that no evidence has been provided to justify this initiative. It is further noted that since 2000, the circumstances involving the dismissal of elected Councils have all involved local governments with a popularly elected Mayor or President. Henceforth the notion that such a change by default will deliver better outcomes for ratepayers is simply not accepted.

This change would see only those who have the financial capacity to run substantive campaigns be elected as Mayor, or those who have political party backing. The effect of this will be an inequitable result for local democracy where the outcome is predicated on financial resources rather than the best candidate for the community.

Should Councils wish to change from a Council—elected Mayor or President to a Mayor or President elected by vote of the electors of the district, there is a process prescribed in the Act for such a change, as demonstrated recently by the application of that process by the City of Rockingham and City of Stirling.

Due to the implications of such a change, and the sufficient process already in place, this proposal is considered to be completely unwarranted and unjustified.

4.5 Tiered Limits on the Number of Councillors

Supported.

Following the recommendation from the Panel report, the City supported mandatory population thresholds to be determined by legislation. It is noted the number of Councillors for a population of up to 5,000 being restricted to 5 could be problematic (attendance issues etc) and the City supports WALGA's recommendation for an applicable range of 5-7 Councillors for this population band.

4.6 No Wards for Small Councils (Band 3 and 4 Councils only)

Supported.

As a band 1 local government, the City supports the use of wards for councils. It is acknowledged this may not be as effective in some band 3 or 4 local governments. This will reduce compliance obligations for smaller local governments, such as the removal of the requirement for 8 yearly ward reviews.

The City supports the principle, however would not be supportive of such an approach to band 1 or 2 local governments.

4.7 Electoral Reform – Clear Lease Requirements for Candidate and Voter Eligibility

Supported.

The City notes the DLGSC has identified issues surrounding sham leases following recent inquiries. The proposed reforms for Candidate and Voter Eligibility are supported.

4.8 Reform of Candidate Profiles

Supported.

The City supports Reform of Candidate Profiles and notes there is limited detail regarding the proposed reforms while further work is to be undertaken to evaluate how longer candidate profiles could be accommodated.

For some local governments without wards the ballot paper can be excessively large and it is recommended this be considered when undertaking the further work on reform of candidate profiles.

To extend candidate profiles further has the potential to decrease the rate of voter participation, genuine engagement and equity to those drawing a later ballot position. A solution may be to allow candidates to provide a hyperlink to a webpage or social media page that contains further information. Technology should be utilised to avoid excessive ballot papers (such as QR codes).

4.9 Minor Other Electoral Reforms

Supported.

The minor proposed reforms are supported by the City and support the overarching objective of this theme for stronger local democracy and community engagement.

5.1 Introduce Principles in the Act

Supported.

New principles are proposed to be included to foster a culture of better practice, based on the recommendations of the Panel Report.

The City supported those recommendations from the Panel Report, and continues its support, in principle, subject to the availability of further information on the proposed principles.

5.2 Greater Role Clarity

Supported.

It is proposed roles will be further defined, providing a greater understanding of the CEO's responsibilities and clear delineation between the functions of council and the CEO, as leader of the administration. The City supports the principle of greater role clarity.

It is noted the proposed roles will be open to further consultation and input. The City will make further submissions at this time.

5.3 Council Communication Agreements

Supported.

It is noted this report objective is to achieve consistent availability of information to Elected Members. The WALGA recommendation is for a consistent, regulated Communications Agreement.

The City supports the principle of a communications agreement outlining communications process between councillors and the CEO. It is the understanding of the City communications agreements between Ministers and agencies have no set format or rules. The requirement for adoption of communications agreements may appropriately be dealt with via a local government guideline that provides clarity about what documents can be accessed and for what purpose.

5.4 Local Governments May Pay Superannuation Contributions for Elected Members

Supported

Elected Members should receive superannuation contributions to encourage equality for people represented on Council, and it recognises the commitment to elected office can reduce the opportunity for an Elected Member to undertake employment and earn superannuation contributions. It is for this reason Council support superannuation contributions for Elected Members, on the proviso that it is mandated in legislation.

5.5 Local Governments May Establish Education Allowances

Supported

The City, like many local governments have a policy position with respect to local government contributions for Elected Member education expenses. This initiative falls under the general competency doctrine provided by the Local Government Act and could be dealt with at a policy level, however the City supports a streamlined approach to Elected Member education allowances.

5.6 Standardised Election Caretaker period

Not supported.

The City has considered this proposal and a state-wide mandatory caretaker period for local governments is not supported. The City maintains its position a caretaker position should be voluntary, not mandated.

As a growth Council there is often the need for complex planning matters such as DCP, Precinct Plans and Structure Plans that have been developed over long periods to be dealt with regardless of when an election period falls.

The City's primary concern is the impact on progression for a growth Council such as the City of Armadale, and the implications of "holding up business" which do not appear to be considered by this proposal.

It is noted that in State Government during an election caretaker period, many functions and powers are delegated to Directors General. Local government does not have this power of delegation notwithstanding that already provided for in the Act.

5.7 Remove WALGA from the Act

Not Supported.

More information is required to support the initiative and understand its ramifications for the sector. The City would welcome the opportunity to consider WALGA's position on this proposal before making a submission, however that information is not available to Council at the time of endorsement of the City's submission.

5.8 CEO Recruitment

Supported.

The City has considered the proposed reform and notes this was not a recommendation from the Panel Report. The changes would augment the CEO standards in relation to recruitment introduced in February 2021. The City supports the proposal in principle.

The City welcomes further information regarding the process for obtaining the approval of the Inspector for appointment of persons on CEO recruitment panels which are not from the DLGSC approved list and recommends this be a simplified process. Local governments have not long had the opportunity to apply the changes to the CEO recruitment process before further changes are proposed to be implemented.

It is noted such a process would not impede on a Council's ability to engage a recruitment consultant for the recruitment process, which is an important resource for many local governments when conducting recruitment of a local government CEO.

The initiative may be considered an erosion of the general competency doctrine provided by the Local Government Act and the DLGSC guidelines provide ample guidance on the subject.

6.1 Model Financial Statements and Tiered Financial Reporting

Supported.

It is understood the objective of Model Financial Statements and Tiered Financial Reporting is to improve transparency and accountability in local government, with reporting to be in a format which is easily accessible to ratepayers.

As a band 1 local government, the City would be required to produce financial statements in accordance with the proposed standard templates for Annual Financial Statements. Whilst the format of these templates is not available at the time of preparing this submission, the City supports changes which will simplify local government financial reporting. The City agrees these proposed changes will offer improved financial reporting, making statements clearer and reducing unnecessary complexity.

6.2 Simplify Strategic and Financial Planning

Supported.

The City supports a minimum standard which would not inhibit best practice being applied to the initiative by local governments.

6.3 Rates and Revenue Policy

Supported.

The introduction of the Rates and Revenue Policy is supported by the City to improve transparency and access to simplified information by ratepayer. The provision of a template for use or adaption by local governments will support efficient adoption of this requirement.

6.4 Monthly Reporting of Credit Card Statements

Supported.

The City tables credit card expenditure at Council meetings on a monthly basis which is acknowledged as a widespread practice among local governments. The requirement to table the credit card statements is supported, however it is considered a specific regulatory provision for this is unwarranted, rather, credit card expenditure can be reported along with warrant of payments listings as they are presented to Council.

6.5 Amended Financial Ratios

Supported.

The City welcomes continual work to improve the benchmarks and Financial Health Indicators. The City supports what is prescribed reflecting the current outcomes of the DLGSC Working Group.

6.6 Audit Committees

Supported – independent membership to be mandated

Not Supported – independent chair or majority of members independent.

The City supports an approach requiring one or more independent members to form part of the Audit Committee. The City has already adopted this approach.

The City does not support the requirement for an independent chair, or a mandated majority of independent members. The basis is that Councillors have good working knowledge of the operations of Local Government, Local Governments have the oversight of the Auditor General and are subject

to performance audits conducted by the OAG and further, to have Councillors in a minority would diminish the value of Councillors to the local government.

It is noted that other jurisdictions such as NSW have adopted an independent audit committee, however their scope of services are different (broader) to WA and their risk profile is consequently different. We believe the City's suggestion strikes the right balance.

It would be difficult to implement the Minister's proposal without addressing the remuneration of independent members. The City understands the Minister is aware of this issue.

6.7 Building Upgrade Finance

Supported, subject to robust regulatory controls being in place to prevent abuse such as nepotism or conflicts of interest. The City supports the principles behind local governments providing loans to third parties for specific building improvements which would allow local governments to lend funds to improve buildings within their district, however it is noted such practices would require sufficient governance controls in place to ensure financial risks are managed, and the process is equitable and in the best interests of the community.

6.8 Cost of Waste Service to be Specified on Rates Notices

Supported.

This reform would require waste charges to be separately shown on rates notices. The City supports this reform, noting this will require a relatively simple change and improve costs awareness for rate payers.