

Local and Statewide Public Notice (s.1.7 and 1.8)

The City welcomes the opportunity to modernise the requirements of giving public notice of particular matters, as prescribed in the Act. The Minister has indicated an intention to deal with this by making information available online, as opposed to the current requirements for print media. It is already common practice within the local government industry to place statutory public notices on official websites, despite there being no legislated requirement to do so.

As an example, the *City of Perth Act 2016*, section 4(a)(ii) recognises the *important role that the City of Perth plays in representing the broader Perth area and the State of Western Australia*. Further, section 8(1)(f) states that one of the objects of the City of Perth is to *initiate and promote the continued growth and environmentally sustainable development of the City of Perth and ensure its continued role as a thriving centre of business with vibrant cultural and entertainment precincts, while enhancing and protecting its natural environment and having due regard to the flow-on impact on the Perth metropolitan area* (emphasis added underlined).

It is suggested that having regard for the broader community when local governments make key strategic decisions is something that should be expressed within the “Role of Council” as defined within the Act. This could be achieved as part of a broader expansion of the “Role of Council”, to recognise that the demands on local governments have grown significantly since the inception of the 1995 Act.

A specific example as to why this may be beneficial could be a local government considering the construction of a major sporting centre. If done in isolation with no due regard as to whether surrounding local governments might be considering similar developments, this could result in unnecessary duplication, ultimately to the financial detriment of ratepayers and the broader community of both the local governments.

Elected Member Training (new proposal)

The City notes previous WALGA State Council resolutions opposing any legislative change that would:

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

The City supports WALGA’s position in this regard.

In the event that mandatory training was to be legislated, the City considers:

1. There should be no retrospectivity, ie. it should only be applied to first time Elected Members;
2. There should be appropriate recognition of prior learning (RPL);
3. Training should be completed within the first 12 months of office; and
4. That penalties for non-completion of training be a reduction in fees and allowances payable.

Stand Down when Contesting State or Federal Election (new proposal)

Currently under the Act, there is no requirement for an Elected Member to either stand down or take leave of absence if they are a candidate for a State or Federal election. If elected to Parliament the Elected Member is immediately ineligible to continue as an Elected Member. Currently it is up to an individual Elected Member to determine if they wish to take a leave of absence.

The City supports any amendment to the Act that would require an Elected Member, when contesting a State or Federal election, to either:

1. Be prohibited from participating in any decision-making capacity of the Council, namely attending Council and Committee meetings; or
2. Take a leave of absence from all aspects of their role as an Elected Member.

It is suggested that either of the above could apply from the issue of Writs for the relevant election.

Extraordinary Vacancies (Division 6 of Part 2)

At present, if a sitting Councillor is elected by the electors to the office of Mayor or President, an extraordinary vacancy occurs pursuant to section 2.32(f). The vacancy created by that Councillor being elected to the office of Mayor or President can only then be filled at an extraordinary election.

It is suggested that where an ordinary election is required (ie more candidates than vacancies), that the vacancy created by virtue of the sitting Councillor being elected to the position of Mayor or President be filled by the candidate who records the next highest number of votes in that election.

Control of Certain Unvested Facilities (s.3.53)

The Act includes provisions, under section 3.53, that have been carried forward from section 300 of the former *Local Government Act 1960*. Former Section 300 stated:

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

Section 3.53 refers to infrastructure as an 'otherwise unvested facility', and is defined to mean "a thoroughfare, bridge, jetty, drain, or watercourse belonging to the Crown, the responsibility for controlling or managing which is not vested in any person other than under this section."

Section 3.53 places responsibility for an otherwise unvested facility on the local government in whose district the facility is located. Lack of ongoing maintenance and accreting age has resulted in much infrastructure falling into a dilapidated state. This, together with the uncertain provenance of many of these facilities, particularly bridges, can place an unwarranted and unfunded burden on local governments.

The City supports the deletion of section 3.53 of the Act, and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.

Tender Threshold (Reg. 11 Local Government (Functions and General) Regulations 1996)

The City supports an increase to the tender threshold from \$150,000 to \$250,000, which is consistent with the State Government tender threshold. This would allow better responsiveness by local governments when procuring relatively low value goods and services.

It must be noted that any purchases up to the tender threshold are already governed by a local governments purchasing policy developed under regulation 11A, which ensures probity in all facets of procurement up to the tender threshold.

Regional Subsidiaries

The Act was amended in late 2016 to enable local governments to establish regional subsidiaries. The *Local Government (Regional Subsidiaries) Regulations 2017*, which were enacted in early 2017, contain significant restrictions that limit flexibility, and reduce the benefits of the regional subsidiary model. In particular, the regulations prevent regional subsidiaries from borrowing from any organisation other than a constituent local government, entering into a land transaction, or commencing a trading undertaking.

The City supports legislative change that would enable regional subsidiaries to:

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

Conduct of Postal Elections (s.4.20 and 4.61)

Currently, the WA Electoral Commission has a legislatively enshrined monopoly on the conduct of local government postal elections.

The City of Greater Geraldton supports any change to legislation that would also allow the Australian Electoral Commission and local governments to conduct postal elections, thus making the process more competitive and removing the current monopoly.

Attendance at Council Meetings by Telephone (s.5.25 and Reg. 14A)

The City supports an amendment to the legislation to clarify the definition of a “suitable place” to allow participation under this provision when an Elected Member is outside the state of Western Australia. At present the application of the *Land Administration Act 1997* when defining a “townsite” or “suitable place” restricts participation to within Western Australia only.

Electors’ General Meeting (s.5.27)

The Act currently requires a general meeting of electors be held each financial year. There is adequate provision in the Act for the public to participate in local government matters and access information by attending meetings, participating in public question time, lodging petitions, and requesting special electors’ meetings.

Accordingly the City supports any amendment to legislation that does not make meetings of electors mandatory.

Special Electors’ Meeting (s.5.28)

The City supports an amendment to section 5.28 to preclude the calling of a special meeting of electors on the same issue within a 12 month period, unless Council determines otherwise.

Gifts and Contributions to Travel (s.5.82 and 5.83)

The current gift provisions in the Act are very confusing and overly prescriptive. The City supports WALGA’s position in advocating for the following through the Department of Local Government’s Gift Working Group:

1. That there only be one section in the Act for declaring gifts; remove declarations for travel.
2. That there be no requirement to declare gifts received in a genuinely personal capacity.
3. That gift provisions apply only for Elected Members and CEO’s. Other staff fall should be covered under the local government’s Codes of Conduct.
4. That only gifts above \$500.00 need to be declared.
5. That there be no defined categories of notifiable or prohibited gifts.

6. That there be exemption for electoral gifts received that relate to the State and Commonwealth Electoral Acts. Therefore, 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.

Revoking or Changing Decisions (Reg. 10 Local Government (Administration) Regulations 1996)

Regulation 10 of the *Local Government (Administration) Regulations 1996* provides a mechanism for the revocation or change to a previous decision of Council. It does not however, contain any provision clarifying that the provisions do not apply to Council decisions that have already been implemented.

At present, this regulatory deficiency is managed administratively (through Standing Orders), but warrants an appropriate legislative amendment to assist in clarifying the rights of an Elected Member seeking a revocation or change.

Local Government (Rules of Conduct) Regulations 2007

The City supports the implementation of official conduct legislation to govern the behaviour of Elected Members. It is suggested that the General Principles of Behaviour outlined in regulation 3 of these regulations would be an appropriate starting point.

Rating Exemptions – Charitable Purposes (s.6.26(2)(g))

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

The City fully supports previous WALGA State Council positions on this matter, namely:

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

Basis of Rates (s.6.28)

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 Act in Western Australia. Eastern State local governments can elect to rate on one of the following options:

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

The City supports the examination of the limitations of the current methods of valuation of land in Western Australia, with a view to exploring other alternatives.

Differential Rates (s.6.28 and 6.33)

It is noted that concern has previously been raised by metropolitan local governments at the amount of vacant land remaining in an undeveloped state for an extensive period of time and holding up development opportunities.

The City supports any 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.

Exemption from AASB 124 (Reg. 4 Local Government (Financial Management) Regulations 1996)

Regulation 4 of the *Local Government (Financial Management) Regulations 1996* provides a mechanism for an exemption from the Australian Accounting Standard. Regulation 16 is an example of the use of this mechanism, relieving local governments from the requirement to value land under roads.

The City supports an amendment that would allow an exemption from the implementation of AASB 124 'Related Party Transactions' due to the current provisions in the Act on declarations of interest at meetings and in Primary and Annual returns. This is regarded as providing appropriate material declaration and disclosure of interests associated with function of local government.