

CITY OF ARMADALE

AGENDA

OF CITY STRATEGY COMMITTEE TO BE HELD IN THE COMMITTEE ROOM,
ADMINISTRATION CENTRE, 7 ORCHARD AVENUE, ARMADALE ON TUESDAY,
10 DECEMBER 2002, AT 5.30 PM.

Meal to be served at 6.30pm

PRESENT:

APOLOGIES: Cr Hodges

OBSERVERS:

IN ATTENDANCE:

DISCLAIMER

The Disclaimer for protecting Councillors and staff from liability of information and advice given at Committee meetings to be read by the Chairman.

DECLARATION OF MEMBERS' INTERESTS

QUESTION TIME

DEPUTATION

Nil

CONFIRMATION OF MINUTES

RESOLVED

Minutes of the City Strategy Committee Meeting held on 12 November 2002, be confirmed.

ITEMS REFERRED FROM INFORMATION BULLETIN

INFORMATION BULLETIN – ISSUE NO.23/2002.

The following items were included for information in the “City Strategy section”

- ✍ Progress Report on Contingency, Operational and Strategic Projects
- ✍ Report on Outstanding Matters

If any of the items listed above requires clarification or a report for a decision of Council, this item to raised for discussion at this juncture.

I N D E X

CITY STRATEGY COMMITTEE

10 DECEMBER 2002

MISCELLANEOUS

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***CITIES FOR CLIMATE PROTECTION REGIONAL ENERGY GROUP BUSINESS
PLAN 2003-2006***

WARD : All
FILE REF : PSC/031
DATE : 19 November 2002
REF : RVD
RESPONSIBLE : ED DS
MANAGER

In Brief:-

- ✍ The Regional Energy Group has prepared a Business Plan for 2003-2006.
- ✍ Recommend that Council endorse the Regional Energy Group's Business Plan recognising that the Plan provides a basis to work towards greenhouse gas emission reductions with financial support from the business community.

Tabled Items

Regional Energy Group Business Plan

Officer Interest Declaration

Nil.

Strategic Implications

Council's vision is to be "*Clean, green and prosperous*" and have a community recognised for "*A tradition of innovation - readily embracing new people and new ideas*". The Business Plan will help Council and the community move towards this vision.

Legislation Implications

Nil.

Council Policy / Local Law Implications

Nil at this stage. However, consistent with recommendations in the Regional Community Greenhouse Action Plan, the Business Plan includes investigation into Town Planning Provisions for efficient housing and subdivision that go beyond the matters identified in the Liveable Neighbourhoods code and the proposed changes to the Building Code of Australia.

Budget / Financial Implications

Council's five-year financial plan identifies \$10,300 per annum towards the Cities for Climate Protection Program. The Business Plan seeks to lever additional funds from the business community so that employment of a Regional Greenhouse Coordinator can continue beyond March 2003, when projects funded by the Local Government Incentive Grant end.

Consultation

The Regional Energy Group/ South-East Region CCP Coordinating Group have endorsed the plan. The Regional Energy Group includes councillors from Armadale, Gosnells and Serpentine Jarrahdale.

BACKGROUND

At its meeting of 18 September 2000 Council resolved (CS55/00):

1. *That Council adopt the City of Armadale Corporate Greenhouse Action Plan, including the goal of trying to reduce corporate greenhouse gas emissions by 20% from 1998-99 levels by 2010-11.*
2. *That Council adopt the Regional Community Greenhouse Action Plan, including the goal of trying to reduce community greenhouse gas emissions within our region by 15% from 1998-99 levels by 2010-11, subject to adoption of the plan by the City of Gosnells and the Shire of Serpentine-Jarrahdale.*

The other councils adopted the Regional Community Greenhouse Action Plan.

Significant progress in implementing the Corporate Greenhouse Action Plan and Regional Community Greenhouse Action Plan has occurred, primarily through the Local Government Incentive Program Grant. The Grant employs a Regional Greenhouse Coordinator from September 2001 to March 2003 to implement key aspects of the action plans.

Some of the main successes achieved by the Regional Greenhouse Coordinator have include the “Switch your thinking” program, and the “Switched on Living” workshops held in partnership with the Neighbourhood Improvement Program. The Regional Greenhouse Coordinator obtained \$13,900 of sponsorship from businesses towards the “Switch your thinking” program. It is expected that the City will meet the criteria to be awarded Milestone 4 of the Cities for Climate Protection program by March next year.

DETAILS OF PROPOSAL

A Business Plan targeted towards securing funding from the business sector and from councils to continue initiatives to reduce greenhouse gas emissions during the next three years has been prepared. *A summary of the business plan appears as part of this agenda item and copies of the Business Plan have been provided to councillors under separate cover. [Please bring this along to the meeting.]*

Council’s endorsement of the Business Plan is sought in order that the plan can be used to seek further sponsorship from businesses.

COMMENT

The Business Plan provides a locally tailored approach for the region addressing energy consumption and greenhouse emissions at a local level. This next phase will further develop community engagement through expansion of existing projects and the introduction of new projects, building on a number of pilot projects undertaken during the last year. It will expand to include both the commercial and industrial sectors where it is proposed to make contact with key industry leaders and develop a process of achieving change.

The Business Plan also includes as a goal the achievement of Milestone 5 of the Cities for Climate Protection Program for the City of Armadale.

***EXECUTIVE SUMMARY –
SE REGIONAL ENERGY GROUP PROJECT
3 YEAR BUSINESS PLAN***



1. ANALYSIS OF EXISTING BUSINESS

The South East Regional Energy Group comprises representatives of the City of Armadale, City of Gosnells and Serpentine-Jarrahdale Shire. The Group's long-term objective is to reduce regional community emissions by 15% by 2010 based on 1998/99 levels, a reduction goal for the region that has been formally adopted by each member Council.

Arising out of research and a community survey, the comprehensive "switch your thinking!" campaign was tailor made to address locally relevant barriers and opportunities to changing environmental behaviour. The resulting Regional Greenhouse Action Plan 2002 included:

- ? 3 Seniors' workshops
- ? Regionally rotating library and show display
- ? 12 week Heritage FM radio series
- ? Regional Green Light Schools Fundraiser disseminating compact fluorescent light globes
- ? 12 week press advertising and editorial series
- ? 4 Switched on Living neighbourhood workshops pilot as part of City of Armadale's Neighbourhood Improvement Programme
- ? Tidy bin 3 month advertising programme
- ? Launch of Switch your thinking! Website

2. ANALYSIS OF MARKET AND COMPETITION

The existing market for the services provided by the South East Regional Energy Group comprises a very wide range of community activities covering the residential, commercial, industrial, transport and waste sectors. Phase II of the Regional Greenhouse Project will operate in collaboration rather than competition with the other agencies. It will take advantage of the niche available to local government to work effectively at delivering actions at a grass-roots level, in a mutually complementary way with the broader approach of State and Federal agencies.

3. VISION AND MISSION

Vision: *Work in partnership with our communities as responsible members of the global community to facilitate a reduction in regional greenhouse gas emissions by 15% by 2010, based on 1998/1999 levels.*

Mission: *The SE Regional Energy Group will inspire and build capacity for resource conserving behaviour in the community both directly, and through the leadership of our Local Governments and project partners.*

It encompasses the goal of the three individual Councils involved, adopted within the Regional Greenhouse Action Plan (2000): To have all developments and enterprises (including Councils') adopt environmental management as part of their core business or development including greenhouse gas abatement measures.

4. BUSINESS DEVELOPMENT PLAN

The following table outlines proposed activities for the next three-year phase of the Regional Greenhouse Project.

PROJECT	TARGET SECTORS
Research and introduce LGA policies & procedures	All sectors (housing, transport, waste, industry, commerce)
Green Light Schools Fundraiser II	School children and women
Regional Branding and Voucher project	Commerce and general community
Regional Housing Retrofit Pilot	Whole community
Regional "Switched on Rural Living" workshops	Semi rural & rural residents.
Regional "Switched on Urban Living" workshops	Aged, economically & socially disadvantaged & wider community
"Switched on Industry"	Industrial sector (ie manufacturing)
"Switched on Commerce"	Commercial sector (ie Retail)

5. FINANCIAL PLAN

INCOME	2003/2004	2004/2005	2005/2006	Total Amount 3 Years
Carry over funds	\$88,298			\$88,298
SEDO grant	\$27,273			\$27,273
City of Gosnells	13,650	13,650	13,650	40,950
City of Armadale	10,500	10,500	10,500	31,500
Serpentine-Jarrahdale Shire	5,565	5,565	5,565	16,695
Gold sponsor	30,000	30,000	30,000	90,000
Silver sponsor	10,000	10,000	10,000	30,000
Silver sponsor	10,000	10,000	10,000	30,000
Silver sponsor	10,000	10,000	10,000	30,000
Silver sponsor	10,000	10,000	10,000	30,000
Grant funding	25,000	25,000	25,000	75,000
TOTAL	240,287	124,715	124,715	489,719

ANNUAL OPERATING COSTS	AMOUNT	IN KIND CONTRIBUTIONS			IN KIND TOTAL
		Gosnells	Armadale	S-J	
RGC salary & on-costs	\$62,400				
RGC vehicle costs	\$10,000				
Telephone, office supplies & equip.	\$ 5,000				
Office space		\$1,600	\$1,600	\$800	\$4,000
Administration		\$4,000			\$4,000
TOTAL	\$77,400				\$8,000
ANNUAL IMPLEMENTATION BUDGET	\$50,000				
TOTAL ANNUAL EXPENSES BUDGET	\$127,400				\$8,000
Total Budget for 3 year project	\$382,200				\$24,000

Continuing the current approach allows us to achieve region-wide changes that are cost effective and far reaching. However, behaviour change occurs slowly. It is essential that long-term funding is secured so that awareness can translate to behaviour.

Options

Council could consider:

- ? Not supporting the continuation of the Regional Greenhouse Project (RGP).
- ? Supporting the continuation of the RGP at the level as suggested in the Business Plan (i.e. maintaining the status quo).
- ? Supporting the continuation of the RGP at a higher level than suggested here, e.g. increasing its annual contribution from the equivalent of a Silver Sponsor to that of a Gold Sponsor (see page 30 of the Business Plan).

CONCLUSION

In order to secure further support from the business sector, to continue the good work achieved by the Regional Greenhouse Gas Coordinator position and build on existing initiatives it is considered essential that the Regional Energy Group have a Business Plan endorsed by the three Regional Energy Group member Councils. The Business Plan is considered to be a useful document to plan future actions and seek financial support from businesses.

RECOMMEND

That Council endorse the Regional Energy Group's Business Plan recognising that the Plan provides a basis to work towards greenhouse gas emission reductions with financial support from the business community.

Moved Cr _____
Motion Carried/Lost ()

THE WESTERN AUSTRALIAN STATE SUSTAINABILITY STRATEGY

WARD : ALL
FILE REF : PSC/33
DATE : 21 November 2002
REF : IM
RESPONSIBLE : EDDS
MANAGER

In Brief:-

The Draft State Sustainability Strategy was released by the Premier in September 2002 for a four month public submission period. The Strategy was the result of an election commitment.

Sustainable development has become a significant concept in the planning and development process. It is appropriate for Council to be aware of the draft Strategy and use the opportunity to make a submission if there are any areas of concern.

Recommend that Council resolve to make a submission on the Draft State Sustainability Strategy:

- ? commending the State Government for preparing the draft Strategy;
- ? requesting a review of the definition of sustainable development to reflect the acceptability of trade-offs provided any development has a greater net benefit than alternatives when all relevant economic, social and environmental factors are taken into account;
- ? expressing concern that sustainability assessment should not result in an additional administrative layer on the existing planning approval process;
- ? expressing some caution at the use of Statements of Planning Policy for the achievement of land management objectives; and
- ? not providing a general endorsement to the detailed individual Proposed Actions at this stage subject to providing additional officer comment relating to local government.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

There could be strategic implications to the way development occurs arising from the Strategy.

Legislation Implications

Some of the recommendations relate to legislative change.

Council Policy / Local Law Implications

There may be implications for the Council in the design of its policies and local laws to take account of sustainable development imperatives.

Budget / Financial Implications

Nil.

Consultation

✍ ED Technical Services, ED Director Community Services, Environmental Officer

BACKGROUND

The Draft State Sustainability Strategy was released by the Premier in September 2002 for a four month public submission period (closing on 10 January 2003). The Strategy was the result of an election commitment to develop a sustainability strategy for WA.

Sustainable development has become a significant concept in the planning and development process and therefore it is appropriate for Council to be aware of the draft Strategy and use the opportunity to make a submission if there are any areas of concern.

While most of the strategies and actions affect State Government, their general nature could result in there being wider implications across a range of Council activities. The increasing use of the concept of sustainable development may be welcomed to the extent that it is synonymous with integrated planning, however, Council should be wary where cost implications could arise from a commitment to the detailed recommendations.

The Draft Strategy Report

The 234 page report contains chapters on the relationship between sustainability and governance, global sustainability, natural resources, settlements, community and business. Out of it all come 249 proposed actions for state and local government, the private sector and the community. However, the critical issue is what sustainable development actually means and how it fits into the governmental development approval process – this is the issue addressed in the opening chapter and it is the focus of this report.

What is “sustainable development”?

The United Nations Brundtland Commission on Environment and Development defined sustainable development as “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*”. This approach clearly envisaged that the environment would not necessarily be improved by simple conservation. Development would need to occur to achieve a better society – and accordingly thinking has developed in terms of how the three elements of the needs of the environment, the economy and the community can progressively advance in harmony to achieve a more sustainable world.

The draft Strategy defines sustainability as “*meeting the needs of current and future generations through simultaneous environmental, social and economic improvement.*” The Strategy takes the view that – “an activity that only meets two of the factors simultaneously (say economic and social but “trades-off” the environment) is ultimately not sustainable.”

Comment - In principle it can be agreed that it is desirable for development to occur without causing environmental problems and it can also be agreed that it is desirable to meet the needs of current and future generations through simultaneous social, environmental and economic improvement. However, if this is applied strictly to the decision making process problems could arise. In reality trade-offs are desirable and inevitable – as long as it is clearly understood what these costs and benefits are and that a balanced and net beneficial outcome is achieved.

Trade-offs in pursuit of general improvements, for instance the establishment of bushland reserves at the cost to the economy or the achievement of high quality urban development at the cost of a reduced foreshore reserve, have been long accepted as the basis for planning and should be recognised in any new arrangements under the heading of sustainable development. In the local context it is important to establish that any new definition of sustainable development would not be used to preclude proposals such as the Araluen Country Club or the Churchmans Brook Estate, the conversion of Wright Lake into the Champion Lakes regional recreation facility or the development of land between Forrestdale and Brookdale. Such proposals have to demonstrate that the environmental implications can be managed – but they do not necessarily result in environmental improvement. They all come with some environmental risk in the pursuit of significant community and economic gain.

While later sections of the Strategy report (for instance on page 38) indicate that trade-offs to achieve a net benefit are acceptable, the risk is that some individuals and agencies will rely solely on the definition to forestall desirable development without reference to the Strategy as a whole.

In conclusion, the definition of sustainable development needs to be amended to reflect the acceptability of trade-offs provided any development has a greater net benefit than alternatives when all relevant economic, social and environmental factors are taken into account.

Bureaucratic implications

The draft Strategy may result in an additional layer of bureaucracy. A new process of Sustainability Assessment is proposed for checking that sustainability is promoted. The implications of this on the planning process are not fully explained in the Strategy and accordingly there is a risk of establishing a new process to require a planning assessment (under a different name) of a planning assessment. This would impose additional costs and delays on the approval process with limited benefit.

In addition, it is proposed to establish sustainability assessment units in the EPA (for environmental), DPI (for social) and Treasury (for economic). This could be seen as at odds with the objective of securing greater integration of the elements of sustainable development. It is possible that the separate entities will require another layer of bureaucracy to enforce adequate liaison with each part. From a local government perspective, the embracing of sustainable development is important to take place within current decision making structures. The council should be more conscious of its decisions meeting the tests of sustainable development – but the establishment of another process or body through which council's decisions as assessed should be resisted.

The Scope of the Strategy

The Strategy has a very broad scope – most areas of government are included. For instance heritage, Indigenous affairs, justice, disability services, health, techniques of public consultation and the arts and multiculturalism are included in the Strategy. By attempting to cover all issues that some may believe could make the world a better place the State Sustainability Strategy loses its proper focus on sustainable development.

Statements of Planning Policy

The Strategy relies heavily on the development and implementation of Statements of Planning Policy (SPPs) to achieve the identified actions. Under section 5AA of the Town Planning and Development Act the West Australian Planning Commission may prepare SPPs and once prepared they are required to be taken into account by the planning system. This means that the Council would be obliged to implement an approved SPP upon review its town planning scheme. SPPs have been used effectively for the R-Codes and the Metropolitan Centres Policy (for example). Whether they would be equally effective for addressing natural resource management problems or responding to housing for the disadvantaged remains to be seen. The use of SPPs for land management rather than land development could prove difficult and was not what SPPs were intended for. It will be necessary for Council to be vigilant and make comment on any ill-conceived SPPs prepared as a result of the Strategy which would require implementation by the Council.

Town Planning Schemes

One approach that has not been grasped in the Strategy is that through the preparation of town planning schemes, particularly through the preparation of local planning strategies, considerations relating to sustainable development could be better debated and policies to be included in schemes justified.

OPTIONS

1. That Council resolve to make a submission on the State Sustainability Strategy.
2. Than Council resolve not to make a submission on the State Sustainability Strategy.

CONCLUSION

The use of the concept of sustainable development is welcomed in that it promotes integrated planning, however, there may be cost implications associated with the numerous more detailed recommendations suggesting that Council's endorsement should be qualified.

The draft State Sustainability Strategy is an important document that could have implications for the future development of the State. However well meaning, there is the potential for the Strategy to be used to complicate and confuse the development approval process. The possibility of confusion most clearly arises with the definition of sustainable development, however there is also a concern that sustainability assessment could result in the imposing of an additional administrative layer on the planning process.

RECOMMEND

That Council resolve to make a submission on the Draft State Sustainability Strategy:

- a. commending the State Government for preparing the draft Strategy;**
- b. requesting a review of the definition of sustainable development to reflect the acceptability of trade-offs provided any development has a greater net benefit than alternatives when all relevant economic, social and environmental factors are taken into account;**
- c. expressing concern that sustainability assessment should not result in an additional administrative layer on the existing planning approval process;**
- d. expressing some caution at the use of Statements of Planning Policy for the achievement of land management objectives; and**
- e. not providing a general endorsement to the detailed individual Proposed Actions at this stage subject to providing additional officer comment relating to local government.**

Moved Cr _____
Carried/Lost ()

REVIEW OF LOCAL GOVERNMENT ACT 1995

WARD All
FILE REF: ACT/1
DATE 4th Dec 2002
REF AFM
RESPONSIBLE Executive Director
MANAGER Corporate Services

In Brief:

- ? This report presents for Council's consideration and comment (88) proposed amendments to the Local Government Act – refer to the report Attachment for details of the proposed amendments together with the position (in italics) on each proposal as recommended by WALGA's Governance Policy Team in preliminary consultation with local governments.
- ? The majority of the proposed amendments stem from the review/consultation process initiated by the Department of Local Government in 1999-2000. Council made submission to this process
- ? The report recommendation is to support the majority of the proposed amendments.

Officer Interest Declaration

Nil

Strategic Implications

To foster an effective professional environment for the governance and administration of the City's services.

Legislation Implications

The report presents (88) proposed amendments to the Local Government Act 1995

Council Policy/Local Law Implications

Nil

Budget/Financial Implications

Nil

Consultation

- ? Western Australian Local Government Association (WALGA)
- ? Department of Local Government (DLGRD)
- ? South East Zone Association Group
- ? Chief Executive Officer

BACKGROUND

In late September 2002, WALGA representatives attended a briefing by the Department of Local Government and Regional Development (DLGRD) regarding proposals to be included in the Local Government Act Amendment Bill No 3. The briefing included being provided with a discussion paper outlining proposed amendments to the Act.

These proposals stem largely from the 1999/2000 consultation process (which Council participated in) but also include additional matters arising since that time.

DETAILS OF PROPOSAL

Presented at **Attachment A-1 to this agenda** for Council's consideration and comment are details of the (88) proposed amendments to the Act. Following each proposed amendment and in italics, is WALGA's comment reflecting the views of their Governance Policy Team which in some instances reflects feedback received from Local Governments.

WALGA is seeking the views of all local governments on the proposed amendments in order to present local government's position to the DLGRD. The Minister has agreed to extend the consultation process and has indicated that the Bill will now not proceed until the end of February 2003.

COMMENT

The majority of the proposed amendments have previously been developed in consultation with local governments (including Council) and are generally supported on the basis that they seek to either clarify the requirements of the Act and/or provide for more effective governance by local governments commensurate with community needs.

The following recommendation:

1. presents for consideration a summary of the proposed amendments that Council has previously considered with qualified support and also those not previously considered and,
2. proposes, consistent with Council's previous deliberations on the matter, Council's support for the remainder of the proposed amendments.

It is to be noted that the following view reflects those conveyed by Council's delegates to the WALGA South East Zone Group at the last zone meeting held on 27th November 2002.

RECOMMEND

That Council provide the following response to WALGA's request for comment on the proposed amendments to the Local Government Act for inclusion in Local Government Act Amendment Bill No 3, ie.

With the exception of the following matters, Council supports WALGA's position on each of the proposed amendments to the Local Government Act 1995,

Proposed Amendment	WALGA's Comments	Council's Comments
<i>Proposals Previously Considered by Council</i>		
<p>40. Delegation of the power to amend Chief Executive Officer's employment contracts – Section 5.36</p> <p>For the purpose of accountability, the Act is to be amended to ensure that the power to amend a Chief Executive Officer's contract cannot be delegated.</p> <p>To achieve this, it is proposed to amend section 5.36 (2) (b) to require an absolute majority of council to be satisfied with the provisions of the proposed employment contract.</p>	<p>Supported This proposal is supported if this allows the matter to be delegated to a committee of the Council.</p>	<p>WALGA's comments are supported however the current proposal requirement for an absolute majority resolution is understood to effectively prevent the matter being delegated to a council committee – requires further consideration so as to enable a committee of Council to amend the CEO's contract terms.</p>
<p>59. Establishing a Disciplinary Tribunal for Council Members – New provision Part 8</p> <p>It is proposed to include a new provision which will provide for the establishment and operation of a tribunal to deal with matters of a disciplinary nature where a council member has not complied with a code of conduct or other relevant laws.</p> <p>It is proposed that this tribunal be appointed by the Minister with the power to initiate disciplinary measures. It is proposed that such measures would include the temporary suspension of council members and other appropriate sanctions.</p> <p>Further consideration will be given to the incorporation of these provisions in the State Administrative Tribunal legislation in due course.</p>	<p>Support subject to further details being developed and its relationship to the State Administrative Tribunal.</p>	<p>WALGA's comments are supported but with the additional comments regarding the appointment of Tribunal members, ie.</p> <ul style="list-style-type: none"> ? the appointments to occur in consultation with the WALGA Executive or the appointments be made from a list of recommended persons as provided by the WALGA Executive, ? there be a list/panel of recommended persons from which appointments are made to preserve impartiality, ? that the persons appointed be either current or ex-elected local government members having served in local government since the 1995 Act came into operation for reasons of local government acceptance of such persons and their awareness/experience of local government operations (NB: local government officers not be members)

Proposed Amendment	WALGA's Comments	Council's Comments
<i>New Proposals Not previously considered by Council</i>		
<p>An amendment to the Act to have the provisions to conduct an Annual Electors Meeting made optional and to include alternate legislation for the adoption of the Annual Report. It is felt there is sufficient opportunities available to the community to seek a response to issues without the need for the holding of a statutory meeting which are in the main not well attended. It would be proposed that Councils have the option to determine whether or not to hold a meeting.</p>	<p>An amendment to the Local Government Act to have the provisions to conduct an Annual Electors Meeting made optional and to include alternate legislation for the adoption of the Annual Report</p>	<p>WALGA's comments are supported.</p>
<p>Removal of requirement for the State Electoral Commission to be the only provider of election services to Local Government. Since the introduction of postal voting options there has been a concern within Local Government that the requirement for all elections to be conducted by the Commission provides a monopoly when there are other organisations (eg Australian Electoral Commission) that could provide competition and possibly cost savings. The monopoly is further reinforced in several changes proposed within the new proposals</p>	<p>Removal of requirement for the State Electoral Commission to be the only provider of election services to Local Government</p>	<p>WALGA's comments are supported.</p>
<p>Refusal by Councillors to vote at Council and Committee meetings whilst still remaining in the meeting room. This issue has been supported by the Association following representations from the Shire of Mundaring.</p>	<p>Refusal by Councillors to vote at Council and Committee meetings whilst still remaining in the meeting room</p>	<p>WALGA's comments are not supported, ie. Council supports the current provisions of the Act requiring Councillors whilst in attendance at Committee or Council meetings to vote on all matters.</p>
<p>Exemption for rural Councillors from the need to declare financial interests with Co-operative Bulk Handling in regard to siting and construction of grain handling facilities. This proposal was supported by the Association AGM during Local Government Week and relates to the fact that many Councillors in rural areas are grain growers and as such when an application is presented by CBH to the Council the Councillors need to declare an interest. This may create the</p>	<p>Exemption for rural Councillors from the need to declare financial interests with Co-operative Bulk Handling in regard to siting and construction of grain handling facilities.</p>	<p>WALGA's comments are supported.</p>

Proposed Amendment	WALGA's Comments	Council's Comments
<p>situation where there is no quorum and the matter must be delayed until approval is received from the Minister to enable the matter to be considered.</p>		
<p>Speaking on behalf of the Council – this issue relates to S2.8 (1) (d) where the Mayor/President is the only person (in the first instance) permitted to speak on behalf of the Council. It is felt the Act should be amended to allow the Local Government to adopt a policy as to how and who should speak on behalf of the Council. This proposal would broaden Local Government's current capacity to determine how it is publicly represented and to that extent is supported.</p>	<p>An amendment to the Local Government Act to allow Local Governments to adopt a policy as to how and who should speak on behalf of the Council.</p>	<p>WALGA's comments are supported.</p>
<p>Inclusion in the Local Government Act of the requirement for nominees for election to Council either as Mayor/President or councillor to declare their past criminal record. There are currently no declaration requirements in relation to previous criminal convictions within Commonwealth, State or Local Government jurisdictions; rather all prescribe varying eligibility restrictions to which prospective candidates must comply. In relation to disqualification for previous criminal convictions, the Local Government Act currently only deems ineligible those persons who have been convicted of a crime and are in prison serving a sentence for that crime, or persons who have been convicted in the preceding 5 years of a serious local government offence. Including provisions within the Local Government Act which deem certain persons ineligible for membership to a Council due to the commission of a certain level of criminal offence(s) within a prescribed time period may be more appropriate than requiring a duty of disclosure.</p>	<p>Amendments to the Local Government Act to equate the eligibility restrictions in relation to previous criminal convictions by persons seeking election to Council with the restrictions imposed on Members of State Parliament.</p>	<p>WALGA's comments are supported.</p>

Moved Cr
Motion Carried/Lost ()

ARMADALE REDEVELOPMENT AUTHORITY

WARD : Armadale
FILE REF : PSC/30
DATE : 10 Sep 2002
REF : RST
RESPONSIBLE : Chief Executive
MANAGER : Officer

In Brief:-

- ✍ The Armadale Redevelopment Authority is now holding monthly meetings at its Jull Street Office.
- ✍ Report provided on matters currently in train.
- ✍ Recommendation that the report be received and the Chair of the Armadale Redevelopment Authority and Board Members be invited to provide a briefing to Council tentatively on 20th January 2003 at 5.30pm.

Tabled Items

Nil

Officer Interest Declaration

Nil

Strategic Implications

Strategic Plan objective to create an integrated Regional Centre with a full range of services.

Legislation Implications

Town Planning Scheme No.2 and No.3
Armadale Redevelopment Act 2001

Council Policy / Local Law Implications

N/A

Budget / Financial Implications

Potential to broaden rate base and resultant income as a consequence of accelerated investment and development.

Consultation

- ✍ Armadale Redevelopment Authority
- ✍ Landcorp

BACKGROUND

The City last received a progress report on matters relevant to the Armadale Redevelopment Authority at its September City Strategy Committee meeting. This followed a briefing provided to Council by the Chair of the Authority, Mr Gerry Gauntlett on 2 September 2002.

Since that time Council has received a briefing on the proposed railway station redevelopment project on 4 November 2002 and other considered items related to specific projects.

At the meeting held on Monday, 2 December 2002 Council appointed delegates to the ARA Precinct Committees for the Forrestdale Business Park and Champion Lakes Projects.

COMMENT

Matters in Progress

☞ Minnawarra Festival Art Awards

Council invited the ARA to participate in the Awards as a sponsor or purchaser and the Board has agreed to provide a significant acquisition award.

☞ Music in the Mall

The Authority advises that it looks forward to assisting in developing the 2003 Summer Program for events in the Jull Street Mall.

☞ Champion Lakes Project

The Mayor and CEO attended an on-site meeting with the Minister for Sport & Recreation, and Indigenous Affairs, the Hon. Alan Carpenter, MLA at Champion Lakes on Thursday 31 October. The meeting was also attended by the Minister for Planning & Infrastructure and Member for Armadale, along with the Chair of the Armadale Redevelopment Authority, Mr Gerry Gauntlett. Officers of the Authority and various Ministries, were also in attendance. It gave good opportunity to acquaint Minister Carpenter with the extent of the Champion Lakes Project. The project will require support from his Ministry both in regard to future management of the regional recreation facility, particularly the rowing course, and a potential interpretive centre recognizing the aboriginal heritage of the region.

The Champion Lakes Public Environmental Review (PER) document will be completed by 13th December 2002, endorsed by the stakeholders (CoA, DPI, ARA) then forwarded to the Department for Environment & Water Catchment Protection. Public advertising should occur for 4 weeks over January - February 2003.

Champion Lakes will be subject of a more detailed report at a later date.

Council recently appointed Cr Stewart (Cr Everts as Deputy) and the CEO to the Champion Lakes Precinct Committee which is chaired by the Mayor in his role as an ARA Board member.

☞ Wirra Willa Gardens

See separate Confidential Report which contains commercially sensitive information (**Refer Attachment B-1**). In accordance with Council resolution CS72/02 this matter had been referred to the Armadale Redevelopment Authority to consider feasibility and options for purchase of the Wirra Willa property.

Following advice on the formal asking price and valuation, it is unlikely that the matter will be taken any further. The Armadale Redevelopment Authority Board will consider this advice at its next meeting on 11 December 2002.

☞ **Community Forum**

Council has been made aware of the forthcoming Community Forum scheduled for Saturday 14 December 2002. Community comment has been invited and interested residents invited to attend the Forum for discussion. It is anticipated that the latest plans for the railway station redevelopment will also be on display.

☞ **Rail Station Concept Plan**

WA Government Railways Architects, MPS have revised their plans following input from various stakeholders, including comments taken from presentation of the plans to Council.

New perspectives are hoped to be available for viewing at City Strategy Committee meeting, prior to the Community Forum. The ARA has requested that the plans be displayed in the Council foyer and library.

☞ **Precinct Groups**

The City has now formalised its delegates to three of the ARA's Precinct Groups. Only the City Centre Liaison Group has met in its new "guise", and Minutes have been distributed via Council's Information Bulletin.

☞ **Gateway Project**

The ARA have not yet considered this project, referred by Council in October (CS87/02). However, it is viewed as a highly visible opportunity for the Armadale Redevelopment Authority to make early contribution to the City Centre's built environs.

☞ **Concept Plan**

The Concept Plan Steering Committee is meeting monthly to develop the Masterplan.

☞ **City Library - Location**

Discussions on the possibility of a new Government office building in proximity to the rail station and CBD have raised the prospect of Council library facilities being relocated as a tenant in a new building. The possibilities of co-location with a TAFE facility, internet café and other modern library initiatives, have also been raised.

The library would be a paying "tenant" of any new building, so Council would need to consider the commercial viability of such a move.

The City is currently examining its Future Accommodation Needs (CS78/02) and the opportunities (or threats) associated with a possible relocation of the Armadale Library should be considered in conjunction with that study.

The primary consideration will be the provision of the City's Library services and how any proposed move might impact the library services Forward Plan.

The matter will be subject of a separate report, although the ARA is seeking in principle support for the concept to assist negotiations with other potential Government tenants.

✍ **Heads of Agreement**

The officers of the Technical Reference Group are preparing a Draft Head of Agreement to clarify the relationship and roles of the City and ARA.

The principles discussed so far are:-

- Heads of Agreement to address broad commitments for ARA and COA, including capital expenditure and exit strategy.
- Should also address cooperative approaches to business case planning, marketing, public relations, etc.
- Possibly structured as a series of modules, eg;
 - * shared vision and guiding principles
 - * cooperative arrangements (planning, marketing, PR)
 - * capital works and cost sharing arrangements
 - * exit strategies

Examples of other Head of Agreement are being sourced from LandCorp and other Redevelopment Authorities at Midland, Subiaco and East Perth.

✍ **Budget Co-ordination**

Discussions have been held to relate the State Budget process to Council's own Corporate Calendar and Budget planning processes with a view to coordinating forward planning.

✍ **Benchmarking Study**

The ARA has commissioned Market Equity to undertake a Benchmark Study of resident and business perceptions of Armadale. Results will be forwarded to Council.

✍ **Neighbourhood Improvement Program**

Council staff have been invited to provide a presentation on the City's NIP program (conducted with the Ministry of Housing & Works) to the ARA Board Meeting scheduled for 11 December 2002.

✍ **Southern River Regional Cabinet Visit**

As advised earlier, matters relative to the ARA were presented to the Premier and Cabinet during a Breakfast Meeting and associated discussions with Ministers on 8 November 2002. The priorities of focus were the Tonkin Highway, Champion Lakes, Forrestdale Business Park and future Brookdale development.

✍ **Relocation of Government Department**

Discussions on this subject are continuing. The ARA shares Council's view that a major Government presence, either by Department or a regional grouping of other Government agencies, is an essential target for the City Centre's redevelopment.

✍ **Other Confidential Matters – Attraction of key business**

Other matters of a confidential or commercially sensitive are referred in Attachment B-1.

☞ **Council Briefing by ARA Chairman**

Following the last briefing held in September it had been anticipated that briefings be arranged quarterly. A mutually convenient time could not be arranged for December but it is proposed that Mr Gauntlett (and other Board members) be invited to a brief the Council, prior to the Ordinary meeting scheduled for 20th January 2003.

RECOMMEND

1. **That the progress report on matters relating to the ARA be noted.**

2. **That the Chair of the Armadale Redevelopment Authority and Board members be invited to provide a briefing to Council, tentatively to be held at 5.30pm on Monday 20 January 2003, prior to the Ordinary Meeting scheduled for that evening.**

Moved Cr

Motion Carried/Lost (...)

COUNCILLORS' ITEMS

CITY STRATEGY COMMITTEE

SUMMARY OF "A" ATTACHMENTS

10 DECEMBER 2002

Attachment No.	Subject	Page
A-1	<u>Review of the Local Government Act 1995</u> Agenda item to the South East Metropolitan Zone Meeting along with Proposed Amendments to the Act	25 – 61

5.1 Review of Local Government Act 1995 (INT016/BHW) (Attachments page 36)
By Bruce Wittber, Policy Manager (Governance)

IN BRIEF

- ? **Consideration of proposed amendments to the *Local Government Act*.**
- ? **Provide position on a number of proposals that have not previously been considered or which are opposed.**
- ? **Express concern at the limited time allowed for Local Government to comment on the proposals.**

BACKGROUND

In late September 2002 Association representatives attended a briefing by the Department of Local Government and Regional Development (DLGRD) regarding proposals to be included in *Local Government Act* Amendment Bill No 3. The briefing included being provided with a discussion paper outlining proposed amendments to the Act

These proposals stem largely from the 1999/2000 consultation process, but also include amongst other issues;

- ? The proposal for a Local Government Tribunal;
- ? Options for the Oath of Allegiance
- ? Changes to the system for determining how the Mayor/President is elected.
- ? Changes to accommodate the Association's shift to a Single Association.

The Association was given two weeks to respond to these proposals. The DLGRD did not distribute the discussion paper to individual Local Governments and as a consequence the Association distributed the paper to all Councils seeking comment. This would enable a consolidated position to be developed.

The proposals and a summary of the responses received from Local Government were presented to the Governance Policy Team and the position outlined on the discussion paper attached is the outcome of the Policy Team review.

COMMENTS

The majority of issues contained in the discussion paper has been developed through the consultation process and are generally supported. There are however a number of new items that have not been subject to any consultation with Local Government or the Association.

The discussion paper contains the position recommended by the Governance Policy Team but it is appropriate to comment on some specific matters in the proposals. Brief details on each of these issues are as follows (the information in italics is the Association's comment/view):

? ***Changing the method of electing a mayor/president when elected at large – Section 2.13***

Concerns have been raised about a loss of elector entitlements if a council moves to change the method of electing a mayor/president from one elected by the people to one elected by council.

Comment

Not supported

The manner in which this amendment is framed will make it highly unlikely a proposal will be successful to change from a community elected (at large) to a Council elected. The requirement for the Electoral Commissioner to conduct the referendum is also not supported.

? ***Amendment to the number of meetings a member can be absent from without being disqualified - Section 2.25***

An amendment is to be made to the number of meetings that an elected member, without leave of absence, can fail to attend without being disqualified.

It is intended to amend section 2.25 (4) so that a member is disqualified if they are absent throughout 4 consecutive ordinary meetings.

Comment

The principle of the proposal is supported but instead of 4 meetings which will allow those Councils with two meetings a month to cover a two month period it would be better to state two months or three meetings whichever is the greater period.

? ***New power to allow an elected member to withdraw a notice of resignation from the office of councillor, mayor or president, deputy mayor or deputy president – Section 2.31***

There have been occasions where elected members have resigned from their office in the heat of the moment. It is proposed to introduce a ‘cooling off’ period which will allow an elected member to retract their resignation if they wish to.

Specifically, a new clause is to be added to section 2.31 to give an elected member the power to retract their resignation up until 5pm on the next working day after the resignation notice was initially delivered to the CEO. The amendment is to require the retraction to be in writing, signed, dated and delivered to the CEO.

Comment

Not supported

Once a resignation has been submitted it should not be able to be withdrawn. This ability may be misused.

? ***Matters that Local Governments cannot make local laws about – New Section Part 3***

Local laws are being created that provide the power for local government to take actions on land which is not Local Government property when these actions are not included in Schedules 3.1 and 3.2. This is an unintended outcome.

It is proposed to include a new section in Part 3 of the Act which prevents Local Governments from creating local laws that would otherwise allow a local government to control things on land which is not Local Government property when these things are not included in Schedules 3.1 and 3.2.

Comment

Not supported

Local Government should have the right to determine these issues for good government in the area.

? *Allowing offices of council member to remain vacant – Section 4.17*

To minimise cost for councils with no wards it is proposed to extend the circumstances for avoiding extraordinary elections. This will require an amendment to the effect that there is no requirement to hold an extraordinary election in a council with no wards if a councillor resigns at any time following an election. However, this provision will only apply as long as 80% of council member positions are filled. If the resignation means that less than 80% of council member positions are filled, the council will need to conduct an extraordinary election for all vacant positions in accordance with the existing provisions within the Act.

Comment

Supported

The broad principle is supported however the Association is of the opinion that this opportunity should also be available to any Local Government where there are Wards with multiple Councillors ie two or more Councillors per ward

It is also not clear from the information as to whether the vacancy, if it is left unfilled, is then filled at the next ordinary election as an additional vacancy if it was not vacant due to the normal effluxion of time.

? *Entitlement to be an Occupier of Rateable Property – Section 4.32*

It is proposed that section 4.32(3) should include a further requirement for a person to establish that they are a bona fide occupier. It is proposed that the person needs to have a minimum amount of rental paid per annum. This would need to be set in regulations and the amount shall be \$5000.

Comments

Not supported (strongly)

This is the most commented on proposal of all comments received. There is strong disagreement due to the universal nature of the proposal and no recognition is taken of the impact on rural areas. The eligibility of an occupier needs to be dependent on a period of their tenancy agreement. In some Local Governments this could have a significant impact on the number of electors eligible to vote, which may mean a change in the structure of the Council.

? ***Voting by the presiding member – Section 5.21 (3)***

It is proposed that where a vote is tied the chair should be required to use a casting vote to clearly determine whether the motion is passed or defeated.

Comment
Supported

? ***Requirement to advertise the value of the salary package of the Chief Executive Officer and senior employees – Section 5.36 & 5.37***

To bring the recruitment process for senior Local Government employees into line with normal executive recruiting practice, an amendment is proposed in relation to the information that is required to be included in the advertisement for the vacant position.

At present, sections 5.36 (4) & 5.37 (3) require the salary and the total value of all remuneration and benefits payable to be included in the advertisement. Both of these sections are to be amended so that only the total value of the package (which could be within a range) is advertised.

Comment
Whatever changes are proposed they should be consistent with the approach taken to this matter by the State Government. There is some support for the requirement to be deleted altogether.

? ***Delegation of the responsibility to accept the annual report – Section 5.54***

To reflect the original intention of the Act, an amendment is to be made to ensure that the responsibility of the council to accept the annual report cannot be delegated.

This will require an amendment to section 5.54 (1) to require the acceptance of the report to be made by an absolute majority of council.

Comment
Supported

Whilst the proposal is supported it simply is a clarification of what in the main occurs within most Local Governments. Why have it as an absolute majority and not something that cannot be delegated to CEO rather than as an absolute majority.

? ***Various amendments to the sections relating to the plan of principal activities***

Amendments are proposed to the local government forward planning provisions to ensure that the plans developed are consistent with community desires and that there is flexibility for Local Governments to prepare plans that meet corporate needs.

This will require the following amendments:

? Sections 5.52, 5.56, 5.57 and 5.58 are to be deleted.

- ? Any reference in the Act (or regulations) to principal activity plans is to be removed.
- ? A statement is to be included in section 2.7 to require councils to plan for the future. The procedures for the making and the content of such plans shall be as prescribed in regulations.

Comment

Supported

Subject to the Department engaging with Local Government on the development of any substitute forward financial plan arrangements.

? Definition of when a person has a financial interest – Section 5.60A

To clarify the scenario as to when an elected member or employee has a financial interest it is proposed that the definition contained in this section be broadened.

Section 5.60A should be amended so that when determining whether a person has an interest, it is necessary to consider whether there was a reasonable expectation of financial gain or loss resulting from either the way the matter might be dealt with by the council or committee, and the way that the matter might be dealt with by the elected member or employee. At present the requirement is limited to the way the Local Government would deal with the matter.

Comment

There is insufficient information to comment. If the proposal is to broaden the definition this will need detailed consultation with Local Government.

? Closely associated interests – Section 5.62

The use of “nominal value” to determine the value of shares is considered to be an outdated method. The actual or market value may be more appropriate in some cases.

This will require amendment to section 5.62 (d) (ii) and 5.62 (d) (ii) (II) to remove the term “nominal” and provide a regulation making power to specify what the type and value should be (i.e. market value or nominal value).

Also, the Inquiry into the City of Cockburn recommended that the term “closely associated” in section 5.62 be widened to include a person for whom legal services (and other services), are being provided by an elected member. Whilst it is accepted that such relationships may be problematic it would be preferable to add a further category of prescribed (in regulations) relationships rather than add a further specific matters to the Act.

Comment

There is insufficient information to comment. If the proposal is to broaden the definition this will need detailed consultation with Local Government.

? ***Audit Committee – Part 7***

New provisions about Audit Committees are to be inserted into the Act to ensure that council members maintain an involvement in the audit process. The Act should require each local government to establish an audit committee which will be open to the public.

Comment

Supported

The support to this proposal is on the basis of the requirement for the formal establishment of an Audit Committee to be optional at the discretion of each Local Government and where such a committee is established there should be no community representative. With regard to the Management Report this should not be required to be made public at the annual electors meeting unless the Council so chooses.

? ***Extension of provisions to allow all electors to vote in a poll held in relation to a recommended amalgamation of 2 or more Local Government districts – Schedule 2.1 Clause 8 (3)***

An amendment to this schedule is required so that, if a poll of electors is requested and held on a recommended amalgamation, electors in all districts, or parts of districts affected by the proposal, are able to vote in the poll and not just those electors in the district that called for a poll.

Comment

Not supported

There is a need to hold further discussions with Local Government on this proposal as it has not been subject to previous consultation

? ***Appointment of an independent person to conduct polls in relation to Local Government boundary changes – Schedule 2.1 Clause 9***

An amendment is required to ensure greater impartiality and independence in the conduct of polls in relation to proposals to change Local Government boundaries. This will be achieved with the removal of the power for Local Governments to conduct the polls.

Comment

Not supported

It is considered unnecessary for the person to be independent of each Council and will add significant cost burden to the proposal.

There is also the question of why the use of an independent person is limited to the Electoral Commission as this destroys competition.

? ***Review of Local Government names, wards and representations – Schedule 2.2 (6)***

It is proposed that it is appropriate for Local Governments, whether or not they have wards, to conduct a periodic review of their electoral representation arrangements.

Comment

Not supported

There is strong suggestion that this amendment will be used to introduce one vote one value in wards to the exclusion of the other criteria.

? ***Further clarification of the process about how mayors, presidents, deputy mayors and deputy presidents are elected by the council – Schedule 2.3***

It is necessary to further define how mayors, presidents, deputy mayors and deputy presidents are elected by the council.

Comment

Not supported (strongly)

This is unnecessary introduction of more complexity to the election process to solve maybe one issue at one Council.

In addition to the above issues there are also a number of matters that the Association has been seeking to have amendments incorporated into the Act which have not been included in the proposals. These include:

- ? An amendment to the Act to have the provisions to conduct an Annual Electors Meeting made optional and to include alternate legislation for the adoption of the Annual Report – it is felt there is sufficient opportunities available to the community to seek a response to issues without the need for the holding of a statutory meeting which are in the main not well attended. It would be proposed that Councils have the option to determine whether or not to hold a meeting.
- ? Removal of requirement for the State Electoral Commission to be the only provider of election services to Local Government – since the introduction of postal voting options there has been a concern within Local Government that the requirement for all elections to be conducted by the Commission provides a monopoly when there are other organisations (eg Australian Electoral Commission) that could provide competition and possibly cost savings. The monopoly is further reinforced in several changes proposed within the new proposals
- ? Refusal by Councillors to vote at Council and Committee meetings whilst still remaining in the meeting room – this issue has been supported by the Association following representations from the Shire of Mundaring.
- ? Exemption for rural Councillors from the need to declare financial interests with Co-operative Bulk Handling in regard to siting and construction of grain handling facilities – this proposal was supported by the Association AGM during Local Government Week and relates to the fact that many Councillors in rural areas are grain growers and as such when an application is presented by CBH to the Council the Councillors need to declare an interest. This may create the situation where there is no quorum and the matter must be delayed until approval is received from the Minister to enable the matter to be considered.

There are also two issues on which the Association does not have an issue but members have asked for them to be considered for inclusion in the review of the Act. These are:

- ? Speaking on behalf of the Council – this issue relates to S2.8 (1) (d) where the Mayor/President is the only person (in the first instance) permitted to speak on behalf of the Council. It is felt the Act should be amended to allow the Local Government to adopt a policy as to how and who should speak on behalf of the Council.

Comment

This proposal would broaden Local Government's current capacity to determine how it is publicly represented and to that extent is supported.

- ? Inclusion in the *Local Government Act* of the requirement for nominees for election to Council either as Mayor/President or councillor to declare their past criminal record.

Comment

There are currently no declaration requirements in relation to previous criminal convictions within Commonwealth, State or Local Government jurisdictions; rather all prescribe varying eligibility restrictions to which prospective candidates must comply. In relation to disqualification for previous criminal convictions, the Local Government Act currently only deems ineligible those persons who have been convicted of a crime and are in prison serving a sentence for that crime, or persons who have been convicted in the preceding 5 years of a serious local government offence. Including provisions within the Local Government Act which deem certain persons ineligible for membership to a Council due to the commission of a certain level of criminal offence(s) within a prescribed time period may be more appropriate than requiring a duty of disclosure.

The main concern of the review is the limited time that has been allowed for consultation of the recommendations. Initially the Association was only given two weeks to respond. This is totally inadequate and whilst it is acknowledged that a number of items included in the proposals have previously been the subject of consultation that was nearly three years ago. At the Association's liaison meeting with the Minister for Local Government on 13 November, the concerns expressed by the Association on behalf of member Councils in regards to the limited period for consultation on the Amendment Bill No. 3 were advocated. The Minister subsequently agreed to extend the consultation period, indicating that the legislation would be unlikely to proceed until the end of February 2003.

RECOMMENDATION

- 1. That the comment outlined in the discussion paper in respect to each proposal be adopted as the Association's position and forwarded to the Department of Local Government and Regional Development.**
- 2. That the following issues be submitted to the Department for inclusion in the current review:**
 - a An amendment to the *Local Government Act* to have the provisions to conduct an Annual Electors Meeting made optional and to include alternate legislation for the adoption of the Annual Report**
 - b Removal of requirement for the State Electoral Commission to be the only provider of election services to Local Government**

- c **Refusal by Councillors to vote at Council and Committee meetings whilst still remaining in the meeting room**
 - d **Exemption for rural Councillors from the need to declare financial interests with Co-operative Bulk Handling in regard to siting and construction of grain handling facilities.**
 - e **An amendment to the *Local Government Act* to allow Local Governments to adopt a policy as to how and who should speak on behalf of the Council.**
 - f **Amendments to the *Local Government Act* to equate the eligibility restrictions in relation to previous criminal convictions by persons seeking election to Council with the restrictions imposed on Members of State Parliament.**
3. **That the Minister be thanked for extending the consultation period on the Amendment Bill No. 3 and advised that the Association looks forward to all future consultation on legislative proposals being undertaken in accordance with the partnership principles.**

Review of Local Government Act 1995
Comments on Proposed Amendments

1. Local Public Notice - Section 1.7

An amendment to this section is needed to provide greater flexibility for local governments when giving public notice.

It is proposed to amend the section so that instead of a local government being required to advertise a notice in a newspaper circulating throughout the district, it has the ability to choose another method of giving notice that may be more effective.

Accordingly, section 1 (a) needs to be amended to give local governments the option of disseminating information to residents and ratepayers outside of publication in a newspaper. The amendment is to ensure that the council is required to make a decision to use another method. The decision can apply for the one occasion, or for future occasions that local notice is required.

Comment

Supported

Subject to the decision being allowed to be delegated and there being minimum standards applied..

2. Decisions by special majority - Section 1.10

It has been decided that a special majority of council will no longer be required for any decisions made by a council. A requirement for an absolute majority will replace the circumstances where the Act presently requires a special majority decision.

This will require the deletion of section 1.10. In addition, references to special majority in 2.11 (2), 3.12 (4), 4.20 (4) and 4.61 (2) are to be replaced with a requirement for an absolute majority instead.

Comment

Supported

The need for a Special Majority for some Local Governments for a limited number of decisions is not considered necessary and replacing with Absolute Majority is considered appropriate and therefore supported.

3. Changing the method of electing a mayor/president when elected at large – Section 2.13

Concerns have been raised about a loss of elector entitlements if a council moves to change the method of electing a mayor/president from one elected by the people to one elected by council.

Consequently, a new process is proposed which is to be followed when such a change is sought. This process will involve the following:

- ? If council agrees to progress such a change, it must seek feedback from the community on the proposal for a period of 6 weeks.
- ? The council is then to reconsider the proposal in light of the feedback received.
- ? If council resolves to proceed, a referendum is to be held.
- ? The Local Government Advisory Board is to set the question for the referendum and identify the arguments for change or retention of the status quo.
- ? The Western Australian Electoral Commission is to conduct the referendum.
- ? The result of the referendum will bind council.
- ? Should the referendum support change, implementation of the new method shall take place at the next election for the mayor/president (unless preparation for an election for the mayor/president has already commenced, in which case the election should occur and the appointed person should serve their term).
- ? Referendums on this matter cannot be held more than once every 4 years.

Comment

Not supported

The manner in which this amendment is framed will make it highly unlikely a proposal will be successful to change from a community elected (at large) to a Council elected.

4. Ability for directly elected Mayors and Presidents to vote for the deputy mayor or deputy president – Section 2.15

An amendment is required to clarify that all of the elected members of council (not just councillors) are able to cast a vote for the election of the deputy mayor or deputy president.

Comment

Supported

5. Disqualification because of membership of another council – Section 2.23

A loophole is to be removed to prevent the present situation where it is possible for a councillor in local government A to stand for election in local government B and, if successful, fax his or her resignation to the CEO of local government A after the poll result is known in local government B but before it is formally declared.

An amendment is to be made to clarify that if a current member of one council nominates for election with another local government, that member needs to resign from office prior to submitting their nomination with the other local government unless his or her current term is to expire.

Comment

Supported

6. Council's reasons for refusing leave of absence to be recorded in the minutes – Section 2.25

To improve the transparency of decision making by councils, this section is to be amended so that if a council refuses to grant leave of absence to an elected member, the reasons for refusing to do so must be included in the minutes.

This will require the introduction of a new clause in section 2.25 to require such information in these circumstances.

Comment

Supported

It improves the ability for the community to understand the outcome of a decision.

7. Abolition of Ministerial approval for absence of members from council meetings – Section 2.25

To provide greater autonomy for local governments, an amendment will be made to remove the requirement for Ministerial approval of leave of absence. However, to avoid a council allowing a member to stay on leave for an inappropriate period of time, a provision is to be introduced such that a member will lose their membership on council if they do not attend an ordinary meeting within a six month period.

This will require the deletion of section 2.25 subsection (2). This is to be replaced with the provision that a member will be disqualified from continuing his or her membership on council if they do not attend an ordinary meeting within a period of six consecutive months.

Comment

Supported

Any actions that provide greater autonomy to Local Government is supported and encouraged. The limit of 6 months is reasonable as a person who cannot represent their constituency during that period is not contributing to the affairs of the community.

8. Amendment to the number of meetings a member can be absent from without being disqualified - Section 2.25

An amendment is to be made to the number of meetings that an elected member, without leave of absence, can fail to attend without being disqualified.

It is intended to amend section 2.25 (4) so that a member is disqualified if they are absent throughout 4 consecutive ordinary meetings.

Comment

The principle is supported but instead of 4 meetings which will allow those Councils with two meetings a month to cover a two month period it would be better to state two months or three meetings whichever is the greater period.

9. Clarification of the process following the serving of a notice of disqualification on an elected member - Sections 2.27 & 2.32

An amendment is required to resolve an inconsistency where a member can be served a notice of disqualification under section 2.27 yet is able, under section 2.32, to refuse to accept that they are disqualified. In some cases, persons who were not qualified to be members have been able to remain in their position for a lengthy period of time.

It is proposed to amend section 2.27 so that where a member is served a notice by his or her CEO informing the member that he or she is disqualified but the member does

not accept he or she is disqualified, the member has 14 days in which to satisfy the CEO that he or she should not be disqualified. If the member is unable to satisfy the CEO within 14 days he or she is deemed to be disqualified. However, the member should then have a further 28 days to refer the matter to the courts for a declaration as to whether or not the member is disqualified.

Comment

Supported

Subject to the proposal also including a requirement that failure to respond to a notice or the CEO is unable to ascertain a current address (unless last known address is used) then they will also be disqualified.

10. Introduction of an alternative oath or affirmation of allegiance and declaration – Section 2.29

It is proposed that newly elected members be given an alternative oath or affirmation of allegiance and declaration that removes reference to the reigning sovereign. This would be to the Commonwealth and people of Australia.

This will require an amendment to section 2.29 to indicate that an alternative oath or affirmation of allegiance and an alternative declaration is possible. In addition, it would need to be made clear that such an oath is not in contravention of the Criminal Code.

Comment

Supported

11. New power to allow an elected member to withdraw a notice of resignation from the office of councillor, mayor or president, deputy mayor or deputy president – Section 2.31

There have been occasions where elected members have resigned from their office in the heat of the moment. It is proposed to introduce a ‘cooling off’ period which will allow an elected member to retract their resignation if they wish to.

Specifically, a new clause is to be added to section 2.31 to give an elected member the power to retract their resignation up until 5pm on the next working day after the resignation notice was initially delivered to the CEO. The amendment is to require the retraction to be in writing, signed, dated and delivered to the CEO.

Comment

Not supported

Once a resignation has been submitted it should not be able to be withdrawn. This ability may be misused. Not in the best interests of Local Government.

12. Term of appointment of commissioners to be consistent throughout the Act – Sections 2.6 and 2.37

At present there are a number of provisions which regulate the maximum term for the appointment of a commissioner. Depending on which section, the maximum period is

either 1 or 2 years. Experience has demonstrated that the appointment of commissioners for a 2 year period is often warranted.

To make the 2 year maximum period consistent throughout the Act the following sections will need amendment.

Section 2.6 (4) to be amended to include a statement along the lines of “for a period of no more than 2 years”.

Section 2.37 (6) to be amended so that the day fixed for an election can be up to 2 years from the time the offices of council are declared vacant.

Section 2.37A (3) to be amended so that the day fixed for an election can be up to 2 years from the time the Governor appoints the commissioner.

Comment

Supported

However concerned that the amendment does not create a loophole relating to length of term for the appointment of the Commissioner.

13. Matters that local governments cannot make local laws about – New Section Part 3

Local laws are being created that provide the power for local government to take actions on land which is not local government property when these actions are not included in Schedules 3.1 and 3.2. This is an unintended outcome.

It is proposed to include a new section in Part 3 of the Act which prevents local governments from creating local laws that would otherwise allow a local government to control things on land which is not local government property when these things are not included in Schedules 3.1 and 3.2.

Comment

Not supported

Local Government should have the right to determine these issues for good government in the area.

14. Amendments to clarify intent – Section 3.12

It has been apparent that some local governments have had difficulty with the interpretation of some of the local law provisions in the Act.

Section 3.12 needs to be amended so that it is clear that it applies to the creation of new local laws and to the amendment and repeal of existing local laws.

Comment

Supported

However there should be some consistency with time periods .S3.12 requires 6 weeks whereas S3.16 requires 12 weeks.

15. Removal of the requirement for the purpose and effect of the proposed local law to be read aloud - Section 3.12

It is proposed that the current requirement for the presiding member to read aloud the purpose and effect of a proposed local law be removed. This is to be replaced with the tabling of a summary of the purpose and effect instead.

This will require amendment to section 3.12 (2) so that it provides for a summary of the purpose and effect of the proposed local law to be tabled.

Comment

Supported

Provided summary is then incorporated into the minutes of the meeting.

16. Advertising of proposal to enact a local law – Section 3.12

To reduce the cost of the local law making procedure, an amendment to the advertising requirements is to be made.

The present requirement for Statewide public notice to be given once the local law has been published in the Government Gazette is to be replaced with a requirement for local public notice to be given instead.

This will require an amendment to section 3.12 (6).

Comment

Supported

17. Reducing the advertising requirements for the review of local laws – Section 3.16

The advertising requirements for a review of a local law are quite onerous, particularly when compared to the requirements for the creation of a new law. It has therefore been decided to reduce the timeframe for public comment to bring it into line with the requirements for creating a new local law. In addition, the requirement to give notice of the outcome of a review will no longer be required.

This will require an amendment to section 3.16 (2) © to reduce the 12 week period to 6 weeks. In addition, section 3.16 (5) is to be deleted.

Comment

Supported

18. Disposal of vehicles – Section 3.27

To reduce the costs associated with the holding of impounded vehicles, it is proposed to give local governments the flexibility to declare that an abandoned vehicle is a 'wreck'. If vehicles are declared to be wrecks, a local government is able to dispose of such vehicles without the need to impound them.

The Act will require amendment to provide local government with the power to declare a vehicle a wreck and to dispose of a vehicle immediately if it wishes when such a declaration is made.

The Act or regulations shall define a wreck as a vehicle, which in the opinion of a local government, has no means by which the owner can be identified, has an estimated value of \$500 or less, appears to be unroadworthy and is otherwise not operational and used as transport.

Comment

Supported

Will the provisions allow the declaration to be delegated to the CEO or will it require a Council decision. Care will also be required in the definition of "wreck".

19. Readvertising closure of thoroughfares to vehicles – Section 3.50

To improve the efficiency of local government operations, it is proposed that the period of closure of a thoroughfare to vehicles may be unlimited.

This requires the deletion of section 3.50 (3) so that the current 4 year limit is removed.

Comment

Supported

20. Closing certain thoroughfares to vehicles – Section 3.50

To correct an inconsistency with this section, an amendment is proposed to replace the existing wording of section 3.50(7) with the following:

“Despite subsection (1), a local government may close a thoroughfare to the passage of vehicles for a period not exceeding 4 weeks, without giving local public notice, to the extent that the closure may be required in circumstances in which it may be impracticable to give local public notice before closing the thoroughfare.”

Comment

Supported

21. Relaxation of the requirement for local governments to obtain the market valuation of property every 6 months when selling by private treaty – Section 3.58 (4) (c)

An amendment is proposed to reduce the costs associated with selling land by private treaty. This will particularly benefit local governments in country areas involved in the subdivision and sale of land in circumstances where the value of land changes slowly and the blocks of land are sold over a number of years.

Section 3.58 (4) (c) is to be amended so that the requirement for a market valuation to have been carried out not more than 6 months before the proposed disposition, is replaced with a requirement for the local government to be satisfied that the market

valuation of the property to be disposed, reflects the value of that land once an initial valuation has been obtained.

In addition, the amendment is to ensure that council is to make the decision to not obtain a new valuation and that this decision cannot be delegated.

Comment

Supported

To maintain flexibility it would be appropriate to allow for the decision to be delegated.

22. Removal of requirement to give public notice of dispositions of property prior to the local government agreeing to the disposition – Section 3.58

To improve the efficiency and effectiveness by which local government disposes of its property, it is proposed to remove the requirement for local governments to give public notice of proposed dispositions prior to it agreeing to dispose of such property. This will be particularly useful for dispositions which involve the leasing of property, or the sale of land in a subdivision.

The removal of the requirement to give public notice will be replaced by the local government being required to include details of the disposition in the minutes of the first meeting after the disposition transaction is completed. Details will be those presently required by section 3.58 (4).

Comment

Supported

23. Establishment agreement for a regional local government – Section 3.64(e)

An amendment to section 3.64(e) is proposed to require the establishment agreement to also specify two year tenure for the position of chairman and deputy chairman.

Comment

Supported

24. Prohibiting a person from being a member and an employee of a regional local government – Section 3.66

To improve transparency of the affairs of the regional local governments and to safeguard the interest of the public, it is proposed that a person will no longer be able to be a member and an employee of the same regional government.

This will require an amendment to section 3.66 (3) (a) so that sections 2.26 and 2.32 (e) apply to regional local governments.

Comment

Supported

25. Day on which elections are held – Part 4

The Act needs to clarify that a local government election (ordinary or extraordinary) is not to be held on the same day as a Commonwealth or State election.

Comment
Supported

26. Allowing offices of council member to remain vacant – Section 4.17

To minimise cost for councils with no wards it is proposed to extend the circumstances for avoiding extraordinary elections. This will require an amendment to the effect that there is no requirement to hold an extraordinary election in a council with no wards if a councillor resigns at any time following an election. However, this provision will only apply as long as 80% of council member positions are filled. If the resignation means that less than 80% of council member positions are filled, the council will need to conduct an extraordinary election for all vacant positions in accordance with the existing provisions within the Act.

Comment
Supported

The broad principle is supported however the Association is of the opinion that this opportunity should also be available to any Local Government where there are Wards with multiple Councillor ie two or more Councillors per ward

It is also not clear from the information as to whether the vacancy, if it is left unfilled, is then filled at the next ordinary election as an additional vacancy if it was not vacant due to the normal effluxion of time.

27. Provisions for elections and referendums – Section 4.20

At present the Act requires a local government to provide the Electoral Commissioner with 80 days notice if it wants the Commissioner to conduct an election or referendum for it.

Occasionally, during the 80 day period, a local government is required or decides to conduct an additional election or a referendum concurrent with the initial election.

If the Electoral Commissioner has already agreed to conduct the initial election, it is proposed that the requirement for the local government to provide the Commissioner with 80 days notice to hold a subsequent poll becomes discretionary for the Commissioner, provided that all of the other statutory processes can be complied with.

Comment
Supported

Providing the Electoral Commissioner cannot unreasonably withhold approval.

28. Appointment of Returning Officer - Section 4.20

To improve the efficiency of the local government election process, an amendment is to be made to allow for the appointment of a person as the returning officer, other than the CEO, to continue for more than one election.

This will require amendment of section 4.20 so that it includes an additional provision stating that the appointment (by absolute majority) of a person under section 4.20(2) or 4.20(4) can be made for more than one election should the person being appointed so agree.

The new provision is to require council's decision to state how long the appointment is to be made for. It will also require council to make another decision if the appointed person subsequently decided not to provide the service and the initial council decision could not be implemented.

Comment
Supported

29. Entitlement to be an Occupier of Rateable Property – Section 4.32

It is proposed that section 4.32(3) should include a further requirement for a person to establish that they are a bona fide occupier. It is proposed that the person needs to have a minimum amount of rental paid per annum. This would need to be set in regulations and the amount shall be \$5000.

Comments
Not supported (strongly)

This is the most commented on proposal of all comments received. There is strong disagreement due to the universal nature of the proposal and no recognition is taken of the impact on rural areas.. The eligibility of an occupier needs to be dependent on a period of their tenancy agreement. In some Local Governments this could have a significant impact on the number of electors eligible to vote, which may mean a change in the structure of the Council.

30. Expiry of eligibility to be on the electoral roll – Section 4.33

When a council is suspended, ordinary elections are suspended which means that a non-resident occupier can remain on the electoral roll for a longer period than was intended when these provisions were initially drafted.

Section 4.33 (2) will require amendment so that the reference to ordinary elections is to ordinary elections that would normally have taken place had the council not been suspended.

Comment
Supported

31. Enrolment Eligibility – Section 4.35

An amendment to correct a drafting error is required.

Section 4.35 (6) is to be amended so that the reference to subsection (1) is changed to subsection (2).

Comment
Supported

32. Updating of electoral roll – Section 4.37

Operational experience has demonstrated that in many districts the present requirement to prepare a new electoral roll only 50 days after the previous election is too short.

An amendment to section 4.37 (3) (a) is to be made to extend the period to 100 days. This will still be subject to the Electoral Commissioner being satisfied that the roll is suitable.

Comment
Supported

33. Section 4.43 (4) – Regulations for the correction of rolls

It is proposed that regulations be made to provide for additional requirements as to how such corrections and certifications be made. The Electoral Commission is concerned that if those regulations are to require certain ‘procedures’ to be followed then the head of power referring to only “application” may not be sufficient. If this is the case, then it is proposed that the word “procedures” be included in 4.43 (4).

Comment
Supported

34. Eligibility to be a candidate – Section 4.48

To provide greater clarity as to whether a person should be able to nominate for a local government election, consideration is being given to whether or not the Act should be amended so that a person cannot be a candidate unless he or she is actually on the printed electoral roll prior to the close of nominations.

Also, it is proposed to amend section 4.48 to clarify that a person’s eligibility to be a candidate at the time of nomination is limited to the capacity in which he or she is enrolled as an elector. This will prevent persons from changing their eligibility (such as from company nominee to occupier) during the period of nomination.

Comment
Supported

35. Bringing forward the close of nominations for local government elections – Section 4.49

An amendment to this section is proposed to reduce the costs of conducting elections and to allow for greater time for the Electoral Commission to prepare and send out postal election packages.

Section 4.49 (a) is to be amended to bring forward the close of nomination day by 7 days to the 37th day before election day. This will reduce the nomination period to 7 days.

Minor adjustments may also need to be made to the final date for the preparation of the roll to ensure that completed rolls are available prior to the close of nominations. Consequential minor amendments may also need to be made to the date for the close of enrolments to ensure adequate time to prepare the roll. Further consideration will be given to these matters following consultation with relevant parties.

Comment
Supported

36. Clarification about the information to be included on election material – Section 4.87

An amendment is required to clarify the details required to be included on election material.

Section 4.87 (1) is to be reworded to clarify that the names and addresses of both the authorising person and printer are required on electoral material.

Comment
Supported

37. Section 4.51 – Rejection of nomination on grounds of only being a company nominee.

A number of situations have arisen where nominations for elections have been accepted by returning officers where the person is only a company nominee. Section 2.19 (2) of the Act states that whilst such a person can be an elector they are not entitled to be a council member.

It is proposed that section 4.51 should have a specific provision giving the returning officer the power to reject such a nomination. It would appear appropriate to include this particular qualification matter as this information is known to the returning officer from the details submitted in applications to be an elector. It is acknowledged that there are various other entitlement matters that need to be met to hold office, however, those details are not readily available to returning officers for checking.

Comment
Supported

38. Voting by the presiding member – Section 5.21 (3)

It is proposed that where a vote is tied the chair should be required to use a casting vote to clearly determine whether the motion is passed or defeated.

Comment

Support

39. Requirement to advertise the value of the salary package of the Chief Executive Officer and senior employees – Section 5.36 & 5.37

To bring the recruitment process for senior local government employees into line with normal executive recruiting practice, an amendment is proposed in relation to the information that is required to be included in the advertisement for the vacant position.

At present, sections 5.36 (4) & 5.37 (3) require the salary and the total value of all remuneration and benefits payable to be included in the advertisement. Both of these sections are to be amended so that only the total value of the package (which could be within a range) is advertised.

Comment

Whatever changes are proposed they should be consistent with the approach taken to this matter by the State Government. There is some support for the requirement to be deleted altogether.

40. Delegation of the power to amend Chief Executive Officer's employment contracts – Section 5.36

For the purpose of accountability, the Act is to be amended to ensure that the power to amend a Chief Executive Officer's contract cannot be delegated.

To achieve this, it is proposed to amend section 5.36 (2) (b) to require an absolute majority of council to be satisfied with the provisions of the proposed employment contract.

Comment

Supported

This proposal is supported if this allows the matter to be delegated to a committee of the Council.

41. Arrangement for employees acting in a senior employee's position – Section 5.39

The Act is worded in such a way that a person cannot act in the position of another senior employee unless the person has a contract. This is overly onerous, particularly in circumstances where an employee is acting in a position while a person is on leave, or when a person is filling a position on a temporary basis when a position becomes vacant.

To overcome this issue “acting” arrangements for up to 12 months should be excluded from the definition of employment. This would mean that a proposal to appoint a person in an acting arrangement in a position designated as senior would not need to be put to council for its acceptance or rejection of the proposal. However, the council should have the ability to accept or reject a proposal that a person act as the Chief Executive Officer.

Section 5.39 (2) should be amended so that a contract is not required for a member of staff who acts in a position within a 12 month time period. Also the section should be amended so that a contract is not required for people who are not currently staff of the local government when they are to be employed as a member of staff for less than 3 months.

Comment
Supported

42. Delegation of the responsibility to accept the annual report – Section 5.54

To reflect the original intention of the Act, an amendment is to be made to ensure that the responsibility of the council to accept the annual report cannot be delegated.

This will require an amendment to section 5.54 (1) to require the acceptance of the report to be made by an absolute majority of council.

Comment
Supported

Whilst the proposal is supported it simply is a clarification of what in the main occurs within most Local Governments. Why have it as an absolute majority and not something that cannot be delegated to CEO rather than as an absolute majority.

43. Various amendments to the sections relating to the plan of principal activities

Amendments are proposed to the local government forward planning provisions to ensure that the plans developed are consistent with community desires and that there is flexibility for local governments to prepare plans that meet corporate needs.

This will require the following amendments:

- ? Sections 5.52, 5.56, 5.57 and 5.58 are to be deleted.
- ? Any reference in the Act (or regulations) to principal activity plans is to be removed.
- ? A statement is to be included in section 2.7 to require councils to plan for the future. The procedures for the making and the content of such plans shall be as prescribed in regulations.

Comment
Supported

Subject to the Department engaging with Local Government on the development of any substitute forward financial plan arrangements.

44. Definition of when a person has a financial interest – Section 5.60A

To clarify the scenario as to when an elected member or employee has a financial interest it is proposed that the definition contained in this section be broadened.

Section 5.60A should be amended so that when determining whether a person has an interest, it is necessary to consider whether there was a reasonable expectation of financial gain or loss resulting from either the way the matter might be dealt with by the council or committee, and the way that the matter might be dealt with by the elected member or employee. At present the requirement is limited to the way the local government would deal with the matter.

Comment

There is insufficient information to comment. If the proposal is to broaden the definition this will need detailed consultation with Local Government.

45. Closely associated interests – Section 5.62

The use of “nominal value” to determine the value of shares is considered to be an outdated method. The actual or market value may be more appropriate in some cases.

This will require amendment to section 5.62 (d) (ii) and 5.62 (d) (ii) (II) to remove the term “nominal” and provide a regulation making power to specify what the type and value should be (i.e. market value or nominal value).

Also, the Inquiry into the City of Cockburn recommended that the term “closely associated” in section 5.62 be widened to include a person for whom legal services (and other services), are being provided by an elected member. Whilst it is accepted that such relationships may be problematic it would be preferable to add a further category of prescribed (in regulations) relationships rather than add a further specific matters to the Act.

Comment

See response to item 45

46. Allowing members disclosing interests to participate in meetings – Section 5.69

The Act should be amended to clarify that the Minister’s approval can cover more than one meeting.

Comment

Supported

47. Public inspection of a person’s rate record – Section 5.94 (m) and 5.95

To respect the privacy of individuals, it is proposed that the legislation be amended to allow a person to keep private their contact details if another person wishes to access the rate record of a property owned by that person.

To achieve this, section 5.95 will need amendment to allow a ratepayer to request that their local government keep their identity confidential in circumstances where another person views the rate record. The local government must comply with such a request if the Electoral Commissioner has previously agreed to that person's address being removed from the electoral roll as per section 51B of the *Electoral Act 1907*. If the Electoral Commissioner's agreement has not been obtained, the elector's address should remain on the local government roll. The information excluded from the local government roll should be the same as that excluded from the State roll.

Comment
Supported

48. Bringing forward the date for the adoption of annual budget – Section 6.2

To provide local governments with greater flexibility with their budget management activities, it is proposed to allow local governments to adopt their budget from 1 June each year.

Accordingly, this will require an amendment to section 6.2 to change the date from July 1 to June 1. Other consequential amendments may be necessary.

Comment
Supported

49. Transferring funds from a trust fund into the municipal fund – Section 6.9

To provide for flexibility in the manner in which a local government manages its finances, it is proposed to amend section 6.9.

Section 6.9 (4) is to be amended so that, after 10 years, a local government "may transfer", not "is to transfer", funds from the trust fund into the municipal fund.

Comment
Supported

50. Removing the requirement for local governments to seek the approval of the Treasurer when investing – Section 6.14

To improve the efficiency of local governments when wishing to invest their own funds, it is proposed that the requirement to obtain the Treasurer's approval is to be deleted following discussions with the Department of Treasury and Finance. Local governments will continue to be subject to the prudential provisions of the Trustees Act.

This requires the removal of the words "on the advice and recommendation of the Treasurer" from section 6.14 (1) (b).

Comment
Supported

51. Power to borrow – Section 6.20

Local governments are presently required to advertise refinancing of loans.

It is proposed to delete this but requires council to resolve that the refinancing will be of benefit to the local government.

In addition, the power to refinance cannot be delegated to ensure council makes this decision.

Comment
Supported

52. Removing the requirement for local governments to seek the approval of the Treasurer when borrowing – Section 6.21

To improve the efficiency of local governments when wishing to borrow, it is proposed that the requirement to obtain the Treasurer's approval be removed.

Comment
Supported

53. Borrowing made by regional local governments – Section 6.21 & Functions and General Regulations

The provisions of regulation 24H and 24I were introduced into the *Local Government (Functions and General) Regulations 1996*, rather than the Act as their implementation was a matter of urgency. These regulations provide the opportunity for local governments to give security for borrowings made by a regional local government. At the time these regulations were introduced, it was agreed with Treasury Corporation that the key principles of these regulations should be included in the Act.

Accordingly, it is proposed that the provisions be removed from the regulations and placed into the main body of the Act so that the same intent is achieved. This will then allow for the deletion of regulations 24H and 24I. In addition, any further views of the Treasury Corporation to refine these provisions will need to be incorporated.

Comment
Supported

54. Minimum payment – Section 6.35

To clarify the intended meaning of this section the wording of 6.35 (6) requires amendment to ensure that the minimum rating principles are applied separately to properties in the GRV area, the UV area or any other differential rating category in a particular local government.

Comment
Supported

55. Accrual of interest on the costs of proceedings to recover unpaid rates – Section 6.51

The Act allows for the cost of proceedings to recoup overdue rates, to become a charge on the property for which the rates are in arrears. To correct an anomaly in the Act, an amendment is proposed so that interest can be applied to these costs if their payment is overdue.

It is proposed to amend section 6.51 (1) so that it provides the power to impose a rate of interest on the cost of proceedings, defined in section 6.43, that remain unpaid after this cost becomes due and payable.

Comment
Supported

56. Application of monies paid for rates and service charges – Section 6.62

At present there is no legal right to apply monies to outstanding court costs when a ratepayer indicates that money being sent to the local government is to pay rates. An amendment is proposed to correct this anomaly.

Section 6.62 is to be amended to include “cost of proceedings, as defined in section 6.43”.

Comment
Supported

57. Revestment of land to the Crown to be free of encumbrances – Section 6.74

Crown Solicitor’s advice has recommended this section be amended so that land transferred to the Crown for non-payment of rates is free of encumbrances.

An amendment is required to section 6.74 to enable land to be revested in the Crown free of “mortgages, leases, tenancies, encumbrances, charges and reservations of every kind”.

Comment
Supported

58. Audit Committee – Part 7

New provisions about Audit Committees are to be inserted into the Act to ensure that council members maintain an involvement in the audit process. The Act should require each local government to establish an audit committee which will be open to the public.

? Membership of the committee may range from 3 elected members to full council. It may be a separate committee or it may be an adjunct to any other committee of council.

- ? Audit Committees can comprise only elected members and members of the community if the council so resolves (not council staff).
- ? Elected members are to comprise a majority of the Committee.
- ? The Chief Executive Officer of the local government or his/her nominee cannot be a member but may be an advisor to the committee.

The roles and responsibilities of the Audit Committee are to be as follows:

- ? Determining the process of selecting the Auditor.
- ? Recommending to Council on the appointment of the Auditor.
- ? Managing the audit process from the council's prospective.
- ? Meeting with the auditor at least once each year to discuss the process and/or the outcomes of the audit.
- ? Monitoring the administration's actions on, and responses to, any significant matters raised by the Auditor in the report referred to in section 7.9 of the Act and the management report.
- ? Submitting a copy of the audit contract to the Department of Local Government and Regional Development each time a new contract is entered into or the contract is amended.
- ? Presenting an Annual Report on the audit function to the Council and the Department of Local Government and Regional Development.
- ? Considering the completed Statutory Compliance Return and monitoring the administration's corrective action on matters of non-compliance.

In addition to the Report on the Accounts and the Annual Financial Report required by section 7.9 of the Act, the Act should require the Auditors of each local government to submit a further report on any issues which have been identified in their processes as needing to be addressed.

This second report, to be termed the "Management Report", is to be submitted to the CEO of the respective local government. The CEO is to be obliged to advise the Audit Committee on the action he or she has taken with regard to the Management Report.

The Audit Committee must advise the Council regarding its level of satisfaction with the CEO's response to the Management Report. The Council is to inform the public at the annual electors meeting of the content of the Management Report and Council's actions with regards to the issues raised.

It may be preferable to place the details of these requirements in regulations.

Comment

Supported

The support to this proposal is on the basis of the requirement for the formal establishment of an Audit Committee to be optional at the discretion of each Local Government and where such a committee is established there should be no community representative. With regard to the Management Report this should not be required to be made public at the annual electors meeting. Once again if the Council so chooses that is their prerogative.

59. Establishing a Disciplinary Tribunal for Council Members – New provision Part 8

It is proposed to include a new provision which will provide for the establishment and operation of a tribunal to deal with matters of a disciplinary nature where a council member has not complied with a code of conduct or other relevant laws.

It is proposed that this tribunal be appointed by the Minister with the power to initiate disciplinary measures. It is proposed that such measures would include the temporary suspension of council members and other appropriate sanctions.

Further consideration will be given to the incorporation of these provisions in the State Administrative Tribunal legislation in due course.

Comment

Support subject to further details being developed and its relationship to the State Administrative Tribunal.

Victoria Park opposed

60. Persons found committing breach of Act to give name – Section 9.11

When dealing with infringement notices through the fines enforcement agency, it is desirable to have the individual's date of birth for the successful recovery of outstanding penalties.

The ability to request the date of birth from a person committing an offence should be added to Section 9.11.

Comment

Supported

61. Content of a proposal to the Minister – Schedule 2.1 Clause 2 (2)

It would be advantageous if written justification for a district boundary change was provided by a proponent regardless of who submits the proposal. This would enable the Local Government Advisory Board to determine if the proposal is frivolous or otherwise not in the interests of good government.

Consequently, an additional criteria is to be included in clause 2 (2). This is to require a proposal to include a statement identifying the rationale behind the proposal.

Comment

Support

62. Dealing with proposals – Schedule 2.1 Clause 3

An amendment is proposed to this clause to enhance the efficiency of the Local Government Advisory Board if petitioners change their minds.

It is proposed to amend the Schedule so that the Board has the power to recommend that the Minister reject a proposal if the proposal is no longer supported by sufficient numbers of petitioners (ie, where petitioners indicate in writing their desire to withdraw their support).

Comment
Supported

63. Extension of provisions to allow all electors to vote in a poll held in relation to a recommended amalgamation of 2 or more local government districts – Schedule 2.1 Clause 8 (3)

An amendment to this schedule is required so that, if a poll of electors is requested and held on a recommended amalgamation, electors in all districts, or parts of districts affected by the proposal, are able to vote in the poll and not just those electors in the district that called for a poll.

However, if the proposal involves the amalgamation of a whole district with a part of another district (or parts of more than one district), the amendment is to limit the ability to call for a poll to the electors of the whole district. That is, electors from parts of districts are not able to call for a poll.

In addition, where a poll is conducted, a separate poll for each district (or part district) is to be held.

Comment
Not supported
There is a need to hold further discussions with Local Government on this proposal as it has not been subject to previous consultation

64. Appointment of an independent person to conduct polls in relation to local government boundary changes – Schedule 2.1 Clause 9

An amendment is required to ensure greater impartiality and independence in the conduct of polls in relation to proposals to change local government boundaries. This will be achieved with the removal of the power for local governments to conduct the polls.

It is proposed to amend schedule 2.1 of the Act by replacing Clause 9 (b) (ii) with provisions that preclude a person who is an employee or a council member of the affected local government from running the poll. In addition, provisions should state that this person is to be the WA Electoral Commissioner or a person approved by the Electoral Commissioner following nomination from the council.

Also, it is proposed that a provision be added that prevents a local government affected by a poll proposal to undertake any paid advertising of the case for or against the proposal. This limit would apply from the date of the Minister issuing directions under clause 9 (b) of Schedule 2.1 and until the completion of the poll. "Advertising" would need to cover any paid use of the media and the undertaking of any printing and dissemination (to others) of papers on the matter. Exclusions to this would be press releases and any unpaid interviews. Also, the local governments, should not be

limited from reproducing copies of the material prepared by the Advisory Board and relevant documents relating to the conduct of the poll.

Comment

No supported

It is considered unnecessary for the person to be independent of each Council and will add significant cost burden to the proposal.

There is also the question of why the use of an independent person is limited as this destroys competition.

65. New provision to indicate responsibility for paying the cost of polls conducted in relation to recommended amalgamations – Schedule 2.1 Clause 9 (b) (ii)

To clarify who is responsible for paying the cost of polls held in relation to a proposal to amalgamate two or more local government districts, it is proposed to include an additional provision in clause 9 of schedule 2.1.

The amendment should require the State Government to pay for polls when the boundary change proposal is initiated by the State. Where the poll has been initiated locally, either from individual petitioners or from the local government from which the request for the poll originated, the relevant local government is to pay for each poll on the matter – even if electors that vote in a poll are electors in another local government district.

Comment

Not supported

66. Acceptance or rejection of a recommended amalgamation following a poll of electors – Schedule 2.1 Clause 10 (2)

To reflect the changes made elsewhere to the polling provisions of Schedule 2.1 it will be necessary to amend clause 10 (2).

The amendment is to clarify that the Minister is only bound to reject the proposal if 50% of all electors across all of the polled districts vote and a majority oppose change.

Comments

Not supported

67. Reduction in the guarantee of employment for council staff following a boundary change or amalgamation – Schedule 2.1 Clause 11 (4)

To improve the efficiency and effectiveness of newly created local governments, amendments to the provisions relating to employees are to be made.

The period referred to in clause 11 (4) (b) is to be reduced from two years to one.

Comment

Supported

68. Review of local government names, wards and representations – Schedule 2.2 (6)

It is proposed that it is appropriate for local governments, whether or not they have wards, to conduct a periodic review of their electoral representation arrangements.

This will require amendment to clause 6 of Schedule 2.2 of the Act.

The title of the clause will need to be amended to read “Local government to review electoral representation periodically”.

In addition, a new subclause will need to be introduced. This subclause will need to require local governments without wards to assess whether their district needs to be divided into wards and, if so, what the boundaries of the wards should be and what the number of offices of council member should be for each ward.

The current requirement that not more than 8 years is to elapse between successive reviews by local governments is to apply to local governments without wards.

Comment

Not supported

There is strong suggestion that this amendment will be used to introduce one vote one value in wards to the exclusion of the other criteria.

**69. Advisory Board may accept or reject recommendation – Schedule 2.2
Clause 10 (3)**

The Advisory Board is able to reject a review of wards if, and only if, a proposal for change is made but the review does not correctly take into account the prescribed matters in clause 8.

It is proposed to extend this power to enable the Advisory Board to reject a local government’s review which proposes to maintain the status quo if, in the Board’s opinion, it does not correctly take into account the prescribed matters.

An amendment is also required to provide the Advisory Board with the option of requesting local governments to undertake a further review of wards or internal representative structures within the 8 years required for periodic review. A local government is to comply with such a request. This will provide the Advisory Board with the power to ensure representational structures remain relevant.

Comment

Not supported

70. Further clarification of the process about how mayors, presidents, deputy mayors and deputy presidents are elected by the council – Schedule 2.3

It is necessary to further define how mayors, presidents, deputy mayors and deputy presidents are elected by the council.

The Schedule is to be amended to insert provisions which:

- ? Provide the power to make regulations in relation to this type of election.
- ? Allow for nominations to be made prior to the meeting at which the election will occur.
- ? Require that the time for close of nominations is to be announced at the meeting when the election is to occur. The close of nominations cannot occur for at least 10 minutes following the announcement of the closing time.
- ? Require the election to be on a first past the post basis.
- ? Require the election to use formal ballot papers which contain the names of the candidates.
- ? Require all ballot papers to be preserved in accordance with the electoral provisions of Part 4 of the Act.
- ? Allow for people who are aggrieved by the electoral process to have access to a Court of Disputed Returns.
- ? Require the Returning Officer to declare the result and the votes cast for the candidates.

Comment

Not supported (strongly)

This is unnecessary introduction of more complexity to the election process to solve maybe one issue at one Council.

71. New power to allow an elected member to be a commissioner – Schedule 2.4

It is proposed that, at the Minister's discretion, a person can be a commissioner at the same time they are an elected member.

This will require an amendment to Schedule 2.4 (1) to include a provision allowing for such an occurrence.

Comment

Supported

72. Disqualification of a member of the Local Government Advisory Board – Schedule 2.5 (7) (7)

An amendment is required to minimise the potential for members of the Advisory Board to have a conflict of interest.

Clause (7) of Schedule 2.5 should be amended to disqualify a member of the Advisory Board from acting where the matter being considered is a matter relating to a local government in which the member is an elector.

Comment

Supported

73. New power to allow a local government to issue a notice for the removal of bees from private property – Schedule 3.1

To ensure that the local governments have appropriate power in relation to bee keeping in their districts, the power to issue a notice to a person, requesting the removal of bees from private property is to be included in this Schedule.

Schedule 3.1 is to be amended by inserting the following provision; “The removal of bees if the keeping of bees breaches a local law of the local government”.

Comment
Supported

74. New power to allow a local government to issue a notice to repair a boundary fence – Schedule 3.1

To ensure that local governments have appropriate power in relation to the standard of boundary fences in their districts, the power to issue a notice requesting that a boundary fence be repaired is to be included in this Schedule.

A new provision is to be inserted in Schedule 3.1 to give local governments the power to issue a notice to an owner or occupier requesting that a boundary fence be repaired. It can only issue such a notice if there is a contravention of a local law on the matter.

Comment
Supported

75. New power to allow local government to issue a notice to limit or stop nuisance lighting – Schedule 3.1

To ensure that local governments have the appropriate power in relation to nuisance caused by artificial or reflective light, the power to issue a notice in relation to this matter is to be included in this Schedule.

A new provision is to be inserted into Schedule 3.1 to give local governments the power to issue a notice to an owner or occupier requiring steps to limit or stop any reflective or artificial light illuminating adjoining land where it creates a nuisance. It can only issue such a notice if there is a contravention of a local law on the matter.

Comment
Supported

76. New power to allow a local government to carry out works on private thoroughfares – Schedule 3.2

A new provision is to be inserted into Schedule 3.2 to provide local government with the ability to carry out works on private thoroughfares to provide for the safe use of the thoroughfare by vehicles and pedestrians and to ensure the thoroughfare is not a hazard.

Another new provision is proposed to allow local governments to carry out maintenance works and works in relation to access and safety. Local governments should be able to undertake such construction and obstruction works and legislation should provide the ability to recover costs from owners of the land.

Comment
Supported

77. Transitional provisions – Schedule 9.3

Doubts exist about the current validity of a Governor's Order made under section 190(8) of the Local Government Act 1960 which extended the area of a local government's district so that the powers of a local law may be applied to that extended area.

Legislation needs to be made to validate the continuation of powers for local laws to operate in areas outside district boundaries (eg for bathing, boating etc).

Comment
Supported

78. Amendments in relation to the *Land Administration Act 1997* – various sections

There are a number of instances where the Act refers to the *Land Act 1933* instead of the *Land Administration Act 1997*.

Amendments are required to the following sections: 3.52, 3.54, 9.41, 9.48, 9.69 and schedule 9.3 (clause 37) to correct this.

Comment
Supported

79. Consequential amendments arising from the change in name of the Western Australian Municipal Association (WAMA) to the Western Australian Local Government Association (WALGA) – various sections

There are a number of instances where amendments will need to be made as a consequence of the above name change. These are as follows:

Section 1.4

Delete – “WAMA” means the Western Australian Municipal Association constituted under section 9.58. Replace with “WALGA means the Western Australian Local Government Association”.

Sections 5.49 (2), (4) and (6)

Delete WAMA replace with WALGA

Section 9.58 (1)

Delete “Western Australian Municipal Association” and replace with “Western Australian Local Government Association”.

Schedule 2.5 (2) (b), (4) (1) and (11) (2) (b)
Delete WAMA and replace with WALGA.

Schedule 8.1 (1) (1) (b); (1) (1) (c); (1) (3); and (2)
Delete WAMA replace with WALGA.

Consequential changes to other Acts will also need to be made.

Comment
Supported

80. Consequential amendments arising from the creation of the Western Australian Local Government Association – Section 9.58

The Western Australian Local Government Association is to be a single association organisation.

As such, the reference to the Country Shire Councils' Association of Western Australia, the Country Urban Councils' Association and the Local Government Association of Western Australia are to be removed from section 9.58 (1) of the Act in line with advice from WALGA. Consequential changes to other Acts will also need to be considered.

Comment
Supported

81. Consequential amendments arising from the change of name of the Institute for Municipal Management WA Division Inc. to the Local Government Managers Australia WA Division – various sections

There are a number of instances where amendments will need to be made as a consequence of the above name change. In Schedule 2.5 (2) (c); (4) (2); and (11) (2) (c), delete Institute of Municipal Management WA Division Inc. and replace with Local Government Managers Australia WA Division.

Consequential changes to other Acts will also need to be considered.

Comment
Supported

82. New provisions about confidential information

A separate provision is needed which deals with confidential information. This should allow local governments to keep certain resolutions resulting from in camera discussions confidential until the matter has been resolved.

The matters which can be kept confidential should be specified in regulations.

There will be some things that the local governments shall keep confidential, such as those people who want their address to be silent on the electoral roll, while there will

be other things that local governments may keep confidential (such as the price they are prepared to pay at auction for a bid).

Resolutions should not remain confidential indefinitely but be identified in council minutes as soon as either settlement on land takes place or when a good or service is purchased.

An amendment is required to give local governments the power to keep commercially sensitive information confidential when preparing a business plan (section 3.59).

A separate provision is needed to allow local governments to keep commercially sensitive information confidential during any negotiations. Such a decision should be made by a resolution of council which cannot be delegated.

Comment
Supported