

WALGA ADVOCACY POSITIONS LOCAL GOVERNMENT ACT REVIEW

LOCAL GOVERNMENT ACT REVIEW PRINCIPLES

That State Council endorse the following general principles as being fundamental to its response to the review of the Local Government Act:

- (a) Uphold the General Competence Principle currently embodied in the Local Government Act;
- (b) Provide for a flexible, principles-based legislative framework; and
- (c) Promote a size and scale compliance regime

BENEFICIAL ENTERPRISES

Position Statement	The Local Government Act 1995 should be amended to enable Local Governments to establish Beneficial Enterprises (formerly known as Council Controlled Organisations).
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WALGA has been advocating for Local Governments to have the ability to form Beneficial Enterprises (formerly known as Council Controlled Organisations) for approximately ten (10) years.

A Beneficial Enterprises is a standalone arm's length business entity to carry out commercial enterprises and to deliver projects and services for the community. Local Governments would have the ability to create Beneficial Enterprises through the Local Government Act, however the stand alone business entity would be governed by the Corporations Act (ie normal company law).

Beneficial Enterprises provide services and facilities that are not attractive to private investors or where there is market failure. A Beneficial Enterprise cannot carry out a regulatory function of a Local Government.

Examples

- Urban regeneration; A Land Development may not be attractive to a private developer, however the ability to develop the land may be beneficial for the Local Government in respect to strategic development/connection of an area. Or may be worth a joint venture with a developer.
- Measures to address economic decline in Regional WA – A small business may not be viable for a private citizen, however maybe considered an essential service for the Local Government. ie Could be the local Pharmacy or local mechanical workshop.

Benefits of establishing a Beneficial Enterprise include:

- (a) The ability to employ professional directors and management with experience specific to the commercial objectives of the entity;
- (b) Removal of detailed investment decisions from day-to-day political processes while retaining political oversight of the overarching objectives and strategy;
- (c) The ability to take an overall view of commercial strategy and outcomes rather than having each individual transaction within a complex chain of inter-related decisions being subject to the individual notification and approval requirements of the Local Government Act;

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- (d) The ability to quarantine ratepayers from legal liability and financial risk arising from commercial or investment activities;
- (e) The ability to set clear financial and non-financial performance objectives for the entity to achieve; and
- (f) Greater flexibility to enter into joint venture and partnering relationships with the private sector on conventional commercial terms.

FINANCIAL MANAGEMENT

Tender Threshold

Position Statement	WALGA supports an increase in the tender threshold to align with the State Government tender threshold of \$250 000, with a timeframe of one financial year for individual vendors.
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Procurement

WALGA seeks inclusion of the following position, to permit a procurement activity involving a disposal trade-in activity to qualify as a broad exemption under Regulation 30(3) of the Local Government (Functions and General) Regulations:

Position Statement	That Regulation 30(3) be amended to delete any financial threshold limitation (currently \$75,000) on a disposition where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.
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Imposition of Fees and Charges: Section 6.16

Position Statement	That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.
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Power to Borrow: Section 6.20

That Section 6.20(2) of the Local Government Act, requiring one month's public notice of the intent to borrow, be deleted.

Basis of Rates: Section 6.28

That Section 6.28 be reviewed to examine the limitations of the current methods of valuation of land, Gross Rental Value or Unimproved Value, and explore other alternatives including simplifying and providing consistency in the rating of mining activities.

Differential General Rates: Section 6.33

That Section 6.33 of the Local Government Act be reviewed in contemplation of time-based differential rating, to encourage development of vacant land.

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Member Interests - Exemption from AASB 124

Elected Member obligations to declare interest are sufficiently inclusive that WALGA seeks an amendment to create an exemption under Regulation 4 of the Local Government (Financial Management) Regulations relating to AASB 124 'Related Party Transactions' of the Australian Accounting Standards (AAS).

RATES, FEES AND CHARGES

Imposition of Fees and Charges: Section 6.16

Position Statement	That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.
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Rating Exemptions – Charitable Purposes: Section 6.26(2)(g)

1. Amend the Local Government Act to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth Aged Care Act 1997;
2. Either:
 - (a) amend the charitable organisations section of the Local Government Act 1995 to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or
 - (b) establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates; and
3. Request that a broad review be conducted into the justification and fairness of all rating exemption categories currently prescribed under Section 6.26 of the Local Government Act.

Rating Exemptions – Rate Equivalency Payments

Position Statement	Legislation should be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government.
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Rates or Service Charges Recoverable in Court: Section 6.56

Position Statement	That Section 6.56 be amended to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to the 'cost of proceedings'.
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Rating Restrictions – State Agreement Acts

Position Statement	Resource projects covered by State Agreement Acts should be liable for Local Government rates.
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ADMINISTRATIVE EFFICIENCIES

Control of Certain Unvested Facilities: Section 3.53

WALGA seeks consideration that Section 3.53 be repealed and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.

Local Government Grants Commission and Local Government Advisory Board

WALGA seeks inclusion of a proposal to allow electors of a Local Government affected by any boundary change or amalgamation proposal entitlement to petition the Minister for a binding poll under Schedule 2.1 of the Local Government Act

Schedule 2.1 – Proposal to the Advisory Board, Number of Electors

That Schedule 2.1 Clause 2(1)(d) be amended so that the prescribed number of electors required to put forward a proposal for change increase from 250 (or 10% of electors) to 500 (or 10% of electors) whichever is fewer.

Schedule 2.2 – Proposal to amend names, wards and representation, Number of Electors

That Schedule 2.2 Clause 3(1) be amended so that the prescribed number of electors required to put forward a submission increase from 250 (or 10% of electors) to 500 (or 10% of electors) whichever is fewer.

Transferability of employees between State & Local Government (Questions 82-84)

A General Agreement between State and Local Government should be established to facilitate the transfer of accrued leave entitlements (annual leave, sick leave, superannuation and long service leave) for staff between the two sectors of Government. This will benefit public sector employees and employers by increasing the skills and diversity of the public sector, and lead to improved collaboration between State and Local Government.

Proof in Vehicle Offences may be shifted: Section 9.13(6)

That Section 9.13 of the Local Government Act be amended by introducing the definition of 'responsible person' to enable Local Governments to administer and apply effective provisions associated with vehicle related offences.

COMPLAINTS MANAGEMENT

Querulous, Vexatious and Frivolous Complainants

The Complaints Management commentary contemplates the issue up to the point of unresolved complaints and then references the Ombudsman resources with regard to unreasonable complainants. WALGA seeks inclusion of commentary and questions relating to Local Governments adopting within their proposed complaints management framework, the capacity to permit a Local Government to declare a member of the public a vexatious or

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frivolous complainant, subject to the declaration relating to the nature of complaint and not to the person.

Amend the *Local Government Act 1995*, to:

- Enable Local Government discretion to refuse to further respond to a complainant where the CEO is of the opinion that the complaint is trivial, frivolous or vexatious or is not made in good faith, or has been determined to have been previously properly investigated and concluded, similar to the terms of section 18 of the *Parliamentary Commissioner Act 1971*.
- Provide for a complainant, who receives a Local Government discretion to refuse to deal with that complainant, to refer the Local Government's decision for third party review.
- Enable Local Government discretion to declare a member of the public a vexatious or frivolous complainant for reasons, including:
 - Abuse of process;
 - Harassing or intimidating an individual or an employee of the Local Government in relation to the complaint;
 - Unreasonably interfering with the operations of the Local Government in relation to complaint.

COUNCIL MEETINGS

Electors' General Meeting: Section 5.27

Position Statement	Section 5.27 of the Local Government Act 1995 should be amended so that Electors' General Meetings are not compulsory.
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Special Electors' Meeting: Section 5.28

That Section 5.28(1)(a) be amended:

- (a) so that the prescribed number of electors required to request a meeting increase from 100 (or 5% of electors) to 500 (or 5% of electors), whichever is fewer; and
- (b) to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise.

Minutes, contents of: Regulation 11

Regulation 11 should be amended to require that information presented in a Council or Committee Agenda must also be included in the Minutes to that meeting.

Revoking or Changing Decisions: Regulation 10

That Regulation 10 be amended to clarify that a revocation or change to a previous decision does not apply to Council decisions that have already been implemented.

Elected Member attendance at Council meetings by technology

The current Local Government (Administration) Regulations 1996 allows for attendance by telephone, however only if approved by Council and in a suitable place. A suitable place is then defined as in a townsite as defined in the Land Administration Act 1997. This restricts an Elected Members ability to attend the meeting to a townsite in Western Australia.

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This requirement does not cater for remote locations or the ability to attend via teleconference whilst in another state or overseas. The regulations require amendment to consider allowing attendance at a meeting via technology from any location suitable to a Council.

INTERVENTIONS

Remedial intervention; Powers of appointed person; Remedial action process

In respect to remedial intervention, the appointed person should be a Departmental employee with the required qualifications and experience. This provides a connection back to the Department and its requirements.

The appointed person should only have an advice and support role. Funding of the remedial action should be by the Department where the intervention is mandatory. The Local Government to pay where the assistance is requested.

This area relates to the bigger picture of differentiating between Local Governments based on their size and scale. Suitable arrangements to determine a size and scale compliance regime should be prioritized.

ELECTIONS

Conduct of Postal Elections: Sections 4.20 and 4.61

Position Statement	The Local Government Act 1995 should be amended to allow the Australian Electoral Commission (AEC) <u>and or any other third party provider</u> to conduct postal elections.
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Voluntary Voting: Section 4.65

Position Statement	Voting in Local Government elections should remain voluntary.
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Method of Election of Mayor/President: Section 2.11

Position Statement	Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.
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On-Line Voting

That WALGA continue to investigate online voting and other opportunities to increase voter turnout.

Method of Voting - Schedule 4.1

Position Statement	Elections should be conducted utilising the first-past-the-post (FPTP) method of voting.
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Leave of Absence when Contesting State or Federal Election

Amend the Act to require an Elected Member to take leave of absence when contesting a State or Federal election, applying from the issue of Writs. The options to consider include:

- (i) that an Elected Member remove themselves from any decision making role and not attend Council and Committee meetings; or
- (ii) that an Elected Member take leave of absence from all aspects of their role as a Councillor and not be able to perform the role as specified in Section 2.10 of the Local Government Act.