

## **LOCAL GOVERNMENT ACT 1995 REVIEW: AGILE, SMART, INCLUSIVE – LOCAL GOVERNMENTS FOR THE FUTURE. PHASE 1: CONSULTATION PAPER**

### **SHIRE OF BROOME SUBMISSION**

Thank you for opportunity to make submission on the *Local Government Act 1995* Review: Agile, Smart, Inclusive – Local governments for the future. The Shire of Broome supports the intent of the review to modernise the legislation given that it has been more than 20 years since the last major legislation review.

#### **Context: The Shire of Broome**

The Shire of Broome comprises around 55,000 square kilometres of coastline, bushland and desert. With a population of less than 17,000, this equates to a density of 3 square kilometres for every person, in comparison to 282 people per square kilometre within the Perth metropolitan area.

The age demographic of the resident population illustrates the Shire of Broome has a high proportion of young families with more than 50 per cent of the population being under 35 years of age and more than 80 per cent being under 55 years of age. The median household income of \$1,796 per week is higher than the Australian average. However, around 77 per cent of dwellings have access to internet at home which is lower than the Australian average.

The Shire's cultural diversity is immediately apparent with influences from local Indigenous and Asian cultures including Japanese, Chinese, Malaysian, Thai and Filipino. Around 28 per cent population identified as Indigenous in the most recent Census and almost 15 per cent of the population was born overseas. More than 10 per cent of households speak a language other than English at home.

The Council of the Shire of Broome consists of nine elected members. The Shire of Broome is divided into two wards: Broome Ward (seven Councillors) and Dampier Ward (two Councillors).

The Shire has a management structure of 4 directorates: (1) Office of the CEO; (2) Development and Community; (3) Corporate Services; and (4) Infrastructure. The directorates are led by an executive management team which coordinates the operations of the Shire. Teams of dedicated staff carry out each directorate's responsibilities, programs and initiatives of Council.

There are more than 130 FTE employees at the Shire – just over 50 per cent of employees work in the administration office and the remainder in operational roles. The staff turnover rate is currently at around 30 per cent per annum. Given the small number of employees and difficulty attracting particular expertise to a remote region, the Shire relies on external contractors and consultants to fill skills gaps and implement larger projects.

#### **Overarching comments**

The Shire of Broome supports the overarching objectives and principles guiding the review.

The Shire strongly supports the proposal for the *Local Government Act 1995* (the Act) to be principles-based and focused on outcomes, with the detail relating to powers and responsibilities to be addressed in regulations or other guidance material. This will ensure that the legislation continues to be relevant over time and does not become outdated quickly. It will also provide flexibility for local governments to adapt how they implement responsibilities and deliver outcomes in a way that best suits their particular circumstances and community.

Poor governance and ineffective management impacts the effectiveness of local government and community confidence in local government. However, it is important that the intensity of regulation is proportionate to the risks and consequences of specific powers and responsibilities.

While some proposals are well intentioned, there is a risk that requirements will be imposed which are over and above what would be expected of other levels of government – even though local governments, particularly those in regional and remote regions, have least capacity and resources to deliver.

We are supportive of the proposal for a tiered compliance regime based on capacity. This would reduce the resource burden on small local governments and improved capacity building support from the Department. A tiered compliance regime would need to be reviewed over time to ensure it reflected changes in capacity etc. Also, moving from prescriptive to a principles or outcomes-based legislation model should enable local governments to implement their responsibilities in a way that best suit their circumstances and local community.

### **Additional areas for review**

We understand that the review will be undertaken in two phases. We think it is important that the review consider the following additional matters in Phase 2:

- A broad review into all rating exemption categories is a high priority for the Shire, consistent with the WALGA policy position. In particular, the review should address rates exemptions for commercial activities of charities and the application of the religious organisation exemption to Registered Native Title Bodies Corporate and other Aboriginal Corporations registered under the CATSI Act. These issues are discussed in more detail under Section 10. Reducing Red Tape.
- The Shire recommends that a broader review be undertaken of impediments to digital transformation. Other legislation, such as the *State Records Act 2000*, is preventing modernisation of local government payments, services and information management in line with community expectations. These issues are discussed in more detail under Section 10. Reducing Red Tape.
- The Shire is concerned that personal information about ratepayers and employees is not protected to the same extent as personal information collected by other levels of government or in line with community expectations. It is unclear why any member of the public or business should be able to access personal information through the local government rates book, employee annual returns or the electoral roll data. Members of the public and businesses would not be able to obtain access to the same types of personal information collected by other levels of government, particularly without authorisation of the relevant individual. We consider that access to personal information should be reviewed to ensure it is consistent with privacy law and other levels of government. This issue is also discussed under Section 8. Access to information.
- The Shire supports investigation of options to modernise local government elections and Council meetings, including the WALGA policy positions relating to:
  - o investigating online voting options to encourage increased community participation;
  - o first-past-the-post method for voting;
  - o allowing other parties to support administration and conducting elections, particularly in regional and remote areas which
  - o method for election of Shire President at discretion of local government
  - o increase the requirements for the number of electors for calling special electors' meetings, proposal to Advisory Board and proposals

- annual electors' meetings not compulsory given little or no attendance. Electors already have an opportunity to ask questions about the Annual Report at other Council meetings; and
- review which decisions require a simple or absolute majority.
- The Department's focus seems to be on compliance. Would like to see shift towards focus on supporting local governments, capacity building and assisting with issues that are relevant to the whole sector. For instance, it would be helpful if the Department provided legal advice and training on issues that are relevant to the whole sector. It is inefficient, costly and risks inconsistency if local governments need to independently seek legal advice and training from the private sector when they cannot seek advice from the Department.
  - Areas where support and assistance from the Department would be particularly helpful include procurement, human resources and industrial relations.

#### **Detailed comments on the Phase 1: Consultation Paper**

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## 1. Relationships between council and administration

Defining the roles of council and administration: guidance questions

- How should a council's role be defined? What should the definition include?
- How should the role of the CEO and administration be defined?
- What other comments would you like to make on the roles of council and administration?
- Are there any areas where the separation of powers is particularly unclear? How do you propose that these are improved?

The Shire of Broome does not have any comment on these matters or issues of concern. Any issues that do arise are usually due to a misunderstanding of the roles of council and administration and separation of powers. These issues could be addressed through improved training and capacity building.

## 2. Training for elected members

### Elected member competencies: Response to guidance questions

- What competencies (skills and knowledge) do you think an elected member requires to perform their role?
- Do these vary between local governments? If so, in what way?

It is critical that elected members understand their roles and responsibilities. Consistent with the WALGA policy position, elected members require the following key competencies to effectively perform their role:

- Understand their obligations and responsibilities as Councillors under legislation;
- Understand and critically assess financial information, including budgets and financial reports;
- Conduct and conflicts of interest; and
- Processes and procedures for Council and committee meetings

The Shire considers that it would also be helpful if prospective and newly elected members understood the commitment involved, their role in the community and how local government fits within Australia's government structure.

### Funding training: Response to guidance questions

- Who should pay for the costs of training (course fees, travel, other costs)?
- If councils are required to pay for training, should a training fund be established to reduce the financial impact for small and regional local governments? Should contribution to such a fund be based on local government revenue or some other measure?

The Shire agrees with WALGA's policy position that funding assistance should be available from the State to support participation in training. The current cost of training is an issue for smaller, remote local governments.

The Shire also considers that some training and capacity building support should be provided by the Department, rather than fully relying on training offered by WALGA. In particular, it would be appropriate for the Department to provide newly elected councillors with training on core responsibilities. Further, elected members should be able to undertake training from their home location and not be required to travel to Perth.

### Mandatory training: response to guidance questions

- Should elected member training be mandatory? Why or why not?
- Should candidates be required to undertake some preliminary training to better understand the role of an elected member?
- Should prior learning or service be recognised in place of completing training for elected members? If yes, how would the work?
- What period should apply for elected members to complete essential training after their election?

Training should be available for newly elected members that they would be encouraged to complete within 12 months of being elected to Council for the first time. As discussed earlier, elected members should be able to undertake training from their home location and not be required to travel to Perth. Online training or information sessions should also be available for prospective candidates running for election.

While training for elected members should be supported and encouraged, the Shire does not support mandatory training. Local government members may not have a good understanding of government, their role and responsibilities as local government members or experience in finance, law or governance matters.

However, it is difficult to make formal training mandatory for local government members when it is not mandatory at other levels of government. It is often the case that local government members are time-poor, undertaking this role in addition to other employment and are not full-time politicians. It is also important that local government is diverse and representative of the community, and we do not want to inadvertently discourage or exclude cohorts of the population from participating by imposing mandatory training requirements.

It is also difficult to see how and who would be responsible for enforcing mandatory training requirements. The Shire does not consider it appropriate for the administration arm to be responsible for enforcing sanctions against elected members. It is unclear if the community would support sanctions against or steps to prevent participation in Council decision-making of a local government member who they have elected to Council.

#### Continuing professional development: response to guidance questions

- Should ongoing professional development be undertaken by elected members?
- If so, what form should this take?

There should be professional development options available to local government members to ensure they are up to date with their responsibilities and they can effectively participate in Council meetings and any Committees which they are members of.

As raised above, the Shire considers that some training and capacity building support should be provided by the Department, rather than fully relying on training offered by WALGA. This should include training and support to implement any legislative changes and guidance updates and capacity building to ensure core Council committees can function effectively, such as audit and risk.

The Shire would consider a remuneration structure for local government members which reflects the level of training completed. However, given the potential costs, we propose deductions for not undertaking training rather than introducing additional financial incentives or bonuses for members for undertaking training.

### 3. The behaviour of elected members

In addition to the issues discussed in the Consultation Paper, the Shire supports the WALGA policy position that elected members should be required to take leave of absence when contesting a State or Federal election. At a minimum an elected member should not participate in decision-making while they are contesting another election.

#### Code of Conduct: Response to guidance questions

- Should standards of conduct/behaviour differ between local governments? Please explain.
- Which option do you prefer for codes of conduct and why?
- How should a code of conduct be enforced?

Poor conduct and disruptive behaviour of an elected member can significantly impact the effectiveness of local government and community confidence. It is hard to identify a type of serious breach of conduct or disruptive behaviour that would have a significant impact on one local government but not another.

For these reasons, the Shire supports the WALGA policy position that there should be official conduct legislation to govern the behaviour of elected members.

It is important that any legislation governing conduct and the consequences of is proportionate to the risks and consequences of the conduct or behaviour of an elected member. For instance, behaviour that significantly disrupts confidence and functioning of a local government and breaches of powers and responsibilities of local government members should be covered by legislation and have more severe consequences for breaches.

In this regard, we would suggest that there needs to be a review of what constitutes a major or minor breach, as well as the other issues currently discussed in the Consultation Paper. We are concerned that some conduct which is categorised as a minor breach could significantly impact the effectiveness of local government and community confidence. For example, regulations currently prescribe the misuse of local government resources, improper use of the office to gain personal advantage and disclosing confidential information as minor breaches despite the potential significant impact on local government if this behaviour occurred.

The Shire also proposes the legislation enable Council meeting attendance to be addressed earlier than is currently allowed under the legislation. Currently, action can only be taken after a member has not attended 3 consecutive meetings and the only action available is disqualification. It would be helpful to have steps that could be taken before disqualification, such as being able to write and publish formal correspondence about attendance and withhold payments for non-attendance.

However, continued non-attendance at Council and Committee meetings affects local government decision-making. We are also concerned about the time and resources involved in holding and rescheduling meetings when unable to obtain a quorum, as well as the impact on the elected members that do attend meetings. Elected members also continue to receive payment of Councillors fees even when they do not attend meetings. The administration arm cannot take other actions or withhold payments without legislation backing.

#### Streamlined rules of conduct: Response to guidance questions

- Do you support streamlined Rules of Conduct regulations? Why?
- If the rules were streamlined, which elements should be retained?

- Do you support a reduction in the time frame in which complaints can be made? Is three months adequate?

The Shire would not support a reduction in the timeframe within which complaints can be made to three months.

Members of the public who have been the subject of a serious breach may require time and support to be able to lodge a formal complaint and make arrangements to participate in a conduct review process. We also note that some members of the public may take time or be reluctant to bring complaints forward against a local government member because of their high profile in the community and concerns around confidentiality.

#### Revised disciplinary framework: Response to guidance questions

- Do you support an outcome-based framework for elected members? Why or why not?
- What specific behaviours should an outcomes-based framework target?

As a general principle, the Shire supports outcomes-based regulatory framework. This would ensure that the code of conduct can be implemented consistent with its intent and more flexible to deal with new, unforeseen circumstances that may arise.

However, given the seriousness of the issues and potential consequences, it is important that guidance is available to ensure consistency and fair process for all parties involved in any misconduct investigation and

#### Application of the Rules of Conduct: Response to guidance questions

- Should the rules of conduct that govern behaviour of elected members be extended to all candidates in council elections? Please explain.

Candidates running for local government elections would be expected to comply with conduct requirements if elected, so it would follow that they should comply while running for election. However, to ensure due process, new candidates would need to be advised of their responsibilities and be required to sign a declaration that they understand and can comply with the requirements.

The Shire supports the WALGA policy position that a person should be disqualified from being an elected member if they have been convicted of an offence against the Planning and Development Act or the Building Act, because of the significant personal benefits which can be illegally gained through these systems.

#### Offence provisions: Response to guidance questions

- Should the offence covering improper use of information be extended to former members of council for a period of twelve months? Why?
- Should this restriction apply to former employees? Please explain?

Improper use of information obtained during tenure as a local government member or employment with the Shire should incur an offence. However, we understood that improper use of information gained in the way was already a breach that incurred an offence even after leaving office or public service employment.

#### Confidentiality: Response to guidance questions

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



The Shire supports the WALGA policy position that confidentiality is maintained for all parties involved until the matter is determined.

#### Sector conduct review committees: Response to guidance questions

- What do you see as the benefits and disadvantages of this model?
- What powers should the Conduct Review Committee have?
- In your opinion what matters should go directly to the Standards Panel?
- Who should be able to be a member of a panel: elected members, people with local government experience, independent stakeholders?
- Who should select the members for the pool?
- How many members should there be on the Review Committee?
- Are the proposed actions for the Review Committee appropriate? If not, what do you propose?

The Shire supports the WALGA policy position that there should be an efficient and effective independent Standards Panel review process for handling complaints and breaches, and which ensures that the principles of natural justice and procedural fairness are adhered to and confidentiality for all parties is maintained through the process.

#### Review of elected member non-compliance: Response to guidance questions

- Which of the options for dealing with complaints do you prefer? Why?
- Are there any other options that could be considered?
- Who should be able to request a review of a decision: the person the subject of the complaint, the complainant or both?

The Shire supports the WALGA policy position that the Standards Panel should have an ability to dismiss vexatious and frivolous complaints. However, the Shire would support an ability for the Standards Panel, rather than the local government, to declare a member of the public a vexatious or frivolous complainant.

#### Mediation: Response to guidance questions

- Do you support the inclusion of mediation as a sanction for the Panel? Why or why not?

Mediation could be a helpful option in the situation where it would be more appropriate to resolve a dispute or misunderstanding between two parties and/or the broader community is not affected by the matter.

#### Prohibition from attending council meeting: Response to guidance questions

- Do you support the Panel being able to prohibit elected members from attending council meetings? Why or why not?
- How many meetings should the Panel be able to order the elected member not attend?
- Should the elected member be eligible for sitting fees and allowances in these circumstances?

The Shire supports that WALGA policy position that an individual elected member can be stood down from their role when they are under investigation, have been charged, or when their continued presence prevents council from properly discharging its functions or affects the Council's reputation.

To ensure the principles of natural justice and procedural fairness are adhered to, it would be important to define the process and what is considered disruptive behaviour that would result in an elected member being stood down where their continued presence prevents council from properly discharging its functions or affects the Council's reputation.

#### Compensation to the local government: Response to guidance questions

- Do you support the Panel being able to award financial compensation to the local government? Why or why not?
- What should the maximum amount be?

The Shire supports the proposal for the Panel being able to award financial compensation to the local government. It is not appropriate that rate payers and the wider community incur the costs associated with the misconduct of an elected member. These costs should ideally be born by an elected member found to be in breach of the conduct requirements. However, there may be circumstances where the elected member cannot pay the compensation.

At a minimum, financial compensation should include the administration costs incurred in managing complaint, participating in panel process and implementing any response.

If relevant, the compensation should also include any financial loss incurred due to misuse or loss of local government funds, as well as any grant funding from other levels of government and/or sponsorship funding from other parties, which is recouped or withdrawn as a result of the investigation and misconduct of an elected member.

#### Complaint administrative fee: Response to guidance questions

- Do you support this option? Why or why not?
- Do you believe that a complaint administration fee would deter complainants from lodging a complaint? Is this appropriate?
- Would a complaint administrative fee be appropriate for a sector conduct review committee model? Why or why not?
- What would be an appropriate fee for lodging a complaint?
- Should the administrative fee be refunded along with a finding of a minor breach or should it be retained by the Department to offset costs? Why or why not?

The Shire is supportive of a minimal complaint administration fee to be paid when a complaint is lodged. However, it is important that this does not deter members of the public from lodging a complaint, particularly where the matter potentially involved a significant breach of conduct requirements.

#### Cost recovery to local government: Response to guidance questions

- Do you support the cost of the panel proceedings being paid by a member found to be in breach? Why or why not?

As discussed above, the Shire supports the proposal for the Panel being able to award financial compensation to the local government, which at a minimum includes the administration costs incurred in managing complaint, participating in panel process and implementing any response.

It is not appropriate that rate payers and the wider community incur the costs associated with the misconduct of an elected member. In the first instance, these costs should be born by any elected member found to be in breach of the conduct requirements.

#### Publication of complaints in the annual report: Guidance question

- Do you support the publication of complaints in the annual report?

The Shire already publishes statistic relating to complaints of minor breaches that resulted in action. We would not have any concerns with publishing a broader range of statistics, but note that we would usually have a nil report. We do not think that the Annual Report is the most appropriate or timely way to publish more detailed information about breaches and responses/actions.

#### Tabling decision report at Ordinary Council Meeting: Response to guidance question

- Do you support the tabling of the decision report at the Ordinary Council Meeting? Why or why not?

The Shire agrees that decisions should be tabled at an Ordinary Council Meeting to ensure transparency. We consider that this may be a more useful and timely mechanism than publishing information once a year in the Annual Report.

#### Elected member interests: Response to guidance questions

- Should not-for-profit organisation members participate in council decisions affecting that organisation? Why or why not?
- Would your response be the same if the elected member was an office holder in the organisation?

Preventing elected members who are members or volunteer in not-for-profit organisations may affect the functioning of Council meetings in a Shire with a small population. Elected members are often involved in not-for-profit organisations in their local community. Further there is a risk that Aboriginal elected members would be excluded from participating in a significant portion of Council decisions in the Shire of Broome if not-for-profit membership meant they could not participate in decision-making.

If an elected member were office holder and/or had a financial interest and a council decision had a direct financial impact on the not-for-profit, then it would not be appropriate for them to participate in the council decision. This would be consistent with the approach for elected members who declare financial interests in for-profit businesses.

## 4. Local Government administration

### Recruitment and selection of local government CEOs: Response to guidance questions

- Would councils benefit from assistance with CEO recruitment and selection? Why?
- How could the recruitment and selection of local government CEOs be improved?
- Should the Public Sector Commission be involved in CEO recruitment and selection? If so, how?
- Should other experts be involved in CEO recruitment and selection? If so, who and how?
- What competencies, attributes and qualifications should a CEO have?

The Shire has engaged a recruitment agency to undertake CEO recruitment processes. This is to ensure that appropriate process is followed, expertise and independent from the Council and Shire administration office, which is important in a regional and remote shire.

We would consider using a selection panel for CEO recruitment comprising state government officials, including the WA Public Sector Commission, and/or other independent experts if this option were cost effective and timely, relative to our current approach of using an independent, private recruitment agency.

While we agree that it is important that CEO's have the necessary capabilities, attributes and qualifications, we do not think that this should be specified in legislation. There is a risk that imposing these types of restrictions on CEO recruitment in the legislation will further disadvantage local governments competing for senior staff in remote regions.

Consistent with the WALGA policy position, we consider that only the most important, minimum requirements should be included in legislation regarding CEO recruitment, for instance, the decision-maker and requirements for minimum involvement of independent and appropriately qualified selection panel members.

### Acting CEOs: Response to guidance questions

- Should the process of appointing an acting CEO be covered in legislation? Why or why not?
- If so, who should appoint the CEO when there is a short term temporary vacancy (covering sick or annual leave for example)?
- Who should appoint the CEO if there will be a vacancy for an extended period (for example, while a recruitment process is to be undertaken)?

The Shire has a policy adopted by Council which sets out the arrangements for the appointment of an Acting CEO during periods of absence, to avoid any uncertainty. We note that any officer who holds a position of Director at the Shire should be suitably qualified to act in the CEO position.

We do not consider that the specific arrangements relating to the selection and appointment of an Acting CEO need to be specified in legislation. This is not consistent with the objective of moving to principles-based, flexible legislation. The only exception may be relating to the maximum length of absence before a recruitment process needs to be undertaken.

### Performance review of local government CEOs: Response to guidance questions

- Who should be involved in CEO performance reviews?
- What should be the criteria for reviewing a CEO's performance?
- How often should CEO performance be reviewed?
- Which model/option do you prefer? Why? Is there an alternative model that could be considered?

Currently the performance review process relies on the experience of the Shire President and elected members, who may not have had any prior experience in undertaking a performance review of senior staff. It is also important that a broad range of factors are considered, not just the relationship between elected members and the CEO.

#### Termination or extension of CEO contract around an election: Response to guidance questions

- Would a 'cooling off' period before a council can terminate the CEO following an election assist strengthening productive relationships between council and administration?
- What length should such a cooling off period be?
- For what period before an election should there be a restriction on a council from extending a CEO contract? Should there be any exceptions to this?

While we understand the concerns around the ability of a Council to extend or terminate a CEO contract immediately before or after a local government election, we note that it is also critical that a local government can function effectively and a good working relationship between the Council members and the CEO is important to achieve this outcome.

If these options are pursued, it would be helpful to have guidance around what happens in the circumstances that a contract end-date falls within the cooling off period.

#### Public expectations of staff performance: Response to guidance questions

- Is greater oversight required over local government selection and recruitment of staff?
- Should certain offences or other criteria exclude a person from being employed in local government? If so, what?

The Shire supports the WALGA policy position that legislation should only specify requirements for CEO recruitment and performance, not other local government employees. We also support the WALGA position that subsection 5.37(2) be deleted to remove ambiguity regarding the role of Council in relation to the appointment of other employees.

Expectations regarding the recruitment and performance of staff apply to all levels of government, not just local government. We would have concerns if it is proposed to prescribe requirements in legislation regarding the recruitment and performance management of employees over and above what is the case in other levels of government.

Local governments, particularly those in rural and remote areas, already face significant challenges with recruiting staff with the expertise and capabilities as well as high turnover. Imposing greater restrictions on local government would risk placing us at a further disadvantage when competing for staff with state and commonwealth government agencies located in our region.

## 5. Supporting local governments in challenging times

### Remedial intervention: Response to guidance questions

- Should the appointed person be a departmental employee, a local government officer or an external party? Why?
- Should the appointed person be able to direct the local government or would their role be restricted to advice and support? Please explain.
- Who should pay for the appointed person? Why?

### Powers of appointed person: Response to guidance questions

- What powers should an appointed person have?

### Remedial action process: Response to guidance questions

- Do you think the proposed approach would improve the provision of good governance in Western Australia? Please explain.
- What issues need to be considered in appointing a person?

The Shire does not have any comments in relation to the specific proposals. The Shire is supportive of the overarching objective that there should be a scale of remedial actions depending on the findings of an inquiry. Among other remedial actions, the Minister should be able to suspend one or more local government members, not just the entire council.

## 6. Making it easier to move between state and local government employment

### Transferability of employees: Response to guidance questions

- Should local and State government employees be able to carry over the recognition of service and leave if they move between State and local government?
- What would be the benefits if local and State Government employees could move seamlessly via transfer and secondment?

As a smaller local government with high staff turnover, the Shire can see the benefits of improving mobility of employees between state and local government where it assists with addressing capability and capacity gaps. It could also assist with employee development and provide more substantial career path opportunities.

We note that recognition of service and leave entitlements has been identified as one of the key barriers to mobility between state and local government. The Shire would support the recognition and recovery of associated costs of annual leave and long service leave, but not personal leave.

There is a risk that improving mobility may not result in an equal outcome and could facilitate a disproportionate movement from local to state government. Given this, we think it would be helpful to consider transfers in conjunction with other initiatives such as a two-way secondment program.

In addition to supporting movement between state and local government, the Shire would be interested in transfer and secondment opportunities between local governments within WA and with local governments in other states.

## 7. Gifts

### A new framework for disclosing gifts: Response to guidance questions

- Is the new framework or disclosing gifts appropriate? If not, why?
- Is the threshold of \$500 appropriate? If not, why?
- Should certain gifts – or gifts from particular classes or people – be prohibited? Why or why not?
- If yes, what gifts should be prohibited?

It is critical for confidence in local government that there is transparent disclosure of gifts and travel where there is an actual or potential conflict of interest. However, the current regime governing the disclosure and recording of information about gifts is too complex and onerous, and also goes beyond what is required at other levels of government.

As a principle, there needs to be a clearer link between gift disclosure rules and the decision-making responsibilities and powers of local government members and employees. Any new gift framework should be designed to address confusion about what needs to be disclosed, which is currently contributing to both under and over reporting.

Things that a Councillor or local government employees would receive in the normal course of performing their role, such as lunch provided while attending WALGA training or Zone meetings, should not be required to be disclosed.

In this regard, the Shire of Broome supports the WALGA policy position:

- simplify the gifts framework into one single category (rather than separate gifts and travel provisions);
- legislation provisions should only apply to elected members and the CEO, with other employees covered by code of conduct or policies;
- exempt attendance at ALGA, WALGA and LG Professionals meetings, training and events;
- the proposed \$500 threshold.

However, the value of the threshold should be specified in regulations, rather than legislation, as it should be updated on a regular basis. Further, we note that any return travel from a remote location such as Broome is likely to always exceed the \$500 threshold and so consideration should be given to including a higher threshold for remote areas in the regulations for travel.

### Excluding gifts received in a personal capacity: Response to guidance questions

- Should gifts received in a personal capacity be exempt from disclosure?
- If yes, how could 'personal capacity' be defined?
- Should there be any other exemptions from the requirement to disclose a gift over the threshold?
- If so, what should these be? Please justify your proposal?

Birthday, wedding and any other gifts genuinely received in a personal capacity from family and friends should also not need to be disclosed.

There also needs to be clarification that gifts provided to partners of Councillors, the CEO and Shire employees, do not need to be disclosed if they are received in a personal capacity or directly related to their partner's own employment.



### Gifts: Response to guidance question

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

The Shire also considers that there is scope to significantly streamline the requirements around recording and reporting gift information. We currently record and publish identical information in multiple ways to ensure compliance with the legislation, which costs significant time and resources.

## 8. Access to information

### Public notices: Response to guidance questions

- Which general option do you prefer for making local public notices available? Why?
- Which general option do you prefer for State-wide public notices? Why?
- With reference to the list of public notices, do you believe that the requirement for a public notice should be changed? Please provide details.
- For the State-wide notices in Attachment 3, are there alternative websites where any of this information could be made available?

The Shire supports the WALGA policy position relating to public notices as a minimum step towards modernising the legislation:

- replace the requirement for public notices in newspapers with contemporary digital channels (we do not think it is helpful to restrict the digital channel to a website);
- remove the requirement to advertise local laws in a state-wide public notices;
- allow bridge to be closed for urgent repairs without a notice; and
- limiting the definition of a person having an interest for consultation requirements on proposed roadworks – consistent with town planning consultation requirements.

It is important that the community has ready access to information and the opportunity to participate in consultation processes. The Shire of Broome already uses a range of channels to engage with the community, beyond what is required under the legislation, including: advertising in a range of print, electronic and online media outlets; publishing newsletters; email distribution lists; open days and public information sessions; and social media.

The Shire has active and growing Facebook pages for the Shire of Broome, Broome Recreation and Aquatic Centre, Broome Civic Centre, Broome Public Library and Club Development. These are updated regularly to effectively communicate information, as well as providing a forum for community members to ask questions and provide feedback. The Shire of Broome website is updated regularly to ensure that it is an up-to-date and reliable source of information.

We would suggest that legislation requirements around public communication be principles or outcomes-based rather than mandating specific channels. Local governments need to be able to adapt how they disseminate information and engage with the community reflecting the diversity of their population and how people prefer to seek out and access information.

It is important that legislation enables the use of current and emerging technologies, and continues to be relevant as the media landscape evolves. The risk of prescribing communication channels, such as particular websites, is that they can become outdated very quickly. The current legislation mandates public notices be displayed at certain locations, which we would now consider the least effective way of communicating with the broader community. Also, in future, there may not be options available to meet the current requirements around print media.

If specific communication channels are proposed, then it would be more appropriate to do this through regulations or other guidance materials that can be updated more regularly, rather than in the Act.

### Information available for public inspection: Response

- Advise how you think information should be made available.

- Should additional information that is available to the public in other jurisdictions be available here? If so which items? How should they be made available: in person, website only or both?
- Is there additional information that you believe should be made publicly available? Please detail.
- For Local Governments: How often do you receive requests from members of the public to see this information? What resources do you estimate are involved in providing access in person (hours of staff time and hourly rate)?

Other levels of government moving to digital only record keeping and communication channels, unless there are exceptional circumstances. This means that information is more accessible and communication is more efficient, timely and cost effective. Local government does not face additional risks regarding the type of information collected and stored, or unique challenges with regard to ensuring that the community has access to information. Given this, we consider that it would be appropriate to modernise requirements and bring into line with community expectations.

The Shire currently records and stores the same information multiple times and in multiple ways to meet legislation requirements. This is an inefficient and costly use of resources. While it may appear risk averse, it makes it more difficult for people to locate and access all relevant information pertaining to a matter, because employees need to be able to search and locate information stored in different ways and cross check to determine any gaps or duplicate information.

The Shire received 10 Freedom of Information (FOI) applications in 2016-17 which were processed within legislated timeframes. Only one FOI application was received in the previous financial year. No internal or external reviews were requested. While we do not receive a large number of requests, the costs of locating and preparing information far exceed the \$30 administration fee which can be charged under legislation. The Shire can provide further detail to the Department.

Similarly, the Shire receives only a small number of requests, less than 5 each year, from the public to view Annual/Primary Returns and Electoral Gift Registers.

The Shire is concerned that personal information about ratepayers and employees is not protected to the same extent as personal information collected by other levels of government or in line with community expectations. It is unclear why any member of the public or business should be able to access personal information through the local government rates book, employee annual returns or the electoral roll data. Members of the public and businesses would not be able to obtain access to the same types of personal information collected by other levels of government, particularly without authorisation of the relevant individual. We consider that access to personal information should be reviewed to ensure it is consistent with privacy law and other levels of government.

## 9. Available information

Expanding the information provided to the public: Response

- Which option do you prefer? Why?
- Please indicate whether you think the information should be made available, and if so, whether this should be required or at the discretion of the local government?
- What other information do you think should be made available?

The guiding principles in determining what information should be made available to the public are around transparency of interests of decision-makers and accountability for decision-making. To ensure well functioning local government and community participation in local government (including being able to make informed decisions at local government elections) information about elected members meeting attendance, business interests and financial benefits should be readily accessible.

However, in the context of the broader objectives of the review and guiding principles, most of the other proposals in the list in the Consultation Paper should not be prescribed in legislation or regulations. Rather they could be included in guidance material as examples of best practice.

## 10. Reducing red tape

### Defining red tape: response to guidance questions

- Which regulatory measures within the Act should be removed or amended to reduce the burden on local governments? Please provide detailed analysis with your suggestions.
  - Briefly describe the red tape problem you have identified.
  - What is the impact of the problem? Please quantify if possible.
  - What solutions can you suggest to solve this red tape problem?
- Which regulatory measures within the Act should be removed or amended to reduce the burden on the community? Please provide detailed analysis with your suggestions.
  - Briefly describe the red tape problem you have identified.
  - What is the impact of the problem? Please quantify if possible.
  - What solutions can you suggest to solve this red tape problem?

### Fees and charges

The Shire strongly supports WALGA's policy position that Councils should be able to set fees and charges for local government services. Setting specific fees and charges for local government services in legislation means that they become outdated quickly.

Further, we are concerned that the methodology for calculating fees and charges is not transparent, does not appear to include indexation or consider the costs – administration or operational – of providing services. The current regime does not take into account that the costs of providing services will differ between urban and remote locations. The consequence is that all rate payers in the Shire subsidise the cost of providing local government services, including those that are only utilised by a small number of people in the community. Further, specifying this level of detail in legislation impedes innovation and deters local governments from making structural changes to what and how services are provided.

The Shire notes that a number of fees and charges for local government services are restricted by other legislation, not just the Act, including fees and charges relating to planning and development, health, waste management and vehicle usage.

Both Planning and Building fees are prescribed under Regulation and the fees are generally calculated based on the estimated cost of the development/building. The Building fees are general adjusted annually each year to account for CPI, however Planning fees have not been increased to account for CPI since 2015.

WALGA undertook an extensive review of planning fees in 2013 which advocated for a true cost recovery/fee for service model as it was found following extensive research that in most cases the cost to undertake the work required is more than the regulated fee. No significant changes to the fee structure have been made since this time. As a simple example, the maximum fee for a planning application where the estimated development value is less than \$50,000 is \$147. This would not cover the administrative costs imposed on the Shire to process the application. Similarly for building, the minimum fee for a building application is \$97.70 and similarly this would not cover the administrative cost in processing an application.

The Shire could provide further detail on examples if this would assist the review.

### Rates

The Shire also strongly supports the WALGA policy position that a broad review of all ratings exemptions be undertaken, including eliminating rates exemptions for commercial activities of charities and providing compensation to Councils for charitable organisation exemptions. We are concerned that exemptions under this section of the Act have extended beyond the original intention and now provide rating exemptions for non-charitable purposes and increases the rate burden on other ratepayers.

In particular, we would suggest that the definition of "charitable purposes" needs to be clarified and/or defined in legislation. The review should also clarify rating exemptions for Registered Native Title Bodies Corporate and other Aboriginal Corporations, particularly in relation to applications for exemption under the existing religious exemption clauses in the legislation.

The Shire of Broome also supports the WALGA policy positions that:

- resource projects should be required to pay local government rates;
- rate equivalency payments by government entities should be paid to the relevant local government(s) rather than to the State government;
- a review should be undertaken of current valuation methods and limitations, for instance, local governments should have discretion about using Gross Rental Value or capital value for ratings;
- time-based differential ratings should be available as an option to encourage development;
- local governments should have the flexibility to move to issuing electronic rates notices and be able to offer regular rate payments, without instalment notices (e.g. weekly, fortnightly payments).

### **Debt recovery**

The Shire supports the WALGA policy position that all debt recovery action costs incurred in pursuing unpaid rates and unpaid fees and charges should be recoverable and not limited by legislation. Otherwise the burden falls on other ratepayers to cover the costs of debt recovery actions.

The Shire also supports the proposal to introduce a responsible person definition for vehicle offences to enable more effective administration of vehicle-related offences.

### **Financial management**

The Shire supports the WALGA policy positions to review and update the legislation relating to financial management, borrowing and investment powers:

- Undertake a broad review of the financial management provisions under Part 6 of the Act and the associated regulations.
- Review the current restrictions on borrowing, including:
  - o delete requirement under subsection 6.20(2) that local governments must provide one month's public notice of the intent to borrow; and
  - o allow local governments to use freehold land as security when borrowing.
- Reinstate pre-GFC investment powers, including to allow local governments to invest in accordance with the Trustees Act consistent with investment powers that existed prior to the Global Financial Crisis. The Shire agrees with WALGA that it is no appropriate to base legislation restrictions on the worst-case scenario.

### **Procurement**

The Shire supports WALGA policy position that the tender threshold for local government be increased and brought into line with the State Government tender threshold of \$250,000.

In addition, we would suggest that the tender threshold should be in regulations, not set the Act, so that it can be reviewed and updated on a regular basis.

### **Unvested facilities**

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

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

It is recommended Section 3.53 of the Act be deleted and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.

### **Digital transformation**

The Shire proposes that the Act and other relevant legislation be reviewed to remove impediments to digital transformation. We consider that there is significant scope to reduce inefficient, time-consuming manual processes, which would have significant benefits to local government and the wider community.

Local government does not face unique or additional risks in relation to the type of information collected and stored, managing payments and services and ensuring access to information, relative to other levels of government. However, there is a risk that we are falling behind community expectations regarding:

- digital communications;
- electronic payments and services; and
- digitisation of records.

### **Special majority: guidance question**

- Should the provisions for a special majority be removed? Why or why not?

The Council of the Shire of Broome consists of nine elected members and so the special majority provisions of the Act are not relevant to our Shire. Given that the Shire is not forecast to experience significant population growth, we do not anticipate any increase to the number of Councillors in the short to medium term.

However, the Shire supports the WALGA policy position that a broader review be undertaken of which decisions which require a simple or absolute majority.

### **Senior employees: response to guidance questions**

- Is it appropriate that council have a role in the appointment, dismissal or performance management of any employees other than the CEO? Why or why not?
- Is it necessary for some employees to be designated as senior employees? If so, what criteria should define which employees are senior employees?

As discussed earlier, the Shire supports the WALGA policy position that legislation should only specify requirements for CEO recruitment and performance, not other local government employees. We also support the WALGA position that subsection 5.37(2) be deleted to remove ambiguity regarding the role of Council in relation to the appointment of other employees.

#### Exemption from accounting standard AASB124 – Related party disclosure: response to guidance question

- Are the existing related party disclosure provisions in the Act sufficient without the additional requirements introduced by AASB124? Why or why not?

Support WALGA policy position to provide an exemption from AASB 124 Related Party Transactions given that local government members and CEOs are already required to disclose interests and this information is already recorded and available.

#### Disposal of property: response to guidance questions

- The threshold for trade-ins was set originally to \$50,000 in 1996 and raised to \$75,000 in 2015. Should the threshold be raised higher, if so how high?
- Should the threshold remain at \$75,000 but with separate exemptions for specific types of equipment, for example plant?
- The general \$20,000 threshold was put in place in 1996 and has not been amended. Should the threshold be raised higher than \$20,000? If so, what should it be and why?
- Would raising these thresholds create an unacceptable risk that the items would not be disposed of to achieve the best price for the local government?
- Is there an alternative model for managing the disposal of property? Please explain.

The Shire support WALGA policy position that Regulation 30(3), *Local Government (Functions and General) Regulations 1996*, 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.

The thresholds are arbitrary and do not appear to be linked to the value of particular types of equipment or other property. Further, it is not clear why local governments would have an incentive to make a trade-in at a lower value because it would increase the gap, and therefore the costs, of purchasing the replacement equipment or property.

At a minimum, the regulation should be amended so that the threshold increases in line with CPI. To keep up with inflation, the \$50,000 threshold should have been adjusted to more than \$83,000 by the end of 2017. Similarly, the \$20,000 threshold would now be around \$33,000 if the threshold was indexed to CPI.

In addition, the Shire supports the WALGA policy position that a broader review be undertaken of Section 3.58 Disposing of Property and Section 3.59 Commercial Enterprises to redraft and update to reflect current commercial and contractual practices.



## 11. Regional subsidiaries

### Regional subsidiaries

- Which option do you prefer?
- Should regional subsidiaries be allowed to borrow money other than from the member councils? Why or why not?
- If a regional subsidiary is given the power to borrow directly, what provisions should be put in place to mitigate the risks?

The Shire supports the WALGA policy positions on regional subsidiaries, including the proposals to enable:

- local governments to establish Council Controlled Organisations to participate in commercial enterprises and partnerships; and
- regional subsidiaries to borrow in their own right and enter into land transactions.

These restrictions, particularly around borrowing and land transactions, are impeding the establishment of regional subsidiaries.