

FLYING MINUTE: COMMUNICATIONS AGREEMENTS CONSULTATION – WALGA SUBMISSION

By Tony Brown, Executive Director Member Services and Felicity Morris, Manager Governance and Procurement

WALGA RECOMMENDATION

That State Council endorse the 'Communications Agreements WALGA Submission'.

RESOLUTION 249.FM/2025

CARRIED

EXECUTIVE SUMMARY

- Consultation is open on the draft [Local Government Regulations Amendment Regulations 2025](#) (the Draft Regulations) and draft [Local Government \(Default Communications Agreement\) Order 2025](#) (the Draft Order) which give effect to reforms regarding communications agreements between Council and the CEO.
- Communications agreements will regulate Council and Committee Member requests and access to information.
- Sector feedback has been collated and identifies some overarching concerns, specific amendments and elements that are broadly suitable.
- The overriding view is that the Draft Order is overly prescriptive and complex and requires simplification. A principles-based approach is preferred.
- The attached submission, informed by this feedback, is recommended for endorsement.
- The Governance Policy Team endorsed the attached submission on 11 August 2025.

ATTACHMENTS

- Communications Agreements Draft WALGA submission
- [WALGA Discussion Paper - Communications Agreements](#)

POLICY IMPLICATIONS

WALGA's existing advocacy position is based on the high-level reform proposals provided for public consultation in 2022. The current [Advocacy Position](#) is:

2.5.3 Council Communication Agreements

The Local Government sector supports the introduction of a consistent, regulated Communications Agreement between Councils and the CEO within Local Governments.

This position was based on the understanding that communication agreements would be consistent with the existing policies and protocols used by Local Governments, rather than significantly more prescriptive and complex.

BACKGROUND

The *Local Government Amendment Act 2023* (2023 Amendment Act) included amendments to the *Local Government Act 1995* (the Act) to:

- Provide that the right of a Council Member or Committee Member to access information under section 5.92 must be exercised in accordance with the Local Government's communications agreement.

- Require every Local Government to have a communications agreement between the Council and the CEO regulating the matters specified in the Act and regulations.
- Require the Minister to make a Ministerial Order setting out a default communications agreement which applies at any time a Local Government does not have its own communications agreement.
- Enable Local Governments to adopt and amend their own communications agreement with the agreement of the CEO, which will expire at the end of every caretaker period, and upon the end of the CEO's employment with that Local Government.

The Department of Local Government, Industry Regulation and Safety (LGIRS) published the draft [Local Government Regulations Amendment Regulations 2025](#) (the Draft Regulations) and draft [Local Government \(Default Communications Agreement\) Order 2025](#) (the Draft Order).

The Draft Regulations prescribe the minimum requirements for all communications agreements and include mechanisms to require compliance by Local Government employees, Council Members and Committee Members. The Draft Order sets out what is proposed to be the default communications agreement.

The Draft Regulations and Draft Order were released for public consultation on 5 June, with submissions closing on 25 July. WALGA requested an extension to this period and the public consultation period now closes on 22 August. WALGA circulated a discussion paper to Local Governments requesting comments by Monday 28 July. This short timeframe has been challenging for Local Governments to review the materials and report through their Council meeting cycles.

The Governance Policy Team considered the attached submission at their meeting on 11 August and recommend endorsement by State Council.

COMMENT

Responses received from Local Governments indicate general concerns regarding:

- Excessive prescriptive detail in both the Draft Regulations and Draft Order which will impose increased red-tape and administrative burden, in conflict with stated aims of the reforms.
- Complex, regulatory style drafting in the Draft Order that will make the default communications agreement difficult to interpret and apply.
- Unworkable proposed commencement date of 19 October, given the existing Local Government workload supporting elections and preparing for Council Member inductions.

Draft Regulations

The Draft Regulations will:

- prescribe additional matters that must be addressed in communications agreements including providing copies of correspondence sent by the Mayor or President to all Council Members and arrangements for Commissioners;
- prescribe definitions for key terms that will apply to all communications agreements;
- amend the *Local Government (Model Code of Conduct) Regulations 2021* and *Local Government (Administration) Regulations 1996* to modify Council and employee codes of conduct.

Feedback clearly indicated the provisions dealing with Mayor / President correspondence would not be suitable for all Local Governments, with the potential to generate high volumes of largely irrelevant correspondence to all Council Members. Removal of this matter from the Draft Regulations and Draft Order would allow Local Governments to include appropriate provisions in their own communications agreements if they consider them necessary. Similarly, Local Governments strongly objected to the requirement that all communications agreements allow Commissioners special powers to determine how requests may be made and to make requests of any Local Government employee.

The Draft Regulations prescribe key definitions for "request for information" and for "administrative matters", which are subject to simplified process. The sector strongly opposes the vague and expansive definition of "request for information" as it is inconsistent with the Act, likely to cause an increased administrative burden, generate unreasonable expectations and overreach, and introduce uncertainty that increases the likelihood of disputes. The definition for "administrative matter" is more suitable, but may still be inappropriate for some Local Governments. Feedback suggested some improvements, but ultimately supported removing this definition from the Draft Regulations, to allow each Local Government to agree to an appropriate definition.

Local Governments oppose proposed amendments to the *Local Government (Model Code of Conduct) Regulations 2021* that would mean Council Members were not prohibited from directing or attempting to direct an employee when making requests under a communications agreement. This would undermine a key principle of the Act, that the CEO is responsible for the direction of employees. Some responses also expressed concerns that the Codes of Conduct would be used to enforce compliance with communications agreements, regarding this as unnecessarily regulation.

Draft Order

Feedback suggested amendments to several provisions of the Draft Order. In particular, Local Governments oppose the inclusion of minimum numbers of nominated employees (employees to whom requests may be addressed). These arrangements were regarded as unnecessarily bureaucratic. The proposed mechanism for disputes also prompted concerns regarding damage to relationships, entrenching adversarial relationships between members and the CEO, abuse of the process and substantial use of resources. A significant number of Local Governments did not support empowering Council to make a final determination of disputes, or to overturn a decision of the CEO. Responses proposed a broad range of improvements to several clauses that specify the requirements and processes for requests. The most frequent amendments have been addressed in the draft WALGA Submission. However, the range of these suggestions reflect the difficulty in providing a default communications agreement that allows for the diverse needs and contexts of Local Governments. This reinforces the need for a more principles-based, policy style drafting approach for the Draft Order.

The sector feedback and detailed analysis of the Draft Regulations and Draft Order has informed the preparation of the attached draft WALGA submission. The submission recommendations are provided below.

Submission Recommendations

Recommendation 1: Drafting style

1. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:

- (a) Minimise the level of prescriptive detail in the Draft Regulations to avoid unnecessary red-tape and administrative burden, which is inconsistent with reform objectives.
- (b) Ensure that Councils and CEOs have the flexibility to adopt communications agreements that are appropriate for their needs, context, structure and resource levels.
- (c) Simplify the Draft Order by using clear, plain language drafting.

Recommendation 2: Commencement date

- 2. That WALGA advise the Department of Local Government, Industry Regulation and Safety to revise the commencement date of the Regulations to allow at least six months after publication of the final Regulations and Order for Local Governments to prepare.

Recommendation 3: Provision of Mayor or President Correspondence to all Council Members

- 3. That WALGA advise the Department of Local Government, Industry Regulation and Safety:
 - (a) Not to prescribe in regulations the provision of Mayor / President correspondence to all Council Members as an additional matter that must be regulated by all communications agreements.
 - (b) To delete Clause 5 of the Draft Order and exclude this matter from any future default communications agreement.

Recommendation 4: Requests for information – definition and scope

- 4. That WALGA advise the Department of Local Government, Industry Regulation and Safety to delete the words "or otherwise" and "other information" from any definitions of request for information.

Recommendation 5: Administrative matters – definition and scope

- 5. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Not prescribe a definition for "administrative matter" in regulations, allowing it to be defined in each communications agreement.
 - (b) Include the following definition of administrative matter in the default communications agreement:

administrative matter in relation to a council member or committee member, means support or assistance provided to an individual council member or individual committee member to facilitate an administrative process related to that member, and may include:

 - (i) council and committee meeting scheduling, attendance, apologies, leave of absence, deputy committee member attendance, drafting a notice of motion or alternative motion;
 - (ii) attendance at professional development, training or events, associated speech writing, ceremonial protocols, travel, accommodation and incidental expense arrangements;
 - (iii) entitlements to a fee, allowance, reimbursement or superannuation;



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- (iv) *personal compliance obligations under the Act, Regulations, or other written law including code of conduct, conflict of interest, gift disclosure or recordkeeping requirements; or*
- (v) *information and communication technology software or hardware provided by the local government.*

Recommendation 6: Commissioners

6. That WALGA advise the Department of Local Government, Industry Regulation and Safety:
 - (a) Not to prescribe in regulations any requirement for all communications agreements to include provisions for commissioners.
 - (b) Not to prescribe in regulations that commissioners may make requests to any employee, determine the manner of their requests and the manner of the response.
 - (c) To delete Clauses 29 and 30 from the Draft Order.

Recommendation 7: Model Code of Conduct Amendments

7. That WALGA advise the Department of Local Government, Industry Regulation and Safety not to proceed with the amendment to clause 20 of the Model Code of Conduct for Council Members, Committee Members and Candidates.

Recommendation 8: Clause 4 General principles

8. That WALGA advise the Department of Local Government, Industry Regulation and Safety to include an additional principle in Clause 4 that emphasises the importance of mutual respect for the separate roles and responsibilities of Council Members, Council and the CEO under the Act.

Recommendation 9: Clause 8 Nominated employees

9. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Delete the minimum numbers of nominated employees from Clause 8.
 - (b) Replace requirements to direct a request to "an appropriate nominated employee" with requirements to direct a request to "a nominated employee" to allow flexibility.
 - (c) Allow the CEO to keep Council Members informed of nominated employees by any appropriate method, rather than requiring maintenance of a register.

Recommendation 10: Clause 12 Information that may be requested

10. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Review the matters listed in Clause 12 to ensure they are clear and suitable.
 - (b) Clarify that Clause 12 is subject to Clause 13.

Recommendation 11: Clause 13 Requirements applicable to requests for information

11. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Consider amendment of Clause 13(2)(b) to read:

"accompanied by any supporting information that may assist the local government to respond to the request, including the relevance of the request to the functions of the requesting member under the Act or another written law."

Recommendation 12: Clause 14 Certain information not required to be provided

12. That WALGA advise the Department of Local Government, Industry Regulation and Safety to amend Clause 14(c) to provide that information is not required to be provided if it is not held by the Local Government.

Recommendation 13: Clause 15 Disputes

13. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
- (a) Amend sub-clause 15(2) to provide that where the requesting member is the Mayor or President, the dispute should be discussed at a meeting between the requesting member, the CEO and the Deputy Mayor or President.
 - (b) Consider options for referring disputes to an impartial third party, including the Inspector if appropriate.
 - (c) Replace sub-clauses 15(3) and 15(4) with a statement noting that Council Members may bring a notice of motion for Council's consideration, with reference to Council's role under the Act.
 - (d) If Council's authority to determine disputes under sub-clauses 15(3) and 15(4) is retained, provide guidance about the scope and limitations of this authority, and the information and considerations that must inform Council's decision-making.

Recommendation 14: Division 4 Processes for requests for information

14. That WALGA advise the Department of Local Government, Industry Regulation and Safety to clarify Clause 22 to provide additional guidance on:
- (a) when it is appropriate not to provide a copy to all members; and
 - (b) the process to resolve a disagreement between the CEO and requesting member.

FLYING MINUTE OUTCOME

Poll created: 13/08/2025 at 16:00

Poll closed: 20/08/2025 at 17:00

The submission was endorsed.

Communications Agreements

WALGA Submission

August 2025

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About WALGA

The Western Australian Local Government Association (WALGA) is an independent, member-based, not for profit organisation representing and supporting the WA Local Government sector.

Our membership includes all 139 Local Governments in the State. WALGA uses its influence, support and expertise to deliver better outcomes for WA Local Governments and their communities.

We advocate to all levels of Government on behalf of our Members, and provide expert advice, services and support to Local Governments. WALGA's vision is for agile and inclusive Local Governments enhancing community wellbeing and enabling economic prosperity.

Acknowledgement of Country

WALGA acknowledges the continuing connection of Aboriginal people to Country, culture and community. We embrace the vast Aboriginal cultural diversity throughout Western Australia, including Boorloo (Perth), on the land of the Whadjuk Nyoongar People, where WALGA is located, and we acknowledge and pay respect to Elders past and present.

1. Introduction

The current *Local Government Act 1995* reform process is based on 6 themes:

1. Earlier intervention, effective regulation and stronger penalties
2. Reducing red tape, increasing consistency and simplicity
3. Greater transparency and accountability
4. Stronger local democracy and community engagement
5. Clearer roles and responsibilities
6. Improved financial management and reporting.

Communications Agreements were outlined in the Minister for Local Government's [Reform Proposals](#) released in 2022.

Following sector consultation, WALGA adopted the following advocacy position in relation to Communication Agreements:

2.5.3 Council Communication Agreements

The Local Government sector supports the introduction of a consistent, regulated Communications Agreement between Councils and the CEO within Local Governments.

This position was based on the understanding that communication agreements would be consistent with the existing policies and protocols used by Local Governments, rather than significantly more prescriptive and complex.

The [Local Government Amendment Act 2023](#) included amendments to the *Local Government Act 1995* (the Act) to:

- Provide that the right of a Council Member or Committee Member to access information under section 5.92 must be exercised in accordance with the Local Government's communications agreement.
- Require every Local Government to have a communications agreement between the Council and the CEO regulating the matters specified in the Act and regulations.
- Require the Minister to make Ministerial Order setting out a default communications agreement which applies at any time a Local Government does not have its own communications agreement.
- Enable Local Governments to adopt and amend their own communications agreement with the agreement of the CEO, which will expire at the end of every caretaker period, and upon the end of the CEO's employment with that Local Government.

The draft [Local Government Regulations Amendment Regulations 2025](#) (the Draft Regulations) and draft [Local Government \(Default Communications Agreement\) Order 2025](#) (the Draft Order) provide the regulatory detail for this reform. The Department of Local Government, Industry Regulation and Safety (LGIRS) has also published a [Communications Agreement Consultation Paper](#) (the LGIRS Consultation Paper) which explains the Draft Regulations and Draft Order.

The Draft Regulations prescribe the minimum requirements for all communications agreements and include mechanisms to require compliance by Local Government employees, Council Members and Committee Members. The Draft Order sets out what is proposed to be the default communications agreement in Schedule 1.

2. General comments

2.1. Prescriptive approach increases red-tape

A significant majority of Local Governments advised that the Draft Regulations and Draft Order are overly prescriptive, complex and detailed. Local Governments are concerned that this regulatory approach will not contribute to positive working relationships between Council and Administration, instead creating an unnecessary administrative burden and compliance obligations. This is in conflict with the stated aim of reforms to reduce red tape and increase consistency and simplicity.

Comments particularly emphasise the need for the Draft Regulations to allow flexibility. Only minimal requirements should be prescribed, with a principles-based approach preferred to allow Local Governments to develop locally appropriate solutions. One Local Government noted that the *Public Sector Management Act 1994* simply requires communication agreements between Ministers and State Government agencies to set out "the manner in which, and the circumstances in which, dealings are to be had, and communications are to be made, between ministerial officers assisting the Minister and the employees in that department or organisation". The details are left to each Minister and agency to determine.

Local Governments noted that a greater level of detail may be necessary in the Draft Order, but that the language and style is unnecessarily bureaucratic and complex. A plain language style would be more accessible, provide clarity and facilitate easy application.

Clarity is particularly important as compliance with the communications agreement will be required under the Code of Conduct for Council Members, Committee Members and Candidates and the Employee Code of Conduct. It should be noted that each of these codes already require compliance with relevant policies, which are not typically drafted in a regulatory style. This suggests that a policy drafting style could also be used for a communications agreement. Several Local Governments urged that the purpose of the communications agreement should be supporting positive and effective working relationships, rather than establishing a basis for compliance and enforcement.

Finally, over-regulation creates a need for further regulation, since a rigidly prescriptive framework demands that every potential outcome be explicitly defined and resolved. As a result, many Local Governments support additions or clarifications to the Draft Order, despite generally being in favour of less prescriptive detail.

Indicative Local Government comments

"While clarity is important, the level of prescription may restrict the ability of Local Governments to develop approaches that reflect their unique governance structures, operational contexts, and resource levels. A more flexible framework allowing Local

Governments to tailor their communications agreements, within clearly articulated principles, would be preferable."

"The draft Communications Agreement is too formal. It is written in the manner of a regulation or legislation, which can be hard to follow for people not well versed in such a form of writing. A simplified version, written in plain English would be more appropriate and provide greater accessibility to all readers."

Recommendation 1: Drafting style

1. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - a. Minimise the level of prescriptive detail in the Draft Regulations to avoid unnecessary red-tape and administrative burden, which is inconsistent with reform objectives.
 - b. Ensure that Councils and CEOs have the flexibility to adopt communications agreements that are appropriate for their needs, context, structure and resource levels.
 - c. Simplify the Draft Order by using clear, plain language drafting and a principles-based approach.

2.2. Commencement and implementation

A commencement date of 19 October 2025 would not be feasible for most Local Governments. The lead up to Local Government elections is extremely busy, with considerable resources devoted to supporting electoral processes and preparing for the induction of new Council Members. To effectively implement communications agreements, Local Governments need sufficient time to develop or update processes, train staff and Council Members, and maintain existing good governance practices. Importantly, the relevant Codes of Conduct for Council Members and for employees will each require amendment and educating all parties on their responsibilities. As a final point, under section 5.104(2) of the Act, Council will be required to adopt the amended Model Code of Conduct for Council Members, Committee Members and Candidates within 3 months after the Draft Regulations come into operation.

Local Governments provided reasonable commencement dates of up to 12 months after publication. Based on the submissions provided, a commencement date six months after publication would be reasonable for the majority of Local Governments.

Recommendation 2: Commencement date

2. That WALGA advise the Department of Local Government, Industry Regulation and Safety to revise the commencement date of the Regulations to allow at least six months after publication of the final Regulations and Order for Local Governments to prepare.

3. Draft Regulations

This part of the submission deals with the Draft Regulations. Where the corresponding content of the Draft Order is relevant to the discussion of the issue, it is included in this part. All clause references are to Schedule 1 of the Draft Order.

3.1. Provision of Mayor or President correspondence to all Council Members

Draft Regulations

Regulation 7 of the Draft Regulations would insert a new Regulation 28C in the *Local Government (Administration) Regulations 1996* prescribing that communications agreements must regulate the circumstances in which correspondence sent by the Mayor or President on behalf of the Local Government must be provided to all Council Members. This is an additional matter that was not specified in the Act amendments and is an example of the overly prescriptive approach taken by the Draft Regulations. If retained, this will require all Local Governments to address this in their communications agreements.

Draft Order

Clause 5 of the Draft Order requires correspondence sent by the Mayor or President on behalf of the Local Government to be provided to all Council members, unless the Mayor or President is satisfied that "particular circumstances" mean it is appropriate not to provide the correspondence. The LGIRS Consultation Paper advises that this should only occur in "exceptional circumstances" and could otherwise constitute a breach of the communications agreement by the Mayor or President.

Comment

A significant number of Local Governments firmly oppose the inclusion of this matter in the Draft Regulations and Draft Order. There is a strong view that this is an unnecessary additional matter to include in an agreement between the Council and the CEO. Local Governments expressed the concern that Mayors or Presidents may send a high volume of correspondence that could be understood as being on behalf of the Local Government, much of which is routine or administrative in nature. Providing copies of all this correspondence to all Council Members would be administratively onerous for staff, Council Members, and the Mayor or President. In addition, to avoid breaching the communications agreement, the Mayor or President would need to have a record of each decision and the circumstances that make it appropriate not to provide correspondence to all Council Members.

Even those Local Governments that wish to regulate the provision of Mayor / President correspondence advised that they are unsatisfied with the terms of the Draft Order. Like those that opposed this requirement, many of these Local Governments also expressed concern at the volume of correspondence that would be captured and the administrative practicalities. On that basis, these clauses should be removed from the Draft Order as well as the Draft Regulations. Those Local Governments that wish to address Mayor or

President correspondence in their communications agreements may then choose to do so in way that is suitable for them.

Other concerns with the Draft Order include the potential breadth of the term "correspondence", and a lack of clarity about what might be considered "on behalf of the local government". Some Local Governments are concerned that an inadvertent oversight could be considered a breach by the Mayor or President, or that the decision-making authority may cause contention, particularly in applying the criteria of "particular circumstances".

Indicative Local Government comments

"For a large metropolitan local government, there could easily be a thousand pieces of correspondence which are sent by the Mayor on behalf of the local government. If even the majority of these were to be forwarded to all other elected members, their inboxes would be filled quickly with inconsequential and unwanted items."

"This would result in significant increase in red tape. A cost benefit assessment should be undertaken before implementation to ensure an appropriate use of rate payer resources."

"The City seeks clarity regarding the purpose of requiring this function, particularly as specific items can already be requested."

"Given current volumes of what might be included in the term 'correspondence', if the requirement were to be imposed it would be manageable, but would divert resources from current activities to ensure compliance with the new requirements"

"The City values transparency and collective awareness among elected members. However, in practice, the clause may be overly rigid and administratively burdensome if applied without discretion."

Recommendation 3: Provision of Mayor or President Correspondence to all Council Members

3. That WALGA advise the Department of Local Government, Industry Regulation and Safety:
 - (a) Not to prescribe in regulations the provision of Mayor / President correspondence to all Council Members as an additional matter that must be regulated by all communications agreements.
 - (b) To delete Clause 5 of the Draft Order and exclude this matter from any future default communications agreement.

3.2. Requests for information – definition and scope

Draft Regulations

Regulation 7 of the Draft Regulations would insert a new Regulation 28D in the *Local Government (Administration) Regulations 1996* which prescribes the content of communications agreements. The regulation distinguishes between administrative

matters and requests for information and prescribes definitions as well as the content that must be included in relation to each type of request.

The definition of request for information in regulation 28D(1) is as follows (emphasis added):

request for information, in relation to a local government, means a request for —

- (a) access to information held by the local government under section 5.92 or otherwise; or
- (b) other information.

This definition is also used in regulation 10(2) of the Draft Regulations for a consequential amendment to the *Local Government (Model Code of Conduct) Regulation 2021*.

As this definition is prescribed in the Draft Regulations, it will apply to all communications agreements, not just the default agreement.

Draft Order

Clause 3(1) of the Draft Order provides that the default communications agreement applies to a person only when acting in their capacity as a Council Member, Committee Member or employee.

Clause 4 provides general principles, including that Council and Committee Members will ensure they only request information that is relevant to their functions under the Act or any other written law.

Division 3 sets out the requirements regarding requests for information. Clause 11 of the Draft Order repeats the prescribed definition when stating that a Council Member or Committee Member may make a request for information. Clause 14 specifies that nothing in the agreement requires certain information to be provided, including “information mentioned in section 5.92(4) of the Act”.

Comment

There are serious concerns about the expansive definition of “request for information”, with Local Governments supporting the deletion of the words “or otherwise” and “other information”.

Local Governments suggest that this definition is unreasonably vague. It is unclear what is intended by “or otherwise” in part (a) of the definition. Further, the inclusion of “other information” in part (b) is so open-ended, it may make any limitations imposed by (a) almost meaningless. Local Governments advise that this expansive definition is likely to cause an increased administrative burden, generate unreasonable expectations and overreach, and introduce uncertainty that increases the likelihood of disputes. In addition, responses point to the inconsistency with the Act.

The definition of ***request for information*** expands significantly beyond requests under section 5.92. Section 5.92(1) of the Act allows a Council Member or Committee Member to “have access to any information held by the local government that is relevant to the performance by the person of any of the person’s functions under this Act or under any other written law” (emphasis added). Local Governments agree that this is an

appropriately broad right of access, requiring only relevance to the performance of a statutory function.

Section 5.92(4) clarifies that the section does not give a Council Member or Committee Member the right to access specified information, including certain employee information, any personal information about individuals that is not relevant to a Council or Committee decision, information the Local Government is prohibited or restricted from disclosing to the Council Member or Committee Member under a written law, and information that is not relevant to the functions of the Council Member or Committee Member under the Act or any written law.

The expansive definition also appears to be inconsistent with other provisions of the Draft Order. Clause 4 uses the wording of section 5.92, stating that Council and Committee Members agree to only request information that is relevant to their functions under law. Clause 14(b) of the Draft Order confirms that a Council Member or Committee Member is not required to be provided with information mentioned in section 5.92(4) of the Act. As noted above, section 5.92(4)(f) refers to information that is not relevant to the performance of a function under law.

The result may be that a Council Member or Committee Member may *request* information under clause 11 that they must agree not to request under clause 4(c)(iii), that they do not have a statutory right to access, and that clause 14 confirms that they are not required to be provided.

The words "or otherwise" and "other information" should be deleted from the definition of request for information.

Indicative Local Government comments

"Without clear boundaries, the volume and complexity of requests may escalate, placing undue pressure on administrative resources and diverting attention from core service delivery ... The current definition risks misalignment with section 5.92 of the Local Government Act 1995, which is designed to ensure access to information is relevant and purposeful ... The lack of clarity may lead to disagreements between elected members and administration regarding the legitimacy or scope of requests, undermining trust and collaboration."

"The current definition may lead to unreasonable expectations, misuse, or requests outside the scope of a Council Member's role, placing unnecessary pressure on limited resources."

Recommendation 4: Requests for information – definition and scope

4. That WALGA advise the Department of Local Government, Industry Regulation and Safety to delete the words "or otherwise" and "other information" from any definitions of request for information.

3.3. Administrative matters – definition and scope

Draft Regulations

Regulation 7 of the Draft Regulations would insert a new Regulation 28D in the *Local Government (Administration) Regulations 1996* which distinguishes between administrative matters and requests for information and prescribes definitions as well as the content that must be included in relation to each type of request. The definition of administrative matter lists the scheduling of council or committee meetings, compliance obligations under the Act, IT support, training and conference arrangements, event invitations, entitlements and “any other matter of an administrative nature”.

Regulation 10(2) of the Draft Regulations would insert the proposed definition of administrative matter into clause 20(1) of the Model Code of Conduct for Council Members, Committee Members and Candidates (Sch 1 of the *Local Government (Model Code of Conduct) Regulations 2021*).

Draft Order

Clause 2 of the Draft Order repeats the definition of "administrative matter" and defines "administrative request for information". Clause 25 defines "administrative request" as either or both of an "administrative request for information" or a "request for administrative assistance". Clause 26 defines a "request for administrative assistance". This is a total of four distinct but related defined terms.

Comment

Local Government officers regularly provide routine information and support to Council Members and Committee Members. There is broad support for a simple, streamlined process for these day-to-day matters. It would be appropriate to simplify some of the language and structure of the Draft Order to achieve this. In particular, it seems unnecessarily complex to have four defined terms to deal with routine enquiries.

The definition of administrative matter prescribed in the Draft Regulations may not be suitable for all Local Governments. WALGA proposed an alternative definition (below), which received support from a majority of Local Government responses.

Proposed WALGA definition:

***administrative matter** in relation to a council member or committee member, means support or assistance provided to an individual council member or individual committee member to facilitate an administrative process related to that member, and may include:*

- (i) council and committee meeting scheduling, attendance, apologies, leave of absence, committee deputy member attendance, drafting a notice of motion or alternative motion.*
- (ii) attendance at professional development, training or events, associated speech writing, ceremonial protocols, travel, accommodation and incidental expense arrangements,*
- (iii) entitlements to a fee, allowance, reimbursement or superannuation,*
- (iv) personal compliance with obligations under the Act, Regulations, code of conduct, conflict of interest or gift disclosure requirements, record keeping,*

- (v) *information and communication technology software or hardware provided by the local government,*
- (vi) *any other matters specified as administrative matters in a local government's communications agreement.*

Those Local Governments that preferred the WALGA definition stated that it provides greater detail and clarity, and aligns with the practical realities of local government operations.

Any definition prescribed in the regulations must be workable for all Local Governments, as it would apply to all communications agreements. WALGA's proposed definition allows some flexibility by stating that communications agreements may specify other administrative matters.

However, a significant proportion of Local Governments agreed that a more appropriate level of flexibility can be achieved by avoiding a prescribed definition in regulations and allowing "administrative matter" to be defined in the communications agreement. This would allow Local Governments to develop a definition to reflect their needs, capacity and existing processes.

If the definition were removed from regulations, a definition would still be required for the default communications agreement. The WALGA definition could be adapted for this purpose by removing paragraph (vi), as this definition would only appear in the default communications agreement. Minor drafting refinements are reflected in the version recommended below.

Indicative Local Government comments

"Possibly, introducing a separate process for administrative matters can be helpful—but only if it is flexible and context-sensitive. A rigid or overly formalised process could create administrative burden and delay responses to minor queries ... Trying to strictly separate administrative matters through a regulated process may create unnecessary red tape, hinder responsiveness, and disrupt existing working relationships."

"Regulations should avoid prescribing a fixed definition and instead allow each local government to define 'administrative matter' in its communications agreement based on local context and capacity ... Over-defining administrative matters risks unnecessary complexity. A flexible, locally tailored approach will better serve the needs of councils and reduce administrative burden."

"Each local government provides various levels of administrative support to their Elected Members so it would be appropriate for a local government to determine and define this for their specific context, and allow this to change subject to the requirements of each new Council post election as agreed with the CEO."

"The City does not support the level of prescriptive definitions provided as the Draft Order and recommends that further re-drafting consideration be given to simplifying the definitions (if they are deemed necessary)."

Recommendation 5: Administrative matters – definition and scope

5. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Not prescribe a definition for "administrative matter" in regulations, allowing it to be defined in each communications agreement.
 - (b) Include the following definition of administrative matter in the default communications agreement:

administrative matter in relation to a council member or committee member, means support or assistance provided to an individual council member or individual committee member to facilitate an administrative process related to that member, and may include:

- (i) *council and committee meeting scheduling, attendance, apologies, leave of absence, deputy committee member attendance, drafting a notice of motion or alternative motion;*
- (ii) *attendance at professional development, training or events, associated speech writing, ceremonial protocols, travel, accommodation and incidental expense arrangements;*
- (iii) *entitlements to a fee, allowance, reimbursement or superannuation;*
- (iv) *personal compliance obligations under the Act, Regulations, or other written law including code of conduct, conflict of interest, gift disclosure or recordkeeping requirements; or*
- (v) *information and communication technology software or hardware provided by the local government.*

3.4. Exclusions from application of communications agreement

Draft Regulations

The new Regulation 28D(3), to be inserted in the *Local Government (Administration) Regulations 1996* by Draft Regulation 7, provides that a communications agreement must specify it does not apply to anything a Council Member, Committee Member or Employee does as part of deliberations at a Council Meeting, or CEO employment processes.

Draft Order

Clause 3(2) of the Draft Order gives effect to these requirements.

Comment

These exclusions enable Council Members and Committee Members to communicate with employees under certain circumstances without being subject to the communications agreement. The respective codes of conduct would continue to apply to employees and Council or Committee Members.

Most Local Governments agree that these exclusions are appropriate.

No changes are recommended.

3.5. Commissioners

Draft Regulations

New Regulation 28D(5) will require all communications agreements to include content enabling commissioners to make requests to any employee, to determine the manner information is to be provided and to resolve disputes.

Draft Order

Clause 29 provides that the communications agreement applies to a commissioner as if they were the Mayor or President and the Council of the Local Government. Clause 30 then modifies the application of the communications agreement to allow a commissioner to make a request to the CEO or any employee, in the manner determined by the commissioner and to specify the manner in which a response is to be provided. It also provides for a commissioner to resolve disputes.

Comment

Over two thirds of Local Government responses agreed that, consistently with Section 2.38 of the Act, any reference to Council, Council Member, Mayor or President in the communications agreement should apply to a commissioner without further modification. Local Governments recognise the unique circumstances surrounding the appointment of commissioners, and the importance that they have access to information needed to restore the Local Government to normal functions. However, this can be achieved through the existing agreement or through a new agreement negotiated between the commissioner and CEO. Local Governments agreed that it was inappropriate for commissioners to be able to make requests of any employee, emphasising the need for consistency and proper process during challenging times for a Local Government. Many Local Governments also noted that the appointment of commissioners is rare, and it seems unreasonable for all communications agreements to provide for this highly unusual circumstance.

Indicative Local Government comments

"The City considers that commissioners, acting in place of Council, should have access to appropriate information. However, requests should still be routed through the CEO or nominated officers to maintain accountability and avoid bypassing established governance structures."

"Yes, the rights and responsibilities of commissioners should align with those of Council Members and the President to ensure consistency and accountability in governance during administration."

"Allowing Commissioners unfettered access to staff bypasses the CEO's oversight, undermines proper governance processes, and places employees in an unfair and uncomfortable position—especially in a small team environment ... To preserve proper accountability and protect staff, all requests—regardless of whether they come from a Commissioner or an elected member—should be routed through the CEO or a nominated officer, as per the principles of the communications agreement."

Recommendation 6: Commissioners

6. That WALGA advise the Department of Local Government, Industry Regulation and Safety:
 - (a) Not to prescribe in regulations any requirement for all communications agreements to include provisions for commissioners.
 - (b) Not to prescribe in regulations that commissioners may make requests to any employee, determine the manner of their requests and the manner of the response.
 - (c) To delete Clauses 29 and 30 from the Draft Order.

3.6. Amendments to Model Code of Conduct

Draft Regulations

Regulation 10(1) will insert a new clause 10A in the Model Code of Conduct for Council Members, Committee Members and Candidates (Sch 1 of the *Local Government (Model Code of Conduct) Regulations 2021*). The new clause 10A provides that a Council Member or Committee Member must not contravene a communications agreement, by reference to the new s.5.92A to be inserted in the Act. As a result, breach of a communications agreement by a Council Member could be the subject of a behaviour breach complaint.

Regulation 10(4) of the Draft Regulations will amend clause 20 of the Model Code of Conduct. Model Code of Conduct clause 20(2)(a) prohibits a Council Member from directing or attempting to direct a Local Government employee to do or not to do anything in their capacity as a Local Government employee. Clause 20(3) currently provides that this prohibition does not apply to anything done during deliberations at a Council or Committee meeting. The proposed amendment would add that the prohibition does not apply to anything that a Council Member does as part of making a request in accordance with a communications agreement.

Comment

The proposed amendment implies that a request for information or administrative request may be made in a manner that is an attempt to *direct* a local government employee and has the effect of allowing such direction without breaching Code of Conduct provisions. A majority of Local Government responses agree that this is inappropriate and unnecessary, emphasising that this amendment would undermine the separation of Council and CEO roles and responsibilities. Many Local Governments expressed confidence that officers and Council Members are capable of distinguishing between a request, which is appropriate, and a direction, which is not.

The amendment to the Model Code of Conduct is unnecessary and should not proceed.

Indicative Local Government comments

"A request for information or administrative assistance should not be a direction to a City employee. A request can be made without directing an outcome."

"The current prohibition under clause 20(2)(a) of the Model Code of Conduct appropriately reinforces the separation between governance and administration. Allowing directions through communications agreements risks blurring these boundaries"

and undermining the CEO's responsibility for staff management. Instead, communications agreements should facilitate efficient and respectful information-sharing without compromising the integrity of the roles defined under the Local Government Act 1995."

"It is a fundamental principle of the Local Government Act the distinction of the role of the Council, Mayor/President, Councillor and the CEO/Administration, specifically including that an individual Elected Member cannot direct the CEO or a local government officer. A request for information is a request that must be considered in the context of the Communications Agreement and actioned accordingly."

"Allowing direction, explicit or implied, through requests risks undermining the CEO's authority, compromising staff accountability, and blurring the lines between strategic oversight and administrative execution. Communications agreements should facilitate access to information and support good governance, not provide a mechanism for circumventing established roles and responsibilities."

Recommendation 7: Model Code of Conduct Amendments

7. That WALGA advise the Department of Local Government, Industry Regulation and Safety not to proceed with the amendment to clause 20 of the Model Code of Conduct for Council Members, Committee Members and Candidates.

4. Draft Order

The Draft Order sets out what is proposed to be the default communications agreement in Schedule 1.

All Local Governments will be subject to this default agreement on a regular basis (at least every two years after each caretaker period and after a CEO's employment ends) as well as at any time an agreement cannot be reached between Council and the CEO. The default agreement is also likely to be the starting point for Local Governments seeking to develop their own communications agreement. As a result, it is critical that the default agreement is fit for purpose.

This part deals with matters that appear only in the Draft Order. All clause references are to Schedule 1 of the Draft Order.

4.1. Clause 4 General principles

Draft Order

Clause 4 of the Draft Order provides general principles for both the Council and the CEO, largely relating to acting and communicating in accordance with the agreement. This includes that the CEO will support Council Members and Committee Members in performing their functions under law, and that Council Members and Committee Members will only request information relevant to their functions under law.

Comment

Almost half the Local Government responses support the inclusion of an additional principle that the communications agreement is applied in a manner that is consistent with the respective roles and responsibilities of Council and the CEO under the Act. Local Governments also proposed a range of other modifications.

Indicative Local Government comments

"The City recommends including a principle that reinforces the importance of mutual respect, role clarity, and adherence to the separation of powers between Council and administration. This would support a constructive and professional working relationship."

"The City considers this should clearly stipulate and reflect Council's legislated role in strategic decision making, rather than operational or matters pertaining to individual community members."

"While the current principles provide a solid foundation, it may be beneficial to include additional principles that emphasize the importance of maintaining operational flexibility and avoiding confusion regarding statutory roles."

"The City supports the general principles detailed in this Division other than the need to comply with provisions stipulated in the communications agreement. General principles should be developed based on the good governance principles of mutual respect, and the desire to genuinely fulfil the needs of respective roles and responsibilities within a local government."

Recommendation 8: Clause 4 General principles

8. That WALGA advise the Department of Local Government, Industry Regulation and Safety to include an additional principle in Clause 4 that emphasises the importance of mutual respect for the separate roles and responsibilities of Council Members, Council and the CEO under the Act.

4.2. Clause 8 Nominated employees

Draft Order

Clause 8(1) enables the CEO to nominate employees for the purposes of the agreement.

Clause 8(2) requires the CEO to nominate minimum numbers of employees, depending on the Class of the Local Government.

Clause 8(3) allows employees to be nominated for all requests for information, or a type of request for information. Clause 8(4) allows employees to be nominated for media enquiries, requests for administrative assistance, or types of either of these.

Under clauses 16, 18, 20, 23 and 27 of the Draft Order, Council Members or Committee Members must make and discuss their various requests with an “appropriate nominated employee”, defined in clause 2(1). In summary, an appropriate nominated employee is an employee who has been nominated for that type of request.

Clause 9 allows the CEO to direct which employee responds to a request.

Comment

There is strong support for simplifying the requirements in relation to nominated employees.

A significant proportion of Local Governments support the removal of minimum numbers of nominated employees. It is unlikely that all Local Governments of a particular class will have the same requirements or capacity. CEOs will be best placed to determine the number of nominated employees required to service the level of requests in the timeframes specified in the default agreement. Several Local Governments noted that they currently coordinate requests through limited or even a single point of contact, with internal referrals once received.

Local Governments emphasised the need for flexibility in directing a request to an appropriate nominated employee. Although requests must only be directed to nominated employees, it may not always be clear which nominated employee is the appropriate point of contact, particularly if a request for information addresses multiple subjects. It would be unfortunate if a Council Member was technically in breach of the Code of Conduct for sending a request to the wrong nominated employee. While it is efficient to nominate employees for specific purposes, any nominated employee should be capable of passing on a misdirected request.

Indicative Local Government comments

"Any requirement for a minimum number of nominated employees should be deleted. This is unnecessarily prescriptive and cannot contemplate the particular circumstances of a given local government at any particular time."

"Many local governments already have practices in place whereby requests are centralised through a 'council support' inbox. This ensures that any requests for information are sent to the relevant employee/s, responses are collated where it relates to multiple service areas, response timeframes are tracked and appropriate records are kept."

"The need for the CEO to nominate employees for the purposes of certain activities detailed within a communications agreement, and to subsequently maintain an up-to-date register, is overly prescriptive, will create additional administrative processes and an unnecessary level of bureaucratic red tape."

Recommendation 9: Clause 8 Nominated employees

9. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Delete the minimum numbers of nominated employees from Clause 8.
 - (b) Replace requirements to direct a request to "an appropriate nominated employee" with requirements to direct a request to "a nominated employee" to allow flexibility.
 - (c) Allow the CEO to keep Council Members informed of nominated employees by any appropriate method, rather than requiring maintenance of a register.

4.3. Clause 12 Information that may be requested

Draft Order

Clause 12(1) lists matters that may be the subject of requests for information, Clause 12(2) provides examples of information that may be requested by a Mayor or President, while Clause 12(3) specifies that the clause does not limit what information may be requested.

Comment

It appears that this clause simply provides indicative examples of suitable subject matter for requests for information. Local Governments advised that a non-exhaustive list of common request types may be helpful in identifying appropriate requests. However, a significant percentage of Local Governments raised concerns about the inclusion of one or more of the matters in Clause 12, or the language used. A review of each matter listed in Clause 12 may be required.

There was also significant opposition to the inclusion of a list. Those Local Governments stated that the link to a statutory function is all that is required. The overriding importance of this nexus was also emphasised by those Local Governments who support the inclusion of a list. Currently Clause 13(1) provides that the information requested must

be relevant to a statutory function. Some concerns could be addressed by clarifying that Clause 12 is subject to the requirements in Clause 13.

Indicative Local Government comments

"A general list may be useful for clarity but should not be read as exhaustive or definitive. The examples should only refer to matters clearly relevant to statutory functions. Otherwise, there is a risk that requests may fall outside the scope of s.5.92 and lead to disputes."

"The provision of a non-exhaustive list may introduce confusion and conflict between Elected Member and administration interpretations of a 'request for information'. Information regarding 'a service, project or initiative being delivered' is very broad and may unintentionally promote councillors feeling entitled to request detailed, operational information, personal information, or commercial in confidence information (for example) that is not relevant to their role, so long as it pertains to the local government's activities in some way."

"In practice, information requests related to service delivery, project updates, or policy implementation are often relevant and consistent with Council's oversight and decision-making responsibilities. However, where requests extend to operational detail, internal workflows, or staff matters, they may fall outside the scope of section 5.92 and interfere with administrative functions. Listing such examples risks inviting inappropriate or intrusive requests inconsistent with the governance role of Elected Members."

"It sets practical expectations about the types of information typically accessible and supports consistent application across local governments. However, such lists should be clearly framed as non-exhaustive and illustrative only, to avoid restricting or inadvertently expanding the scope of legitimate requests beyond the statutory framework under section 5.92. The agreement must explicitly acknowledge that all requests remain subject to the statutory requirement that the information be relevant to a Council Member's functions."

Recommendation 10: Clause 12 Information that may be requested

10. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Review the matters listed in Clause 12 to ensure they are clear and suitable.
 - (b) Clarify that Clause 12 is subject to Clause 13.

4.4. Clause 13 Requirements applicable to requests for information

Draft Order

Clause 13 sets out the requirements applicable to a request for information, including relevance to a statutory function (as discussed above), a limited scope and accompanied by supporting information or correspondence.

Comment

In many circumstances, the information requested by Council or Committee Members is self-evidently related to performance of a function under the Act or other written law, consistent with s.5.92(1). However, in some cases the relevance is not always clear. There is strong support for a requirement that the requesting member explain the relevance of the information requested to a statutory function. Local Governments advised that this would enhance transparency and enable officers to understand and more efficiently respond to requests.

Clause 13(2)(b) requires that a request for information must be "accompanied by any supporting information that may assist a local government to respond to the request". This could be amended slightly to refer to an explanation of relevance to a statutory function.

Indicative Local Government comments

"Yes, to ensure clarity and good governance, it is important that this clause includes a requirement for the requester (Council Member or Committee Member) to explain how the requested information is relevant to the performance of their functions under the Local Government Act 1995. This is also to encourage transparency and accountability by linking requests to statutory roles and responsibilities."

"Requests for information should include a brief explanation of how the information is relevant to the Council or Committee Member's statutory role. While many requests are clearly linked to their functions, others may be less apparent and benefit from additional context. Requiring members to articulate the relevance of the request ensures alignment with section 5.92, promotes transparency, and assists staff in processing and responding to requests efficiently."

Recommendation 11: Clause 13 Requirements applicable to requests for information

11. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:

(a) Consider amending Clause 13(2)(b) to read:

"accompanied by any supporting information that may assist the local government to respond to the request, including the relevance of the request to the functions of the requesting member under the Act or another written law."

4.5. Clause 14 Certain information not required to be provided

Draft Order

Clause 14 provides that information is not required to be provided in response to a request for information if:

- the request is not made in accordance with the agreement.
- the information is mentioned in section 5.92(4) of the Act.
- the information:
 - is not held by the Local Government, and
 - is held by another person or body, and
 - cannot be reasonably obtained by the Local Government.
- the CEO decides that preparing or providing the information would divert a substantial and unreasonable portion of the Local Government's resources.

Comment

Clause 14(c) appears somewhat convoluted. If the information is not held by the Local Government and cannot be reasonably obtained, it is not clear why it is relevant whether the information is held by another person or body. In any case, it appears that this clause would require Local Governments to undertake research to identify and obtain information that they do not currently hold. While it may sometimes be appropriate to consult external sources to address requests for information, it should not be a requirement. A majority of Local Government responses agreed that this subclause should be redrafted to make it clear that information is not required to be provided if it is not held by the Local Government.

Indicative Local Government comments

"In particular this clause implies that the communications agreement applies to information not held by the local government, which may be quite broad in scope, for example it could contemplate broad / deep research requests. These requests can be appropriate if they are of importance in informing Council strategy, policy or good governance, however are perhaps not appropriate for inclusion in the scope of communications agreements."

"The simplification would reduce ambiguity, remove administrative uncertainty, and align the clause with the practical reality that a Local Government cannot be expected to provide information it does not possess or control."

Recommendation 12: Clause 14 Certain information not required to be provided

12. That WALGA advise the Department of Local Government, Industry Regulation and Safety to amend Clause 14(c) to provide that information is not required to be provided if it is not held by the Local Government.

4.6. Clause 15 Disputes

Draft Order

Clause 15 sets out the process for dealing with disputes regarding a final response to a request for information that includes a refusal to provide some or all of the information requested. In the first instance the dispute must be discussed at a meeting between the CEO and the requesting member, joined by the Mayor or President. If this does not resolve the dispute, the requesting member may refer the dispute to Council for determination.

Comment

A significant number of Local Governments expressed overarching concerns regarding the dispute resolution model. These Local Governments anticipated potential damage to relationships, entrenching adversarial relationships between members and the CEO, abuse of the process and significant use of resources.

The Draft Order does not appear to contemplate disputes where the Mayor or President is the requesting member. A majority of responses supported the proposal that, where the Mayor or President is the requesting member, the Deputy Mayor or President should be the third party at the meeting to discuss the dispute.

The Draft Order specifies that Council's determination is final and may override a decision of the CEO under clause 14(d) that a request would divert unreasonable resources. A significant percentage of Local Governments said that it was inappropriate for Council to be able to override the CEO's decision in this way, noting that this decision rests on an operational assessment which is the role of the CEO. Those Local Governments that stated that it was appropriate for Council to have this power, but that it should be exercised with caution and respect for the role of the CEO, restricted to matters related to strategy, governance or decision-making. These Local Governments noted that Council does have the authority to both direct the CEO and determine the budget, ensuring that resources are allocated to give effect to its decisions. Several Local Governments advised that it was not appropriate to regard Council as having a power to determine disputes. Instead, individual Council Members should continue to have the capacity to bring a Notice of Motion before Council, which would be considered within the scope of Council's governing body role. This avoids framing the matter as a "dispute", and requires Council to have regard to its role under the Act.

The Draft Order is silent on whether Council can overturn the CEO's decision that the request was not made in accordance with the communications agreement (Clause 14(a)), that the information is excluded under section 5.92(4) of the Act (Clause 14(b)), or that the information is not held by the Local Government (Clause 14(c)). Local Governments expressed concerns about the possibility that Council could seek to overrule the CEO's decision where information was not provided due to confidentiality requirements or other legal obligations.

Local Governments advised that if Council was to undertake this function, clear criteria and considerations for decision would be necessary as well as mechanisms to deal with repeated, politicised or vexatious use of the dispute mechanism.

A significant percentage of Local Governments support referring disputes to the Inspector or another third party. Many Local Governments supporting this option argued it was inappropriate for one of the parties to an agreement to have final dispute resolution authority. Others suggested that an independent third party might be able to play a more conciliatory role. Some Local Governments may wish to consider mediation of disputes, but this may not be suitable for all Local Governments and could be difficult to include in the default agreement. Several Local Governments expressed concern about the time and resource implications if the Inspector were to determine disputes. These concerns would be relevant for both the referring Local Government and for the Inspector. Rather than determining individual disputes, it may be more appropriate for the Inspector to have the capacity to intervene if Local Governments experience repeated or contentious disputes.

Indicative Local Government comments

"Yes, the Deputy Mayor or President (or another agreed senior Elected Member) should attend dispute discussions when the Mayor or President is the requesting member. This adds transparency and reduces the risk of bias or conflict. Care should be taken to avoid escalating what may be a minor or operational issue, and either party could have the option to involve a mutually agreed third party if needed."

"Risks of this kind of dispute in a public forum:

- *create perception of disharmony amongst CEO and Council*
- *undermine community confidence*

Disputes should not be determined by the Inspector.

In circumstances where a request for information is refused, the appropriate mechanism is for the requesting Councillor to give notice of motion. This allows Council to consider the matter formally and determine whether to support the provision of the information—framed as a decision of Council rather than a "dispute."

"Whilst a formal dispute resolution scheme to resolve disagreements in relation to requests for information is supported in principle, it is considered likely to present as a further means by which Councils with high degrees of conflict within, for disaffected Council Members to weaponise a process for the purposes of heightening the conflict."

"Having disputes determined by Council presents several risks: it may politicise the outcome, place undue pressure on the CEO, or compromise objectivity, particularly if the dispute involves a contentious or complex matter. Council Members may not always be best placed to assess the operational impacts of a request, especially where it relates to resource constraints, confidentiality, or legal obligations. Referring unresolved disputes to the Inspector provides an independent, impartial mechanism that strengthens procedural fairness and reinforces good governance. It would also promote consistency across the sector and ensure that disputes are resolved in accordance with the intent of section 5.92 of the Act and related legislative obligations."

"If disputes cannot be resolved internally, referring them to an independent body such as the Inspector would ensure impartiality and fairness. This avoids placing Council in the conflicting role of both party and decision-maker in the dispute. ... Council's power to overturn CEO decisions should be used carefully to protect the CEO's operational role."

Any such power should be limited to matters affecting Council's governance or strategy, not day-to-day administration, to avoid blurring responsibilities. ... Clear, proactive communication between the CEO and Council is key to preventing disputes. The agreement should include a straightforward, timely dispute process, with options for mediation if needed. Regular training for all parties on their roles and the dispute process would also help reduce misunderstandings."

Recommendation 13: Clause 15 Disputes

13. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Amend sub-clause 15(2) to provide that where the requesting member is the Mayor or President, the dispute should be discussed at a meeting between the requesting member, the CEO and the Deputy Mayor or President.
 - (b) Consider options for referring disputes to an impartial third party, including the Inspector if appropriate.
 - (c) Replace sub-clauses 15(3) and 15(4) with a statement noting that Council Members may bring a notice of motion for Council's consideration, with reference to Council's role under the Act.
 - (d) If Council's authority to determine disputes under sub-clauses 15(3) and 15(4) is retained, provide guidance about the scope and limitations of this authority, and the information and considerations that must inform Council's decision-making.

4.7. Clause 16 Mayor/President discuss media enquiry

Draft Order

Clause 16 allows the Mayor or President to discuss a media enquiry with the CEO or an appropriate nominated employee without making a request for information.

Comment

Nearly half of Local Government responses indicated that this clause was suitable for their needs.

No changes are recommended.

4.8. Division 4 Requests for information - processes

Draft Order

Division 4 of the Draft Order sets out the processes for making, acknowledging, discussing and responding to requests for information other than administrative requests.

Under Clause 22(1), final responses will generally be provided to all Council Members and members of the relevant committee. Clause 22(2) provides exceptions, including where the request for information is one made by the Mayor or President in relation to representing the Local Government, correspondence or arranging a formal meeting or event. Clause 22(2) also allows the CEO and requesting member to agree that the final

response is confidential or because of particular circumstances it is appropriate not to provide to all members.

Comment

Most responses advised that the processes in Division 4 are broadly suitable, while some expressed the view that the processes were overly bureaucratic and detailed.

A significant percentage of Local Governments advised that the time limit for provision of a final response would need to be applied with some flexibility, or that response times should be agreed based on each request. Currently, Clause 21(3) requires that within 10 working days, the CEO must ensure that the requesting member is provided with either a final response or notice that a response cannot be provided in time and an estimate of when it will be provided. This may provide the flexibility required.

Many Local Governments stated that additional criteria or guidance was required to clarify when it would be appropriate not to provide copies of a response to all members. The basis for this varied, with some responses expressing concerns about withholding information, while others advised that it was impractical to default to providing copies to all members and would result in unworkable volumes of correspondence.

In addition, Local Governments requested further guidance regarding the outcome where the requesting member and CEO do not agree on whether copies of a response should be provided to all members, with some suggesting a dispute resolution process.

Indicative Local Government comments

"Clause 22(2) is workable but would benefit from clearer examples or guidance to avoid misunderstandings about when information can be withheld from other members. Good record-keeping should support this ... The clause should explain what happens if the CEO and member disagree about confidentiality, such as referring the matter to the Mayor/President or seeking independent advice."

"Several exemptions permit selective distribution. There is no obligation to document or justify the invocation of confidentiality clauses, which may restrict equitable access to information among all Council Members."

"It is considered that the provision of all responses to all council members will become overly burdensome for local government administrative staff. For large local governments this would be a significant amount of correspondence, much of which is likely not relevant or administrative in nature."

Recommendation 14: Division 4 Processes for requests for information

14. That WALGA advise the Department of Local Government, Industry Regulation and Safety to clarify Clause 22 to provide additional guidance on:

- (a) when it is appropriate not to provide a copy to all members; and
- (b) the process to resolve a disagreement between the CEO and requesting member.

4.9. Division 5 Administrative requests - processes

Draft Order

Division 5 of the Draft Order sets out the requirements for making and responding to administrative requests.

Comment

Most responses suggested that the processes and requirements are broadly suitable.

No changes are recommended.

5. Recommendations

Recommendation 1: Drafting style

1. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Minimise the level of prescriptive detail in the Draft Regulations to avoid unnecessary red-tape and administrative burden, which is inconsistent with reform objectives.
 - (b) Ensure that Councils and CEOs have the flexibility to adopt communications agreements that are appropriate for their needs, context, structure and resource levels.
 - (a) Simplify the Draft Order by using clear, plain language drafting.

Recommendation 2: Commencement date

2. That WALGA advise the Department of Local Government, Industry Regulation and Safety to revise the commencement date of the Regulations to allow at least six months after publication of the final Regulations and Order for Local Governments to prepare.

Recommendation 3: Provision of Mayor or President Correspondence to all Council Members

3. That WALGA advise the Department of Local Government, Industry Regulation and Safety:
 - (a) Not to prescribe in regulations the provision of Mayor / President correspondence to all Council Members as an additional matter that must be regulated by all communications agreements.
 - (b) To delete Clause 5 of the Draft Order and exclude this matter from any future default communications agreement.

Recommendation 4: Requests for information – definition and scope

4. That WALGA advise the Department of Local Government, Industry Regulation and Safety to delete the words "or otherwise" and "other information" from any definitions of request for information.

Recommendation 5: Administrative matters – definition and scope

5. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Not prescribe a definition for "administrative matter" in regulations, allowing it to be defined in each communications agreement.
 - (b) Include the following definition of administrative matter in the default communications agreement:

***administrative matter** in relation to a council member or committee member, means support or assistance provided to an individual council member or individual committee member to facilitate an administrative process related to that member, and may include:*

- (vi) council and committee meeting scheduling, attendance, apologies, leave of absence, deputy committee member attendance, drafting a notice of motion or alternative motion;*
- (vii) attendance at professional development, training or events, associated speech writing, ceremonial protocols, travel, accommodation and incidental expense arrangements;*
- (viii) entitlements to a fee, allowance, reimbursement or superannuation;*
- (ix) personal compliance obligations under the Act, Regulations, or other written law including code of conduct, conflict of interest, gift disclosure or recordkeeping requirements; or*
- (x) information and communication technology software or hardware provided by the local government.*

Recommendation 6: Commissioners

6. That WALGA advise the Department of Local Government, Industry Regulation and Safety:
 - (a) Not to prescribe in regulations any requirement for all communications agreements to include provisions for commissioners.
 - (b) Not to prescribe in regulations that commissioners may make requests to any employee, determine the manner of their requests and the manner of the response.
 - (c) To delete Clauses 29 and 30 from the Draft Order.

Recommendation 7: Model Code of Conduct Amendments

7. That WALGA advise the Department of Local Government, Industry Regulation and Safety not to proceed with the amendment to clause 20 of the Model Code of Conduct for Council Members, Committee Members and Candidates.

Recommendation 8: Clause 4 General principles

8. That WALGA advise the Department of Local Government, Industry Regulation and Safety to include an additional principle in Clause 4 that emphasises the importance of mutual respect for the separate roles and responsibilities of Council Members, Council and the CEO under the Act.

Recommendation 9: Clause 8 Nominated employees

9. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Delete the minimum numbers of nominated employees from Clause 8.
 - (b) Replace requirements to direct a request to "an appropriate nominated employee" with requirements to direct a request to "a nominated employee" to allow flexibility.
 - (c) Allow the CEO to keep Council Members informed of nominated employees by any appropriate method, rather than requiring maintenance of a register.

Recommendation 10: Clause 12 Information that may be requested

10. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Review the matters listed in Clause 12 to ensure they are clear and suitable.
 - (b) Clarify that Clause 12 is subject to Clause 13.

Recommendation 11: Clause 13 Requirements applicable to requests for information

11. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Consider amendment of Clause 13(2)(b) to read:
"accompanied by any supporting information that may assist the local government to respond to the request, including the relevance of the request to the functions of the requesting member under the Act or another written law."

Recommendation 12: Clause 14 Certain information not required to be provided

12. That WALGA advise the Department of Local Government, Industry Regulation and Safety to amend Clause 14(c) to provide that information is not required to be provided if it is not held by the Local Government.

Recommendation 13: Clause 15 Disputes

13. That WALGA advise the Department of Local Government, Industry Regulation and Safety to:
 - (a) Amend sub-clause 15(2) to provide that where the requesting member is the Mayor or President, the dispute should be discussed at a meeting between the requesting member, the CEO and the Deputy Mayor or President.
 - (b) Consider options for referring disputes to an impartial third party, including the Inspector if appropriate.
 - (c) Replace sub-clauses 15(3) and 15(4) with a statement noting that Council Members may bring a notice of motion for Council's consideration, with reference to Council's role under the Act.
 - (d) If Council's authority to determine disputes under sub-clauses 15(3) and 15(4) is retained, provide guidance about the scope and limitations of this authority, and the information and considerations that must inform Council's decision-making.

Recommendation 14: Division 4 Processes for requests for information

14. That WALGA advise the Department of Local Government, Industry Regulation and Safety to clarify Clause 22 to provide additional guidance on:
 - (a) when it is appropriate not to provide a copy to all members; and
 - (b) the process to resolve a disagreement between the CEO and requesting member.