

**5.1 Local Government Act 1995 Review**

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

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

Note: WALGA staff to report to the next State Council meeting on the role of the Department of Local Government.

2. That State Council endorse the retention of current WALGA Policy positions as listed:

(a) Method of Election of Mayor/President: Section 2.11

<b>Position Statement</b>	Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.
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(b) Notification of Affected Owners: Section 3.51

<b>Position Statement</b>	Section 3.51 of the Local Government Act 1995 concerning “Affected owners to be notified of certain proposals” should be amended to achieve the following effects: <ul style="list-style-type: none"><li>1. to limit definition of “person having an interest” to those persons immediately adjoining the proposed road works (i.e. similar principle to town planning consultation); and</li><li>2. to specify that only significant, defined categories of proposed road works require local public notice under Section 3.51 (3) (a).</li></ul>
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(c) Regional Local Governments: Part 3, Division 4

<b>Position Statement</b>	The compliance obligations of Regional Local Governments should be reviewed.
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(d) Council Controlled Organisations: Part 3, Division 4

<b>Position Statement</b>	The Local Government Act 1995 should be amended to enable Local Governments to establish Council Controlled Organisations (CCO).
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(e) **Tender Threshold: Local Government (Functions and General)  
Regulation 11(1)**

<b>Position Statement</b>	<b>WALGA supports an increase in the tender threshold to align with the State Government tender threshold (\$250 000).</b>
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(f) **Regional Subsidiaries**

<b>Position Statement</b>	<b>That WALGA advocate for legislative and regulatory amendments to enable Regional Subsidiaries to:</b> <ul style="list-style-type: none"><li>- <b>Borrow in their own right;</b></li><li>- <b>Enter into land transactions; and</b></li><li>- <b>Undertake commercial activities</b></li></ul>
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(g) **Conduct of Postal Elections: Sections 4.20 and 4.61**

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

<b>Position Statement</b>	<b>Voting in Local Government elections should remain voluntary.</b>
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(i) **Electors' General Meeting: Section 5.27**

<b>Position Statement</b>	<b>Section 5.27 of the Local Government Act 1995 should be amended so that Electors' General Meetings are not compulsory.</b>
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(j) **Local Government (Rules of Conduct) Regulations 2007**

<b>Position Statement</b>	<b>WALGA supports:</b> <ol style="list-style-type: none"><li>1. <b>Official Conduct legislation to govern the behaviour of Elected Members;</b></li><li>2. <b>An efficient and effective independent Standards Panel process;</b></li><li>3. <b>An ability for the Standards Panel to dismiss vexatious and frivolous complaints; and,</b></li><li>4. <b>Confidentiality for all parties being a key component of the entire process.</b></li></ol>
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(k) **Imposition of Fees and Charges: Section 6.16**

<b>Position Statement</b>	<b>That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.</b>
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(l) **Rating Exemptions – Rate Equivalency Payments**

<b>Position Statement</b>	Legislation should be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government.
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**(m) Rating Restrictions – State Agreement Acts**

<b>Position Statement</b>	Resource projects covered by State Agreement Acts should be liable for Local Government rates.
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**(n) Poll Provisions**

<b>Position Statement</b>	Schedule 2.1 of the Local Government Act 1995 should be amended so that the electors of a Local Government affected by any boundary change or amalgamation proposal are entitled to petition the Minister for a binding poll.
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**(o) Stand Down Provision**

<b>Position Statement</b>	<p>WALGA supports, in principle, a proposal for an individual elected member to 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, subject to further policy development work being undertaken.</p> <p>Further policy development of the Stand Down Provisions must involve specific consideration of the following issues of concern to the Sector:</p> <ol style="list-style-type: none"> <li>1. That ... the established principles of natural justice and procedural fairness are embodied in all aspects of the proposed Stand Down Provisions; and</li> <li>2. That activities associated with the term ‘disruptive behaviour’, presented as reason to stand down a defined Elected Member on the basis their continued presence may make a Council unworkable, are thoroughly examined and clearly identified to ensure there is awareness, consistency and opportunity for avoidance.</li> </ol>
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**(p) Method of Voting - Schedule 4.1**

<b>Position Statement</b>	Elections should be conducted utilising the first-past-the-post (FPTP) method of voting.
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**3. That State Council:**

- (a) Amend current WALGA Policy position ‘Rating Exemptions – Charitable Purposes: Section 6.26(2)(g)’ by adding Item 3:**

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

(b) Amend current WALGA Policy position 'Elected Member Training' to read:

That WALGA:

1. Supports and encourages all Elected Members to carry out the Elected Member Skillset, as a minimum, that comprises;
  - i. Understanding Local Government;
  - ii. Serving on Council;
  - iii. Understanding Financial Reports and Budgets;
  - iv. Conflicts of Interest; and,
  - v. Meeting Procedures and Debating.
2. Requests the State Government through the Minister for Local Government to provide funding assistance to Local Governments to enable all Elected Members to receive training;
3. Supports Local Governments being required to establish an Elected Member Training Policy to encourage training and include budgetary provision of funding for Elected Members; and,
4. Supports Local Government election candidates being required to attend a Candidates information session, either in person or on-line, as an eligibility criteria for nomination as an Elected Member.

4. That State Council adopt as WALGA Policy positions the following items as listed:

(a) Local and Statewide Public Notice: Sections 1.7 and 1.8

That Sections 1.7 and 1.8 of the Local Government Act be amended to remove the statutory requirements for statewide and local public notice to be placed in a newspaper circulating statewide or locally, to be replaced with the requirement for a Local Government to place public notices on their website.

(b) Leave of Absence when Contesting State or Federal Election

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

- (a) that an Elected Member remove themselves from any decision making role and not attend Council and Committee meetings; or
- (b) that an Elected Member take leave of absence from all aspects of their role as a Councillor and not be able to perform the role as specified in Section 2.10 of the Local Government Act.
- (c) **Control of Certain Unvested Facilities: Section 3.53**

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

- (d) **Dispositions of Property: Local Government (Functions and General) Regulation 30(3)**

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

- (e) **On-Line Voting**

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

- (f) **Special Electors' Meeting: Section 5.28**

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

(a) so that the prescribed number of electors required to request a meeting increase from 100 (or 5% of electors) to 500 (or 5% of electors), whichever is fewer; and

(b) to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise.

- (g) **Senior Employees: Section 5.37(2)**

That Section 5.37(2) of the Local Government Act be deleted.

- (h) **Annual Review of Certain Employees Performance: Section 5.38**

That Section 5.38 either be deleted, or amended so that there is only a specific statutory requirement for Council to conduct the Chief Executive Officer's annual performance review.

- (i) **Gifts and Contributions to Travel: Sections 5.82 and 5.83**

That the *Local Government Act 1995* and Regulations be amended so that:

- There be one section for declaring gifts. Delete declarations for Travel.
- No requirement to declare gifts received in a genuinely personal capacity, as gifts only to be declared in respect to an Elected Member or CEO carrying out their role.
- Gift provisions only for Elected Members and CEO's.

- Other staff fall under Codes of Conduct from the CEO to the staff.
- Gifts only to be declared if above \$500.00.
- There will not be any category of notifiable gifts or prohibited gifts.
- Exemptions for ALGA, WALGA and LG Professionals (already achieved).
- Exemption for electoral gifts received that relate to the State and Commonwealth Electoral Acts, so Elected Members who are standing for State or Federal Parliament will only need to comply with the State or Federal electoral act and not declare it as a Local Government gift.

**(j) Vexatious and Frivolous Complainants: New Provision**

That a statutory provision be developed, permitting a Local Government to declare a member of the public a vexatious or frivolous complainant.

**(k) Revoking or Changing Decisions: Regulation 10**

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

**(l) Minutes, contents of: Regulation 11**

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

**(m) Repayment of Advance Annual Payments: New Regulation**

That regulations be drafted as matter of priority in relation to Section 5.102AB of the Local Government Act.

**(n) Power to Borrow: Section 6.20**

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

**(o) Basis of Rates: Section 6.28**

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

**(p) Differential General Rates: Section 6.33**

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

**(q) Service of Rates Notice: Section 6.41**

That Section 6.41 be amended to:

- (a) permit the rates notice to be issued electronically; and
- (b) introduce flexibility to offer regular rate payments (i.e. fortnightly, monthly etc) without requirement to issue individual instalment notices.

**(r) Rates or Service Charges Recoverable in Court: Section 6.56**

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

**(s) Exemption from AASB 124: Regulation 4**

That Regulation 4 of the *Local Government (Financial Management) Regulations* be amended to provide an exemption from the application of AASB 124 'Related Party Transactions' of the Australian Accounting Standards (AAS).

**(t) Onus of Proof in Vehicle Offences may be Shifted: Section 9.13(6)**

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

**(u) Schedule 2.1 – Proposal to the Advisory Board, Number of Electors clause 2(1)(d).**

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

**(v) Schedule 2.2 – Proposal to amend names, wards and representation, Number of Electors clause 3(1)**

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

**5. That State Council note additional proposals as listed for future consideration following Sector consultation:**

**(a) New Proposal - Differentiating between Local Governments/Tiered Compliance**

- Insert a new provision to differentiate between Local Governments based on capacity. This will reduce the compliance burden on smaller Local Governments with limited capacity and provide additional opportunities for local governments with capacity.
- Tiered application of legal framework and support a review of this approach.

**(b) New Proposal – Regional Capitals Recognition**

The Regional Capitals Alliance would welcome legislative change to enable regional capitals to be designated within the Act under Section 2.4 (District to be designated city, town or shire) and also that the Regional Capitals Alliance WA (RCAWA) be established as a recognised statutory body not dissimilar to the establishment of a regional local government currently provided for in the Act under Division 4 Section 3.61.

**(c) New Proposal Section 2.21 – Disqualification because of Convictions**

**Add a disqualification criteria which disqualifies a person from being an Elected Member if they have been convicted of an offence against the Planning and Development Act, or the Building Act, in the preceding five years.**

**A planning or building system conviction is potentially more serious than a Local Government Act conviction because of Local Government's prominent role in planning and building control and the significant personal benefits which can be illegally gained through these systems.**

**(d) New Proposal – Local Laws**

- **Procedure for making local laws – Local Governments' local laws generally affect those persons within its district. The requirement to give statewide notice under subsection (3) should be reviewed and consideration being given to Local Governments only being required to advertise the proposed local law by way of local public notice;**
- **Eliminate the requirement to consult on Local Laws when a model is used;**
- **Periodic review of local laws – consideration might be given to review of this section and whether it could be deleted. Local Governments through administering local laws will determine when it is necessary to amend or revoke a local law in terms of meeting its needs for its inhabitants of its district. Other State legislation is not bound by such periodic reviews, albeit recognising such matters in subsidiary legislation are not as complex as matters prescribed in statute.**

**(e) New Proposal – Closure of Bridges for Repairs**

**Allow a bridge to be closed for urgent repairs and maintenance without notice, even if it will have significant adverse effects on users. The closure of a bridge will often have significant adverse effects on users. However, bridges may need to be closed for urgent repairs if there is a sign of weakness and, currently, the Act does not provide capacity to take this action without giving local public notice if the closure will be greater than four weeks.**

**(f) New Proposal Section 6.14 – Power to Invest**

**Allow Local Governments with capacity to invest in accordance with the Trustees Act in the manner that existed prior to the Global Financial Crisis. The Global Financial Crisis was a once in a generation experience (1987 and 1929 were the two previous financial crashes of extreme magnitude). Legislation should not be based on a worst case scenario but on a routine and general operating environment. Prior to the Global Financial Crisis, the previous legislation was adequately controlling Local Government investments.**

**(g) New Proposal – Financial Management Provisions**

- **Conduct a complete review of the Financial Management provisions under Part 6 of the Local Government Act and associated Regulations;**

**(h) New Proposal – Standards Panel**

- Review of Standards Panel Legislative content and practices;

**(i) New Proposal – Local Government Election Provisions**

- Review of Local Government election provisions under Part 4 of the Local Government Act and associated Regulations with a focus on lessons learnt in the conduct of the 2017 elections including currently non-legislated matters such as candidate conduct and campaigning behaviours.

**(j) New Proposal – CEO Employment**

Investigate and Development a policy on an approach whereby Local Government be encouraged to seek third party assistance in the recruitment, performance management and, if necessary, dismissal of a CEO, with any necessary legislation.

**(k) New Proposal – Section 3.58 and 3.59: Disposal of Property and Commercial Enterprises**

That WALGA include in the Local Government Act 1995 Review submission, the review of section 3.58 Disposing of Property and section 3.59 Commercial Enterprises to be redrafted to reflect current commercial and contractual practices in Western Australia.

**(l) New Proposal – Simple / Absolute Majority Decisions**

That WALGA support a review of those decisions requiring simple / absolute majority.