



Office of Hon Dr Brian Walker MLC

MEMBER FOR EAST METROPOLITAN REGION

22 February 2022

John
Dear Minister,

Local Government Reform Proposals – Public Consultation

Thank you for the opportunity to submit a response to the Local Government reform proposals advertised by the Department of Local Government, Sport and Cultural Industries on its website late last year, and open for comment until 25 February 2022.

Attached is a document outlining in detail feedback offered by the Legalise Cannabis WA Party, in my capacity as their parliamentary spokesperson for local government issues. In it, I address each of the six themes in detail.

By way of an introductory comment however, I would like to record my deep-seated regret, and that of my party colleagues, at the failure, thus far at least, to present to the public a comprehensive green bill for consideration in its entirety. As late as August 2020, to coincide with the release of the final report of the Local Government Review Panel, your predecessor as Minister, Hon. David Templeman MLA, made a commitment on behalf of the McGowan Government to do just that, stating that the government would begin "the drafting of a new Local Government Act green bill" based upon that report, and one which would, to quote fellow parliamentarian and government member David Michael MLA, who chaired that review, "prepare local governments in Western Australia not just for the challenges of today, or the next few years, but for the long term".

Instead, what we have before us now are substantial, but nonetheless limited proposals to amend the Act as it currently stands, and I and my colleagues cannot help but feel that this down-scaled reform is, and will be recognised in time to have been, a missed opportunity, which saddens us.

That being noted, I would not wish to stand silently by as these limited proposals are brought forward, and in that spirit I offer the attached observations, thoughts, and suggestions, which I trust will be of use both to the Department, and to you as the responsible Minister.

My responses range from serious concerns over what might be seen as an attack on the democratic underpinnings of local government, through to hearty support for measures which promise more openness and transparency across the sector.

If I can be of any further help to you during this reform process, I trust you will not hesitate to reach out to me.

Yours sincerely,

Hon. Dr Brian Walker MLC
Member for East Metropolitan

LOCAL GOVERNMENT REFORM SUBMISSION – HON DR BRIAN WALKER MLC

Theme 1: Early Intervention, Effective Regulation and Stronger Penalties

1.1 Early Intervention Powers

While early intervention is, in and of itself, a laudable goal, I would contend that the current, limited powers provided within the Act are limited for good reason, in so much that, while local governments are by their very creation a creature of State Government, they remain democratically elected bodies in their own right, and except in extremely serious circumstances, should be allowed to serve out their terms, with the ratepayers of the locale then deciding the fate of individual members, and of the Council as a whole.

That being understood, I have no objection to the Minister choosing to give specific, and for the most part minor powers to an Inspector. I do have concerns with regard to a duplication of bodies; at present there is only the one Standards Panel, whereas the situation envisaged would require not only an Inspector and his or her support staff, but also a new panel of Local Government Monitors, while retaining the Standards Panel under a new name, and with a revised remit. This promises to be an expensive exercise, almost by definition, and I strongly oppose any suggestion that the expense should be carried either by the sector, or, as seems more likely, by ratepayers. Instead, if the Government is committed to going down this slightly bloated path, it must, in my opinion, be prepared to foot the bill, not only in the short term, but also for the foreseeable future.

1.2 Local Government Monitors

Nomenclature is important, and often serves to give an organisation its overarching sense of purpose and identity, whilst serving as a valuable indicator of function within the wider community. While I have no objection to the creation of this collective body of experienced individuals (other than those financial concerns raised above), a commitment to the independence of elected local governments would lead one to wonder if “Monitors” is an appropriate term, given that it denotes a constant level of watchfulness and oversight. Instead, what seems to be envisaged here is a group that can occasionally parachute into a local government experiencing some level or other of difficulty. That being the case, might a less pejorative and/or loaded term be more appropriate? The intent seems to be that the group will act as a first port of call, and will mentor local governments, so might Mentoring Panel be one such option? Facilitation Panel might be another. “Monitors,” by comparison, smack of a mix between overly officious school prefects, and Soviet-era political officers, appointed to ensure and enforce conformity. I feel sure that is not what the Department envisage, but would recommend some additional thought be given to the naming of any such group or panel, to avoid that perception.

1.3 Conduct Panel

While I am generally supportive of this amendment to the current Standards Panel model (again, with reference back to the cost of running such a system over time), I do hold concerns over natural justice if, as seems likely when one bars sitting councillors from being members, the ability to have one's actions reviewed by a group of peers is removed. As a result, I would recommend that the Conduct Panel include no fewer than one, and ideally more than one, sitting councillor from a local government suitably removed from that under consideration, so as to provide practical experience of the types of situation in which a councillor might reasonably be expected to find themselves on a daily basis, and the best manner in which they might be expected to respond. To have no councillors is to open up the process to a level of theoretical practice that is undesirable (those who have never served as a councillor are, by definition, ill equipped to judge what is and isn't reasonable in that role), while this review proves that local government is an evolving space, with regulations and requirements that change and morph on a regular basis, meaning that an ex-councillor might soon find their experience moribund.

Who will appoint members of this new Conduct Panel? If, as suggested, the Local Government Inspector is expected to provide evidence to the Panel for its adjudication, then it would be wholly inappropriate for the Inspector or Inspectorate to be the appointing body, as a clear conflict of interest would then exist. Direct appointment by the Minister would circumvent such a conflict.

How will the Department justify allowing an unelected, and presumably politically appointed body such as the Conduct Panel to suspend a councillor under the new, stronger penalties proposed? Councillors are democratically elected to represent their constituents, the ratepayers of a particular district. Where is the equivalent power for a politically appointed body to suspect a State or Federal MP? The nearest equivalent I am aware of is the power, under Standing Orders, for the relevant House to suspend a member (in the case of the Legislative Council, SO31/32). Such a suspension is extremely limited - one day in the first instance, four days in the second, and a maximum of 13 days in the event of a third breach. And such a suspension only comes into place as the result of a vote of the relevant House. Here, the Department is proposing to allow an outside body to suspend a democratically elected member for up to three months, which seems wholly disproportionate when read in the context of other democratically elected bodies. If the government is set and determined to proceed along these lines, I would make two suggested amendments: (1) the timescale of any suspension be amended to reflect that employed in a parliamentary setting; given that Council sits in full once a month in the usual course of events, a one month suspension in the first instance, a two month suspension in the second, and a potential three month suspension in the third, might be deemed appropriate, with such escalating suspensions to be limited to the calendar year in which the offences occur. And to overcome any suggestion of interference by the Panel in the democratic process, (2) amend this proposal such that the Panel may *recommend* that a

suspension is in order, but must then pass the matter back to the relevant Council, with an absolute majority vote by all members being required to bring the suspension to pass.

In the event that the Panel recommended prosecution through the courts, as suggested in the proposals, who would instigate such a prosecution? Would it be the Department (i.e. the Minister), or would the responsibility fall to the individual City, Town or Shire?

And what would any appeal mechanism look like? To say that there would be one is insufficient to allow for meaningful comment. Would the appeal be to the Minister (as, presumably, the appointing body), to some larger, more broadly constituted Panel, or to SAT? This does not seem to have been sufficiently thought through as yet.

1.4 Review of Penalties

As above, where is the precedent for suspension, and the associated penalties (loss of title, access to email, etc) at either a State or Federal level? Councillors are democratically elected representatives of their local communities, and as such, it might be argued that these penalties will be inflicted not just on the individual councillor, but also on the ratepayers they represent. More specifically, a suspended Councillor is still a Councillor, and therefore arguably entitled to retain the title, while restricting access to an official email account will (a) severely hamper a ratepayer's ability to contact their representative, should they choose to do so, and (b) have the effect of encouraging councillors to use non-official communication channels which, once established, might be expected to remain in use, parallel to those provided by the Local Government. This is suboptimal, in my opinion.

If harsher penalties are entertained (and, upon reflection, the penalties contemplated seem to be overly harsh, and quite possibly ill-considered), they should be limited to suspension, on an escalating scale, as suggested above, and an equivalent suspension of sitting fees and allowances.

And again, as democratically elected representatives, it would be desirable that any Panel outcome was presented as a recommendation to the Council, for a vote by its duly elected members. Anything less might constitute outside interference with the democratic process, if not a sustained attack upon it, and be open to both complaint and abuse.

1.5 Rapid Red Card Resolutions

While I applaud the underlying principle behind this "red card" proposal, it may be counterproductive in some instances, and require a level of additional flexibility to be inserted into it if it is to succeed. For example, a Councillor who oversteps the bounds on a motion early on in a particular meeting, might already have tabled a motion for

debate later in that same meeting, and gagging that Councillor might prevent that debate from taking place. Better, I would suggest, that a red card be considered to expire at the end of a debate, and not carry through for the whole of the meeting.

Similarly, expulsion from the meeting – to achieve the desired aim, it might be more democratic to allow that the Presiding Member can move a motion calling for the expulsion of an offending elected member, such a motion being dependent upon an absolute majority vote in its favour from the Council. The aim here would be to instil an additional level of sanction, while at the same time avoiding any claims of “gagging” or “silencing” individual councillors, for whatever reason. If these powers are to be introduced, to whatever level, then review by the Inspector or another body would seem highly advisable, and should probably be expanded to consideration of the merits of the instruction overall (at present, it is not impossible to envisage the powers, as written, being used by a Presiding Member, with the agreement of a sizeable clique, to repeatedly silence dissent, such as to adhere to the letter of the law, but to depart radically from its spirit).

The same level of concern does not necessarily apply to these “red card” powers being used in relation a member of the public observing the meeting, since they obviously have a reduced impact upon democratic decision making under those circumstances.

And finally, on the very term “red card,” the Department should ask itself if it risks diminishing respect for the institutions of local government if it encourages the use of sporting terminology in a legislative or regulatory setting? Clearly, local government is not a game, and there is no suggestion that the Department thinks otherwise, but there is a clear risk, in my opinion, that embedding a sporting metaphor within an LG’s Standing Orders might impart a sense of triviality which is, I trust, not the intent of the proposed reform.

1.6 Vexatious Complaint Referrals

I am generally supportive of this proposal, though it is worth noting that, as worded, it would be the complaint itself that was open to being considered vexatious, and not the complainant. That may be a desirable distinction to make – a complainant who has one particular bugbear, might also have a valid complaint on another matter. Clarification on that point might be advisable, along with an explanation of how someone deemed to have a vexatious complaint can appeal that classification (to an internal Council Complaints Committee / to the Inspector / to the Ombudsman / to the SAT?) Clearly some level of oversight needs to be attached to this proposal, or it risks either perceived or actual abuse.

1.7 Minor Other Reforms

As so often, the devil is in the detail, and there is very little detail here for me to comment upon. Sector-wide guidance notices could conceivably be useful, as, in theory at least, could powers for the Inspector to require local governments to rectify perceived non-compliance issues (though, again, given that the Inspector looks to be a political appointee, what appeal process then exists – to the Minister, or to SAT perhaps, should a local government disagree with the ruling?). To say that “potential other reforms to strengthen guidance for local governments are being considered” is less than helpful, given that it effectively grants free slather to the Department, without any real ability for the public to comment ahead of time. What the Department classifies as “minor” may well be “substantial” or even “major” reforms from another perspective, which is one, obvious reason why a Green Bill would have been far preferable to the current process, in my opinion.

Theme 2: Reducing Red Tape, Increasing Consistency and Simplicity

2.1 Resource Sharing

This proposal concerns me, as it has the potential to dilute the level of professional support offered to small and medium sized Local Governments. It effectively paves the way for part-time CEOs and part-time senior employees, from the perspective of any one of the sharing bodies, and that must, of necessity, diminish both the perception of those roles, and the amount of time dedicated to them in any particular instance.

Reversing the perspective, I can see merit in adjacent Local Governments being able to share lower level resources – for example, two neighbouring shires being able to conclude a joint contract for waste disposal, or to come together to build a single facilities in a location agreeable to both. I would not extend this to senior employees with significant levels of oversight, however. To ensure transparency and value-for-money for the communities employing these key staff, they should answer to only one master.

In essence, collaboration is a fine concept; mergers by another name are not.

2.2 Standardisation of Crossovers

Standardisation of crossovers (which I understand to be those sections of driveways that run between the kerb and private property, be it residential or retail) strikes me as a laudable red-tape-reduction measure, and as such I am supportive of the proposal.

2.3 Introduce Innovation Provisions

While this proposal strikes me as light on detail, I am generally supportive of mechanisms which would allow an increased level of flexibility in response to innovative proposals, or to emergencies. As such, I find myself agreeing with WALGA, that so long as sufficient attention is given to checks and balances, especially where the expenditure of public funds are concerned, the amendment has the potential to facilitate desirable outcomes in both scenarios, and on that understanding, it is a reform I would be inclined to support.

2.4 Streamline Local Laws

I am not convinced, upon reflection, that it should be substantially easier to revoke a local law than it is to introduce one. In both cases, Elected Members should be satisfied that the outcome is a desirable one for their community. Allowing what would effectively be automation of the process has the potential for unintended consequences. As such, I prefer the current model, whereby a local law is revoked by way of a considered action of Council. To my mind, review of local laws should be happening as a matter of course, and revocation by Council, presuming it is undertaken on the back of a detailed and well-argued officer's recommendation, should only take a matter of minutes on the floor of the Council. If it takes longer, then arguably the matter was more complex, and required a level of thought or debate which, in and of itself, is then desirable.

Public consultation is a cornerstone of good local government (indeed, of government at every level), and therefore I cannot support a reduction in advertising / public notice requirements.

I note WALGA's contention that certification of local laws be by a legal practitioner rather than via scrutiny by Joint Standing Committee on Delegated Legislation (which it calls "Parliament's Delegated Legislation Committee"). I consider this to be a dangerous, flawed, and misguided proposal, which potentially impinges upon the privileges of Parliament, and am therefore happy to see that the Department has neither endorsed nor entertained it. Should that position change for any reason, please refer to s52 and s53 of the *WA Constitution Act 1889*.

2.5 Simplifying Approvals for Small Business and Community Events

In principle, I agree that it is desirable to standardise approvals for events, though I note as a caution that local governments should not be equated with businesses in all regards, given their democratic and overarching nature.

2.6 Standardised Meeting Procedures, Including Public Question Time

I see no issue with standardised meeting procedures across local governments, and am therefore supportive of this proposal.

2.7 Regional Subsidiaries

The fact that Regional Subsidiaries have been possible since 2017, yet none have been formed, does beg the question as to whether the sector sees a need for such bodies. That being said, I am broadly supportive of moves to introduce flexibility into the system, and as such I do not object to a reworking of the current requirements, though I would suggest the lack of previous uptake would merit review of any new provisions, perhaps on the fifth anniversary of their introduction. I am very supportive of the suggestion that employees of a subsidiary should be afforded the same employment conditions as those directly employed by the local government in question, and would suggest that where two or more local governments join together to form a joint subsidiary, the most favourable employment conditions from amongst the participating LGs should be deemed to apply.

Theme 3: Greater Transparency and Accountability

3.1 Recordings and Live-Streaming of All Council Meetings

I support mandatory live-streaming and recording of full Council meetings, though I feel that recording and streaming of subsidiary meetings (committee meetings, advisor meetings, etc) would be overly onerous, and counterproductive. The Department may, therefore, like to consider defining what it means by a “council meeting” in this context. There might also be valid concerns around the recording (and retention of recordings related to) confidential items, up to and including the archiving of such confidential items by DLGSC.

And while I am supportive, I would suggest that, since most if not all local governments are dependent upon third-party provision of technology, some high level exemption be allowed in the event of a technological, power, or other similar failure takes place, outwith the powers of the local government to resolve. I would not suggest, for example, that every Council chamber need be connected to a back-up generator in case the power goes out, or risk being in breach of the Act if their livestreaming / recording fails as a result.

3.2 Recording All Votes in Council Minutes

I support the mandatory recording of all votes in Council Minutes, and I am frankly surprised that this has not been spelt out and insisted upon previously.

3.3 Clearer Guidance for Meeting Items that may be Confidential

I am supportive of clearer guidance in this regard, and of greater transparency and openness, though I would refer back to my concerns over the recording and submission of confidential items as part of the live streaming / recording process.

3.4 Additional Online Registers

I am supportive of these additional online registers, as set out in the proposal.

3.5 Chief Executive Officer Key Performance Indicators (KPIs) be Published

Noting that Local Government CEOs have an almost unprecedented influence over often extremely large public bodies, it seems reasonable to me that their KPIs and Performance Reviews should be published, so long as provision is made for any KPIs of a confidential nature to be exempted (perhaps with such being sighted and signed off as suitable for exemption by the Inspector?), and similarly that there is a level of anonymity afforded to those undertaking the performance review. Within those bounds, I am supportive of this proposal.

Theme 4: Stronger Local Democracy and Community Engagement

4.1 Community and Stakeholder Engagement Charters

I am supportive of the concept of community and stakeholder engagement charters, but would favour a level of flexibility around the form which these take, noting that many local governments already have good, workable systems in place, and that, as in so much else, a centralised, one-size-fits-all approach might only serve to reduce the sector to the lowest common denominator, rather than encourage excellence. Any model should provide a minimum expectation, with local governments encouraged to go above and beyond that where possible and practicable.

4.2 Ratepayer Satisfaction Surveys (Band 1 and 2 Local Governments only)

I am supportive of the concept of a regular, independently managed ratepayer satisfaction survey, but question whether once every four years is sufficient. Personally, I favour a two-year cycle, off-set in such a way as to ensure that the surveys fall in non-election years. This should then be considered a minimum requirement (I understand that many local governments already undertake such a survey on an annual basis).

For this proposal to succeed to the fullest, I consider it important that the publication requirements should require that the responses be published in full, rather than a summary being given by the Local Government, thus ensuring the maximum level of transparency is encouraged and maintained.

I would also recommend encouragement for smaller councils to conduct similar surveys, even if this is only on a voluntary basis.

4.3 Introduction of Preferential Voting

The introduction of preferential voting into Local Government elections has its pros and cons. On the positive side of the ledger, it ensures that votes are not wasted, and continue to be counted after a voters first choice has been elected or eliminated, and it has the advantage of bringing local government into line with its state and federal counterparts. To a degree, that might eliminate one complaint, namely that preferential voting is harder for voters to grasp – if they are undertaking the same type of ballot process across all three levels of government, one might imagine that it would become more natural, and better understood over time. That being said, there are other negatives, including the fact that counts can take considerably longer, while the system can be open to manipulation, both through the introduction of “dummy” candidates, and through the use of formal or informal groupings amongst candidates.

It is my contention that “dummy” candidates are already becoming a factor in some local government elections here in Western Australia, at least to the extent that it can already benefit a candidate to have as wide a field as possible, and thus split the potential vote in a number of different directions. At present, that leads to wasted votes, while ensuring that a moderately strong candidate can walk through the middle of the field, without the risk that others will attract sufficient support to mount an effective challenge. Formalising the situation by introducing preferential voting would not, in my opinion, make the situation worse, but it would ensure that votes are not wasted in the process. Meanwhile, I remain unconvinced that groups of candidates banding together in common cause is necessarily a bad thing. Yes, it might encourage a level of party involvement in local government, something which has largely been avoided in WA to date, but it might also strengthen the hands of independent candidates at one and the same time.

Balancing each of these factors, I find ourselves favouring the introduction of optional preferential voting in Local Government elections, stopping short of requiring electors to vote for all candidates, but allowing them to indicate a set number of candidates (or more) to whom they are willing to lend their support. I would encourage the Department to consider this as a more nuanced alternative to the one presently under consideration.

4.4 Public Vote to Elect the Mayor and President

I favour the public election of the Mayor or President, but would not wish to see this option forced upon communities who have taken a conscious and reasoned decision to have these individuals elected in-house. Therefore I would encourage a compromise, whereby it should be made easier for ratepayers to propose a change to the status quo in their own local government area, but still permissible for those local governments that make a conscious decision, with the backing of their communities, to retain either system as they see fit. It should not be the role of centralised State Government, or the Department, to dictate to local governments in a one-size-fits-all format. While an inclination towards greater public democracy is laudable, it remains counterintuitive to then forced such a decision upon communities against their will.

4.5 Tiered Limit on the Number of Councillors

I am sympathetic to the intent behind this proposal, but have questions around the practical implementation of it across various sizes of local government.

As best I can tell, the reforms to population groupings higher than 5,000 reflect current practice, though it is worth noting that they are currently based, I believe, upon the number of valid *electors*, rather than the population (this may be what is meant in the proposal, but the use of the word “population” without definition seems to me to risk a potentially dangerous divergence from current practice).

My key concern lies with smaller numbers of councillors for what are, often, extremely large geographical areas. Like WALGA in this regard, I am not convinced that almost halving the number of councillors in some sparsely populated but geographically extensive local government areas (for example Katanning, Moora, or Ngaayatjarraka, who each currently have 9 councillors) is acceptable from the point of view of the democratic augmentation and sustainment of these bodies.

At the risk of repeating a comment made above on more than one occasion, one size does not, cannot, and should not be assumed to fit all local governments, even within a population / elector bracket such as this, and flexibility needs to be retained to ensure that local situations are accounted for. For this reason, I am supportive of this reform in so far as it relates to Band 1 and 2 Local Governments, but **not**, as currently drafted, to those bands below them.

4.6 No Wards for Small Councils (Band 3 and 4 Councils only)

A no-ward system can work extremely well in some situations (regardless of Band, with Kwinana being a case in point), but can be wholly inappropriate in others (for example, in the Shire of Chittering, where wards have been established around distinct townships, or the Shire of Broomehill-Tambellup, where the wards are reflective of an earlier amalgamation). Again, I would urge the Department to avoid thinking that all local governments are inherently the same, in favour of embracing the rich diversity within our current system – alignment with the majority is not, in and of itself, a sufficient argument for the imposition of change.

As a result, I am not supportive of this proposed reform, considering it to be altogether too prescriptive and centralising.

4.7 Electoral Reform – Clear Lease Requirements for Candidates and Voter Eligibility

Conceding that this appears to be a perennial issue in City of Perth elections, and that the City of Perth Inquiry recommended it be addressed from that perspective, I would be interested to know if it has been a practical issue for any other local government in recent years? That question being noted, I am generally supportive of a tightening of the rules around leases, being of the opinion that it is important to ensure that all candidates have a valid connection to the community in which they are standing. Indeed, if successful, the Minister may wish to recommend that his colleague, the Minister for Electoral Affairs, considers a similar requirement at State elections, requiring a like connection before a candidate's nomination can be entertained.

4.8 Reform of Candidates Profiles

I have not been approached by any candidate (successful or unsuccessful) complaining about the current length of profile permitted, and while I agree that it is generally a good thing if candidates are permitted to share more information with voters, it is also a good mental exercise to require candidates to self-edit their material in an appropriate fashion. I am also aware that voting packs are generally mailed out, and that an increase in profile length might make this a more expensive line item for local governments, who foot the bill for that mailing. That being said, noting that the Department proposes to undertake further evaluation in this space, I am generally supportive of the principle of longer profiles.

4.9 Minor Other Electoral Reforms

I have no issue with the two examples of minor reform listed – standard recounts, and a tighter control on how candidates can use electoral roll data are both laudable in and of themselves. I do note with some concern, however, the opening line under this heading, which suggests that other, non-cited “minor” reforms may be under consideration. I would urge the Department not to introduce any such without prior public consultation, because one man’s “minor” is all too often another’s sticking point.

Theme 5: Clearer Roles and Responsibilities

5.1 Introduce Principles in the Act

A greater articulation of principles can only be of benefit, therefore I am supportive of this proposal.

5.2 Greater Role Clarity

Role clarity is essential as Local Government develops, and on that basis I am supportive of this proposal. I would not, however, be supportive of additional powers and responsibilities being placed in the hands of employees, up to and including the CEO, at the expense of the ability of democratically elected councillors to hold their local governments to account, and to champion the rights of ratepayers.

5.2.1 Mayor or President Role

Again, clear roles and responsibilities are to be encouraged, and, given that the list of responsibilities attached to the mayor or shire president’s role under this heading are those already undertaken, I am supportive. For that support to continue into the future, it will be important that “input and consultation (which) inform precise wording” going forward adhere to that spirit, and seek merely to encapsulate the present reality in legislation, rather than to expand the power base associated with any one role or position.

5.2.2 Council Role

See 5.2.1, above.

5.2.3 Elected Member (Councillor) Role

See 5.2.1, above. My only additional notes would be that, (a) while it is desirable that a councillor balances the needs of current and future people who live in, work in, and visit the district, a councillor's primary duty is to represent and provide for the needs of the ratepayers within their local government area; and (b) that limiting the use of a councillor, mayor or president's title to those times during which they are performing a role in an official capacity, while laudable in principle, is likely to prove impractical in reality, and should therefore be approached with caution.

5.2.4 CEO Role

Again, with the proviso that there is scope in the wording of the "input and consultation" clause at the head of this proposal to allow for undesirable expansion, the roles listed are both logical, and adhere to the current practice across Local Governments, and so long as this is merely a codification of that current practice, I have no issue with this proposal.

5.3 Council Communication Agreements

This is a remarkably objective proposal, wholly dependent upon the content of any template that might be produced by the Department, and almost impossible to comment upon constructively without sight of such a template, presuming that will be the baseline to be adopted by many local governments. I would contend that the democratically elected representatives of the ratepayers, being the elected members or councillors, should have default access to any information held by the local government that is relevant to the performance of their duties, as currently laid out in the Act. If, as the proposed reform suggests, this is sometimes a source of conflict, then my strong preference would be for a trusted third party, perhaps the Inspector as established under 1.1, to adjudicate between the parties, rather than force a prescriptive system onto local governments which might reduce the rights of councillors to access information simply because it was not specified in any species of communication agreement. As such, while I respect the intent of this proposal, I cannot give it my support in its current form.

5.4 Local Governments May Pay Superannuation Contributions for Elected Members

While I take no principled decision as to whether or not superannuation should be paid to elected members, I note that (a) councillors are specifically exempted from being classed as employees of the local government, which may throw up some irregularities in this regard, and (b) a system which allows local governments to opt in or out is not likely to be sustainable over even the medium, let alone the long term, and will almost certainly lead to all local governments opting to provide

superannuation eventually, due to pressure to standardise, and not to be seen as any less than their peers. In the interim, there is doubtless the potential for this issue to be politicised by populists, not least councillors seeking to make a name for themselves by rejecting any increased provision. The solution would seem to be for the State Government to decide whether or not it is desirable for elected members to receive superannuation contribution, and if the decision is that it is indeed desirable, to legislate for the whole sector in one sweep. **This may indeed be the only instance I have encountered within the scope of the reforms where a one-size-fits-all approach is not only advisable, but arguably necessary. Ironically, it is the one instance where the Department has backed away from such a uniform approach.**

5.5 Local Government May Establish Education Allowances

A training budget is, as I understand it, already provided by many local governments, so that making this optional seems redundant. Either this reform is unnecessary, or, in the light of now mandatory training for elected members, it should be a natural requirement for all local governments. I incline towards latter position.

5.6 Standardised Election Caretaker period

I am supportive of a caretaker period being established in relation to major decisions, but I wonder at the wisdom of including a hard ban on councillors who are seeking re-election from representing the local government during that period. Not only are they still democratically elected councillors, but it is also possible that a considerable portion of a small council might be up for re-election at the same time, standing unopposed. I would respectfully submit that the two issues are not necessarily conjoined, and that while major decisions should not be made, and candidates should not have access to local government resources in support of their campaigns, incumbent councillors should still be enabled and expected to play a full role in the representation of those who elected them to that position. To legislate for anything less is to create a temporary second-class councillor, with reduced standing, which I consider to be both inadvisable, and a potential attack on democratic institutions. No State or Federal MP would willingly allow such an imposition on their own role in the run up to an election, and until and unless they are willing to do so, it does a disservice to the entire sector of local government to suggest that such rules are somehow necessary there.

5.7 Remove WALGA from the Act

Monopolies are intrinsically bad for business, and a monopoly as large and as influential as WALGA all the more so. In an attempt to level the playing field, and to allow other organisations to tender and thrive in this space, I support the removal of

any reference to WALGA in the Act. And in response to claims that so doing might jeopardise the insurance and joint purchasing arrangements provided by WALGA, it is my contention that, if these rely upon a legislated monopoly status to deliver value for money for ratepayers across the state, then it is past time that the Auditor General investigated their provision, and opined as to their desirability in a free market economy.

5.8 CEO Recruitment

I am generally supportive of this proposal, though I object to the idea that a local government would need to seek the approval of the Inspector before looking beyond this pool of independent experts. Create it, by all means. Offer it to local governments, certainly. But if they choose to go elsewhere, that is a matter for the elected members, not for a politically appointed Inspector to contend with.

Theme 6: Model Financial Statements and Tiered Financial Reporting

6.1 Model Financial Statements and Tiered Financial Reporting

While I support the Auditor General's recommendations to improve financial reporting, and to make statements clearer, I am not of the opinion that smaller organisations should be held to a lesser financial reporting standard than larger ones.

Taking the Shire of Ravensthorpe as a case in point, one of the smallest of our local governments, with a population of less than 2,000 residents, was recently found by the Crime and Corruption Commission to have had insufficient checks and balances in place to stop its CEO from misappropriating nearly \$55,000 for personal gain. It is hard to envisage such a fraud going unnoticed in a larger Council, where a considerable number of qualified accounting staff are likely to be employed, and given that, **if there is any argument to be made for a tiered system, it is the *opposite* of that proposed by the department, with *greater* reporting requirements for smaller local governments.**

That being said, I am strongly of the opinion that *all* local governments should be held to the same, high standard. As a result, I cannot support this proposal, and would go so far as to recommend a radical rethink in this sphere.

6.2 Simplify Strategic and Financial Planning

There seems to be a remarkable lack of rationale attached to this proposal. Why are the Department proposing simplified Council Plans, simplified Asset Management Plans, and simplified Long Term Financial Plans, when more comprehensive versions

of each are already required of local governments. If a particular local government is not capable of producing the documentation currently required, then a case can be made for additional training, or the employment of appropriately qualified staff. It should not be the case that the entire sector is encouraged to reduce its level of performance to that of its least performing peer, however.

Nor do I see merit in reviewing plans as far apart as eight years. Four years seems more appropriate to me as a minimum, with a preference for a rolling system of review in the course of each financial year.

This appears to me to be another, misguided case of 'one-size-fits-all' thinking on the part of the Department, with the proposal almost admitting that it will lead to a reduction in detail, in favour of simplification and clarity. I do not hold to that view, and would encourage the Department to think again, with an aim to lifting all Councils to a higher level, rather than settling on the lowest common denominator.

6.3 Rates and Revenue Policy

The principle here is admirable – you are looking to better inform the public as to the likely costs, and associated rates increases (or, conceivably decreases, though those seem never to be contemplated!) in future years. In practice however, the Department will need to be careful not to tie the hands of democratically elected members, whose role it is, on an annual basis (and not on any greater timescale than that) to set the local government's rates. The Council of 2022 cannot, in good conscience, or in law, tie the hands of the Council of 2025, which may well have a radically different makeup in terms of its elected members, and no Policy should be able to do so either. As a result, I have strong reservations as to the effectiveness of this proposal, and fail to see how it can lead to any practical outcome, other than a diminished democratic input from elected members.

6.4 Monthly Reporting of Credit Card Statements

This strikes me as a sensible proposal, and my only question is why hasn't the Department been proactive and demanded this level of reporting before? I believe it is already common practice across a range of local governments, so can only presume that this is a sign that the Department is catching up with realities on the ground.

6.5 Amended Financial Ratios

There is insufficient information attached to this proposal for any unbiased commentator to put forward an argument one way or the other. You propose to review ratios, but you don't indicate your methodology, or the anticipated outcome of any such a review.

This proposal should be put out for future, additional public consultation once the Department has identified what it hopes to achieve. In its current, nebulous form, it isn't even a particularly useful thought bubble.

6.6 Audit Committees

This is an interesting proposal. On the one hand, it would require local governments to expend resources to pay for the time and travel expenses of an independent chair of their audit committee, while on the other it proposes a cost saving measure by allowing councils to create amalgamated, regional audit committees in conjunction with (presumably) their close geographical neighbours.

I am generally supportive of the concept of an independent chair, but I'm wary of regional committees. The aim here should, in my opinion, be a higher level of oversight, rather than a system which has the potential to water-down oversight by dividing a single committee's time and focus between multiple local governments.

In my opinion, the current requirements as to the make up of audit committees are both measured and justifiable, and I would encourage the Department to limit itself to simply inserting the requirement for an independent chair, and thus increase transparency. The proposal as it stands is trying to do two diametrically opposed things, and therefore risks expending additional funds to no discernible benefit.

6.7 Building Upgrade Finance

In my experience, the Department would normally be the first body to remind local governments that they need to stay within their lane. To my way of thinking, it is not the role of local government to provide loans to business. If the State government, with its vastly larger budget, wishes to set up a system to allow for this, then it should do so via legislation or regulation, duly passed by Parliament. Otherwise, loans should remain the purview of the financial sector.

6.8 Cost of Waste Service to be Specified on Rates Notices

I am supportive of greater transparency on rates notices, wherever and however that can be achieved. As a result, I would urge more flexibility than this rather limited proposal suggests. Why limit local governments to listing waste charges? I am aware, for example, that a number of coastal local governments are currently considering CHRMAP (Coastal Hazard Risk Management and Adaption Plan) funds, to allow for long-term funding of mitigation measures in relation to rising sea levels and erosion. These would be an obvious candidate for specific listing on rates notices, to allow residents to see at a glance where any additional revenue was going. So, while I applaud the intent in this proposal, I would encourage the Department to go further, and to allow local governments more freedom in terms of what they list on their rates notices in general.

CONCLUSION

As noted in the covering letter which prefaced this document, I consider it unfortunate that the Minister and the Department have opted for what is, however well meaning, a piece-meal approach to reform, rather than offering the public the opportunity to comment on a Green Bill, as was initially promised by the McGowan Government. I believe that will come to be seen, by the public and by the sector, as a missed opportunity.

I hold serious concerns that several of the proposals currently on the table have the potential to impact upon, and seriously limit the democratic institution of local government, and I would urge the Minister to reject these, in favour of entrenching local government as a viable, and community-facing third tier of our democracy here in Western Australia. Will that throw up periodic challenges? Of course. But such is - and fundamentally *should be* - the nature of a democratic institution designed to serve those it represents.

I hope that this feedback will prove useful, and will influence the Department's thinking going forward. I would be very happy to discuss any of all of the points in more detail, should it be deemed appropriate at any stage.