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## DLGSC LOCAL GOVERNMENT REFORM<sup>1</sup>

### LOCAL GOVERNMENT ELECTED MEMBERS' ASSOCIATION Inc SUBMISSIONS

*... Are you OK? ... Do you have a support group? ... Do you need to resign for your own health and welfare? ... and when the conversation has settled ... Now tell me again what the CEO advised? or Now tell me again what the DLGSC advised? or Now tell me again what WALGA advised? or Now tell me again what the CEO did?...<sup>2</sup>*

I write in support of Local Government Elected Members in response to the current and highly disappointing DLGSC *Local Government Reform – Summary of Proposed Reforms* (the Proposals), with my *evidence based* submissions<sup>3</sup> directed to improving the effectiveness<sup>4</sup> of and correcting the current flaws<sup>5</sup> in the LG Act framework and local government structures<sup>6</sup> and establishing a *university based law and business school local government EM and employee training*, so as to *reduce corruption*, achieve good governance, transparency and accountability<sup>7</sup> to better inform the state government response<sup>8</sup>, and to improve the safety of the local government workplace

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<sup>2</sup> a not uncommon call to me, wearing my LGEMA hat, from a distressed EM

<sup>3</sup> see evidence, including in footnotes throughout and annexures to this submission, which have taken over 2 years to compile, and in particular Annexure Six: What is the Evidence, at page 92

<sup>4</sup> Annexure One: LG Act Effectiveness Test, at page 82

<sup>5</sup> Annexure Four: Local Government Fundamental Flaws, at page 88

<sup>6</sup> Annexure Three: Local Government Structure Synopsis, at page 87

<sup>7</sup> Annexure Two: Local Government Accountability, at page 83

<sup>8</sup> Annexure Five: Government Response, at page 90





## Introduction

Are Local Governments effective?<sup>16</sup>

Are Local Governments accountable?<sup>17</sup>

Are Local Government structures constitutional?<sup>18</sup>

What are the fundamental local government flaws?<sup>19</sup>

What is government response to local government law reform?<sup>20</sup>

What is the evidence of the need for each of the Proposals?<sup>21</sup>

What is the current and potential impact on Elected Members, especially minority Elected Members, from the current framework and the Proposals?<sup>22</sup>

What are the obstacles to effective Local Government reform and good governance?<sup>23</sup>

What have recent reforms achieved?<sup>24</sup>

**History Is an Important Teacher. Neither the LG Minister nor the DLGSC is listening to history.**

*History – lived experience, the whole truth, unsanitised and unedited – is our greatest learning resource ... It is what informs social and structural change<sup>25</sup>*

*... The first general rule, that the law must be applied and its application enforced, requires no development or explanation. It is a defining feature of a society governed by the rule of law ... Entities and individuals acted in the way they did because they could...Misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished...<sup>26</sup>*

*and that, ... the culture of an organisation is what people do when no-one is watching; and then outlined good governance, ... Hence it is rightly said that the tone of the entity is, and must be, set at the top. But that tone must also be echoed from the bottom and reinforced at every level of the entity's management and supervision; it must always sound from above, and then as to culture, ...a culture that fosters poor leadership, poor decision making or poor behaviour will undermine the governance framework of the entity.*

*It is no more true now of local government now that it was of state government in WA Inc times, ... serious weaknesses and deficiencies in our system of government. Together, they disclose fundamental weaknesses in the present capacity of our institutions of government, including the Parliament, to exact that degree of openness, accountability and integrity necessary to ensure that the Executive fulfils its basic responsibility to serve the public interest. This is not to deny the*

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<sup>16</sup> see Annexure One: LG Act Effectiveness Test, at page 82

<sup>17</sup> see Annexure Two: Local Government Accountability, at page 83

<sup>18</sup> see Annexure Three: Local Government Structure Synopsis, at page 87

<sup>19</sup> see Annexure Four: Local Government Fundamental Flaws, at page 88

<sup>20</sup> see Annexure Five: Government Response, at page 90

<sup>21</sup> See Annexure Six: What is the Evidence, at page 92

<sup>22</sup> see Annexure Seven: Elected Members Impact Summary, at page 92

<sup>23</sup> see Annexure Eight: Obstacles To Effective Local Government Reform And Good Governance, at page 94

<sup>24</sup> see Annexure Ten, at page 98

<sup>25</sup> Australian of the Year, Grace Tame 3 March 2021, address to National Press Club

<sup>26</sup> Haynes' Banking Royal Commission final report findings crystallise the elements of good governing EMs:

**Misconduct in the Banking, Superannuation and Financial Services Industry Royal Commission** 4 February 2019



*essential strengths of the concepts of representative democracy and responsible government which Western Australia has inherited<sup>27</sup>*

*... The trust principle, expresses the condition upon which power is given to the institutions of government and to officials, elected and appointed alike. It is that:*

*The institutions of government and the officials and agencies of government exist for the public, to serve the interests of the public. This principle ... provides the “architectural principle” of our institutions and a measure of judgment of their practices and procedures. It informs the standards of conduct to be expected of our public officials. And because it represents an ideal which fallible people will not, and perhaps cannot, fully meet, it justifies the imposition of safeguards against the misuse and abuse of official power and position.*

*Both principles, and the commitment which they assume to the rule of law and to respect for the rights and freedoms of individuals, need to be translated into practical goals if they are to provide the basis for government in [WA]*

*Three goals can be identified as necessary to safeguard the credibility of our democracy and to provide an acceptable foundation for public trust and confidence in our system of government. These goals are:*

- (a) government must be conducted openly;*
- (b) public officials and agencies must be made accountable for their actions; and*
- (c) there must be integrity both in the processes of government and in the conduct to be expected of public officials<sup>28</sup>.*

## SUBMISSIONS: EXECUTIVE SUMMARY

### I Support:

#### Elected Member Health and Safety, and Welfare

1. A safe Local Government workplace, which includes an express duty of care owed to Elected Members by LG Council Administrations and Councils, noting the health and welfare of minority Elected Members agitating for statutory compliance and good governance is **not** currently protected<sup>29</sup>, and in many cases is actively agitated against to their personal detriment.
2. University law and business school based local government training programs, and independent research
3. Repeal of the Standards Panel
4. Repeal of EM Code of Conduct Behaviour Division 3
5. Repeal of LG Act s.5.123, minor breach confidentiality provisions

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<sup>27</sup> **Royal Commission Into the Commercial Activities of Government 12 November 1992** known as **WA Inc** Report para.1.1.31 12 November 1992

<sup>28</sup> WA Inc. Report para.1.2.5, 1.2.6, 1.2.7

<sup>29</sup> irrespective of whether or not advertant or inadvertent corruption, or no corruption was present, the utter tragedy in Victoria’s IBAC hearings relating *Operation Sardon* and the Mayor of Casey reveal lack of effective support for this EM, possible lack of effective training; and shows how much **silence, fear of public humiliation and gaol, and long delays** in outcomes contributed to this tragedy in 2021



6. Include *Good faith and honest* and *reasonable mistake* defences to EM behaviour and conduct breaches
7. Recording and live streaming all Council meetings provided mendicant Local Government have DLGSC support for setting up costs, and confidential meetings are not required to be recorded, and repeal of all provisions in all local laws that prohibit private recording of Council and Committee meetings; see Proposal 3.1
8. Recording vote of each Council and committee member, and that the votes are recorded on a mandatory Register of Meeting Resolutions required to be published on the LG website, see Proposal 3.2
9. Removing the restriction on recording meetings from all Meeting Procedure Local laws<sup>30</sup>
10. Council Communication Agreements, but noting offence provisions for breach of access to records and information will be much more effective and are critically important, see Proposal 5.3; and annual generic meeting attendance and reimbursements should not be permitted.
11. Superannuation proposals but only if Elected Members can individually decide for themselves and into which fund payments are made is decided by the EM, and LGs should take out EM tax on request from individual EM, see Proposal 5.4
12. EM education allowances but only from an independent Registered Training Provider, but much more important is to give EM access to independent legal advice, and to publish all LG Act interpretation legal advices on DLGSC website<sup>31</sup>, see Proposal 5.5.

#### Improved Employee Understanding and Compliance with Local Government Laws

13. Establishment of independent oversight and enforcement of the *Local Government Act 1995* legislative framework by a Local Government Parliamentary Ombudsman reporting to a parliamentary Local Government Standing Committee, with an independent DLGSC resourced to provide expert confidential legal support to Elected Members in the first instance.
14. Improved independent training from Registered Training Organisations for Elected Members and Employees
15. Extending the LG Act policy on continuing professional development to CEOs, committee members and senior employees<sup>32</sup>
16. Ministerial Circulars provided they are legally accurate and complete, and sent directly to Elected Members, see Proposal 1.7

#### Improved Governance

17. LG Act Covid Part 10 must be amended to stop Councils delivering their governing and oversight powers to CEOs, as they are arguably unconstitutional<sup>33</sup>.

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<sup>30</sup>including for purpose of covering gaps (where recordings lost, inadequate or mishap): see *Re McLerie and City of Melville [2022] WAICmr 1*

<sup>31</sup> as recommended by Greg McIntyre SC in LG Inquiry Report, *Report of the Inquiry into City of Joondalup 2005*

<sup>32</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation for independent training, at recommendation 49, but should **not** be at cost to ratepayers for any employee professional development

<sup>33</sup> see recent community furore relating to *Wanneroo* proposed resolutions, which bring LG into disrepute





18. Improved responses to and improved Investigations<sup>34</sup> of the long recognised but unaddressed issue<sup>35</sup> of *public officer*<sup>36</sup> *misconduct*<sup>37</sup> must be implemented by articulating in

<sup>34</sup> see for example *subsequent investigation was protracted and scant investigative avenues were explored before it reached a possibly premature conclusion that no serious misconduct had occurred*: para.4; and **numerous staffing changes** within DoC and **poor communication** with the CCC inhibited its ability to properly monitor the progress of the investigation: para 5; DG responsibility is not lessened by **instability** caused by staffing or structural changes: para 6; 22 months was **too long**: para 20; investigation passed between **four different investigating officers** in employee relations division: para 21; **Formal allegations of misconduct were not put** to that subject officer, **interview not conducted**; **subject officers not approached** in any manner to provide their explanation for the events: para 27; **notes destroyed** of one investigator's conversation with the member of the public who reported the matter when he left DoC for another position: para 28; **did not undertake sufficient inquiries**: para 29: due to **poor records**, there were no clear means of identifying the decision making processes undertaken: para 30; investigation was **unnecessarily protracted, disjointed and lacked basic investigative competence**; **significant failings in management** and the rationale to support the **final decision was flawed**: para 33; approaching a subject officer in this manner, outside a formal disciplinary process, seriously **undermined the integrity of the investigation**; DoC advised it did not approach any other subject officers because they were of a lower level. This explanation makes no sense: para 35-36; **other investigative avenues not pursued**... undertaking basic lines of enquiry such as email audits and examination of other open source information may have provided insight; and interviewing all officers may have provided information: para 37; CCC experienced **difficulties obtaining progress reports** and maintaining communication with designated staff from within DoC... DoC has attributed the problem to **staff turnover and inexperience** in dealing with the CCC: para 38; **lack of analysis of the evidence** in reaching their final conclusion: para 39; **poor communication, recordkeeping and investigative practices** seriously inhibited the ability to properly address the allegations received: para 41; risk of **serious misconduct** is primarily for agencies to manage...**heads of government agencies must have a robust integrity function in place**: para.46; uncovered **systemic risks**, partly due to **dated technology** and partly due to **lack of appropriate managerial vigilance**: para.104: CCC Report *Review of an Inadequate Investigation by the Department of Communities into Allegations of Bribery* 2 April 2020

<sup>35</sup> LG Act does not specify process for dealing with misconduct, disciplinary offences or substandard performance, , and it should: *Report On Misconduct Handling Procedures In The Western Australian Public Sector: Department Of Local Government And Regional Development* April 2006, at page 6

<sup>36</sup> LG employees and Elected Members are *public officers*

<sup>37</sup> which included:

#### RECOMMENDATION 1

*The CCC recommends that,*

- *legal opinion be sought by the Department<sup>37</sup> to establish its **authority to investigate** matters not specified under the LG Act, see 1.1*
- *a Memorandum of Understanding be established between the and the CCC defining the role of both agencies in relation to the investigation of **LG misconduct** matters, see 1.2*

#### RECOMMENDATION 2

*The CCC recommends that CCC **Report On Misconduct Handling Procedures In The Western Australian Public Sector: Department Of Local Government And Regional Development** April 2006the Department continue its **evaluation of the current records system** with a view to refining the process to ensure that all relevant documentation relating to discrete investigations is kept together.*

#### RECOMMENDATION 3

*The CCC recommends that the Department consider changes to existing legislation or an amendment to the Local Government (Official Conduct) Amendment Bill 2005, that will provide a **disciplinary framework for CEOs and local government employees** that complements the proposed framework for elected members.*

#### RECOMMENDATION 4

*The CCC recommends that the CCC establish a process by which the details of local government misconduct matters that are reported to the Commission are provided to the Department by way of a **monthly register**.*

#### RECOMMENDATION 5

*The CCC recommends that the Department establish an **audit process**, or existing Departmental audit processes be reviewed, with a view to incorporating the examination of the relevant files at local government offices to ensure*



legislation and Codes of Conduct that it is *serious misconduct* not to adequately investigate allegations<sup>38</sup>, that LG Minister require development of a DLGSC Serious Misconduct Minimisation Operational Guideline to answer and respond to the CCC reports about employee misconduct<sup>39</sup>, noting that the approach of the Department to *Prosecution of individuals is not the objective and will be a measure of last resort*<sup>40</sup>, has clearly not worked in terms of LG employee compliance with the LG Act framework.

19. DLGSC DG be required to hold *a central database of allegations, and details of whether or not they have been resolved*<sup>41</sup>, against LG EMs, CEOs, other employees and contractors. *Too often, the Commission sees public officers resign without consequence during a disciplinary process. Occasionally, this has led to these officers being employed in other parts of the public sector without earlier allegations of misfeasance being resolved*<sup>42</sup>; and *There is a significant misconduct risk without a central database of allegations and whether they have or have not been resolved*<sup>43</sup>.
20. Improved records access law, improved compliance with local government records access law, increased oversight and enforcement of EM and public local government records access, more and better continuing disclosure rules, and increased penalties against CEOs and employees for non-compliance with records access rules, and in particular for CEOs and employees refusing to provide information or records especially to EMs, giving *misleading information and/or withholding information* from EMs and the District community.

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that all notifiable matters are being properly reported to the CCC: CCC **Report On Misconduct Handling Procedures In The Western Australian Public Sector: Department Of Local Government And Regional Development April 2006**

<sup>38</sup> see WA CCC Report Review of an Inadequate Investigation by the Department of Communities into Allegations of Bribery 2 April 2020, and see **Re Boulter and Department of Local Government Sport and Cultural Industries** [2021] WAICmr8

<sup>39</sup> it is noteworthy circularity that CEOs must advise and inform Councils and when they do not, Councils are suspended or dismissed, but no oversight body investigates CEO and senior employee roles in such suspensions or dismissals, and nobody has inclination to properly support Councils and EMs in better understanding of LG, when CEOs are corruptly, willfully or out of ignorance, not performing that function with impunity: see **Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts** [2020] WASC 350

<sup>40</sup> Department's Investigations Policy and Procedures Manual in **2006, cited in CCC Report On Misconduct Handling Procedures In The Western Australian Public Sector: Department Of Local Government And Regional Development April 2006** at page 6

<sup>41</sup> WA CCC **Abuse of power at the Department of Primary Industries and Regional Development** tabled on 5 July 2019 see para.333; *The Public Sector Commission might give consideration to this matter*: CCC Media Release 5 July 2019

<sup>42</sup> CCC **Abuse of power at the Department of Primary Industries and Regional Development** 5 July 2019 para.332

<sup>43</sup> CCC **Abuse of power at the Department of Primary Industries and Regional Development** 5 July 2019 para 333

21. Combined Code of Conduct for EMs and employees<sup>44</sup>, which has equitable responses<sup>45</sup> and penalties.
22. Offence and criminal provisions for misleading Council, Elected Members or Electors.
23. Increasing penalties by creating LG Act offences against CEO and employees who mislead EMs or Council, or lose or refuse access to local government records.
24. LG Minister using his LG Act s.9.13A powers much more often.
25. LG Act setting bands and criteria to apply to Salaries and Allowances LG Determinations and to increase the number of bands and employee lower remuneration in small LGs, and stop the explosion of CEO and senior employee salaries.
26. Support model local law for Meeting Procedures that has been prepared by disinterested meeting expert under DLGSC supervision but not direction, and advertised for public comment, see Proposal 2.6 .
27. Clearer drafting of meeting confidentiality provisions provided there is NO requirement for confidentiality and it always remains in Councils' discretion as is currently the case, but more important is remedying LG Act silence about document confidentiality, which is an entirely different issue but must remain always in Council discretion; and it must be employee *serious misconduct* and a LG Act offence not to provide a record to an EM or member of the public in a timely way as required by the LG Act , see Proposal 3.3, and noting the strong argument for the LG Act to require all LG records are accessible by EMs<sup>46</sup>, and all LG records are presumed to be public documents unless they are prescribed to be confidential .
28. Online Registers but noting LG Act must require that *all* records required to be on LG website must be in a list that is sensibly discovered and in a digital format that is searchable by word, and adding registers for serious breaches, employee misconduct, applicant meetings, applications, lobbyists, employee secondary employment, AEC/Returning Officer delegations; offences register; contractors and consultants register; and an offence provision for non-compliance in keeping registers, see Proposal 3.4. Support DLGSC keeping an online register of all former and current LG CEO placements.
29. It is CEO serious misconduct for a CEO to take a part in undertaking their own performance review or directing an employee to do so.

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<sup>44</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 20

<sup>45</sup> between EMs and employees

<sup>46</sup> not to committee members who are not EMs



30. CEO KPI publication but it is not enough, and there must be a return of recently repealed<sup>47</sup> publication of all CEO and senior employee contracts.
31. Introduction of Principles into the Act<sup>48</sup>, but more than are suggested but the LG Act also requires objects, see Proposal 5.1, especially relating to Traditional owners, sustainability, EM informed consent, procedural fairness and natural justice, productivity, keeping and accessing records, democracy, integrity, free and fair election, biodiversity and natural assets protection, locality amenity.
32. Caretaker periods, but must apply to delegates, state government entities, WALGA, departing CEOs, see Proposal 5.6, and include all public events.
33. Removal of WALGA from the Act and should include a final audit by the WA OAG before effective, removal of all nomination authorities to government panels, boards, committees etc from all written laws, and include a distribution of the WALGA assets, prohibition of the zone meeting practice which excludes Councils and electors from WALGA State Council resolutions, repeal of all WALGA a LG Pro gift disclosure exemptions<sup>49</sup>, reduction of regulated permitted gifts that are not electoral gifts to \$0.00<sup>50</sup> and repeal of *tickets* gift exemption<sup>51</sup>, and removal of exemption for WALGA preferred provides not being subject to the LG Act tender requirements and dissolution of the Partnership agreement with the state government, see Proposal 5.7.
34. Model Financial Statements and Tiered Financial Reporting, at Proposals 6.1,6.2 subject to reviewing the actual templates so they are simplified and easier to understand<sup>52</sup>, but there must be improved express linkages to the two plans encompassed by Future Plan of Districts; and there must be mandatory advertisement of draft budgets to District residents, clearer regulatory link between budget allowances and when the allowance can be spent without Council approval, with applicable offence provisions for breach.
35. Rates and Revenue Policy, provided it accounts for green assets, is linked to a mandatory 10 year Financial Plan and operational costs are a mandated upper limit percentage, see Proposal 6.3.

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<sup>47</sup> LG Act s.5.94(t)

<sup>48</sup> whose focus includes LG transparency, EM freedom of speech, LG administration efficiency and effectiveness, and direct full accurate answers to public and EM questions

<sup>49</sup> see Tony Power SC from **City of Perth LG Inquiry Report 2020** recommendation 87 about EMs, committee members and all employees disclosing **all** gifts

<sup>50</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 88

<sup>51</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 92

<sup>52</sup> noting activity costing of different services is made extremely difficult to understand, and supporting detail often not provided



- 36. Monthly Credit Card reporting statements, see Proposal 6.4.
- 37. Audit Committee reform, see Proposal 6.6, especially requiring all LG internal auditors to report directly to the Audit Committee and not the CEO given the inherent conflicts of interest.
- 38. Waste Services Costs published, see Proposal 6.8<sup>53</sup>.

#### Residents and Ratepayers, and Good Governance

- 39. Increased independent support for third party formal complainants against administration behaviours or maladministration.
- 40. Enforcement of public question time access for every questioner, enforcement of actually answering the question asked and recording all of the questions and answers in meeting minutes, by clearly making the Presiding Member of a meeting responsible for ensuring accurate full answers to questions, and making it *minor misconduct* breach not to comply and if an employee fails to answer questions to be a misconduct and breach of the Code of Conduct complaint, see Proposal 2.6.

#### Productivity

- 41. Fostering Regional Subsidiaries providing there are demonstrable savings and productivity increases, and employees are seconded or work from participating LGs, and borrowings are prohibited, see Proposal 2.7.
- 42. Engagement Charter provided it is enforceable by electors and minority Elected Members, such as through a combined EM and Employee Code of Conduct that has penalties and LG offences for non-compliance by employees, see Proposal 4.1.
- 43. Standardised community surveys designed by disinterested expert such as ABS, that are collated to make comparisons between LGs, and published in DLGSC Annual Report, see Proposal 4.2.
- 44. There must be recognised measurable and comparative productivity local government goals.

#### Elections and Voting<sup>54</sup>

- 45. Introduction of preferential voting, which should be optional preferential voting.

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<sup>53</sup> noting in some LGs, waste services costs are included with waste services for parks, community centres, when justifying the recovery charges levied against individual ratepayers; these allocations must be separately budgeted and reported for transparency to ratepayers, EMs

<sup>54</sup> many concerns around electoral reform relate to increasing influence of political parties in LG, and ability of independent candidates to succeed in the absence of effective donations control, and in the present of significant resources given by political parties given to preferred candidates

46. A better model for optional preferential voting, compulsory voting, no wards in smaller LGs, only residents can vote and nominate as Elected Member candidates, all in all out<sup>55</sup> every four years, postal voting only available to people with post office boxes.
47. Transfer electoral offences to the Criminal Code.
48. A combined Report by WAEC and DLGSC required to be made to parliament about the LG election outcomes, issues, offences and Court of Disputed Returns outcomes, see Proposal 4.3.
49. Public only vote to elect Mayor or President, see Proposal 4.4.
50. Tiered limit on number of Councillors but upper limit should be between 11- 13, and proxy and deputy EMs should be permitted up to a set number of meetings, but upper limits should be also applied to LG employee numbers, and employee numbers removed from Salaries and Allowances band criteria, see Proposal 4.5, and consideration is given to limiting EM continuous terms to 2-3 terms.
51. No ward only voting for smaller LGs subject to qualifications, at Proposal 4.6<sup>56</sup>.
52. Clear Lease electoral requirements but do not support buildings voting in any event, see Proposal 4.7.
53. Reform of Candidate Profile which must include recent photo, residential address and prohibiting candidates who are from property industry, see Proposal 4.8, with all electoral requirements strictly enforced and Returning Officers held to account.

#### Miscellaneous

54. Require all EMs to provide an email address for constituent inquiries.
55. Recognise LGEMA as a LG stakeholder.
56. Require DLGSC in its Annual Report to provide broad range of local government statistics<sup>57</sup>.

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<sup>55</sup> note concerns with all in/all out in smaller LGs there might not be enough candidates

<sup>56</sup> however, where wards are abolished EMs might come all from say a CBD area, with no representation for the outer areas, such as in **Karratha**, which has a large CBD population in 1 ward and 2 smaller regional wards, and which might particularly negatively impact indigenous population areas outside of CBD especially in regional LGs, and which might be remedied by requiring candidates from ward areas but allowing everyone to vote in each ward

<sup>57</sup> EM and employee numbers, size of LGs, OAG audit outcomes, successful prosecutions, external oversight outcomes and recommendations, productivity comparisons, CEO movements and name of all LG CEOs and contact details, name of all LG Mayors and president and contact details

57. Requiring *absolute majority* of Council for permanent change to thoroughfares, roads, public access ways in LG (*Uniform Local Provisions*) Regulations 1996 (WA).
58. Better regulation of standards for construction of retaining walls for broad field subdivisions and individual lots, and better regulating changing natural ground levels in LG (*Uniform Local Provisions*) Regulations 1996 (WA) with appropriate offence provisions relating to the value achieved through breaches.
59. Other Written Laws including but not limited to by amending:
- WorkSafe Act to expressly include local governments as a workplace of Elected Members so they are clearly covered<sup>58</sup>
  - Lobbyist Act to apply its provisions to LG lobbyists<sup>59</sup>
  - make another person<sup>60</sup> the LG FOI Act Principal FOI Officer
  - make another employee a PID Officer and not the CEO
  - not allow CEOs to be electoral Returning Officer and authorise LG to appoint agent who is polling specialist but not necessarily the WAEC
  - make it clear a complaint can be made to police about LG Act offences
  - require WALGA to act in public interest and in interests of local government, prohibit WALGA zone meetings and require WALGA agendas to be considered by Councils before giving any weight to them
  - all other Acts creating local government committees bind those committees to the LG Act and regulations, and LG Meeting Procedures Local Law
  - Removing the power of WALGA to make nominations to government boards, panels, inquiries etc.
  - Royal Commission Act amended to clarify Royal Commission power to make no-disclosure orders, and to enable Royal Commission when issuing a summons or notice to produce to prohibit recipient disclosing the summons or notice to any other person; and to give a Royal Commission the power to examine document over which legal professional privilege is claimed for the purpose of verifying the claim for privilege<sup>61</sup>.

## **I Do Not Support**

### Evidence Base

1. Exclusion of previous Royal Commissions, LG and Ministerial Inquiries, CCC and OAG reports as reference materials, see Reform Development of Proposals.

<sup>58</sup> especially in relation to bullying by LG and DLGSC and WALGA employees

<sup>59</sup> LGs must be added to list of prescribed organisations in *Integrity (Lobbyists) Regulations 2016* Reg. 3 Government representative, for purpose of *Integrity (Lobbyists) Act 2016* (WA s.3(1) as authorised by *Public Sector Management Act 1994* (WA) Schedule 1 column 2, item 15

<sup>60</sup> not CEOs

<sup>61</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendations 337 - 338



Any Reduction in oversight, including

2. Use of the term *red tape*, see proposal reforms page 1.

Particular External Intervention Models, including

3. The early intervention model at Proposal 1.1.
4. The proposed Inspector/Monitor Model at Proposals 1.1,1,2.
5. The proposed Conduct Panel model at Proposal 1.3.
6. Any body or person other than the State Administrative Tribunal having power to suspend an Elected Member at Proposal 1.1.
7. Continued influence of ex and current CEOs in Local Government oversight and training.

Any Increased Elected Member Punishments<sup>62</sup>, including

8. Criminalisation of Elected Member breaches at Proposal 1.3<sup>63</sup>.
9. Strengthening penalties against Elected Members at Proposals 1.1, 1.4.
10. Elected Member serious breaches being dealt with by any body other than the State Administrative Tribunal, and not having a time limit within which they are dealt.

Proposed Changes in Roles of Council, Elected Members, Employees, including

11. Amending roles of local government, Councils, Elected Members and employees, because they are abundantly clear and constitutionally compliant at Proposal 5.2.
12. Giving any decision making powers directly to LG CEOs or other employees at Proposal 2.3.

Any Reduction in Council powers, including

13. Council CEO recruitment influenced by DLGSC or Inspectors at Proposal 5.8.

Any reduced EM Powers, including

14. Red card proposals at Proposal 1.5.

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<sup>62</sup> irrespective of whether or not advertant or inadvertent corruption, or no corruption was present, the utter tragedy in Victoria's IBAC hearings relating *Operation Sardon* and the Mayor of Casey reveal lack of effective support for this EM, possible lack of effective training and how much **silence, fear of public humiliation and gaol, and long delays** in outcomes contributed to this tragedy in 2021

<sup>63</sup> noting recent repeal of words *on indictment* from LG Act s.2.22(1)(c), which I understand to mean that prosecution for any offence that can see an EM convicted of a crime does not now have to be undertaken by Crown<sup>63</sup> and could be undertaken by LG CEO or the Department CEO<sup>63</sup>, which weaponises this provision in CEO control



Any reduced Elector, Community Influence, including

15. Local Law changes at Proposal 2.4.

16. Reduction of Council oversight of small business approval and community events at Proposal 2.5.

17. Any reduction in public question time access or effectiveness at Proposal 2.6.

18. Vexatious complaint proposals at Proposal 1.6.

Any increased Corruption Risks, including

19. Building Upgrade Finance at Proposal 6.7.

Miscellaneous, including

20. Standardisation of crossovers at Proposal 2.2.

21. LG Act Part 10 Covid Powers.

**MY SUBSTANTIVE SUBMISSIONS ON THE PROPOSALS**

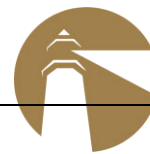
These submission are made in a context of not being informed about what is specifically proposed, and accordingly are compromised and preliminary.

CONSULTATION: PROPOSED REFORMS	COMMENT
2016 - now	Since around May 2016 there have been over 20 significant amendments to the LG Act and LG regulations, and considered over 50 amendments: see <b>Annexure Ten</b> , at page 98.
What's Missing?	<p>The recurrent themes from LGEMA member contributions to this submission are that there is:</p> <ul style="list-style-type: none"><li>• no reliable expert support for or protection of EMs, especially minority EMs<sup>64</sup>, noting it is one word from one informed person with the <b><i>courage</i></b> to speak that exposes corruption<sup>65</sup></li><li>• no LG duty of care is owed to EMs and mental health harm of EMs is widespread;</li></ul> <p>and there is no-one stopping DLGSC, or CEOs and employees:</p> <ul style="list-style-type: none"><li>• misleading or lying to Councils, EMs and electors<sup>66</sup></li></ul>

<sup>64</sup> particularly heinous, when DLGSC, WALGA, CEO or employee has given wrong advice to EM for which there is no consequences for the employees, and which provides no statutory defence for EMs; noting malicious intention motivating some advices in some circumstances

<sup>65</sup> CCC report, ***Exposing Corruption in Department of Communities*** para.12

<sup>66</sup> including by omissions; noting EMs rely on CEOs for accurate advice and information, but **CEOs often unable or unwilling to provide that advice**, stating it is for EM to decide what the LG Act means in a particular circumstance, which is true but which should be assisted by effective accurate advice and information



	<ul style="list-style-type: none"> <li>• being rude to and bullying EMs<sup>67</sup></li> <li>• not providing information and records<sup>68</sup>, at all or in a timely way, as required<sup>69</sup> and insufficient continuing disclosure rules<sup>70</sup>, or</li> <li>• breaching the LG Act framework requirements with impunity, especially egregious where a majority Council will not discipline or expose the offending behaviour;</li> <li>• District citizens interests and the public interest are being increasingly excluded from LG decision making; and</li> <li>• Conflicts of interest are poorly managed and even often unrecognised, and often unlawfully drive LG decision making<sup>71</sup>.</li> </ul>
<b>LG Works With, page 2</b>	LG is required to work with and for persons of District <sup>72</sup> being the customers, electors, ratepayers, residents
<b>Local government</b>	Many references to <i>local government</i> are sloppy or lazy. There is a need to identify which element of local government is meant because generic references make intended meanings opaque, and unanswerable
<b>Reform development, page 2<sup>73</sup></b>	<p><u>Submission</u></p> <p>The references on which the DLGSC has relied <b>exclude</b> the most important reports.</p> <p><u>Preferable Reform Considerations<sup>74</sup></u></p> <ol style="list-style-type: none"> <li>1. Reports from independent sources which include, <b>Royal Commissions, Corruption<sup>75</sup> and Crime Commission,</b></li> </ol>

<sup>67</sup> including delaying responding to complaints, which is form of **bullying** behaviour

<sup>68</sup> to EMs, or to public; noting *accurate records are the first defence against concealment and deception*: WA Inc. para 1.1.27

<sup>69</sup> which is CEOs' function: LG Act s.5.41(h)

<sup>70</sup> one of pre-requisites in free market within capitalist structure is **free flow of information, which is integral to government structure accountability**; noting EMs, and residents and ratepayers are increasingly angry about being *done over* by LG administrations

<sup>71</sup> by Councils and Council employee delegates

<sup>72</sup> LG Act s.3.1

<sup>73</sup> CCC uses a range of mechanisms **to build public sector capacity** and assist public authorities to prevent, identify and respond to serious misconduct. One way is by making recommendations and publishing reports on the outcome of investigations, to expose instances of serious misconduct and to provide anti-corruption lessons: CCC Website Recommendations, accessed 19 February 2022; and to make general open recommendations such as relating to confidential information: CCC Website Open Recommendations, accessed 19 February 2022; and closed recommendations such as in relation to Exmouth CCC report: see closed Recommendations from **Report on matters of serious misconduct in the Shire of Exmouth** tabled on 2 May 2017, and from **Report On A Matter Of Governance At The Shire Of Dowerin** tabled on 10 October 2016.

<sup>74</sup> *History – lived experience, the whole truth, unsanitised and unedited – is our greatest learning resource ... It is what informs social and structural change*: Australian of the Year, Grace Tame 3 March 2021, address to National Press Club

<sup>75</sup> WA Royal Commission reports include *Findings of interim Report and Report of Royal Commission into City of Wanneroo* 3 September 1996; and Crime and Corruption relevant reports include WA CCC **Serious Misconduct** by

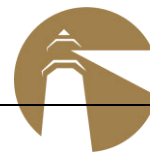


	<p><b>National and WA Office of Auditor – General, Building and Energy</b> all of whom are oversight bodies not subject to regulatory capture, and it is their <b>reports and recommendations</b>, to which the LG Minister should have the highest regard and give greatest weight in deciding local government reform.</p> <p>2. Law Reform must reference and be guided by <u>all</u> RC, CCC and OAG reports' recommendations; and any LG Inquiry reports by experts independent of the DLGSC<sup>76</sup></p>
<b>Term red tape</b>	<p><u>Submission</u></p> <p><b>Red Tape</b> is an <i>abhorrent</i> term, which should be <b>an anathema</b> to independent expert disinterested regulators.</p> <p>LG Act framework relies on regulation and enforcement to be effective.</p>

the **CEO of the Shire of Ravensthorpe** 22 September 2021 (Ravensthorpe); WA CCC A Review of the Department of Transport's Management of the **Unlawful Access** to TRELIS 5 August 2021; NSW ICAC Investigation into the **conduct of councillors** of the former Canterbury City Council [NSW] and others (Operation Dasha) 22; WA Review of the OAG Response to Misconduct Risks With Access to **Confidential Information** 24 June 2021; WA CCC A Review of the Department of Transport's management of **Unlawful Access** to TRELIS March 2021; WA CCC Report on Electoral Allowances and Management of Electorate Offices 26 November 2020; WA CCC Report Review of an Inadequate Investigation by the Department of Communities into Allegations of Bribery 2 April 2020; WA CCC Report on the Review of an investigation by Western Power into **Serious Misconduct** 23 September 2020; WA CCC Report on **Misconduct Risks** in Health Support Services and North Metropolitan Health Service 19 September 2019; WA CCC **Abuse of Power** at the Department of Primary Industries and Regional Development 5 July 2019; WA CCC Serious Misconduct in Procurement of Environmental Services 21 May 2019; WA CCC Report into how **conflicts of interest** undermine good governance: A report on the **Chief Executive Officer of the Shire of Halls Creek** August 2018; Qld CCC Culture and **corruption risks** in Local Government in its lessons report from its investigation into Ipswich City Council (Operation Windage) August 2018; WA CCC Report into Allegations of **Serious Misconduct** by Councillors of the City of **Perth** between 21-24 October 2017, 18 December 2017; WA CCC Report on Matters of **Serious Misconduct** in the Shire of **Exmouth** 2 May 2017; WA CCC Report On a Matter of **Governance** at the Shire of **Dowerin** 10 October 2016; WA CCC Report on a **Purchase of Land** in the Australian Marine Complex Henderson by a Senior Officer of LandCorp 20 June 2016; WA CCC Report on an Investigation into Acceptance and Disclosure of **Gifts and Travel Contributions** by the Lord Mayor of the City of **Perth** 5 October 2015; WA CCC Report on the **Misconduct Intelligence Assessment** of the Western Australian Public Sector 26 March 2015; WA CCC Report on **Misconduct Risk** in LG **Procurement** 4 February 2015 (Cities of **Cockburn, Joondalup, Perth, Swan, Wanneroo, Stirling, Bayswater**; Town of **Cottesloe**, CEO Shire of **Murchison**); WA CCC Report on the Investigation of Alleged Public Sector **Misconduct** by a **Local Government Employee (CEO)** in Relation to the Purchase of Management Systems **Software** 19 December 2013 (**Augusta-Margaret River, Kalamunda**); WA CCC Report on the Review of the Capacity of Local Governments in the **Pilbara** to Prevent, Identify and Deal with **Misconduct** 16 April 2013 (Town of **Port Hedland**, Shire of **Roebourne**, – Shire of **East Pilbara**, Shire of **Ashburton**); WA CCC Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to **Misconduct** Under Part 5 of the Corruption and Crime Commission Act 2003 (WA) tabled in WA Parliament 21 October 2010; WA CCC Report on the investigation of alleged Public Sector **Misconduct** at the City of **Wanneroo** 3 December 2009; WA CCC Report on the investigation into allegations of **Misconduct** by Councillors or employees of the City of **Bayswater** 13 November 2009; QLD CCC Operation Belcarra: A blueprint for integrity and addressing **corruption risk** in local government 4 October 2017; WA CCC Report on the investigation of alleged **misconduct** concerning Mr. Stephen Lee Mayor of the City of **Cockburn** 26 September 2008; WA CCC Report On **Misconduct Handling Procedures** In The Western Australian Public Sector: **Department Of Local Government And Regional Development** April 2006

<sup>76</sup> such as those reports from Greg McIntyre SC, Tony Power SC





	<p>Regulation <u>is</u> paperwork, to ensure regulatory compliance and the exercise of compliance guided by Policy.</p> <p>LG Act requires compliance in the public and District interest<sup>77</sup>. The term <i>red tape</i> is akin to labelling community public interest activists as NIMBYs.</p> <p><i>Red tape</i> is a meaningless and dangerously pejorative term beloved by self-interested applicants seeking to avoid regulatory compliance so as to access the <i>economic honey pot</i><sup>78</sup> of LG decision making.</p>
Victorian models, page 2	<p><u>Submission</u></p> <p>Law reform proposals, such as the Inspector Proposal, must be wary of models from jurisdictions such as Victoria, where local governments are a third and discrete tier of government</p> <p><b>LG is not a third tier of government in WA</b></p>
1.1 Early Intervention <sup>79</sup>	<p>What is proposed exactly, noting terms <i>breach</i> and <i>complaint</i> appear to be used interchangeably, which is disturbing obfuscation considering <i>breach</i> is a statutory term of art. The language of <i>Inspector</i> and <i>Monitor</i> is demeaning and outdated 1950s school room language, which should be rejected</p> <ul style="list-style-type: none"> <li>• Can a person who is a former CEO or EM without legal qualifications or experience serve as Chief Inspector? Proposal 1.1; and submitting they should not</li> <li>• Is it proposed that an Office of the Chief Inspector will be established to service the administrative requirements of a Chief Inspector? Proposal 1.1</li> <li>• How are the EM minor and serious complaints different from EM minor and serious breach complaints? Proposal 1.1</li> <li>• Who can make an EM minor and serious complaint to the Inspector: Proposal 1.1</li> <li>• What is the difference between an EM minor complaint and EM serious complaint? What is their content? Proposal 1.1</li> </ul>

<sup>77</sup> LG Act s.1.3(2), s.1.3(3)

<sup>78</sup> *Game of Mates*, Chapter Four Grey Gifts

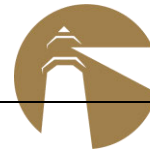
<sup>79</sup> proposed framework continues WALGA and DLGSC program that treats EMs as school children with CEOs, Inspectors and Monitors as headmasters with *proverbial cane*; proposals appear to give CEOs powers without Council oversight, reduce power of elected Councils, reduce LG, Council and CEO accountability and transparency, against the intentions of the 1995 parliament in passing the LG Act. WALGA and the DLGSC appear to have exacerbated and are exacerbating the utter abject failure of some LGs led by poorly performing, maladministering or corrupt CEOs. Some EMs are willfully or blindly led by their CEO; EMs fear being reported by their CEO and suffering the shocking shaming provisions of the LG Act; so some EMs are not exercising their governance role or meeting the statutory needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity because of fear, ignorance (not of their own making) and poor training



	<ul style="list-style-type: none"> <li>• The Inspector will have oversight of complaints against LG CEOs brought by whom and which process will Inspector have oversight of? Proposal 1.1</li> <li>• What is a <i>less serious breach of the Act</i> and who decides? Proposal 1.1</li> <li>• What penalties can Inspector impose against EMs and for what<sup>80</sup>? Proposal 1.1</li> <li>• To whom in local government will Inspector issue compliance notices<sup>81</sup>? Proposal 1.1</li> <li>• Why is the Inspector the only entity who can provide evidence to the new Conduct Panel, which is clearly in breach of natural justice and procedural fairness principles? Proposal 1.3</li> <li>• To whom will complaints about CEOs and employees be made?</li> <li>• Will the penalties against CEOs and employees be strengthened and expanded? Proposal 1.1</li> </ul> <p><u>Council, DLGSC and Public Service Commissioner</u> The Council, DLGSC and PSC role in CEO performance management and disciplinary proceedings is unclear and requires urgent clarification.</p>
Chief Inspector	<p><u>Submission</u> Former CEOs and EMs are not necessarily legally qualified, and have perceived or actual a bias relating to incumbent and/or proposed employees. An effective intervenor is first required to be a <b>disinterested expert</b>. Then the intervenor is required to understand fully the whole LG regulatory framework, have the skills to apply that knowledge in a particular context, understand what the rules of procedural fairness and natural justice demand in the context and apply them, and then apply that against conduct that is complained of. It is not possible to do this with public confidence unless the intervenor is disinterested in the outcomes, legally qualified and experienced in administrative law. The DLGSC has not satisfied these criteria and making another equally defective model with the same deficiencies will not help and will make matters in dispute worse and more costly, and avoid and deflect DLGSC accountability for their regulatory failures, and subvert the state budget DLGSC objectives.</p>

<sup>80</sup> currently role of Magistrate's Court (LG Act offences); SAT (EM serious breaches); SAT (EM recurrent minor breaches); Standards Panel and SAT (EM minor breaches); Public Sector Commissioner (CEO minor misconduct)

<sup>81</sup> currently LG Minister's role: LG Act s.9.13A

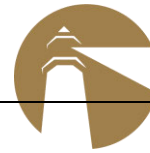


	<p><b>Disagree with model so far as it can be understood.</b></p> <p>It is noted that <i>highly respected</i> term for former EMs or employees has generated real concern that things cannot change<sup>82</sup>. <i>Highly respected by whom</i> is the recurrent question, which is of great concern to all participants in this submission.</p> <p><b>The Inspector must be a legal practitioner with at least 10 years legal experience, sufficient skills and experience<sup>83</sup> and who is seen to be and is independent of LG CEOs and other employees.</b></p> <p>The Intervenor Model must also have <i>oversight of LG employees and contractors</i><sup>84</sup> and be an independent expert who will engender confidence, such as barrister specialising in the area, appointed by CCC or SAT.</p> <p>The Intervenor Model must be an independent body reporting directly to parliament through Public Accounts Committee or preferably a Joint Standing Committee on Local Government.</p> <p><u>Preferable Reform</u></p> <p>The preferable best and most cost effective model is a <b>Parliamentary Local Government Ombudsman</b>, reporting directly to and with oversight by the Public Accounts Committee or preferably a new Joint Standing Committee on Local Government.</p> <p><u>Case Study</u></p> <p>LG employees cleared land without a clearing permit, for which they had been formally advised they needed a clearing permit. The LG, <u>not</u> the employees who knowingly cleared without a permit, was prosecuted by DWER, Council was not served with the notice of prosecution, the CEO plead guilty on behalf of the LG and the ratepayers paid the \$50,000 fine. IT is not known if there were any consequences for the employees who cleared the land. Why were the employees not prosecuted? How will the Inspector stop such behaviour?</p> <p><b>I submit</b> that the proposed Intervenor Model (Inspector) whose qualifications are former CEO or EM will not have the necessary <b>courage, fortitude or independence</b> to stop such behaviour, nor will they start work with any EM or public confidence.</p>
<b>LG Monitors Panel</b>	<u>Submission</u>

<sup>82</sup> Inspector needs **investigative, regulatory and legal expertise, and must be without perceived, actual or potential bias**

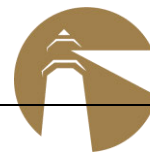
<sup>83</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 326

<sup>84</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 324(iv)



	<p>What is proposed exactly?</p> <p>How will monitors proactively <i>fix</i> problems? Proposal 1.2</p> <p>How can monitors fix problems without the problem continuing to occur if they will not apportion blame or collect evidence? Proposal 1.2</p> <p>Will monitors be authorised to speak directly to ratepayers on behalf of the LG? Proposal 1.2</p> <p>Who will the Monitors liaise with in LG?</p> <p>What role will Council have in problem fixing by Monitors? Proposal 1.2</p> <p><b>Disagree</b></p> <p>This is the DLGSC's budgeted role. How will this proposal improve CEO LG Act compliance? How will this proposal not put more costs onto ratepayers, when it is a state government oversight role of one of its entities (local government) through the DLGSC and for which DLGSC receives a budget allocation? It is the DLGSC job is to enforce the LG regulatory environment on behalf of the state government.</p> <p>The proposal transfers DLGSC accountability, and <b><i>diffuses oversight and enforcement responsibility</i></b> away from the DLGSC whose budgeted role is to ensure LG Act framework compliance, and unnecessarily increases the costs and transfers those costs to ratepayers; and will not improve the current failures.</p> <p>It is a reprehensible proposal that unelected and unaccountable (possibly unqualified, possibly self-interested, possibly conflicted) inspectors have <i>oversight of all local governments</i> and unfettered <i>standing powers</i> to interfere in local government meetings and <i>undertake serious investigations</i>.</p> <ul style="list-style-type: none"> <li>• Who will nominate them for appointment?</li> <li>• What will their qualifications be?</li> <li>• Will it be an ad-hoc panel?</li> <li>• How many constitutes a panel?</li> <li>• What are the powers of the panel?</li> <li>• What are the powers of individual monitors?</li> <li>• To whom does it/they report?</li> <li>• To whom can a complaint be made about it/them?</li> <li>• How can their independence be assured?</li> </ul>
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	<p><u>Preferable Reform</u></p> <p>A <b>Parliamentary Local Government Ombudsman</b><sup>85 86</sup> is far better model compared to the proposed Intervenor Model (Inspector and Monitors) and in the end would be less costly and save more money, and is far more likely to generate LG Act compliance by CEOs and employees.</p> <p><b>Any evidence given must be on oath.</b></p> <p><u>Case Study</u></p> <p>A minority EM concerned about LG Act breaches by a CEO makes complaints to the DLGSC, but DLGSC ignores those complaints or does not investigate them or make any findings, as they are required to do. DLGSC forms the view that once the CEO moves to another LG, DLGSC is not required to address the complaints. The CEO moves to another LG. The DLGSC closes the file and the CEO is not required to address the complaints, nor does the DLGSC report back to complainant<sup>87</sup>. No-one is enforcing DLGSC compliance with its regulatory role or enforcing CEOs to comply with LG Act framework.</p> <p>I submit that proposed Intervenor Model of Inspector and Monitors cannot work as proposed and will not make any difference to the current failures to enforce the LG Act against employees, or better equip Councils to implement their statutory oversight roles<sup>88</sup>.</p>
<b>Abolish Standards Panel</b>	<b>Agree, as soon as possible</b>
<b>Conduct Panel</b>	See below
<p><b>Breach Penalties strengthened</b></p> <p>(noting breach applies to EMS, misconduct, minor misconduct applies to employees, serious</p>	<p><u>Submission</u></p> <p>What is proposed exactly?</p> <p>Will any penalties be removed?</p> <p><b>Current <i>minor breach</i> penalties are sufficient, and are arguably excessive because there is NO independent expert compliance support for EMs<sup>90</sup>.</b></p>

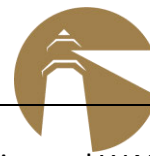
<sup>85</sup> essential for effective monitoring, promotion and enforcement of the integrity, efficiency and effectiveness of LGs; which will increase productivity and reduce corruption; and who must have **investigative, regulatory and legal expertise, and be without perceived, actual or potential bias**, noting currently embedded statutory conflicts of interest that infect LG Standards Panel, DLGSC

<sup>86</sup> must be legal practitioner with at least 10 years legal experience, sufficient skills and experience<sup>86</sup> and who is seen to be and is independent of LG employees and former employees: see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendations 326

<sup>87</sup> see *Re Boulter and Department of Local Government Sport and Cultural Industries [2021] WAICmr8*

<sup>88</sup> LG Act s.2.7

<sup>90</sup> as over 1,000 inquiries to LGEMA over nearly 3 years have shown, noting *every example and case study in this submission references actual incidents, behaviour*; how would LG Minister categorise employee behaviour of an employee signing gagging behaviour in the CEO knowledge at an EM during a meeting debate, when that EM is a minority EM and has no power to do anything about it; or when a CEO shamelessly lies to a Council meeting so that a decision has to be deferred, which was the outcome CEO wanted; CEO knew it was a lie but Council did not, until after the meeting that it was a lie. Why is that not grounds for summary dismissal?



<p>misconduct applies to both)<sup>89</sup></p>	<p>In <i>Kunze</i> an EM relied on CEO advice and WALGA training, both of which were wrong, but which were not a defence to minor breach because there is no good faith or mistake of fact or law defence against EM minor breach or behaviour complaints, and there should be<sup>91</sup>. How else can an EM be expected to understand the requirements that bind them if their sources of knowledge were wrong, misleading or silent – CEO and EM training?</p> <p>EMs are repeatedly advised it is their responsibility to know the LG Act framework, but there is no independent body responsible for providing expert legal advice or expert independent disinterested confidential training to EMs<sup>92</sup>.</p> <p>However, CEOs have the municipal funds to pay lawyers, WALGA and DLGSC at their disposal to seek the advice they want, and to use to punish/discipline EMs who are part of their employer Council and who are asking questions and requiring answers. EMs cannot be expected to understand the complex legal framework and to answer to it, and be punished for not knowing it by those with a self-interest in punishing them, and self-interest in not fully informing them<sup>93</sup>. CEOs have only the function of advising Council<sup>94</sup>, not EMs in relation to compliance matters<sup>95</sup>.</p> <p><b>Disagree with any form of Conduct Panel having power to suspend an EM. This must remain only with the Minister or SAT power.</b></p> <p><u>Preferable Better Necessary Reform</u></p> <ol style="list-style-type: none"><li>1. General offence provision with penalties must be applied to all LG Act requirements</li></ol>
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<sup>89</sup> *misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished*: Haynes, J. in **Banking Royal Commission**

<sup>91</sup> ***Kunze v Local Government Standards Panel [2021] WASAT 159***

<sup>92</sup> see Tony Power SC from City of Perth Inquiry 2020 **training recommendations** 1 – 10, 28 -37, 47 – 56 for CEO and EM training; and noting DLGSC should employ expert independent rigorous credible statutory interpretation advisors and when they provide advice to an EM question, publish that advice on a public register, and stop advising poorly paid EM volunteers to obtain their own advice as DLGSC so often advises

<sup>93</sup> see Standards Panel decisions overturned by SAT; see CEO records refusals overturned by OIC; see DLGSC qualified audit report; no published independent reviews of WALGA training;

<sup>94</sup> LG Act s.5.41(a)&(b)

<sup>95</sup> noting some Meeting Procedure Local Laws used to have an offence for a CEO not to advise EMs about a possible/potential minor or serious breach, but that is being (wrongly) removed from current models, which could be cured by the statutory EM defence of CEO (or any employee responsible to a meeting when CEO not present) not advising an EM about potential breach at a meeting



	<ol style="list-style-type: none"><li>2. Employee <i>misconduct, minor misconduct</i> consequences<sup>96</sup> and penalties need strengthening.</li><li>3. EM minor breach confidentiality provisions must be repealed, and the minor <b>breach register</b> must record the outcome of all minor and serious breach complaints' outcomes including SAT original and review jurisdiction outcomes, including the complaints held to be vexatious, or dismissed without hearing<sup>97</sup>, or not upheld, which must be reproduced in the LG <b>Annual Report</b></li><li>4. Refusal to hear a minor breach complaint should be reviewable by SAT as limited to specific statutory grounds</li><li>5. EM <i>serious breach</i> management must be reformed. It is secret, and unaccountable; serious breaches are not required to be included on <b>serious breach registers</b> and should be as decided by SAT. The provision that empowers DLGSC to make another secret arrangement <i>in another way</i> following a serious breach must be repealed or clarified, and not made by a delegate<sup>98</sup>, as it may be used to protect favoured EMs. Minor Breach Registers must be <b>Breach Registers</b> and record EM serious breaches found by SAT</li><li>6. Preferably EM serious breaches should go directly to SAT within a set period of time, in SAT original jurisdiction, if DLGSC CEO satisfied the facts reveal a sufficient case to be tried, and other mechanism to respond to such complaints repealed.</li><li>7. IF DLGSC remain in control of serious breach complaints, DLGSC must be required to investigate and report back to serious breach complainants and EM complained against within set short period of time, with a review appeal mechanism for a DLGSC refusal to send a serious breach to SAT included in LG Act.</li><li>8. There must be informal independent mediation offered to EMs before any Division 3 or Division 4 conduct complaint is actioned, with legal advice and support provided to the</li></ol>
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<sup>96</sup> such as through LG Employee Code of Conduct Regulations that impose penalties such as recording on a public register; training; warnings; performance management, dismissal for recurrent behaviour or behaviour that adversely affects LG finances or reputation

<sup>97</sup> DLGSC may have circulated wrong or misleading advice about who EMs can seek support from about a complaint, which has hindered procedural fairness and natural justice being afforded EMs; CEOs and employees can make countless vexatious complaints against EMs, paid for by the electors from the municipal funds; without any accountability; which at worst destroys EMs' mental health and wellbeing and at best occupies EM time that would otherwise be spent on EM roles

<sup>98</sup> LG Act s.5.116(3)



	<p>9. EM by a solicitor of EM choosing, and paid for by the LG or the LG's D&amp;O Officer insurance policy<sup>99</sup>.</p> <p>10. Legal support for CEO or employees actioning any complaints against EMs must be required to be approved by a Council <i>absolute majority</i><sup>100</sup>.</p> <p>11. There must be EM <b>minor and serious breach defences</b> added to the Act which include:</p> <ul style="list-style-type: none"><li>○ <i>Acting in good faith</i><sup>101</sup></li><li>○ <i>CEO, employee or Mayor did not advise of potential breach when one of them knew of potential breach and did not advise the EM accordingly in a timely way</i><sup>102</sup></li></ul> <p><u>Electoral offences</u> must be formally recognised as strict liability offences and removed to the Criminal Code<sup>103</sup>, and convictions should be required to be recorded on a public <b>Offences Register</b><sup>104</sup>.</p> <p><u>Court of Disputed Returns</u><sup>105</sup></p> <ul style="list-style-type: none"><li>• Include SAT review rights against Court of Disputed Returns decisions</li><li>• LG legal representation can be approved by Council absolute majority</li><li>• costs can only be claimed against vexatious complainants and against the WAEC, LG, and SSO if they do not behave as model litigants as decided by the Magistrate</li><li>• counsel assisting the Magistrate is appointed by the Court and paid for by the LG to ensure the Magistrate is appropriately advised of the law as happens in Coronial Inquiries and Royal Commissions</li></ul>
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<sup>99</sup> WALGA influenced LGIS provides a panel of lawyers from whom EMs must choose for insurer to pay for legal advice, as advised by LGIS (who is only the broker); this restriction must be stopped; furthermore insurance cover for EMs should not be different from employee cover, for example in area of travel medical insurance where currently cover for employees is apparently more comprehensive than for EMs

<sup>100</sup> so it cannot be delegated

<sup>101</sup> EMs are not well enough trained to understand all the breaches of the LG Act, acting in good faith will cover such circumstances

<sup>102</sup> such as at a meeting; this will stop abhorrent practice of CEOs and other employees advising favoured EMs and not advising unpopular EMs of potential breaches

<sup>103</sup> as suggested by Tony Power SC in report into City of Perth 2020

<sup>104</sup> *electoral processes must be fair. Public participation in, support for, candidates, parties, programmes is to be encouraged ... electoral laws should aim to prevent sectional interests from purchasing political favour, prevent those seeking election from attracting support by improper means*: WA Inc Royal Commission Report, para 1.2.4

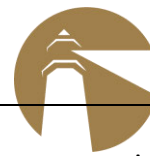
<sup>105</sup> is not functional element of producing free and fair LG elections





	<ul style="list-style-type: none"> <li>clarified in the LG Act or Magistrates Procedural Rules that no party is a respondent, noting, and parties are only witnesses because it is an inquiry not a hearing.</li> <li>that the Court must develop a published procedure</li> <li>if a candidate is convicted of an electoral offence or the Court of Disputed Returns finds an electoral offence has been committed, such findings should reverse the onus of proof in the Court of Disputed Returns to requiring that the commission of the offence did not affect the outcome</li> </ul> <p>12. LG Act civil enforcement model option: see <b>Annexure Nine</b>, at page 97</p>
<b>1.2 Local Government Monitors</b>	<p><b>Disagree. This Proposal is rejected.</b></p> <p><u>Submission</u></p> <p>What is proposed exactly?</p> <p>A panel of monitors who individually or more than one respond? Who decides which Monitor responds? How will Inspector ensure there is no perceived, actual or potential conflict of interest? Will WALGA have a role in nominating Inspector or Monitors? (WALGA must not have any role, because this has led to the Standards Panel we have today in which there is no public confidence of respect)</p> <p>Are Monitors appointed by Inspector to do the Inspector's job?</p> <p>What is the reporting back to the Inspector process?</p> <p>Will Councils have a role in the reporting back to Inspector?</p> <p>Who will hear complaints about Monitors?</p> <p>Former CEOs, EMs as monitors will have or will be perceived to have conflicts, bias. There will be little confidence in them.</p> <p><i>LGs request:</i> Who in local government makes request? (It should be only Council, CEO or any EM<sup>106</sup> at most)</p> <p>I submit that if a monitor can order something to fix a problem, this has usurped the role of Council, and is arguably <i>unconstitutional</i>.</p> <p><u>I submit</u> that not identifying the source of the problem, or the person responsible for the problem will mean it continues to happen.</p> <p><u>I submit</u> that there is no Monitor accountability or complaint mechanism identified, which is the same problem as with the current DLGSC.</p> <p><u>I submit</u> that this proposal shifts accountability and diffuses power from DLGSC to single person appointed by the Inspector, with both bodies equally unqualified and who will not have public confidence.</p>

<sup>106</sup> noting a majority Council already has power to resolve most problems/issues but minority EMs do not, and so need power to complain to an independent unbiased disinterested expert oversight body



	<p><u>I submit</u> that the DLGSC should be appropriately resourced to do perform its oversight and regulatory role, noting DLGSC does <u>not</u> currently provide reliable accurate support or advice to LGs or EMs; and furthermore does not respect EM confidentiality because EM requests are sometimes reported back to their CEO, which can cause great difficulties for the EM</p> <p><u>I submit</u> that it is completely and utterly objectionable that a monitor would liaise with electors on behalf of a LG; that is the role of EMs.</p> <p><u>I submit</u> that in Case Study One, if a LG is issuing wrong rates notices that is the responsibility of the CEO, and this may be a matter for CEO disciplinary proceedings. The case study wrongly uses the term <i>local government</i> issuing wrong rates notices because it is the LG that raises rates but the administration not the LG issuing the rates notices wrongly, because Council did not do it. This proposal reflects the fundamental misunderstanding of how LG is supposed to operate, imports a fundamental misunderstanding of accountability, and does not even identify the breach of the exercise of a delegated authority.</p> <p><u>Possible Model</u></p> <p><u>I submit</u> that if ONLY Council can request the help of a monitor<sup>107</sup> and the monitor is answerable only to Council and DLGSC, not connected to WALGA in any way, and is paid for by the DLGSC Budget, then this might be a useful model especially if they are independent disinterested experts in their field and not appointed to prop up support for CEOs. Such a model would go to resolving the access to <b><i>information imbalance between CEOs and Councils, which the CEOs, who do not understand their fiduciary duty to Council, foster</i></b></p>
1.3 Conduct Panel <sup>108</sup>	<p><u>Submission</u></p> <p><b>DISAGREE</b></p> <p>Same conflicts as Standards Panel just a different name</p> <p><b>This model is rejected, noting it has not been articulated.</b></p> <p>Proposed model creates same problem as with Standards Panel, run by persons with conflicts of interest, lack of procedural fairness weaponised to harm and silence minority</p>

<sup>107</sup> resources available to CEOs and employees are *at large* from DLGSC, WALGA, employee support organisations, and often municipal funds; but there is **no such support for Councils and EMs**.

<sup>108</sup> regime for disciplining EMs is open to abuse and is abused, and utterly devoid of procedural fairness and natural justice, and often infected with conflicts of interest embedded in the current framework.



	<p>EMs who are not in favour with WALGA<sup>109</sup>, DLGSC<sup>110</sup>, their LG CEO or other employees<sup>111</sup> because they are asking governance questions, and accordingly who are often the bullied and ostracised <i>canary in the coal mine</i>.</p> <p>Right to address the Panel is small improvement but is not even remotely sufficient, and does not counteract withdrawing the right to give evidence, which is completely contrary to the rules of natural justice.</p> <p><u>Preferred Reform</u></p> <p><b>All EM conduct complaints must be made directly to the State Administrative Tribunal<sup>112</sup></b></p> <p><b>In the alternative, only agree with a new Panel if:</b></p> <ul style="list-style-type: none"><li>• It hears complaints against Employees and EMs</li><li>• Appointment to Panel is not used as a reward for WALGA supporters, or to support WALGA/DLGSC preferred outcomes as it is currently perceived to be by many observers, and must not have WALGA nominees</li><li>• WALGA has no role whatsoever in appointments or outcomes</li><li>• Tenure on Panel is limited to, say 2 years</li><li>• Independent Counsel assisting is appointed to support the Panel, and/or Panel is constituted only independent lawyers, appointed by State Administrative Tribunal</li><li>• DLGSC provides secretarial support but <u>does not</u> sit on or vote on or influence the Panel</li><li>• DLGSC does not draft decisions ahead of hearings</li><li>• Panel hears complaints about CEOs and other employees in relation to misconduct, and minor misconduct</li><li>• procedural fairness and natural justice rules mandated, and identify what that is in this context</li><li>• Panel required to advise sitting members names to persons subject of complaint, to ensure no conflicts of interest</li><li>• Panel has open hearings</li><li>• Confidentiality does <u>not</u> apply to <u>any</u> outcome<sup>113</sup></li></ul>
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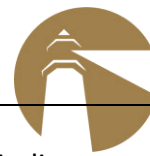
<sup>109</sup> it is a breach of confidentiality and a form of bullying for a WALGA trainer to report back an EM's question in a training session to the EM's CEO, without express informed consent of EM

<sup>110</sup> it is a breach of confidentiality and a form of bullying for a DLGSC employee to report back an EM's question, say on the hotline, to the EM's CEO, without express informed consent of EM

<sup>111</sup> who are not complying with LG Act

<sup>112</sup> noting many costly State Administrative Tribunal outcomes where incompetent Standards Panel decision were overturned; process **needs to be demonstrably free of LG employee, WALGA and DLGSC influence**; *needs different body, different statutory instruments, different consequences*, see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 332

<sup>113</sup> at present CEOs and employees can make countless vexatious complaints with impunity against an EM who is asking questions, because the complaints cannot be disclosed, municipal funds pay costs and legal support for CEO



	<ul style="list-style-type: none"> <li>• Review rights to SAT for <i>any</i> finding, any penalty</li> <li>• Requires Council <i>absolute majority</i> for LG to be legally advised or represented</li> <li>• Requires removal of all names from Breach Register after each election, or when EM no longer on Council, whichever is sooner</li> <li>• Must have equal<sup>114</sup> legal resources and support between LG and EM</li> <li>• Panel has no power to refer breaches for prosecution</li> <li>• Panel cannot suspend EMs, but can refer to SAT for penalty, where SAT can also review the decision of breach</li> <li>• The evidence to the Panel can be from multiple sources, not only the Inspector</li> </ul> <p><u>Furthermore:</u> There must be a positive duty for a LG complaints officers to pass on complaints within a time frame, or it is employee minor misconduct<sup>115</sup>.</p> <p><u>Serious Breaches Reform</u> EM serious breach process and outcomes are opaque, and not accountable and can be used as a bullying technique by not processing a complaint in a timely manner. There must be a time frame within which DLGSC processes EM serious breach complaints, which is only dismiss or refer to the SAT within 2 weeks of receipt of complaint, with a deemed complaints to SAT after two weeks<sup>116</sup>.</p>
<b>Recommends criminalising minor breaches</b>	<p><u>Submission</u> <b>Strongly Disagree</b> with Proposal 1.3 EM conduct breaches must not be criminalised, especially in a system that is system weaponised against EMs<sup>117</sup>, the training is so poor, LGs do not provide independent legal advice support to EMs and DLGSC does not provide legal advice to EMs There are so many provisions that punish and hurt EMs, which are so often abused against minority EMs. <u>I submit</u> that there it be much harder to find EM Candidates with merit and independence standing for LG under the current weaponised EM complaints systems, where there are even harsher penalties, which in turn will foster election of poor</p>

and complaints officer; so no consequences for vexatious or dismissed complaints against EMs, and no consequences for Standards Panel when its' *on the face of it* vested interest decisions are overturned by SAT<sup>114</sup> between complainant if an EM or employee, complaints officer and EM

<sup>115</sup> it appears to some people that some LGs decide whether or not to pass on EM complaints in timely way depending on whether or not EM is favoured EM

<sup>116</sup> it is *misconduct* and ***selective bullying to process complaints quicky or slowly depending on the effect and outcomes desired*** by the complainant and processor of complaint

<sup>117</sup> LG Act framework generally, and in particular made worse by recent changes at **Annexure Ten**, at page 98



	<p>quality candidates, which will make current LG lack of Council oversight and LG dysfunction even worse.</p> <p><u>I submit</u> that employee breaches of the LG Act that are offences or are defined to be minor misconduct, should be referred to the Magistrates Court criminal or civil jurisdiction according to the severity, as defined in the LG Act<sup>118</sup>, because employees have so much more access to advice and training than EMs.</p>
<b>1.4 Review of Penalties</b>	<p><u>Submission</u></p> <p>What is proposed exactly? This is poorly articulated.</p> <p><u>I submit</u> that the Proposal does not recognise that it is CEO and other employee who breach the LG Act and face no disciplinary proceedings or prosecution of offences, unless the CCC is involved, and that this is the cause of widespread LG dysfunction<sup>119</sup></p> <p><u>Preferable Reform</u></p> <p>Noting employees breach the Act more often than EMs.</p> <p><u>I submit</u> that the LG Act must be amended to include:</p> <ul style="list-style-type: none"><li>• general offence provision to cover all Act requirements, especially those relating to EM and public records access</li><li>• a specific offence with serious penalties must be included to mislead or lie to Council or Committee meetings or to EMs</li><li>• specific offence with serious penalties for not producing LG record as required</li></ul> <p><u>I submit</u> that EM serious breaches should be recorded in a <b>Serious Breach Register</b></p> <p>Noting for LG CEO and other employees there is misconduct (Council disciplinary role), minor misconduct (Council, PSC disciplinary role), serious misconduct (PSC, CCC disciplinary role),</p> <p><u>I submit</u> that there must be a public <b>employee misconduct register</b> for all three levels of employee misconduct</p>

<sup>118</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendations 334-335, which I only agree with insofar as employee accountability

<sup>119</sup> for example: not providing public records in timely way, not providing records to EMs as required; clearing without a permit, participating in Council debate; not supervising/disciplining poorly performing employees; misleading Council, acting in a partisan way to EMs; hiding information from EMs and Council; not fully informing Council; not forwarding misconduct complaints; advising parties that they have use FOI to access public records; opening EM correspondence without authority; undertaking a major land transaction without a business plan; losing records; failing OAG performance audits; having materiality responses in qualified financial audits; using LG resources to bully minority EMs; not disciplining/stopping employee rudeness to EMs; causing LG inquiries through incompetent management; gambling with the municipal funds for four years; using nepotism in tender awards and employee employment; using municipal funds for prostitution services; creating unsafe workplace for employees and EMs; commencing or responding to court and tribunal proceedings without Council authority; signing deeds of settlement without authority; not keeping proper records





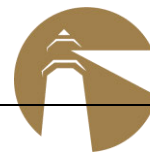
	<p><u>I submit</u> that mandatory EM training MUST require expert training including about disciplining employees including CEOs, noting training providers are not teaching EMs all information they need to carry out their Council oversight roles and/or are not teaching it effectively. Furthermore, some training providers are reporting EM questions back to the EM's LG CEOs, which causes harm to the EM, and defeats any likelihood of effective teaching or learning.</p> <p><u>I submit</u> that mandatory training by policy and regulations must apply to committee members, CEOs and other senior employees<sup>120</sup>.</p> <p><u>I submit</u> that committee members receive continuing professional development and training in relation to the specialist skills and knowledge required or a particular committee<sup>121</sup>.</p>
<b>1.5 Rapid Red Card Resolutions</b>	<p><u>Submission</u></p> <p><b>Disagree with Proposal 1.5</b></p> <p><b>Red Card proposal is poor governance.</b></p> <p>It empowers Presiding Members to remove one or more EMs from a meeting, which can effect a decision outcome by giving the Presiding Member at least two votes in a close decision, the casting vote and the removal of one or more EMs.</p> <p>Independent EMs can receive a very hard time and ANYTHING that makes it harder for them to do their job, vote according to their conscience in the District best interests MUST be avoided at all costs, because in such EMs <i>reside the constitutional objective for better Local Government of localities</i><sup>122</sup> <i>that is representative of the persons of the District</i><sup>123</sup>.</p> <p>EMs are elected to represent the persons of the District in what is a representative democracy. There are other powers including short adjournment of meeting, which are enough.</p> <p><i>Some Presiding Members do not always behave impartially.</i></p> <p>Presiding Members would be empowered to manipulate the vote in tightly contested matters, noting red card or multiple red cards give Presiding Member further opportunity to change a meeting decision outcome, over and above the power to make a casting vote.</p> <p>It is widely recognised that <b>minority EMs</b> are unpopular because they are often the <i>canary in the coalmine</i>, who in face</p>

<sup>120</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation for independent training, at recommendations 49

<sup>121</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation for independent training, at recommendations 50

<sup>122</sup> Constitution Act s.52

<sup>123</sup> LG Act s.3.1



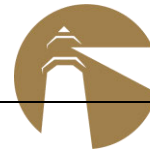
	<p>of maladministration, misconduct or corruption become understandably very frustrated or outraged<sup>124</sup>, and may not act in concert with a comfortable majority, which is wilfully blind<sup>125</sup> to poor or unlawful CEO and administration conduct, and be called disruptive notwithstanding the EM's <i>good faith objectives</i><sup>126</sup>, be subject to conduct rules behaviour management and silenced, in the self-interest of the majority, which is acting in concert with CEOs and employees to the detriment of the persons of the District, the District, the public interest and the municipal funds.</p> <p><b>Better Reform</b></p> <p>In the alternative, if red card system is introduced it must be an <i>absolute majority</i> Council decision, which can only be moved by Presiding Member, and must <u>not extend to or include the actual vote</u> in any matter; or must prohibit the use of a casting vote and require <i>absolute majority</i> for any decision made in a red card EMs' absences.</p> <p>I <u>submit</u> that it should also <u>apply to employees</u> who are not respecting every EM equally, who are not respecting the meeting rules and who are <i>running ANY form of interference</i> in the public question time or meeting debate, or participating in the meeting debate and outcomes<sup>127</sup>. Any EM should be empowered to red card a disruptive employee or employee who is acting in breach of the LG Act or applicable Code of Conduct or Meeting Procedure Local Law.</p> <p><b>Preferable Reform</b></p> <p><u>Conduct</u></p> <ol style="list-style-type: none"><li>1. Elected Member Code of Conduct Rules <b>behaviour provisions Division 3 must be repealed</b>, because they are being abused by Council majorities against minority EMs.</li><li>2. There must be a <b><i>good faith</i></b> and <b><i>honest mistake of facts or law defence</i></b> inserted into all EM red card, conduct and behaviour (if they remain) provisions.</li></ol>
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<sup>124</sup> *Outrage* is moral emotion that evolution furnished us with tens of thousands of years ago to keep people behaving nicely, along with other emotions like empathy, guilt and disgust. Outrage is effectively a special kind of anger that we feel when someone does something wrong to us or someone else, and motivates us to punish wrongdoer: Ethics Centre accessed 26 January 2021: Social media is a moral trap - The Ethics Centre

<sup>125</sup> for example see, WA CCC *Report into how conflicts of interest undermine good governance: A report on the Chief Executive Officer of the Shire of Halls Creek* August 2018; WA CCC *Report On a Matter of Governance at the Shire of Dowerin* 10 October 2016

<sup>126</sup> see *Matheson* decision where SAT overruled a SP decision about minority EM trying to lead Council to good governance in respect of meeting closures

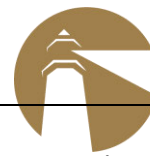
<sup>127</sup> CEOs must be prohibited from answering any question relating to matter at a meeting that seeks an opinion, and only give answers as to facts that are unknown; some Presiding Members ask their CEO an open question because the P.M. wants influence of CEOs in debate, which is wrong and arguably unlawful, and where this happens CEOs referred to as ***twelfth Cr*** in an eleven member Council



	<p><u>Meeting Procedures</u></p> <ol style="list-style-type: none"> <li>3. There is not much that is more disturbing to independent EMs and electors in the public gallery or viewing online than: <ul style="list-style-type: none"> <li>• CEOs speaking privately to Presiding Members during a Council debate</li> <li>• CEOs attempting to run meetings, affect outcomes, run interference</li> <li>• Employees running interference during meetings especially during EM debate.</li> </ul> </li> <li>4. Meeting Procedures should prohibit any employee including the CEO speaking privately to the Presiding Member at a meeting, because CEO is then seen to be participating in the debate, influencing the debate progress and outcomes; any advice or information from CEO or any other employee should be given to all EMs in the employee report; and any other advice CEO or employee believes necessary to be conveyed to a meeting should be conveyed to the whole meeting. CEOs and employees should not be at the Council meeting table, or in a position to speak to or influence EMs in debate including making rude gestures and offensive body language, whispering secret messages or using mobile phone to send text messages<sup>128</sup>.</li> <li>5. LG Act must make all <i>running interference employee behaviour</i> at meetings an offence under the LG Act, with increased penalties for recurrent offenders.</li> <li>6. Standing Orders should universally be called <b>Meeting Procedures</b>, and should be mandated Local Law<sup>129</sup>.</li> <li>7. Noting that Meeting Procedures Local Law' purpose is to assist EMs to have effective proper informed meetings on behalf of and with input of persons of the District, they are <u>not</u> for the benefit of or debate input from employees or administrations, and are not there to control EMs in the CEO or other employees' interests, as recent amendments' bias indicate.</li> <li>8. Agree need for Meeting Procedure Local Law template but: <ul style="list-style-type: none"> <li>• not written by WALGA or DLGSC, because they have an <i>employee bias</i></li> <li>• written by a disinterested meeting procedure expert, and advertised for public comment</li> </ul> </li> </ol>
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<sup>128</sup> all of this behaviour has been observed, and is not uncommon

<sup>129</sup> not currently mandatory to have a Meeting Procedure Local Law



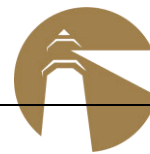
	<ul style="list-style-type: none"> <li>• Governor should endorse a Meeting Procedure Model local law as per LG Act procedure, which can then be gazetted</li> <li>• WALGA as an employee advocate must have little or no influence on the Meeting Procedure Local Law Model Template, and any influence publicly reported in a Meeting and Submission Register.</li> <li>• Submissions on the Meeting Procedure Local Law Template from any local government must be rejected unless they are part of Council meeting minutes which endorsed the submission<sup>130</sup></li> </ul>
<b>1.6 Vexatious<sup>131</sup></b> <b>Complaints Referrals</b>	<p><u>Submission</u></p> <p>What is proposed exactly?</p> <ol style="list-style-type: none"> <li>1. Often all a complainant wants is acknowledgement of their complaint, resolution and recompense as necessary; and many LG employees treat themselves as victims in response to a complaint</li> <li>2. Reference to “<i>local governments</i>” infuses a lack of clarity in or obfuscates the Proposals about which element of local government is meant<sup>132</sup>.</li> <li>3. Councils are often kept ignorant of complaints resolved or unresolved, which is wrong.</li> <li>4. Poor complaints management is a result of the current unresponsive statutory framework, lack of sufficient Council oversight, lack of Council will or knowledge about complaints’ oversight and self-interested conflicted employees managing complaints against the administration in which they work or against themselves.</li> <li>5. In most LGs complaint numbers, types, management (usually against administrations) are dealt with by CEOs, other employees some of whom appear to manage complaints in their own self-interest.</li> <li>6. CEOs will <i>always be conflicted</i> about questions relating to the administration because the CEO’s function is to be responsible for employment, management supervision, direction and dismissal of other employees<sup>133</sup>; noting no entity is statutorily responsible for Local Government being a <b>safe respectful workplace for employees and EMs and</b></li> </ol>

<sup>130</sup> it should be LG Act offence for any employee to make a submission on LG letterhead or purporting to be from a LG unless it has been endorsed by Council

<sup>131</sup> it is too easy to label **recurring unresolved complaints or grievances** as vexatious, especially in absence of sophisticated, expert and implemented complaint handling process and practice

<sup>132</sup> this technique is common ploy used to avoid transparency by many in the industry, especially when an employee has done the wrong thing, the LG did it; but when Council has done the wrong thing, Council did it

<sup>133</sup> LG Act s.5.41(g)



**citizens**, and this should be added to the express CEO s.5.41 functions and Council role under s.2.7

7. CEOs should NEVER be in charge of referring complaints to outside body including not Inspector thereby bi-passing Council, who is the CEO's and Employees' employer<sup>134</sup> and from whom CEOs may want to hide valid complaints about employees and their administration. If there is to be a vexatious complainant decision, it must always go first to Council which *absolute majority* decides whether or not a complaint is vexatious, with a review by Parliamentary LG Ombudsman or State Administrative Tribunal where dissatisfied.
8. Many, many times so called "*substantial responses*" do not answer the complaint, and deliberately obfuscate; as is often the case with Public Question Time.
9. Many, many times answers to Public Questions at meetings do not answer the question asked, because Mayors, CEOs or other employees do not want to answer a particular question relating to administration or EMs where the answer is harmful to reputations or for other self-interested reasons.
10. Noting some complainants are labelled vexatious because the complainant will not resile from their complaints until resolved to their satisfaction, but administrations do not want to answer the complaint; so the **impasse is labelled vexatious**.
11. LG Act must require each LG to have a **Council adopted Complaints Management Policy**.
12. It must be a specific LG Act offence to keep complaints against the LG administration secret from Council and EMs.

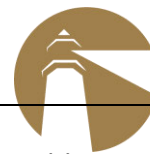
Case Study

CEO supports (by allocating employee resources to draft complaint sometimes up to 30 pages) a third party elector (ie not employee or EM) to make over 10 minor breach complaints about a long standing EM who questions CEO. Each of 10 complaints is dismissed, LG pays the Standards Panel bill, and EM cannot complain or tell anyone because of the **abhorrent recently inserted confidentiality provisions**<sup>135</sup>, The CEO and complainant are vexatious litigants on any measure and should be stopped, but are not exposed. Furthermore, the CEO is using LG resources for a purpose not authorised which is *misconduct*

<sup>134</sup> LG Act s.5.36(1)

<sup>135</sup> contrary to LG intentions: LG Act s.1.3, and in particular: LG Act s.1.3(2)(c)





	<p>or <i>minor misconduct</i>, which is not addressed by any oversight body.</p> <p><b>EM Breach confidentiality provision must be repealed because it fosters EM bullying in secret.</b></p> <p><u>Case Study</u></p> <p>CEO and majority EMs make numerous behaviour complaints against an EM who is asking governance questions and requiring answers, which generate complaints made to the Standards Panel, which are dismissed. CEO and President manufacture Division 3 behaviour complaints on the same issues, are deeply invested in the complaint proceedings outcomes but are clearly conflicted. Police trained investigators are contracted by the CEO to investigate the EM at expense of municipal funds. Mental health of EM deteriorates and is harmed.</p> <p>Abuse of the behaviour process is widespread and vexatious, and harming good governing EMs trying to do their job<sup>136</sup>, damaging local government, and damaging the likelihood of anyone of action and merit standing for Council.</p> <p><b>Behaviour provisions of EM Conduct Rules must be repealed.</b></p> <p>In the alternative, Division 3 behaviour complaints:</p> <ul style="list-style-type: none"> <li>• should be prohibited if already been to the Standards Panel and Standards Panel complaint prohibited if behaviour complaint made</li> <li>• must be heard by body/person independent of Council such as Public Sector Commissioner or Ombudsman or EO Commissioner otherwise it will continue to be abused by Council majorities who have CEO support, or vice versa.</li> </ul> <p>These provisions cause health harm to and discrimination against minority EMs who are independent, and are being abused in an unsafe workplace<sup>137</sup>.</p>
<b>1.7 Other Minor Reforms</b>	<p><u>Submission</u></p> <p>What is proposed exactly?</p> <p>It is not known how many local government Ministerial circulars have been made and they should be identified and circularised, so informed relevant reform submissions can be made</p> <p><b>LG Ministerial Circulars</b> are a good idea for temporary statutory interpretation of unclear LG Act provisions, which should be resolved by law reform at earliest possible opportunity, provided they are sent DIRECTLY to Elected</p>

<sup>136</sup> who are always in minority because if they were in majority they could achieve good governance through Council resolutions

<sup>137</sup> which is not *workplace* for EMs as far as WorkSafe is concerned, which must be remedied by law reform



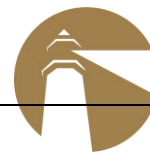
	<p>Members<sup>138</sup>, and it should be an LG Act offence not to forward information to EMs that has been sent to administrations for sending onto EMs</p> <p>If it is proposed that these advices will be written by DLGSC then care must be taken<sup>139</sup>.</p> <p>DLGSC publishes Operational Guidelines (OGs), which can be misleading, incomplete or out of date, or missing; LG Minister can and should require that OGs are updated and kept current, and should require an OG to reflect best practice from every OAG LG performance and financial audit topic.</p> <p>It is unclear how Ministerial advices will be different from OGs</p> <p>The problem is that <b><i>DLGSC is lacking in local government legal expertise and experience.</i></b></p> <p>This proposal just rebadges but leaves same problem, an inexpert poorly resourced captured DLGSC providing unreliable advice to LG Minister, which diminishes the Minister's standing and reputation, and further harms LG productivity and governance.</p> <p>Current issues are that DLGSC (and WALGA) advice is often wrong or misleading, including by omission, which stirs unrest, concern, lack of public confidence in these bodies.</p> <p>It is noted that the LG Minister currently has a non-delegable power to <b><i>direct by notice</i></b> any individual element of a local government to comply with Act<sup>140</sup>, presumably on advice of DLGSC, so how would it help giving this power to Inspector who also may not be independent?</p> <p>Again it is this proposal is shifting problem of DLGSC making by its lack of expertise and resources, or misapplied resources; and <b><i>diffuses Ministerial and DLGSC, responsibility and accountability.</i></b></p>
2.1 Resource Sharing	<p><u>Submission</u></p> <p>What is proposed exactly that is new?</p> <p>Is about raising the amount paid to CEOs or senior employees who job share between LGs</p> <p>CEOs do resource share at present<sup>141</sup></p> <p>This proposal appears to be a means of avoiding sensible LG boundary resetting to achieve the localities envisaged by the Constitution, which the Proposals ignore.</p>

<sup>138</sup> noting some CEOs do not forward some information onto EMs

<sup>139</sup> DLGSC public servants do not always accurately interpret the LG Act

<sup>140</sup> LG Act s.9.13A, s9.66, *LG (Functions and General) Regulations 1996* Reg.35A

<sup>141</sup> **Salaries and Allowances LG Determination 2021:** A person who holds a dual appointment of CEO of Shire of Murray and CEO of Shire of Waroona, shall be entitled to receive a TRP range from the bottom of Band 2 (\$206,500) to a maximum of \$351,727 (which represents the top of Band 2 plus 10%); A person who holds a dual appointment of CEO of Shire of East Pilbara and CEO of Pilbara Regional Council, shall be entitled to receive a TRP range equivalent to the Band 2 range (\$206,500 - \$319,752)



	<p><u>CEO Remuneration Settings</u></p> <p><i>The Tribunal<sup>142</sup> has considered sections 2.7 to 2.10 and 5.41 of the LG Act, which outlines the roles and responsibilities of local governments, councillors, mayors, presidents and their deputies and the functions of local government Chief Executive Officers (CEOs)<sup>143</sup>.</i></p> <p>The Tribunal noted a number of submissions raised a variety of issues, such as performance management, governance standards, workplace culture, qualifications and training, among others. Such issues are outside the Tribunal's powers. The Tribunal's functions are narrow and strictly defined in the SA Act (as identified in paragraphs 1 and 2). The Tribunal sets the appropriate levels of remuneration for the offices within its jurisdiction, not the specific office holders<sup>144</sup>.</p> <p>The LG Determination should not apply to Acting CEOs</p> <p><b>CEO Remuneration Setting is not working to attract well qualified independent CEOs, and the system is overprotecting those underperforming CEOs and senior managers from accountability, disciplinary proceedings and termination. The current Salaries and Allowances Tribunal LG Determination process is not functional and is inhibiting attracting effective EMs or well qualified employees, and it must change, in the public interest. Once LG CEOs are admitted to that exclusive and powerful club, the accountability and performance rules do not seem to apply and CEOs' future is pretty much assured regardless of performance<sup>145</sup>.</b></p> <p>CEO remuneration band levels<sup>146</sup> are not producing well qualified CEOs, and indeed are arguably attracting underqualified CEOs.</p> <p>There should be no increase in the salary band remuneration ranges, as already CEO remuneration too high especially for mendicant or poorly resourced Local Governments, which is driven by not enough salary bands, and the criteria for salary</p>
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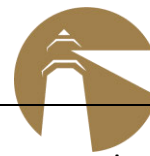
<sup>142</sup> Salaries and Allowances Tribunal

<sup>143</sup> Salaries and Allowances LG Determination 2021, Preamble

<sup>144</sup> Salaries and Allowances LG Determination 2021, Conclusions para.16

<sup>145</sup> except for pesky CCC and OAG and LG Inquiry (by independent experts) reports, and pesky EMs who target underperforming CEOs; this quote rings a bell ... *the club is impregnable. No-one was ever criticised in public, errant directors merely assigned another post and every vote at an annual general meeting was approved*: from "Why the Senate vetoed Josh Frydenberg's super sting during a federal election countdown" ABC Business Editor Ian Verrender, ABC on-line 14 February 2022

<sup>146</sup> *The Tribunal continues to apply the four Band allocation model. The model allows a number of measurable and non-measurable factors to be considered when assessing appropriate levels of remuneration. The model is adjusted annually to accommodate incremental increases experienced by all organisations; While some submissions argued for a change to the classification model, the Tribunal considers this model remains the best available for local government remuneration*: Salaries and Allowances LG Determination 2021: Preamble



	<p>bands being poorly set and not in community interests, without reform it is envisaged that and forecast they will continue to increase without any benefit to local Government Districts<sup>147</sup>. <u>Preferable Reform</u><sup>148</sup></p> <p>The LG Act must mandate <b>8 - 10 salary bands</b> with the existing bands frozen and the new lower bands with far lower remuneration than they are at present and <b>salary band criteria</b><sup>149</sup> <b>need to be set to foster improvements</b> in CEO and EM competence, qualifications, experience, local government, productivity increases, or remove LG from the Salaries and Allowances Tribunal altogether, and mandate bands and criteria in LG Regulations. The current system is not working.</p>
<b>2.2 Standardisation and Crossovers</b>	<p><u>Submission</u><sup>150</sup></p> <p>What are limits of what is proposed?</p> <p><b>Disagree</b> because cross over needs vary from locality to locality, which is the basic objective for LGs – when laws cannot apply over all of WA because there are locality differences; needs community and expert consultation, and necessary costs, public interest and amenity exceptions provided for.</p> <p>Who has the expertise in DLGSC to manage this?</p> <p>Who is the Cross Over Working Group?<sup>151</sup> Who decided its membership? Transparency is important. If this proposal is motivated by employees not wanting to deal with requests for variations from a standard then it must be treated with great caution considering the public interest<sup>152</sup> in responsive cross over regulation.</p>

<sup>147</sup> WA must stop trend of increasing CEO and senior employee remuneration with that current adverse path shown in eastern states where for example Brisbane City Council CEO Colin Jensen annual salary of at least \$700,000, the highest-paid council executive in NSW, City of Parramatta Council CEO Brett Newman, who earns \$633,853. compared to US President Joe Biden base salary of \$519,000, and Australia's PM \$549,250.

LG administration salaries have been highlighted by **NSW Office of Local Government**, which is reviewing **Australian LG pay administration packages** to decide if they should be curbed, and has noted Queensland councils pay most generous salaries to their top executives, followed by NSW, Victoria and Western Australia. Predict; also noting excessive need for costly contractors is most obvious demonstration of lack of sufficient qualifications in existing employees: see for example *South Australian Productivity Commission report on Local Government* 5 February 2020; and lack of CEO quality revealed by 14 OAG LG **performance audits**

<sup>148</sup> see **LGEMA submission to the Salaries and Allowances Tribunal on the 2022 LG Determination**

<sup>149</sup> current payment and remuneration criteria were set in the 2010 LG Determination have arguably led to employee number and operational costs increases, and must be amended and mandated in LG Act to drive increased productivity and include qualifications, past work references and experience; EMs with more than 4 years' experience, relevant professional tertiary qualifications should be on a higher rate

<sup>150</sup> constitutional purpose of LGs is to **govern localities so as to have locality specific laws where beneficial and state-wide laws would not work or be unresponsive to local needs**; LGEMA member note crossover needs vary between LGs, such as in relation to driveway heights and flooding; surfaces such as gravel, dirt or bitumen; on corners or on straight roads; costs from developers

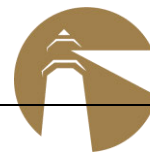
<sup>151</sup> please publish and circulate minutes of these meetings; is it part of transport and road related committees and working groups on which WALGA (employee centric) represents LG Districts?

<sup>152</sup> safety, amenity, costs



	<p><u>Preferable More Important Reform</u></p> <p>Far more important is to:</p> <ol style="list-style-type: none"> <li>1. Require <b>Council <i>absolute majority</i> for any permanent changes to thoroughfares, roads, public access ways</b> in <i>LG (Uniform Local Provisions) Regulations 1996 (WA)</i>, to ensure such changes <i>cannot be made secretly</i> under delegated authority in absence of Council and community engagement and consultation.</li> <li>2. Better regulate standards for construction of retaining walls for broad field subdivisions and individual lots, and address changing natural ground levels; to close the current legislative and enforcement loopholes that have allowed developers / builders to avoid prosecution for changing ground levels by undertaking siteworks without any building or other required approvals.</li> </ol>
<b>2.3 Introduce Innovative Provisions</b>	<p><u>Submission</u></p> <p>What is proposed exactly?</p> <p>It is utterly unclear what this means, or to whom power is to be transferred, or what in the LG Act needs to be changed or removed, or why.</p> <p><b>Disagree</b></p> <p>Powers must not be given to CEOs or employees (because constitutionally they cannot have governing power vested in them) noting the WA Constitution requires governing bodies for localities, and any reduction in the <b>power of Councils</b> (being the statutory body that implements constitutional requirements for localities to be governed) to better <b>govern their Districts</b> (being the statutory embodiment of the constitutional locality) is arguably unconstitutional, wrong and must be resisted.</p> <p>Consequences of any amendments must be tested against the Bushfires Act and <b>Emergency Management Act, which generally take precedence over the LG Act.</b></p>
<b>2.4 Streamline Local Laws</b>	<p><u>Submission</u></p> <p>What is proposed exactly?</p> <p>Which sector is burdened as asserted? Where is the evidence?</p> <p><b>Disagree</b></p> <p>Proposal shows a fundamental misunderstanding of the purpose of Local Laws for a District.</p> <p>Local Laws are necessarily inconsistent between Districts because they are made properly to suit a District, their purpose is designed to accommodate differences between localities.</p> <p>If Local Laws need to be consistent state-wide, then they are laws for the state parliament to make.</p>

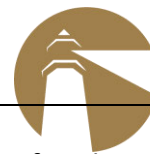




	<p><u>Preferable Reform</u></p> <p>Noting legislative function is one of Councils' core functions, which cannot be delegated, and it is employee's core responsibilities to support Council and administer,</p> <ol style="list-style-type: none"> <li>1. Local Laws should remain to be reviewed every eight years, with a sunset clause applying after eight years.</li> <li>2. DLGSC should be required to employ appropriate independent legal experts and start implementing their statutory responsibility to draft Model Local Laws for the Governor to gazette (and stop the practice of it being a WALGA commercial enterprise with model local laws drafted in apparently interests of employees, not gazetted, not publicly available, not endorsed by the Governor).</li> <li>3. DLGSC should be required by the LG Act to maintain and keep their Local Law Register updated<sup>153</sup>, to save LG time and resources.</li> <li>4. This proposal appears to be a red herring to disguise DLGSC lack of expertise, and to diffuse its responsibility which if implemented as LG Act designed it, would see Local Law making a <i>piece of cake</i> for LGs, and no burden; and not a commercial opportunity for WALGA.</li> <li>5. There can be <b>no reduction in advertising a local law to the people it affects</b>, which would be an <i>abject failure</i> in transparency and accountability<sup>154</sup>, given local laws are binding, create powers and offences.</li> </ol> <p><b>Essential Reform</b></p> <p><b>Law Reform must be made so as to ensure that Local Laws are clearly not operative until they:</b></p> <ul style="list-style-type: none"> <li>○ have completed all requirements of the LG Act</li> <li>○ Joint Standing Committee advertises for submission directly through affected Elected Members</li> <li>○ Have been approved by Joint Standing Committee on Local Laws</li> <li>○ have completed their time laying table of both houses of parliament</li> <li>○ have been circulated directly to affected EMs when it is tabled in parliament</li> <li>○ gazettal cannot be made until all the above has been completed</li> <li>○ have been gazetted</li> </ul>
<p><b>2.5 Simplifying Approvals for Small</b></p>	<p><u>Submission</u></p> <p>What is proposed exactly?</p>

<sup>153</sup> which it currently is not, and causes costly resources issues for LGs relying on resource

<sup>154</sup> in breach of LG Act intentions at s.1.3(2)



<p><b>Businesses and Community Events</b></p>	<p>Where and what is the evidence for the assertion that the current arrangements are <i>frustrating for businesses and local communities</i>?</p> <p><b>Disagree</b></p> <p>This proposal reflects a complete misunderstanding of <i>governing a locality</i> required by the WA Constitution. This is a matter for each District who if it had the benefit of an expertly drafted and gazetted Local Law could adopt with modifications as Councils decide the desirable differences for the benefit of the persons of the District<sup>155</sup>.</p> <p>This proposal reflects the abject failures of DLGSC Local Law and Operational Guidelines, and diffuses/shifts DLGSC responsibilities, and oversight.</p>
<p><b>2.6 Standardised Meeting Procedures, Including Public Question Time<sup>156</sup></b></p>	<p><u>Submission</u></p> <p>What is proposed exactly?</p> <p>Where and what is evidence of complaints about Meeting Procedure and who from?</p> <p>Why would meeting procedures being different between LGs be a source of complaint? Each meeting procedure local law should be drafted to suit the citizens, Councils and EMs of each District, as the LG Act was designed to achieve.</p> <p>Many if not most of the community complaints that come to LGEMA's attention are come from Councils and/or employees not complying with existing meeting procedure and no-one enforcing the current requirements.</p> <p>Public Question Time (PQT) is an essential risk management technique designed in LG Act for obtaining information from Councils, EMs and employees that might not be but should be on a public record<sup>157</sup>, especially information missing from an agenda item, or which administrations refuses to disclose.</p> <p>Basic PQT requirements are standardised across WAs by LG Act and LG Administration Regulations. It is just that Councils, Presiding Members and administrations ignore the rules and no-one enforces them including not the LG Minister<sup>158</sup> or DLGSC.</p> <p>Some Presiding Members<sup>159</sup> adopt PQT procedures that are arguably inconsistent with the LG Act regulatory framework requirements.</p>

<sup>155</sup> LG Act s.3.1

<sup>156</sup> *It is a democratic imperative. The right to vote is without substance unless it is based on adequate information. If government is to be truly government for the people, if the public is to be able to participate in government and to experience its benefits, the public must be properly informed about government and its affairs: WA Inc. Report para.2.1.3*

<sup>157</sup> whether or not it should be on *public record* is different point

<sup>158</sup> LG Act s.9.13A

<sup>159</sup> often on advice of their CEO



	<p>The LG Minister has the power to enforce PQT laws<sup>160</sup> and should exercise the power occasionally which would have significant positive good governance impacts.</p> <p><u>Preferable Reform</u></p> <p>LG Act reform should require:</p> <ul style="list-style-type: none"><li>○ each LG to have a Meeting Procedure Local Law<sup>161</sup></li><li>○ the DLGSC prepare and regulate and gazette minimum requirements for Meeting Procedure Local Law, which includes requirement for the most senior employee present at any meeting to advise EM of potential minor or serious breach, or serious misconduct<sup>162</sup>, and to prohibit employees making a complaint if the advice was not given or not given in a timely way or caused the breach<sup>163</sup> and make it defence if a warning was not given<sup>164</sup></li><li>○ Meeting Procedure local laws prescribe that it is serious misconduct and an offence for an employee or contractor to mislead Council</li><li>○ The Criminal Code must make it a crime for any person including CEOs to knowingly mislead Council</li><li>○ Clarification of the opaque PQT provisions, especially explicitly requiring that all PQTs must be answered however long it takes; and making Presiding Member specifically responsible for PQT answers<sup>165</sup>, including their accuracy and that they actually answer the question</li><li>○ Require that all questions to be answered at the meeting if 24 hours' notice has been given or if questions relate to meeting agenda item<sup>166</sup></li><li>○ Prohibition against any limitation of number of questioners <b>from the District</b>, prohibit time being allocated unless question is repetitive</li><li>○ an offence or EM breach or employee serious misconduct to not answer PQT questions truthfully, comprehensively, and accurately</li><li>○ Create Employee Serious Misconduct offence not to include questions and answers in meeting minutes, with synopsis prohibited.</li></ul>
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<sup>160</sup> LG Act s.9.13A

<sup>161</sup> not presently required

<sup>162</sup> it is not employee's role to implement advice, it is employee role to advise and explain, and then for EM to decide

<sup>163</sup> for example by publishing an EM notice of motion that the CEO knew or should have known should or would be a confidential item

<sup>164</sup> if senior employee does not understand, and cannot give advice, how can an EM be expected to understand

<sup>165</sup> presently unclear

<sup>166</sup> employees can be sent to find the answer and matter deferred until employee returns



	<p><i>Case Study</i></p> <p>CEOs can anticipate many angry people attending for a PQT or petition about a contentious issue. It must be an express CEO' duty and function to ensure a safe meeting place<sup>167</sup> but police should not be called without the express prior approval of whoever will be the Presiding Member.</p>
<b>Regional Subsidiary</b>	<p><u>Submission</u></p> <p>What is proposed exactly?<sup>168</sup></p> <p><u>Better Reform Proposal</u></p> <p>A Regional Subsidiary is a separate body corporate comprised of 2 or more LGs<sup>169</sup>.</p> <p><b>This initiative may have merit</b> provided the ability of a District to manage the affairs of its locality for its locality is not compromised and ratepayers do not bear the burden of additional costs, for example proposals should only go forward if <b>productivity improvements, and efficiency or costs' reduction are demonstrable</b>, and <b>constitutionally</b> clearly demonstrated that a regional subsidiary delivers "better government" to the local government Districts within the RS.</p> <p><i>The LG (Regional Subsidiaries) Regulations 2017:</i></p> <ul style="list-style-type: none"> <li>○ should cite under which statutory authority the regulations are made, and reference all the relevant LG Act provisions</li> <li>○ limit the power of a regional subsidiary including by an upper limit set by percentage and by absolute amount to borrow funds, noting it is too broad in current Regulation 11</li> <li>○ should reduce the number of employees of each participating LG <b>only by seconding employees</b> to a RS, not creating new employee positions, and ensuring reduction in operating costs as 5 of total expenditure</li> <li>○ should reduce the operational costs of each participating LG</li> <li>○ should not increase the number of EM</li> <li>○ CEOs from participating LGs should rotate with no increase in salary, given there will be reduced operational costs and management</li> </ul>

<sup>167</sup> for example: where CEOs have different position from Council and petitioners, CEO may not ensure a safe work environment for the known risk, and meeting chaos may arise. EMs may be frightened by the experience and their behaviour and responses modified by CEO deliberate failures not to ensure a safe workplace for meeting participants

<sup>168</sup> noting *Regional local governments (as constituted under Part 3 Division 4 of the LG Act) are allocated to a Band only with respect to CEOs: LG Determination 2021, Part 1, para 1.6*

<sup>169</sup> LG Act s.3.61(1), s.3.62(1)



	<ul style="list-style-type: none"> <li>○ Participating LG can elect to have combined financial reporting, food and health and the like inspection and reporting, but which clearly show separate LG finances</li> <li>○ There should be NO reductions in transparency and accountability of each participating LG</li> <li>○ There must be demonstrable productivity and integrity and risk management gains</li> <li>○ An upper size limit should be required to avoid the mega oversized LGs currently existing which defeat the constitutional objectives of governing for a locality</li> <li>○ Should only be fostered if there is compulsory LG voting</li> </ul> <p><i>Case Study</i> Many LGs boundaries do not consider locality differences and similarities. Western Suburbs Councils, and the amenity and costs of maintaining, preserving and protecting the coastal environment and public amenity values might benefit from a <b>Western Suburbs Coastal Regional Subsidiary.</b></p> <p><i>Case Study</i> Regional and Rural LGs should have this option facilitated at no additional expense to ratepayers.</p>
<b>3.1 Recordings and Live Streaming of all Council Meetings<sup>170</sup></b>	<p><u>Submission</u> Will this be by regulation or in a Local Law<sup>171</sup>?</p> <p><b>Agree<sup>172</sup></b> but there must be no exceptions <b>except for closed meetings<sup>173</sup></b>, and must include <i>all of the meeting</i> including public and elected members questions and answers, and must be a record required by regulation to be a public record for purpose of access for the purpose of LG Act s.5.94(u)<sup>174</sup>.</p>

<sup>170</sup> supported by Tony Power SC from City of Perth LG Inquiry Report 2020 Recommendations 57

<sup>171</sup> ban on recording meetings *must* be removed from all Meeting Procedure Local Laws

<sup>172</sup> audio-video recordings are essential for LG decision-making meetings accountability, noting comments when one WA LG introduced this, ... *First we heard some of the inappropriate dialogue but only the gallery saw the face pulling. Now we have audio and video. Well, was there a big change in behaviour. No more fingers in mouths at other EMs' comments, no more face pulling if they didn't like something. No more gesticulations to the public gallery...*, thus reducing the mental health harm to EMs from disrespectful employee or EM behaviours, which CEOs and Presiding Members are unwilling, unable to stop. In any event, CEOs owe duty of care to maintain a safe workplace for employees AND EMs. It is a much safer meeting environment for EMs when live audio - video streaming occurring. Will also be important evidence in employee misconduct and EM breach hearings, and also evidence of whether or not a public question was actually answered. Many CEOs and some CEOs just don't want the transparency and accountability, and the evidence that such a record will be. It is critically important and essential reform proposal resisted by those not interested in LG good governance reform. All Meeting Procedure Local Laws should permit recordings by whoever wants to record and publish, and not leave it to CEO to control what is recorded. It must be up to Council *absolute majority* to decide if a confidential meeting is recorded.

<sup>173</sup> in some LGs employees will behave very badly to some EMs, especially minority EMs, including shouting at them behind the cover of a closed meeting; knowing the meeting is being recorded will moderate such behaviour

<sup>174</sup> see **Re McLerie and City of Melville [2022] WAICmr 1**



	<p>It must only be Council <i>special majority</i><sup>175</sup> that decides to record a confidential closed meeting; and Council must be specifically authorised to hold meetings in the absence of all employees as necessary, and it must be an offence to record or listen to any meeting if it is a confidential meeting unless you are a Council <i>special majority</i> approved participant, which is recorded in the minutes</p> <p>EM voting record must be kept and made public on a Council resolutions register, which includes all Council resolutions whatever the source of the resolution<sup>176</sup> which is required to be kept on the LG website</p> <p>Employees sometimes listen to confidential meetings on recording devices contemporaneously, or the recordings of confidential meetings; especially in relation to their performance.</p> <p>Otherwise EMs will be reticent about raising employee and administration issues, which need addressing.</p> <p>Presiding Members can be authorised to record a closed meeting on their mobile phone for minutes and evidence purposes if needed but only by Council special majority.</p> <p><b>DLGSC must NOT be responsible for record keeping</b> as they already do not have sufficient resources or expertise to manage their current budget and statutory obligations<sup>177</sup>, close relationships with CEOs may lead to confidentiality breaches of the recordings<sup>178</sup>.</p> <p>This is a matter for <b>State Records Office</b> record keeping of LG records, which DLGSC knows<sup>179</sup>.</p> <p><u>Preferable Additional Reform</u></p> <ol style="list-style-type: none"><li>1. Should include audio-visual recording of committee meetings that are open to the public<sup>180</sup></li><li>2. LGs should be required to keep the meeting resolutions record on the local government website, as with other statutory website public records obligations, and they should be defined as record required to be on the website and freely available on a USB to any person presenting at local government offices</li></ol>
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<sup>175</sup> as previously defined in LG Act

<sup>176</sup> and so including Electors Meeting resolutions, EM Notices of Motion, petitions, complaints, performance management

<sup>177</sup> see for example, *Re Boulter and Department of Local Government Sport and Cultural Industries* [2021]

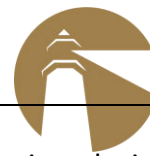
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<sup>178</sup> see **Casino Royal Commission Interim Report** on *Regulatory Capture* in DLGSC

<sup>179</sup> SRO (under DLGSC) administers regulation of management of records and information across WA public sector according to requirements of State Records Act 2000: **DLGSC Annual Report 2020-2021**, page 41

<sup>180</sup> Tony Power SC from City of Perth Inquiry 2020 recommendation 58





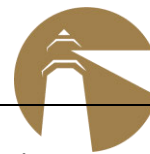
	<ol style="list-style-type: none"><li>3. This must be in the LG Act so as it make it harder to reverse in the future</li><li>4. It should be LG Act offence, or employee misconduct, not to upload records required to be on LG website; and a crime to share a confidential recording</li><li>5. It should be LG Act offence, or employee misconduct, not to upload records in a word searchable format in an easily discerned list, for example to stop mixing up policies, local laws and other documents together to make it really hard to find a document and defeat the records intentions of the LG Act.</li><li>6. DLGSC could provide or second an IT team to set up recording and liver streaming at no cost to level 3 and 4 band Local governments</li><li>7. DLGSC should publish guidelines about best practice requirements for IT in this area</li><li>8. DLGSSC and State Records Office should publish guidelines about ensuring all online records are easily found and accessible, as part of the LG Record Keeping Plan.</li><li>9. All the prohibitions against recording meetings should be removed from the LG Act and regulations, all local laws, and</li><li>10. Any person including EMs should be permitted to record meetings, such as on their mobile phones<sup>181</sup>.</li></ol>
<b>3.2 Recording All Votes in Council Meetings<sup>182</sup></b>	<p><u>Submission</u></p> <p><b>Agree, and should also apply to all Committee meetings</b> where committee has delegated authority, or meeting open to the public and to all Audit Committee meetings, and all non LG Act committees such as Bush Fire Advisory Committee established under Bush Fires Act.</p> <p>This must be included in the LG Act so as it to make it harder to reverse.</p> <p><u>Additional Preferable Reform</u></p> <p>Reasons for every Council and Committee decision in sufficient detail to explain why the decision was made to be included in the meeting minutes<sup>183</sup>.</p> <p>Council and Committee decisions required to be independently audited at least once every two years by independent qualified auditor, and reported to the Audit Committee<sup>184</sup>.</p>

<sup>181</sup> which will mean when there is glitch with official recording, there will be other recordings to rely on

<sup>182</sup> decision making recommendations 57 – 68 by Tony Power SC from City of Perth Inquiry 2020, which recommend a combined Code of Conduct for EMs and employees

<sup>183</sup> Tony Power SC from City of Perth Inquiry 2020 recommendation 60, by amendment to LG Admin Regs Reg 11(da)

<sup>184</sup> Tony Power SC from City of Perth Inquiry 2020 recommendation 64, 65



	<p>Every Council and Committee resolution must be recorded on a <b>Council Resolution Register</b> and a <b>Committee Resolution Register</b>, which is required to be kept current and on the local government website; in a format with searchable catchwords<sup>185</sup>.</p> <p>All LG Committees established under other LG Acts must be required to comply with LG Act committee laws and LG Meeting Procedures Local Law such as BushFire Advisory Committees.</p>
<p><b>3.3 Clearer Guidance for Meeting Items that may be Confidential</b></p>	<p><u>Submission</u></p> <p>What is proposed exactly?</p> <p>Currently, all Council meetings are presumed by the LG Act to be open to the public unless they are closed, and <u>only</u> Council can close meetings.</p> <p>EMs do not receive sufficient or expert training about this.</p> <p>It is arguably <b>unconstitutional</b> and certainly without integrity to suggest that the proposed Inspector<sup>186</sup> has any role in making that decision for Council, and should only be authorised to intervene, if at all, after the event if there has been a statutory breach.</p> <p>Information held by DLGSC is sometimes released to CEOs even if it is confidential<sup>187</sup>.</p> <p>DLGSC should have no role in retaining recording of confidential Council meetings, this can only be <b>State Records</b>.</p> <p><u>Preferable Reform</u></p> <ol style="list-style-type: none"> <li>1. Drafting of LG Act amendments and Improved independent expert EM training and DLGSC Operational Guidelines prepared by a disinterested expert<sup>188</sup> in this area is required.</li> <li>2. Some CEOs advise Councils that they are required to close a meeting, which is misleading and breach of the LG Act<sup>189</sup>, for which there is not current penalty and there should be, and at least must be classed as minor misconduct to mislead Council.</li> <li>3. The greater problem is that the <b>reasons for confidentiality are misused and abused</b>, and compliance is not enforced by DLGSC<sup>190</sup> or the LG Minister</li> </ol>

<sup>185</sup> some CEOs have habit of uploading documents required to be on LG website in format that is not word searchable, not on obvious list, or in large list of documents, over 400, which have to be trawled through to find, without proper title, or leave old versions online when they have been replaced, so cannot be found

<sup>186</sup> which should be Parliamentary LG Ombudsman

<sup>187</sup> see Casino Royal Commission Interim Report on *Regulatory Capture* within DLGSC

<sup>188</sup> not DLGSC employee, not ex LG employee, not ex EM all of whom cab ne consulted; but by barrister expert in LG law

<sup>189</sup> LG Act s.5.41(b)

<sup>190</sup> see *Matheson and LG Standards Panel* [2020] WASAT 26



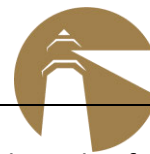
	<p>4. <i>Commercial in confidence</i><sup>191</sup> and <i>legal advice</i> confidentiality is widely abused and LG Act must be redrafted to be much clearer, to stop hiding matters from the community that should not be hidden; noting any person who wants to do business with local government must expect that that business will be public, otherwise they should take their business elsewhere. Furthermore, it is not uncommon for CEOs to recommend meeting confidentiality to ensure the records attached to that part of the meeting are confidential, which does not necessarily follow and should not necessarily follow.</p> <p>5. Making a meeting confidential should require <b><i>absolute majority</i></b>.</p> <p><b>Important Law Reform Issue: Document Confidentiality</b><sup>192</sup></p> <ol style="list-style-type: none"><li>1. CEOs' <i>functions</i> include to keep and disclose LG records<sup>193</sup> in compliance with the LG Act, State Records Act and the LG Record Keeping Plan.</li><li>2. LG records may expose CEO wrongs, maladministration.</li><li>3. Accordingly CEOs are conflicted by being responsible for LG records access and in being the principal FOI records officer.</li><li>4. CEOs are wrong, in breach of the FOI or LG Acts in many records access decisions<sup>194</sup> or records cannot be found in</li></ol>
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<sup>191</sup> LG Act s.5.23(e)

<sup>192</sup> **OIC 2019/2020 Annual Report** reports that, "[A] more positive and open attitude to information disclosure can significantly reduce the potential strain on an agency's resources by reducing or eliminating the need to deal with individual FOI applications for that information. The Commissioner encourages local government agencies to adopt a more positive and open attitude in this regard. This can manifest itself in the proactive publication of information and by being responsive and open to both formal and informal requests for information from members of the public.", noting a "noticeable increase in the number of applications for external review received from local government councillors, who are using the FOI Act to apply to their own local government agency to access documents", and Commissioner notes that, 'decisions made by local government remain, as it did in 2013/14, eight times more likely to be subject to external review than a decision made by all other agencies' and it is critical that all FOI officers are given adequate resources, are respected and supported by agency officers, particularly by management and senior staff."

<sup>193</sup> LG Act s.5.41(h)

<sup>194</sup> *Re Walters and Shire of York* [2014] WAICmr 24; *Swift and Shire of Busselton, Re* [2003] WAICmr 7 (11 March 2003); *Askew and City of Gosnells, Re* [2003] WAICmr 19 (14 July 2003); *Ross William Leighton and Shire of Kalamunda, Re* [2008] WAICmr 52 (20 November 2008) ; *Aniveb Pty Ltd and Blackbeard Pty Ltd trading as Urban Endeavour and Avon Capital Estates (Australia) Limited and City of Canning and 'Y', Re* [2010] WAICmr 28 (29 October 2010); *RE Z and the City of Subiaco* [2020] WAICmr 12



	<ol style="list-style-type: none"><li>5. other matters<sup>195</sup> where it is breach of CEOs' function to lose records<sup>196</sup>, but there is no consequence<sup>197</sup>.</li><li>6. It must be a LG Act offence:<ul style="list-style-type: none"><li>○ to lose records,</li><li>○ not keep records, or</li><li>○ not give access as required to records.</li></ul></li><li>7. Act is explicitly silent about document confidentiality but the FOI Act is not<sup>198</sup>.</li><li>8. <b>Document confidentiality is a serious omission</b> from the LG Act must be addressed<sup>199</sup>, noting the OIC submission to the Select Committee<sup>200</sup>.</li><li>9. It is correctly implied by properly governed LGs acting within an effective risk management framework that prudent ethical CEOs:</li></ol>
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<sup>195</sup> *Tracey and City of Gosnells, Re* WAICmr 34 (13 June 1996); *Ross William Leighton and Shire of Kalamunda, Re* [2008] WAICmr 52 (20 November 2008); *Ross William Leighton and Shire of Kalamunda, Re* [2008] WAICmr 54 (19 December 2008)

<sup>196</sup> LG Act s.5.41(h)

<sup>197</sup> while the CEO might delegate this function, it is not clear that there is authority to do so under the FOI Act and this requires law reform; furthermore just because a CEO delegates FOI decision making to an employee does not mean CEO has delegated responsibility for exercise of that function by a delegate: LG Act s.5.41(g); s.5.41(h)

<sup>198</sup> *Freedom of Information Act (1992)* (FOI Act) reversed Parliaments' previous attitude to public records by creating a general right of access to information; which meant that unless there was a specific statutory reason for not releasing information, it should be released. The FOI Act led to consequential amendment: LG Act s.5.97 *Nothing in this Division affects the operation of the FOI Act*. The LG sector has not kept up with modern transparency obligations, which are an integral part of the LG risk management framework, so as to avoid concealing wrongdoing. *It is unacceptable, in our democratic society, that there should be a restraint on the publication of information relating to government when the only vice in that information is that it enables the public to discuss, review and criticise government action: Commonwealth v Fairfax* (1980) 32 ALR 485, at para. 493. It must be LG Act offence to refuse access to record to which an EM or member of public is entitled to access.

<sup>199</sup> **WA Inc Report** para.2.1.10: *Information is the key to accountability. To fulfil its purpose, four information conditions must be satisfied:*

1. *Information of, or about, government must be made optimally available or accessible to the public. We emphasise "optimally" since, as we have said, official secrecy has its proper place in the conduct of government. Secrecy, however, should not be the norm, with openness the exception. Rather, the contrary must be the case.*
2. *Information must have integrity. It must give a proper picture of the matter to which it relates. It must not aim to mislead or to create half-truths.*
3. *Information must be capable of being understood, preferably by the public at large, but particularly by the accountability agent to whom it is supplied.*

*Information must be manageable by those expected to assimilate, examine and pass judgment on it. "Information overload", no less than secrecy and positive deception, can be the cause of ignorance, misunderstanding and confusion. Attention must be given to the manner and form in which information is supplied, to its suitability to the purpose of its supply and, particularly when supplied to Parliament, to the means best suited for its subsequent and intelligible communication to the public*

<sup>200</sup> *Greater recognition for the pro-disclosure objects and operation of the FOI Act and the role of the OIC in encouraging local government agencies to give access to as much documentation outside the FOI Act as possible and to use the FOI process as a last resort for those seeking access to government documents: OIC submission to the Panel*



	<ul style="list-style-type: none"><li>• mark documents <i>draft confidential</i> which Councils might want kept confidential and which fully informed Councils overturn as appropriate in the District interest and public interest, and</li><li>• will assume documents relating to a confidential part of a meeting will be confidential and mark them confidential accordingly, which Council can and must be told it can overturn</li></ul> <p>LG Act should:</p> <ul style="list-style-type: none"><li>• presume all LG documents are public records unless otherwise decided by the Act or Council, rather than listing records that are public, which is the wrong approach and inconsistent with LG Act and FOI Act intentions<sup>201</sup></li><li>• when a CEO marks a document confidential it is marked Draft Confidential in recognition that Council can make any record public as it decides in the District and public interests</li><li>• disconnect confidentiality of meeting documents and meeting closure, and require separate resolutions by <i>absolute majority</i> in relation to meetings (or part) and each document (or part) proposed to be kept confidential</li><li>• make it an offence not to disclose a record required to be disclosed in a timely manner, as timely records access is a critically important in risk management and keeping EMs informed so as to carry out their statutory duties effectively<sup>202</sup>.</li></ul>
<b>3.4 Additional Online Registers</b>	<p><u>Submission</u> <b>Agree</b>, provided all current registers<sup>203</sup> are proposed to be retained in the LG Act. All current registers<sup>204</sup> should be required to be on the local government website in a <b>format whose words are searchable</b>. The proposed additional online registers are an important and welcome initiative (if it is not proposed to remove any current registers).</p> <p><u>Lease Register</u>: should include licences, temporary use permits <u>Community Grants Register</u>: should include Donations, Gifts</p>

<sup>201</sup> see **Statement of Principles to Support Proactive Disclosure of Government held Information 24 September 2021** published by all Australian FOI Commissioners

<sup>202</sup> most important aspect of EMs' presence at Council meetings is being a fully informed EM

<sup>203</sup> include Electoral Roll (Voting Rights)(3 Types); Postal Votes; Electoral Gifts (Candidates); Gifts (EMs); Notifiable Gifts (employees); Financial Interests; Tenders; Related Party Transactions; Delegations (4 types); EM Minor Breach

<sup>204</sup> and *all documents* required to be published on LG website



	<p><u>Interests Disclosure Register<sup>205</sup></u>: <i>which collates all disclosures made by EMs about interests related to matters considered by Council</i></p> <p>A Financial Interests Register is currently required by LG Act legislative framework: LG Act s.5.88(2), Admin Regs Reg.28 for declarations of direct and indirect financial interests, and proximity interests of:</p> <ul style="list-style-type: none"> <li>○ EMs to meetings</li> <li>○ CEOs and employee advising or reporting to meetings</li> <li>○ CEOs to mayor/president</li> <li>○ employee delegates to CEO,</li> </ul> <p>so if this <b>proposal relates to EM impartiality interest declarations</b>, it should say so and which standard must also be applied to employees by Employee Code of Conduct as it is for EMs, otherwise a double standard prevails.</p> <p><u>Applicant Contribution Register</u>: Agree, and LG (<i>Administration Regulations</i> Regulation 20B should be repealed so all gifts from Western Australian Local Government Association<sup>206</sup>, Australian Local Government Association Limited<sup>207</sup>, Local Government Professionals Australia WA<sup>208</sup>, a department of the Public Service such as the DLGSC; a government department of another State, a Territory or the Commonwealth or a LG or regional LG are required to be disclosed</p> <p><u>Contracts Register<sup>209</sup></u>: Should include all contracts without <u>any</u> lower or any other limit, and minimum content must be included including, start and finish date, identity of party that approved it (delegate or Council), compliance with procurement policy such as dates and number of quotes obtained<sup>210</sup> by whom, any extension or option possibilities' date, and names of all parties, any interests declarations.</p> <p><u>Additional Reform Proposals</u></p> <p>The following registers should be required to be kept by CEOs:</p> <ul style="list-style-type: none"> <li>• <b>Minor Breach Register</b> must include <i>Serious Breaches</i>, and LG Act must state when EM name can be removed which</li> </ul>
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<sup>205</sup> CEOs currently required to collate and make public current *Financial Interests Registers*, which must include all CEO and EM primary and annual returns, all EM financial declarations made at Council and/or Committee meetings, employee declarations relating to employee delegated authority, and all employee (including contractors) declarations made in relation to reporting or advising Council or Committee meetings

<sup>206</sup> WALGA

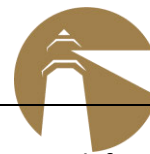
<sup>207</sup> ALGA ABN 31 008 613 876

<sup>208</sup> LGPA ABN 91 208 607 072

<sup>209</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 288 (but who recommends only over \$50,000 value for City of Perth)

<sup>210</sup> EMs can request further information, but names of quotes should not be published





	<p>should be after each LG election, and if EM ceases to be EM, whichever is sooner.</p> <ul style="list-style-type: none"> <li>• <b>Public rezoning, subdivision and development applications register</b></li> <li>• <b>Third Party Meetings Register</b>, where third party any person meeting with employees or EMs, because such meetings cause conflicts of interest</li> <li>• <b>Lobbyists Register</b><sup>211</sup></li> <li>• <b>Political Party Affiliation Register</b></li> <li>• <b>Employee Secondary Employment Register</b></li> <li>• <b>WAEC/Returning Officer Delegations</b><sup>212</sup></li> <li>• <b>Offences Register</b> for current EMs and employees convicted of relevant LG offence in Courts</li> <li>• <b>Employee Minor and Serious Misconduct Register</b></li> <li>• <b>Contractors, Consultants Register</b></li> </ul> <p>It must be at least <i>minor misconduct</i> for a CEO not to keep and publish registers as required, and/or a LG Act offence.</p>
<p><b>3.5 CEO KPIs by Published</b></p>	<p><u>Submission</u></p> <p><b>Agree but not enough</b></p> <p>Why is the Proposal requiring <i>minimum transparency</i>, which is in contravention of LG Act<sup>213</sup>?</p> <p><u>Preferred Reform</u></p> <p>All CEO and Senior employees contracts should be public records, so as to return repealed LG Act s.5.92(t) to the LG Act, noting all employees are paid with public monies and the ratepayers who pay those bills should be able to access employee remuneration arrangements, as essential risk management so those who are interested can check the CEO package compliance with and against the Salaries Tribunal LG Determinations.</p> <p><b>CEO register:</b> DLGSC should be required to keep a public <b>CEO Register</b> of all current and former local government CEOs, Deputy CEOs, Acting CEOs, where they work, worked and when; and for this register to be kept publicly available online on the DLGSC website in a word searchable format, and reported in the <b>DLGSC Annual Report</b>.</p>

<sup>211</sup> ... report reveals perils facing LGs where *lobbying is uncontrolled and unreported*... risk of public officers<sup>211</sup> being diverted from fidelity to public interest (or perceived to be so diverted) because of close personal or political relationships with lobbyists representing private or commercial interests, and assistance or favour or prospect of advantageous exercise of influence by lobbyists to benefit public officer at some time in future: **CCC Report on the investigation of alleged Public Sector Misconduct at the City of Wanneroo 3 December 2009**

<sup>212</sup> LG Act silent about where to record written WAEC/Returning Officer Delegations: LG Act s.4.26

<sup>213</sup> LG Act s.1.3(2)



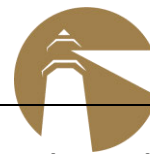
	<p><u>CEO Selection</u></p> <p>In the “Game of Mates” the authors suggest a jury system to appoint LG CEOs<sup>214</sup>, which Councils could adopt to assist them within the current statutory framework, and which the statutory framework could better facilitate.</p>
<p><b>4.1 Community Engagement and Stakeholder Engagement Charters</b></p>	<p><u>Submission</u></p> <p>Which model from which other state is preferred?</p> <p><b>Agree only if:</b></p> <ul style="list-style-type: none"> <li>○ a Model Charter is produced by a disinterested expert , submitted to the DLGSC, advertised for public comment, amended, readvertised and finally gazetted by Governor</li> <li>○ it is <b>categorised as a policy</b> so it is required to be published on local government website</li> <li>○ compliance is enforced against employees, such as in KPIs, Employee Code of Conduct<sup>215</sup>; and departure by employee defined to be <i>misconduct</i> for minor departures, <i>minor misconduct</i> for significant or repeated departures, and serious misconduct and an offence to depart on more than a specified number of occasions,</li> </ul> <p>otherwise it is just more ineffective time wasting paperwork that will gather dust.</p>
<p><b>4.2 Ratepayer Satisfaction Surveys</b></p>	<p><u>Submission</u></p> <p>What is proposed exactly?</p> <p><b>Agree only</b> if it is in an approved standard format as designed by independent disinterested survey experts<sup>216</sup>, advertised for public comment; and endorsed by Council <i>absolute majority</i>, noting survey outcomes are so easily manipulated by those with an interest in the outcome is also in charge of them, such as CEOs.</p> <p>DLGSC should be required to collate and publish in Annual Report, including relevant comparisons between LGs</p>
<p><b>4.3 Introduction of Preferential Voting</b></p>	<p><u>Submission</u></p> <p>What is proposed exactly? Optional or compulsory? It is misleading to refer to majority because there is no compulsory voting</p> <p>The current LG electoral system is just about the most expensive, conflicted, unaccountable system one could envisage<sup>217</sup>.</p>

<sup>214</sup> **Game of Mates** page 163

<sup>215</sup> noting see Tony Power SC from City of Perth Inquiry 2020 recommendations 20 – 27, which recommend combined Code of Conduct for EMs and employees

<sup>216</sup> such Australian Bureau of Statistics

<sup>217</sup> in non-compulsory voting states of Tasmania (59%), SA (33%) and WA (28%), ... compulsory voting states of New South Wales, Victoria, Queensland, and the Northern Territory voters turn out to local government elections at the same high rate as they do in State and Federal elections... WA local government elections in a similar period had 28% turnout, which is lowest in Australia, ie 70% of the eligible population does not vote. It is not a



	<p>Agree with this small <b>improvement, but it should be optional preferential voting</b>, but it is not nearly enough.</p> <p><u>Preferred Law Reform</u></p> <ol style="list-style-type: none"><li>1. Issues in LG elections are widely recognised<sup>218</sup>At present <b>sectoral interests</b><sup>219</sup> and <b>incumbents control or have significant influence in LG election outcomes because voting is not compulsory and because employees have enormous influence in LG elections.</b></li><li>2. Political parties have significant influence already. <b>If it is</b> between sectoral only interest<sup>220</sup>, sectoral <i>and</i> political interests, the latter is preferable.</li><li>3. <b>Optional Preferential voting</b> gives voters most choice, and gives the higher likelihood of most representative outcome</li><li>4. <b>Buildings</b> should not be voting LG elections, only residents vote in state and federal elections and it should be the same in LG elections</li><li>5. <b>Compulsory Voting</b><sup>221</sup> must be introduced because it will drive more interest in local government, mean less influence by sectoral interests and incumbents in outcomes, improve governance and reduce corruption<sup>222</sup>,</li></ol>
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participative democracy, and it does not produce electoral legitimacy or mandate, it is disconnected from the persons of the District who LGs must serve: LG Act s.3.1

<sup>218</sup> QLD CCC examined elections across several QLD Councils, reported integrity issues and made 31 electoral reform recommendations: QLD CCC report **Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government** Operation Belcarra in 2017 . The report into the 2021 Victorian LG elections makes chilling reading: see *Complaints about Victorian local govt elections soar* - Government News. It identified the highest number of complaints related to the contribution, authorisation or distribution of election material, followed next by ... *I don't think this candidate is eligible to run for election* and included complaints about bribery, intimidation or improper influence, misuse of voters' rolls, interference with postal ballots and COVID restrictions' manipulation

<sup>219</sup> including administration employees, CEOs; property developers, mining and pastoral interests who have vested interest in honey pot of LG decision making who should be prohibited from making donations to Candidates: see *The Australian Institute for Progress Ltd v The Electoral Commission of Queensland & Ors* [2020] QSC 54; noting LG election donation disclosure regime should apply the principles articulated by the WA Inc Royal Commission as a benchmark for regulatory reform: **Report on the investigation of alleged misconduct concerning Mr Stephen Lee Mayor of the City of Cockburn**<sup>219</sup> 26 September 2008

<sup>220</sup> where there is no compulsory elections

<sup>221</sup> compulsory voting reduces cost per vote perhaps even so such as 1/6 of cost of each vote; being required to vote every 2 years or preferably all in all out every 4 years, is a very small price to pay for representative democracy. Look where non-compulsory voting has got us. Victoria, New South Wales, Queensland, Northern Territory have LG election compulsory elections voting; SA, WA and Tasmania do not (no LG in ACT); in last LG elections Tasmania was 59% and SA 33%, and between 1995 and 2021 WA LG election voting dropped from 47% to 28% notwithstanding postal voting option, which was adopted to increase voter turnout but has not, and noting WA has lowest voter turnout of all Australian LG jurisdictions in 2021. Abolish postal voting except for those who have PO Boxes, and let's have compulsory optional preferential voting every four years, and no wards in small LGs, and only people vote for mayor/president.

<sup>222</sup> see **Democracy and Its Crisis** by voting and constitutional expert A.C. Grayling



	<p>6. and reduce grey corruption<sup>223</sup>, and lead to more community engagement, all of which will lead to better and endorsed outcomes for a District .</p> <p>7. <b>All in all out every four years</b> should be adopted. Under this system Councils will have an opportunity to work together as a team for 4 years to achieve real reform<sup>224</sup>. How to do that requires 4 year terms because it takes at least 2 years to work out how the system works; employees do not want it because they will face informed united Councils. It will be cheaper in terms of election costs, and less of an imposition on voters.</p> <p>8. <b>Wards</b> should be abolished <u>only</u> in small LGs and prohibited in Regional Subsidiaries, because of the costs of campaigning for independent<sup>225</sup> Candidates in large wards, and because in large LGS independents are more likely to promote the constitutional objects of governing for a locality<sup>226</sup> on behalf of local interests. Some LGs are so large they have different localities within their District. Ward boundaries can and should identify and accommodate these differences. Regional Subsidiaries should be able to hold LG elections together for their participating LGS, provided who you are voting for in each LG is clear, and there is a demonstrable reduction in costs for the LGs; but <b>noting it might be necessary to retain wards for candidate selection so only candidates resident in ward can stand to ensure some voters are not disenfranchised but allowing all electors to vote in all wards</b></p> <p>9. <b>Terms of WAEC election service appointments</b> with LGs to run LG elections need to be standardised and made public, and require a Council <i>absolute majority</i>; and a clear division needs to be established in relation to LG and WAEC responsibilities in conduct of elections including complaints<sup>227</sup></p> <p>10. <b>WAEC improve the adequacy</b> of its practices and procedures in relation to handing and investigating <b>electoral complaints</b><sup>228</sup></p>
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<sup>223</sup> for example reduce number of discretionary provisions in Local Planning Schemes, foster introduction of third party merits review of development approvals

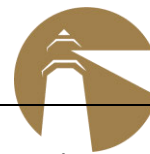
<sup>224</sup> which may pose threat to CEOs and administrations wanting to exert maximum influence on EMs

<sup>225</sup> to be fostered, not hindered

<sup>226</sup> with similar interests

<sup>227</sup> see Tony Power SC from City of Perth Inquiry 2020 electoral recommendation 150

<sup>228</sup> see Tony Power SC from City of Perth Inquiry 2020 electoral recommendation 146



	<ol style="list-style-type: none"><li>11. Repeal LG Act s.4.98 and amend Criminal Code s.94 so <b>Chapter XIV of Criminal Code applies to LG elections</b><sup>229</sup></li><li>12. <b>Limiting or prohibiting any political party, and property developer support</b><sup>230</sup> of LG candidates</li><li>13. <b>It should be a LG Act electoral offence for an employee or incumbent EM to support or oppose</b> LG candidates</li><li>14. <b>It should be a LG Act electoral offence for an employee or incumbent EM to use LG resources to support or oppose</b> LG candidates, with resources clearly defined noting definition of LG <i>resources</i> and <i>property</i> in LG Act framework</li><li>15. <b>Postal voting should be stopped</b> except for electors with a PO Box, but if postal votes continue, it must be required that they can only be sent to address shown on state electoral role<sup>231</sup></li><li>16. <b>Voting</b><sup>232</sup> <b>should take place</b> at public places such as libraries, post offices and LG offices say over a <b>three week period, which is NOT in a school holiday period</b></li><li>17. <b>Electoral Offences</b> must be clearly prescribed to be strict liability offences<sup>233</sup></li><li>18. <b>Returning Officers and Scrutineers need better training</b><sup>234</sup></li><li>19. <b>Court of Disputed Returns</b> decisions must have appeal rights, and require that costs can <i>only</i> be awarded against vexatious litigants<sup>235</sup> . Furthermore, the Magistrate's reasons for decision should be required to be reported, otherwise the CDR common law is secret.</li><li>20. <b>LG Election Report to Parliament.</b> WAEC or similar neutral body should be contracted by DLGSC to provide a report to parliament about each LG election including all LG elections, including issues arising, how electoral officers are employed, how much they are paid and by whom; how many electoral offences were complained of and how many were prosecuted and what the outcomes were; how many complaints were made to the Court of Disputed Returns</li></ol>
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<sup>229</sup> see Tony Power SC from City of Perth Inquiry 2020 electoral recommendation 147

<sup>230</sup> prohibit financial or in-kind support

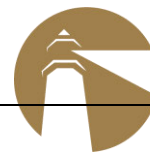
<sup>231</sup> see Tony Power SC from City of Perth Inquiry 2020 electoral recommendation 141

<sup>232</sup> postal voting was introduced to improve LG voting turnout, has not done so; voting in LG election is lowest in WA; something has to be changed to engage electors in LG, which includes making it as easy as possible, and as tamper proof as possible; there is significant evidence of postal ballots being stolen from private letterboxes, which in low turnout elections can have a significant influence in outcomes

<sup>233</sup> so *returning officers* and WAEC **cannot decide not to prosecute** electoral offences

<sup>234</sup> see Tony Power SC from City of Perth Inquiry 2020 electoral recommendation 153

<sup>235</sup> current system weighted heavily against in-person complainants, especially where WAEC is opposing and represented by State Solicitors Office threatening costs application against complainants; there are no precedents because Magistrates Courts decisions are not reported and there are no appeal rights; so common law is known only to WAEC and SSO



	<p>and what the outcomes were; costs of elections; governance arrangements between WAEC and LGs in respect of elections run by WAEC. At present LG elections are not all free, fair or accountable<sup>236</sup>, nor are trends identified or managed. This report should be included in the next <b>DLGSC Annual Report</b>.</p> <p><b>21. Prohibit non-resident occupiers from voting or standing as candidates<sup>237</sup></b>, or in the lesser alternative if buildings continue to vote, only one officer of body corporate should be permitted to vote<sup>238</sup>; occupiers must be paying rent occupying floor space, using property for genuine purpose; or prohibit non-residents from voting or nominating as candidates<sup>239</sup></p>
<b>4.4 Public Vote to Elect Mayor or President</b>	<p><u>Submission</u> <b>Agree</b> All Mayors and Presidents should be publicly elected in a system of compulsory elections every four years<sup>240</sup>. This will mean the mayor owes no allegiances, is elected by whole of the District. A publicly elected mayor can be a significant driver of institutional change.</p> <p><u>In the alternative</u> if this is not adopted the EM vote for Mayor should never be secret and never conducted by the CEO.</p> <p><u>Additional Submissions</u></p> <ul style="list-style-type: none"> <li>• Mayors should only speak for LG with Council permission once Council has adopted a position on the issue</li> <li>• CEOs and employees should never speak for or on behalf of LG, and the LG Act should prohibit it.</li> <li>• CEOs and employees should be prohibited from making submissions in their employed capacity including a prohibition against making submissions on behalf of or representing the LG, and it must be an offence to do so.</li> </ul>
<b>4.5 Tiered Limits on Number of Councillors</b>	<p><u>Submission</u> <b>Agree to limit Cr numbers based on population</b> <u>Additional Preferred Law Reform</u> 1. Upper limit should be <b>13 CRs</b> not 15 CRs</p>

<sup>236</sup> see electoral manipulation reported in City of Perth LG Inquiry Report 2020;

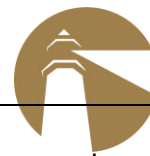
<sup>237</sup> see Tony Power SC from City of Perth Inquiry 2020 electoral alternative recommendation 144

<sup>238</sup> see Tony Power SC from City of Perth Inquiry 2020 electoral recommendation 140

<sup>239</sup> see Tony Power SC from City of Perth Inquiry 2020 electoral recommendation 141- 145

<sup>240</sup> this will disadvantage under-resourced candidates against well-resourced mayoral candidates in large LGs, which can be resolved by restricting total electoral expenditure and donations including in-kind donations to an upper limit; and prohibiting political party, property developer and real estate money and in-kind donations





	<p>2. Employee costs<sup>241</sup> are much more than Cr costs<sup>242</sup>. There must be <b>an upper limit of employee numbers</b> mandated as % of LG expenditure, and through the LG Salaries Tribunal bands.</p> <p>3. Small LGs, especially rural and remote LGs might have <b>difficulty with quorums</b> with lower Cr numbers, and this should be taken into account say by an appeal process that would allow ministerial approval for EMs to appear by electronic means for a limited number of Council meetings and any number of Committee meetings, ability to appear electronically such as by zoom and by allowing EM to nominate proxy or deputy Crs to stand in for say up to 3 Council meetings a year.</p> <p>4. <b>Tiers should match up</b> with Salaries and Allowances Tribunal bands, which should be increased in number<sup>243</sup>.</p>
<b>4.6 No Wards for smaller Councils</b>	<p><u>Submission</u> NB: The correct term here is <i>District</i> not <i>Councils</i> <b>Agree</b> that there should be no wards for smaller Councils<sup>244</sup> subject to addressing concerns articulated above, and no wards for Regional Local Governments or for Regional Subsidiaries</p> <p><u>Additional Preferred Reform</u></p> <ol style="list-style-type: none"> <li>1. Where LGs Districts are too big, boundaries should be reset because they are unlikely to satisfy the constitutional</li> <li>2. requirement of governing a locality, noting Royal Commissions held in into LG boundary resetting<sup>245</sup>.</li> <li>3. Manipulating nominations in wards circumvents LG Act electoral intentions<sup>246</sup>, and obstructs the tenets of a representative democracy.</li> <li>4. Will mean less costly elections, and more democratic representation of persons of District</li> </ol> <p><i>Case Study</i> There are more nominations than vacancies, but no-one has nominated in one ward. At last minute one nomination is lodged in vacant ward, nominee is elected unopposed without a vote. This possibility should not be any part of a representative democracy.</p>
<b>4.7 Electoral Reform - Clear Lease Requirements</b>	<p><u>Submission</u> <b>Agree, but this is not nearly enough to deliver representative democracy in LG.</b></p>

<sup>241</sup> approx., 23,973 in 2020

<sup>242</sup> approx. 1,154 Crs in 2021

<sup>243</sup> current bands make costs of CEOs too high for small and rural, or mendicant local governments, which means nearly all rates are acquitted on operational employee costs, and little on capital works for a District

<sup>244</sup> say 30,000 residents or less in a LG

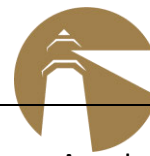
<sup>245</sup> *Royal Commission Metropolitan Municipal Boundaries 1973/1974; Royal Commission Metropolitan Municipal Boundaries 1949*

<sup>246</sup> LG Act Part 4 generally; s.4.2(1)(a), LG Act s.4.5, s.4.6, s.4.60



	<p><u>Better Law Reform</u></p> <ol style="list-style-type: none"> <li>1. Buildings should NOT VOTE in LG elections<sup>247</sup>, only residents should vote as is the case in state and federal elections and other countries with representative democracies.</li> <li>2. Building do not vote in state or federal elections.</li> <li>3. LG Act must make clear only one Vote in a LG election, and not multiple votes depending on how many buildings owned, so if an elector lives in and owns other buildings in a District, they cannot vote more than once.</li> <li>4. <b>ONLY permanent residents who are on state and electoral roll for a District</b>, as defined, should be permitted to be EM candidates for Council in that District.</li> </ol>
4.8 Reform of Candidate Profiles	<p><u>Submission</u></p> <p><b>Agree with review of Candidate Profile reform</b></p> <ol style="list-style-type: none"> <li>1. Recent photo MUST be required, say not less than 6/12 old.</li> <li>2. Residential address for the Candidate must be included but not the house number unless, where there are wards, the Candidate does not live in the ward in which they are standing.</li> <li>3. Formatting should be permitted, such as bullet points etc</li> <li>4. Limit profile by length and number of lines only, not by word numbers</li> <li>5. Returning Officers should not have discretion about what to refuse or accept in a profile, especially as CEOs sometimes RO, and are often conflicted/self-interested in outcome. There must be clear statutory grounds for content refusal and appeal to WAEC where refused.</li> <li>6. Must be strict liability electoral offence to lie or mislead voters in a candidate profile</li> <li>7. Must require to be only content about Candidate, not others, not other things, it is not an electioneering pamphlet, it must be clearly an information about the Candidate.</li> <li>8. Requirement to disclose political party affiliation, membership, all organisations' memberships on Candidate profile</li> <li>9. <b>Candidates who are not residents, or who are real estate agents or part of the property development industry or employees of same; or pastoral or mining industry in areas</b></li> </ol>

<sup>247</sup> LG voting entitlement must be based on WAEC electoral rolls, with basis of enrolment being *only* residency. LG electoral franchise is at odds with modern democratic processes, with **property franchises** abolished at state/colonial level in WA in the 1890s and nationally in 1902; property franchise reduces residents' influence in election and electors' meeting outcomes, and is fundamentally unfair and wrong, and unrepresentative



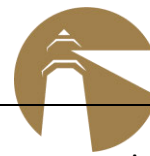
	<p><b>where those industries are operative</b> should be prohibited from being EM candidates<sup>248</sup>; and in the lesser alternative the LG Act should require disclosure on their Candidate Profile including disclosure of being a close associate of a real estate agent or property developer</p>
<p><b>4.9 Other Electoral Reforms</b></p>	<p><u>Law Reform</u></p> <ol style="list-style-type: none"> <li>1. WAEC electoral appointments/contracts should only be adopted by Council <i>absolute majority</i> in public meeting.</li> <li>2. All election costs including resourcing and employee costs relating to an election must be publicly reported to Council and allocated in a specific budget line item</li> <li>3. CEOs and all other employees must be prohibited from being any part of any LG election practice or procedure, because they are conflicted</li> <li>4. Marked Electoral Rolls must be provided for public inspection on request, especially be persons doubtful about accuracy relating to their own or others' votes</li> <li>5. Postal Ballots must be collected and kept by Post Office and delivered on the day of the poll, and all outer ballot paper envelopes must be required to be opened <b>only</b> in front of scrutineers</li> <li>6. A continuous count must be publicly displayed throughout all election counts</li> <li>7. Councils must be authorised to appoint an approved polling body to conduct an election through a strictly regulated procurement or tender process<sup>249</sup>, other than WAEC<sup>250</sup>; and prohibit CEOs from running elections</li> <li>8. All electoral offences must be prescribed to be strict liability offences to stop the current practices of ROs or WAEC contractor choosing not to prosecute electoral offences<sup>251</sup>. See proposed reform of Court of Disputed Returns elsewhere in this submission.</li> </ol>
<p><b>5.1 Introduce Principles in the Act</b></p>	<p><u>Submission</u></p> <p><b>Agree</b> that this appears on the face of it to be a good initiative.</p> <p><u>Better Law Reform</u></p> <p><b>Objects</b></p> <ol style="list-style-type: none"> <li>1. However principles should be called <b>Objects</b> to ensure they are used effectively and applied in matters of statutory</li> </ol>

<sup>248</sup> management of enormous range conflicts of interest is very difficult if not impossible, and accordingly not observed or implemented, which ban has been recently passed by NSW Upper House 24 June 2021, and awaits Lower House decision

<sup>249</sup> which cannot be WALGA preferred provider, or WALGA

<sup>250</sup> to foster cost effective well run elections

<sup>251</sup> which makes it unfair for compliant candidates and gives non-compliant candidates an electoral advantage



	<p>interpretation and good governance implementation of the LG Act framework<sup>252</sup> requirements.</p> <p><u>Further Law Reform</u></p> <ol style="list-style-type: none"> <li>2. There are other objectives that must be addressed in the Act objectives</li> <li>3. The Panel Recommended objectives were insufficient<sup>253</sup>.</li> <li>4. The LG Act must be amended to add LG Act s.1.3A <i>The rights and interests of Indigenous Traditional Owners shall be recognised and the sustainable delivery of local government decision making and services must be in harmony with those rights and interests</i><sup>254</sup>.</li> <li>5. An LG Act objective must be added to LG Act s.1.3(1) to provide that any advice or information presented to Council is for the purpose of placing Council in a position to make fully informed decisions when it approves or authorises a matter or action. <i>Informed consent must be defined in the LG Act to mean a permission or approval is granted in full knowledge of all the relevant factors, objections, possible consequences and the possible risks and benefits, and current and future budget impacts and that the Meeting Procedure Local Law must require that the agenda includes all relevant information provided to any or all EMs<sup>255</sup> outside the Council meeting about any agenda item<sup>256</sup>, so</i></li> </ol>
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<sup>252</sup> all laws, including all subsidiary legislation, providing powers and duties on any part of LG

<sup>253</sup> **The Panel** objectives recommendations were commendable but not sufficiently specific or strong enough and did not address the fundamental impediments to effective implementation of the LG Act framework. The Proposals, regrettably, are even weaker. The Panel recommendations were:

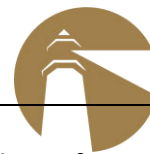
*To ensure the system of local government is sustainable, accountable, collaborative and capable, councils should:*

1. *Provide democratic and effective representation, leadership, planning and decision- making;*
2. *Be transparent and accountable for decisions and omissions;*
3. *Be flexible, adaptive and responsive to the diverse interests and needs of their local communities, including the traditional owners of the land;*
4. *Consider the long term and cumulative effects of actions on future generations;*
5. *Ensure that, as a general rule, all relevant information is released publicly, readily available and easy to understand;*
6. *Provide services in an equitable manner that is responsive and accessible to the diverse needs of the community;*
7. *Seek to continuously improve service delivery to the community in response to performance monitoring;*
8. *Collaborate and form partnerships with other councils and regional bodies for the purposes of delivering cost-effective services and integrated planning, while maintaining local representation of communities and facilitating community benefit; and*
9. *Participate with other councils and with the State and Federal government in planning and delivery of services, setting public policy and achieving regional, State and Federal objectives.*

<sup>254</sup> see for example, *Local Government Act 2019* (NT) s.5

<sup>255</sup> even if all EMs know some information or advice, does not mean Council knows that information, Council knows information *only if* it is in agenda or stated to Council meeting, recorded in minutes

<sup>256</sup> CEOs must be required to include in agendas and minutes any questions put to any person and answers about a meeting agenda item, especially all those questions to Briefing Forums, Agenda Forums or workshops, public question time



	<p>the community knows all the information on which a Council bases its decisions, and that the advice to Council is full, complete, and not misleading, not dishonest and without any relevant omissions; and must include all previous Council decisions relevant to the substance of the matter.</p> <p>6. An amendment must be made to LG Act s.1.3(2)(b) to add the words, <i>constructive and effective</i> so as to provide, <i>greater constructive and effective community participation in the decisions and affairs of local government.</i></p> <p><i>LG Act Intentions</i></p> <p>Intentions must be amended to be characterised as <i>objectives</i> to ensure their high regard is given in interpreting and applying the LG Act provisions and must include as follows:</p> <ol style="list-style-type: none"><li>1. Amendments must be made to LG Act s.1.3(2)(c) to enhance greater LG accountability to their communities to provide ... <i>including a presumption that all LG records and information are a publicly accessible in a timely way unless otherwise expressly resolved to be confidential by Council, courts or written law.</i></li><li>2. An amendment must be made to LG Act s.1.3(2)(d) to include <i>productive</i> that is, to provide, <i>more efficient, resident focussed effective and productive local government governing in the public interest of the District</i></li><li>3. A fifth objective/intention must be added to LG Act s.1.3(2) to provide s.1.3(2)(e) ...<i>democratic<sup>257</sup> principles of the Westminster system being fostered and applied<sup>258</sup></i></li><li>4. A sixth objective/intention must be added to LG Act s.1.3(2) to provide s.1.3(2)(f) ... <i>local governments with integrity through the imposition and enforceability of high standards of ethical conduct on Council and Committee members; CEO, employees and contractors; and the DLGSC public servants assisting the Minister in administration of the LG Act framework, having highest regard and weight to recommendations from any</i></li></ol>
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<sup>257</sup> for example, there is requirement for *democracy* in Northern Territory: *Local Government Act 2019* (NT) at Part 1.2

<sup>258</sup> Martha Nussbaum (1947-present) ***Not for Profit: Why Democracy Needs the Humanities*** 2016 Princeton University Press, noting some commentators argue democracy doesn't work without *love* and *compassion*, which is sorely missing in some LG cultures



	<p>5. <i>external independent local government oversight bodies</i><sup>259</sup></p> <p>6. A seventh objective/intention must be added to LG Act s.1.3(2) to provide LG Act s.1.3(2)(g) .. <i>all decisions are the correct</i><sup>260</sup> <i>and preferable</i><sup>261</sup> <i>decision observing community aspirations, reasonableness, procedural fairness, natural justice and satisfaction of the legitimate expectations of the recipient of an administrative decision</i></p> <p>7. An eight objective/intention must be added to LG Act s.1.3(2) to provide LG Act s.1.3(2)(h) ...<i>to ensure cost effective free, fair and accountable elections free of bias, conflicts of interest and electoral manipulation</i></p> <p>8. A ninth objective/intention must be added to LG Act s.1.3(2) to provide LG Act s.1.3(2)(i) ... <i>to minimise biodiversity loss and cumulative habitat destruction and fragmentation, and to acknowledge the importance of adaptive planning to respond to climate change, extreme weather, wildfire events and invasive species, and to apply the precautionary principle in all decision making</i></p>
5.2 Greater Role Clarity	<p><u>Submission</u></p> <p>The roles of EMs and employees are abundantly clear, and there is no need to <i>better define</i> them<sup>262</sup>.</p> <p><b>STRONGLY DISAGREE</b></p> <ol style="list-style-type: none"> <li>1. The “roles” of CEOs and other Employees are abundantly clear and <b>MUST NOT BE TAMPERED WITH</b><sup>263</sup>.</li> <li>2. Any attempt to remove any power or role from Council and EMs to transfer them to employees will create constitutional objections, and cause costly litigation</li> <li>3. Councils hold all local government governing powers, and are the only LG body constitutionally empowered to be the repository of local government governing powers.</li> <li>4. Councils are constitutionally required to be comprised of Elected Members</li> </ol>

<sup>259</sup> there is no specific constitutional obligation for LGs to act in *public interest*, so it needs to be embedded in LG Act objectives

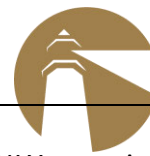
<sup>260</sup> meaning according to law, lawful

<sup>261</sup> meaning according to merits of circumstances, generally paying due regard to and applying all relevant consideration and not paying regard to irrelevant considerations Relevant considerations include facts, evidence, petitions, submissions, previous relevant reports to Council, previous relevant Council resolutions and any relevant lawfully adopted public policy

<sup>262</sup> poorly understood or ignored by those who should know better

<sup>263</sup> distinction between governance and operational matters is false dichotomy created by some LG CEOs to create the false illusion of 2 separate arms of WA local government, see WA CCC **Report On a Matter of Governance at the Shire of Dowerin** 10 October 2016

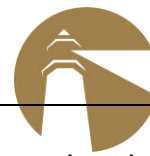




	<p>5. Elected Members are the <b>ONLY</b> constitutionally required element of LG</p> <p>6. Elected Members current statutory roles properly require and facilitate them to be informed and vote impartially, and no change is required.</p> <p>7. Elected Members need more support from LG Minister and DLGSC, and more resources especially minority EMS</p>
<b>5.2 Local Government</b>	<p><b>Local Government Bands</b></p> <p>The <b>Salaries Tribunal allocation of 4 bands has seen an unacceptable blow out</b> of CEO and senior employee remunerations beyond capacity of many LGs to pay and without resulting improvement in qualifications and suitability. The LG Act must <b>regulate the number of bands</b> say expanded to 8-10<sup>264</sup> and must regulate the criteria for the bands, which must include qualifications and experience, and absence of crimes and serious misconduct.</p> <p><u>Submissions</u></p> <p>The LG Act must make it an offence for a CEO or employee to make <b>any</b> submission on LG letterhead or purporting in any way to be from the LG without the express authority of the absolute majority of Council<sup>265</sup>, and which has first been advertised to electors; including to the Salaries and Allowances Tribunal. The Salaries and Allowances Tribunal should be required to load all submission onto its website; and well before it makes a LG Determination decision.</p>
<b>5.2.1 Mayor President Role</b>	<p><u>Submission</u></p> <p>It is legally wrong to assert that Crs have a role in oversight of service delivery, operations or LG functions. This is Council's role and reveals a fundamental misunderstanding of the nature of LG by the author of the Proposals.</p> <p><b>Disagree</b></p> <p>The Act already identifies role of Mayors and Presidents, and should not be changed, other than to identify the impartial nature required of a Presiding Member in making casting vote and <i>running</i> meetings.</p> <p>Mayors/Presidents have no executive powers, except perhaps their CEO liaison power, quite properly have the same legislative restrictions placed on their ability to direct staff or interfere in administrative matters as do EMs.</p> <p><u>Better Law Reform</u></p> <p>It must be the <b>clear statutory responsibility</b> for the Mayor (or <b>presiding member</b> of any meeting which has public question time) to be <b>responsible for answering accurately and fully any</b></p>

<sup>264</sup> with **NO increase** in range allowed in top bands

<sup>265</sup> so it cannot be delegated

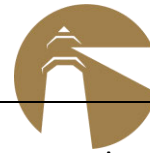


	<p><b>public question</b> asked at public question time, answering the question at the meeting if 48 hours' notice was given, and for it to be a reportable <b>minor breach</b> if a public or EM question is not fully answered at the meeting it was asked, and to be a minor breach if the Presiding member with an interest in the subject matter of the question does not refer the answer to the question to the next most senior EM without any interest. Leadership programs or executive coaches<sup>266</sup> should be established for Mayors<sup>267</sup>.</p>
<p><b>Roles, CEO Remuneration EM Payments</b></p>	<p>The <i>Salaries and Allowances Tribunal</i> considers sections 2.7 to 2.10 and 5.41 of the LG Act, which outlines the roles and responsibilities of local governments, councillors, mayors, presidents and their deputies and the functions of local government Chief Executive Officers (CEOs)<sup>268</sup>. I submit that the LG Act can require the Tribunal to consider various factors when deciding CEO remuneration and EM payments, and bind the Tribunal in relation to some matters <b>Accordingly, the Proposals in changing in these roles and functions may influence CEO remuneration (upwards) and EM payments (downwards)</b></p> <p><b>Furthermore, given the Salaries and Allowances Tribunal constraints against making productivity, qualifications and experience as relevant factors in LG Determinations, the LG Act and/or Salaries Act should be amended to:</b></p> <ul style="list-style-type: none"> <li>• Require LG Determinations only every two years</li> <li>• Require the Tribunal to only use state CPI for any indexation that is applied</li> <li>• Require LG Determinations to be approved by the responsible Minister (Currently the Premier) and LG Minister</li> <li>• Require a report and recommendations from the WA OAG about LG Determinations</li> <li>• Require CEO band criteria to include CEO qualifications, experience and history in remuneration levels</li> <li>• Require productivity to be band criterion</li> <li>• Require the LG culture to be a criterion</li> <li>• Require a CEO remuneration package to be not more than a stated percentage of the municipal funds expenditure, and operational expenditure</li> </ul>

<sup>266</sup> who are **NOT** former CEOs or employees

<sup>267</sup> See Tony Power SC from City of Perth LG Inquiry Report 2020 Recommendations 38 – 46

<sup>268</sup> Salaries and Allowances Tribunal LG Determination 2021, Preamble considerations, at para.4



	<ul style="list-style-type: none"><li>• Require that alone LG CEO remuneration levels should never be higher than a WA Minister of State<sup>269</sup></li><li>• Publication of the LG Determination process and procedure</li><li>• Publish a LG Determination submissions protocol on the Tribunal website</li><li>• Required the submission period and advice to be emailed directly to every EM, and not just to CEOs, and to be published in the Council agenda</li><li>• Require all submissions on a LG Determination to be published on the Tribunal website as they are received</li><li>• LG CEO Determination does not apply to acting CEOs and that this is a decision for Council <i>absolute majority</i></li><li>• Require consideration of the hours undertaken for professional development under sitting fees, and that a further allowance be granted for that purpose<sup>270</sup></li><li>• Set categories and caps on permissible EM allowances or entitlements by amendment to LG Act s.5.98<sup>271</sup></li><li>• Restrict amount and categories of permissible EM expenses' reimbursements<sup>272</sup>, and requiring that the <b>sole purpose</b> of the expenditure is for proper discharge of EM role<sup>273</sup></li><li>• Require declaration or reimbursements on a public register<sup>274</sup></li><li>• Any medical expenses incurred while on Council or LG business away from usual place of residence is paid for the LG</li><li>• Establish a standardised CEO professional leadership competencies for each classification band<sup>275</sup>, and establish guidelines of their use<sup>276</sup>, all of which are publicly available on the LG website<sup>277</sup></li><li>• Establish model standard format for CEO performance and development agreements and assessments<sup>278</sup></li><li>•</li></ul>
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<sup>269</sup> Germany and the Netherlands have adopted such a rule; noting that at time of writing *Game of Mates* over 230 senior Australian government employees earned more than Prime Minister

<sup>270</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 53

<sup>271</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 93

<sup>272</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 94

<sup>273</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 95

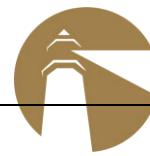
<sup>274</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 97

<sup>275</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 105

<sup>276</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 106

<sup>277</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 109

<sup>278</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 121



	<ul style="list-style-type: none"> <li>Amend the Salaries and Tribunal Act s.7A from <i>paid or provided</i> to <i>offered, paid or provided</i> <sup>279</sup></li> <li>Amend the LG Admin Regs Reg 18F to replace <i>paid</i> with <i>paid or offered</i><sup>280</sup>;</li> </ul> <p><b>And,</b> the Minister should be required by LG regulation to make a <i>Statement of Expectations and Statement of Intent</i> about LG Determinations to the Tribunal, which draft should be published for public comment so as to give policy statement to the Tribunal about the government's intentions in respect of CEO remuneration and EM payments.</p>
<b>5.2.2 Council role</b>	<p><u>Submission</u> <b>Disagree</b> <b>No change is needed</b><sup>281</sup>, and no evidence is provided to suggest any change is necessary. <u>All</u> decision making powers is constitutionally vested in the governing body, which the LG Act provides to be called Councils. This cannot be lawfully or constitutionally changed and there is no need and no evidence for any need. Where a delegation has lawfully occurred, this is not a devolution of power; it is delegation of the exercise of the power, which is a distinction that must be clearly understood. Council already has the role of CEO and administration oversight<sup>282</sup>. That local governments are not safe workplaces for EMs and employees is completely the fault of the LG Minister<sup>283</sup>, DLGSC<sup>284</sup> for not undertaking their oversight roles effectively and not providing confidential<sup>285</sup> expert legal support for EMs on request, and for EM training not being adequate<sup>286</sup> and being delivered by ex-CEOs in some circumstances; and for WorkSafe legislation not clearly defining LG a workplace for EMs so they are protected<sup>287</sup>, and for EO Commissioner and WorkSafe liaising with CEOs and not EMs in matters of EM or</p>

<sup>279</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 136

<sup>280</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 137

<sup>281</sup> only Councils have power to make decisions. Councils can delegate exercise of their powers but they and state parliament cannot constitutionally or lawfully cause a LG governing power to reside in an administrator

<sup>282</sup> LG Act s.2.7

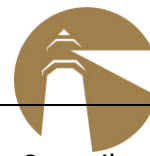
<sup>283</sup> for not applying LG Act s.9.13A when requested

<sup>284</sup> for not performing its regulatory role: see OAG report

<sup>285</sup> advices are often wrong, or EM told to seek their own advice which they cannot afford; and EMs' request for support is sometimes leaked back to their CEO with sometimes enormous mental health harm impacts for the EM

<sup>286</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation for independent training, at recommendations 1,4,5, 6, 8, 9

<sup>287</sup> especially from bullying



	<p>employee bullying and leaving Councils out of the loop altogether; and for example the DLGSC and the PSC not prohibiting and disciplining CEOs from making settlements that are not authorised to make<sup>288</sup>.</p>
<p><b>5.2.3 Elected Member (Councillor Role)</b> <sup>289</sup></p>	<p><u>Submission</u>  <b>There is NO need to clarify EM roles and responsibilities</b><sup>290</sup> and no evidence is provided to suggest any change is necessary.  <b>Disagree</b>  It is the CEOs' function to provide a culture of safe working environment for employees, and they should be disciplined for not doing so.  A LG culture is CEO responsibility<sup>291</sup>.  <b>Agree</b> re EM title use<sup>292</sup> but the restriction should also apply to CEOs and employees, and employees should be referred to as employees <i>not officers</i>, unless LG Act designates a particular position with officer in the name.  All EMs and all employees are <i>public officers</i>, but EMs are President/Mayor and Councillors, and employees are employees.  <u>Better Law Reform</u>  There must be a safe working environment for EMs, especially minority EMs, which it currently is NOT in many LGs.  <b>WorkSafe legislation</b> must be amended to include protection of EMs, including from bullying by employees or other EMs.  One important change that <b>MUST</b> be made is to make it a LG Act <b>offence</b> and <b>Criminal Code crime</b> to:  <ul style="list-style-type: none"> <li>○ lie to or mislead an EM or Council</li> <li>○ refuse any local government record to an EM on request</li> <li>○ refuse any local government record to an EM on request in a timely manner,</li> </ul> because <b>EMs two most important roles</b> are:  <ul style="list-style-type: none"> <li>○ making unbiased fully informed decisions without fear or favour</li> <li>○ being fully informed before making a decision.</li> </ul> This is not possible at present because CEOs refuse to give, or require to be given by other employees, records and</p>

<sup>288</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 about settlements

<sup>289</sup> EMs powers to direct employees/interfere with administrations was part of the impetus for the adoption of LG Act in 1995. This was a legitimate and constitutionally compliant objective, which constitutionally CANNOT be applied to Councils, being EMs' collective. CEOs cannot be the repository of a Local Government power. Conversely Councils can direct CEOs in the exercise of any administrative function, duty, authority or agency

<sup>290</sup> quite clear in LG Act s.2.10

<sup>291</sup> **Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts [2020] WASC 350** para.142

<sup>292</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation for independent training, at recommendation 87

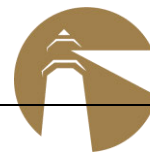


	<p>information to EMs and electors; and often provide deficient reports to Councils<sup>293</sup>.</p> <p><b>There needs to be required <i>Reporting to Council</i> templates, required by Meeting Procedure Local Laws.</b></p> <p><u>MORE Essential Law Reform</u></p> <p>EMs and employees who have a conflict of interest should not be participating in meeting decision making, and the LG Act must be amended to authorise an EM not to participate in a meeting if they have a conflict of interest that is not financial or proximity interest, rather than current provision which make it an offence not to participate in such circumstances<sup>294</sup>.</p> <p>Amend WorkSafe Act to include local governments as a workplace of Elected Members, and Lobbyist Act to apply to LG lobbyists; make another person the LG FOI Act Principal FOI Officer, not make an employee the PID Officer, not allow CEOs to be electoral Returning Officer or Principal FOI Officer, and make it clear that a complaint can be made to police about LG Act offences.</p>
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<sup>293</sup> such as full of opinion and unsubstantiated assertions, rather than necessary facts

<sup>294</sup> see *Dain* which has left EMs in an **impossible situation** in absence of law reform; means they cannot vote if they have a conflict of interest but they can only not vote if they have a direct or indirect financial or proximity interest: see LG Act s.5.21(2); ***Dain v Shire of Peppermint Grove [2019] WASC 264***; and see Tony Power SC from City of Perth LG Inquiry Report 2020 see Recommendations 69 – 77





<p><b>5.2.4 CEO Role</b><sup>295 296 297</sup> 298</p>	<p><u>Submission</u></p> <p><b>Disagree</b></p> <p>CEOs are administrators and have only <i>administrative functions</i>, that is why they are regulated under LG Act <i>Part V Administration</i>. Matters identified in list in the Proposals are already in LG Act or Regulations</p> <p>The LG Act should expressly require CEOs to comply with their duty of fidelity to Council, and administer LGs under Council direction using CEO's statutory functions for those purposes only.</p> <p>The LG Act clearly outlines CEOs functions, it is just that many CEOs ignore their fiduciary obligations, functions and duties without fear of anyone or anything, which is entirely the combined fault of successive Councils, LG Ministers and DLGSC, and EM training.</p> <p>CEOs ONLY oversight role is of the other employees, contractors, in compliance with court and Tribunal orders, the</p>
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<sup>295</sup> legislative framework around CEOs *role* poses number of impediments to LG good governance and embed conflicts of interest including:

- the CEO being responsible for LG records, also being responsible for access to public records and being the principal FOI officer under the FOI Act, and thus controlling the release of LG records that might show the CEO in a poor light.
- no requirement for financial management experience or qualifications in CEOs (or EMs)
- no requirement for demonstrable leadership skills in CEOs (or EMs)
- no measurement or reporting of the use of contractors and consultants required to fill knowledge gaps
- no requirements within LGs about salary settings in relation to the LG budget, other than non-binding LG Act s.5.40 employee principles
- no lobbying controls
- no CEO secondary employment controls
- no requirements about EM training to include CEO performance management (WALGA delivers the EM training for which it is paid large sums of public monies), which in LGEMA members' experience is fear based training deficient in areas of importance in CEO performance management)
- no CEO post separation employment controls
- CEOs being returning officers where they have a vested interest in an electoral outcome
- CEOs not required to keep vehicle travel logs
- CEOs not required to employ persons with the skills needed by their LG
- no apparent statutory consequences for a breach of Tribunal LG Determinations
- CEO control of who is prosecuted for offences under the LG Act, including offences by the CEO

<sup>296</sup> Proposals ignore constitutional constraints on parliament's lawful enactment powers. CEOs are administrators with functions and duties, not holders of powers. CEOs exercise powers at Councils will such as under delegation, budget or through Policy . CEOs do not hold those powers, they exercise them.

<sup>297</sup> current LG Act is clearer, more concise and should not be changed, other than to make it enforceable. LG Act s5.41(b) restricts CEOs to providing advice to Council. Changing this provision to authorise advice to EMs is welcomed provides every advice is circulated to all EMs. If implemented as proposed, it removes CEO function to provide advice and assistance to council and replaces it with function owed to EMs responsibilities for all councillors.

<sup>298</sup> any permanent transfer of powers from the elected governing body to unelected bureaucrats is arguably unconstitutional, and dangerous



	<p>LG Act, other written laws, Council direction and policy, and PSC direction.</p> <p><u>Better Law Reform</u></p> <p>CEOs should be expressly required to be qualified and competent.</p> <p>A model CEO contract must be adopted by LG regulation<sup>299</sup>.</p> <p>The <b>fundamental current Local Government flaw</b> is that many CEOs do not comply with the LG Act in spirit or in law, and do not require the LG employees to do so without fear of any consequence because when Local Governments go really pear shaped, Councils not CEOs are suspended or terminated.</p> <p><b>CEO Suspension:</b> Whenever a Council is suspended or terminated, the CEO should be suspended until it is clear whether or not the CEOs have clearly advised Councils of their role and obligations.</p> <p><b>Offences:</b> LG Act must be amended to include a general offence provision for breach of specific requirements of Act, such as records access obligations and litigation functions, to motivate all employees to comply.</p> <p><b>Employee Code of Conduct</b> Must have a time within which they must be in place, must bind CEOs, and must require Council endorsement.</p> <p><b>Employee Code of Conduct Local Law:</b> If it is good enough to enforce a code of conduct against EMs by a local law, it must be good enough to enforce a code of conduct against employees by a local law.</p> <p>DLGSC should make a Model <i>Employee Code of Conduct Local Law</i>, and give Conduct Panel power to hear breaches of Employee Code of Conduct Local Law;</p> <p><b>OR preferably the Code of Conduct should be combined into one for Employees and EMs, and enforced in the same for both<sup>300</sup>, embracing principles integrity, diligence, fairness, service, transparency and accountability<sup>301</sup>, and which mandates compliance with standards the community expects from public officers, namely to act in the best interest of the community with reasonable care and diligence, and with honesty, integrity and transparency having regard to relevant factually correct information<sup>302</sup>, with any sanction for breach of the Code commensurate with the breach<sup>303</sup></b></p>
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<sup>299</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 104

<sup>300</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 20

<sup>301</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 21

<sup>302</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 22

<sup>303</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 26



	<p><b>A breach of CEO Functions</b><sup>304</sup> should be defined to be at least minor misconduct and in some circumstances serious misconduct.</p> <p>CEOs must satisfy a list of <b>minimum competencies</b><sup>305</sup></p> <p>CEOs must be measured against a <b>sector wide format for performance measurement</b><sup>306</sup></p> <p><b>CEO termination and summary termination criteria must be clearly regulated</b><sup>307</sup></p>
<p><b>5.3 Council Communication Agreements</b><sup>308 309 310</sup></p>	<p><u>Submission</u></p> <p>The LG Act is quite clear about what information is required to be provided to EMs, but many CEOs ignore the LG Act with impunity.</p> <p>The most important EM role is to be informed and to arrive at meetings fully informed. CEOs and employees are responsible for providing access to records and information, and comprehensive reports to Council; so as put EMs in a fully informed position. ANYTHING that a CEO or employee does to hinder this must be a LG offence; especially breach of LG Act s.5.92 requirements, and role as FOI Act Principal Officer<sup>311</sup>.</p> <p><u>Better Law Reform</u></p> <p>LG Act needs to make mandatory an <b>Access To Records and Information Policy</b> under existing framework with minimum prescribed content, and back this up with amendments to prescribed content of Employee Codes of Conduct to require</p>

<sup>304</sup> especially but not limited to LG Act s.5.41 functions

<sup>305</sup> see Tony Power SC from City of Perth Inquiry 2020 minimum competency recommendations 104 - 115

<sup>306</sup> see Tony Power SC from City of Perth Inquiry 2020 performance measurement recommendations 121 – 132

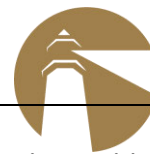
<sup>307</sup> see Tony Power SC from City of Perth Inquiry 2020 CEO employment termination recommendations 133 – 139

<sup>308</sup> EMs accessing to records is clearly dealt with by LG Act s.5.92, which is often *honoured in the breach* by employees, without any consequences

<sup>309</sup> CEOs are the *keepers* of LG records all official records, and must provide access as required: LG Act s.5.41(h). EM and public records rights are clear, and must be provided as prescribed; and noting Federal Court has held that, ... {documents} *does not exist, cannot be found* provisions are not meant to be a *refuge for the disordered or disorganised*: *Chu v Telstra Corporation Ltd* [2005] FCA 1730; it must be minor misconduct and a LG Act offence to lose records is revealed in records access applications see for example: see **DLGSC lost records** in *Re Boulter and Department of Local Government Sport and Cultural Industries* [2021] WAICmr8; and **LG CEO lost or no records** (both breaches of LG Act s.5.41(h) CEO functions) in *Re McLerie and City of Melville* [2022] WAICmr 1, *Ross William Leighton and Shire of Kalamunda, Re* [2008] WAICmr 52 (20 November 2008), *Tracey and City of Gosnells, Re* WAICmr 34 (13 June 1996)

<sup>310</sup> *As the Commission has emphasised, accountability can only be exacted where those whose responsibility it is to call government to account are themselves possessed of, or are able to obtain, the information necessary to make considered judgments. Information is the key to accountability: Royal Commission into the Commercial Activities of Government*

<sup>311</sup> it is **fundamental flaw of LG Act** that CEOs and employees performance is recorded in LG records, that the CEO is responsible for record keeping: LG Act s.5.41(h); BUT CEO controls access to/disposal of the records and is responsible for granting access to those records to EMs, employees and public, when records may disclose maladministration or worse that it is in CEOs' interest to conceal



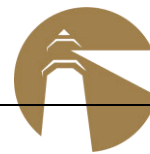
	<p>timely access to records to EMs and to public , backed up with DLGSC model template.</p> <p><u>Best Practice Law Reform</u></p> <p>All LG records are public records unless prescribed to be confidential<sup>312</sup>.</p>
<p><b>5.4 LGs May Pay Superannuation to EMs<sup>313</sup></b></p>	<p><u>Submission</u></p> <p><b>Agree if each EM can decide for themselves</b>, so it is <u>not all in or all out</u>, noting the superannuation mechanism payment procedures is not identified and should be.</p> <p>Councils <b>already have power</b> to resolve to pay superannuation to EMs<sup>314</sup>, but only if all EMs agree.</p> <p><u>Better Law Reform</u></p> <ol style="list-style-type: none"> <li>1. Prohibit <b>annual</b> meeting fee and disbursement allowances because the current system rewards lazy EMs the same as busy active engaged EMs.</li> <li>2. Administration authorised and required to make tax deductions EM payments, as requested by each EM</li> <li>3. DLGSC make OG<sup>315</sup> about meeting fee and reimbursement payments affecting any Centrelink payments, pensions; a copy of which is required to be put in Candidate information packages</li> <li>4. DLGSC make OG about 2 different methods of payment for EMs that has sufficient information to help EMs decide what is best for them</li> <li>5. LG Act provides for each EM to decide what is best payment method for them, and provide for EMs having different for different methods of payment, ie general annual or specific; tax deductions and super just as employees enjoy</li> </ol>
<p><b>5.5 LGs May Establish Education Allowances</b></p>	<p><u>Submissions</u></p>

<sup>312</sup> *Statement of Principles to Support Proactive Disclosure of Government held Information* 24 September 2021: Australian Information Commissioners and Ombudsmen

<sup>313</sup> *Nothing in this determination establishes a liability for the payment of superannuation by local governments. Elected council members are eligible for superannuation payments if their council has resolved unanimously to become an Eligible Local Governing Body (ELGB) pursuant to section 221A and section 221B of the Income Tax Assessment Act 1936 (Cwlth). Where the council is an ELGB, it is deemed to have an employer/employee relationship with its elected council members and this attracts the application of a number of statutory obligations. Alternative arrangements described in Australian Taxation Office (ATO) Interpretative Decision ATO ID 2007/205 allow for elected council members and councils to agree for whole or part of meeting attendance fees to be paid into a superannuation fund. Where the council is an ELGB, fees for attendance at council, committee and prescribed meetings (whether paid via a per meeting fee or annual allowance) are to be inclusive of any superannuation guarantee liability. This information is not published by way of legal or financial advice: Salaries and Allowances Tribunal LG Determination 2021, Explanatory Note 3*

<sup>314</sup> EMs are eligible for superannuation payments if Council has resolved unanimously to become an *Eligible Local Governing Body* (ELGB): see Salaries and Allowances LG 2020 Determination: non-binding EM explanatory notes & ATO Determination

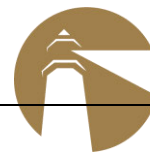
<sup>315</sup> Operational Guideline



	<p><b>Agree providing it:</b></p> <ul style="list-style-type: none"> <li>• does not include any other Costs such as travel and accommodation allowances, otherwise it may be abused</li> <li>• only from a Registered Training Provider</li> <li>• improvements in training provided.</li> </ul> <p><b>More Important is Legal Support</b></p> <p>LGs are required to provide reimbursement of legal advices provided by independent<sup>316</sup> legal experts to EMs, especially where DLGSC has provide no, insufficient or wrong advice, or advised EMs to obtain own legal advice, and always when CEO has used municipal funds in a matter against the EM.</p>
<b>5.6 Standardised Election Caretaker Mode</b>	<p><u>Submission</u></p> <p><b>Agree</b>, but subject to further clarification</p> <p><u>Better Law Reform</u></p> <ol style="list-style-type: none"> <li>1. Require <i>absolute majority</i> for any decision in Caretaker Period (CP).</li> <li>2. CP must also apply to <b>Council delegates</b>, and prohibit some exercises of delegated authority in caretaker period, especially relating to Planning Act delegations.</li> <li>3. CP must apply to <b>Property Development</b> including state government entities and decision-makers<sup>317</sup></li> <li>4. CP must apply to making grants or donations, and to making and announcing awards and citizenship ceremonies because they advantage incumbents</li> <li>5. Must apply to any WALGA decision, state council agenda items that might influence election outcomes, including that there should be no WALGA zone meetings in CP periods</li> <li>6. There should also be a <b>caretaker period applying to periods when a CEO's contract</b> is expiring or about to be terminated, so CEOs cannot make any employment arrangements or commit to any expenditure other than specifically approved by Council.</li> <li>7. Both employees and EM incumbents must be prohibited from using LG resources in CP period for anything related to Candidates' support or opposition.</li> </ol>

<sup>316</sup> not from a panel provided by conflicted WALGA or conflicted LGIS insurer

<sup>317</sup> in last LG elections Development WA circulated information about a development in a LG District that may have influenced the electoral outcomes



<p><b>5.7 Remove WALGA From LG Act</b> <sup>318 319 320 321 322</sup></p>	<p><u>Submission</u></p> <p>What is actually proposed?</p> <p>What will happen to WALGA assets? Will they be returned to LGs?</p> <p><b>Agree subject to the new WALGA model:</b></p> <ul style="list-style-type: none"> <li>• being an accountability and transparency improvement</li> <li>• not publishing a WALGA or LG CPI different from the state CPI on which to advocate for matters such as increased employee remuneration</li> <li>• no longer speaking on behalf of LGs by cancelling the partnership agreement<sup>323</sup></li> <li>• abolishing zones and requiring state Council agendas to be considered ONLY by Councils<sup>324</sup></li> <li>• remove the statutory right to nominate members to any body, including the over 30 government bodies<sup>325</sup></li> <li>• subject to FOI Act and OAG Audits</li> </ul>
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<sup>318</sup> WALGA 2020 Annual Report<sup>318</sup> did not include a detailed profit and loss statement so members could understand how WALGA money is spent, inexplicably held \$10 million in cash reserves while charging significant membership and subscription fees to LGs, and applied unexplained \$452,443 in termination benefits

<sup>319</sup> Parliamentary LG Select Committee<sup>319</sup> reported that WALGA has 106 employees and a budget of \$9.3 million, and bizarrely the DLGSC has only 37 employees and a budget of \$4.6 million, noting the DLGSC is established to assist the LG Minister to administer the LG Act.

<sup>320</sup> will WALGA's status as LG spokesperson in the State Partnership Agreement change? Will WALGA LG services provider remain protected? What statutory roles will WALGA retain?

<sup>321</sup> *Given the significant revenue from public funds that the Western Australian Local Government Association receives through fees and subscriptions paid by local government members, there is value in the Office of the Auditor General undertaking annual audits of WALGA: the Panel Finding 53*

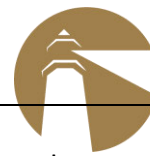
<sup>322</sup> 2018-19 financial year the expenditure in the Preferred Supplier contracts was a staggering \$351,979,031. WALGA received \$4,283,471 of that as contract management fees: Panel report

<sup>323</sup> just because WALGA management has clothes of a local government advocate, does not mean it is necessarily a public interest, District, Council or resident and ratepayer advocate

<sup>324</sup> this arrangement has excluded Councils and electors from all WALGA State Council decisions; unless Councils have considered and voted on State Council agendas before their representative attends a zone meeting and requires zone representative to vote accordingly

<sup>325</sup> includes but not necessarily limited to Standards Panel, LG Inquiry Panels, Local Government Advisory Board, Local Government Advisory Board Committee with Delegated powers, Local Government Inquiry Panel, County Housing Authority, Local Health Authorities Analytical Committee, The Library Board of Western Australia, Western Australian Local Government Grants Commission, Western Australian Planning Commission (WAPC), Regional Planning Committees, Biosecurity Senior Officer's Group, Fee Arbitration Panel, Agricultural Implements Advisory Committee, Children's Crossing and Road Safety Committee, Fencing Road Reserves in Pastoral Regions, Operational Railway Crossing Protection Sub-Committee, Perth Bicycle Network & Regional Bicycle Network - Grant Assessment Panel, Recreational Boating Facilities Scheme - Grant Assessment Panel, Regional Airport Development Scheme – Grant Assessment Panel, State Gravel Supply Management Group, Strategy and Policy Railway Crossing Protection Sub-Committee, Traffic Management for Events Advisory Group, Traffic Management for Road Works Advisory Group, Utility Providers Committee, WA Bicycle Network Plan - Implementation Reference Group, Western Australian Pavements Group, Western Power/Local Government Operational Forum, DFES Committee: DFWS Bush Fire Services Capital GRANTS Committee, DFES Committee: DFES State Emergency Service Capital GRANTS Committee, Keep Australia Beautiful Council





	<ul style="list-style-type: none"> <li>• removal of exemption from tender requirements if using WALGA preferred providers or ANY provider service<sup>326</sup></li> <li>• removal of LGIS effective monopoly on LG insurance</li> <li>• repeal all the exemptions from gift disclosures, especially the exemptions for WALGA and LGPro</li> <li>• audit by OAG before removal from Act</li> </ul>
<b>5.8 CEO Recruitment</b>	<p><u>Submission</u> <b>DISAGREE</b></p> <p>DLGSC appears as not independent, and appears to be a captured agency<sup>327</sup></p> <p>Councils should be authorised to use or not use this proposed method</p> <p>Councils <b><i>must not be required to use only CEOs from a DLGSC approved list</i></b>, Councils should be supported to employ CEOs from outside the sector<sup>328</sup>, so as to foster diversity and generational good governance improvement.</p> <p>Inspector<sup>329</sup> should have no role in CEO selection, and particularly noting that this will/may create a conflict of interest in future, if CEO subject of complaint that Inspector has to deal with; if there is not already an existing relationship that produces a conflict of interest.</p>
<b>6.1 Model Financial Statements and Tiered Financial Reporting</b>	<p><u>Submission</u></p> <p>What is actually proposed?</p> <p><b>Agree</b> re Financial Statements and Online Registers proposals, but who will enforce it? Who will require the online register can be found and is searchable by catch words?</p> <p>Furthermore, no-one is enforcing existing LG laws against non-complying employees now. How will more regulation help?</p> <p><u>Better Law Reform</u></p> <ol style="list-style-type: none"> <li>1. All Budgets should be required line by line to link with the District's Plan for Future Strategic Community Plan objectives</li> <li>2. LG Act should require LG 10 year financial plans with prescribed minimum content</li> <li>3. LG Budgets should be required to be advertised for public comment in a timely way</li> </ol>

<sup>326</sup> WALGA's preferred supplier program and mutual insurance coverage should be abandoned or accompanied with appropriate oversight measures: Panel Recommendation 64

<sup>327</sup> see **Casino Royal Commission Interim report**; OAG report on failures to regulate LG employees: **Regulation And Support of the LG Sector 30 April 2021**; see CCC for example in **CCC Report On a Matter of Governance at the Shire of Dowerin** 10 October 2016

<sup>328</sup> for example who supported employment of Ravensthorpe CEO who has announced he is illiterate in his defence; of the CEOs who have committed procurement fraud; or over 15 OAG performance audits failed by CEOs

<sup>329</sup> who might be a former CEO?



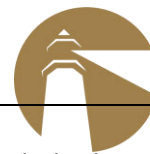
	<p>4. There should be a community budget workshop that starts the budget process, which is open to any District resident, ratepayer or elector.</p> <p>5. <b>There must be a much clearer regulatory link between budget allowances and when the allowance can be spent without Council approval, with applicable offence provisions<sup>330</sup> for breach.</b></p>
<p><b>6.2 Simplify Strategic and Financial Planning<sup>331 332</sup></b></p>	<p><u>Submission</u> What is actually proposed?</p> <p><u>Better Law Reform</u></p> <ol style="list-style-type: none"> <li>1. Proposed templates MUST be endorsed by OAG and adopted by Regulation, and enforceable by electors or minority EMs</li> <li>2. Community opinion of persons from LG District should be primary and most important informing strategy for developing LG strategic plans</li> <li>3. Asset Plans must include Green (Natural and Biodiversity Assets)</li> <li>4. Service Plans and Project Plans must be informed by sustainability goals, community aspirations, public interest and amenity of District</li> <li>5. Employees are not necessarily residents of a District in which they work, and they move on to other employment; some senior employees are not invested in District outcomes other than what they can put on their CV.</li> <li>6. In relation to Service Proposals and Project Proposals some long term employees have relationships with contractors which may impact on the reliability of their independence of their recommendations, especially in smaller communities; and this must be addressed because such choices often end up being much more costly for ratepayers</li> </ol>
<p><b>6.3 Rates and Revenue Policy<sup>333</sup></b></p>	<p><u>Submission</u> <b>Agree</b> so far as the proposal can be understood</p> <p><u>Better Law Reform</u> Must account for green assets</p>

<sup>330</sup> for example, how can a LG lawfully not have a Council approved Purchasing Policy, when it is a mandatory requirement of LG Act, as is the case in at least one large Metropolitan Local Government?

<sup>331</sup> LG Act s.5.56 is sufficient, and should not be changed

<sup>332</sup> strategic planning authority is proposed unacceptably to be moved from communities and LG to unelected bureaucrats

<sup>333</sup> rating and revenue strategy to set fees and charges can be set (on a cost recovery basis) appears to be proposing a blank cheque on rate setting. Panel recommended that oversight be strengthened by audit processes, which is not and should be included in the Proposals.



	<p>Rates and Revenue Policy must be linked to a mandatory<sup>334</sup> 10 year Financial Plan, and limit operational including contractor costs by specific budget %.</p> <p>Templates must be advertised for public comment and approved by OAG.</p>
<b>6.4 Monthly Reporting of Credit Card statements</b>	<p><u>Submission</u></p> <p><b>Agree</b>, so far as the proposal is understood</p> <p><u>Better Law Reform</u></p> <p>LG Act must adopt a mandatory credit card policy based on OAG Best Practice Guide which forms minimum requirements, a template of which should be produced by DLGSC with approval of OAG<sup>335</sup></p>
<b>6.5 Amended Financial Ratios</b>	<p><u>Submission</u></p> <p>What is actually proposed?</p> <p><u>Better Law Reform</u></p> <p>LG Act must adopt OAG Best Practice and DLGSC should produce an Operational Guideline which reflects OAG Best Practice recommendations</p>
<b>6.6 Audit Committees<sup>336</sup></b>	<p><u>Submission</u></p> <p><b>Agree</b> so far as it can be understood.</p> <p>Will, should independent members be paid?</p> <p>CEOs and employees interests are in conflict with Audit Committees</p> <p><u>Better Law Reform</u></p> <ol style="list-style-type: none"> <li>1. LG Act and DLGSC must adopt OAG Best Practice Guidelines for Audit Committees as minimum requirements</li> <li>2. CEOs and employees must be expressly prohibited from influencing Audit Committees in any way, should provide reports <i>without recommendations</i>. Audit Committees must meet with OAG auditor in absence of CEOs and employees, who should be called in only to answer questions.</li> <li>3. Regional Audit Committees may help with costs, but noting they could be captured by vested interests.</li> </ol>

<sup>334</sup> not currently mandatory, but should be, with required format

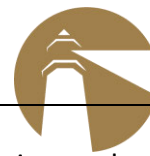
<sup>335</sup> see OAG LG Performance Audit **Controls over Corporate Credit Cards** 9 May 2018

<sup>336</sup> *The Panel recommends the role of audit committees be expanded to become Internal Audit, Risk and Improvement Committees and:*

1. *The majority of the Committee members, including the Chair, should be independent of the local government and should be drawn from a suitably qualified panel.*
2. *To address the impost on small local governments, the committee could be established on a regional basis:*  
Panel Recommendation 53.

*The Panel recommends the main roles of the Audit, Risk and Improvement Committee should include:*

1. *Developing an audit plan which focuses on compliance, risk (including procurement), financial management, fraud control, governance and delivery of the Council Plans;*
2. *Identifying continuous improvement opportunities and monitoring programs and projects in this area;*
3. *Conducting the mandatory internal audits as outlined in the audit plan; and*
4. *Providing advice to the council in relation to these matters:* Panel Recommendation 54



	<p>4. Should LGs be employing internal auditors? Is this necessary or appropriate? Should they be liaising with OAG or only through Audit Committee?</p> <p>5. A <b>template of proactive risk management</b> should be produced by the OAG and endorsed by DLGSC and included in an Operational Guideline.</p> <p>6. Audit electoral Rolls<sup>337</sup></p> <p>7. CEO produces procurement and contract risks annual report to the Audit Committee<sup>338</sup></p> <p>8. Random independent audits of LG procurement and contracting activities, with results reported to the Audit Committee<sup>339</sup></p>
<b>6.7 Building Upgrade Finance</b>	<p><u>Submission</u></p> <p><b>Disagree.</b></p> <p>It is not role of LG, and could lead to abuse/corruption, especially in the circumstances where there is no effective LG external oversight by DLGSC.</p>
<b>6.8 Cost of Waste Services to Be Specified on Rates Notices</b>	<p><u>Submission</u></p> <p><b>Agree,</b> and include local government employee costs and contractor costs, and make itemised costings available as a public record published on internet.</p> <p><u>Better Law Reform</u></p> <p>Adopt OAG Best Practice Recommendations<sup>340</sup></p>
<b>Purchasing, Procurement, Contracting<sup>341</sup></b>	<p>CCC has many current investigations into procurement and financial management<sup>342</sup>, and has finalised a number of LG investigations into corrupt LG procurement</p> <p><u>Law Reform</u></p> <p>OAG new forensic audit team funded to apply to LG</p> <p>LGs have a centralised procurement model and procurement team<sup>343</sup></p> <p>DLGSC develop a model Purchasing Model template and add to LG Admin Regs, to be minimum requirements</p> <p>Purchasing Policy includes:</p> <ul style="list-style-type: none"> <li>• when a bill of quantities is required as part of a tender<sup>344</sup></li> <li>• preference for a centralises project management office<sup>345</sup></li> </ul>

<sup>337</sup> see by Tony Power SC from City of Perth Inquiry 2020 electoral recommendations 154 - 155

<sup>338</sup> Tony Power SC from City of Perth Inquiry 2020 recommendation 289

<sup>339</sup> Tony Power SC from City of Perth Inquiry 2020 recommendations 290-291

<sup>340</sup> OAG on LG **Waste Management – Service Delivery** 21 August 2020

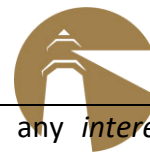
<sup>341</sup> one of biggest LG , maladministration, fraud, corruption risks

<sup>342</sup> *Labrador, Taurus-Delta, Taurus – Charlie, Obsidian, Taurus-Echo, Ochre, Brass, Auburn-Bravo, Auburn-Bravo One, Dorado, Alpha, Auburn-Alpha, Octans, Auburn- Bravo, Serpens*: Accessed CCC website 19 February 2022

<sup>343</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 264

<sup>344</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 265

<sup>345</sup> *to support better financial management of project planning and delivery*, see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 266



	<ul style="list-style-type: none"><li>• clear process when CEO has any <i>interest or conflict of interest</i>, actual or perceived<sup>346</sup></li><li>• <b>all</b> engagements expressly documented in records system even if verbal quote obtained<sup>347</sup></li><li>• price and value for money are specific assessment criteria<sup>348</sup></li><li>• employees cannot be on central procurement team and on assessment and evaluation team<sup>349</sup>, and employee engaged in a particular quote/tender or assessment of a quote/tender is identified on the records, and sign a declaration of interest form<sup>350</sup></li><li>• all procurement activities above \$150,000 are supported with a risk assessment, and where high risk identified, the specific risk addressed<sup>351</sup></li><li>• identifies where independent probity<sup>352</sup> advisor or auditor is to be engaged<sup>353</sup></li><li>• evaluation panels should have more than one member with relevant specialised technical knowledge<sup>354</sup></li><li>• process for an evaluation panel member obtaining non-panel member assistance<sup>355</sup></li><li>• tenders are to be scored by consensus rather than averaging the scores of each panel member<sup>356</sup></li><li>• valuations shows clear distinction between <i>compliance criteria</i> (mandatory) and <i>selection criteria</i> (measurement)<sup>357</sup></li><li>• methodology for comparative price analysis<sup>358</sup></li><li>• comparative price analysis is always verified by a senior procurement team member<sup>359</sup></li><li>• includes a clear plain English procedure for <i>carry forwards</i> on capital works<sup>360</sup></li></ul>
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<sup>346</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 267

<sup>347</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 268

<sup>348</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 269

<sup>349</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 270

<sup>350</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 272

<sup>351</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 273

<sup>352</sup> quality of having strong moral principles, fairness, honesty and decency

<sup>353</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 274

<sup>354</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 277

<sup>355</sup> *panel members need authority to seek outside guidance without jeopardising the integrity of the evaluation process*, see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 276

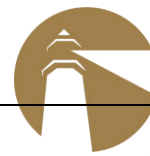
<sup>356</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 279

<sup>357</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 275

<sup>358</sup> *because comparative price analysis can be a source of data manipulation and miscalculation, which can result in unsatisfactory or corrupt tender or quotation outcomes*, see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendations 276

<sup>359</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 276

<sup>360</sup> *Inconsistent knowledge, poor inconsistent communications from executive can adversely affect capital works*, see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 280



	<ul style="list-style-type: none"> <li>• basic requirements for a procurement and contract training program<sup>361</sup>, customised for each different group<sup>362</sup></li> </ul> <p>Declaration Registers have distinct and different <i>confidence</i> and <i>conflict of interest</i> reporting obligations<sup>363</sup></p> <p>Each LG has a procurement and contracts handbook<sup>364</sup></p>
<b>COMPLAINT HANDLING</b>	<ol style="list-style-type: none"> <li>1. DLGSC establish LG industry standard and guidelines for better practice complaint handling guidelines<sup>365</sup></li> <li>2. Both or combined code(s) of conduct require an independently approved complaints handling process<sup>366</sup></li> <li>3. LGs required by regulation to adopt a Complaints Resolution Procedure and mandatory Policy based on the Australian new Zealand Guidelines AS/NZS 10002:2014 for LG complaint management<sup>367</sup></li> <li>4. CEO KPI to adopt effective complaint and grievance handling training for EMs, and employees, including the CEO, which includes <i>lodging, managing (Including internal investigation process), determining, reporting, referring, internally reviewing and independently auditing</i> outcomes, including an assessment of training outcomes<sup>368</sup>, with it all be being documented in the LG records<sup>369</sup></li> <li>5. LG publishes complaint policies, procedures and practices on its website<sup>370</sup>, prepared by industry accredited expert<sup>371</sup></li> <li>6. LGs have a centralised complaint handling framework to manage complaints and grievances by or against EMs, committee members, employees and contractors<sup>372</sup></li> <li>7. A confidential register is established to record complaints and grievances by or against EMs, committee members, employees and contractors</li> <li>8. Complaint handling training for EMs and employees by n industry accredited expert provider<sup>373</sup></li> </ol>

<sup>361</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 281

<sup>362</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendations 281-286

<sup>363</sup> to help disclosing persons understand what they are disclosing, see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 271

<sup>364</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 286

<sup>365</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendations 292- 302

<sup>366</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendations 292- 293

<sup>367</sup> to improve LG standards of service to the community and raise LG standard of decision making, see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendations 286; which will improve productivity

<sup>368</sup> Tony Power SC from City of Perth LG Inquiry Report 2020 recommendations 294, 308

<sup>369</sup> Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 319

<sup>370</sup> Tony Power SC from City of Perth LG Inquiry Report 2020 recommendations 305 - 306

<sup>371</sup> Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 307

<sup>372</sup> to identify trends and accountability for corrective actions, and ad probity, transparency, accountability and audits, see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendations 303-304

<sup>373</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 310





	<p>9. One LG employee is responsible for all complaints outcomes who should not be CEO, and should be a Council designated senior employee</p> <p>10. An employee dealing with a complaint or grievance is prohibited from being concerned with the subject matter of the investigation<sup>374</sup></p> <p>11. Consultant engagement to assist in complaint handling must be documented as to scope and budget, and reviewed for any actual or perceived conflicts of interest</p> <p>12. LG employees handling Consultant engagements are prohibited in engaging in the subject matter of a complaint with the consultant.<sup>375</sup></p> <p>13. Splitting of employee and other matters in complaint handling is prohibited<sup>376</sup></p> <p>14. Report complaint handling audit results in LG Annual Report<sup>377</sup></p> <p>15. Bench book<sup>378</sup> for LG Inquiries developed by state government<sup>379</sup></p> <p>16. Bench book for Court of Disputed Returns developed by state government</p>
<b>CORRUPTION</b>	<p>1. LGs must be required to adopt a zero-tolerance of fraud and corruption<sup>380</sup></p> <p>2. LGs must develop an holistic fraud and control framework<sup>381</sup></p> <p>3. LGs must adopt best practice to identify and document LG misconduct and fraud risks<sup>382</sup></p> <p>4. LGs implement treatment plans to manage fraud and corruption risks<sup>383</sup></p> <p>5. CEO KPIs must develop comprehensive organisation wide strategies to combat fraud and corruption<sup>384</sup></p>

<sup>374</sup> to ensure independence of process, see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 311

<sup>375</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 315

<sup>376</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 318

<sup>377</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 322

<sup>378</sup> see for example **The Bench Book - a guide to Corruption and Crime Commission examinations**, Court bench books

<sup>379</sup> see Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 336

<sup>380</sup> *to establish LG stance on fraud and corruption, and manage it*, Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 295

<sup>381</sup> Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 295

<sup>382</sup> Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 296

<sup>383</sup> Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 296

<sup>384</sup> Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 300

## ANNEXURE ONE

### LG ACT EFFECTIVENESS TEST

Does the LG Act statutory framework foster good government<sup>385</sup> and the local government constitutional objectives of:

1. Elected Members being lawfully and fairly elected?
2. Elected Members informing themselves sufficiently to exercise properly their decision making roles?
3. Councils being informed sufficiently to make the best decision in the interests of the persons of their Districts?
4. Councils making decisions in the interests of the persons of their District?
5. Protection of minority Elected Members so they can exercise their constitutional and statutory roles and duties without fear<sup>386</sup> or bias?<sup>387</sup>

The answers to those questions is a qualified **yes** because the LG Act was designed to work through regulatory enforcement by external oversight bodies<sup>388</sup>. There is little regulatory enforcement<sup>389</sup>, productivity examination, employee accountability and EM protection to the detriment of Districts and the people who reside in them.

The answer to the question of whether or not local governments are implementing the LG Act as it was envisaged by parliament in 1995 is a **resounding NO**. LGs are not exercising good governance because the LG Act is not enforced against employees including against non-complying CEOs, where EMs<sup>390</sup>, Councils and/or electors who are trying unsuccessfully to deal

<sup>385</sup> *better*, peace order and good government of localities: Constitution Act

<sup>386</sup> it is not safe to speak up in LG, noting recent comments from NSW Ombudsman apply so accurately to WA LGs, needed to make clear to the State Government that a *cultural shift* is needed to make speaking up in the public sector an *easy, normal and safe thing to do* - in other words, work toward not leaving everything to the senior bureaucrats; being fearless to challenge them even though job advancement may be in their hands

<sup>387</sup> majority Councils are fully empowered to make decisions, and so the test of whether or not *better peace order and good government* of localities is being achieved is always about the power of a minority elected member to be informed, heard by oversight bodies, protected to undertake their good governance role despite a majority Council exercising unlawful or poor governance practices

<sup>388</sup> which means there are insufficient offence provisions for breaching the requirements of the LG Act, especially those that relate to administrative functions such as records production, fully and honestly informing EMs and Council, and employee conduct and conflicts of interest; with an excessive focus on EM penalties which together have the effect of protecting poorly performing employees and administrations

<sup>389</sup> because it is entirely focussed on EM conduct, especially minority EM conduct (and not on the reasons for that conduct), and not on employee misconduct

<sup>390</sup> see poorly thought out consequences of amending LG Act to introduce the minor breach confidentiality provisions AND downgrading of LG complaints officers from senior employee introduced 5 July 2019 resulting in *significant increase in the number of new complaints being lodged with 154 lodged compared to 121 in 2019-20: Standards Panel Annual Report 2020- 2021*; and *trend of the majority of complaints resulting in no breach being found, either by a finding of no breach being made or by the panel refusing to deal with a complaint. Out of 175 complaints finalised in in 2020-21, 81 findings of no breach were made, and the panel refused to deal with 32 complaints*: Standards Panel Annual Report 2020- 2021; of the 175 complaints finalised in 2020-21, the Standards Panel, made 49 findings that breach occurred; 81 findings of no breach, 10 complaints were withdrawn, 3 suspended as EM no longer EM due to resignation, refused to deal with 32 complaints: Standards Panel Annual Report 2020 -2021; refused to deal with complaints were misconceived, with three vexatious, three without substance, one misconceived and without substance. SP costs to LGs for sitting fees and writing fees was \$171,703 from 30 LGs; with average cost per finding or decision \$791.20. The number of SP decisions overturned or

with poorly performing CEOs are complained against, bullied, penalised and/or punished<sup>391</sup>. WA has at best a timid and tame DLGSC lacking will power in relation to LG employees' compliance, and in short gives all the appearance of an agency experiencing regulatory capture<sup>392</sup>.

## ANNEXURE TWO

### Local Government Accountability

Local Government is poorly understood by many who should know better or ignored by those with the power to depart from binding legislation with impunity<sup>393</sup>, and the self-interest to do so.

The WA Constitution<sup>394</sup> requires<sup>395</sup> WA to have *elected local governing bodies with all the powers as the Legislature considers necessary for the **better** government of the area in respect of which the body is constituted*<sup>396</sup>. Parliament has implemented its constitutional obligations through an overarching statutory local government structure<sup>397</sup>, which is currently established by the LG Act, the details of which each Council decides<sup>398</sup> in the interests of each constitutionally required locality<sup>399</sup>.

WA local governments are state government entities. They are *not* a separate tier of WA government<sup>400</sup>. The constitutional doctrine of separation of powers **does not** apply to WA local governments.

In 2020<sup>401</sup>, there were 139 WA Local Government entities<sup>402</sup>, each with between 7 – 15 Elected Members (EMs) and 23,973 employees who together managed non-capital assets valued at

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modified by the SAT is not reported in the Annual Report. Imagine the collective *mental health harm to the EMs and consequent failing Council governance and oversight of administration*

<sup>391</sup> see for example *Re Boulter and Department of Local Government Sport and Cultural Industries* [2021] WAICmr8 (a minority EM); *Re v LG Standards Panel* [2015] WASC 51 (a minority EM); *Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts* [2020] WASC 350 (a Council); *Parker v City of Rockingham* [2021] WASCA 120 (a ratepayer); and then there is failed attempt of a CEO to punish EMs trying to performance manage the CEO in, *Stephen Cain [LG CEO] v [EMs] Stuart Downing; Logan Howlett; Lee-Anne Smith; Kevin Allen* [2020] FWC 1914 PERTH, 8 MAY 2020; and the failure of a CEO to deal with a poorly performing employee causing an unsafe workplace in *Ayton v City of Armadale* [2020] WASCA 39; and see over 12 OAG performance audits' poor outcomes where CEOs and administrations have failed in their functions, see multiple unfounded EM minor breach complaints against good governance minority EMs in Standards Panel Annual Report <sup>392</sup> as explained in *Casino Royal Commission Interim Report*

<sup>393</sup> such as CEOs who *capture* their Council, which simply and unquestioningly endorses CEO recommendations

<sup>394</sup> which can only be enforced by superior Courts, say on judicial review; which is out of financial reach of most people, and which is out of financial reach of many Councils, and elector bodies

<sup>395</sup> *Constitution Act 1889* (WA) s.52

<sup>396</sup> which includes general, executive, legislative, oversight and compliance all residing in Councils, which means there is no separation of powers doctrine in any sense applicable to WA LGs

<sup>397</sup> Elected Members (EMs), Council (EMs) and Administrations (employees)

<sup>398</sup> required to be decided by Councils: LG Act s.5.36(1)(b)

<sup>399</sup> the statutory *District*

<sup>400</sup> so comparisons or use of models from jurisdictions that are a third tier of government such as Victoria, must be treated with great caution

<sup>401</sup> most disappointingly, there are no useful LG statistics in **DLGSC Annual Report 2020 - 2021**

<sup>402</sup> DLGSC Annual Report 2020 -2021

around \$45 billion, which pale into insignificance beside LGs' cover<sup>403</sup> of all WA's land, freshwater and adjacent coasts<sup>404</sup> supporting natural habitats of biodiversity with inestimable economic, natural, amenity and intrinsic values, arguably \$trillions in economic terms; and raised rates' revenue of around \$2.4 billion. This is not an insignificant part of and influence on the WA economy and WA citizens' lives and living.

LGEMA was set up *three years ago*<sup>405</sup> with one of its objectives to support WA Elected Members (EMs) with independent free expert advice about the proper and lawful application and implementation of the LG Act framework<sup>406</sup>. Countless volunteer hours towards well over a **thousand calls for help**<sup>407</sup> have revealed a state government, through DLGSC's 300 person workforce<sup>408</sup> seemingly dedicated to LG employee support (notwithstanding its Annual Report general assertions<sup>409</sup>) and local government entities profoundly lacking in expertise<sup>410</sup> and integrity<sup>411</sup>, and ridden with self-interest, unaddressed conflicts of interest, and fear<sup>412</sup> and no

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<sup>403</sup> and locally govern much of it, presenting LGs with unique conservation and restoration opportunities, different from state and federal governments

<sup>404</sup> generally 200 metres seawards of the low water mark in coastal LGs

<sup>405</sup> and incorporated 7 August 2019

<sup>406</sup> which no other body provides

<sup>407</sup> all recorded, which just in the last month included LG election invalidity, LG electoral offences, Court of Disputed Returns practice and procedure, CDR submissions for CDR, FOI reviews to OIC, public records, financial interest registers, EM drunk at LG function, Mayor using LG resources to support candidate in election, voting ballot papers, EM Serious Breach process, EM letter opening by employees, LG role in Biodiversity Protection, LAW Reform, CEO recruitment, regional bodies, boundaries, OAG and WALGA audits

<sup>408</sup> notwithstanding DLGSC required outcome of *Local governments are supported to meet legislative requirements of the Local Government Act* for is *better places* goal: see **DLGSC Annual Report 2020-2021**, page 42

<sup>409</sup> *The DLGSC partners with local government to deliver good governance to the community ... monitoring, promoting and enforcing compliance with the Act, the local government business area assists the sector to improve the capacity and accountability of 139 local governments to respond to community demands and expectations. Using a risk-based approach to identify those needing targeted intervention and assistance, this supports local governments to fulfil their statutory obligations.*: DLGSC Annual Report 2020-2021, page 37.

<sup>410</sup> wrong or vague answers to EM questions, or advice to EM to get their own legal advice at their own expense

<sup>411</sup> EM questions for assistance are reported back to LG CEOs, even after request for confidence

<sup>412</sup> to speak up, speak out – the *sector is rife with bullying*, which is particularly toxic against minority EMs agitating for governance reform against entrenched cultures of poor unresponsive governance, and who are the valiant true *canaries in the coalmine*, noting the appalling state of affairs that employees can make bullying complaints to WorkSafe but EMs cannot, DLGSC provides NO support for bullied minority EMs, noting the widely recognised weaponisation of LG complaints systems against EMs who refuse to *toe the line*, or be groomed

fear<sup>413</sup> for all the wrong reasons<sup>414</sup>, all of which fosters a dysfunctional or corrupt LG environment<sup>415</sup>.

It is a weighty disappointment that the DLGSC has ceased the, *Local Governments were capable and well-governed* as a desired outcome reporting measure, and replaced it with the much weaker, *Local Governments are supported to meet legislative requirements of the Local Government Act*<sup>416</sup>; noting the percentage of local governments<sup>417</sup> where actions<sup>418</sup> were taken in support of compliance with the legislative framework was 22%, and below the 40% target; expenditure on cost per local government for regulation and support was \$74,655 below the target of \$109,051, and below the previous year's \$99,975<sup>419</sup>, which in any event are miniscule sums compared to the crying need for expert informed Elected Member support.

We have little if any confidence in the current DLGSC LG leadership and support<sup>420</sup>, which focusses its resources on supporting very well paid CEOs, and does not adequately if at all support under-resourced EMs or Councils in their oversight roles<sup>421</sup>, and does not enforce the LG Act

<sup>413</sup> there is no general *culture of fear of repercussion* for breaching LG Act framework, especially within administrations generally immune to misconduct findings or prosecution, especially CEOs and senior employees; noting ... *a culture that fosters poor leadership, poor decision making or poor behaviour will undermine the governance framework of the entity...*: Haynes Royal Commission **Misconduct in the Banking, Superannuation and Financial Services Industry**, final report 4 February 2019

<sup>414</sup> and noting with concern *Effectiveness and efficiency indicators are not reported for this outcome* [Efficient and effective asset and infrastructure support services to *client agencies*] *as it relates to the services provided by DLGSC to support the outcome and activities of the client agencies. An exemption from the requirements of Treasurer's Instruction 904(2)(iv) Key Performance Indicators, has been provided by the Under Treasurer*: DLGSC Annual Report 2020-2021, page 43; noting it is assumed local governments are *client agencies*

<sup>415</sup> see **Transparency International's CPI** release 27 January 2022 of Australia's Corruption Perceptions Index (CPI), which is the Worst Ever. Latest CPI report has given Australia its worst-ever score, now in 18th place, scoring just 73 points on 100-point scale. Australia has dropped 12 points since 2012, more than any OECD country apart from Hungary, which also fell 12 points. Australia's rate of decline is similar or steeper than other countries with far worse issues, including Cyprus, Lebanon, Syria and Venezuela. In 2012 Australia ranked seventh in world, level with Norway. This year, Australia has fallen to 18th, out of 180 countries.

<sup>416</sup> DLGSC Annual Report 2020-2021, page 45

<sup>417</sup> vague and unhelpful measure: which LGs? which element of LG? what form of help? was unhelpful response to an EM hotline inquiry counted?

<sup>418</sup> what actions?

<sup>419</sup> DLGSC Annual Report 2020-2021, page 47

<sup>420</sup> for example, see *Re Boulter and Department of Local Government Sport and Cultural Industries* [2021] WAICmr8; and OAG Report *Regulation And Support of the LG Sector* 30 April 2021

<sup>421</sup> DLGSC Annual Report 2020-2021, page 98 - 99

Outcome 1: Local governments are supported to meet legislative requirements of the Local Government Act. Effectiveness Measure 1: Percentage of local governments where actions were taken in support of compliance with the legislative framework.

#### Why we measure

The Department of Local Government, Sport and Cultural Industries (DLGSC) supports local governments to fulfil their statutory obligations and to improve capability in the sector to deliver services to their local communities. Through a risk-based approach, DLGSC identifies the training, guidance, advice and support needs of the sector, as well as those local governments needing targeted intervention and more direct assistance. Part of the improved capability effort is targeted at **assisting local government Chief Executive Officers to be better equipped** to deal with the challenges currently facing the sector. This measure allows DLGSC to understand how local governments are performing regarding their leadership and governance to fulfil their statutory requirements and help ensure the outcomes are achieved. The DLGSC's *Compliance Framework* outlines the approach taken to ensure that local governments, their Elected Members, and employees operate in compliance with the Local Government Act 1995

against employees, which evidence based concern is exacerbated by the OAG's qualifications even of the DLGSC 2020-2021 Audit Report<sup>422</sup> and the OAG's adverse findings against the DLGSC regulatory support for EMs and Councils<sup>423</sup>. I am concerned that the reduction in complaints to DLGSC reveals an utter lack of public and EM confidence in the DLGSC<sup>424</sup> to effectively respond to complaints.

As an elected MP within a Westminster representative system of government, a LG Minister can be reasonably expected to support completely and have empathy with the plight of LG EMs<sup>425</sup> who are the *only* constitutionally required component of local government<sup>426</sup> and who are without expert support or training<sup>427</sup>, and the Minister can expect to have the support of an

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(and associated Regulations). The Framework details the actions taken to support and achieve greater compliance, including provision of advice services, guidance documents, and monitoring of key information provided to DLGSC by local governments.

What we measure The Compliance Framework details the actions DLGSC may take in response to possible non-compliance, including arms-length monitoring, requesting further information, dealing with complaints, breaches, probity audits, investigations and authorised inquiries. The DLGSC measures local government compliance performance against this framework to identify areas for assistance to improve capability and governance.

#### How we measure

The indicator shows the percentage of local governments that had action taken against their Elected Members or employees under that Compliance Framework in the financial year. Records are collated of all actions including issuing letters of improvement as well as other compliance actions, complaints, audits, inquiries etc taken by DLGSC in response to potential non-compliance, to determine which of Western Australia's local governments had action taken against them. The figure is then converted to a percentage. DLGSC are actively increasing the support and guidance to local governments with the aim of reducing actions against specific local governments in the future. In addition to the 1 The revised Outcome Based Management framework was implemented in 2020-21. DLGSC Annual Report 20 DLGSC Annual Report 2020-21 | 9999 development of a risk profiling tool, an engagement strategy and other compliance initiatives and material are being developed to achieve this outcome.

#### Analysis

A total of 30 local governments (out of a total of 137) (*which aspect or person in the LG, what type of action? – this is a meaningless and unhelpful statistic*) had formal action taken by DLGSC under the Compliance Framework in 2020-21. There was an 18 per cent decrease on the 2020-21 Target. Some of this decrease can be attributed to the COVID-19 pandemic as compliance actions, such as probity audits and visits to local governments were unable to be conducted. In addition, there was also an overall decrease in new complaints made to DLGSC, potentially due to the active guidance being provided by the department, but also as a consequence of external factors such as the pandemic and natural disasters. The DLGSC saw a reduction in the number of serious breach complaints made, as well as the number of formal inquiries commenced.

<sup>422</sup> in relation to procurement, computer controls, payroll system; if DLGSC does have its own house in order, how can it provide accurate useful support to LGs, noting OAG report that government procurement is one of highest corruption risk areas?

<sup>423</sup> *Regulation And Support of the LG Sector* 30 April 2021

<sup>424</sup> from personal experience, and LGEMA mentoring, advice, workshop roles

<sup>425</sup> especially minority EMs advocating good governance, who are often the *canary in the coal mine*, some of whom are bullied mercilessly

<sup>426</sup> WA Constitution

<sup>427</sup> except from LGEMA



expert public service and expert public servants<sup>428</sup>. Otherwise, the state government entities being LGs are doomed, at best to mediocrity and waste, and to being run poorly<sup>429</sup> by self-interested unelected unaccountable bureaucrats.

### ANNEXURE THREE

#### Local Government Structure Synopsis<sup>430</sup>

1. The WA Constitution requires parliament to make laws for the *peace order and good government* of WA<sup>431</sup>, which includes local government laws.
2. The WA constitution requires the WA parliament to establish a system of elected local governing bodies for WA localities vested with the powers necessary for the **better** government of the area.
3. Local Governments are *not* a separate tier of government in WA<sup>432</sup>.
4. By successive LG Acts, the WA parliament has established local governments and how they are to be *run*<sup>433</sup>, which is currently by the *Local Government Act 1995* (WA) (LG Act)
5. WA parliament has amended the LG Act and its subsidiary legislation<sup>434</sup> from time to time, generally in a piecemeal often political approach driven by self-interested lobbyists<sup>435</sup>, which has had serious adverse consequences for LG good governance and accountability.
6. WA local governments are statutory *body corporates*, which are state government *entities*, comprised of constitutionally required Elected Members who together make up a constitutional *local governing body* in which *all* governing powers *must* be vested. In compliance with the Constitution, parliament has decided that there is a statutory Council comprised of Elected Members who are the statutory Councillors. *All* governing powers must reside in the statutory Council collective<sup>436</sup>, which is served by a statutory administration in which no governing power can lawfully reside. The statutory local government through these entities governs<sup>437</sup> and administers<sup>438</sup> constitutional localities,

<sup>428</sup> noting it was DLGSC that advised improper, unreasonable course to LG Minister Templeman, which ended up with Ministerial humiliation, but not DLGSC who advised him, in Supreme Court: *Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts* [2020] WASC 350

<sup>429</sup> see OAG LG performance audits of CEO performance in over 80 LGs

<sup>430</sup> Councils have CEO, employee and administration oversight, LG Minister has Council and EM oversight, with both Council and Minister with powers of direction and dismissal; external bodies have oversight of all LG entities including EMs and employees, can make recommendations, but have no powers of direction or dismissal, except by courts, SAT, other tribunals and Public Service Commissioner

<sup>431</sup> Constitution Act s.2(1)

<sup>432</sup> as in Victoria and in NZ, contrary to ALGA assertions published in error on their website accessed 14 November 2021 as follows, *Local government (councils) is the third tier of government in the Australian system of government*.

<sup>433</sup> which includes LG Regulations; see Councils *run* Local Governments in LG Act s.2.6 header

<sup>434</sup> mainly Regulations

<sup>435</sup> WALGA; LG Pro; property, mining and pastoral industries

<sup>436</sup> constitutionally required

<sup>437</sup> Council

<sup>438</sup> Administration as directed by Council resolution and policy direction, and oversight

7. which are the statutory Districts<sup>439</sup>, to bring *better*<sup>440</sup> peace, order and good government<sup>441</sup> to localities through a *local* governing body.
8. The LG Minister is responsible to parliament for the performance of the DLGSC.
9. The DLGSC<sup>442</sup> is part of the WA Public Service whose budgeted roles include assisting the LG Minister to administer the LG Act<sup>443</sup>.

## ANNEXURE FOUR

### Local Government Fundamental Flaws

Many, and in some cases all<sup>444</sup>, Local Governments<sup>445</sup>:

- have entrenched *double standards*, which is unfair and inequitable<sup>446</sup>
- have disempowered and show disrespect for Councils and EMs<sup>447</sup>
- are not focussed on service to the persons of the District<sup>448</sup>
- have an under-skilled workforce rife with unaddressed conflicts of interest
- are *run* by unelected bureaucrats<sup>449</sup>
- are riddled with non-compliance with the LG Act framework, which is causing local government *wrong* and *wrongdoing*; and about which even some LG inquiries are *wrong*<sup>450</sup> or do not resolve, and which generally do not lead to durable or enduring improvement<sup>451</sup>
- unlawfully restrict timely EM and public access to records and information
- have structural procurement weakness<sup>452</sup>

<sup>439</sup> with locality boundaries endorsed by Governor

<sup>440</sup> Constitutional requirement

<sup>441</sup> general Constitutional obligation that applies to State parliament

<sup>442</sup> but not LGs

<sup>443</sup> LG Act s.1.4

<sup>444</sup> where it is a statutory requirement

<sup>445</sup> with apologies to any functional local governments or DLGSC employees operating fearlessly with integrity

<sup>446</sup> for example, Employee Codes of Conduct are not enforceable with penalties for breach in the same way EM Codes of Conduct are enforced, they do not have penalties for non-compliance, and employees cannot be brought before a Conduct Panel, nor is a regulator providing regulatory rigour and competent oversight; a Model Code of Conduct was required to be implemented by a certain date but an Employee Code of Conduct was not; Council was prescribed to be approving authority for EM Model Code of Conduct but was not for Employee Code of Conduct; Gifts from donors have to be declared on Gift Registers except WALGA gifts do not; EMs are punished for harming the reputation of other LG participants but LG employees are not; EMs face a Standards Panel for minor breaches but employees do not face a panel for misconduct or minor misconduct; employees have support of WALGA and DLGSC but EMs do not;

<sup>447</sup> *One of the appropriate reform drivers in 1995 for the current LG Act was proper need to stop EMs directing administrations and CEOs. However, these restrictions have been applied to Councils in ignorance, because such an approach is constitutionally flawed.* EMs bring their District's community aspirations to Council decision-making

<sup>448</sup> Constitution Act s.52; LG Act s.3.1(1)

<sup>449</sup> contrary to WA Constitutional arrangements

<sup>450</sup> for example, *Report of the Inquiry into the Shire of Toodyay* 2021

<sup>451</sup> for example, Reports of the Inquiries into, *the City of Perth* 30 June 2020; *Shire of Perenjori* 2019; *City of Melville* 2019; *City of Joondalup* 2005

<sup>452</sup> CCC *Report on Matters of Serious Misconduct in the Shire of Exmouth* 2 May 2017



- have significant operational<sup>453</sup> and policy<sup>454</sup> failings<sup>455</sup>
  - abuse and weaponise the complaints processes<sup>456</sup>
  - whose oversight bodies recommendations are lawfully ignored and/or not adopted<sup>457</sup>
  - with the geographic boundary settings in many if not all LGs do not satisfy the constitutional obligations for a District to be a locality<sup>458</sup>,
- which has led to the current parlous wasteful state of affairs, exacerbated by Ministerial<sup>459</sup> and DLGSC<sup>460</sup> failures<sup>461</sup>.

Accordingly, many aspects of many WA local governments are not open or accountable, and have compromised or absent integrity, noting a similar situation led to the downfall of a previous WA Labor government<sup>462</sup>, and most recently the City of Perth Council<sup>463</sup>. The DLGSC as the public

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<sup>453</sup> Administration; CCC *Report on the Review of the Capacity of Local Government in the Pilbara to Prevent, Identify and Deal with Misconduct* (16 April 2013) and CCC *Report on Misconduct Risk in Local Government Procurement*, 2015

<sup>454</sup> Council, see for example *City of Rockingham*, which does not have a mandated Council approved Procurement Policy, where procurement is recognised by OAG as one of highest risk areas in government

<sup>455</sup> see disturbing CEO performance results in, OAG LG Reports *Audit Report 2020 – 2021 Financial Audits of State Government Entities (including LGs at Appendix Four)* 24 November 2021; *Cyber Security in LG Report No.9: 2021-22* November 2021; *Staff Exit Controls* 5 August 2021; *Annual 2019-20 Financial Audits of LG Entities Report 30: 2020-21* 16 June 2021; *LG General Computer Controls* 12 May 2021; *Regulation of Consumer Food Safety by the Health Department* 1 April 2021; *Managing the Impact of Plant and Animal Pests: Follow Up* 31 August 2020; *Waste Management – Service Delivery* 21 August 2020; *Regulation of Consumer Food Safety by LG Entities* 30 June 2020; *Information Systems Audit Report* 25 June 2020; *LG Contract Extensions and Variations* 4 May 2020; *Fraud Prevention in LG* 15 August 2019; *LG Building Approvals* 26 June 2019; *Verifying Employee Identity and Credentials* 19 June 2019; *Records Management in LG* 9 April 2019; *Management of Supplier Master Files* 7 March 2019; *Audit Results Report – Annual 2017-18 Financial Audits of LG Entities* 7 March 2019; *LG Procurement* 11 October 2018; *Timely Payment of Suppliers* 13 June 2018; *Controls over Corporate Credit Cards* 9 May 2018

<sup>456</sup> *Application for an order to stop bullying Stephen Cain [LG CEO] v [EMs] Stuart Downing; Logan Howlett; Lee-Anne Smith; Kevin Allen* [2020] FWC 1914 PERTH, 8 MAY 2020; see Standards Panel vexatious complaint findings; see many State Administrative Tribunal reversals of Standards Panel breach finding decisions

<sup>457</sup> for example, LG Minister could direct DLGSC to make an Operational Guideline and Model Policy that reflects best practice of every LG OAG Best Practice Recommendation from the many LG performance and financial audits

<sup>458</sup> LG Minister has power to direct Local Government Advisory Board to inquire into anything Minister requires: LG Act s2.45(c)

<sup>459</sup> failure to use as required Minister's LG Act s.9.13A compliance notice powers, and see *Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts* [2020] WASC 350 decision

<sup>460</sup> as a *captured agency*

<sup>461</sup> exacerbated by absence of a WA tertiary institution teaching local government, or undertaking local government research; and poor training standards

<sup>462</sup> *Three goals can be identified as necessary to safeguard the credibility of our democracy and to provide an acceptable foundation for public trust and confidence in our system of government. These goals are:*

*(a) government must be conducted openly; and*

*(b) public officials and agencies must be made accountable for their actions; and*

*(c) there must be integrity both in the processes of government and in the conduct to be expected of public officials:* The WA Royal Commission into the Commercial Activities of Government (WA Inc.)

<sup>463</sup> but not suspension or dismissal of CEO (or senior employees) who clearly could not have been complying with their LG Act s.5.41(b),(g),(h) functions

service body charged and funded to provide local government regulatory oversight has failed and continues to fail local governments by the Proposals<sup>464</sup>.

## ANNEXURE FIVE

### Government Response

WA Legislative Council report *Local Government Review Panel Final Report* May 2020 (Panel)<sup>465</sup> identified many important reforms, which are ignored by the Proposals; and missed many issues as regrettably do the Proposals. The Proposals ignore many of the Panel recommendations. This approach cannot and will not cure the current fundamental flaws in the operation and oversight of WA local governments, which will continue to have significant unnecessary adverse impacts on the WA economy and prosperity, and the amenity of the localities where its citizens live.

### Minister's Solutions

Many of the Proposals transfer powers, functions and duties away from the DLGSC rebadging them in another body thereby diffusing accountability and transparency to the detriment of effective LG operations, and further<sup>466</sup> away from Councils. Some Proposals must be withdrawn, while others must be strengthened.

### SOME SOLUTIONS

1. An accountable non-captured DLGSC must be appropriately resourced to carry out its budgeted functions according to law, equity and natural justice, having regard to the objects and intentions of the WA Constitution and the LG Act, which has parliamentary oversight by a dedicated Local Government Joint Standing Committee<sup>467</sup>.
2. An appropriately resourced Parliamentary Ombudsman<sup>468</sup> to investigate and rule on *all* local government misconduct and breach complaints<sup>469</sup> from which ever source about any local government element including the DLGSC, Council, EM, CEO, employees, or contractors.
3. Adopt all Royal Commission LG recommendations<sup>470</sup>, Corruption and Crime Commission LG recommendations, OAG LG performance and financial audit best practice recommendations and best practice, or publish the reasons for not adopting them.

<sup>464</sup> it must be more widely recognised that LG administrations can and do influence electoral outcomes: see 2020 City of Perth Inquiry; set up Councils to fail, where there are EMs or Councils objecting to questionable administration practices, or trying to hold CEOs and/or senior employees to account: see *Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts* [2020] WASC 350. ANY opportunity to reduce employees' capacity must be *vigorously employed*. EMs are poorly trained and poorly advised by conflicted trainers and employees.

<sup>465</sup> [https://www.dlgsc.wa.gov.au/docs/default-source/local-government/local-government-review-panel-final-report.pdf?sfvrsn=acefce14\\_1](https://www.dlgsc.wa.gov.au/docs/default-source/local-government/local-government-review-panel-final-report.pdf?sfvrsn=acefce14_1)

<sup>466</sup> see **Appendix Ten**

<sup>467</sup> positive economics of this proposal over the Proposals arguably could be demonstrated

<sup>468</sup> repeal of Standards Panel, no Inspector, no Monitors

<sup>469</sup> which are not *serious misconduct*, unless referred by CCC

<sup>470</sup> Royal Commissions into Banking and Casinos blamed regulatory capture, poor regulatory oversight and neglect of public interest for the demonstrated *administrative dysfunction*, as indeed has apparently infected DLGSC



4. Sufficiently resource and require the DLGSC<sup>471</sup> to undertake their regulatory roles without fear or favour to enforce compliance with the LG Act.
5. Insert a general offence provision into the LG Act for breach of any provision, with penalties applying.
6. Require Employee Codes of Conduct to be in place by a specified date, to be approved by Council, and enforced by a Local Law, which provides penalties<sup>472</sup>, or require a Combined EM and employee Code of Conduct with same approach for EMs and employees.
7. Provide for a complaint to be made to the police about a LG Act offence if the CEO, Returning Officer, Council and/or DLGSC refuse to prosecute.
8. Require compulsory optional preferential voting, only by residents to better empower Councils as counter to administration influence, improve public and elector engagement in LG and help to weed out the grey corruption<sup>473</sup> by and influence of sectoral interests whose control or influence local government election outcomes is fostered and facilitated by current electoral procedures.
9. Require a LG Productivity Report from a disinterested expert<sup>474</sup> to provide law and policy reform proposals<sup>475</sup>, noting economic improvements always follow improvements in integrity<sup>476</sup>.
10. Require at least 8 local government bands mandated in LG Act for EM payments and CEO remuneration, and mandate minimum criteria for those bands based on performance, productivity and qualification criteria<sup>477</sup>.
11. Reset local government boundaries, perhaps in 2 step process by fostering the development of regional bodies preparatory to and as trial boundary resets.
12. Foster, through law reform, that LG administrations are comprised of competent honest expert ethical *necessary* employees who administer and comply with Council decisions and direction, and perform their statutory functions efficiently and lawfully within a recognised functional fiduciary relationship devoid of influence from inevitable bias and self-interest<sup>478</sup>.
13. Sufficiently resource the OAG to include local government in Forensic Audits.
14. Sufficiently resource the CCC to include investigation of all midlevel serious misconduct allegations.

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<sup>471</sup> *Regulatory Capture* of DLGSC by LG employees and former employees must be eliminated

<sup>472</sup> to avoid the current double standards

<sup>473</sup> see *Game of Mates: How favours bleed the nation* 2017 Murray CK, & Frijters, P, about Australia's corruption; recognises how powerful players lobby for laws to be changed, so that behaviour otherwise corrupt becomes lawful normal way of doing business, thereby entrenching [and protecting] potentially corrupt activity, see page 16

<sup>474</sup> for example, see *South Australian Productivity Commission report on Local Government* 5 February 2020

<sup>475</sup> such as in SA example where excessive use of contractors to cover up employee lack of expertise was highlighted as significant cost issue

<sup>476</sup> *The Ethical Advantage* 29 October 2020 <https://ethics.org.au/theres-something-australia-can-do-to-add-45b-to-the-economy-it-involves-ethics/>

<sup>477</sup><sup>477</sup> the current 4 band system and the criteria for the bands has driven up LG costs and is unresponsive to merit, qualifications, experience or misconduct findings

<sup>478</sup> It is uncontroversial that everyone has bias and self-interest, it is distancing this from administrative decision-making which is essential

## ANNEXURE SIX

### What is the Evidence?

The Proposals give no evidence or research for assertions and proposals therein for the need for various law reform, which appear to be based on unsubstantiated opinion perhaps reflecting the lobbying activities of WALGA and LG Pro<sup>479</sup> acting as employee advocate organisations, and which ignore the recommendations of the WA Office of the Auditor General and the Corruption and Crime Commission most of which relate to poor, sometimes corrupt CEO performance and poorly trained EMs<sup>480</sup>.

Since it was established in 2019 LGEMA has responded to around 1,000 requests for assistance including clarifying and correcting advices given by employees, CEOs, Mayors, WALGA and the DLGSC, and their legal advisors. LGEMA has documented these requests, which are reflected in the footnotes to this submission, all of which relate to an actual occurrence on one or more occasions.

## ANNEXURE SEVEN

### Elected Members Impact Summary

The state government is making it increasingly difficult for local government Elected Members<sup>481</sup> to perform their constitutional<sup>482</sup> and statutory roles<sup>483</sup>, and for Local Governments to attract well qualified independent candidate EMs, or appropriately qualified suitable CEOs and employees.

The DLGSC and WALGA Annual Reports reveal significant financial support for many CEO and other employee support programs<sup>484</sup>, but very little expenditure if any on direct expert reliable independent support for Elected Members<sup>485</sup> or for enforcing *Local Government Act 1995* (WA) (LG Act)<sup>486</sup> compliance against employees including CEOs<sup>487</sup>, in an environment where EM

<sup>479</sup> estimated 81% of WALGA's and 68% of LG Pro law reform recommendations benefit employee administrators and/or disadvantage public interest

<sup>480</sup> WALGA does the training, noting for example CCC comments in *Dowerin*

<sup>481</sup> how extraordinary that DLGSCs find the money for, *The DLGSC continues to fund research by the University of Western Australia and WALGA that establishes benchmark data about Elected Members in local government in Western Australia ...[to] determine the motivations to stand for new Elected Members and re-nominating members, which will allow trends to be monitored*, but not provide an expert comprehensive legal service support for EMs: Annual Report 2020-2021, page 63, and not for governing bodies support being Councils and their constituent EMs

<sup>482</sup> noting WA Constitution has vested governing powers *only* in Elected Members, as collective *governing body*

<sup>483</sup> LG Act s.2.8, s.2.10

<sup>484</sup> which may mean in many cases supporting LG CEOs not qualified to fill position, and not enforcing programs to equip EMs to perform their constitutional and statutory roles

<sup>485</sup> EMs can email DLGSC hotline or WALGA for support, but advice maybe wrong, unhelpful or refused; furthermore EM contact may be reported back to CEO, sometimes causing enormous difficulties for EMs; WALGA training is not expert or independent because WALGA is an employee support organisation and much of the training is delivered by ex-employees without EM insight

<sup>486</sup> honoured more often in the breach

<sup>487</sup> there is reference to breaches (EMs) and Inquiries (Councils), but no reference to employee misconduct, minor misconduct, serious misconduct; there are no LG statistics, no explanation of *formal action taken*



support is desirable and desperately needed<sup>488</sup>. Minority Elected Members are unheard and punished mercilessly with significant mental health harm to them<sup>489</sup>, notwithstanding they are often the proverbial *canary in the coalmine*.

The **LG Act** is a strong effective Act, with some easily remedied flaws. The current problem is that the LG Act is **neither implemented nor complied with by many LG employees**.

As a passionate supporter of WA local government and the current constitutional model, I write to you with my profound disappointment in the Local Government Reform – Summary of Proposed Reforms (the Proposals), which are *simplistic vague embarrassing uninformed notes biased to EM disempowerment and unconstitutional employee empowerment*, and increasingly reduced oversight accountability. The Proposals poor standard of drafting should be entirely unacceptable to a Minister of the Crown. For one of the most important WA Acts of parliament<sup>490</sup>, the Proposals disclose a disconcerting and uninformed approach to local government reform, many of which utterly miss the mark<sup>491</sup> and fail the *pub test*. There are many experts in this field whose *public interest* input on a Green Bill any prudent reasonable Minister could welcome, which would also benefit EMs, and the District communities and the citizens who EMs are finding it increasingly difficult to represent.

Astoundingly, there is no Green Bill for me to comment on.

I cannot understand from the circulated Proposals what is proposed to be included, amended or repealed. It is difficult to comment accurately on the Proposals with *any* confidence. I am most concerned that a lack of informed submissions might be characterised as lack of interest, or even worse as endorsement of the Proposals.

## ANNEXURE EIGHT

### Obstacles To Effective Local Government Good Governance Reform: Circularity<sup>492</sup>

<sup>488</sup> for example see the CCC findings about EMs' *breathhtaking levels of ignorance about the role and responsibility of EMs over CEO governance*, and *EMs are volunteers whose general lack of knowledge of the LG Act was disturbing*; and *Council misplaced its trust in former CEO to provide necessary governance processes, controls and information, which would have ensured that LG was operating lawfully and community's assets were protected: Report on a Matter of Governance at the Shire of Dowerin* 10 October 2016

<sup>489</sup> go no further than the Standards Panel Annual Report 2020-2021 outcomes for the number of and increasing trend of breach complaints dismissed, especially fostered by the heinous LG Act s.5.123 foisted on EMs 5 July 2019, and equally heinous Division 3 Behaviour provisions introduced in 2021, which give employees another bite at the EM when Standards Panel complaint fails and a majority Council bullying power over a minority EM

<sup>490</sup> because it impacts on so many people; and because in 2020, there were 139 LGs in WA, each with between 7 – 15 Elected Members (EMs) amounting to around 1,194 EMs in 2021 and 23,973 employees<sup>490</sup> who together managed non-capital assets valued at \$45 billion and raised rates' revenue of around \$2.4 billion<sup>490</sup>, which pale into insignificance beside LGs' cover<sup>490</sup> of *all* WA's land, freshwater and adjacent to coasts<sup>490</sup> supporting biodiversity of inestimable economic value, arguably \$trillions

<sup>491</sup> for *better government* of Districts: Constitution s.52; LG Act s.1.3(2)&(3) intentions

<sup>492</sup> LG law reform *must always* start with model established and envisaged by WA Constitution. Law reform constitutional primacy empowers EMs to perform their constitutional and statutory roles through local governing bodies without fear, favour or hindrance, to satisfy Constitutional aspiration and intention for *better* peace, order and good government of localities.

A fundamental problem, which has fostered poor governance in WA local governments, is one of **circularity**, which can be broken only by a strong LG Minister entirely motivated by the public interest<sup>493</sup>.

### Circularity One

Successive LG Ministers appear to have been briefed officially primarily<sup>494</sup> from LG employee advocates<sup>495</sup> and lobbyists<sup>496</sup>, and have not had an unconflicted neutral expert well-resourced independent public service department<sup>497</sup> to give the Minister frank, fearless and expert advice; nor is the DLGSC well placed to perform its statutory obligation to *assist the Minister to administer the Act*<sup>498</sup> because of resourcing issues decided by the Minister and the state budget, and the internal allocation of those resources by the DLGSC. Hence, a circularity exists that must be broken.

### Circularity Two

If “*day to day management deficiencies*” exist, it is CEOs’ function to fix them, but bizarrely also to advise an otherwise unsupported Council’s role how to performance manage CEO until deficiencies fixed, or dismiss the CEO. Even the Supreme Court has noticed a chronic power imbalance, it is preposterous that current Law Reform proposals not only do not fix this parlous and conflicted state of affairs, but make it worse. When faced with EMs or Councils performing their roles and asking questions, CEOs have all power and influence to give LG an appearance of such instability, they can even persuade a Minister, through DLGSC, to suspend a Council, noting “abuse of power” and “influence” are two of CCC’s deadly corruption sins. The Supreme Court reversed an unreasonable LG Minister’s decision to suspend a Council based on poor advice from DLGSC, and noticed this chronic power imbalance<sup>499</sup>.

### Circularity Three

The **LG records circularity**<sup>500</sup>. Records are kept for purposes that include accountability. Information is circulated to LG administrations to inform affected parties such as EMs and electors, residents and ratepayers. LG administrations make records and are sent information.

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<sup>493</sup> sad and disturbing local government *reality* is far from the model envisaged by the LG Act, through *no* fault of many worthy individual participants and advocates. The *perverse reality* is that as EM powers are increasingly constrained, LG powers increase, a *unionised administrative powerful bureaucracy* enlarges, and sadly *localised power, affiliation and character dwindle* to the detriment of a Districts’ citizens.

<sup>494</sup> not from EM advocates, Councils, electors or District public interests residents and ratepayer groups

<sup>495</sup> DLGSC, WALGA and LG Pro within a Partnership Agreement

<sup>496</sup> employee lobbyists, property, mining and pastoral interest groups

<sup>497</sup> see *Perth Casino Royal Commission Interim Report on the Regulatory Framework* 30 June 2021; Office of the Auditor General Report *Regulation And Support of the LG Sector* 30 April 2021; WA CCC Report *On a Matter of Governance at the Shire of Dowerin* 10 October 2016

<sup>498</sup> LG Act s.1.4 definition of *Department*

<sup>499</sup> when EMs or Councils start asking unwanted questions about, *Deficiencies in the day to day management of a local government ... [it] will not provide an adequate foundation for a conclusion that it is inappropriate for the council to act or continue to act as the governing body unless those day to day management deficiencies can be traced back to some failing or suspected failing in the operation of the council in its capacity as the governing body*, see ***Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts* [2020] WASC 350**, at para 91

<sup>500</sup> see also **LGEMA submission** to State Records Commission on **LG Record Keeping Plans**



LG CEOs control record making and record access<sup>501</sup>, and information dissemination<sup>502</sup>. It appears that no state government agency is responsible for enforcing LG records access<sup>503</sup>. This must be remedied and appropriately budgeted. This circularity **must be broken** to have any chance of better LG accountability, as intended<sup>504</sup> by the 1995 parliament and ensuring EMs are in a safe workplace, and are being fully informed in a timely way about matters affecting their local government and in particular records and information.

The DLGSC<sup>505</sup> advises the Minister, but the DLGSC is not meeting its budget obligations<sup>506</sup>, appears dysfunctional<sup>507</sup>, appears heavily influenced by WALGA<sup>508</sup> and CEOs, and CEO lobbyist

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<sup>501</sup> clearly highly conflicted roles; see LG Act s.5.41(h), see FOI Act making CEOs being principal FOI officer

<sup>502</sup> such as submissions due on LG Salaries and Allowances Tribunal LG Determination, or LG Act reform submissions, which some CEOs do not forward to EMs and some Councils do not require that such information is circulated, or circulated too late for EMs electors to have workshops and/or Council meeting to decide informed response; such as funding and grant possibilities

<sup>503</sup> FOI Act does not require agencies to guarantee that their record-keeping systems are infallible. The OIC<sup>503</sup> has recognised that documents may not be readily found for a number of reasons including *misfiling; poor record keeping; ill-defined requests; proliferation of record systems; unclear policies or guidelines; inadequate training in record management; or simply that the documents do not exist*. The Federal Court<sup>503</sup> has commented that the *do not exist* provision is not meant to be a refuge for the disordered or disorganised: **Re McLerie and City of Melville[2022] WAICmr 1**

<sup>504</sup> LG Act s.1.3(2)(c)

<sup>505</sup> without the identified qualities

<sup>506</sup> WA LG budget allocation in the 2020/2021 WA State Budget is made to the DLGSC to provide for the *regulation and support of LGs: 2020 WA Budget Paper No 2 Volume 2, page 145 -148*. The DLGSC outcomes, services and key performance information are related to the WA government LG goals of, ... *Better Places: a quality environment with liveable and affordable communities and vibrant regions*. ... Key budget effectiveness goals measure the impact of the DLGSC delivery of its services on the WA government's desired outcomes, which are that, ... *Local governments are supported to meet legislative requirements of the Local Government Act...* Key budget efficiency indicators are that the DLGSC is, ... *supporting LGs to fulfill their statutory obligations and to improve capability in the sector*. Service delivery of the *Regulation and Support of Local Government* is measured against the resources used by the DLGSC. There are DLGSC 50-55 FTE employees employed to deliver this service at a cost of around \$15 million. The State government's expected DLGSC outcome is that LGs are supported, *to meet legislative requirements of LG Act* with measurement being made by the ... *percentage of LGs where actions were taken in support of compliance with the legislative framework: 2020 WA Budget Paper No 2 Volume 2, page 145-148*. The DLGSC budget objectives include LG, Council, EM and employee compliance with the LG Act. The OAG audit of DLGSC role in LG regulation and LG support raises serious doubts about the DLGSC's ability to deliver or actual delivery of the state government LG budget objectives.

<sup>507</sup> see for example, **Re Boulter and Department of Local Government Sport and Cultural Industries [2021]**

**WAICmr8**; Office of the Auditor General Report *Regulation And Support of the LG Sector* 30 April 2021; Casino Royal Commission Interim Report

<sup>508</sup> which is non-elected, not publicly accountable, is a legislated monopoly constitutionally (its own Rules of Association) required to act only in its own interests, not the public interest and not in local government interests, avoids LG Councils' input and ignores electors by liaising with LG through secret zone meetings not through LG Councils, is almost entirely reliant on public monies but is not audited by OAG, or subject to FOI Act; yet most surprisingly is only spokesperson that speaks to the state government for Local Governments and is body that nominates LG representatives on influential state government bodies (such as federal grants and boundary setting); is arguably *LG employee* advocacy body, not LG advocacy body; noting WALGA state Council is informed by reports from its employees and WALGA zone meetings, not Councils' or electors' positions



bodies, has transferred some statutory responsibilities wholly or in part to WALGA<sup>509</sup> and is not keeping its Operational Guidelines or its Local Law register up to date, which is an essential starting point for fostering LG good governance<sup>510</sup>. Furthermore, the DLGSC does not have **disciplinary framework for CEOs and local government employees** as recommended<sup>511</sup>, is not keeping a general register of legal advices as recommended<sup>512</sup>, not keeping and auditing a register of CEO and employee misconduct allegations as recommended<sup>513</sup>, is not applying the WA Public Service Code of Conduct to LG employees including CEOs, and not regulating LG lobbyists<sup>514</sup> and LG candidate donors.

Other reasons for DLGSC failing local governments<sup>515</sup> include insufficient resourcing and lack of appropriate distancing from<sup>516</sup> those it is required to regulate, insufficient legally qualified experts in local government working in DLGSC, inquiries not conducted fairly or effectively<sup>517</sup>, and complete failure in assisting EMs<sup>518</sup>. The ignored LG Act requirements<sup>519</sup>, failure of CEOs to

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<sup>509</sup> for example, EM advice line, Model Local Laws, representation on state government boards and committees

<sup>510</sup> such as for each OAG LG Performance Audit best Practice Recommendations

<sup>511</sup> **CCC Report On Misconduct Handling Procedures In The Western Australian Public Sector: Department Of Local Government And Regional Development** April 2006, Recommendation 3

<sup>512</sup> see *Report of the Inquiry into City of Joondalup 2005* Recommendation 21

<sup>513</sup> **CCC Report On Misconduct Handling Procedures In The Western Australian Public Sector: Department Of Local Government And Regional Development** April 2006 at Recommendations 3,4 and 5

<sup>514</sup> see recommendations from WA CCC **Report on the investigation of alleged Public Sector Misconduct at the City of Wanneroo 3 December 2009**

<sup>515</sup> LG Minister (for example LG Act s.9.13A); and DLGSC (for example, LG Act s.9.24 employee offence prosecutions) have significant and sufficient local government intervention powers, but do not use them or do not use them expertly with effect

<sup>516</sup> CEOs and other employees

<sup>517</sup> whose generalised advice is often terminated with advice to EMs to obtain their own legal advice (at the EM's cost)

<sup>518</sup> it is a waste of time and resources, and damaging to hold LG inquiries by people not sufficiently qualified, or who are conflicted and/or not properly distanced from the inquiry and its possible outcomes. *The LG Act provides the DLGSC and the Minister with a range of powers to regulate the conduct of council members and local government staff, and scrutinise the affairs of local governments. The Committee questions whether the DLGSC is appropriately resourced to exercise these powers and administer its Local Government Compliance Framework: The Panel Finding 19*

<sup>519</sup> especially noting EMs using LG resources to promote preferred Candidates and only minor breach complaints made and acted on if candidate not Council majority or employees' preferred candidate; employees with conflicts of interest in position to affect election outcomes, see one example of *electoral manipulation* findings in City of Perth 2021 inquiry; failure to prosecute strict liability electoral offences in breach of LG Act Part 4, Division 11; failure of LG/WAEC contracts to require LG Act compliance or have a clear penalty for failures; failure of LGs to hold WAEC account for such failures; complete opaqueness of how WAEC preferred Returning Officers are appointed; WAEC using SSO to represent it in Court of Disputed Returns matters where SSO not seen to be acting as a model litigant, Magistrates Courts wrongly listing parties as respondents, no general publication of Electoral Codes of Conduct in breach of LG Act s.5.94(a); Councils not considering WAEC contract terms where delegations of contract powers not made in breach of CEO functions; or EMs not being given WAEC contracts in breach of LG Act s.5.92(2); no appeal right from Court of Disputed Returns decisions; unknown possibility of costs orders being made against complainants in Court of Disputed Returns where costs should be only awarded against vexatious complainants; no requirements for procedural fairness and natural justice in any decision relating to LG elections, no lowest vote different where recount required, CEOs, all who have conflict of interest in election outcomes, being returning officers who decide voter eligibility, collect postal votes before count and store them after count; returning officers not required to remain appointed until all relevant time limitations expired

appropriately and accurately advise and inform EMs and Councils<sup>520</sup>, and ineffective implementation of LG oversight systems and requirements prop up this unaccountable state of affairs, which is destructive because it is devoid of good governance<sup>521</sup> and best practice<sup>522</sup>. An apparently *captured*<sup>523</sup> DLGSC is<sup>524</sup> the root cause of local government dysfunction and failures currently facing WA local governments<sup>525</sup>.

## ANNEXURE NINE

### SAT Act and LG Act amendments for civil enforcement of LG Laws Model

The State Administrative Tribunal Act (SAT Act) and LG Act could be amended as follows:

“SAT Act” means State Administrative Tribunal Act

“LG Act” means the *Local Government Act 1995* and all associated subsidiary legislation

“CEO” means LG CEO, permanent or temporary, or LG employee acting under delegated authority from the CEO or Council or another principal.

“Vocation body” is Council and DLGSC

“Vocation” includes a LG CEO

“LG Laws” include the LG Act, LG Regulations and any other written laws that impose duties, functions or powers on a “CEO” or Council

Civil enforcement of LG Laws is matter of significant public interest in access to justice for the resident, ratepayers and electors of a District, and effective not wasteful expenditure of LG municipal funds being public monies.

Any person can make a complaint to the State Administrative Tribunal if the applicable Council or the DLGSC have refused to enforce a CEO or Council compliance with the LG Laws or Council resolutions in a timely way.

Equitable remedies should be only by a SAT judicial member.

Interpretation of LG Laws should be by a SAT judicial member.

Giving the SAT this role will:

- Restrain breaches of LG laws
- Assist everyone to understand LG laws
- Assist CEOs in understanding LG Laws
- Aid effective and prompt enforcement of LG Laws
- Mitigate and remedy harm to the proper and lawful administration of LG municipal funds
- Correct, restrain and remedy inaccurate or incomplete legal advices given to LGs
- Improve the understanding of EMs of their powers, duties and functions
- Create SAT oversight of LG Act and LG Local Laws, because there is currently no oversight body enforcing LG laws
- Facilitate dispute resolution

<sup>520</sup> [EMs] *have the power but they don't know it because they rely on CEO to tell them what they don't know or what they need to know*: see CCC **Report On a Matter of Governance at the Shire of Dowerin 10 October 2016**

<sup>521</sup> see **Casino Royal Commission Interim Report**

<sup>522</sup> see 14 OAG LG Performance Audit Reports

<sup>523</sup> in *regulatory capture* sense

<sup>524</sup> others include poor DLGSC resourcing decisions, some oversight flaws (exploited by many) in otherwise effective LG Act, many of which flaws are not acknowledged, addressed or remedied by the Proposals

<sup>525</sup> for example see many RC and CCC reports cited above, which mostly stem from CEO or employee wrongdoing in relation to LGs





- Empower minority EMs, and electors

The SAT responses could include:

- Issue an injunction to restrain contravention of LG laws
- Make an enforcement order or interim enforcement order, or cancel such an order
- Make declarations of right in relation to any right, obligation or duty imposed by or under LG laws
- Make minor or serious misconduct findings
- SAT can direct the CEO to comply with the LG Act or lawful Council resolution or injunct the CEO from acting in a way that is inconsistent with the LG Act or a Council resolution
- Make any orders necessary to secure compliance with the Act and give effect to the intentions of the LG Act including to undertake a specified act or refrain from a specified act
- Make a declaration as to the law where just and convenient to do so
- Include a mediated outcome as long as any agreed interpretation of the law is published
- Decide remedies including costs and damages
- Facilitation of mediated outcomes

In resolving disputes this will lead to:

- Speed, minimisation of formality and technicality
- Focus on merits and proportionality of a matter
- Develop a body of law that interprets LG laws
- Improve the effectiveness and implementation of the anti-fraud, anti-risk and anti-corruption provision of LG laws
- Empower EMs
- Reduce LG injustice
- Improve LG good governance and reduce corruption

## ANNEXURE TEN

### Recent Law Reform Compromised EM Roles<sup>526</sup>

Up to the current proposals, since around May 2016 the LG Ministers have, as recommended by the DLGSC and/or WALGA, successfully recommended to parliament over 50 changes to the LG legislative framework that amended the LG Act framework including<sup>527</sup>:

- (a) removing any voting requirement that requires a 75% majority<sup>528</sup>, so change in important areas now requires less support, which meant repealing all LG Act requirements for decisions by Special Majority<sup>529</sup> including the changing from electing mayor/president from election by Council to election by electors<sup>530</sup>.

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<sup>526</sup> have generally made it much harder for EMs to perform their roles; made LG even more unsafe workplace for EMs, reduced CEO and other employees' transparency accountability; reduced public access to LG records

<sup>527</sup> noting this is not comprehensive

<sup>528</sup> LG Act s.1.4 definition of 75% majority repealed

<sup>529</sup> LG Act s.1.10 repealed

<sup>530</sup> LG Act s.2.11



- (b) weakening the statutory requirements for local public notice of a matter requiring LG Act public notice to their community<sup>531</sup>, noting that many LG websites are un navigable and unsearchable in any sensible way ,and that there is no requirement to publish a local notice
- (c) on the website front page where it is easily noticed by locals who actually access their LG website.
- (d) weakening the statutory requirements for State-wide local notice<sup>532</sup> and having regard to the concerns articulated above.
- (e) repealing the words “on indictment” from LG Act s.2.22(1)(c).” As I understand it, what this means is that the prosecution for any offence that can see an EM convicted of a crime does not now have to be undertaken by the Crown<sup>533</sup> and could be undertaken by the LG CEO or the Department CEO<sup>534</sup>, which weaponises this provision in the hands of the CEO.
- (f) adding Part 8 “*Division 1A — Intervention by the Minister in certain circumstances subdivision 2 Council member may be suspended or required to undertake remedial action*”<sup>535</sup>, and including peremptory suspension of one or more Councillors, power to order remedial action and the notice and procedures required<sup>536</sup>, which means that the Minister can now suspend or dismiss a single EM, which is a troubling power given minority EMs are often the ones asking the difficult governance questions of a wilfully blind, lazy or captured majority. At the Town of Cambridge the majority of EMs were asking troubling performance questions of the CEO and senior staff, which quite properly led to CEO/senior staff dismissal and resignations at which point the LG Minister issued a “show cause” why the Minister should not dismiss the Council notice to the whole Council on advice from DLGSC, which notice the Supreme Court quashed on an application by the Town for a Writ of Prohibition. The Supreme Court in issuing the writ of prohibition against the “show cause” notice found that the LG Minister has been acting unreasonably<sup>537</sup>.
- (g) including s.8.19A Suspension of Council member while inquiry held, but most surprisingly made no provision to suspend an offending CEO
- (h) including a power for an Inquiry Panel to recommend a single Council member be dismissed<sup>538</sup>, noting that WALGA as influencer submits a list of people from whom one

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<sup>531</sup> see changes to LG Act s.1.7

<sup>532</sup> see changes to LG Act s.1.8

<sup>533</sup> indictable offence is an offence which can only be tried in Crown Court but term also includes 'either-way' offences (that is offences which can be tried in the magistrates' court or the Crown Court); person is 'tried on indictment' before a judge and jury in Crown Court

<sup>534</sup> LG Act s.9.24

<sup>535</sup> LG Act s.8.15D > s.8.15M

<sup>536</sup> LG Minister attempted to exercise this power to dismission Cambridge Council and was found by the WA Supreme Court to have been unreasonable: see ***Town of Cambridge -v- The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts*** [2020] WASC 350, which indicates a political purpose and/or a poorly informed Minister

<sup>537</sup> ***Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts*** [2020] WASC 350

<sup>538</sup> LG Act s.8.22(2A)



member of the Inquiry Panel must be selected<sup>539</sup>, thus is a significant but conflicted influencer in LG Inquiry proceedings.

- (i) ensuring EMs are not paid fees or allowances while suspended<sup>540</sup>, but there is surprisingly no equivalent statutory consequence for a CEO who is required to but does not appropriately advise and inform Council sufficiently for Council to have made informed decisions<sup>541</sup> so as to avoid such consequences.
- (j) adding a provisions that substantial but not complete compliance with local law making procedure does not invalidate the local law, and reducing the public notice requirements for new local laws and review of existing local laws<sup>542</sup>; but there is no statutory consequence for a CEO who does not comply and/or appropriately and sufficiently advise and inform Council for Council to undertake an informed local law adoption procedure<sup>543</sup>, as the CEO is required to do and there is no statutory consequence for the CEO who does not comply.
- (k) adding a provision to require copy of proposed business plan to be published on LG website<sup>544</sup> (but not where on the website it must be, so as to stop employees burying it in an unfindable unsearchable place), and removing the requirement of local public notice as previously defined and required<sup>545</sup>; but there is no statutory consequence for a CEO who does not comply and/or does not appropriately and sufficiently advise and inform Council for Council to make an informed decision<sup>546</sup>, as the CEO is required to do. There is no statutory consequence for a LG CEO who does not comply and that there is no general offence or breach provision in the LG Act to capture breaches otherwise not specified as offences.
- (l) requiring that a LG mayor, president or councillor candidate must have completed induction course to be eligible<sup>547</sup>, but no such requirement is made for prospective or employed CEOs to undertake training for which the OAG LG performance audits reveal an obvious and urgent need.
- (m) removing the requirement for the CEO to exhibit LG election candidate details on notice board at LG offices<sup>548</sup> but requiring them to be published in LG website but not where or how on the website, so the details can be buried on the website. Nor do the amendments provide for fair and equitable searchable printable downloadable website display, nor do the amendments require the details to be displayed as provided by the candidate, which leaves it open to electoral manipulation of such materials by the CEOs or other employees<sup>549</sup>.
- (n) removing the Council role in the annual review of all employees. The Act now only requires Council to review only the CEO performance, and the CEO to undertake all other employee

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<sup>539</sup> LG Act Schedule 81.1, cl.1(1), cl.(3)&(4)

<sup>540</sup> LG Act s.8.29(5)

<sup>541</sup> LG Act s.5.41(b)

<sup>542</sup> LG Act s.3.12(3)(a), deletion s.3.12(3a), s.3.12(6)(c);s.3.16(2a) deleted

<sup>543</sup> LG Act s.5.41(b)

<sup>544</sup> LG Act s.3.59(4)(b)

<sup>545</sup> deletion LG Act s.3.59(5a)

<sup>546</sup> LG Act s.5.41(b)

<sup>547</sup> LG Act s.4.48(1)&(2)

<sup>548</sup> LG Act s.4.52(1)

<sup>549</sup> noting issues of electoral manipulation in the **City of Perth 2020 Inquiry Report**

performance review, with no requirement for an outcomes report to Council, and with no statutory consequences for a CEO who does not undertake the required reviews<sup>550</sup>.

- (o) repealing the requirement for public notice of a Council's proposed policy relating to payments to employees over and above their contractual or award entitlements, and only now requires the final policy to be placed on LG website with no requirements as to how or where thus setting the scene for a CEO to bury the policy on the website. There are no statutory consequences for a CEO authorising such a payment in breach of the policy. There is no general offence provision for breach of the LG Act requirements.
- (p) notwithstanding the new comprehensive gift disclosure provisions added to the LG Act, unfortunately and bizarrely, the Minister has made regulations that a gift from WALGA, ALGA or LG PRO are non-declarable gift, whatever the size<sup>551</sup>. So in a report to Council recommending membership or subscription to a WALGA service or a WALGA preferred provider a CEO, employee or EM who has received any amount of a WALGA gift is not required to declare that gift. Unfortunately the DLGSC has not seen fit to amend the LG Act to reflect the Supreme Court decision<sup>552</sup> wherein the Court decided that a Councillor could not participate in meetings or vote where the Councillor has an "apprehension of bias" but they should have. Additions were made to LG Act in relation of disclosure of gifts by Council members and CEO<sup>553</sup>. The requirement to have a gift register available for public inspection under LG Act s.5.8(4) was repealed but it is required to be available for public inspection under LG Act s.5.94(ba) and on the LG website<sup>554</sup>. There is no statutory consequence or remedy against a CEO for not complying or ensuring compliance with these public record requirements.
- (q) clarifying that a CEO with a disclosable interest cannot give advice or report unless authorised by Council or Minister in only a specific set of circumstances<sup>555</sup>. There is a penalty for breach of this requirement of \$10,000 or 2 years' imprisonment but bizarrely only the DLGSC CEO, LG CEO, Council or authorised employee can commence a prosecution for a LG Act offence<sup>556</sup>, which is a serious issue when it is the LG CEO, who employs LG employees, who is the offender or that an CEO employee can prosecute an EM who is part of the CEO's employer Council.
- (r) changing the definition reference for the word "publish" from the *Criminal Code* to the law of tort as referenced in the *Defamation Act 2005*<sup>557</sup>, thus changing the issue of publishing information from a financial register that is inaccurate from a criminal matter to a civil matter, which should arguably have the option of either, and noting protection from liability of an employee but not an EM "An action in tort does not lie against an authorised person for

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<sup>550</sup> LG Act s.5.38

<sup>551</sup> LG Admin Regs Reg.20B

<sup>552</sup> ***Dain v Shire of Peppermint Grove* [2019] WASC 264**

<sup>553</sup> LG Act s.5.87A, 5.87B, 5.87C

<sup>554</sup> LG Act s.5.89A(5)

<sup>555</sup> LG Acts.5.71A and s.5.71B

<sup>556</sup> LG Act s.9.24(1)

<sup>557</sup> LG Act s.5.90(2)



*anything that the person has done, in good faith, in the exercise or purported exercise of a power under this Division*<sup>558</sup>.

- (s) repealing the public right to inspect CEO and senior employee contracts<sup>559</sup>, notwithstanding the Tribunal Determinations about openness of CEO contracts, and the LG Act intentions for transparency and accountability. This means that it is now hard for a member of the public to ascertain if a CEO contract complies with Tribunal Determinations, and for an EM to so ascertain if a CEO refuses access to the contract by an EM in breach of LG Act s.5.92(2), for which there is no CEO consequence unless a Council majority forces the CEO to produce the contract.
- (t) Repealing, quite properly, a CEO's discretion to not permit public inspection of records Council has not made confidential<sup>560</sup>. However, there is no statutory consequence for CEOs who do not have public records available and no LG Act remedy for the person seeking inspection who is wrongly refused by a CEO.
- (u) requiring the CEO to publish the listed documents on the LG website<sup>561</sup>, but without any statutory misconduct consequence for not doing this nor is there a timely remedy for persons needing information before an upcoming Council or committee meeting. There is no requirement to ensure that the CEO cannot "bury" the documents on the website and have a search term that does not find the document.
- (v) Requiring minor breach complaints to be confidential unless substantiated, which has led to an increase in minor breach complaints against EMs<sup>562</sup>; and drafted so poorly that EMs do not understand that the provision *does not mean that cannot ask for help*, which has harmed EM mental health
- (w) providing for withdrawal of minor breach complaints<sup>563</sup>, to give power to Standards Panel to refuse to deal with a complaint<sup>564</sup>, provide for mediation in some circumstances<sup>565</sup>, make costs orders against the "guilty" Councillor but no power to make a costs order against a much better paid CEO or employee who make a complaint that is "frivolous, trivial, vexatious, misconceived or without substance"<sup>566</sup>. Furthermore, this gives a CEO or employee an opportunity to withdraw a complaint without facing the consequences of a formal finding of making an unsubstantiated complaint while causing maximum harm to possible to the EM.
- (x) ensuring the "shaming" of an EM is complete by amending the LG Act to require that a censure order made following a minor breach finding must be published on the LG Website by the CEO, without any requirement when it is to be taken down<sup>567</sup>, but no equal provision for or "shaming" of a CEO who has committed minor or serious misconduct.

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<sup>558</sup> LG Act s.8.10

<sup>559</sup> LG Act s.5.94(t)

<sup>560</sup> LG Act s.5.95(3)(b)

<sup>561</sup> LG Act 5.96A

<sup>562</sup> see Standards Panel Annual Report 2021

<sup>563</sup> LG Act s.5.110A

<sup>564</sup> LG Act s.5.110(3A)

<sup>565</sup> LG Act s.5.110 (3B)

<sup>566</sup> LG Act s.5.110(3A)

<sup>567</sup> LG Act s.5.118(3)



- (y) permitting any LG employee to be a “complaints officer” as defined<sup>568</sup>, changed from the previous requirement that a LG complaints officer could be only a senior employee as defined by LG Act s.5.37. This amendment minimises the importance and responsibilities of the position of complaints officer<sup>569</sup> and is dismissive of the importance of the minor breach complaint process. A complaints officer is the LG employee who:
- receives minor breach complaints about an EM<sup>570</sup>
  - assesses a complaint it against required procedure
  - decides what materials are relevant for forwarding the Standards Panel<sup>571</sup>
  - forwards a minor breach complaint to the Standards Panel<sup>572</sup>
  - receives and processes a minor breach referral from the DLGSC<sup>573</sup>
  - is authorised to make their own minor breach complaint (perhaps under direction) <sup>574</sup>
  - receives and processes notices and requests from the Standards Panel<sup>575</sup>
  - is required to assess a minor breach complaint and decide if it reveals a serious breach<sup>576</sup>
  - maintain a minor breach complaints register<sup>577</sup>, noting there no requirement about currency of the entries in a minor breach register, so it is up to the complaints officer (as directed or decided by CEO) to decide how long each name remains in the register, which is open to manipulation.
- (z) The complaints officer is part of a quasi-judicial process and whose continued employment, management supervision, direction and dismissal is in the hands of the CEO<sup>578</sup>. The lower the level of the employment hierarchy the more likely the complaints officer might be liable to CEO influence and the less likely to be sufficiently qualified and/or experienced to be part of a quasi-judicial process. One has to ask: why did WALGA and the DLGSC want this change, which is an unjustifiable amendment that is inconsistent with the LG Act intention to result in better decision-making<sup>579</sup>?
- (aa) a shocking widening the scope of EM “complaint” confidentiality from relating only to election periods to relate to any time, noting the offence provisions relating to breach of confidentiality. Only a minor or serious breach “guilty” finding can be published. This means that any complaint about a CEO, employee or Council member cannot be published unless it is a minor or serious breach EM “guilty” finding<sup>580</sup>. So any vexatious complaint made by a CEO or employee cannot be published no matter the harm to the EM, disruption and costs caused. This amendment ensures the weaponisation of the Standards Panel minor breach system is

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<sup>568</sup> LG Act s.5.102A

<sup>569</sup> LG Act 5.120(1)

<sup>570</sup> LG Act s.5.102A, s.5.107(1), s.5.120

<sup>571</sup> LG Act s.5.107(3)(c)(ii)

<sup>572</sup> LG Act s.5.107(3)(c)

<sup>573</sup> LG Act s.108(2)

<sup>574</sup> LG Act s.5.109(1)

<sup>575</sup> LG Act 5.110A(4)(a)(ii), &(6), LG Act s.5.110(3)

<sup>576</sup> LG Act s.5.115(1)

<sup>577</sup> LG Act 5.120(1)

<sup>578</sup> LG Act s.5.41(g)

<sup>579</sup> LG Act s.1.3(2)(a)

<sup>580</sup> LG Act s.5.123



made so much worse, and there is not transparency or accountability of CEOs and employees making vexatious complaints. Complaints about CEOs cannot be made to any independent body and there is no quasi-judicial process to bring CEO's misconduct to account.

- (bb) removing the right to review in the State Administrative Tribunal of a Standards Panel decision to dismiss a "complaint"<sup>581</sup>. This situation may further foster what is believed by many to be a partisan approach by the Standards Panel, "guilty" for EMs" not in the Club<sup>582</sup> and "not guilty" for those are in the Club<sup>583</sup>. Noting CEOs and employees can make minor breach complaints to the Standards Panel, whose members are appointed by Minister, and comprised of a DLGSC nominee who must preside, a WALGA nominee, and a person with legal knowledge presumably nominated by the DLGSC – not necessarily a legal practitioner<sup>584</sup>. These are all members of the Club<sup>585</sup> who control the Standards Panel, and it is wondered by many if the DLGSC draft Standard Panel decisions ahead of the hearing.
- (cc) mandating EM training, mandating that the CEO upload the EMs training completed reports be uploaded on the LG website<sup>586</sup>, authorising regulations to be made prescribing EM training courses; the period within which training must be completed; and exemptions from training<sup>587</sup>. Notwithstanding the recent OAG performance audits, CCC reports and LG inquiries, and significant reliance on outside contractors' expertise there is no corresponding requirement for CEOs or employees to undertake training in any or particular certain circumstances, as there should be if there is to be any hope for any LG governance and productivity improvements.
- (dd) requiring that LGs must adopt a policy in relation to EMs' continuing professional development<sup>588</sup>, but not requiring one for the CEO or employees, which is clearly needed<sup>589</sup>.
- (ee) requiring publishing of the reasons for rates and minimum payments<sup>590</sup>, probably because it was not being doing and should have been, and perhaps from the influence of the OAG now undertaking LG financial audits and making recommendations.
- (ff) making it an offence for a person who is no longer an authorised person not to return their identity card<sup>591</sup>, which suggest there have been management problems in relation to these cards surprisingly unable to be resolved by contractual employment terms.
- (gg) making statutory rules about authorised person's identity cards<sup>592</sup>, which suggest there have been management problems in relation to abuse of these cards unable to be resolved by contractual employment terms. CEOs are responsible for employee contracts.

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<sup>581</sup> LG Act s.5.125

<sup>582</sup> see Appendix Two

<sup>583</sup> noting the number of "guilty" findings overturned by the State Administrative Tribunal

<sup>584</sup> LG Act Schedule 5, cl.8(6)

<sup>585</sup> See Appendix

<sup>586</sup> LG Act s.5.127

<sup>587</sup> LG Act s.5.126

<sup>588</sup> LG Act s.5.128

<sup>589</sup> See 11 x OAG performance audits

<sup>590</sup> LG Act s.6.36(c) &(3A)

<sup>591</sup> LG Act s.6.41(6)

<sup>592</sup> LG Act s.9.10





- (hh) preventing publishing information in the LG Annual Report about minor breach complaints that were unsuccessful<sup>593</sup>, which in turn protects exposure of CEOs and employees who have been making vexatious complaints and the cost to the ratepayers of those complaints.
- (ii) reducing the transparency and accountability requirements for public notice about a LG exercising a power of sale of land by requiring it only to be on the LG website<sup>594</sup>, without any requirements preventing the notice being “buried” on the website.
- (jj) While the COVID amendment were made hurriedly in a period of emergency, they have unnecessarily reduced LG accountability and transparency, and unnecessarily enhanced the power of and reduced the accountability of CEOs and Councils<sup>595</sup>.

## CONCLUSION

I trust the LG Minister and the DLGSC to make the local government workplace a **safe and safer place for all WA’s Elected Members**, improve training for EMs and employees by providing university law and business schools based local government training program, improve local government CEO and employee accountability<sup>596</sup>, foster greater community participation<sup>597</sup> by improved access to records and information to Elected Members and the community, all of which will improve local government decision making<sup>598</sup> through improved local governments efficiency and effectiveness<sup>599</sup> in the interest of the *persons of the Districts*<sup>600</sup> and improved integrity, governance and productivity; *to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity*<sup>601</sup>, as the 1995 parliament intended<sup>602</sup>.

Yours faithfully

Sandra Boulter LLB

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<sup>593</sup> LG Act Schedule 5.1 clause 11(2)

<sup>594</sup> LG Act Schedule 6.3 clause 1(c)

<sup>595</sup> LG Act Part 10 — Provisions for COVID-19 pandemic

<sup>596</sup> LG Act s.1.3(2)(c)

<sup>597</sup> LG Act s.1.3(2)(b)

<sup>598</sup> LG Act s.1.3(2)(a)

<sup>599</sup> LG Act s.1.3(2)(d)

<sup>600</sup> LG Act s.3.1

<sup>601</sup> LG Act s.1.3(3)

<sup>602</sup> LG Act s.1.3(2)&(3)