

# Murchison Country Zone of WALGA

Shires of –ABN 75 305 122 944

Cue

Meekatharra

Mount Magnet

Murchison

Sandstone

Yalgoo



## MINUTES MURCHISON COUNTRY ZONE OF

Western Australian Local Government Association  
SPECIAL MEETING - Friday 28 August 2020 1.00pm

Hosting on Zoom



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## Special Meeting, Shire of Cue Council Chambers on Friday 22 November 2019

### 1. Opening

The President Cr Ross Foulkes-Taylor opened the meeting.

### 2. Attendance

#### 2.1 Delegates

Cr Rossco Foulkes-Taylor	Zone President Shire of Murchison
Mr Bill Boehm	CEO Shire of Murchison
Cr Jorgen Jensen	President Shire of Mount Magnet
Mr Kelvin Matthews	CEO Shire of Mount Magnet
Cr Ross Pigdon	President Shire of Cue
Cr Les Price	Shire of Cue
Cr Beth Walton	President Shire of Sandstone
Cr Carol Hodshon	Shire of Sandstone
Mr John Read	Acting CEO Shire of Yalgoo

#### 2.2 Observers

Mr Rob Madson	CEO Shire of Cue
Mr Harry Hawkins	CEO Shire of Sandstone

#### 2.3 Visitors

Mr Tony Brown	WALGA Executive Manager Governance & Organisational Services
Mr James McGovern	WALGA Manager Governance

#### 2.4 Apologies

Cr Greg Payne	President Shire of Yalgoo
Cr Gail Trenfield	Shire of Yalgoo
Cr Emma Foulkes-Taylor	Shire of Murchison
Cr James McGorman	Shire of Mount Magnet
Ms Samantha Appleton	Executive Officer Murchison Country Zone
Cr Harvey Nichols	Shire of Meekatharra
Mr Roy McClymont	CEO Shire of Meekatharra

### 3. Official Opening

The President Cr R Foulkes Taylor declared the meeting open at 1:02pm.

### 4. WA Local Government Association

#### 4.1 WALGA President

## President's Report September 2020

#### Introduction

Activity in the Local Government sector in 2020 continues to move at a hectic pace. Since my last report we have had COVID-19 Recovery in full swing, the release of the Local Government Act Review Panel report and the release of the City of Perth Inquiry report. In addition, advocacy continues on key sector issues including road funding and appearing before the Select Committee representing the sector. I will outline these items in this report.



#### COVID-19 Recovery

The important role of Local Government in the COVID-19 recovery has been highlighted in recent weeks.

Local Government's role in COVID-19 recovery will be to:

1. collect and provide local impacts to the State Recovery Coordinator to inform recovery planning and implementation
2. align local recovery plans to the State Recovery Plan where required to ensure consistency
3. build on the strong work already undertaken by local governments in:
  - a) reviewing or adopting financial hardship policies to support ratepayers to provide rate, fee and tenancy relief to businesses and individuals in distress
  - b) reviving community services, sports and recreation to promote wellbeing and enable the community to resume active, connected lives in a COVID-safe manner
  - c) supporting arts culture, events and tourism activities in local areas and being proactive in helping these industries to innovate to operate in the future

- d) accelerating small capital works projects to provide vital employment channels and use local materials, contractors and labour services to support vulnerable parts of the workforce
- e) streamlining or fast tracking approval processes and relieving compliance burdens on businesses and households where possible to stimulate local economic activity

I know Local Governments will meet the challenges ahead.

The Premier and the State Recovery Controller Sharyn O'Neill released the WA Recovery Plan on 26 July. The release of the Plan followed stakeholder engagement through Ministerial Roundtables, a number of which were attended by WALGA, Elected Members and Local Government CEOs, the State Recovery Advisory Group, of which I am a member.

### **Local Government Review Panel Report**

The State Government announced a review of the *Local Government Act 1995* in 2017 and, given the breadth of issues to be addressed, adopted a two-stage approach to the review process. Stage one focussed on priority reforms, while stage two has looked at wide-ranging reforms with the aim of developing a new Act.

As part of the Stage Two process, the Minister for Local Government appointed a Local Government Review Panel chaired by David Michael MLA. The Panel has released its [final report](#) containing 65 recommendations across a wide range of subjects.

Importantly, the recommendations of the Panel's report are not currently Government policy; the Minister for Local Government has advised that the report will be considered as part of the ongoing Local Government Act review process. In addition, the Government is not intending to consult specifically on the Panel's report and recommendations. Notwithstanding, an agenda item has been prepared for the upcoming round of Zone meetings to provide input to State Council to determine WALGA's position on the Panel's recommendations.

### **City of Perth Inquiry Report**

The Inquiry into the City of Perth, announced by the Minister for Local Government on 24 April 2018, has released its [final report](#).

The final report makes over 250 findings and 350 recommendations and will represent an input into the Local Government Act Review.

### **State Road Funds to Local Government**

Local Government representatives recently met with the Senior Executive team at Main Roads WA, as the State Road Funds to Local Government Advisory Committee. Monitoring delivery and acquittal of grant funded projects, and redistributing funds as required to ensure effective utilisation of resources is a key responsibility of this group. Following detailed assurances from Local Governments in April that grant funds would be acquitted before the end of the financial year, it was disappointing to see that collectively nearly \$22 million or 14.5% of budgeted project funding was not acquitted by 30 June. With both Federal and State Governments directing significant additional money into infrastructure projects in 2020/21 and 2021/22 the need for Local Governments to have well developed project planning and delivery pipelines has never been greater. While the case for increased State financial support for Local

Government roads can be well supported, it is at risk of being undermined by project delivery performance.

### **Select Committee into Local Government**

The Selection Committee into Local Government has recommenced public hearings following an enforced pandemic-induced break.

I appeared before the Committee on 3 August along with Chief Executive Officer Nick Sloan, and Executive Managers Zac Donovan and Tony Brown. During the hearing, the Committee focused their questions on WALGA's preferred supplier program business model and the insurance mutual.

WALGA put forward a [comprehensive submission](#) celebrating the Local Government sector and raising a number of issues.

The Committee received an extension from the Legislative Council and are now required to report before the end of November 2020.

### **PRESIDENT'S CONTACTS**

President's contacts since 2 July 2020 and scheduled before 2 September 2020 are as follows:

#### **State and Federal Government Relations**

- Hon Mark Coulton MP, Federal Minister for Regional Health, Regional Communications and Local Government
- Vince Conelly MP, Member for Stirling
- Hon David Templeman MLA, Minister for Local Government; Heritage; Culture and the Arts (COVID-19 Briefings x1)
- David Michael MLA, Chair of the Local Government Review Panel
- Valuer General for Western Australia, Lester Cousins - (COVID-19 Briefing webinar)

#### **Zone Meetings**

- State Council Video conference – LG Act Review Panel Final Report
- Avon-Midland-Country Zone Meeting
- Pilbara Country Zone Meeting
- Great Eastern Country Zone Meeting
- Central Country Zone Meeting

#### **Local Government Relations**

- Select Committee into Local Government
- Weekly update via webinar x 3
- Radio interviews x 6
- ALGA COVID19 Update meeting video conference
- ALGA Board Forum video conference
- LGIS Board Meeting
- Joint Venture Management Committee meeting (WALGA/LGIS)
- Finance and Services Committee Meeting
- Local Government House Trust Meeting

- Mayors, Presidents and CEO Briefing webinar
- Peter Forbes, Chair, LGIS and Mary Woodford, Boardmember, LGIS
- Council Visit – City of Kalgoorlie-Boulder (CEO, President and Councillors)
- Council Visit – Shire of Coolgardie (CEO, President and Councillors)
- Council Visit – Shire of Menzies (CEO, President and Councillors)
- Council Visit – Shire of Northam (CEO, President and Councillors)
- Council Visit – Shire of Toodyay (CEO, President and Councillors)
- Council Visit – Shire of Dowerin (CEO, President and Councillors)
- Council Visit – Shire of Quairading (CEO, President and Councillors)
- Shire of Dundas (CEO and President)
- Shire of Wyalkatchem (CEO and President)
- Shire of Koorda (CEO and President)

#### **Conferences. Workshops. Public Relations**

- US Consul General David Gainer (COVID-19 Briefing webinar)
- Committee for Perth - Reshaping Working Group
- Rob Thomson, CEO, Sport West and Michael Beros, Chair, Sport West
- Viv Barton, President, Public Libraries WA
- LGIS 25<sup>th</sup> anniversary celebrations
- WALGA Strategic Plan Briefing

Please take care and keep safe.

#### **Mayor Tracey Roberts JP President**

In the absence of any further updates from Mr Tony Brown or queries from the meeting, the President accepted the report as read.

#### **4.2 Zone Representative to State Council - Cr Les Price**

Cr Price addressed the meeting.

#### **4.3 WALGA Status Reports**

No items to report.

#### **4.4 Local Government Review Panel Final Report (05-034-01-0001 TB)**

### **RESOLUTION**

**Moved Cr Price      Seconded Cr Pigdon**

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**That the Murchison Country Zone support WALGA's response to the local government review panel final report, with the following amendments:**

- **3(b) – Oppose. Councils represent all groups and to single one out would be divisive;**
- **7(c) – No need to reference any particular section of the community;**
- **8(e) – Oppose. Peak bodies should have no role;**
- **12 – Conditionally support, optional not mandatory;**
- **12(c) - Conditionally support, optional not mandatory;**
- **16 – Oppose. Councils represent all groups and to single one out would be divisive;**
- **17 – Oppose. Councils represent all groups and to single one out would be divisive;**
- **22 – Oppose. Consultation not considered necessary;**
- **25(d) – Oppose;**
- **26(a) – Oppose;**
- **33(b) – Term “responsive” to be reviewed as dictionary definition “reacting quickly and positively” not considered appropriate for all individuals/groups;**
- **46 – Oppose;**
- **51 – Delete term “reasonable”;**
- **52 – Oppose. Full cost recovery impractical for currently subsidised services e.g. swimming pool entry fees;**
- **54(c) – Oppose. Should not be mandatory as internal audits impractical for small councils;**
- **55 – Oppose in entirety, noting WALGA is opposed to 55(b),(c)&(g);**
- **63 – Oppose;**
- **While silent on the matter, the zone believes the review should have included consideration of vexatious complainants.**

**Carried Unanimously**

#### **Local Government Review Panel Final Report (05-034-01-0001 TB)**

***Tony Brown, Executive Manager Governance and Organisational Service***  
***James McGovern, Manager Governance***

**WALGA carried out an extensive consultation process on Phase 2 of the Local Government Act Review in 2018/19, culminating in sector positions being endorsed by State Council in March 2019. This agenda item considers the Local Government Review Panel's recommendations in the context of the sector's current advocacy positions.**

**The Minister for Local Government has not considered the Panel's recommendations at this stage and has not requested a consultation process on Murchison Country Zone of WALGA**



the report. WALGA is taking the opportunity to obtain a sector opinion on the recommendations to provide to the Minister.

The Recommendations below are subject to Zone input and all Zone recommendations will be collated into a consolidated recommendation that will be provided for State Council consideration at its meeting on 2 September 2020.

## Recommendations

1. That WALGA SUPPORT the following Recommendations from the Local Government Review Panel Final Report:

- Recommendations 1, 2, 3, 4, 6 and 7;
- Recommendation 8;
- Recommendation 11;
- Recommendations 12, 13 and 14;
- Recommendation 15;
- Recommendations 16 and 17;
- Recommendation 24;
- Recommendations 25(b) to (f);
- Recommendations 26(b), (d), (e) and (f);
- Recommendations 28, 29, 30, 31, 32(1)(a) to (o) and 32(2)(a);
- Recommendations 33 and 34;
- Recommendations 36 and 37;
- Recommendations 38(c), (d) and (e);
- Recommendations 39, 40, 41(a) to (g) and (i);
- Recommendation 42;
- Recommendations 43 and 44;
- Recommendations 45, 46, 47, 48 and 49;
- Recommendations 50, 51 and 52;
- Recommendation 54;
- Recommendations 55(a), (b), (d), (e), (f), (h) and (i);
- Recommendation 56;
- Recommendation 57;
- Recommendation 59;
- Recommendations 62 and 63;
- Recommendation 64(c);
- Recommendations 65(a) to (e).

2. That WALGA OPPOSE the following Recommendations from the Local Government Review Panel Final Report:

- Oppose Recommendation 5;
- Oppose Recommendation 19;
- Oppose Recommendations 23 and 25(a);
- Oppose Recommendation 26(c);
- Oppose Recommendations 32(2)(b) and (c);
- Oppose Recommendation 35;
- Oppose Recommendations 38(a) and (b);

- Oppose Recommendation 41(h);
  - Oppose Recommendations 53(a) and (b);
  - Oppose Recommendations 55(c) and (g);
  - Oppose Recommendation 58;
  - Oppose Recommendation 60;
  - Oppose Recommendation 61;
3. That WALGA **CONDITIONALLY SUPPORT** the following Recommendations from the Local Government Review Panel Final Report as described:
- Recommendations 9 and 10 and but oppose any proposal to remove the poll provisions (Dadour provisions) in Schedule 2.1, Clause 8 of the Local Government Act;
  - Recommendation 18 and reiterate WALGA's current advocacy position that there be adequate funding of legislative responsibilities assigned to Local Governments in relation to service delivery to remote Aboriginal communities;
  - Recommendations 20, 21 and 27 in support of a broad review of the property franchise including a community consultative process;
  - Recommendation 26(a) conditional upon a review of the relative benefits and merits of changes to reduce numbers of Elected Members on Council be supported, on the following basis:
    - Populations up to 5,000 – 5 to 7 Councillors (incl. President)
    - Populations between 5,000 and 75,000 – 5 to 9 Councillors (incl. Mayor/President)
    - Populations above 75,000 – up to 15 Councillors (incl. Mayor);
4. That WALGA carry out further consultation on the following Recommendations from the Local Government Review Panel Final Report:
- Recommendation 22 – All In/All Out Elections;
  - Recommendations 64(a) and (b) - WALGA
  - Recommendation 65(f) – Transfer of Employee Entitlements

## Executive Summary

- In 2017 the State Government announced a review of the *Local Government Act 1995*.
- Given the breadth of matters covered by the Local Government Act, a staged approach to the review was adopted:
  - Stage one: priority reforms
  - Stage two: wide ranging reforms leading to a new LOCAL Government Act
- This agenda item relates to the Stage 2 reforms. The Department of Local Government carried out a consultation process in 2018/19 where over 3,000 submissions were received.
- The Minister for Local Government appointed an Independent Panel to consider submissions received by the Department of Local Government Sport and Cultural Industries on the review of the Local Government Act in November 2019.
- The Panel's report has made 65 recommendations
- The Panel's report does not represent Government policy; the Minister for Local

Government has stated the report will be considered as part of the Act Review process.

- This agenda item seeks a sector position on the recommendations. The recommendations to support, oppose or seek further consultation or information is proposed in this item.

## **WALGA Process**

The Association recognizes the Report is a high level document that is based on identifying principles that will drive the development of a modern Local Government Act. The Association therefore considered the Report from the perspective of the sector's current advocacy positions.

This Item provides commentary on support for recommendations that met or where similar to adopted advocacy positions. This Item also identifies significant departure from advocacy to the extent that support cannot be recommended without further sector consideration of WALGA's position.

## **Attachment**

The Panel's Report can be found [here](#).

## **Comment**

The following comment is a comparison of State Council's record of advocacy on matters raised in the Local Government Review Panel Final Report:

### **CLEAR LEGISLATIVE INTENT**

#### **Recommendations 1 to 7 – Introduction and Role and Functions of Local Government**

Local Government Act Reference: Part 1

Recommendation 1 proposes a strategic approach to the consideration of the Report recommendations.

Recommendation 2 introduces a new statement of intent that will explain the legislations purpose:

*An Act to provide for a system of local government relevant to Western Australia that develops and supports sustainable, accountable, collaborative and capable local governments through democratic representation, the provision of services, opportunities and enhanced well-being for each and every community.*

Recommendation 3(a) to (j) proposes objectives for the legislative framework 'to support Local Governments having the agility, adaptability and flexibility to respond to changing community expectations and technology'.

Recommendation 4 proposes a shorter, less prescriptive Act that minimizes the use of regulations in favour of a principles-based approach.

Recommendation 5 proposes recognition of the diversity of Local Governments however it does not support a multi-tiered (size and scale) legislative framework.

Recommendation 6 proposes upholding the power of general competence predicated in the current Local Government Act.

Recommendation 7 (a) to (i) proposes guiding principles for sustainable, accountable, collaborative and capable Local Governments.

WALGA Comment – WALGA advocacy supports many of the proposals in Recommendations 1 to 7, principally that the Local Government Act Review be based on a ‘Principles over Prescription’ approach that avoids red tape and ‘declutters’ the extensive regulatory regime that currently exists<sup>1</sup> (Recommendations 3 and 4) and maintaining the general competence principle<sup>2</sup> (Recommendation 6) which frees Local Governments to make any decision that does not conflict with statute or common law. Recommendation 7 aligns with WALGA advocacy for enabling legislation.<sup>3</sup> Recommendation 5 is unsupportive of WALGA advocacy that promotes a size and scale compliance regime<sup>4</sup> and it is recommended that WALGA maintain its current advocacy for a Local Government Act that is reflective of the differences and diversity of Local Governments in Western Australia.

WALGA Recommendation: Support Recommendations 1, 2, 3, 4, 6 and 7. Oppose Recommendation 5

### **AN AGILE SYSTEM**

#### **Recommendations 8 to 11 - Structural Reform**

Local Government Act Reference: Part 1; Section 2.1(2) and Schedule 2.1, cl. 8

Recommendation 8 proposes to combine the Local Government Grants Commission and Local Government Advisory Board to form a Local Government Commission, with roles assigned that will engender a strategic approach to its operation including monitor the performance and financial health of the sector, the latter in collaboration with the Office of the Auditor General, in addition to traditional functions such as distributing Commonwealth grant funding to Local Governments and boundary changes. Establishment of the Commission under this strategic framework will require skills-based appointments rather than by representation.

Recommendations 9 and 10 supports a legislative framework that is flexible, responsive and resilient and capable of facilitating community participation. There are also specific proposals for structural reform including revised processes for boundary changes and mergers, enhanced model of joint subsidiaries (see Recommendation 14) and provision for the establishment of community boards. Commentary associated with Recommendation 9 sees flaws in the current poll provisions found in Clause 8 of Schedule 2.1 (‘Dadour provisions’) as being *‘...unduly restrictive when Local Governments need to adapt to changing circumstances’*.

Recommendation 11 proposes the potential to establish community boards, with reference to examples of successful international models. While community boards might be formed in response to mergers or for use by large Local Governments to devolve certain responsibilities to community representatives, the proposal makes clear that the overall responsibility for decision-making and authority will rest with the ‘parent’ Local Government. See also Recommendation 33 ‘Community Engagement’.

WALGA Comment – WALGA does not have an advocacy position in relation to Recommendation 8 ‘Local Government Advisory Board’ and this may be a matter for sector consultation. Recommendations 9 and 10 propose a legislative framework that

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<sup>1</sup> State Council Resolution 06.3/2019 Items 1, 1(b) and 1(e)

<sup>2</sup> State Council Resolution 06.3/2019 Item 1(a) <sup>3</sup> State Council Resolution 06.3/2019 Item 1(d) <sup>4</sup> State Council Resolution 06.3/2019 Item 1(c)

has similar themes to WALGA's advocacy that the Local Government Act Review promote a flexible, principles-based legislative framework<sup>5</sup>.

WALGA has a long-standing advocacy position for the retention of the Dadour provisions that give electors a right to demand a poll on recommended amalgamations<sup>6</sup>. This advocacy is tied to the principle that the Dadour provisions are the ultimate expression of community support or rejection of amalgamation proposals. Although not a specific recommendation, the commentary appears contradictory to the general themes expressed throughout the Report for increased opportunities for community consultation<sup>7</sup>. The community board proposal in Recommendation 11 is similar to WALGA advocacy for community engagement that is based on principle rather than prescription<sup>8</sup>.

**WALGA Recommendation:** Support the general intent of Recommendations 8 and 9. Oppose any proposal to remove the poll provisions (Dadour provisions) in Schedule 2.1, Clause 8 of the Local Government Act. Support Recommendation 11.

### **Recommendations 12, 13 and 14 - Expanded Regional Cooperation**

**Local Government Act Reference:** Part 3, Division 4

Recommendations 12 and 13 promotes expanding opportunities for regional cooperation between Local Governments under improved regional subsidiaries model for shared services, and through a new form of regional authority for specific issues. Recommendation 14 proposes an end to the regional council model in favour of regional cooperation models set out in the previous recommendations.

**WALGA Comment –** WALGA has a strong advocacy history in support of regional subsidiaries<sup>9</sup> and is disappointed that the complexity of the existing legislative provisions means that no regional subsidiaries have formed since the Act amendment of 2016. WALGA has independently developed a revised version of regulations that limits unnecessary compliance without diluting transparency and accountability of regional subsidiaries, and therefore welcomes recommendations that will facilitate regional cooperation under this model.

WALGA is cognisant that regional councils are often formed for a singular purpose, most commonly waste management, yet compliance obligations are generally equivalent to that of a Local Government. It is current WALGA advocacy that the compliance obligations of regional councils should be reviewed<sup>10</sup>. It appears the recommendations will create a suitable opportunity for the transition of regional councils to a model more suitable to the participant Local Governments.

**WALGA Recommendation:** Support Recommendations 12, 13 and 14.

### **Recommendation 15 - State Local Government Partnership Agreement**

**Local Government Act Reference:** Section 3.18

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<sup>5</sup> State Council Resolution 06.3/2019 at 1(b)

<sup>6</sup> State Council Resolution 06.3/2019; 121.6/2017; 108.5/2014

<sup>7</sup> For example, Recommendations 9, 10(c), 11, 33, 34, 35

<sup>8</sup> State Council Resolution 06.3/2019

<sup>9</sup> State Council Resolutions 121.6/2017; 106.6/2016; 94.4/2011; 114.5/2010

<sup>10</sup> State Council Resolution 06.3/2019

Recommendation proposes a set of principles for intergovernmental relations that makes clear Local Government's role and obligations as part of a broader system of government.

**WALGA Comment** – WALGA's advocacy is for a communication and consultation protocol that ensures a consultation process precedes regulatory or compliance changes that affect the sector<sup>11</sup>. The current Partnership Agreement signed in 2017 is currently under review.

Section 3.18 'Performing executive functions' includes apparently similar objectives to Recommendation 15, whereby a Local Government considers matters such as; integration and coordination; avoidance of inappropriate duplication; and effective and efficient management of services and facilities that may also be provided by the State and Commonwealth. This creates adequate space for the general competence principle to apply when a Local Government considers the range and scope of its executive functions, services and facilities.

**WALGA Recommendation:** Support Recommendation 15.

### **INCLUSIVE LOCAL DEMOCRACY**

#### **Recommendations 16 and 17 - Relations with Aboriginal Peoples and Communities and Recommendation 18 - Service Delivery in Remote Communities**

**Local Government Act Reference:** Not mandated

Recommendations 16 and 17 contemplate a Local Government Act that includes recognition of the unique status of Aboriginal peoples and inclusion of mechanisms for consultation and engagement. Recommendation 18 recommends further consideration of service delivery to remote communities through improved integration with Integrated Planning and Reporting requirements.

**WALGA Comment** – WALGA's advocacy recognises and respects Aboriginal cultural practices and places through development of Reconciliation Action Plans<sup>12</sup>, and is supportive of efforts to improve the living conditions and governance in Aboriginal communities.<sup>13</sup>

There are 287 discrete Aboriginal communities in WA accommodating approximately 17,000 Aboriginal people spanning 26 Local Government districts. It is therefore inevitable that service delivery considerations are coordinated with State and Federal Government departments and agencies with relevant responsibilities, to mitigate against cost-shifting responsibility to individual Local Governments with limited financial capacity.

**WALGA adopted the advocacy position that 'the State Government must not assign legislative responsibilities to Local Governments unless there is provision for resources required to fulfil the responsibilities'<sup>14</sup>.**

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<sup>11</sup> State Council Resolution 2.1/2012

<sup>12</sup> State Council Resolution 118.5/2012

<sup>13</sup> State Council Resolution 64.3/2014

<sup>14</sup> State Council Resolution 06.3/2019 at 1(f)

The commentary associated with Recommendation 18 raises a necessary discussion regarding service delivery to remote Aboriginal communities but lacks detail on how the inter-governmental responsibilities and funding arrangements associated with efficient and timely service delivery can be better achieved.

**WALGA Recommendation:** Support Recommendations 16 and 17, and reiterate WALGA's current advocacy position in relation to Recommendation 18, that there be adequate funding of legislative responsibilities assigned to Local Governments in relation to service delivery to remote Aboriginal communities.

### **Recommendation 19 - Optional Preferential Voting**

**Local Government Act Reference:** Section 4.69, 4.74 and Schedule 4.1

The Report recommends a system of voting that better represents the community's preference for candidates that is not currently delivered by a first past the post system, where a candidate does not require a clear majority of votes to be elected.

**WALGA Comment –** WALGA's advocacy position supports the current 'first past the post' system. WALGA has previously opposed other forms of voting<sup>15</sup> and the system of proportional preferential voting was briefly introduced to the Local Government Act for one election cycle before being repealed and returned to first past the post voting in 2009<sup>16</sup>.

**WALGA Recommendation:** Oppose Recommendation 19 and any alternative voting system in favour of retaining the first past the post system.

### **Recommendations 20, 21 and 27 - Review of Property Franchise**

**Local Government Act Reference:** Sections 4.30 → 4.35; Section 4.66

Recommendation 20 proposes mandating one vote per person, which is currently prescribed in Section 4.65 albeit in the context of the property franchise. Recommendation 21 proposes discontinuing enrolment entitlement through ownership or occupation of rateable property. Property franchise claims result in enrolment on the Owner's and Occupiers Roll, forming the second limb of voter entitlement alongside the Residents Roll.

The Expert Panel proposes increasing participation, consultation and involvement of business owners and operators by Local Governments including mechanism such as business advisory groups.

Recommendation 27 recommends consultation be undertaken to determine whether the property franchise continue within the City of Perth, in concert with a review of the *City of Perth Act 2016*.<sup>17</sup> Currently, Part 4 of the Local Government Act applies to the election of council members of the City of Perth, and Section 20 of the *City of Perth Act 2016* applies to the election of the Lord Mayor.

**WALGA Comment –** WALGA has not adopted an advocacy position relevant to the recommendations.

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<sup>15</sup> State Council Resolutions 185.2/2007 and 427.5/2008

<sup>16</sup> *Local Government Amendment (Elections) Act 2009*

<sup>17</sup> City of Perth Inquiry Report, Recommendation 144

It is recommended that support be given to a broad consultative process with Local Governments, the business sector, communities and relevant stakeholders to assess whether or not owners and occupiers of rateable property should have a right to vote in a modern democratic electoral system.

**WALGA Recommendation: Conditionally Support Recommendations 20, 21 and 27 in support of a review of the property franchise including a broad community consultative process.**

### **Recommendation 22 - All In/All Out 4 Year Election Cycle**

**Local Government Act Reference: Section 4.5**

Recommendation 22 proposes Elected Members be elected at the same time, every four years. This aligns with the election of State Parliamentarians. An acknowledged detriment is the potential loss of corporate knowledge due to non-election of experienced councillors, whereas benefits include potential increased participation by candidates and electors and reduced election costs to Local Governments.

**WALGA Comment –** There is no WALGA advocacy position relevant to this proposal. It is therefore recommended that the sector be consulted and the resultant views be considered in developing WALGA's advocacy position.

**WALGA Recommendation:** That the sector be consulted prior to WALGA considering its advocacy position in relation to Recommendation 22.

### **Recommendations 23, 24 and 25(a) – Conduct of Elections**

**Local Government Act Reference: Section 4.20 and 4.61**

Recommendation 23 is that the Western Australian Electoral Commission (WAEC) take responsibility for all Local Government elections, with the consequence that a Local Government CEO will no longer be the Returning Officer of first resort. Recommendation supports electronic/online voting. Recommendation 25(a) adds to the currently mandated role of the WAEC by proposing all elections are by postal voting, ending the option on in-person voting.

**WALGA Comment –** WALGA advocates for an end to the WAEC's enshrined monopoly on the conduct of postal elections by amending legislation to permit third parties to be service providers of postal elections<sup>18</sup>.

**WALGA Recommendation:** Support Recommendation 24; Oppose Recommendations 23 and 25(a); WALGA reiterates its position that third parties be permitted as service providers for postal elections.

### **Recommendations 25(b) to (f) - Other Election Proposals**

Recommendation (b) proposed the extension of the election process to optimise participation.

Recommendation 25(c) 'Candidate Nomination Information' is adapted from a model similar to Victorian legislation that requires candidates to respond to a set of questions prescribed by regulation in the form of a statutory declaration. Recommendation 25(d)

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<sup>18</sup> State Council Resolution 06.3/2019



– Caretaker Policies are increasingly evident in Local Government; in 2016, WALGA committed to develop the currently-available template Caretaker Policy<sup>19</sup>.

Recommendation 25(e) seems to reflect current legislation<sup>20</sup> and Recommendation (f) identifies the prospect that potential donations can be crowdfunded in the absence of a gift declaration and this is likely to undermine integrity of the election process.

**WALGA Recommendation: Support Recommendations 25(b) to (f)**

### **Recommendation 26(a) - Elected Member Numbers Based on Population**

**Local Government Act Reference: Section 2.17**

The Report proposes the following structures for Elected Member positions on Council:

- (i) Population up to 5,000 – 5 Councillors (incl. President)

*This proposal will capture approximately 81 Local Governments (1 metro, 80 non-metro)*

- (ii) Population between 5,000 and 75,000 – 5 to 9 Councillors (incl. Mayor/President)

*This proposal will capture approximately 47 Local Governments (19 metro, 28 non-metro)*

- (iii) Population above 75,000 – 9 to 15 Councillors (incl. Mayor)

*This proposal will capture approximately 11 Local Governments (10 metro, 1 non-metro)*

**WALGA Comment –** WALGA adopted an advocacy position in 2011 opposing a previous proposal to reduce the number of Elected Members to between 6 and 9<sup>21</sup>. At the time, WALGA requested a proper examination of the relative benefits and merits of any proposal to reduce numbers of Elected Members be conducted. There is still merit in reviewing numbers on Council and the proposal is worthy of consideration although limiting populations of up to 5,000 to a fixed number of 5 Councillors lacks the flexibility that is easily resolved by extending the maximum number of Councillors to 7.

**WALGA Recommendation: Conditionally Support Recommendation 26(a) conditional upon a review of the relative benefits and merits of changes to reduce numbers of Elected Members on Council be supported, on the following basis:**

- (i) Populations up to 5,000 – 5 to 7 Councillors (incl. President)
- (ii) Populations between 5,000 and 75,000 – 5 to 9 Councillors (incl. Mayor/President)
- (iii) Populations above 75,000 – up to 15 Councillors (incl. Mayor)

### **Recommendation 26(b) to (f) – Wards, Mayor/President Election and Term Limits**

**Local Government Act Reference: Part 2 and Part 4; Schedule 2.2**

**Recommendation 26 (b) to (f) proposes a number of adjustments associated with Recommendation 8 - Local Government Advisory Board/Local Government Commission. These proposals include:**

- Recommendation 26(b) - system of ward boundary reviews;

<sup>19</sup> State Council Resolution 16.1/2016

<sup>20</sup> Regulations 30B and 30CA of the *Local Government (Elections) Regulations*

<sup>21</sup> State Council Resolution 08.1/2011 – ‘Reject the reduction in the number of Elected Members to between 6 and 9, and request the Minister engage the Department of Local Government in research to determine the relative benefits and merits of the proposal prior to further discussion with the Local Government sector’

- Recommendation 26(c) - discontinuance of ward boundaries for Band 3 and 4 Local Governments;
- Recommendation 26(d) - phasing in of proposals under Recommendation 26(a);
- Recommendation 26(e) - continuance of two year election cycle for Council-elected Mayors/Presidents; and
- Recommendation 26(f) - no limits to be placed on terms Elected Members and elected Mayor/President can serve.

**WALGA Comment – Recommendation 26(e) aligns with WALGA advocacy that Local Governments retain the right to determine whether the Mayor / President will be elected by the Council or the community.<sup>22</sup> WALGA has not adopted advocacy positions specific to the remaining proposals however Recommendation 26(c) conflicts with the general competence principle and the current self-determination inherent in the current ward review system. WALGA supports the ability for all Local Governments, not merely those in Band 3 and 4, to consider the merits of its system of representation and election on the basis of community of interest; physical and topographical features; demographic trends; economic factors and the ratio of Councillors to electors in the various wards.<sup>23</sup>**

**WALGA supports the general intent of Recommendation 8 and similar support is proposed to the exclusion of Item (c).**

**WALGA Recommendation: Support Recommendations 26(b), (d), (e) and (f). Oppose Recommendation 26(c).**

### **Recommendations 28 to 32 - Redefinition of Roles and Responsibilities**

**Local Government Act Reference: Sections 2.7, 2.8, 2.10 and 5.41**

**Recommendation 28 sets the scene for Recommendations 29 to 32 by suggesting revised statements of roles and responsibilities that are specific to address the following issues:**

- Community leadership
- Strategic planning
- Continuous improvement
- Executive function (for mayors/presidents)
- Guiding the CEO (for mayors/presidents)
- Training

**WALGA Comment – Recommendations 28, 29, 30 and 31 are supported. Recommendations 32(1)(a) to (o), and 32(a) are supported. WALGA opposes Council involvement in matters relating to senior employees<sup>24</sup> as this conflicts with the role of the CEO as employing authority of all employees under Sec. 5.41(g) of the Local Government Act.**

**Recommendations 32(2)(b) and (c) are opposed. These recommendations seek to perpetuate ongoing Council involvement in matters relating to senior employees. WALGA points out that Regulation 9(1) of the *Local Government (Rules of Conduct)***

<sup>22</sup> State Council Resolution 06.3/2019; 121.6/2017

<sup>23</sup> *How to conduct a review of wards and representation for local governments with and without a ward system* – Department of Local Government, Sport and Cultural Industries - October 2017, Page 6

<sup>24</sup> State Council Resolution 123.6/2017

**Regulation** was amended on 15 August 2020 to remove reference to Councillor involvement in administration where authorised by the Council to undertake that task.

This amendment directly relates to past findings such as the City of Canning Inquiry 2014, where the Inquirer noted this Regulation was used to involve Council in a matter directly related to the CEO's employing authority functions:

*'Reg. 9(1) of the Local Government (Rules of Conduct) Regulations 2007 is a rule of conduct, and is not, by itself, a source of authority for intervention by the Council in Administration activities.'*<sup>25</sup>

**WALGA Recommendation:** Support Recommendations 28, 29, 30, 31, 32(1)(a) to (o) and 32(a).

**Oppose** Recommendations 32(2)(b) and (c) to conclusively ensure that a Council cannot involve itself in the functions of the Chief Executive Officer as set out in Section 5.41 of the Local Government Act.

### **Recommendations 33 and 34 – Community Engagement and Governance**

**Local Government Act Reference:** Sections 2.7, 2.8, 2.10 and 5.41

Recommendation 33 proposes a range of community engagement principles, and Recommendation 34 proposes a Community Engagement Charter be required as a mechanism for guiding and enhancing community participation in local decision-making.

**WALGA Comment –** WALGA advocates that Local Governments adopt a Community Engagement Policy, with each Local Government to implement the most appropriate means of engagement<sup>26</sup>.

**WALGA Recommendation:** Support Recommendations 33 and 34.

### **Recommendation 35 – Annual Engagement with Electors**

**Local Government Act Reference:** Sections 5. 27

Recommendation 35 proposes a lesser version of the opportunity already available to electors but poorly attended historically. This raises the prospect that, in the absence of the opportunity to move motions at meetings, the proposed annual meeting will follow a similar trend.

**WALGA Comment –** WALGA advocates that Elector's General Meetings should not be compulsory, on the basis that there is adequate opportunity for the public to participate in the affairs of the Local Government through attendance at Council Meetings, participating in public question time, requesting special electors' meetings etc<sup>27</sup>.

**WALGA Recommendation:** Oppose Recommendation 35 and seek amendment to the Act to ensure Electors' General Meetings are not compulsory.

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<sup>25</sup> Report of the Panel of Inquiry into the City of Canning, May 2014 at 9.53

<sup>26</sup> State Council Resolution 06.3/2019

<sup>27</sup> State Council Resolution 06.3/2019; 121.6/2017; 09.1/2011

## **SMART PLANNING AND SERVICE DELIVERY**

### **Recommendations 36 and 37 - Enhanced Integrated Planning and Reporting**

Local Government Act Reference: Section 5.56; Local Government (Administration) Regulations Part 5, Division 3

Recommendation 36 and 37 propose enhanced Integrated Planning and Reporting principles and provisions and that Audit, Risk and Improvement Committee monitor performance against baseline measures including financial management, service delivery and community well-being.

WALGA Comment – WALGA has supported the Integrated Planning and Reporting framework dating back to the Systemic Sustainability Study of 2008 and broadly supported the regulatory amendments introduced in 2011.

WALGA Recommendation: Support Recommendations 36 and 37

### **Recommendations 38(a) and (b) – Minimum Service Levels**

Local Government Act Reference: Section 3.18

Recommendations 38(a) and (b) are separated for independent consideration due to the potential for extensive consequences to the Local Government sector. Recommendation 38(a) proposes a minimum level of service delivery established as a statutory obligation, and Recommendation 38(b) proposes a qualified reserve power whereby the Minister for Local Government responds to a failure to deliver the minimum services by issuing an enforceable direction.

WALGA Comment: WALGA's closest advocacy positions to Recommendation 38 is 'principles over prescription' together with upholding the General Competence Principle<sup>28</sup>. Recommendation 38(a) appears intended to create a commonality of service delivery that is potentially measurable across the sector, with service delivery outcomes either legislated or directed by the Minister for Local Government. This approach is anathema to the General Competence Principle that permits Local Governments to independently determine appropriate levels of service.

It is noted that continuance of the General Competence Principle is supported in Recommendation 6, but the contradictory nature of Recommendation 38(a), that determination of some services will be taken out of the hands of Local Governments and their communities, is neither identified nor examined in the Report.

Recommendation 38(b) is intended as a qualified reserve power however the associated commentary includes reference to directions relating to a natural disaster or a pandemic. The Local Government sector's experiences during the COVID-19 pandemic did not bring to light any deficiency in the capacity of the State Government to manage issues arising from a pandemic that would require the Minister for Local Government to assume emergency direction powers – see also Recommendation 58. WALGA advocates that the State Government ensure there is proper provision for resources required to fulfil any legislated responsibility<sup>29</sup>.

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<sup>28</sup> State Council Resolution 06.3/2019 Items 1(a) and (b); 120.6/2017

<sup>29</sup> State Council Resolution 06.3/2019 Item 1(f)

**WALGA Recommendation: Oppose Recommendation 38(a) and (b) and reiterate support for Recommendation 6 'General Competence Principle'.**

**Recommendations 38(c), (d) and (e) – Service Levels and IPR**

**Local Government Act Reference: Section 5.56; Part 5, Division 3 Local Government (Administration) Regulations**

**Recommendations 38(c), (d) and (e) propose a range of measures to align financial sustainability principles and services and programs to the integrated planning and reporting framework, and to conduct regular service delivery reviews including community consultation.**

**WALGA Comment: WALGA supported the introduction of the Integrated Planning and Reporting 'planning for the future' provisions and the above recommendations broadly align with current level of maturity in community consultation processes and examination of service delivery leading to the development of Strategic Community Plans and Corporate Business Plans.**

**WALGA Recommendation: Support Recommendations 38(c), (d) and (e)**

**Recommendations 39 to 42 - Local & Joint Subsidiaries**

**Local Government Act Reference: Part 3, Division 4**

**Recommendation 39 proposes Integrated Planning and Reporting frameworks be cognisant of State Government plans when developing strategies for economic development.**

**Recommendation 40 proposes the new Local Government Act provide freedom for commercial activities, linking with Recommendation 41 which, whilst recommending against a beneficial enterprise model, makes positive recommendations for the support of commercial activities under an updated subsidiary model required to observe competitive neutrality principles. Recommendation 42 supports the use of regional subsidiary models unless qualified by the requirement to form an entity where the Local Government is not the dominant party.**

**WALGA Comment – It is noted that Recommendation 41(a) to (i) details the elements required for a flexible subsidiary model, including a proposal under 41(h) that employees of a subsidiary fall within the jurisdiction of the WA Industrial Relations Commission. This conflicts with current WALGA advocacy that such a transfer is conditional upon modernisation of the State system to be more consistent with the Federal industrial relations system<sup>30</sup>.**

**WALGA has a long-held advocacy position for the creation of Beneficial Enterprises<sup>31</sup> with support for a vehicle for commercial activity ('Council-controlled organisations') dating back to WALGA's Systemic Sustainability Study 2008<sup>32</sup>.**

**WALGA Recommendation: Support Recommendations 39, 40, 41(a) to (g) and (i) and 42. Oppose Recommendation 41(h).**

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<sup>30</sup> State Council Resolution 78.5/2018

<sup>31</sup> State Council Resolutions 06.3/2019; 121.6/2017; 107.5/2010; 114.5/2010

<sup>32</sup> *The Journey: Sustainability into the Future* - Action 21, Page 49

### **Recommendations 43 and 44 - Modernise Financial Management**

**Local Government Act Reference: Part 6; Local Government (Financial Management) Regulations**

**Recommendation 43 proposes a modern set of principles to modernise financial management.**

**Recommendation 44 proposes a selection of measures in support of sound financial decision-making.**

**WALGA Comment – WALGA supports the general intent of the recommendations, aligning as they do with a number of advocacy positions<sup>33</sup> including:**

- Conduct a complete review of financial management provisions
- Freehold land be used to secure debt
- Enable Building Upgrade Finance

**WALGA notes that the Report of the Inquiry into the City of Perth makes a number of recommendations<sup>34</sup> relating to financial management of all Local Governments including:**

- Recommendation 188 : Establishment of Financial Management Instructions;
- Recommendation 189 : The 'WA Accounting Manual' dated September 2012 be reviewed and updated;
- Recommendation 190 : The format of format of the annual budget and financial report be prescribed for consistency across local government'

**WALGA Recommendation: Support Recommendations 43 and 44**

### **Recommendation 45 to 49 - Procurement**

**Local Government Act Reference: Section 3.57; Local Government (Functions and General) Regulations Part 4**

**Recommendation 45 proposes procurement thresholds, rules and policies be more closely aligned with the State Government. Recommendation 46 proposes a model Procurement Policy be adopted by all Local Governments. Recommendations 47 and 48 propose enhancing panel contracts and encouraging local business to register as local content providers. Recommendation 49 introduces the prospect that breaches of procurement rules be referred to an Independent Assessor for investigation.**

**WALGA Comment – WALGA has consistently supported the alignment of the tender threshold with that of the State Government<sup>35</sup> and broadly supports the principle that suppliers of goods, services and works competing for contracts will benefit where procurement processes across State and Local Government has more similarities than differences. These proposals will also assist recent endeavours of both State and Local Government to enhance opportunities for local and regional suppliers to access contracts and boost local economies in the post COVID-19 recovery phase.**

**WALGA Recommendation: Support Recommendations 45, 46, 47, 48 and 49**

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<sup>33</sup> State Council Resolution 06.3/2019

<sup>34</sup> City of Perth Inquiry Report, Volume 3, Page 83

<sup>35</sup> State Council Resolution 06.3/2019

## **Recommendations 50, 51 and 52 - Rating and Revenue**

**Local Government Act Reference: Part 6; Local Government (Financial Management) Regulations**

Recommendation 50(a) opposes rate capping and 50(c) proposes a broad review of rate exemptions available under Section 6.26(2) of the Local Government Act in recognition of the limitation this places on capacity to raise revenue. Further proposals include development and publication a Local Governments rates and revenue strategies (50b) and a review by the Valuer General of rating methodologies (50 g). Recommendation 51 aligns with the current provisions in Sec 6.17 of the Local Government Act which requires the setting of fees and charges to consider; the cost of providing the service; importance of the service to the community; and the price of alternative providers might charges for similar service.

Recommendation 52 recommends cost recovery principles be adopted when Local Government and State Government set fees and charges.

**WALGA Comment –** WALGA's advocacy opposes rate capping<sup>36</sup> and there is long-standing support for a review of general rate exemption provisions and charitable land use rate exemptions<sup>37</sup> initially examined by the Local Government Advisory Board in 2005<sup>38</sup>. WALGA also supports a review of the basis of rates<sup>39</sup> and this may be incorporated in Recommendation 50(g).

WALGA's advocacy position in relation to Recommendation 52 is that Local Government to be empowered by legislation to set fees and charges for all services it provides in favour of the current arrangement whereby many fees and charges are determined by State Government legislation<sup>40</sup>.

The Office of the Auditor General regularly audits State Government fee-setting in line with Government policy:

*It is general government policy that fees should fully recover the cost of providing related services. If fees under-recover costs, this could mean the general public is subsidising customers, while over-recovery could mean customers are being charged too much. Any under or over-recovery of costs requires approval from the Minister or authority from legislation, respectively.<sup>41</sup>*

WALGA's long-held concern is that the State Government's policy is inadequately applied to Local Government service delivery (town planning fees, building fees, dog and cat registration etc) and Local Governments experience a net revenue loss due to inherent issues of:

- Lack indexation
- Lack from regular review
- Lack a transparent methodology in setting of fees and charges

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<sup>36</sup> State Council Resolution 06.3/2019; 96.6/2015; 118.7/2015 incl. Rate Setting Policy Statement

<sup>37</sup> State Council Resolution 06.3/2019; 122.6/2017; 118.7/2015; 5.1/2012

<sup>38</sup> Local Government Advisory Board's Inquiry into the Operation of Section 6.26(2)(g) of the Local Government Act 1995 – November 2005

<sup>39</sup> State Council Resolution 06.3/2019; 123.6/2017

<sup>40</sup> State Council Resolution 06.3/2019; Metropolitan Local Government Reform Submission 2012

<sup>41</sup> Report 13 'Fee-setting by the Department of Primary Industries and Regional Development and Western Australia Police Force' December 2019 - Executive Summary, Page 3

**WALGA Recommendation: Support Recommendations 50, 51 and 52; continue to advocate for legislation that empowers Local Governments to set fees and charges for all services it delivers.**

## **ACCOUNTABILITY, SELF-REGULATION AND INTEGRITY**

### **Recommendations 53 and 54 - Accountability and Self-Regulation**

**Local Government Act Reference: Part 7 (Audit); Local Government (Audit) Regulations**

**Recommendation 53 recommends an expanded Audit, Risk and Improvement Committee with Recommendation 53(a) and (b) proposes that skills-based independent members hold the majority of numbers, and the Chair, of the Committee, and regional committees be formed to offset potential increased costs.**

**Recommendation 54 proposes an expanded role for the Audit, Risk and Improvement Committee including an audit plan approach focussing on compliance, risk (including procurement), financial management, fraud control, governance and delivery of plans.**

**WALGA Comment – WALGA’s advocacy supported the Office of the Auditor General WA conducting Local Government finance and performance audits<sup>42</sup>. The self-regulation themes within Recommendation 54 are supported, however Recommendation 53(a) and (b) proposals for a majority of independent members, potentially drawn from a panel of approved suppliers or shared through regional cooperation arrangements, does not include a benefits analysis and there is no evidence the regional cooperation approach will lessen internal audit costs particularly for rural and regional Local Governments.**

**WALGA Recommendation: Oppose Recommendation 53(a) and (b). Supports Recommendation 54.**

### **Recommendation 55 – Integrity and Governance**

**Local Government Act Reference: Part 7 (Audit); Local Government (Audit) Regulations**

**Recommendation 55(a) to (i) propose a range of governance measures to improve integrity, oversight and public participation.**

**WALGA Comment – Recommendations (f), (g) and (h) align with the Department of Local Government, Sport and Cultural Industries current development of Mandatory CEO Standards for Recruitment, Performance Review and Termination (associated with the *Local Government Amendment Legislation Act 2109*) and it is likely this body of work will continue to be dealt with independent of this Report. WALGA’s current advocacy position includes opposition to item (g), the mandatory readvertising of the CEO position upon completion of two five year terms.<sup>43</sup>**

**The proposal under item (c), permitting elected members unable to maintain impartiality to withdraw from a meeting and not vote, is clearly unworkable where the meeting quorum comes under threat and is opposed.**

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<sup>42</sup> State Council Resolution 7.1/2018

<sup>43</sup> State Council Resolution 145.7/2019



**WALGA Recommendation: Support Recommendation 55(a), (b), (d), (e), (f), (h) and (i). Oppose Recommendations 55(c) and (g).**

### **Recommendation 56 – Training and Development**

**Local Government Act Reference: Section 5.126 and Regulations 35 and 36 of the Local Government (Administration) Regulations**

**Recommendation 56 updates the recently introduced Elected Member training provisions.**

**WALGA Recommendation: Support Recommendation 56**

### **Recommendation 57 and 58 – Early Intervention Framework**

**Local Government Act Reference: Part 8**

**Recommendation 57 proposes an early intervention framework whereby the Department of Local Government, Sport and Cultural Industries works with Local Governments to improve performance, governance and compliance.**

**Recommendation 58 proposes the Minister for Local Government should have powers to direct Local Governments and make declarations during a declared state of emergency.**

**WALGA Comment – WALGA does not have advocacy positions in relation to either recommendation. Recommendation 38(b) introduced commentary on this topic and it is reiterated the Local Government sector's experiences during the COVID-19 pandemic did not bring to light any deficiency in the capacity of the State Government to manage issues arising from the pandemic that would require providing the Minister for Local Government with additional emergency powers. A matter of this significance should be considered in the broad context of the State Government's assessment its capacity to respond during the present state of emergency period, rather than dealt with piecemeal in a review of the Local Government Act.**

**WALGA Recommendation: Support Recommendation 57. Oppose Recommendation 58.**

### **Recommendations 59 and 60 – Office of the Independent Assessor**

**Local Government Act Reference: Part 8; Section 5.41**

**Recommendation 59 (a) to (f) proposes conditions upon which an Office of the Independent Assessor might be established, including taking the functions of the Local Government Standards Panel.**

**Recommendation 60 proposes consideration of managing complaints by Elected Members against a CEO or other senior officer, with potential complaints be investigated by the Independent Assessor.**

**WALGA Comment – WALGA has a long-standing advocacy position for improvement to the operational efficiency of the Local Government Standards Panel.<sup>44</sup>**

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<sup>44</sup> State Council Resolution 43.2/2011

The proposal in Recommendation 59 to create the Office of the Independent Assessor resonates in some regard with Recommendation 323, 324 and 325 of the Report of the Inquiry into the City of Perth.<sup>45</sup>

Recommendation 60 has the potential to overlay with other statutory provisions relating to employment law, and it is unclear whether the Report has considered the appropriateness of a proposal which will permit individual Elected Members, rather than the Council acting collectively as the employing authority, to instigate actions relating to a CEO's performance. Similarly, it is current practice that all complaints relating to other local government employees fall within the function of the CEO as the employing authority under Section 5.41(g) of the Act.

**WALGA Recommendation: Support Recommendation 59. Oppose Recommendation 60.**

## **OTHER MATTERS**

### **Recommendation 61(a) and (b) – Classification Bands**

Local Government Act Reference: Schedule 2.2

Recommendation 61(a) proposes the principles for determining classification and for Local Governments should be set out in the new Act, and Recommendation 61(b) states that once established they be utilized by the Salaries and Allowances Tribunal to determine Councillor and CEO allowances and remuneration.

**WALGA Comment –** WALGA has a long-standing advocacy position in relation to appropriate levels of remuneration for Elected Members.<sup>46</sup> The commentary accompanying Recommendation 61(b) informs the rationale for removing the classification band process from the *Salaries and Allowances Act 1975* to the *Local Government Act 1995* is to provide a broader application of the band system to other matters including whether a Local Government should have wards. This ties Recommendation 61(a) and (b) to Recommendation 26(c) that has the intent of discontinuing wards in Band 3 and 4 Local Government, which WALGA does not support.

**WALGA Recommendation: Oppose Recommendation 61.**

### **Recommendations 62 and 63 - Harmonisation of Local Laws**

Local Government Act Reference: Section 3.5 to 3.17

Recommendations 62 and 63 propose increased harmonisation of Local Laws by developing model Local Laws and deemed provisions, with Local Government responsible for justifying any departure or variation from the models or provisions.

**WALGA Comment –** WALGA advocates for improvements to the current local law-making process and independent local law scrutiny conducted by Parliament's Delegated Legislation Committee<sup>47</sup>. Consistent Models and deemed provisions will

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<sup>45</sup> City of Perth Inquiry Report Recommendations Pp. 108 - 110

<sup>46</sup> State Council Resolution 06.3/2019; WALGA Submission to the Salaries and Allowances Tribunal – 21 February 2019

<sup>47</sup> State Council Resolution 06.3/2019

greatly enhance certainty in the local law-making process whilst ensuring the right for Local Governments to argue for and justify departures and variances that suit local conditions, issues and needs.

**WALGA Recommendation: Support Recommendations 62 and 63**

#### **Recommendation 64 - WALGA**

**Local Government Act Reference: Section 9.58**

**Recommendation 64 recommends the following in respect to WALGA;**

- (a) WALGA not be constituted under the new Act;**
- (b) A transition period is provided to ensure continuity in operations of WALGA while it is re-formed under other legislation; and**
- (c) Recognition of WALGA's Preferred Supplier Program and mutual insurance coverage in the legislation should be accompanied by appropriate oversight measures, including auditing.**

**WALGA Comment – From the Local Governments sector perspective it is critical to retain WALGA's services status in the legislation and regulations relating to the Preferred Supplier Program and the Insurance service, as these programs provide significant savings for the Local Government sector.**

**In respect to whether WALGA's establishment is referenced in the Local Government Act, it is appropriate for the Association to obtain legal advice on any negative consequences this may have.**

**WALGA Recommendation: Support recommendation 64(c) for WALGA services retention in the Local Government Act relating to the Preferred Supplier Program and the Local Government Insurance Service. Further advice required in respect to recommendation 64(a) and (b)**

#### **Recommendation 65 – Operational Provisions**

**Local Government Act Reference: Various**

**Recommendation 65 (a) to (f) proposes a number of operational matters for future consideration.**

**WALGA Comment – The proposals align with WALGA's advocacy to the extent that the new Local Government Act be based on a flexible, principles-based legislative framework that avoids red tape and 'de-clutters' the current extensive regulatory regime.<sup>48</sup>**

**There is general support is therefore for these operational provisions, however Recommendation 65(f) – transfer of employee entitlements across all three levels of Government – though well intended is highly likely to raise extensive legal, industrial and financial ramifications prior to being capable of implementation. Further research and industrial consideration is therefore inevitable.**

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<sup>47</sup> State Council Resolution 06.3/2019 Items 1(b) and (e)

**WALGA Recommendation: Support Recommendations 65(a) to (e). Conditionally support Recommendation 65(f) pending further research and industrial consideration.**

## **5 Emerging Issues as Notified/Permitted by the President**

Nil.

## **6 Meeting Closure**

There being no further business the President to close the meeting at 2:39pm.