

## SELECT COMMITTEE INTO LOCAL GOVERNMENT



Our ref: LGI

8 July 2019

President Tony Sachse, and  
Chief Executive Officer John Nuttall  
Shire of Mount Marshall  
PO Box 20  
BENCUBBIN WA 6477

Dear President and Chief Executive Officer

### Parliamentary inquiry into Local Government

On 26 June 2019 the Select Committee into Local Government was established by the Legislative Council to inquire into how well the system of local government is functioning in Western Australia, with particular reference to –

- (a) whether the *Local Government Act 1995* and related legislation is generally suitable in its scope, construction and application;
- (b) the scope of activities of Local Governments;
- (c) the role of the Department of State administering the *Local Government Act 1995* and related legislation;
- (d) the role of Elected Members and Chief Executive Officers/employees and whether these are clearly defined, delineated, understood and accepted;
- (e) the funding and financial management of Local Governments; and
- (f) any other related matters the Select Committee identifies as worthy of examination and Report.

As part of its consultation process, the Committee invites you to provide a written submission on one or more of the above Terms of Reference. The Committee also requests that you circulate this invitation to your Councillors, staff and interested parties in your local government area (including any ratepayer or similar organisations), as well as local media outlets.

The closing date for submissions is **4:00pm on Friday, 23 August 2019**. Submissions received after that date are unlikely to be considered. If you are unable to present your submission by the closing date, please contact the Committee Clerk.

Submissions are confidential until the Committee releases them. You should not disclose your submission to others until the Committee authorises its public release.

It is normal practice for Legislative Council committees to authorise the publication of submissions at some stage during its inquiry. These submissions are then available to the public on request. Please note that your submission may be placed on the Internet by the Committee.

It is important that any request for the Committee to prohibit publication of all or part of the submission, or the identity of the author, be attached to the submission when it is lodged. Please state why you want it confidential. If you want part of the submission kept confidential please put that part on a separate page(s). The Committee will consider requests for confidentiality, but retains the power to publish any submission. The Legislative Council may also authorise publication.

The Committee may decide to hold hearings at a later date. If you wish to appear before the Committee, make that request when the submission is lodged.

Written information about the form and content of submissions can be obtained from the Committee Office or viewed on the Parliamentary website at: [www.parliament.wa.gov.au](http://www.parliament.wa.gov.au). (Choose Quick Links/Make a submission to a committee.)

It would assist the Committee to process and consider your submission if it is typed on A4 paper. An electronic copy of any material would be appreciated. The preferred format is Word 2007 or later. For inquiries, or lodging submissions contact:

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Yours sincerely



**Hon Simon O'Brien MLC**  
Chairman

# Select Committee into Local Government

## Terms of Reference

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- 1) That a select committee into local government be established.
- 2) The select committee is to inquire into how well the system of local government is functioning in Western Australia, with particular reference to —
  - a) whether the *Local Government Act 1995* and related legislation is generally suitable in scope, construction and application;
  - b) the scope of activities of local governments;
  - c) the role of the department of state administering the *Local Government Act 1995* and related legislation;
  - d) the role of elected members and chief executive officers/employees and whether these are clearly defined, delineated, understood and accepted;
  - e) the funding and financial management of local governments; and
  - f) any other related matters the select committee identifies as worthy of examination and report.
- 3) The select committee shall comprise five members.
- 4) The select committee shall report by no later than 12 months after the motion for its establishment is agreed to and may, if it sees fit, provide interim reports to the house.

# Interim Submission

## Select Committee into Local Government

**August 2019**

## About WALGA

The WA Local Government Association (WALGA) is working for Local Government in Western Australia. As the peak industry body, WALGA advocates on behalf of 138 Western Australian Local Governments. As the united voice of Local Government in Western Australia, WALGA is an independent, membership-based organization representing and supporting the work and interests of Local Governments in Western Australia. WALGA provides an essential voice for 1,222 Elected Members, approximately 22,000 Local Government employees (16,500 Full Time Equivalent's) as well as over 2.5 million constituents of Local Governments in Western Australia.

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## Executive Summary

Local Government in Western Australia:

- Plays a key role in Australia's Federation;
- Provides democratic representation and democratic expression for its communities;
- Delivers a range of complex and evolving services;
- Is place-based, and plans for the future of place;
- Advocates on behalf of its communities;
- Is a steward for significant publicly owned built assets;
- Is accountable to the community through the ballot box and a range of other mechanisms; and,
- Consists of many committed people –Elected Members and staff – passionate about making the community a better place to live, work and recreate.

The *Local Government Act 1995* is generally appropriate as it is based on the principle of 'general competence': Local Governments are enabled by the Act to exercise their democratic mandate to do what's required for their community.

The Local Government sector supports the Review of the *Local Government Act 1995* to modernise the legislative framework and has endorsed a number of policy positions regarding the Act and regulations.

Place-based, and with a direct connection to communities all across Western Australia, the services that Local Governments deliver have evolved from services to property to incorporate a range of services to people and communities. This evolution of services, which is in line with international trends, is in response to the needs and demands of the community and the withdrawal of services by other spheres of government. Local Government is responsible for maintaining a vast road network on behalf of the people of Western Australia, as well as significant public assets. These assets must be managed and maintained for the present day as well as for future citizens.

While the Department of Local Government, Sport and Cultural Industries consists of committed and diligent officers, it is the Local Government sector's view that the Department, due to resourcing pressures, does not meet the Local Government sector's expectations for timely advice, robust capacity building, or early interventions to prevent governance or relationship breakdowns.

The role of a Local Government Elected Member is challenging, and perhaps not broadly understood. Elected Members, as community leaders, are expected to represent their local community and make decisions at Council and Committee Meetings. Elected Members are ultimately responsible for overseeing a complex business that provides a broad range of functions, manages significant public assets, and employs many staff, all in a political and publicly accountable environment. The expectation that Elected Members may be able to



individually 'get things done' does not mesh with the reality that Elected Members are only able to exercise authority as one member of a decision making body at formal meetings.

Chief Executive Officers of Local Governments also occupy a challenging role, with responsibility for managing the Local Government's physical, financial and human resources, often with significant financial and capacity constraints.

Local Government's workforce, consisting of committed and dedicated officers in a diverse range of occupations, make a significant contribution to the communities in which they work, particularly in non-metropolitan Western Australia.

Rates, which represent Local Governments' principal method of funding their diverse range of service activities, are an efficient taxation mechanism. There are too many rating exemptions, causing significant revenue leakage, which shifts the burden of funding Local Governments' services and functions onto fewer ratepayers.

Similarly, there are too many restrictions on Local Government's ability to set fees and charges appropriate to the service being provided. Many fees and charges are specified in legislation, often below the level of cost recovery, which effectively forces ratepayers to subsidise the activity for which the fee is levied.

Grant transfer payments have eroded over time, adding to the pressure on Local Government to do more with less. The Local Government sector supports the campaign at the national level for grants from the Commonwealth Government to the Local Government sector to return to one percent of Commonwealth taxation revenue.

The Local Government sector supports the State Local Government Partnership Agreement and the opportunities for the Local Government sector and the State Government to work together to achieve mutually beneficial strategic outcomes.

WALGA would like to thank the Committee for considering this submission, and emphasise that this Inquiry presents a tremendous opportunity to highlight the countless examples of dedicated Elected Members and staff going above and beyond to achieve excellent results for their communities.

## Introduction

Local Governments play a key role in the Australian Federation. Local Governments in Western Australia provide democratic representation and a range of services to their respective communities which span the length and breadth of the state.

Local Governments, in one form or another, have existed in Western Australia since the arrival of settlers from Britain in the nineteenth century. The first piece of legislation to weave the fabric of today's Local Government sector was the *Towns Improvement Act of 1838*.<sup>1</sup> Today, Local Government is constituted and primarily regulated by the *Local Government Act 1995* but there are many other legislative instruments which impact the way Local Governments operate in their diverse array of activities.

Local Governments are a key democratic institution in Western Australia's local communities. Councils have well-established relationships with the communities they serve and represent, local businesses and organisations as well as other spheres of government.<sup>2</sup>

Services provided by the 139 Local Governments in Western Australia include the traditional roads and waste collection but also now extend to recreation, medical services and other human services.<sup>3</sup> Often, Local Governments taking on new or expanded roles in service delivery or advocacy is as a result of gaps left by other spheres of Government reducing their service delivery, or due to community pressure for Local Governments to step into a particular space.

All Local Governments throughout Western Australia continually strive to provide the highest quality services within the constraints of Local Government revenue streams, Australia's vertical fiscal imbalance and ongoing cost-shifting from other spheres of Government, all of which are well documented by the 2003 Hawker Report<sup>4</sup> and many reports on Local Government finances before and since.<sup>5</sup>

Local Government in Western Australia, with a presence in every community in the state represents a significant component of the State's economy. Local Government is the steward of public assets of \$48 billion, including responsibility for more than 88 percent of the public road network, employs a workforce of 22,000 people (16,500 FTEs) and spends \$4.1 billion per year.<sup>6</sup>

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<sup>1</sup> WALGA (2011)

<sup>2</sup> Aulich *et al* (2011) Volume 2 p13

<sup>3</sup> PricewaterhouseCoopers (2006)

<sup>4</sup> House of Representatives Standing Committee on Economics, Finance and Public Administration, (2003)

<sup>5</sup> See also PricewaterhouseCoopers (2006) and Aulich *et al* (2011) Volume 1

<sup>6</sup> WALGA (2019a)

## Trust in Government

The 2019 Edelman Trust Barometer, the pre-eminent study of peoples' trust in institutions around the world found, that:

- Trust in Government remains low in Australia with people generally 'distrusting' of Government, and,
- Only a minority in western democracies believe "the system is working for me".<sup>7</sup>,

This lack of trust in democracy and in institutions has a real impact. A lack of trust in the system leads to increased fear and increased fear erodes trust and negatively affects our collective wellbeing.

This places Local Government in a very important position and creates significant opportunities for Local Government as a legitimate and connected sphere of Government.

As trust in Government and institutions declines to an all-time low, there is a small slice of good news for Local Government. The 2014 Griffith University Constitutional Values Survey found that, of our three spheres of Government, Local Government is the most trusted.<sup>8</sup>

Specifically, in Western Australia, while 69.8 percent of respondents trust Local Government to do a good job in carrying out its responsibilities, 63.2 percent of respondents trust the State to do a good job and only 56.9 percent trust the Federal Government to do a good job with its responsibilities.

Not only does the community trust Local Government to do a good job, 75 percent of people believe that Local Government is best placed to make decisions about the local area.<sup>9</sup>

With global uncertainty, and the erosion of trust in government, many people are looking for community, connection and stability. The challenge being embraced by Local Governments across Western Australia is to enable and facilitate this community connection.

This Select Committee presents a tremendous opportunity to further build trust in Local Government as a legitimate and democratically mandated sphere of government. This can be achieved by highlighting the achievements of Local Government.

It would be a real shame, and an opportunity lost, if this Parliamentary Inquiry is hijacked by those with an axe to grind using the committee process to air their often unfounded or unsubstantiated grievances. Instead, this Inquiry has a tremendous opportunity to highlight the achievements of Local Government in building cohesive and resilient communities.

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<sup>7</sup> Edelman (2019)

<sup>8</sup> Griffith University (2014)

<sup>9</sup> Ryan, R. et al (2015)

To that end, WALGA would like to pay tribute to Western Australia's 1,222 Elected Members who have been willing to step up and take a leadership role in their communities, often in a challenging political role in the public realm. Unfortunately, Local Government has recently attracted uninformed criticism from a small number of noisy individuals who seem to have an axe to grind.

WALGA would like to remind the Committee that it's not the critics, comfortable in their cheap seats behind anonymous social media pages who matter, it's the men and women who put themselves forward to take a leadership position in their community.

As Theodore Roosevelt famously said:

*"It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly... who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly."*<sup>10</sup>

That's not to assert that the Local Government sector in Western Australia is perfect; of course there is room for improvement and Local Governments welcome opportunities to improve their efficiency, effectiveness and their engagement with their communities.

Local Government has embraced a range of recent initiatives to improve their efficiency, effectiveness and engagement with their communities. For instance, the Integrated Planning and Reporting Framework was introduced into Western Australia at the behest of the Local Government sector who saw the opportunity for a more integrated and strategic approach to community, financial and business planning.

Performance audits, undertaken by the Auditor General, have also been welcomed by the Local Government sector. Performance audit participants have welcomed the opportunity to have their systems and processes critically examined by an external agency, and the learnings from the performance audits have been widely shared across the sector.

The increasing prevalence of deliberative democracy techniques, such as participatory budgeting, further demonstrates the desire and willingness of Local Governments to meaningfully engage with their communities.

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<sup>10</sup> Brown (2019)

It is WALGA's and the Local Government sector's expectation that the Committee will take the time to consider the full range of positive examples of Local Governments continual drive to deliver services efficiently, be an effective steward of community infrastructure, and engage meaningfully with citizens as a key component of Western Australia's vibrant democracy.

## Local Government Collaboration

Local Governments, while democratically representing their communities, strive to deliver services effectively and efficiently. One way Local Governments aim to improve their service provision is by collaborating with other Local Governments in partnerships, as members of Regional Local Governments, or as members of voluntary collaborative groups.

Collaboration in Local Government has a number of drivers. A key driver for Local Governments to work together to achieve community outcomes is to strive for better, more strategic, and regionally appropriate outcomes. When Local Governments collaborate to, for example, develop aged housing facilities, or promote regional tourism, they are collaborating because together they can drive better outcomes than they could as one Local Government undertaking a task more suited to a regional scale.

Local Government collaboration is also driven by necessity. In many cases, Local Governments collaborate because the service is more efficiently provided at a regional level. For example, in metropolitan Perth, Local Governments are members of Regional Local Governments to collaboratively provide waste services at an appropriate scale and level of service.

It is important to note that Local Governments also actively seek to work collaboratively with Government agencies, industry, local business and civil society in delivery community outcomes. Across regional WA, Local Governments work closely with Regional Development Commissions and regional offices of the Commonwealth's Regional Development Australia (RDA) network to undertake regional planning, develop regional projects and leverage State and Federal funding.

WALGA recently produced a "Cooperation & Shared Services" document that provides demonstrations of the collaboration currently being undertaken in the sector.

The document can be found here: [Cooperation & Shared Services document](#) and is also attached as Addendum 1.

## Legislation

### ***a) Whether the Local Government Act 1995 and related legislation is generally suitable in scope, construction and application<sup>11</sup>***

The legislative framework governing Local Government is generally appropriate and the underpinning principle of 'general competence' is strongly supported by the Local Government sector.

However, additions and amendments since the current Local Government Act was introduced over 20 years ago have created a layered, spaghetti-like regulatory regime that needs to be untangled and simplified. Similarly, practice and procedures have changed since the current Act's introduction and, as a result, the legislative framework requires modernisation.

For these reasons, the Local Government sector has strongly supported the State Government's goal to undertake a full Review of the *Local Government Act 1995* and the associated regulations.

## Local Government Act Review

WALGA has been a strong supporter of the current Review of the Local Government Act and has supported the Government's intent to streamline and modernise the legislative framework.

WALGA put forward a comprehensive submission to Government that was the culmination of a signification consultation and engagement process, and the collection of policy and advocacy positions developed over many years.

The Local Government sector participated in a comprehensive process leading up to the adoption of the advocacy positions, as detailed below:

WALGA partnered with the Department of Local Government, Sport and Cultural Industries to deliver facilitated workshops across all WALGA Zones, held throughout October and November 2018. Approximately 500 Elected Members and senior administrators attended 19 workshops held in each of the 17 WALGA Zones.

WALGA, LG Professionals and the Department of Local Government, Sport and Cultural Industries partnered to host the Future of Local Government Forum, which was held at Curtin University on Wednesday, 30 January 2019 and was attended by 230 participants.

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<sup>11</sup> Select Committee Terms of Reference



A total of 73 member Local Governments provided responses to the WALGA consultation process, either through an individual response or a Zone/regional group response. 42 individual Local Governments responded with additional collective responses from three WALGA Zones representing a further 31 member Local Governments.

The WALGA State Council, consisting of 25 representatives from across the State, in adopting advocacy positions in March 2019 endorsed the positions unanimously. This demonstrates the veracity of the consultation process. In addition, the Department of Local Government, Sport and Cultural Industries received over 3,000 submissions from the community, Local Governments and stakeholder bodies.

## Key Principles

State Council, in finalising WALGA's submission to the Local Government Act Review process, endorsed the following key principles as fundamental drivers of future Local Government legislation.<sup>12</sup>

### 1. Retain General Competence Powers.

The Local Government Act is founded on the general competence powers principle, which gives Local Governments the legal capacity to do anything that is not prohibited by law. This principle is uniformly supported by the Local Government sector and that it should not be diluted by over-regulating the operations of Local Government.

The general competence principle recognises the democratic mandate of Local Government to represent, plan, and provides services for its community.

### 2. Provide Flexible, Principles-based Legislative Framework.

The Local Government Act works well when Local Governments apply their general competence powers within a legislative framework that provides for good governance, with accountability to the community for decision-making. The Local Government sector seeks a light-touch regulatory approach accompanied by best practice guidance, support and assistance.

There is concern that, without adequate care and sector input, the new Local Government Act will be overly prescriptive and mistakes of the past will be repeated. Prescriptive compliance regimes do not typically drive innovation or organisational performance; instead boxes are ticked and processes to comply are implemented leading to inefficiencies and distractions.

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<sup>12</sup> WALGA (2019b)

The Local Government Act should focus on principles and objectives, not on process. As an example, Local Governments in 2016 were given the ability to establish Regional Subsidiaries. A key feature of the model is to enable Local Governments to establish a subsidiary that is fit-for-purpose by adapting the governing charter to the subsidiary's purpose and structure. Instead, the regulations are prescriptive and a number of Local Governments have considered the model and opted not to pursue it. Best practice, guidance material and smart people working together to solve problems drive innovation; prescriptive regulation drives compliance for the sake of compliance.

To focus on the process and not the principles and objectives risks embedding today's practice into legislation instead of allowing Local Governments the flexibility to innovate and adapt to new methods and new technologies. Not everything a Local Government should do needs to be legislated. Ultimately, Councils are considered to be generally competent and are accountable to the community through democratic elections held every two years.

### **3. Size and Scale Compliance Regime**

There is a marked appetite in the response to the Facilitated Workshops, Detailed Discussion Papers and Future of Local Government Statewide Forum for differentiation between Local Governments based on size and scale.

- 4. Promote enabling legislation that empowers Local Government to carry out activities beneficial to its community taking into consideration the Local Government's role in creating a sustainable and resilient community through:**
- i. Economic development;**
  - ii. Environmental protection; and,**
  - iii. Social advancement.**

The need to provide enabling legislation with a 'menu of opportunities' for the sector. The State Government needs to set legislation that enables Local Governments to carry out activities, even though all Local Governments may not want to carry the activity; those that wish to, should be permitted to. A good example of this is the proposed introduction of beneficial enterprises.

### **5. Avoid Red Tape and de-clutter the extensive regulatory regime that underpins the Local Government Act.**

WALGA has called for the de-cluttering of the extensive regulatory regime that underpins the Local Government Act. The Act Review provides a timely reminder that the legislative burden on Local Government is vast and burdensome; the Local Government Act itself runs to over 500 pages and the 9 associated Regulations combine to approximately 400 additional pages. It would not be unfair or unkind to observe that few within each Local Government's administration, and fewer Elected Members, would grasp the level of detail contained throughout the Act and Regulations, creating of its own accord a compliance burden.

This scale of legislation represents a considerable challenge to the delivery of effective and efficient governance. WALGA echoes the sentiments of Dr David Cox, Chair of the Law Reform Commission of Western Australia, who stated at the Local Government Act Forum in January 2019:

“Consideration in drafting (the new Act) is to think about who you are drafting it for? Consider who has to read it and write it for normal people – not law graduates. People want to know what’s governing them and they need to understand it.”<sup>13</sup>

**6. The State Government must not assign legislative responsibilities to Local Governments unless there is provision for resources required to fulfil the responsibilities.**

The State Government should not impose responsibilities to Local Governments without adequate resourcing. This principle is contained within the British Columbia Community Charter<sup>14</sup> and is supported by the Local Government sector.

## Key Policy Positions

The following key policy positions are considered to be of primary importance to the sector:

### Rates, Fees and Charges

#### Rating Exemptions

- Rating Exemptions - Request that a broad review be conducted into the justification and fairness of all rating exemption categories, Sector Revenue foregone 2017/18 - \$45.6m;
- Local Government Act should eliminate exemptions for commercial (non-charitable) business activities of charitable organisations;
- Support for exemptions of genuine Charitable activities that qualify under the Commonwealth Aged Care Act 1997;
- Eliminate exemptions for Government Trading Enterprises;
- Support for the principle that all users of Local Government services should make a contribution to these services.

#### Rating Restrictions – State Agreement Acts

- Resource projects covered by State Agreement Acts should be liable for Local Government rates.

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<sup>13</sup> Cox, D. (2019)

<sup>14</sup> British Columbia (2019)

### Imposition of Fees and Charges: Section 6.16

- That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services, regardless of the enabling legislation.

### No Rate Capping

The Local Government sector opposes rate capping or any externally imposed limit on Local Government's capacity to raise revenue as appropriately determined by the Council.

### Beneficial Enterprises

The *Local Government Act 1995* should be amended to enable all Local Governments to establish Beneficial Enterprises (formerly known as Council Controlled Organisations).

Beneficial Enterprises are:

- Arm's length entities to deliver projects and services required by the community;
- Vehicle for greater efficiency and improved partnering practices for Local Government;
- Provide services & facilities that are not attractive to private investors;
- Cannot carry out any regulatory function of a Local Government;
- Skills Based Board – Alternate governance model;
- Not about outsourcing essential services.

### Building Upgrade Finance

That WALGA advocate for amendments to the Local Government Act that enable a Building Upgrade Finance mechanism in Western Australia.

The Building Upgrade Finance position is advocating for reforms to Western Australian legislation that would enable local governments to guarantee finance for building upgrades for non-residential property owners. In addition to building upgrades to achieve environmental outcomes, advocates have identified an opportunity to use this approach to finance general upgrades to increase the commercial appeal of buildings for potential tenants. In this way, Building Upgrade Finance is viewed as means to encourage economic investment to meet the challenges of a soft commercial lease market in Perth and achieve economic growth. Further benefits of this proposal include the potential for heritage protection, universal access and building safety.

### **Community Engagement Policy**

That the Local Government Act 1995 include a requirement for Local Governments to adopt a Community Engagement Policy, with each Local Government to determine how to implement community engagement strategies.

### **Additional Policy Positions**

A complete schedule of the Local Government sectors adopted policy positions, grouped according to the Government's three themes of agile, smart and inclusive, relating to specific elements of the Local Government legislative regime were included in WALGA's submission to the Review of the Local Government Act which can be found [here](#) and is also attached as Addendum 2.

DRAFT

## Scope of Activities of Local Government

### *b) The scope of activities of local governments*

Local Government is an important sphere of Government that undertakes functions most appropriately implemented at the local level. As the sphere of Government closest to the people, and with a significant emphasis on *place*, Local Government affects the daily lives of all people and businesses and is well-positioned to have unique insight into the needs and aspirations of their communities.<sup>15</sup>

While Local Governments provide significant services, research demonstrates that the community highly values the long term focus of Local Government in looking after place. Eighty percent of Australians rate 'planning for the future' as one of the most important functions undertaken by Local Government.<sup>16</sup>

Across Western Australia, there is significant diversity in the range of functions and services that are provided by Local Government.

While there is some diversity of function across Local Governments in Western Australia, all Local Governments undertake a number of regulatory functions such as authorisation of planning and building developments, waste management, administration of food safety laws, regulation of companion animals, and provision of local roads. Most Local Governments provide social services as well, including provision of recreation and community facilities, economic development promotion and community festivals and events.

Local Governments in Western Australia manage the majority of the Western Australian road network, of approximately 127,500km. In addition, on behalf of the community, Local Governments are responsible for nearly \$14 billion of built assets (excluding transport assets). These primarily comprise recreation facilities, including ovals and pitches for a wide range of sports, swimming pools, tennis courts, gymnasiums, libraries, arts and other community centres. Local Governments with coastal or river frontage provide and maintain recreational boat launching facilities and associated infrastructure.

Some of the diversity of functions and services is driven by financial capacity. For instance, small, remote Local Governments do not have the financial resources to provide the community recreation services that a large metropolitan Local Government provides.

Diversity of functions can also be driven by community demand. For instance, Local Governments in country Western Australia deliver services, such as health services, that would otherwise be provided by the market or the State Government in metropolitan Perth.

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<sup>15</sup> Productivity Commission (2017)

<sup>16</sup> Ryan, R. (2019)



Local Governments in non-metropolitan regions also often provide housing and other incentives to attract and retain health and other professionals.

Evolution of Local Government's role to encompass human, social and community services is in response to the dynamics on the ground, including the withdrawal of services from other spheres of Government or in response to the democratic aspirations of the community.

The retreat from service provision from the State Government often means that Local Government, at the behest of the community through the democratically elected Council, will step up to fill the gaps. For example, a number of Local Governments provide security services in their suburbs and communities. Often this sort of service eventuates due to the demands of citizens for a safer community.

Similarly, a number of Local Governments are actively becoming involved in seeking to address homelessness in their communities. While the State Government's Department of Communities is the lead agency responsible for addressing homelessness, Local Governments often play a role in coordinating agencies and not-for-profit service providers, again filling a gap in service provision from another sphere of Government. As Professor Roberta Ryan observed at the 2019 WA Local Government Convention, Local Government, with its focus on place, is the only body capable of pulling together government and non-government resources to address place-based disadvantage.<sup>17</sup>

## Waste Management and Resource Recovery

The Local Government sector provides contemporary waste management (and often resource recovery) services as an essential service to their communities in order to maintain public health standards and minimise the environmental impact of municipal solid waste, with the *Waste Avoidance and Resource Recovery Act 2007*, the *Public Health Act 2016* and the *Local Government Act 1995* providing the primary heads of power. Resource recovery operations are subject to international commodity price fluctuations, foreign environmental import standards and contamination rates that impact the quality of the commodities recovered. Importantly, recycling also generates three-to-one employment opportunities compared to traditional landfill.

The 2016-17 Census of Local Government Waste and Recycling Services found that Local Governments in Western Australia spent \$295 million in collecting 1.5 million tonnes of domestic waste in 2016-17.<sup>18</sup> Sixteen Local Governments reported investing in new waste and recycling infrastructure and/or initiatives in 2016-17.

These investments included:

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<sup>17</sup> Ryan, R. (2019)

<sup>18</sup> Waste Authority (2018a)

- New or upgraded transfer stations (completed or commenced construction) in the shires of Dardanup, Harvey, Moora, Cuballing and the City of Busselton;
- A new landfill cell in the Shire of Augusta–Margaret River;
- The installation of a landfill weighbridge in the Shire of Broome;
- A new regional waste facility in the Shire of Ravensthorpe;
- A new green waste kerbside collection service in the City of Subiaco; and,
- The introduction of a fortnightly kerbside recycling service in the City of Karratha and the Shire of Coorow.

36 Local Governments reported recycling their own construction and demolition waste and 73 Local Governments reported recycling green waste from their own operations, and a number of metropolitan Local Governments are investing in waste to energy solutions for residual waste. Fifty two Local Governments and regional councils reported spending a total of approximately \$3 million in waste and recycling education programs in 2016–17. About half (52 per cent) was expended by regional councils.

All of this innovation is being achieved with minimal strategic planning or financial support from State or Commonwealth Governments. The new State Waste Strategy is uncosted and unfunded. It is important to note that in 2017, the Waste Avoidance and Resource Recovery Levy generated approximately \$76m in receipts, of which 75 percent went to consolidated State revenue, with the Minister for Environment approving the allocation of just \$19 million to the WARR Account.<sup>19</sup> Of the \$19m, approximately half went to underwriting the waste branch of the Department of Water and Environmental Regulation, leaving approximately \$8.5m for strategic waste initiatives.

Local Government contends that there are a number of improvements that would assist in delivering more efficient and effective outcomes – including meeting the targets of the State Waste Strategy – primarily though hypothecating all funds collected from the Waste Avoidance and Resource Recovery Levy into strategic waste reduction and management activities (as identified in the State Waste Strategy and Action Plan). Strategic investments could then include 50:50 funding for FOGO (3 bin) infrastructure, state-wide and regional waste infrastructure plans to direct future public and private investments, the State Government mandating sustainable procurement policies across all departments and agencies, and matching funding for Local Government regional landfill upgrades. A State/Local Government Partnership Agreement on Waste Management and Resource Recovery would provide the required governance framework to achieve this.

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<sup>19</sup> Waste Authority (2018)

## Roads, Bridges, Paths and Drains

Local Governments are responsible for 127,500km of roads in Western Australia, which represents 88 percent of the public road network.

With just 10.5 percent of the national population, Western Australian Local Governments are responsible for 19.4 percent of the national Local Government road length. This equates to 49.4km of road per person in WA, which is nearly double the National average of 26.8km of Local Government road per person. For comparison, NSW Local Governments are responsible for just 18.6km of roads per person. This reflects both the extensive nature of the road network in WA and the responsibility of Local Government in Western Australia for all but the highest order roads (primarily freeways and highways). This has clear ramifications for the capacity to fund road maintenance and renewal. This issues is discussed further in the section relating to Local Government funding.

To support active transport (walking, cycling) Local Governments provide and maintain more than 15,800km of sealed walking and cycling paths and an additional 715km of gravel paths.

There are 894 bridges managed by Local Governments across Western Australia.

Effective drainage is critical but typically unseen infrastructure provided and maintained by Local Governments to avoid damage to public and private infrastructure from inundation.

With an estimated replacement value of \$27.18 billion at June 2018, the roads, paths, bridges and drains are one of the most valuable State assets in a financial sense as well as underpinning the connectivity of communities and industries.

Local Governments spent \$982 million on roads, bridges and paths during 2017/18. Nearly half of this expenditure is funded by Local Governments from rates and other revenues. The balance is funded by the Federal Government (22 percent) and the State Government (28 percent).

Local Governments are also seeking to innovate in the construction of roads and paths with many utilising recycled material.

## Transport Planning

Almost every journey involves the road and path network under the control of Local Governments. Consequently, Local Governments are actively involved in transport planning to ensure that community and industry expectations for access and safety are delivered. This activity assists to address key issues of congestion, particularly around activity centres, parking and integration between modes, particularly public transport.

In industrial, rural and regional areas, freight movements are an important consideration as efficient movement of freight underpins the economic growth of these areas.

In the five years to 2017, 50.4 percent of those killed and 59 percent of those seriously injured in road crashes were on roads under the control of Local Governments. Identifying high risk locations, suitable treatments to ameliorate the risks and sourcing funding for these projects is an important Local Government function.

Provision of transport related services and infrastructure accounts for nearly 30 percent of total Local Government expenditure.<sup>20</sup>

Local Governments are innovating in their transport planning responsibilities as much as possible. For instance, Local Governments are utilising data from mobile phones and vehicle navigation systems to inform transport planning, using drones and other remote sensing technology to improve efficiency and reduce risks, and building and providing charging infrastructure for electric vehicles.

## Land Use Planning

Local Governments' land use planning function aims to maintain and improve the wellbeing of local communities. Local Government has been involved in planning for its local communities since the *Town Planning and Development Act 1928* took effect in 1929. This Act provided for planning and development control to be achieved primarily through 'town planning schemes' prepared by local governments and approved by the Minister. Over the years, the level of detail and content of local planning schemes has evolved, guided by State Government requirements to address numerous state-wide planning issues and concerns at a local level to ensure the consideration of local perspectives and preservation of community values. Each Local Planning Scheme has been endorsed by the State Planning Agency (of the day) and has been granted formal approval by the Planning Minister to guide development in the local area.

Western Australian Local Governments are providing effective planning frameworks for the consideration of planning matters within their jurisdictions. Confirmation of this effectiveness was affirmed in a recent review of the planning and development performance of 19 Local Governments. These Local Governments encompass 90 percent of the total population of the Greater Perth region and 84.5 percent of the region's population growth between 2016 and 2017. The project provided an excellent representation of how the sector is achieving its strategic and statutory planning functions and meeting statutory timeframes of the planning and building approvals processes.

Key findings from this detailed review include:

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<sup>20</sup> Western Australian Local Government Grants Commission (2018)

- 99 percent of all building applications were approved by Local Governments within statutory timeframes.
- 98 percent of all planning applications were approved or responded to within the statutory timeframes. Planning applications include all development applications, subdivision referrals and clearances, building strata clearances (Form 26s) and building permits.
- 97 percent of applications were approved under delegated authority, allowing Local Government officers to assess and approve the application rather than being considered at a full Council meeting.
- Of the total time taken to process a scheme amendment, on average 40 percent is spent with the WA Planning Commission, Minister for Planning or the Environmental Protection Authority.
- On average each Local Government has seven strategic planning documents which support land use planning functions, including: Strategic Community Planning, Community infrastructure, Commercial, Housing, Environment, Economic, Transport, Activity Centres, Heritage and an Public Open Space. This demonstrates that Local Governments consider a complex array of planning matters when assessing planning applications, yet still meet statutory timeframe requirements.

There are a number of improvements that would assist the Local Government sector in fulfilling its planning responsibilities, including:

- Resourcing the Department of Planning, Lands and Heritage to assist in the implementation of the proposed Planning Reform measures that will be outlined in the response to the 'Green Paper';
- Review and refinement of the State Government Planning framework, given the large number of policies, guidelines, manuals and position statements to which Local Government must refer;
- Review of the Local Planning Strategy process given the massive amount of information expected to be included in the document, as outlined in the Local Planning Manual. The review should also include the connection to the State's Integrated Planning Framework and provide scalability of the content for smaller local governments;
- Providing legislated timelines for all referral agencies to provide advice on both strategic and statutory proposals that are cognisant of Local Government decision making requirements;
- Timeframes for State Planning Policy review processes, as some 'reviews' have been underway for numerous years which affect a Local Government's ability to incorporate this proposed information into their local planning framework; and
- A review of the Planning Fees and Charges, which have been frozen since 2013, providing Local Government with the ability to establish fees and charges for their own districts.

Other issues being faced by the sector which inhibit its capacity to fulfil its planning responsibilities include:

- The dichotomy between the current focus on the standardisation of all Local Governments' local planning controls and the clear role of a Local Planning Scheme in upholding the specific local character and objectives of an area;
- A lack of a full cost benefit analysis of Development Assessment Panels (DAPs), to determine the effectiveness of the system, and what is an appropriate level of DAP involvement within the WA Planning system;
- Planning for waste in the peri-urban areas in a strategic manner, rather than each Local Government having to consider applications in an ad hoc manner;
- Lack of clarity and assistance in resolving financial and liability concerns in coastal planning implementation after completing a coastal hazard risk management plan;
- Different requirements and expectations of the various State Agencies in the implementation of Bush Fire Planning mechanisms; and
- Lack of coordinated state-wide planning for the provision of Regional Open Space. Local Governments are collaborating to try and achieve this outcome.<sup>21</sup> Also compounded by the spending of the funds within Metropolitan Region Improvement Fund in order to progress regional open space and other regional infrastructure items, to ensure that the regions continue to grow.

## Building Control

Local Government has been involved in building control for its local communities for many decades, providing for the health and safety of its residents through the assessment and issuing of building licences and monitoring of the licence conditions. A major change in the Building functions occurred in 2012, with the private sector able to be more involved in the process, through the private certification of Building Permit Applications.

Local Governments are Permit Authorities under the *Building Act 2011*. Building Permits are issued by Local Government for any building work for which a building permit application is required pursuant to the *Building Act 2011* (Part 5) and the *Building Regulations 2012* and are assessed using the National Construction Codes, *Building Act 2011* and *Building Regulations 2012*, relevant Australian Standards, and other relevant legislation.

A recent Office of Auditor General report found that the Local Government entities reviewed in the audit were properly assessing permit applications against requirements in the *Building Act 2011* and issuing most building permits within the legislated timeframes. Combined with the statistics from the recent Performance Monitoring project undertaken by WALGA – specifically that 99 percent of all Building Applications were approved within the statutory timeframes – the sector is effectively performing its building permit function.

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<sup>21</sup> See [www.gapp.org.au/](http://www.gapp.org.au/)



There are a number of improvements that could assist the Local Government sector in fulfilling its Building responsibilities including:

- A review of the operation of the *Building Act 2011* and regulations, to address the improvements that the Local Government sector requires, in order to effectively administer the Act; specifically on the following topics:
  - clarity of information required to be submitted to Local Government;
  - mandatory inspections, including when and how they are undertaken;
  - time frames and fees;
  - amended plans process;
  - difficulties in building in bush fire prone areas;
  - appropriate infringements;
  - ongoing training and training of swimming pool inspectors;
  - registration of technical specialists;
  - role of the Department of Fire and Emergency Services; and
  - Clarity on the other prescribed approvals that are required.
- A review of the fees and charges to ensure cost recovery is able to be achieved for the entire building process, not just the Building Permit assessment process. Specifically, Local Governments should be empowered to determine the appropriate level of fee for services provided by Local Government.

Other issues being faced by the sector which inhibit its capacity to fulfil its building responsibilities include:

- The constant industry pressure to introduce a full private certification model as occurs in the Eastern States, without the acknowledgement that a full regime of independent regulatory inspections would also need to be included to protect the consumer;
- Resources within a Local Government to provide a regulatory and enforcement service, as the fees currently only pay for a portion of the Building Permit issuing function, and not enforcement;
- Encouraging more people to enter into a Building Surveying function in Local Government. The funds from the Construction Training Levy Fund does not include Local Government building surveyor trainees; and
- Lack of clarity and advice from the Building Commission on the operation of the Building Act. The Local Government sector spends significant time and resources obtaining advice from other Local Governments or from legal experts, in order to effectively implement the Act.

## Emergency Management

Emergency Management is a relatively new Local Government responsibility. The roles assigned to Local Governments under the *Bushfires Act 1954* could be considered a traditional role of Local Government, as have been in place since 1954 and currently affect approximately 120 Local Governments. The Bushfires Act is primarily related to the management of bushfire brigades, enforcement of bushfire preparation and enforcement measures for non-compliance.

The *Emergency Management Act 2005* prescribed further responsibilities to Local Governments including requirements to:

- Undertake Emergency Risk Management assessments;
- Establish and chair a Local Emergency Management Committee;
- Develop and maintain local emergency management arrangements;
- Manage Recovery following an emergency; and,
- Appoint a Local Recovery Coordinator.

Furthermore in 2015, Bushfire Risk Management Planning was enshrined in State Emergency Management Policy (SEMP 2.9, Management of Emergency Risks). This policy identifies AS/NZS ISO 3100:2009 Risk Management – Principles and Guidelines as the standard for emergency risk management in Western Australia. Schedule 3 of this policy identifies Local Governments with high or extreme level of bushfire risk require a specific plan. Local Governments named in the schedule are required to develop an integrated plan with participation from other agencies and landowners, and are named as the custodians of the plan for ongoing review. As this program matures, Local Governments are now facing the implications of undertaking works to mitigate the identified risks. The State is yet to embed mitigation policy and funding mechanisms into the State framework.

Since 2017, the Local Government sector has been adapting to the responsibilities outlined in Australia's strategy for protecting crowded places from terrorism. The Strategy has introduced the concept of 'shared responsibility' to counter terrorism which has not featured as strongly within the existing counter terrorism arrangements in Western Australia.

This has posed many challenges to Local Governments as outlined most recently in the Community Development and Justice Standing Committee Inquiry into crowded places. In brief, the sector is currently grappling with the implementation of the Strategy including:

- The strategy is not linked to any legislation or policy framework within WA and is therefore not mandatory;
- With no identified standards for compliance, there is a lack of clarity on the role of Local Governments as an owner operator and / or as the approver of events,
- The strategy lacks coordination across government with many State Government agencies acting independently on their own interpretation of their responsibilities,

- A risk management based approach to event approvals and consideration of mitigation measures is the preferred approach by Local Governments,
- There has been no funding provided to assist and support Local Governments to undertake these responsibilities or in implementing mitigation measures,
- Local Governments are concerned with the implications of these measures on events that are being hosted by community groups. Many Local Governments are challenged by asking these groups to be considering counter terrorism when it is the intention of these groups to be building community connections and wellbeing;
- The costs associated with implementing mitigation measures is cost prohibitive for community groups and Local Governments.

## Climate Change

Any objective analysis of how each of the three spheres of government is tackling the issue of climate change would indicate that it is Local Government that is determined not to allow short term politics to impede good long term public policy, and action. No level of government wants to scare its community, but there is a clear duty of care to ensure that decisions made benefit the community in the long term. Whether we like it or not, we are now in a climate crisis, with the most recent examples being highlighted in the recently released State Government report on coastal erosion hotspots.<sup>22</sup>

Across a range of priority areas, from understanding local risks of climate change, to reducing operational energy costs and carbon intensity, to planning for the impacts of coastal erosion and bush fire risk, to driving innovations in water use efficiency, Local Governments are engaging with, listening to, and responding to their communities on climate change. A number of Local Governments have long committed to energy reduction targets for their own operations, to drive innovation and cost savings for their communities.

Local Government has identified a number areas where the State Government can assist:

### **1. Accelerated action and fast tracked reform to remove regulatory barriers and facilitate the transition to a low carbon, energy efficient economy.**

Local Governments are already active in renewable energy and energy efficiency projects, but State level regulations continue to hamper Local Governments from undertaking or supporting a range of high impact cost-effective energy efficiency and renewable energy projects. For example, LED street lighting retrofits and large scale renewable energy projects, including power purchase agreements and community energy projects. Local Governments are also seeking amendments to Regulation 54 of the *Local Government (Financial Management) Regulations 1996* to include 'renewable energy infrastructure' as a prescribed charge. This would allow Local Governments to

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<sup>22</sup> Department of Transport (2019)

fund the installation of solar panels on the roof of residents that opt in, and then the resident is able to repay the cost of the panels over 10 years by adding a small amount onto the resident's rates bill. It would provide an economic stimulus to SME's in the solar industry, and address a major barrier to low social-economic households transitioning to a low carbon economy, realising savings on their energy bills, and countering rising electricity prices.

## **2. A State level emissions reduction target and/or renewable energy target.**

Western Australia is the only State or Territory without an emissions reduction target or a renewable energy target. The State Government has previously indicated it considers it the responsibility of the Federal Government to enact any targets, however following the recent Federal election, there is now a stronger argument to be put for setting a state level target. The Premier recently "warned that States such as WA could go it alone on climate policy unless the Morrison Government comes up with a workable national approach to reducing greenhouse gases and supply certainty to investors".<sup>23</sup>

## **3. Planning for climate proof communities (incl. funding for innovative climate change projects).**

This priority speaks to the need for State Government and Local Government to work in partnership to build healthy, resilient communities by ensuring that climate change considerations (both mitigation and adaptation) are embedded in Government policies and regulations. A key aspect of this is a State Planning regime that adequately incorporates climate change in planning policies, along with related environmental issues such as urban forestry, biodiversity, water security and emergency management.

## **4. Comprehensive, effective adaptation planning.**

It is recognised that there is planning around coastal adaptation currently occurring, but effective planning needs to take in comprehensive identification of, and response to, the effects of climate change. It also needs to expand out to other effects of climate change such as heat waves and other extreme weather events, bush fire planning and water management.

By way of an existing example, an increasing number of the 44 coastal Local Governments are undertaking Coastal Hazard Risk Management and Adaptation Plans to identify and understand the level of risk on the assets in coastal areas. Through this process, with assistance from the WAPC, Local Governments are able to investigate management and adaptation measures that are appropriate to minimise the identified risks to a more acceptable level. What is not clear, without a State Climate Change Policy,

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<sup>23</sup> The West Australian (31 May 2019)

and coastal specific legislation, is how such risks can be addressed in an efficient, effective and equitable manner.

A State/Local Government Partnership Agreement on Climate Change and Sustainability would provide the required governance framework to achieve these outcomes for Local Government on behalf of the people and communities of Western Australia.

## Economic Development

The Local Government sector has recognised that Local Government plays a key role in creating sustainable and inclusive economic growth as a way to support local communities and contribute to the Western Australian economy. Attention is now turning to ways to diversify the economy and position WA as a vibrant and innovative place to live, invest and do business. While economic development is typically seen to be the responsibility of State and Federal Governments, the role that Local Governments can, and do, play in creating economic conditions is often overlooked.

Far from the traditional responsibilities of 'roads rates and rubbish' which necessarily reflected the function of Local Government in its emerging role at the turn of the 19<sup>th</sup> century, Local Government is now a legitimate partner with State and Federal Governments in developing local, regional, State and National economies.

The Local Government sector's responsibilities are broad and include a wide range of functions, all of which have an impact on the economic and business environment. The sector is also responsible for overseeing hundreds of local laws which influence the behaviour of businesses and consumers. Local Governments also derive powers from other State legislation and are tasked with implementing a broad range of regulations on behalf of the state, such as the *Planning and Development Act 2005*, the *Building Act 2012* and the *Public Health Act 2016*.

The sector's economic footprint is significant and clearly positions it as a major contributor to the State's economy. In 2016/17 WA Local Governments spent \$4.1billion on important services for the community, and managed assets worth more than \$48 billion. Local Government raised \$2.2 billion in rates revenue in order to fund community services and collected \$976 million in fees and charges. In terms of its contribution to the State's employment targets, the sector employs 22,000 people (approximately 16,500 FTEs).

Local Governments clearly have an important role in supporting economic activity at a local and regional level through:

- Local leadership in setting a framework that fosters economic development
- Planning for the future
- Providing economic infrastructure such as roads, bridges, public spaces and facilities

- Minimising regulatory and compliance burdens on businesses, in particular the planning system
- Providing for appropriate land for business, industry and residential development
- Undertaking local procurement
- Creating liveable communities
- Marketing and promoting the local area
- Tourism
- Supporting the private sectors' wealth creation
- Building commercial relationships
- Coordinating and collaborating with stakeholders including other levels of government and the business sector
- Advocating to other levels of government
- Seed funding ventures where private sector funding is not available

In response to Local Government's increasing focus on its role in economic development, in 2019 after a sector-wide consultative process, WALGA launched its *'Economic Development Framework for Local Government'*<sup>24</sup> and through the review of the Local Government Act, the sector has agreed to imbed economic development as a key role of the Local Government sector.

## Airports and Airfields

There are approximately 150 airports and airstrips owned, maintained and operated by Local Governments across regional Western Australia. Of these, 23 Local Government airports serve regular passenger transport (RPT) services. These facilities provide access to essential services, including medical services as well as facilitate industry and tourism across the State. They range in scale from gravel airstrips without services, to Karratha Airport which served 448,000 passengers in the year ending May 2019. The Shire of East Pilbara managed Newman airport served 318,000 passengers in the year to May 2019<sup>25</sup> and the City of Kalgoorlie-Boulder managed airport grew passenger numbers by 13.1 percent to 295,000 in the year to May 2019.

## Other Services

As can be seen, Local Governments have evolved to be far more than roads, rates and rubbish. This is not empire building. Local Governments are responding to their community's aspirations and expectations.

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<sup>24</sup> Available from: <https://walga.asn.au/Policy-Advice-and-Advocacy/Economic-Development/Economic-Development-Framework>

<sup>25</sup> Bureau of Infrastructure, Transport and Regional Economics (2019)



Other Services include:

- Aged Care
- Child Care
- Doctors and Allied Health Services
- Housing, including community housing as well as Government Regional Officer Housing addressing a shortage of Government Employee accommodation
- Natural Resource Management
- Parks and Recreation facilities and programs
- Libraries
- Museums
- Community Events
- Lifeguard and Beach control services
- Community Development
- Public Health services, including food control
- Rangers and Animal Control
- Swimming Pool Inspections

## Department of Local Government

### ***c) The role of the department of state administering the Local Government Act 1995 and related legislation***

WALGA and the Local Government sector have a strong working relationship with the Department of Local Government, Sport and Cultural Industries, which is comprised of committed and dedicated officers and executives.

Notwithstanding, it is WALGA's observation that, over several years, the Department of Local Government has been diminished in its resources and, consequently, its ability to quickly respond to issues in the sector has been compromised. This decline in the Department's capacity over a number of years manifests itself in a number of ways.

Firstly, there is significant benefit in many cases in early interventions in relationship breakdowns within Local Governments, which, if not addressed, can deteriorate into substantial governance issues. An early intervention when there are signs of declining relationships or issues beginning to arise can arrest a downward spiral that may lead to the suspension of the Council, appointment of one or more commissioners and a formal inquiry into a particular Local Government, all of which impart significant cost to public funds, reduce trust in Government generally, and deprive a community of democratic representation while the inquiry is underway.

Secondly, the decline in service from the Department of Local Government to the Local Government sector represents a cost shift from the State to Local Government. WALGA has, over the past ten years, enhanced its governance and advice service offering to Local Governments, in part to fill the gap left by the State.

While WALGA is well placed to provide advice, support and capacity building initiatives for and on behalf of the Local Government sector, as a membership-based organisation without legislative mandate WALGA is not in a position to intervene in the affairs of a Local Government in the same way that the Department of Local Government can intervene with its legislative backing.

In addition, the absence of the Department from advice and capacity building activities further erodes the Department's capacity for intervention.

As part of WALGA State Council's deliberations relating to the current Review of the *Local Government Act 1995*, State Council adopted the following position relating to the Department of Local Government's role:

- a) "Support the continuance of the Department of Local Government, Sport and Cultural Industries as a direct service provider of compliance and recommend the Department***

*fund its capacity building role through the utilisation of third party service providers; and,*

- b) Call on the State Government to ensure there is proper resourcing of the Department of Local Government, Sport and Cultural Industries to conduct timely inquiries and interventions when instigated under the provisions of the Local Government Act 1995.”<sup>26</sup>*

The rationale for the position adopted above was listed as follows:

*“The addition of item (b) is in recognition of the sector’s response that intervention strategies proposed in the Local Government Act Review (Phases 1 and 2) are only one part of the challenge to providing an adequate response when a breakdown in good governance occurs. The sector seeks both a just and timely resolution when intervention is needed. For the Department to provide a timely response it must be properly resourced to avoid unnecessary delay in the intervention process. Undue delay in determining an outcome and corrective action is also an undue delay in returning good governance to the community of an affected Local Government.”<sup>27</sup>*

WALGA does not seek to criticise or impugn the commitment and dedication of officers or executives of the Department of Local Government; the issues are systemic and relate to the broader State Government’s commitment to appropriately funding the Department to fulfil its capacity building, regulatory, compliance and early intervention mandate.

## Other Related Legislation

In addition to the requirement to administer the Local Government Act, Local Governments are directly affected by other state legislation such as the following:

- Aboriginal Heritage Act 1972
- Agriculture and Related Resources Protection Act 1976
- Animal Welfare Act 2002
- Aquatic Resources Management Act 2016
- Auditor General Act 2006
- Biosecurity & Agricultural Management Act 2007
- Biodiversity Conservation Act 2016
- Building Act 2011
- Building and Construction Industry Training Fund and Levy Collection Act 1990
- Building Service (Complaint Resolution and Administration) Act 2011
- Bush Fires Act 1954

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<sup>26</sup> WALGA (2019b) p25

<sup>27</sup> WALGA (2019b) p25-26

- Caravan Parks & Camping Grounds Act 1996
- Cat Act 2011
- Cemetery Act 1986
- Child Care Services Act 2007
- City of Perth Act 2016
- Commercial Tenancy (Retail Shops) Agreements Act 1985
- Conservation and Land Management Act 1984
- Contaminated Sites Act 2003
- Control of Vehicles (Off-road Areas) Act 1978
- Corruption, Crime and Misconduct Act 2003
- Country Housing Act 1998
- Criminal Code Act Compilation Act 1913
- Defamation Act 2005
- Disability Services Act 1993
- Dividing Fences Act 1961
- Dog Act 1974
- Electoral Act 1907
- Emergency Management Act 2005
- Environmental Protection Act 1986
- Equal Opportunity Act 1984
- Fire Brigades Act 1942
- Fire and Emergency Services Act 1998
- Food Act 2008
- Freedom of Information Act 1992
- Health (Miscellaneous Provisions) Act 1911
- Heritage Act 2018
- Land Administration Act 1987
- Legal Deposit Act 2012
- Library Board of Western Australia Act 1951
- Liquor Control Act 1988
- Local Government Grants Act 1978
- Local Government (Miscellaneous Provisions) Act 1960
- Main Roads Act 1930
- Marine and Harbours Act 1981
- Mental Health Act 2014
- Metropolitan Redevelopment Authority Act 2011
- Mining Act 1978
- National Redress Scheme for Institutional Child Sexual Abuse Act 2018
- Occupational Safety and Health Act 1984
- Planning & Development Act 2005
- Port Authorities Act 1999
- Public Health Act 2016

- Public Interest Disclosure Act 2003
- Public Transport Authority Act 2003
- Public Works Act 1902
- Rates and Charges (Rebates and Deferments) Act 1992
- Regional Development Commissions Act 1993
- Residential Tenancies Act 1987
- Residential Parks (Long-stay Tenants) Act 2006
- Retail Trading Hours Act 1987
- Retirement Villages Act 1992
- Rights in Water and Irrigation Act 1914
- Road Traffic Act 1974
- Road Traffic (Administration) Act 2008
- Royalties for Regions Act 2009
- Salaries and Allowances Act 1975
- Soil and Land Conservation Act 1945
- State Administrative Tribunal Act 2004
- State Records Act 2000
- Statistics Act 1907
- Strata Titles Act 1985
- Swan and Canning Rivers Management Act 2006
- Transfer of Land Act 1893
- Trustees Act 1962
- Waste Avoidance and Resource Recovery Act 2007
- Water Services Act 2012
- Waterways Conservation Act 1976
- Workers Compensation and Injury Management Act 1981
- Working with Children (Criminal Record Checking) Act 2004

The above list relates to State legislation. There is a myriad of Commonwealth legislation that also applies to Local Government.

In addition, the Department of Local Government, Sport and Cultural Industries does not provide advice or support to Local Governments regarding their obligations under legislation outside of the Department's portfolio. In relation to legislative heads of power managed by other departments or agencies, the Local Government sector has experienced reluctance or insufficient capacity in these agencies to provide advice to Local Governments regarding implementation or compliance.

When legislation imposes powers or duties on Local Government, the State Government should ensure engagement and implementation strategies are also funded to ensure the Local Government sector is capable of consistently delivering the desired outcomes, recognising the challenges of size and scale across Local Governments.

## Roles of Elected Members and Chief Executive Officers

### ***d) The role of elected members and chief executive officers / employees and whether these are clearly defined, understood and accepted***

The *Local Government Act 1995* clearly defines the role of a Councillor:

*A councillor —*

- (a) represents the interests of electors, ratepayers and residents of the district; and*
- (b) provides leadership and guidance to the community in the district; and*
- (c) facilitates communication between the community and the council; and*
- (d) participates in the local government's decision-making processes at council and committee meetings; and*
- (e) performs such other functions as are given to a councillor by this Act or any other written law.*

The role of the Council is generally considered to be strategic in nature, with the Council employing a Chief Executive Officer to manage the day-to-day operations of the Local Government in accordance with the Council's strategic direction.

The role of a Councillor is challenging. Councillors are responsible for overseeing a complex business – that provides a broad range of functions, manages significant public assets, and employs in some cases hundreds of staff – all in a political and publicly accountable environment.

### **Councillor vs Council**

It is also important to acknowledge, contrary to some community understanding, individual Councillors, including the Mayor or President, have little power as individuals. The power and authority of a Councillor only exists as a member of a Council making formal decisions at a legally constituted Council meeting.

The then Department of Local Government and Communities, in guidance for prospective candidates in advance of the 2017 Local Government elections are absolutely clear on this point. The Fact Sheet states:

*“Generally, local government council members, who include the mayor, president and councillors, do not have any authority to act or make decisions as individuals. They*

*are members of an elected body that makes decisions on behalf of a local government through a formal meeting process.*<sup>28</sup>

This may be contrary to community expectations, particularly in relation to the Mayor or President, elected on a mandate to make certain changes or to fulfil certain commitments, which may not be achievable due to the determinations of the Council as a collective.

In Victoria, the review of their Local Government Act addressed this very issue:

*“The role of mayors is not properly understood by the community. Many councillors argue that mayors are ‘first among equals’ and that the role is merely ceremonial—such as representing council at public functions like citizenship ceremonies—as well as chairing council meetings. Out in the community, people often have a completely different view: that the mayor has an important leadership role in council; that they are responsible for holding councillors to account for their actions and have the power to do so; and that they also have broader responsibilities for how the council, including its administration, fulfils its role.”*<sup>29</sup>

It may be the case that some of the public disquiet about Local Government relates to the misalignment between the public understanding of the role of individual Councillors including the Mayor or President, and the actual role defined by the *Local Government Act 1995*.

## Councils are not Boards

There has been some commentary in recent times that Councils are equivalent to a Board of Directors. This misunderstands and misrepresents the fundamental role of Council to make *political* decisions in a *public* setting.

Councillors are very much encouraged to adopt ‘board-like behaviour’ in their deliberations and decision making in Council meetings and their dealings with constituents.

Councillors are community representatives – not professional directors that would be found in the private sector – tasked with a number of complex and often competing roles, such as providing good democratic government, supporting the community, managing places, delivering and maintaining infrastructure, and delivering services efficiently while ensuring rates are kept low.<sup>30</sup> Again, these roles are performed in a publicly and contested political environment.

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<sup>28</sup> Department of Local Government and Communities (2017)

<sup>29</sup> The State of Victoria Department of Environment, Land, Water and Planning (2016), p38

<sup>30</sup> Skatssoon (2019)



## Training and Professional Development

The complexity of the role, coupled with its public and political nature, demonstrates that training, professional development, capacity building and ongoing advice and support for Elected Members is essential. For this reason, WALGA, as the Local Government sector peak body, has invested significant resources in ensuring training and advice are available to Elected Members at all levels.

WALGA is a Registered Training Organisation (RTO) that offers a range of Nationally-Accredited Elected Member professional development courses that have been designed to provide the essential knowledge and skills to support Councillors to perform their role as defined in the *Local Government Act 1995*.<sup>31</sup>

With a range of flexible courses to choose from, including a qualification specifically developed to meet the needs of Elected Members in Western Australia, there are a variety of ways for Elected Members to maintain and develop their professional capabilities.

Completion of training and assessment activities from all three Stages of WALGA's Learning and Development Pathway, will result in the achievement of the Diploma of Local Government (Elected Member) qualification. Since 2011, 35 Elected Members have completed the Diploma qualification and there are a further 36 currently enrolled.

## Role of the Chief Executive Officer

The *Local Government Act 1995* clearly defines the role of a Local Government Chief Executive Officer:

*The CEO's functions are to —*

- (a) advise the council in relation to the functions of a local government under this Act and other written laws; and*
- (b) ensure that advice and information is available to the council so that informed decisions can be made; and*
- (c) cause council decisions to be implemented; and*
- (d) manage the day to day operations of the local government; and*
- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions; and*
- (f) speak on behalf of the local government if the mayor or president agrees; and*
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees); and*

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<sup>31</sup> WALGA (2019)

- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and*
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.*

The Chief Executive Officer is the principal adviser to the Council and assists Elected Members to perform their role by providing advice and information so they can make informed decisions that are legally within the Council's powers while taking account of financial and resource constraints.<sup>32</sup>

The CEO implements Council's decisions and is answerable to the Council for the performance of the Local Government in delivering services and facilities to the community.<sup>33</sup> Employment, management and supervision of all other staff is the responsibility of the CEO, who is responsible for managing operations on a day-to-day basis.

Given the Council has only one employee – the Chief Executive Officer – it is crucial that the Council makes a good decision when employing a CEO, and also that Council is able to effectively manage the performance of the CEO. As Councillors are often community representatives, who may not be experienced or qualified in contemporary human resource management practices, employment, management and performance appraisal of the CEO may be one of the Council's most significant challenges.

The *Local Government Act 1995* requires that performance criteria for the purpose of reviewing the CEO's performance are established. Similarly, development of these performance criteria are crucial for the Council to get right.

For these reasons, WALGA offers an Elected Member training course on CEO Performance Appraisals, and provides Elected Members with significant advice and assistance through the CEO recruitment and performance appraisal cycle.

It is also acknowledged that the recent amendments to the Local Government Act in June 2019 provide for guidelines to be produced for the CEO recruitment and performance review process.

## Chief Executive Officer Remuneration

At times, there has been uninformed commentary in the public realm about the pay of Chief Executive Officers in the Local Government sector. The remuneration of Chief Executive Officers is subject to a determination every year by the Salaries and Allowances Tribunal,

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<sup>32</sup> WALGA (2019a)

<sup>33</sup> WALGA (2019a)

the same body that determines the pay and conditions for Members of Parliament, senior executives of Government Trading Entities such as Synergy and the Water Corporation, and Judges and Magistrates.

The Salaries and Allowances Tribunal's process for determining CEO remuneration is transparent and well-established and it should be noted that recent determinations have only provided for modest increases in remuneration to reflect the broader economic circumstances and wage restraint in the public and private sector.

To criticise Local Government CEOs for 'earning more than the Premier', which seems to be a common trope among the uninformed, is misguided. Notwithstanding post-political entitlements payable to Government Ministers and long-serving Parliamentarians, the Premier occupies a political office; a Local Government CEO occupies an executive management administrative office and is often responsible for management of significant sums of public money. The CEO of a Local Government is more comparable to a Director General or senior bureaucrat than a politician.

In the case of large metropolitan Local Governments, the Chief Executive Officer may be responsible for an organisation with \$170 million in annual revenue and 1,000 employees. To suggest that someone with such responsibility would not command a significant remuneration package is naïve and misguided.

## Local Government Workforce

An inquiry into Local Government in Western Australia must consider the substantial economic and community contributions made by Western Australia's Local Government workforce.

Nationally, close to 200,000 people work in the Local Government sector, and employment in Local Government is particularly important in non-metropolitan areas.<sup>34</sup> In Western Australia, Local Government employs approximately 22,000 people.<sup>35</sup>

Local Governments undertake workforce planning as part of the integrated planning framework to identify future workforce needs and potential skills gaps. Local Governments, and particularly rural and remote Local Governments, can be susceptible to skills gaps and skills shortages. Due to competition from the private sector in terms of remuneration, lack of suitably qualified or experienced candidates locally, and remoteness or location, 69 percent of Local Governments have experienced skills shortages, particularly relating to engineers, town planners, building surveyors, environmental health officers, and project managers.<sup>36</sup>

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<sup>34</sup> Ryan, R. (2019)

<sup>35</sup> WALGA (2018a)

<sup>36</sup> ALGA (2018)

It is important for the committee to acknowledge the contribution the Local Government workforce makes to communities all across Western Australia. The vast majority of Local Government employees are dedicated and committed community minded people seeking to make their communities better while, in many cases, confronting funding and capacity challenges.

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## Funding and Financial Management

### ***e) The funding and financial management of local governments***

The removal of constraints to Local Government revenue capacity is a critical success factor for an improved system of Local Government in Western Australia.

The place of Local Government in Australia's Federation and in the context of the vertical fiscal imbalance has been well documented and well researched. The revenue constraints impacting on Local Government in virtue of its role in the Federation is perhaps best summarised by the Systemic Sustainability Study Panel:

*"The positioning of Australian Local Government in jurisdictional roles, determined by State legislation and with revenue sourced from State and Commonwealth sources along with own-source rates and charges, provides significant scope for role and funding tensions between the three levels of government."<sup>37</sup>*

This tension sometimes manifests in commentary about Local Government rate setting, which occasionally degenerates to a discussion about the merits or otherwise of specific rate increases. A debate of this nature can be destructive; rate rises above the consumer price index may be essential for a number of reasons, and may be a manifestation of a democratic mandate for the Local Government to provide specific services to a certain level of service.

Rates are Local Governments' only taxation mechanism available to fund the myriad of services expected by the community and mandated by State legislation. This is because other sources of income are subject to varying degrees of control by other spheres of government: fees and charges may be set or capped by regulation and not increased over time and grants and transfers are not subject to Local Government control. Secondly, due to a large infrastructure backlog, there is a need for Local Governments to raise sufficient revenue to fund future obligations for infrastructure replacement and renewal. Failure to do this represents an inequitable transfer of liabilities to future generations of ratepayers.

A significant infrastructure backlog is a tangible manifestation of Local Governments' revenue constraints. In 2017-18 there was a \$136 million shortfall between the \$717 million estimated to be required to maintain the road network in its current condition and the \$584 million that was spent by Local Governments on road preservation. This gap has grown by around \$48 million per year over the past five years. The gap between actual and required expenditure on roads is largest in the Wheatbelt region and has been for many years. The cumulative effect of this is clear in road condition data across the network, where between 20 and 25 percent of the sealed roads are in a poor or very poor condition. This challenge is not able to be resolved by Local Governments alone. In the Wheatbelt South Region it has been calculated that, in aggregate, Local Governments would have to spend 100 percent of their

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<sup>37</sup> WALGA (2006) p19

revenue raising capacity (a theoretical maximum calculated by the WA Local Government Grants Commission) in addition to the grants received in order to meet their road preservation needs. The increased service levels required by high productivity vehicles (over-mass, road trains) add to the challenges faced by Local Governments in these regions.

Remote regions are heavily dependent on Federal and State Governments to fund road maintenance and renewal. In the Gascoyne Region, around 90 percent of road funding is from Federal and State Governments, and in the Kimberley around 80 percent of funding is from Federal and State Governments.

Furthermore, this is a major example of Local Governments' asset management obligations which extend to the buildings and facilities on which the community relies for a whole range of services, including recreation, arts and culture, places of heritage significance and tourism. Local Governments have a significant responsibility to adequately fund the ongoing management, maintenance and renewal of these assets.

Beyond acknowledging Local Government's place in Australia's Federal system of Government, characterised by a significant vertical fiscal imbalance, there are some practical reforms that would enhance the revenue capacity of Local Governments and improve equity in the community.

## Rates

Rates, which represent Local Governments' only tax instrument and primary form of own-source of revenue, are a tax on wealth, not tied to any specific services, but rather used to fund a broad range of community facilities and services.<sup>38</sup>

Local Government is a legitimate and essential sphere of Government with the democratically enshrined mandate to raise revenue through rates to fund infrastructure and services for the benefit of their community.

Councils' deliberative rate setting processes reference their Integrated Planning Framework – a thorough strategic, financial and asset management planning process – and draw upon the community's willingness and capacity to pay.

The Henry Tax Review puts forward five key principles that the tax system should seek to address:<sup>39</sup>

1. Equity
2. Efficiency

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<sup>38</sup> Deloitte Access Economics (2013)

<sup>39</sup> Commonwealth of Australia (2010)

3. Simplicity
4. Sustainability
5. Policy Consistency

It can be seen in the following table that rates perform well when assessed against the principles of taxation.

Principle	Definition <sup>40</sup>	How rates perform
<b>Equity</b>	The tax and transfer system should treat individuals with similar economic capacity in the same way, while those with greater capacity should bear a greater net burden. Further, the tax system should be progressive.	As rates are directly related to property value, those with higher valued properties will pay more in rates than those with lower valued properties in the same jurisdiction. It should be noted that while rates are related to property value in relation to equity among ratepayers, rates are calculated using either gross rental value or unimproved value, not capital value.
<b>Efficiency</b>	The tax and transfer system should raise and redistribute revenue at the least possible cost to economic efficiency and with minimal administration and compliance costs.	Rates are a relatively efficient tax as they are unlikely to substantially affect economic decision-making. In fact, the Henry Tax Review contends that “the estimated welfare losses of municipal rates and land tax are lower than, or similar to, those of the GST, and a lot lower than for personal tax on labour income and company income tax.” <sup>41</sup>
<b>Simplicity</b>	The tax and transfer system should be easy to understand and simple to comply with.	Rates are simple, easy to understand, easy to comply with, and difficult to avoid.
<b>Sustainability</b>	A principal objective of the tax system is to raise revenue to fund government programs... [and] should have the capacity to meet	Rates are sustainable. As a tax on land, which is immobile, revenue from rates is relatively fixed when compared to other forms of taxation.

<sup>40</sup> Commonwealth of Australia (2010)

<sup>41</sup> Commonwealth of Australia (2010),

[http://www.taxreview.treasury.gov.au/content/FinalReport.aspx?doc=html/publications/papers/Final\\_Report\\_Part\\_1/chapter\\_1.htm#Chart\\_1\\_5](http://www.taxreview.treasury.gov.au/content/FinalReport.aspx?doc=html/publications/papers/Final_Report_Part_1/chapter_1.htm#Chart_1_5)



	the changing revenue needs of government on an ongoing basis.	
<b>Policy Consistency</b>	Tax and transfer policy should be internally consistent.	Rates are not inconsistent with other forms of taxation and there is a direct link between rates and services provided to the property and the broader community.

## Rate Exemptions

Rating exemptions undermine the efficacy of rates in relation to the criteria outlined in the table above.

Exemptions from rates represent significant revenue leakage for Local Governments and this transfers the rate burden to remaining ratepayers. The Local Government sector supports a broad review into the justification and fairness of all rating exemption categories currently prescribed under section 6.26 of the *Local Government Act 1995*. Rate exemptions can be particularly perverse where commercial operations are clearly evident.

To understand the impact of ratings exemptions on the sector, WALGA conducted a survey of its members during July 2018. The survey sought to quantify the impact of ratings exemptions during the 2017-18 financial year.

Some 100 Local Governments responded to the survey, representing Local Governments of all sizes and from across both metropolitan and regional WA. 30 respondents were from the metropolitan area, 63 were from regional WA, and the remainder did not state their location.

The total value of revenue foregone in 2017-18 as a result of ratings exemptions was \$45,633,541. This represents approximately two percent of total rates revenue (based on 2016-17 figures). The impost of rates exemptions was relatively evenly spread across the sector, with the largest share of revenue foregone attributed to the City of Stirling (11 percent) and City of Greater Geraldton (9 percent).

In dollar terms, the largest overall financial impost to the sector from rating exemptions related to land used exclusively for charitable purposes (\$16,564,788), followed by crown land (\$7,522,264), and land used as a non-government school (\$7,247,816). It is noted that some Local Governments had difficulties accessing gross rental values for crown land and so the revenue foregone is potentially much higher.

The most common type of property that was exempt from rating during the 2017-18 financial year was land which is property of the crown (13,905 properties). This was followed by land used exclusively for charitable purposes (2,919 properties) and land owned by a regional local government (2,811 properties).

## Charitable Purposes Rating Exemption

Of particular concern to the Local Government sector is the rate exemption relating to charitable purposes. In 2005, the Local Government Advisory Board inquired into the operation of section 6.26(2)(g) of the *Local Government Act 1995*.<sup>42</sup> This section provides that “land used exclusively for charitable purposes” is exempt from Local Government rates.

In principle, this section of the Act is supported by the Local Government sector. Clearly, Local Government, like any sphere of government, ought to continue to play a role in supporting and encouraging charitable organisations in their work for the benefit of the community. Accordingly, advocacy by the Local Government sector for legislative amendments relating to this section of the Act should not be misinterpreted as disregard for the positive work of charities in the community.

The Local Government sector contends that exemptions under this section of the Act have extended beyond the original intention and now provide rating exemptions for non-charitable purposes, which increase the rate burden to other ratepayers.

The most prominent example of this is the exemption provided under this section of the Act to Independent Living Units (ILU), which is well documented in the Local Government Advisory Board’s Report.<sup>43</sup> It was estimated by the Local Government Advisory Board that approximately \$3 million of revenue was foregone by Local Governments in 2005 as a result of this section of the Act.<sup>44</sup> This figure has significantly increased since the Advisory Board’s report published over a decade ago, with WALGA’s 2018 survey of Local Governments suggesting that \$16.5 million of rate revenue is forgone due to the charitable purposes rate exemption.

If this issue is not addressed, the rate burden on other ratepayers will continue to increase as the demand for Independent Living Units increases as the population ages.

The Local Government Advisory Board recommended in 2005 that Independent Living Units should not be exempt from rates.<sup>45</sup> The Legislation Reform Working Group recommended in 2010 that Independent Living Units should not be exempt from rates.<sup>46</sup> WALGA’s policy position on this issue is that the *Local Government Act 1995* should be amended to remove the rate exemption for Independent Living Units. There may be an argument for exemptions to be granted by State or Federal legislation. Examples include exemptions granted by the *Commonwealth Aged Care Act 1997* and group housing for the physically and intellectually

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<sup>42</sup> Local Government Advisory Board (2005)

<sup>43</sup> Local Government Advisory Board (2005) p14-22

<sup>44</sup> Local Government Advisory Board (2005) p3

<sup>45</sup> Local Government Advisory Board (2005) p22

<sup>46</sup> Legislation Reform Working Group (2010) p2

disabled which is supported under a government scheme such as a Commonwealth-State Housing Agreement or Commonwealth-State Disability Agreement.

Recent policy decisions of the State Government have further exacerbated this problem. Currently, the Department of Housing pay ex-gratia rates to the Local Government for their public housing stock. Many of these houses are now being transferred to management of not-for-profit organisations that are not making the same ex-gratia rate payments.

The sphere of government that determines that exemptions should be granted should fund the exemption. This will ensure that funding the revenue shortfall will be equitably and appropriately distributed amongst taxpayers. For example, the State Government have a compensatory fund of this nature relating to pensioner discounts for the payment of rates.

The *Local Government Act 1995* needs to be amended to provide clarification on rating of land used for charitable purposes.

## Rate Equivalency Payments

A similar issue relates to rate exemptions for State Government trading entities.

A particular example is the exemption granted to LandCorp by the *Land Authority Act 1992*. In 1998, the Act was amended to include provisions for LandCorp to pay the Treasurer an amount equal to that which would have otherwise been payable in Local Government rates, based on the principle of 'competitive neutrality'.

This matter is of serious concern to Local Governments with significant LandCorp holdings in their district. The shortfall in rates are effectively paid by other ratepayers, which means ratepayers have to pay increased rates because LandCorp has a presence in the district.

The current situation involving the Perth Airport demonstrates that such a system is appropriate and can work in practice. In this case, the Commonwealth Government requires the lessee to make a rate equivalency payment to the relevant Local Government and not the Commonwealth. There is no reason why a similar system cannot be adopted for State Government Trading Entities.

## State Agreement Acts

Before the 1980s, State Government conditions of consent for major resources projects in WA included the requirement for purpose-built towns in close proximity to project sites. These conditions were detailed in State Agreement Acts, which are essentially contracts between the State Government and proponents of major resources projects that are ratified by the State Parliament.

The requirement to provide community services and infrastructure meant State Agreement Acts typically included a Local Government rating restriction clause. Many of these towns have since been 'normalised' due to Local Governments, the State Government and utility providers assuming responsibility for services and infrastructure.

In 2011, the State Government introduced a new policy on 'the application of Gross Rental Valuation to mining, petroleum and resource interests' (the GRV mining policy). The policy would apply for a 3 year trial period from 1 July, 2012. The trial period was recently extended until 30 September, pending the outcomes of a review of the policy. The primary objectives of the policy were to clarify the circumstances where Local Governments could apply GRV rating to mining land and enable the use of GRV rating on new (i.e., initiated after June 2012) mining, petroleum and resource interests. This included the application of GRV rating to new State Agreement Acts.

However, existing State Agreement Acts continue to restrict Local Government rating. Local Governments can only rate projects covered by existing Agreements in the unlikely event of 'both parties agree[ing] to adopt the policy'. Alternatively, the State Government has also stated that 'projects that operate under existing State Agreements and currently exempt from rates may apply the policy as part of their respective Agreement Variation processes with the Department of State Development during the trial period'. Again, this statement suggests it is unlikely that the rating exemptions will be removed for existing State Agreements since variations are infrequent and there is no real requirement to remove the exemptions.

Rating exemptions on State Agreement Acts mean that Local Governments are denied an efficient source of revenue. There are also equity issues associated with the existing exemptions since they only apply to a select group of mining companies whose projects are subject to older State Agreement Acts. Removing the rates exemption clauses from the pre-July 2012 State Agreement Acts would provide a fairer outcome for all other ratepayers, including the proponents of new resources projects.

## Differential Rating

The current legislative process for the imposition of differential rates is poorly timed and steeped in bureaucratic red tape. This process should be revised to remove the legislative burden, specifically the need to seek Ministerial approval in some instances. Ministerial input should only be required if the community feedback, after advertising, requests this action.

## Restrictions on Borrowings

Another Local Government finance issue is a disincentive for Local Government investment in community infrastructure due to borrowing restrictions in the *Local Government Act 1995*.

Section 6.21(2) states that a Local Government can only use its 'general funds' as security for borrowings to upgrade community infrastructure, and is restricted from using its assets to secure its borrowings.

This provision severely restricts the borrowing capacity of Local Governments and reduces the scale of borrowing that can be undertaken to the detriment of the community.

This is particularly relevant since the Global Financial Crisis. Treasury now requires member Local Governments to show as contingent liabilities in their balance sheet their proportion of contingent liabilities of the Regional Local Government of which they are a member. Given that the cost of provision of an Alternative Waste Disposal System is anything up to \$100 million, the share of contingent liabilities for any Local Government is significant. Even under a 'Build-Own-Operate' financing method, the unpaid (future) payments to a contractor must be recognised in the balance sheet of the Regional Local Government as a contingent liability.

This alone is likely to prevent some Local Governments from borrowing funds to finance its own work as the value of contingent liabilities are taken into account by Treasury for borrowing purposes.

## Fees and Charges

Fees and charges are, on average, the second largest source of Local Government discretionary revenue.<sup>47</sup> Local Governments are able to charge users for specific, often incidental, services. Examples include dog registration fees, fees for building approvals and swimming pool entrance fees.

In some cases, Local Governments will recoup the entire cost of providing a service or even make a profit. In other cases, user charges may be set below cost recovery to encourage a particular activity with identified community benefit, such as sporting ground user fees or swimming pool entry fees.<sup>48</sup>

Currently, fees and charges are determined according to three methods:

- By legislation
- With an upper limit set by legislation<sup>49</sup>
- By the Local Government.

Fees determined by State Government legislation are of particular concern to Local Governments and represent significant revenue leakage. Examples of fees and charges of this nature include dog registrations fees, town planning fees and building permits. Since

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<sup>47</sup> WALGA (2008) p80

<sup>48</sup> WALGA (2008b) p81

<sup>49</sup> See Section 6.17(3) of the *Local Government Act 1995*

Local Governments do not have direct control over the determination of fees set by legislation, this revenue leakage is recovered from rate revenue.

Under the principle of 'general competence' there is no reason why Local Governments should not be empowered to make decisions regarding the setting of fees and charges for specific services.

There may be an argument that certain fees and charges should be consistent across the State or the metropolitan area; however it is not clear why dog registration fees, as an example, should be the same in every Local Government area. Local Governments in most other states are able to set animal registration fees.

Car registration fees are not the same in every State and few would argue they ought to be; setting fees, charges and tax rates is a core function of government and Local Governments, as a legitimate sphere of government, should be able to make policy decisions regarding their services and revenue streams.

Councils should be empowered to make policy decisions regarding user-paid services provided by the Local Government.

## Grants

Grants and transfers from other spheres of Government are the other main revenue source for Local Government. Financial Assistance Grants, provided by the Commonwealth and distributed by the State Government's Local Government Grants Commission are a key funding source for many Local Governments.

The Department of Local Government, Sport and Cultural Industries website explains Financial Assistance Grants:

*"Local Government Financial Assistance Grants funded by the Commonwealth Government are distributed among 137 local governments in Western Australia each year. The grants are the State's entitlement for financial assistance from the Commonwealth Government, paid in equal quarterly instalments for a financial year, under the Australian law, Local Government (Financial Assistance) Act 1995. The distribution of Financial Assistance Grants is for local government purposes, to achieve equitable levels of services by reasonable effort."*

*Western Australia's share of Commonwealth funding for 2018-19 is \$293,275,889, which equals 11.93 per cent of the national allocation of \$2.457 billion. The allocation has increased from \$287.355m. The funding is untied; there are no conditions on how*

*the funds should be spent. The amount is divided into two parts, a general purpose component and a local roads component.*<sup>50</sup>

Particularly for smaller, more remote Local Governments, financial assistance grants can comprise of a significant portion of revenue. As the Australian Local Government Association (ALGA) notes, Financial Assistance Grants are particularly important in areas with a low rate base, and/or high growth rate, and rapidly expanding service and infrastructure needs.<sup>51</sup>

Local Governments in Western Australia strongly support ALGA's advocacy campaign to restore Financial Assistance Grants to one percent of Commonwealth taxation revenue, which was the level of funding provided in 1996.<sup>52</sup> Since then, despite the Australia's Gross Domestic Product growing strongly, Financial Assistance Grants funding has eroded to now represent approximately 0.55 percent of Commonwealth taxation revenue.<sup>53</sup>

This decline in revenue support from the Commonwealth coincides with the responsibilities and demands of Local Government increasing as the State Government reduces services to address budget issues and Local Government seeks to address the infrastructure backlog, which improves the economic capacity of Western Australia's communities.

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<sup>50</sup> Department of Local Government, Sport and Cultural Industries (2019)

<sup>51</sup> ALGA (2019)

<sup>52</sup> ALGA (2019a)

<sup>53</sup> ALGA (2019a)



## Other Related Matters

- f) Any other related matters the select committee identifies as worthy of examination and report***

## Transparency and Accountability

Local Government is a unique combination of a complex organisation, operating in the public realm with significant transparency and accountability requirements.

Appropriately, given Local Government's role as steward of public assets and public funds, there is a high level of public scrutiny related to Local Government operations and decision-making. In particular, Council meetings, with limited exceptions, are open to the public, and community members can avail themselves of public question time at Council meetings. Further, Local Governments are required to hold a public meeting of electors annually, and members of the community are able to petition for special electors meetings to be held to address specific issues.

In addition, the role of an Elected Member includes a role in facilitating communication between the community and the Council. Elected Members are generally approachable and make themselves available to be contacted about community issues in person at events or via telephone, email or social media. Information, including agendas and minutes, is available on each Local Government's website, meaning that Council decisions are generally accessible.

Local Governments embrace accountability, openness and transparency. Accusations to the contrary are fundamentally misguided, given the existing legislative transparency requirements coupled with Local Government practice that enhances transparency even further.

A prime example of Local Government's culture of openness is highlighted by the commencement of performance audits by the Office of the Auditor General. Despite the resource requirement in facilitating an audit of this nature, Local Governments have embraced the opportunity for an independent agency to access their organisation and provide recommendations on how performance can be improved to reduce risk or enhance efficiency or effectiveness.

The performance audits conducted by the Office of the Auditor General are not only relevant to the subset of Local Governments chosen for audit, but also provide learnings for other Local Governments. It is a credit to the Local Government sector that the performance audits have been welcomed by Local Governments, and not resisted.

## State Local Government Partnership Agreement

In August 2017, the following State and Local Government sector leaders signed the Western Australian State Local Government Agreement:<sup>54</sup>

- Premier – Hon Mark McGowan MLA;
- Minister for Local Government – Hon David Templeman MLA;
- President, WALGA – Cr Lynne Craigie; and,
- President, Local Government Professionals Australia WA – Mr Jonathan Throssell.

The objectives of the partnership agreement are to facilitate the State Government and the Local Government sector working together to enhance communication and consultation between the two spheres of Government, and to provide good governance for the people of Western Australia.

Importantly, the Agreement sets out a communication and consultation framework that commits the State Government to thoroughly consulting with the Local Government for 12 weeks for proposals that “will have a significant impact on Local Government responsibilities or operations.”<sup>55</sup>

Further, the Agreement establishes the State and Local Government Partnership Group comprising the following State and Local Government leaders:

- Premier;
- Treasurer;
- Minister for Local Government;
- Minister for Planning / Transport;
- WALGA President;
- LG Professionals President; and,
- Such other Ministers and Local Government representatives as appropriate to the subject matter on the agenda.

The Partnership Agreement provides opportunities for both the State Government and the Local Government sector.

For the Local Government sector, the commitment to consultation timeframes and regular, formal access to key Government leaders, such as the Premier and Treasurer, are important.

For the State Government, there are opportunities to leverage Local Government’s reach in every community in Western Australia in the pursuit of State Government objectives.

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<sup>54</sup> Government of Western Australia, Local Government Professionals Australia WA, and WALGA (2017)

<sup>55</sup> Government of Western Australia, Local Government Professionals Australia WA, and WALGA (2017)

For example, WALGA commissioned a consultancy to review the WA Plan for Jobs and provide information to Local Government about opportunities for leveraging the State's work in this space.<sup>56</sup> This provided Local Governments with options and opportunities at the regional and local level, allowing Local Governments to develop their local and regional economies in line with State objectives.

Similarly, as part of the Review of the Local Government Act, WALGA partnered with the Department of Local Government, Sport and Cultural Industries to host workshops around Western Australia leveraging WALGA's Zones to provide consolidated input into the State's review process.

## State Industrial Relations Review

WALGA would like to draw the Committee's attention to the ongoing State Industrial Relations Review.

Although there is a State Local Government Partnership Agreement, there are times when there are differing views on particular issues. The recent Ministerial review of the WA Industrial Relations system is a case in point.

This particular example is where the State Government are proposing an agenda that disadvantages the Local Government sector.

The WA State Government undertook a review of the WA Industrial Relations System in which the following recommendations have been made:

- *Local Government employers and employees be regulated by the State industrial relations system.*
- *To facilitate this recommendation, the State Government introduce legislation into the State Parliament that declares, by way of a separate declaration, that each of the bodies established for a Local Government purpose under the Local Government Act 1995 (WA) is not to be a national system employer for the purposes of the 2018 IR Act.*
- *If the declaration is passed by the State Parliament, the State expeditiously attempt to obtain an endorsement under s 14(2)(c) and s 14(4) of the FW Act by the Commonwealth Minister for Small and Family Business, the Workplace and Deregulation, to make the declaration effective (the endorsement).*

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<sup>56</sup> WALGA (2018)

Clearly a political decision, the State Government has advised they will **not** be modernising the State IR system, including updating the *Minimum Conditions of Employment Act 1993*, *Industrial Relations Act 1979* or state awards.

If this recommendation is enacted 88 percent of Local Governments or 93 percent of employees currently operating in the federal system will be forced to operate in a jurisdiction which is antiquated and does not provide minimum conditions reflective of the modern workplace.

Further, no consideration appears to have been given by the State Government to the fact that Local Governments have operated in the federal jurisdiction for well over a decade i.e. before the *Fair Work Act 2009* came into effect. The foundations in which Local Governments have established core functions and services for their communities has been enabled through a federal and modernised system.

While purporting to provide jurisdictional certainty, this politically driven decision will force Local Governments to review the viability of services and operations with ultimately members of the community paying the price.

WALGA and the sector are of the view that Local Government employers and employees in WA should not be exclusively regulated by the State IR system.

## Whole of Government Data Sharing

The State Government's *Western Australian Government ICT Strategy 2016-2020* and recently released *Privacy and Responsible Information Sharing Discussion Paper*, provide substantial opportunity for improved planning and decision making across the whole of government, including State Government and the Local Government sector.

The Government's ICT Strategy observes:

*"Information that is higher quality and analysed properly should enable better governance decisions, and support government digital services that provide data of real value to the community."<sup>57</sup>*

The State Government, through its Departments and Agencies, prepare a vast array of strategic planning and future directions documents that guide State and Local Government decision making and activity. These documents are based upon data and assumptions curated by each Department or Agency, specific to the purposes of their objective.

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<sup>57</sup> Government of Western Australia (2016)

The absence of consistent, accurate and relevant data sets that guide the development of the State's strategic direction contribute to variability, inconsistency and at times even conflict in the planning directions for State and Local services and policies.

This is compounded through Local Governments' reliance on State Government strategic planning and directions documents as a key influence in developing Local Government Strategic Community Plans and Corporate Business Plans for Local Governments' communities.

The duplication of effort across State Government Departments and Agencies and each Local Government in sourcing, curating and refining data is inefficient and incurs a substantial cost on the Western Australian community, not only for the data collection process, but in the resulting variability and inconsistency of strategic outcomes.

WALGA considers that there is opportunity for the State Government to coordinate baseline data sets, assumptions and forecast data that can be collected, curated, managed and shared in formats, capable of being tailored in macro and micro formats to suit regional and local districts, so that State and Local Government strategic planning is based upon relevant, consistent and reliable data sets.

Provision of a 'single source of truth' for State and Local Government data (statistical, forecast and assumptions), provides for efficiency and consistency in whole of Government planning and decision making.

## Conclusion

WALGA would like to take the opportunity to thank the Committee for considering this submission.

As this submission demonstrates, Local Governments, across the breadth and width of Western Australia, deal with a wide range of issues and strive to provide efficient services and effective democratic representation on behalf of their constituents and communities.

This Committee Inquiry presents a tremendous opportunity for best practice and innovation to be highlighted. While no Local Government is perfect, WALGA contends that the Local Government sector contains countless examples of dedicated Elected Members, executives and staff striving to achieve positive outcomes on behalf of the community.

WALGA President, Cr Lynne Craigie OAM, and Chief Executive Officer, Nick Sloan, would welcome the opportunity to present to the Committee on the matters contained in this submission or any other matters relevant to the Inquiry.

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## Draft Letter to Select Committee into Local Government

Mr Mark Warner, Committee Clerk  
Select Committee into Local Government  
Legislative Council  
Parliament House, 4 Harvest Terrace  
West Perth WA 6005

Dear Mr Warner,

On behalf of the Council of the Shire of Mt Marshall I wish to submit the following information to the Select Committee into Local Government.

The Shire of Mt Marshall is based in the North East Wheatbelt. It is slightly larger than 10,000 square kilometres in size and has two main centres (Bencubbin and Beacon). It has a population of around 550 people. Important to note is that the Shire maintains 307 km of sealed roads and 1440 km of unsealed roads.

Given our size and location we proudly work collaboratively within the region. We are part of the NEWROC (North Eastern Wheatbelt Regional Organisation of Councils) and have for some time worked with the other five Shires in the group in areas such as economic development, tourism, telecommunications, health, energy and waste. Further the Shire is part of the CEACA organisation, responsible for the delivery of independent living units across the region. Perhaps most impressively Mt Marshall is one of 42 Shires across the Wheatbelt who have collaborated to deliver the Wheatbelt Strategic Freight Network, a group which has recently been awarded \$80 million from the Federal Government towards the first stage of this project.

### **Terms of Reference**

*Whether the Local Government Act 1995 and related legislation is generally suitable in its scope, construction and application*

Whilst it is acknowledged that the Local Government Act has been appropriate for the last 25 years it is timely that a review into the legislation is held, especially given the changing nature of the world in areas such as communication, media and technology. However it is respectfully suggested to the Select Committee that the most appropriate forum for any change is the Local Government Act Review which has been underway for some time now. In regards to that review Mt Marshall have been part of discussion and lodged appropriate submissions to the Department. Further the Chief Executive Officer was selected to assist the Department in the preparations for stage two of the act review.

### *The scope of activities of Local Governments*

This is an area which Mt Marshall feels the Select Committee ought to pay close attention in order that it is understood how much more than the traditional view of roads, rates and rubbish is undertaken by Local Government. This has become particularly more so in recent years with both State and Federal Government regularly cost shifting matters to Local Government. In the regional areas it is often necessary for Local Government to have to pick up such services given that there is no other agency who would be able or willing to do so. Examples of the types of services provided by the Shire of Mt Marshall to the community are as follows:

- Sport and Recreation Facilities (x2)
- Libraries (x2)
- Parks and Leisure facilities
- Natural Resource Management
- GP services (required to fund a doctor to service the community)
- Child Care Services (x2)
- Housing (community and independent living/aged care)
- Public Health Services
- Community Events
- Emergency Management (including airstrips for RFDS use)
- Economic Development
- Caravan Parks (x2)
- Biosecurity
- Ranger/Animal Control

### *The role of the Department of State administering the Local Government Act 1995 and related legislation*

The department is severely under resourced and under staffed, with many of the experienced and knowledgeable officers having been moved out of the department in the State Government restructure program. Meaningful support from the department is therefore not provided.

### *The role of Elected Members and Chief Executive Officers/employees and whether they are clearly defined, delineated, understood and accepted*

Mt Marshall contends that the Local Government Act 1995 defines the roles and responsibilities of Elected Members and the Chief Executive Officer. It is clear that Elected Members are responsible for employing the Chief Executive Officer. The Chief Executive Officer is responsible for managing the administration and employing all other staff. Further the most recent legislative review has made training of Elected Members a requirement, and these type of issues will be dealt with in that mandatory training.

### *The funding and financial management of Local Governments*

As with many regional Local Governments Mt Marshall is reliant upon the Finance Assistance Grants (FAG's) provided by the Federal Government. Rates makes up a relatively small proportion of income, and is affected by exemptions, such as the inability to rate CBH. As the amount of money provided to Local Government through FAG's has been eroded over a number of years, Shires such as Mt Marshall are 'required to do more with less'. As a simple example the amount of roads which the Shire has to maintain is listed at the start of this letter. The majority of our annual budget is spent upon maintaining these roads to an appropriate standard.

### *Any other related matters the Select Committee identifies as worthy of examination and report*

It is contended that globally confidence in government has been eroded. As the sphere of government closest to the community this impact has been felt by Local Government generally. Aligned with the increased use of social media, and easy access to elected members and officers there has been an insidious rise in unfounded, unsubstantiated and often concerted attacks upon Local Government, usually by small minorities who refuse to engage in a meaningful way with Local Government. Whilst this has not been a significant problem in the Shire of Mt Marshall, it is certainly hoped that this Select Committee does not allow such a 'noisy minority' to persuade committee members that there are inherent problems within Local Government. As with all industry there are issues and those who do wrong, but the whole of the industry should not be viewed by the actions of those few. It is to be hoped that this inquiry recognises the very considerable contribution that local governments make to their communities.

Given the large amount of legislation implemented by Local Government, the governance requirements and purchasing controls required of Local Government, and the fact that the Auditor General now controls auditing of Local Government, Mt Marshall contends there should be justifiable faith in the sector. The Shire of Mt Marshall works hard for its residents and provides as many services as it can within the means available.

Mt Marshall asks the Select Committee to accept this submission on behalf of the Shire, and will be pleased to answer any questions or provide further assistance of information should that be necessary. Mt Marshall also endorses the response prepared and provided by WALGA on behalf of the industry.

Yours sincerely,

Cr Tony Sachse  
Shire President  
Shire of Mt Marshall

On behalf of, and adopted by Council on 3 September 2019 under resolution number