

**C10/5152 - PROPOSED AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1995
(REC) (ATTACHMENT)**

Ward : All
 Category : Strategic
 Subject Index : Acts, Statutes and Local Laws
 Customer Index : Western Australian Local Government Association
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : None
 Works Programme : Not Applicable
 Funding : Not Applicable
 Responsible Officer : Jeff Clark
 Governance & Compliance Program Manager

AUTHORITY / DISCRETION

DEFINITION

<input checked="" type="checkbox"/>	Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>when Council review decisions made by Officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>

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KEY ISSUES / SUMMARY

- A response from the Council has been requested by the Western Australian Local Government Association (WALGA) to seven amendments to the Local Government Act 1995 proposed by the Minister.
- WALGA has consistently opposed proposal 1 and suggests that it should continue to be opposed.
- WALGA has a position on the first part of proposal 2 and has not sought opinion within the sector on the second part of the proposal.
- WALGA has a supportive position on proposals 3, 4, and 6 that are closely aligned with the proposed amendments.
- In relation to proposal 5 WALGA does not agree with the amendment as proposed.
- The seventh proposal is intended to correct an anomaly in the Act and is supported.

BACKGROUND

The Minister for Local Government has proposed seven amendments to the Local Government Act 1995 and requested feedback from the sector. The Western Australian Local Government Association (WALGA) has prepared a set of explanatory notes [5152 Proposed Amendments to the Local Government Act](#) on the proposed amendments to the Local Government Act 1995 (the Act) that include both the Minister's proposal and WALGA's comment on each of seven items.

WALGA has requested that the Minister's proposals are considered at full Council and a response provided by 7 January 2011.

DETAIL

The seven amendments to the Local Government Act 1995 that the Minister has proposed are as follows:

- 1 Reducing the number of Elected Members to between six and nine
- 2 Salaries and Allowances Tribunal to set the fees for Elected Members and salaries for Chief Executive Officers.
- 3 New mechanism for the temporary suspension of Council
- 4 Require Elected Members to resign when elected to State or Commonwealth Parliament
- 5 Restricting the types of local government investments to low risk products such as those with the WA Treasury Corporate, major banks and government bonds.
- 6 Align criminal conviction criteria for Elected Members with that of WA Members of Parliament.
- 7 To limit employee termination payments to one year's salary.

These matters are discussed in the WALGA Proposed Amendments to the Local Government Act 1995 Explanatory Notes that is provided as an attachment.

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Proposal 1

Reducing the number of Elected Members to between six and nine

The first proposal was considered and reported in the City of Melville's Local Government Advisory Board Reform Submission in the section dealing with Representation. The Key Points of this section are:

- 1 The City of Melville is of the view that a reduction from thirteen elected members to a number between six and nine is not warranted and will result in an undue workload;
- 2 The majority of the community of the City of Melville does not consider it necessary to reduce the number of Councillors;
- 3 Local Government is about local representation of residents concerns, no matter how small, and any reduction in representation will simply reduce the opportunities for the residents concerns to be heard at the Council level;
- 4 Should reduction in councillor representation numbers be legislated there are a number of options that could be canvassed for representation of between seven and nine elected members including the Mayor in the City of Melville.

WALGA's Position

WALGA has expressed ongoing opposition and most recently at the State Council on 12 October 2010 where the following resolution was passed:

"That WALGA;

- c. Oppose the Local Government Reform Steering Committee Report recommendation 8 concerning prescribing the number of Elected members to between 6 and 9"

The City of Melville and the local government sector have a strong position of opposition to the proposal and it is advised that no other information has been provided to suggest this position should be reconsidered.

Proposal 2

Salaries and Allowances Tribunal to set the fees for Elected Members and salaries for Chief Executive Officers.

WALGA's Position

WALGA have advocated on this proposal since 2004 and resolved as follows:

"That recommendation 1.35 of the Local Government Advisory Board report be supported and that the State Government be requested to amend the Local Government Act 1995 accordingly to achieve the following outcome:

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“That the Western Australian Salaries and Allowances Tribunal be given the responsibility for establishing the range of fees and allowances for elected members, with each Local Government having the ability to set a fee within this range. The Tribunal also be required to update the fees and allowances on an annual basis.”

- (a) That the State Government be requested to amend the Local Government Act accordingly;
- (b) In the event the Local Government Act 1995 is amended as per the Association’s advocacy:
 - i. that the question of the quantum and extent of Councillor Fees and Allowances be sought from other states with a view of presenting this to the Western Australian Salaries and Allowances Tribunal to support any Association submission on this subject; and
 - ii. that targeted research be undertaken on Councillor responsibilities, level of control and work values, so that these can be extrapolated as industry averages and provided to the Tribunal in further support of any Association submission.”

The Council may consider support of WALGA’s position on this proposal.

In the proposal concerning salaries for Chief Executive Officers (CEO), WALGA has the view “that Local Governments should retain the general competence power to determine appropriate remuneration levels for their key executive”.

The consideration of this proposal includes discussion on whether salary bands should be viewed as a guideline when a local government is recruiting a CEO and the local government wishes to retain flexibility in salary negotiations to ensure a suitable candidate is appropriately rewarded. If salaries are prescribed, the opportunity to recruit and retain an outstanding CEO has imposed boundaries. Such a prescription has the potential to limit attraction to the sector.

Proposal 3

New mechanism for the temporary suspension of Council

WALGA’s Position

WALGA had considered a policy position in 2008 and supported a mechanism to suspend an individual Elected Member rather than an entire Council.

In reviewing the proposal, officers consider that the addition of a new suspension power provides a greater range of solutions to the Minister should a Council be suffering an internal breakdown in effective decision making. The proposal will allow such intervention to assist to resolve an issue rather than cause an Inquiry Panel to be appointed usually for a period of six months and at a cost of \$1 - \$1.5million.

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Proposal 4

Require Elected Members to resign when elected to State or Commonwealth Parliament

WALGA's Position

The Minister was requested by WALGA in 2008 to consider a similar amendment. The proposed amendment aligns with a State Council resolution of August 2007:

“That the Minister for Local Government be requested to consider amending the Local Government Act 1995 to require Elected Members to resign from Council immediately upon being declared elected to State or Federal Parliament.”

Proposal 5

Restricting the types of local government investments to low risk products such as those with the WA Treasury Corporate, major banks and government bonds.

WALGA's Position

WALGA supports the sector's right to retain the principle of general competency powers currently provided under the Local Government Act 1995 (the Act) and that Local Governments continue to decide for themselves how best to deal with investment opportunities.

The Director Corporate Services advises that some further legislative clarity with respect to acceptable local government investments would be welcomed. Few details regarding the proposed amendment are however available at this stage, making commentary on this particular amendment difficult. Investment returns do need to be carefully balanced against investment risk. Investment risk is more than simply the credit worthiness risk rating of an institution or one of its products as assigned Standard & Poors. Other investment risks include diversification risk, liquidity risk and interest rate risk. The Director believes therefore that the “Prudent Person” rule in the Trustee's Act 1962 should not be discarded simply to be replaced by a prescriptive list of acceptable investments. In the past, over reliance by Local Government Officers, on what was previously a prescriptive list of acceptable local government investments, prior to implementation of the “Prudent Persons” rule also resulted in investment losses. A combination of a restricted list of investments, associated with the application of the “Prudent Persons” rule, should provide a high level of protection. Local Government Operational Guidelines Number 19 titled “Investment Policy”, which was issued by the Department of Local Government in February 2008, is an excellent resource and should be used as a basis for the development of any amendments to the investment powers of Local Authorities.

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Proposal 6

Align criminal conviction criteria for Elected Members with that of WA Members of Parliament.

WALGA's Position

This proposal is consistent with the Association's policy position. WALGA has also put forward an option that this proposal be broadened to "Align the qualification and disqualification criteria for Local Government election candidates and Elected Members with that of Western Australian Members of State Parliament". The intent of this option is that it would incorporate all aspects of qualification and disqualification rather than one aspect of disqualification being criminal convictions.

Officers consider that the option provided by WALGA is consistent with the standard expected of Elected Members by the community.

Proposal 7

To limit employee termination payments to one year's salary.

WALGA's Position

There is no current position on this proposal.

This proposal seeks to address an anomaly in the Act where it is possible for employees to receive up to two year's salary when deemed redundant. The proposal intends to limit payouts to all employees to a maximum of one year's salary and would be consistent with Western Australian State and Commonwealth public sector arrangements.

The City of Melville severance procedure and contract of employment templates already have a one year salary limit. This proposed amendment will not have any operational impact.

PUBLIC CONSULTATION/COMMUNICATION

No public consultation has been conducted for this report. However when the City of Melville's Local Government Advisory Board Reform Submission in the section dealing with Representation was prepared, public consultation occurred on representation and other matters addressed in that Report.

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

No public consultation with other agencies has been conducted for this report

STATUTORY AND LEGAL IMPLICATIONS

The proposed amendments will change aspects of the Local Government Act 1995 should the amendments or variations thereof be accepted by the Minister. The relevant sections are noted in the Explanatory Notes provided as an attachment.

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FINANCIAL IMPLICATIONS

The financial implications of Proposal 1, should it be implemented in 2019, would require a reduction in the number of Elected Members by a minimum of four. The value that the Salaries and Allowances Tribunal would place on the fees and allowances for Elected Members is unknown and cannot be assessed. However a reduction in cost may be made.

The proposal that CEO's salaries should be contained in a band is again, affected by the outcome of the Tribunal's deliberations and whilst the current bands may be taken as an indicator, it cannot be fully assessed at this time.

Proposal 3 concerning the new mechanism for temporary suspension of a Council has the potential to provide a cost saving in the event that the Council received a temporary suspension order. Should that occur and the Council addressed the issues, a saving of \$1 - \$1.5 million could be the outcome.

Proposal 4 and 6 has the potential to cause an extraordinary Mayoral or ward election. The current cost of a single ward election is in the order of \$35,000 to \$40,000. An extraordinary Mayoral election has greater ramifications and a cost has not been quoted but officers assess the cost of an election to be in the order of \$80,000 and there is a possibility of a further extraordinary ward election should a sitting Member be elected as Mayor.

Proposal 5 is difficult to quantify as it may require a local government to accept a lower rate of return than what is currently available at levels of risk that are currently considered acceptable for the investment of trust monies.

Proposal 7 would only apply in a redundancy situation and is unlikely to apply to the City in the foreseeable future. Furthermore because the procedure within employment templates already has a one year maximum there will be no financial impact.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Risk Statement	Level of Risk*	Risk Mitigation Strategy
Risk of not responding to the request by WALGA would mean the Council's view on the proposals would be unknown.	Negligible consequences which are almost certain, resulting in a Medium level of risk	Respond to the survey to ensure the Council's response is considered.

* As derived from using the Risk Assessment Matrix

POLICY IMPLICATIONS

The policy implications should the proposed amendments be adopted and the Local Government Act 1995 be amended are that the following policies will need to be reviewed and amended to be consistent with the Act.

- CP- 013 Elected Members Allowances, Claims for Expenses and Conference Attendance.
- CP- 009 Investment of Funds

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ALTERNATE OPTIONS AND THEIR IMPLICATIONS

The Council may resolve to not provide a response to WALGA on the seven matters or only respond to specific matters. Should the Council not respond, then the opportunity for WALGA to provide a complete sector response to the Department of Local Government is diminished.

CONCLUSION

The Council is presented with an opportunity to respond to WALGA on the seven proposals to amend the Act. The proposed amendments cover different aspects of the Act and need to be considered separately. WALGA has a principally long term position on proposals 1-4 and 6 as discussed in the Explanatory Notes and developed from consultation and response to the sector. However it does not have a position on proposals 5 or 7. Proposal 7 is intended to correct an anomaly and on that basis, there does not appear to be a significant reason to oppose the proposal however proposal 5 needs additional attention to ensure it addresses any unintended consequences that may arise and the forgoing of investment returns from investments that are seen as being appropriate for Trustee's to invest in.

OFFICER RECOMMENDATION 5152

APPROVAL

That in relation to the "Proposed Amendments to the Local Government Act 1995 Explanatory Notes", dated November 2010 the Council:

- 1 Supports the Western Australian Local Government Association's position and comments on proposals 1, 3, 4, and 6.**
- 2 Supports the Western Australian Local Government Association's position and comments on proposals proposal 2 relating to the fees and allowances for Elected Members.**
- 3 Does not support restrictions on a salary or salary structure for a Chief Executive Officer as per proposal 2.**
- 4 Generally supports the introduction of a restricted list of acceptable Local Government Investments that result in a high level of security at acceptable rates of return but supports the retention of the "Prudent Persons" rule so as to ensure that Local Governments apply appropriate rigor to the selection of investments that addresses all types of investment risk.**
- 5 Supports the Minister's proposal 7 to limit employee termination payments to one year's salary.**
- 6 Requests the Chief Executive Officer to advise the Western Australian Local Government Association in writing of the Council's response.**