



# Report of the Inquiry into the City of Perth

An Inquiry under Part 8, Division 2  
*Local Government Act 1995*

3



## **Acknowledgment of Country**

The Western Australian Government proudly acknowledges the Traditional Owners and recognises their continuing connection to their lands, families and communities.

We pay our respects to Aboriginal and Torres Strait Islander cultures and to Elders past, present and emerging.

The first step in living alongside and working with the Aboriginal community is built upon establishing respectful relationships. Crucial to these respectful relationships is acknowledging the history of Aboriginal people and recognising the importance of connection to family, culture and country.

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# Volume 3

## Restoring Good Government

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The City of Perth has a bright future. They have wonderful staff, we have a growing population, we have lots of economic opportunity and the capital city local government I'm sure is one that Western Australia will be proud of in the years to come.

Mr Andrew Hammond  
Chair Commissioner

# Volume 3

This Volume concludes with the opinion of the Inquiry Panel regarding whether there has been good government at the City of Perth as well as whether there is any prospect of good government being provided in the future.

## 3.1 Opinion of the Inquiry Panel



### About this Part

This Part contains the Inquiry's conclusions, as required by its Terms of Reference, about whether the Council and Administration of the City of Perth (City) provided 'good government' during the Inquiry period.

In making that assessment, this Part analyses the evidence obtained through the Inquiry's investigation and hearing programme. The evidence is set out in detail in [Volume 2: Case studies](#).

On the basis of the evidence considered by it, in respect of each topic examined in Volume 2, the Inquiry has made a determination about whether there was 'good government'.

## 3.2 The Future



### About this Part

In this Part, rather than looking at past events, the Inquiry looks to the present and the future. The focus is on what has happened since 2 March 2018, when the Council was suspended. This Part addresses what steps have been taken, and what steps are planned for the future, to restore good government at the City. This responds specifically to Term of Reference A.1(ii), which requires that the Inquiry report on "*the prospect of such good government being provided in the future ...*".

In considering issues such as people, governance, and corporate recovery at the City, the Inquiry has given significant weight to the evidence of Mr Andrew Hammond, City of Perth Commissioner and Chair Commissioner since the suspension of the Council, and Mr Murray Jorgensen, Chief Executive Officer of the City since November 2018.

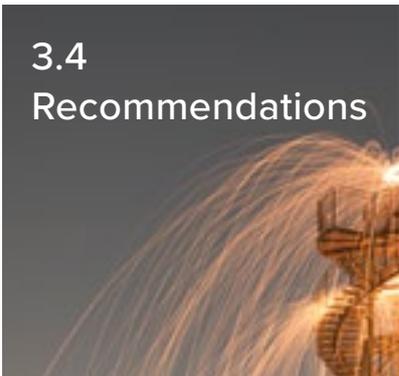
## 3.3 Matters referred to other authorities



### About this Part

This Part relates to the power of an Inquiry Panel to refer matters to Commonwealth, State and other authorities.

## 3.4 Recommendations



### About this Part

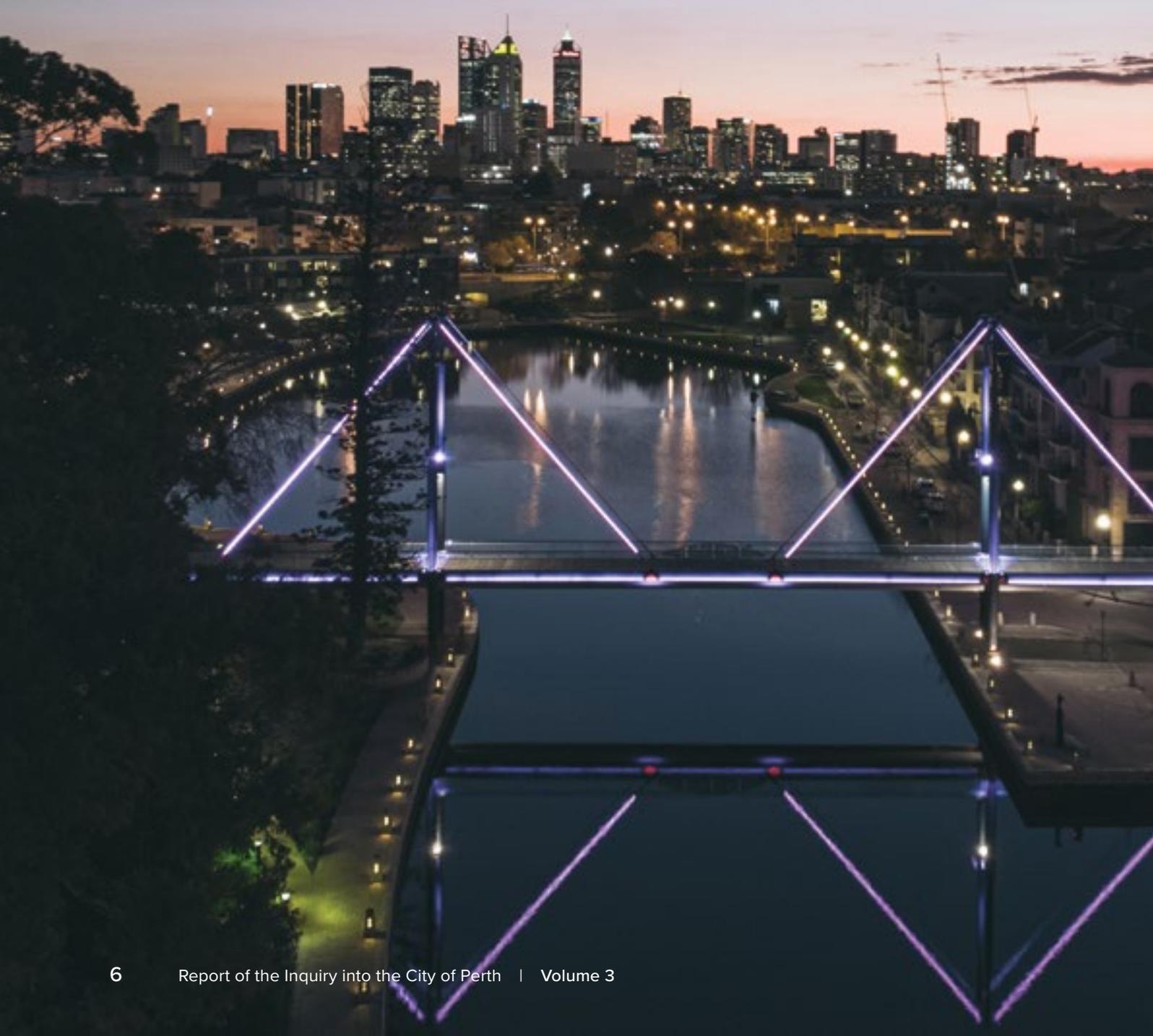
The Inquiry has searched for the root causes of the failings it has identified in this Report. In the opinion of the Inquiry shortcomings in culture and governance were core to the failings at the City.

The Inquiry considers that many of the issues identified in this Report represent risks also present in many other local governments.

On this basis the Inquiry has made a suite of recommendations. The Inquiry considers that many of these recommendations have the capacity for a broader local government-wide application.

# 3.1

## Opinion of the Inquiry Panel



## Introduction

### Good government

The Terms of Reference for the Inquiry require it to make determinations about “*good government*” at the City of Perth (City) during the period of the Inquiry’s Terms of Reference, 1 October 2015 to 1 March 2018 (Inquiry period).

Part A.1 of the Terms of Reference state:

- “1. *The Inquiry Panel is to inquire into and report on those aspects, operations and affairs of the City of Perth (including of the Council and the Administration) during the period between 1 October 2015 and 1 March 2018 inclusive, which may be necessary, in order to determine:*
- i. whether there has been a failure to provide for the good government of persons in the City of Perth’s district;*
  - ii. the prospect of such good government being provided in the future (including by reference to whether the Council and Administration has the ability to, and is likely to, do so); and*
  - iii. any steps which may need to be taken to ensure that such good government does happen in the future”.*<sup>1</sup>

The Council of the City is the body of nine council members, being the Lord Mayor and eight councillors, who are elected to office.<sup>2</sup> The Council is the governing and decision-making body for the government of the City.

The Administration of the City consists of employees of the City who implement the decisions of the Council and provide services to residents, ratepayers, businesses, people who work in the City, and visitors. The Administration consisted of between 700 and 760 employees during the Inquiry period. It was led by the Chief Executive Officer (CEO) and a group of directors who together made up the Executive Leadership Group.

This Chapter will consider, in the light of the evidence obtained by the Inquiry, whether the Council and Administration of the City provided “*good government*” during the Inquiry period.

The Inquiry considers that all council members and employees of the City, when they are acting in their official capacity, are part of the government of the City. If what they do is in accordance with the law, and their delegated authority, advances the legitimate objectives of the City, and is beneficial to the community, then it is good government.

When council members or employees do not act in accord with the objectives of the City or to the benefit of the community; if they act from self-interest, with bias, with a conflict of interest, or outside their authority, then their actions are not good government.

## Recommendations

Part B of the Terms of Reference state that the functions of the Inquiry “include to inquire into, report on, and then make recommendations in relation to the matters the subject of the Inquiry that it considers appropriate (in accordance with its duty under section 8.22 of the Local Government Act 1995)”.<sup>3</sup>

Section 8.22(1) of the *Local Government Act 1995* (LG Act) states:

*“(1) An Inquiry Panel’s report is to contain any recommendations that the Inquiry Panel considers appropriate”.*

The Inquiry, in this Report, has made a number of recommendations arising from its investigations and deliberations. These are made to assist the City to achieve and maintain good government in the future, and for other purposes.

## Dismissal of the Council or a council member

Section 8.22(2) of the LG Act empowers the Inquiry to recommend:

*“(a) that a council be dismissed; or*  
...  
*(c) if subsection (2A) applies, that a council member be dismissed”.*

In November 2018, after the commencement of the Inquiry, an amendment to the LG Act occurred to provide for a recommendation by an Inquiry Panel to dismiss individual council members. Subsection (2A) states:

*“(2A) The Inquiry Panel can only recommend that a council member be dismissed if the Inquiry Panel is satisfied, on reasonable grounds, that –*

*(a) at least one of the following apply:*

- i. the member has failed, or is failing, to perform the member’s role, functions or duties under this Act;*
- ii. the member’s conduct has impeded, or is impeding, the ability of another person to perform their role, functions or duties under this Act;*
- iii. the member’s conduct has impeded, or is impeding, the ability of the local government to comply with the principles that apply to it under section 5.40 [of the LG Act];*

*and*

*(b) the seriousness or duration of that failure or conduct make it inappropriate for the member to continue to be a member of the governing body of the local government”.*

The Council was suspended on 2 March 2018, and the City has been governed by Commissioners. Since the suspension:

- On 27 May 2019, Ms Janet Davidson resigned from her position as a councillor.
- On 19 October 2019, the terms of Lord Mayor Ms Lisa Scaffidi, and councillors Mr Jim Adamos, Ms Lily Chen and Dr Jemma Green, expired.
- On 29 January 2020, the Governor declared the remaining offices of councillor to be vacant. That is, the offices held by Ms Lexi Barton, Mr Reece Harley, Mr Steve Hasluck and Mr James Limnios.

New Council elections will be held on 17 October 2020.

Given that a Council comprised of elected representatives does not currently exist, there is no requirement for the Inquiry to make a recommendation about the dismissal of the Council, or any individual council member.

However, on the basis of the evidence it has obtained, if the Inquiry had been required to make a determination about dismissal of the Council, it would have recommended that the Council be dismissed.

Having said that, the Inquiry does not consider that all council members were equally responsible for the dysfunction which existed at the time the Council was suspended.

### Evidence obtained by the Inquiry

The conclusions reached by the Inquiry are based on the evidence it has obtained through its comprehensive investigations and programme of hearings.

This evidence is set out in full in the chapters which make up Volume 2 of this Report. Those chapters cover a considerable range of topics relating to events at the City and the conduct of council members and employees.

To enable an understanding of how the Inquiry has reached its view on whether there was “*good government*” at the City, a summary will be given in this Chapter of the evidence set out in Volume 2.

However, to properly understand the matters the Inquiry has investigated, the evidence obtained, and the conclusions and findings derived from that evidence, it is necessary to refer to the individual chapters in Volume 2.

## 2.2 Community Leadership

This part of Volume 2 of this Report considers community leadership by the Council. Community leadership reflects the role of Council and council members in decision-making on social, economic, cultural, environmental and civic matters.

Councils are democratically elected governments. As elected officials of government, council members are individually and collectively bound by their statutory responsibilities and obligations under the LG Act. That is, to govern the local government's affairs and be responsible for the performance of the local government's functions. A Council should be strategically focused in its approach on setting its policy direction as well as guiding the facilities, services and programmes required by the community now and into the future.

In undertaking their roles, Council and council members should make representative, informed, accountable and transparent decisions in the interests of their local community. Council members must avoid any conflict between their own interests and the interests of the community in general. The City also had a broader representative and collaborative inter-governmental role as reflected in the *City of Perth Act 2016*.

This Part examined how council members got elected, how decisions were made, the balancing of official duties with private interests and the connection between decision-making and personal benefit.

### 2.2.1 Local government elections

The failure by council members to provide good government arises at the beginning of the democratic process, with the election of candidates to be council members.

The Inquiry has examined several situations in which the election process was improperly manipulated by candidates. These primarily involved Mr Keith Yong, who was a councillor from October 2013 to October 2017, but also involved other council members.

These situations included:

- Use of "sham" leases, either to make a person appear to be eligible to be a candidate, or to provide a candidate with corporate nominees who could vote for them.
- Falsification of corporate nominee processes to entitle people to vote on behalf of companies, which did not legitimately own or lease property in the City.
- Making false complaints to the City in order to have legitimate corporate nominees struck from the electoral roll.
- Use by a candidate of post office boxes controlled by him as the postal address for people on the electoral roll, giving rise to a suspicion that there was an intention by the candidate to falsify votes and the opportunity to do so.

The Inquiry also noted that the governance processes of the City appeared to be unable to adequately identify and deal with the manipulation of electoral processes by candidates.

The Inquiry finds, based on the evidence, good government was not demonstrated in these circumstances.

### 2.2.2 Decision-making

Council members have a responsibility to balance the interests of the whole community when making their decisions. Decision-making should be transparent and the reasons for decisions appropriate and documented. Greater transparency around council decision-making enables the community to understand how council members reach decisions on the matters they are required to consider. Good government is achieved when council members represent, and balance, the interests of the whole community, and not just a segment of it.

The Inquiry examined several situations in which the evidence suggested that some decisions made by the Council, relating to properties in the City, had aspects in which personal interests were put before community interests.

These included:

- Consideration of a development application for a shop in a commercial premise which was part of the Adagio apartment building. The evidence suggested that some council members decided to refuse the application, knowing that their decision would be overturned by the State Administrative Tribunal, but believing that their decision would gain votes at a forthcoming Council election.
- A decision to reject a sponsorship proposal to rejuvenate the Piccadilly Theatre premises in the City. Although this proposal was initially received positively by the Council, lobbying by two local businessmen appeared to have caused it to be rejected by the Council, without any adequate reasons being given.

The Inquiry finds, based on the evidence, good government was not demonstrated in these circumstances.

### 2.2.3 Disclosure, personal interest and entitlements

In serving the electorate and representing the interests of the whole community, council members must act to avoid any conflict between their own interests and the interests of the community in general. A council member's own interests may relate to their business interests or any other benefit they receive in their private capacity while they are a council member. A fundamental principle is that council members must always consider the community's interest in any decisions or actions taken in their role as a council member. In the event of a conflict between the public and private interests of a council member, the former must prevail.

Interests should be disclosed by council members. Disclosure of interests ensures transparency and integrity in decision-making and that the interests of the community are paramount. It also ensures that council members are accountable. Without disclosure, transparency and accountability are diminished.

The Inquiry has examined:

- The failure by some council members to disclose their financial or other interests.
- Misuse by some council members of entitlements which were available to assist them in their official role. This included use of the Council dining room, and reimbursement for costs associated with restaurants, clothes and dry cleaning.
- Misuse by a council member, Ms Chen, of her official title, office, business cards, email and the Council dining room for private business purposes.

The Inquiry finds, based on the evidence, good government was not demonstrated in these circumstances.

#### 2.2.4 Grants and sponsorship

Partnerships with other organisations through grants and sponsorships can provide positive and tangible benefits to the community. The best use of public funds should be a key consideration of Council, committees and staff, when making decisions about which initiatives and events to support. Accountability of the outcomes delivered, and acquittal of those funds, is the responsibility of the local government.

The community expects high standards of ethical behaviour and fair dealing in decision-making related to partnerships, sponsorships, grants and donations. This includes disclosure and management of interests, especially conflicts between private interests and official duties and the maintenance of high standards of accountability and transparency in decision-making.

The Inquiry has examined the allocation by Council of millions of dollars each year to community associations and events through partnerships, sponsorships, grants and donations. There were risks. Three risks which became evident to the Inquiry are that:

- Some council members received gifts, including tickets to events, from sponsored organisations, and did not properly declare or deal with them.
- Some council members attempted to ensure that the City allocated money to organisations and events with which they had a personal connection.
- Weaknesses in governance practices reduced the transparency and accountability for the spending of public funds and the potential benefits being derived by council members.

The Inquiry finds, based on the evidence, good government was not demonstrated in these circumstances.

## 2.3 Administrative Leadership

The next part of Volume 2 of this Report considers the Administrative leadership of the City.

Local governments are entrusted with significant resources on behalf of the community – people, physical assets and finances. Each of these resources need to be managed appropriately, efficiently and effectively. The Administration delivers the services, facilities and programmes of the local government.

The Administration is led by a CEO, who is employed by, accountable to, and managed by, the Council. The CEO plays a crucial role in translating the Council's direction and decisions into actions, employing and leading staff, managing the financial resources and providing a safe workplace. The CEO is instrumental in setting the workplace culture.

The CEO supports the Council to provide good government to the local community and is the liaison point between the Council and the Administration, which implements the Council's decisions. The relationship between the CEO and the Council is critical to a local government's success. Mutual understanding and acceptance of the roles of each is the cornerstone of this relationship.

Importantly, the relationship also relies on each having the ability to transparently manage and resolve issues and conflicts as they arise. This is particularly the case where a Council is factionalised, bringing an internal political dimension which a CEO must manage without becoming involved, or where council members attempt to "*empire build*", by controlling the activities of the CEO, or usurping the CEO's role by interfering in the day-to-day running of the local government.

The CEO is also responsible for keeping council members "*in-line*" and, if necessary, for reporting them to the Corruption and Crime Commission (CCC), the Public Sector Commission, the Local Government Standards Panel or the Department of Local Government, Sport and Cultural Industries (Department).

The employees of the Administration, like council members, are public officers. They must act with the highest level of integrity. Governance processes should provide for accountable, ethical and sound decision-making. Personal interests must not be put before a public officer's official duties.

This Part examined key aspects of the Administration including appointment and termination of the City's CEOs; people management practices including recruitment, performance management and termination; financial management and planning; and procurement and contract management, including investigation of misconduct.

This Part does not relate exclusively to the actions of employees, as the Inquiry's investigations identified numerous situations in which council members interfered in administrative processes, frequently to the detriment of good governance.

### 2.3.1 Chief Executive

This Chapter examined events surrounding the performance management and termination of a CEO, Mr Gary Stevenson, by the Council, and the appointment of another CEO, Mr Martin Mileham.

The appointment, performance management and termination of a CEO are among the most important decisions a Council will make. It is a significant financial investment in one person to deliver on the future aspirations and directions of the local government. Council members are individually and collectively responsible, as the Council, for decisions related to the CEO.

These decisions should, among other things, be free of nepotism, patronage or unlawful discrimination, fair and unbiased, transparent and capable of review. A Council that seeks to terminate the employment of its CEO must comply with the provisions of the LG Act. When it fails to do so, good government is not served.

Disintegration of the relationship between a Council and CEO has critical consequences for all parties. Where a Council seeks to terminate the employment of a CEO, it should be procedurally fair to that CEO and the decision should be transparent and capable of review.

At the City, the Inquiry notes that control over certain aspects of the position of the CEO appears to have been a significant aim of a faction of council members who were in the majority. While the faction led by Ms Scaffidi was in the majority, she, and her ally Ms Davidson, were two of the three members of the two committees which controlled the appointment, management and termination of the CEO – the CEO Recruitment Committee and the CEO Performance Review Committee.

The Inquiry considered whether Ms Scaffidi orchestrated the termination of Mr Stevenson, because he had reported to the CCC some travel and accommodation contributions she had received and not declared.

The appointment of Mr Mileham was also examined by the Inquiry. This included examination of a telephone conversation Ms Scaffidi had with Mr Mileham, shortly before he was to be interviewed for the substantive CEO position, telling him what she expected from the “*next CEO*”. This was not appropriate.

The Inquiry has also formed views on the performance management processes undertaken by the Council for Mr Stevenson and Mr Mileham. In the circumstances considered, the performance of a CEO should be managed appropriately and with regard to good people management principles, including as to the process adopted and the performance measures set and monitored. This did not occur at the City in the relation to the performance management of Mr Stevenson.

The Inquiry finds, based on the evidence, good government was not demonstrated in these circumstances.

### 2.3.2 People management

Employees bring to the City knowledge, expertise, abilities, skill sets and experience that are an invaluable asset into the future. Good people governance in local government is achieved when there is integrity in decision-making, interests are transparently disclosed and managed, decisions are procedurally fair, transparent and capable of review, processes and decisions are free of nepotism, patronage or unlawful discrimination and, most importantly, people are treated fairly and consistently. Good people governance also includes sound policies, procedures and practices.

This Chapter considered aspects of people management by the City. The processes examined include recruitment, promotion, probation and termination of employees, complaints and grievances, record-keeping, and disciplinary processes.

Sections in this Chapter examined examples of recruitments, terminations and disciplinary processes which were not properly conducted and where there was, or may have been, inappropriate interference by council members.

The Inquiry finds, based on the evidence, good government was not demonstrated in these circumstances.

### 2.3.3 Financial management and planning

A local government plans and manages significant programmes and finances on behalf of its community. They must sustainably and holistically provide for its future. Finances which are used to provide services and facilities to the community must be responsibly managed.

The governance of the City during the Inquiry period included the systems and processes by which it operated. Important among these were the financial management and planning processes and practices. This Chapter examined in depth the financial management and strategic planning for the City. It examined the weaknesses in systems and processes during the Inquiry period, and how these are being, and can be, addressed.

These weaknesses included the following:

- An ineffective “*integrated*” planning and reporting framework which was not integrated, with plans which did not contain sufficient information to inform the community or assist the Council to manage performance. There was “*tick-the-box*” compliance approach to planning and reporting, rather than a better outcomes-based practice that would be expected of a local government of the City’s size, financial resources and capital city status.
- Non-compliance with legislative obligations including the conduct of reviews and establishment of plans. The City did not have a business plan for City of Perth Parking, contrary to section 3.59 of the LG Act. The City provided inaccurate information to the Department in its 2015, 2016 and 2017 Returns in relation to this requirement.
- Services were not appropriately monitored for performance and financial implications. The City was not able to report consistently on its statutory financial ratios.
- The City did not have appropriate systems and governance in place to manage and monitor its financial performance. There were weaknesses in the internal audit function.
- Financial management at the City was adversely affected by a “*siloed*” structure in which directorates and some units had their own financial staff who operated independently. This led to a lack of information sharing, good record keeping and centralised control of finances.

This Chapter also provided an example of a relationship between the City and an external organisation, the Perth Public Art Foundation, which involved a major commitment of funds by the City and which, although it had the characteristics of a sponsorship by the City, operated outside the governance framework. Governance practices by the City were also lacking around financial controls.

The Inquiry finds, based on the evidence, good government was not demonstrated in these circumstances.

### 2.3.4 Procurement and contracting

The City spends approximately \$50 million per year on procurement.

City employees have considerable authority vested in them, as public officers of a local government, to source suppliers, manage contracts and authorise payments for goods and services. They are responsible and accountable for the public money they commit and expend on behalf of the City.

The community expects that the City's employees will perform their duties with integrity and impartiality and will act in the community's interest, rather than their own.

Local governments generally are exposed to high risks of fraud and corruption, because of the large volume of goods and services they procure and because of the high degree of devolved decision-making. When funds belonging to the City are misappropriated a "loss" is suffered by the City. It is important that the City, and local governments generally, understand these risks and actively manage them with appropriate controls.

The sections in this Chapter examined five specific procurement exercises conducted by the City, and investigated by the Inquiry, in which the consequences of failing to follow appropriate procedures ranged from unauthorised expenditure to possible fraud and corruption. The shortcomings and risks identified by the Inquiry included the following:

- Failure to declare and manage conflicts of interest.
- A request by the CEO, Mr Mileham, to a potential contractor for a gift, which was then inadequately declared.
- Failures by evaluation panels to properly evaluate tenders.
- Failures by the Administration to detect manipulation, by an evaluation panel member, of tender criteria and a comparative price analysis.
- Failures by the City to deal properly with complaints by unsuccessful tenderers and an allegation referred by the CCC.
- Misuse of the sole supplier tender exemption process.
- Failures by the City to monitor costs charged by contractors and enforce budget limits.
- Poor governance processes and practices, including limited oversight and limited fraud and misconduct risk assessment.

The Inquiry finds, based on the evidence, good government was not demonstrated in these circumstances.

## 2.4 Final Days

This part describes events within the Council and Administration of the City at the end of 2017, and the beginning of 2018, which led to the level of dysfunction which caused the Minister to suspend the Council.

### 2.4.1 Events leading to the suspension of the Council

This Chapter examined the circumstances relating to an external investigation by a legal firm, instigated by the Deputy Lord Mayor, Dr Green, into information which suggested possible misconduct by Ms Scaffidi and the CEO, Mr Mileham. This investigation was named “*Project Percy*”. No misconduct was identified by the investigation.

Following the completion of the Project Percy investigation, Mr Mileham went on sick leave. This led, by a series of other events, to a Special Council Meeting being called on 27 February 2018 to consider a motion which would enable the Council to appoint an Acting CEO.

On the day of the Special Council Meeting, but before it was held, several members of the Executive Leadership Group (ELG) inappropriately activated the City’s Crisis Management Plan, seemingly to prevent the Special Council Meeting being held and the Council appointing a different ELG member to the position of Acting CEO.

On the following day Dr Green emailed the Department advising that the Council was considering scheduling another Special Council Meeting on 5 March 2018 to suspend the CEO, Mr Mileham.

The Inquiry finds, based on the evidence, good government was not demonstrated in the activation of the Crisis Management Plan.

## Conclusions

### Features of the government of the City of Perth

Arising from its investigations and hearings, the Inquiry makes the following observations about the functioning of the Council and Administration of the City, during the Inquiry period:

For most of the Inquiry period, Ms Scaffidi was the subject of public comment arising from a CCC report dated 5 October 2015, which found that she had, in 2008 and 2009, engaged in serious misconduct in failing to disclose gifts and travel in relation to three instances of hospitality provided by different companies.<sup>4</sup>

- Throughout the Inquiry period, breaches of the LG Act by Ms Scaffidi were the subject of consideration by the Department, the State Administrative Tribunal or the Supreme Court. Ms Scaffidi stood down from the position of Lord Mayor from 7 September 2017 to 8 January 2018 and she was ultimately suspended from the position on 24 July 2018 for seven months, after the Council had been suspended by the Minister.
- The Council was factionalised and divided. For most of the Inquiry period a majority faction, led by Ms Scaffidi, controlled decision-making by the Council. For the last four and a half months of the Inquiry period, there was a new majority, but the Council continued to be divided.
  - These divisions in the Council contributed to dysfunction and poor decision-making.
  - It also contributed to dysfunction and divisions in the Administration of the City, including among members of the ELG.
- Some council members interfered regularly in the administration of the City in a way which was well beyond their official role, despite a prohibition against this conduct under the *Local Government (Rules of Conduct) Regulations 2007*.
  - This interference was most marked in relation to employment matters affecting staff at many levels. It included interference in recruitments, terminations and disciplinary processes.

There was also a willingness by some council members to approach staff directly about a variety of matters in which they had a personal interest, such as allocation of grant or sponsorship funding to particular community organisations.

- This led to a situation in which employees in the Administration sometimes spent considerable time dealing with requests and questions from council members.
- There was a culture of self-entitlement among some council members. Personal interests were put before service to the community. Some council members did not hesitate to disregard the rules relating to entitlements in order to maximise their personal benefit.

Decision-making and record-keeping by the Council was poor. Decisions were made on a factional team basis and there was not, therefore, proper debate or consideration of community views. Decisions were often made on the basis of the personal interest either of a council member or their associates. When decision-making is poor the real reasons for a decision are often not disclosed.

- The Inquiry found that reasons for important decisions by Council or its committees were sometimes either not recorded or were recorded in a way which obscured, rather than explained, the real basis for the decision. This was not transparent or accountable.
- This culture of disregard for the rules extended, for some council members, to the manipulation of election processes.
- There were a variety of other obstacles to good governance by the Administration, including competitiveness between directors, siloed business units and a failure to detect and deal with breaches of policies and procedures.
- Complaints made to the City, or allegations referred by the CCC were, in some cases, not properly investigated or dealt with by the City. On occasion this led to misconduct or corruption not being detected.

In relation to the culpability of individual council members, the Inquiry notes that the dysfunction present in the Council at the time it was suspended was due more to the actions of some council members than others. All council members did not bear equal responsibility for the situation which developed. Culture starts at the top, and the Lord Mayor, Ms Scaffidi, set a bad example in relation to self-interest, entitlement and interference in the Administration.

# 3.2

## The Future

## Introduction

Much of the Inquiry's task, as described in Volume 2 of this Report, has been to look backwards and ask questions about historical events:

*What, if anything, went wrong with good government at the City of Perth (City)?*

*If things went wrong, why did they?*

*What lessons can the past teach us for use in the future?*

This Volume of the Inquiry's Report is different. In this Part, the Inquiry briefly looks to the present and the future. The focus here is on what has happened since 2 March 2018 when the City of Perth Council (Council) was suspended and replaced by three Commissioners.

The questions asked in this Part are not what went wrong and why. Rather, they are what steps have been taken, and what steps are planned for the future, to return good government to the City. The questions are asked to assist the Inquiry to answer one of the ultimate questions posed by its Terms of Reference:

*What is the prospect that good government will be provided at the City in the future?*

## Investigation and hearings

The following witnesses gave relevant evidence to the Inquiry in the course of public hearings held on 9 and 10 October 2019:

- Mr Murray Jorgensen, Chief Executive Officer (CEO) since 27 November 2018; and
- Mr Andrew Hammond, City of Perth Commissioner, City of Perth, since 2 March 2018, and Chair Commissioner since 9 August 2019.

Mr Jorgensen and Mr Hammond did not occupy roles at the City during the period of the Inquiry's Terms of Reference. However, their evidence as to steps taken by the City since 2 March 2018 is the best evidence available on that topic. Furthermore, their expertise in good governance and good government in the context of local governments is undoubted,<sup>5</sup> and both were regarded by the Inquiry as impressive witnesses.

The evidence given by Mr Jorgensen and Mr Hammond was wide-ranging. It covered their perception of the state of the City upon their appointments, to steps which have been taken by the Commissioners and the administration to effect change, to policy decisions taken to achieve certain social and economic outcomes for the community.

Both Mr Jorgensen and Mr Hammond provided written statements to the Inquiry.

Mr Jorgensen's statement had 14 attachments. The first attachment is a draft Corporate Governance Framework, a significant document to which the Inquiry refers to below.

The second through fifth attachments are consultants' reports given to Mr Jorgensen by the Commissioners when he commenced at the City, to provide him with an overview of the "level" at which the City was operating.<sup>6</sup> At the risk of generalising, those reports provide point in time comment on the City's overall performance, its stakeholder engagement and corporate communications, its customer service performance and its human resources performance.

The remaining attachments are internal documents prepared by, for, or with the input of, Mr Jorgensen during his tenure as CEO of the City in response to – and again at the risk of generalising – the issues identified by the consultancy reports. They include the City's Procurement Strategy and its Corporate Recovery Implementation Plan, both of which the Inquiry refers to below.

In broad terms, the evidence of Mr Jorgensen and Mr Hammond reflects a willingness on the part of both the administration of the City and its Commissioners to reinstall confidence in the City and its governance. The evidence reflects positive steps taken by all concerned to implement that willingness. Structural change is evident and perhaps inevitably so, with a focus on using the City's best resource – its people – to return good governance practices and undertake the corporate recovery necessary to ensure good government.

While the evidence received is broad, the key themes of quality people, good governance and corporate recovery emerged from it all, and so it is to these themes that the Inquiry turns.

### Evidence obtained by the Inquiry

#### People

The most pervasive theme arising from the evidence of Mr Jorgensen and Mr Hammond was the central significance to future good governance and good government of having "good people" within the organisation to conduct its business.

In response to an early question about his experience with staff at the City, Mr Jorgensen explained:

*"The quality of people overall at the City of Perth, and one of the reasons I actually accepted a continuation of my role, was that I realised the vast majority of people at the City of Perth were absolutely dedicated, committed professionals trying to do the right thing in a very difficult environment ..."*<sup>7</sup>

This was a theme to which Mr Jorgensen returned at the end of his evidence:

*"We have high quality individuals there which we are trying to harness to just make the City a better place and I'm confident, before I depart, that we will be well down the track of corporate recovery"*.<sup>8</sup>

Mr Hammond was similarly emphatic as to the criticality of quality staff:

*“In terms of what makes a successful Local Government, what do you say the core drivers of that are?---People, good people. Irrespective of any legislation or regulations, it’s all about the people. You’ve got to have good staff, committed staff, staff that love the community in which they live and staff that want to do well. You’ve got to have Elected Members with exactly the same attitude. If ever there was Local Government Nirvana, it would be when the CEO, the Executive, management group, Elected Members and Mayor, and key stakeholders, say in the City of Perth’s example it would be the State Government, if they are all actively committed to the shared vision of the City and are all actively working and influencing towards that shared vision, then that Local Government becomes a formidable Local Government. It would be hard to stop, almost impossible to stop in achieving their vision”.*<sup>9</sup>

The significance of quality staffing is reflected, not only in the evidence given by Mr Jorgensen and Mr Hammond, but in the recruitment that has occurred since 2 March 2018. In addition to refreshing and restyling the Executive Leadership Team (formerly the Executive Leadership Group), the City has employed a Project Director, Strategic Finance who is responsible for strategic financial and technology management; a Project Director, Corporate Recovery, who is principally responsible for the City’s corporate recovery; and a Strategic Procurement Lead responsible for implementing reforms within the procurement space at the City.

Mr Hammond explained why the City employed a Project Director, Strategic Finance:

*“It occurred because there was an inability to, I think obtain an acknowledgment from the staff involved as to the importance of an Integrated Strategic Planning Framework and the need for documents like the Corporate Business Plan to be fully populated with financial projections and also a need for team-based plans that could give Council and the Executive the opportunity to almost forensically understand what each team was up to and what their activities were likely to be for the next three to five years”.*<sup>10</sup>

Mr Hammond continued:

*“There is a very strong interface between strategic finance and the development of strategy. There is nothing worse in the context of a Local Government, when strategy is developed and it’s adopted and it’s publicised, but it’s never executed because it gets to the first budget and it doesn’t get a run. If that strategy is adopted, that strategy can only be adopted if the Corporate Business Plan clearly establishes that the City has the financial capacity to deliver, and not before”.*<sup>11</sup>

Mr Hammond also explained why the City employed a Project Director, Corporate Recovery:

*“... the engagement that the Commissioners have had with her is based on two areas: one is the development of the Strategic Planning Framework, and that interface between finance that we talked of before, the assistance with staff in developing their team-placed plans. The identification of specific issue strategies that will come from the Strategic Community Plan, for example, homelessness, core retail activation, and event strategy and the like, but also on the corporate recovery side is a range of other issues such as getting an effective Business Plan for the City of Perth Parking Business Unit.*

*Other areas such as the review of the Council's Standing Orders, which is the meeting procedure, that's, in my view, somewhat archaic. The development of policies/business rules for the development of strategy policy, policies that provide for the governance framework. Essentially, establishing that contemporary Local Government framework so when the Councillors come back in, which they will and which they should, they will have a very, very contemporary and robust system in which to work under".<sup>12</sup>*

Mr Jorgensen described the significance of the recruitment of the City's Strategic Procurement Lead, who is also the author<sup>13</sup> of the City's Procurement Strategy:<sup>14</sup>

*"[The Lead is] well recognised in Local Government, had a major involvement of the WALGA, Western Australia Local Government Association, tender and procurement services. He came on board, was highly regarded internally and to this day is still highly regarded as having started to steer the ship in the right direction ...".<sup>15</sup>*

Given what the Inquiry has had to say elsewhere in this Report about the City's past issues with strategic financial management, procurement and corporate governance, the engagement of specialised staff to manage those aspects of the City's business was prudent and well-considered.

More generally, in view of the evidence of Mr Jorgensen and Mr Hammond, the Inquiry is, in general, satisfied that the City is staffed by high quality and dedicated professionals who have and who can, to adopt Mr Jorgensen's language, convey the City down the track of corporate recovery.

## Governance

While Mr Hammond and Mr Jorgensen emphasised the critical significance of having good people within the City to steer its corporate recovery and development, they also recognised that people alone are not sufficient to ensure good governance. Structural supports are also necessary. As Mr Jorgensen explained in his evidence:

*"Are you able to expand or amplify, if you can, your view about what good governance means in a Local Government context?---Putting aside the specific legislation of the Local Government Act and the City of Perth Act, I think a lot of the principles of good governance flow through the private sector as well as the public sector, but I think if there's four fundamental pillars in place, then I would regard good governance being in place, although in saying that, it is inextricably linked to the quality of the people delivering or attempting to deliver good governance. So you can have good process, good framework, but if it's ignored by the people, you won't have good governance".<sup>16</sup>*

The "four fundamental pillars" of good governance to which Mr Jorgensen referred have been captured in a document produced by the City and titled "Corporate Governance Framework".<sup>17</sup> This document, which at the time of Mr Jorgensen giving evidence had not yet been formally adopted by the City, but which was shortly to be adopted,<sup>18</sup> was prepared at the instruction of Mr Jorgensen.<sup>19</sup> It is a substantial document, running to 52 pages.

The document describes its purpose in the following way:

*“For the City to demonstrate good governance, there needs to be a clear understanding of responsibility and accountability. The Corporate Governance Framework has been produced to outline the information used to guide decisionmaking, the roles of Council, Elected Members and the Administration, how and when decisions are made and how the City is accountable for its actions”.*<sup>20</sup>

It then describes the four pillars *“required to create the foundations of excellence in governance at the City of Perth”*,<sup>21</sup> namely, strategy and leadership; roles and responsibilities; transparent decision-making and accountability and performance.

Each is described in considerable detail within the Corporate Governance Framework<sup>22</sup> and was the subject of detailed evidence from Mr Jorgensen.<sup>23</sup> Mr Jorgensen agreed that they provide a well-known framework in local government, describing them as being present in *“many local government corporate governance frameworks”*.<sup>24</sup>

In essence, each pillar comprises a group of principles of good governance which, when adopted, provide a measurable way to indicate whether good governance is being achieved. To take *“strategy and leadership”* as an example, that pillar comprises three principles of good governance: strategic focus, positive culture, and engagement. These principles, in turn, are achieved by the application of certain *“tools”*, described in Appendix A to the Corporate Governance Framework, each of which can be identified, applied, measured and reported against. In that way, the clear goal is for good governance to become very much a matter of daytoday practice rather than, as it might otherwise be, an empty aspirational statement.

Significantly, within the Corporate Governance Framework is a description of the City’s overarching governance structure, the Integrated Planning and Reporting Framework (IPR Framework). The Corporate Governance Framework describes the purpose of the IPRF as being to *“ensure the priorities and services provided by the City align with community needs and aspirations, within organisational resource constraints”*.<sup>25</sup>

The core components of the IPR Framework are described as the Strategic Community Plan, the Corporate Business Plan and the annual operational plans and budgets. Mr Jorgensen explained the IPR Framework. He told the Inquiry it is concerned with *“what sort of City or Local Government you really want to become”*.<sup>26</sup> He gave evidence to the Inquiry that each of the plans, and the budgets, within the IPR Framework cascade from the high level to the granular, and were directed to achieve the goal of becoming the City or local government the organisation was aiming to be, explaining that *“Good governance should be informed by really understanding the community’s vision and aspirations and their goals and that usually comes from very detailed community engagement”*.<sup>27</sup>

That cascading, and the guiding link back to the City’s aspirations and the community visions the City exists to serve, is clearly reflected in the diagram taken from page 18 of the Corporate Governance Framework (Figure 3.1):<sup>a</sup>



**Figure 3.1: City of Perth integrated planning model, September 2019.**

In evidence, Mr Jorgensen explained the connections between the Strategic Community Plan and the Corporate Business Plan:

*“[The] community vision and aspiration is articulated in the Community Strategic Plan or the Strategic Community Plan. That usually has a minimum of a 10 year horizon, so it’s quite a long-term thing. So, for example, you want to reduce homelessness to zero within the City of Perth, would be a Strategic Community Plan aspiration. How you would do that then flows on to the next document which is the Corporate Business Plan ...”.*<sup>28</sup>

He then expanded upon the connection between the Corporate Business Plan and the Operational Plans:

*“This Business Plan works on a four year horizon and takes the aspirational content down into, effectively, a cunning plan, if you want to call it that, to deliver the services and deliver the projects that the community desires and the Council sees as a priority. There are quite often a number of different informing documents, whether they are land use strategies or other strategies that are used in formulating that ...*

*[Then] there’s a number of then service plans or operational plans, sometimes Local Government call them Business Unit Plans. We have elected to focus on service at the City of Perth, so we call them a Service Plan and that is then how the individual team or teams at the City will deliver that over the next few years ...”.*<sup>29</sup>

<sup>a</sup> A slightly, though not materially different version of this, is referred to in Chapter 2.3.3: *Financial management and planning, Section: Financial management and planning* of this Report.

From the operational plans the granularity then descends further into annual budgets which are populated “*from all of these input documents*”.<sup>30</sup> It is plain from Mr Jorgensen’s evidence, and from the content of the Corporate Governance Framework including the IPR Framework, that the planning and reporting structures contemplated by the frameworks are necessary to, and should facilitate, good governance at the City.

Mr Hammond explained that, prior to the production of the Corporate Governance Framework, a formal documented framework was not in place at the City.<sup>31</sup> He went on to explain the consequences of not having a contemporary governance framework:

*“We get back to that lack of engagement with policy and strategy and I’m not here to comment on the behaviour of Council or behaviour of staff, but my opinion is that if you haven’t got an effective framework of business rules, that basically mandate the engagement of Councillors in things that they should be engaged with ... you will have problems”.*<sup>32</sup>

Mr Hammond explained the practical significance of the Corporate Governance Framework to the business of the City and how it was to be used to position the City for success in the future:

*“That Governance framework will include matters such as, when Council meetings are conducted, when Council briefing sessions or forums are conducted, how we engage with the community. It will also provide for how much notice needs to be given for agendas and also provide how much time the Councillors should have with their agenda papers prior to having to meet so as they can consider them effectively. Also matters such as submitting notices of motion, giving the staff the opportunity to be able to comment on the implications of such motions. A whole range, if you like, of business rules. Once again, the business rules are absent in that Governance Policy Strategy area. We will have them well and truly in place by first quarter next year”.*<sup>33</sup>

The Inquiry unreservedly agrees with the significance given by Mr Jorgensen and Mr Hammond to corporate governance, and the need for a framework for the implementation and oversight of corporate governance. The Corporate Governance Framework, described by Messrs Hammond and Jorgensen, appears to be a robust document. If implemented, monitored and continually reviewed (and where necessary, updated) by staff and council members committed to advancing the best interests of the community of the City of Perth (and the Inquiry has no reason to think it will not be) it should stand the City in good stead for the future.

## Corporate recovery

In addition to people and governance, the need to plan the road to corporate recovery, and the sense that they were commencing from a low base, emerged from the evidence of Mr Jorgensen and Mr Hammond. It was plain that corporate recovery is a key goal.

Mr Jorgensen and Mr Hammond both gave evidence about the state of affairs when they commenced at the City.

Mr Jorgensen described the organisation as “*inward looking*”. He said that his perception when he arrived was that the organisation had been through “*an incredibly [difficult] period, you would almost call it survival. It had been under a lot of scrutiny, attack, disruption and therefore I would say many of the staff were almost in survival mode, or protection mode*”.<sup>34</sup>

This was a view shared by Mr Hammond, who gave evidence to the Inquiry that:

*“My first impression was that it was an organisation under siege. The demeanour of the staff, and obviously we were only in contact with the senior staff, but they were quite stressed. They seemed to me to have been through a lot of adversity and they were struggling with the situation, if you like, and from that I saw an internal defence focus”*.<sup>35</sup>

One consequence of the difficulties facing the staff at the City, as described by Mr Jorgensen and Mr Hammond, was that a significant degree of corporate recovery was necessary. To facilitate this, a Corporate Recovery Implementation Plan (CRIP) has been prepared and adopted.<sup>36</sup>

In his message to the staff of the City in the CRIP, Mr Jorgensen explained its purpose:

*“[It] clearly identifies what we need to do to help us mature into an organisation of which we can all be proud. The plan is not about apportioning blame or fault, it is entirely about what our team needs to do, to become a highly functional local government”*.<sup>37</sup>

In his message, Mr Jorgensen explained that “*It will take commitment from us all to achieve our goals and this plan will be dynamic, monitored and adjusted as we go*”,<sup>38</sup> before turning to set out the key focus areas for the CRIP, including establishing:

- “1. a high performing executive*
- 2. a fully Integrated Planning and Strategic Framework (IPSF)*
- 3. meaningful and effective performance measurement and benchmarking aligned with the IPSF*
- 4. integrated financial systems*
- 5. integrated Information and Communications Technologies (ICT)*
- 6. robust and contemporary project management*
- 7. a solid foundation of governance for the orderly transition and return of an elected Council*
- 8. a customer service-orientated ethos that is agile and responsive [to] the community, customers and stakeholders*
- 9. effective human resource development and a positive organisational culture”*.<sup>39</sup>

The CRIP is a living document which, as Mr Jorgensen told the Inquiry, is constantly being updated as the City becomes aware of new issues that require resolution in pursuit of the City’s corporate recovery.<sup>40</sup>

As at the date of Mr Jorgensen giving evidence, the CRIP was 24 pages long and detailed the goals, and the markers for progress against, seven CRIP recovery areas.<sup>41</sup>

Success against the CRIP, as amended from time to time, is measurable and measured.

As at the date of Mr Jorgensen and Mr Hammond giving evidence to the Inquiry, the City was about 24 per cent of the way along the path to corporate recovery set out in CRIP.<sup>42</sup>

That progress is reflected in a document called the “*Corporate Recovery Implementation Plan – Status Report*”, the most recent of which in the Inquiry’s holdings is dated 15 September 2019,<sup>43</sup> though it is like the CRIP itself a living document.

Mr Jorgensen was asked about how long full corporate recovery would take to achieve according to the CRIP:

*“The full recovery – based on my experience, I would believe it’s going to take years to become an overnight success. I believe we are probably talking close to three years to get our financials and all aspects of great governance in place, it could be up to two to three years but the vast majority, the solid foundations will be in place before 30 June next year”.*<sup>44</sup>

Mr Jorgensen’s estimate is a sensible one. The CRIP is multi-faceted, and it will take time to implement all of the actions necessary to achieve its outcome. What is important, though, and what is apparent from the evidence of Mr Jorgensen, is that the City has planned a route and has commenced the journey towards corporate recovery.

The Inquiry observes that the areas identified as key areas within the CRIP reflect the themes which permeated Messrs Hammond and Jorgensen’s evidence: people, governance and recovery. This reflects, in the Inquiry’s view, that the Commissioners and the City’s administration under Mr Jorgensen have given careful consideration to a structured and targeted approach to corporate recovery which should, when implemented, serve the City well for and into the future.

## Conclusion

Both Mr Jorgensen and Mr Hammond were asked about how they saw the future of the City. In answer, both expressed the view that the City’s future was bright, and that their task was to get the basic foundations of a functioning local government in place in order to secure that future.<sup>45</sup>

Mr Hammond summarised the position neatly towards the end of his evidence:

*“The City of Perth has a bright future. They have wonderful staff, we have a growing population, we have lots of economic opportunity and the capital city Local Government I’m sure is one that Western Australia will be proud of in the years to come. The Commissioners will get the basics of Local Government right, those fundamental areas of governance that need to be strong and from there, provided that good people are involved with the City, both at the Executive level and at the elected level, the City will thrive”.*<sup>46</sup>

There are good reasons to believe the City will fare better than it has in the recent past. The means to become a better local government are being or have been put in place. The willingness to change appears to be present. It will in the Inquiry’s view take some time to overcome the obstacles which beleaguered it in the past, but with commitment to the path now mapped out for it there is reason to think that in the future the City will be properly governed, thrive and prosper. There are plenty of reasons to think that the public confidence in it, as the State’s capital city, will be restored.

# 3.3

## Matters Referred to Other Authorities



## Overview

This Inquiry has the power to refer any matter arising out of it to an authority of the State, the Commonwealth, another State or a Territory that has a power under a law to investigate or take action in relation to it and it may pass on to that authority any document it has obtained in the course of this Inquiry.

While this was an Inquiry under the *Local Government Act 1995* into matters of governance and government at the City of Perth, it did in the course of its investigation find out about a number of matters, some more serious than others, which required it in the responsible discharge of its duties, functions and powers to refer them to a number of external agencies.

In the discharge of this duty, the Inquiry referred 135+ matters, many concerning suspected criminal behaviour, in respect of 23 individuals and two organisations, including council members and senior members of the Administration, to 17 different Commonwealth, State and other authorities.

However, it should be made clear that the referral of a matter by this Inquiry to those agencies merely indicates that this Inquiry has formed the view that there is a reasonable basis for referral to that other agency for its consideration and action. It should not be seen as confirmation of wrongdoing. Whether or not there has been any wrongdoing is a matter to be decided elsewhere and by others at some later time.

# 135+

Matters referred



# 17

Commonwealth, State and other authorities



# 23

Persons referred



# 1

Organisation referred



# 320+

Recommendations for the future

# 3.4

## Recommendations



## Introduction

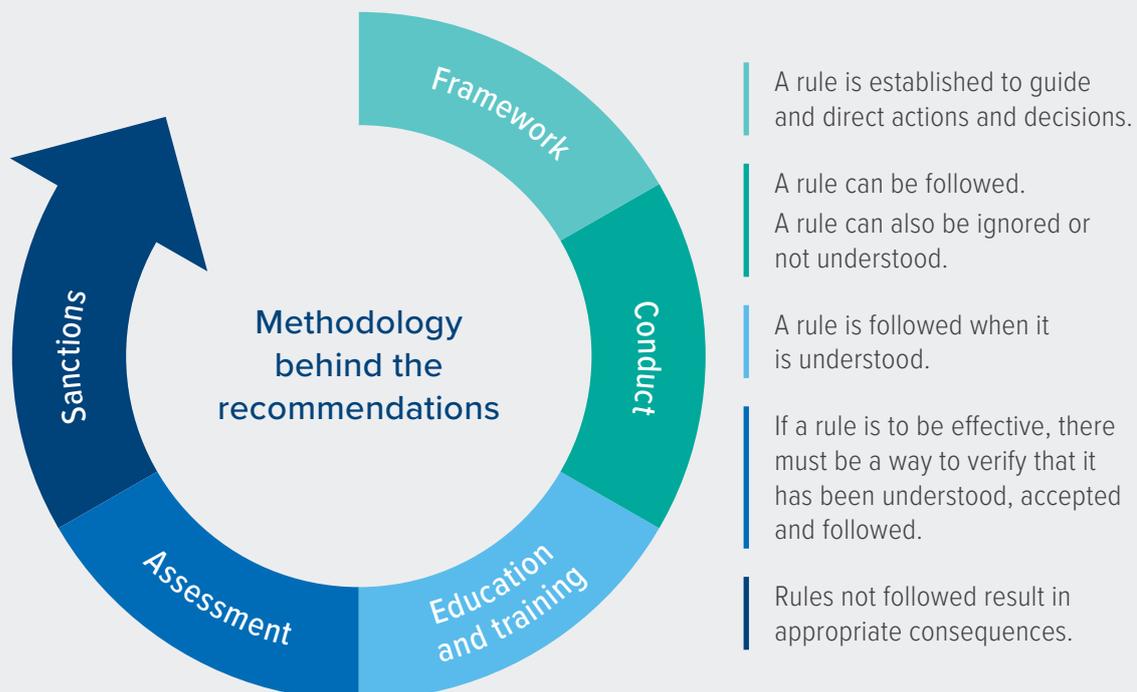
In the course of examining government at the City of Perth (City) during the period of this Inquiry's Terms of Reference, 1 October 2015 and 1 March 2018 (Inquiry period), a number of failings in good government were identified. They existed in the Council and the Administration of the City.

Inevitably, the investigation undertaken by this Inquiry drove it to search for the root causes of many of these failings. In the end, it was clear that many of them stemmed largely from two root causes. They were poor behaviour and poor decision-making. The poor culture at the City and poor governance practices proved fertile ground for these two root causes.

It is this understanding of what lies at the heart of many of the failings identified by this Inquiry which is the primary driver for many of its recommendations.



A simple model has guided the Inquiry in articulating the methodology behind the recommendations.



### Framework

Rules guide and direct our actions and decisions. Rules can take many forms. They can be written or not. Rules often articulate a power that a person, group of persons or organisation has over another. They can be created by governments, taking the form of legislation or policies and procedures. Rules tell us how something is to be done or how it is not to be done. Rules can be self-regulated or regulated by other parties, including other arms of government or government agencies. Rules are designed to provide for fairness and consistency in treatment. Rules are to be followed.

Local government has power to create local laws and make rules. It also has to comply with rules imposed by legislation (such as the *Local Government Act 1995* or other laws which require local government to regulate functions such as environmental health) as well as any directions provided by the Minister for Local Government.

### Conduct

Integral to finding an effective and lasting solution to many of the problems at the City is the need to have, a clear, simple, meaningful and practical set of rules governing the behaviour and decision-making of council members<sup>b</sup> and employees. While the roles of these two groups are different, when it comes to behaviour and decision-making, there is much common ground between them.

Rules governing behaviour and decision-making should be compulsory. They should set acceptable minimum standards, benchmarked to best practice. Any aspiration by the City (or indeed any local government) to some higher standard should be encouraged. The adoption of a lower standard would defeat the purpose of the regime.

### Education and training

A rule is less likely to be followed if it is not understood. It may not be enough that the rule is clear and simple. In some cases, the rule governing behaviour and decision-making will need to be further explained by, for example, scenario modelling. A full and proper understanding is often the best way of ensuring compliance.

### Assessment

If a rule is to be effective, it must be understood, accepted and then followed. Often, it is not enough for the rule to just be understood. The person to whom it applies must also accept and adopt the reason for its existence. It must be seen as appropriate and, in some cases, necessary. Mentoring by an experienced professional is often the best method for ensuring the adoption of a different way of behaving. It can be done in a number of different ways.

<sup>b</sup> Council member is a term describing members of a local government's Council including a Lord Mayor, Mayor or President and councillors.

It can often be done effectively by one-on-one mentoring. It can sometimes be supplemented and reinforced by continuing professional development. Assessment is a good way of measuring acceptance.

The evidence heard by this Inquiry has demonstrated that the rules governing behaviour and decision-making by council members and employees alike were often not understood, not accepted or deliberately not followed.

## Sanctions

Equally important to understanding and adopting rules of this kind is having the machinery to ensure that if they are not followed, there are appropriate consequences. This requires at least two things.

First, that there is a system whereby failures to follow the rules are dealt with fairly, quickly and consistently. In that way, those bound by the rules will understand that there are measured, timely and unwanted consequences for their failures.

The current system is not timely, it often produces inconsistent results and often requires solutions to be found in different places. It is not streamlined. It can be confusing. Consequently, it is not as effective as it could be. There is no real need for such a diverse and disconnected regulatory system. The problems of local government are often local government specific. It makes good sense, therefore, for them to be dealt with by a streamlined local government-specific regime.

Secondly, while most council members and employees of local government will, when they understand the rules and the reasons for them, conduct themselves accordingly, some will not. It is because of this minority that there needs to be an appropriate and measured range of sanctions.

The purpose of a sanction, in the context of local government as elsewhere, is to punish and correct conduct where it does not accord with what is required and expected of public officers. It is also to mark public disapproval of that conduct and deter the public officer and other public officers from engaging in that conduct in the future. It is the counterbalance to education and training about the right way to do things. It should always be proportionate to the breach.

It is therefore appropriate for the sanctions which will be applied to this minority to range from dismissal, suspension and pecuniary penalties all the way down to reprimands and apologies. Obviously, the nature and extent of the breach and the purpose underlying the sanction should shape the sanction applied in any given case.

It is important in the area of local government for sanctions for failures to follow the rules governing behaviour and decision-making to be transparent. Transparency is an effective way of ensuring accountability and correcting behaviour. Therefore, where sanctions are imposed on council members or employees, they should be made public. Often, the publication of a sanction, even one at the lower end of the scale, can be an effective form of correction, as well as a disincentive to others who might be considering something similar.

### ‘Lines of defence’ approach

In developing the recommendations consideration has also been given to the City’s lines of defence<sup>c</sup> to:

- Strengthen the City’s internal controls at a business level, including policies, procedures and processes, and provide training and awareness to ensure comprehension and application (*First line of defence*).
- Improve the City’s internal oversight mechanisms through better planning, monitoring and reporting, including whole of organisation governance frameworks such as risk management, compliance and complaint handling frameworks (*Second line of defence*).
- Support accountability through maturing the internal audit function with a greater focus on audits and reviews to detect and address fraud and misconduct and systemic problems and weaknesses (*Third line of defence*).
- Identify potential areas of legislative improvement that provide for better practice or universal systemic solutions.

### State Government legislative reform programme

The recommendations have also been prepared against the background of the current legislative framework for local government in Western Australia. This legislative framework is currently undergoing reform as part of the State Government’s Local Government Act Review programme. In developing the recommendations contained in this Report, consideration has been given to the current legislation (as at June 2020). It has also been informed by those elements of the State Government’s reform programme which are in the public domain.

The recommendations have also been prepared having regard to the legislative framework for regulating local governments in other States and Territories in Australia, namely, the Victorian Local Government Inspectorate and the Queensland Office of the Independent Assessor.

Some of the Inquiry’s recommendations fall outside the scope of the State Government’s reforms because, for example, they go to operational matters which do not require legislative reform. Some of the recommendations are in addition to and complement the State Government’s reforms. Some recommendations cover the same matters, but are different from the State Government’s reforms.

While the recommendations made by this Inquiry have been heavily influenced by what the Inquiry considers to be the root causes of many of the problems at the City during its period of interest, they are not the only drivers.

<sup>c</sup> The ‘Four lines of defence’ model has been developed by the Western Australian Auditor General, and the Institute of Internal Auditors Australia has a 3 lines of defence model, both covering similar elements: Report, Western Australian Auditor General, Audit Results Report – Annual 2018-19 Financial Audits of Local Government Entities, Report 16: 2019-20, 11 March 2020, p 27; Factsheet, Institute of Internal Auditors Australia, ‘3 Lines of Defence’ Combined Assurance Model, 2020.

An important part of this Inquiry's work was an examination of whether the failings it identified had occurred before, whether they had occurred elsewhere and whether their causes lie in some more deep-rooted problems with local government as a whole. This is one of the reasons why this Inquiry examined the findings and recommendations of similar inquiries and reports dealing with similar problems, both in this State and elsewhere.

As a consequence of this wider consideration, this Inquiry has concluded that many of the failings identified in its Report are also common to many other local governments, both in this State and elsewhere. Consequently, it is this Inquiry's respectful opinion that the solutions offered by these recommendations, while based on the evidence before this Inquiry and the findings made by it, have the potential for a much broader local government-wide application, well beyond the City of Perth.

## Summary of recommendations

In summary, the Inquiry recommends:

### Conduct

- The creation of a single, mandatory and comprehensive Code of Conduct for all council members and employees of local governments, complemented by training and assessment on, and enforcement of, a Code;
- An assessment of the culture of the City's Council and Administration and supporting leadership development for the City's Council, Chief Executive Officer (CEO) and executives;
- Continuing professional development for council members, CEOs and executives in local government.

### Decision-making

- Greater transparency and accountability for decision-making by Councils and committees of local governments, including audits of decisions of the City's Council.
- Changes to the regulation of the disclosure of conflicts and financial interests by council members and employees, the entitlements for council members and the use of the City's dining room.
- Improved practices for provide greater transparency in decision-making, procedural fairness and consistency in the management of a local government's CEO including appointment, management of performance and termination of employment.

#### Capability

- Improvements to the induction training and education for the Lord Mayor and councillors of the City.
- Coaching programmes for elected mayors or presidents and appointed CEOs.
- Training programs for City employees in areas such as managing conflicts of interest, procurement and contracting, project management, risk management and misconduct prevention.

#### Systems and processes

- Operational changes to the City's systems, policies, procedures and practices for financial management, human resources, procurement of goods and services, project management and handling of complaints, including allegations of corruption and other misconduct.
- Improved risk, audit and assurance practices for the City, utilising a 'lines of defence' model and adopting a risk approach to misconduct identification and mitigation.

#### The local government system

- Legislative amendments and operational changes to ensure the integrity of local government elections and to improve financial management of local governments and the City.
- Independent oversight of the recruitment and performance management of CEOs of local governments.
- The creation of a Local Government Inspectorate, to improve the capability and integrity of local governments and the local government system.
- Amendments to the Royal Commissions Act 1968, to improve the efficiency of Royal Commissions and other commissions of inquiry.
- Reporting by the City on its progress against the Inquiry's recommendations.

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## Statutory roles and responsibilities

### Council members

#### City of Perth

1. The City provide the newly elected Lord Mayor and councillors with an independent course of education (City Council Induction Programme), with an assessment component, on the special role, functions, duties and responsibilities of their respective offices within six months of each City of Perth ordinary or special local government election.

*The Lord Mayor and councillors must be provided with a comprehensive understanding of their statutory roles and responsibilities in order for Council to function, including instruction as to their special roles as articulated by the City of Perth Act 2016, in addition to the universal training provided to all newly elected council members regarding their roles as prescribed by local government.*

2. The City Council Induction Programme include instruction as to obligations under relevant legislation, including but not limited to the:

- *City of Perth Act 2016;*
- *Local Government Act 1995* and regulations;
- *Corruption, Crime and Misconduct Act 2003;*
- *State Records Act 2000;*
- *Equal Opportunity Act 1984;* and
- *Occupational Safety and Health Act 1984.*

*These statutes contain regimes which are critical for the Council to understand in order to govern properly.*

3. The City Council Induction Programme also include education on the integrated planning and reporting framework, its components and undertaking community consultation and engagement. This would include the vision and strategic direction that it sets for the City, its resourcing implications, and the alignment of the framework with both the aspirations of the community, medium and long term, and the City's objectives under the City of Perth Act 2016.

*The City's integrated planning and reporting framework is fundamental to the governance role of Council and is the primary means by which both the aspirations of the community, medium and long term, and the objectives of the City, as prescribed by the City of Perth Act 2016, are translated into effective, affordable, and achievable strategic directions and actions by Council.*

### 3.4 Recommendations

4. An independent training provider be engaged, by the City, to assist the City's CEO to develop the City Council Induction Programme; independently deliver the programme, including all training and assessment components; and report on the outcomes of compliance with the programme to Council.

*To enhance the quality and integrity of the City Council Induction Programme through the involvement of a suitably experienced independent training provider.*

5. The independent training provider be selected and engaged by the City in a fair and transparent manner and, in so far as is practicable, the provider is not to have any professional or personal affiliations with the CEO, the Lord Mayor or councillors, historic or otherwise.

*To prevent the politicisation of the training programme, perceived or otherwise, in the absence of a preferred supplier panel for training providers in local government.*

#### Chief Executive Officer

##### Local government

6. Any newly appointed CEO of a local government undertake an independent course of education established by the Department<sup>d</sup> (CEO Induction Programme), with an assessment component, on the role, functions and duties and responsibilities of local government CEOs. The CEO Induction Programme should be required regardless of whether the new appointee has been previously employed as a CEO, but with some provision for advanced standing, where appropriate.

*Knowledge of the role is critical to the discharge of its functions.*

7. The CEO Induction Programme include instruction as to obligations under, including but not limited to, the

- *Local Government Act 1995* and regulations;
- *Corruption, Crime and Misconduct Act 2003*;
- *State Records Act 2000*;
- *Equal Opportunity Act 1984*; and
- *Occupational Safety and Health Act 1984*.

*These statutes contain regimes which are critical for the CEO to understand in order to properly fulfil his or her role.*

<sup>d</sup> The State Government department responsible for local government in Western Australia is the Department of Local Government, Sport and Cultural Industries.

8. A panel of independent training providers be established by the Department to deliver the CEO Induction Programme, including all training and assessment components, and report on the outcomes of compliance with the programme to the council of the local government.

*To enhance the quality and integrity of the CEO Induction Programme through the involvement of a suitably experienced independent training provider.*

#### City of Perth

9. In the absence of a CEO Induction Programme established by the Department, the City engage an independent training provider to develop and deliver the programme described in Recommendations 6-7 for each newly appointed CEO of the City.

*Knowledge of the role is critical to the discharge of its functions.*

10. The City's CEO is to undertake and complete the CEO Induction Programme within six months of commencement and the outcomes be included in the CEO's probationary performance agreement and reported to the City of Perth Council as part of the performance review.

*To enhance the quality and integrity of the CEO Induction Programme and support the continuing professional development of the City's CEO.*

## Culture, conduct and leadership

### Culture

#### City of Perth

11. The City engage an accredited provider to undertake a review, guided by the 'Organisational Cultural Inventory' or some other appropriate system, of the culture of the City, including the City of Perth Council and the Administration (Cultural Assessment).

*To identify and assess, in an holistic way, the City's organisational culture.*

12. The accredited provider be engaged for a minimum of three years to provide a baseline, progress and closing assessment, in the form of an assessment report for each assessment to the CEO, of the cultural change performance within the City.

*A three-year period would ordinarily cut across election cycles and give a more representative view.*

13. The City is to conduct the baseline Cultural Assessment survey within three months of the commencement of the new Council, and it is to be undertaken by council members, the CEO, and the Administration.

*This sets the timing of the survey and who is required to participate in the assessment.*

### 3.4 Recommendations

14. The accredited provider should also provide the City with organisational development advice to guide actions in response by the City of Perth Council and the CEO to the Cultural Assessment findings.

*An accredited provider will have an appropriate tool to make the assessment and provide operational development advice.*

15. The reports containing the results of the Cultural Assessment and proposed actions to address findings in each report is to be provided to the City of Perth Council by the CEO for consideration, endorsement and action no later than three months after the results are received by the CEO.

*The City consider what organisational cultural improvements can and should be implemented following the assessment.*

16. The report, and the City of Perth Council's response to it, is to be communicated appropriately to staff and made available to the public.

*Reporting and disclosures facilitate transparency and accountability in local government.*

17. In the years subsequent to the baseline report, the accredited provider is to provide in the report a view on the effectiveness of the strategies implemented by the City and any barriers to their implementation, as well as ongoing organisational development strategies to address areas in need of improvement.

*Constant re-assessment as to whether strategies are working and where issues remain will facilitate organisational improvement.*

18. The Cultural Assessment is to be supported by and integrated with an accredited Executive 360-degree cultural and leadership assessment for the City's council members, the CEO and the executive of the Administration.

*To provide an avenue for individuals in a leadership role to gain insight into their leadership skills.*

19. Key performance indicators from the Cultural Assessment and Executive 360-degree programme are to form part of the City's CEO and each executive's performance and development agreement.

*Individuals are held accountable for their behaviours, areas of improvement and contribution to the team and City outcomes for culture.*

## Code of Conduct

### Local government

20. The *Local Government Act 1995* be amended to provide for the Director-General of the Department to prescribe a single mandatory Code of Conduct (Code) for all council members, members of council committees (committee members) and employees of a local government,<sup>e</sup> which will set minimum standards to comprehensively regulate all conduct engaged in by council members, committee members and employees in the discharge of their duties and functions, including, but not limited to, the disclosure of conflicts of interest, financial interests and gifts.

*Key conduct obligations for council members and employees across local governments are the same. While roles and delegations may differ, the fundamental way an officer of the local government should act and make decisions should be the same and should, where practicable, be articulated in one instrument. The standard should not be different or separated.*

*The new section 5.51A of the Local Government Act 1995, which has not come into effect, provides that the CEO of a local government is to prepare and implement a Code of Conduct to be observed by employees.*

*The new sections 5.103 and 5.104 of the Local Government Act 1995, which have not come into effect, provide for regulations to prescribe a model code of conduct for council members, committee members and candidates and for local governments to adopt a code of conduct incorporating the model code.*

21. The provisions of the Code be principles-based and incorporate the principles of integrity, diligence, fairness, service, transparency and accountability.

*The Code should, wherever possible, broadly state and explain what is required of council members and employees, rather than prohibiting improper or unethical behaviour.*

*The rules of conduct in the Local Government (Rules of Conduct) Regulations 2007 and the proposed provisions of Part C of the draft “Mandatory Code of Conduct for Council Members, Committee Members and Candidates” are proscriptive, that is, those rules and provisions set out in detail what council members “must not” do.*

22. The Code should mandate compliance with the standards that the community expects from public officers, namely, to act in the best interests of the community, with reasonable care and diligence and with honesty, integrity and transparency, having regard to relevant and factually correct information.

*Those serving the community should represent it and live up to the community’s expectations of them.*

<sup>e</sup> The Code of Conduct is to apply to all those persons of the local government defined as a “public officer” in section 1 of the *Criminal Code*.

23. The Code deal with the matters in Part 5, Division 6 of the *Local Government Act 1995* and the *Local Government (Rules of Conduct) Regulations 2007*, with those provisions to be repealed.

*To consolidate the obligations of council members and employees in one instrument.*

24. A local government may, in addition to the Code, regulate other aspects of the conduct of council members, committee members and employees, or impose greater constraints on conduct than those regulated by the Code, but cannot do so in a way which derogates from or is in conflict with the Code's minimum requirements.

*To encourage improvement on, but prevent diminution of, the requirements of the Code. That is the effect of new section 5.104(3) of the Local Government Act 1995, which has not come into effect, in relation to the model code of conduct.*

25. The Department arrange for an independent review of the Code, at three-yearly intervals, to determine whether it remains effective and relevant and whether it should be updated and amended.

*To maintain the efficacy and relevance of the Code to allow for iterative improvement and the implementation of best practice.*

26. Any breach of the Code be subject to the imposition of a sanction commensurate with the breach.

*To encourage compliance, it is important that any breaches of the Code be subject to the imposition of appropriate sanctions by an independent adjudicative body: Recommendations 332-333.*

*Under sections 5.103 and 5.105 of the Local Government Act 1995, as amended by section 51 of the Local Government Legislation Amendment Act 2019, only breaches of Part C of the draft "Mandatory Code of Conduct for Council Members, Committee Members and Candidates" may be dealt with by the Local Government Standards Panel. The Panel may only order that a council member found to be in breach of the provisions of Part C be publicly censured, made to apologise publicly, undertake training or pay a fine.*

*Breaches of Part A of the draft Mandatory Code will not result in any sanctions. Breaches of Part B of the draft Mandatory Code are proposed to be dealt with by the council of the local government which may require a council member to undertake training, mediation or counselling.*

*Under the previous statutory framework, failure by council members to comply with the local government's code of conduct did not result in any sanctions or consequences.*

## City of Perth

27. If Recommendations 20-22 are not adopted, the City of Perth Council review and amend the City's Code of Conduct (Council Policy "CP10.1") to give effect to those recommendations.

*The City's Code of Conduct should, wherever possible, broadly state and explain what is required of council members, committee members and employees, rather than prohibiting improper or unethical behaviour.*

## Training

### Local government

28. Local governments be required to provide all newly elected council members, committee members and newly recruited employees with training on the Code, including an assessment component, as part of their induction process.

*Those bound by the Code should understand it.*

29. All council members and employees undergo training on the Code when it is introduced and refresher training on the Code, including an assessment component, at no less than 12-month intervals.

*To maintain currency of understanding.*

30. The Department establish the training programmes described in Recommendations 28-29, and publish comprehensive training materials on its website, for use by internal and external facilitators, in delivering the programme to council members and employees.

*Training content is to be accessible and enable local governments to deliver the training internally and directly through the use of free, centralised training materials.*

31. The Department consider establishing a standardised method for the assessment component of the training programme which is low burden, for both the facilitator and recipients of the training, and to allow the content to be easily updated.

*Training content is to be accessible and to enable local governments to deliver the training internally, and directly, using free, centralised training materials.*

32. The training programmes and materials be reviewed annually by the Department, and where possible, include recent examples and case studies which are relevant to the training content.

*Training content is to be relevant and current and is seen as such.*

### 3.4 Recommendations

33. The Department to consider the inclusion of reporting against compliance with the Code training requirement in a local government's compliance audit return, split by category, namely, council members, committee members, candidates, the CEO, "senior employees"<sup>f</sup> or equivalent and employees.

*To encourage compliance, transparency and accountability.*

34. Local governments be required to publish in their Annual Report their percentage of compliance for the financial year with the Code training requirement, according to the specified categories (as described in Recommendations 33).

*To encourage transparency and accountability for the local government's performance.*

#### City of Perth

35. If Recommendation 28 is not adopted, the City is to provide all newly elected council members, newly appointed committee members and newly recruited employees with training on the Code, including an assessment component, as part of their induction process.

*Those bound by the Code of Conduct should understand it.*

36. If Recommendation 29 is not adopted, all council members and employees undergo training on the Code when it is introduced and refresher training on the Code, including an assessment component, at no less than 12-month intervals.

*To maintain currency of understanding.*

37. If Recommendation 34 is not adopted, the City is to publish in its Annual Report its percentage of compliance for the financial year with the Code training requirement, according to the specified categories (as described in Recommendations 363).

*To encourage transparency and accountability for the City's performance.*

<sup>f</sup> Local Government Act 1995, s 5.37.

## Leadership

### Lord Mayor, mayors or presidents

#### Local government

38. The Department establish a Mayoral Leadership Coaching Programme for newly elected mayors and presidents of local governments, delivered by accredited coaching providers, to support mayors and presidents build their non-technical and leadership skills as part of continuing professional development.

*A mayor or president as a leader needs to have good leadership skills.*

39. An independent accredited executive coach, with formal experience in leadership coaching, be appointed to support and mentor a newly elected mayor or president in his or her transition into the role and for continuing professional development, particularly the development of skills necessary to provide effective community leadership and manage relationships within and between the City of Perth Council and the CEO. The coach to be selected by the mayor or president from a panel of suppliers provided by the Department.

*Professional expertise assists to improve capability and provided objective insights.*

#### City of Perth

40. In the absence of a Mayoral Leadership Coaching Programme established by the Department, the City establish the equivalent of the Mayoral Leadership Coaching Programme described at Recommendation 38, within three months of the Lord Mayor commencing in the role.

*The Lord Mayor is to receive professional coaching that is effective, appropriate, and provides for development of his or her leadership capability.*

41. An independent accredited executive coach, with formal experience in leadership coaching, be appointed by the City to support any newly elected Lord Mayor in his or her transition into the role and for continuing professional development, particularly the development of skills necessary to provide effective community leadership and manage relationships within and between the City of Perth Council and the CEO. The coach to be selected by the Lord Mayor from a panel of suppliers provided by the City.

*Professional coaching enhances and develops leadership skills.*

### Chief Executive Officers

#### Local government

42. The Department establish a CEO Professional Leadership Coaching Programme for CEOs of local governments, delivered by accredited coaching providers, to support CEOs to build their non-technical and leadership skills both in their transition into the role and for continuing professional development.

*A CEO, as a leader, needs to have leadership skills.*

43. An independent accredited executive coach, with formal experience in leadership coaching, be appointed, to support and mentor a CEO (including new and current CEOs) in his or her role and continuing professional development, particularly the development of skills necessary to provide effective community leadership and manage relationships within and between the council and the CEO. The coach to be selected by the CEO from a panel of suppliers provided by the Department.<sup>9</sup>

*Professional expertise assists to improve capability and provided objective insights.*

#### City of Perth

44. In the absence of a CEO Professional Leadership Coaching Programme established by the Department in Recommendation 42, the City engage an independent accredited coaching provider to support the City's CEO to build non-technical and leadership skills both in his or her transition into the role and for continuing professional development.

*The CEO is to receive professional coaching that is effective, appropriate, and provides for development of his or her leadership capability.*

45. An independent accredited executive coach, with formal experience in leadership coaching, be appointed, to support and mentor a newly appointed City CEO in his or her role and for continuing professional development, particularly the development of skills necessary to provide effective community leadership and manage relationships within and between the Council and the CEO. The coach to be selected by the CEO from a panel of suppliers provided by the City

*Professional expertise assists to improve capability and provided objective insights.*

46. The Council is to facilitate the appointment of the independent accredited executive coach described in Recommendation 45, within three months of the new CEO commencing at the City.

*It is important for the newly appointed CEO to commence with the right support and coaching.*

<sup>9</sup> The State Government department responsible for local government in Western Australia is the Department of Local Government, Sport and Cultural Industries.

## Council member essential training

### Local government

47. To the extent these matters are not sufficiently dealt with in the *Council Member Essentials* training<sup>h</sup>, regulation 35(2) of the *Local Government (Administration) Regulations 1996* be amended to require council members to undergo training on:
- the statutory roles and functions of, and the relationships between, the council, Mayor or President, council members, the CEO and other employees of the local government, including:
    - council’s role as the governing body of the local government and the administration’s role in managing the local government’s operations;
    - decision-making processes of local governments, including council and committee meeting procedures;
    - how council, the CEO and the administration can and should work constructively; and
    - how council can and should monitor and manage the CEO’s and the local government’s performance;
  - conduct and integrity in decision-making, including declaring and managing conflicts of interests;
  - financial management and the Integrated Planning and Reporting Framework; and
  - leadership, including council members’ role as elected representatives of the community.

*Training is to be targeted and relevant to support council members of a local government to properly perform their roles.*

### City of Perth

48. Council members of the City are to be trained in those areas described in Recommendation 47.

*Training is to be targeted and relevant. These matters are integral to council members at the City properly performing their roles and directly relates to areas of deficiency identified by this Inquiry.*

<sup>h</sup> *Local Government (Administration) Regulations 1996*, reg 35(2).

## Continuing professional development

### Local government

49. The State Government consider amending section 5.128 of the *Local Government Act 1995* and prescribing regulations to require local governments, in preparing and adopting policy on continuing professional development:

- to extend that policy to committee members and senior employees;
- to consider the individual training and professional development needs of council members, committee members and senior employees; and
- to require training and professional development courses be delivered by independent and qualified training providers who are members of a panel of training providers established by the Department, with assessment undertaken as part of the course.

*To provide for essentials in local government training and development for persons of the local government other than council members.*

50. Committee members, including those who are council members, as part of their continuing professional development, receive training in respect of the specialised skills and knowledge required to competently carry out that committee function.

*Council members and others should receive specialised training relevant to the effective discharge of their roles.*

51. The training described in Recommendation 50 be received before the committee member serves on the relevant committee or, if that is not practicable, as soon as practicable after appointment to the committee.

*Decision-making is to be informed by the training.*

52. Local governments to report all continuing professional development compliance to the Department.

*For compliance and performance monitoring.*

53. The Salaries and Allowances Tribunal consider whether the hours undertaken for continuing professional development be provided for under council members' sitting fees or whether a further allowance be granted for this purpose.

*To appropriately meet the time impost on council members.*

## City of Perth

54. If Recommendation 49 is not adopted, the City prepare and adopt a policy on continuing professional development:
- to extend that policy to committee members and senior employees;
  - to consider the individual training and professional development needs of council members, committee members and senior employees; and
  - to require training and professional development courses be delivered by independent and qualified training providers who are members of a panel of training providers established by the Department, with assessment undertaken as part of the course.

*To provide for essentials in local government training and development for persons of the City other than council members.*

55. If Recommendation 50 is not adopted, the City arrange for all committee members, as part of their continuing professional development, to receive training in respect of the specialised skills and knowledge required to competently carry out that committee function.

*Council members and others should receive specialised training relevant to the effective discharge of their roles.*

56. The training described in Recommendation 55 be received before the committee member serves on the relevant committee or, if that is not practicable, as soon as practicable after appointment to the committee.

*Decision-making is to be informed by the training.*

## Council and committee decision-making

### Local government

57. Part 2 of the *Local Government (Administration) Regulations 1996* be amended to require all council meetings and committee meetings of Council be audio-visually recorded in their entirety, which recordings should be kept in compliance with the *State Records Act 2000*.

*To improve transparency and accountability, and by those measures the quality of local government decision-making.*

58. Audio-visual recordings of all parts of meetings of a council or a committee of the council that were open to members of the public be prescribed pursuant to section 5.96A(1)(i) of the *Local Government Act 1995* as information which the CEO must publish on a local government's official website.

*To improve transparency and accountability.*

59. Audio-visual recordings of all parts of meetings of a council or a committee of the council that were open to members of the public be prescribed pursuant to section 5.94(u)(ii) of the *Local Government Act 1995* as information which a person attending the office of a local government during business hours may inspect.

*To improve transparency and accountability.*

60. Regulation 11(da) of the *Local Government (Administration) Regulations 1996* be amended to require the reasons for all decisions of council or a committee of council be recorded in writing in the minutes of the meeting in sufficient detail to explain why the decision was made.

*To improve transparency and accountability, and to avoid the situation where a committee and council reach the same view on a proposal, but for unexplained and possibly different reasons.*

61. Local governments ensure that their policies make clear that all communications<sup>i</sup> sent or received by any council member relating to any decision of a council or a committee of the council (Decision-Making Correspondence) are records which must be forwarded to the CEO<sup>j</sup> and stored in accordance with the *State Records Act 2000* and the State Records Commission's guidance on local government elected members' records.

*To improve compliance with the State Records Act 2000, to facilitate transparent and accountable decision-making, and to aid auditing, investigation and oversight.*

i Including social media posts, text messages, messages from applications such as WhatsApp and Facebook Messenger and records of verbal communications.

j In the case of the matters related to the performance and termination of employment of a CEO this would be a designated "senior employee".

62. The Code require all council members, committee members and employees of a local government,<sup>k</sup> where information technology facilities are provided by the local government,<sup>l</sup> to use those facilities for any matter relating to the business of the local government or the performance of the duties or functions of their office or employment.

*To facilitate transparent and accountable decision-making, and to aid auditing, investigation and oversight.*

#### City of Perth

63. Recommendation 58 be adopted as better practice transparency by the City of Perth Council, in the absence of broader local government legislative reforms.

*To improve transparency and accountability at the City.*

64. The decisions of the City of Perth Council, a committee and the CEO, including related correspondence, be audited for compliance with statutory and policy requirements and obligations, no less than once every 24 months by an independent, qualified auditor.

*An independent report providing oversight on the City's ability to act and make decisions in accordance with the legislation and policy provides accountability, transparency and improvement.*

65. The results of the audit be reported to the City of Perth Council's Audit Committee (Audit Committee) and the Council.

*The Audit Committee has oversight for the audit activities of the City.*

66. The first audit described at Recommendation 64 be conducted for the financial year ending 30 June 2021.

*The City to use the first audit as a mechanism to inform the new Council and CEO of areas of compliance and for potential improvement.*

67. If an audit conducted under Recommendation 64 identifies serious deficiencies in the City's compliance with statutory and policy obligations, sanctions should be imposed immediately, a report to Council on an improvement programme<sup>m</sup> be developed, that programme be adopted by the City of Perth Council within two months of the audit report being presented and the audit be repeated at 12 months.

*Where an audit identifies non-compliance or process weaknesses, action should be taken to address (including sanction and improvement actions control framework weaknesses).*

<sup>k</sup> The Code of Conduct is to apply to all those persons of the local government defined as a "public officer" in section 1 of the *Criminal Code*.

<sup>l</sup> Including email addresses, remote system access and electronic devices such as computers, mobile telephones and electronic tablets.

<sup>m</sup> The improvement programme should include specific actions to address findings made in the audit, allocation of responsibility and timeframes for the completion of the action. This improvement programme is to be monitored by the Audit Committee.

68. A copy of the independent audit report for the financial year ended 30 June 2021 and the City of Perth Council's response to that report (Recommendation 67) be provided to the Minister for Local Government by no later than 31 December 2021.

*Confidence in the City to act in accordance with its legislative and policy responsibilities is strengthened with transparency and accountability to the Minister for Local Government.*

## Disclosure, personal interests and entitlements

### Disclosures and conflicts

#### Local government

69. The Code require council members, committee members and employees of a local government to disclose any actual or perceived conflicts of interest (conflict of interest) that arise in the discharge of their duties and functions; and in sufficient detail so as to:
- identify what the conflicting interest is and the reason why it gives rise to an actual or perceived conflict; and
  - enable a third-party to assess the nature and extent of the conflict.

*The detailed definitions of “financial interest” and “closely associated person” in the Local Government Act 1995 are complex and confusing.*

*Furthermore, the different consequences which attach to the declaration of a “financial interest” under the Local Government Act 1995 in comparison to the consequences which attach to a declaration of an “impartiality interest”<sup>n</sup> under the Local Government (Rules of Conduct) Regulations 2007 can lead to inconsistent and absurd results.*

*By unifying the concept of a conflict of interest with reference to well-defined principles, the system should be simpler to understand and easier to comply with and lead to better governance outcomes.*

70. Where a council member, committee member or employee has a conflict of interest in relation to a matter before a council or committee meeting, the Code require the council member, committee member or employee to disclose that conflict:
- to the CEO in writing and as soon as practicable prior to that meeting; or
  - if that is not practicable, orally at the commencement of the meeting and then in writing to the CEO as soon as practicable after the conclusion of the meeting.

*Conflicts of interest should be made and recorded appropriately and transparently.*

<sup>n</sup> This may also be the case with the proposed definition of an “interest” under the draft “Mandatory Code of Conduct for Council Members, Committee Members and Candidates”.

71. The Code prohibit council members, committee members and employees who declare a conflict of interest from discharging any of their duties or functions in relation to that conflict, unless:
- i) in the case of a council member at a council meeting or a committee member at a committee meeting,
    - at the meeting the council member or committee member discloses the conflict orally and in sufficient detail; and
    - the council or committee, having regard to the disclosure, the nature and extent of the conflict and the advice of the CEO, resolves by absolute majority vote:
      - that it is appropriate to permit that council member or committee member to participate in discussions or decision-making processes at the meeting in relation to that matter; and
      - the extent to which it is appropriate for that council member or committee member to participate in discussions or decision-making processes at the meeting in relation to that matter; and
    - the council member or committee member only participates in discussions or decision-making processes at the meeting to the extent of the council’s or the committee’s resolution;
  - ii) in the case of a council member who declares a conflict of interest in relation to any other aspect of their role, for example, in relation to their attendance at a council briefing session:
    - the CEO, having regard to the council member’s disclosure and the nature and extent of the conflict, decides:
      - that it is appropriate to permit that council member to discharge his or her duties and functions in the matter; and
      - the extent to which it is appropriate for that council member to discharge his or her duties and functions in the matter; and
    - the council member or committee member only discharge his or her duties and functions in the matter to the extent decided by the CEO;
  - iii) in the case of an employee:
    - the employee’s line manager<sup>o</sup>, having regard to the employee’s disclosure and the nature and extent of the conflict, decides:
      - that it is appropriate to permit that employee to discharge his or her duties and functions in the matter; and
      - the extent to which it is appropriate for that employee to discharge his or her duties and functions in the matter; and
    - the employee only discharges his or her duties and functions in the matter to the extent decided by his or her line manager;

<sup>o</sup> In the case of the CEO, this would be a designated “senior employee”.

- iv) in the case of an employee at a council or committee meeting:
- the CEO, having regard to the employee's disclosure and the nature and extent of the conflict, decides:
    - that it is appropriate to permit that employee to discharge his or her duties and functions in the matter; and
    - the extent to which it is appropriate for that employee to discharge his or her duties and functions in the matter; and
  - the employee only discharges his or her duties and functions in the matter to the extent decided by the CEO.

*Conflicts of interest should be made, recorded and managed appropriately and transparently.*

72. Where the council, a committee, the CEO or an employee makes a decision in relation to a disclosure of a conflict of interest, including a decision that it is not appropriate for a council member, committee member or employee to participate in discussions or decision-making processes or to exercise duties and functions, detailed reasons for that decision or determination must be given.

*Conflicts of interest should be managed and documented appropriately and transparently when connected to decision-making.*

73. All disclosures of conflicts of interest and any decision or determination in Recommendation 71 on that conflict, including the reasons for that decision or determination, be recorded in full in an Expenditure, Interests and Gifts Register.

*To reflect the position in section 5.88 of the Local Government Act 1995.*

74. Where a disclosure of a conflict of interest is made in relation to a council or committee meeting, the disclosure and any decision or determination in Recommendation 71 on that conflict, including the reasons for that decision or determination, be recorded in full in the minutes of the meeting.

*To increase transparency and accountability.*

75. The Department is to provide examples of, and the Code is to provide guidance on, what constitutes a conflict of interest, what information and level of detail a disclosure of a conflict of interest should contain and how conflicts of interest are to be managed.

*To assist council members, committee members and employees in meeting their obligations under the Code.*

76. The Code incorporate section 5.69 of the *Local Government Act 1995*.

*To enable council meetings to consider and vote on an item where a majority of council members have declared conflicts of interest, where the Minister of Local Government is of the opinion that it is in the public interest to do so.*

77. Council members, committee members and employees should consult the Expenditure, Interests and Gifts Register as soon as practicable after receipt of an agenda for a council or committee meeting and notify the CEO of any interests which may be required to be declared in relation to any items before the meeting.

*To assist council members to meet their responsibility to disclose conflicts of interest.*

#### Primary and annual returns

78. The Code incorporate the current obligations in Part 5, Division 6, Subdivision 2 of the *Local Government Act 1995* and require council members, the CEO and designated employees to disclose their financial interests in a primary and annual returns.

*The primary and annual return documents are complex; requiring continuous disclosure in each return improves transparency and accountability by reducing or eliminating the need to reconcile different returns across different periods of time.*

79. The Code require council members, the CEO and senior employees to disclose all financial interests in the primary and then each subsequent annual return and not permit information to be excluded because it was recorded in a previous return.

*The primary and annual return documents are complex; requiring continuous disclosure in each return improves transparency and accountability by reducing or eliminating the need to reconcile returns across periods of time.*

*Section 5.78(2)(a) of the Local Government Act 1995 does not require a council member, the CEO or senior employees to disclose any information that has been disclosed in a previous return. That reduces transparency and accountability.*

80. The Code require the use of the current forms for primary and annual returns (Form 2 and Form 3, Schedule 1, *Local Government (Administration) Regulations 1996*) with the following amendments:

- i) the forms specifically identify the common types of income required to be disclosed, namely, “income from an occupation”, “income from a trust”, “rent”, “share dividends and other income from investments”, “bank interest”, “commissions” and “sources of other income”, with a separate disclosure space for each income type; and
- ii) the Code and the forms require the person completing the form to provide the name and address of the person or body corporate providing each income source and a description of the relationship between the person completing the form and the person or body corporate providing the income.

*The primary and annual return documents are complex. The amendments will promote and improve clarity and accountability.*

### 3.4 Recommendations

81. The financial interests disclosed in primary and annual returns be disclosed in an Expenditure, Interests and Gifts Register.

*To increase transparency and accountability. This is consistent with section 5.88 of the Local Government Act 1995.*

82. If Recommendations 78-80 are not adopted, the *Local Government Act 1995* and associated regulations be amended to give effect to the specific changes proposed in those recommendations.

*The primary and annual return documents are complex. The amendments will promote and improve clarity and accountability.*

83. The Department give consideration to further amending the regulated forms for primary and annual returns to require council members and “designated employees” to disclose the names of close family members and entities that they or their close family member control or jointly control, in compliance with Australian Accounting Standard *AASB 124 Related Party Disclosures*.

*To improve transparency and administrative efficiency.*

84. The Department provide guidance to local governments in relation to the disclosure requirements of financial interests in primary and annual returns, consistently with Recommendation 79.

*To assist the person making the return to do so accurately.*

85. The CEO of a local government or his or her nominee is to be involved, in a substantive way, and responsible for maintaining an Expenditure, Interests and Gifts Register (Recommendation 97), maintaining the local government’s conflicts of interest framework (including policies, procedures and training) and identifying potential risks to the integrity of decision-making within the local government.

*Without governance expertise and accountability to guide the process, conflicts of interest may not be properly addressed and managed.*

#### City of Perth

86. If Recommendation 84 is not adopted, the City should provide guidance to all Relevant Persons in relation to the disclosure requirements of Relevant Persons’ income sources in primary and annual returns, consistent with Recommendation 79.

*To assist the person making the return to do so accurately.*

## Use of Councillor title

City of Perth

87. The Department develop guidelines for local governments about the circumstances in which a council member may use his or her councillor title.

*Council members are not use their councillor title when it is not appropriate to do so, whether deliberately or inadvertently.*

## Gifts

### Local government

88. The Code require:
- council members, committee members and employees; and
  - any person or entity who:
    - requires, or who it is reasonable to believe may require, a decision from the local government; and or
    - has, or who it is reasonable to believe may have, directly or indirectly, commercial dealings or a commercial relationship with the local government,

to disclose in full any gift that a council member, committee member or employee receives from that person.

*The highest standards of integrity are expected in local government decision-making.*

89. Alternatively, if Recommendation 88 is not adopted:
- i) the State Government consider lowering the prescribed minimum value for gifts that must be declared pursuant to regulation 20A(1) of the *Local Government (Administration) Regulations 1996* from \$300.00 to \$0.00;
  - ii) local governments adopt policies requiring any person declaring a gift to take reasonable steps to ascertain the actual value of the gift and to attach evidence of the value of the gift to the declaration; and
  - iii) the declaration form be prescribed by the *Local Government (Administration) Regulations 1996*; and
  - iv) all gift declarations be recorded on the Expenditure, Interests and Gifts Register.

*To provide for transparency and accountability for gifts received.*

90. Specific information from the Expenditure, Interests and Gifts Register be published on the local government's website, comprising:

- conflicts of interest, or impartiality, financial and proximity interests, if Recommendation 69 is not adopted, declared by council members, committee members, the CEO and senior employees;
- interests disclosed in primary and annual returns by council members, the CEO and senior employees; and
- any failures by council members, committee members, the CEO and senior employees to declare gifts or interests, together with the explanation given by that person for the failure.

*To promote transparency and accountability.*

91. The Expenditure, Interests and Gifts Register be independently audited by an independent auditor once each financial year, with the results of the audit published on the local government's website as soon as they become available.

*To promote transparency and accountability.*

92. That section 5.62(1B)(a) of the *Local Government Act 1995* be repealed.

*It is not appropriate for council members, the CEO and employees to accept gifts in the form of tickets but be exempt from disclosing that gift as an interest or be treated as not having a conflict of interest when the organisation that is the source of those tickets has an interest in matters before council.*

## Entitlements

### Local government

93. Section 5.98 of the *Local Government Act 1995* and Part 8 of the *Local Government (Administration) Regulations 1996* be amended to enable the Salaries and Allowances Tribunal to set categories of, and caps on, permissible council member allowances or entitlements.

*To improve clarity, and provide external setting, of council member allowances and entitlements.*

### City of Perth

94. The amendments to City of Perth Council Policy – “CP10.6: Elected Members – Reimbursement of Expenses” on 25 September 2018, which restricts the amount and categories of permissible reimbursement for expenses incurred by council members, be retained.

*To maintain limits on the types of expenditure for which reimbursement can be sought.*

95. The City's CEO only authorise council members to be reimbursed, at the City's cost, where the sole purpose of the expenditure is for the proper discharge of the council member's role as a representative of the City.

*A claim for reimbursement by a council member is to have a proper connection to the discharge of that council member's functions and duties.*

96. City of Perth Council Policy – "CP10.6: Elected Members – Reimbursement of Expenses" be further reviewed and amended by the end of September 2020 to:

- clearly articulate the process and financial controls in place for reimbursement of expenses, including actions required by council members;
- articulate that council members cannot commit City funds or incur expenses on behalf of the City;
- provide a requirement for evidence of the expenditure, namely, a receipt paid by the council member;
- provide that council members must complete the required declaration regarding the expenditure and that where the declaration is not made and complete, the reimbursement will not occur;
- articulate the CEO and/or delegated employee responsibilities for the acquittal of claims for expenses by council members;
- articulate that the allowance of one council member cannot be used by another if that council member's allowance has been exceeded; and
- state that making a false or fraudulent claim may be a criminal offence and reported to the Western Australian Police Force and/or the Corruption and Crime Commission.

*A clearly articulated policy ensures all persons involved in claiming and approving claims for reimbursement understand the process, roles and responsibilities and reduces the likelihood of potential fraud or misuse.*

97. All expenditure claims, including the council member's name, claim category, parties or connection to the City<sup>p</sup>, amount and date approved will be recorded in a register maintained by the City's CEO or his or her delegate immediately after the claim has been incurred by an authorised officer and be contained in the Expenditure, Interests and Gifts Register.

*For transparency and accountability, and to aid audit, investigation and oversight.*

p Refer to Recommendations 101-103 for additional information required for the dining room.

### 3.4 Recommendations

98. The City engage an independent qualified auditor to conduct an audit of the Expenditure, Interests and Gifts Register, supporting evidence and governance processes for incurring the expenditure, as part of the annual internal audit programme.<sup>q</sup>

*Misconduct risks associated with these claims requires independent oversight to establish appropriate behaviours and processes at the City.*

99. The results of the audit are to be reported to the Audit Committee and the Council.

*The Audit Committee has oversight for the audit activities of the City.*

100. The City is to publish in its Annual Report each year, the total reimbursement provided to each council member under “CP10.6: Elected Members – Reimbursement of Expenses”.

*Confidence in the City to act in accordance with its legislative responsibilities is strengthened with transparency and accountability to the Minister for Local Government.*

## The Council dining room

### City of Perth

101. The City’s dining and function facilities be used only by the City to discharge its unique civic responsibilities.<sup>r</sup>

*The City’s civic and function facilities (including the dining room) should be for the benefit of the City and the community it serves, with proper regard to the status of the City as the capital of Western Australia.*

102. The use of these civic and function facilities must be authorised by the City’s CEO, who must record in writing that he or she is satisfied that its use meets the unique responsibilities that the City has, as the State’s capital city local government, and that the costs of the use will be incurred in the City’s best interests.

*To provide a degree of oversight to the use of the dining room.*

103. A quarterly report to the Council be submitted containing the costs associated with the dining room facility including events and meetings held, those parties that attended, the council members who attended, the number that attended each event or dining service and the cost per person to host, as public information.

*To clarify expectations around the transparency and accountability.*

q If this recommendation is not adopted, this recommendation shall apply to the City’s equivalent registers of expenditure, interests and gifts.  
r *City of Perth Act 2016.*

## Appointing, managing and terminating employment of a Chief Executive Officer

### Model contract and minimum professional competencies

#### Local government

104. The *Local Government (Administration) Regulations 1996* be amended to provide for the contract of employment for a CEO to be based on a model contract<sup>s</sup> to be developed by the Department.

*To standardise minimum specifications for CEO employment contracts across the sector, enhancing the ability of Councils to successfully fulfil their obligations as the employer of the CEO.*

105. The Department establish standardised professional leadership competencies for local government CEOs in each classification band.

*Professional leadership competencies outline role expectations, standards and key accountabilities deemed critical to overall individual, organisation and whole of sector performance.*

106. The Department adopt guidelines<sup>t</sup> for the use of those standardised professional leadership competencies of a CEO (Recommendation 105) in respect of:

- the CEO's initial recruitment; and
- his or her ongoing performance and the review of that performance (including termination of employment).

*To set a baseline for CEO professional and performance competencies across the sector and to assist Councils in recruiting, selecting and managing performance, having regard to the different sizes, needs and capabilities of local governments.*

107. The CEO model standards<sup>u</sup> prescribed pursuant to section 5.39A of the *Local Government Act 1995* require local governments to develop and use criteria for the selection and employment of a CEO and the review of a CEO's performance that, at a minimum, include the professional leadership competencies articulated by the Department pursuant to Recommendation 105.

*To provide a mechanism for councils and CEOs to have a common understanding of expectations and performance standards.*

<sup>s</sup> There is no mandatory contract of employment for CEOs in Western Australian local governments. The Salaries and Allowances Tribunal sets salary ranges, allowances and categories of payments for CEO contracts. The Western Australian Local Government Association (WALGA) and Local Government Professionals have developed an agreed joint model contract for local government CEOs.

<sup>t</sup> This may be included in the *Standards and Guidelines for Local Government CEO Recruitment and Selection, Performance Review and Termination*, which is currently under development by the Department.

<sup>u</sup> Local governments will be required, under the new provisions, to adopt model standards for the recruitment, performance management and early termination of employment of the CEO: Document, Parliament of Western Australia, Local Government Amendment Bill 2019, Explanatory Memorandum, no date, p 3.

### 3.4 Recommendations

108. Section 5.39B<sup>v</sup> of the *Local Government Act 1995* be amended to require local governments to comply with the requirements of the CEO model standards.

*Good governance must occur for the appointment, performance management and termination of employment of CEOs.*

109. The up-to-date version of the professional leadership competencies and the most recent CEO selection criteria used by the local government, as adopted by the local government, be publicly available on the local government's website.

*The role and expectations of the CEO of a local government must be available for public scrutiny and to inform the community.*

110. The Department consider requiring local governments to publish in their annual reports the details related to the employment of a CEO, including the total value of the annual remuneration, the term of the contract and the documented reasons for the decision on the salary to be paid.

*Employment of a CEO is a significant decision both financially and strategically and transparency on the decision ensures accountability to the community.*

111. The Department establish a panel of professionals with demonstrated expertise in the recruitment and selection and management of performance of executive employees, to assist local governments to recruit, establish key performance indicators for and manage the performance of the CEO.

*For compliance, performance monitoring and accountability across the sector.*

#### City of Perth

112. The City develop within six months of this Report, a Council Policy articulating the Council's principles, procedures and decision-making processes for the recruitment, selection, performance management and termination of employment of the City's CEO.

*To provide for better practice recruitment, selection and performance management and termination of employment of the City's CEO, while transparently articulating the process and principles of the decision-making adopted.*

113. In the absence of the establishment of sector-wide leadership competencies for CEOs, the City of Perth Council develop, in consultation with independent expert advice, professional leadership competencies for the City's CEO in line with the City's classification as a "Band 1" local government.

*To provide for better practice performance management of a CEO, while transparently articulating the standards and competencies expected.*

<sup>v</sup> *Local Government Legislation Amendment Act 2019*, which provision at the date of providing the report had yet to come into effect.

114. In the absence of the adoption of Recommendation 121 by the Department, the City of Perth Council develop and use a standard format for the CEO Performance and Development Agreement and Assessment.

*To provide a consistent format, structure and assessment.*

115. The City of Perth Council engage a professional, with expertise in performance management to assist it, as a newly formed council, to establish the performance criteria (Recommendation 131) for the City's CEO and to provide the required knowledge and skills to council members on undertaking better practice performance management and assessment.

*The City's newly elected Council should have access to expert professional assistance to develop the agreement and assess the performance of the CEO.*

## Recruitment

### Local government

116. The CEO model standards require the recruitment and selection process for a local government CEO be undertaken by a panel (CEO Recruitment Panel), which shall make a recommendation to the council of a local government on the candidate to be appointed as CEO. The CEO Recruitment Panel is to comprise:
- a member of the council, appointed to the panel by the council;
  - an independent third party, with demonstrated expertise in local government; and
  - a member of the panel described in Recommendation 111, appointed by the Department, with experience in the recruitment and selection and managing the performance of executive employees, who shall provide guidance and advice to the CEO Recruitment Panel.

*The selection and recruitment process for local government CEOs should adhere to good governance principles through transparent, consistent and independent people management and recruitment practices, with the mandated involvement of a Department representative as an experienced third party.*

117. The CEO model standards prescribe that the council of a local government:
- must not employ<sup>w</sup> a CEO in the absence of a recommendation from a CEO Recruitment Panel;
  - must allow the members of the CEO Recruitment Panel to be present during discussions of the Panel's recommendation;
  - may accept the CEO Recruitment Panel's recommendation;
  - may reject the CEO Recruitment Panel's recommendation and appoint another person as CEO, but must provide detailed reasons for doing so; and
  - may require further information before deciding whether to accept or reject the CEO Recruitment Panel's recommendation.

*The selection and recruitment process for local government CEOs is to be fair and transparent.*

118. The appointee of the Department to a CEO Recruitment Panel prepare the report to council on the recruitment and selection process for a local government CEO, including the decision of council to accept or reject the Panel's recommendation and the reasons given by the Council for that decision.

*Independent oversight of the appointment of local government CEOs provides for fairness, greater accountability and better transparency.*

119. The appointee of the Department to raise any probity concerns, with the Department, including potential breaches of the legislation.

*Independent oversight of the appointment of local government CEOs provides for fairness, greater accountability and better transparency.*

120. The Department monitor trends in CEO recruitments and selections and provide advice to local governments on areas for improvement.

*Oversight of the local government sector performance supports better practices into the future.*

<sup>w</sup> Pursuant to section 5.36 of the *Local Government Act 1995*.

## Reviews of performance

### Local government

121. The Department consider developing a sector-wide standard format for the CEO Performance and Development Agreements and Assessments.

*To provide for a consistent format, structure and assessment for a CEO's performance agreement and assessment.*

122. The CEO model standards require the review of the performance of a local government CEO be facilitated by a panel (CEO Performance Advisory Panel), which shall make a recommendation and provide a report to the council of a local government on the outcome of that review. The CEO Performance Advisory Panel is to comprise:

- a member of the council, appointed to the committee by the council;
- an independent third party with demonstrated expertise in local government, and/or the recruitment and selection and managing the performance of executive staff, appointed by the council; and
- one of whom is a member of the panel described in Recommendation 111 nominated by the Department, who shall be experienced in the recruitment and selection and managing the performance of executive employees and provide guidance and advice to the CEO Performance Advisory Panel.

*Performance reviews for local government CEOs should adhere to good governance principles through transparent, consistent and independent people management and recruitment practices, with the mandated involvement of a Department representative as an experienced third party.*

123. The CEO model standards prescribe the council of a local government:
- review a CEO's performance guided by a recommendation from a CEO Performance Advisory Panel;
  - must allow the members of the CEO Performance Advisory Panel to be present during council's discussions of the Panel's recommendation;
  - may accept the CEO Performance Advisory Panel's recommendation with or without modifications, but if the Panel's recommendation is modified must provide detailed reasons for doing so;
  - may reject the CEO Performance Advisory Panel's recommendation and adopt an alternative outcome for the review, but must provide detailed reasons for doing so; and
  - may require further information before deciding whether to accept or reject the CEO Performance Advisory Panel's recommendations.

*The performance review process for local government CEOs is to be transparent.*

### 3.4 Recommendations

124. The appointee of the Department to a CEO Performance Advisory Panel prepare the report to council on the local government CEO's performance review assessment and outcome, including the decisions of council, the reasons for them and the process undertaken.

*Independent oversight of the appointment of local government CEOs provides for fairness, greater accountability and better transparency.*

125. The council is to afford the CEO procedural fairness by providing:
- the CEO Performance Advisory Panel's report to the CEO prior to the council meeting at which council will decide the outcome of the review; and
  - sufficient time for the CEO to respond to any adverse statements in the report.

*To afford the CEO procedural fairness.*

126. The report to council is to include the report of the CEO Performance Advisory Panel and any response provided by the CEO, as described in Recommendation 125.

*To afford the CEO procedural fairness and ensure that all council members receive all the relevant information to make their decision.*

127. Immediately following the council meeting where the report described in Recommendation 126 is considered, the CEO be provided with written advice from the council on the decision and any reasons for that decision and any areas for improvement.

*To afford the CEO procedural fairness.*

128. All records related to Recommendations 124-127 are to be recorded in accordance with the requirements of the *State Records Act 2000*.

*To provide for review, transparency and accountability.*

129. The appointee of the Department to raise any probity concerns with the Department, including potential breaches of the legislation.

*Independent oversight of performance management of local government CEOs is necessary for good governance and good government.*

130. The Department monitor trends in CEO recruitments and provide advice to local governments on areas for improvement.

*Oversight of the local government sector performance supports better practices into the future.*

#### City of Perth

131. The City of Perth Council develop CEO performance criteria to be included in the City's CEO Performance and Development Agreement and Assessment, which include but are not limited to:

- at a minimum, the professional leadership competencies described in Recommendation 113;
- specific and measurable key performance indicators across areas of responsibility, including the CEO's legal responsibilities, service delivery outcomes and deliverables, financial management, people management, culture, and implementation of council plans and decisions;
- behavioural ('soft' skills) and developmental indicators; and
- developmental requirements informed by training and coaching programmes (including the CEO Induction Programme at Recommendation 6 and the CEO Professional Leadership Coaching Programme at Recommendation 42).

*The performance review criteria should be fair, and the CEO should be aware of the performance criteria against which he or she will be assessed.*

132. The Council Policy described in Recommendation 131 provide that performance review criteria be set in a timely manner, to allow the CEO the 12-month period to meet the performance objectives.

*The CEO have an adequate opportunity to meet the performance expectations.*

## Termination of employment

### Local government

133. The CEO model standards require that before a local government terminates a CEO's employment, the Council of the local government must record in writing, and provide to the CEO, the reasons for the termination, including:
- the date on which the decision was made;
  - if the termination was by consent, the reasons given by the Council and the CEO for consenting to the termination;
  - if the termination was for serious misconduct or other conduct justifying summary dismissal, the precise conduct said to give rise to the termination; and
  - if the termination was for poor performance or non-performance of the CEO's duties or functions:
    - the precise way in which the CEO's performance was poor, expressed by reference to the criteria for performance described in Recommendation 107;
    - the impact that performance had on the good government of the local government;
    - the steps which were taken by the council to remedy that poor performance; and
    - any comment or response provided by the CEO in respect of his or her performance, which comment or response the council must seek.

*To provide a procedurally fair process.*

134. The written statement of reasons described in Recommendation 133:
- where it concerns termination of the CEO's employment other than with the CEO's consent, be prepared with the professional assistance of an independent third-party described in Recommendation 111; and
  - be kept as a record of the local government in accordance with the *State Records Act 2000*.

*While the cessation of the employment of the CEO is properly a matter for council, evidence received by the Inquiry indicates that the "at the council's pleasure" character of that employment, and the potential for it to be politicised, contributed to a range of dysfunctional outcomes within the City, suggesting a degree of independent interrogation of termination decisions is warranted for the security of the role and the stability of local government.*

135. The *Local Government (Administration) Regulations 1996* be amended to provide that no decision to terminate the employment of a CEO may be made within three months after a local government election, except in the case of serious misconduct or mutual agreement.

*To limit political interference in the appointment of a CEO, and to maintain organisational continuity across electoral cycles.*

136. The State Government consider amending section 7A of the *Salaries and Allowances Act 1975* to replace the words “paid or provided” with the words “offered, paid or provided”.

*To improve probity and compliance with legislative requirements.*

137. The State Government consider amending regulation 18F of the *Local Government (Administration) Regulations 1996* to replace the word “paid” with the words “paid or offered”.

*To improve probity and compliance with legislative requirements.*

#### City of Perth

138. If Recommendation 133 is not adopted, and if the City terminates a CEO’s employment, it must record in writing, and provide to the CEO, the reasons for the termination, including:

- the date on which the decision was made;
- if the termination was by consent, the reasons given by the Council and the CEO for consenting to the termination;
- if the termination was for serious misconduct or other conduct justifying summary dismissal, the precise conduct said to give rise to the termination; and
- if the termination was for poor performance or non-performance of the CEO’s duties or functions:
  - the precise way in which the CEO’s performance was poor, expressed by reference to the criteria for performance described in Recommendation 134;
  - the impact that performance had on the good government of the local government;
  - the steps which were taken by the council to remedy that poor performance; and
  - any comment or response provided by the CEO in respect of his or her performance, which comment or response the council must seek.

*To provide a procedurally fair process.*

139. The written statement of reasons described in Recommendation 138:
- where they concern termination of the CEO's employment other than with the CEO's consent, be prepared with the professional assistance of an independent third-party described in Recommendation 111; and
  - be kept as a record of the local government in accordance with the *State Records Act 2000*.

*While the cessation of the employment of the CEO is properly a matter for council, evidence received by the Inquiry indicates that the "at the council's pleasure" character of that employment, and the potential for it to be politicised, contributed to a range of dysfunctional outcomes within the City, suggesting a degree of independent interrogation of termination decisions is warranted for the security of the role and the stability of local government.*

## Local government elections

### Local government

140. Section 4.31(1G) of the *Local Government Act 1995* be amended so that a body corporate owning or occupying rateable property can only nominate officers of the body corporate to vote on its behalf.

*The body corporate is to exercise a vote, consistent with the position in local government elections in South Australia, Victoria and the City of Sydney.*

141. The *Local Government (Elections) Regulations 1997* be amended so that ballot papers can only be sent to the elector's address as shown on the State electoral roll and or the Commonwealth electoral roll.

*The elector should receive the ballot paper directly and exercise the voting right.*

142. Section 4.32(3) of the *Local Government Act 1995* and the *Local Government (Elections) Regulations 1997* be amended to prescribe that an occupier must either:

- i) pay a minimum amount of rent; or
- ii) have the right to occupy a minimum amount of floor space,

in relation to a property, in order to be eligible to be enrolled on the owners and occupiers roll by reason of the occupation of that property.

*The right of occupation entitling a person to enrol as a voter is to be genuine.*

143. Section 4.31(1C) of the *Local Government Act 1995* be amended to add, as an additional criterion of eligibility to enrol to vote as a non-resident occupier, that the person uses and intends to continue to use the relevant rateable property for a genuine purpose.

*The right of occupation entitling a person to enrol as a voter is to be genuine and to ensure that electors and candidates do not enter into agreements to occupy premises for the sole purpose of being eligible to vote or nominate as a candidate in a local government election.*

144. If Recommendations 142-143 are not adopted, the State Government consider whether to amend the *Local Government Act 1995*, so non-resident occupiers of property are not eligible to vote or nominate as candidates in elections.

*The integrity of City of Perth elections is to be preserved.*

145. Before each biennial local government election cycle, the Department audit the eligibility of candidates and electors across local governments.

*To strengthen the integrity and oversight of local government elections.*

146. The Western Australian Electoral Commission (WAEC) consider and review the adequacy of its practices and procedures regarding to the handling and investigation of electoral complaints.

*Effective mechanisms to deal with complaints during local government elections need to be in place, given the issues identified by the Inquiry.*

147. Section 4.98 of the *Local Government Act 1995* be repealed and section 94 of the *Criminal Code* be amended so that Chapter XIV of the *Criminal Code* applies to local government elections.

*Electoral offences are generally able to be prosecuted without a limitation period. This provides for the integrity of the electoral process. Misconduct in relation to local government elections should be capable of being dealt with under the electoral offence provisions in Chapter XIV of the Criminal Code. Proceedings for breaches of electoral offence provisions under the Local Government Act 1995 must currently be brought within two years, which may prevent instances of electoral misconduct, when discovered, from being prosecuted.*

City of Perth

148. The City of Perth engaged an independent qualified auditor to conduct an audit of the owners and occupiers roll as a matter of urgency prior to the October 2020 election to mitigate the risks of misconduct in the election process.

*The integrity of the City owners and occupiers roll, given the matters discovered by this Inquiry, is to be preserved.*

149. The results of the audit described in Recommendation 148 be reported to the Audit Committee and the Council (City of Perth Commissioners).

*The Audit Committee has oversight for the audit activities of the City.*

150. The City and the WAEC establish a clear division of responsibilities in the conduct of Council elections, including the handling of complaints.

*Clarity on roles and responsibilities will ensure integrity and accountability in the local government election process.*

151. The City's returning officer scrutinise each candidate for the City of Perth local government elections to confirm that he or she is eligible to enrol as an elector for the City and where a candidate who is enrolled on the owners and occupiers roll does not appear to be entitled to be so enrolled, to refer the matter to the City's CEO.

*Candidates who are successfully elected are to be eligible to hold office.*

152. Applications for enrolment to vote by occupiers of rateable property within the City:

- be accompanied by adequate proof of that occupation, for example, copies of the lease of the property and proof of payment of rent; and
- be carefully scrutinised by properly trained scrutineers at the City,

to ensure the right of occupation is genuine and applicants meet the criteria in the *Local Government Act 1995* for enrolment.

*To prevent ineligible electors from voting in elections.*

153. The City engage the WAEC to provide adequate training to persons assisting with the City's 2020 local government elections commensurate with their roles and responsibilities (including returning officer and scrutineers).

*Persons are to be appropriately skilled and qualified to perform the roles and responsibilities assigned to them.*

154. The City conduct an audit of its systems and processes regarding the owners and occupiers roll, including processes related to applying to be on the roll, acceptance of nominations, inclusion on the roll and release of information on that roll to parties including council members.

*The integrity of the system is to be strengthened by identifying control weakness and areas for improvement.*

155. The results of the audit are to be reported to the Audit Committee and the Council (City of Perth Commissioners).

*The Audit Committee has oversight for the audit activities of the City.*

## People management

### General

#### City of Perth

156. The City's CEO is to review all human resources policies and procedures within 12 months of this Report and consider the development of policy for areas of deficiency.

*Human resources policies are to be current and based on contemporary practices for public officers.*

157. The City conduct an audit of the human resources function's record-keeping compliance, specifically related to recruitment, termination of employment, performance management and grievance and complaint handling.

*The City is to comply with the State Records Act 2000 and the City's Record-Keeping Plan.*

158. The City take steps to accurately measure and report to Council on the growth or contraction in labour numbers and costs.

*To facilitate workforce planning and associated service regimes, including, for example, setting the budget, resource allocation and priority setting.*

159. The City take steps to develop key people management metrics and associated performance targets during the development of the City's Corporate Business Plan and Workforce Plan, based on human resource best practice.

*Measurement of people management activities provides quantifiable evidence on developments in the workforce, including impacts from initiatives such as organisational change, and can also provide an indication of the health of the organisation.*

160. A report to Council be provided by the CEO on the City's performance against the reporting targets for key people management metrics on a quarterly basis, including any actions taken to correct performance which is not on target.

*Targets and benchmarks assist with the monitoring of performance.*

161. The City's Annual Report contain performance assessment in the key people management metrics.

*People are the City's most significant asset and this provides transparency and accountability for workforce initiatives.*

## Recruitment

### Local government

162. Section 5.37(2) of the *Local Government Act 1995* be repealed.

*To remove the capacity for a council to be involved in the employment of senior staff, maintaining the delineation in roles between the Council and the CEO and Administration.*

163. The State Records Office give consideration to whether the requirement to retain recruitment records of "other staff" for 12 months is sufficient or whether recruitment records should be retained for a greater time of period to enable better scrutiny of the process.

*The current 12-month timeframe in the disposal schedule<sup>x</sup>, had the City complied with it, would have meant that records would not have been available for the Inquiry to examine as part of its Terms of Reference.*

### City of Perth

164. The City to examine all recruitment records held in the City's human resource systems, including the 'BigRedSky' platform and ensure they are recorded, retained and disposed of, in accordance with the *State Records Act 2000*, the City's Record-Keeping Plan and the State Records Office's "*General Disposal Authority for Local Government Records*".

*The City is to comply with the State Records Act 2000.*

<sup>x</sup> According to the State Records Office "*DA 2015-001 – General Disposal Authority for Local Government Records*", 10 March 2016, adopted by the City of Perth, local governments are only required to "*retain 1 year after action completed, then Destroy*" records related to "*Other staff – recruitment records, including advertising, interview records, applications (unsuccessful), selection criteria and shortlists*".

165. All recruitment decisions, relating to permanent appointments and/or contracts greater than 12 months, at the City should be made by a panel of at least two persons, comprising the direct line manager for the advertised position and:
- for senior employees and management positions, a person independent of the local government with the necessary skills and knowledge to assess the suitability of the candidate for the advertised role; and
  - for all other positions, a person who is independent of the business area for the position being recruited.

*To improve probity and ensure objectivity in the recruitment process.*

166. A City employee is not to participate on a recruitment panel until he or she have undertaken suitable selection and recruitment training provided by an independent industry accredited provider to industry best practice standards.

*Good people management practices are necessary to ensure a recruitment process which meets the objectives of the Local Government Act 1995.*

167. The training to be provided in a direct format, with assessments conducted at the end of the training to ensure comprehension.

*Outcomes are best achieved with the quality of teaching.*

168. Refresher training is to occur at least every three years.

*Outcomes are best achieved with the quality of teaching.*

169. The role, duties, functions, discretions and other terms of employment be clearly and consistently defined for each City employee.

*For clarity of roles, to the benefit of the prospective employee and the City.*

170. The City selection process for employment be based on a measurable and objective assessment of suitability, competence and ability to satisfy the requirements of the position description, and on no other basis.

*To improve probity and ensure merits-based recruitment.*

### 3.4 Recommendations

171. Each selection and recruitment process be recorded in writing, with sufficient detail, to ensure the recruitment decision can be audited if required and retained as a record of the City in accordance with the *State Records Act 2000*.

*To aid probity, transparency, accountability and audit.*

172. The City establish in policy that late applications will not be considered.

*In the interests of fairness to all applicants and to guard against interference in the process.*

173. The City consider establishing a complaints and grievances procedure for recruitment and selection processes, with a qualified external professional engaged where appropriate.

*To provide a fair process for all applicants and detect potential breaches of process.*

174. The City review its human resources policy, procedure and forms to prescribe a process for assessing and managing any declared conflicts of interest and confidentiality and require employees to:

- complete a declaration of conflicts of interest form; and
- acknowledge, in a separate document, an understanding of the confidentiality provisions and confirm agreement to them.

*To provide a fair process and aid probity, transparency, accountability and audit.*

## Performance management

### City of Perth

175. Every employee has specified key performance indicators, based on the position description, established within one month of commencing at the City.

*Clear and effective performance monitoring will benefit the employee and the City.*

176. An employee's probationary performance be assessed against the requirements of his or her key performance indicators, prior to the expiry of the probationary period.

*A fair assessment process will provide feedback to the employee and the City.*

177. The performance assessment of the employee be recorded in writing and kept by the City as a written record of that employee's performance assessment in accordance with the *State Records Act 2000*.

*To aid probity, transparency, accountability and audit.*

178. If any employee, whether on probation or not, is assessed as not satisfying the requirements of his or her position description and/or key performance indicators, the employee be:
- advised of the nature and extent of the deficiency;
  - invited to respond to the deficiency within a reasonable time; and
  - after consideration of the employee's response, advised of the manner in which the employee is required to improve on the deficiency, if that is the case, in order to satisfy his or her key performance indicators.

*To promote transparency and accountability in human resourcing decisions.*

179. The nature of the deficiency described in Recommendation 178 be recorded in writing, provided to the employee, and kept as a record of the City in accordance with the *State Records Act 2000*.

*To aid probity, transparency, accountability and audit.*

180. The City to examine all current and historical complaint and grievance records held in unregistered<sup>y</sup> hard copy files or the City's local drives to ensure that they are recorded, retained and disposed of, in accordance with the *State Records Act 2000*, the City's Record-Keeping Plan and the State Records Office's "*General Disposal Authority for Local Government Records*".

*The City is to comply with the State Records Act 2000.*

181. Auditing of the City's compliance with Council Policy 12.4 "*Payments under section 5.50 of the Local Government Act 1995*" be undertaken as part of the City's annual internal audit programme to ensure compliance, proper documentation and record-keeping.

*Accountability and oversight for financial decisions of the City is necessary.*

## Termination of employment

### City of Perth

182. The employment of an employee shall only be terminated in accordance with that employee's contract or prescribed conditions of employment.

*For clarity and accountability, to benefit the City and the employee.*

183. Where an employee's employment is terminated, he or she will be afforded procedural fairness, where required by law, and the reasons for the termination of employment will be recorded in writing and kept by the City in accordance with the *State Records Act 2000*.

*For fairness, accountability and compliance with the State Records Act 2000.*

<sup>y</sup> A registered file is one which has an allocated HPE content manager file reference.

184. The City develop a framework for the termination of employment, including the terms of separation, and resolving actual or potential legal claims from current or former employees arising out of their employment, including:

- the circumstances in which it is appropriate for the City to enter into Deeds of Settlement; and
- the appropriateness of the terms of such Deeds, such as;
  - whether it is appropriate for the City to make payments in excess of an employee’s statutory and contractual entitlements and the amount of any such payments; and
  - whether it is appropriate for the City to agree to any obligations of confidentiality or non-disparagement.

*The City is to strike an appropriate balance between managing its exposure to risk from legal claims and its accountability to the community, including its use of community funds.*

185. The City engage an independent, external and qualified auditor to conduct an audit of the recruitment, performance management and termination of employment processes, as part of the annual internal audit programme.

*Misconduct risks associated with these claims requires independent oversight to establish appropriate behaviours and processes at the City.*

186. The results of the audit are to be reported to the Audit Committee and the Council.

*The Audit Committee has oversight for the audit activities of the City.*

187. The City examine all current and historical termination of employment records held in unregistered hard copy files or the City’s local drives to ensure that they are recorded, retained and disposed of in accordance with the *State Records Act 2000*, the City’s Record-Keeping Plan and the State Records Office’s “*General Disposal Authority for Local Government Records*”.

*The City is to comply with the State Records Act 2000.*

## Financial management

### General

#### Local government

188. The State Government consider amendments to the *Local Government Act 1995* to provide for better practice financial management through the establishment of Local Government Financial Management Instructions (similar to the Treasurer's Instructions for State Government) that establish a minimum set of standards and requirements for the financial administration of local government (Financial Management Instructions).

*To set a base standard of financial management and reporting.*

189. The "WA Accounting Manual" be reviewed, updated and promulgated by the Department within the next 12 months.

*The WA Accounting Manual is dated 3 September 2012. It should be current and relevant.*

190. The Minister for Local Government consider prescribing the format of the annual budget and financial report to provide consistency across local government.

*For consistency and ease of comprehension and comparison by the community.*

191. The Department consider issuing a better practice guide for business plans for major trading undertakings required under regulation 10 of the *Local Government (Functions and General) Regulations 1996*.

*Guidance will facilitate and provide a template for better planning and disclosure relating to the trading enterprises.*

192. The Department increase its regulatory role in the oversight of compliance audit returns and the issuing of directions to local governments who have not established business plans for major trading undertakings required under regulation 10 of the *Local Government (Functions and General) Regulations 1996*.

*To encourage compliance with statutory obligations and in so doing to promote better business and accountability practices.*

193. The Department consider an amendment to the annual compliance return for the declaration of the date of the last review of the appropriateness and effectiveness of the City's financial management systems and procedures, as required by regulation 5(2)(c) of the *Local Government (Financial Management) Regulations 1996*.

*To encourage compliance with statutory obligations, and in so doing to promote better business and accountability practices.*

### 3.4 Recommendations

194. Regulation 13 of the *Local Government (Audit) Regulations 1996* be amended to require a local government to report on whether the CEO has complied with regulation 5(2)(c) of the *Local Government (Financial Management) Regulations 1996*.

*To promote and record the undertaking by CEOs of reviews of the appropriateness and effectiveness of the local government's financial management system, as required by regulation 5(2)(c) of the Local Government (Financial Management) Regulations 1996.*

195. The Department publish better practice examples of plans required under the integrated planning and reporting framework.

*To facilitate and encourage the preparation of best practice integrated planning and reporting frameworks by local governments.*

196. The Department develop a guide on better practice cost allocation models for the allocation of internal costs within financial budgeting, planning and reporting.

*To facilitate the preparation of better cost allocation models by local governments.*

197. The Department consider developing sector professional capabilities for local government finance employees.

*Capability frameworks articulate expected skills and behaviours required across the sector, while complementing the skills and job requirements specific to particular local governments.*

#### City of Perth

198. The City consider employing an appropriately qualified<sup>z</sup> chief finance officer.

*To provide specialist leadership, strategic advice and oversight of the City's finances and financial management practices (including commercial functions), given the City's size and financial base.*

199. If Recommendation 197 is not adopted, professional capabilities for finance employees be developed and adopted as better practice by the City in the absence of broader local government reforms.

*Capability frameworks articulate expected skills and behaviours required for specific roles or job types. It also supports ongoing professional development.*

<sup>z</sup> Appropriately qualified requires that a person holds a relevant tertiary qualification in finance, commerce, business or equivalent and membership of a professional accounting body. Such bodies include CPA Australia as a CPA, Chartered Accountants Australia and New Zealand as a Chartered Accountant or the Institute of Public Accountants as a MIPA.

200. All City employees who are, or who are likely to be, involved in any aspect of its financial management, including those with a delegated financial authority and incurring limits and authorities, receive training provided by an industry accredited provider on those aspects of financial management necessary for the performance of that employee's role and the discharge of his or her duties and functions, and be assessed by that provider on understanding and competency in those matters on which the training has been received.

*To promote the professional development of financial management staff and to improve the quality of financial services delivery.*

201. The training and assessment be repeated, as part of a continuing professional development programme, according to industry best practice at no less than 12-month intervals.

*To promote the continuing professional development of financial management staff and to maintain the quality of financial services delivery within the City.*

202. The City's CEO maintain an accurate and up-to-date register of all training and assessment in financial management, recording in writing the details of who has undergone what training and assessment, when it occurred in each case and the extent to which that employee was compliant with the necessary assessment standard.

*To maintain the quality of financial services delivery within the City, and to aid audit.*

203. Any City employee who is not fully qualified in the financial management described in Recommendations 200-201 be restricted from engaging in those aspects of financial management for which he or she is not qualified.

*To maintain the quality of financial services delivery for the City, and to aid audit.*

204. The City of Perth Council and the City's CEO review the delegation framework to ensure it provides sufficiently clear direction to council members, committee members, the CEO and employees on delegated limits and documents they are permitted to sign and the financial arrangements they can enter into on behalf of the City.

*All council members, committee members and employees should be able to clearly identify the limitation of their delegated authority to commit funds or services and sign documents, contracts or agreements for the City.<sup>aa</sup>*

aa This includes the areas of financial management, people management and grants management.

### 3.4 Recommendations

205. The City institute a mechanism to ensure employees understand and confirm their understanding of their delegated authority, documents they are permitted to sign and the limit of any financial management authorities, including when employees are acting in other roles.

*Employees are to understand and act within their delegated authority.*

206. The City implement a financial control which prevents an officer approving contracts, agreements and purchase orders outside of his or her delegated authority.

*To improve expenditure control.*

207. Key financial processes and systems be process mapped and documented to support consistent decision making and ensure accountability.

*To minimise business continuity risks and ensure consistency and transparency in decision-making.*

208. The CEO review the activity-based costing model for the allocation of direct service costs and other overhead costs.

*The City's activity-based costings model is to be based on best practice methodology.*

209. The CEO conduct a root-cause analysis, to be presented to City of Perth Council as a report for action, of its consistent underspend in capital works projects, to identify improvements to the City's capital works planning, budget setting, asset management, capabilities, project execution and financial management practices.

*The City consistently underspends its capital works programme by approximately 30-40 per cent each year, for which it collected rates it did not spend.*

210. A copy of the report for Recommendation 209 and the City of Perth Council's response to the report be provided to the Minister for Local Government no later than 30 June 2021.

*Confidence in the City to act in accordance with its legislative responsibilities is strengthened with transparency and accountability to the Minister for Local Government.*

211. The City progress the implementation of the Corporate Governance Framework (as tendered to the Inquiry) with it to be monitored and continually reviewed (and where necessary, updated) by employees and council members.

*A sound Corporate Governance Framework articulates expectations, rules and processes in place to ensure integrity, transparency and accountability focussed on advancing in the best interests of the community of the City of Perth and positioning it well for the future.*

## Governance

### City of Perth

212. The CEO undertake a functional review of the governance function to identify:
- the current capability and maturity of the governance function within the City;
  - the services provided and resources required by the governance unit, compared against similar local governments and industry benchmarks;
  - the adequacy or otherwise of current compliance measures in relation to relevant local government governance obligations;
  - key performance indicators which are used to monitor ongoing performance; and
  - any gaps and prepare a gap analysis and recommendations.

*The City spent a significant amount annually on its governance function. The Inquiry has made multiple findings related to deficiencies in the policies, processes and practices of the governance function. The City should align its governance function, processes, systems, operations and organisational design to its legislative purposes and performance expectations.*

## Integrated planning and reporting framework

### City of Perth

213. The City of Perth Council and the CEO review the City's approach to the integrated planning and reporting framework to shift the focus to a planning for the future approach, rather than a compliance and financially driven internal process.

*An effective integrated planning and reporting framework is essential to future planning and financial management, providing transparency and accountability to the community.*

214. The City engage, for the next planning cycle, a suitably qualified service provider to assist in the development of best practice plans, including the Corporate Business Plan, the Workforce Plan, the Asset Management Plan and the Long Term-Financial Plan.

*Sound financial and service delivery planning should ensure the City's resources are directed, monitored and managed efficiently and are effective with regard to its current and future needs.*

215. The City take steps to engage appropriate employees in the annual planning and budgeting process.

*To improve staff understanding of financial matters, and to generate a sense of ownership and accountability.*

## Performance measures

### City of Perth

216. The City of Perth Council develop, in consultation with key stakeholders, effectiveness and efficiency key performance indicators which are specific and measurable for key programmes, services, functions and outcomes.

*This is important to aid a proper understanding of the effectiveness and efficiency of service delivery.*

217. The City of Perth Council set reporting targets for key performance indicators on an annual and recurrent basis.

*Targets and benchmarks assist with the monitoring of performance against the indicators.*

218. Key performance indicators and their targets or benchmarks form part of the City Corporate Business Plan and/or Annual Budget and the performance against the targets be reported in the City's Annual Report.

*Targets and benchmarks are to be monitored and reported.*

219. A report to Council be provided by the CEO on the City's performance against the reporting targets for key performance indicators on a quarterly basis, including any actions taken to correct performance that is not on target.

*Targets and benchmarks assist with the monitoring of performance against the indicators.*

## Financial management

### Financial systems, processes and capability

City of Perth

220. The CEO undertake a functional review of the finance function to identify:
- the current capability and maturity of the finance unit and other financial areas within the City;
  - the services provided and resources required by the finance unit, compared against similar local governments and industry benchmarks;
  - the adequacy or otherwise of current compliance measures in relation to relevant local government financial regulations, including tax obligations;
  - the potential impact of industry and technological changes on the finance unit;
  - the impact of the City's projected growth on the unit;
  - key performance indicators which are used to monitor ongoing performance; and
  - any gaps and prepare a gap analysis and recommendations.

*The City is to align its finance function, processes, systems, operations and organisational design to its legislative purposes and performance expectations.*

### Rate setting

City of Perth

221. The City of Perth Council take steps to improve transparency when setting rates and clearly document its reasons for differential rate increases and articulate the extent of any cross-subsidisation.

*For transparency and accountability to the community.*

### Major trading undertaking

City of Perth

222. The City of Perth Council develop and publish its business plan for the City of Perth Parking (CPP), as a matter of urgency.

*This is a requirement of section 3.59(2) of the Local Government Act 1995 for a major trading undertaking.*

223. The CPP business plan and the City's Annual Budget account for and document competitive neutrality in the pricing of services provided by the CPP.

*The management of the unique position of the City as a business operator should be recognised through a documented position on competitive neutrality.*

224. The City set and adopt key performance indicators with targets or benchmarks for the CPP business, with them to be included in the City's Corporate Business Plan and the CPP business plan and reported on in the City's Annual Report.

*Arguably required by section 11(2)(f)(ii) of the City of Perth Act 2016, and important to aid a proper understanding of the effectiveness and efficiency of service delivery.*

225. Following its establishment, the business plan be reviewed annually as part of the process to develop the Annual Budget, Corporate Business Plan and Long Term Financial Plan.

*The requirement for a business plan should not be seen simply as a compliance obligation, rather as better practice financial and business planning. Incorporation into the integrated planning and reporting framework activities ensures integration and aligns effort.*

226. The City of Perth Council's first business plan for CPP is to be provided to the Minister for Local Government by no later than 31 December 2020.

*Confidence in the City to act in accordance with its legislative responsibilities is strengthened with transparency and accountability to the Minister for Local Government.*

## Grants, sponsorships and partnerships

### City of Perth

227. The City of Perth Council review its policies and procedures on partnerships, grants, sponsorships and donations to ensure better practice and that its policies and procedures:

- cover all types of discretionary funding provided in these categories, regardless of where the spend is approved;
- clearly articulate who has authority and to what level to approve funding arrangements; and
- describe the process for acquittal of funding arrangements.

*The City's policies and procedures are to be inclusive of all activities; that Council, committees and employees understand the level of delegated authority to enter into arrangements; and accountability for the release and acquittal of funds.*

228. The City develop a partnership policy for arrangements with external organisations which, like its historic arrangement with the Perth Public Art Foundation, are not captured by Council Policy “CP18.8 – Provision of Sponsorship and Donations”.

*There is to be a process for the management of partnerships exists to guide expenditure, assessment and acquittal.*

229. The City establish appropriate systems and processes to accurately record, monitor and report on all partnership, grant, sponsorship and donation funding arrangements, be it a single instance of funding or multi-year funding. These should be reported in the Annual Report and include the type, the activity, the entity funded, the funding approved, who approved the funding and the amount acquitted as spent.

*There is to be full transparency on the funding provided to other individuals or organisations through these programmes, because current reporting is deficient or inconsistent and doesn't enable the community to understand the full extent of funding provided.*

230. The City allocate a specified, pre-determined part of its Annual Budget to discretionary spending on partnership, grant, sponsorship and donation funding arrangements<sup>ab</sup> (Discretionary Grant Funding Arrangements), having appropriate regard to the relative expenditure of other capital city local governments on these categories of funding and the City's Strategic Community Plan.

*To provide for certainty and discipline in discretionary expenditure.*

231. Discretionary Grant Funding Arrangements entered into by the City<sup>ac</sup> be independently audited at least every 12 months for compliance and better practice grant funding management.

*Funding arrangements and associated expenditure is required to meet the requirements set for it.*

232. The results of the audit be reported to the Audit Committee and the Council.

*The Audit Committee has oversight for the audit activities of the City.*

ab This amount is to include cash and in-kind (for example, waiving the cost of venue hire, fees and charges, parking, etc) allocation funding from the City.

ac Arrangements entered into by the council, a committee of council, the CEO or an employee under delegated authority.

### 3.4 Recommendations

233. The City of Perth amend its policy dealing with the attendance of council members and CEO<sup>ad</sup> to require that a council member, committee member or employee only be permitted to accept a ticket and attend an event under a Discretionary Grant Funding Arrangement when that person is performing an official role at the event or discharging the functions and duties of their office or employment, unless the person pays the cost of the ticket.

*To improve transparency and accountability, and through those mechanisms the quality of decision-making.*

234. The City continue to facilitate the transition of the employment of the Executive Director, Perth Public Art Foundation from the City to the Foundation and do likewise with any similar arrangements.

*To separate the City from the organisations it funds and place it at arms-length for accountability, transparency and independence, thereby allowing the City to appropriately manage the relationship and funding arrangement.*

235. The City conduct and retain complete and fully executed copies of all funding arrangements to which it is a party.

*To improve transparency, accountability and oversight of the arrangement.*

236. The City examine all current Discretionary Grant Funding Arrangements to ensure that fully executed copies, signed by an appropriately delegated officer, of all funding arrangements are recorded and retained in accordance with the *State Records Act 2000* and the City's Record-Keeping Plan.

*To improve transparency, accountability, oversight and contract management, as well as ensuring the City complies with the State Records Act 2000.*

237. All Discretionary Grant Funding Arrangements, including the entity funded, category of funding (partnership, grant, sponsorship and donation), amount approved (in-kind and cash reported separately), date approved, approval authority, date of agreement, date acquitted, final expenditure and linkage to any other operational funding to the same activity, will be recorded in a single register maintained by the CEO or his or her delegate.

*For transparency and accountability, and to aid audit, investigation and oversight.*

238. A report to Council be provided by the CEO on the City's Discretionary Grant Funding Arrangements on a quarterly basis.

*For transparency and accountability, and to aid reporting and audit.*

<sup>ad</sup> Pursuant to section 5.90A of the *Local Government Act 1995*.

239. The City review its funding agreements and arrangements before execution or renewal and consider whether it should take legal advice, having regard to the value of the agreement and its terms.

*The City is to know the legal effect of the agreement or arrangement it is executing or extending.*

240. The City to review its policies and practices regarding the provision of funding in accordance with agreement or arrangement terms and acquittal<sup>ae</sup> of funds provided to external parties under partnership or other similar agreements or arrangements.

*Acquittal processes are to be understood and properly conducted.*

241. The City amend its policies and practices to require an entity funded on a multi-year Discretionary Grant Funding Arrangement to provide an annual financial report, containing a Statement of Income and Expenditure, relating to activity funded which must be signed by the Chairperson or Chief Executive Officer or equivalent and the Treasurer or Chief Finance Officer or equivalent of the funded entity, and be certified by a qualified auditor who is:

- not an officer or employee of the organisation;
- not an employee of the City;
- registered as a company auditor or equivalent under a law in force in Western Australia; or
- a Member or Fellow of the Institute of Chartered Accountants, the Australian Society or Certified Practising Accountants or the National Institute of Accountants.

*To provide for good financial management and ensure funding claimed by a funded entity was spent on the purpose described in the funding agreement or arrangement.*

242. In the case of a partnership arrangement, such as the one with the Perth Public Art Foundation, a review of all the City's expenditure and acquittal processes for that entity should be conducted before the arrangement ends and a new one is approved by the City of Perth Council, to ensure the funds have been properly applied.

*This would be sound grant and financial management practice, providing accountability for the spending of funds by the City.*

<sup>ae</sup> 'Acquittal' occurs when the City has advised the recipient of Discretionary Grant Funding that the reports and financial information provided by the recipient are satisfactory.

243. Partnership arrangements to be acquitted by an appropriately qualified or experienced officer, having regard to any segregation of duties between an advisory/facilitation role and a grants management role, with the results of the acquittal to be provided to the Audit Committee.

*To encourage ownership of expenditure, to improve reporting, and to facilitate audit.*

## Risk, assurance and audit

### Local government

244. The Department review, update and promulgate its publication “*Risk Management Resources*”, including the “*Model Risk Management Policy*”, having regard to current industry standards<sup>af</sup> and best practice.

*“Risk Management Resources” is dated March 2013.*

### City of Perth

245. The City’s risk, audit and assurance management frameworks be comprehensively reviewed and a report to Council prepared by an independent consultant with expertise in current industry best practice, working collaboratively with a senior employee designated responsibility by the CEO, providing a schedule of actions to improve the City’s maturity in risk, audit and assurance.

*The City’s risk management framework needs to be appropriate to the scale, scope and complexity of the City and its local government activities.*

246. The report described in Recommendation 245 be submitted by the CEO to Council within 12 months of this Report.

*The City’s risk management framework needs to be appropriate to the scale, scope and complexity of the City and its local government activities.*

247. The City review its Crisis Management Plan, Crisis and Business Continuity Management Framework and Business Continuity Plan for consistency of process, roles and responsibilities, which review be undertaken along with Recommendations 245-246.

*The roles, responsibilities and processes are to be consistently expressed across these governing documents and understood by those relying on them.*

af ISO 31000: Risk management

248. The City take steps to improve the capability of the Council, committees and employees in risk, audit and assurance, so that the City's business planning, project management, capital planning and service delivery policies and practices are consistent with leading international standards for risk and audit management.

*The City as part of its everyday activities should identify, consider, monitor and manage risks.*

249. The City's CEO, supported by the Audit Committee, implement the 'lines of defence' model<sup>ag</sup> to manage risk and improve governance practices within the City.

*This provides a framework for officers at the City to identify and understand and view risks, identify existing controls and strengthen or add controls where they are absent.*

250. City employees receive risk management training, appropriate to their roles and responsibilities, together with guidance on the 'lines of defence' model.

*Risk management is to be properly understood and applied by the broader organisation.*

251. The City integrate risk management practices into all annual planning activities.

*The City, as a whole, needs to achieve a better understanding of its service costs and risks to inform corporate and operational planning and budgets.*

252. The Audit Committee develop, with appropriately qualified external assistance, a Strategic Internal Audit Plan that relates to the focus areas of internal audit over the medium term.

*The City does not currently have a Strategic Internal Audit Plan.*

253. The City consider adopting a co-sourcing internal audit model to use the experience of external professional providers to complement the current internal audit team.

*The Council should have an effective internal audit function that provides independent assurance that the City is functioning effectively and the internal controls the City has put into place to manage risk are working.*

254. The internal audit function be reviewed and, if necessary, expanded to consider opportunities for the adoption of better practices, continuous improvement and compliance with professional standards.

*The City needs to approach better practice in its audits.*

ag 'Three lines of defence': Factsheet, Institute of Internal Auditors Australia, '3 Lines of Defence' Combined Assurance Model, 2020 and 'Four lines of defence': Report, Western Australian Auditor General, Audit Results Report – Annual 2018-19 Financial Audits of Local Government Entities, Report 16: 2019-20, 11 March 2020, p 27.

### 3.4 Recommendations

255. The City consider adopting a professional development programme for its internal audit team, as part of the co-sourced model, to improve the team's capability and capacity.

*A more effective and efficient audit team should increase the number of audits that can be conducted per year and should improve audit rigour.*

256. The City review its Internal Audit Charter to ensure it is based on internationally accepted standards and best practice.

*The City's Charter was last reviewed in 2015.*

257. The Audit Committee develop, with appropriately qualified external assistance, an Assurance Map to understand the nature, scope and extent of assurance activities across the City.

*The City does not currently have an assurance map.*

258. As part of the Strategic Internal Audit Plan and Annual Internal Audit Plan, and to supplement compliance audit, the Audit Committee introduce performance audits or reviews to assess the efficiency and effectiveness of activities, services and programmes undertaken or delivered by the City's.

*Performance audits determine whether a local government is carrying out its activities effectively and doing so economically and efficiently and in compliance with all relevant laws.*

259. The City consider establishing an independent chief audit officer role to oversee the City's audit activities, whose role is similar to and guided by Treasurer's Instruction 1201(4) for State Government agencies.

*For the internal audit function to be effective, it must be able to carry out its responsibilities independently and objectively, without interference.*

260. The Audit Committee establish appropriate industry benchmarks against which to monitor and measure audit performance of the internal audit function.

*The absence of formal measurement of an internal audit's performance may result in missed opportunities to maximise its effectiveness.*

261. The City should establish a guide which clearly describes and distinguishes the roles of probity auditor and probity advisor, used during procurement processes, including:

- where the procurement is complex and/or sensitive, a probity advisor should be engaged to establish the probity management framework; and
- a probity auditor should then be engaged to provide an independent scrutiny of the procurement process and express an objective opinion on whether the prescribed probity requirements have been followed.

*This clarification will ensure roles and responsibilities are clear and services engaged are fit for purpose.*

262. The engagement and use of probity auditors be overseen by the chief audit officer.

*Professional standards are compromised when staff not experienced in audit take a lead role in using the services for unrelated purposes.*

## Procurement and contracting

### Procurement and contracting systems, processes and capability

#### City of Perth

263. The City's CEO undertake a functional review of the procurement and contracting function to identify:

- improvements since the Deloitte Organisational Capability and Compliance Assessment (June 2017);
- the current capability and maturity of the City for procurement and contracting;
- the adequacy or otherwise of current compliance measures in relation to relevant local government procurement and contracting;
- key performance indicators, which are used to monitor ongoing performance; and
- any gaps and prepare a gap analysis and recommendations.

*The City is to align its procurement and contracting function, processes, systems, operations and organisational design to its legislative purposes and performance expectations.*

264. The City continue to advance its adoption of a centralised procurement model and establish a centralised procurement team.

*Centralising procurement will improve supervision, improve accountability and audit, and provide a 'one stop' shop for staff with procurement and contracting issues.*

265. The City adopt a consistent approach in relation to whether and in what circumstances, a bill of quantities is to be supplied as part of a request for tender.

*To avoid similar instances to the recall and re-issue of the tender for the construction of the Railway Street and Market Street Shared Path Extension do not occur in the future.*

266. The City consider establishing a centralised project management office to provide organisation-wide leadership, resources and integration of better practice project management within functions and activities.

*To provide resources to assist in improving the City's capacity to scope, manage and report on projects, as well as support better financial management of project planning and delivery.*

267. City of Perth Council Policy “CP9.7 – Purchasing” and the Sole Supplier Justification Procedure be amended to provide a clear process to follow in circumstances where the CEO wishes to engage on behalf of the City a person or an organisation with whom the CEO has an interest or conflict of interest (actual or perceived) as a result of a personal or business relationship.

*Council Policy “CP9.7 – Purchasing” and the Sole Supplier Justification Procedure is currently silent as to the process to follow in these circumstances.*

268. City of Perth Council Policy “CP9.7 – Purchasing” be amended to expressly require all engagements, even those resulting from a verbal quotation process, to be fully documented.

*While this requirement is implicit in Council Policy 9.7, making it express will help prevent the requirement from being overlooked and ensures compliance with the State Records Act 2000.*

269. City of Perth Council Policy “CP9.7 – Purchasing” be amended to make price and value for money a specific criterion of assessment.

*Price has historically been treated inconsistently in procurement activity, leading to inappropriate results which may not reflect the City’s overarching focus on value for money.*

270. Employees of the centralised procurement team should not be a member of an evaluation panel for requests for tenders or quotations.

*Being a panel member for requests for tenders or quotations process compromises the independence of the function, including providing advice and guidance, conducting reviews of process or approving and authorising process.*

## Confidentiality and conflicts of interests in procurement and contracting

### City of Perth

271. The City separate its “Declaration of Confidentiality and Interest” form into two separate documents, one dealing with obligations of confidence and the other dealing with the issue of conflicts of interests.

*Separating the components of the declaration will help the person completing the forms focus on what should be declared.*

272. The City require each panel member, technical advisor and decision-maker in a procurement process to complete a Declaration of Interest Form, declaring any conflict of interest, before undertaking any role or taking any step in the procurement process.

*To limit the prospect of a procurement process being adversely affected by conflicts of interests.*

## Evaluation of quotations and tenders

### City of Perth

273. All City procurement activities above \$150,000.00 be supported with a risk assessment and, for those identified as high risk, the City consider the specific risks associated with that procurement and develop treatment plans to mitigate those risks, including probity of the procurement process.

*In a fiscal environment that is increasingly characterised by independent contract or resource availability and economic pressures and constraints, effective corruption and misconduct management is paramount to ensure value for money is obtained for ratepayers in all decision-making.*

274. City of Perth Council Policy “CP9.7 – Purchasing” be amended to prescribe the circumstances in which a procurement process requires an independent probity advisor or auditor to be involved in the process.

*A specialised probity officer being involved “at the coalface” of tendering decisions should minimise the prospects of misconduct or process failure, and provide a first port of call for staff on evaluation panels who have probity questions.*

275. The City make clearer to the members of evaluation panels which requirements of a tender are “compliance criteria”, the mandatory criteria which tender submissions must meet to be considered as part of the tender process, and which requirements are “selection criteria”, the criteria against which tender submissions are assessed.

*Evaluation panel members are to understand the requirements which will be assessed during a tender process and assess accordingly.*

276. If a comparative price analysis is to be retained by the City, as part of request for tender or quotation assessment, then:

- a policy or procedure should be adopted setting out the methodology to be applied; and
- the comparative price analysis is to be independently verified by a senior member of the procurement team.

*Comparative price analysis can be a source of data manipulation or miscalculation, without reference to the tenderers, which can result in unsatisfactory or corrupt tender or quotation outcomes.*

277. Where possible, evaluation panels should include more than one person with specialised technical knowledge relevant to the evaluation to be undertaken.

*Where an evaluation panel defers to a single technical expert, there is potential for that expert to inappropriately, or inadvertently, influence the evaluation leading to inappropriate outcomes.*

278. The City adopt a clear process by which an evaluation panel can obtain guidance or input from a non-panel member about issues that arise during the tender evaluation process. For example, about aspects of tender submissions which may be outside their areas of expertise.

*Panel members should be provided with the ability to seek guidance outside the panel without jeopardising the integrity of the tender evaluation process.*

279. Evaluation panel members to score tenders by consensus, rather than by averaging the scores of each panel member.

*To reduce the risk that the evaluation of tenders is manipulated by members of the panel.*

### Capital works contracts

#### City of Perth

280. The City develop, adopt and communicate to staff a plain-English procedure about the application of carry forwards to capital works projects.

*Inconsistent knowledge of carry forwards at a project officer level, and the poor or inconsistent communication of the attitude of the executive towards carry forwards in capital works projects, has the capacity to adversely affect capital works.*

### Training and development

#### City of Perth

281. The City create and implement a procurement and contract management training and development programme (P&CM Programme) for employees, including but not limited to finance staff, employees who have a delegated authority to incur liabilities on behalf of the City, employees who procure goods and services or have the potential to be a member of or a technical advisor to an evaluation panel and any other employee who has a role in procurement and contract management processes.

*Policies and processes are only as good as their implementation, and proper implementation is reliant on competent, confident and informed staff.*

282. The P&CM Programme should be customised to the needs of the relevant groups of employees, based on their roles and responsibilities, including, at a minimum, training on:
- Integrity in procurement and contract management: declaring and managing conflicts of interest, confidentiality, record-keeping and decision-making (including delegations, financial limits and incurring and certifying processes).
  - Planning to procure: how to define requirements, analyse the supply market, understanding the procurement framework and developing and obtaining approval for a request for quotation or tender.
  - Forming a contract: advertising the request, the evaluation and negotiation processes, the role of panel members and technical advisors, the role of approvers and contract award.
  - Managing a contract: ensuring suppliers fully meet their obligations as efficiently and effectively as possible to achieve the contract outcomes, as well as arranging payment for services.

*Understanding the basics of procuring and managing goods and services arrangements are essential to sound financial management and service provision to the community.*

283. The City consider, as part of the P&CM Programme, exploring case studies of where previous issues have arisen in the procurement area, for example,
- where City officers have engaged in corrupt conduct and the consequences for those officers of engaging in that conduct; or
  - where an issue was identified early and corrected before it could corrupt the process.

*Case studies help ground theoretical instruction in real world facts.*

284. The City require employees involved in procurement and contracting activity to undertake refresher training, at least annually, as part of the P&CM Programme.

*To be useful, the training must be current.*

285. An employee is not permitted to sit on an evaluation panel or make a procurement decision, unless the employee has successfully completed all training required by the P&CM Programme, and the relevant refresher training.

*Procurement processes are only to be undertaken by properly trained employees.*

286. The City compile and maintain a contracting and procurement handbook, comprising:
- all relevant City processes, policies and procedures;
  - reference materials for the P&CM Programme;
  - contact information for places or people to whom staff can turn when faced with procurement or contracting management issues; and
  - a frequently asked questions section.

*To provide a single source of reliable information for procurement and contracting management matters, and to assist staff to properly deal with issues as they arise.*

287. The City improve the skills and knowledge of project manager, project officers and other staff responsible for or involved in construction, maintenance or other works, including internal works, in the requirements for development approval, heritage advice and building permits, including in respect of buildings or other assets owned or managed by the City.

*Confusion over matters of this type is embarrassing for the City, frustrating for relevant staff, potentially exposes the City to liabilities under relevant legislation, and affects the programme and budget for capital works.*

## Reporting

### City of Perth

288. The City to publish monthly on its website the contracts register for all contracts awarded<sup>ah</sup> above \$50,000.00 (in value), including:
- the contract details;
  - the mechanism of procurement;<sup>ai</sup>
  - the party to whom the contract was awarded;
  - the value of the contract;
  - the date the contract was awarded;
  - the period or duration of the contract;
  - any variations to the contract; and
  - the funds the City actually spent under the contract.<sup>aj</sup>

*To provide transparency and accountability on the contracted work, effective contract management and final expenditure for compliance with the legislation and policy.*

ah Contracts related to services or goods procured, including through requests for quotations, sole suppliers, tenders, use of the State Government's Common Use Agreement and WALGA Preferred Supplier Programme.

ai That is, whether the City undertook a tender process, requested quotations, engaged the provider using its sole supplier procedure, used the State Government Common Use Agreement or WALGA's Preferred Supplier Program.

aj Note that for contracts across financial years, a report would only need to occur in the financial year the contract ended.

## Risk and audit

### City of Perth

289. Procurement and contracting risks to be reviewed annually and included in a report to the Audit Committee.

*To provide transparency to procurement and contract risks and enable consideration to be given to target areas as part of an annual audit plan.*

290. Procurement and contracting activities of the City be independently audited at least every 12 months, as part of the City's internal audit programme with representative and random sampling across all levels of expenditure, procurement types and all business units, giving consideration to risk, for compliance, misconduct and better practice grants management.

*Random audits combat complacency, tend to identify systemic failures and facilitate the identification of misconduct.*

291. The results of the audit are to be reported to the Audit Committee and the Council.

*The Audit Committee has oversight for the audit activities of the City.*

## Complaints and misconduct prevention

### General

#### Local government

292. Local governments be required to develop a complaints resolution procedure based on the Australian/New Zealand *Guidelines for complaint managements in organisations* AS/NZS 10002:2014.

*Local governments are to deal with complaints properly and fairly. It would also reduce recurring complaints, improve standards of service to the community and raise the standard of decision-making.*

*Part B of the draft "Mandatory Code of Conduct for Council Members, Committee Members and Candidates" requires local governments to have a complaints management policy, but this policy will only apply to complaints about council members.*

293. The Department establish better practice guidelines for councils and CEOs on complaint handling in local government.

*To provide an industry standard for better practice in Western Australian local governments.*

294. All council members and employees of local governments be trained and assessed on the complaints handling process, as part of any training on the Code, by an industry-accredited provider on the commencement of the policy.

*All public officers are to understand the policy and the processes to lodge, manage, determine and refer complaints.*

#### Corruption and misconduct risks

##### City of Perth

295. The City adopt a policy which clearly states it has a zero-tolerance of fraud and corruption and develop an holistic fraud and corruption control framework.

*To establish the City's stance on fraud and corruption and then manage it.*

296. The City adopt a process, in accordance with industry best practice and standards, to identify and document the City's misconduct and fraud risks and implement treatment plans.

*To eliminate, mitigate and manage identified risks.*

297. The City undertake within three months of this report<sup>ak</sup> a corruption and misconduct risk assessment, including, for example, areas such as contracting and procurement, financial management, human resources, information management and service delivery areas.

*The City is to have a robust framework to identify, manage and mitigate misconduct and corruption risks.*

298. The first City corruption and misconduct risk assessment be conducted by an independent and suitably qualified provider and the outcome be reported to the Audit Committee and the Council.

*To establish a baseline against which to measure corruption and misconduct risk.*

299. Corruption and misconduct risk assessment be reviewed annually and included in a report to the Audit Committee and the Council.

*To provide transparency to procurement and contract risks and enable consideration to be given to target areas as part of an annual audit plan.*

300. The City's CEO develop comprehensive, organisation-wide strategies (education and awareness, policy and compliance), based on the risk assessment (as described at Recommendation 2465) to combat fraud and corruption.

*The City is to have a robust framework to counteract misconduct and corruption risks.*

<sup>ak</sup> If not undertaken in the 12 months prior to this Report.

301. An external audit be conducted every two years on the City's approach to misconduct and fraud.

*The approach needs to be current and appropriate to the risks facing the City.*

302. The results of the review be reported to the Audit Committee and the Council.

*The Audit Committee has oversight for the audit activities of the City.*

### Complaints handling framework

#### City of Perth

303. A centralised complaint handling policy, based on industry best practice, and an appropriately confidential system be developed for the management and recording of complaints and grievances by or against any council member, committee member or employees of or contractors to the City, including the outcome of any investigations.

*To provide a central and consistent method of receiving, recording, investigating and reporting on complaints and grievances, including the identification of trends and accountability for corrective actions. The database should contain controls to protect the integrity and confidentiality of the information on it.*

304. The City keep a record of these complaints and grievances in a centralised system (Recommendation 303), detailing the persons involved, the nature and extent of the complaint or grievance, actions taken and the outcome, which records are to be retained in accordance with the *State Records Act 2000*.

*To aid probity, transparency, accountability and audit.*

305. The City adopt, maintain and publish on its website clear complaints and grievances handling policies and procedures, dealing with how the City will:

- as a matter of process, deal with misconduct complaints against or grievances about council members, committee members or employees of or contractors to the City;
- as a matter of process, deal with referrals to and from the Corruption and Crime Commission, the Public Sector Commission and any other relevant authority; and
- conduct internal investigations.

*Clear policies and procedures promote understandable, efficient, consistent and transparent outcomes.*

306. Publication of the policies and procedures described in Recommendation 305 on the City's website be accompanied by a frequently asked questions (FAQ) section.

*To assist in understanding the procedures and how they operate.*

### 3.4 Recommendations

307. The policies, procedures, records and FAQ section described in Recommendations 303-306 be prepared by an industry accredited expert in accordance with industry best practice standards.

*The City's complaints handling policy, procedures, records and FAQ should be at an industry best practice standard.*

308. The City require a person with appropriate governance experience be designated to be involved, in a substantive way, in maintaining the complaints and grievances handling framework, dealing with complaints, grievances, referrals and internal investigations and reporting.

*Without governance expertise and accountability to guide the process, complaints of misconduct may not be properly addressed.*

309. The City's CEO or his or her designated officer be responsible for ensuring that all complaints and grievances<sup>al</sup> are processed in accordance with the policies and procedures described in Recommendations 3043-306.

*Oversight by properly skilled officers is required to be in place.*

#### Complaints handling training

##### City of Perth

310. Council members and employees of the City be trained and assessed on the complaints and grievances handling policies and procedures by an industry-accredited provider on the commencement of the policies and procedures.

*All public officers need to properly understand the policies and the procedures to lodge, manage, determine and refer complaints and grievances.*

#### Investigations

##### City of Perth

311. The City ensure any employee dealing with complaints, grievances, referrals or internal investigations is independent of the subject matter of the investigation, is appropriately trained and is, where necessary, supervised or assisted by a similarly independent person with specialist governance experience.

*Without independence, and without governance expertise to guide the process, complaints and grievances may not be properly addressed.*

<sup>al</sup> Unless there is a conflict of interest.

312. The City ensure the engagement of a third-party consultant to advise or assist with any complaint, grievance or probity matter (Consultant Engagement) be clearly documented, including as to scope and budget.

*Failure to properly document engagements, and the scope of engagements, contributed to the issues identified in the Project Percy and Western Irrigation sections of this Report.*

313. All Consultant Engagements be reviewed for potential or actual conflicts of interest by a suitably qualified person with appropriate governance experience.

*An employee with an actual or potential conflict in the engagement of a third party is not to be involved in procurement activities involving that party.*

314. All Consultant Engagements be on terms specifying, by name or office, those within the City who have authority to give instructions to the consultant.

*The absence of clear and appropriate lines of communication between consultants and the City contributed to the issues identified in the Project Percy section of this Report.*

315. City employees managing the Consultant Engagements should not involve themselves in the subject of the engagement, so as to substantially influence or appear to influence the results of that investigation or the advice given to the City.

*To maintain the integrity of the procurement process.*

316. The City adopt and encourage the practice of critically reviewing the accuracy and cogency of outcomes, conclusions and findings produced under Consultant Engagements.

*For probity, accountability, transparency and value for money.*

317. Any systemic, endemic or high-risk issues identified by Consultant Engagements be captured in the complaints and grievances handling system by the designated officer responsible for complaints and grievances handling and reported as part of the quarterly reporting requirement described in Recommendation 320.

*To baseline and inform a "lessons learned" process.*

318. The City to cease the practice of splitting investigations into employee matters and other matters for separate investigation.

*Better practice investigation involves an holistic review of the allegations or complaint to ensure that individual and systemic issues are identified.*

## Reporting and audit

### City of Perth

319. Trend and outcome reporting on complaints and grievances be reported in writing and at least quarterly to the City's executive and the Council.

*To provide the City's leadership with information on the number, nature and outcome of the complaints and grievances across the City.*

320. An audit of the City's complaints and grievance handling framework, including the management of individual employee-related matters, the system data and compliance with the policies and procedures be undertaken annually by an independent qualified auditor as part of the internal audit programme. This is to review the City's compliance with policies and procedures, the effectiveness of the training programme and areas for improvement.

*To determine whether the procedures are being consistently and fairly applied in a timely way and to aid probity, transparency, accountability and audit.*

321. The results of the audit are to be reported to the Audit Committee and the Council.

*The Audit Committee has oversight for the audit activities of the City.*

322. The City publish in its Annual Report the findings of the audit described in Recommendation 321, along with the City's trend and outcome reporting on complaints and grievances.

*To promote transparency and accountability, and through those mechanisms drive improvements in process and compliance.*

## External oversight and intervention

### Local Government Inspector

#### Local government

323. An office of Inspector of Local Government (Inspector) be established as an independent statutory office, responsible to the Minister for Local Government.

*The current system for monitoring, promoting and enforcing the integrity, efficiency and effectiveness of local governments is fragmented and can be cumbersome. Centralising and better defining the functions dealing with these matters will promote consistent, fair and timely resolutions.*

324. The Inspector have the following duties and functions, namely, to:

- i) improve the decision-making, integrity, efficiency, effectiveness and accountability of local governments;
- ii) assume the regulatory and advisory functions of the Department, including any additional functions of the Department arising from these recommendations<sup>am</sup>;
- iii) assist local governments by providing guidance, education and advice, as requested by local governments, or as the Inspector thinks fit;
- iv) receive, investigate, assess and mediate complaints or referrals about local government matters, including about council members and employees, including in relation to the Code;
- v) of his or her own motion, conduct investigations into and audits of local governments, including council members and employees;
- vi) decide what matters should be investigated or audited, how they should be investigated or audited, what actions should be taken in respect of any investigation, what records or things will be required to be produced, who will be required to be examined under oath or affirmation and who will conduct the examination of any such person in the course of any investigation;
- vii) inquire into local government matters at the direction of the Minister for Local Government and assume the functions of authorised inquiries under Part 8, Division 1 and the functions of Inquiry Panels under Part 8, Division 2 of the *Local Government Act 1995*, as appropriate;
- viii) report to the Minister for Local Government where, in the Inspector's opinion, a local government may be failing to provide good government, or one or more council members are impeding the ability of the local government to provide good government; and
- ix) bring legal proceedings against council members and employees for failing to comply with their obligations under the Code.

*These are the duties and functions required for the effective monitoring, promotion and enforcement of the integrity, efficiency and effectiveness of local governments.*

am Recommendations 6, 8, 9, 20, 30-33, 38-40, 42-44, 49, 52, 75, 83, 84, 87, 104-107, 110, 111, 114, 116, 118-122, 124, 129, 130, 145, 189, 191-193, 195, 197, 244 and 293.

325. The Inspector be conferred with powers to:

- i) issue Standards establishing minimum standards that local governments must comply with, for example, in relation to procurement and contracting, governance, human resources and strategic planning;
- ii) require, by notice in writing, a person to produce any record or thing relating to the Inspector's investigations, audits or examinations;
- iii) require, by notice in writing, a local government, council member or employee to produce a written statement of information relating to the Inspector's investigations, audits or examinations;
- iv) require a person to attend and be examined on oath or affirmation;
- v) conduct examinations in public or private, as the Inspector thinks fit, having regard to the public interest and the matter before the Inspector;
- vi) prohibit any person examined in private from disclosing the requirement to attend for the examination or the content of that examination to any other person without the Inspector's express prior written authorisation;
- vii) to issue improvement notices on local governments, requiring local governments to remedy any failures to comply with the *Local Government Act 1995* or other statutory instruments or any matter which, in the reasonable opinion of the Commissioner, amounts to a failure to provide good government or good governance;
- viii) require parties to a complaint, an allegation of breach, or referred matter, to attend a mediation of the complaint, breach or matter, or to undertake another form of alternative dispute resolution that, in the opinion of the Inspector, is best suited to the matter before him or her;
- ix) refer suspected contraventions of the law to an appropriate external agency, such as the Corruption and Crime Commission or the Western Australia Police Force;
- x) delegate any of his or her functions to officers holding prescribed offices within the office of the Inspector; and
- xi) do all things that are necessary for or incidental to the discharge of the Inspector's duties and functions.

*These are the powers necessary for the Inspector to discharge the conferred duties and functions.*

326. The Inspector be a legal practitioner of at least 10 years' experience, with sufficient skills and experience in local government to properly discharge the roles and duties associated with the office.

*Sufficient and relevant experience will be necessary to the proper and effective discharge of the role.*

327. The office of the Inspector be appropriately resourced and staffed with personnel having the necessary skills and experience to support the Inspector to carry out his or her statutory duties and functions, including investigative, regulatory and legal expertise.

*The office must be adequately resourced to be effective.*

328. The office of the Inspector be independently audited at no less than three-year intervals to assess whether he or she is meeting his or her objectives and properly discharging his or her duties and functions.

*The effectiveness of the office should be regularly assessed.*

329. The Inspector report to the Minister for Local Government annually, and otherwise on request by the Minister, on the performance of the Inspector's functions or the discharge of his or her duties.

*The Minister for Local Government should be kept properly informed of the Inspector's performance and effectiveness.*

330. Consequential amendments be made to Part 8 of the *Local Government Act 1995* to give effect to Recommendations 323-329.

331. If Recommendations 323-329 are not adopted:

- the proposed functions of the Inspector be conferred on the Department; and/or
- the State Government consider alternative models used in other States and Territories in Australia for regulating the local government sector.

*The duties and functions are important and need to be done by some other authority, if it is not the Inspector.*

## Compliance and enforcement

### Local government

332. The *Local Government Act 1995* be amended to:

- abolish the Local Government Standards Panel; and
- give the State Administrative Tribunal jurisdiction to deal with alleged failures by council members to comply with their obligations under the Code.

*To simplify the regime for dealing with complaints against and disciplining council members. Under the current statutory framework and the framework proposed by the State Government's Local Government Act Review, failures by council members to comply with statutory obligations in different statutory instruments will be dealt with by different bodies with different consequences.*

333. On a finding that a council member has failed to comply with his or her obligations under the Code, the State Administrative Tribunal have the power to make an order that the council member be publicly censured, be made to apologise publicly, undertake training, be suspended for a period of not more than six months, be disqualified for a period of not more than five years and/or be made to pay a fine.

*To retain the sanctions currently available to the Tribunal under section 5.117(1) of the Local Government Act 1995 and to give the Tribunal the additional power to order that a council member pay a fine.*

*It may be appropriate for the Tribunal to adopt more informal procedures where a lesser sanction (for example, a public censure, an order for an apology or a requirement to undertake training) is sought by the Local Government Inspector.*

334. The Magistrates Court be given jurisdiction to deal with serious failures of council members and employees of local governments to comply with designated obligations under the Code, including, for example, serious failures to disclose conflicts of interest or financial interests.

*To align with the current position under the Local Government Act 1995, where the failure to comply with certain provisions may be the subject of criminal proceedings: see, for example, sections 5.65, 5.67, 5.70, 5.71, 5.71A, 5.76, 5.78, 5.89 and 5.93.*

335. On a finding that there has been a serious failure by a council member or employee of a local government to comply with a designated obligation under the Code, the Magistrates Court have the power to order a term of imprisonment or that the council member or employee be made to pay a fine.

*To align with the current position under the Local Government Act 1995 where the failure to comply with certain provisions may be punished by a fine or imprisonment: see, for example, sections 5.65, 5.67, 5.70, 5.71, 5.71A, 5.76, 5.78, 5.89 and 5.93.*

## **Inquiries under the *Local Government Act 1995***

### Local government

336. In the event that Recommendations 323-32430 are not adopted, the State Government consider appointing a suitably qualified person or panel of persons to prepare and publish a 'bench book' for inquiries conducted by Inquiry Panels under Part 8, Division 2 of the *Local Government Act 1995* to provide guidance to inquiries of that type and to provide model documentation including, for example, model practice directions, model notices to produce documents, and the like.

*Time and resources can be used most effectively in future local government inquiries by building upon the practical knowledge acquired through the conduct of such an inquiry.*

337. The *Royal Commissions Act 1968* be amended to:

- clarify the Royal Commission's power to make orders of non-disclosure; and
- enable a Royal Commission, when issuing a summons or a notice to produce, to prohibit the recipient from disclosing the summons or the notice to any other person.

*There is currently no express power under the Royal Commissions Act 1968 to restrain parties from disclosing the evidence in private hearings to other parties. Further, there is no power under the Royal Commissions Act 1968 to restrain parties from disclosing that they have been served with a notice to produce documents or a summons to give evidence or the contents of that notice or summons.*

*Witnesses before the Inquiry admitted disclosing their evidence in private hearings to other witnesses. The ability of Royal Commissions or other inquiries exercising the powers of a Royal Commission to conduct investigations would be greatly enhanced with powers similar to those held by other investigative bodies.<sup>an</sup>*

338. The *Royal Commissions Act 1968* be amended to give a Royal Commission the power to examine documents over which legal professional privilege is claimed for the purposes of verifying the claim of privilege.

*This reflects the position in section 6AA of the Royal Commissions Act 1902 (Cth).*

## Reporting on recommendations of this Inquiry

339. The Minister for Local Government receive a detailed report from the City of Perth Council annually within four-months of the close of the financial year on the progress against recommendations contained within this Report, including reasons for any decisions taken to not implement recommendations.

*Provides for accountability for actions to address matters identified in this Inquiry.*

340. The Minister for Local Government to determine the nature and timing of reporting by the Department on the progress against recommendations contained within this Report, including reasons for any decisions taken to not implement recommendations.

*Provides for accountability for actions to address matters identified in this Inquiry.*

<sup>an</sup> For example, *Corruption Crime and Misconduct Act 2003*, s 99 and 167.

341. Unless otherwise determined by the Minister for Local Government:

- i) the City of Perth Council and the City's CEO are to report on performance against recommendations contained in this Report annually in the Annual Report until such time as all relevant recommendations have been addressed;
- ii) the City of Perth Council to receive and consider, at a minimum on a six-monthly basis, a report on progress against the recommendations of this Inquiry;
- iii) the City of Perth Council minutes are to document any decisions taken in regard to the recommendations in this Report; and
- iv) any report on progress described in Recommendation 341(i)) is to be publicly available and provide sufficient detail for a member of the community to understand the actions taken as a result, including any decision to not undertake and action in the recommendation.

*Provides for accountability for actions to address matters identified in this Inquiry to the community and regular reporting to the Minister for Local Government.*

## Endnotes

- 1 Notice of Appointment of an Inquiry Panel, Terms of Reference A.1, 24 April 2018.
- 2 *City of Perth Act 2016*, s 9, 20.
- 3 Notice of Appointment of an Inquiry Panel, Terms of Reference B, 24 April 2018.
- 4 Report, Report on an Investigation into Acceptance and Disclosure of Gifts and Travel Contributions by the Lord Mayor of the City of Perth, Corruption and Crime Commission, 5 October 2015.
- 5 Transcript, M Jorgensen, public hearing, 9 October 2019, p 43-47; Transcript, A Hammond, public hearing, 10 October 2019, p 15-16.
- 6 Volume 4, Part 4.3: City of Perth reports.
- 7 Transcript, M Jorgensen, public hearing, 9 October 2019, p 51.
- 8 Transcript, M Jorgensen, public hearing, 10 October 2019, p 10.
- 9 Transcript, A Hammond, public hearing, 10 October 2019, p 24-25.
- 10 Transcript, A Hammond, public hearing, 10 October 2019, p 31.
- 11 Transcript, A Hammond, public hearing, 10 October 2019, p 31.
- 12 Transcript, A Hammond, public hearing, 10 October 2019, p 32.
- 13 Transcript, M Jorgensen, public hearing, 9 October 2019, p 116.
- 14 Document, City of Perth, Procurement Strategy, 2018, 0.0747.
- 15 Transcript, M Jorgensen, public hearing, 9 October 2019, p 115.
- 16 Transcript, M Jorgensen, public hearing, 9 October 2019, p 50.
- 17 Document, City of Perth, Corporate Governance Framework, September 2019.
- 18 Transcript, A Hammond, public hearing, 10 October 2019, p 35.
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