



# A new Local Government Act for WA

## Consultation report – Elections

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## **Introduction**

Councils play an important role in representing their community on a range of matters. Ensuring councils represent the diversity of their community is important to ensure the broad views of the community are heard and considered.

Elections are the method by which local government council members are selected by popular vote. Elections are a fundamental part of local democracy and provide a direct voice for the community on the issues which are most important to them.

Approximately one-third of eligible voters currently participate in local government elections in WA. This participation rate has been relatively unchanged since the introduction of postal voting in the late 1990s.

The consultation paper sought to canvass opportunities to increase voter participation at elections, whilst also strengthening local democracy and increasing efficiency.

Community will always remain at the heart of local government, and it's important that councils reflect the diversity of their community.

## **How we consulted**

Following the release of discussion papers in September 2018, over 100 workshops, forums and meetings were held with community, local governments and stakeholders. This consultation included 28 community workshops across Western Australia and 'pop-up' stalls in shopping centres and community halls. Multiple workshops were held in all Western Australia's regions.

The workshops provided an opportunity for attendees to discuss topics that were of interest to them. All attendees were also encouraged to provide a submission.

Individual council members, local government staff, peak bodies, community organisations, councils and community were invited to have their say by completing online surveys or providing a written submission.

The objective of the consultation was to seek the views of as many interested people as possible, rather than scientifically sampling the population. As a consequence, responses are from people with a keen interest in local government, either because of their working relationship or because of their experiences with local government (often their own).

## Responses received

### Overview

A total of 3,151 responses to the review were received. This was made up of surveys on each of the 11 discussion papers released, written submissions and informal 'post card' responses collected during workshops.

For every topic residents/ratepayers provided the largest number of responses.

The gender balance amongst survey responses was reasonably representative (55% male, 45% female), but the sample was skewed heavily towards older age groups. Around 75 per cent of respondents were aged 46 years or over, with nearly half over 55. Less than 12 per cent were aged 35 or under.

### Breakdown of responses on elections

A total of 318 responses addressed the topic of local government elections, which included 102 written submissions and 216 survey responses.

The 318 submissions were drawn from private individuals and residents/ratepayers groups (144); local government councils and zones (62); council members (42); local government staff and chief executive officers (50); government agencies (3); peak bodies (2); stakeholders from business and civil society (14) and a member of Parliament (1).

## What we heard

The following sections provide data on and outlines key messages from the feedback received on the topic of elections.

Responses from local governments, including elected members and staff, did generally not support concepts such as compulsory voting, preferential voting and moving to full elections every four years.

Most responses want local government elections to have the same significance or weight as State and Federal elections but remain essentially 'local', where citizens (as distinct from politicians) vie for positions on council in well-publicised and community-centric debates. Some members of the public called for an overhaul of elections that would result in significant change to the sector.

The Western Australian Local Government Association (WALGA) generally supported maintaining the status quo in relation to the conduct of elections with some amendments being made to empower local governments and other providers to conduct postal voting and enable online voting to be used. WALGA also supported the general identification of options to increase voter participation.

In respect to wards, the Local Government Advisory Board (LGAB) made several observations about issues associated with the current process. Local governments are currently required to undertake a review of their ward boundaries and councillor numbers in certain circumstances (including periodic reviews every 8 years). The LGAB noted that these reviews do not necessarily result in a better ward and

representation outcome for communities and there is a concern that councillor vested interests may sometimes seek to override the expressed interests of the community.

The LGAB also questioned the need for wards, particularly considering that elected members are expected to represent the interests of electors, ratepayers and residents of the whole district and not just their ward. The LGAB noted that electors who own property in more than one ward were able to vote for more than one councillor.

## Workshops

Feedback received during workshops tended to focus on the following issues:

- **The frequency of elections:** Views split on whether a four (4) year election cycle should be introduced or the two (2) year election cycle retained;
- **Online voting:** Respondents were generally supportive, however, noted concerns regarding the security of such a method;
- **Compulsory voting:** Strong views on whether it should be introduced;
- **Wards:** Mixed views regarding the retention of wards.

## How elections are conducted

Elections must have a high level of integrity to ensure public confidence in the outcome. Elections must also be conducted in a way that maximises participation of eligible voters in an efficient manner while supporting the principles that are the foundation of our democracy.

Some of the ways to change how elections are conducted include:

- Compulsory voting;
- The voting method used;
- Frequency;
- Methods to elect the mayor or president;
- Permitting electronic and online voting;
- Requiring postal voting to be offered in all districts;
- Mandating the use of the Western Australian Electoral Commission (WAEC) to conduct elections; and
- Caretaker provisions.

## Compulsory voting

Every elector is required to cast a vote in both State and Federal elections throughout Australia, but this same requirement does not extend to all local government elections.

In Western Australia, voting in a local government election is voluntary with only 34 per cent of eligible voters casting a vote in the 2017 ordinary elections. Introducing compulsory voting for local government elections is one method of ensuring greater turnout in elections.

More than two-thirds (67 per cent) of residents who responded to the survey supported compulsory voting. There was less support from local government staff (52 per cent),

and council members (45 per cent). WALGA supported the retention of voluntary voting.

### Voting method

The current voting method for local government elections in Western Australia is first past the post (FPP). This method is inconsistent with the voting method applied at both a State and Federal level where variants of preferential voting are in place.

FPP can often lead to successful candidates being elected without a clear majority of votes. A preferential voting method could enhance the engagement of voters, who may take a greater interest in all the candidates running for election. This may encourage voters to participate and also ensure voters are informed when voting in local government elections.

It is worth noting that often there is an insufficient number of candidates in some local government districts in WA for preferential voting to be relevant. In the six ordinary local government elections held between 2003 and 2013, there was an average of 1.57 candidates per member vacancy.

Respondents were asked to indicate their support for the use of preferential voting in local government elections in WA. Fifty-five per cent of residents, and 46 per cent of local government staff supported the introduction of preferential voting.

WALGA supported the retention of the FPP method for local government elections.

### Frequency

The *Local Government Act 1995* provides that a local government is to hold ordinary elections every two (2) years. The Act also provides that councillors are to serve a term of four years. The effect of these two provisions is that the election of councillors is staggered; with half the councillors being elected every two years.

Views were largely split on the matter of holding elections every four years rather than every two years. Less than half (44 per cent) of residents, 43 per cent of local government staff and just 15 per cent of council members supported the concept.

In general, despite objections about the cost of elections and the disruption they cause, most within the sector, including council members and WALGA, reported that they wanted to retain a staggered approach.

### Election of mayor or president

Under the *Local Government Act 1995*, mayors and presidents can be elected by the community or elected by the council of elected members.

Respondents were asked to indicate their preferred method for electing mayors and presidents. Residents (62 per cent) favoured direct election by the community while local governments supported a method determined by council (58 per cent). WALGA supported the option of local governments determining the method for election of the Mayor or President.

The LGAB suggested two potential options for the election of mayors and presidents:

1. Remove the option for popular election, or
2. Have a tiered approach where local governments with a population below a particular amount, for example 35,000, must have a council elected mayor, and those above 35,000 could maintain the two current options.

Local Government Professionals WA (LG Professionals) supported the removal of the option for popular election of the mayor or president, citing that such an amendment would enhance consistency across local governments in WA.

### Electronic and online voting

There was considerable support for electronic and online voting being made available for local government elections. Eighty-five per cent of local government staff, 80 per cent of responses provided on behalf of a local government, 61 per cent of responses from residents and 60 per cent of responses from council members supported its introduction. However, some respondents did note their concerns in relation to security.

All groups of respondents in the survey were strongly supportive of having legislation that would permit local governments to trial online voting.

WALGA supported the introduction of online voting and any other options to increase voter participation in elections. LG Professionals also supported the use of online voting but specified that other means of voting should still be available, such as postal voting.

### Postal voting

The ability of local governments to offer postal voting as a way for eligible voters to cast a vote was introduced in the late 1990s in WA.

Most council members (81 per cent) and members of the public (77 per cent) supported all local governments being required to offer postal voting. Local government staff (60 per cent) also favoured all local governments being required to offer postal voting.

A slim majority (52 per cent) of responses provided on behalf of local government stated that postal voting should not be mandatory.

### WA Electoral Commission

The majority of responses from the public (68 per cent) and council members (54 per cent) supported all local governments being required to use the WA Electoral Commission (WAEC) to conduct elections. Most responses provided on behalf of local governments (73 per cent) advocated for no local governments to be required to use the WAEC.

Members of the public (84 per cent) overwhelmingly supported the continuation of the WA Electoral Commission being the only organisation permitted to conduct local government postal elections. A majority of local government staff (57 per cent) and council members (55 per cent) also supported the WA Electoral Commission exclusivity to continue.

Most responses provided on behalf of local governments (60 per cent) advocated for other organisations to be permitted to conduct postal voting. WALGA and LG Professionals also supported third party organisations being able to conduct local government postal elections.

### Caretaker provisions

Members of the public (82 per cent) and council members (62 per cent) supported the introduction of compulsory caretaker periods. Local government staff (40 per cent) and responses on behalf of local governments (30 per cent) generally did not support their introduction.

### Voter eligibility

The eligibility criteria to vote and nominate for election establishes who can have their say in a local government's future. Currently, the criteria in Western Australia is broad and includes owners of property and corporations that are not eligible to vote in other elections.

Property franchise is the right of property owners to vote in a local government election. Property owners must re-enrol every two years to vote in a local government election. This differs from residents, who once on the electoral role for State and Federal elections, remain on the electoral role.

A significant proportion of respondents from all main categories supported retention of the property franchise. The property franchise was universally (100 per cent) supported in responses provided by the 20 local governments that provided a response to the survey and was also supported by the majority of council members (80 per cent), staff (79 per cent), and members of the public (63 per cent).

Respondents also supported extending the property franchise to people who *lease* rateable property. Eighty per cent of responses provided on behalf of local governments, 68 per cent of council members, 67 per cent of local government staff and 66 per cent of members of the community supported the concept.

The eligibility of landowners to vote also currently extends to corporations. A company is entitled to a maximum of two votes in each district in which the company owns land.

Just 34 per cent of residents supported retention of corporations' right to vote. Council members were split with 46 per cent in favour and against. The overwhelming majority (90 per cent) of responses provided on behalf of local governments and to a lesser extent staff (64 per cent) supported its retention.

### Candidates

Eligibility to participate in elections as a voter and as a candidate is a fundamental part of the rules concerning elections. To nominate for council, a person must be an elector of the district. A person is not eligible if they, among other things:

- Are a member of State or Federal Parliament;
- Are an insolvent under administration;
- Are a nominee of a company;

- Have been convicted of a serious local government offence within the last five years; or
- Have been convicted of an offence for which the indictable penalty was or included imprisonment for life; or imprisonment for more than five years.

Respondents were asked to consider if a person should be ineligible to serve on council if they have been convicted under planning or building legislation. The rationale for excluding such people is that council members perform a unique and important role in planning and building control and the community should be confident their elected representatives can perform these duties ethically and competently.

Disqualifying people who have been convicted under planning or building legislation from serving on council was supported by a majority of respondents. Eighty-three per cent of members of the public, 67 per cent of local government staff and 65 per cent of council members supported the concept.

WALGA suggested the Act should be amended to include:

“A new disqualification criteria which disqualifies a person from being an elected member if they have been convicted of an offence against the Planning and Development Act, or the Building Act in the preceding five years.”

While the Chamber of Minerals and Energy was silent on the matter of whether specific offences should disqualify a candidate, the Chamber expressed a view that information on allegations, adverse findings and planning and building offences should be collated in a single, online portal.

### Election campaigns

Election campaigns are the most public component of elections. The Act provides a basic framework for election campaign rules. Candidates are required to submit a written profile with their nomination of no more than 150 words which is confined to their biographical information and statements of the candidate’s policies or beliefs. This information is not to contain information that the Returning Officer considers to be false, misleading or defamatory.

### Limits on advertising campaigns

Anecdotally, the average cost of local government campaigns has increased in recent years. This increase in costs may be tied to the growing number of candidates standing in many metropolitan local governments and the resulting greater competition.

Good local democracy relies on maximising participation not just of voters but also potential candidates. An escalation of the costs of campaigning necessary to have a reasonable chance for success can reduce the percentage of people able to be a council member.

One approach to address this potential issue is to cap the amount a candidate can spend on their campaign.

There was significant community support for a cap to be introduced on campaigning to become a council member. Eighty-six per cent of residents supported the concept.

A cap was also supported by a majority of local government staff (71 per cent), council members (68 per cent), and responses provided on behalf of local governments (60 per cent).

### Candidate nomination and information

There was near universal support for local governments being required to publish candidate profiles on their website. This support included 100 per cent of council members, 93 per cent of community members, 90 per cent of local government staff and 80 per cent of responses provided on behalf of a local government.

### Election gifts

Respondents were asked if the rules that regulate the receipt of non-election gifts and election gifts should be aligned.

There was strong support for one set of rules for gifts across council members (90 per cent), local government staff (88 per cent), responses provided on behalf of local governments (85 per cent), and members of the public (82 per cent).

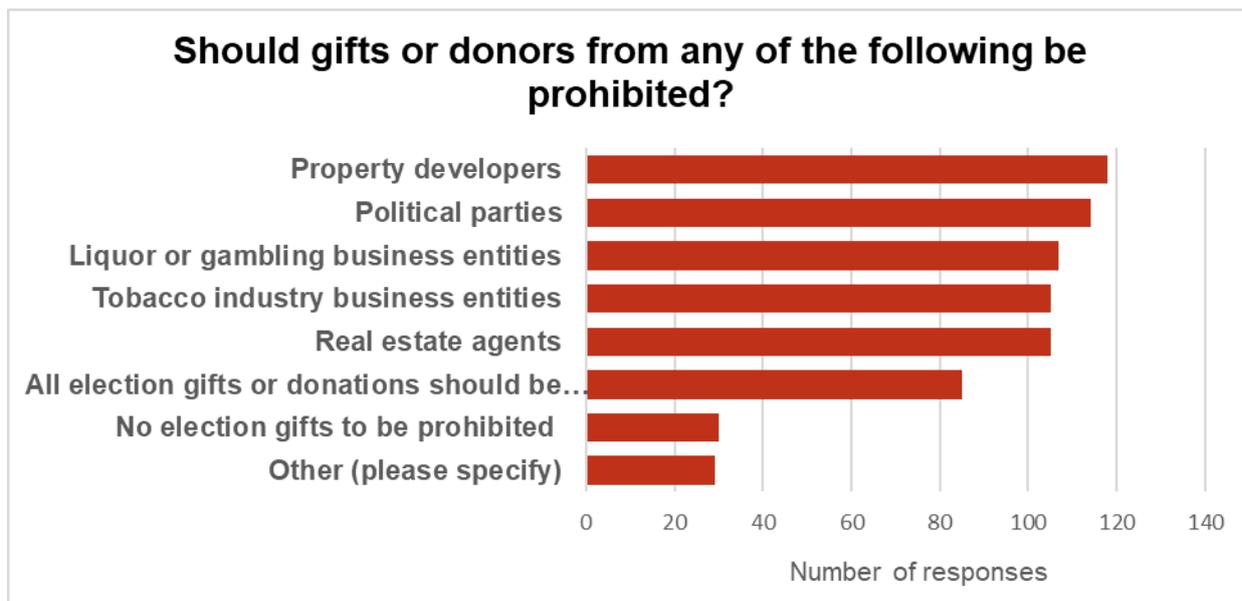
Requiring election gifts to be declared regardless of when they are received was almost universally supported by respondents. All survey responses received on behalf of local governments (100 per cent), 92 per cent of responses from members of the public, and 90 per cent of staff and council members supported the concept.

There was also general support for donors to be required to declare election gifts. The greatest proportion of support came from members of the public (85 per cent) but support also existed from council members (65 per cent), local government staff (64 per cent) and responses provided on behalf of local government (60 per cent).

There was close to universal support for requiring a register of election gifts and donations to be made available online.

### Prohibited election gifts

Survey respondents were asked whether gifts or donations from particular categories of organisation should be prohibited. The most popular response was property developers, followed by political parties and liquor and gambling entities. The majority of other respondents who provided responses in the 'other' category reiterated broad concerns associated with corporations providing election campaign funding.



### Wards and representation

Section 2.2 of the Local Government Act provides that a local government district may be divided into wards. Wards are intended to ensure that all parts of a district are fairly represented. The Act, however, explicitly requires councillors to represent their entire district and not just their ward. While councillors are only elected by voters in a ward, they must represent everyone in the district and make decisions that are in the best interests of the entire district. The Act permits an elector to nominate in any ward, regardless of where they reside.

### Requirement to have wards

Respondents were asked to consider whether a local government should be required to have a ward structure if they reached a certain population threshold. Two-thirds of members of the public (66 per cent) and similar proportion of council members (62 per cent) supported the concept. In contrast, only a quarter (24 per cent) of local government staff and 15 per cent of responses submitted on behalf of local government supported a threshold where wards would become mandatory.

### Ward boundaries

Ward structures are ultimately determined by the Governor on the Minister’s recommendation following a review by the LGAB. Respondents were asked to consider whether the Electoral Commissioner should instead be empowered to oversee the establishment and modification of ward boundaries. Most residents (73 per cent) and council members (56 per cent) supported ward boundaries being set by the Electoral Commissioner. There was less support from local government staff (50 per cent).

### Number of councillors

The number of council members within a local government is set upon the establishment of the local government and may be varied by the Minister following a recommendation of the LGAB. The number of council members across the State’s

local government varies from six through 15, with the most common number being nine.

Most responses supported linking a local government's number of council members to a local government population. This included 75 per cent of residents, 58 per cent of responses from local government staff, and 56 per cent of council members.

## **Summary**

An analysis of feedback received through the consultation workshops and submissions has identified the following key themes:

- The community generally supported proposals that enhanced community participation, such as compulsory voting, direct election of the Mayor or President by the community and the introduction of online voting.
- The local government sector, including councillors and staff, emphasised the need for local government elections to remain 'local' and not become politicised. The sector tended to be more supportive of proposals that enhanced efficiency and cut red tape, such as introducing one set of rules for gifts received by councillors and that the election of Mayors or Presidents should be by council (or a method determined by council).

## **Where to from here**

Feedback and suggestions received during the consultation period will be used to inform the new Local Government Act.

Consideration will be given to balance the need to reduce red tape and enhance the efficiency of local governments, whilst also increasing voter participation and strengthening local democracy.