



Submission: Local Government Reform

February 2022



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Cancer Council WA

Cancer Council WA welcomes the opportunity to provide a submission as part of the proposed local government reform consultation process.

Cancer Council WA is a leading health promotion charity in Western Australia. Our vision is a cancer-free future for all West Australians and, over the last 60 years, we have strived to achieve this vision through cancer research, advocacy, education, and support. We are highly regarded in the community and work closely with a diverse range of stakeholders to help deliver outstanding, client-centred customer service and health equity throughout our communities.

In the spirit of deepening relationships, Cancer Council WA acknowledge all the traditional custodians and owners of country throughout Western Australia and recognise their continuing connection to land, waters and community. We also pay our respect to their Elders and extend that respect to all Aboriginal peoples living and working in this area.

1. Background

Local government is an important tier of government and is a major provider of government services and infrastructure. Local government also supports public health, economic development, community vibrancy and inclusiveness.

The *Local Government Act 1995 (LG Act)* provides the framework for local governments within Western Australia. However, local government draws its functions from a wide range of disparate legislation which can lead to localised and disconnected decision-making that does not take into account the broader role, functions and objectives of local government. The LG Act is in need of reform and amendments are required to reflect the changing expectations of local government in the community and to ‘future proof’ the legislation.

The Department of Local Government, Sport and Cultural Industries (**DLGSC**) paper titled “Local Government Reform – Summary of Proposed Reforms” (**Background Paper**) sets out the six themes of the reforms that are being considered as follows.

- 1. Earlier intervention, effective regulation and stronger penalties*
- 2. Reducing red tape, increasing consistency and simplicity*
- 3. Greater transparency and accountability*
- 4. Stronger local democracy and community engagement*
- 5. Clear roles and responsibilities*
- 6. Improved financial management and reporting.”*

The Background Paper also sets out the proposed reforms that are aligned with these themes. The proposed reforms require changes to the LG Act (and associated regulations). The Background Paper provides that the proposed reforms are based on a significant volume of research and consultation undertaken over the last five years.

Cancer Council WA acknowledges the research and consultation that has occurred in preparing the proposed reforms to the LG Act, however considers that the proposed reforms are narrow in focus and that broader reform is necessary to ensure the LG Act provides a coordinated framework for local government reflecting the changing role of local government in the community. Despite local government having important ‘public health’ functions, local government does not have clear legislative powers to consider public health across the entirety of its activities and decision-making processes. Cancer Council WA considers legislative change is required as part of the proposed reforms to integrate public health into the existing activities and decision-making processes of local governments, in a streamlined and efficient manner. This submission by Cancer Council WA accordingly, has a broader focus than the proposed reforms as set out in the Background Paper.

2. Local governments and public health

Local government has an important role to play in protecting, promoting and improving public health in Western Australia. ‘Public health’ is defined in section 4(1) of the *Public Health Act 2016 (PH Act)* as follows:

“public health means the health of individuals in the context of —

- (a) the wider health and wellbeing of the community; and*
- (b) the combination of safeguards, policies and programmes designed to protect, maintain, promote and improve the health of individuals and their communities and to prevent and reduce the incidence of illness and disability”.*

Public health is the collective responsibility of all three tiers of government (local, state and federal), organisations across all sectors, communities, and individuals.

Cancer Council WA considers that public health is one of the most important interdependencies requiring regulatory and policy action in Western Australia. While local government has certain responsibility for public health as set out in health legislation, including the PH Act, broader incorporation of public health into local government decision-making is necessary to facilitate the achievement of local, state and federal government priorities and targets in relation to chronic disease prevention (including cancer prevention).

The majority of the disease burden in Australia is caused by cancer, cardiovascular diseases, musculoskeletal conditions and mental and substance use disorders.¹ It is estimated however that 38 per cent of the disease burden could be prevented through a reduction in modifiable risk factors.¹ Similarly, research has indicated that approximately 32 per cent of cancers (excluding keratinocyte cancers) are attributed to known risk factors that can be controlled.² The number of deaths caused by chronic disease, including cancer, can be reduced through addressing risk factors such as tobacco use; overweight and obesity; poor diet; inadequate physical activity; alcohol use and ultraviolet radiation (**UVR**) exposure (amongst other factors).^{1,2}

Given the central role of local government in public health and cancer prevention, Cancer Council WA has prepared a resource for local governments titled “Local Governments, public health and cancer prevention. Taking action to improve the health and wellbeing of our local communities” (February 2022), located at <https://www.cancerwa.asn.au/resources/2022-02-10-LG-PH-Cancer-Prevention-Guide.pdf> (**Local Government Guide**). The Local Government Guide is intended as a guide for local governments to address, through the development of evidence-based policies and practices, the major modifiable risk factors for cancer (being tobacco use; overweight and obesity; poor diet; inadequate physical activity; alcohol use and UVR exposure). These modifiable disease risk factors are also common to other chronic diseases, for example, heart disease. Further information about these modifiable risk factors and actions that local governments can take in addressing them are set out, in brief, below.

2.1 Tobacco use

While significant progress has been made in Australia to reduce tobacco use, tobacco use is still the leading cause of preventable death and disease in the country.¹ This disproportionately impacts priority groups such as Aboriginal peoples, people living in low socioeconomic circumstances, people living with a mental illness, and people living in remote and rural areas.³ There is still significant work to be done to reduce the incidence and impact of smoking and exposure to second-hand smoke on the Western Australian community.

Local governments play a crucial role in creating smoke-free environments in Western Australia. They do this through a number of means, including by policy initiatives. For example, they could adopt and implement a smoke-free policy for local government staff which includes smoke-free workplaces, facilities and vehicles and provide support for staff to quit smoking. In addition, they may enact local laws to prohibit smoking in areas not covered by state legislation. For example, the City of Perth's *Thoroughfares and Public Places Local Law 2017* prohibits smoking within any mall reserve. Smoke-free environments help to protect non-smokers from exposure to second-hand smoke and provide a supportive environment for smokers wanting to quit.⁴

2.2 Overweight and obesity; poor diet; inadequate physical activity

Local governments influence the environments in which their community lives, works and undertakes leisure. Within the limits of planning laws, local governments have the ability to improve access to healthy food and beverages and to reduce access to, and promotion of, unhealthy food and beverages. Further local governments may influence built environments to promote active transport and physical activity.

Just over one-quarter of children (26.5 per cent) are estimated to be above a healthy weight⁵ while over two-thirds of adults (69.3 per cent) are estimated to be above a healthy weight.⁶ The International Agency for Research on Cancer (**IARC**) has found there is sufficient evidence that high body mass increases the risk of 13 types of cancer.⁷

Physical activity can help to prevent some cancers (most notably two of the most common cancers, breast and bowel) and a range of chronic diseases including heart disease.⁸ Sedentary behaviour may contribute to an increased risk of breast, bowel, endometrial and lung cancer.^{9,10} Poor diet (often with high energy and sodium intake) contributes to physical illness and is associated with severe mental illness.¹¹ The marketing and availability of unhealthy food and beverages is a major contributor of overweight and obesity.¹²

Longitudinal research from a Western Australian study, shows that residential proximity to takeaway and fast-food outlets is significantly associated with poor dietary behaviours.¹³ The converse is also true; residential proximity to supermarkets and green-grocers is significantly associated with greater fruit/vegetable and healthy food intake.¹³

Another study shows that 41 per cent of Perth schools are within 1 kilometre of one or more of the 'top four' fast-food chain outlets (i.e., McDonalds, KFC, Red Rooster, and Hungry Jacks).¹⁴ A significantly higher frequency of these outlets are located within walking distance (400m – 1km) of schools in low socio-economic areas.¹⁴

Further, research has found that 70 per cent of Perth schools have at least one unhealthy food advertisement within 500m and that there are nine times as many outdoor advertisements for unhealthy foods than for healthy foods.¹⁴ The schools in lower socio-economic areas had a higher proportion of unhealthy food advertisements.¹⁴

The Sustainable Health Review Final Report (2019) recommended that changes to the planning laws be made to limit unhealthy food outlets and to support access to healthy food options, including near schools.¹⁵

Local government can also support the provision of healthy food in public places in other ways. The World Health Organization urges governments at all levels to lead by example through ensuring that the foods served or sold in public settings contribute to healthy diets¹⁶. Healthy food procurement and service is an opportunity for local governments to influence the options of foods offered to the community, for example at community events.

Local government can also support the reduction in children's exposure to unhealthy food and beverage advertising by adopting an advertising policy that prohibits advertising of unhealthy food and beverages on all property owned and maintained by local government, including bus stops. Local government can similarly use policy measures to promote physical activity. For example, local government could adopt and implement a streetscape design policy to increase walkability and physical activity, while ensuring adequate protection from UVR.

2.3 Alcohol use

Alcohol-related harms are high in Western Australia, and include injury, violence, and chronic diseases, such as cancer.¹⁷ Alcohol is a cause of cancer and is responsible for around 3500 cancers in Australia each year.¹⁸ Alcohol has been classed as a Group 1 carcinogen by the IARC (this means alcohol is known to cause cancer in humans and has the strongest level of evidence in IARC classification) for cancers of the mouth, pharynx, larynx, oesophagus, bowel, liver, stomach and breast (in women).^{19,20} There is no risk-free level of alcohol use with respect to cancer. Reducing alcohol use reduces the risk of alcohol-related cancer.^{21,22,23}

Alcohol contributes to more than 200 different types of health conditions, including liver disease, cancers, cardiovascular disease, stroke, respiratory diseases and sexually transmitted infections.²⁴ Alcohol use during pregnancy is also a leading cause of preventable birth defects, including Fetal Alcohol Spectrum Disorder (FASD).²⁵ Alcohol use is linked to worse outcomes for depression, suicide, social functioning and health care use.²⁶

Local governments often need to respond to the harms caused by alcohol or where alcohol is a factor. For example, a local government may need to respond to vandalism, anti-social behaviour, or violence within its district. The evidence shows increasing the availability of alcohol in communities leads to increased levels of alcohol use and related harms²⁷, and exposure to alcohol marketing impacts on the drinking attitudes and behaviours of young people.²⁸ There are a number of ways local governments can reduce levels of alcohol-related harm, particularly in addressing access to, and the promotion of, alcohol in their local community. For example, local governments could consider amending local planning schemes to introduce measures to control where liquor outlets are located. Another example is that local governments could adopt and implement a sponsorship policy that restricts alcohol sponsorship of sporting and cultural events within the local government district.

2.4 Ultraviolet radiation exposure

Australia has one of the highest rates of skin cancer in the world.²⁹ More than 1400 melanomas were diagnosed in 2017³⁰ in Western Australia and more than 83,000 non-melanoma skin cancer treatments were undertaken in WA in 2014.³¹ Melanoma, the deadliest form of skin cancer, is the most common cancer in young Western Australians aged 15 to 39.³²

Cutaneous malignant melanoma, squamous cell carcinoma (SCC) and basal cell carcinoma (BCC) of the skin are caused by solar radiation.³³ Skin cancer is largely preventable by reducing exposure to UVR from the sun. Increasing shade infrastructure throughout the built environment can significantly reduce UVR exposure and skin cancer risk and has also been shown to increase uptake of active transport, physical activity and use of public open spaces.³⁴

Local governments are in a position to have a significant influence on skin cancer risk by reducing over exposure to UVR in communities (for example, through the planning approval process and provision of shade) and promoting sun protective behaviours to residents and staff. Local governments could adopt and implement a comprehensive shade policy that covers all local government sponsored, funded and organised community events. Further, a comprehensive shade policy could cover all local government owned or managed facilities.

2.5 Co-benefits of public health intervention

There are many benefits of public health interventions, in addition to the benefits of facilitating good health, reducing the risk of chronic disease and reducing the demand on the health system. For example, public health interventions can advance other government priorities such as mitigating and adapting to climate change; increasing community belonging and safety; and creating liveable and inviting neighbourhoods and places. For example, public health initiatives that support increased walking and cycling may also contribute to safer, inviting streets and less motorised vehicle trips.

3. Comments on the Proposed Reforms

The proposed local government reforms address a range of important matters in relation to the effective and efficient operation of local government. Cancer Council WA however, only seeks to comment on the proposed reforms and the additional matters as set out below.

3.1 Proposed reform 1.7 – Minor other reforms

Proposed reform 1.7

The proposed reforms for 1.7 are as follows.

- *“Potential other reforms to strengthen guidance for local governments are being considered.*
- *For example, one option being considered is the potential use of sector-wide guidance notices. Guidance notices could be published by the Minister or Inspector, to give specific direction for how local governments should meet the requirements of the Local Government Act and Regulations. For instance, the Minister could publish guidance notices to clarify the process for how potential conflicts of interests should be managed.*
- *It is also proposed (see item 1.1) that the Inspector has the power to issue notices to individual local governments to require them to rectify non-compliance with the Act or Regulations.”*

Comments on proposed reform 1.7

Cancer Council WA supports the use of guidance notices. It is recommended that guidance notices be able to be provided to local governments exercising any of their functions (whether under the LG Act or any other written law). A person should be given protection from liability where they were acting in good faith in accordance with the guidance notice (see Division 4 of the LG Act regarding protection from liability).

Cancer Council WA requests that protecting, promoting and improving public health be an area for which guidance notices are considered. For example, guidance could be provided for declining engagement with the tobacco industry and other unhealthy industries (for example, the unhealthy food and beverage, and alcohol industries) in particular situations (such as in relation to public health policy formulation). In this regard it is noted that the tobacco industry and other unhealthy industries have a conflict interest in public health policy in that the aim of promoting the products of the unhealthy industry conflicts with public health objectives.³⁵

3.2 Proposed reform 2.3 – Introduce innovative provisions

Proposed reform 2.3

The proposed reforms for 2.3 are as follows.

- *“New provisions are proposed to allow exemptions from certain requirements of the Local Government Act 1995, for:*
 - *Short-term trials and pilot projects*
 - *Urgent responses to emergencies.”*

Comments on proposed reform 2.3

Cancer Council WA welcomes innovation in local government. Cancer Council WA recommends however, that controls be included that would prevent unhealthy industries (such as unhealthy food and beverage; alcohol and tobacco) from exploiting short-term trials or pilot programs as a way to avoid the usual scrutiny, consideration and controls applicable to their activities.

3.3 Proposed reform 2.4 – Streamline local laws

Proposed reform 2.4

The proposed reforms for 2.4 are as follows.

- *“It is proposed that local laws would only need to be reviewed by the local government every 15 years.*
- *Local laws not reviewed in the timeframe would lapse, meaning that old laws will be automatically removed and no longer applicable.*
- *Local governments adopting Model Local Laws will have reduced advertising requirements”.*

Comments on proposed reform 2.4

Cancer Council WA notes that often local laws do not address current government public health priorities and considers that model local laws and uniform local laws operating across the State could assist in addressing this issue. Cancer Council WA recommends that the DLGSC work with the WA Department of Health, the Mental Health Commission, Western Australian Local Government Association (**WALGA**) and other interested stakeholders to develop model local laws that address government public health priorities. These could include provisions regarding prohibiting smoking in specified areas; restricting the advertising and availability of unhealthy food and beverages, and alcohol; and addressing requirements for shade in particular circumstances, amongst other matters.

3.4 Proposed reform 2.5 – Simplifying approvals for small business and community events

Proposed reform 2.5

The proposed reforms for 2.5 are as follows.

- *“Proposed reforms would introduce greater consistency for approvals for:*
 - *alfresco and outdoor dining*
 - *minor small business signage rules*
 - *running community events.”*

Comments on proposed reform 2.5

As a general principle, Cancer Council WA supports simplifying approvals for small business and community events. In simplifying approvals and processes, it is crucial that public health considerations are integrated in a streamlined manner within the simplified process. For example, processes could require (as applicable) the prohibition of smoking in specified areas; the restriction of advertising and availability of unhealthy food and beverages, and alcohol; and requirements for shade in particular circumstances.

3.5 Proposed reform 3.3 – Clearer guidance for meeting items that may be confidential

Proposed reform 3.3

The proposed reforms for 3.3 are as follows.

- *“Recognising the importance of open and transparent decision-making, it is considered that confidential meetings and confidential meeting items should only be used in limited, specific circumstances.*
- *It is proposed to make the Act more specific in prescribing items that may be confidential, and items that should remain open to the public.*
- *Items not prescribed as being confidential could still be held as confidential items only with the prior written consent of the Inspector.*
- *All confidential items would be required to be audio recorded, with those recordings submitted to the DLGSC.”*

Comments on proposed reform 3.3

Cancer Council WA considers that it is in the public interest that matters that may impact on the public health be open to the public. This includes matters concerning unhealthy industries (such as the tobacco; unhealthy food and beverage; and alcohol industries) and any potential, perceived or actual conflicts of interests regarding these industries. Cancer Council WA agrees with the proposed reform that any confidential items would be required to be audio recorded, with those recordings submitted to the DLGSC.

3.6 Proposed reform 3.4 – Additional online registers

Proposed reform 3.4

Proposed reforms for 3.4 are as follows.

- *“It is proposed to require local governments to report specific information in online registers on the local government’s website. Regulations would prescribe the information to be included.*
The following new registers, each updated quarterly, are proposed:
 - **Lease Register** to capture information about the leases the local government is party to (either as lessor or lessee)
 - **Community Grants Register** to outline all grants and funding provided by the local government
 - **Interests Disclosure Register** which collates all disclosures made by elected members about their interests related to matters considered by council
 - **Applicant Contribution Register** accounting for funds collected from applicant contributions, such as cash-in-lieu for public open space and car parking
 - **Contracts Register** that discloses all contracts above \$100,000.”

Comments on proposed clause 3.4

Cancer Council WA supports the proposed reforms for 3.4 and the moves to improve transparency in local government. Cancer Council WA requests that the prescribed information to be included in the registers, include the legal identity of the parties involved (for example, individual names, Australian Business Number (ABN) and Australian Company Number (ACN)) as applicable. This would allow the public to scrutinize the involvement of the local government with particular individuals or entities.

However, Cancer Council WA recommends that a threshold lower than \$100,000 for the proposed contracts register be considered. It is noted in this regard that rule F5 of the Western Australian Procurement Rules³⁶ in relation to State agencies requires a contract arising from a procurement valued at \$50,000 or more (inclusive of GST and all extension options), to be recorded in the State agency's Accountable Authority contract register. The contract register information is accessible from the Tenders WA state government website. In addition, it would aid transparency if contracts with the same parties that collectively exceed the threshold within a specified time period (for example, a year) are also included in the contracts register. Transparency should not be avoided by the manner in which the contracts are structured.

Using what is currently published on Tenders WA as a guide, details that Cancer Council WA recommends be considered for inclusion in a contracts register include:

- a unique identifier (contract number)
- the contract title
- the contracting parties (their legal identity)
- a brief description of what the contract is for (including the nature of goods or services; and where they are to be provided)
- the commencement date and expiry date of the contract
- the estimated dollar value of the contract at award
- the number and total value of approved variations to date
- for standing offers, total expenditure (updated annually)
- final contract dollar value at final contract completion
- the number and total value of contracts awarded to the particular entity within a specified time period.

Cancer Council WA notes there is already certain local government information that is required to be published on the local government's website such as the register of gifts (see section 5.89A of the LG Act) and matters provided for in section 5.96A of the LG Act.

The register of financial interests provided for in section 5.88 of the LG Act is not yet required to be published on the local government's website as section 39(2) of the *Local Government Legislation Amendment Act 2019* (as passed) – No.16 of 2019 (**LGLA Act**) has not yet come into operation. It is important that the community has online access to a register containing financial interests to ensure transparency and that decision-makers are free from improper influence.

Cancer Council WA considers that the revenue and income of local governments should be available through the local government's website. In this regard, it is noted that the financial report for the financial year is required to be included in the annual report that is published on the local government's website (see sections 5.53 and 5.55A of the LG Act).

Cancer Council WA supports provisions designed to ensure the community and other stakeholders have greater access to information held by local governments.

3.7 Proposed reform 4.1 - Community and stakeholder engagement

Proposed reform 4.1

The proposed reforms for 4.1 are as follows.

- *"It is proposed to introduce a requirement for local governments to prepare a community and stakeholder engagement charter which sets out how local government will communicate processes and decisions with their community."*

- *A model Charter would be published to assist local governments who wish to adopt a standard form”.*

Comments on proposed reform 4.1

Cancer Council WA supports a charter clearly outlining the manner in which local government will engage with the community. As part of any consultation charter, triggers for consultation should be required to be set out. Consultation should occur at an early stage before any significant decisions are made that may impact on the community (for example, changes concerning land use) so that the community is able to play an integral role in shaping decisions (not only being informed of what is being proposed). A clear complaints process should be available should a member of the community consider that the charter is not being followed.

While consultation and community engagement play an important role in local government decision-making, other matters relevant to the decision, must be given appropriate weight and consideration. For example, in relation to matters that have public health implications, the local government’s public health plan and the state government’s Sustainable Health Review Final Report (2019)¹⁵ and the WA Health Promotion Strategic Framework 2017-2021³⁸ (with the next framework for 2022-2026 currently in development) may be relevant considerations. The charter should specify that in any consultation process, the community shall be advised as to the scope of the local government’s decision-making power and matters relevant to its exercise.

Cancer Council WA considers it is important to include in the charter that there be measures to protect public health policy from tobacco industry interference. This aligns with the World Health Organization Framework Convention on Tobacco Control (of which Australia is a Party), that provides at Article 5.3:

“In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”

Cancer Council WA also considers it is important to include in the charter that there be measures to protect public health policy, including policies to restrict or reduce the availability and marketing of unhealthy food and beverages; and alcohol from industry interference. The unhealthy food and beverage, and alcohol industries have a conflict of interest in the area of public health policy, in that their aim of promoting and profiting from unhealthy food and beverages, and alcohol, conflicts with the public health objective to encourage healthy dietary patterns and reduce alcohol use.³⁵

Further, by way of related suggestion, Cancer Council WA suggests DLGSC consider ensuring, with relevant stakeholders, that the procurement and tender process and template documentation requires individuals and entities to disclose any direct or indirect association with harmful industries (for example, tobacco, alcohol and unhealthy food and beverage industries). The local government can then consider if that relationship would pose a risk to public health before awarding the contract or tender.

3.8 Proposed reform 5.1 – Introduce principles in the Local Government Act 1995

Proposed reform 5.1

The proposed reforms for 5.1 are as follows.

- *“It is proposed to include new principles in the Act, including:*
 - *The recognition of Aboriginal Western Australians*

- *Tiering of local governments (with bands being as assigned by the Salaries and Allowances Tribunal)*
- *Community Engagement*
- *Financial Management.”*

Comments on proposed reform 5.1

Cancer Council WA recommends a section be inserted into the LG Act setting out the objects of the legislation, and then including in the LG Act, principles to be considered in pursuit of those objects. It is recommended a separate provision be inserted providing that people exercising functions under the LG Act are required to have due regard to the objects and principles. This would be a way to embed the objects and principles into decision-making processes to ensure the LG Act is administered in a manner that furthers the objects and principles. Such an approach reflects modern statutory drafting practices and is evident in the drafting of the PH Act.

Cancer Council WA supports the inclusion of the principles proposed in broad terms, however does not consider there is sufficient information regarding the way the principles are to be described and the purpose for their inclusion. Cancer Council WA considers that the LG Act should recognise the unique status of Aboriginal peoples as traditional custodians and owners of the land and ensure that Aboriginal peoples are empowered to be engaged in local government decision-making processes. It is recommended the LG Act provide a requirement for local government planning to expressly consider the needs and circumstances of Aboriginal peoples and Aboriginal communities (including remote communities as applicable).

The public health role of local governments has broadened over time, with functions expanding from a focus on ‘safety’ to a broader proactive public health role, incorporating the requirements for local governments to undertake public health planning. It is appropriate in the circumstances that the role of local governments in protecting, promoting and improving public health be incorporated in any objects and principles of the LG Act. This would be a way to ensure that public health is considered in all decisions under the LG Act.

One way to do this would be to provide that the objects of the LG Act include, “to protect, promote and improve public health” (with the definition of ‘public health’ being the same as in section 4(1) of the PH Act). An object of this nature would align with the functions of local governments.

A principle to support this object, could be the precautionary principle that is set out in section 3(2) of the PH Act and provides as follows:

“(1) If there is a public health risk, lack of scientific certainty should not be used as a reason for postponing measures to prevent, control or abate that risk.

(2) In the application of the precautionary principle, decision-making should be guided by —

- (a) a careful evaluation to avoid, where practicable, harm to public health; and*
- (b) an assessment of the risk-weighted consequences of the options.”*

The general function of local government is currently set out in section 3.1 of the LG Act and provides as follows:

“3.1. General function

(1) The general function of a local government is to provide for the good government of persons in its district.

(2) *The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.*

(3) *A liberal approach is to be taken to the construction of the scope of the general function of a local government.”*

The above description does not provide clarity as to what functions local governments actually perform. Clarification of the role and functions of local governments and their statutory responsibilities was a recommendation of the Local Government Review Panel – Final Report (Recommendations for a New Local Government Act for Western Australia; May 2020)³⁷ and should be addressed as part of the proposed reforms.

The functions of local governments should include the general power to provide good government to persons in the district but then set out in broad terms what these functions include. Cancer Council WA considers that it should be expressly provided that local government has a function in protecting, promoting and improving public health within its district. Local governments and their officers have public health functions included in a range of legislation, for example the PH Act, *Health (Miscellaneous Provisions) Act 1911*, *Tobacco Products Control Act 2006*; *Liquor Control Act 1988* and *Food Act 2008* (amongst others). However, a general public health function included in the LG Act would strengthen the importance of public health considerations across the entirety of local government activities and decision-making. It would also clarify for communities that public health is a key statutory responsibility of local governments.

Objects, principles and functions that expressly advance public health would support local governments' legislative power in relation to public health (see section 3.5 of the LG Act) and facilitate the integrated planning framework obligations of local governments (see section 45(3) of the PH Act [not yet in operation; however it can be viewed in the *Public Health Act 2016* (as passed) – No.18 of 2016] and section 5.56(1) of the LG Act). Further, such objects, principles and functions would support relevant state government plans and frameworks that require local government involvement to support their implementation, for example, the WA Health Promotion Strategic Framework 2017-2021 (with the next framework for 2022-2026 currently in development).³⁸

There is considerable overlap between the issues of public health, environmental protection and planning and development. Part 7 of the PH Act, once in operation, will provide a framework for an assessment of public health risks and benefits arising from particular assessable proposals to be undertaken in conjunction with existing approvals processes.

It is noted that public health assessments will only apply to proposals that are prescribed by regulations to be made under the PH Act. The framework implements the recommendations of the Economics and Industry Standing Committee in 2002 (Bellevue Hazardous Waste Fire Inquiry) and the Education and Health Standing Committee in 2007 (Inquiry into the Cause and Extent of Lead Pollution in the Esperance Area).³⁹

Cancer Council WA made a submission in respect of planning reform to the Department of Planning, Lands and Heritage in August 2021. A central part of that submission was that the most significant issue hindering the planning and development of local communities in WA, is the absence of mandatory public health considerations and metrics in land use planning and development. Cancer Council WA strongly recommends this matter be addressed in a coordinated and efficient manner at the state government level. The statutory absence of public health considerations in land use planning and development means that the process decision-makers must follow will not involve giving weight to considerations of public and preventative health. Unfortunately this can lead to disconnected decision-making that does not consider the broader role, functions and objectives of local governments in relation to public health. Local government is limited in its capacity to advance public health within its district, when it does not have express power to consider public health in

respect of planning and development. A holistic and consistent approach to public health is required at the local government level to ensure consistency across local government activities and decision-making.

In addition to incorporating greater inclusion of public health in the LG Act, Cancer Council WA recommends a change to the *Planning and Development (Local Planning Schemes) Regulations 2005 (PDLPS Regulations)*. Schedule 2, clause 67(2) of the PDLPS Regulations set out a list of considerations that local governments must have 'due regard' for in assessing a local development proposal (to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application). There is no express mention of public health. Reform is necessary to align planning goals with local, state and federal government public health objectives.

Cancer Council WA submits that 'public health' should be expressly set out in the Schedule 2, clause 67(2) of the PDLPS Regulations, given the importance of public health in planning and development. In this way, consideration of public health would be integrated into the existing decision-making process, in a streamlined and efficient manner. Such an approach aligns with the recommendations of the Sustainable Health Review¹⁵ and supports government public health priorities and targets at all levels. The incorporation of public health in local government decision-making, including with respect to planning and development, will help secure population-level health gains and associated economic prosperity.

3.9 Proposed reform 5.7 – Remove WALGA from the Local Government Act 1995

Proposed reform 5.7

The proposed reform for 5.7 is as follows.

- *"The Local Government Panel Report recommended that WALGA not be constituted under the Local Government Act 1995.*
- *Separating WALGA out of the Act will provide clarity that WALGA is not a State Government entity."*

Comments on proposed reform 5.7

WALGA plays an important role in representing and supporting the local government sector in WA. Cancer Council WA supports WALGA continuing to perform its central role in the local government sector, whether or not it is constituted under the LG Act. We can see the merit in the local government sector being able to use WALGA's preferred supplier program and their mutual insurance coverage. Cancer Council WA suggests that further consultation with WALGA occur in respect of this proposed reform so that its implications are fully explored before any decision is made.

3.10 Proposed reform 6.2 – Simplify strategic and financial planning

Proposed reform 6.2

The proposed reforms for 6.2 are (in part) as follows.

"...

- *Local governments would be required to adopt a standard set of plans, and there will be templates published by the DLGSC for use or adaption by local governments.*
- *It is proposed that the plans that are required are:*

- *Simplified **Council Plans** that replace existing Strategic Community Plans and set high-level objectives, with a new plan required at least every eight years. These will be short-form plans, with a template available from the DLGSC*
- *Simplified **Asset Management Plans** to consistently forecast costs of maintaining the local government's assets. A new plan will be required at least every ten years, though local governments should update the plan regularly if the local government gains or disposes of major assets (e.g. land, buildings, or roads). A template will be provided, and methods of valuations will be simplified to reduce red tape...".*

Comments on proposed reform 6.2

In relation to the simplified council plans, Cancer Council WA recommends these plans be able to be used to ensure the public health needs of the community are met through, for example, local government land use and planning activities and that the templates accommodate such an approach.

Further, in relation to the simplified asset management plans, Cancer Council WA recommends that a clause be included in these templates around facilitating reasonable upgrades that incorporate a combination of natural and built shade to provide year-round protection from UVR from the sun. UVR causes at least 95 per cent of all skin cancers (the most commonly diagnosed and most costly cancer type to treat) in Australia and the planning and design of quality shade plays a key role in reducing the incidence of this highly preventable disease in the community.⁴⁰

3.11 Proposed reform 6.7 – Building upgrade finance

Proposed reform 6.7

Proposed reforms for 6.7 are as follows.

- *“Reforms would allow local governments to provide loans to third parties for specific building improvements - such as cladding, heritage and green energy fixtures.*
- *This would allow local governments to lend funds to improve buildings within their district.*
- *Limits and checks and balances would be established to ensure that financial risks are proactively managed.”*

Comments on proposed reform 6.7

Cancer Council WA considers that in providing loans for any upgrades, there should be a requirement around facilitating reasonable upgrades that incorporate provisions to reduce community exposure to UVR. Quality shade can reduce UVR exposure by up to 75 per cent and local governments are well placed to consider appropriate shade requirements in respect to the upgrade of buildings.⁴¹

Planning approval processes provide local governments with the opportunity to require the provision of shade in new building and development applications, as well as renovations to existing premises. There is also the opportunity when planning and designing healthy active environments to ensure communities are protected from UVR exposure.

4. Other comments

4.1 Section 3.54 of the Local Government Act 1995

Section 3.54 of the LG Act provides as follows.

“3.54. Reserves under control of local government

(1) If land reserved under the Land Administration Act 1997 is vested in or placed under the control and management of a local government, the local government may do anything for the purpose of controlling and managing that land that it could do under section 5 of the Parks and Reserves Act 1895 if it were a Board appointed under that Act to manage and control the land and for that purpose a reference in that section to a by-law is to be read as a reference to a local law.

(2) Subsection (1) is subject to any express provision to the contrary made by an order under the Land Administration Act 1997 in respect of the land.”

Comments on section 3.54 of the LG Act

Reserves often have prominent advertising placed in them. Cancer Council WA considers that it is appropriate that the advertising of unhealthy products or brands, including unhealthy food or beverages, or alcohol, on local government assets or assets it controls and manages be prohibited by legislation. In the alternative, Cancer Council WA considers it is appropriate that local governments have the clear legislative power to refuse advertising of unhealthy products or brands, including unhealthy food or beverages, or alcohol, on its assets or assets it controls and manages. Cancer Council WA recommends the above suggested changes be considered as part of the proposed reforms.

It is also recommended that template contracts and tender documents be developed and published by the DLGSC, in consultation with stakeholders, to incorporate terms that enable local governments to be able to restrict the nature of the advertising on its assets or assets it controls and manages by way of contract.

Limiting unhealthy advertising on local government assets and assets it controls and manages would align with the position of the state government in prohibiting alcohol advertising on state owned assets (train stations, buses, trains) and would greatly reduce exposure to advertising of unhealthy products and brands. There is evidence regarding how this exposure has a causal effect, leading people, especially children and young people, to consume those products.²⁸

4.2 Section 5.126 of the Local Government Act 1995

Section 5.126 of the LG Act provides as follows.

“5.126. Training for council members

(1) Each council member must complete training in accordance with regulations.

(2) Regulations may —

(a) prescribe a course of training; and

(b) prescribe the period within which training must be completed; and

(c) prescribe circumstances in which a council member is exempt from the requirement in subsection (1); and

(d) provide that contravention of subsection (1) is an offence and prescribe a fine not exceeding \$5 000 for the offence.”

The current training prescribed under regulation 35 of the *Local Government (Administration) Regulations 1996* is a course titled Council Member Essentials that is provided by either North Metropolitan TAFE; South Metropolitan TAFE or WALGA.

Comments on section 5.126 of the LG Act

Universal training for council members is necessary to ensure that council members have the necessary training to understand and carry out their role. Cancer Council WA recommends that a short course addressing local government’s role in protecting, promoting and improving public health and examining the social and commercial determinants of health (that is, the factors that affect the health of individuals and communities) be developed and prescribed in regulations for the purposes of section 5.126. In the alternative, Cancer Council WA recommends such a course be included within the continuing professional development policy of a local government in respect of council members (see section 5.128 of the LG Act).

4.3 Part 5, Division 6 of the Local Government Act 1995

Comments on Part 5, Division 6 of the LG Act

Part 5, Division 6 of the LG Act addresses the way in which the disclosure of financial interests and gifts are to be managed within local governments. Given the important role of council members and many local government employees as decision-makers in positions of power, the public has a reasonable expectation that the decisions that a local government makes are free from improper influence.

Cancer Council WA considers that it would be inappropriate for local government officials to receive gifts from companies whose products cause demonstrable public health damage such as tobacco, unhealthy food and beverages, and alcohol. Such gifts have the potential to undermine the important public health role of local governments and local government officials. Cancer Council WA considers that such gifts should be expressly prohibited by the LG Act. Alternatively, Cancer Council WA recommends that a power be inserted in the LG Act allowing regulations to be made for such a purpose.

5. Conclusion

Thank you for considering this Cancer Council WA submission. Cancer Council WA would be pleased to provide further information regarding our comments upon request. We look forward to reading the outcomes of the consultation in due course.

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