

# **LOCAL GOVERNMENT REFORM**

## **- Summary of Proposed Reforms**

**Submission by Patrick Hall**  
**Mayor, City of Canning**

\*The views and opinions contained in the following submission are my own personal views and opinions, based on my own experiences, and do not necessarily reflect the views and opinions of the City of Canning or its Council.

**22.02.2022**

## 1.1 EARLY INTERVENTION POWERS

### **Submission: That a more thorough triage process be implemented for minor breach complaints**

The Department of Local Government Sports and Cultural Industries (DLGSC) accepts minor breach complaints and forwards advice to the respondents requesting a detailed response to the complaint - without first making a thorough assessment of the validity of the complaint.

I would submit that reforming the complaints process should include provision for the thorough triaging of complaints at the earliest point in the process – and prior to Elected Members being required to respond to the complaint. This would determine whether the elements of the alleged breach have been met and/or whether the complaint should not be dealt with - on the basis that it has been assessed as being trivial, frivolous, vexatious or misconstrued.

This process should be conducted by senior DLGSC staff and approved by the Department head. It is also my view that this initial complaint assessment process should not be subject to review or appeal.

Currently, because the Local Government Standards Panel system is a veritable desktop review of the 'complaint versus the response', respondents must treat every complaint seriously because they have only one opportunity to provide a comprehensive written defence.

Responses to even a relatively simple complaint can take an inordinate amount of time to complete and often require extensive research, obtaining transcripts from the audio of Council meetings, referring to policy and regulations, and result in a comprehensive written response – which can contain up to 20 pages of documentary evidence and other attachments,

It has been my experience that after an Elected Member has completed and submitted their comprehensive response, months later the Panel may simply advise the parties (via a 1-page letter of advice) that they have refused to deal with the complaint on the grounds that it was misconstrued, trivial, vexatious, or not within their remit.

A (thorough) preliminary assessment at the earliest point in the complaint process will assist all parties to the complaint. The robust triaging of complaints is key to the changes necessary to improve the current system.

### **Further recommendation: The Inspectorate/Department website**

With the proposed establishment of the Inspectorate, the Department could significantly reduce the number of complaints made to it by introducing a simple scenario-based table on its website to document conduct which would generally be considered to be a breach of the Act and Regulations - and to also document what is not.

The Inspectorate/Department will have its finite resources tested on perennial allegations of alleged conduct which have been determined (time and again) not to be a breach. If complainants were able to self-assess their proposed allegation against a table of previous decisions, then this may certainly prevent a lot of misconstrued complaints from being made.

What are the top 10 (or 20) alleged breaches of conduct by Elected Members reported to the Panel each year? The data is available. These should form the basis of an FAQ section on the Department's website which could be linked to case law (or at least to findings from previous complaints) with the intention of better informing complainants – before the potential allegation is lodged.

**NOTE:** I would also submit that Complaint Forms should only be available directly from the Inspectorate/Department's website – and not available from individual local governments. This would ensure that in the first instance complainants are directed to the online resources made available on the website of the Inspectorate/Department. \*Local governments could insert a hyperlink on their own websites to direct complainants to the Inspectorate/Department's website and the official forms. I am of the opinion that there should only be one 'source of truth'.

## 1.2 LOCAL GOVERNMENT MONITORS

### **Submission: That participation in mediation be compulsory**

I believe that early intervention will only succeed if all parties are compelled to participate – despite their reluctance to do so. This would be in the best interests of the local government sector, the district, and the Council as a group. If behaviour is of such concern that it has required intervention, then participation in mediation to mitigate the continuation of the behaviour should not be optional.

**Further recommendation:** That any recommendation/s made by the Monitors be treated in the same manner as a recommendation made by an auditor or a formal Inquiry, and that the actions taken to satisfy the recommendation be reported to the Audit and Risk Committee of the relevant local government.

## 1.4 REVIEW OF PENALTIES

### **Submission: Suspension of Councillors**

I do not support suspending an Elected Member when he or she has "*breached the Local Government Act or Regulations*" on more than one occasion.

Whilst I support the notion of stronger penalties, this particular reform requires careful consideration and greater clarity – because not all breaches are equal. Without seeking to minimise or diminish the seriousness of any particular breach, it must be conceded that there are instances in which Elected Members have been found to have breached a provision of the Act or Regulations 'on a technicality'.

Considering the incredibly minor nature of many complaints and the highly technical nature of some findings, a Member's actions may have been entirely in good faith and the occurrence of a breach may have been genuinely inadvertent. Careful consideration should be given before publicly shaming an elected official – by suspending her/him from Council and stripping them of their title, for two infractions (which may be minor).

This mandated approach also does not take into effect the inadvertent consequences of doing so, which would likely include a significant escalation of appeals to the State Administrative Tribunal (SAT) and substantial resourcing required by the Department to defend those actions.

I would submit that the suspension of Elected Members should be handled in a similar manner to internal disciplinary matters handled by WA Police. The DLGSC (Minister) could issue a 'Show Cause Notice' requiring the Elected Member to provide reasons why they should not be suspended.

In the interests of natural justice any action to suspend an Elected Member should include provisions allowing the Elected Member to appeal the decision to the SAT.

## 1.5 RAPID RED CARD RESOLUTIONS

### **Submission: That the decision of the Presiding Member not be subject to a vote of dissent by Council**

Whilst the conduct of Elected Members is understandably placed under great scrutiny, I would implore the Minister to acknowledge the detrimental effect that activist groups and vexatious persons have on the conduct of meetings.

Regrettably, respect for authority has diminished to the point where residents are often openly hostile toward elected officials, creating a workplace (the Council Chamber) which is sometimes not a healthy or safe environment – for either staff or Elected Members (or innocent bystanders). Any future Model Standing Orders should introduce sufficient measures to prevent misconduct by members of the public - whilst still supporting, preserving and encouraging the democratic process.

I support the red-card system and do so on the basis that it would be exercised rarely, would require a clear first warning be issued, would require the Presiding Member to justify the action and notify the Inspector, and therefore there are adequate controls in place to mitigate the risk that a Presiding Member may abuse the process.

My submission is that the decision by the Presiding Member to exercise their discretion and issue a 'red-card' should not be able to be subjected to a motion of dissent by Councillors under the provisions of the Standing Orders.

To allow the Presiding Member's decision to be overturned – on a matter of conduct, would;

- undermine and diminish her/his authority
- prevent the preservation of order
- cause further discord among the Council

I would also submit that the red-card system should apply equally to individuals and to large groups.

Notwithstanding the democratic right of every person to attend a public meeting and to voice their opinion, the reforms should take into consideration the increasing prevalence of large groups of agitators who attend public meetings, disrupt proceedings, and intimidate other members of the public, staff, and Elected Members.

At the time of this submission, pro-choice (ant vaccination) groups are infiltrating the local government system by presenting petitions, making deputations, and calling Special Council Meetings in an attempt to persuade local governments to publicly support their point of view. This orchestrated activist behaviour is a sign of things to come. I fully expect unruly behaviour, significant disturbances to Council meetings, and disruption to decision making.

Whilst current Standing Orders across the sector generally allow for the Presiding Member to adjourn (close) the meeting for a period to restore order, the closing of a public meeting should never be considered to be a good option for the democratic process. To close a meeting should be deemed to be an extreme measure and an option of last resort.

Instead, the Presiding Officer should have the authority to red-card 'groups' to maintain and restore order, or to clear the public gallery *for the duration of that particular item* – to allow the business of the local government (decision making) to continue unhindered and without disruption.

If the above is to be considered, then I would submit that the clearing of the public gallery by the Presiding Member would also be subject to the same conditions as those already drafted for the Rapid Red Card process.

## **1.6 VEXATIOUS COMPLAINT REFERRALS**

I fully support the proposed reform.

Vexatious complaints/complainants are a significant issue for the sector. It is accepted that the behaviour and decision making of elected officials should be rightly scrutinised by the ratepayers who elected them, however the unhealthy obsession and fixation on certain Councils (and individual Councillors) by vexatious persons is a matter that needs to be addressed through legislation.

Whilst Councillors are not employees, the local government (and the Department) should provide a safe workplace that is free of intimidation, harassment, and bullying.

Vexatious complainants divert the limited resources of local governments away from more important tasks, their relentless actions come at a significant financial cost to residents, and their obsessive behaviour takes a considerable toll on the people subjected to it.

It is also true that the prevalence of (unchallenged) vexatious behaviour toward Elected Members is a barrier which discourages good people (particularly women and younger people) from nominating as candidates for local government.

## **1.7 MINOR OTHER REFORMS**

I believe that the following minor reforms would support the objectives outlined in the discussion paper by providing greater transparency and accountability – for all parties.

### **Submission 1: Disclosure of Interests – Regulation 22 Local Government (Model Code of Conduct) Regulations 2021**

If transparency is genuinely a tenet of these reforms then I urge the Minister to consider an amendment of Regulation 22 Local Government (Model Code of Conduct) Regulations 2021.

A councillor should be compelled to disclose an interest in any matter raised in an official capacity by the local government, because the decision-making of Council is influenced by every discussion about a matter, irrespective of the forum in which the discussion occurs. Where a Member is aware of an interest they should be compelled to disclose it – regardless of the forum.

Currently the terms of Regulation 22 are aligned to the Act and only require a Councillor to disclose an interest where the relevant matter is discussed at a Council Meeting (either Ordinary or Special) or a committee meeting.

Strategic Issue Briefings and Workshops (including budget workshops) are both gatherings of the full-Council but there is no compulsion on an Elected Member to disclose an interest because these forums are not considered to be a council meeting or committee meeting as defined in the Act.

Of greater concern, Agenda Briefings (a formal meeting of Council which also includes provision for petitions, deputations and public question time) are also not a 'Council Meeting' (under the provisions of

the Act) and therefore disclosures of interest are not mandated – irrespective of how glaring the interest is later found to be.

Though these Agenda Briefings are not decision-making forums, Councillors can exert significant influence over their colleagues through strategic questioning – without the requirement to disclose to their fellow Councillors that they have an interest in the matter (even a proximity or financial interest).

Budget workshops are immensely important forums. Again, a Councillor can exert significant influence over the allocation of funds during the budget process – without ever having to disclose a significant interest in a matter under discussion.

The disclosure of interests is a key tenet of local government.

Elected Members have a sworn duty to act in good faith and to exercise their considerable decision making powers impartially. To not do so undermines public confidence in the honesty and integrity of all public officers. Broadening the ‘*disclose of interest*’ provisions will improve transparency and it will send a clear message to the community that the sector is serious about integrity and ethical behaviour.

### **Submission 2: Review the current 6 month statute of limitation on Minor Breaches - Section 5.107(4) of the Local Government Act**

Section 5.107(4) of the Act is unequivocal. Complaints of a Minor Breach must be made “*within 6 months after the breach alleged in the complaint occurred, but not later.*”

The current situation does not take into account the many instances in which an allegation is first thought to be ‘serious’ misconduct (by the complainant) and is rightly referred to an authoritative body (CCC, WA Police, or the Department) for investigation.

Section 28 of the Crime, Corruption and Misconduct Act compels certain public officers (including Mayors and CEO’s) to report matters to the CCC which are “reasonably suspected” of being serious misconduct.

Unfortunately, it is often the case that by the time that the authoritative body has conducted and finalised its investigation – and found that the misconduct was a minor breach not a serious breach, the 6-month statute of limitations for Minor Breaches under Section 5.107(4) has expired. As a consequence it then prevents a complaint of a Minor Breach from being referred, inadvertently allowing blatant misconduct to completely avoid scrutiny or sanction.

A simple amendment would correct the current situation.

I would submit that Section 5.107 be amended to take into account allegations of misconduct referred to authoritative bodies for investigation, and provide that in those circumstances the 6-month period referred to in the Act commences ‘*at the conclusion of the deliberations by the authoritative body*’ or words to that effect.

Similarly, it is often the case that the failure to disclose an interest in an item by an Elected Member (impartiality) does not become apparent for a considerable time after the failure, and often the 6-month statute of limitations (for Minor Breaches) has already expired.

It is also my view that the provisions of Section 5.107(4) of the Act should be amended to specifically exclude breaches relating to disclosures of interest from the mandated 6-month period referred to in the Act. It is in the public interest to do so.

A failure to disclose an impartiality interest, particularly when the failure has been blatant and/or intentional, is a serious matter and should be subjected to sanction – regardless of when the breach was uncovered.

### **Submission 3: Complainants to be identified (Serious Breaches)**

In the interests of natural justice and procedural fairness, a complainant making an allegation of either Minor or Serious Breaches should be identified to the person who has been subjected to the complaint.

The Act is inconsistent on this point.

In the case of a Minor Breach dealt with by the Local Government Standards Panel (Panel), the Act provides that the respondent is provided all details of the complaint under the provisions of Section 5.107(3)(b) which stipulates that the Complaints Officer is required to;

*“...give to the council member about whom the complaint is made a copy of the complaint”*

By doing so, the legislation identifies the complainant to the council member about whom the complaint is made, as all of the complainants details are contained on the prescribed complaint form.

This is not the case when allegations of a Serious Breach are made to the Department under Section 5.114. There is no provision under this Section to provide the *council member about whom the complaint is made* with the name of the person making the allegation against them, or even to provide a ‘copy of the complaint’

There is no valid reason why a person making a complaint of a Serious Breach against an elected member should have their identity protected. It is not in the interests of natural justice, it is not transparent, it is inconsistent with Section 5.107 of the Act, and it is contrary to the principles applied in every court in the nation (criminal and civil).

I would submit that even the most serious offences in the criminal justice system require the complainant to be identified to the accused, actions in the State Administrative Tribunal (SAT) identify both parties, as do civil proceedings in the Magistrates Court.

It is also the case that any proceedings against a vexatious person cannot be prosecuted without evidence of their vexatious conduct. By failing to identify (vexatious) accusers to those who have been accused, the Department – due to the legislation, is inadvertently hindering Elected Members from gathering the evidence necessary to sustain a claim of vexatious behaviour should they chose the option to do so.

Elected Members are being notified by the Department that an allegation of a Serious Breach has been made against them - and are then requested to answer the allegation, without ever knowing the identity of the complainant. The identity of the complainant may be highly relevant to the matter, and it may also significantly alter the manner in which the Elected Member frames her/his response.

For instance the anonymous complainant could be a former spouse, a disgruntled former employee of the EM, an opponent from a local government election, a person involved in a civil dispute with an EM – or a vexatious person waging an orchestrated campaign against a particular EM.

Only the EM can provide this highly relevant background, and they can only do so if they are provided with the identity of the complainant at the time of the complaint.

The current situation allows vexatious or malicious persons to make allegation of Serious Breaches under a cloak of anonymity and this situation is unfair and unjust.

#### **Submission 4: Register of certain complaints – Section 5.121(1) Local Government Act**

Section 5.121(1) of the Act requires the complaints officer for each local government to keep a register of complaints *for all complaints that result in a finding under section 5.110(2)(a) that a minor breach has occurred.*

The Act does not make provision for findings which are subject to lawful review under the provisions of section 5.125 and are before the State Administrative Tribunal for determination.

It is my strong view that it is not in the interests of justice - or the public interest, to publish or release the name of an Elected Member (and the finding against her or him) whilst the matter is under review by a higher judicial authority than the Standards Panel.

In the event that the decision of the Standards Panel (or future Inspectorate) is overturned, the Elected Member has already been subjected to reputational damage by the publishing of the finding on the City's website and the media attention that Standard Panel findings often attract.

I would submit that the requirement to publish a finding of a minor breach on a register, should exclude any matter which has lawfully been referred to the SAT for review – until the conclusion of the appeal process.

Similarly, I would submit that the requirement to publish a finding of a minor breach in a local government's **Annual Report**, should exclude any matter which has lawfully been referred to the SAT for review – until the appeal process has been concluded.

#### **Submission 5: Confidentiality - Section 123 Local Government Act**

From my personal experiences, Section 5.123 must be revised to ensure that it meets the objectives of these reforms.

The section currently allows vexatious complainants to maintain public anonymity, because unless a finding of a breach has been made, the identities of both parties remain confidential.

I fully understand the original intent of this section, but in practise it does not serve the intended purpose. Elected Members are being required to respond to an orchestrated campaign of petty complaints by vexatious complainants, and the anonymity provided by this section provides the incentive for these people to continue to make complaints – without any repercussions, and without having their continuing vexatious behaviour ever made known to the general public.

These complaints come at a substantial financial cost to ratepayers with the Department charging a significant fee to local government for every Standards Panel complaint.

Whilst vexatious complainants are able to continue to lodge meritless complaints under cover of the anonymity provided by Section 5.123, the local government (ratepayers) are left counting the cost, and Elected Members are left dealing with the personal effect that a campaign of vexatious complaints can have on a person's health. It takes a toll.

I believe that there is an opportunity to discourage petty (trivial) and vexatious complaints by removing the provision for confidentiality for all matters in which the Panel has refused to deal with the complaint on the basis that it was frivolous, trivial, vexatious, misconceived or without substance. In these instances (refuse to deal) I would submit that consideration be given to;

- Publishing the nature of the complaint and the name of the complainant
- Not publishing the name of the member who was the subject of the complaint

Not only would this approach discourage vexatious complaints, it would also have a similar effect on those Elected Members who are making trivial complaints within their own local government as their petty behaviour would be revealed to residents and to their peers.

I feel certain that it would dissuade the continual submission of trivial complaints and would therefore provide a benefit to the Department (by reducing the number of complaints) and the local government (by minimising reputational damage and avoiding the financial costs associated with the Department's handling of complaints).

Alternately, if the Minister does not see merit in publishing the names of complainants for matters found to be frivolous, trivial, vexatious, misconceived or without substance, then I would submit that complaints that have been deemed *vexatious* should still be dealt with in the manner described above.

## **2.6 STANDARDISED MEETING PROCEDURES**

### **Submission 1: That further guidance be provided regarding Deputations**

I would submit that Deputations should be restricted to matters which concern the business of local government or which are within the remit of the local government.

Currently there are no such restrictions and members of the public are able to make deputations on contentious social issues, world affairs, or any other subject. The current pro-choice (Covid) movement is an relevant example of a subject being brought to Councils which is beyond our decision making and outside of our remit. By doing so, the business of Council is postponed unnecessarily.

I would submit that;

- Deputations be restricted to no more than 5 minutes duration. \*This would be consistent with the amount of time generally afforded to Elected Members to debate important decisions in the chamber.
- That the subject of the deputation must concern the business of the local government or be restricted to matters within the remit of the local government

- That deputations must be provided to the local government in written form – prior to the meeting, to allow the local government to prevent inaccurate information, false claims, or defamatory content being live streamed during a public meeting.
- That the local government have authority not to approve applications for deputations from persons who are deemed to be misusing the deputation process for vexatious purposes
- That guidance be provided to deal with multiple deputations on the exact same subject

### **Submission 2: That further guidance be provided regarding Petitions**

I would submit that petitions should also be restricted to matters which concern the business of local government or to subjects which are within the remit of the local government.

As an example, I am informed that a neighbouring local government will be asked to consider a petition at an upcoming Ordinary Council Meeting which requests the Council to take a 'pro-choice' position regarding Covid mandates. Not only could the subject of the petition be construed as being overtly political and anti-government, but its intent is not in the national interest, is outside of the remit of local government, and may undoubtedly lead to inadvertent damage to that Council's reputation and image.

Currently, the Standing Orders of many Councils (including my own) do not provide the authority for Councils not to accept a petition – irrespective of the potentially provocative, damaging, and divisive nature of its subject.

### **Submission 3: Standing Orders to apply equally to Agenda Briefings**

Agenda Briefings are standard practise across the sector. They are a pre-OCM meeting for the purpose of asking questions relating to the agenda for the OCM held the following week.

Agenda Briefings are held in the Council Chamber, are officiated by the Presiding Member in the same manner as an Ordinary Council Meeting, they include deputations, petitions, and public question time, a public gallery is in attendance, media are often in attendance – but they are not governed by the Standing Orders Local Law, nor are they deemed to be a Council Meeting under the Act.

Without the framework provided by Standing Orders, Presiding Members are prevented from raising or enforcing any of the provisions contained in the City's Standing Orders – including matters relating to conduct... as they do not apply. Similarly, members are not required to disclose conflicts of interest at Agenda Briefings as, again, they are not deemed to be a Council Meeting under the Act.

The requirement for the preservation of order and guidance regarding behaviour and conduct are of equal importance in an Agenda Briefing meeting and I would therefore submit that consideration be given to;

- amending the Act to include Agenda Briefings in the definition of 'Meeting'
- extending the requirements for live-streaming to include Agenda Briefings
- Mandating the type of meetings held by local governments (the terms used) to ensure consistency across the sector.

**Submission 4: That guidance be provided regarding Public Question Time to prevent;**

- Multiple repetitive questions being asked on the same issue by large groups when matters of considerable public interest come before Council.
- Questions being directed at individual Councillors by members of the public

**3.1 RECORDING / LIVE STREAMING OF COUNCIL MEETINGS**

**3.5 CEO Key Performance Indicators to be published**

**4.4 PUBLIC VOTE TO ELECT MAYOR OR PRESIDENT**

I support the proposal that Presidents/Mayors of Band 1 and 2 local governments be elected through a vote of the electors of the district.

**Submission: That preferential voting not be introduced for the election of Mayors and Presidents**

I would submit that the Minister has demonstrated a clear desire to put in place measures intended to encourage better relations between Mayors/Presidents and their Councillors. I applaud that objective.

The introduction of preferential voting would however result in;

- Significant additional cost to ratepayers. The cost of running an election under the preferential voting system is substantially higher than the current system due to the complexity of counting.
- A far more complicated system which will;
  1. confuse voters and lead to an increase in invalid votes
  2. May lead to a disengagement of traditional local government voters and contribute to lower participation in local government elections
  3. Take longer to count (and re-count) and may prevent election outcomes being announced for days
- deep divisions forming between candidates, particularly incumbent Mayors and mayoral candidates (many of whom may be the incumbent Mayor's fellow Councillors) due to;
  - deals being negotiated between candidates to advantage one candidate over another through the exchange of preferences
  - the potential for secret *quid pro quo* deals being made in exchange for preferences
  - the orchestrated running of *fake candidates* to harvest votes (preferences) for other candidates
- the likelihood that the intent of the Minister's reform (the democratic election of Mayors/Presidents by the community) may not be realised as the election of Mayors/Presidents will ultimately be decided by secret deals being done by candidates
- the politicisation of the local government sector with political party members overtly running as party members and being openly supported and endorsed by same-party state and federal politicians

- the prevalence of 'how to vote' cards which might be construed under the Act to cause a detriment to a particular candidate or candidates. *\*The publication of a 'how to vote' card which encourages voters (either overtly or covertly) to put a particular candidate last, may reasonably be construed to be a "detriment" under the provisions of the Act.*

It is often the case that serving Councillors nominate as candidates to run against an incumbent Mayor/President. It is not in the interest of better relations for colleagues to be encouraged (by the preferential voting system) to conspire and to work against each other in their own self-interest.

If preferential voting were to be introduced then it should be 'optional preferential'.

#### 4.8 REFORM OF CANDIDATE PROFILES

I support the proposed reform. It is almost impossible to adequately illustrate a person's background and value as a candidate in only 150 words.

**Further submission: That candidates be prevented from making 'promises' in their candidate profile**

Candidates are frequently making claims that are misleading and outside of their remit. As an example, in recent elections claims such as "I will freeze rates" have been often used to persuade voters, despite the fact that no individual has the capacity to do so.

The practise is misleading and deceptive, and has also been the subject of many complaints to Returning Officers, the West Australian Electoral Commission, the Department, and the Local Government Standards Panel.

To ensure that the information contained in candidate profiles is consistent and fair, candidate profiles should be restricted to statements regarding a person's qualifications, experience, achievements, and post-election intentions.... or other specific criteria determined by these reforms.

#### 4.9 MINOR OTHER ELECTORAL REFORMS

**Submission 1: That local government employees are not to act as Electoral Officers in their own local government elections**

The local government election process should be independent from any unnecessary interference by the City's own staff. Staff should be prevented from acting as Electoral Officers and being present in the ballot counting/processing area during local government elections.

**Submission 2:** As a further consideration, the live-streaming of ballot counts may encourage greater voter participation and media interest in the local government election process.

#### 5.4 SUPERANNUATION

**Submission: That the state government mandates the introduction of superannuation for Elected Members**

I support the introduction of superannuation for the reasons outlined in the local government reform proposal, and would submit that a further reason for the introduction of superannuation is to close the gender pay gap.

I do not support the WA local government reforms proposal to allow local governments to decide for themselves (through a Notice of Motion) to pay superannuation contributions for Elected Members and I ask the Minister to reconsider that position.

***The proposed approach will significantly disadvantage the groups that are intended to most benefit from the proposal (women and younger people), as they are the groups least represented in the local government and least likely to have the numbers to secure the intended reform.***

In May 2020 LGNSW<sup>1</sup> (the NSW equivalent of WALGA) made a submission in response to the discussion paper published by the NSW government detailing a number of important observations, each of which is equally relevant to the Western Australian local government sector;

***“LGNSW recognises that lack of access to superannuation is not the only variable which impacts upon the participation of women in local government. However, this is particularly significant where mayoral and councillor fees are the primary source of income for female mayors and councillors.***

***“This further illustrates that measures need to be taken to remove barriers to women’s participation in local government. Requiring the compulsory payment of superannuation to mayors and councillors would help bridge the superannuation gender gap and assist in attracting more women as candidates for local government.”***

Then, in March 2021 the New South Wales state government issued a media release<sup>2</sup> announcing the introduction of superannuation for Mayors and Councillors from 2022, and in response to the NSW announcement, Australian Local Government Association President Cr Linda Scott commented;

***“Ensuring elected councillors receive fair superannuation will remove a very real disincentive to stand for elected office, especially for women. “Research shows that, on average, women retire with 47% less superannuation than men, so introducing superannuation to local government will allow more women to consider running to be an elected leader.”***

These comments, made by the Australian Local Government Association President, support the widely accepted view that the non-payment of superannuation to elected members in the local government sector is a significant and well-documented barrier for women considering elected leadership roles.

Leaving this important reform to the vagaries of individual WA Councils (many of which are male dominated), may in fact result in an inadvertent widening of the gender pay gap because the introduction of superannuation will not be consistent across the sector leading to the possibility of an inequitable 2-tier payment system where some women will be further disadvantaged.

Of more concern, if the decision is left to individual local governments through a vote of Council, then the reform can just as easily be undone through a subsequent vote of Council. The sector could therefore be involved in a perpetual cycle of individual Councils voting in superannuation – and future Councils then choosing to vote it out.

The benefits of superannuation to the local government sector are not in dispute, and the comparative cost of its introduction is minimal.

If the intent of the state government’s local government reforms includes the objectives of increasing voter interest, attracting more women and younger people into the sector, providing fairness and equity, and to provide sector-wide consistency, then I urge the Minister to mandate superannuation and take the decision out of the hands of individual Councils.

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<sup>1</sup> [LGNSW Submission- Councillor Superannuation Discussion Paper](#) May 2020

<sup>2</sup> NSW state government media release March 2021 [‘Super Fairness for Elected Members at last’](#)

## 5.6 STANDARDISED ELECTION CARETAKER PERIOD

### **Submission 1: That Motions put by Councillors (Notice of Motion provisions) be restricted during the caretaker period**

In the lead up to local government elections ‘incumbent Councillors’ should be prevented from submitting Notices of Motions unless the Chief Executive Officer deems that the subject of the NOM is of such an urgent nature that it would be detrimental to the local government not to allow it to proceed.

The reasoning is that the ability of incumbents to put NOM’s provides a disadvantage to other candidates, and affords incumbents potential media exposure which would benefit their election prospects.

#### **Other Considerations**

The reform proposal includes the following;

**“Incumbent Councillors who nominate for re-election are not to represent the local government, act on behalf of the council, or use local government resources to support campaigning activities.”**

The above passage is not clear and requires clarification.

As it reads (to me) there appears to be three separate elements, namely that “Incumbent Councillors who nominate for re-election are not to;

- represent the local government
- act on behalf of the Council
- or use local government resources to support campaigning activities

Or does it mean that incumbent Councillors are not to represent the local government or act on behalf of the Council, if doing so supports campaigning activities?

The following comments are predicated on my belief that the proposed reform does intend to introduce a caretaker period in which Councillors will not be permitted to undertake either of the 3 separate elements described above.

On that basis I respectfully submit;

- a) that this particular reform requires careful consideration and clarification around the terms ‘Councillors’, ‘represent’ and ‘act on behalf of’, and that it would be impossible for a Mayor or President to fulfil her/his role of Office if the term ‘*Incumbent Councillors*’ also included incumbent Mayors/Presidents.

The role of Mayor is a pivotal community leadership position as has been illustrated by the role of Mayors during the Covid pandemic. No person can foresee what might occur in the lead up to a local government election, and restricting the role of Mayor for a relatively significant caretaker period could have a detrimental effect on a community during times of crisis. Consistent leadership is important, as is the community-facing role that a Mayor/President fulfils.

- b) I would also make the observation that if incumbent Councillors are prevented from ‘representing the local government’ then this would have implications for those Councillors who have been elected to Committees of Council – both external and internal, and may inhibit representation of

the local government and interrupt the deliberations of external groups. This may be most relevant on state-government Boards and Committees where Councillors are appointed on the basis of their role as local government Elected Members, are required to provide a Delegate Report to their Council on the activities of the meeting, and are always acting as representatives of their municipality.

## **6.6 AUDIT COMMITTEES**

I disagree with the proposed mandate that the Chair of any Audit Committee should be and independent person.

The Chair has no more authority on an Audit Committee than any other member. The role of the Chair is primarily to manage the conduct of the meeting and ensure that the deliberations of the committee adhere to the relevant policy and terms of reference.

Elected Members are already independent from the Administration and the separation of powers is defined in the Act (and these reforms are intended to provide further clarification). We are ratepayers representing ratepayers.

In my case I am a Mayor, but I also hold an Advanced Diploma of Integrated Risk Management, and prior to my election as Mayor I had been employed as an Executive Risk Manager for a national company, and was later employed as a Senior Risk Manager/Coordinator by the Department of Education, Department of Justice, and finally the Department of Health.

In each of those government departments I worked in the department's risk and audit directorate, and worked closely with the risk and audit committees.

Further, I have been on the City of Canning Audit and Risk Committee since 2015 and Chair of the committee since 2019.

The proposed reform does not recognise the possibility that there may be suitably qualified Elected Members (Accountants or holders of MBA's and other higher tertiary qualifications) who might be ideally placed to Chair the district's Audit and Risk Committee.

I also believe that the local government sector will find it immensely difficult to attract the number of suitable candidates required from the private sector to fill the role of Chair.

I have no issue with Audit and Risk committees being required to have a majority membership of independent members, however that same committee should then choose the Chair from its members based on their ability and experience in the role.

**END**

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