



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

Local Government Review Panel

Final Report

Recommendations for a new Local Government Act
for Western Australia

May 2020



Table of Contents

FOREWORD	4
BACKGROUND	5
PART A – THE STRATEGIC FRAMEWORK.....	7
Why a ‘New’ Act?.....	7
What Sort of ‘New’ Act?	8
Moving Quickly	8
The High-Level Package.....	9
Clear Legislative Intent.....	9
An Agile System.....	10
Inclusive Local Democracy.....	10
Smart Planning and Service Delivery	11
Enhanced Accountability, Self-Regulation and Integrity	11
PART B – DETAILED RECOMMENDATIONS	12
Clear Legislative Intent	12
Introduction	12
The Role and Functions of Local Government	14
Guiding Principles	14
An Agile System	16
Establishment of a Local Government Commission	16
Enabling Structural Reform	17
Expanded Regional Cooperation	19
Advancing Intergovernmental Cooperation	20
Inclusive Local Democracy	21
Relations with Aboriginal Peoples and Communities	21
Elections.....	22
Redefinition of Roles and Responsibilities	26
Community Engagement and Governance	29
Smart Planning and Service Delivery	31
Enhanced Integrated Planning and Reporting.....	31
Minimum Service Levels	33
Local and Joint Subsidiaries.....	33



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

Modernise Financial Management35

Procurement.....37

Rating and Revenue.....38

Accountability, Self-Regulation and Integrity.....40

 Enhanced Accountability and Self-Regulation.....40

 Renewed Focus on Integrity.....41

 Expanded Requirements for Training and Professional Development42

 A New Early Intervention Framework42

 Establishment of an Office of the Independent Assessor43

Other Matters45

 Classification Bands45

 Local Laws45

 Western Australian Local Government Association46

 Operational Provisions47

ATTACHMENT 148

ATTACHMENT 249

ATTACHMENT 350

ATTACHMENT 452



FOREWORD

‘Rates, Roads and Rubbish’ was a catch-cry I heard frequently when I was elected to Local Government 15 years ago. This ‘Roads Boards’ viewpoint was not appropriate then, and is certainly not fit-for-purpose for Western Australian communities in 2020 and into the future.

Since the 1995 Act was proclaimed, our society and the technologies we use continue to change at an unstoppable pace, and with this change, community needs and expectations of local government are also increasing. These demands on the sector will continue to expand, especially in the aftermath of, and recovery from, the COVID-19 pandemic.

The recommendations in this review are a road-map to more agile and inclusive local governments, with a clear purpose to deliver for the enhanced wellbeing of their communities.

A new legislative framework that ensures community consultation and integrated planning is a centrepiece of a local government’s operations, as well as an emphasis on regional and intergovernmental collaboration.

The recommended renewed focus on integrity, self-regulation and accountability will give local governments the tools to ensure good governance and continuous improvement.

An Act based on this report would prepare local governments in Western Australia not just for the challenges of today, or the next few years, but for the long-term, and would put them in good stead to continue to foster healthy, connected and engaged local communities.

Thank you to the many contributors to this report, including those in the sector and community who made a submission or otherwise assisted in the process.

I especially thank panel members for their significant individual contributions, as well as the secretariat at the Department who supported the panel with high quality research and assistance, as without their diligence, this report would not have been possible.

David Michael MLA
Chair



BACKGROUND

In 2017 the McGowan Government announced a review of the *Local Government Act 1995*. This is the most significant and comprehensive reform of local government legislation conducted in more than two decades. The objective is for Western Australia to have a new, modern Act that empowers local governments to better deliver for the community. The vision is for local governments to be agile, smart and inclusive.

Given the breadth of matters covered by the Local Government Act, a staged approach to the review has been adopted:

- Stage one: priority reforms
- Stage two: wide ranging reforms

The majority of the stage one priority reforms are now in place following the passage of the *Local Government Legislation Amendment Act 2019*. These reforms include:

- A new gift framework for elected members;
- A mandatory online induction for all candidates;
- Universal training for elected members;
- Changes to the Standards Panel; and
- Easier access to information to provide greater transparency to the community.

The remaining priority reforms which are expected to be implemented later this year include:

- New mandatory code of conduct for elected members, committee members and candidates;
- Best practice standards for Chief Executive Officer (CEO) recruitment, performance review and early termination; and
- Further transparency measures.

Extensive community consultation was conducted on stage two topics between September 2018 and March 2019 by the Department of Local Government, Sport and Cultural Industries (the Department) with the input of a stakeholder reference group.

More than 3,000 survey responses and written submissions were received from community members, ratepayer associations, industry groups, local governments, elected members, and peak bodies.

After this significant community and sector consultation to better understand the issues confronting local government, the areas in need of reform and possible options for reform, a panel of experts was formed to provide more detailed consideration and to develop policy responses to guide the development of the new Act. The role of the Panel was to guide the review's strategic direction and to consider and recommend high level guiding principles of the new Act.



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

The members of the Panel are:

- Mr David Michael MLA, Member for Balcatta (Chair)
- Professor John Phillimore, Executive Director, John Curtin Institute of Public Policy
- Mr Graham Sansom, Adjunct Professor, Institute for Public Policy and Governance, University of Technology Sydney
- Ms Anne Wood, Partner, Kott Gunning Lawyers
- Mr Henry Zelones OAM LGM JP, former Mayor City of Armadale
- Mr Duncan Ord OAM, Director General, Department of Local Government, Sport and Cultural Industries

Commencing in November 2019, the Panel formally met on nine occasions. In addition, invitations were extended to a range of organisations to provide advice and test ideas at separate roundtables.

It should be noted that an overwhelming majority of recommendations were agreed to unanimously by all members of the panel, with only a small number either having a minority of panellists expressing an opposing view or excluding themselves due to a potential conflict of interest.

Meetings were structured around the following six broad topic areas:

1. A Vision for Local Government
2. Planning for a New Local Government Act
3. Supporting Communities and Local Democracy
4. Growing the Economy
5. Sustainable Service Delivery
6. Building Trust and Integrity

This report reflects the work of the Panel. It is divided into two sections: Part A provides the strategic overarching direction, with Part B outlining the Panel's detailed recommendations within that framework.



PART A – THE STRATEGIC FRAMEWORK

The Minister asked the Panel members to consider and recommend overarching, high-level directions for local government that would flow into policies and principles to guide the development of a ‘new’ Local Government Act. This Part of the Panel’s report sets out a strategic framework for the new Act that addresses not only the underlying issues identified when the Panel began its work, but crucially the emerging imperatives that flow from the COVID-19 crisis and its aftermath.

Why a ‘New’ Act?

When the Western Australia Government launched the Local Government Act Review its objectives were to produce ‘a new, modern Act that empowers local governments to better deliver for the community’, and that local government should be ‘Agile, Smart and Inclusive’. Those objectives remain valid, but there is now also the question of how they can and should be pursued in the aftermath of COVID-19.

Western Australia’s system of local government has remained largely unchanged for several decades. Even before the COVID-19 crisis, local governments demonstrated the full spectrum of capacities and behaviours, ranging from outstanding to good, to average, to, in a few cases, poor. This is not surprising given the very large number of local governments and their variable size and capacity. Many have responded positively and swiftly to the crisis with initiatives to support local communities and businesses – through rate freezes, waiving of fees, increased flexibility in dealing with planning applications, and so on – complementing the State government’s initiatives. However, the crisis has also highlighted the system’s limited capacity, sustainability and resilience. Rather than being a crucial and reliable source of support to communities, many local governments themselves require considerable funding from other levels of government simply to perform their basic statutory obligations and keep their operations running, rather than to expand services.

Having numerous local governments, including a majority that are small in terms of population and/or area and that lack financial and human resources, also makes the system cumbersome and costly to operate. In addition to financial support, local government requires significant State Government resources for oversight, advice, capacity building and regulation, including interventions to ensure good governance.

Further areas of concern are the generally low levels of community participation and regional cooperation. Local government should be truly the level of government ‘closest to the people’, but the system of voluntary, first-past-the-post voting attracts only a low turnout at elections, and the extent to which many councils can be considered to be properly representative of their diverse communities can be questioned. At the same time, only limited use is being made of opportunities for local governments to share information, skills and resources at a regional level, and to undertake collaborative planning and service delivery.

So, can local government in Western Australia ‘better deliver for the community’ without fundamental change? Is it sufficient for councils simply to perform their current functions more efficiently and effectively? What sort of local government will be needed to tackle a slow and fragile post-COVID-19 recovery and to play a valued ongoing role in advancing community wellbeing and regional development?



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

The Panel's view is that the new Act must address these questions and underpin a program of systemic reform to ensure that local government can meet the needs of communities in what may well be a very different operating environment. The Act itself must be truly renewed. It should look and feel different, 'tell the story' of change, and outline a fresh agenda. The Panel's package of key reforms is set out below.

What Sort of 'New' Act?

Local Government Acts are among the most lengthy and complex pieces of legislation in any jurisdiction. As a result, their strategic intent and important linkages between different sections of the Act can easily be lost in the mass of detail. Currently the 1995 Western Australia Act and Regulations run to more than 700 pages, while there are also elements of the *Local Government (Miscellaneous Provisions) Act 1960* that are still operational.

Some jurisdictions have tackled this problem by having multiple Acts: Queensland has a separate Electoral Act; New Zealand has a separate Rating Act; British Columbia has a 'Community Charter' that deals with key elements of local democracy and complements the Local Government Act.

So, what should a new Western Australian Act look like? How can it 'tell a story' rather than swamp the reader (and the sector) with a torrent of regulatory detail? The Panel proposes the following:

- Start with an introductory section that sets the tone – the Northern Territory Act offers an excellent example of how this can be done (refer to **Attachment 1**).
- Structure the new Act around strategic issues and the ways in which local government relates to its communities and partners, rather than the mechanics of local administration.
- Include sets of principles that offer guidance on how key objectives of the new Act should be pursued.
- Shorten the main text considerably (aim for at least a 50% reduction) by consigning regulatory detail to schedules or a separate 'operations' Act (the Panel was advised that extensive use of schedules may be inconsistent with current drafting practice).
- Incorporate new measures to expand self-regulation (notably independent Audit, Risk and Improvement Committees) as part of a flexible regulatory regime that can respond quickly to unexpected circumstances (such as COVID-19).
- Minimise the use of Regulations (which tends to enable more extensive and detailed oversight and intervention, and which requires time-consuming parliamentary drafting) by providing standardised guidelines and model codes, charters and local laws. Local governments could modify these 'minimum' provisions but would have to justify significant departures from them to the Joint Standing Committee on Delegated Legislation.

Moving Quickly

The current direction of the review, reflected in the initial instructions to the Panel, is for a complete re-write of the existing Local Government Act. However, experience in other States indicates that will require more resources than appear available at present and take a very long time, and that bold new directions may get lost along the way. The Panel is therefore of the view that the Government's objectives could best be achieved by developing the new Act in two stages, focusing first on a limited number of strategic elements (such as overarching principles, building the sector's capacity, Integrated Planning and Reporting (IPR), and enhanced accountability), while leaving matters of operational detail (a number of which require further investigation) until later.



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

The Panel also believes that the Government needs to legislate as soon as possible in order to strengthen local government's capacity for the post-COVID-19 recovery and likely ongoing changes in its operating environment. While it appreciates that resources are currently focused on short-term responses to the impact of COVID-19, the Panel's assessment is that a substantial package of strategic changes to the Local Government Act is required within months, not years. This could be done in one of three ways:

- (a) Amend and restructure the existing Local Government Act to bring together its key strategic elements as a 'front end', but leaving most of its provisions unchanged for the time being;
- (b) A new 'framework' Act initially limited to essential changes, but which would later progressively absorb updated material from the current Act (along the lines of the approach taken previously when the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960* replaced the *Local Government Act 1960*); or
- (c) A permanent 'companion' Act to the current Act that deals with 'high-level directions' (similar to the approach taken in British Columbia with its 'Community Charter' Act).

The decision on how to proceed is of course one for Government and will depend on several factors including other Parliamentary priorities. On balance, the Panel favours options (b) or (c), which most decisively reflect the Government's commitment to produce a 'new' Act – something that 'looks and feels' different. The risk with option (a) is that it could become too complex and might boil down to just a series of amendments scattered through hundreds of pages of existing provisions, without clearly setting out a fresh agenda. This is what happened after the 2013 review in New South Wales.

The High-Level Package

The critical high-level elements of the legislative package proposed by the Panel are detailed below. These elements need to be drafted and juxtaposed in a new or restructured Act or Acts in such a way that the inter-relationships between them are made clear. In several instances supportive policy statements will be essential to convey fully Government's intentions.

Clear Legislative Intent

- **An introductory section** that acknowledges the status of local government as a sphere of government and the importance of all facets of local democracy; that recognises the rights and interests of Aboriginal peoples; that focuses on the need to enhance community wellbeing, including acceptable standards of local government service delivery for all; and that calls for open, accountable and ethical governance (refer to **Attachment 1** for an example).
- **A statement of the role and functions of local governments**, including the power of general competence (refer to **Attachment 2** for an example of the functions of a local government).
- **Guiding principles** for effective local and regional governance, complemented by more detailed policy principles in those parts of the Act for IPR, community engagement, decision-making, financial management, integrity and inter-government relations.



An Agile System

- **Establishment of a Local Government Commission** that brings together and extends the work of the Grants Commission and Advisory Board to promote and facilitate capacity building and continuous improvement across the sector as well as, where necessary, structural reform (including mergers and/or regional governance).
- **A fresh approach to enabling structural reform**, including voluntary mergers and the option of replacing merged councils with community boards (see below) – recognising that the ‘Dadour’ provisions can now be by-passed by simply extending the boundaries of one council to subsume its neighbour, and the consequent need for a new pathway for change (refer to **Attachment 3** for an example).
- **Expanded regional cooperation**, including streamlined arrangements for the establishment of joint subsidiaries (which could then replace existing regional local governments); requirements for cooperative regional planning as part of IPR; and if necessary, a new form of ‘regional authority’ that overlays local government areas and can bring together local governments, state and federal agencies and other key stakeholders (for example Aboriginal communities) to address specific issues.
- **Advancing inter-governmental relations** through a set of legislated principles that could be linked to the State Local Government Partnership Agreement (refer to **Attachment 4** for an example); additional consultative mechanisms if required; and arrangements for collaborative governance at the regional level (including involvement of federal agencies where appropriate).

Inclusive Local Democracy

- **Specific provisions for engagement with Aboriginal peoples and communities**, including new consultative mechanisms and an obligation to plan for, and where appropriate undertake, delivery of essential services to local communities.
- **Four-yearly elections for all councillors**, plus a continued requirement for regular ‘representation reviews’ that involve the community in consideration of electoral issues such as the number of councillors, how the mayor is elected, the use of wards and whether the councillors are sufficiently representative of the broader community.
- **Re-definition of roles and responsibilities** for the governing body of council (councillors working collectively), mayors, individual councillors and CEOs, coupled with the new principles for decision-making.
- **More effective community engagement and governance**, including a requirement for all local governments to formulate and adhere to a Community Engagement Charter and an option to establish community boards in selected localities (similar to the New Zealand model).



Smart Planning and Efficient Service Delivery

- **Improved IPR**, clearly positioned as the centrepiece of local governments' operations and linking strategic and corporate planning, regional cooperation, community engagement, financial management, service delivery and monitoring and reporting of outcomes.
- **Increased Ratepayer Value for Money** through the introduction of a Rating and Revenue Strategy to increase transparency in setting rates, fees and charges, aligning services and programs to the IPR framework, a new focus on continuous improvement and reporting on a wider set of financial and service delivery indicators.
- **Modernised financial management**, based on a new set of principles, and including requirements for program budgets and regular service reviews involving community consultation.
- **New provisions for local and joint subsidiaries** that enable local governments to play an effective role in economic and regional development, and in the case of joint subsidiaries, provide a vehicle for regional cooperation.
- **Ensuring a minimum level of service** from local government is available to all Western Australians

Enhanced Accountability, Self-Regulation and Integrity

- **Robust accountability and self-regulation** through standardised performance and annual reporting; a revamped Annual Community Meeting along the lines of a company Annual General Meeting; and the establishment of independent Audit, Risk and Improvement Committees to undertake a wide range of internal audit functions and ensure good governance and continuous improvement.
- **A renewed focus on integrity** through the work of Audit, Risk and Improvement Committees and the establishment of a new Office of the Independent Assessor to deal with conduct complaints (similar to the Queensland model).
- **Rigorous training and professional development** of mayors/presidents, councillors and CEOs.
- **A new 'early intervention' framework** to support local governments experiencing governance or operational problems (a variation of the Victorian model of municipal monitors).



PART B – DETAILED RECOMMENDATIONS

Clear Legislative Intent

Introduction

1. The Panel recommends that the new Act be structured and drafted in such a way as to highlight the key strategic elements set out in Part A of this report, and that further consideration be given to the ‘two Acts’ options presented in Part A, at least as a transitional measure.

The basis for this recommendation was explained in Part A. The Panel considers it essential to move decisively and as quickly as possible to strengthen the capacity and resilience of Western Australian local government, and to set a fresh agenda, particularly in light of the COVID-19 crisis and its likely aftermath.

2. The Panel recommends the following statement of intent (vision) for a new Act:

An Act to provide for a system of local government relevant to Western Australia that develops and supports sustainable, accountable, collaborative and capable local governments through democratic representation, the provision of services, opportunities and enhanced well-being for each and every community.

It was determined that the vision for local government included in a new Act should be responsive to the changing face of Western Australia’s communities. The long title of a legislative instrument is intended to provide a clear statement of the legislature’s intention. The Panel considered how a statement of intent (vision) for a local government legislative framework would meet the future needs of Western Australia’s communities and local government sector.

3. The Panel recommends the adoption of the following objectives for a new Act:

- a. Democratic and accountable local government that recognises the diversity of and within Western Australia’s communities.
- b. Recognition of the specific needs and culture of Western Australia’s Aboriginal people.
- c. Promotion and improvement of the community’s economic, social and environmental well-being.
- d. An adaptive and forward-looking legislative framework, which supports and enables councils to provide local leadership for the whole community, and to collaborate with each other and with other key stakeholders at a regional level.
- e. Open and transparent community participation in the decisions and affairs of local governments.
- f. Enhanced capability of the local government sector, with a focus on continuous improvement and sustainability.
- g. Efficient and effective service delivery and regulation that is responsive to current and future community needs.



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

- h. Informed decision-making by local governments which is in the interest of their communities, within a legislative framework that supports balance and certainty in relation to the different interests of their communities.**
- i. Accountability of local governments to their communities through processes that demonstrate good governance.**
- j. Support for approaches and opportunities which foster collaboration and cooperation both within the local government sector and across all levels of Government.**

The Panel considered what the objectives for a legislative framework would be to support local governments having the agility, adaptability and flexibility to respond to changing community expectations and technology, and deliver long-term sustainability. In doing so, the Panel considered examples from across Australian jurisdictions and international best practice.

4. The Panel recommends an Act that is considerably shorter, less prescriptive and minimises the use of regulations by establishing clear principles, robust processes, model charters, guidelines and templates.

The Panel endorsed the Western Australian Local Government Association's (WALGA) call for a principles-based approach to the development of a new legislative framework.

This approach needs to be supported by robust processes for planning and decision-making, as well as model charters, guidelines and templates to set appropriate standards in areas such as establishment of subsidiaries, community engagement and local laws.

An enhanced internal audit and reporting regime is also essential to promote effective self-regulation and greater accountability to local communities (refer to Recommendation 59 regarding Audit, Risk and Improvement Committees).

5. The Panel recognises the diversity of local governments in Western Australia and supports a new Act which is responsive to this but does not recommend the adoption of a multi-tiered legislative framework.

The Panel considered the capacity and capability of Western Australia's local government sector more broadly, and the application of a legislative framework to support this.

The Panel explored having different requirements and obligations under the new Act depending on a local government's size, scale and/or demographics. However, finding the balance of what local governments should be required to do and for what reasons proved difficult. The Panel decided that a more practical approach was for the new Act to apply minimum standards to all local governments and, where applicable, to provide flexibility within the new Act that enables a diversity of obligations to be placed on or assumed by local governments dependent on their capacity and capability.



The Role and Functions of Local Government

- 6. The Panel recommends the inclusion of a statement of the role and principal functions of local governments that makes it clear their basic statutory responsibilities, retaining the overall power of general competency in the current Local Government Act.**

Communities and stakeholders need to be able to distinguish between local governments' basic statutory responsibilities for planning, service delivery and good governance on the one hand, and their discretionary activities on the other. This can be achieved by including a short statement that summarises statutory obligations. The South Australian Act offers a useful model (refer to **Attachment 2**).

The power of general competence provides significant autonomy to local governments. Under the *Local Government Act 1995* local governments are considered to be autonomous bodies established to provide for the good government of persons in their district. This general competency power is not, however, unlimited – local governments must comply with Commonwealth and State legislation.

Guiding Principles

- 7. The Panel recommends that the following overarching guiding principles are included in the new Act:**

To ensure the system of local government is sustainable, accountable, collaborative and capable, councils should:

- a. **Provide democratic and effective representation, leadership, planning and decision-making;**
- b. **Be transparent and accountable for decisions and omissions;**
- c. **Be flexible, adaptive and responsive to the diverse interests and needs of their local communities, including the traditional owners of the land;**
- d. **Consider the long term and cumulative effects of actions on future generations;**
- e. **Ensure that, as a general rule, all relevant information is released publicly, readily available and easy to understand;**
- f. **Provide services in an equitable manner that is responsive and accessible to the diverse needs of the community;**
- g. **Seek to continuously improve service delivery to the community in response to performance monitoring;**
- h. **Collaborate and form partnerships with other councils and regional bodies for the purposes of delivering cost-effective services and integrated planning, while maintaining local representation of communities and facilitating community benefit; and**
- i. **Participate with other councils and with the State and Federal government in planning and delivery of services, setting public policy and achieving regional, State and Federal objectives.**



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

When developing the principles, the Panel considered the following to be important:

- Local governments should be effective, accountable and transparent institutions with inclusive processes which actively engage communities, build trust in government, and are responsive to their communities' needs;
- A collaborative approach across all levels of government to support sustainable development and effective decision making for the economic, social and environmental well-being of all Western Australians;
- A system of local government which supports continuous improvement and a highly capable local government sector, with accountable councils and administrations.
- Transparent and appropriate governance processes which uphold principles of integrity and build trust in the local government sector.



An Agile System

Establishment of a Local Government Commission

8. The Panel recommends:

- a. **The Local Government Grants Commission and the Local Government Advisory Board should be combined into a single body responsible to the Minister and named the Local Government Commission, and including the functions of the Grants Commission in accordance with Commonwealth legislation.**
- b. **The role of the Local Government Commission should be to:**
 - (i) **Provide recommendations on major local government boundary changes, amalgamations and other necessary reforms;**
 - (ii) **Manage the distribution of Commonwealth grant funding to local governments in WA; and**
 - (iii) **Monitor the overall health and performance of the local government sector by identifying key issues and trends, and advise the Government and sector peak bodies accordingly.**
- c. **Members should be appointed to the Local Government Commission on the basis of their skills rather than as representatives.**
- d. **The Local Government Commission should consider the financial viability of local governments in making recommendations to the Minister.**
- e. **The Minister and sector peak bodies should have the power to refer matters to the Commission for assessment and advice.**
- f. **The Commission should play an independent role in monitoring the capacity and the financial health of the sector in collaboration with the Auditor General.**
- g. **Minor boundary adjustments where both local governments agree should be handled by the department.**

The Panel considered that there were substantial opportunities and benefits in combining the existing Grants Commission and Advisory Board and in providing the new body with a more strategic role. The Grants Commission has access to considerable financial data on local governments and an understanding of the challenges facing the sector. This could be valuable in making recommendations to the Minister on boundary changes and other matters.

The Grants Commission's visiting program also means that it is in a position to identify and promote best practice and to identify local governments that would benefit from capacity building.

It was agreed that the new body should continue to provide recommendations on significant local government boundary changes and amalgamations, including all of those proposals where parties were not in agreement. To remove unnecessary regulatory burden, boundary changes of a minor nature which had the agreement of both local governments and the ratepayers in the affected area should be handled by the department in a streamlined process. Examples of this would be changing the responsibility for a road or park, or ensuring that a property (such as a farm) is in a single district.



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

In addition to managing the distribution of Commonwealth grant funding to local governments in Western Australia and making recommendations on boundary changes, the role of the combined body should include monitoring the overall health of the sector by identifying issues and trends and advising the Minister. This combined body should be charged with providing frank and fearless advice to the Minister, the department, and local governments.

The new body should be constituted of members of varied skills, with administrative support provided by the department.

Enabling Structural Reform

9. **The Panel supports a legislative framework for a system of local government which promotes local democracy and has the in-built flexibility to enable different models of governance which facilitate community participation, provide for representation of the whole community, and for efficient and effective service-delivery for the community.**
10. **The Panel recommends that through their Partnership Agreement and the proposed Local Government Commission, State and local government consider options to facilitate structural reform that will strengthen the capacity and resilience of the local government system. Those options should include:**
 - a. **Revised processes for boundary changes and mergers.**
 - b. **Substantially increased cooperation between local governments through an enhanced model of joint subsidiaries.**
 - c. **Provision for the establishment of community boards within local government areas.**

Making specific proposals for structural reform – in particular ‘forced’ amalgamations – was beyond the Panel’s terms of reference. However, as noted in Part A of this report, the COVID-19 crisis has focused attention on the need to maximise the capacity and resilience of the *system* of local government. Various options for structural reform have a role to play, and the new Act should include measures to facilitate necessary adjustments.

The Panel sees significant flaws in the current provisions for boundary changes and amalgamations of local government areas. Procedures for minor boundary changes appear unnecessarily complex, whilst the use of the boundary change mechanism to undertake de facto amalgamations – as approved by the Supreme Court in 2014 – raises serious issues about due process. It effectively bypasses the ‘Dadour’ provisions for local referenda, which themselves can be seen as unduly restrictive when local government needs to adapt to changing circumstances.

These issues have been debated repeatedly across Australia. The Panel saw potential in the new provisions for boundary changes and mergers adopted in early 2019 in South Australia (sections 26-28). The process was negotiated with the Local Government Association. It is based on a set of principles (refer to **Attachment 3**); administered *independently* by the Grants Commission; requires detailed investigation and extensive community consultation on major boundary adjustments and amalgamations; but has no requirement for referenda.



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

The new Local Government Commission proposed under Recommendation 8 could play a similar role in Western Australia, monitoring the capacity and health of the local government system, identifying action required to address any deficiencies, and handling major boundary changes. The Panel is also recommending that the structural reform 'toolkit' be augmented with an improved model of joint subsidiaries (Recommendations 14 and 39), plus a new option for establishing community boards (Recommendation 11). Robust, multi-functional joint subsidiaries could offer an alternative to amalgamations, whilst community boards could be used to maintain local identity, democracy and services in merged local government areas.

11. The Panel recommends an additional legislative option for local governments to establish community boards.

The Panel noted that with 137 local governments ranging in populations from less than 200 to over 200,000, Western Australian local governments can be either too small to meet their responsibilities, or too big to be properly representative of different localities within them, and respond adequately to varying community needs and demands. Accordingly, there is a need for mechanisms in the new Act that would, on the one hand, encourage small councils to combine their efforts 'upwards' through regional cooperation and/or mergers, and on the other, enable large councils to devolve some of their responsibilities 'downwards' in order to promote effective community governance.

The Panel concluded that the new Act should therefore include an option for local governments to establish community boards along the lines of those that have operated successfully in New Zealand for more than 30 years, but with flexibility to tailor implementation of the model to particular local circumstances. Community boards could either replace councils that have been merged into a larger entity, thus maintaining local identity and democracy in former local government areas; or be established for specific localities within a large local government area – a suburb or group of suburbs, a rural district with a distinct identity and a sense of community, a town within a large shire, a remote Aboriginal settlement, and so on.

Key features of the community boards model should include:

- Ultimate authority to rest with the 'parent' local government, which would determine the functions and budgets (if any) of boards in its area – the boards would not be incorporated as local governments in their own right.
- Empowering the Local Government Commission to require the establishment of boards as part of a merger.
- Giving local communities the right to petition the Local Government Commission for the establishment of a board.
- No requirement for boards to cover the whole of a local government area.
- Membership options ranging from a majority being locally elected to all members being appointed by the 'parent' local government after a community nomination process.
- Mechanisms for boards to advocate to the 'parent' local government on behalf of their communities, and to play a significant advisory role in planning and budgeting processes.



Expanded Regional Cooperation

12. The Panel recommends that the new Act should promote and mandate expanded regional cooperation between local governments by:

- a. Making increased collaboration a specific objective and principle.**
- b. Providing an improved model of joint (regional) subsidiaries that can be used for strategic planning, resource sharing, shared services delivery and commercial enterprises (see also Recommendations 14 and 39).**
- c. Requiring regional cooperation as part of IPR (see also Recommendation 35).**

13. The Panel recommends that consideration also be given to the potential need for a new form of ‘regional authority’ to enable collaboration on specific issues between governments and with other key stakeholders.

While there are promising signs of increasing regional cooperation between local governments for certain functions and in some parts of the state, the Panel formed the view that much more could and should be done – as proposed in WALGA’s 2008 report *The Journey: Sustainability into the Future*. The evident limitations of the current model of regional subsidiaries is a particular concern. The Panel proposes that increased collaborative working should be framed as a specific objective of the new Act: that could be realised through a streamlined model of joint subsidiaries and by adding a regional dimension to IPR, as explained under Recommendations 34 and 35.

The Panel also noted the potential need for a new form of collaborative ‘regional authority’ that overlays local government areas and can bring together local governments, state (and where necessary, federal) agencies and other key stakeholders to address specific issues. Such an arrangement might be required when regional issues, such as provision of services to remote Aboriginal communities or complex environmental management problems, exceed the scope of local governments and joint subsidiaries.

14. The Panel recommends:

- a. The regional council model is discontinued.**
- b. A flexible model of joint (regional) and single (local) subsidiaries be introduced in order to enable:**
 - (i) collaboration between local governments; and/or**
 - (ii) involvement of local government in economic development including commercial activities.**

Greater cooperation and collaboration is one way to address financial sustainability and capacity of local governments without the fear of loss of identity. The Panel noted that there are a range of areas that could potentially be delivered jointly by local governments, such as corporate services, economic development, IPR, waste management and community planning.

The current Local Government Act provides for two formal approaches: regional local governments and regional subsidiaries. The Panel recommends that there would be benefits to having only one broader legislative model of collaboration. A single flexible model could reduce complexity and provide for a more tailored compliance regime. Local governments would still have the flexibility to enter into voluntary arrangements outside of the legislated model. This would remove the regional



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

local government model under the new Act, noting the need for appropriate transitional provisions for those already established.

Further discussion and recommendations on this new flexible model, including its use for economic development, can be found under Smarter Planning and Service Delivery at Recommendations 37 to 40.

Advancing Intergovernmental Cooperation

15. The Panel recommends that the new Act include a set of principles for intergovernmental relations that make clear local government's role and obligations as part of the broader system of government, and that underpin a range of ongoing arrangements such as the State Local Government Partnership.

The Panel welcomed the progress being made through the State Local Government Partnership Agreement. It appreciated the difficulty of requiring such agreements under legislation, but at the same time sees an opportunity to promote and support ongoing improvements to state-local relations by including relevant principles in the new Act. The British Columbia Community Charter Act includes a set of principles that may offer a starting point for further discussion (refer to **Attachment 4**). The Panel noted, however, that any set of principles must make clear not only the need for mutual respect, consultation and cooperation, but also local government's responsibility to see itself and act as *government*, and to accept its ongoing obligations to plan, deliver services and provide good governance as part of the broader public sector.



Inclusive Local Democracy

Relations with Aboriginal Peoples and Communities

- 16. The Panel recommends that the new Act recognises the unique status of Aboriginal people as traditional owners of the land and ensures that they are empowered to engage in decision-making in their local communities.**
- 17. The Panel recommends that further consideration is given to the manner of recognition, and the options for inclusion, engagement and shared decision making between local governments and Aboriginal communities, through consultation with the Department of Premier and Cabinet and the Aboriginal Advisory Council of Western Australia, and with reference to practices in other states, the Northern Territory and New Zealand.**

The Panel identified a need for the new Act to include specific provisions for engagement with Aboriginal peoples and communities, including new consultative mechanisms and an obligation to plan for, and where appropriate undertake, delivery of essential services to local communities.

The Panel noted that while legislative statements mandating general recognition of the diversity of communities are common in the local government context, statements recognising the unique role of Aboriginal people in the community and the potential role of local government in partnering to achieve outcomes are less common in local government legislation in Australian State jurisdictions.

Models that should be further explored include the *Local Government Act 2020* (Victoria) where the definition of 'municipal community' includes 'traditional owners of the land in the municipal'; the *Local Government Act 2002* (New Zealand) which specifically references the need to provide opportunities for Maori people to contribute to the decision making process and the *Local Government Act 2008* (Northern Territory) which includes in its preamble "the rights and interests of Indigenous traditional owners, as enshrined in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Native Title Act 1993* (Cth), must also be recognised and the delivery of local government services must be in harmony with those laws".

- 18. The Panel recommends further consideration is given to the issue of service delivery by local governments in remote communities, and appropriate adjustments to Integrated Planning and Reporting requirements.**

There is a need for local governments to work closely with indigenous communities and accept their responsibilities to ensure that adequate services are offered to all citizens, by the local government itself and/or in conjunction with other governments and agencies. While it was recognised that there are unique challenges with service delivery to remote communities, IPR processes should require identification of their needs, plus effective engagement and shared decision making with Aboriginal people.



Elections

19. Optional preferential voting be adopted in place of the current first past the post system.

The Panel discussed voting methodologies and agreed that the first past the post system can often lead to outcomes that do not adequately represent the community's preferences with successful candidates being elected without a clear majority of votes.

There was support for the adoption of optional preferential voting, a variant to preferential voting whereby the voter can mark their preference of all or some of the candidates on the ballot paper, with "1" indicating their first preference. It was considered that this would provide results that are most representative of the community's views and would not require electors to vote for candidates about which they had little knowledge.

20. The principle of one vote per person be included in the legislation, subject to Recommendation 21 below.

21. Property franchise voting should be replaced with the requirement for local governments to introduce mechanisms for regular and effective consultation with the business community.

The Panel considered that there are two sides to local democracy: involvement in local decision-making to influence and inform the decisions that are being made by council, and elections. If structures and processes are in place to ensure all segments of the community are engaged, there may no longer be a need to extend election franchise beyond residents of the district.

The Panel noted that the introduction of compulsory voting was previously recommended by the Robson Review and was suggested by several submissions, but believes that before this change is considered, recommendations contained within this report should be implemented to increase voter participation and possibly negate the need for the introduction of compulsory voting.

The Panel considered democratic principles, the right of business owners and operators to participate in and inform local government decision-making, the relatively small take-up of the property electoral franchise and the administrative burden for local governments to retain a separate register for the small number of owner occupiers that are currently registered to vote. The Panel believed that there are other avenues that local governments could and should use to ensure that business and landowner views are adequately heard through mechanisms such as a business advisory group.

22. Local government elections are held once every four years, two years after but to otherwise accord with the timing of the State election.

The Panel discussed the merits and disadvantages of all elected members being elected at the same time. While acknowledging the potential for loss of corporate knowledge if no councillors were re-elected, the benefits of one election held every four years midway between State Government elections has the potential to increase participation and would reduce costs for local governments.



23. All local government elections should be overseen by the Western Australian Electoral Commissioner.

The Panel decided that the Western Australian Electoral Commission (WAEC) was the most appropriate organisation to coordinate local government elections. Having the one body responsible for conducting elections would allow for greater consistency across local governments. It was acknowledged that there would be higher costs associated with WAEC run elections; however, this would be offset by elections being held only every four years.

24. Provision in the new Act for electronic/online voting to be introduced in the future once the integrity of the process can be assured (including allowing for a pilot).

While believing that electronic and online voting was not yet mature enough to be introduced, the Panel decided that new technologies would be likely to become practical in the life of the new Act and that the legislation should allow for the piloting and introduction of these. In the event online voting is introduced, postal / in person voting should remain an option.

25. The Panel makes the following further recommendations in relation to elections:

a. Postal voting be required, with lodgement of these votes to be allowed in person on and before election day.

To improve equity, the Panel determined all elections should be postal with the ability to lodge those votes in person, including on election day, being retained. The need for voting to be able to be carried out via the post has been demonstrated by the current COVID-19 pandemic.

b. The election process extended to provide more time for the issuing and receipt of postal votes.

To optimise participation in the electoral process and in recognition of the changes to postal services in Australia, an extension to the electoral timeframe is recommended. This should allow additional time for the issuing of postal votes and more time for electors to return their votes. The timeframe should be set through regulations in consultation with the Western Australian Electoral Commissioner.

c. The information local government candidates must provide at nomination should be expanded to ensure that adequate information is given for voters to make an informed decision. Candidate nomination forms should also include declaration of membership of a political party and these forms should be published and available during the election period.

The Panel discussed methods to increase community knowledge of candidates including increasing the length of the candidate profile statements, providing more structure for these, and publishing candidate answers to WAEC approved questions on local governments' websites. The Panel was supportive of additional information being provided by candidates in local government elections. This would enable voters to make more informed voting decisions, rather than relying on the 150-word statement. This could be achieved through set questions in regulations to which candidates would respond in the form of a statutory declaration. The Victorian provisions serve as a model.



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

- d. A caretaker policy should be introduced barring elected members up for re-election from representing the council at events, handing out council grants or donations and moving substantive notices of motion in the period before the election, and a requirement to comply with this policy should be included in the Code of Conduct.**

The Panel also considered ways to increase transparency and accountability and reduce conflicts during a local government election period. The Panel agreed that the Code of Conduct should include caretaker provisions to be imposed from the close of nominations to the date of the election.

The Panel acknowledged the need to protect the CEO from potential conflicts during the caretaker period and, consistent with Recommendation 59, the CEO would no longer receive or investigate complaints.

- e. The donor and the candidate should co-sign each declaration of a gift made.**

In order to ensure integrity in the election process, the Panel agreed that there should be a requirement for the declaration of a gift to be signed by both the candidate and the donor.

- f. Donations via crowd funding platforms should be regulated so far as possible.**

The Panel also acknowledged the increasing likelihood that candidates will receive donations through crowd funding platforms which makes identifying individual donors difficult and determined that the department should investigate the legality and practicality of regulating crowd funding donations to ensure integrity in the election process is upheld.

26. In respect to elected member representation, the Panel recommends:

- a. Population should be used to determine the number of elected member positions:**

- (i) Population of up to 5,000 – 5 councillors (including President).**
- (ii) Population of between 5,000 and 75,000 – 5 to 9 councillors (including Mayor/President).**
- (iii) Population of above 75,000 – 9 to 15 councillors (including Mayor).**

- b. Ward boundary reviews, to ensure equitable representation is maintained, should be conducted every four years by the Office of the Electoral Distribution Commissioners, with the support of the WAEC and should be conducted using similar processes and principles that are in place for state electoral boundaries as contained in the *Electoral Act 1907*.**

- c. Current classification bands 3 and 4 should not have multiple wards unless the Local Government Commission permits it in the interests of ensuring local democracy is enabled in certain communities.**

- d. The changes to wards and elected member numbers due to the above recommendations should be phased in.**



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

The Panel gave careful consideration to the recommendations of the Local Government Advisory Board in relation to wards and councillor numbers. Wards in local governments with small populations were seen as unnecessarily increasing fragmentation and detracting from the requirement for elected members to act in the best interests of the entire community.

However, the Panel acknowledged there may be situations, for example remote communities, where it is important to ensure there is balanced representation on council. The Panel decided local governments in bands 3 and 4 can apply to the new Local Government Commission for wards should it be necessary to enable local democracy in their districts.

The Panel considered that it was desirable for councils to have an odd number of positions.

e. With the introduction of four-year elections, council elected mayors/presidents should be elected for two-year terms.

The Panel considered that it was important to provide a council with the ability to elect a new mayor/president to replace one who had lost the confidence of the other members of council within their four-year term. The Panel decided the fairest and most efficient way to do this was to have two year terms for council elected mayors and presidents which will provide the opportunity for council to replace them after this period should there be dissatisfaction with their performance amongst council.

f. No restriction should be placed on the number of terms an elected member or mayor/president can serve.

The Panel agreed that there should be no change made to the current situation with no limits applying to the number of terms a councillor and mayor/president can serve.

27. The Panel recommends further consideration should be given to strengthening the provisions of the City of Perth Act to reflect the unique role the City of Perth plays in the development of the State economy. In addition, consultation should be undertaken with the City of Perth and other relevant stakeholders as to whether property franchise voting should be retained in the City of Perth.

The Panel noted that property franchise voting may nevertheless be appropriate for the City of Perth and suggested that the Department could undertake further consultation to determine if the *City of Perth Act 2016* should be amended so property franchise voting continues to apply in the City of Perth.

The Panel recognised the *City of Perth Act 2016* might be appropriate legislation to further strengthen the relationship between the State Government, business and the City of Perth in promoting the social and economic interests of the whole State.



Redefinition of Roles and Responsibilities

28. The Panel recommends significant changes in the Act to the current statements of roles and responsibilities for mayors/presidents, councillors and CEOs and that the Act should include a new statement of responsibilities for the ‘council’ which captures the roles and responsibilities of all councillors acting collectively as the council.

The revised statements of roles and responsibilities seek to address more clearly the following issues:

- Community leadership
- Strategic planning
- Continuous improvement
- Executive function (for mayors/presidents)
- Guiding the CEO (for mayors/presidents)
- Training

29. The Panel recommends the following as the role of council:

The council —

- (a) considers the diversity of interests and needs of the local community;
- (b) is accountable to the community for the local government’s performance;
- (c) ensures adequate opportunities and mechanisms for engagement with the local community;
- (d) ensures the timely development and adoption of the strategic plans, programs and policies of the council and promotes the effective and consistent implementation of these;
- (e) develops and adopts strategic plans and a budget for the local government;
- (f) keeps the local government’s resource allocation, expenditure and activities and the efficiency and effectiveness of its service delivery, under review;
- (g) provides strategic direction to the CEO in order to achieve high-quality administration and performance of the local government’s functions in accordance with the Local Government Act and local government’s policies;
- (h) carries out an annual performance review of the CEO and in agreement with the CEO adopts Key Performance Targets for the following year;
- (i) provides a safe working environment for the CEO, officers and councillors;
- (j) reviews annually the delegations of the council; and
- (k) performs such other functions as are given to a council by this Act or any other written law.



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

30. The Panel recommends the following as the role of councillors:

A councillor —

- (a) without bias represents the current and future interests of all people who live, work and visit the district;
- (b) provides leadership and guidance to the community in the district;
- (c) facilitates communication between the community and the council;
- (d) accurately represents to the community the policies and decisions of the council;
- (e) participates in the development of strategic plans;
- (f) must be prepared to –
 - (i) participate with an open mind in the local government’s decision-making processes;
 - (ii) be an active and contributing member of the council; and
 - (iii) make considered and well-informed decisions;
- (g) makes all reasonable efforts to acquire and maintain the skills necessary to perform the role of councillor; and
- (h) performs such other functions as are given to a councillor by this Act or any other written law.

31. The Panel recommends the following as the role of the mayor/president:

In addition to the responsibilities of a councillor, the mayor or president —

- (a) provides leadership and guidance to the community in the whole district;
- (b) carries out civic and ceremonial duties on behalf of the local government;
- (c) acts as the principal spokesperson on behalf of the council and explains and upholds the decisions of the local government;
- (d) encourages good working relations between councillors, and between the council and the CEO;
- (e) provides guidance to councillors about what is expected of a councillor including in relation to:
 - (i) the role of a councillor;
 - (ii) the councillor code of conduct; and
 - (iii) standing orders
- (f) liaises with the CEO on the local government’s affairs and the performance of its functions;
- (g) presides at meetings in accordance with this Act;
- (h) leads the development of strategic plans;
- (i) promotes partnerships between the council and key stakeholders;
- (j) leads and facilitates the presentation of the annual Council budget;



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

- (k) initiates the annual performance appraisal of the CEO; and
- (l) performs such other functions as are given to the mayor or president by this Act or any other written law.

32. The Panel recommends the following as the functions of the CEO:

- (1) The CEO's functions are to —
 - (a) advise and assist the council in relation to the functions of a local government under this Act and other written laws;
 - (b) ensure that timely and accurate advice and information is available to the council so that informed decisions can be made;
 - (c) ensure that the mayor and other councillors are given the administrative and professional support necessary to effectively discharge their role;
 - (d) advise the council on appropriate forms of community engagement;
 - (e) advise and consult the mayor and council on the development and implementation of the strategic plans, programs, strategies and policies of the council;
 - (f) prepare, in consultation with the mayor and council, the draft budget;
 - (g) ensure that the policies and lawful decisions of the council are implemented in a timely and efficient manner;
 - (h) conduct the day-to-day management of the local government in accordance with the strategic plans, programs, strategies and policies of the council;
 - (i) ensure the effective and efficient management of the local government in a way that promotes —
 - (i) the effective, efficient and economical management of public resources;
 - (ii) excellence in service delivery; and
 - (iii) continual improvement;
 - (j) maintain systems to enable effective planning and accurate reporting of the financial and service performance of the local government to the council and community;
 - (k) speak publicly on behalf of the local government when approved by the mayor or president to do so;
 - (l) be responsible for the employment and management of local government employees, except with respect to the position of CEO, through management practices that —
 - (i) promote equal employment opportunities;
 - (ii) are responsive to the local government's policies and priorities; and
 - (iii) provide a safe working environment;



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

- (m) ensure the local government complies with this Act and any other written law;
 - (n) ensure that records, proceedings and documents of the local government are properly kept for the purposes of this Act and any other written law; and
 - (o) perform any other function specified or delegated by the council or imposed under this Act or any other written law as a function to be performed by the CEO.
- (2) The CEO must inform and consult the council when determining, or making, significant changes to –
- (a) the organisational structure for the staff of the local government; or
 - (b) the processes, terms or conditions that are to apply to the appointment of senior executive officers; or
 - (c) the appraisal scheme that is to apply to senior executive officers.

Community Engagement and Governance

33. The Panel recommends that the following community engagement principles should be included in the new Act:

- a. Councils actively engage with their local communities;**
- b. Councils are responsive to the needs, interests and aspirations of individuals and groups within its community;**
- c. Community engagement processes have clearly defined objectives and scope;**
- d. Participants in community engagement have access to objective, relevant and timely information to inform their participation;**
- e. Participants in community engagement are representative of the persons and groups affected by the matter that is the subject of the community engagement;**
- f. Participants in community engagement are entitled to reasonable support to enable meaningful and informed engagement; and**
- g. Participants in community engagement are informed of the ways in which the community engagement process will influence council decision-making.**

The Panel considers the community key to the effective functioning of the local government, with the local government being there for and to respond to the community. It is therefore vital that all segments of the community are heard and can participate in decision-making.

34. The Panel recommends a Community Engagement Charter be required as a mechanism for guiding and enhancing community participation in local decision-making, and that a model charter be prepared to set parameters and provide guidance on mechanisms to be used.

The Panel agreed that all local governments should be required to have a Community Engagement Charter, with individual local governments responsible for ensuring they are fit for purpose. The



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

department should provide suitable guidance material and templates for those local governments that wish to utilise these.

The Panel proposed that triggers for consultation be included, such as borrowing, change of purpose in land use, and major changes to strategy.

The Panel considered that the Charter should be accessible, flexible, and include the deliberative community engagement requirements for IPR. The Charter should also include a reporting mechanism in the annual report.

The Panel believed that elected members have an important role to play in community engagement in listening to the community and that this should be outlined in the Charter. Training should be available to elected members in this area.

35. The Panel recommends the Annual Electors' Meeting is replaced by an Annual Community Meeting whereby:

- a. As a minimum, councils provide information on their achievements and future prospects;**
- b. Councils report on the local government's financial performance and performance against relevant Council Plans;**
- c. Both the mayor/president and the Chair of the Audit Committee address the meeting;**
- d. There is ample time for questions; and**
- e. Wider community participation is encouraged through different delivery mechanisms.**

The Panel recommended the retention of an annual meeting (to replace the Annual Electors' Meetings) which will facilitate community participation through more modern delivery mechanisms to reach people who may not be able to attend ordinary council meetings (for example, using Zoom and/or webinars). At this meeting there should be an annual performance statement made by the mayor/president, a report from the chair of the Audit, Risk and Improvement Committee and a question and answer session.



Smart Planning and Service Delivery

Enhanced Integrated Planning and Reporting

36. The Panel recommends the following IPR Principles are included in the new Act:

- a. Councils plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services to meet the diverse needs of the local community;
- b. Strategic planning identifies and incorporates, where appropriate, regional, State and Federal objectives and strategies concerning the economic, social, physical and environmental development and management of the community;
- c. Strategic planning addresses the community's vision;
- d. Strategic planning takes into account the resources needed for effective implementation;
- e. Strategic planning identifies and addresses the risks to effective implementation; and
- f. Strategic planning is a key accountability tool that provides for ongoing monitoring of progress and regular reviews to identify and address changing circumstances.

37. The Panel recommends:

- a. IPR be given greater prominence in the new Act as the centrepiece of 'smart' planning and service delivery.
- b. The new Local Government Commission and the department should take steps to improve understanding and skills across the sector to ensure consistent implementation of IPR requirements.
- c. IPR provisions in the Act should be expanded to include the issues currently covered in the regulations (suitably updated in accordance with these recommendations).
- d. IPR provisions and guidelines should be amended to, amongst other things –
 - (i) Highlight the central goal of advancing community well-being (economic, social, cultural and environmental).
 - (ii) Replace the current requirement for a Strategic Community Plan with a more flexible framework for 'Community Strategies'.
 - (iii) Reframe Corporate Business Plans as broader 'Council Plans' prepared by each incoming council.
 - (iv) Mandate deliberative community engagement in the preparation of both Community Strategies and Council Plans.
 - (v) Require a 'regional issues and priorities' section within Council Plans, to be prepared in consultation with neighbouring/nearby local governments.
- e. Provision should be made for a baseline reporting system as part of the IPR framework, and local governments should be required over time to report against a



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

wider range of performance measures covering financial management, service delivery, governance and community wellbeing.

- f. Annual reports should include a statement of performance against the objectives, programs and projects set out in Community Strategies and Council Plans.**
- g. The Audit, Risk and Improvement Committee (see Recommendations 53 and 54) should monitor the local government's performance in implementing the IPR framework, including compliance with relevant statutory obligations, and report its assessment to the community (for example, as an addendum to the council's annual report and/or as a statement to the Annual Community Meeting proposed in Recommendation 35).**
- h. That all IPR plans be reviewed every four years (to align with the new election cycle), two years or one year depending on the plan.**

The Panel believes that strengthening and reframing the Act's provisions for IPR would promote and link more effective strategic and corporate planning, regional cooperation, community engagement, financial management, service delivery, and monitoring and reporting of outcomes.

The Panel noted some excellent examples of emerging regional cooperation in strategic planning, and opportunities for creative use of IPR to promote a more holistic approach to community wellbeing, and in particular for collaborative planning with Aboriginal peoples and communities. However, it was concerned that the current IPR framework is not fully understood across the sector, and that implementation remains patchy. There is an evident need for more work to develop and explain the framework, and for further assistance to individual local governments and regional groups to enhance their ability both to meet basic IPR requirements, and to grasp opportunities to make better use of IPR as a tool to achieve desired outcomes for places and communities.

The Panel concluded that reframing the current requirements for Strategic Community Plans and Corporate Business Plans would be helpful in explaining the scope and intent of IPR. This would involve:

- Clarifying the difference between 'aspirational' strategies on the one hand, and plans that commit a council to pursue specific courses of action on the other.
- Demonstrating how IPR offers pathways for local governments to work together at a regional level, as well as to plan with communities for districts and neighbourhoods.

The Panel therefore proposes that Strategic Community Plans be replaced by multi-level 'Community Strategies' that could be prepared for regions, individual local government districts, and smaller areas/localities within a local government district. Corporate Business Plans should be reframed as broader 'Council Plans' that give effect (as far as possible) to Community Strategies. These proposals draw on current practice in Victoria (council plans and community planning) and New South Wales (joint organisations developing regional strategies).

The Panel also examined the requirement for Victorian local governments to report on a wide range of key performance indicators and considered this type of reporting to the community to be highly desirable. To alleviate the burden this could place on some local governments, it proposes that reporting should be phased in, starting with indicators for financial management, service delivery and governance, and expanding to broader well-being measures over time. Reporting should be made freely available through a statewide online platform.



Part of the reporting framework could be an annual declaration that the local government is successfully meeting its obligation to provide essential basic services to its community. This could be a function of the Audit, Risk and Improvement Committee.

Minimum Service Levels

38. The Panel recommends:

- a. **As a minimum, local governments must seek to identify and provide, or offer, to all its citizens, a minimum level of services to meet statutory obligations.**
- b. **The Minister should have the power to direct a local government if it fails to provide or offer these services.**
- c. **The new Act should incorporate financial sustainability principles which also link to the IPR framework.**
- d. **Local government services and programs should be aligned to the IPR framework.**
- e. **Local governments conduct regular reviews of services and service levels including community consultation.**

The Panel strongly believed that all citizens in Western Australia are entitled to a minimum level of service delivery, whether it be a metropolitan local government or a remote community. However, the diversity of the sector means that services may vary significantly between local governments. The Panel felt that while there are some services where it is reasonable to have discretion, there are some minimum services that all local governments must provide.

The Panel was cognisant of the financial constraints and capability of local governments to be able to deliver basic services and in some cases, providing services independently would be challenging. In these situations, local governments should collaborate using the joint subsidiary model.

As noted earlier, service delivery to remote communities was identified as an area that could be particularly challenging due to financial constraints, isolation and access (among other things). The Panel strongly supported identification of service needs through the IPR process and minimum services being delivered. However, financial and cultural barriers will sometimes need to be addressed through broader whole of government initiatives. New mechanisms may be needed to facilitate such initiatives (such as the South Australian Outback Communities Authority). A community should have the right to decline a particular service or services if they have other arrangements in place.

The Minister should have a qualified reserve power to intervene in certain situations and provide enforceable directions to local governments. This would include where minimum services were not being provided and in the event of a natural disaster or pandemic.

Local and Joint Subsidiaries

39. **The Panel recommends local governments should continue to play an active role in economic development at both local and regional levels. The IPR framework should encourage local governments to be cognisant of State Government plans when developing strategies for economic development.**



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

40. The Panel recommends that the new Act should provide the freedom for local governments to be involved in commercial activities where it is in the public interest and subject to competitive neutrality principles.

The Panel noted that local government provides an important stimulus in the economy, especially in regional areas, and that it is important that a legislative framework does not unnecessarily restrict the ability for local governments to be involved in economic development.

The Panel was of the view that there are not currently any specific barriers in the Local Government Act that hinder the ability for local government to grow their economy. They also noted that local governments' involvement in economic development should be voluntary, and subject to the needs and desires of the local community. The new Act should provide appropriate governance and accountability measures covering these activities.

41. The Panel recommends that 'beneficial enterprises' not be introduced as a new mechanism for local government commercial activities, but that instead an updated and more flexible subsidiary model should provide for the following:

- a. Local government autonomy to establish a single or joint subsidiary to:
 - (i) Carry out any scheme, work or undertaking on behalf of the council;
 - (ii) Manage or administer any property or facilities on behalf of the council;
 - (iii) Provide facilities or services on behalf of the council; and/or
 - (iv) Carry out any other functions on behalf of the council.
- b. The subsidiary to be established through a charter.
- c. The charter to be certified by an independent and suitably experienced legal practitioner as within power and National Competition Policy.
- d. Public notice of the proposal to establish the subsidiary to ensure that there are no private operators that would be significantly disadvantaged.
- e. The subsidiary to be able to undertake commercial activities (within the limits of competitive neutrality and a thorough risk assessment).
- f. The subsidiary to have the ability to acquire, hold, dispose of or otherwise deal with property.
- g. Dividends able to be paid to member local governments.
- h. The requirement for employees of the subsidiary to be employed under the same award or agreement conditions as the relevant local government/s and within the jurisdiction of the Western Australian Industrial Relations Commission.
- i. No requirement for ministerial approval at the outset, but reserve powers for the Minister for Local Government to intervene if issues arise should be included.

42. The Panel recommends local governments should utilise the subsidiary models and, as a general rule, should not form entities outside this, such as under the Associations Incorporation Act, except as a means of establishing or maintaining partnerships with other local or regional organisations in those instances where the local government is not the dominant party.



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

The Panel noted that the current regional subsidiaries model could be improved in relation to their establishment, scope of operations and governance. It was noted that the current model has not been utilised by the sector as its scope is perceived to be too limiting.

While the Panel supported local governments being innovative and able to operate when market failure is identified, it was of the view that the new Act should explicitly require that local governments operate in accordance with competitive neutrality principles when establishing a subsidiary and setting fees and charges.

The Panel also noted concerns that a local government may use a subsidiary to reduce employee pay and conditions and considered that this should be prohibited in the Act.

The introduction of a new subsidiaries model, similar to the Tasmanian model, would allow local governments the flexibility to operate on a commercial basis (within reason). It is recommended that if this is to occur, adequate controls would need to be introduced, including community consultation, model charters, appropriate reporting and audit measures and providing the ability for the Minister to intervene if considered necessary.

The legislative framework for the model should provide autonomy for local governments to establish a subsidiary without Ministerial oversight while retaining reserve powers for the Minister if required. There should be measures to ensure greater transparency and accountability to the community.

The Panel also discussed concerns with local governments using the Associations Incorporation Act to establish entities outside the Local Government Act and considered that as a general rule this be prohibited under the new Act. Local governments should encourage non-government providers to establish and govern associations where appropriate for community-led service delivery, with local governments only stepping in if the association cannot operate effectively or needs to be wound up.

Modernise Financial Management

43. The Panel recommends the following financial management principles be included in the new Act:

- a. Councils should have regard to achieving intergenerational equity, including ensuring the following:**
 - (i) Policy decisions are made after considering their financial effects on future generations;**
 - (ii) The current generation funds the cost of its services; and**
 - (iii) Long life infrastructure may appropriately be funded by borrowings.**
- b. Revenue, expenses, assets, liabilities, investments and financial transactions are managed in accordance with the council's financial policies and strategic plans;**
- c. Financial risks are monitored and managed prudently having regard to economic circumstances;**
- d. Financial policies and strategic plans, including the Revenue and Rating Strategy and Investment policy, seek to provide stability and predictability in the financial impact on the community; and**



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

e. **Accounts and records that explain the financial operations and financial position of the council are kept.**

44. Having regard to the need for sound financial decision-making and accountability, the Panel recommends the following:

- a. **Local governments should be required to adopt or justify departures from a model investment policy to the Audit, Risk and Improvement Committee and relevant State Government Agency.**
- b. **Local governments should be able to use freehold land to secure debt.**
- c. **Debt should not be used for recurrent expenditure except in an emergency situation.**
- d. **Notice should continue to be required to be given for borrowings not included in the local government's annual budget.**
- e. **Building upgrade finance is permitted for specific purposes such as cladding, heritage and green improvements.**
- f. **Local governments should adopt program budgeting to more clearly show the actual cost of delivering a service or undertaking an activity.**
- g. **Local governments should report on the percentage of their expenditure spent on local businesses in their annual report.**

It is important that local governments are enabled through the legislation to invest their reserves effectively to maximise revenue. Given that the funds are public money, this must be balanced to ensure that local governments and their communities are not unnecessarily exposed to risk. The Panel agreed that local governments should be required to prepare an investment policy, dealing with approved investments and risk levels amongst other things.

Local government legislation in Queensland contains a tiered investment structure, with local governments having the power to invest based on their tier. This takes into consideration risk levels and credit ratings. The Panel suggested that further expert analysis be undertaken to inform potential implementation in Western Australia.

Local governments generally have low levels of debt relative to security, income levels and service responsibilities. The Panel noted that there are benefits to using debt for financial management when the benefits of the capital investment are multi-generational. On this basis, the Panel recommended expanding the ability for local governments to use freehold land to secure debt.

Building upgrade finance, which is operating in some other jurisdictions, is a scheme whereby a local government administers loans issued by financiers to non-residential building owners to upgrade their buildings. The Panel saw merit in allowing the introduction of the scheme for prescribed purposes such as upgrading heritage buildings or environmental upgrades. The introduction of building upgrade finance will need to have appropriate safeguards in place which could be modelled on the approach used in other States.

The Panel was of the view that the budget needs to be more closely integrated with IPR processes. As one measure to achieve this alignment, local governments should transition to budgeting on the basis of service delivery. This would require each service or program to be fully costed, ensuring elected members (and ultimately the community) understand the cost of providing the service and



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

encourage critical review of costs. This would also allow the community to provide more informed input into the Council Plans.

Program budgeting will result in better information leading to more informed decisions. Reporting on actual cost of services could result in decisions to allocate limited resources in different ways and gain greater acceptance by the community.

The positive impact a local government can have on their local economy through using businesses within their district and region were noted by the Panel. The view was held that there would be benefits for the community in seeing how much the local government had spent locally and with which businesses. This would be included in the Annual Report as a “local content” report.

Procurement

45. The Panel recommends that local government procurement thresholds, rules and policies are, where applicable, aligned with the State Government, including (but not limited to):

- a. **Tender threshold (currently \$250,000);**
- b. **Procurement rules and methods for goods and services under the tender threshold;**
- c. **Procurement policies, including sustainable procurement, procuring from disability enterprises, buy local (where ‘local’ refers to Western Australia or a specific region of the state determined by the local government) and Aboriginal businesses; and**
- d. **Using TendersWA as the primary tender platform.**

The Panel agreed that procurement needs to be open, transparent, fair and ensure adequate market testing, value for money and local consideration.

The Panel supported aligning local government and State Government procurement frameworks, including the tender threshold, procurement rules under the tender threshold and the publication of tenders and high value contracts on TendersWA. By increasing consistency between State and local government, and transparency of procurement rules and processes it creates a business-friendly environment and increases confidence in the process.

Local governments should be able to advertise tenders on other platforms, in addition to TendersWA, if they so choose.

46. The Panel recommends the development of a model procurement policy for all local governments. If a local government chooses to deviate from the policy it should be required to explain its reasoning to the responsible State Government agency.

In keeping with the recommended alignment to the State procurement framework, a model procurement policy should be developed that is consistent, as much as practicable, with the State rules that apply for purchasing goods under the tender threshold. The Panel believed development of a model procurement policy would assist local governments with the procurement process and increase consistency between local governments. If a local government chose to deviate from the model, local governments should have to justify the deviation by explaining their reasoning.



47. The Panel recommends enhancing legislation to regulate and guide the establishment and management of panel contracts.

It was acknowledged that local government preferred supplier panels are important and need to be retained; however, their establishment and operation needs to be regulated. The Panel supported the continuance of the WALGA Preferred Supplier Panel, subject to regular oversight and checks and balances to ensure that it is constituted correctly and there is accountability.

48. The Panel recommends a requirement for local governments to have an open register of local businesses with local governments determining what is considered 'local' to their community.

The Panel recommended the introduction of an open register of local businesses where local businesses can register with the local government and outline the services and goods they provide. This will assist local governments to support local businesses when procuring goods under the tender threshold, and in informing them of open tenders. Local governments should determine what is considered 'local' to their community.

49. The Panel recommends breaches of the local government procurement rules to be referred to the Office of the Independent Assessor to use the appropriate powers under the new Local Government Act.

There are currently limited penalties for non-compliance with the procurement rules in the Local Government Act. The Panel supported the compliance model in the State Government procurement rules whereby greater oversight and less autonomy is the result of compliance breaches and believed the Office of the Independent Assessor should have the power to address cases of non-compliance. (See Recommendation 54 for more information on the Office of the Independent Assessor).

Rating and Revenue

50. The Panel recommends:

- a. Rate capping should not be introduced.
- b. Local governments should be required to develop and publish a rates and revenue strategy, that would amongst other things replace the need to have fees and charges set in the annual budget.
- c. The Economic Regulatory Authority (ERA) should be asked to undertake a review of the rating system, including a thorough examination of the case for the current wide range of exemptions.
- d. The current rates exemptions should be retained until after the ERA review.
- e. Property owners seeking an exemption should be regularly required to prove they meet the criteria for an exemption.
- f. Local governments should charge a separate waste charge applying to all properties which have a waste service, including exempt properties.



g. The Valuer General should be asked to undertake a review of the rating methodology with the aim of smoothing out significant fluctuations in valuations.

The Panel noted the importance of rates as local government's principal own source revenue, but equally the need to ensure transparency and fairness in the way rates are calculated and imposed.

With local governments increasingly being required to provide more services and to a higher level to their communities, as well as maintaining their existing assets, the Panel noted that there is concern as to how local governments will continue to fund this in the future given their limited revenue sources.

Of all revenue sources, the most important own source revenue for local governments is rates revenue. Local governments are permitted to impose differential general rates according to land zoning, land use (including if the land is vacant) or a combination of the two.

The Panel was supportive of local governments being required to develop a rates and revenue strategy, as is in place in other jurisdictions. The strategy would include the schedule of fees and charges set by local governments (currently included in the budget), the methodology where the fees are set at cost recovery, the rate/s in the dollar and associated objects and reasons for differential general rates. This would increase transparency for ratepayers and enable local governments to demonstrate the actual cost of services to consumers.

It was acknowledged that there are limitations on local governments' ability to raise revenue due to the current rate exemption categories. Rate exemptions result in local governments needing to cover the rates shortfall by other means, raising the funds from other groups of ratepayers or alternatively reducing services or asset maintenance.

It was accepted that there may be sound reasons why certain exempt categories should be retained, including linkages to State Government policies and initiatives. The Panel recommends that applicants should be required to prove each year that they still fit the criteria for the exemption, especially for organisations claiming charitable status.

51. The Panel recommends that local governments should be able to set reasonable fees and charges according to a rating and revenue strategy, with the oversight of the Audit, Risk and Improvement Committee.

52. The Panel recommends that local governments and State Government apply cost recovery principles when setting fees and charges.

While local governments have the power to set their own fees and charges generally, there are a number of fees and charges that local governments have no control over. Only a few of these are set under the current Local Government Act.

The Panel agreed that fees and charges set in legislation can provide consistency between local governments. It was also noted that while the fees and charges may be consistent, there is likely to be a different level of service provided by local governments.

It was also noted that while local governments are encouraged to adopt a cost recovery model when setting fees and charges, there may be circumstances where it is appropriate to set them lower for certain population groups (for example, seniors) or to encourage certain outcomes in the community.



Accountability, Self-Regulation and Integrity

Enhanced Accountability and Self-Regulation

53. The Panel recommends the role of audit committees be expanded to become Internal Audit, Risk and Improvement Committees and:

- a. The majority of the Committee members, including the Chair, should be independent of the local government and should be drawn from a suitably qualified panel.**
- b. To address the impost on small local governments, the committee could be established on a regional basis.**

54. The Panel recommends the main roles of the Audit, Risk and Improvement Committee should include:

- a. Developing an audit plan which focuses on compliance, risk (including procurement), financial management, fraud control, governance and delivery of the Council Plans;**
- b. Identifying continuous improvement opportunities and monitoring programs and projects in this area;**
- c. Conducting the mandatory internal audits as outlined in the audit plan; and**
- d. Providing advice to the council in relation to these matters.**

The Panel supported the expansion and strengthening of the role of local government audit committees to become Audit, Risk and Improvement Committees. Moving to a principles-based Act and providing local governments with more autonomy emphasises the need for self-regulation. This requires a robust process for accountability and transparency, justifying the need for the committee to have an independent chair. The Panel also concluded that, given the committee's expanded and critical role, there should be a majority of members not associated with the local government in any way and appointed and remunerated for their skills.

This aligns with the changes occurring within the State Government and the Office of the Auditor General recommendations.

Audit, Risk and Improvement Committees should be required to review matters such as compliance, risk management, financial management, fraud control and governance of the local government.

The Panel was of the view that an Audit, Risk and Improvement Committee could have a role in providing advice to council on decisions across a range of matters, including good governance, financial and risk management, and continuous improvement. The Chair could have a more public role, including in addressing council on relevant matters, reporting at the Annual Community Meeting and preparing a statement in the local government's annual report.

To address cost and access to suitable personnel to take on this role, regional Internal Audit, Risk and Improvement Committees should be permitted. In addition, consideration should be given to establishing a panel of approved independent members from which councils could choose.



Renewed Focus on Integrity

55. In relation to governance, the Panel recommends:

- a. Meeting procedures are standardised across all local governments, allowing for both a committee system and a public briefing system.
- b. Elected members should be required to lodge a declaration of interest as well as a confirmation of impartiality prior to meetings.
- c. Elected members who believe that they are unable to maintain impartiality on a particular matter should be permitted to withdraw from that part of the meeting provided a quorum is maintained.
- d. All votes should be recorded in the minutes on each motion with details of how each councillor voted.
- e. As a minimum, audio recordings of public parts of council meetings should be available on the local government's website when the minutes become available, with livestreaming to be encouraged.
- f. CEO contracts should be standardised and consistent with the Public Sector Commission's policy and relevant conditions for public sector employees.
- g. CEO contracts should be no more than five years and after two terms the local government must readvertise the position.
- h. The department should facilitate additional oversight in the recruitment and management processes of CEOs. This could include representation on the selection panel and/or screening of applicants.
- i. Primary and Annual Returns should include disclosure of membership of political parties and associations likely to be seen as exerting an influence on decision-making.

The Panel discussed ways to ensure council decision-making was transparent and accountable. It recommends that not only should actual conflicts of interest be declared before the council meeting, but that each councillor should make a declaration in relation to any item on the agenda on which they may not be impartial. This would include, for example, items where they had taken a public position or lobbied in relation to the matter before the meeting. If the councillor believes that they are unable to put those interests aside and make a decision in the best interests of the district as a whole, the person should be able to remove themselves from the meeting for that item, providing a quorum is maintained so that a vote can be taken. A declaration prior to the meeting would assist the CEO in determining whether or not a quorum is available for a matter.

While webcasting (livestreaming) of council meetings was preferred, given the technology constraints that could be experienced by some local governments, audio recordings of the meetings was considered as a practical minimum to ensure greater transparency in the decision making process. These recordings would be State records under the *State Records Act 2000*. The recordings should be required to be published on the website by the time the minutes were published.

The Panel agreed that the department should play an active role in assisting the council in the CEO recruitment and performance review processes. Another option is that prior to selection, the



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

Department could provide a reference check and possible recommendations for training for the shortlisted candidates for the positions of CEO.

To increase transparency and foster greater trust in local government, the Panel believed that elected members should declare in their Primary and Annual Returns interests that could be perceived as affecting decision-making. This would include membership of political parties, business associations and the holding of any office in an incorporated association such as a sporting club.

Expanded Requirements for Training and Professional Development

56. The Panel recommends the following in relation to training:

- a. New CEOs (including CEOs moving to a substantially larger local government) should be required to undertake training and ongoing professional development as recommended by the selection panel.**
- b. There should be compulsory induction training and ongoing professional development for all councillors, including specific programs for mayors and presidents.**
- c. Training modules for all councillors should include in-depth material on IPR and land use planning.**
- d. The Minister should have discretion to exempt completion of training within the stipulated time on compelling grounds.**
- e. Expanded use of peer review and support should be encouraged both to help improve the performance of individuals and local governments.**

The Panel discussed the importance of training for elected members, including training beyond the foundation units in such areas as land use planning. Additional training should also be required of mayors and presidents to provide them with such skills as leadership, conducting meetings and managing disputes. Training for new CEOs was also considered vital so that they had knowledge across the whole portfolio of their responsibilities. This need should be identified during the recruitment process and training should commence shortly after appointments are made. The Department could also identify training needs in CEOs and senior staff and advise the relevant mayor/president.

A New Early Intervention Framework

57. The Panel recommends that there should be an early intervention framework of monitoring to support local governments. The department should have additional powers to appoint and support the monitor with councils responsible for the direct costs of the monitor.

The Panel agreed that the department should assist councils through early intervention to remedy weaknesses and provide mentoring and support. This would be in addition to the department's role in policy development, legislation and statutory approvals.

A key benefit of an early intervention model would be the ability for the department to work with local governments to improve their performance, governance and compliance with legislation and to strengthen the capacity of local governments.



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

This model should enable the department to appoint a monitor to support local governments that are experiencing governance issues. The role of a monitor would be to observe governance processes and report back on issues; provide advice to councils that are experiencing governance issues, and to make recommendations to the Minister for Local Government for further action. The relevant council should be advised of the terms of the monitor appointment.

The Panel saw value in a power to extend the role of a monitor to temporarily take over certain functions of a local government when good governance practices are not being adopted or services are not being delivered to segments of the community.

They also saw value in Department staff having the right of access to council meetings, including closed meetings.

58. The Panel recommends the Minister should have the power to direct local governments and make declarations in respect to the Local Government Act during a declared state of emergency.

The COVID-19 situation has highlighted the need for the Minister to be able to direct local governments and make declarations without having to apply to the State Emergency Coordinator so that the Local Government Act can be applied flexibly and adapt to the changing environment of an emergency.

Establishment of an Office of the Independent Assessor

- 59. The Panel recommends establishing an Office of the Independent Assessor that should:**
- a. Be an independent body to receive, investigate and assess complaints against elected members and undertake inquiries. This removes the CEO from being involved in processing and determining complaints.
 - b. Be a statutory appointment by the Governor.
 - c. Upon assessment, refer the complaint back to the council (behaviour-related), the State Administrative Tribunal (SAT) (serious breaches), or to another appropriate body (such as, Corruption and Crime Commission, Public Sector Commission, Ombudsman) according to the subject of the complaint.
 - d. Replace the Standards Panel by investigating and making determinations on Rules of Conduct breaches. SAT will determine the penalties.
 - e. Amongst other powers, have the power to investigate, to order compulsory mediation and to deal with abuses of process.
 - f. Be required to notify the CEO and council of any matters on a confidential basis.
- 60. The Panel recommends consideration should be given to the appropriate recognition and management of complaints by an elected member against a CEO or other senior officer, with one option for these to be investigated by the Office of the Independent Assessor.**



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

The Panel considered the range of bodies that currently play a role in ensuring the integrity of local governments. They supported the continuation of the Ombudsman's role in dealing with complaints related to local government administrative decisions.

The Panel supported the creation of an Office of the Independent Assessor, an independent "one stop shop" body to investigate and assess complaints against elected members. The Independent Assessor could assess and prioritise all complaints and, depending on the outcome of its investigations, refer it to the relevant agency. This could include the Corruption and Crime Commission, the Public Sector Commission, or the State Administrative Tribunal for mediation, possible further investigation and determination of a sanction/s. Where a complaint involves behaviour it could be referred back to the council to deal with under Part B of the new Code of Conduct provisions. It was suggested that the Queensland model for an Independent Assessor may provide appropriate guidance.

The Office of the Independent Assessor would require a team of investigators and the Panel considered that the Office could take over the department's current role in conducting inquiries and investigations. The Independent Assessor could advise the Minister on suspension and dismissals of elected members and councils. It could also have powers to make recommendations to the State Administrative Tribunal and local governments.

The Office of Independent Assessor would replace the Standards Panel, and have the power to investigate complaints of breach of Part C of the Code of Conduct. Its findings in relation to breaches of conduct could be referred to the State Administrative Tribunal for imposition of the penalty.

The Panel considered that there should be a power under the Act for the appointment of an acting CEO to temporarily take the place of a CEO if an investigation by the Office of Independent Assessor reveals serious deficiencies in the way the local government is administered.



Other Matters

Classification Bands

61. The Panel recommends:

- a. **The new Act should set principles for determining classification bands for local governments.**
- b. **These classification bands should be used by the Salaries and Allowances Tribunal for determining councillor and CEO payments, as well as providing a framework for distinguishing between local governments in relation to other matters.**

The Panel was of the opinion that the principles behind the setting of bands for the payment of salaries and allowances should be set in the new Local Government Act, rather than by the Salaries and Allowances Tribunal, with the Tribunal responsible for the setting of the monetary figures for each category.

These bands should have wider application; being used to determine whether a local government should have wards, as an example. This would create a level of consistency in treatment of local governments considered to be similar according to the principles.

Local Laws

62. The Panel recommends the increased harmonisation of local laws through the development of model local laws and deemed provisions.

63. The Panel recommends requiring local governments to justify to the Joint Standing Committee on Delegated Legislation any variation from the model or deemed provisions.

The Panel saw merit in laws being harmonised throughout the State; however, agreed that there should be flexibility for local governments to tailor local laws to address certain, limited, local matters.

The Panel also saw value in the introduction of deemed provisions which operate in a manner similar to the Planning and Development deemed provisions regulations. Deemed provisions are essentially uniform local laws which will operate across the State. They can also be amended from time to time and will override any inconsistent local laws.

The benefit of deemed provisions is that there is more consistency across the State for matters where harmonisation is considered important. It also reduces the need for local governments to develop their own laws with the accompanying capability and capacity implications.

The development of model local laws which complement the deemed provisions will allow local governments the flexibility to introduce specific provisions to their districts. The “local” would be delivered through the identification of certain elements that could be district or region specific, with the council having the power to specify these.

The Joint Standing Committee on Delegated Legislation, in approving the model local laws or deemed provisions, would approve the extent to which these could be altered without referral back to the Committee. Further public consultation would not be required on these variations but could be undertaken by the local government.



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

The use of model local laws and deemed provisions would reduce the administrative burden on local governments to consult. If a local government wanted to introduce provisions outside the model or deemed provisions, consultation would be required and the law would need to be scrutinised by the Joint Standing Committee on Delegated Legislation. The local government should have to justify to the Committee why such a deviation was necessary or desirable.

The Panel also supported a restriction on the range of matters over which a local government could introduce a local law; with approval necessary outside of this.

Western Australian Local Government Association

64. In relation to WALGA, the Panel recommends:

- a. WALGA not be constituted under the new Act;**
- b. A transition period is provided to ensure continuity in operations of WALGA while it is re-formed under other legislation; and**
- c. Recognition of WALGA's Preferred Supplier Program and mutual insurance coverage in the legislation should be accompanied by appropriate oversight measures, including auditing.**

The Panel deliberated the merits of WALGA being constituted under the Local Government Act and determined that it was not appropriate to incorporate a member body under this legislation. This created confusion as to the extent of the Minister's powers over the organisation and WALGA's level of independence.

More appropriate legislation would appear to be the *Associations Incorporation Act 2015*. Transitional provisions should be included in the new Local Government Act to allow for the orderly reconstitution of WALGA without affecting their operations.

This change would not restrict the new Act (or other Acts) from referencing WALGA membership on boards and committees.

The Panel saw merit in the sector being able to use its aggregated buying power through use of WALGA's preferred supplier program and their mutual insurance coverage. Recognition of these initiatives in the legislation should be accompanied by a power for the Auditor General to conduct regular audits of these programs and related processes.



Operational Provisions

- 65. The Panel also identified the following operational matters to be considered when drafting the new Act:**
- a. The powers of entry in the current Local Government Act should be retained.**
 - b. The current evidence requirements in legal proceedings should be retained, however the requirement for the CEO to certify the documents should be removed. This should be delegated and the range of items that can be certified expanded after consultation with local governments.**
 - c. The new Act should be updated to reflect the modern signing of contracts.**
 - d. A more streamlined ability to dispose of impounded goods needs to be developed for the new Act.**
 - e. The new Act should enable councillors and members of the community (in the case of public questions and deputations) to remotely participate in council and committee meetings.**
 - f. Employment entitlements for local government employees should be transferrable across all three levels of Government.**



ATTACHMENT 1

Example of Introductory Sections

Northern Territory Local Government Act 2019 Part 1.2

Section 4(1).

The underlying principles of this Act are as follows:

- (a) Local government is a distinct and essential sphere of government.
- (b) The system of local government:
 - i. needs to be flexible and adaptable to the diverse interests and needs of the many communities within the Territory; and
 - ii. needs to be comprehensive, democratic, responsive to community needs and accountable both to local communities and the public generally.

Section 5.

The rights and interests of Indigenous traditional owners, as enshrined in the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) and the Native Title Act 1993 (Cth), are to be recognised and the delivery of local government services must be in harmony with those laws.

Section 6.

This Act provides for the following:

- (a) the establishment of a democratic and effective system of local government that recognises the diversity of communities in the Territory;
- (b) the conferral of wide powers on councils to act for the advancement, and in the best interests, of their local communities;
- (c) the enabling of councils to play a broad role in promoting the social, economic, environmental, and cultural well-being of their local communities;
- (d) the imposition of high standards of ethical conduct on council members;
- (e) the requirement on councils of high standards of governance, service delivery, asset management and financial accountability;
- (f) the requirement on councils to promote and assist constructive participation by their local communities in achieving effective local government for their areas.



ATTACHMENT 2

Example of Functions of a Local Government

South Australia Local Government Act

Section 7: Functions of a council

The functions of a council include—

- (a) to plan at the local and regional level for the development and future requirements of its area;
- (b) to provide services and facilities that benefit its area, its ratepayers and residents, and visitors to its area (including general public services or facilities (including electricity, gas and water services, and waste collection, control or disposal services or facilities), health, welfare or community services or facilities, and cultural or recreational services or facilities);
- (c) to provide for the welfare, well-being and interests of individuals and groups within its community;
- (d) to take measures to protect its area from natural and other hazards and to mitigate the effects of such hazards;
- (e) to manage, develop, protect, restore, enhance and conserve the environment in an ecologically sustainable manner, and to improve amenity;
- (f) to provide infrastructure for its community and for development within its area (including infrastructure that helps to protect any part of the local or broader community from any hazard or other event, or that assists in the management of any area);
- (g) to promote its area and to provide an attractive climate and locations for the development of business, commerce, industry and tourism;
- (h) to establish or support organisations or programs that benefit people in its area or local government generally;
- (i) to manage and, if appropriate, develop, public areas vested in, or occupied by, the council;
- (j) to manage, improve and develop resources available to the council;
- (k) to undertake other functions and activities conferred by or under an Act.



ATTACHMENT 3

Possible Approaches to Structural Reform

South Australia Local Government Act

Following negotiations between the State government and the Local Government Association the South Australian Act was amended in 2018 to introduce a new, more flexible process for structural reform, set out in sections 26-32C (see below). Importantly, section 26(d) states that *the Commission should, so far as is relevant, give preference to structural changes that enhance the capacity of local government to play a significant role in the future of an area or region from a strategic perspective.*

Other principles (section 26(1)(c)) are as follows:

- i. the resources available to local communities should be used as economically as possible while recognising the desirability of avoiding significant divisions within a community;
- ii. proposed changes should, wherever practicable, benefit ratepayers;
- iii. a council should have a sufficient resource base to fulfil its functions fairly, effectively and efficiently;
- iv. a council should offer its community a reasonable range of services delivered on an efficient, flexible, equitable and responsive basis;
- v. a council should facilitate effective planning and development within an area, and be constituted with respect to an area that can be promoted on a coherent basis;
- vi. a council should be in a position to facilitate sustainable development, the protection of the environment and the integration of land use schemes;
- vii. a council should reflect communities of interest of an economic, recreational, social, regional or other kind, and be consistent with community structures, values, expectations and aspirations;
- viii. a council area should incorporate or promote an accessible centre (or centres) for local administration and services;
- ix. the importance within the scheme of local government to ensure that local communities within large council areas can participate effectively in decisions about local matters;
- x. residents should receive adequate and fair representation within the local government system, while over-representation in comparison with councils of a similar size and type should be avoided (at least in the longer term);
- xi. a scheme that provides for the performance of functions and delivery of services in relation to 2 or more council (for example, a scheme for regional governance) may improve councils' capacity to deliver services on a regional basis and therefore offer a viable and appropriate alternative to structural change.

Key elements of the process set out in sections 27-32C of the Act include:

- Responsibility for processing boundary changes transferred from the former Boundary Adjustments Facilitation Board to the Grants Commission, which operates with a very high level of independence and determines the guidelines under which the process operates.
- The Minister is limited to being one party who can propose boundary changes or mergers for the Commission's consideration, and making the final decision to accept or reject the



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

Commission's recommendation – a decision to reject the Commission's recommendation must be reported to Parliament.

- Changes or mergers can also be proposed by local governments (groups or individual), by either house of Parliament, and by a specified number of eligible electors.
- The Commission can decide not to investigate a proposal it considers trivial, a repeat of a previous proposal, or in some other way inappropriate or contrary to the public interest.
- Minor ('administrative') proposals can be processed quickly by the Commission with or without community consultation.
- A two-stage process is required for major ('general') changes – preliminary analysis followed (if considered appropriate) by detailed investigation and extensive community consultation (some sort of public inquiry).
- No requirement for binding referenda.
- All the Commission's findings and recommendations must be reported publicly on a website.



ATTACHMENT 4

Example of Principles for Inter-Governmental Relations

British Columbia Community Charter Act

Section 23. Agreements with other public authorities

- (1) A council may make agreements with a public authority respecting
 - a) activities and services within the powers of a party to the agreement, including agreements respecting the undertaking, provision and operation of activities and services,
 - b) operation and enforcement in relation to the exercise of authority to regulate, prohibit and impose requirements within the powers of a party to the agreement, and
 - c) the management of property or an interest in property held by a party to the agreement.

Principles of municipal-provincial relations (given effect in sections 276 and 277)

- (1) The citizens of British Columbia are best served when, in their relationship, municipalities and the Provincial government
 - a) acknowledge and respect the jurisdiction of each,
 - b) work towards harmonization of Provincial and municipal enactments, policies and programs, and
 - c) foster cooperative approaches to matters of mutual interest.
- (2) The relationship between municipalities and the Provincial government is based on the following principles:
 - a) the Provincial government respects municipal authority and municipalities respect Provincial authority;
 - b) the Provincial government must not assign responsibilities to municipalities unless there is provision for resources required to fulfill the responsibilities;
 - c) consultation is needed on matters of mutual interest, including consultation by the Provincial government on
 - (i) proposed changes to local government legislation,
 - (ii) proposed changes to revenue transfers to municipalities, and
 - (iii) proposed changes to Provincial programs that will have a significant impact in relation to matters that are within municipal authority;
 - d) the Provincial government respects the varying needs and conditions of different municipalities in different areas of British Columbia;



LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

- e) consideration of municipal interests is needed when the Provincial government participates in interprovincial, national or international discussions on matters that affect municipalities;
- f) the authority of municipalities is balanced by the responsibility of the Provincial government to consider the interests of the citizens of British Columbia generally;
- g) the Provincial government and municipalities should attempt to resolve conflicts between them by consultation, negotiation, facilitation and other forms of dispute resolution.