LOCAL GOVERNMENT ACT REVIEW PRINCIPLES

1. That State Council endorse a 'Principles over Prescription' approach to the Local Government Act Review and actively promote the benefits of the general principles listed below, intended to safeguard against the new Local Government Act becoming overly prescriptive:

   (a) Uphold the General Competence Principle currently embodied in the Local Government Act;

   (b) Provide for a flexible, principles-based legislative framework;

   (c) Promote a size and scale compliance regime;

   (d) Promote enabling legislation that empowers Local Government to carry out activities beneficial to its community taking into consideration the Local Governments role in creating a sustainable and resilient community through;
      i. Economic Development
      ii. Environmental Protection
      iii. Social Advancement;

   (e) Avoid red tape and 'de-clutter' the extensive regulatory regime that underpins the Local Government Act; and

   (f) The State Government must not assign legislative responsibilities to Local Governments unless there is provision for resources required to fulfil the responsibilities.

2. (a) Support the continuance of the Department of Local Government, Sport and Cultural Industries as a direct service provider of compliance and recommend the Department fund its capacity building role through the utilisation of third party service providers.

   (b) Call on the State Government to ensure there is proper resourcing of the Department of Local Government, Sport and Cultural Industries to conduct timely inquiries and interventions when instigated under the provisions of the Local Government Act 1995.

State Council Resolution March 2019 – 06.3/2019
December 2017 – 120.6/2017

THEME - AGILE

Beneficial Enterprises	
Position Statement	The Local Government Act 1995 should be amended to enable all Local Governments to establish Beneficial Enterprises (formerly known as Council Controlled Organisations).

Background

This model is available to Local Governments in New Zealand where they are used for a variety of purposes. The model allows one or more Local Governments to establish a wholly Local Government owned commercial organisation.

The Association has developed the amendments required for the Beneficial Enterprises model to be implemented in Western Australia.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 121.6/2017
October 2010 – 107.5/2010
October 2010 – 114.5/2010

Supporting Documents

Beneficial Enterprises Summary (2018)

FINANCIAL MANAGEMENT

No Rate Capping	
Position Statement	The Local Government sector opposes rate capping or any externally imposed limit on Local Government's capacity to raise revenue as appropriately determined by the Council.

Background

The Local Government sector fundamentally opposes 'rate capping' based on the following rationale:

I. Local Government is a legitimate and essential sphere of Government with the democratically enshrined mandate to raise revenue through rates to fund infrastructure and services for the benefit of their community.

II. Councils deliberative rate setting processes reference their Integrated Planning Framework – a thorough strategic, financial and asset management planning process – and draw upon the community's willingness and capacity to pay.

III. Rate-capping prejudices Local Government's long-term financial management and can, as experienced in other jurisdictions, have detrimental long-term effects on Local Government asset management, with chronic under-rating leading to significant infrastructure maintenance and renewal backlogs.

IV. Rate capping places undue pressure on sound financial management at a time when Local Governments are subjected to increasing costs beyond their control, often imposed by other spheres of Government.

V. Local Government rates have remained steady for many years at approximately 3.7 percent of GDP in Australia; meaningful tax reform would require thorough investigation of the total taxation burden, not an external cap on Local Government rates.

State Council Resolution March 2019 – 06.3/2019
September 2015 – 96.6/015
December 2015 – 118.7/2015

Supporting Documents Rate Setting Policy Statement

Financial Management Review – Part 6	
Position Statement	Conduct a complete review of the Financial Management provisions under Part 6 of the Local Government Act and associated Regulations

State Council Resolution March 2019 – 06.3/2019
December 2017 – 121.6/2017

Tender Threshold	
Position Statement	WALGA supports an increase in the tender threshold to align with the State Government tender threshold ($250,000) with a timeframe of one financial year for individual vendors.

Background The tender threshold should be increased to allow Local Governments responsiveness when procuring relatively low value good and services.

State Council Resolution March 2019 – 06.3/2019
December 2017 – 121.6/2017
July 2015 – 74.4/2015
September 2014 – 88.4/2014

Procurement	
Position Statement	That Regulation 30(3) be amended to delete any financial threshold limitation (currently $75,000) on a disposition where it is used exclusively to purchase other property in the course of acquiring goods and services, commonly applied to a trade-in activity.

Background

The current limit is $75,000 and this type of activity commonly applies to a trade-in situation.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 123.6/2017

Imposition of Fees and Charges: Section 6.16	
Position Statement	That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.

Background

Local Governments are able to impose fees and charges on users of specific, often incidental, services. Examples include dog registration fees, fees for building approvals and swimming pool entrance fees.

In some cases, Local Governments will recoup the entire cost of providing a service. In other cases, user charges may be set below cost recovery to encourage a particular activity with identified community benefit, such as sporting ground user fees or swimming pool entry fees.

Currently, fees and charges are determined according to three methods:

- By legislation
- With an upper limit set by legislation
- By the Local Government.

Fees determined by State Government legislation are of particular concern to Local Governments and represent significant revenue leakage because of:

- Lack of indexation
- Lack of regular review (fees may remain at the same nominal levels for decades)
- Lack of transparent methodology in setting the fees (fees do not appear to be set with regard to appropriate costs recovery levels).

Examples of fees and charges of this nature include dog registrations fees, town planning fees and building permits. Since Local Governments do not have direct control over the determination of fees set by legislation, this revenue leakage is recovered from rate revenue. This means all ratepayers end up subsidising the activities of some ratepayers.

When fees and charges are restricted by legislation, rather than being set at cost recovery levels, this sends inappropriate signals to users of Local Government services, particularly when the consumption of those services is discretionary. When legislative limits allow consumers to pay below 'true cost' levels for a discretionary service, this will lead to overprovision and a misallocation of resources.

Under the principle of 'general competence' there is no reason why Local Governments should not be empowered to make decisions regarding the setting of fees and charges for specific services.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 121.6/2017
December 2012 – 133.6/2012
January 2012 – 8.1/2012

Supporting Documents

Metropolitan Local Government Reform Submission 2012

Power to Borrow: Section 6.20(2)	
Position Statement	That Section 6.20(2) of the Local Government Act, requiring one month's public notice of the intent to borrow, be deleted.

Background

Section 6.20(2) requires, where a power to borrow is proposed to be exercised and details of the proposal are not included in the annual budget, that the Local Government must give one month's public notice of the proposal (unless an exemption applies). There is no associated requirement for Council to request or consider written submissions prior to exercising the power to borrow, as is usually associated with giving of public notice. Section 6.20(2) simply delays for one month the exercise of power to borrow, and it is recommended it be deleted.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 123.6/2017

Restrictions on Borrowings: Section 6.21	
Position Statement	That Section 6.21 of the Local Government Act 1995 should be amended to allow Local Governments to use freehold land, in addition to its general fund, as security when borrowing.

Background

Borrowing restrictions in the *Local Government Act 1995* act as a disincentive for investment in community infrastructure. Section 6.21(2) states that a Local Government can only use its 'general funds' as security for borrowings to upgrade community infrastructure, and is restricted from using its assets to secure its borrowings. This provision severely restricts the borrowing capacity of Local Governments and reduces the scale of borrowing that can be undertaken to the detriment of the community.

This is particularly relevant since the Global Financial Crisis. Treasury now requires member Local Governments to show as contingent liabilities in their balance sheet their proportion of contingent liabilities of the Regional Local Government of which they are a member. Given that the cost of provision of an Alternative Waste Disposal System is anything up to $100 million, the share of contingent liabilities for any Local Government is significant. Even under a 'Build-Own-Operate' financing method, the unpaid (future) payments to a contractor must be recognised in the balance sheet of the Regional Local Government as a contingent liability.

This alone is likely to prevent some Local Governments from borrowing funds to finance its own work as the value of contingent liabilities are taken into account by Treasury for borrowing purposes.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 123.6/2017
January 2012 – 8.1/2012

Member Interests - Exemption from AASB 124	
Position Statement	Regulation 4 of the Local Government (Financial Management) Regulations should be amended to provide an exemption from the application of AASB 124 'Related Party Transactions' of the Australian Accounting Standards (AAS).

Background

That an exemption be allowed from the implementation of AASB 124 'Related Party Transactions' due to the current provisions in the Act on declarations of interest at meetings and in Primary and Annual returns. This is regarded as providing appropriate material declaration and disclosure of interests associated with function of Local Government.

Regulation 4 of the Financial Management Regulations provides a mechanism for an exemption from the Australian Accounting Standards (AAS). Regulation 16 is an example of the use of this mechanism, relieving Local Governments from the requirement to value land under roads.

State Council Resolution March 2019 – 06.3/2019
December 2017 – 123.6/2017

Financial Ratios	
Position Statement	That Regulation 50 of the Local Government (Financial Management) Regulations be reduced and amended to the following financial ratios : - *Operating Surplus ratio* - *Net Financial Liabilities ratio* - *Asset Renewal Funding Ratio* Target ratios for Local Governments be considered in line with the size and scale principle. A review of the formulas for the ratios be undertaken.

Background

Regulation 50 of the Local Government (Financial Management) Regulations require Local Governments to report on seven (7) financial ratios, being:
(a) the current ratio; and
(b) the asset consumption ratio; and
(c) the asset renewal funding ratio; and
(d) the asset sustainability ratio; and
(e) the debt service cover ratio; and
(f) the operating surplus ratio; and
(g) the own source revenue coverage ratio

Recent feedback from Local Governments, also highlighted in the Financial Sustainability of WA Local Governments report produced by Deloittes in 2017, recommended the following three (3) ratios be required;
- Operating Surplus ratio
- Net Financial Liabilities ratio
- Asset Renewal Funding Ratio

State Council Resolution March 2019 – 06.3/2019

Building Upgrade Finance	
Position Statement	That WALGA advocate for amendments to the Local Government Act that enable a Building Upgrade Finance mechanism in Western Australia.

Background

The Building Upgrade Finance position is advocating for reforms to Western Australian legislation that would enable local governments to guarantee finance for building upgrades for non-residential property owners. In addition to building upgrades to achieve environmental outcomes, advocates have identified an opportunity to use this approach to finance general upgrades to increase the commercial appeal of buildings for potential tenants. In this way, BUF is viewed as means to encourage economic investment to meet the challenges of a soft commercial lease market in Perth and achieve economic growth.

BUF enables building owners to obtain finance that they may not normally have access to. For local government, the approach may allow for the achievement of strategic community objectives and provide an additional revenue stream. For lenders, the scheme is said to be a way for financers to participate in environmentally conscious investments and support technology like solar and have additional security because in the event of bankruptcy, recovery of the BUF takes precedence over other outstanding payments.'

Building Upgrade Finance (BUF) is a mechanism that allows non-residential building owners access to funds from select commercial lenders to upgrade the sustainability performance of their buildings.

Loans obtained under BUF differ from standard commercial loans in the way the loan is repaid. In BUF, there is a financier, a building owner and a local government.

- The BUF-approved financier provides funds to a building owner to upgrade a building.
- The building owner engages consultants and contractors to design, manage and complete the upgrade in a way that creates operational savings in energy and/or water consumption.
- The local government collects the loan repayments and passes them onto the financier.

Loan repayments are collected from the building owner via a *Building Upgrade Charge* (BUC) levied by the local government against the land on which the building is situated. The BUC is paid quarterly by the building owner to the local

government as repayment for the loan.

The BUC means that the loan is tied to the property rather than property owner. Responsibility to pay for the loan shifts if ownership of the property changes. In other Australian States that have employed this approach, the local government is not, by law, financially liable for any non-payment by the building owner. Local governments are required to use their best endeavours to recover the loan. As the loan is recovered via the same powers as rates or a service charge, in the event of non-payment, local governments have the same powers available to recover unpaid rates or service charges. This can include taking possession of the land and selling the property.

The BUC also secures the loan, making the loan 'senior debt' in the eyes of the financier in the event of a default. This means that should the building owner go bankrupt, the financier can be satisfied they will be paid back as a priority. Because of this reduction in risk, finance terms can be made more attractive than for standard commercial loans.

State Council Resolution March 2019 – 06.3/2019

Energy Infrastructure Service Charge	
Position Statement	That WALGA advocate for amendment to Regulation 54 of the Local Government (Financial Management) Regulations to include 'renewable energy infrastructure' as a prescribed charge.

Background

The City of Fremantle and City of Cockburn propose an amendment to Regulation 54 of the Local Government (Financial Management) Regulations to include 'renewable energy infrastructure' as a prescribed service charge. This will permit Local Governments to offer a group scheme that will assist property owners (at the owners' discretion) to install environmental initiatives as an improvement to their property, with the Local Government to recoup the cost via a charge against the land.

Victorian legislation permits a service charge of this type and the City of Darebin is an example of a Local Government promoting a renewable energy infrastructure scheme. This proposal requires no amendment to Section 6.38(1) of the Local Government Act. The regulatory amendment would simply read:

54. Works etc. prescribed for service charges on land - Act's. 6.38 (1)
For the purposes of section 6.38(1), the following are prescribed as works, services and facilities:
(a) property surveillance and security;
(b) television and radio rebroadcasting;
(c) underground electricity;
(d) water; and
(e) renewable energy infrastructure.

State Council Resolution March 2019 – 06.3/2019

RATES, FEES AND CHARGES

Imposition of Fees and Charges: Section 6.16	
Position Statement	That a review be undertaken to remove fees and charges from legislation and Councils be empowered to set fees and charges for Local Government services.

Background

Local Governments are able to impose fees and charges on users of specific, often incidental, services. Examples include dog registration fees, fees for building approvals and swimming pool entrance fees.

In some cases, Local Governments will recoup the entire cost of providing a service. In other cases, user charges may be set below cost recovery to encourage a particular activity with identified community benefit, such as sporting ground user fees or swimming pool entry fees.

Currently, fees and charges are determined according to three methods:

- By legislation
- With an upper limit set by legislation
- By a Local Government under Section 6.16.

Fees determined by State Government legislation are of particular concern to Local Governments and represent significant revenue leakage because of:

- Lack of indexation
- Lack of regular review (fees may remain at the same nominal levels for decades)
- Lack of transparent methodology in setting the fees (fees do not appear to be set with regard to appropriate costs recovery levels).

Examples of fees and charges of this nature include dog registrations fees, town planning fees and building permits. Since Local Governments do not have direct control over the determination of fees set by legislation, this revenue leakage is recovered from rate revenue. This means all ratepayers end up subsidising the activities of some ratepayers.

When fees and charges are restricted by legislation, rather than being set at cost recovery levels, this sends inappropriate signals to users of Local Government services, particularly when the consumption of those services is discretionary. When legislative limits allow consumers to pay below 'true cost' levels for a discretionary service, this will lead to overprovision and a misallocation of resources.

Under the principle of 'general competence' there is no reason why Local Governments should not be empowered to make decisions regarding the setting of fees and charges for specific services.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 121.6/2017
December 2012 – 133.6/2012
January 2012 – 8.1/2012

Supporting Documents

Metropolitan Local Government Reform Submission 2012

Rating Exemptions – Section 6.26	
Position Statement	Request that a broad review be conducted into the justification and fairness of all rating exemption categories currently prescribed under Section 6.26 of the Local Government Act.

Background

Sector commentary focused on the desire of the sector to review all rate exemption categories under Section 6.26 of the Act, and to introduce a system that requires some level of rating particularly where commercial operations are evident. There is continuing support for Government Trading Entities and Authorities to pay rates to Local Government rather than Consolidated Revenue.

State Council Resolution

March 2019 – 06.3/2019

Rating Exemptions – Charitable Purposes: Section 6.26(2)(g)	
Position Statement	1. Amend the Local Government Act to clarify that Independent Living Units should only be exempt from rates where they qualify under the Commonwealth Aged Care Act 1997; and 2. Either: (a) amend the charitable organisations section of the Local Government Act 1995 to eliminate exemptions for commercial (non-charitable) business activities of charitable organisations; or (b) establish a compensatory fund for Local Governments, similar to the pensioner discount provisions, if the State Government believes charitable organisations remain exempt from payment of Local Government rates.

Background

Exemptions under this section of the Act have extended beyond the original intention and now provide rating exemptions for non-charitable purposes, which increase the rate burden to other ratepayers. There may be an argument for exemptions to be granted by State or Federal legislation. Examples include exemptions granted by the Commonwealth *Aged Care Act 1997*

and group housing for the physically and intellectually disabled which is supported under a government scheme such as a Commonwealth-State Housing Agreement or Commonwealth-State Disability Agreement.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 122.6/2017
December 2015 – 118.7/2015
January 2012 – 5.1/2012

Supporting Documents

Metropolitan Local Government Reform Submission 2012

Rating Exemptions – Rate Equivalency Payments	
Position Statement	Legislation should be amended so rate equivalency payments made by LandCorp and other Government Trading Entities are made to the relevant Local Governments instead of the State Government.

Background

A particular example is the exemption granted to LandCorp by the *Land Authority Act 1992*. In 1998, the Act was amended to include provisions for LandCorp to pay the Treasurer an amount equal to that which would have otherwise been payable in Local Government rates, based on the principle of 'competitive neutrality'.

This matter is of concern to Local Governments with significant LandCorp holdings in their district. The shortfall in rates is effectively paid by other ratepayers, which means ratepayers have to pay increased rates because LandCorp has a presence in the district.

The current situation involving the Perth Airport demonstrates that such a system is appropriate and can work in practice. In this case, the Commonwealth Government requires the lessee to make a rate equivalency payment to the relevant Local Government and not the Commonwealth. There is no reason why a similar system cannot be adopted for State Government Trading Entities.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 121.6/2017
January 2012 – 6.1/2012

Rating Restrictions – State Agreement Acts	
Position Statement	Resource projects covered by State Agreement Acts should be liable for Local Government rates.

Background

Before the 1980s, State Government conditions of consent for major resources projects in WA included the requirement for purpose-built towns in close proximity to project sites. These conditions were detailed in State Agreement Acts, which are essentially contracts between the State Government and proponents of major resources projects that are ratified by the State Parliament.

The requirement to provide community services and infrastructure meant State Agreement Acts typically included a Local Government rating restriction clause. Many of these towns have since been 'normalised' due to Local Governments, the State Government and utility providers assuming responsibility for services and infrastructure.

In 2011, the State Government introduced a new policy on 'the application of Gross Rental Valuation to mining, petroleum and resource interests' (the GRV mining policy). The policy would apply for a 3 year trial period from July 1, 2012. The trial period was recently extended until 30 September, pending the outcomes of a review of the policy. The primary objectives of the policy were to clarify the circumstances where Local Governments could apply GRV rating to mining land and enable the use of GRV rating on new (i.e., initiated after June 2012) mining, petroleum and resource interests. This included the application of GRV rating to new State Agreement Acts.

However, existing State Agreement Acts continue to restrict Local Government rating. Local Governments can only rate projects covered by existing Agreements in the unlikely event of 'both parties agree[ing] to adopt the policy'[1]. Alternatively, the State Government has also stated that 'projects that operate under existing State Agreements and currently exempt from rates may apply the policy as part of their respective Agreement Variation processes with the Department of State Development during the trial period'[2]. Again, this statement suggests it is unlikely that the rating exemptions will be removed for existing State Agreements since variations are infrequent and there is no real requirement to remove the exemptions.

[1] Barnett, C (Minister for State Development) & Castrilli J (Minister for Local Government) 2011, *Communities benefit from resources projects policy*, media release.
[2] Ibid.

Rating exemptions on State Agreement Acts mean that Local Governments are denied an efficient source of revenue. There are also equity issues associated with the existing exemptions since they only apply to a select group of mining companies whose projects are subject to older State Agreement Acts. Removing the rates exemption clauses from the pre-July 2012 State Agreement Acts would provide a fairer outcome for all other ratepayers, including the proponents of new resources projects.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 121.6/2017
September 2014 – 89.4/2014
March 2014 – 10.1/2014
October 2011 – 116.5/2011

Basis of Rates: Section 6.28	
Position Statement	That Section 6.28 be reviewed to examine the limitations of the current methods of valuation of land, Gross Rental Value or Unimproved Value, and explore other alternatives including simplifying and providing consistency in the rating of mining activities**.**

Background

The method of valuation of land to be used as the basis of rating in Western Australia is either: Gross Rental Value for predominantly non-rural purpose; or unimproved value of land for rural purposes. These are the only two methods available under the Section 6.28 of the Local Government Act in Western Australia.

Eastern State Local Governments can elect to rate on one of the following options:

- Site Value - levy on the unimproved value of land only and disregards the value of buildings, personal property and other improvements;
- Capital Value - value of the land including improvements;
- Annual Value - rental value of a property (same as GRV).

Alternative land valuation methods came under the scope of the WALGA Systemic Sustainability Study, particularly Capital Improved Valuations which is in operation in Victoria and South Australia.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 123.6/2017

Differential General Rates: Section 6.33	
Position Statement	That Section 6.33 of the Local Government Act be reviewed in contemplation of time-based differential rating, to encourage development of vacant land.

Background

Concern at the amount of vacant land remaining in an undeveloped state for an extensive period of time and holding up development opportunities.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 123.6/2017

Rates or Service Charges Recoverable in Court: Section 6.56	
Position Statement	That Section 6.56 be amended to clarify that all debt recovery action costs incurred by a Local Government in pursuing recovery of unpaid rates and services charges be recoverable and not be limited by reference to the 'cost of proceedings'.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 123.6/2017

Recovery of Mining Tenement Rates	
Position Statement	Mining tenements should not be renewed by the appropriate State Agency until the Local Government rates are paid.

State Council Resolution

March 2019 – 06.3/2019

THEME - SMART

ADMINISTRATIVE EFFICIENCIES

Simple / Absolute Majority Decisions	
Position Statement	That WALGA support a review of those decisions requiring simple and absolute majority.

State Council Resolution March 2019 – 06.3/2019

Notification of Affected Owners: Section 3.51	
Position Statement	Section 3.51 of the Local Government Act 1995 concerning "Affected owners to be notified of certain proposals" should be amended to achieve the following effects: a) to limit definition of "person having an interest" to those persons immediately adjoining the proposed road works (i.e. similar principle to town planning consultation); and b) to specify that only significant, defined categories of proposed road works require local public notice under Section 3.51 (3) (a).

Background

The objectives outlined above aim to instil clarity and certainty when Local Governments are required to comply with Section 3.51 of the Local Government Act when planning road works. It is proposed this can be achieved by engaging in discussion with the Department of Local Government to develop instructions for the drafting of suitable amendments to the Act that will result in the desired outcome.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 123.6/2017
February 2009 – 480.1/2009

Control of Certain Unvested Facilities: Section 3.53	
Position Statement	WALGA seeks consideration that Section 3.53 be repealed and that responsibility for facilities located on Crown Land return to the State as the appropriate land manager.

Background

The Local Government Act 1995 includes a provisions, under Section 3.53, that is carried forward from Section 300 of the former Local Government Act 1960.

Former Section 300 stated:

> *300. A council has the care, control, and management of public places, streets, ways, bridges, culverts, fords, ferries, jetties, and drains, which are within the district, or, which although not within the district, are by this Act placed under the care, control, and management, of the council, or are to be regarded as being within the district,*

except where and to the extent that under an Act, another authority has that care, control, and management.

Section 3.53 refers to infrastructure as an 'otherwise unvested facility', and is defined to mean: *"a thoroughfare, bridge, jetty, drain, or watercourse belonging to the Crown, the responsibility for controlling or managing which is not vested in any person other than under this section."*

Section 3.53 places responsibility for an otherwise unvested facility on the Local Government in whose district the facility is located. Lack of ongoing maintenance and accreting age has resulted in much infrastructure falling into a dilapidated state. This, together with the uncertain provenance of many of these facilities, particularly bridges, is reported as placing an unwarranted and unfunded burden on a number of Local Governments.

State Council Resolution March 2019 – 06.3/2019
December 2017 – 123.6/2017

Disposal of Property and Commercial Enterprises : Section 3.58 and 3.59:	
Position Statement	That WALGA include in the Local Government Act 1995 Review submission, a review of Section 3.58 'Disposing of Property' and Section 3.59 'Commercial Enterprises' to be redrafted to reflect current commercial and contractual practices in Western Australia.

State Council Resolution March 2019 – 06.3/2019
December 2017 – 124.06/2017

Proposal to the Advisory Board, Change of Boundaries or Amalgamation: Schedule 2.1	
Position Statement	WALGA seeks inclusion of a proposal to allow electors of a Local Government affected by any boundary change or amalgamation proposal entitlement to petition the Minister for a binding poll under Schedule 2.1 of the Local Government Act.

State Council Resolution March 2019 – 06.3/2019
December 2017 – 121.6/2017
December 2014 – 108.5/2014

Proposal to the Advisory Board, Number of Electors : Schedule 2.1	
Position Statement	That Schedule 2.1 Clause 2(1)(d) be amended so that the prescribed number of electors required to put forward a proposal for change increase from 250 (or 10% of electors) to 500 (or 10% of electors) whichever is fewer. For Local Governments with total electors of less than 500, then the requirement be a minimum of 25% of electors.

State Council Resolution March 2019 -06.3/2019
December 2017 – 123.6/2017

Schedule 2.2 – Proposal to amend names, wards and representation, Number of Electors	
Position Statement	That Schedule 2.2 Clause 3(1) be amended so that the prescribed number of electors required to put forward a submission increase from 250 (or 10% of electors) to 500 (or 10% of electors) whichever is fewer. For Local Governments with total electors of less than 500, then the requirement be a minimum of 25% of electors.

State Council Resolution March 2019 -06.3/2019
December 2017 – 123.6/2017

Proof in Vehicle Offences may be shifted: Section 9.13(6)	
Position Statement	That Section 9.13 of the Local Government Act be amended by introducing the definition of 'responsible person' to enable Local Governments to administer and apply effective provisions associated with vehicle related offences.

Background

This proposal emerged due to an increase in cases when progressing the prosecution of vehicle related offences in court (at the request of the vehicle owner) resulted in dismissal of charges by the Magistrate when the owner of the vehicle states that he does not recall who was driving his vehicle at the time of the offence.

The *Litter Act 1979* was amended in 2012 to introduce the definition of 'responsible person' (as defined in *Road Traffic Act 1974)* so that a 'responsible person' is taken to have committed an offence where it cannot be established who the driver of the vehicle was at the time of the alleged offence. This also removes the ability for the responsible person to be absolved of any responsibility for the offence if they fail to identify the driver. It is suggested that a similar amendment be made to Section 9.13 of the Act in order to ensure that there is consistent enforcement in regards to vehicle related offences.

State Council Resolution March 2019 -06.3/2019
December 2017 – 123.6/2017

Regional Local Governments: Part 3, Division 4	
Position Statement	The compliance obligations of Regional Local Governments should be reviewed.

Background

Currently, Regional Local Governments are treated by the *Local Government Act 1995* for the purposes of compliance, as if they were a Local Government.

The Association believes that this places an overly large compliance burden on Regional Local Governments. The large compliance burden reduces potential cost savings that aggregated service delivery may achieve through increased efficiency and acts as a disincentive for Local Governments to establish Regional Local Governments.

State Council Resolution March 2019 -06.3/2019
December 2017 – 123.6/2017
January 2012 – 9.1/2012

Local Government (Long Service Leave) Regulations	
Position Statement	That a review be undertaken of the Local Government (Long Service Leave) Regulations to identify opportunities to amend and improve the Regulations to address ambiguity and readability to enable consistent interpretation and application of a key sector entitlement.

Background

Many long service leave questions arise from the poor construction of wording in the Regulations and a lack of clarity around how LSL can be administered, which makes interpretation difficult for Local Government employers and their employees. For example, how casual employment is defined and treated for the purposes of accruing LSL, the portability of pro-rata LSL between Local Governments and how the entitlement to LSL is treated where an employee has multiple roles at the same or different Local Governments.

Approximately 32% of Local Government and Regional Council enterprise agreements contain clauses to allow employees to take pro-rata LSL after seven years' or less of continuous service which is inconsistent with the current Regulations and creates legal interpretation issues for Local Governments.

The superfluous and anachronistic nature of the current provisions can be attributed to the Regulations being under the former *Long Service Leave Act 1958,* and then transitioned via the *Local Government (Miscellaneous Provisions) Act 1960*.

The last amendment to the Regulations occurred in 2001 and a full review is essential.

State Council Resolution March 2019 – 06.3/2019
December 2017 – 123.6/2017

Audit Committee	
Position Statement	Remove the requirement to hold a separate Audit Committee meeting if all Elected Members are appointed to the Audit Committee.

State Council Resolution March 2019 – 06.3/2019

COMPLAINTS MANAGEMENT

Querulous, Vexatious and Frivolous Complainants	
Position Statement	That a statutory provision be developed, permitting a Local Government to : • Enable Local Government discretion to refuse to further respond to a complainant where the CEO is of the opinion that the complaint is trivial, frivolous or vexatious or is not made in good faith, or has been determined to have been previously properly investigated and concluded, similar to the terms of section 18 of the *Parliamentary Commissioner Act 1971*. • Provide for a complainant, who receives a Local Government discretion to refuse to deal with that complainant, to refer the Local Government's decision for third party review. • Enable Local Government discretion to declare a member of the public a vexatious or frivolous complainant for reasons, including: - Abuse of process; - Harassing or intimidating an individual, Elected Member or an employee of the Local Government in relation to the complaint; - Unreasonably interfering with the operations of the Local Government in relation to the complaint.

Background WALGA seeks inclusion of commentary and questions relating to Local Governments adopting within their proposed complaints management framework, the capacity to permit a Local Government to declare a member of the public a vexatious or frivolous complainant, subject to the declaration relating to the nature of complaint and not to the person.

State Council Resolution March 2019 – 06.3/2019
December 2017 – 123.6/2017

COUNCIL MEETINGS

Electors' General Meeting: Section 5.27	
Position Statement	Section 5.27 of the Local Government Act 1995 should be amended so that Electors' General Meetings are not compulsory.

Background

There is adequate provision in the Local Government Act for the public to participate in Local Government matters and access information by attending meetings, participating in public question time, lodging petitions, and requesting special electors' meetings.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 121.6/2017
February 2011 – 09.1/2011

Special Electors' Meeting: Section 5.28	
Position Statement	That Section 5.28(1)(a) be amended: (a) so that the prescribed number of electors required to request a meeting increase from 100 (or 5% of electors) to 500 (or 5% of electors), whichever is fewer; and (b) to preclude the calling of Electors' Special Meeting on the same issue within a 12 month period, unless Council determines otherwise. For Local Governments with total electors of less than 500, then the requirement be a minimum of 25% of electors.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 123.6/2017

Minutes, contents of: Administration Regulation 11	
Position Statement	Regulation 11 should be amended to require that information presented in a Council or Committee Agenda must also be included in the Minutes to that meeting.

State Council Resolution

March 2019 -06.3/2019
December 2017 – 123.6/2017

Revoking or Changing Decisions: Administration Regulation 10	
Position Statement	That Regulation 10 be amended to clarify that a revocation or change to a previous decision does not apply to Council decisions that have already been implemented.

Background

Regulation 10 provides a mechanism for the revocation or change to a previous decision of Council. It does not however, contain any provision clarifying that the provisions do not apply to Council decisions that have already been implemented. This regulatory deficiency is currently managed administratively, but warrants an appropriate amendment to assist clarify the rights of a Councillor to seek a revocation or change

State Council Resolution

March 2019 -06.3/2019
December 2017 – 123.6/2017

Attendance at Council Meetings by Technology: Administration Regulation 14A	
Position Statement	That there be a review of the ability of Elected Members to log into Council meetings.

State Council Resolution

March 2019 -06.3/2019
December 2017 – 123.6/2017

INTERVENTIONS

Remedial intervention; Powers of appointed person; Remedial action process	
Position Statement	In respect to remedial intervention, the appointed person should be a Departmental employee with the required qualifications and experience. This provides a connection back to the Department and its requirements. The appointed person should only have an advice and support role. Funding of the remedial action should be by the Department where the intervention is mandatory. The Local Government to pay where the assistance is requested.

State Council Resolution

March 2019 -06.3/2019
December 2017 – 123.6/2017

Disqualification Because of Convictions: Section 2.22	
Position Statement	Add a new disqualification criteria which disqualifies a person from being an Elected Member if they have been convicted of an offence against the Planning and Development Act, or the Building Act, in the preceding five years.

Background

A planning or building system conviction is potentially more serious that a Local Government Act conviction because of Local Government's prominent role in planning and building control and the significant personal benefits which can be illegally gained through these systems.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 124.6/2017

THEME - INCLUSIVE

COMMUNITY ENGAGEMENT

Community Engagement Policy	
Position Statement	That the Local Government Act 1995 include a requirement for Local Governments to adopt a Community Engagement Policy, with each Local Government to determine how to implement community engagement strategies.

Background

- No objection to adopting a community engagement policy however the engagement process itself should not be regulated.
- Limited support for participatory budgeting as Local Government budgets should align with Corporate Business Plans that drive delivery of Strategic Community Plans.
- Respondents are respectful of community expectation to be informed and, on occasions, involved in some decision-making processes and that engagement works best when it is genuine rather than regulated.

State Council Resolution

March 2019 – 06.3/2019

ELECTIONS

Conduct of Postal Elections: Sections 4.20 and 4.61	
Position Statement	The Local Government Act 1995 should be amended to allow the Australian Electoral Commission (AEC) and or any other third party provider (including a Local Government) to conduct postal elections.

Background

Currently, the WAEC has a legislatively enshrined monopoly on the conduct of postal elections that has not been tested by the market.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 121.6/2017
March 2012 – 24.2/2012

Voluntary Voting: Section 4.65	
Position Statement	Voting in Local Government elections should remain voluntary.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 121.6/2017

Method of Election of Mayor/President: Section 2.11	
Position Statement	Local Governments should determine whether their Mayor or President will be elected by the Council or elected by the community.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 121.6/2017

On-Line Voting	
Position Statement	That WALGA supports online voting.
Position Statement	That WALGA continue to investigate other opportunities to increase voter turnout.

Background

WALGA was requested to explore the possibility of introducing on-line voting in Local Government elections.

A State Council Item for Noting was prepared in May 2017 advising that WALGA staff will liaise with the WAEC regarding the use of the iVote system and also seek feedback from the

Local Government sector on online voting and other opportunities to increase voter turnout. The Minister for Local Government has indicated that online voting is likely to be considered in the context of increasing elector participation.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 121.6/2017

Method of Voting - Schedule 4.1	
Position Statement	Elections should be conducted utilising the first-past-the-post (FPTP) method of voting.

Background

This State Council resolution influenced amendment to Schedule 4.1 in 2009 that returned Local Government elections to a first past the post system from the preferential proportional Representation. The FPTP method is simple, allows an expression of the electorate's wishes and does not encourage tickets and alliances to be formed to allocate preferences.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 121.6/2017
October 2008 – 427.5/2008

Leave of Absence when Contesting State or Federal Election	
Position Statement	Amend the Act to require an Elected Member to take leave of absence when contesting a State or Federal election, applying from the issue of Writs. The options to consider include: (i) that an Elected Member remove themselves from any decision making role and not attend Council and Committee meetings; or (ii) that an Elected Member take leave of absence from all aspects of their role as a Councillor and not be able to perform the role as specified in Section 2.10 of the Local Government Act.

Background

The East Metropolitan Zone identified that, under the *Local Government Act 1995,* there is no requirement for an Elected Member to either stand down or take leave of absence if they are a candidate for a State or Federal election. If elected to Parliament the Elected Member is immediately ineligible to continue as an Elected Member. Currently it is up to an individual Elected Member to determine if they wish to take a leave of absence. In some cases Elected Members have voluntarily resigned.

State Council Resolution

March 2019 – 06.3/2019
December 2017 – 121.6/2017

LOCAL LAWS

Local Laws	
Position Statement	WALGA Procedure for making local laws – Local Governments' local laws generally affect those persons within its district. The requirement to give statewide notice under subsection (3) should be reviewed and consideration being given to Local Governments only being required to advertise the proposed local law by way of local public notice.
Position Statement	Eliminate the requirement to consult on Local Laws when a model is used.
Position Statement	Periodic review of local laws – consideration be given to review of this section and whether it could be deleted. Local Governments through administering local laws will determine when it is necessary to amend or revoke a local law in terms of meeting its needs for its inhabitants of its district. Other State legislation is not bound by such periodic reviews, albeit recognising such matters in subsidiary legislation are not as complex as matters prescribed in statute.
Position Statement	Introduce certification of Local Laws by a legal practitioner in place of scrutiny by Parliament's Delegated Legislation Committee.

State Council Resolution March 2019 -06.3/2019