

7. Gifts

7.1 Simplifying the gift provisions

Background

Councillors and local government employees, as everyone does, occasionally receive gifts. Given the important role of council members and many local government employees as decision-makers in positions of power, the public has a reasonable expectation that the important decisions that a local government makes are free from improper influence.

There is nothing inherently wrong with accepting gifts when they are offered. It is critical, however, that their receipt is openly and transparently acknowledged and recorded, and that those records are made freely available to the community. Non-disclosure of gifts that may have an effect on, or could be perceived as possibly having an effect on, the decision-making of elected members runs the risk of damaging the reputation of the local government sector and the trust placed in elected members by their communities. In extreme cases this could leave councils unable to perform their primary function of providing for the good government of people in their districts.

The rules concerning the declaration of gifts must also be sensible and not create an unreasonable burden or compromise the council member's rights to maintain a private life beyond their service as a councillor.

Gifts and contributions to travel are regulated under the Act and three sets of Regulations – the *Local Government (Administration) Regulations 1996*, *Local Government (Elections) Regulations 1997* and *Local Government (Rules of Conduct) Regulations 2007*. Each regulation has a different framework for declaring gifts and contributions, which has led to confusion in the sector. Attachment 2 outlines the provisions currently applying in Western Australia.

It is widely acknowledged that current approach to gifts is overly complex and requires reform. Acknowledging the need for change, in September 2016 a gift working group was established with representatives from the Department of Local Government, WALGA, LG Professionals WA, the Department of the Premier and Cabinet, the Mayor of Armadale, Shire President of Morawa and the CEOs of the Cities of Swan and Vincent.

Prior to the formation of the working group WALGA, as the peak body representing the sector, prepared a policy position based on consultation with its members. While the working group did not accept all of these positions, the document formed the basis for the discussion and the working group's initial recommendations. Following

consideration of the matter, the individual working group member's positions have been refined.

With the review of the Act it is timely to consider the recommendations of the group to ensure that the proposed way forward is aligned to public expectations of accountability and transparency.

Across Australia

A summary of local government gift disclosure requirements across Australia is provided below:

State	Threshold	Exemptions
New South Wales	\$500 gift, \$250 travel	<ul style="list-style-type: none"> • Relatives • Political donation captured under other legislation. • Travel from public funds, political parties, relatives
Victoria	\$500	<ul style="list-style-type: none"> • Relatives • Reasonable hospitality. • Gifts received more than 12 months prior to becoming an elected member or employee (not including election campaign donations)
Queensland	\$500 gift, travel considered a "sponsored hospitality benefit"	<ul style="list-style-type: none"> • Relatives • Someone else related by blood or marriage. • Friends • Sponsored hospitality benefits where there could not be a perception of a conflict of interest
South Australia	\$750 in annual return, \$100 in register of interests	<ul style="list-style-type: none"> • Hospitality of reasonable value • Relatives by blood or marriage or family members
Tasmania	N/A	Not set at state-wide level
Northern Territory	N/A	Not set at a state-wide level
Australian Capital Territory	N/A	N/A

It is clear there is no “one size fits all” solution for the disclosure of gifts in the local government sector.

Current situation

The current framework for the disclosure of gifts and travel is outlined in detail in Attachment 2 and is summarised below:

Elements of Disclosure	Current requirements
Gift disclosure	✓
Travel disclosure	✓
Prohibited gifts	✓
Notifiable gifts	✓
Election gifts	✓
Monetary threshold	<ul style="list-style-type: none"> • \$50 for a notifiable gift • \$200 for a disclosable gift • \$200 for an election gift • Over \$300 for a prohibited gift
Prescribed timeframe for cumulative acceptance of gifts	Six or 12 months (depending on the regulation)
Who is required to disclose	<p>Elected members and designated employees for gifts and travel contributions.</p> <p>Notifiable and Prohibited gifts apply to elected members only.</p>
Exemptions (vary depending on the category of gift)	<ul style="list-style-type: none"> • A gift or travel from a relative • A gift or travel under \$200 • Travel contribution from Commonwealth, State or local government funds • Travel contribution as part of occupation of the person (not related to council duties) • Travel contribution was from a political party, of which the person is a member, for the purpose of political activity or representation • An electoral gift disclosable under the Elections Regulations • A gift from a statutory authority, government instrumentality or non-profit association for

Elements of Disclosure	Current requirements
	professional training (prohibited and notifiable gifts only) <ul style="list-style-type: none"> • A gift from WALGA, the Australian Local Government Association or Local Government Managers Australia WA (for prohibited and notifiable gifts only)

Recommendations of the gifts working group

The gifts working group proposed that a new framework should:

- provide for a transparent system of accountability where members of the community can have confidence in the decision-making of their representatives; and
- create a simplified legislative framework to deal with gifts received by elected members and senior staff.

The reference group agreed on an overhaul of the current requirements that included six key parts:

- There would no longer be separate monetary thresholds to determine what “type” of gift has been received, as is currently the case with “notifiable” and “prohibited” gifts and gifts under section 5.82.
- All gifts received by local government elected members and CEOs valued at \$500 or more received from a donor in a 12-month period must be disclosed.
- Recipients of gifts valued at \$500 or more would be prohibited from voting on matters before the council concerning the donor of the gift. The Minister for Local Government may, at their discretion and upon application, allow elected members to vote on such matters.
- Exemptions from the gift provisions would be minimal to aid simplicity.
- Gifts from a “relative” will continue to be exempt from disclosure; however, the definition of “relative” will be expanded to include adopted and foster children and grandchildren.
- All local governments will be required to develop and adopt a gifts policy for employees other than the CEO. Individual local governments can determine what gifts can or cannot be accepted by employees, any applicable threshold amounts and disclosure requirements.

Some members of the reference group sought additional changes, after agreement was reached on these positions.

Key elements of the proposed approach

The current framework sets three different categories for gifts with different thresholds:

- \$50 for a notifiable gift;
- \$200 for a disclosable gift; and
- \$300 for a prohibited gift.

Notifiable and prohibited gifts apply in situations where there is likely to be a perceived conflict of interest – where the donor has matters which require council decisions.

Replacing notifiable and prohibited gifts with a single category

Under the proposed approach, there would no longer be such a thing as a “prohibited” gift. Instead, the appropriateness of the acceptance of the gift will be a matter for the recipient.

This would simplify disclosure requirements while still maintaining a level of probity, accountability and transparency.

All gifts could be accepted regardless of the amount, but that acceptance of gifts over the threshold would disqualify the recipient of such a gift (being an elected member) from voting on matters relating to the donor. This would apply for the term in which they received the gift, or for the term following their election in the case of a gift received in the election period. This deals with any perception of bias in decision-making.

The Minister for Local Government would have the discretion to approve voting by elected members on such matters and on application from the local government where this is considered to be in the public interest. This approach would be consistent with section 5.69 of the Act, which gives the Minister the statutory authority to allow elected members who have disclosed an interest to continue to participate in meetings.

This would:

- allow elected members and CEOs to use their own judgement on the acceptance of gifts of any value without the concern that they are “prohibited”
- demonstrate that there is nothing inherently wrong with accepting a gift when it is offered, provided acceptance is properly regulated and disclosed
- deal with the critical matter to be addressed, being any attempt to influence decision-making through the provision of gifts
- make it clear to recipients and donors alike that while any and all gifts can be accepted regardless of value, they can have no perceived or actual impact on the recipient’s decision-making as the recipient will not be able to vote on matters relating to the donor
- provide for a level of independent Ministerial oversight by requiring recipients to apply for approval to vote on matters concerning the donor in circumstances

where this is considered necessary (for example, if a quorum can no longer be formed).

Consolidating 'gifts' and 'contributions to travel'

Consolidating gifts and contributions to travel would further streamline the gift provisions. At present, different information must be recorded depending on whether a gift or contribution to travel is received. What constitutes a contribution to travel can be a source of confusion, particularly when work trips may be extended for personal purposes. In addition, components of a trip may come under the definition of a gift rather than a contribution to travel.

In the interests of simplifying the disclosure requirements while still maintaining a level of probity, accountability and transparency, it is recommended that separate treatment of "contributions to travel" be discontinued.

In addition, using "gift" as an umbrella concept which includes travel will simplify and streamline the existing disclosure requirements for elected members and reduce red tape. The consolidation of the two also recognises that contributions to travel, including accommodation, are in practice a form of gift.

Having a single threshold of \$500

Replacing the categories of 'notifiable' and 'prohibited' gifts with a monetary threshold of \$500 would simplify gift provisions significantly. Any gifts under \$500 would be exempt from disclosure.

The argument for increasing the threshold is two-fold: to compensate for removing multiple exemption categories and so that the threshold was set at a level that would not generally capture gifts received from friends or multiple small gifts from the same person or organisation such as hospitality. Removing exemptions (see details in the table above) would further simplify the provisions, leading to less confusion on what should be disclosed.

The working group recommended \$500 as the threshold as it would capture many of the gifts that it was considered that members of public would reasonably expect council members to receive in the course of their everyday life – what could be considered to be personal gifts.

While it is acknowledged that raising the threshold to \$500 would allow more expensive gifts to be accepted without the requirement to disclose, there is also a significant reduction in red tape and administrative burden through the proposed lessened disclosure requirements.

Increasing the disclosure threshold to \$500 would:

- align Western Australia with the requirements in South Australia and Victoria; and
- align with the proposed gift framework more generally and reduce the confusion stemming from the differing disclosure amounts, leading towards a simplified and streamlined approach.

New South Wales has the highest disclosure threshold, being \$1,000. However, New South Wales is also more restrictive in prohibiting donations from particular donors, perhaps as a method of offsetting its relatively high disclosure threshold.

Disclosure timeframes

Regulations currently prescribe a six-month timeframe for cumulative acceptance of gifts to the \$50 and \$300 notifiable and prohibited thresholds. The cumulative threshold for disclosable gifts and contributions to travel is \$200 in a 12-month period. The working group recommended that these should be amended to \$500 over a 12-month period.

Raising the threshold and extending the prescribed time period will have the effect of reducing the administrative burden on elected members. For example, attendance at regular meetings including a meal worth \$40 would add up to \$480 over a year. It is less likely that, with a threshold of \$500 in 12 months, reasonably priced hospitality would be disclosable.

A timeframe of six months effectively doubles the threshold. Gifts of \$1,000 are likely to be significant enough that there is a strong public interest argument for disclosing them.

In the interests of promoting accountability and transparency and ensuring the community is aware of expensive gifts received by elected members it is recommended that the prescribed time period be 12 months.

Who should the framework apply to?

The working group recommended that the new gift disclosure provisions apply only to local government elected members and CEOs, with each local government required to adopt a gifts policy with which all other employees must comply.

Allowing each local government to set its own gifts policy provides the opportunity to tailor requirements to a local government's unique situation. With 137 local governments across the State and staffing numbers ranging from fewer than 20 to more than 800, there is no practical "one size fits all" approach.

The current framework captures all manner of employees which, while potentially appropriate in theory, is not actually necessary or practical. While those who choose

to run for office and represent their community as an elected member are public figures, and are therefore expected to make reasonable concessions as to their personal privacy, there is no compelling public interest reason for all local government employees, who are private citizens, to be required to disclose gifts.

Empowering local governments to develop their own gifts policies for employees gives the sector the flexibility to determine what gifts should and should not be accepted and to tailor each policy to the requirements of the district.

Excluding gifts from relatives

Gifts received from a relative do not need to be disclosed. A relative is currently defined as any of the following —

- (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant of the person or of the person's spouse or de facto partner;
- (b) the person's spouse or de facto partner or the spouse or de facto partner of any relative specified in paragraph (a), whether or not the relationship is traced through, or to, a person whose parents were not actually married to each other at the time of the person's birth or subsequently, and whether the relationship is a natural relationship or a relationship established by a written law.¹⁸

Consistent with the recommendations of the working group, it is proposed that the definition of relative is expanded to ensure foster and adopted children and grandchildren are also classed as relatives. This is consistent with the definition of "relative" in the *Members of Parliament (Financial Interests) Act 1992*, which includes that "an adopted person shall be treated as the legitimate child of his adopters".

It is also intended that the definition of gift specifically refers to fiancés and fiancées. This will remove any uncertainty about the giving of an engagement ring.

Penalties for non-disclosure or provision of false information

The working group recommended that existing penalties for non-disclosure and giving false and misleading information be retained. Under section 5.89B of the Act a failure to comply with the disclosure requirements is an offence with a penalty of \$10,000 or imprisonment for two years.

Similarly, it is an offence to give false or misleading information in a return lodged under various sections of the Act (including the gift provisions) with the same penalty of a \$10,000 fine or two years' imprisonment.

¹⁸ section 5.74

A new framework for disclosing gifts: Guidance questions

- 85) Is the new framework for disclosing gifts appropriate?
- 86) If not, why?
- 87) Is the threshold of \$500 appropriate?
- 88) If no, why?
- 89) Should certain gifts – or gifts from particular classes or people – be prohibited? Why or why not?
- 90) If yes, what gifts should be prohibited?

Excluding gifts in a genuine personal capacity

More recently, local government peak bodies have advocated for reforms in addition to the working group's initial recommendations by seeking for gifts in a genuine personal capacity to also be excluded

The argument for this exemption is that gifts from friends are a personal matter and not relevant to the performance of an elected member's functions. The value of some of these gifts may be over the threshold limit.

The difficulty with this option is how to define 'personal capacity'. A substantial gift from a property developer, for example, could be given to coincide with the elected member's birthday and said to be given in a personal capacity.

It is the role of elected members to make decisions on matters affecting the community, including on planning and other approvals and on expenditure of funds raised from rates and other charges. A gift could influence the recipient's views on the donor and result in decision making that may not be in the public interest. This can be mitigated in one of two ways: banning the receipt of gifts or requiring the giving of the gift to be made public. The second method allows the community to judge whether they believe decision-making has been affected.

An alternative treatment is to set a threshold at an amount that would exclude gifts that could be considered to be a personal gift.

Excluding gifts received in a personal capacity: Guidance questions

- 91) Should gifts received in a personal capacity be exempt from disclosure?
- 92) If yes, how could 'personal capacity' be defined?

- 93) Should there be any other exemptions from the requirement to disclose a gift over the threshold?
- 94) If so, what should these be? Please justify your proposal.

Gifts: Guidance question

- 95) Do you have any other suggestions or comments on this topic?

- That the *Local Government Act 1995* and Regulations be amended so that:**
- **There be one section for declaring gifts. Delete declarations for Travel.**
 - **No requirement to declare gifts received in a genuinely personal capacity, as gifts only to be declared in respect to an Elected Member or CEO carrying out their role.**
 - **Gift provisions only for Elected Members and CEO's.**
 - **Other staff fall under Codes of Conduct from the CEO to the staff.**
 - **Gifts only to be declared if above \$500.00.**
 - **There will not be any category of notifiable gifts or prohibited gifts.**
 - **Exemptions for ALGA, WALGA and LG Professionals (already achieved).**
 - **Exemption for electoral gifts received that relate to the State and Commonwealth Electoral Acts, so Elected Members who are standing for State or Federal Parliament will only need to comply with the State or Federal electoral act and not declare it as a Local Government gift.**

Transparency

Local governments are required to make a variety of information available as a matter of accountability and transparency. This includes issuing public notices on tenders, advertising annual electors meetings and keeping registers on a range of subjects. Other documents are required to be available for public inspection at the council office during business hours.

These requirements have not kept up with technology. In the digital age, people expect to be able to access information when and where they want. For many people, finding a notice in a newspaper is old-fashioned and not easily accessible. In fact, in the Kimberley and other areas of the State, the West Australian newspaper is no longer available.

All local governments now have a website and some have social media accounts.

This section examines what changes need to be made to meet current community expectations on information availability.

That Sections 1.7 and 1.8 of the Local Government Act be amended to remove the statutory requirements for statewide and local public notice to be placed in a newspaper circulating statewide or locally, to be replaced with the requirement for a Local Government to place public notices on their website.

8. Access to information

It is vital that local governments take positive steps to provide information to their communities. This ensures that:

- Local governments operate in a transparent manner;
- Residents are sufficiently engaged in community affairs; and
- The public recognises the work and service that local governments provide to the community.

The Act provides many situations where local governments must provide information to the community. This includes issuing public notices, keeping registers on a variety of subjects and making certain documents available for public inspection.

Access to technology has changed the way that information is shared, received and discovered. Current trends indicate that people are turning away from traditional print media in favour of the internet and social media.

This shift in information consumption has significantly reduced the impact of the print notices required by the Act. It has also brought into question the practice of keeping physical documents available for inspection, which requires a person to attend the local government's offices during business hours.

It is difficult to justify the cost and inconvenience of continuing these practices when the same information could be made available electronically. In addition to being cheaper, electronic disclosure has the potential to be more accessible and convenient.

All other jurisdictions in Australia have addressed this issue by amending their legislation to account for new technology. The particular approach differs from State to State, but each jurisdiction now provides for:

- the operation of local government websites;
- the issuing of electronic notices; and
- online access to public documents.

Western Australia is the only jurisdiction that has yet to follow suit. The Act is generally silent on electronic disclosure and local governments have been left to address this issue themselves.

As a result, the review is considering how the Act should account for electronic disclosure and what approach is the most appropriate.

8.1 Public notices

The Act requires local governments to provide public notice to the community in a variety of circumstances. The Act specifies two forms of notice:

- (a) written notice in a newspaper circulating in the district ("local notice"); and
- (b) written notice in a newspaper circulating in the State ("state-wide notice").

The Act requires public notices to be issued in many situations. A complete list of the notices required by the Act is listed at the end of this section as supplementary information-Pubic notices.

The introduction of electronic notices on local government websites would have a number of positive benefits, but also have a number of drawbacks. These impacts are summarised below:

Benefits of electronic notice	Drawback of electronic notice
Cheaper than print media	Increased IT costs
Doesn't require the services of an external publisher	Requires IT skills provided internally or via a contractor
Accessible and convenient for the general population	Inconvenient for people who lack internet access
Available to be viewed from any location with internet access	Unlikely to be viewed by people outside the district
Can operate in conjunction with accessibility software	May not be accessible for certain demographics
Modernises sector standards for local governments	Makes local governments more dependent on website operations

The ultimate effect that electronic notices will have on the sector depends on the role that these notices will play in legislation.

For example:

- If an electronic notice were introduced as a replacement for a print notice, this could represent a significant reduction in red tape and its associated costs.
- If an electronic notice were to replace a State-wide notice, this could reduce transparency since people outside the district would generally have no reason to check the local government's website.
- If local governments were required to issue an electronic notice instead of providing the option of an electronic or print notice, this would improve sector standards at the cost of flexibility.

- If an electronic notice were required in addition to print notices, this would increase the regulatory burden imposed on the sector, with an associated increase in costs.

Across Australia

In other Australian jurisdictions, the requirement to issue electronic notices on websites is generally in addition to print notices.

This approach improves transparency, maximises the coverage of notices and ensures that local governments take advantage of electronic communication.

However, this approach also represents an increase in total regulatory burden and cost. This undermines one of the primary advantages of electronic notice, which is its potential to reduce costs.

Jurisdiction	Public notice requirements
Western Australia	Print notice only
New South Wales	Print and electronic notice required
Victoria	Print and electronic notice required
Queensland	Print and electronic notice required
South Australia	Print and electronic notice required
Tasmania	Print and electronic notice required
Northern Territory	Print and electronic notice required

General options

The general options available for public notice are as follows:

Option	Local notice requirements	State-wide notice requirements
1	No change to notice requirements	
2	Print or electronic notices	No change to State-wide notice requirements

Option	Local notice requirements	State-wide notice requirements
3	Print or electronic notices	Print and electronic notices
4	Print or electronic notices	
5	Electronic notice required Additional print notices are optional	
6	Print and electronic notices	
7	Electronic notice on local government website	Electronic notice published on centralised website

Specific options

In addition to reviewing how notices are made available, the question also arises as to whether a particular type of notice is still appropriate in its current form.

For each type of notice, there are several options which are available:

- (a) The requirement can remain unchanged;
- (b) The type of notice required by the Act may be changed from state-wide notice to local notice;
- (c) The form of the notice can be changed from print to electronic;
- (d) The requirement to issue the notice may no longer be necessary.

How appropriate these options are will depend on the type of notice and the reason for its issue.

Public notices: Guidance questions

- 96) Which general option do you prefer for making local public notices available? Why?
- 97) Which general option do you prefer for State-wide public notices? Why?
- 98) With reference to the list of public notices, do you believe that the requirement for a particular notice should be changed? Please provide details.
- 99) For the State-wide notices in Attachment 3, are there alternative websites where any of this information could be made available?

8.2 Information available for public inspection

Under the Act there are a number of registers and documents that local governments are required to produce and maintain. These documents are required to be available for inspection at the local government office on request.

Information that is currently required to be available to the public:

Information required to be made available

Annual Report
Annual Budget
Future plan for the district
Minutes of council, committee and elector meetings
Notice papers and agendas of meetings
Reports tabled at a council or committee meeting
Primary and Annual returns – for elected members Includes – Sources of income Trusts Debts Property holdings Interests and positions in corporations
Discretionary disclosures generally
Gifts (already required to be on the website)
Electoral gifts register
Disclosure of travel contributions (already required to be on the website)
Allowance for deputy mayor or deputy president
Payments for certain committee members
Codes of Conduct
Complaints register (concerning elected members)
Contracts of employment of the CEO and other senior local government employees
Register of delegations to committees, CEO and employees
Schedule of fees and charges

Information required to be made available

Proposed local laws

Gazetted local laws (and any other law that has been adopted by the district)

Rates record

Electoral roll

Tenders register

Currently the only documents that are required to be placed upon a local government's website are the gifts register and contributions of travel register, and annual report following the amendments to the auditing provisions.

It may also be appropriate to make additional information available to enhance the transparency of local governments.

Across Australia

Information required to be available in other States includes:

Additional Information

Rates information generally

District maps that contain ward boundaries

Adverse findings by the Standards Panel or State Administrative Tribunal against elected members

Broadly speaking the impacts of requiring information to be made available on the local government's website are assessed as follows:

Benefits of electronic registers	Drawback of electronic register
Accessible and convenient for the general population without having to attend a local government office	Increased IT costs
Available to be viewed from any location with internet access	Requires IT service via internal staff or contractor
More likely to be viewed by members of the local community	Makes local governments more dependent on website operations

Benefits of electronic registers

Drawback of electronic register

Can operate in conjunction with accessibility software

Modernises sector standards for local governments

Potentially reduces staff time in providing access to the registers at the office

The impact that electronic disclosure will have depends on how the information is provided.

General options

The options available are as follows:

- (a) The requirement can remain unchanged: Information is provided in person on demand, with placement on a website discretionary.
- (b) A hybrid approach depending on the nature of the information: Some information is required to be placed on a local government website, while other more sensitive information is only provided in person.
- (c) Electronic disclosure replaces physical registers completely: All information is provided on a local government website and no information is provided in person. This would represent a significant increase in the availability of information to the public.
- (d) Electronic disclosure is required for all information, in addition to providing it in person: This will increase the level of transparency, although it may create additional costs to publish the information online. A local government could simply print out the information if requested for it in person.

Information available for public inspection: Guidance questions

100) Using the following table, advise how you think information should be made available:

Provision	Documents	In person only	Website only	Both	Neither
Section 5.53	Annual Report				
Section 5.75 & 5.76	Primary and Annual returns – for Elected members Includes – sources of income Trusts Debts Property holdings. Interests and positions in corporations.				
Section 5.87	Discretionary disclosures generally				
Section 5.82	Gifts (already required to be on the website)				
Section 5.83	Disclosure of travel contributions (already required to be on the website)				
Elections Regulations 30H	Electoral gifts register				
Section 5.98A	Allowance for deputy mayor or deputy president				
Section 5.100	Payments for certain committee members				
Functions and General	Tenders register				

Regulations
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Section
5.94 &
Administrati
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Register of delegations
to committees, CEO
and employees

Minutes of council,
committee and elector
meetings

Future plan for the
district

Annual Budget

Notice papers and
agendas of meetings

Reports tabled at a
council or committee
meeting

Complaints register
(concerning elected
members)

Contracts of
employment of the CEO
and other senior local
government employees

Schedule of fees and
charges

Proposed local laws

Gazetted Local laws
(and other law that has
been adopted by the
district)

Rates record

Electoral roll

Note: There is no intention to amend the current limitations imposed by section 5.95 of the Act which limits the disclosure of certain information.

- 101) Should the additional information that is available to the public in other jurisdictions be available here? If so which items? How should they be made available: in person, website only or both?
- 102) Is there additional information that you believe should be made publicly available? Please detail.
- 103) For Local Governments: How often do you receive requests from members of the public to see this information? What resources do you estimate are involved in providing access in person (hours of staff time and hourly rate)?

Access to information: Guidance question

- 104) Do you have any other suggestions or comments on this topic?

9. Available information

9.1 Expanding the information provided to the public

Initial consultation with the sector highlighted additional information which could be reported and made available for public inspection.

The list of these proposals is provided below:

Proposal	Reasoning
Live streaming video of council meetings on local government website	Streamed meetings will give the public a better understanding of council matters. It will also allow community members an opportunity to directly scrutinise the behaviour of elected members during meetings.
Diversity data on council membership and employees	Reporting this information will identify whether a local government's council and employment practices are reflective of local demographics.
Elected member attendance rates at council meetings	Reporting this information will give the public an indication of whether elected members are attending meetings in accordance with their statutory duties.
Elected member representation at external meetings/events	This information will give the public an understanding of how often the council sends representatives to external events. The information will also assist ratepayers to assess whether an appropriate level of representation is occurring and whether the expenses are reasonable.
Gender equity ratios for staff salaries	This information will indicate whether the local government is operating in a diverse and equitable manner.
Complaints made to the local government and actions taken	This information will inform the public of how the local government deals with

Proposal	Reasoning
	complaints and how often action is taken to resolve these issues.
Performance reviews of CEO and senior employees	Providing these reviews will allow ratepayers to assess whether the CEO and senior staff are pursuing their duties with appropriate diligence.
Website to provide information on differential rate categories	This information will assist ratepayers to understand the rate system and how it applies in practice.
District maps and ward boundaries	<p>This information will assist the public to identify the limits of their local government's jurisdiction.</p> <p>This will also mean that the public can identify the correct authority to which they should refer a complaint or query.</p>
Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission	<p>This will inform district residents of critical governance matters of which they might not otherwise be aware.</p> <p>While adverse findings may be the subject of public media, there is never a guarantee that this will occur.</p>
Financial and non-financial benefits register	<p>This would inform ratepayers of the amount spent on each elected member and senior employee for:</p> <ul style="list-style-type: none"> (a) remuneration (b) superannuation payments (c) other monetary benefits (d) fringe benefits, and (e) any other non-monetary benefit which is significant and capable of being quantified.

For each proposal, the following options have been identified:

Option 1: Status Quo

Under this option, the reporting requirements under the Act will remain unchanged. This will prevent any increase in regulatory burden, but it will represent a lost opportunity for increasing the transparency standards applicable to the sector. While there will not be a legislative requirement to provide the information, local governments will still be able to provide it voluntarily.

Option 2: Additional reporting requirement

Under this option, local governments will need to provide the additional information on the local government's website.

This will increase transparency, better informing community decision-making. It will, however, represent an increase in regulatory burden.

Option 3: Policy requirement

Under this option, local governments will not be required to report additional information to the public. Instead, the local government will be required to develop a policy which states:

- (a) whether the information is available for public inspection; and
- (b) if so, how this information may be accessed by the public.

This policy will need to be made available on the local government's website.

This option will slightly increase transparency of local governments, since it will assist the public to determine what kind of information is accessible to them. It does not make the information readily available.

The option will slightly increase the regulatory burden on local governments, although this burden will be restricted to the creation and disclosure of policy documents. Any further burden will depend on what level of information the local government chooses to make disclosable to the public.

Expanding the information provided to the public: Guidance questions

105) Which of these options do you prefer? Why?

106) In the table below, please indicate whether you think the information should be made available, and if so, whether this should be required or at the discretion of the local government:

Proposal	Should this be made available: No, optional, required?
Live streaming video of council meetings on local government website	
Diversity data on council membership and employees	
Elected member attendance rates at council meetings	
Elected member representation at external meetings/events	
Gender equity ratios for staff salaries	
Complaints made to the local government and actions taken	
Performance reviews of CEO and senior employees	
Website to provide information on differential rate categories	
District maps and ward boundaries	
Adverse findings of the Standards Panel, State Administrative Tribunal or Corruption and Crime Commission.	
Financial and non-financial benefits register	

107) What other information do you think should be made available?

Minutes, contents of: Regulation 11

That Regulation 11 be amended to require that information presented in a Council or Committee Agenda also be included in the Minutes to that meeting.

Expanding the information available to the public: Guidance question

108) Do you have any other suggestions or comments on this topic?

Red Tape Reduction

No-one likes red tape. It gets in the way and makes simple tasks seem difficult.

Distinguishing red tape from vital checks which ensure our government acts in a fair manner, protects members of the community, and that everyone abides by the law, can be difficult.

Local governments may be subject to unnecessary red tape. Similarly, they may be unintentionally creating red tape for businesses and members of the community. This aspect of the review seeks to identify examples of red tape so these can be addressed.

10. Reducing red tape

Modern bureaucracies must strike a delicate balance between oversight and red tape. Accountability measures that go too far can become regulatory burdens that create unnecessary costs that outweigh their compliance benefits.

A goal of effective regulation is to impose the least amount of resistance to activity, for the lowest cost possible, while providing a governance framework to prevent or reduce the number, or seriousness, of issues in a timely manner.

The Department has identified a number of options for reducing red tape within the current Act and regulations. These only represent a partial list of potential options to streamline the legislation that provides the framework for local government.

Although this part of the review seeks to cover all aspects of the Act and associated regulations, it does not concern the individual decisions or internal policies used by a local government. These matters will be considered in phase 2 of the review.

10.1 Defining red tape

Red tape is comprised of time-consuming and excessive processes, procedures and paperwork. It imposes costs on government, businesses and individuals through duplicative and confusing regulations, overly complicated forms and excessive compliance burdens.

In the context of this review, some examples of red tape reduction burdens could be:

- Unnecessary or out-of-date reporting requirements imposed on local governments – regulatory requirements that may no longer have any benefit in the present day operations of local governments, or where the rationale for imposing these requirements no longer exists.
- The one size fits all approach where smaller local governments are disproportionately and negatively affected by compliance requirements.
- Requiring local governments to collect unnecessary data or requesting data that is already collected elsewhere within State Government. If the information can be sourced elsewhere, this should be preferred over requiring a local government to collect, store and submit information to State Government.
- Poor coordination between local government and other State Government agencies regarding applications and approvals.
- Local governments having outdated processes or requirements in their interactions with business and the community.

Defining red tape: Guidance questions

- 109) Which regulatory measures within the Act should be removed or amended to reduce the burden on local governments? Please provide detailed analysis with your suggestions.
- Briefly describe the red tape problem you have identified.
 - What is the impact of this problem? Please quantify if possible.
 - What solutions can you suggest to solve this red tape problem?
- 110) Which regulatory measures within the Act should be removed or amended to reduce the burden on the community? Please provide detailed analysis with your suggestions.
- Briefly describe the red tape problem you have identified.
 - What is the impact of this problem? Please quantify if possible.
 - What solutions can you suggest to solve this red tape problem?

That State Council endorse the following general principles as being fundamental to its response to the review of the Local Government Act:

- Uphold the General Competence Principle currently embodied in the Local Government Act;**
- Provide for a flexible, principles-based legislative framework; and**
- Promote a size and scale compliance regime.**

Red Tape Rapid Assessment Tool

The Department of Treasury administers the Red Tape [Rapid Assessment Tool \(RAT\)](#) to provide a framework for examining processes and procedures. The RAT helps identify customers' and agencies' points of frustration or failures in a given process, and clarify options for improvement.

The RAT allows users to take a step back to see the whole picture, and map out the journey of how different stakeholders interact to achieve the desired outcome. This is appropriate when there is a specific process to be mapped to pinpoint areas for improvement (e.g. delays, duplication, bottlenecks, waste, and capacity issues).

Regulatory Burden Measure

The Department of Treasury administers the [Regulatory Burden Measure \(RBM\)](#) to assist in calculating the compliance costs of regulatory proposals on business, individuals and community organisations using an activity-based costing methodology. The tool also calculates the cost of administering regulatory proposals. This helps to

illustrate the cost burden on government of enforcing and monitoring a particular regulatory process.

The quality of the cost analysis through the RBM is dependent on the quality of data available. This can help paint a better picture of the administrative and compliance activities imposed, including the volume of work, steps required and time taken to comply. This information will feed into an RBM assessment.

As an alternative to calculating a final dollar saving, other means of articulating a red tape reduction saving include:

- Number of licences, registrations and documents being moved online
- Number of hours/days/weeks/months saved from going online, reduced waiting times, fewer delays
- Number of paper pages no longer required or being published online

All feedback received on this topic will be analysed and considered for implementation. Easy to implement and well-considered suggestions may be implemented in phase 1. More complicated suggestions will be considered for inclusion in phase 2 of the review.

10.2 Potential red tape reductions

Special Majority

Section 1.10 of the Act defines a special majority decision as one made by a council with more than 11 members through a 75 per cent majority. In cases where there are 11 elected members or fewer, decisions that require a special majority may be made through an absolute (more than 50 per cent) majority.

The rules concerning special majorities currently apply to just 18 of the State's local governments, and a special majority is only required when changing the method of filling the office of mayor or president.

This means that a special majority is required very infrequently and by only a few local governments.

Special majority: Guidance question

- 111) Should the provisions for a special majority be removed? Why or why not?

Senior employees

A local government may designate employees to be senior employees.¹⁹ Currently, local government CEOs are required to inform the council of a proposal to employ or dismiss a senior employee. The council may accept or reject the CEO recommendation but if council rejects the CEO's recommendation it must provide reasons for doing so.

Some local government CEOs have argued that council involvement in workforce matters related to senior employees confuses the separate roles of council and administration established elsewhere in the Act, and can be source of tension between council and CEOs²⁰.

For employees other than senior employees, the Act provides the CEO with broad workforce management powers, including the power to employ, direct, and dismiss employees. As a responsibility of the CEO, council has no role in the recruitment, selection and performance management of non-senior employees.

The Act does not define what criteria should be used to determine if an employee should be designated as a senior employee. A local government could, if it wished, designate all employees as senior employees.

Most commonly, local governments will designate employees that report directly to the CEO as senior employees. As these people are key personnel, often responsible for large portfolios and budgets, council may wish to retain the current oversight provisions.

An alternative view is that, as council cannot direct local government staff (other than the CEO), council involvement in workforce issues (beyond those involving the CEO) is an unnecessary expansion of council responsibility. It also can be viewed as a restriction of the powers and responsibility of the CEO to manage the day to day operations of the local government and implement council decisions.

¹⁹ section 5.37 of the Act.

²⁰ Local governments have also queried whether the council is required to be informed of a decision to renew the contracts of senior employees.

Across Australia

Jurisdiction	Status
New South Wales	Senior staff are a defined category of person linked to the Executive Band of the Local Government (State) Award. The CEO can appoint (and dismiss) although must consult with council
Victoria	Nil
Queensland	Senior employees are a defined category and are appointed by a panel that includes the mayor, CEO and one other
South Australia	No separate senior employee category. The Deputy CEO is appointed by the CEO with the concurrence of the council. All other appointments are made by the CEO.
Tasmania	No separate category and the CEO is responsible for the appointment of all staff
Northern Territory	No separate category and the CEO is responsible for appointment of all staff

Senior employees: Guidance questions

- 112) Is it appropriate that council have a role in the appointment, dismissal or performance management of any employees other than the CEO? Why or why not?
- 113) Is it necessary for some employees to be designated as senior employees? If so, what criteria should define which employees are senior employees?

Senior Employees: Section 5.37(2)

That Section 5.37(2) of the Local Government Act be deleted.

Exemption from Accounting Standard AASB124 — Related Party Disclosures

The Australian Accounting Standards Board (AASB) establishes Accounting Standards that regulate financial transactions and management of financial matters. Local government treatment of financial reporting must conform with AASB Standards, although regulations provide that if a provision of the Australian Accounting Standards is inconsistent with a provision of the *Local Government (Financial Management)*

Regulations 1996, the provision of the regulations prevails to the extent of the inconsistency.

In July 2016 changes were made to AASB 124 - Related Party Disclosures. The Standard requires that transactions made between 'related parties' are to be disclosed. Related parties are defined as entities with a close relationship and in the context of local governments could include regional subsidiaries, key management personnel like the mayor or president, elected members and CEO, close family members of key management personnel, and entities that are controlled by key management personnel. Only related party transactions that are material (significant) are required to be disclosed.

Provisions in the Act already require local governments to disclose certain financial interests. Interests must be disclosed through the form of a primary return or annual return by the elected member and senior staff, and lodged with the CEO (or in the case of the CEO disclosing an interest, it must be lodged with the mayor or president). This must be done within three months of the day that they take up that position. The CEO (or the mayor or president) must also provide written acknowledgement of receipt of the disclosure.

The AASB disclosure requirements may represent a duplication or overlap as most related party transactions should already be addressed by the Act's disclosure provisions. Alternatively, it can be argued that the AASB requirements introduce consistency between local governments and private entities, and thus strengthen accountability.

Exemption from accounting standard AASB124 - Related party disclosures: Guidance questions

- 114) Are the existing related party disclosure provisions in the Act sufficient without the additional requirements introduced by AASB 124? Why or why not?

Exemption from AASB 124: Regulation 4

That Regulation 4 of the *Local Government (Financial Management) Regulations* be amended to provide an exemption from the application of AASB 124 'Related Party Transactions' of the Australian Accounting Standards (AAS).

Disposal of Property

Section 3.58 of the Act outlines the process that a local government is required to follow in order to dispose of property. Disposal is defined as 'to sell, lease or otherwise dispose of any property (other than money)'.

Property can be disposed of:

- through a public auction to the highest bidder; or
- through public tender to the most acceptable tender.

Alternatively, a local government can dispose of property if a local public notice is given and submissions sought on the proposed disposal of the property.

There are some exemptions to these requirements with respect to real property, property disposed of as part of a trading undertaking, and other exemptions set out in regulations.

Regulation 30 of the *Local Government (Functions and General) Regulations 1996* provides for a number of exemptions from these requirements predominately with respect to land transactions. Other exemptions exist where the requirements of the Act have been complied with but the property was not disposed of.

Two exemptions concern property that has a market value of less than \$20,000, and property that is disposed of during a 'trade-in' when less than \$75,000 is paid. It has been suggested that these thresholds create a burden that is not commensurate with the monetary value of the property involved.

Trading-in property when purchasing new property of a similar type is a method of asset disposal that is widely used and accepted in the community. The threshold as currently set can create issues with the disposal of major equipment that is used by local governments such as graders, trucks or buses as an item valued over \$75,000 will need to be offered for sale by public auction or public tender.

Disposal of property: Guidance questions

- 115) The threshold for trade-ins was set originally to \$50,000 in 1996 and raised to \$75,000 in 2015. Should that threshold be raised higher, if so how high?
- 116) Should the threshold remain at \$75,000 but with separate exemptions for specific types of equipment, for example plant?
- 117) The general \$20,000 threshold was put in place in 1996 and has not been amended. Should the threshold be raised higher than \$20,000? If so, what should it be and why?
- 118) Would raising these thresholds create an unacceptable risk that the items would not be disposed of to achieve the best price for the local government?
- 119) Is there an alternative model for managing the disposal of property? Please explain.

Dispositions of Property: Local Government (Functions and General) Regulation 30(3)

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.

Reducing red tape: Guidance question

- 120) Do you have any other suggestions or comments on this topic?

Regional Subsidiaries

Local governments are finding themselves under increased pressure to maintain community services in the current economic climate. The Act provides local governments with several mechanisms by which they can cooperate and pool resources. This includes the ability to form semi-independent entities known as regional subsidiaries. This model provides the ability for two or more local governments to provide a service or carry on an activity jointly with fewer compliance obligations under the Act.

Currently, many local governments are concerned that the regulatory requirements are too stringent to pursue the establishment of regional subsidiaries and at this time there are no regional subsidiaries in operation in WA.

The State Government strongly support local governments working collaboratively, and an effective subsidiary model will assist in delivering positive outcomes for local communities.

11. Regional Subsidiaries

Under the Act, local governments have the ability to form a corporate entity known as a regional subsidiary.

This arrangement allows multiple local governments to pool their resources to carry out their statutory functions, provide services across multiple districts or provide other benefits to their communities.

The characteristics of a regional subsidiary are:

- a separate legal entity from the local governments that form it
- governed by a binding charter which sets out its powers, functions and duties
- managed by a board appointed by the member councils, which can consist fully or partly of non-local government members (that is, people who are not elected members or employees)
- In the event of a regional subsidiary being wound up, the assets would become the property of the local governments that formed it, and those local governments would be liable for any debts
- required to release an annual report and financial statement, with any other reporting requirements to be set out in the charter
- not allowed to pursue commercial enterprises or borrow money except from the local governments which form it

This model was designed as a low risk-low compliance one. That is, most of the reporting and other statutory obligations under the Act would not apply to a regional subsidiary as it would be undertaking activities that would not present a significant risk to the forming local governments and therefore to the communities in those districts.

Regional subsidiaries are designed to carry out many of the activities which could be performed by a local government. They cannot, however, undertake commercial enterprises or speculative investments.

Under the *Local Government (Regional Subsidiaries) Regulations 2017*, subsidiaries are currently only able to borrow money from the local governments that form the subsidiary (the member councils). This restriction was put in place to ensure that regional subsidiaries would not incur excessive liabilities and cause risk to ratepayer money.

The local government sector has requested that regional subsidiaries be permitted to borrow money, either from financial institutions or the Treasury.

Further feedback from the sector has indicated that the restriction on borrowing is a major impediment to using regional subsidiaries to deal with matters such as waste management and other activities.

The implications of this proposal are discussed below.

11.1 Risks and benefits of borrowing

Regional subsidiaries were designed to be used as a form of collaborative service provision. The intent was that the model would allow local governments to pool their resources to provide new services and more effective existing services. They could also use the model to share back-office functions, such as accounting, records management and human resources.

For this reason, much of the financial management and reporting controls in the Act have not been applied to regional subsidiaries.

Importantly, for a regional subsidiary to be created, the Minister must approve an Establishment Charter which sets out the purpose of the regional subsidiary and its governance arrangements prior to its creation.

If subsidiaries were permitted to borrow money, this could have a number of advantages:

Advantage	Reasoning
Subsidiaries will have a greater capacity to obtain funds	<p>The subsidiary could borrow money which can be used to pursue the subsidiary's goals.</p> <p>The subsidiary will be able to obtain funds for unexpected situations or emergencies.</p> <p>Establishment of subsidiaries will be easier, since once the subsidiary is formed, it can borrow money to assist with setting up its operations.</p>
Subsidiaries will be less dependent on financial contributions from the member councils	<p>Subsidiaries will require less funding from member councils, since they can borrow money when needed.</p> <p>Borrowing money from a bank is less complex than obtaining funding from the member councils.</p>

Advantage	Reasoning
Subsidiaries will be more attractive to local governments	If the subsidiary model is more flexible, there is more chance that local governments will consider using the model.
Complexity will be reduced for the member councils	The forming councils do not have to consider how the loan will be apportioned between them.

Allowing subsidiaries to borrow money would also involve a number of risks and disadvantages which are set out below:

Disadvantage	Reasoning
Increased vulnerability	If a subsidiary incurs significant levels of debt, this will make the subsidiary more vulnerable to financial or economic shocks.
Increased chance of insolvency	If a subsidiary is unable to pay its debts, the member councils will be required to pay the debts on the subsidiary's behalf. This could cause significant financial loss and the loss of jobs. It will also cause significant damage to public confidence.
Reduced control by member councils	Member councils will have less control over the borrowing activities of the subsidiary, with the degree of control and reporting entirely dependent upon any restrictions placed in the charter. Member councils may not foresee the need for these at the time of forming the subsidiary or may not have sufficient skills in this area to ensure that adequate safeguards are put in place. There is no requirement for the managing body of a regional subsidiary to have any members from the local governments (whether elected members or officers).
Repayments	Once a subsidiary borrows money, it will need to pay the money back in addition to interest repayments.

Disadvantage	Reasoning
	<p>This will place the subsidiary under pressure to earn revenue to repay the loan.</p> <p>Any money spent on interest repayments will divert money which could have been spent on service provision.</p> <p>If a subsidiary is unable to pay back a loan, the member councils will be liable for any interest which is unpaid as well as the principal loan.</p>
Subprime lending	<p>The debts of a subsidiary will always be guaranteed by member councils.</p> <p>Banks will have little incentive to ensure that the subsidiary itself can repay the loan, since the debt can always be recovered from ratepayer money.</p> <p>Banks that make risky loans to a subsidiary will actually be rewarded if the debt spirals out of control, since this increases the total profit that the bank will receive.</p>

While the borrowing of money would lead to a number of risks, the danger could be mitigated by ensuring sufficient protections.

These legislative protections could include one or more of:

- Increasing the required reporting requirements of a subsidiary;
- Requiring the subsidiary to obtain consent to borrow;
- Only allowing borrowing to occur when permitted by the charter;
- Limiting the purposes for which money can be borrowed; or
- Limiting the amounts which can be borrowed by a subsidiary.

Each one of these precautions would lower the risk of a subsidiary, but would also represent a reduction in the model's flexibility.

Across Australia

Each Australian jurisdiction has a different approach regarding whether subsidiaries are allowed to borrow money. Subsidiaries in this situation has been interpreted widely to be the most applicable model in that jurisdiction. The range of approaches is as follows:

Jurisdiction	Status
Western Australia	Subsidiaries can borrow money, but only from member councils that formed it.
New South Wales	Subsidiaries can borrow money with Ministerial approval.
Victoria	Subsidiaries can borrow money with Ministerial approval.
Queensland	Subsidiaries cannot borrow money.
South Australia	Subsidiaries can borrow money when permitted by the charter and with the consent of member councils.
Tasmania	Subsidiaries can borrow money, but Ministerial approval is needed if liabilities exceed 30 per cent of subsidiary's revenue.
New Zealand	Subsidiaries can borrow money as necessary. Debts are not guaranteed by member councils.

11.2 Options:

Option 1: Status quo

This option proposes that the existing rules will remain unchanged and subsidiaries can only borrow from member councils.

This option will mean that subsidiaries do not gain the advantage of being able to borrow money from external bodies to pursue their objectives. It will mean, however, that subsidiaries will remain low-risk.

The current provisions have not provided the incentive for local governments to establish regional subsidiaries. Consequently, the collaborative benefits sought in the development of the legislation have not eventuated.

Currently, there are no regional subsidiaries in operation in WA.

Option 2: Regional subsidiaries are permitted to borrow from Treasury Corporation.

This option proposes that regional subsidiaries will be permitted to borrow money from the Treasury Corporation.

This will mean that subsidiaries have less chance of becoming insolvent. The Treasury will only lend money to the subsidiary in reasonable circumstances and subject to reasonable terms.

There is still a possibility that the subsidiary may borrow money it lacks the capacity to repay. Member councils will still be liable for the debt at the cost of their ratepayers.

Option 3: Regional subsidiaries are permitted to borrow from financial institutions

This option proposes that regional subsidiaries will be permitted to borrow money from financial institutions if permitted by the charter.

This course of action would result in the complete range of advantages and disadvantages listed in the previous section.

If this option is taken, the Government would need to review what additional legislative protections might be necessary to ensure that borrowing does not cause excessive risks to ratepayer money.

Regional subsidiaries: Guidance questions

- 121) Which option do you prefer?
- 122) Should regional subsidiaries be allowed to borrow money other than from the member councils?
- 123) Why or why not?
- 124) If a regional subsidiary is given the power to borrow directly, what provisions should be put in place to mitigate the risks?

Regional subsidiaries: Guidance question

- 125) Do you have any other suggestions or comments on this topic, including on any other aspect of the *Local Government (Regional Subsidiaries) Regulations 2017*?

Regional Subsidiaries

That WALGA advocate for legislative and regulatory amendments to enable Regional Subsidiaries to:

- **Borrow in their own right;**
- **Enter into land transactions; and**
- **Undertake commercial activities**

126)

Local Government Act review: Guidance question

127) You are invited to make comment and put forward suggestions for change on other matters which have not been covered in this paper.

For more information, please contact:

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Website: www.dlgc.wa.gov.au/lgareview

Translating and Interpreting Service (TIS) – Telephone: 13 14 50

Attachment 1: Councillor position description

Councillor position description

Role as prescribed by the *Local Government Act 1995*

- represent the interests of electors, ratepayers and residents of the district
 - provide leadership and guidance to the community district
 - facilitate communication between the community and the council
 - participate in the local government decision making process at council and committee meetings
 - perform such other functions as are given to councillor by the *Local Government Act 1995* or any other written law
-

Accountabilities, as prescribed by the *Local Government Act 1995*

- an understanding of the role and structure of local government as prescribed by the *Local Government Act 1995*
 - an understanding of the quasi-judicial town planning role of local government, as prescribed by the *Planning and Development Act 2005*
 - an understanding of Integrated Strategic Planning – the strategic plans for the future of local government, the processes involved and the strategic role of a councillor
 - an understanding of the process of managing the Chief Executive Officer's performance
 - ability to read and understand financial statements and reports
 - a basic understanding of legal processes
-

Governance and ethical standards

- an understanding of the 'separation of powers' between councillors and the administration (the difference between governing and managing)
 - an understanding of meeting process, including Standing Orders
 - an appreciation for policy development processes
-

Councillor position description

- an awareness of risk management strategies
 - an understanding of the accountability framework prescribed by *the Local Government Act 1995* and the *Corruption and Crime Act 2003*, and other legislation
-

Values, characteristics and commitment to the role

- the ability to communicate, debate and actively participate in meetings; ability to enhance discussion and assist discussions to reach closure; ability to disagree, without being disagreeable
 - the ability to develop and maintain effective working relationships and to manage interpersonal conflicts
 - ability to exercise independent judgements
-

Attachment 2: Gifts

The current gift framework

The current framework is established by section 5.82 of the Act for gifts and section 5.83 of the Act for contributions to travel. Under these sections, relevant persons are required to disclose gifts and contributions to travel over a prescribed amount, in writing, to the CEO within 10 days of receipt. The disclosures must be recorded in a register using a set form, which must then be made available on the local government's official website. There is currently no timeframe for disclosures to be published on the local government website.

Gift disclosures must include:

- a description of the gift;
- the name and address of the person who made the gift;
- the date on which the gift was received;
- the estimated value of the gift at the time it was made; and
- the nature of the relationship between the relevant person and the person who made the gift.

Section 5.82(4) of the Act defines a "gift" as:

"...any disposition of property, or the conferral of any other financial benefit, made by one person in favour of another, otherwise than by will (whether with, or without, an instrument in writing) without consideration in money or money's worth passing from the person in whose favour it is made to the other, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or other contributions to travel...".

Section 5.82(2) provides for the following exemptions from disclosure:

- if the gift did not exceed the prescribed amount (\$200), unless it was:
 - one of two or more gifts made by one person at any time during a year; and
 - the sum of those two or more gifts exceeded the prescribed amount;

or

- the donor was a relative of the person.

Travel disclosures must include:

- a description of the contribution;
- the name and address of the person who made the contribution;
- the date on which the contribution was received;
- the estimated value of the contribution at the time it was made;

- the nature of the relationship between the relevant person and the person who made the contribution;
- a description of the travel; and
- the date of travel.

A “contribution to travel” is not explicitly defined in the Act but section 5.83(4) states that it includes “accommodation incidental to a journey”. Regulation 34D of the *Local Government (Administration) Regulations 1996* defines a “travel contribution” as:

“...in relation to a person, means a financial or other contribution that has been made to any travel undertaken by the person.”

Section 5.83 provides for the following exemptions from disclosure:

- if the contribution was made from Commonwealth, State or local government funds; or
- the contribution was made by a relative of the person; or
- the contribution was made in the ordinary course of an occupation of the person which is not related to his or her duties as an elected member or employee; or
- the amount of the contribution did not exceed the prescribed amount unless it was –
 - one of two or more contributions made by one person at any time during a year; and
 - the sum of those two or more contributions exceeded the prescribed amount;

or

- the contribution was made by a political party of which the person was a member and the travel was undertaken for the purpose of political activity of the party, or to enable the person to represent the party.

If an elected member receives a gift or contribution to travel that needs to be disclosed under section 5.82 or 5.83 then for the remainder of their term in which the gift was received, the donor is deemed to be a “closely associated person” under section 5.62(1)(eb). As a consequence, the member will then have a financial interest (section 5.60) and need to disclose that interest in accordance with s. 5.65 if the donor requires (or has a financial relationship with someone who requires) a local government decision.

Section 5.103 of the Act requires every local government to prepare or adopt a code of conduct to be observed by elected members, committee members and employees. Regulations may prescribe the content or matters that are to be included, being the *Local Government (Administration) Regulations 1996*. Further information on codes of conduct can be viewed in Chapter 3.1 of this paper.

Section 5.104 of the Act states that elected members are required to observe rules of conduct which are set out in regulations, specifically the *Local Government (Rules of Conduct) Regulations 2007*.

In addition to the requirements set out in the Act, there are three sets of Regulations dealing with disclosure of gifts and contributions to travel:

- *Local Government (Rules of Conduct) Regulations 2007* (Rules of Conduct Regulations)
- *Local Government (Administration) Regulations 1996* (Admin Regulations)
- *Local Government (Elections) Regulations 1997* (Election Regulations)

Each set of regulations sets out different requirements including disclosure periods, monetary thresholds and exemption categories.

Rules of Conduct Regulations

The Rules of Conduct Regulations are “general principles to guide the behaviour of elected members”. This includes acting with reasonable care, diligence, honesty and integrity, acting lawfully, avoiding damage to the local government’s reputation, and being open and accountable to the public.

Regulation 12 sets out the requirements surrounding acceptance and disclosure of gifts received by elected members.

Regulation 12 broadly aligns with the definition of gift under section 5.82(4) of the Act except for the following exemptions:

- a gift from a relative as defined in section 5.74(1) of the Act – parent, grandparent, sibling, uncle, aunt, nephew, niece, lineal descendant, spouse/de facto; or
- an electoral gift disclosable under the *Local Government (Elections) Regulations 1997* Regulation 30B; or
- a gift from a statutory authority, government instrumentality or non-profit association for professional training; or
- a gift from WALGA, the Australian Local Government Association or Local Government Managers Australia WA.

Types of gifts

The Rules of Conduct Regulations provide for two distinct types of gift with two monetary thresholds.

A notifiable gift is any gift between \$50 and \$300, or any series of gifts from the same donor which would come to that amount in value in a six-month period. Notifiable in

this context means that any gift between \$50 and \$300 must be disclosed to the CEO and entered into the notifiable gift register.

A prohibited gift is any gift worth over \$300, or any series of gifts from the same donor which would come to that amount in value in a six-month period. Elected members cannot accept prohibited gifts if the donor is undertaking, is seeking to undertake, or it is reasonable to believe will seek to undertake, an "activity involving local government discretion".

An activity involving local government discretion is defined at *regulation 12(1) of the Rules of Conduct Regulations*. It means "an activity that cannot be undertaken without an authorisation from the local government or by way of a commercial dealing with the local government". A practical example of such an activity in a local government context could be a property developer seeking to build an apartment block – such a change would require an application to the local government for approval.

These provisions sit alongside the section 5.82 and 5.83 provisions. Where a gift is valued between \$200 and \$300 and the donor is undertaking, or seeking to undertake, an activity involving local government discretion, disclosure will be required in both registers.

Administration Regulations

The Administration Regulations provide for administrative matters for local governments, including meeting procedures, employment requirements, reporting and planning, and disclosure of financial interests. This includes disclosure by local government employees of gifts.

The Administration Regulations mirror the Rules of Conduct Regulations in most matters relating to gifts.

Relevant regulations

Regulation 25 prescribes the amount of a gift for the purposes of section 5.82(2)(a) of the Act. The prescribed amount is \$200.

Regulation 26 prescribes the amount of a contribution to travel for the purposes of section 5.83(2)(d) of the Act. The prescribed amount is also \$200.

Regulation 34B prescribes that local governments must have a code of conduct regarding the acceptance of gifts. The code of conduct provisions only apply to employees. Regulation 34B of the Administration Regulations otherwise mirrors Regulation 12 of the Rules of Conduct Regulations.

The types of gifts established in Regulation 12 of the Rules of Conduct Regulations are, again, mirrored in Regulation 34B of the Admin Regulations.

Election Regulations

The Election Regulations prescribe requirements for the holding and management of local government elections.

Relevant regulations

Regulation 30A provides that gifts of \$200 or more, or gifts with a total value of \$200 or more received from the same person in the "disclosure period" are relevant for the purposes of the Election Regulations.

Regulation 30BA provides that candidates cannot receive gifts unless the name and address of the donor are known to them. Such gifts are not taken to have been received if, as soon as they become aware of the gift, the candidate takes reasonable steps to either return the gift or give it to the CEO for disposal.

Regulation 30B provides for the disclosure requirements.

Regulation 30CA provides that the donor of the gift must also disclose to the CEO within a required time.

Regulation 30C outlines the disclosure period. The disclosure period commences six months before election day and concludes three days after election day for unsuccessful candidates. For successful candidates, the disclosure period concludes on the start day as defined in section 5.74 of the Act. This effectively means that any electoral gifts received six months prior to and three days after the election must be disclosed.

Regulation 30D provides that disclosure must be made by completing a set form and lodging it with the CEO, within three days of the making, receipt or promise of a gift once the person has nominated to be a candidate. Gifts received earlier than the nomination date but within six months of the election must be disclosed within three days of nomination.

Regulation 30F outlines the information to be provided: description of the gift, date of receipt/making/promise, value and name/address of each donor.

Regulation 30G requires the CEO to maintain an electoral gifts register. Disclosures relating to unsuccessful candidates must be removed after the disclosure period (that is, three days after election day) and be retained separately for at least two years. Similarly, for successful candidates, the CEO must remove disclosures following the completion of the person's term of office. Those forms must be retained separately for at least two years.

Regulation 30H requires the electoral gifts register be kept at the local government's offices for public access.

Supplementary Information: Public notices

Situations where local public notices are required by the Local Government Act or associated regulations:

Provision	Situation	Details
Section 3.12	Local law is made and gazetted by the local government	Notice must specify the date the local law activates and where it can be inspected
Section 3.50	Closure of a thoroughfare for more than 4 weeks	Public notice must be issued before closure can occur
Section 3.51	Alterations to property in a way that will affect any individual	After public notice is issued, a "reasonable time" must be given before work can commence
Section 3.58	Disposing of certain kinds of property other than via an auction or tender	Notice must invite submissions from the local community (2 week minimum)
Section 5.29	Convening a meeting of local electors	Public notice must be issued at least 14 days prior to the meeting
Section 5.50(1)	Policies regarding the making of extra payments to terminated employees	Public notice must be issued after policy is adopted
Section 5.50(2)	Extra payments made to terminated employees	Public notice only required if amount exceeds the policy made under section 5.50(1)
Section 5.55	Release of annual report	Public notice must be issued as soon as practicable after the report is accepted by the council
Section 6.11	Proposal to use reserve account for a purpose other than what the money was originally reserved	Public notice must be given a month before the proposal is put into operation
Section 6.19	Proposal for the local government to set a new fee or charge	Public notice only required if changing fee or charge other than at the start of a financial year

Provision	Situation	Details
Section 6.20	Proposal for the local government to borrow money or obtain credit	Public notice must be given a month before the proposal is put into operation
Section 6.36	Proposal to impose differential rates and minimum payments	The notice must provide information on the rates being imposed and invite public submissions (3 week minimum)
Schedule 2.2 Clause 7	Local government seeks to carry out a review of the district ward boundaries	Public notice must invite public submissions (6 week minimum)
Schedule 6.3 Clause 1	Local government seeks to sell land for non-payment of rates	Public notice must be issued if the ratepayer cannot be notified personally through usual means
Administration Regulation 12	Council meeting dates	Public notice must be issued once a year and list the meeting dates for the next 12 months
Administration Regulation 19D	Release of strategic community plan	Notice must specify where the plan is available for inspection
Constitution Regulation 11H	Validity of election results is challenged	Notice must be issued once a decision is reached in the Court of Disputed Returns
Elections Regulation 73	Local election is to be postponed to a future time	Notice must be issued stating that the election is postponed
Elections Regulation 80	Final results of local election are available	Public notice must set out the results in the prescribed form
Elections Regulation 92	Poll to determine how presiding member of council is to be appointed	Public notice must set out the results in the prescribed form
Regional Subsidiaries Regulation 4	Proposal to establish subsidiary	Notice must state where the business plan may be inspected and invite submissions (6 week minimum)

Situations where State-wide notice is required:

Provision	Situation	Details
Section 2.12A	Proposal to change the method of electing the presiding member of council	Public notice must invite public submissions on the proposal (6 week minimum)
Section 3.12	Proposal to introduce new local law	Public notice must invite public submissions on the draft local law (6 week minimum)
Section 3.16	Review of an existing local law	Public notice must invite public submissions on the existing local law (6 week minimum)
Section 3.59	Major trading undertakings or land transactions	Public notice must invite public submissions on the business plan (6 week minimum)
Section 4.39	Closing date for enrolment in election	The notice must include details on how a person can become an elector
Section 4.47	Nomination of candidates in election	The notice must specify how many seats are up for election and how nominations can be submitted
Section 5.36	Advertising a vacancy for a CEO position	Also applies to senior employee positions
Schedule 6.3	Sale of land	The notice must include a description of the land and any improvements sold with the land
Functions and General Regulation 14	Invitation for tenders	Tender process applies whenever the local government seeks to acquire goods or services above a prescribed amount
Functions and General Regulation 21	Expression of interest for prospective suppliers	This process is used to obtain a group of prospective suppliers prior to formal tender process
Functions and General Regulation 24AD	Panel of pre-approved suppliers	Similar to tender process, but conducted in advance

Provision	Situation	Details
Functions and General Regulations 24E	Regional price preference policy	Notice must specify the region to which the policy will apply and invite submissions (4 week minimum)