A review
of
the review
of
the review
of the
Local Government Act 1995

By Larry Graham
August 2020

EXECUTIVE SUMMARY

The Minister for Local Government announced an *"expert panel"* to *"independently assess and provide recommendations on the feedback collected during the extensive consultation on the direction and requirements for a new Local Government Act."*.

The result was neither a competent, nor an independent review. It was not a rigorous and open intellectual endeavour seeking the best outcome for the public, but it was a secretive process with what appear to be predetermined outcomes.

The resulting recommendations are dangerous, radical and will not protect the public interest. These proposals are undemocratic and reward the powerful interests in the local government sector; many of whom who are in formal partnerships with the government.

For the last thirty years, numerous royal commissions and formal inquiries have been recommending governments legislate competently for increased oversight and regulation, including enforcement powers and penalties to be used against those who do not comply with their lawful obligations.

But in WA, this panel of experts have decided our publicly funded system of local government that employs over 15,000 people and has assets worth over $40 billion needs less government regulation and more self-regulation.

It is obvious that those conducting the review did not recognise that local government and its peak body the WA Local Government Association (WALGA) both use public funds. When public funds are involved, Royal Commissioners have told us: *"The public is entitled to insist that government be conducted openly and that it be, and be seen to be, accountable for its actions. Nowhere is the need for this more apparent than when it undertakes initiatives which put public funds and resources at risk."*

When talking about the local government act; everyone agrees that it is outdated and needs renewing. Few propositions could make this legislation worse, but what this panel has put forward will ensure that modern, open and transparent accountability does not occur because increased control of public money will be granted to unelected bureaucrats. This happens after stripping away most of the current regulated oversight and controls which will be replaced with general legislated principles and unenforceable codes.

And we know where this type of self-governance leads us because our country is in the aftermath of having to deal with similar systemic design flaws to those being proposed. In the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Commissioner Kenneth Hayne said:

"Misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished."

In this State, the Royal Commission into the Commercial Activities of Government, said:

"The Commission's principal concern is to ensure that public officials and agencies are so regulated as to render them answerable for their actions to the public."

Under this panel's proposals, public misconduct is unlikely to be *"...detected, denounced and justly punished"* and there is nothing proposed to make public office *"...answerable for their actions to the public."*

More recently, at the City of Perth, the government spent over $7 millions of public money to be told:

"One important element, that is not contained in detail elsewhere in the Report, is accountability. This refers to the mechanisms which help ensure that a local government which uses public money and makes decisions which affect people's lives can be held responsible for its actions."

But none of that recommended responsibility is sought by this panel, but what is proposed by them will result lower accountability requirements for local government. Which is inexplicable, because over the centuries, our democratic systems have learnt to protect the public interest by depending on effective checks and balances; accordingly, we know:

- that systems reliant on good will, always fail; and
- strong laws with good supporting regulation best protect the public interest; and
- thorough oversight and compliance monitoring with commensurate and independent enforcement are essential for good governance; and
- public officials must be held to account.

These proposals fail any public interest test and should not be proceeded with.

Then there is the fractious argument over the greatest power imbalance in local government; elected members V CEO's. If this panel's recommendations are adopted, unelected bureaucrats become superpowerful and those you vote into office as councillors will now have their already limited powers further restricted making them little more than sophisticated rubber stamps.

If that is not bad enough:

- The regulating department will no longer regulate;
- powerless committees adopt a central role
- WALGA will be retained as a legislated monopoly
- Restrictions on local government going into business will be weakened
- Some councils will be replaced by unelected boards
- Rating will continue unchecked

The Chair of the panel said:

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

Making integrated planning the centrepiece of local government's operations is racing forward to the past. This "new" initiative is the same tired old strategic planning framework that has been around for over fifteen years and it is hard to see how something so old and ineffective is the vehicle to take local government forward.

Sadly, this expert panel is not talking about making formal town and development planning the new centrepiece for local government. The decision-making power for that critical process will remain with the State Government.

Most thinking people agree that the current act needs to be replaced, but this panel's proposals address none of the fundamental issues of local government being structurally dysfunctional; financially unsound, overseen by a poorly resourced regulator, riven with chronic power imbalances and dominated by the legislated monopoly of WALGA.

Until those basic structural issues are corrected, local governments will never be able to effectively deliver for their communities.

Despite the deep involvement of the Minister and the regulating government department in the panel's work; and the formal partnership between the government and local government representative organisations, these recommendations are not government policy.

They are recommendations to the Minister who can accept or reject any or all of them. But the unworkability of the panel's proposals and the failing to address these basic problems mean that no responsible minister could ever recommend they be adopted.

The only course of action that does not have a detrimental effect on the public interest is for the Minister for Local Government to reject these proposals; if he does not do that, then Cabinet should. The entire review process should then be restarted in a way that is free of interference from vested interests.

Larry Graham
lazchat@icloud.com

Note: This is a private work and the views expressed are mine and should not be attributed to anyone else. Of course, as a private individual I do not have access to government resources as this panel did and the following document is deliberately written in the same style as the panel's. That is there is little supporting evidence or sourcing, but anyone interested can find my formal written submissions to the public processes on the Departmental review website.

In addition to the issues raised in this paper, there are two significant groups who should be extremely upset at the results of this review. They are the public and elected shire councillors; neither of their interests has been given the consideration they deserve.

Most people understand that in a democracy, their elected representatives' collective power should always outbalance bureaucratic power but that is not the case in local government, and we return to that later in this document.

The public is supposed to be protected when those in power give priority to the public interest over all other interests; so, how do we know what the public interest really is?

The best way to start is by saying that whatever it is; it is not simply saying x submissions were received. That of course is political tokenism, but the public interest has never been better explained than by WA Royal Commission into the Commercial Activities of Government which stated that two principles underpin all of our democracy, they are:

"It is for the people of the State to determine by whom they are to be represented and governed."

And

"The institutions of government and the officials and agencies of government exist for the public, to serve the interests of the public."

As the recommendations of this review fail both of those basic principled public interest tests, it becomes obvious that the lessons from that very important Royal Commission have been forgotten.

Elected shire councillor's interests have been diminished because the findings of this review create an undemocratic monstrosity where bureaucratic mandarins are granted far greater powers than those given to councillors elected to represent the public interest.

It should not be necessary to go any further, because those two shortcomings remaining uncorrected should be terminal to any chance of these recommendations being implemented.

In any functioning democratic system, when effective accountability is avoided or minimised, it creates a climate that either accommodates or rewards corrupt and improper behaviour and it is entrenched checks and balances and adherence to the rule of law that prevent or minimise the likelihood of this climate expanding and leading to the misuse or abuse of public resources.

But in the recently released paper by this "expert panel", existing and rudimentary formal checks and balances are removed, or significantly reduced, and they are not replaced by any meaningful enforcement options or penalties.

Almost all of the retrograde recommendations have their origins in the local government club and outcomes like these fit even the loosest definition of regulatory capture. Regulatory capture is where, having captured those in charge, powerful forces relegate the public interest to a place behind their own interests and this is what has occurred in this review process.

Reform of this sector is urgently needed because despite the sector being full of very good people all striving to do the best for their communities, Local Government in Western Australia is:

- Structurally dysfunctional; and
- Financially unsound; and

- Undemocratic; and
- Controlled by a law that is no longer fit for purpose; and
- Overseen by a poorly resourced regulator; and
- Riven by chronic power imbalances; and
- Dominated by the legislated monopoly of WALGA.

The review competently addresses none of these structural shortcomings, but on the upside, the report does often repeat that jingoistic catchphrase about being Agile, Smart and Inclusive and, in the text of the document, it mentions Covid (12) more times than democracy (8).

Using public monies demands a high level of accountability, oversight and reporting and the terminal flaw of this review is that those conducting it have not recognised that local government and its WA Local Government Association (WALGA) are both publicly funded. Accordingly, the reviewers have not recommended the protections and oversights that a competent public system demands.

That oversight should also end any chance of this panel's proposals being implemented.

So how did we arrive at this bizarre position?

The mammoth Local Government Act is dated, and most now recognise that it is no longer fit for purpose so, quite rightly, the McGowan Government launched a review of the act in 2017.

The local government sector is dominated by WALGA; a powerful legislated monopoly who, over many years, have successfully locked themselves into a privileged position as the pseudo regulator of the sector and they are now an equal partner with the government of Western Australia. That unwarranted quasi-official standing has granted official credibility to their self-serving recommendations and enabled them to apply undue influence on the government, the department and the review processes.

While ongoing and politically unanimous serial amendments of the law made a difficult legislative review significantly more complicated than it needed to be; WALGA, with its fellow travellers were exerting huge pressure for more autonomy and independence for local government to come from this review.

It was only when its absence was publicly highlighted that adopting a strategic direction became necessary for government; hence this review by an "expert panel". The twin objectives for the review appear to be to counter the public perception that WALGA was in control and also to show that the government knew where all this was heading. But WALGA and their fellow travellers simply wanted their views to be rubber stamped for implementation; and for that to happen this panel had to be seen as the independent umpire. This was an intent that became clearer when S. Love M.L.A. asked a parliamentary question:

"Why was the panel established more than two years after the Local Government Review commenced?"

To which the Minister replied:

"The Panel was established to independently assess and provide recommendations on the feedback collected during the extensive consultation on the direction and requirements for a new Local Government Act."

Please note the crucial words to *"independently assess"* because it is a novel use of the word independent, when the panel:

- Was chosen by minister; and
- had a terms of reference from the Minister; and
- had critical matters Ministerially excluded from consideration; and
- reported privately and directly to the Minister; and
- had no independent members of the public on it; and
- had no public input; and
- was administered by the department; and
- was advised by the department.

In addition to those characteristics denoting ministerial control, the Minister reserved the right to vary the terms of reference at any time; retained ultimate authority over the review, reserved final approval and the right to be the public face of the project. And if all that doesn't convince you of a lack of independence: the review was chaired by a first term Government MP who is a WALGA fellow traveller (Hansard P2281 9 Apr 19) and the panel included the departmental CEO as a full member of the panel.

One wonders which particular part of all of that makes this an independent assessment process, because the review looked, sounded and acted very much like a government-controlled entity.

But the elevation of spin over substance does not end there; no public input was sought, as we have no idea who *"those in the sector and community who made a submission or otherwise assisted in the process"* (Report Foreword P4) were. What methodology was used is unknown, how the respective submissions were assessed is also unknown, the panel held no public hearings, took no public evidence, produced nothing for public comment and only met on nine occasions over its ten month life and then it reported privately to a Minister who had already ruled out certain changes.

This was neither a competent, nor an independent review.

The only logical conclusion is that was not a rigorous and open intellectual endeavour seeking the best outcome for the public. Demonstrably, it was a secretive process and one with predetermined outcomes that were most likely to benefit those powerful interests within the sector.

And it is worth noting that this sector utilises public funds, employs over 15000 people and controls $40+ billion worth of publicly funded property.

Some of the review participants were good, some were not; some were experienced in WA Local Government, some were not; some were conflicted, and some were not. But in any event, they were the chosen ones who met in private and constructed this report for the Minister. Their assessment and recommendations can be called a lot of things, but independent they are not.

Government departments controlling, advising and directing secret reviews of their own legislation is not the best option for making good law; but the worst option is when a weak, inexperienced, understaffed and underfunded department does it. When this happens, the focus changes from good government working in, and for, the public interest, to one of departmental mitigation of poor performance and predictably, this is what has happened in this case.

The foreword of the report of the "expert panel" says:

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

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

While community consultation is always welcome, many people will be surprised to discover that an obscure planning process is about to become a centrepiece of local government; more so when it is understood that the new centrepiece was introduced into our local government's act and regulations over 15 years ago. I have been unable to find any significant submissions aimed at promoting this rather perfunctory process to become the centrepiece of any new law.

Had the reviewers recommended formal town planning and development planning/approval become the centrepiece of a new local government act, citizens would be lining up to thank them. Not only is this not the case; the reviewers just ignored that crucial function, meaning power will remain with Ministers and unelected planning bodies who make decisions that often disadvantage and disenfranchise local communities who are concerned about developmental proposals.

The second part of that foreword points out a *"renewed focus on integrity, self-regulation and accountability"* and there can be no argument against a such a focus on integrity, but it is the next two fields where things get a tad messy. While this paper highlights that there is little of the much needed *"renewed focus"* on accountability, it is the shift to further *"self-regulation"* that is more concerning and this paper addresses that in detail further on.

Those using public monies do not get the right to self-regulate and it is an absurdity to suggest that we need more of it. That it appears at all is reflective of the composition of the panel, the pressure applied by WALGA sycophants and the lack of ethical direction from government.

This expert panel was charged by the commissioning minister to

"...consider and recommend for Ministerial endorsement:

- *overarching, high level direction for local government.*
- *guiding principles for new Local Government Act." (sic)*

Inexplicably, after being given those tasks, the reviewers decided that was probably not what the government wanted and instead they have recommended staged legislative changes.

Staged implementation of laws and regulation almost always never work; those who doubt this may like to check the implementation resulting from the plethora of royal commissions, reviews and parliamentary committees reports of recent years, Usually, staged implementation results in dysfunctional change as it most often produces weak and uncompleted framework legislation that is accompanied by unenforceable statements of principle underpinned by soft regulation.

For example, at page 8 the review makes this extraordinary statement:

"The current direction of the review, reflected in the initial instructions to the Panel, is for a complete re-write of the existing Local Government Act. However, experience in other States indicates that will require more resources than appear available at present and take a very long time, and that bold new directions may get lost along the way."

In the absence of any public advice and, given the roles of the Chair, the CEO and the Department in this review, the only explanations for such a change in direction is that either the department/CEO or Chair have been told by the Minister that funds are unlikely to be provided, because it defies logic that a committee would make a decision of this kind without any such advice.

The resources of government are not the concern of a review panel and it is this behaviour that is symptomatic of the circumstances described earlier about weak, inexperienced, understaffed and underfunded departments reviewing their own laws. The government initiated this review and if it desires change of the kind recommended, the government will fund it. If government does not wish to do that, it is up to them and not this committee to decide what and how things proceed. That is why we have democratically elected governments and these decisions should never be made by secret gatherings of unelected "experts".

More so with this department's funding because various submissions to the public review processes, (e.g. Mine and WALGA's) highlighted how poor funding is handicapping its role of regulating this sector. Unperturbed by any of that, the panel just skipped another inconvenient problem. In my view a more useful recommendation would have been that sufficient resources be allocated to allow a full and comprehensive redraft of the Act; after all this is what the Minister asked for.

But any genuinely independent panel would have noted the comments about how poor structure and funding has weakened the regulating department and then recommended a restructure and that more resources be allocated. But this panel chose not to do that.

GENERAL

Part A of the report covers much rhetorical ground without making many inroads into the substance of reform. A telling example of this, is the statement on P7:

"Rather than being a crucial and reliable source of support to communities, many local governments themselves require considerable funding from other levels of government simply to perform their basic statutory obligations and keep their operations running, rather than to expand services."

The first part of that statement reinforces the many submissions made to the public review processes about the fiscal and structural dysfunction of the current local government. Curiously, after having raised this major structural matter, the "expert panel" then ignored it.

This panel then went on to accurately describe some of the major deficiencies in the system of local government:

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

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

(Highlighting added)

But again, having accurately described more of the deficiencies in the system the panel failed to recommend any meaningful action to correct them; this is perplexing, because they said:

"The Panel's view is that the new Act must address these questions and underpin a program of systemic reform to ensure that local government can meet the needs of communities in what may well

be a very different operating environment. The Act itself must be truly renewed. It should look and feel different, 'tell the story' of change, and outline a fresh agenda."

And having said that, the review then failed to make any meaningful recommendations to address the matters they raised; i.e. the high inbuilt cost of local government, the low turnout at elections and other structural dysfunctionalities.

The panel were required to set an *"overarching, high level direction for local government"* and it is here under the heading of *"What sort of "New" Act?"* on page 8 that the legislative wheels start to fall of this process as its drifts off into a rhetorical Nirvana, it says:

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

Administrative laws are not novels; they do not tell stories. That is because they are about regulatory and other detail that make it clear what Parliament intends.

The first four dot points of the panel's recommendations follow that philosophical and doctrinaire path which is aimed at reducing accountability and replacing logical rules and laws with unenforceable generalities; but it is the fifth dot point that set the alarm bells ringing:

"Incorporate new measures to expand self-regulation (notably independent Audit, Risk and Improvement Committees) as part of a flexible regulatory regime that can respond quickly to unexpected circumstances (such as COVID-19)."

Expanding self-regulation?

More self-regulation for a sector that even this panel says parts of require *"...considerable funding from other levels of government simply to perform their basic statutory obligations and keep their operations running, rather than to expand services."*

What possible justification could there be for reducing regulation and oversight on publicly funded bodies that this panel tells us cannot all perform their basic statutory obligations?

Why would any government increase self-regulation at a time when a plethora of Royal Commissions and inquiries in a variety of fields are recommending the opposite so as to better protect public funds and/or the public interest?

At a cost of millions of dollars to the public purse, the inquiry into the City of Perth did not recommend more self-regulation; its 300+ recommendations are aimed in increasing oversight and compliance while recommending new penalties for breaches of obligations. So, it would be a very poor outcome if this review resulted in less regulation and oversight, but the next dot point in this part completes the recipe for disaster because the panel recommends that government:

"Minimise the use of Regulations (which tends to enable more extensive and detailed oversight and intervention, and which requires time-consuming parliamentary drafting) by providing standardised guidelines and model codes, charters and local laws"

Minimising the use of regulations in a fully regulated publicly funded sector really is a novel approach.

But it is more enlightening to contrast those twin objectives to *"expand self-regulation"* and to *"Minimise the use of Regulations"* with the following quote from Commissioner Kenneth Hayne C in the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, who said:

"Misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished."

A further valid comparison is the WA Royal Commission into the Commercial Activities of Government, which said:

"The Commission's principal concern is to ensure that public officials and agencies are so regulated as to render them answerable for their actions to the public."

Because the City of Perth inquiry and these Royal Commissioners approaches are so radically different from this "expert panel", it is entirely reasonable to ask who we should believe and which of the two courses is best to follow?

The choice is between a cabal; who, without any discernible and independent public evidence, arrived at a view that less regulation is better. And several highly qualified commissioners and inquirers who, after formal evidence-based enquiries recommended more competent and enforceable regulation in the public interest.

That is the choice; less regulation recommended by those with interests in the sector or more regulation recommended by those charged with protecting the public interest. i.e. the public interest V self-interest.

In the public sector the public interest should always win out, but in this case, it does not. These two recommendations and directions made by this panel for the future of local government are so far away from what is expected from public office that they should be immediately rejected by Government.

The generality of the direction set by the recommendations contained in this "expert panel" report can never result in the much-needed improvements in governance, oversight, transparency and accountability; nor will they democratise our system of local government.

Having made those general statements let me now turn to their detail to show why this is so. This review package starts with what is called a Clear Legislative Intent *(Page 9)* which is in three parts:

- The first proposal is for a legislated Introductory Section, which is a collection of timeworn and unenforceable statements; their inclusion in any new law will only serve to muddy regulatory waters.
  - One wonders how the first requirement that *"acknowledges the status of local government as a sphere of government..."* accords with S52 of the WA Constitution Act 1889 requires the State Legislature to *"maintain a system of local governing bodies...".* The constitution only allows local government to have such powers as considered *"necessary for the better government of the area in respect of which the body is constituted."* The constitution makes no provision at all for the creation of another sphere of government and, because the term is undefined, one also wonders what a sphere of government actually is.

    Of course, it is possible for the Government to amend the constitution to accommodate this course of action, but the panel makes no such recommendation, nor has the Minister announced any such intention. If this change is to occur, significantly more public discussion is needed before such a fundamental and dramatic change is implemented.

  - The second requirement of this part acknowledges the *"...importance of all facets of local democracy".* Even with all the goodwill in the world, it is hard to see what, if anything, this means. More so because the review panel has decided that local democracy is not important enough to warrant compulsory voting or the removal of the corrupting ward systems.

- The third requirement of this part relates to the *"rights and interests of aboriginal peoples"* and this important matter is dealt with elsewhere in this paper.

- The fourth requirement of this part *"focuses on the need to enhance community wellbeing, including acceptable standards of local government service delivery for all"* Again one wonders not only what this means and why it needs be in a law.

  It also begs the question of not only what *"community wellbeing"* actually is, but also how and when it became the responsibility of local government?

  Community wellbeing is an emerging concept that is generally accepted as being a combination of a range of factors (social, economic, environmental, cultural, political to name a few) that, if all operate effectively, will allow individuals to fulfil their potential. It is a developing notion that can, and does, mean different things to different people however, it is a radical change for this huge area of social policy to become the responsibility of local government. It is also a change that the community has had no say in at all and one that extends the ambit of the role and function of local government.

  The other part of this section talks about acceptable standards; these should be defined, either in law or in regulations and not included in a general introductory provision of a new law.

- The fifth requirement of this part *"calls for open, accountable and ethical governance"*. Laws do not call for things, they legislate them. This is a classic case of hyperbole versus legislative action and these aims, whilst admirable, should be included in legal and regulatory requirements for enforceable codes of conduct and standards.

- The second part of this proposal is for a statement of the role and functions of local government which will be examined in detail later in this report, but there is no in principle opposition to these legislative provisions.

- The third part of this proposal is for a new, or restructured Act to include guiding principles for a range of matters; with complementary detailed provisions in specific parts of the act.

  - The previous comments that relate to the requirements for regulation and oversight are crucial here; whilst legislated principles can be important, when breaching them attracts no penalty, compliance and enforcement are unlikely.

    This is a very dangerous shift in public administration, and it is one that significantly changes accountability away from regulation and compliance and locks it in the esoteric. It is a fundamental change away from explicit regulations that are externally monitored and enforced; to a set of unenforceable legislated guiding principles.

It will come up often in this paper, but local government is not and cannot be self-regulating. Even if it could, it should not be because it depends totally on public funds and that incurs significant public accountability obligations. Once more the WA Royal Commission into the Commercial Activities of Government (V2 S3.1.1) holds a very different view to this review panel:

"In a democratic society, effective accountability to the public is the indispensable check to be imposed on those entrusted with public power."

The City of Perth Inquiry Report (P80) also highlights the need for accountability when it says:

- *"One important element, that is not contained in detail elsewhere in the Report, is accountability. This refers to the mechanisms which help ensure that a local government which uses public money and makes decisions which affect people's lives can be held responsible for its actions. It generates incentives for responsible individuals to act in the interests of the community through:*
    - *rewarding good performance;*
    - *sanctions for poor performance (including corruption or misconduct);*
    - *opportunity for learning, process and system improvement; and*
    - *support for individuals to develop through improving knowledge and capability.*

Accountability can also identify gaps in governance practices, clarify community, stakeholder or government expectation and promote improvements in how a local government works. External audits, reviews and inquiries are some of the mechanisms that provide government organisations, including local governments, with independent views on system and organisational capability and where improvements can be made."

Other than this "expert panel" I have been unable to find anyone in the public governance sphere pushing for less accountability, oversight or sanctions.

The review paper then moves on to a section headed *"An Agile System" (P9)* that has four component parts*:*

- *"Establishment of a Local Government Commission"*; this will be dealt with in detail later in this paper.

- *"A fresh approach to enabling structural reform".* I understand there was a ministerial prohibition from dealing with boundary issues which is probably why this *"fresh approach"* appears to be to continue to avoid dealing with the structural dysfunction of council boundaries and why it then proposes to de-democratise local government by replacing some elected councils with appointed community boards.

- *"Expanded regional cooperation.";* this will be dealt with in detail later in this paper.

- *"Advancing inter-governmental relations";* The limited functional autonomy enabled under the Local Government Act 1995 has been extrapolated by the panel to mean (incorrectly) that local government is autonomous in its entirety. The fundamental premise of this part is that local government is an independent level of government, which it is not and elevating local government to the same status as State and Federal Governments is a dramatic and radical change to our system of government. The model offered up is a Canadian one from British Columbia; aside from our constitutional and jurisdictional differences, the debate over the respective powers of the different levels of government has raged in Canada since its inception and it is not an applicable model for WA.

The next section of the review paper is a section headed *"Inclusive Local Democracy" (P10)* that has four component parts:

- *"Specific provisions for engagement with Aboriginal peoples and communities"*: It is not clear what this part actually means, does it mean to engage with aboriginal people? Peoples? Peoples and their communities? Or some other combination?

  But the strangest part of this is a requirement to *".... plan for, and where appropriate undertake, delivery of essential services to local communities"* One would have thought if essential services were actually essential to local communities it would always be appropriate for them to be delivered.

- *"Four-yearly elections for all councillors"* this is a good and useful recommendation, which when combined with the recommendation to bring all elections into sync making it possible to vote a council in or out of office is a major beneficial change. As is the proposal for ongoing *"representation reviews"*; which one assumes would be done by the WAEC. If would be counterproductive and regressive for these reviews to be conducted by local governments.

- *"Re-definition of roles and responsibilities"* is such a bland and general description that, even with the subsequent text, it could, and most probably does, mean all things to all people.

- *"More effective community engagement and governance"* this part includes a requirement for an obligatory *"Community Engagement Charter".* This may or may not be a good thing dependent on the detail, compliance and penalties for non-compliance.

  There is an additional recommendation for the *"establishment of community boards"* and there are some things that need saying about them. While there are many alternative models around the world, the ones chosen by this panel are from New Zealand. They do not transpose well into this country because New Zealand has no written constitution or states and local government plays a fundamentally different role there than it does in WA.

  The other driver for these boards is the "New Democracy" movement which, in wonderful Orwellian style, is neither new nor democratic. It is an academic movement started in USA universities in the 60's and it was, and is, based on a view that elected people cannot be trusted to govern.

This proposal also overlooks the inconvenient truth that advisory bodies can, and currently do, play a role in our systems of government. This is even truer in local government where the current act allows for formal community input and involvement in the affairs of a council by way of the committee system.

In a functioning democracy those elected should always have supremacy and the underlying principle espoused by this panel of requiring elected councils to become totally dependent on advice and guidance from a non-elected board is anti-democratic nonsense.

The next section of the review paper is a section headed *"Smart Planning and Efficient Service Delivery" (P10)* that also has four component parts:

- *"Improved IPR"* Given the panel *"...was established to independently assess and provide recommendations on the feedback collected during the extensive consultation..."*; I read every submission made to the public processes and did not notice any proposal to promote IPF as a centrepiece of local government. So, where did the recommendation that this become the centrepiece of local government's operations come from?

  While this unanswered at this stage, and an enhanced Integrated Planning Framework (IPF) could be a useful process; by and large, it has not been very successful. And this may be because many local governments do not fully grasp the concept and in place of the intended sophisticated and integrated planning process, IPF has morphed into a box ticking exercise. Even with the additional training envisaged, there is nothing in the proposals to give any confidence that this will change.

  > *"The entities treating regulatory compliance as a cost of doing business rather as a foundation that informs and underpins how the business must be conducted."*
  >
  > *(28 Sep 18 - Interim Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry by Kenneth M Hayne; Commissioner)*

  That quote from the Banking Royal Commissioner aptly describes how local governments treat guidelines, restrictions and obligations under the IPF; i.e. they are seen as obstacles to be overcome rather than an integrated and inclusive process.

  Whilst IPF can, and should, play a role in the future of local government, it is a tired old system and to set it as the centrepiece of legislative reform is a mistake.

- *"Increased Ratepayer Value for Money"* This is another major failing of this review. The current rating system is complicated; expensive, depends on Valuer General assessments, and normal everyday ratepayers providing rate relief to the two biggest and most financially viable industries in the state (Mining and Agriculture).

  None of those matters have been addressed by the panel, but mysteriously, they tell us that transparency will be increased by adopting a *"Rating and Revenue Strategy"*. Non-compliance with that newly invented strategy attracts no penalty, while the concepts of accountability, oversight and expenditure control do not warrant a mention, but rate capping has been excluded from further consideration.

  It is hard to see how the substance of this part matches the headline of *"Increased Ratepayer Value for Money"*.

- *"Modernised financial management"* All those earlier whimsical words reappear in this part; but what is totally lacking are the systematic counterbalances of oversight, regulation and enforcement. As the multitude of Royal Commissions and inquiries have pointed out; without these key ingredients the public interest will not be properly protected.

- *"New Provisions for local and joint subsidiaries"* This could be a useful addition to the legislation. The only reservations are that it is yet another way to paper over the structural dysfunction caused by Shire Boundaries, and to deliver beneficial enterprises by another name.

- "*Ensuring a minimum level of service" There* is insufficient information to allow any coherent discussion at this stage; but dependent on the detail, this could be a useful addition.

The next section of the review paper is a section headed *"Enhanced Accountability, Self-Regulation and Integrity" (P11)*:

- *"Robust accountability and self-regulation"* One wonders how we ever got to this stage; the entire direction of these recommendations is the opposite of what is expected from modern governmental systems. There is clearly a role and requirement for increasing public accountability of local government, and the type of functions described here are part of that. Whilst they are a part, they can only ever be a small local part because the overall regulation must be external and governmental. Another reminder is necessary that we are talking about public money, not private funds.

- *"A renewed focus on integrity"* The office recommended under this part will be dealt with further on in this paper.

- *"Rigorous training and professional development"* This is a good recommendation.

- *"A New "early intervention" framework"* This will be dealt with further on in this paper.

PART B – DETAILED RECOMMENDATIONS

RECOMMENDATION 1 – this has been dealt with previously in this paper.

RECOMMENDATION 2 – the panel recommends the following statement of intent (vision) for a new act:

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

It is easy to dismiss this as over exuberant group think, but it is more than that. We are not proposing writing a novel, this is about a new law, and good laws speak for themselves. The comparative provision (S1.3) in the current act avoids all the hyperbole and efficiently and clearly tells us what the intent of the law is. Sub Clause (1) of that section tells us that the Act provides for a system of local government by —

(a) *providing for the constitution of elected local governments in the State; and*

(b) describing the functions of local governments; and

(c) providing for the conduct of elections and other polls; and

(d) providing a framework for the administration and financial management of local governments and for the scrutiny of their affairs.

There is nothing flashy, no unnecessary rhetoric, just a clear and precise description of what the Act does. This is not a critical issue, and is more about style than substance, but it is indicative of the intent of the panel; this recommendation would be significantly improved be deleting all words after "*…system of local government"*

Sub clause (2) of the existing Act S1.3 clearly tells us what the Act is intended to result in:

(a) *better decision-making by local governments; and*

(b) greater community participation in the decisions and affairs of local governments; and

(c) greater accountability of local governments to their communities; and

(d) more efficient and effective local government.

Again, the wording is clear, concise and is understandable to anyone reading the clause. However, regulatory and compliance issues arise because the intent of an act is descriptive not prescriptive; intents are unenforceable and accordingly they are largely ignored by all. That will not change simply by inserting flowery phrases. I am not advocating retention of the provisions of the current act; what I am saying is that the style should be adopted.

RECOMMENDATION 3 – proposes new objectives for a new act

On reading this part my first thoughts were that the hippy days of the 1960's had returned – the panel's recommendations stumble at the first hurdle by making a sweeping collection of naïve generic statements as their recommended objectives:

a. Democratic and accountable local government that recognises the diversity of and within Western Australia's communities.
b. Recognition of the specific needs and culture of Western Australia's Aboriginal people.
c. Promotion and improvement of the community's economic, social and environmental well-being.
d. An adaptive and forward-looking legislative framework, which supports and enables councils to provide local leadership for the whole community, and to collaborate with each other and with other key stakeholders at a regional level.
e. Open and transparent community participation in the decisions and affairs of local governments.

f. *Enhanced capability of the local government sector, with a focus on continuous improvement and sustainability.*

g. *Efficient and effective service delivery and regulation that is responsive to current and future community needs.*

h. *Informed decision-making by local governments which is in the interest of their communities, within a legislative framework that supports balance and certainty in relation to the different interests of their communities.*

i. *Accountability of local governments to their communities through processes that demonstrate good governance.*

j. *Support for approaches and opportunities which foster collaboration and cooperation both within the local government sector and across all levels of Government.*

The current Act has no objectives, but its direction and intent is set in C1.3:

(1) This Act provides for a system of local government by –

a. *Providing for the constitution of elected local governments in the State; and*

b. *describing the functions of local governments; and*

c. *providing for the conduct of elections and other polls; and providing a framework for the administration and financial management of local governments and for the scrutiny of their affairs.*

(2) The Act is intended to result in –

a. *better decision making by local governments; and*

b. *greater community participation in the decisions and affairs of local governments; and greater accountability of local governments to their communities; and*

c. *more efficient and effective local government.*

(3) *In carrying out its functions a local government is to use its best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity.*

This is not an argument for the status quo, and few would suggest that the provisions of the current act are meaningless; their problem is that they are ignored, unpoliced and unenforceable. The proposed objectives have all those failings but reach new levels of hyperbole and as such warrant individual examination.

a. "*Democratic and accountable local government that recognises the diversity of and within Western Australia's communities.*"

Not only is this more flowery rhetoric, it is grammatically flawed flowery rhetoric. How could any democratic and accountable local government charged with acting within its own boundaries recognise the "*diversity of and within Western Australia's communities*"?

And even if they could; why should they?

The democratic and accountable objectives will be dealt with later in this paper.

b. *"Recognition of the specific needs and culture of Western Australia's Aboriginal people."*

This is an admirable but, in the context of a local government act, meaningless and tokenistic objective; I have a very strong view that such a recognition of our aboriginal peoples should not be buried in the text of laws; they should be proud and prominent statement at the opening of every statute.

The last word is probably a typographical error that is supposed to read as *"peoples"*

c. *"Promotion and improvement of the community's economic, social and environmental well-being."*

Cl 1.3(3) of the current act says:

"In carrying out its functions a local government is to use its best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity."

It is not clear that this recommendation adds anything at all to the current requirements; however, having said that, when councils currently do what is lawfully required of them in this regard, it is certainly controversial.

Readers should note the existing controversies surrounding local governments who do adopt the required social and environmental policies. As controversial as complying with this part of the law becomes; ignoring it brings no recrimination at all.

d. *"An adaptive and forward-looking legislative framework, which supports and enables councils to provide local leadership for the whole community, and to collaborate with each other and with other key stakeholders at a regional level."*

It is interesting to have an objective in a law for "*An adaptive and forward-looking legislative framework..."* it is self-evident that a law is either *"adaptive"* or it is not. As it is equally self-evident that legislators decide the legislative framework and Parliaments cannot and should not be fettered by this sort of well-meaning embellishment.

This objective goes on to say that legislative framework "*...which supports and enables councils to provide local leadership for the whole community, and to collaborate with each other and with other key stakeholders at a regional level."*

This is another well-meaning but poorly worded objective. Would it not have been better for a simple and direct objective that; *"...local governments (councils)are required to provide leadership to their communities and collaborate with other councils?"*

e. "*Open and transparent community participation in the decisions and affairs of local governments."*

What is there not to like about this objective?

f. *"Enhanced capability of the local government sector, with a focus on continuous improvement and sustainability."*

This is a goodish recommendation

g. *"Efficient and effective service delivery and regulation that is responsive to current and future community needs."*

This is grammatically difficult; should it be "Efficient and effective service delivery and regulation that are...." meaning that both are to be responsive.

Or is the responsive requirement intended to relate only to regulation meaning that efficient and effective service delivery is not required to meet those needs?

h. *"Informed decision-making by local governments which is in the interest of their communities, within a legislative framework that supports balance and certainty in relation to the different interests of their communities."*

This recommendation simply does not make sense and could not possibly be included in any new law.

i. *"Accountability of local governments to their communities through processes that demonstrate good governance."*

This objective is another that makes no sense and could not possibly be included in any new law.

j. *"Support for approaches and opportunities which foster collaboration and cooperation both within the local government sector and across all levels of Government."*

Yet another objective that makes no sense and could not possibly be included in any new law.

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

There can be no objection to a new act that is shorter and less prescriptive, but the recommended direction change is aimed at minimising regulations and replacing them with the general provisions mentioned; this is a legal, administrative, governance and ethical minefield.

My submissions to the public review called for a significantly smaller, less prescriptive law that established heads of power; defined roles, responsibilities and functions and put in place a regulatory regime with enforceable accountability processes.

But that is not what is on offer here; instead it is the club seeking to reduce the effectiveness of the laws and regulations that control and restrict the behaviour of their club members.

This dramatic change of strategic direction is one that has been advocated by WALGA and it flies in the face of the recommendations of the many recent Royal Commissions who have all recommended heading in the opposite direction.

No-one has put it better and more succinctly than Commissioner Hayne in the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, when he said:

> *".... entities that broke the law were not properly held to account. Misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished."*

That is as true in local government as it was in financial services.

This part of this recommendation is critical to the integrity of the entire system of local government and what it puts forward should be vigorously opposed.

Public governance depends on two major principles operating conjunctively; the rule of law and rigorous checks and balances. When they are properly supported and implemented, the public interest is more likely to be protected than not.

Conversely, systems that rely on good will and good thoughts always fail.

It is not judgemental on people in the system when processes that impose competent public interest protections are introduced.

This recommendation removes fundamental protections and proposes replacing them with a series of non-obligatory and unenforceable principles, processes, charters, guidelines and templates.

This part is one of a number of recommendations that are so critical to the future of local government that even if opposing them means the entire review collapsed and we remained with the current outdated act, that would still be a better outcome than proceeding with them.

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

This was nearly a very good recommendation that could have been supported. Except that after rightfully rejecting a size and scale compliance regime, the panel went on to recommend pretty much what they had just rejected; they said:

"....a more practical approach was for the new Act to apply minimum standards to all local governments and, where applicable, to provide flexibility within the new Act that enables a diversity of obligations to be placed on or assumed by local governments dependent on their capacity and capability."

Anyone who has ever spent any time examining public systems knows that as soon as minimum standards are introduced, they very quickly become the box ticking norm which are rarely exceeded.

Once more, this is a proposal that has its genesis in the local government club, and it is entirely about reducing public accountability and papering over the structural dysfunction of local government. If a local council cannot meet the requirements of good governance, probity and accounting for the use of public monies, it should not be allowed to have any.

Reducing accountability standards robs local government of legitimacy.

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

This is a complex and difficult series of connected issues and it is worthwhile comparing what is proposed with what exists:

Sub Clause (1) of S2.6 of the Local Government Act 1995 says:

"Each local government is to have an elected council as its governing body."

Sub Clause (1) of S2.7 says:

The council —

(a) governs the local government's affairs; and

(b) is responsible for the performance of the local government's functions.

Sub Clause (1) of S3.1 says:

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

What is proposed is a direct lift from the SA Local Government Act:

Section 7: Functions of a council

The functions of a council include—

(a) to plan at the local and regional level for the development and future requirements of its area;

(b) to provide services and facilities that benefit its area, its ratepayers and residents, and visitors to its area (including general public services or facilities (including electricity, gas and water services, and waste collection, control or disposal services or facilities), health, welfare or community services or facilities, and cultural or recreational services or facilities);

(c) to provide for the welfare, well-being and interests of individuals and groups within its community;

(d) to take measures to protect its area from natural and other hazards and to mitigate the effects of such hazards;

(e) to manage, develop, protect, restore, enhance and conserve the environment in an ecologically sustainable manner, and to improve amenity;

(f) to provide infrastructure for its community and for development within its area (including infrastructure that helps to protect any part of the local or broader community from any hazard or other event, or that assists in the management of any area);

(g) to promote its area and to provide an attractive climate and locations for the development of business, commerce, industry and tourism;

(h) to establish or support organisations or programs that benefit people in its area or local government generally;

(i) to manage and, if appropriate, develop, public areas vested in, or occupied by, the council;

(j) to manage, improve and develop resources available to the council;

(k) to undertake other functions and activities conferred by or under an Act.

Now we see where the reinvigorated planning framework has its genesis; it is integral to part (a) of this recommendation. However, there are some significant hurdles to a WA local government being required to *"plan at the local and regional level for the development and future requirements of its area"*.

The Planning Act removes final say for planning from local government town plans, and the subdivision laws and processes combine with the powers of the State Administrative Tribunal to make local government in WA largely a bystander in the decision making of the formal planning processes of their areas.

If it is proposed to change those laws to allow local government to be in control of planning this could be a good thing; but if, as I suspect, this is more hyperbole, we are wasting our time.

Part (b) of this recommendation dramatically expands the specific matters that local government can handle, and I am not at all sure it is applicable to WA. For example, there is a lot more public discourse necessary before we change the role of local government back to being a provider of electricity, water, gas and health services. Having said that the WA situation could be accommodated by deleting all after *"... residents and ratepayers..."*

Part (c) shifts the role of local government from governing in the interests of those in a district, to one of providing for the "*welfare, well-being and interests of individuals and groups within its community"* This is a subtly worded, but significant, change in the role of local government.

Part (d) is yet another broad statement that could be removed without having any effect at all. Local Governments have responsibilities under the various emergency and fire acts. Those responsibilities are specific, obligatory and, unless it is specifically legislated to be the case, unaffected by anything contained in this Act.

For Part (e) to have any meaningful effect; significant changes are required to the environmental processes and laws of WA. Unless and until that happens, this part should be deleted.

Part (f) is badly worded law; it is not clear whether a local government is to provide the infrastructure for development within its area.

Currently, development infrastructure costs are determined through the development and planning processes with most of the cost falling on the developer. If this is to change, it places a new and significant financial impost on local government and one, I am certain ratepayers do not want.

The less said about Part (g), the better. Local government to be made responsible for providing *'an attractive climate"*?

Really? As an old Pilbara boy, I am really looking forward to returning to my old hometown when the council has fixed up an attractive 25-degree maximum summer climate.

There is no problem with Parts (h),(i), (j) and (k) but if they are included in a new act, little of substance is added. The specificity that is in the SA Act may not be the best way forward as the provisions of our current act already provide for most of these things to occur.

RECOMMENDATION 7 – Sets the guiding principles for a new act:

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

a. Provide democratic and effective representation, leadership, planning and decision-making;

b. Be transparent and accountable for decisions and omissions;

c. Be flexible, adaptive and responsive to the diverse interests and needs of their local communities, including the traditional owners of the land;

d. Consider the long term and cumulative effects of actions on future generations;

e. Ensure that, as a general rule, all relevant information is released publicly, readily available and easy to understand;

f. Provide services in an equitable manner that is responsive and accessible to the diverse needs of the community;

g. Seek to continuously improve service delivery to the community in response to performance monitoring;

h. Collaborate and form partnerships with other councils and regional bodies for the purposes of delivering cost-effective services and integrated planning, while maintaining local representation of communities and facilitating community benefit; and

i. Participate with other councils and with the State and Federal government in planning and delivery of services, setting public policy and achieving regional, State and Federal objectives"

The only thing one can say about these statements of principle is that they are well intentioned; and we all know how that road to hell was paved.

Earlier comments in this paper about weasel words and hyperbole are relevant again here because this part is full of flowery descriptors that rob these principles of legitimacy.

Whilst they are part of laws, legislating non-obligatory and unenforceable principles, processes, charters, guidelines and templates does not work in isolation. It seems the panel does not understand that clear, concise and well-defined laws with obligations, enforcement powers are more likely to produce good outcomes that waffly long principled legal statements and a hope that all will conform to them.

RECOMMENDATION 8 This is one of the more important recommendations in that it seeks the establishment of a Local Government Commission.

The panel recommends;

The Local Government Grants Commission and the Local Government Advisory Board should be combined into a single body responsible to the Minister and named the Local Government Commission, and including the functions of the Grants Commission in accordance with Commonwealth legislation.

a. The role of the Local Government Commission should be to:

(i) Provide recommendations on major local government boundary changes, amalgamations and other necessary reforms;

(ii) Manage the distribution of Commonwealth grant funding to local governments in WA; and

(iii) Monitor the overall health and performance of the local government sector by identifying key issues and trends, and advise the Government and sector peak bodies accordingly.

b. Members should be appointed to the Local Government Commission on the basis of their skills rather than as representatives.

c. The Local Government Commission should consider the financial viability of local governments in making recommendations to the Minister.

d. The Minister and sector peak bodies should have the power to refer matters to the Commission for assessment and advice.

e. *The Commission should play an independent role in monitoring the capacity and the financial health of the sector in collaboration with the Auditor General.*

f. *Minor boundary adjustments where both local governments agree should be handled by the department.*

There is no doubt that the structure of local government is a major cause of its dysfunction and the entrenched high costs of the sector. Some councils are rolling in money whilst their neighbours struggle to make ends meet; the reason? A line on a map.

The Barnett government's bungling of this crucial issue spooked the political horses; but unless this crucial issue is addressed, most other reforms will fail. The number of councils in WA is irrelevant; what should be the determining factor is a community of interest.

My submissions called for this law to include the requirements for setting local government boundaries and all boundary changes to be handled by the WAEC. The irrefutable logic being that the WAEC have the experience in setting boundaries based on legislative requirements.

This recommendation for a local government commission is not proposed to be an independent body; which is a failing that puts all change back into the political processes that have delivered us the current situation. Governments right around this nation have removed their own control over their electoral boundaries because it has been clearly demonstrated that they cannot be trusted to put the public interest first.

This recommendation could be significantly improved if that Ministerial control was removed; however, even then it would still be a second-rate alternative to the tried and proven independent body for handling boundaries; the WAEC.

Part (a)(ii) of this recommendation is a name change for the Grants Commission with no change in function, duties or responsibilities. It is supported, subject to it being made answerable to Parliament.

Part (b) is a positive recommendation that is worthy of support and implementation.

Part (c) is a general placebo clause that has little if any meaningful effect. Having considered *"…the financial viability of local governments in making recommendations to the Minister"* what happens next? Is it a requirement to report that to the Minister? Is the Minister obliged to take any notice of it? What does financial viability actually mean? What happens if two adjoining councils are not financially viable? So many questions, so few answers.

Part (d) is superfluous – anyone should have the right to refer any matter to this commission

Part (e) once established at law the commission is answerable to the Minister; hence it cannot *"plan an independent role"* in anything.

The Auditor General is an officer of the Parliament, it is not part of the government and whilst the office is entitled to provide informal advice to departments and entities, it is not acceptable for the AG to collaborate with agencies of government.

Part (f) retains the department as the body to set agreed boundaries. Why create a dedicated commission and empower it to conduct this function and then also reserve part of the function to the department? It defies logic, is confusing and creates a dual control over a singular issue.

The notes for this section contain these extraordinary statements of intent:

"This combined body should be charged with providing frank and fearless advice to the Minister, the department, and local governments."

And

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

The new legislation will create a new body that answers to the Minister and then require it to provide *"frank and fearless advice to the Minister, the department, and local governments"* while being administered by the department that is responsible for assisting and advising the minister.

Processes like that rarely deliver the goods for the public and having another body inside the club is the least likely outcome to drive positive change in the sector.

RECOMMENDATION 9 says:

"The Panel supports a legislative framework for a system of local government which promotes local democracy and has the in-built flexibility to enable different models of governance which facilitate community participation, provide for representation of the whole community, and for efficient and effective service-delivery for the community."

This is soft to meaningless bureababble that can be argued to mean whatever suits at the time.

RECOMMENDATION 10

"The Panel recommends that through their Partnership Agreement and the proposed Local Government Commission, State and local government consider options to facilitate structural reform that will strengthen the capacity and resilience of the local government system. Those options should include:

a. Revised processes for boundary changes and mergers.

b. Substantially increased cooperation between local governments through an enhanced model of joint subsidiaries.

c. Provision for the establishment of community boards within local government areas."

This recommendation is a dangerous one that is underpinned by that insidious agreement between the government, WALGA and the Local Government Professionals (WA). It creates a partnership between representative bodies and the State as though they are equals; when they are not.

Local government is a subordinate level of government and it is overseen, regulated and authorised by the state; these are not equal parties and promoting local government to that standing is dangerous.

As dangerous as it is to have the regulator's minister in partnership with those the department is supposed to be regulating, the relationships are even more incestuous with other partnerships and board positions being in place.

The recent spate of Royal Commissions and inquiries have all highlighted the failures of regulators who got too close to those they are supposed to be regulating so we know where all this will end; the only possible outcome is failure and neglect by the regulator.

In the recent report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Commissioner Kenneth Hayne addressed the role of regulators, where he said:

"Misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished."

And

"The first general rule, that the law must be applied and its application enforced, requires no development or explanation. It is a defining feature of a society governed by the rule of law."

And

"...an unconditional preference for negotiated compliance renders an agency susceptible to capture' by those whom it is bound to regulate."

The point of including Hayne's comments is to reinforce that, for it to have any meaningful purpose, the law must be both applied and enforced; and regulators must maintain their distance and independence from those they are supposed to be overseeing.

This is not the case in local government in WA and nothing in this panel's report puts such arrangements in place.

Part (a) brings all the heat and pressure over boundaries back into the political arena.

Why would anyone do that?

Part (b) delivers up the very process for delivering Beneficial Enterprises that the panel ruled out.

Part (c) has been addressed earlier in this paper; but it is worth reiterating concerns over the removal of democratically elected councils and replacing them with appointed bodies.

In a democracy when those in authority become convinced that democracy cannot work, we have a serious problem. I remind readers of the WA Royal Commission into the Commercial Activities of Government, which said:

"The Commission's principal concern is to ensure that public officials and agencies are so regulated as to render them answerable for their actions to the public."

And

"It is for the people of the State to determine by whom they are to be represented and governed."

And

"The institutions of government and the officials and agencies of government exist for the public, to serve the interests of the public."

No-one reading and understanding those quotes would ever agree to removing democratically elected councils and replacing them with appointed bodies.

This is a terrible, almost fascistic, proposition that should be immediately ruled out of ever being implemented.

RECOMMENDATION 11 - *"The Panel recommends an additional legislative option for local governments to establish community boards"*

All the comments on the Recommendation 10 are valid here, but the panel goes on to say:

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

What the panel have capably described is the dysfunction that results from the current boundaries but instead of dealing with that issue, they seek to import a process from a country with a completely different system to ours.

It is bizarre to advocate for election of representatives who will:

"(a) without bias represents the current and future interests of all people who live, work and visit the district;

(b) provides leadership and guidance to the community in the district;

(c) facilitates communication between the community and the council;

(d) accurately represents to the community the policies and decisions of the council;

(e) participates in the development of strategic plans;

(f) must be prepared to –

(i) participate with an open mind in the local government's decision-making processes;

(ii) be an active and contributing member of the council; and
(iii) make considered and well-informed decisions;

(g) makes all reasonable efforts to acquire and maintain the skills necessary to perform the role of councillor; and

(h) performs such other functions as are given to a councillor by this Act or any other written law"

And then to go on to outline why doing so will not work without unelected bodies directing councils. Which part of representative democracy confuses this panel? It is here that the panel's failure to take account of the importance of elected representatives in a democracy is highlighted

S5.8 of the current Local Government Act creates and grants a local government the power to *"...establish committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees."*

That, and the provisions following in the current act, allow a council to involve community expertise and interest in their decision-making processes, and it happens without disenfranchising those who are democratically elected.

RECOMMENDATIONS 12 and 13

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

a. Making increased collaboration a specific objective and principle.

b. Providing an improved model of joint (regional) subsidiaries that can be used for strategic planning, resource sharing, shared services delivery and commercial enterprises (see also Recommendations 14 and 39).

c. Requiring regional cooperation as part of IPR (see also Recommendation 35)."

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

It is more logical to deal with recommendation 13 first. Once again, this is a badly worded recommendation; either there is a need for a new form or *"regional authority"* or there is not. Who is to give *"consideration"* to the *"potential need"*? How is this even possible? What is the regional authority which this recommendation addresses?

If the reviewers are referring to Development Commissions, then reading the "Regional Development Commissions Act 1993" would be a good place for them to have started because then they may have noticed that all they are seeking is already required under that act.

Returning to recommendation 12, whilst regional cooperation can be a useful tool for existing councils; this recommendation is only necessary because the panel did not deal with boundary dysfunction. If they did so the necessity for this recommendation would be significantly reduced.

RECOMMENDATION 14

a. *"The regional council model is discontinued.*

b. A flexible model of joint (regional) and single (local) subsidiaries be introduced in order to enable:

(i) collaboration between local governments; and/or

(ii) involvement of local government in economic development including commercial activities."

The comments relating to earlier relevant recommendations also apply here.

RECOMMENDATION 15

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

This recommendation is nonsensical; once more it is based on the British Columbian legislation which is not analogous to the WA situation. There is no need or requirement for a set of "*principles for intergovernmental relations"* because there is no intergovernmental relationship. The relationship between the State and Federal governments is set by the Australian Constitution, and the WA Constitution makes the Parliament responsible for the State's subsidiary entity of local government.

It is amazing that none of this panel's experts noticed that the State Local Government Partnership is NOT with any local governments; it is between the State Government (not the department), WALGA and the Local Government Professionals (WA) and not one of those bodies is a local government.

RECOMMENDATION 16 and 17

"The Panel recommends that the new Act recognises the unique status of Aboriginal people as traditional owners of the land and ensures that they are empowered to engage in decision-making in their local communities."

"The Panel recommends that further consideration is given to the manner of recognition, and the options for inclusion, engagement and shared decision making between local governments and Aboriginal communities, through consultation with the Department of Premier and Cabinet and the Aboriginal Advisory Council of Western Australia, and with reference to practices in other states, the Northern Territory and New Zealand."

This matter was addressed earlier in this paper and, whilst there can be no rational opposition to it, it would be a mistake to follow the New Zealand model as it is underpinned by treaties and no such arrangements exist in WA. Whether treaties should or should to not be in place is not a matter that should be handled in a local government act.

RECOMMENDATION 18

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

As someone who lived in and represented remote communities for many years, I have great sympathy for what is being sought here. However once again the rhetorical flourish exceeds the practicality; what the panel is seeking is not an improvement in service delivery to remote communities, it is seeking "*...further consideration"* and *"...appropriate adjustments to Integrated Planning and Reporting requirements".*

RECOMMENDATION 19

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

A good logical, practical recommendation that should be urgently implemented.

RECOMMENDATION 20

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

A good logical, practical recommendation that should be urgently implemented, subject to the following comments for Recommendation 21.

RECOMMENDATION 21

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

This was very nearly a good logical, practical recommendation that should have been urgently implemented, but instead of simply removing antiquated property based voting the panel imposes an additional condition on all local governments. The panel's proposed objectives for the new act, at par (c) is for the *"Promotion and improvement of the community's economic, social and environmental well-being";* surely that covers all that is needed?

In any functioning democracy, property-based voting rights cannot and should not exist.

RECOMMENDATION 22

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

A good logical, practical recommendation that should be urgently implemented.

RECOMMENDATION 23

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

A good logical, practical recommendation that should be urgently implemented.

RECOMMENDATION 24

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

There is no need for this recommendation; when electronic voting is safe, reliable and protects the sanctity of the privacy of each vote, if a government so chooses, it will be adopted regardless of what provisions there are in a local government act.

RECOMMENDATION 25

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

A good logical, practical recommendation that should be urgently implemented.

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

One of the problems with this review is that it is not obvious who recommended it or why this issue has arisen. There is no obvious reason why more time is needed but it is not of any real significance in the scheme of things.

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

The comments made about (b) above apply here also.

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

While this is a good logical, practical recommendation that should be implemented, it suffers from a lack of sanction for non-compliance.

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

This is a good logical, practical recommendation that should be implemented; however, it also suffers from a lack of sanction for non-compliance.

(f) *"Donations via crowd funding platforms should be regulated so far as possible."*

This could have been a well targeted and efficient ban on crowd funding of campaigns; sadly, it is not.

RECOMMENDATION 26

(a) Population should be used to determine the number of elected member positions:

(i) Population of up to 5,000 – 5 councillors (including President).

(ii) Population of between 5,000 and 75,000 – 5 to 9 councillors (including Mayor/President).

(iii) Population of above 75,000 – 9 to 15 councillors (including Mayor).

A good logical, practical recommendation that should be urgently implemented.

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

Wards are a corruption of the electoral system and they should be abolished; their very existence allows candidates to nominate for a vacant ward position and avoid electoral processes.

The commonly used comparison with seats in the Legislative Assembly is a nonsense because a local government council is a decision-making body that is not a Parliament. Winning a majority of seats on a council does not give a group any additional rights to form a local government and the City of Perth Inquiry had a lot to say about how destructive majority blocs that result from this process can become.

But if the panel is determined to retain them, the WAEC is the appropriate body to review ward boundaries.

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

Wards are a corruption of the electoral system and they should be abolished.

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

They should not – changes should have effect immediately after the act is promulgated.

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

Why? Council elected presiding officers should only hold office while they have the confidence of their peers. At any time, a vote of no confidence in the presiding officer should result in the position being declared vacant. It is a strange thing called democracy.

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

Agreed; term limits are an American abomination that should be avoided at all costs.

RECOMMENDATION 27

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

Rubbish – the Town of Port Hedland and the City of Karratha make an infinitely greater contribution to *"…the development of the State economy."* than does the City of Perth and we would not consider giving the Pilbara resource companies property franchise voting.

The property franchise abomination was abolished at state/colonial level in WA in the 1890's and nationally in 1902; there is no justification for its existence anywhere in the State.

RECOMMENDATION 28

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

This is a largely rhetorical recommendation that is made redundant by the following recommendations.

RECOMMENDATION 29

The panel recommends the following and my comments have been inserted as postscripts:

"That a council:

(a) considers the diversity of interests and needs of the local community;

Having considered the diversity of interests and needs of the local community; what then? This is more rhetorical flourish. This panel appears to be of the opinion that considering things is an outcome; it is not. One can consider a matter and still make improper, incorrect or ineffective decisions.

If the panel is seeking that councils take matters into account when making their decisions; the panel should say so and after requiring it to happen, also to require a demonstration of its effect on a final decision.

(b) is accountable to the community for the local government's performance;

How?

(c) ensures adequate opportunities and mechanisms for engagement with the local community;

How?

And then those weasel words reappear.....

What is adequate? Adequate to whom? The council or the community?

Having been *"engaged with"* can the community then be ignored with impunity?

(d) ensures the timely development and adoption of the strategic plans, programs and policies of the council and promotes the effective and consistent implementation of these;

Surely if a council has developed and adopted the required "...s*trategic plans, programs and policies"* it is in a position to require them to be implemented?

Who do they promote those things to? Their CEO?

If *"...the strategic plans, programs and policies..."* are as crucial as the panel seems to think they are, surely the law should allow a council to have the power to direct its CEO to carry out "... *the effective and consistent implementation of these"* matters?

To do otherwise places a CEO in a more powerful position than a council and in a democracy, having the ultimate say on the use, timing and efficacy of public funds lying with an unelected bureaucrat is just plain wrong.

(e) develops and adopts strategic plans and a budget for the local government;

Agreed

(f) keeps the local government's resource allocation, expenditure and activities and the efficiency and effectiveness of its service delivery, under review;

The power imbalance between a council and its sole employee is the most critical issue in this entire review process. How does a council do these things that the panel requires, when the CEO is to be granted far more power than a council?

This part simply grants council the power to review; what then?

What if the CEO rejects the review? What then?

What if the review is unsatisfactory? What then?

The reason for those trite questions is to highlight that the only power this part grants is the power to review, it is not to direct, not to take any corrective action or not to govern; the power is restricted to reviewing.

These proposals make no provision for a council to have any meaningful role other than to plan and budget. All other powers are removed or transposed to the CEO and councils do not even have an unfettered right to access information.

This relationship is already way out of balance and a new act should correct that imbalance; if it does not, a new law cannot possibly function in the public interest.

(g) provides strategic direction to the CEO in order to achieve high-quality administration and performance of the local government's functions in accordance with the Local Government Act and local government's policies;

How does a council do this when the CEO will now have more power than a council? How does a council do this when the CEO has the power to restrict information and a council has no power to direct their only employee? How does a council do this when it has no resources, no staff and no authority to require work to be done by an administration?

(h) carries out an annual performance review of the CEO and in agreement with the CEO adopts Key Performance Targets for the following year;

Why is a CEO's agreement necessary for adopting KPIs? Surely the council has the right to set their own KPIs and judge CEO's performance of them accordingly? After all the council, not the Mayor or President, that is the employer. Like any employee, CEO's have a right to be consulted on the KPI's which form the basis of their performance assessments, but they should not get a right of veto which is what this recommendation provides.

No agreement = No KPI's

(I) provides a safe working environment for the CEO, officers and councillors;

This is an intriguing recommendation because it contradicts the direction the panel has taken about the separation of the rights, roles and functions of the respective office holders.

All employers have obligations at law in this regard. The council has only one employee and if the so called "separation of powers" nonsense continues, any council that interfered in the workplace arrangements of council officers would be open to action for doing so.

Until this changes the safe working environment of the officers of a local authority is the responsibility of the CEO and it never can be the council.

(j) reviews annually the delegations of the council; and

Agreed

(k) performs such other functions as are given to a council by this Act or any other written law."

Agreed

One of the failings of the current act has been the determination of legislators to micromanage local government by writing specific provisions into law. By and large these have failed because, while there is a role for that type of legislation, generally speaking, in these types of laws, oversight, reporting, checks, balances, good regulation and penalties for non-compliance do a far better job of protecting the public interest.

This panel has succumbed to that behaviour. Without wanting to revert to the status quo, consider the current act's provisions for the role of a council.

"(1) The council

(a) governs the local government's affairs; and

(b) is responsible for the performance of the local government's functions.

(2) Without limiting subsection (1), the council is to

(a) oversee the allocation of the local government's finances and resources; and

(b) determine the local government's policies."

That clause is simple, understandable, dispassionate and provides all the powers necessary for councils to do the things raised in the panel's expansive and rhetorical recommendations.

A similarly constructed clause without those literary flourishes should not be beyond the ability of our governmental system.

RECOMMENDATION 30 - The panel recommends the following role for a councillor and my comments have been inserted after each one with some general comments at the end of the section:

(a) without bias represents the current and future interests of all people who live, work and visit the district;

Without bias? For want of sounding repetitive, this is more unenforceable, undefined and largely biased hyperbole. Why are elected councillors the only part of the entire local government sector where bias is assumed and will be legislatively (but not competently) banned. Are other office holders allowed to be biased? Are CEO's required to act *"without bias"*? Not according to the recommendations of this panel; which may well be biased.

How could an elected representative ever be legitimately expected to represent the "*…current and future interests of all people who live, work and visit the district."?*

How could anyone actually do that?

If this is adopted, councillors will now have to represent the interests of ALL people who…. WOW unanimity in a democracy – this is a first.

Why should councillors of a district now be responsible for the interests of those who *"visit the district"?* It would be absurd to legislatively require this of a council, but to impose that responsibility on individual councillors without granting them any countervailing individual power is a significant legislative error.

(b) provides leadership and guidance to the community in the district;

A good logical, practical recommendation that should be implemented.

(c) facilitates communication between the community and the council;

A good logical, practical recommendation that should be implemented.

(d) accurately represents to the community the policies and decisions of the council;

(e) participates in the development of strategic plans;

(f) must be prepared to –

(i) participate with an open mind in the local government's decision-making processes;

(ii) be an active and contributing member of the council; and

(iii) make considered and well-informed decisions;

The intent in Recommendations (d),(e) and (f) would be better established by the provisions of the current act; i.e. "*…participates in the local government's decision-making processes at council and committee meetings".* That provision succinctly and adequately describes what a councillor's role is and should be. I refer readers to the general comments below.

(g) makes all reasonable efforts to acquire and maintain the skills necessary to perform the role of councillor; and

A good logical, practical recommendation that should be implemented.

(h) performs such other functions as are given to a councillor by this Act or any other written law."

A good logical, practical recommendation that should be implemented.

Defining the role of a councillor is an important part of this legislative review. It is here that councillors should be able to turn to see what they are supposed to be doing and once again the judgemental rhetoric of the panel inhibits good law making.

For example, would the weasel words *"without bias", "accurately represents", "with an open mind"* and *"active and contributing member"* ever be used to describe the functions of any Member of Parliament? MP's all have electorates, constituents and most are members of political parties and whilst we expect they put the public interest first, no-one would countenance legislatively requiring them to comply with these subjective standards.

None of the standing orders, constitutions, rules or laws that control our democratic parliaments have such offensive descriptions of elected representatives so why should this one?

These judgemental statements should be removed.

Councillors have little direct individual power because those they had, or were purported to have, were codified and largely removed by the 1995 Act, and it is here that one of the false dichotomies of local government has its genesis. The 1995 Act was legitimately aimed at preventing individual councillors from interfering in the day to day running of a local government; it was successful in this.

Since then powerful forces have expanded those individual restrictions to create an independent republic of administration; whilst it was never intended that the CEO and council powers would be equal, it was always envisaged that the Council collectively would be the responsible governing body.

This power imbalance was made clear by Mr Sefton of the State Solicitor's Office in the recent Town of Cambridge V Templeman case (P85), he said:

"…then whilst the CEO bears that primary responsibility to deal with the things, if the things aren't being dealt with, the council itself is ultimately responsible. And it needs to ensure that these matters are dealt with in a way through appropriate structures and policies or the way in which it can manage the actual CEO if it's suggested the CEO is failing to deal with the issues."

That is an inbuilt assumption that elected officials required guidance on probity and governance issues, but unelected officers do not. By definition this panel accepts the possibility of ethical and proprietorial failings by elected representatives, but they do not countenance the same possibilities arising in the behaviour of unelected bureaucrats.

The inquiries into Dowerin, Exmouth, Joondalup and Perth have all raised similar concerns over CEO's being the source of all information and advice while being unquestionable and unchallengeable mandarins.

Given the direction of these recommendations, it is safe to assume that the restrictions on the relationship between individual councillors and staff will remain. Individual councillors have no power to interfere or direct staff and there is no real pressure for that to change; however, councillors acting in concert as a council should have significant powers.

What has been happening is that the legitimate restrictions on individual councillors have been expanded to include council. This is both incorrect and improper.

Under the current act, S2.7 requires the council to govern the local government's affairs and be responsible for the performance of the local government's functions. In this panel's recommendations that right to govern is removed, as is the responsibility for the performance of functions; these are replaced by general monitoring and planning roles.

This is an absurdity; who in their right mind would propose a system of local government that has no power to govern?

Point (f) of this part says a councillor: *must be prepared to –*

(i) *participate with an open mind in the local government's decision-making processes;*
(ii) *be an active and contributing member of the council; and*
(iii) *make considered and well-informed decisions;*

As objectionable as this wordsmithing is in principle, one could live with a councillor being required to do those things, but if this recommendation is adopted that is not what will be required. This legislated requirement is for councillors to be prepared just like a good boy scout.

Under this proposal, there are no lawful requirements to conform, a councillor's obligation stops at preparedness. Providing a councillor is prepared to do the things in subclauses (i) (ii) and (iii), their lawful responsibilities are acquitted. If they subsequently go into a meeting with a closed mind, do not contribute, be inactive and not make considered and well-informed decisions; it is ok, just as long as before the meeting they were prepared.

It is also worth noting that no such obligations are required of an unelected CEO, particularly one acting under delegated authority. That seems to be a strange outcome, given the series of reports from various sources that have led to the prosecution of a number of CEO's.

Having said that, it is wrong to assume that simply holding a particular position makes any, or all, of the people in local government act improperly. I refer readers to the many comments in this document from Commissioner Haynes, and other inquiries and royal commissions.

It is not judgemental on people in any system to introduce checks and balances that impose these critical public interest protections and that is because these type of initiatives are more likely to protect the public interest than any other measures.

RECOMMENDATION 31 - The panel recommends the following role for a Mayor or Shire President and comments have been inserted after each point with some general comments following:

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

(a) provides leadership and guidance to the community in the whole district;

A good logical, practical recommendation that should be implemented.

(b) carries out civic and ceremonial duties on behalf of the local government;

A good logical, practical recommendation that should be implemented.

(c) acts as the principal spokesperson on behalf of the council and explains and upholds the decisions of the local government;

This is a dramatic change in the role of a presiding officer; previously the Act clearly granted them the power to be the lawful person who *"...speaks on behalf of the local government".*

This recommendation removes that certainty and replaces it with added responsibilities to explain and uphold decisions of the local government. If this is allowed to be implemented, a presiding officer is then obligated to uphold any decision of a CEO; regardless of whether or not the council agrees with the decision.

This change removes the ability for any presiding officer to express any personal view. These new duties and obligations are in addition to a presiding officer's responsibilities as a councillor. As a councillor they would be entitled to express a dissenting view on decisions, but as presiding officer they would be bound to uphold them.

For example; if a factionalised council votes to act unfairly, the presiding officer is prevented by this proposed law from speaking against that injustice and is bound to uphold that decision. Every day of the week, right around the world, members of parliaments and other legislatures publicly call decisions into question and one can only wonder why it is that local government representatives should not be allowed the same rights.

This part needs further consideration and altering to more accurately reflect the rights, obligations and powers of office holders speaking publicly.

(d) encourages good working relations between councillors, and between the council and the CEO;

Assuming that the intent of this part is that the presiding officer is to provide leadership aimed at ensuring professional working relationships between the respective parties; surely that extends beyond encouragement?

(e) provides guidance to councillors about what is expected of a councillor including in relation to:

(i) the role of a councillor;

(ii) the councillor code of conduct; and

(iii) standing orders

A sound recommendation.

(f) liaises with the CEO on the local government's affairs and the performance of its functions;

This is a direct lift from the current act, but it is still a logical, practical recommendation. However, it leaves some problems in place and they are that there is no power for Presiding officers:

- to guide or direct CEO's; or
- to do anything other than liaise; or
- to explain council's decisions; or
- require council's decisions be implemented; or
- to report or act on matters that arise between meetings of council

(g) presides at meetings in accordance with this Act;

A sound recommendation.

(h) leads the development of strategic plans;

There is no need for such a law. It reserves a power for a specific function when the general right to chair and lead would allow that to happen anyway. It is would be legislators attempting to micromanage council matters with legislative changes.

For example, what if one councillor is a competent retired planner who, with the unanimous support of their colleagues and staff, is willing to lead in this way. It is too easy to say that a way around the law can be found if all agree, but that obviates the need for such a provision in the first instance.

(I) promotes partnerships between the council and key stakeholders;

What? The only role for a presiding officer is to *"promote partnerships"*? Why? They cannot initiate or negotiate a partnership?

What do we need this provision for? It is superfluous groupthink.

(j) leads and facilitates the presentation of the annual Council budget;

This is a confusing part. It is implicit that the regulated timelines and processes for budgeting will be removed under the panels proposals to *"expand self-regulation"* and *"Minimise the use of Regulations".* If that is the case this power places all responsibility for budgeting on the presiding officer.

However nowhere in the panel's recommendations are the necessary transfer of powers, resources or the authority to make that happen.

One assumes the only way that a presiding officer will be able to acquit their responsibilities in this regard is to ask the CEO to do it. And that means ask, because there is no power to direct it to occur.

(k) initiates the annual performance appraisal of the CEO; and

This is a council responsibility that is being transferred to the presiding officer; it is benign and largely irrelevant in the scheme of things.

(l) performs such other functions as are given to the mayor or president by this Act or any other written law."

A sound recommendation.

RECOMMENDATION 32 The panel recommends the following role for a CEO and comments have been inserted after each point with some general comments following:

"*(1) The CEO's functions are to –*

a) *advise and assist the council in relation to the functions of a local government under this Act and other written laws;*

This recommendation adds the word *"assist"* to the existing act's provisions; as such it is largely window dressing making no substantive change and because the key to this part is for the CEO to *"advise"* it should be supported on that basis.

(b) *ensure that timely and accurate advice and information is available to the council so that informed decisions can be made;*

This provision is one of the more controversial provisions of the current act because it places a responsibility on CEO's to provide advice and information only to the council. It does not place the same obligation on CEO's when an individual councillor seeks advice or information, nor does it address the design flaw of the CEO being the source of all advice to council. Nor does it allow for external verification of the alleged *"... accurate advice and information..."*

In the normal course of events that is not a major issue but when the CEO is both the issuer of and the source of advice that things get complicated. This matter came up in the inquiry into the Shire of Dowerin where it became clear that the councillors had the power to seek information but did not know it. In effect councillors individually, or collectively as council, did not know what they needed to know and there was no-one other than the CEO to tell them.

Having said all that, this recommended provision is still better than the existing one in that it requires CEOs to provide *"timely and accurate advice and information"* to council.

The provision could be improved further by requiring CEO's to make similar provisions to advise individual councillors.

The provision could also be expanded on in a different part of the act by creating a punishable offence to withhold from, or provide incomplete or inaccurate information to, councillors or council.

(c) *ensure that the mayor and other councillors are given the administrative and professional support necessary to effectively discharge their role;*

On the face of it, this is a sound recommendation. There is only one small caveat and that is that there is no provision for a CEO to provide similar support to the council.

(d) *advise the council on appropriate forms of community engagement;*

(e) *advise and consult the mayor and council on the development and implementation of the strategic plans, programs, strategies and policies of the council;*

(f) *prepare, in consultation with the mayor and council, the draft budget;*

Because (a) and (b) provide the necessary powers for these things to be done the proposed clauses (d), (e) and (f) are redundant and should be deleted.

(g) ensure that the policies and lawful decisions of the council are implemented in a timely and efficient manner;

This is a sound recommendation; however, the panel's other recommendations provide no comfort that this will be any more effective than the current provision. Somewhere in the law there needs to be sanctions for CEO's who:

- commit fraud; or
- refuse to provide information to councillors; or
- mislead councillors or councils; or
- omit critical or important information; or
- act without proper authority, delegated or otherwise.

All these matters could be addressed in an enforceable and legislated code of conduct for CEO's and it is critical to note that the panel makes no such recommendation.

(h) conduct the day-to-day management of the local government in accordance with the strategic

plans, programs, strategies and policies of the council;

This is a sound recommendation that again lacks any enforcement procedures or non-compliance cost to the CEO and it also does not include any obligation to implement any decisions of council.

(i) ensure the effective and efficient management of the local government in a way that

promotes —

(i) the effective, efficient and economical management of public resources;

(ii) excellence in service delivery; and
(iii) continual improvement;

Obviously, someone on the panel liked the words *"effective and efficient".* That aside, this is another provision that does not do what its authors seem to want. How does a CEO ensure those sought-after outcomes if a council decides differently?

A macro example is the provision of health services into remote communities; it can never be *"effective and efficient",* but that should not prevent it happening, because it is necessary. If the council decides a measure is necessary, why would the law give their employee the power to decide otherwise?

The semi colon at the end of (ii) should be a full stop.

(j) maintain systems to enable effective planning and accurate reporting of the financial and service performance of the local government to the council and community;

There are so many subjective statements in this incomprehensible recommendation that no executive could ever comply with it.

(k) speak publicly on behalf of the local government when approved by the mayor or president to do so;

This is an acceptable recommendation with the insertion of the word "only" between *"government"* and *"when".*

(l) be responsible for the employment and management of local government employees, except with respect to the position of CEO, through management practices that —

(i) promote equal employment opportunities;
(ii) are responsive to the local government's policies and priorities; and

(iii) provide a safe working environment;

The proposed clauses (i), (ii) and (iii) are all requirements of various laws and as such are redundant and should be deleted.

(m) ensure the local government complies with this Act and any other written law;

While this recommendation is stating the obvious, it draws attention to the rule of law which is overlooked in discussions about local government; complying with the law is not optional.

(n) ensure that records, proceedings and documents of the local government are properly kept for the purposes of this Act and any other written law; and

This is an acceptable recommendation that once more lacks any enforcement provisions and is also a requirement of the State Records Act.

(o) perform any other function specified or delegated by the council or imposed under this Act or any other written law as a function to be performed by the CEO.

This is an acceptable recommendation

(2) The CEO must inform and consult the council when determining, or making, significant changes to –

(a) the organisational structure for the staff of the local government; or

(b) the processes, terms or conditions that are to apply to the appointment of senior executive officers; or

(c) the appraisal scheme that is to apply to senior executive officers.

This is a new and welcome addition that one assumes will replace the current S5.37 that enabled councils to designate and monitor senior positions.

As pointed out earlier in this paper, when comparing the language used, none of the panel's weasel words attributed to democratically elected representatives manifest themselves in the parts of the review relating to CEO's. CEO's are not required to act "*without bias",* or *"accurately represents"* matters and issues; they are not required to act, *"with an open mind"* or to be an *"active and contributing member".*

This is a clear demonstration of the inherent bias of this panel that results from the pressure applied by the governments partners; WALGA and LGP (WA).

These definitions of the roles and powers of the respective parts of a local government are among the most controversial part of this review. They are also among its biggest failings.

In no other field of administration is an executive position granted as much unchecked power as a CEO in local government. Even in healthy well managed councils the relationship is unbalanced between councils and their employee; this legislated dysfunction is exaggerated when the relative powers of an individual councillor and a CEO are assessed.

In every democratic jurisdiction power should always reside with those elected; that is not the outcome of this review and the recommended roles for the respective parties will only perpetuate this fractious relationship.

The substantial point being that a councillor is primarily elected to represent the interests of electors, residents and ratepayers. What the bureaucrats struggle with is that, democracy is a messy business and sometimes those elected disagree; when this occurs the vehicle for progress is political (which may or may not be party political) and this is also messy.

RECOMMENDATION 33

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

a. *Councils actively engage with their local communities;*

b. *Councils are responsive to the needs, interests and aspirations of individuals and groups within its community;*

c. *Community engagement processes have clearly defined objectives and scope;*

d. *Participants in community engagement have access to objective, relevant and timely information to inform their participation;*

e. *Participants in community engagement are representative of the persons and groups affected by the matter that is the subject of the community engagement;*

f. *Participants in community engagement are entitled to reasonable support to enable meaningful and informed engagement; and*

g. *Participants in community engagement are informed of the ways in which the community engagement process will influence council decision-making."*

This recommendation should not be adopted. This is not an argument against community engagement, increased consultation and a healthy exchange of views between elected representatives, their organisations and the public; it is a rejection of the specific provisions recommended.

That rejection is based on the unworldliness of the proposals and the quirky nature of the sole supporting paragraph in the panel's report. For such far reaching changes to the fundamental operations of local government one would have expected significantly more than one paragraph, but that sole paragraph says:

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

One could write a book about that paragraph but it is ironic that the panel thinks that the community is so much of a key that it avoided recommending compulsory voting because *"...recommendations contained within this report should be implemented to increase voter participation and possibly negate the need for the introduction of compulsory voting."*

Representative democracies depend on popular elections and not having the ability to be popularly elected by the wider populace robs local government of its electoral legitimacy. It is not possible to prop up that illegitimacy by regulated processes; even if it was possible it is not desirable because to do so undermines elected representatives.

The panel itself recommended a shorter, less prescriptive act that established clear principles; but for this part, it then went on to recommend a longer more prescriptive provision and less regulation which is where this recommendation properly belongs.

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

This is a recommendation that can be supported in principle however it there should be a model charter prepared, the detailed provisions should not be in the Act, they should be in subsidiary legislation.

RECOMMENDATION 35

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

(a) As a minimum, councils provide information on their achievements and future prospects;

(b) Councils report on the local government's financial performance and performance against relevant Council Plans;

(c) Both the mayor/president and the Chair of the Audit Committee address the meeting;

(d) There is ample time for questions; and

(e) Wider community participation is encouraged through different delivery mechanisms."

These sorts of amendments are known in the trade as curtain amendments because they are meaningless window dressing. For meetings such as that proposed they have to have meaning; they need to allow resolutions (including votes of no confidence in elected representatives) to be carried by the public and for responses to be published as soon as possible not as is currently the situation, at the next year's meeting.

If the panel's wish is to change the annual reporting processes to make them more relevant significantly more work needs to be done.

RECOMMENDATION 36 and 37

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

a. *Councils plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services to meet the diverse needs of the local community;*

b. *Strategic planning identifies and incorporates, where appropriate, regional, State and Federal objectives and strategies concerning the economic, social, physical and environmental development and management of the community;*

c. *Strategic planning addresses the community's vision;*

d. *Strategic planning takes into account the resources needed for effective implementation;*

e. *Strategic planning identifies and addresses the risks to effective implementation; and*

f. *Strategic planning is a key accountability tool that provides for ongoing monitoring of progress and regular reviews to identify and address changing circumstances.*

37. *The Panel recommends:*

a. *IPR be given greater prominence in the new Act as the centrepiece of 'smart' planning and service delivery.*

b. *The new Local Government Commission and the department should take steps to improve understanding and skills across the sector to ensure consistent implementation of IPR requirements.*

c. *IPR provisions in the Act should be expanded to include the issues currently covered in the regulations (suitably updated in accordance with these recommendations).*

d. *IPR provisions and guidelines should be amended to, amongst other things –*

(i) Highlight the central goal of advancing community well-being (economic, social, cultural and environmental).

(ii) Replace the current requirement for a Strategic Community Plan with a more flexible framework for 'Community Strategies'.

(iii) Reframe Corporate Business Plans as broader 'Council Plans' prepared by each incoming council.

(iv) Mandate deliberative community engagement in the preparation of both Community Strategies and Council Plans.

(v) Require a 'regional issues and priorities' section within Council Plans, to be prepared in consultation with neighbouring/nearby local governments.

e. *Provision should be made for a baseline reporting system as part of the IPR framework, and local governments should be required over time to report against a wider range of performance measures covering financial management, service delivery, governance and community wellbeing.*

f. *Annual reports should include a statement of performance against the objectives, programs and projects set out in Community Strategies and Council Plans.*

g. *The Audit, Risk and Improvement Committee (see Recommendations 53 and 54) should monitor the local government's performance in implementing the IPR framework, including compliance with relevant statutory obligations, and report its assessment to the community (for example, as an addendum to the council's annual report and/or as a statement to the Annual Community Meeting proposed in Recommendation 35).*

h. *That all IPR plans be reviewed every four years (to align with the new election cycle), two years or one year depending on the plan."*

This recommendation has been addressed earlier in this paper, but it is worth reiterating the main points:

- IPR is poorly understood; and

- IPR is a dated concept; and
- IPR training is worthwhile; and
- IPR morphs into a box ticking exercise; and
- internal monitoring does not work.

RECOMMENDATION 38 *"The Panel recommends:*

a. *As a minimum, local governments must seek to identify and provide, or offer, to all its citizens, a minimum level of services to meet statutory obligations.*

b. *The Minister should have the power to direct a local government if it fails to provide or offer these services.*

c. *The new Act should incorporate financial sustainability principles which also link to the IPR framework.*

d. *Local government services and programs should be aligned to the IPR framework.*

e. *Local governments conduct regular reviews of services and service levels including community consultation."*

In its current form, this recommendation should be rejected because once governments mandate minimum standards idealism and optimism do not change the inevitability of that minimum becoming the standard.

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

Little in this process has given me any cause for joy apart from this recommendation. The delicious irony of the panel making the case for a new act that *"acknowledges the status of local government as a sphere of government..."* and then going on to require that newly created sphere to be "c*ognisant of State Government plans"* is not lost on me. But I suspect in the groupthink of this panel's decision-making it was lost on them.

Either local government is an autonomous level of government or is it not. If it is, it does not need be cognisant of any other government's plans. But here we are with this recommendation.

Economic development is a risky business and what the role for local government is in it, is at best uncertain at worst requires placing public funds at risk.

To pick the ends of the spectrum I ask the panel what is the "*active role in economic development at both local and regional levels"* they would expect from Peppermint Grove and Gascoyne Junction or Yalgoo. The latter two have a far greater need for economic development than the former; which is in an infinitely better position than the other two.

Or maybe the panel could consider what the "*active role in economic development"* the four shires of the Pilbara should be doing regionally.

Contemplating these absurdities will demonstrate clearly what a bad recommendation this is.

It should be rejected.

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

This recommendation should be rejected because it is completely at odds with the findings and recommendations of the 1992 WA Royal Commission into Commercial Activities of Government, who, when addressing government's role in commerce said:

"3.13.2 The vital issue is not the activities in which government engages, but the conditions under which it engages in them. The public is entitled to insist that government be conducted openly and that it be, and be seen to be, accountable for its actions. Nowhere is the need for this more apparent than when it undertakes initiatives which put public funds and resources at risk."

Governments and business are never a good mix, but this recommendation for *"the freedom for local governments to be involved in commercial activities"* does not conform with the findings of that royal commission.

If such a dramatic change is ever implemented (and my preference is that it not be) the public has every right to insist as the very minimum (see how it works) that any commercial activity *"be conducted openly and that it be, and be seen to be, accountable for its actions".*

This of course means that the law should provide that councils, councillors and officers of local governments (including CEO's) are to be held accountable for public funds and damages, or losses if they be incurred.

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

a. *Local government autonomy to establish a single or joint subsidiary to:*

   (I) Carry out any scheme, work or undertaking on behalf of the council;

   (ii) Manage or administer any property or facilities on behalf of the council;

   (iii)Provide facilities or services on behalf of the council; and/or

   (iv) Carry out any other functions on behalf of the council.

b. *The subsidiary to be established through a charter.*

c. *The charter to be certified by an independent and suitably experienced legal practitioner as within power and National Competition Policy.*

d. *Public notice of the proposal to establish the subsidiary to ensure that there are no private operators that would be significantly disadvantaged.*

e. *The subsidiary to be able to undertake commercial activities (within the limits of competitive neutrality and a thorough risk assessment).*

f. *The subsidiary to have the ability to acquire, hold, dispose of or otherwise deal with property.*

g. *Dividends able to be paid to member local governments.*

h. *The requirement for employees of the subsidiary to be employed under the same award or agreement conditions as the relevant local government/s and within the jurisdiction of the Western Australian Industrial Relations Commission.*

i. *No requirement for ministerial approval at the outset, but reserve powers for the Minister for Local Government to intervene if issues arise should be included. "*

These principles underpinning this recommendation have been addressed in previous parts. But the sneakiness of this recommendation is bewildering; the panel having recommended "*that 'beneficial enterprises' not be introduced"* then changes the name and proceeds to recommend their introduction under a different guise.

How did this happen? It is no surprise that the strongest advocate for this change is WALGA and the local government club champion must be rewarded.

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

This recommendation might mean something to someone but not me.

RECOMMENDATION 43

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

a. *Councils should have regard to achieving intergenerational equity, including ensuring the following:*

   (I) Policy decisions are made after considering their financial effects on future generations;

   (ii) The current generation funds the cost of its services; and

   (iii) Long life infrastructure may appropriately be funded by borrowings.

b. *Revenue, expenses, assets, liabilities, investments and financial transactions are managed in accordance with the council's financial policies and strategic plans;*

c. *Financial risks are monitored and managed prudently having regard to economic circumstances;*

d. *Financial policies and strategic plans, including the Revenue and Rating Strategy and Investment policy, seek to provide stability and predictability in the financial impact on the community; and*

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

Dealing with the generality first; how is it possible to recommend that the Parliament *"Shorten the main text considerably (aim for at least a 50% reduction) by consigning regulatory detail to schedules or a separate 'operations' Act."* And then come up a recommendation like this?

Again, I make the point that these recommendations contradict the plethora of royal commissions, inquiries and reports that all call for a completely different direction when using public monies.

Financial management is an issue that is more properly dealt with in regulations rather than law. And this is because as times change, financial management rules change, and history tells us those changes can come quickly. Having this sort of nonsense locked in law severely restricts regulatory response times when those crises occur. History also tells us that would be a dumb thing to do.

Sub clause (a) is a load of ideological clap trap. This recommendation does not make a general statement about *"generational equity"* whatever that may mean; it requires councils to "*...have regard to achieving intergenerational equity, including ensuring..."* that certain things happen. These things become obligatory and they are to:

- Only make policy decisions "*...after considering their financial effects on future generations."* Councils are not required do anything about this other than consider it; then they can send future generations to financial oblivion if they so wish.
- *"The current generation funds the cost of its services*". Wow. No previous generation has ever had to deal with a requirement to fully fund the cost of its services and nor should they; our forebears did not question the cost of two world wars, they needed to be done and they were. Coming generations received the consequential benefits and all generations have contributed to the cost; that is how civilised societies work.

  Does a council that borrows to build a road dig it up as the generation who funded it passes on? Or do the coming generations just drive on it and never think about the cost? Did our panel think of this? I guess so, because the next point is the beauty that contradicts the entire thrust of this group of dogmatic recommendations.
- *"Long life infrastructure may appropriately be funded by borrowings"* This is known as an "out clause". It works like this: We know what we have been saying is wrong, but we want to say it anyway, so ignore it. This is a classic case of such a clause.

Sub clause (b) *Revenue, expenses, assets, liabilities, investments and financial transactions are managed in accordance with the council's financial policies and strategic plans.*

What are the council's "*financial policies and strategic plans"?* Are these to be regulated? If so, a more sensible clause is one to require these things to be done in accord with the regulations.

If they are not to be regulated, is it open to a council to have whatever "*financial policies and strategic plans*" that suit them? One cannot think of a more dangerous way of managing public finances than to allow an unregulated or self-regulated, unpoliced system which is what these recommendations propose.

Sub clause (c) *Financial risks are monitored and managed prudently having regard to economic circumstances*

It is difficult to see what this actually requires. The best intent it can have is that it is seeking to legislate wisdom. And we all know how that ends.

Sub clause (d) *Financial policies and strategic plans, including the Revenue and Rating Strategy and Investment policy, seek to provide stability and predictability in the financial impact on the community*

There is no requirement on a council to *"ensure"* that these measures actually provide *stability and predictability in the financial impact on the community".* If this recommendation is implemented, the council's lawful obligation stops at seeking to provide them. Feelgood nonsense.

Sub clause (d) *Accounts and records that explain the financial operations and financial position of the council are kept.*

As local governments are deemed to be government organisations under the State Records Act 2002; this recommendation is redundant.

RECOMMENDATION 44

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

a. *Local governments should be required to adopt or justify departures from a model investment policy to the Audit, Risk and Improvement Committee and relevant State Government Agency.*

   It is worthy of note that the recommendation is for "local governments" to be required to take action; one assumes that is the council; if so, for clarity sake, that is what the recommendation should say.

   One assumes that a *"model investment policy"* will be issued from the Department. If that is correct, it again overcomes the argument that local government is autonomous. If it is incorrect, it is not clear who will issue the model. Will each council have the power? Or will the responsibility lie with the administration through the CEO? When councils will be excluded from issuing any form of directive to their administration, how does a council determine such a policy?

   The general point is made further on about who is best to monitor, oversee and assess financial policies and compliance therewith. Probably the worst option is council itself doing that, but next comes this hybrid committee foreshadowed in recommendation 53.

b. *Local governments should be able to use freehold land to secure debt.*

   This is another item from the WALGA wish list, the entire justification and detailed submission was:

   "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."

   That is it; that is the public justification for this change and on that evidence, the change should not be made. Again, it is worth noting that land held as freehold by a local government is not private land. It is land that is held in the public interest.

   The only reason for using freehold land in this way is to secure a loan; if a council is already unable to raise loan funds through the state system it is in serious financial trouble. Which begs the question of what happens to that public land in the event of a default?

On balance this change should not happen.

c. *Debt should not be used for recurrent expenditure except in an emergency situation.*

   Whilst most can agree with this principle, why does it need be in the law? It is obviously a regulatory matter where details of what constitutes an emergency situation can also be provided.

d. *Notice should continue to be required to be given for borrowings not included in the local government's annual budget.*

   Whilst most can agree with this principle, why does it need be in the law? It is a regulatory matter.

e. *Building upgrade finance is permitted for specific purposes such as cladding, heritage and green improvements.*

   Whilst most can agree with this principle, why does it need be in the law? It is a regulatory matter.

f. *Local governments should adopt program budgeting to more clearly show the actual cost of delivering a service or undertaking an activity.*

   This recommendation is gibberish. More clearly than what? Most likely the panel is seeking to have program budgeting show actual accrued costs. If that is the case, why did they not just say that. But in any event, this is one more recommendation for a law that should more properly be a regulation

g. *Local governments should report on the percentage of their expenditure spent on local businesses in their annual report."*

   Why a percentage? Why is this not a monthly requirement to disclose expenditure by business and amount? If ratepayers' funds are to be used to support local businesses, surely ratepayers have the right to know; as they have the right to know what the benefit is. Recommendation 48 also relates to this issue and it will be addressed at that stage.

   This is another recommendation that should be a regulation

With the exceptions that have been addressed above, the majority of these recommendations would be more than passable regulations.

Micromanaging by legislation is the biggest reason that the current act has blown out to its mammoth size; these recommendations continue that habit. It is clear that the panel was unable to decide whether to follow a public or private financial model and, in the end, they opted for a curious mix of a publicly unaccountable partially private hybrid.

The flaw in what is proposed is that there are no private holdings, funds or ownership in local government; it is all public money and ownership and that requires the high level of oversight and accountability that is best delivered by highly skilled external audit and accountability organisations. The merits or otherwise of the panel's preferred vehicle, the *Audit, Risk and Improvement Committee* are discussed at Recommendation 53.

What is the *"relevant State Government Agency"* and why is it not named?

RECOMMENDATION 45, 46 AND 47

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

a. *Tender threshold (currently $250,000);*

b. *Procurement rules and methods for goods and services under the tender threshold;*

c. *Procurement policies, including sustainable procurement, procuring from disability enterprises, buy local (where 'local' refers to Western Australia or a specific region of the state determined by the local government) and Aboriginal businesses; and*

d. *Using TendersWA as the primary tender platform.*

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

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

The intent of two of the three related recommendations are generally good, which is to make the state government tendering system the default option for local government. That good intent is completely undermined by recommendation 47 which, if adopted, will entrench WALGA's position in the local government purchasing system.

If it is to remain (and my preference is that it does not) any new act should contain a requirement that the WALGA preferred purchaser program be regularly and routinely audited by the WA Auditor General. It is interesting to note that the WA Auditor General recently examined Local Government Procurement and found:

"All 8 local governments we reviewed had shortcomings in their procurement practices, most related to weak procurement controls, processes and documentation for tendering, purchase orders and approvals, and reviewing invoices and payment. However, we did not identify any evidence of misconduct.

Local governments varied in how well they complied with legislation and their own procurement policies. While local government's policies broadly met regulatory requirements, they need to do more to monitor procurement controls and the effectiveness of processes. We saw no notable difference in the effectiveness of controls between the regional and metropolitan, and the small and large local governments we examined.

Having policies and controls that are appropriate, and monitoring their effectiveness is essential if local governments, and the ratepayers that they serve, are to have confidence in local government procurement activities. Procurement practices that focus solely on minimum compliance with legislation are unlikely to provide local governments with the oversight and control they need to address risks and ensure value for money in their procurement.

The issues identified in this audit are relatively simple to fix. By addressing them, governance of this important local government function can be strengthened."

Paraphrasing the AG, that office is saying is that monitoring the effectiveness of policies and controls is essential if the public is to have confidence in the procurement activities.

The WALGA procurement processes are not publicly monitored for their effectiveness and it should not receive legislative comfort or protection in any form but should still be required to be regularly audited by the Auditor General. The justification for such a change is that the only money in the scheme is public money and as the WA Royal Commission into Commercial Activities of Government said:

"All public sector bodies, programmes and activities involving any use of public resources, be the subject of audit by the Auditor General. (Paragraph 3.10.7)"

To comply with S3.57 (1) of the current act, local governments are required to:

"invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services."

Sub clause (2) of S3.57 allows that the *"Regulations may make provision about tenders."*

In establishing that regulatory power, the Act does not provide for any regulation allowing alteration or removal of the requirement to tender; nor does it allow for regulation relating to anything other than being *"...about tenders."*

The relevant regulations are contained in the Local Government (Functions and General) Regulations 1996; under the Provision of goods and services Part 4 Tenders for providing goods or services (s3.57) Division 2; Regulation 11 is the relevant regulation and the pertinent parts are:

11. When tenders have to be publicly invited

(1) Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than $150 000 unless subregulation (2) states otherwise.

(2) Tenders do not have to be publicly invited according to the requirements of this Division if—

(a) the supply of the goods or services is to be obtained from expenditure authorised in an emergency under section 6.8(1)(c) of the Act; or

(b) the supply of the goods or services is to be obtained through the WALGA Preferred Supplier Program; or

Sub Clause (1) establishes the benchmark, which when exceeded, triggers the requirement to tender. Because it excludes some purchases from the requirement to tender, it is not strictly in line with the provisions of the Act. It really is a borderline determination because while the Act does not require such a regulation; it also does not specifically exclude it.

The proposition is that Sub Clause (2) is unlawful. Because S3.57 of the Act makes no provision for exclusions such as these makes the regulatory provision ultra vires.

Regulation 11 Sub Clause (2) (k), which allows an exemption from tendering if *"...the goods or services are to be supplied by a pre-qualified supplier under Division 3."*

However, that is also a false dependence because "Division 3 Clause 24 AB Local Government may establish panels of pre-qualified suppliers" says:

"A local government may establish a panel of pre-qualified suppliers to supply particular goods or services to the local government in accordance with this Division"

This exemption from tendering is restricted to *"A local government..."* and WALGA does not fit that qualification; all of which means that any local government using WALGA panels of pre-qualified suppliers and entering into contracts is operating ultra vires.

Even if the above is not totally correct; any review of the act should clarify the situation, give priority to the WA State tender system over WALGA's system and require WALGA to be publicly audited by the State Auditor General.

RECOMMENDATION 48

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

Why? What it the purpose this is to serve? Is there to be a complementary requirement to use the businesses on this register? How are the price, value and benefit to be assessed?

Again, if local government is an autonomous sphere of government, why is this required?

Even if having such a register is justified, it should be required by regulation, not law.

RECOMMENDATION 49

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

Comments re this office will be dealt with at Recommendation 59 (Not recommendation 54 as the panel's report says)

RECOMMENDATION 50

a. *"Rate capping should not be introduced.*

   Rates have increased exponentially in WA because there are no checks or balances on rating. This panel report proposes none be introduced. Providing rates are increased in accord with the required processes no-one has any power to disallow a general rate increase. Pedants will of course point out that values can be challenged but that is not a general check on administrative power.

   Rate capping is not ideal, but it is better than nothing, which is what exists under the current system and it should be introduced.

b. *Local governments should be required to develop and publish a rates and revenue strategy, that would amongst other things replace the need to have fees and charges set in the annual budget.*

   Rates are the biggest income stream for most local governments; how is it possible to not have them set in the annual budget? Even if it is possible why would you do that? The rationale of public budgets is for a governing body to publicly explain and approve revenue and expenditure of public monies.

   To remove this from a formal budget process and make it an administrative tool is a retrograde step for accountability. The implications of such a move are frightening; can a CEO edit the said strategy privately using their administrative powers? How would we know? How will that be prevented and who will police it?

c. *The Economic Regulatory Authority (ERA) should be asked to undertake a review of the rating system, including a thorough examination of the case for the current wide range of exemptions.*

   This is a good recommendation that should be proceeded with forthwith. It does not require a legislative change; it could be referred immediately.

d. *The current rates exemptions should be retained until after the ERA review.*

This is a fair and reasonable option.

e. *Property owners seeking an exemption should be regularly required to prove they meet the criteria for an exemption.*

For want of being boring, this is a regulatory matter not a legislative one.

f. *Local governments should charge a separate waste charge applying to all properties which have a waste service, including exempt properties.*

This is a regulatory matter not a legislative one

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

The outcome will be significantly improved if the current wording is deleted and *"That the Valuer General be instructed to review the rating system in WA"* is inserted in its place.

RECOMMENDATION 51 and 52

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

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

Recommendation 51 is another hyperbolic statement; what is reasonable? And what is the mechanism by which council's will be held to account? The merits or otherwise of the Audit, Risk and Improvement Committee will be discussed at Recommendation 53 but suffice it to say at this stage the panel does not recommend that this body will have any coercive or punitive powers.

There is no justification or rationale for Recommendation 52. But what the panel has put forward is a plan for consistent inconsistency; they said:

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

Why should local governments be consistent with each other? They are supposed to be representing the interests of their communities which can all be very different. The biggest variant that is often used are the Shires of Peppermint Grove and East Pilbara; why should two vastly different jurisdictions need to be consistent with each other?

That is illogical outcome and the lack of evidence for the change probably means that it is a bureaucratically driven issue. The other strange part of this recommendation is that an expert panel charged with recommending directions for a local government act review makes a recommendation that "*…State Government apply cost recovery principles when setting fees and charges."*

It is self-evident that this is outside the ambit of this committee and should be ignored.

RECOMMENDATION 53 and 54

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

a. *The majority of the Committee members, including the Chair, should be independent of the local government and should be drawn from a suitably qualified panel.*

One cannot be sure what the panel means when they say the above; what does "*independent of the local government*" mean? How does a committee that is supposed to be part of a self-regulating, flexible regulatory regime suddenly become independent from the body it is self-regulating?

Who determines what are the suitable qualifications required for the *"suitably qualified panel"?* Do the non-majority have to be suitably qualified? Are the non-majority councillors, staff or the CEO, or a combination of all of those?

This recommendation is so vague and lacking in crucial detail that it cannot possibly be proceeded with until that detail is provided.

b. *To address the impost on small local governments, the committee could be established on a regional basis.*

This is another band aid measure aimed at overcoming the structural weakness of local government boundaries.

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

a. *Developing an audit plan which focuses on compliance, risk (including procurement), financial management, fraud control, governance and delivery of the Council Plans;*

This may be a sound objective for such a committee but until its structure and powers are fully understood, it means little.

b. *Identifying continuous improvement opportunities and monitoring programs and projects in this area;*

This is another incoherent recommendation that should be ignored.

c. *Conducting the mandatory internal audits as outlined in the audit plan; and*

Whilst this is sound in principle; it is suggested that a far better recommendation would be for the committee to facilitate the required audits using auditors approved by the State Auditor General.

d. *Providing advice to the council in relation to these matters.*

This is the only power granted to this committee and it is clearly insufficient.

GENERAL

The idea of expanding and making audit committees more independent has some merit, however these recommendations are curiously worded which downgrades their efficacy. Each sub recommendation has been notated but the major general failings are the absence of powers to do anything other than advise, plan and audit.

Systems based on good will always fail; it is inbuilt and rigorous checks and balances that maximise the chances of misuse of public monies being discovered and penalised. These recommendations fail that rudimentary test because there are no obligations placed on any council or administration to do anything at all about what comes forward from this committee.

Imagine an audit committee who finds that a council has misappropriated public monies. Their only authorised avenue is to report it to council. This is pretty much the mechanism that the CCC has been railing against for over a decade.

This panel is hoisted on its own petard with this matter; by definition self-regulation can never be independent. It does not matter how many times one says the word independent, saying the word does not make it so.

If the panel were serious about enhanced accountability, they would have proposed sweeping independent audit powers for a truly independent committee and then given it the authority to bypass council and report directly to state regulators.

RECOMMENDATION 55 – *In relation to governance, the Panel recommends:*

a. "Meeting procedures are standardised across all local governments, allowing for both a committee system and a public briefing system.

Missing in this part are the requirements for public question time, submissions and presentations. That needs to be remedied.

b. Elected members should be required to lodge a declaration of interest as well as a confirmation of impartiality prior to meetings.

This is grammatical nonsense – if it is adopted as it is written all elected members will have to do this whether or not they have an interest or partiality.

There is also no requirement for staff and CEO's to make these declarations and there should be. Particularly when they are making decisions under delegated authority of council.

c. Elected members who believe that they are unable to maintain impartiality on a particular matter should be permitted to withdraw from that part of the meeting provided a quorum is maintained.

This is another bizarre recommendation; what this panel is recommending is that when a councillor is partial and cannot remove their personal interest from a public matter they must only leave if there is a quorum remaining?

Please explain?

Are we seriously going to attempt to improve conduct by making retention of a quorum a higher priority than proper ethical conduct?

d. All votes should be recorded in the minutes on each motion with details of how each councillor voted.

A good common-sense recommendation

e. As a minimum, audio recordings of public parts of council meetings should be available on the local government's website when the minutes become available, with livestreaming to be encouraged.

This is a bad recommendation. In this day and age all councils should be required to livestream all committee and council meetings.

f. CEO contracts should be standardised and consistent with the Public Sector Commission's policy and relevant conditions for public sector employees.

CEO's contracts should not be standardised; each council should have the right to put whatever terms and conditions in the contract; it is a negotiated document and if the CEO does not wish to accept, they are free to go elsewhere.

That of course is subject to the provisions of the Salaries and Allowances Tribunal's decisions and conditions.

CEO contracts should also be public documents. This was the case for years, but they were made secret in recent legislative amendments; there is no justification for this secrecy because the positions are public and publicly funded. We now know more about the salary and conditions of a judge, a cabinet minister or an MP than we do about a council CEO. That is wrong.

g. *CEO contracts should be no more than five years and after two terms the local government must readvertise the position.*

This is another paradoxical micromanagement clause. On the one hand the panel is preaching more autonomy and increased self-regulation for councils and then it pops up with overt regulation.

This recommendation also sets a statutory maximum of two terms without advertising. Why? Five years is a long contract, so why should councils not advertise each time it is to be renewed? Testing the personnel market is as important as testing any other market.

h. *The department should facilitate additional oversight in the recruitment and management processes of CEOs. This could include representation on the selection panel and/or screening of applicants.*

This is an important conflict of interest that is being recommended. How can the department act independently -

- when its minister is in formal partnership with the organisation representing CEO's; and
- when it holds an honorary position on the board of the organisation representing CEO's; and
- is a principal partner of the organisation representing CEO's?

i. *Primary and Annual Returns should include disclosure of membership of political parties and associations likely to be seen as exerting an influence on decision-making.* "

This is pure McCarthyism.

"Are you now or have you or have ever been a member of……."

In many places in the world, freedom for political involvement is a much sought after civic right. In this country political parties are lawful organisations and being a member is a legitimate and desirable thing for a citizen to do.

Party membership does not of itself bring about any requirement to follow party directions, policy or rules; this is only ever applicable when the candidate is nominated as an official representative of a particular party.

There is a requirement for public personnel to disclose matters that may affect their impartiality and if being a member of a political party affects a councillor, they should disclose that. That general process is significantly different to stigmatising legitimate membership of political organisations.

This is an error that should not be implemented.

RECOMMENDATION 56 - *"The Panel recommends the following in relation to training:*

a. *New CEOs (including CEOs moving to a substantially larger local government) should be required to undertake training and ongoing professional development as recommended by the selection panel.*

Agreed.

b. *There should be compulsory induction training and ongoing professional development for all councillors, including specific programs for mayors and presidents.*

This is an obligatory requirement, not a needs-based requirement but if the wider view is that it is beneficial, it is not worth fighting about. However, the training should be designed by the regulating department and WALGA should be excluded from delivering training.

It is clear from this review that training is going to become a major influence on the sector, and it is unhealthy to have the biggest and most financial influence in the sector also training participants.

The other reason is simply that by being the organisation representing councils and not elected members, they are conflicted.

c. *Training modules for all councillors should include in-depth material on IPR and land use planning.*

See earlier comments re IPR.

d. *The Minister should have discretion to exempt completion of training within the stipulated time on compelling grounds.*

Another deliciously ironical contradiction of the self-regulation recommendations.

e. *Expanded use of peer review and support should be encouraged both to help improve the performance of individuals and local governments."*

More grammatical nonsense. I suspect it is supposed to read "... *to help improve the performance of* both *individuals and local governments".* But even then, this is not what one puts in legislation; at best it is a policy guideline.

RECOMMENDATION 57

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

Strongly agree; this is a good practical and intelligent recommendation.

RECOMMENDATION 58

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

This is a poor recommendation and has the potential to cause mayhem. In declared states of emergency, coordination and control is paramount and that is why all actions are coordinated through the State Emergency Systems.

Time does not permit a full case to be put forward why this is so; however, before any action is taken on this recommendation full endorsement from the emergency management committee at state level should be obtained and released publicly.

RECOMMENDATION 59 and 60

59. The Panel recommends establishing an Office of the Independent Assessor that should:

a. *Be an independent body to receive, investigate and assess complaints against elected members and undertake inquiries. This removes the CEO from being involved in processing and determining complaints.*

This is artificially restrictive as it only allows for complaints against elected members. See below.

b. *Be a statutory appointment by the Governor.*

That is one option; but such a move requires ministerial responsibility. A far better option is for the complaints office to be an office of the Parliament in the same way as the CCC, FOI Commissioner and the Auditor General. This makes the office truly independent from the day to day government, but still ensures accountability to democratically elected bodies.

c. *Upon assessment, refer the complaint back to the council (behaviour-related), the State Administrative Tribunal (SAT) (serious breaches), or to another appropriate body (such as, Corruption and Crime Commission, Public Sector Commission, Ombudsman) according to the subject of the complaint.*

Unless the matter involves a CCC matter, all local government complaints should be dealt with by this office.

d. *Replace the Standards Panel by investigating and making determinations on Rules of Conduct breaches. SAT will determine the penalties.*

The Standards Panel has been an abject failure and should be abolished; unless the matter involves a CCC matter, all local government complaints should be dealt with by a designated office.

e. *Amongst other powers, have the power to investigate, to order compulsory mediation and to deal with abuses of process.*

This is a redundant clause

f. *Be required to notify the CEO and council of any matters on a confidential basis.*

Why? Once a complaint has been dealt with the decisions should be published and the CEO and council can find out then. Of course, if there are decisions affecting individuals the natural justice principles apply, but otherwise the same public decision-making processes as used by courts, tribunals and other bodies should apply.

60. The Panel recommends consideration should be given to the appropriate recognition and management of complaints by an elected member against a CEO or other senior officer, with one option for these to be investigated by the Office of the Independent Assessor.

See comments below.

After a lifetime of dealing with complaints systems, I don't know what happens when people consider how to deal with complaints in the local government sector; all kids of strange rules and barriers get put in place.

Which is problematical because it is a relatively simple matter. Someone (it should not matter who) has a complaint/grievance (and it should not matter what) about someone (and it should not matter who or what) and they need somewhere to go to get their issues sorted out. That is it.

There is no more to deal with – all that is needed is to have a powerful and/or independent office that has the power to investigate, recommend corrective action, enforce their decisions and then for there to be somewhere to appeal their decisions.

But in local government, given those circumstances, those designing systems then have apoplexy over irrelevant details and get hung up on whether it is a matter to be handled by the council, CCC, the department, some independent body, the Auditor General, Public Sector Commission or Uncle Tom Cobbly and all? It really is not that hard.

With both the current system and that proposed in these recommendations it is hard to see how a complaint process could ever be made more complex or less user friendly; it is as if the system is being designed to deter public complaints.

The obvious body to monitor, police and enforce governance is the regulating department, but being the regulator, prosecutor and advisor compromises them. In many other areas where the government is both the regulator and participant, governments develop alternative structures to separate the core advisory, administrative, regulatory and prosecutorial roles and functions of conflicted organisations. Such laws require the different component parts to operate independently of each other.

There are two obvious alternatives for dealing with complaints; one is to legislatively split the department into two bodies required to operate separately of each other. One advisory and administrative and the other to become an independent compliance and regulatory body.

The alternative is for the Department to remain as is and an independent authority/Ombudsman be formed to regulate and police local government; including all complaints which are not serious enough for referral to the CCC. Such a body should be a Parliamentary office as discussed earlier.

The benefit of either of these two options is that they remove all the artificially created obstacles to complaints being dealt with and both would allow investigative, remedial and punitive responses to any matter referred to them by anyone.

As I said earlier; designing a user friendly, strong and competent regulatory and complaints body is not that difficult if one really wants to do it; and that is the key.

RECOMMENDATION 61

"The Panel recommends:

a. The new Act should set principles for determining classification bands for local governments.

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

With the exception of all after *"CEO payments"* this is a useful recommendation that should be implemented.

RECOMMENDATION 62 and 63

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

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

One gets a tad confused over this expert panel recommending more self-regulation but then recommending *"harmonisation"* and supporting less government regulation but then recommending more legislative conditions. Harmonisation is a nice new word to replace consistency which was used often in discussion papers and submissions to the wider review.

If the electors in each jurisdiction want different laws why should they not be able to do that? No one makes WA adopt Victorian laws simply because they are different; nor does the Federal Government adopt Indonesian Laws for the same reason. Each jurisdiction makes its own decisions based on its own interests and at a local level if different towns/suburbs/jurisdiction cannot react differently what is the point of having different governments in each place?

The idea of consistency probably stems from the Parliamentary delegated legislation processes that are also in need of reform, with the overriding emphasis no longer being on exceeding legislated power, but on consistency and conformity with central laws. S3.7 of the Act says:

"A local law made under this Act is inoperative to the extent that it is inconsistent with this Act or any other written law."

Removal or amendment of that section would allow a local council to have the power to exceed state legislation in a local law; I strongly recommend that occur. The current system where the central government uses its power to impose laws, not as minimum standards, but as laws that cannot be differed from is a rather dated, centralist concept.

Recommendation 63 is redundant. Joint Standing Committees of the Parliament do not take orders from part time review committees.

RECOMMENDATION 64 - *In relation to WALGA, the Panel recommends:*

a. *WALGA not be constituted under the new Act;*

   This is a good recommendation that should be adopted

b. *A transition period is provided to ensure continuity in operations of WALGA while it is re-formed under other legislation; and*

   See Below

c. *Recognition of WALGA's Preferred Supplier Program and mutual insurance coverage in the legislation should be accompanied by appropriate oversight measures, including auditing.*

   See Below

If the power of the club is demonstrated clearly anywhere it is here. What looks like a significant change is not what it appears to be. WALGA is a legislated monopoly that is charged by S3(d) of its constitution to *"represent the views of the Association to the State and Federal Governments on financial, legislative, administration and policy matters".*

WALGA can only act in its own interests and it cannot, and does not represent the public interest; it is not a local government, it has no regulatory powers and has no authority over Councils. But since its inception it has promoted itself into the mainstream of decision making in a way that no other lobby group in WA has been able to and it is a formal partner of the State Government.

WALGA claims to be the peak body for local government in WA; but none of the state's genuine peak bodies (e.g. the Chamber of Minerals and Energy or the Chamber of Commerce and Industry) have legislative protection or comfort; so why does WALGA need it?

The answer is that it does not.

Nor is any transition period necessary. Even if all reforms in local government are agreed by the end of this year, any new act will be at least another two years in drafting and passing through Parliament so there is no need to provide any transitional time.

Most community groups can arrange incorporation in weeks so if a rich and powerful organisation like WALGA cannot do it in two years; maybe they are not the right organisation to be representing anything.

The recommendation related to the preferred supplier program and insurance coverage fall also raise the question of why a legislated monopoly power is required for what should be competitive and market driven businesses. In both cases markets are not tested; there is no public accountability or public auditing notwithstanding that both businesses exist on public funds.

Outsiders should not be asked to demonstrate why change is necessity; these are public funds being used and the public has a right to know what is in it for them. As discussed earlier, there is no public evidence to show that either of these programs provides value for money. Their owners and partners say that they do, but there is no independently verifiable public evidence to demonstrate that this is so.

While the panel's recommendation is for "*appropriate oversight measures, including auditing*", there is no stipulation of what those measurers may be. There is no detail on what, or who, should do the *"auditing"*, or what constitutes *"appropriate oversight"*.

With regards to auditing of these legislatively protected WALGA business monopolies, the panel once again ignored the obvious because the WA Royal Commission into the Commercial Activities of Government said:

> *"All public sector bodies, programmes and activities involving any use of public resources, be the subject of audit by the Auditor General. (Paragraph 3.10.7)"*

There is no doubt that both these WALGA programs meet that criteria of *"...any use of public resources"* and as such they should be audited by the Auditor General. Any new act should stipulate this as an obligatory requirement.

With regard to procurement, the earlier comments are valid here also and a new law should also obligate that the WALGA preferred supplier activities are also audited by the Auditor General.

There is no business, ethical, moral reason why these publicly funded programs, (if they are to continue and my strong preference is that they do not) should not be audited by the independent public Auditor General; however there may well be some good financial reasons why that will be strongly opposed.

It is almost certain that the insidious agreement between the government and WALGA will be used to delay, obfuscate and frustrate reform and public disclosure. If this occurs, it is another reason why that terrible agreement should be jettisoned.

RECOMMENDATION 65

"The Panel also identified the following operational matters to be considered when drafting the new Act:

a. The powers of entry in the current Local Government Act should be retained.

Agreed

b. The current evidence requirements in legal proceedings should be retained, however the requirement for the CEO to certify the documents should be removed. This should be delegated and the range of items that can be certified expanded after consultation with local governments.

CEO's are the official officers for this purpose and there is no need for change.

c. The new Act should be updated to reflect the modern signing of contracts.

Whatever

d. A more streamlined ability to dispose of impounded goods needs to be developed for the new Act.

Why?

e. The new Act should enable councillors and members of the community (in the case of public questions and deputations) to remotely participate in council and committee meetings.

Agreed

f. Employment entitlements for local government employees should be transferrable across all three levels of Government."

They should not. Firstly, there is not three levels of government and secondly because each local authority should be based on a community of interest and should develop their employment entitlements (within the bounds of the Salaries and Allowances and Industrial Relations constraints) to suit their community needs.

This recommendation also negates the recommendation made by Commissioner Ian Fletcher in Exmouth, who said the Department:

"...needed to crack down on officials who were able to move from shire to shire after being exposed doing the wrong thing."

Fletcher is correct and this recommendation is not.