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Productivity Commission Productivity Inquiry
Submissions due by Wednesday 23 March 2022
Attention: Tracey Horsfall 02 6240 3261 productivity.inquiry@pc.gov.au

WA LOCAL GOVERNMENT ELECTED MEMBERS' ASSOCIATION Inc (LGEMA) SUBMISSIONS

LGEMA writes in support of the Western Australian Local Government Elected Members (EMs) in response to the Australian Productivity Commission (the Commission) call for submissions, with our submissions directed to the **Inquiry Terms of Reference 4 and 5**¹ so as to demonstrate the urgent need for local government productivity reform including by improving local government governance, transparency and accountability, and removing the current obstacles to better local government for localities ².

LGEMA

LGEMA was formed in 2019 to provide independent expert support to EMs, and to advocate for EMs' interests. The LGEMA Rules of Association³ objects are to:

¹ <https://www.pc.gov.au/inquiries/current/productivity#issues>

Without limiting related matters on which the Commission may report, its report to the Government should:

1. Analyse Australia's productivity performance in both the market and non-market sectors, including an assessment of the settings for productive investment in human and physical capital and how they can be improved to lift productivity.
2. Identify forces shaping Australia's productivity challenge as a result of the COVID-19 pandemic and policy response.
3. Consider the opportunities created for improvements in productivity as a result of Australia's COVID-19 experience, especially through changes in Australia's labour markets, delivery of services (including retail, health and education) and digital adoption.
4. **Identify priority sectors for reform** (including but not limited to data and digital innovation and workforce skills) and benchmark Australian priority sectors against international comparators to quantify the required improvement.
5. **Examine the factors that may have affected productivity growth, including domestic and global factors** and an assessment of the impact of major policy changes, if relevant.
6. Prioritise and quantify the benefit of potential policy changes to improve Australian economic performance and the wellbeing of Australians by supporting greater productivity growth to set out a roadmap for reform.
7. **Revisit key recommendations and themes from the previous five yearly review** in light of the above, where relevant

² Constitution Act s.52(2)

³ <https://lgema.asn.au/wp-content/uploads/2021/11/Local-Government-Elected-Members-Association-WA-Inc-Rules-06-11-2021.pdf>



Provide support for local government elected members dedicated to serving the public interest through open, accountable, transparent and sustainable Local Government by:

- *Supporting councillors who are members of the association*
- *Publishing best practice models that promote the objects of the association including for local government procedures, planning scheme provisions, local laws, policies and notices of motion*
- *Providing education on best practice local government*

LGEMA has a website¹ and public Facebook page², which anyone can follow, where we upload Local Government governance and EM support information, and advertise our workshops. We provide a direct advice, mentoring and information service to our around 100 members. Since being established, LGEMA has provided over 1,000 advices in response to our members' questions.

Our LGEMA workshops have included:

- So You Have Been Elected to Council: Basics
- Employment Law
- Governance
- What I Wish I Had Known
- Bush Fire Management and Local Government
- Planning and Development, and Local Government
- LG Act Law Reform Proposals.

SUBMISSION ONE We submit that Local Government productivity can only improve if:

- the sector is properly regulated
- EMs are expertly and independently educated and trained to understand their roles, and
- Councils understand and use their governance, oversight and policy powers
- Councils and communities have a direct line to oversight bodies and policy makers³,

which will lead to governance improvements, maladministration reduction, and corruption ruthlessly rooted out.

Errors in Productivity Commission, Local Government, Shifting the Dial: 5 year Productivity Review, Supporting Paper No. 16 3 August 2017 (Report)

1. The Report was wrong to state, *Local Governments form an important third tier of government*. In WA, Local Governments are a state entity and are not a third tier of government⁴ as they are, for example, in Victoria.
2. The Report confusingly interchanges the use of *Council* and *local government*, wrongly in some places⁵, which *inter alia* fosters misunderstanding of how local governments function.

¹ <https://lgema.asn.au/>

² <https://www.facebook.com/LGEMALocalGovernmentElectedMembersAssociation/>

³ such as the Australian Productivity Commission

⁴ *Constitution Act 1889 (WA)* s.52

⁵ for example, see *By geographical area, the Shire of East Pilbara is Australia's largest council*, when the term **local government District** should have been used



SUBMISSION TWO When reporting about Local Governments, can the Commission please recognise and observe the clear constitutional¹ and statutory² differences between the terms *local government, Council, Mayor or President, Elected Member, administration and employee*, and the different state and territory constitutional arrangements for Local Governments.

Background: Local Government Statistics

LGEMA cannot find current comprehensive WA LG statistics³ provided collectively and publicly anywhere including not in the Department of Local Government, Sport and Cultural Interests (DLGSC) Annual Report, or Australia wide Local Government statistics, so the figures below are our best and closest guess:

- 537 Local Governments nationally (approx.)
- 148 WA Local Government entities including 137 WA Local Government Districts (approx.)
- 1,154 WA Local Government Mayors, Presidents and Councillors who are the EMs making up Local Government Councils (approx.)
- 23,973 WA Local Government employees: WALGA Annual Report: 2019/2020 (as at 2019 194,000 Local Government employees Australia wide - around 10 percent of the total public sector: ALGA website data)
- total of WA Local Government non-capital assets estimated value was **\$45 billion** and Local Governments raised **rates' revenue of around \$2.4 billion**: WA Equal Opportunity Commissioner Annual Report 2019/2020 Annual Report (Australia wide as at 2019 Local Governments owned or managed non-financial assets with an estimated written down value of **\$457 billion** and collected around \$18.9 billion in rates, up from **\$17.4 billion** in 2016: ALGA website data).

Green assets such as tree canopy cover in urban environments, and water resources and biodiversity⁴, and the ecosystem services they provide are critically important to Local Government productivity, see for example *Cost Benefit Analysis of a Mission to Discover Australia's Species* Deloitte Economics 2021, noting **local governments cover all Australian land, waters and sea**⁵.

¹ varies between the states

² each state and territory (except ACT) has its own different Local Government legislative framework

³ EM and employee numbers, size of LGs, OAG audit outcomes, successful prosecutions, external oversight outcomes and recommendations, productivity comparisons, CEO movements and name of all LG CEOs and contact details, name of all LG Mayors and president and contact details

⁴ nearly all of Australia is covered by LG Districts, which presents a unique opportunity to undertake Australia wide positive local actions for global benefit; WA's south-west is a world megadiverse biodiversity hotspot; Deloitte's **cost benefit analysis** of discovering Australia's undiscovered taxonomy, estimated to be 420,000 or 70% of all Australian species, noting, *We cannot properly grasp or understand the natural world without this taxonomic system*. The *Taxonomy Report* estimates that taxonomic discoveries over next generation are fundamental to **Australia's future prosperity**, and that for every dollar spent there is a **x4 to x35 return on investment**, noting WA Councils' statutory **future generation obligations** at LG Act s.1.3(3): see *Cost Benefit Analysis of a Mission to Discover Australia's Species* Deloitte Economics 2021 <https://www.science.org.au/files/userfiles/support/reports-and-plans/2021/cost-benefit-analysis-of-taxonomy-australias-mission-deloitte-2021.pdf>

⁵ generally 200 metres seawards of low water mark in WA



SUBMISSION THREE State government departments responsible for Local Governments and perhaps the Australian Bureau of Statistics should be required to publish comprehensive current Local Government data and statistics, at the very least all those statistics identified above, so as to have data against which oversight bodies and Councils can measure performance and use in implementing Local Government strategic and budget decisions, for law reform submissions and to realise a true understanding of how much Australia's productivity is affected by Local Government productivity or lack thereof.

SUBMISSION FOUR We urge the Commission to include up to date statistics relating to all Australian Local Government resources and assets in the Commission's final productivity report.

WA Local Government

WA Local Governments are statutory *body corporates*, which are state government *entities*, comprised of constitutionally required EMs who together make up a constitutional *local governing body* in which *all* governing powers *must* be vested¹. In compliance with the WA Constitution, parliament has decided through the *Local Government Act 1995* (WA) (LG Act) that there is a statutory Council comprised of EMs who are the statutory Mayor or President, and Councillors. *All* governing powers must reside in the statutory Council collective², which is served by a statutory administration in which no governing power can lawfully reside. The statutory Local Governments through these statutory entities govern³ and administer⁴ the constitutionally required localities, which are the statutory Districts⁵, to bring *better*⁶ peace, order and good government⁷ to localities through a *local* governing body.

The Minister for Local Government⁸ is responsible to parliament for the DLGSC performance. The DLGSC⁹ is WA Public Service department whose budgeted roles includes assisting the LG Minister to administer the LG Act¹⁰.

Many WA Local Governments¹¹,

- have entrenched *double standards*, which is unfair and inequitable¹²

¹ *Constitution Act 1889* (WA) s.52

² constitutionally required

³ Council

⁴ Administration as directed by Council resolutions, policy direction, and oversight

⁵ with locality boundaries endorsed by Governor

⁶ *Constitution Act 1889* (WA) Part 111B s.52(2)

⁷ *Constitution Act 1889* (WA) s.2(1) which requires this of WA state parliaments

⁸ currently the Hon. John Carey

⁹ but not LGs

¹⁰ LG Act s.1.4

¹¹ with apologies to any functional Local Governments or DLGSC employees operating fearlessly with integrity

¹² for example, Employee Codes of Conduct are not enforceable with penalties for breach in the same way EM Codes of Conduct are enforced, they do not have penalties for non-compliance, and employees cannot be brought before a Conduct Panel, nor is a regulator providing regulatory rigour and competent oversight; a Model Code of Conduct was required to be implemented by a certain date but an Employee Code of Conduct was not; Council was prescribed to be approving authority for EM Model Code of Conduct but was not for Employee Code of Conduct; Gifts from donors have to be declared on Gift Registers except WALGA gifts do not; EMs are punished for harming the reputation of other LG participants but LG employees are not; EMs face a Standards Panel for minor



- have administrations who have wrongly disempowered and show disrespect for Councils and EMs¹
- are not sufficiently focussed on services to the persons of the District²
- have an under-skilled workforce rife with unaddressed conflicts of interest
- are *run* by unelected bureaucrats³
- are riddled with non-compliance with the LG Act framework, which is causing Local Government *wrong* and *wrongdoing*; and about which even some LG inquiries are wrong⁴ or do not resolve, and which outcomes generally do not lead to durable or enduring reform or improvement⁵
- unlawfully restrict timely EM and public access to records and information
- have structural procurement weakness⁶
- have significant operational⁷ and policy⁸ failings
- abuse and weaponise complaints' processes⁹
- whose oversight bodies' recommendations are lawfully ignored and/or not adopted¹⁰
- with geographic boundary settings in many if not all LGs, which do not sensibly satisfy the constitutional obligations for Districts to be localities¹¹,

breaches but employees do not face a panel for misconduct or minor misconduct; employees have support of WALGA and DLGSC but EMs do not;

¹ one of the appropriate reform drivers in 1995 for the current LG Act was proper need to stop EMs directing administrations and CEOs. However, these restrictions have been wrongly applied by CEOs and employees, to Councils in ignorance, because such an approach is constitutionally and legally flawed ... and noting especially that it is the EMs who bring their District's community aspirations to Council decision-making

² Constitution Act s.52; LG Act s.3.1(1)

³ contrary to WA constitutional arrangements

⁴ for example, ***Report of the Inquiry into the Shire of Toodyay*** 2021

⁵ for example, Reports of the Inquiries into, *the City of Perth* 30 June 2020; *Shire of Perenjori* 2019; *City of Melville* 2019; *City of Joondalup* 2005

⁶ CCC *Report on Matters of Serious Misconduct in the Shire of Exmouth* 2 May 2017

⁷ Administration; CCC ***Report on the Review of the Capacity of Local Government in the Pilbara to Prevent, Identify and Deal with Misconduct*** (16 April 2013) and CCC ***Report on Misconduct Risk in Local Government Procurement***, 2015

⁸ Council, see for example *City of Rockingham*, which does not have a mandated Council approved Procurement Policy in breach of the LG Act, where procurement is recognised by the WA OAG as one of highest government risk areas

⁹ ***Application for an order to stop bullying Stephen Cain [LG CEO] v [EMs] Stuart Downing; Logan Howlett; Lee-Anne Smith; Kevin Allen*** [2020] FWC 1914 PERTH, 8 MAY 2020; see Standards Panel vexatious complaint findings; see many State Administrative Tribunal reversals of Standards Panel breach finding decisions; and see the rise in misconceived and vexatious complaints against EMs shown in the Standards Panel 2020/2021 Annual Report

¹⁰ for example, LG Minister could direct DLGSC to make an Operational Guideline and Model Policy that reflects best practice of every LG OAG Best Practice Recommendation from the many LG performance and financial audits

¹¹ LG Minister has power to direct Local Government Advisory Board to inquire into anything Minister requires: LG Act s2.45(c)



which has led to the current parlous wasteful unproductive state of Local Government affairs, exacerbated by parliamentary, Ministerial¹ and DLGSC² inaction and failures³.

The DLGSC⁴ advises the Minister, but the DLGSC is not meeting its budget obligations⁵, appears dysfunctional⁶, appears heavily influenced by WALGA⁷ and CEOs, and CEO lobbyist bodies, has transferred some of its express statutory responsibilities wholly or in part to WALGA⁸ and is not keeping its Operational Guidelines or its Local Law register up to date, which is an essential starting point for fostering Local Government good governance⁹ and efficiency. Furthermore, the DLGSC does not have *disciplinary framework for CEOs and local government employees* to respond to and address *misconduct*, as recommended by the Corruption and Crime Commission (CCC)¹⁰, is not keeping a general register of Local Government legal advices as recommended¹¹, is not keeping and auditing a register of CEO and employee misconduct allegations as

¹ failure to use Minister's LG Act s.9.13A compliance notice powers as required and necessary, and see ***Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts [2020] WASC 350*** decision

² as a *captured agency*

³ exacerbated by absence of a WA tertiary institution teaching local government, or undertaking local government research; and poor vested interest training standards

⁴ without the identified qualities

⁵ WA LG budget allocation in the 2020/2021 WA State Budget is made to the DLGSC to provide for the *regulation and support of LGs: 2020 WA Budget Paper* No 2 Volume 2, page 145 -148. The DLGSC outcomes, services and key performance information are related to the WA government LG goals of, ... *Better Places: a quality environment with liveable and affordable communities and vibrant regions*. ... Key budget effectiveness goals measure the impact of the DLGSC delivery of its services on the WA government's desired outcomes, which are that, ... *Local governments are supported to meet legislative requirements of the Local Government Act...* Key budget efficiency indicators are that the DLGSC is, ... *supporting LGs to fulfill their statutory obligations and to improve capability in the sector*. Service delivery of the *Regulation and Support of Local Government* is measured against the resources used by the DLGSC. There are DLGSC 50-55 FTE employees employed to deliver this service at a cost of around \$15 million. The State government's expected DLGSC outcome is that LGs are supported, *to meet legislative requirements of LG Act* with measurement being made by the ... *percentage of LGs where actions were taken in support of compliance with the legislative framework: 2020 WA Budget Paper* No 2 Volume 2, page 145-148. The DLGSC budget objectives include LG, Council, EM and employee compliance with the LG Act. The OAG audit of DLGSC role in LG regulation and LG support raises serious doubts about the DLGSC's ability to deliver or actual delivery of the state government LG budget objectives.

⁶ see for example, ***Re Boulter and Department of Local Government Sport and Cultural Industries [2021] WAICmr8***; Office of the Auditor General Report ***Regulation And Support of the LG Sector*** 30 April 2021; ***Casino Royal Commission Interim Report***

⁷ which is non-elected, not publicly accountable, is a legislated monopoly constitutionally (its own Rules of Association) required to act only in its own interests, not the public interest and not in local government interests, avoids LG Councils' input and ignores electors by liaising with LG through secret zone meetings not through LG Councils, is almost entirely reliant on public monies but is not audited by OAG, or subject to FOI Act; yet most surprisingly is only spokesperson that speaks to the state government for Local Governments and is body that nominates LG representatives on influential state government bodies (such as federal grants and boundary setting); is arguably *LG employee* advocacy body, not LG advocacy body; noting WALGA state Council is informed by reports from its employees and WALGA zone meetings, not Councils' or electors' positions

⁸ for example, EM advice line, Model Local Laws, representation on state government boards and committees

⁹ such as for each OAG LG Performance Audit best Practice Recommendations

¹⁰ CCC ***Report On Misconduct Handling Procedures In The Western Australian Public Sector: Department of Local Government And Regional Development*** April 2006, Recommendation 3

¹¹ see ***Report of the Inquiry into City of Joondalup 2005*** Recommendation 21



recommended¹, is not applying the WA Public Service Code of Conduct to Local Government employees including CEOs as it could, is not regulating Local Government lobbyists² and is not sufficiently regulating Local Government election candidate donors.

Other reasons for DLGSC failing Local Governments³ include insufficient expertise and resourcing, and lack of appropriate distancing from⁴ those it is required to regulate, insufficient legally qualified with Local Government expertise employees working in DLGSC⁵, complete failure in assisting EMs and inquiries not conducted expertly, fairly or effectively⁶. The ignored with impunity LG Act requirements⁷, failure of CEOs to appropriately and accurately advise and inform EMs and Councils⁸, and ineffective implementation of LG oversight systems and requirements all prop up this unaccountable state of affairs, which is destructive of productivity because it is

¹ CCC *Report On Misconduct Handling Procedures In The Western Australian Public Sector: Department Of Local Government And Regional Development* April 2006 at Recommendations 3,4 and 5

² see recommendations from WA CCC *Report on the investigation of alleged Public Sector Misconduct at the City of Wanneroo 3 December 2009*

³ LG Minister (for example LG Act s.9.13A); and DLGSC (for example, LG Act s.9.24 employee offence prosecutions) have significant and sufficient local government intervention powers, but do not use them or do not use them expertly with effect

⁴ CEOs and other employees

⁵ whose generalised, often unhelpful or wrong, advice is often terminated with advice to EMs to obtain their own legal advice (at the EM's personal cost)

⁶ it is a waste of time and resources, and damaging to hold LG inquiries by people not sufficiently qualified, or who are conflicted and/or not properly distanced from the inquiry and its possible outcomes. *The LG Act provides the DLGSC and the Minister with a range of powers to regulate the conduct of council members and local government staff, and scrutinise the affairs of local governments. The Committee questions whether the DLGSC is appropriately resourced to exercise these powers and administer its Local Government Compliance Framework: The Panel* (Parliamentary Committee) Finding 19

⁷ especially noting EMs using LG resources to promote preferred Candidates and only minor breach complaints made and acted on if candidate not Council majority or employees' preferred candidate; employees with conflicts of interest in position to affect election outcomes, see one example of *electoral manipulation* findings in City of Perth 2021 inquiry; failure to prosecute strict liability electoral offences in breach of LG Act Part 4, Division 11; failure of LG/WAEC "contracts" to require LG Act compliance or have a clear penalty for failures; failure of LGs to hold WAEC account for such failures; complete opaqueness of how WAEC preferred Returning Officers are appointed; WAEC using SSO to represent it in Court of Disputed Returns matters where SSO not seen to be acting as a model litigant, Magistrates Courts wrongly listing parties as respondents, no general publication of Electoral Codes of Conduct in breach of LG Act s.5.94(a); Councils not considering WAEC "contract" terms where delegations of contract powers not made in breach of CEO functions; or EMs not being given WAEC contracts in breach of LG Act s.5.92(2); no appeal right from Court of Disputed Returns decisions; unknown possibility of costs orders being made against complainants in Court of Disputed Returns where costs should be only awarded against vexatious complainants; no requirements for procedural fairness and natural justice in ant decision relating to LG elections, no lowest vote different where recount required, CEOs who all who have conflict of interest in election outcomes being returning officers who decide voter eligibility, collect postal votes before count and store them after count; returning officers not required to remain appointed until all relevant time limitations expired

⁸ [EMs] *have the power but they don't know it because they rely on CEO to tell them what they don't know or what they need to know: see CCC Report On a Matter of Governance at the Shire of Dowerin 10 October 2016*



devoid of good governance¹ and best practice². Furthermore, it is always the minority EM who is the *canary in the coalmine* and on whose head bullying and coercive control³ falls at great personal cost, and at great loss to Local Government productivity⁴.

Accordingly, many WA Local Governments are not being productively administered, are not open or accountable, have Councils subject to *regulatory capture*⁵ by their CEOs, Councils who will not speak up or perform their Council oversight roles⁶ and have compromised integrity including willful blindness⁷, noting a similar situation led to the downfall of a previous WA Labor government⁸, and most recently the City of Perth Council⁹. The DLGSC, as the public service body charged and funded to provide Local Government regulatory oversight, has failed and continues to fail all WA Local Governments¹⁰, not support EMs and Councils¹¹ or the District communities Councils were established to serve. Local Government administrations¹² are a resource, whose

¹ see **Casino Royal Commission Interim Report**

² see 14 OAG LG Performance Audit Reports

³ see LGEMA Coercive Control of EMs Series on LGEMA Facebook posts 2-11 March 2022

⁴ such as the many employees working on complaints about the EM, stalking the EM on social media to find something to complain about, expending resources on finding spurious reasons to oppose such EMs requests

⁵ for understanding *regulatory capture*, see **Perth Casino Royal Commission Interim Report on the Regulatory Framework** 30 June 2021 <https://www.wa.gov.au/government/announcements/perth-casino-royal-commission-interim-report-available-pcrc-website>

⁶ LG Act s.2.7

⁷ for example see CCC reports, **Report On a Matter of Governance at the Shire of Dowerin** 10 October 2016; **Report into how conflicts of interest undermine good governance: A report on the Chief Executive Officer of the Shire of Halls Creek** August 2018

⁸ *Three goals can be identified as necessary to safeguard the credibility of our democracy and to provide an acceptable foundation for public trust and confidence in our system of government. These goals are:*

(a) government must be conducted openly; and

(b) public officials and agencies must be made accountable for their actions; and

(c) there must be integrity both in the processes of government and in the conduct to be expected of public officials:

The **WA Royal Commission into the Commercial Activities of Government** (WA Inc.)

⁹ but not suspension or dismissal of CEO (or senior employees) who clearly could not have been complying with their LG Act s.5.41(b),(g),(h) functions to advise and inform Council, manage employees and provide access to records

¹⁰ it must be more widely recognised that LG administrations can and do influence electoral outcomes: see 2020 City of Perth Inquiry; set up Councils to fail, where there are EMs or Councils objecting to questionable administration practices, or trying to hold CEOs and/or senior employees to account: see **Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts [2020] WASC 350**. Local Government EMs and employees are poorly trained and EMs are poorly advised by conflicted trainers and employees

¹¹ and blame them for any Local Government instability, when it is usually caused by minority EMs asking questions and insisting on answers which CEOs and senior employees do not want to answer: see for example **Stephen Cain [LG CEO] v [EMs] Stuart Downing; Logan Howlett; Lee-Anne Smith; Kevin Allen [2020] FWC 1914 Perth**, 8 May 2020; and see **Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts [2020] WASC 350**

¹² *Productivity increases* when more output is produced with the same amount of inputs or when the same amount of output is produced with less inputs. The two widely used productivity concepts are labour and multifactor productivity. *Labour productivity* is defined as output per worker or per hour worked, with factors that can affect labour productivity including **workers' skills**, technological change, **management practices** and changes in other inputs; and *Multifactor productivity* (MFP) is defined as output per unit of combined inputs. Combined inputs typically include labour and capital, but can be expanded to include energy, materials and **services**. Changes



productivity has much room for improvement, the starting point for which must be measurable, comparable and accountable work, with a starting point being data and a measurable baseline.

SUBMISSION FIVE Any Commission data and findings relating to the importance to Local Government productivity of Councils properly undertaking their governing CEO and administration oversight roles, and not being subject to *regulatory capture* by their CEOs would be welcome.

Tertiary Local Government Education

Training is different from *education*. Education¹ is about learning theory, which includes developing knowledge, skills, and judgment. Training is skills based, which preferably builds on a prior education. The two terms reflect the difference between theory and practice.

There is no WA based tertiary Local Government education, which absence has led to a lack of real understanding of the true express and implied aims and intentions of the framework established by the LG Act, and the proper roles of the various players, and the consequent dearth of academic research, which in turn hinders LG accountability, transparency and improvement, which in turn hinders efficiency and productivity².

EMs are repeatedly advised it is their responsibility to know the LG Act framework, but there is no independent body responsible for providing that expert legal advice or expert independent disinterested confidential training to EMs³. In *Kunze*⁴ an EM had relied on CEO advice and WALGA training, both of which were wrong or deficient, but which was not a defence to a minor breach complaint because there is no *good faith* or *mistake of fact or law* defence against EMs' minor breach or behaviour complaints. How can EMs be expected to understand the requirements that bind them if their sources of knowledge refuse to help or are wrong, misleading, silent or biased? The CCC has noted the poorly trained EMs in its *Dowerin* report, wherein a Local Government CEO gambled (literally) with the municipal funds for around four years without detection.

in MFP reflect changes in output that cannot be explained by changes in inputs: Reserve Bank Productivity Explainer, accessed 8 March 2022

¹ *almost 40 per cent of Australian workforce currently works in household services* [arguably such as those provided by Local Governments], so the weak productivity growth here is weighing on the outcome for the economy as a whole. It is possible that part of the story is the difficulty of measuring output in some service industries; one of these steps is ensuring a strong ongoing focus on training, education and the accumulation of human capital... national comparative advantage will increasingly be built on the quality of our ideas and our human capital. This means that a continued focus on education and research is important: **Productivity, Wages and Prosperity** Reserve Bank Governor Philip Lowe 13 June 2018 speech

² noting, *One explanation for why firms are reporting that it is hard to find workers with the necessary skills is that the very high focus on cost control over recent times has led to reduced work-related training:* **Productivity, Wages and Prosperity** Reserve Bank Governor Philip Lowe 13 June 2018 speech

³ see Tony Power SC from City of Perth Inquiry 2020 **training recommendations** 1 – 10, 28 -37, 47 – 56 for CEO and EM training; and noting DLGSC should employ expert independent rigorous credible statutory interpretation advisors and when they provide advice to an EM question, publish that advice on a public register, and stop advising poorly paid EM volunteers to obtain their own advice as DLGSC so often advises

⁴ *Kunze v Local Government Standards Panel [2021] WASAT 159*



The DLGSC and WALGA Annual Reports reveal significant expenditure on CEO and other employee¹ support programs², but very little expenditure if any on direct expert reliable independent support for EMs³ or for enforcing the LG Act⁴ compliance against employees including CEOs⁵, in an environment where EM support is both desirable and necessary⁶.

The failure of Australian tertiary institutions to make Local Government employee and EM education a priority, or available at all⁷, in each state and territory contributes to Local Government maladministration and arguably consequent lost productivity.

SUBMISSION SIX The Commission could consider the importance to productivity of Local Government EMs and employees being educated first and how to establish focussed tertiary Local Government education; and ensuring independent expert training, and thus having fully informed, and expert available research on which to rely.

¹ who are well if not over paid

² which may mean in many cases supporting LG CEOs not qualified to fill position, and not enforcing programs to equip EMs to perform their constitutional and statutory roles

³ who are volunteers; EMs can email DLGSC hotline or WALGA for support, but advice can be incomplete, wrong, unhelpful and/or refused; furthermore EM contact may be reported back to CEO, sometimes causing enormous difficulties for EMs; WALGA training is not expert or independent because WALGA is an employee support organisation and much of the training is delivered by ex-employees without EM insight or clear understanding of the roles of each local government participant

⁴ honoured more often in the breach

⁵ there is reference to breaches (EMs) and Inquiries (Councils), but no reference to employee misconduct, minor misconduct, serious misconduct; there are no LG statistics, no explanation of *formal action taken*

⁶ for example see the CCC findings about EMs' *breathhtaking levels of ignorance about the role and responsibility of EMs over CEO governance*, and *EMs are volunteers whose general lack of knowledge of the LG Act was disturbing*; and *Council misplaced its trust* in former CEO to provide necessary governance processes, controls and information, which would have ensured that LG was operating lawfully and community's assets were protected: *Report on a Matter of Governance at the Shire of Dowerin* 10 October 2016

⁷ none in WA



Local Government Maladministration¹ and Corruption^{2 3}

Corruption affects all areas of society. Addressing systemic corruption helps protect our planet, create jobs, achieve gender equality, and secure greater access to essential services such as education and healthcare **United Nations** on International Anti-Corruption Day 9 December 2021, <https://www.un.org/en/observances/anti-corruption-day> , accessed 9 December 2021.

It takes *one word*⁴ from one informed person with the **courage** to speak that can expose corruption⁵.

¹ where *maladministration* includes inefficient or dishonest administration, and/or mismanagement; see disturbingly poor CEO results in local government *performance and financial audit* as reported in the WA OAG LG Reports *Audit Report 2020 – 2021 Financial Audits of State Government Entities (including LGs at Appendix Four)* 24 November 2021; **Cyber Security** in LG Report No.9: 2021-22 November 2021; **Staff Exit Controls** 5 August 2021; *Annual 2019-20 Financial Audits of LG Entities Report 30: 2020-21* 16 June 2021; LG General **Computer Controls** 12 May 2021; *Managing the Impact of Plant and Animal Pests: Follow Up* 31 August 2020; **Waste Management – Service Delivery** 21 August 2020; *Regulation of Consumer Food Safety by LG Entities* 30 June 2020; **Information Systems Audit Report** 25 June 2020; **LG Contract Extensions and Variations** 4 May 2020; *Fraud Prevention in LG* 15 August 2019; **LG Building Approvals** 26 June 2019; *Verifying Employee Identity and Credentials* 19 June 2019; **Records Management in LG** 9 April 2019; *Management of Supplier Master Files* 7 March 2019; **Audit Results Report – Annual 2017-18 Financial Audits of LG Entities** 7 March 2019; **LG Procurement** 11 October 2018; **Timely Payment of Suppliers** 13 June 2018; **Controls over Corporate Credit Cards** 9 May 2018

² *The Cost of Corruption: The growing perception of corruption and its cost to GDP* January 2018:

<https://australiainstitute.org.au/wp-content/uploads/2020/12/P381-Costs-of-corruption-FINAL.pdf>

³ WA Royal Commission reports include *Findings of interim Report and Report of Royal Commission into City of Wanneroo* 3 September 1996; and Crime and Corruption relevant reports include WA CCC **Serious Misconduct by the CEO of the Shire of Ravensthorpe** 22 September 2021 (Ravensthorpe); WA CCC *Report into how conflicts of interest undermine good governance: A report on the Chief Executive Officer of the Shire of Halls Creek* August 2018; Qld CCC *Culture and corruption risks in Local Government in its lessons report from its investigation into Ipswich City Council (Operation Windage)* August 2018; WA CCC *Report into Allegations of Serious Misconduct by Councillors of the City of Perth between 21-24 October 2017*, 18 December 2017; WA CCC *Report on Matters of Serious Misconduct in the Shire of Exmouth* 2 May 2017; WA CCC *Report On a Matter of Governance at the Shire of Dowerin* 10 October 2016; WA CCC *Report on an Investigation into Acceptance and Disclosure of Gifts and Travel Contributions by the Lord Mayor of the City of Perth* 5 October 2015; WA CCC *Report on Misconduct Risk in LG Procurement* 4 February 2015 (Cities of Cockburn, Joondalup, Perth, Swan, Wanneroo, Stirling, Bayswater; Town of Cottesloe, CEO Shire of Murchison); WA CCC *Report on the Investigation of Alleged Public Sector Misconduct by a Local Government Employee (CEO) in Relation to the Purchase of Management Systems Software* 19 December 2013 (Augusta-Margaret River, Kalamunda); WA CCC *Report on the Review of the Capacity of Local Governments in the Pilbara to Prevent, Identify and Deal with Misconduct* 16 April 2013 (Town of Port Hedland, Shire of Roebourne, – Shire of East Pilbara, Shire of Ashburton); WA CCC *Report on the investigation of alleged Public Sector Misconduct at the City of Wanneroo* 3 December 2009; WA CCC *Report on the investigation into allegations of Misconduct by Councillors or employees of the City of Bayswater* 13 November 2009; QLD CCC *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* 4 October 2017; WA CCC *Report on the investigation of alleged misconduct concerning Mr. Stephen Lee Mayor of the City of Cockburn* 26 September 2008; WA CCC *Report On Misconduct Handling Procedures In The Western Australian Public Sector: Department Of Local Government And Regional Development* April 2006

⁴ see for example, CCC report, **Exposing Corruption in Department of Communities** para.12

⁵ noting **economic improvements always follow improvements in integrity**: *The Ethical Advantage* 29 October 2020 <https://ethics.org.au/theres-something-australia-can-do-to-add-45b-to-the-economy-it-involves-ethics/>



To improve Local Government productivity¹, Local Government,

- laws must be enforced, which currently they are not²
- maladministration and corruption must be rooted out, which currently it is not
- employee *public officer*³ *misconduct*⁴ must be investigated⁵ by disinterested experts, and punished.

Local Governments must be required to,

1. adopt a zero-tolerance of fraud and corruption⁶
2. develop an holistic fraud and risk control framework⁷
3. adopt best practice to identify and document misconduct and fraud risks⁸
4. implement treatment plans to manage fraud and corruption risks⁹
5. develop comprehensive organisational wide strategies to combat fraud and corruption¹⁰.

¹ see WA CCC Report *Review of an Inadequate Investigation by the Department of Communities into Allegations of Bribery* 2 April 2020, and see *Re Boulter and Department of Local Government Sport and Cultural Industries* [2021] WAICmr8

² see WA Office of the Auditor General *Regulation And Support of the Local Government Sector* 30 April 2021: <https://audit.wa.gov.au/reports-and-publications/reports/regulation-and-support-of-the-local-government-sector/>; arguably a very good report on a very poor state of local government oversight

³ LG employees and EMs are *public officers*

⁴ noting roadmap outlined in CCC *Report On Misconduct Handling Procedures In The Western Australian Public Sector: Department Of Local Government And Regional Development* April 2006 but not implemented, which included:

RECOMMENDATION 1

The CCC recommends that,

- *legal opinion be sought by the Department to establish its **authority to investigate** matters not specified under the LG Act, see 1.1*
- *a Memorandum of Understanding be established between the and the CCC defining the role of both agencies in relation to the investigation of **LG misconduct** matters, see 1.2*

RECOMMENDATION 2

*The CCC recommends that the Department continue its **evaluation of the current records system** with a view to refining the process to ensure that all relevant documentation relating to discrete investigations is kept together.*

RECOMMENDATION 3

*The CCC recommends that the Department consider changes to existing legislation or an amendment to the Local Government (Official Conduct) Amendment Bill 2005, that will provide a **disciplinary framework for CEOs and local government employees** that complements the proposed framework for elected members.*

RECOMMENDATION 4

*The CCC recommends that the CCC establish a process by which the details of local government misconduct matters that are reported to the Commission are provided to the Department by way of a **monthly register**.*

RECOMMENDATION 5

*The CCC recommends that the Department establish an **audit process**, or existing Departmental audit processes be reviewed, with a view to incorporating the examination of the relevant files at local government offices to ensure that all notifiable matters are being properly reported to the CCC*

⁵ LG Act does not sufficiently specify process for dealing with employee misconduct, disciplinary offences or substandard performance and it should: see CCC *Report On Misconduct Handling Procedures In The Western Australian Public Sector: Department Of Local Government And Regional Development* April 2006, at page 6

⁶ *to establish LG stance on fraud and corruption, and manage it*, Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 295

⁷ Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 295

⁸ Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 296

⁹ Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 296

¹⁰ Tony Power SC from City of Perth LG Inquiry Report 2020 recommendation 300



Local Governments need competent honest expert ethical *necessary* employees who administer and are forced to comply with Council decisions and direction, and who perform their statutory functions efficiently and lawfully within a recognised functional fiduciary relationship devoid of influence from inevitable bias, self-interest and conflicts of interest¹.

Development of DLGSC Misconduct² Minimisation Operational Guidelines is arguably essential for answering and responding to the CCC reports about employee misconduct³, noting that the approach of the then Department to *Prosecution of individuals is not the objective and will be a measure of last resort*⁴, has clearly not worked in terms of Local Government employee compliance with the LG Act framework. The DLGSC DG should be required to hold *a central database of allegations, and details of whether or not they have been resolved*⁵, against LG EMs, CEOs, other employees and contractors. ... *Too often, the [CCC] sees public officers resign without consequence during a disciplinary process. Occasionally, this has led to these officers being employed in other parts of the public sector without earlier allegations of misfeasance being resolved*⁶; and ... *there is a significant misconduct risk without a central database of allegations and whether they have or have not been resolved*⁷.

... *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 ... Entities and individuals acted in the way they did because they could... Misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished...*⁸ and noting that, ... *the culture of an organisation is what people do when no-one is watching;* and then outlined good governance, ... *Hence it is rightly said that the tone of the entity is, and must be, set at the top. But that tone must also be echoed from the bottom and reinforced at every level of the entity's management and supervision; it must always sound from above,*

¹ it is uncontroversial that everyone has bias and self-interest, it is distancing this bias and self-interest from administrative influence and decision-making which is essential

² *misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished*: Haynes, J. in **Banking Royal Commission**; and noting the three levels of misconduct in increasing ignominy are, **misconduct, minor misconduct, serious misconduct**

³ it is noteworthy circularity that CEOs must advise and inform Councils, and when they do not fulfill this function Councils are suspended or dismissed, but no oversight body investigates CEO and senior employee roles in such suspensions or dismissals, noting DLGSC has no inclination to properly support Councils and EMs in better understanding of LG, when CEOs are corruptly, willfully or out of ignorance, not performing that advisory function under LG Act s.5.41(a) &(b) with impunity: see **Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts** [2020] WASC 350

⁴ Department's Investigations Policy and Procedures Manual in 2006, cited in CCC **Report On Misconduct Handling Procedures In The Western Australian Public Sector: Department Of Local Government And Regional Development** April 2006 at page 6

⁵ WA CCC **Abuse of power at the Department of Primary Industries and Regional Development** tabled on 5 July 2019 see para.333; *The Public Sector Commission might give consideration to this matter*: CCC Media Release 5 July 2019

⁶ CCC *Abuse of power at the Department of Primary Industries and Regional Development* 5 July 2019 para.332

⁷ CCC *Abuse of power at the Department of Primary Industries and Regional Development* 5 July 2019 para 333

⁸ Haynes' Banking Royal Commission final report findings crystallise the elements of good governing EMs: **Misconduct in the Banking, Superannuation and Financial Services Industry Royal Commission** 4 February 2019



and then as to culture, ...*a culture that fosters poor leadership, poor decision making or poor behaviour will undermine the governance framework of the entity.*

It is no truer now of Local Government than it was of local and state governments in WA Inc times where there were, ... *serious weaknesses and deficiencies in our system of government. Together, they disclose fundamental weaknesses in the present capacity of our institutions of government, including the Parliament, to exact that degree of openness, accountability and integrity necessary to ensure that the Executive fulfils its **basic responsibility to serve the public interest**. This is not to deny the essential strengths of the concepts of representative democracy and responsible government which Western Australia has inherited¹...*

... *The **trust principle**, expresses the condition upon which power is given to the institutions of government and to officials, elected and appointed alike. It is that:*

The institutions of government and the officials and agencies of government exist for the public, to serve the interests of the public. This principle ... provides the “architectural principle” of our institutions and a measure of judgment of their practices and procedures. It informs the standards of conduct to be expected of our public officials. And because it represents an ideal which fallible people will not, and perhaps cannot, fully meet, it justifies the imposition of safeguards against the misuse and abuse of official power and position.

Both principles, and the commitment which they assume to the rule of law and to respect for the rights and freedoms of individuals, need to be translated into practical goals if they are to provide the basis for government in [WA]

Three goals can be identified as necessary to safeguard the credibility of our democracy and to provide an acceptable foundation for public trust and confidence in our system of government. These goals are:

*(a) government must be conducted **openly**;*

*(b) public officials and agencies must be made **accountable** for their actions; and*

*(c) there must be **integrity** both in the processes of government and in the conduct to be expected of public officials².*

History Is An Important Teacher

History – lived experience, the whole truth, unsanitised and unedited – is our greatest learning resource ... It is what informs social and structural change³.

¹ *Royal Commission Into the Commercial Activities of Government 12 November 1992* (WA Inc) Report para.1.1.31 12 November 1992

² WA Inc. Report para.1.2.5, 1.2.6, 1.2.7

³ Australian of the Year, Grace Tame 3 March 2021, address to National Press Club



SUBMISSION SEVEN The Commission's review of Local Government productivity can be informed by a careful review of the history of all recommendations from each states' Corruption and Crime Commission^{1 2} reports³, and all the ANAO and WA Auditor General audit reports⁴ of Local Governments, and we submit it would be most helpful for the Commission to clearly identify, recognise and articulate the risks to and costs in productivity from Local Government maladministration, misconduct and corruption.

Pork Barrelling

Pork barrelling occurs at Local Government level as well as state and federal governments.

SUBMISSION EIGHT It would be helpful for the Commission to address the issue of how *pork barrelling* affects Local Government productivity.

Records and Information Access^{5 6 7 8}

Accurate records provide the first defence against concealment and deception⁹... It is unacceptable, in our democratic society, that there should be a restraint on the publication of information relating to government when the only vice in that information is that it enables the public to discuss, review and criticise government action¹⁰.

Public and EM access to Local Government records and information is hampered In many ways, including,

¹ or similar body

² CCC uses a range of mechanisms **to build public sector capacity** and assist public authorities to prevent, identify and respond to serious misconduct. One way is by making recommendations and publishing reports on the outcome of investigations, to expose instances of serious misconduct and to provide anti-corruption lessons: CCC Website Recommendations, accessed 19 February 2022; and to make general open recommendations such as relating to confidential information: CCC Website Open Recommendations, accessed 19 February 2022; and closed recommendations such as in relation to Exmouth CCC report: see closed Recommendations from **Report on matters of serious misconduct in the Shire of Exmouth** tabled on 2 May 2017, and from **Report On A Matter Of Governance At The Shire Of Dowerin** tabled on 10 October 2016.

³ corruption

⁴ maladministration

⁵ see **Re Boulter and Department of Local Government Sport and Cultural Industries [2021] WAICmr8**

⁶ EMs accessing to records is clearly dealt with by LG Act s5.92, which is often *honoured in the breach* by employees, without any consequences

⁷ CEOs are the *keepers* of LG records, and must provide *access* (inherently conflicting roles) as required: LG Act s.5.41(h). EM and public records rights are clear, and must be provided as prescribed; and noting Federal Court has held that, ... {documents} *does not exist, cannot be found* provisions are not meant *to be a refuge for the disordered or disorganised: Chu v Telstra Corporation Ltd [2005] FCA 1730*; and for examples of lost records: see **DLGSC lost records** in **Re Boulter and Department of Local Government Sport and Cultural Industries [2021] WAICmr8**; and **LG CEO lost or no records** (both breaches of LG Act s.5.41(h) CEO functions, and State Records Act) in **Re McLerie and City of Melville [2022] WAICmr 1, Ross William Leighton and Shire of Kalamunda, Re [2008] WAICmr 52 (20 November 2008), Tracey and City of Gosnells, Re WAICmr 34 (13 June 1996)**

⁸ *As the Commission has emphasised, accountability can only be exacted where those whose responsibility it is to call government to account are themselves possessed of, or are able to obtain, the information necessary to make considered judgments. Information is the key to accountability: WA Inc*

⁹ WA Inc. report para.1.1.27

¹⁰ *Cth of Australia v John Fairfax & Sons Ltd (1980) 32 ALR 485, at 493*



- not providing information and records¹, at all or in a timely way, as required²
- insufficient continuing disclosure rules³
- employees breaching with impunity the LG Act framework for EM and public access to records and information requirements
- no independent expert compliance support advice for EMs.

WA Local Government records management is unaccountably circular. Records are kept for purposes that include accountability. Information is circulated to LG administrations to inform affected parties such as EMs and electors, residents and ratepayers. LG administrations make records and are sent information. LG CEOs control record making and record access⁴, and information dissemination⁵. It appears that no state government agency is directly⁶ responsible for enforcing Local Government EM and public⁷ records access⁸. This circularity **must be broken** to have any chance of *better* Local Government accountability, as intended⁹ by the 1995 parliament in enacting the LG Act, and ensuring EMs are being fully informed in a timely way about matters affecting their Local Government and their decision making, in particular ensuring timely access to Local Government records and information.

SUBMISSION NINE It would be helpful for the Commission to demonstrate the connection between transparency and accountability, and access to records and information; and how the absence of timely records and information access can affect Local Government productivity. The Commission could consider supporting the reversal of the current position so that all Local Government records are public records unless prescribed to be confidential, and thereby support the *Statement of Principles to Support Proactive Disclosure of Government held Information*¹⁰.

¹ to EMs, or to public; noting *accurate records are the first defence against concealment and deception*: WA Inc. para 1.1.27

² which is CEOs' function: LG Act s.5.41(h)

³ one of pre-requisites in free market within capitalist structure is **free flow of information, which is integral to government structure accountability**; noting EMs, and residents and ratepayers are increasingly angry about being *done over by LG administrations*

⁴ clearly highly conflicted roles; see LG Act s.5.41(h), see FOI Act making CEOs being principal FOI officer

⁵ such as submissions due on LG Salaries and Allowances Tribunal LG Determination, or LG Act reform submissions, which some CEOs do not forward to EMs, noting some Councils do not require that such information is circulated; or the information is circulated too late for EMs or electors to have workshops and/or Council meeting to decide informed response; including information about funding and grant possibilities

⁶ although the LG Minister and DLGSC are required to be enforcing LG laws, they are not doing so

⁷ WA FOI Commissioner does not have jurisdiction under the FOI Act to enforce access to public records and information, or to enforce EM statutory records and information access rights

⁸ FOI Act does not require agencies to guarantee that their record-keeping systems are infallible. The OIC⁸ has recognised that documents may not be readily found for a number of reasons including *misfiling; poor record keeping; ill-defined requests; proliferation of record systems; unclear policies or guidelines; inadequate training in record management; or simply that the documents do not exist*. The Federal Court has commented that the **do not exist provision is not meant to be a refuge for the disordered or disorganised: *Re McLerie and City of Melville*[2022] WAICmr 1**

⁹ LG Act s.1.3(2)(c)

¹⁰ *Statement of Principles to Support Proactive Disclosure of Government held Information* 24 September 2021: Australian Information Commissioners and Ombudsmen



Climate Change

Climate change is causing extreme weather events including increasing severity of, and intensity and destruction¹ from drought, floods and wildfires², the local impact of which is borne by Local Governments and their communities.

Work renowned planet activist, David Suzuki is credited with the phrase, *think global, act local*. This sentiment applies with no greater relevance than to Local Governments in respect of the opportunity they present for grass roots climate change responses³, and whose 537⁴ jurisdictions cover nearly all Australian land, waters and coastal/marine interfaces.

Furthermore, the Commission and Local Governments must recognise that biodiversity provides free irreplaceable economically advantageous ecoservices, which contribute to productivity. Healthy biodiverse landscapes and waters provide a sense of place, food and fibre⁵, and human wellbeing and healthy living. Prudent Councils can,

- recognise the role *biodiversity* and accompanying *ecoservices* have in mitigating impacts from climate change, land clearing⁶, invasive species⁷, wild fire prevention, pollution and human-made policy settings⁸, which destroy the natural environment causing loss of District amenity, productivity and biodiversity
- require *adaptive planning policy*, which includes *Green Infrastructure and Asset Management Plans*, and undertake works to ensure the best and highest use of all public reserves⁹, roads¹⁰ and thoroughfares taking into account the economic value for capital assets¹¹ of ecoservices from healthy biodiverse landscapes

¹ 15,000 fires occurred across all states, resulting in combined impact area of approx. 19 million hectares containing almost 3 billion native vertebrates comprising approx. 143 million mammals, 2.46 billion reptiles, 181 million birds; with estimated 40 million possums and gliders; over 36 million antechinuses, dunnarts, and other insectivorous marsupials; 5.5 million bettongs, bandicoots, quokkas, and potoroos; 5 million kangaroos and wallabies; 1.1 million wombats; and 114,000 echidnas impacted, estimated over 60,000 koalas killed, injured or affected: *Wildfire Biodiversity Impacts Report* pages 5, 6

² see *Impacts of Unprecedented 2019-2020 Bushfires on Australian Animals* WWF November 2020

³ see for example, *A New Choice Australia's Climate for Growth* Pradeep, P. Deloitte November 2020 at <https://www2.deloitte.com/au/en/pages/economics/articles/new-choice-climate-growth.html>

⁴ all Australian local governments, approximate number

⁵ in rural LGs

⁶ from mining, agriculture broad scale clearing to single significant tree loss

⁷ especially feral predators, such as cats, foxes, camels, cane toads

⁸ such as fresh-water commodification

⁹ including LG owned, managed Crown land; require no increased areas of hard surfaces so new buildings only on existing building footprints, and not on land 200 metres landwards of coastal, freshwater, wetland high water marks

¹⁰ such as shady trees extending life of road, footpath surfaces

¹¹ noting LG s.1.3(3) LG intention, for example turning streets into green/blue corridor walkways and water collectors for street trees by Green Infrastructure Plans, collecting storm water for recycling as in Town of Cottesloe and City of Nedlands; Perth's verge gardens grow friendships as well as plants, research finds - ABC News ; East coast capitals to swelter without more greening: report - Australian Local Government Association (alga.asn.au)



- update their Local Planning Strategy and amend their Local Planning Scheme to make biodiversity protection a primary aim¹
- help protect a District's natural environment assets by ensuring they inform Local Planning Strategies and Schemes, local laws, rates incentives, grants, awards and recognition to minimise impacts from development, extraction, water use, land clearing and pollution, especially noting and measuring *cumulative impacts*² directed to preserving the ecosystem services provided by healthy clean unfragmented biodiverse habitats
- improving local environment and agricultural outcomes³
- divesting fossil fuels from Local Government investment.

SUBMISSION TEN It would be helpful for the Commission to identify Local Governments' role in addressing climate change, identifying possible Local Government climate change responses which can also improve Local Governments' productivity.

Financial Reporting

Financial Statements and Reporting must be simplified and easier to understand⁴, and there must be improved express budget linkages to the two plans encompassed by Future Plan of Districts.

SUBMISSION ELEVEN If EMs and Councils cannot understand the Local Government administration's financial statements or financial position, then Councils' oversight role is impossible and productivity must inevitably suffer. It would be helpful for the Commission to show the relationship between clear or opaque financial statements, and Local Government productivity.

¹ such as WA Shire of Augusta Margaret River Local Planning Scheme No.1, *Biodiversity and Environmental Values The South-West Region of Western Australia has been identified as Australia's only biodiversity hotspot, to acknowledge that the municipal district of the Shire forms a significant part of this internationally recognised, global biodiversity hotspot with its forests, rivers and creeks, ocean foreshores and areas of remnant vegetation. To the extent possible under the Scheme, to ensure, that biodiversity values are protected and, where possible, enhanced and to arrest any further biodiversity decline by ensuring that future land use and development do not cause biodiversity loss or diminish its environmental values for present and future generations: LPS cl 1.6.1*

² Local Governments are uniquely placed to measure: for example tree loss, shade loss, fragmentation of natural corridors, backyard species; noting *cumulative impacts* are poorly addressed by EPBC Act: see *Final Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* Report October 2020 Samuels, G.

³ provided \$450 million between 2018–19 and 2022–23

⁴ noting for example, *activity costing of different services* is made extremely difficult to understand, and supporting detail often not provided by employees, who it is suggested deliberately *obfuscate financial reporting* in their own interests



Voting

Problems in Local Government elections are widely recognised¹, and elections are unnecessarily costly² and unaccountable³.

Voting⁴ in WA LG elections is not compulsory⁵, is undertaken as a costly half in/ half out every two years, is first past the post⁶ and is confined to ward only voting in many Local Governments.

Councils decide whether or not their CEO⁷ or the WA Electoral Commission^{8 9} will run a particular Local Government election. Furthermore, buildings vote in WA Local Government elections by the LG Act giving occupiers a right to vote in Local Government elections, which is wrong and increases the influence of sectoral interests¹⁰.

Democracy and Local Government governance would be vastly improved, corruption would reduce, there would be a fairer distribution of Local Government resources and expenditure¹¹

¹ QLD CCC examined elections across several QLD Councils, reported integrity issues and made 31 electoral reform recommendations: QLD CCC report **Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government** Operation Belcarra in 2017 . The report into the 2021 Victorian LG elections makes chilling reading: see *Complaints about Victorian local govt elections soar* - Government News. It identified the highest number of complaints related to the contribution, authorisation or distribution of election material, followed next by ... *I don't think this candidate is eligible to run for election* and included complaints about bribery, intimidation or improper influence, misuse of voters' rolls, interference with postal ballots and COVID restrictions' manipulation

² compulsory voting reduces **cost per vote** perhaps even so such as 1/6 of cost of each vote; being required to vote every 2 years or preferably all in all out every 4 years, is a very small price to pay for representative democracy, see what non-compulsory voting has done. Victoria, New South Wales, Queensland, Northern Territory have LG election compulsory elections voting; SA, WA and Tasmania do not (no LG in ACT); in last LG elections Tasmania was 59% and SA 33%, and between 1995 and **2021 WA LG election voting dropped from 47% to 28%** notwithstanding postal voting option, which was adopted to increase voter turnout but has not, and noting WA has lowest voter turnout of all Australian LG jurisdictions in 2021. Would be best to abolish postal voting except for those who have PO Boxes, noting numerous thefts and misuse of stolen postal ballot last WA Local Government election: see for example in Shire of Serpentine-Jarrahdale election

³ WAEC is secretive about Local Government elections it is appointed to conduct

⁴ **compulsory voting** is only true test of public opinion, **voluntary voting** means those with vested, not public, interest in outcome will vote, and in WA this includes in particular property development, mining and pastoral interests as applicable in a particular Local Government

⁵ arguments against compulsory voting include that electors will be fined if they do not vote, and that this would be politically unpopular, which applies equally to state and federal elections

⁶ ie not preferential

⁷ who have a vested interest and bias in electoral outcomes

⁸ see Tony Power SC from **City of Perth Inquiry 2020** electoral recommendation 146

⁹ see Tony Power SC from **City of Perth Inquiry 2020** electoral recommendation 150

¹⁰ see local government **electoral manipulation** reports in Tony Power SC from City of Perth Inquiry 2020

¹¹ not having compulsory LG voting *creates a risk that Local Governments with relatively small populations will be represented by sectional (engaged) interests, so providing services or making other decisions that may not be those most valued by the community as a whole* in **Cth LG Productivity Report 2017**, page 13



with a consequent increase in productivity if there was compulsory preferential Local Government voting on an all in/all out every four years¹ and no *ward only* voting in smaller LGs².

Noting the important contribution independents can play, if it is a *binary choice* between sectoral³ private interests (non-compulsory voting) versus the party political interests more aligned to the public interest ramping up under compulsory voting deciding the outcome of Local Government elections, then the latter while not perfect is preferred in the *public* interest, which embraces the interests of free and fair elections, and increased productivity.

SUBMISSION TWELVE It would be helpful for the Commission to explore further the impact of sectoral interests controlling Local Government election outcomes⁴ on Local Government productivity; and to provide as much evidence as it can for about compulsory voting improving Local Government productivity because the current WA LG Minister still does not believe in or support compulsory Local Government voting.

Local Laws

Well drafted, by disinterested legal experts, Model Local Laws can assist Local Governments to minimise the costs of making Local Laws, improve local law efficacy, improve service and governance outcomes, and thereby improve efficiency and productivity through local laws started off with well-crafted model local laws. The WA parliament's Upper House (Legislative Council) has found that an increased harmonisation of Local Laws through model Local Laws would benefit Local Governments⁵. At present, the DLGSC is not undertaking its statutory role⁶ to draft, adopt and gazette model local laws, and has apparently endorsed WALGA⁷ drafting model local laws for profit⁸, which models on the face of it arguably tend to promote or prefer

¹ for example *Democracy and Its Crisis* A.C. Grayling

² noting risk of larger areas of a locality dominating if no wards relating to candidates, or some other system of ensuring fair representation across local government localities

³ including administration employees, CEOs; property developers, mining and pastoral interests who have vested interests in honey pot of LG decision making and who should be prohibited from making donations to Candidates: see *The Australian Institute for Progress Ltd v The Electoral Commission of Queensland & Ors* [2020] QSC 54; noting LG election donation disclosure regime should apply the principles articulated by the WA Inc Royal Commission as a benchmark for regulatory reform: **Report on the investigation of alleged misconduct concerning Mr Stephen Lee Mayor of the City of Cockburn**³ 26 September 2008

⁴ such as large private email databases, say those held by the local surf or football club, or local primary schools who are institutions widely trusted by the community, which can have significant influence in LG elections, especially in the absence of compulsory elections; the use of an email database is an electoral gift conferring a financial benefit that is generally not declared by candidates should be because the database support because it is an in-kind gift of value, calculated for example by each email being the value of the cost of printing and postage; and noting that incorporated association sends out such an email without the authority of its members, this may be a breach of their Rules of Association

⁵ Legislative Council **LG Review Panel Final Report** (the Panel) May 2020 Recommendation 64

⁶ LG Act s.3.9

⁷ for example, WALGA and DLGSC have proposed LG Act reform to reduce current advertising requirements for draft local laws, thus removing contributions from the very people it affects, which would be an *object failure* in transparency, accountability and community engagement in breach of the LG Act intentions: LG Act s.1.3(2)&(3)

⁸ through subscription memberships; there is a total amount of **\$2,367,498 income** from subscription services in the WALGA Annual Report 2020.2021 but this is not broken down, so how much of it relates to local law subscription service is unknown, noting WALGA is not subject to FOI or OAG financial auditing (all Local Governments financial audits are conducted by WA OAG), noting WALGA 2020/2021 income of \$22,230,483 was



employee interests and not community interests, and increase the financial costs of producing local laws, thereby adversely affecting productivity.

SUBMISSION THIRTEEN The Commission could acknowledge the importance of local laws drafted in the interests of the community of a District locality by disinterested legal experts based on model local laws supervised, advertised for public submissions and finally gazetted by the DLGSC as anticipated by the LG Act, in improving Local Government efficiency and productivity.

Local Government Services, Surveys

So far as we know, there are no statutory minimum standards or enforced standards for WA Local Government services. There appears to be no priority given to benchmarking or assessing the accuracy and efficacy of Community Satisfaction Surveys on which considerable funds are expended.

Furthermore, measurement of how Local Government productivity in relation to non-discretionary services against discretionary services provided by Local Governments is by our members as a productivity issue. There is an adverse impact on the delivery of required services from the ever-increasing focus on the more exciting (and generally more expensive) discretionary projects/services, such as large events, business development teams and grants, international trade promotions such as sister-cities¹.

A lost service that is causing lost Local Government productivity is the loss of local government building surveyors being responsible for approving building designs with consequent loss in

all from public monies; and noting conflicts of interest arising from DLGSC, WALGA or ALGA gifts to Local Government employees and EMS are disturbing exempt (from otherwise strong local government gift disclosure regime) from declaration at meetings making decision including relating to WALGA: *Local Government (Administration) Regulations 1996* Regulation 34B(1)

¹ see this issue noted in the South Australia Productivity Commission Report, page 25



building design compliance¹ and quality², and an increase in unresolved long lasting complaints by affected owners and neighbours³.

An excessive amount of red tape⁴ requires more employees and can adversely impact on productivity but not enough red tape can also adversely impact on productivity and local amenity. For example: a hairdresser seeks to permission to work from home, which is a change of or additional use of a building that warrants an assessment and permission process. There are many factors to consider including traffic, parking, noise, hours, access and neighbourhood amenity. One Local Government has 2 forms to fill in and takes a few months to reach a decision and another Local Government has 18 forms and takes around 18 months to reach a decision. What is the right *red tape* balance between productivity and local amenity?

SUBMISSION FOURTEEN There needs to be a benchmark set by disinterested experts⁵ for delivery of Local Government services against which Councils and the District community can measure the standard of the service delivery⁶, efficiency and productivity.

¹ see Building Confidence Peter - Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia by Peter Shergold and Bronwyn Weir February 2018 https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf

² for example building cladding disasters, manipulation of ground levels, non-compliance with building conditions of approval or the absence of sensible conditions, poor placement of noisy plant on private property such as air conditioners, or poor placement of basketball hoops or skate parks too close to residential housing compromising noise attenuation policies and regulation; poorly planned cross-overs requiring demolition and rebuilding; poorly planned thoroughfare closures; absence of or minimal building requirements in high fire risk areas, left out reo rod in brick piers needed to tie down rooves, deliberately installed inadequate undersized soak wells thereby condemning buildings to flooding issues; inadequate soil retention; non-compliant dangerous steps in internal stair ways; left out 'J' bolts in one double story unit thereby rendering main roof as unsafe because of inadequate tied down, wrongly surveyed and place boundary walls, encroaching buildings etc etc, and see WA Auditor General's 26 June 2019 Report on Local Government Building Approvals: at <https://audit.wa.gov.au/reports-and-publications/reports/local-government-building-approvals/>, which sampled four LG entities - Albany, Gosnells, Joondalup, Mandurah – and which was far from acceptable measure of LG CEO and administration performance, and Council oversight and policy, OAG found *It was disappointing to find that local government entities conduct limited monitoring and inspections of building works, and that compliance issues were not always resolved quickly*, and recommendations that included, development and implementation of a risk-based approach to monitor and inspect building works, improved guidance to staff on how to prioritise and manage building related complaints and enforcement activities to resolve community concerns and non-compliance issues in a timely way

³ see for example in the City of Melville, where there is a particularly active well informed about building laws group, which applies its activities throughout the metropolitan area, *Citizens for Building Reform WA* in this sphere, which the Local Government is unwilling or unable to resolve; noting the power to make Building Local Laws: LG Act s.3.5(4A) for which mystifyingly there is not yet a *Model (Building) Local Law* by the DLGSC, or any Local Government Building Local Law to our knowledge

⁴ which is essential and necessary in a regulated and regulatory environment

⁵ not the DLGSC which is a *captured by employees* government department

⁶ noting the ANAO recommendations in its *Service Delivery through Other Entities* 25 January 2022



Purchasing, Procurement, Contracting¹

The WA CCC has many current investigations into procurement and financial management², and has finalised a number of investigations into corrupt Local Government procurement³.

SUBMISSION FIFTEEN It would be helpful for the Commission to consider the efficacy for Local Government productivity improvements possible in all Australian OAGs through having proactive procurement risk audit teams, including consideration of the importance of the new WA OAG forensic audit team, which is not funded to apply to Local Government but should be.

Furthermore, it appears that overly rigorous procurement strategies can be a staunch ally of incumbency. Procurement regulatory and policy controls are essential for transparency and probity, but they can lead to long term costly contracts with expensive long term maintenance and support costs.

SUBMISSION SIXTEEN It would be helpful for the Commission to address this issue and how Local Governments can strike best practice right balance between too little and too lax procurement policies so as to foster Local Government productivity.

Many LGs have out dated or ineffective databases and operating systems but do not have access to sophisticated independent advice about what system to choose, leading to buying systems that are unsuited or not to a sufficient or compliant standard, which lead to productivity losses and lost productivity gains, noting the WALGA for-profit preferred provider service is not always producing desirable outcomes and CEOs' advices generally range between not expert and corrupt, see WA CCC *Report on the Investigation of Alleged Public Sector Misconduct by a Local Government Employee*⁴ in Relation to the Purchase of Management Systems **Software** 19 December 2013⁵. A system that is:

- universal to all WA LGs would be good for productivity in terms of employees moving between Local Governments⁶, and making efficient use of the time taken for WA OAG's performance and financial audit roles.
- able to be purchased at varying levels of sophistication and capacity noting the large differences between Local Governments' operating expenditures.

SUBMISSION SEVENTEEN It would be helpful for the Commission to provide guidance about solving this dilemma in the interests of District communities and the preferred or optional percentage of municipal expenditure available for services and capital works, against for operational expenditure.

Lobbying⁷

¹ one of biggest LG , maladministration, fraud, corruption risks

² *Labrador, Taurus-Delta, Taurus – Charlie, Obsidian, Taurus-Echo, Ochre, Brass, Auburn-Bravo, Auburn-Bravo One, Dorado, Alpha, Auburn-Alpha, Octans, Auburn- Bravo, Serpens*: accessed CCC website 19 February 2022

³ see above

⁴ CEO **Augusta-Margaret River, Kalamunda**

⁵ <https://www.ccc.wa.gov.au/sites/default/files/Local%20Government%20Purchase%20of%20Management%20Systems%20Software.pdf>

⁶ but we do not have figures for how much this is

⁷ WALGA and LG Pro lobbying activities have been estimated by commentators that 81% of WALGA's and 68% of LG Pro law reform recommendations benefit employee administrators and/or disadvantage the public interest



Lobbyists pose existential strategic, conflict of interest and corruption risks to Local Governments and introduce all manner of conflicts of interest, which pervade Local Governments as a normal

way of doing business, unless a prudent Council is effectively managing conflicts of interest, which is rare¹.

SUBMISSION EIGHTEEN It would be helpful for the Commission to address the issue of the impact of lobbying on Local Government productivity and recommend that the WA Lobbyist Act should apply its provisions to Local Government lobbyists².

CEO Remuneration Settings

Generally

In WA, the Salaries and Allowances Tribunal³ (Tribunal) decides Local Government EM⁴ payments and CEO remuneration, by an annual LG Determination. The current number of bands (4) and outward looking criteria for those bands was set in 2012, and has remained unchanged since that time. Local Government and CEO performance do not appear to be measured in efficiency or productivity in the salary band criteria, which disturbingly includes the number of employees a CEO is responsible for as a band criterion, arguably inhibiting efficiency and productivity.

Surprisingly, the LG Act does not regulate the number of bands or the criteria for being in particular bands, which do not include qualifications and experience, or the absence of a history of criminal record and serious misconduct as criteria.

The Tribunal⁵ has considered sections 2.7 to 2.10 and 5.41 of the LG Act, which outlines the roles and responsibilities of local governments, councillors, mayors, presidents and their deputies and the functions of Local Government Chief Executive Officers (CEOs)⁶.

The Tribunal has noted⁷ that issues of performance management, governance standards, workplace culture, qualifications and training are **outside** the Tribunal's powers. The Tribunal's functions are narrow and strictly defined in the *Salaries and Allowances Act 1975* (WA), and do not appear to facilitate or foster efficiency or increases in productivity.

The Tribunal role in CEO remuneration setting does not appear to attract well qualified independent efficient CEOs, while the *system* is overprotecting underperforming CEOs and senior managers from accountability, performance management, disciplinary proceedings and termination. Unlike in private enterprise, Local Government employees do not have to work productively to keep their jobs. It appears that once Local Government CEOs are admitted to that exclusive and very powerful club, the accountability and performance rules do not apply

¹ but see Town of Cambridge **Council** expert endeavours in this arena

² LGs must be added to list of prescribed organisations in *Integrity (Lobbyists) Regulations 2016* Reg. 3 Government representative, for purpose of *Integrity (Lobbyists) Act 2016* (WA s.3(1) as authorised by *Public Sector Management Act 1994* (WA) Schedule 1 column 2, item 15

³ whose membership as we understand it does not include an HR expert

⁴ who are classed as volunteers

⁵ Salaries and Allowances Tribunal

⁶ Salaries and Allowances LG Determination 2021, Preamble

⁷ in LG Determination 2021



effectively, and CEOs' futures are pretty much assured, regardless of performance or productivity.

Grey Gifts

Another perspective is in the nature of *grey gifts*¹, which arguably foster corruption and hinder productivity. One way to reclaim the value of *grey gifts* is to ensure that anyone employed in the public sector or a sector that lives mainly off government contracts cannot have a total personal income higher than a prescribed maximum, such as the income of the prime minister², or state premier. This would limit the gains available to people managing public institutions³, such as Local Governments, and inhibit corruption.

Working From Home

Some Local Government CEOs work from home all or part of the time.

*Secondary Employment*⁴

Secondary employment⁵ in Local Government where it is not regulated, means paid employment of any kind, direct or indirect, undertaken in addition to employees' employment contracts, and in WA Local Governments is unregulated. Secondary employment behaviours include multiple job-holding, moonlighting or second jobs. Secondary employment categories for HR management purposes include,

1. no LG awareness or approval
2. known and regulated, or
3. arranged by the Local Government.

Some common employee misconduct risk areas include *secondary employment* because of the potential,

- for conflict of interest between their public duty and their private interests, and/or
- use of Local Government resources, including the employee's work time used in soliciting business, for the benefit of private interests.

There are helpful guidelines in the Conflicts of Interest Guidelines in WA Public Sector⁶ and in a research paper on secondary employment in the WA Police Force⁷, which have been noted by the CCC⁸, and noting the WA Department of Commerce Code of Conduct on secondary

¹ *grey gifts* are discretionary decisions over the allocation of things that have private value, but are not priced such as land rezoning or content of infrastructure contracts; and which are the currency of *grey corruption*: Game of Mates, page 35

² as they have done in Netherlands and Germany

³ Game of Mates, page 161

⁴ *Conflicts of Interest - Government of Western Australia, guidelines*; DLGSC Operational Guidelines December 2019 *Disclosure of interests affecting impartiality*

⁵ pose a conflict of interest, as noted in CCC *Serious Misconduct in Procurement of Environmental Services* at para.64-65 at

<https://www.ccc.wa.gov.au/sites/default/files/Serious%20misconduct%20in%20procurement%20of%20environmental%20services.pdf>

⁶ which do not apply to Local Governments

⁷ <https://ro.ecu.edu.au/cgi/viewcontent.cgi?article=2964&context=theses>

⁸ WA CCC *Serious misconduct in procurement of environmental services*, at para.64 – 65



employment helpfully provides, ... *The department acknowledges that some employees may wish to participate in employment external to the department. Approval must be sought from the delegated officer prior to engaging in any form of paid employment, outside of our official duties. All employees are able to participate in volunteer activities in their own time where there is no financial reward. There is no requirement to seek approval in this circumstance unless a conflict of interest is identified, none of which apply to WA Local Governments.*

Post Separation Employment or Office

It is an EM minor breach to attempt to influence, by means of a promise of a reward, an employee's conduct¹ and there is a crime of a *public officer* (including a Local Government EM or employee)² acting without lawful authority or a reasonable excuse on any knowledge or information obtained by reason of office or employment to obtain a benefit or detriment³.

Integrity risks from post separation employment are recognised by the WA PSC and APSC who provide fact sheets and checklists to hinder post separation employment integrity risks⁴. The WA PSC advises that while not mandatory it is, *open to Council, its Risk and Audit Committee or the authority's risk and governance branch to consider post separation (if not already) as part of its overall risk management framework or in relation to particular senior or high risk profile positions*⁵, which is a disturbing lack of Local Government regulation in this area.

Prudent post separation LG integrity risk management requires:

1. ongoing declarations of interest from current EMs and employees, especially reporting any attempted lobbying from separated employees or EMs
 2. identification of high risk areas, especially including audits of separated employee IT access before separation, or any influence exerted prior to departure that relates to their new employer
 3. ongoing post separation contractual restrictions within specified time frame, especially relating to business documentation, such as tenders and contracts
 4. standard contractual requirements,
- and include the person, while still employed, being prohibited from,
5. using their position to influence decisions or elicit information and advice in favour of the (prospective) new employer
 6. revealing confidential, sensitive or official information to their new employer
 7. providing intellectual property or other information that would give the new employer an advantage in dealing with the Local Government and/or a competitive advantage in the marketplace
 8. using their knowledge and contacts within Local Government to lobby, or otherwise seek advantage for their new employer in dealing with the Local Government,

¹ 2021 Conduct Regs Model Code cl.20

² *Public Officer* under Criminal Code includes *a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law*: Criminal Code s.1(d)

³ Criminal Code s.83

⁴ <https://www.wa.gov.au/government/publications/reducing-post-separation-employment-integrity-risks>
<https://www.apsc.gov.au/sect-414-post-separation-employment>

⁵ PSC advice by email to author 11 January 2021



noting current employees and EMs must be prohibited from providing the former Local Government employee or former EM more (or less) favourable treatment in their subsequent professional dealings (e.g. licensing, regulatory compliance, auditing, development or building applications) on the basis of an ongoing personal relationship with the separated person, which if not enforced are likely to lead to Local Government productivity losses, noting the WA OAG has found that the DLGSC was not effectively or efficiently managing employee exits so as to minimise security, asset and financial risks.

Bullying

It is now recognised that it is a myth to blame *workplace bullying* on interpersonal relationships. Bullying, which is rife in WA Local Governments, is about failed organisational structures¹, which are Councils' non-delegable role and responsibility², but noting that the Local Government culture is the CEOs' responsibility³. A bullying culture reveals warning signs of dysfunctional structural *ways of working* and may be the first sign to Councils that they do not have an *appropriate structure* for their administration, and CEOs' performance reviews are not addressing fundamental flaws in CEOs' employee management⁴. Short term consequences of a bullying culture include promotion of poor performers and no career prospects for strong performers, and that strong informed minority EMs resign. The ultimate consequences include Local Government productivity losses.

SUBMISSION NINETEEN It would be helpful for the Commission to identify how to decide the appropriate number of salary bands and salary band criteria⁵, and the need or otherwise to address secondary employment, post separation conduct and a bullying organisational structure the reform of which would foster productivity improvements in Local Government and CEOs, and whether or not it would be better to remove Local Government Determinations from the Salaries and Allowances Tribunal altogether, and mandate bands and criteria in Regulations under the LG Act. It is also noted that working from home is increasing and LGEMA requests the Commission's comment about how this including how it can affect productivity especially if it is a Local Government CEO working full or part time from home.

WALGA and ALGA

The WA Local Government Association (WALGA) is a statutory body established by the LG Act without any statutory requirements to act in the interests of Local Government, LG Districts, Local Government District communities or the public interest⁶.

¹ see one example of a **Risk Audit Tool (Bullying)** SA University <https://apo.org.au/sites/default/files/resource-files/2018-01/apo-nid172316.pdf>

² LG Act s.5.2

³ *Cambridge* para.142

⁴ LG Act s.5.41(g)

⁵ current payment and remuneration criteria were set in the Tribunal **2012 LG Determination** have arguably led to employee number and operational costs increases, and must be amended and mandated in LG Act to drive increased productivity and include qualifications, past work references and experience; EMs with more than 4 years' experience, relevant professional tertiary qualifications should be on a higher rate

⁶ WALGA Rules of Association require it to act in its own interests



Furthermore, WALGA and LG Pro (Local Government CEOs' representative body) and the DLGSC have formed a recognised partnership¹ with the state government that gives it exclusive authority to speak to and represent Local Governments to the LG Minister, which leaves out and ignores the need for representation of Councils and District communities, noting:

1. WALGA's rules of association require it to act in its own interests
2. WALGA's agendas, behaviours and submissions gives it all the appearance of a Local Government *employee* advocate
3. WALGA does not appear to represent Local Government Councils or Local Government District communities because,
 - WALGA employees draft WALGA State Council agendas
 - WALGA agendas are not circulated to all WA EMs or Local Government Councils
 - Councils elect 2 EMs as WALGA zone representatives
 - Councils generally do not provide guidance or direction to their WALGA representatives about how to vote at WALGA zone meetings
 - WA is divided into 12 WALGA country zones and 5 WALGA metropolitan zones, so the WALGA zone voting outcomes are heavily weighted towards country zones
 - WALGA zone meetings take place to vote on WALGA state council agenda matters, which are closed to the public
 - WALGA zone meeting and State Council outcomes are not required to be reported back to Councils, and generally are not.

WALGA, which is not subject to the FOI Act or WA OAG financial or performance audits², has as its income and/or under its control³, significant public monies much of which is expended on operational costs⁴, makes nominations to over 30 government committees and is WA's ALGA member. If the other state and territory ALGA members are similarly established, then if the federal government is using ALGA to inform itself about Local Government affairs in each state and territory, the federal government and the Commission must understand it is hearing only from Local Government administration employee advocates.

SUBMISSION TWENTY We submit that a prudent Commission will recognise that submissions from WALGA, ALGA and similar bodies may not necessarily represent or reflect the positions or interests of Local Governments, Councils, local District communities or the public interest.

South Australian Productivity Commission

The South Australian Productivity Commission (SAPC) was asked by their state government to provide advice on options to assist Local Government Councils to improve efficiency and create capacity directed to passing on cost reductions to ratepayers, and providing recommendations

¹ under an MOU

² *Given the significant revenue from public funds that the Western Australian Local Government Association receives through fees and subscriptions paid by local government members, there is value in the Office of the Auditor General undertaking annual audits of WALGA: the Panel Finding 53*

³ 2018-19 financial year the expenditure in the Preferred Supplier contracts was a **staggering \$351,979,031**.

WALGA received \$4,283,471 of that as contract management fees: Panel report

⁴ Parliamentary LG Select Committee⁴ reported that WALGA has 106 employees and a budget of \$9.3 million, and bizarrely noting the DLGSC has only 37 employees and a budget of \$4.6 million, noting the DLGSC is established to assist the LG Minister to administer the LG Act and to regulate Local Governments.



to lower costs and enhance financial accountability. The SAPC *Local Government SA Productivity Report 2020* key findings included that,

- the total operating expenditure (TOE) for the Local Government sector¹ grew faster than inflation over the ten years preceding 2017-18
- wages and *changing* skill mix were significant TOE increase drivers
- other key TOE drivers were the growth in the volume, scope and quality of LG *mandated and discretionary services*²
- other less significant cost drivers were *compliance costs*
- compared to each other, Councils are relatively efficient, but significant improvements were possible
- enhancing Councils' *capacity for sound decision making* is the key to containing growth and increasing efficiency.

The SA government published its support³ for the SAPC recommendations⁴, which included:

Recommendations 1- 4: included an *Information Framework*, and the responding *Response and Implementation Plan*.

Recommendation 5: lower costs and enhance financial accountability by the government clarifying and improving the relationship between government and Local Governments in the short term by,

- identifying and addressing inefficiency and red tape generated by government mandated Local Government services
- adopting strong review processes to identify adverse impacts on Local Governments from government decisions
- clarifying the range of options available to Councils for performance of their legislated functions
- clarifying Local Government responsibilities, including establishing *measurable minimum service standards* for mandated Local Government services
- clarifying the respective state and Local Government responsibilities so as to remove unnecessary overlaps or duplication, and reduce uncertainty.

Recommendation 6: reduce Local Government transactions costs, by facilitating more flexible efficient enterprise bargaining arrangements by legislative amendments to allow a group or association of Councils to access Fair Work enterprise bargaining agreements.

¹ employees

² *services provided should match those most valued by community, which is critical part of the productivity equation* in Australian Productivity Commission, *Local Government, Shifting the Dial: 5 year Productivity Review, Supporting Paper No. 16*, 3 August 2017, page 5

³ February 2020

⁴ https://www.dpc.sa.gov.au/__data/assets/pdf_file/0004/139261/Government-Response-SAPC-Local-Government.pdf



Recommendation 7: improve procurement through lower costs, higher capability and efficient procurement processes by implementing Local Government access to government procurement, contracts and pricing training.

Recommendation 8: foster continuous improvement by establishing a *Premier's Award* for Local Government excellence in continuous improvement and innovation.

Recommendation 8: increase Local Government financial accountability by increasing the quality and transparency of planning and reporting by amending the legislative framework to require annual reports to include performance comparisons and reporting against service standards, and to specify standardised model long term financial plans, and infrastructure and asset management plans, that are reported in annual reports.

The SA government provided detailed advice to Councils, which make helpful reading for any Councils seeking improved productivity, especially noting findings about the ***use of contractors***,

- outsourcing to external contractors, especially in relation to service delivery, reduces Local Government accountability, with the Local Government and the contractor blaming each other for service failures,
- disempowers communities
- ***clouds expenditure and productivity outcomes***,

noting insourcing from local community expertise as an alternative should be pro-actively nurtured.

SUBMISSION TWENTY ONE That the Commission takes careful note of and endorses the findings and recommendations of the SAPC about local government productivity, especially noting the volunteer contribution local community expertise, for example through Council Committee structures could deliver to Local Government productivity.

Land Development and Use

Most WA land zoning, subdivision, development and building applications start with local government and have significant local government input into processing the applications¹ even where the local government is not the final decision maker. The interests of employees and good governing EMs are different and often opposite but they both want higher rates income. Employees want more rates to fund more employees and well intentioned EMs want more rates for capital works to enhance their Districts. EM objects can be achieved with higher productivity without higher rates. Developed land brings in more rates, the higher the density the higher the rates income so there is an inherent conflict in Local Governments between land use and rate setting decisions.

¹ which do not necessarily translate to influencing the outcomes unless the local government is the decision maker



The state government gives the appearance of supporting well planned development by funding the WAPC¹ with large budgets for human resources to draft a model scheme text, review and adopt local planning schemes², and to draft and adopt State Planning Policies and Development Control Policies³, which all need Third Party Appeal Rights (TPARs) to make a *legal nexus* between planning and development, and for planning to have any effect whatsoever on development. This is WA's **great planning façade**. The community is engaged in planning consultation and workshops and draft outcomes, and approve the planning policy outcomes that reflect their aspirations for their District and state; and find to their later dismay and anger that they have no role in enforcing planning policy against the decision makers who depart from them with impunity. The results of the wasted productivity of WAPC strategic planning output can be seen all over WA. It might be more productive to spend the strategic planning budget on planting the trees removed to smooth the path for development.

WA is the only state in Australia without any form of third party merits appeal rights⁴ against unmeritorious land development, especially worse in the currently relaxed/removed⁵ rigorous development assessment against approved state and local government planning policy⁶, which has had and will continue to have significant long term adverse impacts on the productivity and amenity of the places where people live and work, and on biodiversity of public lands and waters.

Where short term private profit is the only or primary motive for land rezoning⁷, subdivision and development in the absence of effective third party merits appeal rights in the WA State Administrative Tribunal⁸ to test and examine development approvals against sophisticated expert planning policy and where lobbyists or applicants lobby, influence or bribe local government employees and EMs, buildings are built on flood plains⁹, extreme fire risk land and

¹ total annual appropriations \$114,556,000: State Budget Papers 2020/2021 Volume 2 page 743

² in which the property development industry lobbies for large wide ranging discretions (*grey gift* potential), which are characterised being guided by weighty planning policy, but are not; if a local planning scheme prohibits a development then the decision maker is bound, and recipient faces successful judicial review if approved unlawfully or illegally

³ WAPC Strategic Planning Budget of **\$25,288,000** (total cost of service **\$79,039,000**): State Budget Papers 2020/2021 Volume 2 page 745; noting Strategic Planning Services' Key Efficiency Indicators **unenforceably** being to *guide the state's long-term urban settlement, industrial economic development and management of the environment in ways that reflect the aspirations of the WA community for a high quality of life*: State Budget Papers 2020/2021 Volume 2 page 746; and noting the Model Scheme Text requires that each local government is expressed to be *responsible for the enforcement and implementation of this Scheme: Planning and Development (Local Planning Schemes) Regulations 2015* (WA) Schedule 1 — Model provisions for local planning schemes, clause 5; and *This Scheme is to be read in conjunction with any local planning strategy for the Scheme area*: clause 7(2); and local governments can choose, which some have, to adopt into their Local Planning Scheme *The conservation of the natural environment of the scheme area including the protection of natural resources, the preservation of trees, vegetation and other flora and fauna, and the maintenance of ecological processes and genetic diversity* clause 8(h) and *Planning and Development Act 2005*(WA) Schedule 7, clause 4(2)

⁴ see Annexure One to this submission

⁵ under COVID legislation, which has included the disastrous disruptor of proper planning *implementation of the temporary Significant Development Assessment pathway*: State Budget Papers 2020/2021 Volume 2 page 745

⁶ which deal with **inundation, fire and flooding risk** and mitigation

⁷ decided by uncontrolled unregulated non-reviewable Ministerial discretion, and represents enormous *grey gift* opportunities

⁸ judicial review in the courts generally cannot look at merit of an approval, and policy is about merit

⁹ see residential housing on flood plains issue examined,



coastal areas with high risk of collapse and inundation, and built with dangerous materials such as flammable cladding and asbestos. Socially responsible conditions are not imposed on development, such as ensuring apartments and housing are used for residential accommodation and not prohibiting short-stay holiday letting in residential areas¹ where there are housing and/or labour shortages. Productivity from land development is lost.

Even worse, in WA there is little if any effective monetary charge to landowners for rezoning^{2 3}, where private and government⁴ windfall gains are huge, and lawful corruption is at large.

Furthermore, in WA there are no prohibitions against political or electoral donations from property developers, mining or pastoral interests in state or local government laws. The *WA Integrity (Lobbyists) Act 2016* and *Integrity (Lobbyists) Regulations 2016* disturbingly do not apply to local governments. The resulting lack of good governance and integrity, and well planned development is arguably adverse to local and state government productivity.

SUBMISSION TWENTY TWO While we recognise that these are state based issues, recognition by the Productivity Commission of the lost productivity from the development of land, which ignores the prior planning will be helpful for making law reform submissions.

Grants⁵

The Commonwealth government makes significant grants directly to local government. Conditions on those grants requiring good governance is one way for the federal government to exercise direct influence over and improve local government governance.

Unlike the Commonwealth public service, as at January 2021 Western Australia⁶ operated without an agreed grants framework, including for election commitments⁷. For example, Local Government capital works grants might be used wrongly for operational expenditure, prop up

<https://www.theguardian.com/australia-news/2022/mar/11/thousands-more-to-live-on-floodplain-on-sydneys-fringes-if-developments-allowed-to-proceed>

¹ and even in local government Districts where short stay accommodation such as Air BnB is prohibited in residential areas it operates at large where Councils dominated by sectoral interests refuse to investigate or prosecute, as happens in the premier tourist destination, the Town of Cottesloe

² as there is in the ACT, and which if adopted nationally would lead to vast benefits to governments: Game of Mates, page 19

³ see estimated in 2017 annual **\$11billion in windfall economic gains** from higher land use approvals: Game of Mates, page 23

⁴ where a landholder

⁵ in WA *Local Government Grants Act 1978* establishes **Local Government Grants Commission (LGCC)** with five (5) LGGC member board whose majority is influenced by WALGA nominations: one ministerial nomination, one DLGSC Officer, 3 members from the WALGA submitted lists – metropolitan, shire not in metropolitan area, city or town not in metropolitan area; and whose principal function is to make recommendations to the LG Minister about the allocation of Commonwealth financial assistance; noting the LGGC Annual Report 2019/2020 reports the grant allocation methodology and outcomes

⁶ in 2015, the WA Public Accounts Parliamentary Committee tabled a report, in which it was estimated that WA's 140 local governments would that year receive a combined total of **\$1.9 billion from rate revenues**, with a further **\$282 million from the Local Government Grants Commission**

⁷ and especially pork barrelling



failing budgets¹, misapplied or not spent, so as to improve the expenditure *bottom line*. The WA and Commonwealth Auditors' General have found acquittal and expenditure of grants is wanting, see WA OAG *Grants Administration* 28 January 2021²; *Australian Government Grants Reporting*³ 19 October 2021; and noting *The Commonwealth's Resource Management Guide No.412*.

SUBMISSION TWENTY THREE The Commission could helpfully review how the poor acquittal of local government grants adversely impacts on local government productivity, and in particular address the risks in mendicant local governments who rely on grants for their financial and corporate existence

SUBMISSION TWENTY FOUR The Commission should look at the process of allocating federal government grants, who influences outcomes and whether or not the current process adversely affects local government productivity from federal grants' outcomes.

Recognised Universal Productivity Goals

SUBMISSION TWENTY FIVE All Local Government Acts should have statutory productivity and public interest objectives and intentions because statutory objectives provide a *context*⁴ for all statutory interpretation, and a guide for Councils in setting organisational structures⁵ and budget expenditure. For example, an amendment could be made to LG Act s.1.3(2)(d) to include *productive* so as to be amended to read, *more efficient, resident focussed, effective and productive local government governing in the public interest of the District*.

SUBMISSION TWENTY SIX There must be recognised measurable and comparative local government productivity KPIs and goals⁶, against which to measure the around 537 Australian local government administrations and CEO performance.

Yours faithfully

Sandra Boulter

Deputy Chair, secretary on behalf of LGEMA

LGEMA: Local Government Elected Members Association Inc. supporting LG Elected Members striving for LG best practice good governance with integrity

Website: <https://lgema.asn.au/>

¹ for example by unlawfully but undetected removal of monies from **Reserve Accounts** to resolve operating expenditure deficits, without grantor or Council authority

² *only 2 of the 8 entities sampled/audited had good grant administration practices across all OAG audit criteria*

³ which includes analysis of grants to Local Governments

⁴ WA Interpretation Act s.18; *Bethune* test cited in **Salini-Impregilo S.P.A.v Francis** [2020] WASC 72; **Parker v City of Rockingham** [2021] WASCA 120 para. 48 – 53

⁵ LG Act s.5.36(1)(b)

⁶ noting *labour productivity can be measured as either the number of employed persons or the number of paid hours worked by employees. Hours worked measures are typically preferred because they capture changes in standard working hours, leave, overtime and flexible work arrangements: Reserve Bank Productivity Explainer* accessed 8 March 2022, and which noted the ABS also reports **hours worked that have been adjusted for 'quality'**, meaning that they take into account changes in the level of education and experience of the labour force



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Incorporated 7 August 2019 **AIRN** A1030822L **ABN** 14455851094

ANNEXURE ONE THIRD PARTY APPEAL (MERITS) RIGHTS (TPARs)

Rationale for TPARs Support

1. Assertions by Ministers or public servants or decision makers about the robustness, productivity, good intentions or worthiness of the WA planning and development framework are without any force or foundation in the absence of a system that independently tests those assertions. A system that does not measure or test itself is without moral or ethical integrity and will produce economicⁱ, environmentⁱⁱ and social failures. Local governments are required to meet the needs of future and current generations through integration of environmental protection, economic and social advancement and economic prosperity as required by the LG Act intentions, object and purposeⁱⁱⁱ. The DLGSC^{iv} has intentions that support TPARs^v. The *Planning^{vi} and Development Act 2005* purposes support TPARs. WAPC use a large budget and significant human resources to draft and adopt State Planning Policies, Development Control Policies and Local Planning Schemes, which all need TPARs to have any effect whatsoever.
2. The first party in a development decision is the applicant. The applicant has the right of review (appeal) in Western Australia to the State Administrative Tribunal (SAT) against the merits of a development refusal, or any condition of an approval.
3. The second party to a development decision is the decision maker, that includes the local government, Development Assessment Panels (DAPS), SDAUs (State Development Assessment Unit) or the Western Australian Planning Commission.
4. Everyone else is a third party, for example affected neighbours, community groups such as Coastcare groups, and a local government to a DAP or WAPC decision.
5. The WA State Administrative Tribunal (SAT) hears administrative reviews of a decision to refuse development or impose an unwanted condition which all relate to the merits of the



decision. SAT is a no costs jurisdiction, which means the applicant for review has to pay a fee to lodge a review application but does not have to pay the legal costs of the decision maker if the application is unsuccessful (unless the SAT finds the application was frivolous or vexatious). SAT is much less complex procedurally than a court, and an applicant can self-represent or have legal representation.

6. The SAT can refer a matter of law to the Supreme Court.
7. There are No TPARs in the WA SAT. For example, this means a third party cannot commence an application for review in the SAT against an unmeritorious development approval or failure to apply a condition necessary to the continued quiet enjoyment of the third party neighbour's property, such as missing a requirement that a new house not have a shiny roof or not overshadow a solar panel or not have a noisy air conditioner or a pool pump near a boundary etc etc. or a local government's concern that tree and biodiversity loss, parking, traffic, waste water or flooding or petrol fumes from a petrol station are not adequately addressed and the decision is contrary to policies addressing those issues.
8. WA is the only state in Australia with no SAT TPARs or in an equivalent tribunal^{vii}.
9. An unmeritorious development approval includes one that is inconsistent with policy, where the discretion of the decision maker has failed because it has been exercised in a manner that is inconsistent with adopted policy without good reason to depart from the policy – that is the decision is unmeritorious but not quite an unlawful breach of development assessment legal framework.
10. A third party can only appear in the SAT to give evidence in a review of a refusal or condition already commenced by the first party recipient of a development refusal (or against a condition of an approval it objects to), and only at the discretion of the SAT presiding member. A disgruntled neighbour cannot initiate a review (appeal), and neither can the local government against a SDAU, Joint Development Assessment Panel (JDAP) (development over a certain value) or Western Australian Planning Commission (subdivision) decision or a Ministerial decision (zoning).
11. Thus, access to the rule of law is not evenly available. It is undemocratic because equal access to the law is a fundamental tenet of a functional democracy.
12. Surprisingly, WALGA is against TPARs, local government planning staff (WALGA associate members through their professional associations) are also against TPARs.
13. WALGA literature review on TPARs appears cursory, shallow and not wide ranging, and some of the papers appear to be from property and/or development industry members.



14. All arguments against third party appeal rights have been rebutted and outweighed in academic research and examination of the statistics.
15. For example, there is an excellent TPAR analysis in 2009 paper by the Hon. Judge Trenorden on the inevitability of third party appeal rights in the SAT^{viii}. Some points raised include:
- a. are that it is dangerous to draw conclusions from the raw number of merits appeals that are made because so few actually go to trial
 - b. there are more first party appeals than third party appeals in the jurisdictions examined
 - c. third party appeals provide the opportunity for the parties to meet, often for the first time, and understand both the proposal and the objections to it and talk through a consensus position.
 - d. rebuts the floodgates arguments
 - e. suggests that policies may not cover all elements that could adversely impact on the merits of a decision and some other elements can be considered on the appeal if missed in the original approval
 - f. meaningful or adequate community consultation does not always occur prior to a development decision being made (the TOC consultation policy specifically excludes the policy from applying to development applications)
 - g. prospect of an appeal with not deter quality projects
 - h. third party appeals introduce multiple views to the decision, which improves the outcome
 - i. third party appeals *dispel fears about collusion between the developer and planning authorities. They are a means of checking that planning authorities do not act capriciously or arbitrarily.*
 - j. *planning is ultimately a communicative process, which needs to embrace the public in more meaningful ways. It is now recognized that society is not homogenous but comprised of a range of interests that are fragmented, contradictory and even conflictory. Thus, local government decisions presented as being in "the public interest" make an ambitious claim. Third party appeals facilitate greater public participation and beneficially draw the public into land-use decision-making*
 - k. the Courts and Tribunals *have an important filtering function to prevent irrelevant considerations from influencing an application. Stein (Stein, L, "Planning and Accountability" in (1995) Australian Planner vol 32, no 2, p 71) concluded, inter alia, with an observation on the benefits of appeals generally being heard by courts or tribunals. Although he may not have intended it, the following statement is a clear argument for third-party appeals rights to a court or tribunal: After 25 years as an academic, practitioner and judge in this (planning) area, it is my clear belief that the authorities must be kept in line and planning must be viewed as a matrix of*

interconnected policy, legal, scientific and political filaments which can only be seen when the fullest testing is done on the evidence that is brought forward.



16. Some members of the property and development industry are against third party appeal rights because they create the only true legal nexus between planning policies (SPPS, DCPs, LPPs and Local Government policies) and development decision making but this is not the argument they articulate. They say NIMBY, red tape, delays which mask their real reasons for not wishing a careful assessment of their development approvals against planning policies adopted to guide meritorious development outcomes.
17. Without TPARs, we have a development approval system, not a development assessment system.
18. Some Councils have formally opposed the DAP system and many local government communities are suffering adverse impacts of DAP decisions, because they had no right of appeal against.
19. TPARs will partly bring accountability to the planning and development decision making. They have the potential to improve a local government officer Responsible Authority Reports to the JDAP, because the JDAP decision could be third party appealed by neighbours and/or the local government.
20. With the introduction of TPARs, developers will know that approvals that are inconsistent with planning policies will be challenged and can be overturned. So, some outcomes from the introduction of TPARs that can be expected include:
 - a. State and local government policies will have much more influence on development assessment decisions, thus raising the standard of decision making, because TPARs create an accountable legal nexus between planning policy and development decision making, which does not currently exist (That is why there is lots of consultation on planning policies because this makes the community think (wrongly) that they are engaged in an important process and that good policy outcomes influence development decision making, which they often do not).
 - b. There may be an initial spike in SAT reviews (appeals) but once developers and their representatives understand what third party appeal rights mean - i.e. that dodgy approvals may be overturned - the appeals will drop off
 - c. The potential for undue influence, cosy relationships between the first and second parties are less likely to influence the outcome, and the potential for corruption is reduced
 - d. The local government statutory planners will also not be minded to make hasty ill-considered approval decisions, which can happen for a whole variety of reasons, say for example because of a heavy workload
 - e. Assessment of development applications and delegated decision making and reporting to Council improves because of a more thorough examination of all the



- relevant applicable policies, because an approval or a refusal can be reviewed against applicable policies
- f. Workplace bullying of a decision maker's decision makers by applicants tends to be reduced
 - g. Poor development approvals are exposed and corrected on review
 - h. A body of SAT case law develops teaching us what is meritorious and proper practice and what is not, having regard say for example to The State Coastal Planning Policy 2.6 or a local planning policy on the determination of Natural Ground Level, or how to deliberate over a decision – say about whether or not the discretion to vary a height restriction.
 - i. The level of public consultation tends to increase and decision makers are more inclined to take note of and act on any objections, because this communication will foster picking up anything that the decision maker has missed out.
21. In the long run, there is no doubt at all that TPARS in SAT will modernise its approach to inclusive development decision making in the public interest (as in the rest of Australia) and:
- i. the quality and compliance of development applications will improve
 - ii. ambit claims in a development application will reduce over time and thus they are able to be processed more quickly, and so the decision-making process will become more streamlined
 - iii. use of irrelevant planning considerations will be minimised
 - iv. the decision maker's workplace environment will improve
 - v. efficiency of the decision maker's workplace will improve
 - vi. development decisions will be transparent and accountable to and more trusted by the people and community they impact on
 - vii. there will be more public engagement in the assessment process because affected neighbours and interest groups, such as Coastcare, will know they can make a difference
 - viii. development outcomes will improve because TPARs create legal nexus between planning and development that is so desperately needed in WA is thereby created.
22. While it is acknowledged that TPARs probably cannot be lawfully inserted into Local Planning Schemes under the current legislative framework, attempting to amend the scheme will send the strongest message possible to the Minister and the parliament to change that framework, given it is the Minister who approves or refuses scheme amendments.
23. The absence of TPARs combined with the presence of political donations from property developers permitted in WA (prohibited in other jurisdictions) are significant drivers of conflicts of interest and corruption in WA's planning and development.
24. The absence of TPARs combined with the absence of compulsory local government elections and not allowing all Elected Members to be voted in once every four years are significant



drivers of conflicts of interest and corruption in local government development decision making because well intentioned Council majorities may only last for two years.

25. The absence of TPARs combined with the *Integrity (Lobbyist) Act* not applying to local governments or town planning, or to employees of property developers are significant drivers of conflicts of interest and corruption in local and state government development decision making.
26. The absence of TPARs combined with the failure of Local Government Councils to require public meeting registers to record who meets with whom and when and what about, which apply to Elected Members, Employees and contractors are significant drivers of conflicts of interest and corruption in local government development decision making.
27. The absence of TPARs combined with the failure of local Government Councils to restrict their employees exercising delegated authorities to make decision only that comply with Council policies or refer the decision to Council are significant drivers of conflicts of interest and corruption in local government development decision making.
28. The absence of TPARs and the failure of the Public Service guidelines, such as Conflicts of Interest and Secondary employment to apply to Local Government employees, which means there are few if any controls on the revolving door movement (or in holding more than one position at a time) of personnel between sitting on decision-making authorities (such as WAPC committees, SDAU JDAP, Local Government Councils), private property firms, local governments and politics together with the weak conflict of interest LG Act provisions are significant drivers of conflicts of interest and corruption in local and state government development decision making^{ix}.
29. The Absence of TPARs combined with the lack of a requirement for independent technical reports to be paid for by development, subdivision and rezoning proponents are significant drivers of conflicts of interest and corruption in local and state government development decision making
30. The absence of TPARs means corruptly obtained development approvals without planning merit cannot be reviewed by the SAT.

ⁱ “ ... improved ethics doesn't just prevent ethical failures...it improves the bottom line ... Deloitte Access Economics has found an increase in ethical behaviour would improve Australian GDP, wages, corporate returns and mental health The Ethical Advantage <https://ethics.org.au/theres-something-australia-can-do-to-add-45b-to-the-economy-it-involves-ethics/> with the report noting that, shows that \$45 billion will be added to the Australian economy by improving national ethics. The report found that an increase in the ethical behaviour would improve Australia's GDP, wages, corporate returns and mental health.

ⁱⁱ *Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority [2021] NSWLEC 92*

ⁱⁱⁱ LG Act s.1.3(2)(3)

^{iv} Department of Local Government Sport and Cultural Industries



^v DLGSC 2019/2020 Annual Report states that DLGSC outcome for WA govt LG budget objectives include that LGs were “Capable and Well-Governed”

^{vi} *to provide for an ... effective land use planning system: s.1.3(1)(b) and ... To promote the sustainable use of land s.3(1)(c)*

^{vii} NSW even has a Land and Environment Court

^{viii} http://www.sat.justice.wa.gov.au/files/10_Hon_Judge_Christine_Trenorden_Presentation.pdf

^{ix} ***Game of Mates: How Favours Bleed The Nation*** first published in 2017 by authors Cameron Murray and Paul Frijters, Chapter 2 *The Great Property Development Game*, page 22