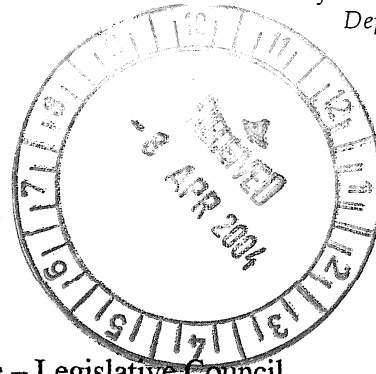




MINISTER FOR LOCAL GOVERNMENT AND REGIONAL
DEVELOPMENT; HERITAGE; THE KIMBERLEY; PILBARA
AND GASCOYNE; GOLDFIELDS-ESPERANCE

Tom Stephens MLC
Member for the Mining and Pastoral Region;
Deputy Leader of the Government
in the Legislative Council

Our Ref: 1-11096



-7 APR 2004

The Hon Barry House MLC
Chairman
Public Administration and Finance Committee – Legislative Council
Parliament House
Perth WA 6000

Dear Mr Chairman,

Report 6 – Local Government Act 1995. Presented on 12 December 2003.

As the Minister for Local Government and Regional Development I am pleased to be able to inform you that I have asked my Department to take action to implement all of eleven recommendations contained in this Report.

I have attached a comprehensive response to each of the recommendations, including the views of the Western Australian Local Government Association and the Local Government Managers Association (WA) who have kindly provided their views on the recommendations prior to my decision to ask the Department of Local Government and Regional Development to take action to implement the recommendations.

I hope that this information is of interest to you.

Yours sincerely

Tom Stephens MLC
MINISTER FOR LOCAL GOVERNMENT AND
REGIONAL DEVELOPMENT; HERITAGE;
THE KIMBERLEY, PILBARA AND GASCOYNE;
GOLDFIELDS-ESPERANCE



**RESPONSE TO
THE REPORT OF THE STANDING COMMITTEE
ON PUBLIC ADMINISTRATION AND FINANCE
ON THE *LOCAL GOVERNMENT ACT 1995***

INTRODUCTION

On 2 July 2003, as Minister for Local Government and Regional Development, I requested that the Standing Committee on Public Administration and Finance undertake an investigation into the events surrounding the appointment of Mr Denis Smith to the position of Chief Executive Officer of the City of Joondalup.

The Committee's report was presented to Parliament by the Hon Barry House MLC, its Chairman, on 12 December 2003.

The premise on which the report is based is encapsulated in the following statement:

... the Committee is concerned that the current provisions of the Local Government Act 1995, whilst presently providing an extremely high level of autonomy for local governments, is not sufficiently detailed or prescriptive enough with respect to the processes that should be followed by local governments in undertaking what is arguably a Council's single most important function; that of appointing its Chief Executive Officer.

The Committee makes 11 recommendations for the implementation of various best practice administrative procedures across local government in Western Australia, and for the amendment of the *Local Government Act 1995* to provide clearer direction for local governments.

At my request, the Department of Local Government and Regional Development (DLGRD) is taking action to implement all of the recommendations and responses to each of the 11 recommendations of the Report. However it is useful to consider the general views of the Western Australian Local Government Association (WALGA) as many of the recommendations seek that the Department operate in conjunction with WALGA.

WALGA is of the view that it was not appropriate for the Standing Committee to resolve “to treat the events surrounding the appointment of Mr Denis Smith by the City of Joondalup as an illustrative practical case study as part of a broader inquiry into those provisions of the *Local Government Act 1995* dealing with the appointment of local government chief executive officers and the administrative practices adopted by local governments to give effect to those provisions generally”.

WALGA has also commented, quite appropriately, in correspondence to the DLGRD, that it is not an agency of government. Consequently, it is inappropriate to assume that this Association would naturally work on the development and implementation of processes, either singularly or in conjunction with the DLGRD. The Association’s major role is to act as its members’ advocate, particularly as it relates to its commercial *modus operandi*.

WALGA notes that, notwithstanding possible misconceptions, the Association continues to be mindful of the leadership role it has within Local Government and regularly works to develop a range of best practice initiatives for the benefit of the members.

As the Minister for Local Government and Regional Development I would like to take this opportunity to thank the Western Australian Local Government Association and Local Government Managers Australia (LGMA) for assisting in responding to the Standing Committee’s Report.

RESPONSE TO REPORT

Recommendation 1

The Committee recommends that the Department of Local Government and Regional Development and the Western Australian Local Government Association undertake a review of the procedures adopted by local governments in executing official documents and applying their common seal, with a view to establishing clear best practice guidelines.

This recommendation suggests that the Department work in conjunction with the Western Australian Local Government Association (WALGA).

Regrettably, WALGA would appear not to support the thrust of this recommendation.

WALGA notes that the use of the common seal is not regulated and as a consequence the Association does not support prescription and prefers that local governments continue to have autonomy and be allowed the flexibility of adopting their own Local Laws in relation to use of their common seal.

Also, the LGMA is opposed in principle to extra prescription by regulation or guidelines of the functions and activities of local government; however, it has indicated it would support DLGRD issuing appropriate guidelines or information advice to local governments.

The DLGRD will now review the procedures adopted by local governments in executing official documents and applying their common seal and prepare best practice guidelines for the procedures.

Recommendation 2

The Committee recommends that the Department of Local Government and Regional Development and the Western Australian Local Government Association should give consideration to developing a general best practice recruitment process for local government which is aligned, where practical given the unique situation of local governments, to that currently applying in the State public sector for the recruitment of Senior Executive Service staff.

This recommendation again suggests that the Department work with WALGA.

WALGA, however, does not support the view that the method adopted by the City of Joondalup in recruiting Mr Smith is indicative of a systemic problem in Western Australia. WALGA has stated that Association staff involved or familiar with the recruitment of local government Chief Executive Officers have found that practices are appropriate.

WALGA provides a Recruitment and Selection service to its members through a registered employment agency trading as Local Government Workplace Solutions ('Workplace Solutions'). This service operates in competition with other local and interstate recruitment services.

Unfortunately WALGA considers it to be unreasonable for the Association to provide intellectual property, or to use the resources of 'Workplace Solutions' staff in the development and support of material which would then be used by non subscribing members, or competitors in the market place generally, to the disadvantage of those members who have contributed financially to the development of the WALGA service.

WALGA does not support the contention that local government recruitment practices should be aligned with the State public sector Senior Executive Service. The Association believes that the procedures and requirements at the State level are overly prescriptive, and does not consider that they readily lend themselves to modification and adaptation to the specific needs of a diverse range of local governments.

Regrettably, the LGMA also does not support the recommendation. It is strongly in favour of best practice processes in the recruitment of CEOs by local governments, but believes that adopting these should be the prerogative of the individual council.

As the Minister for Local Government and Regional Development I note the reluctance of the two organisations for prescription, given the disparity in the needs of individual local governments. However, it is undeniable that the situation arose in Joondalup. If it is treated as a unique aberration and dismissed, there is no guarantee that the situation will not occur again.

I intend to develop and promote regulations (and if necessary amendments to the relevant Acts) aligned to the State Executive Service requirements but taking into account the varied local government environment. While, unfortunately, WALGA feels that it is inappropriate to take this course of action, it is, nevertheless, appropriate that the Association and the LGMA should be consulted during the development of such guidelines or regulations. These will be tested within the industry and adopted if they prove to be acceptable.

Recommendation 3

The Committee supports the proposed amendment to section 5.36 of the Local Government Act 1995, and recommends that it be mandatory for vacant local government Chief Executive Officer positions to be advertised in at least one statewide circulation newspaper, and that in the case of large local governments also one nationwide circulation newspaper. Furthermore, there should be an express exception to this requirement for those circumstances where there is an extension or renewal of an existing contract between a local government and its Chief Executive Officer.

Currently section 5.36(4) does not require press advertising for the position of CEO, but places a requirement on the local government to advertise the salary and the total value of all remuneration and benefits payable to the Chief Executive Officer if it decides to advertise.

Section 5.37 (3) has identical provisions for senior employees.

The recommendation for mandatory advertising for Chief Executive Officers is supported and the *Local Government Amendment Bill 2003*, which is currently before Parliament, proposes the following amendments to apply for both Chief Executive Officers and senior employees.

Section 5.36(2) (b) is to be amended so that an absolute majority of council must be satisfied with the provisions of the proposed employment contract.

Section 5.36(4) is to be repealed and the following inserted: *The position of CEO of a local government is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.* A similar amendment is to apply for the positions of senior employees.

WALGA and the LGMA believe that the Amendment Bill currently before Parliament gives adequate provision for the public advertisement of a position. Both organisations would prefer that the choice of advertising media be at the council's discretion.

As Minister for Local Government and Regional Development, I propose to prescribe statewide advertising in the regulations. Consideration will be given to defining this in regulation, including the option of requiring the use of an on line advertisement site.

As Minister for Local Government and Regional Development, I agree that there should be no requirement to advertise a Chief Executive Officer position if the contract is being renewed and will investigate whether this requires legislative amendment to the Bill currently before the Parliament.

Recommendation 4

The Committee recommends that:

- (a) the Government give consideration to amending the Local Government Act 1995 to require local governments, prior to advertising a vacant Chief Executive Officer position, to obtain advice from the Salaries and Allowances Tribunal as to an appropriate range in which to negotiate a remuneration package for the position;*
- (b) the Government give consideration to amending the Local Government Act 1995 to permit local governments to advertise a Chief Executive Officer position with a remuneration package within a specified negotiable range as determined by the relevant Council after its consideration of the advice from the Salaries and Allowances Tribunal; and*
- (c) Councils be required to follow a public and accountable process, to be developed by the Department of Local Government and Regional Development and the Western Australian Local Government Association, which may require the re-advertising of the position, in circumstances where a Council wishes to appoint a candidate to the advertised position on a total remuneration package in excess of the advertised range.*

WALGA supports local governments being permitted to advertise a Chief Executive Officer's remuneration package within a salary range, but believes that the Salaries and Allowances Tribunal is unsuited to the task because of the great variation that exists within the local governments. The LGMA, representing Chief Executive Officers, is of the view that local governments need to have the freedom to determine the salary and benefits considered appropriate to their circumstances.

WALGA has stated that local governments already use a range of professional services to establish the remuneration package of the Chief Executive Officer. The Salaries and Allowances Tribunal is one such agency, although its clientele is limited by legislation.

I consider the advantage of mandating the services of the Salaries and Allowances Tribunal would be that the public could be assured that all Chief Executive Officer salaries were being assessed impartially. Consideration would need to be given to the development of expertise in the area of local government but, once established, the argument that the Salaries and Allowances Tribunal has no knowledge of the area would be lost. I will therefore pursue the matter with the Salaries and Allowances Tribunal and investigate the necessary legislative amendments to fulfil parts (a) and (b) of the recommendation.

Part (c) of the recommendation requires the Department to work with WALGA again to develop a public and accountable process. WALGA has suggested that, in the rare event that an amount higher than the maximum of the range is recommended, the local government should be obliged to make specific mention of the quantum when endorsing an appointment by resolution of Council. This would be recorded in the Council minutes and therefore made public. This however does not address the issue of ensuring that the proposed salary is known to potential applicants and the public prior to the selection process taking place. This issue requires further consideration.

Recommendation 5

The Committee supports the preparation by the Western Australian Local Government Association of a Guide for Employing Local Government Chief Executive Officers, to be distributed to all local governments in Western Australia along with details of the Western Australian Local Government Association's existing recruitment and selection service for local governments.

Regrettably, as WALGA has a licensed employment agent operating in the sector, and competes for customers with a significant number of other providers, it considers it to be inappropriate for the Association to participate in the development of such a guide.

LGMA supports a generic publication to assist Councils and consultants new to the sector.

While WALGA's recruitment agency has its own material, this should not preclude WALGA from consultation with the Department and LGMA on the production of such a guide. As Minister for Local Government and Regional Development, I support the recommendation and will proceed with the necessary consultation whilst developing the guide.

Recommendation 6

The Committee does not support the reintroduction of minimum academic and experience qualification requirements in the Local Government Act 1995 for local government chief executive officers. The Committee, however, recommends that, in conjunction with any amendment to the Local Government Act 1995 introducing a prescribed mandatory advertising requirement for vacant local government chief executive officer positions, a further requirement be prescribed that any such advertisement must contain a statement indicating that minimum selection requirements have been established for the position by the relevant local government Council and that these minimum selection requirements are contained in a publicly available document

The recommendation is supported as it calls for what is currently widely accepted good practice in relation to recruitment. Unfortunately LGMA is of the view that it is unnecessary to regulate for such practices and these can be adequately covered in a generic publication mentioned in response to item 5.

I support the practice being incorporated into legislation and will pursue the development of the required regulations or Act amendments through the Cabinet process. These will be prepared in conjunction with the regulations or Act amendments identified at Recommendation 3.

Recommendation 7

The Committee recommends that any guidelines prepared by the Department of Local Government and Regional Development and/or the Western Australian Local Government Association relating to the employment of local government Chief Executive Officers should state that a Council must satisfy itself as to the existence of any academic qualifications and experience claimed by an applicant in those circumstances where the Council has determined the minimum academic qualifications and experience required for the position.

It should be noted that this matter has already been addressed in the WALGA recruitment agency manual.

I intend taking to Cabinet proposals to ensure the development of regulations and any necessary Act amendments mandating Chief Executive Officer recruitment requirements for local governments. This will include the most appropriate means by which council can satisfy itself of the qualifications and experience claimed by an applicant where minimum standards are required for the position.

Recommendation 8

The Committee recommends that the Department of Local Government and Regional Development and the Western Australian Local Government Association liaise on the development of a suitable education campaign or guidelines for local governments on the specific requirements of section 5.36(2)(b) of the Local Government Act 1995.

Unfortunately WALGA believes it is inappropriate to be involved in the development of guidelines as its expertise in this area resides with its commercial recruitment agency. The LGMA supports increased education and advice to elected members on any of their responsibilities and functions under the Act. It made the observation that a general education program run at one point in time may have limited benefits as the turnover of people in Chief Executive Officer positions is infrequent. It supported the publication of general advice on recruitment of Chief Executive Officers and the identification of a direct contact at the Department, WALGA and LGMA who could be contacted at the time a vacancy occurs.

As Minister for Local Government and Regional Development I have asked the Department to develop guidelines relating to this section of this Act.

Recommendation 9

The Committee recommends that the Department of Local Government and Regional Development, the Western Australian Local Government Association, and Local Government Managers Australia (WA Division Inc) undertake consultation and jointly develop a model contract of employment for local government Chief Executive Officers. Furthermore, a formal process must be put in place by Councils to ensure that any variations to such a model contract of employment for Chief Executive Officers are public, accountable and consistent with the Local Government Act 1995.

Model contracts have been developed by both WALGA and LGMA but differ markedly. WALGA and LGMA support an industry standard model contract and are willing to make their documents available as the basis from which a model can be developed.

As Minister for Local Government and Regional Development I will develop a model contract of employment for local government Chief Executive Officers. Consideration will also be given to including mandatory terms and excluding specific types of terms via regulations to deal with the issues raised by the Committee.

Recommendation 10

The Committee recommends that the Local Government Act 1995 be amended to provide that copies of the employment contracts of local government Chief Executive Officers are to be available to all electors of the relevant local government area, subject to the deletion from the contract of any bank account information and private contact details.

Section 5.94 provides for the inspection by the public of the contracts of Chief Executive Officers and other senior employees. Certain matters may be excluded, however, as they are believed to be confidential.

I agree that this recommended amendment would clarify the extent to which information is personal and not available for inspection. Consequently, I supports its introduction.

Recommendation 11

The Committee recommends that all Western Australian local governments should note and endeavour to implement the recommendations of the New South Wales Independent Commission Against Corruption's Report on investigation into Mr Glen Oakley's use of false academic qualifications, and that they be noted in any guidelines developed for the employment of local government chief executive officers

I intend to put in place Chief Executive Officer recruitment procedures for local governments which will include recommended procedures for employers to check and record a candidate's qualification claims. These will at least require a process that checks and records a candidate's qualifications claims. The New South Wales report will be considered as a part of this process.

PROPOSED COMPLETION OF GUIDELINES AND MODEL CONTRACT

It is proposed that the Department will complete the preparation of the above guidelines, proposals for regulations and any required amendments to acts and a model contract by 30 June 2004.