

EXECUTIVE SUMMARY

- 1 The Legislative Council established the Select Committee into Local Government (Committee) on 26 June 2019. The Committee inquired into a wide range of systemic issues affecting the local government sector in Western Australia.
- 2 Western Australia's 139 local governments are constituted under the *Local Government Act 1995* (LG Act), which sets out their functions, powers and responsibilities. Local governments in Western Australia vary dramatically in land area, population, staff numbers, and financial capacity.
- 3 Local governments provide a variety of services, including regulatory functions required by State legislation, and social, economic and community services to meet the needs of their communities.

Scope, construction and application of the *Local Government Act 1995*

- 4 In contrast to previous local government legislation in Western Australia, the LG Act grants local governments significant functional autonomy to decide how they deliver services and functions. The LG Act provides local governments with broad legislative and executive powers, commonly referred to as general competence powers, to provide for the good government of their communities.
- 5 The local government sector continues to strongly support the principle of general competence that underpins the LG Act. However, the Committee heard that over time, amendments to the LG Act and associated regulations have encroached on the principle of general competence. Submissions called for a reduction in the significant regulatory regime imposed under the LG Act, and for local government legislation to focus on principles rather than process.
- 6 The Committee also heard that the compliance requirements of the LG Act could better accommodate the diversity in size and capacity across Western Australia's 139 local governments. The Committee explored examples of excessive regulation raised in evidence, and the potential for a legislative regime that differentiates between local governments based on their size and scale.

Scope of local government activities

- 7 Modern local governments perform a variety of important functions beyond traditional activities such as rubbish collection, maintaining road infrastructure, and other 'services to property'. The Committee explored how the range of services and facilities provided by local governments has increased over time, and the role that community consultation plays in determining the scope of local government activities.
- 8 A range of evidence was received regarding the long standing and ongoing impact of cost shifting from the State to local governments. The Committee heard that councils are being required to provide an increasing range of services to their communities, often with decreasing assistance from higher tiers of government. Cost shifting is having a disproportionate impact on smaller local governments and local governments in regional areas.
- 9 The State Local Government Partnership Agreement creates a forum for the local government sector to raise issues of concern with the State Government, and provides for consultation on matters that will significantly impact local governments. The State Government's regulatory impact assessment process also provides a mechanism for the impact of regulatory proposals on local governments to be considered.

- 10 The ongoing impact of cost shifting suggests that more needs to be done to assess the cost and regulatory burden that State legislation and policy creates for the local government sector. Regulatory impact assessment needs to explicitly address why local government is the appropriate level of government to assume further responsibilities, and set out the resources that the State Government will provide to meet the cost of discharging those responsibilities.
- 11 Further, Parliamentary scrutiny of proposed legislation affecting local governments, and of systemic issues within the sector, could be enhanced.

Funding and financial management

- 12 In 2018–19 local governments managed over \$45 billion in public assets, employed a workforce of 16,000 FTE staff, and spent more than \$4.1 billion. Local governments are authorised to raise public funds through rates on property, receive significant public funding through grants from the State and Federal Governments, and impose fees and charges for services.
- 13 The Committee explored key funding issues affecting the local government sector including:
- local governments' limited ability to increase own-source revenue
 - the relative decline in Commonwealth grant funding
 - the need for review of the charitable purposes rate exemption
 - the beneficial enterprise model.
- 14 The increasing road funding shortfall is a significant concern. The shortfall is the difference between the expenditure required to preserve local government road assets at their current condition, and the (lesser) amount of actual expenditure. The shortfall increased from \$132.5 million in 2017–18 to \$155.74 million in 2018–19. For non-metropolitan local governments, maintenance of road assets is becoming increasingly financially unsustainable.
- 15 The significant revenue raising and expenditure responsibilities given to the sector are accompanied by a detailed set of financial management requirements imposed by the LG Act and its associated regulations. The Committee explored concerns regarding transparency and accountability in local government financial management, and whether financial reporting obligations imposed on local governments are excessive or onerous.
- 16 The Office of the Auditor General (OAG) has been responsible for auditing the local government sector since 2017. The Committee explored concerns regarding the increased cost of audits performed under the OAG's supervision, and the OAG's experience regarding local government issues. The Committee also noted concerning adverse trends reported by the OAG regarding local government financial ratios. The OAG's examination of the issues underlying these adverse trends requires the State Government's ongoing support.
- 17 The Committee concluded that the Auditor General's involvement in the local government sector has been positive. Recommendations made by the OAG have the potential to reduce the financial reporting burden on local governments, and support them in meeting their financial management obligations.

The Department of Local Government, Sport and Cultural Industries

- 18 The Department of Local Government, Sport and Cultural Industries' (DLGSC) role is to regulate and support the local government sector. The Committee heard that the DLGSC is under-resourced and does not meet the local government sector's expectations for timely advice, robust capacity building, or early interventions to prevent governance or relationship breakdowns. Related concerns included that the DLGSC is prioritising regulation and

compliance over capacity building and support, and that local governments are increasingly seeking advice from the Western Australian Local Government Association (WALGA).

- 19 The DLGSC has been in 'rebuilding mode' following machinery of government changes and voluntary separations, and has been focused on the review of the LG Act. The Committee explored the DLGSC's capacity to provide advice to local governments and individual council members, the distinction between technical and strategic advice, and whether WALGA's increasing advisory services represent a further cost shift from the State to local governments.
- 20 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.
- 21 Issues within a small number of local governments appear to consume an inordinate amount of the DLGSC resources. The DLGSC has conducted a record program of authorised inquiries since 2017, and receives a high number of complaints of serious breaches of the LG Act. The high workload of the DLGSC's investigations and assessment branch appears to be exacerbated by a lack of community understanding regarding the DLGSC's limited ability to investigate complaints that do not fall under the LG Act. More broadly, the fragmented complaints framework for issues relating to local governments is an ongoing source of frustration for both local governments and members of the public.
- 22 There is potential for the DLGSC to be given expanded powers to appoint a person with suitable expertise to intervene in and assist a struggling local government. An independent statutory body for local government issues is another option that merits further consideration.

The roles of council members, chief executive officers, and employees

- 23 The LG Act defines the roles of individual council members, the council, and the local government chief executive officer (CEO) and staff. A clear understanding and acceptance by council members and staff of their respective roles is essential to a properly functioning local government.
- 24 The Committee heard that the limited role of individual council members is not always understood or accepted by some council members and the broader public.
- 25 The delineation between the governance role of council and the CEO's responsibility for operational matters was a key issue raised in evidence. The LG Act's broad definition of the council's role appears to create ambiguity, particularly when contrasted with the detailed description of the CEO's functions. Prohibitions introduced by the *Local Government (Rules of Conduct) Regulations 2007* appear to have introduced additional confusion about the scope of council's governance role, and the consequences for individual councillors.
- 26 One of a council's most important responsibilities is recruiting and performance managing the local government's CEO. The Committee explored concerns that some council members may not have sufficient skills or experience to effectively carry out this role, and addressed the minimum standards that the DLGSC is proposing to introduce to assist councils in this regard. The Committee also investigated the level of resources and support provided to council members.

The Local Government Standards Panel and the minor breach system

- 27 Submissions raised a number of concerns regarding the LG Act's minor breach system, which allows complaints of council member misconduct to be made to the Local Government Standards Panel (Panel).

- 28 The minor breach system was intended to provide a short, sharp intervention process to address council member misconduct. However, a number of reports have demonstrated that the minor breach system remains poorly understood by members of the public, council members, and some CEOs. The number of minor breach complaints to the Panel has increased dramatically in recent years, but a large number of complaints are unsuccessful. The high volume of complaints affects the timeliness of Panel decisions, which in turn significantly detracts from the Panel's effectiveness.
- 29 The Committee addressed concerns raised regarding the Panel's powers and processes. The Committee also explored broader criticisms that individual council member conduct is unfairly and disproportionately targeted through the minor breach system while misconduct or wrongdoing by other parties receives limited attention.
- 30 The Committee also investigated perceptions that the minor breach system is preventing council members from performing their role, or contributing to a power imbalance between council members and local government staff.
- 31 The Committee concluded that, while a properly functioning Panel has a part to play in addressing council member misconduct, it is inherently limited in its ability to address the underlying dysfunction at a relatively small number of local governments. The Committee explored other options to address this, such as early intervention by presiding members or external experts, and a proposed model code of conduct for council members.

The Western Australian Local Government Association

- 32 The Western Australian Local Government Association (WALGA) is the representative body for the sector. It provides advice to members, advocates for policy positions, and promotes the local government sector. All but one of Western Australia's 139 local governments are currently members of WALGA.
- 33 The Committee explored how WALGA represents its members, concerns about WALGA's relationship with the DLGSC, and whether WALGA should continue to be constituted under the LG Act.
- 34 The Committee also investigated two significant aspects of WALGA's operations, being its Preferred Supplier Program (PSP) and the Local Government Insurance Services mutual scheme it administers for members.
- 35 The PSP is a system under which WALGA negotiates with suppliers on behalf of members to establish preferred supplier agreements. Members of WALGA are able to purchase goods and services through the PSP on terms more favourable than would be available to individual local governments.
- 36 WALGA received over \$4.2 million in contract management fees from the PSP in 2018–19. The annual cost to WALGA of running the PSP (including staff costs) is around \$2.5 million. WALGA confirmed that the PSP is a major source of revenue for WALGA, and underwrites the cost of delivering services to members. The Committee explored concerns regarding the pricing model for WALGA's revenue from PSP contracts, the impact of the PSP on local government procurement skills, and challenges facing small suppliers in joining PSP panels.
- 37 WALGA is also responsible for the Local Government Insurance Service mutual scheme (Scheme), which provides pooled insurance coverage to participating members and obtains additional indemnity insurance from the market. In 2019 the Scheme received \$62,273,695 in member contributions and held \$31,799,274 in member equity.
- 38 The LG Act provides WALGA with the authority to establish the Scheme. In contrast to a private insurer, the mutual scheme returns surplus funds to members instead of retaining them as profits. The Committee heard that the Scheme was established at a time when local

governments were unable to obtain public liability cover from private insurers, and has expanded over time to provide a range of insurance covers to members.

- 39 The Committee addressed the following concerns raised in evidence regarding the Scheme:
- the competitiveness of member contributions charged by the Scheme
 - transparency regarding payments from the Scheme to WALGA
 - WALGA's involvement in the Scheme's insurance broking
 - whether local governments should be regularly tendering their insurance arrangements.

The way forward

40 Since 2017 the DLGSC has been undertaking a review of the *Local Government Act 1995* (LG Act). Amendments to the LG Act arising out of the first stage of this review were passed in July 2019, and are in various stages of implementation.

41 In May 2020 an expert panel appointed by the Minister for Local Government delivered its report on recommendations for a new local government Act.

42 The Committee acknowledges the ongoing efforts of the DLGSC and the Government to reform and modernise the legislative framework for Western Australia's local governments.

43 However, the Committee also recognises that Parliament bears responsibility for maintaining the system of local government in Western Australia.

44 This report is an opportunity for the House to take stock of the legislative framework that has served local governments over the past 25 years, and consider how they can be best supported to continue to deliver important functions and services for their communities.

45 In summary, the Committee recommends that:

- a new local government Act include a non-exhaustive statement of local government functions
- regulatory proposals at the State level be required to explicitly address cost shifting consequences
- explanatory memoranda address the potential impact of proposed legislation on local governments, including any costs of complying with and administering proposed legislation
- the terms of reference of an existing parliamentary committee be expanded, or a new parliamentary committee be established, to address issues relating to the system of local government
- the Government continue to support the OAG in its examination of local government financial issues, and consider the OAG's recommendations to improve the DLGSC's support of local government financial management and refine financial reporting requirements
- the DLGSC be appropriately resourced to perform its advisory and regulatory functions
- the DLGSC be formally established as a 'one-stop-shop' for complaints relating to the local government sector, and coordinate a publicly available single source of information setting out the avenues of complaint regarding local governments decisions and conduct issues
- the Government consider establishing an independent statutory body for local government matters

- the roles of council members and the CEO be clearly defined in a new local government Act, and ambiguity regarding council’s governance role be addressed
- further support and training be provided to individual council members
- the Local Government Standards Panel system be improved and the *Local Government (Rules of Conduct) Regulations 2007* be further reviewed
- a policy of early intervention in dysfunctional councils be considered
- WALGA no longer be constituted under the LG Act or any new local government Act.

Findings and recommendations

Findings and recommendations are grouped as they appear in the text at the page number indicated:

FINDING 1

Page 19

The local government sector considers that the *Local Government Act 1995* and associated regulations impose a significant regulatory regime on local governments.

RECOMMENDATION 1

Page 35

The Government consider implementing a compliance regime that differentiates between local governments based on their size and scale where appropriate.

FINDING 2

Page 38

Local governments have a broad range of responsibilities, and the scope of local government activities has increased over time.

RECOMMENDATION 2

Page 44

The Government consider including a non-exhaustive statement of local government functions in any new local government Act.

FINDING 3

Page 46

Cost shifting from the State to local governments is a long standing and ongoing issue.

FINDING 4

Page 61

Regional and remote local governments are required to provide or subsidise a range of essential services for their communities.

FINDING 5

Page 65

Cost shifting has a disproportionate impact, in the form of additional regulatory and compliance requirements, on smaller local governments and local governments in regional areas.

FINDING 6

Page 65

Cost shifting to local governments is a serious issue that deserves Parliament's ongoing attention.

FINDING 7

Page 69

The State Local Government Partnership Agreement provides a forum for the local government sector to raise issues of concern with the State Government, and provide input regarding proposals that will affect the sector.

RECOMMENDATION 3

Page 72

The regulatory impact assessment process for any regulatory proposal giving new responsibilities to local governments should explicitly address:

- why local government is the appropriate level of government to assume those responsibilities
- the estimated cost to the local government sector of discharging those responsibilities
- the resources the State Government will provide to local governments to meet that estimated cost.

RECOMMENDATION 4

Page 75

Explanatory memoranda accompanying a Bill should be required to address the potential impact of the Bill on local governments, including any costs of complying with and administering the proposed legislation.

RECOMMENDATION 5

Page 78

The Legislative Council amend the Standing Orders of the Legislative Council to expand the terms of reference of an existing parliamentary committee, or establish a new parliamentary committee, to address issues relating to the system of local government.

RECOMMENDATION 6

Page 79

The Legislative Council and the Government consider establishing a Joint Select Committee to inquire into structural reform of the system of local government in Western Australia.

FINDING 8

Page 81

Local government financial capacity varies significantly across the sector.

FINDING 9

Page 83

Many local governments rely heavily on State and Commonwealth grant funding.

FINDING 10

Page 90

The cessation of the elected member training program under the Country Local Government Fund has imposed additional costs on non-metropolitan local governments.

FINDING 11

Page 93

The local government sector does not have the financial resources required to fully maintain its road network and to keep up with its road improvement needs.

FINDING 12

Page 93

The shortfall between local government expenditure on road preservation and the amount required to maintain roads at their current condition has continued to increase over the past five years to \$155.74 million in 2018–19.

FINDING 13

Page 94

Maintenance of road assets for non-metropolitan councils is increasingly becoming financially unsustainable.

RECOMMENDATION 7

Page 96

The Government consider returning to local governments at least 27 percent of motor vehicle licence fee collections.

RECOMMENDATION 8

Page 108

Recognising that the current charitable purposes rate exemption produces perverse outcomes and may inappropriately shield commercial operations from paying rates, the Government clarify the charitable purposes rate exemption in any new local government Act.

RECOMMENDATION 9

Page 108

The Government conduct a broad review of the rate exemptions to be included in any new local government Act.

FINDING 14

Page 117

Considerable further work needs to be done to assess the potential risks and benefits of the beneficial enterprise model.

FINDING 15

Page 123

The MyCouncil website allows local governments and the public to access information about individual councils and make comparisons between councils.

FINDING 16

Page 124

Local governments are required to report seven financial ratios to the Department of Local Government, Sport and Cultural Industries. The ratios are used to calculate a Financial Health Indicator that is published on the MyCouncil website as a measurement of each local government's overall financial health.

FINDING 17

Page 125

In its 2018–19 financial audits the Office of the Auditor General reported that 106 financial ratios at 72 local government entities indicated adverse trends.

RECOMMENDATION 10

Page 126

The Government continue to support the Office of the Auditor General in its examination of adverse trends in local government financial indicators.

FINDING 18

Page 137

Some local governments have concerns about the cost of the Office of the Auditor General's involvement in local government audits, and the Office of the Auditor General's level of experience regarding the local government sector.

RECOMMENDATION 11

Page 140

The Government give active consideration to facilitating, through the Department of Local Government, Sport and Cultural Industries, a shared internal audit service for the local government sector, particularly to assist small and medium councils.

RECOMMENDATION 12

Page 140

The Government give active consideration to providing, through the Department of Local Government, Sport and Cultural Industries, an accounting advice helpdesk service to the local government sector similar to the service provided by the Department of Treasury to the State government sector.

FINDING 19

Page 142

The Committee concurs with the view expressed by the Office of the Auditor General that a number of financial reporting requirements on local governments are excessive, onerous, or both.

RECOMMENDATION 13

Page 143

The Government:

- consider reducing the financial reporting requirements on local governments
- in doing so, take into account the information provided by the Office of the Auditor General, set out at Appendix 3 and Appendix 4 of this report.

RECOMMENDATION 14

Page 144

The Department of Local Government, Sport and Cultural Industries and the Government consider the introduction of tiered financial reporting for local governments.

RECOMMENDATION 15

Page 145

The Government give active consideration to allowing smaller local government entities to report some asset classes using the cost model, rather than periodically re-valuing those assets.

FINDING 20

Page 150

Existing asset valuation and reporting requirements impose a significant cost and burden on local governments, and do not necessarily produce information that is essential to good financial management and decision-making.

RECOMMENDATION 16

Page 150

The Government and the Department of Local Government, Sport and Cultural Industries consider changing the asset valuation and reporting requirements for local government infrastructure assets.

FINDING 21

Page 150

The Office of the Auditor General's involvement in auditing the local government sector since 2017 has been a positive development.

FINDING 22

Page 154

As at 5 August 2020 the Department of Local Government, Sport and Cultural Industries had 37 employees dedicated to local government (33.13 full time equivalent).

FINDING 23

Page 156

There is a perception among local governments that the Department of Local Government, Sport and Cultural Industries is under-resourced and unable to provide timely advice, robust capacity building, or early intervention to prevent governance or relationship breakdowns.

FINDING 24

Page 166

Issues within a relatively small number of local governments appear to consume an inordinate amount of the Department of Local Government, Sport and Industries' and the State Government's resources.

RECOMMENDATION 17

Page 171

The Department of Local Government, Sport and Cultural Industries review and update the local government accounting manual as soon as possible.

RECOMMENDATION 18

Page 171

Where appropriate, the Department of Local Government, Sport and Cultural Industries review and update its published guidance to the local government sector.

FINDING 25

Page 179

There is a perception in the local government sector that the increased level of advice and support provided by Western Australian Local Government Association represents a cost shift from the State government to local governments.

RECOMMENDATION 19

Page 180

The Government ensure that the Department of Local Government, Sport and Cultural Industries is sufficiently resourced to be a strong source of advice and support for the local government sector.

RECOMMENDATION 20

Page 180

The Government ensure that the Department of Local Government, Sport and Cultural Industries is sufficiently resourced to be a source of independent advice and support for individual council members.

RECOMMENDATION 21

Page 188

The Department of Local Government, Sport and Cultural Industries coordinate the preparation of a publicly available single source of information clearly setting out the avenues of complaint available regarding local government decisions, and conduct issues within local governments.

RECOMMENDATION 22

Page 190

The Government consider formally establishing the Department of Local Government, Sport and Cultural Industries as a 'one-stop-shop' for complaints related to the local government sector.

RECOMMENDATION 23

Page 195

The Government ensure that the Department of Local Government, Sport and Cultural Industries is appropriately resourced to conduct authorised inquiries in a timely manner.

RECOMMENDATION 24

Page 197

The Government ensure that the Department of Local Government, Sport and Cultural Industries is sufficiently resourced to deal with complaints of serious breach under the *Local Government Act 1995* in a timely manner.

RECOMMENDATION 25

Page 206

The Government give active consideration, as part of the review of the *Local Government Act 1995*, to establishing a new independent statutory body to regulate and support the local government sector.

FINDING 26

Page 210

Individual council members have a limited role outside of council and committee meetings. This is not always understood by some council members and the broader public.

FINDING 27

Page 216

The roles of the council and the local government administration under the *Local Government Act 1995* are broadly drafted, and provide limited detail about the tasks that should be undertaken by the council and the chief executive officer.

FINDING 28

Page 231

The broad drafting used in the *Local Government Act 1995* creates uncertainty regarding the content of a council's governance role, and the extent to which that role involves or authorises oversight and inquiry by individual council members.

FINDING 29

Page 231

Despite recent changes to the *Local Government (Rules of Conduct) Regulations 2007*, uncertainty remains regarding the extent to which, if at all, individual council members can be authorised by council to carry out council's governance function outside of council or committee meetings, particularly when this governance function includes tasks that may be considered to involve administrative or operational aspects.

RECOMMENDATION 26

Page 231

The Government clarify the roles of council and the chief executive officer, and the distinction between governance and operational matters, in any new local government Act.

FINDING 30

Page 235

There is a perception that chief executive officers are able to determine council member requests for information under s 5.92 of the *Local Government Act 1995* to suit their own self-interest, and use the governance/operational distinction as a 'shield' against council members' legitimate requests for information.

FINDING 31

Page 241

It is unclear whether the *Local Government Act 1995* authorises a council to seek external advice without the involvement of the chief executive officer or staff and, if so, in what circumstances a council may do so.

RECOMMENDATION 27

Page 241

The Government and the Department of Local Government, Sport and Cultural Industries publish guidance that:

- sets out the circumstances, if any, in which the *Local Government Act 1995* authorises a council to seek external advice, in particular legal advice, without the involvement of the chief executive officer or staff
- provide practical instruction as to how, in circumstances where a council considers any involvement by the chief executive officer to be inappropriate, the council should go about obtaining external advice (whether with the involvement of local government staff or otherwise).

FINDING 32

Page 243

Some council members may not have sufficient skills or experience to effectively carry out the council's responsibility for recruiting, performance managing, and terminating the employment of the chief executive officer.

FINDING 33

Page 248

Some council members consider that they are not provided with sufficient resources and support to discharge their responsibilities.

FINDING 34

Page 249

Previous inquiries have found that council members are not adequately remunerated to meet the requirements of their role.

The Government give consideration to expanding council member training to address:

- the distinction between council's governance role and the operational functions of the chief executive officer and staff
- conducting chief executive officer recruitment and performance reviews, and terminating a chief executive officer's employment.

FINDING 35

Page 265

The Local Government Standards Panel received 115 minor breach complaints in 2019–20 and 147 minor breach complaints in 2018–19. The number of complaints to the Panel has increased significantly in recent years.

FINDING 36

Page 266

The 115 minor breach complaints received by the Local Government Standards Panel in 2019–20 concerned council members from 26 local governments, and the 147 complaints received in 2018–19 concerned council members from 25 local governments.

FINDING 37

Page 266

The recent increase in the number of complaints to the Local Government Standards Panel indicates heightened dysfunction within a small number of local governments and does not reflect a spreading dysfunction within the local government sector as a whole.

FINDING 38

Page 267

A large number of minor breach complaints are unsuccessful. Only 33 (22 percent) of the 147 complaints to the Local Government Standards Panel in 2018–19 resulted in findings of breach or referral to the Department of Local Government, Sport and Cultural Industries for further action.

FINDING 39

Page 267

The minor breach system remains poorly understood by members of the public, council members, and some chief executive officers.

FINDING 40

Page 269

There is a lengthy period between lodgement of complaints and a final decision by the Local Government Standards Panel. Slow resolution of complaints significantly detracts from the Local Government Standards Panel's effectiveness.

FINDING 41

Page 269

The Local Government Standards Panel's power to refuse to deal with frivolous or trivial complaints has not significantly reduced its workload since the power was introduced in 2016.

FINDING 42

Page 269

The procedural fairness requirements of the *Local Government Act 1995*, and the Local Government Standards Panel's pre-hearing procedures, mean that it takes around three months for the Local Government Standards Panel to first consider a complaint.

FINDING 43

Page 270

The Department of Local Government, Sport and Cultural Industries and the Local Government Standards Panel have taken steps to improve the timeliness of Local Government Standards Panel decisions.

FINDING 44

Page 272

The Local Government Standards Panel does not have the power to compel a person to give evidence, give evidence under oath, or produce a document.

The Local Government Standards Panel cannot investigate complaints and can only make a decision based on the evidence presented to it.

FINDING 45

Page 272

Expanding the Local Government Standards Panel's investigatory and evidence gathering powers may further lengthen the time taken to determine a complaint.

RECOMMENDATION 29

Page 273

The Department of Local Government, Sport and Cultural Industries review the minor breach complaint form in consultation with members of the Local Government Standards Panel.

RECOMMENDATION 30

Page 274

The Government consider requiring local governments to provide the Local Government Standards Panel with any audio or video recordings of council meetings that relate to a complaint of minor breach.

RECOMMENDATION 31

Page 276

The complaints officer role be removed, and all minor breach complaints be made directly to the Department of Local Government, Sport and Cultural Industries or any independent body established to deal with complaints against council members.

FINDING 46

Page 277

There is a perception that the range of orders that the Local Government Standards Panel can make after a finding of minor breach are insufficient to deter council member misconduct.

FINDING 47

Page 279

The Department of Local Government, Sport and Cultural Industries has not made an allegation of recurrent breach to the State Administrative Tribunal since it was formed in 2017.

The Department of Local Government, Sport and Cultural Industries is unable to confirm whether a previous local government department made an allegation of recurrent breach to the State Administrative Tribunal prior 2017.

FINDING 48

Page 291

The broad drafting of the prohibitions in the *Local Government (Rules of Conduct) Regulations 2007*:

- allows insignificant instances of misconduct to result in protracted minor breach proceedings
- increases the difficulties that council members face in avoiding or responding to minor breach complaints.

RECOMMENDATION 32

Page 291

The Government consider redrafting the *Local Government (Rules of Conduct) Regulations 2007*, or any future regulations describing the content of a minor breach, in a way that appropriately guides council member behaviour without impeding council members from performing their role.

FINDING 49

Page 293

There is a perception among some council members that local government chief executive officers can use the minor breach system to control or intimidate council members.

FINDING 50

Page 293

Only 16 of the 29 complaints (55 percent) lodged by chief executive officers between 1 July 2018 and 30 June 2019 resulted in findings of breach or referral to the Department of Local Government, Sport and Cultural Industries.

RECOMMENDATION 33

Page 295

The Government consider amending s 5.123 of the *Local Government Act 1995* to allow a person to publicly discuss a minor breach complaint that has been dismissed by the Local Government Standards Panel.

FINDING 51

Page 307

Section 5.103 of the *Local Government Act 1995* will require regulations to prescribe a model code of conduct for council members, committee members and candidates.

Section 5.104 of the *Local Government Act 1995* will require all local governments to prepare and adopt a code of conduct that incorporates the model code prescribed pursuant to s 5.103 of the *Local Government Act 1995*.

The Department of Local Government, Sport and Cultural Industries expects regulations under s 5.103 of the *Local Government Act 1995* to be in force by the end of 2020.

FINDING 52

Page 307

The Department of Local Government, Sport and Cultural Industries' consultation draft of the model code of conduct indicates that local governments will be expected to manage council member conduct issues at the local level.

RECOMMENDATION 34

Page 307

The Government ensure that local governments are provided with appropriate support and resources to implement any local level complaint process prescribed pursuant to s 5.103 of the *Local Government Act 1995*.

RECOMMENDATION 35

Page 307

The model code of conduct to be prescribed pursuant to s 5.103 of the *Local Government Act 1995* require a complainant to engage with any local level complaint process before making a minor breach complaint to the Local Government Standards Panel.

FINDING 53

Page 319

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.

RECOMMENDATION 36

Page 321

The Western Australian Local Government Association need not and should not be constituted under the *Local Government Act 1995*, or any new local government Act.

FINDING 54

Page 330

There is value in the Office of the Auditor General undertaking annual audits of the Preferred Supplier Program.

FINDING 55

Page 338

The Local Government Insurance Services mutual scheme's board takes into account a range of factors when determining local government contributions to the scheme. These factors differ depending on the area of insurance.

FINDING 56

Page 338

Local governments with concerns regarding the value for money offered by the Local Government Insurance Services mutual scheme are free to publicly tender their insurance arrangements.

FINDING 57

Page 338

All local governments who tendered their insurance arrangements in recent years either remained with the Local Government Insurance Services mutual scheme or returned the next financial year.

FINDING 58

Page 343

Fourteen of fifteen local governments who tendered their insurance arrangements paid a reduced contribution to the Local Government Insurance Services mutual scheme in the following year.

Eleven of the fifteen local governments had their contributions to the Local Government Insurance Services mutual scheme reduced by a greater percentage than the reduction in total contributions across the Local Government Insurance Services mutual scheme, or reduced while total Local Government Insurance Services mutual scheme contributions rose.

On average, the difference between the percentage change in those eleven local governments' contributions and the percentage change in total contributions across the Local Government Insurance Services mutual scheme was eight percent, and the largest difference was 20 percent.

FINDING 59

Page 348

In 2019 the Western Australian Local Government Association began disclosing its revenue from the Local Government Insurance Services mutual scheme in its publicly available annual report.

FINDING 60

Page 363

There is value in the Office of the Auditor General undertaking annual audits of the Local Government Insurance Services mutual scheme.