

Local Government Act Reform

Local Government Amendment Act 2023

The State Government is engaged in significant reforms to the *Local Government Act 1995*. Information regarding the process to date, themes of the reforms, and an outline of all proposals can be found on the Department of Local Government, Sport and Cultural Industries (DLGSC) website (<https://www.dlgsc.wa.gov.au/local-government/strengthening-local-government/local-government-act-reform>). The reforms will be progressed in two tranches. The *Local Government Amendment Act 2023* was passed by Parliament on 11 May 2023, and will amend the *Local Government Act 1995* to introduce electoral reforms, and some communication and transparency measures. The remaining reforms, including the Local Government Inspector and Monitors, are expected to be included in an amendment bill to be introduced in November 2023.

Different sections of the *Local Government Amendment Act 2023* will take effect at different times, in conjunction with supporting regulations. More information about commencement timing is available on the DLGSC website (https://www.dlgsc.wa.gov.au/local-government/strengthening-local-government/local-government-act-reform#Commencement_timing_and_support_materials). Changes to Special Electors' meetings, compliance exemptions, and some administrative amendments that didn't require regulations, came into effect on 19 May 2023. Regulations supporting key electoral reforms are expected by the end of June 2023 so that these changes can come into effect before the 2023 elections. Regulations supporting the remaining reforms are expected later in 2023. DLGSC's explanation of the *Local Government Amendment Act 2023* reforms is available on their website (<https://www.dlgsc.wa.gov.au/local-government/strengthening-local-government/local-government-act-reform/local-government-reform-explained>).

This handout briefly outlines the main reforms included in the *Local Government Amendment Act 2023* and when they are expected to take effect. Details of some changes are not yet available, as these will be included in regulations. Timeframes for implementation are based on DLGSC expectations and are subject to change. The DLGSC are holding regular webinars and can be contacted with questions on 1300 762 511 or by email at actreview@dlgsc.wa.gov.au. WALGA's Governance team can also be contacted for support and advice on (08) 9213 2514 or by email to governance@walga.asn.au.

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Electoral reforms


Will be in effect for 2023 elections. See DLGSC and WAEC webinar

https://www.dlgsc.wa.gov.au/local-government/strengthening-local-government/local-government-act-reform/local-government-reform-webinars#Reform_webinar_2

- **Abolishing wards.** The *Local Government Act 1995* will be amended to allow regulations to abolish and prohibit wards for certain Local Governments. Amendments also deal with the ways in which these changes will take effect. While the regulations are not yet made, these changes will apply to Band 3 and 4 Local Governments only. Affected Local Governments have all been contacted by the Minister.
- **Election of Mayor/President.** A new section 2.12B will be inserted in the *Local Government Act 1995* allowing regulations to be made requiring specified Local Governments to use direct election of the Mayor or President. While the regulations are not yet made, this requirement will apply to Band 1 and 2 Local Governments only. Affected Local Governments have been contacted by the Minister. The existing provisions in the *Local Government Act 1995* that allow for a change in method of election Mayors or Presidents will also be amended to be subject to the new regulations. That is, a Band 1 or 2 Local Government will not be able to use the mechanism in section 2.12A to change back to election by the Council.
- **Council Membership limits.** A new section 2.16B will be inserted in the *Local Government Act 1995* providing a mechanism for determining a population estimate for Local Government districts. Under new sections 2.17 and 2.17A, limits on Councillor numbers will be imposed based on this population estimate. A new section 2.18A will allow the Governor to order a change in numbers based on population.

Population	Council Members (including Mayor/President)
5000 or less	5 – 7
Between 5000 and 75 000	5 – 9
More than 75 000	9 – 15

- **Optional preferential voting.** Optional preferential voting will replace first past the post voting for all elections. Section 4.69 will be amended to provide that a voter is to cast one first preference vote and may cast additional preference votes if there are more than two candidates. A number of consequential amendments will be made throughout the *Local Government Act 1995* to deal with preferential voting. Schedule 4.1 will be replaced in its entirety and provide the procedure for counting votes and determining results. For consistency, optional preferential voting will apply to 'in-house' elections, such as the election of the Deputy Mayor/President.
- **Filling extraordinary vacancies.** Section 4.8 will be amended to require an extraordinary election to be held unless an extraordinary vacancy has been filled in accordance with new Schedules 4.1A or 4.1B. Schedule 4.1A will allow extraordinary vacancies for the office of



Councillor; or office of an elector Mayor or President that arise within 12 months of an election to be filled by the next in line candidate. Schedule 4.1B applies where a sitting Councillor is elected as Mayor/President. If a district or ward election (for that Councillor's ward) is held at the same time as the Mayoral/Presidential election, the first unsuccessful candidate is elected to replace the Councillor elected as Mayor/President.

- **Postponing election and leaving extraordinary vacancy unfilled.** Sections 4.16 and 4.17 will be amended to allow an election to be postponed, or a vacancy to be left unfilled, until the ordinary election day if the extraordinary vacancy arises within 12 months before an ordinary election (after the third Saturday in October before an election year). Currently this is only possible within 9 months before an ordinary election (after the third Saturday in January of an ordinary election year). A Council decision and the permission of the Electoral Commissioner will still be required.
- **Use of electoral rolls.** Section 4.42 will be amended to allow regulations to require Elected Members and candidates to destroy any supplied copies of electoral rolls, and to provide a declaration to that effect. A new section 4.46A makes it an offence to use electoral information for a non-electoral or commercial purpose. Candidates and Elected Members will also be required to take all reasonable steps to ensure that any person to whom they supply electoral information does not misuse that information.
- **Electoral timetable brought forward one week.** The close of enrolments (s.4.39), preparation of rolls (ss.4.40, 4.41, 4.43), call and close of nominations (ss.4.47, 4.49), and public notice of the election (s.4.64) will all occur a week earlier than previously. This is to allow more time for postage of ballot papers.
- **Recounts.** A new section 4.72A will be inserted allowing the Returning Officer to arrange a full or partial recount of votes on their own initiative or at the request of a candidate or scrutineer. Regulations may specify circumstances under which a Returning Officer is required to arrange a full or partial recount.

Expected to be in effect for 2025 elections

- **Non-resident occupier eligibility.** Section 2.25 of the *Local Government Act 1995* will be amended to allow regulations to prescribe requirements that must be met for a non-resident occupier to be eligible for election to Council. Sections 4.31, 4.32 and 4.33 will be amended to impose additional requirements before a person is regarded as occupying a property for the purposes of enrolment eligibility, and to allow regulations to impose further requirements.
- **Caretaker period.** New sections 1.4A and 3.73 will be inserted in the *Local Government Act 1995*, providing for a mandatory caretaker period commencing at the close of nominations and ending on election day. During this period Local Governments will not be able to do a "significant act". There will be several exceptions, including where the decision was made prior to the caretaker period, or the act is authorised by the DLGSC CEO as necessary for proper operation of the Local Government or to deal with an emergency.

significant act means any of the following —

- (a) making a local law (including making a local law to amend or repeal a local law);
- (b) entering into, or renewing or terminating, the contract of employment of the CEO or of a senior employee;
- (c) entering into a major land transaction;
- (d) entering into a land transaction that is preparatory to entry into a major land transaction;
- (e) commencing a major trading undertaking;
- (f) entering into a contract, or other agreement or arrangement, in prescribed circumstances;
- (g) inviting tenders in prescribed circumstances;
- (h) deciding to do anything referred to in paragraphs (a) to (g);
- (i) an act done under a written law or otherwise that is a prescribed act.

Council plans

Expected to come into effect late 2023, with extended transition period

Section 5.56 of the *Local Government Act 1995* will be replaced. Instead of the requirement to “plan for the future of the district” Local Governments will be required to prepare a “council plan”. The council plan will address “future services and facilities for the district” and will be subject to further regulations. It is anticipated that DLGSC will produce template Council Plans.

Council plans

A council plan would replace some of the existing key plans of your local government. Instead, a council plan adopted by the council setting the high level plans of the local government for future.

How these changes help

The existing integrated planning and reporting framework is quite complex and is requiring significant resourcing by local governments. By simplifying the framework local governments can better focus their resources towards service delivery instead of extensive planning.

Source: <https://www.dlgsc.wa.gov.au/local-government/strengthening-local-government/local-government-act-reform/local-government-reform-explained#Council-plans>

Local Governments will be able to transition to the new Council Plans as their existing Integrated Planning and Reporting (IPR) framework documents expire.

Meetings

Came into effect on 19 May 2023

- **Electors' special meetings.** Section 5.28 of the *Local Government Act 1995* will be amended to provide that a minimum of 300 electors (or 5% of electors, whichever is less) is required to call a special electors' meeting. Previously the lesser of 100 electors or 5% was required. In addition, the Mayor/President will be able to decide that a meeting need not be held, or exclude a matter from discussion, if it has been/will be discussed at a special electors' meeting in the last 12 months or next 35 days. The Local Government must give local public notice of the decision and discuss the matter at the next Ordinary Council Meeting.

Expected to come into effect late 2023

- **Parental leave.** New subsections will be inserted in section 2.25 of the *Local Government Act 1995*, providing all Elected Members with an entitlement to 6 months parental leave from the birth, adoption or fostering of a child. Absence from meetings during parental leave will not be counted as an absence for disqualification purposes. The definition of quorum in section 5.19 will also be amended so that a member on parental leave will not be counted when calculating quorum. For example, if there are 7 offices on Council but one Member is on parental leave, quorum will be at least 50% of 6 offices meaning only 3 Members are required. However, the definition of absolute majority will not be amended.
- **Votes to be recorded in minutes.** Section 5.21 of the *Local Government Act 1995* will be amended so that individual votes must be recorded in the minutes as well as the total number of votes for and against a motion. Regulations may provide further details of how this must be done.
- **Broadcasting or recording meetings.** A new section 5.23A will be inserted in the *Local Government Act 1995* to allow regulations to be made requiring Council and Committee meetings to be broadcast and/or recorded and published. Broadcasting and/or publication will not be required for meetings closed to the public and regulations may exclude liability for defamation. While the regulations are not yet made, the requirement to broadcast meetings will apply to Band 1 and 2 Local Governments, while Band 3 and 4 Local Governments will be required to make and publish audio recordings.
- **Uniform meeting procedures.** A new section 5.33A will be inserted in the *Local Government Act 1995* to allow standardised meeting procedures to be set out in regulations.

Payments to Council and Committee Members

Expected to come into effect in 2024

- **Meeting attendance fees for independent Committee Members.** Section 5.100 of the *Local Government Act 1995* will be amended so that Committee Members, who are not Council Members or Local Government employees, are entitled to be paid meeting attendance fees. The fees must be set by Council within the range determined by the Salaries and Allowances

Tribunal. The provisions in regulations for reimbursement of expenses will also be expanded to include mandatory reimbursement for prescribed expenses.

- **Council Member training and professional development fees.** A new section 5.129 will be inserted to allow Local Governments to adopt a policy (by absolute majority) providing for the payment of a fee to Council Members or reimbursement of expenses in relation to completion of mandatory training or professional development. Section 5.98 will also be amended so that Council Members can only be paid or reimbursed in accordance with Part 5, Division 8 OR a policy adopted under section 5.129.

Communication and transparency

Expected to come into effect late 2023

Community engagement charter. A new section 5.56A will be inserted requiring all Local Governments to prepare, adopt and publish a community engagement charter that establishes principles and procedures for receiving community feedback, facilitating community involvement in decisions, and engaging with the community. The new section 5.56A emphasises the importance of engagement with a diverse range of community members. Regulations may prescribe additional requirements. It is anticipated that DLGSC will produce template community engagement charters.

- **Community surveys.** A new section 5.56B will be inserted allowing regulations to require Local Governments to conduct surveys of prescribed classes of people, for prescribed purposes and in accordance with prescribed requirements. This is expected to only be required for band 1 and 2 local governments.
- **Communications agreements.** New sections 5.92A, 5.92B and 5.92C will be inserted. Local Governments will be required to have a communications agreement that provides the procedure for Council Member access to information and communications between Council Members and employees. Council Members and employees must comply with the agreement. The Minister will be required to issue a default communications agreement, which may be tiered for different bands/classes of Local Governments. The default communications agreement will apply unless a Local Government prepares and adopts their own. If a Local Government adopts a communication agreement it remains in effect until the end of the next caretaker period, or a new CEO is employed.
- **Registers.** A new section 5.96B will be inserted allowing regulations to be made requiring the CEO to keep and publish registers on the Local Government's website. Registers may include leases, grants or contracts to which the Local Government is a party, or decisions under the *Planning and Development Act 2005*. Section 5.88 will also be amended to require the CEO to publish the record of disclosures of financial interests on the Local Government's website. This record is one component of the financial interests register. The other component is primary and annual returns, which will not be published on the website.

CEO employment

Expected to come into effect late 2023

- **Publication of CEO performance review.** Section 5.38 of the *Local Government Act 1995* will be amended to specify that a report on a CEO performance review must be provided to the CEO for response. The report must include a statement for publication, made up of a summary of the outcome in relation to each performance criterion and any other prescribed information. The CEO's response may include a response statement for publication. Regulations may provide further requirements for the form or content of the report or response. A new Section 5.39AA will require Local Governments to publish the CEO's contractual performance criteria, and the statement and CEO response in relation to a performance review. The CEO of DLGSC can direct that information be excluded from publication in the public interest.
- **CEO model standards – establishment of panel.** Section 5.39A will be amended to allow the model standards for CEO recruitment, performance and termination (Schedule 2 of the *Local Government (Administration) Regulations 1996*) to include requirements for Local Governments to involve members of a panel of persons established by DLGSC.

Principles for function of Local Government

Expected to come into effect in July 2023

Section 1.3(3) will be deleted, and section 3.1 General function amended to include an expanded statement of principles.

Existing section 1.3(3) to be deleted:

1.3. Content and intent

...

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

New section 3.1(1A) to be inserted:

3.1. General function


...

(1A) Without limiting subsection (1), the general function of a local government must be performed having regard to the following —

(a) the need —

(i) to promote the economic, social and environmental sustainability of the district; and

(ii) to plan for, and to plan for mitigating, risks associated with climate change; and

- 
- (iii) in making decisions, to consider potential long-term consequences and impacts on future generations;*
 - (b) the need —*
 - (i) to recognise the particular interests of Aboriginal people; and*
 - (ii) to involve Aboriginal people in decision-making processes;*
 - (c) the need to consider collaboration with other local governments.*

...

Exemptions

Came into effect on 19 May 2023

A new section 9.63A has been inserted allowing the Minister to approve a Local Government application for exemption from compliance with a specified requirement of the *Local Government Act 1995*. This must be for a specified period, for the purpose of dealing with an emergency or unusual circumstances. Local Governments granted an exemption must give local public notice.

Model financial statements

Expected to come into effect in July 2023

Not strictly part of the current reform, model financial statements have been in preparation for some time and have now been released by DLGSC (<https://www.dlgsc.wa.gov.au/local-government/local-governments/support-and-advice/financial-policy-and-accounting#mfs>). Regulations are expected to require Local Governments to use these models for the 2022-23 financial statements and financial report. Two model financial statements have been developed. A more detailed model will apply to Band 1 and 2 Local Governments, and a simplified model to Band 3 and 4 Local Governments.