

**9. OFFICER'S REPORTS**  
**9.2 ADMINISTRATION REPORTS**  
**9.2.8 Local Government Act Amendments**

<b>FILE NO:</b>	<b>LE.ACT.1</b>
<b>COUNCIL DATE:</b>	<b>20 December 2010</b>
<b>REPORT DATE:</b>	<b>10 December 2010</b>
<b>LOCATION/ADDRESS:</b>	<b>N/A</b>
<b>APPLICANT:</b>	<b>WALGA</b>
<b>SENIOR OFFICER:</b>	<b>R Hooper, CEO</b>
<b>REPORTING OFFICER:</b>	<b>R Hooper, CEO</b>
<b>DISCLOSURE OF INTEREST:</b>	<b>Nil</b>
<b>APPENDICES:</b>	<b>Proposed Amendments &amp; Feedback Form</b>
<b>DOCUMENTS TABLED:</b>	<b>Nil</b>

**Summary:**

WALGA requests Council's comments on the proposed amendments by the 7<sup>th</sup> January, 2011.

**Background:**

The Local Government Act was promulgated in 1995 and there have been a series of amendments since that time.

**Consultation:**

Statewide

**Statutory Environment:**

Not applicable

**Policy Implications:**

Nil

**Financial Implications:**

Nil at this stage. If approved by Parliament there will be financial impacts in the independent setting of fees and salaries for Elected Members and Chief Executive Officers.

**Strategic Implications:**

Nil

**Voting Requirements:**

**Absolute Majority Required:**      **No**

**Site Inspection:**

**Site Inspection Undertaken:**      **Not applicable**

**Triple bottom Line Assessment:**

**Economic Implications:**

Nil at this time.

**Social Implications:**

Legislative changes impact across the Community however the proposed changes will have minimal direct impact as York already has the number of elected members set at six (6).

**Environmental Implications:**

Nil at this stage.

**Comment:**

The proposed changes bring local government more in line with State Government standards and support the structural reform processes.

**Proposed Amendments****1. Reducing Elected Members to Between 6 & 9****Comment**

The proposal can be supported in principle as evidenced by York and other examples in rural areas.

For larger metropolitan and regional centres a reduction to these levels may result in local government members representing larger elector numbers than for State electorates.

It may be more relevant to retain the current 15 member system but limit its use to local government above a set figure e.g. 50,000.

**2. Salaries & Allowances Tribunal to Set the Fees for Elected Members & Chief Executive Officers****Comment**

The use of an independent organisation to set fees and salaries is realistic to address community concerns and to ensure comparability across the State.

**3. New Mechanism for the Temporary Suspension of a Council****Comment**

A temporary Council or an individual Elected Member suspension system may be of high value when there is evidence of a Council being dysfunctional or riven by personality clashes.

**4. Require Elected Members to Resign when they are Elected to State or Commonwealth Parliament****Comment**

The proposal is sensible in that it ensures separation between the roles of the three (3) tiers of government.

**5. Restricting the Types of Local Government Investment to Low Risk Products such as those with the WA Treasury Corporation, Major Banks and Government Bonds****Comment**

The history of Local Government in high risk investment has resulted in significant losses to some communities.

As local governments are primarily dealing with public monies the proposal has merit and should be supported with a provision for ministerial or treasury exemption where a business case can be substantiated outside of the prescribed investments to meet the needs of larger local authorities.

**6. Align Criminal Conviction Criteria for Elected Members with that of WA Members of Parliament**

**Comment**

This alignment with State Government standards is sensible and realistic.

**7. To Limit Employee Termination Payments to One Year's Salary****Comment**

The proposal will cover an anomaly which may allow payments outside of contract conditions.

The WALGA employment contract limits redundancy payments to 12 months.

There are also a number of senior staff across the State who have not entered into employment contracts and the proposed changes will impact on these positions.

Structural reform proposals for redundancies associated with amalgamations are not affected by this proposal as they are covered by Schedule 2.1, Clause 11(4) of the Local Government Act.

**RESOLUTION****161210****Moved: Cr Randell****Seconded: Cr Lawrance*****"That Council:******Adopt the following positions on the proposed amendments and advise WALGA and the Department of Local Government accordingly:***

- 1. Reducing Elected Members to Between 6 & 9  
Support the intent of reducing elected member numbers for each Council to 6 to 9 per local governments with populations up to 50,000 and Council's above this population base to be able to apply for exemptions outside of the set representation figures.***
- 2. Salaries & Allowances Tribunal to Set the Fees for Elected Members & Chief Executive Officers  
Support***
- 3. New Mechanism for the Temporary Suspension of a Council  
Support***
- 4. Require Elected Members to Resign when they are Elected to State or Commonwealth Parliament  
Support***
- 5. Restricting the Types of Local Government Investment to Low Risk Products such as those with the WA Treasury Corporation, Major Banks and Government Bonds  
Support***
- 6. Align Criminal Conviction Criteria for Elected Members with that of WA Members of Parliament  
Support***
- 7. To Limit Employee Termination Payments to One Year's Salary  
Support subject to the proposal not detracting from the current provisions in Schedule 2.1 of the Local Government Act 1995."***

***CARRIED: 5/0***



**INFOPAGE**



SHIRE OF YORK	
FILE: <i>OR 16R7</i>	INITIALS
OFFICER: <i>key</i>	
30 NOV 2010	
116956	From:
REFERRED TO COUNCIL	
DATE	INITIALS
<i>20/11/10</i>	Date: <i>20</i>

**To:** Chief Executive Officer

**Organisation:** All Councils

**Reference:** 05-034-01-0001

**Subject:** Proposed Amendments to the Local Government Act 1995

James McGovern – Manager,  
Governance

26 November 2010

**IN BRIEF**

<b>Operational Area:</b>	Governance
<b>Key Issues:</b>	<ul style="list-style-type: none"> <li>The Minister for Local Government has requested sector feedback on a number of proposed amendments to the Local Government Act 1995.</li> <li>WALGA is appreciative of the opportunity for the sector to comment at this early stage, and encourages a strong response from Local Government Councils.</li> <li>Explanatory Notes is provided to inform on the proposals and provide WALGA comment to assist in your Councils deliberations.</li> </ul>
<b>Action Required:</b>	<b><u>Council Consideration Required</u> – Feedback requested by 7 January 2011</b>

The Association's continued endeavour to foster closer working relationships with the Minister for Local Government and his Department has paid dividends, with the Minister asking the Association to lead the consultation process on a Local Government Act Amendment Bill. This is a significant departure from past practice; traditionally, sector comment has been sought once the Minister and Department of Local Government have drafted instructions to the State Solicitor's Office.

Some matters of long-standing importance to the sector, underpinned by WALGA State Council endorsement, feature in the proposals. WALGA welcomes this opportunity to provide comment prior to preparation of the drafting instructions and appreciates the influence this consultation process will have in developing amendments to the *Local Government Act 1995*.

In light of the importance of this consultation process, the Association requests that the Minister's proposals are considered at a Full Council meeting, with your Council's resultant resolution relayed to WALGA for collating with other Local Government responses to form a representative view and provide strong arguments should the need arise to negotiate aspects of the Minister's proposals.

It is critical to any consultation process that a strong sector response is gathered, and even more so on this occasion as indication of the sector's appreciation of the opportunity to lead and influence the Local Government Amendment Bill as it progresses in 2011. Your response by **7 January 2011** would therefore be appreciated.

Explanatory Notes are attached, which expand on the issues for consideration. For further information on this matter, please contact Manager, Governance James McGovern on 9213 2093, [jmcgovern@walga.asn.au](mailto:jmcgovern@walga.asn.au) or Executive Manager Governance & Strategy, Tony Brown on 9213 2051, [tbrown@walga.asn.au](mailto:tbrown@walga.asn.au).

A response form is provided overleaf; however more detailed submissions are also welcome.

Local Government House  
15 Altona Street  
West Perth WA 6005  
PO Box 1544  
West Perth WA 6872  
Facsimile (08) 9322 2611  
Telephone (08) 9321 5055  
Email [info@walga.asn.au](mailto:info@walga.asn.au)  
Website [www.walga.asn.au](http://www.walga.asn.au)

For further information please contact  
**James McGovern - 9213 2093 – [jmcgovern@walga.asn.au](mailto:jmcgovern@walga.asn.au)**  
**Tony Brown – 9213 2051 – [tbrown@walga.asn.au](mailto:tbrown@walga.asn.au)**



**The Voice of Local Government**



## Feedback Form

Seven amendments to the Local Government Act 1995 are proposed. These issues are expanded in the attached Explanatory Notes. Please indicate the level of support or opposition to each proposal and provide additional comments where appropriate. More detailed submissions are also welcomed.

1. Reducing the number of Elected Members to between six and nine
2. Salaries and Allowances Tribunal to set the fees for Elected Members and salaries for CEOs
3. New mechanism for the temporary suspension of Council
4. Require Elected Members to resign when elected to State or Commonwealth Parliament
5. Restricting the types of local government investments to low risk products such as those with the WA Treasury Corporation, major banks and government bonds
6. Align criminal conviction criteria for Elected Members with that of WA Members of Parliament
7. To limit employee termination payments to one year's salary

Local Government House  
15 Altona Street  
West Perth WA 6005  
PO Box 1544  
West Perth WA 6872  
Facsimile (08) 9322 2611  
Telephone (08) 9321 5055  
Email [info@walga.asn.au](mailto:info@walga.asn.au)  
Website [www.walga.asn.au](http://www.walga.asn.au)

For further information please contact

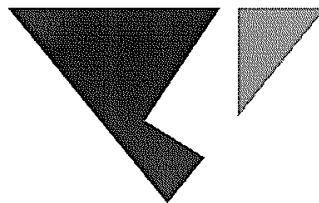
**James McGovern - 9213 2093 – [jmcgovern@walga.asn.au](mailto:jmcgovern@walga.asn.au)**

**Tony Brown – 9213 2051 – [tbrown@walga.asn.au](mailto:tbrown@walga.asn.au)**



**The Voice of Local Government**





**WALGA**

# **Proposed Amendments to the Local Government Act 1995**

## *Explanatory Notes*

*Prepared by:*  
**James McGovern**  
**Manager Governance**  
**(08) 9213 2093**  
**[jmcgovern@walga.asn.au](mailto:jmcgovern@walga.asn.au)**

**November 2010**

## Background

The Minister for Local Government has invited the sector to comment on a number of proposed amendments to the Local Government Act 1995. The latest amendments to the Act occurred with the introduction of the Local Government (Official Conduct) Amendment Act 2007 and the proclamation of the Local Government Amendment Act 2009.

WALGA welcomes this opportunity to provide comment prior to preparation of the drafting instructions and appreciates the influence this consultation process will have in developing amendments to the Local Government Act 1995.

It is therefore of some consequence that this consultation process results in a strong response from the Local Government sector to ensure comments and feedback are representative of the majority of Local Governments.

The Association requests that your Council gives formal consideration to the following proposals and provide comment by way of a Council resolution, and inform WALGA by **7<sup>th</sup> January 2011**.



## **1. Reducing Elected Members to between six and nine**

### **Minister's Proposal:**

*As part of the reform process, local governments were asked by the Minister for Local Government to consider reducing the number of elected members to between six and nine. The rationale is that a smaller number of elected members will encourage greater competition for positions on Council and contribute to a more strategic decision-making focus by councils. Fifty one local governments have committed to reducing the number to the range requested. Sixty one local governments already have Councillor numbers in this range.*

*It is proposed that section 2.17 of the Act be amended to reduce the number of elected members to between six and nine. Despite the new permitted range, local governments may continue with existing elected member numbers for up to an eight year period from the October 2011 elections. This will be for two full electoral terms. If they have not made the changes by then, the Local Government Advisory Board would take the action as set out in Schedule 2.1, Clause 6.(3) to implement the necessary change for the 2019 elections.*

### **WALGA Comment:**

The Association has expressed to the Minister on a number of occasions, the continual opposition of this recommendation by the Local Government sector, most recently with the State Council resolving on 12 October 2010:

**"That WALGA;**

- c. Oppose the Local Government Reform Steering Committee Report recommendation 8 concerning prescribing the number of Elected members to between 6 and 9"**

The reduction in the numbers to this extent would require Elected Members in large metropolitan Councils to become full time Councillors. A significant number of Local Governments have provided the Association with reasoned arguments explaining the detrimental nature of this one size fits all approach.

It has been suggested the Minister engage the Department of Local Government in researching the benefits of this proposal in greater detail, and provide to the sector similarly reasoned arguments in support of this proposal.

## **2. Salaries and Allowances Tribunal to set the fees for Elected Members**

### **Minister's Proposal:**

#### Elected Members

*At present, the head of power for the setting of elected member fees and allowances is provided under the Act and monetary values are prescribed in Regulations. The Governor approves the setting or amending of these fees and allowances on a recommendation by the Minister for Local Government. Elected member meeting fees have only been amended twice since 1996 and, in both cases, in line with changes to the Consumer Price Index.*

*It is proposed that the responsibility for the setting of the dollar values for elected member fees and allowances be transferred to the Salaries and Allowances Tribunal, through amendment to the Act and the Salaries and Allowances Tribunal Act 1975. The approach envisaged would be for the Tribunal to provide its advice to the Minister for Local Government, who will then have the final decision about whether the fees and allowances are adopted.*

*The 2006 Local Government Advisory Board's report into Structural and Electoral Reform, as well as the 2008 WALGA Sustainability Study, both recommended that the Salaries and Allowances Tribunal be responsible for the setting of elected member fees.*

*Providing for an independent body to set the value of fees and allowances for local government elected members will bring the approach into line with that already in place for State Members of Parliament. In addition, other States have independent tribunals established to set fees and allowances for local government members.*

*The Minister for Local Government will also retain responsibility for the types of fees, allowances and expenses that elected members can be paid or reimbursed and the circumstances in which they are made.*

#### Chief Executive Officers (CEOs)

*At present, the Tribunal has a statutory role in making recommendations as to the remuneration to be paid or provided to local government CEOs. These recommendations are to be taken into account by the local government before entering into, or renewing, a contract of employment with a CEO.*

*It is proposed that the legislation be amended so that local governments are required to ensure the salaries of their CEOs are set within the salary bands recommended by the Tribunal. Similar to that for elected members, the approach envisaged would be for the Tribunal to provide its advice to the Minister for Local Government, who will then have the final decision about whether the salary bands are adopted.*

**WALGA Comment:**

Elected Members – It is pleasing to note that the setting of remuneration levels for Elected Members by the Salaries and Allowances Tribunal has not been linked to the State Government's plan to reduce elected members.

The Association has advocated on this issue since 2004 and reaffirmed this advocacy when State Council considered this matter in light of the 2006 Local Government Advisory Board (LGAB) Report on Structural Reform, subsequently resolving:

**That recommendation 1.35 of the Local Government Advisory Board report be supported and that the State Government be requested to amend the Local Government Act 1995 accordingly to achieve the following outcome:**

**“That the Western Australian Salaries and Allowances Tribunal be given the responsibility for establishing the range of fees and allowances for elected members, with each Local Government having the ability to set a fee within this range. The Tribunal also be required to update the fees and allowances on an annual basis.”**

- (a) That the State Government be requested to amend the Local Government Act accordingly;**
- (b) In the event the Local Government Act 1995 is amended as per the Association's advocacy:**
  - i. that the question of the quantum and extent of Councillor Fees and Allowances be sought from other states with a view of presenting this to the Western Australian Salaries and Allowances Tribunal to support any Association submission on this subject; and**
  - ii. that targeted research be undertaken on Councillor responsibilities, level of control and work values, so that these can be extrapolated as industry averages and provided to the Tribunal in further support of any Association submission.**

Chief Executive Officers (CEOs) – This is a recent addition by the Minister to the Local Government Act amendment proposals and did not feature in the Local Government Reform Steering Committee Report recommendations. WALGA takes a view that Local Governments should retain the general competence power to determine appropriate remuneration levels for their key executive.

### **3. New mechanism for the temporary suspension of a Council**

#### **Minister's Proposal:**

*The Department delivers both proactive and reactive assistance and support to Councils to aid them in providing good governance to the people of its district. However, on occasion, division and conflict between Council members, and between Council Members and the administrative officers, arises leading to Councils becoming dysfunctional.*

*Section 8.19 of the Act provides for the suspension of a Council, however, this only applies where an Inquiry Panel is appointed by the Minister to inquire and report on a local government's operation or affairs within six months of the suspension. The operation of Inquiry Panels has been found to be effective in dealing with serious and systemic governance issues. However, because the Inquiry process can recommend dismissal of a council, it involves a process that is necessarily exhaustive, and correspondingly time consuming and costly. It is estimated that a Panel Inquiry would cost approximately \$1-1.5 million. It is not viewed as being an appropriate mechanism to deal with the type of situations outlined above.*

*Section 8.15(2) of the Act also provides for a council to be suspended in circumstances where the council has not complied with an order made with respect to the recommendations of an Authorised Inquiry that is conducted pursuant to section 8.3 of the Act. Although less costly and time consuming than a Panel Inquiry, an Authorised Inquiry still typically takes between 6 – 12 months from commencement to completion. As a consequence, an Authorised Inquiry does not provide an immediate response to issues that are detrimentally affecting the operation of the local government.*

*It is proposed that Part 8 of the Act be amended to provide an alternative mechanism for the Minister to utilise where the Minister becomes aware of significant issues that he or she believes may lead to a breakdown in the effective decision making process of an elected Council. This mechanism will allow for the suspension of a Council and the appointment of a Commissioner to act on behalf of the Council for a maximum period of six months. Prior to the end of this period, the Minister would decide whether to reinstate the Council or to keep it suspended and establish a Panel Inquiry, as required by section 8.19 of the Act.*

*This new approach is considered to provide a circuit breaker to allow the issues that have arisen to be quickly resolved by the Commissioner and for the Council to be reinstated. The addition of an alternative 'issue resolution' process will enable the Minister to choose the most practical 'suspension' mechanism for each specific circumstance.*

*Once the Minister becomes aware of a dysfunctional Council, the suspension powers would operate in the following manner. The Minister would request the Department of Local Government to carry out an assessment and provide a report on the issues about a local government that have been brought to his or her attention. Based on this information, the Minister would then decide whether to take*

*any action and, if so, whether the new suspension power would be utilised, or a Panel Inquiry held.*

*If this new suspension power was used, the Council would be issued a 'notice of intent to suspend' by the Minister and be given a period of 21 days to respond to this notice. If the Minister chose to carry through with the intention to suspend, a Commissioner would be appointed and the elected members of council temporarily suspended for a period of no more than six months. Elected members would continue to receive their meeting allowance.*

*Prior to the end of the six month suspension, the Minister would either reinstate the Council, or appoint an Inquiry Panel in line with the current section 8.19 of the Act.*

*In summary, Part 8 would require amendment to incorporate the following steps:*

- (a) The Minister issues the Council with a notice of intention to suspend due to issues arising that the Minister believes may lead to a breakdown in the effective decision making process of an elected Council;*
- (b) The Council will have a period of 21 days in which to respond to the Minister's notice detailing the Minister's reasons for providing a notice of intention to suspend;*
- (c) The Minister would give serious consideration to the reasons provided and determine whether the council should be suspended;*
- (d) If the Minister decides to suspend the Council, he or she has the option of suspending and appointing a Commissioner for a maximum period of six months (new power) or if the identified issues are considered so significant that a Commissioner would not be able to resolve them within six months, to immediately appoint an Inquiry Panel (existing power) to investigate the issues; and*
- (e) Prior to the end of the six month suspension period, the Minister is to reinstate the Council or appoint a Panel Inquiry.*

*The Minister is to have the power to require council members to undertake remedial action, such as undergoing training or mediation, during the period of suspension.*

**WALGA Comment:**

The proposed amendment appears to have its origin in situations the Minister and his Department have encountered, where there was insufficient reason to conduct a Panel Inquiry yet the operations of a Council were affected by internal conflicts that could potentially escalate. From this perspective, WALGA appreciates there may be the need for extraordinary powers to immediately provide to a community, a cost-effective remedy that will lead to the resumption of good governance.

WALGA's policy position on this issue was considered in 2008 where there was support for a mechanism to suspend individual Elected Members rather than an entire Council.

#### **4. Require Elected Members to resign when they are elected to State or Commonwealth Parliament**

##### **Minister's Proposal:**

*The Act provides that if a local government elected member is elected as a Member of Parliament, his or her council position does not become vacant until the next ordinary election day. There is no requirement in the Act, or other legislation, for the local government elected member to resign and, as such, a person can be an elected member of a local government Council and the Western Australian Parliament.*

*Section 36(1)(b) of the Constitution Acts Amendment Act 1899 requires a member of the WA Parliament to immediately resign when elected to Commonwealth Parliament.*

*It is proposed to amend the Act to require elected members to immediately resign (or for their position to become automatically vacant) when elected to State or Commonwealth Parliament. This will contribute to appropriate separation of responsibilities and reduce potential conflicts of interest that might arise if representing at a State or Federal and Local level simultaneously.*

*This will also align with the eligibility requirements for nomination or membership into State and Commonwealth Parliament set by the State Electoral Act 1907 and Constitution Acts Amendment Act 1899.*

*In 2008, WALGA requested the Minister consider an amendment of this type.*

##### **WALGA Comment:**

The proposal aligns with a State Council resolution of August 2007 –

***That the Minister for Local Government be requested to consider amending the Local Government Act 1995 to require Elected Members to resign from Council immediately upon being declared elected to State or Federal Parliament.***

## **5 Restricting the types of local government investments to low risk products such as those with the WA Treasury Corporation, major banks and government bonds.**

### **Minister's Proposal:**

*The investment options available to local governments were altered in 1997 when the prescribed list of investments in the Trustees Act 1962 was removed and replaced by the 'Prudent Person' rule. This rule is no longer viewed as providing sufficient clarity and guidance in relation to local government investment management policies.*

*In 2007, it was revealed that eight local governments and two regional local governments had invested in Collateralised Debt Obligations with Lehman Brothers (formerly Grange Securities). This has resulted in multi-million dollar losses by the affected local governments and concerns have been raised in the community about the performance of local governments in this area.*

*It is proposed to amend the Act to allow for regulations to prescribe the investments that can be made by local government. This will include Government guaranteed and other low risk investments. A requirement for local governments to only invest in these types of products is expected to minimise the investment exposure of local governments and the loss of ratepayer funds.*

*At this stage, the following forms of investment are being considered to be included in this regulation:*

- 1. a deposit with the Western Australian Treasury Corporation or an investment facility of the Western Australian Treasury Corporation;*
- 2. any public funds or securities issued by, or guaranteed by, the Commonwealth, any State of the Commonwealth or a Territory; and*
- 3. interest bearing deposits with, and/or debentures or bonds issued by, an authorised deposit-taking institution (as defined in the Banking Act 1959 (Cwth)) where the Institution has a Standard & Poor's Rating of A-1+ (short-term) or AA (long term, but excluding subordinated obligations).*

*Further discussion is proposed to take place between the Department of Local Government, local governments and the WA Treasury Corporation to develop this regulation.*

### **WALGA Comment:**

There remains subjectivity in the definition of the term 'low risk' in the context of this proposal. The WA Local Government Association supports the sector's right to retain the principle of general competency powers as provided under the Local Government Act 1995, and that Local Governments be allowed to continue to decide for themselves how best to deal with investment opportunities.

## **6 Align criminal conviction criteria for Elected Members with that of Western Australian Members of Parliament**

### **Minister's Proposal:**

*It is proposed to amend the Act to preclude a person who has been convicted of an offence with a statutory penalty of imprisonment for five years or more from standing for election to local government.*

*This will align the eligibility requirements for local government candidates with those that apply to State Members of Parliament. This requirement will have a positive impact on the calibre of those standing and ultimately representing the community on Council.*

*These provisions need to be modelled on section 32(1)(b) of the Constitution Acts Amendment Act 1899 whereby a person is disqualified where he or she has been convicted on indictment of an offence for which the indictable penalty was or included*

- (i) imprisonment for life, or*
- (ii) imprisonment for more than five years.*

*Serving elected members with such records will be able to serve out their terms, however, would not be eligible for re-election once the legislation was amended.*

### **WALGA Comment:**

This proposal is consistent with the Associations policy position.

It is suggested that for true alignment of criteria, the proposal take a holistic approach incorporating all aspects of Candidates/Elected Member qualification and disqualification rather than one aspect of disqualification, namely criminal convictions.

One option would be for this proposal to be broadened to "Align the qualification and disqualification criteria for Local Government election candidates and Elected Members with that of Western Australian Members of State Parliament".



## **7. To limit employee termination payments to one year's salary**

### **Minister's Proposal:**

*Recent consideration of the current provisions in the Act indicates that it is possible for employees of local governments, including CEOs, to receive up to two years' salary on redundancy. This situation has arisen out of an anomaly in the Act not intended when the Act was developed.*

*It is proposed that an amendment to regulations to limit payouts to all such employees to a maximum of one year's salary will bring local government provisions into line with Western Australian State and Commonwealth public sector arrangements and would be consistent with organisational practice in other jurisdictions.*

*This proposal will not effect the two year guarantee of employment as provided for in Clause 11 (4) of Schedule 2.1 of the Act.*

### **WALGA Comment:**

There is no current Association policy position on this proposal.



## **9. OFFICER'S REPORTS**

### **9.2 ADMINISTRATION REPORTS**

#### **9.2.9 Plastic Shopping Bags (Waste Avoidance) 2010**

<b>FILE NO:</b>	<b>LE.ACT. 6</b>
<b>COUNCIL DATE:</b>	<b>20 December 2010</b>
<b>REPORT DATE:</b>	<b>9 December 2010</b>
<b>LOCATION/ADDRESS:</b>	<b>Nil</b>
<b>APPLICANT:</b>	<b>Hon. Mia Davies MLC</b>
<b>SENIOR OFFICER:</b>	<b>Ray Hooper, CEO</b>
<b>REPORTING OFFICER:</b>	<b>Gordon Tester</b>
<b>DISCLOSURE OF INTEREST:</b>	<b>Nil</b>
<b>APPENDICES:</b>	<b>Copy of Proposed Bill</b>
<b>DOCUMENTS TABLED:</b>	<b>Nil</b>

#### **Summary:**

The National Party have introduced a bill into the Legislative Council aiming to ban single use plastic shopping bags from Western Australia.

Council's views on this matter are requested to assist the Honourable Mia Davies MLC to form a balanced view on the matter

#### **Background:**

Approximately 400 million plastic bags are used in WA each year, with the vast majority of those bags ending up as landfill or in our environment. This bill would only ban the single use bags received at places such as supermarkets, and not household tidy bags, dog litter bags in parks or food storage bags.

#### **Plastic Bag Facts:**

- Australians used 3.9 million plastic shopping bags in 2007.
- Nearly half a million plastic bags are collected on Clean up Australia Day each year.
- It takes only four grocery shopping trips for an average Australian family to accumulate 60 plastic shopping bags.
- Plastic bags are produced from polymers derived from petroleum. The amount of petroleum used to make a plastic bag would drive a car about 11 metres.
- In 2005, Australians used 192 HDPE bags per capita.
- 14% of HDPE plastic carry bags are returned to major supermarkets for recycling.

#### **Consultation:**

The National Party (WA Branch) is seeking Councils views on their proposed bill banning single use plastic shopping bags.

#### **Statutory Environment:**

The proposed legislation being considered is the Plastic Shopping Bags (Waste Avoidance) Bill 2010.

#### **Policy Implications:**

Nil

#### **Financial Implications:**

Nil

#### **Strategic Implications:**

This Bill has the potential to assist Council in managing the environment within the Shire of York.

**Voting Requirements:**

**Absolute Majority Required:** No

**Site Inspection:**

**Site Inspection Undertaken:** Not applicable

**Triple bottom Line Assessment:**

**Economic Implications:**

Nil

**Social Implications:**

The cost of purchasing alternative carrying devices may be considered prohibitive and will require significant change in regards to shopping habits.

**Environmental Implications:**

The whole reason behind this bill is to prevent adverse effects on the environment due to poor disposal of plastic bags and to conserve resources that are used in plastic bag manufacture.

**Comment:**

This is a complex matter that has been the subject of many reports in recent years.

While these bags are considered to be single use bags, they are also used for rubbish disposal by a significant number of people.

The manufacturers of multi use shopping bags and single use rubbish bags stand to increase their profits greatly.

The use of reuse shopping bags has reduced the plastic bag use by about 40%.

Landfill sites will be filled with single use plastic rubbish bags purchased by the consumer rather than double use plastic bags supplied by shopping centres.

On the positive side however, it may encourage recycling, to avoid having to buy rubbish bags.

The bill does have a transition period to phase in the total ban of plastic bags that briefly allows alternative bags such as biodegradable bags prior to the total ban.

**RESOLUTION**

**171210**

**Moved: Cr Randell**

**Seconded: Cr Walters**

***“That Council:***

***Support the Plastic Shopping Bags (Waste Avoidance Bill)”***

***CARRIED: 4/1***

Hon **Mia Davies** MLC

Member for Agricultural Region | Party Secretary, Parliamentary National Party

COPY SENT TO:	
1.	All councillors
2.	
3.	

Our Ref: JB/101124

Shire President Pat Hooper  
PO Box 22  
YORK WA 6302

02 DEC 2010

SHIRE OF YORK	
FILE: LE.ACT.8	
OFFICER	INITIALS
Ray	
Gordon	
Judith	
7 DEC 2010	
1117081	
REFERRED TO COUNCIL	
DATE	INITIALS

Dear Shire President *Pat*

**Re: Plastic Shopping Bags (Waste Avoidance) Bill 2010**

In April this year, the abovementioned Bill was introduced into the Legislative Council and aims to ban single use plastic shopping bags from Western Australia. I attach a copy of the Bill for your perusal.

By way of background, approximately 400 million plastic bags are used in WA each year, with the vast majority of those ending up as landfill or in our environment. This Bill would only ban the single use bags you receive at places such as supermarkets, and not household tidy bags, dog litter bags in parks or food storage bags.

I would welcome your Council's views on this Bill in order for me to form a balanced view on this important matter.

Should you have any queries regarding this Bill or any other matters, please do not hesitate to contact me.

Yours sincerely

*Mia Davies*

Hon. Mia Davies MLC  
Member for the Agricultural Region

*Gordon - prepare a report to present to council for approval to support or oppose the Bill.*



Western Australia

## **Plastic Shopping Bags (Waste Avoidance) Bill 2010**

---

### **CONTENTS**

---

1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Retailer must provide alternative shopping bag until transition date	3
5.	Retailer not to provide plastic shopping bag	3
6.	Person must not represent that supplied plastic shopping bag is not a plastic shopping bag	4
7.	Interaction with Environmental Protection Act	4
8.	Regulations	5
9.	Review of Act	5

Western Australia

LEGISLATIVE COUNCIL

*(Introduced by Hon Sally Talbot, MLC)*

**Plastic Shopping Bags (Waste Avoidance)  
Bill 2010**

**A Bill for**

**An Act to restrict the supply of single use shopping bags.**

The Parliament of Western Australia enacts as follows:

***Plastic Shopping Bags (Waste Avoidance) Bill 2010***

**s. 1**

---

1     **1.       Short title**

2             This is the *Plastic Shopping Bags (Waste Avoidance) Act 2010*.

3     **2.       Commencement**

4             This Act comes into operation 28 days after the day on which it  
5             receives the Royal Assent.

6     **3.       Interpretation**

7             In this Act —

8             *alternative shopping bag* means a carry bag that —

- 9                 (a)    is a biodegradable bag; or  
10                (b)    is designed to be used on a regular basis over a period of  
11                       approximately 2 years; or  
12                (c)    is of a kind brought within the ambit of this definition  
13                       by the regulations;

14             *authorised person* means a person who is an authorised person  
15             for the purposes of the *Environmental Protection Act 1986*;

16             *biodegradable bag* means a carry bag comprised of material of  
17             a type that has been assessed and tested in accordance with the  
18             relevant standard and can, in accordance with the relevant  
19             standard, be designated as compostable;

20             *plastic shopping bag* means —

- 21                 (a)    a carry bag —  
22                        (i)   the body of which comprises (in whole or in  
23                               part) polyethylene with a thickness of less than  
24                               35 microns; and  
25                        (ii)   that includes handles; or  
26                 (b)    a bag that is of a kind brought within the ambit of this  
27                        definition by the regulations,  
28             but does not include —  
29                 (c)    a biodegradable bag; or



- 1           (d) a plastic bag that constitutes, or forms an integral part  
2           of, the packaging in which goods are sealed prior to  
3           sale; or
- 4           (e) a bag of a kind excluded from the ambit of this  
5           definition by the regulations;
- 6           *relevant standard* means AS 4736/2006 (as amended from time  
7           to time);
- 8           *transition date* means the date prescribed by regulation for the  
9           purposes of this definition.
- 10       **4.       Retailer must provide alternative shopping bag until**  
11       **transition date**
- 12       (1) From the day on which this section comes into operation until  
13       the day immediately preceding the transition date, a retailer who  
14       at any premises makes plastic shopping bags available to  
15       customers as a means of carrying goods purchased, or to be  
16       purchased, from the retailer must —
- 17           (a) be in a position to provide an alternative shopping bag to  
18           a customer who requests that the retailer provide him or  
19           her with such a bag; and
- 20           (b) display such notice or notices in the premises as  
21           prescribed by the regulations.
- 22       Maximum Penalty: \$5 000.
- 23       (2) This section does not prevent a retailer from requiring a  
24       customer to pay a fee for the provision of an alternative  
25       shopping bag.
- 26       **5.       Retailer not to provide plastic shopping bag**
- 27       (1) A retailer who provides a plastic shopping bag to a customer —  
28           (a) on or after the transition date; and

***Plastic Shopping Bags (Waste Avoidance) Bill 2010***

**s. 6**

---

- 1           (b) as a means of carrying goods purchased, or to be  
2           purchased, from the retailer,

3           is guilty of an offence.

4           Maximum Penalty: \$5 000.

- 5       (2) It is a defence to a charge under subsection (1) if the retailer  
6       proves that he or she believed on reasonable grounds that the  
7       bag was not a plastic shopping bag.

- 8       (3) This section applies whether or not a fee is charged to the  
9       customer for provision of the plastic shopping bag.

10   **6. Person must not represent that supplied plastic shopping**  
11   **bag is not a plastic shopping bag**

12       A person who —

- 13           (a) sells, supplies or provides a bag to another person  
14           knowing that it is a plastic shopping bag; and  
15           (b) prior to, or in the course of, selling, supplying or  
16           providing the bag, represents to the other person that the  
17           bag is not a plastic shopping bag,

18       commits an offence.

19       Maximum Penalty: \$20 000.

20   **7. Interaction with Environmental Protection Act**

- 21       (1) This Act and the *Environmental Protection Act 1986* will be  
22       read together and construed as if the 2 Acts constituted a single  
23       Act.

- 24       (2) Without derogating from subsection (1), authorised persons may  
25       exercise their powers under the *Environmental Protection*  
26       *Act 1986* for the purposes of the administration and enforcement  
27       of this Act.

- 28       (3) In the event of an inconsistency between this Act and the  
29       *Environmental Protection Act 1986*, the provisions of this Act  
30       shall prevail.

**8. Regulations**

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) The regulations may exempt any specified person or class of persons from the operation of this Act or of any specified provision of this Act, and may do so unconditionally or subject to conditions.
- (3) Regulations under this Act may —
  - (a) be of general application or limited application;
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply;
  - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other person or body prescribed by the regulations; or
  - (d) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another prescribed body.

**9. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the second anniversary of the transition date.
- (2) In the course of the review carried out under subsection (1) the Minister is to have regard to —
  - (a) the effect on the community of section 5;
  - (b) the extent to which this Act has been effective in restricting the supply of plastic shopping bags; and
  - (c) such other matters that are considered by the Minister to be relevant to a review of this Act.

***Plastic Shopping Bags (Waste Avoidance) Bill 2010***

**s. 9**

---

- 1       (3) The Minister is to prepare a report based on the review carried  
2       out under subsection (1) and is to cause the report to be laid  
3       before each House of Parliament as soon as practicable after the  
4       report is prepared.  
5

6

---

